

STATE OF CALIFORNIA

**CALIFORNIA LAW  
REVISION COMMISSION**

RECOMMENDATION AND STUDY

*relating to*

**The Presentation of Claims Against  
Public Entities**

January 1959

## LETTER OF TRANSMITTAL

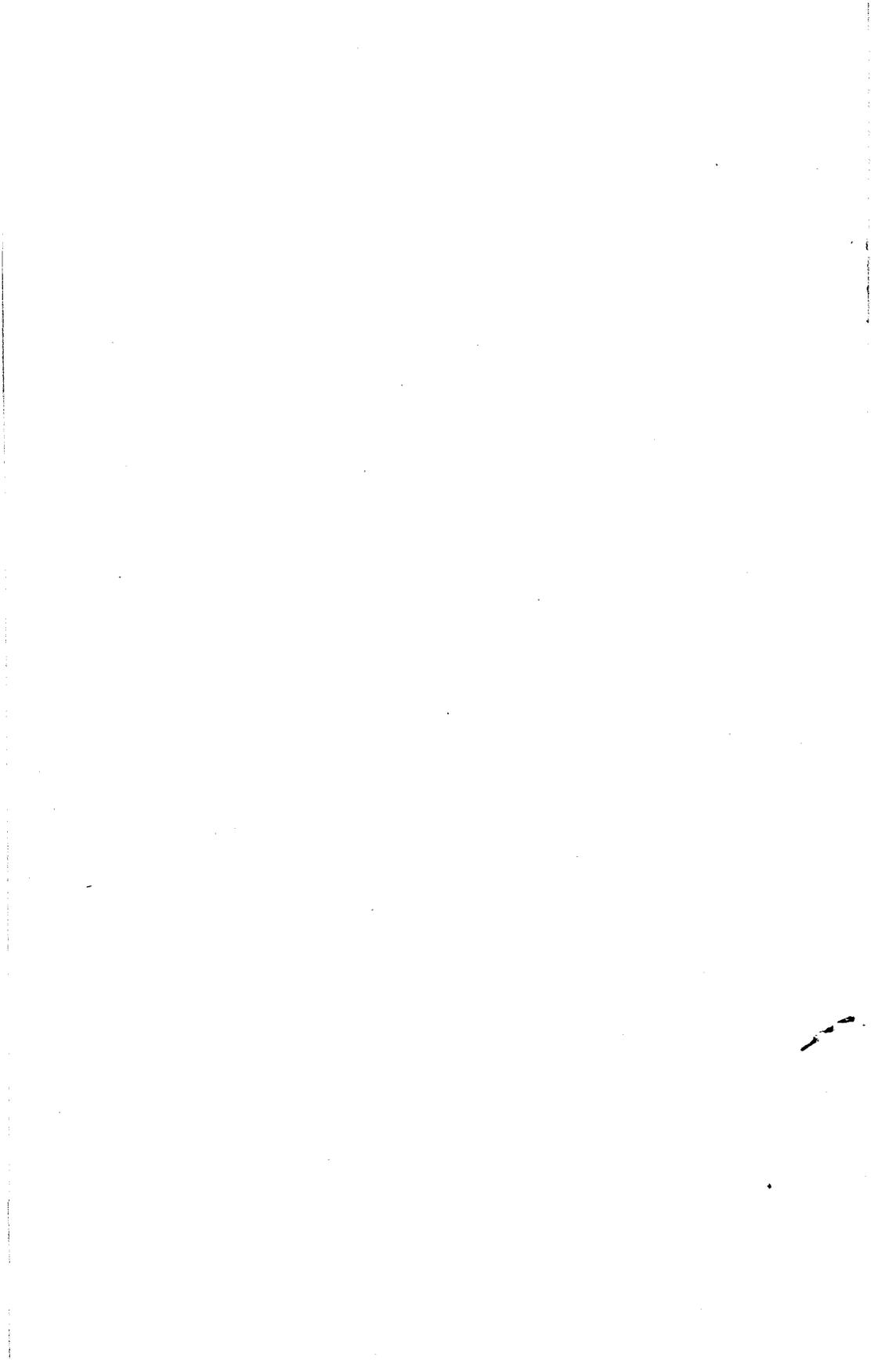
To HIS EXCELLENCY EDMUND G. BROWN  
*Governor of California*  
*and to the Members of the Legislature*

The California Law Revision Commission was authorized by Resolution Chapter 35 of the Statutes of 1956 to make a study of the various provisions of law relating to the presentation of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised. The Commission herewith submits its recommendation relating to this subject and the study prepared by its research consultant, Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

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January 1959



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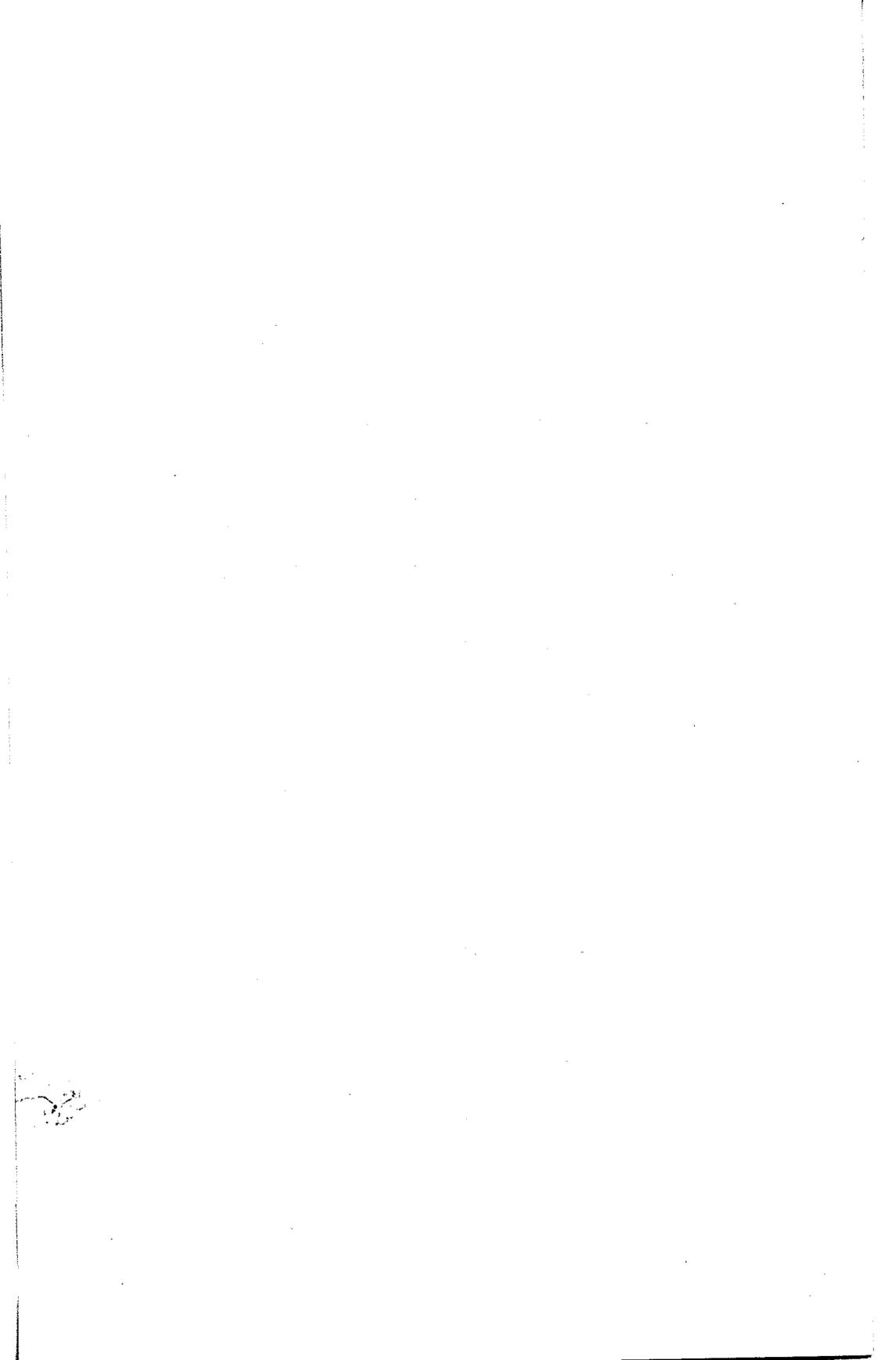
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## RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

### Relating to Presentation of Claims Against Public Entities

The law of this State contains many statutes and county and city charters and ordinances which bar suit against a governmental entity for money or damages unless a written statement or "claim" setting forth the nature of the right asserted against the entity, the circumstances giving rise thereto and the amount involved is communicated to the entity within a relatively short time after the claimant's cause of action has accrued. Such provisions are referred to in this Recommendation and Study as "claims statutes."

Claims statutes have two principal purposes. First, they give the governmental entity an opportunity to settle just claims before suit is brought. Second, they permit the entity to make an early investigation of the facts on which a claim is based, thus enabling it to defend itself against unjust claims and to correct the conditions or practices which gave rise to the claim.

The principle justifying claims statutes has been extensively accepted in California over a long period of time. Claims statutes appeared as early as 1855. Today there are at least 174 separate claims provisions in the law of this State, scattered through statutes, charters, ordinances and regulations. As appears below and more fully in the research consultant's report, these provisions differ widely as to many material matters, including claims covered, time for filing, and information required to be furnished.

It has become increasingly clear in recent years that the implementation of the claims statute principle in this State by the enactment of numerous and conflicting claims provisions has created grave problems both for governmental entities and those who have just claims against them. The Law Revision Commission was, therefore, authorized and directed to study and analyze the various provisions of law relating to the filing of claims against public bodies and public employees to determine whether they should be made uniform and otherwise revised.<sup>1</sup> The Commission has made an exhaustive study of existing claims statutes and the judicial decisions interpreting and applying them.

On the basis of this study the Commission has concluded that the law of this State governing the presentation of claims against governmental entities is unduly complex, inconsistent, ambiguous and difficult to find, that it is productive of much litigation and that it often results in the barring of just claims. This conclusion is supported by the following facts among others disclosed by the Commission's study:<sup>2</sup>

1. There are at least 174 separate claims provisions in California. Yet a large number of cities, districts and other local entities are not protected by any claims statute.

<sup>1</sup> Cal. Stat. 1956, res. c. 35, p. 256.

<sup>2</sup> For a more complete statement of the defects in existing claims statutes see research consultant's study, *infra* at A-17.

2. There is great disparity among existing claims statutes with respect to the types of claims which are subject to presentation requirements, the time limits for presenting claims, the official to whom claims must be presented, the information which the claimant must furnish, the requirements of verification and signature, the time allowed for consideration of the claim by the governmental entity and the time allowed for commencing an action after a claim is rejected. A claim must be presented in conformity with the provisions of the particular claims statute applicable to it to avoid barring suit on the claim. Yet there is much ambiguity and overlapping in claims provisions, with the result that claimants, attorneys and courts are often confused as to which, if any, of several claims provisions applies to a particular case.

3. The courts have generally given claims provisions a strict construction, although a few courts have been relatively liberal in particular cases. As a result, many actions based upon apparently valid claims have been barred solely by reason of a technical failure to comply with the applicable claims statute, whereas in other factually similar cases technical deficiencies have not barred relief. This results in unfairness to particular claimants and leads to unnecessary litigation.

4. No consistent pattern appears in the judicial decisions dealing with the extent to which the principles of waiver and estoppel may be invoked to preclude a governmental entity from relying upon technical noncompliance with a claims provision.

5. Failure to comply with technical requirements of claims provisions, such as the failure to verify a claim, has frequently been the basis for barring relief to a claimant, even though such defect clearly did not impair the effectiveness of the claim in fulfilling the basic notice-giving function and purpose of the claim filing requirement. Although the courts have often applied the doctrine of substantial compliance to excuse certain technical failures to comply with claims filing requirements, there is great uncertainty as to which types of defects may and may not be excused through application of this doctrine.

The Commission has concluded that these and other substantial defects in existing claims statutes, detailed in its research consultant's study, require remedial legislative action. The Commission does not believe, however, that these defects warrant an abandonment of the claims statute principle in this State. The legitimate interests of governmental entities and the public whom they represent require that prompt notice of claims against them be given to such entities. The Commission recommends, therefore, not only that the principle be continued in effect as to those governmental entities which are now protected by claims statutes but that similar protection be extended to the considerable number of such entities which do not presently have it.

On the other hand, the Commission believes that the glaring defects in existing claims statutes can be virtually eliminated by legislative action. To this end the Commission has drafted a new general claims statute which, if enacted, would govern the presentation of most claims for money or damages against governmental entities in this State. The Commission recommends that the Legislature enact this new general claims statute and that existing claims provisions be repealed or revised to conform to the new statute. The Commission believes that if this recommendation is accepted the legitimate interest of governmental

entities in prompt notice of claims against them will be adequately protected while, by virtue of the ready accessibility and general coverage of the new statute, just claims can be easily filed and the substantial rights of claimants preserved.

The principal features of the legislation recommended by the Commission are the following:

*Claims Presentation Procedure.* The basic scheme of the proposed general claims statute is simple: no suit may be brought against a governmental entity on a cause of action to which the statute is applicable until a written claim relating thereto has been presented to the entity and time has been allowed for action thereon by its governing body. The claim must be presented not later than 100 days after the cause of action to which it relates has accrued. Thereafter the governing body has 80 days within which to act upon the claim. If it does not act within 80 days, the claim is deemed denied as a matter of law. Suit must be brought within nine months after the date on which the claim was presented.

*Provisions Designed To Avoid Injustice.* The statute incorporates three provisions designed to alleviate hardship to claimants which have been recognized, albeit not uniformly, in the decisions or statutes of this and other states:

(a) Defects in a claim are waived unless the claimant is given written notice thereof by the entity.

(b) Time for filing is extended for a period not to exceed one year in the case of the claimant's death, minority, or physical or mental disability during the claim-presenting period, if the governmental entity will not be unduly prejudiced thereby.

(c) The governmental entity is estopped to assert the claimant's failure to comply with the statute if he relied upon a representation made by an officer, employee or agent of the entity that a presentation of claim was not necessary or that a claim as filed conformed to legal requirements.

*Constitutional Amendment.* If the goal of general uniformity of claims provisions is to be realized in respect of chartered counties, cities and counties and cities it is desirable to amend the Constitution to confirm the Legislature's power to prescribe procedures governing the presentation, consideration and enforcement of claims against such entities. The Commission has drafted and recommends the adoption of a constitutional amendment for this purpose. The statutes proposed by the Commission expressly provide that they shall not take effect as to a chartered county or city which has a claims procedure prescribed by charter or pursuant thereto until this constitutional amendment has been adopted.

*Coverage of General Claims Statute.* The proposed new statute does not govern the presentation of all claims against all governmental entities in this State. Claims against the State itself have been omitted therefrom because the State is unique in comparison with other entities, its legislative body does not meet regularly throughout the year, and the existing statutory provisions governing the filing of claims

against the State appear to provide an adequate and well established procedure. Thus, the new statute applies only to local public entities, defined to include any county, city and county or city (but delayed in effect as to some chartered counties and cities as explained above) and any district, local authority or other political subdivision of the State, claims against which are not paid by warrants drawn by the State Controller.

Even as to local public entities, however, the coverage of the new general claims statute is not universal. Like nearly all existing claims statutes, it applies only to claims for money or damages. Moreover, certain types of claims for money or damages are expressly excluded from the statute—for example, claims for tax exemptions and refunds, claims by public officers and employees for salaries, expenses and allowances, and claims for principal and interest on bonded indebtedness. In such cases the same need for prompt notice and investigation does not usually exist and the filing of such claims can better be regulated by the statute which creates and governs the rights involved. Another exception to the coverage of the proposed statute is found in the authority given to local public entities to include special provisions in written contracts governing the presentation, consideration and payment of claims arising thereunder, thus permitting a desirable flexibility in contract situations.

*Coordination of the New General Claims Statute With Existing Law.* The legislation recommended by the Commission includes the following provisions designed to fit the new general claims statute into the law of this State in such a way as to accomplish the desired simplification of the law without prejudice to either the local public entities or the claimants to whom it will apply:

(a) All statutes presently governing the presentation of claims against local public entities have been either repealed or amended where this is necessary to eliminate conflicts between them and the new general claims statute. In the interest of improving the structure of the Government Code the provisions thereof relating to claims against the State (Sections 16000-16054) and those relating to claims against public officers and employees (Sections 1980-82) have been transferred to new Division 3.5 of Title 1 of the Government Code. Thus, Division 3.5 will contain the statutes governing claims against the State, against local public entities (the new general claims statute) and against public officers and employees.<sup>3</sup>

(b) All local public entities are authorized to prescribe by charter, ordinance or regulation claims procedures applicable to claims not governed by the general claims statute or by other statutes specifically applicable thereto. This is necessary to close the gap in existing claims statute coverage which will be created by the repeal of claims statutes insofar as they apply to types of claims not covered by the new general claims statute.

(c) If the objectives of this study are to be achieved it will also be necessary for local public entities to repeal claims provisions which are

<sup>3</sup> The legislative bills necessary to accomplish this coordination of the statutory law relating to claims against governmental entities are not printed in this publication, both because of their length and because so much of the legislation is of a repetitious character.

presently found in their charters, ordinances and regulations lest these become traps for unwary citizens. The Commission hopes that this coordination of local law with the new statute will be expeditiously accomplished soon after the enactment of the new general claims statute. It is anticipated, however, that at best it will take some time to accomplish all repeals and amendments of existing claims provisions which will be necessary to coordinate them with the new statute. The Commission has, therefore, included in the general claims statute a provision that until July 1, 1964 (nearly five years after the effective date of a bill enacted by the 1959 Session of the Legislature) a claim may be presented in conformity *either* with the new statute *or* with any existing claims procedure established by or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of the new claims statute and not yet repealed at the time the claim is presented.

*Claims Against Public Officers and Employees.* There are several provisions in the law of this State which require that a claim be filed before suit can be brought against a public officer or employee on his personal liability to the claimant. These provisions are in many respects ambiguous, uncertain and overlapping, thus sharing most of the defects found in existing claims provisions pertaining to public entities. Substantial questions exist as to whether such provisions are justifiable and, if so, whether they should be made uniformly applicable to officers and employees of all local public entities. If it is determined that such provisions should remain in existence as to some or all entities they should be amended to eliminate existing ambiguities and overlaps.

The Law Revision Commission has not had an opportunity to give public officer and employee claims statutes sufficient study to be prepared to make a recommendation concerning them at this time. The Commission intends to study these claims statutes further and to present a recommendation concerning them to a later session of the Legislature.

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The Commission's recommendation that a new general claims statute be established would be effectuated by the enactment of the following measures:

I

*An act to add Division 3.5 commencing with Section 700 to Title 1 of the Government Code, to repeal Section 342 of the Code of Civil Procedure and to add Sections 313 and 342 to said code, relating to claims against the State, local public entities and public officers and employees.*

*The people of the State of California do enact as follows:*

SECTION 1. Division 3.5 commencing with Section 700 is added to Title 1 of the Government Code, to read:

## DIVISION 3.5. CLAIMS AGAINST THE STATE, LOCAL PUBLIC ENTITIES AND OFFICERS AND EMPLOYEES

### CHAPTER 2. CLAIMS AGAINST LOCAL PUBLIC ENTITIES

#### Article 1. General

700. As used in this chapter, "local public entity" includes any county or city and any district, local authority or other political subdivision of the State but does not include the State or any office, officer, department, division, bureau, board, commission or agency thereof claims against which are paid by warrants drawn by the Controller.

701. Until the adoption by the people of an amendment to the Constitution of the State of California confirming the authority of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof, this chapter shall not apply to a chartered county or city while it has a claims procedure prescribed by charter or pursuant thereto.

702. This chapter applies only to claims relating to causes of action which accrue subsequent to its effective date.

703. Articles 1 and 2 of this chapter apply to all claims for money or damages against local public entities except:

(a) Claims under the Revenue and Taxation Code or other provisions of law prescribing procedures for the refund, rebate, exemption, cancellation, amendment, modification or adjustment of any tax, assessment, fee or charge or any portion thereof, or of any penalties, costs or charges related thereto.

(b) Claims in connection with which the filing of a notice of lien, statement of claim, or stop notice is required under any provision of law relating to mechanics', laborers' or materialmen's liens.

(c) Claims by public officers and employees for fees, salaries, wages, mileage or other expenses and allowances.

(d) Claims for which the workmen's compensation authorized by Division 4 of the Labor Code is the exclusive remedy.

(e) Applications or claims for any form of public assistance under the Welfare and Institutions Code or other provisions of law relating to public assistance programs, and claims for goods, services, provisions or other assistance rendered for or on behalf of any recipient of any form of public assistance.

(f) Applications or claims for money or benefits under any public retirement or pension system.

(g) Claims for principal or interest upon any bonds, notes, warrants, or other evidences of indebtedness.

(h) Claims which relate to a special assessment constituting a specific lien against the property assessed and which are payable from the proceeds of such an assessment, by offset of a claim for damages against it or by delivery of any warrant or bonds representing it.

(i) Claims by the State or a department or agency thereof or by another local public entity.

704. A claim against a local public entity presented in substantial compliance with any other applicable claims procedure established by

or pursuant to a statute, charter or ordinance in effect immediately prior to the effective date of this chapter shall satisfy the requirements of Articles 1 and 2 of this chapter, if such compliance takes place before the repeal of such statute, charter or ordinance or before July 1, 1964, whichever occurs first. Sections 715 and 720 are applicable to claims governed by this section.

705. The governing body of a local public entity may authorize the inclusion in any written agreement to which the entity, its governing body, or any board or officer thereof in an official capacity is a party, of provisions governing the presentation, by or on behalf of any party thereto, of any or all claims arising out of or related to the agreement and the consideration and payment of such claims. A claims procedure established by an agreement made pursuant to this section exclusively governs the claims to which it relates, except that the agreement may not require a shorter time for presentation of any claim than the time provided in Section 714, and that Sections 715 and 720 are applicable to all such claims.

#### Article 2. Claim as Prerequisite to Suit

710. No suit for money or damages may be brought against a local public entity on a cause of action for which this chapter requires a claim to be presented until a written claim therefor has been presented to the entity in conformity with the provisions of this article and has been rejected in whole or in part.

711. A claim shall be presented by the claimant or by a person acting on his behalf and shall show:

- (a) The name of the claimant;
- (b) The residence or business address of the person presenting the claim;
- (c) The date, place and other circumstances of the occurrence or transaction which gave rise to the claim asserted;
- (d) A general description of the indebtedness, obligation, injury, damage or loss incurred so far as it may be known at the time of presentation of the claim; and
- (e) The amount claimed as of the date of presentation of the claim, together with the basis of computation thereof.

A claim may be amended at any time before final action thereon is taken by the governing body of the local public entity. The amendment shall be considered a part of the original claim for all purposes.

712. If in the opinion of the governing body of the local public entity a claim as presented fails to comply substantially with the requirements of Section 711 the governing body may, at any time within 60 days after the claim is presented, give the person presenting the claim written notice of its insufficiency, stating with particularity the defects or omissions therein. The governing body may not take final action on the claim for a period of ten days after such notice is given. A failure or refusal to amend the claim shall not constitute a defense to any action brought upon the cause of action for which the claim was presented if the court finds that the claim as presented complied substantially with Section 711.

713. When suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, the

local public entity may assert as a defense either that no claim was presented or that a claim as presented did not comply substantially with the requirements of Section 711, unless such defense has been waived. Any defense based upon a defect or omission in a claim as presented is waived by failure of the governing body to give notice of insufficiency with respect to such defect or omission as provided in Section 712, except that no notice need be given and no waiver shall result when the claim as presented fails to give the residence or business address of the person presenting it.

714. A claim may be presented to a local public entity (1) by delivering the claim personally to the clerk or secretary thereof not later than the one hundredth day after the cause of action to which the claim relates has accrued or (2) by sending the claim to such clerk or secretary or to the governing body at its principal office by mail postmarked not later than such one hundredth day. A claim shall be deemed to have been presented in compliance with this section even though it is not delivered or mailed as provided herein if it is actually received by the clerk, secretary, or governing body within the time prescribed.

For the purpose of computing the time limit prescribed by this section, the date of accrual of a cause of action to which a claim relates is the date upon which the cause of action would be deemed to have accrued within the meaning of the statute of limitations which would be applicable thereto if the claim were being asserted against a defendant other than a local public entity.

715. The superior court of the county in which the local public entity has its principal office shall grant leave to present a claim after the expiration of the time specified in Section 714 if the entity against which the claim is made will not be unduly prejudiced thereby, where no claim was presented during such time and where:

- (a) Claimant was less than 16 years of age during all of such time; or
- (b) Claimant was physically or mentally incapacitated during all of such time and by reason of such disability failed to present a claim during such time; or
- (c) Claimant died before the expiration of such time.

Application for such leave must be made by verified petition showing the reason for the delay. A copy of the proposed claim shall be attached to the petition. The petition shall be filed within a reasonable time, not to exceed one year, after the time specified in Section 714 has expired. A copy of the petition and the proposed claim and a written notice of the time and place of hearing thereof shall be served on the clerk or secretary or governing body of the local public entity not less than ten days before such hearing. The application shall be determined upon the basis of the verified petition, any affidavits in support of or in opposition thereto, and any additional evidence received at such hearing.

716. Within 80 days after a claim is presented, the governing body shall take final action on the claim in one of the following ways:

- (a) If the governing body finds the claim is not a proper charge against the local public entity, it shall reject the claim.
- (b) If the governing body finds the claim is a proper charge against the local public entity and is for an amount justly due, it shall allow the claim.

(c) If the governing body finds the claim is a proper charge against the local public entity but is for an amount greater than is justly due, it shall either reject the claim or allow it in the amount justly due and reject it as to the balance. If the governing body allows the claim in part and rejects it in part it may require the claimant to accept the amount allowed in settlement of the entire claim.

Notice of any action taken under this section shall be given in writing by the clerk or secretary of the local public entity to the person who presented the claim. Action taken under this section shall be final and may not be reconsidered by the governing body, but nothing herein shall prohibit the governing body from compromising any suit based upon the cause of action to which the claim relates.

717. If the governing body of the local public entity fails or refuses to act on a claim in the manner provided in Section 716 within 80 days after the claim has been presented, the claim shall be deemed to have been rejected on the eightieth day.

718. Where this chapter requires that a claim be presented to the local public entity and a claim is presented and final action thereon is taken by the governing body:

(a) If the claim is allowed in full no suit may be maintained on any part of the cause of action to which the claim relates.

(b) If the claim is allowed in part and the claimant accepts the amount allowed, no suit may be maintained on that part of the cause of action which is represented by the allowed portion of the claim.

(c) If the claim is allowed in part no suit may be maintained on any portion of the cause of action where, pursuant to a requirement of the governing body to such effect, the claimant has accepted the amount allowed in settlement of the entire claim.

Nothing in this article shall be construed to deprive a claimant of the right to resort to writ of mandamus or other proceeding against the local public entity or the governing body or any officer thereof to compel it or him to act upon a claim or pay the same when and to the extent that it has been allowed.

719. Except as provided in Section 718, when suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, neither the amount set forth in a claim relating thereto or any amendment of such claim nor any action taken by the governing body of the entity on such claim shall constitute a limitation upon the amount which may be pleaded, proved or recovered.

720. When suit is brought against a local public entity on a cause of action for which this chapter requires a claim to be presented, the entity shall be estopped from asserting as a defense to the action the insufficiency of the claim as to form or content or as to time, place or method of presentation of the claim if the claimant or person presenting the claim on his behalf reasonably and in good faith relied on any representation, express or implied, made by any officer, employee or agent of the entity, that a presentation of claim was unnecessary or that a claim had been presented in conformity with legal requirements.

721. Any suit brought against a local public entity on a cause of action for which this chapter requires a claim to be presented must be

commenced within nine months after the date of presentation of the claim.

Article 3. Claims Procedures Established  
by Local Public Entities

730. Claims against a local public entity for money or damages which are excepted by Section 703 from Articles 1 and 2 of this chapter, and which are not governed by any other statutes or regulations expressly relating thereto, shall be governed by the procedure prescribed in any charter, ordinance or regulation adopted by the local public entity. The procedure so prescribed may include a requirement that a claim be presented and rejected as a prerequisite to suit thereon, but may not require a shorter time for presentation of any claim than the time provided in Section 714 of this code, and Sections 715 and 720 of this code shall be applicable to all claims governed thereby.

SEC. 2. Section 342 of the Code of Civil Procedure is hereby repealed.

SEC. 3. Section 342 is added to the Code of Civil Procedure, to read:

342. An action against a local public entity, as defined in Section 700 of the Government Code, upon a cause of action for which a claim is required to be presented by Chapter 2 (commencing with Section 700) of Division 3.5 of Title 1 of the Government Code must be commenced within the time provided in Section 721 of the Government Code.

SEC. 4. Section 313 is added to the Code of Civil Procedure, to read:

313. The general procedure for the presentation of claims as a prerequisite to commencement of actions for money or damages against the State of California, counties, cities, cities and counties, districts, local authorities, and other political subdivisions of the State, and against the officers and employees thereof, is prescribed by Division 3.5 (commencing with Section 600) of Title 1 of the Government Code.

II

*A resolution to propose to the people of the State of California an amendment to the Constitution of the State by adding Section 10 to Article XI thereof, relating to the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities and against officers, agents and employees thereof.*

*Resolved by the Assembly, the Senate concurring, That the Legislature of the State of California at its 1959 Regular Session commencing on the 5th day of January, 1959, two-thirds of the members elected to each of the two houses of the Legislature voting therefor, hereby proposes to the people of the State of California that the Constitution of the State be amended by adding Section 10 to Article XI thereof, to read:*

SEC. 10. No provision of this article shall limit the power of the Legislature to prescribe procedures governing the presentation, consideration and enforcement of claims against chartered counties, cities and counties and cities, or against officers, agents and employees thereof.

# A STUDY RELATING TO THE PRESENTATION OF CLAIMS AGAINST PUBLIC ENTITIES \*

## INTRODUCTION

California law contains a large variety of legal provisions found in the codes, general laws, city charters and city ordinances which require a written claim to be presented before one may sue a public entity or employee. These provisions are designed to protect against unfounded and unnecessary lawsuits. They apply to various types of claims and to different types of public entities. Some claims against some entities are not subject to a presentation requirement. All claims against certain entities are subject to a presentation requirement while no claims against some and only specified claims against still other entities are subject thereto. The time limits, formal requisites, contents and place to file vary greatly from claim statute to claim statute. All of the many diverse provisions, however, share the common general characteristic that compliance with the applicable claim presentation procedure is a prerequisite to maintenance of a court action to enforce the claim.

Most of the claims statutes and litigation concerning them relate to claims for personal injury or property damage in tort, for money owing on contract, for breach of contract and for taking or damaging private property for public use without payment of just compensation (the so-called "inverse condemnation" action). This study relates exclusively to legal provisions governing claims in the foregoing categories. Excluded from the scope of the study, therefore, are such provisions as the following:

- (1) Provisions governing claims for refund of taxes, assessments, fees, etc. Such provisions are frequently integrated with special procedures governing the assessment, levy and collection of revenue. They are separate and independent from the tort and contract claims provisions and do not create problems of the same nature and significance as the claim provisions embraced by the report.
- (2) Provisions governing notices and claims in connection with mechanics' and materialmen's lien procedures or their statutory counterparts applicable to public construction contracts.
- (3) Provisions governing aid rendered under public assistance programs.
- (4) Claims of public officers and employees arising under the Workmen's Compensation law.
- (5) Provisions governing payment of benefits under pension and retirement systems.
- (6) Provisions for payment of interest and principal on government bonds.

\* This study was made at the direction of the Law Revision Commission by Professor Arvo Van Alstyne of the School of Law, University of California at Los Angeles.

There seems to be no adequate generic word for referring collectively to statutes, city charters and ordinances. Since claims are governed by legal requirements of all three types, the phrases "claims statutes" and "claims provisions" are used interchangeably herein to refer to all forms of legal claim presentation requirements as a class. For the sake of convenience, the quoted phrases are used only to refer to provisions governing presentation of claims against public agencies; the terms "employee claim statute" or "employee claim provision" are utilized to identify generically requirements claims which are prerequisite to suit against a public employee.

### LEGAL AND HISTORICAL BACKGROUND

Requirements that certain kinds of claims against public entities be presented in writing to designated officers within a specific time limit as a prerequisite to payment and as a condition precedent to maintaining an action to enforce the claim are purely statutory in nature.<sup>1</sup> They are found in the law of many states<sup>2</sup> and are uniformly held to be valid and constitutional procedural conditions precedent to liability.

Claim statutes are not a recent innovation in California law. More than a century ago the County Government Act of 1855 provided that "no person shall sue a county in any case, or for any demand, unless he or she shall first present his or her claim or demand to the Board of Supervisors for allowance."<sup>3</sup> This provision later provided the basis for Section 4072<sup>4</sup> of the Political Code adopted in 1872 and is also reflected in the County Government Acts of 1883,<sup>5</sup> 1891<sup>6</sup> and 1893.<sup>7</sup> It may be regarded as the lineal ancestor of Sections 29700 *et seq.* of our present Government Code which governs presentation of claims against counties.

Similarly, the Political Code contained provisions governing claims against the State,<sup>8</sup> these, in turn, were based upon earlier claim statutes adopted prior to the codes.<sup>9</sup> The detailed and repetitious claims procedures established for cities of various classes by the Municipal Corporations Act of 1883<sup>10</sup> had their earlier counterparts in claims sections of municipal charters, such as the San Francisco Consolidation Act of 1856<sup>11</sup> and the Gilroy Charter of 1870.<sup>12</sup> Claims procedures prescribed by ordinances over a half century ago are still in effect,<sup>13</sup> attesting the longevity of such requirements, and city charter claim provisions adopted before the turn of the century or soon thereafter have survived unchanged to this day.<sup>14</sup>

<sup>1</sup> 17 McQUILLIN, MUNICIPAL CORPORATIONS § 48.02 (3d ed. 1950).

<sup>2</sup> *Ibid.*

<sup>3</sup> Cal. Stat. 1855, c. 47, § 24, p. 56.

<sup>4</sup> Reenacted in 1907 as CAL. POL. CODE § 4075, Cal. Stat. 1907, c. IV, § 4075, p. 379.

<sup>5</sup> Cal. Stat. 1883, c. 75, § 41, p. 312.

<sup>6</sup> Cal. Stat. 1891, c. 216, § 41, p. 311.

<sup>7</sup> Cal. Stat. 1893, c. 234, § 41, p. 363.

<sup>8</sup> CAL. POL. CODE §§ 660, 663-64 (1872).

<sup>9</sup> Cal. Stat. 1858, c. 257, §§ 8-11, pp. 213-14; Cal. Stat. 1869-70, c. 390, p. 544.

<sup>10</sup> Cal. Stat. 1883, c. 49, §§ 91-97, 266-69, 371, 423, 526, 624, 766, 803, 864, pp. 93 *et seq.*

<sup>11</sup> Cal. Stat. 1856, c. 125, § 84, p. 170. See also SACRAMENTO CHARTER, Cal. Stat. 1851, c. 89, § 12, p. 391.

<sup>12</sup> Cal. Stat. 1869-70, c. 180, § 11, p. 266.

<sup>13</sup> COVINA ORD. No. 6, adopted Sept. 10, 1901; ESCONDIDO ORD. No. 16, adopted 1889.

<sup>14</sup> EUREKA CHARTER, Cal. Stat. 1895, c. 5, §§ 168-69, 173, 179, pp. 398-401; SAN BERNARDINO CHARTER, Cal. Stat. 1905, c. XV, §§ 135, 138, 236-37, pp. 962-63, 977.

Claims presentation procedure has thus been a familiar feature of the California legal scene from the very beginning of the State's history. As early as 1857 the Supreme Court held that failure to allege compliance with an applicable claim statute rendered a complaint wholly insufficient to state a cause of action against a public agency.<sup>15</sup> The claims statutes, however, developed along *ad hoc* lines with no attempt being made to develop any uniform claim procedure applicable to all levels of government. As more and more cities adopted freeholder charters claims provisions were often incorporated in them. Other cities enacted ordinances to regulate claims procedure. As special districts increased in number many were created by special legislation which included claims filing requirements; other districts were created under general enabling statutes which may or may not have provided for filing of claims. The proliferation of claims statutes was characterized by lack of any consistent or widespread agreement on either basic policy or detailed treatment. The result is extreme non-uniformity multiplied and scattered throughout many independent statutes, city charters and ordinances.

Until relatively recent years the piecemeal establishment of diverse and sometimes inconsistent claim requirements appears to have caused only occasional difficulties resulting in litigation. However, a great upsurge in reported cases relating to claim requirements began in the late 1920's and has continued to this day. The reasons for this development are not difficult to identify. The population boom and its attendant problems, the growing complexity of society and the increasingly pervasive role which government began to assume, particularly at the municipal level, all tended to increase the volume of claims by citizens against governing bodies.<sup>16</sup> But even more importantly, it was during this period of roughly the past three decades that the law of California experienced an immense expansion of the previously narrow limits of governmental liability in tort.

No attempt can be made within the scope of this report to recount in detail the various developments of public liability in tort.<sup>17</sup> Some of the principal statutory features should be briefly mentioned, however, in order to better understand the impact of the ever-enlarging substantive liability of governmental agencies on claims procedure. The basic rule of sovereign immunity from liability for torts committed in a "governmental" as distinguished from "proprietary" capacity<sup>18</sup> gave way to its first major statutory modification<sup>19</sup> when in 1923 the Public Liability Act<sup>20</sup> was adopted. This statute which is today found in the Government Code<sup>21</sup> declared cities, counties and school districts liable for "injuries to persons and property resulting from the danger-

<sup>15</sup> McCann v. Sierra County, 7 Cal. 121 (1857).

<sup>16</sup> See David, *Municipal Liability in Tort in California*, 6 So. CAL. L. REV. 269 (1933).

<sup>17</sup> An extremely detailed and careful account covering the period up to 1933 is found in a series of articles by Leon David, now Judge of the Superior Court of Los Angeles County. See David, *Municipal Liability in Tort in California*, 6 So. CAL. L. REV. 269 (1933) and 7 So. CAL. L. REV. 48, 214, 295, 372 (1933-34).

<sup>18</sup> See *Chafor v. Long Beach*, 174 Cal. 478, 163 Pac. 670 (1917).

<sup>19</sup> Only one previous statutory waiver had occurred which covered damages resulting from mob or riot. Cal. Stat. 1867-68, c. 344, p. 418, later codified as CAL. POL. CODE § 4452 (1944), and today found as CAL. GOVT. CODE §§ 50140-45. An attempt in 1911 to waive immunity for injuries resulting from defective public property was held to be unconstitutional for want of a sufficient title. *Brunson v. Santa Monica*, 27 Cal. App. 89, 148 Pac. 950 (1915).

<sup>20</sup> Cal. Stat. 1923, c. 328, p. 675.

<sup>21</sup> CAL. GOVT. CODE § 53051.

ous or defective condition of public streets, highways, buildings, grounds, works and property" when specified conditions of notice and negligence existed and authorized them to insure against such liability. Since the statute created liability where none had existed before and also created a large new body of potential claims the Legislature in 1931 saw fit to enact a special claims statute<sup>22</sup> governing only claims arising under the Public Liability Act of 1923.

The second major statutory development related to torts involving the operation of motor vehicles. Prior to 1929 municipal liability for motor vehicle accidents depended upon whether the vehicle was engaged in a proprietary function or not.<sup>23</sup> In that year Section 1714½ was added to the Civil Code<sup>24</sup>—today, Section 400 of the Vehicle Code—imposing liability upon the State, counties, cities, school districts and other districts and political subdivisions of the State for the negligence of their officers and employees in the operation of motor vehicles in the course of official duty. As the number of automobiles and trucks and the corresponding volume of traffic increased this waiver of liability also resulted in an ever larger volume of tort claims against all levels of government.

The foregoing statutory developments affecting governmental liability were accompanied by progressive judicial curtailment of the much-criticized immunity doctrine. The availability of the "inverse condemnation" theory as a technique to circumvent governmental immunity for taking or damaging property was established by several important decisions.<sup>25</sup> By liberal interpretation the Public Liability Act has been stretched to cover situations not obviously within its language.<sup>26</sup> There is no longer any doubt that the State is liable for negligence in the course of proprietary activities;<sup>27</sup> and prior judicial intimations<sup>28</sup> that a county's functions are exclusively governmental and hence can never give rise to tort liability in the absence of statute have been expressly disapproved by the Supreme Court.<sup>29</sup>

This steady expansion of the scope of governmental liability inevitably brought into operation in an increasing number of cases the existing claims statutes. The large volume of reported decisions involving claims procedure in the past 34 years, since adoption of the Public Liability Act of 1923, attests to the practical difficulties which claimants increasingly encountered in seeking to follow the appropriate

<sup>22</sup> Cal. Stat. 1931, c. 1167, p. 2475, now CAL. GOVT. CODE §§ 53050-56.

<sup>23</sup> See David, *Municipal Liability in Tort in California*, 7 So. CAL. L. REV. 372, 382-85 (1934).

<sup>24</sup> Cal. Stat. 1929, c. 260, p. 565.

<sup>25</sup> *Rose v. State*, 19 Cal.2d 713, 123 P.2d 505 (1942), holding CAL. CONST. Art. I, § 14 to be a self-enforcing basis for liability for which no immunity exists at any level of government. See also *Heimann v. City of Los Angeles*, 30 Cal.2d 746, 185 P.2d 597 (1947); *House v. Los Angeles County Flood Control Dist.*, 25 Cal.2d 384, 153 P.2d 950 (1944).

<sup>26</sup> See *Peters v. San Francisco*, 41 Cal.2d 419, 260 P.2d 55 (1953) (constructive notice of defect is sufficient); *Gove v. Lakeshore Homes Ass'n*, 54 Cal. App.2d 155, 128 P.2d 716 (1942) (erosion from discharging sewer outlet held actionable); *Bauman v. San Francisco*, 42 Cal. App.2d 144, 108 P.2d 989 (1940) (negligent supervision of playground activities treated as creating a dangerous and defective condition); *Cressey v. City of Los Angeles*, 10 Cal. App.2d 745, 53 P.2d 172 (1935) (imputed notice); *Barrett v. City of Sacramento*, 128 Cal. App. 708, 18 P.2d 356 (1933) (broken depression in sidewalk three-eighths of an inch deep, held actionable).

<sup>27</sup> *Guidi v. State*, 41 Cal.2d 523, 262 P.2d 3 (1953); *People v. Superior Court*, 29 Cal.2d 754, 178 P.2d 1 (1947).

<sup>28</sup> *Dillwood v. Riecks*, 42 Cal. App. 602, 184 Pac. 35 (1919).

<sup>29</sup> *Guidi v. State*, 41 Cal.2d 623, 627, 262 P.2d 3, 5 (1953).

procedural route to realization of the newly recognized substantive rights. An exhaustive search of the reports covering the seventy-three years from 1850 to 1923 has disclosed but 38 supreme court and 11 district court of appeal decisions or a total of 49 cases which involve the interpretation, application or effect of a claims provision. Since 1923 on the other hand—a period less than one-half as long—there have been 39 supreme court decisions and 135 decisions of the district courts of appeal (not counting opinions later vacated upon grant of hearing by the supreme court) for a total of 174 cases relating to claims statutes.

This nearly four-fold increase in reported cases over the past three decades suggests that there are serious deficiencies in the present claims statutes. Such provisions, being fundamentally procedural in nature, should conform to the desiderata of simplicity and effectiveness which society has a right to expect of the means by which legally recognized rights are enforceable. Unfortunately, the existing pattern of claims provisions fails to meet these standards and in consequence claims procedures have been termed by the Supreme Court as "traps for the unwary"<sup>30</sup> and by a legal writer on the subject as "a bramble patch of legislation which, in many cases, completely chokes off . . . substantive rights."<sup>31</sup>

## SURVEY OF CLAIMS PROVISIONS

### Coverage of Existing Claims Provisions

Legal requirements governing the filing of claims are surprisingly numerous in California. They are to be found in five sources: (1) the California codes, (2) the uncodified general laws of the State, (3) city charters, (4) municipal ordinances and (5) rules and regulations promulgated by designated governmental agencies pursuant to statutory authorization.

In the pages immediately following the various statutory,<sup>32</sup> charter and ordinance claims provisions are listed in terms of the type of governmental agency to which they apply with a brief description of the nature of the claims covered. For convenience in referring to them later in this study, all claims provisions listed are numbered consecutively.

<sup>30</sup> *Stewart v. McCollister*, 37 Cal.2d 203, 231 P.2d 48 (1951).

<sup>31</sup> *Ward, Requirements for Filing Claims Against Governmental Units in California*, 38 CALIF. L. REV. 259, 271 (1950).

<sup>32</sup> This report was prepared during the 1957 General Session of the California Legislature. It therefore collates and analyzes the statute law existing prior to changes enacted at that session. The several new enactments relating to claims do not materially alter either the analysis or the conclusions reached in the report, although in a few instances minor details are affected. Among the changes adopted in the statutes of 1957 are:

- (a) Chapter 99, amending Government Code Section 29714 relating to rejection of claims against counties;
- (b) Chapter 252, adding a new Section 12330 to the Public Utilities Code, to provide for filing of claims against municipal utility districts;
- (c) Chapter 314, adding a new Section 29700.1 to the Government Code, relating to itemization of certain types of claims against counties;
- (d) Chapter 518, creating the Contra Costa County Water Agency, and incorporating in Section 20 thereof the county claims procedure as applicable to all claims against the agency.

## Provisions Relating to Claims Against the State

TABLE I

## STATUTES GOVERNING CLAIMS AGAINST THE STATE

Code	Section	Nature of claim
1. AGRIC.	242	Claims for compensation for slaughter of diseased cattle
2. BUS. & PROF.	19598	Claims for winning shares of pari-mutuel pools on horse races
3. FISH & GAME	1122	Claims for damages arising from operation of leased fish breederies and hatcheries
4. GOVT.	9130	Claims against Senate Contingent Fund, Assembly Contingent Fund and Legislative Printing Fund
5. GOVT.	14031	Claims against Division of Architecture Revolving Fund
6. GOVT.	14035	Claims against Water Resources Revolving Fund
7. GOVT.	14350-53	Claims for refund of forfeited deposit on ground of clerical mistake in contractor's bid
8. GOVT.	15864	Claims of State agencies for expenses under Property Acquisition Law
9. GOVT.	16002	Claims for which appropriations have been made or for which State funds are available
10. GOVT.	16020	Claims the settlement of which is provided by law but for which no appropriation has been made, no fund is available, or an appropriation or fund has been exhausted
11. GOVT.	16021, 16041-54	Claims the settlement of which is not otherwise provided by law, including claims on express contract, in negligence and in inverse condemnation
12. GOVT.	16372	Claims against Special Deposit Fund
13. MIL. & VET.	188	Claims for supplies and maintenance of State militia in declared emergency
14. MIL. & VET.	1033	Claims against Veterans' Home of California for supplies, salaries, etc.
15. MIL. & VET.	1086.1	Claims for medical and hospital care given to members of Women's Relief Corps Home
16. MIL. & VET.	1089	Claims for aid under c. 2, div. 5 of Mil. & Vet. Code (Woman's Relief Corps Home)
17. MIL. & VET.	1586-87	Claims for taking or damaging of property or for services rendered at instance of Governor in declared extreme emergency
18. PENAL	1241	Claims for fees for appointed counsel in criminal appeals
19. PENAL	4900-06	Claims for indemnity by erroneously convicted persons after pardon
20. PUB. RES.	4004	Claims for damages arising from fire prevention and fire fighting activities of State Forester

In addition to the statutes cited, persons having claims against the State for which appropriations have been made or for which state funds are available must conform to the rules and regulations "for the presentation and audit of claims" promulgated by the State Board of Control under authority conferred by Section 16002 of the Government Code. These rules which embrace detailed requirements as to time, form and procedure for presentation are found in Title 2, Division 2, Chapter 1 of the California Administrative Code.

#### Provisions Relating to Claims Against Counties

TABLE II  
STATUTES GOVERNING CLAIMS AGAINST COUNTIES

Code	Section	Nature of Claim
21. AGRIC.	439.56	Claims for damages from killing of livestock by dogs
22. EDUC.	20947	Claims for assistance given to blind pupils attending California School for the Blind
23. GOVT.	29700-16	All claims in contract or tort payable out of county funds
24. GOVT.	53050-53	Claims for injury to person or property as a result of the dangerous or defective condition of public property
25. H. & S.	257	Claims for services given physically handicapped children by State Dept. of Public Health
26. H. & S.	13051-52	Claims for expenses reasonably incurred in furnishing fire fighting services
27. MIL. & VET.	945-46	Claims for burial expenses of veterans and their widows

It will be observed that *county* charters and *county* ordinances are not listed as sources in which claim filing requirements are to be found. The reasons are twofold. First, Section 7½ of Article XI of the California Constitution, which governs county charters, does not authorize the subject of claims procedure to be included in such charters.<sup>33</sup> Second, the filing of claims against counties is already covered in comprehensive fashion by legislation thereby making county ordinances on the subject both unnecessary and superseded by State law.<sup>34</sup>

<sup>33</sup> Provisions of a county charter which are not authorized expressly or impliedly by § 7½ of Art. XI are invalid. *Jones v. DeShields*, 137 Cal. 331, 202 Pac. 137 (1921); *Wilkinson v. Lund*, 102 Cal. App. 767, 283 Pac. 385 (1929).

