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PROPOSED AGENDA FOR MEETING OF LAW  
REVISION COMMISSION JANUARY 6 and 7, 1956

1. Consideration of minutes of November meeting.
2. Discussion of Fish and Game Code matter (See Memorandum No. 1).
3. Discussion of Inheritance and Gift Tax Study (See Memorandum No. 2).
4. Discussion of draft of 1956 Report (See Memorandum No. 3).
5. Discussion of Agenda items (See Memorandum No. 4). *ppg 2,3,4, 5 are missing - see folder for notes*
6. Discussion of Study No. 14 (Appointment of Administrator in quiet title action) (See Memorandum No. 5).
7. Discussion of Study No. 10 (Penal Code § 19a) (See Memorandum No. 6).
8. Discussion of redraft of Study No. 7 (Retention of Venue) ( See Memorandum No. 7).

MINUTES OF MEETING  
OF  
JANUARY 6 AND 7, 1956

Pursuant to the call of the Chairman, the Law Revision Commission met on January 6 and 7 at San Francisco, California.

PRESENT:

Mr. Thomas E. Stanton, Jr., Chairman  
Mr. John D. Babbage, Vice-Chairman  
Honorable Jess R. Dorsey, Senate (Jan. 6)  
Honorable Clark L. Bradley, Assembly  
Mr. Joseph A. Ball (January 7)  
Mr. Bert W. Levit  
Mr. Stanford C. Shaw  
Mr. John H. Swan (January 7)  
Mr. Ralph N. Kleps, ex officio

ABSENT:

Mr. Samuel D. Thurman

Mr. John R. McDonough, Jr., Executive Secretary of the commission and Mrs. Virginia B. Nordby, Assistant Executive Secretary of the commission, were present on both days. Mr. J. D. Strauss, Principal Deputy Legislative Counsel, was present during a part of the meeting on Friday, January 6. Mr. James B. Frankel, the commission's Research Consultant on the Inheritance and Gift Tax Study, was present during a part of the meeting on Saturday, January 7.

The minutes of the meeting of the commission on November 11 and 12, 1955, which had been distributed to the members of the commission prior to the meeting, were amended and unanimously approved as amended.

1. Administrative Matters

A. Stenographic Services for the Executive Secretary: The Chairman reported that he had discussed with the Legislative Counsel the possibility of an arrangement by which the Executive Secretary could utilize the services of Miss Pellicone, the commission's stenographer-clerk, in connection with his law school work when this would not interfere with commission work in consideration of the University's furnishing the commission office space, heat, light, janitorial services, the use of the law library, and other miscellaneous benefits. It is the view of the Legislative Counsel that such an arrangement could be made only by means of a formal agreement between the State and the University and that the Department of Finance would probably prefer to reimburse the University for office space, etc. on a monetary basis rather than by authorizing the utilization of Miss Pellicone's services for non-State purposes. The Executive Secretary then stated that both he and the Dean of the Law School felt that if there were any question of the propriety of utilizing Miss Pellicone's services for Law School purposes or if such an arrangement would not receive the ready approval of everyone on the State side who may be concerned, it should not be done. The commission discussed the matter and decided that the Executive Secretary should utilize the services of the commission's stenographer-clerk only for State purposes.

B. 1956 Report to the Legislature: The commission considered a second draft of its 1956 Report to the Legislature which had been prepared by the Executive Secretary pursuant to the directions given him at the meeting of November 11 and 12, 1955, and distributed to the members of the commission prior to the meeting. A number of changes were made and the Report

as thus revised was approved for publication.

## 2. Agenda

Action on Pending Suggestions: The commission considered a number of suggestions for revision of the law which had been received and reached the following decisions:

Immediate Study. The commission decided that the following items should be placed on the list of Topics Selected for Immediate Study to be reported to the 1956 Session of the Legislature for approval.

