

Time

August 12 - 9:30 a.m. - 5:00 p.m.
August 13 - 9:00 a.m. - 4:00 p.m.

Place

Friday - Room 1157
State Office Building
350 McAllister Street
San Francisco

Saturday-Commissioner Stanton's
office
221 Sansome Street
San Francisco

FINAL AGENDA
for meeting of
CALIFORNIA LAW REVISION COMMISSION

San Francisco

August 12-13, 1966

FRIDAY, AUGUST 12

1. Approval of Minutes of July Meeting (enclosed)
2. Administrative Matters

Preparation of Tentative Recommendation

3. Study 26 - Escheat

Memorandum 66-34 (sent 7/1/66)
Tentative Recommendation (attached to memorandum)
First Supplement to Memorandum 66-34 (to be sent)

Special order
of business--
10:00 a.m.
August 12

SATURDAY, AUGUST 13

Approval of Final Recommendation for Publication

4. Study 63(L) - Evidence Code

General Recommendation on Revision of Evidence Code

Memorandum 66-45 (to be sent)
Revised Recommendation (attached to memorandum)

5. Study 62(L) - Vehicle Code Section 17150 and Related Statutes

Memorandum 66-47 (enclosed)
Revised Recommendation (attached to memorandum)

6. Study 53 - Personal Injury Damages

Memorandum 66-48 (enclosed)
Revised Recommendation (attached to memorandum)

7. Study 55(L) - Additur

Memorandum 66-49 (enclosed)
Revised Recommendation (attached to memorandum)

8. Study 63(L) - Evidence Code

Revision of Penal Code

Memorandum 66-50 (sent 7/28/66)
Recommendation (attached to memorandum)
First Supplement to Memorandum 66-50 (to be sent)

Consideration of Comments on Tentative Recommendation

9. Study 42 - Good Faith Improvers

Memorandum 66-46 (to be sent)

Recommendation that Topic be Dropped from Agenda

10. Study 49 - Unlicensed Contractors

Memorandum 66-51 (enclosed)

MINUTES OF MEETING

of

AUGUST 12 AND 13

San Francisco

A meeting of the California Law Revision Commission was held at San Francisco on August 12 and 13, 1966.

Present: Sho Sato, Vice Chairman
James R. Edwards
John R. McDonough
Herman F. Selvin
Thomas E. Stanton
George H. Murphy, ex officio (August 12 only)

Absent: Richard H. Keatinge, Chairman
Hon. James A. Cobey
Hon. Alfred H. Song
Joseph A. Ball

Messrs. John H. DeMouilly and Joseph B. Harvey of the Commission's staff also were present.

Also present on August 12 were the following observers:

John E. Barsell, Department of Justice, San Francisco
Samuel J. Cord, Office of the State Controller
Lawrence E. Gercovich, Office of the State Controller
Edwin G. Neuharth, Office of the State Controller
William J. Power, Department of Justice

Also present on August 12 and 13, 1966, was Jon D. Smock, Judicial Council.

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ADMINISTRATIVE MATTERS

Minutes of July 21, 22, and 23 meeting. The minutes of the meeting held on July 21, 22, and 23, 1966, were approved as submitted.

Budget. The topics to be undertaken by the Commission and the amounts to be allocated in the budget to these topics were discussed. The Executive Secretary suggested amounts to be allocated for consultants on Inverse Condemnation, Attachment, Garnishment and Execution, Quasi-Community Property, and the effect of the Evidence Code on other codes. Particular attention was given to the desirability of retaining the services of a research consultant to undertake the task of classifying the presumptions in the Civil Code and the Code of Civil Procedure. No decision was reached by the Commission on any of these matters.

STUDY 26 - ESCHEAT

The Commission considered Memorandum 66-34, the First Supplement thereto, and the tentative recommendation distributed therewith. The following actions were taken:

ABANDONED PROPERTY

The Commission discussed the desirability of legislating in this field and received the views of representatives of the Attorney General's office and the State Controller's office. The Commission concluded that the project is worthwhile and should be undertaken by the Commission.

The Controller's office reported that, under the existing statute, an average of about \$700,000.00 is escheated to the State of California each year. The statute under which these sums escheat claims the right to escheat property held only by holders doing business in California. Thus, this sum does not represent property which could be escheated under Texas v. New Jersey that is in the hands of holders who are not doing business in California.