<sup>34</sup> *Cf. Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 558 (1947). See also *Thompson v. County of Los Angeles*, 140 Cal. App. 73, 35 P.2d 185 (1934).

## Provisions Relating to Claims Against Cities

TABLE III

STATUTORY AND CHARTER PROVISIONS GOVERNING CLAIMS AGAINST CITIES<sup>35</sup>

Code or charter provision	Nature of claim	Authority
28. GOVT. CODE §§ 53050-53	Claims for injury to person or property as result of dangerous or defective condition of public property	
28a. GOVT. CODE § 39586	Claims for damages arising from negligence of city officers or employees in abatement of a nuisance	
29. H. & S. CODE §§ 13051-52	Claims for expenses reasonably incurred in furnishing fire fighting services	
30. ALAMEDA CHARTER §§ 4-5	All demands	Stat. 1937, p. 2887
31. ARCADIA CHARTER § 1114	Any claim for money or damages	Stat. 1951, p. 4538
32. BERKELEY CHARTER § 61	Any claim for money	Stat. 1923, p. 1547, as amended, CAL. GEN. LAWS Act 729 (Deering Supp. 1957)
33. BURBANK CHARTER § 67	All claims for damages	Stat. 1937, p. 2750, as amended, CAL. GEN. LAWS Act 1010 (Deering Supp. 1957)
34. CHULA VISTA CHARTER § 1115	Any claim for money or damages	Stat. Ex. Sess. 1949, p. 144
35. COMPTON CHARTER § 1418	Any claim for money or damages	Stat. 1948, p. 267
36. CULVER CITY CHARTER § 1410	Any claim for money or damages	Stat. 1947, p. 3406
37. EUREKA CHARTER § 179	Any claim for money or damages	Stat. 1895, p. 400
38. FRESNO CHARTER § 58	All claims and demands	Stat. 1947, p. 3630, as amended, CAL. GEN. LAWS Act 2762a (Deering Supp. 1957)
39. GILROY CHARTER § 11	All accounts and demands	Stat. 1869-70, p. 266
40. GLENDALE CHARTER Art. XI §§ 3, 5	All demands against the city	Stat. 1953, § 3, p. 4028, as amended, Stat. 1921, § 5, p. 2221, CAL. GEN. LAWS Act 3017 (Deering Supp. 1957)
41. GRASS VALLEY CHARTER Art. X § 12	Any claim for money or damages	Stat. 1952, p. 246
42. HAYWARD CHARTER § 1212	Any claim for money or damages	Stat. 1956, p. 178
43. HUNTINGTON BEACH CHARTER Art. XV § 1	Any claim for money or damages	Stat. 1937, p. 2997
44. INGLEWOOD CHARTER Art. XXXVI § 27	All claims for damages of any kind whatsoever	Stat. 1927, p. 2249
45. LONG BEACH CHARTER § 338	All claims for damages	Stat. 1921, p. 2151

<sup>35</sup> Citations to charters are to the volume and page of the statutes where the claim provisions are found. Where the words "as amended" are used, the reference is to the charter as amended by the voters and approved by concurrent resolution of the Legislature.

TABLE III—Continued

## STATUTORY AND CHARTER PROVISIONS GOVERNING CLAIMS AGAINST CITIES

Code or charter provision	Nature of claim	Authority
46. LOS ANGELES CHARTER §§ 363, 376	Every claim for money or damages except claims for overpayment of taxes	Stat. 1941, § 363, p. 3493, as amended; Stat. 1927, § 376, p. 2014, as amended; CAL. GEN. LAWS Act 4410 (Deering Supp. 1957)
47. LOS ANGELES CHARTER § 112½	Claims for compensation by wrongfully suspended or discharged employee	Stat. 1937, p. 2858
48. MARYSVILLE CHARTER Art. VI § 7	Any claim for money or damages	Stat. 1954, p. 204
49. MODESTO CHARTER § 1312	Any claim for money or damages	Stat. 1951, p. 4332
50. MONTEREY CHARTER § 76½	Claims for personal injury or personal property damage as result of dangerous or defective condition of any public street, place or building of city	Stat. 1935, p. 2655, as added, CAL. GEN. LAWS Act 5062 (Deering Supp. 1957)
51. MOUNTAIN VIEW CHARTER § 1110	Any claim for money or damages	Stat. 1952, p. 185
52. OROVILLE CHARTER § 7	All demands	Stat. 1933, p. 2928
53. PACIFIC GROVE CHARTER Art. 45	Every demand	Stat. 1955, p. 4081
54. PASADENA CHARTER Art. 11 § 12	Any claim for money or damages whether founded on tort or contract	Stat. 1933, p. 2783, as added, CAL. GEN. LAWS Act 5802 (Deering Supp. 1957)
55. PETALUMA CHARTER Art. 9 § 64	All claims and demands	Stat. 1951, p. 4715, as amended, CAL. GEN. LAWS Act 5860 (Deering 1954)
56. PORTERVILLE CHARTER § 48	All demands against city	Stat. 1927, p. 2193
57. REDONDO BEACH CHARTER § 19.3	Any claim for money or damages	Stat. 1949, p. 3010
58. REDWOOD CITY CHARTER § 88	Any claim for money or damages	Stat. 1955, p. 3836, as amended, CAL. GEN. LAWS Act 6604a (Deering Supp. 1957)
59. RIVERSIDE CHARTER §§ 1113, 1115	All claims for damages and all other demands against city	Stat. 1953, pp. 3904, 3905
60. ROSEVILLE CHARTER §§ 7.17, 7.18	Any claim for money or damages	Stat. 1955, p. 3738
61. SACRAMENTO CHARTER § 70	Any claim for money	Stat. 1st Ex. Sess. 1940, p. 320, as amended, CAL. GEN. LAWS Act 6699 (Deering Supp. 1957)
62. SALINAS CHARTER §§ 87, 108	Any claim for money or damages	Stat. 1919, pp. 1417, 1422
63. SAN BERNARDINO CHARTER §§ 135, 138, 236, 237	Claims and demands of every kind against city	Stat. 1905, pp. 962, 963, 977
64. SAN BUENAVENTURA CHARTER Art. XVII §§ 4, 6	Any claim or demand for money or damages	Stat. 1933, pp. 2891, 2892

TABLE III—Continued

## STATUTORY AND CHARTER PROVISIONS GOVERNING CLAIMS AGAINST CITIES

Code or charter provision	Nature of claim	Authority
65. SAN DIEGO CHARTER § 110	Claims for damages because of negligence; claims for money due because of contract or operation of law	Stat. 1953, p. 4005, as amended, CAL. GEN. LAWS Act 6887 (Deering Supp. 1957)
66. SAN FRANCISCO CHARTER § 87	All claims for damages	Stat. 1935, p. 2421, as amended, CAL. GEN. LAWS Act 6922 (Deering Supp. 1957)
67. SAN LEANDRO CHARTER § 1117	Any claim for money or damages	Stat. Ex. Sess. 1949, p. 84
68. SAN LUIS OBISPO CHARTER § 1213	Any claim for money or damages	Stat. 1955, p. 4131
69. SANTA ANA CHARTER § 614	All claims for money or damages	Stat. 1953, p. 3757
70. SANTA BARBARA CHARTER §§ 136, 137, 138, 142	Any claim for money or damages	Stat. 1927, pp. 2100, 2101
71. SANTA CLARA CHARTER §§ 1315, 1317	Any claim for money or damages	Stat. 1951, pp. 4426, 4427
72. SANTA CRUZ CHARTER § 1426	Any claim for money or damages	Stat. 1948, p. 343
73. SANTA MONICA CHARTER § 1515	Any claim for money or damages	Stat. 1947, p. 3338
74. SUNNYVALE CHARTER § 1316	Any claim for money or damages	Stat. 1949, p. 3275
75. TORRANCE CHARTER Art. XVIII § 9	Any claim for money or damages	Stat. 1951, p. 4345, as amended, CAL. GEN. LAWS Act 8600 (Deering Supp. 1957)
76. VALLEJO CHARTER § 219	Any claim for money or damages	Stat. 2d Ex. Sess. 1946, p. 418
77. VISALIA CHARTER Art. XI §§ 4, 6	All demands against the city	Stat. 1923, pp. 1483, 1484
78. WHITTIER CHARTER §§ 1113, 1115	All claims for damages and all other demands against the city	Stat. 1955, pp. 3688, 3689

**TABLE IV**  
**ORDINANCES GOVERNING CLAIMS AGAINST CITIES**

In response to a questionnaire sent by the writer to 142 cities in the State with a population in excess of 5,000 requesting information as to ordinance claims provisions, answers were received from 120. Of these cities 83 reported that no ordinance relating to claims was in effect whereas 37 cities advised that the following ordinances had been adopted and were in operation :<sup>30</sup>

Claims provision	Nature of claim
79. ALHAMBRA ORD. 2618 (May 4, 1954)	All claims
80. ANAHEIM MUNIC. CODE § 4280.1	Claims for damages resulting from dangerous and defective condition of city property or from operation of city motor vehicle
81. BUENA PARK MUNIC. CODE §§ 2632-38	All claims
82. CARLSBAD ORD. 1005-A (Nov. 2, 1954)	All claims for damages
83. CHICO MUNIC. CODE §§ 100-104	All claims
84. COLTON ORD. 611 (Dec. 2, 1940)	Claims for damages resulting from negligence
85. CONCORD MUNIC. CODE §§ 2600-01	Every demand
86. CORONA ORD. 580 (July 5, 1950)	All claims not found on contract
87. CORONADO ORD. 650 (March 6, 1939)	Claims arising out of contract and claims for damages
88. COSTA MESA ORD. 68 (Nov. 1, 1954)	All claims
89. COVINA ORD. 6 (Sept. 10, 1901)	All claims
90. EL CENTRO ORD. 57-1 (Jan. 23, 1957)	Claims founded on contract
91. ESCONDIDO ORD. 316 (July 2, 1936)	Claims based on negligence other than dangerous and defective conditions
92. GLENDALE MUNIC. CODE §§ 2-199 to 2-204	Claims for damages founded in tort
93. LAKEWOOD MUNIC. CODE §§ 2520-31	All claims
94. LA MESA ORD. 149 (Dec. 10, 1929)	All claims
95. LA VERNE ORD. CODE §§ 2580-81	Claims for damages resulting from dangerous and defective condition of city property
96. MADERA ORD. 181 (June 7, 1915) as amended by Ord. 164 N.S. (June 19, 1950)	All claims
97. MONROVIA ORD. 1204 (Feb. 2, 1954)	All claims
98. MONTEBELLO ORD. 444 (Nov. 22, 1948)	All claims
99. MONTEREY PARK MUNIC. CODE §§ 2630-40	All claims
100. ONTARIO ORD. 661 (Nov. 13, 1940)	All claims
101. ORANGE MUNIC. CODE §§ 2600-01.2	All claims
102. OXNARD MUNIC. CODE §§ 1630-31 (as amended Aug. 5, 1954)	Claims in tort and contract
103. PACIFIC GROVE MUNIC. CODE § 1-202	Claims for damages resulting from dangerous and defective condition of city property
104. PALO ALTO ADMIN. CODE §§ 408-08.7	Claims in contract and for damages

<sup>30</sup> The compilation of ordinances governing claims against cities does not reflect any subsequent changes made in 1957 or thereafter.

## TABLE IV—Continued

## ORDINANCES GOVERNING CLAIMS AGAINST CITIES

Claims provision	Nature of claim
105. PASADENA ORD. 1924 (as amended Feb. 1, 1942)	All claims
106. REDDING MUNIC. CODE §§ 30-31	All Claims
107. RICHMOND ORD. 987 (June 25, 1945)	All claims
108. ROSEVILLE ORD. 211 (June 21, 1933)	All claims
109. SAN BUENAVENTURA MUNIC. CODE §§ 1421-26	Claims in tort or contract
110. SAN MATEO ORD. 610 (July 21, 1947)	Contract claims and damage claims resulting from dangerous and defective condition of city property
111. SANTA MARIA ORD. 72 (Dec. 16, 1916)	All claims
112. SOUTH GATE ORD. 301 (July 29, 1935)	All claims
113. SOUTH PASADENA ORD. 798 (Dec. 8, 1937)	Claims for damages resulting from dangerous and defective condition of city property or from negligence
114. UPLAND ORD. 251 (Sept. 18, 1930)	All claims
115. WATSONVILLE ORD. 519 N.C.S. (Nov. 20, 1951)	All claims

## Provisions Relating to Claims Against Districts

TABLE V

## STATUTORY PROVISIONS GOVERNING CLAIMS AGAINST DISTRICTS

Statutory provision	Nature of claim	Authority
116. GOVT. CODE §§ 29700-16 [Districts the funds of which are under control of the county board of supervisors]	All claims in contract or tort	
117. GOVT. CODE §§ 53050-53 [School districts]	Claims for injury to person or property as result of dangerous or defective condition of school district property	
118. EDUC. CODE § 1007 [School districts]	Claims for injury to person or property arising because of negligence of school district or its officers or employees	
119. EDUC. CODE § 7220 [School districts]	Claims for tuition of pupils attending school in adjoining state	
120. GOVT. CODE §§ 61628-31 [Community services districts]	Claims for injury to person or property as result of dangerous or defective condition of district-controlled property; or any act or omission of district officers or employees	
121. HARB. & NAV. CODE § 5548 [Municipal port districts]	Any claim for money or damages <sup>27</sup>	
122. HARB. & NAV. CODE § 6370 [Port districts]	All claims and demands against district	
123. HARB. & NAV. CODE § 6960 [River port districts]	All claims against district	
124. H. & S. CODE § 4817 [County sanitation districts]	All claims against district operating fund	
125. H. & S. CODE § 5617 [County sewerage and water districts]	All claims against district operating fund	
126. H. & S. CODE § 6096 [Regional sewage disposal districts]	All claims against district operating fund	
127. H. & S. CODE §§ 13051-52 [County fire protection districts]	Claims for expenses reasonably incurred furnishing fire fighting services	
127a. PUB. UTIL. CODE §§ 12830-33 [Municipal utility districts]	Claims for injury to person or property as result of any dangerous or defective condition of any property under control of the district; or negligence of district officers or employees	
128. PUB. UTIL. CODE §§ 16682-86 [Public utility districts]	All claims against district	
129. WATER CODE §§ 22727-29 [Irrigation districts]	Claims for injury to person or property as result of any dangerous or defective condition of any property under control of the district; or negligence of district officers or employees	
130. WATER CODE §§ 24601-04 [Irrigation districts]	Claims by officers and employees for reimbursement for mileage and expenses	

<sup>27</sup> Although Harbor and Navigation Code Sections 5000-601 were repealed in 1953, the repealing act expressly declared the provisions thereof to be still effective as to any existing municipal port districts. Cal. Stat. 1953, c. 1084, § 1, p. 2574.

## TABLE V—Continued

## STATUTORY PROVISIONS GOVERNING CLAIMS AGAINST DISTRICTS

Statutory provision	Nature of claim	Authority
131. WATER CODE §§ 31084-89 [County water districts]	Claims for injury to person; or for taking, injury, damage or destruction of property as result of any dangerous or defective condition of any property controlled by district; or any act or omission of district officers or employees	
132. WATER CODE §§ 35752-54 [California water districts]	Claims for injury to person or property as result of dangerous or defective condition of property under control of district; or negligence of district officers or employees	
133. WATER CODE § 50606 [Reclamation districts]	Claims by trustees for services or expenses incurred	
134. WATER CODE §§ 50955-57 [Reclamation districts]	Claims for clerk hire	
135. WATER CODE § 56117 [County drainage districts]	Claims against district operating fund	
136. Alameda County Flood Control and Water Conservation District Act § 29	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1949, p. 2260, as amended, CAL. GEN. LAWS Act 205 (Deering Supp. 1957)
137. Contra Costa County Flood Control and Water Conservation District Act § 30	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1951, p. 3658, as amended, CAL. GEN. LAWS Act 1656 (Deering Supp. 1957)
137a. Contra Costa County Water Agency Act § 20	Claims against agency	Stat. 1957, p. 1553
138. Del Norte County Flood Control District Act § 31	Claims against district arising out of contract, tort or inverse eminent domain	Stat. 1955, p. 633, as amended, CAL. GEN. LAWS Act 2040 (Deering Supp. 1957)
139. Fairfield-Suisun Sewer District Act § 53	All demands against district	Stat. 1951, p. 556
140. Humboldt County Flood Control District Act § 31	Claims against district arising out of contract, tort or inverse eminent domain	Stat. 1945, p. 1773, as amended, CAL. GEN. LAWS Act 3515 (Deering Supp. 1957)
141. Kings River Conservation District Act §§ 15, 16	Claims for injury to person; or for taking, injury, damage or destruction of property as result of dangerous or defective condition of any property owned, operated or controlled by district; or any act or omission of district officers or employees	Stat. 1951, p. 2508, as amended, CAL. GEN. LAWS Act 4025 (Deering Supp. 1957)
142. Lake County Flood Control and Water Conservation District Act § 8	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1951, p. 3526, as amended, CAL. GEN. LAWS Act 4145 (Deering Supp. 1957)
143. Levee District No. 1 of Sutter County Act §§ 3, 11	All bills and accounts against levee district for contract or otherwise	Stat. 1873-74, pp. 512, 514, as amended, CAL. GEN. LAWS Act 8368a (Deering 1954)
144. Levee Districts and Erection of Protection Works Act § 11	All claims for charges and expenses of district; and for land and improvements taken or damaged	Stat. 1905, p. 331, as amended, CAL. GEN. LAWS Act 4284 (Deering 1954)

TABLE V—Continued

## STATUTORY PROVISIONS GOVERNING CLAIMS AGAINST DISTRICTS

Statutory provision	Nature of claim	Authority
145. Los Angeles County Flood Control Act § 14½	All claims against district	Stat. 1915, p. 1502, as amended, CAL. GEN. LAWS Act 4463 (Deering Supp. 1957)
146. Lower San Joaquin Levee District Act § 11	All claims against district	Stat. 1955, p. 2051, as amended, CAL. GEN. LAWS Act 4298 (Deering Supp. 1957)
147. Marin County Flood Control and Water Conservation District Act § 29	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1953, p. 1933, as amended, CAL. GEN. LAWS Act 4599 (Deering Supp. 1957)
148. Mendocino County Flood Control and Water Conservation District Act § 8	Claims against district	Stat. 1949, p. 1815, as amended, CAL. GEN. LAWS Act 4830 (Deering Supp. 1957)
149. Metropolitan Water District Act § 6.7	Any claim for money or damages	Stat. 1927, p. 702, as amended, CAL. GEN. LAWS Act 9129 (Deering Supp. 1957)
150. Montalvo Municipal Improvement District Law § 53	All demands against district	Stat. 1955, p. 1016, as amended, CAL. GEN. LAWS Act 5239a (Deering Supp. 1957)
151. Monterey County Flood Control and Water Conservation District Act § 30	Claims arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1947, p. 1755, as amended, CAL. GEN. LAWS Act 5064 (Deering Supp. 1957)
152. Morrison Creek Flood Control District Act § 8	All claims against district	Stat. 1953, p. 3535, as amended, CAL. GEN. LAWS Act 6749 (Deering Supp. 1957)
153. Municipal Water District Act of 1911 § 20	Any claim for money or damages	Stat. 1911, p. 1290, as amended, CAL. GEN. LAWS Act 5243 (Deering Supp. 1957)
154. Napa County Flood Control and Water Conservation District Act § 30	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1951, p. 3428, as amended, CAL. GEN. LAWS Act 5275 (Deering Supp. 1957)
155. Protection District Act of 1895 § 9	All claims for charges and expenses and for land or improvements taken or damaged	Stat. 1895, p. 249, as amended, CAL. GEN. LAWS Act 6174 (Deering 1954)
156. Riverside County Flood Control and Water Conservation District Act § 15	All claims against district	Stat. 1945, p. 2147, as amended, CAL. GEN. LAWS Act 6642 (Deering Supp. 1957)
157. The Sacramento County Water Agency Act § 8.1	All claims against agency	Stat. 1st Ex. Sess. 1952, p. 326, as amended, CAL. GEN. LAWS Act 6730a (Deering Supp. 1957)
158. San Benito County Water Conservation and Flood Control District Act § 34	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1953, p. 3298, as amended, CAL. GEN. LAWS Act 6808 (Deering Supp. 1957)
159. San Francisco Bay Area Metropolitan Rapid Transit District Act § 10 (10) <sup>77a</sup>	Claims other than claims based on written contract	Stat. 1949, p. 2180, as amended, CAL. GEN. LAWS Act 7101c (Deering Supp. 1957)

<sup>77a</sup> Cal. Stat. 1957, c. 1056, p. 2290, repealed all but two sections of chapter 1239 of the 1949 statute (*id.* at 2336) and enacted the San Francisco Bay Area Rapid Transit District Act. CAL. PUB. UTIL. CODE §§ 23500-9757. Sections 29060-62 of the Public Utilities Code provide for claims for injury to person or property as a result of any dangerous or defective condition of any property under control of the district or by the negligence of any officer or employee of the district.

TABLE V—Continued

## STATUTORY PROVISIONS GOVERNING CLAIMS AGAINST DISTRICTS

Statutory provision	Nature of claim	Authority
160. San Luis Obispo County Flood Control and Water Conservation District Act § 30	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1945, p. 2443
161. Santa Barbara County Flood Control and Water Conservation District Act § 31	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1955, p. 2024, as amended, CAL. GEN. LAWS Act 7304 (Deering Supp. 1957)
162. Santa Barbara County Water Agency Act § 8.1	All claims against the district	Stat. 1945, p. 2790, as amended, CAL. GEN. LAWS Act 7303 (Deering 1954)
163. Santa Clara County Flood Control and Water Conservation District Act § 30	Claims against district arising out of contract, tort or the taking or damaging of property without compensation	Stat. 1951, p. 3353, as amended, CAL. GEN. LAWS Act 7335 (Deering Supp. 1957)
164. Santa Cruz County Flood Control and Water Conservation District Act § 154	All claims against district	Stat. 1955, p. 2710, as amended, CAL. GEN. LAWS Act 7390 (Deering Supp. 1957)
165. Solano County Flood Control and Water Conservation District Act § 8.1	All claims against district	Stat. 1951, p. 3759, as amended, CAL. GEN. LAWS Act 7733 (Deering Supp. 1957)
166. Solvang Municipal Improvement District Act § 53	All claims against district	Stat. 1951, p. 3681, as amended, CAL. GEN. LAWS Act 5239 (Deering 1954)
167. Sonoma County Flood Control and Water Conservation District Act § 8	All claims against district	Stat. 1949, p. 1798, as amended, CAL. GEN. LAWS Act 7757 (Deering Supp. 1957)
168. Storm Water District Act of 1909 § 19	All claims against current expense fund of district	Stat. 1909, p. 347, as amended, CAL. GEN. LAWS Act 6176 (Deering Supp. 1957)
169. Ventura County Flood Control Act § 13	All claims against district	Stat. 4th Ex. Sess. 1944, p. 186, as amended, CAL. GEN. LAWS Act 8955 (Deering Supp. 1957)
170. Yolo County Flood Control and Water Conservation District Act § 8	All claims against district	Stat. 1951, p. 3777, as amended, CAL. GEN. LAWS Act 9307 (Deering Supp. 1957)

\* \* \* \* \*

In four instances the statute governing a special district contains no explicit reference to claims procedure but does incorporate by reference a body of statute law which includes claims provisions:

171. Avenal Community Services District Law, Stat. 1955, c. 1702, § 3, p. 3127, which incorporates "the provisions of the Community Services District Law, as now or hereafter amended." CAL. GOV. CODE §§ 61628-31 *supra* item 120.
172. Brisbane County Water District Act, Stat. 1st Ex. Sess. 1950, c. 13, § 3, p. 447, which incorporates "the provisions of the County Water District Law, as now or hereafter amended." CAL. WATER CODE §§ 31084-89 *supra* item 131.
173. Donner Summit Public Utility District Act, Stat. 1st Ex. Sess. 1950, c. 15, § 3, p. 450, which incorporates "the provisions of the Public Utility District Act, as now or hereafter amended." CAL. PUB. UTIL. CODE §§ 16682-86 *supra* item 128.
174. Olivehurst Public Utility District Act, Stat. 1st Ex. Sess. 1950, c. 12, § 3, p. 446, which incorporates "the provisions of the Public Utility District Act, as now or hereafter amended." CAL. PUB. UTIL. CODE §§ 16682-86 *supra* item 128.

In a few instances, rule-making authority with respect to claims procedure has been conferred upon district governing boards or other officers. The boards of directors of water replenishment districts, for example, are expressly authorized by Section 60183 of the Water Code to prescribe the manner in which demands shall be "audited and approved." And prior to 1957 the council of the San Francisco Bay Area Metropolitan Rapid Transit District was expressly empowered to "prescribe the procedure for the presentation and payment of claims against the district," although by the same section a maximum period of six months was fixed for filing of claims.<sup>38</sup> The district auditors of port districts<sup>39</sup> and river port districts<sup>40</sup> are expressly authorized by the cited provisions to prescribe the "forms and blanks" upon which claims against such districts must be presented—virtually the power to determine the contents which shall be required of a claim. It is not known whether this rule-making power has been exercised.

#### Cities Not Subject to Claims Statutes

It will be observed from the foregoing tables that the number of separate provisions governing claims against cities and districts is large. Proper perspective, however, can be achieved only by considering also the numbers of cities and districts which are *not* governed by any claims provisions other than Sections 53050 *et seq.* of the Government Code which are applicable to dangerous-and-defective-condition claims against all cities and school districts.

Turning first to the claims provisions of city charters, only 48 of the 65 existing charters, or 74 percent, contain claims filing requirements; 14 are entirely silent on the subject. The remaining three charters merely authorize the adoption of ordinances to govern claims. Although it might be anticipated that those cities without a charter claims procedure would have adopted an ordinance on the subject, this is not always the case. The data can be best summarized in tabular fashion.

TABLE VI

#### CHARTER CITIES WITH NO PROVISION IN CHARTER FOR FILING CLAIMS

Name	Charter	Claims provision in ordinance
1. Albany	Stat. 1927, c. 53	None
2. Alhambra (A)	Stat. 1915, c. 19	Ord. 2618 (May 4, 1954)
3. Alviso	Stat. 1852, c. 137	No information
4. Bakersfield	Stat. 1915, c. 4	None
5. Chico	Stat. 1923, c. 12	Munic. Code §§ 100-104
6. Napa	Stat. 1915, c. 6	No information
7. Oakland	Stat. 1911, c. 20	None
8. Palo Alto	Stat. 1909, c. 13	Admin. Code §§ 408-408.7
9. Piedmont	Stat. 1923, c. 24	None
10. Pomona	Stat. 1911, c. 45	None
11. Richmond	Stat. 1909, c. 18	Ord. 987 (June 25, 1945)
12. San Jose	Stat. 1915, c. 49	None
13. San Mateo	Stat. 1923, c. 4	Ord. 610 (July 21, 1947)
14. San Rafael (A)	Stat. 1913, c. 28	None
15. Santa Rosa	Stat. 1923, c. 6	No information
16. Stockton	Stat. 1923, c. 7	None
17. Watsonville (A)	Stat. 1903, c. 18	Ord. 519 N.C.S. (Nov. 20, 1951)

NOTE: The letter (A) signifies that the charter expressly authorizes the adoption of a claims procedure by ordinance.

<sup>38</sup> Cal. Stat. 1949, c. 1239, § 10(10), p. 2180, as amended, CAL. GEN. LAWS Act 7101c (Deering Supp. 1957). See note 37a *supra*.

<sup>39</sup> CAL. HARB. & NAV. CODE § 6370.

<sup>40</sup> *Id.* § 6960.

As pointed out previously some 83 cities replying to a questionnaire reported that no ordinance governing claims had been adopted. These cities are listed below.

TABLE VII  
CITIES REPORTING NO CLAIMS ORDINANCE IN EFFECT

1. Alameda (C)	22. Fontana	42. Maywood	63. Reedley
2. Albany*	23. Fresno	43. Menlo Park	64. San Anselmo
3. Antioch	24. Glendora	44. Merced	65. San Bruno
4. Azusa	25. Hanford	45. Millbrae	66. San Carlos
5. Bakersfield*	26. Hayward (C)	46. Mill Valley	67. San Fernando
6. Barstow	27. Hillsborough	47. National City	68. San Gabriel
7. Bell	28. Huntington	48. Newark	69. Sanger
8. Benicia	Beach (C)	49. North Sacramento	70. San Jose*
9. Beverly Hills	29. Huntington Park	50. Oakland*	71. San Leandro (C)
10. Brawley	30. Indio	51. Oceanside	72. San Pablo
11. Burlingame	31. Inglewood (C)	52. Oroville (C)	73. San Rafael*
12. Chino	32. Laguna Beach	53. Palm Springs	74. Santa Paula
13. Chula Vista (C)	33. La Habra	54. Palos Verdes Estates	75. Seaside
14. Daly City	34. Lindsay	55. Paso Robles	76. Selma
15. Delano	35. Livermore	56. Petaluma (C)	77. Sierra Madre
16. Dinuba	36. Lodi	57. Piedmont*	78. South San Francisco
17. El Cajon	37. Lompoc	58. Pittsburg	79. Stockton*
18. El Cerrito	38. Los Altos	59. Pomona*	80. Susanville
19. El Monte	39. Lynwood	60. Port Hueneme	81. Tracy
20. El Segundo	40. Martinez	61. Red Bluff	82. Wasco
21. Fairfield	41. Marysville (C)	62. Redlands	83. Woodland

NOTE: The letter (C) after a city indicates a charter city with a claims provision in the city charter. An asterisk (\*) denotes a charter city which has no claims provision in the charter.

#### Districts Not Subject to Claims Statutes

Both general and special statutory provisions relating to special districts present a similar pattern with respect to the existence or nonexistence of claims filing provisions. Table V, *supra*, lists 61 separate claims provisions applicable to districts. There are, however, 71 statutes governing or relating to special districts which are silent upon the subject of claims. These are collected in the following table.

TABLE VIII

## SPECIAL DISTRICTS AS TO WHICH NO PROVISION FOR FILING OF CLAIMS IS MADE

District	Statute establishing district
1. School transportation districts	EDUC. CODE §§ 21621-53
2. Library districts in unincorporated towns and villages	EDUC. CODE §§ 22301-434
3. Library districts	EDUC. CODE §§ 22601-733
4. Union high school library districts	EDUC. CODE §§ 22801-3102
5. Joint harbor improvement districts	HARB. & NAV. CODE §§ 5700-84
6. Harbor improvement districts	HARB. & NAV. CODE §§ 5800-915
7. Harbor districts	HARB. & NAV. CODE §§ 6000-111
8. Recreational harbor districts	HARB. & NAV. CODE §§ 6400-694
9. Local health districts	H. & S. CODE §§ 880-972
10. Mosquito abatement districts	H. & S. CODE §§ 2200-398
11. Pest abatement districts	H. & S. CODE §§ 2800-922
12. Garbage disposal districts	H. & S. CODE §§ 4100-65.7
13. Garbage and refuse disposal districts	H. & S. CODE §§ 4170-97
14. Sewer districts	H. & S. CODE §§ 4659-67
15. Joint municipal sewage disposal districts	H. & S. CODE §§ 5700-830.08
16. Sanitary districts	H. & S. CODE §§ 6400-915
17. Public cemetery districts	H. & S. CODE §§ 8890-9225
18. Fire protection districts	H. & S. CODE §§ 14001-314
19. Metropolitan fire protection districts	H. & S. CODE §§ 14325-75
20. County fire protection districts	H. & S. CODE §§ 14400-598.5
21. Police protection districts	H. & S. CODE §§ 20000-349
22. Air pollution control districts	H. & S. CODE §§ 24198-341
23. Bay Area Air Pollution Control District	H. & S. CODE §§ 24345-72
24. Local hospital districts	H. & S. CODE §§ 32000-313
25. Housing authorities	H. & S. CODE §§ 34200-368
26. Public service districts <sup>41</sup>	LABOR CODE §§ 2100-83
27. Memorial districts	MIL. & VET. CODE §§ 1170-250
28. Placer mining districts <sup>42</sup>	PUB. RES. CODE §§ 2401-606
29. Recreation park and parkway districts	PUB. RES. CODE §§ 5400-28
30. County recreation districts	PUB. RES. CODE §§ 5431-68
31. Regional park districts	PUB. RES. CODE §§ 5500-95
32. Park recreation and parkway districts	PUB. RES. CODE §§ 5630-67

<sup>41</sup> Although Labor Code Sections 2100-83 were repealed in 1953, the repealing act expressly declared the provisions thereof to be still effective as to any existing public service districts. Cal. Stat. 1953, c. 1303, p. 2864.

<sup>42</sup> Although Public Resources Code Sections 2401-512 were repealed in 1953, the repealing act expressly declared the provisions thereof to be still effective as to any existing placer mining districts. Cal. Stat. 1953, c. 1365, § 1, p. 2935.

TABLE VIII—Continued

## SPECIAL DISTRICTS AS TO WHICH NO PROVISION FOR FILING OF CLAIMS IS MADE

District	Statute establishing district
33. Regional shoreline park and recreation districts	PUB. RES. CODE §§ 5680-777
34. Soil conservation districts	PUB. RES. CODE §§ 9074-350
35. Resort districts	PUB. RES. CODE §§ 10000-2164
36. Airport districts	PUB. UTIL. CODE §§ 22001-979
37. Transit districts	PUB. UTIL. CODE §§ 24501-7509
38. Separation of grade districts	STS. & HWYS. CODE §§ 8100-297
39. Highway lighting districts	STS. & HWYS. CODE §§ 19000-312
40. Joint highway districts	STS. & HWYS. CODE §§ 25000-521
41. Boulevard districts	STS. & HWYS. CODE §§ 26000-263
42. Bridge and highway districts	STS. & HWYS. CODE §§ 27000-325
43. California Toll Bridge Authority	STS. & HWYS. CODE §§ 30000-506
44. Vehicle parking districts	STS. & HWYS. CODE §§ 31500-907
45. Parking authorities	STS. & HWYS. CODE §§ 32500-3552
46. Parking districts	STS. & HWYS. CODE §§ 35100-706
47. Sacramento & San Joaquin Drainage District	WATER CODE §§ 8500-9577
48. Water storage districts	WATER CODE §§ 39000-48401
49. County waterworks districts	WATER CODE §§ 55000-991
50. Amer. River Flood Control District	Stat. 1927, c. 808, p. 1596, as amended, CAL. GEN. LAWS Act 320 (Deering Supp. 1957)
51. Calif. Water Storage & Conservation District	Stat. 1941, c. 1253, p. 3139
52. Contra Costa County Storm Drainage District	Stat. 1953, c. 1532, p. 3191, as amended, CAL. GEN. LAWS Act 1657 (Deering Supp. 1957)
53. County Water Authority	Stat. 1943, c. 545, p. 2090, as amended, CAL. GEN. LAWS Act 9100 (Deering Supp. 1957)
54. Drainage District Act of 1885	Stat. 1885, c. 158, p. 204, as amended, CAL. GEN. LAWS Act 2200 (Deering Supp. 1957)
55. Drainage District Act of 1903	Stat. 1903, c. 238, p. 291, as amended, CAL. GEN. LAWS Act 2202 (Deering Supp. 1957)
56. Flood Control and Flood Water Conservation District	Stat. 1931, c. 641, p. 1369, as amended, CAL. GEN. LAWS Act 9178 (Deering 1954)
57. Fresno Metropolitan Flood Control District	Stat. 1955, c. 503, p. 971, as amended, CAL. GEN. LAWS Act 2791 (Deering Supp. 1957)
58. Knight's Landing Ridge Drainage District	Stat. 1913, c. 99, p. 109, as amended, CAL. GEN. LAWS Act 2191 (Deering 1954)
59. Monterey Peninsula Airport District	Stat. 1941, c. 52, p. 684, as amended, CAL. GEN. LAWS Act 153 (Deering 1954)
60. Orange County Flood Control District	Stat. 1927, c. 723, p. 1325, as amended, CAL. GEN. LAWS Act 5682 (Deering Supp. 1957)

TABLE VIII—Continued

## SPECIAL DISTRICTS AS TO WHICH NO PROVISION FOR FILING OF CLAIMS IS MADE

District	Statute establishing district
61. Orange County Water District	Stat. 1933, c. 924, p. 2400, as amended, CAL. GEN. LAWS Act 5683 (Deering Supp. 1957)
62. Palo Verde Irrigation District	Stat. 1923, c. 452, p. 1067, as amended, CAL. GEN. LAWS Act 3880 (Deering Supp. 1957)
63. Protection District Act of 1880	Stat. 1880, c. 63, p. 55, as amended, CAL. GEN. LAWS Act 6172 (Deering Supp. 1957)
64. Protection District Act of 1907	Stat. 1907, c. 25, p. 16, as amended, CAL. GEN. LAWS Act 6175 (Deering 1954)
65. Sacramento River West Side Levee District	Stat. 1915, c. 361, p. 516, as amended, CAL. GEN. LAWS Act 4296 (Deering 1954)
66. San Bernardino County Flood Control District	Stat. 1939, c. 73, p. 1011, as amended, CAL. GEN. LAWS Act 6850 (Deering Supp. 1957)
67. San Diego County Flood Control District	Stat. 1945, c. 1372, p. 2560, as amended, CAL. GEN. LAWS Act 6914 (Deering Supp. 1957)
68. Santa Clara-Alameda-San Benito Water Authority	Stat. 1955, c. 1289, p. 2349, as amended, CAL. GEN. LAWS Act 9102 (Deering Supp. 1957)
69. Vallejo Sanitation and Flood Control District	Stat. 1st Ex. Sess. 1952, c. 17, p. 351, as amended, CAL. GEN. LAWS Act 8934 (Deering Supp. 1957)
70. Water Conservation Act of 1927	Stat. 1927, c. 91, p. 160, as amended, CAL. GEN. LAWS Act 9127a (Deering Supp. 1957)
71. Water Conservation Act of 1931	Stat. 1931, c. 1020, p. 2045, as amended, CAL. GEN. LAWS Act 9127c (Deering Supp. 1957)

Table VIII is believed to be a reasonably careful compilation of the districts in California which are not governed by any statutory claims filing procedure. For two reasons, however, its accuracy is subject to reservations.

First, some of the listed districts may not be independent corporate entities separate from the city or county in which they exist but may instead be mere agencies or instrumentalities and hence subject to the claims procedure of the larger entity. In the 1955 decision of *Bauer v. County of Ventura*,<sup>43</sup> the Supreme Court held that a storm drain maintenance district organized and functioning under the Storm Drain Maintenance District Act<sup>44</sup> was not an independent governmental agency but a mere agency of county government "created for purposes of taxes and administration"<sup>45</sup> and as such was not liable in tort independently from the county. Other types of districts which have similarly been regarded as mere instrumentalities of a larger entity include county road districts,<sup>46</sup> reclamation districts,<sup>47</sup> improvement

<sup>43</sup> 45 Cal.2d 276, 289 P.2d 1 (1955).

<sup>44</sup> Storm Drain Maintenance District Act, Cal. Stat. 1937, c. 265, p. 566, as amended, CAL. GEN. LAWS Act 2208 (Deering Supp. 1957).

<sup>45</sup> *Bauer v. County of Ventura*, 45 Cal.2d 276, 288, 289 P.2d 1, 8 (1955).

<sup>46</sup> *Anaheim Sugar Co. v. County of Orange*, 181 Cal. 212, 183 Pac. 809 (1919).

<sup>47</sup> *Sacramento etc. Dist. v. Riley*, 199 Cal. 668, 251 Pac. 207 (1926); *Reclamation Dist. No. 537 v. Burger*, 122 Cal. 442, 55 Pac. 156 (1898).

and acquisition districts,<sup>48</sup> municipal assessment districts<sup>49</sup> and at least one type of protection district.<sup>50</sup>

On the other hand, the courts have treated as independent corporate entities such districts as school districts,<sup>51</sup> joint highway districts,<sup>52</sup> library districts,<sup>53</sup> fire protection districts,<sup>54</sup> local health districts,<sup>55</sup> county waterworks districts,<sup>56</sup> public utility districts,<sup>57</sup> municipal utility districts,<sup>58</sup> metropolitan water districts,<sup>59</sup> county water districts<sup>60</sup> and irrigation districts.<sup>61</sup>

The distinction appears to lie in whether the governing statute has conferred upon the particular district a continued corporate existence coupled with a large measure of autonomy in carrying out the public functions for which it was created. To determine in which category each type of district listed in Table VIII should be placed for purposes of the present study would require an intensive detailed analysis in each case of the governing statutory language. Such an analysis is beyond the scope of this report and is unnecessary to an appreciation of the problems likely to be encountered in attempting to determine the applicability to districts of the general county and city claims statutes. Table VIII therefore excludes only those types of districts otherwise within its purpose which are clearly mere taxing or administrative instrumentalities of a large entity<sup>62</sup> and includes all others as to which unresolved doubts exist.

Second, some of the districts included in Table VIII may be governed by the claims procedure applicable to counties under the provisions of Sections 29700-16 of the Government Code since their funds may be "controlled" by the board of supervisors within the meaning of Section 29704. That section provides in substance that the general county claims procedure shall also apply to claims "founded upon contract, express or implied, or upon any act or omission . . . of any district or public entity the funds of which are controlled by the board, or of any officer or employee of any such district or public entity." [Emphasis added.]

Unfortunately, this pivotal language has never been construed in any reported decision. Many of the districts listed in Table VIII are

<sup>48</sup> *Mortimer v. Acquisition & Imp. Dist. No. 36*, 105 Cal. App.2d 298, 233 P.2d 113 (1951).

<sup>49</sup> *Marr v. Southern California Gas Co.*, 198 Cal. 278, 245 Pac. 178 (1926).

<sup>50</sup> *Pasadena Park Impr. Co. v. Lelande*, 175 Cal. 511, 166 Pac. 341 (1917); *Brigden v. Dodge*, 54 Cal. App. 266, 201 Pac. 631 (1921). Both of these cases relate to districts organized under the Protection District Act of 1895, Cal. Stat. 1895, c. 201, p. 247, as amended, CAL. GEN. LAWS Act 6174 (Deering 1954).

<sup>51</sup> *Hughes v. Ewing*, 93 Cal. 414, 28 Pac. 1067 (1892).

<sup>52</sup> *Joint Highway Dist. No. 13 v. Hinman*, 220 Cal. 578, 32 P.2d 144 (1934); *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 813, 169 P.2d 1000 (1946).

<sup>53</sup> *Palos Verdes Library Dist. v. McClellan*, 97 Cal. App. 769, 276 Pac. 600 (1929).

<sup>54</sup> *Johnson v. Fontana County F. P. Dist.*, 15 Cal.2d 380, 101 P.2d 1092 (1940).

<sup>55</sup> *Stuckenbruck v. Board of Supervisors*, 193 Cal. 506, 225 Pac. 857 (1924).

<sup>56</sup> *Biggart v. Lewis*, 133 Cal. 660, 192 Pac. 437 (1920).

<sup>57</sup> *In re Orosi Public Utility Dist.*, 196 Cal. 43, 235 Pac. 1004 (1925).

<sup>58</sup> *East Bay Municipal U. Dist. v. Garrison*, 191 Cal. 680, 218 Pac. 43 (1923).

<sup>59</sup> *Metropolitan W. Dist. v. County of Riverside*, 21 Cal.2d 640, 134 P.2d 249 (1943).

<sup>60</sup> *Rock Creek Water Dist. v. County of Calaveras*, 29 Cal.2d 7, 172 P.2d 863 (1946).

<sup>61</sup> *Imperial Irr. Dist. v. County of Riverside*, 95 Cal. App.2d 402, 215 P.2d 518 (1950).

<sup>62</sup> The types of districts omitted from the list include those referred to in notes 44, 50 *supra*; street improvement assessment districts, CAL. STRS. & HWYS. CODE §§ 5180 *et seq.*; county maintenance districts, *id.* §§ 5820 *et seq.*; municipal lighting maintenance districts, *id.* §§ 18600 *et seq.*; county free public library taxing districts, CAL. EDUC. CODE §§ 22173 *et seq.*; drainage improvement districts, Drainage District Improvement Act of 1919, Cal. Stat. 1919, c. 354, p. 731, CAL. GEN. LAWS Act 2203 (Deering Supp. 1957); and county service areas, CAL. GOVT. CODE §§ 25210.1 *et seq.* This enumeration is only intended to be illustrative and not exhaustive.

governed by the county board of supervisors in an ex officio capacity. In the case of others the board of supervisors does not serve as the governing body but the statutes creating the districts authorize district taxes to be levied, collected and placed in the county treasury at the same time and by the same procedures as county taxes. Does Section 29704 apply to either type of district or to both?

It could be argued that district funds are "controlled" by the county board of supervisors within the meaning of Section 29704 only where the board's power with respect to such funds obtains solely in its capacity as governing board of the county. Under this view Section 29704 would only serve to make explicit the applicability of the normal county claims procedure to claims against districts which are mere taxing or administrative instrumentalities of the county, such as road districts or street improvement districts. Under this analysis those entities of the first type described above—*i.e.*, those over which the board of supervisors presides in an independent capacity—would not be subject to county claims procedures. This distinction is suggested in dictum found in *Johnson v. Fontana County F. P. Dist.*,<sup>63</sup> where Mr. Justice Houser in a unanimous Supreme Court decision referred to the position of the board of supervisors as governing body of a county fire protection district in these words:

While the supervisors are the governing board of the district and hold title to its property they act in a representative capacity and hold this property for the use and benefit of the district. While they handle the money of the district they collect and pay out this money for the benefit of the district and in carrying out its purposes. There is not much similarity between such a district and an assessment district which carries on no continuous function and exists solely for the purpose of paying for a public improvement.<sup>64</sup>

The quoted words were written to support a decision holding that county fire protection districts were liable under Section 400 of the Vehicle Code for injuries caused by negligent operation of district motor vehicles. The court was not concerned with the operation of any claims statute. Hence, the *Johnson* decision does not preclude the possibility that the courts may hold even an "independent entity" form of district to be within the scope of the general county claims statute if the board of supervisors serves as its governing body and, as such, controls its funds.

On the other hand in adopting the controlling language of Section 29704, the Legislature may have had in mind all types of districts whether independent entities or not over which the board of supervisors presides in any capacity. In the 1920 case of *Biggart v. Lewis*<sup>65</sup> the Supreme Court expressed views which, at a quick reading, would seem to support this result although the court unfortunately neither cited nor discussed the pertinent statutes. After deciding that a particular claim against a county waterworks district was not a legal charge, the court stated in clear dictum:

<sup>63</sup> 15 Cal.2d 380, 101 P.2d 1092 (1940).

<sup>64</sup> *Id.* at 387, 101 P.2d at 1096.

<sup>65</sup> 183 Cal. 660, 192 Pac. 437 (1920).

It will be noted that the water district in question is referred to constantly throughout the act authorizing its creation as a "county" water district and, in this behalf, it will be further noted that the board of supervisors is made the governing body of the district after the district is created, and that the funds of the district are deposited in the county treasury to the especial account of the district and the disbursement thereof is under the control of the board of supervisors. It will thus be observed that the management of the district is, to some extent at least, a county affair and, therefore, in the absence of more specific provision in the act, the same general rules and regulations which govern the board of supervisors in acting upon claims against the county proper must cover and control the allowance of claims against the district.<sup>66</sup>

This language, however unqualified it may seem, cannot be regarded as a reliable indication of the meaning to be ascribed to the "control" clause in Section 29704. At the time of the *Biggart* decision the statutory predecessor to Section 29704 made the county claims procedure applicable to "any claim or bill against the county or district fund" without any qualification based on supervisory control.<sup>67</sup> The limitation to districts whose funds were under the control of the board of supervisors was first enacted in 1931,<sup>68</sup> some nine years after the quoted opinion was written. Furthermore, the basis for the suggestion that the county waterworks districts were peculiarly a "county" affair was largely dissipated by later legislation authorizing such districts by petition to change to an independent-board-of-directors system of district government.<sup>69</sup>

The scope of coverage of Section 29704 with reference to districts must, therefore, be regarded as uncertain. Accordingly, except as otherwise indicated, Table VIII, *supra*, lists all district statutes not setting forth an express claims procedure without regard to the possibility that the general county claims procedure might apply in some instances.

#### Summary of Coverage of Existing Claims Provisions

In terms of the entities covered by claims requirements, existing law is far from uniform. Of the four general levels of governmental organization—state, county, city and district—only claims against the first two are covered by comprehensive claims statutes. At the municipal corporation level, nearly three-fourths of all charter cities have claims provisions in their charters; but the rest are silent on the subject. Many charter cities, as well as many general law cities, have enacted a claims procedure in ordinance form;<sup>70</sup> but a substantial number of cities have not done so. School districts and many types of districts function under statutory claims provisions; but more types of districts are not subject to claims procedure than are.

The lack of systematic coverage even extends to particular claims statutes. Sections 53050-53 of the Government Code, for example, apply

<sup>66</sup> *Id.* at 671, 192 Pac. at 441.

