

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report

December 1974

CALIFORNIA LAW REVISION COMMISSION

**Stanford Law School
Stanford, California 94305**

THE CALIFORNIA LAW REVISION COMMISSION

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MARC SANDSTROM <i>Chairman</i>	NOBLE K. GREGORY <i>Member</i>
JOHN N. McLAURIN <i>Vice Chairman</i>	JOHN D. MILLER <i>Member</i>
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JOHN J. BALLUFF <i>Member</i>	GEORGE H. MURPHY <i>Ex Officio</i>

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NATHANIEL STERLING <i>Staff Counsel</i>	JO ANNE FRIEDENTHAL <i>Legal Counsel</i>

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ANNE JOHNSTON <i>Administrative Assistant</i>	VIOLET S. HARJU <i>Secretary</i>
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NOTE

This pamphlet begins on page 501. 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 12 of the Commission's *Reports, Recommendations, and Studies*.

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STANFORD LAW SCHOOL
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MARC SANDSTROM
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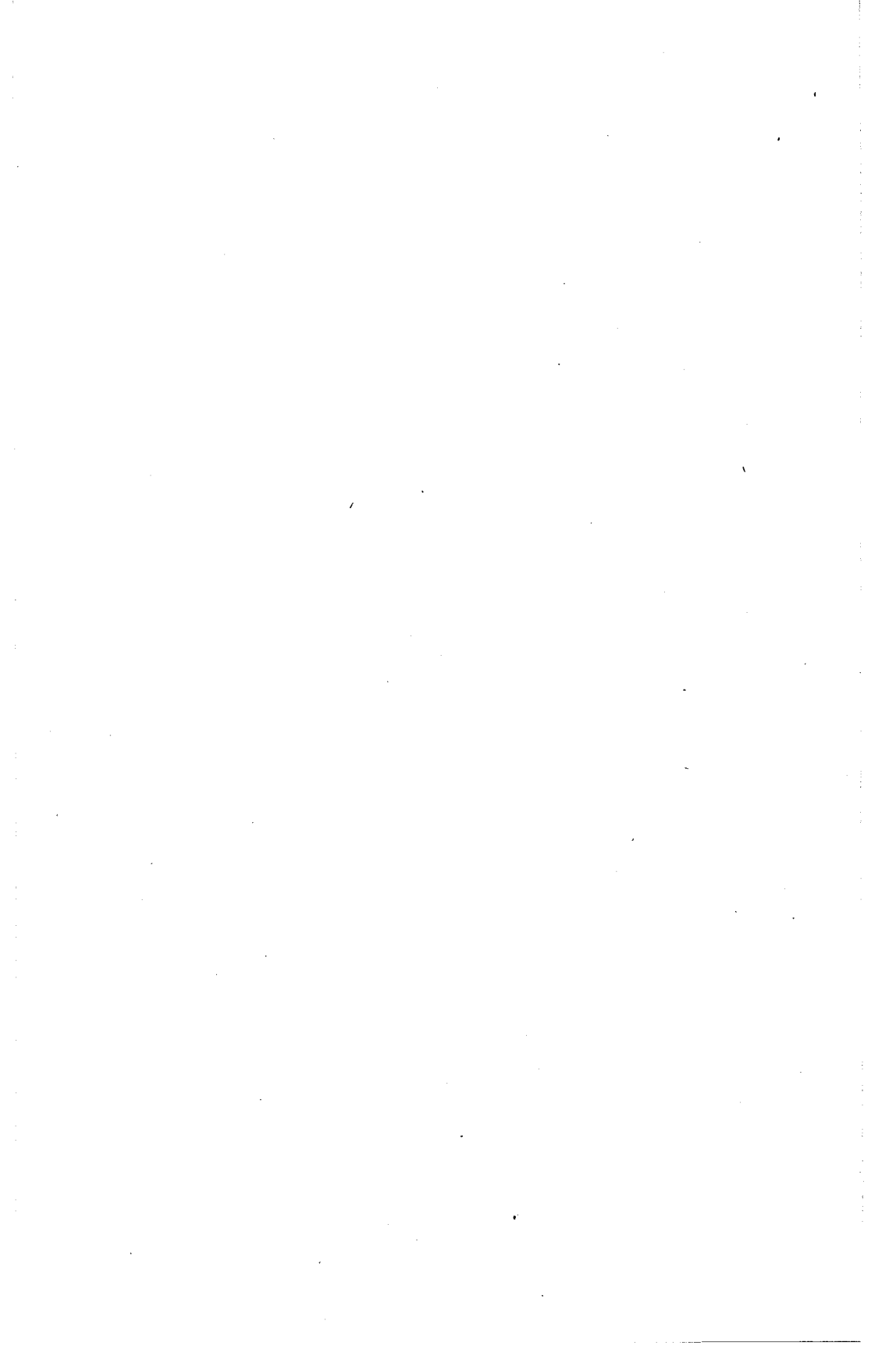
December 1, 1974

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 1974.

This report was printed during the first week of December 1974 so that it would be available in printed form early in January 1975. Accordingly, it does not reflect changes in Commission membership after December 1, 1974.

Respectfully submitted,
MARC SANDSTROM
Chairman



CONTENTS

	<i>Page</i>
FUNCTION AND PROCEDURE OF COMMISSION	507
PERSONNEL OF COMMISSION	510
SUMMARY OF WORK OF COMMISSION	511
1975 LEGISLATIVE PROGRAM	512
MAJOR STUDIES IN PROGRESS.....	514
Creditors' Remedies	514
Condemnation Law and Procedure	515
CALENDAR OF TOPICS FOR STUDY	516
Topics Authorized for Study.....	516
Topics Under Active Consideration	516
Other Topics Authorized for Study.....	519
Topics Continued on Calendar for Further Study	519
Topics to Be Removed From Calendar of Topics.....	523
Topics for Future Consideration	523
LEGISLATIVE HISTORY OF RECOMMENDATIONS	
SUBMITTED TO 1974 LEGISLATIVE SESSION	530
Resolution Approving Topics for Study	530
Creditors' Remedies	530
Prejudgment attachment.....	530
Enforcement of judgments	534
Condemnation Law and Procedure	534
Liquidated Damages	535
Evidence.....	535
Erroneously ordered disclosure of privileged information	535
The "criminal conduct" exception	535
Lease Law	536
Personal property left on leased premises	536
Abandonment of leased real property	537
Inheritance Rights of Nonresident Aliens.....	538
REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL	539
RECOMMENDATIONS	542

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS	543
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APPENDICES

I. Report of Senate Committee on Judiciary on Assembly Bill 2948	557
II. Report of Assembly Committee on Judiciary on Assembly Bill 2830	567
III. Report of Senate Committee on Judiciary on Assembly Bills 2830 and 2831	569
IV. Recommendation Relating to Payment of Judgments Against Local Public Entities	575
V. Recommendation Relating to View by Trier of Fact in a Civil Case	587
VI. Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege	601
VII. Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments	609

PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION	627
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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1974

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 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.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. In some cases, the study is prepared by a member of the Commission's staff, but the majority of the 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

¹ See CAL. GOVT. CODE §§ 10300-10340.

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 California Supreme Court or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

³ See CAL. GOVT. CODE § 10335.

considerable background necessary to understand the specific problems under consideration.

The research study includes a discussion of the existing law and the defects therein and suggests possible methods of eliminating those defects. The study is given careful consideration by the Commission and, 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,⁵ it usually is published in the pamphlet containing the recommendation.

The Commission ordinarily prepares a Comment explaining each section it recommends. These Comments are included in the Commission's report and are frequently revised by legislative committee reports⁶ to reflect amendments⁷ made after the recommended legislation has been introduced in the Legislature. The Comment often indicates the derivation of the section and explains its purpose, its relation to other sections, and potential problems in its meaning or application. The Comments are written as if the legislation were enacted since their primary purpose is to explain the statute to those who will have occasion to use it after it is in effect. They are entitled to substantial weight in construing the statutory provisions.⁸

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 For a listing of background studies published in law reviews, see 10 CAL. L. REVISION COMM'N REPORTS 1108 n.5 (1971) and 11 CAL. L. REVISION COMM'N REPORTS 1008 n.5 & 1108 n.5 (1973).

⁶ Special reports are adopted by legislative committees that consider bills recommended by the Commission. These reports, which are printed in the legislative journal, state that the Comments to the various sections of the bill contained in the Commission's recommendation reflect the intent of the committee in approving the bill except to the extent that new or revised Comments are set out in the committee report itself. For a description of the legislative committee reports adopted in connection with the bill that became the Evidence Code, see *Arellano v. Moreno*, 33 Cal. App.3d 877, 884, 109 Cal. Rptr. 421, 426 (1973). For examples of such reports, see 10 CAL. L. REVISION COMM'N REPORTS 1132-1146 (1971).

⁷ Many of the amendments made after the recommended legislation has been introduced are made upon recommendation of the Commission to deal with matters brought to the Commission's attention after its recommendation was printed. In some cases, however, an amendment may be made that the Commission believes is not desirable and does not recommend.

⁸ *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-250, 437 P.2d 508, 511, 66 Cal. Rptr. 20, 23 (1968). The Comments are published by both the Bancroft-Whitney Company and the West Publishing Company in their editions of the annotated codes.

However, while the Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.⁹ Hence, failure to note a change in prior law or to refer to an inconsistent judicial decision is not intended to, and should not, influence the construction of a clearly stated statutory provision.¹⁰

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.¹¹ 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.¹² 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.

Commission recommendations have resulted in the enactment of legislation affecting 3,317 sections of the California statutes: 1,340 sections have been added, 627 sections amended, and 1,350 sections repealed. For a summary of the legislative action on Commission recommendations, see "Legislative Action on Commission Recommendations" *infra*.

⁹ See, e.g., *Arellano v. Moreno*, 33 Cal. App.3d 877, 109 Cal. Rptr. 421 (1973).

¹⁰ The commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal.3d 150, 158-159, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-654 (1971). For a reaction to the problem created by the *Kaplan* approach, see *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973). See also Cal. Stats. 1974, Ch. 227.

¹¹ See CAL. GOVT. CODE § 10333.

¹² 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).

PERSONNEL OF COMMISSION

As of December 1, 1974, the membership of the Law Revision Commission is:

	<i>Term expires</i>
Marc Sandstrom, San Diego, <i>Chairman</i>	October 1, 1975
John N. McLaurin, Los Angeles, <i>Vice Chairman</i>	October 1, 1975
Hon. Robert S. Stevens, Los Angeles, <i>Senate Member</i>	*
Hon. Alister McAlister, San Jose, <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 D. Miller, Long Beach, <i>Member</i>	October 1, 1977
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1977
Howard R. Williams, Stanford, <i>Member</i>	October 1, 1977
George H. Murphy, Sacramento, <i>ex officio Member</i>	†

As of December 1, 1974, the staff of the Commission is:

Legal

John H. DeMouly, *Executive Secretary*

Nathaniel Sterling, *Staff Counsel*

Stan G. Ulrich, *Legal Counsel*

JoAnne Friedenthal, *Legal Counsel*

Administrative-Secretarial

Anne Johnston, *Administrative Assistant*

Violet S. Harju, *Clerk-Typist*

Barbara M. Rieder, *Clerk-Typist*

In August 1974, Jack I. Horton resigned from the Commission's legal staff to accept the position of Executive Secretary of the Guam Law Revision Commission. In September 1974, JoAnne Friedenthal was appointed as a member of the Commission's legal staff. During January-July 1974, Michael Rand McQuinn also was employed as a member of the legal staff; he resigned to accept a position with the Department of Justice in Washington, D.C.

* 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 four principal tasks:

(1) Presentation of its legislative program to the Legislature.¹

(2) Work on various assignments given to the Commission by the Legislature.²

(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.³

(4) Consideration of suggestions for new topics to be added to the Commission's calendar of topics.⁴

The Commission held six two-day meetings and three three-day meetings in 1974.

¹ See "Legislative History of Recommendations Submitted to 1974 Legislature" *infra*.

² See discussion on following pages.

³ See "Report on Statutes Repealed by Implication or Held Unconstitutional" *infra*.

⁴ See "Topics for Future Consideration" *infra*.

1975 LEGISLATIVE PROGRAM

The Commission will submit the following recommendations to the 1975 Legislature:

(1) *Recommendation Proposing the Eminent Domain Law* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974).

(2) *Recommendation and Study Relating to Oral Modification of Written Contracts* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 301 (1976).

(3) *Recommendation Relating to Payment of Judgments Against Local Public Entities* (September 1974), published as Appendix IV to this Report.

(4) *Recommendation Relating to View by Trier of Fact in a Civil Case* (October 1974), published as Appendix V to this Report.

(5) *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege* (October 1974), published as Appendix VI to this Report.

(6) *Recommendation Relating to Admissibility of Copies of Business Records in Evidence* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

(7) *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments* (December 1974), published as Appendix VII to this Report.

(8) *Recommendation Relating to Wage Garnishment Exemptions* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 901 (1974).

(9) *Recommendation Relating to Partition Procedure* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 401 (1976).

(10) *Recommendation Relating to Inverse Condemnation: Claim Presentation Requirement* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

(11) *Recommendation Relating to Liquidated Damages* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

(12) *Recommendation Relating to Revision of the*

Attachment Law (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

(13) *Recommendation Relating to Wage Garnishment Procedure* (February 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

The Commission also recommends that one topic be removed from its calendar and that five new topics be added to its calendar (see this Report *infra*).

MAJOR STUDIES IN PROGRESS

Creditors' Remedies

The Legislature has directed that the Commission make a study of creditors' remedies including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters.¹

The Commission, working with a special committee of the State Bar,² 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.

As a result of its study of creditors' remedies, the Commission submitted recommendations to the 1971,³ 1972,⁴ 1973,⁵ 1974⁶

¹ Cal. Stats. 1974, Res. Ch. 45. This study, originally authorized in 1957, was expanded in 1972 and 1974. See Cal. Stats. 1957, Res. Ch. 202; Cal. Stats. 1972, Res. Ch. 27; Cal. Stats. 1974, Res. Ch. 45. For further discussion, see 11 CAL. L. REVISION COMM'N REPORTS 1113 (1973).

² As of December 1974, the members of this committee were Ferdinand F. Fernandez, chairman; Nathan Frankel, Edward N. Jackson, Andrea Ordin, Ronald N. Paul, and William W. Vaughn.

³ *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge from Employment*, 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971). The recommended legislation was enacted. See Cal. Stats. 1971, Ch. 1607.

⁴ *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, and a revised recommendation on this subject was submitted to the 1973 Legislature. See note 5 *infra*.

⁵ *Recommendation and Study Relating to Civil Arrest*, 11 CAL. L. REVISION COMM'N REPORTS 1 (1973); *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973); and *Recommendation Relating to the Claim and Delivery Statute*, 11 CAL. L. REVISION COMM'N REPORTS 301 (1973). The recommended legislation relating to civil arrest and the claim and delivery statute was enacted. See Cal. Stats. 1973, Chs. 20 (civil arrest), and 526 (claim and delivery). The recommended legislation relating to wage garnishment was not enacted.

⁶ *Recommendation Relating to Enforcement of Sister State Money Judgments*, 11 CAL. L. REVISION COMM'N REPORTS 451 (1973); *Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973); see also *Tentative Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 501 (1973). The recommended legislation was enacted. See Cal. Stats. 1974, Chs. 211 (enforcement of sister state judgments), 1516 (prejudgment attachment).

legislative sessions. The Commission is continuing its study of this topic and plans to make additional recommendations to future sessions.

Condemnation Law and Procedure

The Commission is now engaged in the study of condemnation law and procedure and will submit a recommendation for a comprehensive statute on this subject to the 1975 Legislature.⁷

The Commission has retained four consultants to provide expert assistance in the condemnation study: Thomas M. Dankert, Ventura attorney; Professor Gideon Kanner, Loyola University School of Law; Norman E. Matteoni, San Jose attorney; and Professor Arvo Van Alstyne, University of Utah.

⁷ See *Recommendation Proposing the Eminent Domain Law* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974).

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.¹

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 creditors' remedies including, but not limited to, attachment, garnishment, execution, repossession of property (including the claim and delivery statute, self-help repossession of property, and the Commercial Code repossession of property provisions), civil arrest, confession of judgment procedures, default judgment procedures, enforcement of judgments, the right of redemption, procedures under private power of sale in a trust deed or mortgage, possessory and nonpossessory liens, and related matters should be revised.²

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.

² 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 submitted a revised recommendation to the 1973 Legislature. See *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was not enacted. The Commission will submit revised recommendations to the 1975 Legislature. See *Recommendation Relating to Wage Garnishment Exemptions* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 901 (1974); *Recommendation Relating to Wage Garnishment Procedure* (February 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

See also *Recommendation and Study Relating to Civil Arrest*, 11 CAL. L. REVISION COMM'N REPORTS 1 (1973). For a legislative history of this recommendation, see 11 CAL. L. REVISION COMM'N REPORTS 1123 (1973). The recommended legislation was enacted. See Cal. Stats. 1973, Ch. 20.

See also *Recommendation Relating to the Claim and Delivery Statute*, 11 CAL. L. REVISION COMM'N REPORTS 301 (1973). For a legislative history of this recommendation, see 11 CAL. L. REVISION COMM'N REPORTS 1124 (1973). The recommended legislation was enacted. See Cal. Stats. 1973, Ch. 526.

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.³

Nonprofit corporations. Whether the law relating to nonprofit corporations should be revised.⁴

See also *Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 1516. The Commission plans to submit a recommendation for technical revisions in the attachment law to the 1975 Legislature. See *Recommendation Relating to Revision of the Attachment Law* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

See also *Recommendation Relating to Enforcement of Sister State Money Judgments*, 11 CAL. L. REVISION COMM'N REPORTS 451 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 211.

³ Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5299; see also Cal. Stats. 1966, Res. Ch. 42, at 263; 4 CAL. L. REVISION COMM'N REPORTS 115 (1963).

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.

See also *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts* (January 1974), reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 426.

The Commission plans to submit a recommendation for a comprehensive statute to the 1975 Legislature. See *Recommendation Proposing the Eminent Domain Law* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974).

⁴ Authorized by Cal. Stats. 1970, Res. Ch. 54, at 3547; see also 9 CAL. L. REVISION COMM'N

Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised.⁵

Partition procedures. 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.⁶

Modification of contracts. Whether the law relating to modification of contracts should be revised.⁷

Escheat; unclaimed property. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised.⁸

REPORTS 107 (1969).

⁵ Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888. See *Recommendation and Study Relating to Liquidated Damages* (December 1973), reprinted in 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was not enacted.

See also *Recommendation Relating to Liquidated Damages* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

⁶ 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.

See *Recommendation Relating to Partition Procedure* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 401 (1976). The Commission plans to submit this recommendation to the 1975 Legislature.

⁷ 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.

See *Recommendation and Study Relating to Oral Modification of Written Contracts* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 301 (1976). This recommendation will be submitted to the 1975 Legislature.

⁸ 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).

See also *Recommendation Relating to Unclaimed Property*, 11 CAL. L. REVISION COMM'N REPORTS 401 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was not enacted.

See also *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments* (December 1974), published as

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.⁹

Other Topics Authorized for Study

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

Parol evidence rule. Whether the parol evidence rule should be revised.¹⁰

Prejudgment interest. Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised.¹¹

Arbitration. Whether the law relating to arbitration should be revised.¹²

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.

Appendix VII to this Report. This recommendation will be submitted to the 1975 Legislature.

⁹ 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.

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

¹¹ Authorized by Cal. Stats. 1971, Res. Ch. 75.

¹² 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.

Governmental liability. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.¹

Evidence. Whether the Evidence Code should be revised.²

¹ 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 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).

See also *Recommendation Relating to Payment of Judgments Against Local Public Entities* (September 1974), published as Appendix IV to this Report. This recommendation will be submitted to the 1975 Legislature.

² Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289.

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.³

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.

See also *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, reprinted in 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 227.

See also *Recommendation Relating to Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege*, 11 CAL. L. REVISION COMM'N REPORTS 1147 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was not enacted.

See also *Recommendation Relating to View by Trier of Fact in a Civil Case* (October 1974), published as Appendix V to this Report; *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege* (October 1974), published as Appendix VI to this Report; *Recommendation Relating to Admissibility of Copies of Business Records in Evidence* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975). These recommendations will be submitted to the 1975 Legislature.

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.

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

Unincorporated associations. Whether the law relating to suit by and against partnerships and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised.⁴

Lease law. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised.⁵

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 *Recommendation Relating to Payment of Judgments Against Local Public Entities* (September 1974), published as Appendix IV to this Report; *Recommendation Relating to Inverse Condemnation: Claims Presentation Requirement* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975). These recommendations will be submitted to the 1975 Legislature.

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

⁴ 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 Unincorporated 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.

⁵ Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289; see also Cal. Stats. 1957, Res. Ch. 202, at 4589.

Topics to Be Removed From Calendar of Topics

A study and recommendation have been made on the following topic, and legislation has been enacted. Because of its nature, this topic does not need to be continued on the Commission's calendar for further study.⁶

Right of nonresident aliens to inherit. Whether the law relating to the right of nonresident aliens to inherit should be revised.⁷

Topics for Future Consideration

The Commission recommends that it be authorized to study the new topics described below.

A study to determine whether the law relating to transfer of out-of-state trusts to California should be revised. In 1971, legislation was enacted to provide a comprehensive procedure for the transfer of a California trust to another jurisdiction.¹ However, no California statute provides a procedure for the transfer of trusts from other states into California. One writer ²

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.

See also *Recommendations Relating to Landlord-Tenant Relations*, 11 CAL. L. REVISION COMM'N REPORTS 951 (1973). This report contains two recommendations: *Abandonment of Leased Real Property* and *Personal Property Left on Premises Vacated by Tenant*. For a legislative history of these recommendations, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Chs. 331, 332.

⁶ 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 this Report *supra*.

⁷ Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888. See *Recommendation and Study Relating to Inheritance Rights of Nonresident Aliens*, 11 CAL. L. REVISION COMM'N REPORTS 421 (1973). For a legislative history of this recommendation, see this Report *infra*. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 425.

¹ PROB. CODE §§ 1132, 1139 *et seq.* The apparent intent of the Legislature in adopting this legislation was to facilitate the transfer of the place of administration, or of the assets, when desirable to deal with one of the problems created by the present day mobility of population. See *Review of Selected 1971 California Legislation*, 3 PAC. L.J. 191, 201 (1972).

² 3 N. CONDEE, CALIFORNIA PRACTICE § 1850 (1964).

has noted cases in which California probate courts have accepted jurisdiction of trusts established by will in other states, but several appellate court cases suggest that probate courts should restrict their jurisdiction to matters specifically provided for by statute.³

The lack of precise statutory authority leaves the attorney and the court without proper guidance on how to proceed in case of a transfer of a trust into California from another jurisdiction. Moreover, there is some doubt as to the authority to act in such a case in view of the precise statute governing the transfer of trusts out of California. Accordingly, the Commission has concluded that a study should be made concerning the transfer of out-of-state trusts into California so that legislation can be recommended to fill the void.

A study to determine whether the law relating to class actions should be revised. The increasing use of the class action in an expanding variety of contexts has given rise to numerous problems associated with this type of suit.

The basic statute permitting maintenance of class actions is Code of Civil Procedure Section 382. This section merely contains a statement that, when the question is one of a common or general interest or when the parties are numerous and it is impracticable to bring them all before the court, one or more may sue or defend for the benefit of all. There is, however, no specific statute which sets out the procedure to be followed in such actions. The Consumer Legal Remedies Act (CIVIL CODE § 1750 *et seq.*, adopted in 1970) established procedures for the handling of class actions involving claims of unfair or deceptive practices in consumer affairs. In *Vasquez v. Superior Court*,⁴ the California Supreme Court stated that the procedural provisions of the Consumer Legal Remedies Act could be applied to a consumer action which arose before the effective date of the statute. However, the court left open the question of the management of suits which do not come within the purview of the act.

