

Time

February 25 - 9:00 a.m. - 5:00 p.m.

Place

Gloss Room (Room 163-E, Third Floor)
Law School
Stanford, California

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Stanford

February 25, 1967

1. Approval of Minutes of January Meeting (sent 2/7/67)
2. Administrative Matters

Letter from Assemblyman Crandall

Memorandum 67-15 (enclosed)

3. Review of Recommendations to 1967 Session
 - Senate Bills Nos. 244-254 (sent 2/10/67)
 - Memorandum 67-22 (Evidence Code Recommendation)(enclosed)
 - Memorandum 67-6 (Commercial Code Recommendation)(enclosed)
 - Memorandum 67-7 (Agricultural Code Recommendation)(enclosed)
 - Memorandum 67-17 (Additur Recommendation)(to be sent)
 - Memorandum 67-18 (Good Faith Improver Recommendation)(to be sent)
 - Memorandum 67-19 (Unincorporated Associations Recommendation)(to be sent)
 - Memorandum 67-20 (Lease Recommendation)(to be sent)
 - Memorandum 67-12 (Vehicle Code Recommendation)(to be sent)
 - Memorandum 67-13 (Personal Injury Damages Recommendation)(to be sent)
 - Memorandum 67-21 (Discovery in Eminent Domain)(enclosed)

4. Study 26 - Escheat

Memorandum 67-16 (sent 2/7/67)

Revised Recommendation (attached to Memorandum 67-16)

5. Study 36 - Condemnation Law and Procedure

Possession Prior to Final Judgment and Related Problems

Memorandum 67-4 (you have this)

Proposed Legislation (attached to Memorandum 66-68)(you have this)

Note: We plan to discuss the basic approach that should be taken in connection with this recommendation. We will take up the various comments on the proposed legislation at a subsequent meeting.

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

FEBRUARY 25, 1967

Stanford

A meeting of the California Law Revision Commission was held at Stanford Law School on February 25, 1967.

Present: Richard H. Keatinge, Chairman
Sho Sato, Vice Chairman
James R. Edwards
John R. McDonough
Thomas E. Stanton, Jr.

Absent: Joseph A. Ball
Herman F. Selvin
George H. Murphy, ex officio

Note: The 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 Department of Public Works
Norval Fairman	State Department of Public Works
James T. Markle	State Department of Water Resources
J. M. Morrison	Attorney General's Office
David B. Walker	San Diego County Counsel's Office

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ADMINISTRATIVE MATTERS

Minutes of January 1967 meeting. The Minutes of the January 1967 meeting were approved.

Future meetings. Future meetings are scheduled as follows:

March 19 (evening), 20 (morning), 21 (morning)	Lake Tahoe
April 21 (evening), 22	Los Angeles
May 19 (evening), 20	San Francisco
June 23 (evening), 24	Los Angeles
July 28 (evening), 29	San Francisco
August	No meeting
September 21 (evening), 22, 23	Los Angeles
October 20 (evening), 21	San Francisco

Budget for 1967-68 fiscal year. The Executive Secretary reported that the Budget Division has approved the 1967-68 budget with a cut of slightly less than 5 percent in the budget as originally proposed.

Revision of comments. The Executive Secretary reported that he has been advised that the Senate Judiciary Committee is willing to adopt reports revising the official comments to conform to changes made during the legislative process and to otherwise clarify and improve the comments.

Research contract. The Commission authorized the Executive Secretary to enter into a contract with Mr. Joseph B. Harvey in an amount not to exceed \$2,500 for the period covering April 1, 1967, to June 30, 1969. The contract is to provide for an hourly or daily rate of compensation that is equivalent to the rate Mr. Harvey is now paid. The contract is to cover appearances at legislative hearings and follow up work on matters where Mr. Harvey already has prepared research materials.

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STUDY 26 - ESCHEAT

The Commission considered Memorandum 67-16, the revised Tentative Recommendation dated February 6, 1967, and a letter (dated February 17, 1967) from the General Telephone Company. The following actions were taken:

Section 1501

Subdivision (g), defining "owner," was deleted as unnecessary. The staff was directed to go through the statute and to change references to "owner" to "last known owner." If the revision proves too cumbersome, the staff is to consider a new definition for the term to indicate that the owner for escheat purposes is the person last appearing to be the owner on the holder's records.

