

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1977

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

THE CALIFORNIA LAW REVISION COMMISSION

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NOTE

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 14 of the Commission's *Reports, Recommendations and Studies* which is scheduled to be published late in 1979.

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STATE OF CALIFORNIA

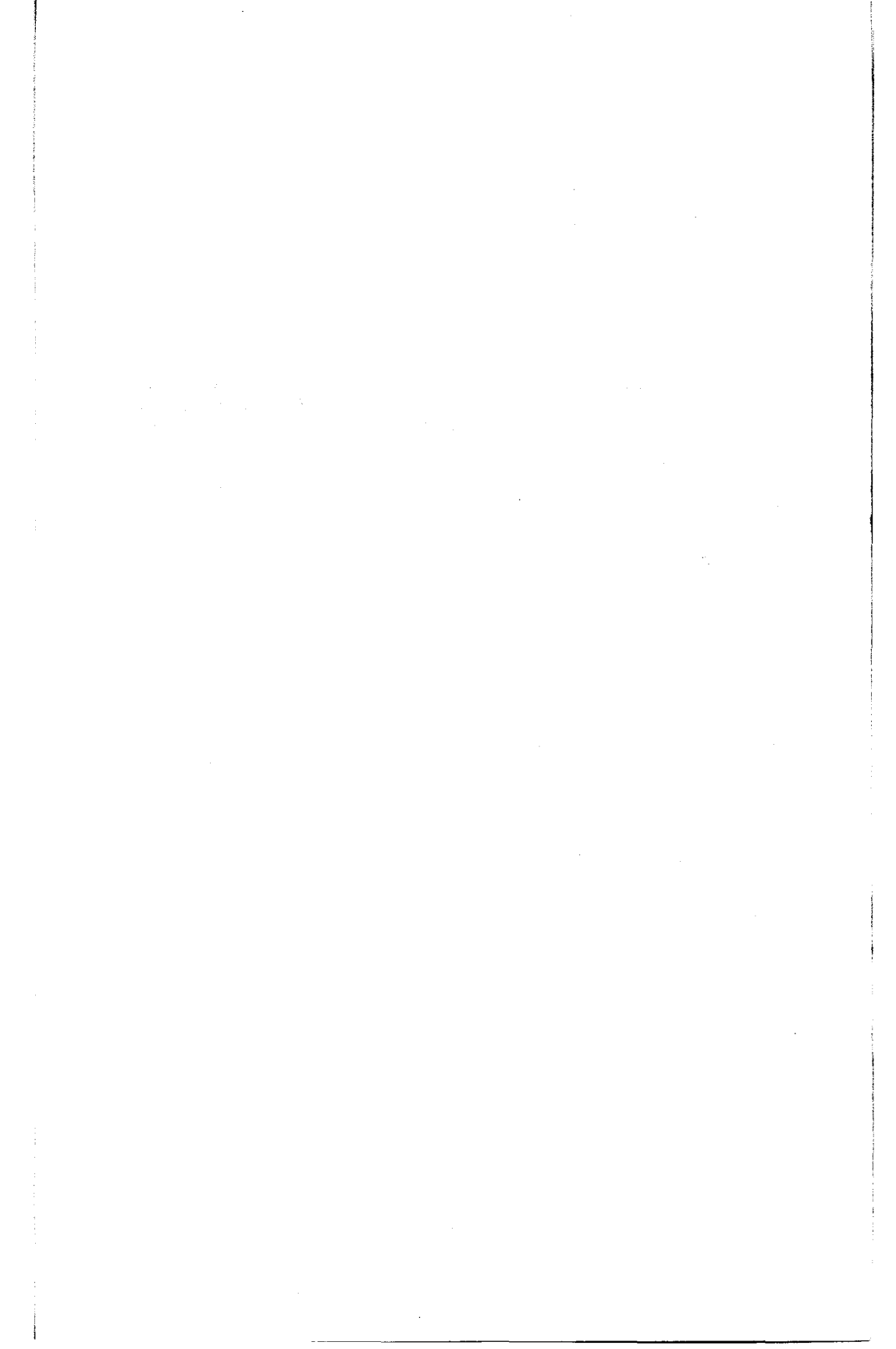
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SUMMARY OF WORK OF COMMISSION

The Commission recommended one resolution and eight bills for enactment at the 1977 session. The resolution was adopted and five of the bills were enacted. Final action on one bill—pending in conference committee when the Legislature recessed in September 1977—will be taken in the second year of the 1977–78 session. Committee hearings on two bills (relating to nonprofit corporation law) were postponed during 1977 in order to give an Assembly Select Committee time to study the subject matter of the bills. The bills enacted in 1977 dealt with a variety of subjects: enforcement of sister state money judgments; damages in unlawful detainer actions; use of keepers on writs of execution; liquidated damages for breach of contract; “earnest money” deposits in connection with the sale of real property; and effect on attachment of bankruptcy proceedings or general assignments for the benefit of creditors.

The Commission plans to submit six recommendations to the 1978 session. The recommendations deal with review of resolution of necessity by writ of mandate; use of court commissioners under the attachment law; evidence of market value of property; psychotherapist–patient privilege; parole evidence rule; and wage garnishment.

During 1978, the Commission plans to complete work on a major recommendation proposing a comprehensive revision of the guardianship–conservatorship provisions of the Probate Code. The Commission also plans to devote a major portion of its time and resources to the study of creditors’ remedies, inverse condemnation, evidence, child custody, and adoption. Other topics may be considered if time permits.

During 1977, the Commission also reviewed decisions of the Supreme Court of the United States and the Supreme Court of California, as required by Section 10331 of the Government Code, to determine whether any statutes of this state have been held to be unconstitutional or to have been impliedly repealed.

During 1977, the Commission held 9 separate meetings, consisting of 22 days of working sessions.

CALIFORNIA LAW REVISION COMMISSION

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Chairman

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December 1, 1977

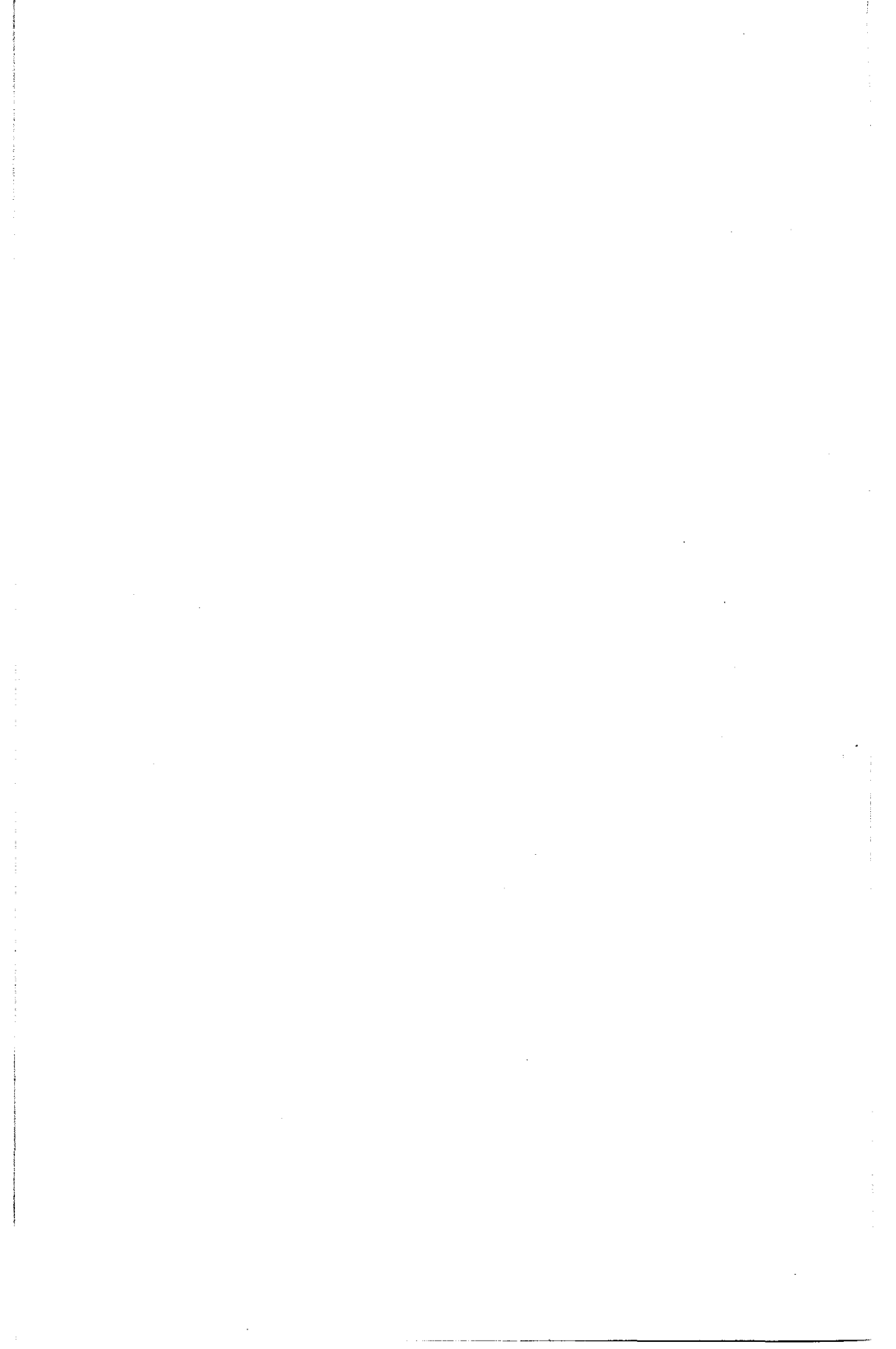
To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1977.

I am pleased to report that one concurrent resolution and five bills were enacted to implement the Commission's recommendations during the 1977 legislative session.

I would also like to give special recognition to Assemblyman Alister McAlister who carried five bills recommended by the Commission, to Senator George Deukmejian who carried two bills recommended by the Commission, to Senator George N. Zenovich who carried one bill recommended by the Commission, and to Senators Alan Robbins and Alfred H. Song who managed and explained bills recommended by the Commission on the Senate floor.

Respectfully submitted,
JOHN N. McLAURIN
Chairman



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ANNUAL REPORT FOR THE YEAR 1977

INTRODUCTION

The primary objective of the California Law Revision Commission is to study the statutory and decisional law of this state to discover defects and anachronisms and to recommend legislation to make needed reforms.

The Commission consists of a Member of the Senate appointed by the Committee on Rules, a Member of the Assembly appointed by the Speaker, and seven additional members appointed by the Governor with the advice and consent of the Senate. The Legislative Counsel is an ex officio nonvoting member of the Commission.

The Commission assists the Legislature in keeping the law up to date by:

- (1) Intensively studying complex and controversial subjects;
- (2) Identifying major policy questions for legislative attention;
- (3) Gathering the views of interested persons and organizations; and
- (4) Drafting recommended legislation for legislative consideration.

The efforts of the Commission permit the Legislature to determine significant policy questions rather than to concern itself with the technical problems in preparing background studies, working out intricate legal problems, and drafting needed legislation. The Commission thus enables the Legislature to accomplish needed reforms that otherwise might not be made because of the heavy demands on legislative time. In some cases, the Commission's report demonstrates that no new legislation on a particular topic is needed, thus relieving the Legislature of the need to study the topic.

The Commission may study only topics that the Legislature by concurrent resolution authorizes it to study. The Commission now has a calendar of 21 topics¹ and will request that the Legislature in 1978 authorize the study of three new topics.²

Commission recommendations have resulted in the enactment of legislation affecting 4,327 sections of the California statutes: 1,760 sections have been added, 923 sections amended, and 1,644 sections repealed. Of the 107 Commission recommendations submitted to the Legislature, 95 (93%) were enacted into law either in whole or in substantial part.³

¹ See listing of topics under "Calendar of Topics for Study" *infra*.

² See "Topics for Future Consideration" *infra*.

³ See listing of recommendations and legislative action in Appendix II *infra*.

1978 LEGISLATIVE PROGRAM

The Commission plans to submit the following recommendations to the 1978 Legislature:

(1) *Recommendation Relating to Review of Resolution of Necessity by Writ of Mandate* (September 1977), published as Appendix VII to this Report.

(2) *Recommendation Relating to Use of Court Commissioners Under the Attachment Law* (October 1977), published as Appendix VIII to this Report.

(3) *Recommendation Relating to Evidence of Market Value of Property* (October 1977), published as Appendix IX to this Report.

(4) *Recommendation Relating to the Psychotherapist-Patient Privilege* (October 1977), published as Appendix X to this Report.

(5) *Recommendation Relating to the Parol Evidence Rule* (November 1977), published as Appendix XI to this Report.

(6) *Recommendation Relating to Wage Garnishment*, 13 Cal. L. Revision Comm'n Reports 1703 (1976). Assembly Bill 393 was introduced at the 1977-78 Regular Session to effectuate this recommendation. The bill was pending in a joint conference committee when the Legislature recessed in September 1977. The bill will be given further consideration when the Legislature meets in 1978.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1977 LEGISLATIVE SESSION

The Commission recommended one concurrent resolution and eight bills for enactment at the 1977 session. The concurrent resolution was adopted and five of the bills were enacted. When the Legislature recessed in September 1977, one bill was pending in conference committee and two bills were pending in committee in the first house. Final action on these three bills will be taken by the Legislature in the second year of the 1977-78 Regular Session.

Nonprofit Corporation Law

Senate Bills 623 and 624 were introduced by Senator George Deukmejian to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Nonprofit Corporation Law*, 13 Cal. L. Revision Comm'n Reports 2201 (1976). The Commission decided to defer hearings on the bills in 1977 in order to give the Assembly Select Committee on Revision of the Non-profit Corporation Code time to complete its study.

The Commission will not recommend legislation relating to nonprofit corporations for enactment at the 1978 legislative session and will not request that Senate Bills 623 and 624 be set for hearing in 1978. The Commission's decision is based on the conclusion that it is important that legislation be enacted as soon as possible to eliminate the need for persons interested in nonprofit corporations to refer over to the old General Corporation Law¹ which was repealed when the new General Corporation Law was enacted.² The Assembly Select Committee is preparing legislation for introduction in 1978. The Commission is advised that the Select Committee plans to adopt the Commission's basic recommendation that a new nonprofit corporation law be enacted that is independent and is substantially complete in itself and that the Select Committee has drawn from other aspects of the Commission's 1976 recommendation in preparing its proposals. The Commission is concerned that the presentation of different bills recommended by the Commission and the Select Committee might require legislative committees to devote so much time to hearing the

¹ Nonprofit corporations generally are governed by the repealed General Corporation Law with the exception of a handful of key provisions in the General Nonprofit Corporation Law. See *Recommendation Relating to Nonprofit Corporation Law*, 13 Cal. L. Revision Comm'n Reports 2201, 2224-26 (1976).

² See Cal. Stats. 1975, Ch. 682, § 6.

bills that the Legislature would be unable to pass any legislation at all in 1978 on this subject.

Creditors' Remedies

Four bills relating to creditors' remedies were recommended by the Commission for enactment at the 1977 session.

Use of keepers pursuant to writs of execution. Assembly Bill 13, which became Chapter 155 of the Statutes of 1977, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to the Use of Keepers Pursuant to Writs of Execution* (March 1977), published as Appendix III to this Report. The bill was enacted as introduced.

Sister state money judgments. Assembly Bill 85, which became Chapter 232 of the Statutes of 1977, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Sister State Money Judgments*, 13 Cal. L. Revision Comm'n Reports 1669 (1976). See also *Report of Senate Committee on Judiciary on Assembly Bill 85*, Senate J. (June 9, 1977), at 3255, reprinted as Appendix VI to this Report.

The following amendments were made to this bill at the suggestion of the Assembly Judiciary Committee:

(1) Code of Civil Procedure Section 1710.15 was amended as follows: In paragraph (3) of subdivision (b), the phrase "and, if accrued interest on the sister state judgment is to be included in the California judgment" was inserted preceding the words "a statement of the amount of interest"; the phrase "(computed at the rate of interest applicable to the judgment under the law of the sister state, but not at a rate in excess of 7 percent per annum)" was substituted for the phrase "computed at the rate of interest applicable to the judgment under the law of the sister state".

(2) Code of Civil Procedure Section 1710.25 was amended as follows: In paragraph (2) of subdivision (a), the phrase "(computed at the rate of interest applicable to the judgment under the law of the sister state, but not at a rate in excess of 7 percent per annum)" was inserted following the word "judgment"; the second sentence was added to subdivision (b).

(3) Code of Civil Procedure Section 1710.30 was amended to insert in subdivision (b), following the word "judgment", the words "under this section."

(4) Code of Civil Procedure Section 1710.40 was amended as follows: The second sentence of subdivision (a) was deleted; a new subdivision (c) was added.

Attachment—effect of bankruptcy and assignments for benefit of creditors. Senate Bill 221, which had been introduced by Senator Zenovich, was amended in the Assembly to incorporate the legislation recommended by the Commission on this subject and, as so amended, was enacted as Chapter 499 of the Statutes of 1977. See *Recommendation Relating to Attachment—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors* (April 1977), published as Appendix IV to this Report.

Wage garnishment. Assembly Bill 393, which was pending in a joint conference committee when the Legislature recessed in September 1977, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Wage Garnishment*, 13 Cal. L. Revision Comm'n Reports 1703 (1976). The bill will be given further consideration when the Legislature meets in 1978.

Liquidated Damages

Assembly Bill 570 was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Liquidated Damages*, 13 Cal. L. Revision Comm'n Reports 1735 (1976). The bill was enacted as introduced.

Damages in Action for Breach of Lease

Assembly Bill 13 was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Damages in Action for Breach of Lease*, 13 Cal. L. Revision Comm'n Reports 1679 (1976). See also *Report of Senate Committee on Judiciary on Assembly Bill 13*, Senate J. (April 21, 1977), at 1437, reprinted as Appendix V to this Report.

The following amendments were made to this bill upon recommendation of the Commission as a result of continuing study of this topic after the bill was introduced:

Civil Code Section 1952, which was not included in the bill as introduced, was amended to insert at the beginning of subdivision (b) the phrase "Unless the lessor amends the complaint as provided in paragraph (1) of subdivision (a) of Section 1952.3 to state a claim for damages not recoverable in the unlawful detainer proceeding,".

Civil Code Section 1952.3 was amended to substitute a new section for the one which was included in the bill as introduced.

Resolution Approving Topics for Study

Assembly Concurrent Resolution No. 4, introduced by Assemblyman McAlister and adopted as Resolution Chapter 17 of the Statutes of 1977, authorizes the Commission to continue the study of 21 topics previously authorized for study and to drop two topics previously authorized for study—tort liability and transfer of out-of-state trusts to California—from the Commission's calendar of topics.

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 reviewed the decisions of the Supreme Court of the United States and of the Supreme Court of California published since the Commission's last Annual Report was prepared.¹ It has the following to report:

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

(2) Two decisions of the Supreme Court of California held statutes of this state repealed by implication.

In *Governing Board of Rialto Unified School District v. Mann*,³ the court held that the enactment of Health and Safety Code Section 11361.7(b), which prohibits any public entity from revoking any rights of an individual on the basis of a pre-1976 marijuana possession offense where certain conditions are met, "worked a direct repeal" of Education Code Section 13403(h),⁴ which allows dismissal of teachers convicted of felonies or of any crimes involving moral turpitude, to the extent that Section 13403(h) permitted the dismissal of teachers convicted of marijuana possession.

¹ This study has been carried through 97 S. Ct. 2995 (Adv. Sh. No. 18A, July 15, 1977) and 19 Cal.3d 834 (Adv. Sh. No. 28, Oct. 18, 1977).

² One United States Supreme Court decision declared a California statute preempted, in some applications, by federal law. In *Jones v. Rath Packing Co.*, 97 S. Ct. 1305 (1977), the court examined the applicability of Business and Professions Code Section 19211 and implementing regulations, which deal with the validity of net weight labeling on packaging, to commodities subject to federal inspection and net weight labeling regulation (Wholesome Meat Act provisions in the case of meat, and Federal Food, Drug and Cosmetic Act provisions and Fair Packaging and Labeling Act provisions in the case of flour). The court held that, in the case of meat, the applicable federal statutes preempted the California statute and regulations and that, in the case of flour, the enforcement of the California statute and regulations would prevent accomplishment of the purpose of the federal law.

³ 18 Cal.3d 819, 558 P.2d 1, 135 Cal. Rptr. 526 (1977).

⁴ Section 13403(h) was superseded by Education Code Sections 44932(h) (applicable to elementary and secondary school teachers) and 87732(h) (applicable to community college teachers) which contain identical language. See 1976 Cal. Stats., Ch. 1010 (operative April 30, 1977).

In *In re Thierry S.*,⁵ the court held that Welfare and Institutions Code Section 625(a), which permits warrantless misdemeanor arrests of juveniles based on reasonable cause, was impliedly repealed by Welfare and Institutions Code Section 625.1 which permits such arrests only when the offense takes place in the presence of the arresting officer.

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

(4) Five decisions of the Supreme Court of California held statutes of this state unconstitutional.⁶

In *Hardie v. Eu*,⁷ the court held unconstitutional the limitations on amounts that may be spent to further circulation of state initiative petitions provided in Government Code Sections 85200-85202, finding that these limitations violate rights of freedom of speech and freedom of association guaranteed by the First Amendment to the United States Constitution.⁸

⁵ 19 Cal.3d 727, 566 P.2d 610, 139 Cal. Rptr. 708 (1977).

⁶ Three other decisions of the California Supreme Court imposed constitutional qualifications on the application of state statutes without invalidating any statutory language:

In *In re Dewing*, 19 Cal.3d 54, 560 P.2d 375, 136 Cal. Rptr. 708 (1977), the court held that 1976 Cal. Stats., Ch. 1070, § 7, amending Penal Code Section 17(b)(2), operated as an ex post facto law and therefore violated the United States Constitution (Art. I, § 9, Cl. 3) and the California Constitution (Art. I, § 9) when it was applied to persons already in custody of the Youth Authority. Prior to the amendment of Section 17, an offense which could be either a misdemeanor or a felony was automatically considered a misdemeanor in setting the time for detention in the Youth Authority. The new statute allows the misdemeanor sentence to apply only if the offense in the specific instance was designated a misdemeanor at the time the defendant was bound over to the Youth Authority. Applying that statute to persons already in Youth Authority detention would have the effect of adding two years to their sentences; therefore, the new law could not apply to those persons.

In *In re Roger S.*, 19 Cal.3d 921, 569 P.2d 1286, 141 Cal. Rptr. 298 (1977), the court held that procedures established by the Department of Health under Welfare and Institutions Code Section 6000(b) for the admission of minors 14 years of age or older to state hospitals did not properly recognize the right under the due process clauses of the California and United States Constitutions to a precommitment hearing.

In *Newland v. Board of Governors*, 19 Cal.3d 705, 566 P.2d 254, 139 Cal. Rptr. 620 (1977), the court held that the requirement of Education Code Section 13220.16(b) that an applicant for a teaching credential who is a convicted sex offender obtain a certificate of rehabilitation cannot constitutionally be applied to deny a misdemeanant a credential. Since Penal Code Section 4852.01 provides that felons—but not misdemeanants—may apply for certificates of rehabilitation, the requirement of a certificate of rehabilitation was held to deny misdemeanants the equal protection of the laws. Education Code Section 13220.16 was repealed (see 1977 Cal. Stats., Ch. 36, § 813), but Education Code Section 87215 was amended to continue its provisions (see 1977 Cal. Stats., Ch. 36, § 367).

⁷ 18 Cal.3d 371, 556 P.2d 301, 134 Cal. Rptr. 201 (1976).

⁸ Government Code Sections 85200-85202 were repealed. See 1977 Cal. Stats., Ch. 1095, § 4.

In *Rockwell v. Superior Court*,⁹ the court held that the provisions in Penal Code Sections 190-190.3 imposing a mandatory death penalty for certain categories of first-degree murder were unconstitutional under the Eighth and Fourteenth Amendments to the United States Constitution because they did not provide for consideration of mitigating circumstances nor did they specify detailed guidelines as to the relevance of such evidence.¹⁰

In *Serrano v. Priest*,¹¹ the court held that the state school financing system, despite changes made in 1972 and 1973,¹² violated the equal protection provisions of the California Constitution¹³ because, under this system, the adequacy of educational opportunity depends upon the suspect classification of district wealth.

In *Arp v. Worker's Compensation Appeals Board*,¹⁴ the court held that Labor Code Section 3501(a), which allows widows, but not widowers, a conclusive presumption of dependency in connection with spousal death benefits, violates the equal protection provisions of the United States and California Constitutions. The court did not extend the presumption of dependency to widowers but held that all applicants would have to establish proof of dependency under Labor Code Section 3502 until the Legislature provides otherwise.

In *People v. Thomas*,¹⁵ the court held that Welfare and Institutions Code Section 3108, which provides for a three-fourths jury decision in involuntary commitment proceedings, violates the due process and unanimous verdict provisions of the California Constitution. The court also held that due process requires the standard of proof in all involuntary commitment proceedings under Welfare and Institutions Code Sections 3050, 3051, 3106.5, and 3108 to be proof beyond a reasonable doubt.

⁹ 18 Cal.3d 420, 556 P.2d 1101, 134 Cal. Rptr. 680 (1976).

¹⁰ Penal Code Sections 190-190.3 were repealed and new provisions enacted. See 1977 Cal. Stats., Ch. 316, §§ 4-11.

¹¹ 18 Cal.3d 728, 557 P.2d 929, 135 Cal. Rptr. 345 (1976).

¹² See 1972 Cal. Stats., Ch. 1406; 1973 Cal. Stats., Ch. 208. These measures were enacted in response to an earlier phase of this case. See *Serrano v. Priest*, 5 Cal.3d 584, 487 P.2d 1241, 96 Cal. Rptr. 601 (1971). Additional legislation was enacted in 1977. See 1977 Cal. Stats., Ch. 894.

¹³ Cal. Const., Art. I, § 7, Art. IV, § 16. The school financing system then in effect was held not to violate the equal protection clause of the United States Constitution.

¹⁴ 19 Cal.3d 395, 563 P.2d 849, 138 Cal. Rptr. 293 (1977).

¹⁵ 19 Cal.3d 630, 566 P.2d 228, 139 Cal. Rptr. 594 (1977).

CALENDAR OF TOPICS FOR STUDY

Topics Authorized for Study

The Commission has on its calendar of topics the topics listed below.¹ Each of these topics has been authorized for Commission study by the Legislature.²

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.

The Commission, working with a State Bar committee, is now engaged in drafting a comprehensive statute governing enforcement of judgments. Professor Stefan A. Riesenfeld is serving as the consultant to the Commission.

The Commission plans to submit a recommendation relating to the Attachment Law to the 1978 Legislature. See *Recommendation Relating to Use of Court Commissioners Under the Attachment Law* (October 1977), published as Appendix VIII to this Report.

The Commission also plans to submit a recommendation relating to wage garnishment to the 1978 Legislature. See *Recommendation Relating to Wage Garnishment*, 13 Cal. L.

¹ For information concerning prior Commission recommendations and studies concerning these topics, and the legislative history of legislation introduced to effectuate such recommendations, see "Current Topics—Prior Publications and Legislative Action" *infra*.

² Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for such study. The legislative authorization for each topic is noted in "Current Topics—Prior Publications and Legislative Action" *infra*.

Revision Comm'n Reports 1703 (1976). Assembly Bill 393 was introduced at the 1977-78 Regular Session to effectuate this recommendation. The bill was pending in a joint conference committee when the Legislature recessed in September 1977. Final action will be taken on the bill when the Legislature meets in 1978.

Evidence. Whether the Evidence Code should be revised.

The Commission has undertaken a study of the differences between the newly adopted Federal Rules of Evidence and the California Evidence Code. Professor Jack Friedenthal of the Stanford Law School is the Commission's consultant on this study. The Commission also is making a study of the experience under the Evidence Code to determine whether any revisions are needed.

The Commission plans to submit a recommendation to the 1978 Legislature proposing expansion and revision of the provisions of the Evidence Code relating to evidence of market value in eminent domain and inverse condemnation proceedings. The recommendation proposes that the existing provisions be made applicable generally to all cases where market value of property is in issue (other than ad valorem property taxation proceedings) and recommends a number of changes in the existing rules governing the evidence admissible on the issue of market value of property. See *Recommendation Relating to Evidence of Market Value of Property* (October 1977), published as Appendix IX to this Report.

Another recommendation to be submitted to the 1978 Legislature is the result of the Commission's study of the experience under the psychotherapist-patient privilege. See *Recommendation Relating to the Psychotherapist-Patient Privilege* (November 1977), published as Appendix X to this Report.

Child custody, guardianship, 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.

Professor Brigitte M. Bodenheimer of the Law School, University of California at Davis, has been retained as the chief consultant on this topic. She has prepared two background studies—one relating to child custody and the other to adoption. See Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 Stan. L. Rev. 703 (1971); *New Trends and Requirements in Adoption Law and*

Proposals for Legislative Change, 49 So. Cal. L. Rev. 10 (1975). The background studies do not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation. Mr. Garrett H. Elmore has been retained as a consultant on one aspect of the topic—revision of the guardianship and conservatorship statutes.

