

file
9/17/63

Memorandum No. 63-47

Subject: Study No. 34(L)--Uniform Rules of Evidence
(Article III. Presumptions)

You have in your binder relating to presumptions Professor Chadbourn's study relating to presumptions and Memo 63-35 summarizing it.

To refresh your recollections, this memorandum will repeat the conclusions reached by the consultant and will indicate what results would flow from the adoption of the various views on presumptions. The Commission should then consider the statutes (attached as Exhibit I) that we have gathered. These statutes all mention presumptions or prima facie evidence or something similar. The Commission should decide how the courts should treat the matter involved in the particular statute-- according to Thayer, Morgan, Traynor, or existing law. From this process, we may be able to derive some general rules and a fairly simple statutory solution to the problem of presumptions.

Presumption, inference, and prima facie evidence defined.

As the consultant points out, we are dealing with inferences and presumptions. There seems to be little disagreement on what a presumption is, but there is a great deal of controversy over what its function and life span are. Under URE Rule 13, a presumption is "an assumption of fact" which the law requires "to be assumed from another fact...found or otherwise established in the action." The existing law is similar: "A presumption is a deduction which the law expressly directs to be made

from particular facts." C.C.P. §1959.

An inference is a logical deduction that may be made from a proved fact. C.C.P. §1958; see Study at 21-22. The deduction is not required by law in every case, but in exceptional cases the law may compel the deduction to be drawn--and in such a case, we may refer to the inference as a mandatory inference as distinguished from a permissive inference.

We have another creature in California law allied to the presumptions and inferences: it is called "prima facie evidence." See, e.g., Agri. C. § 18, Exhibit I. Whether this is really a presumption or an inference, and if the latter, whether it is of the permissive or mandatory variety, is not readily apparent. The Code of Civil Procedure defines it as "that which suffices for the proof of a particular fact, until contradicted and overcome by other evidence." C.C.P. § 1833.

Function and duration of a presumption.

Thayer view. The so-called orthodox view, espoused by Thayer, is that a presumption is a guide for the judge in determining who has the burden of producing evidence on a question. The presumption tells the judge and the parties that the party against whom the presumption operates must come forward with sufficient evidence to warrant a finding of the nonexistence of the presumed fact (if he fails to do so, the judge will direct a verdict or find against him on the issue); and when the party against whom the presumption operates has come forward with that quantum of evidence, the

presumption is functus officio and disappears from the case. It matters not that the evidence is not believed; the presumption is overcome by the introduction of the evidence.

Morgan View. The Morgan view, which essentially is the URE view, is that a presumption imposes upon the party against whom it operates the burden of persuading the trier of fact of the nonexistence of the presumed fact.

Traynor view. Justice Traynor, in his dissent in Speck v. Sarver, 20 Cal.2d 585, 590 (1942), advocates a third position. In his view, a presumption should impose upon the party against whom it operates the burden of proving to the trier of fact that the nonexistence of the presumed fact is as probable as its existence, and the trier of fact should find for such party if his evidence produces such an equilibrium, but should find for the party in whose favor the presumption operates if the adverse party's evidence fails to produce such an equilibrium.

California view. California follows Traynor to a limited extent. Under California law, a presumption does not ordinarily shift the burden of persuasion--although in some cases it does. And, a presumption does not disappear in the face of contrary evidence. But, in California, a presumption is something more than a device for imposing a burden of producing some quantum of evidence. Under California law, a presumption may operate against a person who has the burden of proof--under all

of the other views, this is an impossibility, because all that it does is shift the burden of proof. In such a case, the party with the burden of proof has not only his normal burden of persuading the fact trier, he must also overcome the undefinable effect of the presumption operating in his opponent's favor.

Policy arguments.

"Law scholars" have found arguments both favoring and disfavoring most of these views. No one, however, supports the California view.

The Thayer view is the view of the majority of courts. Supporters argue that a presumption is created to resolve an issue when there is no evidence; hence, the presumption must disappear in the face of the facts when they are shown. The underlying inference upon which the presumption was based remains and may be sufficient to convince the fact trier anyway.

Opponents of the Thayer view argue that presumptions are created for reasons of policy that are still operative when the opponent has introduced some evidence. It is absurd to give the presumption no force merely because evidence that no one believes has been introduced. If the policy underlying a presumption requires a particular conclusion when there is no evidence, it should require a similar conclusion when there is evidence but the trier's mind is in equilibrium.

Some presumptions are based on policy grounds unrelated to the logic or lack of logic embodied in the compelled conclusion. For example, Labor Code Section 3708 provides that if an employer does not carry workmen's compensation insurance and an employee sues him for an on-the-job injury, the employer's negligent causation of the injury is presumed. If the employer could avoid the force of this presumption by the introduction of sufficient evidence to sustain a finding--even though the evidence is not believed--the public policy giving rise to the presumption would be completely thwarted. The apparent purpose of the presumption is to compel the employer to prove his lack of negligence--not merely to introduce minimal evidence.

Morgan feels that the policies underlying presumptions are best carried out by requiring the party against whom they operate to prove the nonexistence of the presumed fact. Thus, in the situation just referred to, the employer would have the burden of persuading the fact trier that the employee's injury was not caused by the employer's negligence. This is probably what was desired by the Legislature in the particular instance.

Opponents of the Morgan view point out, however, that this gives too much weight to presumptions. For example, the presumption of death from 7 years absence would--under the Morgan view--shift to the adverse party the burden of proving that the absent person is alive. Yet, if the party seeking to

prove the death introduced direct evidence of that fact, the burden of persuasion would not shift, it would remain with that party; the adverse party would not have to prove the absent person is alive, he would merely have to meet the evidence of death with sufficient evidence to produce an equilibrium. He must satisfy the fact trier that the fact of life is as probable as the fact of death. He should not have a heavier burden merely because the other party relies on a presumption, which is obviously weaker in evidentiary value than the direct evidence.

The Traynor view meets this latter argument; for under the Traynor view, the burden of persuasion does not shift. But, the Traynor view, too, may be criticized. It virtually requires the jury to weigh the evidence of the nonexistence of the presumed fact against the presumption in order to determine whether the probability of the nonexistence of the presumed fact is as great as the probability of its existence. After all, there is no evidence of the fact's existence--there is merely the presumption; while there is evidence of its nonexistence. In this regard, the Morgan view is somewhat easier to understand and apply, for it requires the person against whom it operates to persuade the fact trier of the nonexistence of the presumed fact.

The California view is generally criticized because it sometimes imposes upon a party who has the burden of persuasion

the additional burden of overcoming the presumption considered as evidence. This imposes on such a party an unduly high burden of proof. The California rule also prevents a court from following a common sense rule when ruling on a motion for a directed verdict against a person with the burden of proof. See Study, pp. 23-34.

Effect of presumption views.

Professor Chadbourn analyzes the effect of the various views on presumptions at three stages of litigation:

- (1) Directed verdict stage.
- (2) Determining facts stage.
- (3) Appellate stage. The last stage (discussed on pages 60-61) seems to present no problems not present in the earlier stages.

The following chart will summarize his analysis of the first two stages:

PARTY WITH BURDEN OF PROOF

IS RELYING ON:

STAGE I DIRECTED VERDICT	INFERENCES		PRIMA FACIE EVIDENCE	PRESUMPTIONS
	Permissive	Mandatory		
Motion for verdict for party with burden of proof	Never granted	Granted unless adverse party has introduced sufficient evidence to warrant finding of nonexistence of inferred fact. Denied if he has.	Probably same as mandatory inference.	Same as mandatory inference under all views.
Motion by party for verdict against party with burden of proof.	Granted only if inference is dispelled by "clear, positive and uncontradicted evidence."		Probably same as inference	Granted only if presumption dispelled by absolutely conclusive evidence or by the party's own evidence under California view. Same as inference under other views.
STAGE II DETERMINING FACTS	Party in whose favor inference operates must convince trier of fact that existence of fact is more probable than its nonexistence. Adverse party risks finding of the fact if no evidence produced of its nonexistence.	Party in whose favor inference operates is entitled to finding of fact's existence unless other party introduced sufficient evidence of nonexistence to balance the burden of proof. If such a balance created, party with burden of proof loses.	Probably same as mandatory inference.	Thayer view: presumption gone (logical inference remains). Other views: 1. Same as mandatory inference. 2. Party in whose favor presumption operates entitled to finding of fact's existence unless other party persuades fact trier of nonexistence of fact by: (a) preponderance of evidence; (b) clear and convincing evidence or (c) beyond reasonable doubt.

At Stage III, the appellate level, the job of the court is to determine whether the verdict or finding of the court below is supported by the evidence. In performing this task, a presumption is counted as evidence. But, as on a motion for a directed verdict, the presumption may be dispelled by evidence deemed absolutely conclusive. See, e.g., Clendenning v. Parker, 69 Cal.App. 685 (1924).

The only part of the analysis not covered by the above chart is what happens when the party who does not have the burden of proof relies on a presumption. Under all views but that of California, the situation cannot occur because the most that a presumption can do is impose on the other party the burden of persuasion and, by hypothesis, in this situation he already has that burden. Under the California view, he also has the burden of overcoming some evidentiary weight that must be given the presumption. This is not objectionable, however, insofar as those presumptions are concerned that require a heavier burden of proof than a preponderance of evidence in order to dispel them.

