

**S259522**

**IN THE  
SUPREME COURT OF CALIFORNIA**

---

---

**RAUL BERROTERAN II,**  
*Petitioner,*

*v.*

**THE SUPERIOR COURT OF  
LOS ANGELES COUNTY,**  
*Respondent.*

---

---

**FORD MOTOR COMPANY,**  
*Real Party in Interest.*

---

---

AFTER A DECISION BY THE COURT OF APPEAL, SECOND APPELLATE DISTRICT, DIVISION ONE  
CASE NO. B296639

---

---

**MOTION FOR JUDICIAL NOTICE  
EXHIBITS 1 – 6  
VOLUME 13 OF 14, PAGES 3034-3321 OF 3537  
[FILED CONCURRENTLY WITH  
REAL PARTY IN INTEREST'S OPENING BRIEF ON THE MERITS]**

---

---

**HORVITZ & LEVY LLP**

\*FREDERIC D. COHEN (BAR NO. 56755)  
LISA PERROCHET (BAR NO. 132858)  
3601 WEST OLIVE AVENUE, 8TH FLOOR  
BURBANK, CALIFORNIA 91505-4681  
(818) 995-0800 • FAX: (844) 497-6592  
fcohen@horvitzlevy.com  
lperrochet@horvitzlevy.com

**SANDERS ROBERTS LLP**

JUSTIN H. SANDERS (BAR NO. 211488)  
DARTH K. VAUGHN (BAR NO. 253276)  
SABRINA C. NARAIN (BAR NO. 299471)  
1055 WEST 7TH STREET, SUITE 3050  
LOS ANGELES, CALIFORNIA 90017  
(213) 426-5000 • FAX: (213) 234-4581  
jsanders@sandersroberts.com  
dvaughn@sandersroberts.com  
snarain@sandersroberts.com

ATTORNEYS FOR REAL PARTY IN INTEREST  
**FORD MOTOR COMPANY**

## TABLE I

### EVIDENCE CODE TO COMPARABLE SECTIONS

Table I indicates as to each section of the Evidence Code the comparable provisions of the California law in effect on January 1, 1965, that are superseded by the Evidence Code. Where the table indicates that a section in the Evidence Code supersedes an existing provision, the section replacing the existing provision may duplicate the superseded section or may be narrower or broader than the superseded section. For a discussion of the comparison, see the *Comment* to the Evidence Code section involved.

Where a particular section of the existing law is superseded by more than one section of the Evidence Code, that fact is indicated by an asterisk (\*) after the number of the superseded section. (Table II indicates the various Evidence Code sections that supersede a particular section of existing law.)

The source of each section in the Evidence Code that does not supersede a specific provision in existing law is listed as "New." For example, some sections in the Evidence Code (principally the preliminary provisions and definitions) are based on comparable provisions in other recently enacted California codes, such as the Commercial Code and the Vehicle Code, and do not supersede any specific provision in existing law. For the source of a particular section, see the *Comment* to the Evidence Code section involved.

<i>Evidence Code (Section)</i>	<i>Existing Code (Section)</i>	<i>Evidence Code (Section)</i>	<i>Existing Code (Section)</i>
1 -----	New	195 -----	New
2 -----	New	200 -----	New
3 -----	New	205 -----	New
4 -----	New	210 -----	CCP 1868*
5 -----	New		1870(1)*,
6 -----	New		1870(15)*,
7 -----	New		1870(16)*
8 -----	New	220 -----	New
9 -----	New	225 -----	New
10 -----	New	230 -----	New
11 -----	New	235 -----	New
12 -----	New	240 -----	New
100 -----	New	250 -----	New
105 -----	New	300 -----	CCP 2103
110 -----	New	310 -----	CCP 2102*
115 -----	New	311 -----	CCP 1875*
120 -----	New	312 -----	CCP 2061*, 2101
125 -----	New	320 -----	CCP 2042*
130 -----	New	350 -----	CCP 1868 *
135 -----	New	351 -----	CCP 1847*,
140 -----	CCP 1823, 1827*		1870(1)*,
145 -----	New		1870(15)*,
150 -----	New		1870(16)*
160 -----	New		CCP 1838, 1868*,
165 -----	New	352 -----	2044*
170 -----	New		New
175 -----	New	353 -----	New
180 -----	New	354 -----	New
185 -----	New	355 -----	New
190 -----	CCP 1824	356 -----	CCP 1854

\* In part.

\* In part.

<i>Evidence Code (Section)</i>		<i>Existing Code (Section)</i>	<i>Evidence Code (Section)</i>		<i>Existing Code (Section)</i>
400-406	CCP	1834, 2102*	750		New
410	CCP	1831	751	CCP	1885*
411	CCP	1844	752	CCP	1884
412	CCP	1963(6),	753	CCP	1863
		2061(6)*,	754	CCP	1885*
		2061(7)	760	CCP	2045*, 2048*
413	CCP	1963(5),	761	CCP	2045*
		2061(6)*	762		New
	Penal	1323*	763		New
450-460	CCP	1875*, 2102*	764	CCP	2046*
500	CCP	1981*	765	CCP	2044*, 2066
501		New	766	CCP	2056
502	CCP	2061(5)	767	CCP	2046*, 2048*
520	CCP	1963(1)	768	CCP	2052*,
521	CCP	1963(4)			2054
522		New	769	CCP	2049*, 2052*
550	CCP	1981*	770	CCP	2049*, 2052*
600	CCP	1958-1960	771	CCP	2047*
601	CCP	1961	772	CCP	2045*, 2048*
602	CCP	1833	773	CCP	2045*, 2048*
603		New		Penal	1323*
604		New	774	CCP	2050*
605		New	775		New
606		New	776	CCP	2055
607		New	777	CCP	2043
620	CCP	1962*	778	CCP	2050*
621	CCP	1962(5)	780	CCP	1847*,
622	CCP	1962(2)			1870(16)*,
623	CCP	1962(3)			2049*, 2051*,
624	CCP	1962(4)			2052*, 2053*
630		New	785	CCP	2049*, 2051*
631	CCP	1963(7)	786	CCP	1847*, 2049*,
632	CCP	1963(8)			2051*, 2053*
633	CCP	1963(9)	787	CCP	2051*, 2065*
634	CCP	1963(13)	788	CCP	2051*, 2065*
635		New	789		New
636	CCP	1963(10)	790	CCP	2053*
637	CCP	1963(11)	791		New
638	CCP	1963(12)	800	CCP	1845*,
639	CCP	1963(17)			1870(9)*
640	CCP	1963(23)	801	CCP	1845*,
641	CCP	1963(24)			1870(9)*
642	CCP	1963(37)	802	CCP	1872*
643	CCP	1963(34)	803		New
644	CCP	1963(35)	804		New
645	CCP	1963(36)	805		New
660		New	810-822	CCP	1845.5
661	Civil	193, 194, 195	870	CCP	1870(10)
	CCP	1963(31)	890	CCP	1980.1
662		New	891	CCP	1980.2
663		New	892	CCP	1980.3
664	CCP	1963(15)	893	CCP	1980.4
665	CCP	1963(3)	894	CCP	1980.5*
666	CCP	1963(16)	895	CCP	1980.6
667	CCP	1963(26)	896	CCP	1980.7
668	CCP	1963(2)	897	CCP	1871*, 1980.5*
700	CCP	1879*	900		New
701	CCP	1879*, 1880*	901		New
702	CCP	1845*, 1879*,	902		New
		1880*	903		New
703	CCP	1883*	905		New
704	CCP	1883*	910		New
710	CCP	1846*	911	CCP	2065*
711	CCP	1846*	912		New
720	CCP	1870(9)*	913		New
721	CCP	1872*	914		New
722	CCP	1256.2	915		New
723	CCP	1871*	916		New
730-733	CCP	1871*	917		New
			918		New

\* In part.

\* In part.

<i>Evidence Code (Section)</i>	<i>Existing Code (Section)</i>	<i>Evidence Code (Section)</i>	<i>Existing Code (Section)</i>
919 -----	New	1280 -----	CCP 1918*, 1920*,
920 -----	New		1921*, 1922*,
930 -----	Penal 1323*, 1323.5		1926*, 1946*
940 -----	CCP 2065*	1281 -----	New
	Penal 1323*	1282 -----	CCP 1928.1
950-962 ---	CCP 1881(2)	1283 -----	CCP 1928.2
970-973 ---	CCP 1881(1)*	1284 -----	New
	Penal 1322*	1290-1292 ---	CCP 1870(8)
980-987 ---	CCP 1881(1)*	1300 -----	New
	Penal 1322*	1301 -----	New
990-1007 --	CCP 1881(4)*	1302 -----	CCP 1851*
1010-1026 --	B & P 2904	1310 -----	CCP 1852*,
	CCP 1881(4)*		1870(4)*
1030-1034 --	CCP 1881(3)	1311 -----	CCP 1852*,
1040-1042 --	CCP 1881(5)		1870(4)*
1050 -----	New	1312 -----	CCP 1870(13)*
1060 -----	New	1313 -----	CCP 1852*,
1070 -----	CCP 1881(6)		1870(11)*
1100 -----	CCP 2053*	1314 -----	CCP 1870(11)*,
1101 -----	CCP 2053*		1963(30)
1102 -----	New	1315-1316 --	CCP 1919a, 1919b
1103 -----	New	1320 -----	CCP 1870(11)*,
1104 -----	New		1870(13)*
1105 -----	New	1321 -----	CCP 1870(11)*
1150 -----	New	1322 -----	CCP 1870(11)*
1151 -----	New	1323 -----	New
1152 -----	CCP 2078*	1324 -----	CCP 2051*, 2053*
1153 -----	New	1330 -----	New
1154 -----	CCP 2078*	1331 -----	New
1155 -----	New	1340 -----	New
1156 -----	CCP 1936.1	1341 -----	CCP 1936
1200 -----	CCP 1845*	1400 -----	New
1201 -----	New	1401 -----	New
1202 -----	New	1402 -----	CCP 1982
1203 -----	New	1410 -----	New
1204 -----	New	1411 -----	New
1205 -----	New	1412 -----	CCP 1941
1220 -----	CCP 1870(2)	1413 -----	CCP 1940(1),
1221 -----	CCP 1870(3)		1940(3)
1222 -----	CCP 1848*	1414 -----	CCP 1942
	1870(5)*	1415 -----	CCP 1940(2)
1223 -----	CCP 1848*, 1870(6)	1416 -----	CCP 1870(9)*,
1224 -----	CCP 1848*, 1851*,		1943
	1870(5)*	1417-1418 --	CCP 1944
1225 -----	CCP 1848*, 1849,	1419 -----	CCP 1945
	1870(5)*	1420 -----	New
1226 -----	New	1421 -----	New
1227 -----	New	1450 -----	New
1230 -----	CCP 1853, 1870(4)*,	1451 -----	CCP 1948, 1951*
	1946(1)	1452 -----	CCP 1875(5),
1235 -----	New		1875(6)*,
1236 -----	New		1875(7)*,
1237 -----	CCP 2047*		1875(8),
1238 -----	New		1901*,
1240 -----	CCP 1850*,		1905*, 1906*,
	1870(7)*		1907*, 1918*,
1241 -----	CCP 1850*,		1921*, 1922*,
	1870(7)*		1928.3*
1242 -----	CCP 1870(4)*	1453 -----	CCP 1875(6)*,
1250 -----	New		1901*, 1905*,
1251 -----	New		1918*, 1919*,
1252 -----	New		1921*, 1922*,
1260 -----	New		1928.3*
1261 -----	New	1454 -----	CCP 1901*, 1906*,
1270-1271 --	CCP 1918*, 1920*,		1907*, 1918*,
	1921*, 1922*,	1500 -----	CCP 1855*, 1937*
	1926*, 1946*,	1501 -----	CCP 1855(1), 1937*
	1953e-1953h	1502 -----	New
1272 -----	New		

\* In part.

\* In part.

<i>Evidence Code (Section)</i>		<i>Existing Code (Section)</i>	<i>Evidence Code (Section)</i>		<i>Existing Code (Section)</i>
1503 -----	CCP	1855(2), 1938, 1939 New	1531 -----	CCP	1923
1504 -----			1532 -----	CCP	1919*, 1951*
1505 -----	CCP	1855*, 1870(14)*	1550 -----	CCP	1953i
1506 -----	CCP	1855(3), 1901*, 1905*, 1906*, 1907*, 1918*, 1920a*, 1921*, 1922*	1551 -----	CCP	1920b
			1560 -----	CCP	1998
1507 -----	CCP	1855(4), 1919*	1561 -----	CCP	1998.1
1508 -----	CCP	1855*, 1870(14)*	1562 -----	CCP	1998.2
1509 -----	CCP	1855(5), 1870(14)*	1563 -----	CCP	1998.3
1510 -----		New	1564 -----	CCP	1998.4
1530 -----	CCP	1901*, 1905*, 1906*, 1907*, 1918*, 1919*, 1920a*, 1921*, 1922*, 1928.3*	1565 -----	CCP	1998.5
			1566 -----		New
			1600 -----	CCP	1919*, 1951*
			1601 -----	CCP	1855a
			1602 -----	CCP	1927
			1603 -----	CCP	1928
			1604 -----	CCP	1925
			1605 -----	CCP	1927.5

\* In part.

\* In part.

## TABLE II

### SUPERSEDED SECTIONS TO EVIDENCE CODE

Table II indicates as to each superseded section of the California law in effect on January 1, 1965, the comparable provisions of the Evidence Code. Where the table indicates that an existing section is superseded by a provision in the Evidence Code, the provision replacing the existing section may duplicate the superseded section or may be narrower or broader than the superseded section. For a discussion of the comparison, see the *Comment* to the Evidence Code section involved. See also the *Comment* to the superseded section.

The disposition of an existing section that is not superseded by a specific provision in the Evidence Code is listed as "Not continued." The *Comment* to the repealed section gives the reason for its exclusion.

In addition to Evidence Code references, Table II also contains a reference to sections added to other codes that continue the substance of an existing section that is repealed but is not a proper subject for inclusion in the Evidence Code.

<i>Bus &amp; Prof Code</i> (Section)	<i>Evidence Code</i> (Section)	<i>Code Civ Proc</i> (Section)	<i>Evidence Code</i> (Section)
2904 -----	1010-1026	1854 -----	356
		1855 -----	1500-1510
<i>Civil Code</i> (Section)		1855a -----	1601
193 -----	661	1863 -----	753
194 -----	661	1867 -----	Not continued
195 -----	661	1868 -----	210, 350, 352
		1869 -----	500, 550
<i>Code Civ Proc</i> (Section)		1870(1) ---	210, 351
1256.2 ----	722	1870(2) ---	1220
1823 -----	140	1870(3) ---	1221
1824 -----	190	1870(4) ---	1230, 1242,
1825 -----	Not continued		1310, 1311
1826 -----	500-667	1870(5) ---	1222, 1224,
1827 -----	140, 450-459	1870(6) ---	1225
1828 -----	410	1870(7) ---	1223
1829 -----	1500-1510	1870(8) ---	1240, 1241
1830 -----	1500-1510	1870(9) ---	1290-1292
1831 -----	410	1870(10) --	720, 800, 801,
1832 -----	Not continued	1870(11) --	1416
1833 -----	602		870
1834 -----	403(b)	1870(12) --	1313, 1314,
1836 -----	Not continued	1870(13) --	1320-1322
1837 -----	Not continued	1870(14) --	Not continued
1838 -----	352	1870(15) --	1312, 1320
1839 -----	Not continued	1870(16) --	1500-1510
1844 -----	411	1871 -----	210, 351
1845 -----	702, 800, 801, 1200	1872 -----	210, 351, 780
		1875 -----	723, 730-733
1845.5 ----	810-822		721, 802
1846 -----	710, 711	1879 -----	311, 450-460,
1847 -----	351, 600, 780, 786	1880 -----	1452, 1453
		1881(1) ---	700-702
1848 -----	1200, 1222- 1227	1881(2) ---	701, 702
1849 -----	1225	1881(3) ---	970-973,
1850 -----	1240, 1241	1881(4) ---	980-987
1851 -----	1224, 1302		950-962
1852 -----	1310, 1311,	1881(5) ---	1030-1034
	1313	1881(6) ---	990-1007,
1853 -----	1230	1883 -----	1010-1026
			1040-1042
			1070
			703, 704

<i>Code Civ Proc (Section)</i>	<i>Evidence Code (Section)</i>	<i>Code Civ Proc (Section)</i>	<i>Evidence Code (Section)</i>
1884 -----	752	1957 -----	140, 210
1885 -----	751, 754	1958 -----	600(b)
1901 -----	1452-1454,	1959 -----	600(a)
	1506, 1530	1960 -----	600(b)
1903 -----	1530	1961 -----	601
1905 -----	1452, 1453,	1962 -----	620
	1506, 1530	1962(1) ---	Not continued
1906 -----	1452, 1454,	1962(2) ---	622
	1506, 1530	1962(3) ---	623
1907 -----	1400, 1401,	1962(4) ---	624
	1410, 1452,	1962(5) ---	621
	1454, 1506,	1962(6) ---	* Not continued
	1530	1962(7) ---	Not continued
1918 -----	1270, 1271,	1963(1) ---	520
	1280, 1400-	1963(2) ---	668
	1402, 1410,	1963(3) ---	665
	1452-1454,	1963(4) ---	521
	1506, 1530	1963(5) ---	413, 665
1919 -----	1453, 1507,	1963(6) ---	412
	1530, 1532,	1963(7) ---	631
	1600	1963(8) ---	632
1919a ----	1315, 1316	1963(9) ---	633
1919b ----	1315, 1316	1963(10) ---	636
1920 -----	1270, 1271,	1963(11) ---	637
	1280	1963(12) ---	638
1920a ----	1506, 1530	1963(13) ---	634
1920b ----	1551	1963(14) ---	Not continued
1921 -----	1270, 1271,	1963(15) ---	664
	1280, 1452,	1963(16) ---	666
	1453, 1506,	1963(17) ---	639
	1530	1963(18) ---	Not continued
1922 -----	1270, 1271,	1963(19) --- <i>Civil Code</i>	3545 (Added)
	1280, 1452,	1963(20) ---	Not continued
	1453, 1506,	1963(21) ---	Not continued
	1530	1963(22) ---	Not continued
1923 -----	1531	1963(23) ---	640
1924 -----	Not continued	1963(24) ---	641
1925 -----	1604	1963(25) ---	Not continued
1926 -----	1270, 1271,	1963(26) ---	667
	1280	1963(27) ---	Not continued
1927 -----	1602	1963(28) --- <i>Civil Code</i>	3546 (Added)
1927.5 ----	1605	1963(29) ---	Not continued
1928 -----	1603	1963(30) ---	1314
1928.1 ----	1282	1963(31) ---	661
1928.2 ----	1283	1963(32) --- <i>Civil Code</i>	3547 (Added)
1928.3 ----	1452, 1453,	1963(33) --- <i>Civil Code</i>	3548 (Added)
	1530	1963(34) ---	643
1928.4 ----	3	1963(35) ---	644
1936 -----	1341	1963(36) ---	645
1936.1 ----	1156	1963(37) ---	642
1937 -----	1500, 1501	1963(38) ---	Not continued
1938 -----	1503	1963(39) ---	Not continued
1939 -----	1503	1963(40) --- <i>Civil Code</i>	164.5 (Added)
1940 -----	1413, 1415	1967 -----	Not continued
1941 -----	1412	1968 -----	Not continued
1942 -----	1414	1973 -----	Not continued
1943 -----	1416	1978 -----	Not continued
1944 -----	1417, 1418	1980.1 ----	890
1945 -----	1419	1980.2 ----	891
1946 -----	1230, 1270,	1980.3 ----	892
	1271, 1280	1980.4 ----	893
1947 -----	1270, 1271	1980.5 ----	894, 897
1948 -----	1451	1980.6 ----	895
1951 -----	1451, 1532,	1980.7 ----	896
	1600	1981 -----	500, 550
1953e-1953h	1270-1272	1982 -----	1402
1953i-1953l	1550	1983 -----	Not continued
1954 -----	140, 210, 351,	1998 -----	1560
	352		

\* The last clause of Section 1962(6) is codified as *Code of Civil Procedure Section 1908.5 (Added)*.

<i>Code Civ Proc (Section)</i>	<i>Evidence Code (Section)</i>	<i>Code Civ Proc (Section)</i>	<i>Evidence Code (Section)</i>
1998.1 -----	1561	2054 -----	768
1998.2 -----	1562	2055 -----	776
1998.3 -----	1563	2056 -----	766
1998.4 -----	1564	2061 -----	312, 412, 413, 502
1998.5 -----	1565		
2042 -----	320	2065 -----	351, 787, 788, 911, 940
2043 -----	<i>Code Civ Proc</i> 631.7 ( <i>Added</i> )		
2044 -----	777	2066 -----	765
2045 -----	352, 765	2078 -----	1152, 1154
	760, 761, 772, 773	2079 -----	Not continued
2046 -----	764, 767	2101 -----	312
2047 -----	771, 1237	2102 -----	310, 400-406, 450-460
2048 -----	760, 761, 767, 772, 773	2103 -----	300
2049 -----	769, 770, 780, 785, 786, 1235		
2050 -----	774, 778	<i>Penal Code (Section)</i>	
2051 -----	780, 785, 786, 787, 788, 1324	1322 -----	970-973, 980-987
2052 -----	768, 769, 770, 780, 1235	1323 -----	413, 773, 930, 940
2053 -----	780, 786, 790, 1100- 1104, 1324	1323.5 -----	930





## TABLE III

### AMENDMENTS, ADDITIONS, AND REPEALS

Table III contains a convenient list of provisions in other codes that were added, amended, or repealed by the Evidence Code legislation.

#### BUSINESS AND PROFESSIONS CODE

Section 2904 (Repealed)                      Section 25009 (Amended)  
Section 5012 (Amended)

#### CIVIL CODE

Section 53 (Amended)                      Section 3545 (Added)  
Section 164.5 (Added)                      Section 3546 (Added)  
Section 193 (Repealed)                      Section 3547 (Added)  
Section 194 (Repealed)                      Section 3548 (Added)  
Section 195 (Repealed)

#### CODE OF CIVIL PROCEDURE

Section 1 (Amended)                      Section 1850 (Repealed)  
Section 117g (Amended)                      Section 1851 (Repealed)  
Section 125 (Amended)                      Section 1852 (Repealed)  
Section 153 (Amended)                      Section 1853 (Repealed)  
Section 433 (Amended)                      Section 1854 (Repealed)  
Section 631.7 (Added)                      Section 1855 (Repealed)  
Section 1256.2 (Repealed)                      Section 1855a (Repealed)  
Section 1747 (Amended)                      Section 1863 (Repealed)  
Title of Part IV (Amended)                      Section 1867 (Repealed)  
Section 1823 (Repealed)                      Section 1868 (Repealed)  
Section 1824 (Repealed)                      Section 1869 (Repealed)  
Section 1825 (Repealed)                      Section 1870 (Repealed)  
Section 1826 (Repealed)                      Section 1871 (Repealed)  
Section 1827 (Repealed)                      Section 1872 (Repealed)  
Section 1828 (Repealed)                      Section 1875 (Repealed)  
Section 1829 (Repealed)                      Section 1879 (Repealed)  
Section 1830 (Repealed)                      Section 1880 (Repealed)  
Section 1831 (Repealed)                      Section 1881 (Repealed)  
Section 1832 (Repealed)                      Section 1883 (Repealed)  
Section 1833 (Repealed)                      Section 1884 (Repealed)  
Section 1834 (Repealed)                      Section 1885 (Repealed)  
Section 1836 (Repealed)                      Section 1893 (Amended)  
Section 1837 (Repealed)                      Section 1901 (Repealed)  
Section 1838 (Repealed)                      Section 1903 (Repealed)  
Section 1839 (Repealed)                      Section 1905 (Repealed)  
Section 1844 (Repealed)                      Section 1906 (Repealed)  
Section 1845 (Repealed)                      Section 1907 (Repealed)  
Section 1845.5 (Repealed)                      Section 1908.5 (Added)  
Section 1846 (Repealed)                      Section 1918 (Repealed)  
Section 1847 (Repealed)                      Section 1919 (Repealed)  
Section 1848 (Repealed)                      Section 1919a (Repealed)  
Section 1849 (Repealed)                      Section 1919b (Repealed)

## CODE OF CIVIL PROCEDURE—Continued

Section 1920 (Repealed)	Section 1967 (Repealed)
Section 1920a (Repealed)	Section 1968 (Repealed)
Section 1920b (Repealed)	Section 1973 (Repealed)
Section 1921 (Repealed)	Section 1974 (Amended)
Section 1922 (Repealed)	Section 1978 (Repealed)
Section 1923 (Repealed)	Sections 1980.1-1980.7 (Repealed)
Section 1924 (Repealed)	Section 1980.1 (Repealed)
Section 1925 (Repealed)	Section 1980.2 (Repealed)
Section 1926 (Repealed)	Section 1980.3 (Repealed)
Section 1927 (Repealed)	Section 1980.4 (Repealed)
Section 1927.5 (Repealed)	Section 1980.5 (Repealed)
Section 1928 (Repealed)	Section 1980.6 (Repealed)
Sections 1928.1-1928.4 (Repealed)	Section 1980.7 (Repealed)
Section 1928.1 (Repealed)	Sections 1981-1983 (Repealed)
Section 1928.2 (Repealed)	Section 1981 (Repealed)
Section 1928.3 (Repealed)	Section 1982 (Repealed)
Section 1928.4 (Repealed)	Section 1983 (Repealed)
Section 1936 (Repealed)	Section 1998 (Repealed)
Section 1936.1 (Repealed)	Section 1998.1 (Repealed)
Section 1937 (Repealed)	Section 1998.2 (Repealed)
Section 1938 (Repealed)	Section 1998.3 (Repealed)
Section 1939 (Repealed)	Section 1998.4 (Repealed)
Section 1940 (Repealed)	Section 1998.5 (Repealed)
Section 1941 (Repealed)	Section 2009 (Amended)
Section 1942 (Repealed)	Section 2016 (Amended)
Section 1943 (Repealed)	Sections 2042-2056 (Repealed)
Section 1944 (Repealed)	Section 2042 (Repealed)
Section 1945 (Repealed)	Section 2043 (Repealed)
Section 1946 (Repealed)	Section 2044 (Repealed)
Section 1947 (Repealed)	Section 2045 (Repealed)
Section 1948 (Repealed)	Section 2046 (Repealed)
Section 1951 (Repealed)	Section 2047 (Repealed)
Sections 1953e-1953h (Repealed)	Section 2048 (Repealed)
Section 1953e (Repealed)	Section 2049 (Repealed)
Section 1953f (Repealed)	Section 2050 (Repealed)
Section 1953f.5 (Repealed)	Section 2051 (Repealed)
Section 1953g (Repealed)	Section 2052 (Repealed)
Section 1953h (Repealed)	Section 2053 (Repealed)
Sections 1953i-1953l (Repealed)	Section 2054 (Repealed)
Section 1953i (Repealed)	Section 2055 (Repealed)
Section 1953j (Repealed)	Section 2056 (Repealed)
Section 1953k (Repealed)	Section 2061 (Repealed)
Section 1953l (Repealed)	Section 2065 (Repealed)
Section 1954 (Repealed)	Section 2066 (Repealed)
Sections 1957-1963 (Repealed)	Section 2078 (Repealed)
Section 1957 (Repealed)	Section 2079 (Repealed)
Section 1958 (Repealed)	Sections 2101-2103 (Repealed)
Section 1959 (Repealed)	Section 2101 (Repealed)
Section 1960 (Repealed)	Section 2102 (Repealed)
Section 1961 (Repealed)	Section 2103 (Repealed)
Section 1962 (Repealed)	
Section 1963 (Repealed)	

## CORPORATIONS CODE

Section 6602 (Amended)                      Section 25310 (Amended)

## GOVERNMENT CODE

Section 11513 (Amended)                      Section 19580 (Amended)

## HEALTH AND SAFETY CODE

Section 3197 (Amended)

## PENAL CODE

Section 270e (Amended)	Section 1120 (Amended)
Section 686 (Amended)	Section 1322 (Repealed)
Section 688 (Amended)	Section 1323 (Repealed)
Section 939.6 (Amended)	Section 1323.5 (Repealed)
Section 961 (Amended)	Section 1345 (Amended)
Section 963 (Amended)	Section 1362 (Amended)

## PUBLIC UTILITIES CODE

Section 306 (Amended)

o

CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1965 REGULAR SESSION

---

# ASSEMBLY FINAL HISTORY

SYNOPSIS OF  
ASSEMBLY BILLS, CONSTITUTIONAL AMENDMENTS, CONCURRENT  
AND JOINT RESOLUTIONS, AND HOUSE RESOLUTIONS

---

Duration of Session

Assembly Convened January 4, 1965

Adjourned Sine Die June 18, 1965

Legislative Days (Days Assembly Was in Session).....106 days  
Calendar Days (Exclusive of Saturdays and Sundays).....120 days  
Calendar Days (Inclusive of Saturdays and Sundays).....166 days

Last Day for Signing Bills by Governor, July 23, 1965

Last Day for Filing Referendum, September 16, 1965

All Bills Approved by the Governor, Unless Otherwise Specifically Provided  
For in the Bill, Become Effective September 17, 1965

---

HON. JESSE M. UNRUH  
*Speaker*

HON. JEROME R. WALDIE  
*Majority Floor Leader*

HON. CARLOS BEE  
*Speaker pro Tempore*

HON. ROBERT T. MONAGAN  
*Minority Floor Leader*

*Compiled Under the Direction of*

JAMES D. DRISCOLL  
*Chief Clerk*

WILLOUGHBY LYONS  
*History Clerk*

**333—Song, Willson, Foran, Stanton, and Whetmore (Senator Cobey, coauthor). To Com. on Rls.**

An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 931.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.

Jan. 18—Read first time. To printer.

Jan. 19—From printer. To committee.

Feb. 4—Art. IV, Sec. 2(a), of Constitution invoked, permitting bill to be heard in committee, and acted upon by the Assembly.

Feb. 10—From committee: Be re-referred to Com. on Jud. Re-referred to Com. on Jud.

Feb. 11—From committee chairman, with author's amendments: Amend, and re-refer to Com. on Jud. Read second time, amended, to printer. Considered engrossed.

Feb. 15—From printer. Re-referred to Com. on Jud.

Mar. 2—From committee chairman, with author's amendments: Amend, and re-refer to Com. on Jud. Read second time, amended, to printer.

Mar. 3—From printer. To re-engrossment.

Mar. 8—Reported correctly re-engrossed. Re-referred to Com. on Jud.

Mar. 23—From committee chairman, with author's amendments: Amend, and re-refer to Com. on Jud. Read second time, amended, to printer.

Mar. 25—From printer. To re-engrossment.

Mar. 29—Reported correctly re-engrossed. Re-referred to Com. on Jud.

April 6—From committee: Amend, and do pass as amended.

April 7—Read second time, amended, to printer. Ordered returned to second reading file.

April 8—From printer. To re-engrossment. Read second time. To third reading.

April 12—Reported correctly re-engrossed. Read third time, passed, title approved. To Senate.

April 12—In Senate. Read first time. To Com. on Jud.

April 21—From committee: Amend, and do pass as amended.

April 22—Read second time, amended, to printer. From printer. To third reading.

May 4—Read third time, passed, title approved. To Assembly.

May 5—In Assembly. Concurrence in Senate amendments pending.

May 6—Senate amendments concurred in. To enrollment.

May 12—Reported correctly enrolled. To Governor at 10 a.m.

May 18—Approved by Governor. Chapter 299.

**334—Young and Willson. To Com. on Rls.**

An act to add Section 139.7 to the Civil Code, relating to termination of alimony payments in divorce and separate maintenance cases.

Jan. 18—Read first time. To printer.

Jan. 21—From printer. To committee.

Feb. 16—From committee: Be re-referred to Com. on Jud. Re-referred to Com. on Jud.

June 18—From committee without further action.

**335—Young. To Com. on Rls.**

An act to amend Sections 137.2 and 139 of the Civil Code, relating to awards of alimony.

Jan. 18—Read first time. To printer.

Jan. 21—From printer. To committee.

Feb. 16—From committee: Be re-referred to Com. on Jud. Re-referred to Com. on Jud.

May 19—From committee: That the bill be retained in committee, and that the subject matter be referred to Rules Committee for assignment to proper interim committee. Subject matter referred to Com. on Rls.

June 18—From committee without further action.

ASSEMBLY BILL

No. 333

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. The Evidence Code is enacted, to read:

2  
3 EVIDENCE CODE

4  
5 DIVISION 1. PRELIMINARY PROVISIONS AND  
6 CONSTRUCTION

7  
8 1. This code shall be known as the Evidence Code.

9 2. The rule of the common law, that statutes in derogation  
10 thereof are to be strictly construed, has no application to this  
11 code. This code establishes the law of this State respecting the  
12 subject to which it relates, and its provisions are to be liber-  
13 ally construed with a view to effect its objects and to pro-  
14 mote justice.

15 3. If any provision or clause of this code or application  
16 thereof to any person or circumstances is held invalid, such  
17 invalidity shall not affect other provisions or applications of

LEGISLATIVE COUNSEL'S DIGEST

AB 333, as introduced, Song (Rls.). California Evidence Code.

Adds, amends, repeals, secs. of various codes.

Revises, consolidates and codifies in the Evidence Code the California law of evidence.

1 to escape detection or apprehension after the commission of  
2 a crime or a tort.

3 1019. There is no privilege under this article as to a com-  
4 munication relevant to an issue between parties all of whom  
5 claim through a deceased patient, regardless of whether the  
6 claims are by testate or intestate succession or by inter vivos  
7 transaction.

8 1020. There is no privilege under this article as to a com-  
9 munication relevant to an issue of breach, by the psychothera-  
10 pist or by the patient, of a duty arising out of the psycho-  
11 therapist-patient relationship.

12 1021. There is no privilege under this article as to a com-  
13 munication relevant to an issue concerning the intention of a  
14 patient, now deceased, with respect to a deed of conveyance,  
15 will, or other writing, executed by the patient, purporting to  
16 affect an interest in property.

17 1022. There is no privilege under this article as to a com-  
18 munication relevant to an issue concerning the validity of a  
19 deed of conveyance, will, or other writing, executed by a pa-  
20 tient, now deceased, purporting to affect an interest in  
21 property.

22 1023. There is no privilege under this article in a pro-  
23 ceeding under Chapter 6 (commencing with Section 1367) of  
24 Title 10 of Part 2 of the Penal Code initiated at the request  
25 of the defendant in a criminal action to determine his sanity.

26 1024. There is no privilege under this article if the psycho-  
27 therapist has reasonable cause to believe that the patient is in  
28 such mental or emotional condition as to be dangerous to him-  
29 self or to the person or property of another and that disclosure  
30 of the communication is necessary to prevent the threatened  
31 danger.

32 1025. There is no privilege under this article in a proceed-  
33 ing brought by or on behalf of the patient to establish his  
34 competence.

35 1026. There is no privilege under this article as to informa-  
36 tion that the psychotherapist or the patient is required to  
37 report to a public employee or as to information required to  
38 be recorded in a public office, unless the statute, charter,  
39 ordinance, administrative regulation, or other provision re-  
40 quiring the report or record specifically provides that the  
41 information is confidential or may not be disclosed in the par-  
42 ticular proceeding.

43

#### 44 Article 8. Clergyman-Penitent Privileges

45

46 1030. As used in this article, "clergyman" means a priest,  
47 minister, or similar functionary of a church or of a religious  
48 denomination or religious organization.

49 1031. As used in this article, "penitent" means a person  
50 who has made a penitential communication to a clergyman.

51 1032. As used in this article, "penitential communication"  
52 means a communication made in confidence, in the presence of



1 no third person so far as the penitent is aware, to a clergyman  
2 who, in the course of the discipline or practice of his church,  
3 denomination, or organization, is authorized or accustomed to  
4 hear such communications and has a duty to keep them secret.

5 1033. Subject to Section 912, a penitent, whether or not  
6 a party, has a privilege to refuse to disclose, and to prevent  
7 another from disclosing, a penitential communication if he  
8 claims the privilege.

9 1034. Subject to Section 912, a clergyman, whether or not  
10 a party, has a privilege to refuse to disclose a penitential  
11 communication if he claims the privilege.

12

13 Article 9. Official Information and Identity of Informer

14

15 1040. (a) As used in this section, "official information"  
16 means information acquired in confidence by a public employee  
17 in the course of his duty and not open, or officially disclosed,  
18 to the public prior to the time the claim of privilege is made.

19 (b) A public entity has a privilege to refuse to disclose of-  
20 ficial information, and to prevent another from disclosing such  
21 information, if the privilege is claimed by a person authorized  
22 by the public entity to do so and:

23 (1) Disclosure is forbidden by an Act of the Congress of  
24 the United States or a statute of this State; or

25 (2) Disclosure of the information is against the public in-  
26 terest because there is a necessity for preserving the confi-  
27 dentiality of the information that outweighs the necessity for  
28 disclosure in the interest of justice; but no privilege may be  
29 claimed under this paragraph if any person authorized to do  
30 so has consented that the information be disclosed in the pro-  
31 ceeding. In determining whether disclosure of the information  
32 is against the public interest, the interest of the public entity  
33 as a party in the outcome of the proceeding may not be con-  
34 sidered.

35 1041. (a) Except as provided in this section, a public en-  
36 tity has a privilege to refuse to disclose the identity of a per-  
37 son who has furnished information as provided in subdivision

38 (b) purporting to disclose a violation of a law of the United  
39 States or of this State or of a public entity in this State, and  
40 to prevent another from disclosing such identity, if the privi-  
41 lege is claimed by a person authorized by the public entity to  
42 do so and:

43 (1) Disclosure is forbidden by an Act of the Congress of  
44 the United States or a statute of this State; or

45 (2) Disclosure of the identity of the informer is against  
46 the public interest because there is a necessity for preserving  
47 the confidentiality of his identity that outweighs the neces-  
48 sity for disclosure in the interest of justice; but no privilege  
49 may be claimed under this paragraph if any person authorized  
50 to do so has consented that the identity of the informer be  
51 disclosed in the proceeding. In determining whether disclosure  
52 of the identity of the informer is against the public interest,

1 1104. Except as provided in Sections 1102 and 1103, evi-  
2 dence of a trait of a person's character with respect to care  
3 or skill is inadmissible to prove the quality of his conduct on  
4 a specified occasion.

5 1105. Any otherwise admissible evidence of habit or custom  
6 is admissible to prove conduct on a specified occasion in con-  
7 formity with the habit or custom.  
8

9 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
10 EXTRINSIC POLICIES  
11

12 1150. Except as otherwise provided by law, upon an in-  
13 quiry as to the validity of a verdict, any otherwise admissible  
14 evidence may be received as to statements made, or conduct,  
15 conditions, or events occurring, either within or without the  
16 jury room, of such a character as is likely to have influenced  
17 the verdict improperly. No evidence is admissible to show the  
18 effect of such statement, conduct, condition, or event upon a  
19 juror either in influencing him to assent to or dissent from  
20 the verdict or concerning the mental processes by which it  
21 was determined.

22 1151. When, after the occurrence of an event, remedial or  
23 precautionary measures are taken, which, if taken previously,  
24 would have tended to make the event less likely to occur, evi-  
25 dence of such subsequent measures is inadmissible to prove  
26 negligence or culpable conduct in connection with the event.

27 1152. (a) Evidence that a person has, in compromise or  
28 from humanitarian motives, furnished or offered or promised  
29 to furnish money or any other thing, act, or service to another  
30 who has sustained or claims to have sustained loss or damage,  
31 as well as any conduct or statements made in negotiation  
32 thereof, is inadmissible to prove his liability for the loss or  
33 damage or any part of it.

34 (b) This section does not affect the admissibility of evi-  
35 dence of:

36 (1) Partial satisfaction of an asserted claim or demand  
37 without questioning its validity when such evidence is offered  
38 to prove the validity of the claim; or

39 (2) A debtor's payment or promise to pay all or a part of  
40 his pre-existing debt when such evidence is offered to prove  
41 the creation of a new duty on his part or a revival of his pre-  
42 existing duty.

43 1153. Evidence of a plea of guilty, later withdrawn, or of  
44 an offer to plead guilty to the crime charged or to any other  
45 crime, made by the defendant in a criminal action is inadmis-  
46 sible in any action or in any proceeding of any nature, includ-  
47 ing proceedings before agencies, commissions, boards, and  
48 tribunals.

49 1154. Evidence that a person has accepted or offered or  
50 promised to accept a sum of money or any other thing, act,  
51 or service in satisfaction of a claim, as well as any conduct

1 1283. An official written report or record that a person is  
2 missing, missing in action, interned in a foreign country,  
3 captured by a hostile force, beleaguered by a hostile force,  
4 besieged by a hostile force, or detained in a foreign country  
5 against his will, or is dead or is alive, made by an employee  
6 of the United States authorized by any law of the United  
7 States to make such report or record shall be received in any  
8 court, office, or other place in this State as evidence that such  
9 person is missing, missing in action, interned in a foreign  
10 country, captured by a hostile force, beleaguered by a hostile  
11 force, besieged by a hostile force, or detained in a foreign  
12 country against his will, or is dead or is alive.

13 1284. Evidence of a writing made by the public employee  
14 who is the official custodian of the records in a public office,  
15 reciting diligent search and failure to find a record, is not  
16 made inadmissible by the hearsay rule when offered to prove  
17 the absence of a record in that office.

18  
19 Article 9. Former Testimony

20  
21 1290. As used in this article, "former testimony" means  
22 testimony given under oath in:

23 (a) Another action or in a former hearing or trial of the  
24 same action;

25 (b) A proceeding to determine a controversy conducted by  
26 or under the supervision of an agency that has the power to  
27 determine such a controversy and is an agency of the United  
28 States or a public entity in the United States;

29 (c) A deposition taken in compliance with law in another  
30 action; or

31 (d) An arbitration proceeding if the evidence of such  
32 former testimony is a verbatim transcript thereof.

33 1291. (a) Evidence of former testimony is not made inad-  
34 missible by the hearsay rule if the declarant is unavailable as  
35 a witness and:

36 (1) The former testimony is offered against a person who  
37 offered it in evidence in his own behalf on the former occasion  
38 or against the successor in interest of such person; or

39 (2) The party against whom the former testimony is offered  
40 was a party to the action or proceeding in which the testimony  
41 was given and had the right and opportunity to cross-examine  
42 the declarant with an interest and motive similar to that which  
43 he has at the hearing, except that testimony in a deposition  
44 taken in another action and testimony given in a preliminary  
45 examination in another criminal action is not made admissible  
46 by this paragraph against the defendant in a criminal action  
47 unless it was received in evidence at the trial of such other  
48 action.

49 (b) Except for objections to the form of the question which  
50 were not made at the time the former testimony was given,  
51 and objections based on competency or privilege which did  
52 not exist at that time, the admissibility of former testimony

1 under this section is subject to the same limitations and objec-  
 2 tions as though the declarant were testifying at the hearing.  
 3 1292. (a) Evidence of former testimony is not made inad-  
 4 missible by the hearsay rule if:

5 (1) The declarant is unavailable as a witness;

6 (2) The former testimony is offered in a civil action or  
 7 against the prosecution in a criminal action; and

8 (3) The issue is such that the party to the action or pro-  
 9 ceeding in which the former testimony was given had the  
 10 right and opportunity to cross-examine the declarant with an  
 11 interest and motive similar to that which the party against  
 12 whom the testimony is offered has at the hearing.

13 (b) Except for objections based on competency or privilege  
 14 which did not exist at the time the former testimony was  
 15 given, the admissibility of former testimony under this section  
 16 is subject to the same limitations and objections as though  
 17 the declarant were testifying at the hearing.

#### 18 Article 10. Judgments

19  
 20  
 21 1300. Evidence of a final judgment adjudging a person  
 22 guilty of a crime punishable as a felony is not made inad-  
 23 missible by the hearsay rule when offered in a civil action to  
 24 prove any fact essential to the judgment unless the judgment  
 25 was based on a plea of nolo contendere.

26 1301. Evidence of a final judgment is not made inadmis-  
 27 sible by the hearsay rule when offered by the judgment debtor  
 28 to prove any fact which was essential to the judgment in an  
 29 action in which he seeks to:

30 (a) Recover partial or total indemnity or exoneration for  
 31 money paid or liability incurred because of the judgment;

32 (b) Enforce a warranty to protect the judgment debtor  
 33 against the liability determined by the judgment; or

34 (c) Recover damages for breach of warranty substantially  
 35 the same as the warranty determined by the judgment to have  
 36 been breached.

37 1302. When the liability, obligation, or duty of a third  
 38 person is in issue in a civil action, evidence of a final judg-  
 39 ment against that person is not made inadmissible by the  
 40 hearsay rule when offered to prove such liability, obligation,  
 41 or duty.

#### 42 Article 11. Family History

43  
 44 1310. (a) Subject to subdivision (b), evidence of a state-  
 45 ment by a declarant who is unavailable as a witness concerning  
 46 his own birth, marriage, divorce, legitimacy, relationship by  
 47 blood or marriage, race, ancestry, or other similar fact of his  
 48 family history is not made inadmissible by the hearsay rule,  
 49 even though the declarant had no means of acquiring personal  
 50 knowledge of the matter declared.

1 (b) Evidence of a statement is inadmissible under this sec-  
2 tion if the statement was made under circumstances such as to  
3 indicate its lack of trustworthiness.

4 1311. (a) Subject to subdivision (b), evidence of a state-  
5 ment concerning the birth, marriage, divorce, death, legiti-  
6 macy, race, ancestry, relationship by blood or marriage, or  
7 other similar fact of the family history of a person other  
8 than the declarant is not made inadmissible by the hearsay  
9 rule if the declarant is unavailable as a witness and:

10 (1) The declarant was related to the other by blood or  
11 marriage; or

12 (2) The declarant was otherwise so intimately associated  
13 with the other's family as to be likely to have had accurate  
14 information concerning the matter declared and made the  
15 statement (i) upon information received from the other or  
16 from a person related by blood or marriage to the other or  
17 (ii) upon repute in the other's family.

18 (b) Evidence of a statement is inadmissible under this sec-  
19 tion if the statement was made under circumstances such as to  
20 indicate its lack of trustworthiness.

21 1312. Evidence of entries in family bibles or other family  
22 looks or charts, engravings on rings, family portraits, engrav-  
23 ings on urns, crypts, or tombstones, and the like, is not made  
24 inadmissible by the hearsay rule when offered to prove the  
25 birth, marriage, divorce, death, legitimacy, race, ancestry, re-  
26 lationship by blood or marriage, or other similar fact of the  
27 family history of a member of the family by blood or marriage.

28 1313. Evidence of reputation among members of a family  
29 is not made inadmissible by the hearsay rule if the reputation  
30 concerns the birth, marriage, divorce, death, legitimacy, race,  
31 ancestry, relationship by blood or marriage, or other similar  
32 fact of the family history of a member of the family by blood  
33 or marriage.

34 1314. Evidence of reputation in a community concerning  
35 the date or fact of birth, marriage, divorce, or death of a per-  
36 son resident in the community at the time of the reputation  
37 is not made inadmissible by the hearsay rule.

38 1315. Evidence of a statement concerning a person's birth,  
39 marriage, divorce, death, legitimacy, race, ancestry, relation-  
40 ship by blood or marriage, or other similar fact of family his-  
41 tory is not made inadmissible by the hearsay rule if:

42 (a) The statement is contained in a writing made as a  
43 record of an act, condition, or event that would be admissible  
44 as evidence of such act, condition, or event under Section 1271;

45 (b) The statement is of a kind customarily recorded in con-  
46 nection with the act, condition, or event recorded in the writ-  
47 ing; and

48 (c) The writing was made as a record of a church, religious  
49 denomination, or religious society.

50 1316. Evidence of a statement concerning a person's birth,  
51 marriage, divorce, death, legitimacy, race, ancestry, relation-

1 trate, grand jury, or other tribunal, against persons accused  
 2 or charged with the commission of crimes or offenses, the per-  
 3 son accused or charged shall, at his own request, but not other-  
 4 wise, be deemed a competent witness. The credit to be given to  
 5 his testimony shall be left solely to the jury, under the instruc-  
 6 tions of the court, or to the discrimination of the magistrate,  
 7 grand jury, or other tribunal before which the testimony is  
 8 given.

9 This section shall not be construed as compelling any such  
 10 person to testify.

11 SEC. 148. Section 1345 of the Penal Code is amended to  
 12 read:

13 1345. ~~WHEN MAY BE READ IN EVIDENCE.~~ The deposition, or  
 14 a certified copy thereof, may be read in evidence by either  
 15 party on the trial, ~~upon its appearing if the court finds that~~  
 16 the witness is, ~~unable to attend, by reason of his death, insan-~~  
 17 ~~ity, sickness, or infirmity, or of his continued absence from the~~  
 18 ~~State unavailable as a witness within the meaning of Section~~  
 19 ~~240 of the Evidence Code. Upon reading the deposition in evi-~~  
 20 ~~dence, The same objections may be taken to a question or~~  
 21 ~~answer contained therein in the deposition as if the witness~~  
 22 ~~had been examined orally in court.~~

23 SEC. 149. Section 1362 of the Penal Code is amended to  
 24 read:

25 1362. ~~DEPOSITIONS TO BE READ IN EVIDENCE. OBJECTIONS~~  
 26 ~~THERE TO.~~ The depositions taken under the commission may be  
 27 read in evidence by either party on the trial, ~~upon it being~~  
 28 ~~shown if the court finds that the witness is unable to attend~~  
 29 ~~from any cause whatever, and unavailable as a witness within~~  
 30 ~~the meaning of Section 240 of the Evidence Code. The same~~  
 31 ~~objections may be taken to a question in the interrogatories or~~  
 32 ~~to an answer in the deposition: as if the witness had been~~  
 33 ~~examined orally in court.~~

34 SEC. 150. Section 306 of the Public Utilities Code is  
 35 amended to read:

36 306. The office of the commission shall be in the City and  
 37 County of San Francisco. The office shall always be open, legal  
 38 holidays and nonjudicial days excepted. The commission shall  
 39 hold its sessions at least once in each calendar month in the  
 40 City and County of San Francisco. The commission may also  
 41 meet at such other times and in such other places as may be  
 42 expedient and necessary for the proper performance of its  
 43 duties, and for that purpose may rent quarters or offices.  
 44 Except for the commission's deliberative conferences, the ses-  
 45 sions and meetings of the commission shall be open and public  
 46 and all persons shall be permitted to attend.

47 The commission shall have a seal, bearing the inscription  
 48 "Public Utilities Commission State of California." The seal

1 shall be affixed to all writs and authentications of copies of  
2 records and to such other instruments as the commission shall  
3 direct. ~~All courts shall take judicial notice of the seal.~~

4 The commission may procure all necessary books, maps,  
5 charts, stationery, instruments, office furniture, apparatus, and  
6 appliances.

7 SEC. 151. Sections 2 to 150 of this act shall become opera-  
8 tive on January 1, 1967.

()

AMENDED IN ASSEMBLY FEBRUARY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 333

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, LABOR CODE, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. The Evidence Code is enacted, to read:

2  
3 EVIDENCE CODE

4  
5 DIVISION 1. PRELIMINARY PROVISIONS AND  
6 CONSTRUCTION

7  
8 1. This code shall be known as the Evidence Code.

9 2. The rule of the common law, that statutes in derogation  
10 thereof are to be strictly construed, has no application to this  
11 code. This code establishes the law of this State respecting the  
12 subject to which it relates, and its provisions are to be liber-  
13 ally construed with a view to effect its objects and to pro-  
14 mote effecting its objects and promoting justice.

15 3. If any provision or clause of this code or application  
16 thereof to any person or circumstances is held invalid, such  
17 invalidity shall not affect other provisions or applications of  
18 the code which can be given effect without the invalid provi-  
19 sion or application, and to this end the provisions of this code  
20 are declared to be severable.



1 Article 9. Official Information and Identity of Informer

2

3 1040. (a) As used in this section, "official information"  
4 means information acquired in confidence by a public employee  
5 in the course of his duty and not open, or officially disclosed,  
6 to the public prior to the time the claim of privilege is made.

7 (b) A public entity has a privilege to refuse to disclose of-  
8 ficial information, and to prevent another from disclosing such  
9 information, if the privilege is claimed by a person authorized  
10 by the public entity to do so and:

11 (1) Disclosure is forbidden by an Act of the Congress of  
12 the United States or a statute of this State; or

13 (2) Disclosure of the information is against the public in-  
14 terest because there is a necessity for preserving the confi-  
15 dentiality of the information that outweighs the necessity for  
16 disclosure in the interest of justice; but no privilege may be  
17 claimed under this paragraph if any person authorized to do  
18 so has consented that the information be disclosed in the pro-  
19 ceeding. In determining whether disclosure of the information  
20 is against the public interest, the interest of the public entity  
21 as a party in the outcome of the proceeding may not be con-  
22 sidered.

23 1041. (a) Except as provided in this section, a public en-  
24 tity has a privilege to refuse to disclose the identity of a per-  
25 son who has furnished information as provided in subdivision  
26 (b) purporting to disclose a violation of a law of the United  
27 States or of this State or of a public entity in this State, and  
28 to prevent another from disclosing such identity, if the privi-  
29 lege is claimed by a person authorized by the public entity to  
30 do so and:

31 (1) Disclosure is forbidden by an Act of the Congress of  
32 the United States or a statute of this State; or

33 (2) Disclosure of the identity of the informer is against  
34 the public interest because there is a necessity for preserving  
35 the confidentiality of his identity that outweighs the neces-  
36 sity for disclosure in the interest of justice; but no privilege  
37 may be claimed under this paragraph if any person authorized  
38 to do so has consented that the identity of the informer be  
39 disclosed in the proceeding. In determining whether disclosure  
40 of the identity of the informer is against the public interest,  
41 the interest of the public entity as a party in the outcome of  
42 the proceeding may not be considered.

43 (b) This section applies only if the information is furnished  
44 in confidence by the informer to:

45 (1) A law enforcement officer;

46 (2) A representative of an administrative agency charged  
47 with the administration or enforcement of the law alleged to  
48 be violated; or

49 (3) Any person for the purpose of transmittal to a person  
50 listed in paragraph (1) or (2).

51 (c) There is no privilege under this section to prevent the  
52 informer from disclosing his identity.

1 1042. (a) Except where disclosure is forbidden by an Act  
2 of the Congress of the United States, if a claim of privilege  
3 under this article by the State or a public entity in this State  
4 is sustained in a criminal proceeding or in a disciplinary pro-  
5 ceeding, the presiding officer shall make such order or finding  
6 of fact adverse to the public entity bringing the proceeding as  
7 is required by law upon any issue in the proceeding to which  
8 the privileged information is material.

9 (b) Notwithstanding subdivision (a), where a search is  
10 made pursuant to a warrant valid on its face, the public entity  
11 bringing a criminal proceeding or a disciplinary proceeding  
12 is not required to reveal to the defendant official information  
13 or the identity of an informer in order to establish the legality  
14 of the search or the admissibility of any evidence obtained as  
15 a result of it.

16  
17 Article 10. Political Vote

18  
19 1050. If he claims the privilege, a person has a privilege  
20 to refuse to disclose the tenor of his vote at a public election  
21 where the voting is by secret ballot unless he voted illegally or  
22 he previously made an unprivileged disclosure of the tenor  
23 of his vote.

24  
25 Article 11. Trade Secret

26  
27 1060. If he or his agent or employee claims the privilege,  
28 the owner of a trade secret has a privilege to refuse to disclose  
29 the secret, and to prevent another from disclosing it, if the  
30 allowance of the privilege will not tend to conceal fraud or  
31 otherwise work injustice.

32  
33 CHAPTER 5. IMMUNITY OF NEWSMAN FROM CITATION  
34 FOR CONTEMPT

35  
36 1070. As used in this chapter, "newsman" means a person  
37 directly engaged in the procurement of news for publication,  
38 or in the publication of news, by news media.

39 1071. As used in this chapter, "news media" means news-  
40 papers, press associations, wire services, radio, and television.

41 1072. A newsman may not be adjudged in contempt for  
42 refusing to disclose the source of news procured for publica-  
43 tion and published by news media, unless the source has been  
44 disclosed previously or the disclosure of the source is required  
45 in the public interest or otherwise required to prevent injustice.

46 1073. The procedure specified in subdivisions (a) and (b)  
47 of Section 914 and in subdivisions (a) and (b) of Section 915  
48 applies to the determination of a newsman's claim for protec-  
49 tion under Section 1072.

1 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
2 EXTRINSIC POLICIES  
3

4 1150. Except as otherwise provided by law, upon an in-  
5 quiry as to the validity of a verdict, any otherwise admissible  
6 evidence may be received as to statements made, or conduct,  
7 conditions, or events occurring, either within or without the  
8 jury room, of such a character as is likely to have influenced  
9 the verdict improperly. No evidence is admissible to show the  
10 effect of such statement, conduct, condition, or event upon a  
11 juror either in influencing him to assent to or dissent from  
12 the verdict or concerning the mental processes by which it  
13 was determined.

14 1151. When, after the occurrence of an event, remedial or  
15 precautionary measures are taken, which, if taken previously,  
16 would have tended to make the event less likely to occur, evi-  
17 dence of such subsequent measures is inadmissible to prove  
18 negligence or culpable conduct in connection with the event.

19 1152. (a) Evidence that a person has, in compromise or  
20 from humanitarian motives, furnished or offered or promised  
21 to furnish money or any other thing, act, or service to another  
22 who has sustained or claims to have sustained loss or damage,  
23 as well as any conduct or statements made in negotiation  
24 thereof, is inadmissible to prove his liability for the loss or  
25 damage or any part of it.

26 (b) This section does not affect the admissibility of evi-  
27 dence of:

28 (1) Partial satisfaction of an asserted claim or demand  
29 without questioning its validity when such evidence is offered  
30 to prove the validity of the claim; or

31 (2) A debtor's payment or promise to pay all or a part of  
32 his pre-existing debt when such evidence is offered to prove  
33 the creation of a new duty on his part or a revival of his pre-  
34 existing duty.

35 1153. Evidence of a plea of guilty, later withdrawn, or of  
36 an offer to plead guilty to the crime charged or to any other  
37 crime, made by the defendant in a criminal action is inadmis-  
38 sible in any action or in any proceeding of any nature, includ-  
39 ing proceedings before agencies, commissions, boards, and  
40 tribunals.

41 1154. Evidence that a person has accepted or offered or  
42 promised to accept a sum of money or any other thing, act,  
43 or service in satisfaction of a claim, as well as any conduct  
44 or statements made in negotiation thereof, is inadmissible to  
45 prove the invalidity of the claim or any part of it.

46 1155. Evidence that a person was, at the time a harm was  
47 suffered by another, insured wholly or partially against loss  
48 arising from liability for that harm is inadmissible to prove  
49 negligence or other wrongdoing.

50 1156. (a) In-hospital medical staff committees of a li-  
51 censed hospital may engage in research and medical study for  
52 the purpose of reducing morbidity or mortality, and may

1 worthy indication that the act or event did not occur or the  
2 condition did not exist.

3

4 Article 8. Official Records and Other Official Writings

5

6 1280. Evidence of a writing made as a record of an act,  
7 condition, or event is not made inadmissible by the hearsay  
8 rule when offered to prove the act, condition, or event if:

9 (a) The writing was made by and within the scope of duty  
10 of a public employee;

11 (b) The writing was made at or near the time of the act,  
12 condition, or event; and

13 (c) The sources of information and method and time of  
14 preparation were such as to indicate its trustworthiness.

15 1281. Evidence of a writing made as a record of a birth,  
16 fetal death, death, or marriage is not made inadmissible  
17 by the hearsay rule if the maker was required by law to file  
18 the writing in a designated public office and the writing was  
19 made and filed as required by law.

20 1282. A written finding of presumed death made by an  
21 employee of the United States authorized to make such finding  
22 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
23 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
24 App. 1001-1016), as enacted or as heretofore or hereafter  
25 amended, shall be received in any court, office, or other place  
26 in this State as evidence of the death of the person therein  
27 found to be dead and of the date, circumstances, and place  
28 of his disappearance.

29 1283. An official written report or record that a person is  
30 missing, missing in action, interned in a foreign country,  
31 captured by a hostile force, beleaguered by a hostile force,  
32 besieged by a hostile force, or detained in a foreign country  
33 against his will, or is dead or is alive, made by an employee  
34 of the United States authorized by any law of the United  
35 States to make such report or record shall be received in any  
36 court, office, or other place in this State as evidence that such  
37 person is missing, missing in action, interned in a foreign  
38 country, captured by a hostile force, beleaguered by a hostile  
39 force, besieged by a hostile force, or detained in a foreign  
40 country against his will, or is dead or is alive.

41 1284. Evidence of a writing made by the public employee  
42 who is the official custodian of the records in a public office,  
43 reciting diligent search and failure to find a record, is not  
44 made inadmissible by the hearsay rule when offered to prove  
45 the absence of a record in that office.

46

47 Article 9. Former Testimony

48

49 1290. As used in this article, "former testimony" means  
50 testimony given under oath in:

51 (a) Another action or in a former hearing or trial of the  
52 same action;

1 (b) A proceeding to determine a controversy conducted by  
 2 or under the supervision of an agency that has the power to  
 3 determine such a controversy and is an agency of the United  
 4 States or a public entity in the United States;

5 (c) A deposition taken in compliance with law in another  
 6 action; or

7 (d) An arbitration proceeding if the evidence of such  
 8 former testimony is a verbatim transcript thereof.

9 1291. (a) Evidence of former testimony is not made inad-  
 10 missible by the hearsay rule if the declarant is unavailable as  
 11 a witness and:

12 (1) The former testimony is offered against a person who  
 13 offered it in evidence in his own behalf on the former occasion  
 14 or against the successor in interest of such person; or

15 (2) The party against whom the former testimony is offered  
 16 was a party to the action or proceeding in which the testimony  
 17 was given and had the right and opportunity to cross-examine  
 18 the declarant with an interest and motive similar to that which  
 19 he has at the hearing, except that testimony in a deposition  
 20 taken in another action and testimony given in a preliminary  
 21 examination in another criminal action is not made admissible  
 22 by this paragraph against the defendant in a criminal action  
 23 unless it was received in evidence at the trial of such other  
 24 action.

25 ~~(b) Except for objections to the form of the question which~~  
 26 ~~were not made at the time the former testimony was given,~~  
 27 ~~and objections based on competency or privilege which did~~  
 28 ~~not exist at that time, the admissibility of former testimony~~  
 29 ~~he has at the hearing.~~

30 (b) *The admissibility of former testimony under this section*  
 31 *is subject to the same limitations and objections as though the*  
 32 *declarant were testifying at the hearing, except that former*  
 33 *testimony offered under this section is not subject to:*

34 (1) *Objections to the form of the question which were not*  
 35 *made at the time the former testimony was given.*

36 (2) *Objections based on competency or privilege which did*  
 37 *not exist at the time the former testimony was given.*

38 under this section is subject to the same limitations and objec-  
 39 tions as though the declarant were testifying at the hearing.

40 1292. (a) Evidence of former testimony is not made inad-  
 41 missible by the hearsay rule if:

42 (1) The declarant is unavailable as a witness;

43 (2) The former testimony is offered in a civil action or  
 44 against the prosecution in a criminal action; and

45 (3) The issue is such that the party to the action or pro-  
 46 ceeding in which the former testimony was given had the  
 47 right and opportunity to cross-examine the declarant with an  
 48 interest and motive similar to that which the party against  
 49 whom the testimony is offered has at the hearing.

50 ~~(b) Except for objections based on competency or privilege~~  
 51 ~~which did not exist at the time the former testimony was~~

1 SEC. 141. Section 939.6 of the Penal Code is amended to  
2 read:

3 939.6. (a) Subject to subdivision (b), in the investigation  
4 of a charge, the grand jury shall receive no other evidence  
5 than such as is:

6 (1) Given by witnesses produced and sworn before the  
7 grand jury;

8 (2) Furnished by writings, material objects, or other things  
9 presented to the senses; or

10 (3) Contained in a deposition that is admissible under sub-  
11 division 3 of Section 686

12 (b) The grand jury shall receive none but evidence that  
13 would be admissible over objection at the trial of a criminal  
14 action, but the fact that evidence which would have been ex-  
15 cluded at trial was received by the grand jury does not render  
16 the indictment void where sufficient competent evidence to sup-  
17 port the indictment was received by the grand jury.

18 SEC. 142. Section 961 of the Penal Code is amended to  
19 read:

20 961. Neither presumptions of law, nor matters of which  
21 judicial notice is authorized or required to be taken, need be  
22 stated in an accusatory pleading.

23 SEC. 143. Section 963 of the Penal Code is amended to  
24 read:

25 963. In pleading a private statute, or an ordinance of a  
26 county or a municipal corporation, or a right derived there-  
27 from, it is sufficient to refer to the statute or ordinance by its  
28 title and the day of its passage, and the court must thereupon  
29 take judicial notice thereof in the same manner that it takes  
30 judicial notice of matters listed in Section 452 of the Evidence  
31 Code.

32 SEC. 144. Section 1120 of the Penal Code is amended to  
33 read:

34 1120. If a juror has any personal knowledge respecting a  
35 fact in controversy in a cause, he must declare the same in  
36 open court during the trial. If, during the retirement of the  
37 jury, a juror declare a fact which could be evidence in the  
38 cause, as of his own knowledge, the jury must return into  
39 court. In either of these cases, the juror making the statement  
40 must be sworn as a witness and examined in the presence of  
41 the parties in order that the court may determine whether  
42 good cause exists for his discharge as a juror.

43 SEC. 145. Section 1322 of the Penal Code is repealed.

44 SEC. 146. Section 1323 of the Penal Code is repealed.

45 SEC. 147. Section 1323.5 of the Penal Code is repealed.

46 SEC. 148. Section 1345 of the Penal Code is amended to  
47 read:

48 1345. The deposition, or a certified copy thereof, may be  
49 read in evidence by either party on the trial if the court finds  
50 that the witness is unavailable as a witness within the meaning  
51 of Section 240 of the Evidence Code. The same objections may

1 be taken to a question or answer contained in the deposition  
2 as if the witness had been examined orally in court.

3 SEC. 149. Section 1362 of the Penal Code is amended to  
4 read:

5 1362. The depositions taken under the commission may be  
6 read in evidence by either party on the trial if the court finds  
7 that the witness is unavailable as a witness within the meaning  
8 of Section 240 of the Evidence Code. The same objections may  
9 be taken to a question in the interrogatories or to an answer  
10, in the deposition as if the witness had been examined orally in  
11 court.

12 SEC. 150. Section 306 of the Public Utilities Code is  
13 amended to read:

14 306. The office of the commission shall be in the City and  
15 County of San Francisco. The office shall always be open, legal  
16 holidays and nonjudicial days excepted. The commission shall  
17 hold its sessions at least once in each calendar month in the  
18 City and County of San Francisco. The commission may also  
19 meet at such other times and in such other places as may be  
20 expedient and necessary for the proper performance of its  
21 duties, and for that purpose may rent quarters or offices.  
22 Except for the commission's deliberative conferences, the ses-  
23 sions and meetings of the commission shall be open and public  
24 and all persons shall be permitted to attend.

25 The commission shall have a seal, bearing the inscription  
26 "Public Utilities Commission State of California." The seal  
27 shall be affixed to all writs and authentications of copies of  
28 records and to such other instruments as the commission shall  
29 direct.

30 The commission may procure all necessary books, maps,  
31 charts, stationery, instruments, office furniture, apparatus, and  
32 appliances.

33 SEC. 151. Sections 2 to 150 of this act shall become opera-  
34 tive on January 1, 1967.

AMENDED IN ASSEMBLY MARCH 2, 1965  
AMENDED IN ASSEMBLY FEBRUARY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

ASSEMBLY BILL

No. 333

---

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

---

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Labor Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

- 1 SECTION 1. The Evidence Code is enacted, to read:  
2  
3 EVIDENCE CODE  
4  
5 DIVISION 1. PRELIMINARY PROVISIONS AND  
6 CONSTRUCTION  
7  
8 1. This code shall be known as the Evidence Code.  
9 2. The rule of the common law, that statutes in derogation  
10 thereof are to be strictly construed, has no application to this  
11 code. This code establishes the law of this state respecting the  
12 subject to which it relates, and its provisions are to be liber-  
13 ally construed with a view to effecting its objects and promot-  
14 ing justice.  
15 3. If any provision or clause of this code or application  
16 thereof to any person or circumstances is held invalid, such  
17 invalidity shall not affect other provisions or applications of  
18 the code which can be given effect without the invalid provi-  
19 sion or application, and to this end the provisions of this code  
20 are declared to be severable.

MJN 3065



1 1032. As used in this article, "penitential communication"  
2 means a communication, made in confidence, in the presence of  
3 no third person so far as the penitent is aware, to a clergyman  
4 who, in the course of the discipline or practice of his church,  
5 denomination, or organization, is authorized or accustomed to  
6 hear such communications and has a duty to keep them secret.  
7 1033. Subject to Section 912, a penitent, whether or not  
8 a party, has a privilege to refuse to disclose, and to prevent  
9 another from disclosing, a penitential communication if he  
10 claims the privilege.

11 1034. Subject to Section 912, a clergyman, whether or not  
12 a party, has a privilege to refuse to disclose a penitential  
13 communication if he claims the privilege.  
14

#### 15 Article 9. Official Information and Identity of Informer 16

17 1040. (a) As used in this section, "official information"  
18 means information acquired in confidence by a public employee  
19 in the course of his duty and not open, or officially disclosed,  
20 to the public prior to the time the claim of privilege is made.

21 (b) A public entity has a privilege to refuse to disclose of-  
22 ficial information, and to prevent another from disclosing such  
23 information, if the privilege is claimed by a person authorized  
24 by the public entity to do so and:

25 (1) Disclosure is forbidden by an act of the Congress of  
26 the United States or a statute of this state; or

27 (2) Disclosure of the information is against the public in-  
28 terest because there is a necessity for preserving the confi-  
29 dentiality of the information that outweighs the necessity for  
30 disclosure in the interest of justice; but no privilege may be  
31 claimed under this paragraph if any person authorized to do  
32 so has consented that the information be disclosed in the pro-  
33 ceeding. In determining whether disclosure of the information  
34 is against the public interest, the interest of the public entity  
35 as a party in the outcome of the proceeding may not be con-  
36 sidered.

37 1041. (a) Except as provided in this section, a public en-  
38 tity has a privilege to refuse to disclose the identity of a per-  
39 son who has furnished information as provided in subdivision  
40 (b) purporting to disclose a violation of a law of the United  
41 States or of this state or a public entity in this state, and  
42 to prevent another from disclosing such identity, if the privi-  
43 lege is claimed by a person authorized by the public entity to  
44 do so and:

45 (1) Disclosure is forbidden by an act of the Congress of  
46 the United States or a statute of this state; or

47 (2) Disclosure of the identity of the informer is against  
48 the public interest because there is a necessity for preserving  
49 the confidentiality of his identity that outweighs the neces-  
50 sity for disclosure in the interest of justice; but no privilege  
51 may be claimed under this paragraph if any person authorized  
52 to do so has consented that the identity of the informer be

1 disclosed in the proceeding. In determining whether disclosure  
2 of the identity of the informer is against the public interest,  
3 the interest of the public entity as a party in the outcome of  
4 the proceeding may not be considered.

5 (b) This section applies only if the information is furnished  
6 in confidence by the informer to:

- 7 (1) A law enforcement officer;
- 8 (2) A representative of an administrative agency charged  
9 with the administration or enforcement of the law alleged to  
10 be violated; or

11 (3) Any person for the purpose of transmittal to a person  
12 listed in paragraph (1) or (2).

13 (c) There is no privilege under this section to prevent the  
14 informer from disclosing his identity.

15 1042. (a) Except where disclosure is forbidden by an act  
16 of the Congress of the United States, if a claim of privilege  
17 under this article by the state or a public entity in this state  
18 is sustained in a criminal proceeding ~~or in a disciplinary pro-~~  
19 ~~ceeding~~, the presiding officer shall make such order or finding  
20 of fact adverse to the public entity bringing the proceeding as  
21 is required by law upon any issue in the proceeding to which  
22 the privileged information is material.

23 (b) Notwithstanding subdivision (a), where a search is  
24 made pursuant to a warrant valid on its face, the public entity  
25 bringing a criminal proceeding ~~or a disciplinary proceeding~~  
26 is not required to reveal to the defendant official information  
27 or the identity of an informer in order to establish the legality  
28 of the search or the admissibility of any evidence obtained as  
29 a result of it.

30 Article 10. Political Vote

31  
32 1050. If he claims the privilege, a person has a privilege  
33 to refuse to disclose the tenor of his vote at a public election  
34 where the voting is by secret ballot unless he voted illegally or  
35 he previously made an unprivileged disclosure of the tenor  
36 of his vote.

37 Article 11. Trade Secret

38  
39 1060. If he or his agent or employee claims the privilege,  
40 the owner of a trade secret has a privilege to refuse to disclose  
41 the secret, and to prevent another from disclosing it, if the  
42 allowance of the privilege will not tend to conceal fraud or  
43 otherwise work injustice.

44  
45 CHAPTER 5. IMMUNITY OF NEWSMAN FROM CITATION  
46 FOR CONTEMPT

47  
48 1070. As used in this chapter, "newsman" means a person  
49 directly engaged in the procurement of news for publication,  
50 or in the publication of news, by news media.

51 1071. As used in this chapter, "news media" means news-  
52 papers, press associations, wire services, radio, and television.

1 (b) Offered by the prosecution to rebut evidence adduced  
2 by the defendant under subdivision (a).

3 1103. In a criminal action, evidence of the character or a  
4 trait of character (in the form of an opinion, evidence of repu-  
5 tation, or evidence of specific instances of conduct) of the vic-  
6 tim of the crime for which the defendant is being prosecuted  
7 is not made inadmissible by Section 1101 if such evidence is:

8 (a) Offered by the defendant to prove conduct of the victim  
9 in conformity with such character or trait of character.

10 (b) Offered by the prosecution to rebut evidence adduced  
11 by the defendant under subdivision (a).

12 1104. Except as provided in Sections 1102 and 1103, evi-  
13 dence of a trait of a person's character with respect to care  
14 or skill is inadmissible to prove the quality of his conduct on  
15 a specified occasion.

16 1105. Any otherwise admissible evidence of habit or custom  
17 is admissible to prove conduct on a specified occasion in con-  
18 formity with the habit or custom.

19  
20 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
21 EXTRINSIC POLICIES  
22

23 1150. Except as otherwise provided by law, upon an in-

24 1150. (a) Upon an inquiry as to the validity of a verdict,  
25 any otherwise admissible evidence may be received as to state-  
26 ments made, or conduct, conditions, or events occurring, either  
27 within or without the jury room, of such a character as is likely  
28 to have influenced the verdict improperly. No evidence is ad-  
29 missible to show the effect of such statement, conduct, condi-  
30 tion, or event upon a juror either in influencing him to assent  
31 to or dissent from the verdict or concerning the mental pro-  
32 cesses by which it was determined.

33 (b) *Nothing in this code affects the law relating to the com-  
34 petence of a juror to give evidence to impeach or support a  
35 verdict.*

36 1151. When, after the occurrence of an event, remedial or  
37 precautionary measures are taken, which, if taken previously,  
38 would have tended to make the event less likely to occur, evi-  
39 dence of such subsequent measures is inadmissible to prove  
40 negligence or culpable conduct in connection with the event.

41 1152. (a) Evidence that a person has, in compromise or  
42 from humanitarian motives, furnished or offered or promised  
43 to furnish money or any other thing, act, or service to another  
44 who has sustained or claims to have sustained loss or damage,  
45 as well as any conduct or statements made in negotiation  
46 thereof, is inadmissible to prove his liability for the loss or  
47 damage or any part of it.

48 (b) This section does not affect the admissibility of evi-  
49 dence of:

50 (1) Partial satisfaction of an asserted claim or demand  
51 without questioning its validity when such evidence is offered  
52 to prove the validity of the claim; or

1 (2) A debtor's payment or promise to pay all or a part of  
2 his pre-existing debt when such evidence is offered to prove  
3 the creation of a new duty on his part or a revival of his pre-  
4 existing duty.

5 1153. Evidence of a plea of guilty, later withdrawn, or of  
6 an offer to plead guilty to the crime charged or to any other  
7 crime, made by the defendant in a criminal action is inadmis-  
8 sible in any action or in any proceeding of any nature, includ-  
9 ing proceedings before agencies, commissions, boards, and  
10 tribunals.

11 1154. Evidence that a person has accepted or offered or  
12 promised to accept a sum of money or any other thing, act,  
13 or service in satisfaction of a claim, as well as any conduct  
14 or statements made in negotiation thereof, is inadmissible to  
15 prove the invalidity of the claim or any part of it.

16 1155. Evidence that a person was, at the time a harm was  
17 suffered by another, insured wholly or partially against loss  
18 arising from liability for that harm is inadmissible to prove  
19 negligence or other wrongdoing.

20 1156. (a) In-hospital medical staff committees of a li-  
21 censed hospital may engage in research and medical study for  
22 the purpose of reducing morbidity or mortality, and may  
23 make findings and recommendations relating to such purpose.  
24 Except as provided in subdivision (b), the written records  
25 of interviews, reports, statements, or memoranda of such in-  
26 hospital medical staff committees relating to such medical  
27 studies are subject to Sections 2016 to 2036, inclusive, of the  
28 Code of Civil Procedure (relating to discovery proceedings)  
29 but, subject to subdivisions (c) and (d), shall not be admitted  
30 as evidence in any action or before any administrative body,  
31 agency, or person.

32 (b) The disclosure, with or without the consent of the pa-  
33 tient, of information concerning him to such in-hospital medi-  
34 cal staff committee does not make unprivileged any informa-  
35 tion that would otherwise be privileged under Section 994 or  
36 1014; but, notwithstanding Sections 994 and 1014, such in-  
37 formation is subject to discovery under subdivision (a) except  
38 that the identity of any patient may not be discovered under  
39 subdivision (a) unless the patient consents to such disclosure.

40 (c) This section does not affect the admissibility in evidence  
41 of the original medical records of any patient.

42 (d) This section does not exclude evidence which is relevant  
43 evidence in a criminal action.

## 44 DIVISION 10. HEARSAY EVIDENCE

### 45 CHAPTER 1. GENERAL PROVISIONS

46  
47  
48  
49 1200. (a) "Hearsay evidence" is evidence of a statement  
50 that was made other than by a witness while testifying at the  
51 hearing and that is offered to prove the truth of the matter  
52 stated.

1 worthy indication that the act or event did not occur or the  
2 condition did not exist.

3  
4 Article 8. Official Records and Other Official Writings

5  
6 1280. Evidence of a writing made as a record of an act,  
7 condition, or event is not made inadmissible by the hearsay  
8 rule when offered to prove the act, condition, or event if:

9 (a) The writing was made by and within the scope of duty  
10 of a public employee;

11 (b) The writing was made at or near the time of the act,  
12 condition, or event; and

13 (c) The sources of information and method and time of  
14 preparation were such as to indicate its trustworthiness.

15 1281. Evidence of a writing made as a record of a birth,  
16 fetal death, death, or marriage is not made inadmissible  
17 by the hearsay rule if the maker was required by law to file  
18 the writing in a designated public office and the writing was  
19 made and filed as required by law.

20 1282. A written finding of presumed death made by an  
21 employee of the United States authorized to make such finding  
22 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
23 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
24 App. 1001-1016), as enacted or as heretofore or hereafter  
25 amended, shall be received in any court, office, or other place  
26 in this state as evidence of the death of the person therein  
27 found to be dead and of the date, circumstances, and place  
28 of his disappearance.

29 1283. An official written report or record that a person is  
30 missing, missing in action, interned in a foreign country,  
31 captured by a hostile force, beleaguered by a hostile force,  
32 besieged by a hostile force, or detained in a foreign country  
33 against his will, or is dead or is alive, made by an employee  
34 of the United States authorized by any law of the United  
35 States to make such report or record shall be received in any  
36 court, office, or other place in this state as evidence that such  
37 person is missing, missing in action, interned in a foreign  
38 country, captured by a hostile force, beleaguered by a hostile  
39 force, besieged by a hostile force, or detained in a foreign  
40 country against his will, or is dead or is alive.

