

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
JANUARY 18, 1980
SAN FRANCISCO

A meeting of the California Law Revision Commission was held in San Francisco on January 18, 1980.

Law Revision Commission

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| Present: | Beatrice P. Lawson, Chairperson | Judith Meisels Ashmann |
| | Jean C. Love, Vice Chairperson | Ernest M. Hiroshige |
| | Omer L. Rains, Senate Member | Warren M. Stanton |
| Absent: | Alister McAlister, Assembly Member | Bion M. Gregory, <u>Ex Officio</u> |
| | George Y. Chinn | |

Staff Members Present

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| John H. DeMouilly | Robert J. Murphy III |
| Nathaniel Sterling | Stan G. Ulrich |

Consultants Present

Professor Carol S. Bruch, Community Property
Professor William A. Reppy, Creditors' Remedies

Also Present

Allison Mendel, University of California, Davis

ADMINISTRATIVE MATTERS

MINUTES OF NOVEMBER, 1979, MEETING

The Minutes of the November 30, 1979, Meeting were approved without change.

RESEARCH CONTRACT

The Commission considered Memorandum 80-1, relating to a research contract with Mr. Thomas M. Dankert, Ventura, as a consultant. The Commission authorized and directed the Executive Secretary to execute on behalf of the Commission a contract with Thomas M. Dankert to provide expert advice to the Law Revision Commission and to attend hearings on Commission proposals when requested to do so by the Commission's staff, in connection with the Commission's study of eminent domain, inverse condemnation, and evidence. The contract is to provide travel reimbursement, subject to the same limitations that apply to reimbursement

of travel expenses by state employees, for attending Commission meetings and legislative hearings. The total amount payable under the contract is not to exceed \$300 and the contract is to expire on June 30, 1982.

ELECTION OF VICE CHAIRPERSON

The Commission elected Professor Jean C. Love as Vice Chairperson for the term that ends on December 30, 1981.

LEGISLATIVE PROGRAM

The Executive Secretary reported the following allocation of Commission proposals for the 1980 legislative session.

Senate Measures

1. Assignments for Benefit of Creditors
2. Vacation of Public Streets and Service Easements
3. Security for Costs
4. Tax Liens (not yet approved by Commission)
5. Interest Rate on Judgments (not yet approved by Commission)
(Rains reviewing)

Assembly Measures

6. Sole Traders
7. Veterans Guardianship Act
8. Entry of Paternity and Support Judgments
9. Special Assessment Liens on Property Acquired For Public Use
10. Enforcement of Claims and Judgments Against Public Entities
11. Enforcement of Obligations After Death
12. Probate Homestead
13. Guardianship-Conservatorship (Corrective Bill)
14. Resolution to Continue Authority to Study Previously Authorized Topics
15. Quiet Title (AB 1676)
16. Authorize study of three new topics (McAlister)
17. Valuation Evidence in Noncondemnation Cases

Other Measures

18. Psychotherapist-Patient Privilege (Imbrecht?)

STUDY D-300 - ENFORCEMENT OF JUDGMENTS
(INTEREST RATE ON JUDGMENTS)

The Commission considered Memorandum 80-17 and the attached draft of a recommendation to raise the rate of interest on judgments from seven to 10 percent. The staff reported orally that it has updated the table showing the changes in interest rates in other jurisdictions, and the update reveals major increases in seven states. The Commission approved the draft of the recommendation for printing and submission to the 1980 legislative session.

STUDY D-312 - CREDITORS' REMEDIES
(COMMUNITY PROPERTY)

The Commission considered Memorandum 80-3 and the First Supplement thereto, along with the attached study entitled "Debt Collection From Married Persons in California" prepared for the Commission by its consultant, Professor William A. Reppy, Jr., Duke Law School.

The Commission heard a presentation by Professor Reppy of the possible approaches that can be taken to collection of debts from married persons. One possible approach, the most favorable to creditors, would be to permit a creditor to reach all marital property--the community property as well as the separate property of both spouses. No community property jurisdiction has this system; the separate property of the nondebtor spouse is always immune, except that in California such property can be reached if the debt was incurred for necessities. All community property jurisdictions create exceptions to liability of marital property for debts. Washington and Arizona immunize the greatest amount of marital property by requiring a classification of a debt as separate or community; a separate debt may not be satisfied out of community funds. California immunizes the smallest amount of marital property; all community property plus the property of the debtor spouse is liable. New Mexico takes an intermediate position; debts are classified as community or separate and a creditor on a separate debt can reach the separate property of the debtor plus the debtor's half of the community property. Of these systems, Professor Reppy believes the California is superior; the others create serious practical and administrative problems.

After discussion of the merits and problems of the possible approaches that can be taken to collection of debts from married persons, the Commission determined to retain the basic existing California scheme of making the community property and the separate property of the debtor spouse liable to claims of creditors. The Commission reserved the question whether there should be an order of priority of resort to community and separate by the creditor and whether there should be a right of reimbursement between the spouses, based on the nature of the debt, for future consideration. The Commission also reserved the question of the liability of marital property for debts incurred after separation for future consideration.

The Commission also reviewed the major exceptions to liability of community property under the existing California law, and made the following determinations. The provisions immunizing some marital property from liability should be phrased as exemptions for bankruptcy purposes. The law should make clear that the community personal property in a business managed and controlled by the nondebtor spouse is liable for the debts of the debtor spouse, but that the tools of the trade exemption should be available to the nondebtor spouse. The law that presently provides that the separate property and the earnings of a nondebtor spouse are not liable for the prenuptial contract debts of the other spouse should be extended to include prenuptial tort debts and should be phrased as an exemption from enforcement of a judgment. The law that presently makes the separate property of a spouse not liable for a debt secured by community property should be repealed. The law should make clear that property deposited in a bank account in the name of one spouse is liable for the debts of either spouse to the same extent as marital property generally.

