

Memorandum 69-128

Subject: Annual Report

Attached is a draft of the Annual Report. The material that is shown as printed is already set in type and we would not want to pay the expense of making changes that are not significant improvements. However, you can see that considerable changes will be made so please mark your suggested editorial changes on the copy attached and turn it in to the staff at the meeting.

Note that a revised statement of the civil procedure study is included in the Annual Report. Assemblyman Hayes objected to the "shotgun" --as distinguished from the "rifle"--approach to authorizations.

You should also note that one additional case declaring a statute unconstitutional has been decided since you previously examined this material and is included in the attached draft.

Respectfully submitted,

John H. DeMouilly
Executive Secretary

STATE OF CALIFORNIA

CALIFORNIA LAW
REVISION COMMISSION

Annual Report

December 1969

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

This will be revised to reflect any changes
made by December 1.

THE CALIFORNIA LAW REVISION COMMISSION

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Secretary

NOTE

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

CALIFORNIA LAW REVISION COMMISSION

SCHOOL OF LAW
STANFORD UNIVERSITY
STANFORD, CALIFORNIA 94305



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SHO SAIZO
Chairman
SENATOR ALFRED H. SONG
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THOMAS E. SEANTON, JR.
LEWIS K. UHLER
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GEORGE K. MURPHY
EX OFFICIO

December 1, 1969

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

In conformity with Government Code Section 10335, the California Law Revision Commission herewith submits this report of its activities during 1969.

This report was printed during the first week of December 1969 so that it would be available in printed form early in January 1970. Accordingly, it does not reflect changes in Commission membership after December 1, 1969.

Respectfully submitted,

SHO SATO
Chairman

REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1969

FUNCTION AND PROCEDURE OF COMMISSION

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

The principal duties of the Law Revision Commission are to:

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

(2) Receive and consider suggestions and proposed changes in the law from the American Law Institute, the National Conference of Commissioners on Uniform State Laws, bar associations, and other learned bodies, judges, public officials, lawyers, and the public generally.

(3) Recommend such changes in the law as it deems necessary to bring the law of this State into harmony with modern conditions.²

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

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

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

¹ See CAL. GOVT. CODE §§ 10300-10340.

² See CAL. GOVT. CODE § 10330. The Commission is also directed to recommend the express repeal of all statutes repealed by implication or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States. CAL. GOVT. CODE § 10331.

³ See CAL. GOVT. CODE § 10335.

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

The pamphlets are distributed to the Governor, Members of the Legislature, heads of state departments, and a substantial number of judges, district attorneys, lawyers, law professors, and law libraries throughout the State.⁵ Thus, a large and representative number of interested persons are given an opportunity to study and comment upon the Commission's work before it is submitted to the Legislature. The annual reports and the recommendations and studies of the Commission are bound in a set of volumes that is both a permanent record of the Commission's work and, it is believed, a valuable contribution to the legal literature of the State.

A total of 78 bills and two proposed constitutional amendments have been drafted by the Commission to effectuate its recommendations.⁶ *two of* Fifty-~~two~~ of these bills were enacted at the first session to which they were presented; fourteen bills were enacted at subsequent sessions or their substance was incorporated into other legislation that was enacted. Thus, of the 78 bills recommended, 67 eventually became law.⁷ *6/*

⁵ See CAL. GOV. CODE § 10333.

⁶ The number of bills actually introduced was in excess of 78 since, in some cases, the substance of the same bill was introduced at a subsequent session and, in the case of the Evidence Code, the same bill was introduced in both the Senate and the Assembly.

⁷ Cal. Stats. 1955, Ch. 799, p. 1400 and Ch. 877, p. 1494. (Revision of various sections of the Education Code relating to the Public School System.)

Cal. Stats. 1955, Ch. 1183, p. 2193. (Revision of Probate Code Sections 640 to 646—setting aside of estates.)

Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

Cal. Stats. 1957, Ch. 139, p. 733. (Maximum period of confinement in a county jail.)

Cal. Stats. 1957, Ch. 249, p. 902. (Judicial notice of the law of foreign countries.)

Cal. Stats. 1957, Ch. 456, p. 1308. (Recodification of Fish and Game Code.)

Cal. Stats. 1957, Ch. 490, p. 1520. (Rights of surviving spouse in property acquired by decedent while domiciled elsewhere.)

Cal. Stats. 1957, Ch. 640, p. 1689. (Notice of application for attorney's fees and costs in domestic relations actions.)

Cal. Stats. 1957, Ch. 1498, p. 2824. (Bringing new parties into civil actions.)

Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)

Cal. Stats. 1959, Ch. 468, p. 2403. (Effective date of an order ruling on motion for new trial.)

Cal. Stats. 1959, Ch. 469, p. 2404. (Time within which motion for new trial may be made.)

Cal. Stats. 1959, Ch. 470, p. 2405. (Suspension of absolute power of alienation.)

Cal. Stats. 1959, Ch. 500, p. 2441. (Procedure for appointing guardians.)

Cal. Stats. 1959, Ch. 501, p. 2442. (Codification of laws relating to grand juries.)

Cal. Stats. 1959, Ch. 528, p. 2496. (Mortgages to secure future advances.)

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4138-4156. (Presentation of claims against public entities.)

Cal. Stats. 1961, Ch. 461, p. 1540. (Arbitration.)

Cal. Stats. 1961, Ch. 589, p. 1733. (Rescission of contracts.)

Cal. Stats. 1961, Ch. 636, p. 1838. (Inter vivos marital property rights in property acquired while domiciled elsewhere.)

Cal. Stats. 1961, Ch. 657, p. 1867. (Survival of actions.)

Cal. Stats. 1961, Ch. 1612, p. 3439. (Tax apportionment in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1613, p. 3442. (Taking possession and passage of title in eminent domain proceedings.)

Cal. Stats. 1961, Ch. 1616, p. 3459. (Revision of Juvenile Court Law adopting the substance of two bills drafted by the Commission to effectuate its recommendations on this subject.)

Cal. Stats. 1963, Ch. 1681. (Sovereign immunity—tort liability of public entities and public employees.)

Cal. Stats. 1963, Ch. 1715. (Sovereign immunity—claims, actions and judgments against public entities and public employees.)

Cal. Stats. 1963, Ch. 1682. (Sovereign immunity)—insurance coverage for public entities and public employees.)

Cal. Stats. 1963, Ch. 1683. (Sovereign immunity—defense of public employees.)

Cal. Stats. 1963, Ch. 1684. (Sovereign immunity—workmen's compensation benefits for persons assisting law enforcement or fire control officers.)

Cal. Stats. 1963, Ch. 1685. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 1686. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1963, Ch. 2029. (Sovereign immunity—amendments and repeals of inconsistent special statutes.)

Cal. Stats. 1965, Ch. 299. (Evidence Code.)

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

Commission recommendations have resulted in the enactment of legislation affecting ^(1,971) sections of the California statutes: 1,010 sections have been added, ⁽⁴⁶⁹⁾ sections amended, and 492 sections repealed.