41 1284. Evidence of a writing made by the public employee  
42 who is the official custodian of the records in a public office,  
43 reciting diligent search and failure to find a record, is not  
44 made inadmissible by the hearsay rule when offered to prove  
45 the absence of a record in that office.

46  
47 Article 9. Former Testimony

48  
49 1290. As used in this article, "former testimony" means  
50 testimony given under oath in:

51 (a) Another action or in a former hearing or trial of the  
52 same action;

1 (b) A proceeding to determine a controversy conducted by  
2 or under the supervision of an agency that has the power to  
3 determine such a controversy and is an agency of the United  
4 States or a public entity in the United States;

5 (c) A deposition taken in compliance with law in another  
6 action; or

7 (d) An arbitration proceeding if the evidence of such  
8 former testimony is a verbatim transcript thereof.

9 1291. (a) Evidence of former testimony is not made inad-  
10 missible by the hearsay rule if the declarant is unavailable as  
11 a witness and:

12 (1) The former testimony is offered against a person who  
13 offered it in evidence in his own behalf on the former occasion  
14 or against the successor in interest of such person; or

15 (2) The party against whom the former testimony is offered  
16 was a party to the action or proceeding in which the testimony  
17 was given and had the right and opportunity to cross-examine  
18 the declarant with an interest and motive similar to that which  
19 he has at the hearing.

20 (b) The admissibility of former testimony under this section  
21 is subject to the same limitations and objections as though the  
22 declarant were testifying at the hearing, except that former  
23 testimony offered under this section is not subject to:

24 (1) Objections to the form of the question which were not  
25 made at the time the former testimony was given.

26 (2) Objections based on competency or privilege which did  
27 not exist at the time the former testimony was given.

28 1292. (a) Evidence of former testimony is not made inad-  
29 missible by the hearsay rule if:

30 (1) The declarant is unavailable as a witness;

31 (2) The former testimony is offered in a civil action or  
32 against the prosecution in a criminal action; and

33 (3) The issue is such that the party to the action or pro-  
34 ceeding in which the former testimony was given had the  
35 right and opportunity to cross-examine the declarant with an  
36 interest and motive similar to that which the party against  
37 whom the testimony is offered has at the hearing.

38 (b) The admissibility of former testimony under this section  
39 is subject to the same limitations and objections as though the  
40 declarant were testifying at the hearing, except that former  
41 testimony offered under this section is not subject to objections  
42 based on competency or privilege which did not exist at the  
43 time the former testimony was given.

44  
45 Article 10. Judgments

46  
47 1300. Evidence of a final judgment adjudging a person  
48 guilty of a crime punishable as a felony is not made inad-  
49 missible by the hearsay rule when offered in a civil action to

1 961. Neither presumptions of law, nor matters of which  
2 judicial notice is authorized or required to be taken, need be  
3 stated in an accusatory pleading.

4 SEC. 143. Section 963 of the Penal Code is amended to  
5 read:

6 963. In pleading a private statute, or an ordinance of a  
7 county or a municipal corporation, or a right derived there-  
8 from, it is sufficient to refer to the statute or ordinance by its  
9 title and the day of its passage, and the court must thereupon  
10 take judicial notice thereof in the same manner that it takes  
11 judicial notice of matters listed in Section 452 of the Evidence  
12 Code.

13 SEC. 144. Section 1120 of the Penal Code is amended to  
14 read:

15 1120. If a juror has any personal knowledge respecting a  
16 fact in controversy in a cause, he must declare the same in  
17 open court during the trial. If, during the retirement of the  
18 jury, a juror declare a fact which could be evidence in the  
19 cause, as of his own knowledge, the jury must return into  
20 court. In either of these cases, the juror making the statement  
21 must be sworn as a witness and examined in the presence of  
22 the parties in order that the court may determine whether  
23 good cause exists for his discharge as a juror.

24 SEC. 145. Section 1322 of the Penal Code is repealed.

25 SEC. 146. Section 1323 of the Penal Code is repealed.

26 SEC. 147. Section 1323.5 of the Penal Code is repealed.

27 SEC. 148. Section 1345 of the Penal Code is amended to  
28 read:

29 1345. The deposition, or a certified copy thereof, may be  
30 read in evidence by either party on the trial if the court finds  
31 that the witness is unavailable as a witness within the meaning  
32 of Section 240 of the Evidence Code. The same objections may  
33 be taken to a question or answer contained in the deposition  
34 as if the witness had been examined orally in court.

35 SEC. 149. Section 1362 of the Penal Code is amended to  
36 read:

37 1362. The depositions taken under the commission may be  
38 read in evidence by either party on the trial if the court finds  
39 that the witness is unavailable as a witness within the meaning  
40 of Section 240 of the Evidence Code. The same objections may  
41 be taken to a question in the interrogatories or to an answer  
42 in the deposition as if the witness had been examined orally in  
43 court.

44 SEC. 150. Section 306 of the Public Utilities Code is  
45 amended to read:

46 306. The office of the commission shall be in the City and  
47 County of San Francisco. The office shall always be open, legal  
48 holidays and nonjudicial days excepted. The commission shall  
49 hold its sessions at least once in each calendar month in the  
50 City and County of San Francisco. The commission may also  
51 meet at such other times and in such other places as may be

1 expedient and necessary for the proper performance of its  
2 duties, and for that purpose may rent quarters or offices.  
3 Except for the commission's deliberative conferences, the ses-  
4 sions and meetings of the commission shall be open and public  
5 and all persons shall be permitted to attend.

6 The commission shall have a seal, bearing the inscription  
7 "Public Utilities Commission State of California." The seal  
8 shall be affixed to all writs and authentications of copies of  
9 records and to such other instruments as the commission shall  
10 direct.

11 The commission may procure all necessary books, maps,  
12 charts, stationery, instruments, office furniture, apparatus, and  
13 appliances.

14 SEC. 151. Sections 2 to 150 of this act shall become opera-  
15 tive on January 1, 1967.



AMENDED IN ASSEMBLY MARCH 23, 1965  
AMENDED IN ASSEMBLY MARCH 2, 1965  
AMENDED IN ASSEMBLY FEBRUARY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

**ASSEMBLY BILL**

**No. 333**

---

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

---

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Labor Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

- 1     **SECTION 1.** *This Act shall be known as the Cobey-Song*  
2 *Evidence Act.*  
3     ~~SECTION 1.~~  
4     **SEC. 2.** *The Evidence Code is enacted, to read:*  
5  
6                                     **EVIDENCE CODE**  
7  
8     **DIVISION 1. PRELIMINARY PROVISIONS AND**  
9                                     **CONSTRUCTION**  
10  
11     1. *This code shall be known as the Evidence Code.*  
12     2. *The rule of the common law, that statutes in derogation*  
13 *thereof are to be strictly construed, has no application to this*

1 1023. There is no privilege under this article in a pro-  
 2 ceeding under Chapter 6 (commencing with Section 1367) of  
 3 Title 10 of Part 2 of the Penal Code initiated at the request  
 4 of the defendant in a criminal action to determine his sanity.

5 1024. There is no privilege under this article if the psycho-  
 6 therapist has reasonable cause to believe that the patient is in  
 7 such mental or emotional condition as to be dangerous to him-  
 8 self or to the person or property of another and that disclosure  
 9 of the communication is necessary to prevent the threatened  
 10 danger.

11 1025. There is no privilege under this article in a proceed-  
 12 ing brought by or on behalf of the patient to establish his  
 13 competence.

14 1026. There is no privilege under this article as to informa-  
 15 tion that the psychotherapist or the patient is required to  
 16 report to a public employee or as to information required to  
 17 be recorded in a public office, if such report or record is open  
 18 to public inspection.

#### 19 Article 8. Clergyman-penitent Privileges

20  
 21  
 22 1030. As used in this article, "clergyman" means a priest,  
 23 minister, *religious practitioner*, or similar functionary of a  
 24 church or of a religious denomination or religious organization.

25 1031. As used in this article, "penitent" means a person  
 26 who has made a penitential communication to a clergyman.

27 1032. As used in this article, "penitential communication"  
 28 means a communication made in confidence, in the presence of  
 29 no third person so far as the penitent is aware, to a clergyman  
 30 who, in the course of the discipline or practice of his church,  
 31 denomination, or organization, is authorized or accustomed to  
 32 hear such communications and has a duty to keep them secret.

33 1033. Subject to Section 912, a penitent, whether or not  
 34 a party, has a privilege to refuse to disclose, and to prevent  
 35 another from disclosing, a penitential communication if he  
 36 claims the privilege.

37 1034. Subject to Section 912, a clergyman, whether or not  
 38 a party, has a privilege to refuse to disclose a penitential  
 39 communication if he claims the privilege.

#### 40 Article 9. Official Information and Identity of Informer

41  
 42  
 43 1040. (a) As used in this section, "official information"  
 44 means information acquired in confidence by a public employee  
 45 in the course of his duty and not open, or officially disclosed,  
 46 to the public prior to the time the claim of privilege is made.

47 (b) A public entity has a privilege to refuse to disclose of-  
 48 ficial information, and to prevent another from disclosing such  
 49 information, if the privilege is claimed by a person authorized  
 50 by the public entity to do so and:

51 (1) Disclosure is forbidden by an act of the Congress of  
 52 the United States or a statute of this state; or

1 (2) Disclosure of the information is against the public in-  
2 terest because there is a necessity for preserving the confi-  
3 dentiality of the information that outweighs the necessity for  
4 disclosure in the interest of justice; but no privilege may be  
5 claimed under this paragraph if any person authorized to do  
6 so has consented that the information be disclosed in the pro-  
7 ceeding. In determining whether disclosure of the information  
8 is against the public interest, the interest of the public entity  
9 as a party in the outcome of the proceeding may not be con-  
10 sidered.

11 1041. (a) Except as provided in this section, a public en-  
12 tity has a privilege to refuse to disclose the identity of a per-  
13 son who has furnished information as provided in subdivision  
14 (b) purporting to disclose a violation of a law of the United  
15 States or of this state or a public entity in this state, and  
16 to prevent another from disclosing such identity, if the privi-  
17 lege is claimed by a person authorized by the public entity to  
18 do so and:

19 (1) Disclosure is forbidden by an act of the Congress of  
20 the United States or a statute of this state; or

21 (2) Disclosure of the identity of the informer is against  
22 the public interest because there is a necessity for preserving  
23 the confidentiality of his identity that outweighs the neces-  
24 sity for disclosure in the interest of justice; but no privilege  
25 may be claimed under this paragraph if any person authorized  
26 to do so has consented that the identity of the informer be  
27 disclosed in the proceeding. In determining whether disclosure  
28 of the identity of the informer is against the public interest,  
29 the interest of the public entity as a party in the outcome of  
30 the proceeding may not be considered.

31 (b) This section applies only if the information is furnished  
32 in confidence by the informer to:

33 (1) A law enforcement officer;

34 (2) A representative of an administrative agency charged  
35 with the administration or enforcement of the law alleged to  
36 be violated; or

37 (3) Any person for the purpose of transmittal to a person  
38 listed in paragraph (1) or (2).

39 (c) There is no privilege under this section to prevent the  
40 informer from disclosing his identity.

41 1042. (a) Except where disclosure is forbidden by an act  
42 of the Congress of the United States, if a claim of privilege  
43 under this article by the state or a public entity in this state  
44 is sustained in a criminal proceeding, the presiding officer shall  
45 make such order or finding of fact adverse to the public entity  
46 bringing the proceeding as is required by law upon any issue  
47 in the proceeding to which the privileged information is mate-  
48 rial.

49 (b) Notwithstanding subdivision (a), where a search is  
50 made pursuant to a warrant valid on its face, the public entity  
51 bringing a criminal proceeding is not required to reveal to the  
52 defendant official information or the identity of an informer

1 tunity, intent, preparation, plan, knowledge, identity, or ab-  
2 sence of mistake or accident) other than his disposition to  
3 commit such acts.

4 (c) Nothing in this section affects the admissibility of evi-  
5 dence offered to support or attack the credibility of a witness.

6 1102. In a criminal action, evidence of the defendant's  
7 character or a trait of his character in the form of an opinion  
8 or evidence of his reputation is not made inadmissible by Sec-  
9 tion 1101 if such evidence is:

10 (a) Offered by the defendant to prove his conduct in con-  
11 formity with such character or trait of character.

12 (b) Offered by the prosecution to rebut evidence adduced  
13 by the defendant under subdivision (a).

14 1103. In a criminal action, evidence of the character or a  
15 trait of character (in the form of an opinion, evidence of repu-  
16 tation, or evidence of specific instances of conduct) of the vic-  
17 tim of the crime for which the defendant is being prosecuted  
18 is not made inadmissible by Section 1101 if such evidence is:

19 (a) Offered by the defendant to prove conduct of the victim  
20 in conformity with such character or trait of character.

21 (b) Offered by the prosecution to rebut evidence adduced  
22 by the defendant under subdivision (a).

23 1104. Except as provided in Sections 1102 and 1103, evi-  
24 dence of a trait of a person's character with respect to care  
25 or skill is inadmissible to prove the quality of his conduct on  
26 a specified occasion.

27 1105. Any otherwise admissible evidence of habit or custom  
28 is admissible to prove conduct on a specified occasion in con-  
29 formity with the habit or custom.

30

31 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
32 EXTRINSIC POLICIES

33

34 1150. (a) Upon an inquiry as to the validity of a verdict,  
35 any otherwise admissible evidence may be received as to state-  
36 ments made, or conduct, conditions, or events occurring, either  
37 within or without the jury room, of such a character as is likely  
38 to have influenced the verdict improperly. No evidence is ad-  
39 missible to show the effect of such statement, conduct, condi-  
40 tion, or event upon a juror either in influencing him to assent  
41 to or dissent from the verdict or concerning the mental pro-  
42 cesses by which it was determined.

43 (b) Nothing in this code affects the law relating to the com-  
44 petence of a juror to give evidence to impeach or support a  
45 verdict.

46 1151. When, after the occurrence of an event, remedial or  
47 precautionary measures are taken, which, if taken previously,  
48 would have tended to make the event less likely to occur, evi-  
49 dence of such subsequent measures is inadmissible to prove  
50 negligence or culpable conduct in connection with the event.

51 1152. (a) Evidence that a person has, in compromise or  
52 from humanitarian motives, furnished or offered or promised

1 to furnish money or any other thing, act, or service to another  
2 who has sustained or claims to have sustained loss or damage,  
3 as well as any conduct or statements made in negotiation  
4 thereof, is inadmissible to prove his liability for the loss or  
5 damage or any part of it.

6 (b) This section does not affect the admissibility of evi-  
7 dence of:

8 (1) Partial satisfaction of an asserted claim or demand  
9 without questioning its validity when such evidence is offered  
10 to prove the validity of the claim; or

11 (2) A debtor's payment or promise to pay all or a part of  
12 his pre-existing debt when such evidence is offered to prove  
13 the creation of a new duty on his part or a revival of his pre-  
14 existing duty.

15 1153. Evidence of a plea of guilty, later withdrawn, or of  
16 an offer to plead guilty to the crime charged or to any other  
17 crime, made by the defendant in a criminal action is inadmis-  
18 sible in any action or in any proceeding of any nature, includ-  
19 ing proceedings before agencies, commissions, boards, and  
20 tribunals.

21 1154. Evidence that a person has accepted or offered or  
22 promised to accept a sum of money or any other thing, act,  
23 or service in satisfaction of a claim, as well as any conduct  
24 or statements made in negotiation thereof, is inadmissible to  
25 prove the invalidity of the claim or any part of it.

26 1155. Evidence that a person was, at the time a harm was  
27 suffered by another, insured wholly or partially against loss  
28 arising from liability for that harm is inadmissible to prove  
29 negligence or other wrongdoing.

30 1156. (a) In-hospital medical staff committees of a li-  
31 censed hospital may engage in research and medical study for  
32 the purpose of reducing morbidity or mortality, and may  
33 make findings and recommendations relating to such purpose.  
34 Except as provided in subdivision (b), the written records  
35 of interviews, reports, statements, or memoranda of such in-  
36 hospital medical staff committees relating to such medical  
37 studies are subject to Sections 2016 to 2036, inclusive, of the  
38 Code of Civil Procedure (relating to discovery proceedings)  
39 but, subject to subdivisions (c) and (d), shall not be admitted  
40 as evidence in any action or before any administrative body,  
41 agency, or person.

42 (b) The disclosure, with or without the consent of the pa-  
43 tient, of information concerning him to such in-hospital medi-  
44 cal staff committee does not make unprivileged any informa-  
45 tion that would otherwise be privileged under Section 994 or  
46 1014; but, notwithstanding Sections 994 and 1014, such in-  
47 formation is subject to discovery under subdivision (a) except  
48 that the identity of any patient may not be discovered under  
49 subdivision (a) unless the patient consents to such disclosure.

50 (c) This section does not affect the admissibility in evidence  
51 of the original medical records of any patient.

1 1272. Evidence of the absence from the records of a busi-  
2 ness of a record of an asserted act, condition, or event is not  
3 made inadmissible by the hearsay rule when offered to prove  
4 the nonoccurrence of the act or event, or the nonexistence of  
5 the condition, if:

6 (a) It was the regular course of that business to make rec-  
7 ords of all such acts, conditions, or events at or near the time  
8 of the act, condition, or event and to preserve them; and

9 (b) The sources of information and method and time of  
10 preparation of the records of that business were such that the  
11 absence of a record of an act, condition, or event is a trust-  
12 worthy indication that the act or event did not occur or the  
13 condition did not exist.

14  
15 Article 8. Official Records and Other Official Writings

16  
17 1280. Evidence of a writing made as a record of an act,  
18 condition, or event is not made inadmissible by the hearsay  
19 rule when offered to prove the act, condition, or event if:

20 (a) The writing was made by and within the scope of duty  
21 of a public employee;

22 (b) The writing was made at or near the time of the act,  
23 condition, or event; and

24 (c) The sources of information and method and time of  
25 preparation were such as to indicate its trustworthiness.

26 1281. Evidence of a writing made as a record of a birth,  
27 fetal death, death, or marriage is not made inadmissible  
28 by the hearsay rule if the maker was required by law to file  
29 the writing in a designated public office and the writing was  
30 made and filed as required by law.

31 1282. A written finding of presumed death made by an  
32 employee of the United States authorized to make such finding  
33 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
34 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
35 App. 1001-1016), as enacted or as heretofore or hereafter  
36 amended, shall be received in any court, office, or other place  
37 in this state as evidence of the death of the person therein  
38 found to be dead and of the date, circumstances, and place  
39 of his disappearance.

40 1283. An official written report or record that a person is  
41 missing, missing in action, interned in a foreign country,  
42 captured by a hostile force, beleaguered by a hostile force,  
43 besieged by a hostile force, or detained in a foreign country  
44 against his will, or is dead or is alive, made by an employee  
45 of the United States authorized by any law of the United  
46 States to make such report or record shall be received in any  
47 court, office, or other place in this state as evidence that such  
48 person is missing, missing in action, interned in a foreign  
49 country, captured by a hostile force, beleaguered by a hostile  
50 force, besieged by a hostile force, or detained in a foreign  
51 country against his will, or is dead or is alive.

1 1284. Evidence of a writing made by the public employee  
 2 who is the official custodian of the records in a public office,  
 3 reciting diligent search and failure to find a record, is not  
 4 made inadmissible by the hearsay rule when offered to prove  
 5 the absence of a record in that office.

6  
 7 Article 9. Former Testimony

8  
 9 1290. As used in this article, "former testimony" means  
 10 testimony given under oath in:

11 (a) Another action or in a former hearing or trial of the  
 12 same action;

13 (b) A proceeding to determine a controversy conducted by  
 14 or under the supervision of an agency that has the power to  
 15 determine such a controversy and is an agency of the United  
 16 States or a public entity in the United States;

17 (c) A deposition taken in compliance with law in another  
 18 action; or

19 (d) An arbitration proceeding if the evidence of such  
 20 former testimony is a verbatim transcript thereof.

21 1291. (a) Evidence of former testimony is not made inad-  
 22 missible by the hearsay rule if the declarant is unavailable as  
 23 a witness and:

24 (1) The former testimony is offered against a person who  
 25 offered it in evidence in his own behalf on the former occasion  
 26 or against the successor in interest of such person; or

27 (2) The party against whom the former testimony is offered  
 28 was a party to the action or proceeding in which the testimony  
 29 was given and had the right and opportunity to cross-examine  
 30 the declarant with an interest and motive similar to that which  
 31 he has at the hearing.

32 (b) The admissibility of former testimony under this section  
 33 is subject to the same limitations and objections as though the  
 34 declarant were testifying at the hearing, except that former  
 35 testimony offered under this section is not subject to:

36 (1) Objections to the form of the question which were not  
 37 made at the time the former testimony was given.

38 (2) Objections based on competency or privilege which did  
 39 not exist at the time the former testimony was given.

40 1292. (a) Evidence of former testimony is not made inad-  
 41 missible by the hearsay rule if:

42 (1) The declarant is unavailable as a witness;

43 (2) The former testimony is offered in a civil action or  
 44 ~~against the prosecution in a criminal action~~; and

45 (3) The issue is such that the party to the action or pro-  
 46 ceeding in which the former testimony was given had the  
 47 right and opportunity to cross-examine the declarant with an  
 48 interest and motive similar to that which the party against  
 49 whom the testimony is offered has at the hearing.

50 (b) The admissibility of former testimony under this section  
 51 is subject to the same limitations and objections as though the

1 (b) The deposition of a witness taken in the action may be  
2 read to the extent that it is otherwise admissible under the  
3 law of this state.

4 SEC. 140. Section 688 of the Penal Code is amended to  
5 read:

6 688. No person charged with a public offense may be  
7 subjected, before conviction, to any more restraint than is  
8 necessary for his detention to answer the charge.

9 SEC. 141. Section 939.6 of the Penal Code is amended to  
10 read:

11 939.6. (a) Subject to subdivision (b), in the investigation  
12 of a charge, the grand jury shall receive no other evidence  
13 than such as is:

14 (1) Given by witnesses produced and sworn before the  
15 grand jury;

16 (2) Furnished by writings, material objects, or other things  
17 presented to the senses; or

18 (3) Contained in a deposition that is admissible under sub-  
19 division 3 of Section 686.

20 (b) The grand jury shall receive none but evidence that  
21 would be admissible over objection at the trial of a criminal  
22 action, but the fact that evidence which would have been ex-  
23 cluded at trial was received by the grand jury does not render  
24 the indictment void where sufficient competent evidence to sup-  
25 port the indictment was received by the grand jury.

26 SEC. 142. Section 961 of the Penal Code is amended to  
27 read:

28 961. Neither presumptions of law, nor matters of which  
29 judicial notice is authorized or required to be taken, need be  
30 stated in an accusatory pleading.

31 SEC. 143. Section 963 of the Penal Code is amended to  
32 read:

33 963. In pleading a private statute, or an ordinance of a  
34 county or a municipal corporation, or a right derived there-  
35 from, it is sufficient to refer to the statute or ordinance by its  
36 title and the day of its passage, and the court must thereupon  
37 take judicial notice thereof in the same manner that it takes  
38 judicial notice of matters listed in Section 452 of the Evidence  
39 Code.

40 SEC. 144. Section 1120 of the Penal Code is amended to  
41 read:

42 1120. If a juror has any personal knowledge respecting a  
43 fact in controversy in a cause, he must declare the same in  
44 open court during the trial. If, during the retirement of the  
45 jury, a juror declare a fact which could be evidence in the  
46 cause, as of his own knowledge, the jury must return into  
47 court. In either of these cases, the juror making the statement  
48 must be sworn as a witness and examined in the presence of  
49 the parties in order that the court may determine whether  
50 good cause exists for his discharge as a juror.

51 SEC. 145. Section 1322 of the Penal Code is repealed.



- 1     SEC. 146. Section 1323 of the Penal Code is repealed.
- 2     SEC. 147. Section 1323.5 of the Penal Code is repealed.
- 3     SEC. 148. Section 1345 of the Penal Code is amended to  
4 read:
- 5     1345. The deposition, or a certified copy thereof, may be  
6 read in evidence by either party on the trial if the court finds  
7 that the witness is unavailable as a witness within the meaning  
8 of Section 240 of the Evidence Code. The same objections may  
9 be taken to a question or answer contained in the deposition  
10 as if the witness had been examined orally in court.
- 11    SEC. 149. Section 1362 of the Penal Code is amended to  
12 read:
- 13    1362. The depositions taken under the commission may be  
14 read in evidence by either party on the trial if the court finds  
15 that the witness is unavailable as a witness within the meaning  
16 of Section 240 of the Evidence Code. The same objections may  
17 be taken to a question in the interrogatories or to an answer  
18 in the deposition as if the witness had been examined orally in  
19 court.
- 20    SEC. 150. Section 306 of the Public Utilities Code is  
21 amended to read:
- 22    306. The office of the commission shall be in the City and  
23 County of San Francisco. The office shall always be open, legal  
24 holidays and nonjudicial days excepted. The commission shall  
25 hold its sessions at least once in each calendar month in the  
26 City and County of San Francisco. The commission may also  
27 meet at such other times and in such other places as may be  
28 expedient and necessary for the proper performance of its  
29 duties, and for that purpose may rent quarters or offices.  
30 Except for the commission's deliberative conferences, the ses-  
31 sions and meetings of the commission shall be open and public  
32 and all persons shall be permitted to attend.
- 33    The commission shall have a seal, bearing the inscription:  
34 "Public Utilities Commission State of California." The seal  
35 shall be affixed to all writs and authentications of copies of  
36 records and to such other instruments as the commission shall  
37 direct.
- 38    The commission may procure all necessary books, maps,  
39 charts, stationery, instruments, office furniture, apparatus, and  
40 appliances.
- 41    SEC. 151. Sections 2 to 150 of this act shall become opera-  
42 tive on January 1, 1967.

AMENDED IN ASSEMBLY APRIL 7, 1965  
AMENDED IN ASSEMBLY MARCH 23, 1965  
AMENDED IN ASSEMBLY MARCH 2, 1965  
AMENDED IN ASSEMBLY FEBRUARY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

**ASSEMBLY BILL**

**No. 333**

---

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

---

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known as the Cobey-Song  
2 Evidence Act.

3 SEC. 2. The Evidence Code is enacted, to read:

4  
5  
6  
7  
8  
9

EVIDENCE CODE

DIVISION 1. PRELIMINARY PROVISIONS AND  
CONSTRUCTION

10 1. This code shall be known as the Evidence Code.  
11 2. The rule of the common law, that statutes in derogation  
12 thereof are to be strictly construed, has no application to this

1 1023. There is no privilege under this article in a pro-  
 2 ceeding under Chapter 6 (commencing with Section 1367) of  
 3 Title 10 of Part 2 of the Penal Code initiated at the request  
 4 of the defendant in a criminal action to determine his sanity.

5 1024. There is no privilege under this article if the psycho-  
 6 therapist has reasonable cause to believe that the patient is in  
 7 such mental or emotional condition as to be dangerous to him-  
 8 self or to the person or property of another and that disclosure  
 9 of the communication is necessary to prevent the threatened  
 10 danger.

11 1025. There is no privilege under this article in a proceed-  
 12 ing brought by or on behalf of the patient to establish his  
 13 competence.

14 1026. There is no privilege under this article as to informa-  
 15 tion that the psychotherapist or the patient is required to  
 16 report to a public employee or as to information required to  
 17 be recorded in a public office, if such report or record is open  
 18 to public inspection.

19  
 20 Article 8. Clergyman-penitent Privileges

21  
 22 1030. As used in this article, "clergyman" means a priest,  
 23 minister, religious practitioner, or similar functionary of a  
 24 church or of a religious denomination or religious organization.

25 1031. As used in this article, "penitent" means a person  
 26 who has made a penitential communication to a clergyman.

27 1032. As used in this article, "penitential communication"  
 28 means a communication made in confidence, in the presence of  
 29 no third person so far as the penitent is aware, to a clergyman  
 30 who, in the course of the discipline or practice of his church,  
 31 denomination, or organization, is authorized or accustomed to  
 32 hear such communications and has a duty to keep them secret,  
 33 *under the discipline or tenets of his church, denomination, or*  
 34 *organization, has a duty to keep such communications secret.*

35 1033. Subject to Section 912, a penitent, whether or not  
 36 a party, has a privilege to refuse to disclose, and to prevent  
 37 another from disclosing, a penitential communication if he  
 38 claims the privilege.

39 1034. Subject to Section 912, a clergyman, whether or not  
 40 a party, has a privilege to refuse to disclose a penitential  
 41 communication if he claims the privilege.

42  
 43 Article 9. Official Information and Identity of Informer

44  
 45 1040. (a) As used in this section, "official information"  
 46 means information acquired in confidence by a public employee  
 47 in the course of his duty and not open, or officially disclosed,  
 48 to the public prior to the time the claim of privilege is made.

49 (b) A public entity has a privilege to refuse to disclose of-  
 50 ficial information, and to prevent another from disclosing such

1 information, if the privilege is claimed by a person authorized  
2 by the public entity to do so and:

3 (1) Disclosure is forbidden by an act of the Congress of  
4 the United States or a statute of this state; or

5 (2) Disclosure of the information is against the public in-  
6 terest because there is a necessity for preserving the confi-  
7 dentiality of the information that outweighs the necessity for  
8 disclosure in the interest of justice; but no privilege may be  
9 claimed under this paragraph if any person authorized to do  
10 so has consented that the information be disclosed in the pro-  
11 ceeding. In determining whether disclosure of the information  
12 is against the public interest, the interest of the public entity  
13 as a party in the outcome of the proceeding may not be con-  
14 sidered.

15 1041. (a) Except as provided in this section, a public en-  
16 tity has a privilege to refuse to disclose the identity of a per-  
17 son who has furnished information as provided in subdivision  
18 (b) purporting to disclose a violation of a law of the United  
19 States or of this state or a public entity in this state, and  
20 to prevent another from disclosing such identity, if the privi-  
21 lege is claimed by a person authorized by the public entity to  
22 do so and:

23 (1) Disclosure is forbidden by an act of the Congress of  
24 the United States or a statute of this state; or

25 (2) Disclosure of the identity of the informer is against  
26 the public interest because there is a necessity for preserving  
27 the confidentiality of his identity that outweighs the neces-  
28 sity for disclosure in the interest of justice; but no privilege  
29 may be claimed under this paragraph if any person authorized  
30 to do so has consented that the identity of the informer be  
31 disclosed in the proceeding. In determining whether disclosure  
32 of the identity of the informer is against the public interest,  
33 the interest of the public entity as a party in the outcome of  
34 the proceeding may not be considered.

35 (b) This section applies only if the information is furnished  
36 in confidence by the informer to:

37 (1) A law enforcement officer;

38 (2) A representative of an administrative agency charged  
39 with the administration or enforcement of the law alleged to  
40 be violated; or

41 (3) Any person for the purpose of transmittal to a person  
42 listed in paragraph (1) or (2).

43 (c) There is no privilege under this section to prevent the  
44 informer from disclosing his identity.

45 1042. (a) Except where disclosure is forbidden by an act  
46 of the Congress of the United States, if a claim of privilege  
47 under this article by the state or a public entity in this state  
48 is sustained in a criminal proceeding, the presiding officer shall  
49 make such order or finding of fact adverse to the public entity  
50 bringing the proceeding as is required by law upon any issue  
51 in the proceeding to which the privileged information is mate-  
52 rial.

1 would have tended to make the event less likely to occur, evi-  
2 dence of such subsequent measures is inadmissible to prove  
3 negligence or culpable conduct in connection with the event.

4 1152. (a) Evidence that a person has, in compromise or  
5 from humanitarian motives, furnished or offered or promised  
6 to furnish money or any other thing, act, or service to another  
7 who has sustained or claims to have sustained loss or damage,  
8 as well as any conduct or statements made in negotiation  
9 thereof, is inadmissible to prove his liability for the loss or  
10 damage or any part of it.

11 (b) This section does not affect the admissibility of evi-  
12 dence of:

13 (1) Partial satisfaction of an asserted claim or demand  
14 without questioning its validity when such evidence is offered  
15 to prove the validity of the claim; or

16 (2) A debtor's payment or promise to pay all or a part of  
17 his pre-existing debt when such evidence is offered to prove  
18 the creation of a new duty on his part or a revival of his pre-  
19 existing duty.

20 1153. Evidence of a plea of guilty, later withdrawn, or of  
21 an offer to plead guilty to the crime charged or to any other  
22 crime, made by the defendant in a criminal action is inadmis-  
23 sible in any action or in any proceeding of any nature, includ-  
24 ing proceedings before agencies, commissions, boards, and  
25 tribunals.

26 1154. Evidence that a person has accepted or offered or  
27 promised to accept a sum of money or any other thing, act,  
28 or service in satisfaction of a claim, as well as any conduct  
29 or statements made in negotiation thereof, is inadmissible to  
30 prove the invalidity of the claim or any part of it.

31 1155. Evidence that a person was, at the time a harm was  
32 suffered by another, insured wholly or partially against loss  
33 arising from liability for that harm is inadmissible to prove  
34 negligence or other wrongdoing.

35 1156. (a) In-hospital medical staff committees of a li-  
36 censed hospital may engage in research and medical study for  
37 the purpose of reducing morbidity or mortality, and may  
38 make findings and recommendations relating to such purpose.  
39 Except as provided in subdivision (b), the written records  
40 of interviews, reports, statements, or memoranda of such in-  
41 hospital medical staff committees relating to such medical  
42 studies are subject to Sections 2016 to 2036, inclusive, of the  
43 Code of Civil Procedure (relating to discovery proceedings)  
44 but, subject to subdivisions (c) and (d), shall not be admitted  
45 as evidence in any action or before any administrative body,  
46 agency, or person.

47 (b) The disclosure, with or without the consent of the pa-  
48 tient, of information concerning him to such in-hospital medi-  
49 cal staff committee does not make unprivileged any informa-  
50 tion that would otherwise be privileged under Section 994 or  
51 1014; but, notwithstanding Sections 994 and 1014, such in-  
52 formation is subject to discovery under subdivision (a) except

1 1271. Evidence of a writing made as a record of an act,  
2 condition, or event is not made inadmissible by the hearsay  
3 rule when offered to prove the act, condition, or event if:

4 (a) The writing was made in the regular course of a busi-  
5 ness;

6 (b) The writing was made at or near the time of the act,  
7 condition, or event;

8 (c) The custodian or other qualified witness testifies to its  
9 identity and the mode of its preparation; and

10 (d) The sources of information and method and time of  
11 preparation were such as to indicate its trustworthiness.

12 1272. Evidence of the absence from the records of a busi-  
13 ness of a record of an asserted act, condition, or event is not  
14 made inadmissible by the hearsay rule when offered to prove  
15 the nonoccurrence of the act or event, or the nonexistence of  
16 the condition, if:

17 (a) It was the regular course of that business to make rec-  
18 ords of all such acts, conditions, or events at or near the time  
19 of the act, condition, or event and to preserve them; and

20 (b) The sources of information and method and time of  
21 preparation of the records of that business were such that the  
22 absence of a record of an act, condition, or event is a trust-  
23 worthy indication that the act or event did not occur or the  
24 condition did not exist.

#### 25 26 Article 8. Official Records and Other Official Writings

27  
28 1280. Evidence of a writing made as a record of an act,  
29 condition, or event is not made inadmissible by the hearsay  
30 rule when offered to prove the act, condition, or event if:

31 (a) The writing was made by and within the scope of duty  
32 of a public employee;

33 (b) The writing was made at or near the time of the act,  
34 condition, or event; and

35 (c) The sources of information and method and time of  
36 preparation were such as to indicate its trustworthiness.

37 1281. Evidence of a writing made as a record of a birth,  
38 fetal death, death, or marriage is not made inadmissible  
39 by the hearsay rule if the maker was required by law to file  
40 the writing in a designated public office and the writing was  
41 made and filed as required by law.

42 1282. A written finding of presumed death made by an  
43 employee of the United States authorized to make such finding  
44 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
45 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
46 App. 1001-1016), as enacted or as heretofore or hereafter  
47 amended, shall be received in any court, office, or other place  
48 in this state as evidence of the death of the person therein  
49 found to be dead and of the date, circumstances, and place  
50 of his disappearance.

51 1283. An official written report or record that a person is  
52 missing, missing in action, interned in a foreign country,

1 captured by a hostile force, beleaguered by a hostile force,  
 2 besieged by a hostile force, or detained in a foreign country  
 3 against his will, or is dead or is alive, made by an employee  
 4 of the United States authorized by any law of the United  
 5 States to make such report or record shall be received in any  
 6 court, office, or other place in this state as evidence that such  
 7 person is missing, missing in action, interned in a foreign  
 8 country, captured by a hostile force, beleaguered by a hostile  
 9 force, besieged by a hostile force, or detained in a foreign  
 10 country against his will, or is dead or is alive.

11 1284. Evidence of a writing made by the public employee  
 12 who is the official custodian of the records in a public office,  
 13 reciting diligent search and failure to find a record, is not  
 14 made inadmissible by the hearsay rule when offered to prove  
 15 the absence of a record in that office.

#### 16 Article 9. Former Testimony

17  
 18  
 19 1290. As used in this article, "former testimony" means  
 20 testimony given under oath in:

21 (a) Another action or in a former hearing or trial of the  
 22 same action;

23 (b) A proceeding to determine a controversy conducted by  
 24 or under the supervision of an agency that has the power to  
 25 determine such a controversy and is an agency of the United  
 26 States or a public entity in the United States;

27 (c) A deposition taken in compliance with law in another  
 28 action; or

29 (d) An arbitration proceeding if the evidence of such  
 30 former testimony is a verbatim transcript thereof.

31 1291. (a) Evidence of former testimony is not made inad-  
 32 missible by the hearsay rule if the declarant is unavailable as  
 33 a witness and:

34 (1) The former testimony is offered against a person who  
 35 offered it in evidence in his own behalf on the former occasion  
 36 or against the successor in interest of such person; or

37 (2) The party against whom the former testimony is offered  
 38 was a party to the action or proceeding in which the testimony  
 39 was given and had the right and opportunity to cross-examine  
 40 the declarant with an interest and motive similar to that which  
 41 he has at the hearing.

42 (b) The admissibility of former testimony under this section  
 43 is subject to the same limitations and objections as though the  
 44 declarant were testifying at the hearing, except that former  
 45 testimony offered under this section is not subject to:

46 (1) Objections to the form of the question which were not  
 47 made at the time the former testimony was given.

48 (2) Objections based on competency or privilege which did  
 49 not exist at the time the former testimony was given.

1 1292. (a) Evidence of former testimony is not made inad-  
2 missible by the hearsay rule if:

3 (1) The declarant is unavailable as a witness;

4 (2) The former testimony is offered in a civil action; and

5 (3) The issue is such that the party to the action or pro-  
6 ceeding in which the former testimony was given had the  
7 right and opportunity to cross-examine the declarant with an  
8 interest and motive similar to that which the party against  
9 whom the testimony is offered has at the hearing.

10 (b) The admissibility of former testimony under this section  
11 is subject to the same limitations and objections as though the  
12 declarant were testifying at the hearing, except that former  
13 testimony offered under this section is not subject to objections  
14 based on competency or privilege which did not exist at the  
15 time the former testimony was given.

16

17

### Article 10. Judgments

18

19 1300. Evidence of a final judgment adjudging a person  
20 guilty of a crime punishable as a felony is not made inad-  
21 missible by the hearsay rule when offered in a civil action to  
22 prove any fact essential to the judgment unless the judgment  
23 was based on a plea of nolo contendere:

24 1301. Evidence of a final judgment is not made inadmis-  
25 sible by the hearsay rule when offered by the judgment debtor  
26 to prove any fact which was essential to the judgment in an  
27 action in which he seeks to:

28 (a) Recover partial or total indemnity or exoneration for  
29 money paid or liability incurred because of the judgment;

30 (b) Enforce a warranty to protect the judgment debtor  
31 against the liability determined by the judgment; or

32 (c) Recover damages for breach of warranty substantially  
33 the same as the warranty determined by the judgment to have  
34 been breached.

35 1302. When the liability, obligation, or duty of a third  
36 person is in issue in a civil action, evidence of a final judg-  
37 ment against that person is not made inadmissible by the  
38 hearsay rule when offered to prove such liability, obligation,  
39 or duty.

40

### Article 11. Family History

41

42 1310. (a) Subject to subdivision (b), evidence of a state-  
43 ment by a declarant who is unavailable as a witness concerning  
44 his own birth, marriage, divorce, legitimacy, relationship by  
45 blood or marriage, race, ancestry, or other similar fact of his  
46 family history is not made inadmissible by the hearsay rule,  
47 even though the declarant had no means of acquiring personal  
48 knowledge of the matter declared.

49 (b) Evidence of a statement is inadmissible under this sec-  
50 tion if the statement was made under circumstances such as to  
51 indicate its lack of trustworthiness.



1 1311. (a) Subject to subdivision (b), evidence of a state-  
2 ment concerning the birth, marriage, divorce, death, legiti-  
3 macy, race, ancestry, relationship by blood or marriage, or  
4 other similar fact of the family history of a person other  
5 than the declarant is not made inadmissible by the hearsay  
6 rule if the declarant is unavailable as a witness and:

7 (1) The declarant was related to the other by blood or  
8 marriage; or

9 (2) The declarant was otherwise so intimately associated  
10 with the other's family as to be likely to have had accurate  
11 information concerning the matter declared and made the  
12 statement (i) upon information received from the other or  
13 from a person related by blood or marriage to the other or  
14 (ii) upon repute in the other's family.

15 (b) Evidence of a statement is inadmissible under this sec-  
16 tion if the statement was made under circumstances such as to  
17 indicate its lack of trustworthiness.

18 1312. Evidence of entries in family bibles or other family  
19 books or charts, engravings on rings, family portraits, engrav-  
20 ings on urns, crypts, or tombstones, and the like, is not made  
21 inadmissible by the hearsay rule when offered to prove the  
22 birth, marriage, divorce, death, legitimacy, race, ancestry, re-  
23 lationship by blood or marriage, or other similar fact of the  
24 family history of a member of the family by blood or marriage.

25 1313. Evidence of reputation among members of a family  
26 is not made inadmissible by the hearsay rule if the reputation  
27 concerns the birth, marriage, divorce, death, legitimacy, race,  
28 ancestry, relationship by blood or marriage, or other similar  
29 fact of the family history of a member of the family by blood  
30 or marriage.

31 1314. Evidence of reputation in a community concerning  
32 the date or fact of birth, marriage, divorce, or death of a per-  
33 son resident in the community at the time of the reputation  
34 is not made inadmissible by the hearsay rule.

35 1315. Evidence of a statement concerning a person's birth,  
36 marriage, divorce, death, legitimacy, race, ancestry, relation-  
37 ship by blood or marriage, or other similar fact of family his-  
38 tory which is contained in a writing made as a record of a  
39 church, religious denomination, or religious society is not made  
40 inadmissible by the hearsay rule if:

41 (a) The statement is contained in a writing made as a  
42 record of an act, condition, or event that would be admissible  
43 as evidence of such act, condition, or event under Section 1271;  
44 and

45 (b) The statement is of a kind customarily recorded in con-  
46 nection with the act, condition, or event recorded in the writ-  
47 ing.

48 1316. Evidence of a statement concerning a person's birth,  
49 marriage, divorce, death, legitimacy, race, ancestry, relation-  
50 ship by blood or marriage, or other similar fact of family  
51 history is not made inadmissible by the hearsay rule if the  
52 statement is contained in a certificate that the maker thereof

1 (3) Contained in a deposition that is admissible under sub-  
2 division 3 of Section 686 .

3 (b) The grand jury shall receive none but evidence that  
4 would be admissible over objection at the trial of a criminal  
5 action, but the fact that evidence which would have been ex-  
6 cluded at trial was received by the grand jury does not render  
7 the indictment void where sufficient competent evidence to sup-  
8 port the indictment was received by the grand jury.

9 SEC. 142. Section 961 of the Penal Code is amended to  
10 read:

11 961. Neither presumptions of law, nor matters of which  
12 judicial notice is authorized or required to be taken, need be  
13 stated in an accusatory pleading.

14 SEC. 143. Section 963 of the Penal Code is amended to  
15 read:

16 963. In pleading a private statute, or an ordinance of a  
17 county or a municipal corporation, or a right derived there-  
18 from, it is sufficient to refer to the statute or ordinance by its  
19 title and the day of its passage, and the court must thereupon  
20 take judicial notice thereof in the same manner that it takes  
21 judicial notice of matters listed in Section 452 of the Evidence  
22 Code.

23 SEC. 144. Section 1120 of the Penal Code is amended to  
24 read:

25 1120. If a juror has any personal knowledge respecting a  
26 fact in controversy in a cause, he must declare the same in  
27 open court during the trial. If, during the retirement of the  
28 jury, a juror declare a fact which could be evidence in the  
29 cause, as of his own knowledge, the jury must return into  
30 court. In either of these cases, the juror making the statement  
31 must be sworn as a witness and examined in the presence of  
32 the parties in order that the court may determine whether  
33 good cause exists for his discharge as a juror.

34 SEC. 145. Section 1322 of the Penal Code is repealed.

35 SEC. 146. Section 1323 of the Penal Code is repealed.

36 SEC. 147. Section 1323.5 of the Penal Code is repealed.

37 SEC. 148. Section 1345 of the Penal Code is amended to  
38 read:

39 1345. The deposition, or a certified copy thereof, may be  
40 read in evidence by either party on the trial if the court finds  
41 that the witness is unavailable as a witness within the meaning  
42 of Section 240 of the Evidence Code. The same objections may  
43 be taken to a question or answer contained in the deposition  
44 as if the witness had been examined orally in court.

45 SEC. 149. Section 1362 of the Penal Code is amended to  
46 read:

47 1362. The depositions taken under the commission may be  
48 read in evidence by either party on the trial if the court finds  
49 that the witness is unavailable as a witness within the meaning  
50 of Section 240 of the Evidence Code. The same objections may  
51 be taken to a question in the interrogatories or to an answer

1 in the deposition as if the witness had been examined orally in  
2 court.

3 SEC. 150. Section 306 of the Public Utilities Code is  
4 amended to read:

5 306. The office of the commission shall be in the City and  
6 County of San Francisco. The office shall always be open, legal  
7 holidays and nonjudicial days excepted. The commission shall  
8 hold its sessions at least once in each calendar month in the  
9 City and County of San Francisco. The commission may also  
10 meet at such other times and in such other places as may be  
11 expedient and necessary for the proper performance of its  
12 duties, and for that purpose may rent quarters or offices.  
13 Except for the commission's deliberative conferences, the ses-  
14 sions and meetings of the commission shall be open and public  
15 and all persons shall be permitted to attend.

16 The commission shall have a seal, bearing the inscription  
17 "Public Utilities Commission State of California." The seal  
18 shall be affixed to all writs and authentications of copies of  
19 records and to such other instruments as the commission shall  
20 direct.

21 The commission may procure all necessary books, maps,  
22 charts, stationery, instruments, office furniture, apparatus, and  
23 appliances.

24 SEC. 151. Sections 2 to 150 of this act shall become opera-  
25 tive on January 1, 1967.

AMENDED IN SENATE APRIL 22, 1965  
AMENDED IN ASSEMBLY APRIL 7, 1965  
AMENDED IN ASSEMBLY MARCH 23, 1965  
AMENDED IN ASSEMBLY MARCH 2, 1965  
AMENDED IN ASSEMBLY FEBRUARY 11, 1965

CALIFORNIA LEGISLATURE—1965 REGULAR (GENERAL) SESSION

**ASSEMBLY BILL**

**No. 333**

Introduced by Assemblymen Song, Willson, Foran,  
Stanton, and Whetmore  
(Coauthor: Senator Cobey)

January 18, 1965

REFERRED TO COMMITTEE ON RULES

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. This act shall be known as the Cobey-Song  
2 Evidence Act.

3 SEC. 2. The Evidence Code is enacted, to read:

4

5

EVIDENCE CODE

6

7

DIVISION 1. PRELIMINARY PROVISIONS AND  
CONSTRUCTION

8

9

10 1. This code shall be known as the Evidence Code.

11 2. The rule of the common law, that statutes in derogation  
12 thereof are to be strictly construed, has no application to this

1 1023. There is no privilege under this article in a pro-  
 2 ceeding under Chapter 6 (commencing with Section 1367) of  
 3 Title 10 of Part 2 of the Penal Code initiated at the request  
 4 of the defendant in a criminal action to determine his sanity.

5 1024. There is no privilege under this article if the psycho-  
 6 therapist has reasonable cause to believe that the patient is in  
 7 such mental or emotional condition as to be dangerous to him-  
 8 self or to the person or property of another and that disclosure  
 9 of the communication is necessary to prevent the threatened  
 10 danger.

11 1025. There is no privilege under this article in a proceed-  
 12 ing brought by or on behalf of the patient to establish his  
 13 competence.

14 1026. There is no privilege under this article as to informa-  
 15 tion that the psychotherapist or the patient is required to  
 16 report to a public employee or as to information required to  
 17 be recorded in a public office, if such report or record is open  
 18 to public inspection.

19  
 20 Article 8. Clergyman-penitent Privileges

21  
 22 1030. As used in this article, "clergyman" means a priest,  
 23 minister, religious practitioner, or similar functionary of a  
 24 church or of a religious denomination or religious organization.

25 1031. As used in this article, "penitent" means a person  
 26 who has made a penitential communication to a clergyman.

27 1032. As used in this article, "penitential communication"  
 28 means a communication made in confidence, in the presence of  
 29 no third person so far as the penitent is aware, to a clergyman  
 30 who, in the course of the discipline or practice of his church,  
 31 denomination, or organization, is authorized or accustomed to  
 32 hear such communications and, under the discipline or tenets  
 33 of his church, denomination, or organization, has a duty to  
 34 keep such communications secret.

35 1033. Subject to Section 912, a penitent, whether or not  
 36 a party, has a privilege to refuse to disclose, and to prevent  
 37 another from disclosing, a penitential communication if he  
 38 claims the privilege.

39 1034. Subject to Section 912, a clergyman, whether or not  
 40 a party, has a privilege to refuse to disclose a penitential  
 41 communication if he claims the privilege.

42  
 43 Article 9. Official Information and Identity of Informer

44  
 45 1040. (a) As used in this section, "official information"  
 46 means information acquired in confidence by a public employee  
 47 in the course of his duty and not open, or officially disclosed,  
 48 to the public prior to the time the claim of privilege is made.

49 (b) A public entity has a privilege to refuse to disclose of-  
 50 ficial information, and to prevent another from disclosing such

1 information, if the privilege is claimed by a person authorized  
2 by the public entity to do so and:

3 (1) Disclosure is forbidden by an act of the Congress of  
4 the United States or a statute of this state; or

5 (2) Disclosure of the information is against the public in-  
6 terest because there is a necessity for preserving the confi-  
7 dentiality of the information that outweighs the necessity for  
8 disclosure in the interest of justice; but no privilege may be  
9 claimed under this paragraph if any person authorized to do  
10 so has consented that the information be disclosed in the pro-  
11 ceeding. In determining whether disclosure of the information  
12 is against the public interest, the interest of the public entity  
13 as a party in the outcome of the proceeding may not be con-  
14 sidered.

15 1041. (a) Except as provided in this section, a public en-  
16 tity has a privilege to refuse to disclose the identity of a per-  
17 son who has furnished information as provided in subdivision  
18 (b) purporting to disclose a violation of a law of the United  
19 States or of this state or a public entity in this state, and  
20 to prevent another from disclosing such identity, if the privi-  
21 lege is claimed by a person authorized by the public entity to  
22 do so and:

23 (1) Disclosure is forbidden by an act of the Congress of  
24 the United States or a statute of this state; or

25 (2) Disclosure of the identity of the informer is against  
26 the public interest because there is a necessity for preserving  
27 the confidentiality of his identity that outweighs the neces-  
28 sity for disclosure in the interest of justice; but no privilege  
29 may be claimed under this paragraph if any person authorized  
30 to do so has consented that the identity of the informer be  
31 disclosed in the proceeding. In determining whether disclosure  
32 of the identity of the informer is against the public interest,  
33 the interest of the public entity as a party in the outcome of  
34 the proceeding may not be considered.

35 (b) This section applies only if the information is furnished  
36 in confidence by the informer to:

37 (1) A law enforcement officer;

38 (2) A representative of an administrative agency charged  
39 with the administration or enforcement of the law alleged to  
40 be violated; or

41 (3) Any person for the purpose of transmittal to a person  
42 listed in paragraph (1) or (2).

43 (c) There is no privilege under this section to prevent the  
44 informer from disclosing his identity.

45 1042. (a) Except where disclosure is forbidden by an act  
46 of the Congress of the United States, if a claim of privilege  
47 under this article by the state or a public entity in this state  
48 is sustained in a criminal proceeding the presiding officer shall  
49 make such order or finding of fact adverse to the public entity  
50 bringing the proceeding as is required by law upon any issue  
51 in the proceeding to which the privileged information is maté-  
52 rial.

1 would have tended to make the event less likely to occur, evi-  
2 dence of such subsequent measures is inadmissible to prove  
3 negligence or culpable conduct in connection with the event.

4 1152. (a) Evidence that a person has, in compromise or  
5 from humanitarian motives, furnished or offered or promised  
6 to furnish money or any other thing, act, or service to another  
7 who has sustained or claims to have sustained loss or damage,  
8 as well as any conduct or statements made in negotiation  
9 thereof, is inadmissible to prove his liability for the loss or  
10 damage or any part of it.

11 (b) This section does not affect the admissibility of evi-  
12 dence of:

13 (1) Partial satisfaction of an asserted claim or demand  
14 without questioning its validity when such evidence is offered  
15 to prove the validity of the claim; or

16 (2) A debtor's payment or promise to pay all or a part of  
17 his pre-existing debt when such evidence is offered to prove  
18 the creation of a new duty on his part or a revival of his pre-  
19 existing duty.

20 1153. Evidence of a plea of guilty, later withdrawn, or of  
21 an offer to plead guilty to the crime charged or to any other  
22 crime, made by the defendant in a criminal action is inadmis-  
23 sible in any action or in any proceeding of any nature, includ-  
24 ing proceedings before agencies, commissions, boards, and  
25 tribunals.

26 1154. Evidence that a person has accepted or offered or  
27 promised to accept a sum of money or any other thing, act,  
28 or service in satisfaction of a claim, as well as any conduct  
29 or statements made in negotiation thereof, is inadmissible to  
30 prove the invalidity of the claim or any part of it.

31 1155. Evidence that a person was, at the time a harm was  
32 suffered by another, insured wholly or partially against loss  
33 arising from liability for that harm is inadmissible to prove  
34 negligence or other wrongdoing.

35 1156. (a) In-hospital medical staff committees of a li-  
36 censed hospital may engage in research and medical study for  
37 the purpose of reducing morbidity or mortality, and may  
38 make findings and recommendations relating to such purpose.  
39 Except as provided in subdivision (b), the written records  
40 of interviews, reports, statements, or memoranda of such in-  
41 hospital medical staff committees relating to such medical  
42 studies are subject to Sections 2016 to 2036, inclusive, of the  
43 Code of Civil Procedure (relating to discovery proceedings)  
44 but, subject to subdivisions (c) and (d), shall not be admitted  
45 as evidence in any action or before any administrative body,  
46 agency, or person.

47 (b) The disclosure, with or without the consent of the pa-  
48 tient, of information concerning him to such in-hospital medi-  
49 cal staff committee does not make unprivileged any informa-  
50 tion that would otherwise be privileged under Section 994 or  
51 1014; but, notwithstanding Sections 994 and 1014, such in-  
52 formation is subject to discovery under subdivision (a) except

1 1271. Evidence of a writing made as a record of an act,  
2 condition, or event is not made inadmissible by the hearsay  
3 rule when offered to prove the act, condition, or event if:

4 (a) The writing was made in the regular course of a busi-  
5 ness;

6 (b) The writing was made at or near the time of the act,  
7 condition, or event;

8 (c) The custodian or other qualified witness testifies to its  
9 identity and the mode of its preparation; and

10 (d) The sources of information and method and time of  
11 preparation were such as to indicate its trustworthiness.

12 1272. Evidence of the absence from the records of a busi-  
13 ness of a record of an asserted act, condition, or event is not  
14 made inadmissible by the hearsay rule when offered to prove  
15 the nonoccurrence of the act or event, or the nonexistence of  
16 the condition, if:

17 (a) It was the regular course of that business to make rec-  
18 ords of all such acts, conditions, or events at or near the time  
19 of the act, condition, or event and to preserve them; and

20 (b) The sources of information and method and time of  
21 preparation of the records of that business were such that the  
22 absence of a record of an act, condition, or event is a trust-  
23 worthy indication that the act or event did not occur or the  
24 condition did not exist.

25

#### 26 Article 8. Official Records and Other Official Writings

27

28 1280. Evidence of a writing made as a record of an act,  
29 condition, or event is not made inadmissible by the hearsay  
30 rule when offered to prove the act, condition, or event if:

31 (a) The writing was made by and within the scope of duty  
32 of a public employee;

33 (b) The writing was made at or near the time of the act,  
34 condition, or event; and

35 (c) The sources of information and method and time of  
36 preparation were such as to indicate its trustworthiness.

37 1281. Evidence of a writing made as a record of a birth,  
38 fetal death, death, or marriage is not made inadmissible  
39 by the hearsay rule if the maker was required by law to file  
40 the writing in a designated public office and the writing was  
41 made and filed as required by law.

42 1282. A written finding of presumed death made by an  
43 employee of the United States authorized to make such finding  
44 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
45 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
46 App. 1001-1016), as enacted or as heretofore or hereafter  
47 amended, shall be received in any court, office, or other place  
48 in this state as evidence of the death of the person therein  
49 found to be dead and of the date, circumstances, and place  
50 of his disappearance.

51 1283. An official written report or record that a person is  
52 missing, missing in action, interned in a foreign country,



1 captured by a hostile force, beleaguered by a hostile force,  
2 besieged by a hostile force, or detained in a foreign country  
3 against his will, or is dead or is alive, made by an employee  
4 of the United States authorized by any law of the United  
5 States to make such report or record shall be received in any  
6 court, office, or other place in this state as evidence that such  
7 person is missing, missing in action, interned in a foreign  
8 country, captured by a hostile force, beleaguered by a hostile  
9 force, besieged by a hostile force, or detained in a foreign  
10 country against his will, or is dead or is alive.

11 1284. Evidence of a writing made by the public employee  
12 who is the official custodian of the records in a public office,  
13 reciting diligent search and failure to find a record, is not  
14 made inadmissible by the hearsay rule when offered to prove  
15 the absence of a record in that office.

16  
17 Article 9. Former Testimony

18  
19 1290. As used in this article, "former testimony" means  
20 testimony given under oath in:

21 (a) Another action or in a former hearing or trial of the  
22 same action;

23 (b) A proceeding to determine a controversy conducted by  
24 or under the supervision of an agency that has the power to  
25 determine such a controversy and is an agency of the United  
26 States or a public entity in the United States;

27 (c) A deposition taken in compliance with law in another  
28 action; or

29 (d) An arbitration proceeding if the evidence of such  
30 former testimony is a verbatim transcript thereof.

31 1291. (a) Evidence of former testimony is not made inad-  
32 missible by the hearsay rule if the declarant is unavailable as  
33 a witness and:

34 (1) The former testimony is offered against a person who  
35 offered it in evidence in his own behalf on the former occasion  
36 or against the successor in interest of such person; or

37 (2) The party against whom the former testimony is offered  
38 was a party to the action or proceeding in which the testimony  
39 was given and had the right and opportunity to cross-examine  
40 the declarant with an interest and motive similar to that which  
41 he has at the hearing.

42 (b) The admissibility of former testimony under this section  
43 is subject to the same limitations and objections as though the  
44 declarant were testifying at the hearing, except that former  
45 testimony offered under this section is not subject to:

46 (1) Objections to the form of the question which were not  
47 made at the time the former testimony was given.

48 (2) Objections based on competency or privilege which did  
49 not exist at the time the former testimony was given.

1 1292. (a) Evidence of former testimony is not made inad-  
2 missible by the hearsay rule if:

3 (1) The declarant is unavailable as a witness;

4 (2) The former testimony is offered in a civil action; and

5 (3) The issue is such that the party to the action or pro-  
6 ceeding in which the former testimony was given had the  
7 right and opportunity to cross-examine the declarant with an  
8 interest and motive similar to that which the party against  
9 whom the testimony is offered has at the hearing.

10 (b) The admissibility of former testimony under this section  
11 is subject to the same limitations and objections as though the  
12 declarant were testifying at the hearing, except that former  
13 testimony offered under this section is not subject to objections  
14 based on competency or privilege which did not exist at the  
15 time the former testimony was given.

#### 16 Article 10. Judgments

17  
18  
19 1300. Evidence of a final judgment adjudging a person  
20 guilty of a crime punishable as a felony is not made inad-  
21 missible by the hearsay rule when offered in a civil action to  
22 prove any fact essential to the judgment unless the judgment  
23 was based on a plea of nolo contendere.

24 1301. Evidence of a final judgment is not made inadmis-  
25 sible by the hearsay rule when offered by the judgment debtor  
26 to prove any fact which was essential to the judgment in an  
27 action in which he seeks to:

28 (a) Recover partial or total indemnity or exoneration for  
29 money paid or liability incurred because of the judgment;

30 (b) Enforce a warranty to protect the judgment debtor  
31 against the liability determined by the judgment; or

32 (c) Recover damages for breach of warranty substantially  
33 the same as the warranty determined by the judgment to have  
34 been breached.

35 1302. When the liability, obligation, or duty of a third  
36 person is in issue in a civil action, evidence of a final judg-  
37 ment against that person is not made inadmissible by the  
38 hearsay rule when offered to prove such liability, obligation,  
39 or duty.

#### 40 Article 11. Family History

41  
42 1310. (a) Subject to subdivision (b), evidence of a state-  
43 ment by a declarant who is unavailable as a witness concerning  
44 his own birth, marriage, divorce, legitimacy, relationship by  
45 blood or marriage, race, ancestry, or other similar fact of his  
46 family history is not made inadmissible by the hearsay rule,  
47 even though the declarant had no means of acquiring personal  
48 knowledge of the matter declared.

49 (b) Evidence of a statement is inadmissible under this sec-  
50 tion if the statement was made under circumstances such as to  
51 indicate its lack of trustworthiness.

1 1311. (a) Subject to subdivision (b), evidence of a state-  
2 ment concerning the birth, marriage, divorce, death, legiti-  
3 macy, race, ancestry, relationship by blood or marriage, or  
4 other similar fact of the family history of a person other  
5 than the declarant is not made inadmissible by the hearsay  
6 rule if the declarant is unavailable as a witness and:

7 (1) The declarant was related to the other by blood or  
8 marriage; or

9 (2) The declarant was otherwise so intimately associated  
10 with the other's family as to be likely to have had accurate  
11 information concerning the matter declared and made the  
12 statement (i) upon information received from the other or  
13 from a person related by blood or marriage to the other or  
14 (ii) upon repute in the other's family.

15 (b) Evidence of a statement is inadmissible under this sec-  
16 tion if the statement was made under circumstances such as to  
17 indicate its lack of trustworthiness.

18 1312. Evidence of entries in family bibles or other family  
19 books or charts, engravings on rings, family portraits, engrav-  
20 ings on urns, crypts, or tombstones, and the like, is not made  
21 inadmissible by the hearsay rule when offered to prove the  
22 birth, marriage, divorce, death, legitimacy, race, ancestry, re-  
23 lationship by blood or marriage, or other similar fact of the  
24 family history of a member of the family by blood or marriage.

25 1313. Evidence of reputation among members of a family  
26 is not made inadmissible by the hearsay rule if the reputation  
27 concerns the birth, marriage, divorce, death, legitimacy, race,  
28 ancestry, relationship by blood or marriage, or other similar  
29 fact of the family history of a member of the family by blood  
30 or marriage.

31 1314. Evidence of reputation in a community concerning  
32 the date or fact of birth, marriage, divorce, or death of a per-  
33 son resident in the community at the time of the reputation  
34 is not made inadmissible by the hearsay rule.

35 1315. Evidence of a statement concerning a person's birth,  
36 marriage, divorce, death, legitimacy, race, ancestry, relation-  
37 ship by blood or marriage, or other similar fact of family his-  
38 tory which is contained in a writing made as a record of a  
39 church, religious denomination, or religious society is not made  
40 inadmissible by the hearsay rule if:

41 (a) The statement is contained in a writing made as a  
42 record of an act, condition, or event that would be admissible  
43 as evidence of such act, condition, or event under Section 1271;  
44 and

45 (b) The statement is of a kind customarily recorded in con-  
46 nection with the act, condition, or event recorded in the writ-  
47 ing.

48 1316. Evidence of a statement concerning a person's birth,  
49 marriage, divorce, death, legitimacy, race, ancestry, relation-  
50 ship by blood or marriage, or other similar fact of family  
51 history is not made inadmissible by the hearsay rule if the  
52 statement is contained in a certificate that the maker thereof

1 SEC. 140. Section 688 of the Penal Code is amended to  
2 read:

3 688. No person charged with a public offense may be  
4 subjected, before conviction, to any more restraint than is  
5 necessary for his detention to answer the charge.

6 SEC. 141. Section 939.6 of the Penal Code is amended to  
7 read:

8 939.6. (a) Subject to subdivision (b), in the investigation  
9 of a charge, the grand jury shall receive no other evidence  
10 than such as is:

11 (1) Given by witnesses produced and sworn before the  
12 grand jury;

13 (2) Furnished by writings, material objects, or other things  
14 presented to the senses; or

15 (3) Contained in a deposition that is admissible under sub-  
16 division 3 of Section 686.

17 (b) The grand jury shall receive none but evidence that  
18 would be admissible over objection at the trial of a criminal  
19 action, but the fact that evidence which would have been ex-  
20 cluded at trial was received by the grand jury does not render  
21 the indictment void where sufficient competent evidence to sup-  
22 port the indictment was received by the grand jury.

23 SEC. 142. Section 961 of the Penal Code is amended to  
24 read:

25 961. Neither presumptions of law, nor matters of which  
26 judicial notice is authorized or required to be taken, need be  
27 stated in an accusatory pleading.

28 SEC. 143. Section 963 of the Penal Code is amended to  
29 read:

30 963. In pleading a private statute, or an ordinance of a  
31 county or a municipal corporation, or a right derived there-  
32 from, it is sufficient to refer to the statute or ordinance by its  
33 title and the day of its passage, and the court must thereupon  
34 take judicial notice thereof in the same manner that it takes  
35 judicial notice of matters listed in Section 452 of the Evidence  
36 Code.

37 SEC. 144. Section 1120 of the Penal Code is amended to  
38 read:

39 1120. If a juror has any personal knowledge respecting a  
40 fact in controversy in a cause, he must declare the same in  
41 open court during the trial. If, during the retirement of the  
42 jury, a juror declare a fact which could be evidence in the  
43 cause, as of his own knowledge, the jury must return into  
44 court. In either of these cases, the juror making the statement  
45 must be sworn as a witness and examined in the presence of  
46 the parties in order that the court may determine whether  
47 good cause exists for his discharge as a juror.

48 SEC. 145. Section 1322 of the Penal Code is repealed.

49 SEC. 146. Section 1323 of the Penal Code is repealed.

50 SEC. 147. Section 1323.5 of the Penal Code is repealed.

1 SEC. 148. Section 1345 of the Penal Code is amended to  
2 read:

3 1345. The deposition, or a certified copy thereof, may be  
4 read in evidence by either party on the trial if the court finds  
5 that the witness is unavailable as a witness within the meaning  
6 of Section 240 of the Evidence Code. The same objections may  
7 be taken to a question or answer contained in the deposition  
8 as if the witness had been examined orally in court.

9 SEC. 149. Section 1362 of the Penal Code is amended to  
10 read:

11 1362. The depositions taken under the commission may be  
12 read in evidence by either party on the trial if the court finds  
13 that the witness is unavailable as a witness within the meaning  
14 of Section 240 of the Evidence Code. The same objections may  
15 be taken to a question in the interrogatories or to an answer  
16 in the deposition as if the witness had been examined orally in  
17 court.

18 SEC. 150. Section 306 of the Public Utilities Code is  
19 amended to read:

20 306. The office of the commission shall be in the City and  
21 County of San Francisco. The office shall always be open, legal  
22 holidays and nonjudicial days excepted. The commission shall  
23 hold its sessions at least once in each calendar month in the  
24 City and County of San Francisco. The commission may also  
25 meet at such other times and in such other places as may be  
26 expedient and necessary for the proper performance of its  
27 duties, and for that purpose may rent quarters or offices.  
28 Except for the commission's deliberative conferences, the ses-  
29 sions and meetings of the commission shall be open and public  
30 and all persons shall be permitted to attend.

31 The commission shall have a seal, bearing the inscription  
32 "Public Utilities Commission State of California." The seal  
33 shall be affixed to all writs and authentications of copies of  
34 records and to such other instruments as the commission shall  
35 direct.

36 The commission may procure all necessary books, maps,  
37 charts, stationery, instruments, office furniture, apparatus, and  
38 appliances.

39 SEC. 151. Sections 2 to 150 of this act shall become opera-  
40 tive on January 1, 1967.

LAW OFFICES  
SONG, KELL & SCHWARTZ  
MONTEREY PARK  
DISTRICT OFFICE  
214 SOUTH GARFIELD AVENUE  
MONTEREY PARK  
PHONES: CUMBERLAND 3-9233  
ATLANTIC 9-3477

# Assembly California Legislature

ALFRED H. SONG  
MEMBER OF ASSEMBLY, FORTY-FIFTH DISTRICT

VICE CHAIRMAN  
COMMITTEE ON GOVERNMENTAL EFFICIENCY AND ECONOMY  
CHAIRMAN  
SUBCOMMITTEE ON LAW REVISION

May 7, 1965

COMMITTEE  
GOVERNMENTAL EFFICIENCY  
AND ECONOMY  
JUDICIARY  
CONSTITUTIONAL AMENDMENTS  
ELECTIONS AND  
REAPPORTIONMENT  
SACRAMENTO ADDRESS  
ASSEMBLY BOX 48  
STATE CAPITOL  
SACRAMENTO 14  
ROOM 4017  
PHONE: HICKORY 5-7874

Hon. Edmund G. Brown  
Governor, State of California  
State Capitol

Dear Governor:

Senate amendments having gained Assembly concurrence on May 7, 1965, Assembly Bill 333 has completed the legislative process and is now ready for your signature.

AB 333 would establish a new Evidence Code in California, regulating the admission and exclusion of evidence before the California courts. The bill represents the first comprehensive revision and restatement of the law of evidence in California since 1872.

The bill is greatly needed to facilitate the administration of justice in our courts. Existing statutes are fragmentary, conflicting and unclear in many instances. Evidence Law, however, must be invoked in the midst of trials when there is no time to do extensive research to discover what the law is. This Code will give lawyers and judges an immediate source of the Law of Evidence and will end much of the confusion and uncertainty that now exist in the California Law of Evidence.

An immense amount of work went into the bill. The Law Revision Commission devoted seven years to its preparation. The Commission worked very closely with the State Bar, the Judicial Council, the Conference of Judges, and every other group, including 18 local bar associations that expressed an interest in the preparation of the Code. Wide publicity

May 7, 1965

was given to all of the Commission's proposals, and criticisms were invited from any and all sources. Extensive interim study was given to the Code by a Special Subcommittee of the Assembly Interim Committee on Judiciary.

The bill now has the unqualified endorsement of every group that will have to work with the law that it states. The Judicial Council, the Conference of Judges, the State Bar, the Attorney General, the District Attorneys' Association and the Department of Public Works all urged the passage of the bill. There is no opposition among the organized bar or the judiciary.

Mr. B. E. Whitkin, California's foremost authority on the Law of Evidence, has given the Code the highest praise. He testified during legislative hearings that "the pattern is brilliant and the advance is tremendous...." He, too, urged the passage of the bill.

Assembly Bill 333 is based on the legislation recommended by the Law Revision Commission in its Recommendation Proposing an Evidence Code (January 1965). I enclose a copy of this Recommendation. You will note that a Comment is found under each section of the new code as set out in the Recommendation. These Comments make clear the legislative intent and will provide a valuable source of information concerning the meaning and purpose of the various sections of the new code. The Comments contained in the Commission's Recommendation are supplemented and revised by Reports of the Assembly and Senate Judiciary Committees. See the Assembly Daily Journal for April 6, 1965 (pages 1712-1768) and the Senate Daily Journal for April 21, 1965 (pages 1573-1579). A copy of each daily journal is enclosed. We have been advised that the publishers of the California annotated codes will publish these Comments under the pertinent sections of the code so that they will be readily available to the members of the bench and bar. The publication of the Commission and legislative committee Comments is the same procedure that was followed in 1963 in connection with the governmental liability legislation. We have been informed that the Comments have been very helpful in interpreting the 1963 legislation.

The Commission prepared and distributed a number of tentative recommendations and research studies before drafting the new Evidence Code. I enclose a copy of each of these tentative recommendations and studies. This material is a valuable source of information concerning the existing California law. The procedure the Commission followed is described in more

Hon. Edmund G. Brown

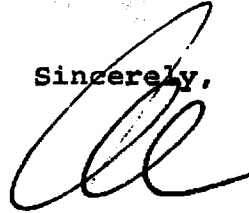
- 3 -

May 7, 1965

detail on pages 3-8 of its Recommendation Proposing an Evidence Code.

You will also be interested in knowing that the Continuing Education of the Bar is planning a summer seminar program on the new code and is also planning a state-wide educational program to be held before the new code becomes operative on January 1, 1967.

Sincerely,



ALFRED H. SONG

AHS:dl  
Enclosures

MJN 3105



**Memorandum**

AB 333

To : Honorable Edmund G. Brown  
Governor of California

Date : May 7, 1965

File No.: 53:2:vv

Attn Mr. Frank Mesple  
Legislative Secretary

*William*

From : Department of Employment  
Albert B. Tieburg, Administrator  
Employment Relations Agency

Subject: Enrolled Bill Report - Department of Employment and  
AB 333 Department of Industrial Relations  
Author Song

This bill enacts a new Evidence Code, consolidating and revising the law relating to evidence. It amends, adds and repeals sections of various codes.

The bill becomes operative on January 1, 1967. The delay allows time for affected persons to become familiar with the new law.

The bill is a result of an intensive review by the California Law Revision Commission (see Commission recommendation, January, 1965). It has the general support of the bar and bench.

It affects this agency by spelling out the rules of privilege and making these rules applicable in administrative proceedings before the Unemployment Insurance Appeals Board and its referees and before the Industrial Accident Commission and its referees.

We are aware of no opposition to the bill.

I concur in the recommendation of Director Ernest B. Webb that the bill be approved.

*Albert B. Tieburg*  
Albert B. Tieburg

*Be sure press has one  
We are doing per  
all cases.  
has a thoma*

PRESS RELEASE FROM

Assemblyman Alfred H. Song  
Room 4017, State Capitol  
Sacramento 14, California

1965 MAY 11 PM 3  
RECEIVED  
GOVERNOR'S OFFICE

FOR IMMEDIATE RELEASE  
May 10, 1965

Assembly Bill 333, by Assemblyman Alfred H. Song (D), has just received the approval of both houses of the California Legislature.

The measure establishes a new Evidence Code in California, regulating the admission and exclusion of evidence before the California courts. The bill represents the first comprehensive revision and restatement of the law of evidence in California since 1872.

Song praised the California Law Revision Commission for "this monumental and significant contribution to the administration of justice in California."

The proposed Evidence Code is the culmination of seven years of work by the Commission. Also participating were the California State Bar Association, Judicial Council, Conference of California Judges, Association of District Attorneys, Attorney General, local bar associations, and many interested individuals.

The members of the Law Revision Commission are law professors John D. McDonough and Sho Sato, and attorneys Joseph Ball, Herman Selvin, Richard Keatinge, James Edwards and Thomas Stanton. Representing the State Legislature were Senator James Cobey and Assemblyman Song. Serving in an exofficio capacity was Legislative Counsel George H. Murphy.

The measure was the subject of a two year interim study by the Assembly Subcommittee on Law Revision, headed by Song.

The State Bar is planning a summer seminar program on the new code, as part of its continuing education program, to acquaint its lawyer members with the new laws on evidence.

Song hailed passage of the bill as constituting "a landmark in the annals and progress of California law that will prove to be invaluable to all judges, lawyers, litigants and students."

#####

DEPARTMENT OF PUBLIC WORKS

## DIVISION OF CONTRACTS AND RIGHTS OF WAY (LEGAL)

1120 N STREET, SACRAMENTO

May 11, 1965

The Honorable Edmund G. Brown  
Governor of California  
State Capitol

Dear Governor Brown:

Re: Assembly Bill No. 333, Establishes an  
Evidence Code

This bill is the product of several years of intensive work by the Law Revision Commission to consolidate the provisions in the Code of Civil Procedure, Civil Code and the case law on evidence. This bill will make some substantial improvements in the rules of evidence in California courts.

It is urged that this bill be signed into law.

Respectfully submitted,

*Emerson Rhyner*  
EMERSON RHYNER  
Deputy Chief

APPROVED  
Highway Transportation Agency



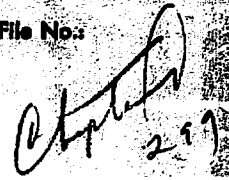
**Memorandum**

To: Honorable Edmund G. Brown  
Governor of California

Attention: Mr. Frank Mesple  
Legislative Secretary

Date: May 14, 1965

File No:



From: Department of General Services

Subject: Enrolled Bill Analysis  
Assembly Bill 333**History, Sponsor and Purpose:**

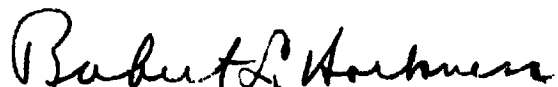
Assembly Bill 333 revises, updates and codifies the law of evidence. The bill is the product of the Law Revision Commission and results from a seven year study. Senator Cobey and Assemblyman Song introduced identical bills in the Senate and Assembly, respectively. Assemblyman Song's AB-333, after amendment, survived, and Senator Cobey's SB-110 was withdrawn. As introduced, the bill contained provisions which would have made material changes in administrative adjudication proceedings. In the opinion of the Office of Administrative Procedure, these would have caused problems, and the Office succeeded in persuading the Law Revision Commission of the need for amendment to eliminate the problem provisions.

**Effect and Comment:**

The primary impact of this bill will be in civil and criminal proceedings. As to administrative adjudication proceedings, the bill continues in existence current law. Under existing law, privileges pertained in civil proceedings apply to administrative proceedings. This bill makes no change in that provision.

**Recommendation:**

This bill would not adversely affect administrative adjudication proceedings under the Administrative Procedure Act, and we therefore see no reason why it should not be signed.

  
ROBERT L. HARKNESS  
Director of General Services

RLH:GRC:bh

FROM:  DISTRICT OFFICE  
800 WEST 20TH STREET  
P. O. BOX 1229  
MERCED, CALIFORNIA  
RANDOLPH 2-6266

FROM:  SACRAMENTO OFFICE  
ROOM 5070, STATE CAPITOL  
ZONE 14  
TELEPHONE: 445-5976

MEMBER:  
CALIFORNIA LAW REVISION  
COMMISSION

**JAMES A. COBEY**  
TWENTY-FOURTH SENATORIAL DISTRICT  
MERCED AND MADERA COUNTIES  
CHAIRMAN, SENATE WATER COMMITTEES

COMMITTEES—STANDING  
AGRICULTURE  
FINANCE  
JUDICIARY  
WATER RESOURCES

COMMITTEES—FACT FINDING  
AGRICULTURE  
LABOR AND WELFARE  
REVENUE AND TAXATION  
WATER RESOURCES

COMMITTEES—STATUTORY  
JOINT LEGISLATIVE BUDGET  
COMMITTEE

## CALIFORNIA LEGISLATURE

# Senate

May 17th 1965

The Honorable Edmund G. Brown  
Governor of California  
State Capitol  
Sacramento, California

Re: Assembly Bill 333

Dear Governor:

This bill is identical with my Senate Bill 110 of which it originated as a copy. I have dropped SB 110.

Assembly Bill 333, as a consequence, is the bill of the California Law Revision Commission establishing for the first time in California history a separate and complete Evidence Code.

As you know, part of the rules of evidence are presently stated in our Code of Civil Procedure, a larger portion is set forth in the decisional law of the state, and a third portion is not available in the law of this state.

