

Time

Place

May 27 - 7:00 p.m. - 10:00 p.m.
May 28 - 9:00 a.m. - 4:00 p.m.

State Bar Building
601 McAllister Street
San Francisco

AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

San Francisco

May 27 and 28, 1966

1. Approval of Minutes of May 1966 Meeting (first meeting) (sent 5/17/66)

2. Administrative Matters

3. Study 44 - The Fictitious Name Statute

Memorandum 66-23 (to be sent)
Revised Tentative Recommendation (attached to memorandum)

4. Study 50 - Rights and Duties Upon Abandonment of Lease

Memorandum 66-24 (sent 5/17/66)
Revised Tentative Recommendation dated May 10, 1966 (sent 5/17/66)
Revised Research Study dated April 11, 1966 (sent 4/13/66) (extra copy sent 5/13/66)

5. Study 63(L) - Evidence Code

Evidence Code with Official Comments (Commission soft cover book-- August 1965) (you have this)
Memorandum 66-21 (extra copy sent 5/13/66)
First Supplement to Memorandum 66-21 (sent 4/22/66) (extra copy sent 5/13/66)
Second Supplement to Memorandum 66-21 (sent 4/22/66) (extra copy sent 5/13/66)
Third Supplement to Memorandum 66-21 (sent 4/28/66) (extra copy sent 5/13/66)
Fourth Supplement to Memorandum 66-21 (sent 5/13/66)
Fifth Supplement to Memorandum 66-21 (sent 5/13/66)
Sixth Supplement to Memorandum 66-21 (sent 5/18/66)

6. Study 26 - Escheat

Memorandum 66-20 (enclosed),
Tentative Recommendation (attached to memorandum)

MINUTES OF MEETING

of

MAY 27 AND 28, 1966

San Francisco

A meeting of the California Law Revision Commission was held at San Francisco on May 27 and 28, 1966.

Present: Richard H. Keatinge, Chairman
James R. Edwards
John R. McDonough
Thomas E. Stanton

Absent: Hon. James A. Cobey
Hon. Alfred H. Song
Joseph A. Ball
Sho Sato, Vice Chairman
Herman F. Selvin
George H. Murphy, ex officio

Messrs. John H. DeMouly, Joseph B. Harvey, and John L. Reeve of the Commission's staff also were present. Present on May 27 was Mr. Richard H. Bein, Deputy District Attorney, Office of the District Attorney of the County of San Diego.

During the afternoon on May 28, Commissioners Keatinge, Edwards, and McDonough functioned as a subcommittee. The report of the subcommittee is attached to these Minutes as Exhibit I.

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ADMINISTRATIVE MATTERS

Minutes of May 5, 6, and 7, 1966, Meeting. The Minutes of the meeting held on May 5, 6, and 7, 1966, were approved as submitted.

Future Meetings. Future meetings are scheduled as follows:

June 9 (evening), 10, and 11	San Francisco
July 21, 22, and 23 (three full days)	Long Beach
August 12 and 13 (two full days)	Los Angeles
September 16 (evening) and 17	San Francisco
October 20, 21, and 22 (three full days)	Los Angeles
November 17 (evening), 18, and 19 (morning)	Berkeley
December--not yet scheduled	

Approval of sending materials to State Bar Committee on Condemnation.

The Commission approved sending the tentative recommendation and research study on immediate possession to the State Bar Committee as soon as such materials are prepared. The Committee is to be advised that the Commission is still considering these materials and that they have not been approved by the Commission.

Approval of sending materials to persons interested in Evidence Code.

The Commission approved sending to the Conference of Judges and the Judicial Council material prepared by the staff that will reflect the actions taken on the Evidence Code at the May 27 and 28 meeting.

Commission's 1967 Legislative Program. The Commission discussed the various items of legislation that would be included in its 1967 legislative program. The Executive Secretary reported that he plans to include the following matters in the 1967 legislative program:

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1. Condemnation law and procedure. A constitutional amendment and legislation relating to immediate possession and related problems.
2. Evidence Code. Revision of the Evidence Code itself and additional legislation to revise several other codes to make necessary changes in light of the Evidence Code.
3. Lessor-lessee rights.
4. Vehicle Code Section 17150 and related sections.
5. Personal injury damages as separate property.
6. Additur.
7. Fictitious Name Statute.
8. Suit in Common Name.
9. Good Faith Improver.
10. Inverse Condemnation.
11. Escheat.
12. 1967 Annual Report.