The court in the *Vasquez* case indicated that the California courts could also refer to the procedural devices set out in Rule 23 of the Federal Rules of Civil Procedure for guidance as to the procedure to be followed in California cases. In *City of San Jose v. Superior Court*,⁵ the Supreme Court specifically stated, "This

³ See *Wells Fargo Bank v. Superior Court*, 32 Cal.2d 1, 193 P.2d 721 (1948); *Oil Well Supply Co. v. Superior Court*, 9 Cal. App.2d 624, 51 P.2d 908 (1935); *Gillette v. Gillette*, 122 Cal. App. 640, 10 P.2d 760 (1932).

⁴ 4 Cal.3d 800, 484 P.2d 964, 94 Cal. Rptr. 796 (1971).

⁵ 12 Cal.3d 447, 525 P.2d 701, 115 Cal. Rptr. 797 (1974).

court has urged trial courts to be procedurally innovative, encouraging them to incorporate procedures from outside sources in determining whether to allow the maintenance of the particular class suit." The interpretation of Federal Rule 23 has engendered substantial litigation. The decision in *Eisen v. Carlisle & Jacquelin*,⁶ for example, raises substantial questions with regard to the requirement of notice in class actions, the viability of the class suit in particular cases, and the nature of allowable recovery. A study of the law relating to class actions in California by the Commission would be useful in determining whether clarifying or substantive changes are needed.

A study to determine whether the law relating to offers of compromise should be revised. Code of Civil Procedure Section 998 provides a procedure whereby the award of costs to a party making an offer of compromise depends upon the other party's failure to obtain "a more favorable judgment." Although the statute specifically sets forth the procedures to be employed in the making and acceptance of the offer, the statute fails to deal with some issues raised by the phrase "a more favorable judgment." It has been pointed out to the Commission by one correspondent⁷ that the question of whether an offer under Section 998 carries with it court costs incurred to the date of the offer is not specifically answered by the statute. In other words, if the defendant offers to settle for \$600 and the costs of the plaintiff at the time of the offer are \$99.45, how high can the judgment be and still permit the defendant to obtain the benefit of Section 998? Is a judgment of \$501 "a more favorable judgment"? Although Section 998 was enacted in its present form in 1971, a case decided under similar language in 1963⁸ seems to apply in this situation. That case held that costs to the date of defendant's offer are to be added to the amount of the judgment in determining whether plaintiff obtained a more favorable judgment. Since Section 998 does not specifically deal with the question and since the *Bennett* case was decided before the enactment of the present statute, it would be useful for the Commission to study the question of whether the terms of Section 998 should be clarified.

An additional consideration is whether Section 998 ought to be revised to deal with the problem of a joint offer to several

⁶ _____ U.S. _____, 94 S. Ct. 2140 (1974).

⁷ See letter from James B. Merzon to Marc Sandstrom, Chairman, California Law Revision Commission, dated March 21, 1974, on file, California Law Revision Commission, Stanford Law School, Stanford, California 94305.

⁸ *Bennett v. Brown*, 212 Cal. App.2d 685, 28 Cal. Rptr. 485 (1963).

plaintiffs. At the present time, the statute provides no guidelines in the case involving a number of plaintiffs. In *Randles v. Lowry*,⁹ the court held that an offer of compromise generally to all of several plaintiffs was not effective. It would be helpful to study Section 998 with a view toward determining whether some provision should be made for a case involving multiple plaintiffs.

A study to determine whether the law relating to discovery in civil cases should be revised. In 1957, California adopted a comprehensive set of provisions—Code of Civil Procedure Sections 2016–2035¹⁰—dealing with discovery based upon the Federal Rules of Civil Procedure. Since that time, the federal discovery rules have been amended to deal with specific problems which have arisen under the rules.¹¹

Protection of expert opinion under work product rule. Federal Rule 26(b) was amended in 1970 to add a specific work product rule covering expert information. This section permits discovery of a party's expert only after it is determined that the expert will be a witness at trial. The opinion of an expert retained by another party in anticipation of litigation or in preparation for trial who is *not* expected to be called as a witness may be discovered only upon the showing of exceptional circumstances.

After a number of cases in which the California courts rejected the work product theory of privilege,¹² the State Bar sponsored statutory changes which were adopted in 1963 and constituted a statutory work product rule for California. See CODE CIV. PROC. § 2016(b), (g). However, this section contained no specific reference to the problem of expert opinion. Two California cases have recognized that, in some instances, there is a need for protection of the opinions of experts employed by the parties in preparation for trial.¹³ Although these cases suggest a California rule which would generally conform to Federal Rule 26(b)(4), a statutory provision clarifying the details of the protection under

⁹ 4 Cal. App.3d 68, 84 Cal. Rptr. 321 (1970).

¹⁰ Cal. Stats. 1957, Ch. 1904, § 3. These sections have been amended in various ways through the years. Code of Civil Procedure Section 2036, which sets out the requirement of a showing of good cause to obtain discovery, was added by Cal. Stats. 1963, Ch. 1744, § 2.

¹¹ 398 U.S. 977 (1970).

¹² See *Greyhound Corp. v. Superior Court*, 56 Cal.2d 355, 364 P.2d 266, 15 Cal. Rptr. 90 (1961); *Suezaki v. Superior Court*, 58 Cal.2d 166, 373 P.2d 432, 23 Cal. Rptr. 368 (1962).

¹³ *Oceanside Union School Dist. v. Superior Court*, 58 Cal.2d 180, 373 P.2d 439, 23 Cal. Rptr. 375 (1962); *San Diego Professional Ass'n v. Superior Court*, 58 Cal.2d 194, 373 P.2d 448, 23 Cal. Rptr. 384 (1962).

California law might be useful.

Deposition of a corporation. Under California Code of Civil Procedure Section 2019(a), only "a person" can be deposed. There is no specific provision for deposition of a corporation. If a party wishes to obtain information known to corporate employees, he must know precisely which employees have the information in order to use a deposition effectively. If the corporation is a party to the action, the opposing party may send a set of interrogatories pursuant to Code of Civil Procedure Section 2030 and the corporation must furnish such information as is available to it. However, a deposition is often a more satisfactory method of eliciting information than is a set of interrogatories. Furthermore, if the corporation is not a party, interrogatories are not permitted.

In 1970, Federal Rule 30(b)(6) was added to permit a deposition of a corporation or association. The new rule requires the party in his subpoena to describe with reasonable particularity the matters on which examination is requested. The organization named is then required to designate a person or persons having the pertinent knowledge who then testify at the deposition as to matters known or reasonably available to the organization. The addition of this type of procedure might be useful in California.

Supplementation of discovery responses. The California discovery statutes contain no provision requiring a party to supplement previous responses to discovery. The only method whereby a party may not obtain information acquired subsequent to his discovery is by a set of new interrogatories or a new deposition. Since most courts require discovery to be completed a specific number of days before trial, such a new discovery procedure may prove inadequate. Federal Rule 26(e) was added in 1970 to require a party who has responded to a request for discovery to supplement his response to include information thereafter acquired under certain limited circumstances. Basically, the party is required to amend prior responses if he learns that the prior response was incorrect or, although the response was correct when made, is no longer correct and circumstances are such that a failure to amend the response is in substance a knowing concealment. In addition, he must supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

Adoption of the federal procedure in California might be desirable.

A study to determine whether the law relating to possibilities of reverter and powers of termination should be revised. California cases have generally recognized and enforced deed restrictions creating automatic reversions on the occurrence of a condition (possibility of reverter) and rights of reentry upon a condition subsequent (power of termination).¹⁴ It has been held that the time limit imposed by the rule against perpetuities does not apply to possibilities of reverter and powers of termination even though the rule would be applicable if the grantor had provided that, upon the happening of the condition, the title would pass to someone other than the grantor or his heirs.¹⁵ Thus, when the fee is limited by a possibility of reverter or a right of termination, there is a permanent restriction on the property. The problem presented is whether the existence of such a limitation of the fee unduly burdens the property, rendering it unmarketable or difficult to finance.¹⁶

In some cases, these difficulties may be alleviated by an action for equitable relief based on changed circumstances to overturn obsolete conditions. In *Hess v. Country Club Park*,¹⁷ the California Supreme Court did provide such relief to avoid giving effect to a right of reentry. There has been no such case, however, dealing with a possibility of reverter. Even when equitable relief is available, the plaintiff must bear the substantial burden and cost of filing suit and proving the existence of changed circumstances to avoid the restrictions.

For a number of years, there has been a growing movement to limit the duration of the right of reentry and possibility of reverter. Model legislation proposing a time limit on these property restrictions was drafted by the American Bar Association Committee on Real Property in 1957.¹⁸ Such legislation has been adopted in six states. The Commission believes that a study should be made of the desirability of limiting the duration of the possibility of reverter and the right

¹⁴ *Parry v. Berkeley Hall School Foundation*, 10 Cal.2d 422, 74 P.2d 738 (1937); *Quatman v. McCray*, 128 Cal. 285, 60 P. 855 (1900); *Biecar v. Czechoslovak-Patronat*, 145 Cal. App.2d 133, 302 P.2d 104 (1956).

¹⁵ L. SIMES, *FUTURE INTERESTS* 379 (1951).

¹⁶ See Simes, *Rights of Entry and Possibilities of Reverter*, 13 *HASTINGS L.J.* 1319; L. SIMES & C. TAYLOR, *IMPROVEMENT OF CONVEYANCING BY LEGISLATION*, Title 19 (1960).

¹⁷ 213 Cal. 613, 2 P.2d 782 (1931).

¹⁸ See L. SIMES & C. TAYLOR, *IMPROVEMENT OF CONVEYANCING BY LEGISLATION* 213-217 (1960).

of termination in California in order to eliminate restrictions which have outlived their usefulness and serve only as a clog on the alienability of real property.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1974 LEGISLATIVE SESSION

Nine bills and one concurrent resolution were introduced to effectuate the Commission's recommendations during 1974. The concurrent resolution was adopted, and seven of the bills, affecting 1,023 sections of the California statutes, were enacted. Three bills were carried over from the first half of the 1973-74 session but were not enacted.¹

Resolution Approving Topics for Study

Assembly Concurrent Resolution No. 164, introduced by Assemblyman Alister McAlister and adopted as Resolution Chapter 45 of the Statutes of 1974, authorizes the Commission to continue its study of topics previously authorized for study. The resolution also approved the removal of three topics (powers of appointment, counterclaims and cross-complaints, and joinder of causes) from the Commission's calendar of topics.

Creditors' Remedies

Two bills on this subject were introduced during 1974.

Prejudgment attachment. Assembly Bill 2948, which became Chapter 1516 of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of

¹ Assembly Bills 101 and 102 were introduced by Assemblymen Warren and McAlister and Senator Song in 1973 to effectuate the recommendation of the Commission on wage garnishment. See *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). Both bills were passed in amended form by the Assembly; Assembly Bill 101 was approved by the Senate Judiciary Committee but died in the Senate Finance Committee; Assembly Bill 102 died in the Senate Judiciary Committee. The Commission plans to make recommendations on wage garnishment to the 1975 Legislature. See *Recommendation Relating to Wage Garnishment Exemptions* (December 1974), to be reprinted in 12 CAL. L. REVISION COMM'N REPORTS 901 (1974); *Recommendation Relating to Wage Garnishment Procedure* (February 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

Assembly Bill 727 and Assembly Joint Resolution 27 were introduced by Assemblyman McAlister in 1973 to effectuate the Commission's recommendation concerning the Unclaimed Property Law (Code of Civil Procedure Section 1500 *et seq.*). See *Recommendation Relating to Unclaimed Property*, 11 CAL. L. REVISION COMM'N REPORTS 401 (1973). Assembly Joint Resolution 27 was adopted as Resolution Chapter 76 of the Statutes of 1973. The resolution was adopted as introduced. Assembly Bill 727 was pending in the Assembly Judiciary Committee when the Legislature recessed in September 1973. The bill was not given any further consideration by the Legislature in 1974 and was not enacted. A revised recommendation will be submitted to the 1975 Legislature. See *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments* (December 1974), published as Appendix VII to this Report.

the Commission on this subject. See *Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973); *Report of Senate Committee on Judiciary on Assembly Bill 2948*, ASSEMBLY J. (Aug. 21, 1974) at 13010, reprinted as Appendix I to this Report.

The following significant amendments were made to Assembly Bill 2948:

(1) Section 482.060, which would have been added to the Code of Civil Procedure by the bill as introduced, was deleted entirely.

(2) Code of Civil Procedure Section 483.010 was amended as follows: In subdivision (a), the first sentence was amended to add the phrase "against a defendant engaged in a trade, business, or profession" following the word "action"; the second sentence was amended to delete the phrase "and shall arise out of the conduct by the defendant of a trade, business, or profession" following the word "implied"; the third sentence was amended to delete the phrase "The claim shall not be"; the remainder of the original subdivision (a) was renumbered subdivision (b), and the phrase "An attachment may not be issued if the claim is" was inserted at the beginning of new subdivision (b); at the end of the first sentence of new subdivision (b), the clause "unless, if originally so secured, such security has, without any act of the plaintiff or the person to whom the security was given, become valueless" was deleted; the final sentence was added to subdivision (b); a new subdivision (c) was added; former subdivision (b) was renumbered subdivision (d).

(3) Code of Civil Procedure Section 484.070 was amended to add the phrase "and the plaintiff does not file and serve a notice of opposition as provided in this subdivision" following the word "exempt" in the final sentence of subdivision (f).

(4) Code of Civil Procedure Section 484.080 was amended as follows: In the second sentence of subdivision (a), following the words "the court", the phrase "may either deny the application for the order or, for good cause shown, grant the plaintiff a continuance for a reasonable period" was substituted for the phrase "shall deny the application for the order"; the third sentence was added. Subdivision (b), as contained in the bill as introduced, was deleted and replaced by a new subdivision (b).

(5) Code of Civil Procedure Section 484.320 was amended to add subdivision (d).

(6) Code of Civil Procedure Section 484.340 was amended to add the phrase "not later than five days prior to the date set for hearing" at the end of the first sentence of subdivision (d).

(7) Code of Civil Procedure Section 484.360 was amended to add the phrase "and the plaintiff does not file and serve a notice of opposition as provided in this section" following the word "exempt" in the final sentence of subdivision (b).

(8) Code of Civil Procedure Section 485.010, paragraph (1) of subdivision (b), was amended to add the clause "Under the circumstances of the case, it may be inferred that there is" and to substitute the phrase "substantially impaired in value, or otherwise made unavailable to levy" for the phrase "or placed beyond the process of the court or substantially impaired in value".

(9) Code of Civil Procedure Section 486.010 was amended to add the clause "which may be based on information and belief" to subdivision (b).

(10) Code of Civil Procedure Section 487.010 was amended as follows: In subdivision (c), the phrase "used or held for use in the defendant's trade, business, or profession" was deleted; in paragraph (7) of subdivision (c), the phrase "on the premises where the trade, business, or profession is conducted" was added; subdivision (d) was added.

(11) Code of Civil Procedure Section 488.030 was amended to add subdivision (c).

(12) Section 488.045, which was not included in the bill as introduced, was added to the Code of Civil Procedure.

(13) Code of Civil Procedure Section 488.310 was amended to add subdivision (e).

(14) Code of Civil Procedure Section 488.320 was amended to add the phrase "or promptly thereafter" following the word "levy" and to add the second sentence to subdivision (b).

(15) Code of Civil Procedure Section 488.330 was amended to add the second sentence to subdivision (c).

(16) Code of Civil Procedure Section 488.340 was amended as follows: The second sentence was added to subdivision (b); in subdivision (d), the second sentence was amended to substitute the word "is" for the words "shall be".

(17) Code of Civil Procedure Section 488.350 was amended to add subdivisions (e) and (f).

(18) Code of Civil Procedure Section 488.360 was amended as follows: The phrase "or promptly thereafter" was inserted following the word "levy" in the final sentence of subdivision (a); the clause "(1) that the aggregate of his property, at a fair valuation, is sufficient in amount to pay his debts, not including the plaintiff's claim, and (2)" was deleted from subdivision (b); in subdivision (c), the word "recorded" was substituted for the word "filed" following the words "shall be" in the second

sentence; the third, fifth, sixth, seventh, eighth, and ninth sentences were added; and subdivision (d) was added.

(19) Code of Civil Procedure Section 488.370 was amended to add the final sentence to subdivision (b).

(20) Code of Civil Procedure Section 488.380 was amended to add a new subdivision (d) and to renumber former subdivision (d) as subdivision (e).

(21) Code of Civil Procedure Section 488.390 was amended to add the final sentence to subdivision (b).

(22) Code of Civil Procedure Section 488.400 was amended to add subdivision (d).

(23) Code of Civil Procedure Section 488.410 was amended to add a new subdivision (c) and to renumber former subdivision (c) as subdivision (d).

(24) Code of Civil Procedure Section 488.420 was amended to add the final sentence to subdivision (b).

(25) Code of Civil Procedure Section 488.430 was amended to add the final sentence to subdivision (b).

(26) Code of Civil Procedure Section 490.010 was amended as follows: In subdivision (a), the clause "except that it is not a wrongful attachment if both of the following are established" was added following the word "authorized" and paragraphs (1) and (2) were added; subdivision (c), as included in the bill as introduced, was deleted; subdivisions (d) and (e) were renumbered as subdivisions (c) and (d), respectively.

(27) Code of Civil Procedure Section 490.020 was amended to delete the phrase "whether direct or consequential" following the word "attachment" from paragraph (1) of subdivision (a) and to delete the clause "where the writ of attachment was issued pursuant to Article 1 (commencing with Section 484.010) or Article 2 (commencing with Section 484.310) of Chapter 4" from subdivision (b).

(28) Code of Civil Procedure Section 492.070 was amended to add the phrase "and a statement that the plaintiff is informed and believes that such property is subject to attachment pursuant to Section 492.040" at the end of the first sentence of subdivision (c).

(29) Code of Civil Procedure Section 492.080, which was included in the bill as introduced, was deleted entirely.

(30) Code of Civil Procedure Section 684.2 was amended as follows: In the first sentence, the phrase "issued, and a judgment is recovered in the action in favor of the plaintiff, and an execution is issued thereon and delivered to the sheriff, constable, or marshal, he shall satisfy the judgment" was substituted for the phrase "issued and judgment is recovered by

the plaintiff, the sheriff, constable, or marshal shall satisfy the same"; in the second sentence, the phrase "and an execution has been delivered to the officer" was deleted following the words "remains due".

(31) Code of Civil Procedure Section 688 was amended to add the second sentence to subdivision (b) and to insert the phrase "or his agent" following the phrase "owing such debt" in the final sentence of subdivision (b).

(32) Financial Code Section 1650, as included in the bill as introduced, was replaced by Section 1650 as added by Chapter 136 of the Statutes of 1974, and was amended to add the last paragraph.

(33) Harbors and Navigation Code Section 495.1, which was not included in the bill as introduced, was amended to add the introductory clause to the first sentence and to add the final sentence.

(34) Harbors and Navigation Code Section 495.2, which was not included in the bill as introduced, was repealed.

(35) Harbors and Navigation Code Section 495.5, which was not included in the bill as introduced, was amended to substitute the phrase "any other attachment" for the phrase "bail on arrest" at the end of the section.

Other technical amendments were made.

Enforcement of judgments. Assembly Bill 2829, which became Chapter 211 of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Enforcement of Sister State Money Judgments*, 11 CAL. L. REVISION COMM'N REPORTS 451 (1973). The bill was enacted as introduced.

Condemnation Law and Procedure

Senate Bill 1535, which became Chapter 426 of the Statutes of 1974, was introduced by Senator Robert S. Stevens to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts* (January 1974), to be reprinted in 12 CAL L. REVISION COMM'N REPORTS 1001 (1974).

The following significant amendments were made to Senate Bill 1535:

(1) Streets and Highways Code Section 5150.5 was amended as follows: The introductory clause "If a county is conducting the proceedings under this division," was deleted; the words "change, or modify" were inserted after the word "establish";

following the word "improved", the phrase "and for which no official grade has previously been established by ordinance or resolution" was deleted, and the phrase "pursuant to this division" was inserted; the phrase "in relation to a county" was deleted preceding the words "shall mean"; at the end of the section, the phrase "by resolution of the legislative body of the county" was deleted, and the words "changed, or modified" were inserted.

(2) Streets and Highways Code Section 10404, which was not included in the bill as introduced, was amended to substitute the phrase "as provided in this section" for the phrase "in the manner and form and at the times specified in Sections 4320 and 4321". The original section was numbered subdivision (a); subdivisions (b), (c), and (d) were added.

(3) Subdivision (a) of Section 71 was amended to add paragraphs (1)-(7), inclusive, defining "commenced" for the purposes of the subdivision.

(4) Section 72 was added to the bill to make its operative date January 1, 1976.

Other technical amendments were made.

Liquidated Damages

Senate Bill 1532 was introduced by Senator Stevens to effectuate the Commission's recommendation on this subject. See *Recommendation and Study Relating to Liquidated Damages*, 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973). The recommendation was withdrawn for further study, and the bill was not enacted.²

Evidence

Two bills were introduced on this subject in 1974.

Erroneously ordered disclosure of privileged information. Assembly Bill 2828, which became Chapter 227 of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Erroneously Ordered Disclosure of Privileged Information*, 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973). The bill was enacted as introduced.

The "criminal conduct" exception. Senate Bill 1534 was introduced by Senator Stevens to effectuate the Commission's

² The Commission plans to submit a revised recommendation on this subject to the 1975 Legislature. See *Recommendation Relating to Liquidated Damages* (January 1975), to be published as an Appendix to the Commission's Annual Report (December 1975).

recommendation on this subject. See *Recommendation Relating to Evidence Code Section 999—The “Criminal Conduct” Exception to the Physician-Patient Privilege*, 11 CAL. L. REVISION COMM’N REPORTS 1147 (1973). The recommendation was withdrawn for further study, and the bill was not enacted.³

Lease Law

Two bills were introduced on this subject in 1974.

Personal property left on leased premises. Assembly Bill 2830, which became Chapter 331 of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Landlord-Tenant Relations: Personal Property Left on Premises Vacated by Tenant*, 11 CAL. L. REVISION COMM’N REPORTS 963 (1973); *Report of Assembly Committee on Judiciary on Assembly Bill 2830*, ASSEMBLY J. (April 4, 1974) at 11722, reprinted as Appendix II to this Report; *Report of Senate Committee on Judiciary on Assembly Bills 2830 and 2831*, SENATE J. (May 22, 1974) at 10055, reprinted as Appendix III to this Report.

The following significant amendments were made to Assembly Bill 2830:

(1) Code of Civil Procedure Section 1981 was amended to add the second sentence to subdivision (b).

(2) Code of Civil Procedure Section 1984, as included in the bill as introduced, was numbered subdivision (a) and subdivision (b) was added. The form was amended to include lines marked: “(insert description of the personal property)” and to show where the statement required by the new subdivision (b) was to be inserted.

(3) Code of Civil Procedure Section 1985 was amended to include in the form lines marked “(insert description of the personal property)”.

(4) Code of Civil Procedure Section 1986 was amended to insert the phrase “either be left on the vacated premises or” preceding the words “be stored” in the first sentence and to add the second sentence.

(5) Code of Civil Procedure Section 1987 as introduced was numbered subdivision (a) and amended to delete the phrase “landlord shall release the” preceding “personal property” and to add the phrase “shall be released by the landlord” following

³ The Commission plans to submit a revised recommendation on this subject to the 1975 Legislature. See *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege* (October 1974), published as Appendix VI to this Report.

the phrase "described in the notice"; subdivision (b) was added.

(6) Code of Civil Procedure Section 1988 was amended as follows: The final sentence was added to subdivision (a); in subdivision (b), the phrase "pursuant to Section 6066 of the Government Code" was substituted for the words "at least once"; following the word "held", a period was inserted and the phrase "The last publication shall be" was added; in subdivision (c), the last two sentences of the subdivision as introduced were deleted and a new final sentence was inserted.

