

STATE OF CALIFORNIA

**CALIFORNIA LAW
REVISION COMMISSION**

Annual Report

December 1968

CALIFORNIA LAW REVISION COMMISSION

**School of Law
Stanford University
Stanford, California 94305**

THE CALIFORNIA LAW REVISION COMMISSION

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NOTE

This pamphlet begins on page 1. The Commission's annual reports and its recommendations and studies are published in separate pamphlets which are later bound in permanent volumes. The page numbers in each pamphlet are the same as in the volume in which the pamphlet is bound. The purpose of this numbering system is to facilitate consecutive pagination of the bound volumes. This pamphlet will appear in Volume 9 of the Commission's REPORTS, RECOMMENDATIONS, AND STUDIES.

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CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
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SHO SATO
Chairman
SENATOR ALFRED H. SONG
ASSEMBLYMAN F. JAMES BEAR
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Ex Officio

December 1, 1968

**To HIS EXCELLENCY, 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 1968.

This report was printed during the first week of December 1968 so that it would be available in printed form early in January 1969. Accordingly, it does not reflect changes in Commission membership after December 1, 1968.

Respectfully submitted,

SHO SATO
Chairman

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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1968

FUNCTION AND PROCEDURE OF COMMISSION

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

The principal duties of the Law Revision Commission are to:

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

(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.²

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

Each of the Commission's recommendations is based on a research study of the subject matter concerned. Many of these studies are undertaken by specialists in the fields of law involved who are retained as research consultants to the Commission. This procedure not only provides the Commission with invaluable expert assistance but is economical as well because the attorneys and law professors who serve as research consultants have already acquired the considerable background necessary to understand the specific problems under consideration.

The consultant submits a detailed research study that is given careful consideration by the Commission. After making its preliminary decisions on the subject, the Commission distributes a tentative recommendation to the State Bar and to numerous other interested persons. Comments on the tentative recommendation are considered by the Commission in determining what report and recommendation it will make to the Legislature. When the Commission has reached a conclusion on the matter, its recommendation to the Legislature, including a draft of any legislation necessary to effectuate its recommendation, is published in a printed pamphlet.⁴ If the research study has not been previously published, it usually is published in the pamphlet containing the recommendation.

¹ See CAL. GOVT. CODE §§ 10300-10340.

² 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 Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

³ See CAL. GOVT. CODE § 10335.

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

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.⁵ 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. 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.

A total of 71 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.⁶ Forty-seven of these bills were enacted at the first session to which they were presented; fourteen bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 71 bills recommended, 61 eventually became law.⁷

⁵ See CAL. GOVT. CODE § 10333.

⁶ The number of bills actually introduced was in excess of 71 since, in some cases, the substance of the same bill was introduced at a subsequent session and, in the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly.

⁷ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)
 Cal. Stats. 1955, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)
 Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)
 Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)
 Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)
 Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)
 Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)
 Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)
 Cal. Stats. 1957, Ch. 1498, p. 2824. (Bringing new parties into civil actions.)
 Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)
 Cal. Stats. 1959, Ch. 468, p. 2403. (Effective date of an order ruling on motion for new trial.)
 Cal. Stats. 1959, Ch. 469, p. 2404. (Time within which motion for new trial may be made.)
 Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)
 Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)
 Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)
 Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)
 Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)
 Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)
 Cal. Stats. 1961, Ch. 589, p. 1733. (Rescission of contracts.)
 Cal. Stats. 1961, Ch. 636, p. 1838. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)
 Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)
 Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)
 Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)
 Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)
 Cal. Stats. 1963, Ch. 1631. (Sovereign immunity—tort liability of public entities and public employees.)
 Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)
 Cal. Stats. 1963, Ch. 1632. (Sovereign immunity)—insurance coverage for public entities and public employees.)
 Cal. Stats. 1963, Ch. 1633. (Sovereign immunity—defense of public employees.)
 Cal. Stats. 1963, Ch. 1634. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)
 Cal. Stats. 1963, Ch. 1635. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)
 Cal. Stats. 1963, Ch. 1636. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)
 Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)
 Cal. Stats. 1965, Ch. 299. (Evidence Code.)

One of the proposed constitutional amendments was approved and ratified by the people;⁸ the other was not approved by the Legislature.

Commission recommendations have resulted in the enactment of legislation affecting 1,932 sections of the California statutes: 978 sections have been added, 463 sections amended, and 491 sections repealed.

-
- Cal. Stats. 1965, Ch. 653. (Sovereign immunity—claims and actions against public entities and public employees.)
 - Cal. Stats. 1965, Ch. 1151. (Evidence in eminent domain proceedings.)
 - Cal. Stats. 1965, Ch. 1527. (Sovereign immunity—liability of public entities for ownership and operation of motor vehicles.)
 - Cal. Stats. 1965, Chs. 1649, 1650. (Reimbursement for moving expenses.)
 - Cal. Stats. 1967, Ch. 72. (Audit.)
 - Cal. Stats. 1967, Ch. 262. (Evidence Code—Agricultural Code revisions.)
 - Cal. Stats. 1967, Ch. 650. (Evidence Code—Evidence Code revisions.)
 - Cal. Stats. 1967, Ch. 702. (Vehicle Code Section 17150 and related sections.)
 - Cal. Stats. 1967, Ch. 703. (Evidence Code—Commercial Code revisions.)
 - Cal. Stats. 1967, Ch. 1104. (Exchange of valuation data in eminent domain proceedings.)
 - Cal. Stats. 1967, Ch. 1324. (Suit by or against an unincorporated association.)
 - Cal. Stats. 1968, Ch. 132. (Unincorporated associations.)
 - Cal. Stats. 1968, Ch. 133. (Fees on abandonment of eminent domain proceeding.)
 - Cal. Stats. 1968, Ch. 150. (Good faith improvers.)
 - Cal. Stats. 1968, Ch. 247. (Escheat of decedent's estate.)
 - Cal. Stats. 1968, Ch. 356. (Unclaimed property act.)
 - Cal. Stats. 1968, Ch. 457. (Personal injury damages.)
 - Cal. Stats. 1968, Ch. 458. (Personal injury damages.)
 - * CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

In January 1968, Messrs. Roger Arnebergh, Lewis K. Uhler, Richard H. Wolford, and William A. Yale were appointed by the Governor to succeed Messrs. James R. Edwards, Richard H. Keatinge, John R. McDonough, and Herman F. Selvin, whose terms had expired or who had resigned.

In September 1968, Mr. Joseph A. Ball resigned from the Commission. No successor had been appointed as of December 1, 1968.

As of December 1, 1968, the membership of the Law Revision Commission is:

	<i>Term expires</i>
Sho Sato, Berkeley, <i>Chairman</i>	October 1, 1969
Hon. Alfred H. Song, Monterey Park, <i>Senate Member</i>	*
Hon. F. James Bear, San Diego, <i>Assembly Member</i>	*
Roger Arnebergh, Los Angeles, <i>Member</i>	October 1, 1971
Thomas E. Stanton, Jr., San Francisco, <i>Member</i>	October 1, 1969
Lewis K. Uhler, Covina, <i>Member</i>	October 1, 1971
Richard H. Wolford, Beverly Hills, <i>Member</i>	October 1, 1971
William A. Yale, San Diego, <i>Member</i>	October 1, 1971
Vacancy	October 1, 1969
George H. Murphy, Sacramento, <i>ex officio Member</i>	†

In June 1968, Mr. John L. Cook was appointed to the Commission's staff to fill the vacancy created when Mr. Gordon E. McClintock resigned to enter private law practice.

In July 1968, Mr. John I. Horton was appointed to the Commission's staff to fill the vacancy created when Mr. Ted W. Isles resigned to enter private law practice.

* 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

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

- (1) Presentation of its legislative program to the Legislature.¹
- (2) Work on various assignments given to the Commission by the Legislature.²
- (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.³

The Commission held five two-day meetings and four three-day meetings in 1968.

¹ See pages 16-19, *infra*.

² See pages 12-15, 20-24, *infra*.

³ See page 29, *infra*.

1969 LEGISLATIVE PROGRAM

The Commission plans to submit seven recommendations to the 1969 Legislature:

- (1) *Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 201 (1969).
- (2) *Recommendation and a Study Relating to Powers of Appointment* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 301 (1969).
- (3) *Recommendation Relating to Real Property Leases* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 401 (1969).
- (4) *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article* (November 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 501 (1969).
- (5) *Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees* (September 1968). See Appendix VII to this Report.
- (6) *Recommendation Relating to Additur and Remittitur* (September 1968). See Appendix VIII to this Report.
- (7) *Recommendation Relating to Fictitious Business Names* (October 1968). See Appendix IX to this Report.

The Commission also recommends that one study be dropped from its calendar of topics (see page 24, *infra*) and that it be authorized to study three additional topics (see pages 25–28, *infra*).

STUDIES IN PROGRESS

INVERSE CONDEMNATION

Resolution Chapter 130 of the Statutes of 1965 directed the Commission to study "whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects." The Commission intends to devote a substantial portion of its time during the next five years to the study of inverse condemnation and tentatively plans to submit a recommendation on this subject to the 1973 Legislature. Prior to 1973, the Commission may submit recommendations concerning inverse condemnation problems that appear to be in need of immediate attention.

Professor Arvo Van Alstyne of the College of Law, University of Utah, has been retained as the Commission's research consultant on this topic. The first three portions of his research study have been completed and published. See Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power*, 19 STAN. L. REV. 727 (1967); *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAWYER 1 (1967); and *Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction*, 20 STAN. L. REV. 617 (1968). The fourth portion of the research study will be published in the *Hastings Law Journal* early in 1969. Additional portions of the study are in preparation.

CONDEMNATION LAW AND PROCEDURE

The Commission is now engaged in the study of condemnation law and procedure and tentatively plans to submit a recommendation for a comprehensive statute on this subject to the 1972 Legislature.

As it did in connection with the Evidence Code study, the Commission will publish a series of reports containing tentative recommendations and research studies covering various aspects of condemnation law and procedure. The comments and criticisms received from interested persons and organizations on these tentative recommendations will be considered before the comprehensive statute is drafted. The first report in this series has been published. See *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967). The second research study in this series, dealing with the right to take, is available in mimeographed form and arrangements are being made for its publication in a law review. The Commission's staff has begun work on the third study which will deal with compensation and the measure of damages. The Commission also has retained Professor Douglas Ayer of the Stanford Law School to prepare a research study on the procedural aspects of condemnation.

Prior to 1972, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of imme-

ciate attention. The Commission submitted the first such recommendation, relating to the exchange of valuation data, to the 1967 Legislature,¹ and submitted a second recommendation to the 1968 Legislature relating to the recovery of the condemnee's expenses on abandonment of an eminent domain proceeding.²

EVIDENCE

The Evidence Code was enacted in 1965 upon recommendation of the Commission. Resolution Chapter 130 of the Statutes of 1965 directs the Commission to continue its study of the Evidence Code. Pursuant to this directive, the Commission has undertaken two projects.

The first is a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code. In this connection, the Commission is continuously reviewing texts, law review articles, and communications from judges, lawyers, and others concerning the Evidence Code. As a result of this review, the Commission recommended to the 1967 Legislature that various changes be made in the Evidence Code,³ and will submit a recommendation to the 1969 Legislature that certain revisions be made in the Privileges Article of the Evidence Code.⁴

The second project is a study of the other California codes to determine what changes, if any, are needed in view of the enactment of the Evidence Code. The Commission submitted recommendations relating to the Agricultural Code⁵ and the Commercial Code⁶ to the 1967 leg-

¹ See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1104.

² See *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.

³ See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1315 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 650.

Since the publication of its last Annual Report, the Commission has reviewed the following: Alexander, *California's New Evidence Code: Changes in the Law of Privileged Communications Relating to Psychotherapy*, 1 U. SAN FERNANDO VALLEY L. REV. 56 (1967); Harvey, *Evidence Code Section 1224—Are an Employee's Admissions Admissible Against His Employer?*, 8 SANTA CLARA LAWYER 59 (1967); Note, *Impeaching the Accused by His Prior Crimes—A New Approach to an Old Problem*, 19 HASTINGS L. J. 919 (1968); Note, *Admissibility of an Agent's Declarations Against His Employer Under Evidence Code Section 1224*, 19 HASTINGS L. J. 1395 (1968); Note, *Markley v. Beagle: Rewriting the New Evidence Code*, 4 CAL. WESTERN L. REV. 210 (1968). The Commission also considered the decisions of the California Supreme Court and Courts of Appeal interpreting and applying the Evidence Code and letters from judges and attorneys.

⁴ See *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article* (November 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 501 (1969).

⁵ See *Recommendation Relating to the Evidence Code: Number 2—Agricultural Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1316 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 262.

⁶ See *Recommendation Relating to the Evidence Code: Number 3—Commercial Code Revisions* (October 1966). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1316 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 703.

islative session. Mr. Jon D. Smock, a former member of the Commission's legal staff and now a member of the staff of the Judicial Council, has been retained as a research consultant to prepare research studies on the changes needed in the evidence provisions contained in the Business and Professions Code and the Code of Civil Procedure. To the extent that its work schedule permits, the Commission will submit recommendations relating to these and additional codes to future sessions of the Legislature.

SOVEREIGN IMMUNITY

Sovereign immunity legislation was enacted in 1963 and 1965 upon recommendation of the Commission. The Commission is continuing to study this subject⁷ and, as a result of this review, plans to submit a recommendation to the 1969 Legislature relating to the statute of limitations in actions against public entities and public employees⁸ and may submit recommendations to future sessions of the Legislature.

