

Time

Place

September 21 - 9:30 a.m. - 5:00 p.m. State Bar Building
September 22 - 9:00 a.m. - 5:00 p.m. 1230 West Street
September 23 - 9:30 a.m. - 3:00 p.m. (if Los Angeles
necessary)

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

September 21-23, 1967

1. Approval of Minutes of June 29-30 meeting (sent 9/6/67)
2. Administrative matters

Future meetings - suggested dates:

October

no meeting

November 16, 17, 18 (from 9:00 a.m. San Francisco
to 11:30 a.m. on Nov. 18)

December 14 (evening), 15, 16

Los Angeles

Budget for 1968-69

Memorandum 67-50 (sent 9/6/67)

Request State Bar to appoint committee on inverse condemnation

3. Approval for printing:

Recommendation Relating to Whether Damages for Personal
Injury to a Married Person Should be Separate or Community
Property

Memorandum 67-61 (sent 9/6/67)

Recommendation (attached to Memorandum)

Recommendation Relating to The Good Faith Improver of Land
Owned by Another

Memorandum 67-62 (sent 9/6/67)

Recommendation (attached to Memorandum)

Portions of Annual Report

Memorandum 67-63 (sent 9/6/67)

Recommendation (attached to Memorandum)

4. Study 26 - Escheat

Approval of Recommendation for printing:

Memorandum 67-48 (sent 9/6/67)

Recommendation (attached to Memorandum)

First Supplement to Memorandum 67-48 (to be sent)

[SPECIAL ORDER OF
BUSINESS AT 1:30 p.m.
on September 21

5. Study 67 - Unincorporated Associations

Memorandum 67-64[✓] (sent 8/30/67)
Recommendation (attached to Memorandum)

6. Study 36 - Condemnation Law and Procedure

[SPECIAL ORDER OF
[BUSINESS AT 9:00 a.m.
[September 22

Approval for printing:

Recommendation Relating to Recovery of Condemnee's Expenses
Upon Abandonment of an Eminent Domain Proceeding

Memorandum 67-50[✓] (sent 9/6/67)
Recommendation (attached to Memorandum)
First Supplement to Memorandum 67-50[✓] (to be sent)
Tentative Recommendation and Study on Possession Prior
to Final Judgment

Memorandum 67-51[✓] (sent 8/30/67)
Tentative Recommendation (attached to Memorandum)
~~First Supplement to Memorandum 67-51 (to be sent)~~

7. Study 63 - Evidence Code

Memorandum 67-31[✓] (sent 9/6/67)
Memorandum 67-39[✓] (sent 9/6/67)
Memorandum 67-52[✓] (sent 9/6/67)
Memorandum 67-53[✓] (sent 9/6/67)
Memorandum 67-54[✓] (sent 9/6/67)
Memorandum 67-55[✓] (enclosed)
Memorandum 67-56[✓] (enclosed)
Memorandum 67-57[✓] (enclosed)

8. Study 44 - Fictitious Business Names Statute

Memorandum 67-49[✓] (sent 9/6/67)
Tentative Recommendation (attached to Memorandum)
First Supplement to Memorandum 67-49 (enclosed)

MINUTES OF MEETING

of

CALIFORNIA LAW REVISION COMMISSION

SEPTEMBER 21 and 22, 1967

Los Angeles

A meeting of the California Law Revision Commission was held at the State Bar Building, Los Angeles, on September 21 and 22, 1967.

Present: Richard H. Keatinge, Chairman
Sho Sato, Vice Chairman
Hon. Alfred H. Song (September 21)
Thomas E. Stanton

Absent: Hon. Frederick J. Bear
Joseph A. Ball
James R. Edwards
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Clarence B. Taylor, Ted W. Isles, and Gordon E. McClintock of the Commission's staff were present. Joseph B. Harvey, Commission Consultant on Study 50 - Leases, was present on September 22.

