

February 6, 1974

Time

February 14 - 7:00 p.m. - 10:00 p.m.
February 15 - 9:00 a.m. - 5:00 p.m.

Place

PSA Hotel Queen Mary
P.O. Box 20396
Long Beach 90801

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Long Beach

February 14-15, 1974

1. Minutes of November 29-30, 1973, Meeting (sent 1/3/74)

2. Administrative Matters

Clearing Mailing List

Memorandum 74-7 (enclosed)

Schedule of Work on Topics

Memorandum 74-5 (sent 1/15/74)

1974 Legislative Program

Memorandum 74-2 (sent 1/31/74)

First Supplement to Memorandum 74-2 (sent 1/31/74)

Second Supplement to Memorandum 74-2 (to be sent)

Printing Program

Memorandum 74-10 (to be sent)

3. Study 39.110 - Innkeeper's and Landlord's Liens

Memorandum 74-1 (sent 1/3/74)

Draft of Tentative Recommendation (attached to Memorandum)

4. Study 23 - Partition Procedure

Memorandum 74-3 (sent 1/15/74)

5. Study 47 - Oral Modification of Written Contract

Memorandum 74-6 (sent 1/15/74)

Background Study (attached to Memorandum)

First Supplement to Memorandum 74-6 (sent 1/31/74)

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6. Study 65.90 - Inverse Condemnation (Payment of Judgments)

Memorandum 74-9 (sent 1/24/74)

Draft of Tentative Recommendation (attached to Memorandum)

First Supplement to Memorandum 74-9 (enclosed)

7. Conflict of Interest Statute

Memorandum 74-4 (to be sent)

MINUTES OF MEETING
of
CALIFORNIA LAW REVISION COMMISSION
FEBRUARY 14 AND 15, 1974
Long Beach

A meeting of the California Law Revision Commission was held in Long Beach on February 14 and 15, 1974.

Present: Marc W. Sandstrom, Chairman
John J. Balluff, Vice Chairman
John D. Miller
Thomas E. Stanton, Jr.
Howard R. Williams

Absent: Robert S. Stevens, Member of Senate
Alister McAlister, Member of Assembly
Noble K. Gregory
John N. McLaurin
George H. Murphy, ex officio

Messrs. John H. DeMouilly, Jack I. Horton, Nathaniel Sterling, and Stan G. Ulrich, members of the Commission's staff, also were present. Mr. Garrett H. Elmore, Commission consultant on partition sales, was present on Friday, February 15.

The following persons were present as observers on days indicated:

Thursday, February 14

Don Bryant, Long Beach Legal Aid Foundation

Friday, February 15

Norval Fairman, Dept. of Transportation, San Francisco
John M. Morrison, Attorney General's Office, Sacramento
John Sheehan, Independent Press-Telegram, Long Beach
James Wernicke, Attorney General's Office, Sacramento

ADMINISTRATIVE MATTERS

Approval of Minutes

The Minutes for the November 29 and 30, 1973, Meeting were approved as submitted.

Future Meetings

Future meetings are scheduled as follows:

March 21 - 7:00 p.m. - 10:00 p.m.	San Francisco
March 22 - 9:00 a.m. - 5:00 p.m.	
March 23 - 9:00 a.m. - 1:00 p.m.	
April 25 - 7:00 p.m. - 10:00 p.m.	Los Angeles
April 26 - 9:00 a.m. - 5:00 p.m.	
April 27 - 9:00 a.m. - 1:00 p.m.	
May 23 - 7:00 p.m. - 10:00 p.m.	San Francisco
May 24 - 9:00 a.m. - 5:00 p.m.	
May 25 - 9:00 a.m. - 1:00 p.m.	
June 27 - 7:00 p.m. - 10:00 p.m.	Los Angeles
June 28 - 9:00 a.m. - 5:00 p.m.	
June 29 - 9:00 a.m. - 1:00 p.m.	
July 25 - 7:00 p.m. - 10:00 p.m.	San Francisco
July 26 - 9:00 a.m. - 5:00 p.m.	
July 27 - 9:00 a.m. - 1:00 p.m.	
August - No meeting	
September 5 - 10:00 a.m. - 5:00 p.m.	Los Angeles
September 6 - 9:00 a.m. - 5:00 p.m.	
September 7 - 9:00 a.m. - 4:00 p.m.	
October 10 - 7:00 p.m. - 10:00 p.m.	San Francisco
October 11 - 9:00 a.m. - 5:00 p.m.	
October 12 - 9:00 a.m. - 3:00 p.m.	
November - No meeting	
December 5 - 7:00 p.m. - 10:00 p.m.	Los Angeles
December 6 - 9:00 a.m. - 5:00 p.m.	