The guardianship—conservatorship revision project now under active study has three basic objectives: (1) To make clear that the standard for appointment of a guardian of the person of a minor is the same as the standard for awarding custody under the Family Law Act, (2) to eliminate guardianship for adults—adults would be governed by the conservatorship statute only, and (3) to consolidate general provisions applicable to guardianship and conservatorship in one statute containing provisions common to both. Working with a special subcommittee of the State Bar Committee on Guardianships and Conservatorships³ and a special committee of the California Land Title Association,⁴ the Commission plans to submit its recommendation on this matter to the 1979 Legislature.

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

The Commission plans to submit its recommendation on this topic to the 1978 Legislature. See *Recommendation Relating to the Parol Evidence Rule* (November 1977), published as Appendix XI to this Report.

Eminent domain. Whether the law relating to eminent domain should be revised.

The Commission plans to submit two recommendations to the 1978 Legislature. See *Recommendation Relating to Review of Resolution of Necessity by Writ of Mandate* (September 1977), published as Appendix VII to this Report, and *Recommendation Relating to Evidence of Market Value of Property* (October 1977), published as Appendix IX to this Report.

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities

³ The members of the State Bar Subcommittee are: Arne S. Lindgren, Chairman (Los Angeles), William S. Johnstone Jr. (Pasadena), David Lee (Oakland), Arthur K. Marshall (Los Angeles), Matthew S. Rae Jr. (Los Angeles), and Ann E. Stodden (Los Angeles).

⁴ The members of the Special Committee of the California Land Title Association are: Edward J. Wise, Chairman (Los Angeles), Helen Byard (Los Angeles), Michael Melton (Van Nuys), Harvey Pederson (San Diego), and Dean A. Swift (San Francisco).

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.

The Commission plans to study one or more aspects of this topic during 1978.

Other Topics Authorized for Study

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

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

The Commission is deferring consideration of this topic in order to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. See Cal. Stats. 1976, Res. Ch. 160.

Class actions. Whether the law relating to class actions should be revised.

Offers of compromise. Whether the law relating to offers of compromise should be revised.

The Commission is deferring consideration of this topic in order to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. See Cal. Stats. 1976, Res. Ch. 160.

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.

Possibilities of reverter and powers of termination. Whether the law relating to possibilities of reverter and powers of termination should be revised.

Marketable Title Act and related matters. Whether a Marketable Title Act should be enacted in California and whether the law relating to covenants and servitudes relating to land, and the law relating to nominal, remote, and obsolete covenants, conditions, and restrictions on land use should be revised.

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.

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

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

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.

Partition. Whether the law relating to partition should be revised.

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

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised.

The Commission is deferring further consideration of this topic in order to avoid possible duplication of the work of the Joint Legislative Committee on Tort Liability. See Cal. Stats, 1976, Res. Ch. 160.

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

The Commission published its recommendation on this topic in 1976. See *Recommendation Relating to Nonprofit Corporation Law*, 13 Cal. L. Revision Comm'n Reports 2201 (1976). The Commission has suspended further work on this topic because the Assembly Select Committee on Revision of the Non-profit Corporation Code has undertaken a study of nonprofit corporation law.

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

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

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 quiet title should be revised. Code of Civil Procedure Section 738 provides for an action to quiet title to property that is in personam in nature—the judgment in the action does not have in rem effect.⁵ In rem effect can only be achieved through the device of quiet title relief in an adverse possession action, which permits naming and serving deceased and unknown claimants.⁶ This cumbersome and inconvenient arrangement has been criticized.⁷ Recent legislation in other property litigation fields such as partition⁸ and eminent domain⁹ has enabled judgments in those fields to have in rem effect. A study should be made to determine whether in rem effect in quiet title actions, and other changes in the law relating to quiet title, are desirable.

A study to determine whether the law relating to community property should be revised. In the past, the Law Revision Commission has studied and made recommendations concerning a number of community property law problems.¹⁰ There are at present a number of additional problems with the California community property laws that have been called to the attention of the Commission. For example, the Legislature enacted a major

⁵ See, e.g., *Taliaferro v. Riddle*, 166 Cal. App.2d 124, 332 P.2d 803 (1958).

⁶ Code Civ. Proc. §§ 749, 749.1, 750.

⁷ See, e.g., *Willemsen, Improving California's Quiet Title Laws*, 21 Hastings L.J. 835 (1970). The Commission has also received correspondence to the same effect. See Letter from Jacob Forst, Esq., (July 6, 1977) (on file in the Commission's office).

⁸ Code Civ. Proc. §§ 872.310, 872.320, 872.530, 872.550.

⁹ Code Civ. Proc. §§ 1250.120, 1250.130, 1250.220.

¹⁰ See *Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 Cal. L. Revision Comm'n Reports at E-1 (1957); *Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere*, 3 Cal. L. Revision Comm'n Reports at I-1 (1961); *Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property*, 8 Cal. L. Revision Comm'n Reports 401 (1967); *Damages for Personal Injuries to a Married Person as Separate or Community Property*, 8 Cal. L. Revision Comm'n Reports 1385 (1967); *Quasi-Community Property*, 9 Cal. L. Revision Comm'n Reports 113 (1969).

reform of community property law, operative in 1975,¹¹ giving both spouses equal management and control of community property.¹² However, the 1975 legislation failed to provide rules governing liability either (1) between the spouses for mismanagement¹³ or (2) between the community and third-party creditors;¹⁴ the 1975 legislation also failed to make necessary conforming revisions in other statutes.¹⁵ Generally, if a party uses separate property to satisfy community obligations, the party is not entitled to reimbursement from the community absent an agreement to that effect;¹⁶ however, the application of this rule to payments made after the parties are separated is not clear. Another problem in the community property law is the inconsistency in the treatment of the community's interest in property acquired by installment purchase and property acquired with borrowed money.¹⁷ A study should be made to determine whether the law relating to community property should be revised to cure these and other problems in the law.

A study to determine whether the law relating to involuntary dismissal for lack of prosecution should be revised. Code of Civil Procedure Section 581a requires dismissal of an action in case of failure to serve or return summons within three years after the commencement of the action. Despite the mandatory language of this provision, it is subject to implied exceptions and excuses.¹⁸ Moreover, cases have held that the court retains discretionary authority to dismiss an action for failure to serve or return summons prior to expiration of the three-year period notwithstanding the contrary implication of Section 581a.¹⁹

¹¹ 1973 Cal. Stats., Ch. 987 (operative January 1, 1975).

¹² Civil Code §§ 5125 (personal property), 5127 (real property).

¹³ See, e.g., Comment, *California's New Community Property Law—Its Effect on Interspousal Mismanagement Litigation*, 5 Pac. L.J. 723 (1974).

¹⁴ See, e.g., Pedlar, *The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy*, 63 Calif. L. Rev. 1610 (1975).

¹⁵ See, e.g., Probate Code §§ 1435.1–1435.18.

¹⁶ See, e.g., *See v. See*, 64 Cal.2d 778, 415 P.2d 776, 51 Cal. Rptr. 888 (1966); *but see* *Beam v. Bank of America*, 6 Cal.3d 12, 490 P.2d 257, 98 Cal. Rptr. 137 (1971) (stating an exception to the general rule where community property was not available to meet community obligations).

¹⁷ *Compare* *Vieux v. Vieux*, 80 Cal. App. 222, 251 P. 640 (1926) (community's interest in property, the acquisition of which commenced before marriage with separate property and continued after marriage with installment payments from community property, is proportionate to total amount contributed to acquisition price) *with* *Gudelj v. Gudelj*, 41 Cal.2d 202, 259 P.2d 656 (1953) (community's interest in property, the acquisition of which was by borrowed money, depends upon whether lender relied on security of separate or community property).

¹⁸ See, e.g., *Wyoming Pac. Oil Co. v. Preston*, 50 Cal.2d 736, 329 P.2d 489 (1958).

¹⁹ See discussion in 4 B. Witkin, *California Procedure, Proceedings Without Trial* §§ 73–74, at 2735–38 (2d ed. 1971).

Code of Civil Procedure Section 583(b) requires dismissal of an action in case of failure to bring the action to trial within five years after the action was filed. The mandatory language of this provision precludes implied exceptions or excuses unless they may fairly be said to make a trial impracticable.²⁰ Section 583(a) permits discretionary dismissal by the court for delays of less than five but greater than two years; however, the statute provides no standards by which the court is to exercise its discretion.²¹

Code of Civil Procedure Section 583(c) requires dismissal of an action in case of failure to bring the action to new trial within three years after the order granting the new trial or after the remand for new trial following reversal on appeal. Despite the mandatory language of this provision, it is subject to the implied exceptions of impossibility or impracticability.²² Moreover, cases have held that the court retains discretionary authority to dismiss an action for failure to bring the action to new trial prior to expiration of the three-year period notwithstanding the contrary implication of Section 583(c).²³

The failure of the dismissal for lack of prosecution statutes to accurately state the exceptions, excuses, and existence of court discretion has been criticized.²⁴ The interrelation of the statutes is confusing.²⁵ The state of the law is generally unsatisfactory, requiring frequent appellate decisions for clarification. A study should be made to determine whether the law relating to involuntary dismissal for lack of prosecution should be revised.

²⁰ Cf. *Crown Coach Corp. v. Superior Court*, 8 Cal.3d 540, 503 P.2d 1347, 105 Cal. Rptr. 339 (1972) (dictum).

²¹ Cf. California Rules of Court, *Pretrial and Trial Rules*, Rule 203.5(e) (West 1977) (summarizing the significant factors developed by the cases and stating them as criteria governing exercise of discretion).

²² See, e.g., *Crown Coach Corp. v. Superior Court*, 8 Cal.3d 540, 503 P.2d 1347, 105 Cal. Rptr. 339 (1972).

²³ See discussion in 4 B. Witkin, *California Procedure Proceedings Without Trial* § 116, at 2782 (2d ed. 1971).

²⁴ See, e.g., Letter from Judge Philip M. Saeta (March 26, 1976) (on file in the Commission's office).

²⁵ For example, there appears to be an inconsistency between the provisions of Section 581a for the mandatory dismissal of an action if the summons is not served and returned within three years after commencement of an action and those of Section 583(a) providing for the dismissal of an action, in the discretion of the court, if it is not brought to trial within two years. This inconsistency has been raised in a number of appellate cases. See, e.g., *Black Bros. Co. v. Superior Court*, 265 Cal. App.2d 501, 71 Cal. Rptr. 344 (1968).

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, and from 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 some 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 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

¹ See Govt. Code §§ 10300-10340.

² See 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. Govt. Code § 10331.

³ See Govt. Code § 10335.

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 However, while the Commission endeavors in the Comment to explain any changes

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), 11 Cal. L. Revision Comm'n Reports 1008 n.5 & 1108 n.5 (1973), and 13 Cal. L. Revision Comm'n Reports 1628 n.5 (1976).

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 an example of such a report, see 13 Cal. L. Revision Comm'n Reports 1701-1702 (1976).

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.

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 considered for enactment by 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.

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 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, 1977, the membership of the Law Revision Commission is:

	<i>Term expires</i>
John N. McLaurin, Los Angeles, <i>Chairman</i>	October 1, 1975
Howard R. Williams, Stanford, <i>Vice Chairman</i>	October 1, 1977
Hon. George Deukmejian, Los Angeles, <i>Senate Member</i>	*
Hon. Alister McAlister, San Jose, <i>Assembly Member</i>	*
Beatrice P. Lawson, Los Angeles, <i>Member</i>	October 1, 1979
Jean C. Love, Davis, <i>Member</i>	October 1, 1979
John D. Miller, Long Beach, <i>Member</i>	October 1, 1977
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1977
Laurence N. Walker, Berkeley, <i>Member</i>	October 1, 1979
Bion M. Gregory, Sacramento, <i>ex officio Member</i>	†

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

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

In March 1977, Governor Brown appointed Beatrice P. Lawson, Los Angeles (replacing Marc Sandstrom who had resigned) and Jean C. Love, Davis (replacing Noble K. Gregory who had resigned). In June 1977, Laurence N. Walker, Berkeley, was appointed to replace John J. Balluff who had resigned. Bion M. Gregory, Sacramento, became an *ex officio* member of the Commission upon his appointment as Legislative Counsel in January 1977 to replace George H. Murphy who retired.

In October 1977, Howard R. Williams was elected Chairman and Beatrice P. Lawson was elected Vice Chairman of the Commission. Their terms commence on December 31, 1977.

As of December 1, 1977, the staff of the Commission is:

Legal

John H. DeMouly <i>Executive Secretary</i>	Stan G. Ulrich <i>Staff Counsel</i>
Nathaniel Sterling <i>Assistant Executive Secretary</i>	Robert J. Murphy III <i>Staff Counsel</i>

Administrative-Secretarial

Juan C. Rogers <i>Administrative Assistant</i>	Violet S. Harju <i>Word Processing Technician</i>
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Kristine A. Clute
Word Processing Technician

In September 1977, Anne Johnston, who had served as the Commission's Administrative Assistant for approximately 13 years, resigned to accept employment in private industry. In October 1977, Juan Carlos Rogers was appointed to replace her. The Commission wishes to express its appreciation to Mrs. Johnston for her long and faithful service to the Commission.

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study and to study the new topics the Commission recommends it be authorized to study (see "Calendar of Topics for Study" *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.



APPENDIX I

CURRENT TOPICS—PRIOR PUBLICATIONS AND LEGISLATIVE ACTION

Arbitration

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.

Child Custody and Related Matters

Authorized by Cal. Stats. 1972, Res. Ch. 27, at 3227; 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).

Background studies on two aspects of this topic have been prepared by the Commission's consultant, Professor Brigitte M. Bodenheimer, Law School, University of California at Davis. See Bodenheimer, *The Multiplicity of Child Custody Proceedings—Problems of California Law*, 23 Stan. L. Rev. 703 (1971); *New Trends and Requirements in Adoption Law and Proposals for Legislative Change*, 49 So. Cal. L. Rev. 10 (1975). The studies do not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation. Mr. Garrett H. Elmore has been retained as a consultant on one aspect of this topic—a project to eliminate the overlap between the guardianship and conservatorship statutes.

Class Actions

Authorized by Cal. Stats. 1975, Res. Ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).

Condemnation Law and Procedure

Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289. See also Cal. Stats. 1956, Res. Ch. 42, at 263; 4 Cal. L. Revision Comm'n Reports 115 (1963).

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); Chs. 1649, 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). The recommended legislation was not enacted. 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*, 12 Cal. L. Revision Comm'n Reports 1001 (1974). For a legislative history of this recommendation, see 12 Cal. L. Revision Comm'n Reports 534 (1974). The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 426.

See also *Tentative Recommendations Relating to Condemnation Law and Procedure: The Eminent Domain Law, Condemnation Authority of State Agencies, and Conforming Changes in Special District Statutes*, 12 Cal. L. Revision Comm'n Reports at 1, 1051, and 1101 (1974).

See also *Recommendation Proposing the Eminent Domain Law*, 12 Cal. L. Revision Comm'n Reports 1601 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2010 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Chs. 581, 582, 584, 585, 586, 587, 1176, 1239, 1240, 1275, 1276. See also Cal. Stats. 1976, Ch. 22.

See also *Recommendation Relating to Relocation Assistance by Private Condemnors*, 13 Cal. L. Revision Comm'n Reports 2085 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1614-1615 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 143.

See also *Recommendation Relating to Condemnation for Byroads and Utility Easements*, 13 Cal. L. Revision Comm'n Reports 2091 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1615 (1976). The recommended legislation was enacted in part (utility easements). See Cal. Stats. 1976, Ch. 994.

The Commission plans to submit two recommendations to the 1978 Legislature. See *Recommendation Relating to Review of Resolution of Necessity by Writ of Mandate* (September 1977), published as Appendix VII to this Report, and *Recommendation Relating to Evidence of Market Value of Property* (October 1977), published as Appendix IX to this Report.

Creditors' Remedies

Authorized by Cal. Stats. 1972, Res. Ch. 27, at 3227. See also Cal. Stats. 1957, Res. Ch. 202, at 4589; 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 11 Cal. L. Revision Comm'n Reports 1123 (1973); 12 Cal. L. Revision Comm'n Reports 530 n.1 (1974). The recommended legislation was not enacted. The Commission submitted a revised recommendation to the 1975 Legislature. See *Recommendation Relating to Wage Garnishment Exemptions*, 12 Cal. L. Revision Comm'n Reports 901 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was not enacted. See also *Recommendation Relating to Wage Garnishment Procedure*, 13 Cal. L. Revision Comm'n

Reports 601 (1976), and *Recommendation Relating to Wage Garnishment*, 13 Cal. L. Revision Comm'n Reports 1703 (1976). For a legislative history of these recommendations, see this Report *supra*. Final action on recommended legislation will be taken by the Legislature in 1978.

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. See also *Recommendation Relating to Turnover Orders Under the Claim and Delivery Law*, 13 Cal. L. Revision Comm'n Reports 2079 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1614 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 145.

See also *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701 (1973). For a legislative history of this recommendation, see 12 Cal. L. Revision Comm'n Reports 530 (1974). The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 1516. See also *Recommendation Relating to Revision of the Attachment Law*, 13 Cal. L. Revision Comm'n Reports 801 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1612 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 437. See also *Recommendation Relating to the Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors* (April 1977), published as Appendix IV to this Report. For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was enacted. See Cal. Stats. 1977, Ch. 499. The Commission plans to submit a recommendation to the 1978 Legislature. See *Recommendation Relating to Use of Court Commissioners Under the Attachment Law* (October 1977), published as Appendix VIII to this Report.

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 12 Cal. L. Revision Comm'n Reports 534 (1974). The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 211. See also *Recommendation Relating to Sister State Money Judgments*, 13 Cal. L. Revision Comm'n Reports 1669 (1976). For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was enacted. See Cal. Stats. 1977, Ch. 232.

See also *Recommendation Relating to Use of Keepers Pursuant to Writs of Execution* (March 1977), published as Appendix III to this Report. For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was enacted. See Cal. Stats. 1977, Ch. 155.

Discovery in Civil Cases

Authorized by Cal. Stats. 1975, Res. Ch. 15. See also 12 Cal. L. Revision Comm'n Reports 526 (1974).

Escheat; Unclaimed Property

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 11 Cal. L. Revision Comm'n Reports 1124 (1973). The recommended legislation was not enacted.

See also *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments*, 12 Cal. L. Revision Comm'n Reports 613

(1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Ch. 25.

Evidence

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

See *Recommendation Proposing an Evidence Code*, 7 Cal. L. Revision Comm'n Reports 1 (1965). A series of tentative recommendations and research studies relating to the Uniform Rules of Evidence was published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 Cal. L. Revision Comm'n Reports at 1, 101, 201, 601, 701, 801, 901, 1001, and *Appendix* (1964). For a legislative history of this recommendation, see 7 Cal. L. Revision Comm'n Reports 912-914 (1965). See also *Evidence Code With Official Comments*, 7 Cal. L. Revision Comm'n Reports 1001 (1965). The recommended legislation was enacted. See 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). The recommended legislation was enacted. See 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). The recommended legislation was not enacted.

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*, 11 Cal. L. Revision Comm'n Reports 1163 (1973). For a legislative history of this recommendation, see 12 Cal. L. Revision Comm'n Reports 535 (1974). 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 12 Cal. L. Revision Comm'n Reports 535 (1974). The recommended legislation was not enacted. A revised recommendation was submitted to the 1975 Legislature. See *Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege*, 12 Cal. L. Revision Comm'n Reports 601 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Ch. 318.

See also *Recommendation Relating to View by Trier of Fact in a Civil Case*, 12 Cal. L. Revision Comm'n Reports 587 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Ch. 301.

See also *Recommendation Relating to Admissibility of Copies of Business Records in Evidence*, 13 Cal. L. Revision Comm'n Reports 2051 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2012 (1976). The recommended legislation was not enacted.

See also *Recommendation Relating to Admissibility of Duplicates in Evidence*, 13 Cal. L. Revision Comm'n Reports 2115 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1615 (1976). The recommended legislation was not enacted.

See also *Recommendation Relating to the Psychotherapist-Patient Privilege* (October 1977), published as Appendix X to this Report. The Commission plans to submit this recommendation to the 1978 Legislature.

See also *Recommendation Relating to Evidence of Market Value of Property* (October 1977), published as Appendix IX to this Report. The Commission plans to submit this recommendation to the 1978 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) and 13 Cal. L. Revision Comm'n Reports 1622 (1976). See also Cal. Stats. 1972, Ch. 764 (judicial notice—technical amendment).

Governmental Liability

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). Most of the recommended legislation was enacted. See 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 *A Study Relating to Sovereign Immunity*, 5 Cal. L. Revision Comm'n Reports 1 (1963).

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). The recommended legislation was enacted. See 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*, 12 Cal. L. Revision Comm'n Reports 575 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Ch. 285.

See also *Recommendation Relating to Undertakings for Costs*, 13 Cal. L. Revision Comm'n Reports 901 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1614 (1976). The recommended legislation was not enacted.

Inverse Condemnation

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

See *Recommendation Relating to Inverse Condemnation: Insurance Coverage*, 10 Cal. L. Revision Comm'n Reports 1031 (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*, 12 Cal. L. Revision Comm'n Reports 575 (1974). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2011 (1976). The recommended legislation was enacted. See Cal. Stats. 1975, Ch. 285.

See also Van Alstyne, *California Inverse Condemnation Law*, 10 Cal. L. Revision Comm'n Reports 1 (1971).

Lease Law

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

See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 Cal. L. Revision Comm'n Reports 701 (1967). For a legislative history of this recommendation, see 8 Cal. L. Revision Comm'n Reports 1319 (1967). The recommended legislation was not enacted.

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). The recommended legislation was not enacted.

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 12 Cal. L. Revision Comm'n Reports 536 (1974). The recommended legislation was enacted. See Cal. Stats. 1974, Chs. 331, 332.

See also *Recommendation Relating to Damages in Action for Breach of Lease*, 13 Cal. L. Revision Comm'n Reports 1679 (1976). For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was enacted. See Cal. Stats. 1977, Ch. 49.

Liquidated Damages

Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888.

See *Recommendation and Study Relating to Liquidated Damages*, 11 Cal. L. Revision Comm'n Reports 1201 (1973). For a legislative history of this recommendation, see 12 Cal. L. Revision Comm'n Reports 535 (1974). The recommended legislation was not enacted.

See also *Recommendation Relating to Liquidated Damages*, 13 Cal. L. Revision Comm'n Reports 2139 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1616 (1976). The recommended legislation was passed by the Legislature but vetoed by the Governor. See also *Recommendation Relating to Liquidated Damages*, 13 Cal. L. Revision Comm'n Reports 1735 (1976). For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was enacted. See Cal. Stats. 1977, Ch. 198.

Marketable Title Act and Related Matters

Authorized by Cal. Stats. 1975, Res. Ch. 82.

Modification of Contracts

Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589. See also 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).

See *Recommendation and Study Relating to Oral Modification of Written Contracts*, 13 Cal. L. Revision Comm'n Reports 301 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 2011 (1976). One of the two legislative measures recommended was enacted. See Cal. Stats. 1975, Ch. 7.

See also *Recommendation Relating to Oral Modification of Contracts*, 13 Cal. L. Revision Comm'n Reports 2129 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1616 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 109.

Nonprofit Corporations

Authorized by Cal. Stats. 1970, Res. Ch. 54, at 3547. See also 9 Cal. L. Revision Comm'n Reports 107 (1969).

See *Recommendation Relating to Nonprofit Corporation Law*, 13 Cal. L. Revision Comm'n Reports 2201 (1976). For a legislative history of this recommendation, see this Report *supra*. The recommended legislation was not enacted.

Offers of Compromise

Authorized by Cal. Stats. 1975, Res. Ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).

Parol Evidence Rule

Authorized by Cal. Stats. 1971, Res. Ch. 75, at 4215. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).

See *Recommendation Relating to the Parol Evidence Rule* (November 1977), published as Appendix XI to this Report. The Commission plans to submit this recommendation to the 1978 Legislature.

Partition

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).

See *Recommendation Relating to Partition of Real and Personal Property*, 13 Cal. L. Revision Comm'n Reports 401 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1610-1612 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 73.

Possibilities of Reverter and Powers of Termination

Authorized by Cal. Stats. 1975, Res. Ch. 15. See also 12 Cal. L. Revision Comm'n Reports 528 (1974).

Prejudgment Interest

Authorized by Cal. Stats. 1971, Res. Ch. 75, at 4215.

Unincorporated Associations

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.

See also *Recommendation Relating to Service of Process on Unincorporated Associations*, 13 Cal. L. Revision Comm'n Reports 1657 (1976). For a legislative history of this recommendation, see 13 Cal. L. Revision Comm'n Reports 1616 (1976). The recommended legislation was enacted. See Cal. Stats. 1976, Ch. 888.

APPENDIX II

LEGISLATIVE ACTION ON COMMISSION RECOMMENDATIONS

(Cumulative)

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. 1975, Ch. 461, enacting substance of this recommendation.
7. <i>The Dead Man Statute</i> , 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. <i>Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere</i> , 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 490
9. <i>The Marital "For and Against" Testimonial Privilege</i> , 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. <i>Suspension of the Absolute Power of Alienation</i> , 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

Recommendation	Action by Legislature
11. <i>Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378</i> , 1 CAL. L. REVISION COMM'N REPORTS at H-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 102
12. <i>Judicial Notice of the Law of Foreign Countries</i> , 1 CAL. L. REVISION COMM'N REPORTS at I-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 249
13. <i>Choice of Law Governing Survival of Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at J-1 (1957)	No legislation recommended.
14. <i>Effective Date of Order Ruling on a Motion for New Trial</i> , 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. <i>Retention of Venue for Convenience of Witnesses</i> , 1 CAL. L. REVISION COMM'N REPORTS at L-1 (1957)	Not enacted.
16. <i>Bringing New Parties Into Civil Actions</i> , 1 CAL. L. REVISION COMM'N REPORTS at M-1 (1957)	Enacted. Cal. Stats. 1957, Ch. 1498
17. <i>Grand Juries</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 20 (1959)	Enacted. Cal. Stats. 1959, Ch. 501
18. <i>Procedure for Appointing Guardians</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 21 (1959)	Enacted. Cal. Stats. 1959, Ch. 500
19. <i>Appointment of Administrator in Quiet Title Action</i> , 2 CAL. L. REVISION COMM'N REPORTS, Annual Report for 1959 at 29 (1959)	No legislation recommended.
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

Recommendation	Action by Legislature
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. But see Cal. Stats. 1972, Ch. 92, enacting substance of a portion of recommendation relating to drunk driving.
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. But see CORP. CODE §§ 1001, 1002 (effective January 1, 1977) enacting substance of recommendation.
27. <i>Evidence in Eminent Domain Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at A-1 (1961)	Not enacted. But see EVID. CODE § 810 <i>et seq.</i> enacting substance of recommendation.
28. <i>Taking Possession and Passage of Title in Eminent Domain Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at B-1 (1961)	Enacted. Cal. Stats. 1961, Chs. 1612, 1613
29. <i>Reimbursement for Moving Expenses When Property Is Acquired for Public Use</i> , 3 CAL. L. REVISION COMM'N REPORTS at C-1 (1961)	Not enacted. But see GOVT. CODE § 7260 <i>et seq.</i> enacting substance of recommendation.
30. <i>Rescission of Contracts</i> , 3 CAL. L. REVISION COMM'N REPORTS at D-1 (1961)	Enacted. Cal. Stats. 1961, Ch. 589
31. <i>Right to Counsel and Separation of Delinquent From Nondelinquent Minor In Juvenile Court Proceedings</i> , 3 CAL. L. REVISION COMM'N REPORTS at E-1 (1961)	Enacted. Cal. Stats. 1961, Ch. 1616
32. <i>Survival of Actions</i> , 3 CAL. L. REVISION COMM'N REPORTS at F-1 (1961)	Enacted. Cal. Stats. 1961, Ch. 657
33. <i>Arbitration</i> , 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961)	Enacted. Cal. Stats. 1961, Ch. 461
34. <i>Presentation of Claims Against Public Officers and Employees</i> , 3 CAL. L. REVISION COMM'N REPORTS at H-1 (1961)	Not enacted 1961. See recommendation to 1963 session (item 39 <i>infra</i>) which was enacted.

