

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

Annual Report



December 1981

CALIFORNIA LAW REVISION COMMISSION
4000 Middlefield Road, Room D-2
Palo Alto, California 94306

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 16 of the Commission's *Reports, Recommendations, and Studies* which is scheduled to be published late in 1983.

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SUMMARY OF WORK OF COMMISSION

The Commission's major recommendation to the 1982 session proposes the enactment of a new comprehensive statute relating to enforcement of judgments. Other proposed legislation recommended in 1982 relates to nonprobate transfers, statutory bonds and undertakings, prejudgment attachment, holographic and nuncupative wills, and real property law. In addition, adoption of a joint resolution in 1982 is recommended to request the United States Congress to revise federal law to permit federal pensions and benefits to be treated like similar nonfederal pensions and benefits are treated in case of marriage dissolution.

In 1981, the Commission recommended nine bills to the Legislature. Five were enacted; the other four will be acted upon by the Legislature in 1982. The enacted bills dealt with:

- durable power of attorney.
- guardianship-conservatorship law.
- power of appointment.
- state tax liens.
- special assessment liens.

During 1982, the Commission plans to devote its attention to perfecting the legislation recommended to the 1982 Legislature and to work on three major projects:

- probate law.
- community property law.
- real property law.

Other topics will also be considered to the extent time and resources permit.

CALIFORNIA LAW REVISION COMMISSION

4000 Middlefield Road, Room D-2
Palo Alto, CA 94306
(415) 494-1335

BEATRICE P. LAWSON
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JEAN C. LOVE
Vice Chairperson

SENATOR OMER L. RAINS

ASSEMBLYMAN ALISTER McALISTER

ROBERT J. BERTON

THOMAS S. LOO

DAVID ROSENBERG

BION M. GREGORY
Ex Officio

December 1, 1981

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 1981.

At the 1981 session five of the nine bills introduced to implement the Commission's recommendations were enacted. The remaining four bills will be acted upon by the Legislature in 1982. I would like to give special recognition to Senator Omer L. Rains and to Assemblyman Alister McAlister who carried the bills recommended by the Commission in the Legislature.

Respectfully submitted,

BEATRICE P. LAWSON
Chairperson

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ANNUAL REPORT FOR THE YEAR 1981

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 member of the Commission.

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

- (1) Intensively studying complex and sometimes 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 31 topics,¹ including one topic added by the Legislature at the 1981 session.

Commission recommendations have resulted in the enactment of legislation affecting 5,914 sections of the California statutes: 2,503 sections have been added, 1,273 sections amended, and 2,138 sections repealed. Of the 137 Commission

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

recommendations submitted to the Legislature, 124 (90%)² have been enacted into law either in whole or in substantial part.³

The Commission's recommendations and studies are published in pamphlet form and later in the form of bound volumes. A list of past publications and information on where and how copies of publications may be obtained may be found at the end of this Report.

² Four two-year bills submitted to the 1981 session are not included in the calculation of this percentage.

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

1982 LEGISLATIVE PROGRAM

The Commission plans to submit recommendations on the following subjects to the 1982 Legislature:

- (1) Enforcement of judgments.¹
- (2) Interest rate on judgments.²
- (3) Nonprobate transfers.³
- (4) Statutory bonds and undertakings.⁴
- (5) Prejudgment attachment.⁵
- (6) Holographic and nuncupative wills.⁶
- (7) Marketable title of real property.⁷
- (8) Federal pensions as community property.⁸

Other recommendations will be submitted if work on them is completed in time to permit their submission to the 1982 Legislature.

¹ See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). Assembly Bills Nos. 707 and 798 were introduced at the 1981-1982 regular session to effectuate this recommendation. The bills will be acted upon by the Legislature in 1982.

² See *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). Senate Bill No. 203 was introduced at the 1981-1982 regular session to effectuate this recommendation. The bill will be acted upon by the Legislature in 1982.

³ See *Recommendation Relating to Nonprobate Transfers*, 15 Cal. L. Revision Comm'n Reports 1605 (1980). Assembly Bill No. 325 was introduced at the 1981-1982 regular session to effectuate this recommendation. The bill will be acted upon by the Legislature in 1982.

⁴ See *Recommendation Relating to Statutory Bonds and Undertakings*, 16 Cal. L. Revision Comm'n Reports 501 (1982).

⁵ See *Recommendation Relating to Attachment*, 16 Cal. L. Revision Comm'n Reports 701 (1982).

⁶ See *Recommendation Relating to Holographic and Nuncupative Wills*, 16 Cal. L. Revision Comm'n Reports 301 (1982).

⁷ See *Recommendation Relating to Marketable Title of Real Property*, 16 Cal. L. Revision Comm'n Reports 401 (1982).

⁸ See *Recommendation Relating to Federal Military and Other Federal Pensions as Community Property* (November 1981), published as Appendix IV to this Report.

MAJOR STUDIES IN PROGRESS

Enforcement of Judgments

The Commission proposed for enactment by the 1981-1982 session of the Legislature a package of bills that will provide a modern, comprehensive enforcement of judgments statute and make necessary conforming changes in existing statutes. See Assembly Bills Nos. 707 and 798 introduced in 1981. See also *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The proposed legislation will be acted upon by the Legislature in 1982. This package of bills is the result of a study conducted over the past five years. The new enforcement of judgments statute covers such matters as the manner of levy of execution, exemptions, redemption, third-party claims, judgment liens, and other creditors' remedies. A significant portion of the Commission's time and resources during 1981 were devoted to considering the comments and suggestions of interested persons and organizations relating to these bills and making necessary amendments to the bills.

The Commission also proposed for enactment by the 1981-1982 session of the Legislature its recommended legislation relating to the interest rate on judgments. See Senate Bill No. 203 introduced in 1981. See also *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). This bill would increase the interest rate on judgments to 10 percent. Amendments made in the Assembly (not recommended by the Commission) included in the bill a provision for prejudgment interest in personal injury cases. Concurrence in Assembly amendments to the bill was pending when the 1981 session of the Legislature adjourned. The Legislature will act on this bill in 1982.

The Commission plans to propose for enactment in 1982 its recommended legislation to make a comprehensive revision of the law relating to prejudgment attachment. See *Recommendation Relating to Attachment*, 16 Cal. L. Revision Comm'n Reports 701 (1982).

Probate Code

The 1980 session of the Legislature directed the Commission to make a study of the Probate Code. In response to this directive, the Commission has commenced a study of portions of the

Uniform Probate Code and the existing California law relating to those portions.

In 1981, upon Commission recommendation, the Uniform Durable Power of Attorney Act and provisions for court review of actions of an attorney in fact were enacted. 1981 Cal. Stats. ch. 511. See *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980).

The Commission recommended to the 1981-1982 legislative session legislation relating to nonprobate transfers. See Assembly Bill No. 325 introduced in 1981. See also *Recommendation Relating to Nonprobate Transfers*, 15 Cal. L. Revision Comm'n Reports 1605 (1980). This bill will be acted upon by the Legislature in 1982.

The Commission plans to propose for enactment in 1982 its recommended legislation relating to holographic and nuncupative wills. See *Recommendation Relating to Holographic and Nuncupative Wills*, 16 Cal. L. Revision Comm'n Reports 301 (1982).

The Commission is now engaged in preparing comprehensive legislation relating to wills and intestate succession.

The Commission has retained the following expert consultants to assist the Commission in its study of probate law: Professor Gail Boreman Bird, Hastings College of the Law, Professor Jesse Dukeminier, U.C.L.A. Law School, Professor Susan F. French, Law School, University of California Davis, and Professor Russell D. Niles, Hastings College of the Law. The Commission is working in close cooperation with the Estate Planning, Trust and Probate Law Section of the State Bar.