The Commission discussed the scheme of the proposed statute. The proposal was to escheat all property in the hands of holders, wherever located, if the last address of the owner on the books of the holder was in California. California corporations, or individuals domiciled in California, holding property belonging to owners with last known addresses outside California would also be required to report and deliver such property to the State of California unless the property had previously been delivered to another state pursuant to its escheat laws. California would then report the receipt of property to the state of last known address and hold the property subject to the claim of the state of last known address. The report to the state of last known address would be in

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exchange for similar information received by that state from corporations and holders domiciled in that state. Finally, California would escheat property in the hands of its domiciliaries where there was no last address of the owner.

The Commission approved the scheme generally, but disapproved escheating any property in the hands of California domiciliaries where the last known address is in another state and that state provides for the escheat of such property. This action, however, was without prejudice to requiring a report of such property to the State of California. No action was taken on the reporting requirements.

The Commission discussed whether the underlying rationale of the entire abandoned property law should be rethought and whether the law should be redrafted to apply to additional or different kinds of property and to improve the general drafting standards in the law. No conclusion on this subject was reached, and the Commission then asked for the suggestions of the representatives of the Attorney General and State Controller in regard to the draft statute.

The Attorney General's and the State Controller's offices reported that the existing statute has presented few difficulties in the administration. The proposed changes contained in the draft statute are desirable and cure the bulk of the defects of which they are aware, most of which stem from the Supreme Court's decision in Texas v. New Jersey. A few minor additional changes should be made, but these are technical changes, not substantive. Except for the Texas v. New Jersey problems, the statute now applies to all property that it is worthwhile to attempt to escheat.

The Commission then suggested that the Attorney General's and State Controller's representatives present their suggested changes, and the following actions were taken or matters were noted:

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Section 1500

It was suggested that the short title of the act be revised to "Unclaimed Property Law."

Section 1501

The Commission inserted the words "or a claim" in subdivision (f) immediately following the word "property."

Section 1510

The Commission directed the staff to make it clear that "domicile" refers to the state of incorporation insofar as corporations are concerned. This is the meaning attached to the term by the Supreme Court in Texas v. New Jersey.

In accordance with the previous policy decision, the Commission directed the staff to revise subdivision (c) to provide for escheat only if there is no escheat law on the books of the state of last known address. The Commission recognized that this could amount to an abandonment of escheat rights to property held by persons not residing or corporations not doing business in California where the last known address of the owner is in California, for reports to California of such property can be obtained only through the cooperation of other states and the proposed provision of Section 1510 was intended to secure that cooperation through reciprocal provisions for escheat and subsequent exchange of reports. The Commission indicated, first, that the problem is probably not a significant one and that not much property of this sort exists and, second, that the problem may be met by reciprocal reporting requirements instead of reciprocal provisions for escheat and subsequent exchange of reports. Whether reciprocal reporting requirements are to be included will be decided when

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when the provision governing reports to the State Controller is considered.

The staff was directed to consider including a reference to the federal courts in Sections 1600 and following instead of in the abandoned property statute.

The staff was directed to consider redrafting item (4) in subdivisions (b) and (c) to express more accurately the concept of governmental bodies.

Subdivision (e) was deleted from Section 1510.

A new subdivision is to be added to Section 1510 to provide for the escheat of property in the hands of a domiciliary of California where the last known address of the owner was in a foreign country.

Section 1511

Subdivision (e) should be redrafted to make it clear that it relates only to the tangible evidences of intangible property, not to intangible property as such, for intangible property cannot be removed from a safety deposit box.

Section 1514

The State Controller's office suggested that tangible property be eliminated from the escheat. Following discussion, the Commission directed the staff to include a provision in the statute authorizing the Controller to refuse to take tangible property by escheat.

Section 1531

The Controller's office suggested the restoration of "120 days" in subdivisions (a) and (e) in order to provide the Controller's office with sufficient time to process the reports.

In subdivisions (c) and (f), the requisite notices should state that after five years the property "may" be permanently escheated to the state.

Section 1542

It was suggested that the section be revised to require a hearing on another state's claim only if the claim is denied.

Section 1562

It was suggested that the section be relocated after Section 1537.

