

October 15, 1968

<u>Time</u>	<u>Place</u>
October 17 - 7:00 p.m. - 10:00 p.m.	State Bar Building
October 18 - 9:00 a.m. - 5:00 p.m.	601 McAllister Street San Francisco, California

REVISED

FINAL AGENDA
for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

October 17 and 18, 1968

OCTOBER 17

1. Approval of Minutes of September 19-21 Meeting (sent 10/3/68)
2. Future Meetings
November 21 (evening), 22, 23 (morning)--Berkeley (Big Game)
December 20, 21 --Los Angeles
3. Administrative Matters (if any)
4. Study 50 - Leases

Yale
Special order
of business
at 7:15 p.m.

Memorandum 68-98 (sent 10/3/68)
Recommendation (attached to Memorandum)
First Supplement to Memorandum 68-98 (to be distributed at meeting)

OCTOBER 18

Arnebergh
Special order
of business
at 9:15 a.m.

5. Study 69 - Powers of Appointment
Memorandum 68-99 (sent 10/10/68)
Recommendation (attached to Memorandum)
First Supplement to Memorandum 68-99 (sent 10/14/68)

Yale

6. Study 44 - Fictitious Business Name Statute

Memorandum 68-100 (sent 9/25/68)

Tentative Recommendation (attached to Memorandum)

Stanton

7. Study 63 - Evidence Code

Psychotherapist-Patient Privilege

Memorandum 68-102 (sent 10/11/68)

Recommendation (attached to Memorandum)

First Supplement to Memorandum 68-102 (sent 10/14/68)

Stanton

8. Future Activities and Annual Report for 1968

Program Budget - Five-Year Schedule of Projects

Memorandum 68-80 (sent 9/12/68)

Stanton

Topics for Future Study

Stanton

Generally

Memorandum 68-81 (sent 9/25/68)

Stanton

The Parol Evidence Rule

Memorandum 68-82 (sent 9/12/68)

Stanton

Rule Against Perpetuities

Memorandum 68-83 (sent 9/12/68)

Stanton

Right of Nonresident Aliens to Inherit

Memorandum 68-84 (sent 9/12/68)

Stanton

Counterclaims and Cross-Complaints

Memorandum 68-95 (sent 9/25/68)

Stanton

Joinder of Causes of Action

Memorandum 68-104 (to be distributed at meeting)

Stanton

Pleadings in Civil Actions

Memorandum 68-96 (to be distributed at meeting)

Stanton

Professional Malpractice

Memorandum 68-97 (sent 10/3/68)

Stanton

Contract Provisions of Insurance Code

Memorandum 68-103 (sent 10/11/68)

Topic to be Dropped from Agenda

Stanton

Rights of Unlicensed Contractor

Memorandum 68-94 (sent 9/17/68)

Consultant

Stanton

Arbitration

Memorandum 68-92 (sent 9/12/68)

Annual Report

Stanton

Memorandum 68-90 (sent 9/12/68)

Meeting Procedures

Memorandum 68-105 (sent 10/10/68)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
OCTOBER 17 AND 18, 1968
San Francisco

A meeting of the California Law Revision Commission was held at the State Bar Building in San Francisco on October 17 and 18, 1968.

Present: Sho Sato, Chairman
Roger Arnebergh
Thomas E. Stanton, Jr.
William A. Yale

Absent: Alfred H. Song, Member of the Senate
F. James Bear, Member of the Assembly
Lewis K. Uhler
Richard H. Wolford
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Executive Secretary, Clarence B. Taylor, Assistant Executive Secretary, Jack I. Horton, Junior Counsel, and John L. Cook, Student Legal Assistant, of the Commission's staff also were present.

ADMINISTRATIVE MATTERS

Minutes of September Meeting

The Minutes of the meeting held on September 19, 20, and 21, 1968, were approved after the following corrections were made:

On page 10, line 1, the word "provide" was substituted for "provides."

