

STATE OF CALIFORNIA

CALIFORNIA LAW REVISION COMMISSION

1963 Annual Report

January 1963

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

NOTE

This pamphlet begins on page 101. 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.

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CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN H. COLEMAN
M.D. 1845

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STATE OF CALIFORNIA
CALIFORNIA LAW REVISION COMMISSION

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January 2, 1963

To HIS EXCELLENCY, EDMUND G. BROWN
Governor of California
and to the Legislature of California

The California Law Revision Commission herewith submits this
report of its activities during the year 1962.

Respectfully submitted,
HERMAN F. SELVIN, *Chairman*

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Executive Secretary
JOSEPH B. HARVEY
Assistant Executive Secretary

JON D. SMOCK
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REPORT OF THE CALIFORNIA LAW REVISION COMMISSION FOR THE YEAR 1962

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. Most 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, a printed pamphlet is published that contains the research study and the official report and recommendation of the

¹ See Cal. Stats. 1953, Ch. 1445, p. 3036; CAL. GOVT. CODE §§ 10300-10340. And see Cal. Stats. (1st Ex. Sess.) 1960, Ch. 61, p. 411, which revises Section 10303 of the Government Code.

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. See also pp. 117-18 *infra*.

³ See CAL. GOVT. CODE § 10335.

Commission together with a draft of any legislation necessary to effectuate the recommendations.⁴ This pamphlet is 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.

In 1955, 1957, 1959 and 1961, the Commission submitted to the Legislature recommendations for legislation accompanied by bills prepared by the Commission. The Commission also submitted a number of reports on topics as to which, after study, it concluded that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. Thirty-one of these bills became law—three in 1955,⁶ seven in 1957,⁷ thirteen in 1959,⁸ and eight in 1961.⁹ One proposed constitutional amendment, favorably voted upon by the 1959 Legislature, was approved and ratified by the people in 1960.

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.

⁵ See CAL. GOVT. CODE § 10333.

⁶ 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.)

⁷ Cal. Stats. 1957, Ch. 102, p. 678. (Elimination of obsolete provisions in Penal Code Sections 1377 and 1378.)

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

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

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

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

Cal. Stats. 1957, Ch. 540, p. 1589. (Notice of application for attorney's fees and costs in domestic relations actions.)

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

⁸ Cal. Stats. 1959, Ch. 122, p. 2005. (Doctrine of worthier title.)

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

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

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

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

Cal. Stats. 1959, Ch. 501, p. 2443. (Codification of laws relating to grand juries.)

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

Cal. Stats. 1959, Ch. 1715, p. 4115 and Chs. 1724-1728, pp. 4133-4156. (Presentation of claims against public entities.)

⁹ 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.)

PERSONNEL OF COMMISSION

As of January 2, 1963, the membership of the Law Revision Commission is:

	Term expires
Herman F. Selvin, Los Angeles, <i>Chairman</i> -----	October 1, 1963
John R. McDonough, Jr., Stanford, <i>Vice Chairman</i> -----	October 1, 1963
Hon. James A. Cobey, Merced, <i>Senate Member</i> -----	*
Hon. Clark L. Bradley, San Jose, <i>Assembly Member</i> -----	*
Joseph A. Ball, Long Beach, <i>Member</i> -----	October 1, 1965
James R. Edwards, San Bernardino, <i>Member</i> -----	October 1, 1963
Richard H. Keatinge, Los Angeles, <i>Member</i> -----	October 1, 1963
Sho Sato, Berkeley, <i>Member</i> -----	October 1, 1965
Thomas E. Stanton, Jr., San Francisco, <i>Member</i> -----	October 1, 1965
Angus C. Morrison, Sacramento, <i>ex officio Member</i> -----	**

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

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

SUMMARY OF WORK OF COMMISSION

During 1962 the Law Revision Commission was engaged in two principal tasks:

- (1) Work on various assignments given to the Commission by the Legislature.¹⁰ Although the Commission considered several other topics on its current agenda of studies, the Commission has devoted substantially all of its time during 1962 to the study of sovereign or governmental immunity.
- (2) 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.¹¹

The Commission held seven two-day meetings and five three-day meetings in 1962.