What this new code will do is for the first time set out in one place the California Law of Evidence in complete, clear and relatively certain form. It is the first revision of the law of evidence in this state since 1872 and it will provide both the bench and bar with a succinct but complete handbook which they can carry into and use in court readily.

As you undoubtedly recall, this new code embodies some seven years of work on the part of the Law Revision Commission, along with lesser amounts by committees of the State Bar of California, the Judicial Council, the Conference of Judges

the District Attorney's Association and some 18 local bar associations as well.

It has received essentially the unanimous endorsement of the bar, the bench and law enforcement in this state.

I respectfully request that you sign this bill.

Respectfully yours,

A handwritten signature in cursive script that reads "James A. Cobe". The signature is written in black ink and is positioned above the typed name "JAMES A. COBEY".

JAMES A. COBEY

JAC:jcc

cc: Assemblyman Alfred H. Song



**BILL MEMORANDUM**

Date: May 17, 1965

To : GOVERNOR BROWN

From: FRANK A. MESPLÉ

ASSEMBLY

BILL No. 333

By Song, et al  
(Co-author Senator Cobey)

VOTE: Senate 36 Ayes  
2 Noes O'Sullivan and Rattigan

Assembly Unanimous

AB 333 revises, consolidates and codifies in the Evidence Code the California law of evidence. The bill becomes operative on January 1, 1967. The bill represents the first comprehensive revision and restatement of the law of evidence in California since 1872.

The Attorney General and Legislative Counsel have no substantial constitutional or legal objections to approval.

The new Evidence Code is the result of several years' work by the Law Revision Commission, the State Bar, the Legislature, the Judicial Council, the Conference of Judges, local bar associations, and individual members of the bar.

The District Attorneys' and Peace Officers' Associations recommend approval.

The Departments of General Services, Public Works, Fish and Game, and Industrial Relations recommend approval.

Assemblyman Song and Senator Cobey, the authors, request approval.

Recommendation: Approve. (Williams)

## CHAPTER 299

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

[Approved by Governor May 18, 1965. Filed with Secretary of State May 18, 1965.]

*The people of the State of California do enact as follows:*

SECTION 1. This act shall be known as the Cobey-Song Evidence Act.

SEC. 2. The Evidence Code is enacted, to read:

### EVIDENCE CODE

#### DIVISION 1. PRELIMINARY PROVISIONS AND CONSTRUCTION

1. This code shall be known as the Evidence Code.

2. The rule of the common law, that statutes in derogation thereof are to be strictly construed, has no application to this code. This code establishes the law of this state respecting the subject to which it relates, and its provisions are to be liberally construed with a view to effecting its objects and promoting justice.

3. If any provision or clause of this code or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the code which can be given effect without the invalid provision or application, and to this end the provisions of this code are declared to be severable.

4. Unless the provision or context otherwise requires, these preliminary provisions and rules of construction shall govern the construction of this code.

5. Division, chapter, article, and section headings do not in any manner affect the scope, meaning, or intent of the provisions of this code.

6. Whenever any reference is made to any portion of this code or of any other statute, such reference shall apply to all amendments and additions heretofore or hereafter made.

7. Unless otherwise expressly stated:

(a) "Division" means a division of this code.

(b) "Chapter" means a chapter of the division in which that term occurs.

(c) This section does not affect the admissibility in evidence of the original medical records of any patient.

(d) This section does not exclude evidence which is relevant evidence in a criminal action.

## DIVISION 10. HEARSAY EVIDENCE

### CHAPTER 1. GENERAL PROVISIONS

1200. (a) "Hearsay evidence" is evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated.

(b) Except as provided by law, hearsay evidence is inadmissible.

(c) This section shall be known and may be cited as the hearsay rule.

1201. A statement within the scope of an exception to the hearsay rule is not inadmissible on the ground that the evidence is hearsay evidence if the hearsay evidence of such statement consists of one or more statements each of which meets the requirements of an exception to the hearsay rule.

1202. Evidence of a statement or other conduct by a declarant that is inconsistent with a statement by such declarant received in evidence as hearsay evidence is not inadmissible for the purpose of attacking the credibility of the declarant though he is not given and has not had an opportunity to explain or to deny such inconsistent statement or other conduct. Any other evidence offered to attack or support the credibility of the declarant is admissible if it would have been admissible had the declarant been a witness at the hearing. For the purposes of this section, the deponent of a deposition taken in the action in which it is offered shall be deemed to be a hearsay declarant.

1203. (a) The declarant of a statement that is admitted as hearsay evidence may be called and examined by any adverse party as if under cross-examination concerning the statement.

(b) This section is not applicable if the declarant is (1) a party, (2) a person identified with a party within the meaning of subdivision (d) of Section 776, or (3) a witness who has testified in the action concerning the subject matter of the statement.

(c) This section is not applicable if the statement is one described in Article 1 (commencing with Section 1220), Article 3 (commencing with Section 1235), or Article 10 (commencing with Section 1300) of Chapter 2 of this division.

(d) A statement that is otherwise admissible as hearsay evidence is not made inadmissible by this section because the declarant who made the statement is unavailable for examination pursuant to this section.

1204. A statement that is otherwise admissible as hearsay evidence is inadmissible against the defendant in a criminal

action if the statement was made, either by the defendant or by another, under such circumstances that it is inadmissible against the defendant under the Constitution of the United States or the State of California.

1205. Nothing in this division shall be construed to repeal by implication any other statute relating to hearsay evidence.

## CHAPTER 2. EXCEPTIONS TO THE HEARSAY RULE

### Article 1. Confessions and Admissions

1220. Evidence of a statement is not made inadmissible by the hearsay rule when offered against the declarant in an action to which he is a party in either his individual or representative capacity, regardless of whether the statement was made in his individual or representative capacity

1221. Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if the statement is one of which the party, with knowledge of the content thereof, has by words or other conduct manifested his adoption or his belief in its truth.

1222. Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:

(a) The statement was made by a person authorized by the party to make a statement or statements for him concerning the subject matter of the statement; and

(b) The evidence is offered either after admission of evidence sufficient to sustain a finding of such authority or, in the court's discretion as to the order of proof, subject to the admission of such evidence

1223. Evidence of a statement offered against a party is not made inadmissible by the hearsay rule if:

(a) The statement was made by the declarant while participating in a conspiracy to commit a crime or civil wrong and in furtherance of the objective of that conspiracy;

(b) The statement was made prior to or during the time that the party was participating in that conspiracy; and

(c) The evidence is offered either after admission of evidence sufficient to sustain a finding of the facts specified in subdivisions (a) and (b) or, in the court's discretion as to the order of proof, subject to the admission of such evidence.

1224. When the liability, obligation, or duty of a party to a civil action is based in whole or in part upon the liability, obligation, or duty of the declarant, or when the claim or right asserted by a party to a civil action is barred or diminished by a breach of duty by the declarant, evidence of a statement made by the declarant is as admissible against the party as it would be if offered against the declarant in an action involving that liability, obligation, duty, or breach of duty.

1225. When a right, title, or interest in any property or claim asserted by a party to a civil action requires a determination that a right, title, or interest exists or existed in the de-

clarant, evidence of a statement made by the declarant during the time the party now claims the declarant was the holder of the right, title, or interest is as admissible against the party as it would be if offered against the declarant in an action involving that right, title, or interest.

1226. Evidence of a statement by a minor child is not made inadmissible by the hearsay rule if offered against the plaintiff in an action brought under Section 376 of the Code of Civil Procedure for injury to such minor child.

1227. Evidence of a statement by the deceased is not made inadmissible by the hearsay rule if offered against the plaintiff in an action for wrongful death brought under Section 377 of the Code of Civil Procedure.

### Article 2. Declarations Against Interest

1230. Evidence of a statement by a declarant having sufficient knowledge of the subject is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and the statement, when made, was so far contrary to the declarant's pecuniary or proprietary interest, or so far subjected him to the risk of civil or criminal liability, or so far tended to render invalid a claim by him against another, or created such a risk of making him an object of hatred, ridicule, or social disgrace in the community, that a reasonable man in his position would not have made the statement unless he believed it to be true.

### Article 3. Prior Statements of Witnesses

1235. Evidence of a statement made by a witness is not made inadmissible by the hearsay rule if the statement is inconsistent with his testimony at the hearing and is offered in compliance with Section 770.

1236. Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement is consistent with his testimony at the hearing and is offered in compliance with Section 791.

1237. (a) Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him while testifying, the statement concerns a matter as to which the witness has insufficient present recollection to enable him to testify fully and accurately, and the statement is contained in a writing which:

(1) Was made at a time when the fact recorded in the writing actually occurred or was fresh in the witness' memory;

(2) Was made (i) by the witness himself or under his direction or (ii) by some other person for the purpose of recording the witness' statement at the time it was made;

(3) Is offered after the witness testifies that the statement he made was a true statement of such fact; and

(4) Is offered after the writing is authenticated as an accurate record of the statement.

(b) The writing may be read into evidence, but the writing itself may not be received in evidence unless offered by an adverse party.

1238. Evidence of a statement previously made by a witness is not made inadmissible by the hearsay rule if the statement would have been admissible if made by him while testifying and:

(a) The statement is an identification of a party or another as a person who participated in a crime or other occurrence;

(b) The statement was made at a time when the crime or other occurrence was fresh in the witness' memory; and

(c) The evidence of the statement is offered after the witness testifies that he made the identification and that it was a true reflection of his opinion at that time.

#### Article 4. Spontaneous, Contemporaneous, and Dying Declarations

1240. Evidence of a statement is not made inadmissible by the hearsay rule if the statement:

(a) Purports to narrate, describe, or explain an act, condition, or event perceived by the declarant; and

(b) Was made spontaneously while the declarant was under the stress of excitement caused by such perception.

1241. Evidence of a statement is not made inadmissible by the hearsay rule if the statement:

(a) Is offered to explain, qualify, or make understandable conduct of the declarant; and

(b) Was made while the declarant was engaged in such conduct.

1242. Evidence of a statement made by a dying person respecting the cause and circumstances of his death is not made inadmissible by the hearsay rule if the statement was made upon his personal knowledge and under a sense of immediately impending death.

#### Article 5. Statements of Mental or Physical State

1250. (a) Subject to Section 1252, evidence of a statement of the declarant's then existing state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) is not made inadmissible by the hearsay rule when:

(1) The evidence is offered to prove the declarant's state of mind, emotion, or physical sensation at that time or at any other time when it is itself an issue in the action; or

(2) The evidence is offered to prove or explain acts or conduct of the declarant.

(b) This section does not make admissible evidence of a statement of memory or belief to prove the fact remembered or believed.

1251. Subject to Section 1252, evidence of a statement of the declarant's state of mind, emotion, or physical sensation (including a statement of intent, plan, motive, design, mental feeling, pain, or bodily health) at a time prior to the statement is not made inadmissible by the hearsay rule if:

- (a) The declarant is unavailable as a witness; and
- (b) The evidence is offered to prove such prior state of mind, emotion, or physical sensation when it is itself an issue in the action and the evidence is not offered to prove any fact other than such state of mind, emotion, or physical sensation.

1252. Evidence of a statement is inadmissible under this article if the statement was made under circumstances such as to indicate its lack of trustworthiness.

#### Article 6. Statements Relating to Wills and to Claims Against Estates

1260. (a) Evidence of a statement made by a declarant who is unavailable as a witness that he has or has not made a will, or has or has not revoked his will, or that identifies his will, is not made inadmissible by the hearsay rule.

(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

1261. (a) Evidence of a statement is not made inadmissible by the hearsay rule when offered in an action upon a claim or demand against the estate of the declarant if the statement was made upon the personal knowledge of the declarant at a time when the matter had been recently perceived by him and while his recollection was clear.

(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

#### Article 7. Business Records

1270. As used in this article, "a business" includes every kind of business, governmental activity, profession, occupation, calling, or operation of institutions, whether carried on for profit or not.

1271. Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

- (a) The writing was made in the regular course of a business;
- (b) The writing was made at or near the time of the act, condition, or event;
- (c) The custodian or other qualified witness testifies to its identity and the mode of its preparation; and
- (d) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

1272. Evidence of the absence from the records of a business of a record of an asserted act, condition, or event is not

made inadmissible by the hearsay rule when offered to prove the nonoccurrence of the act or event, or the nonexistence of the condition, if:

(a) It was the regular course of that business to make records of all such acts, conditions, or events at or near the time of the act, condition, or event and to preserve them; and

(b) The sources of information and method and time of preparation of the records of that business were such that the absence of a record of an act, condition, or event is a trustworthy indication that the act or event did not occur or the condition did not exist.

#### Article 8. Official Records and Other Official Writings

1280. Evidence of a writing made as a record of an act, condition, or event is not made inadmissible by the hearsay rule when offered to prove the act, condition, or event if:

(a) The writing was made by and within the scope of duty of a public employee;

(b) The writing was made at or near the time of the act, condition, or event; and

(c) The sources of information and method and time of preparation were such as to indicate its trustworthiness.

1281. Evidence of a writing made as a record of a birth, fetal death, death, or marriage is not made inadmissible by the hearsay rule if the maker was required by law to file the writing in a designated public office and the writing was made and filed as required by law.

1282. A written finding of presumed death made by an employee of the United States authorized to make such finding pursuant to the Federal Missing Persons Act (56 Stats. 143, 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C. App 1001-1016), as enacted or as heretofore or hereafter amended, shall be received in any court, office, or other place in this state as evidence of the death of the person therein found to be dead and of the date, circumstances, and place of his disappearance.

1283. An official written report or record that a person is missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, besieged by a hostile force, or detained in a foreign country against his will, or is dead or is alive, made by an employee of the United States authorized by any law of the United States to make such report or record shall be received in any court, office, or other place in this state as evidence that such person is missing, missing in action, interned in a foreign country, captured by a hostile force, beleaguered by a hostile force, besieged by a hostile force, or detained in a foreign country against his will, or is dead or is alive.

1284. Evidence of a writing made by the public employee who is the official custodian of the records in a public office, reciting diligent search and failure to find a record, is not



made inadmissible by the hearsay rule when offered to prove the absence of a record in that office.

#### Article 9. Former Testimony

1290. As used in this article, "former testimony" means testimony given under oath in:

(a) Another action or in a former hearing or trial of the same action;

(b) A proceeding to determine a controversy conducted by or under the supervision of an agency that has the power to determine such a controversy and is an agency of the United States or a public entity in the United States;

(c) A deposition taken in compliance with law in another action; or

(d) An arbitration proceeding if the evidence of such former testimony is a verbatim transcript thereof.

1291. (a) Evidence of former testimony is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and:

(1) The former testimony is offered against a person who offered it in evidence in his own behalf on the former occasion or against the successor in interest of such person; or

(2) The party against whom the former testimony is offered was a party to the action or proceeding in which the testimony was given and had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing.

(b) The admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that former testimony offered under this section is not subject to:

(1) Objections to the form of the question which were not made at the time the former testimony was given.

(2) Objections based on competency or privilege which did not exist at the time the former testimony was given.

1292. (a) Evidence of former testimony is not made inadmissible by the hearsay rule if:

(1) The declarant is unavailable as a witness;

(2) The former testimony is offered in a civil action; and

(3) The issue is such that the party to the action or proceeding in which the former testimony was given had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which the party against whom the testimony is offered has at the hearing.

(b) The admissibility of former testimony under this section is subject to the same limitations and objections as though the declarant were testifying at the hearing, except that former testimony offered under this section is not subject to objections based on competency or privilege which did not exist at the time the former testimony was given.

## Article 10. Judgments

1300. Evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment unless the judgment was based on a plea of nolo contendere.

1301. Evidence of a final judgment is not made inadmissible by the hearsay rule when offered by the judgment debtor to prove any fact which was essential to the judgment in an action in which he seeks to:

- (a) Recover partial or total indemnity or exoneration for money paid or liability incurred because of the judgment;
- (b) Enforce a warranty to protect the judgment debtor against the liability determined by the judgment; or
- (c) Recover damages for breach of warranty substantially the same as the warranty determined by the judgment to have been breached.

1302. When the liability, obligation, or duty of a third person is in issue in a civil action, evidence of a final judgment against that person is not made inadmissible by the hearsay rule when offered to prove such liability, obligation, or duty.

## Article 11. Family History

1310. (a) Subject to subdivision (b), evidence of a statement by a declarant who is unavailable as a witness concerning his own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race, ancestry, or other similar fact of his family history is not made inadmissible by the hearsay rule, even though the declarant had no means of acquiring personal knowledge of the matter declared.

(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

1311. (a) Subject to subdivision (b), evidence of a statement concerning the birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of the family history of a person other than the declarant is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and:

(1) The declarant was related to the other by blood or marriage; or

(2) The declarant was otherwise so intimately associated with the other's family as to be likely to have had accurate information concerning the matter declared and made the statement (i) upon information received from the other or from a person related by blood or marriage to the other or (ii) upon repute in the other's family.

(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

1312. Evidence of entries in family Bibles or other family books or charts, engravings on rings, family portraits, engravings on urns, crypts, or tombstones, and the like, is not made inadmissible by the hearsay rule when offered to prove the birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of the family history of a member of the family by blood or marriage.

1313. Evidence of reputation among members of a family is not made inadmissible by the hearsay rule if the reputation concerns the birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of the family history of a member of the family by blood or marriage.

1314. Evidence of reputation in a community concerning the date or fact of birth, marriage, divorce, or death of a person resident in the community at the time of the reputation is not made inadmissible by the hearsay rule.

1315. Evidence of a statement concerning a person's birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of family history which is contained in a writing made as a record of a church, religious denomination, or religious society is not made inadmissible by the hearsay rule if:

(a) The statement is contained in a writing made as a record of an act, condition, or event that would be admissible as evidence of such act, condition, or event under Section 1271; and

(b) The statement is of a kind customarily recorded in connection with the act, condition, or event recorded in the writing.

1316. Evidence of a statement concerning a person's birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of family history is not made inadmissible by the hearsay rule if the statement is contained in a certificate that the maker thereof performed a marriage or other ceremony or administered a sacrament and:

(a) The maker was a clergyman, civil officer, or other person authorized to perform the acts reported in the certificate by law or by the rules, regulations, or requirements of a church, religious denomination, or religious society; and

(b) The certificate was issued by the maker at the time and place of the ceremony or sacrament or within a reasonable time thereafter.

## Article 12. Reputation and Statements Concerning Community History, Property Interests, and Character

1320. Evidence of reputation in a community is not made inadmissible by the hearsay rule if the reputation concerns an event of general history of the community or of the state or nation of which the community is a part and the event was of importance to the community.

1321. Evidence of reputation in a community is not made inadmissible by the hearsay rule if the reputation concerns the interest of the public in property in the community and the reputation arose before controversy.

1322. Evidence of reputation in a community is not made inadmissible by the hearsay rule if the reputation concerns boundaries of, or customs affecting, land in the community and the reputation arose before controversy.

1323. Evidence of a statement concerning the boundary of land is not made inadmissible by the hearsay rule if the declarant is unavailable as a witness and had sufficient knowledge of the subject, but evidence of a statement is not admissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

1324. Evidence of a person's general reputation with reference to his character or a trait of his character at a relevant time in the community in which he then resided or in a group with which he then habitually associated is not made inadmissible by the hearsay rule.

#### Article 13. Dispositive Instruments and Ancient Writings

1330. Evidence of a statement contained in a deed of conveyance or a will or other writing purporting to affect an interest in real or personal property is not made inadmissible by the hearsay rule if:

(a) The matter stated was relevant to the purpose of the writing;

(b) The matter stated would be relevant to an issue as to an interest in the property; and

(c) The dealings with the property since the statement was made have not been inconsistent with the truth of the statement.

1331. Evidence of a statement is not made inadmissible by the hearsay rule if the statement is contained in a writing more than 30 years old and the statement has been since generally acted upon as true by persons having an interest in the matter.

#### Article 14. Commercial, Scientific, and Similar Publications

1340. Evidence of a statement, other than an opinion, contained in a tabulation, list, directory, register, or other published compilation is not made inadmissible by the hearsay rule if the compilation is generally used and relied upon as accurate in the course of a business as defined in Section 1270.

1341. Historical works, books of science or art, and published maps or charts, made by persons indifferent between the parties, are not made inadmissible by the hearsay rule when offered to prove facts of general notoriety and interest.

judge, commissioner or counselor in a proceeding under this chapter shall be deemed to be official information within the meaning of Section 1040 of the Evidence Code.

The files of the conciliation court shall be closed. The petition, supporting affidavit, reconciliation agreement and any court order made in the matter may be opened to inspection by any party or his counsel upon the written authority of the judge of the conciliation court.

SEC. 23. The heading of Part IV of the Code of Civil Procedure is amended to read :

#### PART IV. MISCELLANEOUS PROVISIONS

SEC. 24. Section 1823 of the Code of Civil Procedure is repealed.

SEC. 25. Section 1824 of the Code of Civil Procedure is repealed.

SEC. 26. Section 1825 of the Code of Civil Procedure is repealed.

SEC. 27. Section 1826 of the Code of Civil Procedure is repealed.

SEC. 28. Section 1827 of the Code of Civil Procedure is repealed.

SEC. 29. Section 1828 of the Code of Civil Procedure is repealed.

SEC. 30. Section 1829 of the Code of Civil Procedure is repealed.

SEC. 31. Section 1830 of the Code of Civil Procedure is repealed.

SEC. 32. Section 1831 of the Code of Civil Procedure is repealed.

SEC. 33. Section 1832 of the Code of Civil Procedure is repealed.

SEC. 34. Section 1833 of the Code of Civil Procedure is repealed.

SEC. 35. Section 1834 of the Code of Civil Procedure is repealed.

SEC. 36. Section 1836 of the Code of Civil Procedure is repealed.

SEC. 37. Section 1837 of the Code of Civil Procedure is repealed.

SEC. 38. Section 1838 of the Code of Civil Procedure is repealed.

SEC. 39. Section 1839 of the Code of Civil Procedure is repealed.

SEC. 40. Section 1844 of the Code of Civil Procedure is repealed.

SEC. 41. Section 1845 of the Code of Civil Procedure is repealed.

SEC. 42. Section 1845.5 of the Code of Civil Procedure is amended and renumbered to read :

1247c. In an eminent domain proceeding a witness, otherwise qualified, may testify with respect to the value of the real

property including the improvements situated thereon or the value of any interest in real property to be taken, and may testify on direct examination as to his knowledge of the amount paid for comparable property or property interests. In rendering his opinion as to highest and best use and market value of the property sought to be condemned the witness shall be permitted to consider and give evidence as to the nature and value of the improvements and the character of the existing uses being made of the properties in the general vicinity of the property sought to be condemned. Nothing in this section makes inadmissible any evidence that is admissible under Sections 800 to 805, inclusive, of the Evidence Code or under any other provision of the Evidence Code.

SEC. 43. Section 1846 of the Code of Civil Procedure is repealed.

SEC. 44. Section 1847 of the Code of Civil Procedure is repealed.

SEC. 45. Section 1848 of the Code of Civil Procedure is repealed.

SEC. 46. Section 1849 of the Code of Civil Procedure is repealed.

SEC. 47. Section 1850 of the Code of Civil Procedure is repealed.

SEC. 48. Section 1851 of the Code of Civil Procedure is repealed.

SEC. 49. Section 1852 of the Code of Civil Procedure is repealed.

SEC. 50. Section 1853 of the Code of Civil Procedure is repealed.

SEC. 51. Section 1854 of the Code of Civil Procedure is repealed.

SEC. 52. Section 1855 of the Code of Civil Procedure is repealed.

SEC. 53. Section 1855a of the Code of Civil Procedure is repealed.

SEC. 54. Section 1863 of the Code of Civil Procedure is repealed.

SEC. 55. Section 1867 of the Code of Civil Procedure is repealed.

SEC. 56. Section 1868 of the Code of Civil Procedure is repealed.

SEC. 57. Section 1869 of the Code of Civil Procedure is repealed.

SEC. 58. Section 1870 of the Code of Civil Procedure is repealed.

SEC. 59. Section 1871 of the Code of Civil Procedure is repealed.

SEC. 60. Section 1872 of the Code of Civil Procedure is repealed.

SEC. 61. Section 1875 of the Code of Civil Procedure is repealed.

SEC. 62. Section 1879 of the Code of Civil Procedure is repealed.

SEC. 63. Section 1880 of the Code of Civil Procedure is repealed.

SEC. 64. Section 1881 of the Code of Civil Procedure is repealed.

SEC. 65. Section 1883 of the Code of Civil Procedure is repealed.

SEC. 66. Section 1884 of the Code of Civil Procedure is repealed.

SEC. 67. Section 1885 of the Code of Civil Procedure is repealed.

SEC. 68. Section 1893 of the Code of Civil Procedure is amended to read:

1893. Every public officer having the custody of a public writing, which a citizen has a right to inspect, is bound to give him, on demand, a certified copy of it, on payment of the legal fees therefor. If a public officer having custody of public writings of a particular type fails to find a demanded writing of that type after diligent search, he shall furnish, upon demand, a writing so stating and affix his signature thereto in his official capacity, on payment of a fee therefor in like amount as the minimum fee that would have been required for the preparation and certification of a nonphotographic copy of the demanded writing.

SEC. 69. Section 1901 of the Code of Civil Procedure is repealed.

SEC. 70. Section 1903 of the Code of Civil Procedure is repealed.

SEC. 71. Section 1905 of the Code of Civil Procedure is repealed.

SEC. 72. Section 1906 of the Code of Civil Procedure is repealed.

SEC. 73. Section 1907 of the Code of Civil Procedure is repealed.

SEC. 74. Section 1908.5 is added to the Code of Civil Procedure, to read:

1908.5. When a judgment or order of a court is conclusive, the judgment or order must be alleged in the pleadings if there be an opportunity to do so; if there be no such opportunity, the judgment or order may be used as evidence.

SEC. 75. Section 1918 of the Code of Civil Procedure is repealed.

SEC. 76. Section 1919 of the Code of Civil Procedure is repealed.

SEC. 77. Section 1919a of the Code of Civil Procedure is repealed.

SEC. 78. Section 1919b of the Code of Civil Procedure is repealed.

SEC. 79. Section 1920 of the Code of Civil Procedure is repealed.

- SEC. 80. Section 1920a of the Code of Civil Procedure is repealed.
- SEC. 81. Section 1920b of the Code of Civil Procedure is repealed.
- SEC. 82. Section 1921 of the Code of Civil Procedure is repealed.
- SEC. 83. Section 1922 of the Code of Civil Procedure is repealed.
- SEC. 84. Section 1923 of the Code of Civil Procedure is repealed.
- SEC. 85. Section 1924 of the Code of Civil Procedure is repealed.
- SEC. 86. Section 1925 of the Code of Civil Procedure is repealed.
- SEC. 87. Section 1926 of the Code of Civil Procedure is repealed.
- SEC. 88. Section 1927 of the Code of Civil Procedure is repealed.
- SEC. 89. Section 1927.5 of the Code of Civil Procedure is repealed.
- SEC. 90. Section 1928 of the Code of Civil Procedure is repealed.
- SEC. 91. Article 2.1 (commencing with Section 1928.1) of Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure is repealed.
- SEC. 92. Section 1936 of the Code of Civil Procedure is repealed.
- SEC. 93. Section 1936.1 of the Code of Civil Procedure is repealed.
- SEC. 94. Section 1937 of the Code of Civil Procedure is repealed.
- SEC. 95. Section 1938 of the Code of Civil Procedure is repealed.
- SEC. 96. Section 1939 of the Code of Civil Procedure is repealed.
- SEC. 97. Section 1940 of the Code of Civil Procedure is repealed.
- SEC. 98. Section 1941 of the Code of Civil Procedure is repealed.
- SEC. 99. Section 1942 of the Code of Civil Procedure is repealed.
- SEC. 100. Section 1943 of the Code of Civil Procedure is repealed.
- SEC. 101. Section 1944 of the Code of Civil Procedure is repealed.
- SEC. 102. Section 1945 of the Code of Civil Procedure is repealed.
- SEC. 103. Section 1946 of the Code of Civil Procedure is repealed.
- SEC. 104. Section 1947 of the Code of Civil Procedure is repealed.



SEC. 105. Section 1948 of the Code of Civil Procedure is repealed.

SEC. 106. Section 1951 of the Code of Civil Procedure is repealed.

SEC. 107. Article 5 (commencing with Section 1953e) of Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 108. Article 6 (commencing with Section 1953i) of Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 109. Chapter 4 (consisting of Section 1954) of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 110. Chapter 5 (commencing with Section 1957) of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 111. Section 1967 of the Code of Civil Procedure is repealed.

SEC. 112. Section 1968 of the Code of Civil Procedure is repealed.

SEC. 113. Section 1973 of the Code of Civil Procedure is repealed.

SEC. 114. Section 1974 of the Code of Civil Procedure is amended to read:

1974. No person is liable upon a representation as to the credit of a third person, unless such representation, or some memorandum thereof, be in writing, and either subscribed by or in the handwriting of the party to be held liable.

SEC. 115. Chapter 7 (consisting of Section 1978) of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 116. Chapter 8 (commencing with Section 1980.1) of Title 2 of Part IV of the Code of Civil Procedure is repealed.

SEC. 117. Chapter 1 (commencing with Section 1981) of Title 3 of Part IV of the Code of Civil Procedure is repealed.

SEC. 118. Section 1998 of the Code of Civil Procedure is repealed.

SEC. 119. Section 1998.1 of the Code of Civil Procedure is repealed.

SEC. 120. Section 1998.2 of the Code of Civil Procedure is repealed.

SEC. 121. Section 1998.3 of the Code of Civil Procedure is repealed.

SEC. 122. Section 1998.4 of the Code of Civil Procedure is repealed.

SEC. 123. Section 1998.5 of the Code of Civil Procedure is repealed.

SEC. 124. Section 2009 of the Code of Civil Procedure is amended to read:

2009. An affidavit may be used to verify a pleading or a paper in a special proceeding, to prove the service of a summons, notice, or other paper in an action or special proceeding, to obtain a provisional remedy, the examination of a witness, or a stay of proceedings, and in uncontested proceedings

to establish a record of birth, or upon a motion, and in any other case expressly permitted by statute.

Sec. 125. Section 2016 of the Code of Civil Procedure is amended to read:

2016. (a) Any party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes. Such depositions may be taken in an action at any time after the service of the summons or in a special proceeding after the service of the petition or after the appearance of the defendant or respondent. After commencement of the action or proceedings, the deposition may be taken without leave of court, except that leave of court, granted with or without notice, and for good cause shown, must be obtained if the notice of the taking of the deposition is served by the plaintiff within 20 days after service of the summons or petition on, or appearance of, the defendant or respondent. The attendance of witnesses or the production of books, documents, or other things at depositions may be compelled by the use of subpoena as provided in Chapter 2 (commencing with Section 1985), Title 3, Part 4 of this code.

(b) Unless otherwise ordered by the court as provided by subdivision (b) or (d) of Section 2019 of this code, the deponent may be examined regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the examining party, or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts. It is not ground for objection that the testimony will be inadmissible at the trial if the testimony sought appears reasonably calculated to lead to the discovery of admissible evidence. All matters which are privileged against disclosure upon the trial under the law of this state are privileged against disclosure through any discovery procedure. This article shall not be construed to change the law of this state with respect to the existence of any privilege, whether provided for by statute or by judicial decision.

The work product of an attorney shall not be discoverable unless the court determines that denial of discovery will unfairly prejudice the party seeking discovery in preparing his claim or defense or will result in an injustice, and any writing that reflects an attorney's impressions, conclusions, opinions, or legal research or theories shall not be discoverable under any circumstances.

(c) Examination and cross-examination of deponents may proceed as permitted at the trial.

(d) At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against

any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:

(1) Any deposition may be used by any party for the purpose of contradicting or impeaching the testimony of deponent as a witness.

(2) The deposition of a party to the record of any civil action or proceeding or of a person for whose immediate benefit said action or proceeding is prosecuted or defended, or of anyone who at the time of taking the deposition was an officer, director, superintendent, member, agent, employee, or managing agent of any such party or person may be used by an adverse party for any purpose.

(3) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (i) that the witness is unavailable as a witness within the meaning of Section 240 of the Evidence Code or (ii) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used.

(4) Subject to the requirements of this section, a party may offer in evidence all or any part of a deposition, and if such party introduces only part of such deposition, any party may introduce any other parts.

Substitution of parties does not affect the right to use depositions previously taken; and, when an action in any court of the United States or of any state has been dismissed and another action involving the same subject matter is afterward brought between the same parties or their representatives or successors in interest, all depositions lawfully taken and duly filed in the former action may be used in the latter as if originally taken therefor.

(e) Subject to the provisions of subdivision (c) of Section 2021 of this code, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.

(f) A party shall not be deemed to make a person his own witness for any purpose by taking his deposition. Except where the deposition is used under the provisions of paragraph (2) of subdivision (d) of this section, the introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent, or for explaining or clarifying portions of the said deposition offered by an adverse party, makes the deponent the witness of the party introducing the deposition, as to the portions of the deposition introduced by said party. At the trial or hearing any party may rebut any relevant evidence contained in a deposition whether introduced by him or by another party.

(g) It is the policy of this state (i) to preserve the rights of attorneys to prepare cases for trial with that degree of privacy necessary to encourage them to prepare their cases thoroughly and to investigate not only the favorable but the unfavorable aspects of such cases and (ii) to prevent an attorney from taking undue advantage of his adversary's industry or efforts

SEC. 126. Article 6 (commencing with Section 2042) of Chapter 3 of Title 3 of Part IV of the Code of Civil Procedure is repealed.

SEC. 127. Title 4 (consisting of Section 2061) of Part IV of the Code of Civil Procedure is repealed.

SEC. 128. Section 2065 of the Code of Civil Procedure is repealed.

SEC. 129. Section 2066 of the Code of Civil Procedure is repealed.

SEC. 130. Section 2078 of the Code of Civil Procedure is repealed.

SEC. 131. Section 2079 of the Code of Civil Procedure is repealed.

SEC. 132. Chapter 4 (commencing with Section 2101) of Title 6 of Part IV of the Code of Civil Procedure is repealed.

SEC. 133. Section 6602 of the Corporations Code is amended to read:

6602. In any action or proceeding, the court takes judicial notice, in the same manner that it takes judicial notice of the matters listed in Section 452 of the Evidence Code, of the official acts affecting corporations of the legislative, executive, and judicial departments of the state or place under the laws of which the corporation purports to be incorporated.

SEC. 134. Section 25310 of the Corporations Code is amended to read:

25310. The commissioner shall adopt a seal bearing the inscription: "Commissioner of Corporations, State of California." The seal shall be affixed to all writs, orders, permits, and certificates issued by him, and to such other instruments as he directs.

SEC. 135. Section 11513 of the Government Code is amended to read:

11513. (a) Oral evidence shall be taken only on oath or affirmation.

(b) Each party shall have these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him to testify; and to rebut the evidence against him. If respondent does not testify in his own behalf he may be called and examined as if under cross-examination.

(c) The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which

responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

SEC. 136. Section 19580 of the Government Code is amended to read:

19580. Either by deposition or at the hearing the employee may be examined and may examine or cause any person to be examined under Section 776 of the Evidence Code.

SEC. 137. Section 3197 of the Health and Safety Code is amended to read:

3197. In any prosecution for a violation of any provision of this article, or any rule or regulation of the board made pursuant to this article, or in any quarantine proceeding authorized by this article, or in any habeas corpus or other proceeding in which the legality of such quarantine is questioned, any physician, health officer, spouse, or other person shall be competent and may be required to testify against any person against whom such prosecution or other proceeding was instituted, and the privileges provided by Sections 970, 971, 980, 994, and 1014 of the Evidence Code are not applicable to or in any such prosecution or proceeding.

SEC. 138. Section 270e of the Penal Code is amended to read:

270e. No other evidence shall be required to prove marriage of husband and wife, or that a person is the lawful father or mother of a child or children, than is or shall be required to prove such facts in a civil action. In all prosecutions under either Section 270a or 270 of this code, Sections 970, 971, and 980 of the Evidence Code do not apply, and both husband and wife shall be competent to testify to any and all relevant matters, including the fact of marriage and the parentage of a child or children. Proof of the abandonment and nonsupport of a wife, or of the omission to furnish necessary food, clothing, shelter, or of medical attendance for a child or children is prima facie evidence that such abandonment and nonsupport or omission to furnish necessary food, clothing, shelter or medical attendance is willful. In any prosecution under Section 270, it shall be competent for the people to prove nonaccess of husband to wife or any other fact establishing nonpaternity of a husband. In any prosecution pursuant to Section 270, the final establishment of paternity or nonpaternity in another proceeding shall be admissible as evidence of paternity or nonpaternity.

SEC. 139. Section 686 of the Penal Code is amended to read:

686. In a criminal action the defendant is entitled:

1. To a speedy and public trial.
2. To be allowed counsel as in civil actions, or to appear and defend in person and with counsel.
3. To produce witnesses on his behalf and to be confronted with the witnesses against him, in the presence of the court, except that:

(a) Hearsay evidence may be admitted to the extent that it is otherwise admissible in a criminal action under the law of this state.

(b) The deposition of a witness taken in the action may be read to the extent that it is otherwise admissible under the law of this state.

SEC. 140. Section 688 of the Penal Code is amended to read:

688. No person charged with a public offense may be subjected, before conviction, to any more restraint than is necessary for his detention to answer the charge.

SEC. 141. Section 939.6 of the Penal Code is amended to read:

939.6. (a) Subject to subdivision (b), in the investigation of a charge, the grand jury shall receive no other evidence than such as is:

- (1) Given by witnesses produced and sworn before the grand jury;
- (2) Furnished by writings, material objects, or other things presented to the senses; or
- (3) Contained in a deposition that is admissible under subdivision 3 of Section 686.

(b) The grand jury shall receive none but evidence that would be admissible over objection at the trial of a criminal action, but the fact that evidence which would have been excluded at trial was received by the grand jury does not render the indictment void where sufficient competent evidence to support the indictment was received by the grand jury.

SEC. 142. Section 961 of the Penal Code is amended to read:

961. Neither presumptions of law, nor matters of which judicial notice is authorized or required to be taken, need be stated in an accusatory pleading.

SEC. 143. Section 963 of the Penal Code is amended to read:

963. In pleading a private statute, or an ordinance of a county or a municipal corporation, or a right derived therefrom, it is sufficient to refer to the statute or ordinance by its title and the day of its passage, and the court must thereupon take judicial notice thereof in the same manner that it takes judicial notice of matters listed in Section 452 of the Evidence Code.

SEC. 144. Section 1120 of the Penal Code is amended to read:

1120. If a juror has any personal knowledge respecting a fact in controversy in a cause, he must declare the same in open court during the trial. If, during the retirement of the jury, a juror declare a fact which could be evidence in the cause, as of his own knowledge, the jury must return into court. In either of these cases, the juror making the statement must be sworn as a witness and examined in the presence of the parties in order that the court may determine whether good cause exists for his discharge as a juror.

SEC. 145. Section 1322 of the Penal Code is repealed.

SEC. 146. Section 1323 of the Penal Code is repealed.

SEC. 147. Section 1323 5 of the Penal Code is repealed.

SEC. 148. Section 1345 of the Penal Code is amended to read:

1345. The deposition, or a certified copy thereof, may be read in evidence by either party on the trial if the court finds that the witness is unavailable as a witness within the meaning of Section 240 of the Evidence Code. The same objections may be taken to a question or answer contained in the deposition as if the witness had been examined orally in court.

SEC. 149. Section 1362 of the Penal Code is amended to read:

1362. The depositions taken under the commission may be read in evidence by either party on the trial if the court finds that the witness is unavailable as a witness within the meaning of Section 240 of the Evidence Code. The same objections may be taken to a question in the interrogatories or to an answer in the deposition as if the witness had been examined orally in court.

SEC. 150. Section 306 of the Public Utilities Code is amended to read:

306. The office of the commission shall be in the City and County of San Francisco. The office shall always be open, legal holidays and nonjudicial days excepted. The commission shall hold its sessions at least once in each calendar month in the City and County of San Francisco. The commission may also meet at such other times and in such other places as may be expedient and necessary for the proper performance of its duties, and for that purpose may rent quarters or offices. Except for the commission's deliberative conferences, the sessions and meetings of the commission shall be open and public and all persons shall be permitted to attend.

The commission shall have a seal, bearing the inscription "Public Utilities Commission State of California." The seal shall be affixed to all writs and authentications of copies of records and to such other instruments as the commission shall direct.

The commission may procure all necessary books, maps, charts, stationery, instruments, office furniture, apparatus, and appliances.

SEC. 151. Sections 2 to 150 of this act shall become operative on January 1, 1967.

## CHAPTER 300

*An act to add Sections 12731, 12732, and 12733 to the Water Code, relating to flood protection, and declaring the urgency thereof, to take effect immediately.*

[Approved by Governor May 18, 1965 Filed with  
Secretary of State May 18, 1965.]

*The people of the State of California do enact as follows:*

SECTION 1. Section 12731 is added to the Water Code, to read:

12731. The project for flood control construction of debris basins and channel clearing in the Santa Barbara, California, area as authorized by Public Law 88-635, 78 Stat. 1023, is adopted and authorized at such cost to the state as may be appropriated for state cooperation by the Legislature upon the recommendation and advice of the department.

SEC. 2. Section 12732 is added to said code, to read:

12732. The County of Santa Barbara shall give assurances satisfactory to the Secretary of the Army that the local co-operation, required by Section 2 of the Flood Control Act of 1938 (Public Law 761-75th Congress), will be furnished by the county in connection with the project for flood protection adopted and authorized in Section 12731.

SEC. 3. Section 12733 is added to said code, to read:

12733. The County of Santa Barbara, in conjunction with the Department of the Army, shall execute the plans and projects referred to in Section 12731, and may make modifications and amendments to the plans as may be necessary to execute them for the purposes of Chapters 1 (commencing with Section 12570) and 2 (commencing with Section 12639) of this part.

SEC. 4. This act is hereby declared to be an urgency measure necessary for the immediate preservation of the public peace, health and safety within the meaning of Article IV of the Constitution and shall, therefore, go into immediate effect. A statement of the facts constituting such necessity is as follows:

In order to properly provide the flood control protection necessary to preserve the public peace, health and safety in the Santa Barbara area, it is essential that state authorization for the flood control project be provided immediately. Such authorization will facilitate the acquisition of land, easements, and rights-of-way necessary for the construction of the project.



Volume 1

# Journal of the Assembly

Legislature of the State of California

1965 Regular Session

January Fourth to June Eighteenth



HON. JESSE M. UNRUH  
Speaker of the Assembly

HON. CARLOS BEE  
Speaker pro Tempore of the Assembly

HON. JEROME R. WALDIE  
Majority Floor Leader

HON. ROBERT MONAGAN  
Minority Floor Leader

JAMES D. DRISCOLL  
Chief Clerk of the Assembly

Letter of Transmittal

Assembly Judiciary Committee, April 6, 1965

*Honorable Jesse M. Unruh**Speaker of the Assembly**State Capitol, Sacramento, California*

Dear Mr. Unruh: The Committee on Judiciary, having considered Assembly Bill No. 333 and having reported it out "amend and do pass as amended" on April 6, 1965, herewith submits this report concerning Assembly Bill 333.

This report contains comments to reflect the actions taken on this bill by the Committee on Judiciary. These comments should prove helpful in determining legislative intent.

Respectfully submitted,

GEORGE A. WILLSON, Chairman

REPORT OF ASSEMBLY COMMITTEE ON JUDICIARY  
ON ASSEMBLY BILL NO. 333

In order to indicate more fully its intent with respect to Assembly Bill No. 333, the Assembly Committee on Judiciary makes the following report:

Except for the new or revised comments set out below, the comments contained under the various sections of Assembly Bill No. 333 as set out in the *Recommendation of the California Law Revision Commission Proposing an Evidence Code* (January 1965) reflect the intent of the Assembly Committee on Judiciary in approving the various provisions of Assembly Bill No. 333.

The following new and revised comments to various sections of Assembly Bill No. 333 also reflect the intent of the Assembly Committee on Judiciary in approving Assembly Bill No. 333.

## SHORT TITLE

## Section 1 (Short Title of 1965 Act)

*Comment.* The short title will provide a convenient means for referring to this act as distinguished from the Evidence Code (which is enacted by Section 2 of this act).

## EVIDENCE CODE PROVISIONS

## Section 12

*Comment.* The delayed operative date provides time for California judges and attorneys to become familiar with the code before it goes into effect.

Subdivision (a) makes it clear that the Evidence Code governs all trials commenced after December 31, 1966.

Under subdivision (b), a trial that has actually commenced prior to the operative date of the code will continue to be governed by the rules of evidence (except privileges) applicable at the commencement of the trial. Thus, if the trial court makes a ruling on the admission of evidence in a trial commenced prior to January 1, 1967, such ruling (even when it is made after January 1, 1967) is not affected by the enactment of the Evidence Code; if an appeal is taken from the ruling, Section 12 requires the appellate court to apply the law applicable at

*v. Parham*, 60 Cal.2d 378, 33 Cal. Rptr. 497, 384 P.2d 1001 (1963) (prior statements of prosecution witnesses withheld by the Federal Bureau of Investigation; denial of motion to strike witnesses' testimony affirmed).

*Subdivision (b)*. This subdivision codifies the rule declared in *People v. Keener*, 55 Cal.2d 714, 723, 12 Cal. Rptr. 859, 864, 361 P.2d 587, 592 (1961), in which the court held that "where a search is made pursuant to a warrant valid on its face, the prosecution is not required to reveal the identity of the informer in order to establish the legality of the search and the admissibility of the evidence obtained as a result of it." Subdivision (b), however, applies to all official information, not merely to the identity of an informer.

Subdivision (b) does not affect the rule that a defendant is entitled to know the identity of an informer in a case where the informer is a material witness with respect to facts directly relating to the defendant's guilt.

#### Section 1070

*Comment*. Section 1070 continues without change the provisions of subdivision 6 of Code of Civil Procedure Section 1881.

It should be noted that Section 1070, like the existing law, provides an immunity from being adjudged in contempt; it does not create a privilege. Thus, the section will not prevent the use of other sanctions for refusal of a newsman to make discovery when he is a party to a civil proceeding. See CODE CIV. PROC. § 2034; *Bramson v. Wilkerson*, Civil No. 760973 (L.A. Super. Ct., January 4, 1962), as reported in 3 Cal. Disc. Proc. 72 (Metropolitan News Review Section, January 30, 1962) (memorandum opinion by Judge Philbrick McCoy).

#### Section 1150

*Comment*. Section 1150 codifies existing law which permits evidence of misconduct by a trial juror to be received but forbids the reception of evidence as to the effect of such misconduct on the minds of the jurors. *People v. Stokes*, 103 Cal. 193, 196-197, 37 Pac. 207, 208-209 (1894).

Section 1150 makes no change in the rules concerning when testimony or affidavits of jurors may be received to impeach or support a verdict. Under existing law, a juror is incompetent to give evidence as to matters that might impeach his verdict. *People v. Gray*, 61 Cal. 164, 183 (1882). See also *Siemsen v. Oakland, S. L., & H. Elec. Ry.*, 134 Cal. 494, 66 Pac. 672 (1901). He is competent, however, to give evidence that no misconduct was committed by the jury after independent evidence has been given that there was misconduct. *People v. Deegan*, 88 Cal. 602, 26 Pac. 500 (1891). By statute, a juror may give evidence by affidavit that a verdict was determined by chance. CODE CIV. PROC. § 657(2). And the courts have held that affidavits of jurors may be used to prove that a juror concealed bias or other disqualification by false answers on *voir dire* or was mentally incompetent to serve as a juror. *E.g.*, *Williams v. Bridges*, 140 Cal. App. 537, 35 P.2d 407 (1934) (false answer on *voir dire*); *Noll v. Lee*, 221 Cal. App.2d 81, 34 Cal. Rptr. 223 (1963) (hearing denied) (false answer on *voir dire*); *Church v. Capital Freight Lines*, 141 Cal. App.2d 246, 296 P.2d 563 (1956) (mental competence of juror).

Section 1150 also makes no change in the existing law concerning the grounds upon which a verdict may be set aside, *i.e.*, what constitutes jury misconduct. See CODE CIV. PROC. § 657 (civil case); PENAL CODE § 1181 (criminal case).

#### Section 1156

*Comment.* Section 1156 supersedes Code of Civil Procedure Section 1936.1 (added by Cal. Stats. 1963, Ch. 1558, § 1, p. 3142). Except as noted below, Section 1156 restates the substance of the superseded section.

The phrase "Sections 2016 to 2036, inclusive," has been inserted in Section 1156 in place of the phrase "Sections 2016 and 2036," which appears in Section 1936.1, to correct an apparent inadvertence. This substitution permits use of all kinds of discovery procedures, instead of depositions only, to discover material of the type described in Section 1156. *E.g.*, CODE CIV. PROC. §§ 2030 (written interrogatories), 2031 (motion for order for production of documents).

Section 1156 also makes it clear that the names of patients may not be disclosed without the consent of the patient. This limitation is necessary to preserve the physician-patient and psychotherapist-patient privileges.

#### Section 1200

*Comment.* Section 1200 states the hearsay rule. It defines hearsay evidence and provides that such evidence is inadmissible unless it meets the conditions of an exception established by law. Chapter 2 (commencing with Section 1220) of this division contains a series of exceptions to the hearsay rule. Other exceptions may be found in other statutes or in decisional law. But the fact that certain evidence meets the requirements of an exception to the hearsay rule does not necessarily make such evidence admissible. The exception merely provides that such evidence is not inadmissible under the hearsay rule. If there is some other rule of law—such as privilege or the best evidence rule—that makes the evidence inadmissible, the court is not authorized to admit the evidence merely because it falls within an exception to the hearsay rule. See also EVIDENCE CODE § 352.

Although the California courts have excluded hearsay evidence since the earliest days of the State (see, *e.g.*, *People v. Bob*, 29 Cal.2d 321, 175 P.2d 12 (1946); *Kilburn v. Ritchie*, 2 Cal. 145 (1852)), the hearsay rule has never been clearly stated in statutory form. Code of Civil Procedure Section 1845 (superseded by Evidence Code Section 702) has at times been considered to be the statutory basis for the hearsay rule. *People v. Spriggs*, 60 Cal.2d 868, 872, 36 Cal. Rptr. 841, 844, 389 P.2d 377, 380 (1964). Analytically, however, Section 1845 does not deal with hearsay at all; it deals only with the requirement of personal knowledge. It is true that the section provides that there is an exception to the personal knowledge requirement "in those few express cases in which . . . the declarations of others, are admissible"; but "this section is inaccurate, so far as it refers to [this] exception. In such case the witness testifies merely to the making of the declaration, which he must have heard in order to be a competent witness to testify to it,

Volume 1

# Journal of the Senate

Legislature of the State of California

1965 Regular Session

January Fourth to June Eighteenth



HON. GLENN M. ANDERSON  
President of the Senate

HON. HUGH M. BURNS  
President pro Tempore

J. A. BEEK  
Secretary

REPORT OF SENATE COMMITTEE ON JUDICIARY ON  
ASSEMBLY BILL NO: 333

In order to indicate more fully its intent with respect to Assembly Bill No. 333, the Senate Committee on Judiciary makes the following report:

Except for the new or revised comments set out below, the comments contained under the various sections of Assembly Bill No. 333 as set out in the *Recommendation of the California Law Revision Commission Proposing an Evidence Code* (January 1965), as revised and supplemented by the *Report of Assembly Committee on Judiciary on Assembly Bill No. 333* as set out on pages 1712-1768 of the Assembly Daily Journal for April 6, 1965, reflect the intent of the Senate Committee on Judiciary in approving the various provisions of Assembly Bill No. 333.

## Section 607

*Comment.* If a presumption affecting the burden of proof is relied upon by the prosecution in a criminal case to establish a fact essential to the defendant's guilt, the defendant will not be required to overcome the presumption by clear and convincing evidence or even by a preponderance of the evidence; the defendant will be required merely to raise a reasonable doubt as to the existence of the presumed fact. This is the effect of a presumption in a criminal case under existing law. *People v. Hardy*, 33 Cal.2d 52, 198 P.2d 865 (1948); *People v. Scott*, 24 Cal.2d 774, 151 P.2d 517 (1944); *People v. Agnew*, 16 Cal.2d 655, 107 P.2d 601 (1940).

Instructions in criminal cases on presumptions affecting the burden of proof will be similar to the instructions given on presumptions and on issues where the defendant has the burden of proof under existing law. Where no evidence has been introduced to show the nonexistence of the presumed fact, the court should instruct the jury that, if it finds beyond a reasonable doubt the facts giving rise to the presumption, it should also find the presumed fact. Where some evidence of the nonexistence of the presumed fact has been introduced, the court should instruct the jury that, if it finds beyond a reasonable doubt the facts giving rise to the presumption, it should also find the presumed fact unless the contrary evidence has raised a reasonable doubt as to the existence of the presumed fact. *Cf. People v. Hardy*, 33 Cal.2d 52, 63-64, 198 P.2d 865, 871-872 (1948); *People v. Agnew*, 16 Cal.2d 655, 661-667, 107 P.2d 601, 603-607 (1940); *People v. Martina*, 140 Cal. App.2d 17, 25, 294 P.2d 1015, 1019 (1956). The judge must be careful to specify that a presumption is rebutted by any evidence that raises a reasonable doubt as to the presumed fact. In the absence of this qualification, the jury may be led to believe that the defendant has the burden of disproof of the presumed fact by a preponderance of the evidence and the instruction will be erroneous. *People v. Agnew*, 16 Cal.2d 655, 107 P.2d 601 (1940). *Cf. People v. Hardy*, 33 Cal.2d 52, 198 P.2d 865 (1948).

Of course, in a criminal case, the jury may choose to disregard the instructions relating to presumptions. But this should not affect the duty of the court to instruct the jury on the rules of law, including presumptions, applicable to the case. See the *Comment* to Section 604.

communications are disclosed to others in the course of accomplishing the purpose for which the lawyer, physician, or psychotherapist was consulted. For example, where a confidential communication from a client is related by his attorney to a physician, appraiser, or other expert in order to obtain that person's assistance so that the attorney will better be able to advise his client, the disclosure is not a waiver of the privilege, even though the disclosure is made with the client's knowledge and consent. Nor would a physician's or psychotherapist's keeping of confidential records necessary to diagnose or treat a patient, such as confidential hospital records, be a waiver of the privilege, even though other authorized persons have access to the records. Similarly, the patient's presentation of a physician's prescription to a registered pharmacist would not constitute a waiver of the physician-patient privilege because such disclosure is reasonably necessary for the accomplishment of the purpose for which the physician is consulted. See also EVIDENCE CODE § 992. Communications such as these, when made in confidence, should not operate to destroy the privilege even when they are made with the consent of the client or patient. Here, again, the privilege holder has not evidenced any abandonment of secrecy. Hence, he should be entitled to maintain the confidential nature of his communications to his attorney or physician despite the necessary further disclosure.

Subdivision (d) may change California law. *Green v. Superior Court*, 220 Cal. App.2d 121, 33 Cal. Rptr. 604 (1963) (hearing denied), held that the physician-patient privilege did not provide protection against disclosure by a pharmacist of information concerning the nature of drugs dispensed upon prescription. See also *Himmelfarb v. United States*, 175 F.2d 924 (9th Cir. 1949) (applying the California law of privileges and holding that a lawyer's revelation to an accountant of a client's communication to the lawyer waived the client's privilege if such revelation was authorized by the client).

#### Section 991

*Comment.* "Patient" means a person who consults a physician for the purpose of diagnosis or treatment. This definition modifies existing California law; under existing law, a person who consults a physician for diagnosis only has no physician-patient privilege. *City & County of San Francisco v. Superior Court*, 37 Cal.2d 227, 231, 231 P.2d 26, 28 (1951) (physician-patient privilege "cannot be invoked when no treatment is contemplated or given").

There seems to be little reason to perpetuate the distinction made between consultations for the purpose of diagnosis and consultations for the purpose of treatment. Persons do not ordinarily consult physicians from idle curiosity. They may be sent by their attorney to obtain a diagnosis in contemplation of some legal proceeding—in which case the attorney-client privilege will afford protection. See, e.g., *City & County of San Francisco v. Superior Court*, 37 Cal.2d 227, 231 P.2d 26 (1951). They may submit to an examination for insurance purposes—in which case the insurance contract will contain appropriate waiver provisions. They may seek diagnosis from one physician to check the diagnosis made by another. They may seek diagnosis from one physician in

contemplation of seeking treatment from another. Communications made under such circumstances are as deserving of protection as are communications made to a treating physician.

**Section 42 (Code of Civil Procedure Section 1845.5)**

*Comment.* Section 1845.5 has been renumbered to place it in the portion of the Code of Civil Procedure relating to eminent domain proceedings. The last sentence, which has been added, merely clarifies the relationship of this section to the provisions of the Evidence Code relating to expert witnesses and opinion testimony.

**Section 75 (Code of Civil Procedure Section 1918)**

*Comment.* Section 1918 relates to hearsay, authentication of official records, and the best evidence rule. To the extent that it permits the acts of public officers to be proved by official records, it relates to hearsay and is superseded by the hearsay exceptions contained in Evidence Code Sections 1270-1271 and 1280-1284. To the extent that Section 1918 makes officially published books and documents admissible without testimonial proof of authenticity, it is superseded by Evidence Code Sections 644 and 1530. To the extent that Section 1918 provides the method of authenticating original official writings, it is superseded by Evidence Code Sections 1400-1402 (relating to all writings) and by Evidence Code Sections 1452-1454 (relating to official writings). To the extent that Section 1918 permits original official writings to be proved by certified or attested copies, it is superseded by Evidence Code Sections 1506 (providing an exception to the best evidence rule) and 1530 (providing a presumption of authenticity for certified or attested official writings).

Subdivision 4 of Section 1918 provides for the authentication of a published foreign official journal by evidence that it was commonly received in the foreign country as published by the requisite authority. Although no similar provision appears in the Evidence Code, such evidence may be used to authenticate official writings under the general provisions of Section 1400, which provides that the requirement of authentication may be met by "evidence sufficient to sustain a finding" of the authenticity of the writing.

**Section 126 (Code of Civil Procedure Section 2051)**

*Comment.* Section 2051 is inconsistent with Evidence Code Sections 780 and 785-788. The provision of Section 2051 excluding evidence of particular wrongful acts is continued in Evidence Code Section 787. The provision of Section 2051 excluding criminal convictions where there has been a subsequent pardon has been continued in Evidence Code Section 788.

*Technical Corrections in Comments*

The following changes are necessary to correct certain references contained in the *Comments* as set out in the *Recommendation of the California Law Revision Commission Proposing an Evidence Code* (January 1965) to reflect changes made in the proposed Evidence Code



after its introduction. Page references are to the pamphlet containing the Commission's Recommendation.

<i>Comment to Evidence Code Section</i>	<i>Page</i>	<i>Correction</i>
351	53	Substitute "900-1070" for "900-1073"
601	95	Substitute "630-668" for "630-667"
603	97	Substitute "630-668" for "630-667"
660	111	Substitute "660-668" for "660-667"
700	114	Substitute "900-1070" for "900-1073"
1452	275	Substitute "450-460" for "450-459"
<i>Comment to Repealed CCP Section</i>		
1881	319	Substitute "990-1007" for "990-1006"
		Substitute "1070" for "1070-1073"

The following change is necessary to correct a reference contained in the *Comments* as set out in the Assembly Daily Journal for April 6, 1965: On page 1723 of the Assembly Daily Journal for April 6, 1965, in the fifth line from the bottom of the page, substitute "900-1070" for "900-1073"

#### COMMITTEE REPORTS

Senate Fact Finding Committee on  
Revenue and Taxation, California Legislature  
State Capitol, Sacramento

*The Honorable Glenn M. Anderson,  
President of the Senate*

Dear Sir: The Senate Fact Finding Committee on Revenue and Taxation created pursuant to Section 12.5 of the Standing Rules of the Senate and pursuant to Senate Resolution No. 173, read and adopted under Senate Resolution No. 270.10, June 21, 1963, herewith submits its first report.

This report is a part of a series of nine studies undertaken by this committee with respect to a comprehensive study of the tax systems presently in effect in the State of California and its local subdivisions.

The present report constitutes Part 1 of this series. It is entitled, "Comparison of the Tax Structure of California with Selected Other States." It compares state and local taxes in California with other states similar in economic climate and development and points out the various tax patterns that have been followed in the financing of the government services which have necessarily accompanied their development.

Respectfully submitted,

GEORGE MILLER, JR., Chairman  
"J" EUGENE McATEER, Vice Chairman

STANLEY ARNOLD  
HUGH M. BURNS  
JAMES A. COBEY  
RANDOLPH COLLIER  
RICHARD J. DOLWIG  
LUTHER E. GIBSON

DONALD L. GRUNSKY  
JOHN W. HOELMDAHL  
JOHN F. MCCARTHY  
THOMAS M. REES  
STEPHEN P. TEALE

Letter of transmittal ordered printed in the Journal.

Senate Fact Finding Committee on  
Revenue and Taxation, California Legislature  
State Capitol, Sacramento, January 19, 1965

*The Honorable Glenn M. Anderson  
President of the Senate*

Dear Sir: The Senate Fact Finding Committee on Revenue and Taxation created pursuant to Section 12.5 of the Standing Rules of the Senate and pursuant to Senate Resolution No. 173, read and adopted under Senate Resolution No. 270.10, June 21, 1963, herewith submits its first report.

CALIFORNIA LEGISLATURE  
1965 Regular Session  
1965 First Extraordinary Session

# SUMMARY DIGEST

of

# STATUTES ENACTED

and

Proposed Constitutional Amendments  
Submitted to the Electors  
Including  
Table of Sections Affected



J. A. BEEK  
*Secretary of the Senate*

JAMES D. DRISCOLL  
*Chief Clerk of the Assembly*

*Compiled by*  
GEORGE H. MURPHY  
*Legislative Counsel*

A.B. 325 (Ch. 479). DAVIS. Adds Secs. 5513.5, 5555, Fin.C., re savings and loan associations.

Requires Savings and Loan Commissioner, upon written request of applicant or association, to transmit written statement to such applicant or association stating reasons for denial of certificate of approval or for denial, revocation or suspension of license.

A.B. 328 (Ch. 1437). WILLSON. Amends Secs. 17052 and 17101, Ed.C., re school cafeteria fund expenditures.

Authorizes school districts having an average daily attendance of 400,000 or more, or two or more districts governed by governing boards of identical personnel having such average daily attendance, to expend money from cafeteria fund for construction, alteration or improvement of central food processing plant and for installation of additional cafeteria equipment for central food processing plant.

Permits such expenditure to be charged against cafeteria funds of district, and permits reimbursement from cafeteria fund within five years after expenditure of other school district funds for such authorized purposes.

A.B. 333. (Ch. 299). SONG. Adds, amends, repeals, various secs. of various codes.

Revises, consolidates and codifies in the Evidence Code the California law of evidence.

A.B. 337. (Ch. 1893). YOUNG. Amends, adds, repeals various secs., Civ.C., C.C.P., Gov.C., H. & S.C., re vital statistics.

Declares Legislature's intent to secure adequate and accurate vital statistics and information about divorces, annulments, and legal separations in California.

Repeals present provisions on divorced and annulment registry. Adds new provisions, applicable to separate maintenance actions as well as divorce and annulment actions, providing for furnishing and gathering of more extensive information. Increases from \$1 to \$2 fee imposed to pay for cost of administering new program. Provides for deposit of fees received by State Registrar of Vital Statistics in account in State Treasury. Provides that it is plaintiff's duty to make report of specified information. Prescribes procedures for reporting by county clerks to State Registrar of Vital Statistics.

Provides that statistics are open only to appropriate research interests, and also that certain items are excluded from certified copies. Provides for disposition of reports.

Appropriates \$62,911 for purpose of administering act.

Operative January 1, 1966, and remains in effect until December 31, 1969.

A.B. 339 (Ch. 1031). YOUNG. Amends Sec. 949a, C.C.P., re staying of proceedings in child custody cases.

Deletes provision in law relating to an appeal on any judgment or order which affects custody or visitation rights as to a child that appellate court shall have power to issue writ of supersedeas, injunction, or other appropriate writ or order in such proceedings as may be proper in aid of its jurisdiction.

A.B. 345 (Ch. 930). THELIN. Adds Sec. 33, R. & T.C., re exempting human body parts and blood from taxation.

Exempts from taxation for any purpose human whole blood, plasma, blood products, blood derivatives, and any human body parts held in a bank for medical purposes.

A.B. 346 (Ch. 1644). KENNICK. Adds Secs. 1202.2 and 1231.1, P.U.C., re grade-crossing protection maintenance.

Provides that, unless otherwise agreed, cost of maintaining automatic grade-crossing protection constructed or altered after October 1, 1965 is to be divided by Public Utilities Commission between railroad and public bodies involved in same proportion as cost of constructing such protection is divided, if money has been allocated for such purpose to the Public Utilities Commission and paid by it to public bodies. Provides for allocation and expenditure of not more than \$1,000,000 for such purpose without regard to fiscal years.

Review of  
Selected 1965  
Code Legislation



*California Continuing Education of the Bar*

## Evidence Code

### §§1-1605 (new): Enacts an Evidence Code.

AB 333; STATS 1965, CH 299

This legislation enacts the California Evidence Code and repeals or amends inconsistent sections of other codes. The Evidence Code and the related changes in other codes become effective January 1, 1967.

California has long needed a revision and restatement of evidence law. Witkin, EVIDENCE §§1, 3; Witkin, EVIDENCE, 1963 Supp, 5 at §3; see Baker, *Highlights of Committee on Uniform Rules of Evidence*, 36 CAL SBJ 353 (1961). Many rules of evidence have no statutory basis or have been refined and extended far beyond the limits of their statutory bases. The statement of other rules is scattered among several sections of several codes. Statements of some rules are unclear, incomplete, or inaccurate. See California Law Revision Comm'n, RECOMMENDATION PROPOSING AN EVIDENCE CODE 29-34 (1965) (Reports, Recommendations and Studies vol 7).

In 1956, the legislature directed the California Law Revision Commission to study the desirability of revising California evidence law to conform to the Uniform Rules of Evidence. Stats 1956, ch 42, p 263. In April 1964, the California Law Revision Commission issued TENTATIVE RECOMMENDATION AND A STUDY RELATING TO THE UNIFORM RULES OF EVIDENCE (1964) (Reports, Recommendations and Studies vol 6) in order that interested persons could give the commission suggestions and criticisms. After further study, the commission concluded that the Uniform Rules should not be adopted, but that elements should be incorporated into a new codification of California evidence law that would combine the best features of the Uniform Rules and the existing California law. 7 *California Law Revision Comm'n* 29 (1965). In January 1965, the commission proposed an Evidence Code to the legislature. 7 *California Law Revision Comm'n* 38-293 (1965) (text and commentary).

The legislature adopted the code with slight changes. As adopted, the code is largely a restatement of California evidence law, but the new code also makes many significant changes. 7 *California Law Revision Comm'n* 34 (1965). Unless otherwise provided by

statute, the code applies in all criminal and civil proceedings, but it does not apply in grand jury proceedings. §300.

It is not possible to cover changes in detail here. For the complete text with official comments, see California Law Revision Comm'n, EVIDENCE CODE WITH OFFICIAL COMMENTS (August 1965). Prior to January 1, 1967, when the code becomes effective, Continuing Education of the Bar will offer a program on the new code, and also expects to publish a lawyer's practical guide to California evidence. However, in order to suggest the nature of changes made, a few typical examples are included below. Under the new code:

(1) A judge will have to take judicial notice of certain matters, "whether or not the court is requested to notice them" (7 *California Law Revision Comm'n* 74 (1965)), including "facts and propositions of generalized knowledge that are so universally known that they cannot reasonably be the subject of dispute." §451(f). Failure to take notice of these matters is error, although not necessarily reversible. At present, California law probably does not require that notice be taken of all matters set forth in §451.

(2) A party will be able to attack the credibility of his own witness. §785. At present a party may not attack the credibility of his own witness unless surprised and damaged by the witness's testimony. Such a rule fails to recognize the "practical exigencies of litigation." 7 *California Law Revision Comm'n* 140 (1965).

(3) A married person will no longer have a privilege to prevent his spouse from testifying against him as he has at present. Under §970 a married person has a privilege not to testify against his spouse and a privilege not to be called as a witness in any proceeding to which his spouse is a party; but the privilege may be asserted only by the witness spouse. A married witness will no longer be able to refuse to testify for his spouse. Although it will be more limited, the marital testimonial privilege has apparently been retained because "society stands to lose more" from disruption of marriages than it may gain from a witness spouse's testimony. 7 *California Law Revision Comm'n* 179 (1965). See also California Law Revision Comm'n, RECOMMENDATION AND STUDY RELATING TO THE MARITAL "FOR AND AGAINST" TESTIMONIAL PRIVILEGE F-1 (1957) (Reports, Recommendations and Studies vol 1).

(4) The hearsay rule and its exceptions are clarified and modified. §§1200-1341. Limitations of space will not permit even a

cursory treatment of these sections. See 7 *California Law Revision Comm'n* 221-265 (1965).

For discussions of the code as amended in the legislature before enactment, see Senate J, April 21, 1965, 1573-1579 and Assembly J, April 6, 1965, 1712-1768.

The State Bar supported this legislation. Mack, *President's Message*, 40 CAL SBJ 119 (1965). See also *Report of Committee on Legislation*, 40 CAL SBJ 582, 590 (1965).

**§§810-822 (new) (effective January 1, 1967).**

See discussion under Code of Civil Procedure §§1268-1272.4.

Introduced by Senator Cobey  
(Coauthor: Assemblyman Song)

January 14, 1965

REFERRED TO COMMITTEE ON JUDICIARY

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. The Evidence Code is enacted, to read:

2  
3 EVIDENCE CODE

4  
5 DIVISION 1. PRELIMINARY PROVISIONS AND  
6 CONSTRUCTION

7  
8 1. This code shall be known as the Evidence Code.

9 2. The rule of the common law, that statutes in derogation  
10 thereof are to be strictly construed, has no application to this  
11 code. This code establishes the law of this State respecting the  
12 subject to which it relates, and its provisions are to be liber-  
13 ally construed with a view to effect its objects and to pro-  
14 mote justice.

15 3. If any provision or clause of this code or application  
16 thereof to any person or circumstances is held invalid, such  
17 invalidity shall not affect other provisions or applications of

LEGISLATIVE COUNSEL'S DIGEST

SB 110, as introduced, Cobey (Jud.). California Evidence Code.

Adds, amends, repeals, secs. of various codes.

Revises, consolidates and codifies in the Evidence Code the California statutory law of evidence.



- 1 the code which can be given effect without the invalid provi-  
 2 sion or application, and to this end the provisions of this code  
 3 are declared to be severable.
- 4 4. Unless the provision or context otherwise requires, these  
 5 preliminary provisions and rules of construction shall govern  
 6 the construction of this code.
- 7 5. Division, chapter, article, and section headings do not  
 8 in any manner affect the scope, meaning, or intent of the pro-  
 9 visions of this code.
- 10 6. Whenever any reference is made to any portion of this  
 11 code or of any other statute, such reference shall apply to all  
 12 amendments and additions heretofore or hereafter made.
- 13 7. Unless otherwise expressly stated:
- 14 (a) "Division" means a division of this code.
- 15 (b) "Chapter" means a chapter of the division in which  
 16 that term occurs.
- 17 (c) "Article" means an article of the chapter in which that  
 18 term occurs.
- 19 (d) "Section" means a section of this code.
- 20 (e) "Subdivision" means a subdivision of the section in  
 21 which that term occurs.
- 22 (f) "Paragraph" means a paragraph of the subdivision in  
 23 which that term occurs.
- 24 8. The present tense includes the past and future tenses;  
 25 and the future, the present.
- 26 9. The masculine gender includes the feminine and neuter.
- 27 10. The singular number includes the plural; and the plu-  
 28 ral, the singular.
- 29 11. "Shall" is mandatory and "may" is permissive.
- 30 12. This code shall become operative on January 1, 1967,  
 31 and shall govern proceedings in actions brought on or after  
 32 that date and also further proceedings in actions pending on  
 33 that date. The provisions of Division 8 (commencing with Sec-  
 34 tion 900) relating to privileges shall govern any claim of priv-  
 35 ilege made after December 31, 1966.

## 36 DIVISION 2. WORDS AND PHRASES DEFINED

- 37
- 38
- 39 100. Unless the provision or context otherwise requires,  
 40 these definitions govern the construction of this code.
- 41 105. "Action" includes a civil action and a criminal action.
- 42 110. "Burden of producing evidence" means the obligation  
 43 of a party to introduce evidence sufficient to avoid a ruling  
 44 against him on the issue.
- 45 115. "Burden of proof" means the obligation of a party to  
 46 meet the requirement of a rule of law that he raise a reason-  
 47 able doubt concerning the existence or nonexistence of a fact  
 48 or that he establish the existence or nonexistence of a fact by  
 49 a preponderance of the evidence, by clear and convincing  
 50 proof, or by proof beyond a reasonable doubt.
- 51 Except as otherwise provided by law, the burden of proof  
 52 requires proof by a preponderance of the evidence.

- 1 120. "Civil action" includes all actions and proceedings  
2 other than a criminal action.
- 3 125. "Conduct" includes all active and passive behavior,  
4 both verbal and nonverbal.
- 5 130. "Criminal action" includes criminal proceedings.
- 6 135. "Declarant" is a person who makes a statement.
- 7 140. "Evidence" means testimony, writings, material ob-  
8 jects, or other things presented to the senses that are offered  
9 to prove the existence or nonexistence of a fact.
- 10 145. "The hearing" means the hearing at which a question  
11 under this code arises, and not some earlier or later hearing.
- 12 150. "Hearsay evidence" is defined in Section 1200.
- 13 160. "Law" includes constitutional, statutory, and de-  
14 cisional law.
- 15 165. "Oath" includes affirmation.
- 16 170. "Perceive" means to acquire knowledge through one's  
17 senses.
- 18 175. "Person" includes a natural person, firm, association,  
19 organization, partnership, business trust, corporation, or public  
20 entity.
- 21 180. "Personal property" includes money, goods, chattels,  
22 things in action, and evidences of debt.
- 23 185. "Property" includes both real and personal property.
- 24 190. "Proof" is the establishment by evidence of a requi-  
25 site degree of belief concerning a fact in the mind of the trier  
26 of fact or the court.
- 27 195. "Public employee" means an officer, agent, or em-  
28 ployee of a public entity.
- 29 200. "Public entity" includes a nation, state, county, city  
30 and county, city, district, public authority, public agency, or  
31 any other political subdivision or public corporation, whether  
32 foreign or domestic.
- 33 205. "Real property" includes lands, tenements, and he-  
34 reditaments.
- 35 210. "Relevant evidence" means evidence, including evi-  
36 dence relevant to the credibility of a witness or hearsay declar-  
37 ant, having any tendency in reason to prove or disprove any  
38 disputed fact that is of consequence to the determination of the  
39 action.
- 40 220. "State" means the State of California, unless applied  
41 to the different parts of the United States. In the latter case,  
42 it includes any state, district, commonwealth, territory, or  
43 insular possession of the United States.
- 44 225. "Statement" means (a) a verbal expression or (b)  
45 nonverbal conduct of a person intended by him as a substi-  
46 tute for a verbal expression.
- 47 230. "Statute" includes a provision of the Constitution.
- 48 235. "Trier of fact" includes (a) the jury and (b) the  
49 court when the court is trying an issue of fact other than one  
50 relating to the admissibility of evidence.

1 240. (a) Except as otherwise provided in subdivision (b),  
2 “unavailable as a witness” means that the declarant is:

3 (1) Exempted or precluded on the ground of privilege from  
4 testifying concerning the matter to which his statement is  
5 relevant;

6 (2) Disqualified from testifying to the matter;

7 (3) Dead or unable to attend or to testify at the hearing be-  
8 cause of then existing physical or mental illness or infirmity;

9 (4) Absent from the hearing and the court is unable to  
10 compel his attendance by its process; or

11 (5) Absent from the hearing and the proponent of his state-  
12 ment has exercised reasonable diligence but has been unable  
13 to procure his attendance by the court’s process.

14 (b) A declarant is not unavailable as a witness if the ex-  
15 emption, preclusion, disqualification, death, inability, or ab-  
16 sence of the declarant was brought about by the procurement  
17 or wrongdoing of the proponent of his statement for the pur-  
18 pose of preventing the declarant from attending or testifying.

19 245. “Verbal” includes both oral and written words.

20 250. “Writing” means handwriting, typewriting, printing,  
21 photostating, photographing, and every other means of re-  
22 cording upon any tangible thing any form of communication  
23 or representation, including letters, words, pictures, sounds,  
24 or symbols, or combinations thereof.

## 25 DIVISION 3. GENERAL PROVISIONS

### 26 CHAPTER 1. APPLICABILITY OF CODE

27  
28  
29  
30 300. Except as otherwise provided by statute, this code ap-  
31 plies in every action before the Supreme Court or a district  
32 court of appeal, superior court, municipal court, or justice  
33 court, including proceedings conducted by a referee, court com-  
34 missioner, or similar officer, but does not apply in grand jury  
35 proceedings.

### 36 CHAPTER 2. PROVINCE OF COURT AND JURY

37  
38  
39 310. All questions of law (including but not limited to  
40 questions concerning the construction of statutes and other  
41 writings, the admissibility of evidence, and other rules of evi-  
42 dence) are to be decided by the court. Determination of issues  
43 of fact preliminary to the admission of evidence are to be  
44 decided by the court as provided in Article 2 (commencing  
45 with Section 400) of Chapter 4.

46 311. (a) Determination of the law of a foreign nation or  
47 a public entity in a foreign nation is a question of law to be  
48 determined in the manner provided in Division 4 (commencing  
49 with Section 450).

1 (b) If such law is applicable and the court is unable to  
2 determine it, the court may, as the ends of justice require,  
3 either:

4 (1) Apply the law of this State if the court can do so con-  
5 sistentlly with the Constitution of the United States and the  
6 Constitution of this State; or

7 (2) Dismiss the action without prejudice or, in the case of  
8 a reviewing court, remand the case to the trial court with di-  
9 rections to dismiss the action without prejudice.

10 312. Except as otherwise provided by law, where the trial is  
11 by jury:

12 (a) All questions of fact are to be decided by the jury.

13 (b) Subject to the control of the court, the jury is to de-  
14 termine the effect and value of the evidence addressed to it, in-  
15 cluding the credibility of witnesses and hearsay declarants.

16  
17 CHAPTER 3. ORDER OF PROOF

18  
19 320. Except as otherwise provided by law, the court in its  
20 discretion shall regulate the order of proof.

21  
22 CHAPTER 4. ADMITTING AND EXCLUDING EVIDENCE

23  
24 Article 1. General Provisions

25  
26 350. No evidence is admissible except relevant evidence.

27 351. Except as otherwise provided by statute, all relevant  
28 evidence is admissible.

29 352. The court in its discretion may exclude evidence if its  
30 probative value is substantially outweighed by the probability  
31 that its admission will (a) necessitate undue consumption of  
32 time or (b) create substantial danger of undue prejudice, of  
33 confusing the issues, or of misleading the jury.

34 353. A verdict or finding shall not be set aside, nor shall  
35 the judgment or decision based thereon be reversed, by reason  
36 of the erroneous admission of evidence unless:

37 (a) There appears of record an objection to or a motion to  
38 exclude or to strike the evidence that was timely made and so  
39 stated as to make clear the specific ground of the objection or  
40 motion; and

41 (b) The court which passes upon the effect of the error or  
42 errors is of the opinion that the admitted evidence should  
43 have been excluded on the ground stated and that the error  
44 or errors complained of resulted in a miscarriage of justice.

45 354. A verdict or finding shall not be set aside, nor shall  
46 the judgment or decision based thereon be reversed, by reason  
47 of the erroneous exclusion of evidence unless the court which  
48 passes upon the effect of the error or errors is of the opinion

1 that the error or errors complained of resulted in a miscarriage  
2 of justice and it appears of record that:

3 (a) The substance, purpose, and relevance of the excluded  
4 evidence was made known to the court by the questions asked,  
5 an offer of proof, or by any other means;

6 (b) The rulings of the court made compliance with subdi-  
7 vision (a) futile; or

8 (c) The evidence was sought by questions asked during  
9 cross-examination.