Section 1502

Subdivision (b) was revised to read substantially as follows:

(b) This chapter does not apply to any property held by a utility which the Public Utilities Commission of this state or a similar public agency of another state or of the United States ~~considers-as-part-of-the-revenues-of-the-utility~~ permits or requires to be used, directly or indirectly, for the benefit of the ratepayers in determining the rates to be charged by the utility.

Section 1510

Subdivision (c) was revised to refer to a government or governmental subdivision of this state instead of in this state.

Sections 1511 and 1512

The staff was directed to revise the comments to indicate clearly that the constitutionality of these provisions is not certain, that the Supreme Court might hold that these provisions are not consistent with the standards

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set forth in Texas v. New Jersey. It was suggested that the discussion of constitutionality might be placed in the preliminary recommendation instead of in the section comments.

Section 1511

The word "purchased" was substituted for "sold and delivered" wherever used in the section.

Section 1512

The staff was directed to revise the preliminary language of the section to state, ". . . the funds that escheat under Section 1515"

Subdivision (b)(1) was revised to refer to the situation where no address of the person appearing to be entitled to the funds is shown on the books or records of the holder instead of the situation where no address of such person is known to the holder.

The word "who" was substituted for "what person" wherever used in the section.

Section 1516

The last sentence of subdivision (b) was revised to read substantially as follows:

With respect to such interest, the business association shall be deemed a holder.

In preparing the bill, the last sentence of the subdivision should be made a part of the portion of the subdivision appearing before the commencement of the deleted numbered paragraphs. This will clarify the meaning of the sentence by placing it within the context to which it relates.

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Section 1517

Section 1517 was revised to provide for escheat of the property referred to six months after final distribution or liquidation of a business association.

Section 1531

Subdivision (e) was revised to relieve the Controller of any duty to send notice to owners of property valued at less than \$25.00.

Section 1532

Subdivision (e) was revised to add at the beginning of the sentence relating to tangible personal property:

Except where the State Controller and the holder have agreed to the contrary,

Section 1540

The staff was directed to revise the comment to give the reason for removing the requirement of a finding.

Section 1541

The word "petitioner" was changed to "plaintiff" in the last sentence.

Section 1560

The staff was directed to add a provision in this section or elsewhere to require the Controller to refund erroneously delivered property without any service charge deduction. The provision should not contain a limitation on the period for claiming such property such as that contained in the New York refund provision.

Section 1563

Section 1563 was revised to read as proposed in Memorandum 67-16.

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Tentative Recommendation

Subject to the foregoing revisions, the tentative recommendation was approved. The staff was directed to make the necessary revisions and distribute the revised tentative recommendation once more to the commissioners. The matter will be placed on the next agenda for any questions any commissioner may wish to raise, and in the absence of any further suggested changes, the tentative recommendation as revised will be distributed for comments after the next meeting.

STUDY 36 - CONDEMNATION LAW AND PROCEDURE (DISCOVERY)

The Commission considered Memorandum 67-21 concerning Senate Bill No. 253 (relating to discovery in eminent domain proceedings).

The Commission approved the revised bill set out as Exhibit I to Memorandum 67-21 with the following changes:

Section 1272.01

In paragraph (2) of subdivision (b), "20" was inserted for "10."

Section 1272.02

The alternative draft of the amendment to subdivisions (b) and (d) (Exhibit II) was approved with the following changes:

(1) Subdivision (b)(2) was revised to read:

(2) The amount of the damage, if any, to the remainder of the larger parcel from which such property is taken.

(2) Subdivision (b)(3) was revised to read:

(3) The amount of the benefit, if any, to the remainder of the larger parcel from which such property is taken.

(3) After the introductory clause of subdivision (d), before the phrase "the following data," the phrase "what that opinion is and" was inserted.

Subdivision (d)(6) of the bill was revised to insert the words "and the value of" after the words "description of."

Section 1272.04

Subdivision (c) was revised to read in substance:

(c) No witness called by any party required to serve and file a statement of valuation data may testify on direct examination during the case in chief of the party who called him to any opinion or any data required to be listed in the statement of valuation data unless such opinion or data is listed in the statement of valuation data of the party who calls the witness, except that testimony that is merely an explanation or elaboration of data so listed is not inadmissible under this section.