¹⁰ See p. 111 of this report *infra*.

¹¹ See pp. 117-18 of this report *infra*.

CALENDAR OF TOPICS SELECTED FOR STUDY

STUDIES IN PROGRESS

During 1962 the Commission's agenda consisted of the 28 studies listed below, each of which it had been authorized and directed by the Legislature to study.

Studies on Which the Commission Expects To Submit a Recommendation to the 1963 Legislature ¹²

1. Whether the doctrine of sovereign or governmental immunity in California should be abolished or revised.

The Commission expects to submit the following six recommendations on this topic to the 1963 Legislature:

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

The Commission believes that these recommendations will meet the immediate need for legislation created by recent decisions of the California Supreme Court, and that they will provide a sound framework for future legislation in this field of law. Considerable work remains on this subject, and the Commission expects to devote substantial time and energy to continuing work on sovereign immunity.

2. Whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens.

The Commission plans to submit to the 1963 Legislature a recommendation relating to discovery in eminent domain proceedings.

¹² The legislative authority for the studies in this list is as follows:

No. 1: Cal. Stats. 1957, Res. Ch. 202, p. 4589.

No. 2: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Other Studies in Progress

*Studies Which the Legislature Has Directed the Commission To Make*¹³

1. Whether the law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.
2. Whether the law respecting habeas corpus proceedings, in the trial and appellate courts, should, for the purpose of simplification of procedure to the end of more expeditious and final determination of the legal questions presented, be revised.
3. Whether an award of damages made to a married person in a personal injury action should be the separate property of such married person.
4. Whether a trial court should have the power to require, as a condition of denying a motion for a new trial, that the party opposing the motion stipulate to the entry of judgment for damages in excess of the damages awarded by the jury.
5. Whether the laws relating to bail should be revised.

*Studies Authorized by the Legislature Upon the Recommendation of the Commission*¹⁴

1. 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.¹⁵
2. Whether the law relating to escheat of personal property should be revised.¹⁶
3. Whether the law relating to the rights of a putative spouse should be revised.¹⁷
4. Whether the law respecting post conviction sanity hearings should be revised.¹⁸

¹³ 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 found in the following:

Nos. 1 and 2: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 3 and 4: Cal. Stats. 1957, Res. Ch. 202, p. 4539.

No. 5: Cal. Stats. 1957, Res. Ch. 287, p. 4744.

¹⁴ Section 10335 of the Government Code requires the Commission to file a report at each regular session of the Legislature containing, *inter alia*, a list of topics intended for future consideration, and authorizes the Commission to study the topics listed in the report which are thereafter approved for its study by concurrent resolution of the Legislature.

The legislative authority for the studies in this list is:

No. 1: Cal. Stats. 1955, Res. Ch. 207, p. 4207.

Nos. 2 through 7: Cal. Stats. 1956, Res. Ch. 42, p. 263.

Nos. 8 through 16: Cal. Stats. 1957, Res. Ch. 202, p. 4539.

No. 17 through 19: Cal. Stats. 1958, Res. Ch. 61, p. 135.

No. 20: Cal. Stats. 1959, Res. Ch. 218, p. 5792; Cal. Stats. 1956, Res. Ch. 42, p. 263.

No. 21: Cal. Stats. 1962, Res. Ch. 23, p. ---

¹⁵ For a description of this topic, see 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1955 Report at 28 (1957). For the legislative history, see 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 13 (1959).

¹⁶ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 25 (1957).

¹⁷ *Id.* at 26.

¹⁸ *Id.* at 28.

