

Revised March 9, 1968

Time

March 15 - 7:00 p.m. - 10:00 p.m.
March 16 - 9:00 a.m. - 3:00 p.m.

Place

State Bar Building
601 McAllister Street
San Francisco, California

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

March 15 and 16, 1968

March 15

1. Approval of Minutes of February 15-17 Meeting (sent 3/1/68)
2. Administrative Matters
3. 1968 Legislative Program

Report on 1968 Legislative Program (enclosed)

Memorandum 68-34 (enclosed)

Memorandum 68-33 (enclosed)

Memorandum 68-31 (sent 3/1/68)

Memorandum 68-32 (enclosed)

Memorandum 68-35 (enclosed)

4. Study 65 - Evidence Code

Marital Privileges Revisions

Memorandum 68-16 (sent 3/1/68)

Tentative Recommendation (attached to Memorandum)

Commercial Code Revisions

Memorandum 68-27 (sent 3/5/68)

Tentative Recommendation (attached to Memorandum)

5. Study 52 - Sovereign Immunity

The Discretionary Immunity Doctrine

Memorandum 68-20 (sent 3/1/68)

Mob Damage

Memorandum 68-36 (sent 3/5/68)

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March 16

7. Study 44 - Fictitious Business Names

Special Order of Business
at 9:00 a.m.

Memorandum 68-2 (sent 12/21/67)
Research Study (attached to Memorandum)

8. Study 69 - Powers of Appointment

Memorandum 68-21 (enclosed)
Tentative Recommendation (attached to Memorandum)

9. Study 63 - Evidence Code

Evidence Code Section 1224

Memorandum 68-29 (sent 3/5/68)
Law Review Article (and other background materials)
(attached to Memorandum)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION

MARCH 15 AND 16, 1968

San Francisco

A meeting of the California Law Revision Commission was held at the State Bar Building, San Francisco, on March 15 and 16, 1968.

Present: Sho Sato, Chairman
Roger Arnebergh
Thomas E. Stanton, Jr.
Richard H. Wolford

Absent: Joseph A. Ball, Vice Chairman
Hon. F. James Bear
Hon. Alfred H. Song
Lewis K. Uhler
William A. Yale
George H. Murphy, ex officio

Also present were the following members of the Commission's staff: John H. DeMouilly, Executive Secretary; Clarence B. Taylor, Assistant Executive Secretary; Gordon E. McClintock, Junior Counsel.

Also present were the following observers:

Robert Alexander, State Dept. of Public Works	(March 15)
Robert F. Carlson, State Dept. of Public Works	(March 15)
Norval Fairman, State Dept. of Public Works	(March 15)
Bertram McLees, Jr., San Diego County Clerk	(March 15)
Willard Shank, Office of State Attorney General	(March 15)
William Sharp, Los Angeles County Clerk	(March 16)

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ADMINISTRATIVE MATTERS

Minutes of February 1968 Meeting. The Minutes of the meeting held on February 15, 16, and 17, 1968, were approved as presented.

Personnel. The Executive Secretary was authorized to appoint as Junior Counsel the person whom he and the Assistant Executive Secretary determine is the best qualified.

1968 LEGISLATIVE PROGRAM

The Commission considered the Report on the 1968 Legislative Program and Memoranda 68-31, 68-32, 68-33, 68-34, and 68-35.

Escheat Recommendations

The Commission determined to withdraw its recommendation that Senate Bill No. 62 (Unclaimed Property Compact) be adopted in California. The Commission noted that various persons had pointed out that the compact is poorly worded and, more important, might preclude California from escheating travelers checks and money orders under the place-of-sale presumption provided in Senate Bill No. 63.

Personal Injury Damages Recommendation

The Commission considered the amendment to Senate Bill No. 19 suggested by the California Trial Lawyers Association and adopted this amendment in substance. The Commission also determined to make a technical amendment in Senate Bill No. 19. The following are the approved amendments to this bill.