The Commission also made the following decisions concerning the latest draft of the exemption statutes:

Generally. In drafting the exemption statutes, the staff should consider the following points:

- (1) The exemptions should be described in such a way that they do not depend on whether the judgment runs against one or both spouses; and
- (2) Where an exemption is based upon need, all property of both spouses should be taken into consideration in determining the need.

§ 704.010. Motor vehicle; proceeds. This section should exempt a second car if the car is necessary to enable both spouses to work.

§ 704.020. Household furnishings, wearing apparel, personal effects. This section should exempt household furnishings, etc., in two households if the spouses live separate and apart, regardless of the reasons for the separate living arrangement.

§ 704.030. Materials for repair or improvement of dwelling. This section should correspond with Section 704.020.

§ 704.040. Jewelry, heirlooms, works of art. The language limiting this exemption to "the judgment debtor" should be deleted.

§ 704.050. Health aids. This section was unchanged.

§ 704.060. Tools, etc., used in trade, business, or profession; proceeds. This section should permit both spouses to have the exemption, and the exemption should be doubled in case both spouses work together.

§ 704.070. Deposit accounts and money. The exemptions in this section should apply to married persons. For unmarried persons, the exemptions should be halved.

§ 704.080. Deposit account in which social security payments are directly deposited. This section was unchanged.

§ 704.090. Inmate's trust account. This exemption should be available to each prisoner, married or unmarried.

§ 704.100. Life insurance, endowment, annuity policies. The Commission discussed a number of possible approaches to the life insurance exemption, including doubling it for married persons, basing it on need of the survivors, basing it on the amount necessary to make payments on the policy, and reducing the amount of the exemption. The Commission referred the matter to the staff for further consideration; the staff should take into account the treatment of insurance policies in bankruptcy.

§ 704.110. Public retirement and related benefits and contributions. This section was unchanged.

§ 704.113. Public employee vacation credits. This section was unchanged.

§ 704.115. Private retirement and related benefits and contributions. This section was unchanged.

§ 704.120. Unemployment benefits and contributions; strike benefits. This section was unchanged.

§ 704.130. Disability and health benefits and contributions. This section was unchanged.

§ 704.140. Damages for personal injury. The reference to personal injury "to the judgment debtor" should be deleted or the section should be otherwise amended to make clear that the exemption is to protect the family of the injured person which requires the award of damages for support.

§ 704.150. Damages for wrongful death. This section should be amended so that it is not limited to damages for death of a person on whom the judgment debtor was dependent if the person was one on whom the spouse of the judgment debtor was dependent.

§ 704.160. Worker's compensation. This section was unchanged.

§ 704.170. Aid. This section was unchanged.

§ 704.180. Relocation benefits. This section was unchanged.

§ 704.190. Licenses. This section was unchanged.

§ 704.200. Cemetery plot. The staff should check the meaning of "family plot" to ascertain whether it covers plots for both spouses. The staff should also compare the language of the bankruptcy law to ensure that a plot for each spouse is exempt.

§ 704.720. Dwelling exemption. If spouses live separate and apart in two dwellings, the dwelling exemption should be split between them.

§ 704.730. Exemption of dwelling proceeds. Each spouse should be entitled to an exemption of dwelling proceeds for the dwelling in which he or she resides.

STUDY D-315 - CREDITORS' REMEDIES (MARRIED
WOMEN AS SOLE TRADERS)

The Commission considered Memorandum 80-8 and the attached background study and draft of a recommendation to repeal the sole trader statute. The Commission approved the draft of the recommendation for printing and submission to the 1980 legislative session.

STUDY D-550 - CREDITORS' REMEDIES (TAX LIENS)

The Commission considered Memorandum 80-6 and the attached draft of a recommendation to consolidate the statutory provisions relating to state tax liens. The Commission approved the draft of the recommendation for printing and submission to the 1980 legislative session.

STUDY H-500 - QUIET TITLE ACTIONS

The Commission considered Memorandum 80-14, which discusses the comments on the quiet title recommendation received from Mr. John Briscoe of the Attorney General's office. The staff also orally reported the position of Mr. Garrett Elmore that a quiet title defendant should be able to seek affirmative relief by answer rather than by cross-complaint. The Commission approved the proposed amendments to the recommendation as set out in the memorandum. The Commission also requested the staff to prepare an amendment that makes clear that the state may be sued in a quiet title action but that does not cast doubt on the general liability of the state to suit. This should be done by language indicating either that liability of the state to a quiet title suit is declaratory of existing law or that the liability is a specific application of Government Code Section 945.

STUDY K-100 - EVIDENCE OF MARKET VALUE

The Commission considered Memorandum 80-13 relating to the Commission's recommendation to extend the Evidence Code property valuation rules to all cases involving valuation of property and proposing to amend the recommendation to permit a person who claims ownership to testify as an owner. The Commission also heard a staff report that the Department of Transportation is opposed to such an amendment.

The Commission requested the staff to amend the Commission's legislation on evidence of market value to permit either spouse to testify as to the value of community or separate property of the spouses. The staff should also ascertain whether Mr. Merzon, whose letter to the Commission prompted Memorandum 80-13, is concerned about any problem

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other than community and separate property. The staff should devise a proposal to dispose of any additional problem Mr. Merzon may have, solicit the views of the Department of Transportation, and report back to the Commission.

APPROVED AS SUBMITTED _____

APPROVED AS CORRECTED _____ (for corrections, see Minutes of next meeting)

Date

Chairperson

Executive Secretary