

Time

Place

January 19 - 7:00 p.m. - 10:00 p.m.
January 20 - 9:00 a.m. - 5:00 p.m.
January 21 - 9:00 a.m. - 4:00 p.m.

State Bar Building
1230 West 3rd Street
Los Angeles, California

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

January 19-21, 1967

Thursday evening, January 19

1. Approval of Minutes of November Meeting (sent 11/28/66)
2. Study 36 - Condemnation Law and Procedure

Recommendation on Discovery in Eminent Domain Proceedings

Memorandum 67-5 (to be sent)

Possession Prior to Final Judgment and Related Problems

Statutory provisions of California and other states (enclosed)

Memorandum 67-4 (enclosed)

Memorandum 66-68 (previously sent, additional copy enclosed)

Revised Tentative Recommendation (attached to Memorandum 66-68)

Note: We plan to discuss the basic approach that should be taken in connection with this recommendation in light of the comments received from interested persons. We do not plan to discuss the Revised Tentative Recommendation or Memorandum 66-68 and the attachments thereto except to the extent that they are referred to in Memorandum 67-4.

Friday, January 20

3. Continuation of consideration of item 2 above.
4. Study 26 - Escheat

Memorandum 67-3 (enclosed)

Revised Recommendation (attached to memorandum)

First Supplement to Memorandum 67-3 (enclosed)

Second Supplement to Memorandum 67-3 (enclosed)

Third Supplement to Memorandum 67-3 (enclosed)

Fourth Supplement to Memorandum 67-3 (enclosed)

Special Order
of Business
11:00 a.m.,
January 20

5. Administrative matters

Research consultants and topics for study

Memorandum 67-2 (to be sent)

Oral Report on progress of 1967 legislative program

6. Review of Recommendations to 1967 legislative session

Memorandum 67-1 (Evidence Code Recommendation)(enclosed)

First Supplement to Memorandum 67-1 (enclosed)

Memorandum 67-6 (Commercial Code Recommendation)(to be sent)

Memorandum 67-7 (Agricultural Code Recommendation)(to be sent)

Memorandum 67-8 (Additur Recommendation)(enclosed)

Memorandum 67-9 (Good Faith Improver Recommendation)(to be sent)

Memorandum 67-10(Unincorporated Associations Recommendation (enclosed)

Memorandum 67-11 (Lease Recommendation)(to be sent)

Memorandum 67-12 (Vehicle Code Recommendation)(to be sent)

Memorandum 67-13 (Personal Injury Damages Recommendation)

(to be sent)

7. Oral Report on implications of Program Budgeting

Saturday, January 21

Completion of work on items listed above.

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

JANUARY 19 AND 20, 1967

Los Angeles

A meeting of the California Law Revision Commission was held at Los Angeles on January 19 and 20, 1967.

Present: Richard H. Keatinge, Chairman
Sho Sato, Vice Chairman
Joseph A. Ball (January 20 only)
James R. Edwards
John R. McDonough
Herman F. Selvin
Thomas E. Stanton, Jr.

Absent: George H. Murphy, ex officio

Note: Legislative members of the Commission have not yet been designated by the respective appointing authorities.

Messrs. John H. DeMouilly, Joseph B. Harvey, and Clarence B. Taylor of the Commission's staff also were present.

Also present were the following observers:

Robert F. Carlson	State Dept. of Public Works (January 19)
J. M. Morrison	Attorney General's Office (January 19)
David B. Walker	San Diego County Counsel's Office (January 19)
Richard L. Huxtable	Chairman, State Bar Committee on Condemnation Law and Procedure (January 19)
Samuel J. Cord	Chief, Division of Accounting, State Controller's Office (January 20)
Edwin G. Neuharth	Unclaimed Property Officer, Division of Accounting, State Controller's Office (January 20)

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ADMINISTRATIVE MATTERS

Minutes of November 1966 Meeting. The Minutes of the November 1966 meeting were corrected as follows: The dates of the May meeting, shown on page 2 of the Minutes, were changed to "May 18 (evening), 19, and 20." As corrected, the Minutes were approved.

Future meetings. Future meetings are scheduled as follows:

February 24 (evening), 25	San Francisco
March 19 (evening), 20, 21 (morning)	Lake Tahoe
April 21-22	Los Angeles
May 18 (evening), 19, 20	San Francisco
June (to be scheduled)	Los Angeles
July (to be scheduled)	San Francisco
August (to be scheduled)	San Francisco
September 22-23	Los Angeles

Budget for 1967-68 fiscal year. The Executive Secretary reported that the Budget Division has advised the Commission that its budget for the 1967-68 fiscal year is to be cut ten percent.