AMENDMENT NO. 1

On page 2, line 21 of the printed bill, after "case" insert:
but in no event shall more than one-half of the community property personal injury damages be assigned to the spouse of the party who suffered the injuries

AMENDMENT NO. 2

On page 2, line 26, after "damages" insert:
unless such money or other property has been commingled with other community property

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The Commission considered a suggestion of the State Bar that Senate Bill No. 19 be amended to provide that personal injury damages recovered after divorce, separate maintenance, or separation of the parties shall constitute community property to the extent that the damages recovered reflect lost earnings prior to divorce or separation. After considerable discussion, the Commission declined to adopt the suggested rule. Some of the reasons for this decision are:

1. The suggested rule would introduce needless complexity into the bill to deal with a situation that will arise infrequently and which can be dealt with by the alimony decree or by modification of the decree after the judgment or recovery.
2. The suggested rule might make it more difficult to obtain approval of property settlement agreements and, by giving the non-injured spouse an interest in the lost earnings portion of the recovery, might make it more difficult to settle the damage claim in a case where liability is not clear and the settlement represents only a portion of the claimed damages.
3. It will often be difficult to determine what portion of the judgment or settlement represents lost earnings and litigation may be necessary to determine this amount and to determine how much each spouse should receive of the amount. Since the jury verdict or settlement does not determine the amount of the judgment or settlement that represents lost earnings during the marriage, it will be necessary to prove the amount of such lost earnings in a separate action and to prove that the jury verdict or settlement included that amount or some different amount for the lost earnings.

Where the settlement represents a compromise on liability in a case of doubtful or disputed liability, what portion can be attributed to lost earnings during marriage? What court would determine these matters where the parties have separated without any formal legal proceedings? What court would determine the matters in the case of a settlement?

4. It was noted that as a general rule the spouse who suffered the injury is entitled to all of the personal injury damage recovery on divorce or separate maintenance unless the court determines that justice requires a division in the particular case. The injustice that results under existing law occurs primarily in cases where there is no divorce or where the divorce occurs a number of years after the recovery of the personal injury damages. In the case covered by the State Bar suggestion, there is no compelling need to change existing law or to change the law as it existed prior to the enactment of Civil Code Section 163.5 in 1957. It was noted that the bill in its present form is consistent with the holding in Washington v. Washington, 47 Cal.2d 249, 253 (1956).

5. The Commission noted finally that the bill in its present form significantly improves the position of the noninjured spouse by making personal injury damages subject to division on divorce or separate maintenance under certain limited circumstances. The Commission expressed the hope that the State Bar would abandon its objection to the bill. It would be unfortunate if the entire bill were lost because of the controversy over this relatively minor matter.

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Recovery of Costs on Abandonment

The Commission approved the following amendments to Assembly Bill No. 41.

AMENDMENT NO. 1

On page 2, lines 11 and 12, of the printed bill as amended in the Assembly on February 28, 1968, strike out "trial and during trial" and insert:

the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action

AMENDMENT NO. 2

On page 2, line 15, strike out "in the proceeding" and insert: in preparing for the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action

Service on Unincorporated Associations

The Commission approved the revision of Assembly Bill No. 39 to conform to the revised bill set out in Memorandum 68-32.

Good Faith Improvers

The Commission approved the amendments to Assembly Bill No. 40 suggested in Memorandum 68-35 and also directed the staff to include in the text of the statute a provision that the court shall take into consideration the expenses of the landowner in the action, including reasonable attorney's fees, in protecting the landowner against pecuniary loss.

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Comments to Revised Bills

The Comments to the revised bills to be included in reports of the appropriate legislative committee were approved in the form suggested by the staff with various minor editorial revisions to conform to actions taken at the meeting.

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STUDY 44 - FICTITIOUS BUSINESS NAMES

The staff suggested that consideration of this study be deferred until the July meeting so that interested persons and organizations would have time to submit their comments on the staff study and their alternative recommendations. The comments and suggestions should be requested to be in the Commission's hands not later than June 15, 1968.