Recommendation	Action by Legislature
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. <i>Liability of Public Entities for Ownership and Operation of Motor Vehicles</i> , 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. <i>Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officer</i> , 4 CAL. L. REVISION COMM'N REPORTS 1501 (1963)	Enacted. Cal. Stats. 1963, Ch. 1684
44. <i>Sovereign Immunity—Amendments and Repeals of Inconsistent Statutes</i> , 4 CAL. L. REVISION COMM'N REPORTS 1601 (1963)	Enacted. Cal. Stats. 1963, Chs. 1685, 1686, 2029
45. <i>Evidence Code</i> , 7 CAL. L. REVISION COMM'N REPORTS 1 (1965)	Enacted. Cal. Stats. 1965, Ch. 299

Recommendation	Action by Legislature
46. <i>Claims and Actions Against Public Entities and Public Employees</i> , 7 CAL. L. REVISION COMM'N REPORTS 401 (1965)	Enacted. Cal. Stats. 1965, Ch. 653
47. <i>Evidence Code Revisions</i> , 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. <i>Evidence—Agricultural Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 201 (1967)	Enacted. Cal. Stats. 1967, Ch. 262
49. <i>Evidence—Commercial Code Revisions</i> , 8 CAL. L. REVISION COMM'N REPORTS 301 (1967)	Enacted. Cal. Stats. 1967, Ch. 703
50. <i>Whether Damage for Personal Injury to a Married Person Should Be Separate or Community Property</i> , 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. <i>Vehicle Code Section 17150 and Related Sections</i> , 8 CAL. L. REVISION COMM'N REPORTS 501 (1967)	Enacted. Cal. Stats. 1967, Ch. 702
52. <i>Additur</i> , 8 CAL. L. REVISION COMM'N REPORTS 601 (1967)	Enacted. Cal. Stats. 1967, Ch. 72
53. <i>Abandonment or Termination of a Lease</i> , 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. <i>Good Faith Improver of Land Owned by Another</i> , 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. <i>Suit By or Against an Unincorporated Association</i> , 8 CAL. L. REVISION COMM'N REPORTS 901 (1967)	Enacted. Cal. Stats. 1967, Ch. 1324
56. <i>Escheat</i> , 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967)	Enacted. Cal. Stats. 1968, Chs. 247, 356
57. <i>Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding</i> , 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967)	Enacted. Cal. Stats. 1968, Ch. 133

Recommendation	Action by Legislature
58. <i>Service of Process on Unincorporated Associations</i> , 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967)	Enacted. Cal. Stats. 1968, Ch. 132
59. <i>Sovereign Immunity—Statute of Limitations</i> , 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. <i>Additur and Remittitur</i> , 9 CAL. L. REVISION COMM'N REPORTS 63 (1969)	Enacted. Cal. Stats. 1969, Ch. 115
61. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 71 (1969)	Enacted. Cal. Stats. 1969, Ch. 114
62. <i>Quasi-Community Property</i> , 9 CAL. L. REVISION COMM'N REPORTS 113 (1969)	Enacted. Cal. Stats. 1970, Ch. 312
63. <i>Arbitration of Just Compensation</i> , 9 CAL. L. REVISION COMM'N REPORTS 123 (1969)	Enacted. Cal. Stats. 1970, Ch. 417
64. <i>Revisions of Evidence Code</i> , 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. <i>Mutuality of Remedies in Suits for Specific Performance</i> , 9 CAL. L. REVISION COMM'N REPORTS 201 (1969)	Enacted. Cal. Stats. 1969, Ch. 156
66. <i>Powers of Appointment</i> , 9 CAL. L. REVISION COMM'N REPORTS 301 (1969)	Enacted. Cal. Stats. 1969, Chs. 113, 155
67. <i>Evidence Code—Revisions of Privileges Article</i> , 9 CAL. L. REVISION COMM'N REPORTS 501 (1969)	Vetoed. But see Cal. Stats. 1970, Chs. 1396, 1397
68. <i>Fictitious Business Names</i> , 9 CAL. L. REVISION COMM'N REPORTS 601 (1969)	Enacted. Cal. Stats. 1970, Ch. 618
69. <i>Representations as to the Credit of Third Persons and the Statute of Frauds</i> , 9 CAL. L. REVISION COMM'N REPORTS 701 (1969)	Enacted. Cal. Stats. 1970, Ch. 720
70. <i>Revisions of Governmental Liability Act</i> , 9 CAL. L. REVISION COMM'N REPORTS 801 (1969)	Enacted in part: Cal. Stats. 1970, Chs. 662, 1099

Recommendation	Action by Legislature
71. <i>"Vesting" of Interests Under Rule Against Perpetuities</i> , 9 CAL. L. REVISION COMM'N REPORTS 901 (1969)	Enacted. Cal. Stats. 1970, Ch. 45
72. <i>Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions</i> , 10 CAL. L. REVISION COMM'N REPORTS 501 (1971)	Enacted. Cal. Stats. 1971, Chs. 244, 950; see also Cal. Stats. 1973, Ch. 828
73. <i>Wage Garnishment and Related Matters</i> , 10 CAL. L. REVISION COMM'N REPORTS 701 (1971); 11 CAL. L. REVISION COMM'N REPORTS 101 (1973); 12 CAL. L. REVISION COMM'N REPORTS 901 (1974); 13 CAL. L. REVISION COMM'N REPORTS 601 (1976); 13 CAL. L. REVISION COMM'N REPORTS 1703 (1976)	Recommended legislation pending in 1977-78 legislative session.
74. <i>Proof of Foreign Official Records</i> , 10 CAL. L. REVISION COMM'N REPORTS 1022 (1971)	Enacted. Cal. Stats. 1970, Ch. 41
75. <i>Inverse Condemnation—Insurance Coverage</i> , 10 CAL. L. REVISION COMM'N REPORTS 1051 (1971)	Enacted. Cal. Stats. 1971, Ch. 140
76. <i>Discharge From Employment Because of Wage Garnishment</i> , 10 CAL. L. REVISION COMM'N REPORTS 1147 (1971)	Enacted. Cal. Stats. 1971, Ch. 1607
77. <i>Civil Arrest</i> , 11 CAL. L. REVISION COMM'N REPORTS 1 (1973)	Enacted. Cal. Stats. 1973, Ch. 20
78. <i>Claim and Delivery Statute</i> , 11 CAL. L. REVISION COMM'N REPORTS 301 (1973)	Enacted. Cal. Stats. 1973, Ch. 526
79. <i>Unclaimed Property</i> , 11 CAL. L. REVISION COMM'N REPORTS 401 (1973); 12 CAL. L. REVISION COMM'N REPORTS 609 (1974)	Proposed resolution enacted. Cal. Stats. 1973, Res. Ch. 76. Legislation enacted. Cal. Stats. 1975, Ch. 25.
80. <i>Enforcement of Sister State Money Judgments</i> , 11 CAL. L. REVISION COMM'N REPORTS 451 (1973)	Enacted. Cal. Stats. 1974, Ch. 211
81. <i>Prejudgment Attachment</i> , 11 CAL. L. REVISION COMM'N REPORTS 701 (1973)	Enacted. Cal. Stats. 1974, Ch. 1516. See also Cal. Stats. 1975, Ch. 200.
82. <i>Landlord-Tenant Relations</i> , 11 CAL. L. REVISION COMM'N REPORTS 951 (1973)	Enacted. Cal. Stats. 1974, Chs. 331, 332

Recommendation	Action by Legislature
83. <i>Pleading</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973)	Enacted. Cal. Stats. 1972, Ch. 73
84. <i>Evidence—Judicial Notice</i> (technical change), 11 CAL. L. REVISION COMM'N REPORTS 1025 (1973)	Enacted. Cal. Stats. 1972, Ch. 764
85. <i>Evidence—"Criminal Conduct" Exception</i> , 11 CAL. L. REVISION COMM'N REPORTS 1147 (1973)	Not enacted 1974. See recommendation to 1975 session (item 90 <i>infra</i>) which was enacted.
86. <i>Erroneously Compelled Disclosure of Privileged Information</i> , 11 CAL. L. REVISION COMM'N REPORTS 1163 (1973)	Enacted. Cal. Stats. 1974, Ch. 227
87. <i>Liquidated Damages</i> , 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973); 13 CAL. L. REVISION COMM'N REPORTS 2139 (1976); 13 CAL. L. REVISION COMM'N REPORTS 1735 (1976)	Vetoed 1976. Enacted: Cal. Stats. 1977, Ch. 198
88. <i>Payment of Judgments Against Local Public Entities</i> , 12 CAL. L. REVISION COMM'N REPORTS 575 (1974)	Enacted. Cal. Stats. 1975, Ch. 285
89. <i>View by Trier of Fact in a Civil Case</i> , 12 CAL. L. REVISION COMM'N REPORTS 587 (1974)	Enacted. Cal. Stats. 1975, Ch. 301
90. <i>Good Cause Exception to the Physician-Patient Privilege</i> , 12 CAL. L. REVISION COMM'N REPORTS 601 (1974)	Enacted. Cal. Stats. 1975, Ch. 318
91. <i>Improvement Acts</i> , 12 CAL. L. REVISION COMM'N REPORTS 1001 (1974)	Enacted. Cal. Stats. 1974, Ch. 426
92. <i>The Eminent Domain Law</i> , 12 CAL. L. REVISION COMM'N REPORTS 1601 (1974)	Enacted. Cal. Stats. 1975, Chs. 1239, 1240, 1275
93. <i>Eminent Domain—Conforming Changes in Special District Statutes</i> , 12 CAL. L. REVISION COMM'N REPORTS 1101 (1974); 12 CAL. L. REVISION COMM'N REPORTS 2004 (1974)	Enacted. Cal. Stats. 1975, Chs. 581, 582, 584, 585, 586, 587, 1176, 1276
94. <i>Oral Modification of Written Contracts</i> , 13 CAL. L. REVISION COMM'N REPORTS 301 (1976); 13 CAL. L. REVISION COMM'N REPORTS 2129 (1976)	Enacted. Cal. Stats. 1975, Ch. 7; Cal. Stats. 1976, Ch. 109.

Recommendation	Action by Legislature
95. <i>Partition of Real and Personal Property</i> , 13 CAL. L. REVISION COMM'N REPORTS 401 (1976)	Enacted. Cal. Stats. 1976, Ch. 73
96. <i>Revision of the Attachment Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 801 (1976)	Enacted. Cal. Stats. 1976, Ch. 437
97. <i>Undertakings for Costs</i> , 13 CAL. L. REVISION COMM'N REPORTS 901 (1976)	Not enacted.
98. <i>Admissibility of Copies of Business Records in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2051 (1976)	Not enacted.
99. <i>Turnover Orders Under the Claim and Delivery Law</i> , 13 CAL. L. REVISION COMM'N REPORTS 2079 (1976)	Enacted. Cal. Stats. 1976, Ch. 145
100. <i>Relocation Assistance by Private Condemnors</i> , 13 CAL. L. REVISION COMM'N REPORTS 2085 (1976)	Enacted. Cal. Stats. 1976, Ch. 143
101. <i>Condemnation for Byroads and Utility Easements</i> , 13 CAL. L. REVISION COMM'N REPORTS 2091 (1976)	Enacted in part (utility easements). Cal. Stats. 1976, Ch. 994
102. <i>Transfer of Out-of-State Trusts to California</i> , 13 CAL. L. REVISION COMM'N REPORTS 2101 (1976)	Enacted. Cal. Stats. 1976, Ch. 144
103. <i>Admissibility of Duplicates in Evidence</i> , 13 CAL. L. REVISION COMM'N REPORTS 2115 (1976)	Not enacted. But see Cal. Stats. 1977, Ch. 708, enacting substance of recommendation in modified form.
104. <i>Service of Process on Unincorporated Associations</i> , 13 CAL. L. REVISION COMM'N REPORTS 1657 (1976)	Enacted. Cal. Stats. 1976, Ch. 888
105. <i>Sister State Money Judgments</i> , 13 CAL. L. REVISION COMM'N REPORTS 1669 (1976)	Enacted. Cal. Stats. 1977, Ch. 232
106. <i>Damages in Action for Breach of Lease</i> , 13 CAL. L. REVISION COMM'N REPORTS 1679 (1976)	Enacted. Cal. Stats. 1977, Ch. 49
107. <i>Nonprofit Corporation Law</i> , 13 CAL. L. REVISION COMM'N REPORTS, 2201 (1976)	Not enacted. Recommended legislation pending in 1977-78 legislative session

- | Recommendation | Action by Legislature |
|--|------------------------------------|
| 108. <i>Use of Keepers Pursuant to Writs of Execution</i> (MARCH 1977),
PUBLISHED AS APPENDIX III TO
THIS REPORT | Enacted. Cal. Stats. 1977, Ch. 155 |
| 109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> (APRIL 1977), PUBLISHED
AS APPENDIX IV TO THIS REPORT | Enacted. Cal. Stats. 1977, Ch. 499 |

APPENDIX III

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Use of Keepers Pursuant to Writs of
Execution**

March 1977

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

1. The first part of the paper discusses the importance of maintaining accurate records of all transactions. It emphasizes that proper record-keeping is essential for the integrity of the financial system and for the ability to detect and prevent fraud. The text also mentions the need for transparency and accountability in all financial dealings.

2. The second part of the paper focuses on the role of the auditor in ensuring the accuracy of financial statements. It describes the various procedures and techniques used by auditors to verify the information provided by management. The text also discusses the importance of the auditor's independence and the need for a strong audit trail.

3. The third part of the paper discusses the importance of internal controls in preventing errors and fraud. It describes the various types of internal controls that can be implemented and the need for a strong internal control system to ensure the reliability of financial information.

CALIFORNIA LAW REVISION COMMISSION

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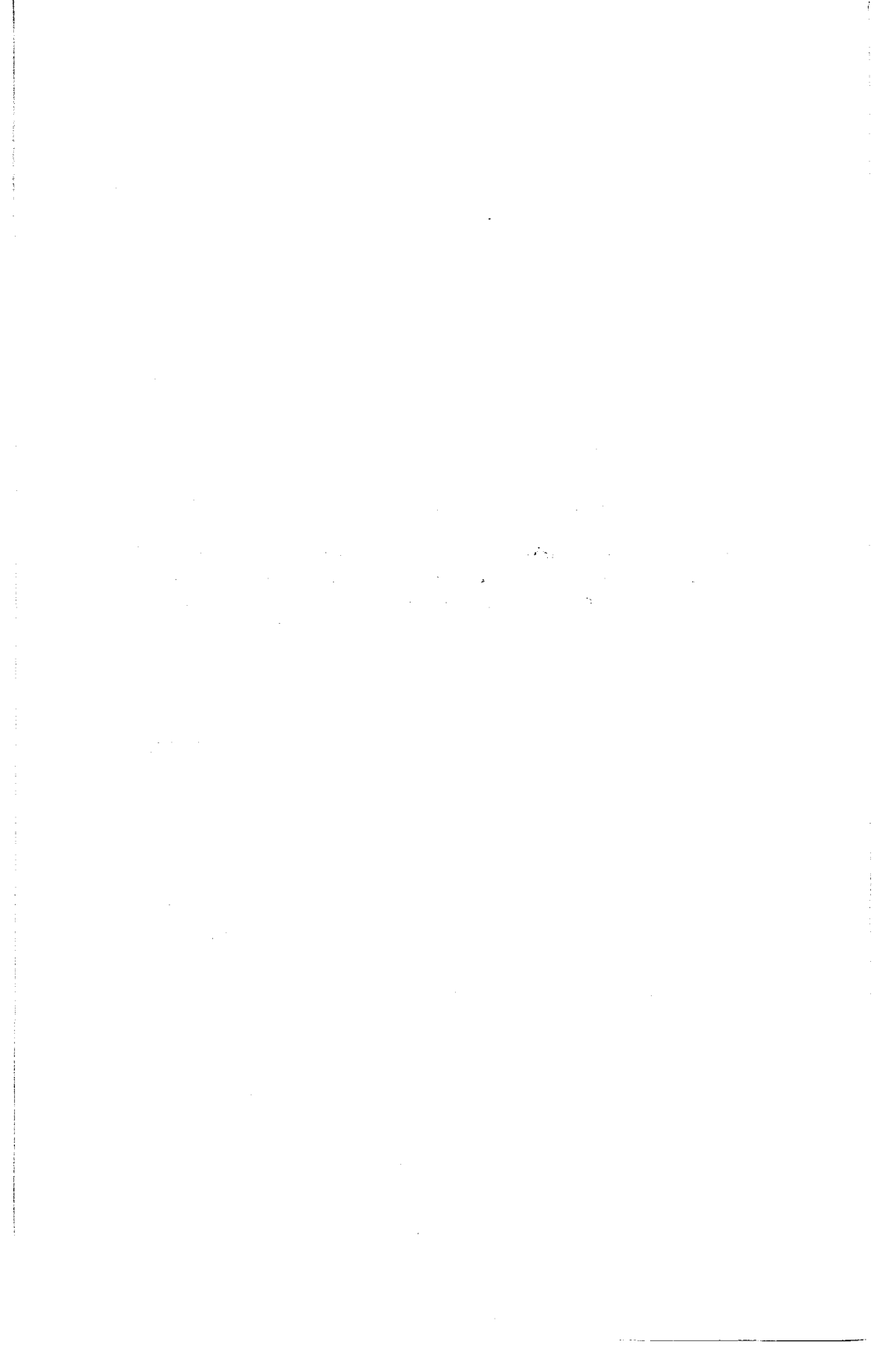
BONNIE M. GREGORY
Ex Officio

March 11, 1977

**To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA**

The California Law Revision Commission was directed by Resolution Chapter 45 of the Statutes of 1974 to study all aspects of the law relating to creditors' remedies. This recommendation deals with one aspect of the creditors' remedies study—use of keepers pursuant to writs of execution.

Respectfully submitted,
JOHN N. McLAURIN
Chairman



RECOMMENDATION

relating to

USE OF KEEPERS PURSUANT TO WRITS OF EXECUTION

Background

Under both existing and prior law, the provisions for the manner of levying on property pursuant to a writ of execution incorporate the procedures applicable to levies under a writ of attachment, subject to a few exceptions. Prior to January 1, 1977, Code of Civil Procedure Section 688, applicable to levies pursuant to a writ of execution, provided in relevant part as follows:

Shares and interests in any corporation or company, and debts and credits, and all other property, both real and personal, or any interest in either real or personal property, and all other property not capable of manual delivery, may be levied upon or released from levy in like manner as like property may be attached or released from attachment

This provision incorporated the mandatory two-day keeper provisions of subdivision 3 of former Section 542 of the Code of Civil Procedure, which read as follows:

3. Personal property, capable of manual delivery, in the possession of the defendant, must be attached by taking it into custody. When the personal property is used as a dwelling, such as a housetrailer, mobilehome, or boat, the same is to be attached by placing a keeper in charge of the property, at plaintiff's expense, for at least two (2) days. At the expiration of said period the officer shall remove its occupants, and take the property into his immediate custody, unless other disposition is made by the court or the parties to the action. Whenever a levy under attachment or execution shall be made on personal property, other than money, or a vehicle required to be registered

under the Vehicle Code belonging to a going concern, then the officer making the levy must, if the defendant consents, place a keeper in charge of said property levied upon, at plaintiff's expense, for at least two days, and said keeper's fees must be prepaid by the levying creditor. During said period defendant may continue to operate in the ordinary course of business at his own expense provided all sales are for cash and the full proceeds are given to the keeper for the purposes of the levy unless otherwise authorized by the creditor. After the expiration of said two days the sheriff, constable, or marshal shall take said property into his immediate possession unless other disposition is made by the court or the parties to the action.

When the Attachment Law became operative on January 1, 1977, Section 688 was revised to read, in relevant part, as follows:

All property subject to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment, except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by Section 488.320.

The incorporation of Section 488.320 of the Code of Civil Procedure in Section 688 has led to confusion. Section 488.320, which provides a general rule for levying on tangible personal property in the hands of a defendant pursuant to a writ of attachment, reads in relevant part as follows:

(a) Except as otherwise provided by this article, to attach tangible personal property in the possession of the defendant, the levying officer shall take such property into custody.

The effect of the incorporation of Section 488.320 is that tangible personal property in the possession of the judgment debtor is required to be taken into custody when levied upon pursuant to a writ of execution. Section 488.045 provides for the manner of taking into custody:

Except as otherwise provided by statute, where a levying officer is directed to take property into

custody, he may do so either by removing the property to a place of safekeeping or by installing a keeper.

Neither Section 488.045 nor Section 488.320 explicitly authorizes the keeper to permit the operation of a going business or requires the keeper to permit the occupants of personal property used as a dwelling to remain in possession for at least two days. Although subdivision (a) of Section 488.360¹ provides for a keeper levy on inventory of a going business or on farm products pursuant to a writ of attachment, this provision is not incorporated by the reference in Section 688.

Narrowly construed, the law no longer requires or authorizes the use of a keeper to permit the operation of a going business after judgment or to permit the occupants of personal property used as a dwelling to remain in possession for at least two days. Liberally construed, the law may be interpreted to permit use of a keeper for a two-day period (as under former law relating to levies on a going business or personal property used as a dwelling), for a 10-day period (as provided in the Attachment Law for a levy on inventory of a going business or farm products), or for some other period agreed upon by the parties.

Recommendation

Legislation is needed to resolve the interpretive problems arising from the provisions discussed above. The variation in interpretation of the law pertaining to the use of keepers results in a lack of uniformity in the procedures

¹ Subdivision (a) of Section 488.360 provides as follows:

(a) To attach farm products or inventory of a going business, if the defendant consents, the levying officer shall place a keeper in charge of such property for a period not to exceed 10 days. During such period, the defendant may continue to operate his farm or business at his own expense provided all sales are final and are for cash or the equivalent of cash. For the purposes of this subdivision, payment by check shall be deemed the equivalent of a cash payment. The levying officer shall incur no liability for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the plaintiff. If the defendant does not consent or, in any event, after the end of such 10-day period, the levying officer shall take such property into his exclusive custody unless other disposition is made by the parties to the action. At the time of levy or promptly thereafter, the levying officer shall serve the defendant with a copy of the writ and the notice of attachment.

followed in different counties. An interpretation that precludes the use of keepers operates to the detriment of judgment debtors by depriving them of a grace period within which to settle the debt or work out some arrangement with the judgment creditor. The elimination of a grace period is also detrimental to the interests of the judgment creditor who prefers a voluntary arrangement to the less efficient and more costly remedy of levy and sale. An interpretation that requires levy by use of a keeper for a lengthy period of time is undesirable because of the considerable expense involved.

The Commission recommends that the essential features of the law in existence before January 1, 1977, pertaining to the use of keepers to levy on personal property of a going business and personal property used as a dwelling, be restored except that the keeper should be authorized, consistent with the Attachment Law (subdivision (a) of Code of Civil Procedure Section 488.360), to accept payment in the form of a check as well as in cash. In order to resolve the uncertainty in this area at the earliest possible time, the proposed legislation should take effect immediately upon enactment.

Proposed Legislation

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

An act to amend Section 688 of the Code of Civil Procedure, relating to enforcement of judgments, and declaring the urgency thereof, to take effect immediately.

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

SECTION 1. Section 688 of the Code of Civil Procedure is amended to read:

688. (a) All goods, chattels, moneys or other property, both real and personal, or any interest therein, of the judgment debtor, not exempt by law, and all property and rights of property levied upon under attachment in the action, are subject to execution.

(b) All property subject to execution may be levied upon or released from levy in like manner as like property may be levied upon or released from attachment, except that tangible personal property in the possession of the judgment debtor shall always be levied upon in the manner provided by ~~Section 488.320.~~ *subdivision (c)*. Notwithstanding the provisions of Title 6.5 (commencing with Section 481.010), service on the judgment debtor of a copy of the writ of execution shall be made either by personal delivery or by mail to the judgment debtor at the address furnished by the judgment creditor. To levy upon any property or debt owed to the judgment debtor which is subject to execution but for which a method of levy of attachment is not provided, the levying officer shall serve upon the person in possession of such property or owing such debt, or his agent (1) a copy of the writ of execution and (2) a notice that such property or debt is levied upon in pursuance of such writ.

(c) Tangible personal property in the possession of the judgment debtor shall be levied upon by taking such property into custody. Except as otherwise provided in this subdivision, where a levying officer is directed to take property into custody, the levying officer may do so either by removing the property to a place of safekeeping or by installing a keeper. Personal property that is used as a dwelling, such as a housetrailer, mobilehome, or vessel, shall be levied upon by placing a keeper in charge of the property, at the judgment creditor's expense, for at least two days. At the expiration of such period, the levying officer shall remove the occupants and take exclusive custody of the personal property used as a dwelling, unless other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor. If the judgment debtor consents, personal property of a going business (other than money or a vehicle required to be registered under the Vehicle Code) shall be levied upon by placing a keeper in charge of such property, at the judgment creditor's expense, for at least two days. During such period, the judgment

debtor may continue to operate in the ordinary course of business at the judgment debtor's expense provided that all sales are final and are for cash or the equivalent of cash. For the purpose of this subdivision, payment by check is the equivalent of cash payment. The levying officer is not liable for accepting payment in the form of a cash equivalent. The proceeds from all sales shall be given to the keeper for the purposes of the levy unless otherwise authorized by the judgment creditor. At the conclusion of the period during which the business may continue to operate, the levying officer shall take the property into exclusive custody unless other disposition is made by the court or agreed upon by the judgment creditor and the judgment debtor.

~~(e)~~ (d) Until a levy, no property shall be affected by issuance of a writ of execution or its delivery to the levying officer.

~~(d)~~ (e) No levy shall bind any property for a longer period than one year from the date of the issuance of the execution, except a levy on the interests or claims of heirs, devisees, or legatees in or to assets of deceased persons remaining in the hands of executors or administrators thereof prior to distribution and payment. However, an alias execution may be issued on said judgment and levied on any property not exempt from execution.

~~(e)~~ (f) Notwithstanding subdivision (a), no cause of action nor judgment as such, nor license issued by this state to engage in any business, profession, or activity, shall be subject to levy or sale on execution.

~~(f)~~ (g) When a check, draft, money order, or other order for the withdrawal of money from a banking corporation or association, the United States, any state, or any public entity within any state, payable to the defendant on demand, comes into the possession of a levying officer under a writ of execution, the provisions of Section 488.520 are applicable.

Comment. The amendment of subdivision (b) of Section 688 is technical. The first sentence of new subdivision (c) continues the applicability after judgment of the general rule that tangible personal property in the possession of the judgment debtor is levied upon by taking it into custody which was formerly

incorporated by the reference to Section 488.320 in subdivision (b) of Section 688. The second sentence of new subdivision (c), which provides for the levying officer's discretion in the manner of taking custody, is comparable to Section 488.045 applicable to custody under an attachment levy. The third and fourth sentences of new subdivision (c) pertaining to a levy on personal property used as a dwelling continue the second and third sentences of subdivision 3 of former Section 542 (as in effect on December 31, 1976). The fifth, sixth, ninth, and tenth sentences of new subdivision (c) of Section 688 continue the substance of the fourth, fifth, and sixth sentences of subdivision 3 of former Section 542 (as in effect on December 31, 1976). The provision in the fourth sentence of subdivision 3 of former Section 542 requiring prepayment of the keeper's fees by the judgment creditor has not been continued in new subdivision (c) of Section 688 because it was surplus in view of the general provisions for prepayment of fees. See Govt. Code §§ 6100, 24350.5. The seventh and eighth sentences of new subdivision (c) of Section 688 are comparable to a portion of subdivision (a) of Section 488.360 (attachment levy on farm products and inventory of going business) and change former Section 542 by permitting payment in the form of a check.

Subdivisions of Section 688 formerly designated (c)-(f) have been renumbered as subdivisions (d)-(g).

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting such necessity are:

An amendment of Section 688 of the Code of Civil Procedure which became operative on January 1, 1977, has created uncertainty as to whether personal property of a going business levied on pursuant to a writ of execution must, if the judgment debtor consents, be levied upon by placing a keeper in charge of the property levied upon for a limited period of time. Because this uncertainty is likely to lead to a lack of uniformity in the procedures followed in the various counties and may operate to the detriment of judgment debtors by depriving them of a grace period within which to work out some arrangement with the judgment creditor which will avoid seizure of the property of the business, it is necessary that this act take effect immediately.

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APPENDIX IV

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

The Attachment Law

**Effect of Bankruptcy Proceedings
Effect of General Assignments for the Benefit of Creditors**

April 1977

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

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Ex Officio

April 8, 1977

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 27 of the Statutes of 1972 to study the subject of creditors' remedies. This recommendation deals with one aspect of creditors' remedies—the effect on attachment of bankruptcy proceedings and general assignments for the benefit of creditors.

The Commission does not view this recommendation as a final disposition of the problems in this area of the law. The Commission plans to make a study of the law relating to general assignments for the benefit of creditors, particularly in light of reports of abuses under existing law. The Commission is also aware that revision of its recommended legislation will probably be necessary when the United States Congress passes legislation revising the bankruptcy laws of the United States.

Respectfully submitted,
JOHN N. McLAURIN
Chairman

RECOMMENDATION

relating to

THE ATTACHMENT LAW

Effect of Bankruptcy Proceedings

Effect of General Assignments for the Benefit of Creditors

Background

Under the Bankruptcy Act, the trustee in bankruptcy may have an attachment lien voided in summary proceedings before the bankruptcy court by showing that the defendant was insolvent when the lien was obtained and that the lien was obtained within four months before the petition in bankruptcy was filed.¹

Prior to its repeal, Section 542b of the Code of Civil Procedure provided that the lien of the temporary restraining order obtained in connection with an attachment terminated upon the filing by the defendant of a petition in bankruptcy.² This provision was not continued in the Attachment Law,³ making it necessary for the trustee in bankruptcy to initiate proceedings to obtain an order

¹ Bankruptcy Act § 67a(1), 11 U.S.C. § 107(a)(1) (1970), provides as follows:

Every lien against the property of a person obtained by attachment, judgment, levy, or other legal or equitable process or proceedings within four months before the filing of a petition initiating a proceeding under this Act by or against such person shall be deemed null and void (a) if at the time when such lien was obtained such person was insolvent or (b) if such lien was sought and permitted in fraud of the provisions of this Act: *Provided, however,* That if such person is not finally adjudged a bankrupt in any proceeding under this Act and if no arrangement or plan is proposed and confirmed, such lien shall be deemed reinstated with the same effect as if it had not been nullified and voided.