What should be California law?

The URE recommends the Morgan view, but with the qualification that the Thayer view be applied to any presumption not having a basis in logical inference. New Jersey has recommended uniform application of the Morgan view. The bifurcated approach of the URE seems undesirable; for it adopts the Thayer view at precisely the point where the Thayer view makes least sense--where there is no underlying inference.

The above analysis indicates that there are about three areas where the law might be changed by the URE and the Commission should consider each one to determine whether change is desirable and what change should be made.

1. Should the applicable rule on a motion for a directed verdict against the party with the burden of proof be the same whether the party with the burden of proof is relying on a presumption or inference? That is, should a presumption, too, be dispelled by "clear, positive and uncontradicted evidence" by the other party? (The rule will be similar when an appellate court is determining whether there is evidence to support a verdict or finding.)

2. Should the "presumption is evidence" rule be abandoned so that a party with the burden of proof does not have to overcome the additional burden of dispelling a presumption-- unless the presumption is one that must be overcome by an extraordinary showing of some sort?

3. How should presumptions be treated when the trier of fact is resolving the factual issues?

In connection with this last question, the Commission should consider each statutory presumption in the accompanying exhibit to determine which solution would best carry out the policy underlying the statute. The Commission may conclude that some exceptional presumptions should shift to the other party the burden of proving the nonexistence of the presumed

fact beyond a reasonable doubt (New Jersey requires such a showing in the case of the presumption of legitimacy), that some others should shift to the other the burden of proving the non-existence of the presumed fact by clear and convincing evidence (as in the case of the presumption that property acquired during marriage is community property); that some others should shift the burden of proving nonexistence by a preponderance of the evidence; and that some others should merely require evidence sufficient to balance the burden of proof that remains with the party relying on the presumption.

It seems likely that most of the presumptions will fall into a general rule and that exceptional rules can be drafted for the few others.

The Commission should consider, too, how presumptions will work in criminal cases. New Jersey recommends in Rule 16 that the URE presumption rules be made inapplicable in criminal cases. This seems to avoid the problem--not solve it. Under existing law, presumptions seem to operate in criminal cases in the fashion that Traynor advocates for civil cases, bearing in mind that the prosecution's burden in criminal cases is proof beyond a reasonable doubt. Thus, in a criminal case, where the prosecution relies on a presumption to prove an element of the defendant's guilt, the defendant has the burden of producing sufficient evidence to balance the prosecution's burden of proof, i.e., to create a reasonable doubt as to the existence

of the presumed fact. People v. Agnew, 16 Cal .2d 655 (1940)

After the Commission has reviewed the attached statutes and determined the general policy to be followed, the staff will review the individual URE presumption rules to determine the extent that they should be modified to express Commission policy and submit them to you at a future meeting.

Respectfully submitted,

Joseph B. Harvey
Assistant Executive Secretary

mtg

Agricultural Code

18. Possession of commodity; prima facie evidence. In all matters arising under this code, the fact of possession by any person engaged in the sale of a commodity is prima facie evidence that such commodity is for sale.

Agricultural Code

152. Infested plants in district; public nuisance; presumption of infestation in host plants. All plants within a citrus white fly district which are infested with citrus white fly or eggs, larvae or pupae thereof, or which there is reasonable cause to presume may be infested with citrus white fly, are declared a public nuisance. The existence of any known host plant of citrus white fly within the boundaries of the district shall be deemed reasonable cause to presume said host plant to be infested with citrus white fly.

Agricultural Code

423. Livestock on public highway. No person owning, or controlling the possession of, any live stock, shall wilfully or negligently permit any such live stock to stray upon or remain unaccompanied by a person in charge or control thereof upon a public highway, both sides of which are adjoined by property which is separated from such highway by a fence, wall, hedge, sidewalk, curb, lawn or building. No person shall drive any such live stock upon, over or across any public highway between the hours of sunset and sunrise without keeping a sufficient number of herders on continual duty to open the road so as to permit the passage of vehicles. In any civil action brought by the owner, driver or occupant of a motor vehicle, or by their personal representatives or assignees, or by the owner of live stock, for damages caused by collision between any motor vehicle and any domestic animal or animals on a highway, there is no presumption or inference that such collision was due to negligence on behalf of the owner or the person in possession of such live stock.

Agricultural Code

1105. Presumption from possession of eggs. It shall be presumed from the fact of possession by any person, firm or corporation engaged in the sale of eggs that such eggs are for sale.

Business and Professions Code

8752. Evidence of license. An unrevoked, unsuspended and unexpired license, or renewal certificate, issued by the board is presumptive evidence in all courts and places that the person named is legally licensed under this chapter.

Business and Professions Code

14431. Unauthorized use; presumptive evidence. The use by any person other than the registrant, or owner of the brand and other than the members of the registrant of any container, supplies or equipment, without the written consent provided for in this article, or the possession by any junk dealer, or dealer in secondhand articles, of any containers, supplies or equipment, is presumptive evidence of unlawful use of or traffic in such containers, supplies, or equipment.

Business and Professions Code

14486. Unauthorized use; presumptive evidence. The use by any person, other than the registrant of any supplies without the written consent provided in this article or the possession of supplies so marked by any junk dealer or dealer of secondhand articles is presumptive evidence of unlawful use of or traffic in such supplies.

Business and Professions Code

14495. Evidence of unlawful use. The use of the name of any organization by any person, firm, or corporation not entitled to use the same under the constitution, by-laws, rules or regulations of the organization which owns the name or by the written consent of such organization, is presumptive evidence of the unlawful use or traffic in such name.

Business and Professions . Code

17071. Intent to injure competitors or destroy competition; evidence.

In all actions brought under this chapter proof of one or more acts of selling or giving away any article or product below cost or at discriminatory prices, together with proof of the injurious effect of such acts, is presumptive evidence of the purpose or intent to injure competitors or destroy competition.

Business and Professions Code

17071.5. Limitation of quantity; sale below invoice or replacement cost; presumption. In all actions brought under this chapter proof of limitation of the quantity of any article or product sold or offered for sale to any one customer to a quantity less than the entire supply thereof owned or possessed by the seller or which he is otherwise authorized to sell at the place of such sale or offering for sale, together with proof that the price at which the article or product is so sold or offered for sale is in fact below its invoice or replacement cost, whichever is lower, raises a presumption of the purpose or intent to injure competitors or destroy competition. This section applies only to sales by persons conducting a retail business the principal part of which involves the resale to consumers of commodities purchased or acquired for that purpose, as distinguished from persons principally engaged in the sale to consumers of commodities of their own production or manufacture.

Business and Professions Code

17073. Cost of article; formula for determining; presumptive evidence. Proof of average overall cost of doing business for any particular inventory period when added to the cost of production of each article or product, as to a producer, or invoice or replacement cost, whichever is lower, of each article or product, as to a distributor, is presumptive evidence of cost of each such article or product involved in any action brought under this chapter.

Business and Professions Code

17074. Transportation tariffs as evidence of delivery cost. Proof of transportation tariffs when fixed and approved by the Public Utilities Commission of the State of California is presumptive evidence of delivery cost.

Business and Professions Code

17077. Raw material; presumptive cost. In any action or prosecution for sales below cost in violation of this chapter, if the defendant acquires his raw materials for a consideration not wholly or definitely computable in money, the cost of the raw materials shall be presumed to be the prevailing market price for similar raw materials in the ordinary channels of trade in the locality or vicinity in which such raw materials were acquired, at the time of the acquisition.

Business and Professions Code

18405. Threats; presumption; evidence of unlawful intent. Any threat, express or implied, made to a retailer by any person, or any agent of any such person, who is engaged in the business of financing the purchase or sale of motor vehicles or of buying conditional sales contracts, chattel mortgages or leases on motor vehicles in this State and is affiliated with or controlled by a manufacturer that such manufacturer will terminate his contract with or cease to sell motor vehicles to such retailer unless such retailer finances the purchase or sale of motor vehicles only with or through a designated person or class of persons or sells and assigns the conditional sales contracts, chattel mortgages or leases arising from his retail sale of motor vehicles only to such person so engaged in financing the purchase or sale of motor vehicles or in buying conditional sales contracts, chattel mortgages or leases on motor vehicles, shall be presumed to be made at the direction of and with the authority of such manufacturer, and is prima facie evidence that the manufacturer has sold or intends to sell the motor vehicles on the condition or with the agreement or understanding prohibited by this chapter.

Business and Professions Code

25607. Possession of beverages licensee not authorized to sell; presumption; seizure. It is unlawful for any person or licensee to have upon any premises for which a license has been issued any alcoholic beverages other than the alcoholic beverage which the licensee is authorized to sell at the premises under his license. It shall be presumed that all alcoholic beverages found or located upon premises for which licenses have been issued belong to the person or persons to whom the licenses were issued. Every person violating the provisions of this section is guilty of a misdemeanor. The department may seize any alcoholic beverages found in violation of this section.