The Commission adopted the staff suggestion that the following revisions of the budget submitted for 1967-68 be made in order to reduce expenditures for 1967-68 by ten percent:

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<u>ITEM</u>	<u>AS BUDGETED</u>	<u>REVISED BUDGET</u>
<u>Salaries and Wages</u>		
Staff and Commission salaries (excluding temporary help)	\$ 94,770	\$ 90,170
Temporary help	6,600	4,000
Staff benefits	7,765	7,765
<u>Operating Expenses</u>		
General Expense	5,500	4,600
Printing	15,500	10,000
Communications	3,000	3,000
Traveling in-state	6,000	5,600
Traveling out-of-state	500	---
Rent	4,000	4,000
Law Books	1,700	1,700
Research and Contractual Services	6,000	6,000
<u>Equipment</u>		
Various items	500	---
Totals	\$ 151,835	\$ 136,835
<u>Miscellaneous Reductions</u>		
		<u>-184</u>
		\$ 136,651

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After considerable discussion, the Commission concluded that the budget could be cut five percent without seriously affecting the program of the Commission. This is possible primarily because the Commission has lost or will lose three out of the seven members of its staff.

The Commission further concluded that a second five percent cut would result in some reduction in the output of the Commission and would result in some delay in the completion of various projects that the Legislature has requested be given top priority. This delay will result in part from the loss of experienced staff members and in part from inadequate funds. The budget based on a 10-percent cut might not result in a substantial decrease in Commission output if all of the assumptions taken into account by the Commission in preparing the reduced budget work out in our favor. Since it is improbable that all the assumptions will work out in our favor, the Commission believes that the budget should be cut only five percent. If a ten percent cut is made, it is likely that it will seriously affect the output of the Commission if the assumptions made in preparing the 10-percent reduced budget do not reflect the actual facts.

The Executive Secretary was directed to advise the Budget Division of the Commission's views on the 10-percent cut. The advice of the legislative members of the Commission will be sought before it is determined whether any objections to the 10-percent cut should be made by the legislative members of the Commission before the legislative committees that consider our budget.

Research contracts. The Commission determined that a contract should be made with Professor Richard R. Powell of the Hastings Law

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School to prepare a research study on powers of appointment. Professor Powell, having prepared the New York legislation on this subject, is exceptionally qualified to prepare the study for the Commission. The compensation for the study is to be \$1,000. The Executive Secretary was directed to execute the contract on behalf of the Commission.

The Commission determined that a contract should be made with Professor Douglas R. Ayer of the Stanford Law School to prepare a research study on the procedural aspects of California condemnation law. Professor Ayer has taught the course in procedure at the Stanford Law School. The compensation for the study is to be \$5,000. The Executive Secretary was directed to execute the contract on behalf of the Commission.

The Commission discussed whether a contract should be made with a research consultant concerning quasi-community property and division of property on divorce. The Executive Secretary was authorized to make either one contract for the two topics or a contract for each topic, the maximum amount for both topics to be \$1,500, whether one or two contracts are made. The Executive Secretary was authorized to execute the contract (or contracts if two consultants are obtained) on behalf of the Commission.

It was suggested that Professor Babette B. Barton of Boalt Hall would perhaps be a good consultant on the quasi-community property and division of property on divorce study.

Five-year program. Based on an assumption that there will be no decrease in its staff, the Commission approved a five-year program for the California Law Revision Commission as follows:

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FIVE YEAR PROGRAM OF THE CALIFORNIA LAW REVISION COMMISSION

(January 1, 1967--January 1, 1972)

Note: This program is subject to changes that result from directives from legislative committees that particular topics be given top priorities. The priorities assigned by this program reflect the expressed desire of the Senate Judiciary Committee that inverse condemnation and eminent domain be given top priorities. Studies initiated by Legislature, rather than on Commission request, are designated by "(L)."

