

STATE OF CALIFORNIA

REPORT OF THE
**CALIFORNIA LAW
REVISION COMMISSION**

To the Governor and the Legislature of the
State of California at the Legislative
Session of 1962

March 1962

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California

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LETTER OF TRANSMITTAL

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

The California Law Revision Commission herewith submits this report of its activities during the year 1961.

HERMAN F. SELVIN, *Chairman*
JOHN R. McDONOUGH, JR., *Vice Chairman*
JAMES A. COBEY, *Member of the Senate*
CLARK L. BRADLEY, *Member of the Assembly*
JOSEPH A. BALL
JAMES R. EDWARDS
RICHARD H. KEATINGE
SHO SATO
THOMAS E. STANTON, JR.
ANGUS C. MORRISON, *Legislative Counsel, ex officio*

JOHN H. DEMOULLY
Executive Secretary

March 1962

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1961

FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is *ex officio* a nonvoting member.¹

The principal duties of the Law Revision Commission are to:

- (1) Examine the common law and statutes of the State for the purpose of discovering defects and anachronisms therein.
- (2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations and other learned bodies, judges, public officials, lawyers and the public generally.
- (3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.²

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.³

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Most of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, a printed pamphlet is published that contains the research study and the official report and recommendation of the

¹ See Cal. Stats. 1953, Ch. 1445, p. 3036; CAL. GOVT. CODE §§ 10300-10340. And see Cal. Stats. (1st Ex. Sess.) 1960, Ch. 61, p. 411, which revises Section 10308 of the Government Code.

² See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331. See also pp. 22-23 *infra*.

³ See CAL. GOVT. CODE § 10335.

Commission together with a draft of any legislation necessary to effectuate the recommendation.⁴ This pamphlet is distributed to the Governor, Members of the Legislature, heads of state departments and a substantial number of judges, district attorneys, lawyers, law professors and law libraries throughout the State.⁵ Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

In 1955, 1957, 1959 and 1961, the Commission submitted to the Legislature recommendations for legislation accompanied by bills prepared by the Commission. The Commission also submitted a number of reports on topics as to which, after study, it concluded that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Thirty-one of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ and eight in 1961.⁹ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.

⁴ Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

⁵ See CAL. GOV'T. CODE § 10333.

⁶ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

⁷ Cal. Stats. 1957, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

⁷ Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1493, p. 2824. (Bringing new parties into civil actions.)

⁸ Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 463, p. 2403. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 469, p. 2404. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)

⁹ Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)

Cal. Stats. 1961, Ch. 589, p. 1733. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1838. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

PERSONNEL OF COMMISSION

Mr. George G. Grover resigned from the Commission effective March 1961 following his appointment by Governor Brown as a member of the California Public Utilities Commission. Mr. James R. Edwards of San Bernardino was appointed by the Governor to fill the vacancy.

Mr. Joseph A. Ball, Professor Sho Sato and Mr. Thomas E. Stanton, Jr. were reappointed to the Commission by the Governor upon the expiration of their terms on October 1, 1961.

Mrs. Vaino H. Spencer resigned from the Commission effective October 1961 after her appointment by Governor Brown as judge of the Los Angeles Municipal Court. Mr. Richard H. Keatinge of Los Angeles was appointed to the Commission in November 1961 to fill the vacancy.

Mr. Ralph N. Kleps, Legislative Counsel and *ex officio* a nonvoting member of the Commission, was appointed in October 1961 as Administrative Director of the Courts. Mr. Angus C. Morrison succeeds Mr. Kleps as Legislative Counsel and *ex officio* a member of the Commission.

As of the date of this report the membership of the Law Revision Commission is:

	<i>Term expires</i>
Herman F. Selvin, Los Angeles, <i>Chairman</i>	October 1, 1963
John R. McDonough, Jr., Stanford, <i>Vice Chairman</i>	October 1, 1963
Hon. James A. Cobey, Merced, <i>Senate Member</i>	*
Hon. Clark L. Bradley, San Jose, <i>Assembly Member</i>	*
Joseph A. Ball, Long Beach, <i>Member</i>	October 1, 1965
James R. Edwards, San Bernardino, <i>Member</i>	October 1, 1963
Richard H. Keatinge, Los Angeles, <i>Member</i>	October 1, 1963
Sho Sato, Berkeley, <i>Member</i>	October 1, 1965
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1965
Angus C. Morrison, Sacramento, <i>ex officio Member</i>	**

* The legislative members of the Commission serve at the pleasure of the appointing power.

