

11/1/74

Memorandum 74-67

Subject: Annual Report

Attached is a draft of the Annual Report for the year 1974. This report must be approved for printing at the November meeting. Please mark your editorial revisions of the attached copy and return it to the staff at the meeting.

We have listed a number of recommendations in the Appendices (page 506 of the attached Report) and in the 1975 Legislative Program (page 512). We will revise these portions of the report and various footnotes throughout the report to reflect the Commission's decisions with respect to the recommendations listed.

We propose to drop one topic--right of nonresident aliens to inherit. (See page 522.)

The new topics, approved at the last meeting, are described on pages 522a-522f of the draft. You should read this portion since it is new material.

The Report on Statutes Repealed by Implication or Held Unconstitutional (pages 531a-531c) is the same as presented at the last meeting (with revisions made by the Commission). We are following the Gordon case to determine whether the Supreme Court will grant a rehearing and will make any necessary adjustments in light of the action of the court.

You should find the summary of legislative action on Commission recommendations (pages 533-545) of interest. I am very proud of the outstanding record of the Commission over the years in securing enactment of its recommendations.

Respectfully submitted,

John H. DeMouilly  
Executive Secretary



STATE OF CALIFORNIA

# CALIFORNIA LAW REVISION COMMISSION

Annual Report

December 1974

CALIFORNIA LAW REVISION COMMISSION

Stanford Law School

Stanford, California 94305

STATE OF CALIFORNIA

RONALD REAGAN, Governor

CALIFORNIA LAW REVISION COMMISSION

STANFORD LAW SCHOOL  
STANFORD, CALIFORNIA 94305  
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- MARC SANDSTROM  
*Chairman*
- JOHN N. McLAURIN  
*Vice Chairman*
- SENATOR ROBERT S. STEVENS
- ASSEMBLYMAN ALISTER McALISTER
- JOHN J. BALLUFF
- NOBLE K. GREGORY
- JOHN D. MILLER
- THOMAS E. STANTON, JR.
- HOWARD E. WILLIAMS
- GEORGE H. MURPHY  
*Ex Officio*

December 1, 1974

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

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1974.

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

Respectfully submitted,  
MARC SANDSTROM  
Chairman



## APPENDICES

- I. Report of Senate Committee on Judiciary  
on Assembly Bill 2948
- II. Report of Assembly Committee on Judiciary  
on Assembly Bill 2830
- III. Report of Senate Committee on Judiciary  
on Assembly Bills 2830 and 2831
- IV. Recommendation Relating to Payment of  
Judgments Against Local Public Entities
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Exemptions
- X. Recommendation Relating to Inverse Condemnation--  
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- XI. Recommendation Relating to Creditors' Remedies--  
Liability for Wrongful Attachment

PUBLICATIONS OF THE CALIFORNIA LAW  
REVISION COMMISSION.....



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## REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1974

### FUNCTION AND PROCEDURE OF COMMISSION

The California Law Revision Commission consists of one Member of the Senate, one Member of the Assembly, seven members appointed by the Governor with the advice and consent of the Senate, and the Legislative Counsel who is ex officio a nonvoting member.<sup>1</sup>

The principal duties of the Law Revision Commission are to:

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

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, and other learned bodies, judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this state into harmony with modern conditions.<sup>2</sup>

The Commission is required to file a report at each regular session of the Legislature containing a calendar of topics selected by it for study, listing both studies in progress and topics intended for future consideration. The Commission may study only topics which the Legislature, by concurrent resolution, authorizes it to study.<sup>3</sup>

Each of the Commission's recommendations is based on a research study of the subject matter concerned. In some cases, the study is prepared by a member of the Commission's staff, but the majority of the studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the

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

<sup>2</sup> See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the California Supreme Court or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

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

considerable background necessary to understand the specific problems under consideration.

The research study includes a discussion of the existing law and the defects therein and suggests possible methods of eliminating those defects. The study is given careful consideration by the Commission and, after making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.<sup>4</sup> If the research study has not been previously published,<sup>5</sup> it usually is published in the pamphlet containing the recommendation.

The 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 reports<sup>6</sup> to reflect amendments<sup>7</sup> 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.<sup>8</sup> While the

<sup>4</sup> Occasionally one or more members of the Commission may not join in all or part of a recommendation submitted to the Legislature by the Commission.

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

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

<sup>7</sup> 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.

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

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Commission endeavors in the Comment to explain any changes in the law made by the section, the Commission does not claim that every inconsistent case is noted in the Comment, nor can it anticipate judicial conclusions as to the significance of existing case authorities.<sup>9</sup> 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.<sup>10</sup>

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the state.<sup>11</sup> Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature.<sup>12</sup> The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the state.

Commission recommendations have resulted in the enactment of legislation affecting 3,317 sections of the California statutes: 1,340 sections have been added, 627 sections amended, and 1,350 sections repealed. For a summary of the legislative action on Commission recommendations, see ~~1974-1975~~

*"Legislative Action on Commission Recommendations" infra.*

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

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

<sup>11</sup> See CAL. GOVT. CODE § 10333.