5. Whether the law respecting jurisdiction of courts in proceedings affecting the custody of children should be revised.¹⁹
6. Whether the law relating to attachment, garnishment and property exempt from execution should be revised.²⁰
7. Whether the Small Claims Court Law should be revised.²¹
8. Whether the law relating to the rights of a good faith improver of property belonging to another should be revised.²²
9. Whether the separate trial on the issue of insanity in criminal cases should be abolished or whether, if it is retained, evidence of the defendant's mental condition should be admissible on the issue of specific intent in the trial on the other pleas.²³
10. Whether partnerships and unincorporated associations should be permitted to sue in their common names and whether the law relating to the use of fictitious names should be revised.²⁴
11. Whether the law relating to the doctrine of mutuality of remedy in suits for specific performance should be revised.²⁵
12. Whether the provisions of the Penal Code relating to arson should be revised.²⁶
13. Whether Civil Code Section 1698 should be repealed or revised.²⁷
14. 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.²⁸
15. Whether the law respecting the rights of a lessor of property when it is abandoned by the lessee should be revised.²⁹
16. Whether a former wife, divorced in an action in which the court did not have personal jurisdiction over both parties, should be permitted to maintain an action for support.³⁰
17. Whether California statutes relating to service of process by publication should be revised in light of recent decisions of the United States Supreme Court.³¹
18. Whether Section 1974 of the Code of Civil Procedure should be repealed or revised.³²
19. Whether the doctrine of election of remedies should be abolished in cases where relief is sought against different defendants.³³

¹⁹ *Id.* at 29.

²⁰ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 15 (1957).

²¹ *Id.* at 16.

²² *Id.* at 17.

²³ *Id.* at 18.

²⁴ *Ibid.*

²⁵ *Id.* at 19.

²⁶ *Id.* at 20.

²⁷ *Id.* at 21.

²⁸ *Id.* at 23.

²⁹ *Id.* at 24.

³⁰ *Id.* at 25.

³¹ See 2 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1958 Report at 18 (1959).

³² *Id.* at 20.

³³ *Id.* at 21.

20. 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.³⁴
21. Whether Vehicle Code Section 17150 should be revised or repealed insofar as it imputes the contributory negligence of the driver of a vehicle to its owner.³⁵

STUDIES FOR FUTURE CONSIDERATION

Pursuant to Section 10335 of the Government Code, the Commission has reported 58 topics that it had selected for study to the Legislature since 1955. Forty-eight of these topics were approved.³⁶ The Legislature also has referred 11 other topics to the Commission for study.

A total of 47 bills and two proposed constitutional amendments, drafted by the Commission to effectuate its recommendations, have been presented to the Legislature. The Commission also has submitted four reports on topics which, after study, it concluded either that the existing law did not need to be revised or that the topic was one not suitable for study by the Commission.

The Commission now has an agenda consisting of 28 studies in progress,³⁷ some of substantial magnitude, that will require all of its energies during the current fiscal year and during the fiscal year 1963-64. For this reason the Commission will not request authority at the 1963 legislative session to undertake additional studies.

³⁴ See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1956 Report at 21 (1957).

³⁵ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1962 Report at 20 (1963).

³⁶ Although 49 topics actually have been approved by the Legislature at the request of the Commission, one of these topics was consolidated with a topic which the Legislature later directed the Commission to study. See 1 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1957 Report at 12, n. 31 (1957).

³⁷ For a complete list of these studies, see pp. 111-14 *supra*.

REPORT ON STUDY OF CONDEMNATION LAW AND PROCEDURE

The Commission was authorized by Resolution Chapter 42 of the Statutes of 1956 to make a study to determine whether the law and procedure relating to condemnation should be revised in order to safeguard the property rights of private citizens. Pursuant to this legislative directive, the Commission has engaged in a continuing study of this field of law.

In 1961, a number of bills relating to condemnation law and procedure were introduced at the request of the Commission. Two of these bills were enacted as law.³⁸ Senate Bill No. 205, relating to evidence in eminent domain proceedings, was pocket vetoed by the Governor.³⁹ Senate Bill No. 203, relating to reimbursement for moving expenses, was referred to interim study.⁴⁰

The Commission does not plan to make any recommendation to the 1963 Legislature concerning evidence in eminent domain proceedings or reimbursement for moving expenses.⁴¹ The Commission has concluded that Senate Bill No. 205 (evidence in eminent domain proceedings) requires further study. However, because the Commission has devoted substantially all of its time during the past two years to the study of sovereign immunity, the Commission will not have an opportunity to study the bill prior to the 1963 legislative session. The Commission does plan, however, to review the bill after the 1963 legislative session and to make a recommendation relating thereto in 1965.

