PARKER'S 2015 CALIFORNIA EVIDENCE CODE



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With Comments by the Law Revision Commission and the Assembly and Senate Judiciary Committees



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PREFACE

LexisNexis is pleased to present the 2015 edition of Parker's Evidence Code. This 2015 edition incorporates all legislation affecting the Evidence Code required by legislative enactments up to and including Chapter 931 of the 2014 Regular Session and Resolution Chapter 1 of the Second Extraordinary Session of the 2013-2014 Legislature and all Propositions approved by the Electorate in 2014.

Included in this edition is a Summary of Changes highlighting major topics of legislative activity extracted from the Legislative Counsel's Digest. Also contained herein is a Table of Sections Affected which may be utilized to facilitate research into recently enacted legislation affecting this Code. Through the use of state-of-the-art computer software, attorney editors have updated the comprehensive descriptive word index with the enactments of the 2014 legislation.

In its efforts to remain committed to technological advances and responsive to the needs of legal researchers, LexisNexis features the Parker's California Codes in electronic form. Now this convenient electronic resource is available as part of your current publication. The enclosed CD-ROM with the Folio VIEWS® search engine allows the user to access instantly the text of a statute to which reference is made. The CD-ROM also contains annotations to cases relating to the provisions of the Evidence Code, as well as references to treatises and other materials of interest. For more information concerning Parker's Codes, please call our Customer Service department toll-free at 1-800-833-9844.

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December 2014



SUMMARY OF CHANGES Excerpts from the Legislative Counsel's Digest EVIDENCE CODE

Confidential Communications §§ 912, 917, 1038.2 (amended)

Existing law governs the admissibility of evidence in court proceedings and permits a person to claim an evidentiary privilege for confidential communications between that person and a specified individual, including, but not limited to, a lawyer, physician, clergy member, sexual assault counselor, and domestic violence counselor, among others, and the communication is presumed to have been made in confidence with the burden lying with the opponent of the claim of privilege to rebut the presumption. Existing law also recognizes a lawyer referral service-client privilege and a human trafficking caseworker-victim privilege, but does not extend the presumption of confidentiality to communications between those parties. Existing law provides that the right to claim the evidentiary privilege for confidential communications is waived if any holder of the privilege has, without coercion, disclosed a significant part of the communication or consented to disclosure of the communication, as specified.

This bill would provide that the communications made between a client and a lawyer referral service, and between a victim and a human trafficking counselor, are also presumed to be confidential, such that the opponent of the privilege would have the burden to rebut the presumption. The bill would also provide that the evidentiary privilege for confidential communications made between a victim, as defined, and a human trafficking counselor are presumed to have been made in confidence, and would apply the above-described waiver provision to the disclosure of those communications. [AB 2747, ch. 913]

Interpreters §756 (added)

The California Constitution provides that a person unable to understand English who is charged with a crime has the right to an interpreter throughout the proceedings. Existing statutory law requires, in any civil or criminal action, as specified, a sign language interpreter to be appointed for a party or witness who is deaf or hearing-impaired and generally requires the payment of these court interpreters' fees to be a charge against the court.

Existing law generally requires court interpreters' fees to be paid by the litigants in civil cases, as directed by the court, but further requires the fees of an interpreter to be waived for a party who needs an interpreter and appears in forma pauperis. This bill would expressly authorize the court to provide a court interpreter in any civil action or proceeding at no cost to the parties, regardless of the income of the parties. The bill would require interpreters to be provided in accordance with a specified order of priority, until sufficient funds are appropriated to provide an interpreter to every party who needs one. [AB 1657, ch. 721]

§ 757 (added)

Existing federal law, Title VI of the federal Civil Rights Act of 1964 and the Safe Streets Act of 1968, prohibit national origin discrimination by recipients of federal assistance.

