

STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report

December 1972

CALIFORNIA LAW REVISION COMMISSION  
School of Law  
Stanford University  
Stanford, California 94305

# THE CALIFORNIA LAW REVISION COMMISSION

## COMMISSION MEMBERS

JOHN D. MILLER <i>Chairman</i>	NOBLE K. GREGORY <i>Member</i>
MARC SANDSTROM <i>Vice Chairman</i>	JOHN N. McLAURIN <i>Member</i>
ALFRED H. SONG <i>Member of the Senate</i>	THOMAS E. STANTON, JR. <i>Member</i>
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KRISTINE A. MAZUR <i>Secretary</i>	

## NOTE

This pamphlet begins on page 1001. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 11 of the Commission's *Reports, Recommendations, and Studies*.

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SCHOOL OF LAW—STANFORD UNIVERSITY  
STANFORD, CALIFORNIA 94305  
(415) 321-2300, EXT. 2479

JOHN D. MILLER

*Chairman*

MARC SANDSTROM

*Vice Chairman*

SENATOR ALFRED H. SONG

ASSEMBLYMAN CARLOS J. MOORHEAD

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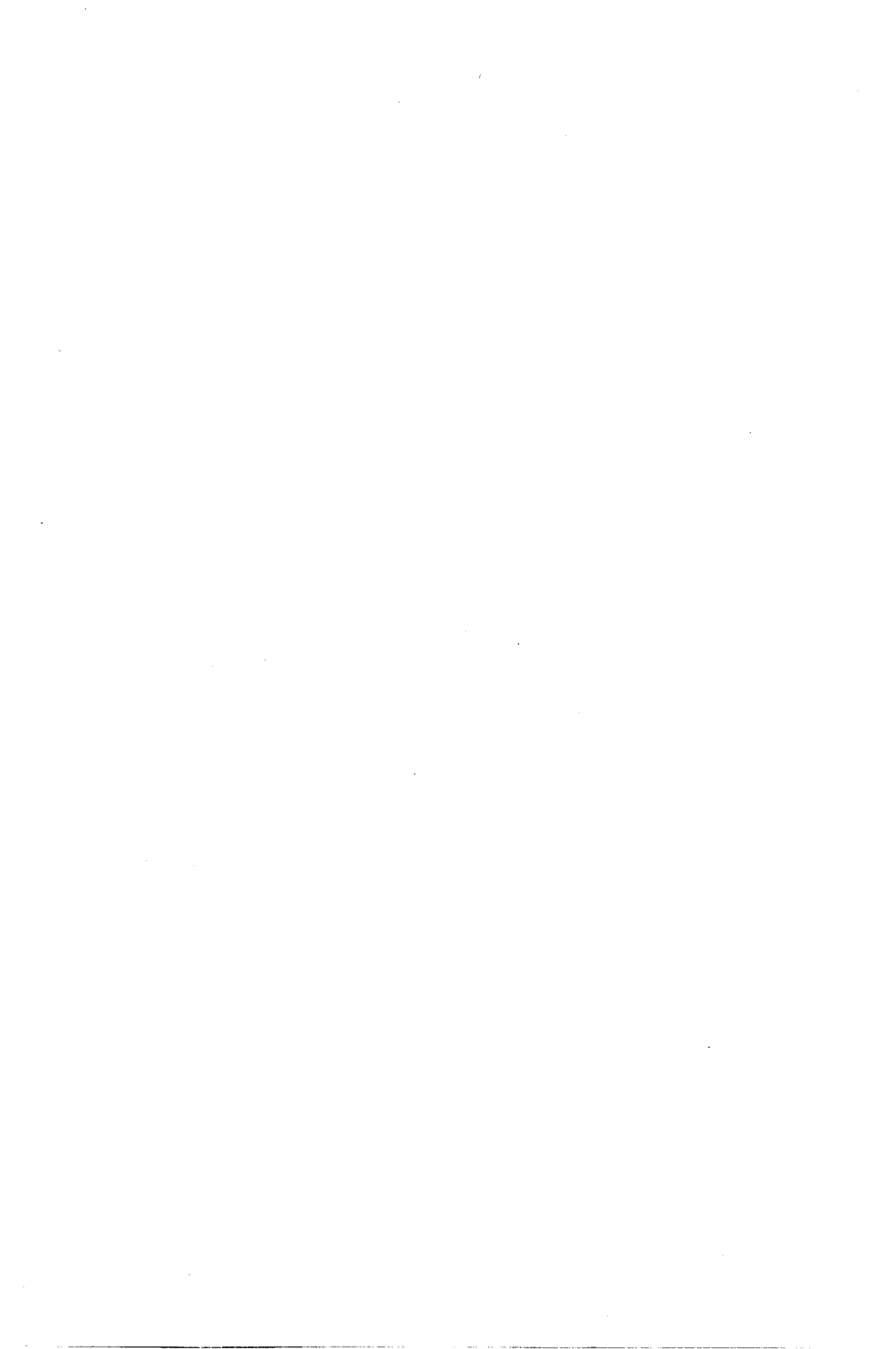
December 1, 1972

**To: THE HONORABLE RONALD REAGAN**  
*Governor of California* and  
**THE LEGISLATURE OF CALIFORNIA**

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1972.

This report was printed during the first week of December 1972 so that it would be available in printed form early in January 1973. Accordingly, it does not reflect changes in Commission membership after December 1, 1972.

Respectfully submitted,  
**JOHN D. MILLER**  
Chairman



## CONTENTS

	<i>Page</i>
FUNCTION AND PROCEDURE OF COMMISSION.....	1007
PERSONNEL OF COMMISSION .....	1010
SUMMARY OF WORK OF COMMISSION .....	1011
1973 LEGISLATIVE PROGRAM.....	1012
MAJOR STUDIES IN PROGRESS .....	1013
Creditors' Remedies .....	1013
Condemnation Law and Procedure .....	1015
CALENDAR OF TOPICS FOR STUDY .....	1016
Topics Authorized for Study .....	1016
Topics Under Active Consideration .....	1016
Other Topics Authorized for Study .....	1018
Topics Continued on Calendar for Further Study..	1019
Topics to Be Removed From Calendar of Topics .....	1022
Topics for Future Consideration.....	1023
LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1972 LEGISLATIVE SESSION .....	1024
Resolutions Approving Topics for Study.....	1024
Employees' Earnings Protection Law .....	1024
Pleading.....	1024
Evidence Code .....	1025
REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL.....	1126
RECOMMENDATIONS .....	1029
CUMULATIVE TABLE OF MEASURES ENACTED UPON COMMISSION RECOMMENDATION .....	1030
PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION.....	1034





# REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1972

## 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.<sup>1</sup>

The principal duties of the Law Revision Commission are to:

(1) Examine the common law and statutes for the purpose of discovering defects and anachronisms.