<sup>67</sup> CAL. POL. CODE § 4075 (Deering 1944) (based on § 40 of the County Government Act of 1897) as added by Cal. Stat. 1907, c. 262, art. X, p. 379, as amended. Cal. Stat. 1913, c. 388, § 1, p. 835, Cal. Stat. 1915, c. 622, § 1, p. 1185.

<sup>68</sup> Cal. Stat. 1931, c. 134, § 1, p. 197.

<sup>69</sup> CAL. WATER CODE §§ 55302-307, added by Cal. Stat. 1947, c. 207, § 1, p. 773.

<sup>70</sup> Authority for adoption of claims ordinances by general law cities is found in CAL. GOVT. CODE § 37201.

only to claims under the Public Liability Act (based on dangerous or defective property) against counties, cities and school districts thereby excluding such claims against the State or other types of district.<sup>71</sup> Similarly, Sections 29700-16 of the Government Code may be applicable to *some* special districts, but not to all, over which the county board of supervisors exercises governing power.<sup>72</sup>

The greatest diversity with respect to coverage, it will be noted, is at the municipal and district level. It is by no means clear why the policy considerations supporting a claims filing procedure with respect to certain municipal corporations or districts are not applicable to all. The Legislature apparently determined that all cities could feasibly and should logically be subject to the same statutory procedures with respect to claims under the Public Liability Act. As to other closely similar types of claims—e.g., claims arising under Section 400 of the Vehicle Code and claims based on proprietary negligence—however, the choice and terms of any claims procedure have been left to local determination.

The local determinations represented in charters and ordinances do not seem to reflect any widely or commonly held understanding as to the need for or desirability of a claims procedure. Population differences—which might be assumed to require formal differences in municipal fiscal and accounting processes—do not seem to be a major motivating factor. Although the largest charter city, Los Angeles (pop. 2,200,000) has a charter claims procedure, so does the smallest of the charter cities, Grass Valley (pop. 5,240). However, other cities of substantial size—e.g., Oakland (pop. 385,000), San Jose (pop. 102,000), Stockton (pop. 71,000), Pomona (pop. 48,000), Bakersfield (pop. 35,000)—have no claims provisions either in their charters or in the form of ordinances; while other relatively small cities—e.g., Marysville (pop. 8,300), Roseville (pop. 8,685)—do.

The differences in coverage become even more difficult to explain on any basis other than the sporadic and piecemeal development of the statutory structure when one considers the district statutes. For example, of the 26 special flood control district statutes listed in Tables V and VIII, *supra*, most of which are substantially counterparts of one another, 20 contain claims filing provisions and six do not. A particularly striking inconsistency relates to the four flood control districts—*i.e.*, Del Norte, Fresno, Santa Barbara and Santa Cruz—created by special acts of the 1955 Legislature. Of these measures, all enacted by the same session, three contained claims provisions and one, Fresno, did not.<sup>73</sup> An exactly similar situation occurred with reference to four special acts passed in the 1945 Legislative Session.<sup>74</sup> The

<sup>71</sup> Although governmental immunity from liability for injuries resulting from a dangerous and defective condition of public property has been waived by the cited sections only as to cities, counties and school districts, the State as well as some excluded districts may be liable in such cases where acting in a proprietary capacity, see *Guldi v. State*, 41 Cal.2d 623, 262 P.2d 3 (1953); *People v. Superior Court*, 29 Cal.2d 754, 178 P.2d 1 (1947); or where the defect gives rise to an action in inverse condemnation, see *Bacich v. Board of Control*, 23 Cal.2d 343, 144 P.2d 818 (1943); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941).

<sup>72</sup> See discussion in text pp. A-38-40 *supra* at notecalls 62-69.

<sup>73</sup> Citations may be found in Table V *supra* at A-29, items 138, 161, 164, and Table VIII *supra* at A-35, item 58.

<sup>74</sup> Compare items 140, 156 and 160 in Table V *supra* at A-29 with item 68 in Table VIII *supra* at A-35.

disparity of treatment of other types of districts is equally apparent from Tables V and VIII.

### Comparison of Key Provisions

#### Types of Claims Subject to Presentation Requirements

Claims against governmental agencies cover the entire range of potential liability from contracts, express or implied, through the field of tort law to inverse condemnation. Some variations in procedures might be expected in the provisions relating to different types of claims since the avowed objectives of claims statutes—to permit early investigation and expeditious settlement—may not apply in precisely the same way to all types. The surprising fact, however, is that the claims statutes frequently do not apply to certain types of claims although the basic objectives of such statutes would seem to be applicable in some degree to all types.

Only when speaking of claims against the State of California or against counties, can it be said with assurance and without painstaking research that all claims generally are the subject of a required claims filing procedure.

With some express exceptions<sup>75</sup> Government Code provisions cover every conceivable type of claim against the State by broad and comprehensive language. Section 16002 provides a procedure for all claims against the State "for which appropriations have been made, or for which state funds are available." Section 16020 provides a somewhat different procedure for claims "for which settlement is provided by law" but for which no appropriation has been made or no fund is available, or an appropriation or fund has been exhausted. Section 16041 governs claims "(1) on express contract, (2) for negligence, or (3) for the taking or damaging of private property for public use"; an enumeration making somewhat more specific the general language of Section 16021 which refers to any claim "the settlement of which is not otherwise provided for by law." It is noteworthy that negligence claims against the State arising under Vehicle Code Section 400 are treated quite differently in certain respects<sup>76</sup> than are other tort claims. All types of claims against the State, however, are covered by some form of presentation procedure.

Similar breadth of coverage is found in Section 29704 of the Government Code which covers claims against counties with the comprehensive phrase, "any claim . . . whether founded upon contract, express or implied, or upon any act or omission." One type of claim—based upon a dangerous or defective condition of public property—is, however, carved out of the general scope of Section 29704 by the specific terms of Section 53052 of the same code which establishes its own procedure for such claims. Thus, as in the case of the State, all types of claims against counties are embraced by a claims filing requirement.

When we turn to claims against cities the pattern of coverage becomes more complex and less uniform. The only general statewide

<sup>75</sup> See CAL. GOVT. CODE § 16001 which exempts expenses for either house of the Legislature or the members or committees thereof and claims for official salaries fixed by statute.

<sup>76</sup> See CAL. GOVT. CODE § 16023 (method of payment); *id.* § 16043 (time to present claims); *id.* § 16045 (action on claim rejected in part).

claims procedure which applies to all cities is found in Sections 53050-53 of the Government Code which relates solely to claims based upon a dangerous or defective condition of city property. Thus, innumerable types of claims for which cities may be liable are not covered by any State statute, including contract claims, claims under Vehicle Code Section 400 and claims based upon negligence in a proprietary capacity. The question whether such claims are subject to a normal presentation procedure in the case of any specific city thus depends upon the provisions of the city charter, if any, and any applicable ordinances currently in effect.

Table IX illustrates the coverage of charter and ordinance claims provisions of California cities by indicating the number of charter and ordinance provisions applicable and inapplicable (or nonexistent) to typical claims.

TABLE IX  
TYPES OF CLAIMS COVERED BY CITY CHARTERS AND ORDINANCES

Type of claim	65 CHARTER CITIES		120 CITIES OVER 5,000 POP.	
	Charter provisions apply	Not covered by charter	Ordinance provisions apply	Not covered by ordinance
1. Personal injury or property damage based upon ordinary negligence.....	47	18	32	88
2. Personal injury or property damage resulting from dangerous and defective condition of city property.....	48	17	34	86
3. Money due on contract.....	43	22	28	92
4. Damages for breach of contract.....	47	18	28	92

Table IX reveals that, in general, when a claims provision is included in a city charter or is enacted into ordinance form, it usually is broad in scope and applicable to all types of claims. Reference to a few selected provisions, however, discloses some unexpected anomalies of charter or ordinance language.

Preliminarily, it will be noted that the number of claims provisions relating to tort claims is greater than the number relating to contract claims; and, at least where charters are concerned, claims are sometimes not required for money due under a contract although they are required for breach of contract. The considerations of policy which motivated legislative decisions such as these are not apparent.

A considerable majority of the city claims provisions, for example, are in terms applicable to claims "for money or damages." Technically, such provisions would seem to be somewhat narrower in scope than those which apply to "all claims"; the latter would appear to embrace claims seeking nonmonetary forms of relief as well. Thus, although an action to abate a municipal nuisance or to recover possession of property would seem to be maintainable against certain cities—e.g., Porterville, Riverside, San Bernardino—only if a claim were previously filed; no such prerequisite would be necessary in the case of

most cities.<sup>77</sup> At the same time, the broader phrase appears to recognize a distinction between claims for "money" and claims for "damages" although the former generically includes the latter. The distinction, if recognized, might play a significant role in removing contractual recovery claims from the scope of the few claims statutes which apply only to claims for "damages."<sup>78</sup>

The types of tort claims covered vary considerably. Some of the city claims provisions are expressly limited to claims for "injuries suffered . . . either to person or property, because of negligence of the City or its officers."<sup>79</sup> Others appear to include intentional as well as negligent torts, by referring to "all claims for damages, founded in tort."<sup>80</sup> Even more inclusive are the several provisions which cover "all claims for damages" without attempting to distinguish between tort and contract damage actions.<sup>81</sup> At the opposite extreme are provisions which require the presentation of a claim only as to certain specified kinds of torts such as claims resulting from a dangerous and defective condition of city property.<sup>82</sup> The last mentioned type of claim provision, although fairly common, is invalid and void since city charter and ordinance provisions relating to dangerous and defective condition claims are superseded by Sections 53050 *et seq.* of the Government Code.<sup>83</sup>

The types of claims covered in city charters and ordinances thus range from all claims to none at all. Whether a plaintiff in an action is halted at the threshold by his failure to have previously presented a claim to the defendant city depends upon what city he is suing and the nature of the claim sued on. No consistent or uniform appraisal of the need for or desirability of a claims filing procedure seems to be apparent. More cities are without a claims procedure than with one; and the variations in the charters or ordinances of those with a claims

<sup>77</sup> *Cf.* Adams v. City of Modesto, 131 Cal. 501, 63 Pac. 1083 (1901), affirming an injunction to abate a sewage nuisance, although no claim was filed. The court felt that the claims procedure established by the Municipal Corporation Act of 1883 applied only to claims for money due on contract. No case has been found discussing the applicability of a claims statute to other than a claim for money or damages.

<sup>78</sup> See Transbay Const. Co. v. San Francisco, 35 F. Supp. 433 (N.D. Cal. 1940), in which the court assumes without discussion that a cause of action for money due under a written contract was not a claim for "damages" within the meaning of the claims provision of Section 87 of the city and county charter, while holding that another count for damages for breach of contract was barred by failure to comply with Section 87. Other provisions limited to claims for "damages" are found in the charters of Burbank, Inglewood and Long Beach.

<sup>79</sup> *E.g.*, SAN DIEGO CHARTER § 110; COLTON ORD. No. 611 (Dec. 2, 1940); ESCONDIDO ORD. No. 316 (July 2, 1936). See also SOUTH PASADENA ORD. No. 798 (Dec. 8, 1937), limited to negligence claims and claims based on dangerous and defective condition of property.

<sup>80</sup> BUENA PARK MUNIC. CODE §§ 2632-2638; CORONA ORD. No. 580 (July 5, 1950); COSTA MESA ORD. No. 68 (Nov. 1, 1954); GLENDALE MUNIC. CODE § 2-199; LAKEWOOD MUNIC. CODE §§ 2520-2531; MONROVIA ORD. No. 1204 (Feb. 2, 1954); MONTEBELLO ORD. No. 444 (Nov. 22, 1948); MONTEREY PARK MUNIC. CODE §§ 2630-40; OXNARD MUNIC. CODE § 1630; SAN BUENAVENTURA MUNIC. CODE § 1421.

<sup>81</sup> BURBANK CHARTER § 67; INGLEWOOD CHARTER Art. XXXVI, § 27; LONG BEACH § 338; SAN FRANCISCO CHARTER § 87; CARLSBAD ORD. No. 1005-A (Nov. 2, 1954); CORONADO ORD. No. 650 (March 6, 1939); LA MESA ORD. No. 149 (Dec. 10, 1929); ONTARIO ORD. No. 661 (Nov. 13, 1940); PALO ALTO ADMIN. CODE §§ 408-408.7; ROSEVILLE ORD. No. 211 (June 21, 1933).

<sup>82</sup> MONTEREY CHARTER § 76½; LAVERNE ORD. CODE §§ 2580-81; PACIFIC GROVE MUNIC. CODE § 1-202. See also ANAHEIM MUNIC. CODE § 4280.1 (including also motor vehicle accident claims); SAN MATEO ORD. No. 610 (July 21, 1947) (including also contract claims); SOUTH PASADENA ORD. No. 798 (Dec. 8, 1937) (including also claims based on negligence of city employees).

<sup>83</sup> Eastlick v. City of Los Angeles, 29 Cal.2d 661, 177 P.2d 558 (1947). The only city claim provision appearing to give express recognition to the superseding effect of the statutory claim provision is Escondido Ord. No. 316 (July 2, 1936) which governs all claims based on negligence other than dangerous or defective condition claims.

procedure in many instances seem to be more a reflection of differences of draftsmanship than of policy determination.

The lack of consistency and uniformity observed in the scope of city claims provisions is, of course, understandable. Under the constitutional principle of "home rule," as well as prevailing legislative policy, the formulation of claims procedures for cities has been left largely to local self-determination. In the absence of any official coordinating agency local discrepancies were bound to develop.

When we turn to claims provisions relating to districts, however, we are dealing with statutes; all of them creations of the State Legislature. Yet a similar pattern of nonuniformity of the types of claims covered is again apparent. Such disparity of coverage is probably attributable in part to the sporadic and uncoordinated development of special district statutes and in part to differences of emphasis and policy of the various local interests which, in most instances, were responsible for drafting and promoting enactment of specific district statutes. Table X which follows illustrates the varieties of statutory descriptions.

TABLE X  
TYPES OF CLAIMS COVERED BY DISTRICT CLAIMS STATUTES

Statutory language used to describe claims covered	Types of districts affected
1. Any or all claims against the district	Port districts River port districts County sanitation districts County sewage disposal districts Regional sewage disposal districts Public utility districts County drainage districts Water replenishment districts Fairfield-Suisun Sewer District Levee districts Levee District No. 1 of Sutter County Lower San Joaquin Levee District Protection districts Montalvo Municipal Improvement District Sacramento County Water Agency Santa Barbara County Water Agency Solvang Municipal Improvement District Storm water districts 9 Flood control districts (Los Angeles County, Mendocino County, Morrison Creek, Riverside County, Santa Cruz County, Solano County, Sonoma County, Ventura County, Yolo County)
2. Claims arising out of contract, tort, or the taking or damaging of property without compensation	12 Flood control districts (Alameda County, Contra Costa County, Del Norte County, Humboldt County, Lake County, Marin County, Monterey County, Napa County, San Benito County, San Luis Obispo County, Santa Barbara County, Santa Clara County)
3. Claims for money or damages	Metropolitan water districts Municipal port districts Municipal water districts
4. Claims founded on contract, express or implied, or any act or omission of district or officer or employee thereof	Districts the funds of which are under the county, board of supervisors
5. Claims other than claims based on written contract	San Francisco Bay Area Metropolitan Rapid Transit District
6. Claims for damages	School districts

TABLE X—Continued

## TYPES OF CLAIMS COVERED BY DISTRICT CLAIMS STATUTES

Statutory language used to describe claims covered	Types of districts affected
7. Claims for taking or damaging of property; for personal injury resulting from any dangerous or defective condition of district controlled property; from any act or omission of any officer or employee of district	Community services districts Irrigation districts County water districts California water districts Kings River Conservation District
8. Claims for personal injury or property damage resulting from dangerous or defective condition of district property	School districts
9. Claims for reimbursement for expenses incurred on official business	Irrigation districts Reclamation districts
10. Claims for salaries and services	Levee District No. 1 of Sutter County
11. Claims for clerk hire	Reclamation districts
12. Claims for reimbursement for fire fighting services	County fire protection districts

The statutory descriptions of claims in Table X are arranged approximately in descending order from the broadest to the narrowest in scope. It will be noted that the description of claims found most often in city charters and ordinances, *i.e.*, "claims for money or damages," is used in only three district statutes whereas the possibly more comprehensive words, "any claims" or "all claims," are most frequently encountered here. Noteworthy, also, is the substantial number of districts with a claims procedure applicable only to tort claims and not to contract claims. Included in this number are the ubiquitous school district and two widely used forms of water districts, the irrigation district and county water district. Finally, it should be remembered that a very large number of district statutes have no claims provisions at all.<sup>84</sup>

#### Time Limits for Filing Claims

##### *Preliminary Considerations*

A prevalent but by no means invariable characteristic of claims statutes and ordinances is provision for a specific period of time after the claim arises within which the formal claim must be presented.

The judicially declared basic purpose of claims provisions—to permit early investigation and settlement without litigation—suggests that all claims presentation procedures should be geared to *some* time limitation and that the period prescribed normally should be of relatively *short* duration, thereby requiring presentation reasonably promptly after the claim has accrued. Both expectations are satisfied by some existing claims provisions but not by all. Indeed, a substantial number of claims statutes and ordinances impose no time limitations at all so that the claimant need only proceed with sufficient diligence to avoid the bar of the ordinary statute of limitations. Others differ greatly in the period of time prescribed for filing a given type of claim. Some provisions even allow a greater period for presentation of claims than

<sup>84</sup> See Table VIII *supra* at A-35.

the period of limitations prescribed by general law for commencing an action on the cause of action to which the claim relates. Still others are not concerned with the time which elapses *after* accrual of the cause of action but instead require presentation at a specified length of time *before* the governing body is to consider the claim or *before* commencement of an action thereon. Since the postaccrual provisions are the more significant ones in terms of practical legal consequences, this portion of the study is directed chiefly to them.

In attempting to ascertain the precise time limits prescribed by some statutes, a preliminary problem of interpretation arises casting some doubt upon the conclusions reached. The problem arises from the fact that 22 special district statutes<sup>85</sup> do not prescribe a specific claims filing time but instead incorporate by reference either in whole or in part the claims procedures applicable to counties.

This raises initially the question of what law is thus incorporated. An incorporation clause may refer to the incorporated law as it reads on the effective date of the incorporating statute;<sup>86</sup> or it may incorporate not only the then-existing law but all subsequent amendments and additions as well.<sup>87</sup> It may be a complete adoption of the incorporated provisions or a partial incorporation only.<sup>88</sup> The effect to be given incorporating language is generally regarded as a matter of legislative intent to be determined primarily from the language of the incorporation clause.<sup>89</sup>

Some of the 22 district statutes in question present no interpretative difficulties with respect to either the scope or timing of the incorporation for they refer to and incorporate all phases of county claims procedures, including "the preparing, presenting, auditing and allowance or disallowance" and "the periods of time specified" for claims against counties; and expressly adopt the county claims statutes as "now or hereafter enacted."<sup>90</sup> Three district acts use substantially the language quoted as to scope; but are somewhat ambiguous as to whether they incorporate future amendments and additions to the statutes governing presentation of claims against counties. The Riverside County and Ventura County flood control acts, for instance, refer to the procedures "specified by law . . . for claims against counties" but fail to expressly add the phrase "as now or hereafter enacted."<sup>91</sup> The Los Angeles County Flood Control Act not only omits the latter phrase but also, as last amended in 1941, refers to the claims procedures "specified in the *Political Code* of the State of California for . . . claims against counties." [Emphasis added.]<sup>92</sup> The *Political Code* sec-

<sup>85</sup> See Table V *supra* at A-29, items 124-26, 135, 139, 144-46, 148, 150, 152, 155-57, 162, 164-70.

<sup>86</sup> *Rancho Santa Anita v. Arcadia*, 20 Cal.2d 319, 125 P.2d 475 (1942).

<sup>87</sup> *Palermo v. Stockton Theatres, Inc.*, 32 Cal.2d 53, 195 P.2d 1 (1948).

<sup>88</sup> *Ramish v. Hartwell*, 126 Cal. 443, 58 Pac. 320 (1899).

<sup>89</sup> See *Bartosh v. Bd. of Osteopathic Examiners*, 82 Cal. App.2d 486, 186 P.2d 984 (1947).

<sup>90</sup> Typical is the language of the Yolo County Flood Control and Water Conservation District Act, Cal. Stat. 1951, c. 1657, § 8 p. 3777, CAL. GEN. LAWS Act 9307 (Deering Supp. 1957): "Claims against the district shall be prepared, presented, audited and allowed or disallowed in the same manner and within the periods of time specified in the laws of the State of California, now or hereinafter [sic] enacted, for the preparing, presenting, auditing, and allowance or disallowance of claims against the county." Substantially the same language is found in five other flood control district acts (Mendocino County, Morrison Creek, Santa Cruz County, Solano County, Sonoma County) and two county water agency acts (Sacramento County, Santa Barbara County). These acts are cited in Table V *supra* at A-29, items 148, 152, 164-67, 157, 162.

<sup>91</sup> Table V *supra* at A-29, items 156, 169.

<sup>92</sup> *Id.* item 145.

tions relating to claims against counties were repealed in 1947 and reenacted as Sections 29700 *et seq.* of the Government Code.<sup>93</sup> The Los Angeles County Flood Control Act, however, has never been amended to reflect the change although it has been amended several times in other particulars.

It is well settled that the incorporation of a *general* body of law without reference to specific code, title, chapter or section numbers will normally be regarded as intended to embrace subsequent amendments as well.<sup>94</sup> The omission of the phrase "as now or hereafter enacted" thus may not preclude such an interpretation of the Riverside and Ventura flood control district statutes. The Los Angeles act, on the other hand, is open to some doubt on this score since it explicitly refers to the Political Code. Other district statutes, requiring claims to be prepared and presented "in the same manner as claims against the county,"<sup>95</sup> however, will probably be construed to include subsequent amendments even though they contain no express language so providing.

The difficulty with many of the statutes in the last cited group, however, relates to scope rather than subsequent amendments. Does a requirement that claims against a district be "presented" in the "same manner" as claims against counties mean that such claims must be presented within the periods of *time* required of county claims; or does the word "manner" connote a legislative intent to merely incorporate requirements relating to form, content, method of presentation and designation of an officer to whom the claim is to be presented? The reported decisions offer no help on the point; but it may be significant that in a number of other district acts the Legislature has expressly referred to both "manner" and "periods of time" for presentation of claims.<sup>96</sup>

A further problem is whether the referential provisions in question incorporate only the *general* county claims procedure of Sections 29700 *et seq.* of the Government Code with a one year presentation period or both those general provisions and the *specific* claims procedure of Sections 53050 *et seq.* of the Government Code with a 90 day presentation period which applies to claims founded on dangerous or defective conditions of public property. Although the substantive provisions of Sections 53050 *et seq.* waiving governmental immunity from liability do not apply to flood control districts,<sup>97</sup> some claims based on dangerous or defective property appear to be classifiable as inverse condemnation claims for which no immunity exists.<sup>98</sup> The Los Angeles County Flood Control Act which purports to incorporate the county claims provisions of the Political Code would appear *not* to incorporate Sections 53050 *et seq.* for those provisions, unlike Sections 29700 *et seq.*, were never part of the Political Code. As for the other acts the answer is in doubt for here again no reported decisions provide assistance.

<sup>93</sup> Cal. Stat. 1947, c. 424, § 5, p. 1307. The entire Political Code was repealed by Cal. Stat. 1951, c. 1633, § 1, p. 3675.

<sup>94</sup> Palermo v. Stockton Theatres, Inc., 32 Cal.2d 53, 195 P.2d 1 (1948).

<sup>95</sup> Language substantially of this type is found in the district statutes listed in Table V *supra* at A-29, items 124-26, 135, 139, 144, 146, 150, 155, 166, 168.

<sup>96</sup> See the statutes cited in note 90 *supra*.

<sup>97</sup> Barlow v. Los Angeles County Flood etc. Dist., 96 Cal. App.2d 979, 216 P.2d 903 (1950).

<sup>98</sup> See Davis v. East Contra Costa Irr. Dist., 19 Cal.2d 140, 119 P.2d 727 (1941).

Comparison of the various time limits for presenting claims prescribed in existing claims statutes reveals a wide range of policy determinations which is difficult to explain in terms of the rationale of such statutes. It seems desirable to explore the various discrepancies from two viewpoints; first, the types of entities subject to the claims procedure; second, the types of claims referred to.

### *Claims Against the State*

Of the 20 claims provisions listed in Table I, *supra*, governing claims against the State, the most significant provisions are found within item number 11, consisting of Sections 16021 and 16041 *et seq.* of the Government Code. Two of the sections in the latter group contain specific provisions relating to when claims must be filed. Thus,

Section 16043 provides in part:

A claim arising under Section 400 of the Vehicle Code shall be presented to the board within *one year* after the claim first arose or accrued. [Emphasis added.]

Section 16044 provides in part:

A claim not arising under Section 400 of the Vehicle Code shall be presented to the board within *two years* after the claim first arose or accrued. [Emphasis added.]

The prescribed periods of one year and two years are quite generous in relation to the much shorter periods usually encountered. In four of the State claims statutes<sup>99</sup> these general provisions with their time limits are expressly incorporated by reference whereas nine others,<sup>100</sup> being silent on the subject, must be construed together with and as subject to the general provisions.<sup>101</sup>

It may be said with accuracy that the general claim filing period for claims against the State is two years and the one year limit for motor vehicle accident claims is an exception thereto. Other exceptions exist also. Claims for money due on a winning pari-mutuel ticket must be presented within *60 days* after the close of the racing meet.<sup>102</sup> A bidder's claim to recover a forfeited deposit on the ground of mistake must be presented within *five days* after opening of the bids.<sup>103</sup> A claim for indemnity by an erroneously convicted person must be presented within *six months* after acquittal, pardon or release from imprisonment.<sup>104</sup> Claims for reimbursement for hospital and medical care given members of the Woman's Relief Corps Home of California are required to be filed "at such times . . . as the department [of Veterans Affairs] may prescribe."<sup>105</sup>

In two of the State claims statutes no time limit for presentation of claims is prescribed either expressly or by implication. One relates to

<sup>99</sup> Table I *supra* at A-22, items 3, 4, 17, 20.

<sup>100</sup> *Id.* items 1, 5, 6, 8-10, 12, 14, 16.

<sup>101</sup> *Lertora v. Riley*, 6 Cal.2d 171, 57 P.2d 140 (1936), holding claim under Agricultural Code Section 242 subject to rules promulgated by State Board of Control pursuant to Government Code Section 16002.

<sup>102</sup> Table I *supra* at A-22, item 2.

<sup>103</sup> *Id.* item 7.

<sup>104</sup> *Id.* item 19.

<sup>105</sup> *Id.* item 15.

claims for counsel fees by attorneys appointed to represent criminal appellants.<sup>106</sup> The other relates to claims for maintenance and supplies for men called to active duty in the State militia in emergencies.<sup>107</sup>

### *Claims Against Counties*

The statutes governing claims against counties present a fairly simple pattern of time requirements.

The general rule, as promulgated by Section 29702 of the Government Code, is that a claim "shall be filed within *a year* after the last item accrued." [Emphasis added.] This one year filing time applies to all claims, whether in contract or tort, and apparently governs several other claims provisions which are silent as to a filing time.<sup>108</sup> Two exceptions are expressly provided, however. Claims arising from a dangerous or defective condition of public property must be presented within *90 days* after the accident occurred.<sup>109</sup> Claims for burial expenses of veterans or their widows must be presented within *60 days* after date of death.<sup>110</sup>

### *Claims Against Cities and Districts*

The only general statutes governing claims against cities and districts are Sections 53050-53 of the Government Code relating to dangerous and defective condition claims against cities and school districts, but to no other types of districts; Section 29704 of the Government Code relating to claims of every type against districts whose funds are under control of the county board of supervisors; and Sections 13051-52 of the Health and Safety Code which provide for the presentation to cities and fire protection districts of claims for cost of fire fighting services rendered to them by other public entities. The first statute provides a *90 day* claim period; the second allows *one year*; the last is silent on the subject and presumably would be controlled as to filing time by time limits prescribed by other laws applicable to the particular entity to which a claim is presented thereunder.

With the three exceptions noted, filing times for claims against cities and districts are determined, if at all, by city charters and ordinances or by statutes relating to specific districts or specific types of districts. Because of the large number of such provisions a comparison of time limits can best be made in tabular form. (The various interpretative difficulties arising from the use of the incorporation-by-reference technique in many district laws have been resolved for purposes of tabulation as explained in the appended note.)<sup>111</sup>

<sup>106</sup> *Id.* item 13.

<sup>107</sup> *Id.* item 13.

<sup>108</sup> Table II *supra* at A-23, items 21-22, 25-26.

<sup>109</sup> *Id.* item 24.

<sup>110</sup> *Id.* item 27.

<sup>111</sup> The Los Angeles County Flood Control Act is here treated as incorporating Government Code Sections 29700 *et seq.*, and all amendments thereto, but not Sections 53050 *et seq.* All other special district acts cited in note 31 *supra* are here treated as incorporating both Sections 29700 *et seq.* and Sections 53050 *et seq.*, with all amendments thereto, including the provisions governing time for the filing of claims.

TABLE XI

## DISTRIBUTION OF FILING TIME REQUIREMENTS APPLICABLE TO CITIES AND DISTRICTS

Time limit prescribed	48 city charters	37 city ordinances	56 district statutes
No time limits stated.....	15	11	9
Two years.....	0	1	0
One year.....	0	10	29
Six months (or 180 days).....	12	5	22
Three months (or 90 days).....	24	19	28
Sixty days.....	1	2	0
Less than 60 days.....	1	0	0

NOTE: The totals of the several columns do not equal the number of provisions indicated at the head of each column due to the fact that several provisions in each category prescribe more than one time limit depending on the type of claim.

The wide variations in filing times revealed by Table XI are even more meaningful when broken down into the several major types of claims which are governed by such time limits.

TABLE XII

## TIME LIMITS GOVERNING PERSONAL INJURY, PROPERTY DAMAGE AND CONTRACT CLAIMS AGAINST CITIES AND DISTRICTS

Time limits	48 city charters			37 city ordinances			56 district statutes		
	D	P	K	D	P	K	D	P	K
No time limit stated.....	15	15	15	8	8	11	5	5	8
Two years.....	0	0	0	1	1	1	0	0	0
One year.....	0	0	0	2	2	10	4	22	22
Six months (or 180 days).....	8	8	11	4	4	4	22	20	16
Three months (or 90 days).....	23	23	20	19	18	4	24	6	1
Sixty days.....	1	1	1	1	1	0	0	0	0
Less than 60 days.....	1	0	0	0	0	0	0	0	0
Claim provisions inapplicable to this type of claim.....	0	1	1	2	3	7	2	4	9

NOTE: Subcolumns "D" designate claims for personal injury or property damage founded upon dangerous or defective condition of public property.

Subcolumns "P" designate claims for personal injury or property damage founded upon ordinary negligence.

Subcolumns "K" designate claims founded upon contract or breach of contract.

*Summary of Filing Times*

The nonuniformity of claim filing time limits is apparent from Tables XI and XII. Protective policies which, according to the repeated declarations of the courts, provide the constitutional basis for claims statutes appear to have influenced the prescription of time limits in widely varying degrees—and in some instances not at all.

A number of claims provisions distinguish between various types of claims by prescribing an earlier filing deadline for some types than for others.<sup>112</sup> Such time differences may often be explained as a logical extension of the underlying rationale of claims presentation require-

<sup>112</sup> *E.g.*, SANTA CRUZ CHARTER, Table III *supra* at A-24, item 72, which requires "all claims for damages" to be presented within 90 days after accrual, and "other claims or demands" within six months; CAL. WATER CODE §§ 31084-85, which requires property damage claims to be presented within 90 days and personal injury claims within 180 days.

ments: with respect to some types of claims, prompt notice is more essential for adequate investigation than for other types of claims. For example, when personal injury or property damage has resulted from alleged ordinary negligence by a public employee, the policy in favor of prompt filing of a claim in order to allow for early investigation of the facts seems to be at its peak. Evidence relating to liability or non-liability in such cases is often solely, or largely, in the form of oral testimony of witnesses. The advantages of early interview before memories grow dim are considerable. It might be expected, therefore, that claims provisions generally would reflect appreciation for these practical considerations by prescribing relatively short claim filing periods. Yet, as the foregoing discussion and tables demonstrate, wide variations exist.

More than a score of claims provisions allow a filing period of one full year after the injury occurred—a period which coincides with the statute of limitations in personal injury cases. Indeed, one ordinance,<sup>113</sup> evidently modelled after a similar State claim provision,<sup>114</sup> allows personal injury claims against the State, other than claims arising under Vehicle Code Section 400, to be filed within two years after the date of injury—or twice as long as the normal statute of limitations on personal injuries. Other provisions, 28 in number, require presentation of claims for personal injury or property damage but impose no time limitations; and hence in practical effect allow the claimant to present his claim at any time provided it is not barred by the statute of limitations. Claims statutes such as these clearly are not postulated upon any felt need for early investigation of the facts as a protection against unfounded or exaggerated claims. Their rationale would seem to be rather the avoidance of expense and inconvenience attendant upon litigation by allowing for settlement prior to suit; and in addition, to operate as a formal mechanism for invoking the fiscal accounting procedures of the government.

In contrast, Table XII also classifies 32 provisions with filing periods of six months or less for personal injury and property damage claims based on ordinary negligence. The State Legislature, it will be observed, has been somewhat partial to periods of six months (or 180 days) or longer—42 statutes out of 52 being in this category. Whereas drafters of city charters and ordinances appear to favor 90 days (or three months) or less with 55 out of 81 separate provisions so providing. The prevalence of such 90 day provisions may reflect the influence of insurance carriers who customarily require notice of loss to be given within 90 days. The six months and longer provisions, on the other hand, probably represent a compromise between policies of demanding prompt notice and of protecting deserving claimants.

It is thus apparent that great disparity of time limits exists with respect to ordinary tort claims. Yet, the only type of tort for which there is a comprehensive statutory waiver of immunity is of this type. Section 400 of the Vehicle Code makes all levels of government liable for personal injuries and property damage resulting from employee negligence in the operation of government motor vehicles on official business. It would seem that the policy considerations which justify a

<sup>113</sup> REDDING MUNIC. CODE § 30.

<sup>114</sup> CAL. GOVT. CODE § 16044.

claim presentation requirement with respect to Vehicle Code Section 400 claims are uniformly applicable to all levels of government. No significant differences are apparent with respect to the nature of the claim, need for investigation of facts relating to liability and damages or the desirability of early settlement. The level and identity of the governmental entity involved seems to be largely irrelevant to the determination of the filing time requirement.

In fact, however, the identity of the entity is frequently crucial. Assume that under otherwise identical circumstances *A, B, C, D, E, F* and *G* are injured in motor vehicle accidents for which the State, the City and County of San Francisco, the City of Ontario, the City of Redding, a public utility district, a community services district and an irrigation district are respectively liable. The injured plaintiffs must present a claim within one year,<sup>115</sup> 60 days,<sup>116</sup> three months,<sup>117</sup> two years,<sup>118</sup> six months,<sup>119</sup> 180 days<sup>120</sup> and 90 days,<sup>121</sup> respectively. But if the entity responsible is a water replenishment district, a port district or any one of a score of cities, the claim may be presented at any time without limitation in any claims statute. And, as previously observed, if the claim is against any of a large number of cities and districts no claim is necessary at all.<sup>122</sup>

Accepting the existing pattern of time limits prescribed for personal injury and property damage claims resulting from ordinary negligence, one would expect to find substantially the same pattern applicable to such claims when they result from the dangerous or defective condition of public property. Yet, the pattern is substantially different. Stated time limits of one year or more are relatively rare although again there are substantial numbers of claims statutes which impose no time limits. A period of 90 days (or three months) is the overwhelmingly favored time with 66 provisions classified as so providing in Table XII; whereas only 41 provisions extend the period to six months (or 180 days) or longer. Some provisions even draw a distinction between personal injury claims and property damage claims, allowing six months for presentation of the former but only 90 days for the latter.<sup>123</sup>

Prevalence of the 90 day period probably reflects the influence of the 1931 legislation<sup>124</sup> which established this period for presentation to counties, cities and school districts of dangerous and defective condition claims under the Public Liability Act of 1923. Yet the Legislature has deviated from its own pattern and has three special district claims statutes<sup>125</sup> which in terms expressly mention dangerous and defective condition claims but prescribe filing time limits *other* than 90 days. The same type of explicit deviation is encountered in at least

<sup>115</sup> *Id.* § 16043.

<sup>116</sup> SAN FRANCISCO CHARTER, as amended, Cal. Stat. 1935, c. 27, § 87, p. 2421.

<sup>117</sup> ONTARIO ORD. NO. 661 (Nov. 13, 1940).

<sup>118</sup> REDDING MUNIC. CODE § 30.

<sup>119</sup> CAL. PUB. UTIL. CODE § 16684.

<sup>120</sup> CAL. GOVT. CODE § 61628.

<sup>121</sup> CAL. WATER CODE § 22727.

<sup>122</sup> See Tables VI, VII, VIII *supra* at A-33, 34, 35.

<sup>123</sup> *E.g.*, CAL. WATER CODE §§ 31084-35; Brisbane County Water District Act, Cal. Stat. 1st Ex. Sess. 1950, c. 13, § 3, p. 447; Kings River Conservation District Act, Cal. Stat. 1951, c. 931, § 15, p. 2508, CAL. GEN. LAWS Act 4025 (Deering Supp. 1957).

<sup>124</sup> Cal. Stat. 1931, c. 1167, § 2, p. 2476.

<sup>125</sup> See Table V *supra* at A-29, items 120, 131, 141.

one city charter<sup>126</sup> and one city ordinance.<sup>127</sup> In addition, of course, there are several charters<sup>128</sup> and ordinances<sup>129</sup> which establish general time limits upon presentation of claims, including but not expressly naming dangerous and defective condition claims other than the 90-day period. However, insofar as such differences in filing time are found in city charters and ordinances, their effect is strictly practical rather than legal. None of the charter or ordinance time limits other than 90 days which have been adopted either by home rule or general law cities have any legally operative effect as to dangerous and defective condition claims. All are superseded by the 90-day period prescribed by Section 53052 of the Government Code.<sup>130</sup> Their continued existence, however, presents a constant threat of misleading deserving claimants, unfamiliar with the settled rule of decision, to delay beyond 90 days before filing a claim in reliance on a longer period designated in a charter or ordinance; or to fail to present a claim at all, although ample time to do so remained, in the mistaken belief that presentation would be too late in view of a charter or ordinance provision fixing a filing period of less than 90 days.

An anomalous feature of the time limit pattern is that many provisions require dangerous and defective condition claims to be presented within a *shorter* period of time than claims under Section 400 of the Vehicle Code.<sup>131</sup> On issues of liability, however, motor vehicle accidents are likely to present more difficult problems of discovering evidence than claims arising out of the physical condition of property. The allegedly defective characteristics of the street, sidewalk, curb, school yard, corridor or other publicly owned property which allegedly caused the injury normally might be expected to continue to exist for a considerable period of time without material change from natural causes. Investigation as the result of a claim would often disclose the basic evidence on liability substantially as well if conducted many months after the accident as within a few weeks. An automobile accident, however, often leaves little in the way of lasting tangible evidence other than broken bones and lacerated flesh. Tire marks soon disappear; oil slicks and broken glass are cleaned up; damaged fences are straightened; and the crumpled fenders, broken radiators and other consequences of impact are soon obliterated by the geniuses of body and fender repair. The bulk of significant evidence of liability thus often resides in the fallible memories of witnesses. Here, where prompt investigation can be of greatest value, the claims statutes often fail to insist upon prompt presentation. But in the dangerous and defective condition cases where promptness is often of lesser importance, greater

<sup>126</sup> MONTEREY CHARTER § 76½, as added by Cal. Stat. 1935, c. 100, § 76½, p. 2655, requires a verified notice to be presented to the city clerk within 10 days after the injury. A claim must later be filed within 90 days.

<sup>127</sup> PACIFIC GROVE MUNIC. CODE § 1-202, allows only 60 days filing time.

<sup>128</sup> See items listed in Table III *supra* at A-24, as follows: six months period—items 44-46, 54, 58, 61, 73, 76; 60 day period—item 66.

<sup>129</sup> See items listed in Table IV *supra* at A-27, as follows: one year period—items 96, 115; six months period—items 82, 87, 94, 111.

<sup>130</sup> *Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 558 (1947). See discussion p. A-91 *infra*.

<sup>131</sup> Contrast the *one year* period allowed by Government Code Section 29702 for Vehicle Code Section 400 claims against counties with the *90 day* period allowed by Government Code Section 53052 for dangerous and defective condition claims. This peculiarity is carried into the numerous district statutes which incorporate by reference the county claims procedure. See note 85 *supra*.

insistence upon early presentation obtains. The pattern is scarcely a logically consistent one.

When we turn to claims founded upon contract a different pattern emerges. Such claims against the State need not be presented for two years<sup>132</sup> whereas the county statutes allow one full year after the last item has accrued.<sup>133</sup> A general policy of the Legislature to extend the filing period for contract claims seems to be reflected in the special district statutes, also, where, as shown by Table XII, *supra*, the one year period predominates with six months as the runner-up. More significant is the fact that only one out of 56 district laws studied in Table XII requires contract claims to be presented within less than six months; and a total of 17 district laws either impose no time limits or do not require a claim to be presented in contract situations. A similar pattern which allows a longer period for presentation of contract claims than for tort claims appears also among the city claims ordinances and, less markedly, the city charters. Indeed, a number of individual claims provisions expressly impose a shorter time limit for claims for "damages" than for "other" claims.<sup>134</sup> On the other hand, a substantial number of claims provisions still require contract claims to be presented within a shorter period than is required of tort claims by other provisions.<sup>135</sup>

Analysis of the many claims provisions classified in Tables XI and XII reveals a series of inconsistent time patterns recurring over and over again as identical or closely similar legislative language is repeated in different measures. Such patterns are believed to result from the tendency of draftsmen of statutes, charters and ordinances to utilize previously enacted provisions as guides or models in the wording of new proposals. Absent strong policy reasons for changes, adoption of the time limitations and other features of some existing statute is the normal procedure. Thus, the filing times stipulated in earlier claims statutes tend to be reproduced in later ones. The period of "a year after the last item accrued," now found in Section 29702 of the Government Code, was apparently first introduced into California law by Chapter 609 of the Statutes of 1865-66.<sup>136</sup> It has appeared continuously ever since 1872 in Section 4072<sup>137</sup> of the Political Code until reenacted in its present location in 1947. The same one year period expressed in substantially identical words is today found in many district acts and city ordinances, but curiously enough, has not made its way into any city charter. Similarly, the 90-day period prescribed by the Legislature in 1931<sup>138</sup> for dangerous and defective condition claims, now found in Section 53052 of the Government Code, has been widely adopted in other enactments relating to similar claims. Although these influences have tended, in some degree, to bring more uniformity into claims provisions, they have clearly not succeeded. The reason is not hard to

<sup>132</sup> CAL. GOVT. CODE § 16044.

<sup>133</sup> *Id.* § 29702.

<sup>134</sup> Table III *supra* at A-24, items 57, 72, 75; see also items 33, 44, 45, 66. Table IV *supra* at A-27, items 81, 83, 87, 88, 93, 97-99, 102, 109; see also *id.* items 82, 84, 86, 91-92, 113.

<sup>135</sup> See Table XII *supra* at A-51.

<sup>136</sup> Cal. Stat. 1865-66, c. 609, § 1, p. 836, amending Section 24 of the County Government Act of 1855, Cal. Stat. 1855, c. 47, p. 51.

<sup>137</sup> Reenacted in 1907 as CAL. POL. CODE § 4075, Cal. Stat. 1907, c. IV, § 4075, p. 379.

<sup>138</sup> Cal. Stat. 1931, c. 1167, § 1, p. 2475.

find. Too many legislative voices speaking at different times have found complete agreement on time limits or other matters impossible.

### *Special Types of Time Requirements*

The usual form of time limitation governing claims restricts the period for filing claims to a specified duration *after* the cause of action has accrued or *after* the last item of an account has become due and payable. There are a substantial number of claims provisions, however, which also require a claim to be filed within a specified period *before* the meeting of the body which is to pass upon it.<sup>139</sup>

These pre-consideration time limitations are clearly quite different in purpose and function from the post-accrual type. Primarily, they appear to be postulated upon the needs of orderly procedural administration rather than upon the desire for safeguards against undue or falsified demands, such as prompt investigation while the evidence is fresh, and against the expense attendant upon unnecessary litigation. They provide an element of protection to public funds, of course, in that no claims hastily presented at the last moment can be immediately approved. At least the time required by statute must be available to staff personnel or to the members of the board to investigate, familiarize themselves and consider the merits before they are called upon to vote. Similarly, interested members of the public are given an opportunity to apprise themselves of the nature and contents of the claim and present any pertinent information to the board during this pre-consideration waiting period. Such provisions not only comport with the basic purposes of an orderly predetermined agenda for board meetings but serve as a deterrent to dishonest, collusive or pressure tactics in the processing of claims. At the same time, they do not threaten the potentially adverse effects which attend noncompliance with the usual post-accrual type of claims provision, since late filing merely postpones consideration of the claim to a later meeting of the board but does not defeat it altogether.

The San Bernardino Charter<sup>140</sup> is unique among claims statutes. Not only does it require claims to be filed at least three days before they are allowed by the city council or other board but also flatly declares that no claims shall be the basis of an action against the city unless filed at least 30 days *before commencement of the action*. The purpose of the latter provision, it would appear, is chiefly to allow for negotiation and settlement; for the absence of any requirement of timely notice after the cause of action has accrued suggests that the framers of this charter were not greatly concerned about the need for prompt

<sup>139</sup> *E.g.*, CAL. GOVT. CODE § 16021 ("at least four months before the meeting of the Legislature") CAL. PEN. CODE § 4901 (*semble*); CAL. GOVT. CODE § 29706 ("not less than three days, or if prescribed by ordinance five days, prior to the time of the meeting of the board at which it is asked to be allowed"); SAN BERNARDINO CHARTER § 237, Cal. Stat. 1905, c. 15, § 237, p. 940 ("at least three days before the same shall be allowed or paid." *Id.* at 977); CHICO MUNIC. CODE §§ 100-04 (two days prior to meeting of council); CONCORD MUNIC. CODE §§ 2600-01 (four days before council meeting); MADERA ORD. No. 181 (June 7, 1915) as amended by Ord. 164 N.S. (June 19, 1950) (on or before the 25th day of the month preceding the month in which claim is presented to city council); ORANGE MUNIC. CODE §§ 2600-01.2 (48 hours prior to council meeting); SANTA MARIA ORD. No. 72 (Dec. 16, 1916) (two days before meeting of Board of Trustees).

<sup>140</sup> Cal. Stat. 1905, c. XV, §§ 135, 236-7, pp. 962, 977, as amended, CAL. GEN. LAWS Act 6817 (Deering Supp. 1957).

investigation of the facts soon after their happening. The provision is thus much more closely related to the typical "waiting period" provision which forbids suit on a claim until it has either been rejected or a specified period has elapsed without allowance. Such provisions are discussed below.

### *Special Exceptions to Time Requirements*

A somewhat striking feature of claims statutes in California is the inflexibility of the filing time requirement. Although statutes in other states often contain special provisions allowing more liberal time allowances in cases of infancy or disability or permitting a late filing of a claim upon a showing of cause,<sup>141</sup> very few such provisions can be found in our law. Those which do exist are correspondingly more conspicuous.

Government Code Section 16046 provides, in connection with claims against the State, that claims of a minor, an insane or incompetent person, a person in prison, or a married woman (if her husband is a necessary party with her in commencing action thereon) "shall be presented to the board as prescribed by this chapter within two years after the disability ceases." In terms, this provision may extend the claim filing period for many years—possibly over 20 years in the case of an injured infant and perhaps longer in the case of a felon or insane person.

Section 110 of the San Diego City Charter contains a provision to the effect that the 90-day claim filing period prescribed by the charter "shall not begin to run against a claimant whose claim or demand for money due is because of operation of law until such claimant shall have actual notice of the existence of such claim." Although this clause purports to merely define when the 90-day period begins to run, its practical effect is comparable to an extension of the time period.

The San Luis Obispo Charter contains a discretionary provision authorizing a waiver of the time requirement by the City Council. Section 1231 of that charter, after imposing a 90-day claim filing requirement in contract cases, adds: "provided, however, that the Council may by four-fifths majority vote waive this provision as to claims arising out of contract in hardship cases." The waiver, it will be observed, is never available in tort cases regardless of circumstances of hardship.

No other provisions relaxing the rigidity of the claim filing times as prescribed have been discovered.

### **Person to Whom Claim Is To Be Presented**

The nonuniformity of claims provisions already observed is carried also into the designation of the person to whom the claim is to be presented. Such designation is often of critical importance for presentation to the wrong official may have the same consequences as if no claim were filed at all. An improperly presented claim may be unenforceable.<sup>142</sup>

<sup>141</sup> *E.g.*, VA. CODE tit. 8, § 8-653 (1957); MASS. ANN. LAWS c. 84, § 19 (1954); N.Y. GEN. MUNIC. LAW c. 24, § 50e (1957).

<sup>142</sup> See discussion of cases bearing on this point at pp. A-92-93 *infra*.