This bill would state that existing law and authority to provide interpreters in civil court includes providing an interpreter for a child in a proceeding in which a petitioner requests an order from the superior court to make the findings regarding special immigrant juvenile status. [SB 873, ch. 685]

Prostitution §782.1 (added)

Existing law requires that in any of specified circumstances, including, but not limited to, rape, unlawful sexual intercourse, or sodomy, if evidence of sexual conduct of the complaining witness is offered to attack the credibility of the complaining witness, specified procedures be followed. Existing law includes, among those procedures, a requirement that a written motion be made by the defendant to the court and prosecutor stating that the defense has an offer of proof of the relevancy of evidence of

SUMMARY OF CHANGES

the sexual conduct of the complaining witness proposed to be presented and its relevancy in attacking the credibility of the complaining witness. Existing law requires the written motion to be accompanied by an affidavit, filed and sealed, in which the offer of proof is stated. Existing law requires if the court finds that the offer of proof is sufficient, the court to order a hearing out of the presence of the jury, if any, and at the hearing allow the questioning of the complaining witness regarding the offer of proof made by the defendant. Existing law permits at the conclusion of the hearing, if the court finds that evidence proposed to be offered by the defendant regarding the sexual conduct of the complaining witness is relevant and is not found inadmissible, the court to make an order stating what evidence may be introduced by the defendant, and the nature of the questions to be permitted. Existing law states that the defendant may then offer that specified evidence pursuant to the order of the court.

This bill would require that in any prosecution for committing an act of disorderly conduct or for loitering in any public place with the intent to commit prostitution, if the possession of one or more condoms is to be introduced as evidence in support of the commission of the crime, specified procedures be followed that are similar to existing law, except that the written motion would be made by the prosecutor to the court and to the defendant stating that the prosecution has an offer of proof of the relevancy of the possession by the defendant of one or more condoms. The bill would permit, at the conclusion of the hearing, if the court finds that evidence proposed to be offered by the prosecutor regarding the possession of condoms is relevant and is not inadmissible, the court to make an order stating what evidence may be introduced by the prosecutor. The bill would then permit the prosecutor to offer that specified evidence pursuant to the order of the court. [AB 336, ch. 403]

TABLE OF EVIDENCE CODE SECTIONS ADDED, AMENDED, REPEALED, OR OTHERWISE AFFECTED

Evidence Code

Section Affected	Type of Change	Chapter Number
755	Repealed	721
756	Added	721
757	Added	685
782.1	Added	403
912	Amended	913
917	Amended	913
1038.2	Amended	913

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EVIDENCE CODE

An Act

TO ESTABLISH AN EVIDENCE CODE, THEREBY CONSOLIDATING AND REVISING THE LAW RELATING TO EVIDENCE; AMENDING VARIOUS SECTIONS OF THE BUSINESS AND PROFESSIONS CODE, CIVIL CODE, CODE OF CIVIL PROCEDURE, CORPORATIONS CODE, GOVERNMENT CODE, HEALTH AND SAFETY CODE, PENAL CODE, AND PUBLIC UTILITIES CODE TO MAKE THEM CONSISTENT THEREWITH; ADDING SECTIONS 164.5, 3544, 3545, 3546, 3547, AND 3548 TO THE CIVIL CODE; ADDING SECTIONS 631.7 AND 1908.5 TO THE CODE OF CIVIL PROCEDURE; AND REPEALING LEGISLATION INCONSISTENT THEREWITH.

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

DIVISION 1

Preliminary Provisions and Construction

Section

- 1. Short title
- 2. Common law construing code abrogated
- 3. Constitutionality
- 4. Construction of code
- 5. Effect of headings
- 6. References to statutes
- "Division," "chapter," "article," "section," "subdivision," and "paragraph"
- 8. Construction of tenses
- 9. Construction of genders
- 10. Construction of singular and plural
- 11. "Shall" and "may"
- Code becomes operative January 1, 1967; Effect on pending proceedings

§ 1. Short title

This code shall be known as the Evidence Code.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

§ 2. Common law construing code abrogated

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

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This section is substantially the same as Section 4 of the Code of Civil Procedure.

§ 3. Constitutionality

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

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 3 is the same as Section 1108 of the Commercial Code. See also, e.g., Vehicle Code § 5. This general "severability" provision permits the repeal of comparable provisions applicable to specific

sections formerly compiled in the Code of Civil Procedure that are now compiled in the Evidence Code and makes it unnecessary to include similar provisions in future amendments to this code. See Code Civ. Proc. § 1928.4 (superseded by the Evidence Code).

§ 4. Construction of code

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

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This is a standard provision in various California codes. e.g., Vehicle Code § 6.

§ 5. Effect of headings

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

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Similar provisions appear in all the existing California codes except the Civil Code, the Commercial Code, and the Code of Civil Procedure. e.g., Vehicle Code § 7.

§ 6. References to statutes

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

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This is a standard provision in various California codes. e.g., Vehicle Code § 10.