Real Property Law

The Commission has commenced active study of another major topic—whether a Marketable Title Act should be enacted in California and related matters. This study will also cover two other topics on the Commission's agenda—whether the law relating to possibilities of reverter and powers of termination should be revised, and whether Section 1464 of the Civil Code should be repealed or revised.

Professor James L. Blawie, Santa Clara Law School, has prepared an analysis of the areas and problems that might be covered in this study. Professors Paul E. Basye, Hastings College of the Law, Jesse Dukeminier, U.C.L.A. Law School, Susan F. French, Law School, University of California Davis, and Russell D. Niles, Hastings College of the Law, also serve as expert consultants.

As the first stage of this project the Commission has prepared a recommendation to expedite clearing title to land burdened by obsolete interests, such as ancient mortgages and deeds of trust. See *Recommendation Relating to Marketable Title to Real Property*, 16 Cal. L. Revision Comm'n Reports 401 (1982). The Commission plans to submit this recommendation to the 1982 legislative session.

Community Property

Another major topic under active study by the Commission is the law relating to community property. Work on this study has been divided into two phases. The first phase covers the liability of various kinds of community property and separate property to third-party creditors for debts and tort obligations of either or both spouses. Professor William A. Reppy, Jr., Duke Law School, is the Commission's principal consultant on this phase of the topic. The Commission has prepared a tentative recommendation on this topic and has reviewed the comments received. The Commission has deferred submission of a final recommendation to the Legislature until it has further considered a number of the problems in light of its conclusions on the second phase of the study.

The second phase covers the problems in connection with equal management and control of community property, the division of community property upon dissolution of marriage, and related problems. Professor Carol S. Bruch of the Law School, University of California Davis, has prepared background reports on this phase of the topic. Her reports are now under Commission study.

The Commission is working closely with the the Property Division Committee of the State Bar Family Law Section. Professor Bruce Wolk of the Law School, University of California Davis, serves as a special consultant on the tax aspects of the community property study.

The Commission plans to submit a recommendation relating to one aspect of this topic to the 1982 Legislature. See *Recommendation Relating to Federal Military and Other Federal Pensions as Community Property* (November 1981), published as Appendix IV to this Report.

CALENDAR OF TOPICS FOR STUDY

Topics Authorized for Study

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

Topics Under Active Consideration

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

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

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

Probate Code. Whether the California Probate Code should be revised, including but not limited to whether California should adopt, in whole or in part, the Uniform Probate Code.³

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

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.⁴

¹ Section 10335 of the Government Code provides that the Commission shall study, in addition to those topics which it recommends and which are approved by the Legislature, any topic which the Legislature by concurrent resolution refers to it for study.

² Authorized by 1974 Cal. Stats. res. ch. 45. See also 1972 Cal. Stats. res. ch. 27; 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 15 (1957).

³ Authorized by 1980 Cal. Stats. res. ch. 37.

⁴ Authorized by 1976 Cal. Stats. res. ch. 30. See also 1975 Cal. Stats. res. ch. 82.

For additional information on this topic, see discussion of "Real Property Law" under "Major Studies in Progress," *supra*.

Possibilities of reverter and powers of termination. Whether the law relating to possibilities of reverter and powers of termination should be revised.⁵

For additional information on this topic, see discussion of "Real Property Law" under "Major Studies in Progress," *supra*.

Civil Code Section 1464. Whether Section 1464 of the Civil Code should be revised or repealed.⁶

For additional information on this topic, see discussion of "Real Property Law" under "Major Studies in Progress," *supra*.

Community property. Whether the law relating to community property should be revised.⁷

For additional information on this topic, see discussion under "Major Studies in Progress," *supra*.

Involuntary dismissal for lack of prosecution. Whether the law relating to involuntary dismissal for lack of prosecution should be revised.⁸

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.⁹

Class actions. Whether the law relating to class actions should be revised.¹⁰

The Commission is deferring consideration of this topic because it is under study by the California Uniform State Laws Commissioners and the California State Bar.

⁵ Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 528 (1974).

⁶ Authorized by 1978 Cal. Stats. res. ch. 65.

⁷ Authorized by 1978 Cal. Stats. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 22 (1978).

⁸ Authorized by 1978 Cal. Stats. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 23 (1978).

⁹ Authorized by 1971 Cal. Stats. res. ch. 75.

¹⁰ Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 524 (1974).

Offers of compromise. Whether the law relating to offers of compromise should be revised.¹¹

Discovery in civil cases. Whether the law relating to discovery in civil cases should be revised.¹²

Procedure for removal of invalid liens. Whether a summary procedure should be provided by which property owners can remove doubtful or invalid liens from their property, including a provision for payment of attorney fees to the prevailing party.¹³

Special assessments for public improvements. Whether the acts governing special assessments for public improvements should be simplified and unified.¹⁴

Statute of limitations. Whether the law relating to statutes of limitations applicable to felonies should be revised.¹⁵

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.

Child custody, adoption, 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.¹⁶

¹¹ Authorized by 1975 Cal. Stats. res. ch. 15. See also 12 Cal. L. Revision Comm'n Reports 525 (1974).

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

¹³ Authorized by 1980 Cal. Stats. res. ch. 37.

¹⁴ Authorized by 1980 Cal. Stats. res. ch. 37.

¹⁵ Authorized by Section 3, Chapter 909, Statutes of 1981, which reads:

SEC.3. (a) It is the finding of the Legislature that since its enactment in 1872, California's basic three-year statute of limitations for felonies has been subjected to piecemeal amendment, with no comprehensive examination of the underlying rationale for the period of limitation, nor its continued suitability as applied to specific crimes or categories of crimes. In the estimation of the Legislature it is therefore desirable for the California Law Revision Commission, on a priority basis, to undertake an in-depth study of the rationales for the statutes of limitations for various felonies and the justification for the revision of the period of limitations for specific crimes or categories of crime, and to make recommendations to the Legislature based on the study.

(b) The California Law Revision Commission shall make a study of the statutes of limitations applicable to felonies, and shall submit its findings and recommendations with regard to legislation with respect thereto the Legislature, on a priority basis.

¹⁶ Authorized by 1972 Cal. Stats. res. ch. 27. See also 10 Cal. L. Revision Comm'n Reports 1122 (1971); 1956 Cal. Stats. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 29 (1957).

Rights and disabilities of minors and incompetent persons. Whether the law relating to the rights and disabilities of minors and incompetent persons should be revised.¹⁷

Eminent domain. Whether the law relating to eminent domain should be revised.¹⁸

Quiet title actions. Whether the law relating to quiet title actions should be revised.¹⁹

Abandonment or vacation of streets and highways. Whether the law relating to the abandonment or vacation of public streets and highways by cities, counties, and the state should be revised.²⁰

Evidence. Whether the Evidence Code should be revised.²¹

The Commission plans to undertake a study of the differences between the Federal Rules of Evidence and the California Evidence Code when time permits. Professor Jack Friedenthal of the Stanford Law School is the Commission's consultant on this study. The experience under the Evidence Code will be reviewed in the course of the study to determine whether any revisions are needed.

Arbitration. Whether the law relating to arbitration should be revised.²²

Escheat; unclaimed property. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised.²³

Partition. Whether the law relating to partition should be revised.²⁴

Modification of contracts. Whether the law relating to modification of contracts should be revised.²⁵

¹⁷ Authorized by 1979 Cal. Stats. res. ch. 19. See also 14 Cal. L. Revision Comm'n Reports 217 (1978).

¹⁸ Authorized by 1977 Cal. Stats. res. ch. 17. See also 1965 Cal. Stats. res. ch. 130; 1956 Cal. Stats. res. ch. 42; 4 Cal. L. Revision Comm'n Reports 115 (1963).