1967 CALENDAR YEAR

Projects to be completed

Escheat

Pour-over trusts (L)

Tentative Recommendations Relating to Eminent Domain (L):

Possession Prior to Final Judgment and Related Problems

Allocation of resources:

Presentation of recommendations to 1967 session (10 bills) - 15 percent

Escheat - 20 percent

Pour-over trusts (L) - not significant

Inverse Condemnation (L) - 30 percent

Eminent Domain (L) - 35 percent

Possession Prior to Final Judgment - 10 percent

The Right to Take - 15 percent

Just Compensation and Measure of Damages - 10 percent

1968 CALENDAR YEAR

Projects to be completed:

Inverse Condemnation (L)

Evidence Code and Related Statutes (L):

Business and Professions Code

Code of Civil Procedure

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Tentative Recommendation Relating to Eminent Domain (L):

The Right to Take

Allocation of Resources:

Presentation of recommendations to 1968 session - 10 percent

Inverse Condemnation (L) - 40 percent

Evidence Code (L) Recommendations - 5 percent

Eminent Domain(L) - 45 percent

The Right to Take - 5 percent

Just Compensation and Measure of Damages - 40 percent

1969 CALENDAR YEAR

Projects to be completed:

Evidence Code and Related Statutes (L)

Civil Code

Revenue and Taxation Code

Division of Property Upon Divorce

Quasi-Community Property

Tentative Recommendations Relating to Eminent Domain (L):

Just Compensation and Measure of Damages

Apportionment and Allocation of the Award

Procedural Aspects

Allocation of resources:

Presentation of recommendations to 1969 session - 15 percent

Evidence Code (L) Recommendations - 5 percent

Division of Property on Divorce - 5 percent

Quasi-Community Property - 5 percent

Eminent Domain (L) - 70 percent

Just Compensation and Measure of Damages - 50 percent

Apportionment and Allocation of the Award - 5 percent

Procedural Aspects - 15 percent

1970 CALENDAR YEAR

Projects to be completed:

Comprehensive Eminent Domain Statute (L)

Powers of Appointment (L)

Fictitious Name Statute

Evidence Code and Related Statutes (L)

Education Code

Elections Code

Allocation of resources:

Presentation of recommendations to 1970 session - 5 percent

Comprehensive Eminent Domain Statute (L) - 75 percent

Powers of Appointment (L) - 10 percent

Fictitious Name Statute - 7 percent

Evidence Code (L) Recommendations - 3 percent

1971 CALENDAR YEAR

Projects to be completed:

These will be determined by priorities indicated by legislative committees or determined by the Commission in view of the topics then on its agenda.

Allocation of resources:

Presentation of recommendations to 1971 session - 30 percent

Various topics - 70 percent

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Revision of Comments. The Commission directed the Executive Secretary to discuss with Senator Grunsky the desirability of following the same procedure as was followed on the Evidence Code with respect to the various recommendations made to the 1967 legislative session: The legislative committees adopted reports (which were printed in the Assembly and Senate Journals) containing new or revised comments needed to reflect changes made in the bill after introduction or to clarify matters that were considered to be unclear. The publishers of the Annotated California Codes published the legislative committee comments and the Law Revision Commission comments under the pertinent code sections.

New association of condemnation attorneys. The Commission was advised that a new association of condemnation attorneys has been formed in Northern California, apparently as a part of the California Trial Lawyers Association.

Relationship with Committee on Administration of Justice. The Commission requested the Executive Secretary to write to the Committee on Administration of Justice and to offer to have a member of the Commission's staff present at the CAJ meetings when Commission recommendations are considered. The staff member would be present merely to answer any questions that come up at the CAJ meeting concerning the recommendation.

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STUDY 26 - ESCHEAT

The Commission considered Memorandum 67-3 and four supplements thereto and a revised Tentative Recommendation which was attached to Memorandum 67-3.

New York Legislation

The Commission considered the First Supplement to Memorandum 67-3. The representative of the State Controller reported that the existing California law picks up all sources of revenue that are picked up under the New York law with the exception of utility deposits. The Commission was advised that the California law is adequate to pick up stock held in street name in cases where the last known address of the owner of the stock is in California.

The Commission rejected a staff suggestion that a provision be added to the statute, similar to provisions in the New York statute, that reports be made by particular classes of holders that they held no property subject to escheat during the year covered by the report.

The Commission noted that in New York the publication is made by the holder and the cost of publication is subtracted from the amount to be paid to the state. The difficulties of administration of the New York scheme were considered and there was no inclination to adopt the New York scheme in California.