(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.<sup>2</sup>

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.<sup>3</sup>

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Many 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

<sup>1</sup> See CAL. GOVT. CODE §§ 10300-10340.

<sup>2</sup> 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 California Supreme Court or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

<sup>3</sup> See CAL. GOVT. CODE § 10335.

the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration. In some cases, the research study is prepared by a member of the Commission's staff.

The research study includes a discussion of the existing law and the defects therein and suggests possible methods of eliminating those defects. The detailed research study 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.<sup>4</sup> If the research study has not been previously published,<sup>5</sup> it usually is published in the pamphlet containing the recommendation.

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.<sup>6</sup> 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.<sup>7</sup> 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.<sup>8</sup>

<sup>4</sup> 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.

<sup>5</sup> For background studies published in law reviews during 1972, see Sweet, *Liquidated Damages in California*, 60 CAL. L. REV. 84 (1972); Timbie, *Modification of Written Contracts in California*, 23 HASTINGS L.J. 1549 (1972). See also Miller, *Recent Developments in the Eminent Domain Field*, 40 THE APPRAISAL JOURNAL 286 (1972), describing the work of the California Law Revision Commission in the eminent domain field. For a listing of background studies published in law reviews prior to 1972, see 10 CAL. L. REVISION COMM'N REPORTS 1108 n.5 (1971).

<sup>6</sup> See CAL. GOVT. CODE § 10333.

<sup>7</sup> For a step by step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 CAL. L. REVISION COMM'N REPORTS 3 (1965).

<sup>8</sup> For use of Commission reports as an aid in the interpretation of statutes, see, e.g., *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-250, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968).

A total of 93 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.<sup>9</sup> Sixty-six of these bills were enacted at the first session to which they were presented; sixteen bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 93 bills recommended, 82 eventually became law.<sup>10</sup> One of the proposed constitutional amendments was approved and ratified by the people; the other was not approved by the Legislature.

Commission recommendations have resulted in the enactment of legislation affecting 2,184 sections of the California statutes: 1,106 sections have been added, 542 sections amended, and 536 sections repealed.

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<sup>9</sup> The number of bills actually introduced was in excess of 93 since, in some cases, the substance of the same bill was introduced at a subsequent session and, in the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly. For a complete list of bills enacted and constitutional amendments approved on recommendation of the Commission, see pages 1030-1033 *infra*.

<sup>10</sup> Legislation adopting the substance of one recommended bill that did not become law was later enacted but not on recommendation of the Commission. See Cal. Stats. 1971, Ch. 1571, § 1, enacting CODE CIV. PROC. § 612.5. See also *Recommendation and Study Relating to Taking Instructions to the Jury Room*, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957); *Recommendation Concerning Study Relating to Taking Instructions to the Jury Room*, 10 CAL. L. REVISION COMM'N REPORTS 1029 (1971) (recommending that topic be removed from Commission's agenda).

## PERSONNEL OF COMMISSION

As of December 1, 1972, the membership of the Law Revision Commission is:

	<i>Term expires</i>
John D. Miller, Long Beach, <i>Chairman</i> .....	October 1, 1973
Marc Sandstrom, San Diego, <i>Vice Chairman</i> .....	October 1, 1975
Hon. Alfred H. Song, Monterey Park, <i>Senate Member</i> ....	*
Hon. Carlos J. Moorhead, Glendale, <i>Assembly Member</i> ....	*
John J. Balluff, Palos Verdes Estates, <i>Member</i> .....	October 1, 1975
Noble K. Gregory, San Francisco, <i>Member</i> .....	October 1, 1975
John N. McLaurin, Los Angeles, <i>Member</i> .....	October 1, 1975
Thomas E. Stanton, Jr., San Francisco, <i>Member</i> .....	October 1, 1973
Howard R. Williams, Stanford, <i>Member</i> .....	October 1, 1973
George H. Murphy, Sacramento, <i>ex officio Member</i> .....	†

In June 1972, Mr. Stan G. Ulrich was appointed to the Commission's legal staff to fill the vacancy created by the resignation of Mr. E. Craig Smay.

During 1972, the following Stanford Law School students were employed by the Commission on a part-time, intermittent basis: Scott W. Bowen, James Ching, Roger La Brucherie, Paul F. Perret, Patricia Radez, and Kathleen Thomas. In August 1972, Mr. Bruce Donald, an Australian lawyer and visiting Harkness Fellow, commenced study of the operations of the Commission; during his stay, he will actively participate in the Commission's work as an unpaid member of the Commission's legal staff.

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\* 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.

### SUMMARY OF WORK OF COMMISSION

During the past year, the Law Revision Commission was engaged in three principal tasks:

(1) Presentation of its legislative program to the Legislature.<sup>1</sup>

(2) Work on various assignments given to the Commission by the Legislature.<sup>2</sup>

(3) 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.<sup>3</sup>

During the past year, the Commission has received and considered a number of suggestions for topics that might be studied by the Commission. Some of these suggested topics appear to be in need of study. Nevertheless, because of the limited resources available to the Commission and the substantial topics already on its agenda, the Commission has determined not to request authority to study any new topics.

The Commission held one one-day meeting, four two-day meetings, and six three-day meetings in 1972.

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<sup>1</sup> See pages 1024–1025 *infra*.

<sup>2</sup> See pages 1012–1021 *infra*.

<sup>3</sup> See pages 1026–1028 *infra*.