- Cal. Stats. 1965, Ch. 653. (Sovereign immunity—claims and actions against public entities and public employees.)
 Cal. Stats. 1965, Ch. 1151. (Evidence in eminent domain proceedings.)
 Cal. Stats. 1965, Ch. 1527. (Sovereign immunity—liability of public entities for ownership and operation of motor vehicles.)
 Cal. Stats. 1965, Chs. 1649, 1650. (Reimbursement for moving expenses.)
 Cal. Stats. 1967, Ch. 72. (Additur.)
 Cal. Stats. 1967, Ch. 262. (Evidence Code—Agricultural Code revisions.)
 Cal. Stats. 1967, Ch. 650. (Evidence Code—Evidence Code revisions.)
 Cal. Stats. 1967, Ch. 702. (Vehicle Code Section 17150 and related sections.)
 Cal. Stats. 1967, Ch. 703. (Evidence Code—Commercial Code revisions.)
 Cal. Stats. 1967, Ch. 1104. (Exchange of valuation data in eminent domain proceedings.)
 Cal. Stats. 1967, Ch. 1324. (Suit by or against an unincorporated association.)
 Cal. Stats. 1968, Ch. 132. (Unincorporated associations.)
 Cal. Stats. 1968, Ch. 133. (Fees on abandonment of eminent domain proceeding.)
 Cal. Stats. 1968, Ch. 150. (Good faith improvers.)
 Cal. Stats. 1968, Ch. 247. (Escheat of decedent's estate.)
 Cal. Stats. 1968, Ch. 356. (Unclaimed property act.)
 Cal. Stats. 1968, Ch. 457. (Personal injury damages.)
 Cal. Stats. 1968, Ch. 458. (Personal injury damages.)
 Cal. Stats. 1968, Ch. 113. (Powers.)
 Cal. Stats. 1968, Ch. 114. (Fictitious business names.)
 Cal. Stats. 1968, Ch. 115. (Additur and remittitur.)
 Cal. Stats. 1968, Ch. 155. (Powers of appointment.)
 Cal. Stats. 1968, Ch. 156. (Specific performance of contracts.)

* CAL. CONST., Art. XI, § 10 (1960). (Power of Legislature to prescribe procedures governing claims against chartered cities and counties and employees thereof.)

PERSONNEL OF COMMISSION

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

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

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

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

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

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

* The legislative members of the Commission serve at the pleasure of the appointing power.

† The Legislative Counsel is *ex officio* a nonvoting member of the Commission.

necessary changes will be made later

SUMMARY OF WORK OF COMMISSION

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

- (1) Presentation of its legislative program to the Legislature.¹
- (2) Work on various assignments given to the Commission by the Legislature.²
- (3) A study, made pursuant to Section 10331 of the Government Code, to determine whether any statutes of the State have been held by the Supreme Court of the United States or by the Supreme Court of California to be unconstitutional or to have been impliedly repealed.³

During the past year, the Commission has received and considered a number of suggestions for topics that might be studied by the Commission. Some of these suggested topics appear to be in need of study. However, because of the limited resources available to the Commission and the substantial topics already on its agenda, the Commission has determined not to undertake to study these topics at this time.⁴

The Commission held one one-day meeting, six two-day meetings, and three three-day meetings in 1969.

¹ See pages 16-19, *infra*.
² See pages 12-15, 20-24, *infra*.
³ See page 29, *infra*.

4. The Commission will request the Legislature at the 1970 session to authorize study of two new topics and to expand the scope of one topic previously authorized for study. See pages 000-000, *infra*.

(9) Proposed Legislation Relating to Statute of Limitations
in Actions Against Public Entities and Public Employees
(October 1969). See Appendix ~~V~~ to this Report.

108
8 p.

(8) Recommendation Relating to Real Property Leases (November
1969). See Appendix IV to this Report.

148
20 p.

The Commission also recommends that two studies be removed from its calendar of topics (see pages infra), that it be authorized to study two additional topics (see pages 000-000, infra), and ^{that} the scope of one previously authorized study be expanded (see pages 000-000, infra).

STUDIES IN PROGRESS

INVERSE CONDEMNATION

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

The Commission has given priority to the water damage aspect of inverse condemnation. During 1969, the Commission devoted considerable time to the preparation of a tentative recommendation relating to liability for water damage and liability for interference with land stability. The Commission has concluded that desirable legislation in this field of law would appear to require revision of the rules governing liability of private persons as well as public entities. Accordingly, the Commission has determined to request that the 1970 Legislature authorize the expansion of the scope of the inverse condemnation study to include consideration of whether the law relating to the liability of private persons under similar circumstances should be revised.

Other aspects of inverse condemnation liability under active study by the Commission include liability for highway proximity damage and aircraft noise damage. Recommendations relating to liability for ultrahazardous activities and for the use of pesticides and to the rights and obligations arising when a public entity enters upon private property to survey, examine, and make tests in connection with the possible acquisition of the property for public use also arose out of the inverse condemnation study.¹

¹ See *Recommendation Relating to Sovereign Immunity: Number 10—Revision of the Governmental Liability Act* (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 801 (1969).

~~tion study.~~

Professor Arvo Van Alstyne of the College of Law, University of Utah, has been retained as the Commission's research consultant on this topic. The first five portions of his research study have been completed and published in law reviews.² Additional portions of the study

² See Van Alstyne, *Statutory Modification of Inverse Condemnation: The Scope of Legislative Power*, 19 STAN. L. REV. 727 (1967); *Modernizing Inverse Condemnation: A Legislative Prospectus*, 8 SANTA CLARA LAWYER 1 (1967); *Statutory Modification of Inverse Condemnation: Deliberately Inflicted Injury or Destruction*, 20 STAN. L. REV. 617 (1968); *Inverse Condemnation: Unintended Physical Damage*, 20 HASTINGS L. J. 431 (1969); *Just Compensation of Intangible Detriment: Criteria for Legislative Modifications in California*, 16 U.C.L.A. L. REV. 458 (1969).

are in preparation.

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CONDEMNATION LAW AND PROCEDURE

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

As it did in connection with the Evidence Code study, the Commission will publish a series of reports containing tentative recommendations and research studies covering various aspects of condemnation law and procedure. The comments and criticisms received from interested persons and organizations on these tentative recommendations will be considered before the comprehensive statute is drafted. The first report in this series has been published. See *Tentative Recommendation and a Study Relating to Condemnation Law and Procedure: Number 1—Possession Prior to Final Judgment and Related Problems*, 8 CAL. L. REVISION COMM'N REPORTS 1101 (1967). The second research study in this series, dealing with the right to take, is nearly finished and arrangements will be made for its publication in a law review. The Commission's staff has begun work on the third study which will deal with compensation and the measure of damages. Two other research studies prepared for the Commission to cover various aspects of eminent domain were published during 1969.³

³ See Ayer, *Allocating the Costs of Determining "Just Compensation"*, 21 STAN. L. REV. 693 (1969);

Matheson, Excess Condemnation in California: Proposals for Statutory and Constitutional Change, 42 SO. CAL. L. REV. 421 (1969).

