

Memorandum 78-52

Subject: Study K-63.100 - Evidence (Application of Evidence Code Property Valuation Rules in Noncondemnation Cases)

Last session the Commission recommended legislation relating to evidence of market value of property that, among other features, would have extended Evidence Code Sections 810-812 to all cases in which market value is in issue (except property taxation matters). The Evidence Code provisions are presently limited to eminent domain and inverse condemnation proceedings.

The Commission received a number of objections to this proposal, the foremost being from the State Bar Committee on Condemnation, which felt that other cases should not be burdened by the intricacies of eminent domain law. The Commission decided to withdraw its proposal upon receipt of a letter from the State Bar Committee on Administration of Justice also expressing serious concerns and requesting that the Commission delay action on the proposal. A copy of the CAJ letter is attached as Exhibit 1 (pink).

The staff has since then made a detailed review of the Evidence Code provisions, and a comparison of the provisions with the general law of valuation outside the Evidence Code, such as it is. As a result of this review and comparison, we have made a number of observations: (1) The general law outside the Evidence Code relating to valuation of property is sketchy and hard to find; what there is of it appears mostly in pre-Code condemnation cases; (2) where the general law is ascertainable, it for the most part is consistent with the Evidence Code provisions; (3) in cases where the general law is inconsistent with the Evidence Code provisions, the Evidence Code either liberalizes admissibility, or there appear to be valid reasons for restricting admissibility.

The staff has prepared the attached draft of a new recommendation to extend the Evidence Code provisions to noncondemnation cases. The draft answers the questions raised by persons concerned about the prior recommendation. See Exhibits 1-5 of this Memorandum. If the Commission approves the draft, the staff will distribute the recommendation to the various State Bar committees and other interested persons for review, and will have the recommendation printed.

Respectfully submitted,

Nathaniel Sterling
Assistant Executive Secretary

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4 May 1978

Mr. John Demouilly,
 Executive Director
 California Law Revision
 Commission
 Stanford University
 Palo Alto CA 94305

Dear Mr. Demouilly:

I am writing you at the request of the Chairman of the Committee on Administration of Justice, Jerome I. Braun, and the Family Law Section's Legislative Committee Chairman, James K. Batchelor, regarding AB 2282.

As we understand it, AB 2282 had its genesis in a 1977 Law Revision Commission report on the Evidence of Market Value of Property. However, AB 2282 differs sufficiently from the LRC 1977 recommendation, previously considered by the Family Law Section and CAJ, to cause serious concern. Enclosed you will find a copy of a report by Robert A. Holtzman, a member of the Southern Section of CAJ, in which both the Family Law Section and CAJ concur.

The CAJ and Family Law Section feel this matter is of sufficient importance that the bill should not be heard in the Senate Judiciary until the Commission has had an opportunity to review the concerns set out in Mr. Holtzman's report, and if possible discuss them with a representative of the Committee or Section.

We realize that this may cause some inconvenience on your part, but request your indulgence in light of the seriousness of the concern.

Very truly yours,

Susan Mahony
 Susan Mahony
 Staff Attorney

SM:jb

enclosure

cc: Messrs. McAlister, Bradford, Braun, Batchelor, Brayton, Chernick,
 Holtzman and Wilson
 Mss. Miller and Musser

TO: Committee on Administration of Justice
FROM: Robert A. Holtzman
RE: Assembly Bill 2282 as Amended April 3, 1978

I

SUMMARY AND RECOMMENDATIONS

AB 2282 encompasses three distinct subjects. Sections 1, 7 and 8 attempt to solve specific problems that have arisen in connection with the valuation of property in eminent domain proceedings. Sections 2 through 6 provide sweeping changes in the admission of evidence in civil actions where the value of real or personal property is in issue, by making the limiting provisions of the Evidence Code, heretofore applicable only to eminent domain and inverse condemnation proceedings, expressly applicable to all civil proceedings except those involving property tax assessments or equalization. The changes would thus affect actions or proceedings as diverse as deficiency judgment proceedings under Code of Civil Procedure Section 580(a), actions for damages for conversion or destruction of personal property, and marriage dissolution proceedings. Sections 9 and 10 transfer provisions relating to the admissibility and effect of evidence relating to the amount of unpaid taxes from the Revenue and Taxation Code to the Evidence Code, with slight modification, and make technical changes to conform the language of Revenue and Taxation Code Section 4986 to the Eminent Domain Law (Code of Civil Procedure Sections 1230.010 1237.050).

The Committee considered the bill, the North and South sections working on it independently. Both sections indicated serious misgivings about the bill in its present form. The report that follows is, in essence, a synthesis of the separate views of the North and South sections.

There appears to be no objection to the changes provided for in Sections 1, 9 and 10, for the reasons set forth hereinbelow. Both sections appear to be of the opinion that the balance of the bill should be opposed because, first, it is philosophically unsound in that it will stifle the present tendency of the courts to devise innovative methods of ascertaining the value of property and unduly restrict available methods of proof; second, no demonstrable need has been shown for such restriction; and, third, the bill contains a number of specific objectionable features and fails to cure specific problems which exist in the present statutes.

It thus appears that all of the bill except Sections 1, 9 and 10 thereof, should be opposed, both on the ground that the fundamental changes in the law which it would bring about are undesirable and on the further ground that, if the legislature deems it desirable that such restrictive provisions be adopted, the bill in its present form is so defective in its approach as to require substantial study and revision.

II

CHANGES IN EMINENT DOMAIN PROCEDURE

A. Section 1 of the bill modifies C.C.P. Section 1260.220, part of the Eminent Domain Law, relating to presentation of evidence of value of condemned property where multiple property interests are affected (i.e., owner, tenant, subtenant, etc.). It makes it clear that each interest holder will have an adequate opportunity to present evidence of the value of the whole property, in order to assure an adequate award for the purpose of apportionment. This amendment is desirable in that such persons may have unique knowledge of the value of the property and should not be precluded from presenting evidence because of the limited character of their property interest.

B. Sections 7 and 8 preclude an owner or expert from taking into account, in formulating his opinion of value in an eminent domain case, such matters as sales or leases or contracts to sell only the subject property or part thereof if such sales or leases occur or such contracts are entered into after the filing of the lis pendens. Although the purpose of eliminating untrustworthy evidence is commendable it would appear that such matters should properly be considered by the witnesses and that their reliance thereon should go to the weight rather than to the admissibility of their opinions. It should be noted also that the word "occurs", relating to the creation of a lease (page 5, line 1) is ambiguous and could give rise to unwarranted controversy relating to the time of creation of the leasehold estate.

III

EXPANSION OF THE EVIDENCE CODE PROVISIONS RELATING TO EMINENT DOMAIN AND INVERSE CONDEMNATION GOES TO SUBSTANTIALLY ALL CIVIL ACTIONS.

A. General philosophy. The basic philosophy of the Evidence Code is to provide liberally for the admissibility of all relevant evidence (Evidence Code, Sections 2, 350 - 351) subject to the power of the trial judge, in the exercise of his discretion, to exclude evidence if its probative value is substantially outweighed by the probability

that its admission will necessitate undue consumption of time, or create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury (Evidence Code, Section 352). The Evidence Code also contains specific provisions excluding relevant evidence for reasons of public policy or because it is too unreliable to be presented to the trier of fact (see, for example, Evidence Code Sections 900 - 1070 re privileges, Sections 1100 - 1156 re extrinsic policies, and Section 1200 re hearsay). This philosophy characterizes the modern view of evidence (compare Federal Rules of Evidence, Rule 102).

Value of property is ordinarily proved by opinion testimony, generally from experts, but also from owners of the subject property, partners in an owner-partnership, or knowledgeable officers of an owner-corporation or association. The proposed expansion of the Evidence Code does not affect this general approach. But the reported cases have permitted numerous exceptions to this approach, reflecting the willingness of the trial courts to accept innovative approaches in difficult situations, and the willingness of the Appellate Courts to approve the practice where the evidence was deemed logically probative. The Uniform Commercial Code expressly codified one such approach, the use of trade journal, newspaper or periodical reports of prevailing market price or value of goods, regularly sold on established commodity markets (U.C.C. Section 2724). Cases have upheld direct evidence of sales of the property itself, or of comparable property [see, e.g., Foreman & Clark Corp. v. Fallon, 3 Cal. (3d) 875, 886, 470 Pac. (2d) 362, 92 Cal. Rptr. 162 (1971); In Re Marriage of Folb, 53 Cal. App. (3d) 862, 871, 126 Cal. Rptr. 306 (1975)]. The report of the Law Revision Commission on the proposed legislation indicates that it would eliminate the rule of limited admissibility of sales data, and thus change the rule laid down in the foregoing cases (Annual ^{/1.} Report of Law Revision Commission, December, 1977, page 112, footnote No. 20).

The members of the Committee are unaware of any significant uncertainty in the application of the present value rules by the trial courts, and have not observed the confusion among appraisers, attorneys and the courts and resultant problems mentioned in the Law Revision

1. The Law Revision Commission report suggests that the statutory exception would be preserved. In the absence of statutory language to such effect, the later enactment may prevail.

Commission Report (page 111). The ability of the trial courts to exclude evidence under Evidence Code Section 352 prevents abuse. The present tendency of the courts to devise innovative methods of ascertaining the value of property is consistent with the modern view of evidence and, even if productive of some confusion or uncertainty, is preferable to the restrictive rule proposed. Enactment of the stifling provisions of AB 2282 would constitute an undesirable step backward in the development of the law of evidence.

2 B. Section 6 permits opinion evidence as to value by a knowledgeable officer, regular employee or partner designated by a corporation, partnership or unincorporated association that is the owner of the property or property interest involved. This would be a desirable change in eminent domain procedure because it would alleviate the necessity of small businesses having to retain experts. The concept of "designation" creates an uncertainty; no method or procedure of designation is provided, and a witness may not qualify absent board authorization or the like. Further, it is unclear whether an opposing party may call a corporate officer, etc., regardless of designation, and regardless of the officer's knowledge or lack thereof.