<sup>12</sup> For a step by step description of the procedure followed by the Commission in preparing the 1963 governmental liability statute, see DeMouly, *Fact Finding for Legislation: A Case Study*, 50 A.B.A.J. 285 (1964). The procedure followed in preparing the Evidence Code is described in 7 CAL. L. REVISION COMM'N REPORTS 3 (1965).

### PERSONNEL OF COMMISSION

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

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

4/ In August 1970, Mr. Jack I. Horton resigned from the Commission's legal staff to accept the position of Executive Secretary of the Guam Law Revision Commission. In 4/ September 1970, Mrs. JoAnne Friedenthal was appointed as a member of the Commission's legal staff. During January-July 1974, Michael Rand McQuinn also was employed as a member of the legal staff; he resigned to accept a position with the Department of Justice in Washington, D.C.

\* The legislative members of the Commission serve at the pleasure of the appointing power.  
 † The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

### SUMMARY OF WORK OF COMMISSION

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

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

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

(3) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the state have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.<sup>3</sup>

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

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

seven

The Commission held ~~two~~ two-day meetings and ~~two~~ three-day meetings in 1973.

three

~~See pages 1123-1124 *infra*  
See pages 1112-1121 *infra*  
See pages 1125-1126 *infra*~~

<sup>1</sup> See "Legislative History of Recommendations Submitted to 1974 Legislature" infra.

<sup>2</sup> See discussion on following pages.

<sup>3</sup> See "Report on Statutes Repealed by Implication or Held Unconstitutional" infra.

<sup>4</sup> See "Topics for Future Consideration" infra.

## 1975 LEGISLATIVE PROGRAM

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

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

(2) Recommendation and Study Relating to Oral Modification of Written Contracts (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 1 (1976). 301

(3) Recommendation Relating to [REDACTED] Payment of Judgments Against Local Public Entities (September 1974), [REDACTED]

[REDACTED] published as Appendix II to this Report.

(4) Recommendation Relating to View by Trier of Fact in a Civil Case (October 1974), [REDACTED]

[REDACTED] published as Appendix V to this Report.

(5) Recommendation Relating to the Good Cause Exception to the Physician-Patient Privilege (October 1974), [REDACTED]

[REDACTED] published as Appendix VI to this Report.

(6) Recommendation Relating to Admissibility of Copies of Business Records in Evidence (December 1974), [REDACTED]

[REDACTED] published as Appendix VII to this Report.

(7) Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments (December 1974), [REDACTED]

[REDACTED] published as Appendix VIII to this Report.

(8) Recommendation Relating to Wage Garnishment Exemptions (December 1974), [REDACTED]

[REDACTED] published as Appendix IX to this Report.

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

401 / (10) Recommendation Relating to Inverse Condemnation--Claim Presentation Requirement (December 1974), published as Appendix X of this Report.

(11) Recommendation Relating to Creditors' Remedies--Liability for Wrongful Attachment (December 1974), published as Appendix XI of this Report.

The Commission also recommends that one topic be removed

[REDACTED]  
from its calendar and that five new topics be added to its calendar (see this Report infra).

## MAJOR STUDIES IN PROGRESS

### Creditors' Remedies

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

The Commission, working with a special committee of the State Bar,<sup>2</sup> is now actively considering this topic. Professor William D. Warren, Stanford Law School, and Professor Stefan A. Riesenfeld, Boalt Hall Law School, University of California at Berkeley, are serving as consultants to the Commission.

As a result of its study of creditors' remedies, the Commission submitted recommendations to the 1971,<sup>3</sup> 1972,<sup>4</sup> 1973,<sup>5</sup> 1974<sup>6</sup>

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

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

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

<sup>4</sup> *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). The recommended legislation—Senate Bill 88 of the 1972 Regular Session—was not enacted, and a revised recommendation on this subject was submitted to the 1973 Legislature. See note 5 *infra*.

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

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

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

### Condemnation Law and Procedure

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

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

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

# CALENDAR OF TOPICS FOR STUDY

## Topics Authorized for Study

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

### Topics Under Active Consideration

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

**Creditors' remedies.** Whether the law relating to 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.<sup>2</sup>

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

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

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

See also *Recommendation Relating to Attachment, Garnishment, and Exemptions From Execution: Employees' Earnings Protection Law*, 10 CAL. L. REVISION COMM'N REPORTS 701 (1971). For a legislative history of this recommendation, see 11 CAL. L. REVISION COMM'N REPORTS 1024 (1973). The recommended legislation was not enacted. The Commission submitted a revised recommendation to the 1973 Legislature. See *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). For a legislative history of this recommendation, see [redacted]. The recommended legislation was not enacted. The Commission will submit a revised recommendation to the 1975 Legislature. See *Recommendation Relating to Wage Garnishment* (December 1974), [redacted].

[redacted] published as Appendix II to this Report.

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

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

See also *Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973). For a legislative history of this recommendation, see [redacted]. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. [redacted].

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

this Report infra.

Exemptions

this Report infra.

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this Report infra.

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

**Nonprofit corporations.** Whether the law relating to nonprofit corporations should be revised.<sup>4</sup>

<sup>3</sup> Authorized by Cal. Stats. 1955, Res. Ch. 130, at 5289; see also Cal. Stats. 1956, Res. Ch. 42, at 263; 4 CAL. L. REVISION COMM'N REPORTS 115 (1963).