10 355. When evidence is admissible as to one party or for  
11 one purpose and is inadmissible as to another party or for  
12 another purpose, the court upon request shall restrict the evi-  
13 dence to its proper scope and instruct the jury accordingly.

14 356. Where part of an act, declaration, conversation, or  
15 writing is given in evidence by one party, the whole on the  
16 same subject may be inquired into by an adverse party; when  
17 a letter is read, the answer may be given; and when a detached  
18 act, declaration, conversation, or writing is given in evidence,  
19 any other act, declaration, conversation, or writing which is  
20 necessary to make it understood may also be given in evidence.

21

## 22 Article 2. Preliminary Determinations on Admissibility 23 of Evidence 24

25 400. As used in this article, "preliminary fact" means a  
26 fact upon the existence or nonexistence of which depends the  
27 admissibility or inadmissibility of evidence. The phrase "the  
28 admissibility or inadmissibility of evidence" includes the  
29 qualification or disqualification of a person to be a witness and  
30 the existence or nonexistence of a privilege.

31 401. As used in this article, "proffered evidence" means  
32 evidence, the admissibility or inadmissibility of which is de-  
33 pendent upon the existence or nonexistence of a preliminary  
34 fact.

35 402. (a) When the existence of a preliminary fact is dis-  
36 puted, its existence or nonexistence shall be determined as pro-  
37 vided in this article.

38 (b) The court may hear and determine the question of the  
39 admissibility of evidence out of the presence or hearing of the  
40 jury; but in a criminal action, the court shall hear and deter-  
41 mine the question of the admissibility of a confession or admis-  
42 sion of the defendant out of the presence and hearing of the  
43 jury.

44 (c) A ruling on the admissibility of evidence implies what-  
45 ever finding of fact is prerequisite thereto; a separate or  
46 formal finding is unnecessary unless required by statute.

47 403. (a) The proponent of the proffered evidence has the  
48 burden of producing evidence as to the existence of the pre-  
49 liminary fact, and the proffered evidence is inadmissible unless

1 the court finds that there is evidence sufficient to sustain a  
2 finding of the existence of the preliminary fact, when:

3 (1) The relevance of the proffered evidence depends on the  
4 existence of the preliminary fact;

5 (2) The preliminary fact is the personal knowledge of a  
6 witness concerning the subject matter of his testimony;

7 (3) The preliminary fact is the authenticity of a writing; or

8 (4) The proffered evidence is of a statement or other con-  
9 duct of a particular person and the preliminary fact is whether  
10 that person made the statement or so conducted himself.

11 (b) Subject to Section 702, the court may admit condition-  
12 ally the proffered evidence under this section, subject to evi-  
13 dence of the preliminary fact being supplied later in the  
14 course of the trial.

15 (c) If the court admits the proffered evidence under this  
16 section, the court:

17 (1) May, and on request shall, instruct the jury to deter-  
18 mine whether the preliminary fact exists and to disregard the  
19 proffered evidence unless the jury finds that the preliminary  
20 fact does exist.

21 (2) Shall instruct the jury to disregard the proffered evi-  
22 dence if the court subsequently determines that a jury could  
23 not reasonably find that the preliminary fact exists.

24 404. Whenever the proffered evidence is claimed to be  
25 privileged under Section 940, the person claiming the privilege  
26 has the burden of showing that the proffered evidence might  
27 tend to incriminate him; and the proffered evidence is inadmis-  
28 sible unless it clearly appears to the court that the proffered  
29 evidence cannot possibly have a tendency to incriminate the  
30 person claiming the privilege.

31 405. With respect to preliminary fact determinations not  
32 governed by Section 403 or 404:

33 (a) When the existence of a preliminary fact is disputed,  
34 the court shall indicate which party has the burden of produc-  
35 ing evidence and the burden of proof on the issue as implied  
36 by the rule of law under which the question arises. The court  
37 shall determine the existence or nonexistence of the prelimi-  
38 nary fact and shall admit or exclude the proffered evidence  
39 as required by the rule of law under which the question arises.

40 (b) If a preliminary fact is also a fact in issue in the action:

41 (1) The jury shall not be informed of the court's determina-  
42 tion as to the existence or nonexistence of the preliminary fact.

43 (2) If the proffered evidence is admitted, the jury shall not  
44 be instructed to disregard the evidence if its determination of  
45 the fact differs from the court's determination of the pre-  
46 liminary fact.

47 406. This article does not limit the right of a party to in-  
48 troduce before the trier of fact evidence relevant to weight  
49 or credibility.

## CHAPTER 5. WEIGHT OF EVIDENCE GENERALLY

1  
2  
3 410. As used in this chapter, "direct evidence" means evi-  
4 dence that directly proves a fact, without an inference or pre-  
5 sumption, and which in itself, if true, conclusively establishes  
6 that fact.

7 411. Except where additional evidence is required by stat-  
8 ute, the direct evidence of one witness who is entitled to full  
9 credit is sufficient for proof of any fact.

10 412. If weaker and less satisfactory evidence is offered  
11 when it was within the power of the party to produce stronger  
12 and more satisfactory evidence, the evidence offered should  
13 be viewed with distrust.

14 413. In determining what inferences to draw from the evi-  
15 dence or facts in the case against a party, the trier of fact  
16 may consider, among other things, the party's failure to ex-  
17 plain or to deny by his testimony such evidence or facts in  
18 the case against him, or his wilful suppression of evidence  
19 relating thereto, if such be the case.

## DIVISION 4. JUDICIAL NOTICE

20  
21  
22  
23 450. Judicial notice may not be taken of any matter un-  
24 less authorized or required by law.

25 451. Judicial notice shall be taken of:

26 (a) The decisional, constitutional, and public statutory law  
27 of the United States and of every state of the United States  
28 and of the provisions of any charter described in Section 7½  
29 or 8 of Article XI of the California Constitution.

30 (b) Any matter made a subject of judicial notice by Section  
31 11383, 11384, or 18576 of the Government Code or by Section  
32 307 of Title 44 of the United States Code.

33 (c) Rules of practice and procedure for the courts of this  
34 State adopted by the Judicial Council.

35 (d) Rules of pleading, practice, and procedure prescribed  
36 by the United States Supreme Court, such as the Rules of the  
37 United States Supreme Court, the Federal Rules of Civil Pro-  
38 cedure, the Federal Rules of Criminal Procedure, the Admi-  
39 ralty Rules, the Rules of the Court of Claims, the Rules of the  
40 Customs Court, and the General Orders and Forms in Bank-  
41 ruptcy.

42 (e) The true signification of all English words and phrases  
43 and of all legal expressions.

44 (f) Facts and propositions of generalized knowledge that  
45 are so universally known that they cannot reasonably be the  
46 subject of dispute.

47 452. Judicial notice may be taken of the following matters  
48 to the extent that they are not embraced within Section 451:

49 (a) Resolutions and private acts of the Congress of the  
50 United States and of the legislature of any state of the United  
51 States.

1 (b) Regulations and legislative enactments issued by or  
2 under the authority of the United States or any public entity  
3 in the United States.

4 (c) Official acts of the legislative, executive, and judicial  
5 departments of the United States and of any state of the  
6 United States.

7 (d) Records of (1) any court of this State or (2) any court  
8 of record of the United States or of any state of the United  
9 States.

10 (e) Rules of court of (1) any court of this State or (2) any  
11 court of record of the United States or of any state of the  
12 United States.

13 (f) The law of foreign nations and public entities in foreign  
14 nations.

15 (g) Specific facts and propositions that are of such common  
16 knowledge within the territorial jurisdiction of the court that  
17 they cannot reasonably be the subject of dispute.

18 (h) Specific facts and propositions that are not reasonably  
19 subject to dispute and are capable of immediate and accurate  
20 determination by resort to sources of reasonably indisputable  
21 accuracy.

22 453. Judicial notice shall be taken of any matter specified  
23 in Section 452 if a party requests it and:

24 (a) Gives each adverse party sufficient notice of the request,  
25 through the pleadings or otherwise, to enable such adverse  
26 party to prepare to meet the request; and

27 (b) Furnishes the court with sufficient information to en-  
28 able it to take judicial notice of the matter.

29 454. In determining the propriety of taking judicial notice  
30 of a matter, or the tenor thereof:

31 (a) Any source of pertinent information, including the ad-  
32 vice of persons learned in the subject matter, may be consulted  
33 or used, whether or not furnished by a party.

34 (b) Exclusionary rules of evidence do not apply except for  
35 Section 352 and the rules of privilege.

36 455. With respect to any matter specified in Section 452  
37 or in subdivision (f) of Section 451 that is of substantial con-  
38 sequence to the determination of the action:

39 (a) If the court has been requested to take or has taken or  
40 proposes to take judicial notice of such matter, the court shall  
41 afford each party reasonable opportunity, before the jury is  
42 instructed or before the cause is submitted for decision by the  
43 court, to present to the court information relevant to (1) the  
44 propriety of taking judicial notice of the matter and (2) the  
45 tenor of the matter to be noticed.

46 (b) If the court resorts to any source of information not  
47 received in open court, including the advice of persons learned  
48 in the subject matter, such information and its source shall be  
49 made a part of the record in the action and the court shall  
50 afford each party reasonable opportunity to meet such informa-  
51 tion before judicial notice of the matter may be taken.



1 456. If the court denies a request to take judicial notice of  
 2 any matter, the court shall at the earliest practicable time so  
 3 advise the parties and indicate for the record that it has denied  
 4 the request.

5 457. If a matter judicially noticed is a matter which would  
 6 otherwise have been for determination by the jury, the court  
 7 may, and upon request shall, instruct the jury to accept as a  
 8 fact the matter so noticed.

9 458. The failure or refusal of the trial court to take ju-  
 10 dicial notice of a matter, or to instruct the jury with respect  
 11 to the matter, does not preclude the trial court in subsequent  
 12 proceedings in the action from taking judicial notice of the  
 13 matter in accordance with the procedure specified in this di-  
 14 vision.

15 459. (a) The reviewing court shall take judicial notice of  
 16 (1) each matter properly noticed by the trial court and (2)  
 17 each matter that the trial court was required to notice under  
 18 Section 451 or 453. The reviewing court may take judicial no-  
 19 tice of any matter specified in Section 452. The reviewing  
 20 court may take judicial notice of a matter in a tenor different  
 21 from that noticed by the trial court.

22 (b) In determining the propriety of taking judicial notice  
 23 of a matter, or the tenor thereof, the reviewing court has the  
 24 same power as the trial court under Section 454.

25 (c) When taking judicial notice under this section of a  
 26 matter specified in Section 452 or in subdivision (f) of Section  
 27 451 that is of substantial consequence to the determination of  
 28 the action, the reviewing court shall comply with the provi-  
 29 sions of subdivision (a) of Section 455 if the matter was not  
 30 theretofore judicially noticed in the action.

31 (d) In determining the propriety of taking judicial notice  
 32 of a matter specified in Section 452 or in subdivision (f) of  
 33 Section 451 that is of substantial consequence to the determi-  
 34 nation of the action, or the tenor thereof, if the reviewing court  
 35 resorts to any source of information not received in open court  
 36 or not included in the record of the action, including the  
 37 advice of persons learned in the subject matter, the reviewing  
 38 court shall afford each party reasonable opportunity to meet  
 39 such information before judicial notice of the matter may be  
 40 taken.

41  
 42 DIVISION 5. BURDEN OF PROOF; BURDEN OF  
 43 PRODUCING EVIDENCE; PRESUMPTIONS  
 44 AND INFERENCES

45  
 46 CHAPTER 1. BURDEN OF PROOF

47  
 48 Article 1. General

49  
 50 500. Except as otherwise provided by law, a party has the  
 51 burden of proof as to each fact the existence or nonexistence

1 of which is essential to the claim for relief or defense that he  
2 is asserting.

3 501. Insofar as any statute, except Section 522, assigns the  
4 burden of proof in a criminal action, such statute is subject  
5 to Penal Code Section 1096.

6 502. The court on all proper occasions shall instruct the  
7 jury as to which party bears the burden of proof on each issue  
8 and as to whether that burden requires that a party raise a  
9 reasonable doubt concerning the existence or nonexistence of  
10 a fact or that he establish the existence or nonexistence of a  
11 fact by a preponderance of the evidence, by clear and convinc-  
12 ing proof, or by proof beyond a reasonable doubt.

13  
14 Article 2. Burden of Proof on Specific Issues

15  
16 520. The party claiming that a person is guilty of crime or  
17 wrongdoing has the burden of proof on that issue.

18 521. The party claiming that a person did not exercise a  
19 requisite degree of care has the burden of proof on that issue.

20 522. The party claiming that any person, including him-  
21 self, is or was insane has the burden of proof on that issue.

22  
23 CHAPTER 2. BURDEN OF PRODUCING EVIDENCE

24  
25 550. The burden of producing evidence as to a particular  
26 fact is initially on the party with the burden of proof. There-  
27 after, the burden of producing evidence as to a particular fact  
28 is on the party who would suffer a finding against him on that  
29 fact in the absence of further evidence.

30  
31 CHAPTER 3. PRESUMPTIONS AND INFERENCES

32  
33 Article 1. General

34  
35 600. (a) Subject to Section 607, a presumption is an as-  
36 sumption of fact that the law requires to be made from another  
37 fact or group of facts found or otherwise established in the  
38 action. A presumption is not evidence.

39 (b) An inference is a deduction of fact that may logically  
40 and reasonably be drawn from another fact or group of facts  
41 found or otherwise established in the action.

42 601. A presumption is either conclusive or rebuttable.  
43 Every rebuttable presumption is either (a) a presumption  
44 affecting the burden of producing evidence or (b) a presump-  
45 tion affecting the burden of proof.

46 602. A statute providing that a fact or group of facts is  
47 prima facie evidence of another fact establishes a rebuttable  
48 presumption.

49 603. A presumption affecting the burden of producing evi-  
50 dence is a presumption established to implement no public  
51 policy other than to facilitate the determination of the par-  
52 ticular action in which the presumption is applied.

1       604. Subject to Section 607, the effect of a presumption  
2 affecting the burden of producing evidence is to require the  
3 trier of fact to assume the existence of the presumed fact un-  
4 less and until evidence is introduced which would support a  
5 finding of its nonexistence, in which case the trier of fact shall  
6 determine the existence or nonexistence of the presumed fact  
7 from the evidence and without regard to the presumption.  
8 Nothing in this section shall be construed to prevent the draw-  
9 ing of any inference that may be appropriate.

10       605. A presumption affecting the burden of proof is a pre-  
11 sumption established to implement some public policy other  
12 than to facilitate the determination of the particular action in  
13 which the presumption is applied, such as the policy in favor  
14 of the legitimacy of children, the validity of marriage, the  
15 stability of titles to property, or the security of those who  
16 entrust themselves or their property to the administration of  
17 others.

18       606. Subject to Section 607, the effect of a presumption  
19 affecting the burden of proof is to impose upon the party  
20 against whom it operates the burden of proof as to the non-  
21 existence of the presumed fact.

22       607. When a rebuttable presumption operates in a criminal  
23 action to establish an element of the crime with which the  
24 defendant is charged, neither the burden of producing evi-  
25 dence nor the burden of proof is imposed upon the defendant;  
26 but, if the trier of fact finds that the facts that give rise to  
27 the presumption have been proved beyond a reasonable doubt,  
28 the trier of fact may but is not required to find that the  
29 presumed fact has also been proved beyond a reasonable doubt.

30

31

## Article 2. Conclusive Presumptions

32

33       620. The presumptions established by this article, and all  
34 other presumptions declared by law to be conclusive, are con-  
35 clusive presumptions.

36       621. Notwithstanding any other provision of law, the issue  
37 of a wife cohabiting with her husband, who is not impotent,  
38 is conclusively presumed to be legitimate.

39       622. The facts recited in a written instrument are conclu-  
40 sively presumed to be true as between the parties thereto, or  
41 their successors in interest; but this rule does not apply to the  
42 recital of a consideration.

43       623. Whenever a party has, by his own statement or con-  
44 duct, intentionally and deliberately led another to believe a  
45 particular thing true and to act upon such belief, he is not, in  
46 any litigation arising out of such statement or conduct, per-  
47 mitted to contradict it.

48       624. A tenant is not permitted to deny the title of his  
49 landlord at the time of the commencement of the relation.

1 Article 3. Presumptions Affecting the Burden  
2 of Producing Evidence  
3

4 630. The presumptions established by this article, and all  
5 other rebuttable presumptions established by law that fall  
6 within the criteria of Section 603, are presumptions affecting  
7 the burden of producing evidence.

8 631. Money delivered by one to another is presumed to  
9 have been due to the latter.

10 632. A thing delivered by one to another is presumed to  
11 have belonged to the latter.

12 633. An obligation delivered up to the debtor is presumed  
13 to have been paid.

14 634. A person in possession of an order on himself for the  
15 payment of money, or delivery of a thing, is presumed to have  
16 paid the money or delivered the thing accordingly.

17 635. An obligation possessed by the creditor is presumed  
18 not to have been paid.

19 636. The payment of earlier rent or installments is pre-  
20 sumed from a receipt for later rent or installments.

21 637. The things which a person possesses are presumed to  
22 be owned by him.

23 638. A person who exercises acts of ownership over prop-  
24 erty is presumed to be the owner of it.

25 639. A judgment, when not conclusive, is presumed to cor-  
26 rectly determine or set forth the rights of the parties, but  
27 there is no presumption that the facts essential to the judg-  
28 ment have been correctly determined.

29 640. A writing is presumed to have been truly dated.

30 641. A letter correctly addressed and properly mailed is  
31 presumed to have been received in the ordinary course of mail.

32 642. A trustee or other person, whose duty it was to convey  
33 real property to a particular person, is presumed to have  
34 actually conveyed to him when such presumption is necessary  
35 to perfect title of such person or his successor in interest.

36 643. A deed or will or other writing purporting to create,  
37 terminate, or affect an interest in real or personal property is  
38 presumed to be authentic if it:

39 (a) Is at least 30 years old;

40 (b) Is in such condition as to create no suspicion concern-  
41 ing its authenticity;

42 (c) Was kept, or if found was found, in a place where  
43 such writing, if authentic, would be likely to be kept or  
44 found; and

45 (d) Has been generally acted upon as authentic by persons  
46 having an interest in the matter.

47 644. A book, purporting to be printed or published by  
48 public authority, is presumed to have been so printed or  
49 published.

50 645. A book, purporting to contain reports of cases ad-  
51 judged in the tribunals of the state or nation where the book

1 is published, is presumed to contain correct reports of such  
2 cases.

3

#### 4 Article 4. Presumptions Affecting the Burden of Proof

5

6 660. The presumptions established by this article, and all  
7 other rebuttable presumptions established by law that fall  
8 within the criteria of Section 605, are presumptions affecting  
9 the burden of proof.

10 661. A child of a woman who is or has been married, born  
11 during the marriage or within 300 days after the dissolution  
12 thereof, is presumed to be a legitimate child of that marriage.  
13 This presumption may be disputed only by the people of the  
14 State of California in a criminal action brought under Section  
15 270 of the Penal Code or by the husband or wife, or the de-  
16 scendant of one or both of them. In a civil action, this presump-  
17 tion may be rebutted only by clear and convincing proof.

18 662. The owner of the legal title to property is presumed  
19 to be the owner of the full beneficial title. This presumption  
20 may be rebutted only by clear and convincing proof.

21 663. A ceremonial marriage is presumed to be valid.

22 664. It is presumed that official duty has been regularly  
23 performed.

24 665. An arrest without a warrant is presumed to be un-  
25 lawful.

26 666. Any court of this State or the United States, or any  
27 court of general jurisdiction in any other state or nation, or  
28 any judge of such a court, acting as such, is presumed to have  
29 acted in the lawful exercise of its jurisdiction. This presump-  
30 tion applies only when the act of the court or judge is under  
31 collateral attack.

32 667. A person not heard from in seven years is presumed  
33 to be dead.

34

### DIVISION 6. WITNESSES

35

36

#### CHAPTER 1. COMPETENCY

37

38 700. Except as otherwise provided by statute, every person  
39 is qualified to be a witness and no person is disqualified to  
40 testify to any matter.

41 701. A person is disqualified to be a witness if he is:

42 (a) Incapable of expressing himself concerning the matter  
43 so as to be understood, either directly or through interpreta-  
44 tion by one who can understand him; or

45 (b) Incapable of understanding the duty of a witness to tell  
46 the truth.

47 702. (a) Subject to Section 801, the testimony of a witness  
48 concerning a particular matter is inadmissible unless he has  
49 personal knowledge of the matter. Against the objection of  
50 a party, such personal knowledge must be shown before the  
51 witness may testify concerning the matter.

1 (b) A witness' personal knowledge of a matter may be  
2 shown by any otherwise admissible evidence, including his  
3 own testimony.

4 703. (a) Before the judge presiding at the trial of an  
5 action may be called to testify in that trial as a witness, he  
6 shall, in proceedings held out of the presence and hearing of  
7 the jury, inform the parties of the information he has con-  
8 cerning any fact or matter about which he will be called to  
9 testify.

10 (b) Against the objection of a party, the judge presiding  
11 at the trial of an action may not testify in that trial as a  
12 witness. Upon such objection, which shall be deemed a motion  
13 for mistrial, the judge shall declare a mistrial and order the  
14 action assigned for trial before another judge.

15 (c) In the absence of objection by a party, the judge pre-  
16 siding at the trial of an action may testify in that trial as a  
17 witness.

18 704. (a) Before a juror sworn and impaneled in the trial  
19 of an action may be called to testify before the jury in that  
20 trial as a witness, he shall, in proceedings conducted by the  
21 court out of the presence and hearing of the remaining jurors,  
22 inform the parties of the information he has concerning any  
23 fact or matter about which he will be called to testify.

24 (b) Against the objection of a party, a juror sworn and im-  
25 paneled in the trial of an action may not testify before the  
26 jury in that trial as a witness. Upon such objection, which  
27 shall be deemed a motion for mistrial, the court shall declare  
28 a mistrial and order the action assigned for trial before an-  
29 other jury.

30 (c) In the absence of objection by a party, a juror sworn  
31 and impaneled in the trial of an action may be compelled to  
32 testify in that trial as a witness.

33  
34  
35

## CHAPTER 2. OATH AND CONFRONTATION

36 710. Every witness before testifying shall take an oath  
37 or make an affirmation or declaration in the form provided  
38 by Chapter 3 (commencing with Section 2093) of Title 6 of  
39 Part IV of the Code of Civil Procedure.

40 711. At the trial of an action, a witness can be heard  
41 only in the presence and subject to the examination of all  
42 the parties to the action, if they choose to attend and examine.

43  
44  
45

## CHAPTER 3. EXPERT WITNESSES

### Article 1. Expert Witnesses Generally

46  
47  
48 720. (a) A person is qualified to testify as an expert if he  
49 has special knowledge, skill, experience, training, or education  
50 sufficient to qualify him as an expert on the subject to which  
51 his testimony relates. Against the objection of a party, such  
52 special knowledge, skill, experience, training, or education

1 must be shown before the witness may testify as an expert.  
 2 (b) A witness' special knowledge, skill, experience, training,  
 3 or education may be shown by any otherwise admissible evi-  
 4 dence, including his own testimony.

5 721. (a) Subject to subdivision (b), a witness testifying  
 6 as an expert may be cross-examined to the same extent as  
 7 any other witness and, in addition, may be fully cross-exam-  
 8 ined as to (1) his qualifications, (2) the subject to which his  
 9 expert testimony relates, and (3) the matter upon which his  
 10 opinion is based and the reasons for his opinion.

11 (b) If a witness testifying as an expert testifies in the form  
 12 of an opinion, he may not be cross-examined in regard to the  
 13 content or tenor of any scientific, technical, or professional  
 14 text, treatise, journal, or similar publication unless:

15 (1) The witness referred to, considered, or relied upon such  
 16 publication in arriving at or forming his opinion; or

17 (2) Such publication has been admitted in evidence.

18 722. (a) The fact of the appointment of an expert witness  
 19 by the court may be revealed to the trier of fact.

20 (b) The compensation and expenses paid or to be paid to  
 21 an expert witness by the party calling him is a proper subject  
 22 of inquiry by any adverse party as relevant to the credibility of  
 23 the witness and the weight of his testimony.

24 723. The court may, at any time before or during the trial  
 25 of an action, limit the number of expert witnesses to be called  
 26 by any party.

27

## 28 Article 2. Appointment of Expert Witness by Court

29

30 730. When it appears to the court, at any time before or  
 31 during the trial of an action, that expert evidence is or may  
 32 be required by the court or by any party to the action, the  
 33 court on its own motion or on motion of any party may ap-  
 34 point one or more experts to investigate, to render a report  
 35 as may be ordered by the court, and to testify as an expert at  
 36 the trial of the action relative to the fact or matter as to which  
 37 such expert evidence is or may be required. The court may  
 38 fix the compensation for such services, if any, rendered by any  
 39 person appointed under this section, in addition to any service  
 40 as a witness, at such amount as seems reasonable to the court.

41 731. (a) In all criminal actions and juvenile court pro-  
 42 ceedings, the compensation fixed under Section 730 shall be  
 43 a charge against the county in which such action or proceeding  
 44 is pending and shall be paid out of the treasury of such county  
 45 on order of the court.

46 (b) In any county in which the procedure prescribed in this  
 47 subdivision has been authorized by the board of supervisors,  
 48 the compensation fixed under Section 730 for medical experts  
 49 in civil actions in such county shall be a charge against and  
 50 paid out of the treasury of such county on order of the court.

51 (c) Except as otherwise provided in this section, in all  
 52 civil actions, the compensation fixed under Section 730 shall,

1 in the first instance, be apportioned and charged to the several  
2 parties in such proportion as the court may determine and  
3 may thereafter be taxed and allowed in like manner as other  
4 costs.

5 732. Any expert appointed by the court under Section 730  
6 may be called and examined by the court or by any party to  
7 the action. When such witness is called and examined by the  
8 court, the parties have the same right as is expressed in Section  
9 775 to cross-examine the witness and to object to the questions  
10 asked and the evidence adduced.

11 733. Nothing contained in this article shall be deemed or  
12 construed to prevent any party to any action from producing  
13 other expert evidence on the same fact or matter mentioned  
14 in Section 730; but, where other expert witnesses are called  
15 by a party to the action, their fees shall be paid by the party  
16 calling them and only ordinary witness fees shall be taxed  
17 as costs in the action.

18  
19 CHAPTER 4. INTERPRETERS AND TRANSLATORS  
20

21 750. A person who serves as an interpreter or translator  
22 in any action is subject to all the rules of law relating to  
23 witnesses.

24 751. (a) An interpreter shall take an oath that he will  
25 make a true interpretation to the witness in a language that  
26 the witness understands and that he will make a true inter-  
27 pretation of the witness' answers to questions to counsel, court,  
28 or jury, in the English language, with his best skill and judg-  
29 ment.

30 (b) A translator shall take an oath that he will make a  
31 true translation in the English language of any writing he  
32 is to decipher or translate.

33 752. (a) When a witness is incapable of hearing or under-  
34 standing the English language or is incapable of expressing  
35 himself in the English language so as to be understood directly  
36 by counsel, court, and jury, an interpreter whom he can under-  
37 stand and who can understand him shall be sworn to interpret  
38 for him.

39 (b) The interpreter may be appointed and compensated as  
40 provided in Article 2 (commencing with Section 730) of  
41 Chapter 3.

42 753. (a) When the written characters in a writing offered  
43 in evidence are incapable of being deciphered or understood  
44 directly, a translator who can decipher the characters or un-  
45 derstand the language shall be sworn to decipher or trans-  
46 late the writing.

47 (b) The translator may be appointed and compensated as  
48 provided in Article 2 (commencing with Section 730) of  
49 Chapter 3.

50 754. (a) As used in this section, "deaf person" means a  
51 person with a hearing loss so great as to prevent his under-



1 standing language spoken in a normal tone.

2 (b) In any criminal action where the defendant is a deaf  
3 person, all of the proceedings of the trial shall be interpreted  
4 to him in a language that he understands by a qualified inter-  
5 preter appointed by the court.

6 (c) In any action where the mental condition of a deaf  
7 person is being considered and where such person may be  
8 committed to a mental institution, all of the court proceedings  
9 pertaining to him shall be interpreted to him in a language  
10 that he understands by a qualified interpreter appointed by  
11 the court.

12 (d) Interpreters appointed under this section shall be paid  
13 for their services a reasonable sum to be determined by the  
14 court, which shall be a charge against the county in which  
15 such action is pending and shall be paid out of the treasury  
16 of such county on order of the court.

17  
18 CHAPTER 5. METHOD AND SCOPE OF EXAMINATION

19  
20 Article 1. Definitions

21  
22 760. "Direct examination" is the first examination of a  
23 witness upon a matter that is not within the scope of a previ-  
24 ous examination of the witness.

25 761. "Cross-examination" is the examination of a witness  
26 by a party other than the direct examiner upon a matter that  
27 is within the scope of the direct examination of the witness.

28 762. "Redirect examination" is an examination of a wit-  
29 ness by the direct examiner subsequent to the cross-examina-  
30 tion of the witness.

31 763. "Recross-examination" is an examination of a witness  
32 by a cross-examiner subsequent to a redirect examination of  
33 the witness.

34 764. A "leading question" is a question that suggests to  
35 the witness the answer that the examining party desires.

36  
37 Article 2. Examination of Witnesses

38  
39 765. The court shall exercise reasonable control over the  
40 mode of interrogation of a witness so as (a) to make such in-  
41 terrogation as rapid, as distinct, and as effective for the as-  
42 certainment of the truth, as may be, and (b) to protect the  
43 witness from undue harassment or embarrassment.

44 766. A witness must give responsive answers to questions,  
45 and answers that are not responsive shall be stricken on motion  
46 of any party.

47 767. Except under special circumstances where the inter-  
48 ests of justice otherwise require:

49 (a) A leading question may not be asked of a witness on  
50 direct or redirect examination.

51 (b) A leading question may be asked of a witness on cross-  
52 examination or recross-examination.

1 768. (a) In examining a witness concerning a writing, in-  
2 cluding a statement made by him that is inconsistent with any  
3 part of his testimony at the hearing, it is not necessary to  
4 show, read, or disclose to him any part of the writing.

5 (b) If a writing is shown to a witness, all parties to the  
6 action must be given an opportunity to inspect it before any  
7 question concerning it may be asked of the witness.

8 769. In examining a witness concerning a statement or  
9 other conduct by him that is inconsistent with any part of his  
10 testimony at the hearing, it is not necessary to disclose to him  
11 any information concerning the statement or other conduct.

12 770. Unless the interests of justice otherwise require, ex-  
13 trinsic evidence of a statement made by a witness that is incon-  
14 sistent with any part of his testimony at the hearing shall be  
15 excluded unless:

16 (a) The witness was so examined while testifying as to give  
17 him an opportunity to explain or to deny the statement; or

18 (b) The witness has not been excused from giving further  
19 testimony in the action.

20 771. If a witness, either while testifying or prior thereto,  
21 uses a writing to refresh his memory with respect to any  
22 matter about which he testifies, such writing must be produced  
23 at the request of an adverse party, who may, if he chooses,  
24 inspect the writing, cross-examine the witness concerning it,  
25 and read it to the jury.

26 772. (a) The examination of a witness shall proceed in  
27 the following phases: direct examination, cross-examination,  
28 redirect examination, recross-examination, and continuing  
29 thereafter by redirect and recross-examination.

30 (b) Unless for good cause the court otherwise directs, each  
31 phase of the examination of a witness must be concluded be-  
32 fore the succeeding phase begins.

33 (c) Subject to subdivision (d), a party may, in the dis-  
34 cretion of the court, during his cross-examination, redirect  
35 examination, or recross-examination of a witness, examine the  
36 witness upon a matter not within the scope of a previous ex-  
37 amination of the witness.

38 (d) If the witness is the defendant in a criminal action, the  
39 witness may not be examined under direct examination by  
40 another party.

41 773. (a) A witness examined by one party may be cross-  
42 examined upon any matter within the scope of the direct ex-  
43 amination by each other party to the action in such order as  
44 the court directs.

45 (b) The cross-examination of a witness by any party whose  
46 interest is not adverse to the party calling him is subject to  
47 the same rules that are applicable to the direct examination.

48 774. A witness once examined cannot be re-examined as  
49 to the same matter without leave of the court, but he may be  
50 re-examined as to any new matter upon which he has been  
51 examined by another party to the action. Leave may be granted  
52 or withheld in the court's discretion.

1 775. The court on its own motion may call witnesses and  
2 interrogate them the same as if they had been produced by a  
3 party to the action, and the parties may object to the questions  
4 asked and the evidence adduced the same as if such witnesses  
5 were called and examined by an adverse party. Such witnesses  
6 may be cross-examined by all parties to the action in such  
7 order as the court directs.

8 776. (a) A party to the record of any civil action, or a  
9 person identified with such a party, may be called and examined  
10 as if under cross-examination by any adverse party at any  
11 time during the presentation of evidence by the party calling  
12 the witness. The party calling such witness is not bound by  
13 his testimony, and the testimony of such witness may be re-  
14 butted by the party calling him for such examination by other  
15 evidence.

16 (b) A witness examined by a party under this section may  
17 be cross-examined by all other parties to the action in such  
18 order as the court directs; but the witness may be examined  
19 only as if under redirect examination by:

20 (1) In the case of a witness who is a party, his own counsel  
21 and counsel for a party who is not adverse to the witness.

22 (2) In the case of a witness who is not a party, counsel for  
23 the party with whom the witness is identified and counsel for  
24 a party who is not adverse to the party with whom the witness  
25 is identified.

26 (c) For the purpose of this section, parties represented by  
27 the same counsel are deemed to be a single party.

28 (d) For the purpose of this section, a person is identified  
29 with a party if he is:

30 (1) A person for whose immediate benefit the action is  
31 prosecuted or defended by the party.

32 (2) A director, officer, superintendent, member, agent, em-  
33 ployee, or managing agent of the party or of a person specified  
34 in paragraph (1), or any public employee of a public entity  
35 when such public entity is the party.

36 (3) A person who was in any of the relationships specified  
37 in paragraph (2) at the time of the act or omission giving rise  
38 to the cause of action.

39 (4) A person who was in any of the relationships specified  
40 in paragraph (2) at the time he obtained knowledge of the  
41 matter concerning which he is sought to be examined under  
42 this section.

43 777. (a) Subject to subdivisions (b) and (c), the court  
44 may exclude from the courtroom any witness not at the time  
45 under examination so that such witness cannot hear the testi-  
46 mony of other witnesses.

47 (b) A party to the action cannot be excluded under this  
48 section.

49 (c) If a person other than a natural person is a party to  
50 the action, an officer or employee designated by its attorney  
51 is entitled to be present.

1 778. After a witness has been excused from giving further  
2 testimony in the action, he cannot be recalled without leave of  
3 the court. Leave may be granted or withheld in the court's  
4 discretion.

5 CHAPTER 6. CREDIBILITY OF WITNESSES  
6

7 Article 1. Credibility Generally  
8

9 780. Except as otherwise provided by law, the court or  
10 jury may consider in determining the credibility of a witness  
11 any matter that has any tendency in reason to prove or dis-  
12 prove the truthfulness of his testimony at the hearing, includ-  
13 ing but not limited to any of the following:

14 (a) His demeanor while testifying and the manner in which  
15 he testifies.

16 (b) The character of his testimony.

17 (c) The extent of his capacity to perceive, to recollect, or  
18 to communicate any matter about which he testifies.

19 (d) The extent of his opportunity to perceive any matter  
20 about which he testifies.

21 (e) His character for honesty or veracity or their opposites.

22 (f) The existence or nonexistence of a bias, interest, or other  
23 motive.

24 (g) A statement previously made by him that is consistent  
25 with his testimony at the hearing.

26 (h) A statement made by him that is inconsistent with any  
27 part of his testimony at the hearing.

28 (i) The existence or nonexistence of any fact testified to  
29 by him.

30 (j) His attitude toward the action in which he testifies or  
31 toward the giving of testimony.

32 (k) His admission of untruthfulness.  
33

34 Article 2. Attacking or Supporting Credibility  
35

36 785. The credibility of a witness may be attacked or sup-  
37 ported by any party, including the party calling him.

38 786. Evidence of traits of his character other than honesty  
39 or veracity, or their opposites, is inadmissible to attack or  
40 support the credibility of a witness.

41 787. Subject to Section 788, evidence of specific instances  
42 of his conduct relevant only as tending to prove a trait of his  
43 character is inadmissible to attack or support the credibility  
44 of a witness.

45 788. (a) Subject to subdivision (b), evidence of a witness'  
46 conviction of a felony is admissible for the purpose of attack-  
47 ing his credibility if the court, in proceedings held out of the  
48 presence and hearing of the jury, finds that:

49 (1) An essential element of the crime is dishonesty or false  
50 statement; and

1 (2) The witness has admitted his conviction of the crime  
2 or the party attacking the credibility of the witness has pro-  
3 duced competent evidence of the conviction.

4 (b) Evidence of a witness' conviction of a felony is inad-  
5 missible for the purpose of attacking his credibility if:

6 (1) A pardon based on his innocence has been granted to  
7 the witness by the jurisdiction in which he was convicted.

8 (2) A certificate of rehabilitation and pardon has been  
9 granted to the witness under the provisions of Chapter 3.5  
10 (commencing with Section 4852.01) of Title 6 of Part 3 of  
11 the Penal Code.

12 (3) The accusatory pleading against the witness has been  
13 dismissed under the provisions of Penal Code Section 1203.4.

14 (4) The conviction was under the laws of another jurisdic-  
15 tion and the witness has been relieved of the penalties and  
16 disabilities arising from the conviction pursuant to a procedure  
17 substantially equivalent to that referred to in paragraph (2)  
18 or (3).

19 (5) A period of more than 10 years has elapsed since the  
20 date of his release from confinement, or the expiration of the  
21 period of his parole, probation, or sentence, whichever is the  
22 later date.

23 789. Evidence of his religious belief or lack thereof is in-  
24 admissible to attack or support the credibility of a witness.

25 790. Evidence of the good character of a witness is inad-  
26 missible to support his credibility unless evidence of his bad  
27 character has been admitted for the purpose of attacking his  
28 credibility.

29 791. Evidence of a statement previously made by a wit-  
30 ness that is consistent with his testimony at the hearing is  
31 inadmissible to support his credibility unless it is offered  
32 after:

33 (a) Evidence of a statement made by him that is incon-  
34 sistent with any part of his testimony at the hearing has been  
35 admitted for the purpose of attacking his credibility, and the  
36 statement was made before the alleged inconsistent state-  
37 ment; or

38 (b) An express or implied charge has been made that his  
39 testimony at the hearing is recently fabricated or is influenced  
40 by bias or other improper motive, and the statement was made  
41 before the bias, motive for fabrication, or other improper  
42 motive is alleged to have arisen.

## 43 44 DIVISION 7. OPINION TESTIMONY AND 45 SCIENTIFIC EVIDENCE

### 46 47 CHAPTER 1. EXPERT AND OTHER OPINION TESTIMONY

#### 48 49 Article 1. Expert and Other Opinion Testimony Generally

50  
51 800. If a witness is not testifying as an expert, his testi-  
52 mony in the form of an opinion is limited to such an opinion

1 as is permitted by law, including but not limited to an opinion  
2 that is:

- 3 (a) Rationally based on the perception of the witness; and
- 4 (b) Helpful to a clear understanding of his testimony.

5 801. If a witness is testifying as an expert, his testimony  
6 in the form of an opinion is limited to such an opinion as is:

7 (a) Related to a subject that is sufficiently beyond common  
8 experience that the opinion of an expert would assist the trier  
9 of fact; and

10 (b) Based on matter (including his special knowledge, skill,  
11 experience, training, and education) perceived by or person-  
12 ally known to the witness or made known to him at or before  
13 the hearing, whether or not admissible, that is of a type that  
14 reasonably may be relied upon by an expert in forming an  
15 opinion upon the subject to which his testimony relates, unless  
16 an expert is precluded by law from using such matter as a  
17 basis for his opinion.

18 802. A witness testifying in the form of an opinion may  
19 state on direct examination the reasons for his opinion and  
20 the matter (including, in the case of an expert, his special  
21 knowledge, skill, experience, training, and education) upon  
22 which it is based, unless he is precluded by law from using such  
23 reasons or matter as a basis for his opinion. The court in its  
24 discretion may require that a witness before testifying in the  
25 form of an opinion be first examined concerning the matter  
26 upon which his opinion is based.

27 803. The court may, and upon objection shall, exclude  
28 testimony in the form of an opinion that is based in whole or  
29 in significant part on matter that is not a proper basis for  
30 such an opinion. In such case, the witness may, if there remains  
31 a proper basis for his opinion, then state his opinion after  
32 excluding from consideration the matter determined to be  
33 improper.

34 804. (a) If a witness testifying as an expert testifies that  
35 his opinion is based in whole or in part upon the opinion or  
36 statement of another person, such other person may be called  
37 and examined by any adverse party as if under cross-exam-  
38 ination concerning the opinion or statement.

39 (b) This section is not applicable if the person upon whose  
40 opinion or statement the expert witness has relied is (1) a  
41 party, (2) a person identified with a party within the meaning  
42 of subdivision (d) of Section 776, or (3) a witness who has  
43 testified in the action concerning the opinion or statement upon  
44 which the expert witness has relied.

45 (c) Nothing in this section makes admissible an expert  
46 opinion that is inadmissible because it is based in whole or in  
47 part on the opinion or statement of another person.

48 (d) An expert opinion otherwise admissible is not made  
49 inadmissible by this section because it is based on the opinion  
50 or statement of a person who is unavailable for examination  
51 pursuant to this section.

1 805. Testimony in the form of an opinion that is otherwise  
2 admissible is not objectionable because it embraces the ultimate  
3 issue to be decided by the trier of fact.

4  
5 Article 2. Opinion Testimony on Particular Subjects

6  
7 870. A witness may state his opinion as to the sanity of a  
8 person when:

9 (a) The witness is an intimate acquaintance of the person  
10 whose sanity is in question;

11 (b) The witness was a subscribing witness to a writing, the  
12 validity of which is in dispute, signed by the person whose  
13 sanity is in question and the opinion relates to the sanity of  
14 such person at the time the writing was signed; or

15 (c) The witness is qualified under Section 800 or 801 to  
16 testify in the form of an opinion.

17  
18 CHAPTER 2. BLOOD TESTS TO DETERMINE PATERNITY

19  
20 890. This chapter may be cited as the Uniform Act on  
21 Blood Tests to Determine Paternity.

22 891. This act shall be so interpreted and construed as to  
23 effectuate its general purpose to make uniform the law of  
24 those states which enact it.

25 892. In a civil action in which paternity is a relevant fact,  
26 the court may upon its own initiative or upon suggestion made  
27 by or on behalf of any person whose blood is involved, and  
28 shall upon motion of any party to the action made at a time so  
29 as not to delay the proceedings unduly, order the mother,  
30 child, and alleged father to submit to blood tests. If any party  
31 refuses to submit to such tests, the court may resolve the ques-  
32 tion of paternity against such party or enforce its order if the  
33 rights of others and the interests of justice so require.

34 893. The tests shall be made by experts qualified as exam-  
35 iners of blood types who shall be appointed by the court. The  
36 experts shall be called by the court as witnesses to testify to  
37 their findings and shall be subject to cross-examination by the  
38 parties. Any party or person at whose suggestion the tests have  
39 been ordered may demand that other experts, qualified as  
40 examiners of blood types, perform independent tests under  
41 order of the court, the results of which may be offered in evi-  
42 dence. The number and qualifications of such experts shall be  
43 determined by the court.

44 894. The compensation of each expert witness appointed  
45 by the court shall be fixed at a reasonable amount. It shall be  
46 paid as the court shall order. The court may order that it be  
47 paid by the parties in such proportions and at such times as it  
48 shall prescribe, or that the proportion of any party be paid by  
49 the county, and that, after payment by the parties or the  
50 county or both, all or part or none of it be taxed as costs in  
51 the action.

1 895. If the court finds that the conclusions of all the ex-  
2 perts, as disclosed by the evidence based upon the tests, are  
3 that the alleged father is not the father of the child, the ques-  
4 tion of paternity shall be resolved accordingly. If the experts  
5 disagree in their findings or conclusions, the question shall be  
6 submitted upon all the evidence.

7 896. This chapter applies to criminal actions subject to the  
8 following limitations and provisions:

9 (a) An order for the tests shall be made only upon applica-  
10 tion of a party or on the court's initiative.

11 (b) The compensation of the experts shall be paid by the  
12 county under order of court.

13 (c) The court may direct a verdict of acquittal upon the  
14 conclusions of all the experts under the provisions of Section  
15 895; otherwise, the case shall be submitted for determination  
16 upon all the evidence.

17 897. Nothing contained in this chapter shall be deemed  
18 or construed to prevent any party to any action from pro-  
19 ducing other expert evidence on the matter covered by this  
20 chapter; but, where other expert witnesses are called by a  
21 party to the action, their fees shall be paid by the party  
22 calling them and only ordinary witness fees shall be taxed  
23 as costs in the action.

## 24 DIVISION 8. PRIVILEGES

### 25 CHAPTER 1. DEFINITIONS

26 900. Unless the provision or context otherwise requires,  
27 the definitions in this chapter govern the construction of this  
28 division. They do not govern the construction of any other  
29 division.

30 901. "Proceeding" means any action, hearing, investiga-  
31 tion, inquest, or inquiry (whether conducted by a court, ad-  
32 ministrative agency, hearing officer, arbitrator, legislative body,  
33 or any other person authorized by law) in which, pursuant to  
34 law, testimony can be compelled to be given.

35 902. "Civil proceeding" means any proceeding except a  
36 criminal proceeding.

37 903. "Criminal proceeding" means:

38 (a) A criminal action; and

39 (b) A proceeding pursuant to Article 3 (commencing with  
40 Section 3060) of Chapter 7 of Division 4 of Title 1 of the  
41 Government Code to determine whether a public officer should  
42 be removed from office for wilful or corrupt misconduct in  
43 office.

44 904. "Disciplinary proceeding" means a proceeding brought  
45 by a public entity to determine whether a right, authority,  
46 license, or privilege (including the right or privilege to be  
47 employed by the public entity or to hold a public office) should  
48 be revoked, suspended, terminated, limited, or conditioned,  
49 but does not include a criminal proceeding.



1 905. "Presiding officer" means the person authorized to  
 2 rule on a claim of privilege in the proceeding in which the  
 3 claim is made.

4  
 5 CHAPTER 2. APPLICABILITY OF DIVISION  
 6

7 910. Except as otherwise provided by statute, the provi-  
 8 sions of this division apply in all proceedings. The provisions  
 9 of any statute making rules of evidence inapplicable in par-  
 10 ticular proceedings, or limiting the applicability of rules of  
 11 evidence in particular proceedings, do not make this division  
 12 inapplicable to such proceedings.

13  
 14 CHAPTER 3. GENERAL PROVISIONS RELATING TO PRIVILEGES  
 15

16 911. Except as otherwise provided by statute:

17 (a) No person has a privilege to refuse to be a witness.

18 (b) No person has a privilege to refuse to disclose any  
 19 matter or to refuse to produce any writing, object, or other  
 20 thing.

21 (c) No person has a privilege that another shall not be a  
 22 witness or shall not disclose any matter or shall not produce  
 23 any writing, object, or other thing.

24 912. (a) Except as otherwise provided in this section, the  
 25 right of any person to claim a privilege provided by Section  
 26 954 (lawyer-client privilege), 980 (privilege for confidential  
 27 marital communications), 994 (physician-patient privilege),  
 28 1014 (psychotherapist-patient privilege), 1033 (privilege of  
 29 penitent), or 1034 (privilege of clergyman) is waived with  
 30 respect to a communication protected by such privilege if any  
 31 holder of the privilege, without coercion, has disclosed a sig-  
 32 nificant part of the communication or has consented to such  
 33 disclosure made by anyone. Consent to disclosure is manifested  
 34 by any statement or other conduct of the holder of the privi-  
 35 lege indicating his consent to the disclosure, including his  
 36 failure to claim the privilege in any proceeding in which he  
 37 has the legal standing and opportunity to claim the privilege.

38 (b) Where two or more persons are joint holders of a privi-  
 39 lege provided by Section 954 (lawyer-client privilege), 994  
 40 (physician-patient privilege), or 1014 (psychotherapist-patient  
 41 privilege), a waiver of the right of a particular joint holder  
 42 of the privilege to claim the privilege does not affect the right  
 43 of another joint holder to claim the privilege. In the case of  
 44 the privilege provided by Section 980 (privilege for confi-  
 45 dential marital communications), a waiver of the right of one  
 46 spouse to claim the privilege does not affect the right of the  
 47 other spouse to claim the privilege.

48 (c) A disclosure that is itself privileged under this divi-  
 49 sion is not a waiver of any privilege.

50 (d) A disclosure in confidence of a communication that is  
 51 protected by a privilege provided by Section 954 (lawyer-  
 52 client privilege), 994 (physician-patient privilege), or 1014

1 (psychotherapist-patient privilege), when such disclosure is  
2 reasonably necessary for the accomplishment of the purpose  
3 for which the lawyer, physician, or psychotherapist was con-  
4 sulted, is not a waiver of the privilege.

5 913. (a) If in the instant proceeding or on a prior occasion  
6 a privilege is or was exercised not to testify with respect to  
7 any matter, or to refuse to disclose or to prevent another from  
8 disclosing any matter, neither the presiding officer nor counsel  
9 may comment thereon, no presumption shall arise because of  
10 the exercise of the privilege, and the trier of fact may not  
11 draw any inference therefrom as to the credibility of the  
12 witness or as to any matter at issue in the proceeding.

13 (b) The court, at the request of a party who may be ad-  
14 versely affected because an unfavorable inference may be  
15 drawn by the jury because a privilege has been exercised, shall  
16 instruct the jury that no presumption arises because of the  
17 exercise of the privilege and that the jury may not draw any  
18 inference therefrom as to the credibility of the witness or as  
19 to any matter at issue in the proceeding.

20 914. (a) The presiding officer shall determine a claim of  
21 privilege in any proceeding in the same manner as a court de-  
22 termines such a claim under Article 2 (commencing with Sec-  
23 tion 400) of Chapter 4 of Division 3.

24 (b) No person may be held in contempt for failure to dis-  
25 close information claimed to be privileged unless he has failed  
26 to comply with an order of a court that he disclose such in-  
27 formation. This subdivision does not apply to any govern-  
28 mental agency that has constitutional contempt power, nor  
29 does it impliedly repeal Chapter 4 (commencing with Section  
30 9400) of Part 1 of Division 2 of Title 2 of the Government  
31 Code. If no other statutory procedure is applicable, the pro-  
32 cedure prescribed by Section 1991 of the Code of Civil Pro-  
33 cedure shall be followed in seeking an order of a court that  
34 the person disclose the information claimed to be privileged.

35 915. (a) Subject to subdivision (b), the presiding officer  
36 may not require disclosure of information claimed to be privi-  
37 leged under this division in order to rule on the claim of  
38 privilege.

39 (b) When a court is ruling on a claim of privilege under  
40 Article 9 (commencing with Section 1040) of Chapter 4 (offi-  
41 cial information and identity of informer) or under Section  
42 1060 (trade secret) and is unable to do so without requiring  
43 disclosure of the information claimed to be privileged, the court  
44 may require the person from whom disclosure is sought or the  
45 person authorized to claim the privilege, or both, to disclose  
46 the information in chambers out of the presence and hearing  
47 of all persons except the person authorized to claim the privi-  
48 lege and such other persons as the person authorized to claim  
49 the privilege is willing to have present. If the judge deter-  
50 mines that the information is privileged, neither he nor any  
51 other person may ever disclose, without the consent of a per-

1 son authorized to permit disclosure, what was disclosed in the  
2 course of the proceedings in chambers.

3 916. (a) The presiding officer, on his own motion or on the  
4 motion of any party, shall exclude information that is sub-  
5 ject to a claim of privilege under this division if:

6 (1) The person from whom the information is sought is not  
7 a person authorized to claim the privilege; and

8 (2) There is no party to the proceeding who is a person au-  
9 thorized to claim the privilege.

10 (b) The presiding officer may not exclude information  
11 under this section if:

12 (1) He is otherwise instructed by a person authorized to  
13 permit disclosure; or

14 (2) The proponent of the evidence establishes that there is  
15 no person authorized to claim the privilege in existence.

16 917. Whenever a privilege is claimed on the ground that  
17 the matter sought to be disclosed is a communication made in  
18 confidence in the course of the lawyer-client, physician-patient,  
19 psychotherapist-patient, clergyman-penitent, or husband-wife  
20 relationship, the communication is presumed to have been  
21 made in confidence and the opponent of the claim of privilege  
22 has the burden of proof to establish that the communication  
23 was not confidential.

24 918. A party may predicate error on a ruling disallowing  
25 a claim of privilege only if he is the holder of the privilege,  
26 except that a party may predicate error on a ruling disallow-  
27 ing a claim of privilege by his spouse under Section 970 or 971.

28 919. Evidence of a statement or other disclosure of privi-  
29 leged information is inadmissible against a holder of the  
30 privilege if:

31 (a) A person authorized to claim the privilege claimed it  
32 but nevertheless disclosure erroneously was required to be  
33 made; or

34 (b) The presiding officer did not exclude the privileged in-  
35 formation as required by Section 916.

36 920. Nothing in this division shall be construed to repeal  
37 by implication any other statute relating to privileges.

38

39

#### CHAPTER 4. PARTICULAR PRIVILEGES

40

41

##### Article 1. Privilege of Defendant in Criminal Case

42

43

44

45

46

47

48

49

50

51

930. To the extent that such privilege exists under the Con-  
stitution of the United States or the State of California, a  
defendant in a criminal case has a privilege not to be called  
as a witness and not to testify.

48

49

##### Article 2. Privilege Against Self-Incrimination

940. To the extent that such privilege exists under the

Constitution of the United States or the State of California,

1 a person has a privilege to refuse to disclose any matter that  
2 may tend to incriminate him.

3  
4 Article 3. Lawyer-Client Privilege

5  
6 950. As used in this article, "lawyer" means a person au-  
7 thorized, or reasonably believed by the client to be authorized,  
8 to practice law in any state or nation.

9 951. As used in this article, "client" means a person who,  
10 directly or through an authorized representative, consults a  
11 lawyer for the purpose of retaining the lawyer or securing  
12 legal service or advice from him in his professional capacity,  
13 and includes an incompetent (a) who himself so consults the  
14 lawyer or (b) whose guardian or conservator so consults the  
15 lawyer in behalf of the incompetent.

16 952. As used in this article, "confidential communication  
17 between client and lawyer" means information transmitted be-  
18 tween a client and his lawyer in the course of that relationship  
19 and in confidence by a means which, so far as the client is  
20 aware, discloses the information to no third persons other  
21 than those who are present to further the interest of the client  
22 in the consultation or those to whom disclosure is reasonably  
23 necessary for the transmission of the information or the ac-  
24 complishment of the purpose for which the lawyer is con-  
25 sulted, and includes advice given by the lawyer in the course  
26 of that relationship.

27 953. As used in this article, "holder of the privilege"  
28 means:

- 29 (a) The client when he has no guardian or conservator.  
30 (b) A guardian or conservator of the client when the client  
31 has a guardian or conservator.  
32 (c) The personal representative of the client if the client is  
33 dead.  
34 (d) A successor, assign, trustee in dissolution, or any simi-  
35 lar representative of a firm, association, organization, partner-  
36 ship, business trust, corporation, or public entity that is no  
37 longer in existence.

38 954. Subject to Section 912 and except as otherwise pro-  
39 vided in this article, the client, whether or not a party, has  
40 a privilege to refuse to disclose, and to prevent another from  
41 disclosing, a confidential communication between client and  
42 lawyer if the privilege is claimed by:

- 43 (a) The holder of the privilege;  
44 (b) A person who is authorized to claim the privilege by the  
45 holder of the privilege; or  
46 (c) The person who was the lawyer at the time of the confi-  
47 dential communication, but such person may not claim the  
48 privilege if there is no holder of the privilege in existence or  
49 if he is otherwise instructed by a person authorized to permit  
50 disclosure.

51 955. The lawyer who received or made a communication  
52 subject to the privilege under this article shall cla

1 ilege whenever he is present when the communication is sought  
 2 to be disclosed and is authorized to claim the privilege under  
 3 subdivision (c) of Section 954.

4 956. There is no privilege under this article if the services  
 5 of the lawyer were sought or obtained to enable or aid anyone  
 6 to commit or plan to commit a crime or a fraud.

7 957. There is no privilege under this article as to a commu-  
 8 nication relevant to an issue between parties all of whom  
 9 claim through a deceased client, regardless of whether the  
 10 claims are by testate or intestate succession or by inter vivos  
 11 transaction.

12 958. There is no privilege under this article as to a commu-  
 13 nication relevant to an issue of breach, by the lawyer or by the  
 14 client, of a duty arising out of the lawyer-client relationship.

15 959. There is no privilege under this article as to a com-  
 16 munication relevant to an issue concerning the intention or  
 17 competence of a client executing an attested document of  
 18 which the lawyer is an attesting witness, or concerning the  
 19 execution or attestation of such a document.

20 960. There is no privilege under this article as to a commu-  
 21 nication relevant to an issue concerning the intention of a  
 22 client, now deceased, with respect to a deed of conveyance,  
 23 will, or other writing, executed by the client, purporting to  
 24 affect an interest in property.

25 961. There is no privilege under this article as to a commu-  
 26 nication relevant to an issue concerning the validity of a deed  
 27 of conveyance, will, or other writing, executed by a client, now  
 28 deceased, purporting to affect an interest in property.

29 962. Where two or more clients have retained or consulted  
 30 a lawyer upon a matter of common interest, none of them may  
 31 claim a privilege under this article as to a communication  
 32 made in the course of that relationship when such communi-  
 33 cation is offered in a civil proceeding between such clients.

#### 34 Article 4. Privilege Not to Testify Against Spouse

35  
 36  
 37 970. Except as otherwise provided by statute, a married  
 38 person has a privilege not to testify against his spouse in  
 39 any proceeding.

40 971. Except as otherwise provided by statute, a married  
 41 person whose spouse is a party to a proceeding has a privilege  
 42 not to be called as a witness by an adverse party to that pro-  
 43 ceeding without the prior express consent of the spouse having  
 44 the privilege under this section unless the party calling the  
 45 spouse does so in good faith without knowledge of the marital  
 46 relationship.

47 972. A married person does not have a privilege under  
 48 this article in:

49 (a) A proceeding brought by or on behalf of one spouse  
 50 against the other spouse.

51 (b) A proceeding to commit or otherwise place his spouse  
 52 or his spouse's property, or both, under the control of another

1 because of the spouse's alleged mental or physical condition.  
2 (c) A proceeding brought by or on behalf of a spouse to  
3 establish his competence.

4 (d) A proceeding under the Juvenile Court Law, Chapter  
5 2 (commencing with Section 500) of Part 1 of Division 2 of  
6 the Welfare and Institutions Code.

7 (e) A criminal proceeding in which one spouse is charged  
8 with:

9 (1) A crime against the person or property of the other  
10 spouse or of a child of either, whether committed before or  
11 during marriage.

12 (2) A crime against the person or property of a third  
13 person committed in the course of committing a crime against  
14 the person or property of the other spouse, whether committed  
15 before or during marriage.

16 (3) Bigamy or adultery.

17 (4) A crime defined by Section 270 or 270a of the Penal  
18 Code.

19 973. (a) Unless erroneously compelled to do so, a married  
20 person who testifies in a proceeding to which his spouse is a  
21 party, or who testifies against his spouse in any proceeding,  
22 does not have a privilege under this article in the proceeding  
23 in which such testimony is given.

24 (b) There is no privilege under this article in a civil pro-  
25 ceeding brought or defended by a married person for the im-  
26 mediate benefit of his spouse or of himself and his spouse.

27  
28 Article 5. Privilege for Confidential Marital  
29 Communications

30  
31 980. Subject to Section 912 and except as otherwise pro-  
32 vided in this article, a spouse (or his guardian or conservator  
33 when he has a guardian or conservator), whether or not a  
34 party, has a privilege during the marital relationship and  
35 afterwards to refuse to disclose, and to prevent another from  
36 disclosing, a communication if he claims the privilege and  
37 the communication was made in confidence between him and  
38 the other spouse while they were husband and wife.

39 981. There is no privilege under this article if the com-  
40 munication was made, in whole or in part, to enable or aid  
41 anyone to commit or plan to commit a crime or a fraud.

42 982. There is no privilege under this article in a proceed-  
43 ing to commit either spouse or otherwise place him or his  
44 property, or both, under the control of another because of his  
45 alleged mental or physical condition.

46 983. There is no privilege under this article in a proceed-  
47 ing brought by or on behalf of either spouse to establish his  
48 competence.

49 984. There is no privilege under this article in:

50 (a) A proceeding brought by or on behalf of one spouse  
51 against the other spouse.

1 (b) A proceeding between a surviving spouse and a person  
 2 who claims through the deceased spouse, regardless of whether  
 3 such claim is by testate or intestate succession or by inter  
 4 vivos transaction.

5 985. There is no privilege under this article in a criminal  
 6 proceeding in which one spouse is charged with:

7 (a) A crime committed at any time against the person or  
 8 property of the other spouse or of a child of either.

9 (b) A crime committed at any time against the person or  
 10 property of a third person committed in the course of com-  
 11 mitting a crime against the person or property of the other  
 12 spouse.

13 (c) Bigamy or adultery.

14 (d) A crime defined by Section 270 or 270a of the Penal  
 15 Code.

16 986. There is no privilege under this article in a proceed-  
 17 ing under the Juvenile Court Law, Chapter 2 (commencing  
 18 with Section 500) of Part 1 of Division 2 of the Welfare and  
 19 Institutions Code.

20 987. There is no privilege under this article in a criminal  
 21 proceeding in which the communication is offered in evidence  
 22 by a defendant who is one of the spouses between whom the  
 23 communication was made.

#### 24 Article 6. Physician-Patient Privilege

25  
 26 990. As used in this article, "physician" means a person  
 27 authorized, or reasonably believed by the patient to be author-  
 28 ized, to practice medicine in any state or nation.

29 991. As used in this article, "patient" means a person  
 30 who consults a physician or submits to an examination by a  
 31 physician for the purpose of securing a diagnosis or preven-  
 32 tive, palliative, or curative treatment of his physical or mental  
 33 or emotional condition.

34 992. As used in this article, "confidential communication  
 35 between patient and physician" means information, including  
 36 information obtained by an examination of the patient, trans-  
 37 mitted between a patient and his physician in the course of  
 38 *that relationship and in confidence by a means which, so far*  
 39 *as the patient is aware, discloses the information to no third*  
 40 *persons other than those who are present to further the in-*  
 41 *terest of the patient in the consultation or those to whom dis-*  
 42 *closure is reasonably necessary for the transmission of the*  
 43 *information or the accomplishment of the purpose for which*  
 44 *the physician is consulted, and includes advice given by the*  
 45 *physician in the course of that relationship.*

46 993. As used in this article, "holder of the privilege"  
 47 means:

48 (a) The patient when he has no guardian or conservator.

49 (b) A guardian or conservator of the patient when the pa-  
 50 tient has a guardian or conservator.  
 51

1 (c) The personal representative of the patient if the patient  
2 is dead.

3 994. Subject to Section 912 and except as otherwise pro-  
4 vided in this article, the patient, whether or not a party, has  
5 a privilege to refuse to disclose, and to prevent another from  
6 disclosing, a confidential communication between patient and  
7 physician if the privilege is claimed by:

8 (a) The holder of the privilege;

9 (b) A person who is authorized to claim the privilege by  
10 the holder of the privilege; or

11 (c) The person who was the physician at the time of the  
12 confidential communication, but such person may not claim  
13 the privilege if there is no holder of the privilege in existence  
14 or if he is otherwise instructed by a person authorized to per-  
15 mit disclosure.

16 995. The physician who received or made a communication  
17 subject to the privilege under this article shall claim the privi-  
18 lege whenever he is present when the communication is sought  
19 to be disclosed and is authorized to claim the privilege under  
20 subdivision (c) of Section 994.

21 996. There is no privilege under this article as to a com-  
22 munication relevant to an issue concerning the condition of  
23 the patient if such issue has been tendered by:

24 (a) The patient;

25 (b) Any party claiming through or under the patient;

26 (c) Any party claiming as a beneficiary of the patient  
27 through a contract to which the patient is or was a party; or

28 (d) The plaintiff in an action brought under Section 376  
29 or 377 of the Code of Civil Procedure for damages for the  
30 injury or death of the patient.

31 997. There is no privilege under this article if the services  
32 of the physician were sought or obtained to enable or aid any-  
33 one to commit or plan to commit a crime or a tort or to escape  
34 detection or apprehension after the commission of a crime or  
35 a tort.

36 998. There is no privilege under this article in a criminal  
37 proceeding or in a disciplinary proceeding.

38 999. There is no privilege under this article in a proceed-  
39 ing to recover damages on account of conduct of the patient  
40 which constitutes a crime.

41 1000. There is no privilege under this article as to a com-  
42 munication relevant to an issue between parties all of whom  
43 claim through a deceased patient, regardless of whether the  
44 claims are by testate or intestate succession or by inter vivos  
45 transaction.

46 1001. There is no privilege under this article as to a com-  
47 munication relevant to an issue of breach, by the physician or  
48 by the patient, of a duty arising out of the physician-patient  
49 relationship.



1 1002. There is no privilege under this article as to a com-  
 2 munication relevant to an issue concerning the intention of  
 3 a patient, now deceased, with respect to a deed of conveyance,  
 4 will, or other writing, executed by the patient, purporting to  
 5 affect an interest in property.

6 1003. There is no privilege under this article as to a com-  
 7 munication relevant to an issue concerning the validity of a  
 8 deed of conveyance, will, or other writing, executed by a  
 9 patient, now deceased, purporting to affect an interest in  
 10 property.

11 1004. There is no privilege under this article in a proceed-  
 12 ing to commit the patient or otherwise place him or his prop-  
 13 erty, or both, under the control of another because of his  
 14 alleged mental or physical condition.

15 1005. There is no privilege under this article in a proceed-  
 16 ing brought by or on behalf of the patient to establish his  
 17 competence.

18 1006. There is no privilege under this article as to infor-  
 19 mation that the physician or the patient is required to report  
 20 to a public employee, or as to information required to be  
 21 recorded in a public office, unless the statute, charter, ordi-  
 22 nance, administrative regulation, or other provision requiring  
 23 the report or record specifically provides that the information  
 24 is confidential or may not be disclosed in the particular  
 25 proceeding.

#### 26 Article 7. Psychotherapist-Patient Privilege

27  
 28 1010. As used in this article, "psychotherapist" means:

29 (a) A person authorized, or reasonably believed by the pa-  
 30 tient to be authorized, to practice medicine in any state or  
 31 nation who devotes, or is reasonably believed by the patient  
 32 to devote, a substantial portion of his time to the practice of  
 33 psychiatry; or  
 34

35 (b) A person certified as a psychologist under Chapter 6.6  
 36 (commencing with Section 2900) of Division 2 of the Business  
 37 and Professions Code.

38 1011. As used in this article, "patient" means a person  
 39 who consults a psychotherapist or submits to an examination  
 40 by a psychotherapist for the purpose of securing a diagnosis  
 41 or preventive, palliative, or curative treatment of his mental  
 42 or emotional condition.

43 1012. As used in this article, "confidential communication  
 44 between patient and psychotherapist" means information, in-  
 45 cluding information obtained by an examination of the pa-  
 46 tient, transmitted between a patient and his psychotherapist  
 47 in the course of that relationship and in confidence by a means  
 48 which, so far as the patient is aware, discloses the information  
 49 to no third persons other than those who are present to fur-  
 50 ther the interest of the patient in the consultation or those  
 51 to whom disclosure is reasonably necessary for the transmis-  
 52 sion of the information or the accomplishment of the purpose

1 for which the psychotherapist is consulted, and includes ad-  
2 vice given by the psychotherapist in the course of that rela-  
3 tionship.

4 1013. As used in this article, "holder of the privilege"  
5 means:

6 (a) The patient when he has no guardian or conservator.

7 (b) A guardian or conservator of the patient when the pa-  
8 tient has a guardian or conservator.

9 (c) The personal representative of the patient if the pa-  
10 tient is dead.

11 1014. Subject to Section 912 and except as otherwise pro-  
12 vided in this article, the patient, whether or not a party, has  
13 a privilege to refuse to disclose, and to prevent another from  
14 disclosing, a confidential communication between patient and  
15 psychotherapist if the privilege is claimed by:

16 (a) The holder of the privilege;

17 (b) A person who is authorized to claim the privilege by  
18 the holder of the privilege; or

19 (c) The person who was the psychotherapist at the time of  
20 the confidential communication, but such person may not claim  
21 the privilege if there is no holder of the privilege in existence  
22 or if he is otherwise instructed by a person authorized to per-  
23 mit disclosure.

24 1015. The psychotherapist who received or made a commu-  
25 nication subject to the privilege under this article shall claim  
26 the privilege whenever he is present when the communication  
27 is sought to be disclosed and is authorized to claim the privi-  
28 lege under subdivision (c) of Section 1014.

29 1016. There is no privilege under this article as to a com-  
30 munication relevant to an issue concerning the mental or  
31 emotional condition of the patient if such issue has been ten-  
32 dered by:

33 (a) The patient;

34 (b) Any party claiming through or under the patient;

35 (c) Any party claiming as a beneficiary of the patient  
36 through a contract to which the patient is or was a party; or

37 (d) The plaintiff in an action brought under Section 376  
38 or 377 of the Code of Civil Procedure for damages for the  
39 injury or death of the patient.

40 1017. There is no privilege under this article if the psy-  
41 chotherapist is appointed by order of a court to examine the  
42 patient, but this exception does not apply where the psycho-  
43 therapist is appointed by order of the court upon the request  
44 of the lawyer for the defendant in a criminal proceeding in  
45 order to provide the lawyer with information needed so that  
46 he may advise the defendant whether to enter a plea based on  
47 insanity or to present a defense based on his mental or emo-  
48 tional condition.

49 1018. There is no privilege under this article if the services  
50 of the psychotherapist were sought or obtained to enable or  
51 aid anyone to commit or plan to commit a crime or a tort or

1 to escape detection or apprehension after the commission of  
2 a crime or a tort.

3 1019. There is no privilege under this article as to a com-  
4 munication relevant to an issue between parties all of whom  
5 claim through a deceased patient, regardless of whether the  
6 claims are by testate or intestate succession or by inter vivos  
7 transaction.

8 1020. There is no privilege under this article as to a com-  
9 munication relevant to an issue of breach, by the psychothera-  
10 pist or by the patient, of a duty arising out of the psycho-  
11 therapist-patient relationship.

12 1021. There is no privilege under this article as to a com-  
13 munication relevant to an issue concerning the intention of a  
14 patient, now deceased, with respect to a deed of conveyance,  
15 will, or other writing, executed by the patient, purporting to  
16 affect an interest in property.

17 1022. There is no privilege under this article as to a com-  
18 munication relevant to an issue concerning the validity of a  
19 deed of conveyance, will, or other writing, executed by a pa-  
20 tient, now deceased, purporting to affect an interest in  
21 property.

22 1023. There is no privilege under this article in a pro-  
23 ceeding under Chapter 6 (commencing with Section 1367) of  
24 Title 10 of Part 2 of the Penal Code initiated at the request  
25 of the defendant in a criminal action to determine his sanity.

26 1024. There is no privilege under this article if the psycho-  
27 therapist has reasonable cause to believe that the patient is in  
28 such mental or emotional condition as to be dangerous to him-  
29 self or to the person or property of another and that disclosure  
30 of the communication is necessary to prevent the threatened  
31 danger.

32 1025. There is no privilege under this article in a proceed-  
33 ing brought by or on behalf of the patient to establish his  
34 competence.

35 1026. There is no privilege under this article as to informa-  
36 tion that the psychotherapist or the patient is required to  
37 report to a public employee or as to information required to  
38 be recorded in a public office, unless the statute, charter,  
39 ordinance, administrative regulation, or other provision re-  
40 quiring the report or record specifically provides that the  
41 information is confidential or may not be disclosed in the par-  
42 ticular proceeding.

43  
44 Article 8. Clergyman-Penitent Privileges

45  
46 1030. As used in this article, "clergyman" means a priest,  
47 minister, or similar functionary of a church or of a religious  
48 denomination or religious organization.

49 1031. As used in this article, "penitent" means a person  
50 who has made a penitential communication to a clergyman.

51 1032. As used in this article, "penitential communication"  
52 means a communication made in confidence, in the presence of

1 no third person so far as the penitent is aware, to a clergyman  
2 who, in the course of the discipline or practice of his church,  
3 denomination, or organization, is authorized or accustomed to  
4 hear such communications and has a duty to keep them secret.

5 1033. Subject to Section 912, a penitent, whether or not  
6 a party, has a privilege to refuse to disclose, and to prevent  
7 another from disclosing, a penitential communication if he  
8 claims the privilege.

9 1034. Subject to Section 912, a clergyman, whether or not  
10 a party, has a privilege to refuse to disclose a penitential  
11 communication if he claims the privilege.

12

13 Article 9. Official Information and Identity of Informer

14

15 1040. (a) As used in this section, "official information"  
16 means information acquired in confidence by a public employee  
17 in the course of his duty and not open, or officially disclosed,  
18 to the public prior to the time the claim of privilege is made.

19 (b) A public entity has a privilege to refuse to disclose  
20 official information, and to prevent another from disclosing such  
21 information, if the privilege is claimed by a person authorized  
22 by the public entity to do so and:

23 (1) Disclosure is forbidden by an Act of the Congress of  
24 the United States or a statute of this State; or

25 (2) Disclosure of the information is against the public in-  
26 terest because there is a necessity for preserving the confi-  
27 dentiality of the information that outweighs the necessity for  
28 disclosure in the interest of justice; but no privilege may be  
29 claimed under this paragraph if any person authorized to do  
30 so has consented that the information be disclosed in the pro-  
31 ceeding. In determining whether disclosure of the information  
32 is against the public interest, the interest of the public entity  
33 as a party in the outcome of the proceeding may not be con-  
34 sidered.

35 1041. (a) Except as provided in this section, a public en-  
36 tity has a privilege to refuse to disclose the identity of a per-  
37 son who has furnished information as provided in subdivision

38 (b) purporting to disclose a violation of a law of the United  
39 States or of this State or of a public entity in this State, and  
40 to prevent another from disclosing such identity, if the privi-  
41 lege is claimed by a person authorized by the public entity to  
42 do so and:

43 (1) Disclosure is forbidden by an Act of the Congress of  
44 the United States or a statute of this State; or

45 (2) Disclosure of the identity of the informer is against  
46 the public interest because there is a necessity for preserving  
47 the confidentiality of his identity that outweighs the neces-  
48 sity for disclosure in the interest of justice; but no privilege  
49 may be claimed under this paragraph if any person authorized  
50 to do so has consented that the identity of the informer be  
51 disclosed in the proceeding. In determining whether disclosure  
52 of the identity of the informer is against the public interest.

1 the interest of the public entity as a party in the outcome of  
2 the proceeding may not be considered.

3 (b) This section applies only if the information is furnished  
4 in confidence by the informer to:

5 (1) A law enforcement officer;

6 (2) A representative of an administrative agency charged  
7 with the administration or enforcement of the law alleged to  
8 be violated; or

9 (3) Any person for the purpose of transmittal to a person  
10 listed in paragraph (1) or (2).

11 (c) There is no privilege under this section to prevent the  
12 informer from disclosing his identity.

13 1042. (a) Except where disclosure is forbidden by an Act  
14 of the Congress of the United States, if a claim of privilege  
15 under this article by the State or a public entity in this State  
16 is sustained in a criminal proceeding or in a disciplinary proceeding,  
17 the presiding officer shall make such order or finding  
18 of fact adverse to the public entity bringing the proceeding as  
19 is required by law upon any issue in the proceeding to which  
20 the privileged information is material.

21 (b) Notwithstanding subdivision (a), where a search is  
22 made pursuant to a warrant valid on its face, the public entity  
23 bringing a criminal proceeding or a disciplinary proceeding  
24 is not required to reveal to the defendant official information  
25 or the identity of an informer in order to establish the legality  
26 of the search or the admissibility of any evidence obtained as  
27 a result of it.

#### 28 Article 10. Political Vote

29  
30  
31 1050. If he claims the privilege, a person has a privilege  
32 to refuse to disclose the tenor of his vote at a public election  
33 where the voting is by secret ballot unless he voted illegally or  
34 he previously made an unprivileged disclosure of the tenor  
35 of his vote.

#### 36 Article 11. Trade Secret

37  
38  
39 1060. If he or his agent or employee claims the privilege,  
40 the owner of a trade secret has a privilege to refuse to disclose  
41 the secret, and to prevent another from disclosing it, if the  
42 allowance of the privilege will not tend to conceal fraud or  
43 otherwise work injustice.

### 44 CHAPTER 5. IMMUNITY OF NEWSMAN FROM CITATION 45 FOR CONTEMPT

46  
47  
48 1070. As used in this chapter, "newsman" means a person  
49 directly engaged in the procurement of news for publication,  
50 or in the publication of news, by news media.

51 1071. As used in this chapter, "news media" means news-  
52 papers, press associations, wire services, radio, and television.

1 1072. A newsman may not be adjudged in contempt for  
2 refusing to disclose the source of news procured for publica-  
3 tion and published by news media, unless the source has been  
4 disclosed previously or the disclosure of the source is required  
5 in the public interest or otherwise required to prevent injustice.

6 1073. The procedure specified in subdivisions (a) and (b)  
7 of Section 914 and in subdivisions (a) and (b) of Section 915  
8 applies to the determination of a newsman's claim for protec-  
9 tion under Section 1072.

10  
11 DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED  
12 BY EXTRINSIC POLICIES

13  
14 CHAPTER 1. EVIDENCE OF CHARACTER, HABIT, OR CUSTOM

15  
16 1100. Except as otherwise provided by statute, any other-  
17 wise admissible evidence (including evidence in the form of  
18 an opinion, evidence of reputation, and evidence of specific  
19 instances of such person's conduct) is admissible to prove a  
20 person's character or a trait of his character.

21 1101. (a) Except as provided in this section and in Sec-  
22 tions 1102 and 1103, evidence of a person's character or a  
23 trait of his character (whether in the form of an opinion, evi-  
24 dence of reputation, or evidence of specific instances of his  
25 conduct) is inadmissible when offered to prove his conduct  
26 on a specified occasion.

27 (b) Nothing in this section prohibits the admission of evi-  
28 dence that a person committed a crime, civil wrong, or other  
29 act when relevant to prove some fact (such as motive, oppor-  
30 tunity, intent, preparation, plan, knowledge, identity, or ab-  
31 sence of mistake or accident) other than his disposition to  
32 commit such acts.

33 (c) Nothing in this section affects the admissibility of evi-  
34 dence offered to support or attack the credibility of a witness.

35 1102. In a criminal action, evidence of the defendant's  
36 character or a trait of his character in the form of an opinion  
37 or evidence of his reputation is not made inadmissible by Sec-  
38 tion 1101 if such evidence is:

39 (a) Offered by the defendant to prove his conduct in con-  
40 formity with such character or trait of character.

41 (b) Offered by the prosecution to rebut evidence adduced  
42 by the defendant under subdivision (a).

43 1103. In a criminal action, evidence of the character or a  
44 trait of character (in the form of an opinion, evidence of repu-  
45 tation, or evidence of specific instances of conduct) of the vic-  
46 tim of the crime for which the defendant is being prosecuted  
47 is not made inadmissible by Section 1101 if such evidence is:

48 (a) Offered by the defendant to prove conduct of the victim  
49 in conformity with such character or trait of character.

50 (b) Offered by the prosecution to rebut evidence adduced  
51 by the defendant under subdivision (a).

1 1104. Except as provided in Sections 1102 and 1103, evi-  
2 dence of a trait of a person's character with respect to care  
3 or skill is inadmissible to prove the quality of his conduct on a  
4 specified occasion.

5 1105. Any otherwise admissible evidence of habit or custom  
6 is admissible to prove conduct on a specified occasion in con-  
7 formity with the habit or custom.