A study to determine whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.  
[Suggestion No. 76(2)]

A study to determine whether the doctrine of worthier title should be abolished in California.  
[Suggestion No. 95]

A study to determine whether the law respecting mortgages to secure future advances should be revised. [Suggestion No. 102(1)]

A study to determine whether the law relating to escheat of personal property should be revised.  
[Suggestion No. 103]

A study to determine whether the law relating to the rights of a putative spouse should be revised.  
[Suggestion No. 104]

Not Accept: The commission decided that the following suggestions should not be accepted for study:

|        |     |
|--------|-----|
| 56     | 107 |
| 102(2) | 108 |
| 106    | 109 |

The commission decided further that consideration should be given at a later time to including Suggestions No. 106, 107, 108 and 109 in the 1957 Report

to the Legislature as matters deserving attention by the Legislature but without recommendation that the commission be authorized to study them.

Postponed: The commission postponed consideration of the following suggestions:

Suggestion No. 99 -- The commission postponed consideration of this suggestion until the Attorney General replies to the inquiry of the Executive Secretary.

Suggestions No. 79 and 105 -- The commission removed Suggestion No. 79 from the Immediate Study list, consolidated it with Suggestion No. 105, and expanded both suggestions into a study of the law of arrest, bail, and procedure prior to preliminary hearing in cases not before the Superior Court. The commission directed the Executive Secretary to advise the Board of Governors of the State Bar that the commission was considering such a study and that it would appreciate knowing the status of any related studies being conducted by the State Bar.

### 3. Current Studies

#### A. Study No. 18(L) - Fish and Game Code: Mr. J. D. Strauss,

Principal Deputy Legislative Counsel, who is in charge of the revision of the Fish and Game Code which the Legislative Counsel's office is preparing for the commission, presented for consideration a problem which has been encountered throughout the course of the revision. This problem results from the fact that the Fish and Game Commission has been given successive two-year grants of plenary power by each General Session of the Legislature since 1945 to make regulations controlling noncommercial hunting and fishing. The Code provides that these regulations supersede provisions of the Code on the same subjects. In some areas the Fish and Game Commission has exercised this power to supersede the code and

in others it has not. The commission has also issued and later withdrawn certain regulations, thus creating the question whether the code provisions which were superseded by these regulations were reactivated when the regulations were rescinded. Moreover, in a number of cases it is not clear whether part or all of a code section has been superseded by a Fish and Game Commission regulation.

Mr. Strauss reported that it would greatly facilitate the drafting of a revised Fish and Game Code if the Fish and Game Commission would occupy the field and issue regulations covering every matter over which it has plenary powers. If this were done, every section in the code which falls under the plenary power could be repealed, whereas, if the present situation continues, those sections which could be, but in fact have not been, superseded by regulations would have to be retained in the revised code.

Two specific questions were presented for decision: (1) Whether the Law Revision Commission should recommend to the Fish and Game Commission that it occupy the field and issue regulations covering every matter over which it has plenary powers; and (2) how the Legislative Counsel's staff should proceed in preparing revisions of those provisions as to which the Fish and Game Commission has exercised or could exercise its plenary powers. After these questions were discussed at length it was decided: (1) That no recommendation be made by the Law Revision Commission to the Fish and Game Commission; and (2) That the draft of a revised Fish and Game Code repeal all provisions actually superseded by regulation and that it designate those sections which could be, but have not yet been, superseded by regulation. It also was decided that, in order to avoid delay, the draft should be based on the 1955 Regulations of the Fish and Game Commission.

B. Study No. 17(L) - Inheritance and Gift Tax. Copies of "A

Comparative Survey of the California Inheritance and Gift Tax Law and the Federal Estate and Gift Tax Law", the report prepared by Mr. James B. Frankel, the commission's Research Consultant, were distributed to the members of the commission. A number of changes in the study were suggested by members of the commission. However, because the commission had not had time to examine the study carefully and because there would not be an opportunity to consider the matter at a later commission meeting, the Northern Committee was given authority to edit Mr. Frankel's study and prepare it for publication.