Civil Code

40. Persons of unsound mind adjudged incapable; powers; certificate of discharge from institution; presumption. After his incapacity has been judicially determined, a person of unsound mind can make no conveyance or other contract, nor delegate any power or waive any right, until his restoration to capacity. But a certificate from the Medical Superintendent or Resident Physician of the Insane Asylum to which such person may have been committed, showing that such person had been discharged therefrom, cured and restored to reason, shall establish the presumption of legal capacity in such person from the time of such discharge.

Civil Code

125. Presumptions from delay. LAPSE OF TIME ESTABLISHES CERTAIN PRESUMPTIONS. Unreasonable lapse of time is such a delay in commencing the action as establishes the presumption that there has been connivance, collusion, or condonation of the offense, or full acquiescence in the same, with intent to continue the marriage relation notwithstanding the commission of such offense.

Civil Code

126. Presumptions from delay; rebuttal. PRESUMPTIONS MAY BE REBUTTED.

The presumptions arising from lapse of time may be rebutted by showing reasonable grounds for the delay in commencing the action.

Civil Code

129. Separate domicile or residence. In actions for divorce neither the domicile nor residence of the husband shall be deemed to be the domicile or residence of the wife. For the purpose of such an action each may have a separate domicile or residence depending upon proof of the fact and not upon legal presumptions.

164. Community property; presumptions as to property acquired

by wife; limitation of actions; leasehold interest. All other real property situated in this State and all other personal property wherever situated acquired during the marriage by a married persona while domiciled in this State is community property; but whenever any real or personal property, or any interest therein or encumbrance thereon, is acquired by a married woman by an instrument in writing, the presumption is that the same is her separate property, and if acquired by such married woman and any other person the presumption is that she takes the part acquired by her, as tenant in common, unless a different intention is expressed in the instrument; except, that when any of such property is acquired by husband and wife by an instrument in which they are described as husband and wife, unless a different intention is expressed in the instrument, the presumption is that such property is the community property of said husband and wife. The presumptions in this section mentioned are conclusive in favor of any person dealing in good faith and for a valuable consideration with such married woman or her legal representatives or successors in interest, and regardless of any change in her marital status after acquisition of said property.

In cases where a married woman has conveyed, or shall hereafter convey, real property which she acquired prior to May 19, 1889, the husband, or his heirs or assigns, of such married woman, shall be barred from commencing or maintaining any action to show that said real property was community property, or to recover said real property from and after one year from the filing for record in the recorder's office of such conveyances, respectively.

As used in this section, personal property does not include and real property does include leasehold interests in real property.

172 a. Community real property; management and control; wife's joinder in conveyances; limitation of action. Except as provided in Section 172b, the husband has the management and control of the community real property, but the wife, either personally or by duly authorized agent, must join with him in executing any instrument by which such community real property or any interest therein is leased for a longer period than one year, or is sold, conveyed, or encumbered; provided however, that nothing herein contained shall be construed to apply to a lease, mortgage, conveyance, or transfer of real property or of any interest in real property between husband and wife; provided, also, however, that the sole lease, contract, mortgage or deed of the husband, holding the record title to community real property, to a lessee, purchaser or encumbrancer, in good faith without knowledge of the marriage relation shall be presumed to be valid. No action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, executed by the husband alone, shall be commenced after the expiration of one year from the filing for record of such instrument in the recorder's office in the county in which the land is situate, and no action to avoid any instrument mentioned in this section, affecting any property standing of record in the name of the husband alone, which was executed by the husband alone and filed for record prior to the time this act takes effect, in the recorder's office in the county in which the land is situate, shall be commenced after the expiration of one year from the date on which this act takes effect.

Civil

193. Presumption of legitimacy; children born in wedlock . LEGITIMACY
OF CHILDREN BORN IN WEDLOCK. All children born in wedlock are presumed
to be legitimate.

Civil

194. Presumption of legitimacy; children born after dissolution of marriage. All children of a woman who has been married, born within ten months after the dissolution of the marriage, are presumed to be legitimate children of that marriage.

Civil

195. Presumption of legitimacy; dispute; proof of illegitimacy. The presumption of legitimacy can be disputed only by the people of the State of California in a criminal action brought under the provisions of Section 270 of the Penal Code, or the husband or wife, or the descendant of one or both of them. Illegitimacy, in such case, may be proved like any other fact.

Civil

209. Support and services of step-children. HUSBAND NOT BOUND FOR THE SUPPORT OF HIS WIFE'S CHILDREN BY A FORMER MARRIAGE. A husband is not bound to maintain his wife's children by a former husband; but if he receives them into his family and supports them, it is presumed that he does so as a parent, and, where such is the case, they are not liable to him for their support, nor he to them for their services.

Civil

211. Control and earnings, relinquishment by parent to child. PARENT MAY RELINQUISH SERVICES AND CUSTODY OF CHILD. The parent, whether solvent or insolvent, may relinquish to the child the right of controlling him and receiving his earnings. Abandonment by the parent is presumptive evidence of such relinquishment.

Civil

232. Persons entitled to be declared free from parental custody and control. An action may be brought for the purpose of having any person under the age of 21 years declared free from the custody and control of either or both of his parents when such person comes within any of the following descriptions:

(a) Who has been left by either or both of his parents in the care and custody of another without any provision for his support, or without communication from either or both of his parents, for the period of one year with the intent on the part of such parent or parents to abandon such person. Such failure to provide, or such failure to communicate for the period of one year, shall be presumptive evidence of the intent to abandon. Such person shall be deemed and called a person abandoned by the parent or parents abandoning him. If in the opinion of the court the evidence indicates that either or both parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by such parent or parents.

* * *

Civil

831. Way as boundary. BOUNDARIES BY WAYS. An owner of land bounded by a road or street is presumed to own to the center of the way, but the contrary may be shown.

Civil

853. Trusts; presumption. When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made.

Civil

1055. Presumption as to date of delivery. DATE. A grant duly executed is presumed to have been delivered at its date.

Civil

1059. Constructive delivery of grant. CONSTRUCTIVE DELIVERY.

Though a grant be not actually delivered into the possession of the grantee, it is yet to be deemed constructively delivered in the following cases:

1. Where the instrument is, by the agreement of the parties at the time of execution, understood to be delivered, and under such circumstances that the grantee is entitled to immediate delivery; or,
2. Where it is delivered to a stranger for the benefit of the grantee, and his assent is shown, or may be presumed.

Civil

1105. Fee simple title; presumption. WHEN FEE SIMPLE TITLE IS PRESUMED TO PASS. A fee simple title is presumed to be intended to pass by a grant of real property, unless it appears from the grant that a lesser estate was intended.

Civil

1150. Gift in view of death; presumption. WHEN GIFT PRESUMED TO BE IN VIEW OF DEATH. A gift made during the last illness of the giver, or under circumstances which would naturally impress him with an expectation of speedy death, is presumed to be a gift in view of death.

Civil

1431. Joint obligations; presumption. WHEN JOINT. An obligation imposed upon several persons, or a right created in favor of several persons, is presumed to be joint, and not several, except in the special cases mentioned in the Title on the Interpretation of Contracts. This presumption, in the case of a right, can be overcome only by express words to the contrary.

Civil

1477. Partial performance; effect. PARTIAL PERFORMANCE. A partial performance of an indivisible obligation extinguishes a corresponding proportion thereof, if the benefit of such performance is voluntarily retained by the creditor, but not otherwise. If such partial performance is of such a nature that the creditor cannot avoid retaining it without injuring his own property, his retention thereof is not presumed to be voluntary.

Civil

1614. Written instrument; presumption of consideration. WRITTEN
INSTRUMENT PRESUMPTIVE EVIDENCE OF CONSIDERATION. A written instrument
is presumptive evidence of a consideration.

Civil

1615. Want of consideration; burden of proof. BURDEN OF PROOF TO
INVALIDATE SUFFICIENT CONSIDERATION. The burden of showing a want of
consideration sufficient to support an instrument lies with the party
seeking to invalidate or avoid it.

Civil

1654. Uncertainty, interpretation against party causing; presumption.

WORDS TO BE TAKEN MOST STRONGLY AGAINST WHOM. In cases of uncertainty not removed by the preceding rules, the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist. The promisor is presumed to be such party; except in a contract between a public officer or body, as such, and a private party, in which it is presumed that all uncertainty was caused by the private party.

Civil

1659. Joint and several promise; presumption; promisors benefiting from consideration. WHEN JOINT AND SEVERAL. Where all the parties who unite in a promise receive some benefit from the consideration, whether past or present, their promise is presumed to be joint and several.

Civil

1838. . Loss of or injury to thing deposited. INJURY TO, OR LOSS OF THING DEPOSITED. If a thing is lost or injured during its deposit, and the depositary refuses to inform the depositor of the circumstances under which the loss or injury occurred, so **far** as he has information concerning them, or willfully misrepresents the circumstances to him, the depositary is presumed to have willfully, or by gross negligence, permitted the loss or injury to occur.

Civil

1914. Interest; presumption. Whenever a loan of money is made, it is presumed to be made upon interest, unless it is otherwise expressly stipulated at the time in writing.

