

10/24/77

Memorandum 77-71

**Subject: Annual Report (New Topics Portion)**

Attached to this memorandum is the staff draft of the portion of the Annual Report describing the three new topics that the Commission has decided to request authority to study.

Respectfully submitted,

Nathaniel Sterling  
Assistant Executive Secretary

## Topics for Future Consideration

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

A study to determine whether the law relating to quiet title should be revised. Code of Civil Procedure Section 738 provides for an action to quiet title to property that is in personam in nature--the judgment in the action does not have in rem effect.<sup>1</sup> In rem effect can only be achieved through the device of quiet title relief in an adverse possession action, which permits naming and serving deceased and unknown claimants.<sup>2</sup> This cumbersome and inconvenient arrangement has been criticized.<sup>3</sup> Recent legislation in other property litigation fields such as partition<sup>4</sup> and eminent domain<sup>5</sup> has enabled judgments in those fields to have in rem effect. A study should be made to determine whether in rem effect in quiet title actions, and other changes in the law relating to quiet title, are desirable.

A study to determine whether the law relating to community property should be revised. In the past, the Law Revision Commission has studied and made recommendations concerning a number of community property law problems.<sup>1</sup> There are at present a number of additional problems with

- 
1. See, e.g., Taliaferro v. Riddle, 166 Cal. App.2d 124, 332 P.2d 803 (1958).
  2. Code Civ. Proc. §§ 749, 749.1, 750.
  3. See, e.g., Willemsen, Improving California's Quiet Title Laws, 21 Hastings L.J. 835 (1970). The Commission has also received correspondence to the same effect. See Letter from Jacob Forst, Esq., (July 6, 1977) (on file in the Commission's office).
  4. Code Civ. Proc. §§ 872.310, 872.320, 872.530, 872.550.
  5. Code Civ. Proc. §§ 1250.120, 1250.130, 1250.220.
1. See Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere, 1 Cal. L. Revision Comm'n Reports at E-1 (1957); Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere, 3 Cal. L. Revision Comm'n Reports at I-1 (1961); Whether 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); Quasi-Community Property, 9 Cal. L. Revision Comm'n Reports 113 (1969).

the California community property laws that have been called to the attention of the Commission. For example, the Legislature enacted a major reform of community property law, operative in 1975,<sup>2</sup> giving both spouses equal management and control of community property.<sup>3</sup> However, the 1975 legislation failed to provide rules governing liability either (1) between the spouses for mismanagement<sup>4</sup> or (2) between the community and third-party creditors;<sup>5</sup> the 1975 legislation also failed to make necessary conforming revisions in other statutes.<sup>6</sup> The law is clear that, if a party uses separate property to satisfy community obligations, the party is not entitled to reimbursement from the community absent an agreement to that effect;<sup>7</sup> however, the application of this rule to payments made after the parties are separated is not clear. Another problem in the community property laws is the inconsistency in the treatment of the community's interest in property acquired by installment purchase and property acquired with borrowed money.<sup>8</sup> A study should be made to determine whether the law relating to community property should be revised to cure these and other problems in the law.

- 
2. 1973 Cal. Stats., Ch. 987, at 2238, operative January 1, 1975.
  3. Civil Code §§ 5125 (personal property), 5127 (real property).
  4. See, e.g., Comment, California's New Community Property Law--Its Effect on Interspousal Mismanagement Litigation, 5 Pac. L.J. 723 (1974).
  5. See, e.g., Pedlar, The Implications of the New Community Property Laws for Creditors' Remedies and Bankruptcy, 63 Calif. L. Rev. 1610 (1975).
  6. See, e.g., Probate Code §§ 1435.1-1435.18.
  7. See, e.g., See v. See, 64 Cal.2d 778, 415 P.2d 776, 51 Cal. Rptr. 888 (1966); but see Beam v. Bank of America, 6 Cal.3d 12, 490 P.2d 257, 98 Cal. Rptr. 137 (1971) (stating an exception to the basic rule where choice of using separate or community property for community obligations is not available).
  8. Compare Vieux v. Vieux, 80 Cal. App. 222, 251 P. 640 (1926) (community's interest in property, the acquisition of which commenced before marriage with separate property and continued after marriage with installment payments from community property, is proportionate to total amount contributed to acquisition price) with Gudelj v. Gudelj, 41 Cal. 2d 202, 259 P.2d 653 (1953) (community's interest in property, the acquisition of which was by borrowed money, depends upon whether lender relied on security of separate or community property).

