

MINUTES OF MEETING  
of  
CALIFORNIA LAW REVISION COMMISSION  
JANUARY 21-22, 1982

A meeting of the California Law Revision Commission was held in San Diego on January 21-22, 1982.

Law Revision Commission

Present: Jean C. Love, Chairperson  
Beatrice P. Lawson, Vice Chairperson  
Robert J. Berton

Bion M. Gregory  
Thomas S. Loo

Absent: Omer L. Rains, Senate Member  
David Rosenberg

Alister McAlister,  
Assembly Member

Staff Members Present

John H. DeMouilly

Nathaniel Sterling

Consultants Present

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

Others Present

Diana Richmond, State Bar Family Law Section, San Francisco

ADMINISTRATIVE MATTERS

MINUTES OF THE DECEMBER 1981 MEETING

The Minutes of the December 4 Meeting were revised as follows: The following material on page 5 was deleted: "The notion of a property right in enhanced earnings capacity was not believed to be a suitable remedy. The staff was directed to devise possible remedies for consideration by the Commission." In place of the deleted material, the following was inserted: "The notion of a property right in enhanced earnings capacity was considered. The staff was directed to devise alternative possible remedies for consideration by the Commission."

As so revised, the Minutes of the December 4 Meeting as submitted by the staff were approved.

## CONSULTANT'S CONTRACTS

The Commission considered Memorandum 82-6 and the First Supplement to 82-6.

The Chairperson reported that Professor Mitchell has made other plans for the summer of 1982, some of which are tentative. Professor Mitchell is not interested in preparing the background study unless his plans for the summer change. Even if he were willing to prepare the study, it appears that he no longer would be able to devote his full time to the study during the summer of 1982. He advised the Chairperson that he would call at the end of three weeks if his summer plans change and he would be interested in preparing the background study.

If Professor Mitchell does not indicate that he is interested in preparing the background study, the staff and Chairperson should provide the names of one or more persons as suggested consultants for consideration at the March meeting. In addition, a statement of the scope of the study should be prepared for consideration by the Commission at the March meeting. This statement would be useful whether or not Professor Mitchell decides to prepare the background study.

The staff was requested to have a law student check to determine whether any useful articles have been written in law reviews or other publications that identify considerations that should be taken into account in determining what the statute of limitations should be on felonies generally and on particular types or classes of felonies. An article on the statute of limitations on civil actions generally or particular types of civil actions might be useful in identifying considerations applicable to criminal actions. An effort should be made to review articles on comparative law.

The Commission adopted the substance of the following for inclusion in its Manual of Practices and Procedure:

Statement of scope of background study. The Commission considers it important that there be a clear understanding concerning the scope of the background study so that the background study includes an adequate discussion of those matters that the Commission believes are in need of study. For this reason, a statement of the scope of the study is prepared in cooperation with the Commission's consultant. The statement identifies those aspects of the topic to be studied that are considered by the Commission to be of particular importance. Where appropriate, the statement may indicate uniform or model acts or statutes of other jurisdictions that are to be considered in the background study. The statement is intended to assure that the background study includes an adequate discussion of the matters that are described in the statement but is not intended to restrict

the consultant in any way. The consultant is completely free to include in the background study a discussion of any aspect of the topic the consultant believes should be discussed in the background study, whether or not included in the statement. The study may be written in such form and contain such discussion as the consultant believes is suitable for presentation of the subject matter of the study.

The statement of the scope of the study is prepared in cooperation with the consultant. The staff prepares and presents for Commission consideration a draft of a statement of the scope of the study. If the consultant is not present at the time the draft of the statement is considered by the Commission, the staff draft of the statement as revised by the Commission is sent to the consultant with a request that the consultant review the statement and suggest any additional aspects of the topic that the consultant believes are in need of study or other modifications of the statement that the consultant believes are desirable. The suggestions of the consultant are reviewed by the Commission and any necessary changes made in the statement.

