

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

1965 Annual Report

January 1965

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

CALIFORNIA LAW REVISION COMMISSION

ROOM 30, CROTHERS HALL
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



COMMISSION MEMBERS

JOHN R. McDONOUGH, Jr.
Chairman
RICHARD H. KEATINGE
Vice Chairman
SENATOR JAMES A. COBEY
ASSEMBLYMAN ALFRED H. SONG
JOSEPH A. BALL
JAMES R. EDWARDS
SHO SATO
HERMAN F. SELVIN
THOMAS E. STANTON, Jr.
GEORGE H. MURPHY
Ex Officio

COMMISSION STAFF

JOHN H. DEMOLLY
Executive Secretary
JOSEPH B. HARVEY
Assistant Executive Secretary
JON D. SMOCK
Associate Counsel
ANNE SCHMIDT WEYLAND
Administrative Assistant

January 2, 1965

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 1964.

Respectfully submitted,

JOHN R. McDONOUGH, JR.
Chairman

TABLE OF CONTENTS

| | Page |
|---|------|
| FUNCTION AND PROCEDURE OF COMMISSION | 807 |
| PERSONNEL OF COMMISSION | 809 |
| SUMMARY OF WORK OF COMMISSION | 810 |
| STUDIES ON WHICH THE COMMISSION EXPECTS TO SUBMIT A RECOMMENDATION TO THE 1965 LEGISLATURE | 811 |
| CALENDAR OF TOPICS FOR STUDY | 812 |
| Studies in Progress | 812 |
| Studies Which the Legislature Has Directed the Commission to Make | 812 |
| Studies Authorized by the Legislature Upon the Recommenda- tion of the Commission | 813 |
| Studies for Future Consideration | 814 |
| REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCON- STITUTIONAL | 815 |
| RECOMMENDATIONS | 816 |

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1964

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, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.⁴ If the research study has not been previously published, it also is included in this pamphlet.

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.

³ See CAL. GOVT. CODE § 10335.

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.

The pamphlets are 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.

A total of 57 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Thirty-nine of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ eight in 1961,⁹ and eight in 1963.¹⁰ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.¹¹

⁵ See CAL. GOVT. 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.)

Cal. Stats. 1955, 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. 1498, 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.)

¹⁰ Cal. Stats. 1963, Ch. 1681. (Sovereign immunity—tort liability of public entities and public employees.)

Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)

Cal. Stats. 1963, Ch. 1682. (Sovereign immunity—insurance coverage for public entities and public employees.)

Cal. Stats. 1963, Ch. 1683. (Sovereign immunity—defense of public employees.)

Cal. Stats. 1963, Ch. 1684. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1685. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1686. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

¹¹ CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

Honorable Alfred H. Song of Monterey Park, Member of the Assembly for the Forty-fifth Assembly District, was appointed the Assembly Member of the Commission to fill the vacancy created when Honorable Pearce Young of Napa, Member of the Assembly for the Fifth Assembly District, resigned.

As of January 2, 1965, the membership of the Law Revision Commission is:

| | <i>Term expires</i> |
|--|---------------------|
| John R. McDonough, Jr., Stanford, <i>Chairman</i> ----- | October 1, 1967 |
| Richard H. Keatinge, Los Angeles, <i>Vice Chairman</i> ----- | October 1, 1967 |
| Hon. James A. Cobey, Merced, <i>Senate Member</i> ----- | * |
| Hon. Alfred H. Song, Monterey Park, <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, 1967 |
| Sho Sato, Berkeley, <i>Member</i> ----- | October 1, 1965 |
| Herman F. Selvin, Los Angeles, <i>Member</i> ----- | October 1, 1967 |
| Thomas E. Stanton, Jr., San Francisco, <i>Member</i> ----- | October 1, 1965 |
| George H. Murphy, 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. Until his death on September 26, 1964, Angus C. Morrison filled this position. At the time that this report was prepared for printing, no successor to Mr. Morrison had been named; Mr. Murphy, Chief Deputy, was serving in his stead.

SUMMARY OF WORK OF COMMISSION

During 1964, the Law Revision Commission was engaged in two principal tasks:

- (1) Work on various assignments given to the Commission by the Legislature.¹ The Commission has devoted substantially all of its time during 1964 to a study of the rules of evidence and the preparation of a new Evidence Code.
- (2) 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.²

The Commission held two two-day meetings and nine three-day meetings in 1964.

¹ See p. 811 of this report *infra*.

² See p. 815 of this report *infra*.