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Legislative Program

The Commission considered Memorandum 74-2, a report of the 1974 legislative program. The Executive Secretary reported that Assembly Bills 101 and 102 are set for hearing by the Senate Judiciary Committee for February 26 but that no other bills have yet been set for hearing. The Executive Secretary orally reported that various groups have expressed opposition or concern about some of the legislative proposals. The Improvement Acts bill (Senate Bill 1535) is a cause for concern to the Newspaper Publishers since it will repeal some obsolete acts which include publication requirements not found in the generally used acts. The bill to repeal Evidence Code Section 999 (Senate Bill 1534) may be opposed by the State Bar and the California Trial Lawyers Association. The California Real Estate Association has expressed concern about the landlord-tenant recommendations. (For Commission action on Legislative Counsel problems with landlord-tenant relations recommendations, see discussion infra in these Minutes.)

Mailing List

The Commission considered Memorandum 74-7 concerning the policy for distribution of Commission publications. The Chairman reported that he had tentatively concluded, on the basis of a memorandum provided by the Commission's Administrative Assistant, that a selective distribution policy would raise more problems than it would solve. The Commission approved the sending of the notice attached to Memorandum 74-7 and it was agreed that the staff is to submit its recommendations concerning the distribution policy to a future meeting after making an analysis of the returned forms.

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Printing Program

The Executive Secretary made an oral report concerning the printing program. This report is summarized below.

REPORTS RECEIVED

Inheritance Rights of Nonresident Aliens
Enforcement of Sister State Money Judgments
Annual Report
Conforming Changes in Improvement Acts
State Condemnation Authority

REMAINING REPORTS

Prejudgment Attachment

This job is on the press. We expect the reports about 2/15/74, definitely by 2/20/74.

Liquidated Damages

We approved this report for printing 1/31/74 (proofs). We will receive the ozalids probably by 2/18/74 and then will be ready to put on presses. Expected printed report sometime during March 1974.

Landlord-Tenant Relations

We expect to receive proof on this report by 2/14/74. We expect to receive printed report in April 1974.

Eminent Domain Law

We have 278 pages in page proof form which have been carefully checked and require only minor corrections. We expect to receive an additional 250 pages (remainder of report) by 2/18/74. Pamphlet should be available sometime towards end of April 1974.

ALL OF THE ABOVE JOBS ARE FLAGGED URGENT AT THE PRINTING PLANT.

Conforming Changes in Special District Statutes

We have sent copy to printer. We have proofs of text of statute sections. We have revised our Mag Cards containing remainder of report and expect to receive proofs soon. We have not requested that this job be given a top priority.

We expect to mail out the following reports to our mailing list about 2/22/74:

Inheritance Rights of Nonresident Aliens
Enforcement of Sister State Money Judgments
Conforming Changes in Improvement Acts
Prejudgment Attachment
Annual Report

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When received, we will mail out Liquidated Damages and Landlord-Tenant Relations

We expect to send out the following reports to persons interested in condemnation law approximately April 15, 1974:

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

Schedule of Work on Topics

The Commission considered Memorandum 74-5 and the attached draft of a tentative schedule for work on the topics on the Commission's agenda. The following goals were established for the 1975, 1976, and 1977 sessions:

Recommendations to Be Submitted to 1975 Session

Comprehensive Eminent Domain Statute
State Condemnation Authority
Conforming Special District Acts to Eminent Domain Statute
Jury View
.
Oral Modification of Written Contract
Partition Procedure
Revised Recommendations on Measures That Fail to Pass in 1974

Recommendations to Be Submitted to 1976 Session

Nonprofit Corporations (Top Priority)
Execution
All Other Aspects of Creditors' Remedies Study (Confession of Judgment Procedure, Default Judgment Procedure, and the like)
Arbitration

Recommendations to Be Submitted to 1977 Session

Child Custody and Related Matters

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The schedule for consideration of topics during 1974 (Exhibit I to Memorandum 74-5) was discussed and generally approved, but the dates and days for meetings as set out in that schedule was revised as set out heretofore in these Minutes. It was recognized that both the goals and the schedule will necessarily have to be revised in view of changing priorities and developments during the next few years.