Also present were the following observers:

Mr. R. D. Conacher	New South Wales Law Reform Commission
Samuel J. Cord (Sept. 21)	Office of State Controller
Edwin G. Neuharth (Sept. 21)	Office of State Controller
J. T. Markle (Sept. 22)	Department of Water Resources
Russell W. Walker (Sept. 22)	County of San Diego
Norval Fairman (Sept. 22)	Department of Public Works
Charles E. Spencer, Jr. (Sept. 22)	Department of Public Works
Terry C. Smith (Sept. 22)	Los Angeles County Counsel

ADMINISTRATIVE MATTERS

Minutes of Second June Meeting. The Minutes of the meeting of June 29 and 30, 1967, were approved as presented by the staff.

Future Meetings: Future meetings were scheduled as follows:

October	No meeting
November 17	Los Angeles
December 14 (evening), 15, 16	San Francisco

Note: It is necessary to hold the November meeting in Los Angeles because the Board of Governors of the State Bar is meeting in San Francisco at the same time.

Budget for 1967-1968 Fiscal Year. The budget for the 1967-68 fiscal year, attached to Memorandum 67-60, was approved as submitted by the staff, subject to the Commission's direction that an amount sufficient to allow the Executive Secretary to attend the National Legislative Conference in 1968 be added to the budget.

Annual Report. The Commission considered Memorandum 67-63 and the attached draft of a portion of the Annual Report. The portion of the Annual Report was approved as submitted by the staff, subject to the following changes:

(1) Page 5: A specific reference to the Resolution directing the Commission to study inverse condemnation is to be made at the beginning of the first paragraph on inverse condemnation.

(2) Page 5: The first sentence of the second paragraph under Condemnation Law and Procedure is changed to read: "As it did in connection with the Evidence Code study,"

(3) Page 8: The second sentence of the second paragraph from the bottom of the page is changed to read in substance: "This amendment was made at the suggestion of the State Bar which took the view that the meaning of the existing language, which the amendment restored,

has been settled by judicial decision."

(4) Page 9: A sentence is to be added to (1) under Suit By or Against An Unincorporated Association to indicate that a new recommendation is to be submitted to the 1968 Legislature.

(5) Page 10: A sentence is to be added to the discussion of the recommendations relating to damages for personal injuries to a married person and rights of a good faith improver to indicate that a revised recommendation will be submitted to the 1968 Legislature.

(6) Page 11: Citations indicating that comprehensive legislation has been enacted on Commission recommendation are to be added to the footnotes to topics 1, 2, and 4 under "Topics Under Active Consideration."

(7) Pages 11 and 12: Under "Topics Continued on Calendar for Further Study" a citation to the pertinent statute is to be added to the footnote of each topic which has resulted in legislation enacted upon Commission recommendation. If a recommendation or revised recommendation will be submitted to the 1968 Legislature, that is to be indicated also.

State Bar Committee on Inverse Condemnation. The Executive Secretary was directed to request that the Board of Governors of the State Bar appoint a special committee on inverse condemnation. Mr. Stanton and the Executive Secretary should confer with the President of the State Bar before a formal letter of request is sent.

Revision of Recommendations Approved for Printing. The staff was directed to review all 1967 legislation and to make any changes in the recommendations necessitated by legislation enacted in 1967. The staff was also directed to make any other revisions necessary to eliminate

Minutes
September 21 and 22, 1967

any defects that are discovered in the recommendations, including but not limited to revisions necessary to make the provisions of recommended legislation consistent with 1967 legislation and other statutes.

STUDY 26 - ESCHEAT

The Commission considered Memorandum 67-48, the attached recommendation relating to escheat, and the First Supplement to Memorandum 67-48.

The following actions were taken with respect to the recommendation attached to Memorandum 67-48.

Preliminary portion of recommendation

On page 2, under recommendation 1, the first two sentences of the second paragraph were deleted and, in the third sentence, the words "For the revenue implications of this type of legislation, see" was substituted for "See."