Civil

1943. Term of hiring; presumption. A hiring of real property, other than lodgings and dwelling-houses, in places where there is no custom or usage on the subject, is presumed to be a month to month tenancy unless otherwise designated in writing; except that, in the case of real property used for agricultural or grazing purposes a hiring is presumed to be for one year from its commencement unless otherwise expressed in the hiring.

Civil

1944. Term of hiring; presumption; lodgings or dwelling house.

HIRING OF LODGINGS FOR INDEFINITE TERM. A hiring of lodgings or a dwelling house for an unspecified term is presumed to have been made for such length of time as the parties adopt for the estimation of the rent. Thus a hiring at a monthly rate of rent is presumed to be for one month. In the absence of any agreement respecting the length of time or the rent, the hiring is presumed to be monthly.

Civil

1945. Renewal by continued possession and acceptance of rent.

RENEWAL OF LEASE BY LESSEE'S CONTINUED POSSESSION. If a lessee of real property remains in possession thereof after the expiration of the hiring, and the lessor accepts rent from him, the parties are presumed to have renewed the hiring on the same terms and for the same time, not exceeding one month when the rent is payable monthly, nor in any case one year.

Civil

1946. Renewable hiring; notice of termination. A hiring of real property, for a term not specified by the parties, is deemed to be renewed as stated in the last section, at the end of the term implied by law unless one of the parties gives written notice to the other of his intention to terminate the same, at least as long before the expiration thereof as the term of the hiring itself, not exceeding 30 days, provided, however, that as to tenancies from month to month either of the parties may terminate the same by giving at least 30 days' written notice thereof at any time and the rent shall be due and payable to and including the date of termination. It shall be competent for the parties to provide by an agreement at the time such tenancy is created that a notice of the intention to terminate the same may be given at any time not less than seven days before the expiration of the term thereof. The notice herein required shall be given in the manner prescribed in Section 1162 of the Code of Civil Procedure.

Civil

2137. Liability of consignor. CONSIGNOR, WHEN LIABLE FOR FREIGHTAGE.

The consignor of freight is presumed to be liable for the freightage, but if the contract between him and the carrier provides that the consignee shall pay it, and the carrier allows the consignee to take the freight, he cannot afterwards recover the freightage from the consignor.

Civil

2235. All transactions between a trustee and his beneficiary during the existence of the trust, or while the influence acquired by the trustee remains, by which he obtains any advantage from his beneficiary, are presumed to be entered into by the latter without sufficient consideration, and under undue influence. The presumptions established by this section do not apply to the provisions of an agreement between a trustee and his beneficiary relating to the hiring or compensation of the trustee.

Civil

2806. Conditional and unconditional obligations. A suretyship obligation is to be deemed unconditional unless its terms import some condition precedent to the liability of the surety.

Civil

3336. Personal property; conversion; presumption. The detriment caused by the wrongful conversion of personal property is presumed to be:

First--The value of the property at the time of the conversion, with the interest from that time, or, an amount sufficient to indemnify the party injured for the loss which is the natural, reasonable and proximate result of the wrongful act complained of and which a proper degree of prudence on his part would not have averted; and

Second--A fair compensation for the time and money properly expended in pursuit of the property.

3337. Personal property; conversion; subsequent application of property to benefit of owner. SAME. The presumption declared by the last section cannot be repelled, in favor of one whose possession was wrongful from the beginning, by his subsequent application of the property to the benefit of the owner, without his consent.

Civil

3356. Estimating damages; value of instrument in writing. For the purpose of estimating damages, the value of an instrument in writing is presumed to be equal to that of the property to which it entitles its owner.

Civil

3387. Breach of agreement to transfer real estate; presumption of inadequacy of damages. It is to be presumed that the breach of an agreement to transfer real property cannot be adequately relieved by pecuniary compensation.

Civil

3400. Presumption of intent to make an equitable and conscientious agreement. PRESUMPTION AS TO INTENT OF PARTIES. For the purpose of revising a contract, it must be presumed that all the parties thereto intended to make an equitable and conscientious agreement.

Civil

3440. Transfers and liens without delivery.

Conclusive presumption of fraud.

Every transfer of personal property and every lien on personal property made by a person having at the time the possession or control of the property, and not accompanied by an immediate delivery followed by an actual and continued change of possession of the things transferred, is conclusively presumed fraudulent and void as against the transferor's creditors while he remains in possession and the successors in interest of those creditors, and as against any person on whom the transferor's estate devolves in trust for the benefit of others than the transferor and as against purchasers or encumbrancers in good faith subsequent to the transfer.

Exceptions.

This section shall not apply to any of the following:

- (a) Things in action.

* * *

Civil

3522. Essentials to use of thing granted. One who grants a thing is presumed to grant also whatever is essential to its use.

Code of Civil Procedure

321. Adverse possession; five years. In every action for the recovery of real property, or the possession thereof, the person establishing a legal title to the property is presumed to have been possessed thereof within the time required by law, and the occupation of the property by any other person is deemed to have been under and in subordination to the legal title, unless it appear that the property has been held and possessed adversely to such legal title, for five years before the commencement of the action.

Code of Civil Procedure

322. Entry under claim of title; extent of presumptive possession.

When it appears that the occupant, or those under whom he claims, entered into the possession of the property under claim of title, exclusive of other right, founding such claim upon a written instrument, as being a conveyance of the property in question, or upon the decree or judgment of a competent court, and that there has been a continued occupation and possession of the property included in such instrument, decree, or judgment, or of some part of the property, under such claim, for five years, the property so included is deemed to have been held adversely, except that when it consists of a tract divided into lots, the possession of one lot is not deemed a possession of any other lot of the same tract.

Code of Civil Procedure

323. Sufficiency of possession, use and inclosure. For the purpose of constituting an adverse possession by any person claiming a title founded upon a written instrument, or a judgment or decree, land is deemed to have been possessed and occupied in the following cases:

1. Where it has been usually cultivated or improved;
2. Where it has been protectdd by a substantial inclosure;
3. Where, although not inclosed, it has been used for the supply of fuel, or of fencing-timber for the purposes of husbandry, or for pasturage, or for the ordinary use of the occupant;
4. Where a known farm or single lot has been partly improved, the portion of such farm or lot that may have been left not cleared, or not inclosed according to the usual course and custom of the adjoining country, shall be deemed to have been occupied for the same length of time as the part improved and cultivated.

Code of Civil Procedure

324. Extent of possession in absence of writing or judgment. Where it appears that there has been an actual continued occupation of land, under a claim of title, exclusive of any other right, but not founded upon a written instrument, judgment, or decree, the land so actually occupied, and no other, is deemed to have been held adversely.

325. Inclosure and cultivation necessary. For the purpose of constituting an adverse possession by a person claiming title, not founded upon a written instrument, judgment, or decree, land is deemed to have been possessed and occupied in the following cases only:

1. Where it has been protected by a substantial inclosure.
2. Where it has been usually cultivated or improved.

Provided, however, that in no case shall adverse possession be considered established under the provision of any section or sections of this code, unless it shall be shown that the land has been occupied and claimed for the period of five years continuously, and the party or persons, their predecessors and grantors, have paid all the taxes, State, county, or municipal, which have been levied and assessed upon such land.

Code of Civil Procedure

326. Adverse possession by tenant--five years. When the relation of landlord and tenant has existed between any persons, the possession of the tenant is deemed the possession of the landlord: until the expiration of five years from the termination of the tenancy, or, where there has been no written lease, until the expiration of five years from the time of the last payment of rent, notwithstanding that such tenant may have acquired another title, or may have claimed to hold adversely to his landlord. But such presumptions cannot be made after the periods herein limited.

Code of Civil Procedure

1020. Service of notice by registered mail; exceptions. Any notice required by law, other than those required to be given to a party to an action or to his attorney, the service of which is not governed by the other sections of this chapter and which is not otherwise specifically provided for by law, may be given by sending the same by registered mail with proper postage prepaid addressed to the addressee's last known address with request for return receipt, and the production of a returned receipt purporting to be signed by the addressee shall create a disputable presumption that such notice was received by the person to whom the notice was required to be sent.

Code of Civil Procedure

1847. Presumption that witness is truthful. A witness is presumed to speak the truth. This presumption, however, may be repelled by the manner in which he testifies, by the character of his testimony, or by evidence affecting his character for truth, honesty, or integrity, or his motives, or by contradictory evidence; and the jury are the exclusive judges of his credibility.

Code of Civil Procedure

1861. Primary and general sense. The terms of a writing are presumed to have been used in their primary and general acceptation, but evidence is nevertheless admissible that they have a local, technical, or otherwise peculiar signification, and were so used and understood in the particular instance, in which case the agreement must be construed accordingly.

Code of Civil Procedure

1909. Effect of orders other than judgments. Other judicial orders of a court or judge of this State, or of the United States, create a disputable presumption, according to the matter directly determined, between the same parties and their representatives and successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing under the same title and in the same capacity.