OTHER TOPICS UNDER ACTIVE CONSIDERATION

During the 1969 legislative session, the Commission also will be occupied with the presentation of its legislative program. In addition to recommendations mentioned above, the 1969 legislative program includes recommendations relating to mutuality of remedies in suits for specific performance,⁹ powers of appointment,¹⁰ real property leases,¹¹ additur and remittitur,¹² and the Fictitious Business Name Statute.¹³

A major recommendation scheduled for completion during 1969 is a comprehensive revision of the Fictitious Business Name Statute (Civil Code Sections 2466-2471). In addition, if work on eminent domain and inverse condemnation does not occupy substantially all of its time, the Commission plans to consider during 1969 other topics authorized for study. These include arbitration, Civil Code Section 1698 (oral modification of contract in writing), and Code of Civil Procedure Section 1974 (writing required to hold person liable for representation as to credit of third person).

⁷ Since the publication of its last Annual Report, the Commission has reviewed the following: Chotiner, *California Government Tort Liability*, 43 CAL. S.B.J. 233 (1968); Notes on the California Tort Claims Act, 19 HASTINGS L. J. at 561 (*The Discretionary Immunity Doctrine in California*), 573 (*California Public Entity Immunity From Tort Claims by Prisoners*), and 584 (*Sovereign Liability for Defective or Dangerous Plan or Design—California Government Code Section 830.6*) (1968); Note, *Liability of California Municipalities for Damages Caused by Riots*, 3 LINCOLN L. REV. 62 (1967); Note, *California Tort Claims Act: Discretionary Immunity*, 39 SO. CAL. L. REV. 470 (1966). The Commission has also considered the decisions of the California Supreme Court and Courts of Appeal interpreting and applying the sovereign immunity legislation.

⁸ See *Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 49 (1969).

⁹ See *Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 201 (1969).

¹⁰ See *Recommendation and a Study Relating to Powers of Appointment* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 301 (1969).

¹¹ See *Recommendation Relating to Real Property Leases* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 401 (1969).

¹² See *Recommendation Relating to Additur and Remittitur* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 63 (1969).

¹³ See *Recommendation Relating to Fictitious Business Names* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 71 (1969).

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1968 LEGISLATIVE SESSION

Eight bills and two concurrent resolutions were introduced to effectuate the Commission's recommendations to the 1968 session of the Legislature. The Commission withdrew its recommendation that one of the bills be enacted; the seven remaining bills were enacted. The concurrent resolutions were adopted.

With respect to each bill, at least one special report was adopted by a legislative committee that considered the bill. Each report, which was printed in the legislative journal, accomplished three things: First, it declared that the Committee presented the report to indicate more fully its intent with respect to the particular bill; second, where appropriate, it stated that the comments under the various sections of the bill contained in the Commission's recommendation reflected the intent of the Committee in approving the bill except to the extent that new or revised comments were set out in the Committee report itself; third, the report set out one or more new or revised comments to various sections of the bill in its amended form, stating that such comments also reflected the intent of the Committee in approving the bill. The reports relating to the bills that were enacted are included in the appendices to this Report. The following legislative history also includes a reference to the report or reports that relate to each bill.

Resolutions Approving Topics for Study

Senate Concurrent Resolution No. 3, introduced by Senator Alfred H. Song and Assemblyman F. James Bear and adopted as Resolution Chapter 92 of the Statutes of 1968, authorizes the Commission to continue its study of topics previously authorized for study, to remove from its calendar one topic (pour-over trusts) on which no additional legislation was needed, and to remove from its calendar two other topics (division of property on divorce or separate maintenance; rights of a putative spouse) to avoid duplicating the work of the Governor's Commission on the Family.

Senate Concurrent Resolution No. 2, introduced by Senator Song and Assemblyman Bear and adopted as Resolution Chapter 110 of the Statutes of 1968, authorizes the Commission to make a study to determine whether the law relating to arbitration should be revised.

Escheat

Senate Bill No. 61, which became Chapter 247 of the Statutes of 1968, and Senate Bill No. 63, which in amended form became Chapter 356 of the Statutes of 1968, were introduced by Senator Song and Assemblyman Bear to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967); *Report of Senate Committee on Judiciary on Senate Bills Nos. 61 and 63*, SENATE J. (March 11, 1968) at 595, reprinted as Appendix I to this Report; *Report of Assembly Committee on Judiciary on Senate Bill No. 63*, ASSEMBLY J. (May 1, 1968) at 2586, reprinted as Appendix II to this Report.

Senate Bill No. 62 was also introduced by Senator Song and Assemblyman Bear, but, before the bill was set for hearing, the Commission withdrew its recommendation that the bill be enacted.

Senate Bill No. 61 was enacted as introduced. The following significant amendments were made to Senate Bill No. 63:

(1) Paragraphs (3) and (4) were added to subdivision (a) of Section 1502 (former Section 1526) of the Code of Civil Procedure. Subdivision (b) of that section was amended to read: "Except for sums payable on telegraphic money orders, this chapter does not apply to any property held by a utility which is of a type that the Public Utilities Commission of this state or a similar public agency of another state or of the United States directly or indirectly takes into consideration for the benefit of the ratepayers in determining the rates to be charged by the utility."

(2) In subdivision (c) of Code of Civil Procedure Section 1503, the following clause was inserted: "or any property that was not required to be reported under the old act,".

(3) Subdivision (d) of Code of Civil Procedure Section 1510 was deleted entirely, and former subdivision (e) was renumbered (d).

(4) In the first sentence of subdivision (b) of Code of Civil Procedure Section 1516 (former Section 1504), the following words were inserted: "escheats to this state if (1) the interest in the association is owned by a person who for more than 20 years has neither claimed a dividend or other sum referred to in subdivision (a) nor corresponded in writing with the association or otherwise indicated an interest as evidenced by a memorandum or other record on file with the association, and (2) the association does not know the location of the owner at the end of such 20-year period." This replaced the words "owned by a person who has not claimed a dividend or other sum escheated under subdivision (a), and who has not corresponded in writing with the business association concerning such interest for 15 years following the time such dividend or other sum escheated, escheats to this state."

(5) In subdivision (a) of Code of Civil Procedure Section 1518 (former Section 1506), the following words were inserted: "All tangible personal property located in this state and, subject to Section 1510, all intangible personal property, and the income or increment on such tangible or intangible property,"; this replaced the words: "Subject to Section 1510, any intangible personal property, and the income or increment thereon,". In subdivision (b) of this section, the words "intangible personal" were deleted preceding the word "property."

(6) In paragraph (1) of subdivision (b) of Code of Civil Procedure Section 1530 (former Section 1510), the phrase "twenty-five dollars (\$25) or more" was substituted for the phrase "more than ten dollars (\$10)." In paragraph (3) of this section, the word "the" was inserted after "In." In paragraph (4) of this section, the phrase "under twenty-five dollars (\$25)" was substituted for the phrase "of ten dollars (\$10) or less."

(7) In Code of Civil Procedure Section 1564 (former Section 1517), paragraph (9) was added to subdivision (b).

(8) In Code of Civil Procedure Section 1580 (former Section 1525), paragraph (2) was deleted entirely from subdivision (b), and para-

graph (1) was combined with the introductory phrase of subdivision (b).

(9) In Code of Civil Procedure Section 1581, the last sentence was added to subdivision (b).

Other technical amendments were made.

Personal Injury Damages

Senate Bill No. 19, which in amended form became Chapter 457 of the Statutes of 1968, and Senate Bill No. 71, which in amended form became Chapter 458 of the Statutes of 1968, were introduced by Senator Song and Assemblyman Bear to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 1385 (1967); *Report of Senate Committee on Judiciary on Senate Bills 19 and 71*, SENATE J. (April 22, 1968) at 1317, reprinted as Appendix III to this Report.

Senate Bill No. 19. The following significant amendments were made to Senate Bill No. 19:

Subdivision (c) of Section 146 of the Civil Code was amended as follows: The clause "but in no event shall more than one-half of the community property personal injury damages be assigned to the spouse of the party who suffered the injuries" was added to the first sentence. The clause "unless such money or other property has been commingled with other community property" was added to the second sentence.

Senate Bill No. 71. The following significant amendments were made to Senate Bill No. 71:

Section 168 of the Civil Code, which was not included in the bill as introduced, was amended as follows: The phrase "and community property personal injury damages" was added following the words "The earnings." The words "and damages" were added after the words "such earnings." The second sentence was added.

Unincorporated Associations

Assembly Bill No. 39, which in amended form became Chapter 132 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS 1403 (1967); *Report of Senate Committee on Judiciary on Assembly Bill 39*, SENATE J. (April 22, 1968) at 1318, reprinted as Appendix IV to this Report.

The following significant amendments were made to Assembly Bill No. 39:

Subdivision 2.1 of Section 411 of the Code of Civil Procedure was amended twice, the first version to take effect immediately and the other to take effect on the 61st day after the adjournment of the 1968 Regular Session of the Legislature, the normal effective date.

Subdivision 2.1 was amended to take effect immediately by deleting everything following the colon and adding paragraphs (a), (b), and (c).

Subdivision 2.1 was also amended to take effect on the normal effective date to provide in paragraph (c) that service should be made in the manner provided in Section 24007 of the Corporations Code.

Section 412 of the Code of Civil Procedure, which was not included in the bill as introduced, was amended.

Section 24007 was added to the Corporations Code. This section was not included in the bill as introduced.

Good Faith Improvers

Assembly Bill No. 40, which in amended form became Chapter 150 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 1373 (1967); *Report of Assembly Committee on Judiciary on Assembly Bill No. 40*, ASSEMBLY J. (March 20, 1968) at 1217, reprinted as Appendix V to this Report.

The following significant amendments were made to Assembly Bill No. 40:

The proposed amendment to Section 339 of the Code of Civil Procedure was deleted. Instead, Section 340 of the Code of Civil Procedure, which was not included in the bill as introduced, was amended to add subdivision 6.

Section 871.3 of the Code of Civil Procedure was amended to add the second sentence.

Section 871.4 of the Code of Civil Procedure was amended to add the second sentence.

Section 871.5 of the Code of Civil Procedure was amended to add the last two sentences.

Section 871.7 was amended to number the section as proposed subdivision (a) and to add subdivision (b).

Fees on Abandonment

Assembly Bill No. 41, which in amended form became Chapter 133 of the Statutes of 1968, was introduced by Assemblyman Bear and Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967); *Report of Assembly Committee on Judiciary on Assembly Bill No. 41*, ASSEMBLY J. (March 20, 1968) at 1219, reprinted as Appendix VI to this Report.

The following significant amendments were made to Assembly Bill No. 41. Subdivision (c) of Section 1255a of the Code of Civil Procedure was amended as follows:

(1) The phrase "the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action" was substituted for the phrase "trial and during trial."

(2) The phrase "in preparing for the condemnation trial, during the trial, and in any subsequent judicial proceedings in the condemnation action" was substituted for the phrase "in the proceeding."

(3) The phrase "include only those recoverable costs and disbursements, or portions thereof, which would not have" was substituted for the phrase "not include any cost or disbursement, or portion thereof, which would have."

CALENDAR OF TOPICS FOR STUDY

STUDIES IN PROGRESS

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

Topics Under Active Consideration

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

1. 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 (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 4 CAL. L. REVISION COMM'N REPORTS at 115 (1963)).²
2. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).³

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

The legislative directives to make these studies are listed after each topic.

² 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, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Cal. Stats. 1961, 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, p. 2900 (evidence in eminent domain proceedings); Ch. 1649, p. 3744, and Ch. 1650, p. 3746 (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 1318 (1967). See also 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.

The Commission is now engaged in the study of this topic and tentatively plans to submit a recommendation for a comprehensive statute to the 1972 Legislature. See 8 CAL. L. REVISION COMM'N REPORTS 1313 (1967). See also *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967).

³ 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

3. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects (Cal. Stats. 1965, Res. Ch. 130, p. 5289).
4. Whether the Evidence Code should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).⁴
5. Whether the law relating to the use of fictitious names should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 18 (1957)).⁵
6. Whether Civil Code Section 1698 should be repealed or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957)).

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); Cal. Stats. 1963, Ch. 1715 (claims, actions and judgments against public entities and public employees); Cal. Stats. 1963, Ch. 1682 (insurance coverage for public entities and public employees); Cal. Stats. 1963, Ch. 1683 (defense of public employees); Cal. Stats. 1963, Ch. 1684 (workmen's compensation benefits for persons assisting law enforcement or fire control officers); Cal. Stats. 1963, Ch. 1685 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 1686 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, 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); Cal. Stats. 1965, 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* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 49 (1969). This recommendation will be submitted to the 1969 Legislature.

This topic will be considered in connection with the Commission's study of topic 3 (inverse condemnation).

- ⁴ 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); Cal. Stats. 1967, Ch. 262 (Agricultural Code revisions); Cal. Stats. 1967, Ch. 703 (Commercial Code revisions).

See also *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article* (November 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 501 (1969). This recommendation will be submitted to the 1969 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 8 CAL. L. REVISION COMM'N REPORTS 1314 (1967).

- ⁵ See *Recommendation Relating to Fictitious Business Names* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 71 (1969). This recommendation will be submitted to the 1969 Legislature; a comprehensive recommendation on this topic will be submitted to the 1970 Legislature.

7. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 20 (1959)).

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.

1. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person (Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹
2. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 19 (1957)).²
3. Whether Vehicle Code Section 17150 and related statutes should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1962, Res. Ch. 23, p. 94).³
4. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁴
5. 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

¹ See *Recommendation and Study Relating to Whether Damages for Personal Injury to a Married Person Should be Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS 401 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967).

See also *Recommendation Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property*, 8 CAL. L. REVISION COMM'N REPORTS at 1385 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 18 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Chs. 457 and 458.

² See *Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 201 (1969). This recommendation will be submitted to the 1969 Legislature.

³ See *Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (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. 702.

⁴ See *Recommendation and Study Relating to The Good Faith Improver of Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS 801 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

See also *Recommendation Relating to Improvements Made in Good Faith Upon Land Owned by Another*, 8 CAL. L. REVISION COMM'N REPORTS at 1373 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 150.

- should be revised (Cal. Stats. 1966, Res. Ch. 9; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁵
6. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised (Cal. Stats. 1967, Res. Ch. 81; see also Cal. Stats. 1956, Res. Ch. 42, p. 263).⁶
 7. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases (Cal. Stats. 1955, Res. Ch. 207, p. 4207).⁷
 8. Whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised (Cal. Stats. 1966, Res. Ch. 9).⁸
 9. Whether the law relating to a power of appointment should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).⁹
 10. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹⁰

⁵ 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 at 1403 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 18-19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 132.

⁶ 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 at 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).

⁷ See *Recommendation and Study Relating to Taking Instructions to the Jury Room*, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). The recommended legislation was withdrawn by the commission for further study.

⁸ See *Recommendation and Study Relating to Rights of Surviving Spouse in Property Acquired by Decedent While Domiciled Elsewhere*, 1 CAL. L. REVISION COMM'N REPORTS at E-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). The recommended legislation was enacted. See Cal. Stats. 1957, Ch. 490. See *Recommendation and Study Relating to Inter Vivos Marital Property Rights in Property Acquired While Domiciled Elsewhere*, 3 CAL. L. REVISION COMM'N REPORTS at I-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). The recommended legislation was enacted. See Cal. Stats. 1961, Ch. 636.

⁹ See *Recommendation and a Study Relating to Powers of Appointment* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 301 (1969). This recommendation will be submitted to the 1969 Legislature.

¹⁰ 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* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 401 (1969). This recommendation will be submitted to the 1969 Legislature.

11. Whether the law relating to additur and remittitur should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹¹

Other Topics Authorized for Study

The Commission has not yet begun the preparation of a recommendation on the topics listed below. In a few cases, however, the research study is in preparation.

1. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised (Cal. Stats. 1956, Res. Ch. 42, p. 263; see also 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957)).
2. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 15 (1957)).
3. 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 (Cal. Stats. 1959, Res. Ch. 218, p. 5792; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957)).
4. Whether the Small Claims Court Law should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 16 (1957)).
5. Whether the law relating to arbitration should be revised (Cal. Stats. 1968, Res. Ch. 110).¹²
6. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court (Cal. Stats. 1958, Res. Ch. 61, p. 135; see also 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 18 (1959)).

STUDIES TO BE DROPPED FROM CALENDAR OF TOPICS

Study Relating to the Rights of an Unlicensed Contractor

In 1957, the Commission was authorized to make a study to determine whether Section 7031 of the Business and Professions Code, which

¹¹ See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (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. 72.

See also *Recommendation Relating to Additur and Remittitur* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 63 (1969). This recommendation will be submitted to the 1969 Legislature.

¹² 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.

precludes an unlicensed contractor from bringing an action to recover for work done, should be revised.¹ The Commission requested authority to make this study because Section 7031 may operate to visit a forfeiture on the contractor and to give the other party a windfall.

The Commission recommends that this topic be dropped from its calendar of topics. The Commission has concluded that it would not be desirable to make a recommendation on Section 7031 without considering the fundamental policy question whether this type of sanction should be used to enforce other licensing laws.² The Commission has considered whether it should request that the scope of this topic be broadened to cover this fundamental question and has concluded that the resolution of the question would not be particularly aided by the extensive legal research and analysis which the Commission undertakes to provide. In addition, the recent decision of the California Supreme Court in *Latipac, Inc. v. Superior Court*,³ which permits an unlicensed contractor to recover for work done if he has substantially complied with the licensing law, will mitigate the forfeiture and windfall problems in some cases.

STUDIES FOR FUTURE CONSIDERATION

During the next few years, the Commission plans to devote its attention primarily to condemnation law and procedure and inverse condemnation. Legislative committees have indicated that they wish these topics to be given priority. Nevertheless, the Commission believes that it may have time to consider a few topics that are relatively narrow in scope. During recent years, the Commission has submitted recommendations to the Legislature on most of the topics it was authorized to study that were narrow in scope. Work on the remaining narrow topics is in progress. So that the Commission's agenda will include a reasonable balance of broad and narrow topics, the Commission recommends that it be authorized to study the following new topics.

A study to determine whether the law relating to counterclaims and cross-complaints should be revised

When a party wishes to assert a claim against one who has sued him, he is confronted in California by the bewildering distinction between a cross-complaint and a counterclaim. By a cross-complaint, under Code of Civil Procedure Section 442, a litigant seeks affirmative relief, against any person, relating to the transaction upon which the action is brought. By a counterclaim, under Code of Civil Procedure Section 438, a litigant asserts a claim which "must tend to diminish or defeat the plaintiff's recovery"; the claim "must exist in favor of a defendant and against a plaintiff between whom a several judgment might be had in the action." Where a claim tending to diminish or defeat a plaintiff's recovery *also* "arises from the transaction set forth in the complaint," and in no other case, the claim will be deemed a compulsory counter-

¹ This study was authorized by Cal. Stats. 1957, Res. Ch. 202, p. 4589. For a description of the topic, see 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 23 (1957).

² See Business and Professions Code Sections 8554, 9678, 10136, and 10508 for other instances using this sanction to enforce a licensing law.

³ 64 Cal.2d 278, 49 Cal. Rptr. 676, 411 P.2d 564 (1966).

claim and the litigant barred from maintaining a subsequent action thereon.

The need for an examination of the law relating to counterclaims and cross-complaints is demonstrated by the following extract from Witkin's *California Procedure*:

The general purposes of both the counterclaim and cross-complaint have been described as follows: "One of the objects of the reformed or code procedure is to simplify the pleadings and conduct of actions, and to permit of the settlement of all matters of controversy between the parties in one action, so far as may be practicable. And to this end most of the codes have provided that the defendant, in an action may, by appropriate pleadings, set up various kinds of new matter, or cross-claims, which must otherwise have been tried in separate actions. Generally speaking, in most of the states this new matter is broad enough to embrace all controversies which upon previous statutes might have been the subject of setoff, and all claims which under the adjudication of courts might have been interposed as defenses by way of recoupment, and secures to a defendant all the relief which an action at law, or a bill in equity, or a cross-bill would have secured on the same state of facts prior to the adoption of the code. The object of these remedial statutes is to enable, as far as possible, the settlement of cross-claims between the same parties in the same action, so as to prevent a multiplicity of actions." (*Pac. Finance Corp. v. Superior Court* (1933) 219 C. 179, 182, 25 P.2d 983.)

* * * * *

The usefulness of these entirely separate forms of pleadings for cross-claims has been doubted, and it would seem that an enlarged *counterclaim*, available against plaintiffs, codefendants and strangers, and embodying the relief now available by counterclaim and cross-complaint, would be desirable. This is the modern approach of the Federal Rules. (See *supra*, §565.)

If the duplication merely called for care in selecting the proper label for the pleading, the objection to the two forms would not be very strong. Unfortunately, however, . . . C.C.P. 438 and 442 are not mutually exclusive, and their overlapping coverage has created a number of serious procedural problems. . . .

* * * * *

The technical distinctions between counterclaim and cross-complaint, and the overlapping statutes, create difficulties for both parties. The defendant must know whether he should set up his demand by affirmative defense, by counterclaim, or by a separate cross-complaint, and also whether he must set it up or be barred. The plaintiff must know whether the demand is properly an affirmative defense or counterclaim which need not be answered, or a cross-complaint which requires an answer. If the defendant carefully restates the same demand as a counterclaim and a cross-complaint, he wastes time and effort, and passes the problem of choice to the plaintiff who must decide whether or not to answer. Thus it is important to plead the cross-claim in the proper manner, but it is not easy to decide what is the proper manner.

The California courts have shown full awareness of the gravity of the problem, and have attempted to meet it by an extremely liberal rule of construction. The general principle that pleadings are to be liberally construed (*supra*, §209) is expanded as follows: Disregarding the theory or label placed on the pleading by the defendant, and sometimes disregarding also the construction placed on it by the plaintiff, the court will look into the substance of the claim and decide for itself. This may mean one of two things: If the cross-claim comes under only a single classification, the court will reclassify and treat it *as what it should be*. But if the claim comes under more than one classification, the court will treat it *as a counterclaim or cross-complaint or affirmative defense* to reach the most desirable result in the particular case. [2 WITKIN, CALIFORNIA PROCEDURE *Pleading* §§565-570 at 1569-1576 (1954).]

Mr. Witkin's analysis suggests that the existing technical distinction between a counterclaim and cross-complaint serves no useful purpose and has created "a number of serious procedural problems." A study of the California law relating to counterclaims and cross-complaints and of the pertinent provisions of the Federal Rules of Civil Procedure should be made to determine whether the serious procedural problems that now exist can be eliminated.

A study to determine whether the law relating to joinder of causes of action should be revised

Section 427 of the Code of Civil Procedure states the statutory rules governing joinder of causes of action. In general, these rules permit a plaintiff to unite several causes of action in one complaint where: (1) all causes belong to one and only one of the classes set forth in subdivisions (1) through (9) of Section 427; (2) all causes affect all parties to the action; (3) no cause requires a different place of trial; and (4) each cause is separately stated. The classes referred to consist essentially of the common law categories of claims, *e.g.*, contracts, express or implied; injuries to person; injuries to property; these are supplemented by an overriding provision which permits joinder of all claims arising out of the same transaction.

The categories established by Section 427 are arbitrary; it makes no sense to allow the plaintiff to join all unrelated contract claims which he may have against a given defendant and, at the same time, to refuse to allow joinder of unrelated tort and contract claims. Moreover, as a result of piecemeal revision, enactment of related but conflicting legislation, and subsequent judicial interpretation, Section 427 has become unnecessarily complex¹ and misleading.² For example, the last para-

¹ For example, the specific provision "that causes of action for injuries to person and injuries to property, growing out of the same tort, may be joined in the same complaint" seems to uselessly duplicate paragraph (8) which permits joinder of "claims arising out of the same transaction, or transactions connected with the same subject of the action." See 2 WITKIN, CALIFORNIA PROCEDURE *Pleading* § 146 (1954).

² For example, Section 427 states that all causes of action joined "must affect all the parties to the action." This language seems to require that all parties involved must have a joint and common interest in every cause of action sought to be joined. However, Section 379b of the Code of Civil Procedure, which was enacted subsequent to Section 427, specifically provides that "it shall *not* be necessary that each defendant shall be interested as . . . to every cause of action

graph of Section 427 confusingly intermingles rules regarding joinder of causes of action with provisions regarding the need for a separate statement of certain types of joined causes of action.

A better rule on joinder of causes of action might be that all causes of action may be joined in the pleadings and later severed for trial if necessary at the discretion of the court. This is the practice in the federal courts reflected in Rule 18 of the Federal Rules of Civil Procedure.

A study should be made to determine whether the law relating to joinder of causes of action should be revised. To the extent necessary, this study will also involve the rules relating to joinder of parties.

A study to determine whether Civil Code Section 715.8 (rule against perpetuities) should be revised or repealed

The rule against perpetuities is designed to prevent unreasonable control of the future ownership of property. The basic rule in California requires that every interest in property "vest" not later than 21 years after some life in being at the time when the interest is created.³ Serious problems were created in 1963 when Civil Code Section 715.8 was added, unintentionally furnishing a definition of "vesting" that permits the creation of interests of perpetual existence. Section 715.8 provides that an interest in property is vested if "there are persons in being, irrespective of the nature of their respective interests, who together could convey a fee simple title" to the property. The following is merely one example of a very simple device that conforms perfectly to Section 715.8 but completely thwarts the purpose of the rule against perpetuities.

T places property in trust, directing the trustee to pay the income from the property to *T*'s issue from time to time living. When there is no issue of *T* surviving, the trustee is to convey the property to Stanford University. The adult income beneficiaries and Stanford University, acting jointly, have the power to convey fee simple title to the property.

It would often be impractical to secure the consent of even all the adult income beneficiaries, but the existence of the adverse interest in Stanford virtually precludes such a conveyance. Nevertheless, under Section 715.8 the interests are "vested," and the rule against perpetuities is "satisfied."

The existing statute clearly invites not only undue fettering of property but also schemes for avoidance of both federal and state taxes. It seems imperative, therefore, that a study be made to determine whether Civil Code Section 715.8 should be revised or repealed.⁴

included in any proceeding against him . . ." (Emphasis added.) This inconsistency has been judicially resolved by permitting the latter rule to prevail. *Kraft v. Smith*, 24 Cal.2d 124, 148 P.2d 23 (1944). See also *Peters v. Bigelow*, 137 Cal. App. 135, 30 P.2d 450 (1934). Nevertheless the respective sections remain in apparent conflict.