The Executive Secretary also reported that there is considerable support for our 1963 recommendation relating to discovery in eminent domain and that the Commission might submit a recommendation on this subject to the 1967 legislative session. It was suggested that time would not permit consideration of this subject prior to the 1967 legislative session.

Preprinting of bills for bar convention. The Executive Secretary reported that he had made arrangements for the preprinting of the bills in time for the bar convention in September. Accordingly, he plans to have the Commission approve all bills for preprinting at the July and August meetings.

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STUDY 44 - FICTITIOUS NAME STATUTE

The Commission considered Memorandum 66-23 and the attached revised tentative recommendation (both distributed prior to the meeting) and the suggested amendment of Section 7540 of the Business and Professions Code which was handed out at the meeting.

The Commission considered the proposed legislation and took the following actions:

Title

A reference to the amendment of Section 7540 of the Business and Professions Code is to be added to the title.

Section 1 (Repeals Civil Code Sections 2466-2471)

This section was approved as drafted.

Section 17900

Subdivision (b) of this section was revised to read:

(b) In the case of a partnership, a name which does not include the surname of each individual who is a member of the partnership.

Section 17901

This section was approved as drafted.

Section 17902

Subdivision (a) was revised to read:

(a) File a fictitious name certificate in accordance with this chapter not later than 40 days from the time he commences to transact business in this state under the fictitious name; and

Section 17903

This section was approved as drafted.

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Section 17904

This section was approved as drafted.

Section 17905

The words "under penalty of perjury" were deleted in the introductory clause of subdivision (a).

In paragraphs (2) and (3) of subdivision (a), the word "two" was changed to "one."

Section 17906

This section was approved as drafted.

Section 17907

This section was approved as drafted.

The comment was revised in response to some suggestions made by Mr. McDonough.

Section 17908

This section was approved as drafted.

Section 17909

The references to "register" are to be changed to "index" in this section. The last sentence is to be revised to read: "When a certificate appears to have expired under subdivision (a) of Section 17906 or has expired under subdivision (e) or (f) of Section 17906, the Secretary of State and the county clerk shall enter that fact in the index together with the date of such expiration."

Section 17910

Subdivision (b) was revised to read:

(b) The Secretary of State and each county clerk may destroy

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or otherwise dispose of any fictitious name certificate that appears to have expired under subdivision (a) of Section 17906 or has expired under subdivision (e) or (f) of Section 17906.

Section 17911

This section was approved as drafted.

Section 17912

The Commission determined not to provide a criminal penalty in the statute.

The Commission determined that Section 17912 should read in substance as follows:

17912. (a) Any person who regularly transacts business in this state under a fictitious name and wilfully fails to comply with the requirements of Section 17902 is liable civilly in the sum of five hundred dollars (\$500), which sum may be recovered by the Secretary of State in an action brought in any court of competent jurisdiction.

(b) Any person who regularly transacts business in this state under a fictitious name and wilfully fails to file a fictitious name certificate in accordance with this chapter within 40 days after a judgment against such person under subdivision (a) or under this subdivision becomes final is liable civilly in the sum of one thousand dollars (\$1,000), which sum may be recovered by the Secretary of State in an action brought in any court of competent jurisdiction.

(c) All moneys collected by the Secretary of State under subdivisions (a) and (b) shall be deposited in the State Treasury to the credit of the General Fund.

(d) No contract or transaction is void or unenforceable because a party to the contract or transaction has violated this chapter.

(e) Nothing in this chapter prevents a person from filing a fictitious name certificate at any time after the time prescribed in Section 17902 or in subdivision (b) of this section.

Amendments

The amendment of Business and Professions Code Section 7540 was approved. This section was handed out at the meeting.

The amendments of Business and Professions Code Sections 10159.5 and 10522.5 were approved.

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The amendment of Financial Code Section 12300.2 was approved.

The amendment of Government Code Section 26848 and the addition of Government Code Section 12193.5 were approved.

Operative date

Section 9 was approved.

Distribution for comment

The tentative recommendation, as revised, was approved for distribution to interested persons for comment.

The tentative recommendation should be sent to a local representative of Lloyds of London. [Lloyds of London is not qualified to write insurance in California; therefore, every policy upon a California risk must be placed through the office of a surplus line broker in California. People v. Caldwell, 55 Cal. App.2d 238, 130 P.2d 495 (1943).]