On page 10, a period was inserted at the end of the first paragraph.

On page 16, a period was inserted at the end of the paragraph appearing on this page.

On page 25, after the paragraph indicating the material to be added to the Comment to Section 1388.2, the reference to Civil Code Section "1013" was changed to "1213."

Future Meetings

Future meetings were scheduled as follows:

November 21 (evening), 22, and 23 (morning)	Berkeley at Boalt Hall (Big Game)
December	NO MEETING
January 9 (evening), 10, and 11	Los Angeles

Additional meetings are tentatively scheduled as follows:

February 7 and 8	San Francisco
March 6 (evening), 7, and 8	Los Angeles
March 30 (evening), 31, and April 1 (morning)	Lake Tahoe
May 9 and 10	Los Angeles
June 6 and 7	San Francisco
June 26 (evening), 27, and 28 (morning)	San Diego
September 4, 5, and 6 (three full days)	San Francisco

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October 3 and 4	Los Angeles
November (evening, all day, morning)	Stanford (Big Game)
December	No Meeting

Meeting Schedule

The Commission discussed a portion of Memorandum 68-105 and determined that meetings generally should be held on the first weekend of the month and that meetings should be held at Lake Tahoe during Easter Vacation, at San Diego during late June (if suitable arrangements can be made), and at the place where the Big Game (Stanford v. California) is held in November.

Future Activities of Commission

The Commission considered Memorandum 68-80 and approved the following Five-Year Schedule of Projects.

5-YEAR SCHEDULE OF PROJECTS

OCTOBER 1968 - JANUARY 1970

Legislative Consideration of Recommendations to 1969 Legislature

Powers of Appointment
Leases
Additur and Remittitur
Evidence Code (Revisions of Privileges Article)
Sovereign Immunity (Statute of Limitations in Actions Against
Public Entities and Public Employees)
Mutuality of Remedies in Suits for Specific Performance
Topics to be added to or dropped from Agenda of Topics

Fictitious Business Names

Preparation of Recommendations to 1970 Legislature

Fictitious Business Name Statute
Sovereign Immunity (Prisoners and Mental Patients)
Civil Code Section 1698 (Oral modification of contract in writing)
Code of Civil Procedure Section 1974 (Writing required to hold
person liable for representation as to credit of third person)

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Condemnation Law and Procedure (Right to Enter for Survey or Examination)

Work on Other Topics

Condemnation Law and Procedure (TOP PRIORITY)
Inverse Condemnation (TOP PRIORITY)
Evidence Code
 Revisions of Business and Professions Code
 Revisions of Civil Code
Arbitration
Consideration of Recommendations to 1969 Legislature That Are Not Enacted

JANUARY 1970 - JANUARY 1971

Legislative Consideration of Recommendations to 1970 Legislature

Fictitious Business Name Statute
Sovereign Immunity (Prisoners and Mental Patients)
Condemnation Law and Procedure (Right to Enter for Survey or Examination)
Civil Code Section 1698 (Oral modification of contract in writing)
Code of Civil Procedure Section 1974 (Writing required to hold person liable for misrepresentation as to credit of third person)
Topics to be added to or dropped from Agenda of Topics (to be determined)

Preparation of Recommendations to 1971 Legislature

Condemnation Law and Procedure (The Right to Take)
Evidence Code
 Revisions of Business and Professions Code
 Revisions of Civil Code
 Revisions of the Code of Civil Procedure
Arbitration

Work on Other Topics

Condemnation Law and Procedure (TOP PRIORITY)
Inverse Condemnation (TOP PRIORITY)
Consideration of Recommendations to 1970 Legislature That Are Not Enacted
Additional Topics (to be determined on basis of priorities and assignments given by legislative committees)

