

<u>Time</u>	<u>Place</u>
October 20 - 7:00 p.m. - 10:00 p.m.	State Bar Building
October 21 - 9:00 a.m. - 5:00 p.m.	1230 West Third Street
October 22 - 9:00 a.m. - 4:00 p.m.	Los Angeles

FINAL AGENDA

for meeting of

CALIFORNIA LAW REVISION COMMISSION

Los Angeles

October 20-22, 1966

Thursday evening, October 20

1. Approval of Minutes of September Meeting (sent 10/4/66)
2. Administrative Matters
 - Meeting at Lake Tahoe - March 19 (Sunday evening), 20, 21 (morning)
 - Approval of Recommendations for Publication
3. Study 50 - Termination of Leases
 - Memorandum 66-59 (sent 10/4/66)
 - Revised Recommendation (attached to Memorandum)
4. Study 42 - Good Faith Improvers
 - Memorandum 66-63 (sent 10/4/66)
 - Revised Recommendation (attached to memorandum)
5. The Evidence Code
 - Agricultural Code Revisions
 - Memorandum 66-60 (sent 10/5/66)
 - Revised Tentative Recommendation (attached to memorandum)
 - Commercial Code Revisions
 - Memorandum 66-61 (sent 10/5/66)
 - Tentative Recommendation (attached to memorandum)

Friday, October 21

6. Study 36 - Condemnation Law and Procedure
 - Possession Prior to Judgment and Related Problems
 - Memorandum 66-62 (to be sent)
 - Revised Tentative Recommendation (attached to memorandum)
 - First Supplement to Memorandum 66-62 (to be sent)

Special order
of business
9:00 a.m.

7. Study 26 - Escheat

Memorandum 66-56 (sent 8/26/66; another copy sent 10/4/66)
Revised Tentative Recommendation (attached to Memorandum 66-56)
First Supplement to Memorandum 66-56 (to be sent)

8. Study 44 - Fictitious Business Names

Memorandum 66-64 (enclosed)

Saturday, October 22

Continuation of work on agenda items listed above.

9. Annual Report

Memorandum 66-65 (enclosed)
Draft of Annual Report (attached to Memorandum)

MINUTES OF MEETING

of
CALIFORNIA LAW REVISION COMMISSION

OCTOBER 20, 21, AND 22, 1966

Los Angeles

A meeting of the California Law Revision Commission was held at Los Angeles on October 20, 21, and 22, 1966.

Present: Richard H. Keatinge, Chairman
Sho Sato, Vice Chairman
Joseph A. Ball
John R. McDonough (October 22 only)
Thomas E. Stanton, Jr. (October 20 and 21 only)
George H. Murphy, ex officio (October 22 only)

Absent: Honorable James A. Cobey
Honorable Alfred H. Song
James R. Edwards
Herman F. Selvin

Messrs. John H. DeMouilly, Joseph B. Harvey, and Clarence B. Taylor (October 21 only) of the Commission's staff also were present.

Also present on October 21 were the following observers:

James F. Markle	Dept. of Water Resources
David B. Walker	San Diego County Counsel's Office
Robert F. Carlson	State Dept. of Public Works
Charles E. Spencer, Jr.	State Dept. of Public Works
Thomas H. Clayton	State Dept. of General Services & Finance
Willard A. Shank	Attorney General's Office
Robert V. Blade	Oroville, California
Richard Huxtable	State Bar Committee on Condemnation
John M. McLaurin	Consultant to Commission

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ADMINISTRATIVE MATTERS

Minutes of September 1966 meeting. The minutes of the September 1966 meeting were approved as prepared by the staff.

Future meetings. Future meetings are scheduled as follows:

November 17 (evening), 18, and 19 (morning) --	Berkeley
December --	No meeting
January --	To be scheduled
February --	To be scheduled
March 19 (evening), 20, 21 (morning) --	Lake Tahoe

Research contracts. The Commission authorized the Executive Secretary to enter into a contract on behalf of the Commission with Margaret Loftus for the indexing of Volume 8 of the Reports, Recommendations, and Studies. The amount of compensation is to be worked out with Mrs. Loftus but is not to exceed \$900.00.