8

9 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
10 EXTRINSIC POLICIES

11

12 1150. Except as otherwise provided by law, upon an in-  
13 quiry as to the validity of a verdict, any otherwise admissible  
14 evidence may be received as to statements made, or conduct,  
15 conditions, or events occurring, either within or without the  
16 jury room, of such a character as is likely to have influenced  
17 the verdict improperly. No evidence is admissible to show the  
18 effect of such statement, conduct, condition, or event upon a  
19 juror either in influencing him to assent to or dissent from  
20 the verdict or concerning the mental processes by which it  
21 was determined.

22 1151. When, after the occurrence of an event, remedial or  
23 precautionary measures are taken, which, if taken previously,  
24 would have tended to make the event less likely to occur, evi-  
25 dence of such subsequent measures is inadmissible to prove  
26 negligence or culpable conduct in connection with the event.

27 1152. (a) Evidence that a person has, in compromise or  
28 from humanitarian motives, furnished or offered or promised  
29 to furnish money or any other thing, act, or service to another  
30 who has sustained or claims to have sustained loss or damage,  
31 as well as any conduct or statements made in negotiation  
32 thereof, is inadmissible to prove his liability for the loss or  
33 damage or any part of it.

34 (b) This section does not affect the admissibility of evi-  
35 dence of:

36 (1) Partial satisfaction of an asserted claim or demand  
37 without questioning its validity when such evidence is offered  
38 to prove the validity of the claim; or

39 (2) A debtor's payment or promise to pay all or a part of  
40 his pre-existing debt when such evidence is offered to prove  
41 the creation of a new duty on his part or a revival of his pre-  
42 existing duty.

43 1153. Evidence of a plea of guilty, later withdrawn, or of  
44 an offer to plead guilty to the crime charged or to any other  
45 crime, made by the defendant in a criminal action is inadmis-  
46 sible in any action or in any proceeding of any nature, includ-  
47 ing proceedings before agencies, commissions, boards, and  
48 tribunals.

49 1154. Evidence that a person has accepted or offered or  
50 promised to accept a sum of money or any other thing, act,  
51 or service in satisfaction of a claim, as well as any conduct

1 or statements made in negotiation thereof, is inadmissible to  
2 prove the invalidity of the claim or any part of it.

3 1155. Evidence that a person was, at the time a harm was  
4 suffered by another, insured wholly or partially against loss  
5 arising from liability for that harm is inadmissible to prove  
6 negligence or other wrongdoing.

7 1156. (a) In-hospital medical staff committees of a li-  
8 censed hospital may engage in research and medical study for  
9 the purpose of reducing morbidity or mortality, and may  
10 make findings and recommendations relating to such purpose.  
11 The written records of interviews, reports, statements, or  
12 memoranda of such in-hospital medical staff committees relat-  
13 ing to such medical studies are subject to Sections 2016 and  
14 2036 of the Code of Civil Procedure (relating to discovery  
15 proceedings) but, subject to subdivisions (b) and (c), shall  
16 not be admitted as evidence in any action or before any ad-  
17 ministrative body, agency, or person.

18 (b) This section does not affect the admissibility in evidence  
19 of the original medical records of any patient.

20 (c) This section does not exclude evidence which is relevant  
21 evidence in a criminal action.

## 22 DIVISION 10. HEARSAY EVIDENCE

### 23 CHAPTER 1. GENERAL PROVISIONS

24  
25  
26  
27 1200. (a) "Hearsay evidence" is evidence of a statement  
28 that was made other than by a witness while testifying at the  
29 hearing and that is offered to prove the truth of the matter  
30 stated.

31 (b) Except as provided by law, hearsay evidence is inad-  
32 missible.

33 (c) This section shall be known and may be cited as the  
34 hearsay rule.

35 1201. A statement within the scope of an exception to the  
36 hearsay rule is not inadmissible on the ground that the evi-  
37 dence is hearsay evidence if the hearsay evidence of such state-  
38 ment consists of one or more statements each of which meets  
39 the requirements of an exception to the hearsay rule.

40 1202. Evidence of a statement or other conduct by a de-  
41 clarant that is inconsistent with a statement by such declarant  
42 received in evidence as hearsay evidence is not inadmissible  
43 for the purpose of attacking the credibility of the declarant  
44 though he is not given and has not had an opportunity to  
45 explain or to deny such inconsistent statement or other con-  
46 duct. Any other evidence offered to attack or support the  
47 credibility of the declarant is admissible if it would have been  
48 admissible had the declarant been a witness at the hearing.  
49 For the purposes of this section, the deponent of a deposition  
50 taken in the action in which it is offered shall be deemed to  
51 be a hearsay declarant.



1 1203. (a) The declarant of a statement that is admitted as  
2 hearsay evidence may be called and examined by any adverse  
3 party as if under cross-examination concerning the statement.

4 (b) This section is not applicable if the declarant is (1) a  
5 party, (2) a person identified with a party within the meaning  
6 of subdivision (d) of Section 776, or (3) a witness who has  
7 testified in the action concerning the statement.

8 (c) This section is not applicable if the statement is one  
9 described in Article 1 (commencing with Section 1220), Ar-  
10 ticle 3 (commencing with Section 1235), or Article 10 (com-  
11 mencing with Section 1300) of Chapter 2 of this division.

12 (d) A statement that is otherwise admissible as hearsay evi-  
13 dence is not made inadmissible by this section because the de-  
14 clarant who made the statement is unavailable for examination  
15 pursuant to this section.

16 1204. A statement that is otherwise admissible as hearsay  
17 evidence is inadmissible against the defendant in a criminal  
18 action if the statement was made, either by the defendant or  
19 by another, under such circumstances that it is inadmissible  
20 against the defendant under the Constitution of the United  
21 States or the State of California.

22 1205. Nothing in this division shall be construed to repeal  
23 by implication any other statute relating to hearsay evidence.

## 24 CHAPTER 2. EXCEPTIONS TO THE HEARSAY RULE

### 25 Article 1. Confessions and Admissions

26  
27  
28  
29 1220. Evidence of a statement is not made inadmissible  
30 by the hearsay rule when offered against the declarant in an  
31 action to which he is a party in either his individual or repre-  
32 sentative capacity, regardless of whether the statement was  
33 made in his individual or representative capacity.

34 1221. Evidence of a statement offered against a party is not  
35 made inadmissible by the hearsay rule if the statement is one  
36 of which the party, with knowledge of the content thereof, has  
37 by words or other conduct manifested his adoption or his belief  
38 in its truth.

39 1222. Evidence of a statement offered against a party is not  
40 made inadmissible by the hearsay rule if:

41 (a) The statement was made by a person authorized by the  
42 party to make a statement or statements for him concerning  
43 the subject matter of the statement; and

44 (b) The evidence is offered either after admission of evi-  
45 dence sufficient to sustain a finding of such authority or,  
46 in the court's discretion as to the order of proof, subject to the  
47 admission of such evidence.

48 1223. Evidence of a statement offered against a party is not  
49 made inadmissible by the hearsay rule if:

50 (a) The statement was made by the declarant while partic-  
51 ipating in a conspiracy to commit a crime or civil wrong and in  
52 furtherance of the objective of that conspiracy;

1 (b) The statement was made prior to or during the time  
2 that the party was participating in that conspiracy; and

3 (c) The evidence is offered either after admission of evi-  
4 dence sufficient to sustain a finding of the facts specified in  
5 subdivisions (a) and (b) or, in the court's discretion as to the  
6 order of proof, subject to the admission of such evidence.

7 1224. When the liability, obligation, or duty of a party to  
8 a civil action is based in whole or in part upon the liability,  
9 obligation, or duty of the declarant, or when the claim or right  
10 asserted by a party to a civil action is barred or diminished by  
11 a breach of duty by the declarant, evidence of a statement  
12 made by the declarant is as admissible against the party as it  
13 would be if offered against the declarant in an action involving  
14 that liability, obligation, duty, or breach of duty.

15 1225. When a right, title, or interest in any property or  
16 claim asserted by a party to a civil action requires a determina-  
17 tion that a right, title, or interest exists or existed in the de-  
18 clarant, evidence of a statement made by the declarant during  
19 the time the party now claims the declarant was the holder  
20 of the right, title, or interest is as admissible against the party  
21 as it would be if offered against the declarant in an action  
22 involving that right, title, or interest.

23 1226. Evidence of a statement by a minor child is not made  
24 inadmissible by the hearsay rule if offered against the plaintiff  
25 in an action brought under Section 376 of the Code of Civil  
26 Procedure for injury to such minor child.

27 1227. Evidence of a statement by the deceased is not made  
28 inadmissible by the hearsay rule if offered against the plaintiff  
29 in an action brought under Section 377 of the Code of Civil  
30 Procedure.

31 Article 2. Declarations Against Interest  
32  
33

34 1230. Evidence of a statement by a declarant having suffi-  
35 cient knowledge of the subject is not made inadmissible by the  
36 hearsay rule if the statement, when made, was so far contrary  
37 to the declarant's pecuniary or proprietary interest, or so far  
38 subjected him to the risk of civil or criminal liability, or so far  
39 tended to render invalid a claim by him against another, or  
40 created such a risk of making him an object of hatred, ridicule,  
41 or social disgrace in the community, that a reasonable man in  
42 his position would not have made the statement unless he be-  
43 lieved it to be true.

44 Article 3. Statements of Witnesses  
45  
46

47 1235. Evidence of a statement made by a witness is not  
48 made inadmissible by the hearsay rule if the statement is in-  
49 consistent with his testimony at the hearing and is offered in  
50 compliance with Section 770.

51 1236. Evidence of a statement previously made by a wit-  
52 ness is not made inadmissible by the hearsay rule if the state-

1 ment is consistent with his testimony at the hearing and is  
2 offered in compliance with Section 791.

3 1237. Evidence of a statement previously made by a wit-  
4 ness is not made inadmissible by the hearsay rule if the state-  
5 ment would have been admissible if made by him while  
6 testifying, the statement concerns a matter as to which the  
7 witness has insufficient present recollection to enable him to  
8 testify fully and accurately, and the statement is contained  
9 in a writing which:

10 (a) Was made at a time when the fact recorded in the writ-  
11 ing actually occurred or was fresh in the witness' memory;

12 (b) Was made (1) by the witness himself or under his di-  
13 rection or (2) by some other person for the purpose of record-  
14 ing the witness' statement at the time it was made;

15 (c) Is offered after the witness testifies that the statement  
16 he made was a true statement of such fact; and

17 (d) Is offered after the writing is authenticated as an accu-  
18 rate record of the statement.

19 1238. Evidence of a statement previously made by a wit-  
20 ness is not made inadmissible by the hearsay rule if the state-  
21 ment would have been admissible if made by him while  
22 testifying and:

23 (a) The statement is an identification of a party or another  
24 as a person who participated in a crime or other occurrence;

25 (b) The statement was made at a time when the crime or  
26 other occurrence was fresh in the witness' memory; and

27 (c) The evidence of the statement is offered after the wit-  
28 ness testifies that he made the identification and that it was a  
29 true reflection of his opinion at that time.

30  
31 Article 4. Spontaneous, Contemporaneous,  
32 and Dying Declarations

33  
34 1240. Evidence of a statement is not made inadmissible by  
35 the hearsay rule if the statement:

36 (a) Purports to narrate, describe, or explain an act, condi-  
37 tion, or event perceived by the declarant; and

38 (b) Was made spontaneously while the declarant was under  
39 the stress of excitement caused by such perception.

40 1241. Evidence of a statement is not made inadmissible by  
41 the hearsay rule if the declarant is unavailable as a witness  
42 and the statement:

43 (a) Purports to narrate, describe, or explain an act, condi-  
44 tion, or event perceived by the declarant; and

45 (b) Was made while the declarant was perceiving the act,  
46 condition, or event.

47 1242. Evidence of a statement made by a dying person  
48 respecting the cause and circumstances of his death is not made  
49 inadmissible by the hearsay rule if the statement was made  
50 upon his personal knowledge and under a sense of immediately  
51 impending death.

1 Article 5. Statements of Mental or Physical State

2  
3 1250. (a) Subject to Section 1252, evidence of a statement  
4 of the declarant's then existing state of mind, emotion, or  
5 physical sensation (including a statement of intent, plan, motive,  
6 design, mental feeling, pain, or bodily health) is not made  
7 inadmissible by the hearsay rule when:

8 (1) The evidence is offered to prove the declarant's state  
9 of mind, emotion, or physical sensation at that time or at any  
10 other time when it is itself an issue in the action; or

11 (2) The evidence is offered to prove or explain acts or conduct  
12 of the declarant.

13 (b) This section does not make admissible evidence of a  
14 statement of memory or belief to prove the fact remembered or  
15 believed.

16 1251. Subject to Section 1252, evidence of a statement of  
17 the declarant's state of mind, emotion, or physical sensation  
18 (including a statement of intent, plan, motive, design, mental  
19 feeling, pain, or bodily health) at a time prior to the statement  
20 is not made inadmissible by the hearsay rule if:

21 (a) The declarant is unavailable as a witness; and

22 (b) The evidence is offered to prove such prior state of  
23 mind, emotion, or physical sensation when it is itself an issue  
24 in the action and the evidence is not offered to prove any fact  
25 other than such state of mind, emotion, or physical sensation.

26 1252. Evidence of a statement is inadmissible under this  
27 article if the statement was made under circumstances such as  
28 to indicate its lack of trustworthiness.

29  
30 Article 6. Statements Relating to Wills and to Claims  
31 Against Estates

32  
33 1260. (a) Evidence of a statement made by a declarant  
34 who is unavailable as a witness that he has or has not made a  
35 will, or has or has not revoked his will, or that identifies his  
36 will, is not made inadmissible by the hearsay rule.

37 (b) Evidence of a statement is inadmissible under this section  
38 if the statement was made under circumstances such as to  
39 indicate its lack of trustworthiness.

40 1261. Evidence of a statement is not made inadmissible by  
41 the hearsay rule when offered in an action upon a claim or demand  
42 against the estate of the declarant if the statement was:

43 (a) Made upon the personal knowledge of the declarant at  
44 a time when the matter had been recently perceived by him  
45 and while his recollection was clear; and

46 (b) Made under circumstances such as to indicate its trust-  
47 worthiness.

48  
49 Article 7. Business Records

50  
51 1270. As used in this article, "a business" includes every  
52 kind of business, governmental activity, professio **MJN 3197**

1 calling, or operation of institutions, whether carried on for  
2 profit or not.

3 1271. Evidence of a writing made as a record of an act,  
4 condition, or event is not made inadmissible by the hearsay  
5 rule when offered to prove the act, condition, or event if:

6 (a) The writing was made in the regular course of a busi-  
7 ness;

8 (b) The writing was made at or near the time of the act,  
9 condition, or event;

10 (c) The custodian or other qualified witness testifies to its  
11 identity and the mode of its preparation; and

12 (d) The sources of information and method and time of  
13 preparation were such as to indicate its trustworthiness.

14 1272. Evidence of the absence from the records of a busi-  
15 ness of a record of an asserted act, condition, or event is not  
16 made inadmissible by the hearsay rule when offered to prove  
17 the nonoccurrence of the act or event, or the nonexistence of  
18 the condition, if:

19 (a) It was the regular course of that business to make rec-  
20 ords of all such acts, conditions, or events at or near the time  
21 of the act, condition, or event and to preserve them; and

22 (b) The sources of information and method and time of  
23 preparation of the records of that business were such that the  
24 absence of a record of an act, condition, or event is a trust-  
25 worthy indication that the act or event did not occur or the  
26 condition did not exist.

#### 27 Article 8. Official Records and Other Official Writings

28  
29  
30 1280. Evidence of a writing made as a record of an act,  
31 condition, or event is not made inadmissible by the hearsay  
32 rule when offered to prove the act, condition, or event if:

33 (a) The writing was made by and within the scope of duty  
34 of a public employee;

35 (b) The writing was made at or near the time of the act,  
36 condition, or event; and

37 (c) The sources of information and method and time of  
38 preparation were such as to indicate its trustworthiness.

39 1281. Evidence of a writing made as a record of a birth,  
40 fetal death, death, or marriage is not made inadmissible  
41 by the hearsay rule if the maker was required by law to file  
42 the writing in a designated public office and the writing was  
43 made and filed as required by law.

44 1282. A written finding of presumed death made by an  
45 employee of the United States authorized to make such finding  
46 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
47 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
48 App. 1001-1016), as enacted or as heretofore or hereafter  
49 amended, shall be received in any court, office, or other place  
50 in this State as evidence of the death of the person therein  
51 found to be dead and of the date, circumstances, and place  
52 of his disappearance.

1 1283. An official written report or record that a person is  
2 missing, missing in action, interned in a foreign country,  
3 captured by a hostile force, beleaguered by a hostile force,  
4 besieged by a hostile force, or detained in a foreign country  
5 against his will, or is dead or is alive, made by an employee  
6 of the United States authorized by any law of the United  
7 States to make such report or record shall be received in any  
8 court, office, or other place in this State as evidence that such  
9 person is missing, missing in action, interned in a foreign  
10 country, captured by a hostile force, beleaguered by a hostile  
11 force, besieged by a hostile force, or detained in a foreign  
12 country against his will, or is dead or is alive.

13 1284. Evidence of a writing made by the public employee  
14 who is the official custodian of the records in a public office,  
15 reciting diligent search and failure to find a record, is not  
16 made inadmissible by the hearsay rule when offered to prove  
17 the absence of a record in that office.

18  
19 Article 9. Former Testimony

20  
21 1290. As used in this article, "former testimony" means  
22 testimony given under oath in:

23 (a) Another action or in a former hearing or trial of the  
24 same action;

25 (b) A proceeding to determine a controversy conducted by  
26 or under the supervision of an agency that has the power to  
27 determine such a controversy and is an agency of the United  
28 States or a public entity in the United States;

29 (c) A deposition taken in compliance with law in another  
30 action; or

31 (d) An arbitration proceeding if the evidence of such  
32 former testimony is a verbatim transcript thereof.

33 1291. (a) Evidence of former testimony is not made inad-  
34 missible by the hearsay rule if the declarant is unavailable as  
35 a witness and:

36 (1) The former testimony is offered against a person who  
37 offered it in evidence in his own behalf on the former occasion  
38 or against the successor in interest of such person; or

39 (2) The party against whom the former testimony is offered  
40 was a party to the action or proceeding in which the testimony  
41 was given and had the right and opportunity to cross-examine  
42 the declarant with an interest and motive similar to that which  
43 he has at the hearing, except that testimony in a deposition  
44 taken in another action and testimony given in a preliminary  
45 examination in another criminal action is not made admissible  
46 by this paragraph against the defendant in a criminal action  
47 unless it was received in evidence at the trial of such other  
48 action.

49 (b) Except for objections to the form of the question which  
50 were not made at the time the former testimony was given,  
51 and objections based on competency or privilege which did  
52 not exist at that time, the admissibility of form

1 under this section is subject to the same limitations and objec-  
2 tions as though the declarant were testifying at the hearing.  
3 1292. (a) Evidence of former testimony is not made inad-  
4 missible by the hearsay rule if:

5 (1) The declarant is unavailable as a witness;

6 (2) The former testimony is offered in a civil action or  
7 against the prosecution in a criminal action; and

8 (3) The issue is such that the party to the action or pro-  
9 ceeding in which the former testimony was given had the  
10 right and opportunity to cross-examine the declarant with an  
11 interest and motive similar to that which the party against  
12 whom the testimony is offered has at the hearing.

13 (b) Except for objections based on competency or privilege  
14 which did not exist at the time the former testimony was  
15 given, the admissibility of former testimony under this section  
16 is subject to the same limitations and objections as though  
17 the declarant were testifying at the hearing.

18

19

#### Article 10. Judgments

20

21 1300. Evidence of a final judgment adjudging a person  
22 guilty of a crime punishable as a felony is not made inad-  
23 missible by the hearsay rule when offered in a civil action to  
24 prove any fact essential to the judgment unless the judgment  
25 was based on a plea of nolo contendere.

26 1301. Evidence of a final judgment is not made inadmis-  
27 sible by the hearsay rule when offered by the judgment debtor  
28 to prove any fact which was essential to the judgment in an  
29 action in which he seeks to:

30 (a) Recover partial or total indemnity or exoneration for  
31 money paid or liability incurred because of the judgment;

32 (b) Enforce a warranty to protect the judgment debtor  
33 against the liability determined by the judgment; or

34 (c) Recover damages for breach of warranty substantially  
35 the same as the warranty determined by the judgment to have  
36 been breached.

37 1302. When the liability, obligation, or duty of a third  
38 person is in issue in a civil action, evidence of a final judg-  
39 ment against that person is not made inadmissible by the  
40 hearsay rule when offered to prove such liability, obligation,  
41 or duty.

42

#### Article 11. Family History

43

44 1310. (a) Subject to subdivision (b), evidence of a state-  
45 ment by a declarant who is unavailable as a witness concerning  
46 his own birth, marriage, divorce, legitimacy, relationship by  
47 blood or marriage, race, ancestry, or other similar fact of his  
48 family history is not made inadmissible by the hearsay rule,  
49 even though the declarant had no means of acquiring personal  
50 knowledge of the matter declared.

1 (b) Evidence of a statement is inadmissible under this sec-  
2 tion if the statement was made under circumstances such as to  
3 indicate its lack of trustworthiness.

4 1311. (a) Subject to subdivision (b), evidence of a state-  
5 ment concerning the birth, marriage, divorce, death, legiti-  
6 macy, race, ancestry, relationship by blood or marriage, or  
7 other similar fact of the family history of a person other  
8 than the declarant is not made inadmissible by the hearsay  
9 rule if the declarant is unavailable as a witness and:

10 (1) The declarant was related to the other by blood or  
11 marriage; or

12 (2) The declarant was otherwise so intimately associated  
13 with the other's family as to be likely to have had accurate  
14 information concerning the matter declared and made the  
15 statement (i) upon information received from the other or  
16 from a person related by blood or marriage to the other or  
17 (ii) upon repute in the other's family.

18 (b) Evidence of a statement is inadmissible under this sec-  
19 tion if the statement was made under circumstances such as to  
20 indicate its lack of trustworthiness.

21 1312. Evidence of entries in family bibles or other family  
22 books or charts, engravings on rings, family portraits, engrav-  
23 ings on urns, crypts, or tombstones, and the like, is not made  
24 inadmissible by the hearsay rule when offered to prove the  
25 birth, marriage, divorce, death, legitimacy, race, ancestry, re-  
26 lationship by blood or marriage, or other similar fact of the  
27 family history of a member of the family by blood or marriage.

28 1313. Evidence of reputation among members of a family  
29 is not made inadmissible by the hearsay rule if the reputation  
30 concerns the birth, marriage, divorce, death, legitimacy, race,  
31 ancestry, relationship by blood or marriage, or other similar  
32 fact of the family history of a member of the family by blood  
33 or marriage.

34 1314. Evidence of reputation in a community concerning  
35 the date or fact of birth, marriage, divorce, or death of a per-  
36 son resident in the community at the time of the reputation  
37 is not made inadmissible by the hearsay rule.

38 1315. Evidence of a statement concerning a person's birth,  
39 marriage, divorce, death, legitimacy, race, ancestry, relation-  
40 ship by blood or marriage, or other similar fact of family his-  
41 tory is not made inadmissible by the hearsay rule if:

42 (a) The statement is contained in a writing made as a  
43 record of an act, condition, or event that would be admissible  
44 as evidence of such act, condition, or event under Section 1271;

45 (b) The statement is of a kind customarily recorded in con-  
46 nection with the act, condition, or event recorded in the writ-  
47 ing; and

48 (c) The writing was made as a record of a church, religious  
49 denomination, or religious society.

50 1316. Evidence of a statement concerning a person's birth,  
51 marriage, divorce, death, legitimacy, race, ancestry, relation-



1 ship by blood or marriage, or other similar fact of family  
2 history is not made inadmissible by the hearsay rule if the  
3 statement is contained in a certificate that the maker thereof  
4 performed a marriage or other ceremony or administered a  
5 sacrament and:

6 (a) The maker was a clergyman, civil officer, or other person  
7 authorized to perform the acts reported in the certificate by  
8 law or by the rules, regulations, or requirements of a church,  
9 religious denomination, or religious society; and

10 (b) The certificate was issued by the maker at the time  
11 and place of the ceremony or sacrament or within a reasonable  
12 time thereafter.

13

14 Article 12. Reputation and Statements Concerning  
15 Community History, Property Interests,  
16 and Character

17

18 1320. Evidence of reputation in a community is not made  
19 inadmissible by the hearsay rule if the reputation concerns an  
20 event of general history of the community or of the state or  
21 nation of which the community is a part and the event was  
22 of importance to the community.

23 1321. Evidence of reputation in a community is not made  
24 inadmissible by the hearsay rule if the reputation concerns the  
25 interest of the public in property in the community and the  
26 reputation arose before controversy.

27 1322. Evidence of reputation in a community is not made  
28 inadmissible by the hearsay rule if the reputation concerns  
29 boundaries of, or customs affecting, land in the community and  
30 the reputation arose before controversy.

31 1323. Evidence of a statement concerning the boundary of  
32 land is not made inadmissible by the hearsay rule if the de-  
33 clarant is unavailable as a witness and had sufficient knowledge  
34 of the subject, but evidence of a statement is not admissible  
35 under this section if the statement was made under circum-  
36 stances such as to indicate its lack of trustworthiness.

37 1324. Evidence of a person's general reputation with ref-  
38 erence to his character or a trait of his character at a relevant  
39 time in the community in which he then resided or in a group  
40 with which he then habitually associated is not made inadmis-  
41 sible by the hearsay rule.

42

43 Article 13. Dispositive Instruments and Ancient Writings

44

45 1330. Evidence of a statement contained in a deed of con-  
46 veyance or a will or other writing purporting to affect an  
47 interest in real or personal property is not made inadmissible  
48 by the hearsay rule if:

49 (a) The matter stated was relevant to the purpose of the  
50 writing;

51 (b) The matter stated would be relevant to an issue as to  
52 an interest in the property; and

1 (c) The dealings with the property since the statement was  
2 made have not been inconsistent with the truth of the state-  
3 ment.

4 1331. Evidence of a statement is not made inadmissible by  
5 the hearsay rule if the statement is contained in a writing  
6 more than 30 years old and the statement has been since  
7 generally acted upon as true by persons having an interest in  
8 the matter.  
9

10 Article 14. Commercial, Scientific, and  
11 Similar Publications  
12

13 1340. Evidence of a statement, other than an opinion, con-  
14 tained in a tabulation, list, directory, register, or other pub-  
15 lished compilation is not made inadmissible by the hearsay  
16 rule if the compilation is generally used and relied upon as  
17 accurate in the course of a business as defined in Section 1270.

18 1341. Historical works, books of science or art, and pub-  
19 lished maps or charts, made by persons indifferent between  
20 the parties, are not made inadmissible by the hearsay rule  
21 when offered to prove facts of general notoriety and interest.  
22

23 DIVISION 11. WRITINGS  
24

25 CHAPTER 1. AUTHENTICATION AND PROOF OF WRITINGS  
26

27 Article 1. Requirement of Authentication  
28

29 1400. Authentication of a writing means (a) the introduc-  
30 tion of evidence sufficient to sustain a finding that it is the  
31 writing that the proponent of the evidence claims it is or (b)  
32 the establishment of such facts by any other means provided  
33 by law.

34 1401. (a) Authentication of a writing is required before  
35 it may be received in evidence.

36 (b) Authentication of a writing is required before second-  
37 ary evidence of its content may be received in evidence.

38 1402. The party producing a writing as genuine which  
39 has been altered, or appears to have been altered, after its  
40 execution, in a part material to the question in dispute, must  
41 account for the alteration or appearance thereof. He may  
42 show that the alteration was made by another, without his  
43 concurrence, or was made with the consent of the parties af-  
44 fected by it, or otherwise properly or innocently made, or  
45 that the alteration did not change the meaning or language  
46 of the instrument. If he does that, he may give the writing  
47 in evidence, but not otherwise.  
48

49 Article 2. Means of Authenticating and Proving Writings  
50

51 1410. A writing is sufficiently authenticated to be received  
52 in evidence if there is any evidence sufficient to sus

1 ing of the authenticity of the writing; and nothing in this  
2 article shall be construed to limit the means by which the  
3 authenticity of a writing may be shown.

4 1411. Except as provided by statute, the testimony of a  
5 subscribing witness is not required to authenticate a writing.

6 1412. If the testimony of a subscribing witness is required  
7 by statute to authenticate a writing and the subscribing wit-  
8 ness denies or does not recollect the execution of the writing,  
9 the writing may be authenticated by other evidence.

10 1413. A writing may be authenticated by anyone who saw  
11 the writing executed, including a subscribing witness.

12 1414. A writing may be authenticated by evidence that:

13 (a) The party against whom it is offered has at any time  
14 admitted its authenticity; or

15 (b) The writing is produced from the custody of the party  
16 against whom it is offered and has been acted upon by him as  
17 authentic.

18 1415. A writing may be authenticated by evidence of the  
19 authenticity of the handwriting of the maker.

20 1416. A witness who is not otherwise qualified to testify as  
21 an expert may state his opinion whether a writing is in the  
22 handwriting of a supposed writer if the court finds that he  
23 has personal knowledge of the handwriting of the supposed  
24 writer. Such personal knowledge may be acquired from:

25 (a) Having seen the supposed writer write;

26 (b) Having seen a writing purporting to be in the hand-  
27 writing of the supposed writer and upon which the supposed  
28 writer has acted or been charged;

29 (c) Having received letters in the due course of mail pur-  
30 porting to be from the supposed writer in response to letters  
31 duly addressed and mailed by him to the supposed writer; or

32 (d) Any other means of obtaining personal knowledge of  
33 the handwriting of the supposed writer.

34 1417. The authenticity of handwriting, or the lack thereof,  
35 may be proved by a comparison made by the trier of fact with  
36 handwriting (a) which the court finds was admitted or treated  
37 as authentic by the party against whom the evidence is offered  
38 or (b) otherwise proved to be authentic to the satisfaction of  
39 the court.

40 1418. The authenticity of writing, or the lack thereof, may  
41 be proved by a comparison made by an expert witness with  
42 writing (a) which the court finds was admitted or treated as  
43 authentic by the party against whom the evidence is offered  
44 or (b) otherwise proved to be authentic to the satisfaction of  
45 the court.

46 1419. Where a writing sought to be introduced in evidence  
47 is more than 30 years old, the comparison under Section 1417  
48 or 1418 may be made with writing purporting to be authentic,  
49 and generally respected and acted upon as such, by persons  
50 having an interest in knowing whether it is authentic.

51 1420. A writing may be authenticated by evidence that  
52 the writing was received in response to a communication sent

1 to the person who is claimed by the proponent of the evidence  
2 to be the author of the writing.

3 1421. A writing may be authenticated by evidence that the  
4 writing refers to or states facts that are unlikely to be known  
5 to anyone other than the person who is claimed by the pro-  
6 ponent of the evidence to be the author of the writing.

7

8 Article 3. Acknowledged Writings and Official Writings

9

10 1450. The presumptions established by this article are pre-  
11 sumptions affecting the burden of producing evidence.

12 1451. A certificate of the acknowledgment of a writing  
13 other than a will, or a certificate of the proof of such a writing,  
14 is prima facie evidence of the facts recited in the certificate  
15 and the genuineness of the signature of each person by whom  
16 the writing purports to have been signed if the certificate meets  
17 the requirements of Article 3 (commencing with Section 1180)  
18 of Chapter 4, Title 4, Part 4, Division 2 of the Civil Code.

19 1452. A seal is presumed to be genuine and its use author-  
20 ized if it purports to be the seal of:

21 (a) The United States or a department, agency, or public  
22 employee of the United States.

23 (b) A public entity in the United States or a department,  
24 agency, or public employee of such public entity.

25 (c) A nation recognized by the executive power of the  
26 United States or a department, agency, or officer of such  
27 nation.

28 (d) A public entity in a nation recognized by the executive  
29 power of the United States or a department, agency, or officer  
30 of such public entity.

31 (e) A court of admiralty or maritime jurisdiction.

32 (f) A notary public within any state of the United States.

33 1453. A signature is presumed to be genuine and author-  
34 ized if it purports to be the signature, affixed in his official  
35 capacity, of:

36 (a) A public employee of the United States.

37 (b) A public employee of any public entity in the United  
38 States.

39 (c) A notary public within any state of the United States.

40 1454. A signature is presumed to be genuine and author-  
41 ized if it purports to be the signature, affixed in his official  
42 capacity, of an officer, or deputy of an officer, of a nation or  
43 public entity in a nation recognized by the executive power of  
44 the United States and the writing to which the signature is  
45 affixed is accompanied by a final statement certifying the genu-  
46 ineness of the signature and the official position of (a) the  
47 person who executed the writing or (b) any foreign official  
48 who has certified either the genuineness of the signature and  
49 official position of the person executing the writing or the  
50 genuineness of the signature and official position of another  
51 foreign official who has executed a similar certificate in a chain  
52 of such certificates beginning with a certificate of t

1 ness of the signature and official position of the person execut-  
2 ing the writing. The final statement may be made only by a  
3 secretary of an embassy or legation, consul general, consul,  
4 vice consul, consular agent, or other officer in the foreign serv-  
5 ice of the United States stationed in the nation, authenticated  
6 by the seal of his office.

7  
8  
9

## CHAPTER 2. SECONDARY EVIDENCE OF WRITINGS

10  
11

### Article 1. Best Evidence Rule

12  
13  
14  
15

1500. Except as otherwise provided by statute, no evidence other than the writing itself is admissible to prove the content of a writing. This section shall be known and may be cited as the best evidence rule.

16  
17  
18  
19

1501. A copy of a writing is not made inadmissible by the best evidence rule if the writing is lost or has been destroyed without fraudulent intent on the part of the proponent of the evidence.

20  
21  
22  
23

1502. A copy of a writing is not made inadmissible by the best evidence rule if the writing was not reasonably procurable by the proponent by use of the court's process or by other available means.

24  
25  
26

1503. (a) A copy of a writing is not made inadmissible by the best evidence rule if, at a time when the writing was under the control of the opponent, the opponent was expressly or impliedly notified, by the pleadings or otherwise, that the writing would be needed at the hearing, and on request at the hearing the opponent has failed to produce the writing. In a criminal action, the request at the hearing to produce the writing may not be made in the presence of the jury.

27  
28  
29  
30

31  
32  
33  
34

(b) Though a writing requested by one party is produced by another, and is thereupon inspected by the party calling for it, the party calling for the writing is not obliged to introduce it as evidence in the action.

35  
36  
37  
38  
39

1504. A copy of a writing is not made inadmissible by the best evidence rule if the writing is not closely related to the controlling issues and it would be inexpedient to require its production.

40  
41  
42  
43

1505. If the proponent does not have in his possession or under his control a copy of a writing described in Section 1501, 1502, 1503, or 1504, other secondary evidence of the content of the writing is not made inadmissible by the best evidence rule. This section does not apply to a writing that is also described in Section 1506 or 1507.

44  
45  
46  
47  
48

1506. A copy of a writing is not made inadmissible by the best evidence rule if the writing is a record or other writing that is in the custody of a public entity.

49  
50  
51  
52

1507. A copy of a writing is not made inadmissible by the best evidence rule if the writing has been recorded in the public records and the record or an attested or a certified copy thereof is made evidence of the writing by statute.

1 1508. If the proponent does not have in his possession a  
2 copy of a writing described in Section 1506 or 1507 and could  
3 not in the exercise of reasonable diligence have obtained a  
4 copy, other secondary evidence of the content of the writing  
5 is not made inadmissible by the best evidence rule.

6 1509. Secondary evidence, whether written or oral, of the  
7 content of a writing is not made inadmissible by the best evi-  
8 dence rule if the writing consists of numerous accounts or  
9 other writings that cannot be examined in court without great  
10 loss of time, and the evidence sought from them is only the  
11 general result of the whole; but the court in its discretion  
12 may require that such accounts or other writings be produced  
13 for inspection by the adverse party.

14 1510. A copy of a writing is not made inadmissible by the  
15 best evidence rule if the writing has been produced at the  
16 hearing and made available for inspection by the adverse party.

17  
18 Article 2. Official Writings and Recorded Writings

19  
20 1530. (a) A purported copy of a writing that is in the  
21 custody of a public entity, or of an entry in such a writing, is  
22 prima facie evidence of the content of such writing or entry if:

23 (1) The copy purports to be published by the authority of  
24 the nation or state, or public entity therein, in which the writ-  
25 ing is kept;

26 (2) The office in which the writing is kept is within the  
27 United States or within the Panama Canal Zone, the Trust  
28 Territory of the Pacific Islands, or the Ryukyu Islands, and  
29 the copy is attested or certified as a correct copy of the writing  
30 or entry by a public employee, or a deputy of a public em-  
31 ployee, having the legal custody of the writing; or

32 (3) The office in which the writing is kept is not within  
33 the United States or any other place described in paragraph  
34 (2) and the copy is attested as a correct copy of the writing  
35 or entry by a person having authority to make the attestation.  
36 The attestation must be accompanied by a final statement  
37 certifying the genuineness of the signature and the official posi-  
38 tion of (i) the person who attested the copy as a correct copy  
39 or (ii) any foreign official who has certified either the genuine-  
40 ness of the signature and official position of the person attest-  
41 ing the copy or the genuineness of the signature and official  
42 position of another foreign official who has executed a similar  
43 certificate in a chain of such certificates beginning with a cer-  
44 tificate of the genuineness of the signature and official position  
45 of the person attesting the copy. The final statement may be  
46 made only by a secretary of an embassy or legation, consul  
47 general, consul, vice consul, consular agent, or other officer in  
48 the foreign service of the United States stationed in the nation  
49 in which the writing is kept, authenticated by the seal of his  
50 office.

51 (b) The presumptions established by this section are pre-  
52 sumptions affecting the burden of producing evidence.

1 1531. For the purpose of evidence, whenever a copy of a  
2 writing is attested or certified, the attestation or certificate  
3 must state in substance that the copy is a correct copy of the  
4 original, or of a specified part thereof, as the case may be.

5 1532. (a) The official record of a writing is prima facie  
6 evidence of the content of the original recorded writing if:

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

9 (2) A statute authorized such a writing to be recorded in  
10 that office.

11 (b) The presumption established by this section is a pre-  
12 sumption affecting the burden of producing evidence.  
13

### 14 Article 3. Photographic Copies of Writings 15

16 1550. A photostatic, microfilm, microcard, miniature photo-  
17 graphic or other photographic copy or reproduction, or an en-  
18 largement thereof, of a writing is as admissible as the writing  
19 itself if such copy or reproduction was made and preserved as  
20 a part of the records of a business (as defined by Section  
21 1270) in the regular course of such business. The introduction  
22 of such copy, reproduction, or enlargement does not preclude  
23 admission of the original writing if it is still in existence.

24 1551. A print, whether enlarged or not, from a photo-  
25 graphic film (including a photographic plate, microphoto-  
26 graphic film, photostatic negative, or similar reproduction)  
27 of an original writing destroyed or lost after such film was  
28 taken is as admissible as the original writing itself if, at the  
29 time of the taking of such film, the person under whose di-  
30 rection and control it was taken attached thereto, or to the  
31 sealed container in which it was placed and has been kept, or  
32 incorporated in the film, a certification complying with the  
33 provisions of Section 1531 and stating the date on which, and  
34 the fact that, it was so taken under his direction and control.  
35

### 36 Article 4. Hospital Records 37

38 1560. (a) As used in this article, "hospital" means a hos-  
39 pital located in this State that is operated by a public entity  
40 or any licensed hospital located in this State.

41 (b) Except as provided in Section 1564, when a subpoena  
42 duces tecum is served upon the custodian of records or other  
43 qualified witness from a hospital in an action in which the  
44 hospital is neither a party nor the place where any cause  
45 of action is alleged to have arisen and such subpoena requires  
46 the production of all or any part of the records of the hospital  
47 relating to the care or treatment of a patient in such hospital,  
48 it is sufficient compliance therewith if the custodian or other  
49 officer of the hospital, within five days after the receipt of  
50 such subpoena, delivers by mail or otherwise a true and correct  
51 copy (which may be a photographic or microphotographic re-  
52 production) of all the records described in such subpoena to the

1 clerk of court or to the court if there be no clerk or to such  
2 other person as described in subdivision (a) of Section 2018  
3 of the Code of Civil Procedure, together with the affidavit de-  
4 scribed in Section 1561.

5 (c) The copy of the records shall be separately enclosed in  
6 an inner envelope or wrapper, sealed, with the title and num-  
7 ber of the action, name of witness, and date of subpoena clearly  
8 inscribed thereon; the sealed envelope or wrapper shall then  
9 be enclosed in an outer envelope or wrapper, sealed, directed  
10 as follows:

11 (1) If the subpoena directs attendance in court, to the clerk  
12 of such court, or to the judge thereof if there be no clerk.

13 (2) If the subpoena directs attendance at a deposition or  
14 other hearing, to the officer before whom the deposition is to  
15 be taken, at the place designated in the subpoena for the taking  
16 of the deposition or at his place of business.

17 (3) In other cases, to the officer, body, or tribunal conduct-  
18 ing the hearing, at a like address.

19 (d) Unless the parties to the proceeding otherwise agree,  
20 or unless the sealed envelope or wrapper is returned to a  
21 witness who is to appear personally, the copy of the records  
22 shall remain sealed and shall be opened only at the time of  
23 trial, deposition, or other hearing, upon the direction of the  
24 judge, officer, body, or tribunal conducting the proceeding, in  
25 the presence of all parties who have appeared in person or  
26 by counsel at such trial, deposition, or hearing. Records which  
27 are not introduced in evidence or required as part of the  
28 record shall be returned to the person or entity from whom  
29 received.

30 1561. (a) The records shall be accompanied by the affi-  
31 davit of the custodian or other qualified witness, stating in  
32 substance each of the following:

33 (1) That the affiant is the duly authorized custodian of the  
34 records and has authority to certify the records.

35 (2) That the copy is a true copy of all the records described  
36 in the subpoena.

37 (3) That the records were prepared by the personnel of  
38 the hospital, staff physicians, or persons acting under the  
39 control of either, in the ordinary course of hospital business  
40 at or near the time of the act, condition, or event.

41 (b) If the hospital has none of the records described, or  
42 only part thereof, the custodian shall so state in the affidavit,  
43 and deliver the affidavit and such records as are available in  
44 the manner provided in Section 1560.

45 1562. The copy of the records is admissible in evidence to  
46 the same extent as though the original thereof were offered  
47 and the custodian had been present and testified to the matters  
48 stated in the affidavit. The affidavit is admissible in evidence  
49 and the matters stated therein are presumed true. When more  
50 than one person has knowledge of the facts, more than one  
51 affidavit may be made. The presumption established by this  
52 section is a presumption affecting the burden of proof.



1 1563. This article shall not be interpreted to require tender  
2 or payment of more than one witness and mileage fee or other  
3 charge unless there is an agreement to the contrary.

4 1564. The personal attendance of the custodian or other  
5 qualified witness and the production of the original records is  
6 required if the subpoena duces tecum contains a clause which  
7 reads:

8 "The procedure authorized pursuant to subdivision (b) of  
9 Section 1560, and Sections 1561 and 1562, of the Evidence Code  
10 will not be deemed sufficient compliance with this subpoena."

11 1565. If more than one subpoena duces tecum is served  
12 upon the custodian of records or other qualified witness from  
13 a hospital and the personal attendance of the custodian or  
14 other qualified witness is required pursuant to Section 1564,  
15 the witness shall be deemed to be the witness of the party serv-  
16 ing the first such subpoena duces tecum.

17 1566. This article applies in any proceeding in which testi-  
18 mony can be compelled.

19  
20 CHAPTER 3. OFFICIAL WRITINGS AFFECTING PROPERTY

21  
22 1600. The official record of a document purporting to  
23 establish or affect an interest in property is prima facie evi-  
24 dence of the content of the original recorded document and its  
25 execution and delivery by each person by whom it purports to  
26 have been executed if:

27 (a) The record is in fact a record of an office of a public en-  
28 tity; and

29 (b) A statute authorized such a document to be recorded in  
30 that office.

31 1601. (a) Subject to subdivisions (b) and (c), when in  
32 any action it is desired to prove the contents of the official  
33 record of any writing lost or destroyed by conflagration or  
34 other public calamity, after proof of such loss or destruction,  
35 the following may, without further proof, be admitted in evi-  
36 dence to prove the contents of such record:

37 (1) Any abstract of title made and issued and certified as  
38 correct prior to such loss or destruction, and purporting to  
39 have been prepared and made in the ordinary course of busi-  
40 ness by any person engaged in the business of preparing and  
41 making abstracts of title prior to such loss or destruction; or

42 (2) Any abstract of title, or of any instrument affecting  
43 title, made, issued, and certified as correct by any person en-  
44 gaged in the business of insuring titles or issuing abstracts of  
45 title to real estate, whether the same was made, issued, or  
46 certified before or after such loss or destruction and whether  
47 the same was made from the original records or from abstract  
48 and notes, or either, taken from such records in the preparation  
49 and upkeeping of its plant in the ordinary course of its  
50 business.

1 (b) No proof of the loss of the original writing is required  
2 other than the fact that the original is not known to the party  
3 desiring to prove its contents to be in existence.

4 (c) Any party desiring to use evidence admissible under  
5 this section shall give reasonable notice in writing to all other  
6 parties to the action who have appeared therein, of his inten-  
7 tion to use such evidence at the trial of the action, and shall  
8 give all such other parties a reasonable opportunity to inspect  
9 the evidence, and also the abstracts, memoranda, or notes from  
10 which it was compiled, and to take copies thereof.

11 1602. If a patent for mineral lands within this State,  
12 issued or granted by the United States of America, contains a  
13 statement of the date of the location of a claim or claims upon  
14 which the granting or issuance of such patent is based, such  
15 statement is prima facie evidence of the date of such location.

16 1603. A deed of conveyance of real property, purporting  
17 to have been executed by a proper officer in pursuance of  
18 legal process of any of the courts of record of this State, ac-  
19 knowledged and recorded in the office of the recorder of the  
20 county wherein the real property therein described is situated,  
21 or the record of such deed, or a certified copy of such record,  
22 is prima facie evidence that the property or interest therein  
23 described was thereby conveyed to the grantee named in such  
24 deed.

25 1604. A certificate of purchase, or of location, of any lands  
26 in this State, issued or made in pursuance of any law of the  
27 United States or of this State, is prima facie evidence that  
28 the holder or assignee of such certificate is the owner of the  
29 land described therein; but this evidence may be overcome  
30 by proof that, at the time of the location, or time of filing a  
31 pre-emption claim on which the certificate may have been  
32 issued, the land was in the adverse possession of the adverse  
33 party, or those under whom he claims, or that the adverse party  
34 is holding the land for mining purposes.

35 1605. Duplicate copies and authenticated translations of  
36 original Spanish title papers relating to land claims in this  
37 State, derived from the Spanish or Mexican Governments,  
38 prepared under the supervision of the Keeper of Archives, au-  
39 thenticated by the Surveyor-General or his successor and by  
40 the Keeper of Archives, and filed with a county recorder, in ac-  
41 cordance with Chapter 281 of the Statutes of 1865-66, are re-  
42 ceivable as prima facie evidence with like force and effect as  
43 the originals and without proving the execution of such  
44 originals.

45 Sec. 2. Section 2904 of the Business and Professions Code  
46 is repealed.

47 ~~2904. For the purpose of this chapter the confidential rela-~~  
48 ~~tions and communications between psychologist and client shall~~  
49 ~~be placed upon the same basis as those provided by law be-~~  
50 ~~tween attorney and client, and nothing contained in this chap-~~  
51 ~~ter shall be construed to require any privileged communication~~  
52 ~~to be disclosed.~~

1 SEC. 3. Section 5012 of the Business and Professions Code  
2 is amended to read:

3 5012. The board shall have a seal ~~which shall be judicially~~  
4 ~~noticed.~~

5 SEC. 4. Section 25009 of the Business and Professions Code  
6 is amended to read:

7 25009. Any defendant in any action brought under this  
8 chapter or any person who may be a witness therein under Sec-  
9 tions ~~2021, 2031 or 2055~~ 2016, 2018, and 2019 of the Code of  
10 Civil Procedure or Section 776 of the Evidence Code, and the  
11 books and records of any such defendant or witness, may be  
12 brought into court and the books and records may be intro-  
13 duced by reference into evidence, but no information so ob-  
14 tained may be used against the defendant or any such witness  
15 as a basis for a misdemeanor prosecution under this chapter.

16 SEC. 5. Section 53 of the Civil Code is amended to read:

17 53. (a) Every provision in a written instrument relating to  
18 real property which purports to forbid or restrict the convey-  
19 ance, encumbrance, leasing, or mortgaging of such real prop-  
20 erty to any person of a specified race, color, religion, ancestry,  
21 or national origin, is void and every restriction or prohibition  
22 as to the use or occupation of real property because of the  
23 user's or occupier's race, color, religion, ancestry, or national  
24 origin is void.

25 (b) Every restriction or prohibition, whether by way of  
26 covenant, condition upon use or occupation, or upon transfer  
27 of title to real property, which restriction or prohibition di-  
28 rectly or indirectly limits the acquisition, use or occupation of  
29 such property because of the acquirer's, user's, or occupier's  
30 race, color, religion, ancestry, or national origin is void.

31 (c) In any action to declare that a restriction or prohibition  
32 specified in subdivision (a) or (b) of this section is void, the  
33 court ~~may take~~ takes judicial notice of the recorded instru-  
34 ment or instruments containing such prohibitions or restric-  
35 tions *in the same manner that it takes judicial notice of the*  
36 *matters listed in Section 452 of the Evidence Code.*

37 SEC. 6. Section 164.5 is added to the Civil Code, to read:

38 164.5 The presumption that property acquired during mar-  
39 riage is community property does not apply to any property  
40 to which legal or equitable title is held by a person at the time  
41 of his death if the marriage during which the property was  
42 acquired was terminated by divorce more than four years  
43 prior to such death.

44 SEC. 7. Section 193 of the Civil Code is repealed.

45 ~~193. LEGITIMACY OF CHILDREN BORN IN WEDLOCK. All chil-~~  
46 ~~drren born in wedlock are presumed to be legitimate.~~

47 SEC. 8. Section 194 of the Civil Code is repealed.

48 ~~194. All children of a woman who has been married, born~~  
49 ~~within ten months after the dissolution of the marriage, are~~  
50 ~~presumed to be legitimate children of that marriage.~~

51 SEC. 9. Section 195 of the Civil Code is repealed.

1 195. The presumption of legitimacy can be disputed only  
2 by the people of the State of California in a criminal action  
3 brought under the provisions of Section 270 of the Penal Code,  
4 or the husband or wife, or the descendant of one or both of  
5 them. Illegitimacy, in such case, may be proved like any other  
6 fact.

7 SEC. 10. Section 3544 is added to the Civil Code, to read :  
8 3544. A person intends the ordinary consequences of his  
9 voluntary act.

10 SEC. 11. Section 3545 is added to the Civil Code, to read :  
11 3545. Private transactions are fair and regular.

12 SEC. 12. Section 3546 is added to the Civil Code, to read :  
13 3546. Things happen according to the ordinary course of  
14 nature and the ordinary habits of life.

15 SEC. 13. Section 3547 is added to the Civil Code, to read :  
16 3547. A thing continues to exist as long as is usual with  
17 things of that nature.

18 SEC. 14. Section 3548 is added to the Civil Code, to read :  
19 3548. The law has been obeyed.

20 SEC. 15. Section 1 of the Code of Civil Procedure is  
21 amended to read :

22 1. ~~TITLE AND DIVISION OF THIS VOLUME.~~ This Act shall be  
23 known as the Code of Civil Procedure of California, and is  
24 divided into four Parts, as follows :

- 25 Part I. Of Courts of Justice.
- 26 II. Of Civil Actions.
- 27 III. Of Special Proceedings of a Civil Nature.
- 28 IV. ~~Of Evidence~~ *Miscellaneous Provisions*.

29 SEC. 16. Section 117g of the Code of Civil Procedure is  
30 amended to read :

31 117g. No attorney at law or other person than the plaintiff  
32 and defendant shall take any part in the filing or the prosecution  
33 or defense of such litigation in the small claims court.  
34 The plaintiff and defendant shall have the right to offer evi-  
35 dence in their behalf by witnesses appearing at such hearing,  
36 or at any other time. The presence of the plaintiff or defend-  
37 ant, whether individual or corporate, at the hearing shall not  
38 be required to permit the proof of the items of an account but  
39 such proof shall be in accordance with the provisions of the  
40 ~~Uniform Business Records as Evidence Act Sections 1270 and~~  
41 ~~1271 of the Evidence Code~~. The judge or justice may also  
42 informally make any investigation of the controversy between  
43 the parties either in or out of court and give judgment and  
44 make such orders as to time of payment or otherwise as may,  
45 by him, be deemed to be right and just. The provisions of  
46 Section 579 of the Code of Civil Procedure are hereby made  
47 applicable to small claims court actions.

48 SEC. 17. Section 125 of the Code of Civil Procedure is  
49 amended to read :

50 125. In an action for divorce or seduction, the court may  
51 direct the trial of any issue of fact joined therein to be private,  
52 and may exclude all persons except the officers of

1 parties, their witnesses, and counsel; ~~provided, that in any~~  
 2 ~~cause the court may, in the exercise of a sound discretion, dur-~~  
 3 ~~ing the examination of a witness, exclude any or all other~~  
 4 ~~witnesses in the cause. Nothing in this section prevents the~~  
 5 ~~exclusion of a witness pursuant to Evidence Code Section 777.~~

6 SEC. 18. Section 153 of the Code of Civil Procedure is  
 7 amended to read:

8 153. Except as otherwise expressly provided by law, the  
 9 seal of a court need not be affixed to any proceeding therein,  
 10 or to any document, except:

- 11 1. To a writ;
- 12 2. To a summons;
- 13 3. To a warrant of arrest;
- 14 4. To the certificate of probate of a will or of the appoint-
- 15 ment of an executor, administrator, or guardian;

16 ~~5. To the authentication of a copy of a record or other pro-~~  
 17 ~~ceeding of a court, or of an officer thereof, or of a copy of a~~  
 18 ~~document on file in the office of the clerk or judge.~~

19 SEC. 19. Section 433 of the Code of Civil Procedure is  
 20 amended to read:

21 433. When any of the matters enumerated in Section 430  
 22 do not appear upon the face of the complaint, the objection  
 23 may be taken by answer; except that when the ground of  
 24 demurrer is that there is another action *or proceeding* pending  
 25 between the same parties for the same cause; *and* the court  
 26 may take judicial notice of ~~other actions and proceedings~~  
 27 ~~pending in the same court, or in other courts of the State, and~~  
 28 ~~for this purpose only the other action or proceeding under~~  
 29 ~~Division 4 (commencing with Section 450) of the Evidence~~  
 30 ~~Code, an affidavit may be filed with the demurrer to establish~~  
 31 ~~for the sole purpose of establishing such fact or invoke~~  
 32 ~~invoking such notice.~~

33 SEC. 20. Section 631.7 is added to the Code of Civil Pro-  
 34 cedure, to read:

35 631.7. Ordinarily, unless the court otherwise directs, the  
 36 trial of a civil action tried by the court without a jury shall  
 37 proceed in the order specified in Section 607.

38 SEC. 21. Section 1256.2 of the Code of Civil Procedure is  
 39 repealed.

40 ~~1256.2. In any condemnation proceeding, either party shall~~  
 41 ~~be allowed to question any witness as to all expenses and fees~~  
 42 ~~paid or to be paid to such witness by the other party.~~

43 SEC. 22. Section 1747 of the Code of Civil Procedure is  
 44 amended to read:

45 1747. Notwithstanding the provisions of Section 124 of the  
 46 Code of Civil Procedure, all superior court hearings or con-  
 47 ferences in proceedings under this chapter shall be held in  
 48 private and the court shall exclude all persons except the offi-  
 49 cers of the court, the parties, their counsel and witnesses. Con-  
 50 ferences may be held with each party and his counsel sep-  
 51 arately and in the discretion of the judge, commissioner or  
 52 counselor conducting the conference or hearing, counsel for

1 one party may be excluded when the adverse party is present.  
2 All communications, verbal or written, from parties to the  
3 judge, commissioner or counselor in a proceeding under this  
4 chapter shall be deemed made to such officer in official confi-  
5 dence to be official information within the meaning of subdivi-  
6 sion 5, Section 1881 of the Code of Civil Procedure Section  
7 1040 of the Evidence Code.

8 The files of the conciliation court shall be closed. The peti-  
9 tion, supporting affidavit, reconciliation agreement and any  
10 court order made in the matter may be opened to inspection  
11 by any party or his counsel upon the written authority of the  
12 judge of the conciliation court.

13 SEC. 23. The heading of Part IV of the Code of Civil Pro-  
14 cedure is amended to read:

15 PART IV. OF EVIDENCE MISCELLANEOUS PROVISIONS

16 SEC. 24. Section 1823 of the Code of Civil Procedure is re-  
17 pealed.

18 1823. DEFINITION OF EVIDENCE. Judicial evidence is the  
19 means, sanctioned by law, of ascertaining in a judicial pro-  
20 ceeding the truth respecting a question of fact.

21 SEC. 25. Section 1824 of the Code of Civil Procedure is re-  
22 pealed.

23 1824. DEFINITION OF PROOF. Proof is the effect of evi-  
24 dence; the establishment of a fact by evidence.

25 SEC. 26. Section 1825 of the Code of Civil Procedure is re-  
26 pealed.

27 1825. DEFINITION OF LAW OF EVIDENCE. The law of evi-  
28 dence, which is the subject of this part of the Code, is a collec-  
29 tion of general rules established by law:

- 30 1. For declaring what is to be taken as true without proof;
- 31 2. For declaring the presumptions of law, both those which  
32 are disputable and those which are conclusive; and;
- 33 3. For the production of legal evidence;
- 34 4. For the exclusion of whatever is not legal;
- 35 5. For determining, in certain cases, the value and effect of  
36 evidence.

37 SEC. 27. Section 1826 of the Code of Civil Procedure is re-  
38 pealed.

39 1826. THE DEGREE OF CERTAINTY REQUIRED TO ESTABLISH  
40 FACTS. The law does not require demonstration; that is, such  
41 a degree of proof as, excluding possibility of error, produces  
42 absolute certainty; because such proof is rarely possible. Moral  
43 certainty only is required; or that degree of proof which pro-  
44 duces conviction in an unprejudiced mind.

45 SEC. 28. Section 1827 of the Code of Civil Procedure is re-  
46 pealed.

47 1827. FOUR KINDS OF EVIDENCE SPECIFIED. There are four  
48 kinds of evidence:

- 49 1. The knowledge of the Court;
- 50 2. The testimony of witnesses;
- 51 3. Writings;
- 52 4. Other material objects presented to the senses.

1 SEC. 29. Section 1828 of the Code of Civil Procedure is re-  
2 pealed.

3 1828. There are several degrees of evidence:

4 One—Primary and secondary.

5 Two—Direct and indirect.

6 Three—Prima facie, partial, satisfactory, indispensable, and  
7 conclusive.

8 SEC. 30. Section 1829 of the Code of Civil Procedure is re-  
9 pealed.

10 1829. Primary evidence is that kind of evidence which,  
11 under every possible circumstance, affords the greatest cer-  
12 tainty of the fact in question. Thus, a written instrument is  
13 itself the best possible evidence of its existence and contents.

14 SEC. 31. Section 1830 of the Code of Civil Procedure is re-  
15 pealed.

16 1830. Secondary evidence is that which is inferior to pri-  
17 mary. Thus, a copy of an instrument or oral evidence of its  
18 contents is secondary evidence of the instrument and contents.

19 SEC. 32. Section 1831 of the Code of Civil Procedure is re-  
20 pealed.

21 1831. DIRECT EVIDENCE DEFINED. Direct evidence is that  
22 which proves the fact in dispute, directly, without an infer-  
23 ence or presumption, and which in itself, if true, conclusively  
24 establishes that fact. For example: if the fact in dispute be an  
25 agreement, the evidence of a witness who was present and  
26 witnessed the making of it, is direct.

27 SEC. 33. Section 1832 of the Code of Civil Procedure is re-  
28 pealed.

29 1832. INDIRECT EVIDENCE DEFINED. Indirect evidence is  
30 that which tends to establish the fact in dispute by proving  
31 another, and which, though true, does not of itself conclusively  
32 establish that fact, but which affords an inference or presump-  
33 tion of its existence. For example: a witness proves an admis-  
34 sion of the party to the fact in dispute. This proves a fact,  
35 from which the fact in dispute is inferred.

36 SEC. 34. Section 1833 of the Code of Civil Procedure is re-  
37 pealed.

38 1833. Prima facie evidence is that which suffices for the  
39 proof of a particular fact, until contradicted and overcome by  
40 other evidence. For example: the certificate of a recording  
41 officer is prima facie evidence of a record, but it may after-  
42 wards be rejected upon proof that there is no such record.

43 SEC. 35. Section 1834 of the Code of Civil Procedure is re-  
44 pealed.

45 1834. PARTIAL EVIDENCE DEFINED. Partial evidence is that  
46 which goes to establish a detached fact, in a series tending to  
47 the fact in dispute. It may be received, subject to be rejected  
48 as incompetent, unless connected with the fact in dispute by  
49 proof of other facts. For example: on an issue of title to real  
50 property, evidence of the continued possession of a remote  
51 occupant is partial, for it is of a detached fact, which may or  
52 may not be afterwards connected with the fact in dispute.

1 SEC. 36. Section 1836 of the Code of Civil Procedure is re-  
2 pealed.

3 **1836. INDISPENSABLE EVIDENCE DEFINED.** Indispensable evi-  
4 dence is that without which a particular fact cannot be proved.

5 SEC. 37. Section 1837 of the Code of Civil Procedure is re-  
6 pealed.

7 **1837. CONCLUSIVE EVIDENCE DEFINED.** Conclusive or unan-  
8 swerable evidence is that which the law does not permit to be  
9 contradicted. For example, the record of a Court of competent  
10 jurisdiction cannot be contradicted by the parties to it.

11 SEC. 38. Section 1838 of the Code of Civil Procedure is re-  
12 pealed.

13 **1838. CUMULATIVE EVIDENCE DEFINED.** Cumulative evi-  
14 dence is additional evidence of the same character, to the same  
15 point.

16 SEC. 39. Section 1839 of the Code of Civil Procedure is re-  
17 pealed.

18 **1839. CORROBORATIVE EVIDENCE DEFINED.** Corroborative  
19 evidence is additional evidence of a different character, to the  
20 same point.

21 SEC. 40. Section 1844 of the Code of Civil Procedure is re-  
22 pealed.

23 **1844. ONE WITNESS SUFFICIENT TO PROVE A FACT.** The di-  
24 rect evidence of one witness who is entitled to full credit is  
25 sufficient for proof of any fact, except perjury and treason.

26 SEC. 41. Section 1845 of the Code of Civil Procedure is re-  
27 pealed.

28 **1845. TESTIMONY CONFINED TO PERSONAL KNOWLEDGE.** A  
29 witness can testify of those facts only which he knows of his  
30 own knowledge; that is, which are derived from his own per-  
31 ceptions, except in those few express cases in which his opin-  
32 ions or inferences, or the declarations of others, are admissible.

33 SEC. 42. Section 1845.5 of the Code of Civil Procedure is  
34 repealed.

35 **1845.5.** In an eminent domain proceeding a witness, other-  
36 wise qualified, may testify with respect to the value of the real  
37 property including the improvements situated thereon or the  
38 value of any interest in real property to be taken, and may  
39 testify on direct examination as to his knowledge of the amount  
40 paid for comparable property or property interests. In ren-  
41 dering his opinion as to highest and best use and market value  
42 of the property sought to be condemned the witness shall be  
43 permitted to consider and give evidence as to the nature and  
44 value of the improvements and the character of the existing  
45 uses being made of the properties in the general vicinity of  
46 the property sought to be condemned.

47 SEC. 43. Section 1846 of the Code of Civil Procedure is re-  
48 pealed.

49 **1846. TESTIMONY TO BE IN PRESENCE OF PERSONS AFFECTED.**  
50 A witness can be heard only upon oath or affirmation, and  
51 upon a trial he can be heard only in the presence and subject



1 to the examination of all the parties, if they choose to attend  
2 and examine.

3 SEC. 44. Section 1847 of the Code of Civil Procedure is re-  
4 pealed.

5 1847. WITNESS PRESUMED TO SPEAK THE TRUTH. A witness  
6 is presumed to speak the truth. This presumption, however,  
7 may be repelled by the manner in which he testifies, by the  
8 character of his testimony, or by evidence affecting his char-  
9 acter for truth, honesty, or integrity, or his motives, or by  
10 contradictory evidence; and the jury are the exclusive judges  
11 of his credibility.

12 SEC. 45. Section 1848 of the Code of Civil Procedure is re-  
13 pealed.

14 1848. The rights of a party cannot be prejudiced by the  
15 declaration, act, or omission of another, except by virtue of a  
16 particular relation between them; therefore, proceedings  
17 against one cannot affect another.

18 SEC. 46. Section 1849 of the Code of Civil Procedure is re-  
19 pealed.

20 1849. DECLARATIONS OF PREDECESSOR IN TITLE EVIDENCE.  
21 Where, however, one derives title to real property from an-  
22 other, the declaration, act, or omission of the latter, while  
23 holding the title, in relation to the property, is evidence against  
24 the former.

25 SEC. 47. Section 1850 of the Code of Civil Procedure is re-  
26 pealed.

27 1850. DECLARATIONS WHICH ARE A PART OF THE TRANSA-  
28 CTION. Where, also, the declaration, act, or omission forms part  
29 of a transaction, which is itself the fact in dispute, or evidence  
30 of that fact, such declaration, act, or omission is evidence, as  
31 part of the transaction.

32 SEC. 48. Section 1851 of the Code of Civil Procedure is re-  
33 pealed.

34 1851. And where the question in dispute between the par-  
35 ties is the obligation or duty of a third person, whatever  
36 would be the evidence for or against such person is prima  
37 facie evidence between the parties.

38 SEC. 49. Section 1852 of the Code of Civil Procedure is re-  
39 pealed.

40 1852. DECLARATION OF DECEDENT EVIDENCE OF PEDIGREE.  
41 The declaration, act, or omission of a member of a family who  
42 is a decedent, or out of the jurisdiction, is also admissible as  
43 evidence of common reputation, in cases where, on questions of  
44 pedigree, such reputation is admissible.

45 SEC. 50. Section 1853 of the Code of Civil Procedure is re-  
46 pealed.

47 1853. DECLARATION OF DECEDENT EVIDENCE AGAINST HIS  
48 SUCCESSOR IN INTEREST. The declaration, act, or omission of  
49 a decedent, having sufficient knowledge of the subject, against  
50 his pecuniary interest, is also admissible as evidence to that  
51 extent against his successor in interest.

1 SEC. 51. Section 1854 of the Code of Civil Procedure is re-  
2 pealed.

3 1854. ~~WHEN PART OF A TRANSACTION PROVED, THE WHOLE~~  
4 ~~IS ADMISSIBLE: When part of an act, declaration, conversa-~~  
5 ~~tion, or writing is given in evidence by one party, the whole~~  
6 ~~on the same subject may be inquired into by the other; when~~  
7 ~~a letter is read, the answer may be given; and when a de-~~  
8 ~~tached act declaration, conversation, or writing is given in~~  
9 ~~evidence, any other act, declaration, conversation, or writing,~~  
10 ~~which is necessary to make it understood, may also be given~~  
11 ~~in evidence.~~

12 SEC. 52. Section 1855 of the Code of Civil Procedure is re-  
13 pealed.

14 1855. There can be no evidence of the contents of a writing,  
15 other than the writing itself, except in the following cases:

16 One—When the original has been lost or destroyed; in which  
17 case proof of the loss or destruction must first be made.

18 Two—When the original is in the possession of the party  
19 against whom the evidence is offered, and he fails to produce  
20 it after reasonable notice.

21 Three—When the original is a record or other document in  
22 the custody of a public officer.

23 Four—When the original has been recorded, and a certified  
24 copy of the record is made evidence by this Code or other  
25 statute.

26 Five—When the original consists of numerous accounts or  
27 other documents, which cannot be examined in Court without  
28 great loss of time, and the evidence sought from them is only  
29 the general result of the whole.

30 In the cases mentioned in subdivisions three and four, a  
31 copy of the original, or of the record, must be produced; in  
32 those mentioned in subdivisions one and two, either a copy or  
33 oral evidence of the contents.

34 SEC. 53. Section 1855a of the Code of Civil Procedure is  
35 repealed.

36 1855a. When, in any action, it is desired to prove the con-  
37 tents of any public record or document lost or destroyed by  
38 conflagration or other public calamity and after proof of such  
39 loss or destruction, there is offered in proof of such contents  
40 (a) any abstract of title made and issued and certified as cor-  
41 rect prior to such loss or destruction, and purporting to have  
42 been prepared and made in the ordinary course of business  
43 by any person, firm or corporation engaged in the business of  
44 preparing and making abstracts of title prior to such loss or  
45 destruction; (b) any abstract of title, or of any instrument  
46 affecting title, made, issued and certified as correct by any  
47 person, firm or corporation engaged in the business of insur-  
48 ing titles or issuing abstracts of title, to real estate whether  
49 the same was made, issued or certified before or after such  
50 loss or destruction and whether the same was made from the  
51 original records or from abstracts and notes, or either, taken  
52 from such records in the preparation and upkeep.

1 his plant in the ordinary course of its business, the same may,  
 2 without further proof, be admitted in evidence for the pur-  
 3 pose aforesaid. No proof of the loss of the original document  
 4 or instrument shall be required other than the fact that the  
 5 same is not known to the party desiring to prove its contents  
 6 to be in existence; provided, nevertheless, that any party so  
 7 desiring to use said evidence shall give reasonable notice in  
 8 writing to all other parties to the action who have appeared  
 9 therein, of his intention to use the same at the trial of said  
 10 action; and shall give all such other parties a reasonable op-  
 11 portunity to inspect the same, and also the abstracts, memo-  
 12 randa, or notes from which it was compiled, and to take  
 13 copies thereof.

14 SEC. 54. Section 1863 of the Code of Civil Procedure is re-  
 15 pealed.

16 1863. PERSONS SKILLED MAY TESTIFY TO DECIPHER CHAR-  
 17 ACTERS. When the characters in which an instrument is writ-  
 18 ten are difficult to be deciphered, or the language of the in-  
 19 strument is not understood by the Court, the evidence of  
 20 persons skilled in deciphering the characters, or who under-  
 21 stand the language, is admissible to declare the characters or  
 22 the meaning of the language.

23 SEC. 55. Section 1867 of the Code of Civil Procedure is re-  
 24 pealed.

25 1867. MATERIAL ALLEGATION ONLY TO BE PROVED. None but  
 26 a material allegation need be proved.

27 SEC. 56. Section 1868 of the Code of Civil Procedure is re-  
 28 pealed.

29 1868. EVIDENCE CONFINED TO MATERIAL ALLEGATION. Evi-  
 30 dence must correspond with the substance of the material al-  
 31 legations, and be relevant to the question in dispute. Collateral  
 32 questions must therefore be avoided. It is, however, within  
 33 the discretion of the Court to permit inquiry into a collateral  
 34 fact, when such fact is directly connected with the question  
 35 in dispute, and is essential to its proper determination, or when  
 36 it affects the credibility of a witness.

37 SEC. 57. Section 1869 of the Code of Civil Procedure is re-  
 38 pealed.

39 1869. AFFIRMATIVE ONLY TO BE PROVED. Each party must  
 40 prove his own affirmative allegations. Evidence need not be  
 41 given in support of a negative allegation, except when such  
 42 negative allegation is an essential part of the statement of the  
 43 right or title on which the cause of action or defense is  
 44 founded, nor even in such case when the allegation is a denial  
 45 of the existence of a document, the custody of which belongs  
 46 to the opposite party.

47 SEC. 58. Section 1870 of the Code of Civil Procedure is re-  
 48 pealed.

49 1870. FACTS WHICH MAY BE PROVED ON TRIAL. In conform-  
 50 ity with the preceding provisions, evidence may be given upon  
 51 a trial of the following facts:

52 1. The precise fact in dispute;

1 2. The act, declaration, or omission of a party, as evidencee  
2 against such party;

3 3. An act or declaration of another, in the presence and  
4 within the observation of a party, and his conduct in relation  
5 thereto;

6 4. The act or declaration, verbal or written, of a deceased  
7 person in respect to the relationship, birth, marriage, or death  
8 of any person related by blood or marriage to such deceased  
9 person; the act or declaration of a deceased person done or  
10 made against his interest in respect to his real property; and  
11 also in criminal actions, the act or declaration of a dying  
12 person, made under a sense of impending death, respecting  
13 the cause of his death;

14 5. After proof of a partnership or agency, the act or decla-  
15 ration of a partner or agent of the party, within the scope  
16 of the partnership or agency, and during its existence. The  
17 same rule applies to the act or declaration of a joint owner,  
18 joint debtor, or other person jointly interested with the party;

19 6. After proof of a conspiracy, the act or declaration of a  
20 conspirator against his co-conspirator, and relating to the  
21 conspiracy;

22 7. The act, declaration, or omission forming part of a trans-  
23 action, as explained in Section 1850;

24 8. The testimony of a witness deceased, or out of the juris-  
25 diction, or unable to testify, given in a former action between  
26 the same parties, relating to the same matter;

27 9. The opinion of a witness respecting the identity or hand-  
28 writing of a person, when he has knowledge of the person or  
29 handwriting; his opinion on a question of science, art, or trade,  
30 when he is skilled therein;

31 10. The opinion of a subscribing witness to a writing, the  
32 validity of which is in dispute, respecting the mental sanity  
33 of the signer; and the opinion of an intimate acquaintance  
34 respecting the mental sanity of a person, the reason for the  
35 opinion being given;

36 11. Common reputation existing previous to the controversy,  
37 respecting facts of a public or general interest more than  
38 thirty years old, and in cases of pedigree and boundary;

39 12. Usage, to explain the true character of an act, contract,  
40 or instrument, where such true character is not otherwise  
41 plain; but usage is never admissible, except as an instrument  
42 of interpretation;

43 13. Monuments and inscriptions in public places, as evidence  
44 of common reputation; and entries in family bibles, or other  
45 family books or charts, engravings on rings, family portraits,  
46 and the like, as evidence of pedigree;

47 14. The contents of a writing, when oral evidence thereof  
48 is admissible;

49 15. Any other facts from which the facts in issue are pre-  
50 sumed or are logically inferable;

51 16. Such facts as serve to show the credibility of a witness,  
52 as explained in Section 1847.

1 SEC. 59. Section 1871 of the Code of Civil Procedure is re-  
2 pealed.

3 1871. Whenever it shall be made to appear to any court  
4 or judge thereof, either before or during the trial of any action  
5 or proceeding, civil, criminal, or juvenile court, pending before  
6 such court, that expert evidence is, or will be required by  
7 the court or any party to such action or proceeding, such  
8 court or judge may, on motion of any party, or on motion  
9 of such court or judge, appoint one or more experts to inves-  
10 tigate, render a report as may be ordered by the court, and  
11 testify at the trial of such action or proceeding relative to the  
12 matter or matters as to which such expert evidence is, or will  
13 be required, and such court or judge may fix the compensation  
14 of such expert or experts for such services, if any, as such  
15 expert or experts may have rendered, in addition to his or  
16 their services as a witness or witnesses, at such amount or  
17 amounts as to the court or judge may seem reasonable.

18 In all criminal and juvenile court actions and proceedings  
19 such compensation so fixed shall be a charge against the county  
20 in which such action or proceeding is pending and shall be  
21 paid out of the treasury of such county on order of the court  
22 or judge. In any county in which the procedure prescribed  
23 herein has been authorized by the board of supervisors, on  
24 order by the court or judge in any civil action or proceeding,  
25 the compensation so fixed of any medical expert or experts  
26 shall also be a charge against and paid out of the treasury of  
27 such county. Except as above otherwise provided, in all civil  
28 actions and proceedings such compensation shall, in the first  
29 instance, be apportioned and charged to the several parties in  
30 such proportion as the court or judge may determine and may  
31 thereafter be taxed and allowed in like manner as other costs.

32 Nothing contained in this section shall be deemed or con-  
33 strued so as to prevent any party to any action or proceeding  
34 from producing other expert evidence as to such matter or  
35 matters, but where other expert witnesses are called by a party  
36 to an action or proceeding they shall be entitled to the ordi-  
37 nary witness fees only and such witness fees shall be taxed  
38 and allowed in like manner as other witness fees.

39 Any expert so appointed by the court may be called and  
40 examined as a witness by any party to such action or pro-  
41 ceeding or by the court itself; but, when called, shall be  
42 subject to examination and objection as to his competency  
43 and qualifications as an expert witness and as to his bias. Such  
44 expert though called and examined by the court, may be cross-  
45 examined by the several parties to an action or proceeding in  
46 such order as the court may direct. When such witness is  
47 called and examined by the court, the several parties shall  
48 have the same right to object to the questions asked and the  
49 evidence adduced as though such witness were called and ex-  
50 amined by an adverse party.

1 The court or judge may at any time before the trial or  
2 during the trial, limit the number of expert witnesses to be  
3 called by any party.

4 SEC. 60. Section 1872 of the Code of Civil Procedure is re-  
5 pealed.

6 1872. Whenever an expert witness gives his opinion, he  
7 may, upon direct examination, be asked to state the reasons  
8 for such opinion, and he may be fully cross-examined thereon  
9 by opposing counsel.

10 SEC. 61. Section 1875 of the Code of Civil Procedure is re-  
11 pealed.

12 1875. Courts take judicial notice of the following:

13 1. The true signification of all English words and phrases,  
14 and of all legal expressions;

15 2. Whatever is established by law;

16 3. Public and private official acts of the legislative, execu-  
17 tive and judicial departments of this State and of the United  
18 States, and the laws of the several states of the United States  
19 and the interpretation thereof by the highest courts of appel-  
20 late jurisdiction of such states;

21 4. The law and statutes of foreign countries and of political  
22 subdivisions of foreign countries; provided, however, that to  
23 enable a party to ask that judicial notice thereof be taken,  
24 reasonable notice shall be given to the other parties to the  
25 action in the pleadings or otherwise;

26 5. The seals of all the courts of this State and of the United  
27 States;

28 6. The accession to office and the official signatures and seals  
29 of office of the principal officers of government in the legisla-  
30 tive, executive, and judicial departments of this State and of  
31 the United States;

32 7. The existence, title, national flag, and seal of every state  
33 or sovereign recognized by the executive power of the United  
34 States;

35 8. The seals of courts of admiralty and maritime jurisdic-  
36 tion, and of notaries public;

37 9. The laws of nature, the measure of time, and the geo-  
38 graphical divisions and political history of the world.

39 In all these cases the court may resort for its aid to appro-  
40 priate books or documents of reference. In cases arising under  
41 subdivision 4 of this section, the court may also resort to the  
42 advice of persons learned in the subject matter, which advice,  
43 if not received in open court, shall be in writing and made a  
44 part of the record in the action or proceeding.

45 If a court is unable to determine what the law of a foreign  
46 country or a political subdivision of a foreign country is, the  
47 court may, as the ends of justice require, either apply the law  
48 of this State if it can do so consistently with the Constitutions  
49 of this State and of the United States or dismiss the action  
50 without prejudice.

51 SEC. 62. Section 1879 of the Code of Civil Procedure is re-  
52 pealed.

1 1879. ALL PERSONS CAPABLE OF PERCEPTION AND COMMUNI-  
2 CATION MAY BE WITNESSES. All persons, without exception,  
3 otherwise than is specified in the next two sections, who, hav-  
4 ing organs of sense, can perceive, and, perceiving, can make  
5 known their perceptions to others, may be witnesses. There-  
6 fore, neither parties nor other persons who have an interest in  
7 the event of an action or proceeding are excluded; nor those  
8 who have been convicted of crime; nor persons on account of  
9 their opinions on matters of religious belief; although, in  
10 every case the credibility of the witness may be drawn in  
11 question, as provided in Section 1847.

12 SEC. 63. Section 1880 of the Code of Civil Procedure is re-  
13 pealed.

14 1880. The following persons cannot be witnesses:

15 1. Those who are of unsound mind at the time of their pro-  
16 duction for examination.