See Bankruptcy Act § 67a(3)-(4), 11 U.S.C. § 107(a)(3)-(4) (1970); 4 W. Collier, Bankruptcy ¶ 67.15[1] (14th ed. 1975); E. Jackson, California Debt Collection Practice §§ 9.116-9.117 (Cal. Cont. Ed. Bar 1968). The lien may also be preserved for the benefit of the bankrupt's estate. Bankruptcy Act § 67a(3), 11 U.S.C. § 107(a)(3) (1970).

² Code Civ. Proc. § 542b, added by 1972 Cal. Stats., Ch. 550, § 19, was repealed by 1974 Cal. Stats., Ch. 1516, § 12 as amended 1975 Cal. Stats., Ch. 200, § 2 (operative Jan. 1, 1977).

³ 1974 Cal. Stats., Ch. 1516 as amended 1975 Cal. Stats., Ch. 200, § 2 (codified as Code Civ. Proc. §§ 481.010-492.090) (operative Jan. 1, 1977).

declaring void the lien of a temporary protective order issued under the Attachment Law.⁴

Former Section 542b also provided for the termination of the lien of the temporary restraining order upon the making by the defendant of a general assignment for the benefit of creditors, a less formal and less expensive alternative to bankruptcy.⁵ The Attachment Law did not continue this provision.⁶

Recommendations

The Commission recommends that a new chapter be added to the Attachment Law to deal with the effect of bankruptcy proceedings and general assignments for the benefit of creditors.

Under the proposed chapter, the lien of a temporary protective order or of an attachment automatically terminates if it was created within four months before the date a petition in bankruptcy is filed by or against the defendant or the defendant makes a general assignment⁷ for the benefit of creditors.⁸ Terminating such preferential

⁴ See also Code Civ. Proc. § 486.110 (lien of temporary protective order).

⁵ See generally D. Cowans, *Bankruptcy Law and Practice* § 83 (1963); Shapiro, *Assignment for the Benefit of Creditors*, in *California Remedies for Unsecured Creditors* 429 (Cal. Cont. Ed. Bar 1957); Comment, *Assignments for the Benefit of Creditors in California: A Proposed Revision of Ineffectual Statutory Provisions*, 6 U.C.L.A. L. Rev. 573 (1959). It should also be noted that the making of a general assignment for the benefit of creditors is an act of bankruptcy. Bankruptcy Act § 3a, 11 U.S.C. § 21(a) (1970).

⁶ It should be noted, however, that Code of Civil Procedure Section 486.040 permits the court to fashion a temporary protective order containing "such provisions as the court determines would be in the interest of justice and equity to the parties." This general language would appear to authorize a temporary protective order that would permit a general assignment for the benefit of creditors.

⁷ Under the recommended statute, the general assignment must assign all the defendant's transferable assets that are not exempt from execution for the benefit of all the defendant's creditors, and it may not create any preferences among creditors.

⁸ The recommended statute would not terminate an attachment lien in California if there is an attachment lien existing under the law of another state which is not terminated. If there are creditors in several states, it would be unfair to the creditor attaching in California to void his or her attachment lien when the attachment liens obtained by creditors in other states would not be similarly voided. This inequality of treatment results because the recommended statute, unlike the Bankruptcy Act, would void liens which were obtained when the defendant was not insolvent and because, where the lien is voidable under the Bankruptcy Act, the lien is actually void only if the trustee obtains a court order declaring the lien void. Similarly, many states do not provide for the termination of attachment liens upon the making of a general assignment. It should be noted, however, that the laws of several other states provide

liens as a matter of state law furthers the policy favoring procedures generally designed to distribute the debtor's assets ratably and also eliminates the need for proceedings in bankruptcy to obtain an order declaring such liens void.⁹

The new chapter provides an orderly procedure through which an assignee under a general assignment for the benefit of creditors or a trustee in bankruptcy¹⁰ may obtain the release of property levied upon where the lien is terminated. The plaintiff in the action in which the attachment has been issued is given notice and a 10-day period within which to object to the release of the property. In the alternative, the person seeking release of the property may obtain its immediate release by giving a bond in the amount of the plaintiff's attachment lien which indemnifies the plaintiff against any damages arising out of an improper release.

The new chapter provides that the assignee under the general assignment for the benefit of creditors is subrogated to the rights of the attaching creditor. This will prevent the termination of the attachment lien by the making of a general assignment from benefiting a lienholder whose lien was subordinate to that of the attaching creditor but superior to the rights of the assignee, such as a secured party who obtained the security interest after the attachment but before the making of the general assignment.

The new chapter, like the Bankruptcy Act, provides for the reinstatement of terminated liens where the defendant is finally adjudged not to be a bankrupt and no arrangement or plan is proposed and confirmed.¹¹ An analogous provision

for voiding certain liens upon the making of a general assignment. N.J. Stat. Ann. § 2A:19-3 (West 1952); N.Y. Debt. & Cred. Law § 15(6a) (McKinney Supp. 1977); N.C. Gen. Stat. § 23-3 (1965); Tenn. Code Ann. § 47-13-116 (1964).

⁹ The termination under state law would not take place where the trustee in bankruptcy obtains a court order preserving the lien for the benefit of the estate under Section 67a(3) of the Bankruptcy Act, 11 U.S.C. § 107(a)(3) (1970).

¹⁰ Where a receiver has been appointed in bankruptcy or there is a debtor in possession, such person should also be authorized to apply for the release of the property as a corollary of the power to void a lien under the Bankruptcy Act. See Bankruptcy Act § 2a(3), 11 U.S.C. § 11(a)(3) (1970) (receiver) and §§ 67a(3), 188, 342, 11 U.S.C. §§ 107(a)(3), 588, 742 (1970) (debtor in possession).

¹¹ See Bankruptcy Act § 67a(1), 11 U.S.C. § 107(a)(1) (1970), quoted in note 1 *supra*.

of the new chapter provides that a lien under the Attachment Law which was terminated by the making of a general assignment is reinstated where the general assignment is set aside otherwise than by the filing of a proceeding under the National Bankruptcy Act.

Proposed Legislation

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

An act to add Chapter 13 (commencing with Section 493.010) to Title 6.5 of Part 2 of the Code of Civil Procedure, relating to attachment.

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

Code of Civil Procedure §§ 493.010–493.060 (added)

SECTION 1. Chapter 13 (commencing with Section 493.010) is added to Title 6.5 of Part 2 of the Code of Civil Procedure, to read:

CHAPTER 13. EFFECT OF BANKRUPTCY PROCEEDINGS AND GENERAL ASSIGNMENTS FOR THE BENEFIT OF CREDITORS

§ 493.010. "General assignment for the benefit of creditors" defined

493.010. As used in this chapter, "general assignment for the benefit of creditors" means an assignment which satisfies all of the following requirements:

(a) The assignment is an assignment of all the defendant's assets that are transferable and not exempt from execution.

(b) The assignment is for the benefit of all the defendant's creditors.

(c) The assignment does not itself create a preference of one creditor or class of creditors over any other creditor or class of creditors, but the assignment may recognize the existence of preferences to which creditors are otherwise entitled.

Comment. Section 493.010 defines "general assignment for the benefit of creditors" so as to limit the application of the provisions of this chapter for the termination of the lien of a temporary protective order or of attachment upon the making of a general assignment. This section reflects the policy that an attaching plaintiff should not lose the attachment preference as against an assignment for the benefit of creditors unless the assignment is designed to distribute all of the defendant's transferable nonexempt assets ratably among all creditors. The provision that the assets must be transferable recognizes that some property, such as a lease which is subject to a condition that it may not be transferred without the consent of the lessor, may not be assignable; such property need not be included in a "general assignment for the benefit of creditors" under this section. See *Medinah Temple Co. v. Currey*, 162 Ill. 441, 44 N.E. 839 (1896); 16 Cal. Jur.3d *Creditors' Rights* § 62, at 419-420 (1974); Shapiro, *Assignment for the Benefit of Creditors*, in *California Remedies for Unsecured Creditors* 461 (Cal. Cont. Ed. Bar 1957). The general assignment for the benefit of creditors may not create preferences if it is to have the effect of terminating a lien under the Attachment Law. This rule is not violated by the recognition of preferences that are not created by the assignment, such as, for example, prior secured interests, wage claims, prior execution liens, or tax claims.

§ 493.020. General assignment for the benefit of creditors not precluded

493.020. Notwithstanding any other provision of this title, the defendant may make a general assignment for the benefit of creditors.

Comment. Section 493.020 makes clear that, regardless of the terms of any writ of attachment, temporary protective order (Sections 486.010-486.110), or turnover order (Section 482.080), the defendant may make a general assignment for the benefit of creditors. Section 493.020 and the remainder of Chapter 13 reflect the policy favoring general assignments for the benefit of creditors (which contemplate the ratable distribution to creditors of the assignor's assets) over attachment (which permits an unsecured creditor to establish a priority over other unsecured creditors).

§ 493.030. Termination of lien of temporary protective order or attachment

493.030. (a) The making of a general assignment for the benefit of creditors terminates a lien of a temporary protective order or of attachment if the lien was created within four months prior to the making of the general assignment.

(b) The filing of a petition initiating a proceeding under the National Bankruptcy Act by or against the defendant terminates a lien of a temporary protective order or of attachment if the lien was created within four months prior to the filing of the petition unless the bankruptcy court orders the lien preserved for the benefit of the bankrupt estate.

(c) Subdivisions (a) and (b) do not apply unless all liens of attachment on the defendant's property in other states that were created within four months prior to the making of a general assignment for the benefit of creditors or the filing of a petition initiating a proceeding under the National Bankruptcy Act have terminated.

Comment. Section 493.030 provides for the termination of the lien of a temporary protective order or of an attachment upon the making of a general assignment for the benefit of creditors (defined in Section 493.010) or the commencement of bankruptcy proceedings within four months after the creation of the lien. See also Sections 486.090 (expiration of temporary protective order), 486.110 (lien of temporary protective order from time of service), 488.500 (lien of attachment), 488.510 (duration of lien of attachment).

Section 493.030 is derived from a portion of former Section 542b which provided for the termination of the lien created by service of the notice of attachment hearing and the temporary restraining order when the defendant filed a proceeding under the Bankruptcy Act or made a general assignment for the benefit of creditors. It broadens the former section to provide for the automatic termination of the lien of attachment, thereby making it unnecessary to initiate court proceedings under the Bankruptcy Act to have the lien of attachment declared void. This principle is also applied where the defendant makes a general assignment for the benefit of creditors (defined in Section 493.010) within the specified time.

The last portion of subdivision (b) recognizes that, in some cases, the trustee may seek to be subrogated to the rights of a lienholder whose lien is deemed null and void. See Bankruptcy Act § 67a(3), 11 U.S.C. § 107(a)(3) (1970). See also Section 493.060.

Subdivision (c) prevents the termination of attachment liens under this section in a case where attachment liens on the defendant's property in other states are not terminated. This provision recognizes that, in another state, the lien may not be voided under Section 67a(1) of the Bankruptcy Act, 11 U.S.C. § 107(a)(1) (1970), or under the applicable laws in that state relating to general assignments for the benefit of creditors. For example, if the law relating to general assignments in another state does not provide for the termination of an attachment lien in that state, the making of a general assignment would not terminate the attachment lien in California if there is an attachment lien on the defendant's property located elsewhere that would not be terminated. Similarly, if the trustee in bankruptcy does not obtain a court order voiding an attachment lien in another state, an attachment lien in California will not be automatically terminated under subdivision (b) of this section.

This chapter does not affect other provisions voiding liens arising under this title. See, *e.g.*, Ins. Code § 1034 (voidable preferences in insolvency proceedings applicable to insurers).

§ 493.040. Release of attachment

493.040. (a) Where a lien of attachment terminates pursuant to Section 493.030, the assignee under a general assignment for the benefit of creditors or, in the case of a bankruptcy, the trustee, receiver, or the debtor in possession if there is no trustee or receiver, may secure the release of the attachment by filing with the levying officer a request for release of attachment stating the grounds for release and describing the property to be released, executed under oath, together with a copy thereof.

(b) In the case of an assignee, the request shall include two copies of the general assignment for the benefit of creditors.

(c) In the case of a trustee, receiver, or debtor in possession, the request shall include a certified copy of the petition in bankruptcy, together with a copy thereof.

(d) If immediate release of the attachment is sought, the request shall be accompanied by an undertaking to pay the plaintiff any damages resulting from an improper release of the attachment, in the amount of the plaintiff's claim to be secured by the attachment, executed by a corporate surety possessing a certificate of authority from the Insurance Commissioner as provided by Section 1056.

(e) Within five days after the filing of the request for release of attachment, the levying officer shall mail to the plaintiff:

(1) A copy of the request for release of the attachment, including the copy of the document filed pursuant to subdivision (b) or (c).

(2) If an undertaking has not been given, a notice that the attachment will be released pursuant to the request for release of attachment unless otherwise ordered by a court within 10 days after the date of mailing the notice.

(3) If an undertaking has been given, a notice that the attachment has been released.

(f) Unless otherwise ordered by a court, if an undertaking has not been given, the levying officer shall release the attachment pursuant to the request for release of attachment after the expiration of 10 days from the date of mailing the papers referred to in subdivision (e) to the plaintiff. If an undertaking has been given, the levying officer shall immediately release the attachment pursuant to the request for release of attachment.

(g) Where the attached property has been taken into custody, it shall be released to the person making the request for release of attachment or some other person designated in the request. Where the attached property has not been taken into custody, it shall be released as provided in subdivision (c) of Section 488.560.

(h) The levying officer is not liable for releasing an attachment in accordance with this section nor is any other person liable for acting in conformity with the release.

Comment. Section 493.040 provides a procedure for releasing property from an attachment the lien of which has terminated pursuant to Section 493.030. Under Section 493.040, the levying officer is provided with sufficient information to dispose of the

attached property in an expeditious and orderly manner. By giving the plaintiff notice before the release takes place, the plaintiff in an appropriate case is able to protect his or her interests in preserving the attachment priority. In the alternative, where the person seeking release has given a proper undertaking, the property is released from attachment immediately and the plaintiff is protected by the undertaking in the amount of the plaintiff's claim to be secured by the attachment. Under the release provisions of Section 488.560(c), which are incorporated by Section 493.040(g), garnishees are informed that they are relieved of the duties and liabilities of a garnishee arising from service of the notice and writ of attachment. Subdivision (h) protects persons acting in conformity with the release provisions of this section and is the same as Section 488.560(d).

§ 493.050. Reinstatement of lien

493.050. (a) The lien of a temporary protective order or of attachment, which has terminated pursuant to Section 493.030, is reinstated with the same effect as if it had not been terminated in the following cases:

(1) Where the termination is the result of the making of a general assignment for the benefit of creditors and the general assignment for the benefit of creditors is set aside otherwise than by the filing of a proceeding under the National Bankruptcy Act.

(2) Where the termination is the result of the filing of a petition initiating a proceeding under the National Bankruptcy Act and the defendant is not finally adjudged a bankrupt and no arrangement or plan is proposed and confirmed under the National Bankruptcy Act.

(3) Where the termination is the result of the filing of a petition initiating a proceeding under the National Bankruptcy Act and the trustee abandons property which had been subject to the lien of the temporary protective order or of attachment.

(b) The period from the making of a general assignment for the benefit of creditors until reinstatement of the lien of the temporary protective order or of attachment is not counted in determining the duration of the temporary protective order or the lien of attachment.

Comment. Section 493.050 provides for reinstatement of the terminated lien where the general assignment for the benefit of creditors is set aside, the defendant is not finally adjudged a bankrupt and no bankruptcy arrangement or plan is proposed and confirmed, or the trustee in bankruptcy abandons property that had been subject to a terminated lien. Paragraph (2) of subdivision (a) is derived from a proviso contained in Section 67a(1) of the Bankruptcy Act, 11 U.S.C. § 107(a)(1) (1970). Paragraph (1) applies this principle to the analogous situation where the general assignment for the benefit of creditors fails. Paragraph (3) codifies for the purposes of this chapter the principle that, after abandonment, the property is restored to its former status as if it had never been held by the trustee. See *Pounds v. Chicago Ins. Co.*, 298 So.2d 134 (La. Ct. App. 1974).

Subdivision (b) provides for the tolling of the running of the effective periods of the temporary protective order under Section 486.090 and the lien of attachment under Section 488.510 when the defendant makes a general assignment for the benefit of creditors. Federal law provides for the tolling of state statutes of limitation upon the filing of a petition in bankruptcy. Bankruptcy Act § 11f, 11 U.S.C. § 29(f) (1970); *Booolodian v. Ohanesian*, 13 Cal. App.3d 635, 91 Cal. Rptr. 923 (1970) (tolling of period of attachment lien under former Section 542b). Note that the effective date of the lien of the reinstated attachment may relate back to the date of service of a temporary protective order as provided in Section 488.500.

§ 493.060. Assignee subrogated to rights of plaintiff

493.060. Upon the making of a general assignment for the benefit of creditors, the assignee is subrogated to the rights of the plaintiff under the temporary protective order or attachment.

Comment. Section 493.060 subrogates the assignee under the general assignment for the benefit of creditors to the rights of the attaching plaintiff in order to prevent the termination of the lien of the temporary protective order or of attachment from benefiting a lienholder whose lien was subordinate to the plaintiff's lien but whose lien is not terminated by the making of the general assignment. Hence, where the plaintiff has attached property of the defendant and the property later becomes subject to a security interest, a general assignment by the defendant gives the assignee the priority of the attaching

plaintiff whose lien is terminated by Section 493.030(a). Without this provision, the secured party whose interest would otherwise be prior to the assignee's would move up in the line of priorities and the termination of the attachment lien would benefit the secured party rather than the entire estate under control of the assignee. This provision is analogous in effect to the provision in the Bankruptcy Act which permits the trustee to be subrogated to the rights of a lienholder whose lien is void. See Bankruptcy Act § 67a(3), 11 U.S.C. § 107(a)(3) (1970).

APPENDIX V

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 13

In order to indicate more fully its intent with respect to Assembly Bill 13, the Senate Committee on Judiciary makes the following report.

Assembly Bill 13 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Damages in Action for Breach of Lease*, 13 Cal. L. Revision Comm'n Reports 1679 (1976). The following new comment and revised Law Revision Commission comment reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 13.

Code of Civil Procedure § 1952 (amended)

Comment. Subdivision (b) of Section 1952 is revised to make clear that the bringing of an unlawful detainer proceeding does not affect the lessor's right to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8 unless the unlawful detainer proceeding has become an ordinary civil action and the lessor has amended the complaint to state a claim for damages not recoverable in the unlawful detainer proceeding. The lessor may, of course, elect not to so amend the complaint and instead to prosecute the unlawful detainer proceeding to judgment and to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8 if the lessor has a cause of action for such relief.

Code of Civil Procedure § 1952.3 (added)

Comment. Section 1952.3 relates to an unlawful detainer proceeding that has become an ordinary civil action.

The provision of subdivision (a) that delivery of possession of the property to the lessor converts an unlawful detainer proceeding into an ordinary civil action codifies prior case law. If the lessee gives up possession of the property after commencement of an unlawful detainer proceeding, "the action thus becomes an ordinary one for damages." *Union Oil Co. v. Chandler*, 4 Cal. App3d 716, 722, 84 Cal. Rptr. 756, 760 (1970). This is true where possession is given up "before the trial of the unlawful detainer action." *Green v. Superior Court*, 10 Cal. 3d 616, 633 n.18, 517 P.2d 1168, 1179 n.13, 111 Cal. Rptr. 704, 715 n.18 (1974). *Accord, Erbe Corp. v. W. & B. Realty Co.*, 255 Cal. App.2d 773, 778, 63 Cal. Rptr. 462, 465 (1967); *Turem v. Texaco, Inc.*, 236 Cal. App.2d 758, 763, 46 Cal. Rptr. 389, 392 (1965). In this situation, the rules designed to preserve the summary nature of the proceeding are no longer applicable. See, e.g., *Cohen v. Superior Court*, 248 Cal. App.2d 551, 553-554, 56 Cal. Rptr. 813, 815-816 (1967) (no trial precedence when possession not in issue); *Heller v. Melliday*, 60 Cal. App.2d 689, 696-697, 141 P.2d 447, 451-452 (1943) (cross-complaint allowable after surrender). The limitation of Section 1952.3 to unlawful detainer proceedings is not intended to preclude application of rules stated in the section in forcible entry or forcible detainer cases.

Paragraph (1) of subdivision (a) makes clear that, when the statutory conditions for the application of Section 1951.2 are met, the damages authorized by that section are among the remedies available to the lessor when an unlawful detainer proceeding has been converted to an ordinary civil action. The paragraph serves, among other purposes, the salutary purpose of avoiding multiplicity of actions. The statutory conditions for the application of Section 1951.2 are that there be a lease, breach of lease by the lessee, and either abandonment by the lessee before the end of the term or termination by the lessor of the lessee's right to possession. See Civil Code § 1951.2(a). The lessor is not required to seek such damages in the unlawful detainer proceeding which has been thus converted but may elect to recover them in a separate action. See Civil Code § 1952(b).

If damages for loss of rent accruing after judgment are sought by the lessor pursuant to paragraph (3) of subdivision (a) of Section 1951.2, the additional conditions of subdivision (c) of that section must be met. And, if the lessor seeks such damages or any other damages not recoverable in the unlawful detainer proceeding, the last portion of paragraph (1) of subdivision (a) of Section 1952.3 requires the lessor to amend the complaint so that possession of the property is no longer in issue and to state a claim for such damages. If the case is at issue, the lessor's application for leave to amend is addressed to the discretion of the court. See Code Civ. Proc. § 473. The court is guided by a "policy of great liberality in permitting amendments at any stage of the proceeding . . ." 3 B. Witkin, *California Procedure*, Pleading § 1040, at 2618 (2d ed. 1971). If the lessor makes the election so to amend the complaint, the lessor loses the right to bring a separate action for relief under Sections 1951.2, 1951.5, and 1951.8. See Section 1952(b).

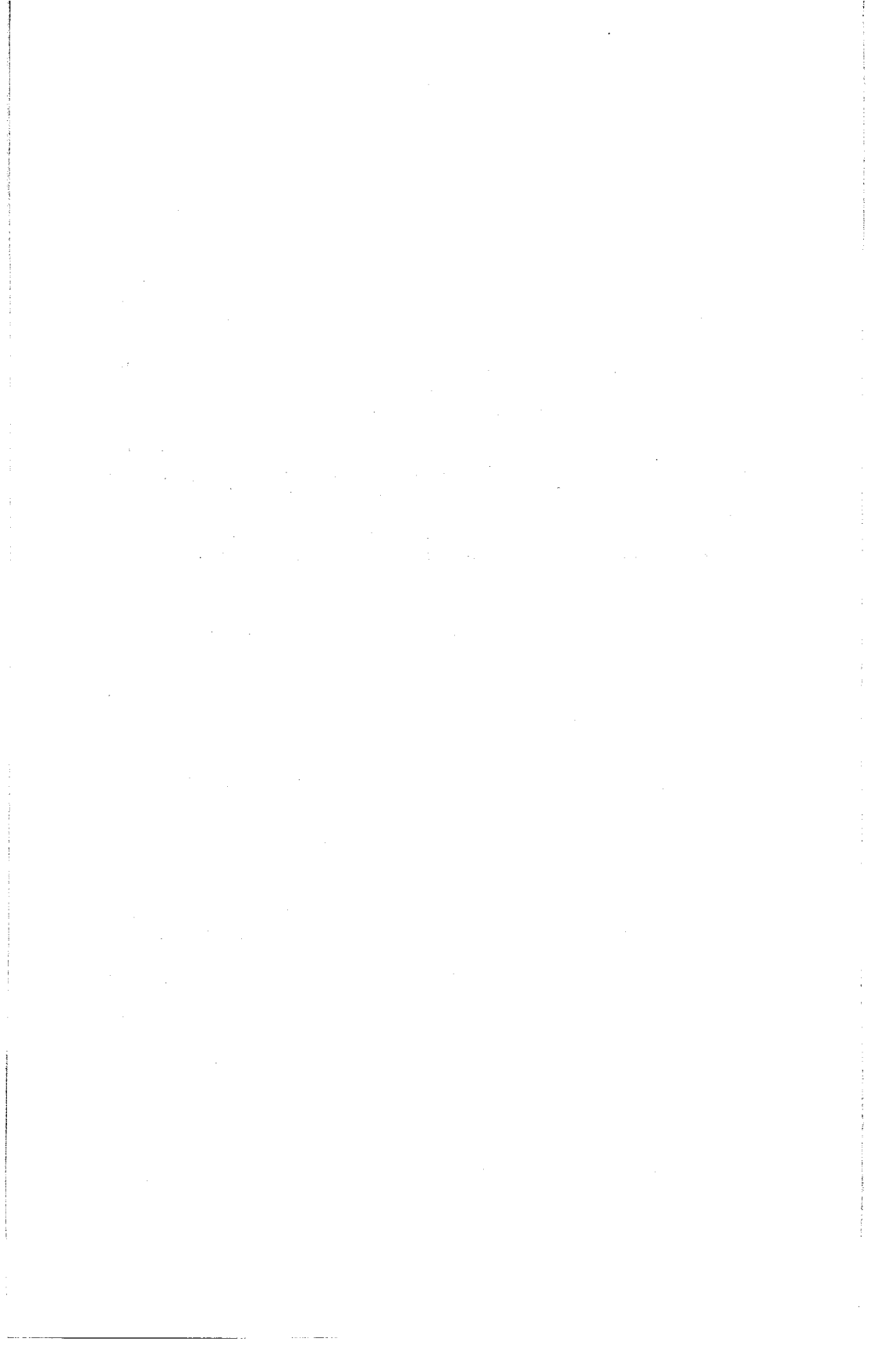
When the defendant has delivered possession of the property to the lessor, the defendant is no longer subject to the restrictive rules of unlawful detainer pleading and may cross-complain, whether or not the lessor has amended the complaint. See subdivision (a) (2). Mere delivery of possession does not, however, extend the defendant's time to plead since such time is necessarily determined by the form of the complaint. Thus, as subdivision (b) makes clear, the defendant's response must be filed within the time provided for unlawful detainer proceedings—see Code Civ. Proc. §§ 1167, 1167.3 (five days)—unless the lessor amends the complaint so that possession is no longer in issue in the case. See subdivision (a) (1). If the complaint is so amended, the defendant has a right to answer "within 30 days after service thereof" or within such time as the court may allow. Code Civ. Proc. §§ 471.5, 586.

The defendant is not obliged to "allege in a cross-complaint any related cause of action" (Code Civ. Proc. § 426.30) unless after delivering possession to the lessor the defendant files a cross-complaint, or files an answer or an amended answer, in response to the amended complaint. See subdivision (a) (2). This limitation of the application of the compulsory cross-complaint

statute will protect the defendant against inadvertent loss of a related cause of action.

Once the defendant's default has been entered on the unlawful detainer complaint, whether before or after possession of the property has been delivered to the lessor, the case will thereafter remain an unlawful detainer proceeding unless the default is set aside or the lessor amends the complaint to open the default. See subdivision (c). If the defendant moves to have the default set aside, the motion is addressed to the discretion of the court. See Code Civ. Proc. § 473; M. Moskovitz, P. Honigsberg & D. Finkelstein, *California Eviction Defense Manual* § 7.7, at 53 (1971). If the lessor amends the complaint in some substantial way, the default may be waived. The amended complaint is said to open the default. See 4 B. Witkin *California Procedure, Proceedings Without Trial* § 147, at 2809 (2d ed. 1971).

Subdivision (d) makes clear that Section 1952.3 has no effect on existing law with respect to unlawful detainer proceedings where possession remains in issue. In such proceedings, there are a number of affirmative defenses the defendant is permitted to raise. See, e.g., *Green v. Superior Court*, 10 Cal.3d 616, 517 P.2d 1168, 111 Cal. Rptr. 704 (1974); *Abstract Investment Co. v. Hutchinson*, 204 Cal. App.2d 242, 22 Cal. Rptr. 309 (1962).



APPENDIX VI

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 85

In order to indicate more fully its intent with respect to Assembly Bill 85, the Senate Committee on Judiciary makes the following report.

Assembly Bill 85 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Sister State Money Judgments*, 13 Cal. L. Revision Comm'n Reports 1669 (1976). Except for the revised comments set out below, the Law Revision Commission comments to the various sections of Assembly Bill 85 reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 85.

The following revised comments also reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 85.

Code of Civil Procedure § 1710.15 (amended).

Application for entry of judgment

Comment. Section 1710.15 is amended to provide the manner of claiming interest on the sister state judgment. Paragraph (3) of subdivision (b) makes clear that the rate of interest applicable to the sister state judgment when a California judgment is entered under this chapter is the applicable rate under the law of the sister state but not at a rate in excess of seven percent per annum. This continues prior law except that, under prior law, there was no seven-percent maximum on the rate of interest allowed. See *Parnham v. Parnham*, 32 Cal. App.2d 93, 89 P.2d 189 (1939).

Code of Civil Procedure § 1710.25 (amended).

Entry of judgment

Comment. Section 1710.25 is amended to provide that the clerk enters the judgment based on the aggregate of the principal amount of the sister state judgment and the interest which has run thereon (subject to a seven-percent maximum rate) under the laws of the sister state as stated in the judgment creditor's application. See Section 1710.15. In addition, the amendment makes clear that the judgment entered in this state includes the fee for filing the application under this chapter.