On page 2, under recommendation 2, the last sentence of the first paragraph was deleted and a comma was substituted for the words "the identity and address of the original purchaser is seldom of any significance in determining the person to whom payment should be made and."

Page 3 of the recommendation was revised as set out on the following pages.

the purchaser.³ For this reason, it usually is impossible to apply lit-

⁷
The Commission is advised that, in the case of telegraphic money orders, ~~the~~ Western Union Telegraph Company, ~~do not~~ disclose the identity and address of both the sender and the payee.

The usual telegraphic money order transaction can be described as follows. The sender enters the office at the point of origin, fills out a money order application and hands the application to the clerk who calculates the charges and collects the charges plus the principal amount of the money order from the sender. The clerk then prepares a receipt which is given to the sender. The clerk or other employee transmits a telegraphic message to the company's money order office located nearest to the payee, directing that office to pay the principal amount of the money order to the payee in the form of a negotiable draft. On receipt of the message, the office of destination prepares a money order draft payable to the named payee, together with a money order notice, which notice is then delivered to the payee. Upon calling at the office and satisfactorily identifying himself, the payee is given the money order draft, countersigned in his presence. The payee endorses the draft, hands it back and receives cash, or, if he prefers, he may take the draft away with him to make such use thereof as he sees fit, in which case he is required to sign a receipt for the draft. If the payee cannot be located for the delivery of the money order notice, or if he fails to call for the draft within 72 hours, the office of destination transmits a message to the office of origin advising the latter of the reasons for nonpayment. The office of origin then sends a notice to the sender and, when the sender calls at the office, he receives a draft which he may endorse and cash immediately at the office or, if he prefers, may carry away with him. See Record, Western Union Tel. Co. v. Pennsylvania, Supreme Court of the United States, October Term, 1960, No. 543 (Filed Nov. 25, 1960), pp. 17-18.

has for the last several years retained records that

~~It has been held that the sender of a money order is the owner of the funds if the draft has not been delivered to the payee.~~

The Commission has been advised by Western Union Telegraph Company that, under the applicable tariffs of the company as they now read, if no negotiable money order draft has been delivered to the payee, the sender is the apparent owner of sums left in the hands of the company. However, in the opinion of Western Union, where a money order draft has been issued to the payee, the question as to whether the sender or the payee is the apparent owner of sums left in the hands of the company remains unresolved.

erally to such instruments the basic escheat rule stated in *Texas v. New Jersey* (escheat to the state of the obligee's last known address as shown on the obligor's records). Of course the alternative rule provided by *Texas v. New Jersey* (escheat by the state of the obligor's domicile if the records do not show the obligee's last known address) could be applied to such obligations. ~~But an application of that rule would tend to frustrate one of the apparent purposes of the rule announced by the Supreme Court, which is to distribute escheated obligations, insofar as possible, among the states in proportion to the~~

But, as is implicit in the Supreme Court's opinion, application of that alternative rule tends to frustrate one of the apparent purposes of the basic escheat rule which is

commercial activity of their residents. ~~The Commission has concluded, that obligations due on travelers checks and money orders distinguishable from the obligations considered by the Supreme Court in Texas v. New Jersey and that it is probable that modified rules can be applied to such obligations.~~

For that reason, in cases where the obligor has no record address for the obligee, Texas v. New Jersey accords a lower escheat priority to the obligor's state of domicile than to the state of actual last known address of the obligee.

To provide an appropriate rule where

~~no record is kept~~ no record is kept, the Commission recommends that the sum payable on a travelers check or money order escheat to California if the instrument was purchased here and the name of the apparent owner or his address is not shown by the records of the issuing company. Conversely, if a travelers check or money order of a California corporation is purchased in another state, California should not escheat the unclaimed sum due on the instrument unless (1) the issuing company has a record showing the name of the apparent owner and an address in this state, or (2) the state of issuance does not provide for its escheat.