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STUDY 52 - SOVEREIGN IMMUNITY

Mob Damage. The Commission considered Memorandum 68-36 and the attached materials. The Commission determined that no further study should be devoted to the question of mob damage at this time.

The Discretionary Immunity Doctrine. The Commission considered Memorandum 68-20 and the attached materials. The Commission determined that no revisions or additions to the discretionary immunity doctrine are needed at this time.

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STUDY 63 - EVIDENCE CODE

Revision of Sections 971 and 973. The Commission considered Memorandum 68-16 and the attached Tentative Recommendation. The staff is to delete the reference to the law prior to the adoption of the Evidence Code from the Comment to Section 971. The Commission approved the Tentative Recommendation for distribution for comment.

Commercial Code Revisions. The Commission considered Memorandum 68-27 and the attached Tentative Recommendation. The Commission approved the Tentative Recommendation for distribution for comment.

Revision of Section 1224. The Commission considered Memorandum 68-29 and the attached materials. The Commission deferred action on the question of revising Section 1224 until the April meeting.

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STUDY 69 - POWERS OF APPOINTMENT

The Commission considered Memorandum 68-21 and the attached Tentative Recommendation. The following actions were taken with regard to the Tentative Recommendation.

Location of statute. The Commission approved the staff suggestion that the statute be placed in the Civil Code at Title 7 (commencing with Section 1380) of Part 4 of Division 2.

Comment to statute. The Commission considered the general Comment to the statute and found it satisfactory.

Section 752.01. The Commission determined that all of the Comment following the Fletcher cite should be deleted.

Section 752.06. The Commission determined that the exception for joint powers should be deleted. A specific reference to this problem is to be included in the Comment.

The staff is to investigate the necessity of including "his creditors, or creditors of his estate" in subdivision (a), and the meaning of those terms when applied to a situation where a permissible appointee of a special power is also a creditor of the donee.

Section 752.07. The words "or otherwise postponed" contained in subdivision (a) are to be clarified so that it is clear that a postponed power can become presently exercisable upon the occurrence of the condition or other event.

Section 752.08. No revisions in this section were suggested.

Section 752.11. The Commission determined to delete the word "effectively" in the introductory language, and the words "manifest any intent to" in subdivision (c).

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The staff is to investigate the effect of subdivision (c) on the creation of a power in an unborn child or minor.

Section 752.21. The Commission determined to revise Section 752.21 to read:

Except to the extent that the creating instrument manifests an intent to impose limitations, the authority of the donee to determine appointees and to select the time and manner of making appointments is unlimited.

Section 752.22. The Commission determined to revise Section 752.22 to read:

The donee of a power to appoint that is presently exercisable, whether general or special, can contract to make an appointment if the contract does not confer a benefit upon a person who is not a permissible appointee.

The staff is to investigate whether or not the deletion of the phrase "nor the promised appointment" changes the meaning of the section.

Section 752.23. The Commission directed the staff to investigate whether the language concerning remedies in Section 752.23 should be deleted. If it is not deleted, the staff is to consider whether the same language should be added to Section 752.22.

The staff is to investigate whether an appointment should be invalidated where the promise is performed.

Section 752.24. The Commission directed the staff to investigate whether the last sentence in subdivision (b) should include a postponed power as well as a testamentary power.

Section 752.31. The Commission directed that the words "An effective exercise of" be revised to read "A power of appointment can

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be exercised" in subdivisions (a) and (b).

The second sentence of subdivision (b) is to be deleted and the language incorporated in the Comment.

The staff is to consider whether subdivisions (b) and (c) should be combined and whether the list of exceptions is exclusive. The subdivision is to indicate clearly that a power is not invalid because the donor requires less formalities than those required by law but may be cured by an exercise conforming to normal formalities.