The commission discussed the general form which its report and recommendation to the Legislature on the Inheritance and Gift Tax study should take. It was decided that the report should not make any recommendations as to whether California should adopt an estate tax, but should indicate various possible alternative courses of action, pointing out, however, that the commission questions whether it would serve any real purpose to conform the California inheritance tax to the federal estate tax in matters of detail so long as the basic difference between the two is retained. It was also decided that the report should make it clear that the commission does not intend to study this matter further unless it is instructed by the Legislature to do so.

The question was raised whether a copy of Mr. Frankel's study should be sent to the Inheritance Tax Division of the Controller's Office. Although it was felt that the commission might not want to adopt a general policy of sending studies to State agencies prior to publication, it was decided that in this particular case a copy of the study should be sent to the Inheritance Tax Division because of the assistance they have given and the interest they have taken in the project. It was further decided that the Executive Secretary

should telephone Mr. Hickey prior to sending the study and inform him of the general nature of the commission's report to the Legislature.

C. Study No. 14 - Appointment of Administrator in Quiet Title Actions:

The Southern Committee reported that at its first meeting with Professor Richard C. Maxwell, Research Consultant on Study No. 14, a major problem had arisen. Mr. Maxwell stated to the committee that he doubts that this topic involves any real problem since his preliminary research indicates that the plaintiff in a quiet title action need not appoint an administrator but can always proceed against the decedent's heirs. He stated that in his opinion it would probably often be simpler and less expensive to have a special administrator appointed than to ascertain who the heirs are and use the various methods of substituted service necessary to bind them. Thus, in his opinion, Probate Code Section 573 is really a boon rather than a problem to the quiet title action plaintiff.

The Southern Committee had directed the Executive Secretary to contact Mr. Thomas M. Ward, the originator of the suggestion on which Study No. 14 is based, to ascertain his views on the matter, and it was reported that Mr. Ward had in mind a proceeding in which a special administrator need not be appointed nor all the heirs served. Mr. Ward would like a more expeditious procedure than either of these and suggested that it might take a form similar to that authorized by Revenue and Taxation Code Sections 3950 and 3963 which provide for quieting title, in the circumstances to which they apply, against a claim held by a person since deceased by naming as parties to the action "the heirs of" that person.

Although the commission expressed some doubt as to the constitutionality of the procedure suggested by Mr. Ward, it decided to investigate further this and any other possible procedures which might be established. It was agreed that the Chairman and the Executive Secretary would discuss these matters with

representatives of title companies and that Mr. Maxwell should proceed no further with his study until the commission had considered the information obtained by the Chairman and the Executive Secretary.

The commission postponed consideration of the additional problem reported by the Southern Committee that Mr. Maxwell has indicated reluctance to proceed further with this study (should the commission decide to continue with it) because it falls in the field of procedure rather than his field of real property.

D. Study No. 10 - Penal Code Section 19a: The commission considered two general questions which had arisen in connection with Mr. Cochran's report on Study No. 10: (1) Whether the commission should undertake to edit Research Consultant's reports in the interest of brevity and better expression, and (2) Whether the commission should follow the practice of the New York Law Revision Commission of eliminating from Research Consultants' reports recommendations inconsistent with the recommendations of the commission. After these questions had been discussed the following action was taken: (1) A motion was made by Mr. Bradley, seconded by Mr. Swan, and adopted that the report be revised prior to publication. (2) A motion was made by Mr. Babbage, seconded by Mr. Bradley, and adopted that any recommendations of a Research Consultant inconsistent with the recommendations of the commission be eliminated from the Research Consultant's report before it is published. Mr. Ball, Mr. Levit and Mr. Swan opposed this motion.

The commission postponed consideration of the recommendations of the Southern Committee as to the content of the commission's report and recommendation to the Legislature relating to Penal Code Section 19a until the Southern Committee has approved a draft of that report and recommendation.

E. Study No. 7 - Retention of Venue: The commission postponed consideration of a draft of the commission's report and recommendation to the Legislature relating to Study No. 7 until the Southern Committee has approved it.

There being no further business the meeting was adjourned.

Respectfully submitted,

John R. McDonough, Jr.  
Executive Secretary