Section 1581

It was suggested that the section be relocated after Section 1570.

Exoneration provision

It was suggested that a provision be added exonerating the state from further liability if it pays escheated property to the wrong owner.

Interstate compact

The State Controller's and Attorney General's offices expressed general approval of the interstate compact on abandoned property.

ESCHEAT OF DECEDENT'S ESTATES

Probate Code Section 231

Subdivision (a) was revised in substance as follows:

231. (a) If a decedent, whether or not he was domiciled in this state, leaves no one to take his estate or any portion thereof by testate succession and no one, other than a government or governmental subdivision or agency, to take his estate or any portion thereof by intestate succession under the laws of this state or of any other jurisdiction, the same escheats at the time of the death of the decedent in accordance with this article.

The section was approved as revised.

Section 232

There was some discussion whether to make reference to all interests in real property located in this state, but no action was taken.

Section 232 was then approved in principle.

The staff was directed to revise the comment to refer to Section 231.

Sections 233 and 234

The staff was directed to consider reversing the order of Sections 233 and 234.

Section 233 was revised in substance as follows:

233. All tangible personal property of the decedent, wherever located at the decedent's death, that was customarily kept in this state prior to the decedent's death, escheats to this state.

The staff was directed to make similar drafting revisions in other sections.

Sections 233 and 234 were then approved in principle.

Sections 235 and 236

The staff was directed to revise paragraph (3) of subdivision (b) to provide that the law of the other jurisdiction recognizes California's escheat claim instead of provides for escheat by California.

The staff was directed to revise Section 236 to deal with property that is being administered in California. This section, and Section 234 also, should be directions to the Probate Court as to the disposition of property being administered here, they should not attempt to deal with the question of what property is subject to administration in California.

Subject to the revision, Sections 235 and 236 were approved in principle.

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STUDY 42 - GOOD FAITH IMPROVERS

The Commission considered Memorandum 66-46 and the comments by Professor Merryman, the Commission's consultant on the topic, and by Richard D. Agay, a Los Angeles attorney, on its tentative recommendation. The following actions were taken:

Background portion of tentative recommendation. Professor Merryman suggested that the first sentence under Background missed a point that he had tried very hard to make in his study. To make Professor Merryman's point clearer, the Commission decided to add the following footnote to the recommendation:

¹This is the American common-law rule as stated in the cases. The research consultant points out that this rule is based on a dubious historical development. See research study infra at 460-468, 482.

Section 871.1. Paragraph (a)(2) of Section 871.1 is to be redrafted to make it clear that the 15-year term referred to in this paragraph is to be computed from the time that the good faith improver affixes the improvement to the land. The existing language could be construed to permit a person who had had a 15-year term of possession to be a good faith improver even though less than 15 months of his term remained at the time he affixed the improvement to the land.

Section 871.2. The Commission rejected Mr. Agay's suggestion that in order for a person to be classified as a good faith improver he be required to show (1) that he has a title insurance policy indicating his ownership and (2) that he has had the land surveyed.

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Section 871.4. The Commission decided to make no change in the text of this section. The Commission was unable to tell from Mr. Agay's comment what he considered to be the problem with this section. The Commission directed the staff to redraft the Comment to Section 871.4 to clarify the intent of the section.

Section 871.6. Mr. Agay was concerned that a problem could arise under this section in a situation involving several improvers and several owners who could not agree on what election to make. The Commission concluded that no change was necessary in Section 871.6 to meet this problem since such a case would be decided under Section 871.5 rather than under 871.6.

The Commission failed to adopt the suggestion that Section 871.6 be clarified to show that the value of the improvement is its value to the owner rather than its value to the improver. The value referred to is the amount by which the improvement enhances the value of the land--the increase in the market value of the land.

The Commission concluded that no change was necessary in the election procedure provided by Section 871.6. The Commission felt that Mr. Agay had failed to recognize that an improver is entitled to make an election only if the owner fails to do so within the time specified by the court.

The Commission rejected the suggestions that when an improver is forced to purchase the land (1) he be required to post security to cover the amount of the payment and the court costs and (2) he be required to secure the required payment by a mortgage. Since the statute requires the improver to pay the purchase price in a lump sum, a mortgage would be unnecessary. Moreover, the owner is adequately protected since his title to the land and

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the improvement would be quieted if the improver failed to make payment as required by the court.