(7) Code of Civil Procedure Section 1989 was amended to substitute the words "Notwithstanding subdivision (c) of Section 1981, where the landlord releases to the former tenant property which remains on the premises after a tenancy is terminated," for the clause "Where the landlord releases property to the former tenant pursuant to Section 1987," in subdivision (a).

Other technical amendments were made.

Abandonment of leased real property. Assembly Bill 2831, which became Chapter 332 of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Landlord-Tenant Relations: Abandonment of Leased Real Property*, 11 CAL. L. REVISION COMM'N REPORTS 957 (1973); *Report of Senate Committee on Judiciary on Assembly Bills 2830 and 2831*, SENATE J. (May 22, 1974) at 10055, reprinted as Appendix III to this Report.

The following significant amendments were made to Assembly Bill 2831:

(1) Civil Code Section 1951.3 was amended as follows: Requirement of inclusion in the written notice to the lessor of an address at which the lessee could be served by certified mail in any action for unlawful detainer of the real property was inserted in subdivision (a), in the form, and in paragraph (3) of subdivision (e); the form was amended to add the paragraph requiring payment of the rent due and unpaid; the period of unpaid rent was reduced from 20 to 14 consecutive days in subdivision (b) and in the form; the form was amended to substitute the words "lessee/tenant" for "lessee" in three places and to substitute the words "lessor/landlord" for "lessor" in three places; subdivision (e) was amended to add paragraph (4); and subdivision (g) was added.

(2) Section 415.47, which was not included in the bill as introduced, was added to the Code of Civil Procedure.

Other technical amendments were made.

Inheritance Rights of Nonresident Aliens

Senate Bill 1533, which became Chapter 425 of the Statutes of 1974, was introduced by Senator Stevens to effectuate the recommendation of the Commission on this subject. See *Recommendation and Study Relating to Inheritance Rights of Nonresident Aliens*, 11 CAL. L. REVISION COMM'N REPORTS 421 (1973). The bill was enacted as introduced.

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 or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

(2) One decision of the Supreme Court of the United States holding a statute of this state unconstitutional has been found.

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

In *Lubin v. Panish*,² the United States Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 and 18600-18603 deprived indigent persons of equal protection guaranteed by the Fourteenth Amendment and the rights of expression and association guaranteed by the First Amendment. In *Knoll v. Davidson*,³ the California Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 violated the equal protection clause of the Fourteenth Amendment and was "in all respects null and void"⁴ because it failed to provide methods alternative to the payment of fees for the qualification of candidates for public office. In *Donovan v. Brown*,⁵ the California Supreme Court held that the California filing fee system set forth in Elections Code Sections 6551-6555 (made a prerequisite by Section 18603 of that code for the filing of a declaration of write-in candidacy and by Section 18603 for the counting of ballots) violated the

¹ This study has been carried through 94 S. Ct. 3234 (Aug. 15, 1974) and 12 Cal.3d 685 (Nov. 12, 1974).

² ____ U.S. ____, 94 S.Ct. 1315 (1974).

³ 12 Cal.3d 335, 525 P.2d 1273, 116 Cal. Rptr. 97 (1974).

⁴ 12 Cal.3d at 349, 525 P.2d at 1282, 116 Cal. Rptr. at 106.

⁵ 11 Cal.3d 571, 524 P.2d 137, 115 Cal. Rptr. 41 (1974).

equal protection clause of the Fourteenth Amendment.⁶

*D'Amico v. Board of Medical Examiners*⁷ held that the Osteopathic Act of 1962⁸ and Business and Professions Code Section 2310 violate the equal protection principles of the California and United States Constitutions insofar as they forbid licensure of graduate osteopaths as physicians and surgeons regardless of individual qualifications.

*People v. Superior Court*⁹ held that Penal Code Section 1000.2 violates the doctrine of separation of powers contained in Article III, Section 3, of the California Constitution insofar as it requires the consent of the prosecutor before a trial court may order that a defendant be diverted into a rehabilitation program for first-time possessors of drugs.¹⁰

*Adams v. Department of Motor Vehicles*¹¹ held Civil Code Sections 3071, 3072, 3073, and 3074 of the garageman's lien law invalid insofar as they permit involuntary sale and transfer of a vehicle without affording the owner an opportunity for hearing because they deprive owners of due process of law.¹²

*In re Kapperman*¹³ held invalid subdivision (c) of Section 2900.5 of the Penal Code. Subdivision (c) limited application of Section 2900.5 (which gives persons convicted of felony offenses credit for time served in custody prior to the commencement of their prison sentence) to persons delivered into custody of the Director of Corrections on or after March 4, 1972, the effective date of the section. This limitation, which precluded persons in custody on the effective date of the section from the benefits of the section, was held to violate Article I, Sections 11 and 21, of the California Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution in that it constituted a legislative classification which was not reasonably related to a legitimate public

⁶ In response to *Lubin*, legislation was enacted (Cal. Stats. 1974, Ch. 454) amending Elections Code Sections 6355 and 18603 and adding Government Code Section 16100.6. The court in *Knoll*, while noting the enactment of this legislation, expressed no opinion as to its constitutionality. See 12 Cal.3d at 349 n.11, 525 P.2d at 1288 n.11, 116 Cal. Rptr. at 106 n.11.

⁷ 11 Cal.3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974).

⁸ The Osteopathic Act of 1962 was a referendum measure amending the Osteopathic Act of 1922, which was enacted by initiative. Cal. Stats. 1962, 1st Ex. Sess., Ch. 48 (4 DEERING'S ANN. BUS. & PROF. CODE, 1961-1973 Cum. Supp. App. I at 281-286; 3A WEST'S ANN. BUS. & PROF. CODE at 332-334 (1974)); Cal. Stats. 1923 at xciii (4 DEERING'S ANN. BUS. & PROF. CODE, App. at 523 (1960); 3A WEST'S ANN. BUS. & PROF. CODE at 326 (1974)).

⁹ 11 Cal.3d 59, 520 P.2d 405, 113 Cal. Rptr. 21 (1974).

¹⁰ For legislation dealing with the problem raised by this decision, see Cal. Stats. 1974, Ch. 1014.

¹¹ 11 Cal.3d 146, 520 P.2d 961, 113 Cal. Rptr. 145 (1974).

¹² For legislation enacted in response to this decision, see Cal. Stats. 1974, Ch. 1262.

¹³ 11 Cal.3d 542, 522 P.2d 657, 114 Cal. Rptr. 97 (1974).

purpose.¹⁴

*In re Foss*¹⁵ held that Health and Safety Code Section 11501 and its successor, Section 11352, violate the prohibition against cruel or unusual punishments in Article I, Section 6, of the California Constitution insofar as they preclude parole consideration of a repeat narcotic offender for a minimum of 10 years.¹⁶

*Grimes v. Hoschler*¹⁷ held Business and Professions Code Section 7113.5 violated the supremacy clause of the United States Constitution (Article VI, clause 2) in that it frustrated the objectives of the Federal Bankruptcy Act by permitting the Contractors' State License Board to revoke the license of a contractor who had been adjudicated a bankrupt.¹⁸

*Gordon v. Justice Court*¹⁹ held that the practice of allowing a non-attorney judge, qualified under Government Code Section 71601, to try a case in which a defendant faces a potential jail sentence violates the due process clause of the United States Constitution.²⁰

¹⁴ The court did not invalidate the entire section but only eliminated the discriminatory classification under subdivision (c) of Section 2900.5, thus extending the statutory benefits retroactively to those whom the subdivision improperly excluded.

¹⁵ 10 Cal.3d 910, 519 P.2d 1073, 112 Cal. Rptr. 649 (1974).

¹⁶ The court also stated that the views expressed in its opinion apply with equal force to the provision of Section 11501 and its successor, Section 11352, precluding parole consideration of a third-time offender for a minimum of 15 years.

¹⁷ 12 Cal.3d 305, 525 P.2d 65, 115 Cal. Rptr. 625 (1974).

¹⁸ The court further noted that Business and Professions Code Section 7102, which provides that after revocation a license will not be reinstated or reissued without a showing that the amount of the discharged debts has been paid in full, similarly is in conflict with the Federal Bankruptcy Act and therefore invalid under the supremacy clause.

¹⁹ 12 Cal.3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974).

²⁰ The court also noted that there is a strong argument that the practice of allowing a non-attorney judge to act as magistrate in a felony preliminary examination pursuant to Penal Code Sections 806 and 868 *et seq.* similarly deprives the defendant of due process of law.

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 "Calendar of Topics for Study" *supra*), to remove from its calendar of topics the topics listed under "Topics to Be Removed From Calendar of Topics" *supra*, and to authorize the Commission to study the topics described under "Topics for Future Consideration" *supra*.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of the provisions referred to under "Report on Statutes Repealed by Implication or Held Unconstitutional," *supra*, to the extent that those provisions have been held to be unconstitutional.

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

Recommendation	Action by Legislature
1. <i>Partial Revision of Education Code</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1954 at 12 (1957)	Enacted. Cal. Stats. 1955, Chs. 799, 877
2. <i>Summary Distribution of Small Estates Under Probate Code Sections 640 to 646</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1954 at 50 (1957)	Enacted. Cal. Stats. 1955, Ch. 1183
3. <i>Fish and Game Code</i> , 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1957 at 13 (1957); 1 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1956 at 13 (1957)	Enacted. Cal. Stats. 1957, Ch. 456
4. <i>Maximum Period of Confinement in a County Jail</i> , 1 CAL. L. REVISION COMM'N REPORTS at A-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 139
5. <i>Notice of Application for Attorney's Fees and Costs in Domestic Relations Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at B-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 540
6. <i>Taking Instructions to Jury Room</i> , 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957)	Not enacted. But see Cal. Stats. 1971, Ch. 1571, enacting substance of this recommendation.

7. *The Dead Man Statute*, 1 CAL. L. REVISION COMM'N REPORTS at D-1 (1957) Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to EVID. CODE § 1261.
8. *Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957) Enacted. Cal. Stats. 1957, Ch. 490
9. *The Marital "For and Against" Testimonial Privilege*, 1 CAL. L. REVISION COMM'N REPORTS at F-1 (1957) Not enacted. But recommendation accomplished in enactment of Evidence Code. See Comment to EVID. CODE § 970.
10. *Suspension of the Absolute Power of Alienation*, 1 CAL. L. REVISION COMM'N REPORTS at G-1 (1957); 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 14 (1959) Enacted. Cal. Stats. 1959, Ch. 470
11. *Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378*, 1 CAL. L. REVISION COMM'N REPORTS at H-1 (1957) Enacted. Cal. Stats. 1957, Ch. 102
12. *Judicial Notice of the Law of Foreign Countries*, 1 CAL. L. REVISION COMM'N REPORTS at I-1 (1957) Enacted. Cal. Stats. 1957, Ch. 249

13. *Choice of Law Governing Survival of Actions*, 1 CAL. L. REVISION COMM'N REPORTS at J-1 (1957) No legislation recommended.
14. *Effective Date of Order Ruling on a Motion for New Trial*, 1 CAL. L. REVISION COMM'N REPORTS at K-1 (1957); 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 16 (1959) Enacted. Cal. Stats. 1959, Ch. 468
15. *Retention of Venue for Convenience of Witnesses*, 1 CAL. L. REVISION COMM'N REPORTS at L-1 (1957) Not enacted.
16. *Bringing New Parties Into Civil Actions*, 1 CAL. L. REVISION COMM'N REPORTS at M-1 (1957) Enacted. Cal. Stats. 1957, Ch. 1498
17. *Grand Juries*, 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 20 (1959) Enacted. Cal. Stats. 1959, Ch. 501
18. *Procedure for Appointing Guardians*, 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 21 (1959) Enacted. Cal. Stats. 1959, Ch. 500
19. *Appointment of Administrator in Quiet Title Action*, 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 29 (1959) No legislation recommended.

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| 20. <i>Presentation of Claims Against Public Entities</i> , 2 CAL. L. REVISION COMM'N REPORTS at A-1 (1959) | Enacted. Cal. Stats. 1959, Chs. 1715, 1724, 1725, 1726, 1727, 1728; CAL. CONST., Art. XI, § 10 (1960) |
| 21. <i>Right of Nonresident Aliens to Inherit</i> , 2 CAL. L. REVISION COMM'N REPORTS at B-1 (1959); 11 CAL. L. REVISION COMM'N REPORTS 421 (1973) | Enacted. Cal. Stats. 1974, Ch. 425. |
| 22. <i>Mortgages to Secure Future Advances</i> , 2 CAL. L. REVISION COMM'N REPORTS at C-1 (1959) | Enacted. Cal. Stats. 1959, Ch. 528 |
| 23. <i>Doctrine of Worthier Title</i> , 2 CAL. L. REVISION COMM'N REPORTS at D-1 (1959) | Enacted. Cal. Stats. 1959, Ch. 122 |
| 24. <i>Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of Vehicles and Drunk Driving</i> , 2 CAL. L. REVISION COMM'N REPORTS at E-1 (1959) | Not enacted. |
| 25. <i>Time Within Which Motion for New Trial May Be Made</i> , 2 CAL. L. REVISION COMM'N REPORTS at F-1 (1959) | Enacted. Cal. Stats. 1959, Ch. 469 |
| 26. <i>Notice to Shareholders of Sale of Corporate Assets</i> , 2 CAL. L. REVISION COMM'N REPORTS at G-1 (1959) | Not enacted. |

27. *Evidence in Eminent Domain Proceedings*, 3 CAL. L. REVISION COMM'N REPORTS at A-1 (1961) Not enacted. But see EVID. CODE § 810 *et seq.* enacting substance of recommendation.
28. *Taking Possession and Passage of Title in Eminent Domain Proceedings*, 3 CAL. L. REVISION COMM'N REPORTS at B-1 (1961) Enacted. Cal. Stats. 1961, Chs. 1612, 1613
29. *Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. L. REVISION COMM'N REPORTS at C-1 (1961) Not enacted. But see GOVT. CODE § 7260 *et seq.* enacting substance of recommendation.
30. *Rescission of Contracts*, 3 CAL. L. REVISION COMM'N REPORTS at D-1 (1961) Enacted. Cal. Stats. 1961, Ch. 589
31. *Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings*, 3 CAL. L. REVISION COMM'N REPORTS at E-1 (1961) Enacted. Cal. Stats. 1961, Ch. 1616
32. *Survival of Actions*, 3 CAL. L. REVISION COMM'N REPORTS at F-1 (1961) Enacted. Cal. Stats. 1961, Ch. 657
33. *Arbitration*, 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961) Enacted. Cal. Stats. 1961, Ch. 461
34. *Presentation of Claims Against Public Officers and Employees*, 3 CAL. L. REVISION COMM'N REPORTS at H-1 (1961) Not enacted 1961. See recommendation to 1963 session (item 39 *infra*) which was enacted.

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| 35. <i>Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere</i> , 3 CAL. L. REVISION COMM'N REPORTS at I-1 (1961) | Enacted. Cal. Stats. 1961,
Ch. 636 |
| 36. <i>Notice of Alibi in Criminal Actions</i> , 3 CAL. L. REVISION COMM'N REPORTS at J-1 (1961) | Not enacted. |
| 37. <i>Discovery in Eminent Domain Proceedings</i> , 4 CAL. L. REVISION COMM'N REPORTS 701 (1963); 8 CAL. L. REVISION COMM'N REPORTS 19 (1967) | Enacted. Cal. Stats. 1967,
Ch. 1104 |
| 38. <i>Tort Liability of Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 801 (1963) | Enacted. Cal. Stats. 1963,
Ch. 1681 |
| 39. <i>Claims, Actions and Judgments Against Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1001 (1963) | Enacted. Cal. Stats. 1963,
Ch. 1715 |
| 40. <i>Insurance Coverage for Public Entities and Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1201 (1963) | Enacted. Cal. Stats. 1963,
Ch. 1682 |
| 41. <i>Defense of Public Employees</i> , 4 CAL. L. REVISION COMM'N REPORTS 1301 (1963) | Enacted. Cal. Stats. 1963,
Ch. 1683 |

42. *Liability of Public Entities for Ownership and Operation of Motor Vehicles*, 4 CAL. L. REVISION COMM'N REPORTS 1401 (1963); 7 CAL. L. REVISION COMM'N REPORTS 401 (1965) Enacted. Cal. Stats. 1965, Ch. 1527
43. *Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer*, 4 CAL. L. REVISION COMM'N REPORTS 1501 (1963) Enacted. Cal. Stats. 1963, Ch. 1684
44. *Sovereign Immunity—Amendments and Repeals of Inconsistent Statutes*, 4 CAL. L. REVISION COMM'N REPORTS 1601 (1963) Enacted. Cal. Stats. 1963, Chs. 1685, 1686, 2029
45. *Evidence Code*, 7 CAL. L. REVISION COMM'N REPORTS 1 (1965) Enacted. Cal. Stats. 1965, Ch. 299
46. *Claims and Actions Against Public Entities and Public Employees*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965) Enacted. Cal. Stats. 1965, Ch. 653
47. *Evidence Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101 (1967) Enacted in part: Cal. Stats. 1967, Ch. 650; balance enacted: Cal. Stats. 1970, Ch. 69
48. *Evidence—Agricultural Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 201 (1967) Enacted. Cal. Stats. 1967, Ch. 262

49. *Evidence—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 301 (1967) Enacted. Cal. Stats. 1967, Ch. 703
50. *Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 401 (1967); 8 CAL. L. REVISION COMM'N REPORTS 1385 (1967) Enacted. Cal. Stats. 1968, Chs. 457, 458
51. *Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967) Enacted. Cal. Stats. 1967, Ch. 702
52. *Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967) Enacted. Cal. Stats. 1967, Ch. 72
53. *Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967); 9 CAL. L. REVISION COMM'N REPORTS 401 (1969); 9 CAL. L. REVISION COMM'N REPORTS 153 (1969) Enacted. Cal. Stats. 1970, Ch. 89
54. *Good Faith Improver of Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 801 (1967); 8 CAL. L. REVISION COMM'N REPORTS 1373 (1967) Enacted. Cal. Stats. 1968, Ch. 150

55. *Suit By or Against an Unincorporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967) Enacted. Cal. Stats. 1967, Ch. 1324
56. *Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967) Enacted. Cal. Stats. 1968, Chs. 247, 356
57. *Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967) Enacted. Cal. Stats. 1968, Ch. 133
58. *Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967) Enacted. Cal. Stats. 1968, Ch. 132
59. *Sovereign Immunity—Statute of Limitations*, 9 CAL. L. REVISION COMM'N REPORTS 49 (1969); 9 CAL. L. REVISION COMM'N REPORTS 175 (1969) Vetoed 1969. Enacted: Cal. Stats. 1970, Ch. 104
60. *Additur and Remittitur*, 9 CAL. L. REVISION COMM'N REPORTS 63 (1969) Enacted. Cal. Stats. 1969, Ch. 115
61. *Fictitious Business Names*, 9 CAL. L. REVISION COMM'N REPORTS 71 (1969) Enacted. Cal. Stats. 1969, Ch. 114
62. *Quasi-Community Property*, 9 CAL. L. REVISION COMM'N REPORTS 113 (1969) Enacted. Cal. Stats. 1970, Ch. 312

63. *Arbitration of Just Compensation*, 9 CAL. L. REVISION COMM'N REPORTS 123 (1969) Enacted. Cal. Stats. 1970, Ch. 417
64. *Revisions of Evidence Code*, 9 CAL. L. REVISION COMM'N REPORTS 137 (1969) Enacted in part: Cal. Stats. 1970, Ch. 69; see also Cal. Stats. 1970, Chs. 1396, 1397
65. *Mutuality of Remedies in Suits for Specific Performance*, 9 CAL. L. REVISION COMM'N REPORTS 201 (1969) Enacted. Cal. Stats. 1969, Ch. 156
66. *Powers of Appointment*, 9 CAL. L. REVISION COMM'N REPORTS 301 (1969) Enacted. Cal. Stats. 1969, Chs. 113, 155
67. *Evidence Code—Revisions of Privileges Article*, 9 CAL. L. REVISION COMM'N REPORTS 501 (1969) Vetoed. But see Cal. Stats. 1970, Chs. 1396, 1397
68. *Fictitious Business Names*, 9 CAL. L. REVISION COMM'N REPORTS 601 (1969) Enacted. Cal. Stats. 1970, Ch. 618
69. *Representations as to the Credit of Third Persons and the Statute of Frauds*, 9 CAL. L. REVISION COMM'N REPORTS 701 (1969) Enacted. Cal. Stats. 1970, Ch. 720
70. *Revisions of Governmental Liability Act*, 9 CAL. L. REVISION COMM'N REPORTS 801 (1969) Enacted in part: Cal. Stats. 1970, Chs. 662, 1099

71. *"Vesting" of Interests Under Rule Against Perpetuities*, 9 CAL. L. REVISION COMM'N REPORTS 901 (1969) Enacted. Cal. Stats. 1970, Ch. 45
72. *Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions*, 10 CAL. L. REVISION COMM'N REPORTS 501 (1971) Enacted. Cal. Stats. 1971, Chs. 244, 950; see also Cal. Stats. 1973, Ch. 828
73. *Wage Garnishment and Related Matters*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971); 11 CAL. L. REVISION COMM'N REPORTS 101 (1973) Not enacted. But new recommendation will be submitted to 1975 session.
74. *Proof of Foreign Official Records*, 10 CAL. L. REVISION COMM'N REPORTS 1022 (1971) Enacted. Cal. Stats. 1970, Ch. 41
75. *Inverse Condemnation—Insurance Coverage*, 10 CAL. L. REVISION COMM'N REPORTS 1051 (1971) Enacted. Cal. Stats. 1971, Ch. 140
76. *Discharge From Employment Because of Wage Garnishment*, 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971) Enacted. Cal. Stats. 1971, Ch. 1607
77. *Civil Arrest*, 11 CAL. L. REVISION COMM'N REPORTS 1 (1973) Enacted. Cal. Stats. 1973, Ch. 20

78. *Claim and Delivery Statute*, 11 CAL. L. REVISION COMM'N REPORTS 301 (1973) Enacted. Cal. Stats. 1973, Ch. 526
79. *Unclaimed Property*, 11 CAL. L. REVISION COMM'N REPORTS 401 (1973) Proposed resolution enacted. Cal. Stats. 1973, Res. Ch. 76. Proposed legislation not enacted. But new recommendation will be submitted to 1975 session.
80. *Enforcement of Sister State Money Judgments*, 11 CAL. L. REVISION COMM'N REPORTS 451 (1973) Enacted. Cal. Stats. 1974, Ch. 211
81. *Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973) Enacted. Cal. Stats. 1974, Ch. 1516
82. *Landlord-Tenant Relations*, 11 CAL. L. REVISION COMM'N REPORTS 951 (1973) Enacted. Cal. Stats. 1974, Chs. 331, 332
83. *Pleading* (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973) Enacted. Cal. Stats. 1972, Ch. 73
84. *Evidence—Judicial Notice* (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1025 (1973) Enacted. Cal. Stats. 1972, Ch. 764
85. *Evidence—"Criminal Conduct" Exception*, 11 CAL. L. REVISION COMM'N REPORTS 1147 (1973) Not enacted. But new recommendation will be submitted to 1975 session.

86. *Erroneously Compelled Disclosure of Privileged Information*, 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973) Enacted. Cal. Stats. 1974, Ch. 227
87. *Liquidated Damages*, 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973) Not enacted. But new recommendation will be submitted to 1975 session.
88. *Improvement Acts*, 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974) Enacted. Cal. Stats. 1974, Ch. 426

APPENDIX I

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 2948

[Extract from Senate Journal for August 21, 1974 (1973-74 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bill 2948, the Senate Committee on Judiciary makes the following report:

Except for the revised comments set out below, the comments contained under the various sections of Assembly Bill 2948 as set out in *Recommendation of the California Law Revision Commission Relating to Prejudgment Attachment* (December 1973), 11 Cal. L. Revision Comm'n Reports 701 (1973), reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 2948.