### 1973 LEGISLATIVE PROGRAM

The Commission will submit three recommendations to the 1973 Legislature:

(1) *Recommendation and Study Relating to Civil Arrest* (July 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 1 (1973).

(2) *Recommendation Relating to Wage Garnishment and Related Matters* (October 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 101 (1973).

(3) *Recommendation Relating to the Claim and Delivery Statute* (December 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 301 (1973).

The Commission also recommends that four topics be removed from its calendar (see page 1022 *infra*).

## MAJOR STUDIES IN PROGRESS

## Creditors' Remedies

Resolution Chapter 202 of the Statutes of 1957 authorized the Commission to make a study to determine whether the law relating to attachment, garnishment, and property exempt from execution should be revised. Beginning in 1969, decisions of the United States and California Supreme Courts held that significant portions of the existing statutory provisions relating to creditors' remedies constituted a taking of property in violation of constitutional due process requirements.<sup>1</sup> Therefore, by Resolution Chapter 27 of the Statutes of 1972, the scope of the topic assigned to the Commission was expanded to cover whether the law relating to attachment, garnishment, execution, repossession of property (including the claim and delivery statute, Chapter 2 (commencing with Section 509) of Title 7 of Part 2 of the Code of Civil Procedure, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, and related matters should be revised. The Commission, working with a special committee of the State Bar,<sup>2</sup> is now actively considering this topic. Professor William D. Warren, Stanford Law School, and Professor Stefan A. Riesenfeld, Boalt Hall Law School, University of California at Berkeley, are serving as consultants to the Commission.

Any comprehensive revision of the law relating to creditors' remedies will necessarily require extended study. For this reason, recommendations to deal with problems in need of immediate legislative attention will be submitted to the Legislature prior to completion of work on the comprehensive revision. A recommendation was submitted to the 1971 Legislature dealing with discharge from employment because of garnishment of wages. See *Recommendation Relating to Attachment, Garnishment, and Exemptions from Execution: Discharge From Employment*, 10 CAL. L. REVISION COMM'N

<sup>1</sup> *E.g.*, *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969); *McCallop v. Carberry*, 1 Cal.3d 903, 464 P.2d 122, 83 Cal. Rptr. 666 (1970). See cases cited in notes 4 and 5 *infra*.

<sup>2</sup> As of December 1972, the members of this committee were Ferdinand F. Fernandez, chairman; Nathan Frankel, Edward N. Jackson, Ronald N. Paul, Arnold M. Quittner, and William W. Vaughn.

REPORTS 1147 (1971). The recommended legislation was enacted. See Cal. Stats. 1971, Ch. 1607. A recommendation dealing with wage garnishment procedure and related matters was submitted to the 1972 Legislature. See *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). The recommended legislation—Senate Bill 88 of the 1972 Regular Session—was not enacted,<sup>3</sup> and a revised recommendation on this subject will be submitted to the 1973 Legislature. See *Recommendation Relating to Wage Garnishment and Related Matters* (October 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). The Commission also will submit a recommendation relating to civil arrest to the 1973 Legislature. See *Recommendation and Study Relating to Civil Arrest* (July 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 1 (1973).

In 1971, the California Supreme Court held generally unconstitutional the procedures provided in California for prejudgment judicial repossession by secured creditors<sup>4</sup> and prejudgment attachment by unsecured creditors.<sup>5</sup> Stopgap legislation designed to remedy the defects in the repossession<sup>6</sup> and attachment<sup>7</sup> procedures was enacted by the 1972 Legislature, but this legislation will be operative only until December 31, 1975. Accordingly, the study of prejudgment repossession and prejudgment attachment is being given top priority by the Commission. The Commission will submit a recommendation relating to the claim and delivery statute (judicial repossession) to the 1973 Legislature. See *Recommendation Relating to the Claim and Delivery Statute* (December 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 301 (1973). The Commission plans to submit a recommendation on prejudgment attachment to the 1974 Legislature.

<sup>3</sup> For the legislative history of this legislation, see page 1024 *infra*.

<sup>4</sup> *Blair v. Pitchess*, 5 Cal.3d 258, 486 P.2d 1242, 96 Cal. Rptr. 42 (1971). See also *Fuentes v. Shevin*, 407 U.S. 67 (1972). Cf. *Adams v. Egle*, 38 F. Supp. 614 (S.D. Cal. 1972) (nonjudicial repossession provisions of Commercial Code unconstitutional).

<sup>5</sup> *Randone v. Appellate Department*, 5 Cal.3d 536, 488 P.2d 13, 96 Cal. Rptr. 709 (1971). See also *National General Corp. v. Dutch Inns of America, Inc.*, 15 Cal. App.3d 490, 93 Cal. Rptr. 343 (1971); *Property Research Financial Corp. v. Superior Court*, 23 Cal. App.3d 413, 100 Cal. Rptr. 233 (1972); *People v. Allstate Leasing Corp.*, 24 Cal. App.3d 973, 101 Cal. Rptr. 470 (1972); *Damazo v. McIntyre*, 26 Cal. App.3d 18, 102 Cal. Rptr. 609 (1972); *Banks v. Superior Court*, 26 Cal. App.3d 143, 102 Cal. Rptr. 590 (1972).

<sup>6</sup> Cal. Stats. 1972, Ch. 855.

<sup>7</sup> Cal. Stats. 1972, Ch. 550.



### Condemnation Law and Procedure

The Commission is now engaged in the study of condemnation law and procedure and tentatively plans to submit a recommendation for a comprehensive statute on this subject to the 1975 Legislature.

The Commission plans to publish a tentative recommendation during 1974 which will include a draft of a comprehensive eminent domain statute. The comments and criticisms received from interested persons and organizations on the tentative statute will be considered before the statute to be recommended to the Legislature is drafted.

The Commission has retained three consultants to provide expert assistance in the condemnation study: Gideon Kanner, Los Angeles attorney, Paul E. Overton, San Diego attorney, and Norman E. Matteoni, Deputy Counsel of Santa Clara County.