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JANUARY 1971 - JANUARY 1972

Legislative Consideration of Recommendations to 1971 Legislature

Condemnation Law and Procedure (The Right to Take)
Evidence Code
 Revisions of Business and Professions Code
 Revisions of Civil Code
 Revisions of Code of Civil Procedure
Arbitration
Topics to be added to or dropped from Agenda of Topics (to be determined)

Preparation of Recommendations to 1972 Legislature

Condemnation Law and Procedure (Comprehensive Statute)
Other Topics (to be determined on basis of priorities and assignments given by legislative committees)

Work on Other Topics

Inverse Condemnation (TOP PRIORITY)
Other Topics (to be determined on basis of priorities and assignments given by legislative committees)
Consideration of Recommendations to 1971 Legislature That Were Not Enacted

JANUARY 1972 - JANUARY 1973

Legislative Consideration of Recommendations to 1972 Legislature

Condemnation Law and Procedure (Comprehensive Statute)
Other Topics (to be determined on basis of priorities and assignments given by legislative committees)

Preparation of Recommendations to 1973 Legislature

Inverse Condemnation

Work on Other Topics

To be determined on basis of priorities and assignments given by legislative committees

JANUARY 1973 - JANUARY 1974

Priorities to be determined on basis of priorities and assignments given by legislative committees

The Five-Year Schedule of Projects set out above is to be revised in light of any additional topics authorized for Commission study.

New Topics for Study

The Commission considered Memoranda 68-81, 68-82, 68-83, 68-84, 68-95, 68-104, 68-96, 68-97, and 68-103, relating to new topics for study and made the following decisions.

Topics to be studied. The Commission decided that authority should be requested from the 1969 Legislature to study the following new topics:

1. A study to determine whether the law relating to counterclaims and cross-complaints should be revised. (A draft of the statement to be included in the Annual Report was handed out at the meeting.)

The Executive Secretary is to check with the Attorney for the State Bar Committee on Administration of Justice to determine that such a study would not duplicate efforts of the State Bar. [A check with Garrett Elmore, attorney for CAJ, indicates that the Conference of State Bar delegates several years ago recommended such a study, but CAJ has not since had an opportunity to make the study and does not plan to do so within the next few years. The failure to make the study was not because of any feeling that the study was not needed; the study was deferred because of the pressure of other work.]

2. A study to determine whether the law relating to joinder of causes of action should be revised.

3. A study to determine whether Civil Code Section 715.8 (Rule Against Perpetuities) should be revised.

Topics not to be studied. The Commission determined that the following topics that had been suggested for study were not ones that should be studied by the Commission at this time:

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1. The Parol Evidence Rule.
2. The Right of Nonresident Aliens to Inherit. If the Legislature desires the Commission to study this topic, it should adopt a resolution directing the Commission to study the topic.
3. Pleadings in Civil Actions. This is too substantial a project to be undertaken at this time. Commissioner Wolford's suggested revision relating to the form of a denial on information and belief should be brought to the attention of the legislative members of the Commission so that they can, if they wish, introduce any needed legislation.
4. Professional malpractice.
5. Contract provisions of Insurance Code.
6. California Apportionment.
7. Taxation of National Banks.
8. Joint Powers Authority Revenue Bonds.
9. Effect of Expungement on a Criminal Conviction.
10. California Cancer Quack Laws.
11. Unauthorized Practice and Right of Out-of-State Attorneys.
12. Effect of Divorce on Wills.
13. Special Treatment of Cemeteries.
14. The Pacific Case: Automobile Liability Coverage Under Homeowners Policies, 2 U. San Francisco L. Rev. 120 (1967).
15. Burden, Counter-Revolutionary Changes in Construction Work Remedies, 2 U. San Francisco L. Rev. 216 (1968).
16. Vagrancy Laws and the Right to Privacy, 2 U. San Francisco L. Rev. 337 (1968).