³ CAL. CIVIL CODE § 715.2.

⁴ For an article strongly recommending the repeal of Civil Code Section 715.8, see *Luedemann, California Revises the Rule Against Perpetuities—Again*, 16 STAN. L. REV. 177 (1963). See also *Dukeminier, Perpetuities Revision in California: Perpetual Trusts Permitted*, 55 CAL. L. REV. 678 (1967); *Fletcher, A Rule of Discrete Invalidity: Perpetuities Reform Without Waiting*, 20 STAN. L. REV. 459 (1968).

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.¹ 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.

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

(3) Two decisions of the Supreme Court of California holding a statute of this state unconstitutional have been found.²

In *People v. Johnson*,³ Evidence Code Section 1235, which provides a hearsay exception for prior inconsistent statements of a witness, was held to violate the Sixth Amendment's guarantee of the right of confrontation when the prior inconsistent statement is sought to be used as substantive evidence against the defendant in a criminal prosecution. Since Evidence Code Section 1204⁴ specifically recognizes that the hearsay exceptions provided in the code are subject to any restrictions on the admission of evidence imposed by the state and federal constitutions and since Section 1235 may still constitutionally be applied in circumstances (such as civil cases) not considered in the *Johnson* case, the Commission has concluded that no revision is needed in the Evidence Code to reflect the decision in the *Johnson* case.

In *Silver v. Reagan*,⁵ it was held not constitutionally permissible to defer reapportionment of the state's congressional districts (established by Elections Code Section 30000) until after the 1970 census. Legislation⁶ was enacted in 1967 that constitutionally redistricted the state's congressional districts.⁷

¹ This study has been carried through 69 Adv. Cal. 394 (1968) and 88 U.S. 2329 (1968).

² Government Code Section 10331 refers only to *statutes* that have been held unconstitutional. It is noted however that, in *Vogel v. County of Los Angeles*, 68 Adv. Cal. 12, 64 Cal. Rptr. 409, 434 P.2d 961 (1967), the California Supreme Court held unconstitutional the second paragraph of Section 3 of Article XX of the California Constitution relating to the loyalty oath required of public employees.

³ 68 Adv. Cal. 674, 68 Cal. Rptr. 599, 441 P.2d 111 (1968).

⁴ Section 1204 provides: "A statement that is otherwise admissible as hearsay evidence is inadmissible against the defendant in a criminal action if the statement was made, either by the defendant or by another, under such circumstances that it is inadmissible against the defendant under the Constitution of the United States or the State of California."

⁵ 67 Cal.2d 452, 62 Cal. Rptr. 424, 432 P.2d 26 (1967).

⁶ Cal. Stats. 1967, 2d Ex. Sess., Ch. 2, § 2. Errors in the description of the districts given in the 1967 act were corrected in 1968. Cal. Stats. 1968, Ch. 1.

⁷ *Silver v. Reagan*, 67 Cal.2d 924, 64 Cal. Rptr. 325, 434 P.2d 621 (1967).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed as studies in progress on pages 20-24 of this Report, to study the new topics listed on pages 25-28 of this Report, and to drop from its calendar of topics the topic listed on page 24 of this Report.

APPENDIX I

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILLS NOS. 61 AND 63

[Extract from Senate Journal for March 11, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Senate Bills Nos. 61 and 63, the Senate Committee on Judiciary makes the following report.

Except for the revised comments to Senate Bill No. 63 set out below, the comments contained under the various sections of Senate Bills Nos. 61 and 63 as set out in the *Recommendation of the California Law Revision Commission Relating to Escheat* (September 1967) reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Senate Bills Nos. 61 and 63.

The following revised comments to Senate Bill No. 63 also reflect the intent of the Senate Committee on Judiciary in approving Senate Bill No. 63.

Section 1502 (Application of chapter)

Comment. Paragraphs (1) and (2) of subdivision (a) of Section 1502 are the same in substance as former Section 1526, except that the portion of former Section 1526 that excluded property "presumed abandoned or escheated under the laws of another state prior to the effective date of this chapter" has been deleted because its substance is retained in subdivision (b) of Section 1504.

Paragraphs (3) and (4) of subdivision (a) retain the significant portion of an exemption formerly contained in the last paragraph of former Section 1502.

Subdivision (b) has been added to meet a problem that was met under the previous law by excluding utilities from the operation of this chapter entirely. This subdivision contains a limitation not found in the prior law. The "utility exemption" is limited to property that is used or applied for the benefit of the ratepayers in determining the rates to be charged by the utility. This limitation has been added to assure that the unclaimed property which is covered by the exemption will actually be used for the benefit of the ratepayers and will not merely revert to the stockholders. Telegraphic money orders are specifically excepted from the exemption so that the intent to escheat such funds will be clear. If such funds were included within the exemption, the funds would not be retained by the company but would escheat to the state where the company was domiciled. See the Comment to Section 1510.

Subdivision (c) is the same in substance as the second sentence of former Code of Civil Procedure Section 1500. Although the provisions of this chapter do not apply to any type of property received by the state under Chapters 1-6 of this title, certain provisions in those chapters apply to this chapter. For example, Section 1300 provides that its definitions apply throughout this title. Therefore, the definition of "escheat" that appears in that section governs the construction of this chapter as well as the construction of the other chapters in this title.

Section 1503. (Special provisions concerning property not subject to former law)

Comment. Legislation enacted in 1968 added, amended, and repealed sections of this chapter. The 1968 legislation provides for the escheat of certain property that would never have been presumed abandoned—escheated—under the chapter had the 1968 legislation not been enacted. For example, former Section 1504 provided for the escheat of certain property held or owing by a business association. However, former Section 1504 applied only to California business associations (those “organized under the laws of or created in this state”) and business associations doing business in this state. This limitation precluded the escheat to this state of property held or owing by any business association that was not a California business association and that was not doing business in this state, even where the property was held or owing to a person whose last known address according to the records of the business association was in California. The 1968 legislation removes this limitation. Property held by any business association now escheats if the conditions specified in Sections 1516 and 1510 are satisfied. The 1968 legislation thus provides for the escheat of property that was not subject to the “old act” (this chapter as it existed prior to January 1, 1969).

Section 1503 provides special rules concerning property that was not subject to the old act. The section has no effect on property that escheated under the old act or would have escheated under the old act in the course of time had the 1968 legislation not been enacted.

Subdivision (b) of Section 1503 makes it clear that this chapter imposes no obligation whatsoever on the holder with respect to property not subject to the old act if the owner’s claim against the holder was barred by an applicable statute of limitations prior to the operative date of the 1968 legislation—January 1, 1969. For example, if a business association is not a California business association and was not doing business in this state prior to January 1, 1969, the business association need not pay or deliver to this state any property where the claim of the owner to such property was barred prior to January 1, 1969. On the other hand, if the business association is a California business association or was doing business in this state prior to January 1, 1969, the fact that the claim of the owner to the property was barred prior to January 1, 1969, does not relieve the association of its duty to pay or deliver escheated property to this state.

Subdivision (c) deals with the problem of how far back the holder must check his records to determine what property that was not subject to the old act must be paid to California under this chapter. For example, if the business association is not a California business association and was not doing business in this state prior to January 1, 1969, the 1968 legislation imposes a new requirement that the business association pay to California unclaimed dividends that are payable to shareholders whose last known address is in California if the dividends have been unclaimed for seven years and the business association has not heard from the shareholder for that period. Under subdivision (c), such a business association need pay to California only those dividends with respect to which the seven-year period expires after December 31, 1968. Thus, if the dividends became payable in 1960 and the share-

holder has neither contacted the business association nor claimed the dividends, subdivision (c) relieves the business association from the obligation of paying such unclaimed dividends to California. On the other hand, if the dividends became payable in 1965, they will escheat to California in 1972 if the shareholder has neither contacted the business association nor claimed the dividends during the seven-year period. In the latter case, subdivision (c) does not relieve the business association from paying the escheated dividends to the State Controller because on January 1, 1969, the dividends have been held for less than the escheat period (seven years).

Subdivision (c) applies to property that was not required to be reported under the old act. This preserves the effect of subdivision (g) of former Section 1510 (renumbered as Section 1530 by the 1968 legislation).

Section 1513 (Property held by banking or financial organizations; travelers checks and money orders issued by business associations)

Comment. Subdivisions (a) through (d) of Section 1513 are substantially the same as subdivisions (a) through (d) of former Section 1502. The changes made either clarify the former language or are necessary to make the section apply to property held by out-of-state businesses as well as to property held by businesses within this state. Subdivision (e) has been added to cover money orders issued by any business association that is not a banking or financial organization.

Subdivisions (d) and (e) apply to telegraphic money orders as well as any other money orders.

Former subdivision (e) is superseded by Section 1514.

The last sentence of former Section 1502 is superseded by paragraphs (3) and (4) of subdivision (a) of Section 1502.

Section 1515 (Funds held by life insurance corporation)

Comment. Section 1515 incorporates the substance of former Section 1503. The section applies to all life insurance corporations, whether or not they transact business in California. See Section 1501(g).

When the insured or annuitant is entitled to the funds, the funds are payable to California if his last known address, as shown on the records of the corporation, is in California. See Section 1510(a). If his address is not shown on the records of the corporation, the determination as to whether California is entitled to the funds is made under subdivisions (b) through (e) of Section 1510.

Where a person other than the insured or annuitant is entitled to the funds, the funds are payable to California if the last known address, as shown on the records of the corporation, of the person entitled to the funds is in California. See Section 1510(a). If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, the presumption provided by subdivision (b) of Section 1515 operates to determine the last known address of the person entitled to the funds (the "apparent owner") for the purposes of subdivision (a) of Section 1510. See Section 1501(a) (defining "apparent owner"). Concerning this presumption, see the discussion in *Recommendation Relating to*

Escheat, 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies 1001, 1012-1013 (1967). See also Section 1542(a)(4) (right of another state to recover funds escheated to California by application of the presumption).

Section 1516 (Dividends and distributions of business associations)

Comment. Section 1516 is based on former Section 1504. The former section has been revised to provide for the escheat of property held by a business association, whether or not the association does business in this state. The period for escheat of an intangible interest under subdivision (b) has been changed to 20 years and the subdivision has been made applicable whether or not the association has owed a dividend or other sum referred to in subdivision (a) which is unclaimed by the owner. Under the former law, the intangible interest in the association apparently never escheated if the association did not declare a dividend or make a similar distribution.

Section 1518 (Property held by fiduciaries)

Comment. Section 1518 is substantially the same as former Section 1506. Changes have been made to clarify the meaning of the section, to make it apply whether or not the fiduciary does business in California, and to make it apply to tangible, as well as intangible, property.

Under Section 1533, the State Controller may reject tangible personal property that escheats under Section 1518 if he determines that the state's interest would not be served by accepting it.

Section 1530 (Report of escheated property)

Comment. Section 1530 is substantially the same as former Section 1510. The changes that have been made in the section are mostly technical and are necessary to conform to the revision of the remainder of the chapter.

In paragraphs (1) and (4) of subdivision (b), the phrase "ten dollars (\$10)" has been changed to "twenty-five dollars (\$25)" to reduce the administrative burden and expense on holders and to conform to the notice and publication requirements of Section 1531.

Subdivision (b)(1) has been revised to incorporate the substance of an amendment (relating to travelers checks and money orders) made by the National Conference of Commissioners on Uniform State Laws to the Uniform Disposition of Unclaimed Property Act. See 26 SUGGESTED STATE LEGISLATION D-31 (1967).

In the case of escheated funds of life insurance corporations, the name, if known, and the last known address, if any, of the beneficiary or other person appearing from the records of the corporation to be entitled to the funds must be reported. Subdivision (b)(1). If this person is one other than the insured or annuitant, the name and last known address of the insured or annuitant must also be reported. Subdivision (b)(2).

Former subdivision (e) has been omitted because subdivision (e) of Section 1531 requires the Controller to notify owners of any substantial sums subject to escheat.

Former subdivision (g) also has been omitted. It was a temporary provision governing property subject to the reporting requirement

as of September 18, 1959. Sections 1503 and 1505 preserve the effect of subdivision (g).

Section 1533 (Controller may reject tangible personal property)

Comment. Tangible personal property subject to escheat under Sections 1514, 1517, 1518, 1519, and 1520 may be of little or no value, and the costs of transportation, storage, and disposition may exceed its worth. Section 1533 authorizes the State Controller to reject tangible personal property if he determines that the state's interest would not be served by accepting it.

Section 1564 (Disposition of funds)

Comment. Section 1564 is substantially the same as former Section 1517. The preliminary language of subdivision (b) has been modified to broaden the purposes for which the money in the abandoned property account may be expended. Certain expenses that the Controller is authorized to incur in the administration of this fund—for example, litigation costs incurred under Sections 1571–1574—are not clearly included among the specific purposes listed in subdivision (b). The revised language eliminates any uncertainty as to the availability of the fund for such ordinary administrative expenses. Paragraph (9) has been added to subdivision (b) to conform this section with Code of Civil Procedure Section 1325 which makes continuous appropriation of the Unclaimed Property Fund for various purposes.