The Executive Secretary was authorized to approach persons who might be interested in serving as research consultants on the project to conform the other codes to the Evidence Code. The staff is to make a report at a future meeting containing its suggestions as to the codes which should next be studied and the research consultants and amounts to be paid for research studies concerning these codes.

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STUDY 26 - ESCHEAT

The Commission considered Memorandum 66-56 and the August 25 draft of the tentative recommendation on this subject. The following actions were taken:

Overall approach

The Commission concluded that it should propose only those revisions of the abandoned property law that are necessary to remedy the problems created by Texas v. New Jersey and those procedural problems that are identified by the persons who administer or are subject to the abandoned property law.

Section 1300

The staff was directed to tabulate subdivision (b).

Subdivision (e) should be divided into two subdivisions to define the two terms contained therein.

Section 1510

The word "appearing" was changed to "as shown" in subdivisions (a), (c) and (e).

Subdivision (b) is to be revised to eliminate any reference that might be construed as including federal agencies.

The staff is to review Sections 1600 et seq. in order to determine whether the escheat jurisdiction asserted in those statutes should be modified to conform to the rules in the recommended statute.

Section 1511

The staff was directed to revise subdivision (e) to refer to "the contents" of a safety deposit box instead of describing the contents. The

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subdivision should be made a separate section. Because the subdivision refers only to tangibles, it is not subject to Section 1510, which sets forth the Texas v. New Jersey rules for the escheat of intangible property; hence, removal of the subdivision from a section that is subject to Section 1510 will tend to avoid confusion.

Section 1512

The second sentence, which begins "If it is not definite and certain . . ." , was not approved. Sufficient votes for approval or disapproval could not be obtained. The sentence deals with the case where no owner can be identified from the books of the holder insurance company. The Commission discussed a proposal to deem the last address of the owner to be the same as the last address of the insured not only in cases where no owner can be identified from the books but also in cases where an identified owner has no last address determinable from the holder's books. The argument against this proposal was that it is direct conflict with the Texas v. New Jersey rule that the state of incorporation escheats the property in such a case. The argument against a proposed revision that would deem the last address of the owner to be that of the insured only where no owner is identified on the holder's books was also based on the proposition that Texas v. New Jersey forbids such a disposition of the property. The counter argument in favor of this last proposed revision was that Texas v. New Jersey dealt with a case where the owner had no address on the holder's books but did not deal with the case where no owner could be identified on the holder's books. In the case of insurance policies, it seems to make sense,

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therefore, that unclaimed proceeds payable to no identified owner--such as those payable to the insured's estate--should escheat to the state of the insured's last known address.

Section 1514

The phrase "subject to Section 1510" is to be relocated to immediately precede the reference to intangible personal property. Similar changes should be made throughout the statute.

Section 1515

The staff was directed to revise the language providing for escheat "unless the owner has, within seven years . . . , increased or decreased the principal . . . [or] corresponded in writing" Literally, such language provides that communication within the specified period prevents the property from escheating forever. The language should be revised to provide that the property escheats seven years after the last communication. Similar changes should be made throughout the statute where similar language is used.

In the final paragraph, the first reference to a "business association" was deleted as redundant.

The meaning of the last sentence was considered obscure, and the staff was directed to determine its meaning and revise the section to express its meaning more clearly.

Section 1516

The Commission directed the staff to determine the current practice under existing Section 1508, which this section will supersede. If trust

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income is escheated 7 years after it becomes distributable, then the section should be revised to express this meaning more clearly. If trust income is not escheated 7 years after it becomes distributable, but is escheated only when the principal is escheated 7 years after the principal becomes distributable, then the section should be revised to so state.

Section 1530

Subdivision (b)(3) should be revised to refer to all tangible property that is required to be reported by a holder. Subdivision (b)(4) should be revised to refer to all intangible property that is required to be reported by a holder.

Section 1533

Section 1533 should be revised to require a report from a holder of all property that would be subject to escheat except for the fact that the last address of the owner is in another state. The Controller will then make the determination whether the other state has an escheat law.

Section 1540

Subdivision (b) should be revised to eliminate the requirement for formal findings. A simple grant or denial of the claim is sufficient.

Section 1541

The terminology should be revised to speak in terms of actions and complaints instead of proceedings and petitions. Except for the special time limits, normal civil procedure should govern. The costs provision should be deleted. The provision requiring nonjury trial should be retained.