¹⁹ Authorized by 1978 Cal. Stats. res. ch. 65. See also 14 Cal. L. Revision Comm'n Reports 22 (1978).

²⁰ Authorized by 1978 Cal. Stats. res. ch. 65.

²¹ Authorized by 1965 Cal. Stats. res. ch. 130.

²² Authorized by 1968 Cal. Stats. res. ch. 110. See also 8 Cal. L. Revision Comm'n Reports 1325 (1967).

²³ Authorized by 1967 Cal. Stats. res. ch. 81. See also 1956 Cal. Stats. res. ch. 42.

²⁴ Authorized by 1977 Cal. Stats. res. ch. 17. See also 1959 Cal. Stats. res. ch. 218; 1956 Cal. Stats. res. ch. 42; 1 Cal. L. Revision Comm'n Reports, "1956 Report" at 21 (1957).

²⁵ Authorized by 1974 Cal. Stats. res. ch. 45. See also 1957 Cal. Stats. res. ch. 202; 1 Cal. L. Revision Comm'n Reports, "1957 Report" at 21 (1957).

Governmental liability. Whether the law relating to sovereign or governmental immunity in California should be revised.²⁶

Inverse condemnation. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including, but not limited to, liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised.²⁷

Lease law. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised.²⁸

Liquidated damages. Whether the law relating to liquidated damages in contracts generally, and particularly in leases, should be revised.²⁹

Parol evidence rule. Whether the parol evidence rule should be revised.³⁰

Powers of appointment. Whether the law relating to powers of appointment should be revised.³¹

Pleadings in civil actions. Whether the law relating to pleadings in civil actions and proceedings should be revised.³²

Topics for Future Consideration

The Commission now has a number of major studies on its calendar. Because of the substantial and numerous topics already on its calendar (one of which was added by the 1981 Legislature), the Commission does not at this time recommend any additional topics for inclusion on its calendar of topics.

²⁶ Authorized by 1977 Cal. Stats. res. ch. 17. See also 1957 Cal. Stats. res. ch. 202.

²⁷ Authorized by 1971 Cal. Stats. res. ch. 74. See also 1970 Cal. Stats. res. ch. 46; 1965 Cal. Stats. res. ch. 130.

²⁸ Authorized by 1965 Cal. Stats. res. ch. 130. See also 1957 Cal. Stats. res. ch. 202.

²⁹ Authorized by 1973 Cal. Stats. res. ch. 39. See also 1969 Cal. Stats. res. ch. 224.

³⁰ Authorized by 1971 Cal. Stats. res. ch. 75. See also 10 Cal. L. Revision Comm'n Reports 1031 (1971).

³¹ Authorized by 1979 Cal. Stats. res. ch. 19. See also 1965 Cal. Stats. res. ch. 130; 14 Cal. L. Revision Comm'n Reports 218 (1978).

³² Authorized by 1980 Cal. Stats. res. ch. 37.

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 an ex officio 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,² bar associations, and other learned bodies, and from judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in law as it deems necessary to bring the law of this state into harmony with modern conditions.³

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.⁴

The Commission's work on a recommendation is commenced after a background study has been prepared. 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. Expert consultants are also retained to advise the Commission at Commission meetings.

¹ See Gov't Code § 10301. See also Gov't Code §§ 10300-10340 (statute establishing Law Revision Commission). Gov't Code § 10301 was amended in 1981 to make the Legislative Counsel a voting member of the Commission, effective January 1, 1982. See 1981 Cal. Stats. ch. 1106. Prior to the 1981 amendment, the Legislative Counsel was a nonvoting member.

² The Commission's Executive Secretary serves as an Associate Member of the National Conference of Commissioners on Uniform State Laws.

³ See Gov't 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. Gov't Code § 10331.

⁴ See Gov't Code § 10335.

The background study is given careful consideration by the Commission and, after making its preliminary decisions on the subject, the Commission ordinarily 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 recommendation, if any, the Commission 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.⁵ In some cases, the background study is published in the pamphlet containing the recommendation.⁶

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 reports⁷ to reflect amendments⁸ 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.⁹ However, while the Commission endeavors in the Comment to explain any changes

⁵ 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.

⁶ In some cases, the background study may have been previously published in a law review. 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).

⁷ 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 Appendix II to this Report.

⁸ 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.

⁹ *E.g.*, *Van Arsdale v. Hollinger*, 68 Cal.2d 245, 249-50, 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.¹⁰ 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.¹¹

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.¹² 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.¹³ 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.

¹⁰ See, e.g., *Arellano v. Moreno*, 33 Cal. App.3d 877, 109 Cal. Rptr. 421 (1973).

¹¹ The Commission does not concur in the *Kaplan* approach to statutory construction. See *Kaplan v. Superior Court*, 6 Cal.3d 150, 158-59, 491 P.2d 1, 5-6, 98 Cal. Rptr. 649, 653-54 (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 1974 Cal. Stats. ch. 227.

¹² See Gov't Code § 10333.

¹³ 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, 1981, the membership of the Law Revision Commission is:

	<i>Term Expires</i>
Beatrice P. Lawson, Los Angeles, <i>Chairperson</i>	October 1, 1983
Jean C. Love, Davis, <i>Vice Chairperson</i>	October 1, 1979
Hon. Omer L. Rains, Ventura, <i>Senate Member</i>	*
Hon. Alistair McAlister, San Jose, <i>Assembly Member</i>	*
Vacancy, <i>Member</i>	October 1, 1983
Robert J. Berton, San Diego, <i>Member</i>	October 1, 1983
Thomas S. Loo, Los Angeles, <i>Member</i>	October 1, 1981
Vacancy, <i>Member</i>	October 1, 1985
David Rosenberg, Davis, <i>Member</i>	October 1, 1985
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 an *ex officio* member of the Commission. Legislation enacted in 1981 made the Legislative Counsel a voting member of the Commission. See 1981 Cal. Stats. ch. 1106. Prior to the 1981 enactment, the Legislative Counsel was a nonvoting member.

In January 1981, Judith Ashmann resigned after being appointed judge of the Municipal Court. In February 1981, George Y. Chinn and Warren M. Stanton resigned.

In October 1981, Governor Brown appointed David Rosenberg, Davis, to replace Warren Stanton.

As of December 1, 1981, the staff of the Commission is:

Legal

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

Administrative-Secretarial

Victoria V. Matias <i>Word Processing Technician</i>	Juan C. Rogers <i>Administrative Assistant</i>	Leta M. Skaug <i>Word Processing Technician</i>
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During 1981, the following Stanford Law School and University of Santa Clara Law School students were employed on a part-time, intermittent basis: Marcia Grimm, Robert Helm, Diane S. Makar, Betty L. Meshack, Ann Ross, and Richard Seim.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1981 LEGISLATIVE SESSION

The Commission recommended one concurrent resolution and nine bills for enactment at the 1981 session. The concurrent resolution was adopted and five of the bills were enacted.

Creditors' Remedies

Four bills relating to creditors' remedies were recommended by the Commission for enactment at the 1981 session.

Enforcement of judgments. Assembly Bills 707 and 798 were introduced by Assemblyman Alister McAlister to effectuate the Commission's recommendation on this subject. See *Tentative Recommendation Proposing the Enforcement of Judgments Law*, 15 Cal. L. Revision Comm'n Reports 2001 (1980). The bills were not acted upon by the Legislature in 1981 because the Commission was considering suggested amendments to the bills. The Legislature will act on the bills in 1982.

Interest rate on judgments. Senate Bill 203 was introduced by Senator Omer L. Rains to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Interest Rate on Judgments*, 15 Cal. L. Revision Comm'n Reports 7 (1980). The Legislature did not take final action on this bill in 1981. Senate concurrence in the Assembly amendments to the bill was pending when the 1981 session adjourned. Final legislative action will be taken in 1982.