Utility Exemption

The Commission considered the Second Supplement to Memorandum 67-3. The staff suggestion that the exemption not apply to property of the type described in Section 1514 which is held or owing by a utility was rejected.

The staff was requested to check to determine whether Government Code Sections 50050-50053 (referred to in proposed Section 1526) apply to chartered cities.

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The Commission considered that the utility exemption provided by existing law may be justified because the utilities that receive the benefit of such exemption are subject to rate regulation by public bodies. However, the rates approved by public agencies for carriers of persons and property ordinarily are not determined in the same manner as rates for utilities providing communications, electric, water, steam, or gas service. Hence, the Commission concluded that a distinction can be made between the types of utilities covered by the exemption provided by existing law and the types of utilities not covered by the existing exemption.

The Commission determined not to extend the utility exemption to additional types of utilities. The revisions to be made in the tentative recommendation to reflect this decision are hereinafter indicated.

The staff was directed to advise the various utilities of the language proposed to be included in the statute in order to limit the existing utility exemption to property considered by the public agency fixing rates in determining rates and to request their comments on the language and their suggestions for any needed revisions. The staff was also requested to contact the Public Utilities Commission and obtain their comments on the language contained in the tentative recommendation.

Permanent Escheat

In response to several comments objecting to the provisions for permanent escheat, the Commission determined that the provisions for permanent escheat should be deleted from the proposed legislation.

The staff was requested to examine the escheat provisions to determine whether provisions need to be added to the law to provide in substance that the effect of escheat under the proposed legislation is to give the state

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the full right of ownership, the right to receive payment, etc. The staff was requested to report the results of this examination.

Travelers Checks

The Commission considered the Fourth Supplement to Memorandum 67-3. The tentative recommendation should be revised to provide in substance that California escheats the travelers checks and money orders sold or delivered in California unless the records of the holder show that the last known address of the owner of the check or order is outside California. Section 1581, relating to records to be maintained by persons issuing travelers checks and money orders, is to be deleted.

Where a California corporation sells or delivers travelers checks or money orders in another state, California will not escheat such travelers checks or money orders if the state where the travelers check or money order was sold or delivered has a valid statute which provides for the escheat to that state of the travelers check or money order and the records of the holder do not show that the last known address of the owner of the travelers check or money order is in California.

The revision of Section 1560 was approved.

The changes proposed by the staff to be made in Sections 1530, 1531, and 1532, to conform the proposed legislation to the Uniform Act provisions relating to travelers checks and money orders, were approved.

Specific Revisions of Tentative Recommendation

Preliminary portion of Recommendation. It was noted that the preliminary portion of the recommendation will need to be revised to indicate the important changes in existing law recommended by the Commission.

Section 1300. This section was approved as revised.

Section 1500. This section was approved as revised.

Section 1501. In subdivision (g), a comma was inserted after "Owner" and after "chapter."

In subdivision (i), the phrase ", the transportation or passage of persons or property," was deleted.

Section 1502. The last clause of subdivision (b) --"but this chapter does not apply to property of the type described in Section 1514 which is held or owing by a utility"--was deleted and the section was then approved.

Section 1510. The last three sentences of subdivision (a) are to be deleted and the provisions necessary to reflect the actions of the Commission concerning travelers checks and money orders (see supra) are to be inserted in an appropriate place in the statute. As thus revised, Section 1510 was approved.

Sections 1511, 1512, repeal of Section 1503. Previously approved.

Section 1513. Subdivision (a) was approved.

The suggestion of the Association of California Life Insurance Companies that a specific exemption be included in the statute for unpaid claim drafts paid under group accident and sickness policies was considered. It was determined not to attempt to draft such an exemption; the matter was considered one that should be left to the interested groups to seek appropriate legislative relief if such relief is justified.

The Commission approved subdivision (b) after it had been revised to read in substance as follows:

(b) For the purposes of this section, if no address of the person appearing to be entitled to the unclaimed funds is known to the corporation, or if it is not definite and certain from the records of the corporation what person is entitled to such funds, the last-known address of the person entitled to such funds is deemed to be the same as the last-known address of the insured or annuitant according to the records of the corporation.

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Where a California insurance corporation holds unclaimed funds of the type described in Section 1513 and the circumstances described in subdivision (b) above place the last-known address of the person entitled to the funds in another state, California will not escheat such funds if the state where the last-known address is deemed to be has a valid statute which provides for the escheat of the funds to that state.