Prior to 1972, the Commission will submit recommendations concerning eminent domain problems that appear to be in need of immediate attention. The Commission submitted the first such recommendation (exchange of valuation data) to the 1967 Legislature,⁴ a second recom-

⁴ See *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1101.

mendation (recovery of the condemnee's expenses on abandonment of an eminent domain proceeding) to the 1968 Legislature,⁵ and will

⁵ See *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 133.

submit a third recommendation (arbitration of just compensation) to the 1970 Legislature.⁶ (September

⁶ See *Recommendation Relating to Arbitration of Just Compensation* (1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 000 (1969).

During 1969, the Commission prepared and sent out for comment tentative recommendations relating to ~~the extent to which the right of eminent domain may be used to acquire access to private property, and substitute condemnation.~~ ~~examining property~~ the extent to which the right of eminent domain may be used to acquire access to private property, ~~and substitute condemnation.~~ The Commission also considered the extent to which the condemnee should be entitled to recover attorney's fees, appraisal fees, and other expenses of litigation.

EVIDENCE

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

The first is a continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code. In this connection, the Commission ⁽¹⁾ continuously reviewing texts, law review articles, and communications from judges, lawyers, and others concerning the Evidence Code. As a result of this review, the Commission recommended to the 1967 Legislature that various changes be made in the Evidence Code,⁷ and to the 1969 Legislature that certain

⁷ See *Recommendation Relating to the Evidence Code: Number 1—Evidence Code Revisions* (October 1966), reprinted in 8 CAL. L. REVISION COMM'N REPORTS 101 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1315 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 650.

revisions be made in the Privileges Article of the Evidence Code.⁸ The

⁸ See *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article* (November 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 501 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). The recommended legislation was not enacted.

Commission will submit a recommendation to the 1970 Legislature that various changes be made in the Evidence Code.⁹

⁹ See *Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code* (September 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 000 (1969).

The second project is a study of the other California codes to determine what changes, if any, are needed in view of the enactment of the Evidence Code. The Commission submitted recommendations relating to the Agricultural Code¹⁰ and the Commercial Code¹¹ to the 1967

¹⁰ See *Recommendation Relating to the Evidence Code: Number 2—Agricultural Code Revisions* (October 1966), reprinted in 8 CAL. L. REVISION COMM'N REPORTS 201 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1316 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 262.

¹¹ See *Recommendation Relating to the Evidence Code: Number 3—Commercial Code Revisions* (October 1966), reprinted in 8 CAL. L. REVISION COMM'N REPORTS 301 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS at 1316 (1967). Much of the recommended legislation was enacted. See Cal. Stats. 1967, Ch. 703.

legislative session. To the extent that its work schedule permits, the Commission will submit recommendations relating to additional codes to future sessions of the Legislature.

SOVEREIGN IMMUNITY *and*

Sovereign immunity legislation was enacted in 1963, ~~1965~~ ~~and 1969~~ upon recommendation of the Commission.¹² The Commission is contin-

¹² See note 3, *infra* at 000.

uing its study of this topic which is closely related to inverse condemnation. As a result of this review, the Commission will submit a recommendation to the 1970 Legislature that various changes be made in the governmental liability act.¹³ The recommendation to the 1970 Leg-

September

¹³ See Recommendation Relating to Sovereign Immunity: Number 10--Revisions of the Governmental Liability Act (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 801 (1969).

islature includes such matters as ultrahazardous activity liability; liability arising out of correctional and health activities, immunity for injuries from plan or design of property, and liability arising out of the use of pesticides.

See also note
3, *infra* at
000.

OTHER TOPICS UNDER ACTIVE CONSIDERATION

During the 1970 legislative session, the Commission also will be occupied with the presentation of its legislative program. In addition to the recommendations mentioned above, the 1970 legislative program includes recommendations relating to quasi-community property,¹⁴ representations as to credit,¹⁵ the fictitious business name statute,¹⁶ and Civil Code Section 715.8. (rule against perpetuities).¹⁷

¹⁵ See Recommendation and Study Relating to Representations as to the Credit of Third Persons and the Statute of Frauds (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 901 (1969).

¹⁶ See Recommendation and Study Relating to Fictitious Business Names (September 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 601 (1969).

¹⁷ See Recommendation and Study Relating to the "Vesting" of Interests Under the Rule Against Perpetuities (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 701 (1969).

If work on eminent domain and inverse condemnation does not occupy substantially all of its time, the Commission plans to consider during 1970 other topics authorized for study. These include arbitration, Civil Code Section 1698 (oral modification of a contract in writing), liquidated damages, right of nonresident aliens to inherit, cross-complaints and counterclaims, and joinder of causes of action.

LEGISLATIVE HISTORY OF RECOMMENDATIONS SUBMITTED TO 1969 LEGISLATIVE SESSION

Eight bills and two concurrent resolutions were introduced to effectuate the Commission's recommendations to the 1969 session of the Legislature. ^(Five) ~~Six~~ of the bills were enacted. The concurrent resolutions were adopted.

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

RESOLUTIONS APPROVING TOPICS FOR STUDY

Senate Concurrent Resolution No. 16, introduced by Senator Alfred H. Song and adopted as Resolution Chapter 212 of the Statutes of 1969, authorizes the Commission to continue its study of topics previously authorized for study and to remove from its calendar one topic (whether Section 7031 of the Business and Professions Code, which precludes an unlicensed contractor from bringing an action to recover for work done, should be revised). The Commission ~~has~~ concluded that the determination of whether Section 7031 should be revised would not be particularly aided by the extensive legal research and analysis which the Commission undertakes to provide.

Senate Concurrent Resolution No. 17, introduced by Senator Song and Assemblyman Moorhead and adopted in amended form as Resolution Chapter 224 of the Statutes of 1969, authorizes the Commission to make studies of the following topics: (1) Whether the law relating to counterclaims and cross-complaints should be revised; (2) whether the law relating to liquidated damages in contracts and, particularly, in leases, should be revised; (3) whether the law relating to joinder of causes of action should be revised; (4) whether Civil Code Section 715.8 (rule against perpetuities) should be revised or repealed; (5) whether the law relating to the right of nonresident aliens to inherit should be revised; and (6) whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised.

POWERS OF APPOINTMENT

Senate Bill No. 98, which in amended form became Chapter 155 of the Statutes of 1969, and Senate Bill No. 99, which became Chapter 113 of the Statutes of 1969, were introduced by Senator Song and Assemblyman Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation and a Study Relating to Powers of Appointment*, 9 CAL. L. REVISION COMM'N REPORTS 301 (1969); *Report of Assembly Committee on Judiciary on Senate Bills 98, 99, 101, and 105*, ASSEMBLY J. (May 12, 1969) at 2990, reprinted as Appendix VI to this Report.

Senate Bill No. 98 was amended to add subdivision (e) to Section 1381.3 of the Civil Code. Senate Bill No. 99 was enacted as introduced.

STATUTE OF LIMITATIONS IN ACTIONS AGAINST PUBLIC ENTITIES AND PUBLIC EMPLOYEES

Senate Bill No. 100, ~~which in amended form became Chapter 155 of the Statutes of 1969~~, was introduced by Senator Song and Assemblyman Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees*, 9 CAL. L. REVISION COMM'N REPORTS 49 (1969); *Report of Assembly Committee on Judiciary on Senate Bill 100*, ASSEMBLY J. (June 10, 1969) at 4820. ~~Appendix VI to this Report.~~ The bill was passed in amended form by the Legislature, but was vetoed by the Governor.