The second sentence of subdivision (b) makes clear that, after entry of the California judgment, interest runs thereon at the legal rate (seven percent per annum) applicable to money judgments initially rendered in California. See Cal. Const., Art. XV, § 1; Section 1710.35 (upon entry, judgment has same effect as judgment of superior court). Costs of enforcing the judgment incurred after entry

of the California judgment are recoverable in the usual manner. See Section 1033.7 (memorandum of costs).

Code of Civil Procedure § 1710.40 (amended).

Vacation of judgment

Comment. Subdivision (a) of Section 1710.40 is amended to make clear that the judgment debtor may seek to have the judgment entered in California vacated on the ground that the amount of interest allowed on the sister state judgment is incorrect.

Subdivision (c) is new. The first sentence of subdivision (c) makes clear that the court may enter a different judgment in appropriate cases, *e.g.*, where the principal amount of the judgment or the interest thereon has been incorrectly stated but it is clear that the judgment creditor is entitled to a judgment in California in a different amount. Compare Section 663.

The second sentence of subdivision (c) makes clear that the court must make findings if findings are requested unless the judgment as entered in California is for \$1,000 or less. The \$1,000 or less exclusion is drawn from the comparable exclusion found in Section 632.

APPENDIX VII
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

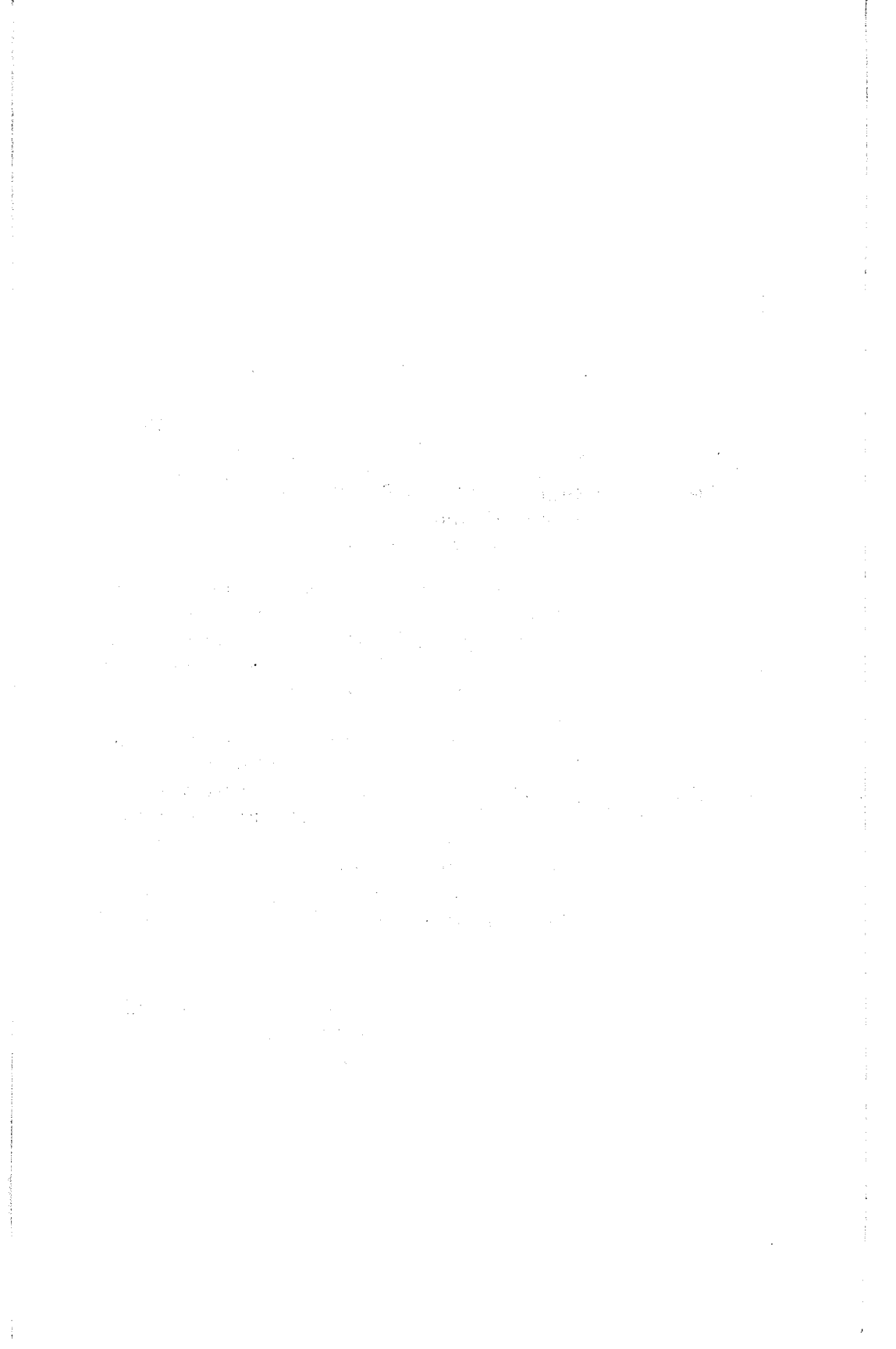
RECOMMENDATION

relating to

**Review of Resolution of Necessity by Writ
of Mandate**

September 1977

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



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September 8, 1977

**To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA**

The Eminent Domain Law was enacted in 1975 on recommendation of the California Law Revision Commission. Pursuant to legislative authority of Resolution Chapter 130 of the Statutes of 1965, the Commission has maintained a continuing review of condemnation law and procedure to determine whether any technical or substantive changes are necessary.

As a result of this continuing review, the Commission submits herewith a recommendation with regard to legislation clarifying the circumstances under which a resolution of necessity may be reviewed by writ of mandate. The recommended legislation would provide for such review by ordinary mandamus pending commencement of an eminent domain proceeding. Thereafter, the resolution would be subject to review only in the eminent domain proceeding itself unless the interests of justice otherwise require.

Respectfully submitted,
JOHN N. McLAURIN
Chairman



RECOMMENDATION

relating to

REVIEW OF RESOLUTION OF NECESSITY BY WRIT OF MANDATE

A public entity may not commence an eminent domain proceeding until its governing body has adopted a resolution of necessity.¹ The findings and determinations made in such a resolution are conclusive in the eminent domain proceeding² except to the extent they were influenced or affected by gross abuse of discretion by the governing body.³

The validity of the resolution of necessity itself may be subject to direct attack, apart from its evidentiary effect in an eminent domain proceeding. A resolution procured by bribery is not valid;⁴ and, in the case of a conflict of interest, the resolution is subject to direct attack under the Political Reform Act of 1974.⁵ Attacks based on formal defects in the resolution, which might be made in actions for injunction, declaratory relief, or writ of mandate,⁶ are seldom successful since the defects are easily correctable by amendment or comparable action.⁷

The extent to which an attack on the validity of the resolution may be made by writ of mandate is not clear.⁸ The adoption of a resolution of necessity by the governing body is legislative rather than quasi-judicial in nature⁹ and

¹ Code Civ. Proc. § 1245.220.

² Code Civ. Proc. § 1245.250(a). In the case of an extraterritorial condemnation, the resolution is supported by a presumption affecting the burden of producing evidence. Code Civ. Proc. § 1245.250(b).

³ Code Civ. Proc. § 1245.255.

⁴ Code Civ. Proc. § 1245.270.

⁵ See Govt. Code § 91003(b).

⁶ See California Civil Writs § 5.4, at 65 (Cal. Cont. Ed. Bar 1970).

⁷ Condemnation Practice in California § 6.23, at 138 (Cal. Cont. Ed. Bar 1973). See also Code Civ. Proc. § 1260.120(c) and Comment thereto (conditional dismissal subject to corrective or remedial action).

⁸ The Comment to Code of Civil Procedure Section 1245.255 (as originally enacted) states that "the validity of the resolution may be subject to direct attack by administrative mandamus (Section 1094.5)," but it would appear that ordinary mandamus (Section 1085) rather than administrative mandamus is the proper remedy.

⁹ See discussions in *People v. Chevalier*, 52 Cal.2d 299, 304-07, 340 P.2d 598, 601-03 (1959), and *Wulzen v. Board of Supervisors*, 101 Cal. 15, 21, 35 P. 353, 355 (1894).

ordinary mandamus (rather than administrative mandamus) has been held to be the proper remedy for review of legislative actions.¹⁰ A writ of mandate is available only where there is no plain, speedy, and adequate remedy in the ordinary course of law,¹¹ and the Eminent Domain Law in fact provides a means of attack on the validity of the resolution by an objection to the right to take filed in a subsequent eminent domain proceeding.¹²

The adoption of a resolution of necessity, however, may have the effect of clouding title or otherwise hindering the full use of the property prior to the time an eminent domain proceeding is commenced.¹³ During this period, the property owner should have available a clear means of attacking directly the validity of the resolution.

The Law Revision Commission recommends that it be made clear that ordinary mandamus is a proper remedy for judicial review of the validity of a resolution of necessity, but only prior to the commencement of the eminent domain proceeding.¹⁴ Thereafter, the validity of the resolution should be subject to attack pursuant to the Eminent Domain Law. In the case of a writ of mandate action pending at the time of commencement of the eminent domain proceeding, the property owner should be permitted to prosecute the writ action to completion if the interest of justice so requires.

This recommendation would eliminate the need for litigation to resolve the issues of the availability of the writ of mandate and of the proper type of mandamus. It would help to limit the potential proliferation of multiple actions on the validity issue. It would permit the court by ordinary mandamus to examine the proceedings before the governing body to determine whether its action has been

¹⁰ See *Wilson v. Hidden Valley Mun. Water Dist.*, 256 Cal. App.2d 271, 63 Cal. Rptr. 889 (1967); *Brock v. Superior Court*, 109 Cal. App.2d 594, 241 P.2d 283 (1952).

¹¹ Code Civ. Proc. § 1086.

¹² Code Civ. Proc. § 1250.370(a).

¹³ A property owner must wait six months after adoption of the resolution before seeking pursuant to Code of Civil Procedure Section 1245.260 to compel the payment of damages for failure to commence the eminent domain proceeding.

¹⁴ Limitation of the right to bring a mandamus action after commencement of the eminent domain proceeding would not be detrimental to the property owner since a successful challenge to the validity of the resolution in the eminent domain proceeding entitles the property owner to compensation for litigation expenses. Code Civ. Proc. § 1268.610.

arbitrary, capricious, or entirely lacking in evidentiary support, or whether it has failed to follow the procedure and give the notices required by law; it would not, however, permit the court to substitute its judgment as to the findings and determinations made in the resolution of necessity for that of the governing board.¹⁵ Finally, the standard for judicial review of the validity of the resolution by ordinary mandamus would be analogous to that in a collateral attack on the conclusive effect of the resolution in the eminent domain proceeding.¹⁶

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

An act to amend Section 1245.255 of the Code of Civil Procedure, relating to eminent domain.

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

SECTION 1. Section 1245.255 of the Code of Civil Procedure is amended to read:

1245.255. (a) *The validity of a resolution of necessity adopted by the governing body of the public entity pursuant to this article is subject to review:*

(1) *Before the commencement of the eminent domain proceeding, by writ of mandate pursuant to Section 1085. The court having jurisdiction of the writ of mandate action, upon motion of any party, shall order the action dismissed without prejudice upon commencement of the eminent domain proceeding unless the court determines that dismissal will not be in the interest of justice.*

(2) *After the commencement of the eminent domain proceeding, by objection to the right to take pursuant to this title.*

¹⁵ See *Pitts v. Perluss*, 58 Cal.2d 824, 833-35, 377 P.2d 83, 88-90; 27 Cal. Rptr. 19, 24-26 (1962).

¹⁶ Under Code of Civil Procedure Section 1245.255, a resolution of necessity is denied evidentiary effect in the eminent domain proceeding "to the extent its adoption or contents were influenced or affected by gross abuse of discretion by the governing body."

(b) A resolution of necessity does not have the effect prescribed in Section 1245.250 to the extent that its adoption or contents were influenced or affected by gross abuse of discretion by the governing body.

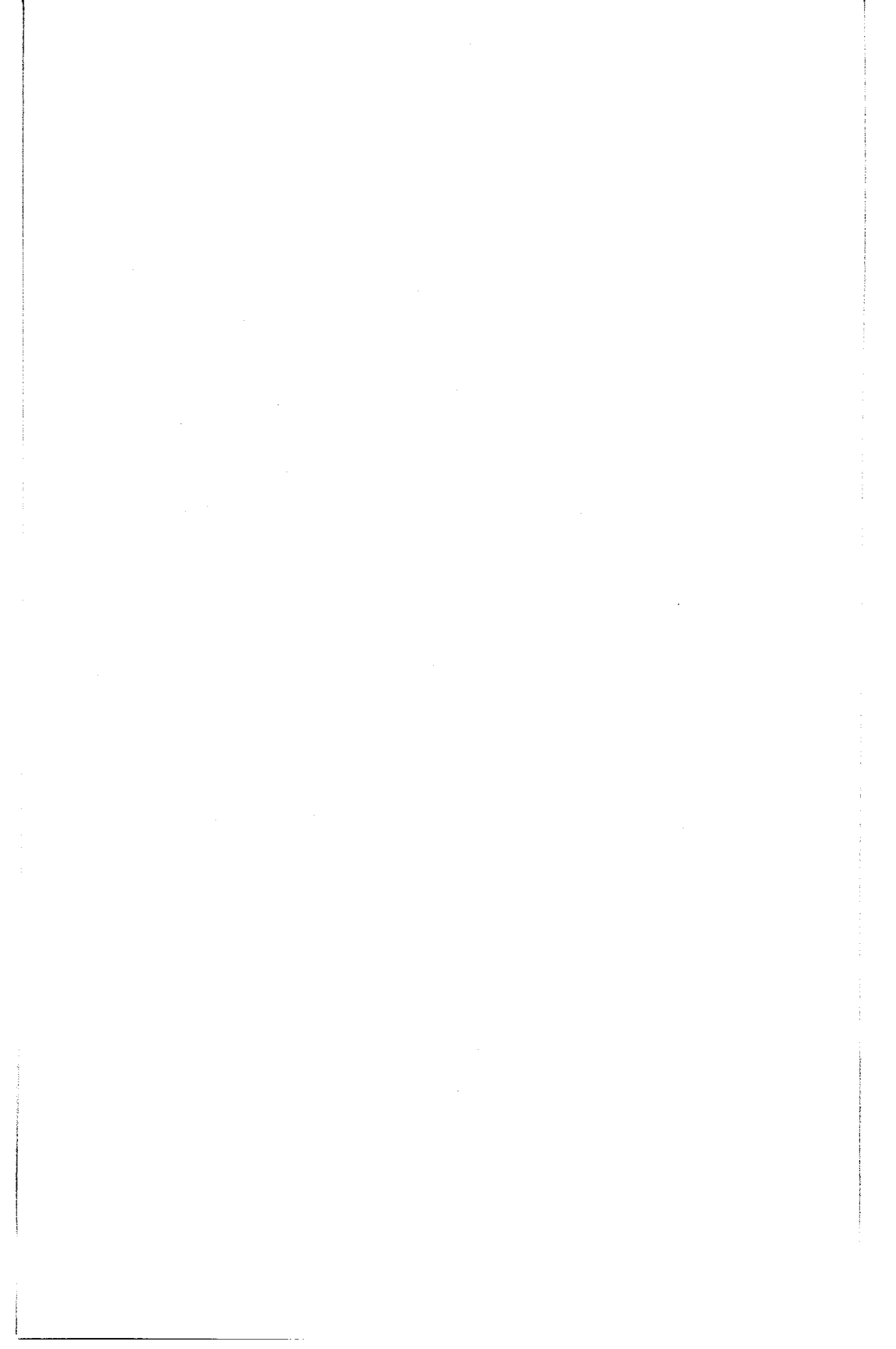
(c) Nothing in this section precludes a public entity from rescinding a resolution of necessity and adopting a new resolution as to the same property ~~subject~~ *subject, after the commencement of an eminent domain proceeding*, to the same consequences as a conditional dismissal of the proceeding under Section 1260.120.

Comment. Subdivision (a) (1) is added to Section 1245.255 to make clear that ordinary mandamus (Section 1085) is an appropriate remedy to challenge the validity of a resolution of necessity. See *Wulzen v. Board of Supervisors*, 101 Cal. 15, 21, 35 P. 353, 355 (1894); *Wilson v. Hidden Valley Mun. Water Dist.*, 256 Cal. App.2d 271, 278-81, 63 Cal. Rptr. 889, 893-95 (1967). See also Section 1230.040 (rules of practice in eminent domain proceedings). Under subdivision (a) (1), the writ of mandate is available prior to the time the eminent domain proceeding is commenced. Thereafter, the validity of the resolution may be attacked in the eminent domain proceeding itself. Subdivision (a) (2). See Section 1250.370(a) (no valid resolution of necessity as ground for objection to right to take). In the case of a writ of mandate action pending at the time of commencement of the eminent domain proceeding, the writ action may be prosecuted to completion only if the interest of justice so requires. Judicial review of the resolution of necessity by ordinary mandamus on the ground of abuse of discretion is limited to an examination of the proceedings to determine whether adoption of the resolution by the governing body of the public entity has been arbitrary, capricious, or entirely lacking in evidentiary support, and whether the governing body has failed to follow the procedure and give the notice required by law. See *Pitts v. Perluss*, 58 Cal.2d 824, 833, 377 P.2d 83, 88, 27 Cal. Rptr. 19, 24 (1962); *Brock v. Superior Court*, 109 Cal. App.2d 594, 605, 241 P.2d 283, 290 (1952).

Subdivision (a) does not purport to prescribe the exclusive means by which the validity of a resolution of necessity may be challenged. The validity of the resolution may be subject to review under principles of law otherwise applicable, such as (in appropriate cases) declaratory relief and injunction. The validity of the resolution may be subject to attack, in the case of a conflict of interest, under the Political Reform Act of 1974 (Govt. Code § 91003(b)). See also Section 1245.270 (resolution adopted as a result of bribery).

Unlike subdivision (a), subdivision (b) does not provide a ground for attack on the validity of the resolution. Subdivision (b) provides, apart from the validity of the resolution, a ground for attack on the evidentiary effect given a resolution by Section 1245.250.

It should be noted that Section 1245.255 may be subject to statutory exceptions. See, *e.g.*, Health & Saf. Code §§ 33368 and 33500 (conclusive effect of adoption of redevelopment plan).



**APPENDIX VIII
STATE OF CALIFORNIA**

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

**Use of Court Commissioners Under the
Attachment Law**

October 1977

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

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
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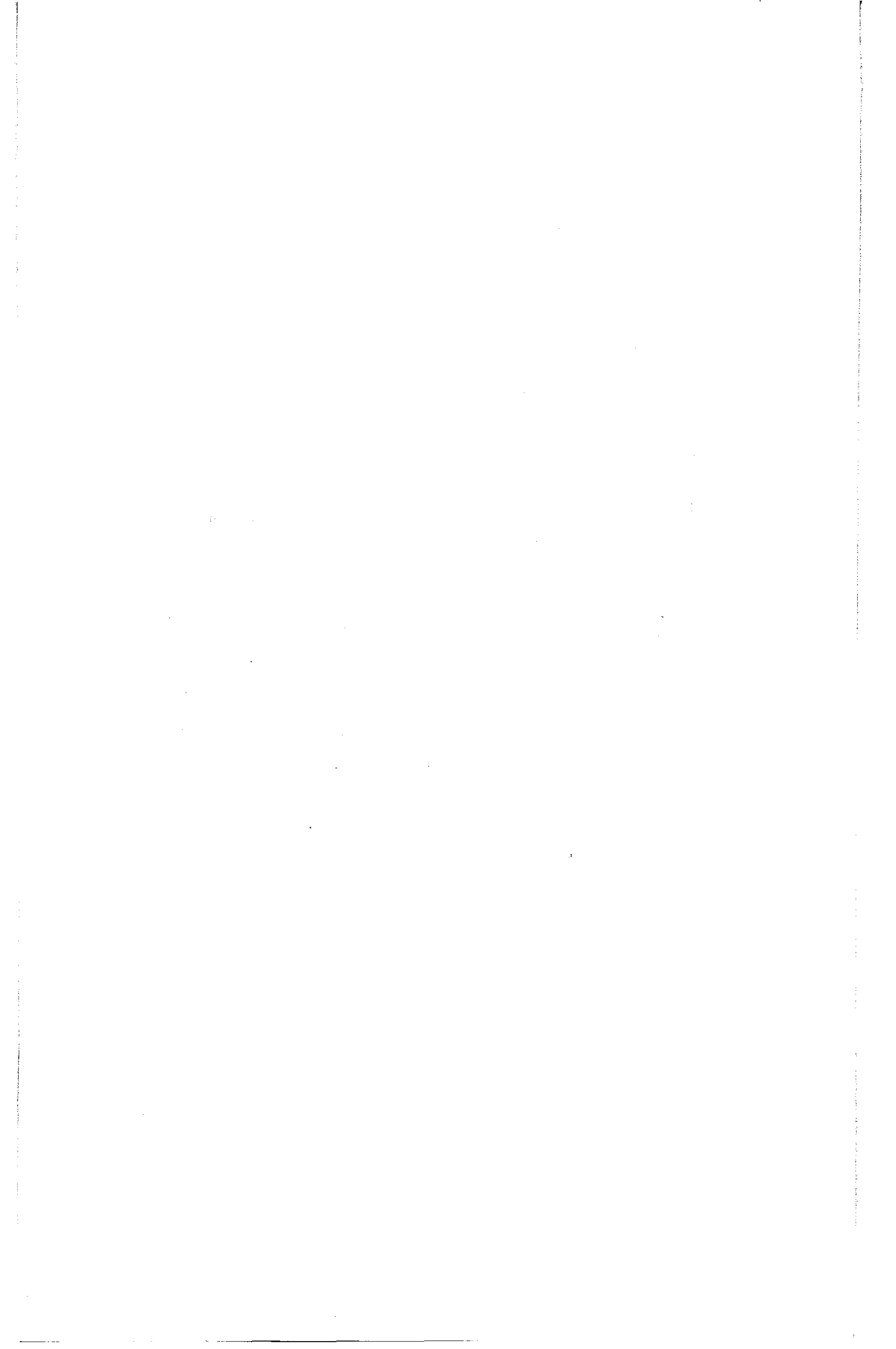
October 6, 1977

To: THE HONORABLE EDMUND G. BROWN JR.
***Governor of California* and**
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 27 of the Statutes of 1972 to study the subject of creditors' remedies, including prejudgment attachment. As a result of this directive, the Attachment Law—1974 Cal. Stats., Ch. 1516—was enacted upon Commission recommendation.

The Commission has maintained a continuing study of the Attachment Law to determine whether any substantive, technical, or clarifying changes are needed. This recommendation is a product of the continuing review. It defines the subordinate judicial duties under the Attachment Law that may be performed by court commissioners.

Respectfully submitted,
JOHN N. McLAURIN
Chairman



RECOMMENDATION

relating to

USE OF COURT COMMISSIONERS UNDER THE ATTACHMENT LAW

The California Constitution permits the Legislature to provide for the appointment of officers such as commissioners to perform subordinate judicial duties.¹ Until January 1, 1977, commissioners were authorized by statute to issue writs of attachment *ex parte* or after a noticed hearing.² The Attachment Law,³ which took effect on January 1, 1977, is silent as to the use of court commissioners.

The Law Revision Commission's original recommendation proposing enactment of the Attachment Law would have permitted court commissioners to perform all judicial duties under the law.⁴ This provision was deleted from the bill before final passage. As a result, the duties a court commissioner may perform under the Attachment Law are not clear and are limited by the general statutes pertaining to the powers of court commissioners.⁵ The parties may, however, stipulate that any judicial duty under the Attachment Law be performed by a court commissioner.⁶

¹ Cal. Const., Art. VI, § 22.

² Code Civ. Proc. §§ 538.1, 538.4 (interim attachment statute), enacted by 1972 Cal. Stats., Ch. 550, §§ 9, 12, repealed by 1974 Cal. Stats., Ch. 1516, § 12 (operative Jan. 1, 1977, pursuant to 1975 Cal. Stats., Ch. 200, § 2).

³ Code Civ. Proc. §§ 481.010-492.090.

⁴ *Recommendation Relating to Prejudgment Attachment*, 11 Cal. L. Revision Comm'n Reports 701, 739, 760 (1973).

⁵ General powers of superior court commissioners are provided in Code of Civil Procedure Section 259. Additional powers of superior court commissioners in Los Angeles County are provided by Code of Civil Procedure Section 259a which is made applicable to several other counties by Government Code Sections 70141.4-70141.12. Government Code Section 72190 authorizes municipal court commissioners to exercise the powers of superior court commissioners. Court commissioners are empowered to hear and determine certain *ex parte* motions for orders and writs, to approve undertakings, and in certain counties to act as judge *pro tempore* and hear uncontested actions and proceedings. See also 1 B. Witkin, *California Procedure Courts* §§ 223-227, at 480-84 (2d ed. 1970).

⁶ If appointed and qualified, a commissioner may act as a temporary judge pursuant to stipulation of the parties. Cal. Const., Art. VI, § 21; Code Civ. Proc. § 259a, subd. 4; *Rooney v. Vermont Investment Corp.*, 10 Cal.3d 351, 359-60, 515 P.2d 297, 302-03, 110 Cal. Rptr. 353, 358-59 (1973).

The question has arisen whether it would be constitutionally permissible to authorize court commissioners to perform all judicial duties under the Attachment Law.⁷ The Legislative Counsel has given the opinion that a provision authorizing court commissioners to perform judicial duties under the law "would be constitutional to the extent it authorized the determination of preliminary matters, even though contested, and a final determination on the merits of an issue in litigation, if uncontested. This general rule is subject to the qualification that the determination of a contested preliminary matter may, depending upon the facts of a particular case, so involve the exercise of due process rights that it would be required to be made by a judge rather than an officer such as a commissioner."⁸ The Legislative Counsel concluded that either preliminary or uncontested matters may be appropriately designated subordinate judicial duties by the Legislature on the authority of the California Supreme Court's decision in *Rooney v. Vermont Investment Corporation*.⁹ The Legislative Counsel suggested, however, that the determination of a contested exemption claim, although a preliminary matter, is a matter that may in some cases involve "due process rights" so as to require the "exercise of judicial power of the highest degree."¹⁰ This position is buttressed by recent decisions regarding prejudgment remedies rendered by the United States and the California Supreme Courts that emphasize the importance of the defendant's right to property necessary for the support of the defendant and the defendant's family.¹¹

The Commission has reviewed the judicial duties specified in the Attachment Law. It has concluded that the

⁷ An outline of the judicial duties specified in the Attachment Law is attached as an Exhibit hereto.

⁸ Opinion of Cal. Legislative Counsel at 9 (No. 8659, June 16, 1975) (unpublished).

⁹ 10 Cal.3d 351, 366, 515 P.2d 297, 307, 110 Cal. Rptr. 353, 363 (1973).

¹⁰ Opinion of Cal. Legislative Counsel, *supra* at 9.

¹¹ See *Sniadach v. Family Fin. Corp.*, 395 U.S. 337, 340-42 (1969); *Randone v. Appellate Dep't*, 5 Cal.3d 536, 558-63, 488 P.2d 13, 27-32, 96 Cal. Rptr. 709, 723-28 (1971); *Blair v. Pitchess*, 5 Cal.3d 258, 279, 486 P.2d 1242, 1257, 96 Cal. Rptr. 42, 57 (1971); *McCallop v. Carberry*, 1 Cal.3d 903, 907, 464 P.2d 122, 125, 83 Cal. Rptr. 666, 669 (1970). *Cf.* *North Georgia Finishing, Inc. v. Di-Chem, Inc.*, 419 U.S. 601, 605-06 (1975); *Fuentes v. Shevin*, 407 U.S. 67, 88-90 (1972).

following matters are not preliminary matters and so may not constitutionally be determined by a court commissioner:

(1) Contested motions for determination of liability and damages for wrongful attachment.¹²

(2) Contested third-party claims.¹³

(3) Contested actions to enforce a garnishee's liability.¹⁴

In addition, contested exemption claims, although preliminary matters, in many cases involve essential rights requiring judicial attention;¹⁵ these too, the Commission believes, may not constitutionally be determined by a court commissioner. The parties may stipulate, however, that these matters may be determined by a court commissioner as a temporary judge.¹⁶

The Attachment Law should specify the duties that may constitutionally be performed by a court commissioner. This will eliminate the existing doubt and make clear that court commissioners may continue to perform the types of duties they have been successfully performing for a number of years under the prior attachment law. It will also promote the efficient, expeditious, and economical administration of the Attachment Law by enabling the fullest permissible use of court commissioners.

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

An act to add Section 482.060 to the Code of Civil Procedure, relating to attachment.

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

SECTION 1. Section 482.060 is added to the Code of Civil Procedure, to read:

¹² See Code Civ. Proc. §§ 490.030, 490.050.

¹³ See Code Civ. Proc. § 488.090, incorporating the procedures of Code Civ. Proc. § 689.

¹⁴ See Code Civ. Proc. § 488.550.

¹⁵ See Code Civ. Proc. §§ 482.100, 484.070, 484.350, 484.360, 484.530, 485.610, 492.040, 492.050.

¹⁶ See Cal. Const., Art. VI, § 21.