Code of Civil Procedure

1915. Effect of foreign judgment. A final judgment of any other tribunal of a foreign country having jurisdiction, according to the laws of such country, to pronounce the judgment, shall have the same effect as in the country where rendered, and also the same effect as final judgments rendered in this State.

Code of Civil Procedure

1957. Indirect evidence. Indirect evidence is of two kinds:

1. Inferences; and,
2. Presumptions.

Code of Civil Procedure

1959. Presumption defined. A presumption is a deduction which the law expressly directs to be made from particular facts.

Code of Civil Procedure

1961. Effect of uncontroverted presumption. A presumption (unless declared by law to be conclusive) may be controverted by other evidence, direct or indirect; but unless so controverted the jury are bound to find according to the presumption.

Code of Civil Procedure

1962. Conclusive or indisputable presumptions. The following presumptions, and no others, are deemed conclusive:

1. A malicious and guilty intent, from the deliberate commission of an unlawful act, for the purpose of injuring another;
2. The truth of the facts recited, from the recital in a written instrument between the parties thereto, or their successors in interest by a subsequent title; but this rule does not apply to the recital of a consideration;
3. Whenever a party has, by his own declaration, act, or omission, intentionally and deliberately led another to believe a particular thing true, and to act upon such belief, he cannot, in any litigation arising out of such declaration, act, or omission, be permitted to falsify it;
4. A tenant is not permitted to deny the title of his landlord at the time of the commencement of the relation;
5. Notwithstanding any other provision of law, [1] the issue of a wife cohabiting with her husband, who is not impotent, is indisputably presumed to be legitimate;
6. The judgment or order of a court, when declared by this code to be conclusive; but such 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;
7. Any other presumption which by statute is expressly made conclusive.

Code of Civil Procedure

1963. Disputable presumptions. All other presumptions are satisfactory, if uncontradicted. They are denominated disputable presumptions, and may be controverted by other evidence. The following are of that kind:

1. That a person is innocent of crime or wrong;
2. That an unlawful act was done with an unlawful intent;
3. That a person intends the ordinary consequence of his voluntary act;
4. That a person takes ordinary care of his own concerns;
5. That evidence willfully suppressed would be adverse if produced;
6. That higher evidence would be adverse from inferior being produced;
7. That money paid by one to another was due to the latter;
8. That a thing delivered by one to another belonged to the latter;
9. That an obligation delivered up to the debtor has been paid;
10. That former rent or installments have been paid when a receipt for latter is produced;
11. That things which a person possesses are owned by him;
12. That a person is the owner of property from exercising acts of ownership over it, or from common reputation of his ownership;
13. That a person in possession of an order on himself for the payment of money, or the delivery of a thing, had paid the money or delivered the thing accordingly;
14. That a person acting in a public office was regularly appointed to it;

Code of Civil Procedure

1963. continued.

15. That official duty has been regularly performed.
16. That a court or judge, acting as such, whether in this State or any other state or country, was acting in the lawful exercise of his jurisdiction;
17. That a judicial record, when not conclusive, does still correctly determine or set forth the rights of the parties;
18. That all matters within an issue were laid before the jury and passed upon by them; and in like manner, that all matters within a submission to arbitration were laid before the arbitrators and passed upon by them;
19. That private transactions have been fair and regular;
20. That the ordinary course of business has been followed;
21. That a promissory note or bill of exchange was given or endorsed for a sufficient consideration;
22. That an endorsement of a negotiable promissory note or bill of exchange was made at the time and place of making the note or bill;
23. That a writing is truly dated;
24. That a letter duly directed and mailed was received in the regular course of the mail;
25. Identity of person from identity of name;
26. That a person not heard from in seven years is dead;
27. That acquiescence followed from a belief that the thing acquiesced in was conformable to the right or fact;

Code of Civil Procedure

1963. continued

28. That things have happened according to the ordinary course of nature and the ordinary habits of life;
29. That persons acting as copartners have entered into a contract of copartnership;
30. That a man and woman deporting themselves as husband and wife have entered into a lawful contract of marriage;
31. That a child born in lawful wedlock, there being no divorce from bed and board, is legitimate;
32. That a thing once proved to exist continues as long as is usual with things of that nature;
33. That the law has been obeyed;
34. That a document or writing more than 30 years old is genuine, when the same has been since generally acted upon as genuine, by persons having an interest in the question, and its custody has been satisfactorily explained;
35. That a printed and published book, purporting to be printed or published by public authority, was so printed or published;
36. That a printed and published book, purporting to contain reports of cases adjudged in the tribunals of the State or country where the book is published, contains correct reports of such cases;
37. That a trustee or other person, whose duty it was to convey real property to a particular person, has actually conveyed to him, when such presumption is necessary to perfect the title of such person or his successor in interest;

Code of Civil Procedure

1963 continued

38. The uninterrupted use by the public of land for a burial ground, for five years, with the consent of the owner, and without a reservation of his rights, is presumptive evidence of his intention to dedicate it to the public for that purpose;

39. That there was a good and sufficient consideration for a written contract;

40. That property owned at the time of death by a person who had been divorced from his or her spouse more than four years prior thereto was not community property acquired during marriage with such divorced spouse, but is his or her separate property.

Code of Civil Procedure

2034. Refusal of deponent to answer questions or interrogatories or to obey subpoenas or orders. . . . (2) If any party or person for whose immediate benefit the action or proceeding is prosecuted or defended, or an officer, director, superintendent, member, agent, employee or managing agent of any such party or person refuses to obey an order made under subdivision (a) of this section, [4] or if any party or an officer or managing agent of a party refuses to obey an order made under [5] Sections 2019, 2031 or 2032 of this code, [6] the court may make such orders in regard to the refusal as are just, and among others the following:

(1) An order that the matters regarding which the questions were asked, or the character or description of the thing or land, or the contents of the paper, or the physical or mental or blood condition of the person sought to be examined, or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

* * *

Code of Civil Procedure

2061. Province of jury; instructions on effect of proof. The jury, subject to the control of the court, in the cases specified in this code, are the judges of the effect or value of evidence addressed to them, except when it is declared to be conclusive. They are, however, to be instructed by the court on all proper occasions:

2. That they are not bound to decide in conformity with the declarations of any number of witnesses, which do not produce conviction in their minds, against a less number or against a presumption or other evidence satisfying their minds;

* * *

Government

11383. Presumptions raised by filing; judicial notice. The filing of a certified copy of a regulation or an order of repeal with the Secretary of State raises the rebuttable presumptions that:

(a) It was duly adopted.

(b) It was duly filed and made available for public inspection at the day and hour endorsed on it.

(c) All requirements of this chapter and the regulations of the department relative to such regulation have been complied with.

(d) The text of the certified copy of a regulation or order of repeal is the text of the regulation or order of repeal as adopted.

The courts shall take judicial notice of the contents of the certified copy of each regulation and of each order of repeal duly filed.

11384. Presumption from publication in code or register; judicial notice. The publication of a regulation in the California Administrative Code or Register raises a rebuttable presumption that the text of the regulation as so published is the text of the regulation adopted.

The courts shall take judicial notice of the content of each regulation or notice of the repeal of a regulation printed in the California Administrative Code or California Administrative Register.

291. Damages from breach of rule deemed occasioned by wilful default.

Damage to person or property arising from the failure of a vessel to observe any rule of Article 1 of this chapter, shall be deemed to have been occasioned by the wilful default of the person in charge of the deck at the time, unless the circumstances of the case made a departure from the rule necessary.

Harbors & Navigation

832. Compensation. A managing owner is presumed to be without right to compensation for his own services..

Harbors & Navigation

871. Presumptive evidence from master's certificate. A certificate from the master or chief surviving officer of a vessel, to the effect that a seaman exerted himself to the utmost to save the vessel, cargo, and stores, is presumptive evidence of the fact.

Health & Safety

§600. Presumption of sole and separate property of grantee. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance.

Health & Safety

12352. Felonies; prohibited acts; presumption. Every person who does either of the following is guilty of a felony:

(a) Recklessly or maliciously has in his possession an explosive on a public street or highway; in or near any theater, hall, school, college, church, hotel, other public building, or private habitation; in, on, or near any railway passenger train or car, cable road or cable car, steam or other vessel engaged in carrying passengers, ferryboat, or public place ordinarily passed by human beings.

(b) Recklessly or maliciously uses an explosive to intimidate, terrify, or endanger any human being.

Any person not in the lawful possession of an explosive who is found with an explosive on his person or in his possession, on, in, or near any of the buildings, means of transportation, or places mentioned in this section, is presumably guilty of reckless and malicious possession of the explosive.

Insurance

335. Presumed knowledge. Each party to a contract of insurance is bound to know:

(a) All the general causes which are open to his inquiry equally with that of the other, and which may affect either the political or material perils contemplated.

(b) All the general usages of trade.

Insurance

1964. Presumption of actual loss. An actual loss may be presumed from the continued absence of a ship without being heard of. The length of time which is sufficient to raise this presumption depends on the circumstances of the case.