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Section 1542

Subdivision (b) should be revised to omit the requirement for formal findings. A simple grant or denial of the claim should be sufficient.

The penultimate sentence was revised to read:

He shall allow a claim if he determines that the other state has the right to recover the escheated property.

Section 1551

Section 1551 should be revised to provide for publication of the notice of permanent escheat after five years from the time of delivery to the Controller. Permanent escheat should then follow automatically one year after the publication.

Section 1560

Section 1560 should be revised to require the state to hold the holder harmless. The section now relieves a holder from liability, but such a provision is inadequate protection for out-of-state holders.

The hold harmless and relief from liability provisions should be applicable only if the property is properly paid to the state. If the property did not actually escheat and was paid to the state by mistake, the holder should remain liable to the owner, and if the holder is held liable to the owner, he should be entitled to recover the property from the state.

Section 1565

The word "obvious" was changed to "apparent" immediately preceding the words "commercial value."

Section 1570

The staff was directed to revise Section 1570 or to make some other appropriate change in the statute to provide that if the owner's claim

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against the holder is barred by the statute of limitations, the owner's claim against the Controller is also barred.

Section 1572

In subdivision (a)(2), the phrase "known by the State Controller to be held by any person" was deleted as unnecessary.

Subdivision (b)(1) should be reviewed by the staff to determine the necessity for the specific reference to various organizations and agencies.

Section 1573

Subdivision (c) should be revised to permit the California Attorney General to take action under this section on behalf of another state if that state agrees to reimburse the Attorney General for such action.

Section 1574

Subdivision (b) should be revised to provide that the Controller may agree to pay a reward of not exceeding 15 percent of the property recovered instead of requiring the Controller to pay a 15 percent reward in all cases.

Section 1575

The words "in the discretion of the court" were deleted from the end of subdivision (b) because they were unnecessary.

Section 1620 (Compact)

The staff was directed to check the form of the enacting statute for the compact. The compact was then approved.

Statute generally

Subject to the foregoing revisions, the draft statute was approved. The staff was directed to send the statute as revised to the Controller for further comments.

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STUDY 36 - CONDEMNATION LAW AND PROCEDURE (NO. 5 - POSSESSION
PRIOR TO FINAL JUDGMENT AND RELATED PROBLEMS)

The Commission considered Memorandum 66-62 and the 22 letters attached as exhibits to that memorandum. The Commission also considered in some detail the views of the State Bar Committee on Condemnation Law and Procedure as set forth in the minutes of that committee's meeting and as presented by Mr. Huxtable, the chairman of the committee.

The Commission determined to postpone to the November meeting the basic questions (1) whether to submit a recommendation on this subject to the 1967 session of the Legislature, or to reserve the substance of the recommendation for inclusion in a comprehensive recommendation to be submitted to a subsequent session; and (2) assuming a recommendation is to be made to the 1967 Legislature, whether a constitutional amendment should be proposed or, as an alternative, legislation be proposed without a constitutional amendment.

The staff was directed to submit a memorandum, especially for the benefit of members who have missed meetings, summarizing the major issues to be decided in connection with the recommendation and setting forth the alternatives. The staff was also directed to revise the recommendation and to make certain changes in the proposed legislation, notwithstanding the possibility that it may be determined at the November meeting to make no recommendation to the 1967 Legislature. If no recommendation is to be made to the 1967 session, the material (including the research study) would be published as a Tentative Recommendation (this procedure was followed on the evidence study).

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Code of Civil Procedure Section 1247

In subdivision (4) of this section, concerning actions apart from the condemnation proceeding relating to possession of the property, the words "against the plaintiff" were inserted after the word "proceedings," to avoid any deviation from the language now contained in Code of Civil Procedure Section 1254. The initial language of the subdivision was also changed to read, "To determine the right to possession of the property, as between the plaintiff and the defendant, in accordance with Title 7.1" etc.