In some cases, the Commission may invite the consultant to meet with the Commission before commencing work on the background study to discuss the scope of the study and the methodology of the study so that the Commission will gain some understanding of the subject matter to be studied and so that the background study will discuss all of the matters and include all of the information the Commission believes would be useful to the Commission in considering the particular topic.

Form and content of study. The consultant is completely free to determine the form and content of the background study, but the background study should include an adequate discussion of the specific matters that the statement of the scope of the study indicates should be discussed in the background study and such other matters as the consultant believes should be considered in the background study. The background study ordinarily is prepared in the form of one or more law review articles.

The Commission has found a background study most useful if it includes the following:

(1) An identification of the specific problems that may require legislative action.

(2) A discussion of existing California decisional and statutory law with respect to each such problem and, where the consultant considers it useful, a discussion of uniform or model acts or statutes of other jurisdictions and other material.

(3) The alternative methods by which each problem might be solved, the advantages and disadvantages of each alternative, and the consultant's recommendations as to which alternative is best. The consultant is completely free to make such recommendations as the consultant considers appropriate or desirable.

The Commission adopted the following provision to be included in its standard form of contract with research consultants:

If the consultant makes any presentation of his or her background study and recommendations to any person or group, the consultant shall make clear at the time the presentation is made that:

(1) The consultant's recommendations are not recommendations of the Commission and do not represent the views or recommendations of the Commission.

(2) The Commission may or may not make recommendations on the particular matter and, if the Commission does make recommendations, those recommendations will be made in the Commission's printed report to the Legislature.

#### CONFLICT OF INTEREST CODE

The Commission considered Memorandum 82-1 and adopted without change the amendments to the Commission's conflict of interest code that were attached to Memorandum 82-1

#### 1982 LEGISLATIVE PROGRAM

The Commission considered Memorandum 82-5 which presented the following report concerning the 1982 legislative program.

#### Approved by Policy Committee in First House

AB 707 (Enforcement of Judgments)

AB 798 (Conforming Changes to Enforcement of Judgments Statute)

#### Introduced

AB 2331 (Wills)

AB 2332 (Attachment)

AB 2341 (Escheat)

AB 2416 (Marketable Title)

ACR 76 (Continues Authority to Study Previously Authorized Topics)

AJR 63 (Federal Pensions and Benefits Subject to State Marital Property Law)

#### To Be Introduced

AB \_\_\_\_\_ (Authorizes P.O.D. Accounts in Financial Institutions)

\_\_\_\_\_ (Bonds and Undertakings)

\_\_\_\_\_ (Conforming Changes to Bonds and Undertakings Statute)

#### Dead

AB 325 (Nonprobate Transfers)

The Commission was in general agreement that the nonprobate transfer bill should be introduced in 1983.

The Commission considered whether a better standard could be provided in AB 707 for various exemptions based on a particular type of property being exempt to the extent necessary for the support of the judgment debtor and dependents of the judgment debtor. The Commission decided the existing standard in the bill was adequate but indicated that it had no strong objections to providing that no exemption exists for punitive damages awarded in a personal injury or wrongful death action.

STUDY D-312 - DEBTOR-CREDITOR RELATIONS (LIABILITY OF  
MARITAL PROPERTY FOR DEBTS AND OBLIGATIONS)

The Commission commenced consideration of Memorandum 82-2 and the attached tentative recommendation relating to liability of marital property for debts. The Commission made the following decisions with respect to the tentative recommendation:

§ 5120.005. Debts. The technical drafting suggestion of the State Bar Business Law Section that the definition of "debt" refer to a debt incurred by a spouse "before or during marriage" was accepted.

§ 5120.010. Liability of community property. The liability of community property for child or spousal support obligations should be the same as the liability for other prenuptial obligations--all community property should be liable except the earnings of the non-obligor spouse (including deposit accounts to which the earnings can be traced and in which they are held uncommingled).