REAL PROPERTY LEASES

Senate Bill No. 101 was introduced by Senator Song and Assemblyman Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Real Property Leases*, 9 CAL. L. REVISION COMM'N REPORTS 401 (1969); *Report of Senate Committee on Judiciary on Senate Bill 101*, SENATE J. (March 3, 1969) at 577; ~~Appendix VI to this Report.~~ *Report of Assembly Committee on Judiciary on Senate Bill 101*, ASSEMBLY J. (May 14, 1969) at 3218, ~~reprinted as Appendix VI to this Report.~~

The bill was passed in amended form by the Senate. It was further amended and approved by the Assembly Judiciary Committee but was defeated on the Assembly floor. Reconsideration of the vote whereby the bill was defeated was granted, and the bill was placed on the inactive file. The bill was later rereferred to the Assembly Judiciary Committee and died in that committee.

FICTITIOUS BUSINESS NAME CERTIFICATES

Senate Bill No. 102, which became Chapter 114 of the Statutes of 1969, was introduced by Senator Song to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Fictitious Business Names*, 9 CAL. L. REVISION COMM'N REPORTS 71 (1969). Senate Bill 102 was enacted as introduced.

EVIDENCE CODE—REVISION OF THE PRIVILEGES ARTICLE

Senate Bill No. 103 was introduced by Senator Song and Assemblymen Foran, McCarthy, and Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article*, 9 CAL. L. REVISION COMM'N REPORTS 501 (1969); *Report of Assembly Committee on Judiciary on Senate Bill 103*, ASSEMBLY J. (May 12, 1969) at 2989, reprinted as Appendix ~~II~~ to this Report.

The bill was passed in amended form by the Legislature, but was vetoed by the Governor.

MUTUALITY OF REMEDIES IN SUITS FOR SPECIFIC PERFORMANCE

Senate Bill No. 104, which in amended form became Chapter 156 of the Statutes of 1969, was introduced by Senator Song and Assemblyman Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance*, 9 CAL. L. REVISION COMM'N REPORTS 201 (1969); *Report of Assembly Committee on Judiciary on Senate Bills 98, 99, 104, and 105*, ASSEMBLY J. (May 12, 1969) at 2990, reprinted as Appendix ~~II~~ to this Report.

The following significant amendments were made to Senate Bill No. 104:

Civil Code Section 3386 was amended as follows:

(1) The introductory clause was amended to substitute "Notwithstanding that the agreed counterperformance is not or would not have been specifically enforceable, specific performance may be compelled" for the proposed wording: "Specific performance may be compelled, whether or not the agreed counterperformance is or would have been specifically enforceable."

(2) Subdivision (b) was amended to insert the clause, "if the court deems necessary."

ADDITUR AND REMITTITUR

Senate Bill No. 105, which in amended form became Chapter 115 of the Statutes of 1969, was introduced by Senator Song and Assemblyman Moorhead to effectuate the recommendation of the Commission on this subject. See *Recommendation Relating to Additur and Remittitur*, 9 CAL. L. REVISION COMM'N REPORTS 63 (1969); *Report of Assembly Committee on Judiciary on Senate Bills 98, 99, 104, and 105*, ASSEMBLY J. (May 12, 1969) at 2990, reprinted as Appendix ~~II~~ to this Report.

The following significant amendments were made to Senate Bill No. 105:

Code of Civil Procedure Section 662.5 was amended as follows:

(1) The introductory clause was amended to insert the phrase, "after trial by jury" following the word, "where," and to insert the phrase "in its discretion" preceding the colon.

(2) Subdivision (a) was amended to substitute the words, "If the ground for granting a new trial is inadequate damages, make its order granting the new trial" for the phrase, "Grant a motion for a new trial on the ground of inadequate damages and make its order."

(3) Subdivision (b) was amended to substitute the words, "If the ground for granting a new trial is excessive damages, make its order granting the new trial" for the phrase, "Grant a motion for a new trial on the ground of excessive damages and make its order."

CALENDAR OF TOPICS FOR STUDY

TOPICS AUTHORIZED FOR STUDY

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

TOPICS UNDER ACTIVE CONSIDERATION

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

1. Whether the law and procedure relating to condemnation should be revised with a view to recommending a comprehensive statute that will safeguard the rights of all parties to such proceedings (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 4 CAL. L. REVISION COMM'N REPORTS at 115 (1963)).²
2. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).³

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

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

² See *Recommendation and Study Relating to Evidence in Eminent Domain Proceedings; Recommendation and Study Relating to Taking Possession and Passage of Title in Eminent Domain Proceedings; Recommendation and Study Relating to the Reimbursement for Moving Expenses When Property Is Acquired for Public Use*, 3 CAL. L. REVISION COMM'N REPORTS, Recommendations and Studies at A-1, B-1, and C-1 (1961). For a legislative history of these recommendations, see 3 CAL. L. REVISION COMM'N REPORTS 1-5 (1961). See also Cal. Stats. 1961, Ch. 1612 (tax apportionment) and Cal. Stats. 1961, Ch. 1613 (taking possession and passage of title). The substance of two of these recommendations was incorporated in legislation enacted in 1965. Cal. Stats. 1965, Ch. 1151, p. 2900 (evidence in eminent domain proceedings); Ch. 1649, p. 3744, and Ch. 1650, p. 3746 (reimbursement for moving expenses).

See also *Recommendation and Study Relating to Condemnation Law and Procedure: Number 4—Discovery in Eminent Domain Proceedings*, 4 CAL. L. REVISION COMM'N REPORTS 701 (1963). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 213 (1963). See also *Recommendation Relating to Discovery in Eminent Domain Proceedings*, 8 CAL. L. REVISION COMM'N REPORTS 19 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1318 (1967). See also Cal. Stats. 1967, Ch. 1104 (exchange of valuation data).

See also *Recommendation Relating to Recovery of Condemnee's Expenses on Abandonment of an Eminent Domain Proceeding*, 8 CAL. L. REVISION COMM'N REPORTS 1361 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 133.

See also *Recommendation Relating to Arbitration of Just Compensation* (1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). This recommendation will be submitted to the 1970 Legislature.

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

³ See *Recommendations Relating to Sovereign Immunity: Number 1—Tort Liability of Public Entities and Public Employees; Number 2—Claims, Actions and Judgments Against Public Entities and Public Employees; Number 3—Insurance Coverage for Public Entities and Public Employees; Number 4—Defense of Public Employees; Number 5—Liability of Public Entities for Ownership and Operation of Motor Vehicles; Number 6—Workmen's Compensation Benefits for Persons Assisting Law Enforcement or Fire Control Officers; Number 7—Amendments and Repeals of Inconsistent Special Statutes*, 4 CAL. L. REVISION COMM'N REPORTS 801, 1001, 1201, 1401, 1501, and 1601 (1963). For a legislative history of these recommendations, see 4 CAL. L. REVISION COMM'N

(September

3. Whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects (Cal. Stats. 1965, Res. Ch. 130, p. 5289).
4. Whether the Evidence Code should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289).⁴
5. Whether the law relating to arbitration should be revised (Cal. Stats. 1968, Res. Ch. 110; see also 8 CAL. L. REVISION COMM'N REPORTS at 1325 (1967)).⁵
6. Whether Civil Code Section 1698 should be repealed or revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 21 (1957)).