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STUDY 23 - PARTITION PROCEDURE

The Commission considered Memorandum 74-3 and the attached draft statute relating to partition procedure. In connection with this subject, the staff was directed to attempt to get knowledgeable representatives of the land title association to attend Commission meetings during the discussions of partition procedure. The staff should attempt also to get sample partition forms from Mr. DeMeo if possible. Inquiry should be made whether former partition referee R. E. Allen is available and whether he has a successor.

The Commission completed review of approximately the first half of the draft statute. The Commission directed the staff to redraft and reorganize the whole chapter in a logical, methodical manner, including extensive cross-references and derivations noted in the Comments. The redraft should be accompanied by tables of parallel references between old and new sections and a diagram or outline of the partition procedure.

The Commission made the following specific decisions with regard to the draft statute:

Section 752.10

Subdivisions (b) and (e). The interrelation of the definitions of "co-owner" and "ownership estate" should be examined and revised if necessary to correct technical defects.

Subdivision (d). The words "and similar fiduciary" should be deleted from the definition of "guardian."

Section 753.10

Subdivision (a). The reference to "several" persons should be replaced by a reference to "two or more" persons.

Subdivision (b). This subdivision, indicating the circumstances under which partition of successive estates may be had, should be revised to make clear that partition is not precluded where one of the successive estates is itself held in concurrent ownership.

Subdivision (c). This subdivision, permitting partition at the instance of the holder of a lien on a parity with a lien on which the owner's title is based, should be deleted subject to further staff research on the need for the subdivision, particularly in light of Code of Civil Procedure Section 801.1 et seq. The deletion should be noted in the Comment and reactions to the deletion solicited; if possible, the attorneys of record in cases involving the subdivision should be contacted.

Section 753.20

This section, dealing with condominiums, is a special provision that should not appear among the general partition procedure sections.

Subdivision (a). The reference to "several" persons should be replaced by a reference to "two or more" persons.

Section 753.30

The Comment should note that the introductory portion of this section excusing the plaintiff from setting forth in the complaint certain interests is new.

Subdivision (a). The effect of the judgment on persons covered by this subdivision should be removed from the end of the subdivision and placed with the provisions relating to the effect of the judgment.

Subdivision (b). The reference to conveyances, encumbrances, and liens "known to the plaintiff" should be qualified by language requiring actual

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knowledge; the staff should look to comparable statutory provisions in other types of actions for appropriate wording.

Provision should be made for joinder of only the interests intended to be affected by the plaintiff.

The effect of a judgment on a person not joined should be clarified as to bona fide purchasers in the case of sale and as to the defendant in the case of division of the property.

Section 753.40

The complaint should contain a listing of all interests in the property to be partitioned, whether or not intended to be affected by the action. The complaint should also contain a prayer as to the relief requested with a specific indication of the parties or interests to be partitioned.

Section 754.30

The staff should further investigate this section requiring appointment of persons to represent the interests of unknown owners. In so doing, the staff should give consideration to the competing demands of due process and security of title.

Section 754.40

This section providing for naming unknown persons should be replaced by provisions that parallel the provisions developed by the Commission for eminent domain proceedings.

Sections 755.10-755.20

Provisions making the filing of a lis pendens mandatory, such as these, should be retained for partition actions.

Section 756.10

This section providing for the contents of the summons should be replaced by provisions that parallel the provisions developed by the Commission for eminent domain proceedings.

Section 756.20

This section providing for issuance of a summons for only some of the parties, with a description of the property relating to them, should be retained in cases where service is by publication. The staff should give consideration to reincorporation of such a provision in the Eminent Domain Law.

Section 757.10

This section providing for the manner of service should be replaced by provisions that parallel the provisions developed by the Commission for eminent domain proceedings.

Section 758.10

Inquiry should be made of the title companies to determine whether the strict forfeiture provisions of this section for failure to answer or allege encumbrances are essential. The staff should also give consideration to the possibility that such strict forfeiture provisions may not satisfy due process in the case of defendants served as persons unknown in an attempt to give a quiet title effect to the partition action. In this connection, reference should be made to Code of Civil Procedure Section 751 prohibiting judgment by default in a quiet title action.