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STUDY 63(L) - EVIDENCE CODE

Form of Commission's Publications on Evidence

The Commission considered Memorandum 66-21. The Commission determined that it would publish one recommendation for the 1967 legislative session that will contain all recommended revisions in the Evidence Code itself. This recommendation would include changes in the Evidence Code based on the material in the tentative recommendation previously distributed, together with any other changes that the Commission concludes should be made in the Evidence Code. This publication would be entitled:

Recommendation Relating to the Evidence Code

Number 1 -- Revisions of the Evidence Code

The Commission also determined that an additional recommendation be published for each of the other codes (except the Penal Code). Each of these recommendations would be published after a particular code had been studied. The recommendations would be given titles consistent with the following:

Recommendation Relating to the Evidence Code

Number 2 -- Revisions of the Commercial Code

It was recognized that only two or three of the other codes can be studied prior to the 1967 legislative session. Hence, recommendations on only two or three of the other codes can be made to the 1967 legislative session. However, over a period of years, the Commission plans to consider and make a recommendation on each code if its recommendations to the 1967 legislative session on revisions of other codes meet with legislative approval.

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Evidence Code

Section 403

The Commission considered the comment of Professor Chadbourn on the proposed amendment of Section 403 contained in the tentative recommendation previously distributed for comment. Individual members of the Commission expressed the view that the proposed amendment of Section 403 contained in the tentative recommendation did not appear to be necessary and that the Evidence Code as originally enacted probably needs no change.

The Commission deferred taking any action on Section 403 and directed the staff to place this matter on the agenda at a future meeting. The materials prepared for that meeting are to include the original materials that led to the suggested amendment as well as any comments on the suggested amendment.

It was also suggested that the Committee of the Conference of Judges and the Subcommittee of the Judicial Council be sent a copy of Professor Chadbourn's suggestion with a request that they comment on his proposal as well as the tentative recommendation.

Proposed Section 414

The Commission considered the Fifth Supplement to Memorandum 66-21 which noted a letter from Richard H. Perry who objected to proposed Section 414 (contained in tentative recommendation previously distributed). He believes that Section 414 states an obvious truism. The Commission did not take any action with respect to Section 414 pending receipt of other comments on the section.

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In connection with Section 414, the Commission considered a suggestion of the Northern Section of the State Bar Committee on Evidence that a possible clarifying addition to Sections 1093 and 1127 of the Penal Code should be made. The suggestion was that language similar to Section 414 be added to the Penal Code sections. The Commission directed the staff to forward the suggestion to Professor Sherry for consideration by the Joint Legislative Committee on Revision of the Penal Code.

Judicial Notice

Matters judicially noticed by courts of last resort. The Commission considered the Second Supplement to Memorandum 66-21 which contained a letter from Richard H. Perry suggesting that a provision be added to Section 451 to require that judicial notice be taken "of all matters heretofore or hereafter judicially noticed by courts of last resort in this state." The Commission declined to add such a provision to Section 451 because such an addition would place a duty on the judge to take judicial notice of such matters without any request and without any requirement that the party furnish information to enable the court to take judicial notice of the matter. If the matter is one listed in Section 451, Section 451 will require judicial notice to be taken. If the matter is one listed in Section 452, judicial notice should not be mandatory unless a request is made and the information needed to take judicial notice is furnished. It was recognized that a trial judge would have to follow a decision of a higher court that a particular matter is to be noticed under Section 451.

Judicial notice of foreign law. The Commission considered the Fourth Supplement to Memorandum 66-21. The Commission determined that no change

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should be made in the Evidence Code provisions relating to judicial notice of foreign law.

Psychotherapist-patient privilege

In the course of the discussion of the Fifth Supplement to Memorandum 66-21, the Commission noted the letter from Dr. E.F. Galioni approving the suggested changes contained in the tentative recommendation previously distributed insofar as they relate to the psychotherapist-patient privilege.

Marriage counselor's privilege

The Commission considered the Second Supplement to Memorandum 66-21 which noted an article from the Los Angeles Daily Journal reporting a talk by Judge Kaus before the Citrus Bar Association. Judge Kaus is reported as stating that an unfortunate by-product of the new code is to overrule Simrin v. Simrin, 233 Cal. App.2d 90, 43 Cal. Rptr. 376 (1965), which held that a husband and wife can agree that communications made between them and a marriage counselor (a rabbi) in the course of marriage counseling will be confidential and that such an agreement will be enforced in a post-divorce custody proceeding.