C. Evidence Code Section 816 prevents a witness from taking into account as the basis for his opinion the price and other terms and circumstances of a sale or contract to sell, except where the comparable property is situated geographically near the property being valued and was sold quite "near in time to the date of valuation" and was "alike in respect to character, size, situation, usability, and improvements". The Law Revision Commission found these restrictions to be far too onerous but AB 2282 does nothing to diminish them. The bill should expand Section 816 so as to permit an expert to take into account bona fide sales reasonably related in time, without such restrictions.

D. Evidence Code Section 819 prevents a witness from taking into account as a basis for his opinion capitalization evidence, except with respect to rentals from existing improvements on the property. The Law Revision Commission report recognized that there may be situations where existing improvements do not represent a property's highest and best use, in which case the capitalized value of rental from existing improvements would not necessarily be indicative of the fair market value of the property. AB 2282 does not deal with the question. The subject is a complex one and would require subcommittee work before the bill could be effectively amended.

E. Evidence Code Section 822(d) as it presently stands excludes from the court's consideration "An opinion as to the value of any property or property interest other than that being valued." The Law Revision Commission report advises tightening the rule to make it clear that the value of property traded for the subject property should not be admissible as evidence of its value. To the contrary, the restriction should be relaxed. The section, taken literally, would appear to exclude an analysis by the court of situations where a lump sum had been paid for both the property being valued and for other assets. In such situations it is necessary for the expert to express an opinion as to the values of the other assets in order to "break them out" of the sales price and arrive at an end figure attributable to the subject property. Indeed, Section 815 states that "a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale . . . which included the property or property interests being valued or any part thereof. . . ." Section 822(d) should be amended to accommodate the objective sought to be accomplished by Section 815.

IV

TECHNICAL AMENDMENTS TO REVENUE AND TAXATION CODE SECTION 4986

Revenue and Taxation Code Section 4986 presently provides that in an eminent domain proceeding, the subject of the amount of the taxes due on the property is irrelevant and the mention of the subject at any phase of the trial shall constitute ground for mistrial. AB 2282 moves the subject matter to Evidence Code Section 822(c), maintains the concept that the evidence is inadmissible, but removes the harsh provision for automatic mistrial. This appears to be a desirable change. As noted, other technical changes conform the language of Revenue and Taxation Code Section 4896 to that used in the Eminent Domain Law without substantive change; these amendments appear sound.

LAW OFFICES OF
GALLOWAY, THOMSON & KILDUFF

HAROLD A. GALLOWAY
HUGH T. THOMSON
VINCENT J. KILDUFF

A PROFESSIONAL ASSOCIATION
800 LAFAYETTE STREET, SUITE 600
SANTA CLARA, CALIFORNIA 95050

AREA CODE 408
TELEPHONE 284-1200

May 3, 1978

Assemblyman Alister McAllister
Room 3112
State Capitol, Sacramento, CA. 95814

Re: Assembly Bill 2282

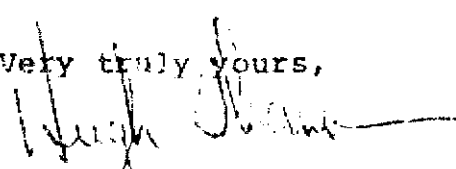
Dear Assemblyman McAllister:

I am writing to express my view of Assembly Bill 2282 which was introduced by you.

I have practiced family law for the last five years, and with special emphasis for the last two. I have tried approximately 200 contested dissolution cases using expert witnesses to determine value. Having considered AB 2282, and particularly Section 813(a)(1), I am concerned that the term "witnesses qualified to express such opinions" will be defined as MAI appraisers only. This would increase the already heavy cost burden upon the parties as the MAI appraisers tend to charge about \$300 for an appraisal and an additional amount for trial testimony. I have used both realtors and appraisers and have a high regard for the ability of realtors to value property.

I therefore respectfully request that domestic law actions be excepted from this bill.

Very truly yours,


HUGH T. THOMSON

HT:sh
cc: Members
Property Division Committee
Family Law Section
State Bar of California

JEFFERY, GIBSON & BARBOUR

ROBERT N. BARBOUR

RICHARD J. GIBSON

BRADFORD J. JEFFERY

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SACRAMENTO, CALIFORNIA 95802
TELEPHONE 426-4481, 221

May 5, 1978

Assemblyman Alister McAlister
Room 3112
State Capitol, Sacramento, California 95814

Re: Assembly Bill 2282

Dear Assemblyman McAlister:

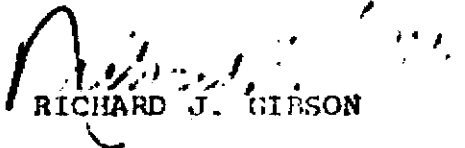
I have recently received a copy of a letter addressed to you under date of May 3, 1978, from Attorney Hugh T. Thomson, Santa Clara, California.

I have been active in the field of family law for some 15-20 years, and I concur with Mr. Thomson's opinion regarding limiting appraisers to MAI appraisers. Our local Courts have accepted opinion evidence from real estate agents and brokers regarding the reasonable market value of property, and having discussed this matter personally with Judges in our county, I can indicate to you without hesitation that frequently an opinion expressed by a real estate agent is accepted with as much or more weight as an MAI appraiser, at least for dissolution purposes.

I would, therefore, join with Mr. Thomson's request that domestic law actions be excepted from this bill.

Very truly yours,

JEFFERY, GIBSON & BARBOUR


RICHARD J. GIBSON

RJG:mb

cc: Hugh T. Thomson, Esq.
Galloway, Thomson & Kilduff
900 Lafayette Street, Suite 600
Santa Clara, California 95050



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April 10, 1978

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515 Seventeenth Street
Denver, Colorado 80202

Mr. Nathaniel Sterling
Assistant Executive Secretary
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Dear Mr. Sterling:

In answer to your request, I have read the copy of the Commission's current recommendations. I want to make you aware that I am a staff appraiser and, therefore, have not done any court work. You asked for my opinion, however, so for what it is worth, I will give it to you.

1. All the recommended changes make sense to me and should be approved without any major problem.
2. Not being a lawyer, I do not understand the rules of evidence or even the need for same. When an appraiser is hired to present his value judgment, he should be permitted to explain what it is and how he arrived at it according to what is proper in his profession and testify to same.

Thank you for the opportunity to go over your recommendations, and if you feel that either The College of Fellows or myself could be of any assistance to the Commission, please let me know.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles N. MacNear".

Charles N. MacNear, F.A.S.A.-F.S.V.A.
Chancellor, College of Fellows

CNM:sb

cc: Dexter MacBride, F.A.S.A.



Memorandum 78-52

EXHIBIT 5

Study K-63.100

CALIFORNIA APPRAISERS' COUNCIL

April 21, 1978

Mailing Address:

Robert D. Jackson, F.A.S.A., President
1683 Colorado Boulevard
Los Angeles, California 90041

State of California
California Law Revision Commission
Stanford Law School
Stanford, California 94305

Attention: Nathaniel Sterling, Assistant Executive
Secretary

Re: Your letter to me dated March 28, 1978

MEMBER ASSOCIATIONS:

American Society of Appraisers
Los Angeles Chapter
Sacramento Chapter
San Francisco Chapter
San Jose Chapter

California Society of Rural
Appraisers and Farm
Managers

National Association of
Independent Fee Appraisers
Los Angeles Chapter

Society of Governmental Appraisers
Central Coast Chapter
Dos Condes Chapter
El Tahoe Chapter
North Bay Chapter

Society of Real Estate Appraisers
Bakersfield Chapter
East Bay Chapter
Long Beach Chapter
Los Angeles Chapter
Mission Chapter
Monterey Bay Chapter

Society of Subdivision Appraisers
Los Angeles District

Gentlemen:

I appreciate the opportunity to respond on the matter of "Evidence of Market Value of Property" dated October 1977.

It is my view that the Evidence Code enacted in 1965 should have applied to all valuation proceedings from its inception.

The subject has been discussed with appraisers, members of the legal profession, and members of the judiciary in Los Angeles County.

I am convinced that if the legislature fails to act in this matter, the courts will determine by decisional action that the provisions of the Evidence Code are not limited to eminent domain proceedings.

The Evidence Code as adopted in 1965 should be modified in an important aspect, however. Section 822 was, I believe, improperly drawn. The heading states:

1. "...the following matter is inadmissible as evidence."
2. "...and is not a proper basis for an opinion as to the value of property."

Part 1 as a part of the Evidence Code is appropriate if in the wisdom of the California legislators and certain members of the legal profession it is concluded that such information should be denied to courts and juries in all cases.

April 21, 1978

- 2 -

Such absolute exclusion does, however, seem to be inconsistent with the provisions of 1263.320, part (b), even for eminent domain matters.

The conclusion stated in part 2 above "not a proper basis" reflects inadequate knowledge of what is happening in the appraisal profession. The appraisal profession/business could not have been studied prior to the writing of the clause. Investigation of the total scope of appraisal activity in the United States (and California) would have revealed that between 50% and 75% of all appraisals made do, in some way, run counter to the provisions of 822.

If the legislature intends to regulate appraisal practice and procedure by setting forth in the law what is "proper" and "not proper", appropriate investigation, study, and inquiry should be made. Further, it is reasonable to obtain input from both practicing appraisers and the nationally recognized testing and certifying professional appraisal societies.

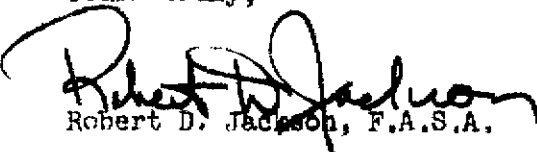
The Evidence Code is not the appropriate place for appraisal regulation. Information concerning other professions, trades, etc., is normally found in the Business and Professions Code or in regulations from boards created in the Business and Professions Code.

It seems that justice might be better served if the matter of admissibility were revised to provide for court discretion rather than live with an inflexible rule of absolute exclusion.

Further, I believe that the matter of "propriety" should be deleted from the section.

Should additional input be desired, I will be happy to lend my efforts in arranging for appearances before the California Law Revision Commission by representatives of the appraisal profession.

Yours truly,


Robert D. Jackson, F.A.S.A.