The recommended rule will be administratively convenient because a record of the state of purchase is a simple one to make and retain; for example, the record could be a letter designation in the serial number of the instrument. These companies that desire to avoid appli-

The rule thus is consistent with the expressed purpose of Texas v. New Jersey to achieve clarity, certainty, and ease of administration.

cation of the rule may do so by maintaining a record of the names and addresses of the apparent owners of the instruments they issue, thereby making it possible to apply the rule of Texas v. New Jersey and assuring California of its interest in the funds under that rule. The recommended rule would distribute the escheat of funds due on travelers checks and money orders ratably among the states in proportion to the volume of purchases of such instruments by their residents. Since most travelers checks and money orders are purchased near the purchasers' homes, the result reached would also approximate that reached under the basic rule promulgated in Texas v. New Jersey (unclaimed property should escheat to the state of the last known address of the last known owner).⁴

basic escheat

⁴To hold the recommended rule invalid would ~~concentrate~~ concentrate the escheat of funds payable on travelers checks and money orders into those states where the issuing companies are incorporated. To avoid such concentration, states would be required to impose onerous record keeping requirements that would serve no useful purpose for the issuing companies. Accordingly, it appears likely that the recommended rule will be upheld by the Supreme Court.

commercial activities of their residents--
i.e., the

be inconsistent with the apparent objective of Texas v. New Jersey to avoid concentrating

On page 5, a dash was inserted after "service" in the fourth line from the top of the page and the word "party" was substituted for "signatory" in the second line from the bottom.

On page 6, the words "did not escheat to the state of California but instead was to be delivered to the Montana administrator" were substituted for "escheated to the state of Montana rather than to the state of California" in the second paragraph.

On page 7, line 8, commas were inserted before and after the words "for example."

Section 1300 (pages 8-9)

In subdivision (c), the words "or which a known owner has refused to accept" were inserted before the comma in line 4.

The Commission determined to make no change in subdivision (g).

Section 1501 (pages 10-11)

After discussion, subdivision (c) was approved as drafted.

The second and third sentences of the seventh paragraph of the Comment were revised to read:

Public corporations formerly were specifically excluded from the defined term "person." This exclusion has been deleted. It is apparent that the exclusion was a technical defect since, under former Code of Civil Procedure Section 1507, certain property held by public corporations was presumed abandoned if unclaimed for seven years, but the procedural provisions of the former statute dealing with reporting and delivery of abandoned property applied only to "persons."

Section 1502 (page 12)

In the second line from the bottom of the first paragraph of the Comment to Section 1502, the word "exception" should be changed to "exemption."

The Commission considered the suggestion of railroads that the utility exemption be extended to include railroads. The Commission determined not to so extend the exemption.

Section 1503 (to be added on page 12)

Section 52 of the bill (uncodified savings clause) should be added to the statute as Section 1503. See the discussion of Section 52, infra, for the revisions that should be made in that section when it is codified as Section 1503.

Section 1511 (pages 13-14)

Section 1511 and the Comment thereto was deleted and the following substituted:

§ 1511. Presumption relating to travelers checks and money orders

1511. For the purposes of Section 1510, where the records of the holder do not show a last known address of the apparent owner of a travelers check or money order, it is presumed that the state in which the travelers check or money order was purchased is the state of the last known address of the apparent owner. This presumption is a presumption affecting the burden of proof.

Comment. Section 1511 is included to deal with situations in which the person entitled to the proceeds of a travelers check or money order, or his last known address, is not shown on the records of the holder. In this case, the presumption provides, in effect, for escheat by this state if the travelers check or money order was purchased here. See discussion in Recommendation Relating to Escheat, 8 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES XXX-XXX (1967). See also Section 1581 (records concerning travelers checks and money orders).