17 2. Children under ten years of age, who appear incapable of  
18 receiving just impressions of the facts respecting which they  
19 are examined; or of relating them truly.

20 3. Parties or assignors of parties to an action or proceeding,  
21 or persons in whose behalf an action or proceeding is prose-  
22 cuted, against an executor or administrator upon a claim, or  
23 demand against the estate of a deceased person, as to any  
24 matter or fact occurring before the death of such deceased  
25 person.

26 SEC. 64. Section 1881 of the Code of Civil Procedure is re-  
27 pealed.

28 1881. There are particular relations in which it is the  
29 policy of the law to encourage confidence and to preserve it  
30 inviolate; therefore, a person cannot be examined as a witness  
31 in the following cases:

32 1. A husband cannot be examined for or against his wife  
33 without her consent; nor a wife for or against her husband,  
34 without his consent; nor can either, during the marriage or  
35 afterward, be, without the consent of the other, examined as to  
36 any communication made by one to the other during the mar-  
37 riage; but this exception does not apply to a civil action or  
38 proceeding by one against the other, nor to a criminal action  
39 or proceeding for a crime committed by one against the other,  
40 or for a crime committed against another person by a husband  
41 or wife while engaged in committing and connected with the  
42 commission of a crime by one against the other; or in an action  
43 for damages against another person for adultery committed by  
44 either husband or wife; or in a hearing held to determine the  
45 mental competency or condition of either husband or wife.

46 2. An attorney cannot, without the consent of his client, be  
47 examined as to any communication made by the client to him,  
48 or his advice given thereon in the course of professional em-  
49 ployment; nor can an attorney's secretary, stenographer, or  
50 clerk be examined, without the consent of his employer, con-  
51 cerning any fact the knowledge of which has been acquired in  
52 such capacity.

1 3. A clergyman, priest or religious practitioner of an estab-  
2 lished church cannot, without the consent of the person mak-  
3 ing the confession, be examined as to any confession made to  
4 him in his professional character in the course of discipline  
5 enjoined by the church to which he belongs.

6 4. A licensed physician or surgeon cannot, without the con-  
7 sent of his patient, be examined in a civil action, as to any  
8 information acquired in attending the patient, which was nec-  
9 essary to enable him to prescribe or act for the patient; pro-  
10 vided, however, that either before or after probate, upon the  
11 contest of any will executed, or claimed to have been executed,  
12 by such patient, or after the death of such patient, in any ac-  
13 tion involving the validity of any instrument executed, or  
14 claimed to have been executed, by him, conveying or trans-  
15 ferring any real or personal property, such physician or sur-  
16 geon may testify to the mental condition of said patient and  
17 in so testifying may disclose information acquired by him  
18 concerning said deceased which was necessary to enable him to  
19 prescribe or act for such deceased; provided further, that  
20 after the death of the patient, the executor of his will, or the  
21 administrator of his estate, or the surviving spouse of the de-  
22 ceased, or if there be no surviving spouse, the children of the  
23 deceased personally, or, if minors, by their guardian, may give  
24 such consent, in any action or proceeding brought to recover  
25 damages on account of the death of the patient; provided fur-  
26 ther, that where any person brings an action to recover dam-  
27 ages for personal injuries, such action shall be deemed to  
28 constitute a consent by the person bringing such action that  
29 any physician who has prescribed for or treated said person  
30 and whose testimony is material in said action shall testify;  
31 and provided further, that the bringing of an action, to re-  
32 cover for the death of a patient, by the executor of his will, or  
33 by the administrator of his estate, or by the surviving spouse  
34 of the deceased, or if there be no surviving spouse, by the chil-  
35 dren personally, or, if minors, by their guardian, shall consti-  
36 tute a consent by such executor, administrator, surviving  
37 spouse, or children or guardian, to the testimony of any physi-  
38 cian who attended said deceased.

39 5. A public officer cannot be examined as to communications  
40 made to him in official confidence, when the public interest  
41 would suffer by the disclosure.

42 6. A publisher, editor, reporter, or other person connected  
43 with or employed upon a newspaper, or by a press association  
44 or wire service, cannot be adjudged in contempt by a court,  
45 the Legislature, or any administrative body, for refusing to  
46 disclose the source of any information procured for publica-  
47 tion and published in a newspaper.

48 Nor can a radio or television news reporter or other person  
49 connected with or employed by a radio or television station be  
50 so adjudged in contempt for refusing to disclose the source of  
51 any information procured for and used for news or news com-  
52 mentary purposes on radio or television.



1     SEC. 65. Section 1883 of the Code of Civil Procedure is re-  
2     pealed.

3     1883. JUDGE OR A JUROR MAY BE WITNESS. The Judge him-  
4     self, or any juror, may be called as a witness by either party;  
5     but in such case it is in the discretion of the Court or Judge to  
6     order the trial to be postponed or suspended, and to take place  
7     before another Judge or jury.

8     SEC. 66. Section 1884 of the Code of Civil Procedure is re-  
9     pealed.

10    1884. WHEN AN INTERPRETER TO BE SWORN. When a wit-  
11    ness does not understand and speak the English language, an  
12    interpreter must be sworn to interpret for him. Any person,  
13    a resident of the proper county, may be summoned by any  
14    Court or Judge to appear before such Court or Judge to act  
15    as interpreter in any action or proceeding. The summons must  
16    be served and returned in like manner as a subpoena. Any  
17    person so summoned who fails to attend at the time and place  
18    named in the summons, is guilty of a contempt.

19    SEC. 67. Section 1885 of the Code of Civil Procedure is re-  
20    pealed.

21    1885. (a) In all criminal prosecutions, where the accused  
22    is a deaf person, he shall have all of the proceedings of the  
23    trial interpreted to him in a language that he can understand  
24    by a qualified interpreter appointed by the court.

25    (b) In all cases where the mental condition of a person is  
26    being considered and where such person may be committed to  
27    a mental institution, and where such person is a deaf person,  
28    all of the court proceedings, pertaining to him, shall be inter-  
29    preted to him in a language that he understands by a quali-  
30    fied interpreter appointed by the court.

31    (c) An interpreter who shall be appointed under the terms  
32    of this section shall be required to take an oath that he will  
33    make a true interpretation to the person accused or being  
34    examined of all the proceedings of his case in a language that  
35    he understands, and that he will repeat such person's answers  
36    to questions to counsel, court, or jury, in the English language,  
37    with his best skill and judgment.

38    (d) Interpreters appointed under this section shall be paid  
39    for their services a reasonable sum to be determined by the  
40    court, which shall be a charge against the county.

41    (e) As used in this section, "deaf person" means a person  
42    with a hearing loss so great as to prevent his understanding  
43    normal spoken language with or without a hearing aid.

44    SEC. 68. Section 1893 of the Code of Civil Procedure is  
45    amended to read:

46    1893. Every public officer having the custody of a public  
47    writing, which a citizen has a right to inspect, is bound to give  
48    him, on demand, a certified copy of it, on payment of the legal  
49    fees therefor; and such copy is admissible as evidence in like  
50    cases and with like effect as the original writing.

51    SEC. 69. Section 1901 of the Code of Civil Procedure is re-  
52    pealed.

1 1901. A copy of a public writing of any state or country,  
2 attested by the certificate of the officer having charge of the  
3 original, under the public seal of the state or country, is ad-  
4 missible as evidence of such writing.

5 SEC. 70. Section 1903 of the Code of Civil Procedure is re-  
6 pealed.

7 1903. RECITALS IN STATUTES, HOW FAR EVIDENCE. The re-  
8 citals in a public statute are conclusive evidence of the facts  
9 recited for the purpose of carrying it into effect, but no fur-  
10 ther. The recitals in a private statute are conclusive evidence  
11 between parties who claim under its provisions, but no further.

12 SEC. 71. Section 1905 of the Code of Civil Procedure is re-  
13 pealed.

14 1905. RECORD, HOW AUTHENTICATED AS EVIDENCE. A ju-  
15 dicial record of this State, or of the United States, may be  
16 proved by the production of the original, or by a copy thereof,  
17 certified by the Clerk or other person having the legal custody  
18 thereof. That of a sister State may be proved by the attesta-  
19 tion of the Clerk and the seal of the Court annexed, if there  
20 be a Clerk and seal, together with a certificate of the Chief  
21 Judge or presiding magistrate, that the attestation is in due  
22 form.

23 SEC. 72. Section 1906 of the Code of Civil Procedure is re-  
24 pealed.

25 1906. A judicial record of a foreign country may be proved  
26 by the attestation of the Clerk, with the seal of the Court  
27 annexed, if there be a Clerk and a seal, or of the legal keeper  
28 of the record, with the seal of his office annexed, if there be a  
29 seal, together with a certificate of the Chief Judge, or presid-  
30 ing magistrate, that the person making the attestation is the  
31 Clerk of the Court or the legal keeper of the record, and, in  
32 either case, that the signature of such person is genuine, and  
33 that the attestation is in due form. The signature of the Chief  
34 Judge or presiding magistrate must be authenticated by the  
35 certificate of the Minister or Ambassador, or a Consul, Vice  
36 Consul, or Consular Agent of the United States in such foreign  
37 country.

38 SEC. 73. Section 1907 of the Code of Civil Procedure is re-  
39 pealed.

40 1907. ORAL EVIDENCE OF A FOREIGN RECORD. A copy of the  
41 judicial record of a foreign country is also admissible in evi-  
42 dence, upon proof:

43 1. That the copy offered has been compared by the witness  
44 with the original, and is an exact transcript of the whole of it;

45 2. That such original was in the custody of the Clerk of the  
46 Court or other legal keeper of the same; and,

47 3. That the copy is duly attested by a seal which is proved  
48 to be the seal of the Court where the record remains, if it be  
49 the record of a Court; or if there be no such seal, or if it be  
50 not a record of a Court, by the signature of the legal keeper  
51 of the original.

1 SEC. 74. Section 1908.5 is added to the Code of Civil Pro-  
2 cedure, to read:

3 1908.5. When a judgment or order of a court is conclusive,  
4 the judgment or order must be alleged in the pleadings if  
5 there be an opportunity to do so; if there be no such oppor-  
6 tunity, the judgment or order may be used as evidence.

7 SEC. 75. Section 1918 of the Code of Civil Procedure is re-  
8 pealed.

9 1918. Manner of proving other official documents. Other  
10 official documents may be proved, as follows:

11 1. Acts of the executive of this state, by the records of the  
12 state department of the state, and of the United States, by the  
13 records of the state department of the United States, certified  
14 by the heads of those departments respectively. They may also  
15 be proved by public documents printed by order of the Legis-  
16 lature or congress, or either house thereof.

17 2. The proceedings of the Legislature of this state, or of  
18 congress, by the journals of those bodies respectively, or either  
19 house thereof, or by published statutes or resolutions, or by  
20 copies certified by the clerk or printed by their order.

21 3. The acts of the executive, or the proceedings of the legis-  
22 lature of a sister state, in the same manner.

23 4. The acts of the executive, or the proceedings of the legis-  
24 lature of a foreign country, by journals published by their  
25 authority, or commonly received in that country as such, or  
26 by a copy certified under the seal of the country or sovereign,  
27 or by a recognition thereof in some public act of the executive  
28 of the United States.

29 5. Acts of a county or municipal corporation of this state,  
30 or of a board or department thereof, by a copy, certified by  
31 the legal keeper thereof, or by a printed book published by the  
32 authority of such county or corporation.

33 6. Documents of any other class in this state, by the origi-  
34 nal, or by a copy, certified by the legal keeper thereof.

35 7. Documents of any other class in a sister state, by the  
36 original, or by a copy, certified by the legal keeper thereof,  
37 together with the certificate of the secretary of state, judge of  
38 the supreme, superior, or county court, or mayor of a city of  
39 such state, that the copy is duly certified by the officer having  
40 the legal custody of the original.

41 8. Documents of any other class in a foreign country, by  
42 the original, or by a copy, certified by the legal keeper thereof,  
43 with a certificate, under seal, of the country or sovereign, that  
44 the document is a valid and subsisting document of such coun-  
45 try, and the copy is duly certified by the officer having the  
46 legal custody of the original, provided, that in any foreign  
47 country which is composed of or divided into sovereign and/or  
48 independent states or other political subdivisions, the certifi-  
49 cate of the country or sovereign herein mentioned may be  
50 executed by either the chief executive or the head of the state  
51 department of the state or other political subdivision of such  
52 foreign country in which said documents are lodged or kept,

1 under the seal of such state or other political subdivision; and  
2 provided, further, that the signature of the sovereign of a  
3 foreign country or the signature of the chief executive or of  
4 the head of the state department of a state or political sub-  
5 division of a foreign country must be authenticated by the  
6 certificate of the minister or ambassador or a consul, vice con-  
7 sul or consular agent of the United States in such foreign  
8 country.

9 9. Documents in the departments of the United States gov-  
10 ernment, by the certificates of the legal custodian thereof.

11 SEC. 76. Section 1919 of the Code of Civil Procedure is re-  
12 pealed.

13 1919. PUBLIC RECORD OF PRIVATE WRITING EVIDENCE. A  
14 public record of a private writing may be proved by the origi-  
15 nal record, or by a copy thereof, certified by the legal keeper  
16 of the record.

17 SEC. 77. Section 1919a of the Code of Civil Procedure is  
18 repealed.

19 1919a. Church records and/or registers and/or entries  
20 therefrom and/or certificates kept or issued by a clergyman or  
21 other person in accordance with law or in accordance with the  
22 rules, regulations and/or requirements of a religious denomi-  
23 nation, society or church, shall be competent evidence of the  
24 facts recited therein, if properly proved, attested and au-  
25 thenticated as provided in Section 1919b.

26 SEC. 78. Section 1919b of the Code of Civil Procedure is  
27 repealed.

28 1919b. Church records or registers or entries therefrom or  
29 certificates, of the character mentioned in Section 1919a, in  
30 order to be admissible in evidence, shall be proved by the  
31 original or by a copy thereof certified by the clergyman or  
32 other person having the custody of the original, provided that  
33 the genuineness of the signature of the clergyman or other  
34 person issuing such certificate or certifying to a copy of the  
35 same or of such record or register or of entries therefrom, and  
36 the fact that he is the person having the custody of such record  
37 or register and/or certificate, and that such certificate or copy  
38 of certificate, record, register or entries therefrom, was duly  
39 issued by the person issuing the same shall be attested either  
40 by the bishop, chief priest, president, district superintendent  
41 or other presiding officer of such religious denomination, so-  
42 ciety or church, under his seal, if he has a seal, or by a notary  
43 public or other civil officer authorized by law to take acknowl-  
44 edgments or to issue certificates as to the genuineness of sig-  
45 natures and/or the correctness of documents or of copies  
46 thereof, under his seal, if he has a seal; provided, further,  
47 that the fact that such record, register and/or certificate is a  
48 document kept in accordance with law or in accordance with  
49 the rules, regulations and/or requirements of a religious de-  
50 nomination, society or church may be proved by the certificate  
51 of such bishop, chief priest, president, district superintendent  
52 or other presiding officer of such religious denomi-

1 ciety or church or of a notary public or other civil officer  
 2 authorized by law to take acknowledgments and/or to issue  
 3 certificates as to the genuineness of signatures and/or the cor-  
 4 rectness of documents or of copies thereof, under his seal, if  
 5 he has a seal; and provided, further, that the genuineness of  
 6 the signature and the status of such bishop, chief priest, presi-  
 7 dent, district superintendent or other presiding officer of such  
 8 religious denomination, society or church, and/or of such no-  
 9 tary public or other civil officer shall, in this state or in any  
 10 other state in the United States, be authenticated by the certi-  
 11 ficate of the secretary of state of such state, and shall, in a  
 12 foreign country, be authenticated by the certificate of the  
 13 sovereign or other chief executive of such foreign country or  
 14 the head of the state department thereof, under the seal of  
 15 such foreign country or of such state department, and that  
 16 the signature of such sovereign, chief executive or of the head  
 17 of the state department of such foreign country must be au-  
 18 thenticated by the certificate of the minister or ambassador  
 19 or a consul, vice consul or consular agent of the United States  
 20 in such foreign country; but if such foreign country be one  
 21 composed of or divided into sovereign and/or independent  
 22 states or other political subdivisions, the certificate of the chief  
 23 executive or of the head of the state department of such  
 24 foreign country herein referred to, may be executed by the  
 25 chief executive or by the head of the state department of the  
 26 state or other political subdivision of such foreign country,  
 27 in which said certificates, records, and/or registers are lodged  
 28 or kept, under the seal of such state or other political sub-  
 29 division; and the signature of the chief executive or of the  
 30 head of the state department of such state or other political  
 31 subdivision shall be authenticated in the manner hereinbefore  
 32 provided for the authentication of the signature of the sov-  
 33 ereign, chief executive or head of the state department of a  
 34 foreign country.

35 SEC. 79. Section 1920 of the Code of Civil Procedure is re-  
 36 pealed.

37 1920. Entries in public or other official books or records,  
 38 made in the performance of his duty by a public officer of  
 39 this State, or by another person in the performance of a duty  
 40 specially enjoined by law, are prima facie evidence of the  
 41 facts stated therein.

42 SEC. 80. Section 1920a of the Code of Civil Procedure is  
 43 repealed.

44 1920a. Photographic copies of the records of the Depart-  
 45 ment of Motor Vehicles when certified by the department, shall  
 46 be admitted in evidence with the same force and effect as the  
 47 original records.

48 SEC. 81. Section 1920b of the Code of Civil Procedure is  
 49 repealed.

50 1920b. A print, whether enlarged or not, from any photo-  
 51 graphic film, including any photographic plate, microphoto-  
 52 graphic film, or photostatic negative, of any original record,

1 document, instrument, plan, book or paper may be used in  
2 all instances that the original record, document, instrument,  
3 plan, book or paper might have been used, and shall have the  
4 full force and effect of said original for all purposes; provided,  
5 that at the time of the taking of said photographic film, micro-  
6 photographic, photostatic or similar reproduction, the person  
7 or officer under whose direction and control the same was  
8 taken, attached thereto, or to the sealed container in which  
9 the same was placed and has been kept, or incorporated in  
10 said photographic film, microphotographic, photostatic or simi-  
11 lar reproduction; a certification complying with the provisions  
12 of Section 1923 of this code and stating the date on which, and  
13 the fact that, the same was so taken under his direction and  
14 control.

15 SEC. 82. Section 1921 of the Code of Civil Procedure is re-  
16 pealed.

17 1921. JUSTICE'S JUDGMENT IN OTHER STATES, HOW PROVED.  
18 A transcript from the record or docket of a Justice of the  
19 Peace of a sister State, of a judgment rendered by him, of  
20 the proceedings in the action before the judgment, of the  
21 execution and return, if any, subscribed by the Justice and  
22 verified in the manner prescribed in the next section, is admis-  
23 sible evidence of the facts stated therein.

24 SEC. 83. Section 1922 of the Code of Civil Procedure is re-  
25 pealed.

26 1922. SAME. There must be attached to the transcript a  
27 certificate of the Justice that the transcript is in all respects  
28 correct, and that he had jurisdiction of the action, and also a  
29 further certificate of the Clerk or prothonotary of the county  
30 in which the Justice resided at the time of rendering the judg-  
31 ment, under the seal of the county, or the seal of the Court  
32 of Common Pleas or County Court thereof, certifying that the  
33 person subscribing the transcript was, at the date of the judg-  
34 ment, a Justice of the Peace in the county, and that the signa-  
35 ture is genuine. Such judgment, proceedings, and jurisdiction  
36 may also be proved by the Justice himself, on the production  
37 of his docket, or by a copy of the judgment, and his oral  
38 examination as a witness.

39 SEC. 84. Section 1923 of the Code of Civil Procedure is re-  
40 pealed.

41 1923. Whenever a copy of a writing is certified for the  
42 purpose of evidence, the certificate must state in substance  
43 that the copy is a correct copy of the original, or of a specified  
44 part thereof, as the case may be. The certificate must be under  
45 the official seal of the certifying officer, if there be any, or if  
46 he be the Clerk of a Court having a seal, under the seal of  
47 such Court.

48 SEC. 85. Section 1924 of the Code of Civil Procedure is re-  
49 pealed.

50 1924. The provisions of the preceding sections of this  
51 Article applicable to the public writings of a sister State, are

1 equally applicable to the public writings of the United States,  
2 or a Territory of the United States.

3 SEC. 86. Section 1925 of the Code of Civil Procedure is re-  
4 pealed.

5 1925. CERTIFICATES OF PURCHASE PRIMARY EVIDENCE OF  
6 OWNERSHIP. A certificate of purchase, or of location, of any  
7 lands in this State, issued or made in pursuance of any law of  
8 the United States, or of this State, is primary evidence that  
9 the holder or assignee of such certificate is the owner of the  
10 land described therein; but this evidence may be overcome by  
11 proof that, at the time of the location, or time of filing a pre-  
12 emption claim on which the certificate may have been issued,  
13 the land was in the adverse possession of the adverse party,  
14 or those under whom he claims, or that the adverse party is  
15 holding the land for mining purposes.

16 SEC. 87. Section 1926 of the Code of Civil Procedure is re-  
17 pealed.

18 1926. An entry made by an officer, or Board of officers, or  
19 under the direction and in the presence of either, in the course  
20 of official duty, is prima facie evidence of the facts stated in  
21 such entry.

22 SEC. 88. Section 1927 of the Code of Civil Procedure is re-  
23 pealed.

24 1927. Whenever any patent for mineral lands within the  
25 State of California, issued or granted by the United States of  
26 America, shall contain a statement of the date of the location  
27 of a claim or claims, upon which the granting or issuance of  
28 such patent is based, such statement shall be prima facie evi-  
29 dence of the date of such location.

30 SEC. 89. Section 1927.5 of the Code of Civil Procedure is  
31 repealed.

32 1927.5. Duplicate copies and authenticated translations of  
33 original Spanish title papers relating to land claims in this  
34 State, derived from the Spanish or Mexican Governments,  
35 prepared under the supervision of the Keeper of Archives,  
36 authenticated by the Surveyor-General or his successor and  
37 by the Keeper of Archives, and filed with a county recorder,  
38 in accordance with Chapter 281 of the Statutes of 1865-6, are  
39 receivable as prima facie evidence in all the courts of this  
40 State with like force and effect as the originals and without  
41 proving the execution of such originals.

42 SEC. 90. Section 1928 of the Code of Civil Procedure is re-  
43 pealed.

44 1928. A deed of conveyance of real property, purporting  
45 to have been executed by a proper officer in pursuance of legal  
46 process of any of the courts of record of this state, acknowl-  
47 edged and recorded in the office of the recorder of the county  
48 wherein the real property therein described is situated, or the  
49 record of such deed, or a certified copy of such record is prima  
50 facie evidence that the property or interest therein described  
51 was thereby conveyed to the grantee named in such deed.

1 SEC. 91. Article 2.1 (commencing with Section 1928.1) of  
2 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure  
3 is repealed.

4 SEC. 92. Section 1936 of the Code of Civil Procedure is re-  
5 pealed.

6 1936. Historical works, books of science or art, and pub-  
7 lished maps or charts, when made by persons indifferent be-  
8 tween the parties, are prima facie evidence of facts of general  
9 notoriety and interest.

10 SEC. 93. Section 1936.1 of the Code of Civil Procedure is  
11 repealed.

12 1936.1. In-hospital medical staff committees of a licensed  
13 hospital may engage in research and medical study for the  
14 purpose of reducing morbidity or mortality, and may make  
15 findings and recommendations relating to said purpose. The  
16 written records of interviews, reports, statements or memo-  
17 randa of such in-hospital medical staff committees relating to  
18 such medical studies shall be subject to Sections 2016 and 2036  
19 of this code relating to discovery proceedings, but shall not be  
20 admitted as evidence in any action of any kind in any court  
21 or before any administrative body, agency or person; pro-  
22 vided, however, that the admissibility in evidence of the origi-  
23 nal medical records of any patient shall not be affected by this  
24 section.

25 This section shall not be applicable to evidence which is  
26 material and relevant to a criminal proceeding.

27 SEC. 94. Section 1937 of the Code of Civil Procedure is re-  
28 pealed.

29 1937. ORIGINAL WRITING TO BE PRODUCED OR ACCOUNTED FOR.  
30 The original writing must be produced and proved, except as  
31 provided in Sections 1855 and 1919. If it has been lost, proof  
32 of the loss must first be made before evidence can be given  
33 of its contents. Upon such proof being made, together with  
34 proof of the due execution of the writing, its contents may be  
35 proved by a copy, or by a recital of its contents in some  
36 authentic document, or by the recollection of a witness, as  
37 provided in Section 1855.

38 SEC. 95. Section 1938 of the Code of Civil Procedure is re-  
39 pealed.

40 1938. WHEN IN POSSESSION OF ADVERSE PARTY, NOTICE TO BE  
41 GIVEN. If the writing be in the custody of the adverse party,  
42 he must first have reasonable notice to produce it. If he then  
43 fail to do so, the contents of the writing may be proved as in  
44 case of its loss. But the notice to produce it is not necessary  
45 where the writing is itself a notice, or where it has been wrong-  
46 fully obtained or withheld by the adverse party.

47 SEC. 96. Section 1939 of the Code of Civil Procedure is re-  
48 pealed.

49 1939. WRITINGS CALLED FOR AND INSPECTED MAY BE WITH-  
50 HELD. Though a writing called for by one party is produced  
51 by the other, and is thereupon inspected by the party calling



1 for it, he is not obliged to produce it as evidence in the case.

2 SEC. 97. Section 1940 of the Code of Civil Procedure is re-  
3 pealed.

4 1940. Any writing may be proved either:

5 One—By any one who saw the writing executed; or,

6 Two—By evidence of the genuineness of the handwriting of  
7 the maker; or,

8 Three—By a subscribing witness.

9 SEC. 98. Section 1941 of the Code of Civil Procedure is re-  
10 pealed.

11 1941. OTHER WITNESSES MAY ALSO TESTIFY. If the sub-  
12 scribing witness denies or does not recollect the execution of  
13 the writing, its execution may still be proved by other evi-  
14 dence.

15 SEC. 99. Section 1942 of the Code of Civil Procedure is re-  
16 pealed.

17 1942. WHEN EVIDENCE OF EXECUTION NOT NECESSARY.  
18 Where, however, evidence is given that the party against  
19 whom the writing is offered has at any time admitted its execu-  
20 tion no other evidence of the execution need be given, when  
21 the instrument is one mentioned in Section 1945, or one pro-  
22 duced from the custody of the adverse party, and has been  
23 acted upon by him as genuine.

24 SEC. 100. Section 1943 of the Code of Civil Procedure is  
25 repealed.

26 1943. EVIDENCE OF HANDWRITING. The handwriting of a  
27 person may be proved by any one who believes it to be his, and  
28 who has seen him write, or has seen writings purporting to be  
29 his, upon which he has acted or been charged, and who has  
30 thus acquired a knowledge of his handwriting.

31 SEC. 101. Section 1944 of the Code of Civil Procedure is  
32 repealed.

33 1944. Evidence respecting the handwriting may also be  
34 given by a comparison, made by the witness or the jury, with  
35 writings admitted or treated as genuine by the party against  
36 whom the evidence is offered, or proved to be genuine to the  
37 satisfaction of the Judge.

38 SEC. 102. Section 1945 of the Code of Civil Procedure is  
39 repealed.

40 1945. SAME. Where a writing is more than thirty years  
41 old, the comparisons may be made with writings purporting  
42 to be genuine, and generally respected and acted upon as such,  
43 by persons having an interest in knowing the fact.

44 SEC. 103. Section 1946 of the Code of Civil Procedure is  
45 repealed.

46 1946. The entries and other writings of a decedent, made  
47 at or near the time of the transaction, and in a position to  
48 know the facts stated therein, may be read as prima facie evi-  
49 dence of the facts stated therein, in the following cases:

50 One—When the entry was made against the interest of the  
51 person making it.

1 Two—When it was made in a professional capacity and in  
2 the ordinary course of professional conduct.

3 Three—When it was made in the performance of a duty  
4 specially enjoined by law.

5 SEC. 104. Section 1947 of the Code of Civil Procedure is  
6 repealed.

7 1947. COPIES OF ENTRIES ALSO ALLOWED. When an entry  
8 is repeated in the regular course of business, one being copied  
9 from another at or near the time of the transaction, all the  
10 entries are equally regarded as originals.

11 SEC. 105. Section 1948 of the Code of Civil Procedure is  
12 repealed.

13 1948. Every private writing, except last wills and testa-  
14 ments, may be acknowledged or proved and certified in the  
15 manner provided for the acknowledgment or proof of con-  
16 veyances of real property, and the certificate of such acknowl-  
17 edgment or proof is prima facie evidence of the execution of  
18 the writing, in the same manner as if it were a conveyance  
19 of real property.

20 SEC. 106. Section 1951 of the Code of Civil Procedure is  
21 repealed.

22 1951. Every instrument conveying or affecting real prop-  
23 erty, acknowledged or proved and certified, as provided in the  
24 Civil Code, may, together with the certificate of acknowledg-  
25 ment or proof, be read in evidence in an action or proceeding,  
26 without further proof; also, the original record of such con-  
27 veyance or instrument thus acknowledged or proved, or a cer-  
28 tified copy of the record of such conveyance or instrument  
29 thus acknowledged or proved, may be read in evidence, with  
30 the like effect as the original instrument, without further  
31 proof.

32 SEC. 107. Article 5 (commencing with Section 1953e) of  
33 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure  
34 is repealed.

35 SEC. 108. Article 6 (commencing with Section 1953i) of  
36 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure  
37 is repealed.

38 SEC. 109. Chapter 4 (consisting of Section 1954) of Title  
39 2 of Part IV of the Code of Civil Procedure is repealed.

40 SEC. 110. Chapter 5 (commencing with Section 1957) of  
41 Title 2 of Part IV of the Code of Civil Procedure is repealed.

42 SEC. 111. Section 1967 of the Code of Civil Procedure is  
43 repealed.

44 1967. INDISPENSABLE EVIDENCE, WHAT. The law makes  
45 certain evidence necessary to the validity of particular acts,  
46 or the proof of particular facts.

47 SEC. 112. Section 1968 of the Code of Civil Procedure is  
48 repealed.

49 1968. TO PROVE PERJURY AND TREASON, MORE THAN ONE  
50 WITNESS REQUIRED. Perjury and treason must be proved by  
51 testimony of more than one witness. Treason by the testimony  
52 of two witnesses to the same overt act; and perjury by the

1 testimony of two witnesses, or one witness and corroborating  
2 circumstances.

3 SEC. 113. Section 1973 of the Code of Civil Procedure is  
4 repealed.

5 1973. In the following cases the agreement is invalid, un-  
6 less the same or some note or memorandum thereof be in writ-  
7 ing, and subscribed by the party charged, or by his agent.  
8 Evidence, therefore, of the agreement, cannot be received  
9 without the writing or secondary evidence of its contents:

10 1. An agreement that by its terms is not to be performed  
11 within a year from the making thereof;

12 2. A special promise to answer for the debt, default, or  
13 miscarriage of another, except in the cases provided for in  
14 Section 2794 of the Civil Code;

15 3. An agreement made upon consideration of marriage other  
16 than a mutual promise to marry;

17 4. An agreement for the leasing for a longer period than  
18 one year, or for the sale of real property, or of an interest  
19 therein; and such agreement, if made by an agent of the  
20 party sought to be charged, is invalid, unless the authority of  
21 the agent is in writing, subscribed by the party sought to be  
22 charged;

23 5. An agreement authorizing or employing an agent or bro-  
24 ker to purchase or sell real estate, or to lease real estate for  
25 a longer period than one year, or to procure, introduce, or  
26 find a purchaser or seller of real estate or a lessee or lesser  
27 of real estate where such lease is for a longer period than one  
28 year, for compensation or a commission;

29 6. An agreement which by its terms is not to be performed  
30 during the lifetime of the promisor, or an agreement to devise  
31 or bequeath any property, or to make any provision for any  
32 person by will;

33 7. An agreement by a purchaser of real property to pay an  
34 indebtedness secured by a mortgage or deed of trust upon the  
35 property purchased, unless assumption of said indebtedness  
36 by the purchaser is specifically provided for in the conveyance  
37 of such property.

38 SEC. 114. Section 1974 of the Code of Civil Procedure is  
39 amended to read:

40 1974. REPRESENTATION OF CREDIT BY WRITING. No evi-  
41 dence is admissible to charge a person *is liable* upon a repre-  
42 sentation as to the credit of a third person, unless such rep-  
43 resentation, or some memorandum thereof, be in writing, and  
44 either subscribed by or in the handwriting of the party to be  
45 charged *held liable*.

46 SEC. 115. Chapter 7 (consisting of Section 1978) of Title  
47 2 of Part IV of the Code of Civil Procedure is repealed.

48 SEC. 116. Chapter 8 (commencing with Section 1980.1) of  
49 Title 2 of Part IV of the Code of Civil Procedure is repealed.

50 SEC. 117. Chapter 1 (commencing with Section 1981) of  
51 Title 3 of Part IV of the Code of Civil Procedure is repealed.

1 SEC. 118. Section 1998 of the Code of Civil Procedure is  
2 repealed.

3 1998. (a) Except as provided in Section 1998.4, when a  
4 subpoena duces tecum is served upon the custodian of records  
5 or other qualified witness from a licensed or county hospital,  
6 state hospital or hospital in an institution under the jurisdic-  
7 tion of the Department of Corrections in an action in which  
8 the hospital is neither a party nor the place where any cause  
9 of action is alleged to have arisen and such subpoena requires  
10 the production of all or any part of the records of the hospital  
11 relating to the care or treatment of a patient in such hospital,  
12 it shall be sufficient compliance therewith if the custodian or  
13 other officer of the hospital shall, within five days after the  
14 receipt of such subpoena, deliver by mail or otherwise a true  
15 and correct copy (which may be a photographic or microphoto-  
16 graphic reproduction) of all the records described in such sub-  
17 poena to the clerk of court or to the court if there be no clerk  
18 or to such other person as described in subdivision (a) of Sec-  
19 tion 2018, together with the affidavit described in Section  
20 1998.1.

21 (b) The copy of the records shall be separately enclosed in  
22 an inner envelope or wrapper, sealed, with the title and num-  
23 ber of the action, name of witness and date of subpoena clearly  
24 inscribed thereon; the sealed envelope or wrapper shall then  
25 be enclosed in an outer envelope or wrapper, sealed, directed  
26 as follows:

27 If the subpoena directs attendance in court, to the clerk of  
28 such court, or to the judge thereof, if there be no clerk; if the  
29 subpoena directs attendance at a deposition or other hearing,  
30 to the officer before whom the deposition is to be taken, at the  
31 place designated in the subpoena for the taking of the depo-  
32 sition or at his place of business; in other cases, to the officer,  
33 body, or tribunal conducting the hearing, at a like address.

34 (c) Unless the parties to the action or proceeding otherwise  
35 agree, or unless the sealed envelope or wrapper is returned to  
36 a witness who is to appear personally, the copy of the records  
37 shall remain sealed and shall be opened only at the time of  
38 trial, deposition, or other hearing, upon the direction of the  
39 judge, officer, body, or tribunal conducting the proceeding, in  
40 the presence of all parties who have appeared in person or by  
41 counsel at such trial, deposition, or hearing. Records which are  
42 not introduced in evidence or required as part of the record  
43 shall be returned to the person or entity from whom received.

44 SEC. 119. Section 1998.1 of the Code of Civil Procedure is  
45 repealed.

46 1998.1. The records shall be accompanied by the affidavit  
47 of the custodian or other qualified witness, stating in substance  
48 each of the following: (a) that the affiant is the duly author-  
49 ized custodian of the records and has authority to certify said  
50 records, (b) that the copy is a true copy of all the records  
51 described in the subpoena, (c) that the records were prepared  
52 by the personnel of the hospital, staff physicians, or persons

1 acting under the control of either, in the ordinary course of  
2 hospital business at or near the time of the act, condition or  
3 event. If the hospital has none of the records described, or  
4 only part thereof, the custodian shall so state in the affidavit,  
5 and deliver the affidavit and such records as are available in  
6 the manner provided in Section 1998.

7 SEC. 120. Section 1998.2 of the Code of Civil Procedure is  
8 repealed.

9 1998.2. The copy of the records shall be admissible in evi-  
10 dence to the same extent as though the original thereof were  
11 offered and the custodian had been present and testified to the  
12 matters stated in the affidavit. The affidavit shall be admissible  
13 in evidence and the matters stated therein shall be presumed  
14 true in the absence of a preponderance of evidence to the con-  
15 trary. When more than one person has knowledge of the facts,  
16 more than one affidavit may be made.

17 SEC. 121. Section 1998.3 of the Code of Civil Procedure is  
18 repealed.

19 1998.3. Sections 1998, 1998.1, 1998.2, 1998.4, and 1998.5  
20 shall not be interpreted to require tender or payment of more  
21 than one witness and mileage fee or other charge unless there  
22 shall be an agreement to the contrary.

23 SEC. 122. Section 1998.4 of the Code of Civil Procedure is  
24 repealed.

25 1998.4. The personal attendance of the custodian or other  
26 qualified witness and the production of the original records  
27 shall be required if the subpoena duces tecum contains a clause  
28 which reads:

29 "The procedure authorized pursuant to subdivision (a) of  
30 Section 1998, and Section 1998.1 and 1998.2 of the Code of  
31 Civil Procedure will not be deemed sufficient compliance with  
32 this subpoena."

33 SEC. 123. Section 1998.5 of the Code of Civil Procedure is  
34 repealed.

35 1998.5. In the event more than one subpoena duces tecum  
36 is served upon the custodian of records or other qualified wit-  
37 ness from a licensed or county hospital or hospital in an in-  
38 stitution under the jurisdiction of the Department of Corre-  
39 ctions and the personal attendance of the custodian or other  
40 qualified witness is required pursuant to Section 1998.4 of the  
41 Code of Civil Procedure the witness shall be deemed to be the  
42 witness of the party serving the first such subpoena duces  
43 tecum.

44 SEC. 124. Section 2009 of the Code of Civil Procedure is  
45 amended to read:

46 2009. An affidavit may be used to verify a pleading or a  
47 paper in a special proceeding, to prove the service of a sum-  
48 mons, notice, or other paper in an action or special proceed-  
49 ing, to obtain a provisional remedy, the examination of a wit-  
50 ness, or a stay of proceedings, and in uncontested proceedings  
51 to establish a record of birth, or upon a motion, and in any

1 other case expressly permitted by ~~some other provision of this~~  
2 ~~code statute~~.

3 SEC. 125. Section 2016 of the Code of Civil Procedure is  
4 amended to read:

5 2016. (a) Any party may take the testimony of any per-  
6 son, including a party, by deposition upon oral examination or  
7 written interrogatories for the purpose of discovery or for use  
8 as evidence in the action or for both purposes. Such depositions  
9 may be taken in an action at any time after the service of the  
10 summons or in a special proceeding after the service of the  
11 petition or after the appearance of the defendant or respond-  
12 ent. After commencement of the action or proceedings, the  
13 deposition may be taken without leave of court, except that  
14 leave of court, granted with or without notice, and for good  
15 cause shown, must be obtained if the notice of the taking of  
16 the deposition is served by the plaintiff within 20 days after  
17 service of the summons or petition on, or appearance of, the  
18 defendant or respondent. The attendance of witnesses or the  
19 production of books, documents, or other things at depositions  
20 may be compelled by the use of subpoena as provided in Chap-  
21 ter 2 (commencing with Section 1985), Title 3, Part 4 of this  
22 code.

23 (b) Unless otherwise ordered by the court as provided by  
24 subdivision (b) or (d) of Section 2019 of this code, the depo-  
25 nent may be examined regarding any matter, not privileged,  
26 which is relevant to the subject matter involved in the pend-  
27 ing action, whether it relates to the claim or defense of the  
28 examining party, or to the claim or defense of any other  
29 party, including the existence, description, nature, custody,  
30 condition and location of any books, documents, or other tangi-  
31 ble things and the identity and location of persons having  
32 knowledge of relevant facts. It is not ground for objection  
33 that the testimony will be inadmissible at the trial if the testi-  
34 mony sought appears reasonably calculated to lead to the dis-  
35 covery of admissible evidence. All matters which are privi-  
36 leged against disclosure upon the trial under the law of this  
37 State are privileged against disclosure through any discovery  
38 procedure. This article shall not be construed to change the  
39 law of this State with respect to the existence of any privilege,  
40 whether provided for by statute or by judicial decision.

41 The work product of an attorney shall not be discoverable  
42 unless the court determines that denial of discovery will un-  
43 fairly prejudice the party seeking discovery in preparing his  
44 claim or defense or will result in an injustice, and any writ-  
45 ing that reflects an attorney's impressions, conclusions, opin-  
46 ions, or legal research or theories shall not be discoverable un-  
47 der any circumstances.

48 (c) Examination and cross-examination of deponents may  
49 proceed as permitted at the trial ~~under the provisions of this~~  
50 ~~code~~.

51 (d) At the trial or upon the hearing of a motion or an  
52 interlocutory proceeding, any part or all of a deposition, so far

1 as admissible under the rules of evidence, may be used against  
2 any party who was present or represented at the taking of  
3 the deposition or who had due notice thereof, in accordance  
4 with any one of the following provisions:

5 (1) Any deposition may be used by any party for the pur-  
6 pose of contradicting or impeaching the testimony of deponent  
7 as a witness.

8 (2) The deposition of a party to the record of any civil  
9 action or proceeding or of a person for whose immediate bene-  
10 fit said action or proceeding is prosecuted or defended, or of  
11 anyone who at the time of taking the deposition was an officer,  
12 director, superintendent, member, agent, employee, or manag-  
13 ing agent of any such party or person may be used by an  
14 adverse party for any purpose.

15 (3) The deposition of a witness, whether or not a party,  
16 may be used by any party for any purpose if the court finds:  
17 (i) that the witness is *unavailable as a witness within the*  
18 *meaning of Section 240 of the Evidence Code or dead; or (ii)*  
19 *that the witness is at a greater distance than 150 miles from*  
20 *the place of trial or hearing, or is out of the State, unless it*  
21 *appears that the absence of the witness was procured by the*  
22 *party offering the deposition; or (iii) that the witness is unable*  
23 *to attend or testify because of age, sickness, infirmity, or im-*  
24 *prisonment; or (iv) that the party offering the deposition has*  
25 *been unable to procure the attendance of the witness by sub-*  
26 *poena; or (v) (ii) upon application and notice, that such ex-*  
27 *ceptional circumstances exist as to make it desirable, in the*  
28 *interest of justice and with due regard to the importance of*  
29 *presenting the testimony of witnesses orally in open court, to*  
30 *allow the deposition to be used.*

31 (4) Subject to the requirements of this section, a party may  
32 offer in evidence all or any part of a deposition, and if such  
33 party introduces only part of such deposition, any party may  
34 introduce any other parts.

35 Substitution of parties does not affect the right to use depo-  
36 sitions previously taken; and, when an action in any court  
37 of the United States or of any state has been dismissed and  
38 another action involving the same subject matter is afterward  
39 brought between the same parties or their representatives or  
40 successors in interest, all depositions lawfully taken and duly  
41 filed in the former action may be used in the latter as if origi-  
42 nally taken therefor.

43 (e) Subject to the provisions of subdivision (c) of Section  
44 2021 of this code, objection may be made at the trial or hear-  
45 ing to receiving in evidence any deposition or part thereof for  
46 any reason which would require the exclusion of the evidence  
47 if the witness were then present and testifying.

48 (f) A party shall not be deemed to make a person his own  
49 witness for any purpose by taking his deposition. Except where  
50 the deposition is used under the provisions of paragraph (2)  
51 of subdivision (d) of this section, the introduction in evidence  
52 of the deposition or any part thereof for any purpose other

1 than that of contradicting or impeaching the deponent, or for  
2 explaining or clarifying portions of the said deposition offered  
3 by an adverse party, makes the deponent the witness of the  
4 party introducing the deposition, as to the portions of the  
5 deposition introduced by said party. At the trial or hearing  
6 any party may rebut any relevant evidence contained in a  
7 deposition whether introduced by him or by another party.

8 (g) It is the policy of this State (i) to preserve the rights  
9 of attorneys to prepare cases for trial with that degree of  
10 privacy necessary to encourage them to prepare their cases  
11 thoroughly and to investigate not only the favorable but the  
12 unfavorable aspects of such cases and (ii) to prevent an at-  
13 torney from taking undue advantage of his adversary's in-  
14 dustry or efforts.

15 SEC. 126. Article 6 (commencing with Section 2042) of  
16 Chapter 3 of Title 3 of Part IV of the Code of Civil Procedure  
17 is repealed.

18 SEC. 127. Title 4 (consisting of Section 2061) of Part IV  
19 of the Code of Civil Procedure is repealed.

20 SEC. 128. Section 2065 of the Code of Civil Procedure is  
21 repealed.

22 ~~2065. A witness must answer questions legal and pertinent  
23 to the matter in issue, though his answer may establish a claim  
24 against himself; but he need not give an answer which will  
25 have a tendency to subject him to punishment for a felony;  
26 nor need he give an answer which will have a direct tendency  
27 to degrade his character, unless it be to the very fact in issue,  
28 or to a fact from which the fact in issue would be presumed.  
29 But a witness must answer as to the fact of his previous con-  
30 viction for felony unless he has previously received a full and  
31 unconditional pardon, based upon a certificate of rehabilita-  
32 tion.~~

33 SEC. 129. Section 2066 of the Code of Civil Procedure is  
34 repealed.

35 ~~2066. RIGHT OF WITNESSES TO PROTECTION. It is the right  
36 of a witness to be protected from irrelevant, improper, or  
37 insulting questions, and from harsh or insulting demeanor;  
38 to be detained only so long as the interests of justice require  
39 it; to be examined only as to matters legal and pertinent to  
40 the issue.~~

41 SEC. 130. Section 2078 of the Code of Civil Procedure is  
42 repealed.

43 ~~2078. COMPROMISE OFFER OF NO AVOID. An offer of compro-  
44 mise is not an admission that anything is due.~~

45 SEC. 131. Section 2079 of the Code of Civil Procedure is  
46 repealed.

47 ~~2079. IN ACTION FOR DIVORCE, ADMISSION NOT SUFFICIENT.  
48 In an action for divorce on the ground of adultery, a confes-  
49 sion of adultery, whether in or out of the pleadings, is not of  
50 itself sufficient to justify a judgment of divorce.~~

51 SEC. 132. Chapter 4 (commencing with Section 2101) of  
52 Title 6 of Part IV of the Code of Civil Procedure is repealed.



1 SEC. 133. Section 6602 of the Corporations Code is  
2 amended to read:

3 6602. In any action or proceeding, the court shall take  
4 takes judicial notice ~~without proof in court of the Constitution~~  
5 and statutes applying to foreign corporations, and any inter-  
6 pretation thereof, the seals of State and state officials and  
7 notaries public, and, *in the same manner that it takes judicial*  
8 *notice of the matters listed in Section 452 of the Evidence*  
9 *Code*, of the official acts affecting corporations of the legisla-  
10 tive, executive, and judicial departments of the State or place  
11 under the laws of which the corporation purports to be incor-  
12 porated.

13 SEC. 134. Section 25310 of the Corporations Code is  
14 amended to read:

15 25310. The commissioner shall adopt a seal bearing the  
16 inscription: "Commissioner of Corporations, State of Califor-  
17 nia." The seal shall be affixed to all writs, orders, permits, and  
18 certificates issued by him, and to such other instruments as he  
19 directs. ~~All courts shall take judicial notice of this seal.~~

20 SEC. 135. Section 11513 of the Government Code is  
21 amended to read:

22 11513. (a) Oral evidence shall be taken only on oath or  
23 affirmation.

24 (b) Each party shall have these rights: to call and examine  
25 witnesses; to introduce exhibits; to cross-examine opposing  
26 witnesses on any matter relevant to the issues even though  
27 that matter was not covered in the direct examination; to  
28 impeach any witness regardless of which party first called him  
29 to testify; and to rebut the evidence against him. If respond-  
30 ent does not testify in his own behalf he may be called and  
31 examined as if under cross-examination.

32 (c) The hearing need not be conducted according to tech-  
33 nical rules relating to evidence and witnesses. Any relevant  
34 evidence shall be admitted if it is the sort of evidence on which  
35 responsible persons are accustomed to rely in the conduct of  
36 serious affairs, regardless of the existence of any common law  
37 or statutory rule which might make improper the admission  
38 of such evidence over objection in civil actions. Hearsay evi-  
39 dence may be used for the purpose of supplementing or ex-  
40 plaining ~~any direct other~~ evidence but shall not be sufficient  
41 in itself to support a finding unless it would be admissible  
42 over objection in civil actions. The rules of privilege shall be  
43 effective to the ~~same extent that they are now or hereafter may~~  
44 *otherwise required by statute to be recognized in civil actions*  
45 *at the hearing*, and irrelevant and unduly repetitious evidence  
46 shall be excluded.

47 SEC. 136. Section 19580 of the Government Code is  
48 amended to read:

49 19580. Either by deposition or at the hearing the employee  
50 may be examined and may examine or cause any person to be  
51 examined under Section ~~2055~~ of the Code of Civil Procedure  
52 *776 of the Evidence Code*.

1 SEC. 137. Section 3197 of the Health and Safety Code is  
2 amended to read:

3 3197. In any prosecution for a violation of any provision of  
4 this article, or any rule or regulation of the board made pur-  
5 suant to this article, or in any quarantine proceeding author-  
6 ized by this article, or in any habeas corpus or other proceed-  
7 ing in which the legality of such quarantine is questioned,  
8 any physician, health officer, spouse, or other person shall be  
9 competent and may be required to testify against any person  
10 against whom such prosecution or other proceeding was insti-  
11 tuted, and the provisions of subsections 1 and 4 of Section  
12 1881 of the Code of Civil Procedure shall not be the privileges  
13 provided by Sections 970, 971, 980, 994, and 1014 of the Evi-  
14 dence Code are not applicable to or in any such prosecution  
15 or proceeding.

16 SEC. 138. Section 270e of the Penal Code is amended to  
17 read:

18 270e. No other evidence shall be required to prove mar-  
19 riage of husband and wife, or that a person is the lawful  
20 father or mother of a child or children, than is or shall be re-  
21 quired to prove such facts in a civil action. In all prosecu-  
22 tions under either Section 270a or 270 of this code, any existing  
23 provisions of law prohibiting the disclosure of confidential  
24 communications between husband and wife shall Sections 970,  
25 971, and 980 of the Evidence Code do not apply, and both hus-  
26 band and wife shall be competent to testify to any and all  
27 relevant matters, including the fact of marriage and the par-  
28 entage of a child or children. Proof of the abandonment and  
29 nonsupport of a wife, or of the omission to furnish necessary  
30 food, clothing, shelter, or of medical attendance for a child or  
31 children is prima facie evidence that such abandonment and  
32 nonsupport or omission to furnish necessary food, clothing,  
33 shelter or medical attendance is wilful. In any prosecution  
34 under Section 270, it shall be competent for the people to prove  
35 nonaccess of husband to wife or any other fact establishing  
36 nonpaternity of a husband. In any prosecution pursuant to  
37 Section 270, the final establishment of paternity or nonpater-  
38 nity in another proceeding shall be admissible as evidence of  
39 paternity or nonpaternity.

40 SEC. 139. Section 686 of the Penal Code is amended to  
41 read:

42 686. In a criminal action the defendant is entitled:

- 43 1. To a speedy and public trial.
- 44 2. To be allowed counsel as in civil actions, or to appear and  
45 defend in person and with counsel.
- 46 3. To produce witnesses on his behalf and to be confronted  
47 with the witnesses against him, in the presence of the court,  
48 except that:

49 (a) Where the charge has been preliminarily examined be-  
50 fore a committing magistrate and the testimony taken down  
51 by question and answer in the presence of the defendant, who  
52 has, either in person or by counsel, cross-examined or had an

1 opportunity to cross-examine the witness; or where the testi-  
 2 mony of a witness on the part of the people, who is unable to  
 3 give security for his appearance, has been taken conditionally  
 4 in the like manner in the presence of the defendant, who has,  
 5 either in person or by counsel, cross-examined or had an op-  
 6 portunity to cross-examine the witness, the deposition of such  
 7 witness may be read, upon its being satisfactorily shown to  
 8 the court that he is dead or insane, or cannot with due diligence  
 9 be found within the state; and except also that in the case of  
 10 offenses hereafter committed the testimony on behalf of the  
 11 people or the defendant of a witness deceased, insane, out of  
 12 jurisdiction, or who cannot, with due diligence, be found  
 13 within the state, given on a former trial of the action in the  
 14 presence of the defendant who has, either in person or by  
 15 counsel, cross-examined or had an opportunity to cross-examine  
 16 the witness, may be admitted. *Hearsay evidence may be ad-*  
 17 *mitted to the extent that it is otherwise admissible in a criminal*  
 18 *action under the law of this State.*

19 *(b) The deposition of a witness taken in the action may be*  
 20 *read to the extent that it is otherwise admissible under the*  
 21 *law of this State.*

22 SEC. 140. Section 688 of the Penal Code is amended to  
 23 read:

24 688. ~~NO PERSON TO BE A WITNESS AGAINST HIMSELF IN A~~  
 25 ~~CRIMINAL ACTION; OR TO BE UNNECESSARILY RESTRAINED. No~~  
 26 ~~person can be compelled, in a criminal action, to be a witness~~  
 27 ~~against himself; nor can a person charged with a public offense~~  
 28 *may be subjected, before conviction, to any more restraint*  
 29 *than is necessary for his detention to answer the charge.*

30 SEC. 141. Section 939.6 of the Penal Code is amended to  
 31 read:

32 939.6. *(a) Subject to subdivision (b), in the investigation*  
 33 *of a charge, the grand jury shall receive no other evidence*  
 34 *than such as is :*

35 *(1) Given by witnesses produced and sworn before the*  
 36 *grand jury ; ;*

37 *(2) Furnished by legal documentary evidence, or the writ-*  
 38 *ings, material objects, or other things presented to the senses;*  
 39 *or*

40 *(3) Contained in a deposition of a witness in the cases men-*  
 41 *tioned in that is admissible under subdivision 3 of Section 686*

42 *(b) The grand jury shall receive none but legal evidence*  
 43 *and the best evidence in degree, to the exclusion of hearsay or*  
 44 *secondary evidence that would be admissible over objection at*  
 45 *the trial of a criminal action, but the fact that evidence which*  
 46 *would have been excluded at trial was received by the grand*  
 47 *jury does not render the indictment void where sufficient com-*  
 48 *petent evidence to support the indictment was received by*  
 49 *the grand jury .*

1 SEC. 142. Section 961 of the Penal Code is amended to  
2 read:

3 961. Neither presumptions of law, nor matters of which  
4 judicial notice is *authorized or required to be taken*, need be  
5 stated in an accusatory pleading.

6 SEC. 143. Section 963 of the Penal Code is amended to  
7 read:

8 963. In pleading a private statute, or an ordinance of a  
9 county or a municipal corporation, or a right derived there-  
10 from, it is sufficient to refer to the statute or ordinance by its  
11 title and the day of its passage, and the court must thereupon  
12 take judicial notice thereof *in the same manner that it takes*  
13 *judicial notice of matters listed in Section 452 of the Evidence*  
14 *Code*.

15 SEC. 144. Section 1120 of the Penal Code is amended to  
16 read:

17 1120. ~~KNOWLEDGE OF JUROR TO BE DECLARED IN COURT, AND~~  
18 ~~HE TO BE SWORN AS A WITNESS.~~ If a juror has any personal  
19 knowledge respecting a fact in controversy in a cause, he must  
20 declare the same in open court during the trial. If, during the  
21 retirement of the jury, a juror declare a fact which could be  
22 evidence in the cause, as of his own knowledge, the jury must  
23 return into court. In either of these cases, the juror making  
24 the statement must be sworn as a witness and examined in  
25 the presence of the parties *in order that the court may deter-*  
26 *mine whether good cause exists for his discharge as a juror*.

27 SEC. 145. Section 1322 of the Penal Code is repealed.

28 1322. Neither husband nor wife is a competent witness for  
29 or against the other in a criminal action or proceeding to  
30 which one or both are parties, except with the consent of both,  
31 or in case of criminal actions or proceedings for a crime com-  
32 mitted by one against the person or property of the other,  
33 whether before or after marriage or in cases of criminal  
34 violence upon one by the other, or upon the child or children  
35 of one by the other or in cases of criminal actions or proceed-  
36 ings for bigamy, or adultery, or in cases of criminal actions or  
37 proceedings brought under the provisions of section 270 and  
38 270a of this code or under any provisions of the "Juvenile  
39 Court Law."

40 SEC. 146. Section 1323 of the Penal Code is repealed.

41 1323. A defendant in a criminal action or proceeding can  
42 not be compelled to be a witness against himself, but if he  
43 offers himself as a witness, he may be cross-examined by the  
44 counsel for the people as to all matters about which he was  
45 examined in chief. The failure of the defendant to explain or  
46 to deny by his testimony any evidence or facts in the case  
47 against him may be commented upon by counsel.

48 SEC. 147. Section 1323.5 of the Penal Code is repealed.

49 1323.5. In the trial of or examination upon all indictments,  
50 complaints, and other proceedings before any court, magis-

1 trate, grand jury, or other tribunal, against persons accused  
 2 or charged with the commission of crimes or offenses, the per-  
 3 son accused or charged shall, at his own request, but not other-  
 4 wise, be deemed a competent witness. The credit to be given to  
 5 his testimony shall be left solely to the jury, under the instruc-  
 6 tions of the court, or to the discrimination of the magistrate,  
 7 grand jury, or other tribunal before which the testimony is  
 8 given.

9 This section shall not be construed as compelling any such  
 10 person to testify.

11 SEC. 148. Section 1345 of the Penal Code is amended to  
 12 read:

13 1345. ~~WHEN MAY BE READ IN EVIDENCE.~~ The deposition, or  
 14 a certified copy thereof, may be read in evidence by either  
 15 party on the trial, ~~upon its appearing if the court finds that~~  
 16 the witness is unable to attend, by reason of his death, insan-  
 17 ity, sickness, or infirmity, or of his continued absence from the  
 18 State unavailable as a witness within the meaning of Section  
 19 240 of the Evidence Code. ~~Upon reading the deposition in evi-~~  
 20 ~~dence,~~ The same objections may be taken to a question or  
 21 answer contained therein in the deposition as if the witness  
 22 had been examined orally in court.

23 SEC. 149. Section 1362 of the Penal Code is amended to  
 24 read:

25 1362. ~~DEPOSITIONS TO BE READ IN EVIDENCE. OBJECTIONS~~  
 26 ~~THERE TO.~~ The depositions taken under the commission may be  
 27 read in evidence by either party on the trial, ~~upon it being~~  
 28 ~~shown if the court finds that the witness is unable to attend~~  
 29 ~~from any cause whatever, and unavailable as a witness within~~  
 30 ~~the meaning of Section 240 of the Evidence Code.~~ The same  
 31 objections may be taken to a question in the interrogatories or  
 32 to an answer in the deposition: as if the witness had been  
 33 examined orally in court.

34 SEC. 150. Section 306 of the Public Utilities Code is  
 35 amended to read:

36 306. The office of the commission shall be in the City and  
 37 County of San Francisco. The office shall always be open, legal  
 38 holidays and nonjudicial days excepted. The commission shall  
 39 hold its sessions at least once in each calendar month in the  
 40 City and County of San Francisco. The commission may also  
 41 meet at such other times and in such other places as may be  
 42 expedient and necessary for the proper performance of its  
 43 duties, and for that purpose may rent quarters or offices.  
 44 Except for the commission's deliberative conferences, the ses-  
 45 sions and meetings of the commission shall be open and public  
 46 and all persons shall be permitted to attend.

47 The commission shall have a seal, bearing the inscription  
 48 "Public Utilities Commission State of California." The seal

1 shall be affixed to all writs and authentications of copies of  
2 records and to such other instruments as the commission shall  
3 direct. ~~All courts shall take judicial notice of the seal.~~

4 The commission may procure all necessary books, maps,  
5 charts, stationery, instruments, office furniture, apparatus, and  
6 appliances.

7 SEC. 151. Sections 2 to 150 of this act shall become opera-  
8 tive on January 1, 1967.

()

Introduced by Senator Cobey  
(Coauthor: Assemblyman Song)

January 14, 1965

REFERRED TO COMMITTEE ON JUDICIARY

*An act to establish an Evidence Code, thereby consolidating and revising the law relating to evidence; amending various sections of the Business and Professions Code, Civil Code, Code of Civil Procedure, Corporations Code, Government Code, Health and Safety Code, LABOR CODE, Penal Code, and Public Utilities Code to make them consistent therewith; adding Sections 164.5, 3544, 3545, 3546, 3547, and 3548 to the Civil Code; adding Sections 631.7 and 1908.5 to the Code of Civil Procedure; and repealing legislation inconsistent therewith.*

*The people of the State of California do enact as follows:*

1 SECTION 1. The Evidence Code is enacted, to read:

2  
3 EVIDENCE CODE

4 DIVISION 1. PRELIMINARY PROVISIONS AND  
5 CONSTRUCTION

6  
7  
8 1. This code shall be known as the Evidence Code.

9 2. The rule of the common law, that statutes in derogation  
10 thereof are to be strictly construed, has no application to this  
11 code. This code establishes the law of this state respecting the  
12 subject to which it relates, and its provisions are to be liber-  
13 ally construed with a view to effect its objects and to pro-  
14 mote effecting its objects and promoting justice.

15 3. If any provision or clause of this code or application  
16 thereof to any person or circumstances is held invalid, such  
17 invalidity shall not affect other provisions or applications of  
18 the code which can be given effect without the invalid provi-  
19 sion or application, and to this end the provisions of this code  
20 are declared to be severable.

1 4. Unless the provision or context otherwise requires, these  
2 preliminary provisions and rules of construction shall govern  
3 the construction of this code.

4 5. Division, chapter, article, and section headings do not  
5 in any manner affect the scope, meaning, or intent of the pro-  
6 visions of this code.

7 6. Whenever any reference is made to any portion of this  
8 code or of any other statute, such reference shall apply to all  
9 amendments and additions heretofore or hereafter made.

10 7. Unless otherwise expressly stated:

11 (a) "Division" means a division of this code.

12 (b) "Chapter" means a chapter of the division in which  
13 that term occurs.

14 (c) "Article" means an article of the chapter in which that  
15 term occurs.

16 (d) "Section" means a section of this code.

17 (e) "Subdivision" means a subdivision of the section in  
18 which that term occurs.

19 (f) "Paragraph" means a paragraph of the subdivision in  
20 which that term occurs.

21 8. The present tense includes the past and future tenses;  
22 and the future, the present.

23 9. The masculine gender includes the feminine and neuter.

24 10. The singular number includes the plural; and the plu-  
25 ral, the singular.

26 11. "Shall" is mandatory and "may" is permissive.

27 12. (a) This code shall become operative on January 1,  
28 1967, and shall govern proceedings in actions brought on or  
29 after that date and also further proceedings in actions pend-  
30 ing on that date. The provisions of Division 8 (commencing  
31 with Section 900) relating to privileges shall govern any claim  
32 of privilege made after December 31, 1966.

33 that date and, except as provided in subdivision (b), further  
34 proceedings in actions pending on that date.

35 (b) Subject to subdivision (c), a trial commenced before  
36 January 1, 1967, shall not be governed by this code. For the  
37 purpose of this subdivision:

38 (1) A trial is commenced when the first witness is sworn or  
39 the first exhibit is admitted into evidence and is terminated  
40 when the issue upon which such evidence is received is sub-  
41 mitted to the trier of fact. A new trial, or a separate trial of a  
42 different issue, commenced on or after January 1, 1967, shall be  
43 governed by this code.

44 (2) If an appeal is taken from a ruling made at a trial  
45 commenced before January 1, 1967, the appellate court shall  
46 apply the law applicable at the time of the commencement of  
47 the trial.

48 (c) The provisions of Division 8 (commencing with Section  
49 900) relating to privileges shall govern any claim of privilege  
50 made after December 31, 1966.



DIVISION 2. WORDS AND PHRASES DEFINED

100. Unless the provision or context otherwise requires, these definitions govern the construction of this code.

105. "Action" includes a civil action and a criminal action.

110. "Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

115. "Burden of proof" means the obligation of a party to meet the requirement of a rule of law that he raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

120. "Civil action" includes all actions and proceedings other than a criminal action.

125. "Conduct" includes all active and passive behavior, both verbal and nonverbal.

130. "Criminal action" includes criminal proceedings.

135. "Declarant" is a person who makes a statement.

140. "Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact.

145. "The hearing" means the hearing at which a question under this code arises, and not some earlier or later hearing.

150. "Hearsay evidence" is defined in Section 1200.

160. "Law" includes constitutional, statutory, and decisional law.

165. "Oath" includes affirmation or declaration under penalty of perjury.

170. "Perceive" means to acquire knowledge through one's senses.

175. "Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, or public entity.

180. "Personal property" includes money, goods, chattels, things in action, and evidences of debt.

185. "Property" includes both real and personal property.

190. "Proof" is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

195. "Public employee" means an officer, agent, or employee of a public entity.

200. "Public entity" includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.

205. "Real property" includes lands, tenements, and hereditaments.

1 210. "Relevant evidence" means evidence, including evi-  
 2 dence relevant to the credibility of a witness or hearsay declar-  
 3 ant, having any tendency in reason to prove or disprove any  
 4 disputed fact that is of consequence to the determination of the  
 5 action.

6 220. "State" means the State of California, unless applied  
 7 to the different parts of the United States. In the latter case,  
 8 it includes any state, district, commonwealth, territory, or  
 9 insular possession of the United States.

10 225. "Statement" means (a) a verbal expression or (b)  
 11 nonverbal conduct of a person intended by him as a substi-  
 12 tute for a verbal expression.

13 ~~230. "Statute" includes a provision of the Constitution.~~

14 ~~230. "Statute" includes a treaty and a constitutional pro-~~  
 15 ~~vision.~~

16 235. "Trier of fact" includes (a) the jury and (b) the  
 17 court when the court is trying an issue of fact other than one  
 18 relating to the admissibility of evidence.

19 240. (a) Except as otherwise provided in subdivision (b),  
 20 "unavailable as a witness" means that the declarant is:

21 (1) Exempted or precluded on the ground of privilege from  
 22 testifying concerning the matter to which his statement is  
 23 relevant;

24 (2) Disqualified from testifying to the matter;

25 (3) Dead or unable to attend or to testify at the hearing be-  
 26 cause of then existing physical or mental illness or infirmity;

27 (4) Absent from the hearing and the court is unable to  
 28 compel his attendance by its process; or

29 (5) Absent from the hearing and the proponent of his state-  
 30 ment has exercised reasonable diligence but has been unable  
 31 to procure his attendance by the court's process.

32 (b) A declarant is not unavailable as a witness if the ex-  
 33 emption, preclusion, disqualification, death, inability, or ab-  
 34 sence of the declarant was brought about by the procurement  
 35 or wrongdoing of the proponent of his statement for the pur-  
 36 pose of preventing the declarant from attending or testifying.

37 245. "Verbal" includes both oral and written words.

38 250. "Writing" means handwriting, typewriting, printing,  
 39 photostating, photographing, and every other means of re-  
 40 cording upon any tangible thing any form of communication  
 41 or representation, including letters, words, pictures, sounds,  
 42 or symbols, or combinations thereof.

43

44

### DIVISION 3. GENERAL PROVISIONS

45

46

#### CHAPTER 1. APPLICABILITY OF CODE

47

48

49

50

51

300. Except as otherwise provided by statute, this code ap-  
 plies in every action before the Supreme Court or a district  
 court of appeal, superior court, municipal court, or justice  
 court, including proceedings conducted by a referee, court com-

1 missioner; or similar officer, but does not apply in grand jury  
2 proceedings.

3  
4 CHAPTER 2. PROVINCE OF COURT AND JURY

5  
6 310. All questions of law (including but not limited to  
7 questions concerning the construction of statutes and other  
8 writings, the admissibility of evidence, and other rules of evi-  
9 dence) are to be decided by the court. Determination of issues  
10 of fact preliminary to the admission of evidence are to be  
11 decided by the court as provided in Article 2 (commencing  
12 with Section 400) of Chapter 4.

13 311. (a) Determination of the law of a ~~foreign nation or~~  
14 ~~a public entity in a foreign nation~~ *public entity* is a question  
15 of law to be determined in the manner provided in Division  
16 4 (commencing with Section 450).

17 (b) If ~~such law~~ *the law of a foreign nation or a state other*  
18 *than this state, or a public entity in a foreign nation or a state*  
19 *other than this state,* is applicable and the court is unable to  
20 determine it, the court may, as the ends of justice require,  
21 either:

22 (1) Apply the law of this state if the court can do so con-  
23 sistentlly with the Constitution of the United States and the  
24 Constitution of this state; or

25 (2) Dismiss the action without prejudice or, in the case of  
26 a reviewing court, remand the case to the trial court with di-  
27 rections to dismiss the action without prejudice.

28 312. Except as otherwise provided by law, where the trial is  
29 by jury:

30 (a) All questions of fact are to be decided by the jury.

31 (b) Subject to the control of the court, the jury is to de-  
32 termine the effect and value of the evidence addressed to it, in-  
33 cluding the credibility of witnesses and hearsay declarants.

34  
35 CHAPTER 3. ORDER OF PROOF

36  
37 320. Except as otherwise provided by law, the court in its  
38 discretion shall regulate the order of proof.

39  
40 CHAPTER 4. ADMITTING AND EXCLUDING EVIDENCE

41  
42 Article 1. General Provisions

43  
44 350. No evidence is admissible except relevant evidence.

45 351. Except as otherwise provided by statute, all relevant  
46 evidence is admissible.

47 352. The court in its discretion may exclude evidence if its  
48 probative value is substantially outweighed by the probability  
49 that its admission will (a) necessitate undue consumption of  
50 time or (b) create substantial danger of undue prejudice, of  
51 confusing the issues, or of misleading the jury.

1 353. A verdict or finding shall not be set aside, nor shall  
2 the judgment or decision based thereon be reversed, by reason  
3 of the erroneous admission of evidence unless:

4 (a) There appears of record an objection to or a motion to  
5 exclude or to strike the evidence that was timely made and so  
6 stated as to make clear the specific ground of the objection or  
7 motion; and

8 (b) The court which passes upon the effect of the error or  
9 errors is of the opinion that the admitted evidence should  
10 have been excluded on the ground stated and that the error  
11 or errors complained of resulted in a miscarriage of justice.

12 354. A verdict or finding shall not be set aside, nor shall  
13 the judgment or decision based thereon be reversed, by reason  
14 of the erroneous exclusion of evidence unless the court which  
15 passes upon the effect of the error or errors is of the opinion  
16 that the error or errors complained of resulted in a miscarriage  
17 of justice and it appears of record that:

18 (a) The substance, purpose, and relevance of the excluded  
19 evidence was made known to the court by the questions asked,  
20 an offer of proof, or by any other means;

21 (b) The rulings of the court made compliance with subdivi-  
22 sion (a) futile; or

23 (c) The evidence was sought by questions asked during  
24 cross-examination.

25 355. When evidence is admissible as to one party or for  
26 one purpose and is inadmissible as to another party or for  
27 another purpose, the court upon request shall restrict the evi-  
28 dence to its proper scope and instruct the jury accordingly.

29 356. Where part of an act, declaration, conversation, or  
30 writing is given in evidence by one party, the whole on the  
31 same subject may be inquired into by an adverse party; when  
32 a letter is read, the answer may be given; and when a detached  
33 act, declaration, conversation, or writing is given in evidence,  
34 any other act, declaration, conversation, or writing which is  
35 necessary to make it understood may also be given in evidence.

## 36 37 Article 2. Preliminary Determinations on Admissibility 38 of Evidence 39

40 400. As used in this article, "preliminary fact" means a  
41 fact upon the existence or nonexistence of which depends the  
42 admissibility or inadmissibility of evidence. The phrase "the  
43 admissibility or inadmissibility of evidence" includes the  
44 qualification or disqualification of a person to be a witness and  
45 the existence or nonexistence of a privilege.

46 401. As used in this article, "proffered evidence" means  
47 evidence, the admissibility or inadmissibility of which is de-  
48 pendent upon the existence or nonexistence of a preliminary  
49 fact.

50 402. (a) When the existence of a preliminary fact is dis-  
51 puted, its existence or nonexistence shall be determined as pro-  
52 vided in this article.

1 (b) The court may hear and determine the question of the  
2 admissibility of evidence out of the presence or hearing of the  
3 jury; but in a criminal action, the court shall hear and deter-  
4 mine the question of the admissibility of a confession or admis-  
5 sion of the defendant out of the presence and hearing of the  
6 jury.

7 (c) A ruling on the admissibility of evidence implies what-  
8 ever finding of fact is prerequisite thereto; a separate or  
9 formal finding is unnecessary unless required by statute.

10 403. (a) The proponent of the proffered evidence has the  
11 burden of producing evidence as to the existence of the pre-  
12 liminary fact, and the proffered evidence is inadmissible unless  
13 the court finds that there is evidence sufficient to sustain a  
14 finding of the existence of the preliminary fact, when:

15 (1) The relevance of the proffered evidence depends on the  
16 existence of the preliminary fact;

17 (2) The preliminary fact is the personal knowledge of a  
18 witness concerning the subject matter of his testimony;

19 (3) The preliminary fact is the authenticity of a writing; or

20 (4) The proffered evidence is of a statement or other con-  
21 duct of a particular person and the preliminary fact is whether  
22 that person made the statement or so conducted himself.

23 (b) Subject to Section 702, the court may admit condition-  
24 ally the proffered evidence under this section, subject to evi-  
25 dence of the preliminary fact being supplied later in the  
26 course of the trial.

27 (c) If the court admits the proffered evidence under this  
28 section, the court:

29 (1) May, and on request shall, instruct the jury to deter-  
30 mine whether the preliminary fact exists and to disregard the  
31 proffered evidence unless the jury finds that the preliminary  
32 fact does exist.

33 (2) Shall instruct the jury to disregard the proffered evi-  
34 dence if the court subsequently determines that a jury could  
35 not reasonably find that the preliminary fact exists.

36 404. Whenever the proffered evidence is claimed to be  
37 privileged under Section 940, the person claiming the privilege  
38 has the burden of showing that the proffered evidence might  
39 tend to incriminate him; and the proffered evidence is inadmis-  
40 sible unless it clearly appears to the court that the proffered  
41 evidence cannot possibly have a tendency to incriminate the  
42 person claiming the privilege.

43 405. With respect to preliminary fact determinations not  
44 governed by Section 403 or 404:

45 (a) When the existence of a preliminary fact is disputed,  
46 the court shall indicate which party has the burden of produc-  
47 ing evidence and the burden of proof on the issue as implied  
48 by the rule of law under which the question arises. The court  
49 shall determine the existence or nonexistence of the prelimi-  
50 nary fact and shall admit or exclude the proffered evidence  
51 as required by the rule of law under which the question arises.

52 (b) If a preliminary fact is also a fact in issue in

1 (1) The jury shall not be informed of the court's determina-  
2 tion as to the existence or nonexistence of the preliminary fact.

3 (2) If the proffered evidence is admitted, the jury shall not  
4 be instructed to disregard the evidence if its determination of  
5 the fact differs from the court's determination of the pre-  
6 liminary fact.

7 406. This article does not limit the right of a party to in-  
8 troduce before the trier of fact evidence relevant to weight  
9 or credibility.

10

11

#### CHAPTER 5. WEIGHT OF EVIDENCE GENERALLY

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

410. As used in this chapter, "direct evidence" means evi-  
dence that directly proves a fact, without an inference or pre-  
sumption, and which in itself, if true, conclusively establishes  
that fact.

411. Except where additional evidence is required by stat-  
ute, the direct evidence of one witness who is entitled to full  
credit is sufficient for proof of any fact.

412. If weaker and less satisfactory evidence is offered  
when it was within the power of the party to produce stronger  
and more satisfactory evidence, the evidence offered should  
be viewed with distrust.

413. In determining what inferences to draw from the evi-  
dence or facts in the case against a party, the trier of fact  
may consider, among other things, the party's failure to ex-  
plain or to deny by his testimony such evidence or facts in  
the case against him, or his wilful suppression of evidence  
relating thereto, if such be the case.

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

#### DIVISION 4. JUDICIAL NOTICE

450. Judicial notice may not be taken of any matter un-  
less authorized or required by law.

451. Judicial notice shall be taken of:

(a) The decisional, constitutional, and public statutory law  
of the United States and of every state of the United States  
and of this state and of the United States and the provisions  
of any charter described in Section 7½ or 8 of Article XI of  
the California Constitution.

(b) Any matter made a subject of judicial notice by Section  
11383, 11384, or 18576 of the Government Code or by Section  
307 of Title 44 of the United States Code.

(c) Rules of practice and procedure for the courts of this  
State adopted by the Judicial Council.

(d) Rules of pleading, practice, and procedure prescribed  
by the United States Supreme Court, such as the Rules of the  
United States Supreme Court, the Federal Rules of Civil Pro-  
cedure, the Federal Rules of Criminal Procedure, the Admi-  
ralty Rules, the Rules of the Court of Claims, the Rules of the  
Customs Court, and the General Orders and Forms in Bank-  
ruptcy.

1 (e) The true signification of all English words and phrases  
2 and of all legal expressions.

3 (f) Facts and propositions of generalized knowledge that  
4 are so universally known that they cannot reasonably be the  
5 subject of dispute.

6 452. Judicial notice may be taken of the following matters  
7 to the extent that they are not embraced within Section 451:

8 (a) Resolutions and private acts of the Congress of the  
9 United States and of the legislature of ~~any state of the United~~  
10 ~~States~~ *this state and the decisional, constitutional, and statu-*  
11 *tory law of any other state.*

12 (b) Regulations and legislative enactments issued by or  
13 under the authority of the United States or any public entity  
14 in the United States.

15 (c) Official acts of the legislative, executive, and judicial  
16 departments of the United States and of any state of the  
17 United States.

18 (d) Records of (1) any court of this state or (2) any court  
19 of record of the United States or of any state of the United  
20 States.

21 (e) Rules of court of (1) any court of this State or (2) any  
22 court of record of the United States or of any state of the  
23 United States.

24 (f) The law of foreign nations and public entities in foreign  
25 nations.

26 (g) Specific facts and propositions that are of such common  
27 knowledge within the territorial jurisdiction of the court that  
28 they cannot reasonably be the subject of dispute.

29 (h) Specific facts and propositions that are not reasonably  
30 subject to dispute and are capable of immediate and accurate  
31 determination by resort to sources of reasonably indisputable  
32 accuracy.

33 453. Judicial notice shall be taken of any matter specified  
34 in Section 452 if a party requests it and:

35 (a) Gives each adverse party sufficient notice of the request,  
36 through the pleadings or otherwise, to enable such adverse  
37 party to prepare to meet the request; and

38 (b) Furnishes the court with sufficient information to en-  
39 able it to take judicial notice of the matter.

40 454. In determining the propriety of taking judicial notice  
41 of a matter, or the tenor thereof:

42 (a) Any source of pertinent information, including the ad-  
43 vice of persons learned in the subject matter, may be consulted  
44 or used, whether or not furnished by a party.

45 (b) Exclusionary rules of evidence do not apply except for  
46 Section 352 and the rules of privilege.

47 455. With respect to any matter specified in Section 452  
48 or in subdivision (f) of Section 451 that is of substantial con-  
49 sequence to the determination of the action:

50 (a) If the court has been requested to take or has taken or  
51 proposes to take judicial notice of such matter, the court shall  
52 afford each party reasonable opportunity, before the ~~inquiry is~~

1 instructed or before the cause is submitted for decision by the  
2 court, to present to the court information relevant to (1) the  
3 propriety of taking judicial notice of the matter and (2) the  
4 tenor of the matter to be noticed.

5 (b) If the court resorts to any source of information not  
6 received in open court, including the advice of persons learned  
7 in the subject matter, such information and its source shall be  
8 made a part of the record in the action and the court shall  
9 afford each party reasonable opportunity to meet such informa-  
10 tion before judicial notice of the matter may be taken.

11 456. If the court denies a request to take judicial notice of  
12 any matter, the court shall at the earliest practicable time so  
13 advise the parties and indicate for the record that it has denied  
14 the request.