Section 759.10

The staff should give consideration to incorporating in the general provisions a section such as this to the effect that the general rules of

civil practice do not apply where inconsistent with the purposes of this chapter.

Section 759.20

The staff was directed to search the Code of Civil Procedure for either a model or a section that would cover the broad jurisdiction of the court such as prescribed in this section.

Section 760.10

This section should be revised along the following lines:

Except as otherwise provided by statute, the property shall be partitioned by division pursuant to this article unless the court finds that under the circumstances partition by sale would be more equitable. The party seeking to have partition by sale has the burden of proof on the issue.

The staff should supply procedures that should include the following features:

(1) the parties may agree to a sale; (2) the court may order a sale before or after appointment of a referee; (3) the court may appoint a referee for the purpose of determining whether a sale would be more equitable; (4) the court may take into account any referees' reports in making a finding as to whether a sale would be more equitable.

Section 760.20

This section should be revised to make clear that it does not permit the court to ignore or order relief different from that admitted or acknowledged in the pleadings.

Section 760.30

Procedures should be specified to indicate in this section how the matter is brought to a hearing and the issues at the hearing. The reference to

"requisite proofs being made" should be examined to determine whether it conflicts with the prima facie presumption given the plaintiff upon the defendant's default in other sections.

Section 760.40

(Note: This section was mislabeled 764.40 in the draft statute.) The policy of this section should be reversed so that one referee is appointed unless the parties request three referees. The Comment should indicate that the parties may nominate referees, but the court need not accept the nominees. The staff should determine whether the general provisions governing referees are adequate for partition actions.

Section 761.20

The staff should investigate the relation of the Subdivision Map Act to partition by division. Also it should be made clear that zoning and other applicable requirements of law must be complied with in any division of property.

Section 761.40

Language should be added to this section incorporating some standard for payment of owelty. Consideration should be given to the language referring to "the ordinary principles of equity" in the last sentence of Section 792.

Section 762.10

The last sentence of this section, permitting the referee to move for court confirmation of his report, was deleted.

Section 764.10

This provision, providing for appointment of a referee for sale, should be consolidated with the provision for appointment of a referee for division.

Section 764.20

This section should be simplified to conform to the Commission's decision to have one referee for division.

Section 764.30

The standard in this section for when property may be sold should be conformed with the Commission's decision as to when a sale may be ordered generally. The concept of this section that a sale of part of the property may be ordered should be further developed.

Section 765.10

This section should be revised to provide that the court may order that the property be sold: (1) at public auction, (2) by private sale, or (3) at public auction or private sale as the referee determines is better.

Section 765.20

This section should be revised to provide that the court may order that personal property be sold: (1) separately, (2) as a lot or lots, or (3) separately or as a lot or lots as the referee determines is better.

Section 766.20

It should be made clear that the referee may employ an attorney but only upon court order.

Section 766.40

The last sentence of this section should be revised to read: "Unless otherwise ordered by the court, personal property shall be present at the sale."

Section 768.10

The staff should investigate alternate procedures for the sale of property especially the procedure in the Probate Code for contracting with an auctioneer for the sale of personal property.

Section 782.30

The last sentence of this section relating to the opening and closing of public streets should be revised to reflect any necessary public entity action.

Section 783.20

Subdivision (a). The judgment should bind all persons "joined" rather than "named" as parties.

Subdivision (f). The staff should consider a provision that the judgment does not bind a person known to the plaintiff but not joined in the action at least as to the plaintiff's portion. In this connection, the staff should consider the various times at which the plaintiff might acquire knowledge and the possible effects of a lis pendens. Provisions of comparable actions should be examined for appropriate language.

New Section; Division By Parcel

The provision set out in the middle of page six of the memorandum providing for division by known lot or parcel where feasible should be included

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in the draft statute in an appropriate place. The provision for joining other property in the action should not be included; the staff should consider the addition of a Comment indicating that additional properties may be joined by cross-complaint.

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STUDY 39.110 - INNKEEPER'S AND LANDLORD'S LIENS

After considerable discussion of Memorandum 74-1 and the attached staff draft of a tentative recommendation relating to innkeeper's and landlord's liens, the Commission decided to await further judicial developments in the field of creditors' remedies before sending out a recommendation on innkeeper's and landlord's liens.