State tax liens. Senate Bill 202, which became Chapter 217 of the Statutes of 1982, was introduced by Senator Rains to make technical changes in the legislation on this subject enacted at the 1980 session upon Commission recommendation. See *Recommendation Relating to State Tax Liens*, 15 Cal. L. Revision Comm'n Reports 29 (1980). The bill was enacted after technical amendments recommended by the Commission were made.

Guardianship-Conservatorship Law

Assembly Bill 132, which became Chapter 9 of the Statutes of 1981, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Revision of the Guardianship-Conservatorship Law*, 15 Cal. L. Revision Comm'n Reports 1463 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 132*, Senate J. (March 12, 1981), at 625,

reprinted as Appendix II to this Report. The bill was enacted after a few minor amendments recommended by the Commission were made.

Powers of Appointment

Assembly Bill 327, which became Chapter 63 of the Statutes of 1981, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Revision of the Powers of Appointment Statute*, 15 Cal. L. Revision Comm'n Reports 1667 (1980). The bill was enacted as introduced.

Special Assessment Liens

Assembly Bill 78, which became Chapter 139 of the Statutes of 1981, was introduced by Assemblyman McAlister to make clarifying and technical changes in the legislation on this subject enacted at the 1980 session upon Commission recommendation. See *Recommendation Relating to Special Assessment Liens on Property Acquired for Public Use*, 15 Cal. L. Revision Comm'n Reports 1101 (1980). The bill was enacted after amendments recommended by the Commission were made.

Estate Planning and Probate

Two bills relating to estate planning and probate were recommended by the Commission for enactment at the 1981 session.

Durable power of attorney. Assembly Bill 329, which became Chapter 511 of the Statutes of 1981, was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Uniform Durable Power of Attorney Act*, 15 Cal. L. Revision Comm'n Reports 351 (1980). See also *Report of Senate Committee on Judiciary on Assembly Bill 329*, Senate J. (August 13, 1981), at 4664, reprinted as Appendix III to this Report. The bill was enacted after a number of amendments to the bill were made upon recommendation of the Commission.

Nonprobate transfers. Assembly Bill 325 was introduced by Assemblyman McAlister to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Non-Probate Transfers*, 15 Cal. L. Revision Comm'n Reports 1605 (1980). The Legislature did not take final action on this bill in 1981. The Commission considered a number of suggested amendments to the bill and plans to recommend its enactment in 1982 after necessary amendments to the bill have been made.

Resolution Approving Topics for Study

Assembly Concurrent Resolution 5, introduced by Assemblyman McAlister and adopted as Resolution Chapter 14 of the Statutes of 1982, authorizes the Commission to continue the study of 30 topics previously authorized for study and to remove one previously authorized topic from its calendar of topics.

Assembly Bill 303, introduced by Assemblyman Byron Sher and enacted as Chapter 909 of the Statutes of 1981, directs the Commission to study one new topic: statutes of limitations applicable to felonies.

REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

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

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

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

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

(3) One decision of the California Supreme Court held statutes of this state unconstitutional.²

In *California Teachers Association v. Riles*, 29 Cal.3d 794 (1981), the court held that Education Code Sections 60315 and 60246, which authorize the State Superintendent of Public Schools to lend textbooks without charge to students attending nonprofit, nonpublic schools and which provide funds for such purpose, violate the prohibition against the appropriation of public money for the support of sectarian schools in Article IX, Section 8, and Article XVI, Section 5, of the California Constitution.

¹ This study has been carried through 29 Cal.3d (end) (advance sheet no. 27, Oct. 6, 1981) and 101 S. Ct. 3161 (advance sheet no. 18A, Aug. 1981).

² In *Committee to Defend Reproductive Rights v. Myers*, 29 Cal.3d 252 (1981), the court held that provisions of the Budget Acts of 1978, 1979, and 1980 restricting Medi-Cal funding of abortions violated the guarantees of privacy and equal protection under the California Constitution.

Olson v. Cory, as reported in the 1980 Annual Report, 15 Cal. L. Revision Comm'n Reports 1401, 1431 n.3, was further modified and now appears at 27 Cal.3d 532 (1980).

RECOMMENDATIONS

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

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

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 643</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 Code Civ. Proc. § 612.4, 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. 1496
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. 409
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, 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)	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); 14 CAL. L. REVISION COMM'N REPORTS 261 (1978)	Enacted in part. Cal. Stats. 1978, Ch. 1133. See also Cal. Stats. 1979, Ch. 66
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.

Recommendation	Action by Legislature
82. <i>Landlord-Tenant Relations</i> , 11 CAL. L. REVISION COMM'N REPORTS 951 (1973)	Enacted. Cal. Stats. 1974, Chs. 331, 332
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)	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

Recommendation	Action by Legislature
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.
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 1976. But see recommendation to 1979 session (item 118 <i>infra</i>) which was 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

Recommendation	Action by Legislature
107. <i>Nonprofit Corporation Law</i> , 13 CAL. L. REVISION COMM'N REPORTS, 2901 (1976)	Not enacted. Legislation on this subject, not recommended by the Commission, was enacted in 1978.
108. <i>Use of Keepers Pursuant to Writs of Execution</i> , 14 CAL. L. REVISION COMM'N REPORTS 49 (1978)	Enacted. Cal. Stats. 1977, Ch. 155
109. <i>Attachment Law—Effect of Bankruptcy Proceedings; Effect of General Assignments for the Benefit of Creditors</i> , 14 CAL. L. REVISION COMM'N REPORTS 61 (1978)	Enacted. Cal. Stats. 1977, Ch. 499
110. <i>Review of Resolution of Necessity by Writ of Mandate</i> , 14 CAL. L. REVISION COMM'N REPORTS 83 (1978)	Enacted. Cal. Stats. 1978, Ch. 286
111. <i>Use of Court Commissioners Under the Attachment Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 93 (1978)	Enacted. Cal. Stats. 1978, Ch. 151
112. <i>Evidence of Market Value of Property</i> , 14 CAL. L. REVISION COMM'N REPORTS 105 (1978)	Enacted in part. Cal. Stats. 1978, Ch. 294. Substance of remainder enacted in 1980. See item 127 <i>infra</i> .
113. <i>Psychotherapist-Patient Privilege</i> , 14 CAL. L. REVISION COMM'N REPORTS 127 (1978); 15 CAL. L. REVISION COMM'N REPORTS 1307 (1980)	Vetoed 1978.
114. <i>Parol Evidence Rule</i> , 14 CAL. L. REVISION COMM'N REPORTS 143 (1978)	Enacted. Cal. Stats. 1978, Ch. 150
115. <i>Attachment Law—Unlawful Detainer Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit Box; Definition of "Chose in Action,"</i> 14 CAL. L. REVISION COMM'N REPORTS 241 (1978)	Enacted. Cal. Stats. 1978, Ch. 273
116. <i>Powers of Appointment</i> (technical changes), 14 CAL. L. REVISION COMM'N REPORTS 257 (1978)	Enacted. Cal. Stats. 1978, Ch. 266
117. <i>Ad Valorem Property Taxes in Eminent Domain Proceedings</i> , 14 CAL. L. REVISION COMM'N REPORTS 291 (1978)	Enacted. Cal. Stats. 1979, Ch. 31
118. <i>Security for Costs</i> , 14 CAL. L. REVISION COMM'N REPORTS 319 (1978)	Enacted. Cal. Stats. 1980, Ch. 114