Section 1581 (Records concerning travelers checks and money orders)

Comment. Section 1581 imposes alternative requirements upon a business association that sells travelers checks or money orders in California. Where the checks or orders are issued or distributed by the association, but actually sold to the purchaser by another person, the requirements are directed to the association rather than the other person. As a first alternative, the section requires the association to maintain a record of the name and address of the purchaser. Subdivision (a)(1). This record will be sufficient under *Texas v. New Jersey*, 379 U.S. 674 (1965), to permit California to escheat the sum payable if the purchaser's address is in California. The keeping of such a record may be an onerous requirement, however. Subdivision (a)(2) therefore permits the business association to maintain instead a record indicating those travelers checks and money orders that are sold in this state. This record will be a simple one to make and maintain. The record can be made, for example, by a letter designation in the serial number of the instrument indicating the state where it was sold. This record will provide the business association with all information needed to determine the travelers checks and money orders that escheat to California under Section 1511. Subdivision (a)(2), therefore, adds the additional condition that, if the simplified record is to be kept, the association pay to this state the sums escheated to this state as a result of the application of the presumption provided by Section 1511.

The last two sentences of subdivision (b) make it clear that this section does not require or authorize the imposition of any requirement that the business association maintain a record of the names and addresses of purchasers of travelers checks and money orders if the as-

sociation complies with paragraph (2) of subdivision (a). As noted, however, that paragraph requires payment to this state of escheated sums as a condition to the business association's being exempt from the requirement of paragraph (1) of subdivision (a). It is remotely possible that the California Supreme Court or a federal court will hold the presumption established by Section 1511 impermissible in view of *Texas v. New Jersey*, 379 U.S. 674 (1965). See discussion in *Recommendation Relating to Escheat*, 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies 1001, 1010-1012 (1967). If that presumption is held impermissible, the association will then not be obliged by this chapter to make payment to this state on the basis of the presumption and presumably will be required to transmit the funds to the states otherwise determined to be entitled to them. Thus, the association need not then comply with the payment requirement of paragraph (2) of subdivision (a) insofar as that requirement is based on the presumption. With respect to this remote eventuality, the business association will not, however, thereby be required to maintain records of the names and addresses of purchasers under paragraph (1) of subdivision (a). Rather, the lesser record-keeping requirement of paragraph (2) of subdivision (a) will continue in effect for those business associations that elect to keep the records required by that paragraph.

The amount of the civil penalty imposed by subdivision (e) for willful failure to maintain the required record reflects the substantial amount of money that might be lost to California if a record is not maintained. Absent any record, the money would escheat to the state where the business association is domiciled.

APPENDIX II

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON SENATE BILL NO. 63

[Extract from Assembly Journal for May 1, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Senate Bill No. 63, the Assembly Committee on Judiciary makes the following report:

Except for the revised comments set out below, the comments contained under the various sections of Senate Bill No. 63, as set out in the *Recommendation of the California Law Revision Commission Relating to Escheat* (September 1967), as revised and supplemented by the *Report of the Senate Committee on Judiciary on Senate Bills Nos. 61 and 63* as printed in the Senate Journal for March 11, 1968, reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Senate Bill No. 63.

The following revised comments to Senate Bill No. 63 also reflect the intent of the Assembly Committee on Judiciary in approving Senate Bill No. 63.

Section 1510 (General conditions for escheat of intangible personal property)

Comment. Subdivisions (a), (b), and (c) of Section 1510 describe types of abandoned intangible property that this state may claim under the rules stated in *Texas v. New Jersey*, 379 U.S. 674 (1965). In that case, the Court held that unclaimed intangible property is subject to escheat by the state of the last known address of the owner as shown by the records of the holder and that, where the records of the holder do not show the owner's last address, the property, as a general rule, is subject to escheat by the state of the holder's domicile. In the latter case, the state of the owner's actual last known address may escheat the property and recover it from the state of the holder's domicile by showing the actual last known address. Where the laws of the state of the owner's last known address, as shown on the holder's records, do not provide for escheat of intangible property, such property is subject to escheat by the state where the holder is domiciled, but in such a case, the state of the owner's last known address may thereafter claim the property if it enacts an applicable escheat law.

Section 1580 requires the Controller to designate by regulation those states whose laws do not provide for the escheat of any kind of intangible property described in Sections 1513 to 1520. Under subdivision (c), such property does not escheat to this state unless such regulations have been adopted. Thus, holders in this state will be able to determine whether property being held by them escheats to this state by reference to the Controller's regulations, thereby making it unnecessary for them to check the escheat laws of other states.

Subdivision (d) resolves a question not decided in *Texas v. New Jersey*. The subdivision provides for the escheat to this state of intangible property held by a domiciliary of this state and owned by a person whose last known address is in a foreign nation.

The introductory clause of Section 1510 makes it clear that this chapter does not supersede special statutes which provide for a par-

ticular disposition of unclaimed property. See, *e.g.*, CIVIL CODE §§ 2080–2080.6 (property of unknown owner found or saved by another); PROB. CODE § 231 (escheat of decedent's property; disposition of money held by trust funds for health and welfare and similar benefits). See also statutes cited in the Comments to Sections 1517, 1519, and 1520.

Section 1511 (sums payable on travelers checks and money orders) and Section 1515(b) (sums payable by life insurance corporations) provide special presumptions as to the last known address of the apparent owner.

Section 1515 (Funds held by life insurance corporations)

Comment. Section 1515 incorporates the substance of former Section 1503. The section applies to all life insurance corporations, whether or not they transact business in California. See Section 1501(g).

When the insured or annuitant is entitled to the funds, the funds are payable to California if his last known address, as shown on the records of the corporation, is in California. See Section 1510(a). If his address is not shown on the records of the corporation, the determination as to whether California is entitled to the funds is made under subdivisions (b) through (d) of Section 1510.

Where a person other than the insured or annuitant is entitled to the funds, the funds are payable to California if the last known address, as shown on the records of the corporation, of the person entitled to the funds is in California. See Section 1510(a). If a person other than the insured or annuitant is entitled to the funds and no address of such person is known to the corporation or if it is not definite and certain from the records of the corporation what person is entitled to the funds, the presumption provided by subdivision (b) of Section 1515 operates to determine the last known address of the person entitled to the funds (the "apparent owner") for the purposes of subdivision (a) of Section 1510. See Section 1501(a) (defining "apparent owner"). Concerning this presumption, see the discussion in *Recommendation Relating to Escheat*, 8 Cal. Law Revision Comm'n, Rep., Rec. and Studies 1001, 1012–1013 (1967). See also Section 1542(a) (4) (right of another state to recover funds escheated to California by application of the presumption).

APPENDIX III

REPORT OF SENATE COMMITTEE ON JUDICIARY ON SENATE BILLS 19 AND 71

[Extract from Senate Journal for April 22, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Senate Bills 19 and 71, the Senate Committee on Judiciary makes the following report.

Except for the revised Comment and the new Comment (set out below), the Comments contained under the various sections of Senate Bills 19 and 71 as set out in the *Recommendation of the California Law Revision Commission Relating to Damages for Personal Injuries to a Married Person as Separate or Community Property* (Annual Report of Law Revision Commission (December 1967) at 1385; 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies (1967) at 1385) reflect the intent of the Senate Committee on Judiciary in approving Senate Bills 19 and 71.

The following revised Comment to Civil Code Section 146 as amended in Senate Bill 19 also reflects the intent of the Senate Committee on Judiciary in approving Senate Bill 19.

Civil Code Section 146 (amended)

Comment. Subdivision (c) has been added to Civil Code Section 146 to provide a special rule for the disposition of personal injury damages. The subdivision is limited to "*community property* personal injury damages." Under some circumstances, personal injury damages may be separate property when received. See Civil Code Sections 163.5 and 169.3.

Subdivision (c) requires that the spouse who suffered the injuries be awarded all of the community property that represents damages for his or her personal injuries unless the court determines that justice requires a division. If justice so requires, the court may make such division as is just under the facts of the particular case, without regard to the grounds or to which spouse is granted the divorce or separate maintenance. Thus, the court can award the spouse against whom a divorce is granted more than one-half of such damages if the equities of the situation so require. In no event, however, may the court award more than one-half of such damages to the noninjured spouse.

Subdivision (c) specifically requires the court to take into account the economic conditions and needs of the parties and the time that has elapsed since the recovery of the damages as well as the other facts in the case. If the divorce or separate maintenance action is brought shortly after the damages are recovered, the court—absent special circumstances—should award all or substantially all of such damages to the injured spouse. On the other hand, if a number of years has elapsed since the recovery of the damages, this fact alone may be sufficient reason to assign the personal injury damages to the respective parties in such proportions as the court determines to be just under the facts of the particular case.

Under prior law, personal injury damages were separate property and therefore were not subject to division on divorce or separate maintenance unless they had been converted into community property. This

inflexible rule applied even where a substantial portion of such damages represented lost earnings that would have been received during the period of the marriage prior to the divorce. Subdivision (c) permits the court to avoid the injustice that sometimes resulted under former law.

Subdivision (c) applies even though money recovered for personal injury damages has been invested in securities or other property. However, if the amount received has been transmuted into ordinary community property, the subdivision does not apply. Such transmutation can be accomplished by agreement. See CIVIL CODE §§ 158-161. The parties may commingle the proceeds of an award with other community property. If the proceeds so commingled cannot be traced, they must be treated as ordinary community property and subdivision (c) is not applicable. *Cf. Metcalf v. Metcalf*, 209 Cal. App.2d 742, 26 Cal. Rptr. 271 (1962). Even though commingling falls short of the point where tracing becomes impossible, depositing the proceeds in the family bank account and using them for the support of the family may, under some circumstances, be sufficient evidence of an agreement to transmute the award into ordinary community property and to make subdivision (c) inapplicable. *Weinberg v. Weinberg*, 67 Cal.2d ---- [67 A.C. 567, 580-581] (1967). *Cf. Lawatch v. Lawatch*, 161 Cal. App.2d 780, 790, 327 P.2d 603, 608 (1958).

The following new Comment to Civil Code Section 168 as amended in Senate Bill 71 also reflects the intent of the Senate Committee on Judiciary in approving Senate Bill 71.

Civil Code Section 168 (amended)

Comment. Section 168 is amended to treat community property personal injury damages of the wife the same as her earnings are treated under that section. The term "community property personal injury damages" is defined in the last sentence of subdivision (c) of Civil Code Section 146 as amended by Senate Bill 19 of the 1968 Regular Session.

APPENDIX IV

REPORT OF SENATE COMMITTEE ON JUDICIARY ON ASSEMBLY BILL 39

[Extract from Senate Journal for April 22, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bill 39, the Senate Committee on Judiciary makes the following report.

Assembly Bill 39 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Service of Process on Unincorporated Associations* (Annual Report of Law Revision Commission (December 1967) at 1403; 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies (1967) at 1403). The Comment to amended Section 411 of the Code of Civil Procedure contained in the Commission's report has been revised and additional comments have been prepared to reflect the intent of the Senate Committee on Judiciary in approving Assembly Bill 39. The revised and additional comments to the bill as amended in the Senate are set out below.

Section 1—amending C.C.P. § 411 (effective immediately)

Comment. Subdivision 2.1 was added to Section 411 in 1967 to prescribe the manner of service of process on an unincorporated association. Under the subdivision as originally added, if an agent for service of process had been designated by the association, service could only be made on the person designated. The subdivision is amended to provide that service may be made on the association by delivering a copy of the process to one of the officers referred to in the subdivision, whether or not the association has designated an agent for service of process.

Section 2—amending C.C.P. § 411 (delayed effective date)

Comment. Subdivision 2.1 was added to Section 411 in 1967 to prescribe the manner of service of process on unincorporated associations. Under the subdivision as originally added, if an agent for service of process had been designated by the association, service could only be made on the person designated. The subdivision is amended to provide that service may be made on the association by delivering a copy of the process to one of the officers referred to in the subdivision, whether or not the association has designated an agent for service of process.

Under subdivision 2.1 as originally enacted, service could be made on a mere member even though one of the responsible officers referred to in the subdivision could have been served. The subdivision is amended to require that service be made in the manner provided in Corporations Code Section 24007 if neither the agent for service, if one has been designated, nor any of the other persons designated in the subdivision can be found within the state after diligent search. The amendment conforms the subdivision to the statutory pattern that governs service of process on domestic corporations.

Section 3—amending C.C.P. § 412

Comment. Section 412 is amended to make the service by publication procedure applicable to actions against unincorporated associations.

Section 4—adding Corporations Code § 24007

Comment. Section 24007 is based on Corporations Code Section 3302 relating to service upon a domestic corporation, but service is made on

one or more of the members of the association designated in the order rather than upon the Secretary of State.

“Due diligence” means a systematic investigation and inquiry conducted in good faith by the party. The affidavit must show facts indicating sincere desire and an honest effort to locate the defendant. See Civil Procedure Before Trial 502 (Cal. Cont. Ed. Bar). Moreover, the following statements from *Rue v. Quinn*, 137 Cal. 651, 656, 657, 66 Pac. 216, 70 Pac. 732 (1902) are pertinent:

If the facts set forth in the affidavit have a legal tendency to show the exercise of diligence on behalf of the plaintiff in seeking to find the defendant within the state, and that after the exercise of such diligence he cannot be found, the decision of the judge that the affidavit shows the same to his satisfaction is to be regarded with the same effect as is his decision upon any other matter of fact submitted to his judicial determination.