The following revised comments also reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 2948.

Code of Civil Procedure

Section 482.040. General requirements for affidavits

Comment. Section 482.040 provides standards for affidavits filed pursuant to this title. These standards are comparable to but not as restrictive as those provided for affidavits filed in support of or in opposition to a motion for summary judgment. Compare Section 437c. A verified complaint that satisfies the requirements of Section 482.040 may be used in lieu of or in addition to an affidavit. See also Section 2015.5 (use of declaration under penalty of perjury). It should be noted that under this title certain matters may be shown on the plaintiff's information and belief. See Sections 484.510(b), 485.210(d), 485.530(b), 486.010, 492.020(c), and 492.070.

Code of Civil Procedure

Section 483.010. Claims arising out of conduct of trade, business, or profession

Comment. Section 483.010 is based upon subdivision (a) of former Section 537.1. Subdivision (a) of former Section 537.1 was designed to limit attachment to cases arising out of commercial transactions. (The title to the 1972 enactment provides that it is one "relating to attachment in commercial actions.") Section 483.010 continues this purpose. Subdivision (a) limits the claims on which an attachment may be issued to those based upon a contract, express or implied, and asserted against a defendant engaged in a trade, business, or profession. Subdivision (c) further carries out this purpose by specifically prohibiting attachment where the goods, services, or money furnished was used primarily for personal, family, or household purposes. Compare Civil Code Section 1802.1 (retail sales). However, Section 483.010 is

intended to encompass each of the situations described in paragraphs (1) through (4) of subdivision (a) of former Section 537.1. In this respect, it should be noted that the term "contract" used in subdivision (a) includes a lease of either real or personal property. See *Stanford Hotel Co. v. M. Schwind Co.*, 180 Cal. 348, 181 P. 780 (1919) (realty); *Walker v. Phillips*, 205 Cal. App.2d 26, 22 Cal. Rptr. 727 (1962) (personalty).

Claims may be aggregated, but the total amount claimed in the action must be not less than \$500. Generally an expeditious remedy will be available for lesser amounts under the small claims procedure. See Chapter 5A (commencing with Section 116) of Title 1 of Part 1 of this code. The claim must be for a "fixed or readily ascertainable" amount. This provision continues former law. *E.g.*, *Lewis v. Steifel*, 98 Cal. App.2d 648, 220 P.2d 769 (1950).

The introductory clause to Section 483.010 recognizes the authority to attach granted by other miscellaneous statutory provisions. See, *e.g.*, CIVIL CODE §§ 3065a and 3152; FIN. CODE § 3144; FOOD & AGRI. CODE § 281; HARB. & NAV. CODE § 495.1; HEALTH & SAF. CODE § 11501; LABOR CODE § 5600; and REV. & TAX. CODE §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, and 32352. See also Section 492.010 (nonresident attachment).

The attachment remedy is not available where the plaintiff's claim is secured. See subdivision (b). Moreover, the security cannot simply be waived. However, the last sentence of subdivision (b) does permit attachment where the security has become valueless without the act of the plaintiff or where a nonconsensual possessory lien is relinquished by a surrender of possession.

Code of Civil Procedure

Section 484.090. Hearing; issuance of order and writ

Comment. Section 484.090 is similar in content and purpose to former Section 538.4. However, former Section 538.4 provided a preference for hearing which is not continued. Also, the explicit direction that a writ be issued automatically if the defendant fails to appear is eliminated. Instead, Section 484.060 requires the defendant to file a notice of opposition if he plans to oppose the issuance of a writ; if he does not so file, he may not oppose the application. The court must still review the application to determine whether or not the plaintiff has made a prima facie showing for the issuance of the writ. Whether or not the defendant appears in opposition, the plaintiff has the burden of proving (1) that his claim is one upon which an attachment may be issued and (2) the probable validity of such claim. See Section 481.190.

Former Section 538.4 authorized either party to submit oral evidence at the hearing. Section 484.090 contemplates that, in the usual case, the court's determinations will be made on the basis of the pleadings, affidavits, and points and authorities filed prior to the hearing and that an additional evidentiary showing at the hearing will be allowed only upon good cause. This procedure should result in a conservation of judicial time without prejudicing the rights of the parties and should

avoid converting the hearing on a preliminary matter into a full-dress trial of the merits of the action.

The time limits for filing the required affidavits are provided in Sections 484.060 and 484.070.

Section 484.090 does not continue the requirement of former Section 538.4 that the defendant make himself or an agent or officer available for examination regarding the plaintiff's claim.

Although no special finding is required, no right to attach order will be issued if the defendant shows that such order would violate the National Bankruptcy Act. See Section 484.020(d).

Subdivision (b) of Section 484.090 requires the writ to state the amount to be secured by the attachment and describe the property to be levied upon. The writ does not require that levy be made in any particular order. Contrast the last sentence of former Section 538.4.

As to multiple writs, alias writs, and additional writs, see Sections 482.090 and 484.310 and the Comments thereto.

Code of Civil Procedure

Section 485.010. Prerequisite of great or irreparable injury

Comment. Section 485.010 is based on former Section 538.5. Subdivision (a) of former Section 538.5 has been replaced by the substantively similar provisions of paragraphs (2) and (3) of subdivision (b) and subdivision (c) of Section 485.010. Paragraph (3) of subdivision (b) does not, however, modify the exclusive scheme of priorities provided by Section 24074 of the Business and Professions Code (see *Grover Escrow Corp. v. Cole*, 71 Cal.2d 61, 453 P.2d 461, 77 Cal. Rptr. 21 (1969)) but merely provides for levy in the circumstances contemplated in the last paragraph of Section 24074. Subdivisions (b) and (c) of former Section 538.5 have been replaced by paragraphs (1) and (4) of subdivision (b) of Section 485.010. These two paragraphs authorize ex parte relief on a showing of circumstances from which it may be inferred that there is a danger that property will be concealed, substantially impaired in value, or otherwise made unavailable to levy or a showing of *any* other circumstance that indicates that the plaintiff would suffer great or irreparable injury if issuance of the writ were delayed until the matter could be heard on notice.

The introductory clause to Section 485.010 recognizes the specific authorization to issue an ex parte attachment provided by other statutes. See e.g., HARB. & NAV. CODE § 495.1; HEALTH & SAF. CODE § 11501; REV. & TAX. CODE §§ 6713, 7864, 8972, 11472, 12680, 18833, 26251, 30302, and 32352. See also Chapter 12 (commencing with Section 492.010) (nonresident attachment).

Code of Civil Procedure

Section 485.240. Setting aside right to attach order and quashing writ

Comment. Section 485.240 is similar in content and purpose to the last two sentences of former Section 538.5. Former Section 556 also provided a procedure for setting aside a writ that had been improperly

or irregularly issued although former Section 558 specifically authorized amendments to be made to prevent discharge. The latter provision is unnecessary and is not continued by statute; the court has the inherent power to permit a plaintiff to amend his application or supplement his showing in support of the attachment at or prior to the hearing.

Although in the situation provided for here, the defendant is the moving party, the plaintiff nevertheless continues to have the burden of proving (1) that his claim is one upon which an attachment may be issued and (2) the probable validity of such claim. Compare Section 484.090.

Code of Civil Procedure

Section 487.010. Property subject to attachment

Comment. Section 487.010 is substantially the same as former Section 537.3. The introductory paragraph of former Section 537.3 provided that property exempt from execution was not subject to attachment. The next to last paragraph of subdivision (b) of Section 537.3 provided that property necessary for the support of the defendant and his family was not subject to attachment. These provisions are continued in Section 487.020.

Subdivision (a) and (b) of Section 487.010 are the same in substance as subdivision (a) of former Section 537.3. These subdivisions have been revised in part to make clear that property for which a method of levy is not provided is not subject to attachment, *e.g.*, copyrights and patents.

Subdivision (c) is substantially the same as subdivision (b) of former Section 537.3. Some terms have been changed, but their meaning is still substantially the same, and some types of property have been added. For example, farm products and negotiable instruments and documents were apparently not always subject to levy under former Section 537.3 because none of them were listed under subdivision (b) of Section 537.3. See Com. Code §§ 9106 ("general intangibles" does not include instruments), 9109 ("inventory" does not include farm products). All have been listed under subdivision (c) of Section 487.010.

The method of levy on real property tends to minimize the impact on the defendant of an attachment of such property. See Section 488.310 (levy on real property). Accordingly, attachment of real property is permitted whether or not the real property is business related property.

Subdivision (d) has been added to cure an ambiguity in the former statute. Compare former Section 537.2. As to a nonpartnership obligation, a judgment creditor of a partner must apply for a charging order to reach the partner's interest in the partnership. Corp. Code § 15028. However, where the partnership is sued on a partnership obligation, the plaintiff may also join the partners individually and, if the plaintiff recovers judgment against the partnership, he may execute against the individual property of every partner who is served with

summons. Accordingly, the plaintiff in this situation should also be able to attach an individual partner's business-related property whether or not such property is considered to be partnership property. For example, an individual partner may have leased a piece of heavy equipment to the partnership but retained an ownership interest. In this situation, the plaintiff should be able to attach both interests in the equipment, not merely the partnership's leasehold interest. Under former Section 537.2, it was not clear whether "individuals" included individuals who were partners sued on their individual liability for a partnership debt.

Section 487.010 does not affect rules governing priorities between creditors. See, e.g., CODE CIV. PROC. § 1206 (laborer's preferred claim). Moreover, special rules as to what property is subject to attachment apply where the attachment is issued pursuant to Chapter 12 (nonresident attachment). See Section 492.040.

Code of Civil Procedure

Section 487.020. Property exempt from attachment

Comment. Section 487.020 is substantively the same as the first paragraph of Section 537.3 and the next to last paragraph of subdivision (b) of that section. See Comment to Section 487.010.

Subdivision (a) embraces not only the exemptions provided in the 690 series of the Code of Civil Procedure but also homesteads, spendthrift trusts, and any other special exemptions provided by law. See, e.g., CIVIL CODE § 1240 (homestead); *Estate of Lawrence*, 267 Cal. App.2d 77, 72 Cal. Rptr. 851 (1968) (spendthrift trust); *Robbins v. Bueno*, 262 Cal. App.2d 79, 68 Cal. Rptr. 347 (1968) (property in *custodia legis*). See generally 5 B. WITKIN, CALIFORNIA PROCEDURE *Enforcement of Judgment* §§ 11-67 at 3396-3442 (2d ed. 1971, Supp. 1972); E. JACKSON, CALIFORNIA DEBT COLLECTION PRACTICE §§ 19.1-19.44 at 460-488 (Cal. Cont. Ed. Bar 1968). Included under subdivision (a) is Section 690.6 (partial exemption of employee's earnings). However, Section 690.6 is totally eclipsed by subdivision (c) which provides an exemption from attachment of *all* earnings arising out of an employer-employee relationship but not an exemption for earnings generally. This does not, of course, affect the federal exemptions from garnishment. See Consumer Credit Protection Act, §§ 301-307, 15 U.S.C. §§ 1671-1677 (1970). It should be noted that the exemptions provided or incorporated by Section 487.020 are applicable generally only to individual defendants. However, this includes an individual defendant who is a partner and whose property is reached pursuant to subdivision (d) of Section 487.010. *But see* CORP. CODE § 15025(2)(c) (partner may not claim exemption in partnership property attached for partnership debt); *Cowan v. Their Creditors*, 77 Cal. 403, 19 P. 755 (1888).

Subdivision (b) provides an additional exemption available to an individual defendant upon a showing of need.

The California Supreme Court in *Randone v. Appellate Department*,

5 Cal.3d 536, 562, 488 P.2d 13, 30, 96 Cal. Rptr. 709, 726 (1971), held that:

[T]he state cannot properly withdraw from a defendant the essentials he needs to live, to work, to support his family or to litigate the pending action before an impartial confirmation of the actual, as opposed to probable, validity of the creditor's claim after a hearing on that issue.

This title attempts to satisfy the foregoing requirement (1) by providing prior to levy either an opportunity for the defendant to claim his exemptions or a requirement that the plaintiff show that the property sought to be attached is not exempt, (2) by generally subjecting only business property to levy, (3) by providing a nonseizure form of levy in many circumstances, and (4) by authorizing the court to issue a temporary protective order in lieu of a writ in the exceptional circumstances where a writ may be issued *ex parte*.

Subdivision (d) makes clear that property not subject to attachment under Section 487.010 may be claimed as "exempt" under the various procedures for claiming an exemption. See, *e.g.*, Section 485.230.

Code of Civil Procedure

Section 488.045. Discretion of levying officer to remove property or place keeper in possession

Comment. Section 488.045 makes clear that, where a levying officer is directed to attach property which must be taken into his custody, he generally has the discretion to make the levy either by installing a keeper or removing the property to a warehouse or other place of safe-keeping. However, the introductory clause recognizes that in certain situations there is a specific procedure required by statute. See Section 488.360 (levy on inventory of a going business).

Code of Civil Procedure

Section 488.360. Farm products and inventory of a going business

Comment. Section 488.360 provides special methods for attaching farm products and the inventory of a going business. The terms "farm products" and "inventory" are defined by Section 481.110 and 481.120, respectively. As to businesses, this section replaces a portion of subdivision 3 of former Section 542. Subdivision (a) preserves the basic approach of installing a keeper for a short period of time while permitting the business to continue to operate and then taking exclusive custody. However, this section is limited to farm products and inventory. Equipment is attached only by filing pursuant to Section 488.340. Subdivision (a) also makes some additional minor changes. It makes clear that the defendant must be served with a copy of the writ and notice of attachment and permits sales where payment is by check or by a credit card not issued by the defendant, *e.g.*, BankAmericard or Master Charge. It should be noted that subdivision (a) permits (as did former law) the parties to make an alternate disposition of the property; this may include the creation of a consensual security interest with adequate provisions for accounting for proceeds. If an agreement

cannot be reached or the defendant cannot obtain relief under subdivision (b), the property is seized. Subdivision (a) also replaces the first paragraph of both subdivision 1a and subdivision 2a of former Section 542. These paragraphs provided for levy upon growing crops by filing with the county recorder. Levy by recordation is now provided as an alternative method pursuant to subdivision (c). See discussion *infra*. See also COM. CODE § 9401(1).

Subdivision (b) provides a procedure for relief where the defendant can show that the property attached is essential for the support of himself and his family. In these circumstances, the court must order the return of essentials to the defendant but it may also require the defendant to care for the property and may place reasonable restrictions on the disposition of such property. For example, it may direct the defendant to maintain adequate insurance, to care for and preserve the property, to account for proceeds of sale, to permit reasonable inspections of the property and his books, and to furnish the plaintiff with periodic accounts.

Subdivision (c) permits the plaintiff to elect initially an alternate method of levy comparable to the perfection by filing of a consensual security interest in inventory under the Commercial Code. Compare COM. CODE § 9302. The attachment lien acquired by filing not only provides the plaintiff with a "floating lien" on inventory but also gives the plaintiff the same rights and priorities in proceeds as those of a secured party who has obtained rights in proceeds of collateral under Section 9306 of the Commercial Code. Although subdivision (2) of Section 9306 appears to continue a security interest in the original collateral after it is sold, as well as in proceeds, the appearance is deceiving because Section 9307 provides that a buyer in the ordinary course of business takes free from the security interest in inventory (except farm products) even though he knows of it. Subdivision (c) accomplishes this same result by granting the plaintiff the same rights and priorities as those of a secured party under the Commercial Code. Obviously, subdivision (c) does not provide a plaintiff the same degree of security as does subdivision (a). It does, however, provide a priority over other creditors and, if the business continues to be solvent, it may offer an adequate measure of security with a minimal interference with the defendant's affairs. Although subdivisions (a) and (c) require service of the writ and notice on the defendant, such service is not a condition of a valid levy.

Code of Civil Procedure **Section 488.380. Chattel paper**

Comment. Section 488.380 provides the method by which chattel paper is attached. The term "chattel paper" is defined by Section 481.040. Chattel paper is attached by serving the person in possession of such chattel paper with a copy of the writ and the notice of attachment and, if the chattel paper is in the possession of the defendant, taking the chattel paper into custody. This procedure will generally prevent further transfers of the chattel paper and provide the plaintiff

priority over other attaching creditors. Former attachment law did not use the term "chattel paper." However, the procedure provided by subdivision (a) is comparable to that formerly used to attach debts or credits—terms which would seem to have embraced chattel paper. See generally Comment to Section 488.400. Where the defendant is not the person in possession, subdivision (b) also requires service on the defendant, but such service is not a condition of a valid levy.

Attachment pursuant to subdivision (a) does not, however, affect the rights and duties of the account debtor until he is served with a copy of the writ and the notice of attachment. *Cf. Nanny v. H. E. Pogue Distillery Co.*, 56 Cal. App.2d 817, 822, 133 P.2d 686, 688 (1943), quoting with approval 1 CAL. JUR. *Accounts and Accounting* §§ 11, 12 at 150, 151 (1921) (until debtor has notice of assignment, debt will be discharged by payment to assignor). The notice of attachment will advise the account debtor of his duties under the attachment (see subdivision (d) of Section 488.020), including the duty to make any payments still required to the levying officer.

The duty of the obligee (person in possession of the chattel paper) and the account debtor to give an account of the amount owing is set forth in Section 488.080. See also Chapter 11 (commencing with Section 491.010). The person in possession is also required to forward payments received subsequent to levy to the levying officer to be held pursuant to the attachment. Subdivision (e).

Code of Civil Procedure

Section 488.410. Securities

Comment. Section 488.410 provides the methods by which a security may be attached and makes clear that, in those cases where a security cannot be attached, the plaintiff is entitled to appropriate relief against the third party who is in possession. Subdivisions (a) and (b) provide a method of levy consistent with subdivision (1) of Section 8317 of the Commercial Code. Where the security is in the possession of the defendant, subdivision (a) requires seizure. Where a third person has possession under the limited circumstances described in subdivision (b), levy may be accomplished by garnishment. In this situation, although service on the defendant is also required, it is not a condition of a valid levy. In other situations where a third person is in possession, *e.g.*, as pledgee, subdivision (d) makes clear that the remedy available is that provided by subdivision (2) of Section 8317 of the Commercial Code (plaintiff entitled to appropriate equitable relief). See also Section 482.020. These provisions avoid conflict with Section 8317; it should be noted, however, that they do not permit attachment of securities in all situations.

Code of Civil Procedure

Section 490.010. Acts constituting wrongful attachment

Comment. Section 490.010 provides a statutory cause of action for wrongful attachment in four specific situations. As Section 490.060 makes clear, the liability provided by Section 490.010 is not exclusive. The defendant may pursue his common law remedies if he chooses.

Subdivision (a). Subdivision (a) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served in an action where attachment is not authorized. An exception is provided, however, which protects the plaintiff where levy is not authorized because the goods, services, or money furnished were used primarily for consumer purposes but the person who furnished them reasonably believed that they would not be so used. This provision is based on a portion of subdivision (a) of former Section 539 which provided for recovery where "the restraining order or the attachment is discharged on the ground that the plaintiff was not entitled thereto under Sections 537 to 537.2, inclusive." However, under former law, the defendant's recovery was limited to an amount not exceeding the plaintiff's undertaking. Under Section 490.020, the plaintiff's liability is so limited only if he has proceeded by way of a noticed hearing. See Section 490.020(b).

Subdivision (b). Subdivision (b) provides that wrongful attachment occurs when a writ of attachment is levied or a protective order is served where judgment in the action is not in favor of the plaintiff. This provision is based on another portion of subdivision (a) of former Section 539 which provided for recovery where "the defendant recovers judgment." Again, however, under Section 539, the defendant's recovery was limited to an amount not exceeding the amount of the undertaking; under Section 490.020, the plaintiff only obtains such limitation where he has proceeded by way of a noticed hearing.

Subdivision (c). Subdivision (c) provides that wrongful attachment occurs when the plaintiff levies an ex parte writ of attachment on property which is exempt from attachment except where the writ was obtained under Chapter 12 (nonresident attachment) of this title or where the plaintiff reasonably believed that the property was not exempt from attachment. See Section 487.020 (property exempt from attachment). The determination that the property was not exempt made pursuant to Sections 484.520, 485.220, or 485.540 does not preclude a finding that the plaintiff acted unreasonably. For example, the determination may have been based on false affidavits or inadequate investigation by the plaintiff. Attachment of exempt property was classified as a form of abuse of process. See *White Lighting Co. v. Wolfson*, 68 Cal.2d 336, 349, 438 P.2d 345, 353, 66 Cal. Rptr. 697, 705 (1968); *McNabb v. Byrnes*, 92 Cal. App. 337, 268 P. 428 (1928).

Subdivision (d). Subdivision (d) provides that wrongful attachment occurs when a writ of attachment is levied against property of a person other than the person against whom the writ is issued. This will generally be a nonparty but may include a codefendant. An exception is provided comparable to that provided in Section 689. Under former law, the remedy of a third person was to file a complaint in intervention (see *Beshara v. Goldberg*, 221 Cal. App.2d 392, 34 Cal. Rptr. 501 (1963)), a third-party claim under Code of Civil Procedure Section 689, or a separate action for damages for conversion, trespass, or some other tort (see *McPheters v. Bateman*, 11 Cal. App.2d 106, 53 P.2d 195 (1936); *Edwards v. Sonoma Valley Bank*, 59 Cal. 136

(1881)), or for specific recovery (see *Taylor v. Bernheim*, 58 Cal. App. 404, 209 P. 55 (1922)). See generally 5 B. WITKIN, CALIFORNIA PROCEDURE *Enforcement of Judgment* §§ 103-115 at 3468-3481 (2d ed. 1971). Subdivision (d) does not preclude such actions (see Section 490.060) but provides a statutory alternative.

Code of Civil Procedure

Section 490.020. Liability for wrongful attachment

Comment. Section 490.020 provides the measure of the defendant's recovery under this chapter for a wrongful attachment. It should be noted, however, that the liability of the surety *and the plaintiff* together is limited to the amount of the undertaking. This limitation on the plaintiff's liability does not apply where an independent action is brought based on a common law theory of relief. See Section 490.060.

Under subdivision (a), the plaintiff's wrongful attachment liability extends to all damages proximately caused by the attachment. This includes such items as loss of credit and business losses. Any prior rule to the contrary is not continued. Compare *Elder v. Kutner*, 97 Cal. 490, 32 P. 563 (1893); *Heyman & Co. v. Landers*, 12 Cal. 107 (1859).

Harbors & Navigation Code

Section 495.1. Attachment

Comment. Section 495.1 has been amended to include the appropriate cross-references to the Code of Civil Procedure. Chapter 5 (commencing with Section 485.010) provides a procedure for the *ex parte* issuance of a writ of attachment upon proper application supported by affidavit. The introductory clause makes clear that the plaintiff under this section may secure an attachment notwithstanding any lien he may have and regardless of the amount of his claim.

APPENDIX II

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 2830

[Extract from Assembly Journal for April 4, 1974 (1973-74 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bill 2830, the Assembly Committee on Judiciary makes the following report:

Except for the revised comment set out below, the comments contained under the various sections of Assembly Bill 2830 as set out in *Recommendation of the California Law Revision Commission Relating to Landlord-Tenant Relations—Personal Property Left on Premises Vacated by Tenant* (December 1973), 11 Cal. L. Revision Comm'n Reports 951, 963 (1973), reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Assembly Bill 2830.

The following revised comment also reflects the intent of the Assembly Committee on Judiciary in approving Assembly Bill 2830.

Civil Code § 1983. Notice

Comment. Section 1983 generally requires that written notice concerning personal property left on the premises must be given to the former tenant and to any other person the landlord reasonably believes to be the owner of such property. Notice may be given at any time after the premises are vacated and the tenancy has terminated, but sale or other disposition of the property may not occur until a specified period has passed after notice is given. See Sections 1987 and 1988. The requirement that the tenancy be terminated is obvious; a landlord has no need or right to dispose of the tenant's property while the tenancy continues. For an exception to this requirement, see Section 1991. See also CIVIL CODE § 1951.3 (method of declaring abandonment of real property). The requirement that the premises be vacated by the tenant is intended to avoid conflict with the statutory provisions dealing with unlawful detainer. See CODE CIV. PROC. §§ 1161-1179a.