** The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

On July 15, 1961, Mr. Jon D. Smock of Menlo Park was appointed to the staff of the Commission to fill the vacancy created by the resignation of Miss Louisa R. Lindow.

SUMMARY OF WORK OF COMMISSION

During 1961 the Law Revision Commission was engaged in four principal tasks:

- (1) Presentation of its 1961 legislative program to the Legislature.¹⁰
- (2) Work on various assignments given to the Commission by the Legislature.¹¹
- (3) Consideration of various topics for possible future study by the Commission.¹²
- (4) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.¹³

The Commission held eight two-day meetings and two three-day meetings in 1961.

¹⁰ See p. 11 of this report *infra*.

¹¹ See p. 17 of this report *infra*.

¹² See p. 19 of this report *infra*.

¹³ See pp. 22-23 of this report *infra*.

1961 LEGISLATIVE PROGRAM OF COMMISSION

TOPICS SELECTED FOR STUDY

Assembly Concurrent Resolution No. 19 was introduced by Honorable Clark L. Bradley, the Assembly Member of the Law Revision Commission. This resolution requested legislative authorization for the Commission to continue its study of topics previously approved by the Legislature.¹⁴ The resolution was adopted by the Legislature, becoming Resolution Chapter 95 of the Statutes of 1961.

OTHER MEASURES

Taking Possession and Passage of Title in Eminent Domain Proceedings

Senate Bills Nos. 204 and 206 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹⁵

Senate Bill No. 204

Senate Bill No. 204, which in amended form became Chapter 1612 of the Statutes of 1961, relates to proration and refund of property taxes when property is taken by eminent domain.

The bill was amended in the Senate (1) to require that the condemner reimburse the condemnee for the condemner's pro rata share of prepaid property taxes and (2) to permit the condemner to obtain a refund of such taxes in the same manner as taxes erroneously collected if the condemner is a public agency that would be entitled to have such taxes cancelled if unpaid. The bill as introduced did not provide for reimbursement to the condemnee of such prepaid property taxes by the condemner in cases where the condemner is a public agency but instead permitted the condemnee to obtain a refund. The amendment was made because it was thought that the condemner rather than the condemnee should have the burden of invoking the procedures necessary to obtain the tax refund.

Senate Bill No. 204 also was amended in the Senate to provide that any party to an eminent domain proceeding may have the property sought to be taken separately valued for property tax purposes by the taxing officials. Under this amendment the property owner may in the case of a partial taking obtain a determination of the precise amount of taxes due on the part remaining. He can then pay this amount and avoid having to pay the property taxes on the entire parcel

¹⁴ Section 10335 of the Government Code provides that the Commission shall confine its studies to those topics set forth in the calendar of topics contained in the last preceding report which are thereafter approved for its study by concurrent resolution of the Legislature. The section also requires that the Commission study any topic which the Legislature, by concurrent resolution, refers to it for such study.

¹⁵ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at B-1 (1961).

in order to prevent the accrual of penalties and interest on the taxes allocable to the property remaining.

Senate Bill No. 206

Senate Bill No. 206, which in amended form became Chapter 1613 of the Statutes of 1961, relates to the procedure for taking possession and passage of title.

The bill was substantially amended in the Senate. Many of the amendments were technical or clarifying amendments. The following are the principal amendments of a substantive nature :

(1) Section 1243.5 of the Code of Civil Procedure as introduced authorized the court to permit the condemner to serve the order for immediate possession by mail in lieu of personal service. The bill was amended to permit the condemner to make such service without obtaining a prior court order upon filing an affidavit in the proceeding showing why personal service could not have been made. The change was made to relieve the condemner of the expense of making a court appearance in order to serve by mail in lieu of personal service.

(2) Section 1243.5 was amended to provide that prior to judgment the amount deposited may not be reduced to an amount less than that already withdrawn.

(3) The provision in Section 1243.5 for a court order delaying the effective date of immediate possession was deleted. The public agencies objected to this provision as unnecessary on the ground that before a person can be dispossessed under an order of immediate possession, the condemner must obtain a writ of assistance and that, as a matter of practice, a court will issue the writ only upon a showing of necessity and with the imposition of reasonable conditions.

(4) The provision in Section 1243.5 for the vacation of an order of immediate possession by the trial or appellate court was deleted. The public agencies objected to this provision as unnecessary on the ground that the trial court can vacate any order for immediate possession where it is shown that the condemner does not have the right to take the property or does not have the right to take immediate possession and that, if the trial court refuses to do so, the intervention of an appellate court may be secured by a petition for an appropriate writ. The public agencies stated that the writ procedure is more expeditious than an appeal because it is unnecessary to have a record prepared and transmitted to the appellate court.