* * *

From the nature of the question to be determined, the evidence thereon must to a very great extent be hearsay, and the number and character of persons inquired of must in each case be determined by the judge. Diligence is in all cases a relative term, and what is due diligence must be determined by the circumstances of each case.

APPENDIX V

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON ASSEMBLY BILL NO. 40

[Extract from Assembly Journal for March 20, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bill No. 40, the Assembly Committee on Judiciary makes the following report.

Except for the revised Comments set out below, the Comments contained under the various sections of Assembly Bill No. 40 as set out in the *Recommendation of the California Law Revision Commission Relating to Improvements Made in Good Faith Upon Land Owned by Another* (Annual Report of Law Revision Commission (December 1967) at 1373; 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies (1967) at 1373) reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Assembly Bill No. 40.

The following revised Comments to sections contained in Assembly Bill No. 40 also reflect the intent of the Assembly Committee on Judiciary in approving Assembly Bill No. 40.

Section 340 (amended)

Comment. The statute of limitations established by subdivision 6 applies to any action by a good faith improver for relief under Sections 871.1 to 871.7. The equitable doctrine of laches would also provide a defense to a request for relief under those sections.

Section 871.3 (new)

Comment. Section 871.3 requires that an action for relief under this chapter be brought in the superior court. Where relief under this chapter is sought by cross-complaint or counterclaim in a pending action in municipal court and determination of the cross-complaint or counterclaim will necessarily involve the determination of questions not within the jurisdiction of the municipal court, the action must be transferred to the superior court. See Code of Civil Procedure Section 396.

The statute of limitations for an action by a good faith improver for relief under this chapter is fixed by subdivision 6 of Section 340 of the Code of Civil Procedure.

Section 871.4 (new)

Comment. Section 871.4 establishes a legislative ordering of priorities in determining how to deal judicially with the situation created by a good faith improver. See the discussion in the Comment to Section 871.5.

Section 871.5 (new)

Comment. Section 871.5 authorizes the court to exercise any of its legal or equitable powers to adjust the rights, equities, and interests of the parties, but this authority is subject to the limitation that the court must utilize the right of setoff or the right of removal in any case where the exercise of one of these rights would result in substantial justice to the parties under the circumstances of the particular case.

Under this section, the court has considerable discretion to select appropriate relief from the full range of equitable and legal remedies. However, the section requires selection of a remedy that, first, will pro-

tect the landowner from any pecuniary loss and, second, will avoid, insofar as possible, the unjust enrichment of the landowner at the expense of the good faith improver. The court also is required to consider any plans the owner of the land may have for its development or use and his need for the land in connection with the improvement or use of other land. The form of relief must satisfy these requirements. For example, if the landowner desires the land as improved, the court might order, as the trial court did in *Taliaferro v. Colasso*, 139 Cal. App.2d 903, 294 P.2d 774 (1956), that title be quieted in the owner upon condition that he pay to the improver the value of the improvements or some lesser amount. Under appropriate circumstances, the judgment might permit the landowner to make installment payments and give the improver an equitable lien to secure such payments. On the other hand, where the landowner does not desire the land as improved and removal of the improvement is not economically possible, the court might order that title be quieted in the improver on the condition that he pay to the landowner not less than the value of the unimproved land for its highest and best use at the time of trial or, in the alternative, that a judicial sale be made and the landowner be paid not less than such amount.

In every case, the court should credit the landowner with the value of the improver's use and occupation of the land. In protecting the landowner against any pecuniary loss, the court should consider the expenses he has incurred in the action to resolve the matter, including but not limited to reasonable fees for attorneys and expert witnesses. (Section 871.5 makes specific reference to attorney's fees because Code of Civil Procedure Section 1021 might otherwise be construed to preclude recovery for attorney's fees.)

The situation of the landowner, however, may require a form of relief completely different from those mentioned above. The court should deny the improver any relief in a case where no remedy can be devised which can fully protect the landowner against pecuniary loss. For example, an improvement may be constructed on land that is a shopping center site and rather than adding to the value of the shopping center site the improvement may actually reduce that value or may preclude or inhibit the development of the remaining land for its highest and best use. In such a case, the appropriate remedy would be for the court to compel removal of the improvement. See Section 871.4. *Where a choice must be made between protecting one party or the other, the landowner should prevail.*

In every case, the burden is on the good faith improver to establish that he is entitled to relief under this section, and the degree of negligence of the good faith improver should be taken into account by the court in determining whether the improver acted in good faith and in determining the relief, if any, that is "consistent with substantial justice to the parties under the circumstances of the particular case." See Section 871.3.

For a more detailed discussion of the alternatives available to the court in administering the statute, see Merryman, *Improving the Lot of the Trespassing Improver*, 11 Stan. L. Rev. 456, 483-489 (1959), reprinted in 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies 801, 848-854 (1967).

Section 871.7 (new)

Comment. Section 871.7 is included so that this chapter will have no effect on the law relating to eminent domain, inverse condemnation, and encroachments on public lands (*e.g.*, Streets and Highways Code Sections 660-759.3). Thus, for example, if the improvement is made on a right of way—whether the public entity has the fee or merely an easement for such right of way—the improver is not entitled to any relief under this chapter. Nor does the chapter apply where the improvement is, for example, constructed on land appropriated to a public use by a public utility.

APPENDIX VI

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON ASSEMBLY BILL NO. 41

[Extract from Assembly Journal for March 20, 1968 (1968 Regular Session).]

In order to indicate more fully its intent with respect to Assembly Bill No. 41, the Assembly Committee on Judiciary makes the following report.

Assembly Bill No. 41 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding* (Annual Report of Law Revision Commission (December 1967) at 1361; 8 Cal. Law Revision Comm'n, Rep., Rec. & Studies (1967) at 1361). The Comment to amended Section 1255a of the Code of Civil Procedure contained in the Commission's report has been revised to reflect the intent of the Assembly Committee on Judiciary in approving Assembly Bill No. 41, and the revised Comment is set out below.

Code of Civil Procedure Section 1255a (amended)

Comment. Subdivision (c) of Section 1255a requires that the plaintiff reimburse the defendant for all expenses reasonably and necessarily incurred in preparing for trial, during trial, and on appeal and retrial of the action if the plaintiff fails to carry an eminent domain proceeding through to its conclusion.

Under prior law, reasonable attorney's fees were recoverable regardless of when the proceeding was dismissed, but other expenses incurred in preparing for trial were subject to a limitation that precluded their recovery if the action was dismissed 40 days or more prior to pretrial or trial. *La Mesa-Spring Valley School Dist. v. Otsuka*, 57 Cal.2d 309, 19 Cal. Rptr. 479, 369 P.2d 7 (1962). This limitation has been deleted and such expenses may now be recovered without regard to the date that the proceeding is dismissed.

Subdivision (c) provides for the recovery of attorney's fees, appraisal fees, and fees for services of other experts if the fees are reasonable in amount and are reasonably incurred to protect the defendant's interests in preparing for the trial of the condemnation action, during the trial, and in any subsequent proceedings in the condemnation action. If they are so incurred, they may be recovered even though the services are rendered before the filing of the complaint in the eminent domain proceeding. In this respect, the subdivision codifies prior law. See *La Mesa-Spring Valley School Dist. v. Otsuka*, 57 Cal.2d 309, 19 Cal. Rptr. 479, 369 P.2d 7 (1962) (attorney's fees); *Port San Luis Harbor Dist. v. Port San Luis Transp. Co.*, 213 Cal. App.2d 689, 29 Cal. Rptr. 136 (1963) (engineers' fees); *Decoto School Dist. v. M. & S. Tile Co.*, 225 Cal. App.2d 310, 37 Cal. Rptr. 225 (1964) (attorney's fees allowed under Section 1255a for services in connection with an appeal); *State v. Westover*, 140 Cal. App.2d 447, 295 P.2d 96 (1956).

Subdivision (c), of course, permits recovery of fees and expenses only if a complaint is filed and the proceeding is later dismissed. The subdivision has no application if the efforts or resolution of the plaintiff to acquire the property do not culminate in the filing of a complaint.

In applying this section, and particularly in applying subdivision (c), the appellate courts have formulated the concept of "partial abandonment" so that the section will cover those cases in which the nature of the property or property interest being taken is substantially changed by the condemnor after the proceeding is begun. See *Metropolitan Water Dist. v. Adams*, 23 Cal.2d 770, 147 P.2d (1944); *People v. Superior Court*, 47 Cal App.2d 393, 118 P.2d 47 (1941); *Yolo Water etc. Co. v. Edmands*, 50 Cal. App. 444, 196 Pac. 463 (1920). The third sentence of subdivision (c) has been added to make clear that, in allowing costs and disbursements on a partial abandonment, the court should not include any items which would have been incurred notwithstanding the partial abandonment. The sentence codifies the view expressed in *County of Kern v. Galatas*, 200 Cal. App.2d 353, 19 Cal. Rptr. 348 (1962), that in such cases the condemnee should not receive a "windfall" by recovering costs and disbursements that he would have incurred regardless of the change in the nature of the taking. See also *Metropolitan Water Dist. v. Adams, supra*; *Pacific Tel. & Tel. Co. v. Monolith Portland Cement Co.*, 234 Cal. App.2d 352, 44 Cal. Rptr. 410 (1965).

In a variety of relatively unusual situations, the question has arisen whether or not there has occurred such an "abandonment" or "partial abandonment" as to entitle the condemnee to costs and disbursements under this section. See *La Mesa-Spring Valley School Dist. v. Otsuka*, 57 Cal.2d 309, 19 Cal. Rptr. 479, 369 P.2d 7 (1962); *Los Angeles v. Agardy*, 1 Cal.2d 76, 33 P.2d 834 (1934); *City of Los Angeles v. Abbott*, 217 Cal. 184, 17 P.2d 993 (1932); *Mountain View Union High School v. Ormonde*, 195 Cal. App.2d 89, 15 Cal. Rptr. 461 (1961); *County of Los Angeles v. Hale*, 165 Cal. App.2d 22, 331 P.2d 166 (1958); *Torrance Unified School Dist. v. Alwag*, 145 Cal. App.2d 596, 302 P.2d 881 (1956); *Whittier Union High School Dist. v. Beck*, 45 Cal. App.2d 736, 114 P.2d 731 (1941); *City of Bell v. American States W.S. Co.*, 10 Cal. App.2d 604, 52 P.2d 503 (1934) (total abandonments); *Metropolitan Water Dist. v. Adams, supra*; *County of Kern v. Galatas, supra*; *Pacific Tel. & Tel. Co. v. Monolith Portland Cement Co., supra* (partial abandonments). Although certain limited exceptions have been recognized, the courts have generally interpreted the section as intended to require the condemnor to indemnify the condemnee against loss whenever the condemnor fails to complete the proceeding. See *Oak Grove School Dist. v. City Title Ins. Co.*, 217 Cal. App.2d 678, 32 Cal. Rptr. 288 (1963). The amendment of this section deleting the 40-day limitation from subdivision (c) and making other changes is not intended to change the decisional law as to when an abandonment or partial abandonment permitting recovery of costs and disbursement has occurred or to preclude further development of the decisional law in this respect.



APPENDIX VII

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Sovereign Immunity

**Number 9—Statute of Limitations in Actions
Against Public Entities and Public Employees**

September 1968

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

NOTE

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



RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

SOVEREIGN IMMUNITY

Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees

Section 342 of the Code of Civil Procedure and Sections 900–955.8 of the Government Code were enacted in 1963 on recommendation of the Law Revision Commission to prescribe the procedure governing claims and actions against public entities and public employees.¹ The Commission is making a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the 1963 statute.² In this connection, the Commission has considered *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968), and other decisions, and has concluded that changes are needed in the statutes prescribing the time within which actions against public entities and public employees must be commenced.

Section 945.6 of the Government Code provides the statute of limitations applicable to actions against a public entity.³ The section requires that an action against a public entity be commenced within

¹ Cal. Stats. 1963, Ch. 1715. See *Recommendation Relating to Sovereign Immunity: Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees*, 4 CAL. L. REVISION COMM'N REPORTS 1001 (1963).

² Revisions of the 1963 statute were made in 1965 upon recommendation of the Law Revision Commission. Cal. Stats. 1965, Ch. 653. See *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965). See also Cal. Stats. 1968, Ch. 134, amending Government Code Sections 901 and 945.6 (enacted upon recommendation of the Law Revision Commission although no written recommendation was submitted to the Legislature).

³ Section 945.6 provides:

945.6. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced (1) within six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division, or (2) within one year from the accrual of the cause of action, whichever period expires later.

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division.

six months after a claim presented to the public entity has been denied or deemed rejected or within one year from the accrual of the cause of action, whichever period expires later. While the section contains a specific provision tolling this statute of limitations for a person sentenced to imprisonment in a state prison, it contains no provision tolling the statute for a minor or other person under a disability.

In *Williams v. Los Angeles Metropolitan Transit Authority*, *supra*, the Supreme Court held that the provision of Code of Civil Procedure Section 352 that tolls the statute of limitations for a minor is applicable to an action against a public entity.⁴ Hence, the special statute of limitations in Section 945.6 governing actions against public entities is tolled for the duration of the disability where the plaintiff is a minor.