The staff is to investigate whether the exceptions to subdivision (c) should be contained in the consolidated subdivision or if it should state the Restatement rule that the exercising instrument must comply with the donor's required formalities as well as the legal formalities. The staff is also to investigate the possibility of using general language to express the policy of the exceptions rather than listing the exceptions.

Section 752.32. The staff is to consider revising subdivision (a) to indicate that the list of acts manifesting an intent to exercise the power is not exclusive.

Paragraph (2) should be revised to read:

(2) The donee's deed, will, or other instrument sufficiently identifies property covered by the power and it purports to transfer the property;

Matters not covered. The Commission did not consider the policy involved in Section 752.32(a)(4). The Commission did not consider Sections 752.33 to 752.81. The Commission also did not consider the questions raised in the last part of Memorandum 68-21.

REPORT ON 1968 LEGISLATIVE PROGRAM

ESCHEAT RECOMMENDATIONS

Senate Bills Nos. 61, 62, and 63 were heard by the Senate Judiciary Committee on March 7.

Senate Bill No. 61 (escheat of decedent's property)

This bill was reported "do pass" on March 7. No amendments.

Senate Bill No. 62 (Unclaimed Property Compact)

Various persons raised questions about this compact prior to the hearing. I requested that the Committee hold the bill for a later hearing after the Commission has had an opportunity to review the bill.

See Memorandum 68-34

Senate Bill No. 63 (Unclaimed Property Act)

This bill was reported "do pass as amended" but was referred to the Senate Finance Committee since it involves state expense. The additional amendments were technical ones that did not involve any change in policy. When the bill is reprinted as amended, we will send you a copy.

The Committee also adopted a report revising the comments contained in our Recommendation, and this report will be printed in the Journal. We will send you a copy when it is available.

PERSONAL INJURY DAMAGES

Senate Bills Nos. 19 and 71 were heard by the Senate Judiciary Committee on March 7. Objections to Senate Bill No. 19 were made by the State Bar and the California Trial Lawyer's Association. After consideration of the objections, the Committee suggested that the Commission review the bill in light of the problems raised by the objections. Both bills were put over for further consideration on March 21.

See Memorandum 68-33

RECOVERY OF COSTS ON ABANDONMENT

Assembly Bill No. 41 was introduced to effectuate the Commission's recommendation on this subject. Assemblyman Bear requested, at the hearing on February 26, that the bill be put over until March 18 so that the bill could be reviewed by the Commission at the March meeting.

See Memorandum 68-31

SERVICE ON UNINCORPORATED ASSOCIATIONS

Assembly Bill No. 39 was introduced to effectuate the Commission's recommendation on this subject. The bill was amended in the Assembly to incorporate the amendment suggested by the State Bar in accord with the Commission's decision at the last meeting. The bill has passed the Assembly. The staff believes that substantial amendments are needed to this bill.

See Memorandum 68-32

GOOD FAITH IMPROVERS

Assembly Bill No. 40 was introduced to effectuate the Commission's recommendation on this subject. The bill was heard by the Assembly committee on February 26 and the committee indicated that it would be willing to report the bill out of committee if all persons interested in the bill could be satisfied with it. The committee indicated, however, that it did not desire to have a floor fight on the bill. Amendments have been drafted that will satisfy the California Railroad Association and Pacific Gas and Electric. I have been working with Assemblyman Hayes to see if amendments can be drafted that will put the bill in a form that he can support. Assemblyman Knox indicates that Standard Oil Company

also objected to the bill at the 1967 session. I am planning to send their legislative representative a copy of the amendments that are being considered by other interested persons. I will see Assemblyman Hayes again on March 14 and will report the results of this conference on the bill at the meeting.

See Memorandum 68-35

RESOLUTIONS RELATING TO TOPICS FOR STUDY

Senate Concurrent Resolutions 2 and 3 were introduced to authorize the Commission to study previously assigned topics, to drop three topics, and to study arbitration. Both resolutions were approved by the Senate Committee on Judiciary at the hearing on March 7.