Prior to 1975, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of immediate attention. The Commission submitted the first such recommendation (exchange of valuation data) to the 1967 Legislature,<sup>8</sup> a second recommendation (recovery of the condemnee's expenses on abandonment of an eminent domain proceeding) to the 1968 Legislature,<sup>9</sup> and a third recommendation (arbitration of just compensation) to the 1970 Legislature.<sup>10</sup>

<sup>8</sup> See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1104.

<sup>9</sup> See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 133.

<sup>10</sup> See *Recommendation Relating to Arbitration of Just Compensation*, 9 CAL. L. REVISION COMM'N REPORTS 123 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1018 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 417.

## CALENDAR OF TOPICS FOR STUDY

### Topics Authorized for Study

The Commission has on its calendar of topics the topics listed below. Each of these topics has been authorized for Commission study by the Legislature.<sup>1</sup>

### Topics Under Active Consideration

During the next year, the Commission plans to devote substantially all of its time to consideration of the following topics:

**Creditors' remedies.** Whether the law relating to attachment, garnishment, execution, repossession of property (including the claim and delivery statute, Chapter 2 (commencing with Section 509) of Title 7 of Part 2 of the Code of Civil Procedure, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, and related matters should be revised.<sup>2</sup>

**Condemnation law and procedure.** Whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings.<sup>3</sup>

<sup>1</sup> 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.

<sup>2</sup> Authorized by Cal. Stats. 1972, Res. Ch. 27. See also Cal. Stats. 1957, Res. Ch. 202, at 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 15 (1957).

See *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment*, 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1126-1127 (1971). The recommended legislation was enacted. See Cal. Stats. 1971, Ch. 1607.

See also *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). For a legislative history of this recommendation, see 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973). The recommended legislation was not enacted. The Commission will submit a revised recommendation to the 1973 Legislature. See *Recommendation Relating to Wage Garnishment and Related Matters* (October 1972), reprinted in 11 CAL. L. REVISION COMM'N REPORTS 101 (1973).

See also *Recommendation and Study Relating to Civil Arrest* (July 1972), reprinted in 11 CAL. L. REVISION COMM'N REPORTS 1 (1973); *Recommendation Relating to the Claim and Delivery Statute* (December 1972), reprinted in 11 CAL. L. REVISION COMM'N REPORTS 301 (1973). These recommendations will be submitted to the 1973 Legislature.

<sup>3</sup> Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289; see also Cal. Stats. 1956, Res. Ch. 42, at 263; 4 CAL. L. REVISION COMM'N REPORTS 115 (1963).

One or more of the following topics will be considered during the next year if time and resources permit:

**Right of nonresident aliens to inherit.** Whether the law relating to the right of nonresident aliens to inherit should be revised.<sup>4</sup>

**Liquidated damages.** Whether the law relating to liquidated damages in contracts and, particularly, in leases, should be revised.<sup>5</sup>

**Oral modification of a written contract.** Whether Section 1698 of the Civil Code (oral modification of a written contract) should

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. L. REVISION COMM'N REPORTS at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS, Legislative History at 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Ch. 1613 (taking possession and passage of title). The substance of two of these recommendations was incorporated in legislation enacted in 1965. Cal. Stats. 1965, Ch. 1151 (evidence in eminent domain proceedings); Ch. 1649 and Ch. 1650 (reimbursement for moving expenses).

See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. L. REVISION COMM'N REPORTS 701 (1963). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 213 (1963). See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1104 (exchange of valuation data).

See also *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 133.

See also *Recommendation Relating to Arbitration of Just Compensation*, 9 CAL. L. REVISION COMM'N REPORTS 123 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1018 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 417.

The Commission is now engaged in the study of this topic and tentatively plans to submit a recommendation for a comprehensive statute to the 1975 Legislature. See 11 CAL. L. REVISION COMM'N REPORTS 1015 (1973).

<sup>4</sup> Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888. For a background comment on this topic (prepared at the suggestion of the Commission), see *Inheritance Rights of Nonresident Aliens—A Look at California's Reciprocity Statute*, 3 PAC. L.J. 551 (1972). This comment does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation. The Commission has retained Professor Babette B. Barton, Boalt Hall Law School, University of California at Berkeley, as a consultant on this topic.

<sup>5</sup> Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888. For a background study prepared by the Commission's consultant (Professor Justin Sweet, Boalt Hall Law School, University of California at Berkeley) on this topic, see Sweet, *Liquidated Damages in California*, 60 CAL. L. REV. 84 (1972). This study does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation.

be repealed or revised.<sup>6</sup>

**Lease Law.** Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised.<sup>7</sup>

### Other Topics Authorized for Study

The Commission has not yet begun the preparation of a recommendation on the topics listed below.

**Child custody and related matters.** Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised.<sup>1</sup>

**Nonprofit corporations.** Whether the law relating to nonprofit corporations should be revised.<sup>2</sup>

**Partition procedures.** Whether the various sections of the Code of Civil Procedure relating to partition should be revised and

<sup>6</sup> Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957). For a background study prepared by a former part-time member of the Commission's staff, see Timbie, *Modification of Written Contracts in California*, 23 HASTINGS L.J. 1549 (1972). This study does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation.

<sup>7</sup> Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289; see also Cal. Stats. 1957, Res. Ch. 202, at 4589.

See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

See also *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM'N REPORTS 401 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 98 (1969).

See also *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM'N REPORTS 153 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1018 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 89.

Professor Jack H. Friedenthal, Stanford Law School, has been retained as a consultant on this topic. He is preparing a background study on disposition of the tenant's property when a lease is terminated and the property is abandoned.

<sup>1</sup> Authorized by Cal. Stats. 1972, Res. Ch. 27. See 10 CAL. L. REVISION COMM'N REPORTS 1122 (1971). See also Cal. Stats. 1956, Res. Ch. 42, at 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957).

A background study on one aspect of the topic has been prepared by the Commission's consultant. See Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 STAN. L. REV. 703 (1971). This study does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation. The Commission has retained the same consultant (Professor Brigitte M. Bodenheimer, Law School, University of California at Davis) to prepare a background study on another aspect of the topic—adoption—and she is now working on this new study.

<sup>2</sup> Authorized by Cal. Stats. 1970, Res. Ch. 54, at 3547; see also 9 CAL. L. REVISION COMM'N REPORTS 107 (1969).