The existing provision of Civil Code Section 5122(b) that prescribes an order of satisfaction out of separate and community property for a tort debt depending on whether the tort is separate or community in nature was discussed. The Commission first determined that if insurance proceeds are available to satisfy the tort debt, they should be applied without regard to the community or separate character of the insurance proceeds or the debt. If insurance proceeds are not available, or if the available proceeds are not sufficient to satisfy the debt, the Commission further determined that where a separate tort is satisfied out of community property or where a community tort is satisfied out of separate property, whether voluntarily or involuntarily, there should be a right of reimbursement. The reimbursement right should be enforceable for a period of three years after application of the property to satisfaction of the debt. The Comment should note the enforceability of the reimbursement right within the three-year limitation period against the estate of a decedent spouse.

The Commission also considered a procedure to require an order of satisfaction where a creditor has levied on property to satisfy a tort debt. The Commission felt that such a procedure should be implemented if it is possible to devise a procedure that will enable determination of all issues and resolution of any disputes within 30 days after levy. Under such a procedure enforcement after levy on property would be

stayed for up to 30 days during which time the objecting spouse would have the opportunity to satisfy the debt. If the debt is not satisfied within the prescribed time, the stay would terminate and the enforcement process would continue.

Matters not addressed by the Commission included the definition of community and separate torts, whether such a scheme would apply to contract debts as well, and whether such a scheme would apply to prenuptial debts of all kinds.

STUDY F-600 - COMMUNITY PROPERTY  
(DETERMINATION OF PRIORITIES)

The Commission considered Memorandum 82-3, along with the background studies on community property prepared by Professors Bruch and Reppy, in order to determine priorities for the community property study. After hearing a presentation by Professor Bruch of the definition and division portion of her study (an edited transcript of Professor Bruch's remarks is being prepared and will be distributed when available), the Commission made the following determinations:

(1) Top priority should be given to the problems in defining community property, and particularly to the issues whether the fruits of separate property should be community and the effect of title presumptions on the character of the property. The staff reported that it is preparing material for the March 1982 meeting relating to one aspect of this problem--joint tenancy and its relation to community property. On the question of whether the fruits of separate property should be community, the staff was directed to prepare material relating to the constitutionality of such a proposal and to problems that would be encountered in making such a proposal retroactive.

(2) Related to the definitional aspects of community property but constituting a separate problem is the extent to which the community and separate character of property can be altered by transmutation or prenuptial agreement of the parties. This problem should also be given some priority. It was noted that there is a Uniform Laws Commission project on prenuptial agreement and that the Massachusetts case of Osborne v. Osborne contains a wealth of material on this matter.

(3) The third priority should be given to dividing the community at dissolution of marriage and at death. The issues in this area should be addressed after the preceding matters have been resolved.

(4) Valuation problems, such as pension and profit-sharing plans, goodwill of a business or professional practice, and compensating for disparities in earning capacity of spouses, should be next addressed.

(5) Problems relating to post-separation earnings and liabilities were given a fairly low priority.

(6) Problems relating to management and control of community property are to be addressed after the definition and division issues have been handled.

(7) The recommendation on liability of marital property for debts should be completed so that it can be recommended for enactment in 1983, with the understanding that revision may be necessary later in light of decisions made on the other matters outlined above.

STUDY L-703 - PROBATE LAW (AUTHORITY TO CONSENT  
OR WITHHOLD CONSENT TO HEALTH CARE OF ANOTHER)

The Commission considered Memorandum 82-4. The Commission decided to send out for review and comment the latest version of the draft of the Uniform Health Care Consent Act (January 1982 version). It was noted that this draft is more comprehensive in its scope than the Uniform Power of Appointment to Consent to Health Care Act which was attached to Memorandum 82-4.

The letter sending out the draft for review and comment should request comments on whether legislation on this subject is needed in California, whether all or part of the draft is needed in California, and whether any revisions should be made in the draft if it is proposed for enactment in California.

APPROVED AS SUBMITTED \_\_\_\_\_  
APPROVED AS CORRECTED \_\_\_\_\_ (for corrections, see Minutes of next meeting)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chairperson

\_\_\_\_\_  
Executive Secretary