See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings, Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings, Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. L. REVISION COMM'N REPORTS at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS, Legislative History at 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Ch. 1613 (taking possession and passage of title). The substance of two of these recommendations was incorporated in legislation enacted in 1965. Cal. Stats. 1965, Ch. 1151 (evidence in eminent domain proceedings); Ch. 1649 and Ch. 1650 (reimbursement for moving expenses).

See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. L. REVISION COMM'N REPORTS 701 (1963). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 213 (1963). See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1313 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1104 (exchange of valuation data).

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

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

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

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

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

this Report  
infra.

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

**Partition procedures.** Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales.<sup>6</sup>

**Modification of contracts.** Whether the law relating to modification of contracts should be revised.<sup>7</sup>

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

REPORTS 107 (1969).

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

this Report infra.

<sup>6</sup> Authorized by Cal. Stats. 1959, Res. Ch. 218, at 5792; see also Cal. Stats. 1956, Res. Ch. 42, at 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957). The Commission has retained Mr. Garrett H. Elmore as the consultant on this topic. [redacted]

See *Recommendation Relating to Partition Procedure* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 101 (1976). The Commission plans to submit this recommendation to the 1975 Legislature.

<sup>7</sup> Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957). For a background study prepared by a former part-time member of the Commission's staff, see Timbie, *Modification of Written Contracts in California*, 23 HASTINGS L.J. 1549 (1972). This study does not necessarily represent the views of the Commission; the Commission's action will be reflected in its own recommendation.

See *Recommendation and Study Relating to Oral Modification of Written Contracts* (January 1975), to be reprinted in 13 CAL. L. REVISION COMM'N REPORTS 1 (1976). This recommendation will be submitted to the 1975 Legislature.

<sup>8</sup> Authorized by Cal. Stats. 1967, Res. Ch. 81, at 4592; see also Cal. Stats. 1956, Res. Ch. 42, at 263.

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

this Report infra.

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

published as Appendix VIII to this Report.

See also *Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments* (December 1974), [redacted]. This recommendation will be [redacted]

**Child custody and related matters.** Whether the law relating to custody of children, adoption, guardianship, freedom from parental custody and control, and related matters should be revised.<sup>9</sup>

### Other Topics Authorized for Study

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

**Parol evidence rule.** Whether the parol evidence rule should be revised.<sup>1</sup>

**Prejudgment interest.** Whether the law relating to the award of prejudgment interest in civil actions and related matters should be revised.<sup>2</sup>

**Arbitration.** Whether the law relating to arbitration should be revised.<sup>3</sup>

### Topics Continued on Calendar for Further Study

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

**Governmental liability.** Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.<sup>4</sup>

submitted to the 1975 Legislature.

<sup>9</sup> Authorized by Cal. Stats. 1972, Res. Ch. 27. See 10 CAL. L. REVISION COMM'N REPORTS 1122 (1971). See also Cal. Stats. 1956, Res. Ch. 42, at 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957).

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

<sup>1</sup> Authorized by Cal. Stats. 1971, Res. Ch. 75; see also 10 CAL. L. REVISION COMM'N REPORTS 1031 (1971).

<sup>2</sup> Authorized by Cal. Stats. 1971, Res. Ch. 75.

<sup>3</sup> Authorized by Cal. Stats. 1968, Res. Ch. 110, at 3103; see also 8 CAL. L. REVISION COMM'N REPORTS 1325 (1967).

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

<sup>4</sup> Authorized by Cal. Stats. 1957, Res. Ch. 202, at 4589.

See *Recommendations Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. L. REVISION COMM'N REPORTS 801, 1001, 1201, 1301, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. L. REVISION COMM'N REPORTS 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. L. REVISION COMM'N REPORTS 1 (1963). See also Cal. Stats. 1963, Ch. 1681 (tort liability of public entities and public employees), Ch. 1715 (claims, actions and judgments against public entities and

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

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

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

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

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

See also Recommendation Relating to ~~\_\_\_\_\_~~ Payment of Judgments Against Local Public Entities (September 1974), ~~\_\_\_\_\_~~. This recommendation will be submitted to the 1975 Legislature.

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

published as Appendix IV to this Report.

[transfer rest of footnote to this page]

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

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

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

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

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

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

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

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

See also *Recommendation Relating to View by Trier of Fact in a Civil Case* (October 1974), [redacted] (1974); *Recommendation Relating to the "Good Cause" Exception to the Physician-Patient Privilege* (October 1974), [redacted] COMM'N REPORTS 500 (1974); *Recommendation Relating to Admissibility of Copies of Business Records in Evidence* (December 1974), [redacted].

These recommendations will be submitted to the 1975 Legislature.

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

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

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VI to this Report.

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VII to this  
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**Unincorporated associations.** Whether the law relating to suit by and against partnerships and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members should be revised.<sup>4</sup>

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

130, at 5289.

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

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

See also *Recommendation Relating to [redacted] Payment of Judgments Against Local Public Entities* (September 1974), [redacted]. This recommendation will be submitted to the 1975 Legislature.

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

<sup>4</sup> Authorized by Cal. Stats. 1966, Res. Ch. 9, at 241; see also Cal. Stats. 1957, Res. Ch. 202, at 4589.