RDJ/hj

cc: Joan Robinson, President, C.A.C.
Alex Sabbadini, A.S.A., International President,
American Society of Appraisers
Bernard Goodman, A.S.A., International Senior
Vice President, American Society of Appraisers
Dexter D. MacBride, F.A.S.A., Executive Vice
President, American Society of Appraisers
John Monroe, A.S.A., Regional Governor, American
Society of Appraisers
Allan Yuen, A.S.A., President, Los Angeles Chapter,
American Society of Appraisers

STAFF DRAFT
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

**Application of Evidence Code Property
Valuation Rules in Noncondemnation Cases**

September 1978

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

STAFF DRAFT

September 7, 1978

To: The Honorable Edmund G. Brown Jr.
Governor of California and
The Legislature of California

The Evidence Code was enacted in 1965 upon recommendation of the Law Revision Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue to study the law relating to evidence. Pursuant to this directive, the Commission has undertaken a continuing study of the Evidence Code to determine whether any substantive, technical, or clarifying changes are needed.

The Commission recommended to the 1978 Legislature a number of changes in the Evidence Code rules relating to value, damages, and benefits in eminent domain and inverse condemnation cases. See Recommendation Relating to Evidence of Market Value of Property, 14 Cal. L. Revision Comm'n Reports 105 (1977). Among the recommendations was that the Evidence Code rules be extended to all cases where the market value of real property and tangible personal property is in issue, other than ad valorem property tax assessment and equalization. Because of serious concerns expressed by some committees of the State Bar, the Commission withdrew this aspect of its recommendation for further study.

The present recommendation is the result of the Commission's review. It presents a thorough analysis of the problems in the law, and reiterates the Commission's original recommendation that the application of the Evidence Code rules be broadened, with some refinements.

Respectfully submitted,

Howard R. Williams,
Chairman

September 1978

STAFF DRAFT

RECOMMENDATION

relating to

APPLICATION OF EVIDENCE CODE PROPERTY VALUATION
RULES IN NONCONDEMNATION CASES

Introduction

The provisions of the Evidence Code relating to valuation of property apply only to eminent domain and inverse condemnation proceedings.¹ Other actions involving the valuation of property, with a few limited exceptions,² are governed by case law. It has been suggested by several commentators that the eminent domain valuation provisions could be equally well applied to the other actions.³

1. See Evid. Code § 810. (The text of Evidence Code Section 810-822 appears as an Appendix to this recommendation.) See In re Marriage of Folb, 53 Cal. App.3d 862, 870, 126 Cal. Rptr. 306, ____ (1975) ("Neither statutory nor case law authority has been called to our attention that requires, in other areas where property values must be determined by the courts, adherence to the condemnation law method of determining market value of real property.") See also Senate Committee on Judiciary, Comment to Section 810 (Report of Senate Committee on Judiciary on Assembly Bill 2282, Senate J. (June 8, 1978) at 11580).
2. See, e.g., Com. Code §§ 2723-2724 (proof of market price in cases involving sale of goods); Cal. Admin. Code, Tit. 18, Subch. 1 (State Board of Equalization valuation principles and procedures).
3. In Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 144 (1966), it was said: "In any event, the Law Revision Commission and the legislature should consider legislation making the Evidence Code provisions applicable to all actions and special proceedings involving the valuation of real property." And in Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 68 (1967), it was said: "But if the standard value for purposes of eminent domain is the same as value for purposes of real property taxation and inheritance taxation, no reason appears why the evidentiary rules for determining value should be limited to eminent domain and inverse condemnation cases."

The major areas of litigation, other than eminent domain and inverse condemnation, where the determination of property value is important include property taxation, gift taxation, inheritance taxation, breach of contract for sale of property, fraud in sale of property, damage or injury to property, mortgage deficiency judgments, and marital dissolution and division of property. In each of these areas, the critical determination is the "market value" of the property.⁴ This is also the determination in an eminent domain or inverse condemnation proceeding.⁵

The lack of statutory standards of evidence for the valuation of property in areas other than eminent domain and inverse condemnation has created a number of problems. The same basic factual question--the determination of market value of property--is governed by different rules of evidence depending upon the type of case in which the question

4. See, e.g., Cal. Const., Art. XIII, § 1, and Rev. & Tax. Code §§ 110, 110.5, 401 (use of "fair market value" or "full value" for taxation purposes); Rev. & Tax. Code §§ 13311, 13951 (inheritance tax based on "market value" of property); Rev. & Tax. Code § 15203 (gift tax computed on "market value" of property); Civil Code § 3343 (measure of damages in fraud based on "actual value" of property); Ins. Code § 2071 (fire insurance covers loss to the extent of "the actual cash value" of the property); Code Civ. Proc. § 580a (mortgage deficiency judgment calculated on "fair market value" of property). The cases have uniformly interpreted these varying standards to mean "market value." See, e.g., *Jefferson Ins. Co. v. Superior Court*, 3 Cal.3d 398, 402, 475 P.2d 880, 882, 90 Cal. Rptr. 608, 610 (1970) (fire insurance); *De Luz Homes, Inc. v. County of San Diego*, 45 Cal.2d 546, 561-62, 290 P.2d 544, 554 (1955) (property tax); *Guild Wineries & Distilleries v. County of Fresno*, 51 Cal. App.3d 182, 187, 124 Cal. Rptr. 96, 99 (1975) (property tax); *Union Oil Co. v. County of Ventura*, 41 Cal. App.3d 432, 436, 116 Cal. Rptr. 13, 16 (1974) (property tax); *Campbell Chain Co. v. County of Alameda*, 12 Cal. App.3d 248, 253, 90 Cal. Rptr. 501, 504 (1970) (property tax); *Estate of Rowell*, 132 Cal. App.2d 421, 429, 282 P.2d 163, 168 (1955) (inheritance tax); *Bagdasarian v. Gagnon*, 31 Cal.2d 744, 752-53, 192 P.2d 935, 940 (1948) (fraud damages); *Pepper v. Underwood*, 48 Cal. App.3d 698, 706 n.7, 122 Cal. Rptr. 343, 349 n.7 (1975) (fraud damages).

5. E.g., Code Civ. Proc. § 1263.310 (measure of compensation in eminent domain is "fair market value" of property).

arises.⁶ Confusion is generated by the existence of multiple standards.⁷ And the lack of clear statutory standards in cases where the market value issue is not frequently litigated poses real problems.⁸ The case law in this area is sparse and difficult to locate.

The Law Revision Commission recommends that the Evidence Code rules applicable to eminent domain and inverse condemnation cases be extended to include all cases (other than ad valorem property tax assessment and equalization⁹) not now covered by statute where there is an issue of the "market value" (or its equivalent) of real property or tangible personal property.¹⁰ The Commission also recommends a few changes in the Evidence Code rules to accomodate their expanded application.¹¹

6. See Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 144 (1966).

7. See id.

8. See, e.g. In re Marriage of Folb, 53 Cal. App.3d 862, 868, 126 Cal. Rptr. 306, 310 (1975), "Neither the Family Law Act, nor the decisional law of this state relating to community-property division, offers any particular guidance as to how the value of a disputed real property asset should be ascertained."

9. The Commission does not recommend the Evidence Code provisions be extended to ad valorem property tax assessment and equalization cases since proceedings are informal, and cases are already governed by a well-developed set of rules. See Rev. & Tax. Code § 1609 (informal hearing); Cal. Admin. Code, Tit. 18, Subch. 1 (state Board of Equalization valuation principles and procedures).

10. The Evidence Code provisions do not govern valuation of intangible personal property such as stock or goodwill of a business. See Section 811 and Senate Judiciary Committee Comment (Report of Senate Committee on Judiciary on Assembly Bill 2282, Senate J. (June 8, 1978) at 11580). See also South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.3d 944, 979-80, 133 Cal. Rptr. 166, ___ (1976) (Evidence Code provisions limited to valuation of land and improvements, and do not apply to valuation of a business).

11. See discussion, infra, under "Value Shown Only by Opinion Testimony."

Codification will clarify and make more accessible the law in these less frequently litigated areas. Most of the development in the law relating to property valuation has occurred in the eminent domain context. Noncondemnation law will receive the benefit of the interpretation and refinement that has already occurred under the Evidence Code provisions.¹²

Application of the Evidence Code valuation rules in noncondemnation areas would not transport the substantive law of eminent domain defining "market value," "date of valuation," and the like, into those areas.¹³ These other areas are governed by the valuation standards applicable in the particular case.¹⁴ The Evidence Code valuation rules are strictly procedural--they state who is qualified to express an opinion of value and the appraisal evidence that may go into formulating such an opinion.¹⁵ The rules do not purport to embody all appraisal practice or to cover every valuation situation that may arise.¹⁶ They do, however,

12. Cf. Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 159 (1966) ("As a general proposition, the codification tends to clarify this area of law. It has reduced to 13 sections what has been judicially determined in hundreds of decisions, dating back to the 1850's. For the appraiser and general practitioner who embarks into the specialty of eminent domain practice, it should provide a convenient legal and appraisal tool, easily available for ready reference.").

13. For example, the eminent domain concept of "fair market value" is embodied in Code of Civil Procedure Section 1263.320, and is not incorporated in the Evidence Code valuation rules.

14. See Evidence Code § 812. See also discussion, infra, under "Non-compensable Items."

15. South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.2d 944, 970, 133 Cal. Rptr. 166, ___ (1976) ("There is a distinction between a measure of just compensation in an eminent domain action and the methods used to determine the amount of that compensation under that measure. Rules of law establishing the former are substantive, while those fixing the latter are procedural.").

16. See discussion, infra, under "Matter Upon Which Opinion May Be Based." See also Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 159 (1966):

The science of appraising and appraisal practice, such as it is, cannot all be put into legislation. Only limited areas can be controlled by legislation. This was the approach taken

provide a clear and usable body of rules to govern most valuation problems, without rigidifying the law or stifling the development of appropriate appraisal techniques.

The analysis of the Evidence Code rules in this recommendation demonstrates that those rules are sufficiently general in scope, and sufficiently liberal in their admission of all recognized valuation techniques, to justify their use in all areas identified by the Commission. Broad application of the statutory evidence rules will in a few cases change existing case law.¹⁷ However, the courts have applied many of the basic principles applicable to eminent domain cases in the other areas where valuation is important,¹⁸ and the benefit of eliminating the existing uncertainty by having a uniform set of rules of evidence applicable to all real property and tangible personal property valuations outweighs any inconvenience of minor changes in existing case law rules.