REPORTS 211-213 (1963). See also *A Study Relating to Sovereign Immunity*, 5 CAL. L. REVISION COMM'N REPORTS 1 (1963). See also Cal. Stats. 1963, Ch. 1631 (tort liability of public entities and public employees); Cal. Stats. 1963, Ch. 1715 (claims, actions and judgments against public entities and public employees); Cal. Stats. 1963, Ch. 1682 (insurance coverage for public entities and public employees); Cal. Stats. 1963, Ch. 1683 (defense of public employees); Cal. Stats. 1963, Ch. 1634 (workmen's compensation benefits for persons assisting law enforcement or fire control officers); Cal. Stats. 1963, Ch. 1685 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 1686 (amendments and repeals of inconsistent special statutes); Cal. Stats. 1963, Ch. 2029 (amendments and repeals of inconsistent special statutes).

See also *Recommendation Relating to Sovereign Immunity: Number 8—Revisions of the Governmental Liability Act*, 7 CAL. L. REVISION COMM'N REPORTS 401 (1965). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 914 (1965). See also Cal. Stats. 1965, Ch. 653 (claims and actions against public entities and public employees); Cal. Stats. 1965, Ch. 1527 (liability of public entities for ownership and operation of motor vehicles).

See also *Recommendation Relating to Sovereign Immunity: Number 9—Statute of Limitations in Actions Against Public Entities and Public Employees* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 49 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969).

See also *Recommendation Relating to Sovereign Immunity: Number 10—*

Revisions of the Governmental Liability Act (September 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 801 (1969); Proposed Legislation Relating to Statute of Limitations in Actions Against Public Entities and Public Employees (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS at 000 (1969). These recommendations will be submitted to the 1970 Legislature.

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

⁴ See *Recommendation Proposing an Evidence Code*, 7 CAL. L. REVISION COMM'N REPORTS 1 (1965). A series of tentative recommendations and research studies relating to the Uniform Rules of Evidence was published and distributed for comment prior to the preparation of the recommendation proposing the Evidence Code. See 6 CAL. L. REVISION COMM'N REPORTS at 1, 101, 201, 601, 701, 801, 901, 1001, and *Appendix* (1964). For a legislative history of this recommendation, see 7 CAL. L. REVISION COMM'N REPORTS 912-914 (1965). See also *Evidence Code With Official Comments*, 7 CAL. L. REVISION COMM'N REPORTS 1001 (1965). See also Cal. Stats. 1965, Ch. 299 (Evidence Code).

See also *Recommendations Relating to the Evidence Code: Number 1—Evidence Code Revisions; Number 2—Agricultural Code Revisions; Number 3—Commercial Code Revisions*, 8 CAL. L. REVISION COMM'N REPORTS 101, 201, 301 (1967). For a legislative history of these recommendations, see 8 CAL. L. REVISION COMM'N REPORTS 1315 (1967). See also Cal. Stats. 1967, Ch. 650 (Evidence Code revisions); Cal. Stats. 1967, Ch. 262 (Agricultural Code revisions); Cal. Stats. 1967, Ch. 703 (Commercial Code revisions).

See also *Recommendation Relating to the Evidence Code: Number 4—Revision of the Privileges Article* (November 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 501 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969).

See also *Recommendation Relating to the Evidence Code: Number 5—Revisions of the Evidence Code* (September 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). This recommendation will be submitted to the 1970 Legislature.

This topic is under continuing study to determine whether any substantive, technical, or clarifying changes are needed in the Evidence Code and whether changes are needed in other codes to conform them to the Evidence Code. See 8 CAL. L. REVISION COMM'N REPORTS 1314 (1967).

*This is a supplemental study; the present California arbitration law was enacted in 1961 upon Commission recommendation. See *Recommendation and Study Relating to Arbitration*, 3 CAL. L. REVISION COMM'N REPORTS at G-1 (1961). For a legislative history of this recommendation, see 4 CAL. L. REVISION COMM'N REPORTS 15 (1963). See also Cal. Stats. 1961, Ch. 461.

7. Whether the law relating to counterclaims and cross-complaints should be revised (Cal. Stats. 1969, Res. Ch. 224; see also 9 CAL. L. REVISION COMM'N REPORTS at 25 (1969)).
8. Whether the law relating to liquidated damages in contracts and, particularly, in leases, should be revised (Cal. Stats. 1969, Res. Ch. 224).
9. Whether the law relating to joinder of causes of action should be revised (Cal. Stats. 1969, Res. Ch. 224; see also 9 CAL. L. REVISION COMM'N REPORTS at 27 (1969)).
10. Whether the law relating to the right of nonresident aliens to inherit should be revised (Cal. Stats. 1969, Res. Ch. 224).
- // 4 Whether the law giving preference to certain types of actions or proceedings in setting for hearing or trial should be revised (Cal. Stats. 1969, Res. Ch. 224).
12. Whether the jury should be authorized to take a written copy of the court's instructions into the jury room in civil as well as criminal cases (Cal. Stats. 1955, Res. Ch. 207, p. 4207).⁶

⁶ See Recommendation and Study Relating to Taking Instructions to the Jury Room, 1 CAL. L. REVISION COMM'N REPORTS at C-1 (1957). For a legislative history of this recommendation, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 13 (1959). The recommended legislation was withdrawn by the Commission for further study.

OTHER TOPICS AUTHORIZED FOR STUDY

The Commission has not yet begun the preparation of a recommendation on the topics listed below.

1. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised (Cal. Stats. 1956, Res. Ch. 42, p. 263; see also 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 29 (1957)).
2. Whether the law relating to attachment, garnishment, and property exempt from execution should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589; see also 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 15 (1957)).
3. Whether the various sections of the Code of Civil Procedure relating to partition should be revised and whether the provisions of the Code of Civil Procedure relating to the confirmation of partition sales and the provisions of the Probate Code relating to the confirmation of sales of real property of estates of deceased persons should be made uniform and, if not, whether there is need for clarification as to which of them governs confirmation of private judicial partition sales (Cal. Stats. 1959, Res. Ch. 218, p. 5792; see also Cal. Stats. 1956, Res. Ch. 42, p. 263; 1 CAL. L. REVISION COMM'N REPORTS, 1956 Report at 21 (1957)).

TOPICS CONTINUED ON CALENDAR FOR FURTHER STUDY

On the following topics, studies and recommendations relating to the topic, or one or more aspects of the topic, have been made. The topics are continued on the Commission's Calendar for further study of recommendations not enacted or for the study of additional aspects of the topic or new developments.

1. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person (Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹
2. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).²
3. Whether Vehicle Code Section 17150 and related statutes should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1962, Res. Ch. 23, p. 94).³
4. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁴
5. Whether the law relating to suit by and against partnerships and other unincorporated associations should be revised and whether the law relating to the liability of such associations and their members

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

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

² See *Recommendation and a Study Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 201 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 150.

³ See *Recommendation and Study Relating to Vehicle Code Section 17150 and Related Sections*, 8 CAL. L. REVISION COMM'N REPORTS 501 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 702.

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

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

- should be revised (Cal. Stats. 1966, Res. Ch. 9; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).⁵
6. Whether the law relating to the escheat of property and the disposition of unclaimed or abandoned property should be revised (Cal. Stats. 1967, Res. Ch. 81; see also Cal. Stats. 1956, Res. Ch. 42, p. 263).⁶
 7. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised (Cal. Stats. 1958, Res. Ch. 61, p. 135).⁷
 8. Whether the law relating to quasi-community property and property described in Section 201.5 of the Probate Code should be revised (Cal. Stats. 1966, Res. Ch. 9).⁸
 9. Whether the law relating to a power of appointment should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5269).⁹
 10. Whether the law relating to the use of fictitious names should be revised (Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹⁰

⁵ See *Recommendation and Study Relating to Suit By or Against an Unincorporated Association*, 8 CAL. L. REVISION COMM'N REPORTS 901 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 1324.

See also *Recommendation Relating to Service of Process on Unincorporated Associations*, 8 CAL. L. REVISION COMM'N REPORTS at 1403 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 18-19 (1969). The recommended legislation was enacted. See Cal. Stats. 1968, Ch. 132.

⁷ See *Recommendation Relating to Escheat*, 8 CAL. L. REVISION COMM'N REPORTS 1001 (1967). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS at 16-18 (1969). Most of the recommended legislation was enacted. See Cal. Stats. 1968, Ch. 247 (escheat of decedent's estate) and Ch. 356 (unclaimed property act).

7 See Recommendation and Study Relating to Representations as to the Credit of Third Persons and the Statute of Frauds (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 901 (1969). This recommendation will be submitted to the 1970 Legislature.

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

See also *Recommendation Relating to Quasi-Community Property* (June 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). This recommendation will be submitted to the 1970 Legislature.

⁹ See *Recommendation and Study Relating to Powers of Appointment* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 301 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Chs. 113, 155.

¹⁰ See *Recommendation Relating to Fictitious Business Names* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 71 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 114.

See also *Recommendation and Study Relating to Fictitious Business Names* (September 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 601 (1969). This recommendation will be submitted to the 1970 Legislature.

11. Whether the law relating to additur and remittitur should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹¹
12. Whether Civil Code Section 715.8 (rule against perpetuities) should be revised or repealed (Cal. Stats. 1969, Res. Ch. 224; see also 9 CAL. L. REVISION COMM'N REPORTS at 28 (1969)).¹²
13. Whether the law relating to the rights and duties attendant upon termination or abandonment of a lease should be revised (Cal. Stats. 1965, Res. Ch. 130, p. 5289; see also Cal. Stats. 1957, Res. Ch. 202, p. 4589).¹³

¹¹ See *Recommendation and Study Relating to Additur*, 8 CAL. L. REVISION COMM'N REPORTS 601 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1317 (1967). The recommended legislation was enacted. See Cal. Stats. 1967, Ch. 72.

See also *Recommendation Relating to Additur and Remittitur* (September 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 63 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS ____ (1969). The recommended legislation was enacted. See Cal. Stats. 1969, Ch. 115.

- 12 See *Recommendation and Study Relating to the "Vesting" of Interests Under the Rule Against Perpetuities* (October 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 601 (1969). This recommendation will be submitted to the 1970 Legislature.

¹³ See *Recommendation and Study Relating to Abandonment or Termination of a Lease*, 8 CAL. L. REVISION COMM'N REPORTS 701 (1967). For a legislative history of this recommendation, see 8 CAL. L. REVISION COMM'N REPORTS 1319 (1967).

See also *Recommendation Relating to Real Property Leases* (October 1968), reprinted in 9 CAL. L. REVISION COMM'N REPORTS 401 (1969). For a legislative history of this recommendation, see 9 CAL. L. REVISION COMM'N REPORTS 000 (1969).

See also *Recommendation Relating to Real Property Leases* (November 1969), reprinted in 9 CAL. L. REVISION COMM'N REPORTS at 000 (1969).

TOPICS TO BE DROPPED FROM CALENDAR OF TOPICS

STUDY RELATING TO SERVICE OF PROCESS BY PUBLICATION

In 1958, the Commission was authorized to make a study to determine whether the California statutes relating to service of process by publication should be revised.¹ The Commission requested authority to make

¹This study was authorized by Cal. Stats. 1958, Res. Ch. 61, p. 135. For a description of the topic, see 2 CAL. L. REVISION COMM'N REPORTS, 1958 Report at 18 (1959).

this study because two United States Supreme Court decisions—one decided in 1950² and the other in 1956³—had placed new and substan-

²Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950).

³Walker v. City of Hutchinson, 352 U.S. 112 (1956).

tial constitutional limitations on the service of process by publication in judicial proceedings. The Commission concluded that a comprehensive and detailed study was needed to make certain that all California statutory provisions which might be affected by the decisions were examined and any necessary revisions made.

The Commission delayed making such a study because the State Bar decided to undertake a study that included this topic.⁴ In 1966, the

⁴See 41 CAL. S.B.J. 737 (1966); 38 CAL. S.B.J. 486 (1963); 37 CAL. S.B.J. 500 (1962).

State Bar forwarded a proposed statute to the Judicial Council for joint study. The 1969 session of the Legislature enacted legislation recommended by the State Bar and the Judicial Council.⁵ The legisla-

⁵Cal. Stats. 1969, Ch. 1610. See also Revision of Title 5 (commencing with Section 405) of the Code of Civil Procedure Relating to Jurisdiction and Service of Process, 1969 CAL. JUDICIAL COUNCIL REPORT 31 (1969).

tion enacted by the 1969 Legislature is intended to provide a modern law on jurisdiction and service of process. Accordingly, the Commission has concluded that no useful purpose would be served by the Commission's making a study of service of process by publication.

STUDY RELATING TO THE SMALL CLAIMS COURT LAW

In 1957, the Commission was authorized to make a study to determine whether the Small Claims Court Law should be revised.⁶ The Commis-

⁶This study was authorized by Cal. Stats. 1957, Res. Ch. 202, p. 4589. For a description of the topic, see 1 CAL. L. REVISION COMM'N REPORTS, 1957 Report at 16 (1957).

sion requested authority to make this study because it had received communications from judges in various parts of the state suggesting that defects and gaps existed in the Small Claims Court Law. The communications suggested that a variety of matters merited study, including such matters as whether the monetary jurisdiction of the small claims court should be increased and whether the plaintiff should be permitted to appeal when the defendant prevailed on a counterclaim. Some—but far from all—of the questions which motivated the Commission to request authority to study this topic have been dealt with by the Legislature⁷ or by the courts.⁸

⁷For example, the jurisdictional limit was increased from \$100 to \$150 in 1957, from \$150 to \$200 in 1961, and from \$200 to \$300 in 1967. CAL. CODE CIV. PROC. § 117 (West Supp. 1968).