482.060. (a) Except as otherwise provided in subdivision (b), the judicial duties to be performed under this title are subordinate judicial duties within the meaning of Section 22 of Article VI of the California Constitution and may be performed by appointed officers such as court commissioners.

(b) The judicial duties to be performed in the determination of the following matters are not subordinate judicial duties:

- (1) A contested claim of exemption.
 - (2) A contested motion for determination of the liability and damages for wrongful attachment.
 - (3) A contested third-party claim.
 - (4) A contested action to enforce a garnishee's liability.
- (c) Nothing in subdivision (b) limits the power of a court to appoint a temporary judge pursuant to Section 21 of Article VI of the California Constitution.

Comment. Section 482.060 authorizes the use of court commissioners to perform judicial duties arising under this title, subject to the exceptions noted in subdivision (b).

Contested exemption claims, described in paragraph (1) of subdivision (b), may arise under Sections 482.100 (postlevy exemption claims based on changed circumstances), 484.070 (claim of exemption and notice of opposition in procedure for issuance of writ of attachment after a noticed hearing), 484.350-484.360 (claim of exemption and notice of opposition in procedure for issuance of additional writ after a noticed hearing), 484.530 (claim of exemption after levy of ex parte additional writ), 485.610 (claim of exemption after levy of ex parte writ or additional writ), or 492.040-492.050 (release of exempt property where nonresident defendant files general appearance).

Motions for determination of liability and damages for wrongful attachment arise under Sections 490.030 and 490.050. Third-party claims are made and determined in the manner provided by Section 689 which is incorporated by Section 488.090. Actions to enforce a garnishee's liability may be brought pursuant to Section 488.550.

Subdivision (c) recognizes that a qualified commissioner or other person may be appointed as a temporary judge, upon stipulation of the parties, to determine a matter pursuant to the authority of Section 21 of Article VI of the California Constitution.

EXHIBIT

JUDICIAL DUTIES UNDER THE ATTACHMENT LAW

RIGHT TO ATTACH ORDERS, WRITS OF ATTACHMENT, AND DETERMINATION OF EXEMPTIONS

Noticed Hearing Procedures and Prelevy Exemption Claims

Right to attach order, which states the amount to be secured by the attachment, is issued (Section 484.090(a)) if the court finds all the following at a noticed hearing:

(1) The claim is one upon which attachment may be issued. (Section 483.010 specifies the claims.)

(2) The plaintiff has established the probable validity of the claim. (Section 481.190 defines probable validity.)

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

Writ of attachment, which identifies the defendant whose property is to be attached, describes property to be levied upon and property which is exempt and states the amount to be secured by the attachment (Section 488.010(a)), is issued conditioned upon the filing of an undertaking (Section 484.090(b)), if the court finds all the following at a noticed hearing:

(1) The requirements for issuance of a right to attach order are satisfied. (Section 484.090(a) specifies the requirements.)

(2) The defendant has failed to prove all property sought to be attached is exempt. (Section 487.020 specifies property that is exempt.)

Additional writs of attachment may be issued conditioned upon the filing of an undertaking (Section 484.370) if the court finds all the following at a noticed hearing:

(1) A right to attach order has been issued at a noticed hearing (Section 484.090) or the court has determined in a hearing on a motion to set aside an ex parte right to attach order (Section 485.240) that the plaintiff is entitled to the order.

(2) The defendant has failed to prove all property sought to be attached is exempt. (Section 487.020 specifies property that is exempt.)

Continuances may be granted as follows:

(1) For good cause shown, the court may grant a continuance of the hearing on issuance of the order and writ upon the defendant's or the plaintiff's application. (Section 484.060.) If the continuance is granted on the defendant's application, the court extends the effective period of any temporary protective order. (Section 484.080(b).) If the continuance is granted on the plaintiff's application, the court may extend the effective period of any temporary protective order. (Section 484.080(a).)

(2) For good cause shown, the court may continue the hearing on issuance of the order and writ for the production of additional evidence. (Section 484.090(d).)

Ex Parte Procedures and Prelevy Determination of Exemptions

Right to attach order and writ of attachment may be issued conditioned upon the filing of an undertaking (Section 485.220) if the court finds all the following at an ex parte hearing:

(1) The claim is one upon which attachment may be issued. (Section 483.010 specifies the claims.)

(2) The plaintiff has established the probable validity of the claim. (Section 481.190 defines probable validity.)

(3) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(4) The plaintiff's affidavit shows that the property sought to be attached is not exempt. (Section 487.020 specifies property that is exempt.)

(5) The plaintiff will suffer great or irreparable injury if the order is delayed to be heard on notice. (Section 485.010 defines great or irreparable injury.)

Temporary protective order may be issued and the application for the ex parte right to attach order and writ of attachment may be denied by the court in its discretion and

treated as an application for a right to attach order at a noticed hearing (Sections 484.010-484.110) if the court finds that the requirements for issuance of an ex parte order and writ (Section 485.220) are satisfied but that it would be in the interest of justice and equity to the parties to follow the noticed hearing procedure. (Section 486.030.)

Additional writs of attachment may be issued ex parte conditioned on the filing of an undertaking (Section 485.540) if the court finds all the following:

(1) An ex parte right to attach order and writ of attachment have been issued. (Section 485.220.)

(2) The plaintiff's affidavit shows that the property sought to be attached is not exempt. (Section 487.020 specifies property that is exempt.)

(3) The plaintiff will suffer great or irreparable injury if the writ is delayed to be heard on notice. (Section 485.010 defines great or irreparable injury.)

Additional writs of attachment may be issued ex parte conditioned on the filing of an undertaking (Section 484.520) if the court finds all the following:

(1) A right to attach order has been issued after a noticed hearing (Section 484.090) or the court has determined in a hearing on a motion to set aside an ex parte right to attach order (Section 485.240) that the plaintiff is entitled to the order.

(2) The plaintiff's affidavit shows that the property sought to be attached is not exempt. (Section 487.020 specifies property that is exempt.)

Motion to set aside ex parte right to attach order, quash writ of attachment, and release property levied on is granted if the court determines at the hearing on the motion that the plaintiff is not entitled to the order. For good cause shown, the court may continue the hearing on the motion for production of additional evidence. (Section 485.240.)

Postlevy Determination of Exemptions

Claims of exemption generally after levy of an ex parte writ or additional writ are determined by the court in the manner provided in Section 690.50. (Sections 484.530, 485.610.)

Claims of exemption for farm products or inventory, levied upon pursuant to Section 488.360(a), as essential for the support of the defendant or the defendant's family are determined by the court in the manner provided in Section 488.360(b). Upon the required showing, the court orders removal of the keeper and return of the property essential for support and may make such further order as the court deems appropriate to protect the plaintiff. (Section 488.360(b).)

Postlevy exemption claims based on change in circumstances occurring after (1) the denial of a claim earlier in the action or (2) the expiration of the time for claiming the exemption earlier in the action are determined by the court in the manner provided in Sections 482.100(c) and 690.50. (Section 482.100.)

Ex Parte Procedures in Action Against Nonresident Defendant

Right to attach order and writ of attachment are issued conditioned upon the filing of an undertaking (Section 492.030) if the court finds all the following at the ex parte hearing:

(1) The claim is one upon which attachment may be issued. (Section 492.010 specifies the claims.)

(2) The plaintiff has established the probable validity of the claim. (Section 481.190 defines probable validity.)

(3) The defendant is a nonresident described by Section 492.010.

(4) The attachment is not sought for a purpose other than the recovery on the claim upon which the attachment is based.

(5) The plaintiff's affidavit shows that the property is subject to attachment. (Section 492.040 specifies property subject to attachment.)

Additional writs of attachment are issued conditioned upon the filing of an undertaking (Section 492.090) if the court finds all the following at an ex parte hearing:

(1) A right to attach order has been issued against the nonresident pursuant to Section 492.030.

(2) The plaintiff's affidavit shows that the property sought to be attached is subject to attachment. (Section 492.040 specifies property subject to attachment.)

Exempt property is released on order of the court (Section 492.040) when the nonresident defendant files a general appearance in the action. (Section 487.020 specifies property that is exempt.)

Motion to set aside the ex parte right to attach order, quash writ of attachment, and release property levied on is granted if the court determines that the defendant has filed a general appearance in the action and the plaintiff fails to show that the order is authorized by some provision other than Section 492.010. (Section 492.050(c).) If the court finds that the plaintiff is entitled to the right to attach order, it orders the release of exempt property. (Section 492.050(d).)

Order Directing Transfer

If a writ of attachment is issued, the court may also issue an order directing the defendant to transfer to the levying officer possession of the property to be taken into custody or documentary evidence of title of property to be attached. (Section 482.080.)

Order Restricting Amount of Property to Be Levied Upon or Determining Order of Levy

An order restricting the amount of property to be levied upon or determining the order of levy may be issued where the court determines that the property described in the plaintiff's application clearly exceeds the amount necessary to satisfy the plaintiff's claim. (Section 482.120.)

TEMPORARY PROTECTIVE ORDERS

Issuance of Temporary Protective Order

Temporary protective order may be issued conditioned upon the filing of an undertaking (Section 486.020) if the court finds all the following at an ex parte hearing:

- (1) The claim is one upon which attachment may be issued. (Section 483.010 specifies the claims.)
- (2) The plaintiff has established the probable validity of the claim. (Section 481.190 defines probable validity.)
- (3) The order is not sought for a purpose other than the recovery upon the claim upon which the application for the attachment is based.
- (4) The plaintiff will suffer great or irreparable injury if the order is not issued. (Section 485.010 defines great or irreparable injury.)

Contents of Temporary Protective Order

The temporary protective order contains such provisions as the court determines are in the interest of equity and justice to the parties (Section 486.040) and may restrain the transfer of the defendant's property in the state (Section 486.050(a)) except that the defendant may sell farm products or inventory in the ordinary course of business (Section 486.050(b)) and may write checks for certain purposes (Section 486.060).

Duration of Temporary Protective Order

Date of expiration may be set at less than 40 days by the court. (Section 486.090(a).)

Application to modify or vacate the temporary protective order may be granted by the court ex parte or after a noticed hearing if it determines that such action would be in the interest of justice and equity to the parties. (Section 486.100.)

THIRD-PARTY CLAIMS

After levy of a writ of attachment, the court determines third-party claims in the manner provided in Section 689. (Section 488.090.)

EXTENSION OF LIENS OF ATTACHMENT

Upon motion of the plaintiff, made not less than 10 nor more than 60 days before the expiration of the normal three-year period of the lien of attachment, and upon notice to

the defendant, the court may for good cause extend the duration of the lien for one year from the date the lien would otherwise expire. (Section 488.510.)

SALE OR CARE OF ATTACHED PROPERTY

Perishable Property

Upon application of the plaintiff, defendant, or a third person whose interest has been determined, and reasonable notice to other parties, the court may order the sale of attached property or may appoint a receiver or direct the levying officer to take charge of, cultivate, care for, preserve, collect, harvest, pack, or sell attached property where it is shown that the property is perishable or will greatly deteriorate or depreciate in value or that such action will best serve the interests of the parties. (Section 488.530(a).)

Fee of Receiver

The court fixes the daily fee of the receiver and may order the plaintiff to pay the receiver in advance or may direct that all or part of the receiver's fees and expenses be paid from the proceeds of the sale. (Section 488.530(d).)

RELEASE OF EXCESSIVE ATTACHMENTS

The court makes an order releasing an attachment to the extent it determines that the value of the property attached clearly exceeds the amount necessary to satisfy the plaintiff's claim. (Section 488.555.)

UNDERTAKINGS

Approval of Undertaking

All undertakings, other than those given with corporate surety, must be approved by the court before filing. (Section 489.060.)

Determination of Objections to Undertaking

The court determines objections to undertakings on noticed motion and may take evidence and appoint appraisers. (Section 489.090(b).) Objections may be made on the grounds that the sureties are insufficient or that the amount of the undertaking is insufficient. (Section 489.070.) See Sections 489.320(b) (increase to amount of probable recovery for wrongful attachment), 489.310 (undertaking to release attachment), 489.320 (undertaking to secure termination of protective order), 489.410 (postjudgment continuance of attachment), 489.420 (undertaking to release attachment on defendant's appeal). If the court determines an undertaking is insufficient, it orders a sufficient undertaking to be filed. (Section 489.090(c).)

RECOVERY FOR WRONGFUL ATTACHMENT

The court determines motions for recovery on the plaintiff's undertaking for wrongful attachment in the manner provided in Section 1058a. (Sections 490.030, 490.050.)

EXAMINATION OF THIRD PERSONS INDEBTED TO DEFENDANT

The court may order a person owing debts to the defendant or having in his possession or under his control the defendant's personal property to appear before the court and be examined regarding such property. (Section 491.010(a).) If the person fails to appear, the court may have the person brought before the court on a warrant. (Section 491.010(c).) If the person admits the debt or possession of the property, the court may order its attachment. (Section 491.010(d).) The court may require witnesses to appear and testify at the examination. (Section 491.040.)

**APPENDIX IX
STATE OF CALIFORNIA**

CALIFORNIA LAW REVISION COMMISSION

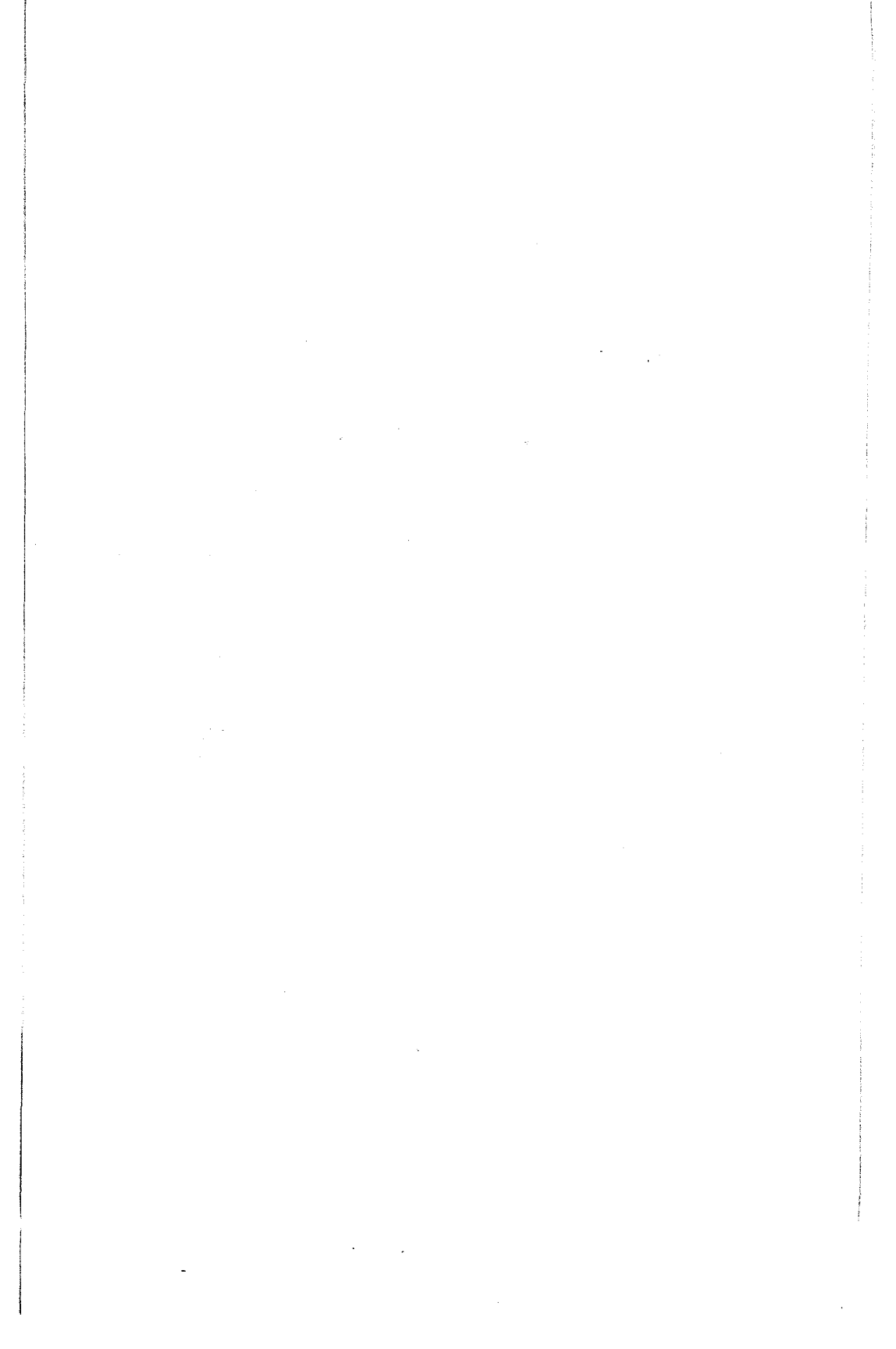
RECOMMENDATION

relating to

Evidence of Market Value of Property

October 1977

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



CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
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Ex Officio

October 6, 1977

To: THE HONORABLE EDMUND G. BROWN JR.
***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 a product of this continuing review. It proposes that the Evidence Code rules relating to value, damages, and benefits in eminent domain and inverse condemnation cases be extended to all cases where the market value of real property and tangible personal property is in issue, other than ad valorem property tax assessment and equalization. It also proposes a number of substantive revisions to improve the rules for determining evidence of market value.

Respectfully submitted,
JOHN N. McLAURIN
Chairman

RECOMMENDATION

relating to

EVIDENCE OF MARKET VALUE OF PROPERTY

Background

The California Evidence Code provisions relating to value, damages, and benefits in eminent domain and inverse condemnation cases¹ were enacted in 1965.² These provisions were the result of recommendations of the California Law Revision Commission³ although they were not ultimately enacted on Commission recommendation.

The Evidence Code provisions relating to value, damages, and benefits in eminent domain and inverse condemnation cases have been the subject of extensive review and comment since their enactment. They have been discussed in law review articles⁴ and treatises,⁵ they have been considered in a national monograph,⁶ and they have been the subject of two thorough questionnaires distributed among practitioners by the Law Revision Commission.⁷

The Commission has reviewed the literature and the Evidence Code provisions and has determined that a

¹ Evid. Code §§ 810-822.

² 1965 Cal. Stats., Ch. 1151, § 4.

³ See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings*, 3 Cal. L. Revision Comm'n Reports, at A-1 (1960).

⁴ See, e.g., Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143 (1966); Whitaker, *Real Property Valuation in California*, 2 U.S.F. L. Rev. 47 (1967).

⁵ See, e.g., Matteoni, *Just Compensation*, in *Condemnation Practice in California* §§ 4.25-4.51, at 57-74 (Cal. Cont. Ed. Bar 1973); Dankert, *Condemnation Practice Handbook*, in 14 California Real Estate Law and Practice §§ 508.01-509.42 (1976); B. Witkin, *California Evidence* §§ 440-447, at 397-405 (2d ed. 1966).

⁶ See D. Massey, *Rules of Compensability and Valuation Evidence for Highway Land Acquisition* (National Cooperative Highway Research Program Rept. No. 104, 1970).

⁷ The first questionnaire results were analyzed in a consultant's report. See Matteoni, "Consultant's Comments" (March 24, 1972) (unpublished, on file in offices of California Law Revision Commission). The second questionnaire results were analyzed in a staff memorandum. See Memorandum 77-58 (September 6, 1977) (unpublished, on file in offices of California Law Revision Commission).

number of changes are desirable. These changes are discussed below.

Application of Evidence Code Provisions

The provisions of the Evidence Code relating to valuation of property apply only to eminent domain and inverse condemnation proceedings.⁸ Other actions involving the valuation of property, with a few limited exceptions,⁹ are governed by case law. It has been suggested by several commentators that the eminent domain valuation provisions could be equally well applied to the other actions.¹⁰

The major areas of litigation, other than eminent domain and inverse condemnation, where the determination of property value is important include property taxation, gift taxation, inheritance taxation, breach of contract for sale of property, fraud in sale of property, damage or injury to property, mortgage deficiency judgments, and marital dissolution and division of property. In each of these areas, the critical determination is the "market value" of the property.¹¹ This is also the determination in an

⁸ Evidence Code Section 810 provides: "This article is intended to provide special rules of evidence applicable only to eminent domain and inverse condemnation proceedings."

⁹ See, e.g., Com. Code §§ 2723-2724 (proof of market price in cases involving sale of goods); Cal. Admin. Code, Tit. 18, Subch. 1 (State Board of Equalization valuation principles and procedures).

¹⁰ In Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143, 144 (1966), it was said: "In any event, the Law Revision Commission and the legislature should consider legislation making the Evidence Code provisions applicable to all actions and special proceedings involving the valuation of real property." And in Whitaker, *Real Property Valuation in California*, 2 U.S.F. L. Rev. 47, 66 (1967), it was said: "But if the standard value for purposes of eminent domain is the same as value for purposes of real property taxation and inheritance taxation, no reason appears why the evidentiary rules for determining value should be limited to eminent domain and inverse condemnation cases."

¹¹ See, e.g., Cal. Const., Art. XIII, § 1, and Rev. & Tax. Code §§ 110, 110.5, 401 (use of "fair market value" or "full value" for taxation purposes); Rev. & Tax. Code §§ 13311, 13951 (inheritance tax based on "market value" of property); Rev. & Tax. Code § 15203 (gift tax computed on "market value" of property); Civil Code § 3343 (measure of damages in fraud based on "actual value" of property); Ins. Code § 2071 (fire insurance covers loss to the extent of "the actual cash value" of the property); Code Civ. Proc. § 580a (mortgage deficiency judgment calculated on "fair market value" of property). The cases have uniformly interpreted these varying standards to mean "market value." See, e.g., *Jefferson Ins. Co. v. Superior Court*, 3 Cal.3d 398, 402, 475 P.2d 880, 882, 90 Cal. Rptr. 606, 610 (1970) (fire insurance); *De Luz Homes, Inc. v. County of San Diego*, 45 Cal.2d 546, 561-62, 290 P.2d 544, 554 (1955) (property tax); *Guild Wineries & Distilleries v. County of Fresno*, 51 Cal. App.3d 182, 187, 124 Cal. Rptr. 96, 99 (1975) (property tax); *Union Oil Co. v. County of Ventura*, 41 Cal.

eminent domain or inverse condemnation proceeding.¹²

The lack of statutory standards of evidence for the valuation of property in areas other than eminent domain and inverse condemnation has created a number of problems. The same basic factual question—the determination of market value of property—is governed by different rules of evidence depending upon the type of case in which the question arises.¹³ Confusion among appraisers and attorneys, as well as among the courts, is generated by the existence of multiple standards.¹⁴ And the lack of clear statutory standards in cases where the market value issue is not frequently litigated poses real problems for the parties and the court.¹⁵

One solution adopted by the courts has been simply to follow the statutory evidence rules in cases other than eminent domain and inverse condemnation.¹⁶ In the case of *In re Marriage of Folb*,¹⁷ for example, the court was confronted with the factual question of the value of a particular asset involved in a community property division. In the absence of applicable statutory and decisional rules of evidence, the court sought guidance from the Evidence

App.3d 432, 436, 116 Cal. Rptr. 13, 16 (1974) (property tax); *Campbell Chain Co. v. County of Alameda*, 12 Cal. App.3d 248, 253, 90 Cal. Rptr. 501, 504 (1970) (property tax); *Estate of Rowell*, 132 Cal. App.2d 421, 429, 282 P.2d 163, 168 (1955) (inheritance tax); *Bagdasarian v. Cragnon*, 31 Cal.2d 744, 752-53, 192 P.2d 935, 940 (1948) (fraud damages); *Pepper v. Underwood*, 48 Cal. App.3d 698, 706 n.7, 122 Cal. Rptr. 343, 349 n.7 (1975) (fraud damages).

¹² E.g., Code Civ. Proc. § 1263.310 (measure of compensation in eminent domain is "fair market value" of property).

¹³ See Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143, 144 (1966).

¹⁴ See *id.*

¹⁵ See, e.g., *In rem Marriage of Folb*, 53 Cal. App.3d 862, 868, 126 Cal. Rptr. 306, 310 (1975), "We recognize that section 4900, subdivision (a) of the Family Law Act requires an equal division of community property, and that the trial court, therefore, is required to make specific findings concerning the nature and value of all assets of the parties before the court. . . . Neither the Family Law Act, nor the decisional law of this state relating to community-property division, offers any particular guidance as to how the value of a disputed real property asset should be ascertained."

¹⁶ This has been suggested in Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143, 144 (1967): "It may well be that the trial and appellate courts will want uniformity and may well follow the new evidence rules for all cases involving the valuation of real property."

¹⁷ 53 Cal. App.3d 862, 126 Cal. Rptr. 306 (1975).

Code provisions and the condemnation cases construing them.¹⁸

The Law Revision Commission recommends that the Evidence Code rules applicable to eminent domain and inverse condemnation cases be extended to include all cases (other than ad valorem property tax assessment and equalization¹⁹) not now covered by statute where there is an issue of the "market value" (or its equivalent) of real property or tangible personal property. The Evidence Code rules are sufficiently general in scope, and sufficiently liberal in their admission of all recognized valuation techniques, to justify their use in all areas identified by the Commission.

Broad application of the statutory evidence rules will to some extent change existing case law.²⁰ However, the courts have applied many of the basic principles applicable to eminent domain cases in the other areas where valuation is important,²¹ and the benefit of eliminating the existing

¹⁸ See *In re Marriage of Folb*, 53 Cal. App.3d 862, 868-71, 126 Cal. Rptr. 306, 310-12 (1975). The court ultimately held some of the Evidence Code provisions not controlling in a marital dissolution case. *Id.* at 870-71, 126 Cal. Rptr. at 312.

¹⁹ The Commission does not recommend the Evidence Code provisions be extended to ad valorem property tax assessment and equalization cases since proceedings are informal, and cases are already governed by a well-developed set of rules. See Rev. & Tax. Code § 1609 (informal hearing); Cal. Admin. Code, Tit. 18, Subch. 1 (State Board of Equalization valuation principles and procedures).

²⁰ For example, the value of property in eminent domain and inverse condemnation cases may be shown only by opinion testimony of expert witnesses or of the owner of the property. Evid. Code § 813. Evidence of sales of the subject property or of comparable sales is admissible on direct examination but only for the purpose of explaining the witness' opinion. See Evid. Code §§ 815-816; Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143, 149 (1966). Thus, after hearing such evidence, the jury is instructed to consider the evidence "only for the limited purpose" of enabling it "to understand and weigh the testimony of the witnesses as to their opinion" of value and to return a verdict within the range of the opinions of value. BAJI 11.80 (5th rev. 1975 Pocket Part).

On the other hand, existing law applicable to other than eminent domain and inverse condemnation cases permits a verdict based on a comparable sale even though the verdict is outside the range of the opinions of value. See *Foreman & Clark Corp. v. Fallon*, 3 Cal.3d 875, 886, 479 P.2d 362, 369, 92 Cal. Rptr. 162, 169 (1971); *In re Marriage of Folb*, 53 Cal. App.3d 862, 871, 126 Cal. Rptr. 306, 312 (1975). The application of the evidentiary rules of Evidence Code Sections 810-822 to all cases where the value of property is in issue (except cases already covered by statute—see Com. Code §§ 2723-2724) would apply the rule of limited admissibility of sales data to such cases and would thus change the rule of *Foreman & Clark Corp. v. Fallon*, *supra*, *In re Marriage of Folb*, *supra*, and similar cases.

²¹ See Whitaker, *Real Property Valuation in California*, 2 U.S.F. L. Rev. 47, 101 n.358 (1967).

uncertainty by having a uniform set of rules of evidence applicable to all real property and tangible personal property valuations outweighs any inconvenience of minor changes in existing case law rules.

Testimony by Owner

Although generally the value of property may be shown only by the opinion of an expert witness, Evidence Code Section 813 permits the owner of property to give an opinion as to its value. This provision has been construed to refer only to natural persons. Where the owner is a corporation, for instance, a corporate representative may not testify unless the representative is otherwise qualified as an expert.²² This rule should be changed. Where the property is owned by a corporation, partnership, or unincorporated association, an officer, regular employee, or partner designated by the owner should be permitted to give an opinion of the value of the property if the designee is knowledgeable as to the value.²³ This will enable the small organization to give adequate testimony as to the value of its property in cases where it might not be able to afford the cost of an expert.

Right of Holder of Lesser Interest to Testify as to Value of Whole

The Evidence Code permits the holder of a lesser interest in property who is not an expert to give an opinion as to the value of the lesser interest but not as to the value of the whole.²⁴ This limitation is appropriate since the presumption that the owner of property knows the value of the property does not extend to a lesser interest holder's knowledge of the value of the whole. However, in an eminent domain proceeding, it may be necessary for the lesser interest holder to present evidence of the value of the whole to assure an adequate award to compensate the lesser interest in the apportionment phase of the proceeding.²⁵

²² *E.g.*, *City of Pleasant Hill v. First Baptist Church*, 1 Cal. App.3d 384, 411-12, 82 Cal. Rptr. 1, 19 (1969).

²³ Section 1103(a) (3) of the Uniform Eminent Domain Code contains a similar provision.

²⁴ Evid. Code § 813(a) (2).

²⁵ Code of Civil Procedure Section 1260.220 authorizes a two-stage procedure of valuation where there are divided interests in property.

The Eminent Domain Law should be amended to make clear that the lesser interest holder may present evidence of the value of the whole in the valuation phase of the proceeding. This amendment would be limited to presentation of evidence; it would not authorize the lesser interest holder, if not an expert, to give an opinion as to the value of the whole.