Legislation recently passed by the United States Congress would provide for federal assistance to states for payment of moving expenses.⁴² It may be necessary to conform state legislation on this subject to the federal law. After the 1963 legislative session, the Commission plans to review its recommended legislation on moving expenses in light of the federal legislation.

³⁸ Senate Bill No. 204 (Cal. Stats. 1961, Ch. 1612, p. 3439); Senate Bill No. 206 (Cal. Stats. 1961, Ch. 1613, p. 3442).

³⁹ See 3 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, 1961 Report at 13 (1961).

⁴⁰ *Ibid.*

⁴¹ The Commission will, however, make a recommendation to the 1963 Legislature concerning discovery in eminent domain proceedings. See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, Recommendation and Study at 701 (1963).

⁴² Pub. L. No. 87-866, 87th Cong., 2d Sess. § 5 (Oct. 23, 1962) [76 Stat. 1145]; S. REP. No. 1997, 87th Cong., 2d Sess. (1962).

REPORT ON STUDY OF UNIFORM RULES OF EVIDENCE

The Commission was authorized by Resolution Chapter 42 of the Statutes of 1956 to make a study to determine whether the California law of evidence should be revised to conform to the Uniform Rules of Evidence drafted by the National Conference of Commissioners on Uniform State Laws and approved by it at its 1953 annual conference.

The Commission will not recommend that legislation on this subject be enacted in 1963. The Commission has, however, published a preliminary report containing its tentative recommendation concerning Article VIII (Hearsay Evidence) of the Uniform Rules of Evidence and the research study relating thereto prepared by its research consultant, Professor James H. Chadbourn of the School of Law, University of California at Los Angeles.⁴³

This preliminary report was published so that interested persons would have an opportunity to study the tentative recommendation and give the Commission the benefit of their comments and criticisms. These comments and criticisms will be considered by the Commission in formulating its final recommendation.

⁴³ See 4 CAL. LAW REVISION COMM'N, REP., REC. & STUDIES, Recommendation and Study at 301 (1963).

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 1962 Report was prepared.⁴⁴ It has the following to report:

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

(2) One decision of the Supreme Court of the United States holding a statute of the State unconstitutional has been found. Health and Safety Code Section 11721, which makes it a misdemeanor to "use, or be under the influence of, or be addicted to the use of narcotics, excepting when administered by or under the direction of a person licensed by the State to prescribe and administer narcotics," was held unconstitutional by the United States Supreme Court in *Robinson v. California*.⁴⁵

(3) No decision of the Supreme Court of California holding a statute of the State repealed by implication has been found.

(4) One decision of the Supreme Court of California holding a statute of the State unconstitutional has been found. Subdivision (a) of Business and Professions Code Section 2552, which pertains to licensing of dispensing opticians, was held unconstitutional by the California Supreme Court in *Blumenthal v. Board of Medical Examiners*.⁴⁶

⁴⁴ This study has been carried through 58 Adv. Cal. 423 (1962) and 370 U.S. 728 (1962).

⁴⁵ 370 U.S. 660 (1962).

⁴⁶ 57 Cal.2d 228, 18 Cal. Rptr. 501, 368 P.2d 101 (1962).

RECOMMENDATIONS

The Law Revision Commission respectfully recommends that the Legislature authorize the Commission to complete its study of the topics listed on pages 111-14 of this report.

Pursuant to the mandate imposed by Section 10331 of the Government Code, the Commission recommends the repeal of Section 11721 of the Health and Safety Code and subdivision (a) of Section 2552 of the Business and Professions Code to the extent that these provisions have been held unconstitutional.

Respectfully submitted,

HERMAN F. SELVIN, *Chairman*
JOHN R. McDONOUGH, JR., *Vice Chairman*
JAMES A. COBEY, *Member of the Senate*
CLARK L. BRADLEY, *Member of the Assembly*
JOSEPH A. BALL
JAMES R. EDWARDS
RICHARD H. KEATINGE
SHO SATO
THOMAS E. STANTON, JR.
ANGUS C. MORRISON, *Legislative Counsel, ex officio*