Code of Civil Procedure Section 1249

Proposed subdivision (b) to be added to this section, dealing with increases or decreases in market value prior to the date of valuation, was considered at length. The staff was directed to prepare an alternative provision incorporating the language from Buena Park School Dist. v. Metrim Corp. . Rather than addressing the problem in terms of changes in value prior to the date of valuation, that decision states the rule as requiring the finder of fact to "treat the property as having the value it would have had, had no preliminary action been taken by the condemnor." The staff was also directed to consider what language, if any, is necessary to coordinate the proposed statutory rule with the provisions of the Evidence Code dealing with expert testimony in condemnation trials. The staff was also directed to prepare language for the comment clearly setting forth the operation of the proposed rule in cases of partial takings.

Code of Civil Procedure Section 1249a

This proposed section, setting forth the rules for determining

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the date of valuation, was considered in detail. The staff was directed to prepare an alternative provision eliminating proposed subdivisions (c) and (d), which provide a compromise date of valuation six months from the filing of the complaint.

Code of Civil Procedure Section 1255a

The proposed language for subdivision (c) of this section, permitting the recovery of expenses on abandonment of the proceeding, was changed to read as follows:

. . . (2) Reasonable attorney and appraisal fees actually and reasonably incurred as a result of the proceeding to take the property, whether such fees were incurred for services rendered before or after the proceeding was commenced.

Proposed Chapter 1 of Title 7.1 (Code of Civil Procedure Sections 1268.01-1268.10)

This chapter, dealing with the deposit of probable just compensation prior to judgment, was generally approved without regard to the scheme ultimately recommended for "immediate possession." In Section 1268.02 a sentence is to be added to read as follows:

The court may stay its redetermination of the amount of probable just compensation until after a motion for a new trial has been determined.

With respect to Section 1268.05, and specifically to the last two sentences of subdivision (e), which deal with the types of security that may be furnished in connection with withdrawals, the staff is to ascertain whether the language used conforms to that used generally in the Code of Civil Procedure.

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In Section 1268.09, excluding (at the trial) evidence offered in connection with the preliminary determination of probable just compensation, the following sentence is to be added:

No reference shall be made in the trial of the issue of compensation to the fact that a party has or has not offered evidence or any particular evidence in connection with a deposit or withdrawal pursuant to this chapter.

Chapter 2 (Code of Civil Procedure Sections 1269.01-1269.07)

Action with respect to this chapter, which deals with the cases in which immediate possession is available and the procedures by which such possession is obtained, was deferred to the November meeting. The staff was directed, however, to prepare an alternative chapter under which (1) ex parte procedure would be retained for the existing constitutional classes of reservoirs and rights of way, and (2) a noticed motion procedure would be provided in all other cases. In connection with the noticed motion procedure, and in particular in connection with Section 1269.03, the revision is to provide for either appeals or writ procedure to determine finally the right to take in cases in which immediate possession is to be taken by noticed motion procedure. Paragraph (4) of subdivision (c) of Section 1269.03, dealing with the certificate of public convenience and necessity in takings by public utilities, is to be deleted.

The Commission also deferred action with respect to Section 1269.05 which would make the deposit of probable just compensation mandatory at the option of home owners. The staff was directed, however, to revise the section to limit property for which the deposit must be made to that

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reasonably necessary for the convenient use of the residence. The staff was also directed to reconsider and prepare alternatives to the language entitling the condemnor to an order for possession effective 30 days after the date of making such a deposit. The forceful objections of all the public agencies to any requirement of a deposit at the option of the property owner was noted.

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STUDY 42 - GOOD FAITH IMPROVERS

The Commission considered Memorandum 66-63 and the attached Revised Recommendation. The following actions were taken:

Section 871.1

The redraft of this section was approved.

The suggestion of the California Land Title Association--to delete the 15 year limitation--was considered but was not adopted because this suggestion would have had the effect of making the statute apply to improvements made by licensees.

Section 871.2

This section is to be redrafted to prepare a better definition of person. It was suggested that the definitions used in other recommendations might be used here. The Commission will review the definition after the report has been printed and the bill as introduced will be amended if necessary.

Section 871.5

The revision of this section to include the language suggested by the California Land Title Association was approved except that "lienholders" rather than "lienors" is to be used.

The suggested revision of the Comment to this section was approved.

Section 871.6

The Commission considered "recommendation Number Four" of the California Land Title Association and concluded that no change was needed in the statute. The Commission concluded that, after the judgment became final, the judgment

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would be valid even though the court granted relief under Section 871.5(b) rather than Section 871.6.