See *Recommendation and Study Relating to Suit by or Against an Unincorporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1324.

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

<sup>5</sup> Authorized by Cal. Stats. 1965, Res. Ch. 130, at 5289; see also Cal. Stats. 1957, Res. Ch.

published as Appendix  
II to this Report.

### Topics to Be Removed From Calendar of Topics

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

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

### Topics for Future Consideration

~~Attention primarily to (1) creditors' remedies and (2) abandonment law and procedure. Legislative committees have indicated that they wish these topics to be given priority. Because of the limited resources available to the Commission and the substantial topics already on its agenda, the Commission does not~~

<sup>6</sup>202, at 4589.

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

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

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

See also *Recommendations Relating to Landlord-Tenant Relations*, 11 CAL. L. REVISION COMM'N REPORTS 931 (1973). This report contains two recommendations: *Abandonment of Leased Real Property* and *Personal Property Left on Premises Vacated by Tenant*. For a legislative history of these recommendations, see [redacted]. The recommended legislation was enacted. See Cal. Stats. 1974, Chs. 331, 332.

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

<sup>8</sup>Authorized by Cal. Stats. 1969, Res. Ch. 224, at 3888. See *Recommendation and Study Relating to Inheritance Rights of Nonresident Aliens*, 11 CAL. L. REVISION COMM'N REPORTS 421 (1973). For a legislative history of this recommendation, see [redacted]. The recommended legislation was enacted. See Cal. Stats. 1974, Ch. 425.

this Report infra.

this Report supra.

this Report infra.

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

A study to determine whether the law relating to transfer of out-of-state trusts to California should be revised. In 1971, legislation was enacted to provide a comprehensive procedure for the transfer of a California trust to another jurisdiction.<sup>1</sup> However, no California statute provides a procedure for the transfer of trusts from other states into California. One writer<sup>2</sup> has noted cases in which California probate courts have accepted jurisdiction of trusts established by will in other states, but several appellate court cases suggest that probate courts should restrict their jurisdiction to matters specifically provided for by statute.<sup>3</sup>

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

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

The basic statute permitting maintenance of class actions is Code of Civil Procedure Section 382. This section merely contains a statement that, when the question is one of a common or general interest or

1. Prob. Code §§ 1132, 1139 et seq. The apparent intent of the Legislature in adopting this legislation was to facilitate the transfer of the place of administration, or of the assets, when desirable to deal with one of the problems created by the present day mobility of population. See Review of Selected 1971 California Legislation, 3 Pac. L.J. 191, 201 (1972).
2. 3 N. Condee, California Practice § 1850 (1964).
3. See Wells Fargo Bank v. Superior Court, 32 Cal.2d 1, 193 P.2d 721 (1948); Oil Well Supply Co. v. Superior Court, 9 Cal. App.2d 624, 51 P.2d 908 (1935); Gillette v. Gillette, 122 Cal. App. 640, 10 P.2d 760 (1932).

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

The court in the Vasquez case indicated that the California courts could also refer to the procedural devices set out in Rule 23 of the Federal Rules of Civil Procedure for guidance as to the procedure to be followed in California cases. In City of San Jose v. Superior Court,<sup>5</sup> the Supreme Court specifically stated, "This court has urged trial courts to be procedurally innovative, encouraging them to incorporate procedures from outside sources in determining whether to allow the maintenance of the particular class suit." The interpretation of Federal Rule 23 has engendered substantial litigation. The decision in Eisen v. Carlisle & Jacquelin,<sup>6</sup> for example, raises substantial questions with regard to the requirement of notice in class actions, the viability of the class suit in particular cases, and the nature of allowable recovery. A study of the law relating to class actions in California by the Commission will be useful in determining whether clarifying or substantive changes are needed.

A study to determine whether the law relating to offers of compromise should be revised. Code of Civil Procedure Section 998 provides a procedure whereby the award of costs to a party making an offer of compromise depends upon the other party's failure to obtain "a more favorable judgment." Although the statute specifically sets forth the procedures to be employed in making and acceptance of the offer, the

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

5. 12 Cal.3d 447, \_\_\_ P.2d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1974).

6. \_\_\_ U.S. \_\_\_, 94 S. Ct. 2140 (1974).

statute fails to deal with some issues raised by the phrase "a more favorable judgment." It has been pointed out to the Commission by one correspondent<sup>7</sup> that the question of whether an offer under Section 998 carries with it court costs incurred to the date of the offer is not specifically answered by the statute. In other words, if the defendant offers to settle for \$600 and the costs of the plaintiff at the time of the offer are \$99.45, how high can the judgment be and still permit the defendant to obtain the benefit of Section 998? Is a judgment of \$501 "a more favorable judgment"? Although Section 998 was enacted in its present form in 1971, a case decided under similar language in 1963<sup>8</sup> would seem to be applicable in this situation. That case held that costs to the date of defendant's offer are to be added to the amount of the judgment in determining whether plaintiff obtained a more favorable judgment. Since Section 998 does not specifically deal with the question and since the Bennett case was decided before the enactment of the present statute, it would appear to be useful for the Commission to study the question of whether the terms of Section 998 should be clarified.