(5) The provision in Section 1243.7 for withdrawal of the deposit was amended to *require* that an applicant seeking to withdraw any of the deposit in excess of the amount originally deposited file an undertaking and to provide that the applicant filing the undertaking is entitled to recover the premium paid for the undertaking, but not to exceed two percent of the face value of the undertaking, as a part of the recoverable costs in the eminent domain proceeding. The changes were made to provide more adequate protection to the condemner in case of an excess withdrawal.

(6) A provision was added to Section 1243.7 giving the court authority to require the filing of an undertaking when one person seeks to withdraw any portion of a deposit which another person claims.

(7) The bill as introduced deleted the last sentence of Section 1249 and inserted the substance of that sentence in Section 1249.1. The bill was amended to restore the deleted sentence to Section 1249 to avoid any implication that Senate Bill No. 206 was intended to affect the meaning of that sentence.

(8) Section 1254 was amended to incorporate a change made in that section by a bill previously enacted at the 1961 legislative session.

Extension of Right of Immediate Possession

Senate Constitutional Amendment No. 6 and Senate Bill No. 207 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹⁶ Both the bill and the proposed amendment died in the Senate Judiciary Committee.

Evidence in Eminent Domain Proceedings

Senate Bill No. 205 was introduced by Senator James A. Cobey, the Senate Member of the Law Revision Commission, to effectuate the recommendation of the Commission on this subject.¹⁷ The bill passed the Legislature in an amended form but was pocket vetoed by the Governor.

Reimbursement for Moving Expenses When Property Is Acquired for Public Use

Senate Bill No. 203 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.¹⁸ The Senate Judiciary Committee recommended that the bill be referred to the Committee on Rules to be assigned to an appropriate interim committee. The bill was referred to the Senate Fact Finding Committee on Judiciary.

Rescission of Contracts

Assembly Bills Nos. 466 and 467 were introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.¹⁹

Assembly Bill No. 467, a comprehensive rescission statute, was passed by the Assembly without amendment. A technical amendment was made to the bill in the Senate. As thus amended, the bill was passed by the Legislature and signed by the Governor, becoming Chapter 589 of the Statutes of 1961.

Assembly Bill No. 466 relates to rescission of a release. The bill was passed by the Assembly, but the Senate Judiciary Committee recommended that the bill be referred to the Committee on Rules to be referred to an appropriate interim committee. The bill was referred to the Assembly Committee on Rules but that committee did not assign the bill to an interim committee for study.

¹⁶ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at B-1 (1961).

¹⁷ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at A-1 (1961).

¹⁸ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at C-1 (1961).

¹⁹ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at D-1 (1961).

Right to Counsel and the Separation of the Delinquent From the Nondelinquent Minor in Juvenile Court Proceedings

Senate Bills Nos. 219 and 220 were introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.²⁰ The substance of these bills was enacted as Chapter 1616 of the Statutes of 1961.

Both Senate Bill No. 219 and Senate Bill No. 220 were drafted on the basis of the then existing law relating to juvenile court proceedings. However, Senate Bill No. 332, a comprehensive revision of the Juvenile Court Law, was introduced at the 1961 Session upon recommendation of the Governor's Special Study Commission on Juvenile Justice. Accordingly, the Law Revision Commission made no effort to secure enactment of Senate Bills Nos. 219 and 220.

Senate Bill No. 219 was introduced to effectuate the recommendation of the Law Revision Commission that the juvenile court should adjudge a juvenile to be a "ward" only if the court's jurisdiction over the juvenile is based upon the juvenile's misconduct and that a juvenile should be adjudged a "dependent child" if he is under the jurisdiction of the juvenile court merely because he lacks proper supervision or care. Senate Bill No. 332 as introduced made no such distinction between wards and dependent children. At the request of the Senate Judiciary Committee the Law Revision Commission drafted amendments to Senate Bill No. 332 to provide for the designation of a juvenile as a "ward" or "dependent child." These amendments were adopted in the Senate.

Senate Bill No. 219 also specified the range of permissible disposition of juveniles who are adjudged to be wards or dependent children, providing that the court should not have the power to place a dependent child on probation, to detain him in the county jail or to commit him to the Youth Authority or to a local correctional institution unless the dependent child is also adjudged to be a ward because of his misconduct. Sections 725 to 781 of the Welfare and Institutions Code as enacted by Senate Bill No. 332 provide for substantially the same range of permissible disposition of juveniles who are adjudged to be wards or dependent children and, accordingly, effectuate the recommendation of the Law Revision Commission on this matter.