Recommendation	Action by Legislature
119. <i>Guardianship-Conservatorship Law</i> , 14 CAL. L. REVISION COMM'N REPORTS 501 (1978); 15 CAL. L. REVISION COMM'N REPORTS 451 (1980)	Enacted. Cal. Stats. 1979, Chs. 165, 726, 730. See also Cal. Stats. 1980, Ch. 246
120. <i>Effect of New Bankruptcy Law on The Attachment Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 1043 (1980)	Enacted. Cal. Stats. 1979, Ch. 77
121. <i>Confessions of Judgment</i> , 15 CAL. L. REVISION COMM'N REPORTS 1053 (1980)	Enacted. Cal. Stats. 1979, Ch. 568
122. <i>Special Assessment Liens on Property Taken for Public Use</i> , 15 CAL. L. REVISION COMM'N REPORTS 1101 (1980)	Enacted. Cal. Stats. 1980, Ch. 122. See also Cal. Stats. 1981, Ch. 139.
123. <i>Assignments for the Benefit of Creditors</i> , 15 CAL. L. REVISION COMM'N REPORTS 1117 (1980)	Enacted. Cal. Stats. 1980, Ch. 135
124. <i>Vacation of Public Streets, Highways, and Service Easements</i> , 15 CAL. L. REVISION COMM'N REPORTS 1137 (1980)	Enacted. Cal. Stats. 1980, Ch. 1050
125. <i>Quiet Title Actions</i> , 15 CAL. L. REVISION COMM'N REPORTS 1187 (1980)	Enacted. Cal. Stats. 1980, Ch. 44
126. <i>Agreements for Entry of Paternity and Support Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 1237 (1980)	Enacted. Cal. Stats. 1980, Ch. 682
127. <i>Application of Evidence Code Property Valuation Rules in Noncondemnation Cases</i> , 15 CAL. L. REVISION COMM'N REPORTS 301 (1980)	Enacted. Cal. Stats. 1980, Ch. 381
128. <i>Probate Homestead</i> , 15 CAL. L. REVISION COMM'N REPORTS 401 (1980)	Enacted. Cal. Stats. 1980, Ch. 119
129. <i>Enforcement of Claims and Judgments Against Public Entities</i> , 15 CAL. L. REVISION COMM'N REPORTS 1257 (1980)	Enacted. Cal. Stats. 1980, Ch. 215
130. <i>Uniform Veterans Guardianship Act</i> , 15 CAL. L. REVISION COMM'N REPORTS 1299 (1980)	Enacted. Cal. Stats. 1980, Ch. 89

Recommendation	Action by Legislature
131. <i>Enforcement of Obligations After Death</i> , 15 CAL. L. REVISION COMM'N REPORTS 1327 (1980)	Enacted. Cal. Stats. 1980, Ch. 124
132. <i>Interest Rate on Judgments</i> , 15 CAL. L. REVISION COMM'N REPORTS 7 (1980)	Senate Bill 203 was introduced at the 1981 legislative session to effectuate this recommendation. The bill will be acted upon by the Legislature in 1982.
133. <i>Married Women as Sole Traders</i> , 15 CAL. L. REVISION COMM'N REPORTS 21 (1980)	Enacted. Cal. Stats. 1980, Ch. 123
134. <i>State Tax Liens</i> , 15 CAL. L. REVISION COMM'N REPORTS 29 (1980)	Enacted. Cal. Stats. 1980, Ch. 600 See also Cal. Stats. 1981, Ch. 217.
135. <i>Revision of Guardianship-Conservatorship Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 1463 (1980)	Enacted. Cal. Stats. 1981, Ch. 9
136. <i>Enforcement of Judgments Law</i> , 15 CAL. L. REVISION COMM'N REPORTS 2001 (1980)	Assembly Bills 707 and 798 were introduced at the 1981 legislative session to effectuate this recommendation. The bills will be acted upon by the Legislature in 1982.
137. <i>Uniform Durable Power of Attorney Act</i> , 15 CAL. L. REVISION COMM'N REPORTS 351 (1980)	Enacted. Cal. Stats. 1981, Ch. 511
138. <i>Nonprobate Transfers</i> , 15 CAL. L. REVISION COMM'N REPORTS 1605 (1980)	Assembly Bill 325 was introduced at the 1981 legislative session to effectuate this recommendation. The bill will be acted upon by the Legislature in 1982.
139. <i>Revision of the Powers of Appointment Statute</i> , 15 CAL. L. REVISION COMM'N REPORTS 1667 (1980)	Enacted. Cal. Stats. 1981, Ch. 63

APPENDIX II

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 132

[Extract from Senate Journal for March 12, 1981 (1980-1981 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 132, the Senate Committee on Judiciary makes the following report.

Assembly Bill 132 is intended to effectuate the Recommendation of the *California Law Revision Commission Relating to Revision of the Guardianship-Conservatorship Law*, 15 Cal. L. Revision Comm'n Reports 1463 (1980). Except for the revised comment set out below, the comments contained under the various sections of Assembly Bill 132 as set out in the Commission's recommendation reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 132.

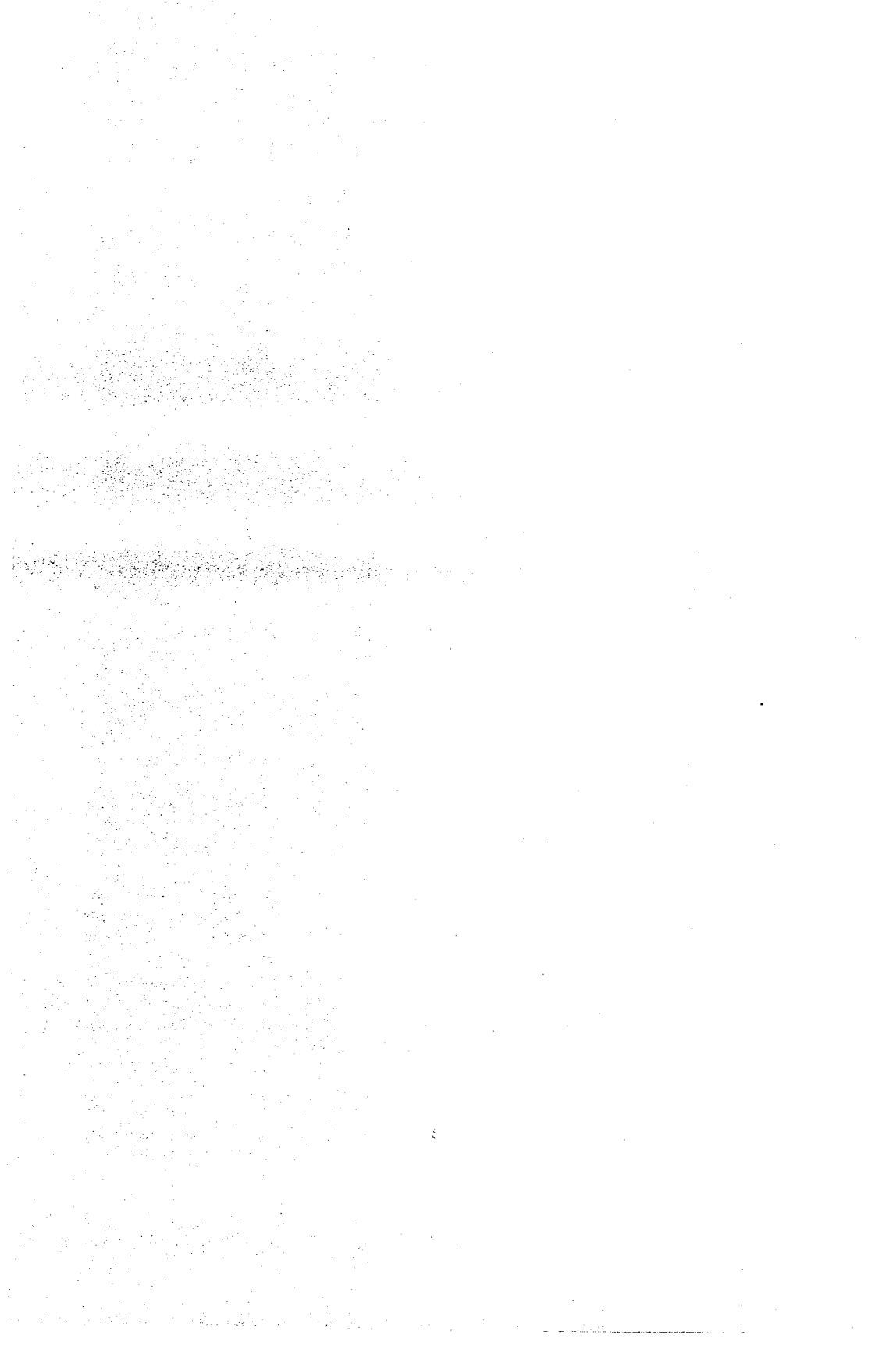
The following revised comment also reflects the intent of the Senate Committee in approving the various provisions of Assembly Bill 132.