⁸For example, *Staff v. Small Claims Court for Los Angeles Judicial Dist. of Los Angeles County*, 68 Cal.2d 76, 435 P.2d 825, 65 Cal. Retr. 65 (1963), held that, where the defendant recovered on a counterclaim against the plaintiff, the plaintiff was entitled to appeal to the Superior Court from the judgment on the counterclaim.

The Commission has concluded that any study of the Small Claims Court Law should be a comprehensive one and that such a study would be a substantial undertaking. The Commission is now devoting substantially all its resources to two major studies—condemnation law and procedure and inverse condemnation—and is unable to commence work on another major study at this time. It is likely that the Small Claims Court Law will receive continuing legislative attention.⁹ Moreover, a

⁹A report prepared for the Assembly Committee on Judiciary in 1969 suggested that legislative hearings on the small claims courts would be worthwhile. See GOLD-FARB, PROBLEMS IN THE ADMINISTRATION OF JUSTICE IN CALIFORNIA 96 (1969). Revision of the Small Claims Court Law would present policy questions concerning judicial administration that would be appropriate for study by the Judicial Council. Accordingly, the Commission recommends that this topic be dropped from its agenda.

TOPICS FOR FUTURE CONSIDERATION

During the next few years, the Commission plans to devote its attention primarily to condemnation law and inverse condemnation. Legislative committees have indicated that they wish these topics to be given priority. Nevertheless, the Commission believes that it may have time to consider a few topics that are relatively narrow in scope. During recent years, the Commission has submitted recommendations to the Legislature on most of the authorized topics of this type; work on the remaining ones is in progress. So that the Commission's agenda will include a reasonable balance of broad and narrow topics, the Commission recommends that it be authorized to study the two new topics described below. It also requests that the previous authorization to study inverse condemnation law be expanded as indicated below.

A study to determine whether the law relating to nonprofit corporations should be revised

The Corporations Code and special provisions in a number of other codes authorize and regulate the incorporation and operation of nonprofit corporations.¹ However, the scheme has developed piecemeal and, as noted recently, "historically the orphan of corporate law, nonprofit corporations [have] suffered from undefined and poorly articulated statutes governing their organization."² As an example, Section 9002 of the Corporations Code provides that the general business corporation law applies to nonprofit corporations, "except as to matters specifically otherwise provided for." Thus, it would appear that the general corporation law relating to the issuance and handling

1. See generally Divisions 2 and 3 of Title 1 of the Corporations Code. Other provisions are scattered throughout the codes. See, e.g., Agri. Code § 54002 (nonprofit agricultural associations); Educ. Code §§ 29004, 29005 (private educational institutions); Ins. Code § 11496 (hospital corporation).

2. Preface to California Nonprofit Corporations (Cal. Cont. Ed. Bar 1969).

or snares should apply to nonprofit corporations, but the latter do not distribute profits or normally even issue stock.³ The situation is further confused by provisions that incorporate the nonprofit corporation provisions⁴ by reference, and thus requires reference first to the general nonprofit corporation law which in turn requires reference to the general business corporation law.

Such confusion and ambiguity could be excused or, at least, ignored⁵ except that:

In recent decades nonprofit corporation law has taken on a new importance. . . .

Nonprofit corporations are no longer confined to the traditional category of political, religious, or social endeavor but have expanded to include community theaters, hospitals, thrift shops, conservation clubs, etc. Moreover, the tax problems, the state and local laws regulating fund-raising, the effect of various activities on the tax-exempt status, the effects of reorganization or dissolution, and many other problems are complex and difficult. Because of these reasons nonprofit corporation law has recently gained a greater vitality.

A study should, therefore, be made to determine whether the law relating to nonprofit corporations should be revised.⁶

³ See H. OLECK, NON-PROFIT CORPORATIONS, ORGANIZATIONS, AND ASSOCIATIONS § 6 (2d ed. 1965).

⁴ See Corp. Code § 12205 (provisions relating to nonprofit corporations "apply to cooperative corporations formed under this part, except where such provisions are in conflict with those of this part").

⁵ Preface to California Nonprofit Corporations (Cal. Cont. Ed. Bar 1969).

⁶ It is anticipated that such a study would lead to a comprehensive revision of the law relating to nonprofit corporations, and, in this connection, the New York comprehensive Not-For Profit Corporation Law (effective September 1, 1970) and the Model Nonprofit Corporation Act, drafted by the American Bar Association Committee on Corporate Laws, may provide some guidance. See ABA COMMITTEE ON CORPORATE LAWS, MODEL NONPROFIT CORPORATION ACT (1964).

Studies of problems concerning procedures in civil actions that would not require a substantial amount of Commission time or resources

Although certain areas of the law relating to civil procedure have received considerable attention and have been subject to substantial revision in relatively recent years,¹ other areas have not been reviewed and have remained essentially unchanged for almost one hundred years.² The Commission is frequently presented with relatively narrow, simple problems of civil practice, pleading and procedure both in the course of its work on other topics and through communications from judges and attorneys. These problems would scarcely justify separate authorizations for study, but the Commission believes that they should be studied on a nonpriority basis as time and resources permit. The Commission would, of course, request separate authorization before undertaking the study of any aspect of practice, pleading, or procedure that would require a substantial amount of time or resources.

7. For example, completely new provisions relating to depositions and discovery, based largely on the Federal Rules of Civil Procedure, were enacted at the 1957 Regular Session of the California Legislature. Cal. Stats. 1957, Ch. 1904, § 3, p. 3322. See CODE CIV. PROC. §§ 2016-2036. Rules governing pretrial procedure were first promulgated by the Judicial Council in 1957; major changes were adopted in 1963, and significant amendments were made in 1967. See CAL. RULES OF CT., Rules 206-218.

8. The code pleading system, introduced in California by the Practice Act, had its origin in the New York Code of 1848 (known as the "Field Code") and has seen relatively little change since its modification in 1872. The existing rules can unfairly trap the unwary or inexperienced. See, e.g., *Aronson & Co. v. Pearson*, 199 Cal. 295, 249 P. 191 (1926) (denial on the ground that "defendant has no knowledge or information sufficient to form a belief," does not directly deny for lack of belief, is therefore defective, and raises no issue); *Connecticut Mut. Life Ins. Co. v. Most*, 39 Cal. App.2d 634, 640, 103 P.2d 1013, 1017 (1940) (negative pregnant--specific denial of one admits all lesser included sums). Yet, at the same time, these rules can be easily circumvented by the skilled, although often requiring pleadings that are both cumbersome and meaningless.

A study to determine whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised (including but not limited to liability for damages resulting from flood control projects) and whether the law relating to the liability of private persons under similar circumstances should be revised

In 1965, the Legislature directed the Law Revision Commission to undertake a study to determine "whether the decisional, statutory, and constitutional rules governing the liability of public entities for inverse condemnation should be revised, including but not limited to the liability for inverse condemnation resulting from flood control projects."⁹ Pursuant to this directive, the Commission has initiated work, giving priority to the water damage and interference with land stability aspects of inverse condemnation. A research study has been prepared,¹⁰ and progress has been made in preparing a recommendation relating to these areas of the law.