If the records of the holder do show an address for the apparent owner, the state that may escheat the sum payable on the travelers

check or money order is determined in accordance with the general rules stated in Texas v. New Jersey, 379 U.S. 674 (1965), which are codified in Section 1510.

Since the holder is required by Section 1581 to pay any escheated sum payable on a travelers check or money order to this state if the instrument was purchased here and the holder does not have a record of the last known address of the apparent owner, the presumption provided by Section 1511 will operate only where more than one state claims the sum payable on a particular instrument. See Section 1542(a)(3).

The Commission rejected a suggestion of Commissioner Stanton that the presumption only affect the burden of producing evidence and rejected a staff suggestion that the proof required to rebut the presumption be specified.

Section 1512 (page 14)

Section 1512 was deleted as unnecessary in view of the revision made in Section 1515.

Section 1513 (pages 14-16)

In subdivision (d) on page 15, the description of the instruments should be in the singular rather than the plural and the strikeout words "on" and "more than" should be restored.

In subdivision (e), the words ", or on a telegraphic money order," were deleted and the Comment is to include a statement to the effect that a telegraphic money order is a money order for the purposes of Section 1513.

Section 1515 (page 17)

The words "and 1512" were deleted in the first line of the section.

A new subdivision (b) was added and subdivisions (b) and (c) were renumbered as subdivisions (c) and (d), the new subdivision to read:

(b) If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the corporation. This presumption is a presumption affecting the burden of proof.

Section 1516 (pages 17-18)

In the first line on page 18, "intangible" was substituted for "tangible."

Section 1517 (page 18)

See the discussion of Section 1520, infra.

Section 1519 (page 19)

See the discussion of Section 1520, infra.

Section 1520 (page 20)

The Comment is to state additionally in effect that, where there is a special statute that provides for a particular disposition of property other than as provided in this chapter, the special statute will prevail. As many examples of such special statutes can be conveniently found should be listed in the Comment. Reference should be made to this Comment in the Comments to Sections 1517 and 1519.

Section 1530 (pages 20-21)

In the first line of subdivision (e), after the words "The report," insert "if made by an individual, shall be verified by the individual;".

Section 1531 (pages 22-23)

In the first line of subdivision (e), the words "final date for filing" were substituted for "receipt of."

The following paragraph was added to the Comment:

Subdivision (e) has been revised to require notice to be given to the apparent owner within 120 days from the final date for filing the report. This change conforms subdivision (e) to subdivision (a) and will avoid mechanical and processing difficulties in mailing the notice to the owner.

Section 1541 (page 26)

The words "make a decision" were substituted for the word "act" in line 3; the words "and a copy of the complaint" were added after the words "The summons."

Section 1542 (page 26)

Subdivision (a)(1) was revised to delete "and" following "chapter" in the fourth line of the paragraph and "and, under the laws of that state, the property has escheated to that state;" was added at the end of the paragraph.

Section 1560 (page 28)

The last sentence of subdivision (b) should be made a separate subdivision, designated as subdivision (c) and existing subdivision (c) is to be renumbered as subdivision (d).

The following sentence is to be added to renumbered subdivision

(d):

The State Controller may, in his discretion, accept an affidavit of the holder stating the facts that entitle the holder to reimbursement under this subdivision as sufficient proof for the purposes of this subdivision.

Section 1561 (page 28)

An additional subdivision was added to this section, to read:

(c) As used in this section, "escheated property" means property which this chapter provides escheats to this state, whether or not it is determined that another state had a superior right to escheat such property at the time it was paid or delivered to the State Controller or at some time thereafter.

Section 1566 (page 31)

This section is to read substantially as follows:

1566. (a) When payment or delivery of money or other property has been made to any claimant under the provisions of this chapter, no suit shall thereafter be maintained by any other claimant against the state or any officer or employee thereof for or on account of such property.

(b) Except as provided in Section 1541, no suit shall be maintained by any person against the state or any officer or employee thereof for or on account of any transaction entered into by the State Controller pursuant to this chapter.