Approval for printing

The recommendation and proposed legislation, as revised, was approved for printing.

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STUDY 44 - FICTITIOUS BUSINESS NAMES

The Commission considered Memorandum 66-64. The Commission determined that there is not sufficient time to prepare a revised research study on this subject, consult with interested persons, prepare a recommendation, distribute the recommendation for comments, and have a report printed within a reasonable time after the session commences. Accordingly, the Commission determined to keep this topic on its agenda with a view to reviewing the subject during the next two years if time permits and possibly submitting a recommendation to 1969 legislative session.

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STUDY 50(L) - RIGHTS UPON TERMINATION OF A LEASE

The Commission considered Memorandum 66-59 and the recommendation as revised on September 26, 1966. The following actions were taken:

Section 1953.5

The section was reconsidered and the section was approved in the form in which it had appeared in the tentative recommendation. This action was taken to conform the section to the rule that appears applicable to contracts generally when there is an anticipatory repudiation.

Section 1954.5

Subdivision (b)(2), as proposed by the staff, was not approved. Under the revised section, the parties would have the right to waive specific performance rights, but would not have the right to contract for the payment of rental deficiencies over the life of the lease.

The staff was directed to add a provision indicating that the section does not affect the right of the parties to submit any dispute arising under the lease to arbitration.

The staff was directed to add a provision indicating that the section is inapplicable to contracts executed prior to the effective date of the act.

Subject to these revisions, the section was approved as drafted.

Section 3308

The word "premises" was changed to "property."

Section 3324

The staff was directed to make an effort to revise the section to provide for the recovery of attorney's fees in any litigation in which a party to a

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lease prevails. The section will be printed in the form in which it appears, and any proposed revision will be reported to the Commission at a later date.

Section 3325

The comment should be revised to provide that the allocation of the advance consideration to the lease does not necessarily mean that the advance consideration is to be applied pro rata over the life of the lease.

Section 3387.5

Section 3387.5 was approved as drafted.

New provision

The staff was directed to add a provision to the statute stating that its provisions are inapplicable to oil and gas leases and similar agreements that are not really leases but are agreements permitting the removal of products from the property.

Recommendation

The entire recommendation was then approved as revised.

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STUDY 63(L) - THE EVIDENCE CODE (GENERALLY)

The Chairman reported that Judge Richards had advised him that the Commission left out the two most important common law provisions concerning burden of proof and burden of producing evidence: Res ipsa loquitur and violation of a statute as evidence of negligence. It was noted that both will be covered by the recommendation to the 1967 legislative session.

The other area that the Commission has not touched at all and which Judge Richards believes that we should consider is with respect to the question of entrapment and how the burden of proof on entrapment should be handled under the Evidence Code scheme. Judge Richards referred the Commission to a very recent opinion of the 9th Circuit on entrapment. Judge Richards believes that this opinion is a poor one.

After considerable discussion, the Commission determined that the problem of the degree of the burden of proof on the defendant (or the prosecution) in an entrapment case and the problem of the degree of the burden of proof on the parties in a criminal action generally are problems that should be considered by the persons now engaged in drafting the new Penal Code.

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STUDY 63(L) - THE EVIDENCE CODE (AGRICULTURAL CODE REVISIONS)

The Commission considered Memorandum 66-50 and the attached Revised Tentative Recommendation. The following actions were taken:

Section 763.5

The Commission considered a suggestion from Mr. Hawkins that the presumption provided by this section should be one affecting the burden of producing evidence, rather than the burden of proof. The Commission did not make any change in the revised section. The Commission concluded that the revised section carries out the intent of the original drafters of the section and that Mr. Hawkins is objecting to existing law rather than to the revision. Moreover, the canner does not have a great burden of proof. All that he must show is that the delay was not willfully or negligently caused or permitted by him. Thus, if the state fails to provide inspection service, the canner would meet the burden by showing that fact.

Other suggestions

A number of other suggestions, including those set out in the memorandum, were considered. No changes were made in the Revised Tentative Recommendation.

Approval for printing

The Commission approved the printing of the Recommendation.

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STUDY 63(L) - EVIDENCE CODE (COMMERCIAL CODE REVISIONS)

The Commission considered Memorandum 66-61 and the attached tentative recommendation. The following actions were taken.