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17. Levit, The Crisci Case--Something Old, Something New, 2 U. San Francisco L. Rev. 1 (1967).
18. A letter as a will or codicil: Testamentary intent in California, 2 U. San Francisco L. Rev. (1968).
19. Copyright protection for architectural structures, 2 U. San Francisco L. Rev. 320 (1968).
20. Making the indigent pay to obtain out-of-state witnesses, 1 U. San Francisco L. Rev. 326 (1967).
21. The failure to use seat belts as a basis for establishing contributory negligence, barring recovery for personal injuries, 1 U. San Francisco L. Rev. 277 (1967).
22. L.S.D. and freedom of religion, 1 U. San Francisco L. Rev. 131 (1966).
23. California "model" trademark act: A comparison with federal law, 2 U. San Francisco L. Rev. 198 (1968).
24. Whatever happened to the small businessman? The California Unfair Practices Act, 165 (1968).
25. Duty to licensees in California: In support of open adoption of Restatement 2d of Torts § 342, 2 U. San Francisco L. Rev. 230 (1968).
26. Injunction of criminal prosecutions.
27. Adoption in California of § 2-302 of Uniform Commercial Code.
28. Removal of obstacles to a poor person voting.

Topic to be Dropped from Agenda

The Commission considered Memorandum 68-94 and determined to drop the study relating to the rights of an unlicensed contractor from its

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calendar of topics authorized for study. The Annual Report is to recommend that this topic be dropped from the calendar of topics.

Annual Report (for 1969 Legislature)

The Commission considered Memorandum 68-90 and the attached draft of the Annual Report. The draft was approved subject to the following revisions and other revisions needed to reflect other Commission actions:

1. The heading on page 12 was changed from "MAJOR STUDIES IN PROGRESS" to "STUDIES IN PROGRESS."
2. On page 14, at the end of the text on that page, a heading "OTHER STUDIES IN PROGRESS" was inserted and a brief discussion is to be added to indicate the other studies that will be under active consideration during 1969.
3. On pages 20 and 21, an indication should be included in the footnotes to the "Topics Continued on Calendar for Further Study" as to whether legislation recommended by the Commission on the particular topics was enacted.
4. The Commission determined that the study relating to the rights of an unlicensed contractor should be dropped. This will be discussed at the bottom of page 22.
5. The Commission determined to request authority to study three new topics. These will be discussed at the bottom of page 23.
6. On page 24, the second sentence of the discussion of the Johnson case was revised to read: "Since Evidence Code Section 1204⁴ specifically recognizes that the hearsay exceptions provided in the code are subject to any restrictions on the admission of evidence imposed

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by the state and federal constitutions and since Section 1235 constitutionally may still be applied in circumstances (such as civil cases) not considered in the Johnson case, the Commission has concluded that no revision is needed in the Evidence Code to reflect the decision in the Johnson case."

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STUDY 44 -- FICTITIOUS BUSINESS NAME STATUTE

The Commission considered Memorandum 68-100 and the attached Tentative Recommendation Relating to the Fictitious Business Name Statute. The tentative recommendation would amend Civil Code Section 2469.2 to extend the time limits for one year.

The Executive Secretary reported that the representative of the county clerk's association had advised that they had no objection to this recommendation and that the County Clerk of Los Angeles County had approved the recommendation.

The recommendation was approved for printing for submission to the 1969 Legislature.

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(approved corrected)

STUDY 50 - LEASES

The Commission considered Memorandum 68-⁷⁶~~66~~, the Tentative Recommendation attached thereto, and the First Supplement to Memorandum 68-⁷⁸~~68~~ (comments relating to this Recommendation received from the California Real Estate Association set forth in a letter dated October 14, 1968, from Dugald Gillies, Legislative Representative). The entire Recommendation was carefully reviewed and the following actions were taken by the Commission.