Probate Code § 3089. Division of community property; transfer of property to conservator of estate

Comment. Section 3089 gives the court in which the conservatorship proceeding is pending authority to make an equal division of the community and quasi-community property as in a marriage dissolution proceeding. The court has discretion whether to make such a division. The spouse having the management or control of community property may consent to all or a part of such property being administered in the conservatorship estate. See Section 3051(c). Such consent may avoid the need for a division under Section 3089.

The authority to divide the community property may not be exercised unless the competent spouse refuses to comply with an order made under this article or in a separate action for support of the conservatee spouse.

The authority granted by Section 3089 will be useful, for example, where the property awarded to the conservatee spouse will be sufficient to provide for the support and maintenance of that spouse. The division in such a case will avoid the need for further proceedings to enforce the support obligation from the community property. A division of the community property does not, however, necessarily eliminate the support obligation of the competent spouse. If community property is acquired by the competent spouse after the division of the property, that community property may be ordered applied to the support of the conservatee under this article or by use of other procedures. However, a separate action is necessary to obtain future support from the separate property of the competent spouse. See Section 3092 and Comment thereto.



APPENDIX III

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 329

[Extract from Senate Journal for August 13, 1981 (1980-1981 Regular Session)]

In order to indicate more fully its intent with respect to Assembly Bill 329, the Senate Committee on Judiciary makes the following report.

Assembly Bill 329 was introduced to effectuate the "Recommendation of the California Law Revision Commission Relating to Uniform Durable Power of Attorney Act," 15 Cal. L. Revision Comm'n Reports 351 (1980). Except for the new and revised comments set out below, the comments contained under the various sections of Assembly Bill 329 as set out in the commission's recommendation reflect the intent of the Senate Committee on Judiciary in approving the bill.

The following new and revised comments also reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill 329.

Civil Code §§ 2400-2407 (added).

Uniform Durable Power of Attorney Act

Comment. This article, which supersedes former Section 2307.1, is the Uniform Durable Power of Attorney Act as approved and recommended in 1979 by the National Conference of Commissioners on Uniform State Laws. Except as noted in the Law Revision Commission Comments and Legislative Committee Comments, the text of this article is the same as the text of the Uniform Act.

Although the title of this article refers to durable powers of attorney, two sections of this article apply to powers of attorney whether durable or nondurable. See Sections 2403, 2404.

Civil Code § 2400. Definition

Comment. Subdivision (a) of Section 2400 is the same as the official text of Section 1 of the Uniform Durable Power of Attorney Act with two modifications:

(1) The reference in the Uniform Act to the principal's "disability" is omitted. Under Section 2356, it is the principal's incapacity to contract which would otherwise terminate the power of attorney.

(2) The last sentence is added. This sentence merely makes clear that the Uniform Durable Power of Attorney Act does not affect the statutory provisions governing proxies.

Subdivisions (b) and (c) are new. Subdivision (b) requires a warning statement if the durable power of attorney is executed on a printed form sold in this state for use by a person who does not have the advice of a lawyer in connection with the durable power of attorney. This requirement is designed to protect the person who

purchases a durable power of attorney form at a stationery store or similar place and executes it without consulting a lawyer. The subdivision does not apply to a case where the person has the advice of a lawyer or where the durable power of attorney is produced by typewriting, word processing equipment, or other method than printing. Subdivision (c) protects good faith transactions. Subdivision (c) does not deal with the liability, if any, of a person who sells a form in this state in violation of subdivision (b).

Civil Code § 2410. Definitions

Comment. Section 2410 defines "power of attorney" so as to limit the use of a proceeding under this article to cases where the attorney in fact either was a resident of this state when the power of attorney was created or is a resident of this state at the time the petition under this article is filed. In other cases, although a proceeding under this article is not authorized, relief may be sought in the appropriate state having jurisdiction over the attorney in fact. This limitation on the use of a proceeding under this article is consistent with the limitation established by Probate Code Section 1138(a) (proceeding with respect to a trust). The definition of "power of attorney" also limits the use of a proceeding under this article to cases where the principal is a natural person. This article does not limit the use of any other available remedy. See Section 2420. See also Section 2423.

Civil Code § 2411. Persons authorized to file petition

Comment. Section 2411 limits the persons who may file a petition under this article to the attorney in fact, the conservator of the principal, those having a present interest or an expectancy in the property of the principal, and a court investigator or public guardian. The attorney in fact is permitted a file to petition so that he or she may, for example, obtain a court review of a particular transaction.

Civil Code § 2412. Relief available

Comment. Section 2412 is adapted from portions of Probate Code Section 1138.1 (proceeding with respect to a trust). It should be noted that subdivision (d) requires a court determination that the principal has become incompetent before the court is authorized to declare the power of attorney terminated because the attorney in fact has violated or is unfit to perform the fiduciary duties under the power of attorney.

***Civil Code § 2413. Orders and decrees;
other necessary action***

Comment. Section 2413 is the same as Probate Code Section 1138.2 (proceeding with respect to a trust).

Civil Code § 2414. Venue

Comment. Section 2414 recognizes that the attorney in fact may not be a resident of this state at the time the petition is filed. See Section 2410(b) (proceeding permitted where attorney in fact is not now a resident of state if he or she was a resident at time power of attorney was created).

Civil Code § 2415. Verified petition required; contents

Comment. Section 2415 is adapted from Probate Code Section 1138.4 (proceeding with respect to a trust).

Civil Code § 2416. Dismissal of petition

Comment. Section 2416 is drawn from Probate Code Section 1138.5 (proceeding with respect to a trust).

Civil Code § 2417. Setting of petition for hearing; notice of hearing; law governing proceedings

Comment. Section 2417 is drawn from Probate Code Section 1138.6 (proceeding with respect to a trust). Subdivision (g) of Section 2417 is a new provision not found in Probate Code Section 1138.6. This new provision is designed to limit the use of this article to cases where its use is justified.

Civil Code § 2418. Appointment of guardian ad litem

Comment. Section 2418 is drawn from Probate Code Section 1138.7 (proceeding with respect to a trust).

Civil Code § 2419. Appeals

Comment. Section 2419 is drawn from Probate Code Section 1138.10 (proceeding with respect to a trust).

Civil Code § 2420. Remedies cumulative

Comment. Subdivision (a) of Section 2420 is the same as Probate Code Section 1138.11 (proceeding with respect to a trust). Subdivision (b) is new.