The Commission's study of inverse liability discloses that, in the past, the California courts have relied frequently upon the rules of private law in dealing with inverse condemnation liability.¹¹ These rules in certain situations appear unsatisfactory and certain changes seem required. However, such changes in the public sphere alone and the resultant differences between the rules governing public and private activities could create serious problems.

For example, under existing law there appears to be no liability-- public or private--for the improvement of a natural stream channel--~~(narrowing, deepening, preventing absorption by lining; even though the~~

9. Cal. Stats. 1965, Res. Ch. 130, p. 5289.

10. See Van Alstyne, Inverse Condemnation: Unintended Physical Damage, 20 Hastings L. J. 431 (1969). See also Van Alstyne, Statutory Modification of Inverse Condemnation: The Scope of Legislative Power, 19 Stan. L. Rev. 727 (1967); Van Alstyne, Modernizing Inverse Condemnation: A Legislative Prospectus, 18 Santa Clara Lawyer 1 (1967).

11. See, e.g., Van Alstyne, Inverse Condemnation: Unintended Physical Damage, 20 Hastings L. J. 431; 448-449 (1969).

improvement greatly increases the total volume or velocity of water directly resulting in downstream damage.¹² This rule of nonliability may possibly be unsatisfactory and is at least inconsistent with the existing rule of strict liability for the diversion of stream waters.¹³ To change the rules of liability and immunity in the public area alone poses a variety of problems. For example, can contribution for damages be secured where public and private improvements combine to cause damage? Should liability be imposed or immunity be granted merely because a private improvement is subsequently acquired by a public entity? The resolution of these problems requires consideration of the law applicable to both private persons and public entities.

The Commission accordingly requests authority to study those related areas of the private law to determine whether changes in the private area are necessary or desirable in connection with revision of the law relating to inverse condemnation.

^{12/} See, e.g., *Archer v. City of Los Angeles*, 19 Cal.2d 19, 119 P.2d 1 (1941); *San Gabriel Valley Country Club v. County of Los Angeles*, 182 Cal. 392, 188 P. 554 (1920).

^{13/} See, e.g., *Youngblood v. Los Angeles County Flood Control Dist.*, 56 Cal.2d 603, 364 P.2d 840, 15 Cal. Rptr. 904 (1961).

REPORT ON STATUTES REPEALED BY IMPLICATION
OR HELD UNCONSTITUTIONAL

Section 10331 of the Government Code provides:

The Commission shall recommend the express repeal of all statutes repealed by implication, or held unconstitutional by the Supreme Court of the State or the Supreme Court of the United States.

Pursuant to this directive the Commission has made a study of the decisions of the Supreme Court of the United States and of the Supreme Court of California handed down since the Commission's last Annual Report was prepared.¹ It has the following to report:

(1) No decision of the Supreme Court of the United States or of the Supreme Court of California holding a statute of this state repealed by implication has been found.

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

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

Sections 478-504 of the Code of Civil Procedure authorized mesne civil arrest and bail but formerly did not require that the defendant be brought into court after his arrest or that he be notified of his rights.²

In In re Harris,³ it was held that the former procedure for mesne process of civil arrest and bail did not provide the due process of law required by the Fourteenth Amendment to the United States Constitution and Article I, section 13, of the California Constitution. Legislation intended to correct this defect in the mesne process of civil arrest and bail⁴ was enacted at the 1969 Regular Session.

In Purdy & Fitzpatrick v. State,⁵ the California Supreme Court held Labor Code Section 1850 and related sections unconstitutional. Labor

¹ This study has been carried through 71 Adv. Cal. 1168 (1969) and 89 S. Ct. 2151 (1969).

² Section 503 of the Code of Civil Procedure provided that the arrested defendant could apply to the court at any time before trial or entry of judgment to vacate the arrest order or to reduce the amount of bail.

³ 69 Adv. Cal. 503, 447 P.2d 149, 72 Cal. Rptr. 341 (1968).

⁴ Cal. Stats. 1969, Ch. 690.

⁵ 71 Adv. Cal. 587, 456 P.2d 645, 79 Cal. Rptr. 77 (1969).

Code Sections 1850-1854 prohibit the employment of aliens on public work except in special cases. ✓⁶

In People v. Belous, ✓⁷ Penal Code Section 274, as it read prior to a 1967 amendment, was held unconstitutional. In 1967, Section 274 (the California penal abortion statute) was amended, and Sections 25950-25954 (the "Therapeutic Abortion Act") were added to the Health and Safety Code. The 1967 legislation broadened the lawful grounds for obtaining an abortion. The validity of Penal Code Section 274 as amended in 1967 was not determined in the Belous case.

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- ✓⁶ In view of Purdy & Fitzpatrick, Labor Code Sections 1940-1947 may also be constitutionally suspect. These sections prohibit the employment of an alien by a city, county, or department of the state.
- ✓⁷ 71 Adv. Cal. 996, 458 P.2d 194, 80 Cal. Rptr. 354 (1969).

RECOMMENDATIONS

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

*Changes
will be made
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C *Acute*

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON SENATE BILLS
98, 99, 104, AND 105

} 7M60

[Extract from Assembly Journal for May 12, 1969 (1969 Regular Session).] 6M60

In order to indicate more fully its intent with respect to Senate Bills 98, 99, 104, and 105, the Assembly Committee on Judiciary makes the following report:

set
10/9/64

Senate Bills 98 and 99 were introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Powers of Appointment* (October 1968). The comments contained under the various sections of Senate Bills 98 and 99 as set out in the commission's recommendation reflect the intent of the Assembly committee in approving those bills.

Senate Bill 104 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968). The comment under Senate Bill 104 as set out in the commission's recommendation reflects the intent of the Assembly committee in approving the bill.

Senate Bill 105 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Additur and Remittitur* (September 1968). The comment under Senate Bill 105 as set out in the commission's recommendation reflects the intent of the Assembly committee in approving that bill.

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REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY ON SENATE BILLS
98, 99, 104, AND 105

} 7/11/60

[Extract from Assembly Journal for May 12, 1969 (1969 Regular Session).] 6/11/60

In order to indicate more fully its intent with respect to Senate Bills 98, 99, 104, and 105, the Assembly Committee on Judiciary makes the following report:

set
10/10/61

Senate Bills 98 and 99 were introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Powers of Appointment* (October 1968). The comments contained under the various sections of Senate Bills 98 and 99 as set out in the commission's recommendation reflect the intent of the Assembly committee in approving those bills.

Senate Bill 104 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Mutuality of Remedies in Suits for Specific Performance* (September 1968). The comment under Senate Bill 104 as set out in the commission's recommendation reflects the intent of the Assembly committee in approving the bill.

Senate Bill 105 was introduced to effectuate the *Recommendation of the California Law Revision Commission Relating to Additur and Remittitur* (September 1968). The comment under Senate Bill 105 as set out in the commission's recommendation reflects the intent of the Assembly committee in approving that bill.

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