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.<sup>3</sup>

**Parol evidence rule.** Whether the parol evidence rule should be revised.<sup>4</sup>

**Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised.<sup>5</sup>

**Arbitration.** Whether the law relating to arbitration should be revised.<sup>6</sup>

### Topics Continued on Calendar for Further Study

On the following topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's Calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments.

**Governmental liability.** Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.<sup>1</sup>

<sup>3</sup> Authorized by Cal. Stats. 1959, Res. Ch. 218, at 5792; see also Cal. Stats. 1956, Res. Ch. 42, at 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957). The Commission has retained Mr. Garrett H. Elmore as the consultant on this topic. Mr. Elmore is preparing a background study.

<sup>4</sup> Authorized by Cal. Stats. 1971, Res. Ch. 75; see also 10 CAL. L. REVISION COMM'N REPORTS 1031 (1971).

<sup>5</sup> Authorized by Cal. Stats. 1971, Res. Ch. 75.

<sup>6</sup> Authorized by Cal. Stats. 1968, Res. Ch. 110, at 3103; see also 8 CAL. L. REVISION COMM'N REPORTS 1325 (1967).

This is a supplemental study; the present California arbitration law was enacted in 1961 upon Commission recommendation. See *Recommendation and Study Relating to Arbitration*, 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). See also Cal. Stats. 1961, Ch. 461.

<sup>1</sup> Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589.

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. L. REVISION COMM'N REPORTS 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. L. REVISION COMM'N REPORTS 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. L. REVISION COMM'N REPORTS 1 (1963). See also Cal. Stats. 1963, Ch. 1681 (tort liability of public entities and public employees), Ch. 1715 (claims, actions and judgments against public

## Evidence. Whether the Evidence Code should be revised.<sup>2</sup>

entities and public employees), Ch. 1682 (insurance coverage for public entities and public employees), Ch. 1683 (defense of public employees), Ch. 1684 (workmen's compensation benefits for persons assisting law enforcement or fire control officers), Ch. 1685 (amendments and repeals of inconsistent special statutes), Ch. 1686 (amendments and repeals of inconsistent special statutes), Ch. 2029 (amendments and repeals of inconsistent special statutes).

See also *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 914 (1965). See also Cal. Stats. 1965, Ch. 653 (claims and actions against public entities and public employees), Ch. 1527 (liability of public entities for ownership and operation of motor vehicles).

See also *Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees*, 9 CAL. L. REVISION COMM'N REPORTS 49 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 98 (1969). See also *Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees*, 9 CAL. L. REVISION COMM'N REPORTS 175 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1021 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 104.

See also *Recommendation Relating to Sovereign Immunity: Number 10—Revisions of the Governmental Liability Act*, 9 CAL. L. REVISION COMM'N REPORTS 801 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1020 (1971). Most of the recommended legislation was enacted. See Cal. Stats. 1970, Ch. 662 (entry to make tests) and Ch. 1099 (liability for use of pesticides, liability for damages from tests).

<sup>2</sup> Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289.

See *Recommendation Proposing an Evidence Code*, 7 CAL. L. REVISION COMM'N REPORTS 1 (1965). A series of tentative recommendations and research studies relating to the Uniform Rules of Evidence was published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 CAL. L. REVISION COMM'N REPORTS at 1, 101, 201, 601, 701, 801, 901, 1001, and *Appendix* (1964). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 912-914 (1965). See also *Evidence Code With Official Comments*, 7 CAL. L. REVISION COMM'N REPORTS 1001 (1965). See also Cal. Stats. 1965, Ch. 299 (Evidence Code).

See also *Recommendations Relating to the Evidence Code: Number 1—Evidence Code Revisions; Number 2—Agricultural Code Revisions; Number 3—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101, 201, 301 (1967). For a legislative history of these recommendations, see 8 CAL. L. REVISION COMM'N REPORTS 1315 (1967). See also Cal. Stats. 1967, Ch. 650 (Evidence Code revisions), Ch. 262 (Agricultural Code revisions), Ch. 703 (Commercial Code revisions).

See also *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article*, 9 CAL. L. REVISION COMM'N REPORTS 501 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 98 (1969).

See also *Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code*, 9 CAL. L. REVISION COMM'N REPORTS 137 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1018 (1971). Some of the recommended legislation was enacted. See Cal. Stats. 1970, Ch. 69 (*res ipsa loquitur*), Ch. 1397 (psychotherapist-patient privilege).

See also report concerning *Proof of Foreign Official Records*, 10 CAL. L. REVISION COMM'N REPORTS 1022 (1971) and Cal. Stats. 1970, Ch. 41.

This topic is under continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code and whether changes are needed in other codes to conform them to the Evidence Code. See 10 CAL. L. REVISION COMM'N REPORTS 1015 (1971). See also Cal. Stats. 1972, Ch. 764.

**Inverse condemnation.** Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including but not limited to liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised.<sup>3</sup>

**Counterclaims and cross-complaints.** Whether the law relating to counterclaims and cross-complaints should be revised.<sup>4</sup>

**Joinder of causes of action.** Whether the law relating to joinder of causes of action should be revised.<sup>5</sup>

**Escheat; unclaimed property.** Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised.<sup>6</sup>

<sup>3</sup> Authorized by Cal. Stats. 1970, Res. Ch. 46, at 3541; see also Cal. Stats. 1965, Res. Ch. 130, at 5289.

See *Recommendation Relating to Inverse Condemnation: Insurance Coverage*, 10 CAL. L. REVISION COMM'N REPORTS 1051 (1971). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1126 (1971). The recommended legislation was enacted. See Cal. Stats. 1971, Ch. 140.

See also *Recommendation Relating to Sovereign Immunity: Number 10—Revisions of the Governmental Liability Act*, 9 CAL. L. REVISION COMM'N REPORTS 801 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1020 (1971). Most of the recommended legislation was enacted. See Cal. Stats. 1970, Ch. 662 (entry to make tests) and Ch. 1099 (liability for use of pesticides, liability for damages from tests). See also *Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees*, 9 CAL. L. REVISION COMM'N REPORTS 175 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1021 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 104.