Comment. Subdivision (a) is substantially the same as Code of Civil Procedure Section 1355 and subdivision (b) is substantially the same as Code of Civil Procedure Section 1378.

[Remainder of Comment same as printed Comment to Section 1566.]

Section 1570 (page 31)

Subdivision (b) was deleted. The Comment is to be revised to reflect this change.

Section 1581 (page 35)

Section 1581 was revised to read:

1581. (a) Any business association that sells its travelers checks or money orders in this state or that provides such checks or orders to others for sale in this state shall either:

(1) Maintain a record of the name and address of the purchasers of all travelers checks and money orders sold on or after January 1, 1969, to purchasers residing in this state.

(2) Maintain a record indicating those travelers checks and money orders that are sold in this state on or after January 1, 1969, and pay to this state the sums that this chapter provides escheat to this state.

(b) The record required by this section may be destroyed after it has been retained for such reasonable time as the State Controller shall designate by regulation. If the business association complies with paragraph (2) of subdivision (a), the State Controller may not require that the business association maintain the record described in paragraph (1) of subdivision (a).

[No change in subdivision (c).]

Section 52 (pages 36-37)

Subdivision (d)--What if property is not presumed abandoned because the period has not run, such property would have become abandoned after January 1, 1969, but is paid to another state prior to that date? California should not abandon its claim to such property. The words "which escheats to this state under this chapter" appear to be unnecessary.

Subdivision (c) was considered unintelligible.

The staff was to redraft Section 52 so that it is simple and easily understood. There was no objection to the policy reflected in the section as explained by the staff at the meeting.

When redrafted, the section is to be codified as new Section 1503.

The Comment should also be worked over.

The revised section should be sent to the State Controller's office for review before the recommendation is finally printed.

Other suggested revisions

Other revisions suggested in Memorandum 67-48 and in the First Supplement thereto were considered, but only the revisions indicated above were made. The staff was authorized, however, to correct any technical defects in the proposed legislation before the recommendation is printed.

Approval for printing

The recommendation, as revised, was approved for printing. Commissioners Keatinge, Sato, Song and Stanton voted "Aye"; there were no "No" votes.

STUDY 36 - CONDEMNATION LAW AND PROCEDURE (Possession Prior
to Final Judgment and Related Problems)

The Commission considered Memorandum 67-51 and the attached
Tentative Recommendation. The tentative recommendation was revised
as indicated below:

Text - p. 18 - "Abandonment of the Proceeding"

The fourth line was revised to read: "Legislature in 1961
codified the case law developed principle that abandonment."

Section 1252

A provision was added to provide in substance as follows: Where
payment or deposit has not been made within the time specified in Section
1251, the property owner cannot use any remedies or declare an implied
abandonment until he gives written notice of the default to the
plaintiff by certified mail and the plaintiff has failed for twenty
days to rectify the default by the making of payment or deposit.

Section 1268.01

The seventh and eighth lines were revised to read: "1272.02
to be included in a statement of valuation data with respect to:".

The substance of the following is to be added to Section 1268.01:
For good cause shown, the court may make an order permitting the
plaintiff to defer preparation of the appraisal report for no longer
than 50 days after the making of a deposit where the plaintiff shows
than an emergency situation exists and that it is not practical to
prepare the report prior to making the deposit.

Section 1268.03

The second sentence in subdivision (c) was made a separate
subdivision.

Section 1268.09

A subdivision was added to provide in substance that, upon the objection of the party submitting an appraisal report in connection with a deposit, the person who made the report may not be called by an opposing party to give an opinion as to value, damage, or benefit.

Section 1269.06

Paragraph (1) of subdivision (a) was revised to read: "(1) Expresses his willingness to surrender possession of the property; or."

Paragraph (1) of subdivision (b) was revised to read: "(1) Expressed his willingness to surrender possession of the property; or."