The Commission decided that it was unnecessary to make provision for the case in which both the improver and the owner fail to make an election under Section 871.6. It is unlikely that such a case will ever occur and, furthermore, the court would have the power to fashion an appropriate remedy in such a case.

The Commission decided not to adopt a proposal that would have required all persons with an interest in the land to join in any election under Section 871.6(b). Such a requirement might require consent of persons having only a slight interest in the land; the matter is to be left to the court.

The Commission rejected the suggestion that the statute require that the purchase money paid by the owner first be used to discharge any liens on the improvement being purchased. It was felt that the court would best be able to deal with the problem of satisfying and discharging liens against the improvement according to the circumstances of each case.

Section 871.6(b)(2). Paragraph (b)(2) of Section 871.6 was altered to read:

(2) Offer to transfer all of his right, title, and interest in the improvement, the land upon which the improvement is constructed, and the such additional land as is reasonably necessary to the convenient use of the improvement to the good faith improver upon the good faith improver's paying the amount specified in subdivision (c).

This alteration clarifies what the improver is to receive if he is required to purchase the owner's property. The Commission did not feel that there was any danger that a court would permit an improver to acquire a land-locked piece of property. Land to provide ingress and egress would be

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included within the phrase "land reasonably necessary to the convenient use of the improvement."

Section 871.6 (c)(1). Paragraph (1) of subdivision (c) is revised to read:

(1) Determining the sum of (i) the value of the land upon which the improvement is constructed and such additional land as is reasonably necessary to the convenient use of the improvement, excluding the value of the improvement, (ii) the reasonable value of the use and occupation of such land by the good faith improver and his predecessors in interest, and (iii) the amount reasonably incurred or expended by the owner of the land in the action, including but not limited to any amount reasonably incurred or expended for appraisal or attorney's fees; , and (iv) where the land to be transferred to the improver is a portion of a larger parcel of land held by the owner, the reduction in the value of the remainder of the parcel by reason of the transfer of the portion to the improver; and

Subparagraph (iv) was added to make it clear that the owner was entitled to receive compensation for any severance damages resulting from the transfer of the land to the improver. The revision in subparagraph (i) was made to clarify the section and to conform it to the revision made in paragraph (2) of subdivision (b) of Section 871.6.

Section 871.6(g). Subdivision (g) of Section 871.6 was altered to read:

(g) If the offer provided for in paragraph (2) of subdivision (b) is made and accepted or if the election authorized in subdivision (e) is made, the court shall set a reasonable time , not to exceed three months, within which the owner of the land shall be paid the entire amount determined under subdivision (c). If more than one person has an interest in the land, the persons having an interest in the land are entitled to receive the value of their interest from the amount paid under this subdivision.

These changes are intended to make it clear what the court is to do with the money paid by the improver and to insure that payment will not be unduly delayed.

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STUDY 44 - THE FICTITIOUS NAME STATUTE

The Commission concluded that the staff should rewrite the Tentative Recommendation relating to the Fictitious Name Statute to provide for a single filing with the Secretary of State and for the use of data processing equipment to record the information and to transmit it to the county clerks.

The Secretary of State's office has expressed a willingness to undertake the responsibility of maintaining these records. It was pointed out that the use of data processing equipment will reduce the cost of complying with the Fictitious Name Statute. The increased workload on the computer also will make it possible to reduce the cost of filing financial statements under the Commercial Code.

The Commission also directed the staff to extend invitations to a number of county clerks and to a member of the data processing section of the Secretary of State's office to attend the Commission's meeting in San Francisco on September 16 and 17, 1966.

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STUDY 49 - UNLICENSED CONTRACTORS

The Commission considered Memorandum 66-51 which recommended that the Unlicensed Contractor study be dropped from the Commission's calendar of topics. The following action was taken:

Retaining the study on the agenda. The Commission decided to retain the problem of denying recovery to an unlicensed contractor for work done while unlicensed on its agenda. The Commission felt that this sanction was unfair and unreasonably harsh. The Commission discussed the possibility of requesting authority to study the desirability of using this type of sanction to enforce any licensing law. However, such authority was not requested because of the number of other higher priority topics on the Commission's agenda.