Value Shown Only by Opinion Testimony

The value of some types of property, such as listed securities or goods regularly sold on commodity markets, may be easily ascertained by evidence of sales and purchases.¹ However, the value of most types of property and particularly of real property, is not so easily determinable. Value ordinarily must be shown by opinion testimony.²

by the Law Revision Commission and the legislature. Its worth has already been proven in assisting appraisers, trial attorneys and judges. . . .

17. The changes are noted, where ascertainable, infra.

18. See discussion, infra. See also Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 101 (1967).

1. McBaine, California Evidence Manual § 519 (2d ed. 1960). Cf. Bagdasarian v. Gragnon, 31 Cal.2d 744, 755, 192 P.2d 935, ___ (1948) ("Market value of personal property may, of course, be established by testimony of expert witnesses, but this is not the only method, and it has been generally held that the reasonable value of marketable personal property may be shown by market prices or actual specific sales of other similar property, provided such sales are bona fide and not too remote in time or place. [Citations.]") (Italics in original.)

2. B. Witkin, California Evidence § 441 (2d ed. 1966); McBaine, California Evidence Manual §§ 519-521 (2d ed. 1960); 31 Cal. Jur.3d, Evidence §§ 560-569 (___).

Evidence Code Section 813(a) codifies the rule that value must be shown by opinion testimony. The effect of the codification is to prevent evidence, otherwise admissible, from being used to support a verdict outside the range of opinion testimony.³ This rule avoids results such as those in Foreman & Clark Corp. v. Fallon⁴ and In re Marriage of Folb,⁵ described below.

Foreman & Clark was an action for damages for breach of a lease which required a determination of the rental value of the premises. Testimony as to the rental value of the premises was given by the lessor and by expert witnesses for both lessee and lessor. The lowest opinion given by any of the witnesses would yield a rental value of \$350,000; the trial court, relying on independent evidence of value such as the agreed rent and prior leases of portions of the premises, arrived at a rental value of \$25,000. The prior leases predated the breach by almost two years. On appeal, the Supreme Court refused to apply the eminent domain rule that the value must be within the range of the expert testimony, holding that "the trial court was warranted in rejecting the expert testimony and following the other evidence in the case."⁶

Folb was a marriage dissolution case in which it became necessary to determine the value of real property. The husband and an expert witness for the husband testified to the value of the property, the lowest opinion of which was \$208,320. The wife introduced no opinion testimony, but did introduce evidence of prior sales of the property, including a nonmarket sale of the property for \$161,065 by the husband to a partnership in which the husband owned a 97% interest. The trial court found the value of the property to be \$161,065. On appeal, the

3. State v. Wherity, 275 Cal. App.2d 241, 249, 79 Cal. Rptr. 591, ____ (1969).

4. 3 Cal.3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971).

5. 53 Cal. App.3d 862, 126 Cal. Rptr. 306 (1975).

6. 3 Cal.3d at 890, 479 P.2d at ____, 92 Cal. Rptr. at _____. The court distinguished this case from eminent domain on the basis of the "special problems" of eminent domain, without an indication of what those problems might be.

C
Court of Appeal noted the eminent domain rule that the trier of fact may not base a determination of value on independent evidence, but held that in a noncondemnation case the trier of fact "was not required to base his determination of the value of [the property] solely upon the opinion testimony of witnesses qualified as experts in real property valuation."⁷

Results such as the foregoing were precisely the type that Evidence Code Section 813(a) was designed to cure. Section 813(a) precludes the trier of fact from making an independent determination of value upon the basis of prior sales of the property or other raw valuation data. The trier of fact may know little or nothing of property values, may never have seen the property being valued or comparable property introduced in evidence, and is not subject to cross-examination as to the bases for the valuation determination. The assistance of experts qualified to analyze and interpret the facts is necessary to prevent the trier of fact from arriving at a valuation far above or far below what any qualified expert believes the property is worth.⁸ The rule enables the trier of fact to act intelligently in arriving at a determination of value.⁹

C
The rule of Evidence Code Section 813(a) is sound. It should be extended to noncondemnation cases, changing the result in such cases as Foreman & Clark and Folb.¹⁰ It should not, however, preclude a valua-

7. 53 Cal. App.3d at 871, 126 Cal. Rptr. at ____.

8. California Law Revision Commission, Recommendation and Study Relating to Evidence in Eminent Domain Proceedings A-5-A-6 (1960); T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law & Practice § 508.04 (1976).

9. Pollak & Downs, The Antiparalleling Statute: A New Dimension in Public Utility Condemnation, 60 Cal. L. Rev. 1116, 1136 (1972).

10. Use of expert testimony to determine the value of community property in marital dissolution cases is not new. See, e.g., "Court Dissolution Policy Revised in East District," L.A. Daily Journal, July 12, 1978, p.1, col.4-5 (Unless there is a stipulation as to value, expert testimony ordinarily required).

tion based on independent evidence in situations where this would be appropriate, such as the valuation of commodities regularly sold in an established market,¹¹ or the valuation of automobiles for which price guides are available.¹² The Evidence Code should be amended accordingly.¹³

Persons Entitled to Give Opinions of Value

Opinion testimony may generally be given only by experts or by the owner of the property.¹ Because of this rule, there has been concern over the litigation cost required by use of professional appraisal testimony.² The Evidence Code provisions are as liberal as, and in some cases more liberal than, general law in permitting qualified nonappraisal witnesses to give opinions of value.

Qualifications of expert. The expert is usually a professional appraiser or real estate broker, though the expert need not always be so

11. See, e.g., Commercial Code Section 2724:

2724. Whenever the prevailing price or value of any goods regularly bought and sold in any established commodity market is in issue, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of such market shall be admissible in evidence. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

12. See, e.g., Code Civ. Proc. § 690.2:

The value of such motor vehicle shall be established by reference to used car price guides customarily used by California automobile dealers, or, if not listed in such guides, fair market value, for a motor vehicle of that year and model.

13. The Evidence Code should also be amended to permit a determination of value outside the range of opinion testimony in default cases. See *City Bank of San Diego v. Ramage*, 266 Cal. App.2d 570, 72 Cal. Rptr. 273 (1968).

1. 31 Cal. Jur.3d Evidence §§ 560-564 (____).
2. See, e.g., ____, 3 Cal. Real Estate Law & Practice § 75.33[3] (____); Peitzman & Smith, The Secured Creditor's Complaint: Relief From the Automatic Stay in Bankruptcy Proceedings, 65 Cal. L. Rev. 1216, 1236 (1977).

qualified.³ A general knowledge of real estate values is not sufficient to qualify a witness as an expert.⁴ The expert must be familiar with (1) the property in question, (2) the value of other property in the vicinity, (3) the state of the market for the property in question, and (4) sales of similar property in the vicinity.⁵

Evidence Code Section 813(a)(1) permits testimony as to the value of property by witnesses "qualified to express such opinions." This provision is broadly construed to include anyone who has special knowledge of the value of the property.⁶ "A witness who through knowledge and experience possesses the means to form an intelligent judgment as to the value of land beyond that possessed by persons generally is competent to give an opinion on fair market value even though he is not a real estate appraiser or broker."⁷ The eminent domain qualification provisions are at least as liberal as the general provision for qualification of an expert expressed in Section 801. The eminent domain law provisions as to qualifications of experts have been relied upon to justify liberal qualifications for expert testimony in other areas of market value litigation.⁸

Right of property owner to testify. The owner of real or personal property being valued is permitted to give an opinion as to the value of the property, in all types of market value litigation.⁹ This rule was

3. B. Witkin, California Evidence § 423 (2d ed. 1966).

4. 31 Cal. Jur.3d Evidence § 565 (____).

5. McBaine, California Evidence Manual § 519 (2d ed. 1960).

6. T. Dankert, Condemnation Practice Handbook, 14 Cal. Real Estate Law & Practice § 508:40[3] (1976).

7. San Bernardino County Flood Control Dist. v. Sweet, 255 Cal. App.2d 889, 898, 63 Cal. Rptr. 640, ____ (1967) [citations omitted].

8. See, e.g., Naples Restaurant, Inc. v. Coberly Ford, 259 Cal. App.2d 881, 66 Cal. Rptr. 835 (1968) (automobile salesman qualified to give opinion of value of motor vehicle in fraud and breach of contract case).

9. See, e.g., 31 Cal. Jur.3d, Evidence § 564 (____); B. Witkin, California Evidence § 403 (2d ed. 1966); McBaine, California Evidence Manual § 481 (2d ed. 1960).

originally "predicated on the theory that the owner who resided on and owned property for a period of years would be presumed to have acquired sufficient knowledge of the property and of the value of the land in that neighborhood to be able to give an intelligent estimate as to the value of his own property."¹⁰ Although the validity of this presumption has been questioned in recent years,¹¹ Section 813(a)(2) codifies the rule that the owner of property may testify as to value,¹² thus preserving the rule at least for cases governed by the Evidence Code.

Occasionally persons in a relationship with the owner, such as the managing agent of a corporation, the pastor of a church, an agent, or the son of an owner, attempt to testify as an owner. Attempts to broaden the owner's right to testify to include such persons closely related to the owner have generally met with failure.¹³ Section 813(a)(3) statutorily expands the owner's right to testify to include an officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property, provided the designee is knowledgeable as to the value of the property.¹⁴ This provision enables the small organization to give adequate testimony as to the value of its property in cases where it might not be able to

10. *City of Pleasant Hill v. First Baptist Church*, 1 Cal. App.3d 384, 411, 82 Cal. Rptr. 1, ___ (1969).

11. See, e.g., The Opinion Rule in California and Federal Courts: A Liberal Approach, 9 U.C.D. L. Rev. 233, 240 n.49 (1976); "Court Dissolution Policy Revised in East District," L.A. Daily Journal, July 12, 1978, p.1, col.4-5 (in marriage dissolution cases "it has been the experience of the Court in the past that the testimony of the parties as to values is of little help in making an accurate determination of the true value of the property").