An additional consideration is whether Section 998 ought to be revised to deal with the problem of a joint offer to several plaintiffs. At the present time, the statute provides no guidelines in the case involving a number of plaintiffs. In Randles v. Lowry,<sup>9</sup> the court held that an offer of compromise generally to all of several plaintiffs was not effective. It would seem helpful to study Section 998 with a view toward determining whether some provision should be made for a case involving multiple plaintiffs.

A study to determine whether the law relating to discovery in civil cases should be revised. In 1957, California adopted a comprehensive set of provisions--Code of Civil Procedure Sections 2016-2035<sup>10</sup>--dealing

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7. See letter from James B. Merzon to Marc Sandstrom, Chairman, California Law Revision Commission, dated March 21, 1974, on file, California Law Revision Commission, Stanford Law School, Stanford California 94305.
  8. Bennett v. Brown, 212 Cal. App.2d 685, 28 Cal. Rptr. 485 (1963).
  9. 4 Cal. App.3d 68, 84 Cal. Rptr. 321 (1970).
  10. Cal. Stats. 1957, Ch. 1904, § 3. These sections have been amended in various ways through the years. Code of Civil Procedure Section 2036, which sets out the requirement of a showing of good cause to obtain discovery, was added by Cal. Stats. 1963, Ch. 1744, § 2.

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with discovery based upon the Federal Rules of Civil Procedure. Since that time, the federal discovery rules have been amended to deal with specific problems which have arisen under the rules.<sup>11</sup>

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

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

Deposition of a corporation. Under California Code of Civil Procedure Section 2019(a), only "a person" can be deposed. There is no specific provision for deposition of a corporation. If a party wishes to obtain information known to corporate employees, he must know precisely which employees have the information in order to use a deposition effectively. If the corporation is a party to the action, the opposing party may send a set of interrogatories pursuant to Code of Civil Procedure Section 2030, and the corporation must furnish such information as is available to it. However, a deposition is often a more satisfactory

11. 398 U.S. 977 (1970).

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

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

method of eliciting information than is a set of interrogatories. Furthermore, if the corporation is not a party, interrogatories are not permitted.

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

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

Adoption of the federal procedure in California might be desirable.

A study to determine whether the law relating to possibilities of reverter and powers of termination should be revised. California cases have generally recognized and enforced deed restrictions creating automatic reversions on the occurrence of a condition (possibility of reverter) and rights of reentry upon a condition subsequent (power of

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termination).<sup>14</sup> It has been held that the time limit imposed by the rule against perpetuities does not apply to possibilities of reverter and powers of termination even though the rule would be applicable if the grantor had provided that, upon the happening of the condition, the title would pass to someone other than the grantor or his heirs.<sup>15</sup> Thus, when the fee is limited by a possibility of reverter or a right of termination, there is a permanent restriction on the property. The problem presented is whether the existence of such a limitation of the fee unduly burdens the property rendering it unmarketable or difficult to finance.<sup>16</sup>

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

For a number of years, there has been a growing movement to limit the duration of the right of reentry and possibility of reverter. Model legislation proposing a time limit on these property restrictions was drafted by the American Bar Association Committee on Real Property in 1957.<sup>18</sup> Such legislation has already been adopted in six states. The Commission believes that a study should be made of the desirability of limiting the duration of the possibility of reverter and the right of termination in California in order to eliminate restrictions which have outlived their usefulness and serve only as a clog on the alienability of real property.

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

15. L. Simes, Future Interests 379 (1951).

16. See Simes, Rights of Entry and Possibilities of Reverter, 13 Hastings L.J. 1319; L. Simes & C. Taylor, Improvement of Conveyancing by Legislation, Title 19 (1960).

17. 213 Cal. 613, 2 P.2d 782 (1931).

18. See L. Simes & C. Taylor, Improvement of Conveyancing by Legislation 213-217 (1960).

## LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1974 LEGISLATIVE SESSION

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

### Resolution Approving Topics for Study

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

### Creditors' Remedies

Two bills on this subject were introduced during 1974.

*l.c.*  
1516 Prejudgment Attachment. Assembly Bill 2948, which became Chapter of the Statutes of 1974, was introduced by Assemblyman McAlister to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Prejudgment Attachment*, 11 CAL. L. REVISION COMM'N REPORTS 701 (1973); *Report of Senate Committee on Judiciary on Assembly Bill 2948*, ASSEMBLY J. (Aug. 21, 1974) at 13010, reprinted as Appendix I to this Report.

The following significant amendments were made to

<sup>1</sup> Assembly Bills 101 and 102 were introduced by Assemblymen Warren and McAlister and Senator Song in 1973 to effectuate the recommendation of the Commission on wage garnishment. See *Recommendation Relating to Wage Garnishment and Related Matters*, 11 CAL. L. REVISION COMM'N REPORTS 101 (1973). Both bills were passed in amended form by the Assembly; Assembly Bill 101 was approved by the Senate Judiciary Committee but died in the Senate Finance Committee; Assembly Bill 102 died in the Senate Judiciary Committee.