Sections 1270.01 and 1270.02

These sections were changed to provide in substance (1) that after judgment any condemning agency may take possession after making the necessary deposit, whether or not the judgment has been set aside and a new trial granted, (2) that, if the condemnor's deposit is made before the judgment is vacated, a deposit is required in the amount of the judgment, and the condemnee may withdraw that amount even if the judgment is set aside and a new trial granted, and (3) that, if the condemnor's deposit is made after the judgment is set aside and a new trial granted, the amount of the deposit is to be determined in accordance with the statutory procedure applicable to possession prior to judgment.

Approval for printing

The Commission approved the tentative recommendation as revised for printing. Commissioners Keatinge, Sato, Song, and Stanton voted "Aye"; there were no "No" votes.

When the printed pamphlet is available, copies should be sent to the Constitutional Revision Commission for such assistance as it may be to that Commission. (The recommendation includes a proposed constitutional amendment.)

STUDY 36 - CONDEMNATION LAW AND PROCEDURE
RECOVERY OF CONDEMNEE'S EXPENSES UPON ABANDONMENT

The Commission considered Memorandum 67-50, the attached recommendation relating to Recovery of Condemnee's Expenses Upon Abandonment, and the First Supplement to Memorandum 67-50.

The recommendation was revised to add the substance of the following to Code of Civil Procedure Section 1255a:

In case of a partial abandonment, the court, in determining the recoverable costs and disbursements, shall consider the extent to which such costs and disbursements would have been incurred had the property or property interest sought to be taken after the partial abandonment been the property or property interest originally sought to be taken.

The following technical changes were made in the recommendation:

- (1) Letter of transmittal--change "recommendation and legislation were not directed to" to read "legislation was only incidentally concerned with."
- (2) Footnote 1 (page 4) add to footnote: "People v. Bowman, 173 Cal. App.2d 416, 343 P.2d 267 (1959)."
- (3) Page 5, second line, change "should" to "will."
- (4) Correct various other typographical errors.

The recommendation, as revised, was approved for printing.

Voting "Aye" were Commissioners Keatinge, Sato, Song, and Stanton. There were no "No" votes. Before the recommendation is sent to the printer, however, the revised recommendation should be sent to each Commissioner and to the public agency representatives present at the meeting, together with a staff memorandum digesting California cases dealing with recovery of condemnee's expenses upon partial abandonment. A brief opportunity should be afforded to the representatives of the public agencies to suggest nonsubstantive revisions of the recommendation and for the Commission members to suggest revisions. Thereafter, the recommendation should be sent to the printer.

STUDY 42 - RIGHTS OF GOOD FAITH IMPROVER

The Commission considered Memorandum 67-62 and a revised recommendation. In the draft prepared by the staff, the Commission directed the following changes:

(1) The word "many" is to be included before the words "title policies" in the second sentence of footnote 3 of the recommendation.

(2) The statement in the Comment to Section 339 that the statute of limitations does not apply to relief sought by counterclaim or cross-complaint is to be deleted. The Commission felt that it would not be good policy to allow an improver who had discovered his defective title to wait to assert his rights until the owner brought a quiet title or ejectment action.

(3) The Comment to Section 871.5 is to contain examples of relief which might be available under that section, including a reference to forced sale. A reference is also to be made to Merryman, Improving the Lot of the Trespassing Improver, 11 STAN. L. REV. 456, 483-489 (1959), reprinted in 8 CAL. L. REVISION COMM'N REPORTS 801, 848-854 (1967).

The Commission approved the recommendation, as revised, for printing. Commissioners Keatinge, Sato, Song, and Stanton voted "Aye"; there were no "No" votes.

STUDY 53 - PERSONAL INJURY DAMAGES TO A MARRIED PERSON

The Commission considered Memorandum 67-61 and the attached revised recommendation. In the draft prepared by the staff, the Commission directed the following changes:

(1) Section 169.3 and the Comment to that section are to be amended as suggested in Memorandum 67-61 to cover the case where the husband has been unjustifiably abandoned by his wife.