Claims against the State, except in a few special cases,<sup>143</sup> are required to be presented initially either to the State Controller<sup>144</sup> or to the State Board of Control.<sup>145</sup> County claims are to be presented to the clerk of the board of supervisors,<sup>146</sup> or to the board itself,<sup>147</sup> although authority is given the board to designate the county auditor as the recipient of some types of claims.<sup>148</sup> The State and county claims provisions thus contain some variety in the designation of the appropriate officer but scarcely enough to create serious confusion.

With respect to claims against cities and districts, however, the usual pattern of inconsistencies and ambiguities emerges from the proliferation of statutes, charters and ordinances. The general pattern can be discerned from Table XIII which follows.

TABLE XIII  
PERSON DESIGNATED AS RECIPIENT TO CLAIM

Recipient designated	56 district laws	48 city charters	37 city ordinances
Legislative body.....	20	11	2
Clerk or secretary.....	33	19	30
Auditor or controller.....	2	9	1
City manager or administrative officer.....	3	5	0
No specific recipient designated.....	1	4	4

Table XIII suggests the lack of unanimity of agreement as to the appropriate claim receiving agency. Despite a preponderance of provisions naming the clerk or secretary, such officer is named in the majority of provisions studied only in the case of city ordinances.

The disparity of legislative policy revealed is further highlighted by several subpatterns. For example, a number of provisions contain an express requirement that a claim be presented not only to the clerk but also to the officer, agent or employee whose act or omission allegedly gave rise to the claim. Such a clause is in five district laws<sup>149</sup> and one ordinance.<sup>150</sup> Insofar as these claims provisions are prerequisites to action against the *entity* involved, the policy underlying insistence upon presentation to the *employee* is somewhat obscure.

Several charter provisions require the claim to be "presented to the council and filed with the city clerk" [Emphasis added.] within the time specified.<sup>151</sup> Verbally there is an observable difference in meaning between such a provision and one which requires that a claim "be filed with the secretary . . . [and] demands so filed with said secretary shall

<sup>143</sup> CAL. BUS. & PROF. CODE § 19598 (State Horse Racing Board); CAL. GOVT. CODE § 14353 (Dep't of Public Works); CAL. MIL. & VET. CODE §§ 1086.1, 1089 (Dep't of Veterans Affairs); CAL. PEN. CODE § 1241 (clerk of court).

<sup>144</sup> CAL. AGRIC. CODE § 242; CAL. GOVT. CODE §§ 9130, 14031, 14035, 15364, 16002, 16372; CAL. MIL. & VET. CODE §§ 188, 1033.

<sup>145</sup> CAL. FISH & GAME CODE § 25; CAL. GOVT. CODE §§ 16020-21; CAL. MIL. & VET. CODE § 1586; CAL. PEN. CODE § 4901; CAL. PUB. RES. CODE § 4004.

<sup>146</sup> CAL. AGRIC. CODE § 439.56; CAL. GOVT. CODE §§ 29701, 53052; CAL. MIL. & VET. CODE § 945.

<sup>147</sup> CAL. EDUC. CODE § 20947; CAL. H. & S. CODE §§ 257, 13052.

<sup>148</sup> CAL. GOVT. CODE § 29701.

<sup>149</sup> CAL. WATER CODE §§ 22727, 31084-85, 35752; Brisbane County Water District Act, Cal. Stat. 1st Ex. Sess. 1950, c. 13, § 3, p. 447; Kings River Conservation District Act, Cal. Stat. 1951, c. 931, § 15, p. 2508, as amended, CAL. GEN. LAWS Act 4025 (Deering Supp. 1957).

<sup>150</sup> GLENDALE MUNIC. CODE §§ 2-199 through 2-204.

<sup>151</sup> E.g., INGLEWOOD CHARTER, Table III *supra* at A-24, item 44; LONG BEACH CHARTER, *id.* item 45.

be presented to the board of directors at its next meeting.”<sup>152</sup> Under the latter form of requirement the critical element would be the date of filing with the clerk. The former type, however, appears to impose a dual requirement: *i.e.*, both the filing and presentation must take place within the prescribed time. Thus, the controlling fact with respect to satisfying the time requirement would be the actual date of presentation to the council and previous timely filing with the clerk would not suffice. Inasmuch as many city councils normally meet only weekly or monthly, such a dual presentation clause may in effect substantially shorten the available time for compliance since the claim must be presented not later than the council meeting preceding the last day of the filing period.

Some of the claims provisions are ambiguous with respect to the proper recipient of the claim. The statutes governing claims against counties are of this type. Section 29701 of the Government Code, read in conjunction with Sections 29700 and 29702, appears to require “any claim” against a county or district fund under the control of the board of supervisors to be filed with the *clerk of the board* or with the *auditor* according to the procedure prescribed by the board within one year after it accrues. Section 29704 which also relates to “any claim” requires that it be presented to *the board* before any suit may be brought thereon. What appears to be a conflict in the requirements of these sections is, however, resolved by Section 29706 which states that the board shall not pass upon a claim “unless it is filed with the clerk or auditor” at least three days before the meeting at which it is asked to be allowed. Evidently a distinction between “filing” and “presentation” is intended with the time limit keyed to the filing date. In any event the statutory language is not as clear as might be desired.

A similar ambiguity appears in the Government Code provisions relating to claims against the State. Section 16002 provides that a claim “for which appropriations have been made, or for which state funds are available” may be presented to the *State Controller*. Under Section 16041, on the other hand, all claims based on express contract, negligence or inverse condemnation must be presented to the *State Board of Control*. There appears to be a conflict between these provisions for many claims on express contract are claims for which an appropriation has been made; and it is not unlikely that State funds may be available to meet at least some claims for negligence and inverse condemnation. Perhaps the conflict is of little significance since a claim rejected by the State Controller as improperly presented to him normally could still be filed timely with the Board of Control during the unusually long (two years) filing period allowed.

Infelicitous draftsmanship is found also in the charter of the City of Arcadia,<sup>153</sup> Section 1112 of which requires that “any demand against the city . . . shall be presented to the *Controller*.” [Emphasis added.] Section 1114 of the same charter, on the other hand, provides that “any claim for money or damages” must be “presented to the *City Clerk*

<sup>152</sup> Metropolitan Water District Act, Table V *supra* at A-29, item 149; Municipal Water District Act, *id.* item 153; BURBANK CHARTER, Table III *supra* at A-24, item 33; CULVER CITY CHARTER, *id.* item 36; LOS ANGELES CHARTER, *id.* item 46; REDONDO BEACH CHARTER, *id.* item 57; REDWOOD CITY CHARTER, *id.* item 58; SANTA CRUZ CHARTER, *id.* item 72; SANTA MONICA CHARTER, *id.* item 73; TORRANCE CHARTER, *id.* item 75; VALLLEJO CHARTER, *id.* item 76. See also SALINAS CHARTER, *id.* item 62.

<sup>153</sup> ARCADIA CHARTER, Table III *supra* at A-24, item 31.

within ninety days.” [Emphasis added.] If the framers of these provisions were observing a distinction between “demands” and “claims,” it is not apparent what the difference is. If no such distinction was intended, there seems to be a square conflict since both provisions seem equally broad in scope.

The incorporation-by-reference technique for prescribing claims procedure creates problems as to the proper recipients of claims in some instances. Some 20 district statutes incorporate by reference the claims procedure applicable to counties. In the case of 12 of these statutes<sup>154</sup> the governing body of the district is the county board of supervisors and the county clerk and county auditor serve *ex officio* as the clerk and auditor for the district. In these instances, a claim against the district would be presented initially to the same officer as if it were against the county, to wit, the clerk or auditor as designated by the board of supervisors. The other eight districts incorporating county claims procedure<sup>155</sup> have independent governing boards and officers. They may or may not have officers who correspond to the clerk of the board and county auditor; and the board of directors may or may not have designated which officer is to be the proper recipient of claims. Yet, only one of these statutes, the Lower San Joaquin Levee District Act,<sup>156</sup> makes express provision for the problem; it requires all claims to be presented directly to the district board of directors although in all other respects incorporates county claims procedures. While it seems unlikely that a determined claimant would be unable to determine to whom his claim should be presented, the potential difficulties inherent in the incorporation-by-reference provisions illustrate the lack of clarity and specificity which has frequently crept into claims statutes.

Apart from ambiguities like those already mentioned, the identification of the proper person with whom to present a claim is usually not difficult for most of the claims statutes designate a single officer to accept all types of claims. However, some of the city charters and a few ordinances establish a more complex procedure and require that certain types of claims are to be presented to a different officer or board from those others generally designated. The Glendale Charter<sup>157</sup> requires demands “for which no appropriation has been made” to be presented to the city council whereas all other demands are to be filed with the city manager. Apparently a claimant must ascertain the current status of the Glendale city budget before he can accurately determine where to file his claim. Riverside<sup>158</sup> and Whittier<sup>159</sup> distinguish between “claims for damages” and “all other demands,” requiring the former to be presented to the city clerk and the latter to the city controller. Claims, however, do not always fit neatly into categories such as these; and sometimes a single claim may include elements of both damages and contractual liability.<sup>160</sup> The San Diego Charter<sup>161</sup> observes substantially the same distinction but is somewhat

<sup>154</sup> Table V *supra* at A-29, items 145, 148, 152, 155-57, 162, 164-65, 167, 169-70.

<sup>155</sup> *Id.* items 124-26, 135, 139, 146, 150, 166.

<sup>156</sup> *Id.* item 146.

<sup>157</sup> GLENDALE CHARTER, Table III *supra* at A-24, item 40.

<sup>158</sup> RIVERSIDE CHARTER, *id.* item 59.

<sup>159</sup> WHITTIER CHARTER, *id.* item 78.

<sup>160</sup> See, *e.g.*, *Transbay Construction Co. v. San Francisco*, 35 F. Supp. 433 (N.D. Cal. 1940).

<sup>161</sup> SAN DIEGO CHARTER, Table III *supra* at A-24, item 65.

more specific; claims for injuries "to person or property because of negligence" are to be presented to the city clerk whereas claims for money due "because of contract or by virtue of operation of law" are to be filed with auditor and comptroller. Under this provision, one may well wonder as to whom a claim for property damage due to a negligent breach of contract should be presented; or a claim for personal injuries resulting from an intentional tort committed by a municipal employee in the course and scope of proprietary employment. Problems like these, however, arise infrequently since most claims will be readily identified as presentable to one or the other designated recipient.

The most difficult compliance problems appear to arise under the charters of Porterville,<sup>162</sup> San Bernardino,<sup>163</sup> San Buenaventura,<sup>164</sup> Visalia<sup>165</sup> and Santa Cruz.<sup>166</sup> Section 48 of the Porterville Charter illustrates the pattern adopted, with some minor variations, in the charters of the first four cities:

Demands against the library fund shall be presented to the Board of Library Trustees; demands against the park fund shall be presented to the Council, and all other demands shall be presented to the City Manager, provided . . . that if the Council shall provide for other boards or commissions, it may make provision for the presentation to and approval by and such board or commission of demands for liabilities incurred by them . . . .

The Santa Cruz Charter is not so definite. It requires every claim to be presented by the claimant not only to the city clerk, but also "to the City officer, board or commission authorized by this charter to incur or pay the expenditure or alleged indebtedness or liability represented thereby." Keeping in mind the fact that all dangerous and defective condition claims are required by statute to be presented to the clerk of the city council,<sup>167</sup> it appears that a claimant against one of these five cities is required to carefully analyze the legal theory of his claim, to identify accurately the board or commission of the city government which is responsible, to investigate in some instances the ordinances which established such board or commission and possibly to determine the current state of the city budget before he can decide with whom to leave the claim. The need for such complexity is not apparent. The most complex and largest city in California, Los Angeles, finds a perfectly adequate procedure in its charter requirement that all claims "be filed with the City Clerk, who shall thereupon present the same to the board, officer or employee authorized by this Charter to incur or pay the expenditure or alleged indebtedness or liability represented thereby."<sup>168</sup>

Finally, as with other aspects of claims statutes, the prevalent non-uniformity in designation of the recipient for claims is enhanced by several statutes, charters and ordinances which require the filing of claims but fail to specifically designate the person to whom the claim

<sup>162</sup> PORTERVILLE CHARTER, *id.* item 56.

<sup>163</sup> SAN BERNARDINO CHARTER, *id.* item 63.

<sup>164</sup> SAN BUENAVENTURA CHARTER, *id.* item 64.

<sup>165</sup> VISALIA CHARTER, *id.* item 77.

<sup>166</sup> SANTA CRUZ CHARTER, *id.* item 72.

<sup>167</sup> CAL. GOVT. CODE § 53052.

<sup>168</sup> LOS ANGELES CHAPTER, Table III *supra* at A-24, item 46.

is to be presented.<sup>169</sup> Occasionally, as in the San Francisco Bay Area Metropolitan Rapid Transit District Act,<sup>170</sup> one finds a requirement that claims merely be "filed with the district." In other instances the charter<sup>171</sup> or ordinance<sup>172</sup> requires a designated officer to audit all claims as a prerequisite to payment but does not expressly name him as the proper recipient of the formal document. Still others are wholly silent upon the subject.<sup>173</sup>

#### Contents of Claims

##### *Statutory Requirements*

A substantial number of claims statutes<sup>174</sup> do not prescribe in any way the information which must be included in a claim although the presentation of a claim is mandatory thereunder. Under such provision the secretary or clerk of the entity as an informal procedure will frequently provide suitable forms to prospective claimants. Some claims statutes<sup>175</sup> expressly authorize a designated officer or board to prescribe in detail the form and contents of claims but are otherwise silent on the subject.

The great bulk of claims provisions, however, contain some specifications as to the contents of claims. The criteria prescribed range from extremely detailed descriptions of the information to be included to such succinct prescriptions as the bare requirement that the claim be "itemized." Because of the great heterogeneity of statutory language, generalization is difficult. However, seven main patterns of requirements as to contents may be roughly discerned:

First, there are a number of provisions which, in one form or another, merely require in general terms that the claimant state "the facts constituting the claim" or "set forth in detail for what the claim is presented."<sup>176</sup>

Second, a number of claims provisions briefly require that the claim be "itemized"<sup>177</sup> or that it "specify each several item with the date and amount thereof"<sup>178</sup> or words of substantially similar import.

<sup>169</sup> BERKELEY CHARTER, *id.* item 32; FRESNO CHARTER, *id.* item 38; OROVILLE CHARTER, *id.* item 52; SACRAMENTO CHARTER, *id.* item 61; ALHAMBRA ORD. 2618 (May 4, 1954); EL CENTRO ORD. 57-1 (Jan. 28, 1957); RICHMOND ORD. 987 (June 26, 1945); UPLAND ORD. 251 (Sept. 18, 1930); San Francisco Bay Area Metropolitan Rapid Transit District Act, Table V *supra* at A-29; item 159.

<sup>170</sup> Table V *supra* at A-29, item 59.

<sup>171</sup> *E.g.*, BERKELEY CHARTER, Table III *supra* at A-24, item 32.

<sup>172</sup> *E.g.*, ALHAMBRA ORD. 2618 (May 4, 1954).

<sup>173</sup> *E.g.*, UPLAND ORD. 251 (Sept. 18, 1930).

<sup>174</sup> For statutes of this type dealing with claims against the State, see Table I *supra* at A-22, items 1, 5-6, 8, 10, 12-13; county claims, see Table II *supra* at A-23, items 26-27; city charters, see Table III *supra* at A-24, items 32-33, 35-36, 38-39, 43-45, 47, 55, 57-58, 61, 72-73, 75-77; city ordinances, see Table IV *supra* at A-27, items 32, 94, 101, 105; district statutes, see Table V *supra* at A-29, items 119, 127, 133-34.

<sup>175</sup> State claims, see Table I *supra* at A-22, items 9, 14-16, 18; city charters, see Table III *supra* at A-24, items 37, 40, 56, 62, 64, 70; city ordinances, Table V *supra* at A-29, items 79, 107.

<sup>176</sup> State claims, Table I *supra* at A-22, items 3, 11, 17, 19-20; city ordinances, Table IV *supra* at A-27, items 89, 102, 112.

<sup>177</sup> State claim statutes, Table I *supra* at A-22, item 4; county claim statutes, Table II *supra* at A-23, items 22, 25; city ordinances, Table IV *supra* at A-27, items 83, 91, 104, 108, 110-11.

<sup>178</sup> City charters, Table III *supra* at A-24, items 30, 37, 52-54, 63, 65; city ordinances, Table IV *supra* at A-27, items 99, 114.

Third, there are several provisions apparently limited to contract claims which authorize the claim to be presented in the form of a bill, invoice, payroll or other contract document.<sup>179</sup>

Fourth, a large number of claims statutes prescribe the required contents in language copied, adopted from or incorporated by reference from what is now Section 29700 of the Government Code—a detailed declaration that each claim against a county must be “itemized to show: (a) Names, dates, and particular service rendered. (b) Character of process and person served. (c) Distance traveled. (d) Time and place of travel. (e) Character of work done. (f) Number of days engaged. (g) Supplies or materials furnished, to whom, and quantity and price paid therefor.”<sup>180</sup>

Fifth, an even larger number of claims provisions<sup>181</sup> paraphrase or incorporate by reference the prescription as to contents contained in what is now Section 29705 of the Government Code. That section is a special provision expressly applicable to noncontract claims against counties and, as such, modifies *pro tanto* the general claims provision of Section 29700. It requires all claims against a county which are not founded on contract to state: “(a) Full details as to the nature of the claim. (b) The time and place it arose. (c) The public property and public officers or employees alleged to be at fault. (d) The nature, extent, and amount of the injury or damage claimed. (e) All other details necessary to a full consideration of the merit and legality of the claim.”

Sixth, by far the most frequently invoked<sup>182</sup> description of the contents of claims is typified by Section 53053 of the Government Code and Section 1007 of the Education Code. Applicable only to tort claims, these sections succinctly provide that the claim “shall specify the name and address of the claimant, the date and place of the accident, and the extent of the injuries or damages received.” A frequent modification is the insertion of the words “and circumstances” after “place” in the quoted provision.

Seventh, and lastly, are a few scattered claims statutes<sup>183</sup> which contain a somewhat more elaborate and detailed specification of contents than any of the provisions described above.

The wide variations observed in the contents required of claims suggest the absence of uniformly held views as to the need for formal precision. If the fundamental policy is one of fair notice, a simple requirement that the claimant state the facts constituting his claim would probably, in most cases, serve substantially as well as a provision

<sup>179</sup> CAL. GOV. CODE § 29700.1, as added by Cal. Stat. 1957, c. 314, § 1, p. 956; city charters, Table III *supra* at A-24, items 31, 59, 68, 78; city ordinances, Table IV *supra* at A-27, item 90.

<sup>180</sup> City ordinances, Table IV *supra* at A-27, items 83, 85, 96, 98-99, 106, 115; district laws, Table V *supra* at A-29, items 116, 124-26, 130, 135-40, 142-48, 150-52, 154-58, 160-70.

<sup>181</sup> City charters, Table III *supra* at A-24, item 50; city ordinances, Table IV *supra* at A-27, items 81, 86, 88, 93, 97-99, 100, 102; district laws, Table V *supra* at A-29, 124-26, 135-40, 142, 145-48, 150-52, 154, 156-58, 160-70.

<sup>182</sup> City charters, Table III *supra* at A-24, items 31, 34, 41-42, 48-49, 51, 59-60, 65-69, 71, 74, 78; city ordinances, Table IV *supra* at A-27, items 80, 84, 91-92, 95, 103, 110, 113; district laws, Table V *supra* at A-29, items 120, 124-26, 129, 131-32, 135-42, 146-48, 150-52, 154, 156-58, 160-72.

<sup>183</sup> State claims statutes, Table I *supra* at A-22, items 2, 7; county claims provisions, Table II *supra* at A-23, item 21; city charters, Table III *supra* at A-24, items 63, 65; city ordinances, Table IV *supra* at A-27, items 87, 109; district laws, Table V *supra* at A-29, items 149, 153.

listing in detail the various bits of information desired. In the case of entities with extensive geographical territory or large population, however, detailed statutory requirements that certain prescribed information be given in every claim might be deemed advisable in order to facilitate administrative handling as well as identification of location, circumstances or personnel involved. Overly detailed requirements, on the other hand, pose a threat of becoming a snare which may defeat deserving but technically noncomplying claimants, even though fair, adequate and timely notice in fact is given to the entity.

It is impossible to determine to what extent the foregoing policy criteria have influenced informational requirements. Many large and populous entities are governed by extremely broad provisions whereas a number of relatively small bodies enjoy the protection of considerably detailed contents requirements.<sup>184</sup> The converse is equally true.<sup>185</sup> It is at least tolerably clear that there is no generally accepted public policy in the State in favor of or against either type of provision.

A second, and equally anomalous, feature of the contents requirements is the frequent incongruity of the statutory language in relation to some types of claims apparently governed thereby. Many of the provisions which require "itemized" claims<sup>186</sup> are broad enough in scope to be applicable to tort claims arising under Section 400 of the Vehicle Code as well as claims under the "proprietary" negligence doctrine; yet itemization in its normal connotation of a contractual account would appear to be wholly alien to the practical demands of tort situations.

Draftsmen of other claims provisions, aware of the somewhat different functions of tort and contract claims, have solved the contents problem in an entirely different way. A number of statutes which expressly apply to both contract and tort claims explicitly prescribe the information to be included in tort claims but are entirely silent as to any such requirements for contract claims.<sup>187</sup> And, as previously noted, many provisions have no content specifications for any type of claim at all.

Interpretative problems relating to contents lurk in the many district law provisions which incorporate county claims procedure. For example, a number of district laws provide that claims "shall be presented in the general form and manner prescribed by general law" [Emphasis added.] for claims against counties.<sup>188</sup> The reiteration of the word "general" suggests the possibility that reference is intended only to the *general* county claims statute<sup>189</sup> and not to the *specific* statute gov-

<sup>184</sup> Compare CAL. GOVT. CODE § 16021 ("the facts constituting the claim" applicable to claims against the State) with Municipal Water District Act of 1911, Cal. Stat. 1911, c. 671, § 20, p. 1300, as added by Cal. Stat. 1951, c. 62, p. 183, CAL. GEN. LAWS Act 5243 (Deering Supp. 1957) ("shall set forth with reasonable certainty the nature of the claim and shall contain the name and address of the claimant, the date of the occurrence from which the damages arose or the date when each item of the account or claim accrued, the total amount originally claimed, all payments thereon or offsets or credits thereto, the net amount due, owing, and unpaid on such claim, and if such claim shall have been assigned, the name of the original claimant and the names of all assignees and the full particulars of each assignment." Cal. Stat. 1951, c. 62, § 21, p. 199).

<sup>185</sup> Compare CAL. GOVT. CODE § 29700 (applicable to claims against counties) with CHICO MUNIC. CODE §§ 100-104.

<sup>186</sup> E.g., MADREA ORD. 181 (June 7, 1915), as amended, Ord. 164 N.S. (June 19, 1950); REDDING MUNIC. CODE § 30.

<sup>187</sup> E.g., ARCADIA CHARTER, Table III *supra* at A-24, item 31; CHULA VISTA CHARTER, *id.* item 34; ROSEVILLE CHARTER, *id.* item 60; SANTA ANA CHARTER, *id.* item 69.

<sup>188</sup> Table V *supra* at A-29, items 136-38, 140, 142, 147, 151, 153, 160-61, 163.

<sup>189</sup> CAL. GOVT. CODE §§ 29700 *et seq.*

erning dangerous and defective condition claims.<sup>190</sup> Although the liability provisions of the last cited sections do not apply to districts other than school districts, the procedural provisions prescribed therein would seem to be logically adaptable to certain types of inverse condemnation claims. Whether an incorporation clause like the one quoted refers to both of the basic county claims statutes or only the general provisions may thus be of considerable significance in some cases. The contents required of a dangerous and defective condition claim are substantially less extensive and detailed than the contents demanded by the general county claims law. A claim which is defective and hence nugatory under the latter provisions might be adequate under the former, if the former provisions were incorporated.

Another substantial group of district laws<sup>191</sup> merely requires claims to be "prepared . . . in the same manner as demands upon the funds of the county." The absence of any reference to the "form" of the claim suggests, by way of contrast with the provisions discussed in the preceding paragraph, that perhaps the legislative intent is to require only a written and properly verified claim, since these requisites relate to the "manner" of preparation rather than to "form." Even this minimal element of control over contents seems to be eliminated, however, where the statute merely requires the district claim to "be presented . . . as are claims against the county," making no reference to manner of preparation or form of the claim.<sup>192</sup>

In a few instances, a specific indication of legislative intent with respect to the scope of the incorporating clause may be detected in language requiring claims against a district to be "itemized in the same manner as are claims against the county."<sup>193</sup> By this reference, apparently only Section 29700 of the Government Code is incorporated for that is the only provision expressly speaking of itemization. Section 29700, however, would be quite incongruous when used as a guide to the contents of a tort claim since it expressly contemplates only claims for expenses incurred, services rendered or goods sold to the county. In all likelihood, therefore, a claimant who conformed to Section 29705, the general tort claim section, would be fully protected but this result would be founded on practical considerations rather than normal principles of interpretation.

#### *Amendment of Defective Claims*

Only in a relatively few statutes is there any explicit recognition of the need for some relaxation in the otherwise stringent rules governing form and content of claims. Section 29703 of the Government Code is of this type and provides:

If the board does not hear or consider any claim required to be itemized because it is not itemized, it shall cause notice to be given to the claimant or his attorney of that fact and allow time for the claim to be itemized . . . .

<sup>190</sup> *Id.* §§ 53050 *et seq.*

<sup>191</sup> Table V *supra* at A-29, items 124-26, 135, 139, 145, 148, 150, 152, 154, 156-57, 162, 164-70.

<sup>192</sup> *Id.* Item 146.

<sup>193</sup> *Id.* Items 143-44, 155.

Somewhat peculiarly, the liberal attitude here displayed appears to apply only to contract claims since they are the only claims "required to be itemized."<sup>193a</sup> And, of course, it applies only to claims against counties and claims against districts under county fiscal control.

Although Section 29703 is of limited application, it provides the basis for the most liberal amendment provisions in California found in the municipal codes of the cities of Chico and Redding.<sup>194</sup> After providing that the council shall not hear, consider or allow "any claim" against the city "unless the same be itemized," both provisions employ substantially the same language as Section 29703 of the Government Code quoted above. Because these two itemization provisions apply to *all* claims against the city, both in tort and contract, the notice and amendment provisions likewise apply to all claims.

The most frequently encountered provision for amendment of claims to cure technical defects is encountered in some 11 flood control statutes<sup>195</sup> which read:

Such claims may be amended within said six months to correct defects in form or statement of facts.

These provisions apply to all claims whether in tort or contract or inverse condemnation. Unlike the county provision, however, they do not require notice of the defect to be given the claimant and limit the period within which claims may be amended to the same period—e.g., "six months" in the above-quoted section—within which the claim itself must be filed. Their efficacy is thus quite limited for the claimant normally learns that his claim is defective only when notified of its rejection upon that ground, often after the time for amendment has lapsed.

One of the surprising aspects of the contents provisions is that, except for the few limited amendment clauses discussed above, no other allowances are made for unintentional defects and omissions in claims. Accordingly, such inadvertencies may sometimes result in the total denial of a meritorious claim, even though the entity responsible has not been deceived or prejudiced in the slightest degree by the information or lack thereof in the claim as presented.<sup>196</sup>

#### Formal Requisites

Comparison of claims provisions with respect to the formalities of signature and verification presents the usual pattern of nonuniformity.

Relatively few provisions expressly require that claims be signed as a separate formality from verification. One of the few that does, however, is Section 29705 of the Government Code which provides that any noncontract claim against a county or county-controlled district shall be "signed by the claimant or someone authorized by him." Some 33 laws governing districts incorporate by reference the same requirement.<sup>197</sup> Similar language is found in the city charter of Eureka<sup>198</sup>

<sup>193a</sup> See also CAL. GOV'T. CODE § 29700.1, added by Cal. Stat. 1957, c. 314, p. 956, authorizing county boards of supervisors to accept "a general statement of the total selling price" of groceries and household supplies furnished by the claimant to recipients of public assistance, in lieu of a fully itemized claim for the price thereof.

<sup>194</sup> CHICO MUNIC. CODE § 101; REDDING MUNIC. CODE § 30.

<sup>195</sup> Table V *supra* at A-29, items 136-38, 140, 142, 147, 151, 154, 158, 160-61.

<sup>196</sup> See discussion in text pp. A-95 *infra* at notecalls 431-33.

<sup>197</sup> Table V *supra* at A-29, items 124-26, 135-40, 142, 144-48, 150-52, 154, 156-58, 160-70.

<sup>198</sup> Table III *supra* at A-24, item 37.

and in ordinances of the cities of Buena Park and Costa Mesa;<sup>199</sup> three city ordinances expressly require the claimant personally to sign making no allowance for signature by his agent.<sup>200</sup> The Buena Park and Costa Mesa ordinances, incidentally, require signature only on tort claims and expressly provide that contract claims need not be signed. A total of 41 claims provisions out of the 174 listed in Tables I-V thus demand a signature upon all, or certain types of, claims.

The absence of any signature provision in a large proportion of claims statutes suggests that it is regarded widely as a purely formal and hence unnecessary requirement. The functional utility of a signature in those statutes which insist upon one is somewhat obscure. As an authenticating device to ensure the good faith of the claimant, a mere signature hardly seems to measure up to the functional utility of a verification. Identification of the claimant does not require a signature, for such information is expressly or impliedly required to be stated in the body of every claim. The strongest case, perhaps, that can be made for insistence upon a signature is that it may have some ceremonial or psychological value, adding formal dignity to the preparation of a claim which may enhance its reliability. This is possibly the policy reflected in the several provisions which require a signature on tort claims but not on contract claims since opportunities for falsified or exaggerated claims are apparently regarded as greater in tort than in contract. Again, however, it is self-evident that a verification requirement would better serve the same objective. Yet no instance has been discovered where a statute requiring a signature does not also require verification. On the other hand, many statutes which require verification do not require a signature except as part of the formal verification itself.<sup>201</sup>

Unlike the formality of a signature, a majority of claims statutes do require verification of claims by a formal sworn statement as a guarantee of the truthfulness of the facts stated. Such requirements are of several types.

Most prevalent is the simple use of the adjective, "verified," requiring that a "verified claim" must be filed. No details as to the exact form or contents of the verification are given nor is there any restriction as to the persons who may execute the verification. Some 29 provisions are of this type.<sup>202</sup>

Section 29701 of the Government Code typifies a slightly more specific requirement that the verification be that of the claimant himself. Including 35 statutes which incorporate Section 29701 by reference, there are 49 claims statutes of this nature.<sup>203</sup>

<sup>199</sup> Table IV *supra* at A-27, items 81, 88.

<sup>200</sup> *Id.* items 86, 100, 107.

<sup>201</sup> *E.g.*, CAL. GOVT. CODE § 29701, incorporated by reference in the district laws cited note 197 *supra*.

<sup>202</sup> Claims against the State, Table I *supra* at A-22, item 2; claims against counties, Table II *supra* at A-23, item 24; city charters, Table III *supra* at A-24, items 31, 36, 42, 50, 59-60, 63, 65, 78; city ordinances, Table IV *supra* at A-27, items 80, 84, 92, 95, 103-04, 106, 110, 113; district laws, Table V *supra* at A-29, items 113-19, 129, 131-32, 141, 149, 153, 172.

<sup>203</sup> Claims against counties, Table II *supra* at A-23, items 22-23; city charters, Table III *supra* at A-24, items 33, 57, 66, 75; city ordinances, Table IV *supra* at A-27, items 82-83, 86-87, 89, 100, 102, 105; district laws, Table V *supra* at A-29, items 124-26, 130, 135-40, 142-43, 150-52, 154, 156-58, 160-70.

More liberal are the 18 provisions authorizing verification either by the claimant or by some authorized person on his behalf;<sup>204</sup> and the six provisions providing for verification of claims against the State "in the same manner as complaints in civil actions"<sup>205</sup> thereby authorizing verification by the claimant's attorney or by other persons having knowledge of the facts.<sup>206</sup>

Three city charters do not require claims to be verified but expressly authorize the fiscal officer to require any claimant to take an oath as to the validity of the claim.<sup>207</sup> In addition, one charter and three ordinances require claims to be "certified" as correct but demand no formal oath.<sup>208</sup>

Inexplicable anomalies with respect to verification requirements are apparent. For example, since verification is regarded as an essential safeguard to be exacted of every contract—as well as tort—claimant against a county,<sup>209</sup> it is difficult to perceive why verification is not equally important when such claims are presented to school districts and cities. Many school districts and cities are larger in area, population and financial program than some counties. Yet only tort claims against school districts need be verified<sup>210</sup> whereas a substantial number of city charters and ordinances do not require even tort claims to be verified.<sup>211</sup>

All told, 109 claims provisions out of the 174 classified in Tables I-V require verification or certification of some or all types of claims.

#### Time for Consideration of Claims

A substantial majority of all claims provisions impose no time limitations upon the consideration of claims which have been presented. The provisions which do restrict the period of consideration are generally of three types.

First, some claims statutes expressly provide that inaction consisting of either failure or refusal of the appropriate board to approve a claim shall be deemed as a matter of law to be the equivalent of a rejection thereof after a specified period.<sup>212</sup> Such provisions are most frequently found in city charters with some 26 charters so providing<sup>213</sup> although a few district laws<sup>214</sup> and ordinances<sup>215</sup> also are of this pattern. The periods of time specified range from four weeks<sup>216</sup> to six months,<sup>217</sup> with 60 days the limit mentioned in 23 of the 33 provisions cited.

<sup>204</sup> City charters, Table III *supra* at A-24, items 37, 58, 62; city ordinances, Table IV *supra* at A-27, items 81, 85, 88, 91, 93, 96-99, 109, 114; district laws, Table V *supra* at A-29, items 121, 128, 173-74.

<sup>205</sup> CAL. GOVT. CODE §§ 16021 and 9130; CAL. FISH & GAME CODE § 25; CAL. MIL. & VET. CODE § 1586; CAL. PEN. CODE § 4901; CAL. PUB. RES. CODE § 4904. See also CAL. AGRIC. CODE § 439.56 which requires affidavits of two disinterested witnesses for claims for damages for livestock killed by dogs.

<sup>206</sup> See CAL. CODE CIV. PROC. § 446.

<sup>207</sup> BERKELEY, FRESNO and SACRAMENTO CHARTERS, Table III *supra* at A-24, items 32, 38, 61.

<sup>208</sup> PETALUMA CHARTER, Table III *supra* at A-24, item 55; CORONADO, RICHMOND and WATSONVILLE ORDINANCES, Table IV *supra* at A-27, items 87, 107, 115.

<sup>209</sup> CAL. GOVT. CODE § 29701.

<sup>210</sup> CAL. EDUC. CODE § 1007.

<sup>211</sup> City charters, Table III *supra* at A-24, items 30, 34-35, 39, 41, 43-46, 49, 51, 53-54, 56, 64, 67-74, 76-78; city ordinances, Table IV *supra* at A-27, items 79, 90, 94, 101, 108, 111-12.

<sup>212</sup> *E.g.*, CAL. GOVT. CODE § 29714.

<sup>213</sup> Table III *supra* at A-24, items 31, 33-36, 40-42, 47-49, 51, 57-59, 60, 67-69, 71-76, 78.

<sup>214</sup> Table V *supra* at A-29, items 121, 149, 153, 159.

<sup>215</sup> Table IV *supra* at A-27, items 92, 102, 109.

<sup>216</sup> *E.g.*, BURBANK CHARTER, Table III *supra* at A-24, item 33.

<sup>217</sup> *E.g.*, San Francisco Bay Area Metropolitan Rapid Transit District Act, Table V *supra* at A-29, item 159.

Second, a number of provisions merely provide that the claimant may, at his own option, treat inaction by the board or council as rejection after a specified time has elapsed.<sup>218</sup>

Third, a few scattered statutes deal with the matter in a somewhat individualized fashion which conforms to no generally perceivable pattern.<sup>219</sup>

The problem of ascertaining the scope of "incorporation-by-reference" clauses again arises here. Some 24 special district laws<sup>220</sup> incorporate the county claims procedures. The language of the referential statutes is not uniform, however. When the Legislature provides that claims shall be "prepared, presented, and audited in the same manner as demands upon the funds of the county,"<sup>221</sup> the primary referent of the word "audited" seems to be those provisions of the Government Code which govern internal processing procedures. It is doubtful whether the provisions of Section 29714 under which a claim against a county is automatically deemed rejected unless acted upon within 90 days, is included since that section merely marks the commencement of the period within which the claimant may sue, and does not appear to relate to the preparation, presentation or auditing of the claim. Similar doubts arise when the referential language merely requires claims to be presented, filed and "thereupon paid as are the claims against the county."<sup>222</sup>

On the other hand, it seems reasonably clear that the 90-day period of consideration is intended to be incorporated by a statute which requires claims to be "audited and allowed or disallowed in the same manner *and within the periods of time*" [Emphasis added.] provided for claims against counties.<sup>223</sup>

Inconsistencies of statutory policy are apparent with respect to the period of consideration. Government Code Section 29714, found in the general county claims statute, which applies to claims arising under Section 400 of the Vehicle Code requires the claimant to treat a claim not allowed within 90 days after presentation as rejected for purposes of commencing an action thereon.<sup>224</sup> No such requirement nor any other temporal limitation upon consideration is prescribed, however, for dangerous and defective condition claims.<sup>225</sup> Presumably the 90-day waiting period represents a compromise between competing policies. On the one hand there is the need for the public entity to have a reasonable period in which to investigate the facts and negotiate a settlement, if need be, free from the complicating and adversary influences of pending litigation. On the other hand there is the need to put a definite

<sup>218</sup> CAL. PUB. UTIL. CODE § 16685; city ordinances, Table IV *supra* at A-27, items 81, 83, 86, 88, 93, 97-99.

<sup>219</sup> CAL. BUS. & PROF. CODE § 19598 (money in pari-mutuel wagering pool not successfully claimed within 90 days after close of the racing meet to be paid into State treasury); CAL. AGRIC. CODE § 242 (all claims for destruction of diseased bovine to be paid within 60 days after presentation); CAL. WATER CODE § 50956 (claims for clerk hire to be paid semiannually).

<sup>220</sup> Table V *supra* at A-29, items 124-26, 135, 139, 144-46, 148, 150, 152, 155-57, 162, 164-70, 173-74.

<sup>221</sup> *E.g.*, Fairfield-Suisun Sewer District Act, Table V *supra* at A-29, item 139; San Joaquin Levee District Act, Table V *supra* at A-29, item 146.

<sup>222</sup> *E.g.*, Levee Districts and Protection Works Act, Table V *supra* at A-29, item 144.

<sup>223</sup> *E.g.*, Sacramento County Water Agency Act, Table V *supra* at A-29, item 157; Ventura County Flood Control Act, Table V *supra* at A-29, item 169.

<sup>224</sup> CAL. GOVT. CODE § 29714.

<sup>225</sup> *Id.* §§ 53050 *et seq.*

time limit upon official consideration so that an impecunious but deserving claimant will not be unduly prejudiced by prolonged delay. The factors involved in reconciling these policies as to motor vehicle accident claims would seem to be equally applicable to dangerous and defective condition claims. Yet, as pointed out above, the 90-day period applies to the former but not the latter type of claim.

Other policy inconsistencies can be observed. A majority of claims provisions contain no limitation on the time during which the public entity may keep a claim under consideration. In most instances this omission creates no great hardship for a claimant because the statute does not require the claimant to await the official decision before suing.<sup>226</sup> Some of these statutes, however, expressly forbid any action on a claim until after it has been rejected<sup>227</sup>—thereby presenting a theoretical impasse where the entity, not under the constraint of any time limitation, merely fails to either approve or reject. At the opposite end of the spectrum of inconsistency are several claims provisions which expressly delimit a period for official consideration after which the claim is deemed—either in optional or mandatory terms—to be rejected but which nevertheless impose no restrictions upon the claimant's right to sue prior to rejection.<sup>228</sup>

The difference between the optional and mandatory periods in itself reflects a policy distinction. Where the claim statute contains its own special period of limitations for commencing an action on a rejected claim, the date of rejection becomes crucial as the starting point for computing the limitation period. If the claimant may or may not at his option deem the claim rejected after a specific time has elapsed, the period of limitations would not begin to run until the claim was officially rejected or the claimant exercised his option.<sup>229</sup> The time for bringing an action on the claim thus might be prolonged indefinitely. On the other hand, if the claim is mandatorily regarded as a matter of law as rejected upon a specified date, the commencement of the period allowed for suit is clearly marked. The mandatory form of provision thus operates normally to curtail rather than potentially extend the period within which suit may be brought on the claim.

#### **Time for Commencing Action on Claim**

The California Code of Civil Procedure contains elaborate provisions governing the periods of time within which various types of actions may be commenced.<sup>230</sup> With respect to most actions the limitation period is from one to four years after accrual of the cause of action depending on the specific nature of the case. The period does not run, however, during such time as the plaintiff is legally prevented from suing.<sup>231</sup> For example, where claims provisions impose a requirement of presentation or of presentation and rejection prior to commencement of suit on the cause of action represented by the claim, the action cannot be commenced and the statutes of limitation do not commence to run

<sup>226</sup> *H. G.*, *id.* § 61628; CAL. WATER CODE §§ 22727, 31087, 35754.

<sup>227</sup> *H. G.*, CAL. GOVT. CODE §§ 16043-44. See also CAL. H. & S. CODE § 13052.

<sup>228</sup> *H. G.*, CHICO MUNIC. CODE § 103; CORONA ORD. 530 (July 5, 1950); OXNARD MUNIC. CODE § 1630.

<sup>229</sup> See discussion and cases cited pp. A-98-99 *infra*.

<sup>230</sup> CAL. CODE CIV. PROC. §§ 312-63.

<sup>231</sup> See *Dillon v. Board of Pension Comm'rs*, 18 Cal.2d 427, 116 P.2d 37 (1941).

until the prescribed conditions have been satisfied.<sup>232</sup> The relationship between the statutes of limitation provided by general law and claims presentation procedure is thus directly related to the question as to whether the applicable claims procedure is a condition precedent to commencement of an action.

The only provision in the general statute of limitations which specifically relates to actions on claims is Section 342 of the Code of Civil Procedure. It provides that actions on claims against counties must be commenced within six months after rejection thereof by the board of supervisors. It applies only to claims against counties, however. In order to avoid the longer periods of limitation provided by general law, which would otherwise be applicable to claims against entities other than counties, a few claims statutes expressly incorporate a limitation of time within which an action may be commenced upon a claim. Six months after rejection is the period usually stipulated<sup>233</sup> although 90 days is also encountered.<sup>234</sup> A number of special district laws prescribe a limiting period, usually one year, from the date the cause of action accrued rather than measuring from the date of rejection of the claim.<sup>235</sup>

A substantial number of city charters and ordinances as well as a few special district laws impose no stated time limits upon suit except that the claim must have been rejected before action is commenced.<sup>236</sup> Under provisions of this type any action brought prior to rejection would appear to be premature. Many such claims statutes, however, do not impose any limits upon the time which the public entity may take to consider and reject a claim;<sup>237</sup> and hence, by prolonged inaction the entity may substantially delay litigation thereon.

The great majority of claims provisions impose no time limitations upon commencement of an action although they do require a claim to be presented. In the view of these provisions the claim apparently serves only as a form of notice. As such it still fulfills a useful function since the plaintiff need not serve his complaint for three years after commencing the action<sup>238</sup> and the mere fact that the action is commenced normally does not afford notice. Under this type of statute the claimant may commence his action at any time after the presentation of the claim and need not await its rejection.<sup>239</sup> Since the general statutes of limitation are applicable, such freedom to sue is essential to full protection of the claimant's rights for the period during which the claim made under such a statute is under official consideration presumably would not toll the statute of limitations.

The recurrent problem of ascertaining the scope of incorporations by reference arises here. Statutes which require claims against districts

<sup>232</sup> *Spencer v. City of Los Angeles*, 180 Cal. 103, 179 Pac. 163 (1919); *Southern Pac. Co. v. City of Santa Cruz*, 26 Cal. App. 26, 145 Pac. 736 (1914). See also *Hochfelder v. County of Los Angeles*, 126 Cal. App.2d 370, 273 P.2d 844 (1954); *Walton v. County of Kern*, 39 Cal. App.2d 32, 102 P. 2d 531 (1940).

<sup>233</sup> CAL. GOVT. CODE §§ 16043-45, 29715; CAL. PUB. UTIL. CODE § 16636; *San Francisco Bay Area Metropolitan Rapid Transit District Act*, Table V *supra* at A-29, item 159; *PASADENA CHARTER*, Table III *supra* at A-24, item 54.

<sup>234</sup> *SANTA MARIA ORD. 72* (Dec. 16, 1916).

<sup>235</sup> Table V *supra* at A-29, items 136-38, 140, 142, 147, 151, 154, 158, 160-61, 163.

<sup>236</sup> *E.g.*, *Metropolitan Water District Act*, *id.* item 149; *SAN BUENAVENTURA CHARTER*, Table III *supra* at A-24, item 64; *COSTA MESA ORD. 68* (Nov. 1, 1954).

<sup>237</sup> *E.g.*, CAL. GOVT. CODE §§ 53050 *et seq.*; CAL. WATER CODE § 35754; *SACRAMENTO CHARTER*, Table III *supra* at A-24, item 61.

<sup>238</sup> CAL. CODE CIV. PROC. § 581a.

<sup>239</sup> *E.g.*, CAL. EDUC. CODE § 1007; CAL. GOVT. CODE § 61631; CAL. WATER CODE § 35754.

to be "audited" or "paid" in the same manner as claims against counties<sup>240</sup> do not appear broad enough to include the six-month period allowed by Section 29715 of the Government Code for suit to be brought after rejection. It is a more doubtful question, however, whether the six-month period is incorporated by statutes which require claims to be "allowed or disallowed in the same manner and within the periods of time" applicable to claims against counties.<sup>241</sup> Since the six-month period for suit is not actually a part of the period of time for allowance or disallowance, such provisions appear to be insufficient to effect an incorporation by reference. A contrary view, however, founded upon the evident legislative purpose to provide for uniform administration of claims would be equally plausible.

As usual, basic policy inconsistencies, other than those inherent in the nonuniformity of the statutory pattern, are discernible. One such discrepancy is in the statutes governing claims against the State. A claimant who allegedly sustained personal injuries or property damage from the negligent operation of a State-owned motor vehicle is required to commence his action "either within the time prescribed by the Code of Civil Procedure within which such an action may be brought or within six months after the claim is rejected or disallowed in whole or in part."<sup>242</sup> But if the basis of the claim is negligence of some other type such as negligent operation of a locomotive on the State Belt Railroad,<sup>243</sup> the action would be barred unless commenced "within six months after the claim is rejected or disallowed in whole or in part."<sup>244</sup> Under the former provision the plaintiff is apparently protected if his action is commenced within the longer of the two periods provided. Assuming two claims for property damage are presented promptly after the respective accidents occur and are rejected on the ninetieth day after the accident, claimant A will have three years from the accrual of the cause of action within which to bring his action on the motor vehicle claim<sup>245</sup> whereas claimant B will be limited to six months after rejection, or a total of nine months, on his railroad claim. If our claimants were suing for personal injuries, the former action could be brought as late as nine months after rejection<sup>246</sup> whereas the railroad claim would have to be reduced to action within six months. The only satisfactory explanation for this diverse treatment is that the two sections were enacted at different times<sup>247</sup> and reflected different legislative attitudes as to the proper interrelationship of claims procedure and the general statutes of limitation. Such an explanation is not, however, a justification.

Another anomaly suggested by the statutory pattern relates to the effect of the many claims provisions which do not impose time limitations upon the commencement of an action once a claim has been timely presented. For example, under a statute like Section 53052 of the Government Code which requires a claim to be filed within 90 days

<sup>240</sup> *E.g.*, Table V *supra* at A-29, items 124-26, 135, 139, 144, 146, 150, 155, 166, 168.

<sup>241</sup> *E.g.*, *id.* items 145, 148, 152, 156-57, 162, 164-65, 167, 169-70.

<sup>242</sup> CAL. GOVT. CODE § 16043.

<sup>243</sup> See *People v. Superior Court*, 29 Cal.2d 754, 178 P.2d 1 (1947).

<sup>244</sup> CAL. GOVT. CODE § 16044.

<sup>245</sup> CAL. CODE CIV. PROC. § 338 (three year period for actions for property damage).

<sup>246</sup> *Id.* § 340 (one year period for actions for personal injury).

<sup>247</sup> The general six-months limitation in what is now Government Code Section 16044 was first enacted as part of Political Code Section 638 by Cal. Stat. 1929, c. 516, § 3, p. 891. The special time provision for vehicle accident claims was added by amendment ten years later. Cal. Stat. 1939, c. 1020, p. 2323.

after the accident, the dangerous and defective condition variety, what legal consequences obtain when a verified complaint containing all of the required contents for a good claim is filed and served on the county or city or school district defendant well within the 90-day period? To deny that the action can be maintained merely because no claim was previously presented is to exalt form over substance.<sup>248</sup> The complaint quite properly could have been filed and served substantially at the same time as the presentation of the claim. To combine the two separate documents into one would not seem to defeat the function of either; hence no good reason exists for refusing to treat the service of the verified complaint itself as a sufficient presentation to satisfy the claim statute. Yet, to do so would in effect make compliance with the claims statute a mere idle formality with respect to actions instituted within the prescribed claim filing period.