Subdivision (b) prescribes the contents of the notice. The notice must include four items of information: (1) a description of the property; (2) the address of the place where the property may be claimed; (3) the date before which the claim must be made; and (4) a statement that payment of storage costs may be required before the property is returned. (See Sections 1984 and 1985 for forms.) The property description must be reasonably adequate to permit the owner to identify the property. The landlord determines where the property may be claimed. The landlord is free to specify any date in the notice as long as the period allowed for taking possession meets the minimum requirements of the last sentence of subdivision (b). Reasonable costs of storage may, but need not, be charged by the landlord as a condition of releasing the property. See Section 1990.

Subdivision (c) provides for the manner of service of the notice. If notice is sent by mail, the landlord must send a copy of the notice to the address where he knows the person to be notified may reasonably be expected to receive the notice.

Thus, for example, if the landlord knows the former tenant's place of employment, the landlord should send a copy of the notice to the tenant at his place of employment. As a matter of course, when serving notice by mail, the landlord should always send a copy addressed to the tenant at the vacated premises. Subdivision (c) merely requires the landlord to make an appropriate effort to notify the former tenant in view of the actual knowledge the landlord has at the time notice is given; the subdivision does not require that the landlord make an investigation in an effort to discover an address where the former tenant can be reached.

APPENDIX III

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILLS 2830 AND 2831

[Extract from Senate Journal for May 22, 1974 (1973-74 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bills 2830 and 2831, the Senate Committee on Judiciary makes the following report:

Except for the revised comments set out below, the comments contained under the various sections of Assembly Bill 2830 and Assembly Bill 2831, as set out in the *Recommendation of the California Law Revision Commission Relating to Landlord-Tenant Relations* (December 1973), 11 Cal. L. Revision Comm'n Reports 951 (1973), as revised by the *Report of Assembly Committee on Judiciary on Assembly Bill 2830* (printed in the Assembly Journal for April 4, 1974), reflect the intent of the Senate Committee on Judiciary in approving these bills.

The following revised comments also reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 2830 and Assembly Bill 2831.

ASSEMBLY BILL 2830

Civil Code § 1986. Preservation of property

Comment. Section 1986 imposes on the landlord a duty to preserve the property remaining on the premises until it is disposed of or released. Where the property is left on the vacated premises, the cost of storage which the tenant or other owner may be required to pay is determined pursuant to subdivision (c) of Section 1990.

Civil Code § 1987. Release of property

Comment. Section 1987 requires the landlord to release the property when a claim is made within the time specified in the notice and the costs of storage are paid. See Section 1990 (costs of storage). If the former tenant claims the property after the date specified in the notice, he is entitled to the property if he pays not only the reasonable storage costs but also the reasonable cost of advertising and sale incurred prior to the time the property is withdrawn from sale. Nothing in Section 1987 affects the tenant's right to bid on the property at the public sale under Section 1988(a).

Civil Code § 1988. Disposition of property not released

Comment. Section 1988 provides for the disposition of the property which is not released to the former tenant or the owner pursuant to Section 1987. The general rule for disposition of property not released is that it shall be sold at public sale by competitive bidding according to the provisions of subdivision (b). However, as an alternative, where the landlord reasonably believes that the remaining property is worth

less than \$100 in total resale value, he may keep or dispose of the property as he desires and still take advantage of the limitations on liability provided by Section 1989. See Section 1980(d) (defining "reasonable belief").

Subdivision (b) provides for the manner of sale. To protect against sale of the property before all of the periods specified in the notices to the former tenant and any other owner have expired, subdivision (b) provides that notice of the sale may not be published until all the periods within which possession may be taken have expired. Of course, where the landlord reasonably believes that there are no owners of the property other than the former tenant, or where all notices given specify the same date by which possession may be taken, this problem will not arise.

Subdivision (c) provides for the disposition of funds remaining after the costs of storage, advertising, and sale are deducted from the proceeds of the sale of the property. The manner of determining the cost of storage is provided in Section 1990. Insofar as subdivision (c) requires payment to the county, subject to the claim of the tenant or other owner, it retains the substance of former Civil Code Section 1862. The last sentence of subdivision (c) is intended to protect the county from liability in the event there are conflicting claims to the balance.

It should be noted that the title taken at a sale of property under Section 1988 is subject to any lien or right preserved by other provisions of law.

Civil Code § 1989. Limitations on landlord's liability

Comment. Section 1989 provides for limitations on the landlord's liability.

Under subdivision (a), the landlord may protect himself *in any case* from liability by releasing property *to the former tenant*. This is so regardless of whether the landlord has given notice pursuant to Section 1983. Thus, even where the landlord believes that some person other than the former tenant may be the owner of the property, the landlord may release the property to the former tenant, thereby avoiding the necessity of deciding who is the rightful owner and suffering the consequences of an incorrect decision. Moreover, subdivision (a) protects the landlord from liability even where he makes no attempt to comply with this chapter but instead releases the property to the former tenant.

Subdivision (b) makes clear that, where property is released to a person (other than the former tenant) believed by the landlord to be an owner of the property, the landlord is not liable to anyone receiving notice pursuant to Section 1983. The landlord may, however, be liable to a person who proves that he should have received notice because the landlord believed or reasonably should have believed that such person was an owner and should have known his address upon reasonable investigation. See Section 1980(d) (defining "reasonable belief"). It should be noted that, under the definition of "reasonable belief" in

Section 1980(d), the landlord is not required to make any investigation concerning the existence of additional owners unless he has specific information which indicates that such an investigation would probably be fruitful and the cost of the investigation would be reasonable in relation to the probable value of the property. However, under subdivisions (b)(2) and (c)(2), the landlord is required to make a reasonable investigation concerning the address of a known owner.

Subdivision (c) provides protection against liability similar to that provided in subdivision (b). Subdivision (c) applies where the property is disposed of as authorized by Section 1988. Thus, the protection against liability applies in cases (1) where the property is sold pursuant to Section 1988 and the proceeds of the sale (less costs of storage, advertising, and sale) are released to the former tenant or another owner or are paid over to the county or (2) where the property not released pursuant to Section 1987 is worth less than \$100 and the landlord retains the property for his own use or makes some other disposition of it.

ASSEMBLY BILL 2831

Civil Code § 1951.3. Lessor's notice of belief of abandonment

Comment. Section 1951.3 provides a method for establishing that leased real property has been abandoned by the lessee within the meaning of Section 1951.2. Under Section 1951.2, if the lessee breaches the lease and abandons the property, the tenancy is terminated and the lessor has a duty to mitigate the damages by making a reasonable effort to relet the premises. Compare Section 1951.4 (lease provision relieving lessor of duty to mitigate damages). The time when the tenancy terminates under Section 1951.2 also is important under Chapter 5 (commencing with Section 1980) which sets forth the lessor's rights and duties as to personal property remaining on the premises after termination of the tenancy.

Subdivisions (a) and (b) provide a procedure by which the lessor can be assured that a lease has been terminated when the rent is in default and it appears that the lessee has abandoned the leased property. When the lease has been so terminated, the lessor can dispose of any personal property remaining on the premises under Chapter 5 (commencing with Section 1980), prepare the premises for a new tenant, and relet the premises. Where the notice of belief of abandonment is given by mail, the 14-day period during which the rent must be in default, combined with the additional period of at least 18 days during which the lessee may communicate to the lessor his intent not to abandon the property, assures that, for the normal tenancy calling for monthly rental payments, at least two rent due dates must pass before abandonment of the property and termination of the lease can occur under this section. If the lessor wishes faster action, or if the breach does not involve a failure to pay rent, the lessor may use the unlawful detainer remedy. See CODE CIV. PROC. §§ 1161-1179a. Even though the lessee fails to pay the rent due, the lease does not terminate under Section 1951.3 if the lessee, not later than the date

specified by the lessor in the notice, makes known to the lessor in writing his intent not to abandon the property. The notice provided by this section may be given at the same time or in combination with the notice provided by Section 1983 concerning the disposition of abandoned personal property. See Section 1991.

Subdivision (d) provides a form for the lessor's notice of belief of abandonment. The lessor is required to complete the form by inserting the date before which the lessee must give notice of intent not to abandon in order to avoid the termination of the lease. Where the lessor's notice is served personally, the lessee must be afforded at least 15 days to give written notice to the lessor of his intent not to abandon and, where the lessor gives notice by mail, the lessee must be afforded at least 18 days.

The lessee can establish that he has not abandoned the property by proving (1) that rent was not due and unpaid for 14 consecutive days when notice was given, (2) that it was not reasonable for the lessor to believe that he had abandoned the property, (3) that, within the permitted time, he gave written notice of his intent not to abandon the property, or (4) that, during the period specified in subdivision (e)(4), the lessee paid all or any portion of the rent. The burden of proof on these matters is placed on the lessee so that the lessor will be able to proceed to relet the property with reasonable assurance that the abandonment and termination will not later be set aside.

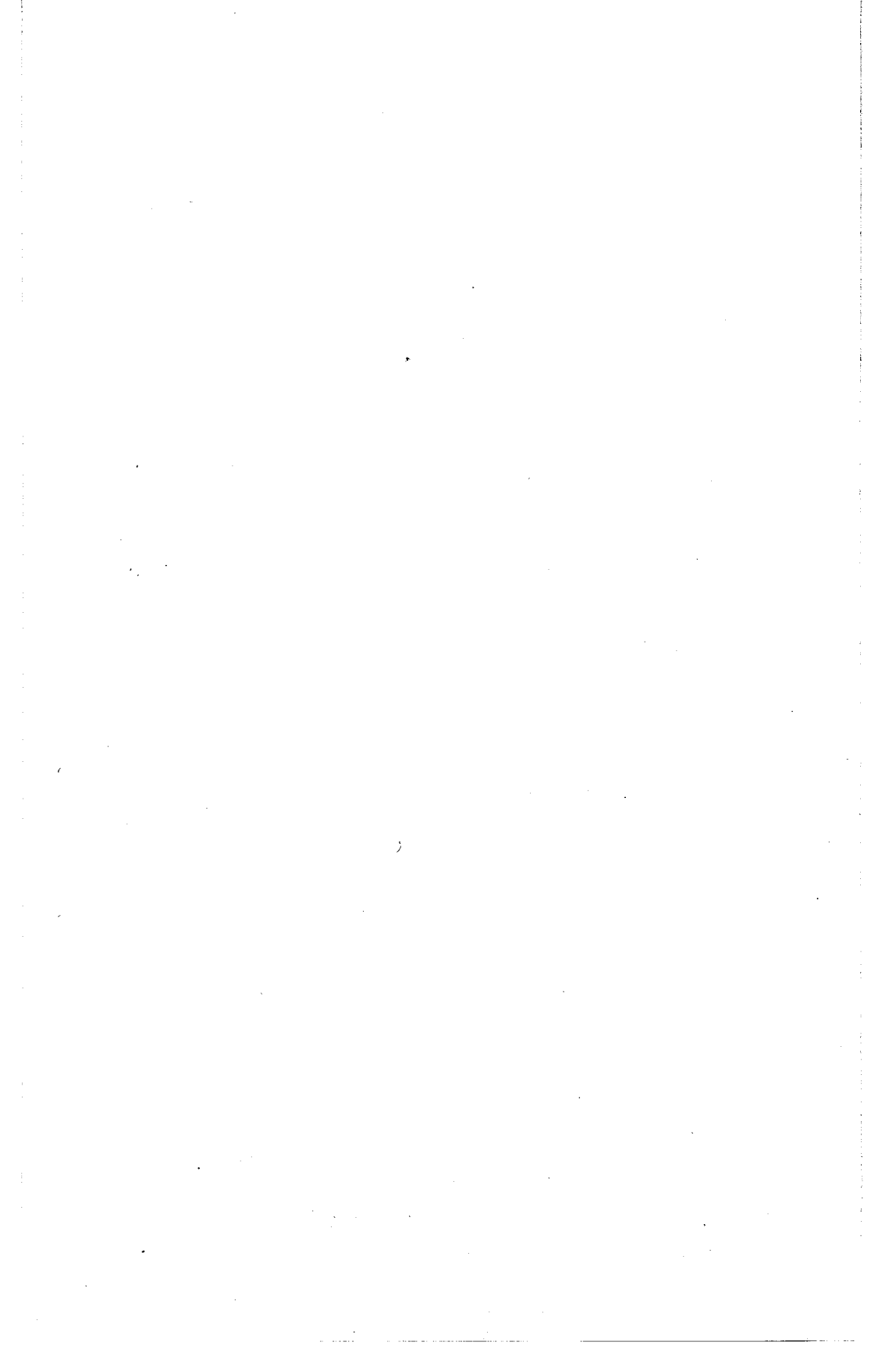
Since many lessees who abandon real property leave personal property on the premises, the mere fact that the lessor knows that the lessee has done so should not, by itself, be held to establish that the lessor's belief as to abandonment was unreasonable. Where the personal property left by the lessee appears to be of little value, it would be reasonable for the lessor to conclude in the absence of other evidence that the personal property, as well as the real property, had been abandoned. On the other hand, where the personal property is of substantial value and it appears that the lessee is the owner, these facts would be significant evidence that the lessee had not abandoned the real property. While subdivision (e)(2) precludes a finding that the lessor's belief of abandonment was unreasonable based solely on the fact that personal property of the lessee remains on the premises, the subdivision does not preclude this fact from being taken into account along with other evidence in determining the issues of the existence of such belief and of its reasonableness.

The lessee's notice that he has not abandoned the real property should include an address at which he may be served by certified mail in an unlawful detainer action. If the notice includes such an address, the lessee may be served by certified mail at that address in the unlawful detainer action. If the address is not included in the lessee's notice, he may be served in the unlawful detainer action by certified mail addressed to (1) the same address or addresses to which the lessor's notice of belief of abandonment was sent or (2) if the notice of belief of abandonment was personally served on the lessee, the address of the real property. Such mail service is an alternative method of

service; the lessee may, of course, be served in the unlawful detainer action by any other method permitted under the general statute governing service. See Code Civ. Proc. § 415.47.

Although this section provides a means by which the lessor may establish by a more objective test whether the real property has been abandoned, it does not preclude either party from otherwise proving the fact. See subdivision (f).

NOTE: Reference is made in the Comment to Chapter 5 (Sections 1980-1991) which is added by Assembly Bill 2830.



APPENDIX IV

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Payment of Judgments Against Local
Public Entities**

September 1974

**CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305**

CALIFORNIA LAW REVISION COMMISSION

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Ex Officio

September 10, 1974

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

The California Law Revision Commission has been directed by the Legislature to study governmental tort liability and inverse condemnation. See Cal. Stats. 1957, Res. Ch. 202 (governmental tort liability), Cal. Stats. 1970, Res. Ch. 46 (inverse condemnation). This recommendation deals with one aspect of these topics—payment of tort and inverse condemnation judgments by local public entities.

Respectfully submitted,
MARC SANDSTROM
Chairman

RECOMMENDATION

relating to

PAYMENT OF JUDGMENTS AGAINST LOCAL PUBLIC ENTITIES

In 1963, upon recommendation of the Law Revision Commission, the Legislature enacted comprehensive legislation dealing with the liability of public entities and public employees. The comprehensive legislation included provisions relating to the payment of tort judgments against local public entities. These provisions expressly required that such entities pay the judgments but, at the same time, protected them against the disruptive financial consequences of large judgments.¹

Depending upon the financial condition of the local public entity, it can comply with the duty to pay a tort judgment² by (1) paying the judgment in the fiscal year in which it becomes final (Govt. Code § 970.4); (2) paying the judgment in the next fiscal year (Govt. Code § 970.6); (3) paying the judgment in not more than 10 annual installments (Govt. Code § 970.6); or (4) paying the judgment with proceeds of a bond issue as authorized by Sections 975-978.8 of the Government Code.³

The provisions relating to the payment of tort judgments do not specifically include judgments based on inverse condemnation liability, and therefore the extent to which those provisions apply to inverse condemnation judgments is not clear.⁴ There is no rational basis for a distinction between the two types of judgments,

¹ See *Recommendation Relating to Sovereign Immunity: Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees*, 4 Cal. L. Revision Comm'n Reports 1001, 1018 (1963).

² Section 970.2 of the Government Code imposes a duty upon local public entities to pay tort judgments and gives the judgment creditor the right to obtain a writ of mandate to enforce this duty.

³ Statutory restrictions upon incurring debts or liabilities and statutory limitations upon the maximum permissible rate of property taxation by local public entities do not apply to tort judgments. Govt. Code § 971. See also note 7 *infra*. A tort judgment against a local public entity is an authorized legal investment for trust funds, banks, and insurance companies to the same extent as the bonds of such local public entity. Govt. Code § 971.2.

⁴ The provisions permitting payment of judgments with the proceeds of a bond issue apply to any outstanding judgment; the other provisions apply to "tort judgments." See Govt. Code § 970(c) (defining "tort judgment").

however, since in some cases damages for a particular injury may be recovered against a local public entity on either a tort theory or an inverse condemnation theory.⁵

The expansion of the scope of inverse condemnation liability during recent years makes it increasingly important that local public entities be provided with the means to minimize the disruptive effect of unexpectedly large inverse condemnation judgments. Accordingly, the Commission recommends that Sections 970-971.2 be made expressly applicable to inverse condemnation judgments. This will make clear that local public entities have a duty to pay inverse condemnation judgments and will make applicable to such judgments the provisions relating to the manner of paying tort judgments, including the provision permitting the payment of such judgments in not more than 10 annual installments.⁶

Section 970.6 of the Government Code gives a local public entity authority to pay a tort judgment in installments "if, in the opinion of the governing body, the amount of the tort judgment is so great that undue hardship will [otherwise] arise." The Commission is not aware of any instance where a local public entity has exercised the right to pay a tort judgment in installments. Nevertheless, to assure that this right is not abused, the Commission recommends that Section 970.6 be amended to permit payment of a tort or inverse condemnation judgment in installments only where both of the following conditions are satisfied:

(1) The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.

(2) The court that enters the judgment, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.

The Commission also recommends that Section 971 of the Government Code be amended to make clear that Revenue and Taxation Code Sections 2201- 2326 do not limit the levy of a tax to pay a tort or inverse condemnation judgment. This clarifying amendment would make no substantive change in existing law.⁷

The Commission's recommendation would be effectuated by the enactment of the following measure:

⁵ See, e.g., *Condemnation Practice in California* § 13.5 at 337-340 (Cal. Cont. Ed. Bar 1973).

⁶ This authority will supplement the authority that already exists under Government Code Sections 975-978.8 to pay an inverse condemnation judgment with the proceeds of a bond issue. See also Govt. Code §§ 990, 11007.4 (insurance against "any tort or inverse condemnation liability").

⁷ The maximum property tax rates for local agencies established by Sections 2201-2326 of the Revenue and Taxation Code do not limit a tax levy to pay a tort or inverse condemnation judgment. See Rev. & Tax. Code §§ 2271 and 2205.

An act to amend the heading for Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of, and to amend Sections 970, 970.2, 970.4, 970.6, 970.8, 971, and 971.2 of, the Government Code, relating to payment of judgments against local public entities.

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

Chapter heading (technical amendment)

Section 1. The heading for Chapter 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title 1 of the Government Code is amended to read:

**Chapter 2. Payment of ~~Tort~~ Judgments
Against Local Public Entities**

Comment. The heading for Chapter 2 is amended to delete "Tort" in recognition of the fact that Article 2 of the chapter applies to any judgment and Article 1 has been amended to include inverse condemnation judgments.

Government Code § 970 (amended)

Sec. 2. Section 970 of the Government Code is amended to read:

970. As used in this article:

(a) "Fiscal year" means a year beginning on July 1 and ending on June 30 unless the local public entity has adopted a different fiscal year as authorized by law, in which case "fiscal year" means the fiscal year adopted by such local public entity.

(b) "Judgment" means a final judgment against a local public entity which is founded upon tort or inverse condemnation liability.

~~(b)~~ (c) "Local public entity" includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the state, but does not include the Regents of the University of California and does not include the state or any office, officer, department, division, bureau, board, commission or agency of the state claims against which are paid by warrants drawn by the Controller.

~~(c)~~ "Tort judgment" means a final judgment which is

founded upon death or injury to person or property proximately caused by a negligent or wrongful act or omission and for which a local public entity is liable.

Comment. Section 970 is amended to substitute a definition of "judgment" for the former definition of "tort judgment." The effect of this substitution is to make clear that Article 1 (commencing with Section 970) applies to inverse condemnation judgments. See *Recommendation Relating to Payment of Judgments Against Local Public Entities*, 12 Cal. L. Revision Comm'n Reports 575 (1974). Cf. Govt. Code §§ 990, 11007.4 (authorizing public entities to obtain insurance against "any tort or inverse condemnation liability").

The definition of "judgment" provided by subdivision (b) applies only to this article. The term "judgment" used in Article 2 (commencing with Section 975) refers to judgments generally without limitation.

Government Code § 970.2 (amended)

Sec. 3. Section 970.2 of the Government Code is amended to read:

970.2. A local public entity shall pay any ~~tort~~ judgment in the manner provided in this article. A writ of mandate is an appropriate remedy to compel a local public entity to perform any act required by this article.

Comment. See Comment to Section 970.

Government Code § 970.4 (amended)

Sec. 4. Section 970.4 of the Government Code is amended to read:

970.4. The governing body of a local public entity shall pay, to the extent funds are available in the fiscal year in which it becomes final, any ~~tort~~ judgment, *with interest thereon*, out of any funds to the credit of the local public entity that are:

(a) Unappropriated for any other purpose unless the use of such funds is restricted by law or contract to other purposes; or

(b) Appropriated for the current fiscal year for the payment of ~~tort~~ judgments and not previously encumbered.

Comment. See Comment to Section 970.

Government Code § 970.6 (amended)

Sec. 5. Section 970.6 of the Government Code is amended to read:

970.6. (a) *If Subject to subdivision (b), if a local public entity does not pay a ~~tort~~ judgment, with interest thereon, during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort judgment is not too great to be paid out of revenues for the ensuing fiscal year, the governing body shall pay the judgment, with interest thereon, during the ensuing fiscal year immediately upon the obtaining of sufficient funds for that purpose.*

(b) *If a local public entity does not pay a tort judgment during the fiscal year in which it becomes final and if, in the opinion of the governing body, the unpaid amount of the tort judgment is so great that undue hardship will arise if the entire amount is paid out of the the revenues for the ensuing fiscal year, The court which enters the judgment shall order that the governing body shall pay the judgment, with interest thereon, in not exceeding 10 annual installments if both of the following conditions are satisfied:*

(1) *The governing body of the local public entity has adopted an ordinance or resolution finding that an unreasonable hardship will result unless the judgment is paid in installments.*

(2) *The court, after hearing, has found that payment of the judgment in installments as ordered by the court is necessary to avoid an unreasonable hardship.*

(c) *Each installment payment shall be of an equal portion of the principal of the ~~tort~~ judgment. The local public entity, in its discretion, may prepay any one or more installments or any part of an installment.*

~~(e)~~ (d) *The authority to pay a ~~tort~~ judgment in installments as provided in this section is in addition to and not in lieu of any other law permitting local public entities to pay ~~tort~~ judgments in installments.*

Comment. See Comment to Section 970.

Government Code § 970.8 (amended)

Sec. 6. Section 970.8 of the Government Code is amended to read:

970.8. (a) Each local public entity that derives revenue for its maintenance and operation from taxes or assessments or from rates and charges made for services or facilities provided by the local public entity shall in each fiscal year levy taxes or assessments or make rates and charges or both, or otherwise provide funds, in an amount sufficient to pay all ~~tort~~ judgments in accordance with this article.