(2) Section 169.3 is to be expanded so as to include a provision to allow the spouse of an injured person reimbursement for money expended on the medical bills and other expenses incurred by reason of the injury. This will conform the section to the policy reflected in amended Section 171c.

(3) Any technical changes necessitated by the changes made in Section 169.3 are to be made.

The Commission approved the recommendation, as revised, for printing. Commissioners Keatinge, Sato, Song, and Stanton voted "Aye"; there were no "No" votes.

STUDY 63 - EVIDENCE CODE

The Commission considered Memoranda 67-31, 67-39, 67-52, 67-53, 67-54, 67-55, 67-56, and 67-57. The Commission directed that the following actions be taken:

(1) Spouse's privilege not to be called and waiver of spousal privilege. Memorandum 67-52. The Commission approved the staff suggestion that Section 971 be amended to eliminate a spouse's privilege not to be called as a witness in a civil case. The Commission also approved the staff suggestion that Section 973(a) be amended to clarify when the privilege not to testify against one's spouse is waived. The redraft of these sections was approved as contained in Memorandum 67-52. The Commission determined that no revision should be made in Section 973(b) at this time.

(2) Hearsay exception for former testimony. Memorandum 67-57. The Commission considered the problem of whether testimony in a prior hearing in the same case would be considered hearsay and whether the former testimony exception to the hearsay rule would preclude its admission into evidence unless the declarant was unavailable. The Commission felt that the evidence probably should be admissible in a case where a great deal of formal evidence has been received, such as in a prior hearing on a motion for a temporary restraining order. The Commission determined that a problem does exist and directed that a study be made of the problem.

(3) Article by Howard B. Miller. Memorandum 67-53. The Commission considered Memorandum 67-53 and determined that the criticisms of the Evidence Code contained in the article by Howard B. Miller, Beyond the Law of Evidence, 40 SO. CAL. L. REV. 1 (1967) have no merit.

It was further determined that permission be sought from John McDonough to publish his letter to Mr. Miller rebutting the article.

(4) The Commission also carefully considered the materials listed below and concluded that they failed to demonstrate that changes are needed in the Evidence Code:

(a) Attorney-client privilege; parties claiming through a deceased client and litigation between joint clients or their successors in interest. Memorandum 67-31.

(b) Subsequent remedial conduct. Memorandum 67-39.

(c) Presumption provisions. Memorandum 67-54.

(d) Penal Code Section 1096. Memorandum 67-55.

(e) Instructions on inferences. Memorandum 67-56.

(f) Guardian-Ward privilege. Mr. Harvey raised a question as to whether the guardian or the ward is the holder of the attorney-client privilege where the ward consults an attorney about litigation against the guardian. The Commission determined that there was no need for revision in the statute because the appointment of a guardian ad litem before trial would transfer the privilege to the second guardian.

The Commission directed that a copy of Memorandum 67-56 be sent to the Joint Penal Code Revision Committee for consideration by that Committee.

STUDY 67 - UNINCORPORATED ASSOCIATIONS

The Commission considered Memorandum 67-64 and an attached recommendation. In regard to the draft prepared by the staff, the Commission directed that the word "unincorporated" be deleted from subdivision 2.1 of Section 411, as follows:

If the suit is against an unincorporated association (not including a foreign partnership covered by Section 15700 of the Corporations Code): if the unincorporated

The Commission also determined that Assemblyman Bear be consulted to determine:

- (1) Whether the measure should include an urgency clause.
- (2) Whether the recommendation should be printed as a Commission recommendation or whether he should introduce the recommended legislation as the legislative member of the Commission as a technical amendment without any recommendation's being printed.

The Commission approved the recommendation, as revised, for printing subject to the decisions made by Assemblyman Bear on the matters listed above.