A study to determine whether the law relating to involuntary dismissal for lack of prosecution should be revised. Code of Civil Procedure Section 581a requires dismissal of an action in case of failure to serve or return summons within three years after the commencement of the action. Despite the mandatory language of this provision, it is subject to implied exceptions and excuses.<sup>1</sup> Moreover, cases have held that the court retains discretionary authority to dismiss an action for failure to serve or return summons prior to expiration of the three-year period notwithstanding the contrary implication of Section 581a.<sup>2</sup>

Code of Civil Procedure Section 583(b) requires dismissal of an action in case of failure to bring the action to trial within five years after the action was filed. The mandatory language of this provision precludes implied exceptions or excuses unless they may fairly be said to make a trial impracticable.<sup>3</sup> Section 583(a) permits discretionary dismissal by the court for delays of less than five but greater than two years; however, the statute provides no standards by which the court is to exercise its discretion.<sup>4</sup>

Code of Civil Procedure Section 583(c) requires dismissal of an action in case of failure to bring the action to new trial within three years after the order granting the new trial or after the remand for new trial following reversal on appeal. Despite the mandatory language of this provision, it is subject to the implied exceptions of impossibility or impracticability.<sup>5</sup> Moreover, cases have held that the court retains discretionary authority to dismiss an action for failure to bring the

- 
1. See, e.g., Wyoming Pac. Oil Co. v. Preston, 50 Cal.2d 736, 329 P.2d 489 (1958).
  2. See discussion in 4 B. Witkin, California Procedure, Proceedings Without Trial §§ 73-74 (2d ed. 1971).
  3. Cf. Crown Coach Corp. v. Superior Court, 8 Cal.3d 540, 503 P.2d 1347, 105 Cal. Rptr. 339 (1972).
  4. Cf. Judicial Council, Pretrial and Trial Rules, Rule 203.5(e) (summarizing the significant factors developed by the cases and stating them as criteria governing exercise of discretion).
  5. See, e.g., Crown Coach Corp. v. Superior Court, 8 Cal.3d 540, 503 P.2d 1347, 105 Cal. Rptr. 339 (1972).

action to new trial prior to expiration of the three-year period notwithstanding the contrary implication of Section 583(c).<sup>6</sup>

The failure of the dismissal for lack of prosecution statutes to accurately state the exceptions, excuses, and existence of court discretion has been criticized.<sup>7</sup> The interrelation of the statutes is confusing.<sup>8</sup> The state of the law is generally unsatisfactory, requiring frequent appellate decisions for clarification. A study should be made to determine whether the law relating to involuntary dismissal for lack of prosecution should be revised.

- 
6. See discussion in 4 B. Witkin, California Procedure, Proceedings Without Trial § 116 (2d ed. 1971).
  7. See, e.g., Letter from Judge Philip M. Saeta (March 26, 1976) (on file in the Commission's office).
  8. For example, there appears to be an inconsistency between the provisions of Section 581a for the mandatory dismissal of an action if the summons is not served and returned within three years after commencement of an action, and those of Section 583(a) providing for the dismissal of an action, in the discretion of the court, if it is not brought to trial within two years. This inconsistency has been raised in a number of appellate cases: See, e.g., Black Bros. Co. v. Superior Court, 265 Cal. App.2d 501, 71 Cal. Rptr. 344 (1968).