See also Van Alstyne, *California Inverse Condemnation Law*, 10 CAL. L. REVISION COMM'N REPORTS 1 (1971).

The Commission's consultant (Professor Arvo Van Alstyne, College of Law, University of Utah) is preparing a background study on the procedural aspects of inverse condemnation.

<sup>4</sup> Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888; see also 9 CAL. L. REVISION COMM'N REPORTS 25 (1969).

See *Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions*, 10 CAL. L. REVISION COMM'N REPORTS 501 (1971). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1125-1126 (1971). The recommended legislation was enacted. See Cal. Stats. 1971, Ch. 244. See also Cal. Stats. 1971, Ch. 950; Cal. Stats. 1972, Ch. 73.

<sup>5</sup> *Ibid.*

<sup>6</sup> Authorized by Cal. Stats. 1967, Res. Ch. 81, at 4592; see also Cal. Stats. 1956, Res. Ch. 42, at 263.

See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 16-18 (1969). Most of the recommended legislation was enacted. See Cal. Stats. 1968, Ch. 247 (escheat of decedent's estate) and Ch. 356 (unclaimed property act).

### Topics to Be Removed From Calendar of Topics

On the following topics, studies and recommendations relating to the topics have been made and legislation enacted. Because of their nature, these topics do not need to be continued on the Commission's calendar for further study.<sup>7</sup>

**Fictitious business names.** Whether the law relating to the use of fictitious names should be revised.<sup>8</sup>

**Quasi-community property.** Whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised.<sup>9</sup>

**Powers of appointment.** Whether the law relating to a power of appointment should be revised.<sup>10</sup>

**Unincorporated associations.** Whether the law relating to suit by and against partnerships and other incorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised.<sup>11</sup>

<sup>7</sup> Some of the topics upon which studies and recommendations have been made are nevertheless retained on the Commission's calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments. See pages 1019-1021 *supra*.

<sup>8</sup> Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589.

See *Recommendation Relating to Fictitious Business Names*, 9 CAL. L. REVISION COMM'N REPORTS 71 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 98 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 114.

See also *Recommendation and Study Relating to Fictitious Business Names*, 9 CAL. L. REVISION COMM'N REPORTS 601 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1019 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 618.

<sup>9</sup> Authorized by Cal. Stats. 1966, Res. Ch. 9, at 241.

See *Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). The recommended legislation was enacted. See Cal. Stats. 1957, Ch. 490. See *Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere*, 3 CAL. L. REVISION COMM'N REPORTS at I-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). The recommended legislation was enacted. See Cal. Stats. 1961, Ch. 636.

See also *Recommendation Relating to Quasi-Community Property*, 9 CAL. L. REVISION COMM'N REPORTS 113 (1969). For a legislative history of this recommendation, see 10 CAL. L. REVISION COMM'N REPORTS 1019 (1971). The recommended legislation was enacted. See Cal. Stats. 1970, Ch. 312.

<sup>10</sup> Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289.

See *Recommendation and Study Relating to Powers of Appointment*, 9 CAL. L. REVISION COMM'N REPORTS 301 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 98 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Chs. 113, 155.

<sup>11</sup> Authorized by Cal. Stats. 1966, Res. Ch. 9, at 241; see also Cal. Stats. 1957, Res. Ch. 202, at 4589.

See *Recommendation and Study Relating to Suit by or Against an Unincorporat-*



### Topics for Future Consideration

During the next few years, the Commission plans to devote its attention primarily to (1) creditors' remedies and (2) condemnation law and procedure. Legislative committees have indicated that they wish these topics to be given priority.

Because of the limited resources available to the Commission and the substantial topics already on its agenda, the Commission does not recommend any additional topics for inclusion on its agenda.

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ed Association, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1324.

See also *Recommendation Relating to Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 18-19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 132.

## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1972 LEGISLATIVE SESSION

Three bills and two concurrent resolutions were introduced to effectuate the Commission's recommendations to the 1972 session of the Legislature. Two of the bills were enacted, and the concurrent resolutions were adopted.

### Resolutions Approving Topics for Study

Senate Concurrent Resolution No. 5, introduced by Senator Alfred H. Song and Assemblyman Carlos J. Moorhead and adopted as Resolution Chapter 22 of the Statutes of 1972, authorizes the Commission to continue its study of topics previously authorized for study.

Senate Concurrent Resolution No. 6, introduced by Senator Song and Assemblyman Moorhead and adopted as Resolution Chapter No. 27 of the Statutes of 1972, expanded the scope of two previously authorized topics. These topics—creditors' remedies and child custody and related matters—are described on pages 1016 and 1018 *supra*.

### Employees' Earnings Protection Law

Senate Bill No. 88 was introduced by Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). The bill was not enacted; upon recommendation of the Senate Judiciary Committee, the bill was re-referred to the Senate Committee on Rules to be assigned to a proper committee for interim study. The Commission will submit a revised recommendation on this subject to the 1973 Legislature. See *Recommendation Relating to Wage Garnishment and Related Matters* (October 1972), to be reprinted in 11 CAL. L. REVISION COMM'N REPORTS 101 (1973).

### Pleading

Assembly Bill No. 106, which became Chapter 73 of the Statutes of 1972, was introduced by Assemblyman Moorhead at the request of the Commission to make clarifying changes relating

to amendments of pleadings and the time within which an adverse party must respond to a pleading.<sup>1</sup>

### Evidence Code

Assembly Bill No. 2367, which became Chapter 764 of the Statutes of 1972, was introduced by Assemblyman Moorhead at the request of the Commission to correct the cross-reference in subdivision (b) of Section 451 of the Evidence Code to the federal law which makes certain documents published in the Federal Register subject to judicial notice. Title 44 of the United States Code was revised after the enactment of the Evidence Code, and Section 307 of Title 44 was renumbered as Section 1507 of the same title. Assembly Bill No. 2367 corrected the reference in Section 451 to reflect this change in Title 44.