Lease of Subject Property

A lease of the subject property may be taken into account in forming an opinion of the value of the property.²⁶ In an eminent domain proceeding, however, such a lease of the whole property or of the part taken, if made after the filing of the *lis pendens*, is inherently untrustworthy, having been made with knowledge of the pendency of the action. The Commission recommends that such a lease not be a proper basis for an opinion of value.²⁷

Admissibility of Unpaid Taxes

Evidence Code Section 822(c) permits consideration of "actual or estimated taxes" for the purpose of capitalization of income. However, Revenue and Taxation Code Section 4986(b) prohibits mention of "the amount of the taxes which may be due on the property." The relationship between these two provisions has caused some confusion in practice.

The apparent conflict between the two provisions is resolved by observing that the Revenue and Taxation Code provision relates only to mention of unpaid taxes.²⁸ The Commission believes that this distinction should be made clear, however, by relocating the taxation provision in the Evidence Code. The language of Revenue and Taxation Code Section 4986(b) concerning mistrial should be

²⁶ Evid. Code § 817.

²⁷ Cf. Evid. Code § 815 (sale of subject property). Likewise, the limitation in Section 815 on use of sales occurring after the filing of the *lis pendens* should apply only in eminent domain proceedings. This recommendation would not preclude use of leases made after *lis pendens* to show damages to the property such as those authorized in *Klopping v. City of Whittier*, 8 Cal.3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1972).

²⁸ See Carlson, *Statutory Rules of Evidence for Eminent Domain Proceedings*, 18 Hastings L.J. 143, 157 (1966).

deleted.²⁹ The general rule will thus apply, which gives the court discretion to declare a mistrial when evidence has been presented which is inadmissible, highly prejudicial, and cannot be corrected by an admonition to the jury.³⁰

Proposed Legislation

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

An act to amend Section 1260.220 of the Code of Civil Procedure, to amend the title of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of, and to amend Sections 810, 811, 812, 813, 815, 817, and 822 of, the Evidence Code, and to amend Section 4986 of the Revenue and Taxation Code, relating to evidence in the valuation of property.

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

Code of Civil Procedure § 1260.220 (amended)

SECTION 1. Section 1260.220 of the Code of Civil Procedure is amended to read:

1260.220. (a) Except as provided in subdivision (b), where there are divided interests in property acquired by eminent domain, the value of each interest and the injury, if any, to the remainder of such interest shall be separately assessed and compensation awarded therefor.

(b) The plaintiff may require that the amount of compensation be first determined as between plaintiff and all defendants claiming an interest in the property. Thereafter, in the same proceeding, the trier of fact shall determine the respective rights of the defendants in and to the amount of compensation awarded and shall apportion the award accordingly. Nothing in this subdivision limits the right of a defendant to present during the first stage of

²⁹ The Commission plans to devote further study to the simplification of the structure of Revenue and Taxation Code Section 4986.

³⁰ See Wolford & Endicott, *Motions During Trial*, in California Civil Procedure During Trial §§ 15.61-15.63, at 372-73 (Cal. Cont. Ed. Bar 1960); 4 B. Witkin, California Procedure Trial § 130, at 2954 (2d ed. 1971).

the proceeding evidence of the value of, or injury to, ~~his~~ *the property or the defendant's* interest in the property; and the right of a defendant to present evidence during the second stage of the proceeding is not affected by ~~his~~ *the* failure to exercise ~~his~~ *the* right to present evidence during the first stage of the proceeding.

Comment. Subdivision (b) of Section 1260.220 is amended to make clear the right of a defendant, whether or not a fee owner, to present evidence of the value of the whole property in order to assure an adequate award for purposes of apportionment.

Evidence Code §§ 810–822 Title (amended)

SEC. 2. The title of Article 2 (commencing with Section 810) of Chapter 1 of Division 7 of the Evidence Code is amended to read:

Article 2. Value, Damages, and Benefits in Eminent Domain and Inverse Condemnation Cases Evidence of Market Value of Property

Evidence Code § 810 (amended)

SEC. 3. Section 810 of the Evidence Code is amended to read:

810. This article is intended to provide special rules of evidence applicable ~~only to eminent domain and inverse condemnation proceedings~~ *to any action in which the value of property is to be ascertained other than ad valorem property tax assessment or equalization.*

Comment. Section 810 is amended to remove the limitation on application of this article to eminent domain and inverse condemnation proceedings. This article applies to any action or proceeding in which the “value of property” is to be determined, with the exception of ad valorem property tax assessment or equalization. See Section 811 and Comment thereto (“value of property” defined). See also Sections 105 and 120 (“action” includes action or proceeding). However, where a particular provision requires a special rule relating to value, the special rule prevails over this article. See, e.g., Com. Code §§ 2723–2724. Property tax assessment and equalization proceedings, whether judicial or administrative, are not subject to this article. See, e.g.,

Rev. & Tax. Code §§ 1609, 1636-1641 (equalization proceedings); Cal. Admin. Code, Tit. 18 (public revenues regulations).

Nothing in this section is intended to require a hearing to ascertain the value of property where a hearing is not required by statute. See, *e.g.*, Rev. & Tax. Code §§ 14501-14505 (Inheritance Tax Referee permitted but not required to conduct hearing to ascertain value of property).

Evidence Code § 811 (amended)

SEC. 4. Section 811 of the Evidence Code is amended to read:

811. As used in this article, "value of property" means the amount of "just compensation" to be ascertained under Section 19 of Article I of the State Constitution and the amount of value, damage, and benefits to be ascertained under Articles 4 (commencing with Section 1263.310) and 5 (commencing with Section 1263.410) of Chapter 9 of Title 7 of Part 3 of the Code of Civil Procedure, market value of any of the following:

- (a) *Real property or any interest therein.*
- (b) *Tangible personal property.*

Comment. Section 811 is amended to broaden the application of this article to all cases where a market value standard is used to determine the value of real property or any interest therein, or of tangible personal property. These cases include, but are not limited to, the following:

(1) Eminent domain proceedings. See, *e.g.*, Code Civ. Proc. § 1263.310 (measure of compensation is fair market value of property taken).

(2) Inheritance taxation. See, *e.g.*, Rev. & Tax. Code §§ 13311, 13951 (property taxed on basis of market value).

(3) Breach of contract of sale. See, *e.g.*, Com. Code §§ 2708, 2713 (measure of damages for nonacceptance, nondelivery, or repudiation is based on market price). Where a particular provision requires a special rule relating to proof of value, the special rule prevails over this article. See, *e.g.*, Com. Code §§ 2723-2724.

(4) Mortgage deficiency judgments. See, *e.g.*, Code Civ. Proc. § 580a (judgment calculated on fair market value of property).

(5) Gift taxation. See, *e.g.*, Rev. & Tax. Code § 15203 (gift tax computed on market value of property).

(6) Fraud in the purchase, sale, or exchange of property. See, *e.g.*, Civil Code § 3343 (measure of damages based on actual value of property).

(7) Other cases in which no statutory standard of market value or its equivalent is prescribed but in which the court is required to make a determination of market value.

This article applies only where market value is to be determined, whether for computing damages and benefits or for any other purpose. In cases involving some other standard of value, the rules provided in this article are not made applicable by statute. See Section 810 and Comment thereto.

This article applies to the valuation of real property or an interest in real property (*e.g.*, a leasehold) and of tangible personal property. It does not apply to the valuation of intangible personal property which is not an interest in real property, such as shares of stock, a partnership interest, goodwill of a business, or property protected by copyright; valuation of such property is governed by the rules of evidence otherwise applicable. However, nothing in this article precludes a court from using the rules prescribed in this article in valuation proceedings to which the article is not made applicable, where the court determines that the rules prescribed are appropriate.

Evidence Code § 812 (amended)

SEC. 5. Section 812 of the Evidence Code is amended to read:

812. This article is not intended to alter or change the existing substantive law, whether statutory or decisional, interpreting "**just compensation**" as used in **Section 19 of Article I of the State Constitution** or the terms "**fair market value**," "**damage**," or "**benefit**" as used in **Articles 4 (commencing with Section 1263.310) and 5 (commencing with Section 1263.410) of Chapter 9 of Title 7 of Part 3 of the Code of Civil Procedure**, *the meaning of "market value," whether denominated "fair market value," "market price," "actual value," or otherwise.*

Comment. Section 812 is amended to make clear that nothing in this article affects the substantive meaning given the term "market value" (as used, for example, in the statutes relating to inheritance taxation) or equivalent terms such as "market price" (breach of contract of sale), "actual value" (fraud in a transaction), "fair market value" (eminent domain), or "just

compensation," "damage," or "benefit" (eminent domain). See Comment to Section 811 for a listing of relevant statutes.

Evidence Code § 813 (amended)

SEC. 6. Section 813 of the Evidence Code is amended to read:

813. (a) The value of property may be shown only by the opinions of:

- (1) Witnesses qualified to express such opinions; ~~and~~
- (2) The owner of the property or property interest being ~~valued.~~ *valued; and*

(3) *An officer, regular employee, or partner designated by a corporation, partnership, or unincorporated association that is the owner of the property or property interest being valued, if the designee is knowledgeable as to the value of the property or property interest.*

(b) Nothing in this section prohibits a view of the property being valued or the admission of any other admissible evidence (including but not limited to evidence as to the nature and condition of the property and, in an eminent domain proceeding, the character of the improvement proposed to be constructed by the plaintiff) for the limited purpose of enabling the court, jury, or referee to understand and weigh the testimony given under subdivision (a); and such evidence, except evidence of the character of the improvement proposed to be constructed by the plaintiff in an eminent domain proceeding, is subject to impeachment and rebuttal.

Comment. Paragraph (3) is added to Section 813(a) to make clear that, where a corporation, partnership, or unincorporated association owns property being valued, a designated officer, regular employee, or partner who is knowledgeable as to the value of the property may testify to an opinion of its value as an owner, notwithstanding any contrary implications in *City of Pleasant Hill v. First Baptist Church*, 1 Cal. App.3d 384, 82 Cal. Rptr. 1 (1969). The designee may be knowledgeable as to the value of the property as a result of being instrumental in its acquisition or management or as a result of being knowledgeable as to its character and use; the designee need not qualify as a general valuation expert. Compare Section 720 (qualification as an expert witness). Nothing in Section 813 affects the authority

of the court to limit the number of expert witnesses to be called by any party (see Section 723) or to limit cumulative evidence (see Section 352).

The phrase "value of property," as used in this section, is defined in Section 811.

Evidence Code § 815 (technical amendment)

SEC. 7. Section 815 of the Evidence Code is amended to read:

815. When relevant to the determination of the value of property, a witness may take into account as a basis for ~~his~~ *an* opinion the price and other terms and circumstances of any sale or contract to sell and purchase which included the property or property interest being valued or any part thereof if the sale or contract was freely made in good faith within a reasonable time before or after the date of valuation, except that *in an eminent domain proceeding* where the sale or contract to sell and purchase includes only the property or property interest being taken or a part ~~thereof thereof~~, such sale or contract to sell and purchase may not be taken into account if it occurs after the filing of the *lis pendens*.

Comment. Section 815 is amended to take into account the expansion of the scope of this article to actions other than eminent domain and inverse condemnation. See Section 810.

Evidence Code § 817 (amended)

SEC. 8. Section 817 of the Evidence Code is amended to read:

817. (a) ~~When~~ *Subject to subdivision (b), when* relevant to the determination of the value of property, a witness may take into account as a basis for ~~his~~ *an* opinion the rent reserved and other terms and circumstances of any lease which included the property or property interest being valued or any part thereof which was in effect within a reasonable time before or after the date of ~~valuation~~ *valuation, except that in an eminent domain proceeding where the lease includes only the property or property interest being taken or a part thereof, such lease may not be taken into account in the determination of the value of property if it occurs after the filing of the lis pendens.*

(b) A witness may take into account a lease providing for a rental fixed by a percentage or other measurable portion of gross sales or gross income from a business conducted on the leased property only for the purpose of arriving at ~~his~~ *an* opinion as to the reasonable net rental value attributable to the property or property interest being valued as provided in Section 819 or determining the value of a leasehold interest.

Comment. Subdivision (a) of Section 817 is amended to add the limitation that a lease of the subject property is not a proper basis for an opinion of value of the property after the filing of the *lis pendens* in an eminent domain proceeding. This is comparable to a provision of Section 815 (sale of subject property). Nothing in subdivision (a) should be construed to limit the use of leases created after filing of the *lis pendens* to show damages to the property, such as those authorized by *Klopping v. City of Whittier*, 8 Cal.3d 39, 500 P.2d 1345, 104 Cal. Rptr. 1 (1972).

Subdivision (b) limits the extent to which a witness may take into account a lease based on gross sales or gross income of a business conducted on the property. This limitation applies only to valuation of the real property or an interest therein, or of tangible personal property, and does not apply to the determination of loss of goodwill. See Section 811 and Comment thereto; Code Civ. Proc. § 1263.510 and Comment thereto.

The phrase "value of property," as used in this section, is defined in Section 811.

Evidence Code § 822 (amended)

SEC. 9. Section 822 of the Evidence Code is amended to read:

822. Notwithstanding the provisions of Sections 814 to 821, the following matter is inadmissible as evidence and is not a proper basis for an opinion as to the value of property:

(a) The price or other terms and circumstances of an acquisition of property or a property interest if the acquisition was for a public use for which the property could have been taken by eminent domain.

(b) The price at which an offer or option to purchase or lease the property or property interest being valued or any other property was made, or the price at which such property or interest was optioned, offered, or listed for sale

or lease, except that an option, offer, or listing may be introduced by a party as an admission of another party to the proceeding; but nothing in this subdivision permits an admission to be used as direct evidence upon any matter that may be shown only by opinion evidence under Section 813.

(c) The value of any property or property interest as assessed for taxation ~~purposes~~; *purposes or the amount of taxes which may be due on the property*, but nothing in this subdivision prohibits the consideration of actual or estimated taxes for the purpose of determining the reasonable net rental value attributable to the property or property interest being valued.

(d) An opinion as to the value of any property or property interest other than that being valued.

(e) The influence upon the value of the property or property interest being valued of any noncompensable items of value, damage, or injury.

(f) The capitalized value of the income or rental from any property or property interest other than that being valued.

Comment. Subdivision (c) of Section 822 is amended to incorporate a provision formerly found in Revenue and Taxation Code Section 4986(b). Unlike the former provision, subdivision (c) does not provide for a mistrial for mention of the amount of taxes which may be due. Whether such mention is grounds for a mistrial is governed by the general principles of court discretion to declare a mistrial when evidence has been presented which is inadmissible, highly prejudicial, and cannot be corrected by an admonition to the jury.

Subdivision (d) does not prohibit a witness from testifying to adjustments made in sales of comparable property used as a basis for an opinion. *Merced Irrigation Dist. v. Woolstenhulme*, 4 Cal.3d 478, 501-03, 483 P.2d 1, 16-17, 93 Cal. Rptr. 833, 848-49 (1971).

Section 822 does not prohibit cross-examination of a witness on any matter precluded from admission as evidence if such cross-examination is for the limited purpose of determining whether a witness based an opinion in whole or in part on matter that is not a proper basis for an opinion; such cross-examination may not, however, serve as a means of placing improper matters before the trier of fact. See Evid. Code §§ 721, 802, 803.

The phrase "value of property," as used in this section, is defined in Section 811.

Revenue & Taxation Code § 4986 (amended)

SEC. 10. Section 4986 of the Revenue and Taxation Code is amended to read:

4986. (a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, may, on satisfactory proof, be canceled by the auditor on order of the board of supervisors with the written consent of the county legal adviser if it was levied or charged:

(1) More than once.

(2) Erroneously or illegally.

(3) On the canceled portion of an assessment that has been decreased pursuant to a correction authorized by Article 1 (commencing with Section 4876) of Chapter 2 of this part.

(4) On property which did not exist on the lien date.

(5) On property annexed after the lien date by the public entity owning it.

(6) On property acquired prior to September 18, 1959, by the United States of America, the state, or by any county, city, school district or other political subdivision and which, because of such public ownership, became not subject to sale for delinquent taxes.

(b) On property acquired after the lien date by the United States of America, if such property upon such acquisition becomes exempt from taxation under the laws of the United States, or by the state or by any county, city, school district or other public entity, and because of such public ownership becomes not subject to sale for delinquent taxes, no cancellation shall be made in respect of all or any portion of any such unpaid tax, or penalties or costs, but such tax, together with such penalties and costs as may have accrued thereon while on the secured roll, shall be paid through escrow at the close of escrow or, if unpaid for any reason, they shall be collected like any other taxes on the unsecured roll. If unpaid at the time set for the sale of property on the secured roll to the state, they shall be transferred to the unsecured roll pursuant to Section 2921.5,

and collection thereof shall be made and had as provided therein, except that the statute of limitations on any suit brought to collect such taxes and penalties shall commence to run from the date of transfer of such taxes, penalties and costs to the unsecured roll, which date shall be entered on the unsecured roll by the auditor opposite the name of the assessee at the time such transfer is made. The foregoing toll of the statute of limitations shall apply retroactively to all such unpaid taxes and penalties so transferred, the delinquent dates of which are prior to the effective date of the amendment of this section at the 1959 Regular Session.

If any property described in this subdivision is acquired by a negotiated purchase and sale, gift, devise, or eminent domain proceeding after the lien date but prior to the commencement of the fiscal year for which current taxes are a lien on the property, the amount of such current taxes shall be canceled and neither the person from whom the property was acquired nor the public entity shall be liable for the payment of such taxes. If, however, the property is so acquired after the commencement of the fiscal year for which the current taxes are a lien on the property, that portion only of such current taxes, together with any allocable penalties and costs thereon, which are properly allocable to that part of the fiscal year which ends on the day before the date of acquisition of the property shall be paid through escrow at the close of escrow, or if unpaid for any reason, ~~they~~, ~~they~~ shall be transferred to the unsecured roll pursuant to Section 2921.5 and shall be collectible from the person from whom the property was acquired. The portion of such taxes, together with any penalties and costs thereon, which are allocable to that part of the fiscal year which begins on the date of the acquisition of the property, shall be canceled and shall not be collectible either from the person from whom the property was acquired nor from the public entity.

In no event shall any transfer of unpaid taxes, penalties or costs be made with respect to property which has been tax deeded to the state for delinquency.

For purposes of this subdivision, if proceedings for acquisition of the property by eminent domain have not been commenced, the date of acquisition shall be the date

that the conveyance is recorded in the name of the public entity or the date of actual possession by the public entity, whichever is earlier. If proceedings to acquire the property by eminent domain have been commenced and an order of ~~immediate possession~~ *for possession prior to judgment* obtained prior to acquisition of the property by deed, the date of acquisition shall be the date upon or after which the plaintiff may take possession as authorized by ~~such the order of immediate possession~~ *for possession prior to judgment*.

~~The subject of the amount of the taxes which may be due on the property shall not be considered relevant on any issue in the condemnation action, and the mention of said subject, either on the voir dire examination of jurors, or during the examination of witnesses, or as a part of the court's instructions to the jury, or in argument of counsel, or otherwise, shall constitute grounds for a mistrial in any such action.~~

No cancellation under paragraph (2) of subdivision (a) of this section shall be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a municipal corporation without the written consent of the city attorney or other officer designated by the city council unless the city council, by resolution filed with the board of supervisors, has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council. For the purpose of this section and Section 4986.9, the date of possession shall be the date after which the plaintiff may take possession as authorized by order of the court or as authorized by a declaration of taking.

Comment. The portion of Section 4986 that related to mention of the amount of taxes which may be due on the property is superseded by Evidence Code Section 822(c). See Comment to Section 822(c). Other technical changes conform the language of Section 4986 to that used in the Eminent Domain Law (Code Civ. Proc. §§ 1230.010-1273.050).

APPENDIX X
STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

RECOMMENDATION

relating to

Psychotherapist-Patient Privilege

October 1977

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
(415) 497-1731

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Ex Officio

October 7, 1977

**To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA**

The Evidence Code was enacted in 1965 upon recommendation of the California Law Revision Commission. Pursuant to legislative authority of Resolution Chapter 130 of the Statutes of 1965, the Commission has maintained a continuing review of the Evidence Code to determine whether any technical or substantive changes are necessary.

As a result of this continuing review, the Commission submits herewith a recommendation relating to the psychotherapist-patient privilege. The recommendation proposes to expand the scope of the privilege to cover patients of certain psychotherapists who are not now covered by the privilege, to make clear that family and group therapy are included within the privilege, to repeal the exception for "criminal proceedings" (the application of which under existing law depends on the type of psychotherapist making or receiving the confidential communication), and to make technical revisions in the provisions relating to professional corporations.

Respectfully submitted,
JOHN N. McLAURIN
Chairman

RECOMMENDATION

relating to

PSYCHOTHERAPIST-PATIENT PRIVILEGE

The Evidence Code provisions relating to the psychotherapist-patient privilege were enacted in 1965¹ upon recommendation of the California Law Revision Commission.² These provisions have been the subject of several subsequent Commission recommendations, with the result that they have been amended and supplemented a number of times.³ In the course of its continuing study of the law relating to evidence, the Commission has reviewed the psychotherapist-patient privilege in the light of recent law review articles,⁴ monographs and other communications received by the Commission,⁵ and the

¹ 1965 Cal. Stats., Ch. 299. As originally enacted, the psychotherapist-patient privilege was contained in Sections 1010-1026 of the Evidence Code. Sections 1027 and 1028 were added by legislation enacted in 1970. Unless otherwise noted, all section references herein are to the Evidence Code.

² See *Recommendation Proposing an Evidence Code*, 7 Cal. L. Revision Comm'n Reports 1 (1965). For the Commission's background study on the psychotherapist-patient privilege, see *A Privilege Not Covered by the Uniform Rules—Psychotherapist-Patient Privilege*, 6 Cal. L. Revision Comm'n Reports 417 (1964).

³ See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions*, 8 Cal. L. Revision Comm'n Reports 101 (1967); *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article*, 9 Cal. L. Revision Comm'n Reports 501 (1969); *Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code*, 9 Cal. L. Revision Comm'n Reports 137 (1969). See also 1967 Cal. Stats., Ch. 650; 1970 Cal. Stats., Chs. 1396, 1397. A number of other amendments have been made in these provisions to conform to other recent enactments.

⁴ See, e.g., Louisell & Sinclair, *Reflections on the Law of Privileged Communications—The Psychotherapist-Patient Privilege in Perspective*, 59 Calif. L. Rev. 30 (1971); Comment, *Underprivileged Communications: Extension of the Psychotherapist-Patient Privilege to Patients of Psychiatric Social Workers*, 61 Calif. L. Rev. 1050 (1973); *Supreme Court of California 1972-1973, Psychotherapist-Patient Privilege*, 62 Calif. L. Rev. 406, 604 (1974); Comment, *California Evidence Code Section 771: Conflict with Privileged Communications*, 6 Pac. L.J. 612 (1975); Comment, *Tarasoff v. Regents of the University of California: Psychotherapists, Policemen and the Duty to Warn—An Unreasonable Extension of the Common Law?* 6 Golden Gate L. Rev. 229 (1975).

⁵ See, e.g., Letter, dated May 23, 1975, from Professor John Kaplan, Stanford Law School, on file in the Commission's offices. Professor Jack Friedenthal prepared a background study for the Commission. The coverage of the study includes the psychotherapist-patient privilege. See Friedenthal, *Analysis of Differences Between the Federal Rules of Evidence and the California Evidence Code* (mimeo 1976). The Commission has also had the benefit of an unpublished paper by Robert Plattner, *The California Psychotherapist-Patient Privilege* (Stanford Law School 1975).

Federal Rules of Evidence.⁶ As a result of this review, the Commission has determined that a number of revisions in the scope of the psychotherapist-patient privilege are desirable.

The Commission recognizes that any extension of the scope of protection afforded confidential communications necessarily handicaps the court or jury in its effort to make a correct determination of the facts. Hence, the social utility of any new privilege or of any extension of an existing privilege must be weighed against the social detriment inherent in the calculated suppression of relevant evidence. Applying this criterion to the psychotherapist-patient privilege, the Commission is persuaded that protection afforded by the psychotherapist-patient privilege is unduly limited and therefore makes the following recommendations.

Psychologists Licensed in Other Jurisdictions

Section 1010(b) of the Evidence Code includes within the psychotherapist-patient privilege psychologists licensed in California.⁷ However, a psychologist licensed or certified in another state or nation may give treatment in California.⁸ For this reason, Section 1010(b) should be broadened to include the patient of a psychologist licensed or certified in another state or nation.⁹ This expansion will conform subdivision (b) to subdivision (a) which covers a patient of a psychiatrist authorized to practice in "any state or nation."

⁶ The Federal Rules of Evidence do not contain a statutory psychotherapist-patient privilege. See Rule 501. However, the Supreme Court Advisory Committee's proposed rules included a statutory privilege with notes thereon. See Proposed Federal Rules of Evidence, Rule 504 (J. Schmertz ed. 1974). The Commission has consulted the proposed rules and notes in preparing this recommendation.

⁷ Section 1010(b) requires licensure under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions Code (psychologists).

⁸ Business and Professions Code Section 2912 provides:

2912. Nothing in this chapter shall be construed to restrict or prevent a person who is licensed or certified as a psychologist in another state or territory of the United States or in a foreign country or province from offering psychological services in this state for a period not to exceed 30 days in any calendar year.

⁹ For a comparable recommendation, see Supreme Court Advisory Committee's Note to Section 504 of the Proposed Federal Rules of Evidence (J. Schmertz ed. 1974).

Psychologists Employed by Nonprofit Community Agencies

Subdivision (d) of Section 2909 of the Business and Professions Code authorizes a nonprofit community agency which receives a minimum of 25 percent of its financial support from federal, state, and local governmental sources to employ unlicensed psychologists to provide psychological services to patients served by the agency. These psychologists must be registered with the Psychology Examining Committee at the time of employment¹⁰ and must possess an earned doctorate degree in psychology or in educational psychology or a doctorate degree deemed equivalent by regulation adopted by the committee.¹¹ In addition, they must have one year or more of professional experience of a type which the committee determines will competently and safely permit them to engage in rendering psychological services. In view of these stringent requirements and the need to provide protection to patients who utilize the services of nonprofit community agencies for psychotherapeutic treatment, the scope of the psychotherapist-patient privilege should be extended to include patients of the psychologists described above.

Licensed Educational Psychologists

Legislation enacted in 1970 provides for the licensure of educational psychologists.¹² A licensed educational psychologist may engage in private practice and provide substantially the same services as school psychologists who are already included within the psychotherapist-patient privilege.¹³ The qualifications for a licensed educational psychologist are more stringent than for a school psychologist, the licensed educational psychologist being required to have three years of full-time experience as a

¹⁰ The exemption from the licensing requirement is for a maximum of two years from the date of registration.

¹¹ The degree must be obtained from the University of California, Stanford University, the University of Southern California, or from another educational institution approved by the committee as offering a comparable program.

¹² See Article 5 (commencing with Section 17860) of Chapter 4 of Part 3 of Division 7 of the Business and Professions Code (licensed educational psychologists), enacted by 1970 Cal. Stats., Ch. 1305, § 5.

¹³ See Evid. Code § 1010(d).

credentialed school psychologist in the public schools or experience which the examining board deems equivalent.¹⁴ For these reasons, the psychotherapist-patient privilege should be broadened to include the licensed educational psychologist.

Psychiatric Social Workers

The psychotherapist-patient privilege does not now apply to psychiatric social workers.¹⁵ The psychiatric social worker is an important source of applied psychotherapy of a nonmedical nature in public health facilities.¹⁶ By excluding psychiatric social workers, the existing privilege statute denies the protection of the privilege to those who rely on psychiatric social workers for psychotherapeutic aid. To provide equality of treatment, the Commission recommends expansion of the psychotherapist-patient privilege to include patients receiving psychotherapy from psychiatric social workers. To assure adequate qualifications for the psychiatric social worker, the privilege should be limited to (1) those psychiatric social workers who are employed by the state and (2) those psychiatric social workers who have not less than the minimum qualifications required of a state psychiatric social worker¹⁷ and work in a city, county, or other local mental health facility that is operated as a part of the approved county Short-Doyle Plan.¹⁸

Professional Corporations

Conforming amendments to the Moscone-Knox Professional Corporation Act made clear that the relation of physician and patient exists between a medical corporation and the patient to whom it renders services,¹⁹ but failed to make clear that the relationship of psychotherapist and

¹⁴ Bus. & Prof. Code § 17862.

¹⁵ Belmont v. State Personnel Bd., 36 Cal. App.3d 518, 111 Cal. Rptr. 607 (1974).

¹⁶ See Comment, *Underprivileged Communications: Extension of the Psychotherapist-Patient Privilege to Patients of Psychiatric Social Workers*, 61 Calif. L. Rev. 1050 (1973).

¹⁷ See California State Personnel Board, Specification, Psychiatric Social Worker (rev. 1973).

¹⁸ See Welf. & Inst. Code § 5601.

¹⁹ See 1968 Cal. Stats., Ch. 1375, § 3.

patient also exists between a medical corporation and the patient to whom it renders services.²⁰ Likewise, provisions authorizing the formation of a marriage, family, or child counseling corporation neglected to make clear that the relationship of psychotherapist and patient exists between such a corporation and its patient.²¹ The application of the psychotherapist-patient privilege to a medical corporation and to a marriage, family, or child counseling corporation should be made clear and the provision located in an appropriate place in the psychotherapist-patient statute.