12. B. Witkin, California Evidence § 441(b) (2d ed. 1966).

13. T. Dankert, Condemnation Practice Handbook, 14 Calif. Real Estate Law & Practice § 508.40[2] (1976).

14. 1978, Cal. Stats., Ch. 294 § 6. The Uniform Eminent Domain Code contains a similar provision. Section 1103(a)(3) (opinion may be given upon proper foundation by "a shareholder, officer, or regular employee designated to testify on behalf of an owner of the property, if the owner is not a natural person").

afford the cost of an expert.¹⁵ Section 813(c) is also more liberal than general law in permitting a person entitled to possession of the property to testify, even though the person may not be technically an "owner."¹⁶

Matter Upon Which Opinion May Be Based

Appraisers, in valuing property, normally use three methods or approaches to estimate the market value of real property: market data, replacement cost, and capitalization of income.¹ The Evidence Code gives statutory recognition to this appraisal "trinity" of generally accepted valuation techniques.²

While it has been suggested that the Evidence Code "limits" admissibility by a "strict statutory scheme,"³ Section 814 makes clear that a witness is not limited to the three approaches specified in the Evidence Code.⁴ Market value can be determined many ways, none of which is exclusive.⁵ An opinion may be based on any matter that is of a type that reasonably may be relied upon by an expert in forming an opinion as

15. California Law Revision Commission, Recommendation Relating to Evidence of Market Value of Property, 14 Cal. L. Revision Comm'n Reports 105, 113 (1977).

16. As amended, 1978 Cal. Stats., Ch. 194 § 6.

1. In re Marriage of Folb, 53 Cal. App.3d 862, 868, 126 Cal. Rptr. 306, ___ (1975); State v. Covich, 260 Cal. App.2d 663, 665, 67 Cal. Rptr. 280, ___ (1968); De Luz Homes, Inc. v. County of San Diego, 45 Cal.2d 546, 563, 290 P.2d 544, ___ (1955).

2. Evid. Code §§ 815-820; Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 146 (1966).

3. Peitzman & Smith, The Secured Creditor's Complaint: Relief From the Automatic Stays in Bankruptcy Proceedings, 65 Cal. L. Rev. 1216, 1236 n.119 (1977).

4. Each of the statutorily recognized appraisal techniques is prefaced by the qualification that it may be used only "when relevant to the determination of the value of property."

5. South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.3d 944, 972, 133 Cal. Rptr. 166, ___ (1976).

to the value of property, including but not limited to matters specifically mentioned in the Evidence Code.⁶ This provision reflects the appraiser's practice of considering any information that might possibly be relevant and evaluating that information in the light of the appraiser's past experience.⁷

Under this provision, for example, the fact that the Evidence Code specifically permits use of capitalization of net rental income does not preclude use of gross rentals or capitalization of nonrental income, where appropriate.⁸ And the fact that the Evidence Code permits use of comparable sales does not preclude use of price trend or other data for noncomparable properties, where appropriate.⁹ The Supreme Court has emphasized that "Evidence Code Section 814 permits a witness to base his

6. Evid. Code § 814. "The Evidence Code does not by this listing of the separate approaches preclude other possible approaches to value. . . . Thus, the opinion of the witness as to value may be based upon other considerations than basic approaches to value unless precluded by some rule of law." T. Dankert, *Condemnation Practice Handbook*, 14 California Real Estate Law & Practice § 508.11[1] (citation omitted) (1976).
7. Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 71 (1967).
8. *Redevelopment Agency v. Del-Camp Investments, Inc.*, 38 Cal. App.3d 836, 113 Cal. Rptr. 762 (1974) (gross rentals); *South Bay Irr. Dist. v. California-American Water Co.*, 61 Cal. App.3d 944, 133 Cal. Rptr. 166 (1976) (nonrental income). See T. Dankert, *supra*, 14 California Real Estate Law & Practice at § 508.11[4]: "It appears from Evidence Code Sections 813 and 814 that opinion testimony could embrace any type of capitalization study not precluded by some exclusionary rule."
9. *City of Los Angeles v. Retlaw Enterprises, Inc.*, 16 Cal.3d 473, 485, 546 P.2d 1380, ___, 128 Cal. Rptr. 436, ___ (1976) (price trend data): "To deny such discretionary power would be to sanctify a wooden conception of comparability that would unjustifiably shackle the fact-finding process." See also *People v. Home Trust Investment Co.*, 8 Cal. App.3d 1022, 1026, 87 Cal. Rptr. 722, ___ (1970) (discretionary power of court to permit evidence of noncomparable sales used as a basis for opinion where there were no comparable sales).

testimony on relevant evidence, 'including but not limited to the matters listed in sections 815 to 821.'"¹⁰

While the Evidence Code valuation provisions are flexible in their admission of relevant evidence, Section 814 imposes a significant limitation--the matter upon which an opinion is based must be of a type that "reasonably may be relied upon by an expert in forming an opinion as to the value of property." This limitation assures that the witness has an adequate basis for an opinion.¹¹

Sales of Subject Property

Generally, prior and subsequent sales of the property being valued are relevant evidence of its value, provided the sales are voluntary, not too remote in point of time, and not otherwise shown to lack probative value.¹ This rule is firmly established in eminent domain law, and is codified by Evidence Code Section 815.² As a matter of trial and appellate court practice in eminent domain, there appears to be a tendency towards liberality in admitting sales of the subject property.³

10. City of Los Angeles v. Retlaw Enterprises, Inc., supra, 16 Cal.3d at 486 n.8, 546 P.2d at ___, n.8, 128 Cal. Rptr. at ___, n.8. See also South Bay Irr. Dist. v. California-American Water Co., supra, 61 Cal. App.3d at 980, 133 Cal. Rptr. at ___:

By virtue of Evidence Code Section 814, an opinion and determination of the market value of condemned property may be based on matters which the hypothetical buyer and seller described in the general market value rule would consider in determining the price at which to purchase and sell the property under consideration "including but not limited to the matters listed in Sections 815-821 of that code (see also City of Santa Barbara v. Petras, 21 Cal. App.3d 506, 510 [98 Cal. Rptr. 635]); and thus capitalization of the income of a condemned public utility, which is not a matter included in Evidence Code section 819, may be a basis for such an opinion or determination.

11. See, e.g., City of Los Angeles v. Lowensohn, 54 Cal. App.3d 625, 638-39, 127 Cal. Rptr. 417, ___ (1976).

1. Bagdasarian v. Gragnon, 31 Cal.2d 744, 755-58, 192 P.2d 935, ___ (1948); Eatwell v. Beck, 41 Cal.2d 128, 134, 257 P.2d 643, ___ (1953); 31 Cal. Jur.3d Evidence § 192 (___).

2. B. Witkin, California Evidence § 362 (2d ed. 1966).

3. T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law & Practice § 509.04 (1976).

Thus, recent cases have upheld use of sales of the subject property made from three to six years prior to the date of valuation.⁴ Noncondemnation cases have drawn upon eminent domain law to conclude that evidence of sales of the subject property should be admissible to prove value.⁵

Comparable Sales

Evidence of sales of personal property similar to the property being valued issue is admissible to prove market value.¹ Whether sales of comparable real property are likewise admissible is not clear, however. Cases prior to 1957 have held that such sales are not admissible on direct examination.² In 1957 the Supreme Court in County of Los Angeles v. Faus³ held that comparable sales were admissible on direct examination in eminent domain proceedings, overruling and disapproving prior eminent domain cases; the court did not, however, overrule or disapprove prior noncondemnation cases holding comparable sales inadmissible on direct examination.

Since 1957, the rule of Faus has been codified in Section 816 of the Evidence Code, which permits a witness to base an opinion on comparable sales freely made within a reasonable time before or after the date of valuation.⁴ In order to be considered comparable, the sale must have been made sufficiently near in time to the date of valuation, and

4. City of Los Angeles v. Retlaw Enterprises, Inc., 16 Cal.3d 473, 546 P.2d 1380, 128 Cal. Rptr. 436 (1976) (six years); South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.3d 944, 133 Cal. Rptr. 166 (1976) (three years).

5. See, e.g., In re Marriage of Folb, 53 Cal. App.3d 862, 867-71, 126 Cal. Rptr. 306, ____ (1975) (marriage dissolution); 53 Cal. Ops. Atty. Gen. 97 (1970) (property tax assessment).

1. B. Witkin, California Evidence § 361 (2d ed. 1966); 31 Cal. Jur.3d § 194 (____).

2. See, e.g., Estate of Ross, 171 Cal. 64, 151 P. 1138 (1915) (inheritance taxation); Thompson v. Stoakes, 46 Cal. App.2d 285, ____ (1941) (damages in real estate transaction).

3. 48 Cal.2d 672, 312 P.2d 680 (1957).

4. T. Dankert, Condemnation Practice Handbook 14 California Real Estate Law & Practice §§ 509.01-509.03 (1966); B. Witkin, California Evidence § 363 (2d ed. 1966).

the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, useability, and improvements, to make it clear that the property sold and the property being valued are comparable in value and that the price realized for the property sold may be fairly considered as "shedding light" on the value of the property being valued.⁵ Under this test, the courts have been given and have utilized broad and liberal discretion in determining comparability.⁶ The application of Section 816 is summarized well in City of Ontario v. Kelber⁷:

But, manifestly, the trial judge, in applying so vague a standard (criteria for comparability), must be granted a wide discretion. (County of Los Angeles v. Faus, 48 Cal.2d 672, 678 [312 P.2d 680].) If the properties are sufficiently similar to have "some bearing" on the value under consideration, or to "shed light" on the proper value, the trial judge's discretion will not be interfered with on appeal. (Merced Irrigation Dist. v. Woolstenhulme, supra, 4 Cal.3d 478, 500). Only where it is clear that the court has abused this discretion by not adequately heeding the safeguards for determining comparability will the appellate court reverse. (People ex rel. State Park Com. v. Johnson, 203 Cal. App.2d 712, 719 [22 Cal. Rptr. 149].)