Senate Bill No. 220 was introduced to effectuate the recommendation of the Law Revision Commission concerning the right to counsel in juvenile court proceedings. Sections 633 and 634 of the Welfare and Institutions Code as enacted by Senate Bill No. 332 are basically the same as the recommendation of the Law Revision Commission contained in Senate Bill No. 220 and, accordingly, effectuate the recommendation of the Law Revision Commission on this matter.

Inasmuch as the substance of the recommendation of the Law Revision Commission contained in Senate Bills Nos. 219 and 220 was either contained in or added to Senate Bill No. 332, Senate Bills Nos. 219 and 220 were not acted upon by the Legislature. Senate Bill No. 332 was enacted as Chapter 1616 of the Statutes of 1961.

²⁰ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at B-1 (1961).

Survival of Actions

Senate Bill No. 202, which in amended form became Chapter 657 of the Statutes of 1961, was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.²¹ The bill was amended in the Senate as follows:

(1) The proposed comprehensive survival statute—Section 573 of the Probate Code—was amended to provide that damages for “pain, suffering or disfigurement” cannot be recovered when a person having a cause of action dies before judgment.

(2) Section 376 of the Code of Civil Procedure was amended to provide that in an action maintained under that section after the death of the child or ward or against the executor or administrator of the person causing the injury, “the damages recoverable shall be as provided in Section 573 of the Probate Code.”

Arbitration

Assembly Bill No. 832 (Chapter 461 of the Statutes of 1961) was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.²² The bill was enacted without amendment.

Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere

Assembly Bill No. 465 (Chapter 636 of the Statutes of 1961) was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.²³ The bill was enacted without amendment.

Presentation of Claims Against Public Officers and Employees

Senate Bill No. 208 was introduced by Senator Cobey to effectuate the recommendation of the Commission on this subject.²⁴ The bill was given a do-pass recommendation by the Senate Judiciary Committee, but failed to pass the Senate. Senator Cobey moved that the Senate reconsider the vote whereby Senate Bill No. 208 was refused passage and reconsideration was granted. However, the bill was subsequently re-referred to the Senate Judiciary Committee and died in that committee.

Notice of Alibi in Criminal Actions

Assembly Bill No. 464 was introduced by Mr. Bradley to effectuate the recommendation of the Commission on this subject.²⁵ The Assembly Committee on Criminal Procedure recommended that the bill be re-

²¹ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at F-1 (1961).

²² See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at G-1 (1961).

²³ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at I-1 (1961).

²⁴ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at H-1 (1961).

²⁵ See 3 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at J-1 (1961).

ferred to the Committee on Rules to be assigned to an appropriate interim committee. The bill was referred to the Assembly Committee on Rules but that committee did not assign the bill to an interim committee for study.

CALENDAR OF TOPICS SELECTED FOR STUDY

STUDIES IN PROGRESS

In addition to the topics included in the legislative program of the Commission, the Commission during 1961 had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study.

Studies Which the Legislature Has Directed the Commission to Make ²⁶

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
3. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.
4. Whether the various provisions of law relating to the filing of claims against public officers and employees should be revised.
5. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.
6. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
7. Whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
8. Whether the laws relating to bail should be revised.

²⁶ Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study.

The legislative directives to make these studies are found in the following :

Nos. 1 through 3 : Cal. Stats. 1956, Res. Ch. 42, p. 263.

No. 4 : Cal. Stats. 1956, Res. Ch. 35, p. 256. See 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, Recommendation and Study at A-11 (1959).

Nos. 5 through 7 : Cal. Stats. 1957, Res. Ch. 202, p. 4589.

No. 8 : Cal. Stats. 1957, Res. Ch. 287, p. 4744.

**Studies Authorized by the Legislature Upon the Recommendation
of the Commission**²⁷

1. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases.²⁸
2. Whether the law relating to escheat of personal property should be revised.²⁹
3. Whether the law relating to the rights of a putative spouse should be revised.³⁰
4. Whether the law respecting post conviction sanity hearings should be revised.³¹
5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.³²
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised.³³
7. Whether the Small Claims Court Law should be revised.³⁴
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.³⁵
9. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.³⁶
10. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.³⁷
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.³⁸
12. Whether the provisions of the Penal Code relating to arson should be revised.³⁹

²⁷ Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies in this list is:

No. 1: Cal. Stats. 1955, Res. Ch. 207, p. 4207.