Recommendation generally

It was noted that the CREA favored incorporation of material in the statute that appeared presently in Comment form. In this regard, the Commission felt that the statute in its final form was adequately specific and complete, and that further detail would be unnecessary and in some instances even undesirable. The Commission further noted the great utility of these Comments generally to both bench and bar. (Reference was specifically made to the view of the California Supreme Court recently expressed in Van Arsdale v. Hottinger, 68 Adv. Cal. 249, 253-254 (1968): "Reports of commissions which have proposed statutes that are subsequently adopted are entitled to substantial weight in construing the statutes. . . . This is particularly true where the statute proposed by the commission is adopted by the Legislature without any change whatsoever and where the commission's comment is brief, because in such a situation there is ordinarily strong reason to believe that the Legislator's votes were based in large measure upon the explanation of the commission proposing the bill."). These Comments are, of course, readily available in both the West's and Deering's Annotated California Codes.

Section 1951

This section was approved as drafted.

The addition of a definition of "reasonable expenses of reletting" was rejected as being unnecessary. It was felt that Section 1951.2 and the Comment thereto adequately covered the issue of what damages the lessor is entitled to, and the term itself was deleted earlier from Section 1951.2, the only place where it previously appeared.

Section 1951.2

Subdivision (b) of Section 1951.2 was revised to read as follows:

(b) The worth at the time of award of the amounts referred to in paragraphs (1) and (2) of subdivision (a) is computed by allowing interest at such lawful rate as may be specified in the lease or, if no such rate is specified in the lease, at the legal rate. The worth at the time of award of the amount referred to in paragraph (3) of subdivision (a) is computed by discounting such amount at the discount rate of the Federal Reserve Bank of San Francisco at the time of award plus one percent.

The effect of this revision is to make the statutory discount rate apply in all cases. This will eliminate the need for time-consuming and expensive proof of the applicable rate by providing a rate subject to judicial notice under Evidence Code Section 452(h). At least equally important, this rate will permit the lessor to invest his discounted award at interest rates currently available in the investment market and recover the benefit of his bargain under the former lease. The staff was directed to make conforming changes in the Comment to Section 1951.2 and, if possible, redraft the discussion relating to the allowance of interest and discounting to make clear the method followed in computing the lessor's damages.

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Deleted from subdivision (c) was the sentence stating that the lessor is entitled to any profit obtained on reletting but the rent received is to be offset against subdivision (a). The sentence was at best unnecessary. Subdivision (a) provides for automatic termination of the lease in the appropriate circumstances. Upon termination, the lessee no longer has an interest in the property and, therefore, under the common law has no right to future rents. Since subdivision (a) provides specifically for an offset of future rents against recoverable damages, it would be redundant to restate this in subdivision (c).

Subdivision (e) of Section 1951.2, relating to the right of the lessor to equitable relief in the appropriate circumstances, was made a separate section and revised to include reference to both Sections 1951.2 and 1951.4. It was suggested that this could replace existing Section 1951.8 which was deleted (see below). The staff was directed to make the necessary conforming changes.

Section 1951.4

The introductory clause of subdivision (b) was redrafted to read: "Even though the lessee has breached the lease and abandoned the property, a lease of real property continues in effect for so long as" This is simply an editorial change and involves no substantive change.

Subdivision (d) was eliminated as being unnecessary. Both subdivision (a) of Section 1951.2 and subdivision (b) of this section contemplate that this section simply provides an additional

remedy. The existence of this remedy does not preclude the lessor from securing relief under Sections 1951.2 and 1951.8. This point is made clear in the Comment to Section 1951.4 and it would require an unnatural construction of the statute to find otherwise. Similarly, this statute does not set forth or alter the rules of law that determine when the lessor may terminate the lessee's right to possession. Nothing in the statute should suggest otherwise and again the Comment emphasizes this point.

Section 1951.5

Approved without substantive change.

Section 1951.6

Approved without change.