5. Evid. Code § 816; Condemnation Practice Handbook §§ 4.26-4.27, 4.30-4.31 (Cal. Cont. Ed. Bar 1973).
6. See, e.g., Community Redevelopment Agency v. Henderson, 251 Cal. App.2d 336, 59 Cal. Rptr. 311 (1967) (properties much larger, in different areas with different zoning and uses; rejected); San Bernardino County Flood Control District v. Sweet, 255 Cal. App.2d 889, 63 Cal. Rptr. 640 (1967) (properties three to five miles distant; admitted); County of Los Angeles v. Union Distributing Co., 260 Cal. App.2d 125, 67 Cal. Rptr. 107 (1968) (property across the street, improved, rented and used, excluded; condemned property was unimproved and vacant for over 40 years); Pleasant Hill v. First Baptist Church, 1 Cal. App.3d 384, 82 Cal. Rptr. 1 (1969) (properties less than one mile apart but in different cities; admitted); County of San Louis Obispo v. Bailey, 4 Cal.3d 518, 93 Cal. Rptr. 859, 483 P.2d 27 (1971) (comparable sales 30 to 50 miles away from condemned land; admitted).
7. 24 Cal. App.3d 959, 970, 101 Cal. Rptr. 428, ____ (1972).

Section 816 has crystallized an extensive, liberal, and well-developed body of case-law relating to admissibility of comparable sales. Its application to noncondemnation cases is appropriate for both real and personal property value determinations and will favorably resolve the present uncertainty concerning the use of comparable sales on direct examination in noncondemnation real property cases.

Sales to Public Agencies

Comparable sales, and sales of the subject property, may be used as a basis for an opinion of value only if "freely made."¹ A forced sale or other involuntary sale is not an accurate gauge of market value; foreclosure, execution, and possibly probate sales are examples of sales that may be inadmissible for this reason.²

Sales to persons having eminent domain power may or may not be voluntary, but are inherently suspect. Prices paid by a condemnor may be more or less than the market value of the property because of either party's desire to avoid litigation. When the litigation avoidance motive is prominent, the sale price is not a reasonable or fair index of value.³

In noncondemnation cases, evidence of sales to public agencies is apparently admissible if it can be shown that the sales were "voluntarily" made.⁴ Section 822(a) of the Evidence Code, as a matter of

1. Evid. Code §§ 815 (subject property), 816 (comparable sales).
2. B. Witkin, California Evidence § 446 (1966); T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law & Practice § 509.07 (1976).
3. South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.3d 944, 983, 133 Cal. Rptr. 166, ___ (1976); Note, Valuation Evidence in California Condemnation Cases, 12 Stan. L. Rev. 766, 784-85 (1960).
4. County of Los Angeles v. Faus, 48 Cal.2d 672, 679, 312 P.2d 680, 682-83 (1957); Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 155 (1966).

policy, excludes from consideration all sales to potential condemners.⁵ Such transactions are considered settlements in compromise of litigation or tend to exhibit the characteristics of forced sales.⁶ They are not sufficiently voluntary as a general rule to justify the investigation and trial time and the collateral inquiry required to admit them or to risk the substantial possibility of error or prejudice from their admission.

Offers to Buy or Sell

General noncondemnation law is unclear as to the admissibility of offers to buy or sell property as evidence of market value.¹ Until 1958, the general rule was that evidence as to what the owner was offered for the property or what other persons seeking the purchase of similar property were willing to give for it, or as to offers of the owner to sell the property at a specified price, was not admissible.² A 1958 Supreme Court Case, Pao Ch'en Lee v. Gregoriou,³ permitted an oral offer to purchase the property as evidence of the value of the property, but this case has not been followed.

5. Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports A-1, A-7:

Sales to persons that could have acquired the property by condemnation for the use for which it was acquired should be excluded from consideration on the issue of value. Such a sale does not involve a willing buyer and a willing seller. The costs, risks and delays of litigation are factors that often affect the ultimate price. Moreover, sales to condemners often involve partial takings. In such cases valid comparisons are made more difficult because of the difficulty in allocating the compensation between the value of the part taken and the severance damage or benefit to the remainder. These sales, therefore, are not sales in the "open market" and should not be considered in a determination of market value.

6. California Condemnation Practice § 9.49 (Cal. Cont. Ed. Bar 1973); Uniform Eminent Domain Code § 1113(1) (1974) (Comment).
1. Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 156 (1966); T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law & Practice, § 509.21 (1976).
2. 31 Cal. Jur.3d Evidence § 193 (____).
3. 50 Cal.2d 502, 326 P.2d 135 (1958).

Evidence Code Section 822(b) makes clear that offers, options, and listings to buy, sell, or lease property are inadmissible to support a valuation opinion. This rule is consistent with the majority view in the United States, which regards such evidence as inherently unreliable, easily susceptible to abusive manipulation, and at best merely a representation of the opinion of one party to a hypothetical transaction that was never confirmed by the opinion of another.⁴ Moreover, offers require collateral inquiry to determine if they are an accurate indication of market value or if they are influenced by personal reasons unrelated to market value, and the offeror may not be before the court and subject to cross-examination.⁵ For these reasons, and because the value of evidence of offers is slight, they are excluded entirely from consideration except as admissions.⁶

Extension of Section 822(b) to noncondemnation cases will resolve the present ambiguity in the law in accordance with the weight of existing California case law.

Leases of Subject Property

Theoretically, the reasonable rental value of the property is an accurate guide to the value of the property at any particular time, and an existing lease is relevant evidence of the reasonable rental value.¹ Section 817 of the Evidence Code codifies the rule that a lease of the subject property may be used as a basis for an opinion as to the value of the property.² Extension of the Evidence Code to noncondemnation cases would not change this general principle of law.³

4. Uniform Eminent Domain Code § 1113(2) (1974) (Comment).
5. Note, Valuation Evidence in California Condemnation Cases, 12 Stan. L. Rev. 766, 785-88 (1960).
6. Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports A-1, A-7-A-8 (1960).
1. San Bernardino County Flood Control District v. Sweet, 255 Cal. App.2d 889, 63 Cal. Rptr. 640 (1967); California Condemnation Practice § 4.56 (Cal. Cont. Ed. Bar 1973).
2. People v. Lynbar, Inc., 253 Cal. App.2d 870, 876, 62 Cal. Rptr. 320, ____ (1967); People v. Dunn, 46 Cal.2d 639, 297 P.2d 964 (1956); People v. Pera, 190 Cal. App.2d 497, 12 Cal. Rptr. 720 (1963).
3. See, e.g., Foreman & Clark Corp. v. Fallon, 3 Cal.3d 875, 479 P.2d 362, 92 Cal. Rptr. 162 (1971); 31 Cal. Jur.3d, Evidence § 195 (____).

Comparable Leases

As a general rule, leases of comparable property, unlike sales of comparable property, have been inadmissible to show the value of property being valued.¹ A major problem in the comparison of lease data as opposed to sales data is that, in addition to land size, shape, location, and utility, the terms, circumstances, and conditions of the lease must also be taken into account.²

Evidence Code Section 818 permits use of comparable leases for the limited purposes of determining the value of a leasehold interest in the subject property and for deriving a reasonable rental value for the subject property for purposes of capitalization. The safeguards defining criteria for comparability of sales in Section 816 are incorporated in Section 818; for leased property to be considered comparable for purposes of basing an opinion on it, it must meet the criteria specifically set forth in Section 816.³

Evidence Code Section 818 thus represents a modest but reasonable expansion of the general law relating to admissibility of evidence to prove value of property.

Value of Other Property

Although sales and leases of comparable property are a proper basis for an opinion as to value, an opinion of the value of the comparable property is not a proper basis.¹ Consideration of an opinion of the

1. Whitaker, California Property Valuation, 2 U.S.F. L. Rev. 47, 76 (1967).
 2. T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law and Practice § 509.25 (1976).
 3. City of Ontario v. Kelber, 24 Cal. App.3d 959, 101 Cal. Rptr. 428 (1972).
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1. Evid. Code §§ 816, 818, 822(d). While it has been suggested that this rule might have the effect of precluding a witness from testifying to adjustments in sales of comparable property used as a basis for an opinion, Section 822(d) is not so intended and has not been so applied. See, e.g., Merced Irrigation Dist. v. Woolstenhulme, 4 Cal.3d 478, 501-03, 483 P.2d 1, 16-17, 93 Cal. Rptr 833, 848-49 (1971); Recommendation Relating to Evidence of Market Value of Property, 14 Cal. L. Revision Comm'n Reports 105, 122 (1977) (Comment to Section 822(d)); T. Dankert, Condemnation Practice Handbook, 14 Calif. Real Estate Law & Practice § 509.05 (1976); California Condemnation Practice § 9.49 (Cal. Cont. Ed. Bar 1973).

value of property other than that being valued is remote and would require the determination of many other collateral questions involving the weight to be given the opinion, which would unduly prolong the trial.² By the same reasoning, an opinion as to value may not be based on the capitalized value of rental or other income from comparable property.³ This would involve irrelevant collateral matters that would tend to confuse the jury and consume undue amounts of trial time.⁴

These rules are specific applications of the general principle that evidence may be excluded if its probative value is substantially outweighed by the probability that its admission will necessitate undue consumption of time or create substantial danger of confusing the issues or of misleading the jury.⁵ The specific application is appropriate in any case in which the value of property is in issue.

Capitalization of Income

Although commonly used in inheritance taxation cases, California law generally precluded capitalization of income to value real property until the enactment of the Evidence Code valuation provisions.¹ The reason for this position was that the capitalization technique involves a significant potential for inaccuracy. It requires an estimate of the expected annual income from the property, and selection of an appropriate capitalization rate. A small difference in capitalization rate will substantially affect the resulting value.² Because of the multitude of data required for accurate analysis, the income capitalization

2. Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports A-1, A-8 (1960); B. Witkin, California Evidence § 447(3) (1966).

3. Evid. Code § 822(f).

4. Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 84 (1967); Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 158 (1966).

5. Evid. Code § 352.

1. California Condemnation Practice § 4.49 (Cal. Cont. Ed. Bar 1973); Whitaker, Real Property Valuation in California, 2. U.S.F. L. Rev. 47, 76-78, 103-05 (1967).