(b) If all or any portion of the revenue used for the maintenance and operation of a local public entity (other than an entity created by an agreement described in Section 895) liable for a ~~tort~~ judgment is derived from appropriations of another local public entity, such other local public entity shall in each fiscal year appropriate funds equal to its pro rata share of an amount sufficient to permit the local public entity liable for the ~~tort~~ judgment to pay the judgment in accordance with this article. Such amount shall be paid to the local public entity liable for the ~~tort~~ judgment and shall be used by such entity to satisfy the ~~tort~~ judgment. The pro rata share of such other local public entity for each ~~tort~~ judgment is an amount bearing the same proportion to the total amount of the ~~tort~~ judgment as the revenue derived from such other local public entity for maintenance and operation during the fiscal year in which the cause of action on such judgment accrued bears to the total revenues used for maintenance and operation during such fiscal year of the local public entity liable for the ~~tort~~ judgment. For this purpose, such other local public entity shall levy taxes or assessments, make rates and charges, or otherwise provide funds, sufficient in amount to raise the amount of the appropriation and payment required by this section.

Comment. See Comment to Section 970.

Government Code § 971 (amended)

Sec. 7. Section 971 of the Government Code is amended to read:

971. Any limitation on the amount of taxes, assessments or rates and charges that may be levied or collected by a local

public entity, and any limitation on the amount of appropriations and payments that may be made by a local public entity, and any limitation on the amount of liability or indebtedness that may be incurred by a local public entity, contained in any other statute or in any charter or ordinance, is inapplicable to the taxes, assessments, rates and charges or appropriations levied, collected or made pursuant to this article. *For the purposes of Section 2271 of the Revenue and Taxation Code, taxes levied pursuant to this article are levied to pay costs mandated by the courts.*

Comment. Section 971 is amended to make clear that Revenue and Taxation Code Sections 2201-2326 do not limit the levy of a tax pursuant to this article to pay a tort or inverse condemnation judgment. This clarifying amendment makes no substantive change in existing law and is consistent with both the purposes of this article and the Revenue and Taxation Code sections. See Rev. & Tax. Code § 2205, defining "costs mandated by the courts" to mean:

any increased costs incurred by a local agency in order to comply with a final court order issued after January 1, 1973 or with a final court order issued prior to July 1, 1972, if the costs incurred by a local agency as a result thereof are not incurred until after June 30, 1973. "Costs mandated by the courts" do not include (i) costs incurred as a result of a judgment in an eminent domain or condemnation proceeding, or (ii) costs incurred in order to comply with a final court order mandating the specific performance, or awarding damages as a result of nonperformance, of any contract or agreement entered into after January 1, 1973.

The procedure provided by Sections 970-971.2 does not include judgments in an eminent domain or condemnation proceeding or judgments arising out of failure to perform a contract.

Government Code § 971.2 (amended)

Sec. 8. Section 971.2 of the Government Code is amended to read:

971.2. (a) All ~~tort~~ judgments for which a local public entity is liable are legal investments for all trust funds, and for the funds of all insurance companies, banks (both commercial and savings) and trust companies, and for every other local public entity within this state, to the same extent as bonds of

the local public entity liable for the ~~test~~ judgment:

(b) Whenever any money or funds may by law be invested in or loaned upon the security of bonds of a local public entity, such money or funds may be invested in or loaned upon the security of a ~~test~~ judgment for which such local public entity is liable; and whenever bonds of a local public entity may be used as security for the faithful performance or execution of any court or private trust or of any other act, a ~~test~~ judgment for which such local public entity is liable may be so used.

(c) All ~~test~~ judgments for which a local public entity is liable, to the same extent as bonds of such local public entity, are legal for use by any state or national bank or banks in the state as security for the deposit of funds of any local public entity within this state.

Comment. See Comment to Section 970.

APPENDIX V

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**View by Trier of Fact
in a Civil Case**

October 1974

**CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305**



CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL
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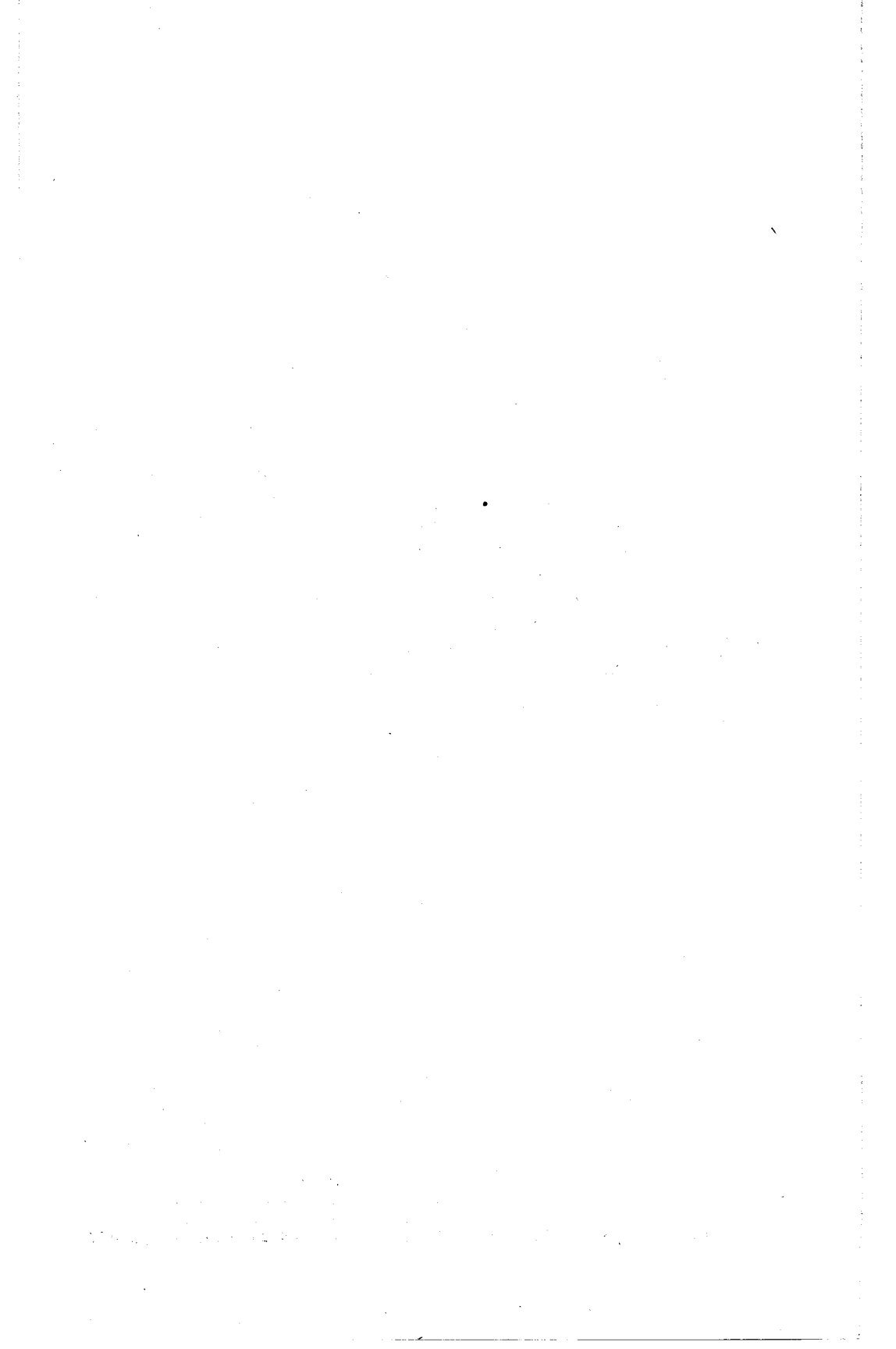
GEORGE H. MURPHY
Ex Officio

October 15, 1974

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

Resolution Chapter 130 of the Statutes of 1965 directs the Commission to study whether the Evidence Code should be revised. Pursuant to this directive, the Commission has made a study of views by triers of fact in civil cases and submits this recommendation as a result of this study.

Respectfully submitted,
MARC SANDSTROM
Chairman



RECOMMENDATION

relating to

VIEW BY TRIER OF FACT IN CIVIL CASE

Background

Jury View

Where relevant evidence is immovable or can be brought into the courtroom only with great difficulty, it is necessary for the trier of fact to leave the courtroom to receive the evidence.

In a civil case heard before a jury, Section 610 of the Code of Civil Procedure provides that the judge may order that the jury be taken out of court to view the property which is the subject of the litigation or the place where a material fact has occurred. The statute requires that the jury be conducted to the property by an officer; once there, the property must be shown to the jury by "some person" appointed for that purpose by the court. Only the person so appointed is permitted to speak to the jurors on any subject connected with the trial.

Section 610 is deficient in several respects:

(1) Section 610 is silent concerning whether the judge is required to accompany the jury at the view. Several decisions indicate that, although the judge should accompany the jury, generally no prejudice requiring reversal results when he does not do so.¹ Since the view is evidence,² the judge should be

¹ In *Rau v. Redwood City Woman's Club*, 111 Cal. App.2d 546, 553, 245 P.2d 12, 17-18 (1952), the court said, "We expressly hold it to be improper [for the judge not to accompany the jury at the view], but we cannot say under the circumstances of this case that defendant was prejudiced by such failure." See also *Haley v. Bay Cities Transit Co.*, 82 Cal. App.2d 950, 187 P.2d 850 (1947). Compare decisions holding that, in a criminal trial, the defendant has a right to have the judge accompany the jury at the view: *People v. Yut Ling*, 74 Cal. 569, 16 P. 489 (1888); *People v. Akens*, 25 Cal. App. 373, 143 P. 795 (1914). This recommendation is concerned only with views in civil cases. Penal Code Section 1119 provides for jury views in criminal cases.

² See Evid. Code § 140 (defining "evidence"); *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941); *Cutting v. Vaughn*, 182 Cal. 151, 187 P. 19 (1920); *People v. Milner*, 122 Cal. 171, 54 P. 833 (1898); *San Francisco Bay Area Rapid Transit Dist. v. Central Valley Nat'l Bank*, 265 Cal. App.2d 551, 555, 71 Cal. Rptr. 430, 432 (1968); *Rau v. Redwood City Woman's Club*, 111 Cal. App.2d 546, 554-555, 245 P.2d 12, 17 (1952); *MacPherson v. West Coast Transit Co.*, 94 Cal. App. 463, 271 P. 509 (1928); B. Witkin, *California Evidence* § 645 (2d ed. 1966). The earlier holding that a view was not evidence in *Wright v. Carpenter*, 49 Cal. 607 (1875), was repudiated in *People v. Milner*, *supra*. In eminent domain and inverse condemnation cases, the evidence obtained at the view may be used only for the limited purpose of understanding and weighing the testimony of expert witnesses or property owners concerning value. Evid. Code § 813. See B. Witkin, *California Evidence* § 646 (2d ed. 1966 & Supp. 1972).

present and thus be cognizant of all the evidence in order to be able properly to determine motions directed to the sufficiency of the evidence. The judge should also be present in order to guard against prejudice resulting, for example, from changed or differing conditions at the premises being viewed, from the actions of a witness or other persons, or from improper conduct of the jurors themselves.

(2) Section 610 is unnecessarily limited to a view of property which is the subject of litigation or of the place in which any material fact occurred. There is no good reason for the statute to ignore situations where other types of evidence, such as staged experiments or demonstrations,³ need to be received outside the courtroom.

(3) Section 610 requires the judge to appoint some person to show the property or place to the jury. Apparently this unnecessarily rigid provision is largely ignored. In any event, the court has authority to appoint a shower where one is needed.⁴

(4) The provision of Section 610 that only the shower can speak to the jurors on matters connected with the trial is open to the interpretation that neither the judge nor any witness may speak to the jurors. This interpretation would bar the jurors from receiving instructions or testimony that may be essential to their correct understanding of the evidence viewed.

View When Court Is Trier of Fact

A judge acting as trier of fact may view evidence outside the courtroom.⁵ However, several cases state that, if the judge inspects the *locus in quo* without the consent of the parties or the presence of the parties or their counsel, the information obtained at the view may not be considered independent evidence sufficient to support a finding, especially on controverted

³ Courts have allowed jurors to view demonstrations despite the limited terms of Section 610. See, e.g., *Newman v. Los Angeles Transit Lines*, 120 Cal. App.2d 685, 262 P.2d 95 (1953).

⁴ See Code Civ. Proc. § 128(3) (court power to provide for orderly conduct of proceedings). See also Evid. Code § 775 (court power to call and interrogate witnesses).

⁵ See *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941); *Otey v. Carmel Sanitation Dist.*, 219 Cal. 310, 26 P.2d 308 (1933); *Hall v. Burton*, 201 Cal. App.2d 72, 84, 19 Cal. Rptr. 797, 804 (1962); *Orchard v. Cecil F. White Ranches, Inc.*, 97 Cal. App.2d 35, 41, 217 P.2d 143, 147 (1950); *Noble v. Kertz & Sons Feed & Fuel Co.*, 72 Cal. App.2d 153, 164 P.2d 257 (1945); *Hatton v. Gregg*, 4 Cal. App. 537, 88 P. 592 (1906); *B. Witkin, Evidence* §§ 643-644 (2d ed. 1966); 4 J. Wigmore, *Evidence* § 1169 (Chadbourn rev. 1972).

matters.⁶ When the view is independent evidence, it is generally not a part of the record on appeal and the reviewing court will assume that the evidence obtained at the view is sufficient to sustain questioned findings of fact.⁷

It is undesirable to require the appellate courts to assume the validity of a finding merely because the trial judge has taken a view where there is no indication in the record whether the view sustains the finding. Moreover, to preclude the trial judge from basing a finding on what he observed at the view unless all the parties consented to the view is overly restrictive.

Recommendations

In order to remedy the defects described above, the Commission recommends a procedure with the following features:

(1) The trier of fact, whether judge or jury, should be permitted to leave the courtroom to receive any relevant evidence, including demonstrations and experiments, where the court determines that a view would be proper and would aid the trier of fact in its determination of the case.

(2) When evidence outside the courtroom is to be received in this manner, the trial scene should simply be shifted to the location of the view. Hence, the judge, jury (if any), court reporter (if any), and any necessary officers should be in

⁶ See *Hall v. Burton*, 201 Cal. App.2d 72, 19 Cal. Rptr. 797 (1962); *Noble v. Kertz & Sons Feed & Fuel Co.*, 72 Cal. App.2d 153, 164 P.2d 257 (1945); *Hatton v. Gregg*, 4 Cal. App. 537, 88 P. 592 (1906). The rule and its rationale was stated in *Noble v. Kertz & Sons Feed & Fuel Co.*, *supra*, as follows:

First, that, with or without consent, the trial judge may view the *locus in quo* for the purpose of understanding the evidence introduced; and, second, that where the view is with consent, what is then seen is itself evidence and may be used alone or with other evidence to support the findings.

On principle, there can be little doubt that a view without consent cannot be considered independent evidence on a controverted issue so as to support alone a finding otherwise not supported by other evidence, and, in fact, contrary to the evidence introduced. To hold otherwise would permit the trial judge to base his findings on what he observed without giving the parties the opportunity to explain or to supplement such observations, or to cross-examine the witness.

Nothing here said is intended to limit the trial court's power of inspection where he is empowered to take judicial notice of the facts. [*Id.*, 72 Cal. App.2d at 159-160, 164 P.2d at 260-261.]

⁷ See, e.g., *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941) (negligence); *Stegner v. Bahr & Ledoyen, Inc.*, 126 Cal. App.2d 220, 272 P.2d 106 (1954) (nuisance); *Orchard v. Cecil F. White Ranches, Inc.*, 97 Cal. App.2d 35, 217 P.2d 143 (1950) (water rights); *Estate of Sullivan*, 86 Cal. App.2d 890, 195 P.2d 894 (1948) (probate); *Chatterton v. Boone*, 81 Cal. App.2d 943, 185 P.2d 610 (1947) (conversion).

attendance at the view. The court should be in session during the view and while going to and returning from the view. The court's authority over the proceedings should remain unchanged. In this way, the solemnity of the proceedings and the proper conduct of those present can be assured.

(3) Since the view would be a session of court, a record should be kept of statements made to the trier of fact at the view in any case where a record is kept of proceedings in the courtroom.

(4) At the view, the court should have discretion to permit explanations of the view or other testimony by witnesses and to permit direct and cross-examination of the witnesses by counsel.

(5) The court should be required to state in its findings of fact (where findings are required) those findings supported primarily by evidence obtained at the view and also its observations at the view supporting such findings. If the court includes the statement in its announcement of intended decision, the statement should not be required to be stated in the findings. This requirement will enable the reviewing court to determine whether the evidence supports the findings whereas, under existing law, the reviewing court is required to assume that the evidence obtained at the view is sufficient to support the findings where a record of the observations has not been made a part of the transcript on appeal.

Proposed Legislation

The Commission's recommendation would be effectuated by enactment of the following measure:

An act to amend Section 632 of, to add Article 1.5 (commencing with Section 651) to Chapter 7 of Title 8 of Part 2 of, and to repeal Section 610 of, the Code of Civil Procedure, relating to views by triers of fact.

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

Code of Civil Procedure § 610 (repealed)

Section 1. Section 610 of the Code of Civil Procedure is repealed.

610. When, in the opinion of the Court, it is proper for the jury to have a view of the property which is the subject of litigation, or of the place in which any material fact occurred, it may order them to be conducted, in a body,

under the charge of an officer, to the place, which shall be shown to them by some person appointed by the Court for that purpose. While the jury are thus absent, no person, other than the person so appointed, shall speak to them on any subject connected with the trial.

Comment. See the Comment to Section 651.

Code of Civil Procedure § 632 (amended). Findings of fact and conclusions of law

Sec. 2. Section 632 of the Code of Civil Procedure is amended to read:

632. 1. In superior courts and municipal courts, upon the trial of a question of fact by the court, written findings of fact and conclusions of law shall not be required, except as herein provided.

In superior courts, upon such trial, the court shall announce its intended decision. Within the time after such announcement permitted by rules of the Judicial Council, any party appearing at the trial may request findings. Unless findings are requested, the court shall not be required to make written findings and conclusions.

In municipal courts, findings and conclusions shall be deemed waived unless expressly requested by one or more of the parties at the time of the trial; provided, that the court shall not be required to make any written findings and conclusions in any case in which the amount of the demand, exclusive of interest and costs, or the value of the property in controversy, does not exceed one thousand dollars (\$1,000).

In any such trial in the superior or municipal court, findings and conclusions may be waived by consent in writing filed with the clerk or judge, or by oral consent in open court, entered in the minutes, and shall be deemed waived by a party by failure to appear at the trial.

Where findings are required, they shall fairly disclose the court's determination of all issues of fact in the case.

Where findings are required and a finding is supported primarily by evidence obtained at a view as provided in Section 651, the court shall so state in its findings and shall also state its observations at the view supporting such

findings. The statements required by this paragraph are not required to be stated in the findings where the court includes such statements in its announcement of intended decision.

The procedure for requesting, preparing, and filing written findings and conclusions and the written judgment of the court shall be in accordance with rules adopted by the Judicial Council. Judgment shall be entered as provided in Section 664.

2. In justice courts, upon trial by the court, no written findings of fact and conclusions shall be required in any case, and judgment shall be entered as provided in Section 664.

Comment. Section 632 is amended to require the court to state in its announcement of intended decision or in its findings, if findings are requested, which findings are based primarily on evidence obtained at a view pursuant to Section 651. In addition, the court must state its observations at the view which support the indicated findings. This provision changes the rule as stated in *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941), that an appellate court will assume that the evidence acquired at a view by the trial judge is sufficient to sustain the findings. See also *South Santa Clara Valley Water Cons. Dist. v. Johnson*, 231 Cal. App.2d 388, 41 Cal. Rptr. 846 (1964); *Stegner v. Bahr & Ledoyen, Inc.*, 126 Cal. App.2d 220, 272 P.2d 106 (1954); *Orchard v. Cecil F. White Ranches, Inc.*, 97 Cal. App.2d 35, 217 P.2d 143 (1950); *Estate of Sullivan*, 86 Cal. App.2d 890, 195 P.2d 894 (1948); *Chatterton v. Boone*, 81 Cal. App.2d 943, 185 P.2d 610 (1947). If the court does not state that a finding is primarily supported by evidence obtained at a view and also state the observations supporting the finding, the finding will not be sustained by the appellate court in the absence of substantial evidence in the record to support it.

Code of Civil Procedure §651 (added). View by trier of fact

Sec. 3. Article 1.5 (commencing with Section 651) is added to Chapter 7 of Title 8 of Part 2 of the Code of Civil Procedure, to read:

Article 1.5. View by Trier of Fact

651. (a) On its own motion or on the motion of a party,

where the court finds that such a view would be proper and would aid the trier of fact in its determination of the case, the court may order a view of any of the following:

- (1) The property which is the subject of litigation.
- (2) The place where any relevant event occurred.
- (3) Any object, demonstration, or experiment, a view of which is relevant and admissible in evidence in the case and which cannot with reasonable convenience be viewed in the courtroom.

(b) On such occasion, the entire court, including the judge, jury, if any, court reporter, if any, and any necessary officers, shall proceed in a body to the place, property, object, demonstration, or experiment to be viewed. The court shall be in session throughout the view and while going to and returning from the view. At the view, the court may permit explanations of the view or other testimony of witnesses and may permit examination of the witnesses by counsel. The proceedings at the view shall be recorded to the same extent as the proceedings in the courtroom.

Comment. Section 651 provides a procedure whereby the trier of fact—whether judge or jury—may leave the courtroom to receive evidence. Former Section 610 provided only for a view by a jury. Views by a judge were governed by case law. See, *e.g.*, *Gates v. McKinnon*, 18 Cal.2d 179, 114 P.2d 576 (1941); *Noble v. Kertz & Sons Feed & Fuel Co.*, 72 Cal. App.2d 153, 164 P.2d 257 (1945). Where a view is ordered, or is conducted, in violation of this section, the view is not independent evidence sufficient to support a finding.

Subdivision (a) provides the standard for determining whether the trier of fact should view evidence outside the courtroom. The court has discretion whether to order a view. In making the determination, the court should weigh the need for the view against such considerations as whether the view would necessitate undue consumption of time or create a danger of misleading the trier of fact because of changed conditions. The nature of evidence which may be viewed outside the courtroom has been expanded to include objects, demonstrations, and experiments. Former Section 610 provided only for a “view of the property which is the subject of litigation, or of the place in which any material fact occurred.” The courts have held, however, that they have inherent authority to order a view of other forms of evidence. See, *e.g.*, *Newman v. Los Angeles*

Transit Lines, 120 Cal. App.2d 685, 262 P.2d 95 (1953) (operation of streetcar door).

Under former law, in a court-tried case, all the parties had to consent to a view by the judge in order for the information there obtained to be considered independent evidence. See *Noble v. Kertz & Sons Feed & Fuel Co.*, *supra*. The requirement of consent by all the parties has not been continued. It should be noted, further, that the court is not required to follow the procedure of Section 651 where it is proper to take judicial notice of facts obtainable at a view. See Evid. Code §§ 450-460 (procedure where judicial notice is to be taken).

Subdivision (b) makes clear that the view by the trier of fact is a session of court, essentially the same as a session inside the courtroom. Hence, subdivision (b) requires the presence of the judge, jury (if any), and any necessary court officials, including the court reporter (if proceedings inside the courtroom are being recorded). The third sentence of subdivision (b) makes clear that the judge has discretion to limit the testimony of witnesses and examination by counsel while the court is in session outside the courtroom. See also Evid. Code § 765 (court control over interrogation). Thus, where appropriate, the court should provide the parties with the opportunity to examine witnesses (direct and cross-examination) at the view and to note crucial aspects of the view for the record. Yet there may be occasions where it will be inconvenient or unnecessary to do so outside the courtroom. Former Section 610 allowed only the person appointed by the court to speak to the jurors and made no provision for the presence of witnesses or counsel for the parties. The decisions concerning a view by the judge admonish, however, that counsel for the parties should be present. See *Noble v. Kertz & Sons Feed & Fuel Co.*, *supra*. The power of the judge to control the proceedings remains intact while the court is in session outside the courtroom. See Code Civ. Proc. § 128 (general authority of court to control proceedings). Hence, for example, the court may appoint a person to show the premises to the trier of fact and may allow or refuse to allow the jurors to question witnesses at the view (see Evid. Code § 765). As to when in a court-tried case the observation of the judge at the view must be made a part of the record, see Section 632 of the Code of Civil Procedure.