The opinion in the case did not actually create a marriage counselor's privilege; it recognized what appears to be either a contract providing for the exclusion of evidence or an exclusion of evidence based on estoppel principles.

The Commission determined not to add a marriage counselor's privilege to the Evidence Code. At the same time, some of the members of the Commission expressed approval of Simrin v. Simrin, 233 Cal. App.2d 90, 43 Cal. Rptr. 376 (1965). It was recognized that it would be extremely

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difficult to devise appropriate language that would (1) make it clear that the Evidence Code has no effect on the Simrin case and (2) at the same time, not create ambiguity in the code.

The Commission declined to recommend any change in the Evidence Code to deal with this problem. The staff was directed to write to Judge Kaus and request that he give the Commission the benefit of his views on what changes, if any, should be made in the Evidence Code in view of the Simrin case.

The Official Information Privilege (Evidence Code Sections 915 and 1040)

The Commission considered the Sixth Supplement to Memorandum 66-21 and some material handed out by Mr. Bein at the meeting.

The question presented for Commission consideration was which agency--the court or the public officer claiming the privilege--should determine whether disclosure of official information is against the public interest. Evidence Code Sections 915 and 1040-1042.

After considerable discussion of the matter, the Commission took the position that the Evidence Code scheme is sound. Under the Evidence Code, the court must hold the information privileged if the court determines that disclosure of the information is prohibited by federal or state statute. If no federal or state statute prohibits disclosure of the information and the public entity claims the privilege, the court is required to prohibit disclosure of official information if the court determines that disclosure of the information is "against the public interest because there is a necessity for preserving the confidentiality of the information that outweighs the necessity for disclosure in the interest of justice." See Evidence Code Sections 1040 and 915. See also the Official Comment to Section 915.

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The Commission suggested to Mr. Bein that he discuss this matter with representatives of public agencies to determine (1) whether a problem really exists and (2) whether such representatives believe that an attempt should be made to persuade the Legislature to change the rule reflected in the Evidence Code. If Mr. Bein finds that representatives of public agencies are in general agreement that the Evidence Code rule is wrong and that legislation should be introduced to effectuate a change in the rule, the Commission indicated that it would be willing to consider this matter again. The Commission took the view, however, that a case had not been made for changing the Evidence Code rule to make the determination of the public official that disclosure is against the public interest conclusive on the court if the public officer acts in good faith.

Hearsay evidence--hospital bills

The Commission considered a suggestion from Gerald Sokoloff suggesting the addition of a specific hearsay exception for hospital bills based on R 4518 of the New York law.

The Commission declined to add such a hearsay exception. Sections 1998-1998.5 of the Code of Civil Procedure (recodified as Evidence Code Sections 1560-1566) provide a procedure that adequately deals with this problem. This conclusion was based on the experience of individual commissioners and on the information that the staff obtained from checking with the Stanford Hospital and with local attorneys in the Palo Alto area.

Evidence Code Sections 1600, 1602, 1603, 1604, and 1605

The Commission considered the First Supplement to Memorandum 66-21. The following actions were taken:

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Section 1600. This section is to be amended to read:

1600. (a) The official record of a document purporting to establish or affect an interest in property is prima facie evidence of the existence and content of the original recorded document and its execution and delivery by each person by whom it purports to have been executed if:

(a) (1) The record is in fact a record of an office of a public entity; and

(a) (2) A statute authorized such a document to be recorded in that office.

(b) The presumption established by this section is a presumption affecting the burden of proof.

Comment. Section 1600 creates a rebuttable presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). The classification of the presumption in Section 1600 as a presumption affecting the burden of proof is consistent with the prior case law. See Thomas v. Peterson, 213 Cal. 672, 3 P.2d 306 (1931); DuBois v. Larke, 175 Cal. App.2d 737, 346 P.2d 830 (1959); Osterberg v. Osterberg, 68 Cal. App.2d 254, 156 P.2d 46 (1945). Such a classification tends to support the record title to property by requiring that the record title be sustained unless the party attacking that title can actually prove its invalidity. See EVIDENCE CODE § 606 and the Comment thereto.

Section 1602. The Commission determined that the substance of this section should be compiled as a new section in the Public Resources Code.

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However, the Commission was unable to agree as to whether the section should provide merely a hearsay exception, a presumption affecting the burden of producing evidence, or a presumption affecting the burden of proof.

The staff was directed to determine whether one or more persons can be found who are connected with the title companies and are experts in mining law. After checking with such person or persons to determine the purpose and effect of the various sections creating presumptions that apply in mining cases, the staff is to report to the Commission.