## JUDICIAL INTERPRETATIONS

### General Principles

#### Objectives of Claims Presentation Requirements

The reported decisions of California appellate courts relating to claims statutes and their application are surprisingly numerous.<sup>249</sup> Such provisions have been a prolific source of litigation. Since in nearly every case the issue involves an asserted defense of noncompliance with the required claims procedure, it is apparent that at least one result of the claims statutes is to provide public entities with a technical but nevertheless complete defense to many actions brought against them.<sup>250</sup> This, of course, was not the intended purpose of claims procedure.

The courts have attempted from time to time to articulate the basic purposes of claims statutes as an aid to their interpretation and application. The purposes most frequently said to be significant are: (a) to prevent wasteful litigation by providing an opportunity for amicable settlement before an action is commenced;<sup>251</sup> (b) to prevent unmeritorious claims by providing the public entity an opportunity for early investigation of the circumstances while the evidence is still fresh;<sup>252</sup> (c) to provide an opportunity through prompt notice for orderly fiscal planning by permitting the entity to know in advance the potential claims it may have to provide for;<sup>253</sup> and (d) to provide an early

<sup>248</sup> See *Porter v. Bakersfield & Kern Elec. Ry.*, 36 Cal.2d 582, 225 P.2d 223 (1950), so holding with respect to Government Code Section 1981, governing claims against public employees.

<sup>249</sup> Approximately 320 reported decisions of the California Supreme Court and District Courts of Appeal have discussed claims statutes and their application.

<sup>250</sup> In 71 out of a total of 158 reported decisions during the past thirty years in which the issue was presented, a defense of noncompliance with prescribed claims procedure was sustained on appeal.

<sup>251</sup> *Knight v. City of Los Angeles*, 36 Cal.2d 764, 160 P.2d 779 (1945); *Crescent Wharf etc. Co. v. City of Los Angeles*, 207 Cal. 430, 278 Pac. 1028 (1929); *Alden v. County of Alameda*, 48 Cal. 270 (1872); *McCann v. Sierra County*, 7 Cal. 121 (1857).

<sup>252</sup> *Bacich v. Board of Control*, 23 Cal.2d 343, 144 P.2d 818 (1943); *Hochfelder v. County of Los Angeles*, 126 Cal. App.2d 370, 272 P.2d 844 (1954); *Erde v. City of Los Angeles*, 116 Cal. App.2d 565, 254 P.2d 110 (1953); *Cruise v. San Francisco*, 101 Cal. App.2d 558, 225 P.2d 988 (1951); *Mendibles v. City of San Diego*, 100 Cal. App.2d 502, 224 P.2d 42 (1950); *Sullivan v. San Francisco*, 95 Cal. App.2d 745, 214 P.2d 82 (1950); *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946); *Silva v. County of Fresno*, 63 Cal. App.2d 253, 146 P.2d 520 (1944); *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 102 (1940); *Kahrs v. County of Los Angeles*, 28 Cal. App.2d 46, 82 P.2d 29 (1938).

<sup>253</sup> *Crescent Wharf etc. Co. v. City of Los Angeles*, 207 Cal. 430, 278 Pac. 1028 (1929); *Hochfelder v. County of Los Angeles*, 126 Cal. App.2d 370, 272 P.2d 844 (1954).

opportunity for the entity to rectify the condition which caused the injury thereby preventing further losses.<sup>254</sup>

It will be noticed that these expressed purposes are not entirely consistent with one another nor with the prevailing doctrine that claims statutes as essential prerequisites to court action. The first object—to provide for settlement before suit—would be achieved by requiring a claim to be presented prior to suit and action deferred during its consideration. However, as pointed out previously, claims provisions frequently do not provide for a “waiting period” prior to instituting action but in effect permit an action to be instituted at the same time as the presentation of the claim. The second object—to permit early investigation—could be served as well by a special short statute of limitations. Moreover, although claim presentation periods of 90 days to six months are quite common, this objective does not seem to be reflected in the many claims statutes which provide for rather lengthy claim filing periods: in numerous instances extending to a full year or more and occasionally even exceeding the statutory period of limitations. The third object—to allow for orderly fiscal planning—may be of some significance with respect to tort and breach of contract claims even though the amount of damages recoverable in the few cases where liability is undisputed is usually speculative; but as to most contract claims this seems to be largely inapplicable since such claims usually relate to previously budgeted and appropriated funds. To the extent that this purpose has validity, it too could be met by a short period of limitations for commencing action rather than a claim statute. The last object—to give opportunity for early rectification to prevent further loss—is of minor importance with respect to contract claims and most negligent torts but would seem to support a short claim presentation period for inverse condemnation and dangerous and defective condition claims. The wide disparity in the periods of time for presentation prescribed by the various statutes, however, suggests that this as well as the other stated purposes has not commanded uniform acceptance by the legislative bodies concerned.

Perhaps it would be most accurate to state that the various objectives or combinations of objectives which the courts have perceived in claims statutes have motivated legislative bodies in varying degrees and at different times. Some claims statutes in terms reflect little more than a desire for orderly procedures for the processing of demands against the public treasury. Others clearly manifest a policy of insisting upon early notification as a protective technique. Most of the numerous claims provisions represent varying degrees of policy intermediate between these extremes. In any event, the courts have not, in the light of these objectives, encountered any difficulties in sustaining the constitutionality of claims statutes: either on the theory that they merely attach reasonable conditions to the government's waiver of its sovereign immunity from suit<sup>255</sup> or that they are reasonable procedural limita-

<sup>254</sup> *Knight v. City of Los Angeles*, 26 Cal.2d 764, 169 P.2d 779 (1945); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941).

<sup>255</sup> *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 331 (1942); *Geimann v. Board of Police Commr's*, 153 Cal. 743, 112 Pac. 553 (1910); *Hufaker v. Decker*, 77 Cal. App.2d 333, 175 P.2d 254 (1946). See also *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942).

tions designed for the legitimate purpose of protecting the public treasury against fraudulent or inflated claims.<sup>256</sup>

#### Consequences of Failure to Comply With Claims Procedure

Although the courts have consistently held that claims statutes are not jurisdictional in the sense that noncompliance precludes power to pay,<sup>257</sup> it is well established that a cause of action against a public entity cannot be stated without alleging compliance with the applicable claims statute, if any.<sup>258</sup> The failure to state a cause of action, of course, is a waivable defect and hence a judgment in favor of a claimant will be affirmed despite noncompliance with the claims statute if the defect was not called to the trial court's attention.<sup>259</sup>

As an original proposition, it could well be contended that whether noncompliance with the claims statute was intended to constitute a complete defense to the claim should be a matter of interpretation of the language of the particular claims statute. Although the courts have occasionally given recognition to this viewpoint,<sup>260</sup> the rule seems to be settled today that noncompliance with a claims statute defeats the cause of action both where the statute expressly declares compliance to be a prerequisite to suit<sup>261</sup> and where the statute is silent as to the effect of noncompliance.<sup>262</sup> The Supreme Court in *Norton v. Pomona*,<sup>263</sup> referring to what is now Sections 53050 *et seq.* of the Government Code, pointed out that nowhere in the act was there

any provision requiring the filing of such claim as a condition precedent to commencing or maintaining action for the damages referred to. . . . To hold that it is not essential to file a claim in accordance with this statute before bringing suit would have the effect of rendering the statute nugatory, a meaningless and purposeless legislative gesture, permitting a claimant to file a claim only if he chose to do so.<sup>264</sup>

In the face of this judicial attitude, it is not surprising that ignorance of the claims statutes constitutes no excuse for failure to file a

<sup>256</sup> *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 102 (1940); *Norton v. Hoffmann*, 34 Cal. App.2d 189, 92 P.2d 250 (1939). See also *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 122, 119 P.2d 717 (1941).

<sup>257</sup> *Farrell v. County of Placer*, 23 Cal.2d 624, 145 P.2d 576 (1944); *Redlands High Sch. Dist. v. Superior Court*, 20 Cal.2d 248, 125 P.2d 490 (1942); *Sittig v. Raney*, 58 Cal. App. 709, 260 Pac. 324 (1921). *But cf. Jacks v. Taylor*, 24 Cal. App. 667, 142 Pac. 121 (1914).

<sup>258</sup> *Artakovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 331 (1943); *Hall v. City of Los Angeles*, 19 Cal.2d 198, 120 P.2d 12 (1941); *Western Salt Co. v. City of San Diego*, 181 Cal. 696, 186 Pac. 245 (1919); *Bigelow v. City of Los Angeles*, 141 Cal. 503, 75 Pac. 111 (1904); *Gould v. Executive Power of the State*, 112 Cal. App.2d 820, 247 P.2d 424 (1952); *Hanfler v. County of Sacramento*, 97 Cal. App.2d 550, 218 P.2d 922 (1950); *Draper v. Grant*, 91 Cal. App.2d 562, 205 P.2d 329 (1949); *Cathey v. San Francisco*, 37 Cal. App.2d 576, 99 P.2d 1109 (1940); *Gavin v. City of Los Angeles*, 24 Cal. App.2d 550, 24 P.2d 259 (1939); *Straff v. Santa Rosa*, 19 Cal. App.2d 322, 85 P.2d 894 (1937); *Brown v. Board of Police Commrs.*, 2 Cal. App.2d 245, 37 P.2d 327 (1934); *D. A. Foley Co. v. State*, 119 Cal. App. 300, 6 P.2d 222 (1931); *First Nat. Bk. v. Whittier*, 109 Cal. App. 217, 292 Pac. 661 (1929); *Frans v. Barnum*, 37 Cal. App. 411, 175 Pac. 659 (1912).

<sup>259</sup> *Randall v. Yuba County*, 14 Cal. 219 (1852).

<sup>260</sup> See *Sala v. Pasadena*, 122 Cal. 714, 124 Pac. 529 (1912), construing charter provision as not making failure to file a claim a bar to compensation.

<sup>261</sup> See *Artakovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 331 (1943); *McCana v. Sierra County*, 7 Cal. 121 (1857).

<sup>262</sup> *Phillips v. Pasadena*, 27 Cal.2d 104, 162 P.2d 625 (1945); *Bancroft v. City of San Diego*, 120 Cal. 432, 52 Pac. 712 (1893).

<sup>263</sup> 5 Cal.2d 54, 53 P.2d 952 (1935).

<sup>264</sup> *Id.*, at 64, 53 P.2d at 956.

claim.<sup>265</sup> On the other hand, a liberal interpretative policy, fashioned as a judicial technique for effectuating the declared purposes of the claims statutes without permitting purely technical defects to obstruct decisions on the merits, would not be inappropriate. Analogous requirements such as notice of loss provisions in insurance policies have received liberal treatment for similar ends at the hands of the courts.<sup>266</sup> Claims statutes generally, however, have been held to be subject to a rule of strict compliance.<sup>267</sup>

Typical is the case of *Wilkes v. San Francisco*.<sup>268</sup> A claim for personal injuries based upon the defective condition of a city street had been filed with the city controller well within the 90-day period prescribed by Section 53052 of the Government Code. That section, however, provided that the claim should be filed with the city clerk rather than the city controller. Despite the fact that a responsible city officer—indeed, the very officer designated in the city charter to receive all other types of claims—had received a timely claim in proper form, a judgment for the defendant was affirmed since, according to the court, claims statutes “are mandatory and are to be strictly construed.”<sup>269</sup>

Decisions may be found exemplifying a less scrupulous regard than the *Wilkes* case for the letter of the law<sup>270</sup> but most of them, rather than illustrating any general principle, merely document the adage that hard cases make “bad law,” or at least, “inconsistent law.”

When the accepted rule of strict construction is coupled with the existing sporadic pattern of many overlapping and frequently inconsistent as well as ambiguous claims statutes, the net result is confusion. A decision of the District Court of Appeal was required before the Vallejo Housing Authority was convinced that it was not protected by any claims statute;<sup>271</sup> and a whole series of decisions was required to finally nail down the point that, apart from dangerous and defective condition claims, there is no State statute which applies to claims against cities.<sup>272</sup> In some cases it is apparent that both the appellate court and counsel were confused as to the identity of the applicable

<sup>265</sup> *Yasunaga v. Stockburger*, 43 Cal. App.2d 396, 111 P.2d 34 (1941).

<sup>266</sup> See *Federal Insurance Company v. Wong*, 137 F. Supp. 232 (S.D. Cal. 1956); *Reed v. Pacific Indemnity Co.*, 101 Cal. App.2d 151, 225 P.2d 255 (1950); *Gibson v. Colonial Ins. Co.*, 92 Cal. App.2d 33, 208 P.2d 387 (1949).

<sup>267</sup> *Hall v. City of Los Angeles*, 19 Cal.2d 138, 120 P.2d 48 (1941); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 128, 119 P.2d 717 (1941); *Bradshaw v. Glean-Cohua Irr. Dist.*, 87 Cal. App.2d 882, 198 P.2d 106 (1948); *Ghossal v. South San Francisco*, 72 Cal. App.2d 472, 164 P.2d 902 (1946); *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942); *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 112 P.2d 759 (1941); *Kline v. San Francisco U. School Dist.*, 40 Cal. App.2d 174, 104 P.2d 661, 105 P.2d 362 (1949).

<sup>268</sup> 44 Cal. App.2d 393, 112 P.2d 759 (1941). To same effect, see *Edward Brown & Sons v. San Francisco*, 312 P.2d 562 (1949), *aff'd on other grounds*, 36 Cal.2d 272, 223 P.2d 231 (1950).

<sup>269</sup> *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 397, 112 P.2d 759, 762 (1941).

<sup>270</sup> *E.g.*, *Trower v. San Francisco*, 157 Cal. 762, 109 Pac. 517 (1919) (construing claim statute as inapplicable); *Cruise v. San Francisco*, 101 Cal. App.2d 558, 225 P.2d 988 (1951) (invoking estoppel); *Schulstad v. San Francisco*, 74 Cal. App.2d 105, 168 P.2d 68 (1946) (holding strict compliance excused by reason of mental disability); *Los Angeles Brick etc. Co. v. City of Los Angeles*, 60 Cal. App.2d 478, 141 P.2d 46 (1943) (holding absence of claim no bar to recovery of damages incidental to injunctive relief); *McCandless v. City of Los Angeles*, 10 Cal. App.2d 407, 52 P.2d 545 (1935) (invoking substantial compliance doctrine).

<sup>271</sup> *Harper v. Vallejo Housing Authority*, 104 Cal. App.2d 621, 222 P.2d 268 (1951).

<sup>272</sup> See *Holm v. City of San Diego*, 35 Cal.2d 399, 217 P.2d 972 (1950); *Raynor v. Arcata*, 11 Cal.2d 113, 77 P.2d 1054 (1938); *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936); *Clinton v. City of Santa Cruz*, 104 Cal. App. 490, 285 Pac. 1062 (1930).

claim statute<sup>273</sup> although in each of the cited cases the same result would probably have been reached under the correct provision. In other cases the trial judge shared the misunderstanding of counsel for one party or the other as to which claim statute applied until his decision was reversed on appeal.<sup>274</sup> In still other instances counsel apparently felt there was sufficient uncertainty as to the applicable claims provision to justify the expense of an appeal to test an adverse ruling.<sup>275</sup>

Procedural requirements, being but means to a greater end, should be the clearest and most easily understood of legal rules. Repeated litigation over the meaning or applicability of rules of adjective law is the least defensible of all forms of legal controversy. Certainty and simplicity are appropriate criteria by which to judge any procedural device. By these standards the existing claims statutes have been judicially found to be wanting. One court unavailingly attempted to chart a course of liberal interpretation as a way out of the procedural thicket by proclaiming that claims statutes "were not intended as a trap in which to ensnare unwary citizens for the purpose of depriving them of their lawful claims."<sup>276</sup> Another court, reversing its own earlier decision<sup>277</sup> on rehearing, apologetically explained that

there has been considerable uncertainty in the law regarding the necessity of presenting and filing claims . . . due, it appears, to ambiguous and overlapping statutory enactments and to more or less conflicting language used in some of the decisions construing those enactments. . . .<sup>278</sup>

Perhaps the most candid statement on the subject is that of Mr. Justice Walton J. Wood in the 1942 decision of *Wood v. Board of P. & F. Pension Commrs.*:

Requirements for the filing of claims . . . in practical operation . . . have often resulted in the failure of applicants to obtain hearings in court due to inadvertence or to the ignorance of the applicants concerning the requirements of ordinances, or to error on their part as to the necessity for filing claims. At times the courts have reluctantly refused hearings because of the strict statutory requirements on the subject, realizing that *the bar of the statute had not aided in the administration of justice.* [Emphasis added.]<sup>279</sup>

<sup>273</sup> *Smith v. County of San Mateo*, 57 Cal. App.2d 820, 135 P.2d 372 (1943) (assuming Government Code Section 29700 rather than Section 53050 was applicable); *Lorenz v. Santa Monica et al.*, Sch. Dist., 51 Cal. App.3d 893, 124 P.2d 846 (1943) (assuming Education Code Section 1007 rather than Government Code Section 53050 was applicable); *Lowe v. City of San Diego*, 8 Cal. App.3d 440, 47 P.2d 1083 (1935) (assuming San Diego Charter Section 110 rather than Government Code Section 53050 was applicable).

<sup>274</sup> *H. G. Wilson v. Beville*, 47 Cal.2d 852, 306 P.2d 739 (1957); *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942); *Kelso v. Board of Education*, 42 Cal. App.2d 415, 109 P.2d 29 (1941); *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936).

<sup>275</sup> *H. G. Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 558 (1947); *Douglass v. City of Los Angeles*, 5 Cal.2d 123, 53 P.2d 353 (1935); *Kornahrens v. San Francisco*, 87 Cal. App.2d 196, 196 P.2d 149 (1948); *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 112 P.2d 759 (1941); *Sandstoe v. Atchison, T. & S.F. Ry.*, 28 Cal. App.2d 215, 82 P.2d 216 (1938); *White-Satra v. City of Los Angeles*, 14 Cal. App.2d 688, 58 P.2d 933 (1936).

<sup>276</sup> *McCandless v. City of Los Angeles*, 10 Cal. App.2d 407, 412, 52 P.2d 545, 547 (1935).

<sup>277</sup> *Kenney v. Antioch L. O. School Dist.*, 18 Cal.2d 226, 60 P.2d 590 (1936).

<sup>278</sup> *Id.* at 228, 63 P.2d at 1144.

<sup>279</sup> 49 Cal. App.2d 52, 57, 120 P.2d 898, 901 (1942).

Although this criticism is severe, it is more than matched by the words of the Supreme Court in 1951, declaring that:

The several claims statutes and charter provisions prescribing varying requirements concerning the length of time for the filing of verified claims, the contents thereof, and the manner of filing or presentation *may well be said to have become traps for the unwary.* [Emphasis added.]<sup>280</sup>

That this evaluation is not without justification is documented by the numerous cases in which a decision on the merits of a claim was never reached by the courts because of noncompliance or defective compliance with a claims statute. Particularly striking illustrations are cases holding that a claim was barred because: (1) The plaintiff presented it to one city official in reliance upon the express requirements of the city charter rather than to another designated by an overlapping and superseding statute.<sup>281</sup> (2) The plaintiff filed her claim within the six-month period allowed by the city charter only to find that a superseding statute limited the time to 90 days.<sup>282</sup> (3) The plaintiff failed to file his claim within 90 days as required by statute because as a result of serious burns he was confined to the hospital during the entire period in a state of complete physical and mental disability.<sup>283</sup> (4) The plaintiff filed his complaint five weeks after presenting the claim, there being nothing in the dangerous and defective condition claim statute otherwise providing, only to learn after the statute of limitations had run that the court regarded the 90-day "waiting period" provision of the general county claims statute—an entirely different enactment—as applicable to the former statute thereby requiring dismissal of his complaint as premature.<sup>284</sup> (5) The plaintiff in reliance on assurances of city officials that her injuries would be appropriately compensated filed no claim until lapse of the 90-day period prescribed by statute.<sup>285</sup> It is in the context of circumstances such as these that one finds the courts appealing to the Legislature for aid, *viz:*

It is true, as pointed out by appellant, this holding may, in some cases, work a real hardship. If it does result in an injustice and is too onerous, that is *a matter of legislative concern*, and not judicial interpretation. [Emphasis added.]<sup>286</sup>

#### Excuse, Waiver and Estoppel

Faced with the doctrine of strict application of the claims statutes, counsel for deserving claimants have repeatedly attempted to secure judicial approval for alternatives to the strict compliance rule. Grounds

<sup>280</sup> Stewart v. McCollister, 37 Cal.2d 203, 207, 231 P.2d 48, 50 (1951). To the same effect see Edward Brown & Sons v. San Francisco, 215 P.2d 562, 568 (1949), *aff'd on other grounds*, 86 Cal.2d 372, 223 P.2d 231 (1950). See also Comment, *California Claims Statutes—"Traps for the Unwary,"* 1 U.C.L.A. L. Rev. 201 (1954).

<sup>281</sup> Douglass v. City of Los Angeles, 5 Cal.2d 123, 53 P.2d 353 (1935); Wilkes v. San Francisco, 44 Cal. App.2d 393, 112 P.2d 759 (1941); Edward Brown & Sons v. San Francisco, *supra* note 280.

<sup>282</sup> Helbach v. Long Beach, 50 Cal. App.2d 242, 123 P.2d 62 (1942).

<sup>283</sup> Wicklund v. Plymouth E. School Dist., 37 Cal. App.2d 252, 99 P.2d 314 (1940); Johnson v. Glendale, 12 Cal. App.2d 389, 55 P.2d 530 (1936).

<sup>284</sup> Walton v. County of Kern, 39 Cal. App.2d 82, 102 P.2d 531 (1940).

<sup>285</sup> Spencer v. City of Calipatria, 9 Cal. App.2d 267, 49 P.2d 320 (1935). Compare Johnson v. Glendale, 12 Cal. App.2d 389, 55 P.2d 530 (1936), which was disapproved in Farrell v. County of Placer, 23 Cal.2d 624, 145 P.2d 570 (1944).

<sup>286</sup> Wicklund v. Plymouth E. School Dist., 37 Cal. App.2d 252, 255, 99 P.2d 314, 315 (1940).

for excuse, waiver and estoppel were usually urged in these efforts and, prior to 1944, were uniformly rejected. Strict compliance was not excused even though the entity was insured,<sup>287</sup> or the claimant was another public entity rather than a private person,<sup>288</sup> or the plaintiff was a minor<sup>289</sup> or was physically or mentally disabled.<sup>290</sup> Similarly, strict compliance was not waived by the county's long settled administrative practice of accepting and considering technically noncomplying claims;<sup>291</sup> nor did it make any difference in the result that the entity had in fact received full and timely information as to the facts or had fully investigated the circumstances of the alleged injury, if no claim had been filed pursuant to the statute.<sup>292</sup> Even where the claimant was lulled into a sense of false security by representations of the city's agents leading him to believe that formal compliance would not be necessary, the courts apologetically clung to the doctrine that the mandatory requirements of the claims statutes could not be excused by estoppel or waiver.<sup>293</sup>

In 1942 Mr. Justice Schauer, speaking for the District Court of Appeal in *Helbach v. Long Beach* suggested in dictum<sup>294</sup> that waiver or estoppel might be available where the claim arose from a proprietary function since the claim statute in such case would be a limitation upon an existing common-law right; and "the reasonableness of the operation of the limitation" would be open to judicial inquiry in the light of such circumstances as physical or mental incapacity. On the other hand, where liability is created by statute as in the case of a waiver of governmental immunity, he said that a claimant "at best would have only what the law, however narrow, gave her, and that would be by way of bounty." The suggestion, however, apparently fell on barren soil for it has not borne fruit in any later decision. The reason perhaps may be found in a reluctance of the courts to further complicate the application of claims statutes by introducing into the problem the vagaries of the governmental-proprietary distinction. A more likely explanation, however, is that Mr. Justice Schauer's approach became largely moot when two years later, as a member of the Supreme Court, he joined in a unanimous decision approving a limited application of the doctrines of excuse, waiver and estoppel to claims statutes. This was the landmark case of *Farrell v. County of Placer*<sup>295</sup> to which we now turn.

<sup>287</sup> *Artukovich v. Astendorf*, 21 Cal. 2d 329, 131 P.2d 831 (1942).

<sup>288</sup> *City of Los Angeles v. County of Los Angeles*, 9 Cal.2d 624, 72 P.2d 133 (1937).  
*But cf. Long Beach City School Dist. v. Payne*, 219 Cal. 598, 28 P.2d 663 (1933).

<sup>289</sup> *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 831 (1942); *Myers v. Hopland U. E. School Dist.*, 6 Cal. App.2d 590, 44 P.2d 954 (1935); *Phillips v. County of Los Angeles*, 140 Cal. App. 78, 35 P.2d 187 (1934). See also *Ridge v. Boulder Creek etc. Dist.*, 60 Cal. App.2d 452, 140 P.2d 990 (1943).

<sup>290</sup> *Wicklund v. Plymouth H. School Dist.*, 37 Cal. App.2d 252, 99 P.2d 314 (1940); *Johnson v. Glendale*, 13 Cal. App.2d 389, 55 P.2d 586 (1936). See also *Helbach v. Long Beach*, 50 Cal. App.2d 442, 123 P.2d 62 (1942).

<sup>291</sup> *Cooper v. County of Butte*, 17 Cal. App.2d 45, 61 P.2d 516 (1936); *First Tr. & Sav. Bank v. Pasadena*, 21 Cal.2d 220, 130 P.2d 702 (1942). *Cf. Chapman v. Fullerton*, 90 Cal. App. 463, 265 Pac. 1035 (1923).

<sup>292</sup> *Hall v. City of Los Angeles*, 19 Cal.2d 133, 150 P.2d 13 (1941); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941); *Kline v. San Francisco U. School Dist.*, 40 Cal. App.2d 174, 104 P.2d 661, 105 P.2d 362 (1940); *White-Satra v. City of Los Angeles*, 14 Cal. App.2d 688, 58 P.2d 932 (1936).

<sup>293</sup> *Kline v. San Francisco U. School Dist.*, *supra* note 292; *Cooper v. County of Butte*, 17 Cal. App.2d 45, 61 P.2d 516 (1936); *Johnson v. Glendale*, 13 Cal. App.2d 389, 55 P.2d 586 (1936); *Spencer v. City of Calipatria*, 9 Cal. App.2d 267, 49 P.2d 320 (1935).

<sup>294</sup> *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942).

<sup>295</sup> 23 Cal.2d 624, 145 P.2d 570 (1944).

Mrs. Farrell was injured in an automobile accident allegedly caused by the dangerous and defective condition of a county bridge. Thirteen days later while Mrs. Farrell was recovering in the hospital she gave a full oral statement to a county claims agent at his request, explaining the circumstances of the accident and extent of her injuries which was recorded in shorthand by a stenographer. The agent then advised her not to employ an attorney since it would be better for her to settle directly with him. About ten days later the same agent again offered to discuss a settlement but after being told by Mrs. Farrell that she wanted to recover her health before determining the extent of her injuries and arriving at any settlement, he stated that that would be satisfactory to him. In reliance on the statements of the claims agent, Mr. and Mrs. Farrell did not seek legal advice "for several months" and their claim was ultimately filed after expiration of the 90-day period provided by law which is now Government Code Section 53052.

Under the foregoing circumstances, the Supreme Court held the mandatory procedural requirement providing that the claim be filed within 90 days "as to the claimant, may be excused by estoppel."<sup>296</sup> Prior cases declaring that waiver or estoppel were never available were either distinguished or disapproved and the general rule was that "there are many instances in which an equitable estoppel in fact will run against the government where justice and right require it."<sup>297</sup>

The *Farrell* case has undeniably exerted a liberalizing influence upon judicial attitudes toward the application of claims statutes. In the course of an opinion declaring the City and County of San Francisco estopped to rely upon the tardy—ten days too late—filing of a claim, under circumstances analogous to those of the *Farrell* case, the court declared that "the old doctrine of strict and literal compliance, with its attendant harsh and unfair results, has disappeared from our law."<sup>298</sup> This broad pronouncement is documented by several significant decisions. Where responsible city officials erroneously advised plaintiff that application by him for a disability pension would constitute a waiver of workmen's compensation benefits attributable to the same disability thereby inducing him to refrain from filing a claim for the pension until after expiration of the prescribed time limit, the city was estopped to urge the late filing as a defense.<sup>299</sup> Refusing to follow pre-*Farrell* cases to the contrary,<sup>300</sup> the court held that mental incapacity resulting from the injuries sustained which prevented filing of a claim during the statutory period was an adequate excuse for non-compliance with the time requirement.<sup>301</sup> Similarly, despite pre-*Farrell* cases apparently "on all fours,"<sup>302</sup> a mistaken presentation of the claim to the wrong officer—i.e., to the controller rather than city clerk—was held to be nonfatal where the claimant had been erroneously advised by the mayor to file as he did and the city council was promptly

<sup>296</sup> *Id.* at 631, 145 P.2d at 573.

<sup>297</sup> *Id.* at 627-28, 145 P.2d at 571. See generally Comment, *Estoppel Against Government in California*, 44 CALIF. L. REV. 340 (1956).

<sup>298</sup> *Cruise v. San Francisco*, 101 Cal. App.2d 558, 563, 225 P.2d 988, 992 (1951).

<sup>299</sup> *Tyra v. Board of Police etc. Commrs.*, 32 Cal.2d 666, 197 P.2d 710 (1948). See also

*Lorenson v. City of Los Angeles*, 41 Cal.2d 334, 260 P.2d 49 (1953).

<sup>300</sup> *Wicklund v. Plymouth E. School Dist.*, 37 Cal. App.2d 252, 99 P.2d 314 (1940);

*Johnson v. Glendale*, 12 Cal. App.2d 389, 55 P.2d 580 (1936).

<sup>301</sup> *Schulstad v. San Francisco*, 74 Cal. App.2d 105, 168 P.2d 68 (1946).

<sup>302</sup> *Douglass v. City of Los Angeles*, 5 Cal.2d 123, 53 P.2d 353 (1935); *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 112 P.2d 759 (1941).

and fully informed and actually considered the claim on its merits.<sup>303</sup> Where an attorney employed as counsel by plaintiff failed to advise plaintiff as to the necessity for filing a claim against a school district which the same attorney had a statutory duty to represent in his capacity as a deputy district attorney, his silence amounted to a breach of his duty as attorney for the school district to give truthful and unbiased advice and supported an estoppel to urge the late filing as a defense.<sup>304</sup>

Unfortunately, the liberality of the preceding cases has not been uniformly reflected in the decisions. It has been consistently held, for example, despite the broad language of the *Farrell* decision, that neither estoppel nor waiver can be applied, regardless of how aggravated the circumstances, in a case where *no claim* was filed prior to suit but only where, as in the *Farrell* case, the claim was late.<sup>305</sup> Although this basis for limiting the *Farrell* decision is supported somewhat tenuously by language in that opinion,<sup>306</sup> it hardly seems consistent with its broad underlying premise that equity always possesses power to assert itself where right and justice would be defeated but for its intervention.

Similar criticism may be directed to several other post-*Farrell* decisions in which the courts appeared to be oblivious to the implications of that case.<sup>307</sup> Conspicuous among them is *Erde v. City of Los Angeles*<sup>308</sup> in which plaintiff alleged that the defect in the claim—omission of date and time of the injury—was induced by deliberate and intentional misrepresentations by a deputy city clerk for the purpose of misleading plaintiff to believe his claim was properly and completely filled out. Such allegations, said the court, were insufficient to constitute an estoppel. "It was not the duty of the clerk to fill out the form or to advise the appellant or to see to it that the appellant followed the advice given to him."<sup>309</sup> The decision seems to be irreconcilable in principle with the later *Dettamanti v. Lompoc Union School Dist.* case<sup>310</sup> decided by a different division of the same District Court of Appeal.

In summary, it may be concluded that although the Supreme Court in *Farrell v. County of Placer* pointed the way to a more liberal application of claims statutes to effectuate their basic objectives without sacrificing justice, the district courts of appeal have varied greatly in their willingness to adopt the *Farrell* approach beyond the narrow limits of the *Farrell* holding. As a result, claims statutes are still frequently "traps for the unwary" but more so in some parts of the State

<sup>303</sup> *Mendibles v. City of San Diego*, 100 Cal. App.2d 502, 224 P.2d 42 (1950).

<sup>304</sup> *Dettamanti v. Lompoc Union School Dist.*, 143 Cal. App.2d 715, 300 P.2d 78 (1956).

<sup>305</sup> *Klimper v. Glendale*, 99 Cal. App.2d 446, 222 P.2d 49 (1950); *Slavin v. Glendale*, 97 Cal. App.2d 407, 217 P.2d 984 (1950); *Brown v. Sequoia Union High School Dist.*, 89 Cal. App.2d 604, 201 P.2d 66 (1949); *Johnson v. County of Fresno*, 64 Cal. App.2d 576, 149 P.2d 38 (1944).

<sup>306</sup> In *Farrell v. County of Placer*, 23 Cal.2d 624, 145 P.2d 570 (1944), the court distinguished two cases, *First Tr. & Sav. Bank v. Pasadena*, 21 Cal.2d 220, 130 P.2d 702 (1942), and *Douglass v. City of Los Angeles*, 5 Cal.2d 123, 53 P.2d 353 (1935), on the grounds that in those cases "no claim at all was filed with the proper persons and the factual bases of the claimed estoppel were dissimilar." *Id.* at 629, 145 P.2d at 572-73.

<sup>307</sup> *Ghiozzi v. South San Francisco*, 72 Cal. App.2d 472, 164 P.2d 902 (1946) (omission of date and place from claim form held fatal despite full and timely knowledge of facts by city); *Bradshaw v. Glenn-Colusa Irr. Dist.*, 87 Cal. App.2d 882, 198 P.2d 106 (1948) (lack of verification held fatal although all other requirements satisfied); *Erde v. City of Los Angeles*, 137 Cal. App.2d 175, 289 P.2d 884 (1955).

<sup>308</sup> *Erde v. City of Los Angeles*, *supra* note 307.

<sup>309</sup> *Id.* at 179, 289 P.2d at 886.

<sup>310</sup> 143 Cal. App.2d 715, 300 P.2d 78 (1956).

than in others and more so before some judges of the same appellate court than others.

### Interpretation of Typical Provisions

#### Applicability of Claims Statute in Particular Fact Situations

The exact coverage of a claims statute depends primarily upon its wording. As we have seen, despite great heterogeneity of language, certain patterns of coverage can be discerned. Similarly, a few general patterns of judicial interpretation with respect to coverage can also be found.

Section 29704 of the Government Code exemplifies the broadest form of claim statute, applying to "any claim" for money "whether founded upon contract, express or implied, or upon any act or omission" of county personnel. This provision governs the filing of all types of claims against a county except those for which some special statute otherwise provides.<sup>311</sup> It is in terms applicable to claims on contract, express or implied;<sup>312</sup> and by judicial interpretation includes also tort claims arising under Section 400 of the Vehicle Code;<sup>313</sup> intentional as well as negligent torts;<sup>314</sup> claims in inverse condemnation founded upon an alleged "taking"<sup>315</sup> as well as upon alleged "damaging"<sup>316</sup> of private property; and demands for payment of private funds illegally held in the county treasury, as a preliminary to seeking mandamus to compel payment.<sup>317</sup> The only monetary claims not covered by Section 29704 are those for which another claims presentation procedure is expressly provided including tax refund claims,<sup>318</sup> dangerous and defective condition claims,<sup>319</sup> claims for principal and interest upon bonds<sup>320</sup> and claims for damages due to mob violence.<sup>321</sup>

More narrowly drawn claims statutes have been construed correspondingly. Provisions which require presentation of all claims "for damages," for example, do not apply to claims for money due on contract<sup>322</sup> but do embrace breach of contract claims<sup>323</sup> and all types of

<sup>311</sup> *Woody v. Peairs*, 35 Cal. App. 553, 170 Pac. 660 (1917).

<sup>312</sup> *Union Bk. & Tr. Co. v. Los Angeles Co.*, 2 Cal. App. 2d 600, 38 P.2d 442 (1934); *Mello v. County of Tulare*, 99 Cal. App. 268, 278 Pac. 465 (1929). See also *Alden v. County of Alameda*, 43 Cal. 370 (1872).

<sup>313</sup> *Dillard v. County of Kern*, 23 Cal.2d 271, 144 P.2d 365 (1943); *Artukovich v. Astendorf*, 21 Cal.2d 829, 181 P.2d 831 (1942).

<sup>314</sup> *Parker v. County of Los Angeles*, 69 Cal. App.2d 130, 144 P.2d 70 (1943).

<sup>315</sup> *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 818, 169 P.2d 1006 (1946).

<sup>316</sup> *Cramer v. County of Los Angeles*, 96 Cal. App.2d 255, 215 P.2d 497 (1950); *Rhoda v. County of Alameda*, 134 Cal. App. 726, 26 P.2d 691 (1933). See also *McCann v. Sierra County*, 7 Cal. 121 (1857).

<sup>317</sup> *Draper v. Grant*, 91 Cal. App.2d 566, 205 P.2d 399 (1949) (money posted as fine in lieu of jail sentence which judge lacked jurisdiction to impose); *Paton v. Teeter*, 37 Cal. App.2d 477, 99 P.2d 699 (1940) (cash bail deposit illegally ordered applied to payment of fines imposed).

<sup>318</sup> *E.g.*, CAL. REV. & TAX. CODE, §§ 5096-107, 5136-43; *Brill v. County of Los Angeles*, 16 Cal.2d 726, 108 P.2d 443 (1940); *Birch v. County of Orange*, 186 Cal. 736, 200 Pac. 647 (1921); *People v. County of Imperial*, 76 Cal. App.2d 572, 173 P.2d 352 (1946). See also *Consolidated Liquidating Corp. v. Ford*, 131 Cal. App.2d 576, 281 P.2d 20 (1955). *But cf.* *Farmers etc. Bank v. City of Los Angeles*, 151 Cal. 655, 91 Pac. 795 (1907).

<sup>319</sup> CAL. GOVT. CODE §§ 53050 *et seq.*; *Albaeck v. County of Santa Barbara*, 123 Cal. App.2d 336, 266 P.2d 844 (1954); *Kahrs v. County of Los Angeles*, 28 Cal. App.2d 46, 82 P.2d 29 (1938); *Cooper v. County of Butte*, 17 Cal. App.2d 43, 61 P.2d 516 (1936); *Thompson v. County of Los Angeles*, 140 Cal. App. 73, 35 P.2d 185 (1934).

<sup>320</sup> *Freehill v. Chamberlain*, 65 Cal. 603, 4 Pac. 646 (1884).

<sup>321</sup> *Clear Lake W. W. Co. v. Lake Co.*, 45 Cal. 90 (1872).

<sup>322</sup> *Transbay Const. Co. v. San Francisco*, 35 F. Supp. 433 (N.D. Cal. 1940); *Bertone v. San Francisco*, 111 Cal. App. 2d 579, 245 P.2d 29 (1952); *Gantenbein v. Long Beach*, 9 Cal. App.2d 726, 51 P.2d 124 (1935).

<sup>323</sup> *Bigelow v. City of Los Angeles*, 141 Cal. 503, 75 Pac. 111 (1904).

claims founded in tort whether intentional<sup>324</sup> or negligent<sup>325</sup> and without regard to whether committed in the course of a governmental or proprietary function.<sup>326</sup> On the other hand, a claims provision which is expressly or impliedly limited to claims for money precludes the necessity of presenting a claim as a prerequisite to injunctive<sup>327</sup> or declaratory<sup>328</sup> relief but does embrace all forms of monetary demands including pension claims<sup>329</sup> and all types of tort<sup>330</sup> and contract claims.<sup>331</sup> A claims provision requiring money demands to be presented and "audited" has been said to be applicable only to contractual claims and not to tort claims.<sup>332</sup>

Illustrative of the interpretative problems likely to arise in the administration of a claims statute which purports to apply to only a single narrow class of claims are cases construing Sections 53050 *et seq.* of the Government Code. These provisions, in terms, apply only to claims "that a person has been injured or property damaged as a result of the dangerous or defective condition of public property."<sup>333</sup> It is clear that the quoted language does not apply to ordinary negligence claims<sup>334</sup> nor to claims arising under Section 400 of the Vehicle Code<sup>335</sup> since neither of these types of claims relate to defective property conditions. But what about inverse condemnation claims? It is settled that a defectively constructed public improvement which, because of the defects therein, causes damage or destruction to private property gives rise to a cause of action in inverse condemnation based upon Section 14 of Article I of the State Constitution.<sup>336</sup> The Constitution, however, forbids either a "taking" or "damaging" of private property for public use without payment of just compensation whereas Section 53052 requires a claim *only* when property is "damaged." As a result of this probably inadvertent difference in wording, a claim in inverse condemnation based on a defective condition of public property must be presented pursuant to Section 53052 if "damage" is alleged<sup>337</sup>

<sup>324</sup> *Slavin v. Glendale*, 97 Cal. App.2d 407, 217 P.2d 984 (1950); *Norton v. Hoffmann*, 34 Cal. App.2d 189, 93 P.2d 250 (1939). See also *Los Angeles Athletic Club v. Long Beach*, 128 Cal. App. 427, 17 P.2d 1061 (1932).

<sup>325</sup> *Cathey v. San Francisco*, 37 Cal. App.2d 575, 99 P.2d 1109 (1940); *Williams Bros. & Haas v. San Francisco*, 53 Cal. App.2d 415, 128 P.2d 56 (1942).

<sup>326</sup> *Western Salt Co. v. City of San Diego*, 181 Cal. 696, 186 Pac. 345 (1919).

<sup>327</sup> *Los Angeles Brick etc. Co. v. City of Los Angeles*, 60 Cal. App.2d 478, 141 P.2d 46 (1943).

<sup>328</sup> *Otis v. City of Los Angeles*, 52 Cal. App.2d 605, 126 P.2d 954 (1942).

<sup>329</sup> *Dryden v. Board of Pension Commrs.*, 6 Cal.2d 575, 59 P.2d 104 (1936).

<sup>330</sup> See *McCann v. Sierra County*, 7 Cal. 121 (1857).

<sup>331</sup> See *Spencer v. City of Los Angeles*, 180 Cal. 103, 179 Pac. 163 (1919); *Gelmann v. Board of Police Commrs.*, 158 Cal. 748, 112 Pac. 553 (1910); *Ames v. San Francisco*, 78 Cal. 325, 18 Pac. 397 (1888).

<sup>332</sup> *Adams v. Modesto*, 131 Cal. 501, 63 Pac. 1083 (1901).

<sup>333</sup> CAL. GOV'T. CODE § 53052. In the application of this section, no distinction is made between governmental and proprietary functions. *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942).

<sup>334</sup> *Ogando v. Carquinez G. School Dist.*, 24 Cal. App.2d 567, 75 P.2d 641 (1938); *Kenney v. Antioch L. O. School Dist.*, 18 Cal. App.2d 226, 63 P.2d 1143 (1936).

<sup>335</sup> *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936); *Raynor v. Arcata*, 11 Cal.2d 113, 77 P.2d 1064 (1938). Cf. *Von Arx v. Burlingame*, 16 Cal. App.2d 29, 60 P.2d 305 (1936).

<sup>336</sup> *House v. Los Angeles County Flood Control Dist.*, 25 Cal.2d 384, 153 P.2d 950 (1944).

<sup>337</sup> *Knight v. City of Los Angeles*, 26 Cal.2d 764, 160 P.2d 779 (1945); *Osborn v. Whittier*, 103 Cal. App.2d 609, 230 P.2d 132 (1951); *Ghiozzi v. South San Francisco*, 72 Cal. App.2d 472, 164 P.2d 902 (1946); *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 102 (1940). For similar decisions under the closely comparable language of Water Code Section 22727 (irrigation district claim statute), see *Davis v. East Contra Costa Irr. Dist.*, 19 Cal.2d 140, 119 P.2d 727 (1941); *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941).

but apparently not if the claim is for a "taking."<sup>338</sup> Carefully considered efforts to avoid this anomalous result appear to be reflected in several claims statutes which, although based upon Section 53052, have expanded its language to expressly embrace claims "that any property has been *taken*, injured, damaged, or *destroyed* . . . as a result of any dangerous or defective condition." [Emphasis added.]<sup>339</sup> Other claims statutes have avoided the problem by explicitly referring to claims in "inverse eminent domain"<sup>340</sup> or claims for the "taking or damaging of property without compensation."<sup>341</sup> Whether a claims statute covers all, some or no types of inverse condemnation claims thus is a matter of statutory draftsmanship.<sup>342</sup> The applicability of city charters and ordinances to inverse condemnation is discussed in the following section.

Another problem posed by the language of Section 53052 is whether wrongful death actions are subject thereto if the cause of death was a dangerous or defective condition of public property. Is a wrongful death claim a claim that "a person has been injured or property damaged" within the meaning of Section 53052? For some purposes—e.g., survivability—wrongful death has been treated as involving injury to a property interest,<sup>343</sup> yet the recently enacted survival statutes appear to distinguish between actions for personal injuries and for wrongful death.<sup>344</sup> The precise issue is still apparently an open one for in the only case in which it was directly presented the court expressly declined to pass on the question finding that in either event Section 53052 had been satisfied.<sup>345</sup> In analogous situations arising under Section 1981 of the Government Code, a claims statute which applies only to claims against public officers and employees, however, substantially identical language has been construed as including wrongful death within the meaning of "any person . . . injured."<sup>346</sup> More precise legislative draftsmanship, of course, could easily have avoided the need for litigation on the point.

#### Conflicting Provisions—Basis for Choice

Within the existing profusion of claims statutes, three situations may be identified in which an accommodation of mutually inconsistent legislative policies as to claims procedure is required.

<sup>338</sup> *Merritt Land Co. v. Oakland*, 154 Cal. App.2d 717, 316 P.2d 672 (1957). See opinion of Carter, J. in *Miramar Co. v. Santa Barbara*, 23 Cal.2d 170, 143 P.2d 1 (1943); *Davis v. East Contra Costa Irr. Dist.*, 19 Cal.2d 140, 119 P.2d 727 (1941); *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 818, 169 P.2d 1000 (1946).

<sup>339</sup> CAL. GOVT. CODE § 61628; CAL. WATER CODE § 31084; *Kings River Conservation District Act*, Cal. Stat. 1951, c. 931, § 15, p. 2508, as amended, CAL. GEN. LAWS Act 4025 (Deering Supp. 1957).

<sup>340</sup> E.g., *Del Norte County Flood Control District Act*, Cal. Stat. 1955, c. 166, § 31, p. 633, CAL. GEN. LAWS Act 2040 (Deering Supp. 1957).

<sup>341</sup> E.g., CAL. GOVT. CODE § 16041 (taking or damaging of private property for public use); *Alameda County Flood Control and Water Conservation District Act*, Cal. Stat. 1949, c. 1275, § 29, p. 2260, CAL. GEN. LAWS Act 205 (Deering Supp. 1957). Prior to 1941 the predecessor to Government Code Section 16041 (Political Code Section 688) did not apply to inverse condemnation actions. See *Baich v. Board of Control*, 23 Cal.2d 843, 144 P.2d 818 (1943).

<sup>342</sup> *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 818, 169 P.2d 1000 (1946).

<sup>343</sup> *Hunt v. Authier*, 28 Cal.2d 288, 169 P.2d 913 (1946). See also *Casey v. Katz*, 114 Cal. App.2d 391, 250 P.2d 291 (1952).

<sup>344</sup> Compare CAL. CODE CIV. PROC. § 377 with CAL. CIV. CODE § 956; 25 So. CAL. L. REV. 112 (1951); 1 U.C.L.A. L. REV. 229 (1954).

<sup>345</sup> *Anderson v. County of San Joaquin*, 97 Cal. App.2d 380, 217 P.2d 479 (1950).

<sup>346</sup> *Ward v. Jones*, 39 Cal.2d 756, 249 P.2d 246 (1952); *Pike v. Archibald*, 118 Cal. App.2d 114, 257 P.2d 480 (1953); *Henry v. City of Los Angeles*, 114 Cal. App.2d 603, 250 P.2d 643 (1952).

First, two or more claims statutes may in terms appear to govern the same claim. Where the statutes in question impose substantially the same requirements<sup>347</sup> there is little likelihood of serious conflict. But if the requirements are quite different so that compliance with one may not satisfy the other resolution of the problem becomes critical. Such is the case with claims against counties under Sections 29704 and 53052 of the Government Code. The former imposes a one-year filing period with respect to all monetary claims of every type; the latter a 90-day period for dangerous and defective condition claims. Reconciliation<sup>348</sup> has been achieved by application of the principle that the specific and later enacted provision, Government Code Section 53052, controls and modifies the general and earlier enacted provision, Government Code Section 29704.<sup>349</sup> Thus, Section 53052 applies exclusively to dangerous and defective condition cases falling within its terms,<sup>350</sup> including claims for property damage predicated upon the theory of inverse condemnation.<sup>351</sup> Claims based on ordinary negligence,<sup>352</sup> claims for a "taking" in inverse condemnation<sup>353</sup> and claims for "damaging" in inverse condemnation not founded on a dangerous or defective condition of public property,<sup>354</sup> however, are not embraced by the language of Section 53052 and hence fall within the general one year claims provision. The results, although arbitrary and somewhat illogical by any empirical standard, are at least fairly predictable.