APPENDIX VI
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

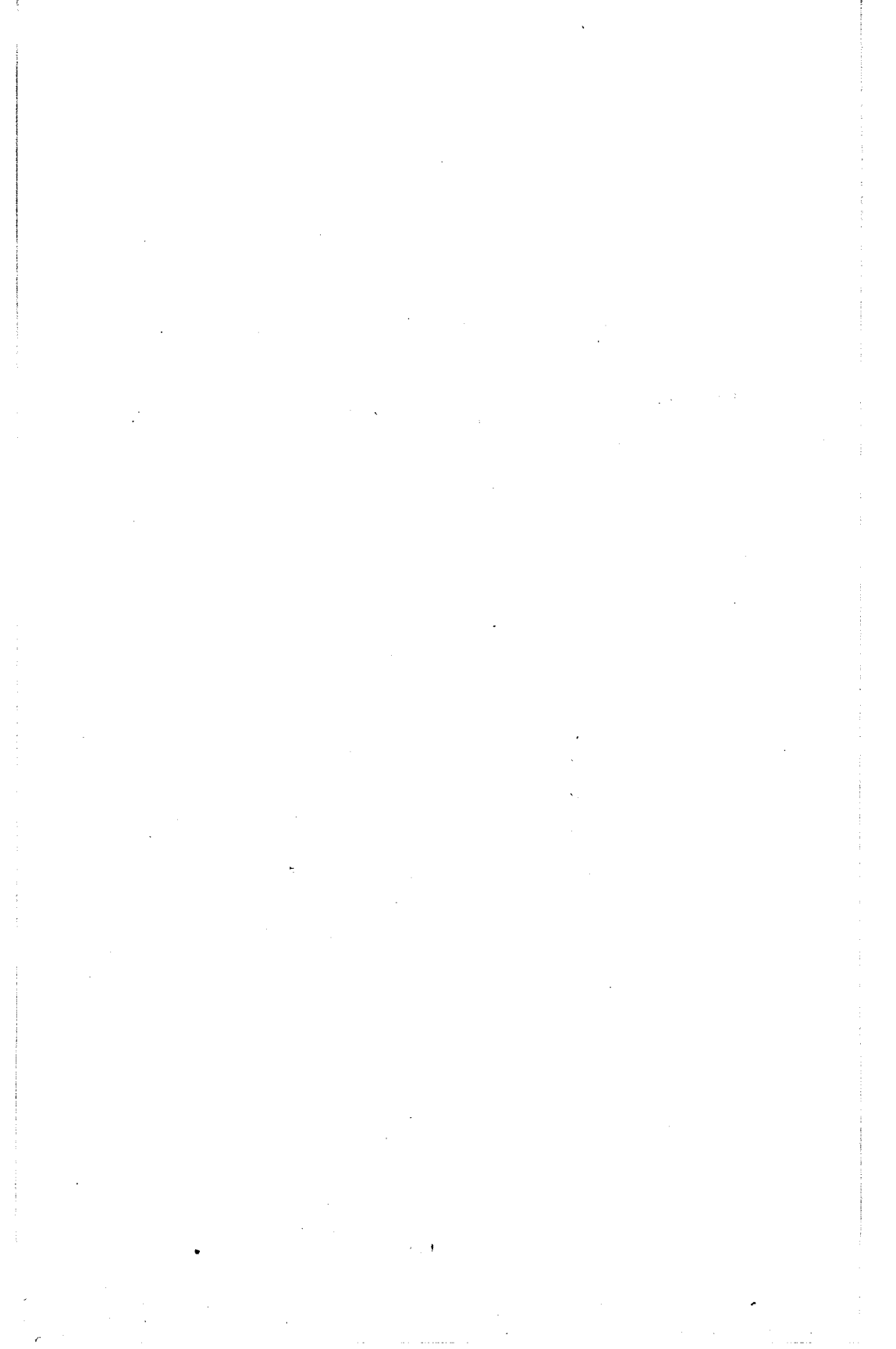
RECOMMENDATION

relating to

The Good Cause Exception to the
Physician-Patient Privilege

October 1974

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305



CALIFORNIA LAW REVISION COMMISSION

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Ex Officio

October 15, 1974

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

The Evidence Code was enacted in 1965 upon recommendation of the Law Revision Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue to study the law relating to evidence. Pursuant to this directive, the Commission has undertaken a continuing study of the Evidence Code to determine whether any substantive, technical, or clarifying changes are needed.

This recommendation is submitted as a result of this continuing review. It proposes the addition of a "good cause" exception to the physician-patient privilege and the repeal, of the "criminal conduct" exception to that privilege.

Respectfully submitted
MARC SANDSTROM
Chairman

RECOMMENDATION

relating to

THE GOOD CAUSE EXCEPTION TO THE PHYSICIAN-PATIENT PRIVILEGE

Section 994 of the Evidence Code provides a privilege which allows a patient "to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and physician."¹ The privilege is limited to communications made by the patient in confidence "for the purpose of securing a diagnosis or preventive, palliative, or curative treatment of his physical or mental or emotional condition."²

Many legal writers who have analyzed the origin and application of the physician-patient privilege find serious fault with it;³ McCormick⁴ and Wigmore⁵ recommend that it be totally abandoned. The Commission, however, believes that the privilege serves a desirable purpose in protecting the privacy of nonparties to an action (such as, for example, in malpractice actions⁶) and in curbing "fishing expeditions" into a party's medical history.

The most significant criticism of the privilege is that it allows the "suppression of useful truth."⁷ In California, however, there are many exceptions to the privilege⁸ which prevent its exercise

¹ See definitions of "patient" (Evid. Code § 991) and "confidential communication between patient and physician" (Evid. Code § 992).

² Evid. Code § 991 (defining "patient").

³ See, e.g., writers cited in C. McCormick, *Evidence* 223-224 n.85 (2d ed. 1972).

⁴ C. McCormick, *Evidence* § 105 at 223-228 (2d ed. 1972).

⁵ J. Wigmore, *Evidence* § 2380a at 828-832 (McNaughton rev. 1961).

⁶ See, e.g., *Marcus v. Superior Court*, 18 Cal. App.3d 22, 95 Cal. Rptr. 545 (1971). Compare *Henard v. Superior Court*, 26 Cal. App.3d 129, 102 Cal. Rptr. 721 (1972). Even in a malpractice action, it may be possible to provide the necessary information without violating the privilege. See *Rudnick v. Superior Court*, 11 Cal.3d 924, 933 n.13, 523 P.2d 643, 650-651 n.13, 114 Cal. Rptr. 603, 610-611 n.13 (1974).

⁷ J. Wigmore, *Evidence* § 2380a at 831 (McNaughton rev. 1961).

⁸ See Evid. Code §§ 996 (patient-litigant exception), 997 (services of physician sought or obtained to assist in crime or tort), 998 (criminal proceeding), 999 (proceeding to recover damages for criminal conduct), 1000 (parties claiming through deceased patient), 1001 (breach of duty arising out of physician-patient relationship), 1002 (intention of deceased patient concerning writing affecting property interest), 1003 (validity of writing affecting property interest), 1004 (commitment or similar proceeding), 1005 (proceeding to establish patient's competence), 1006 (required report), 1007 (proceeding to determine right, license, or privilege). See also Evid. Code § 912 (waiver of privilege).

in most of the situations which have outraged the critics.⁹ Nevertheless, situations may still arise where the interest in finding the truth outweighs any legitimate interest in preventing disclosure of communications between patient and physician.¹⁰ Accordingly, the Commission recommends that a general exception to the physician-patient privilege be provided to permit the disclosure of communications relevant to an issue concerning the condition of a patient who is a party where the court is shown good cause for the disclosure.¹¹

In a prior recommendation, the Commission pointed out the undesirability of retaining the "criminal conduct" exception to the physician-patient privilege provided by Evidence Code Section 999.¹² The Commission found the "criminal conduct"

⁹ For example, Wigmore writes:

Ninety-nine per cent of the litigation in which the privilege is invoked consists of three classes of cases—actions on policies of life insurance where the deceased's misrepresentations of his health are involved, actions for corporal injuries where the extent of the plaintiff's injury is at issue, and testamentary actions where the testator's mental capacity is disputed. In all of these the medical testimony is absolutely needed for the purpose of learning the truth. In none of them is there any reason for the party to conceal the facts, except as a tactical maneuver in litigation. [8 J. Wigmore, *Evidence* § 2380a at 831 (McNaughton rev. 1961).]

In California, absent a waiver of the privilege in the application for the insurance policy, it is unclear whether Evidence Code Section 996 (patient-litigant exception) makes the privilege inapplicable in the first class of cases referred to by Wigmore. See discussion of the similar but differently worded provision of the Uniform Rules of Evidence in *Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article V. Privileges)*, 6 Cal. L. Revision Comm'n Reports 201, 413 (1964). In the second class of cases, Evidence Code Section 996 would allow disclosure of the communication between the patient and physician. Evidence Code Sections 1002 (intention of deceased patient concerning writing affecting property interest) and 1003 (validity of writing affecting property interest executed by deceased patient) would allow disclosure in the third class.

¹⁰ See, e.g., *Carlton v. Superior Court*, 261 Cal. App.2d 282, 67 Cal. Rptr. 568, 68 Cal. Rptr. 469 (1968), which held that, where the defendant denied the plaintiff's allegation that the defendant was intoxicated at the time of an accident, the intoxication issue was not "tendered" within the meaning of the patient-litigant exception (Evid. Code § 996).

¹¹ Similar exceptions based on judicial discretion are provided in N.C. Gen. Stat. § 8-53 (1969) (in the court's "opinion," the disclosure is "necessary to a proper administration of justice") and Va. Code Ann. § 8-289.1 (Supp. 1974) ("in the exercise of sound discretion, [the court] deems such disclosure necessary to the proper administration of justice").

¹² See *Recommendation Relating to Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege*, 11 Cal. L. Revision Comm'n Reports 1147 (1973). This recommendation was withdrawn by the Commission after it met with substantial opposition because, by eliminating an exception to the privilege, it would have broadened the privilege and made unavailable information that might be essential in a particular case. This objection is overcome by the recommended "good cause" exception.

exception to be "burdensome and difficult to administer, unjustified, and unnecessary." Enactment of a "good cause" exception will make the "criminal conduct" exception unnecessary, and the Commission again recommends its elimination.

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 999 of the Evidence Code, relating to the physician-patient privilege.

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

Section 1. Section 999 of the Evidence Code is amended to read:

999. There is no privilege under this article ~~in a proceeding to recover damages on account of conduct of the patient which constitutes a crime~~ as to a communication relevant to an issue concerning the condition of a patient who is a party to the proceeding where good cause for the disclosure of the communication is shown to the presiding officer.

Comment. Section 999 is amended to provide an exception to the physician-patient privilege where good cause is shown for the disclosure of a relevant communication concerning the condition of a patient who is a party. See *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege*, 12 Cal. L. Revision Comm'n Reports 601 (1974). Section 999 permits the disclosure of communications between patient and physician where a need for such evidence is shown while at the same time protecting from disclosure the communications of patients who are not parties. Typically, patients who are not parties need the protection of the privilege in malpractice actions. See, e.g., *Marcus v. Superior Court*, 18 Cal. App.3d 22, 95 Cal. Rptr. 545 (1971). However, even on such malpractice actions, it sometimes may be possible to provide the necessary information without violating the privilege. See *Rudnick v. Superior Court*, 11 Cal.3d 924, 933 n.13, 523 P.2d 643, 650-651 n.13, 114 Cal. Rptr. 603, 610-611 n.13 (1974).

The requirement that good cause be shown for the disclosure permits the court to protect the defendant against a "fishing

expedition" into his medical records. Compare Evid. Code § 996 (patient-litigant exception).

Formerly, Section 999 provided an exception only in a proceeding to recover damages arising out of the criminal conduct of the patient. This "criminal conduct" exception has been eliminated as unnecessary in view of the "good cause" exception now provided by Section 999. Moreover, the "criminal conduct" exception was burdensome, difficult to administer, and ill designed to achieve the purpose of making needed evidence available. See *Recommendation Relating to Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege*, 11 Cal. L. Revision Comm'n Reports 1147 (1973).

APPENDIX VII
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

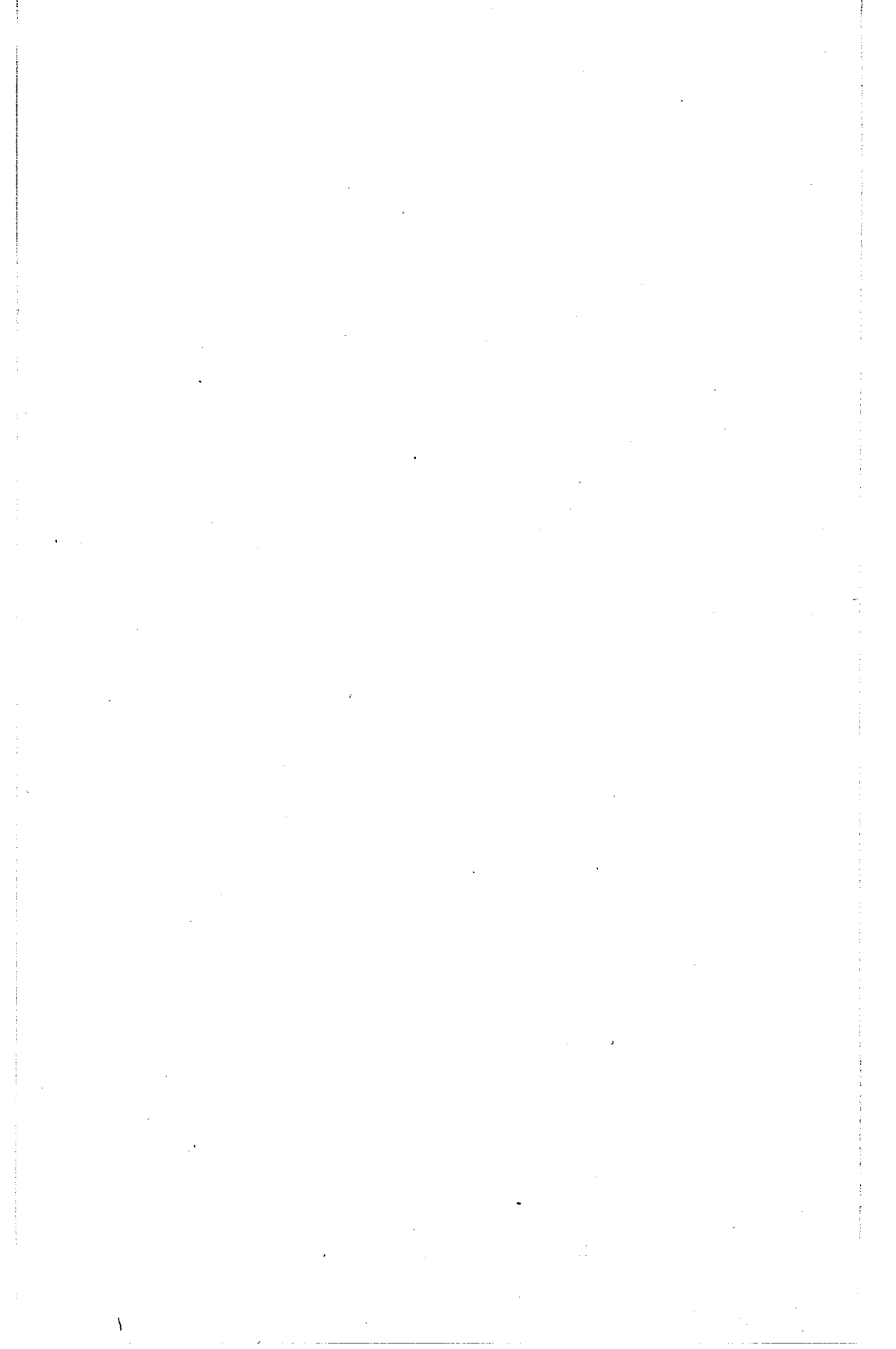
RECOMMENDATION

relating to

Escheat of Amounts Payable on Travelers
Checks, Money Orders, and Similar
Instruments

December 1974

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305



CALIFORNIA LAW REVISION COMMISSION

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November 15, 1974

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

The California Unclaimed Property Law (Code of Civil Procedure Section 1500 *et seq.*) was enacted in 1968 upon recommendation of the Law Revision Commission. See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967). The Commission continued this topic on its agenda for the purpose of reviewing the experience under the 1968 statute and submitting recommendations for any needed revisions. See Resolution Chapter 22 of the Statutes of 1972.

The Commission submitted a recommendation to the 1973 session of the Legislature based on its study of the effect on the Unclaimed Property Law of the decision of the United States Supreme Court in *Pennsylvania v. New York*, 407 U.S. 206 (1972). See *Recommendation Relating to Unclaimed Property*, 11 CAL. L. REVISION COMM'N REPORTS 401 (1973). As a result of the Commission's recommendation, the Legislature adopted a Joint Resolution memorializing the President and the Congress of the United States to enact federal legislation that would provide rules determining which state is entitled to escheat sums payable on travelers checks, money orders, and similar written instruments. Cal. Stats. 1973, Res. Ch. 76. Revision of the California Unclaimed Property Law also was recommended, but the Commission did not push for enactment of this legislation since it determined to await federal developments.

On October 28, 1974, federal legislation was enacted. This

legislation—Pub. L. No. 93-495, §§ 601-604 (Oct. 28, 1974), 88 Stat. 1525-1526—provides rules governing which state is entitled to escheat amounts held on account of travelers checks, money orders, and similar written instruments. The Commission has studied the new federal law and submits this recommendation for conforming revisions in the California Unclaimed Property Law.

Respectfully submitted,
MARC SANDSTROM
Chairman

RECOMMENDATION

relating to

ESCHEAT OF AMOUNTS HELD ON ACCOUNT OF TRAVELERS CHECKS, MONEY ORDERS, AND SIMILAR INSTRUMENTS

Background

The California Unclaimed Property Law¹ provides a comprehensive scheme for the escheat to the state of various kinds of unclaimed personal property, including amounts held by sellers on account of travelers checks, money orders, and similar instruments. If the owner of a travelers check or money order has failed to cash it for a specified period of time, the statute requires the seller to report this fact to the State Controller. Subsequently, the amount held by the seller on account of the travelers check or money order is transferred to the custody of the State Controller who then holds it subject to the claim of the owner.

In *Texas v. New Jersey*,² the United States Supreme Court held that only one state may escheat intangible personal property even though the holder of the property may be subject to the jurisdiction of several states. The court ruled that (1) the state of the last known address of the owner as shown by the records of the holder may escheat intangible personal property³ and (2) if the records do not show an address of the owner, the property may be escheated by the state where the holder is domiciled.⁴ In *Pennsylvania v. New York*,⁵ the United States Supreme Court held that escheat of amounts held by Western Union on account of money orders is governed by the rules set forth in *Texas v. New Jersey*. In *Pennsylvania v. New York*, a number of states proposed that such amounts should escheat to the states where the money orders were purchased, but the court refused to make any exceptions to *Texas v. New Jersey*.

In 1973, the Law Revision Commission recommended⁶

¹ Chapter (commencing with Section 1500) of Title 10 of Part 3 of the Code of Civil Procedure.

² 379 U S 674 (1965).

³ If the state in which the owner had his last known address (as shown by the records of the holder) does not provide for the escheat of unclaimed property, the state where the holder is domiciled may escheat the property subject to a claim of the former state if its law later provides for the escheat of such property.

⁴ In cases falling in the second category, if another state proves that the last known address of the owner actually was within its borders, that state may escheat the property and recover it from the holder or from the state that first escheated it.

⁵ 407 U S 206 (1972).

⁶ *Recommendation Relating to Unclaimed Property*, 11 Cal. L. Revision Comm'n Reports 401 (1973).

revisions to conform the California Unclaimed Property Law to the holding in *Pennsylvania v. New York* and thus assure that California would receive the property it was entitled to escheat under that decision. The Commission also stated its belief that the enactment of federal legislation offered the best long-range solution to the problem of which state is entitled to escheat sums held by the seller on account of travelers checks and money orders and recommended that the California Legislature adopt a Joint Resolution memorializing the President and the Congress of the United States to enact legislation to provide appropriate rules governing the escheat of sums payable on money orders, travelers checks, and similar written instruments. The Joint Resolution recommended by the Commission was adopted by the Legislature.⁷ Because the United States Congress was considering legislation that appeared to have a good chance of enactment, the Commission decided not to push for enactment of the recommended revision of the California Unclaimed Property Law.

On October 28, 1974, federal legislation was enacted. This legislation—Pub. L. No. 93-495 (Oct. 28, 1974), 88 Stat. 1525-1526—(set out immediately following this recommendation), prescribes rules that determine which state is entitled to escheat sums held by the seller on account of travelers checks, money orders, and similar written instruments.

Recommendations

The Commission has reviewed the new federal statute and makes the following recommendations to conform the California Unclaimed Property Law to the federal statute:

(1) Section 1511 of the Code of Civil Procedure, which creates a presumption that the state in which a travelers check or money order was purchased is the state of the last known address of the apparent owner (absent an address being shown on the records of the holder), should be replaced by a statutory provision that codifies the rules stated in the new federal statute.⁸ This will assure that California will receive the property it is entitled to escheat under the federal statute.

(2) Technical conforming amendments should be made to Sections 1530, 1531, 1532, 1542, and 1581 of the Code of Civil Procedure.

⁷ Cal. Stats. 1973, Res. Ch. 76.

⁸ Like the federal statute, the recommended section will apply to "sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974." Pub. L. No. 93-495, § 604 (Oct. 28, 1974), 88 Stat. 1526.

Proposed Legislation

The Commission's recommendations would be effectuated by enactment of the following measure:

An act to amend Sections 1530, 1531, 1532, 1542, and 1581 of, to add Section 1511 to, and to repeal Section 1511 of, the Code of Civil Procedure, relating to the escheat of sums payable on travelers checks, money orders, and similar instruments.

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

Code of Civil Procedure § 1511 (repealed)

Section 1. Section 1511 of the Code of Civil Procedure is repealed.

1511. For the purposes of Section 1510, where the records of the holder do not show a last known address of the apparent owner of a travelers check or money order, it is presumed that the state in which the travelers check or money order was purchased is the state of the last known address of the apparent owner. This presumption is a presumption affecting the burden of proof.

Comment. Section 1511 is replaced by new Section 1511 which conforms the California law to federal law. Pub. L. No. 93-495, §§ 601-604 (Oct. 28, 1974), 88 Stat. 1525-1526. See the Comment to new Section 1511.

Code of Civil Procedure § 1511 (added)

Sec. 2. Section 1511 is added to the Code of Civil Procedure; to read:

1511. (a) Any sum payable on a money order, travelers check, or other similar written instrument (other than a third-party bank check) on which a business association is directly liable escheats to this state under this chapter if the conditions for escheat stated in Section 1513 exist and if:

(1) The books and records of such business association show that such money order, travelers check, or similar written instrument was purchased in this state;

(2) The business association has its principal place of business in this state and the books and records of the business association do not show the state in which such

money order, travelers check, or similar written instrument was purchased; or

(3) The business association has its principal place of business in this state, the books and records of the business association show the state in which such money order, travelers check, or similar written instrument was purchased, and the laws of the state of purchase do not provide for the escheat of the sum payable on such instrument.