In reviewing Section 945.6, the Commission has considered not only the problems for public entities that the *Williams* decision represents, but also the problems for claimants that a number of other recent decisions⁵ illustrate. In the latter cases, apparently meritorious actions have been barred by the six-month statute of limitations because the claimant was unaware that a special statute of limitations applies to actions against public entities. For the reasons indicated below, the Commission has concluded that the short statute of limitations for an action against a public entity should not be tolled for a minor or other person under a disability but that the public entity should notify each claimant of the short limitation period for commencing an action on his claim. To achieve this general objective, the Commission makes the following recommendations:

1. Sections 350-363 of the Code of Civil Procedure are general provisions relating to the time within which actions must be commenced. Except for Section 352, these sections should continue to apply to actions against public entities and public employees.⁶

2. Section 352 of the Code of Civil Procedure operates to toll the statute of limitations for minors, insane persons, and prisoners.⁷ This section should be amended so that it would not apply to actions against public entities and public employees and therefore not extend the

⁴ The court disapproved a contrary dictum in *Frost v. State*, 247 Cal. App.2d 378, 55 Cal. Rptr. 652 (1966).

⁵ See *Tubbs v. Southern Cal. Rapid Transit Dist.*, 67 Cal.2d 671, 63 Cal. Rptr. 377, 433 P.2d 169 (1967); *Isaacson v. City of Oakland*, 263 Adv. Cal. App. 453, 69 Cal. Rptr. 379 (1968); *Hunter v. County of Los Angeles*, 262 Adv. Cal. App. 911, 69 Cal. Rptr. 288 (1968); *Rogers v. Board of Educ.*, 261 Adv. Cal. App. 354, 67 Cal. Rptr. 905 (1968). See also *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968); *Hubbard v. Southern Cal. Rapid Transit Dist.*, 68 Adv. Cal. 635, 68 Cal. Rptr. 305, 440 P.2d 505 (1968); *City of Los Angeles v. Superior Court*, 264 Adv. Cal. App. 908, 70 Cal. Rptr. 826 (1968); *Shotlow v. City of Los Angeles*, 258 Adv. Cal. App. 480, 65 Cal. Rptr. 851 (1968).

⁶ For example, as the court points out in the *Williams* case, "if we are to avoid incongruous results, the procedural provisions of the Government Code must be subject to the general provisions of the Code of Civil Procedure [Section 353] permitting an additional six-month limitation period upon the death of a person entitled to bring an action. Otherwise, if a person injured by a public entity should die at a time shortly before the expiration of the limitation period of six months, the probate court might not have sufficient time to appoint the personal representatives required to bring the action." 68 Adv. Cal. 623, 631 n.9, 68 Cal. Rptr. 297, 302 n.9, 440 P.2d 497, 502 n.9 (1968).

⁷ Section 352 also provides that the statute of limitations does not run while the plaintiff is "a married woman, and her husband be a necessary party with her in commencing such action." This vestigial remnant is of no significance since the abolition of coverture. See 1 WITKIN, CALIFORNIA PROCEDURE *Actions* § 159 at 668 (1954).

special limitations period prescribed by Government Code Section 945.6 (generally six months) for actions against public entities and public employees.

The application of Section 352 to extend the limitation period may impose a significant and unnecessary hardship upon the public entity, for the claimant can defer bringing the action until the evidence has become stale and the witnesses are no longer available. On the other hand, a minor or insane person must present his claim promptly under the claims statute; otherwise, he has no right of action against the public entity. Thus, no significant additional burden will be imposed on him if he is required to commence his action promptly after he has been notified that his claim has been denied.⁹ In the case of a minor or incompetent plaintiff, the suit can be brought through a guardian ad litem or other representative.

3. The public entity should be required to notify each claimant of its action or failure to act on his claim. The public entity has no obligation under existing law to act on a claim within the 45-day period allowed for acting on the claim or to notify the claimant of its failure to act. (Where the public entity fails to take any action within the 45-day period, the claim is deemed denied, and the six-month statute of limitations commences from the end of that 45-day period.) Many public entities take no action on claims as a matter of policy. This results in the claimant's receiving no communication from the public entity alerting him to the beginning of the six-month period for commencing suit on the claim. Thus, some claimants fail to file suit within the six-month period, and such failure bars an action on the claim.⁹

In case of a partial or total rejection of the claim, the notice of the entity's action on the claim should contain a warning, phrased as simply as possible, that the claimant usually has but six months from the time that notice of rejection is given to commence an action on the claim. The warning should also include a statement, similar to that required on a summons, that the claimant may seek the advice of an attorney and that the attorney should be consulted immediately.

The recommended notice would advise each claimant of the action taken on his claim and warn him of the time within which he must commence an action on his claim if it is rejected. In addition, the notice would protect a minor or incompetent claimant against inadvertent reliance on the general tolling provision of Section 352.

The public entity should give the notice in substantially the same manner as it now gives notice of its action on a claim.¹⁰

4. Government Code Section 945.6 should be amended to provide that an action must be commenced within six months after the date that

⁹ Although Section 352 provides for the tolling of the statute of limitations for prisoners, it is likely that this general provision is not applicable to actions by prisoners against public entities since Government Code Section 945.6 contains a special provision for the tolling of the limitation period in the case of a person who loses his civil rights through imprisonment.

⁹ See, e.g., *Tubbs v. Southern Cal. Rapid Transit Dist.*, 67 Cal.2d 671, 63 Cal. Rptr. 377, 433 P.2d 169 (1967).

¹⁰ To provide a uniform procedure for giving the notices required by Government Code Sections 910.8 (notice of insufficiency of claim), 911.8 (notice of action on application to file late claim), and 913 (notice of action on claim), a new Section 915.4 should be added to the Government Code, and existing Sections 910.8, 911.8, and 913 should be amended to conform to this new section. The manner of giving notice should remain in substance the same.

notice of the rejection of the claim and of the six-month limitation period is given. If the required notice is not given, the claimant should be permitted to file suit within two years from the accrual of his cause of action. Under existing law, the action ordinarily must be commenced within six months from the time the claim is acted upon or is deemed to be denied, and the entity's failure to give notice of its action or inaction on the claim has no effect on the limitation period.

The six-month limitation period would insure that any suit against a public entity will be brought within a reasonably short period after the entity has notified the claimant of its action on the claim and of his option to pursue the matter promptly in the courts. The two-year period would serve as a sanction for the entity's failure to give notice and would provide a definite limitation period for all claims where the required notice is not given.

5. Government Code Section 950.6, which sets forth the limitation period for actions against public employees, should be amended to conform to the foregoing recommendations.

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

An act to amend Section 352 of the Code of Civil Procedure and to amend Sections 910.8, 911.8, 913, 945.6, and 950.6 of, and to add Section 915.4 to, the Government Code, relating to claims against public entities and public employees.

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

SECTION 1. Section 352 of the Code of Civil Procedure is amended to read:

352. (a) If a person entitled to bring an action, mentioned in chapter three of this title, be, at the time the cause of action accrued, either:

1. Under the age of majority; or,
2. Insane; or,
3. Imprisoned on a criminal charge, or in execution under the sentence of a criminal court for a term less than for life; or,
4. A married woman, and her husband be a necessary party with her in commencing such action;

the time of such disability is not a part of the time limited for the commencement of the action.

(b) *This section does not apply to an action against a public entity or public employee upon a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) or Chapter 2 (commencing with Section 910) of Part 3, or Chapter 3 (commencing with Section 950) of Part 4, of Division 3.6 of Title 1 of the Government Code.*

Comment. Subdivision (b) has been added so that Section 352, which operates to toll the statute of limitations for minors, insane persons, and prisoners, will not apply to the causes of action against a public

entity or public employee described in this subdivision. Such actions are governed by the period of limitations specified in subdivision (a) of Section 945.6 of the Government Code. To safeguard the minor or incompetent from an inadvertent reliance on the tolling provision of Section 352, notice of rejection of his claim in the form provided in Government Code Section 913 is required to be given by the public entity. If notice is not given, the claimant has two years from the accrual of his cause of action in which to sue. See Government Code Section 945.6(a).

Special exceptions for prisoners exist in both subdivision (b) of Section 945.6 and subdivision (c) of Section 950.6 of the Government Code, which toll the statute of limitations during the period of their civil disability.

The other general provisions of the Code of Civil Procedure relating to the time within which actions must be commenced—Sections 350, 351, 353–363—are applicable to actions against public entities and public employees. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968). See also Government Code Sections 950.2 and 950.4.

SEC. 2. Section 910.8 of the Government Code is amended to read:

910.8. ~~(a)~~ If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, the board or such person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. ~~(b)~~ Such notice ~~may~~ shall be given ~~in the manner prescribed by Section 915.4. personally to the person presenting the claim or by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notices to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim.~~ ~~(c)~~ The board may not take action on the claim for a period of 15 days after such notice is given.

Comment. See the Comment to Section 915.4.

SEC. 3. Section 911.8 of the Government Code is amended to read:

911.8. Written notice of the board's action upon the application shall be given ~~in the manner prescribed by Section 915.4. to the claimant personally or by mailing it to the address, if any, stated in the proposed claim as the address to which the person making the application desires notices to be sent. If no such address is stated in the claim, the notice shall be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the proposed claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.~~

Comment. See the Comment to Section 915.4.

SEC. 4. Section 913 of the Government Code is amended to read:

913. (a) Written notice of ~~any~~ *the* action taken under Section 912.6 or 912.8 ~~or the inaction which is deemed rejection under Section 912.4~~ rejecting a claim in whole or in part shall be given in the manner prescribed by Section 915.4. Such notice may be in substantially the following form:

to the person who presented the claim. Such notice may be given by mailing it to the address, if any, stated in the claim as the address to which the person presenting the claim desires notice to be sent. If no such address is stated in the claim, the notice may be mailed to the address, if any, of the claimant as stated in the claim. No notice need be given when the claim fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant.

"Notice is hereby given that the claim which you presented to the (insert title of board or officer) on (indicate date) was (indicate whether rejected, allowed, allowed in the amount of \$----- and rejected as to the balance, rejected by operation of law, or other appropriate language, whichever is applicable) on (indicate date of action or rejection by operation of law)."

(b) If the claim is rejected in whole or in part, the notice required by subdivision (a) shall include a warning in substantially the following form:

"WARNING

"Subject to certain exceptions, you have only six (6) months from the date this notice was personally delivered or deposited in the mail to file a court action on this claim. See Government Code Section 945.6.

"You may seek the advice of an attorney of your choice in connection with this matter. Your attorney should be consulted immediately."

Comment. Subdivision (a) of Section 913 is amended to require that written notice of either acceptance or rejection be given by the public entity in every case in which a claim is required to be presented under Chapters 1 and 2 of Part 3 of Division 3.6. The notice serves to keep each claimant aware of the status of his claim and guards against an inadvertent failure to sue on a rejected claim within the applicable time limit. The notice must be given in compliance with the uniform procedure prescribed by Section 915.4. An optional form of notice is set forth in subdivision (a).

If the claim is rejected either in whole or in part, subdivision (b) requires the public entity to include with the notice a warning concerning the applicable statute of limitations and advice to secure the services of an attorney. The notice and warning will alert the claimant, at the time of rejection, of the time allowed to pursue his claim in the courts and will protect a minor or incompetent against an inadvertent reliance on the general tolling provisions of Code of Civil Procedure Section 352. See Code of Civil Procedure Section 352 and Government Code Section 945.6(a). The last two sentences of the notice are based

on the language of the notice required by Code of Civil Procedure Section 407 to be included in a summons.

SEC. 5. Section 915.4 is added to the Government Code, to read:

915.4. (a) The notices provided for in Sections 910.8, 911.8, and 913 shall be given by:

(1) Personally delivering the notice to the person presenting the claim or making the application; or

(2) Mailing the notice to the address, if any, stated in the claim or application as the address to which the person presenting the claim or making the application desires notices to be sent or, if no such address is stated in the claim or application, by mailing the notice to the address, if any, of the claimant as stated in the claim or application.

(b) No notice need be given where the claim or application fails to state either an address to which the person presenting the claim or making the application desires notices to be sent or an address of the claimant.

Comment. Section 915.4 is new, but it incorporates the substance of former Sections 910.8(b), 911.8, and 913. It makes uniform the manner of giving all notices under this chapter. Where notice is given by mail, Section 915.2 is applicable.

SEC. 6. Section 945.6 of the Government Code is amended to read:

945.6. (a) Except as provided in Sections 946.4 and 946.6 and subject to subdivision (b) of this section, any suit brought against a public entity on a cause of action for which a claim is required to be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division must be commenced:

(1) *If written notice is given in accordance with Section 913, within not later than six months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapters 1 and 2 of Part 3 of this division, or such notice is personally delivered or deposited in the mail.*

(2) *If written notice is not given in accordance with Section 913, within one year two years from the accrual of the cause of action; whichever period expires later. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 912.4, the period of such extension is not part of the time limited for the commencement of the action under this paragraph.*

(b) When a person is unable to commence a suit on a cause of action described in subdivision (a) within the time prescribed in that subdivision because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public entity establishes that the plaintiff failed to make a

reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (a).

(c) A person sentenced to imprisonment in a state prison may not commence a suit on a cause of action described in subdivision (a) unless he presented a claim in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division.

Comment. Subdivision (a) of Section 945.6 is amended to require that an action be commenced within six months after notice of rejection (by action or nonaction) is given pursuant to Section 913. If such notice is not given, the claimant has two years from the accrual of his cause of action in which to file suit. If the period within which the public entity is required to act is extended pursuant to subdivision (b) of Section 912.4, the period of such extension is added to the two years allowed.