Section 1603. This section is to be amended to read:

1603. A deed of conveyance of real property, purporting to have been executed by a proper officer in pursuance of legal process of any of the courts of record of this state, acknowledged and recorded in the office of the recorder of the county wherein the real property therein described is situated, or the record of such deed, or a certified copy of such record, is prima facie evidence that the property or interest therein described was thereby conveyed to the grantee named in such deed. The presumption established by this section is a presumption affecting the burden of proof.

Comment. Section 1603 creates a rebuttable presumption. EVIDENCE CODE § 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption.").

Prior to the enactment of Code of Civil Procedure Section 1928 in 1872 (upon which section Section 1603 of the Evidence Code is based), the recitals in a sheriff's deed, made pursuant to legal process, could not be

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used as evidence of the judgment, the execution, and the sale upon which the deed was based. The existence of the prior proceedings was required to be proved with independent evidence. Hihn v. Peck, 30 Cal. 280, 287-288 (1866); Heyman v. Babcock, 30 Cal. 367, 370 (1866). The enactment of the predecessor of Evidence Code Section 1603 had two effects. First, it obviated the need for such independent proof. See, e.g., Oakes v. Fernandez, 108 Cal. App.2d 168, 238 P.2d 641 (1951); Wagnor v. Blume, 71 Cal. App.2d 94, 161 P.2d 1001 (1945). See also BAsyE, CLEARING LAND TITLES § 41 (1953). Second, it obviated the need for proof of a chain of title prior to the execution of the deed. Krug v. Warden, 57 Cal. App. 563, 207 Pac. 696 (1922).

The classification of the presumption in Section 1603 as a presumption affecting the burden of proof is consistent with the classification of the similar and overlapping presumptions contained in Evidence Code Sections 664 (official duty regularly performed) and 1600 (official record of document affecting property). Like the presumption in Section 1600, the presumption in Section 1603 serves the purpose of supporting the record chain of title.

Section 1604. The Commission determined that Section 1604 does not require any amendment since the section clearly indicates the proof required to overcome the presumption.

Section 1605. The Commission directed the staff to check with one or more experts to determine the meaning of Section 1605. The staff is to report the results of this check to the Commission.

Revision of Commercial Code

The Commission considered the Third Supplement to Memorandum 66-21. The following section, to be added to the Commercial Code, was approved:

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1209. The presumptions established by this code are presumptions affecting the burden of producing evidence.

Comment. The official text of the Uniform Commercial Code adopted the view that the presumptions in the Commercial Code should be presumptions affecting the burden of producing evidence. See Uniform Commercial Code Section 1-201(31) ("Presumption" or "presumed" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence). When the Commercial Code was enacted in California, the definition of a presumption was deleted because it was considered ambiguous and because the California Law Revision Commission was studying the law of evidence and it was thought that any revision of the law of presumptions should await the recommendation of the Law Revision Commission. See Sixth Progress Report to the Legislature by Senate Fact-Finding Committee on Judiciary (1959-1961), Part 1, the Uniform Commercial Code at 439-441; California State Bar Committee on the Commercial Code, A Special Report, The Uniform Commercial Code, 37 Calif. State Bar J. 131-132 (March-April, 1962).

Section 1209 is added to the California Commercial Code to carry out the intent of the drafters of the Uniform Commercial Code and to harmonize the provisions of the California Commercial Code with the presumptions scheme of the Evidence Code. Section 1209 has the same substantive effect as subdivision (31) of Section 1-201 of the Uniform Commercial Code, but Section 1209 picks up the comprehensive Evidence Code scheme on presumptions. See Evidence Code Sections 600-607. Under Evidence Code Section 604, the

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effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. If contrary evidence is introduced, the presumption is gone from the case and the trier of fact must weigh the inferences arising from the facts that gave rise to the presumption against the contrary evidence and resolve the conflict. See Evidence Code Section 604 and the Comment to that section.

Presumptions are established by Commercial Code Sections 1202, 3114(3), 3304(3)(c), 3307(1)(b), 3414(2), 3416(4), 3419(2), 3503(2), 3510, and 8105(b). Although Section 1202 does not expressly establish a presumption, the section does establish a presumption. Evidence Code Section 602 ("A statute providing that a fact or group of facts is prima facie evidence of another fact establishes a rebuttable presumption."). See also Commercial Code Section 3201(3).