Assembly Bill 727 and Assembly Joint Resolution 27 were introduced by Assemblyman McAlister in 1973 to effectuate the Commission's recommendation concerning the Unclaimed Property Law (Code of Civil Procedure Section 1500 et seq.). See *Recommendation Relating to Unclaimed Property*, 11 CAL. L. REVISION COMM'N REPORTS 401 (1973). Assembly Joint Resolution 27 was adopted as Resolution Chapter 76 of the Statutes of 1973. The resolution was adopted as introduced. Assembly Bill 727 was pending in the Assembly Judiciary Committee when the Legislature recessed in September 1973. The bill was not given any further consideration by the Legislature in 1974 and was not enacted.

A revised recommendation will be submitted to the 1975 legislative session. See Recommendation Relating to Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments (December 1974), published as Appendix **VII** to this Report.

Assembly Bill 2948:

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

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

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

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

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

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

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

(8) Code of Civil Procedure Section 485.010, paragraph (1) of subdivision (b), was amended to add the clause "Under the

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circumstances of the case, it may be inferred that there is" and to substitute the phrase "substantially impaired in value, or otherwise made unavailable to levy" for the phrase "or placed beyond the process of the court or substantially impaired in value".

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

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

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

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

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

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

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

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

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

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

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

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

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subdivision (d) as subdivision (e).

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

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

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

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

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

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

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

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

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

(30) Code of Civil Procedure Section 684.2 was amended as follows: In the first sentence, the phrase "issued, and a judgment is recovered in the action in favor of the plaintiff, and an execution is issued thereon and delivered to the sheriff, constable, or marshal, he shall satisfy the judgment" was substituted for the phrase "issued and judgment is recovered by the plaintiff, the sheriff, constable, or marshal shall satisfy the same"; in the second sentence, the phrase "and an execution has been delivered to the officer" was deleted following the words "remains due".

(31) Code of Civil Procedure Section 688 was amended to add the second sentence to subdivision (b) and to insert the

phrase "or his agent" following the phrase "owing such debt" in the final sentence of subdivision (b).

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

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

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

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

Other technical amendments were made.

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

#### Condemnation Law and Procedure

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

The following significant amendments were made to Senate Bill 1535:

(1) Streets and Highways Code Section 5150.5 was amended as follows: The introductory clause "If a county is conducting the proceedings under this division," was deleted; the words "change, or modify" were inserted after the word "establish"; following the word "improved", the phrase "and for which no official grade has previously been established by ordinance or resolution" was deleted, and the phrase "pursuant to this division" was inserted; the phrase "in relation to a county" was deleted preceding the words "shall mean"; at the end of the section, the phrase "by resolution of the legislative body of the

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county" was deleted, and the words "changed, or modified" were inserted.

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

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

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

Other technical amendments were made.

Liquidated Damages

Senate Bill 1532 was introduced by Senator Stevens to effectuate the Commission's recommendation on this subject. See *Recommendation and Study Relating to Liquidated Damages*, 11 CAL. L. REVISION COMM'N REPORTS 1201 (1973). The [redacted] was withdrawn for further study.

recommen-  
dation

and the bill  
was not enacted.

Evidence

Two bills were introduced on this subject in 1974.

l.c.

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

l.c.

The "*Criminal Conduct*" Exception. Senate Bill 1534 was introduced by Senator Stevens to effectuate the Commission's recommendation on this subject. See *Recommendation Relating to Evidence Code Section 999—The "Criminal Conduct" Exception to the Physician-Patient Privilege*, 11 CAL. L. REVISION COMM'N REPORTS 1147 (1973). The [redacted] was withdrawn for further study.

recommendation

and the bill was not enacted.

Lease Law

Two bills were introduced on this subject in 1974.

*l.e.*

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

The following significant amendments were made to Assembly Bill 2830:

- (1) Code of Civil Procedure Section 1981 was amended to add the second sentence to subdivision (b).
- (2) Code of Civil Procedure Section 1984, as included in the bill as introduced, was numbered subdivision (a) and subdivision (b) was added. The form was amended to include lines marked: "(insert description of the personal property)" and to show where the statement required by the new subdivision (b) was to be inserted.
- (3) Code of Civil Procedure Section 1985 was amended to include in the form lines marked "(insert description of the personal property)".
- (4) Code of Civil Procedure Section 1986 was amended to insert the phrase "either be left on the vacated premises or" preceding the words "be stored" in the first sentence and to add the second sentence.
- (5) Code of Civil Procedure Section 1987 as introduced was numbered subdivision (a) and amended to delete the phrase "landlord shall release the" preceding "personal property" and to add the phrase "shall be released by the landlord" following the phrase "described in the notice"; subdivision (b) was added.
- (6) Code of Civil Procedure Section 1988 was amended as follows: The final sentence was added to subdivision (a); in subdivision (b), the phrase "pursuant to Section 6066 of the Government Code" was substituted for the words "at least once"; following the word "held", a period was inserted and the phrase "The last publication shall be" was added; in subdivision (c), the last two sentences of the subdivision as introduced were deleted and a new final sentence was inserted.
- (7) Code of Civil Procedure Section 1989 was amended to substitute the words "Notwithstanding subdivision (c) of Section 1981, where the landlord releases to the former tenant

property which remains on the premises after a tenancy is terminated," for the clause "Where the landlord releases property to the former tenant pursuant to Section 1987," in subdivision (a).