By the same general reasoning, claims for refund of county taxes erroneously or illegally collected are governed solely by the special procedures of the Revenue and Taxation Code rather than the general county claims procedure.<sup>355</sup>

The rule that a general provision is controlled by a specific provision relating to the same subject matter is delusive in its simplicity.

<sup>347</sup> This is true of Education Code Section 1007 and Government Code Section 53052. See *Lorenz v. Santa Monica etc. Sch. Dist.*, 51 Cal. App.2d 393, 124 P.2d 846 (1942), in which the court erroneously but harmlessly assumes that the predecessor of Section 1007 is applicable to a dangerous and defective condition claim and fails to even cite the predecessor of Section 53052.

<sup>348</sup> "Reconciliation" presupposes recognition by the court that a problem of conflict exists but such is not always the case. See *Smith v. County of San Mateo*, 57 Cal. App.2d 820, 135 P.2d 372 (1943), erroneously assuming that Political Code Section 4078, now Government Code Section 29714, applied to a dangerous and defective condition claim; *Lorenz v. Santa Monica etc. Sch. Dist.*, *supra* note 347.

<sup>349</sup> "[U]nless there is some provision of law expressly authorizing a different course of procedure, all claims or charges against a county must be presented and filed and approved and allowed as provided by the sections of the Political Code." *Woody v. Peairs*, 35 Cal. App. 553, 553, 170 Pac. 660, 662 (1917).

<sup>350</sup> *Albaeck v. County of Santa Barbara*, 123 Cal. App.2d 336, 266 P.2d 844 (1954); *Kahrs v. County of Los Angeles*, 38 Cal. App.2d 46, 82 P.2d 29 (1938); *Cooper v. County of Butte*, 17 Cal. App.2d 43, 81 P.2d 516 (1936); *Thompson v. County of Los Angeles*, 140 Cal. App. 73, 35 P.2d 185 (1934).

<sup>351</sup> *Knight v. City of Los Angeles*, 26 Cal.2d 764, 160 P.2d 779 (1945); *Osborn v. Whittier*, 103 Cal. App.2d 609, 230 P.2d 132 (1951); *Ghiozzi v. South San Francisco*, 72 Cal. App.2d 472, 164 P.2d 902 (1946); *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 103 (1940); *Yonker v. City of San Gabriel*, 23 Cal. App.2d 556, 73 P.2d 623 (1937).

<sup>352</sup> *Raynor v. Arcata*, 11 Cal.2d 113, 77 P.2d 1054 (1938); *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936). See also *Ogando v. Carquinez G. School Dist.*, 24 Cal. App.2d 567, 75 P.2d 641 (1938).

<sup>353</sup> *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 818, 169 P.2d 1000 (1946). *Cf. Miramar Co. v. City of Santa Barbara*, 23 Cal.2d 170, 143 P.2d 1 (1943), in which *Shenk, J.*, concurring, and *Carter, J., Schauer, J., and Curtis, J.*, dissenting, all expressly agreed that Act 5149, Cal. Stat. 1931, c. 1187, predecessor of Government Code Section 53052 did not apply to a "taking." See also *Davis v. East Contra Costa Irr. Dist.*, 19 Cal.2d 140, 119 P.2d 727 (1941).

<sup>354</sup> *Cramer v. County of Los Angeles*, 36 Cal. App.2d 255, 215 P.2d 497 (1950); *Rhoda v. County of Alameda*, 134 Cal. App. 726, 26 P.2d 691 (1933). See also *McCann v. Sierra County*, 7 Cal. 121 (1857).

<sup>355</sup> *Brill v. County of Los Angeles*, 16 Cal.2d 726, 108 P.2d 443 (1940); *Birch v. County of Orange*, 186 Cal. 736, 200 Pac. 647 (1921).

It has proven serviceable in the cited cases but it does not preclude uncertainty as to the interrelationship of overlapping provisions. If a specific provision—e.g., Section 53052—controls *only* to the extent of any inconsistency, then the general provisions may still be applicable in part. In *Hochfelder v. County of Los Angeles*<sup>356</sup> the court apparently assumed, without discussion of the point, that the provisions of Section 29715 of the Government Code allowing six months to sue after final action of the board of supervisors were applicable to a dangerous and defective condition claim filed under Section 53052. Similarly, in *Consolidated Liquidating Corp. v. Ford*<sup>357</sup> portions of the general county claims statute not inconsistent with Section 5097 of the Revenue and Taxation Code were assumed to apply to a tax refund claim presented thereunder. Yet, it has also been squarely held that other provisions<sup>358</sup> of the general county claims statute do *not* apply to dangerous and defective condition claims.<sup>359</sup> Conflicting adjudications of this sort do not aid in reconciling conflicting statutory language. The most desirable solution, of course, would be the elimination of any conflict in the statutes.

Second, a statutory and a city charter or ordinance claim provision may both appear to govern the same claim. This is true, for example, of Section 53052 of the Government Code and many charters and ordinances, all of which govern dangerous and defective condition claims.

With respect to charter cities, a State statute will be held to supersede inconsistent city charter and ordinance provisions only to the extent that the subject of regulation does *not* relate to "municipal affairs" over which charter cities have been given "home rule" autonomy by the Constitution.<sup>360</sup> It has been held that liability in tort, including the procedures to enforce that liability, is a matter of statewide concern as to which charters and ordinances must yield to State statutes.<sup>361</sup> Accordingly, Section 53052 of the Government Code, the only significant statutory claim provision applicable to cities, has been uniformly held to be controlling over inconsistent charter and ordinance claims provisions.<sup>362</sup>

<sup>356</sup> 126 Cal. App.2d 370, 272 P.2d 844 (1954).

<sup>357</sup> 181 Cal. App.2d 576, 281 P.2d 20 (1955).

<sup>358</sup> CAL. GOVT. CODE § 29708.

<sup>359</sup> *Cooper v. County of Butte*, 17 Cal. App.2d 43, 61 P.2d 516 (1936).

<sup>360</sup> *Wilson v. Beville*, 47 Cal.2d 852, 306 P.2d 789 (1957), and cases therein discussed.

<sup>361</sup> *But cf. Kornahrens v. San Francisco*, 87 Cal. App.2d 196, 196 P.2d 140 (1948), holding an ordinary negligence claim arising out of the operation of a municipal railway system must comply with the charter claim procedure rather than the general statutory claim procedure applicable to counties, since "the operation of a street railway is not a county or governmental function but a proprietary one." *Id.* at 200, 196 P.2d at 142. It is unlikely that this remark was intended to suggest that charters control claims relating to proprietary functions and yield to statutory claim procedures only as to governmental activities. The court was probably merely pointing out that in operating its railway San Francisco was exercising *municipal* powers and hence was not within the scope of Government Code Section 29700 which applies to counties. Any intimations along the former lines have been emphatically rejected in *Wilson v. Beville*, 47 Cal.2d 852, 306 P.2d 789 (1957), which quotes approvingly from *Helbach v. Long Beach*, 50 Cal. App.2d 242, 123 P.2d 62 (1942).

<sup>362</sup> *Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 553 (1947); *Douglass v. City of Los Angeles*, 5 Cal.2d 123, 53 P.2d 358 (1935); *Helbach v. Long Beach*, *supra* note 361; *Kelso v. Board of Education*, 42 Cal. App.2d 415, 109 P.2d 29 (1941); *Wilkes v. San Francisco*, 44 Cal. App.2d 593, 112 P.2d 759 (1941); *Sandstoe v. Atchison, T. & S.F. Ry.*, 28 Cal. App.2d 215, 82 P.2d 216 (1938); *White-Satra v. City of Los Angeles*, 14 Cal. App.2d 583, 58 P.2d 933 (1936).

The unanimity with which this conclusion has been reached<sup>363</sup> obscures a basic obstacle to any legislative attempt to consolidate and unify claims procedure into a single statutory provision. The same conclusion may not obtain as to nontort claims. It has been held, for example, that a city charter claim provision superseded the general statute of limitations with respect to claims for unpaid salary<sup>364</sup> and accrued pension benefits<sup>365</sup> since these matters are regarded as municipal affairs as to which a charter city is independent of general statutory law. On the other hand, the procedural provisions for enforcement of judgments relate to matters of statewide concern and control over charter claims provisions.<sup>366</sup>

Due to the absence of any general statutes prescribing a claims procedure for nontort claims against cities, no square holdings as to the validity of such provisions in the light of the "home rule" doctrine are available. The last cited cases, however, strongly intimate the advisability of a constitutional amendment to support legislative efforts to supersede city charter and ordinance claims procedures as to nontort claims. The State Bar of California, in sponsoring Assembly Constitutional Amendment 23 in the 1953 General Session which amendment would have authorized the Legislature to enact uniform laws for various types of claims, advised that:

A constitutional amendment is advocated primarily because doubts may otherwise exist under the "home rule" provisions of the Constitution (Article XI, Sections 6, 7 $\frac{1}{2}$ , 8) as to the legal effectiveness of statutes on this subject, particularly where the procedure prescribed relates to claims not founded upon tortious acts or omissions.<sup>367</sup>

Third, a city charter or ordinance claim provision may be applicable in terms to a given claim but may be legally inapplicable thereto because it is (1) *ultra vires* of the city or (2) superseded by legislative occupation of the field. The situation here presented differs from the second category discussed immediately above in that there a statute expressly governed a type of claim also within the scope of a city claim provision. Here, in the absence of any statutory claim provision, the charter or ordinance procedure is still held to be inapplicable.

The very recent Supreme Court decision of *Wilson v. Beville*<sup>368</sup> illustrates both aspects of the problem. Plaintiff, asserting title to a parcel of real property by virtue of street improvement assessment bond foreclosure proceedings, claimed a right to damages in inverse condemnation for the taking by the City of Los Angeles of an easement for street purposes over his property subsequent to recordation of the assessment. The city argued that plaintiff's right to damages had been

<sup>363</sup> Most of the cases cited note 862 *supra*, have recently been strongly approved in *Wilson v. Beville*, 47 Cal.2d 852, 306 P.2d 789 (1957). No cases to the contrary have been found.

<sup>364</sup> *Gamble v. City of Sacramento*, 41 Cal. App.2d 200, 110 P.2d 530 (1941).

<sup>365</sup> *Dryden v. Board of Pension Commrs.*, 6 Cal.2d 575, 59 P.2d 104 (1936). Cf. *Hermanson v. Board of Pension Commrs.*, 219 Cal. 622, 28 P.2d 21 (1933).

<sup>366</sup> *Dept. of Water & Power v. Inyo Chem. Co.*, 16 Cal.2d 744, 108 P.2d 410 (1940).

<sup>367</sup> Supplement to Second Progress Report of the Senate Interim Judiciary Committee, 2 Appendix to Journal of the Senate 5 (Reg. Sess. 1953). To the same effect, see Comment, *California Claims Statutes—Traps for the Unwary*, 1 U.C.L.A. L. REV. 201, 210 (1954); Comment, *Estoppel Against the Government in California*, 44 CALIF. L. REV. 340, 347, n. 53 (1956).

<sup>368</sup> 47 Cal.2d 852, 306 P.2d 789 (1957).

lost by failure to file a claim with the city pursuant to Sections 363 and 376 of the Los Angeles Charter. This argument was supported by a lengthy array of cases in which city charter claims provisions had been either assumed<sup>369</sup> or held<sup>370</sup> to be applicable to inverse condemnation claims, including cases arising under the same provisions of the Los Angeles Charter.<sup>371</sup> The court, however, in an opinion by Mr. Justice Carter with Justices Shenk and Spence dissenting, rejected the city's defense and held the charter claims provisions to be inapplicable. In the first place, the court stated:

The claim filing requirements of the Los Angeles Charter . . . cannot apply to a claim for compensation when a taking is by eminent domain because it is not a municipal affair; it is a matter of statewide concern and may be regulated only by the state Legislature, such as, the statutes of limitation.<sup>372</sup>

In the second place, the charter provisions could not be regarded as local measures which, under Section 11 of Article XI of the Constitution, are valid to the extent not in conflict with general law since, according to the Court:

*The Legislature has fully occupied the field of eminent domain . . . .* The Legislature has provided a complete and detailed system for exercising the right of eminent domain and assessing compensation. (Code Civ. Proc., §§ 1237-1266.2.)

Here the charter claims provisions are stringent statutes of limitations—procedural restrictions. . . . Such procedural matters are fully covered by the state statutes such as those on eminent domain, . . . and those on limiting the time within which actions may be brought. (Code Civ. Proc., §§ 338, subd. 2, 318-325.) A city charter cannot give a shorter time, make more onerous the recovery of compensation, than the legislation has.<sup>373</sup>

Finally, in view of the fact that the Los Angeles Charter only required presentation of claims for money or damages, the provisions simply did not apply:

[I]t should be clear that the charter provisions do not apply to a conventional eminent domain proceeding. . . . In inverse condemnation the property owner is forced to prosecute proceedings otherwise he is remediless. . . . His action may be to recover the property and for preventative relief in that connection. . . . It is thus not a demand for money within the charter provisions. It becomes so only because the city invokes the intervention of its

<sup>369</sup> *Chilberg v. City of Los Angeles*, 54 Cal. App.2d 99, 128 P.2d 693 (1942); *Jahnke v. City of Los Angeles*, 12 Cal. App.2d 144, 54 P.2d 1117 (1936); *McCandless v. City of Los Angeles*, 10 Cal. App.2d 407, 52 P.2d 545 (1935); *Haign v. City of Los Angeles*, 189 Cal. App. 595, 34 P.2d 779 (1934); *Musto-Keenan Co. v. City of Los Angeles*, 189 Cal. App. 506, 34 P.2d 506 (1934). See also *City of Fresno v. Hedstrom*, 102 Cal. App.2d 453, 229 P.2d 809 (1951).

<sup>370</sup> *Natural Soda Prod. Co. v. City of Los Angeles*, 23 Cal.2d 193, 143 P.2d 12 (1943); *Crescent Wharf etc. Co. v. City of Los Angeles*, 207 Cal. 430, 273 Pac. 1028 (1929); *Sala v. Pasadena*, 162 Cal. 714, 124 Pac. 539 (1912); *Bancroft v. City of San Diego*, 120 Cal. 432, 52 Pac. 712 (1898); *Los Angeles Athletic Club v. Long Beach*, 128 Cal. App. 427, 17 P.2d 1061 (1932); *Morris v. San Francisco*, 59 Cal. App. 364, 210 Pac. 824 (1922).

<sup>371</sup> See cases cited *supra* notes 369 and 370.

<sup>372</sup> *Wilson v. Beville*, 47 Cal.2d 852, 856, 306 P.2d 789, 791 (1957).

<sup>373</sup> *Id.* at 860-61, 306 P.2d at 793-94.

public use as a defense to preventative relief and makes the property owner take compensation instead of his property.<sup>374</sup>

Aside from the fact that *Wilson v. Beville* expressly overrules two earlier decisions,<sup>375</sup> and others *sub silentio*,<sup>376</sup> it suggests a number of provocative questions. If the Los Angeles Charter by the interpretation expressed in the last ground of decision is inapplicable to inverse condemnation claims, would it not follow that other claims provisions relating to money and damage claims are equally inapplicable to such claims? If so, cases affirming the applicability of Sections 29704<sup>377</sup> and 53052<sup>378</sup> of the Government Code are no longer good law. If inverse condemnation claims are not controllable by charter but *only* by State law as stated in the first ground, would not the same be true as to actions arising under Section 400 of the Vehicle Code or actions based upon the common law doctrine of proprietary liability? Similarly, if the statutes of limitation governing eminent domain proceedings have occupied the field to the preclusion of charter claims provisions relating to inverse condemnation claims as intimated in the second ground, would not the same statutes of limitation preclude application of charter or ordinance claims filing periods to claims under Vehicle Code Section 400 or to claims for proprietary liability? The cases are to the contrary.<sup>379</sup> On the other hand, in view of the fact that the *Wilson* case was in fact a case of a "taking," should the broad language of the opinion be restricted to similar facts thereby not impairing the authority of cases holding charter and statutory claims provisions applicable to inverse condemnation for a "damaging" of property?

Viewing as we must the several alternative grounds of the *Wilson* decision as equally authoritative holdings,<sup>380</sup> that case casts a mantle of uncertainty over a large portion of the already tangled "bramble patch of legislation"<sup>381</sup> which comprises California's law of claims. It exposes the possibility that with respect to many types of claims, charter and ordinance claims provisions now on the books may be a delusion and that important types of claims against cities such as those arising out of motor vehicle accidents may not be governed by any existing claims procedure despite long and uniform administrative and judicial

<sup>374</sup> *Id.* at 861-62, 306 P.2d at 794-95.

<sup>375</sup> *Crescent Wharf etc. Co. v. City of Los Angeles*, 207 Cal. 430, 278 Pac. 1028 (1929); *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 102 (1940). The latter case held that the predecessor to Section 53052 of the Government Code applied to an inverse condemnation action against a county for damages. The applicability of a city charter or ordinance was not in issue. Although the court in the *Wilson* case said the *Young* case was "overruled," perhaps this was merely intended to express disapproval of a dictum from the *Crescent Wharf* case, quoted therein, to the effect that inverse condemnation procedures may be provided either by statute or by charter provisions.

<sup>376</sup> See note 370 *supra*.

<sup>377</sup> *E.g.*, *Cramer v. County of Los Angeles*, 96 Cal. App.2d 255, 215 P.2d 497 (1950); *Veterans' Welfare Bd. v. Oakland*, 74 Cal. App.2d 813, 169 P.2d 1000 (1946).

<sup>378</sup> *E.g.*, *Knight v. City of Los Angeles*, 26 Cal.2d 764, 160 P.2d 779 (1945); *Miramar Co. v. City of Santa Barbara*, 23 Cal.2d 170, 143 P.2d 1 (1943); *Young v. County of Ventura*, 39 Cal. App.2d 732, 104 P.2d 102 (1940). The last cited case was declared "overruled" in *Wilson v. Beville*, 47 Cal.2d 852, 308 P.2d 789 (1957), although it is clearly distinguishable factually as well as legally. See comment *supra* note 375.

<sup>379</sup> *Western Salt Co. v. City of San Diego*, 181 Cal. 696, 186 Pac. 345 (1919) (proprietary liability); *Cruise v. San Francisco*, 101 Cal. App.2d 558, 225 P.2d 988 (1951); *Schulstad v. San Francisco*, 74 Cal. App.2d 105, 168 P.2d 68 (1946); *Rogers v. City of Los Angeles*, 6 Cal. App.2d 294, 44 P.2d 465 (1935) (motor vehicle accidents).

<sup>380</sup> *Estate of McSweeney*, 123 Cal. App.2d 787, 268 P.2d 107 (1954); *Bank of Italy etc. Assn. v. Bentley*, 217 Cal. 644, 20 P.2d 940 (1933).

<sup>381</sup> This expression is used by Ward, *Requirements for Filing Claims Against Governmental Units in California*, 38 CALIF. L. REV. 259, 271 (1950).

acquiescence to the contrary view. A statewide legislative solution seems to be clearly called for.

#### Time Allowed for Presentation of Claim

Interpretative problems have arisen with respect to filing time requirements. Since a claim is barred by failure to present it within the time limit prescribed,<sup>382</sup> the crucial issues relate to the proper computation of the time period. In this connection it is settled that, absent statutory relaxation of the rule,<sup>383</sup> the circumstances which will toll the ordinary statutes of limitations—e.g., imprisonment, minority, insanity—are not applicable to claims statutes and will not excuse a late presentation.<sup>384</sup>

The time for presentation under the language of most claims provisions begins to run when the cause of action accrues, which generally is when the act of the defendant giving rise to the cause of action takes place.<sup>385</sup> Although an early decision ruled that the time of discovery of a cause of action based on mistake was the time of accrual within the meaning of a claim statute,<sup>386</sup> later decisions have taken a stricter view and measure the time from the actual date rather than the discovery date.<sup>387</sup> If the claim is based upon a continuing nuisance or trespass such as a prolonged flooding of land, the claimant may treat his claim as one which keeps accruing from time to time and may file periodic claims as the damages continue.<sup>388</sup> The contrary view in an aggravated case would mean that the plaintiff might never be able to file a matured claim;<sup>389</sup> and a premature action prior to filing a claim has been held to be wholly ineffective.<sup>390</sup> However, such a claimant may also treat "the entire sequence of events giving rise to the injury . . . as the 'occurrence from which the damage arose'" and compute the time for presentation from the last event in the series.<sup>391</sup> On the other hand, if the claim relates to a continuing obligation which accrues

<sup>382</sup> *Williams v. San Diego etc. School Dist.*, 143 Cal. App.2d 564, 299 P.2d 916 (1956); *Kirchmann v. Anaheim*, 137 Cal. App.2d 216, 289 P.2d 817 (1955); *Albaeck v. County of Santa Barbara*, 123 Cal. App.2d 336, 266 P.2d 844 (1954); *Gale v. County of Santa Barbara*, 118 Cal. App.2d 451, 257 P.2d 1000 (1953). *Cf. Farrell v. County of Placer*, 23 Cal.2d 624, 145 P.2d 570 (1944).

<sup>383</sup> *E.g.*, CAL. GOVT. CODE § 16046.

<sup>384</sup> *Rounds v. Brown*, 121 Cal. App.2d 642, 263 P.2d 620 (1953) (imprisonment); *Wicklund v. Plymouth El. School Dist.*, 37 Cal. App.2d 252, 99 P.2d 314 (1940) (mental incapacity); *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 831 (1943) (minority).

<sup>385</sup> See *Haigh v. City of Los Angeles*, 129 Cal. App. 595, 34 P.2d 779 (1934) (filing time for claim for damages based on street improvement proceedings runs from final acceptance of the project by city and not from time actual damage is incurred).

<sup>386</sup> *Hayes v. County of Los Angeles*, 99 Cal. 74, 33 Pac. 766 (1893).

<sup>387</sup> *Perrin v. Honeycutt*, 144 Cal. 87, 77 Pac. 776 (1904); *Murphy v. Bondshu*, 2 Cal. App. 249, 33 Pac. 278 (1905). These cases may be distinguishable from *Hayes v. County of Los Angeles*, *supra* note 386 on the ground they are *mandamus* actions to compel the county auditor to draw a warrant after the board of supervisors had allowed a tardy claim, whereas the *Hayes* case was an action to enforce a claim which the board had rejected. At this time, compliance with the county claim statute, Political Code Section 4075, may have been regarded as only a limitation upon the power of the board of supervisors to allow a claim and not as a prerequisite to judicial judgment against the county. See *Perrin v. Honeycutt*, *supra* at 90, 77 Pac. at 777; and dissenting opinion of Curtis, J. in *Brill v. County of Los Angeles*, 16 Cal.2d 726, 736, 108 P.2d 443, 448 (1940).

<sup>388</sup> *Phillips v. Pasadena*, 27 Cal.2d 104, 162 P.2d 625 (1945); *Natural Soda Prod. Co. v. City of Los Angeles*, 109 Cal. App.2d 440, 240 P.2d 993 (1952). See also *Crim v. San Francisco*, 152 Cal. 279, 92 Pac. 640 (1907).

<sup>389</sup> *Natural Soda Prod. Co. v. City of Los Angeles*, *supra* note 388, at 445, 240 P.2d at 996.

<sup>390</sup> *Wiersma v. Long Beach*, 41 Cal. App.2d 8, 106 P.2d 45 (1940). *Cf. Walton v. County of Kern*, 39 Cal. App.2d 32, 102 P.2d 531 (1940).

<sup>391</sup> See *Natural Soda Prod. Co. v. City of Los Angeles*, 23 Cal.2d 193, 203, 143 P.2d 12, 18 (1943), which limits the effect of contrary dictum in *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941).

periodically such as a pension each item represents a separate cause of action which starts the period running under the usual "date of accrual" statute.<sup>392</sup>

A number of claims provisions governing contract claims, and frequently other types as well, explicitly measure the time for presentation from the date upon which the "last item accrued."<sup>393</sup> Such language has been construed as contemplating the incorporation within a single claim of all items in a continuous series of related transactions, provided that none of the items are separated by a period of time in excess of the filing time prescribed and that the claim is presented within that period following accrual of the last item.<sup>394</sup> Thus, in *Skidmore v. County of Alameda*<sup>395</sup> plaintiff was permitted to recover on a claim filed in May 1932 for a series of contractual items falling due between April 1, 1922, and February 19, 1932, no two items having been separated longer than the one-year filing period. By contrast, in *Welch v. County of Santa Cruz*<sup>396</sup> a claimant under the same statute was allowed to recover only \$25 out of a total of \$500 sought because at the time of accrual of the last item of \$25 "more than a year had elapsed since the accrual of the item next preceding it."

It will be observed that quite different results are often achieved under a "last item accrued" statute from those arrived at under a "date of accrual" provision. Under the latter language a claim for unpaid monthly salary, for example, could only embrace payments which accrued during the statutory period preceding presentation of the claim;<sup>397</sup> whereas under the former type, a claim timely filed after accrual of the last item would normally embrace all unpaid salary including installments unless the statutory period had intervened between some of them.<sup>398</sup>

A problem which has arisen occasionally relates to the computation of the presentation period when a newly enacted claims statute becomes effective after the cause of action in question has accrued. This issue was involved in cases arising under what is now Section 53052 of the Government Code which imposed a 90 day presentation requirement for dangerous and defective condition claims. When the original legislation became effective on August 14, 1931, it appeared to bar action on causes arising more than 90 days previously, although the normal statute of limitations had not yet run on such claims, because no claim had been presented within said 90 days. Obviously, said the Supreme Court, "no advantage could rightfully be claimed or gained by the city by reason of the fact that the claim was not filed within ninety days after the occurrence of the accident, because in this case that requirement of the new law could not attach."<sup>399</sup> This did not mean

<sup>392</sup> *Dryden v. Board of Pension Commrs.*, 6 Cal.2d 575, 59 P.2d 104 (1936); *Ames v. San Francisco*, 76 Cal. 325, 18 Pac. 397 (1888); *Carroll v. Siebenthaler*, 37 Cal. 193 (1869).

<sup>393</sup> E.g., CAL. GOVT. CODE § 29702.

<sup>394</sup> *Skidmore v. County of Alameda*, 13 Cal.2d 534, 90 P.2d 577 (1939); *City of Los Angeles v. County of Los Angeles*, 9 Cal.2d 624, 72 P.2d 138 (1937); *Neilson v. Merced County*, 122 Cal. 644, 55 Pac. 421 (1898); *Skidmore v. County of Tuolumne*, 35 Cal. App.2d 535, 96 P.2d 178 (1939); *Welch v. County of Santa Cruz*, 30 Cal. App. 123, 156 Pac. 1003 (1916).

<sup>395</sup> 13 Cal.2d 534, 90 P.2d 577 (1939).

<sup>396</sup> 30 Cal. App. 123, 156 Pac. 1003 (1916).

<sup>397</sup> *Carroll v. Siebenthaler*, 37 Cal. 193 (1869). See also *Ames v. San Francisco*, 76 Cal. 325, 18 Pac. 397 (1888).

<sup>398</sup> *Ford v. Department of Water & Power*, 4 Cal. App.2d 526, 41 P.2d 188 (1935).

<sup>399</sup> *Norton v. Pomona*, 5 Cal.2d 54, 65, 53 P.2d 952, 957 (1935).

that the claim statute had only prospective operation as intimated in prior decisions under other statutes<sup>400</sup> for in a burst of judicial legislation the court construed the statute to require presentation "within ninety days after the effective date of the statute."<sup>401</sup> On the other hand, when the cause of action had accrued a short time before the effective date of the statute so that the 90-day period computed from the injury extended beyond the effective date for a reasonable period of time, the statute was regarded as having full retroactive application since it was procedural and remedial in character.<sup>402</sup>

Although the cases applying the 1931 claims legislation would appear to be controlling, when the same problems arose again several years later in relation to the 90-day claim presentation requirement added to the School Code<sup>403</sup> in 1937, the District Court of Appeal for the Third Appellate District, without citation of cases, held that the amendment had no application to accidents occurring before its effective date<sup>404</sup> whereas the First Appellate District ruled squarely to the contrary upon authority of the prior cases.<sup>405</sup>

#### Recipient of Claims

By analogy to the filing time requirements, the courts have generally adopted the view that presentation of a claim to the wrong recipient, that is, to someone other than the recipient designated in the claims statute, will defeat a claim<sup>406</sup> just as will a tardy presentation. Thus, in *Wilkes v. San Francisco*<sup>407</sup> an unwary claimant fell into a trap created by city charter and statutory claims provisions both applicable in terms to the same dangerous and defective condition claim. Relying on and complying with the charter provision for presentation to the city controller, he subsequently suffered defeat on the technical ground that his claim should have been presented to the city clerk as required by the superseding statute.

Most of the opinions discussing recipient provisions illustrate judicial resourcefulness in developing a rationale for excusing noncompliance by classifying it as "substantial compliance."<sup>408</sup> *Lowe v. City of San Diego*<sup>409</sup> is illustrative, presenting an almost identical setting to that in the *Wilkes* case. Here the claimant presented his dangerous and defective condition claim to the city controller as required by the city charter but three hours later withdrew it and presented it to the city clerk as required by the statute. Although in fact this was in strict compliance with the statute, the court erroneously assumed with the aid of counsel that the charter prevailed and labored to an ultimate

<sup>400</sup> See *Crim v. San Francisco*, 152 Cal. 279, 92 Pac. 640 (1907).

<sup>401</sup> *Shea v. City of San Bernardino*, 7 Cal.2d 688, 62 P.2d 365 (1936). To the same effect, see *Kline v. San Francisco U. School Dist.*, 40 Cal. App.2d 174, 104 P.2d 661, 105 P.2d 362 (1940) (construing what is now Education Code Section 1007).

<sup>402</sup> *Thompson v. County of Los Angeles*, 140 Cal. App. 73, 35 P.2d 185 (1934). See also *Rhoda v. County of Alameda*, 134 Cal. App. 726, 26 P.2d 691 (1933).

<sup>403</sup> Reenacted as CAL. EDUC. CODE § 1007, Cal. Stat. 1943, c. 71, p. 323.

<sup>404</sup> *Buzzard v. East Lake School Dist.*, 34 Cal. App.2d 316, 93 P.2d 233 (1939).

<sup>405</sup> *Kline v. San Francisco U. School Dist.*, 40 Cal. App.2d 174, 104 P.2d 661, 105 P.2d 362 (1940).

<sup>406</sup> *Wilkes v. San Francisco*, 44 Cal. App.2d 393, 112 P.2d 759 (1941); *Huey v. City of Los Angeles*, 137 Cal. App. 48, 29 P.2d 918 (1934); *Beeson v. City of Los Angeles*, 115 Cal. App. 122, 300 Pac. 993 (1931).

<sup>407</sup> 44 Cal. App.2d 393, 112 P.2d 759 (1941).

<sup>408</sup> *Peters v. San Francisco*, 41 Cal.2d 419, 260 P.2d 55 (1953); *Milovich v. City of Los Angeles*, 42 Cal. App.2d 364, 103 P.2d 960 (1941); *Lowe v. City of San Diego*, 8 Cal. App.2d 440, 47 P.2d 1033 (1935).

<sup>409</sup> 8 Cal. App.2d 440, 47 P.2d 1033 (1935).

conclusion that the facts showed substantial compliance therewith. A "trap for the unwary" nearly caught a wary claimant in the *Low* case. Other cases have reached similar liberal results by invoking the doctrine of estoppel.<sup>410</sup> A claim mailed to the proper recipient is held to be in substantial compliance when actually received by a subordinate mail clerk or other personnel who duly forwards it.<sup>411</sup>

The most frequently litigated recipient provision was the requirement, formerly—but no longer—in the Los Angeles City Charter, that every claim with some exceptions must be presented to "the board, commission or officer authorized by this charter to incur the expenditure or liability represented thereby." Although the Los Angeles Charter has been amended, similar provisions are found today in other charters<sup>412</sup> so the cases are not merely of academic interest. As the Supreme Court said of this provision, "much confusion arose as to where demands should be filed, as a prerequisite to suit, whether with the board or commission in whose department the claim arose or with the city council."<sup>413</sup> The confusion which was reflected in a long series of cases<sup>414</sup> was finally brought to rest by a definitive ruling of the Supreme Court in *Douglass v. City of Los Angeles*.<sup>415</sup> Here the court stated that with three exceptions, tort claims were to be presented solely to the city council since it was "the municipal authority which under the law has the power to provide for its payment." The exceptions were claims against the financially independent departments of water and power, harbor and education. This judicial settlement of a vexing problem, although perhaps a reasonably sound interpretation of the charter, only partially met the need for simplicity and certainty in application of the claims provision of the charter. As Presiding Justice Pullen of the Third Appellate District once declared, in view of

the area of the City of Los Angeles and the great diversity of proprietary and governmental interests with which it is concerned . . . it would be a great hardship and inconvenience to demand that a citizen at his peril select from the great number of boards and commissions authorized by the charter and proper subordinate with whom to file his claim.<sup>416</sup>

<sup>410</sup> *Mendibles v. City of San Diego*, 100 Cal. App.2d 502, 224 P.2d 42 (1950) (invoking estoppel where mayor had mistakenly advised claimant to present claim to city auditor pursuant to charter, rather than to clerk as required by Government Code Section 53052).

<sup>411</sup> *Natural Soda Prod. Co. v. City of Los Angeles*, 22 Cal.2d 193, 143 P.2d 12 (1943); *Insolo v. Imperial Irr. Dist.*, 147 Cal. App.2d 172, 305 P.2d 176 (1956). See also *Milovich v. City of Los Angeles*, 42 Cal. App.2d 364, 108 P.2d 960 (1941).

<sup>412</sup> *E.g.*, *SAN BERNARDINO CHARTER*, Cal. Stat. 1905, c. XV, §§ 133, 236, pp. 963, 977; *VISALIA CHARTER*, Cal. Stat. 1923, c. 12, § 4, p. 1483.

<sup>413</sup> *Douglass v. City of Los Angeles*, 5 Cal.2d 123, 131, 53 P.2d 353, 356 (1935).

<sup>414</sup> *Beesen v. City of Los Angeles*, 118 Cal. App. 122, 300 Pac. 993 (1931) (wrongful death action barred by presentation to city council rather than Board of Public Works); *Huey v. City of Los Angeles*, 137 Cal. App. 48, 29 P.2d 918 (1934) (wrongful death action barred by presentation to city council rather than Board of Harbor Commissioners); *Musto-Keenan Co. v. City of Los Angeles*, 139 Cal. App. 506, 34 P.2d 506 (1934) (inverse condemnation claim based on street improvement held properly presented to city council rather than Board of Public Works); *Haigh v. City of Los Angeles*, 139 Cal. App. 595, 34 P.2d 779 (1934) (accord); *McCandless v. City of Los Angeles*, 10 Cal. App.2d 407, 52 P.2d 545 (1935) (accord); *Robertson v. City of Los Angeles*, 8 Cal. App.2d 283, 44 P.2d 461 (1935) (auto accident claim held properly filed with city council); *Rogers v. City of Los Angeles*, 6 Cal. App.2d 294, 44 P.2d 465 (1935) (accord).

<sup>415</sup> 5 Cal.2d 123, 184, 53 P.2d 353, 355 (1935). *Accord*, *Skinner v. City of Los Angeles*, 5 Cal.2d 317, 54 P.2d 446 (1936); *Cottle v. City of Los Angeles*, 5 Cal.2d 140, 53 P.2d 361 (1935); *Jahnke v. City of Los Angeles*, 12 Cal. App.2d 144, 54 P.2d 1117 (1936); *Lynch v. City of Los Angeles*, 11 Cal. App.2d 633, 54 P.2d 488 (1936).

<sup>416</sup> *Musto-Keenan Co. v. City of Los Angeles*, 139 Cal. App. 506, 516, 34 P.2d 506, 510 (1934).

The same comment to a lesser degree applies today to the several cities which retain the same sort of recipient provision.

#### Required Contents of Claims

In repeatedly rejecting the contention that an otherwise timely and properly presented claim is nonetheless insufficient in content to comply with the claims statute, the courts have generally displayed a more liberal attitude than with respect to other requirements. Claims need not be prepared with the precision demanded of pleadings.<sup>417</sup> And, consistent with the purpose of claims statutes to facilitate informal settlement of claims presented without legal advice by lay members of the public, the substantial compliance doctrine obtains.<sup>418</sup> The controlling test seems to be whether "sufficient facts . . . are set forth for investigation and consideration of the claim."<sup>419</sup>

Thus the place where the injury was incurred is sufficiently identified in the claim as the "southeast" corner of the intersection even though in fact it was the southwest corner;<sup>420</sup> and a reference to the accident as having occurred "upon U.S. Highway No. 50 within the County of El Dorado" is regarded as adequate.<sup>421</sup> Indeed, a recent case even held a claim to be sufficient when it misstated the location where the injury occurred as some 11 blocks distant from the actual situs.<sup>421a</sup> A requirement that the claimant's address be given is substantially complied with if the claimant's attorney's office address is given instead;<sup>422</sup> and is equally satisfied if the claim merely identifies the claimant as a resident of a named county and as a student at a specified high school therein without more.<sup>423</sup> The description of the acts upon which liability is predicated can be very general in nature;<sup>424</sup> and even a requirement that the claim be "itemized" imposes only a most general mandate to segregate elements of the claim into broad categories.<sup>425</sup> Similarly, an indefinite identification of the time of the injury as being "on or about" a given date appears to be adequate.<sup>426</sup>

<sup>417</sup> *Ridge v. Boulder Creek etc. School Dist.*, 60 Cal. App.2d 453, 140 P.2d 990 (1943); *More v. City of San Bernardino*, 118 Cal. App. 732, 5 P.2d 661 (1931).

<sup>418</sup> *Knight v. City of Los Angeles*, 26 Cal.2d 764, 160 P.2d 779 (1945); *Dillard v. County of Kern*, 23 Cal.2d 371, 144 P.2d 365 (1943); *Sayre v. El Dorado etc. School Dist.*, 97 Cal. App.2d 333, 217 P.2d 713 (1950); *Perry v. City of San Diego*, 80 Cal. App.2d 166, 181 P.2d 98 (1947).

<sup>419</sup> *Dillard v. County of Kern*, *supra* note 418, at 373, 144 P.2d at 369. To the same effect, *Johnson v. City of Los Angeles*, 134 Cal. App.2d 600, 285 P.2d 718 (1955); *Silva v. County of Fresno*, 63 Cal. App.2d 253, 146 P.2d 520 (1944); *Uttley v. Santa Ana*, 136 Cal. App. 23, 38 P.2d 377 (1933).

<sup>420</sup> *Johnson v. City of Los Angeles*, *supra* note 419.

<sup>421</sup> *Sayre v. El Dorado etc. Dist.*, 97 Cal. App.2d 333, 217 P.2d 713 (1950). To the same effect, *Silva v. County of Fresno*, 63 Cal. App.2d 253, 146 P.2d 520 (1944).

<sup>421a</sup> *Parodi v. San Francisco*, 160 Adv. Cal. App. 613, 335 P.2d 234 (1958).

<sup>422</sup> *Cameron v. Gilroy*, 104 Cal. App.2d 76, 230 P.2d 828 (1951); *Anderson v. County of San Joaquin*, 97 Cal. App.2d 330, 217 P.2d 479 (1950); *Stewart v. Rio Vista*, 73 Cal. App.2d 379, 164 P.2d 274 (1945); *Uttley v. Santa Ana*, 136 Cal. App. 23, 38 P.2d 377 (1933).

<sup>423</sup> *Ridge v. Boulder Creek etc. School Dist.*, 60 Cal. App.2d 453, 140 P.2d 990 (1943).

<sup>424</sup> *More v. City of San Bernardino*, 118 Cal. App. 732, 5 P.2d 661 (1931) (nuisance); *County of Imperial v. Adams*, 117 Cal. App. 220, 3 P.2d 953 (1931) (contract).

<sup>425</sup> *County of Colusa v. Welch*, 122 Cal. 428, 55 Pac. 243 (1898) (money due on contract for services properly set forth as one lump sum); *Kelso v. Teale*, 108 Cal. 477, 39 Pac. 948 (1895) (travel expenses properly set forth as one item); *Babcock v. Goodrich*, 47 Cal. 428 (1874) (items in building construction contract properly set forth by reference to architect's certificate); *More v. City of San Bernardino*, 118 Cal. App. 732, 5 P.2d 661 (1931) (damages due to overflowed sewer properly listed in various types). *But cf. Christie v. Sonoma County*, 60 Cal. 164 (1882); *Chapman v. Fullerton*, 90 Cal. App. 463, 265 Pac. 1035 (1928).

<sup>426</sup> *Knight v. City of Los Angeles*, 26 Cal.2d 764, 160 P.2d 779 (1945) (continuing injury due to flooding). *But cf. Kahrs v. County of Los Angeles*, 28 Cal. App.2d 46, 82 P.2d 29 (1938) (expression "on and after October 17, 1934" held insufficient to include events occurring on Feb. 6, 1935).

A claim will be treated as sufficient to support an action by one who did not sign or present the claim and who is not explicitly identified therein as the claimant if the entity was put upon adequate notice.<sup>427</sup> Even a substantial mistake in the amount of damages sought<sup>428</sup> or failure to include in the claim certain elements of damage<sup>429</sup> will not render the claim ineffective. Nor will the claimant be limited at time of trial to the amount of damages asserted in the claim for the extent of injuries may not be fully known within the relatively short filing period.<sup>430</sup> Information not required expressly or by necessary implication from the statutory language will, under this liberal view, not be required by the courts to be included in the claim.<sup>431</sup>

The only major inroad upon the substantial compliance doctrine with respect to contents is found in decisions refusing to apply that doctrine to claims which are not merely defectively or imperfectly stated but which completely omit to set forth required information.<sup>432</sup> Even though the public entity may have had complete and timely information as to the omitted data, the claim is inadequate and does not comply with the statute under this view. The reason, in the words of the Supreme Court, is that

substantial compliance cannot be predicated upon no compliance. A contrary holding would permit a claimant to bring suit against a city on the basis of a claim that included none of the information required by the statute if he offered to show that the city acquired the information independently of the claim. Such a holding would emasculate the statute.<sup>433</sup>

There is authority to the effect that even in the absence of statutory authorization a defect or omission in a claim can be supplied by amendment if the amended claim is presented within the original filing period.<sup>434</sup> Some statutes relating to special districts expressly incorporate a rule to the same effect.<sup>435</sup> Once the original filing period has expired, however, amendments or corrections are allowable only when

<sup>427</sup> *Alderson v. County of Santa Clara*, 124 Cal. App.2d 334, 268 P.2d 792 (1954); *Kelso v. Board of Education*, 42 Cal. App.2d 415, 109 P.2d 29 (1941). See also *Madary v. City of Fresno*, 20 Cal. App. 91, 123 Pac. 340 (1913) (sustaining single claim filed by plaintiff as assignee on behalf of numerous claimants identified therein).

<sup>428</sup> *Gogo v. Los Angeles etc. Flood Control Dist.*, 45 Cal. App.2d 334, 114 P.2d 65 (1941).

<sup>429</sup> *Alderson v. County of Santa Clara*, 124 Cal. App.2d 334, 268 P.2d 792 (1954).

<sup>430</sup> *Steed v. Long Beach*, 152 Cal. App.2d 482, 315 P.2d 101 (1957); *Sullivan v. San Francisco*, 95 Cal. App.2d 745, 214 P.2d 32 (1950); *Young v. County of Ventura*, 29 Cal. App.2d 732, 104 P.2d 102 (1940).

<sup>431</sup> *Dillard v. County of Kern*, 23 Cal.2d 271, 144 P.2d 365 (1943) (claimant's address not required by Government Code Section 29705); *Perry v. City of San Diego*, 80 Cal. App.2d 166, 181 P.2d 98 (1947) (express averment as to negligence or dangerous and defective condition not required by Government Code Section 53052). See also *More v. City of San Bernardino*, 113 Cal. App. 722, 5 P.2d 661 (1931).

<sup>432</sup> *Hall v. City of Los Angeles*, 19 Cal.2d 193, 130 P.2d 13 (1941) (omission of place); *Erde v. City of Los Angeles*, 137 Cal. App.2d 173, 289 P.2d 884 (1955) (omission of date); *Ghiozzi v. South San Francisco*, 72 Cal. App.2d 472, 164 P.2d 902 (1946) (omission of date and place); *Eppstein v. Berkeley*, 52 Cal. App.2d 395, 126 P.2d 365 (1942) (omission of claimant's name); *Kahrs v. County of Los Angeles*, 28 Cal. App.2d 46, 82 P.2d 29 (1938) (omission of date); *Huey v. City of Los Angeles*, 137 Cal. App. 48, 29 P.2d 918 (1934) (omission of amount demanded).

<sup>433</sup> *Hall v. City of Los Angeles*, *supra* note 432, at 202.

<sup>434</sup> *Smith v. Board of Supervisors*, 99 Cal. 262, 33 Pac. 1094 (1893).

<sup>435</sup> *E.g.*, *Alameda County Flood Control and Water Conservation District Act*, Cal. Stat. 1949, c. 1275, § 29, p. 2260, CAL. GEN. LAWS Act 305 (Deering Supp. 1957) ("Such claims may be amended within said six months to correct defects in form or statement of facts.").

expressly permitted by statute.<sup>436</sup> The most important statute of this type in California is Section 29703 of the Government Code which requires the board of supervisors to give notice and an opportunity for amendment before it may reject a claim against the county because of lack of itemization. Under this provision the failure of the board to give the requisite notice is treated as a waiver by it of the defect in the contents.<sup>437</sup>

#### Verification

As in the case of the other requirements of claims statutes, a failure to verify a claim is fatal and will bar recovery thereon<sup>438</sup> unless the objection is waived by the failure of the defendant entity to assert it as a defense at the time of trial.<sup>439</sup> Compliance with this formality is not excused in the case of minors or even infants who are claimants for a claim may be presented and verified by someone else on their behalf.<sup>440</sup>

Where an effort has been made in apparent good faith to verify the claim — by which is meant “verification by oath annexed”<sup>441</sup>—minor technical defects will be overlooked and substantial compliance regarded as sufficient.<sup>442</sup> All that is required is “a sworn statement that the facts stated are true” which would support a prosecution for perjury if false.<sup>443</sup> In this connection a verification is legally adequate even though it may not have been personally subscribed in the presence of the notary attesting thereto.<sup>444</sup>

It is worthy of note that in practically all of the cases in which an otherwise deserving plaintiff recovered nothing because of failure to verify his claim,<sup>445</sup> the claim was apparently presented by the claimant without legal advice. Loss of rights in such cases is in effect a penalty for ignorance and not for laches or bad faith.

#### Time Allowed for Official Consideration

The timing of a claimant's lawsuit may be a critical matter under some claims statutes. If the applicable provision requires that the claim be presented or presented and officially rejected before an action may be commenced, a complaint filed prior thereto is premature and states

<sup>436</sup> *Dillard v. County of Kern*, 23 Cal.2d 271, 144 P.2d 365 (1943). See also *Jacks v. Taylor*, 24 Cal. App. 667, 142 Pac. 121 (1914).

<sup>437</sup> *Dillard v. County of Kern*, *supra* note 436; *Pedro v. County of Humboldt*, 217 Cal. 493, 19 P.2d 776 (1933); *County of Colusa v. Welch*, 122 Cal. 428, 55 Pac. 243 (1898); *Sittig v. Raney*, 53 Cal. App. 709, 200 Pac. 824 (1921); *Nohl v. County of Del Norte*, 45 Cal. App. 306, 187 Pac. 761 (1919).

<sup>438</sup> *Powers Farms v. Consolidated Irr. Dist.*, 19 Cal.2d 123, 119 P.2d 717 (1941); *McCormick v. Tuolumne County*, 37 Cal. 257 (1869); *Bradshaw v. Glenn-Colusa Irr. Dist.*, 87 Cal. App.2d 882, 198 P.2d 106 (1948); *Oda v. Elk Grove etc. School District*, 61 Cal. App.2d 551, 143 P.2d 490 (1943); *Yonker v. City of San Gabriel*, 23 Cal. App.2d 556, 78 P.2d 623 (1937); *Copper v. County of Butte*, 17 Cal. App.2d 43, 61 P.2d 516 (1936); *White-Satra Co. v. City of Los Angeles*, 14 Cal. App.2d 688, 58 P.2d 933 (1936); *Spencer v. City of Calipatria*, 9 Cal. App.2d 267, 49 P.2d 220 (1935); *Huey v. City of Los Angeles*, 137 Cal. App. 48, 22 P.2d 918 (1934); *Chapman v. Fullerton*, 90 Cal. App. 463, 265 Pac. 1035 (1925).

<sup>439</sup> *Randall v. Yuba County*, 14 Cal. 219 (1859).

<sup>440</sup> *Artukovich v. Astendorf*, 21 Cal.2d 328, 131 P.2d 831 (1943); *Nohl v. County of Del Norte*, 45 Cal. App. 306, 187 Pac. 761 (1919).

<sup>441</sup> *McCormick v. Tuolumne County*, 37 Cal. 257 (1869).

<sup>442</sup> *Dillard v. County of Kern*, 23 Cal.2d 271, 144 P.2d 365 (1944); *Rhoda v. Alameda County*, 69 Cal. 523, 11 Pac. 57 (1886); *Osborn v. Whittier*, 103 Cal. App.2d 609, 230 P.2d 132 (1951).

<sup>443</sup> *Osborn v. Whittier*, *supra* note 442.