Labor

212. Prohibited forms of payment; instruments protested or dishonored; effect of notice. No person, or agent or officer thereof, shall issue in payment of wages due, or to become due, or as an advance on wages to be earned:

(a) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the State, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(b) Any script, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee

Labor

1200. Presumption of lawfulness of minimum wages, maximum hours, and standard conditions. In every prosecution for violation of any provision of this chapter, the minimum wage, the maximum hours of work, and the standard conditions of labor fixed by the commission shall be presumed to be reasonable and lawful.

Labour

2855. Enforcement of contract to render personal service; time limit.

A contract to render personal service, other than a contract of apprenticeship as provided in Chapter 4 of this division, may not be enforced against the employee beyond seven years from the commencement of service under it.

Any contract, otherwise valid, to perform or render service of a special, unique, unusual, extraordinary, or intellectual character, which gives it peculiar value and the loss of which can not be reasonable or adequately compensated in damages in an action at law, may nevertheless be enforced against the person contracting to render such service, for a term not to exceed seven years from the commencement of service under it. If the employee voluntarily continues his service under it beyond that time, the contract may be referred to as affording a presumptive measure of the compensation.

Labor

3003. Presumption of renewal of agreement. If, after the expiration of an agreement respecting the wages and the term of service, the parties continue the relation of master and servant, they are presumed to have renewed the agreement for the same wages and term of service.

Labor

3357. Employee presumption. Any person rendering service for another, other than as an independent contractor, or unless expressly excluded herein, is presumed to be an employee.

Labor:

3708. Presumption of employer's negligence; defense abolished. In such action it is presumed that the injury to the employee was a direct result and grew out of the negligence of the employer, and the burden of proof is upon the employer, to rebut the presumption of negligence. It is not a defense to the employer that the employee was guilty of contributory negligence, or assumed the risk of the hazard complained of, or that the injury was caused by the negligence of a fellow servant. No contract or regulation shall restore to the employer any of the foregoing defenses.

Labor

5704.5. Presumption of hours actually worked in domestic service.

A written contract entered into between a person engaged in household domestic service and his employer shall raise a rebuttable presumption that the hours of employment specified therein are the hours actually worked per week by such household domestic for that employer.

Labor

5707. Autopsy of body not in possession of coroner; refusal to allow autopsy; presumption. If the body of a deceased employee is not in the custody of the coroner, the commission may authorize the performance of such autopsy and, if necessary, the exhumation of the body therefor. If the dependents, or a majority thereof, of any such deceased employee, having the custody of the body refuse to allow the autopsy, it shall not be performed. In such case, upon the hearing of any application for compensation it is a disputable presumption that the injury or death was not due to causes entitling the claimants to benefits under this division.

Penal Code

250. Malice inferred from lack of motive. An injurious publication is presumed to have been malicious if no justifiable motive for making it is shown.

Penal Code

259. When presumed malicious. The injurious utterance of slander is presumed to have been malicious save when it is a communication to a person interested therein, by one who is also interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information.

Penal Code

496. 1. Receiving; knowledge; concealment; punishment. Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion knowing the same to be so stolen or obtained, or who conceals, withholds or aids in concealing or withholding any such property from the owner, knowing the same to be so stolen or obtained, is punishable by imprisonment in a state prison for not more than 10 years, or in a county jail for not more than 1 year.

2. Secondhand dealers; inquiry; presumption. Every person whose principal business is dealing in or collecting used or secondhand merchandise or personal property, and every agent, employee or representative of such person, who buys or receives any property which has been stolen or obtained in any manner constituting theft or extortion, under such circumstances as should cause such person, agent, employee or representative to make reasonable inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it, without making such reasonable inquiry, shall be presumed to have bought or received such property knowing it to have been so stolen or obtained. This presumption may, however, be rebutted by proof.

496. continued

3. Secondhand dealers; inquiry; burden of proof. When in a prosecution under this section it shall appear from the evidence that the defendant's principal business was as set forth in the preceding paragraph, that the defendant bought, received, or otherwise obtained, or concealed, withheld or aided in concealing or withholding from the owner, any property which had been stolen or obtained in any manner constituting theft or extortion, and that the defendant bought, received, obtained, concealed or withheld such property under such circumstances as should have caused him to make reasonable inquiry to ascertain that the person from whom he bought, received, or obtained such property had the legal right to sell or deliver it to him, then the burden shall be upon the defendant to show that before so buying, receiving, or otherwise obtaining such property, he made such reasonable inquiry to ascertain that the person so selling or delivering the same to him had the legal right to so sell or deliver it.

Penal Code

961. Evidentiary matters. Neither presumptions of law, nor matters of which judicial notice is taken, need be stated in an [1] accusatory pleading.

Penal Code

1096. Presumption of innocence and reasonable doubt. A defendant in a criminal action is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown, he is entitled to an acquittal, but the effect of this presumption is only to place upon the state the burden of proving him guilty beyond a reasonable doubt. Reasonable doubt is defined as follows: "It is not a mere possible doubt; because everything relating to human affairs, and depending on moral evidence, is open to some possible or imaginary doubt. It is that state of the case, which, after the entire comparison and consideration of all the evidence, leaves the minds of jurors in that condition that they can not say they feel an abiding conviction, to a moral certainty, of the truth of the charge."

Penal Code

1096 a. Charging jury in language of statute sufficient. In charging a jury, the court may read to the jury section 1096 of this Code, and no further instruction on the subject of the presumption of innocence or defining reasonable doubt need be given.

Penal Code

1270. Nonbailable offenses. A defendant charged with an offense punishable with death cannot be admitted to bail, when proof of his guilt is evident or the presumption thereof great. The finding of an indictment does not add to the strength of the proof or the presumptions to be drawn therefrom.

Probate Code

70. Partial revocation by marriage and survivorship of disinherited spouse. If a person marries after making a will, and the spouse survives the maker, the will is revoked as to the spouse, unless provision has been made for the spouse by marriage contract, or unless the spouse is provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of revocation can be received.

Probate Code

71. Partial revocation by marriage and birth of issue surviving and omitted or disinherited. If a person marries after making a will and has issue of such marriage, and any of the issue survives the maker, or is born after its father's death, the will is revoked as to such issue, unless provision has been made for such issue, unless provision has been made for such issue by some settlement, or unless such issue are provided for in the will, or in such way mentioned therein as to show an intention not to make such provision; and no other evidence to rebut the presumption of such revocation can be received.

Probate Code

109. Divise or bequest to heirs or next of kin. The law of this State does not include (1) the common law rule of worthier title that a testator cannot devise an interest to his own heirs or (2) a presumption or rule of interpretation that a testator does not intend, by a devise or bequest to his own heirs or next of kin, to transfer an interest to them. The meaning of a devise or bequest of a legal or equitable interest to a testator's own heirs or next of kin, however designated, shall be determined by the general rules applicable to the interpretation of wills. This section shall be applied in all cases in which final judgment has not been entered on its effective date.

Public Resources

4803. Presumption of ownership from recorded mark. Any log or timber having any such recorded mark impressed thereon shall be presumed to belong to the person, firm or corporation in whose name the mark has been recorded.

Revenue & Taxation

6091. Gross receipts presumed taxable; burden of proof; resale certificate. For the purpose of the proper administration of this part and to prevent evasion of the sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established. The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Revenue & Taxation

6241. Sale for taxable use presumed; burden of proof; resale certificate. For the purpose of the proper administration of this part and to prevent evasion of the use tax and the duty to collect the use tax, it shall be presumed that tangible personal property sold by any person for delivery in this State is sold for storage, use, or other consumption in this State until the contrary is established. The burden of proving the contrary is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the property is purchased for resale.

Revenue & Taxation

6246. Imports; presumption. It shall be further presumed that tangible personal property shipped or brought to this State by the purchaser was purchased from a retailer on or after July 1, 1935, for storage, use, or other consumption in this State.

Revenue & Taxation

6247. Delivery to resident out of state; presumption of storage for use in state. On and after the effective date of this section, it shall be further presumed that tangible personal property delivered outside this State to a purchaser known by the retailer to be a resident of this State was purchased from a retailer for storage, use or other consumption in this State and stored, used or otherwise consumed in this State.

This presumption may be controverted by a statement in writing signed by the purchaser or his authorized representative, and retained by the vendor, that the property was purchased for use at a designated point or points outside this State. This presumption may also be controverted by other evidence satisfactory to the board that the property was not purchased for storage, use, or other consumption in this State.

Revenue & Taxation

7205. Sale; place of consummation; delivery charges. For the purpose of a sales tax imposed by an ordinance adopted pursuant to this part, all retail sales are consummated at the place of business of the retailer unless the tangible personal property sold is delivered by the retailer or his agent to an out-of-state destination or to a common carrier for delivery to an out-of-state destination. The gross receipts from such sales shall include delivery charges, when such charges are subject to the state sales and use tax regardless of the place to which delivery is made. In the event a retailer has no permanent place of business in the State or has more than one place of business, the place or places at which the retail sales are consummated for the purpose of a sales tax imposed by an ordinance adopted pursuant to this part shall be determined under rules and regulations to be prescribed and adopted by the board.