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<sup>1</sup> The purpose of the bill is set out in the urgency clause that is included in the bill:

Chapter 244 of the Statutes of 1971 added Section 471.5 to the Code of Civil Procedure. Section 471.5 is the same as former Section 432 of the Code of Civil Procedure, which was repealed by Chapter 244, except that the time to answer an amended complaint was increased from 10 to 30 days. No conforming amendment was made to Section 472 of the Code of Civil Procedure. Section 471.5 will become operative on July 1, 1972. Unless the inconsistency between Sections 471.5 and 472 is eliminated, confusion and uncertainty will exist. [Cal. Stats. 1972, Ch. 73, § 5.]

## 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.<sup>1</sup> It has the following to report:

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

(2) No decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

(3) Eight decisions of the Supreme Court of California holding statutes of this state unconstitutional have been found.<sup>2</sup>

*Burrey v. Embarcadero Municipal Improvement District*<sup>3</sup> held that Sections 20 and 64 of the Embarcadero Municipal Improvement District Act<sup>4</sup>—limiting the right to vote on district affairs to the district's landowners and basing voting strength on assessed valuation—violated the one person, one vote rule of the equal protection clause of the Fourteenth Amendment of the United States Constitution.<sup>5</sup>

*Hayes v. Superior Court*<sup>6</sup> held that the limitation of the procedure provided in Penal Code Section 1203.2a to persons imprisoned "in this State" violated the equal protection clauses of

<sup>1</sup> This study has been carried through 93 S. Ct. 28 (Oct. 6, 1972) and 8 Cal.3d 120 (Oct. 4, 1972).

<sup>2</sup> The Commission also notes *Love v. Keayes*, 6 Cal.3d 339, 491 P.2d 395, 98 Cal. Rptr. 811 (1971), citing with approval the holding in *Gray v. Whitmore*, 17 Cal. App.3d 1, 94 Cal. Rptr. 904 (1971), that certain aspects of Code of Civil Procedure Section 1174 violated the due process and equal protection clauses of the California and United States Constitutions.

<sup>3</sup> 5 Cal.3d 671, 488 P.2d 395, 97 Cal. Rptr. 203 (1971).

<sup>4</sup> Cal. Stats. 1960, 1st Ex. Sess., Ch. 81, at 441.

<sup>5</sup> Cal. Stats. 1972, Ch. 95, amended Sections 20 and 64 to conform with the one person, one vote rule.

<sup>6</sup> 6 Cal.3d 216, 490 P.2d 1137, 98 Cal. Rptr. 449 (1971), *appeal dismissed*, 406 U.S. 940 (1972).

the California and United States Constitutions.

*People v. Anderson*<sup>7</sup> held that capital punishment is both cruel and unusual and therefore violates the prohibition against cruel or unusual punishments in Article I, Section 6, of the California Constitution. Insofar as Penal Code Sections 190 and 190.1 (punishment and procedure for murder and other serious crimes) purported to authorize capital punishment, they were held unconstitutional.<sup>8</sup>

*McDermott v. Superior Court*<sup>9</sup> held that, as applied to bail, Penal Code Section 13521—providing for a 25-percent penalty assessment on certain fines, penalties, and forfeitures—violates the excessive bail prohibitions of Article I, Section 6, of the California Constitution and the Eighth Amendment of the United States Constitution.

*Young v. Gnos*<sup>10</sup> held that, under the equal protection clause of the Fourteenth Amendment of the United States Constitution, no durational residence requirement for voter registration in excess of 30 days may be imposed, and general voter registration must remain open at all times except during the 29 days immediately preceding an election. Provisions that violated these standards included Article II, Section 1, of the California Constitution (prescribing a 90-day county and 54-day precinct voter residence period), Elections Code Section 203 (requiring registration closure 53 days preceding an election), and to the extent that they could not be complied with under the 30-day rule, several other sections of the Elections Code (imposing various preelection duties on county clerks).<sup>11</sup>

*People v. Navarro*<sup>12</sup> declared that Welfare and Institutions Code Sections 3050 and 3051 violated the separation of powers doctrine of Section 1 of Article VI of the California Constitution and the requirement of Article III of the California Constitution that the judicial power be vested in the judiciary to the extent that those provisions required concurrence of the district attorney, a nonjudicial officer, in a judicial order committing for

<sup>7</sup> 6 Cal.3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972), *cert. denied*, 406 U.S. 958 (1972).

<sup>8</sup> The Court noted that the death penalty is authorized for eight crimes. (See PENAL CODE §§ 37, 128, 190, 209, 219, 4500, and 12310; MIL. & VET. CODE § 1672(a).) Numerous other statutory provisions referring to capital punishment may be affected by this decision.

<sup>9</sup> 6 Cal.3d 693, 493 P.2d 1161, 100 Cal. Rptr. 297 (1972).

<sup>10</sup> 7 Cal.3d 18, 496 P.2d 445, 101 Cal. Rptr. 533 (1972), *cert. denied*, 41 U.S.L.W. 3207 (Oct. 17, 1972).

<sup>11</sup> Statutes invalidated by the Court include Elections Code Sections 455, 456.5, 456.6, 459, 3573, 6460, 10009, 10012, and 10012.5.

<sup>12</sup> 7 Cal.3d 248, 497 P.2d 481, 102 Cal. Rptr. 137 (1972).

treatment a narcotics addict who would otherwise not qualify for such treatment because of his conviction of certain crimes specified in Section 3052.

*Raffaelli v. Committee of Bar Examiners*<sup>13</sup> held that subdivision (a) of Business and Professions Code Section 6060, which required applicants for admission to the Bar to be citizens of the United States, violated the equal protection clauses of the California and United States Constitutions.

*Curtis v. Board of Supervisors*<sup>14</sup> held that part of Government Code Section 34311, which provided for the veto of a proposed municipal incorporation upon written protest of landowners representing 51 percent of the total assessed valuation of the land involved, violated the equal protection provisions of the California and United States Constitutions.

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<sup>13</sup> 7 Cal.3d 288, 496 P.2d 1264, 101 Cal. Rptr. 896 (1972).

<sup>14</sup> 7 Cal.3d 942, 501 P.2d 537, 104 Cal Rptr. 297 (1972).

## RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see pages 1016–1021 of this Report) and to remove from its calendar of topics the topics listed on page 1022 of this Report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of the provisions referred to on pages 1026–1028 to the extent that those provisions have been held to be unconstitutional.