<sup>444</sup> *Peters v. San Francisco*, 41 Cal.2d 419, 260 P.2d 55 (1953); *Germ v. San Francisco*, 99 Cal. App.2d 404, 222 P.2d 122 (1950).

<sup>445</sup> See cases cited note 438 *supra*.

no cause of action.<sup>446</sup> Absent such prior presentation or rejection requirement, this result would not necessarily obtain. In *Porter v. Bakersfield & Kern Elec. Ry.*<sup>447</sup> the Supreme Court held that the failure of the plaintiff to present his claim to the defendant school bus driver, as required by Section 1981 of the Government Code, did not bar recovery where the complaint, with a copy of the claim previously presented to the school district attached as an exhibit, was filed and served upon the defendant within the statutory time limit. In essence, the decision supports the view that timely service of a complaint which contains all the elements required of a claim will itself satisfy the claims statute where no prior presentation and rejection requirement is contained in the statute. Adopting the opinion of the District Court of Appeal the court stated,

"the cases of *Artukovich v. Astendorf* (1942), 21 Cal. 2d 329 . . . and *Redlands etc. Sch. Dist. v. Superior Court* (1942), 20 Cal. 2d 348 . . . are cited in support of the contention that the failure to file such a claim before bringing suit is fatal to the cause of action. The first of these cases involved a section of the Political Code which required the presentation of a claim to the board of supervisors before any action could be brought. The other case, involving a section of the School Code, contains nothing which is controlling here. While section 1981 of the Government Code requires the presentation of a claim to the employee whose negligence is in question within 90 days after the accident, it contains no requirement that this shall be done before the action is commenced. . . . Under the circumstances it must be held that there was a substantial compliance with the requirement of this code section." [Emphasis added.]<sup>448</sup>

This decision, of course, treats the claims statute as little more than a mere short statute of limitations and in effect allows the claim to be presented after the action has been commenced provided it is still timely. Although previous decisions had refused to recognize a timely complaint as an adequate substitute for a claim, either the contrary contention was not there urged upon the court<sup>449</sup> or they are distinguishable because of an express prior presentation clause.<sup>450</sup>

<sup>446</sup> *Artukovich v. Astendorf*, 21 Cal. 2d 329, 131 P. 2d 831 (1942); *Wiersma v. City of Long Beach*, 41 Cal. App. 2d 8, 106 P. 2d 45 (1940); *Walton v. County of Kern*, 39 Cal. App. 2d 32, 102 P. 2d 531 (1940).

<sup>447</sup> 86 Cal. 2d 582, 225 P. 2d 223 (1950).

<sup>448</sup> *Id.* at 590, 225 P. 2d at 228.

<sup>449</sup> *Wiersma v. City of Long Beach*, 41 Cal. App. 2d 8, 106 P. 2d 45 (1940), holding complaint duly served within six months period fixed by charter was insufficient to satisfy claim statute, since prior presentation of claim is a prerequisite to filing of action even though charter does not expressly so provide. The cases cited to support this holding are all distinguishable in that the complaint was not served upon the defendant until after the claim presentation period had elapsed. *Western Salt Co. v. City of San Diego*, 131 Cal. 695, 186 Pac. 345 (1919); *Bancroft v. City of San Diego*, 120 Cal. 432, 52 Pac. 712 (1898). Or, in addition, that the applicable claims provision contained an express requirement of prior presentation and rejection before suit. *Spencer v. City of Los Angeles*, 130 Cal. 103, 179 Pac. 162 (1919); *Bigelow v. City of Los Angeles*, 141 Cal. 503, 75 Pac. 111 (1904).

<sup>450</sup> *Klimper v. Glendale*, 99 Cal. App. 2d 446, 222 P. 2d 49 (1950) (refusing to apply estoppel doctrine because no claim had ever been presented, complaint not being adequate substitute in view of express prior presentation and rejection clause of municipal ordinance); *Johnson v. County of Fresno*, 64 Cal. App. 2d 576, 149 P. 2d 38 (1944) (erroneously assuming that dangerous and defective condition statute applied to motor vehicle accident claim, rather than general one-year county claim statute containing express prior presentation and rejection requirement).

Two basic questions to be investigated with respect to any claims provision thus appear to be whether prior presentation and/or rejection are required and when rejection, if required, can be regarded as complete so that action can be safely commenced. Answers to both problems normally entail no great difficulty for the language of most statutes is reasonably clear on these matters or else the statute is silent. In two types of cases relating to county claims statutes, however, the law is not entirely certain.

First, it is not clear whether prior presentation and rejection of a claim against a county based on a dangerous and defective condition of property is a prerequisite to commencement of an action thereon.<sup>451</sup> The pertinent *special* claims statutes, Government Code Sections 53050 *et seq.*, are silent on the matter exactly as was the statute involved in the *Porter* case discussed above. The *general* county claims provision, Government Code Section 29704, however, explicitly provides that "no suit shall be brought on any claim until it has been rejected in whole or in part."

It can be argued that the latter provision, being in no way inconsistent with the dangerous and defective condition claims procedure, is not affected by the general rule that the special statutes, *i.e.*, Government Code Sections 53050 *et seq.*, control the general, *i.e.*, Government Code Sections 29700 *et seq.*<sup>452</sup> The problem here discussed would not apply to cities or school districts, for neither of these entities are subject to any general prior rejection statute, as are counties, although both are governed equally with counties by Sections 53050 *et seq.* of the Government Code.

In *Walton v. County of Kern*,<sup>453</sup> a decision in the Fourth Appellate District, the court speaking through Presiding Justice Barnard held that an action commenced on a dangerous and defective condition claim was premature when commenced prior to rejection by the board of supervisors and prior to the end of the 90 days allowed for rejection by what is now Section 29714 of the Government Code. The strength of the *Walton* case, however, is dissipated somewhat in that: (1) the court did not discuss the point since counsel apparently did not urge the contrary; (2) the opinion does not cite the dangerous and defective condition claim statute and may be based on an erroneous assumption reflected also in other cases,<sup>454</sup> that the general county claims provisions were applicable to the claim in question; (3) the earlier and well-considered case of *Cooper v. County of Butte*<sup>455</sup> squarely holds that

<sup>451</sup> Broad language can be found in several opinions to the effect that presentation of a claim pursuant to Government Code Section 53052 is a prerequisite to the claimant's right of action. *E.g.*, *Anderson v. County of Santa Clara*, 184 Cal. App.2d 334, 343, 168 P.2d 721, 730 (1954). However, in none of the cases was the action commenced prior to presentation of the claim and such language is thus completely accurate only with reference to cases in which the action was commenced after the 90 day claim presentation period had elapsed, and compliance was no longer possible. Except to the extent that the provisions of Government Code Section 29704 may alter the result, as suggested in the text following, the rationale of *Porter v. Bakersfield & Kern Elec. Ry.*, 36 Cal.2d 582, 225 P.2d 223 (1950), would seem to be fully applicable in the event an action on a cause of action within the scope of Government Code Section 53052 were commenced prior to presentation of the claim.

<sup>452</sup> The rule that the special provision controls the general applies only where inconsistency exists. *Long Beach City School Dist. v. Payne*, 219 Cal. 598, 28 P.2d 663 (1933); *In re Goddard*, 24 Cal. App.2d 122, 74 P.2d 818 (1937).

<sup>453</sup> 39 Cal. App.2d 32, 102 P.2d 531 (1940).

<sup>454</sup> A similar erroneous assumption appears in *Smith v. County of San Mateo*, 57 Cal. App.2d 820, 135 P.2d 372 (1943).

<sup>455</sup> 17 Cal. App.2d 43, 61 P.2d 516 (1936).

the "waiver clause" of the general claims statute, Government Code Section 29703, does *not* apply to dangerous and defective condition claims against counties; a decision recently expressly cited with approval by the Supreme Court;<sup>456</sup> and (4) a subsequent decision by the same court in an opinion by the same judge squarely holds that the six-month period for suit after rejection, provided by Section 29715 of the Government Code, does not apply to claims under Section 53052.<sup>457</sup> The *Walton* case was not cited in this opinion. On the other hand, in the recent Second Appellate District case of *Hochfelder v. County of Los Angeles*,<sup>458</sup> the court assumes throughout, in accordance with a concession by counsel for both parties, that the "deemed rejected" provision then contained in the general county claims statute, Government Code Section 29714, was applicable to a dangerous and defective condition claim. The actual decision in the *Hochfelder* case, that the action was not barred by time, would have obtained also under a contrary assumption, for the complaint was filed within six months after formal rejection of the claim by the board of supervisors. Until a square decision of the supreme court is announced, the applicability of the prior rejection provision of the general county claims statute to dangerous and defective condition claims against counties will be open to question.

The second problem relates to the interpretation of provisions similar to the general county claims statute, Government Code Section 29714, which prior to its amendment in 1957<sup>459</sup> provided that:

If the board refuses or neglects to allow or reject a claim for 90 days after it is filed with the clerk, the claimant may treat the refusal or neglect as final action and rejection on the ninetieth day.

A square split of authority exists among the district courts of appeal as to the meaning of this language, chiefly with reference to when a claim may be regarded as rejected so that the six months statute of limitations on commencement of an action begins to run. The First District held that it authorizes a claimant to elect to treat a claim as rejected upon the ninetieth day or at any time thereafter, relying upon an analogy to cases construing a "deemed rejected" statute relating to claims in probate proceedings.<sup>460</sup> The Fourth District, finding the probate analogy to be faulty, refused to acquiesce and held that in cases of inaction by the board the claim must be deemed as finally rejected for all purposes on the ninetieth day.<sup>461</sup> The Second District took still a third view and ruled that inaction of the board may be deemed equivalent to rejection on the ninetieth day only and not thereafter but that a subsequent express rejection would also be recognized as valid and as the starting point for computing the six-month period for commencing an action on the claim.<sup>462</sup> Under this last view a claimant may bring mandamus to compel the board of supervisors to formally take action upon a claim in order to start a new six-month

<sup>456</sup> *Dillard v. County of Kern*, 23 Cal.2d 271, 144 P.2d 365 (1943).

<sup>457</sup> *Hennessy v. County of San Bernardino*, 47 Cal. App.2d 183, 117 P.2d 745 (1941), by Presiding Justice Barnard.

<sup>458</sup> *Hochfelder v. County of Los Angeles*, 126 Cal. App.2d 370, 272 P.2d 844 (1954).

<sup>459</sup> See Cal. Stat. 1957, c. 99, § 1, p. 674.

<sup>460</sup> *Smith v. County of San Mateo*, 57 Cal. App.2d 820, 135 P.2d 372 (1943).

<sup>461</sup> *State Dept. of Pub. Health v. County of Imperial*, 67 Cal. App.2d 244, 153 P.2d 957 (1944).

<sup>462</sup> *Hochfelder v. County of Los Angeles*, 126 Cal. App.2d 370, 272 P.2d 844 (1954).

period running where the commencement of an action thereon is presently barred by lapse of more than six months after the date upon which the claim was "deemed rejected."<sup>463</sup>

Resolution of this triple conflict of authority likewise awaits a supreme court decision. It may be submitted, however, that the problems raised by a *permissive* "deemed rejected" clause such as the pre-1957 language of Section 29714, *supra*, are limited thereto and do not arise under a *mandatory* "deemed rejected" provision such as is found in several other claims statutes.<sup>464</sup> The view of the Fourth District would seem to clearly apply to the mandatory form.

Attention should also be directed to the resubmission requirement, Government Code Section 29713, of the county claims procedure. This provision requires a claimant to resubmit his claim a second time within 90 days if it has been allowed in part only and the claimant is unwilling to accept such partial allowance. Such resubmission is clearly a prerequisite to action upon the claim.<sup>465</sup>

#### **Time Within Which Action Must Be Commenced**

A provision in a claims statute requiring suit to be commenced within a specific period of time after rejection is a special statute of limitations which bars subsequent enforcement.<sup>466</sup> Thus, claims against counties presented under the general county claims statutes are subject to the six-month limitation expressly prescribed therein, Government Code Section 29715, which runs from "the final action of the board" and not to the general statutes of limitation.<sup>467</sup> Final action is the date of original rejection if the claim is rejected *in toto* or the date of final rejection if a partially rejected claim has been resubmitted.<sup>468</sup> As pointed out above,<sup>469</sup> there is a division of opinion among the cases as to the interpretation of the permissive "deemed rejected" provision, Government Code Section 29714, of the general county claims statutes in determining when the six-month limitation commences to run upon a claim which has not been formally rejected by the board of supervisors.

A similar division of authority exists as to whether the same "deemed rejected" provision applies to dangerous and defective condition claims to mark the commencement of the six-month period of limitations following "first rejection" prescribed by Section 342 of the Code of Civil Procedure for actions against counties.<sup>470</sup> If Section 29714 does *not* apply, the six-month limitation of Section 342 would presumably never begin to run where the board fails to act on the claim, in view of

<sup>463</sup> Consolidated Liquidating Corp. v. Ford, 131 Cal. App.2d 576, 281 P.2d 20 (1955). See also on availability of mandamus, Brite v. Board of Supervisors, 21 Cal. App.2d 233, 68 P.2d 1007 (1937).

<sup>464</sup> *E.g.*, Municipal Water District Act of 1911, Cal. Stat. 1911, c. 671, § 20, p. 1300, as amended, Cal. Stat. 1951, c. 62, § 21, p. 199, CAL. GEN. LAWS Act 5243 (Deering Supp. 1957); COMPTON CITY CHARTER, Cal. Stat. 1948, c. 11, art. XIV, § 1418, p. 267.

<sup>465</sup> Harvey v. County of Kern, 107 Cal. App. 590, 290 Pac. 648 (1930); Arbios v. County of San Bernardino, 110 Cal. 553, 42 Pac. 1080 (1895); Marron v. County of San Diego, 3 Cal. App. 244, 96 Pac. 814 (1908).

<sup>466</sup> County of Tulare v. Woody, 122 Cal. App. 459, 32 P.2d 743 (1933).

<sup>467</sup> Skidmore v. County of Alameda, 13 Cal.2d 534, 90 P.2d 577 (1939). See also Consolidated Liquidating Corp. v. Ford, 131 Cal. App.2d 576, 281 P.2d 20 (1955).

<sup>468</sup> Harvey v. County of Kern, 107 Cal. App. 590, 290 Pac. 648 (1930).

<sup>469</sup> See discussion pp. A-99-100 *supra* at notecalls 460-63.

<sup>470</sup> Compare Hennessy v. County of San Bernardino, 47 Cal. App.2d 183, 117 P.2d 745 (1941) (holding inapplicability) with Hochfelder v. County of Los Angeles, 126 Cal. App.2d 370, 272 P.2d 844 (1954) and Walton v. County of Kern, 39 Cal. App.2d 32, 102 P.2d 531 (1940) (assuming applicability).

the general rule that the statute of limitations does not begin to run on a claim until rejection thereof where rejection is a prerequisite to suit.<sup>471</sup> Prolonged refusal of the board of supervisors to act which would preclude action by the claimant as premature would of course be controllable by mandamus.<sup>472</sup>

The same result, however, would not necessarily obtain with respect to dangerous and defective condition claims against cities and school districts for Section 342 of the Code of Civil Procedure in terms applies only to actions against counties. In the absence of any special period of limitations applicable to cities and school districts, time for suit on dangerous and defective condition claims would be governed by the period of limitations generally applicable to personal injury and property damage actions. In the absence of an express prior rejection requirement time for suit presumably would be measured from the date the cause of action accrued.<sup>473</sup>

The usual rule that the period of limitations commences on rejection of the claim where prior rejection is a prerequisite to suit, if applied to continuing obligations such as monthly pension payments under a statute allowing presentation of a claim within a specified period after the last item accrued, would extend the period for suit almost indefinitely. In such circumstances a claim is always timely as to items accruing within the statutory period immediately preceding its presentation even though long after the time when the right to the earlier of the periodic payments initially accrued.<sup>474</sup> To measure the period of limitations from the date of rejection, no matter how prolonged the delay before presentation, would in some cases delay litigating the claimant's right to such payments beyond the normal period allowed by law. Accordingly, in *Dillon v. Board of Pension Commrs.*,<sup>475</sup> the Supreme Court held an action to determine the right to a pension is barred unless commenced within the statute of limitations measured from the date the right first accrued exclusive of the time the claim was under official consideration. The *Dillon* case has been followed in later decisions<sup>476</sup> but the court has found it necessary to limit the holding to situations in which the right to a pension accrued automatically upon happening of a specified event—e.g., death of the claimant's husband.<sup>477</sup> Although superficially distinguishable, the *Dillon* case appears to establish a unique and strict rule for applying the statute of limitations in certain types of pension cases which is irreconcilable in principle with the more liberal rule which obtains in other cases under "last-item-accrued" claims statutes.<sup>478</sup> That rule is exemplified by *Skidmore v. County of Alameda*<sup>479</sup> in which items accruing at various intervals over a ten-year period were all recoverable in an action commenced within the statute of limitations measured

<sup>471</sup> *Spencer v. City of Los Angeles*, 180 Cal. 103, 179 Pac. 163 (1919); *Southern Pac. Co. v. City of Santa Cruz*, 26 Cal. App. 26, 145 Pac. 736 (1914).

<sup>472</sup> *Brite v. Board of Supervisors*, 21 Cal. App.2d 233, 63 P.2d 1907 (1937).

<sup>473</sup> See Annot., *Claim Against Public—Time To Sue*, 3 A.L.R.2d 711 (1949); see also *Smith v. County of San Mateo*, 57 Cal. App.2d 820, 135 P.2d 372 (1943). Cf. *Consolidated Liquidating Corp. v. Ford*, 131 Cal. App.2d 576, 281 P.2d 20 (1955).

<sup>474</sup> *Dryden v. Board of Pension Commrs.*, 6 Cal.2d 575, 59 P.2d 104 (1936).

<sup>475</sup> 18 Cal.2d 427, 116 P.2d 37 (1941).

<sup>476</sup> *Skaggs v. City of Los Angeles*, 43 Cal.2d 497, 275 P.2d 9 (1954); *Carey v. Retirement Board*, 131 Cal. App.2d 739, 281 P.2d 25 (1955).

<sup>477</sup> *Tyra v. Board of Police etc. Commrs.*, 32 Cal.2d 666, 197 P.2d 710 (1948).

<sup>478</sup> See note 394 *supra*.

<sup>479</sup> 13 Cal.2d 534, 90 P.2d 577 (1939).

from date of rejection of a claim timely filed after the last item of the series had accrued. This inconsistency in the case law is perhaps attributable, in part at least, to the absence of any clearly defined statutory rule to govern such situations.

In view of the fact that some city charters<sup>480</sup> and ordinances<sup>481</sup> include provisions purporting to govern time for bringing suit upon a claim, the language of the Supreme Court in the recent case of *Wilson v. Beville*<sup>482</sup> is directly pertinent although clearly *obiter dictum*:

Assuming a charter may require the presentation of a claim, it cannot enact statutes of limitations. That is a matter of statewide concern.<sup>483</sup>

It is not clear whether this dictum would also preclude a charter or ordinance provision from merely requiring rejection of a claim as a prerequisite to suit<sup>484</sup> for such provisions if valid would, of course, directly affect the operation of the statutes of limitations by delaying the time of accrual of the cause of action.<sup>485</sup>

## CLAIMS AGAINST PUBLIC EMPLOYEES

### Survey of Existing Provisions

There are comparatively few provisions of law which require claims to be presented as a prerequisite to suit against a public employee. The only two general statutes of this type are by far the most important ones. They are:

1. Section 1981 of the Government Code which reads:

Whenever it is claimed that any person has been injured or any property damaged as a result of the negligence or carelessness of any public officer or employee occurring during the course of his service or employment or as a result of the dangerous or defective condition of any public property, alleged to be due to the negligence or carelessness of any officer or employee, within 90 days after the accident has occurred a verified claim for damages shall be presented in writing and filed with the officer or employee and the clerk or secretary of the legislative body of the school district, county, or municipality, as the case may be. In the case of a State officer the claim shall be filed with the officer and the Governor.

The term "officer" as used in Section 1981 is defined by Section 1980 to include "any deputy, assistant, agent or employee of the State, a school district, county or municipality acting within the scope of his office, agency or employment."

2. Section 2003 of the Government Code which reads:

A cause of action against an employee of a district, county, city, or city and county for damages resulting from any negligence

<sup>480</sup> *E.g.*, PARADENA CHARTER, Cal. Stat. 1933, c. 7, art. 11, § 12, p. 2733.

<sup>481</sup> *E.g.*, SANTA MARIA ORD. No. 72 (Dec. 16, 1916).

<sup>482</sup> 47 Cal.2d 852, 306 P.2d 789 (1957).

<sup>483</sup> *Id.* at 861, 306 P.2d at 794.

<sup>484</sup> *E.g.*, ARCADIA CHARTER, Cal. Stat. 1951, c. 117, § 1114, p. 4538; GLENDALE MUNIC. CODE § 2-201.

<sup>485</sup> See note 471 *supra*.

upon the part of such employee while acting within the course and scope of such employment shall be barred unless a written claim for such damages has been presented to the employing district, county, city, or city and county in the manner and within the period prescribed by law as a condition to maintaining an action thereof against such governmental entity.

In addition, the following city ordinances contain explicit provisions in point:

- (1) *Escondido Ord. No. 316 (July 2, 1936)*—verified claims for damages other than dangerous and defective condition claims must be presented within 60 days to city clerk and to employee "if . . . it is sought to make such officer, agent or employe [sic] liable."
- (2) *Glendale Munic. Code § 2-199*—verified claim for damages founded in tort must be presented within 90 days to the city clerk "and to the board, commission, officer or employee against whom it is intended to bring action."
- (3) *Oxnard Munic. Code § 1630*—verified tort claims "against officers, employees or agents" must be presented within 90 days in triplicate to the city clerk, who shall deliver one copy to "the person concerned" and one to the city attorney.
- (4) *San Buenaventura Munic. Code § 1424.2*—within 90 days for tort claims and within six months for contract claims, verified claims "against any officer of the City shall be presented to, and filed with, the Clerk in duplicate, who shall deliver one copy thereof to the officer concerned."

A number of special district laws and city charters contain claims provisions which are so worded that they appear to make the claims presentation procedure prescribed therein equally applicable to claims against the employing entity and the employee. Typical of one group of five district statutes of this type<sup>486</sup> is Section 22727 of the Water Code which governs irrigation districts:

Whenever it is claimed that any person or property has been injured or damaged as a result of any dangerous or defective condition of any property under the control of any district or its officers or employees or the negligence of any officer or employee of a district, a verified claim for damages shall be presented in writing and filed with the officers or employees involved and also with the secretary within 90 days after the accident or injury has occurred. If an officer or employee cannot be found to be served, the officer's or employee's copy may be served on the secretary, but in any event a verified claim must be served on the secretary.

This section has been held to be applicable to claims against irrigation districts;<sup>487</sup> and although only indirect supporting authority has been

<sup>486</sup> CAL. WATER CODE § 22727 (irrigation districts); CAL. GOVT. CODE § 61623 (community services districts); CAL. WATER CODE §§ 31084-85 (county water districts); CAL. WATER CODE § 35752 (California water districts); Kings River Conservation District Act, Cal. Stat. 1951, c. 931, § 15, p. 2508, CAL. GEN. LAWS Act 4025 (Deering Supp. 1957).

<sup>487</sup> Powers Farms v. Consolidated Irr. Dist., 19 Cal.2d 123, 119 P.2d 717 (1941).

found, the context in which it appears in the Water Code<sup>488</sup> as well as its wording clearly indicates that this section also applies to claims against officers and employees of irrigation districts as a prerequisite to action against them.<sup>489</sup>

The cited district laws seem to adhere to a common structural framework which supports the basic legislative objective to demand prompt notice to the district as a condition to suing a district employee even in cases where the district may be protected against direct suit by the sovereign immunity doctrine. Elements in this framework are provisions that: (1) no district officer shall be personally liable for damages caused by the district or its employees unless the damage was proximately caused by his own negligence, misconduct or wilful violation of official duty;<sup>490</sup> (2) no officer shall be liable for negligence of any subordinate appointed or hired by him unless he had notice of his incompetency at the time of employment or retained him in employment after receiving notice thereof;<sup>491</sup> (3) the district shall pay any judgment against an officer for any act or omission in his official capacity without obligation for repayment;<sup>492</sup> (4) the district may insure its officers or employees against personal liability;<sup>493</sup> and (5) the district may employ counsel for and finance the defense of any action against its officers and employees.<sup>494</sup> The direct financial involvement of the district in claims against its officers and employees under such a statutory structure is obvious; and the need for claims presentation procedure is supported by substantially the same policy considerations as claims provisions governing claims against the entity itself.

Two other district laws<sup>495</sup> as well as some 24 city charters<sup>496</sup> constitute a second group of dual claim presentation provisions. This group must be regarded as ambiguous for it is not entirely certain whether claims against officers and employees are intended to be covered. Typical of these provisions is Section 1212 of the Hayward Charter, the pertinent language of which reads:

No suit shall be brought on any claim for money or damages against the City or any officer, employee, board or commission

<sup>488</sup> CAL. WATER CODE § 22727 is found in Article 4 of Chapter 4, Part 5, Division 11, entitled "Public Liability." Several companion sections relate explicitly to the liability of district officers; e.g., Water Code Sections 22725-26; others authorize the district to satisfy any judgment against a district officer without obligation for repayment, *id.* Section 22730; and to insure at district expense against liability of district officers and employees, *id.* Section 22732.

<sup>489</sup> *Vater v. County of Glenn*, 49 Cal.2d 815, 323 P.2d 85 (1958). *Of. Slaviv v. Glendale*, 97 Cal. App.2d 497, 217 P.2d 984 (1959), in which a city charter provision reinforced by a more explicit ordinance was held applicable to an assault and battery claim against a city police officer.

<sup>490</sup> CAL. WATER CODE §§ 22725, 35750. No such provision is found in the other district laws cited *supra* note 488.

<sup>491</sup> CAL. GOVT. CODE § 61627; CAL. WATER CODE §§ 22726, 31032, 35751; Kings River Conservation District Act, *supra* note 486, § 14.

<sup>492</sup> CAL. GOVT. CODE § 61632; CAL. WATER CODE §§ 22730, 31030, 35755; Kings River Conservation District Act, *supra* note 486, § 17.

<sup>493</sup> CAL. WATER CODE §§ 22732, 35757. No such provision is found in the other district laws cited *supra* note 486.

<sup>494</sup> CAL. GOVT. CODE § 61632; CAL. WATER CODE § 31088. No such provision is found in the other district laws cited *supra* note 486.

<sup>495</sup> Municipal Water District Act of 1911, Cal. Stat. 1911, c. 671, § 20, p. 1300, as amended, Cal. Stat. 1951, c. 62, § 21, p. 199, CAL. GEN. LAWS Act 5243 (Deering Supp. 1957); Metropolitan Water District Act, Cal. Stat. 1927, c. 429, § 6, p. 701, as added by Cal. Stat. 1945, c. 1084, § 2, p. 2091, CAL. GEN. LAWS Act 9129 (Deering Supp. 1957).

<sup>496</sup> Charters of Arcadia, Berkeley, Chula Vista, Compton, Culver City, Glendale, Grass Valley, Hayward, Huntington Beach, Los Angeles, Marysville, Modesto, Mountain View, Roseville, Sacramento, San Buenaventura, San Leandro, San Luis Obispo, Santa Ana, Santa Clara, Santa Cruz, Sunnyvale, Visalia and Whittier. For citations see Table III p. A-24 *supra*.

thereof until a verified demand for same has been presented as herein provided and rejected in whole or in part. . . .<sup>497</sup>

Although language such as this appears to contemplate presentation of a claim as a prerequisite to suit against an officer or employee, the provisions governing presentation in such statutes or charters invariably require a claim to be presented solely to the governing body of the entity or to a designated officer as its agent; require rejection solely by the governing body alone and provide for payment of allowed claims by official warrants. Apart from language worded like the above-quoted provision, all of the procedural mechanics are explicitly or implicitly framed in terms of claims against the entity only. No provisions for free defense counsel, insurance against liability or assumption by the entity of judgments incurred are found in conjunction with these provisions. It is thus uncertain in the absence of reported decisions whether claims against officers or employees are covered. In all likelihood, insofar as the several charter provisions relate to personal liabilities covered by Sections 1981 and 2003 of the Government Code, the claims procedure of the latter two sections would be held to occupy the field and supersede the charters as not being a "municipal affair."<sup>498</sup>

In general, the various employee claim statutes possess the diversity of detail which characterizes the entity claim provisions. They are scattered throughout the statute books, city charters and ordinances; have varying time limits; require different information to be included in the claim and are inconsistent in other details as well. The pattern as to employee claim provisions differs primarily in the fact that they are far fewer in number.

#### Relationship to Other Law

Sections 1981 and 2003 of the Government Code are located in a statutory setting which at once justifies their existence and challenges their consistency. The two sections appear to have a substantially different scope. Section 1981 applies only to negligence claims against personnel of the State, a county, a city or a school district. Section 2003 is both broader and narrower than Section 1981. It excludes claims against State employees but applies to all other persons covered by Section 1981 in addition to employees of *any* district who are otherwise within its provisions. In the light of this discrepancy it is significant to observe like inconsistencies in companion provisions of the Government Code.

Section 1953, limiting the liability of public officers for injuries resulting from a dangerous or defective condition of public property to cases where certain specified conditions exist applies to officers "of any district" as well as of the State, a county or a city. Section 1953.5, exonerating public officers from liability for funds stolen from official custody except for want of due care, likewise applies to officers of "any district." Section 1955, precluding liability for acts performed in good faith under statutes later declared unconstitutional, applies to officers or employees of "any district" or "political subdivision" as well. Section 1956 authorizes the "State, a county, city, *district*, or any other

<sup>497</sup> Cal. Stat. 1957, res. c. 2, § 1212, p. 178.

<sup>498</sup> See *Wilson v. Beville*, 47 Cal.2d 852, 306 P.2d 789 (1957); *Eastlick v. City of Los Angeles*, 29 Cal.2d 661, 177 P.2d 558 (1947).

public agency or public corporation" [Emphasis added.] to insure its employees against liability. And Section 2001, authorizing defense at public expense and by public counsel of actions against public officers, applies, in part, to officers of "the State or of any district, county or city." Legislative solicitude has thus generally extended to employees of special districts. Yet, without apparent explanation, the claims presentation provisions of Section 1981 are limited to claims against *State*, county, city or *school district* employees only whereas Section 2003 refers to these plus all other district employees but excludes State personnel.

Public officers and employees generally enjoy no immunity from liability for their own negligence or misconduct, although some statutory limitations have modified the applicability of the respondeat superior doctrine as a basis for holding public officers responsible for the torts of their subordinates.<sup>499</sup> Public personnel are thus liable for both negligent and intentional torts committed in the course of official duty;<sup>500</sup> and accordingly the provisions authorizing defense by public counsel at public expense<sup>501</sup> and insurance coverage of employees<sup>502</sup> expressly apply to some *intentional* tort situations. Yet, the claims procedures of both Sections 1981 and 2003 are restricted in terms to claims based upon *negligence* only.

The scope of Sections 1981 and 2003 and their relationship to each other, as well as their relationship to companion provisions of the Government Code, are in need of clarification. The language of the various provisions is far from uniform or consistent; and the reasons for the inconsistencies are difficult to identify except as being the result of piecemeal and sporadic legislative proposals aimed at narrow objectives which were never adequately coordinated into a uniform policy.

#### Theory and Purpose of Employee Claim Statutes

With one exception,<sup>503</sup> the reported decisions construing employee claim statutes are related exclusively to Section 1981 of the Government Code quoted above. This section as originally enacted in 1931<sup>504</sup> applied only to claims against "public officers" but in 1933<sup>505</sup> the term "public officers" was enlarged by definition to include deputies, assistants, agents or employees of the entities designated: *i.e.*, the State, counties, cities and school districts. These measures were sponsored primarily by the League of California Municipalities. One of the principal draftsmen of the original bill has explained that its principal purpose was to ensure

that the city officer or employee concerned may have the fullest preliminary protection against groundless claims. If such claims had to be litigated in each case before the exact basis of the alleged injuries became apparent, it would cast a financial burden upon

<sup>499</sup> See CAL. GOV. CODE §§ 1953.6, 1954.

<sup>500</sup> See *Sarafini v. San Francisco*, 143 Cal. App.2d 570, 300 P.2d 44 (1956).

<sup>501</sup> CAL. GOV. CODE § 2001 ("on account of any action taken or work done by him in his official capacity"); *id.* § 2002 ("on account of his official actions").

<sup>502</sup> *Id.* § 1956 ("school districts counties, and municipalities may insure their officers . . . against any liability . . . for injuries or damages resulting from false arrest or false imprisonment").

<sup>503</sup> *Slavin v. Glendale*, 97 Cal. App.2d 407, 217 P.2d 984 (1950); see also note 488 *supra*.

<sup>504</sup> Cal. Stat. 1931, c. 1168, § 1, p. 2476.

<sup>505</sup> Cal. Stat. 1933, c. 807, § 4, p. 2148.

the officer or employee which could not be otherwise than a detriment to public service. The hazards of office in small cities are already so great as to impel many citizens to avoid public service if possible.<sup>506</sup>

The requirement in Section 1981 that a claim be presented to the employing entity as well as to the employee is explained by the same author as follows:

The requirement that a claim against officers, agents or employees shall be filed with the clerk of the governing body will aid that body in determining the ability or fitness of such persons to perform their duties. For instance, under the Public Liability Act of 1923, the legislative body is not responsible for the negligent act or omission of any appointee or employee, except when they knew or had notice that the person appointed or employed was inefficient or incompetent to perform or render the service or services for which he was appointed or employed, or retained such inefficient or incompetent person after knowledge or notice of such inefficiency or incompetence.<sup>507</sup>

Judicial statements as to the reasons which justify Section 1981 are generally in accord with the quoted views. According to the courts, the basic purpose is to protect officers and employees from the harassment of "unfounded and annoying litigation."<sup>508</sup> Additional reasons why the claim should be presented to the employing entity are found in the fact that the attorney for the entity has a statutory duty to defend the employee at public expense<sup>509</sup> and the entity is authorized to insure the employee against liability at public expense.<sup>510</sup> These factors give the entity an immediate financial interest in all claims against its employees even though it may be immune from liability as an employer under the doctrine of governmental immunity.<sup>511</sup> The protection thus given the employee, it should be noted, is procedural only; and even if the plaintiff's cause of action against the employee is barred by noncompliance with Section 1981, the employing entity is subrogated to the plaintiff's substantive rights against the employee and may hold the latter responsible for any damages recovered from the entity under the respondeat superior doctrine.<sup>512</sup> In view of these purposes and incidents, employee claim statutes are constitutional.<sup>513</sup>

Failure to comply with an employee claim statute, as in the case of entity claim provisions, will bar recovery for the plaintiff must, in a case falling within the scope of such statutes, both plead and prove

<sup>506</sup> David, *Municipal Liability in Tort in California*, 7 So. CAL. L. REV. 372, 402 (1934).

<sup>507</sup> *Id.* at 405.

<sup>508</sup> *Von Arx v. City of Burlingame*, 16 Cal. App.2d 29, 38, 60 P.2d 305, 309 (1936). To same effect, see *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946), cited and quoted with approval in *Veriddo v. Renaud*, 35 Cal.2d 263, 217 P.2d 647 (1950).

<sup>509</sup> CAL. GOVT. CODE § 2001.

<sup>510</sup> *Id.* § 1956.

<sup>511</sup> *Veriddo v. Renaud*, 35 Cal.2d 263, 217 P.2d 647 (1950); *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946); *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936). See *Henry v. City of Los Angeles*, 114 Cal. App.2d 603, 250 P.2d 643 (1952), holding Government Code Section 1981 applicable to claim against employee even though city was immune from liability.

<sup>512</sup> *Tyree v. City of Los Angeles*, 92 Cal. App.2d 182, 206 P.2d 912 (1949).

<sup>513</sup> *Veriddo v. Renaud*, 35 Cal.2d 263, 217 P.2d 647 (1950); *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946).

compliance as a prerequisite to maintenance of the action.<sup>514</sup> Two basic problems of interpretation are thus critical: (a) what types of claims are subject to the employee claim requirements? (b) under what circumstances will exact literal compliance be excused and defective compliance held sufficient? To these matters we now turn.

### Judicial Interpretations of Employee Claim Statutes

#### Claims Subject to Section 1981

Soon after the 1931 enactment of Government Code Section 1981 in its original form, Act 5150,<sup>515</sup> questions arose as to the scope of the requirement. The uncertainties were due in part to internal ambiguities and in part to similarity of wording between Act 5150 and a companion statute, Act 5149,<sup>516</sup> which provided a claims procedure for dangerous and defective condition claims against cities, counties and school districts.<sup>517</sup> Although an earlier case had apparently held to the contrary,<sup>518</sup> the District Court of Appeal, in a thorough and carefully considered opinion by Mr. Justice Shinn, held in 1936 in *Jackson v. Santa Monica*<sup>519</sup> that Section 1981 applied (1) only to claims against public officers and employees and not to claims against public entities and (2) only to claims arising out of a dangerous or defective condition of public property resulting from negligence by the officer or employee. Both of these limitations were found to be necessary by reason of the narrow wording of the title of the original act, as well as the title of the amendatory act of 1933. These conclusions were reaffirmed in 1940 in *Jackman v. Patterson*<sup>520</sup> in which an attempt by the 1937 Legislature to broaden the scope of the statute by amending the title to cure its defects was found to be abortive because of an insufficiency in the title of the amending act.

In 1943 Act 5150 was effectively amended<sup>521</sup> to extend its coverage to all forms of negligence claims against public officers and employees and such is its accepted scope today.<sup>522</sup> Section 1981 applies only to negligence claims, and thus is irrelevant to claims based on intentional torts such as wrongful imprisonment,<sup>523</sup> assault and battery,<sup>524</sup> trespass<sup>525</sup> or conversion.<sup>526</sup> Failure to recognize the inapplicability of a claims statute might be expected to do no harm for noncompliance with an inapplicable claims procedure would seem to be innocuous. The recent case of *Chappelle v. Concord*,<sup>527</sup> however, teaches the contrary.

<sup>514</sup> *Ward v. Jones*, 39 Cal.2d 756, 249 P.2d 246 (1952); *Veriddo v. Renaud*, *supra* note 513; *Artukovich v. Astendorf*, 21 Cal.2d 329, 181 P.2d 831 (1943); *Rounds v. Brown*, 121 Cal. App.2d 642, 263 P.2d 620 (1953); *Henry v. City of Los Angeles*, 114 Cal. App.2d 603, 250 P.2d 643 (1952).

<sup>515</sup> Cal. Stat. 1931, c. 1163, p. 2476.

<sup>516</sup> Cal. Stat. 1931, c. 1167, p. 2475. For a review of the legislative background of the two companion measures, see *Tyree v. City of Los Angeles*, 92 Cal. App.2d 182, 206 P.2d 912 (1949).

<sup>517</sup> Now CAL. GOVT. CODE §§ 53050 *et seq.*

<sup>518</sup> *Bates v. Escondido U. H. School Dist.*, 133 Cal. App. 725, 24 P.2d 884 (1933), assuming that Act 5150 applied to claims against school districts, but holding that the particular claim was not within the scope of the statute.

<sup>519</sup> 13 Cal. App.2d 376, 57 P.2d 226 (1936).

<sup>520</sup> 42 Cal. App.2d 255, 108 P.2d 682 (1940). See also to the same effect, *Contreras v. Gummig*, 54 Cal. App.2d 421, 129 P.2d 18 (1942).

<sup>521</sup> Cal. Stat. 1943, c. 557, p. 2127. See Cal. Stat. 1943, c. 134, p. 974.

<sup>522</sup> *Tyree v. City of Los Angeles*, 92 Cal. App.2d 182, 206 P.2d 912 (1949); *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946).

<sup>523</sup> *Chappelle v. Concord*, 144 Cal. App.2d 822, 301 P.2d 968 (1956).

<sup>524</sup> *Jones v. Shears*, 143 Cal. App.2d 360, 299 P.2d 986 (1956).

<sup>525</sup> *Sarafini v. San Francisco*, 143 Cal. App.2d 570, 300 P.2d 44 (1956).

<sup>526</sup> *Reynolds v. Lerman*, 138 Cal. App.2d 586, 292 P.2d 559 (1956).

<sup>527</sup> *Chappelle v. Concord*, 144 Cal. App.2d 822, 301 P.2d 968 (1956).

Plaintiff sued a city police officer for assault and battery and wrongful arrest, alleging presentation of a claim pursuant to Section 1981 about 8½ months after the alleged tort occurred. Defendant's demurrer was sustained without leave to amend and the action dismissed. Plaintiff then filed a new action alleging the same facts as before but adding allegations in support of a claim that the defendant was estopped to rely upon late presentation of the claim. Again the complaint was dismissed on demurrer but this time on the ground that although the original dismissal had been based upon the erroneous view that Section 1981 was applicable it was now final and *res judicata*. "Here, both parties," said the court, "misapprehended the law and induced the court to do the same and plaintiff permitted the decision to become final although appeal was available."<sup>528</sup> Section 1981 surely proved in this instance to be a trap for an unwary plaintiff.

A related problem with respect to the scope of Section 1981 is whether it embraces actions for wrongful death. By its terms the section only relates to claims that a "person has been injured or any property damaged." In *Ward v. Jones*,<sup>529</sup> however, the Supreme Court found this language to be broad enough to cover a wrongful death action and held the action to be barred because a claim had been presented only to the city employer and not to the defendant employees. Later cases are in accord.<sup>530</sup>

This ruling poses a difficult problem of timing. Since Section 1981 requires presentation of the claim within 90 days "after the accident has occurred," it may become crucial to know whether the "accident" is the occurrence causing death or the death itself in a wrongful death case. As the court in *Ward v. Jones* itself recognized, if death occurred more than 90 days after the date of injury, compliance with Section 1981 would be impossible unless the 90 days were computed from date of death; and yet to so compute the filing period tends to frustrate the basic purpose which is to insist on prompt notification before the evidence became stale. This dilemma has not yet been resolved in any reported California decision.

Although an occasional intimation<sup>531</sup> or unconsidered assumption<sup>532</sup> may be found, it is well settled today that Section 1981 applies only to claims against a public officer or employee<sup>533</sup> and not to claims against the employing entity.<sup>534</sup> Although in most of the cases the action was against both the employee and the entity, it is clear that compliance is a prerequisite to maintaining suit against the employee alone.<sup>535</sup> Strange to say, this means that in some instances where both may be liable—e.g., claims arising under Section 400 of the Vehicle Code—the officer

<sup>528</sup> *Id.* at 826, 301 P.2d at 971.

<sup>529</sup> 39 Cal.2d 756, 249 P.2d 246 (1952).

<sup>530</sup> *Pike v. Archibald*, 118 Cal. App.2d 114, 257 P.2d 480 (1953); *Henry v. City of Los Angeles*, 114 Cal. App.2d 503, 250 P.2d 643 (1952).

<sup>531</sup> *Abrahamson v. City of Ceres*, 90 Cal. App.2d 523, 203 P.2d 98 (1949).

<sup>532</sup> *Johnson v. County of Fresno*, 64 Cal. App.2d 576, 149 P.2d 38 (1944).

<sup>533</sup> *Holm v. City of San Diego*, 35 Cal.2d 399, 217 P.2d 972 (1950); *Veriddo v. Renaud*, 35 Cal.2d 263, 217 P.2d 647 (1950).

<sup>534</sup> *Ansell v. City of San Diego*, 35 Cal.2d 76, 216 P.2d 455 (1950); *Raynor v. Arcata*, 11 Cal.2d 113, 77 P.2d 1054 (1938); *Ingram v. City of Gridley*, 100 Cal. App.2d 815, 224 P.2d 798 (1950); *Mendibles v. City of San Diego*, 100 Cal. App.2d 502, 224 P.2d 42 (1950); *Glenn v. City of Los Angeles*, 96 Cal. App.2d 86, 214 P.2d 533 (1950); *Saldana v. City of Los Angeles*, 92 Cal. App.2d 214, 206 P.2d 866 (1949); *Tyree v. City of Los Angeles*, 92 Cal. App.2d 182, 206 P.2d 912 (1949).

<sup>535</sup> *Rounds v. Brown*, 121 Cal. App.2d 642, 263 P.2d 620 (1953); *Huffaker v. Decker*, 77 Cal. App.2d 383, 175 P.2d 254 (1946).

or employee receives the protection of a claims statute, Section 1981, while his municipal employer does not<sup>536</sup> for in the absence of a charter or ordinance claims provision—and many cities have neither—no claims other than dangerous and defective condition claims need be presented to cities.<sup>537</sup> Conversely, since the statutory terms “public officer” and “public employee” are defined<sup>538</sup> to refer only to personnel employed by the State, counties, cities and school districts, the officers and employees of special districts are not given the protection of Section 1981 although the employing districts are frequently protected by a claims statute.<sup>539</sup> The policy reasons for such discriminatory and unequal coverage are not apparent.

At first glance, it would seem to follow from both its language and purpose that Section 1981 is applicable when, and only when, the public employee's negligence occurred in the course and scope of his employment.<sup>540</sup> On closer reading, however, one notes that the section is limited in terms to cases in which “it is claimed” that injury has resulted from negligence during the course of public employment. In *Stewart v. McCollister*<sup>541</sup> the Supreme Court held the word “claimed” was the equivalent of “pleaded” and Section 1981 thus need not be complied with unless plaintiff in his complaint alleged that the negligence occurred in the course of public employment. Allegations and evidence with respect to public employment, however, are material only when the plaintiff is seeking to hold the employing entity liable on the basis of respondeat superior but, as we have seen, Section 1981 does not apply to a claim against the entity. In previous cases<sup>542</sup> holding a plaintiff barred from suing an employee by failure to comply with Section 1981, it appears that the fatal mistake was not a failure to present a claim after all but was the inclusion in the complaint of unnecessary surplusage regarding public employment!

The *Stewart* decision, in effect, completely emasculated Section 1981 for the plaintiff can now avoid both the need for and the consequences of noncompliance by merely suing the employee separately from the employing entity thereby making it possible to omit any allegations with respect to public employment. Such allegations would, of course, be unnecessary surplusage in such a separate action. If both the entity and employee were joined as defendants, on the other hand, allegations as to course of employment might still be essential to the cause of action against the former, for the case of *Slavin v. Glendale*<sup>543</sup> had indicated that in such an action omission of public employment allegations from the count directed against the employees would probably not preclude

<sup>536</sup> See *Holm v. City of San Diego*, 35 Cal.2d 399, 217 P.2d 972 (1950); *Ansell v. City of San Diego*, 35 Cal.2d 76, 216 P.2d 455 (1950); *Raynor v. Arcata*, 11 Cal.2d 113, 77 P.2d 1054 (1938); *Jackson v. Santa Monica*, 13 Cal. App.2d 376, 57 P.2d 226 (1936).

<sup>537</sup> See *Raynor v. Arcata*, *supra* note 536, and text preceding Table III *supra* at A-24.  
<sup>538</sup> CAL. GOVT. CODE § 1980.

<sup>539</sup> See Table V *supra* at A-29.

<sup>540</sup> *Kadow v. City of Los Angeles*, 31 Cal. App.2d 324, 87 P.2d 906 (1939).

<sup>541</sup> 37 Cal.2d 203, 231 P.2d 48 (1951).

<sup>542</sup> *E.g.*, *Ward v. Jones*, 39 Cal.2d 756, 249 P.2d 246 (1952). Although the Supreme Court decision in this case came after *Stewart v. McCollister*, *supra* note 541, the complaint was filed on March 29, 1948, before that decision was rendered; *Verlido v. Renaud*, 35 Cal.2d 263, 217 P.2d 647 (1950).

<sup>543</sup> 37 Cal. App.2d 407, 217 P.2d 984 (1950). This case involved an intentional tort and hence related to an ordinance and charter provision of the City of Glendale rather than to Section 1981 of the Government Code.

the employee claim statute from applying as a bar on the basis of the employment allegations in the count against the entity. The *Stewart* case thus also had the incidental effect of encouraging multiplicity of actions.

Although the *Stewart* decision showed how to avoid Section 1981, the statute remained on the books and hence was a potential trap for an unwary claimant. In 1953 the trap found its victim in the case of *Pike v. Archibald*,<sup>544</sup> a wrongful death action. Plaintiff whose attorney was apparently unaware of either Section 1981 or the decision rendered in the *Stewart* case six months previously commenced an action in November 1951 against the County of Kern and defendant physicians, alleging that the latter were guilty of malpractice in the course of their employment by the county, proximately causing the death of plaintiff's child. There was no allegation of presentation of a claim and the trial court quite properly dismissed the action on demurrer. Soon afterwards, plaintiff apparently convinced that the county was immune from liability commenced a new action against the county physicians alone, omitting any allegations of public employment in reliance upon *Stewart v. McCollister*. Somewhat apologetically, the court dismissed the action for failure to comply with Section 1981, pointing out that plaintiff had in fact "claimed"—i.e., pleaded in the *previous* action—that defendants' negligence had occurred in the course of public employment thereby making Section 1981 applicable. In retrospect, it seems clear that Pike lost not because his cause of action had no merit but because his attorneys failed to observe the technical steps necessary to avoid the avoidable bar of Section 1981.