It was noted that in redrafting the statute, the statute should provide for the escheat to California when the conditions of subdivision (b) above place the last-known address in California. Subdivision (b) in its present form may not accomplish this objective.

Section 1530. The revision of subdivision (b)(1) was approved.

Section 1531. Subdivision (g) was approved.

Section 1532. Subdivision (c) was approved. It was noted that an error was made in the tabulation of this section.

Section 1560. Subdivision (c) was approved.

Technical corrections. The representative of the office of the State Controller advised that he would be sending to the Commission a letter indicating various technical corrections that should be made in the proposed legislation.

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STUDY 36(L) - CONDEMNATION LAW AND PROCEDURE

(Discovery in Eminent Domain Proceedings)

The Commission considered Memorandum 67-5 the Recommendation relating to Discovery in Eminent Domain Proceedings (printed in Annual Report, dated December 1966), and the letter from Robert V. Blade, Oroville attorney.

The following actions were taken:

1. The Commission considered the comment of the Southern Section of the State Bar Committee concerning the time for filing of demand. Subdivision (a) of Section 1272.01 was revised to read:

(a) Not later than 10 days ~~after the memorandum to set has been served and filed~~ prior to the date set for the pre-trial conference , any party to an eminent domain proceeding may serve upon any adverse party and file a demand to exchange valuation data.

2. The Commission considered the comment of the Southern Section of the State Bar Committee concerning the time for exchanging statements of valuation data. The change was suggested by the Southern Section so that the exchange would take place in time so that either party can use other discovery techniques if the other party does not make a good faith exchange of data. Subdivision (d) was revised to read:

(d) Not later than ~~10~~ 20 days prior to the day set for trial each party who served a demand or cross-demand and each party upon whom a demand or cross-demand was served shall serve and file a statement of valuation data. [No change in remainder of subdivision.]

3. The Commission deleted subdivision (e) of Section 1272.01 in response to a suggestion from the Southern Section of the State Bar Committee and the State Department of Public Works.
4. The suggestion of Mr. Blade that the demand and cross-demand should be served and filed was considered. No revision was considered necessary since the proposed legislation requires that the demand and cross-demand be filed as well as served.
5. The suggestion of Mr. Blade that the statements be held by the court until all parties have filed them with the court and then transmitted to the parties was considered. This suggestion was not adopted.
6. The suggestion of Mr. Blade that subdivision (d) of Section 1272.02 be revised to specifically include "special damages arising from the taking other than permanent severance damage" was considered. Persons present at the meeting advised the Commission that no revision was needed since the language included in the statute already covers such damages.
7. In response to a suggestion of Mr. Blade, subdivision (d) was revised to read:
 - (d) The opinion of each witness listed as required in subdivision (b) of this section as to the value of the property described in the demand or cross-demand and as to the amount of the damage and benefit, if any, to the larger parcel from which such property is taken and separately listing the following data to the extent that the opinion as to value, damages, or benefits is based thereon:
8. Subdivision (d)(5) was revised to read:

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(5) The gross income from the property, the deductions from gross income, the resulting net income, the reasonable net rental value attributable to the land and existing improvements thereon and the estimated gross rental income and deductions therefrom upon which such reasonable net rental value is computed , the rate of capitalization used, and the value indicated by such capitalization.

This revision in paragraph (5) of subdivision (d) was made in response to a suggestion from the Southern Section of the State Bar Committee.

9. A suggestion was made that the comment to Section 1272.04 be revised to indicate more strongly that a party may not under existing law offer testimony on rebuttal that presents valuation data that is not offered to meet the matters brought on the cross-examination of his witness. If the comment is revised, it should be revised to include a citation to San Francisco v. Tillman Estate Co., 205 Cal. 651 (property owner may not use rebuttal to reverse the regular order of proof in a condemnation case which requires that valuation opinion evidence be first presented by the property owner who has the burden of proof and the burden of first proceeding with the evidence).

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STUDY 36(L) - CONDEMNATION LAW AND PROCEDURE

(Possession Prior to Final Judgment and Related Problems)

The Commission considered Memorandum 67-4 and the proposed legislation attached thereto. After considerable discussion, the Commission directed that this memorandum (which contained a staff scheme for immediate possession) and the attachments thereto be considered at the next meeting.