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STUDY 53(L) - PERSONAL INJURY DAMAGES

The Commission considered Memorandum 66-48 and the proposed recommendation (revised August 2, 1966) distributed therewith. The recommendation was approved for printing as revised to reflect textual revisions suggested by various Commissioners.

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STUDY 55(L) - ADDITUR

The Commission considered Memorandum 66-49 and the proposed recommendation distributed therewith. The recommendation was approved for printing subject to such revision as is necessary to reflect textual modifications suggested by various Commissioners.

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STUDY 62(L) - VEHICLE CODE SECTION 17150 AND RELATED STATUTES

The Commission considered Memorandum 66-47, the First Supplement thereto, and the proposed recommendation, revised August 2, 1966, that was distributed therewith. A letter from the State Bar dated August 5, 1966, was also considered. The following actions were taken:

Section 902

Subdivision (b) was revised to read:

(b) The plaintiff is a person who is liable for the negligent or wrongful act or omission of the contribution cross-defendant under Section 17150, 17154, 17159, 17707, or 17708 of the Vehicle Code; and

In subdivision (c), "contribution cross-defendant" was substituted for the word "operator."

Imputed contributory negligence generally

The Commission concluded that the recommendation should not be revised to provide a contribution substitute for imputed contributory negligence in employer-employee situations. The problem is a general one and is not peculiar to accidents arising out of the operation of vehicles. A piecemeal approach to the problem, therefore, should not be recommended.

Insurance

In view of the recent legislative history concerning the priority of insurance policies on vehicles operated by permissive users, the Commission concluded to make no recommendation changing the existing law in this respect.

Uninsured motorists

The Commission concluded that the proposed statute would not interfere

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with the owner's rights against his own carrier under his uninsured motorist coverage where the defendant was uninsured because the defendant's contribution right cannot arise until the defendant pays his judgment to the plaintiff. Hence, no change in the statute is to be made in regard to uninsured defendants.

Recommendation generally

The Commission then approved the recommendation for printing.

STUDY 63(L) - EVIDENCE CODE (Evidence Code Revisions)

The Commission considered Memorandum 66-45 and the draft recommendation attached thereto. The following actions were taken:

Section 402

After considering the comments of the District Attorneys' Association, the Commission decided to delete the proposed change in Section 402 from the recommendation.

Section 403

After considering the comments of the District Attorneys' Association, the Commission concluded that Section 403 should remain unamended as decided at the July meeting.

Section 646

Section 646 was amended to read:

646. The judicial doctrine of *res ipsa loquitur* is a presumption affecting the burden of producing evidence. If ~~the facts that give rise to the presumption are found or otherwise established in the action and the~~ party against whom the presumption operates introduces evidence which would support a finding that he was not negligent, the court may, and on request shall, instruct the jury as to any inference that it may draw from such evidence and the facts ~~so found or established~~ that give rise to the presumption.

The revision was made to state more precisely the circumstances under which the judge is required to give a requested instruction.

Section 1600

The first line was revised by the deletion of "official" before "record" and the addition of "instrument or other" before "document."

Section 1602

The Public Resources Code section proposed to supersede Section 1602 was revised to read:

2325. If a patent for mineral lands within this state issued or granted by the United States of America contains a

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statement of the date of the location of a claim or claims upon which the granting or issuance of such patent is based, such statement is prima facie evidence of the date of such location. The presumption established by this section is a presumption affecting the burden of producing evidence.

The staff was directed to communicate with members of the mining bar of the state to determine whether they believe the section should create a presumption or a hearsay exception.

Section 1605

Section 1605 was approved in the form proposed in the draft recommendation.

Recommendation generally

The proposed recommendation was then approved for printing.

General drafting instructions on presumptions

The staff was directed to use the terminology used in the Evidence Code (§§ 1530, 1532, etc.) to classify presumptions created in various codes by the language "prima facie evidence." The comment to each section so classified should then refer to Evidence Code Section 602 to point out the effect of the language.

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STUDY 53(L) - EVIDENCE CODE (Penal Code Revisions)

The Commission considered Memorandum 66-50, the First Supplement thereto, and the proposed recommendation dated July 28, 1966.

Because the proposed changes are actively opposed, and because they do not change the law in any respect, the Commission concluded that no recommendation on the subject would be made.