Group and Family Therapy

There is a question whether the psychotherapist-patient privilege applies in group and family therapy situations. Section 1012 of the Evidence Code defines a confidential communication between patient and psychotherapist to include information transmitted between a patient and psychotherapist "in confidence" and by a means which, so far as the patient is aware, discloses the information to no third persons "other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for . . . the accomplishment of the purpose for which the psychotherapist is consulted." Although these statutory exceptions would seem to include other patients present at group or family therapy treatment,²² the language might be narrowly construed to make information disclosed at a group or family therapy session not privileged.

In light of the frequent use of group and family therapy, it is important that these forms of treatment be covered by the psychotherapist-patient privilege. Group and family therapy are now used more and more in such important areas as marriage and family problems, juvenile delinquency, and alcoholism. It is a growing and promising

²⁰ Evidence Code Section 1014 was amended in 1969 to make clear that a psychological corporation is covered and again in 1972 to cover a licensed clinical social workers corporation.

²¹ See Article 6 (commencing with Section 17875) of Chapter 4 of Part 3 of Division 7 of the Business and Professions Code, enacted by 1972 Cal. Stats., Ch. 1318, § 1.

²² *Cf. Grosslight v. Superior Court*, 72 Cal. App.3d 502, 140 Cal. Rptr. 278 (1977) (privilege covers all relevant communications by intimate family members of patient to psychotherapist and to psychiatric personnel, including secretaries, who take histories for the purpose of recording statements for the use of psychotherapist).

form of psychotherapeutic aid and should be encouraged and protected by the privilege.²³ The policy considerations underlying the privilege dictate that it encompass communications made in the course of group and family therapy. Psychotherapy, including group and family therapy, requires the candid revelation of matters that may be not only intimate and embarrassing but also possibly harmful or prejudicial to the patient's interests. The Commission has been advised that persons in need of treatment sometimes refuse group or family therapy because the psychotherapist cannot assure the patient that the confidentiality of his communications will be preserved.²⁴

The Commission, therefore, recommends that Section 1012 be amended to make clear that the psychotherapist-patient privilege protects against disclosure of communications made during group and family therapy. It should be noted that, if Section 1012 were so amended, the general restrictions embodied in Section 1012 would apply to group and family therapy. Thus, communications made in the course of group or family therapy would be within the privilege only if they are made in confidence and by a means which discloses the information to no other third persons.

Application of Privilege in Criminal Proceedings

Section 1028 of the Evidence Code makes the psychotherapist-patient privilege applicable in criminal proceedings where the psychotherapist is a psychiatrist or psychologist but inapplicable in criminal proceedings where the psychotherapist is a clinical social worker, school psychologist, or marriage, family, and child counselor.²⁵ The basis for this distinction is not clear. A patient consulting a psychotherapist expects to receive the benefit of the privilege regardless of the type of psychotherapist

²³ See, e.g., Note, *Group Therapy and Privileged Communications*, 43 Ind. L.J. 93 (1967); Fisher, *The Psychotherapeutic Professions and the Law of Privileged Communications*, 10 Wayne L. Rev. 609 (1964).

²⁴ See also Meyer & Smith, *A Crisis in Group Therapy*, 32 American Psychologist 638 (1977).

²⁵ Section 1028 provides that, "[u]nless the psychotherapist is a person described in subdivision (a) or (b) of Section 1010, there is no privilege under this article in a criminal proceeding."

consulted; Section 1028 frustrates this expectation in the case of criminal proceedings.

The major effect of Section 1028 is to deny the privilege to patients who consult clinical social workers and marriage, family, and child counselors while preserving the privilege for precisely the same types of communications by patients who consult psychiatrists and psychologists. Section 1028 may also discourage potential patients from seeking treatment for mental and emotional disorders for fear of disclosure of communications in criminal proceedings. This is particularly important in drug addiction cases, but it is important in other cases as well.

Society has an interest in protecting innocent victims from injury by criminal activity, but Section 1028 is not essential to protect this interest; it is adequately protected by two other exceptions to the privilege. Evidence Code Section 1027 denies the privilege where a child under 16 is the victim of a crime and disclosure would be in the best interests of the child. Evidence Code Section 1024 denies the privilege where the patient is dangerous to himself or herself or to others. In addition, the psychotherapist may be personally liable for failure to exercise due care to disclose the communication where disclosure is essential to avert danger to others.²⁶

The Commission believes that the harm caused by Section 1028 far outweighs any benefits to society that it provides. The provision should be repealed.

Proposed Legislation

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

An act to amend Sections 1010, 1012, and 1014 of, to add Section 1010.5 to, and to repeal Section 1028 of, the Evidence Code, relating to the psychotherapist-patient privilege.

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

²⁶ Tarasoff v. Regents of University of California, 17 Cal.3d 425, 551 P.2d 334, 131 Cal. Rptr. 14 (1976).

Evidence Code § 1010 (amended)

SECTION 1. Section 1010 of the Evidence Code is amended to read:

1010. As used in this article, "psychotherapist" means:

(a) A person authorized, or reasonably believed by the patient to be authorized, to practice medicine in any state or nation who devotes, or is reasonably believed by the patient to devote, a substantial portion of ~~his~~ time to the practice of ~~psychiatry~~, *psychiatry*.

(b) A person licensed as a psychologist under Chapter 6.6 (commencing with Section 2900) of Division 2 of the Business and Professions ~~Code~~, *Code, or a person employed by a nonprofit community agency who is authorized to practice psychology under the provisions of subdivision (d) of Section 2909 of the Business and Professions Code, or a person licensed or certified as a psychologist under the laws of another state or nation.*

(c) A person licensed as a clinical social worker under Article 4 (commencing with Section 9040) of Chapter 17 of Division 3 of the Business and Professions Code, ~~when he is~~ *while* engaged in applied psychotherapy of a nonmedical nature.

(d) A person who is serving as a school psychologist and holds a credential authorizing such service issued by the state.

(e) A person licensed as a marriage, family and child counselor under Chapter 4 (commencing with Section 17800) of Part 3, Division ~~5~~ 7 of the Business and Professions Code.

(f) *A person licensed as a licensed educational psychologist under Article 5 (commencing with Section 17860) of Chapter 4 of Part 3 of Division 7 of the Business and Professions Code.*

(g) *A state employee serving as a psychiatric social worker in a mental health facility of the State of California, while engaged in applied psychotherapy of a nonmedical nature.*

(h) *A public employee having not less than the minimum qualifications required of a state psychiatric social worker who is serving as a psychiatric social worker in a city or county mental health facility operated as a part*

of the approved county Short-Doyle Plan (as defined in Section 5601 of the Welfare and Institutions Code), while engaged in applied psychotherapy of a nonmedical nature.

(i) A person having not less than the minimum qualifications required of a state psychiatric social worker who is serving as a psychiatric social worker in a mental health facility operated under contract with a city or county as part of the approved county Short-Doyle Plan (as defined in Section 5601 of the Welfare and Institutions Code), while engaged in applied psychotherapy of a nonmedical nature.

Comment. Subdivision (b) of Section 1010 is amended to recognize the possibility of treatment of a patient by a psychologist employed by a nonprofit community agency (see subdivision (d) of Section 2909 of the Business and Professions Code) or a psychologist licensed or certified in another state or nation. Where the psychologist is licensed or certified in another state or nation, the treatment may take place in California (see Section 2912 of the Business and Professions Code) or in the other state or nation.

Subdivision (f) is added to include a licensed educational psychologist as a psychotherapist for the purpose of the privilege. This addition complements subdivision (d) (school psychologist). For the qualifications for a licensed educational psychologist, see Bus. & Prof. Code § 17862.

Subdivisions (g)-(i) are added to include a psychiatric social worker as a psychotherapist for the purpose of the privilege. The prior law had been construed in *Belmont v. State Personnel Board*, 36 Cal. App.3d 518, 111 Cal. Rptr. 607 (1974), as not including a confidential communication by a patient to a psychiatric social worker within the protection of the psychotherapist-patient privilege. The addition of subdivisions (g)-(i) is based on functional similarities between presently privileged professionals and psychiatric social workers. See generally Comment, *Underprivileged Communications: Extension of the Psychotherapist-Patient Privilege to Patients of Psychiatric Social Workers*, 61 Calif. L. Rev. 1050 (1973). Subdivisions (h) and (i) bring within the privilege patients of those psychiatric social workers who work in mental health facilities that have been approved as a part of the county Short-Doyle Plan and by the State Department of Health for funding under the Short-Doyle program. See Welf. & Inst. Code §§ 5703.1, 5705. See also Welf. & Inst. Code § 5751 (Director of Health to establish standards of education and experience for

professional, administrative, and technical personnel employed in mental health services).

Evidence Code § 1010.5 (added)

SEC. 2. Section 1010.5 is added to the Evidence Code, to read:

1010.5. The relationship of a psychotherapist and patient shall exist between the following corporations and the patients to whom they render professional services, as well as between such patients and psychotherapists employed by such corporations to render services to such patients:

(a) A medical corporation as defined in Article 17 (commencing with Section 2500) of Chapter 5 of Division 2 of the Business and Professions Code.

(b) A psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code.

(c) A licensed clinical social workers corporation as defined in Article 5 (commencing with Section 9070) of Chapter 17 of Division 3 of the Business and Professions Code.

(d) A marriage, family or child counseling corporation as defined in Article 6 (commencing with Section 17875) of Chapter 4 of Part 3 of Division 7 of the Business and Professions Code.

Comment. Section 1010.5 is added to continue the second paragraph of Section 1014(c) with the exception of the definition of "persons" which is not continued. See Section 1014 and Comment thereto. Subdivisions (a) and (d) are new; they make clear the application of the psychotherapist-patient privilege to types of professional corporations not previously covered.

Evidence Code § 1012 (amended)

SEC. 3. Section 1012 of the Evidence Code is amended to read:

1012. As used in this article, "confidential communication between patient and psychotherapist" means information, including information obtained by an examination of the patient, transmitted between a patient and ~~his~~ *the* psychotherapist in the course of that relationship and in confidence by a means which, so far as

the patient is aware, discloses the information to no third persons other than those who are present to further the interest of the patient in the consultation, or those to whom disclosure is reasonably necessary for the transmission of the information or the accomplishment of the purpose for which the psychotherapist is consulted, *or persons who are participating in the diagnosis and treatment under the direction of the psychotherapist, including members of the patient's family*, and includes a diagnosis made and the advice given by the psychotherapist in the course of that relationship.

Comment. Section 1012 is amended to make clear that the scope of the section embraces marriage counseling, family counseling, and other forms of group or family therapy. However, it should be noted that communications made in the course of joint therapy are within the privilege only if they are made in confidence and by a means which discloses the information to no other third persons. The making of a communication that meets these two requirements in the course of joint therapy would not amount to a waiver of the privilege. See Evid. Code § 912(c) and (d). The waiver of the privilege by one of the patients as to that patient's communications does not affect the right of any other patient in group or family therapy to claim the privilege with respect to such other patient's own confidential communications. See Evid. Code § 912(b).

Evidence Code § 1014 (amended)

SEC. 4. Section 1014 of the Evidence Code is amended to read:

1014. Subject to Section 912 and except as otherwise provided in this article, the patient, whether or not a party, has a privilege to refuse to disclose, and to prevent another from disclosing, a confidential communication between patient and psychotherapist if the privilege is claimed by:

- (a) The holder of the privilege;
- (b) A person who is authorized to claim the privilege by the holder of the privilege; or
- (c) The person who was the psychotherapist at the time of the confidential communication, but such person may not claim the privilege if there is no holder of the privilege in existence or if *he such person* is otherwise instructed by a person authorized to permit disclosure.

The relationship of a psychotherapist and patient shall exist between a psychological corporation as defined in Article 9 (commencing with Section 2995) of Chapter 6.6 of Division 2 of the Business and Professions Code or a licensed clinical social workers corporation as defined in Article 5 (commencing with Section 9070) of Chapter 17 of Division 3 of the Business and Professions Code, and the patient to whom it renders professional services; as well as between such patients and psychotherapists employed by such corporations to render services to such patients. The word "persons" as used in this subdivision includes partnerships, corporations, associations and other groups and entities.

Comment. The last paragraph of Section 1014(a), with the exception of the definition of "persons," is continued in Section 1010.5. "Person" is defined in Section 175 to include a partnership, corporation, association, and other organizations.

Evidence Code § 1028 (repealed)

SEC. 5. Section 1028 of the Evidence Code is repealed.

1028. Unless the psychotherapist is a person described in subdivision (a) or (b) of Section 1010, there is no privilege under this article in a criminal proceeding.

Comment. Former Section 1028 is not continued.

APPENDIX XI
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Parol Evidence Rule

November 1977

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL
STANFORD, CALIFORNIA 94305
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Ex Officio

November 3, 1977

To: THE HONORABLE EDMUND G. BROWN JR.
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The Law Revision Commission was authorized by Resolution Chapter 75 of the Statutes of 1971 to make a study of whether the parol evidence rule should be revised. The Commission submits herewith its recommendation on the subject. The Commission recommends that the parol evidence rule be revised to codify case law statements of the rule; this will also have the effect of conforming general law to the Uniform Commercial Code version of the rule.

Respectfully submitted,
JOHN N. McLAURIN
Chairman

RECOMMENDATION

relating to

PAROL EVIDENCE RULE

Code of Civil Procedure Section 1856, which is the basic statutory formulation of the parol evidence rule,¹ provides:

1856. When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:

1. Where a mistake or imperfection of the writing is put in issue by the pleadings;
2. Where the validity of the agreement is the fact in dispute.

But this section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in Section 1860, or to explain an intrinsic ambiguity, or to establish illegality or fraud. The term agreement includes deeds and wills, as well as contracts between parties.

This rule serves a variety of purposes and policies, with the intent to encourage parties to reduce their agreements to writing. A written agreement minimizes the opportunity for perjury, avoids the risk of failing memories, enhances certainty in commercial dealings, and minimizes court time in resolving disputes.²

The California codification of the parol evidence rule, enacted in 1872, has not proved adequate, however. In some situations, strict application of the rule would frustrate the clear intention of the parties. For this reason, the cases have continually eroded the rule, resulting in a maze of conflicting tests and exceptions.³ As the parol

¹ For related provisions, see Civil Code §§ 1625, 1638, 1639; Com. Code § 2202.

² See discussions in Sweet, *Contract Making and Parol Evidence: Diagnosis and Treatment of a Sick Rule*, 53 Cornell L. Rev. 1036, 1047-51 (1968); Note, *The Parol Evidence Rule: Is it Necessary?*, 44 N.Y.U. L. Rev. 972, 982-85 (1969).

³ See discussion in Sweet, *Contract Making and Parol Evidence: Diagnosis and Treatment of a Sick Rule*, 53 Cornell L. Rev. 1036, 1037-44 (1968).

evidence rule exists in California today, it bears little resemblance to the statutory statement of the rule.

The existing California parol evidence rule may be summarized as follows.⁴ The rule makes inadmissible evidence of prior or contemporaneous oral or written agreements that would vary, add to, or contradict the terms of a written instrument that the parties intend to be integrated—*i.e.*, to supersede all other prior or contemporaneous negotiations and understandings and to constitute the final, complete, and exclusive embodiment of their agreement.⁵ The rule does not make inadmissible evidence of a collateral agreement that would supplement (but not contradict) the terms of a written instrument if it is shown that the written instrument was not intended by the parties to constitute an integrated agreement.⁶ The question of integration is one for the court rather than the jury.⁷ The rule does not make inadmissible extrinsic evidence offered to interpret or explain the meaning of a written instrument, whether or not integrated.⁸ The rule does not make inadmissible extrinsic evidence offered to prove that a written instrument is invalid or unenforceable because of mistake, fraud, lack of consideration, illegality, and the like.⁹

The statute should at least accurately state the law.¹⁰ An inaccurate codification of the parol evidence rule is not only misleading, it also requires a search through the reports and

⁴ For a more detailed analysis, see Jefferson, California Evidence Benchbook *The Parol Evidence Rule* §§ 32.1–32.9, at 565–86 (1972).

⁵ *Weisenburg v. Thomas*, 9 Cal. App.3d 961, 89 Cal. Rptr. 113 (1970); *Exchequer Acceptance Corp. v. Alexander*, 271 Cal. App.2d 1, 76 Cal. Rptr. 328 (1969). But see note 16 *infra*.

⁶ *Masterson v. Sine*, 68 Cal.2d 222, 436 P.2d 561, 65 Cal. Rptr. 545 (1968); *Birsner v. Bolles*, 20 Cal. App.3d 635, 97 Cal. Rptr. 846 (1971).

⁷ *Brawthen v. H & R Block, Inc.*, 28 Cal. App.3d 131, 104 Cal. Rptr. 486 (1972).

⁸ *Delta Dynamics, Inc. v. Arioto*, 69 Cal.2d 525, 446 P.2d 785, 72 Cal. Rptr. 785 (1968); *Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33, 442 P.2d 641, 69 Cal. Rptr. 561 (1968).

⁹ *Coast Bank v. Holmes*, 19 Cal. App.3d 581, 97 Cal. Rptr. 30 (1971); B. Witkin, California Evidence §§ 737–747 (2d ed. 1972 & Supp. 1977).

¹⁰ See Note, *Chief Justice Traynor and the Parol Evidence Rule*, 22 Stan. L. Rev. 547, 563 (1970): "It is time for the California state legislature to step in and rid the California Codes of the confusion for which they have become legendary. The provisions concerning parol evidence should either be rewritten or amended to conform to Chief Justice Traynor's three opinions."

treatises to find the law. The Law Revision Commission recommends that California's parole evidence rule statute be revised to conform to existing law.¹¹

Because the parole evidence provisions of the Uniform Commercial Code are substantially the same as existing California case law concerning the parole evidence rule,¹² the Commission further recommends that the Uniform Commercial Code serve as the basis for the statutory restatement of the parole evidence rule. Commercial Code Section 2202 provides:¹³

2202. Terms with respect to which the confirmatory memoranda of the parties agree or which are otherwise set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement but may be explained or supplemented

(a) By course of dealing or usage of trade (Section 1205) or by course of performance (Section 2208); and

¹¹ See Sweet, *Contract Making and Parol Evidence: Diagnosis and Treatment of a Sick Rule*, 53 Cornell L. Rev. 1036, 1061-63 (1968).

¹² See discussion in text at footnotes 14-17, *infra*.

¹³ The Official Comment to Section 2202 states:

1. This section definitely rejects:

(a) Any assumption that because a writing has been worked out which is final on some matters, it is to be taken as including all the matters agreed upon;

(b) The premise that the language used has the meaning attributable to such language by rules of construction existing in the law rather than the meaning which arises out of the commercial context in which it was used; and

(c) The requirement that a condition precedent to the admissibility of the type of evidence specified in paragraph (a) is an original determination by the court that the language used is ambiguous.

2. Paragraph (a) makes admissible evidence of course of dealing, usage of trade and course of performance to explain or supplement the terms of any writing stating the agreement of the parties in order that the true understanding of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what they intended the writing to mean.

3. Under paragraph (b) consistent additional terms, not reduced to writing, may be proved unless the court finds that the writing was intended by both parties as a complete and exclusive statement of all the terms. If the additional terms are such that, if agreed upon, they would certainly have been included in the document in the view of the court, then evidence of their alleged making must be kept from the trier of fact.

(b) By evidence of consistent additional terms unless the court finds the writing to have been intended also as a complete and exclusive statement of the terms of the agreement.

The leading California cases have drawn upon the Uniform Commercial Code provision in their formulation of the parol evidence rule.¹⁴ Use of the Uniform Commercial Code provision will assure a uniform parol evidence rule applicable both to contracts for the sale of goods and to contracts and conveyances generally.

The Uniform Commercial Code parol evidence rule makes clear a few points which, under existing general contract law, are unclear. The Uniform Commercial Code precludes evidence of consistent additional terms to explain or supplement the writing if the court determines that the additional terms are such that, if agreed upon, they would certainly have been included in the writing.¹⁵ The Uniform Commercial Code rule does not preclude a contradictory written agreement that is contemporaneous with the writing.¹⁶ The Uniform Commercial Code makes explicit that course of dealing, usage of trade, and course of performance may be used both to supplement and explain the terms of the agreement.¹⁷ The Commission believes these would be beneficial clarifications of the general law and recommends their adoption.

¹⁴ See, e.g., *Masterson v. Sine*, 68 Cal.2d 222, 228-29, 436 P.2d 561, 564-65, 65 Cal. Rptr. 545, 548-49 (1968). See discussion in Note, *The Parol Evidence Rule: Is It Necessary?*, 44 N.Y.U. L. Rev. 972, 977-82 (1969).

¹⁵ U.C.C. § 2-202, Official Comment 3. While California cases have adopted the Uniform Commercial Code rule, they have also enunciated an alternate rule of admissibility based on the Restatement of Contracts, which allows proof of a collateral agreement which might naturally have been made as a separate agreement. See, e.g., *Masterson v. Sine*, 68 Cal.2d 222, 228-29, 436 P.2d 561, 564-65, 65 Cal. Rptr. 545, 548-49 (1968) (applying both U.C.C. and Restatement tests); *Birsner v. Bolles*, 20 Cal. App.3d 635, 637-38, 97 Cal. Rptr. 846, 847 (1971) (applying both U.C.C. and Restatement tests).

¹⁶ Under existing law, however, where there are several writings between the same parties that are parts of substantially one transaction, they are to be taken together. See, e.g., *S. Jon Kreedman & Co. v. Meyers Bros. Parking-Western Corp.*, 58 Cal. App.3d 173, 180, 130 Cal. Rptr. 41, 46 (1976). See discussion in 1 B. Witkin, *Summary of California Law Contracts* § 525, at 447-48 (8th ed. 1973).

¹⁷ Course of dealing, usage of trade, and course of performance have been used as aids to interpretation by the California courts. See discussions in 1 California Commercial Law §§ 7.39-7.41, at 335-37 (Cal. Cont. Ed. Bar 1966); 1 B. Witkin, *Summary of California Law Contracts* §§ 527, 534, at 449-50, 455-56 (8th ed. 1973).

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

An act to amend Section 1856 of the Code of Civil Procedure, relating to the parol evidence rule.

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

Code of Civil Procedure § 1856 (amended)

SECTION 1. Section 1856 of the Code of Civil Procedure is amended to read:

1856. ~~When the terms of an agreement have been reduced to writing by the parties, it is to be considered as containing all those terms, and therefore there can be between the parties and their representatives, or successors in interest, no evidence of the terms of the agreement other than the contents of the writing, except in the following cases:~~ (a) *Terms set forth in a writing intended by the parties as a final expression of their agreement with respect to such terms as are included therein may not be contradicted by evidence of any prior agreement or of a contemporaneous oral agreement.*

(b) *The terms set forth in a writing described in subdivision (a) may be explained or supplemented by evidence of consistent additional terms unless the writing is intended also as a complete and exclusive statement of the terms of the agreement.*

(c) *The terms set forth in a writing described in subdivision (a) may be explained or supplemented by course of dealing or usage of trade or by course of performance.*

(d) *The court shall determine whether the writing is intended by the parties as a final expression of their agreement with respect to such terms as are included therein and whether the writing is intended also as a complete and exclusive statement of the terms of the agreement.*

1- (e) Where a mistake or imperfection of the writing is put in issue by the ~~pleadings~~, *pleadings*, *this section does not exclude evidence relevant to that issue.*

2- (f) Where the validity of the agreement is the fact in ~~dispute~~, *dispute*, *this section does not exclude evidence relevant to that issue.*

(g) ~~But this~~ *This section does not exclude other evidence of the circumstances under which the agreement was made or to which it relates, as defined in Section 1860, or to explain an extrinsic ~~ambiguity~~, *ambiguity or otherwise interpret the terms of the agreement*, or to establish illegality or fraud.*

(h) ~~The~~ *As used in this section, the* term agreement includes deeds and wills, as well as contracts between parties.

Comment. Section 1856 is amended to restate the substance of the parol evidence rule for contracts and other written instruments. Its application to other written instruments is subject to express statutory provisions relating to admissibility of extrinsic evidence. See, e.g., Probate Code § 105 (excluding oral declarations of testator); Estate of Russell, 69 Cal.2d 200, 212, 444 P.2d 353, 361, 70 Cal. Rptr. 561, 569 (1968). For the law applicable to contracts for the sale of goods, see Commercial Code Section 2202. Section 1856 governs the admissibility of parol evidence notwithstanding any implications to the contrary in Civil Code Sections 1625, 1638, and 1639 (creation and interpretation of contracts). Nothing in Section 1856 is intended to affect any statute requiring the terms of a contract to be in writing. See, e.g., Civil Code §§ 1624 (statute of frauds), 1803.1-1803.8 (retail installment contracts), 1812.52 (dance studio contracts).

Subdivisions (a) and (b) make inadmissible parol evidence in a few limited cases. These cases are discussed below.

If the written instrument is intended by the parties as the final embodiment of the terms contained in it, subdivision (a) makes parol evidence inadmissible to contradict those terms. Subdivision (a) is comparable to the introductory portion of Commercial Code Section 2202 and codifies prior law. See, e.g., American Nat'l Ins. Co. v. Continental Parking Corp., 42 Cal. App.3d 260, 116 Cal. Rptr. 801 (1974) (hearing denied). The issue of the finality of the terms of the agreement is a matter for court determination under subdivision (d). This also codifies prior law. See, e.g., Brawthen v. H & R Block, Inc., 28 Cal. App.3d 131, 104 Cal. Rptr. 486 (1972). Subdivision (a) does not make inadmissible

evidence of a contemporaneous written agreement that contradicts the terms of the main written agreement even though final. *Cf.* Civil Code § 1642 (several contracts relating to the same matters, between the same parties, and made as parts of substantially one transaction are to be taken together).

As a general rule, evidence of consistent additional terms is admissible to explain or supplement the terms of an agreement notwithstanding the finality of the terms of the agreement. Because a writing has been worked out which is final on some matters, it is not to be taken as including all the matters agreed upon unless it is also a complete and exclusive statement of all the terms. Subdivision (b) makes inadmissible evidence of consistent additional terms, whether or not reduced to writing, if the written instrument was intended by both parties as a complete and exclusive statement of all the terms. Subdivision (b) is comparable to subdivision (b) of Commercial Code Section 2202 and codifies prior law. See, *e.g.*, *Masterson v. Sine*, 68 Cal.2d 222, 436 P.2d 561, 65 Cal. Rptr. 545 (1968). The issues of completeness and exclusivity are matters for court determination under subdivision (d). This also codifies prior law. See, *e.g.*, *Brawthen v. H & R Block, Inc.*, 28 Cal. App.3d 131, 104 Cal. Rptr. 486 (1972). One indication of the completeness and exclusivity of the writing is whether the additional term is such that, if agreed upon, it would certainly have been included in the writing.

The foregoing discussion of subdivisions (a) and (b) indicates the extent of the limitations imposed by Section 1856. Except to the extent indicated in that discussion, the section does not make inadmissible evidence offered to explain or supplement the terms of a written agreement. Subdivision (c) makes clear that the parol evidence rule does not make inadmissible evidence of course of dealing, usage of trade, and course of performance to explain or supplement the terms of a writing stating the agreement of the parties, in order that the true understanding of the parties as to the agreement may be reached. Such writings are to be read on the assumption that the course of prior dealings between the parties and the usages of trade were taken for granted when the document was phrased. Unless carefully negated, they have become an element of the meaning of the words used. Similarly, the course of actual performance by the parties is considered the best indication of what the parties intended the writing to mean. Subdivision (c) thus definitely rejects (1) the premise that the language used has the meaning attributable to such language by rules of construction existing in

the law rather than the meaning which arises out of the context in which it was used and (2) the requirement that a condition precedent to the admissibility of the type of evidence specified in the subdivision is an original determination that the language used is ambiguous. Subdivision (c) is comparable to subdivision (a) of Commercial Code Section 2202 and codifies prior law. See discussions in 1 California Commercial Law §§ 7.39-7.41, at 335-37 (Cal. Cont. Ed. Bar 1966); 1 B. Witkin, Summary of California Law *Contracts* §§ 527, 534, at 449-50, 455-56 (8th ed. 1973). It is expected that the courts will look to the definitions in Commercial Code Sections 1205 and 2208 for guidance in interpreting the meaning of the terms "course of dealing," "usage of trade," and "course of performance."

Section 1856 does not make inadmissible extrinsic evidence, other than that made inadmissible by subdivisions (a) and (b), offered to interpret or explain the meaning of the terms of a written agreement, regardless whether the writing is intended by the parties as a final, complete, and exclusive statement of those terms. See subdivision (g). Evidence offered to interpret or explain the meaning of the terms of a written agreement is subject to the normal rules of admissibility and construction of instruments, including the rule that the "test of admissibility of extrinsic evidence to explain the meaning of a written instrument is not whether it appears to the court to be plain and unambiguous on its face, but whether the offered evidence is relevant to prove a meaning to which the language of the instrument is reasonably susceptible." *Pacific Gas & Elec. Co. v. G. W. Thomas Drayage & Rigging Co.*, 69 Cal.2d 33, 37, 442 P.2d 641, 644, 69 Cal. Rptr. 561, 564 (1968).

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