Section 1951.8

Former Section 1951.8 relating to advance payments was deleted. After considerable discussion, the Commission determined that this section was unnecessary and that the question of treatment of "advance payments" in whatever form they may take could be left to the developing case law. It was noted that existing California law requires an offset of a security deposit against the lessor's damages. Section 1951.2, which provides for recovery of only unpaid rent, dictates a similar offset of advance payment of rental.

Section 1952

Approved without substantive change. Subdivision (b) was revised to include reference to Section 1951.8 (equitable relief). Subdivision (c) was revised to make explicit that the lessor, by evicting the lessee

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under the unlawful detainer provisions, loses the remedy provided by Section 1951.4.

Sections 1952.2, 1952.4, and 1952.6

Approved without substantive change.

Section 3308 (Civil Code)

Inasmuch as the Commission has not intended to undertake the study of personal property leases, it was decided that the amendment of Civil Code Section 3308 should be restricted to the elimination of any reference to real property leases. The Comment to Section 3308 should indicate that this elimination and the enactment of Sections 1951-1952.6 is not intended to in any way affect the existing law relating to personal property leases.

Code of Civil Procedure Sections 337.5 and 339.5

Approved without change.

Approval for printing

As revised, the Recommendation was approved for printing and submission to the 1969 Legislature.

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STUDY 63 - EVIDENCE CODE (PSYCHOTHERAPIST-PATIENT PRIVILEGE)

The Commission considered Memorandum 68-102 and the First Supplement to that memorandum and the staff draft of a recommendation to extend the psychotherapist-patient privilege to clinical social workers and marriage, family, and child counselors.

The Commission indicated that it would be extremely desirable to have a reaction from the State Bar before submitting this recommendation to the Legislature. Further, comments of other groups would be helpful in determining whether the recommendation should be submitted to the Legislature. The recommendation was approved for distribution for comments from interested persons.

STUDY 69 - POWERS OF APPOINTMENT

The Commission considered Memorandum 68-99, the tentative recommendation attached thereto, and the First Supplement to Memorandum 68-99. The following actions were taken.

Section 1381.2

To incorporate the exceptions contained in the federal and state death tax laws and to closer equate a general power to outright ownership, the Commission revised Section 1381.2, defining a general power, as follows:

1381.2. (a) A power of appointment is "general" only to the extent that it is exercisable in favor of the donee, his estate, his creditors, or creditors of his estate, whether or not it is exercisable in favor of others.

(b) A power to consume, invade, or appropriate property for the benefit of a person or persons in discharge of the donee's obligation of support which is limited by an ascertainable standard relating to their health, education, support, or maintenance is not a general power of appointment.

(c) A power exercisable by the donee only in conjunction with a person having a substantial interest in the appointive property which is adverse to the exercise of the power in favor of the donee, his estate, his creditors, and creditors of his estate is not a general power.

(d) All powers of appointment which are not "general" are "special."

(e) A power of appointment may be general as to some appointive property or a specific portion of appointive property and be special as to other appointive property.

The staff was further directed to make appropriate revisions in the Comment to Section 1381.2. The significance of the words "to the extent that," contained in subdivision (a), was to be emphasized and explained by the addition to the Comment of the following language:

A power of appointment is "general" only to the extent that it is exercisable in favor of the donee, his estate, his creditors, or creditors of his estate. Thus, for example, A places property in trust, and gives B a power to consume the income from the trust in such amounts as are necessary to support B in accordance with his accustomed manner of living whenever B's annual income from all other sources is less than \$15,000. B's power is limited to consumption of the income from the trust; in no event can he (or his creditors under Section 1390.3) reach the principal of the trust. Moreover, B's power is limited by one of a variety of commonly used ascertainable standards, and is therefore under Section 1381.2 a "general" power only to the extent that that standard is satisfied. Finally, B's power is subject to the condition that his annual income from all other sources must be less than \$15,000, and is not therefore presently exercisable until that condition is met.