[Note: The staff has discovered several additional "prima facie" sections. At least one of these appears to be intended to create a presumption affecting the burden of proof. A memorandum on these additional sections will be prepared for the July 9-11 meeting if time permits.]

EXHIBIT I
REPORT OF SUBCOMMITTEE

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STUDY 50 - LEASES

In the absence of a quorum, a subcommittee of the Commission considered Memorandum 66-24, the first supplement thereto, a letter from Professor Verrall of May 24, 1966, and the revised tentative recommendation of May 15, 1966. The subcommittee decided that its actions would be reported to the Commission as recommendations for Commission action. The subcommittee then took the following actions:

Chattel leases

The recommendation relating to leases should deal only with real property leases, not with chattel leases. The major identified problems in this field stem from the common law conception of a lease of real property as a conveyance. Since common law real property concepts do not seem to have influenced decisions concerning chattel leases, and inasmuch as there is considerable statutory regulation of chattel leases, the problems relating to leases can be met by a recommendation relating to leases of real property only.

Basic approach to lease recommendation

The subcommittee agreed that the basic approach of the originally distributed tentative recommendation and the revision of May 15 is correct, i.e., that the Commission's recommendation should be based on the notion that a lease should be treated as a contract and the common law concept that a lease is primarily a conveyance should be abandoned.

The subcommittee then approved the approach taken in the revised recommendation of May 15, 1966. This approach is to spell out in considerable detail the exact consequences of treating a lease as a

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contract. This approach differs from that in the original tentative recommendation in that the original merely declared that abandonment of a lease is a breach of the lease and specified the damages that are recoverable on such a breach--the right to rely on other remedies was left to general principles of contract law.

Having approved the general approach to the problem of the revised recommendation, the subcommittee then considered the details thereof.

Section 1951

In subdivision (b), the first portion should be revised to indicate that either the voluntary act or the voluntary course of conduct (which could include omissions) of the defaulting party can constitute repudiation. The staff was also asked to consider and report on the extent to which the involuntary inability of a party to comply with his obligations under the lease should constitute repudiation. The question of the communication of a repudiation by acts under subdivision (b) should also be considered in connection with Section 1953, relating to retraction of a repudiation.

It was concluded that subdivision (c) should be revised to provide that a repudiation consists of vacating the property together with a 60-day delinquency in the payment of rent, provided there is no communication with the lessor to indicate that a repudiation is not actually intended. After further discussion, the subcommittee concluded that subdivision (c) should be omitted entirely. The lessor can protect himself against potential liability by serving a three-day notice to pay rent or vacate, retaking possession if the property is vacated, resorting to unlawful detainer if the property is not vacated.

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The comment should point out that the lease itself may provide for a termination earlier than the normal expiration of the term by granting the lessor a right of reentry upon the happening of specified events.

The staff was also asked to go through the proposed statute and to analyze the extent to which the statute's provisions can be modified by the agreement of the parties.

Section 1951.5

For the reasons stated in connection with the disapproval of Section 1951(c), the subcommittee recommended that Section 1951.5 be omitted from the statute.

Section 1952

Deletion of Section 1951.5, defining "abandonment," requires revision of subdivision (c) to provide that a lease terminates upon repudiation and abandonment of possession. Subdivision (c) should be further revised to indicate that the lease terminates upon repudiation and abandonment except where the lessor has a right to specific performance of the lease and seeks prompt enforcement of that remedy.

The staff was asked to reconsider the necessity for defining termination. The purpose of the section may be accomplished, perhaps, merely by spelling out the consequences of repudiation.

Section 1952.5

The staff was asked to reconsider the need for stating that repudiation is a breach.

Section 1953

The word "conduct" was substituted for "acts" in subdivision (b). The staff was asked to consider the problem of communication in connection

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with the problem of communication that was raised in regard to Section 1951. It was suggested that the section could be redrafted to require that the lessee communicate that he is willing to perform and that the lessee be able to perform.

Section 1953.5

Section 1953.5 should be redrafted to indicate the lessor's option to treat a breach (other than repudiation) as a partial breach.

Section 1954

Section 1954 was approved.

Section 1954.5

The staff was asked to consider whether the statute should be broadened to cover property belonging to persons other than the lessee. The question of the rights of lienholders should also be explored.

Sections 3320-3321

Both of these sections were approved.

Section 3322

The word "undue" was inserted before the word "risk" in subdivision (a), and as modified, the section was approved.

Remainder of statute

The remainder of the statute was not considered.