Revision of comments

The revised comments, as set out in Exhibit IV, were approved.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE (IMMEDIATE POSSESSION)

The Commission discussed the approach that should be taken in preparing a revised tentative recommendation on possession prior to final judgment and related problems. The staff was directed to prepare a revised draft of the proposed legislation contained in the tentative recommendation previously distributed for comment.

In preparing the revised draft, the staff is to consider the feasibility of providing a longer period of notice where immediate possession is to be taken of land upon which structures are located. The staff is also to consider the feasibility of providing for a noticed motion procedure in all cases or in all cases where immediate possession is not now authorized. Any other revisions suggested by the staff should be included in the revised draft of the statute dealing with possession prior to final judgment and related problems, including suggested revisions designed to meet the objections raised by persons commenting on the tentative recommendation previously distributed.

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STUDY 42 - GOOD FAITH IMPROVERS

The Commission considered Memorandum 67-18 relating to Senate Bill No. 254 (relating to good faith improvers). The following actions were taken:

Section 871.2

The spelling of "association" should be corrected and the phrase "government or governmental subdivision or agency," should be deleted.

Section 871.3

This section should be revised to read:

871.3. An action for relief under this chapter shall be brought in the superior court.

New section to be added to Code of Civil Procedure

A new section should be added to the statutes of limitations part of the Code of Civil Procedure providing a two year statute of limitations on bringing an action for relief under the proposed legislation, such time to commence to run when the good faith improver acquires knowledge of his mistake.

Section 871.5

The revision of this section was approved after the first portion of the section was revised to insert "shall make" for "may effect" and subdivision (d) which was proposed to be added was deleted.

New section to be added to proposed legislation

A new section is to be added to the proposed legislation to read in substance:

This chapter does not apply where the improver is a government or governmental subdivision or agency or where the improvement is made to land owned or possessed by a government or governmental subdivision or agency.

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Revision of comments

The comments to the proposed statute are to be revised along the following lines. The comment to Section 871.2 (on Exhibit II) is to be deleted and no comment to the new section on improvements by public entities or on public lands was considered necessary.

The first sentence of the comment to Section 871.3 is to be revised to read: "This section requires that an action for relief under this chapter be brought in the superior court." The second sentence in the comment was satisfactory. The second paragraph of the comment is to be deleted.

Review of revisions by Commission

The amendments designed to carry out the Commission's decisions are to be distributed to the Commission for review and comment.

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STUDY 50 - ABANDONMENT OR TERMINATION OF A LEASE

The Commission considered Memorandum 67-20. The revised bill (attached as Exhibit I) and the revised comments (attached as Exhibit II) were approved.

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STUDY 52 - SOVEREIGN IMMUNITY

The Commission considered Memorandum 67-15 and the attached material which included a request from Assemblyman Earle P. Crandall for an opinion from the Commission on the repeal of the former law relating to damage by mobs and riots.

The Executive Secretary was directed to advise Assemblyman Crandall that the Commission is now engaged in a top priority study of two related topics--eminent domain and inverse condemnation--and that it would not be possible to study the problem of damage from mob or riot for a number of years.

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STUDY 53 - PERSONAL INJURY DAMAGES

The Commission considered Memorandum 66-12 concerning Senate Bill No. 245 (relating to personal injury damages). Section 905 is to be revised as indicated in connection with the discussion of this section on page 15 of these Minutes. The technical correction contained on page 5 of the revised bill as set out on page 5 of Exhibit IV was approved. The revised comments were approved subject to any modifications needed to reflect the changes made at the meeting.

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STUDY 55 - ADDITUR

The Commission considered Memorandum 67-17 relating to Senate Bill No. 250 (relating to additur).

The amended form of the bill attached as Exhibit I of Memorandum 67-17 was approved.

The draft of the report of the Senate Committee on Judiciary set out as Exhibit II was approved with the following changes:

1. The sentence of the third paragraph beginning with the words "It is settled" was revised to read:

In the past, the basis for granting a new trial because of excessive damages has been that the verdict is against the weight of the evidence, i.e., "the insufficiency of the evidence to justify the verdict or other decision"; neither passion nor prejudice had to be shown.