(b) Notwithstanding any other provision of this chapter, this section applies to sums payable on money orders, travelers checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a state prior to January 1, 1974. For the purposes of this subdivision, the words "deemed abandoned" have the same meaning as those words have as used in Section 604 of Public Law Number 93-495 (October 28, 1974), 88 Statutes at Large 1526.

Comment. Section 1511 adopts the rules provided in federal legislation which determines which state is entitled to escheat sums payable on money orders, travelers checks, and similar written instruments. See Pub. L. No. 93-495, §§ 603, 604 (Oct. 28, 1974), 88 Stat. 1525-1526. See also *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments*, 12 Cal. L. Revision Comm'n Reports 609 (1974).

Code of Civil Procedure § 1530 (amended)

Sec. 3. Section 1530 of the Code of Civil Procedure is amended to read:

1530. (a) Every person holding funds or other property escheated to this state under this chapter shall report to the State Controller as provided in this section.

(b) The report shall be on a form prescribed or approved by the Controller and shall include:

(1) Except with respect to travelers checks, ~~and~~ money orders, *and similar written instruments that escheat under Section 1511*, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of any property of value of

twenty-five dollars (\$25) or more escheated under this chapter.

(2) In case of escheated funds of life insurance corporations, the full name of the insured or annuitant, and his last known address, according to the life insurance corporation's records ; .

(3) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of such property and the place where it is held and may be inspected by the State Controller. The report shall set forth any amounts owing to the holder for unpaid rent or storage charges and for the cost of opening the safe deposit box or other safekeeping repository, if any, in which the property was contained.

(4) The nature and identifying number, if any, or description of any intangible property and the amount appearing from the records to be due, except that items of value under twenty-five dollars (\$25) each may be reported in aggregate.

(5) Except for any property reported in the aggregate, the date when the property became payable, demandable, or returnable, and the date of the last transaction with the owner with respect to the property.

(6) Other information which the State Controller prescribes by rule as necessary for the administration of this chapter.

(c) If the holder is a successor to other persons who previously held the property for the owner, or if the holder has changed his name while holding the property, he shall file with his report all prior known names and addresses of each holder of the property.

(d) The report shall be filed before November 1st of each year as of June 30th or fiscal year-end next preceding, but the report of life insurance corporations shall be filed before May 1st of each year as of December 31st next preceding. The State Controller may postpone the reporting date upon his own motion or upon written request by any person required to file a report.

(e) The report, if made by an individual, shall be verified by the individual; if made by a partnership, by a partner; if made by an unincorporated association or private

corporation, by an officer; and if made by a public corporation, by its chief fiscal officer.

Comment. Sections 1530(b)(1), 1531(g), and 1532(c) are amended to conform to Section 1511 (escheat to the state where travelers check, money order, or similar written instrument—not including a third-party bank check—was purchased). See also Section 1581 (seller to maintain record showing state where travelers check, money order, or similar instrument was purchased).

Code of Civil Procedure § 1531 (amended)

Sec. 4. Section 1531 of the Code of Civil Procedure is amended to read:

1531. (a) Within 120 days from the final date for filing the reports required by Section 1530, the State Controller shall cause a notice to be published at least once each week for two successive weeks in an English language newspaper of general circulation in each county in this state in which is located:

(1) The last known address, as listed in the reports, of any person named in the reports as the apparent owner of property escheated to this state under this chapter; or

(2) If no address of any apparent owner named in the reports is listed, or if the address listed in the reports for any apparent owner named therein is outside this state, the principal place of business within this state of the holder of the escheated property.

(b) Each published notice shall be entitled "notice of names of persons appearing to be owners of unclaimed property," and shall contain the names in alphabetical order and last known addresses, if any, of:

(1) Those apparent owners listed in the reports as having a last known address within the county;

(2) Those apparent owners listed as having a last known address outside this state or as having no last known address in a report filed by a holder with his principal place of business within the county; and

(3) The insured or annuitant in the case of funds described in Section 1515 if:

(i) The report does not list the name of the apparent owner of the funds and his last known address; and

(ii) The last known address of the insured or annuitant is within the county.

(c) Each published notice shall also contain:

(1) A statement that information concerning the amount or description of the property and the name and address of the holder may be obtained by any persons possessing an interest in the property by addressing an inquiry to the State Controller.

(2) A statement that, if proof of claim is not presented by the owner to the holder and if the owner's right to receive the property is not established to the holder's satisfaction before a date specified in the notice (which shall be the date five months from the final date for filing the report), the property will be placed, not later than one month after such date, in the custody of the State Controller and all further claims must thereafter be directed to the State Controller.

(d) The State Controller is not required to publish in such notice any item of less than twenty-five dollars (\$25) unless he deems such publication to be in the public interest.

(e) Within 120 days from the final date for filing the report required by Section 1530, the State Controller shall mail a notice to each person having an address listed therein who appears to be entitled to property of the value of twenty-five dollars (\$25) or more escheated under this chapter.

(f) The mailed notice shall contain:

(1) A statement that, according to a report filed with the State Controller, property is being held to which the addressee appears entitled.

(2) The name and address of the person holding the property and any necessary information regarding changes of name and address of the holder.

(3) A statement that, if satisfactory proof of claim is not presented by the owner to the holder by the date specified in the published notice, the property will be placed in the custody of the State Controller and all further claims must be directed to the State Controller.

(g) This section is not applicable to sums payable on travelers checks, ~~or~~ money orders, and similar written instruments that escheat under Section ~~1513~~ 1511.

Comment. See the Comment to Section 1530.

Code of Civil Procedure § 1532 (amended)

Sec. 5. Section 1532 of the Code of Civil Procedure is amended to read:

1532. (a) Except as otherwise provided in subdivisions (b) and (c), every person who has filed a report as provided by Section 1530 shall, within six months from the final date for filing reports as required by Section 1530, pay or deliver to the State Controller all escheated property specified in the report.

(b) If any person establishes his right to receive any property specified in the report to the satisfaction of the holder before such property has been delivered to the State Controller, or if it appears that for some other reason the property is not subject to escheat under this chapter, the holder need not pay or deliver the property to the State Controller, but in lieu thereof shall file with the State Controller a written explanation of the proof of claim or of the reason the property is not subject to escheat.

(c) In the case of sums payable on travelers checks, ~~or~~ money orders, *or similar written instruments* escheated under Section ~~1513~~ 1511, such sums shall be paid to the State Controller not later than 20 days after the final date for filing the report.

(d) The holder of any interest under subdivision (b) of Section 1516 shall deliver a duplicate certificate to the State Controller. Upon delivery of a duplicate certificate to the State Controller, the holder and any transfer agent, registrar or other person acting for or on behalf of the holder in executing or delivering such duplicate certificate shall be relieved from all liability of every kind to any person including, but not limited to, any person acquiring the original certificate or the duplicate of such certificate issued to the State Controller for any losses or damages resulting to such person by the issuance and delivery to the State Controller of such duplicate certificate.

(e) Payment of any intangible property to the State Controller shall be made at the office of the State Controller in Sacramento or at such other location as the State

Controller by regulation may designate. Except as otherwise agreed by the State Controller and the holder, tangible personal property shall be delivered to the State Controller at the place where it is held.

Comment. See the Comment to Section 1530.

Code of Civil Procedure § 1542 (amended)

Sec. 6. Section 1542 of the Code of Civil Procedure is amended to read:

1542. (a) At any time after property has been paid or delivered to the State Controller under this chapter, another state is entitled to recover the property if:

(1) The property escheated to this state under subdivision (b) of Section 1510 because no address of the apparent owner of the property appeared on the records of the holder when the property was escheated under this chapter, the last known address of the apparent owner was in fact in such other state, and, under the laws of that state, the property escheated to that state;

(2) The last known address of the apparent owner of the property appearing on the records of the holder is in such other state and, under the laws of that state, the property has escheated to that state;

(3) The property is the sum payable on a travelers check, ~~or money order, or other similar instrument~~ that escheated to this state ~~by application of the presumption provided by~~ under Section 1511, the *travelers check, money order, or other similar instrument* ~~last known address of the apparent owner~~ was in fact *purchased* in such other state, and, under the laws of that state, the property escheated to that state;
or

(4) The property is funds held or owing by a life insurance corporation that escheated to this state by application of the presumption provided by subdivision (b) of Section 1515, the last known address of the person entitled to the funds was in fact in such other state, and, under the laws of that state, the property escheated to that state.

(b) The claim of another state to recover escheated property under this section shall be presented in writing to

the State Controller, who shall consider the claim within 90 days after it is presented. He may hold a hearing and receive evidence. He shall allow the claim if he determines that the other state is entitled to the escheated property. A claim allowed under this section is subject to the charge specified by subdivision (c) of Section 1540.

(c) Paragraphs (1) and (2) of subdivision (a) do not apply to property described in paragraph (3) or (4) of that subdivision.

Comment. Section 1542(a) (3) is amended to conform to the rules stated in Section 1511. Subdivision (c), a clarifying provision, makes no substantive change.

Code of Civil Procedure § 1581 (amended)

Sec. 7. Section 1581 of the Code of Civil Procedure is amended to read:

1581. (a) Any business association that sells *in this state* its travelers checks, ~~or~~ money orders ~~in this state~~, ~~or other similar written instruments (other than third-party bank checks) on which such business association is directly liable,~~ or that provides such travelers checks, ~~or~~ money orders, ~~or similar written instruments~~ to others for sale in this state, shall ~~either~~ maintain a record indicating those travelers checks, money orders, or similar written instruments that are purchased from it in this state.

~~(1) Maintain a record of the names and addresses of the purchasers of all travelers checks and money orders sold on or after January 1, 1969, to purchasers residing in this state; or~~

~~(2) Maintain a record indicating those travelers checks and money orders that are sold in this state on or after January 1, 1969, and pay to this state the sums that this chapter provides escheat to this state.~~

(b) The record required by this section may be destroyed after it has been retained for such reasonable time as the State Controller shall designate by regulation. ~~If the business association complies with paragraph (2) of subdivision (a), the State Controller may not require that the business association maintain the record described in paragraph (1) of subdivision (a). If any provision of this~~

chapter or application thereof to any person or circumstance is held invalid, the requirement of paragraph (2) of subdivision (a) that the business association pay to this state the sums that this chapter provides escheat to this state is satisfied by payment to this state of the sums that escheat to this state under the provisions of this chapter which can be given effect without the invalid provision or application.

(c) Any business association that willfully fails to comply with this section is liable to the state for a civil penalty of five hundred dollars (\$500) for each day of such failure to comply, which penalty may be recovered in an action brought by the State Controller.

Comment. Section 1581 is revised to reflect the repeal of former Section 1511 and the enactment of new Section 1511.

Federal Legislation



Public Law 93-495
93rd Congress, H. R. 11221
October 28, 1974

An Act

To increase deposit insurance from \$20,000 to \$40,000, to provide full insurance for public unit deposits of \$100,000 per account, to establish a National Commission on Electronic Fund Transfers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

[Titles I-V omitted]

88 STAT. 1525 TITLE VI—DISPOSITION OF ABANDONED MONEY ORDERS AND TRAVELER'S CHECKS

FINDINGS

12 USC 2501.

SEC. 601. The Congress finds and declares that—

(1) the books and records of banking and financial organizations and business associations engaged in issuing and selling money orders and traveler's checks do not, as a matter of business practice, show the last known addresses of purchasers of such instruments;

(2) a substantial majority of such purchasers reside in the States where such instruments are purchased;

(3) the States wherein the purchasers of money orders and traveler's checks reside should, as a matter of equity among the several States, be entitled to the proceeds of such instruments in the event of abandonment;

(4) it is a burden on interstate commerce that the proceeds of such instruments are not being distributed to the States entitled thereto; and

(5) the cost of maintaining and retrieving addresses of purchasers of money orders and traveler's checks is an additional burden on interstate commerce since it has been determined that most purchasers reside in the State of purchase of such instruments.

DEFINITIONS

12 USC 2502. SEC. 602. As used in this title—

(1) "banking organization" means any bank, trust company, savings bank, safe deposit company, or a private banker engaged in business in the United States;

(2) "business association" means any corporation (other than a public corporation), joint stock company, business trust, partnership, or any association for business purposes of two or more individuals; and

(3) "financial organization" means any savings and loan association, building and loan association, credit union, or investment company engaged in business in the United States.

STATE ENTITLED TO ESCHEAT OR TAKE CUSTODY

12 USC 2503. SEC. 603. Where any sum is payable on a money order, traveler's check, or other similar written instrument (other than a third party bank check) on which a banking or financial organization or a business association is directly liable—

(1) if the books and records of such banking or financial organization or business association show the State in which such

October 28, 1974

Pub. Law 93-495

88 STAT. 1526

money order, traveler's check, or similar written instrument was purchased, that State shall be entitled exclusively to escheat or take custody of the sum payable on such instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum;

(2) if the books and records of such banking or financial organization or business association do not show the State in which such money order, traveler's check, or similar written instrument was purchased, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, until another State shall demonstrate by written evidence that it is the State of purchase; or

(3) if the books and records of such banking or financial organizations or business association show the State in which such money order, traveler's check, or similar written instrument was purchased and the laws of the State of purchase do not provide for the escheat or custodial taking of the sum payable on such

instrument, the State in which the banking or financial organization or business association has its principal place of business shall be entitled to escheat or take custody of the sum payable on such money order, traveler's check, or similar written instrument, to the extent of that State's power under its own laws to escheat or take custody of such sum, subject to the right of the State of purchase to recover such sum from the State of principal place of business if and when the law of the State of purchase makes provision for escheat or custodial taking of such sum.

APPLICABILITY

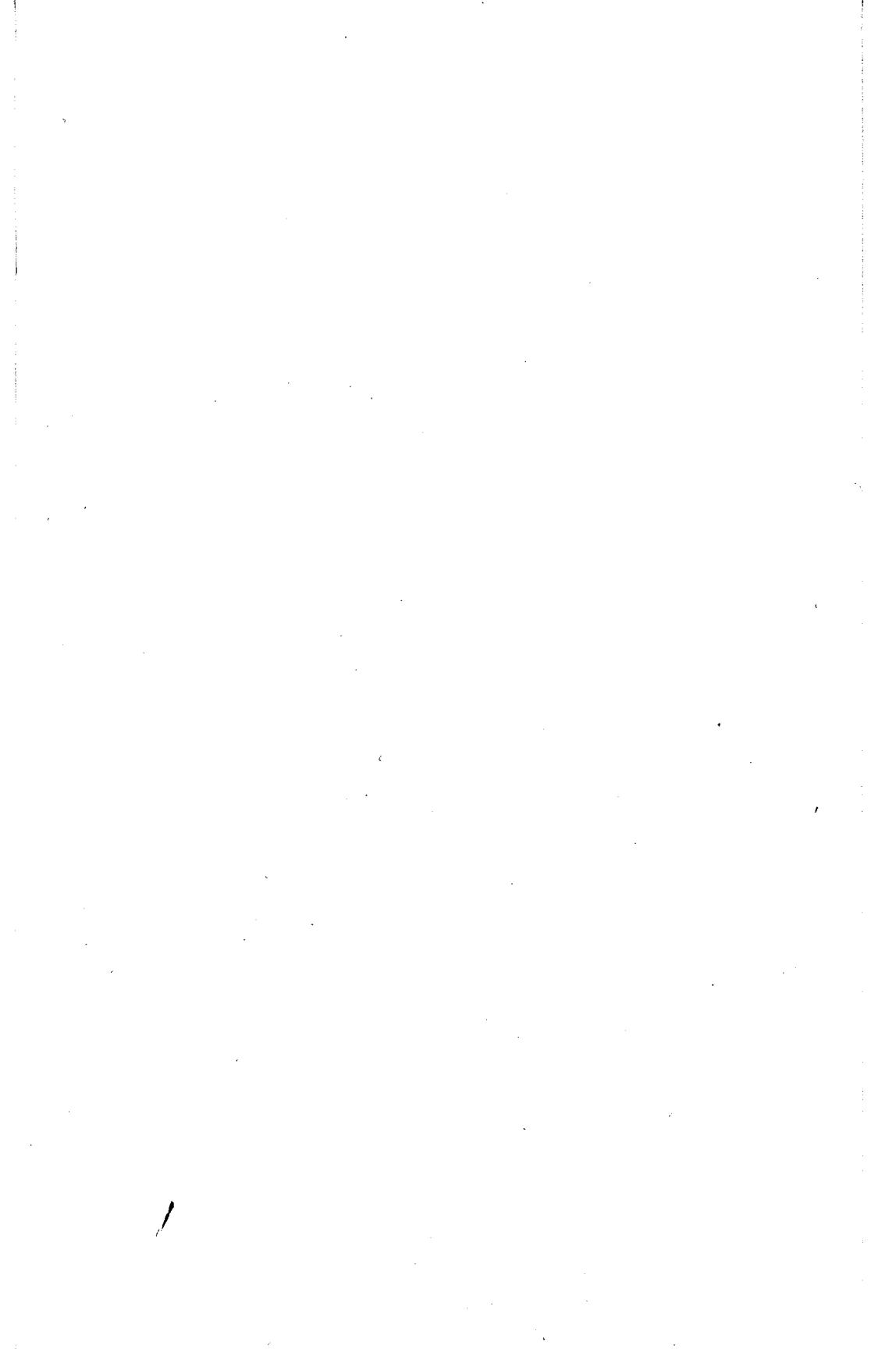
SEC. 604. This title shall be applicable to sums payable on money orders, traveler's checks, and similar written instruments deemed abandoned on or after February 1, 1965, except to the extent that such sums have been paid over to a State prior to January 1, 1974. 12 USC 2501 note.

Approved October 28, 1974.

LEGISLATIVE HISTORY:

HOUSE REPORTS: No. 93-751 (Comm. on Banking and Currency) and No. 93-1429 (Comm. of Conference).
SENATE REPORT No. 93-902 (Comm. on Banking, Housing and Urban Affairs).
CONGRESSIONAL RECORD, Vol. 120 (1974):
 Feb. 5, considered and passed House.
 June 13, considered and passed Senate, amended.
 Oct. 9, House agreed to conference report.
 Oct. 10, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 10, No. 44:
 Oct. 29, Presidential statement.



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The Marital "For and Against" Testimonial Privilege
Suspension of the Absolute Power of Alienation
Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378
Judicial Notice of the Law of Foreign Countries
Choice of Law Governing Survival of Actions
The Effective Date of an Order Ruling on a Motion for New Trial
Retention of Venue for Convenience of Witnesses
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Recommendation and Study Relating to:

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The Right of Nonresident Aliens to Inherit
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The Doctrine of Worthier Title
Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of
Vehicles and Drunk Driving
Time Within Which Motion for New Trial May Be Made
Notice to Shareholders of Sale of Corporate Assets

VOLUME 3 (1961)

1960 Annual Report

1961 Annual Report

Recommendation and Study Relating to:

Evidence in Eminent Domain Proceedings
Taking Possession and Passage of Title in Eminent Domain Proceedings
The Reimbursement for Moving Expenses When Property is Acquired for
Public Use
Rescission of Contracts
The Right to Counsel and the Separation of the Delinquent From the
Nondelinquent Minor in Juvenile Court Proceedings
Survival of Actions
Arbitration
The Presentation of Claims Against Public Officers and Employees
Inter Vivos marital Property Rights in Property Acquired While
Domiciled Elsewhere
Notice of Alibi in Criminal Actions

VOLUME 4 (1963)

1962 Annual Report

1963 Annual Report

1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

Number 4—Discovery in Eminent Domain Proceedings [The first three pamphlets (unnumbered) in Volume 3 also deal with the subject of condemnation law and procedure.]

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 [out of print]

Tentative Recommendation and A Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence)

VOLUME 5 (1963)

A Study Relating to Sovereign Immunity

VOLUME 6 (1964)

[Out of print—copies of pamphlets (listed below) available]

Tentative Recommendations and Studies Relating to the Uniform Rules of Evidence:

Article I (General Provisions)

Article II (Judicial Notice)

Burden of Producing Evidence, Burden of Proof, and Presumptions (replacing URE Article III)

Article IV (Witnesses)

Article V (Privileges)

Article VI (Extrinsic Policies Affecting Admissibility)

Article VII (Expert and Other Opinion Testimony)

Article VIII, (Hearsay Evidence) [same as publication in Volume 4]

Article IX (Authentication and Content of Writings)

VOLUME 7 (1965)

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments [out of print]

Recommendation Proposing an Evidence Code [out of print]

Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act: Liability of Public Entities for Ownership and Operation of Motor Vehicles; Claims and Actions Against Public Entities and Public Employees

VOLUME 8 (1967)

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes following recommendations:

Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding

Improvements Made in Good Faith Upon Land Owned by Another
Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

The Good Faith Improver of Land Owned by Another

Suit By or Against An Unincorporated Association

Recommendation Relating to the Evidence Code:

Number 1—Evidence Code Revisions

Number 2—Agricultural Code Revisions

Number 3—Commercial Code Revisions

Recommendation Relating to Escheat

Tentative Recommendation and A Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems

VOLUME 9 (1969)

Annual Report (December 1968) includes following recommendations:

Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation Relating to Additur and Remittitur

Recommendation Relating to Fictitious Business Names

Annual Report (December 1969) includes following recommendations:

- Recommendation Relating to Quasi-Community Property
- Recommendation Relating to Arbitration of Just Compensation
- Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code
- Recommendation Relating to Real Property leases
- Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees

Recommendation and Study Relating to:

- Mutuality of Remedies in Suits for Specific Performance
- Powers of Appointment
- Fictitious Business Names
- Representations as to the Credit of Third Persons and the Statute of Frauds
- The "Vesting" of Interests Under the Rule Against Perpetuities

Recommendation Relating to:

- Real Property Leases
- The Evidence Code: Number 4—Revision of the Privileges Article
- Sovereign Immunity: Number 10—Revisions of the Governmental Liability Act

VOLUME 10 (1971)

Annual Report (December 1970) includes the following recommendation:

- Recommendation Relating to Inverse Condemnation: Insurance Coverage

Annual Report (December 1971) includes the following recommendation:

- Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Discharge From Employment

California Inverse Condemnation Law [out of print] *

Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions

Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law [out of print]

VOLUME 11 (1973)

Annual Report (December 1972)

Annual Report (December 1973) includes the following recommendations:

- Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege
- Erroneously Ordered Disclosure of Privileged Information

* Copies may be purchased from the Continuing Education of the Bar, Department CEB-S, 2150 Shattuck Ave., Berkeley, Ca. 94704, for \$7.50.

Recommendation and Study Relating to:

- Civil Arrest
- Inheritance Rights of Nonresident Aliens
- Liquidated Damages

Recommendation Relating to:

- Wage Garnishment and Related Matters
- The Claim and Delivery Statute
- Unclaimed Property
- Enforcement of Sister State Money Judgments
- Prejudgment Attachment
- Landlord-Tenant Relations

Tentative Recommendation Relating to:

- Prejudgment Attachment

VOLUME 12

[Volume expected to be available in September 1975]

Annual Report (December 1974) includes following recommendations:

- Payment of Judgments Against Local Public Entities (September 1974)
- View by Trier of Fact in a Civil Case (October 1974)
- The Good Cause Exception to the Physician-Patient Privilege (October 1974)
- Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments (December 1974)

Recommendation Proposing the Eminent Domain Law (December 1974)**Recommendation Relating to Condemnation Law and Procedure:
Conforming Changes in Improvement Acts (January 1974)****Recommendation Relating to Wage Garnishment Exemptions (December 1974)****Tentative Recommendations Relating to Condemnation Law and Procedure:**

- The Eminent Domain Law (January 1974)
- Condemnation Authority of State Agencies (January 1974)
- Conforming Changes in Special District Statutes (January 1974)

VOLUME 13

[Volume expected to be available in September 1977]

Recommendation and Study Relating to Oral Modification of Written Contracts (January 1975)**Recommendation Relating to Partition Procedure (January 1975)**

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