Other technical amendments were made.

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

The following significant amendments were made to Assembly Bill 2831:

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

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

Other technical amendments were made.

#### Inheritance Rights of Nonresident Aliens

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

### REPORT ON STATUTES REPEALED BY IMPLICATION OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

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

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.<sup>1</sup> It has the following to report:

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

One

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

Nine

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

Section 25951(c)(1) which establishes medical criteria for abortions is unconstitutionally vague under the due process clauses of the California and United States Constitutions. In addition, the court invalidated the Health and Safety Code Sections 25951(b) (establishing a medical committee to approve abortion requests), 25951(c) (allowing abortion in cases of rape or incest), 25952 (providing procedure for approving abortions in cases of rape and incest), 25954 (defining "mental health") and the first sentence of Section 25953 (prescribing communications for members of medical committee).

*In re Lynch*<sup>2</sup> held that part of Penal Code Section 314.1 imposing a second sentence for a second conviction of recent exposure violates the prohibition against cruel and unusual punishments in Article I, Section 6, of the California Constitution.

<sup>1</sup> Study has been carried through 93 S. Ct. 3072 (July 13, 1973) (Oct. 9, 1973).

In Lubin v. Panish,<sup>1</sup> the United States Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 and 18600-18603 deprived indigent persons of equal protection guaranteed by the Fourteenth Amendment and the rights of expression and association guaranteed by the First Amendment. In Knoll v. Davidson,<sup>2</sup> the California Supreme Court held that the filing fee system set forth in Elections Code Sections 6551-6555 violated the equal protection clause of the Fourteenth Amendment and was "in all respects null and void"<sup>4</sup> because it failed to provide methods alternative to the payment of fees for the qualification of candidates for public office. In Donovan v. Brown,<sup>5</sup> the California Supreme Court held that the California filing fee system set forth in Elections Code Sections 6551-6555 (made a prerequisite by Section 18603 of that code for the filing of a declaration of write-in candidacy and by Section 18603 for the counting of ballots) violated the equal protection clause of the Fourteenth Amendment.<sup>6</sup>

D'Amico v. Board of Medical Examiners<sup>7</sup> held that the Osteopathic Act of 1962<sup>8</sup> and Business and Professions Code Section 2310 violate the equal protection principles of the California and United States Constitutions insofar as they forbid licensure of graduate osteopaths as physicians and surgeons regardless of individual qualifications.

1. This study has been carried through 94 S.Ct. 3234 (Aug. 15, 1974) and 12 Cal.3d 607 (Oct. 10, 1974).
2. \_\_\_ U.S. \_\_\_, 94 S.Ct. 1315 (1974).
3. 12 Cal.3d 335, \_\_\_ P.2d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1974).
4. 12 Cal.3d at 349, \_\_\_ P.2d at \_\_\_, \_\_\_ Cal. Rptr. at \_\_\_.
5. 11 Cal.3d 571, 524 P.2d 137, 115 Cal. Rptr. 41 (1974).
6. In response to Lubin, legislation was enacted (Cal. Stats. 1974, Ch. 454) amending Elections Code Sections 6555 and 18603 and adding Government Code Section 16100.6. The court in Knoll, while noting the enactment of this legislation, expressed no opinion as to its constitutionality. See 12 Cal.3d at 349 n.11, \_\_\_ P.2d at \_\_\_ n.11, \_\_\_ Cal. Rptr. at \_\_\_ n.11.
7. 11 Cal.3d 1, 520 P.2d 10, 112 Cal. Rptr. 786 (1974).
8. The Osteopathic Act of 1962 was a referendum measure amending the Osteopathic Act of 1922, which was enacted by initiative. Cal. Stats. 1962, 1st Ex. Sess., Ch. 48 (4 Deering's Ann. Bus. & Prof. Code, 1961-1973 Cum. Supp. App. I at 281-286; 3A West's Ann. Bus. & Prof. Code at 332-334 (1974)); Cal. Stats. 1923 at xciii (4 Deering's Ann. Bus. & Prof. Code, App. at 523 (1960); 3A West's Ann. Bus. & Prof. Code at 326 (1974)).

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

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

In re Kapperman<sup>13</sup> held invalid subdivision (c) of Section 2900.5 of the Penal Code. Subdivision (c) limited application of Section 2900.5 (which gives persons convicted of felony offenses credit for time served in custody prior to the commencement of their prison sentence) to persons delivered into custody of the Director of Corrections on or after March 4, 1972, the effective date of the section. This limitation, which precluded persons in custody on the effective date of the section from the benefits of the section, was held to violate Article I, Sections 11 and 21, of the California Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution in that it constituted a legislative classification which was not reasonably related to a legitimate public purpose.<sup>14</sup>

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

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

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

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

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

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

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

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

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

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

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

17. 12 Cal.3d 305, \_\_\_ P.2d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1974).

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

19. 12 Cal.3d 323, \_\_\_ P.2d \_\_\_, \_\_\_ Cal. Rptr. \_\_\_ (1974).

20. The court also noted that there is a strong argument that the practice of allowing a non-attorney judge to act as magistrate in a felony preliminary examination pursuant to Penal Code Sections 808 and 858 et seq. similarly deprives the defendant of due process of law.

### RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics previously authorized for study (see

[REDACTED]

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

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of [REDACTED] 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.



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

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

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

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

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

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

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

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

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

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

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

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

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APPENDICES I-XI

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## PUBLICATIONS OF THE CALIFORNIA LAW REVISION COMMISSION

The California Law Revision Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The *pamphlets* are available for complimentary distribution as long as the supply lasts and may be obtained only from California Law Revision Commission, Stanford Law School, Stanford, California 94305.

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1955 Annual Report

1956 Annual Report

1957 Annual Report

Recommendation and Study Relating to:

The Maximum Period of Confinement in a County Jail

Notice of Application for Attorney's Fees and Costs in Domestic Relations  
Actions

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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  
 Retention of Venue for Convenience of Witnesses  
 Bringing New Parties into Civil Actions

## VOLUME 2 (1959)

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  
 Overlapping Provisions of Penal and Vehicle Codes Relating to Taking of  
 Vehicles and Drunk Driving  
 Time Within Which Motion for New Trial May Be Made  
 Notice to Shareholders of Sale of Corporate Assets

## VOLUME 3 (1961)

1960 Annual Report

1961 Annual Report

Recommendation and Study Relating to:

Evidence in Eminent Domain Proceedings  
 Taking Possession and Passage of Title in Eminent Domain Proceedings  
 The Reimbursement of Moving Expenses When Property is Acquired for  
 Public Use  
 Restitution 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)

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## CALIFORNIA LAW REVISION COMMISSION

1962 Annual Report  
1963 Annual Report  
1964 Annual Report

Recommendation and Study Relating to Condemnation Law and Procedure:

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

Recommendations Relating to Sovereign Immunity:

Number 1—Tort Liability of Public Entities and Public Employees

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

Number 3—Insurance Coverage for Public Entities and Public Employees

Number 4—Defense of Public Employees

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

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

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

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

## VOLUME 5 (1963)

A Study Relating to Sovereign Immunity

## VOLUME 6 (1964)

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

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

Article I (General Provisions)

Article II (Judicial Notice)

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

Article IV (Witnesses)

Article V (Privileges)

Article VI (Extrinsic Policies Affecting Admissibility)

Article VII (Expert and Other Opinion Testimony)

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

Article IX (Authentication and Content of Writings)

## VOLUME 7 (1965)

1965 Annual Report

1966 Annual Report

Evidence Code with Official Comments [out of print]

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Recommendation Proposing an Evidence Code [out of print]

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

VOLUME 8 (1967)

Annual Report (December 1966) includes the following recommendation:

Discovery in Eminent Domain Proceedings

Annual Report (December 1967) includes following recommendations:

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

Improvements Made in Good Faith Upon Land Owned by Another

Damages for Personal Injuries to a Married Person as Separate or Community Property

Service of Process on Unincorporated Associations

Recommendation and Study Relating to:

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

Vehicle Code Section 17150 and Related Sections

Additur

Abandonment or Termination of a Lease

The Good Faith Improver of Land Owned by Another

Suit By or Against An Unincorporated Association

Recommendation Relating to the Evidence Code:

Number 1—Evidence Code Revisions

Number 2—Agricultural Code Revisions

Number 3—Commercial Code Revisions

Recommendation Relating to Escheat

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

VOLUME 9 (1969)

Annual Report (December 1968) includes following recommendations:

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

Recommendation Relating to Additur and Remittitur

Recommendation Relating to Fictitious Business Names

Annual Report (December 1969) includes following recommendations:

Recommendation Relating to Quasi-Community Property

Recommendation Relating to Arbitration of Just Compensation

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- 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

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

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The Claim and Delivery Statute  
 Unclaimed Property  
 Enforcement of Sister State Money Judgments  
 Prejudgment Attachment  
 Landlord-Tenant Relations  
 Tentative Recommendation Relating to:  
 Prejudgment Attachment

## VOLUME 12

[Volume expected to be available in September 1975]

Annual Report (December 1974) includes following recommendations:

~~Payment of Judgments Against Local Public~~  
 Entities (September 1974)

~~View by Trier of Fact in a Civil Case (October 1974)~~

The Good Cause Exception to the Physician-Patient Privilege (October 1974) e/

Admissibility of Copies of Business Records in Evidence (December 1974)

Escheat of Amounts Payable on Travelers Checks, Money Orders, and Similar Instruments (December 1974)

Wage Garnishment (December 1974)

Exemptions

Inverse Condemnation--Claim Presentation Requirement (December 1974)

Creditors' Remedies--Liability for Wrongful Attachment (December 1974)

Recommendation Proposing the Eminent Domain Law (December 1974)

Recommendation Relating to Condemnation Law and Procedure: Conforming Changes in Improvement Acts (January 1974)

Tentative Recommendations Relating to Condemnation Law and Procedure:

The Eminent Domain Law (January 1974)

Condemnation Authority of State Agencies (January 1974)

Conforming Changes in Special District Statutes (January 1974)

## VOLUME 13

[Volume expected to be available in September 1977]

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

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Recommendation relating to Partition Procedure (January 1975)