•

STUDIES ON WHICH THE COMMISSION EXPECTS TO SUBMIT A RECOMMENDATION TO THE 1965 LEGISLATURE

The Commission expects to submit a recommendation on the following topics to the 1965 Legislature:

- (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. (The Commission plans to submit a new Evidence Code for enactment at the 1965 legislative session.)
- (2) Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised. (Legislation relating to this topic was enacted at the 1963 legislative session upon recommendation of the Commission.¹ The Commission has reviewed the 1963 legislation and plans to submit to the 1965 Legislature a recommendation for revisions clarifying the 1963 legislation.)

¹ See this report, *supra* at 808 n.10, and *infra* at 812 n.3.

CALENDAR OF TOPICS FOR STUDY

STUDIES IN PROGRESS

During the year covered by this report, the Commission had on its agenda the topics listed below, each of which it had been authorized and directed by the Legislature to study. The Commission proposes to continue its study of these topics.

*Studies Which the Legislature Has Directed the Commission To Make*¹

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 an award of damages made to a married person in a personal injury action should be the separate property of such married person.
4. 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.
5. Whether the laws relating to bail should be revised.
6. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.²
7. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.³

¹ 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 and 2: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 3 and 4: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

No. 5: Cal. Stats. 1957, Res. Ch. 287, p. 4744.

No. 6: Cal. Stats. 1956, Res. Ch. 42, p. 263.

No. 7: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

² See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings; Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings; Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1-5 (1961). See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 701 (1963). For a legislative history of this recommendation, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 213 (1963).

³ See *Recommendations Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 1 (1963).

*Studies Authorized by the Legislature Upon the Recommendation of the Commission*¹

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.²
2. Whether the law relating to escheat of personal property should be revised.³
3. Whether the law relating to the rights of a putative spouse should be revised.⁴
4. Whether the law respecting post conviction sanity hearings should be revised.⁵
5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.⁶
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised.⁷
7. Whether the Small Claims Court Law should be revised.⁸
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.⁹ —
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.¹⁰
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.¹¹
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.¹²
12. Whether the provisions of the Penal Code relating to arson should be revised.¹³
13. Whether Civil Code Section 1698 should be repealed or revised.¹⁴
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.¹⁵

¹ 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. 4539.

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.

No. 21: Cal. Stats. 1962, Res. Ch. 23, p. 94.

² 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).

³ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 25 (1957).

⁴ *Id.* at 26.

⁵ *Id.* at 28.

⁶ *Id.* at 29.

⁷ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 15 (1957).

⁸ *Id.* at 16.

⁹ *Id.* at 17.

¹⁰ *Id.* at 18.

¹¹ *Ibid.*

¹² *Id.* at 19.

¹³ *Id.* at 20.

¹⁴ *Id.* at 21.

¹⁵ *Id.* at 23.

15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.¹⁶
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.¹⁷
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.¹⁸
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.¹⁹
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.²⁰
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.²¹
21. 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.²²

STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code, the Commission has reported 58 topics that it had selected for study to the Legislature since 1955. Forty-eight of these topics were approved.¹ The Legislature also has referred 11 other topics to the Commission for study.

A total of 57 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 as to 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,² some of substantial magnitude, that will require all of its energies during the current fiscal year and during the fiscal year 1965-66. For this reason the Commission will not request authority at the 1965 legislative session to undertake additional studies.

¹⁶ *Id.* at 24.

¹⁷ *Id.* at 25.

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

¹⁹ *Id.* at 20.

²⁰ *Id.* at 21.

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

²² See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES 20 (1963).

¹ Although 49 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).

² For a complete list of these studies, see pp. 812-814 *supra*.

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 last Annual Report was prepared.¹ It has the following to report:

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

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

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

In *Department of Mental Hygiene v. Kirchner*,² the Supreme Court held unconstitutional Section 6650 of the Welfare and Institutions Code to the extent that it imposes upon designated relatives of a person committed to a state institution for the mentally ill liability for the care, support, and maintenance of such person.

In *Canon v. Justice Court*,³ the Supreme Court held Section 12047 of the Elections Code, which relates to the identification of persons responsible for certain types of election campaign publications, unconstitutional.

In *People v. Woody*,⁴ the Supreme Court held unconstitutional Section 11500 of the Health and Safety Code as applied to certain persons using peyote in a bona fide pursuit of a religious faith.

¹ This study has been carried through 61 Adv. Cal. 941 (1964) and 378 U.S. 589 (1964).

² 60 Cal.2d 716, 36 Cal. Rptr. 488, 388 P.2d 720 (1964).

³ 61 Cal.2d ---, 39 Cal. Rptr. 228, 383 P.2d 428 (1964).

⁴ 61 Cal.2d ---, 40 Cal. Rptr. 69, 394 P.2d 813 (1964).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages 812-814 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 12047 of the Elections Code and Section 6650 of the Welfare and Institutions Code to the extent that these sections have been held unconstitutional.

o

printed in CALIFORNIA OFFICE OF STATE PRINTING

34392—604 11-64 3M

(816)
(817-900 blank)