Nos. 2 through 7: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 8 through 16: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

Nos. 17 through 19: Cal. Stats. 1958, Res. Ch. 61, p. 135.

No. 20: Cal. Stats. 1959, Res. Ch. 218, p. 5792; Cal. Stats. 1956, Res. Ch. 42, p. 263.

²⁸ For a description of this topic, see 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1955 Report at 28 (1957). For the legislative history, see 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 Report at 13 (1959).

²⁹ See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 Report at 25 (1957).

³⁰ *Id.* at 26.

³¹ *Id.* at 28.

³² *Id.* at 29.

³³ See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 Report at 15 (1957).

³⁴ *Id.* at 16.

³⁵ *Id.* at 17.

³⁶ *Id.* at 18.

³⁷ *Ibid.*

³⁸ *Id.* at 19.

³⁹ *Id.* at 20.

13. Whether Civil Code Section 1698 should be repealed or revised.⁴⁰
14. Whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.⁴¹
15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.⁴²
16. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.⁴³
17. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.⁴⁴
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.⁴⁵
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.⁴⁶
20. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales.⁴⁷

STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code the Commission has reported 57 topics that it had selected for study to the Legislature since 1955. Forty-seven of these topics were approved.⁴⁸ The Legislature also has referred 11 other topics to the Commission for study.

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission also has submitted four reports on topics which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

The Commission now has an agenda consisting of 28 studies in progress,⁴⁹ some of substantial magnitude, that will require all of its

⁴⁰ *Id.* at 21.

⁴¹ *Id.* at 23.

⁴² *Id.* at 24.

⁴³ *Id.* at 25.

⁴⁴ See 2 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1958 Report at 18 (1959).

⁴⁵ *Id.* at 20.

⁴⁶ *Id.* at 21.

⁴⁷ See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1956 Report at 21 (1957).

⁴⁸ Although 48 topics actually have been approved by the Legislature at the request of the Commission, one of these topics was consolidated with a topic which the Legislature later directed the Commission to study. See 1 CAL. LAW REVISION COMM'N REP., REC. & STUDIES, 1957 Report at 12, n. 31 (1957).

⁴⁹ For a complete list of these studies, see pp. 17-19 *supra*.

energies during the current fiscal year and during the fiscal year 1962-63. For this reason the Commission will not request authority at the 1962 legislative session to undertake additional studies. The Commission will, however, request authority to expand the scope of a previously assigned study.⁵⁰ Accordingly the legislative members of the Commission will introduce at the 1962 Session of the Legislature a concurrent resolution authorizing the Commission to continue its study of previously assigned topics and, in addition, to undertake a study of the following topic:

A study to determine whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner.

The 1957 Legislature directed the Commission to undertake a study "to determine whether an award of damages made to a married person in a personal injury action should be the separate property of such married person."⁵¹ A study of this subject involves more than a determination of the nature of property interests in damages recovered by a married person in a personal injury action; it also involves the question of the extent to which the contributory negligence of one spouse may be imputed to the other.

Prior to the enactment in 1957 of Section 163.5 of the Civil Code, damages recovered by a married person in a personal injury action were community property. Hence, the courts imputed the contributory negligence of one spouse to the other because the negligent spouse otherwise would share in the compensation paid for an injury for which he was partially responsible. The result was that a nonnegligent spouse was in many instances totally deprived of compensation for injuries negligently caused by others. Section 163.5 prevents such imputation, but it has created many other problems that need legislative solution.

The Commission's preliminary study of these problems has revealed another problem which cuts across any recommendation which the Commission might make in regard to the property nature of a married person's personal injury damages. Many, if not most, actions for the recovery of damages for personal injury in which the contributory negligence of a spouse is a factor arise out of vehicle accidents. Because contributory negligence is imputed to vehicle owners under Vehicle Code Section 17150, the potential results in terms of liability are quite varied and complex when an automobile carrying a married couple is involved in an accident with a vehicle driven by a third party and both the driver spouse and the third party are negligent. Whether the innocent spouse may recover damages from a negligent third party depends in large part upon such factors—not germane to the question of culpability—as whether the automobile was held as community property or as joint tenancy property and whether a husband or a wife was driving when the innocent spouse was injured. In many situations, it is impossible to predict with certainty what the result would be.

⁵⁰ A study to determine whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.

⁵¹ Cal. Stats. 1957, Res. Ch. 202, p. 4589.