2. T. Dankert, Condemnation Practice Handbook, 14 California Real Estate Law & Practice § 508.11[4] (1976).

technique is often unreliable and may result in speculative values.³

There are situations where the technique can yield accurate results which may be objectively tested. The clearest example is where rental is the highest use of the property and it has been committed to that use, since rent income is often stable and largely attributable to the property, and information as to similar investments is frequently available to indicate accurately the capitalization rate.⁴ It is in this situation that Evidence Code Section 819 liberalizes case law by permitting use of the capitalization of income technique.⁵

Section 819 provides safeguards against speculative values by imposing a number of limitations on use of the capitalization technique.⁶

(1) Only rental income, as opposed to income or profits from a business conducted on the property, may be capitalized. This preserves the general rule that business income may not be used to show the value of property.⁷ Profits from a business may not be capitalized because

3. Note, Valuation Evidence in California Condemnation Cases, 12 Stan. L. Rev. 766, 791-800 (1960); Whitaker, supra, 2 U.S.F. L. Rev. at 77. See also Decision No. 80480, 74 Cal. P.U.C. Opinions 232 (1972) (capitalization approach "uncertain," other approaches have "greater reliability").

4. Note, supra, 12 Stan. L. Rev. at 794.

5. Whitaker, supra, 2 U.S.F. L. Rev. at 78:

Section 819 allows a witness to consider the capitalized net rental value of the property as a basis for his opinion of the value of that property. This change accords with the appraiser's use of this method to value income-producing properties, especially those subject to long term leases; and in fact, many appraisers argue that capitalization is theoretically the most accurate valuation method. [footnote omitted] The usual problems with the capitalization method are lessened by restricting the use of the method to capitalization of rental value, not income from the property or profits of a business conducted on the property.

6. Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 151-52 (1966).

7. *People v. Dunn*, 46 Cal.2d 639, 297 P.2d 964 (1956); *de Freitas v. Town of Suisun City*, 170 Cal. 263, 149 P. 553 (1915).

this would introduce unduly speculative and uncertain elements depending upon managerial skills or other factors that are remote from the issue of property value.⁸

(2) Only the reasonable, as opposed to the actual, net rental value may be capitalized. The actual rental may be above or below market, which when capitalized results in a distorted value.⁹

(3) In deriving a reasonable net rental value, only leases that satisfy safeguards of comparability may be used.¹⁰

(4) Only rental from existing, as opposed to hypothetical, improvements may be capitalized. This rule prevents undue speculation; it preserves existing law.¹¹

Section 819 is a carefully circumscribed expansion of the general law relating to evidence of market value. It is consistent with the practice in inheritance tax valuation cases.¹² Since its enactment, one noncondemnation appellate case, City Bank of San Diego v. Ramage,¹³ has enunciated similar rules:

8. Cf. Uniform Eminent Domain Code § 1110 (1974) (valuation witness may not capitalize income or profits of a business conducted on the property). Where the property being taken is the business itself, however, capitalization of the business income or profits is permissible. South Bay Irr. Dist. v. California-American Water Co., 61 Cal. App.3d 944, 133 Cal. Rptr. 166 (1976); Pollak & Downs, The Antiparalleling Statute: A New Dimension in Public Utility Condemnation, 60 Cal. L. Rev. 1116, 1133-34 (1972).
9. California Condemnation Practice § 4.44 (Cal. Cont. Ed. Bar 1973).
10. Evid. Code § 818; City of Rosemead v. Anderson, 270 Cal. App.2d 260, 266, 75 Cal. Rptr. 575, ____ (1969) ("Similar safeguards [to comparability] are provided with respect to the terms of leases where the capitalization of income approach is used by the expert in supporting his opinion of value.") In Parker v. City of Los Angeles, 44 Cal. App.3d 556, 118 Cal. Rptr. 687 (1974), an appraisal witness derived a capitalization rate from comparably sized properties which by reason of their location were not particularly comparable to the subject property. The court noted that because of the comparability problem, apparently, the trial court discounted the opinion of the witness. 44 Cal. App.3d at 562, 118 Cal. Rptr. at ____.
11. People v. Johnson, 203 Cal. App.2d 712, 22 Cal. Rptr. 149 (1962).
12. See Whitaker, supra, 2 U.S.F. L. Rev. at 103-05.
13. 266 Cal. App.2d 570, 586, 72 Cal. Rptr. 273, ____ (1968) (foreclosure and fraud).

In the case of property actually yielding an established regular income, the capitalization of the net income, taking into account the replacement cost of improvements as of the relevant date, is a highly significant index of market value as of that date.

The question of the adaptability of the subject property for a specific use is one of the matters to be considered in arriving at an opinion as to its highest and best use. The profitability of such use measured in terms of specific amounts, and dependent upon the nature and cost of specific improvements yet to be made, is not admissible evidence on the subject of fair market value.

Extension of Section 819 to all noncondemnation cases will be beneficial and will preserve the rule of the Ramage case and inheritance taxation cases.

Replacement Cost

The extent to which replacement cost may be used to value land and structures is not clear. There is scant case law to the effect that depreciated replacement cost is a proper means of valuing structures,¹ and the technique is commonly used in property tax assessment cases.²

Evidence Code Section 820 makes clear for eminent domain and inverse condemnation cases that depreciated reproduction or replacement cost may be used to value property. This represents a significant change from prior law, and aligns California with the majority of other jurisdictions.³

Section 820 includes a number of limitations to assure that the replacement cost technique will be used only where appropriate. The technique may not be used unless the improvements enhance the value of the property for its highest and best use; otherwise application of the

1. Cleland v. Thornton, 43 Cal. 437 (1872); Williams v. Faria, 112 Cal. App. 455, ___ P. ___ (1931); 31 Cal. Jur.3d Evidence § 192 (___).
2. Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 89-91 (1967).
3. Note, Valuation Evidence in California Condemnation Cases, 12 Stan. L. Rev. 766, 803-07 (1960); Carlson, Statutory Rules of Evidence for Eminent Domain Proceedings, 18 Hastings L.J. 143, 150-51 (1966); Whitaker, *supra*, 2 U.S.F. L. Rev. at 78-81. See also Uniform Eminent Domain Code § 1111 (1974) (adopting a provision comparable to Section 820).

replacement cost technique would result in an improperly low value.⁴ In applying the technique, only matters that reasonably may be relied upon by an expert may be used.⁵ And replacement cost may only be used when relevant to the particular property being valued.⁶

The effect of Section 820 is to bring the standards for judicial valuations and appraiser valuations closer together, and to resolve previous uncertainty in the law.⁷ It should apply to noncondemnation cases generally.

Conditions in Vicinity

Market value of property is based on the highest and best use to which the property can be put.¹ In determining the value of property, it is desirable not only to determine its adaptability for a particular use by virtue of intrinsic characteristics such as size, shape, and topographical conditions,² but also to determine the character of the neighborhood and trends in development of other property in the general vicinity.³

Evidence Code Section 821 codifies the rule that a valuation witness may take into account as a basis for an opinion the nature of the improvements on properties in the general vicinity and the character of

4. T. Dankert, *Condemnation Practice Handbook*, 14 California Real Estate Law and Practice § 508.11[3] (1976).

5. Evidence Code § 814; cf. *People v. Leadership Housing Systems, Inc.*, 24 Cal. App.3d 164, 100 Cal. Rptr. 747 (1972) (only factors that would be taken into consideration in open market may be considered).

6. *Redevelopment Agency v. Del-Camp Investments, Inc.*, 38 Cal. App.3d 836, 842, 113 Cal. Rptr. 762, ____ (1974).

7. Whitaker, *supra*, 2 U.S.F. L. Rev. at 81.

1. *Sacramento S.R.R. v. Heilbron*, 156 Cal. 408, 104 P. 979 (1909).

2. *Hayward Union High School Dist. v. Lemos*, 187 Cal. App.2d 348, 9 Cal. Rptr. 750 (1960).

3. *California Condemnation Practice* § 4.8 (Cal. Cont. Ed. Bar 1973).

the existing uses being made of such properties. This codifies prior eminent domain case law.⁴ Noncondemnation law on this point is not clear.

Assessed Value

Evidence Code Section 822(c) precludes use of the assessed valuation for taxation purposes to determine the value of property. It is well recognized that assessed values of property cannot be relied upon as an indication of its market value since they are generally applied with an eye to equalization of tax loads rather than an ascertainment of market value, and are seldom determined in a consistent and systematic manner.¹ Application of this provision in noncondemnation cases would codify existing law,² and would be consistent with the rule in the majority of other jurisdictions.³

Noncompensable Items

Evidence Code Section 822(e) requires that a valuation witness exclude from consideration in forming an opinion the influence of non-compensable items of value. This provision has greatest application in eminent domain and inverse condemnation proceedings, where such matters as the effect of an exercise of the police power are excluded.¹ Other noncompensable items in eminent domain include personal inconvenience, annoyance, or discomfort, damages resulting from diversion of traffic, damages due to impairment of view, and change in the character of the

4. Note, Valuation Evidence in California Condemnation Cases, 12 Stan. L. Rev. 766, 774 n.51 (1960). Section 1112 of the Uniform Eminent Domain Code is modeled after Section 821 of the Evidence Code. See Comment to Uniform Eminent Domain Code § 1112 (1974).

1. Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, 3 Cal. L. Revision Comm'n Reports A-1, A-8 (1960); Uniform Eminent Domain Code § 1113(3) (1974) (Comment).

2. 31 Cal. Jur.3d, Evidence § 196 (____).

3. Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 83 (1967).

1. See Uniform Eminent Domain Code § 1113(6) (1974) (Comment).

neighborhood.² These items are peculiar to the substantive law of eminent domain and inverse condemnation, and application of Section 822(e) to noncondemnation cases would not change the substantive law of those cases. Section 822(e) reiterates a general rule applicable in any case in which opinion testimony is given—a witness may not base an opinion on any matter that the witness "is precluded by law from using."³

Proposed Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Sections 810, 813, and 814 of and to add Section 823 to the Evidence Code, relating to evidence in the valuation of property.

The people of the State of California do enact as follows:

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2. See, e.g., Whitaker, Real Property Valuation in California, 2 U.S.F. L. Rev. 47, 58 (1967).
 3. Evid. Code §§ 801, 802; see also Evid. Code § 803.

Evidence Code § 810 (amended)

SECTION 1. Section 810 of the Evidence Code is amended to read:

810. This (a) Except where another rule is provided by statute, this article provides special rules of evidence applicable only to eminent domain and inverse condemnation proceedings to any action in which the value of property is to be ascertained .