In 1951 the Legislature attempted to close the *Stewart* loophole by enacting<sup>545</sup> new Section 2003 of the Government Code quoted above, requiring a claim to be presented to the employing entity as a prerequisite to maintaining an action founded on negligence against the employee. Although Section 1981 still remains in effect, the new provision incorporates several significant changes: (1) the Section 2003 requirement that a claim be presented is not dependent upon the existence of allegations of public employment in the pleadings; (2) Section 2003 applies to claims against employees of districts as well as cities and counties but not employees of the State, whereas Section 1981 applies to the latter but not the former except for school districts; (3) Section 2003 does not require verification as does Section 1981 except to the extent that verification is part of the "manner" of presentation required of claims against the entity; (4) Section 2003 does not require presentation of the claim to the employee but only to the employing entity; (5) Section 2003 does not identify where the claim is to be

<sup>544</sup> 118 Cal. App.2d 114, 257 P.2d 480 (1953).

<sup>545</sup> Cal. Stat. 1951, c. 1680, p. 3673, approved July 23, 1951. This chapter was originally Senate Bill 693. As introduced on January 18, 1951, the bill contained somewhat different language, but was apparently designed to establish the same rule as is now found in Section 2003. The measure was evidently drafted to overcome the decision in *Stewart v. McCollister*, 230 P.2d 618 (1950), rendered by the District Court of Appeal on July 21, 1950, later followed by the Supreme Court on hearing. The present language was introduced by amendment in the Assembly on June 15, 1951, after the Supreme Court had confirmed the opinion of the District Court of Appeal by its decision in the *Stewart* case on May 15, 1951. 37 Cal.2d 203, 231 P.2d 48 (1951). See 3 Assembly Journal 5730 (Reg. Sess. 1951), concurred in by Senate on June 20, 3 Senate Journal 3599 (Reg. Sess. 1951).

filed nor prescribe a specific filing time but instead requires that the claim be presented "in the manner and within the period prescribed by law as a condition to maintaining an action therefor against such governmental entity."

Section 2003 has yet to be construed by the courts. Presumably it is an additional requirement to that provided by Section 1981 and both provisions would have to be satisfied in an appropriate case. By not fixing its own time for presentation Section 2003 apparently would be inapplicable to claims against employees of the many entities which are not subject to any claims provision.<sup>546</sup> Presumably, also, if more than one claims provision applied to the employing entity—e.g., Government Code Sections 29700 *et seq.* and Sections 53050 *et seq.*, are both applicable to counties—a claim pursuant to Section 2003 would have to be presented in accordance with the particular claim procedure which applied to the same *type* of claim against the entity. A somewhat more doubtful point is whether a claim, e.g., under Vehicle Code Section 400, would be required to be presented under Section 2003 when the only claim procedure applicable to the employing entity is limited to claims—e.g., dangerous and defective condition claims—of a type different from the one in question.<sup>547</sup>

In short, Section 2003 has introduced by reference into the law governing claims against public employees other than State employees all of the inconsistencies, discriminations, and other irrationalities which are characteristic of the confused pattern of entity claim statutes. Plaintiff seeking to sue a public employee upon a cause of action allegedly caused by his negligence would find different time limits applicable under Section 2003, depending on whether the defendant was employed by (1) the State, (2) the City and County of San Francisco, (3) the County of Alameda, (4) the City of Los Angeles, (5) the City of Monterey, (6) a county water district or (7) a school district. If the claim is for personal injuries arising out of a motor vehicle accident the claim required by Section 2003 would in the supposed cases have to be presented within one year,<sup>548</sup> 60 days,<sup>549</sup> one year,<sup>550</sup> six months,<sup>551</sup> ten days,<sup>552</sup> 180 days<sup>553</sup> and 90 days<sup>554</sup> respectively. On the other hand, if the same claim was against an employee of such entities as the City of Bakersfield, City of Oakland, a local hospital district or a county recreation district, Section 2003 would not even apply because no entity claim filing requirement exists as to these or many other cities and districts.

<sup>546</sup> Many districts are subject to no claims procedure at all; and many cities are subject to a claims procedure only with respect to dangerous and defective condition claims, pursuant to Government Code Sections 53050 *et seq.*

<sup>547</sup> *E.g.*, Bakersfield which has no charter or ordinance claim provision. Since Government Code Section 53052 does not apply to Vehicle Code Section 400 claims, it can be argued that Government Code Section 2003 does not require such a claim to be presented because there is no claim filing "period prescribed by law as a condition to maintaining an action therefor against such governmental entity."

<sup>548</sup> CAL. GOVT. CODE § 16043.

<sup>549</sup> SAN FRANCISCO CHARTER, Cal. Stat. 1935, c. 27, § 87, p. 2421.

<sup>550</sup> CAL. GOVT. CODE § 29702.

<sup>551</sup> LOS ANGELES CHARTER, Cal. Stat. 1927, c. 9, § 376, p. 2014.

<sup>552</sup> MONTEREY CHARTER, Cal. Stat. 1935, c. 100, § 76½, p. 2655.

<sup>553</sup> CAL. WATER CODE § 31035.

<sup>554</sup> CAL. EDUC. CODE § 1007.

### Section 1981 and the Substantial Compliance Doctrine

Section 1981 requires presentation of the claim to the employer *and* the employee and hence is not satisfied unless both are duly served.<sup>555</sup> However, in appropriate circumstances estoppel may be invoked to preclude a defense of tardy compliance.<sup>556</sup> And as in the case of claims against entities, the doctrine of substantial compliance is available to cure minor defects which do not prevent the purposes of the statute from being satisfied.<sup>557</sup> Although presentation of the claim within 90 days is not excused by minority or other disability,<sup>558</sup> the normal statutes of limitation including the provisions governing tolling for disabilities govern the time for institution of the action since Section 1981 does not fix a time limit within which an action on the claim must be commenced.<sup>559</sup>

The most liberal and far-reaching application of the substantial compliance doctrine to Section 1981 is based on the fact that it does not expressly require the claim to be presented or rejected before suit is brought. Thus, the Supreme Court held in *Porter v. Bakersfield & Kern Elec. Ry.*<sup>560</sup> that service of summons and a duly verified complaint upon the defendant employee within the 90-day period amounted to substantial compliance where a copy of a claim previously presented to the employing entity was annexed to the complaint. The fact that a copy of the claim was incorporated in the complaint does not seem to be pivotal to the decision and service of the verified complaint alone, within the 90-day limit, would seem to satisfy the substantial compliance doctrine. Such a complaint would presumably contain substantially all the information required of a claim under Section 1981, to wit, "the name and address of the claimant, the date and place of the accident and the extent of the injuries or damages received."<sup>561</sup>

In substance, the *Porter* decision means that a claim may be presented under Section 1981 *after* an action on the claim has been commenced subject only to the 90-day time limit; and even this measure of compliance can be avoided if the action is commenced with sufficient promptness to ensure the service of the complaint upon the defendant employee and upon the employing entity within the 90 days allowed. Such a result, it is submitted, frustrates the basic purpose of the claims statute to give notice and opportunity for investigation and settlement before an action is commenced.

### POLICY CONSIDERATIONS AND RECOMMENDATIONS

The present law of California governing the presentation of claims against public entities and their officers and employees is complex, inconsistent, ambiguous, difficult to find, productive of voluminous litigation and often results in the denial of just claims.

<sup>555</sup> *Ward v. Jones*, 39 Cal.2d 756, 249 P.2d 246 (1952) (claim presented to city only); *Von Arx v. Burlingame*, 16 Cal. App.2d 29, 60 P.2d 305 (1936) (accord). *But cf.* *Abrahamson v. City of Ceres*, 90 Cal. App.2d 523, 203 P.2d 98 (1949); disapproved in *Ansell v. City of San Diego*, 35 Cal.2d 76, 216 P.2d 455 (1950).

<sup>556</sup> *Dettamanti v. Lompoc Union School Dist.*, 143 Cal. App.2d 715, 300 P.2d 78 (1956).

<sup>557</sup> *Holm v. City of San Diego*, 35 Cal.2d 395, 217 P.2d 972 (1950) (defective address of claimant); *Hennessy v. County of San Bernardino*, 47 Cal. App.2d 183, 117 P.2d 745 (1941) (defects of form).

<sup>558</sup> *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 831 (1942).

<sup>559</sup> See *Hennessy v. County of San Bernardino*, 47 Cal. App.2d 183, 117 P.2d 745 (1941).

<sup>560</sup> 36 Cal.2d 582, 225 P.2d 223 (1950), discussed p. A-97 at notecalls 447-50 *supra*.

<sup>561</sup> CAL. GOV'T. CODE § 1982.

This conclusion is supported by the foregoing analysis disclosing the following facts:

1. There are at least 174 separate special claims provisions scattered through statutes, city charters and ordinances in California.<sup>562</sup>

2. Despite the large number of claims provisions, many cities and districts are not protected by any statutory claims filing procedure.<sup>563</sup>

3. In the case of many districts, it is not clear whether claims need be filed or not since under present law it is uncertain whether such districts are subject to the general claims procedures applicable to counties.<sup>564</sup>

4. There is great disparity among the various claims statutes with respect to the types of claims which are subject to presentation requirements.<sup>565</sup>

5. The time limits for filing of claims differ widely with respect to the same as well as different types of claims.<sup>566</sup>

6. Existing claims provisions are inconsistent with respect to procedural requirements, including:

- (a) Person to whom the claim is to be presented.<sup>567</sup>
- (b) Information to be furnished by the claimant.<sup>568</sup>
- (c) Requirements of verification and signature.<sup>569</sup>
- (d) Time allowed for consideration of the claim by the public entity.<sup>570</sup>
- (e) Time allowed for commencing action after rejection of a claim.<sup>571</sup>

7. A substantial number of district laws purport to incorporate by reference claims presentation procedures applicable to counties. Differences in wording of these district laws have resulted in ambiguity and uncertainty as to precisely which provisions of statutes applicable to claims against counties are incorporated and made applicable to claims against such districts.<sup>572</sup>

8. Numerous city charters and city ordinances prescribe filing procedures applicable to claims resulting from the dangerous and defective condition of public property. It has been held, however, that the claims procedure established by Section 53052 of the Government Code exclusively governs all such claims against cities and supersedes charter and ordinance provisions relating thereto. Since many of these charter and ordinance provisions are inconsistent with Section 53052, they serve as a constant threat to mislead the unwary claimant.<sup>573</sup>

9. Some claims provisions establish different filing requirements for different types of claims. Such differences tend to create confusion and pose a hazard for a claimant who must at his peril correctly determine the category into which his claim fits.<sup>574</sup>

<sup>562</sup> See pp. A-21-32 *supra*.

<sup>563</sup> See pp. A-33-42 *supra*.

<sup>564</sup> See pp. A-37-40 *supra*.

<sup>565</sup> See pp. A-42-46 *supra*.

<sup>566</sup> See pp. A-46-57 *supra*.

<sup>567</sup> See pp. A-57-62 *supra*.

<sup>568</sup> See pp. A-62-66 *supra*.

<sup>569</sup> See pp. A-66-68 *supra*.

<sup>570</sup> See pp. A-68-70 *supra*.

<sup>571</sup> See pp. A-70-73 *supra*.

<sup>572</sup> See pp. A-47-49 *supra*.

<sup>573</sup> See pp. A-44, 86 *supra*.

<sup>574</sup> See pp. A-82-84 *supra*.

10. Although the courts have generally given claims provisions a strict construction, a few courts have been relatively liberal in particular cases. As a result, many apparently valid claims have been denied solely by reason of a technical failure to comply literally with the applicable statute whereas in other factually similar cases technical deficiencies have not barred relief. This lack of uniformity of judicial interpretation has tended to produce unnecessary litigation.<sup>575</sup>

11. There is much overlapping of claims provisions with the result that claimants, courts and attorneys are often confused as to which of several claims provisions is properly applicable to a particular case.<sup>576</sup>

12. It is not clear to what extent the principles of waiver and estoppel may be invoked to preclude a public entity from relying upon a technical noncompliance with the claims provisions. No consistent pattern appears in the court decisions dealing with this matter.<sup>577</sup>

13. There is considerable doubt, particularly in the light of a recent decision of the California Supreme Court, as to the validity of many claims provisions of city charters and city ordinances and as to the validity of certain specific requirements of such charters and ordinances with respect to certain types of claims.<sup>578</sup> So long as such doubts exist they will in all likelihood tend to promote unnecessary litigation and in some cases may prove to be traps for the unwary.

14. There is considerable uncertainty in the present law as to the correct relationship between certain claims filing requirements and the ordinary statutes of limitation.<sup>579</sup>

15. Although the courts have frequently applied the doctrine of substantial compliance to excuse certain technical failures to comply with claims filing requirements, the law is uncertain as to which types of defects may be and which types may not be excused through application of the doctrine.<sup>580</sup>

16. The failure to comply with technical requirements of claims provisions, such as the failure to verify a claim, has frequently been the basis for barring relief to a claimant even though such technical defect clearly did not impair the effectiveness of the claim in fulfilling the basic function and purpose of the claim filing requirement.<sup>581</sup>

17. Certain recent decisions of the courts have construed important claims statutes in such a way as to create major "loopholes" which tend to make such claims provisions ineffective.<sup>582</sup>

18. With very few exceptions claims provisions in California are extremely rigid and generally fail to make provision for cases in which the failure of a claimant to comply with the statute is not the result of fault or negligence on his part. For example, the strict application of such claims provisions to persons who are minors or mentally or physically disabled has frequently resulted in denying claims which otherwise appear to be meritorious.<sup>583</sup>

19. A substantial number of claims provisions are so worded that it is uncertain in the absence of judicial interpretation whether they

<sup>575</sup> See pp. A-73-102 *supra*.

<sup>576</sup> See pp. A-84-90 *supra*.

<sup>577</sup> See pp. A-78-82 *supra*.

<sup>578</sup> See pp. A-87-90 *supra*.

<sup>579</sup> See pp. A-96-100 *supra*.

<sup>580</sup> See pp. A-92-96, 113 *supra*.

<sup>581</sup> See p. A-96 *supra*.

<sup>582</sup> See pp. A-96-98, 108-112 *supra*.

<sup>583</sup> See p. A-57 *supra*, and see pp. A-120-122 *infra*.

apply to claims against public officers and employees or only to claims against public entities.<sup>584</sup>

20. Existing statutes which expressly purport to apply to claims against public officers and employees are in many respects ambiguous, uncertain and overlapping. Although such statutes are fewer in number than provisions governing claims against public entities, they share most of the difficulties attributed above to the entity claims provisions.<sup>585</sup>

While the present law of this State governing the presentation of claims against public entities and their officers and employees is subject to criticism, the large number of claims statutes evidences a widespread acceptance of the basic policy underlying such procedural prerequisites. This policy postulates claims presentation as a means of giving prompt notice in order to allow for early investigation of the facts and not merely as a statute of limitations. The values to be secured from the procedure include early-negotiated settlements in lieu of expensive and annoying litigation disruptive of governmental efficiency and the discouragement of stale and ill-founded claims. It is believed that these basic objectives can be achieved without the present "bramble bush" of claims statutes by unifying and revising our claims procedures. My recommendations as to the legislation necessary to accomplish this purpose follow.

#### Unified Statutory Treatment

It is recommended that the procedure applicable to claims against all forms of governmental agencies below the State level be set forth in a single statutory enactment to be incorporated into the Code of Civil Procedure. The procedure so provided should be uniformly applicable to all claims for money or damages upon which a legal action might be brought against the public entity involved.

#### Limitation on Entities Covered

Practically all of the important litigation concerning claims provisions is related to claims against public entities rather than the State. In part, this is due to the fact that the claims provisions relating to the State are considerably more liberal in the filing times allowed and do not partake of the ambiguities which arise from the mere concurrent existence of many different governmental subdivisions with varying powers and administrative structures. There is only one State but there are many counties, cities and districts. The State is unique, also, in the size of both its geographical and financial programs and the wide dispersion of those activities which might give rise to claims of various types. Unlike local entities, the State Legislature is not in continuous periodic session where claims may be considered and funds for payment authorized. From nearly every viewpoint, claims against the State and its various departments are subject to quite different considerations and should be governed by different procedures from those which apply to claims against local agencies. Accordingly, since the major legal problems relating to claims procedure appear to be confined to claims against local agencies only, it is recommended that claims against the State or any State agency be excluded from the scope of the proposed

<sup>584</sup> See pp. A-103-105 *supra*.

<sup>585</sup> See pp. A-105-113 *supra*.

statute. All other forms of governmental subdivisions, however, should be included; and in order to avoid any doubts and to ensure proper notice that State claims are separately treated, an express cross-reference to the State claims statutes should be made.

#### **Limitation on Claims Covered**

The scope of the proposed unified claims statute is limited to claims for money or damages thereby excluding demands for injunctive or other forms of specific relief. This limitation is consistent with the scope of nearly all of the claims provisions presently found in California law. Also excluded are (1) claims for tax exemption, cancellation or refund; (2) claims required by the mechanics' and materialmen's lien laws; (3) claims for wages, salaries, fees and reimbursement of expenses of public employees; (4) claims arising under the workmen's compensation laws; (5) claims for aid under public assistance programs; (6) claims for money due under pension and retirement systems and (7) claims for interest and principal upon bonded indebtedness. In most of these instances, the basic objectives of early investigation to prevent litigation and discourage false claims which support a uniform procedure for tort and inverse condemnation claims are not applicable; and orderly administration of the substantive policies governing the enumerated types of claims strongly suggests that claims procedure should be closely and directly integrated into such substantive policies. Obvious and compelling reasons appear for gearing tax refund claims to assessment, levy and collection dates and procedures; establishing special modes for protecting mechanics and material suppliers on public projects; providing an uncomplicated routine procedure for processing the tremendous volume of salary, pension, workmen's compensation and public assistance claims; and permitting flexible, simple and automatic procedures for meeting obligations to bondholders.

Contract claims pose a somewhat intermediate problem. Insofar as the claim is one for breach of contract, the need for early investigation and negotiation is frequently as important as in the case of tort claims. Ordinary routine claims for money due on a contract, however, are in a different category and for purposes of administrative convenience should not be shackled with an elaborate formal claims procedure. Other types of non-routine contract claims such as claims for the value of goods or services on an implied contract theory lie somewhere between the first two classes. It is recommended that the new claims statute permit public entities to waive by contract compliance with the claims statutes as to causes of action founded upon express contract other than claims for damages for breach of contract.

#### **Need for Constitutional Amendment**

In order to provide for a uniform claims procedure applicable to charter cities as well as other local entities, it is recommended that a constitutional amendment be adopted. As pointed out previously, there is some doubt as to whether a statute of the type here proposed could be validly applied to some types of claims against charter cities, since such cities are vested by the constitution with legislative autonomy with respect to "municipal affairs." With some modifications the proposed amendment along these lines adopted by the Assembly

in 1953<sup>586</sup> would serve to safeguard the statute adequately from successful attack.

#### Relationship to Existing Claims Provisions

One of the observable defects in present claims law is the tendency of claimants, not to mention lawyers and judges, to become confused as to which of several claims provisions applies in a particular case. To adopt a new uniform claims procedure as here recommended presents a problem as to what should be done with the existing statutes, charter provisions and ordinances. Unless the existing provisions are concurrently repealed, some unwitting claimants will in all likelihood attempt to comply with the specific claims procedure of a district law, city charter or city ordinance which procedure may not be in compliance with the new uniform claims statute. The proposed uniform claims procedure would not necessarily preclude the existing provisions from continuing to operate as traps for the unwary.

Express repeal of the existing provisions would, of course, be the desirable solution. Under the proposed constitutional amendment this could clearly be accomplished in legal contemplation. But as a practical matter, those claims provisions which are not found in statutory form such as city charters and ordinances would remain physically unchanged except by voluntary act of the city council and, in the case of charters, voters. Thus, although claims provisions in the codes and special district laws could and would be removed by amendment from future editions of such statute law, the charter and ordinance provisions would in many cases remain on the books to mislead the uninformed reader. Even to repeal the purely statutory provisions would require an exhaustive search of present statute law to avoid overlooking some provision; and although such a search was pursued in preparing the present report, the author is far from confident that every relevant provision was disclosed, for such is the inadequacy of the available indexes to our statute law.

Any solution to this dilemma should be designed to eliminate the "trap" possibilities. It is accordingly recommended (1) that the new uniform claims procedure be made *exclusively* applicable only where no other claims procedure is presently provided by law and (2) that the new statute provide that substantial compliance with any other claims procedure applicable to the type of claim which is in existence on the effective date of the new statute would be a sufficient *alternative* to compliance with the new statute. Thus limiting the alternative compliance clause would preclude valid enactment of further special claims provisions by charter or ordinance and would provide time for repeal of pre-existing provisions in an orderly fashion. In addition, it would be desirable to repeal expressly all existing procedural statutes relating to claims against counties, cities and districts concurrently with adoption of the new statute.

Many existing claims provisions, particularly in charters and ordinances, contain detailed procedures for auditing claims and for processing them through appropriate channels of authority. These

<sup>586</sup> Assembly Constitutional Amendment No. 23 (Reg. Sess. 1953), quoted in Comment, *California Claims Statutes—"Traps for the Unwary,"* 1 U.C.L.A. L. Rev. 201, 210 (1954).

matters are primarily of local administrative concern. They do not affect the claimant except incidentally insofar as the internal procedures may delay approval or rejection of the claim; and they do not create any danger of being a "trap." Accordingly, it is recommended that such auditing, accounting and internal processing procedures as may presently pertain to claims be left unchanged where they are not inconsistent with the express provisions of the new statute.

#### **Retroactive Application**

Upon adoption of the proposed uniform claims procedure, the problem of its applicability to claims which accrued prior to its effective date will undoubtedly arise.<sup>587</sup> As previously observed, in the absence of explicit provisions as to retroactivity of claims statutes, the California courts have disagreed as to the solution of the problem.<sup>588</sup> Litigation on the point should be prevented by express rule. If the new statute were made fully retroactive to allow all claims not barred by the statute of limitations to be presented within a fixed period after its effective date, many state claims would undoubtedly be revived and additional burdens imposed on public funds. Limited retroactivity would have the same result, only to a lesser degree, and it would be difficult to fairly draw the line. It is recommended that the new law be made applicable only to causes of action which accrue after its effective date and that previously accruing causes of action be governed by the law, if any, applicable thereto prior to adoption of the new procedure.

#### **Consequences of Noncompliance**

##### **Requirement of Prior Rejection**

In some states, e.g., Connecticut,<sup>589</sup> compliance with the claims statute is excused if an action is commenced on the claim within the claim filing period.<sup>590</sup> Substantially the same rule appears to obtain in California where prior rejection is not expressly required as a condition precedent to suit.<sup>591</sup> If the claim statutes are regarded as a mere short statute of limitations, this view has merit. In general, however, the California Legislature and courts have regarded such procedures as much more than a time limitation. Commencement of a timely action on a claim before any demand has been made for payment defeats the basic policy of discouraging litigation. It may be true that service of the complaint gives adequate notice and equal opportunity for investigation but opportunity for negotiation and settlement prior to incurring the expense of litigation is completely precluded. Institution of a lawsuit not only obligates the claimant for attorney's fees and costs which will probably increase his minimum settlement figure, but frequently imposes a burden of needless annoyance and inconvenience to the public employees involved and to counsel for the local entity in preparing and filing an answer within the relatively short time allowed. Much expense

<sup>587</sup> See Annot., *Municipality—Notice of Claim*, 14 A.L.R. 710 (1921).

<sup>588</sup> See notes 299-305 *supra*.

<sup>589</sup> See CONN. GEN. STAT. § 1180d (Supp. 1955).

<sup>590</sup> See Annot., *Commencement of Action as Notice*, 101 A.L.R. 726 (1936).

<sup>591</sup> See *Porter v. Bakersfield & Kern Elec. Ry.*, 36 Cal.2d 582, 225 P.2d 223 (1950), discussed *supra* at A-97 at notes 447-50. Under the California view, it is service of the complaint rather than commencement of the action which constitutes compliance with the claim statute. Usually these two events occur closely together.

and inconvenience can be avoided with no prejudice to the claimant when rejection of the claim is required before institution of an action. A provision to this effect is thus recommended.

The desirability of a resubmission requirement where a claim has been allowed in part and rejected in part is questionable. Section 29713 of the Government Code has such a provision, requiring a claimant against a county who is unwilling to accept the partial allowance in full satisfaction to resubmit the claim for further consideration as a prerequisite to suit thereon.<sup>592</sup> After having committed itself to a partial allowance only, it is unlikely that the legislative body will reverse its position on reconsideration. The resubmission procedure thus usually serves merely to further delay litigation and its purposes may be adequately served by negotiation prior to final action on the claim and also by the power to compromise litigation.

It is submitted that litigation following partial allowance may be discouraged more readily by other means. Two alternative methods are reflected in present claims statutes. Section 16045 of the Government Code exemplifies both types: (a) It expressly requires any action against the State on a claim under Vehicle Code Section 400 to be based on the *entire* claim and such an action renders the partial allowance nugatory. Presumably claimants may be willing to accept a partial allowance in some cases rather than risk everything in a lawsuit. (b) Section 16045 also provides as to all other types of claims that an action may be brought only on the portion of the claim disallowed after acceptance of the allowed portion. Presumably a claimant may be willing in some cases to forego suit on the disallowed portion because of expense, risk or inconvenience if he is permitted to accept the allowed part without thereby acquiescing in the rejection of the balance. Petty lawsuits for the sake of "principle" are thus discouraged and the dispute over the issue of liability as to the balance is not exacerbated by being posed in the context of an "all-or-nothing" choice of alternatives.

Under either form of statute a further incentive to settlement consists of the possibility of a denial of costs to the claimant if he fails to win more than the board was willing to allow. Such denial would result automatically in the second type postulated but should be expressly authorized if the former alternative is adopted. Such a provision is not uncommon in existing claims statutes.<sup>593</sup>

#### Relief for Persons Under Disability

A most difficult problem to solve is whether compliance with the claims statutes may be excused by reason of a claimant's infancy, incapacity or death.<sup>594</sup> At least four basic positions which have been taken on this question can be identified:

1. Claims statutes apply to minors and incompetents in the absence of an express statutory exception. A preponderance of the California cases follow this view;<sup>595</sup> but the seeming harshness of the rule is ameliorated by cases or statutes that allow someone else to file a claim on behalf of a claimant who cannot do so himself.<sup>596</sup> This view, it is

<sup>592</sup> See note 465 *supra*.

<sup>593</sup> *E.g.*, CAL. PUB. UTIL. CODE § 16686 (public utility districts).

<sup>594</sup> Annot., *Municipal Corporations—Injury—Notice*, 84 A.L.R.2d 735 (1954).

<sup>595</sup> *Artukovich v. Astendorf*, 21 Cal.2d 329, 131 P.2d 831 (1942); *Wicklund v. Plymouth E. School Dist.*, 37 Cal. App.2d 252, 99 P.2d 314 (1940). See notes 289-90 *supra*.

<sup>596</sup> See WASH. REV. CODE § 36.45.020 (1953).

submitted, is reasonably satisfactory in most instances; but it is exposed to the possibility that the claimant's rights may be lost by failure or neglect on the part of a third party who has no legal duty to act and over whose actions the minor or incompetent person has no effective control.

2. Where the failure to present a claim is the result of the minority of the claimant or physical or mental incapacity attributable to the injury which is the basis of the claim, compliance is excused. Some cases ground this result on considerations of fairness and due process<sup>597</sup> while a lone California decision reaches the same result by a liberal extension of the doctrine of estoppel.<sup>598</sup> Although this result may appeal to one's sense of justice and equity, it fails to give adequate protection to the interests of the public entity involved, particularly when it is realized that the minority or other disability involved will probably toll the running of the statute of limitations.<sup>599</sup>

3. By statute in some states special and more liberal time limits for presentation of a claim are established for claims of persons under a disability. Virginia, for example, authorizes claims of infants or incompetents to be presented within 120 days whereas all other claims are subject to a 60-day filing period.<sup>600</sup> Massachusetts provides that when physical or mental incapacity makes it impossible for the claimant to give timely notice, the claim may be presented "within ten days after such incapacity has been removed."<sup>601</sup> A similar but more liberal provision is found in Section 16046 of the California Government Code which extends the presentation period for claims against the State to "two years after the disability ceases." The Virginia type of statute, it is submitted, is inadequate since it still bars claims not presented due to a disability and merely allows a slight extension of time even though the disability still exists. The Massachusetts-California solution which is applicable only to a narrow class of claims is unsatisfactory since it extends the potential claim filing period almost indefinitely.

4. The claim statutes continue to apply to persons under a disability but tardy compliance is permitted by order of court for good cause shown on application within a limited period of time. Section 50e of the New York General Municipal Law which was apparently suggested in part by an earlier New Hampshire statute<sup>602</sup> contains provisions to this effect reading:

Where the claimant is an infant, or is mentally or physically incapacitated, and by reason of such disability fails to serve a notice of claim . . . within the time limited therefor, or where a person entitled to make a claim dies before the expiration of the time limited for service of the notice, the court, in its discretion, may grant leave to serve the notice of claim within a reasonable time after the expiration of the time specified. . . .

<sup>597</sup> See *Miami Beach v. Alexander*, 61 So.2d 917 (Fla. 1952); *McDonald v. Spring Valley*, 285 Ill. 52, 120 N.E. 476 (1918); *Randolph v. Springfield*, 302 Mo. 33, 257 S.W. 449 (1923); *Waxahachie v. Harvey*, 255 S.W.2d 549 (Tex. Civ. App. 1953).

<sup>598</sup> *Schulstad v. San Francisco*, 74 Cal. App.2d 105, 168 P.2d 68 (1946).

<sup>599</sup> See CAL. CODE CIV. PROC. §§ 352, 357.

<sup>600</sup> VA. CODE tit. 8, § 8-653 (1957).

<sup>601</sup> MASS. ANN. LAWS c. 84, § 19 (1954).

<sup>602</sup> N.H. PUB. STAT. c. 76, §§ 8-9 (1891), discussed in *Knight v. Haverhill*, 77 N.H. 487, 93 Atl. 663 (1915); *Owen v. Derry*, 71 N.H. 405, 52 Atl. 926 (1902).

Application for such leave must be made within the period of one year after the happening of the event upon which the claim is based, and shall be made prior to the commencement of an action to enforce the claim, upon affidavit showing the particular facts which caused the delay, accompanied by a copy of the proposed notice of claim. . . . and due notice thereof shall be served upon the person or party against whom the claim is made. . . .

Section 50e, it will be noted, incorporates a compromise between the need to relieve persons under a disability from the consequences of noncompliance and the policy against stale claims. It is believed that this device—a discretionary power in the court to relieve from default coupled with express authority for claims on behalf of infants and incompetents to be presented by third persons—will provide a satisfactory solution to the problem.

#### **Relief From Defective Manner of Service**

Much unnecessary litigation has been devoted to resolution of technical issues relating to allegedly improper presentation of claims. Two recurring problems reflected in California cases as well as elsewhere are whether presentation by mail is sufficient<sup>603</sup> and whether presentation to the wrong official satisfies the statute.<sup>604</sup> Avoidance of these problems can be achieved in part by clear identification of the officer to whom such claims are required to be presented and by express authorization of mailed notice.<sup>605</sup> In order to avoid doubts and to preclude such purely technical issues from interfering with expeditious handling of claims, however, it is recommended that express provision be made to cure minor defects in the manner of service which do not prejudice the public entity. Here again, a useful suggestion is provided by the New York General Municipal Law, Section 50e(3) which provides in part:

[I]f service of such notice be made within the period prescribed by this section, but in a manner not in compliance with the provisions of this subdivision, such service shall be deemed valid if such notice is actually received by such person . . . .

#### **Relief From Defects and Omissions in Contents of Claim**

Insofar as claims statutes seek to create a favorable basis for early negotiation and settlement of claims without litigation, it seems apparent that the preparation and presentation of the requisite claim is regarded primarily as a procedure with which the claimant often is expected to comply without aid of legal counsel.<sup>606</sup> Many cases might be cited in which these expectations were in fact realized and the lay claimant lost his rights—or nearly so—because of technical defects in the claim as prepared by himself.<sup>607</sup> The doctrine of “substantial com-

<sup>603</sup> See cases cited note 411 *supra*.

<sup>604</sup> See cases cited notes 406 and 408 *supra*; Annot., *Claims Against Municipality—Notice*, 23 A.L.R.2d 969 (1952).

<sup>605</sup> See text pp. A-126-127 *infra* at notecalls 642-43.

<sup>606</sup> The doctrine of estoppel is based largely upon this fact, for in cases like *Farrell v. County of Placer*, 23 Cal.2d 824, 145 P.2d 576 (1944), the doctrine is usually invoked to cure defects resulting from claimant's failure to seek legal advice promptly.

<sup>607</sup> Compare *Erde v. City of Los Angeles*, 137 Cal. App.2d 175, 289 P.2d 884 (1955) with *Dettamanti v. Lompoc Union School Dist.*, 143 Cal. App.2d 715, 300 P.2d 73 (1956).

pliance" has done strenuous service in the efforts of courts to hold such errors harmless but even that doctrine has its limitations.<sup>608</sup>

It is submitted that the purposes of the claim statutes would be more equitably and adequately served if a curative provision with safeguards against actual prejudice to the public entity were available in cases of mistakes, discrepancies and inadvertent omissions. Such provisions are not uncommon. They generally are of two basic types:

1. Some statutes, of which several examples are found in California law, permit amendments to be made to claims to cure defects. If the right to amend is limited to the period of time within which the original claim must be filed, as is the case with some of these provisions,<sup>609</sup> the right to amend is of little value and probably exists anyway even without statutory authority.<sup>610</sup> On the other hand, to permit amendments after the filing deadline at the claimant's pleasure might expose the claims procedure to abuse and frustration of its basic objectives of full and timely notice. A better solution is indicated by statutes like California Government Code Section 29703 which requires the governing board of the public entity to give notice and an opportunity to amend, and in default of such, the defects are waived. Section 29703, however, only covers defects consisting of a failure to itemize a claim. Sections 10-7-77 and 10-7-78 of the Utah Code are broader than the California provision, and serve as a better example of the type of provision desired:

[I]f such account or claim is not properly or sufficiently itemized or described or verified, the governing body may require the same to be made more specific as to itemization or description, or to be corrected as to the verification thereof . . .<sup>611</sup> [and] sufficient time shall be allowed the claimant to comply with such requirement.<sup>612</sup>

A Massachusetts statute employs the same technique with respect to omissions other than failure to give the claimant's address and explicitly establishes time limits for giving of notice to amend and for filing of the amendment.<sup>613</sup> Since there seems to be no reason why the same rules should not apply to both inaccuracies and omissions, it is recommended that, if this form of curative provision is adopted, it be based upon a combination of the Utah and Massachusetts patterns.

2. Some claims statutes merely declare claims to be sufficient despite defects that may appear therein if certain conditions are met. In effect, statutes of this type merely codify the substantial compliance doctrine in somewhat modified form. States with such provisions include New York,<sup>614</sup> Massachusetts<sup>615</sup> and Connecticut.<sup>616</sup> The Connecticut provision reads:

<sup>608</sup> Cf. the rule that "substantial compliance" cannot cure omissions but only defective or inaccurate statements. See notes 432-33 *supra*.

<sup>609</sup> E.g., Alameda County Flood Control and Water Conservation District Act, Cal. Stat. 1949, c. 1275, § 29, p. 2260, as amended, CAL. GEN. LAWS Act 305 (Deering Supp. 1957).

<sup>610</sup> *Smith v. Board of Supervisors*, 99 Cal. 262, 33 Pac. 1094 (1893).

<sup>611</sup> UTAH CODE ANN. § 10-7-77 (1953); see also *id.* § 17-15-10, providing to the same effect as to claims against counties.

<sup>612</sup> *Id.* § 10-7-78.

<sup>613</sup> MASS. ANN. LAWS c. 84, § 20 (1954).

<sup>614</sup> N.Y. MUNIC. LAW c. 24, § 50e(6) (1957).

<sup>615</sup> MASS. ANN. LAWS c. 84, § 13 (1954).

<sup>616</sup> CONN. GEN. STAT. § 1180d (Supp. 1955).

No notice given under the provisions of this section shall be held invalid or insufficient by reason of an inaccuracy in describing the injury, or in stating the time, place or cause of its occurrence, if it shall appear that there was no intention to mislead or that such town, city, corporation, or borough was not in fact misled thereby.

Although this form of curative provision has the advantage of eliminating the procedure of notice to amend and amendment required under the first form, it is less certain in its operation and constitutes an invitation to litigation to settle a dispute as to whether the requisite conditions in fact exist.<sup>617</sup>

### Estoppel

Since the Supreme Court in *Farrell v. County of Placer*<sup>618</sup> established the availability of estoppel to excuse late presentation of a claim, the courts have vacillated in their willingness to apply it.<sup>619</sup> Where the time limit for presentation is relatively short, as it must be to fully achieve the purposes of the claims statute, the possibility that a claimant may be lulled into a sense of false security by assurances from public officials that his claim will be sympathetically considered is great. It may be assumed that such assurances are given in perfect good faith but this is of small comfort to the disappointed claimant who finds his judicial remedy barred by failure to present a formal claim. In order to clarify the applicability of the estoppel doctrine and chart its limits, it is therefore recommended that an express provision on the point be included in the proposed statute.<sup>620</sup> It is believed that adequate protection for both claimant and public agency would be achieved by estopping the latter only where reasonable good faith reliance upon official representations is shown and the entity had actual notice of the essential facts of the claim within the time in which it should have been filed.

### Specific Requirements

#### Time for Presentation of Claim

It is recommended that a single uniform filing time be prescribed for all types of claims covered by the act. Any attempt to distinguish between various classes of claims and provide different time limits for each would create unnecessary problems of interpretation. The lines of distinction are by no means entirely clear between contract and tort,<sup>621</sup> tort and inverse condemnation<sup>622</sup> or other possible classifications. Problems of this type should be avoided if possible.

<sup>617</sup> The New York provision particularly illustrates this defect, since it expressly provides that defects may be "corrected, supplied or disregarded . . . in the discretion of the court." N.Y. GEN. MUNIC. LAW c. 24, § 50e(6) (1957).

<sup>618</sup> 23 Cal.2d 624, 145 P.2d 570 (1944).

<sup>619</sup> See notes 298-310 *supra*.

<sup>620</sup> A legislative proposal along these lines is found in Comment, *Estoppel Against the Government in California*, 44 CALIF. L. REV. 340, 354 (1956).

<sup>621</sup> See *Rubino v. Utah Canning Co.*, 123 Cal. App.2d 18, 266 P.2d 163 (1954), and cases therein cited; *L.B. Laboratories, Inc. v. Mitchell*, 39 Cal.2d 56, 244 P.2d 385 (1952).

<sup>622</sup> See *Natural Soda Prod. Co. v. City of Los Angeles*, 23 Cal.2d 193, 143 P.2d 12 (1943); and compare *House v. Los Angeles County Flood Control Dist.*, 25 Cal.2d 384, 153 P.2d 950 (1944) with *Archer v. City of Los Angeles*, 19 Cal.2d 19, 119 P.2d 1 (1941).

The most frequently prescribed time limit for claims presentation found in the California statutes is 90 days.<sup>623</sup> The same or a shorter period is also commonly established in laws of other states, including Connecticut,<sup>624</sup> Massachusetts,<sup>625</sup> Minnesota,<sup>626</sup> New York,<sup>627</sup> Utah,<sup>628</sup> Virginia<sup>629</sup> and Washington.<sup>630</sup> Ninety days is an appropriate compromise between the competing policies of early notice and reasonable waiting period. It is therefore recommended for adoption—the time to be computed from the date when the cause of action to which the claim relates accrues within the meaning of the general statute of limitation applicable thereto. It should be noted that since the proposed statute incorporates its own statute of limitations in the form of a provision that suit must be brought within six months after the claim is rejected, the ordinary statutes of limitation will not be applicable to causes of action to which it relates. The statutes of limitation to which reference is here made are, therefore, those applicable to actions brought against nonpublic defendants. This would provide a solution for such vexing problems as when the claim-filing period commences to run in cases of after-discovered fraud or mistake,<sup>631</sup> wrongful death,<sup>632</sup> continuing nuisances and trespasses<sup>633</sup> and the like. All claims would be governed by the same rules for determining “accrual” as presently or in the future obtain under the statutes of limitation; these rules are relatively well known and thoroughly documented by many cases. The proposal thus has the merits of simplicity and certainty and in addition incorporates the flexibility which the courts have found necessary in applying the statutes of limitation to varying circumstances.

Provisions found in many claims statutes requiring claims to be presented not less than a specified length of time before being passed upon are regarded as primarily a matter for local administrative policy which may be established by rules of practice. Such provisions have no serious consequences other than delay in official consideration. Accordingly, no recommendation as to this type of claims provision is made.

#### **Time for Official Consideration and for Commencing Action on Claim**

In order to avoid troublesome problems as to the interrelationship between the statutes of limitation and the claims statute,<sup>634</sup> it is recommended that a specific period be allowed for official consideration of the claim; and providing that at the end of the period the claim shall be deemed to be rejected as a matter of law in the absence of prior action by the governing body. In view of the prevalence of official consideration periods of 90 days or less,<sup>635</sup> a period of 90 days is here recommended. An optional “deemed rejected” statute, such as is ex-

<sup>623</sup> See notes 123-24 *supra*.

<sup>624</sup> CONN. GEN. STAT. § 1180d (Supp. 1955) (sixty days).

<sup>625</sup> MASS. ANN. LAWS c. 84, § 18 (1954) (thirty days).

<sup>626</sup> MINN. STAT. § 465.09 (1957) (thirty days).

<sup>627</sup> N.Y. GEN. MUNIC. LAW c. 24, § 50e (1957) (ninety days).

<sup>628</sup> UTAH CODE ANN. c. 7, § 10-7-77 (1953) (thirty days).

<sup>629</sup> VA. CODE tit. 8, § 8-653 (1957) (sixty days).

<sup>630</sup> WASH. REV. CODE § 36.45.010 (1953) (sixty days).

<sup>631</sup> See notes 386-37 *supra*.

<sup>632</sup> See notes 529-30 *supra*. Cf. Annot., *Death Following Injury—Notice of Claim*, 64 A.L.R. 1059 (1929).

<sup>633</sup> See notes 388-91 *supra*.

<sup>634</sup> See notes 466-85 *supra*; Annot., *Claim Against Public—Time To Sue*, 3 A.L.R.2d 711 (1949).

<sup>635</sup> See notes 212-16 *supra*.

emplified by Government Code Section 29714 prior to its amendment in 1957, would have the effect of unduly extending the period for commencing action on a claim in some cases even well beyond the normal statute of limitations.<sup>636</sup> Moreover, the correct application of such provisions is a matter upon which the courts are hopelessly divided.<sup>637</sup> On the other hand, the mandatory "deemed rejected" form is clear, specific and certain and does not prolong the time for suit.<sup>638</sup>

Since the proposed statute incorporates an explicit prior rejection requirement, a special period of limitations applicable to actions based on rejected claims should be included in the new statute which would commence to run only upon such rejection, actual or constructive.<sup>639</sup> In order to promote uniformity and avoid undue delay in a suit, it is recommended that provision be made for a relatively short period for commencing suit after rejection regardless of the nature of the claim. The prevalent period of six months<sup>640</sup> is here adopted for this purpose. The general statutes of limitations would thus have no application to such actions.

#### **Person Designated as Recipient**

Much unnecessary litigation and, frequently, unjust results have been caused by uncertainty as to the identity of the person or persons to whom the claim is to be presented.<sup>641</sup> In practice, claims are normally not presented personally to the legislative body or its members but to its clerk or secretary. That the latter is an appropriate agent to receive claims is attested by a majority of claims statutes.<sup>642</sup> Simplicity and certainty thus recommend the clerk or secretary as the person to be served; and the proper forwarding of the claim for investigation, audit and legal advice can easily be arranged as a matter of local administrative direction to the clerk or secretary.

On the other hand, there may be public entities which do not have a regularly appointed and functioning official who bears the title of "clerk" or "secretary." Some district governing boards, for example, may operate in an informal fashion with minutes being kept by one of the members. It would, therefore, appear to be advisable to incorporate in the new statute an alternative provision that presentation may be made to the governing board as a whole in order to obviate possible technical difficulties in identifying the clerk or secretary. In the interests of simplicity, however, the designated recipients should not be expanded beyond the clerk or secretary and the board itself. The primary objective is to ensure notice to the board as a body. Presentation to an individual member of the board would appear to be undesirable. Membership is usually only a part-time responsibility and individual members busily engaged in private business matters should not be expected to assume responsibility for communicating the contents to the rest of the board or for preserving the claim in the official records of the board pending official action to the same extent as the clerk.

<sup>636</sup> See *Consolidated Liquidating Corp. v. Ford*, 131 Cal. App.2d 576, 281 P.2d 20 (1955).

<sup>637</sup> See notes 458-63 *supra*.

<sup>638</sup> See note 464 *supra*.

<sup>639</sup> See notes 466-68 *supra*.

<sup>640</sup> See notes 233-35 *supra*.

<sup>641</sup> See notes 406-16 *supra*; Annot., *Claim Against Municipality—Notice*, 23 A.L.R.2d 969 (1952).

<sup>642</sup> See Table XIII *supra* at A-35.

The possible advantages to be secured by designating individual board members as recipients thus seem to be outweighed by the possible dangers of loss or delay. Accordingly, it is proposed that claims be presented to the body as a whole or to the clerk or secretary who normally serves as the board's agent for receipt of communications of all types.

For convenience and in accord with California cases<sup>643</sup> recognizing the validity of presentation by mail even where not explicitly authorized, the use of registered or certified mail is made acceptable since such mailed notice provides ready means of proof of service in the form of an official receipt. The New York claims statute has a provision authorizing the mailing of claims.<sup>644</sup>

#### Contents of Claim

The basic purpose of a claims statute is notice; and hence it should be sufficient to require that a claimant state his name and address, the circumstances giving rise to his claim and the elements and amounts of recovery demanded. The general statute governing claims against the State is even more general than this, requiring merely "a statement showing the facts constituting the claim."<sup>645</sup> Particularly when coupled with a provision such as that previously proposed requiring the public agency to give notice and request further clarification when the information in the claim is inadequate, the general language here recommended should be sufficiently flexible to avoid unnecessary litigation.

#### Formal Requisites

It is recommended that the requirement of verification found in many<sup>646</sup> but by no means all<sup>647</sup> claim statutes be omitted from the proposed statute. Perhaps more often than any other technical requirement, verification or the lack thereof has defeated otherwise meritorious claims.<sup>648</sup> The basic purpose of the requirement, to ensure the authenticity and truthfulness of claims, can be amply secured by making the wilful misstatement of any material fact in a claim a misdemeanor. Section 72 of the Penal Code already makes the presentation of a false or fraudulent claim, with intent to defraud, a felony. The added protection of a verification is thus believed to be wholly unnecessary and usually acts more as a basis for penalizing the ill-informed than the fraudulent claimant.

#### Claims Against Employees

The basic legislative policy to insist upon presentation of a negligent claim to the employing entity as a condition precedent to suit against the employee has been reaffirmed as recently as 1951 when Section 2003 was added to the Government Code.<sup>649</sup> It is clear, however, in view of the decisions in *Porter v. Bakersfield & Kern Elec.*

<sup>643</sup> *Natural Soda Prod. Co. v. City of Los Angeles*, 23 Cal.2d 193, 143 P.2d 12 (1943); *Insole v. Imperial Irr. Dist.*, 147 Cal. App.2d 172, 305 P.2d 176 (1956).

<sup>644</sup> N. Y. GEN. MUNIC. LAW § 50e(3) (1957).

<sup>645</sup> CAL. GOVT. CODE § 16021.

<sup>646</sup> See notes 202-08 *supra*.

<sup>647</sup> See notes 210-11 *supra*.

<sup>648</sup> See notes 438-40 *supra*.

<sup>649</sup> Cal. Stat. 1951, c. 1630, § 1, p. 3673, discussed pp. A-111-112 *supra* at notecalls 545-54.

*Ry.*<sup>650</sup> and *Stewart v. McCollister*<sup>651</sup> that Sections 1980-82 of the Government Code no longer serve a useful purpose in their present form and constitute a constant threat of entrapment of deserving plaintiffs.<sup>652</sup>

Insofar as the purposes of employee claim statutes relate to the possible liability of the employing entity or to statutory authority for free defense by public counsel and liability insurance at public expense, such purposes require only the presentation of a claim to the employing entity. This requirement is already satisfactorily met by Government Code Section 2003. Accordingly, no new legislation is recommended with respect to claims against officers and employees, for Section 2003 will be adequately integrated with the proposed new entity claim statute by its own reference to the claims procedure "prescribed by law" for claims against public entities. It is, however, recommended that Section 2003 be moved from its present location in the Government Code to an appropriate place as part of the new general claims statute in the Code of Civil Procedure and that Sections 1980-82 be repealed.

<sup>650</sup> 36 Cal.2d 582, 225 P.2d 223 (1950), discussed p. A-113 *supra* at notecalls 560-61.

<sup>651</sup> 37 Cal.2d 203, 231 P.2d 43 (1951), discussed p. A-110 *supra* at notecalls 540-43.

<sup>652</sup> See *Pike v. Archibald*, 113 Cal. App.2d 114, 257 P.2d 480 (1953), discussed p. A-111 *supra* at notecall 544.