2. An additional sentence is to be added to the third paragraph of the comment to indicate in substance that the judge acts, in effect, as a "thirteenth juror" in reviewing the evidence to determine whether the verdict is excessive.

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STUDY 62 - VEHICLE CODE SECTION 17150 AND RELATED STATUTES

The Commission considered Memorandum 67-12 concerning Senate Bill No. 244 (relating to Vehicle Code Section 17150 and related statutes).

The following actions were taken concerning Section 905:

1. The revision of subdivision (a) as set out in the revised bill attached as Exhibit II was approved.
2. Subdivision (b) was approved as drafted in the revised bill.
3. Subdivision (c) was approved as drafted in the revised bill, but the provision should be revised to indicate that the judgment is not conclusive in a case unless the court has jurisdiction over the contribution cross-defendant or has jurisdiction by virtue of attachment of his assets and in the latter case the judgment is binding only to the extent of the assets subject to the court's jurisdiction if the contribution cross-defendant does not appear in the main action.

The revised comments were approved subject to any necessary modifications needed in light of Commission decisions stated above.

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STUDY 63 - EVIDENCE CODE AND RELATED STATUTES

SENATE BILL NO. 247 (GENERAL EVIDENCE CODE RECOMMENDATION)

The Commission considered Memorandum 67-22. The following actions were taken:

1. Senate Bill No. 247 is to be amended to delete proposed Public Resources Code Section 2325 because this section serves no purpose and contributes nothing but confusion to the California law.

2. The comment to the repeal of Section 1602 of the Evidence Code is to be revised to read:

Comment. Section 1602 of the Evidence Code is repealed because a patent for mineral lands does not contain a statement of the date of the location of the claim or claims upon which the granting or issuance of the patent is based. See Bureau of Land Management Form 4-1081 (September 1963) and Form 4-1082 (January 1963). As to patents issued before 1963, the California office of the Bureau of Land Management of the United States Department of Interior reports: "No patents have been found which recite the date of location. To our knowledge, it has never been the practice to refer to the location date in the patent." Letter, California Office of Bureau of Land Management, January 25, 1967, on file in office of California Law Revision Commission.

SENATE BILL NO. 249 (COMMERCIAL CODE REVISIONS)

The Commission considered Memorandum 67-6 and the First Supplement to that memorandum.

The Commission first considered the suggestion that the bill not be heard until the report of the Permanent Editorial Board is available. The Chairman is to call Mr. Richter to advise him of the problems that would be created if the hearings on the bill are delayed. Whether the hearing on Senate Bill No. 249 should be delayed was left to the judgment of the Chairman and the Executive Secretary.

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The Commission next considered the suggestion of Mr. Smock that the phrase "is admissible as evidence" should be deleted from revised Section 1202 and that Commercial Code Sections 2724 and 3510 should be revised to delete similar language. The Commission concluded that no change should be made in revised Section 1202 and that no changes should be recommended to be made in Commercial Code Sections 2724 and 2510.

SENATE BILL NO. 248 (AGRICULTURAL CODE REVISIONS)

The Commission considered Memorandum 67-7. This memorandum reported that it will be necessary to conform Senate Bill No. 1 (the bill to enact a revised Agricultural Code) to Senate Bill No. 248.

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STUDY 67 - UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 67-19 concerning Senate Bill No. 251 (relating to unincorporated associations).

The revised bill as set out in Exhibit I of Memorandum 67-19 was approved. The revised comment as set out in Exhibit II of Memorandum 67-19 was approved.

The Commission considered the Recommendation relating to Code of Civil Procedure Section 414 which was attached as Exhibit III to Memorandum 67-19. The general procedure suggested by the staff was approved: The Senate Judiciary Committee will be requested to have this recommendation printed in the Senate Journal.

The following actions were taken concerning the proposed recommendation on Section 414:

1. Section 414 is to be revised so that the words "on a contract" are deleted from the section as it now exists and no other changes are to be made in the section.

2. Code of Civil Procedure Section 989 should be amended to delete ", jointly indebted upon an obligation," and the following inserted: "who are jointly liable".

3. Code of Civil Procedure Sections 992, 993, and 994 are to be amended to substitute "cause of action" for "obligation."

Comments by members of Commission

The Commission should have an opportunity to review the revised recommendation before it is printed in the Senate Journal.