It is clear that if a vehicle is community property registered in the name of the husband or in the names of both spouses, the contributory negligence of the husband will not be imputed to the wife, but the contributory negligence of the wife will be imputed to the husband. These results flow from the fact that the husband, as manager of the community property, is the only spouse who can consent (within the meaning of Section 17150) to the other's use of the vehicle. On the other hand, if the vehicle is community property registered in the wife's name, the contributory negligence of the wife will probably be imputed to the husband and the husband's contributory negligence may possibly be imputed to the wife, but these results are not predictable with certainty. It is also clear that if the vehicle is held in joint tenancy, the negligence of one spouse is imputed to the other in all cases because each joint owner may consent (within the meaning of Section 17150) to the use of the vehicle. However, if the vehicle is community property but is registered in the names of both spouses jointly, it is not clear whether the true nature of the property can be shown to prevent imputing the contributory negligence of the husband driver to the wife.

The problems arising out of Vehicle Code Section 17150 are not confined to cases in which married persons are involved. If, for example, an automobile owner is a passenger in his own automobile and is injured by the concurring negligence of the driver and a third person, he cannot recover damages from the third person, for the driver's contributory negligence is imputed to him. He could formerly recover from the driver on established principles but Section 17158 of the Vehicle Code, originally enacted to protect against fraudulent claims and collusive suits, was amended in 1961 to provide that the owner can no longer recover from the driver. Hence, an innocent vehicle owner, injured by the concurring negligence of his driver and another, can now recover damages from no one.

A primary purpose of Section 17150 would appear to be to protect innocent third parties from the careless use of vehicles by financially irresponsible drivers. This protection is achieved by its provision that a vehicle owner is liable to an innocent third party for its negligent operation. This policy is not, of course, furthered by depriving innocent vehicle owners of all rights of action against negligent third parties. However, another purpose of Section 17150 may be to discourage vehicle owners from lending them to careless drivers. This policy might be furthered by denying the owner the right to recover against negligent third parties.

The Commission believes that a study should be made to determine what policies Section 17150 should seek to accomplish. It may be that better ways can be found to control the lending of vehicles and to allocate the risk of injury to the owner of a vehicle by another than to impose the entire risk on the one person involved who is not negligent. Accordingly, the Commission recommends that it be authorized to study whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's 1961 Report was prepared.⁵² It has the following to report:

(1) No decision of the Supreme Court of the United States holding a statute of the State unconstitutional or repealed by implication has been found.

(2) No decision of the Supreme Court of California holding a statute of the State repealed by implication has been found.

(3) Two decisions of the Supreme Court of California holding statutes of the State unconstitutional have been found.

In *City of Los Angeles v. Offner*,⁵³ the Supreme Court in a four to three decision held unconstitutional former subdivision (i) of Section 5024 of the Streets and Highways Code⁵⁴ on the ground that it purported to authorize an assessment in an amount greater than the cost of the local improvement in violation of Section 1 of Article XIII of the California Constitution.

In *American Civil Liberties Union v. Board of Education*,⁵⁵ Education Code Sections 16564 and 16565 were challenged on the grounds that they violate the First and Fourteenth Amendments to the Constitution of the United States and Article I, Sections 9 and 10, of the California Constitution. In a four to three decision, the California Supreme Court held Section 16565 unconstitutional insofar as it requires the governing board of a school district to deny the use of school buildings to certain proscribed organizations regardless of the purpose for which the use of the school buildings is sought and insofar as it, together with Section 16564, requires the governing board of a school district to deny the use of school buildings to any organization that the board finds will use the buildings to commit specified unlawful acts.

⁵² This study has been carried through 57 Adv. Cal. 102 (1961) and 68 U.S. 19 (1961).

⁵³ 55 Cal.2d 103, 10 Cal. Rptr. 470, 358 P.2d 926 (1961).

⁵⁴ Section 5024 of the Streets and Highways Code was amended in 1961 to remove the constitutional objections raised in this decision. Cal. Stats. 1961, Ch. 276, p. 1310.

⁵⁵ 55 Cal.2d 167, 10 Cal. Rptr. 647, 359 P.2d 45 (1961); accord, *American Civil Liberties Union v. Board of Education*, 55 Cal.2d 906, 10 Cal. Rptr. 659, 359 P.2d 57 (1961).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages 17-19 of this report and to study the topic listed and described on pages 20-21 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Education Code Sections 16564 and 16565 to the extent that they have been held unconstitutional.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*
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