The triggering date generally will be the date the notice is deposited in the mail or personally delivered to the claimant, at which time the claimant will receive a warning that he has a limited time within which to sue and a suggestion that he consult an attorney of his choice. See Government Code Section 913. No time limit is prescribed within which the public entity must give the notice, but the claimant is permitted six months from the date that the notice is given to file suit.

If notice is not given, the two-year period allows ample time within which the claimant may file a court action.

Section 945.6 does not, of course, preclude the claimant from filing an action at an earlier date after his claim is deemed to have been rejected pursuant to Sections 912.4 and 945.4.

Section 352 of the Code of Civil Procedure does not apply to actions described in Section 945.6. See Code of Civil Procedure Section 352(b). However, the other general provisions of the Code of Civil Procedure relating to the time within which actions must be commenced—Sections 350, 351, 353–363—are applicable. See *Williams v. Los Angeles Metropolitan Transit Authority*, 68 Adv. Cal. 623, 68 Cal. Rptr. 297, 440 P.2d 497 (1968).

SEC. 7. Section 950.6 of the Government Code is amended to read:

950.6. When a written claim for money or damages for injury has been presented to the employing public entity:

(a) A cause of action for such injury may not be maintained against the public employee or former public employee whose act or omission caused such injury until the claim has been rejected, or has been deemed to have been rejected, in whole or in part by the public entity.

(b) A suit against the public employee or former public employee for such injury must be commenced within ~~six~~ months after the date the claim is acted upon by the board, or is deemed to have been rejected by the board, in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of Part 3 of this division the time prescribed in Section 945.6 for bringing an action against the public entity.

(c) When a person is unable to commence the suit within the time prescribed in subdivision (b) because he has been sentenced to imprisonment in a state prison, the time limited for the commencement of such suit is extended to six months after the date that the civil right to commence such action is restored to such person, except that the time shall not be extended if the public employee or former public employee establishes that the plaintiff failed to make a reasonable effort to commence the suit, or to obtain a restoration of his civil right to do so, before the expiration of the time prescribed in subdivision (b).

Comment. The amendment of subdivision (b) of Section 950.6 conforms that subdivision to subdivision (a) of Section 945.6. The effect of this amendment is indicated in the Comment to Section 945.6.



APPENDIX VIII

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Additur and Remittitur

September 1968

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

NOTE

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

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



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Ex Officio

September 20, 1968

To HIS EXCELLENCY, RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was authorized by Resolution Chapter 130 of the Statutes of 1965 to make a study to determine whether the law relating to additur and remittitur should be revised.

The Commission published a recommendation and study on one aspect of this topic—additur—in October 1966. See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). Senate Bill No. 250 was introduced at the 1967 session of the Legislature to effectuate this recommendation and was enacted as Chapter 72 of the Statutes of 1967.

The Commission has continued its study of additur and remittitur and, as a result, submits this additional recommendation.

Respectfully submitted,
SHO SATO
Chairman



RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

Additur and Remittitur

In *Dorsey v. Barba*, 38 Cal.2d 350, 240 P.2d 604 (1952), the California Supreme Court held that a trial court could not condition its denial of a plaintiff's motion for new trial on the ground of inadequate damages upon the defendant's consent to the entry of a judgment for damages in an amount greater than the amount awarded by the jury. The court held that this practice—known as additur—violated the nonconsenting plaintiff's constitutional right to have a jury determine the amount of the damages.

Section 662.5 of the Code of Civil Procedure was enacted in 1967 upon recommendation of the Law Revision Commission to permit additur under circumstances where it was thought not to be inconsistent with *Dorsey*. Section 662.5 authorizes additur where the granting of a new trial on the issue of damages is otherwise appropriate and the jury verdict is supported by substantial evidence. The Commission noted in its report proposing Section 662.5 that the section "leaves the California Supreme Court free to modify, limit, or even overrule its decision in the *Dorsey* case and allow additur practice in cases where the jury verdict on damages is *not* supported by substantial evidence."¹

In June 1967, the California Supreme Court, in *Jehl v. Southern Pacific Co.*, 66 Cal.2d 821, 427 P.2d 988, 59 Cal. Rptr. 276 (1967), expressly overruled the *Dorsey* decision. In a unanimous decision, the court held that additur does not impair the plaintiff's right to a jury trial and is a procedure well suited to the efficient administration of justice. With reference to the Commission recommended legislation, the Court stated: "Since we overrule *Dorsey*, it is unnecessary to limit additur to those cases where the jury's verdict is supported by substantial evidence."²

The Commission has reviewed Section 662.5 in light of the *Jehl* case to determine whether the section should be revised or repealed. On the basis of this review, the Commission recommends that the section be revised to codify the holding in the *Jehl* case. While legislation is no longer necessary to authorize additur, a reference to additur in the code will remind lawyers and judges that this useful corrective device is available in California; the annotations under the section in the annotated codes will provide a helpful starting point for research on any question involving additur.

Specifically, the Commission recommends that Section 662.5 be revised to eliminate the apparently restrictive language authorizing additur "where the verdict of the jury on the issue of damages is supported by substantial evidence" and to codify the test stated in the

¹ *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601, 614 (1967).

² 66 Cal.2d at 832 n.15, 427 P.2d at 995, 59 Cal. Rptr. at 283.

Jehl case for determining the amount of the additur, *i.e.*, such amount as the court in its independent judgment determines from the evidence to be fair and reasonable.

The Commission also recommends that Section 662.5 be revised to provide statutory recognition for remittitur (the currently authorized practice whereby the defendant's motion for a new trial on the ground of excessive damages is denied upon the condition that the plaintiff waive the part of the award considered excessive by the court). A reference in the code to remittitur will assist in making the pertinent law more readily available.

No procedural limitations, such as the time within which the additur or remittitur must be accepted, should be stated in Section 662.5. Thus, the revised section would not affect any procedural limitations on additur and remittitur now or hereafter established by statutory and decisional law or by rules of the Judicial Council.

Enactment of the legislation recommended by the Commission would make no substantive change in existing law. It would, however, conform Section 662.5 to the *Jehl* case and provide statutory recognition for additur and remittitur practice.

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

An act to amend Section 662.5 of the Code of Civil Procedure, relating to new trials.

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

SECTION 1. Section 662.5 of the Code of Civil Procedure is amended to read:

662.5. ~~(a)~~ In any civil action where the verdict of the jury on the issue of damages is supported by substantial evidence but an order granting a new trial limited to the issue of damages would nevertheless be proper, the trial court may:

(a) ~~grant~~ Grant a motion for a new trial on the ground of inadequate damages and make its order subject to the condition that the motion for a new trial is denied if the party against whom the verdict has been rendered consents to an addition of so much thereto as the court in its ~~discretion independent judgment~~ determines from the evidence to be fair and reasonable and specifies in its order.

(b) Grant a motion for a new trial on the ground of excessive damages and make its order subject to the condition that the motion for a new trial is denied if the party in whose favor the verdict has been rendered consents to a reduction of so much thereof as the court in its independent judgment determines from the evidence to be fair and reasonable.

~~(b)~~ Nothing in this section precludes a court from making an order of the kind described in subdivision (a) in any other case where such an order is constitutionally permissible.

~~(c)~~ Nothing in this section affects the authority of the court to grant a motion for a new trial on the ground of excessive damages and to make its order granting a new trial subject to

the condition that the motion for a new trial on that ground is denied if the party recovering the damages consents to a reduction of so much therefrom as the court in its discretion determines and specifies in its order.

Comment. As amended, Section 662.5 merely recognizes that additur and remittitur practice exists in California. The section incorporates the general standard for granting additur and remittitur as set out in *Jehl v. Southern Pacific Co.*:

There is no essential difference between the procedures appropriate for remittitur and additur, and we may therefore look to remittitur cases to determine the proper procedure for additur.

Upon a motion for new trial grounded on insufficiency of the evidence because the damages are inadequate, the court should first determine whether the damages are clearly inadequate and, if so, whether the case would be a proper one for granting a motion for new trial limited to damages. . . . If both conditions exist, the court in its discretion may issue an order granting the motion for new trial unless the defendant consents to an additur as determined by the court. The court's power extends to all such cases. It is not limited to those cases in which an appellate court would sustain either the granting or denial of a motion for new trial on the ground of insufficiency of the evidence. The court shall prescribe the time within which the defendant must accept the additur, and in no case may this time be longer than the jurisdictional period for granting a new trial. . . . If the defendant fails to consent within the prescribed time, the order granting the new trial becomes final.

If the court decides to order an additur, it should set the amount that it determines from the evidence to be fair and reasonable. In this respect it should exercise its completely independent judgment. It need not fix either the minimum or maximum amount that it would have sustained on a motion for new trial or the minimum or maximum amount that would be supported by substantial evidence and therefore sustainable on appeal. If the defendant deems the additur excessive, he may reject it and seek to sustain the jury's award on an appeal from the order granting a new trial. If the plaintiff deems the additur insufficient, he may raise the issue on an appeal from the judgment as modified by the additur. [66 Cal.2d 821, 832-833, 427 P.2d 988, 995, 59 Cal. Rptr. 276, 283 (1967). Citations omitted.]

It should be noted that the additur and remittitur procedure under Section 662.5 is not specified in the section. The section does not affect any procedural limitations on additur and remittitur, whether established by statutory or decisional law (such as the time within which the additur or remittitur must be accepted) or by rules of practice and procedure adopted by the Judicial Council pursuant to Section 6 of Article VI of the California Constitution. Compare *Jehl v. Southern Pacific Co.*, 66 Cal.2d 821, 427 P.2d 988, 59 Cal. Rptr. 276 (1967), with *Alberton v. Superior Court*, 265 Adv. Cal. App. 921, 71 Cal. Rptr. 553 (1968), concerning the time within which the additur or remittitur must be accepted.



APPENDIX IX
STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

RECOMMENDATION

relating to

Fictitious Business Names

October 1968

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

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CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



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WILLIAM A. YALE
GEORGE H. MURPHY
Ex Officio

October 21, 1968

To HIS EXCELLENCY, RONALD REAGAN
Governor of California and
THE LEGISLATURE OF CALIFORNIA

The California Law Revision Commission was directed by Resolution Chapter 202 of the Statutes of 1957 to make a study to determine whether the law relating to the use of fictitious names should be revised.

The Commission herewith submits a recommendation that the initial filing of renewal certificates under the existing fictitious business name statute be deferred one year from January 1, 1970, to January 1, 1971. This additional year will allow time for the Legislature to act on a Commission recommendation—to be submitted to the 1970 Legislature—for a comprehensive revision of the fictitious business name statute before the time set for the initial filing of renewal certificates under existing law.

Respectfully submitted,
SHO SATO
Chairman



RECOMMENDATION OF THE CALIFORNIA LAW REVISION COMMISSION

relating to

Fictitious Business Names

Resolution Chapter 202 of the Statutes of 1957 directed the Law Revision Commission to make a study to determine whether the law relating to the use of fictitious names should be revised. A background research study on this topic, prepared by a former member of the Commission's staff, was recently published,¹ and the Commission is now preparing a comprehensive revision of the California fictitious business name statute (Civil Code Sections 2466-2471). While significant progress has been made, the recommendation of the Commission will not be available for presentation prior to the 1970 legislative session.

Civil Code Section 2469.2, which was added to the fictitious business name statute in 1966, provides that fictitious name certificates "heretofore" filed expire on January 1, 1971, unless a renewal certificate is filed before that date. It is highly probable that the Commission will recommend changes in the system for filing fictitious business name certificates. Any such changes would be first considered by the 1970 Legislature. Accordingly, to avoid requiring persons transacting business under a fictitious name to file renewal certificates (as required by the 1966 legislation) just before the Legislature considers a comprehensive revision of the statute, the Commission recommends that the time limits provided in Civil Code Section 2469.2 be extended for one year, allowing time for the Commission and the Legislature to complete their work on the revision.

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

An act to amend Section 2469.2 of the Civil Code, relating to fictitious name certificates.

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

SECTION 1. Section 2469.2 of the Civil Code is amended to read:

2469.2. Every certificate of fictitious name filed under the authority of this chapter shall expire and be of no further force and effect at the end of five years following the first day of January next after the filing of a certificate of fictitious name with the county clerk in accordance with Section 2466, unless at any time within 12 months immediately preceding said date of expiration a renewal certificate containing all in-

¹ McClintock, *Fictitious Business Name Legislation—Modernizing California's Pioneer Statute*, 19 HASTINGS L. J. 1349 (1968).

OFFICE OF THE CLERK OF THE SENATE AND ASSEMBLY, SACRAMENTO, CALIFORNIA

formation required in the original certificate and subscribed and acknowledged as required by that section is filed with the county clerk with whom said original is on file. No such renewal certificate need be published unless there has been a change in the information required in the original certificate, in which event publication shall be made as provided for the original certificate.

Every certificate of fictitious name ~~heretofore~~ filed *before January 1, 1967*, with the county clerk pursuant to Section 2466 shall expire and be of no further force and effect on and after January 1, ~~1971~~ 1972, unless at any time on or after January 1, ~~1970~~ 1971, but not later than December 31, ~~1970~~ 1971, a renewal certificate in accordance with this section is filed with said county clerk.