Revenue & Taxation

7352. Presumption of distribution; conversion ineffective; liability for conversion. For the purpose of the proper administration of this part and to prevent evasion of the license tax, unless the contrary is established, it shall be presumed that all motor vehicle fuel refined, manufactured, produced, blended, or compounded in this State or imported into this State and no longer in the possession of the distributor has been distributed. This presumption cannot be overcome by proof that the motor vehicle fuel has been converted to his own use by any person to whom the distributor has entrusted the control or possession of the fuel either as bailee, consignee, employee, or agent; provided, however, any such person causing a distribution by the act of converting to his own use any fuel so entrusted to him, as well as any other person receiving such fuel with the knowledge that it was so converted, shall be jointly and severally liable with the distributor for payment of the tax imposed upon such distribution, and all such persons shall be considered as distributors for the purpose of Chapter 5 (commencing at Section 7651) or 6 (commencing at Section 7851) of this part.

Revenue & Taxation

9652. Presumption that receipts are taxable. For the purpose of the proper administration of this part and to prevent evasion of the tax it shall be presumed that the gross receipts from all operations of operators are subject to the tax until the contrary is established.

Revenue & Taxation

14512. Report; presumption of correctness; burden of proof. For the purpose of the hearing the report of the inheritance tax appraiser is presumed to be correct, and at the hearing it is the duty of the objector to proceed in support of his objection.

Revenue & Taxation

17016. Presumption of residence; rebuttal. Every individual who spends in the aggregate more than nine months of the taxable year within this State shall be presumed to be a resident. The presumption may be overcome by satisfactory evidence that the individual is in the State for a temporary or transitory purpose.

Revenue & Taxation

18647. Finding and certificate; presumptive evidence. In any proceeding brought to enforce payment of taxes made due and payable by this article, the finding of the Franchise Tax Board under Section 18641, whether made after notice to the taxpayer or not, is for all purposes presumptive evidence that the assessment or collection of the tax or the deficiency was in jeopardy. A certificate of the Franchise Tax Board of the mailing or issuing of the notices specified in this article is presumptive evidence that the notices were mailed or issued.

Vehicle

22362. Speed limit where persons at work. It is prima facie a violation of the basic speed law for any person to operate a vehicle at a speed greater than 25 miles per hour upon any portion of a highway where officers or employees of the agency having jurisdiction of the same, or any contractor of the agency or his employees, are at work on the roadway or within the right-of-way so close thereto as to be endangered by passing traffic. This section applies only when appropriate signs, indicating the limits of the restricted zone, and the speed limit applicable therein, are placed by such agency within 400 feet of each end of such zone. The signs shall display the figures "25" in the size provided in Section 21403 and shall indicate the purpose of the speed restriction, but otherwise need not comply with the details set forth in Section 21403. Nothing in this section shall be deemed to relieve any operator of a vehicle from complying with the basic speed law.

Vehicle

41100. Speed restriction signs. In any action involving the question of unlawful speed of a vehicle upon a highway which has been signposted with speed restriction signs of a type complying with the requirements of this code, it shall be presumed that existing facts authorize the erection of the signs and that the prima facie speed limit on the highway is the limit stated on the signs. This presumption may be rebutted.

Vehicle

41102. Registered owner responsible; unattended vehicle. (a) In any prosecution charging a violation of any regulation governing the standing or parking of a vehicle under this code or any ordinance enacted by local authorities, proof by the people of the State of California that the particular vehicle described in the complaint was parked in violation of any provision of this code or such ordinance, together with proof that the defendant named in the complaint was at the time of parking the registered owner of the vehicle, shall constitute in evidence a prima facie presumption that the registered owner of the vehicle was the person who parked or placed the vehicle at the point where, and for the time during which, the violation occurred, but for the purposes of this subdivision proof that a person is the registered owner of a vehicle does not create a presumption that the registered owner has violated any other provision of law. The above provisions shall apply only when the procedure required by Section 41103 is complied with.

(b) In any prosecution charging a violation of any provision of this code requiring the display of any evidence of registration, with respect to an unattended vehicle, proof by the people of the State of California that the particular vehicle described in the complaint failed to properly display such evidence of registration, together with proof that the defendant named in the complaint was at the time the registered owner of the vehicle, shall constitute a prima facie presumption that the registered owner of the vehicle was in control of, or responsible for, the vehicle at the time the violation occurred. No other presumption shall be created by this subdivision. The above provisions shall apply only when the procedure required by Section 41103 is complied with.

Vehicle

41104. Train of vehicles. In any case, involving an accident or otherwise, where any rear component of a train of vehicles fails to follow substantially in the path of the towing vehicle while moving upon a highway, the vehicle shall be presumed to have been operated in violation of Section 21711.

Welfare & Institutions

104.6. Compliance with board decision. The board of supervisors of each county shall comply with and execute every decision of the State Social Welfare Board which is directed to the board of supervisors on any appeal filed with the board pursuant to Section 104.1 of this code. Each board of supervisors is presumed to have knowledge of every such decision directed to it.

Constitution

Art. IV, § 1. Legislative power; initiative; referendum; effective date of laws; urgency measures; amendments; veto power; conflicting measures; procedure; counties, cities, and towns. Section 1. The legislative power of this State shall be vested in a Senate and Assembly which shall be designated "The Legislature of the State of California," but the people reserve to themselves the power to propose laws and amendments to the Constitution, and to adopt or reject the same, at the polls independent of the Legislature, and also reserve the power, at their own option, to so adopt or reject any act, or section or part of any act, passed by the Legislature.

The Enacting Clause of Every Law

The enacting clause of every law shall be "The people of the State of California do enact as follows:".

The Initiative--Initiative Measures Placed on Ballot

The first power reserved to the people shall be known as the initiative. Upon the presentation to the Secretary of State of a petition certified as herein provided to have been signed by qualified electors, equal in number to 8 percent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law or amendment to the Constitution, set forth in full in said petition, the Secretary of State shall submit the said proposed law or amendment to the Constitution to the electors at the next succeeding general election occurring subsequent to 130 days after the presentation aforesaid of said petition, or at any special election called by the Governor in his discretion prior to such general election. All such initiative petitions shall have

printed across the top thereof in 12-point black-face type the following:

"Initiative measure to be submitted directly to the electors."

Initiative Measures to Be Submitted to Legislature

Upon the presentation to the Secretary of State, at any time not less than 10 days before the commencement of any regular session of the Legislature, of a petition certified as herein provided to have been signed by qualified electors of the State equal in number to 5 percent of all the votes cast for all candidates for Governor at the last preceding general election, at which a Governor was elected, proposing a law set forth in full in said petition, the Secretary of State shall transmit the same to the Legislature as soon as it convenes and organizes. The law proposed by such petition shall be either enacted or rejected without change or amendment by the Legislature, within 40 days from the time it is received by the Legislature. If any law proposed by such petition shall be enacted by the Legislature it shall be subject to referendum, as hereinafter provided. If any law so petitioned for be rejected, or if no action is taken upon it by the Legislature, within said 40 days, the Secretary of State shall submit it to the people for approval or rejection at the next ensuing general election. The Legislature may reject any measure so proposed by initiative petition and propose a different one on the same subject by a yea and nay vote upon separate roll call, and in such event both measures shall be submitted by the Secretary of State to the electors for approval or rejection at the next ensuing general election or at a prior special election called by the Governor, in his discretion, for such purpose. All said initiative petitions last above described shall have printed in 12-point black-face type the following:

"Initiative measure to be presented to the Legislature."

The Referendum--Effective Date of Statutes--Two-thirds Vote, Urgency Measures, Etc.

The second power reserved to the people shall be known as the referendum. No act passed by the Legislature shall go into effect until 90 days after the final adjournment of the session of the Legislature which passed such act, except acts calling elections, acts providing for tax levies or appropriations for the usual current expenses of the State, and urgency measures necessary for the immediate preservation of the public peace, health or safety, passed by a two-thirds vote of all the members elected to each house.

Urgency Measures

Whenever it is deemed necessary for the immediate preservation of the public peace, health or safety that a law shall go into immediate effect, a statement of the facts constituting such necessity shall be set forth in one section of the act, which section shall be passed only upon a yeas and nays vote, upon a separate roll call thereon; provided, however, that no measure creating or abolishing any office or changing the salary, term or duties of any officer, or granting any franchise or special privilege, or creating any vested right or interest, shall be construed to be an urgency measure. Any law so passed by the Legislature and declared to be an urgency measure shall go into immediate effect.

Referendum Measures to Be Placed on Ballot

Upon the presentation to the Secretary of State within 90 days after the final adjournment of the Legislature of a petition certified as herein provided, to have been signed by qualified electors equal in number to 5 percent of all the votes cast for all candidates for Governor at the last

preceding general election at which a Governor was elected, asking that any act or section or part of any act of the Legislature be submitted to the electors for their approval or rejection, the Secretary of State shall submit to the electors for their approval or rejection, such act, or section or part of such act, at the next succeeding general election occurring at any time subsequent to 30 days after the filing of said petition or at any special election which may be called by the Governor, in his discretion, prior to such regular election, and no such act or section or part of such act shall go into effect until and unless approved by a majority of the qualified electors voting thereon; but if a referendum petition is filed against any section or part of any act the remainder of such act shall not be delayed from going into effect.