The view was expressed that the effect of the staff draft is to provide the hotel or innkeeper with no remedy against the guest's baggage, and it would be better to state that directly rather than amending Section 1861a to give the hotel and innkeeper the remedy provided by that section. On the other hand, the view was expressed that, in rare cases, the remedy under Section 1861a might be useful to a hotel or innkeeper. In any case, the staff is to bring this matter to the attention of the Commission at a future time if judicial developments shed additional light on the extent of legislative power in this area.

The staff was directed to obtain and send to the Commissioners a copy of the opinion of the case before the 9th Circuit in bank on self-help repossession. If a tentative recommendation is prepared for a future meeting, references to self-help repossession and other relevant cases should be included and the issue of state actions discussed.

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STUDY 47 - ORAL MODIFICATION OF WRITTEN CONTRACTS

The Commission considered Memorandum 74-6 and the First Supplement thereto and directed the staff to prepare for the March meeting a draft of a tentative recommendation incorporating the following decisions:

Civil Code Sections 1697 and 1698. These sections should be repealed and replaced by the provisions of Uniform Commercial Code Section 2-209. However, the provision of Uniform Commercial Code Section 2-209(2) requiring that a clause precluding oral modification be separately signed as between nonmerchants should be omitted.

Commercial Code Section 2209. Paragraph (2) of this section which provides that a written contract may only be modified by a written agreement or an oral agreement fully executed by both parties should be amended to adopt the following language of Uniform Commercial Code Section 2-209(2):

A signed agreement which excludes modification or rescission except by a signed writing cannot be otherwise modified or rescinded, but except as between merchants such a requirement on a form supplied by the merchant must be separately signed by the other party.

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STUDY 50 - LANDLORD-TENANT RELATIONS

The Commission considered the First Supplement to Memorandum 74-2. After considering the letter from the Legislative Counsel's Office concerning the recommendation relating to disposition of personal property remaining on the premises at termination of tenancy, the Commission approved the staff suggestion that the last two sentences of subdivision (c) of proposed Section 1988 be revised to read:

If the county pays the balance or any part thereof to a claimant, neither the county nor any officer or employee thereof is liable to any other claimant as to the amount paid.

The last sentence of the Comment to Section 1988 was revised to read:

The last sentence of subdivision (c) is intended to protect the county in the event there are conflicting claims to the balance.

The Commission considered the concern expressed whether the statute would provide due process and concluded that the notice provided by the statute satisfies the requirements of due process.

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STUDY 65.90 - INVERSE CONDEMNATION (PAYMENT OF JUDGMENTS)

The Commission considered Memorandum 74-9, the attached draft of a tentative recommendation relating to the payment of inverse condemnation judgments, and the First Supplement to Memorandum 74-9.

The tentative recommendation was approved for distribution for comment after it has been revised so that it does not state that the existing statute does not cover inverse condemnation judgments. In other words, the existing statute covering "tort" judgments might be construed to cover some types of inverse condemnation judgments. In some cases, damages for an injury are recoverable on either a tort or inverse condemnation theory. In other cases, damages would be recoverable only on an inverse theory. But, in any event, it should be clear that the provisions dealing with the payment of tort judgments apply to any judgment recoverable on a theory of inverse condemnation.

REPORT OF THE

COMMISSIONERS OF THE UNIVERSITY OF MICHIGAN
IN RESPONSE TO A RESOLUTION PASSED BY THE BOARD OF REGENTS
ON FEBRUARY 22, 1961

The Commission on the University of Michigan, created by the Board of Regents on February 22, 1961, has the honor to submit to you this report on the progress of its work during the past year.

The Commission has held numerous public hearings and has received many suggestions from faculty, students, and the general public. It has also conducted extensive research into the various problems facing the University and has developed a series of recommendations designed to improve the University's effectiveness and efficiency.

RECOMMENDATIONS OF THE COMMISSION

The Commission recommends that the Board of Regents should immediately take action on the following matters: (1) the creation of a new office of the President; (2) the reorganization of the Board of Regents; (3) the improvement of the University's financial position; (4) the improvement of the University's physical plant; (5) the improvement of the University's administrative structure; (6) the improvement of the University's academic programs; (7) the improvement of the University's student life; (8) the improvement of the University's relations with the community.

The Commission believes that these recommendations are essential for the long-term success of the University of Michigan and that they should be implemented as soon as possible.

The Commission is confident that the Board of Regents will take prompt action on these recommendations and that they will result in a more effective and efficient University of Michigan.