(b) This article does not govern ad valorem property tax assessment or equalization proceedings.

Comment. Section 810 is amended to remove the limitation on application of this article to eminent domain and inverse condemnation proceedings. This article applies to any action or proceeding in which the "value of property" is to be determined. See Section 811 and Comment thereto ("value of property" defined). See also Sections 105 and 120 ("action" includes action or proceeding). These cases include, but are not limited to, the following:

(1) Eminent domain proceedings. See, e.g., Code Civ. Proc. § 1263.310 (measure of compensation is fair market value of property taken).

(2) Inheritance taxation. See, e.g., Rev. & Tax. Code §§ 13311, 13951 (property taxed on basis of market value).

(3) Breach of contract of sale. See, e.g., Com. Code §§ 2708, 2713 (measure of damages for nonacceptance, nondelivery, or repudiation is based on market price).

(4) Mortgage deficiency judgments. See, e.g., Code Civ. Proc. § 580a (judgment calculated on fair market value of property).

(5) Gift taxation. See, e.g., Rev. & Tax. Code § 15203 (gift tax computed on market value of property).

(6) Fraud in the purchase, sale, or exchange of property. See, e.g., Civil Code § 3343 (measure of damages based on actual value of property).

(7) Other cases in which no statutory standard of market value or its equivalent is prescribed but in which the court is required to make a determination of market value, such as marriage dissolution. See, e.g., In re Marriage of Folb, 53 Cal. App.3d 862, 126 Cal. Rptr. 306 (1975).

This article applies only where market value is to be determined, whether for computing damages and benefits or for any other purpose. In cases involving some other standard of value, the rules provided in this article are not made applicable by statute.

The introductory proviso of subdivision (a) assures that, where a particular provision requires a special rule relating to value, the special rule prevails over this article. See, e.g., Com. Code §§ 2723-2724. By virtue of subdivision (b), property tax assessment and equalization proceedings, whether judicial or administrative, are not subject to this article. See, e.g., Rev. & Tax. Code §§ 1609, 1636-1641 (equalization proceedings); Cal. Admin. Code, Tit. 18 (public revenues regulations).

Nothing in this section is intended to require a hearing to ascertain the value of property where a hearing is not required by statute. See, e.g., Rev. & Tax. Code §§ 14501-14505 (Inheritance Tax Referee permitted but not required to conduct hearing to ascertain value of property).

Evidence Code § 813 (amended)

SEC. 2. Section 813 of the Evidence Code is amended to read:

813. (a) The value of property may be shown only by the opinion of the following persons :

- (1) Witnesses qualified to express such opinions ;
- (2) The owner of the property or property interest being valued ; and
- (3) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.

(b) For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, a person entitled to possession of the property.

~~(b)~~ (c) Nothing in this section prohibits a view of the property being valued or the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); and such evidence, except evidence of the character of the improvement proposed to be constructed by the plaintiff in an eminent domain proceeding, is subject to impeachment and rebuttal.

~~(c)~~ For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, a person entitled to possession of the property.

(d) Nothing in this section precludes a determination of the value of property outside the range of opinion testimony in the case of a judgment taken by default.

Comment. One effect of Section 813 is to require that a determination of the value of property must fall within the range of the opinion testimony. State v. Wherity, 275 Cal. App.2d 241, 249, 79 Cal. Rptr. 591, ___ (1969). Subdivision (d) codifies an exception to this rule. See City Bank of San Diego v. Ramage, 266 Cal. App.2d 570, 585, 72 Cal. Rptr. 273, ___ (1968) (foreclosure).

Evidence Code § 814 (technical amendment)

SEC. 3. Section 814 of the Evidence Code is amended to read:

814. The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to ~~him~~ the witness at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property, including but not limited to the matters listed in Sections 815 to 821, inclusive, and Section 823, unless a witness is precluded by law from using such matter as a basis for ~~his~~ an opinion.

Comment. Section 814 is amended to reflect the enactment of Section 823, listing commodity market reports and used car price guides as proper bases for opinions. While the value of property may be determined by reference to matters listed in Sections 815 to 821 and 823 where appropriate, an opinion as to value may also be based on any other matter that satisfies the general requirements of Section 814. See, e.g., *City of Los Angeles v. Retlaw Enterprises, Inc.*, 16 Cal.3d 473, 486 n.8, 546 P.2d 1380, ___ n.8, 128 Cal. Rptr. 436, ___ n.8 (1976) (price trend data admissible); *South Bay Irr. Dist. v. California-American Water Co.*, 61 Cal. App.3d 944, 980, 133 Cal. Rptr. 166, ___ (1976) (capitalization based on nonrental income admissible); *Redevelopment Agency v. Del-Camp Investments, Inc.*, 38 Cal. App.3d 836, 842, 113 Cal. Rptr. 762, ___ (1974) (capitalization based on gross rentals admissible); *People v. Home Trust Investment Co.*, 8 Cal. App.3d 1022, 1026, 87 Cal. Rptr. 722, ___ (1970) (noncomparable sales admissible).

40314

Evidence Code § 823 (added)

SEC. 4. Section 823 is added to the Evidence Code to read:

823. Notwithstanding any other provision of this article, when relevant to the determination of the value of property, the following matter is admissible as independent evidence and is a proper basis for an opinion as to the value of property:

(a) If the property being valued is regularly bought and sold in an established commodity market, reports in official publications or trade journals or in newspapers or periodicals of general circulation published as the reports of the market. The circumstances of the preparation of such a report may be shown to affect its weight but not its admissibility.

(b) If the property being valued is a motor vehicle, used car price guides customarily used by California automobile dealers for a motor vehicle of that year and model.

Comment. Section 823 is an exception to the general rules that value may be shown only by opinion testimony (Section 813(a)) and that value may not be based on an opinion of the value of other property (Section 822(d)). Subdivision (a) is derived from Commercial Code Section 2274 (prevailing price of goods). Subdivision (b) is derived from Code of Civil Procedure Section 690.2 (exemption of motor vehicle from execution).

APPENDIX (EVIDENCE CODE §§ 810-822)

EVIDENCE OF MARKET VALUE OF PROPERTY

810. This article provides special rules of evidence applicable only to eminent domain and inverse condemnation proceedings.

31565

811. As used in this article, "value of property" means market value of any of the following:

- (a) Real property or any interest therein.
- (b) Tangible personal property.

31566

812. This article is not intended to alter or change the existing substantive law, whether statutory or decisional, interpreting the meaning of "market value," whether denominated "fair market value" or otherwise.

31567

813. (a) The value of property may be shown only by the opinions of:

- (1) Witnesses qualified to express such opinions;
- (2) The owner of the property or property interest being valued; and
- (3) An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.

(b) Nothing in this section prohibits a view of the property being valued or the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); and such evidence, except evidence of the character of the improvement proposed to be constructed by the plaintiff in an eminent domain proceeding, is subject to impeachment and rebuttal.

(c) For the purposes of subdivision (a), "owner of the property or property interest being valued" includes, but is not limited to, a person entitled to possession of the property.

31571

814. The opinion of a witness as to the value of property is limited to such an opinion as is based on matter perceived by or personally known to the witness or made known to him at or before the hearing, whether or not admissible, that is of a type that reasonably may be relied upon by an expert in forming an opinion as to the value of property, including but not limited to the matters listed in Sections 815 to 821, inclusive, unless a witness is precluded by law from using such matter as a basis for his opinion.

31568

815. When relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the price and other terms and circumstances of any sale or contract to sell and purchase which included the property or property interest being valued or any part thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation, except that in an eminent domain proceeding where the sale or contract to sell and purchase includes only the property or property interest being taken or a part thereof, such sale or contract to sell and purchase may not be taken into account if it occurs after the filing of the lis pendens.

31572

816. When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the price and other terms and circumstances of any sale or contract to sell and purchase comparable property if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation. In order to be considered comparable, the sale or contract must have been made sufficiently near in time to the date of valuation, and the property sold must be located sufficiently near the property being valued, and must be sufficiently alike in respect to character, size, situation, usability, and improvements, to make it clear that the prop-

erty sold and the property being valued are comparable in value and that the price realized for the property sold may fairly be considered as shedding light on the value of the property being valued.

31569

817. (a) Subject to subdivision (b), when relevant to the determination of the value of property, a witness may take into account as a basis for an opinion the rent reserved and other terms and circumstances of any lease which included the property or property interest being valued or any part thereof which was in effect within a reasonable time before or after the date of valuation, except that in an eminent domain proceeding where the lease includes only the property or property interest being taken or a part thereof, such lease may not be taken into account in the determination of the value of property if it is entered into after the filing of the lis pendens.

(b) A witness may take into account a lease providing for a rental fixed by a percentage or other measurable portion of gross sales or gross income from a business conducted on the leased property only for the purpose of arriving at an opinion as to the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of the leasehold interest.

31573

818. For the purpose of determining the capitalized value of the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of a leasehold interest, a witness may take into account as a basis for his opinion the rent reserved and other terms and circumstances of any lease of comparable property if the lease was freely made in good faith within a reasonable time before or after the date of valuation.

31574

819. When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the capitalized value of the reasonable net rental value attributable to the land

and existing improvements thereon (as distinguished from the capitalized value of the income or profits attributable to the business conducted thereon).

38724

820. When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the value of the property or property interest being valued as indicated by the value of the land together with the cost of replacing or reproducing the existing improvements thereon, if the improvements enhance the value of the property or property interest for its highest and best use, less whatever depreciation or obsolescence the improvements have suffered.

38723

821. When relevant to the determination of the value of property, a witness may take into account as a basis for his opinion the nature of the improvements on properties in the general vicinity of the property or property interest being valued and the character of the existing uses being made of such properties.

31570

822. Notwithstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and is not a proper basis for an opinion as to the value of property:

(a) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

(b) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which such property or interest was optioned, offered, or listed for sale or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

(c) The value of any property or property interest as assessed for taxation purposes or the amount of taxes which may be due on the property, but nothing in this subdivision prohibits the consideration of

actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.

(d) An opinion as to the value of any property or property interest other than that being valued.

(e) The influence upon the value of the property or property interest being valued of any noncompensable items of value, damage, or injury.

(f) The capitalized value of the income or rental from any property or property interest other than that being valued.