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STUDY 42 - GOOD FAITH IMPROVERS

The Commission considered Memorandum 67-9 and the attached report of the Committee on Administration of Justice to the Board of Governors and the Commission's Recommendation on the Good Faith Improver of Land Owned by Another.

Encroachment Cases

The Commission noted that the principal concern of CAJ seems to stem from a fear that the act will be applied in encroachment cases as well as in classic trespassing improver cases.

The Commission noted that the paragraph concerning encroachment cases was added to the comment to Section 871.5 after the Recommendation had been considered by CAJ and that if the comment is not sufficient it should be revised. The Commission believes that no change is needed in the proposed legislation itself.

Definition of "Good Faith Improver"

The Commission concluded that the "reasonable man exercising due diligence under all the circumstances" standard suggested by CAJ would be undesirable. A total forfeiture should not be permitted merely because the improver was negligent. In encroachment cases, the test is good faith, not the lack of negligence. Moreover, the proposed legislation provides that the owner is always to be made whole, but that he is not to be unjustly enriched at the expense of the good faith improver.

Public Agencies

The Commission concluded that the statute should be revised so that it would not apply where a public agency is a good faith improver. The result of this change is that the landowner would be limited to inverse

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condemnation relief. It was noted that inverse condemnation relief is more limited than relief under the proposed legislation because the proposed legislation permits the owner to recover his attorney's fees and appraisal fees as well as compensation. Making the statute not applicable where the improver is a public agency would also preserve the right to a jury trial in such cases since they would be tried as inverse condemnation cases.

The extent of recovery in inverse condemnation cases is a matter that will be considered by the Commission in its study of inverse condemnation.

The statute should apply where the improvement is made by a good faith improver on land owned by a government or governmental subdivision or agency.

Improvement Partially Completed

The Commission considered that the question of valuation where the improvement is partially finished when the right of the owner to the land is first revealed. It was concluded that the question of valuation of partially completed improvements arises and is resolved in condemnation cases. The fact that the improvement is only partially completed will be a factor considered by the court in determining the appropriate relief. To add special provisions dealing with the problem would unduly complicate the statute in light of the fact that such a case will occur rarely, if at all.

Municipal Court Jurisdiction

The case should be transferred to the Superior Court if relief is sought under the proposed legislation in a municipal court action. The staff is to revise the statute, or the comment, or both to effectuate this decision.

Section 871.5

The first portion of Section 871.5 (a) should be revised to substitute "shall" for "may."

Subdivision (b) should be revised to read:

(b) Where the form of relief provided in Section 871.6 would substantially achieve the objective stated in subdivision (a), the court ~~may not~~ shall grant the relief ~~other than as~~ provided in that section. In other cases, the court ~~may~~ shall grant such other or further relief as may be necessary to achieve that objective.

Section 871.3

The following paragraph should be added to Section 871.3:

An action for relief under this chapter shall be commenced within the time prescribed for the commencement of an action for the recovery of real property under Chapter 2 (commencing with Section 315) of Title 2 of Part 2 of the Code of Civil Procedure.

STUDY 50 - LEASES

The Commission considered Memorandum 67-11 and the report of the Committee on Administration of Justice to the Board of Governors and the Recommendation relating to Abandonment or Termination of a Lease.

Application of Act to Existing Leases

The Commission concluded that Section 13 should remain in the proposed legislation.

In response to a suggestion from CAJ, the Commission determined that a severability clause should be added to the proposed legislation.

Also in response to the comments of CAJ, the Commission determined that a provision should be added to Section 3325, which relates to payment of advance consideration, advance rent, and the like, to provide that Section 3325 does not apply to leases entered into prior to the effective date of the proposed legislation.

"Repudiation" and "Breach"

In response to a question raised by CAJ, the Commission determined that a provision should be included in the proposed legislation to state that a repudiation is a breach.

STUDY 55 - ADDITUR

The Commission considered Memorandum 67-8 and the Recommendation relating to Additur.

The Executive Secretary reported that he had been advised that the Judicial Council's Executive Committee has approved the report of its Trial Court Committee recommending Council support of legislation implementing the Law Revision Commission's recommendation on additur.

The Commission considered the report of the Committee on Administration of Justice to the Board of Governors of the State Bar (copy attached to Memorandum 67-8). The following actions were taken:

1. The State Bar Committee objected to substituting "the evidence does not justify the verdict or other decision" for "insufficiency of the evidence to justify the verdict or other decision." The Commission concluded that there was merit to the objection and determined that the language of the existing statute--"insufficiency of the evidence to justify the verdict or other decision"--should be retained in all places where "the evidence does not justify the verdict or other decision" was proposed to be substituted.