15 457. If a matter judicially noticed is a matter which would  
16 otherwise have been for determination by the jury, the court  
17 may, and upon request shall, instruct the jury to accept as a  
18 fact the matter so noticed.

19 458. The failure or refusal of the trial court to take ju-  
20 dicial notice of a matter, or to instruct the jury with respect  
21 to the matter, does not preclude the trial court in subsequent  
22 proceedings in the action from taking judicial notice of the  
23 matter in accordance with the procedure specified in this di-  
24 vision.

25 459. (a) The reviewing court shall take judicial notice of  
26 (1) each matter properly noticed by the trial court and (2)  
27 each matter that the trial court was required to notice under  
28 Section 451 or 453. The reviewing court may take judicial no-  
29 tice of any matter specified in Section 452. The reviewing  
30 court may take judicial notice of a matter in a tenor different  
31 from that noticed by the trial court.

32 (b) In determining the propriety of taking judicial notice  
33 of a matter, or the tenor thereof, the reviewing court has the  
34 same power as the trial court under Section 454.

35 (c) When taking judicial notice under this section of a  
36 matter specified in Section 452 or in subdivision (f) of Section  
37 451 that is of substantial consequence to the determination of  
38 the action, the reviewing court shall comply with the provi-  
39 sions of subdivision (a) of Section 455 if the matter was not  
40 theretofore judicially noticed in the action.

41 (d) In determining the propriety of taking judicial notice  
42 of a matter specified in Section 452 or in subdivision (f) of  
43 Section 451 that is of substantial consequence to the determi-  
44 nation of the action, or the tenor thereof, if the reviewing court  
45 resorts to any source of information not received in open court  
46 or not included in the record of the action, including the  
47 advice of persons learned in the subject matter, the reviewing  
48 court shall afford each party reasonable opportunity to meet  
49 such information before judicial notice of the matter may be  
50 taken.



1 DIVISION 5. BURDEN OF PROOF; BURDEN OF  
2 PRODUCING EVIDENCE; PRESUMPTIONS  
3 AND INFERENCES  
4

5 CHAPTER 1. BURDEN OF PROOF  
6

7 Article 1. General  
8

9 500. Except as otherwise provided by law, a party has the  
10 burden of proof as to each fact the existence or nonexistence  
11 of which is essential to the claim for relief or defense that he  
12 is asserting.

13 501. Insofar as any statute, except Section 522, assigns the  
14 burden of proof in a criminal action, such statute is subject  
15 to Penal Code Section 1096.

16 502. The court on all proper occasions shall instruct the  
17 jury as to which party bears the burden of proof on each issue  
18 and as to whether that burden requires that a party raise a  
19 reasonable doubt concerning the existence or nonexistence of  
20 a fact or that he establish the existence or nonexistence of a  
21 fact by a preponderance of the evidence, by clear and convinc-  
22 ing proof, or by proof beyond a reasonable doubt.  
23

24 Article 2. Burden of Proof on Specific Issues  
25

26 520. The party claiming that a person is guilty of crime or  
27 wrongdoing has the burden of proof on that issue.

28 521. The party claiming that a person did not exercise a  
29 requisite degree of care has the burden of proof on that issue.

30 522. The party claiming that any person, including him-  
31 self, is or was insane has the burden of proof on that issue.  
32

33 CHAPTER 2. BURDEN OF PRODUCING EVIDENCE  
34

35 550. The burden of producing evidence as to a particular  
36 fact is initially on the party with the burden of proof. There-  
37 after, the burden of producing evidence as to a particular fact  
38 is on the party who would suffer a finding against him on that  
39 fact in the absence of further evidence.  
40

41 CHAPTER 3. PRESUMPTIONS AND INFERENCES  
42

43 Article 1. General  
44

45 600. (a) Subject to Section 607, a presumption is an as-  
46 sumption of fact that the law requires to be made from another  
47 fact or group of facts found or otherwise established in the  
48 action. A presumption is not evidence.

49 (b) An inference is a deduction of fact that may logically  
50 and reasonably be drawn from another fact or group of facts  
51 found or otherwise established in the action.

1 601. A presumption is either conclusive or rebuttable.  
2 Every rebuttable presumption is either (a) a presumption  
3 affecting the burden of producing evidence or (b) a presump-  
4 tion affecting the burden of proof.

5 602. A statute providing that a fact or group of facts is  
6 prima facie evidence of another fact establishes a rebuttable  
7 presumption.

8 603. A presumption affecting the burden of producing evi-  
9 dence is a presumption established to implement no public  
10 policy other than to facilitate the determination of the par-  
11 ticular action in which the presumption is applied.

12 604. Subject to Section 607, the effect of a presumption  
13 affecting the burden of producing evidence is to require the  
14 trier of fact to assume the existence of the presumed fact un-  
15 less and until evidence is introduced which would support a  
16 finding of its nonexistence, in which case the trier of fact shall  
17 determine the existence or nonexistence of the presumed fact  
18 from the evidence and without regard to the presumption.  
19 Nothing in this section shall be construed to prevent the draw-  
20 ing of any inference that may be appropriate.

21 605. A presumption affecting the burden of proof is a pre-  
22 sumption established to implement some public policy other  
23 than to facilitate the determination of the particular action in  
24 which the presumption is applied, such as the policy in favor  
25 of the legitimacy of children, the validity of marriage, the  
26 stability of titles to property, or the security of those who  
27 entrust themselves or their property to the administration of  
28 others.

29 606. Subject to Section 607, the effect of a presumption  
30 affecting the burden of proof is to impose upon the party  
31 against whom it operates the burden of proof as to the non-  
32 existence of the presumed fact.

33 607. When a rebuttable presumption operates in a criminal  
34 action to establish an element of the crime with which the  
35 defendant is charged, neither the burden of producing evi-  
36 dence nor the burden of proof is imposed upon the defendant;  
37 but, if the trier of fact finds that the facts that give rise to  
38 the presumption have been proved beyond a reasonable doubt,  
39 the trier of fact may but is not required to find that the  
40 presumed fact has also been proved beyond a reasonable doubt.

## 41 42 Article 2. Conclusive Presumptions

43  
44 620. The presumptions established by this article, and all  
45 other presumptions declared by law to be conclusive, are con-  
46 clusive presumptions.

47 621. Notwithstanding any other provision of law, the issue  
48 of a wife cohabiting with her husband, who is not impotent,  
49 is conclusively presumed to be legitimate.

50 622. The facts recited in a written instrument are conclu-  
51 sively presumed to be true as between the parties thereto, or

1 their successors in interest; but this rule does not apply to the  
2 recital of a consideration.

3 623. Whenever a party has, by his own statement or con-  
4 duct, intentionally and deliberately led another to believe a  
5 particular thing true and to act upon such belief, he is not, in  
6 any litigation arising out of such statement or conduct, per-  
7 mitted to contradict it.

8 624. A tenant is not permitted to deny the title of his  
9 landlord at the time of the commencement of the relation.

10  
11 Article 3. Presumptions Affecting the Burden  
12 of Producing Evidence  
13

14 630. The presumptions established by this article, and all  
15 other rebuttable presumptions established by law that fall  
16 within the criteria of Section 603, are presumptions affecting  
17 the burden of producing evidence.

18 631. Money delivered by one to another is presumed to  
19 have been due to the latter.

20 632. A thing delivered by one to another is presumed to  
21 have belonged to the latter.

22 633. An obligation delivered up to the debtor is presumed  
23 to have been paid.

24 634. A person in possession of an order on himself for the  
25 payment of money, or delivery of a thing, is presumed to have  
26 paid the money or delivered the thing accordingly.

27 635. An obligation possessed by the creditor is presumed  
28 not to have been paid.

29 636. The payment of earlier rent or installments is pre-  
30 sumed from a receipt for later rent or installments.

31 637. The things which a person possesses are presumed to  
32 be owned by him.

33 638. A person who exercises acts of ownership over prop-  
34 erty is presumed to be the owner of it.

35 639. A judgment, when not conclusive, is presumed to cor-  
36 rectly determine or set forth the rights of the parties, but  
37 there is no presumption that the facts essential to the judg-  
38 ment have been correctly determined.

39 640. A writing is presumed to have been truly dated.

40 641. A letter correctly addressed and properly mailed is  
41 presumed to have been received in the ordinary course of mail.

42 642. A trustee or other person, whose duty it was to convey  
43 real property to a particular person, is presumed to have  
44 actually conveyed to him when such presumption is necessary  
45 to perfect title of such person or his successor in interest.

46 643. A deed or will or other writing purporting to create,  
47 terminate, or affect an interest in real or personal property is  
48 presumed to be authentic if it:

49 (a) Is at least 30 years old;

50 (b) Is in such condition as to create no suspicion concern-  
51 ing its authenticity;

1 (c) Was kept, or if found was found, in a place where  
 2 such writing, if authentic, would be likely to be kept or  
 3 found; and

4 (d) Has been generally acted upon as authentic by persons  
 5 having an interest in the matter.

6 644. A book, purporting to be printed or published by  
 7 public authority, is presumed to have been so printed or  
 8 published.

9 645. A book, purporting to contain reports of cases ad-  
 10 judged in the tribunals of the state or nation where the book  
 11 is published, is presumed to contain correct reports of such  
 12 cases.

13  
 14 Article 4. Presumptions Affecting the Burden of Proof  
 15

16 660. The presumptions established by this article, and all  
 17 other rebuttable presumptions established by law that fall  
 18 within the criteria of Section 605, are presumptions affecting  
 19 the burden of proof.

20 661. A child of a woman who is or has been married, born  
 21 during the marriage or within 300 days after the dissolution  
 22 thereof, is presumed to be a legitimate child of that marriage.  
 23 This presumption may be disputed only by the people of the  
 24 State of California in a criminal action brought under Section  
 25 270 of the Penal Code or by the husband or wife, or the de-  
 26 scendant of one or both of them. In a civil action, this presump-  
 27 tion may be rebutted only by clear and convincing proof.

28 662. The owner of the legal title to property is presumed  
 29 to be the owner of the full beneficial title. This presumption  
 30 may be rebutted only by clear and convincing proof.

31 663. A ceremonial marriage is presumed to be valid.

32 664. It is presumed that official duty has been regularly  
 33 performed.

34 665. An arrest without a warrant is presumed to be un-  
 35 lawful.

36 666. Any court of this State or the United States, or any  
 37 court of general jurisdiction in any other state or nation, or  
 38 any judge of such a court, acting as such, is presumed to have  
 39 acted in the lawful exercise of its jurisdiction. This presump-  
 40 tion applies only when the act of the court or judge is under  
 41 collateral attack.

42 667. A person not heard from in seven years is presumed  
 43 to be dead.

44 DIVISION 6. WITNESSES

45  
 46 CHAPTER 1. COMPETENCY

47  
 48 700. Except as otherwise provided by statute, every person  
 49 is qualified to be a witness and no person is disqualified to  
 50 testify to any matter.

1 701. A person is disqualified to be a witness if he is:

2 (a) Incapable of expressing himself concerning the matter  
3 so as to be understood, either directly or through interpreta-  
4 tion by one who can understand him; or

5 (b) Incapable of understanding the duty of a witness to tell  
6 the truth.

7 702. (a) Subject to Section 801, the testimony of a witness  
8 concerning a particular matter is inadmissible unless he has  
9 personal knowledge of the matter. Against the objection of  
10 a party, such personal knowledge must be shown before the  
11 witness may testify concerning the matter.

12 (b) A witness' personal knowledge of a matter may be  
13 shown by any otherwise admissible evidence, including his  
14 own testimony.

15 703. (a) Before the judge presiding at the trial of an  
16 action may be called to testify in that trial as a witness, he  
17 shall, in proceedings held out of the presence and hearing of  
18 the jury, inform the parties of the information he has con-  
19 cerning any fact or matter about which he will be called to  
20 testify.

21 (b) Against the objection of a party, the judge presiding  
22 at the trial of an action may not testify in that trial as a  
23 witness. Upon such objection, ~~which shall be deemed a motion~~  
24 ~~for mistrial~~, the judge shall declare a mistrial and order the  
25 action assigned for trial before another judge.

26 (c) *The calling of the judge presiding at a trial to testify in*  
27 *that trial as a witness shall be deemed a consent to the granting*  
28 *of a motion for mistrial, and an objection to such calling of a*  
29 *judge shall be deemed a motion for mistrial.*

30 (e) (d) In the absence of objection by a party, the judge  
31 presiding at the trial of an action may testify in that trial as  
32 a witness.

33 704. (a) Before a juror sworn and impaneled in the trial  
34 of an action may be called to testify before the jury in that  
35 trial as a witness, he shall, in proceedings conducted by the  
36 court out of the presence and hearing of the remaining jurors,  
37 inform the parties of the information he has concerning any  
38 fact or matter about which he will be called to testify.

39 (b) Against the objection of a party, a juror sworn and im-  
40 paneled in the trial of an action may not testify before the  
41 jury in that trial as a witness. Upon such objection, ~~which~~  
42 ~~shall be deemed a motion for mistrial~~, the court shall declare  
43 a mistrial and order the action assigned for trial before an-  
44 other jury.

45 (c) *The calling of a juror to testify before the jury as a*  
46 *witness shall be deemed a consent to the granting of a motion*  
47 *for mistrial, and an objection to such calling of a juror shall*  
48 *be deemed a motion for mistrial.*

49 (e) (d) In the absence of objection by a party, a juror  
50 sworn and impaneled in the trial of an action may be com-  
51 pelled to testify in that trial as a witness.

1 court on its own motion or on motion of any party may ap-  
2 point one or more experts to investigate, to render a report  
3 as may be ordered by the court, and to testify as an expert at  
4 the trial of the action relative to the fact or matter as to which  
5 such expert evidence is or may be required. The court may  
6 fix the compensation for such services, if any, rendered by any  
7 person appointed under this section, in addition to any service  
8 as a witness, at such amount as seems reasonable to the court.

9 731. (a) In all criminal actions and juvenile court pro-  
10 ceedings, the compensation fixed under Section 730 shall be  
11 a charge against the county in which such action or proceeding  
12 is pending and shall be paid out of the treasury of such county  
13 on order of the court.

14 (b) In any county in which the procedure prescribed in this  
15 subdivision has been authorized by the board of supervisors,  
16 the compensation fixed under Section 730 for medical experts  
17 in civil actions in such county shall be a charge against and  
18 paid out of the treasury of such county on order of the court.

19 (c) Except as otherwise provided in this section, in all  
20 civil actions, the compensation fixed under Section 730 shall,  
21 in the first instance, be apportioned and charged to the several  
22 parties in such proportion as the court may determine and  
23 may thereafter be taxed and allowed in like manner as other  
24 costs.

25 732. Any expert appointed by the court under Section 730  
26 may be called and examined by the court or by any party to  
27 the action. When such witness is called and examined by the  
28 court, the parties have the same right as is expressed in Section  
29 775 to cross-examine the witness and to object to the questions  
30 asked and the evidence adduced.

31 733. Nothing contained in this article shall be deemed or  
32 construed to prevent any party to any action from producing  
33 other expert evidence on the same fact or matter mentioned  
34 in Section 730; but, where other expert witnesses are called  
35 by a party to the action, their fees shall be paid by the party  
36 calling them and only ordinary witness fees shall be taxed  
37 as costs in the action.

38  
39 CHAPTER 4. INTERPRETERS AND TRANSLATORS  
40

41 750. A person who serves as an interpreter or translator  
42 in any action is subject to all the rules of law relating to  
43 witnesses.

44 751. (a) An interpreter shall take an oath that he will  
45 make a true interpretation to the witness in a language that  
46 the witness understands and that he will make a true inter-  
47 pretation of the witness' answers to questions to counsel, court,  
48 or jury, in the English language, with his best skill and judg-  
49 ment.

1 (b) A translator shall take an oath that he will make a  
2 true translation in the English language of any writing he  
3 is to decipher or translate.

4 752. (a) When a witness is incapable of hearing or under-  
5 standing the English language or is incapable of expressing  
6 himself in the English language so as to be understood directly  
7 by counsel, court, and jury, an interpreter whom he can under-  
8 stand and who can understand him shall be sworn to interpret  
9 for him.

10 (b) The interpreter may be appointed and compensated as  
11 provided in Article 2 (commencing with Section 730) of  
12 Chapter 3.

13 753. (a) When the written characters in a writing offered  
14 in evidence are incapable of being deciphered or understood  
15 directly, a translator who can decipher the characters or un-  
16 derstand the language shall be sworn to decipher or trans-  
17 late the writing.

18 (b) The translator may be appointed and compensated as  
19 provided in Article 2 (commencing with Section 730) of  
20 Chapter 3.

21 754. (a) As used in this section, "deaf person" means a  
22 person with a hearing loss so great as to prevent his under-  
23 standing language spoken in a normal tone.

24 (b) In any criminal action where the defendant is a deaf  
25 person, all of the proceedings of the trial shall be interpreted  
26 to him in a language that he understands by a qualified inter-  
27 preter appointed by the court.

28 (c) In any action where the mental condition of a deaf  
29 person is being considered and where such person may be  
30 committed to a mental institution, all of the court proceedings  
31 pertaining to him shall be interpreted to him in a language  
32 that he understands by a qualified interpreter appointed by  
33 the court.

34 (d) Interpreters appointed under this section shall be paid  
35 for their services a reasonable sum to be determined by the  
36 court, which shall be a charge against the county in which  
37 such action is pending and shall be paid out of the treasury  
38 of such county on order of the court.

## 39 CHAPTER 5. METHOD AND SCOPE OF EXAMINATION

### 40 Article 1. Definitions

41  
42  
43  
44 760. "Direct examination" is the first examination of a  
45 witness upon a matter that is not within the scope of a previ-  
46 ous examination of the witness.

47 761. "Cross-examination" is the examination of a witness  
48 by a party other than the direct examiner upon a matter that  
49 is within the scope of the direct examination of the witness.

50 762. "Redirect examination" is an examination of a wit-  
51 ness by the direct examiner subsequent to the cross-examina-  
52 tion of the witness.

1 763. "Recross-examination" is an examination of a witness  
2 by a cross-examiner subsequent to a redirect examination of  
3 the witness.

4 764. A "leading question" is a question that suggests to  
5 the witness the answer that the examining party desires.

6  
7 Article 2. Examination of Witnesses  
8

9 765. The court shall exercise reasonable control over the  
10 mode of interrogation of a witness so as (a) to make such in-  
11 terrogation as rapid, as distinct, and as effective for the as-  
12 certainment of the truth, as may be, and (b) to protect the  
13 witness from undue harassment or embarrassment.

14 766. A witness must give responsive answers to questions,  
15 and answers that are not responsive shall be stricken on motion  
16 of any party.

17 767. Except under special circumstances where the inter-  
18 ests of justice otherwise require:

19 (a) A leading question may not be asked of a witness on  
20 direct or redirect examination.

21 (b) A leading question may be asked of a witness on cross-  
22 examination or recross-examination.

23 768. (a) In examining a witness concerning a writing, in-  
24 cluding a statement made by him that is inconsistent with any  
25 part of his testimony at the hearing, it is not necessary to  
26 *it is not necessary to* show, read, or disclose to him any part  
27 of the writing.

28 (b) If a writing is shown to a witness, all parties to the  
29 action must be given an opportunity to inspect it before any  
30 question concerning it may be asked of the witness.

31 769. In examining a witness concerning a statement or  
32 other conduct by him that is inconsistent with any part of his  
33 testimony at the hearing, it is not necessary to disclose to him  
34 any information concerning the statement or other conduct.

35 770. Unless the interests of justice otherwise require, ex-  
36 trinsic evidence of a statement made by a witness that is incon-  
37 sistent with any part of his testimony at the hearing shall be  
38 excluded unless:

39 (a) The witness was so examined while testifying as to give  
40 him an opportunity to explain or to deny the statement; or

41 (b) The witness has not been excused from giving further  
42 testimony in the action.

43 771. (a) *Subject to subdivision (c)*, if a witness, either  
44 while testifying or prior thereto, uses a writing to refresh his  
45 memory with respect to any matter about which he testifies,  
46 such writing must be produced at the request of an adverse  
47 party, who may, if he chooses, inspect the writing, cross-  
48 examine the witness concerning it, and read it to the jury.  
49 *at the hearing at the request of an adverse party and, unless*  
50 *the writing is so produced, the testimony of the witness con-*  
51 *cerning such matter shall be stricken.*



1 (b) If the writing is produced at the hearing, the adverse  
2 party may, if he chooses, inspect the writing, cross-examine  
3 the witness concerning it, and introduce it in evidence.

4 (c) Production of the writing is excused, and the testimony  
5 of the witness shall not be stricken, if the writing:

6 (1) Is not in the possession or control of the witness or the  
7 party who produced his testimony concerning the matter; and

8 (2) Was not reasonably procurable by such party through  
9 the use of the court's process or other available means.

10 772. (a) The examination of a witness shall proceed in  
11 the following phases: direct examination, cross-examination,  
12 redirect examination, re-cross-examination, and continuing  
13 thereafter by redirect and re-cross-examination.

14 (b) Unless for good cause the court otherwise directs, each  
15 phase of the examination of a witness must be concluded be-  
16 fore the succeeding phase begins.

17 (c) Subject to subdivision (d), a party may, in the dis-  
18 cretion of the court, ~~during~~ interrupt his cross-examination,  
19 redirect examination, or re-cross-examination of a witness, in  
20 order to examine the witness upon a matter not within the  
21 scope of a previous examination of the witness.

22 (d) If the witness is the defendant in a criminal action, the  
23 witness may not, *without his consent*, be examined under  
24 direct examination by another party.

25 773. (a) A witness examined by one party may be cross-  
26 examined upon any matter within the scope of the direct ex-  
27 amination by each other party to the action in such order as  
28 the court directs.

29 (b) The cross-examination of a witness by any party whose  
30 interest is not adverse to the party calling him is subject to  
31 the same rules that are applicable to the direct examination.

32 774. A witness once examined cannot be reexamined as  
33 to the same matter without leave of the court, but he may be  
34 reexamined as to any new matter upon which he has been  
35 examined by another party to the action. Leave may be granted  
36 or withheld in the court's discretion.

37 775. The court on its own motion may call witnesses and  
38 interrogate them the same as if they had been produced by a  
39 party to the action, and the parties may object to the questions  
40 asked and the evidence adduced the same as if such witnesses  
41 were called and examined by an adverse party. Such witnesses  
42 may be cross-examined by all parties to the action in such  
43 order as the court directs.

44 776. (a) A party to the record of any civil action, or a  
45 person identified with such a party, may be called and examined  
46 as if under cross-examination by any adverse party at any  
47 time during the presentation of evidence by the party calling  
48 the witness. The party calling such witness is not bound by  
49 his testimony, and the testimony of such witness may be re-  
50 butted by the party calling him for such examination by other  
51 evidence. *the witness.*

1 (b) A witness examined by a party under this section may  
2 be cross-examined by all other parties to the action in such  
3 order as the court directs; but the witness may be examined  
4 only as if under redirect examination by:

5 (1) In the case of a witness who is a party, his own counsel  
6 and counsel for a party who is not adverse to the witness.

7 (2) In the case of a witness who is not a party, counsel for  
8 the party with whom the witness is identified and counsel for  
9 a party who is not adverse to the party with whom the witness  
10 is identified.

11 (c) For the purpose of this section, parties represented by  
12 the same counsel are deemed to be a single party.

13 (d) For the purpose of this section, a person is identified  
14 with a party if he is:

15 (1) A person for whose immediate benefit the action is  
16 prosecuted or defended by the party.

17 (2) A director, officer, superintendent, member, agent, em-  
18 ployee, or managing agent of the party or of a person specified  
19 in paragraph (1), or any public employee of a public entity  
20 when such public entity is the party.

21 (3) A person who was in any of the relationships specified  
22 in paragraph (2) at the time of the act or omission giving rise  
23 to the cause of action.

24 (4) A person who was in any of the relationships specified  
25 in paragraph (2) at the time he obtained knowledge of the  
26 matter concerning which he is sought to be examined under  
27 this section.

28 777. (a) Subject to subdivisions (b) and (c), the court  
29 may exclude from the courtroom any witness not at the time  
30 under examination so that such witness cannot hear the testi-  
31 mony of other witnesses.

32 (b) A party to the action cannot be excluded under this  
33 section.

34 (c) If a person other than a natural person is a party to  
35 the action, an officer or employee designated by its attorney  
36 is entitled to be present.

37 778. After a witness has been excused from giving further  
38 testimony in the action, he cannot be recalled without leave of  
39 the court. Leave may be granted or withheld in the court's  
40 discretion.

41 CHAPTER 6. CREDIBILITY OF WITNESSES

42 Article 1. Credibility Generally

43  
44 780. Except as otherwise provided by ~~law~~ *statute*, the court  
45 or jury may consider in determining the credibility of a wit-  
46 ness any matter that has any tendency in reason to prove or  
47 disprove the truthfulness of his testimony at the hearing, in-  
48 cluding but not limited to any of the following:

49 (a) His demeanor while testifying and the manner in which  
50 he testifies.

51 (b) The character of his testimony.  
52

- 1 (c) The extent of his capacity to perceive, to recollect, or  
 2 to communicate any matter about which he testifies.  
 3 (d) The extent of his opportunity to perceive any matter  
 4 about which he testifies.  
 5 (e) His character for honesty or veracity or their opposites.  
 6 (f) The existence or nonexistence of a bias, interest, or other  
 7 motive.  
 8 (g) A statement previously made by him that is consistent  
 9 with his testimony at the hearing.  
 10 (h) A statement made by him that is inconsistent with any  
 11 part of his testimony at the hearing.  
 12 (i) The existence or nonexistence of any fact testified to  
 13 by him.  
 14 (j) His attitude toward the action in which he testifies or  
 15 toward the giving of testimony.  
 16 (k) His admission of untruthfulness.

## 18 Article 2. Attacking or Supporting Credibility

19  
 20 785. The credibility of a witness may be attacked or sup-  
 21 ported by any party, including the party calling him.

22 786. Evidence of traits of his character other than honesty  
 23 or veracity, or their opposites, is inadmissible to attack or  
 24 support the credibility of a witness.

25 787. Subject to Section 788, evidence of specific instances  
 26 of his conduct relevant only as tending to prove a trait of his  
 27 character is inadmissible to attack or support the credibility  
 28 of a witness.

29 788. (a) Subject to subdivision (b), evidence of a witness'  
 30 conviction of a felony is admissible for the purpose of attack-  
 31 ing his credibility if the court, in proceedings held out of the  
 32 presence and hearing of the jury, finds that:

33 (1) An essential element of the crime is dishonesty or false  
 34 statement; and

35 (2) The witness has admitted his conviction of the crime  
 36 or the party attacking the credibility of the witness has pro-  
 37 duced competent evidence of the conviction.

38 (b) Evidence of a witness' conviction of a felony is inad-  
 39 missible for the purpose of attacking his credibility if:

40 (1) A pardon based on his innocence has been granted to  
 41 the witness by the jurisdiction in which he was convicted.

42 (2) A certificate of rehabilitation and pardon has been  
 43 granted to the witness under the provisions of Chapter 3.5  
 44 (commencing with Section 4852.01) of Title 6 of Part 3 of  
 45 the Penal Code.

46 (3) The accusatory pleading against the witness has been  
 47 dismissed under the provisions of Penal Code Section 1203.4.

48 (4) The conviction was under the laws of another jurisdic-  
 49 tion and the witness has been relieved of the penalties and  
 50 disabilities arising from the conviction pursuant to a procedure  
 51 substantially equivalent to that referred to in paragraph (2)  
 52 or (3).

1 (5) A period of more than 10 years has elapsed since the  
2 date of his release from confinement, or the expiration of the  
3 period of his parole, probation, or sentence, whichever is the  
4 later date.

5 789. Evidence of his religious belief or lack thereof is in-  
6 admissible to attack or support the credibility of a witness.

7 790. Evidence of the good character of a witness is inad-  
8 missible to support his credibility unless evidence of his bad  
9 character has been admitted for the purpose of attacking his  
10 credibility.

11 791. Evidence of a statement previously made by a wit-  
12 ness that is consistent with his testimony at the hearing is  
13 inadmissible to support his credibility unless it is offered  
14 after:

15 (a) Evidence of a statement made by him that is incon-  
16 sistent with any part of his testimony at the hearing has been  
17 admitted for the purpose of attacking his credibility, and the  
18 statement was made before the alleged inconsistent state-  
19 ment; or

20 (b) An express or implied charge has been made that his  
21 testimony at the hearing is recently fabricated or is influenced  
22 by bias or other improper motive, and the statement was made  
23 before the bias, motive for fabrication, or other improper  
24 motive is alleged to have arisen.

25  
26 DIVISION 7. OPINION TESTIMONY AND  
27 SCIENTIFIC EVIDENCE

28  
29 CHAPTER 1. EXPERT AND OTHER OPINION TESTIMONY

30  
31 Article 1. Expert and Other Opinion Testimony Generally

32  
33 800. If a witness is not testifying as an expert, his testi-  
34 mony in the form of an opinion is limited to such an opinion  
35 as is permitted by law, including but not limited to an opinion  
36 that is:

- 37 (a) Rationally based on the perception of the witness; and  
38 (b) Helpful to a clear understanding of his testimony.

39 801. If a witness is testifying as an expert, his testimony  
40 in the form of an opinion is limited to such an opinion as is:

41 (a) Related to a subject that is sufficiently beyond common  
42 experience that the opinion of an expert would assist the trier  
43 of fact; and

44 (b) Based on matter (including his special knowledge, skill,  
45 experience, training, and education) perceived by or person-  
46 ally known to the witness or made known to him at or before  
47 the hearing, whether or not admissible, that is of a type that  
48 reasonably may be relied upon by an expert in forming an  
49 opinion upon the subject to which his testimony relates, unless  
50 an expert is precluded by law from using such matter as a  
51 basis for his opinion.

1 802. A witness testifying in the form of an opinion may  
2 state on direct examination the reasons for his opinion and  
3 the matter (including, in the case of an expert, his special  
4 knowledge, skill, experience, training, and education) upon  
5 which it is based, unless he is precluded by law from using such  
6 reasons or matter as a basis for his opinion. The court in its  
7 discretion may require that a witness before testifying in the  
8 form of an opinion be first examined concerning the matter  
9 upon which his opinion is based.

10 803. The court may, and upon objection shall, exclude  
11 testimony in the form of an opinion that is based in whole or  
12 in significant part on matter that is not a proper basis for  
13 such an opinion. In such case, the witness may, if there remains  
14 a proper basis for his opinion, then state his opinion after  
15 excluding from consideration the matter determined to be  
16 improper.

17 804. (a) If a witness testifying as an expert testifies that  
18 his opinion is based in whole or in part upon the opinion or  
19 statement of another person, such other person may be called  
20 and examined by any adverse party as if under cross-exam-  
21 ination concerning the opinion or statement.

22 (b) This section is not applicable if the person upon whose  
23 opinion or statement the expert witness has relied is (1) a  
24 party, (2) a person identified with a party within the meaning  
25 of subdivision (d) of Section 776, or (3) a witness who has  
26 testified in the action concerning the *subject matter of the*  
27 opinion or statement upon which the expert witness has relied.

28 (c) Nothing in this section makes admissible an expert  
29 opinion that is inadmissible because it is based in whole or in  
30 part on the opinion or statement of another person.

31 (d) An expert opinion otherwise admissible is not made  
32 inadmissible by this section because it is based on the opinion  
33 or statement of a person who is unavailable for examination  
34 pursuant to this section.

35 805. Testimony in the form of an opinion that is otherwise  
36 admissible is not objectionable because it embraces the ultimate  
37 issue to be decided by the trier of fact.

## 38 Article 2. Opinion Testimony on Particular Subjects

39  
40  
41 870. A witness may state his opinion as to the sanity of a  
42 person when:

43 (a) The witness is an intimate acquaintance of the person  
44 whose sanity is in question;

45 (b) The witness was a subscribing witness to a writing, the  
46 validity of which is in dispute, signed by the person whose  
47 sanity is in question and the opinion relates to the sanity of  
48 such person at the time the writing was signed; or

49 (c) The witness is qualified under Section 800 or 801 to  
50 testify in the form of an opinion.

1           CHAPTER 2. BLOOD TESTS TO DETERMINE PATERNITY  
2

3       890. This chapter may be cited as the Uniform Act on  
4 Blood Tests to Determine Paternity.

5       891. This act shall be so interpreted and construed as to  
6 effectuate its general purpose to make uniform the law of  
7 those states which enact it.

8       892. In a civil action in which paternity is a relevant fact,  
9 the court may upon its own initiative or upon suggestion made  
10 by or on behalf of any person whose blood is involved, and  
11 shall upon motion of any party to the action made at a time so  
12 as not to delay the proceedings unduly, order the mother,  
13 child, and alleged father to submit to blood tests. If any party  
14 refuses to submit to such tests, the court may resolve the ques-  
15 tion of paternity against such party or enforce its order if the  
16 rights of others and the interests of justice so require.

17       893. The tests shall be made by experts qualified as exam-  
18 iners of blood types who shall be appointed by the court. The  
19 experts shall be called by the court as witnesses to testify to  
20 their findings and shall be subject to cross-examination by the  
21 parties. Any party or person at whose suggestion the tests have  
22 been ordered may demand that other experts, qualified as  
23 examiners of blood types, perform independent tests under  
24 order of the court, the results of which may be offered in evi-  
25 dence. The number and qualifications of such experts shall be  
26 determined by the court.

27       894. The compensation of each expert witness appointed  
28 by the court shall be fixed at a reasonable amount. It shall be  
29 paid as the court shall order. The court may order that it be  
30 paid by the parties in such proportions and at such times as it  
31 shall prescribe, or that the proportion of any party be paid by  
32 the county, and that, after payment by the parties or the  
33 county or both, all or part or none of it be taxed as costs in  
34 the action.

35       895. If the court finds that the conclusions of all the ex-  
36 perts, as disclosed by the evidence based upon the tests, are  
37 that the alleged father is not the father of the child, the ques-  
38 tion of paternity shall be resolved accordingly. If the experts  
39 disagree in their findings or conclusions, the question shall be  
40 submitted upon all the evidence.

41       896. This chapter applies to criminal actions subject to the  
42 following limitations and provisions:

43       (a) An order for the tests shall be made only upon applica-  
44 tion of a party or on the court's initiative.

45       (b) The compensation of the experts shall be paid by the  
46 county under order of court.

47       (c) The court may direct a verdict of acquittal upon the  
48 conclusions of all the experts under the provisions of Section  
49 895; otherwise, the case shall be submitted for determination  
50 upon all the evidence.

51       897. Nothing contained in this chapter shall be deemed  
52 or construed to prevent any party to any action from pro-

1 ducing other expert evidence on the matter covered by this  
 2 chapter; but, where other expert witnesses are called by a  
 3 party to the action, their fees shall be paid by the party  
 4 calling them and only ordinary witness fees shall be taxed  
 5 as costs in the action.

## 6 DIVISION 8. PRIVILEGES

### 7 CHAPTER 1. DEFINITIONS

10  
 11 900. Unless the provision or context otherwise requires,  
 12 the definitions in this chapter govern the construction of this  
 13 division. They do not govern the construction of any other  
 14 division.

15 901. "Proceeding" means any action, hearing, investiga-  
 16 tion, inquest, or inquiry (whether conducted by a court, ad-  
 17 ministrative agency, hearing officer, arbitrator, legislative body,  
 18 or any other person authorized by law) in which, pursuant to  
 19 law, testimony can be compelled to be given.

20 902. "Civil proceeding" means any proceeding except a  
 21 criminal proceeding.

22 903. "Criminal proceeding" means:

23 (a) A criminal action; and

24 (b) A proceeding pursuant to Article 3 (commencing with  
 25 Section 3060) of Chapter 7 of Division 4 of Title 1 of the  
 26 Government Code to determine whether a public officer should  
 27 be removed from office for wilful or corrupt misconduct in  
 28 office.

29 904. "Disciplinary proceeding" means a proceeding brought  
 30 by a public entity to determine whether a right, authority,  
 31 license, or privilege (including the right or privilege to be  
 32 employed by the public entity or to hold a public office) should  
 33 be revoked, suspended, terminated, limited, or conditioned,  
 34 but does not include a criminal proceeding.

35 905. "Presiding officer" means the person authorized to  
 36 rule on a claim of privilege in the proceeding in which the  
 37 claim is made.

### 38 CHAPTER 2. APPLICABILITY OF DIVISION

39  
 40  
 41 910. Except as otherwise provided by statute, the provi-  
 42 sions of this division apply in all proceedings. The provisions  
 43 of any statute making rules of evidence inapplicable in par-  
 44 ticular proceedings, or limiting the applicability of rules of  
 45 evidence in particular proceedings, do not make this division  
 46 inapplicable to such proceedings.

### 47 CHAPTER 3. GENERAL PROVISIONS RELATING TO PRIVILEGES

48  
 49  
 50 911. Except as otherwise provided by statute:

51 (a) No person has a privilege to refuse to be a witness.

1 (b) No person has a privilege to refuse to disclose any  
2 matter or to refuse to produce any writing, object, or other  
3 thing.

4 (c) No person has a privilege that another shall not be a  
5 witness or shall not disclose any matter or shall not produce  
6 any writing, object, or other thing.

7 912. (a) Except as otherwise provided in this section, the  
8 right of any person to claim a privilege provided by Section  
9 954 (lawyer-client privilege), 980 (privilege for confidential  
10 marital communications), 994 (physician-patient privilege),  
11 1014 (psychotherapist-patient privilege), 1033 (privilege of  
12 penitent), or 1034 (privilege of clergyman) is waived with  
13 respect to a communication protected by such privilege if any  
14 holder of the privilege, without coercion, has disclosed a sig-  
15 nificant part of the communication or has consented to such  
16 disclosure made by anyone. Consent to disclosure is manifested  
17 by any statement or other conduct of the holder of the privi-  
18 lege indicating his consent to the disclosure, including his  
19 failure to claim the privilege in any proceeding in which he  
20 has the legal standing and opportunity to claim the privilege.

21 (b) Where two or more persons are joint holders of a privi-  
22 lege provided by Section 954 (lawyer-client privilege), 994  
23 (physician-patient privilege), or 1014 (psychotherapist-patient  
24 privilege), a waiver of the right of a particular joint holder  
25 of the privilege to claim the privilege does not affect the right  
26 of another joint holder to claim the privilege. In the case of  
27 the privilege provided by Section 980 (privilege for confi-  
28 dential marital communications), a waiver of the right of one  
29 spouse to claim the privilege does not affect the right of the  
30 other spouse to claim the privilege.

31 (c) A disclosure that is itself privileged under this divi-  
32 sion is not a waiver of any privilege.

33 (d) A disclosure in confidence of a communication that is  
34 protected by a privilege provided by Section 954 (lawyer-  
35 client privilege), 994 (physician-patient privilege), or 1014  
36 (psychotherapist-patient privilege), when such disclosure is  
37 reasonably necessary for the accomplishment of the purpose  
38 for which the lawyer, physician, or psychotherapist was con-  
39 sulted, is not a waiver of the privilege.

40 913. (a) If in the instant proceeding or on a prior occasion  
41 a privilege is or was exercised not to testify with respect to  
42 any matter, or to refuse to disclose or to prevent another from  
43 disclosing any matter, neither the presiding officer nor counsel  
44 may comment thereon, no presumption shall arise because of  
45 the exercise of the privilege, and the trier of fact may not  
46 draw any inference therefrom as to the credibility of the  
47 witness or as to any matter at issue in the proceeding.

48 (b) The court, at the request of a party who may be ad-  
49 versely affected because an unfavorable inference may be  
50 drawn by the jury because a privilege has been exercised, shall  
51 instruct the jury that no presumption arises because of the  
52 exercise of the privilege and that the jury may not draw any



1 inference therefrom as to the credibility of the witness or as  
2 to any matter at issue in the proceeding.

3 914. (a) The presiding officer shall determine a claim of  
4 privilege in any proceeding in the same manner as a court de-  
5 termines such a claim under Article 2 (commencing with Sec-  
6 tion 400) of Chapter 4 of Division 3.

7 (b) No person may be held in contempt for failure to dis-  
8 close information claimed to be privileged unless he has failed  
9 to comply with an order of a court that he disclose such in-  
10 formation. This subdivision does not apply to any govern-  
11 mental agency that has constitutional contempt power, *nor*  
12 *does it apply to hearings and investigations of the Industrial*  
13 *Accident Commission*, nor does it impliedly repeal Chapter 4  
14 (commencing with Section 9400) of Part 1 of Division 2 of  
15 Title 2 of the Government Code. If no other statutory pro-  
16 cedure is applicable, the procedure prescribed by Section 1991  
17 of the Code of Civil Procedure shall be followed in seeking an  
18 order of a court that the person disclose the information  
19 claimed to be privileged.

20 915. (a) Subject to subdivision (b), the presiding officer  
21 may not require disclosure of information claimed to be privi-  
22 leged under this division in order to rule on the claim of  
23 privilege.

24 (b) When a court is ruling on a claim of privilege under  
25 Article 9 (commencing with Section 1040) of Chapter 4 (offi-  
26 cial information and identity of informer) or under Section  
27 1060 (trade secret) and is unable to do so without requiring  
28 disclosure of the information claimed to be privileged, the court  
29 may require the person from whom disclosure is sought or the  
30 person authorized to claim the privilege, or both, to disclose  
31 the information in chambers out of the presence and hearing  
32 of all persons except the person authorized to claim the privi-  
33 lege and such other persons as the person authorized to claim  
34 the privilege is willing to have present. If the judge deter-  
35 mines that the information is privileged, neither he nor any  
36 other person may ever disclose, without the consent of a per-  
37 son authorized to permit disclosure, what was disclosed in the  
38 course of the proceedings in chambers.

39 916. (a) The presiding officer, on his own motion or on the  
40 motion of any party, shall exclude information that is sub-  
41 ject to a claim of privilege under this division if:

42 (1) The person from whom the information is sought is not  
43 a person authorized to claim the privilege; and

44 (2) There is no party to the proceeding who is a person au-  
45 thorized to claim the privilege.

46 (b) The presiding officer may not exclude information  
47 under this section if:

48 (1) He is otherwise instructed by a person authorized to  
49 permit disclosure; or

50 (2) The proponent of the evidence establishes that there is  
51 no person authorized to claim the privilege in existence.

1 917. Whenever a privilege is claimed on the ground that  
 2 the matter sought to be disclosed is a communication made in  
 3 confidence in the course of the lawyer-client, physician-patient,  
 4 psychotherapist-patient, clergyman-penitent, or husband-wife  
 5 relationship, the communication is presumed to have been  
 6 made in confidence and the opponent of the claim of privilege  
 7 has the burden of proof to establish that the communication  
 8 was not confidential.

9 918. A party may predicate error on a ruling disallowing  
 10 a claim of privilege only if he is the holder of the privilege,  
 11 except that a party may predicate error on a ruling disallow-  
 12 ing a claim of privilege by his spouse under Section 970 or 971.

13 919. Evidence of a statement or other disclosure of privi-  
 14 leged information is inadmissible against a holder of the  
 15 privilege if:

16 (a) A person authorized to claim the privilege claimed it  
 17 but nevertheless disclosure erroneously was required to be  
 18 made; or

19 (b) The presiding officer did not exclude the privileged in-  
 20 formation as required by Section 916.

21 920. Nothing in this division shall be construed to repeal  
 22 by implication any other statute relating to privileges.  
 23

24 CHAPTER 4. PARTICULAR PRIVILEGES

25 Article 1. Privilege of Defendant in Criminal Case

26 930. To the extent that such privilege exists under the Con-  
 27 stitution of the United States or the State of California, a  
 28 defendant in a criminal case has a privilege not to be called  
 29 as a witness and not to testify.  
 30  
 31  
 32

33 Article 2. Privilege Against Self-incrimination

34 940. To the extent that such privilege exists under the  
 35 Constitution of the United States or the State of California,  
 36 a person has a privilege to refuse to disclose any matter that  
 37 may tend to incriminate him.  
 38  
 39

40 Article 3. Lawyer-client Privilege

41 950. As used in this article, "lawyer" means a person au-  
 42 thorized, or reasonably believed by the client to be authorized,  
 43 to practice law in any state or nation.  
 44

45 951. As used in this article, "client" means a person who,  
 46 directly or through an authorized representative, consults a  
 47 lawyer for the purpose of retaining the lawyer or securing  
 48 legal service or advice from him in his professional capacity,  
 49 and includes an incompetent (a) who himself so consults the  
 50 lawyer or (b) whose guardian or conservator so consults the  
 51 lawyer in behalf of the incompetent.

1 952. As used in this article, "confidential communication  
2 between client and lawyer" means information transmitted be-  
3 tween a client and his lawyer in the course of that relationship  
4 and in confidence by a means which, so far as the client is  
5 aware, discloses the information to no third persons other  
6 than those who are present to further the interest of the client  
7 in the consultation or those to whom disclosure is reasonably  
8 necessary for the transmission of the information or the ac-  
9 complishment of the purpose for which the lawyer is con-  
10 sulted, and includes advice given by the lawyer in the course  
11 of that relationship.

12 953. As used in this article, "holder of the privilege"  
13 means:

14 (a) The client when he has no guardian or conservator.

15 (b) A guardian or conservator of the client when the client  
16 has a guardian or conservator.

17 (c) The personal representative of the client if the client is  
18 dead.

19 (d) A successor, assign, trustee in dissolution, or any simi-  
20 lar representative of a firm, association, organization, partner-  
21 ship, business trust, corporation, or public entity that is no  
22 longer in existence.

23 954. Subject to Section 912 and except as otherwise pro-  
24 vided in this article, the client, whether or not a party, has  
25 a privilege to refuse to disclose, and to prevent another from  
26 disclosing, a confidential communication between client and  
27 lawyer if the privilege is claimed by:

28 (a) The holder of the privilege;

29 (b) A person who is authorized to claim the privilege by the  
30 holder of the privilege; or

31 (c) The person who was the lawyer at the time of the confi-  
32 dential communication, but such person may not claim the  
33 privilege if there is no holder of the privilege in existence or  
34 if he is otherwise instructed by a person authorized to permit  
35 disclosure.

36 955. The lawyer who received or made a communication  
37 subject to the privilege under this article shall claim the privi-  
38 lege whenever he is present when the communication is sought  
39 to be disclosed and is authorized to claim the privilege under  
40 subdivision (c) of Section 954.

41 956. There is no privilege under this article if the services  
42 of the lawyer were sought or obtained to enable or aid anyone  
43 to commit or plan to commit a crime or a fraud.

44 957. There is no privilege under this article as to a commu-  
45 nication relevant to an issue between parties all of whom  
46 claim through a deceased client, regardless of whether the  
47 claims are by testate or intestate succession or by inter vivos  
48 transaction.

49 958. There is no privilege under this article as to a commu-  
50 nication relevant to an issue of breach, by the lawyer or by the  
51 client, of a duty arising out of the lawyer-client relationship.

1 959. There is no privilege under this article as to a com-  
2 munication relevant to an issue concerning the intention or  
3 competence of a client executing an attested document of  
4 which the lawyer is an attesting witness, or concerning the  
5 execution or attestation of such a document.

6 960. There is no privilege under this article as to a commu-  
7 nication relevant to an issue concerning the intention of a  
8 client, now deceased, with respect to a deed of conveyance,  
9 will, or other writing, executed by the client, purporting to  
10 affect an interest in property.

11 961. There is no privilege under this article as to a commu-  
12 nication relevant to an issue concerning the validity of a deed  
13 of conveyance, will, or other writing, executed by a client, now  
14 deceased, purporting to affect an interest in property.

15 962. Where two or more clients have retained or consulted  
16 a lawyer upon a matter of common interest, none of them may  
17 claim a privilege under this article as to a communication  
18 made in the course of that relationship when such communi-  
19 cation is offered in a civil proceeding between such clients.

20 Article 4. Privilege Not to Testify Against Spouse

21  
22 970. Except as otherwise provided by statute, a married  
23 person has a privilege not to testify against his spouse in  
24 any proceeding.

25 971. Except as otherwise provided by statute, a married  
26 person whose spouse is a party to a proceeding has a privilege  
27 not to be called as a witness by an adverse party to that pro-  
28 ceeding without the prior express consent of the spouse having  
29 the privilege under this section unless the party calling the  
30 spouse does so in good faith without knowledge of the marital  
31 relationship.

32 972. A married person does not have a privilege under  
33 this article in:

34 (a) A proceeding brought by or on behalf of one spouse  
35 against the other spouse.

36 (b) A proceeding to commit or otherwise place his spouse  
37 or his spouse's property, or both, under the control of another  
38 because of the spouse's alleged mental or physical condition.

39 (c) A proceeding brought by or on behalf of a spouse to  
40 establish his competence.

41 (d) A proceeding under the Juvenile Court Law, Chapter  
42 2 (commencing with Section 500) of Part 1 of Division 2 of  
43 the Welfare and Institutions Code.

44 (e) A criminal proceeding in which one spouse is charged  
45 with:

46 (1) A crime against the person or property of the other  
47 spouse or of a child of either, whether committed before or  
48 during marriage.

49 (2) A crime against the person or property of a third  
50 person committed in the course of committing a crime against  
51

1 the person or property of the other spouse, whether committed  
2 before or during marriage.

3 (3) Bigamy or adultery.

4 (4) A crime defined by Section 270 or 270a of the Penal  
5 Code.

6 973. (a) Unless erroneously compelled to do so, a married  
7 person who testifies in a proceeding to which his spouse is a  
8 party, or who testifies against his spouse in any proceeding,  
9 does not have a privilege under this article in the proceeding  
10 in which such testimony is given.

11 (b) There is no privilege under this article in a civil pro-  
12 ceeding brought or defended by a married person for the im-  
13 mediate benefit of his spouse or of himself and his spouse.

14  
15 Article 5. Privilege for Confidential Marital  
16 Communications

17  
18 980. Subject to Section 912 and except as otherwise pro-  
19 vided in this article, a spouse (or his guardian or conservator  
20 when he has a guardian or conservator), whether or not a  
21 party, has a privilege during the marital relationship and  
22 afterwards to refuse to disclose, and to prevent another from  
23 disclosing, a communication if he claims the privilege and  
24 the communication was made in confidence between him and  
25 the other spouse while they were husband and wife.

26 981. There is no privilege under this article if the com-  
27 munication was made, in whole or in part, to enable or aid  
28 anyone to commit or plan to commit a crime or a fraud.

29 982. There is no privilege under this article in a proceed-  
30 ing to commit either spouse or otherwise place him or his  
31 property, or both, under the control of another because of his  
32 alleged mental or physical condition.

33 983. There is no privilege under this article in a proceed-  
34 ing brought by or on behalf of either spouse to establish his  
35 competence.

36 984. There is no privilege under this article in:

37 (a) A proceeding brought by or on behalf of one spouse  
38 against the other spouse.

39 (b) A proceeding between a surviving spouse and a person  
40 who claims through the deceased spouse, regardless of whether  
41 such claim is by testate or intestate succession or by inter  
42 vivos transaction.

43 985. There is no privilege under this article in a criminal  
44 proceeding in which one spouse is charged with:

45 (a) A crime committed at any time against the person or  
46 property of the other spouse or of a child of either.

47 (b) A crime committed at any time against the person or  
48 property of a third person committed in the course of com-  
49 mitting a crime against the person or property of the other  
50 spouse.

51 (c) Bigamy or adultery.

1 (d) A crime defined by Section 270 or 270a of the Penal  
2 Code.

3 986. There is no privilege under this article in a proceed-  
4 ing under the Juvenile Court Law, Chapter 2 (commencing  
5 with Section 500) of Part 1 of Division 2 of the Welfare and  
6 Institutions Code.

7 987. There is no privilege under this article in a criminal  
8 proceeding in which the communication is offered in evidence  
9 by a defendant who is one of the spouses between whom the  
10 communication was made.

11

12

### Article 6. Physician-Patient Privilege

13

14 990. As used in this article, "physician" means a person  
15 authorized, or reasonably believed by the patient to be author-  
16 ized, to practice medicine in any state or nation.

17 991. As used in this article, "patient" means a person  
18 who consults a physician or submits to an examination by a  
19 physician for the purpose of securing a diagnosis or preven-  
20 tive, palliative, or curative treatment of his physical or mental  
21 or emotional condition.

22 992. As used in this article, "confidential communication  
23 between patient and physician" means information, including  
24 information obtained by an examination of the patient, trans-  
25 mitted between a patient and his physician in the course of  
26 that relationship and in confidence by a means which, so far  
27 as the patient is aware, discloses the information to no third  
28 persons other than those who are present to further the in-  
29 terest of the patient in the consultation or those to whom dis-  
30 closure is reasonably necessary for the transmission of the  
31 information or the accomplishment of the purpose for which  
32 the physician is consulted, and includes advice given by the  
33 physician in the course of that relationship.

34 993. As used in this article, "holder of the privilege"  
35 means:

36 (a) The patient when he has no guardian or conservator.

37 (b) A guardian or conservator of the patient when the pa-  
38 tient has a guardian or conservator.

39 (c) The personal representative of the patient if the patient  
40 is dead.

41 994. Subject to Section 912 and except as otherwise pro-  
42 vided in this article, the patient, whether or not a party, has  
43 a privilege to refuse to disclose, and to prevent another from  
44 disclosing, a confidential communication between patient and  
45 physician if the privilege is claimed by:

46 (a) The holder of the privilege;

47 (b) A person who is authorized to claim the privilege by  
48 the holder of the privilege; or

49 (c) The person who was the physician at the time of the  
50 confidential communication, but such person may not claim  
51 the privilege if there is no holder of the privilege in existence

1 or if he is otherwise instructed by a person authorized to per-  
2 mit disclosure.

3 995. The physician who received or made a communication  
4 subject to the privilege under this article shall claim the privi-  
5 lege whenever he is present when the communication is sought  
6 to be disclosed and is authorized to claim the privilege under  
7 subdivision (c) of Section 994.

8 996. There is no privilege under this article as to a com-  
9 munication relevant to an issue concerning the condition of  
10 the patient if such issue has been tendered by:

11 (a) The patient;

12 (b) Any party claiming through or under the patient;

13 (c) Any party claiming as a beneficiary of the patient  
14 through a contract to which the patient is or was a party; or

15 (d) The plaintiff in an action brought under Section 376  
16 or 377 of the Code of Civil Procedure for damages for the  
17 injury or death of the patient.

18 997. There is no privilege under this article if the services  
19 of the physician were sought or obtained to enable or aid any-  
20 one to commit or plan to commit a crime or a tort or to escape  
21 detection or apprehension after the commission of a crime or  
22 a tort.

23 998. There is no privilege under this article in a criminal  
24 proceeding or in a disciplinary proceeding.

25 999. There is no privilege under this article in a proceed-  
26 ing to recover damages on account of conduct of the patient  
27 which constitutes a crime.

28 1000. There is no privilege under this article as to a com-  
29 munication relevant to an issue between parties all of whom  
30 claim through a deceased patient, regardless of whether the  
31 claims are by testate or intestate succession or by inter vivos  
32 transaction.

33 1001. There is no privilege under this article as to a com-  
34 munication relevant to an issue of breach, by the physician or  
35 by the patient, of a duty arising out of the physician-patient  
36 relationship.

37 1002. There is no privilege under this article as to a com-  
38 munication relevant to an issue concerning the intention of  
39 a patient, now deceased, with respect to a deed of conveyance,  
40 will, or other writing, executed by the patient, purporting to  
41 affect an interest in property.

42 1003. There is no privilege under this article as to a com-  
43 munication relevant to an issue concerning the validity of a  
44 deed of conveyance, will, or other writing, executed by a  
45 patient, now deceased, purporting to affect an interest in  
46 property.

47 1004. There is no privilege under this article in a proceed-  
48 ing to commit the patient or otherwise place him or his prop-  
49 erty, or both, under the control of another because of his  
50 alleged mental or physical condition.

1 1005. There is no privilege under this article in a proceed-  
2 ing brought by or on behalf of the patient to establish his  
3 competence.

4 1006. There is no privilege under this article as to infor-  
5 mation that the physician or the patient is required to report  
6 to a public employee, or as to information required to be  
7 recorded in a public office, unless the statute, charter, ordi-  
8 nance, administrative regulation, or other provision requiring  
9 the report or record specifically provides that the information  
10 is confidential or may not be disclosed in the particular  
11 proceeding.

12 *recorded in a public office, if such report or record is open to*  
13 *public inspection.*

14  
15 Article 7. Psychotherapist-patient Privilege  
16

17 1010. As used in this article, "psychotherapist" means:

18 (a) A person authorized, or reasonably believed by the pa-  
19 tient to be authorized, to practice medicine in any state or  
20 nation who devotes, or is reasonably believed by the patient  
21 to devote, a substantial portion of his time to the practice of  
22 psychiatry; or

23 (b) A person certified as a psychologist under Chapter 6.6  
24 (commencing with Section 2900) of Division 2 of the Business  
25 and Professions Code.

26 1011. As used in this article, "patient" means a person  
27 who consults a psychotherapist or submits to an examination  
28 by a psychotherapist for the purpose of securing a diagnosis  
29 or preventive, palliative, or curative treatment of his mental  
30 or emotional condition.

31 1012. As used in this article, "confidential communication  
32 between patient and psychotherapist" means information, in-  
33 cluding information obtained by an examination of the pa-  
34 tient, transmitted between a patient and his psychotherapist  
35 in the course of that relationship and in confidence by a means  
36 which, so far as the patient is aware, discloses the information  
37 to no third persons other than those who are present to fur-  
38 ther the interest of the patient in the consultation or those  
39 to whom disclosure is reasonably necessary for the transmis-  
40 sion of the information or the accomplishment of the purpose  
41 for which the psychotherapist is consulted, and includes ad-  
42 vice given by the psychotherapist in the course of that rela-  
43 tionship.

44 1013. As used in this article, "holder of the privilege"  
45 means:

46 (a) The patient when he has no guardian or conservator.

47 (b) A guardian or conservator of the patient when the pa-  
48 tient has a guardian or conservator.

49 (c) The personal representative of the patient if the pa-  
50 tient is dead.

51 1014. Subject to Section 912 and except as otherwise pro-  
52 vided in this article, the patient, whether or not a party, has



1 a privilege to refuse to disclose, and to prevent another from  
2 disclosing, a confidential communication between patient and  
3 psychotherapist if the privilege is claimed by:

4 (a) The holder of the privilege;

5 (b) A person who is authorized to claim the privilege by  
6 the holder of the privilege; or

7 (c) The person who was the psychotherapist at the time of  
8 the confidential communication, but such person may not claim  
9 the privilege if there is no holder of the privilege in existence  
10 or if he is otherwise instructed by a person authorized to per-  
11 mit disclosure.

12 1015. The psychotherapist who received or made a commu-  
13 nication subject to the privilege under this article shall claim  
14 the privilege whenever he is present when the communication  
15 is sought to be disclosed and is authorized to claim the privi-  
16 lege under subdivision (c) of Section 1014.

17 1016. There is no privilege under this article as to a com-  
18 munication relevant to an issue concerning the mental or  
19 emotional condition of the patient if such issue has been ten-  
20 dered by:

21 (a) The patient;

22 (b) Any party claiming through or under the patient;

23 (c) Any party claiming as a beneficiary of the patient  
24 through a contract to which the patient is or was a party; or

25 (d) The plaintiff in an action brought under Section 376  
26 or 377 of the Code of Civil Procedure for damages for the  
27 injury or death of the patient.

28 1017. There is no privilege under this article if the psy-  
29 chotherapist is appointed by order of a court to examine the  
30 patient, but this exception does not apply where the psycho-  
31 therapist is appointed by order of the court upon the request  
32 of the lawyer for the defendant in a criminal proceeding in  
33 order to provide the lawyer with information needed so that  
34 he may advise the defendant whether to enter a plea based on  
35 insanity or to present a defense based on his mental or emo-  
36 tional condition.

37 1018. There is no privilege under this article if the services  
38 of the psychotherapist were sought or obtained to enable or  
39 aid anyone to commit or plan to commit a crime or a tort or  
40 to escape detection or apprehension after the commission of  
41 a crime or a tort.

42 1019. There is no privilege under this article as to a com-  
43 munication relevant to an issue between parties all of whom  
44 claim through a deceased patient, regardless of whether the  
45 claims are by testate or intestate succession or by inter vivos  
46 transaction.

47 1020. There is no privilege under this article as to a com-  
48 munication relevant to an issue of breach, by the psychothera-  
49 pist or by the patient, of a duty arising out of the psycho-  
50 therapist-patient relationship.

51 1021. There is no privilege under this article as to a com-  
52 munication relevant to an issue concerning the intention of a

1 patient, now deceased, with respect to a deed of conveyance,  
2 will, or other writing, executed by the patient, purporting to  
3 affect an interest in property.

4 1022. There is no privilege under this article as to a com-  
5 munication relevant to an issue concerning the validity of a  
6 deed of conveyance, will, or other writing, executed by a pa-  
7 tient, now deceased, purporting to affect an interest in  
8 property.

9 1023. There is no privilege under this article in a pro-  
10 ceeding under Chapter 6 (commencing with Section 1367) of  
11 Title 10 of Part 2 of the Penal Code initiated at the request  
12 of the defendant in a criminal action to determine his sanity.

13 1024. There is no privilege under this article if the psycho-  
14 therapist has reasonable cause to believe that the patient is in  
15 such mental or emotional condition as to be dangerous to him-  
16 self or to the person or property of another and that disclosure  
17 of the communication is necessary to prevent the threatened  
18 danger.

19 1025. There is no privilege under this article in a proceed-  
20 ing brought by or on behalf of the patient to establish his  
21 competence.

22 1026. There is no privilege under this article as to informa-  
23 tion that the psychotherapist or the patient is required to  
24 report to a public employee or as to information required to  
25 be recorded in a public office, unless the statute, charter,  
26 ordinance, administrative regulation, or other provision re-  
27 quiring the report or record specifically provides that the  
28 information is confidential or may not be disclosed in the par-  
29 ticular proceeding.

30 *be recorded in a public office, if such report or record is open*  
31 *to public inspection.*

### 32 Article 8. Clergyman-Penitent Privileges

34 1030. As used in this article, "clergyman" means a priest,  
35 minister, or similar functionary of a church or of a religious  
36 denomination or religious organization.

37 1031. As used in this article, "penitent" means a person  
38 who has made a penitential communication to a clergyman.

39 1032. As used in this article, "penitential communication"  
40 means a communication made in confidence, in the presence of  
41 no third person so far as the penitent is aware, to a clergyman  
42 who, in the course of the discipline or practice of his church,  
43 denomination, or organization, is authorized or accustomed to  
44 hear such communications and has a duty to keep them secret.

45 1033. Subject to Section 912, a penitent, whether or not  
46 a party, has a privilege to refuse to disclose, and to prevent  
47 another from disclosing, a penitential communication if he  
48 claims the privilege.

49 1034. Subject to Section 912, a clergyman, whether or not  
50 a party, has a privilege to refuse to disclose a penitential  
51 communication if he claims the privilege.  
52

1 Article 9. Official Information and Identity of Informer

2  
3 1040. (a) As used in this section, "official information"  
4 means information acquired in confidence by a public employee  
5 in the course of his duty and not open, or officially disclosed,  
6 to the public prior to the time the claim of privilege is made.

7 (b) A public entity has a privilege to refuse to disclose of-  
8 ficial information, and to prevent another from disclosing such  
9 information, if the privilege is claimed by a person authorized  
10 by the public entity to do so and:

11 (1) Disclosure is forbidden by an act of the Congress of  
12 the United States or a statute of this state; or

13 (2) Disclosure of the information is against the public in-  
14 terest because there is a necessity for preserving the confi-  
15 dentiality of the information that outweighs the necessity for  
16 disclosure in the interest of justice; but no privilege may be  
17 claimed under this paragraph if any person authorized to do  
18 so has consented that the information be disclosed in the pro-  
19 ceeding. In determining whether disclosure of the information  
20 is against the public interest, the interest of the public entity  
21 as a party in the outcome of the proceeding may not be con-  
22 sidered.

23 1041. (a) Except as provided in this section, a public en-  
24 tity has a privilege to refuse to disclose the identity of a per-  
25 son who has furnished information as provided in subdivision

26 (b) purporting to disclose a violation of a law of the United  
27 States or of this state or a public entity in this state, and  
28 to prevent another from disclosing such identity, if the privi-  
29 lege is claimed by a person authorized by the public entity to  
30 do so and:

31 (1) Disclosure is forbidden by an act of the Congress of  
32 the United States or a statute of this state; or

33 (2) Disclosure of the identity of the informer is against  
34 the public interest because there is a necessity for preserving  
35 the confidentiality of his identity that outweighs the neces-  
36 sity for disclosure in the interest of justice; but no privilege  
37 may be claimed under this paragraph if any person authorized  
38 to do so has consented that the identity of the informer be  
39 disclosed in the proceeding. In determining whether disclosure  
40 of the identity of the informer is against the public interest,  
41 the interest of the public entity as a party in the outcome of  
42 the proceeding may not be considered.

43 (b) This section applies only if the information is furnished  
44 in confidence by the informer to:

45 (1) A law enforcement officer;

46 (2) A representative of an administrative agency charged  
47 with the administration or enforcement of the law alleged to  
48 be violated; or

49 (3) Any person for the purpose of transmittal to a person  
50 listed in paragraph (1) or (2).

51 (c) There is no privilege under this section to prevent the  
52 informer from disclosing his identity.

1 1042. (a) Except where disclosure is forbidden by an Act  
2 of the Congress of the United States, if a claim of privilege  
3 under this article by the State or a public entity in this State  
4 is sustained in a criminal proceeding or in a disciplinary pro-  
5 ceeding, the presiding officer shall make such order or finding  
6 of fact adverse to the public entity bringing the proceeding as  
7 is required by law upon any issue in the proceeding to which  
8 the privileged information is material.

9 (b) Notwithstanding subdivision (a), where a search is  
10 made pursuant to a warrant valid on its face, the public entity  
11 bringing a criminal proceeding or a disciplinary proceeding  
12 is not required to reveal to the defendant official information  
13 or the identity of an informer in order to establish the legality  
14 of the search or the admissibility of any evidence obtained as  
15 a result of it.

16  
17 Article 10. Political Vote  
18

19 1050. If he claims the privilege, a person has a privilege  
20 to refuse to disclose the tenor of his vote at a public election  
21 where the voting is by secret ballot unless he voted illegally or  
22 he previously made an unprivileged disclosure of the tenor  
23 of his vote.

24  
25 Article 11. Trade Secret  
26

27 1060. If he or his agent or employee claims the privilege,  
28 the owner of a trade secret has a privilege to refuse to disclose  
29 the secret, and to prevent another from disclosing it, if the  
30 allowance of the privilege will not tend to conceal fraud or  
31 otherwise work injustice.

32  
33 CHAPTER 5. IMMUNITY OF NEWSMAN FROM CITATION  
34 FOR CONTEMPT  
35

36 1070. As used in this chapter, "newsman" means a person  
37 directly engaged in the procurement of news for publication,  
38 or in the publication of news, by news media.

39 1071. As used in this chapter, "news media" means news-  
40 papers, press associations, wire services, radio, and television.

41 1072. A newsman may not be adjudged in contempt for  
42 refusing to disclose the source of news procured for publica-  
43 tion and published by news media, unless the source has been  
44 disclosed previously or the disclosure of the source is required  
45 in the public interest or otherwise required to prevent injustice.

46 1073. The procedure specified in subdivisions (a) and (b)  
47 of Section 914 and in subdivisions (a) and (b) of Section 915  
48 applies to the determination of a newsman's claim for protec-  
49 tion under Section 1072.

1 DIVISION 9. EVIDENCE AFFECTED OR EXCLUDED  
2 BY EXTRINSIC POLICIES

3  
4 CHAPTER 1. EVIDENCE OF CHARACTER, HABIT, OR CUSTOM

5  
6 1100. Except as otherwise provided by statute, any other-  
7 wise admissible evidence (including evidence in the form of  
8 an opinion, evidence of reputation, and evidence of specific  
9 instances of such person's conduct) is admissible to prove a  
10 person's character or a trait of his character.

11 1101. (a) Except as provided in this section and in Sec-  
12 tions 1102 and 1103, evidence of a person's character or a  
13 trait of his character (whether in the form of an opinion, evi-  
14 dence of reputation, or evidence of specific instances of his  
15 conduct) is inadmissible when offered to prove his conduct  
16 on a specified occasion.

17 (b) Nothing in this section prohibits the admission of evi-  
18 dence that a person committed a crime, civil wrong, or other  
19 act when relevant to prove some fact (such as motive, oppor-  
20 tunity, intent, preparation, plan, knowledge, identity, or ab-  
21 sence of mistake or accident) other than his disposition to  
22 commit such acts.

23 (c) Nothing in this section affects the admissibility of evi-  
24 dence offered to support or attack the credibility of a witness.

25 1102. In a criminal action, evidence of the defendant's  
26 character or a trait of his character in the form of an opinion  
27 or evidence of his reputation is not made inadmissible by Sec-  
28 tion 1101 if such evidence is:

29 (a) Offered by the defendant to prove his conduct in con-  
30 formity with such character or trait of character.

31 (b) Offered by the prosecution to rebut evidence adduced  
32 by the defendant under subdivision (a).

33 1103. In a criminal action, evidence of the character or a  
34 trait of character (in the form of an opinion, evidence of repu-  
35 tation, or evidence of specific instances of conduct) of the vic-  
36 tim of the crime for which the defendant is being prosecuted  
37 is not made inadmissible by Section 1101 if such evidence is:

38 (a) Offered by the defendant to prove conduct of the victim  
39 in conformity with such character or trait of character.

40 (b) Offered by the prosecution to rebut evidence adduced  
41 by the defendant under subdivision (a).

42 1104. Except as provided in Sections 1102 and 1103, evi-  
43 dence of a trait of a person's character with respect to care  
44 or skill is inadmissible to prove the quality of his conduct on  
45 a specified occasion.

46 1105. Any otherwise admissible evidence of habit or custom  
47 is admissible to prove conduct on a specified occasion in con-  
48 formity with the habit or custom.

1 CHAPTER 2. OTHER EVIDENCE AFFECTED OR EXCLUDED BY  
2 EXTRINSIC POLICIES  
3

4 1150. Except as otherwise provided by law, upon an in-  
5 quiry as to the validity of a verdict, any otherwise admissible  
6 evidence may be received as to statements made, or conduct,  
7 conditions, or events occurring, either within or without the  
8 jury room, of such a character as is likely to have influenced  
9 the verdict improperly. No evidence is admissible to show the  
10 effect of such statement, conduct, condition, or event upon a  
11 juror either in influencing him to assent to or dissent from  
12 the verdict or concerning the mental processes by which it  
13 was determined.

14 1151. When, after the occurrence of an event, remedial or  
15 precautionary measures are taken, which, if taken previously,  
16 would have tended to make the event less likely to occur, evi-  
17 dence of such subsequent measures is inadmissible to prove  
18 negligence or culpable conduct in connection with the event.

19 1152. (a) Evidence that a person has, in compromise or  
20 from humanitarian motives, furnished or offered or promised  
21 to furnish money or any other thing, act, or service to another  
22 who has sustained or claims to have sustained loss or damage,  
23 as well as any conduct or statements made in negotiation  
24 thereof, is inadmissible to prove his liability for the loss or  
25 damage or any part of it.

26 (b) This section does not affect the admissibility of evi-  
27 dence of:

28 (1) Partial satisfaction of an asserted claim or demand  
29 without questioning its validity when such evidence is offered  
30 to prove the validity of the claim; or

31 (2) A debtor's payment or promise to pay all or a part of  
32 his pre-existing debt when such evidence is offered to prove  
33 the creation of a new duty on his part or a revival of his pre-  
34 existing duty.

35 1153. Evidence of a plea of guilty, later withdrawn, or of  
36 an offer to plead guilty to the crime charged or to any other  
37 crime, made by the defendant in a criminal action is inadmis-  
38 sible in any action or in any proceeding of any nature, includ-  
39 ing proceedings before agencies, commissions, boards, and  
40 tribunals.

41 1154. Evidence that a person has accepted or offered or  
42 promised to accept a sum of money or any other thing, act,  
43 or service in satisfaction of a claim, as well as any conduct  
44 or statements made in negotiation thereof, is inadmissible to  
45 prove the invalidity of the claim or any part of it.

46 1155. Evidence that a person was, at the time a harm was  
47 suffered by another, insured wholly or partially against loss  
48 arising from liability for that harm is inadmissible to prove  
49 negligence or other wrongdoing.

50 1156. (a) In-hospital medical staff committees of a li-  
51 censed hospital may engage in research and medical study for  
52 the purpose of reducing morbidity or mortality, and may

1 make findings and recommendations relating to such purpose.  
 2 *The Except as provided in subdivision (b), the written records*  
 3 *of interviews, reports, statements, or memoranda of such in-*  
 4 *hospital medical staff committees relating to such medical*  
 5 *studies are subject to Sections 2016 and 2036 to 2036, inclusive,*  
 6 *of the Code of Civil Procedure (relating to discovery pro-*  
 7 *ceedings) but, subject to subdivisions ~~(b)~~ and ~~(e)~~ (c) and (d),*  
 8 *shall not be admitted as evidence in any action or before any*  
 9 *administrative body, agency, or person.*

10 *(b) The disclosure, with or without the consent of the pa-*  
 11 *tient, of information concerning him to such in-hospital medi-*  
 12 *cal staff committee does not make unprivileged any informa-*  
 13 *tion that would otherwise be privileged under Section 994 or*  
 14 *1014; but, notwithstanding Sections 994 and 1014, such in-*  
 15 *formation is subject to discovery under subdivision (a) except*  
 16 *that the identity of any patient may not be discovered under*  
 17 *subdivision (a) unless the patient consents to such disclosure.*

18 ~~(b)~~

19 (c) This section does not affect the admissibility in evidence  
 20 of the original medical records of any patient.

21 ~~(e)~~

22 (d) This section does not exclude evidence which is relevant  
 23 evidence in a criminal action.

24

## 25 DIVISION 10. HEARSAY EVIDENCE

26

### 27 CHAPTER 1. GENERAL PROVISIONS

28

29 1200. (a) "Hearsay evidence" is evidence of a statement  
 30 that was made other than by a witness while testifying at the  
 31 hearing and that is offered to prove the truth of the matter  
 32 stated.

33 (b) Except as provided by law, hearsay evidence is inad-  
 34 missible.

35 (c) This section shall be known and may be cited as the  
 36 hearsay rule.

37 1201. A statement within the scope of an exception to the  
 38 hearsay rule is not inadmissible on the ground that the evi-  
 39 dence is hearsay evidence if the hearsay evidence of such state-  
 40 ment consists of one or more statements each of which meets  
 41 the requirements of an exception to the hearsay rule.

42 1202. Evidence of a statement or other conduct by a de-  
 43 clarant that is inconsistent with a statement by such declarant  
 44 received in evidence as hearsay evidence is not inadmissible  
 45 for the purpose of attacking the credibility of the declarant  
 46 though he is not given and has not had an opportunity to  
 47 explain or to deny such inconsistent statement or other con-  
 48 duct. Any other evidence offered to attack or support the  
 49 credibility of the declarant is admissible if it would have been  
 50 admissible had the declarant been a witness at the hearing.  
 51 For the purposes of this section, the deponent of a deposition

1 taken in the action in which it is offered shall be deemed to  
2 be a hearsay declarant.

3 1203. (a) The declarant of a statement that is admitted as  
4 hearsay evidence may be called and examined by any adverse  
5 party as if under cross-examination concerning the statement.

6 (b) This section is not applicable if the declarant is (1) a  
7 party, (2) a person identified with a party within the meaning  
8 of subdivision (d) of Section 776, or (3) a witness who has  
9 testified in the action concerning the *subject matter of the*  
10 statement.

11 (c) This section is not applicable if the statement is one  
12 described in Article 1 (commencing with Section 1220), Ar-  
13 ticle 3 (commencing with Section 1235), or Article 10 (com-  
14 mencing with Section 1300) of Chapter 2 of this division.

15 (d) A statement that is otherwise admissible as hearsay evi-  
16 dence is not made inadmissible by this section because the de-  
17 clarant who made the statement is unavailable for examination  
18 pursuant to this section.

19 1204. A statement that is otherwise admissible as hearsay  
20 evidence is inadmissible against the defendant in a criminal  
21 action if the statement was made, either by the defendant or  
22 by another, under such circumstances that it is inadmissible  
23 against the defendant under the Constitution of the United  
24 States or the State of California.

25 1205. Nothing in this division shall be construed to repeal  
26 by implication any other statute relating to hearsay evidence.

27  
28 CHAPTER 2. EXCEPTIONS TO THE HEARSAY RULE

29  
30 Article 1. Confessions and Admissions

31  
32 1220. Evidence of a statement is not made inadmissible  
33 by the hearsay rule when offered against the declarant in an  
34 action to which he is a party in either his individual or repre-  
35 sentative capacity, regardless of whether the statement was  
36 made in his individual or representative capacity.

37 1221. Evidence of a statement offered against a party is not  
38 made inadmissible by the hearsay rule if the statement is one  
39 of which the party, with knowledge of the content thereof, has  
40 by words or other conduct manifested his adoption or his belief  
41 in its truth.

42 1222. Evidence of a statement offered against a party is not  
43 made inadmissible by the hearsay rule if:

44 (a) The statement was made by a person authorized by the  
45 party to make a statement or statements for him concerning  
46 the subject matter of the statement; and

47 (b) The evidence is offered either after admission of evi-  
48 dence sufficient to sustain a finding of such authority or, in  
49 the court's discretion as to the order of proof, subject to the  
50 admission of such evidence.

51 1223. Evidence of a statement offered against a party is not  
52 made inadmissible by the hearsay rule if:



1 (a) The statement was made by the declarant while partic-  
2 ipating in a conspiracy to commit a crime or civil wrong and in  
3 furtherance of the objective of that conspiracy;

4 (b) The statement was made prior to or during the time  
5 that the party was participating in that conspiracy; and

6 (c) The evidence is offered either after admission of evi-  
7 dence sufficient to sustain a finding of the facts specified in  
8 subdivisions (a) and (b) or, in the court's discretion as to the  
9 order of proof, subject to the admission of such evidence.

10 1224. When the liability, obligation, or duty of a party to  
11 a civil action is based in whole or in part upon the liability,  
12 obligation, or duty of the declarant, or when the claim or right  
13 asserted by a party to a civil action is barred or diminished by  
14 a breach of duty by the declarant, evidence of a statement  
15 made by the declarant is as admissible against the party as it  
16 would be if offered against the declarant in an action involving  
17 that liability, obligation, duty, or breach of duty.

18 1225. When a right, title, or interest in any property or  
19 claim asserted by a party to a civil action requires a determina-  
20 tion that a right, title, or interest exists or existed in the de-  
21 clarant, evidence of a statement made by the declarant during  
22 the time the party now claims the declarant was the holder  
23 of the right, title, or interest is as admissible against the party  
24 as it would be if offered against the declarant in an action  
25 involving that right, title, or interest.

26 1226. Evidence of a statement by a minor child is not made  
27 inadmissible by the hearsay rule if offered against the plaintiff  
28 in an action brought under Section 376 of the Code of Civil  
29 Procedure for injury to such minor child.

30 1227. Evidence of a statement by the deceased is not made  
31 inadmissible by the hearsay rule if offered against the plaintiff  
32 in an action brought under Section 377 of the Code of Civil  
33 Procedure.

34

35

## Article 2. Declarations Against Interest

36

37 1230. Evidence of a statement by a declarant having suffi-  
38 cient knowledge of the subject is not made inadmissible by the  
39 hearsay rule if the statement, when made, was so far contrary  
40 to the declarant's pecuniary or proprietary interest, or so far  
41 subjected him to the risk of civil or criminal liability, or so far  
42 tended to render invalid a claim by him against another, or  
43 created such a risk of making him an object of hatred, ridicule,  
44 or social disgrace in the community, that a reasonable man in  
45 his position would not have made the statement unless he be-  
46 lieved it to be true.

47

48

## Article 3. Statements of Witnesses

49

50

51

1235. Evidence of a statement made by a witness is not  
made inadmissible by the hearsay rule if the statement is in-

1 consistent with his testimony at the hearing and is offered in  
2 compliance with Section 770.