Miscellaneous Provisions--Effective Date of Initiative and Referendum

Measures

Any act, law or amendment to the Constitution submitted to the people by either initiative or referendum petition and approved by a majority of the votes cast thereon, at any election, shall take effect five days after the date of the official declaration of the vote by the Secretary of State.

Amendment of Initiative Measures

No act, law or amendment to the Constitution, initiated or adopted by the people, shall be subject to the veto power of the Governor, and no act, law or amendment to the Constitution, adopted by the people at the polls under the initiative provisions of this section, shall be amended or repealed except by a vote of the electors, unless otherwise provided in said initiative measure; but acts and laws adopted by the people under the referendum provisions of this section may be amended by the Legislature at any subsequent session thereof.

Conflicting Measures

If any provision or provisions of two or more measures, approved by the electors at the same election, conflict, the provision or provisions of the measure receiving the highest affirmative vote shall prevail.

Measures and Arguments to Be Submitted to Voters

Until otherwise provided by law, all measures submitted to a vote of the electors, under the provisions of this section, shall be printed, and together with arguments for and against each such measure by those in favor of, and those opposed to, it shall be mailed to each elector in the same manner as now provided by law as to amendments to the Constitution, proposed by the Legislature; and the persons to prepare and present such arguments shall, until otherwise provided by law, be selected by the presiding officer of the Senate.

Submission of Measures on Ballot

If for any reason any initiative or referendum measure, proposed by petition as herein provided, be not submitted at the election specified in this section, such failure shall not prevent its submission at a succeeding general election, and no law or amendment to the Constitution, proposed by the Legislature, shall be submitted at any election unless at the same election there shall be submitted all measures proposed by petition of the electors, if any be so proposed, as herein provided.

Preparation of Title

Prior to circulation of any initiative or referendum petition for signatures thereof, a draft of the said petition shall be submitted to the Attorney General with a written request that he prepare a title, and summary of the chief purpose and points of said proposed measure, said title and

summary not to exceed 100 words in all. The persons presenting such request to the Attorney General shall be known as "proponents" of said proposed measure. The Attorney General shall preserve said written request until after the next general election.

Form and Presentation of Petitions

Any initiative or referendum petition may be presented in sections, but each section shall contain a full and correct copy of the title and text of the proposed measure. Each signer shall add to his signature his place of residence, giving the street and number if such exist. His election precinct shall also appear on the paper after his name. The number of signatures attached to each section shall be at the pleasure of the person soliciting signatures to the same. Any qualified elector of the State shall be competent to solicit said signatures within the county or city and county of which he is an elector. Each section of the petition shall bear the name of the county or city and county in which it is circulated, and only qualified electors of such county or city and county shall be competent to sign such section. Each section shall have attached thereto the affidavit of the person soliciting signatures to the same, stating his own qualifications and that all the signatures to the attached section were made in his presence and that to the best of his knowledge and belief each signature to the section is the genuine signature of the person whose name it purports to be, and no other affidavit thereto shall be required. The affidavit of any person soliciting signatures hereunder shall be verified free of charge by any officer authorized to administer oaths. Such petitions so verified shall be prima facie evidence that the signatures thereon are genuine and that the persons signing the same are qualified electors. Unless and until it be

otherwise proven upon official investigation, it shall be presumed that the petition presented contains the signatures of the requisite number of qualified electors.

Filing Petitions With County Clerks

Each section of the petition shall be filed with the clerk or registrar of voters of the county or city and county in which it was circulated, but all said sections circulated in any county or city and county shall be filed at the same time. Within 20 days after the filing of such petition in his office the said clerk, or registrar of voters, shall determine from the records of registration what number of qualified electors have signed the same, and if necessary the board of supervisors shall allow said clerk or registrar additional assistance for the purpose of examining such petition and provide for their compensation. The said clerk or registrar, upon the completion of such examination, shall forthwith attach to said petition, except the signatures thereto appended, his certificate, properly dated, showing the result of said examination and shall forthwith transmit said petition, together with his said certificate, to the Secretary of State and also file a copy of said certificate in his office. Within 40 days from the transmission of the said petition and certificate by the clerk or registrar to the Secretary of State, a supplemental petition identical with the original as to the body of the petition but containing supplemental names, may be filed with the clerk or registrar of voters, as aforesaid.

Right to File Reserved to Proponents

The right to file the original petition shall be reserved to its proponents, as defined herein and any section thereof or supplement thereto presented for filing by any person or persons other than the proponents of

a measure or by persons duly authorized in writing by such proponents shall be disregarded by the county clerk or registrar of voters.

The clerk or registrar of voters shall within 10 days after the filing of such supplemental petition make like examination thereof, as of the original petition, and upon the completion of such examination shall forthwith attach to said petition his certificate, properly dated, showing the result of said examination, and shall forthwith transmit a copy of said supplemental petition, except the signatures thereto appended, together with his certificate, to the Secretary of State.

Certification of Petitions to Secretary of State

When the Secretary of State shall have received from one or more county clerks or registrars of voters a petition certified as herein provided to have been signed by the requisite number of qualified electors, he shall forthwith transmit to the county clerk or registrar of voters of every county or city and county in the State his certificate showing such fact. A petition shall be deemed to be filed with the Secretary of State upon the date of the receipt by him of a certificate or certificates showing said petition to be signed by the requisite number of electors of the State. Any county clerk or registrar of voters shall, upon receipt of such copy, file the same for record in his office. The duties herein imposed upon the clerk or registrar of voters shall be performed by such registrar of voters in all cases where the office of registrar of voters exists.

Initiative and Referendum Powers Also Reserved to Cities and Counties

The initiative and referendum powers of the people are hereby further reserved to the electors of each county, city and county, city and town of the State to be exercised under such procedure as may be provided by law.

Until otherwise provided by law, the legislative body of any such county, city and county, city or town may provide for the manner of exercising the initiative and referendum powers herein reserved to such counties, cities and counties, cities and towns, but shall not require more than 15 percent of the electors thereof to propose any initiative measure nor more than 10 percent of the electors thereof to order the referendum. Nothing contained in this section shall be construed as affecting or limiting the present or future powers of cities or cities and counties having charters adopted under the provisions of Section 3 of Article XI of this Constitution. In the submission to the electors of any measure under this section, all officers shall be guided by the general laws of this State, except as is herein otherwise provided. This section is self-executing, but legislation may be enacted to facilitate its operation, but in no way limiting or restricting either the provisions of this section or the powers herein reserved.

Deering Act

261, §9. Every transfer of real property, or of an interest therein, though colorable in form, shall be void as to the State and the interest thereby conveyed or sought to be conveyed shall escheat to the State as of the date of such transfer, if the property interest involved is of such a character that an alien mentioned in Section 2 hereof is inhibited from acquiring, possessing, enjoying, using, cultivating, occupying, transferring, transmitting or inheriting it, and if the conveyance is made with intent to prevent, evade or avoid escheat as provided for herein.

A prima facie presumption that the conveyance is made with such intent shall arise upon proof of any of the following group of facts:

(a) The taking of the property in the name of a person other than the persons mentioned in Section 2 hereof if the consideration is paid or agreed or understood to be paid by an alien mentioned in Section 2 hereof;

(b) The taking of the property in the name of a company, association or corporation if the memberships or shares of stock therein held by aliens mentioned in Section 2 hereof, together with the memberships or shares of stock held by others but paid for or agreed or understood to be paid for by such aliens, would amount to a majority of the membership or issued capital stock of such company, association or corporation;

(c) The execution of a mortgage in favor of an alien mentioned in Section 2 hereof if such mortgagee is given possession, control or management of the property.

Deering Act

261, § 9 continued

In each of the foregoing instances the burden of proof shall be upon the defendant to show that the conveyance was not made with intent to prevent, evade or avoid escheat.

When requested by the Attorney General it shall be the duty of the district attorney or the county counsel of the proper county to join him in the enforcement of all the provisions of this act and in the investigation of violations thereof and the instituting and carrying on of escheat provisions. The Attorney General shall supervise the work of the district attorneys and county counsels in all such matters.

The enumeration in this section of certain presumptions shall not be so construed as to preclude other presumptions or inferences that reasonably may be made as to the existence of intent to prevent, evade or avoid escheat as provided for herein.

Deering Act

261, § 9b. In any action or proceeding, civil or criminal, by the State of California, or the people thereof, under any of the provisions of this act, when the complaint, indictment or information, alleges the alienage and ineligibility to United States citizenship of any defendant, proof by the state, or the people thereof, of the acquisition, possession, enjoyment, use, cultivation, occupation or transferring of real property or any interest therein, or the having in whole or in part of the beneficial use thereof by such defendant, or of any such facts, and in addition proof that such defendant is a member of a race ineligible to citizenship under the naturalization laws of the United States, shall create a prima facie presumption of the ineligibility to citizenship of such defendant, and the burden of proving citizenship or eligibility to citizenship as a defense to any such action or proceeding shall thereupon devolve upon such defendant.

The Legislature hereby declares that its purpose in adopting this section is not to modify, limit or affect in any manner the provisions of section 9a of this act.