2. In response to a suggestion of the State Bar Committee, subdivision (c) of Section 662.5 was revised to make it consistent with subdivision (a) of that section, to read as follows:

(c) Nothing in this section affects the authority of the court to ~~order~~ grant a motion for a new trial on the ground of excessive damages and to make ~~suek~~ its order granting a new trial subject to the condition that the motion for a new trial on that ground is denied if the party recovering the damages consents to a reduction of so much therefrom as the court in its discretion determines.

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STUDY 63 - EVIDENCE CODE

(General Evidence Code Revisions)

The Commission considered Memorandum 67-1 and the printed recommendation relating to the Evidence Code: Number 1--Evidence Code Revisions.

The Commission determined to make no change in proposed Public Resources Code Section 2325.

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STUDY 64 (L) - POUR-OVER TRUSTS

The Commission considered Memorandum 67-2. Based on the letters from Professor Richard R. Powell (Hastings Law School) and Mr. K. Bruce Friedman, San Francisco attorney, the Commission determined that the study of pour-over trusts be dropped from its agenda of topics and that the following be included in the next Annual Report:

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

FOR STUDY

Study Relating to Pour-Over Trusts

In 1965, the Commission was directed to make a study to determine whether the law relating to devises and bequests to a trustee under, or in accordance with, terms of an existing¹ inter vivos trust should be revised. California Statutes 1965, Chapter 1640, enacted the Uniform Testamentary Additions to Trusts Act (Probate Code Sections 170-173) to deal with the problems that existed in this field of law. Accordingly, the Commission recommends that this topic be dropped from its calendar of topics.

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The Commission was directed to make this study by Cal Stats. 1965, Res. Ch. 130.

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STUDY 67 - UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 67-10 and the attached report of the Committee on Administration of Justice to the Board of Governors and the Recommendation of the Commission on Suit By or Against Unincorporated Associations.

Sections 388 and 24000

The Commission considered the CAJ suggestion that the definition of "unincorporated association" include a specific reference to partnerships. In response to this suggestion and other comments of CAJ, Section 388 was revised to read:

388. Any partnership or other unincorporated association, whether organized for profit or not, may sue and be sued in the name which it has assumed or by which it is known.

A conforming change was made in subdivision (a) of Section 24000, which was revised to read:

(a) As used in this part, "unincorporated association" means any partnership or other unincorporated organization of two or more persons ~~which engages in any activity of any nature~~, whether organized for profit or not, ~~under a common name~~ but does not include a government or governmental subdivision or agency.

It was noted that the distinction between Section 24000 (which excludes a government or governmental subdivision or agency) and Section 388 is based on the fact that Section 388 authorizes an unincorporated association to sue and be sued. So far as governmental agencies are concerned Government Code Section 945 provides the same rule and, hence, the exclusion of governmental agencies from Section 388 is unnecessary. On the other hand, a

purpose is served by excluding such agencies from Sections 24000 et seq., for those sections establish procedural provisions which are not intended to supersede the procedural provisions of the Government Code relating to actions by and against public entities.

Effect on Other Laws

The Commission considered the concern expressed by CAJ as to the possible effect of the new act upon the Limited Partnership Act and other laws.

The Commission reviewed the research contained in pages 2-4 of Memorandum 67-10. The Commission determined that no revisions of the legislation were needed except that Corporations Code Section 15700, relating to designation of agent for service of process upon a foreign partnership, is to be revised to permit designation of a corporate process agent. If the revision would require substantial statutory revision, a provision should be added to Section 15700 to provide specifically that a designation of a process agent in compliance with Section 24003 is a sufficient compliance with the requirement of Section 15700. The preferred form of revision would make each section independent of the other.

Revision of Section 414

In response to a question raised by some members of CAJ concerning the creditor's remedies in the case of a joint obligation arising from statute (see DeMartini v. I.A.C., 90 Cal. App.2d 139), the Commission determined that Code of Civil Procedure Section 414 should be amended to cover cases where joint liability arises from a statutory obligation as well as cases where it arises from a contractual obligation.

Civil Code Section 3369

The staff was requested to examine Civil Code Section 3369 to determine whether any revision of that section or our recommendation is necessary.