3 1236. Evidence of a statement previously made by a wit-  
4 ness is not made inadmissible by the hearsay rule if the state-  
5 ment is consistent with his testimony at the hearing and is  
6 offered in compliance with Section 791.

7 1237. (a) Evidence of a statement previously made by a  
8 witness is not made inadmissible by the hearsay rule if the  
9 statement would have been admissible if made by him while  
10 testifying, the statement concerns a matter as to which the  
11 witness has insufficient present recollection to enable him to  
12 testify fully and accurately, and the statement is contained  
13 in a writing which:

14 (a)

15 (1) Was made at a time when the fact recorded in the writ-  
16 ing actually occurred or was fresh in the witness' memory;

17 (b) Was made (1) (2) was made (i) by the witness himself  
18 or under his direction or (2) (ii) by some other person for the  
19 purpose of recording the witness' statement at the time it was  
20 made;

21 (c)

22 (3) Is offered after the witness testifies that the statement  
23 he made was a true statement of such fact; and

24 (d)

25 (4) Is offered after the writing is authenticated as an accu-  
26 rate record of the statement.

27 (b) *The writing may be read into evidence, but the writing*  
28 *itself may not be received in evidence unless offered by an*  
29 *adverse party.*

30 1238. Evidence of a statement previously made by a wit-  
31 ness is not made inadmissible by the hearsay rule if the state-  
32 ment would have been admissible if made by him while  
33 testifying and:

34 (a) The statement is an identification of a party or another  
35 as a person who participated in a crime or other occurrence;

36 (b) The statement was made at a time when the crime or  
37 other occurrence was fresh in the witness' memory; and

38 (c) The evidence of the statement is offered after the wit-  
39 ness testifies that he made the identification and that it was a  
40 true reflection of his opinion at that time.

41

42 Article 4. Spontaneous, Contemporaneous,  
43 and Dying Declarations

44

45 1240. Evidence of a statement is not made inadmissible by  
46 the hearsay rule if the statement:

47 (a) Purports to narrate, describe, or explain an act, condi-  
48 tion, or event perceived by the declarant; and

49 (b) Was made spontaneously while the declarant was under  
50 the stress of excitement caused by such perception.

1 1241. Evidence of a statement is not made inadmissible by  
 2 the hearsay rule if the declarant is unavailable as a witness  
 3 and the statement:

4 (a) Purports to narrate, describe, or explain an act, condi-  
 5 tion, or event perceived by the declarant; and

6 (b) Was made while the declarant was perceiving the act,  
 7 condition, or event.

8 *the hearsay rule if the statement:*

9 (a) Purports to qualify or explain conduct of the declar-  
 10 ant; and

11 (b) Was made while the declarant was engaged in such  
 12 conduct.

13 1242. Evidence of a statement made by a dying person  
 14 respecting the cause and circumstances of his death is not made  
 15 inadmissible by the hearsay rule if the statement was made  
 16 upon his personal knowledge and under a sense of immediately  
 17 impending death.

18

#### 19 Article 5. Statements of Mental or Physical State

20

21 1250. (a) Subject to Section 1252, evidence of a statement  
 22 of the declarant's then existing state of mind, emotion, or  
 23 physical sensation (including a statement of intent, plan, mo-  
 24 tive, design, mental feeling, pain, or bodily health) is not made  
 25 inadmissible by the hearsay rule when:

26 (1) The evidence is offered to prove the declarant's state  
 27 of mind, emotion, or physical sensation at that time or at any  
 28 other time when it is itself an issue in the action; or

29 (2) The evidence is offered to prove or explain acts or con-  
 30 duct of the declarant.

31 (b) This section does not make admissible evidence of a  
 32 statement of memory or belief to prove the fact remembered or  
 33 believed.

34 1251. Subject to Section 1252, evidence of a statement of  
 35 the declarant's state of mind, emotion, or physical sensation  
 36 (including a statement of intent, plan, motive, design, mental  
 37 feeling, pain, or bodily health) at a time prior to the statement  
 38 is not made inadmissible by the hearsay rule if:

39 (a) The declarant is unavailable as a witness; and

40 (b) The evidence is offered to prove such prior state of  
 41 mind, emotion, or physical sensation when it is itself an issue  
 42 in the action and the evidence is not offered to prove any fact  
 43 other than such state of mind, emotion, or physical sensation.

44 1252. Evidence of a statement is inadmissible under this  
 45 article if the statement was made under circumstances such as  
 46 to indicate its lack of trustworthiness.

47

#### 48 Article 6. Statements Relating to Wills and to Claims

49

##### Against Estates

50

51 1260. (a) Evidence of a statement made by a declarant  
 52 who is unavailable as a witness that he has or has not made a

1 will, or has or has not revoked his will, or that identifies his  
2 will, is not made inadmissible by the hearsay rule.

3 (b) Evidence of a statement is inadmissible under this sec-  
4 tion if the statement was made under circumstances such as to  
5 indicate its lack of trustworthiness.

6 1261. Evidence of a statement is not made inadmissible by  
7 the hearsay rule when offered in an action upon a claim or de-  
8 mand against the estate of the declarant if the statement was:

9 (a) Made upon the personal knowledge of the declarant at  
10 a time when the matter had been recently perceived by him  
11 and while his recollection was clear; and

12 (b) Made under circumstances such as to indicate its trust-  
13 worthiness.

14 1261. (a) Evidence of a statement is not made inadmissible  
15 by the hearsay rule when offered in an action upon a claim  
16 or demand against the estate of the declarant if the statement  
17 was made upon the personal knowledge of the declarant at a  
18 time when the matter had been recently perceived by him and  
19 while his recollection was clear.

20 (b) Evidence of a statement is inadmissible under this sec-  
21 tion if the statement was made under circumstances such as  
22 to indicate its lack of trustworthiness.

23  
24 Article 7. Business Records

25  
26 1270. As used in this article, "a business" includes every  
27 kind of business, governmental activity, profession, occupation,  
28 calling, or operation of institutions, whether carried on for  
29 profit or not.

30 1271. Evidence of a writing made as a record of an act,  
31 condition, or event is not made inadmissible by the hearsay  
32 rule when offered to prove the act, condition, or event if:

33 (a) The writing was made in the regular course of a busi-  
34 ness;

35 (b) The writing was made at or near the time of the act,  
36 condition, or event;

37 (c) The custodian or other qualified witness testifies to its  
38 identity and the mode of its preparation; and

39 (d) The sources of information and method and time of  
40 preparation were such as to indicate its trustworthiness.

41 1272. Evidence of the absence from the records of a busi-  
42 ness of a record of an asserted act, condition, or event is not  
43 made inadmissible by the hearsay rule when offered to prove  
44 the nonoccurrence of the act or event, or the nonexistence of  
45 the condition, if:

46 (a) It was the regular course of that business to make rec-  
47 ords of all such acts, conditions, or events at or near the time  
48 of the act, condition, or event and to preserve them; and

49 (b) The sources of information and method and time of  
50 preparation of the records of that business were such that the  
51 absence of a record of an act, condition, or event is a trust-

1 worthy indication that the act or event did not occur or the  
 2 condition did not exist.

3

4 Article 8. Official Records and Other Official Writings

5

6 1280. Evidence of a writing made as a record of an act,  
 7 condition, or event is not made inadmissible by the hearsay  
 8 rule when offered to prove the act, condition, or event if:

9 (a) The writing was made by and within the scope of duty  
 10 of a public employee;

11 (b) The writing was made at or near the time of the act,  
 12 condition, or event; and

13 (c) The sources of information and method and time of  
 14 preparation were such as to indicate its trustworthiness.

15 1281. Evidence of a writing made as a record of a birth,  
 16 fetal death, death, or marriage is not made inadmissible  
 17 by the hearsay rule if the maker was required by law to file  
 18 the writing in a designated public office and the writing was  
 19 made and filed as required by law.

20 1282. A written finding of presumed death made by an  
 21 employee of the United States authorized to make such finding  
 22 pursuant to the Federal Missing Persons Act (56 Stats. 143,  
 23 1092, and P.L. 408, Ch. 371, 2d Sess. 78th Cong.; 50 U.S.C.  
 24 App. 1001-1016), as enacted or as heretofore or hereafter  
 25 amended, shall be received in any court, office, or other place  
 26 in this state as evidence of the death of the person therein  
 27 found to be dead and of the date, circumstances, and place  
 28 of his disappearance.

29 1283. An official written report or record that a person is  
 30 missing, missing in action, interned in a foreign country,  
 31 captured by a hostile force, beleaguered by a hostile force,  
 32 besieged by a hostile force, or detained in a foreign country  
 33 against his will, or is dead or is alive, made by an employee  
 34 of the United States authorized by any law of the United  
 35 States to make such report or record shall be received in any  
 36 court, office, or other place in this state as evidence that such  
 37 person is missing, missing in action, interned in a foreign  
 38 country, captured by a hostile force, beleaguered by a hostile  
 39 force, besieged by a hostile force, or detained in a foreign  
 40 country against his will, or is dead or is alive.

41 1284. Evidence of a writing made by the public employee  
 42 who is the official custodian of the records in a public office,  
 43 reciting diligent search and failure to find a record, is not  
 44 made inadmissible by the hearsay rule when offered to prove  
 45 the absence of a record in that office.

46

47 Article 9. Former Testimony

48

49 1290. As used in this article, "former testimony" means  
 50 testimony given under oath in:

51 (a) Another action or in a former hearing or trial of the  
 52 same action;

1 (b) A proceeding to determine a controversy conducted by  
2 or under the supervision of an agency that has the power to  
3 determine such a controversy and is an agency of the United  
4 States or a public entity in the United States;

5 (c) A deposition taken in compliance with law in another  
6 action; or

7 (d) An arbitration proceeding if the evidence of such  
8 former testimony is a verbatim transcript thereof.

9 1291. (a) Evidence of former testimony is not made inad-  
10 missible by the hearsay rule if the declarant is unavailable as  
11 a witness and:

12 (1) The former testimony is offered against a person who  
13 offered it in evidence in his own behalf on the former occasion  
14 or against the successor in interest of such person; or

15 (2) The party against whom the former testimony is offered  
16 was a party to the action or proceeding in which the testimony  
17 was given and had the right and opportunity to cross-examine  
18 the declarant with an interest and motive similar to that which  
19 he has at the hearing, except that testimony in a deposition  
20 taken in another action and testimony given in a preliminary  
21 examination in another criminal action is not made admissible  
22 by this paragraph against the defendant in a criminal action  
23 unless it was received in evidence at the trial of such other  
24 action.

25 (b) Except for objections to the form of the question which  
26 were not made at the time the former testimony was given,  
27 and objections based on competency or privilege which did  
28 not exist at that time, the admissibility of former testimony  
29 under this section is subject to the same limitations and objec-  
30 tions as though the declarant were testifying at the hearing.  
31 *he has at the hearing.*

32 (b) *The admissibility of former testimony under this section*  
33 *is subject to the same limitations and objections as though the*  
34 *declarant were testifying at the hearing, except that former*  
35 *testimony offered under this section is not subject to:*

36 (1) *Objections to the form of the question which were not*  
37 *made at the time the former testimony was given.*

38 (2) *Objections based on competency or privilege which did*  
39 *not exist at the time the former testimony was given.*

40 1292. (a) Evidence of former testimony is not made inad-  
41 missible by the hearsay rule if:

42 (1) The declarant is unavailable as a witness;

43 (2) The former testimony is offered in a civil action or  
44 against the prosecution in a criminal action; and

45 (3) The issue is such that the party to the action or pro-  
46 ceeding in which the former testimony was given had the  
47 right and opportunity to cross-examine the declarant with an  
48 interest and motive similar to that which the party against  
49 whom the testimony is offered has at the hearing.

50 (b) Except for objections based on competency or privilege  
51 which did not exist at the time the former testimony was

1 given, the admissibility of former testimony under this section  
 2 is subject to the same limitations and objections as though  
 3 the declarant were testifying at the hearing.

4 (b) *The admissibility of former testimony under this sec-*  
 5 *tion is subject to the same limitations and objections as though*  
 6 *the declarant were testifying at the hearing, except that for-*  
 7 *mer testimony offered under this section is not subject to ob-*  
 8 *jections based on competency or privilege which did not exist*  
 9 *at the time the former testimony was given.*

10

11

## Article 10. Judgments

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

1300. Evidence of a final judgment adjudging a person guilty of a crime punishable as a felony is not made inadmissible by the hearsay rule when offered in a civil action to prove any fact essential to the judgment unless the judgment was based on a plea of nolo contendere.

1301. Evidence of a final judgment is not made inadmissible by the hearsay rule when offered by the judgment debtor to prove any fact which was essential to the judgment in an action in which he seeks to:

(a) Recover partial or total indemnity or exoneration for money paid or liability incurred because of the judgment;

(b) Enforce a warranty to protect the judgment debtor against the liability determined by the judgment; or

(c) Recover damages for breach of warranty substantially the same as the warranty determined by the judgment to have been breached.

1302. When the liability, obligation, or duty of a third person is in issue in a civil action, evidence of a final judgment against that person is not made inadmissible by the hearsay rule when offered to prove such liability, obligation, or duty.

## Article 11. Family History

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

1310. (a) Subject to subdivision (b), evidence of a statement by a declarant who is unavailable as a witness concerning his own birth, marriage, divorce, legitimacy, relationship by blood or marriage, race, ancestry, or other similar fact of his family history is not made inadmissible by the hearsay rule, even though the declarant had no means of acquiring personal knowledge of the matter declared.

(b) Evidence of a statement is inadmissible under this section if the statement was made under circumstances such as to indicate its lack of trustworthiness.

1311. (a) Subject to subdivision (b), evidence of a statement concerning the birth, marriage, divorce, death, legitimacy, race, ancestry, relationship by blood or marriage, or other similar fact of the family history of a person other

1 than the declarant is not made inadmissible by the hearsay  
2 rule if the declarant is unavailable as a witness and:

3 (1) The declarant was related to the other by blood or  
4 marriage; or

5 (2) The declarant was otherwise so intimately associated  
6 with the other's family as to be likely to have had accurate  
7 information concerning the matter declared and made the  
8 statement (i) upon information received from the other or  
9 from a person related by blood or marriage to the other or  
10 (ii) upon repute in the other's family.

11 (b) Evidence of a statement is inadmissible under this sec-  
12 tion if the statement was made under circumstances such as to  
13 indicate its lack of trustworthiness.

14 1312. Evidence of entries in family bibles or other family  
15 books or charts, engravings on rings, family portraits, engrav-  
16 ings on urns, crypts, or tombstones, and the like, is not made  
17 inadmissible by the hearsay rule when offered to prove the  
18 birth, marriage, divorce, death, legitimacy, race, ancestry, re-  
19 lationship by blood or marriage, or other similar fact of the  
20 family history of a member of the family by blood or marriage.

21 1313. Evidence of reputation among members of a family  
22 is not made inadmissible by the hearsay rule if the reputation  
23 concerns the birth, marriage, divorce, death, legitimacy, race,  
24 ancestry, relationship by blood or marriage, or other similar  
25 fact of the family history of a member of the family by blood  
26 or marriage.

27 1314. Evidence of reputation in a community concerning  
28 the date or fact of birth, marriage, divorce, or death of a per-  
29 son resident in the community at the time of the reputation  
30 is not made inadmissible by the hearsay rule.

31 1315. Evidence of a statement concerning a person's birth,  
32 marriage, divorce, death, legitimacy, race, ancestry, relation-  
33 ship by blood or marriage, or other similar fact of family his-  
34 tory is not made inadmissible by the hearsay rule if:

35 (a) The statement is contained in a writing made as a  
36 record of an act, condition, or event that would be admissible  
37 as evidence of such act, condition, or event under Section 1271;

38 (b) The statement is of a kind customarily recorded in con-  
39 nection with the act, condition, or event recorded in the writ-  
40 ing; and

41 (c) The writing was made as a record of a church, religious  
42 denomination, or religious society.

43 1316. Evidence of a statement concerning a person's birth,  
44 marriage, divorce, death, legitimacy, race, ancestry, relation-  
45 ship by blood or marriage, or other similar fact of family  
46 history is not made inadmissible by the hearsay rule if the  
47 statement is contained in a certificate that the maker thereof  
48 performed a marriage or other ceremony or administered a  
49 sacrament and:

50 (a) The maker was a clergyman, civil officer, or other person  
51 authorized to perform the acts reported in the certificate by



1 law or by the rules, regulations, or requirements of a church,  
2 religious denomination, or religious society; and

3 (b) The certificate was issued by the maker at the time  
4 and place of the ceremony or sacrament or within a reasonable  
5 time thereafter.

6  
7 Article 12. Reputation and Statements Concerning  
8 Community History, Property Interests,  
9 and Character  
10

11 1320. Evidence of reputation in a community is not made  
12 inadmissible by the hearsay rule if the reputation concerns an  
13 event of general history of the community or of the state or  
14 nation of which the community is a part and the event was  
15 of importance to the community.

16 1321. Evidence of reputation in a community is not made  
17 inadmissible by the hearsay rule if the reputation concerns the  
18 interest of the public in property in the community and the  
19 reputation arose before controversy.

20 1322. Evidence of reputation in a community is not made  
21 inadmissible by the hearsay rule if the reputation concerns  
22 boundaries of, or customs affecting, land in the community and  
23 the reputation arose before controversy.

24 1323. Evidence of a statement concerning the boundary of  
25 land is not made inadmissible by the hearsay rule if the de-  
26 clarant is unavailable as a witness and had sufficient knowledge  
27 of the subject, but evidence of a statement is not admissible  
28 under this section if the statement was made under circum-  
29 stances such as to indicate its lack of trustworthiness.

30 1324. Evidence of a person's general reputation with ref-  
31 erence to his character or a trait of his character at a relevant  
32 time in the community in which he then resided or in a group  
33 with which he then habitually associated is not made inadmis-  
34 sible by the hearsay rule.

35  
36 Article 13. Dispositive Instruments and Ancient Writings  
37

38 1330. Evidence of a statement contained in a deed of con-  
39 veyance or a will or other writing purporting to affect an  
40 interest in real or personal property is not made inadmissible  
41 by the hearsay rule if:

42 (a) The matter stated was relevant to the purpose of the  
43 writing;

44 (b) The matter stated would be relevant to an issue as to  
45 an interest in the property; and

46 (c) The dealings with the property since the statement was  
47 made have not been inconsistent with the truth of the state-  
48 ment.

49 1331. Evidence of a statement is not made inadmissible by  
50 the hearsay rule if the statement is contained in a writing  
51 more than 30 years old and the statement has been since

1 generally acted upon as true by persons having an interest in  
2 the matter.

3  
4 Article 14. Commercial, Scientific, and,  
5 Similar Publications  
6

7 1340. Evidence of a statement, other than an opinion, con-  
8 tained in a tabulation, list, directory, register, or other pub-  
9 lished compilation is not made inadmissible by the hearsay  
10 rule if the compilation is generally used and relied upon as  
11 accurate in the course of a business as defined in Section 1270.

12 1341. Historical works, books of science or art, and pub-  
13 lished maps or charts, made by persons indifferent between  
14 the parties, are not made inadmissible by the hearsay rule  
15 when offered to prove facts of general notoriety and interest.

16  
17 DIVISION 11. WRITINGS  
18

19 CHAPTER 1. AUTHENTICATION AND PROOF OF WRITINGS  
20

21 Article 1. Requirement of Authentication  
22

23 1400. Authentication of a writing means (a) the introduc-  
24 tion of evidence sufficient to sustain a finding that it is the  
25 writing that the proponent of the evidence claims it is or (b)  
26 the establishment of such facts by any other means provided  
27 by law.

28 1401. (a) Authentication of a writing is required before  
29 it may be received in evidence.

30 (b) Authentication of a writing is required before sec-  
31 ondary evidence of its content may be received in evidence.

32 1402. The party producing a writing as genuine which  
33 has been altered, or appears to have been altered, after its  
34 execution, in a part material to the question in dispute, must  
35 account for the alteration or appearance thereof. He may  
36 show that the alteration was made by another, without his  
37 concurrence, or was made with the consent of the parties af-  
38 fected by it, or otherwise properly or innocently made, or  
39 that the alteration did not change the meaning or language  
40 of the instrument. If he does that, he may give the writing  
41 in evidence, but not otherwise.  
42

43 Article 2. Means of Authenticating and Proving Writings  
44

45 1410. A writing is sufficiently authenticated to be received  
46 in evidence if there is any evidence sufficient to sustain a find-  
47 ing of the authenticity of the writing; and nothing in this  
48 article shall be construed to limit the means by which the  
49 authenticity of a writing may be shown.

50 1410. *Nothing in this article shall be construed to limit*  
51 *the means by which a writing may be authenticated or proved.*

1 1411. Except as provided by statute, the testimony of a  
2 subscribing witness is not required to authenticate a writing.

3 1412. If the testimony of a subscribing witness is required  
4 by statute to authenticate a writing and the subscribing wit-  
5 ness denies or does not recollect the execution of the writing,  
6 the writing may be authenticated by other evidence.

7 1413. A writing may be authenticated by anyone who saw  
8 the writing executed, including a subscribing witness.

9 1414. A writing may be authenticated by evidence that:  
10 (a) The party against whom it is offered has at any time  
11 admitted its authenticity; or

12 (b) ~~The writing is produced from the custody of the party~~  
13 ~~against whom it is offered and has been acted upon by him as~~  
14 ~~authentic.~~

15 (b) *The writing has been acted upon as authentic by the*  
16 *party against whom it is offered.*

17 1415. A writing may be authenticated by evidence of the  
18 ~~authenticity genuineness~~ genuineness of the handwriting of the maker.

19 1416. A witness who is not otherwise qualified to testify as  
20 an expert may state his opinion whether a writing is in the  
21 handwriting of a supposed writer if the court finds that he  
22 has personal knowledge of the handwriting of the supposed  
23 writer. Such personal knowledge may be acquired from:

24 (a) Having seen the supposed writer write;

25 (b) Having seen a writing purporting to be in the hand-  
26 writing of the supposed writer and upon which the supposed  
27 writer has acted or been charged;

28 (c) Having received letters in the due course of mail pur-  
29 porting to be from the supposed writer in response to letters  
30 duly addressed and mailed by him to the supposed writer; or

31 (d) Any other means of obtaining personal knowledge of  
32 the handwriting of the supposed writer.

33 1417. The ~~authenticity genuineness~~ genuineness of handwriting, or the  
34 lack thereof, may be proved by a comparison made by the trier  
35 of fact with handwriting (a) which the court finds was ad-  
36 mitted or treated as ~~authentic genuine~~ *authentic genuine* by the party against  
37 whom the evidence is offered or (b) otherwise proved to be  
38 ~~authentic genuine~~ *authentic genuine* to the satisfaction of the court.

39 1418. The ~~authenticity genuineness~~ genuineness of writing, or the lack  
40 thereof, may be proved by a comparison made by an expert  
41 witness with writing (a) which the court finds was admitted  
42 or treated as ~~authentic genuine~~ *authentic genuine* by the party against whom  
43 the evidence is offered or (b) otherwise proved to be ~~authentic~~  
44 *genuine* to the satisfaction of the court.

45 1419. ~~Where a writing sought to be introduced in evidence~~

46 1419. *Where a writing whose genuineness is sought to be*  
47 *proved is more than 30 years old, the comparison under Sec-*  
48 *tion 1417 or 1418 may be made with writing purporting to be*  
49 *authentic genuine*, and generally respected and acted upon as  
50 such, by persons having an interest in knowing whether it is  
51 *authentic genuine*.

1 1420. A writing may be authenticated by evidence that  
2 the writing was received in response to a communication sent  
3 to the person who is claimed by the proponent of the evidence  
4 to be the author of the writing.

5 1421. A writing may be authenticated by evidence that the  
6 writing refers to or states facts that are unlikely to be known  
7 to anyone other than the person who is claimed by the pro-  
8 ponent of the evidence to be the author of the writing.

9

10 Article 3. *Presumptions Affecting Acknowledged*  
11 *Writings and Official Writings*

12

13 1450. The presumptions established by this article are pre-  
14 sumptions affecting the burden of producing evidence.

15 1451. A certificate of the acknowledgment of a writing  
16 other than a will, or a certificate of the proof of such a writing,  
17 is prima facie evidence of the facts recited in the certificate  
18 and the genuineness of the signature of each person by whom  
19 the writing purports to have been signed if the certificate meets  
20 the requirements of Article 3 (commencing with Section 1180)  
21 of Chapter 4, Title 4, Part 4, Division 2 of the Civil Code.

22 1452. A seal is presumed to be genuine and its use author-  
23 ized if it purports to be the seal of:

24 (a) The United States or a department, agency, or public  
25 employee of the United States.

26 (b) A public entity in the United States or a department,  
27 agency, or public employee of such public entity.

28 (c) A nation recognized by the executive power of the  
29 United States or a department, agency, or officer of such  
30 nation.

31 (d) A public entity in a nation recognized by the executive  
32 power of the United States or a department, agency, or officer  
33 of such public entity.

34 (e) A court of admiralty or maritime jurisdiction.

35 (f) A notary public within any state of the United States.

36 1453. A signature is presumed to be genuine and author-  
37 ized if it purports to be the signature, affixed in his official  
38 capacity, of:

39 (a) A public employee of the United States.

40 (b) A public employee of any public entity in the United  
41 States.

42 (c) A notary public within any state of the United States.

43 1454. A signature is presumed to be genuine and author-  
44 ized if it purports to be the signature, affixed in his official  
45 capacity, of an officer, or deputy of an officer, of a nation or  
46 public entity in a nation recognized by the executive power of  
47 the United States and the writing to which the signature is  
48 affixed is accompanied by a final statement certifying the genu-  
49 ineness of the signature and the official position of (a) the  
50 person who executed the writing or (b) any foreign official  
51 who has certified either the genuineness of the signature and  
52 official position of the person executing the writing or the

1 genuineness of the signature and official position of another  
2 foreign official who has executed a similar certificate in a chain  
3 of such certificates beginning with a certificate of the genui-  
4 neness of the signature and official position of the person execut-  
5 ing the writing. The final statement may be made only by a  
6 secretary of an embassy or legation, consul general, consul,  
7 vice consul, consular agent, or other officer in the foreign serv-  
8 ice of the United States stationed in the nation, authenticated  
9 by the seal of his office.

10  
11 CHAPTER 2. SECONDARY EVIDENCE OF WRITINGS

12  
13 Article 1. Best Evidence Rule

14  
15 1500. Except as otherwise provided by statute, no evidence  
16 other than the writing itself is admissible to prove the con-  
17 tent of a writing. This section shall be known and may be  
18 cited as the best evidence rule.

19 1501. A copy of a writing is not made inadmissible by the  
20 best evidence rule if the writing is lost or has been destroyed  
21 without fraudulent intent on the part of the proponent of the  
22 evidence.

23 1502. A copy of a writing is not made inadmissible by the  
24 best evidence rule if the writing was not reasonably procur-  
25 able by the proponent by use of the court's process or by other  
26 available means.

27 1503. (a) A copy of a writing is not made inadmissible by  
28 the best evidence rule if, at a time when the writing was under  
29 the control of the opponent, the opponent was expressly or  
30 impliedly notified, by the pleadings or otherwise, that the  
31 writing would be needed at the hearing, and on request at the  
32 hearing the opponent has failed to produce the writing. In a  
33 criminal action, the request at the hearing to produce the  
34 writing may not be made in the presence of the jury.

35 (b) Though a writing requested by one party is produced  
36 by another, and is thereupon inspected by the party calling  
37 for it, the party calling for the writing is not obliged to intro-  
38 duce it as evidence in the action.

39 1504. A copy of a writing is not made inadmissible by the  
40 best evidence rule if the writing is not closely related to the  
41 controlling issues and it would be inexpedient to require its  
42 production.

43 1505. If the proponent does not have in his possession or  
44 under his control a copy of a writing described in Section  
45 1501, 1502, 1503, or 1504, other secondary evidence of the con-  
46 tent of the writing is not made inadmissible by the best evi-  
47 dence rule. This section does not apply to a writing that is also  
48 described in Section 1506 or 1507.

49 1506. A copy of a writing is not made inadmissible by the  
50 best evidence rule if the writing is a record or other writing  
51 that is in the custody of a public entity.

1 1507. A copy of a writing is not made inadmissible by the  
2 best evidence rule if the writing has been recorded in the pub-  
3 lic records and the record or an attested or a certified copy  
4 thereof is made evidence of the writing by statute.

5 1508. If the proponent does not have in his possession a  
6 copy of a writing described in Section 1506 or 1507 and could  
7 not in the exercise of reasonable diligence have obtained a  
8 copy, other secondary evidence of the content of the writing  
9 is not made inadmissible by the best evidence rule.

10 1509. Secondary evidence, whether written or oral, of the  
11 content of a writing is not made inadmissible by the best evi-  
12 dence rule if the writing consists of numerous accounts or  
13 other writings that cannot be examined in court without great  
14 loss of time, and the evidence sought from them is only the  
15 general result of the whole; but the court in its discretion  
16 may require that such accounts or other writings be produced  
17 for inspection by the adverse party.

18 1510. A copy of a writing is not made inadmissible by the  
19 best evidence rule if the writing has been produced at the  
20 hearing and made available for inspection by the adverse party.

21  
22 Article 2. Official Writings and Recorded Writings

23  
24 1530. (a) A purported copy of a writing that is in the  
25 custody of a public entity, or of an entry in such a writing, is  
26 prima facie evidence of the content of such writing or entry if:

27 (1) The copy purports to be published by the authority of  
28 the nation or state, or public entity therein, in which the writ-  
29 ing is kept;

30 (2) The office in which the writing is kept is within the  
31 United States or within the Panama Canal Zone, the Trust  
32 Territory of the Pacific Islands, or the Ryukyu Islands, and  
33 the copy is attested or certified as a correct copy of the writing  
34 or entry by a public employee, or a deputy of a public em-  
35 ployee, having the legal custody of the writing; or

36 (3) The office in which the writing is kept is not within  
37 the United States or any other place described in paragraph  
38 (2) and the copy is attested as a correct copy of the writing  
39 or entry by a person having authority to make the attestation.  
40 The attestation must be accompanied by a final statement  
41 certifying the genuineness of the signature and the official posi-  
42 tion of (i) the person who attested the copy as a correct copy  
43 or (ii) any foreign official who has certified either the genui-  
44 neness of the signature and official position of the person attest-  
45 ing the copy or the genuineness of the signature and official  
46 position of another foreign official who has executed a similar  
47 certificate in a chain of such certificates beginning with a cer-  
48 tificate of the genuineness of the signature and official position  
49 of the person attesting the copy. The final statement may be  
50 made only by a secretary of an embassy or legation, consul  
51 general, consul, vice consul, consular agent, or other officer in  
52 the foreign service of the United States stationed in the nation

1 in which the writing is kept, authenticated by the seal of his  
2 office.

3 (b) The presumptions established by this section are pre-  
4 sumptions affecting the burden of producing evidence.

5 1531. For the purpose of evidence, whenever a copy of a  
6 writing is attested or certified, the attestation or certificate  
7 must state in substance that the copy is a correct copy of the  
8 original, or of a specified part thereof, as the case may be.

9 1532. (a) The official record of a writing is prima facie  
10 evidence of the content of the original recorded writing if:

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

13 (2) A statute authorized such a writing to be recorded in  
14 that office.

15 (b) The presumption established by this section is a pre-  
16 sumption affecting the burden of producing evidence.

17

18

### Article 3. Photographic Copies of Writings

19

20 1550. A photostatic, microfilm, microcard, miniature photo-  
21 graphic or other photographic copy or reproduction, or an en-  
22 largement thereof, of a writing is as admissible as the writing  
23 itself if such copy or reproduction was made and preserved as  
24 a part of the records of a business (as defined by Section  
25 1270) in the regular course of such business. The introduction  
26 of such copy, reproduction, or enlargement does not preclude  
27 admission of the original writing if it is still in existence.

28 1551. A print, whether enlarged or not, from a photo-  
29 graphic film (including a photographic plate, microphoto-  
30 graphic film, photostatic negative, or similar reproduction)  
31 of an original writing destroyed or lost after such film was  
32 taken is as admissible as the original writing itself if, at the  
33 time of the taking of such film, the person under whose di-  
34 rection and control it was taken attached thereto, or to the  
35 sealed container in which it was placed and has been kept, or  
36 incorporated in the film, a certification complying with the  
37 provisions of Section 1531 and stating the date on which, and  
38 the fact that, it was so taken under his direction and control.

39

40

### Article 4. Hospital Records

41

42 1560. (a) As used in this article, "hospital" means a hos-  
43 pital located in this State that is operated by a public entity  
44 or any licensed hospital located in this State.

45 (b) Except as provided in Section 1564, when a subpoena  
46 duces tecum is served upon the custodian of records or other  
47 qualified witness from a hospital in an action in which the  
48 hospital is neither a party nor the place where any cause  
49 of action is alleged to have arisen and such subpoena requires  
50 the production of all or any part of the records of the hospital  
51 relating to the care or treatment of a patient in such hospital,  
52 it is sufficient compliance therewith if the custodian or other

1 officer of the hospital, within five days after the receipt of  
2 such subpoena, delivers by mail or otherwise a true and correct  
3 copy (which may be a photographic or microphotographic re-  
4 production) of all the records described in such subpoena to the  
5 clerk of court or to the court if there be no clerk or to such  
6 other person as described in subdivision (a) of Section 2018  
7 of the Code of Civil Procedure, together with the affidavit de-  
8 scribed in Section 1561.

9 (c) The copy of the records shall be separately enclosed in  
10 an inner envelope or wrapper, sealed, with the title and num-  
11 ber of the action, name of witness, and date of subpoena clearly  
12 inscribed thereon; the sealed envelope or wrapper shall then  
13 be enclosed in an outer envelope or wrapper, sealed, directed  
14 as follows:

15 (1) If the subpoena directs attendance in court, to the clerk  
16 of such court, or to the judge thereof if there be no clerk.

17 (2) If the subpoena directs attendance at a deposition or  
18 other hearing, to the officer before whom the deposition is to  
19 be taken, at the place designated in the subpoena for the taking  
20 of the deposition or at his place of business.

21 (3) In other cases, to the officer, body, or tribunal conduct-  
22 ing the hearing, at a like address.

23 (d) Unless the parties to the proceeding otherwise agree,  
24 or unless the sealed envelope or wrapper is returned to a  
25 witness who is to appear personally, the copy of the records  
26 shall remain sealed and shall be opened only at the time of  
27 trial, deposition, or other hearing, upon the direction of the  
28 judge, officer, body, or tribunal conducting the proceeding, in  
29 the presence of all parties who have appeared in person or  
30 by counsel at such trial, deposition, or hearing. Records which  
31 are not introduced in evidence or required as part of the  
32 record shall be returned to the person or entity from whom  
33 received.

34 1561. (a) The records shall be accompanied by the affi-  
35 davit of the custodian or other qualified witness, stating in  
36 substance each of the following:

37 (1) That the affiant is the duly authorized custodian of the  
38 records and has authority to certify the records.

39 (2) That the copy is a true copy of all the records described  
40 in the subpoena.

41 (3) That the records were prepared by the personnel of  
42 the hospital, staff physicians, or persons acting under the  
43 control of either, in the ordinary course of hospital business  
44 at or near the time of the act, condition, or event.

45 (b) If the hospital has none of the records described, or  
46 only part thereof, the custodian shall so state in the affidavit,  
47 and deliver the affidavit and such records as are available in  
48 the manner provided in Section 1560.

49 1562. The copy of the records is admissible in evidence to  
50 the same extent as though the original thereof were offered  
51 and the custodian had been present and testified to the matters  
52 stated in the affidavit. The affidavit is admissible in evidence



1 and the matters stated therein *pursuant to Section 1561* are  
 2 presumed true. When more than one person has knowledge of  
 3 the facts, more than one affidavit may be made. The presump-  
 4 tion established by this section is a presumption affecting the  
 5 burden of *proof producing evidence*.

6 1563. This article shall not be interpreted to require tender  
 7 or payment of more than one witness and mileage fee or other  
 8 charge unless there is an agreement to the contrary.

9 1564. The personal attendance of the custodian or other  
 10 qualified witness and the production of the original records is  
 11 required if the subpoena duces tecum contains a clause which  
 12 reads:

13 "The procedure authorized pursuant to subdivision (b) of  
 14 Section 1560, and Sections 1561 and 1562, of the Evidence Code  
 15 will not be deemed sufficient compliance with this subpoena."

16 1565. If more than one subpoena duces tecum is served  
 17 upon the custodian of records or other qualified witness from  
 18 a hospital and the personal attendance of the custodian or  
 19 other qualified witness is required pursuant to Section 1564,  
 20 the witness shall be deemed to be the witness of the party serv-  
 21 ing the first such subpoena duces tecum.

22 1566. This article applies in any proceeding in which testi-  
 23 mony can be compelled.

24  
 25 CHAPTER 3. OFFICIAL WRITINGS AFFECTING PROPERTY

26  
 27 1600. The official record of a document purporting to  
 28 establish or affect an interest in property is prima facie evi-  
 29 dence of the content of the original recorded document and its  
 30 execution and delivery by each person by whom it purports to  
 31 have been executed if:

32 (a) The record is in fact a record of an office of a public en-  
 33 tity; and

34 (b) A statute authorized such a document to be recorded in  
 35 that office.

36 1601. (a) Subject to subdivisions (b) and (c), when in  
 37 any action it is desired to prove the contents of the official  
 38 record of any writing lost or destroyed by conflagration or  
 39 other public calamity, after proof of such loss or destruction,  
 40 the following may, without further proof, be admitted in evi-  
 41 dence to prove the contents of such record:

42 (1) Any abstract of title made and issued and certified as  
 43 correct prior to such loss or destruction, and purporting to  
 44 have been prepared and made in the ordinary course of busi-  
 45 ness by any person engaged in the business of preparing and  
 46 making abstracts of title prior to such loss or destruction; or

47 (2) Any abstract of title, or of any instrument affecting  
 48 title, made, issued, and certified as correct by any person en-  
 49 gaged in the business of insuring titles or issuing abstracts of  
 50 title to real estate, whether the same was made, issued, or  
 51 certified before or after such loss or destruction and whether  
 52 the same was made from the original records or from abstract

1 and notes, or either, taken from such records in the preparation  
2 and upkeeping of its plant in the ordinary course of its  
3 business.

4 (b) No proof of the loss of the original writing is required  
5 other than the fact that the original is not known to the party  
6 desiring to prove its contents to be in existence.

7 (c) Any party desiring to use evidence admissible under  
8 this section shall give reasonable notice in writing to all other  
9 parties to the action who have appeared therein, of his inten-  
10 tion to use such evidence at the trial of the action, and shall  
11 give all such other parties a reasonable opportunity to inspect  
12 the evidence, and also the abstracts, memoranda, or notes from  
13 which it was compiled, and to take copies thereof.

14 1602. If a patent for mineral lands within this state  
15 issued or granted by the United States of America, contains a  
16 statement of the date of the location of a claim or claims upon  
17 which the granting or issuance of such patent is based, such  
18 statement is prima facie evidence of the date of such location.

19 1603. A deed of conveyance of real property, purporting  
20 to have been executed by a proper officer in pursuance of  
21 legal process of any of the courts of record of this state, ac-  
22 knowledged and recorded in the office of the recorder of the  
23 county wherein the real property therein described is situated,  
24 or the record of such deed, or a certified copy of such record,  
25 is prima facie evidence that the property or interest therein  
26 described was thereby conveyed to the grantee named in such  
27 deed.

28 1604. A certificate of purchase, or of location, of any lands  
29 in this state, issued or made in pursuance of any law of the  
30 United States or of this state, is prima facie evidence that  
31 the holder or assignee of such certificate is the owner of the  
32 land described therein; but this evidence may be overcome  
33 by proof that, at the time of the location, or time of filing a  
34 preemption claim on which the certificate may have been  
35 issued, the land was in the adverse possession of the adverse  
36 party, or those under whom he claims, or that the adverse party  
37 is holding the land for mining purposes.

38 1605. Duplicate copies and authenticated translations of  
39 original Spanish title papers relating to land claims in this  
40 state, derived from the Spanish or Mexican governments,  
41 prepared under the supervision of the Keeper of Archives, au-  
42 thenticated by the Surveyor-General or his successor and by  
43 the Keeper of Archives, and filed with a county recorder, in ac-  
44 cordance with Chapter 281 of the Statutes of 1865-66, are re-  
45 ceivable as prima facie evidence with like force and effect as  
46 the originals and without proving the execution of such  
47 originals.

48 SEC. 2. Section 2904 of the Business and Professions Code  
49 is repealed.

50 SEC. 3. Section 5012 of the Business and Professions Code  
51 is amended to read:

52 5012. The board shall have a seal.

1 SEC. 4. Section 25009 of the Business and Professions Code  
2 is amended to read:

3 25009. Any defendant in any action brought under this  
4 chapter or any person who may be a witness therein under Sec-  
5 tions 2016, 2018, and 2019 of the Code of Civil Procedure or  
6 Section 776 of the Evidence Code, and the books and records  
7 of any such defendant or witness, may be brought into court  
8 and the books and records may be introduced by reference into  
9 evidence, but no information so obtained may be used against  
10 the defendant or any such witness as a basis for a misdemeanor  
11 prosecution under this chapter.

12 SEC. 5. Section 53 of the Civil Code is amended to read:

13 53. (a) Every provision in a written instrument relating to  
14 real property which purports to forbid or restrict the convey-  
15 ance, encumbrance, leasing, or mortgaging of such real prop-  
16 erty to any person of a specified race, color, religion, ancestry,  
17 or national origin, is void and every restriction or prohibition  
18 as to the use or occupation of real property because of the  
19 user's or occupier's race, color, religion, ancestry, or national  
20 origin is void.

21 (b) Every restriction or prohibition, whether by way of  
22 covenant, condition upon use or occupation, or upon transfer  
23 of title to real property, which restriction or prohibition di-  
24 rectly or indirectly limits the acquisition, use or occupation of  
25 such property because of the acquirer's, user's, or occupier's  
26 race, color, religion, ancestry, or national origin is void.

27 (c) In any action to declare that a restriction or prohibition  
28 specified in subdivision (a) or (b) of this section is void, the  
29 court takes judicial notice of the recorded instrument or in-  
30 struments containing such prohibitions or restrictions in the  
31 same manner that it takes judicial notice of the matters listed  
32 in Section 452 of the Evidence Code.

33 SEC. 6. Section 164.5 is added to the Civil Code, to read:

34 164.5 The presumption that property acquired during mar-  
35 riage is community property does not apply to any property  
36 to which legal or equitable title is held by a person at the time  
37 of his death if the marriage during which the property was  
38 acquired was terminated by divorce more than four years  
39 prior to such death.

40 SEC. 7. Section 193 of the Civil Code is repealed.

41 SEC. 8. Section 194 of the Civil Code is repealed.

42 SEC. 9. Section 195 of the Civil Code is repealed.

43 SEC. 10. Section 3544 is added to the Civil Code, to read:

44 3544. A person intends the ordinary consequences of his  
45 voluntary act.

46 SEC. 11. Section 3545 is added to the Civil Code, to read:

47 3545. Private transactions are fair and regular.

48 SEC. 12. Section 3546 is added to the Civil Code, to read:

49 3546. Things happen according to the ordinary course of  
50 nature and the ordinary habits of life.

1 SEC. 13. Section 3547 is added to the Civil Code, to read:  
2 3547. A thing continues to exist as long as is usual with  
3 things of that nature.

4 SEC. 14. Section 3548 is added to the Civil Code, to read:  
5 3548. The law has been obeyed.

6 SEC. 15. Section 1 of the Code of Civil Procedure is  
7 amended to read:

8 1. This act shall be known as the Code of Civil Procedure,  
9 and is divided into four parts, as follows:

10 Part I. Of Courts of Justice.

11 II. Of Civil Actions.

12 III. Of Special Proceedings of a Civil Nature.

13 IV. Miscellaneous Provisions.

14 SEC. 16. Section 117g of the Code of Civil Procedure is  
15 amended to read:

16 117g. No attorney at law or other person than the plaintiff  
17 and defendant shall take any part in the filing or the prosecu-  
18 tion or defense of such litigation in the small claims court.  
19 The plaintiff and defendant shall have the right to offer evi-  
20 dence in their behalf by witnesses appearing at such hearing,  
21 or at any other time. The presence of the plaintiff or defend-  
22 ant, whether individual or corporate, at the hearing shall not  
23 be required to permit the proof of the items of an account but  
24 such proof shall be in accordance with the provisions of Sec-  
25 tions 1270 and 1271 of the Evidence Code. The judge or justice  
26 may also informally make any investigation of the controversy  
27 between the parties either in or out of court and give judg-  
28 ment and make such orders as to time of payment or otherwise  
29 as may, by him, be deemed to be right and just. The provisions  
30 of Section 579 of the Code of Civil Procedure are hereby made  
31 applicable to small claims court actions.

32 SEC. 17. Section 125 of the Code of Civil Procedure is  
33 amended to read:

34 125. In an action for divorce or seduction, the court may  
35 direct the trial of any issue of fact joined therein to be private,  
36 and may exclude all persons except the officers of the court, the  
37 parties, their witnesses, and counsel. Nothing in this section  
38 prevents the exclusion of a witness pursuant to Evidence Code  
39 Section 777.

40 SEC. 18. Section 153 of the Code of Civil Procedure is  
41 amended to read:

42 153. Except as otherwise expressly provided by law, the  
43 seal of a court need not be affixed to any proceeding therein,  
44 or to any document, except:

45 1. To a writ;

46 2. To a summons;

47 3. To a warrant of arrest;

48 4. To the certificate of probate of a will or of the appoint-  
49 ment of an executor, administrator, or guardian.

1 SEC. 19. Section 433 of the Code of Civil Procedure is  
2 amended to read:

3 433. When any of the matters enumerated in Section 430  
4 do not appear upon the face of the complaint, the objection  
5 may be taken by answer; except that when the ground of  
6 demurrer is that there is another action or proceeding pending  
7 between the same parties for the same cause and the court  
8 may take judicial notice of the other action or proceeding  
9 under Division 4 (commencing with Section 450) of the Evi-  
10 dence Code, an affidavit may be filed with the demurrer for  
11 the sole purpose of establishing such fact or invoking such  
12 notice.

13 SEC. 20. Section 631.7 is added to the Code of Civil Pro-  
14 cedure, to read:

15 631.7. Ordinarily, unless the court otherwise directs, the  
16 trial of a civil action tried by the court without a jury shall  
17 proceed in the order specified in Section 607.

18 SEC. 21. Section 1256.2 of the Code of Civil Procedure is  
19 repealed.

20 SEC. 22. Section 1747 of the Code of Civil Procedure is  
21 amended to read:

22 1747. Notwithstanding the provisions of Section 124 of the  
23 Code of Civil Procedure, all superior court hearings or con-  
24 ferences in proceedings under this chapter shall be held in  
25 private and the court shall exclude all persons except the offi-  
26 cers of the court, the parties, their counsel and witnesses. Con-  
27 ferences may be held with each party and his counsel sep-  
28 arately and in the discretion of the judge, commissioner or  
29 counselor conducting the conference or hearing, counsel for  
30 one party may be excluded when the adverse party is present.  
31 All communications, verbal or written, from parties to the  
32 judge, commissioner or counselor in a proceeding under this  
33 chapter shall be deemed to be official information within the  
34 meaning of Section 1040 of the Evidence Code.

35 The files of the conciliation court shall be closed. The peti-  
36 tion, supporting affidavit, reconciliation agreement and any  
37 court order made in the matter may be opened to inspection  
38 by any party or his counsel upon the written authority of the  
39 judge of the conciliation court.

40 SEC. 23. The heading of Part IV of the Code of Civil Pro-  
41 cedure is amended to read:

42  
43 PART IV. MISCELLANEOUS PROVISIONS

44  
45 SEC. 24. Section 1823 of the Code of Civil Procedure is re-  
46 pealed.

47 SEC. 25. Section 1824 of the Code of Civil Procedure is re-  
48 pealed.

49 SEC. 26. Section 1825 of the Code of Civil Procedure is re-  
50 pealed.

51 SEC. 27. Section 1826 of the Code of Civil Procedure is re-  
52 pealed.

- 1     SEC. 28. Section 1827 of the Code of Civil Procedure is re-
- 2     pealed.
- 3     SEC. 29. Section 1828 of the Code of Civil Procedure is re-
- 4     pealed.
- 5     SEC. 30. Section 1829 of the Code of Civil Procedure is re-
- 6     pealed.
- 7     SEC. 31. Section 1830 of the Code of Civil Procedure is re-
- 8     pealed.
- 9     SEC. 32. Section 1831 of the Code of Civil Procedure is re-
- 10    pealed.
- 11    SEC. 33. Section 1832 of the Code of Civil Procedure is re-
- 12    pealed.
- 13    SEC. 34. Section 1833 of the Code of Civil Procedure is re-
- 14    pealed.
- 15    SEC. 35. Section 1834 of the Code of Civil Procedure is re-
- 16    pealed.
- 17    SEC. 36. Section 1836 of the Code of Civil Procedure is re-
- 18    pealed.
- 19    SEC. 37. Section 1837 of the Code of Civil Procedure is re-
- 20    pealed.
- 21    SEC. 38. Section 1838 of the Code of Civil Procedure is re-
- 22    pealed.
- 23    SEC. 39. Section 1839 of the Code of Civil Procedure is re-
- 24    pealed.
- 25    SEC. 40. Section 1844 of the Code of Civil Procedure is re-
- 26    pealed.
- 27    SEC. 41. Section 1845 of the Code of Civil Procedure is re-
- 28    pealed.
- 29    SEC. 42. Section 1845.5 of the Code of Civil Procedure is
- 30    repealed.
- 31    SEC. 43. Section 1846 of the Code of Civil Procedure is re-
- 32    pealed.
- 33    SEC. 44. Section 1847 of the Code of Civil Procedure is re-
- 34    pealed.
- 35    SEC. 45. Section 1848 of the Code of Civil Procedure is re-
- 36    pealed.
- 37    SEC. 46. Section 1849 of the Code of Civil Procedure is re-
- 38    pealed.
- 39    SEC. 47. Section 1850 of the Code of Civil Procedure is re-
- 40    pealed.
- 41    SEC. 48. Section 1851 of the Code of Civil Procedure is re-
- 42    pealed.
- 43    SEC. 49. Section 1852 of the Code of Civil Procedure is re-
- 44    pealed.
- 45    SEC. 50. Section 1853 of the Code of Civil Procedure is re-
- 46    pealed.
- 47    SEC. 51. Section 1854 of the Code of Civil Procedure is re-
- 48    pealed.
- 49    SEC. 52. Section 1855 of the Code of Civil Procedure is re-
- 50    pealed.

- 1 SEC. 53. Section 1855a of the Code of Civil Procedure is  
2 repealed.
- 3 SEC. 54. Section 1863 of the Code of Civil Procedure is re-  
4 pealed.
- 5 SEC. 55. Section 1867 of the Code of Civil Procedure is re-  
6 pealed.
- 7 SEC. 56. Section 1868 of the Code of Civil Procedure is re-  
8 pealed.
- 9 SEC. 57. Section 1869 of the Code of Civil Procedure is re-  
10 pealed.
- 11 SEC. 58. Section 1870 of the Code of Civil Procedure is re-  
12 pealed.
- 13 SEC. 59. Section 1871 of the Code of Civil Procedure is re-  
14 pealed.
- 15 SEC. 60. Section 1872 of the Code of Civil Procedure is re-  
16 pealed.
- 17 SEC. 61. Section 1875 of the Code of Civil Procedure is re-  
18 pealed.
- 19 SEC. 62. Section 1879 of the Code of Civil Procedure is re-  
20 pealed.
- 21 SEC. 63. Section 1880 of the Code of Civil Procedure is re-  
22 pealed.
- 23 SEC. 64. Section 1881 of the Code of Civil Procedure is re-  
24 pealed.
- 25 SEC. 65. Section 1883 of the Code of Civil Procedure is re-  
26 pealed.
- 27 SEC. 66. Section 1884 of the Code of Civil Procedure is re-  
28 pealed.
- 29 SEC. 67. Section 1885 of the Code of Civil Procedure is re-  
30 pealed.
- 31 SEC. 68. Section 1893 of the Code of Civil Procedure is  
32 amended to read:
- 33 1893. Every public officer having the custody of a public  
34 writing, which a citizen has a right to inspect, is bound to give  
35 him, on demand, a certified copy of it, on payment of the legal  
36 fees therefor.
- 37 SEC. 69. Section 1901 of the Code of Civil Procedure is re-  
38 pealed.
- 39 SEC. 70. Section 1903 of the Code of Civil Procedure is re-  
40 pealed.
- 41 SEC. 71. Section 1905 of the Code of Civil Procedure is re-  
42 pealed.
- 43 SEC. 72. Section 1906 of the Code of Civil Procedure is re-  
44 pealed.
- 45 SEC. 73. Section 1907 of the Code of Civil Procedure is re-  
46 pealed.
- 47 SEC. 74. Section 1908.5 is added to the Code of Civil Pro-  
48 cedure, to read:
- 49 1908.5. When a judgment or order of a court is conclusive,  
50 the judgment or order must be alleged in the pleadings if  
51 there be an opportunity to do so; if there be no such oppor-  
52 tunity, the judgment or order may be used as evidence.

- 1 SEC. 75. Section 1918 of the Code of Civil Procedure is re-
- 2 pealed.
- 3 SEC. 76. Section 1919 of the Code of Civil Procedure is re-
- 4 pealed.
- 5 SEC. 77. Section 1919a of the Code of Civil Procedure is
- 6 repealed.
- 7 SEC. 78. Section 1919b of the Code of Civil Procedure is
- 8 repealed.
- 9 SEC. 79. Section 1920 of the Code of Civil Procedure is re-
- 10 pealed.
- 11 SEC. 80. Section 1920a of the Code of Civil Procedure is
- 12 repealed.
- 13 SEC. 81. Section 1920b of the Code of Civil Procedure is
- 14 repealed.
- 15 SEC. 82. Section 1921 of the Code of Civil Procedure is re-
- 16 pealed.
- 17 SEC. 83. Section 1922 of the Code of Civil Procedure is re-
- 18 pealed.
- 19 SEC. 84. Section 1923 of the Code of Civil Procedure is re-
- 20 pealed.
- 21 SEC. 85. Section 1924 of the Code of Civil Procedure is re-
- 22 pealed.
- 23 SEC. 86. Section 1925 of the Code of Civil Procedure is re-
- 24 pealed.
- 25 SEC. 87. Section 1926 of the Code of Civil Procedure is re-
- 26 pealed.
- 27 SEC. 88. Section 1927 of the Code of Civil Procedure is re-
- 28 pealed.
- 29 SEC. 89. Section 1927.5 of the Code of Civil Procedure is
- 30 repealed.
- 31 SEC. 90. Section 1928 of the Code of Civil Procedure is re-
- 32 pealed.
- 33 SEC. 91. Article 2.1 (commencing with Section 1928.1) of
- 34 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure
- 35 is repealed.
- 36 SEC. 92. Section 1936 of the Code of Civil Procedure is re-
- 37 pealed.
- 38 SEC. 93. Section 1936.1 of the Code of Civil Procedure is
- 39 repealed.
- 40 SEC. 94. Section 1937 of the Code of Civil Procedure is re-
- 41 pealed.
- 42 SEC. 95. Section 1938 of the Code of Civil Procedure is re-
- 43 pealed.
- 44 SEC. 96. Section 1939 of the Code of Civil Procedure is re-
- 45 pealed.
- 46 SEC. 97. Section 1940 of the Code of Civil Procedure is re-
- 47 pealed.
- 48 SEC. 98. Section 1941 of the Code of Civil Procedure is re-
- 49 pealed.
- 50 SEC. 99. Section 1942 of the Code of Civil Procedure is re-
- 51 pealed.



- 1 SEC. 100. Section 1943 of the Code of Civil Procedure is  
2 repealed.
- 3 SEC. 101. Section 1944 of the Code of Civil Procedure is  
4 repealed.
- 5 SEC. 102. Section 1945 of the Code of Civil Procedure is  
6 repealed.
- 7 SEC. 103. Section 1946 of the Code of Civil Procedure is  
8 repealed.
- 9 SEC. 104. Section 1947 of the Code of Civil Procedure is  
10 repealed.
- 11 SEC. 105. Section 1948 of the Code of Civil Procedure is  
12 repealed.
- 13 SEC. 106. Section 1951 of the Code of Civil Procedure is  
14 repealed.
- 15 SEC. 107. Article 5 (commencing with Section 1953e) of  
16 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure  
17 is repealed.
- 18 SEC. 108. Article 6 (commencing with Section 1953i) of  
19 Chapter 3 of Title 2 of Part IV of the Code of Civil Procedure  
20 is repealed.
- 21 SEC. 109. Chapter 4 (consisting of Section 1954) of Title  
22 2 of Part IV of the Code of Civil Procedure is repealed.
- 23 SEC. 110. Chapter 5 (commencing with Section 1957) of  
24 Title 2 of Part IV of the Code of Civil Procedure is repealed.
- 25 SEC. 111. Section 1967 of the Code of Civil Procedure is  
26 repealed.
- 27 SEC. 112. Section 1968 of the Code of Civil Procedure is  
28 repealed.
- 29 SEC. 113. Section 1973 of the Code of Civil Procedure is  
30 repealed.
- 31 SEC. 114. Section 1974 of the Code of Civil Procedure is  
32 amended to read :
- 33 1974. No person is liable upon a representation as to the  
34 credit of a third person, unless such representation, or some  
35 memorandum thereof, be in writing, and either subscribed  
36 by or in the handwriting of the party to be held liable.
- 37 SEC. 115. Chapter 7 (consisting of Section 1978) of Title  
38 2 of Part IV of the Code of Civil Procedure is repealed.
- 39 SEC. 116. Chapter 8 (commencing with Section 1980.1) of  
40 Title 2 of Part IV of the Code of Civil Procedure is repealed.
- 41 SEC. 117. Chapter 1 (commencing with Section 1981) of  
42 Title 3 of Part IV of the Code of Civil Procedure is repealed.
- 43 SEC. 118. Section 1998 of the Code of Civil Procedure is  
44 repealed.
- 45 SEC. 119. Section 1998.1 of the Code of Civil Procedure is  
46 repealed.
- 47 SEC. 120. Section 1998.2 of the Code of Civil Procedure is  
48 repealed.
- 49 SEC. 121. Section 1998.3 of the Code of Civil Procedure is  
50 repealed.
- 51 SEC. 122. Section 1998.4 of the Code of Civil Procedure is  
52 repealed.

1 SEC. 123. Section 1998.5 of the Code of Civil Procedure is  
2 repealed.

3 SEC. 124. Section 2009 of the Code of Civil Procedure is  
4 amended to read:

5 2009. An affidavit may be used to verify a pleading or a  
6 paper in a special proceeding, to prove the service of a sum-  
7 mons, notice, or other paper in an action or special proceed-  
8 ing, to obtain a provisional remedy, the examination of a wit-  
9 ness, or a stay of proceedings, and in uncontested proceedings  
10 to establish a record of birth, or upon a motion, and in any  
11 other case expressly permitted by statute.

12 SEC. 125. Section 2016 of the Code of Civil Procedure is  
13 amended to read:

14 2016. (a) Any party may take the testimony of any per-  
15 son, including a party, by deposition upon oral examination or  
16 written interrogatories for the purpose of discovery or for use  
17 as evidence in the action or for both purposes. Such depositions  
18 may be taken in an action at any time after the service of the  
19 summons or in a special proceeding after the service of the  
20 petition or after the appearance of the defendant or respond-  
21 ent. After commencement of the action or proceedings, the  
22 deposition may be taken without leave of court, except that  
23 leave of court, granted with or without notice, and for good  
24 cause shown, must be obtained if the notice of the taking of  
25 the deposition is served by the plaintiff within 20 days after  
26 service of the summons or petition on, or appearance of, the  
27 defendant or respondent. The attendance of witnesses or the  
28 production of books, documents, or other things at depositions  
29 may be compelled by the use of subpoena as provided in Chap-  
30 ter 2 (commencing with Section 1985), Title 3, Part 4 of this  
31 code.

32 (b) Unless otherwise ordered by the court as provided by  
33 subdivision (b) or (d) of Section 2019 of this code, the depo-  
34 nent may be examined regarding any matter, not privileged,  
35 which is relevant to the subject matter involved in the pend-  
36 ing action, whether it relates to the claim or defense of the  
37 examining party, or to the claim or defense of any other  
38 party, including the existence, description, nature, custody,  
39 condition and location of any books, documents, or other tangi-  
40 ble things and the identity and location of persons having  
41 knowledge of relevant facts. It is not ground for objection  
42 that the testimony will be inadmissible at the trial if the testi-  
43 mony sought appears reasonably calculated to lead to the dis-  
44 covery of admissible evidence. All matters which are privi-  
45 leged against disclosure upon the trial under the law of this  
46 state are privileged against disclosure through any discovery  
47 procedure. This article shall not be construed to change the  
48 law of this state with respect to the existence of any privilege,  
49 whether provided for by statute or by judicial decision.

50 The work product of an attorney shall not be discoverable  
51 unless the court determines that denial of discovery will un-  
52 fairly prejudice the party seeking discovery in preparing his

1 claim or defense or will result in an injustice, and any writ-  
2 ing that reflects an attorney's impressions, conclusions, opin-  
3 ions, or legal research or theories shall not be discoverable un-  
4 der any circumstances.

5 (c) Examination and cross-examination of deponents may  
6 proceed as permitted at the trial.

7 (d) At the trial or upon the hearing of a motion or an  
8 interlocutory proceeding, any part or all of a deposition, so far  
9 as admissible under the rules of evidence, may be used against  
10 any party who was present or represented at the taking of  
11 the deposition or who had due notice thereof, in accordance  
12 with any one of the following provisions:

13 (1) Any deposition may be used by any party for the pur-  
14 pose of contradicting or impeaching the testimony of deponent  
15 as a witness.

16 (2) The deposition of a party to the record of any civil  
17 action or proceeding or of a person for whose immediate bene-  
18 fit said action or proceeding is prosecuted or defended, or of  
19 anyone who at the time of taking the deposition was an officer,  
20 director, superintendent, member, agent, employee, or manag-  
21 ing agent of any such party or person may be used by an  
22 adverse party for any purpose.

23 (3) The deposition of a witness, whether or not a party,  
24 may be used by any party for any purpose if the court finds:  
25 (i) that the witness is unavailable as a witness within the  
26 meaning of Section 240 of the Evidence Code or (ii) upon  
27 application and notice, that such exceptional circumstances  
28 exist as to make it desirable, in the interest of justice and  
29 with due regard to the importance of presenting the testimony  
30 of witnesses orally in open court, to allow the deposition to be  
31 used.

32 (4) Subject to the requirements of this section, a party may  
33 offer in evidence all or any part of a deposition, and if such  
34 party introduces only part of such deposition, any party may  
35 introduce any other parts.

36 Substitution of parties does not affect the right to use depo-  
37 sitions previously taken; and, when an action in any court  
38 of the United States or of any state has been dismissed and  
39 another action involving the same subject matter is afterward  
40 brought between the same parties or their representatives or  
41 successors in interest, all depositions lawfully taken and duly  
42 filed in the former action may be used in the latter as if orig-  
43 inally taken therefor.

44 (e) Subject to the provisions of subdivision (c) of Section  
45 2021 of this code, objection may be made at the trial or hear-  
46 ing to receiving in evidence any deposition or part thereof for  
47 any reason which would require the exclusion of the evidence  
48 if the witness were then present and testifying.

49 (f) A party shall not be deemed to make a person his own  
50 witness for any purpose by taking his deposition. Except where  
51 the deposition is used under the provisions of paragraph (2)  
52 of subdivision (d) of this section, the introduction in evidence

1 of the deposition or any part thereof for any purpose other  
2 than that of contradicting or impeaching the deponent, or for  
3 explaining or clarifying portions of the said deposition offered  
4 by an adverse party, makes the deponent the witness of the  
5 party introducing the deposition, as to the portions of the  
6 deposition introduced by said party. At the trial or hearing  
7 any party may rebut any relevant evidence contained in a  
8 deposition whether introduced by him or by another party.

9 (g) It is the policy of this state (i) to preserve the rights  
10 of attorneys to prepare cases for trial with that degree of  
11 privacy necessary to encourage them to prepare their cases  
12 thoroughly and to investigate not only the favorable but the  
13 unfavorable aspects of such cases and (ii) to prevent an at-  
14 torney from taking undue advantage of his adversary's in-  
15 dustry or efforts.

16 SEC. 126. Article 6 (commencing with Section 2042) of  
17 Chapter 3 of Title 3 of Part IV of the Code of Civil Procedure  
18 is repealed.

19 SEC. 127. Title 4 (consisting of Section 2061) of Part IV  
20 of the Code of Civil Procedure is repealed.

21 SEC. 128. Section 2065 of the Code of Civil Procedure is  
22 repealed.

23 SEC. 129. Section 2066 of the Code of Civil Procedure is  
24 repealed.

25 SEC. 130. Section 2078 of the Code of Civil Procedure is  
26 repealed.

27 SEC. 131. Section 2079 of the Code of Civil Procedure is  
28 repealed.

29 SEC. 132. Chapter 4 (commencing with Section 2101) of  
30 Title 6 of Part IV of the Code of Civil Procedure is repealed.

31 SEC. 133. Section 6602 of the Corporations Code is  
32 amended to read:

33 6602. In any action or proceeding, the court takes judicial  
34 notice, in the same manner that it takes judicial notice of the  
35 matters listed in Section 452 of the Evidence Code, of the  
36 official acts affecting corporations of the legislative, executive,  
37 and judicial departments of the state or place under the  
38 laws of which the corporation purports to be incorporated.

39 SEC. 134. Section 25310 of the Corporations Code is  
40 amended to read:

41 25310. The commissioner shall adopt a seal bearing the  
42 inscription: "Commissioner of Corporations, State of Califor-  
43 nia." The seal shall be affixed to all writs, orders, permits, and  
44 certificates issued by him, and to such other instruments as he  
45 directs.

46 SEC. 135. Section 11513 of the Government Code is  
47 amended to read:

48 11513. (a) Oral evidence shall be taken only on oath or  
49 affirmation.

50 (b) Each party shall have these rights: to call and examine  
51 witnesses; to introduce exhibits; to cross-examine opposing  
52 witnesses on any matter relevant to the issues even though

1 that matter was not covered in the direct examination; to  
2 impeach any witness regardless of which party first called him  
3 to testify; and to rebut the evidence against him. If respond-  
4 ent does not testify in his own behalf he may be called and  
5 examined as if under cross-examination.

6 (c) The hearing need not be conducted according to tech-  
7 nical rules relating to evidence and witnesses. Any relevant  
8 evidence shall be admitted if it is the sort of evidence on which  
9 responsible persons are accustomed to rely in the conduct of  
10 serious affairs, regardless of the existence of any common law  
11 or statutory rule which might make improper the admission  
12 of such evidence over objection in civil actions. Hearsay evi-  
13 dence may be used for the purpose of supplementing or ex-  
14 plaining other evidence but shall not be sufficient in itself to  
15 support a finding unless it would be admissible over objection  
16 in civil actions. The rules of privilege shall be effective to the  
17 extent that they are otherwise required by statute to be recog-  
18 nized at the hearing, and irrelevant and unduly repetitious  
19 evidence shall be excluded.

20 SEC. 136. Section 19580 of the Government Code is  
21 amended to read:

22 19580. Either by deposition or at the hearing the employee  
23 may be examined and may examine or cause any person to be  
24 examined under Section 776 of the Evidence Code.

25 SEC. 137. Section 3197 of the Health and Safety Code is  
26 amended to read:

27 3197. In any prosecution for a violation of any provision of  
28 this article, or any rule or regulation of the board made pur-  
29 suant to this article, or in any quarantine proceeding author-  
30 ized by this article, or in any habeas corpus or other proceed-  
31 ing in which the legality of such quarantine is questioned,  
32 any physician, health officer, spouse, or other person shall be  
33 competent and may be required to testify against any person  
34 against whom such prosecution or other proceeding was insti-  
35 tuted, and the privileges provided by Sections 970, 971, 980,  
36 994, and 1014 of the Evidence Code are not applicable to or  
37 in any such prosecution or proceeding.

38 SEC. 137.5. Section 5708 of the Labor Code is amended to  
39 read:

40 5708. (a) All hearing and investigations before the com-  
41 mission, panel, a commissioner, or a referee, are governed by  
42 this division and by the rules of practice and procedure  
43 adopted by the commission. In the conduct thereof they shall  
44 not be bound by the common law or statutory rules of evidence  
45 and procedure, but may make inquiry in the manner, through  
46 oral testimony and records, which is best calculated to ascertain  
47 the substantial rights of the parties and carry out justly the  
48 spirit and provisions of this division. All oral testimony, ob-  
49 jections, and rulings shall be taken down in shorthand by a  
50 competent phonographic reporter.

1 (b) *Except as provided in subdivision (c), the Evidence*  
2 *Code does not apply to the hearings and investigations de-*  
3 *scribed in subdivision (a).*

4 (c) *The rules of privilege provided by Division 8 (com-*  
5 *mencing with Section 900) of the Evidence Code shall be*  
6 *recognized in such hearings and investigations to the extent*  
7 *they are required by Division 8 to be recognized, but subdivi-*  
8 *sion (b) of Section 914 of the Evidence Code does not apply*  
9 *in such hearings and investigations.*

10 SEC. 138. Section 270e of the Penal Code is amended to  
11 read:

12 270e. No other evidence shall be required to prove mar-  
13 riage of husband and wife, or that a person is the lawful  
14 father or mother of a child or children, than is or shall be re-  
15 quired to prove such facts in a civil action. In all prosecu-  
16 tions under either Section 270a or 270 of this code, Sections  
17 970, 971, and 980 of the Evidence Code do not apply, and both  
18 husband and wife shall be competent to testify to any and all  
19 relevant matters, including the fact of marriage and the par-  
20 entage of a child or children. Proof of the abandonment and  
21 nonsupport of a wife, or of the omission to furnish necessary  
22 food, clothing, shelter, or of medical attendance for a child or  
23 children is prima facie evidence that such abandonment and  
24 nonsupport or omission to furnish necessary food, clothing,  
25 shelter or medical attendance is wilful. In any prosecution  
26 under Section 270, it shall be competent for the people to prove  
27 nonaccess of husband to wife or any other fact establishing  
28 nonpaternity of a husband. In any prosecution pursuant to  
29 Section 270, the final establishment of paternity or nonpater-  
30 nity in another proceeding shall be admissible as evidence of  
31 paternity or nonpaternity.

32 SEC. 139. Section 686 of the Penal Code is amended to  
33 read:

34 686. In a criminal action the defendant is entitled:

35 1. To a speedy and public trial.

36 2. To be allowed counsel as in civil actions, or to appear and  
37 defend in person and with counsel.

38 3. To produce witnesses on his behalf and to be confronted  
39 with the witnesses against him, in the presence of the court,  
40 except that:

41 (a) Hearsay evidence may be admitted to the extent that it  
42 is otherwise admissible in a criminal action under the law of  
43 this state.

44 (b) The deposition of a witness taken in the action may be  
45 read to the extent that it is otherwise admissible under the  
46 law of this state.

47 SEC. 140. Section 688 of the Penal Code is amended to  
48 read:

49 688. No person charged with a public offense may be  
50 subjected, before conviction, to any more restraint than is  
51 necessary for his detention to answer the charge.

1 SEC. 141. Section 939.6 of the Penal Code is amended to  
2 read:

3 939.6. (a) Subject to subdivision (b), in the investigation  
4 of a charge, the grand jury shall receive no other evidence  
5 than such as is:

6 (1) Given by witnesses produced and sworn before the  
7 grand jury;

8 (2) Furnished by writings, material objects, or other things  
9 presented to the senses; or

10 (3) Contained in a deposition that is admissible under sub-  
11 division 3 of Section 686

12 (b) The grand jury shall receive none but evidence that  
13 would be admissible over objection at the trial of a criminal  
14 action, but the fact that evidence which would have been ex-  
15 cluded at trial was received by the grand jury does not render  
16 the indictment void where sufficient competent evidence to sup-  
17 port the indictment was received by the grand jury.

18 SEC. 142. Section 961 of the Penal Code is amended to  
19 read:

20 961. Neither presumptions of law, nor matters of which  
21 judicial notice is authorized or required to be taken, need be  
22 stated in an accusatory pleading.

23 SEC. 143. Section 963 of the Penal Code is amended to  
24 read:

25 963. In pleading a private statute, or an ordinance of a  
26 county or a municipal corporation, or a right derived there-  
27 from, it is sufficient to refer to the statute or ordinance by its  
28 title and the day of its passage, and the court must thereupon  
29 take judicial notice thereof in the same manner that it takes  
30 judicial notice of matters listed in Section 452 of the Evidence  
31 Code.

32 SEC. 144. Section 1120 of the Penal Code is amended to  
33 read:

34 1120. If a juror has any personal knowledge respecting a  
35 fact in controversy in a cause, he must declare the same in  
36 open court during the trial. If, during the retirement of the  
37 jury, a juror declare a fact which could be evidence in the  
38 cause, as of his own knowledge, the jury must return into  
39 court. In either of these cases, the juror making the statement  
40 must be sworn as a witness and examined in the presence of  
41 the parties in order that the court may determine whether  
42 good cause exists for his discharge as a juror.

43 SEC. 145. Section 1322 of the Penal Code is repealed.

44 SEC. 146. Section 1323 of the Penal Code is repealed.

45 SEC. 147. Section 1323.5 of the Penal Code is repealed.

46 SEC. 148. Section 1345 of the Penal Code is amended to  
47 read:

48 1345. The deposition, or a certified copy thereof, may be  
49 read in evidence by either party on the trial if the court finds  
50 that the witness is unavailable as a witness within the meaning  
51 of Section 240 of the Evidence Code. The same objections may

1 be taken to a question or answer contained in the deposition  
2 as if the witness had been examined orally in court.

3 SEC. 149. Section 1362 of the Penal Code is amended to  
4 read:

5 1362. The depositions taken under the commission may be  
6 read in evidence by either party on the trial if the court finds  
7 that the witness is unavailable as a witness within the meaning  
8 of Section 240 of the Evidence Code. The same objections may  
9 be taken to a question in the interrogatories or to an answer  
10 in the deposition as if the witness had been examined orally in  
11 court.

12 SEC. 150. Section 306 of the Public Utilities Code is  
13 amended to read:

14 306. The office of the commission shall be in the City and  
15 County of San Francisco. The office shall always be open, legal  
16 holidays and nonjudicial days excepted. The commission shall  
17 hold its sessions at least once in each calendar month in the  
18 City and County of San Francisco. The commission may also  
19 meet at such other times and in such other places as may be  
20 expedient and necessary for the proper performance of its  
21 duties, and for that purpose may rent quarters or offices.  
22 Except for the commission's deliberative conferences, the ses-  
23 sions and meetings of the commission shall be open and public  
24 and all persons shall be permitted to attend.

25 The commission shall have a seal, bearing the inscription  
26 "Public Utilities Commission State of California." The seal  
27 shall be affixed to all writs and authentications of copies of  
28 records and to such other instruments as the commission shall  
29 direct.

30 The commission may procure all necessary books, maps,  
31 charts, stationery, instruments, office furniture, apparatus, and  
32 appliances.

33 SEC. 151. Sections 2 to 150 of this act shall become opera-  
34 tive on January 1, 1967.



STATE OF CALIFORNIA  
Supreme Court of California**PROOF OF SERVICE**STATE OF CALIFORNIA  
Supreme Court of CaliforniaCase Name: **BERROTERAN v. S.C. (FORD MOTOR COMPANY)**Case Number: **S259522**Lower Court Case Number: **B296639**

1. At the time of service I was at least 18 years of age and not a party to this legal action.
2. My email address used to e-serve: **fcohen@horvitzlevy.com**
3. I served by email a copy of the following document(s) indicated below:

Title(s) of papers e-served:

Filing Type	Document Title
BRIEF	S259522 OBOM FordMotorCompany
REQUEST FOR JUDICIAL NOTICE	S259522 MJN FordMotorCompany
ADDITIONAL DOCUMENTS	S259522_01 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_02 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_03 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_04 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_05 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_06 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_07 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_08 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_09 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_10 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_11 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_12 of 14- Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_13 of 14 - Exhs. to MJN
ADDITIONAL DOCUMENTS	S259522_14 of 14 - Exhs. to MJN

Service Recipients:

Person Served	Email Address	Type	Date / Time
Frederic Cohen Horvitz & Levy LLP 56755	fcohen@horvitzlevy.com	e-Serve	5/13/2020 3:42:05 PM
Millie Cowley Horvitz & Levy LLP	mcowley@horvitzlevy.com	e-Serve	5/13/2020 3:42:05 PM
Steve Mikhov Knight Law Group 224676	stevem@knightlaw.com	e-Serve	5/13/2020 3:42:05 PM
Cynthia Tobisman Greines, Martin, Stein & Richland LLP 197983	ctobisman@gmsr.com	e-Serve	5/13/2020 3:42:05 PM
Connie Gutierrez Faegre Drinker Biddle & Reath LLP	connie.gutierrez@dbr.com	e-Serve	5/13/2020 3:42:05 PM

J.Alan Warfield Polsinelli LLP 186559	jalanwarfield@polsinelli.com	e-Serve	5/13/2020 3:42:05 PM
Matthew Proudfoot Gates, O'Doherty, Gonter & Guy, LLP	mproudfoot@gogglaw.com	e-Serve	5/13/2020 3:42:05 PM
Cara Sherman ONGARO PC 269343	csherman@ongaropc.com	e-Serve	5/13/2020 3:42:05 PM
Monique Aguirre Greines Martin Stein & Richland LLP	maguirre@gmsr.com	e-Serve	5/13/2020 3:42:05 PM
Julian Senior SJL Law. P.C 219098	admin@sjllegal.com	e-Serve	5/13/2020 3:42:05 PM
Jo-Anne Novik Horvitz & Levy LLP	jnovik@horvitzlevy.com	e-Serve	5/13/2020 3:42:05 PM
Alan Lazarus Faegre Drinker Biddle & Reath LLP 129767	alan.lazarus@dbr.com	e-Serve	5/13/2020 3:42:05 PM
Frederick Bennett Superior Court of Los Angeles County 47455	fbennett@lacourt.org	e-Serve	5/13/2020 3:42:05 PM
Justin Sanders Sanders Roberts LLP 211488	breyes@sandersroberts.com	e-Serve	5/13/2020 3:42:05 PM
Lisa Perrochet Horvitz & Levy 132858	lperrochet@horvitzlevy.com	e-Serve	5/13/2020 3:42:05 PM
Justin Sanders Sanders Roberts LLP	jsanders@sandersroberts.com	e-Serve	5/13/2020 3:42:05 PM
Edward Xanders Greines, Martin, Stein & Richland LLP 145779	exanders@gmsr.com	e-Serve	5/13/2020 3:42:05 PM
Chris Hsu Greines Martin Stein & Richland LLP	chsu@gmsr.com	e-Serve	5/13/2020 3:42:05 PM
Fred Hiestand Attorney at Law 44241	fred@fjh-law.com	e-Serve	5/13/2020 3:42:05 PM
John M. Thomas Dykema Gossett 266842	jthomas@dykema.com	e-Serve	5/13/2020 3:42:05 PM
Lauren Ungs	laurenu@knightlaw.com	e-Serve	5/13/2020 3:42:05 PM
Bryan Altman	bryan@altmanlawgroup.net	e-Serve	5/13/2020 3:42:05 PM
Christopher Urner	c.urner@altmanlawgroup.net	e-Serve	5/13/2020 3:42:05 PM
Darth Vaughn	dvaughn@sandersroberts.com	e-Serve	5/13/2020 3:42:05 PM
Sabrina Narain	snarain@sandersroberts.com	e-Serve	5/13/2020 3:42:05 PM

299471			
FREDERICK BENNETT III	pnguyen@lacourt.org	e-Serve	5/13/2020 3:42:05 PM

This proof of service was automatically created, submitted and signed on my behalf through my agreements with TrueFiling and its contents are true to the best of my information, knowledge, and belief.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

5/13/2020

Date

/s/Frederic Cohen

Signature

Cohen, Frederic (56755)

Last Name, First Name (PNum)

Horvitz & Levy LLP

Law Firm