Civil Code § 2421. Limitation of applicability of this article by provision in power of attorney

Comment. Section 2421 is drawn from the second sentence of Probate Code Section 1138.13, but the power of attorney may limit the applicability of this article only if it is executed with the advice and approval of the principal's counsel. This limitation is designed to assure that the principal knowingly executes a power of attorney that makes this article inapplicable in whole or in part. The inclusion of a provision in the power of attorney making this article inapplicable does not affect the right to resort to any other judicial remedies that may otherwise be available.

Civil Code § 2422. Effect of provision in power of attorney making this article not applicable

Comment. Section 2422 is new.

Civil Code § 2423. Legislative intent

Comment. Section 2423 is comparable to Probate Code Section 1138.12 (proceeding with respect to a trust).

Section 5. Transitional provision

Comment. Subdivision (a) of Section 5 provides the general rule that this act does not apply to a power of attorney created prior to

the operative date of the act. This limits the applicability of Article 4 (commencing with Section 2410) of Chapter 2 of Title 9 of Part 4 of Division 3 of the Civil Code to powers of attorney created after the operative date of this act. It also prevents this act from giving greater effect to a durable power of attorney executed in this state prior to the operative date of this act than the durable power would have had under former Section 2307.1 of the Civil Code (durable power ceases to be valid one year after incapacity of principal and in any event cannot affect real property which is not the principal's residence). Subdivision (b) states a different rule for a durable power of attorney executed outside California: If California law applies under applicable choice of law rules, then the provisions of this act relating to the validity of a durable power of attorney apply without regard to whether the power was executed before or after the operative date.

APPENDIX IV
STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

RECOMMENDATION

relating to

Federal Military and Other
Federal Pensions as Community
Property

November 1981

CALIFORNIA LAW REVISION COMMISSION
Stanford Law School
Stanford, California 94305

NOTE

This recommendation includes an explanatory Comment to each section of the recommended legislation. The Comments are written as if the legislation were enacted since their primary purpose is to explain the law as it would exist (if enacted) to those who will have occasion to use it after it is in effect.

Cite this recommendation as *Recommendation Relating to Federal Military and Other Federal Pensions as Community Property*, 16 Cal. L. Revision Comm'n Reports 47 (1982).

CALIFORNIA LAW REVISION COMMISSION

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Ex Officio

November 23, 1981

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

Recent United States Supreme Court decisions interpret federal law to preclude California and other states from dividing and awarding various federal pension and insurance benefits in marital dissolution proceedings. Serious inequities occur between the spouses in marriage dissolution proceedings as a result of these recent decisions.

The Commission recommends that the Legislature adopt a resolution requesting Congress to enact legislation to the effect that federal law does not preempt the state community property law in this respect.

This recommendation is made pursuant to the Commission's authority to study the law relating to community property, 1978 Cal. Stats. res. ch. 65.

Respectfully submitted,

BEATRICE P. LAWSON
Chairperson

RECOMMENDATION

relating to

FEDERAL MILITARY AND OTHER FEDERAL PENSIONS AS COMMUNITY PROPERTY

Whether a federal pension or other federal benefits are divisible as community property at dissolution of marriage is determined by the congressional intent in the statutory scheme that provides for the benefits.¹ The leading case of *Hisquierdo v. Hisquierdo*² held that retirement benefits received by a husband under the Railroad Retirement Act of 1974 are not divisible as community property in a marital dissolution proceeding. This case was followed in 1981 when the Supreme Court held in *McCarty v. McCarty*³ that military retired pay is not divisible under the California community property laws.

Military retired pay and other federal pensions and benefits are sometimes the major asset in a marriage. The inability of the state to provide for division of these benefits in a marital dissolution proceeding or to otherwise deal with the property seriously impairs the effort to achieve fairness and equity in domestic relations.

For example, take the typical case⁴ of a marriage of some duration during which the major community assets acquired by the spouses are the family residence having an equity of \$60,000 and the husband's military pension having a value of \$120,000. At dissolution, the value of the house is divided equally between the spouses and under the recent cases the military pension is awarded to the husband, leaving the wife with \$30,000 of community assets and the husband with \$150,000. Efforts to equalize the positions of the spouses by allowing an offset for the value of the federal benefits or by providing spousal support are either impermissible⁵ or inadequate.⁶

¹ See, e.g., Gold, Norton, & Ross, Special Problems of Property Division: The Family Residence, Pension Benefits, the Small Business or Professional Practice, in 1 California Marital Dissolution Practice §§ 9.28-9.34 (Cal. Cont. Ed. Bar 1981).

² 439 U.S. 572 (1979).

³ 101 S. Ct. 2728 (1981). See also *Ridgway v. Ridgway* (decided by United States Supreme Court, Nov. 10, 1981) (military life insurance not subject to state domestic relations laws).

⁴ See, e.g., *In re Marriage of Sheldon*, 124 Cal. App. 3d 371 (1981) (retroactivity of *McCarty* limited).

⁵ *Hisquierdo v. Hisquierdo*, 439 U.S. at 588 (1979).

⁶ Reppy, *Learning to Live with Hisquierdo*, 6 Comm. Prop. J. 5 (1979).

If the state is to have a just marital property system it must have available to it the broadest possible range of options to deal with marital property, including federal military and other federal pensions and benefits. For this purpose it is necessary that Congress enact legislation that makes clear its intent not to preempt the domestic relations laws of the states as applied to federal benefits. The Law Revision Commission recommends that the Legislature adopt a joint resolution that requests the President and Congress of the United States to enact legislation recognizing and not preempting the right of the states to treat federal benefits as separate or community property in accordance with the marital property laws of the states. Legislation is currently before Congress that addresses this issue, and as such the Legislature's resolution would be timely.

The Commission's recommendation would be effectuated by adoption of the following joint resolution:

WHEREAS, The United States Supreme Court has recently held that federal law governing military retired pay preempts state law relating to division of community property; and

WHEREAS, The effect of this decision is to seriously impair the ability of the several states to provide fair and equitable rules governing the property rights of spouses during marriage and on dissolution of marriage in accordance with the marital property laws of the states; and

WHEREAS, As an example of the inequity caused by this decision consider the typical case of a military husband and a housewife who during their marriage have acquired as their major assets the family home worth \$60,000 and the military pension worth \$120,000, so that at dissolution of marriage the husband receives half the family home plus all the military pension for a total of \$150,000, while the wife receives half the family home for a total of \$30,000; and

WHEREAS, It is necessary that federal legislation be enacted authorizing the several states to characterize, divide, and otherwise treat military and other forms of retirement, pension, insurance, and like benefits provided by federal law the same as any other marital property in accordance with the marital property laws of the states in order to achieve justice in domestic relations; and

WHEREAS, Legislation has been introduced in both the United States Senate and House of Representatives to address this issue; now, therefore, be it

Resolved by the Assembly and the Senate of the State of California, jointly, That the Legislature of the State of California

respectfully requests the President and the Congress of the United States to enact legislation recognizing and not preempting the right of the several states to characterize, divide, and otherwise treat the military retirement of a member or former member of the Armed Forces of the United States or any other retirement, pension, insurance, or like benefits provided by federal law the same as any other marital property in accordance with the marital property laws of the states; and be it further

Resolved, That the Chief Clerk of the Assembly transmit copies of this resolution to the President and Vice President of the United States, to the Speaker of the House of Representatives, to each Senator and Representative from California in the Congress of the United States, and to the Chairman of each Committee of the Senate and House of Representatives that the Chief Clerk finds has under consideration legislation that addresses this issue.

PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION

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1957 Annual Report

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The Maximum Period of Confinement in a County Jail
 Notice of Application for Attorney's Fees and Costs in Domestic Relations
 Actions
 Taking Instructions to the Jury Room
 The Dead Man Statute
 Rights of Surviving Spouse in Property Acquired by Decedent While
 Domiciled Elsewhere
 The Marital "For and Against" Testimonial Privilege
 Suspension of the Absolute Power of Alienation
 Elimination of Obsolete Provisions in Penal Code Sections 1377 and 1378
 Judicial Notice of the Law of Foreign Countries
 Choice of Law Governing Survival of Actions
 The Effective Date of an Order Ruling on a Motion for New Trial
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1958 Annual Report

1959 Annual Report

Recommendation and Study Relating to:

The Presentation of Claims Against Public Entities
 The Right of Nonresident Aliens to Inherit
 Mortgages to Secure Future Advances
 The Doctrine of Worthier Title
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 Vehicles and Drunk Driving
 Time Within Which Motion for New Trial May Be Made
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Recommendation and Study Relating to:

Evidence in Eminent Domain Proceedings
 Taking Possession and Passage of Title in Eminent Domain Proceedings
 The Reimbursement for Moving Expenses When Property is Acquired for
 Public Use
 Rescission of Contracts
 The Right to Counsel and the Separation of the Delinquent From the
 Nondelinquent Minor in Juvenile Court Proceedings
 Survival of Actions

Arbitration

The Presentation of Claims Against Public Officers and Employees
Inter Vivos Marital Property Rights in Property Acquired While
Domiciled Elsewhere
Notice of Alibi in Criminal Actions

VOLUME 4 (1963)

1962 Annual Report

1963 Annual Report

1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

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

Recommendations Relating to Sovereign Immunity:

Number 1—Tort Liability of Public Entities and Public Employees

Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees

Number 3—Insurance Coverage for Public Entities and Public Employees

Number 4—Defense of Public Employees

Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles

Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers

Number 7—Amendments and Repeals of Inconsistent Special Statutes [out of print]

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

VOLUME 5 (1963)

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

A Study Relating to Sovereign Immunity

VOLUME 6 (1964)

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

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

Article I ~~(General Provisions)~~

Article II ~~(Judicial Notice)~~

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

Article IV ~~(Witnesses)~~

Article V ~~(Privileges)~~

Article VI ~~(Extrinsic Policies Affecting Admissibility)~~

Article VII ~~(Expert and Other Opinion Testimony)~~

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

Article IX ~~(Authentication and Content of Writings)~~

VOLUME 7 (1965)

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments [out of print]

Recommendation Proposing an Evidence Code [out of print]

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

VOLUME 8 (1967)

Annual Report (December 1966) includes the following recommendation:
Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes following recommendations:
Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding
Improvements Made in Good Faith Upon Land Owned by Another
Damages for Personal Injuries to a Married Person as Separate or Community Property
Service of Process on Unincorporated Associations

Recommendation and Study Relating to:
Whether Damages for Personal Injury to a Married Person Should Be Separate or Community Property
Vehicle Code Section 17150 and Related Sections
Additur
Abandonment or Termination of a Lease
The Good Faith Improver of Land Owned by Another
Suit By or Against An Unincorporated Association

Recommendation Relating to the Evidence Code:
Number 1—Evidence Code Revisions
Number 2—Agricultural Code Revisions
Number 3—Commercial Code Revisions

Recommendation Relating to Escheat

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

VOLUME 9 (1969)

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

Annual Report (December 1968) includes following recommendations:
Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees
Recommendation Relating to Additur and Remittitur
Recommendation Relating to Fictitious Business Names

Annual Report (December 1969) includes following recommendations:

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

Recommendation and Study Relating to:

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

Recommendation Relating to:

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

VOLUME 10 (1971)

Annual Report (December 1970) includes the following recommendation:

- Recommendation Relating to Inverse Condemnation: Insurance Coverage**

Annual Report (December 1971) includes the following recommendation:

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

California Inverse Condemnation Law [out of print]

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

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

VOLUME 11 (1973)

Annual Report (December 1972)

Annual Report (December 1973) includes the following recommendations:

- Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege**

Erroneously Ordered Disclosure of Privileged Information

Recommendation and Study Relating to:

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

Recommendation Relating to:

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

Tentative Recommendation Relating to:

Prejudgment Attachment

VOLUME 12 (1974)**Annual Report (December 1974) includes following recommendations:**

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

Recommendation Proposing the Eminent Domain Law**Recommendation Relating to Condemnation Law and Procedure:**

Conforming Changes in Improvement Acts

Recommendation Relating to Wage Garnishment Exemptions**Tentative Recommendations Relating to Condemnation Law and Procedure:**

The Eminent Domain Law
Condemnation Authority of State Agencies
Conforming Changes in Special District Statutes

VOLUME 13 (1976)**Annual Report (December 1975) includes following recommendations:**

Admissibility of Copies of Business Records in Evidence
Turnover Orders Under the Claim and Delivery Law
Relocation Assistance by Private Condemnors
Condemnation for Byroads and Utility Easements
Transfer of Out-of-State Trusts to California
Admissibility of Duplicates in Evidence
Oral Modification of Contracts
Liquidated Damages

Annual Report (December 1976) includes following recommendations:

Service of Process on Unincorporated Associations
Sister State Money Judgments
Damages in Action for Breach of Lease
Wage Garnishment
Liquidated Damages

Selected Legislation Relating to Creditors' Remedies [out of print]
Eminent Domain Law with Conforming Changes in Codified Sections and
Official Comments [out of print]
Recommendation and Study Relating to Oral Modification of Written
Contracts
Recommendation Relating to:
Partition of Real and Personal Property
Wage Garnishment Procedure
Revision of the Attachment Law
Undertakings for Costs
Nonprofit Corporation Law

VOLUME 14 (1978)

Annual Report (December 1977) includes following recommendations:
Use of Keepers Pursuant to Writs of Execution
Attachment Law—Effect of Bankruptcy Proceedings; Effect of General
Assignments for Benefit of Creditors
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
Parol Evidence Rule
Annual Report (December 1978) includes following recommendations:
Technical Revisions in the Attachment Law: Unlawful Detainer
Proceedings; Bond for Levy on Joint Deposit Account or Safe Deposit
Box; Definition of "Chose in Action"
Ad Valorem Property Taxes in Eminent Domain Proceedings
Security for Costs
Recommendation Relating to Guardianship-Conservatorship Law

VOLUME 15 (1980)

[Volume expected to be available September 1982]
Annual Report (December 1979) includes following recommendations:
Effect of New Bankruptcy Law on the Attachment Law
Confessions of Judgment
Special Assessment Liens on Property Taken for Public Use
Assignments for the Benefit of Creditors
Vacation of Public Streets, Highways, and Service Easements
Quiet Title Actions
Agreements for Entry of Paternity and Support Judgments
Enforcement of Claims and Judgments Against Public Entities
Uniform Veterans Guardianship Act
Psychotherapist-Patient Privilege
Enforcement of Obligations After Death

Annual Report (December 1980) includes following recommendation:

Revision of the Guardianship-Conservatorship Law: Appointment of Successor Guardian or Conservator; Support of Conservatee Spouse from Community Property; Appealable Orders
Guardianship-Conservatorship Law with Official Comments [out of print]
Tentative Recommendation Proposing the Enforcement of Judgments Law
Recommendation Relating to:
Enforcement of Judgments: Interest Rate on Judgments; Married Women as Sole Traders; State Tax Liens
Application of Evidence Code Property Valuation Rules in Noncondemnation Cases
Durable Power of Attorney
Probate Homestead
Estate Planning and Probate: Nonprobate Transfers; Revision of Powers of Appointment Statute

VOLUME 16 (1982)

[Volume expected to be available December 1983]

Annual Report (December 1981) includes the following recommendation:

Federal Military and Other Federal Pensions as Community Property
Recommendation Relating to:
Holographic and Nuncupative Wills
Marketable Title of Real Property
Statutory Bonds and Undertakings
Attachment

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