Letter from California Commission on Uniform State Laws

The Commission considered a letter from the California Commission on Uniform State Laws. The letter requested that the Commission withhold further action on the recommendation until the substance of the recommendation has been approved by the Permanent Editorial Board and further consideration may be given to an alternative approach to the drafting of legislation to effectuate those recommendations.

The Commission determined that a recommendation on this subject should be prepared and submitted to the 1967 legislative session. The recommendation is based on the assumption that the Evidence Code establishes a procedural scheme on presumptions that is sound and workable. The Uniform Laws Commission suggests that decisions from other states on the presumptions provisions should be usable in California. However, the Evidence Code scheme is far superior to the law in the great majority of other states.

In preparing the recommendation on the Commercial Code, the Commission did not exercise an independent judgment on how the presumptions in the Commercial Code should be classified. The Commission attempted to effectuate the intent of the drafters of the Uniform Code to the extent that that intent can be ascertained and to adapt it to the California scheme on presumptions.

When California adopted the Uniform Commercial Code, the Legislature

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deleted the definition of "presumption" from the Uniform Code because the Law Revision Commission was studying the law relating to presumptions and the view was taken that the Commercial Code should conform to the scheme on presumptions that is ultimately adopted after the Commission has studied the question. The studies of the Commercial Code prior to its enactment in California concluded that the Commercial Code definition of presumption was inadequate; the definition is incomplete. The definition in the Evidence Code meets the criticism that was made of the Uniform Commercial Code definition. Hence, it would be undesirable to merely add the Uniform Commercial Code definition to the California Commercial Code because it is incomplete and California already has a much better one in the Evidence Code.

The recommendation deals with procedural structure and scheme which has been developed in the Evidence Code and applies to the admission of all kinds of evidence without regard to the particular code under which the problem arises. The recommendation does not actually deal with the substance of the Commercial Code except insofar as the recommendation deals with the procedural questions of burden of proof and burden of producing evidence. The basic law on these procedural questions should not be different for one code than for all other codes. What the recommendation attempts to do is to make a uniform scheme covering all the codes and providing a uniform method of handling the evidentiary problems. The Evidence Code contains general provisions that classify particular presumptions unless the statute creating the presumption classifies it.

The Evidence Code does not affect the substance of the Commercial Code provisions, but does prescribe the procedural aspects of evidentiary problems that may arise under that code. If the evidentiary problems under the Commercial Code are not handled under the Evidence Code provisions, there will be a different procedure for dealing with evidentiary problems arising out of the Commercial Code. Decisions from other states with different structural schemes on evidence makes no sense, especially when the general unsatisfactory state of the law relating to evidence in most other states is considered.

The chairman is to send a letter to Mr. Richter advising him of the Commission's decision and the reasons for that decision.

Revisions of Recommendation

The Commission reviewed the Recommendation and made the following revisions:

Section 1202 (page 9). This section should be revised to divide subdivision (1) into two subdivisions. The section should be revised to read:

1202. (1) A document in due form purporting to be a bill of lading, policy or certificate of insurance, official weigher's or inspector's certificate, consular invoice, or any other document authorized or required by the contract to be issued by a third party ~~shall be prima facie evidence of its own authenticity and genuineness~~ is admissible as evidence of the facts stated in the document by the third party in any action arising out of the contract which authorized or required the document.

(2) The document referred to in subdivision (1) is presumed to be authentic and genuine. This presumption is a presumption affecting the burden of producing evidence.

(3) Unless the contract otherwise provides, proof of the authenticity and genuineness of the document referred to in subdivision (1) establishes a presumption of the truth and of the facts stated in the document by the third party. This presumption is a presumption affecting the burden of proof.

The Comment is to be revised to conform to this revision.

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Section 2719 (page 11). Subdivision (3) is to be revised to read:

(3) Consequential damages may be limited or excluded unless the limitation or exclusion is unconscionable. Limitation of consequential damages for injury to the person in the case of consumer goods is ~~prima-facie invalid unless it is proved that the limitation is not unconscionable . but-limitation~~ Limitation of damages where the loss is commercial is not valid unless it is proved that the limitation is unconscionable.

Approval for printing

The recommendation, as revised, was approved for printing.