## CUMULATIVE TABLE OF MEASURES ENACTED UPON COMMISSION RECOMMENDATION

### **Constitutional Provisions**

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

### **Statutes**

Cal. Stats. 1955, Ch. 799 and Ch. 877 (revision of various sections of the Education Code relating to the Public School System).

Cal. Stats. 1955, Ch. 1183 (revision of Probate Code Sections 640 to 646—setting aside of estates).

Cal. Stats. 1957, Ch. 102 (elimination of obsolete provisions in Penal Code Sections 1377 and 1378).

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

Cal. Stats. 1957, Ch. 249 (judicial notice of the law of foreign countries).

Cal. Stats. 1957, Ch. 456 (recodification of Fish and Game Code).

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

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

Cal. Stats. 1957, Ch. 1498 (bringing new parties into civil actions).

Cal. Stats. 1959, Ch. 122 (doctrine of worthier title).

Cal. Stats. 1959, Ch. 468 (effective date of an order ruling on motion for new trial).

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

Cal. Stats. 1959, Ch. 470 (suspension of absolute power of alienation).

Cal. Stats. 1959, Ch. 500 (procedure for appointing guardians).

Cal. Stats. 1959, Ch. 501 (codification of laws relating to grand juries).

Cal. Stats. 1959, Ch. 528 (mortgages to secure future advances).



- Cal. Stats. 1959, Ch. 1715 and Chs. 1724–1728 (presentation of claims against public entities).
- Cal. Stats. 1961, Ch. 461 (arbitration).
- Cal. Stats. 1961, Ch. 589 (rescission of contracts).
- Cal. Stats. 1961, Ch. 636 (inter vivos marital property rights in property acquired while domiciled elsewhere).
- Cal. Stats. 1961, Ch. 657 (survival of actions).
- Cal. Stats. 1961, Ch. 1612 (tax apportionment in eminent domain proceedings).
- Cal. Stats. 1961, Ch. 1613 (taking possession and passage of title in eminent domain proceedings).
- Cal. Stats. 1961, Ch. 1616 (revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject).
- Cal. Stats. 1963, Ch. 1681 (sovereign immunity—tort liability of 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. 1715 (sovereign immunity—claims, actions and judgments against public entities and public employees).
- Cal. Stats. 1963, Ch. 2029 (sovereign immunity—amendments and repeals of inconsistent special statutes).
- Cal. Stats. 1965, Ch. 299 (Evidence Code).
- Cal. Stats. 1965, Ch. 653 (sovereign immunity—claims and actions against public entities and public employees).
- Cal. Stats. 1965, Ch. 1151 (evidence in eminent domain proceedings).
- Cal. Stats. 1965, Ch. 1527 (sovereign immunity—liability of public entities for ownership and operation of motor vehicles).
- Cal. Stats. 1965, Chs. 1649, 1650 (reimbursement for moving expenses).

- Cal. Stats. 1967, Ch. 72 (additur).
- Cal. Stats. 1967, Ch. 262 (Evidence Code—Agricultural Code revisions).
- Cal. Stats. 1967, Ch. 650 (Evidence Code—Evidence Code revisions).
- Cal. Stats. 1967, Ch. 702 (Vehicle Code Section 17150 and related sections).
- Cal. Stats. 1967, Ch. 703 (Evidence Code—Commercial Code revisions).
- Cal. Stats. 1967, Ch. 1104 (exchange of valuation data in eminent domain proceedings).
- Cal. Stats. 1967, Ch. 1324 (suit by or against an unincorporated association).
- Cal. Stats. 1968, Ch. 132 (unincorporated associations).
- Cal. Stats. 1968, Ch. 133 (fees on abandonment of eminent domain proceeding).
- Cal. Stats. 1968, Ch. 150 (good faith improvers).
- Cal. Stats. 1968, Ch. 247 (escheat of decedent's estate).
- Cal. Stats. 1968, Ch. 356 (unclaimed property act).
- Cal. Stats. 1968, Ch. 457 (personal injury damages).
- Cal. Stats. 1968, Ch. 458 (personal injury damages).
- Cal. Stats. 1969, Ch. 113 (powers).
- Cal. Stats. 1969, Ch. 114 (fictitious business names).
- Cal. Stats. 1969, Ch. 115 (additur and remittitur).
- Cal. Stats. 1969, Ch. 155 (powers of appointment).
- Cal. Stats. 1969, Ch. 156 (specific performance of contracts).
- Cal. Stats. 1970, Ch. 41 (Evidence Code—proof of foreign documents).
- Cal. Stats. 1970, Ch. 45 (rule against perpetuities).
- Cal. Stats. 1970, Ch. 69 (Evidence Code—*res ipsa loquitur*).
- Cal. Stats. 1970, Ch. 89 (leases).
- Cal. Stats. 1970, Ch. 104 (sovereign immunity—statute of limitations).
- Cal. Stats. 1970, Ch. 312 (quasi-community property).
- Cal. Stats. 1970, Ch. 417 (arbitration of just compensation).
- Cal. Stats. 1970, Ch. 618 (fictitious business names).
- Cal. Stats. 1970, Ch. 662 (entry for survey and examination; condemnation for water carrier terminal facilities).
- Cal. Stats. 1970, Ch. 720 (representations as to credit).

- Cal. Stats. 1970, Ch. 1099 (sovereign immunity—entry for survey and examination; police and correctional activities; medical, hospital, and public health activities; liability for use of pesticides).
- Cal. Stats. 1970, Ch. 1397 (Evidence Code—psychotherapist-patient privilege revisions).
- Cal. Stats. 1971, Ch. 140 (insurance authority of public entities).
- Cal. Stats. 1971, Ch. 244 (cross-complaints, counterclaims, and joinder of causes of action).
- Cal. Stats. 1971, Ch. 950 (joinder of parties).
- Cal. Stats. 1971, Ch. 1607 (discharge from employment).
- Cal. Stats. 1972, Ch. 73 (pleading—technical correction).
- Cal. Stats. 1972, Ch. 764 (evidence—judicial notice—technical correction).

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