Section 1381.3

To clarify the definition of a power of appointment that is "presently exercisable," subdivision (b) was revised to read in substance:

(b) A power of appointment is "presently exercisable" if it is not testamentary and:

(1) There is no limitation as to the time when it may be exercised and the donee can make an appointment effective upon exercise; or

(2) If the time of its exercise or the effective date of the appointment was postponed, the period of postponement has expired.

Section 1385.1

Subdivision (a) of Section 1385.1, specifically granting the donee unlimited authority to appoint except as limited by the creating instrument, was believed by the Commission to be unnecessary and was therefore deleted. The staff was directed to revise the Comment to this section accordingly.

Section 1385.3

Subdivisions (b) and (c) were combined and revised to read as follows:

(b) Unless expressly prohibited by the creating instrument:

(1) If any person whose consent is required dies, the power may be exercised by the donee without the consent of such person.

(2) If any person whose consent is required becomes legally incapable of consenting, his guardian or conservator may consent on his behalf to an exercise of the power.

(3) A consent may be given before or after the exercise of the power by the donee.

No substantive change in the section was made.

Section 1386.1

Subdivision (b) of this section was revised to read:

(b) Such a manifestation exists where:

(1) The donee declares, in substance, that he exercises the specific power or all powers that he has.

(2) The donee purports to transfer an interest in the appointive property which he would have no power to transfer except by virtue of the power.

(3) The donee makes a disposition which, when considered with reference to the property he owned and the circumstances existing at the time of the disposition, manifests his understanding that he was disposing of the appointive property.

This change eliminates any suggestion that the manifestation of intent to exercise a power of appointment cannot in an appropriate case be oral or by physical act and eliminates paragraph (2), the substance of which is covered by paragraph (3).

Section 1387.1

The introductory phrase--"Unless the creating instrument clearly manifests a contrary intent"--was deleted and the section was restored to its original form. This section, as revised, is in accord with the Restatement rule.

Section 1387.2

The concluding phrase--"to the extent that the persons benefited by the appointment are permissible appointees"--was believed to be unnecessary and was therefore deleted.

Section 1388.2

Paragraph (2) of subdivision (c) was revised to require in all cases delivery of a release of a power of appointment which relates to property held by a trustee to such trustee. The phrase --"within the state"--was deleted from paragraph (1) of subdivision (c); this paragraph now requires the donee to exercise due diligence to locate and to deliver his release to any person specified by the donor regardless of where that person may live.

Section 1392.1

This section was revised to read substantially as follows:

1392.1. (a) Unless the power to revoke is reserved in the instrument creating the power or exists pursuant to Civil Code Section 2280, the creation of a power of appointment is irrevocable.

(b) Unless made expressly irrevocable by the creating instrument or the instrument of exercise, an exercise of a power of appointment is revocable if the power to revoke exists pursuant to Civil Code Section 2280 or so long as the interest to the appointive property, whether present or future, has not been transferred or become distributable pursuant to such appointment.

(c) Unless the power to revoke is reserved in the instrument releasing the power, a release of a power of appointment is irrevocable.

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The staff was directed to make conforming changes to the Comment to Section 1392.1.

Approval for printing

With the exception of minor editorial revisions to be accomplished by the staff, the remaining sections of the recommendation were approved as drafted and the entire recommendation was approved for printing.

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STUDY 70 - ARBITRATION

The Commission considered Memorandum 68-92 containing the staff suggestion as to a consultant on the arbitration study authorized by the 1968 Legislature.

A motion was unanimously adopted that Mr. Eddy Feldman, Los Angeles attorney, be selected as the research consultant on this topic. His honorarium is to be fixed at \$1,000 and the research contract with him is to conform in all other respects with the usual contract made with research consultants. The study will involve an examination of all of the provisional remedies and a determination of what effect, if any, an arbitration clause has and should have on each and, in addition, a review of the experience under the 1961 arbitration statute. The study should be written with a view to submitting it for law review publication.

The Executive Secretary was directed to execute the contract on behalf of the Commission.