§ 7. "Division," "chapter," "article," "section," "subdivision," and "paragraph"

Unless otherwise expressly stated:

- (a) "Division" means a division of this code.
- (b) "Chapter" means a chapter of the division in which that term occurs.
- (c) "Article" means an article of the chapter in which that term occurs.

- (d) "Section" means a section of this code.
- (e) "Subdivision" means a subdivision of the section in which that term occurs.
- (f) "Paragraph" means a paragraph of the subdivision in which that term occurs.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-Somewhat similar provisions appear in various California codes. e.g., Vehicle Code § 11. See also Code Civ. Proc. § 17(8).

§ 8. Construction of tenses

The present tense includes the past and future tenses; and the future, the present.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-This is a standard provision in various California codes. e.g., Vehicle Code § 12. See also Code Civ. Proc. § 17.

§ 9. Construction of genders

The masculine gender includes the feminine and neuter.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This is a standard provision in various California codes. e.g., Vehicle Code § 13. See also Code Civ. Proc. § 17.

§ 10. Construction of singular and plural

The singular number includes the plural; and the plural, the singular.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This is a standard provision in various California codes. e.g., Vehicle Code § 14. See also Code Civ. Proc. § 17.

§ 11. "Shall" and "may"

"Shall" is mandatory and "may" is permissive.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-This is a standard provision in various California codes. e.g., VEHICLE CODE § 15.

§ 12. Code becomes operative January 1, 1967; Effect on pending proceedings

- (a) This code shall become operative on January 1, 1967, and shall govern proceedings in actions brought on or after that date and, except as provided in subdivision (b), further proceedings in actions pending on that date.
- (b) Subject to subdivision (c), a trial commenced before January 1, 1967, shall not be governed by this code. For the purpose of this subdivision:
- (1) A trial is commenced when the first witness is sworn or the first exhibit is admitted into evidence and is terminated when the issue upon which such evidence is received is submitted to the trier of fact. A new trial, or a separate trial of a different issue, commenced on or after January 1, 1967, shall be governed by this code.
- (2) If an appeal is taken from a ruling made at a trial commenced before January 1, 1967, the appellate court shall apply the law applicable at the time of the commencement of the trial.
- (c) The provisions of Division 8 (commencing with Section 900) relating to privileges shall govern any claim of privilege made after December 31, 1966.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-The delayed operative date provides time for California judges and attorneys to become familiar with the code before it goes into effect.

Subdivision (a) makes it clear that the Evidence Code governs all trials commenced after December 31, 1966.

Under subdivision (b), a trial that has actually commenced prior to the operative date of the code will continue to be governed by the rules of evidence (except privileges) applicable at the commencement of the trial. Thus, if the trial court makes a ruling on the admission of evidence in a trial commenced prior to January 1, 1967, such ruling (even when it is made after January 1, 1967) is not affected by the enactment of the Evidence Code; if an appeal is taken from the ruling, Section 12 requires the appellate court to apply the law applicable at the commencement of the trial. On the other hand, any ruling made by the trial court on the admission of evidence in a trial commenced after December 31, 1966, is governed by the Evidence Code, even if a previous trial in the same action was commenced prior to that date.

A hearing on a motion or a similar proceeding is to be treated the same as a trial for the purpose of applying the rules stated in subdivision (b). See subdivision (b)(1).

Under subdivision (c), all claims of privilege made after December 31, 1966, are governed by the Evidence Code in order that there might be no delay in providing protection to the important relationships and interests that are protected by the Privileges Division. (As amended in the Legislature.)

DIVISION 2

Words and Phrases Defined

Section

- 100. Application of definitions
- 105. "Action"
- 110. "Burden of producing evidence" 115. "Burden of proof"

- "Conduct" 125.
- 130. "Criminal action"
- 135. "Declarant"
- 140. "Evidence"
- 145. "The hearing"
- 150. "Hearsay evidence"
- 160. "Law"
- 165. "Oath"
- 170. "Perceive" 175. "Person"
- 120. "Civil action"

180. "Personal property" 185. "Property' 190. "Proof"

177. "Dependent person"

Section

- 195. "Public employee"
- "Public entity 200.
- 205. "Real property"
- 210. "Relevant evidence"
- 220. "State"
- 225. "Statement"
- 230. "Statute"
- "Trier of fact"
- 240. "Unavailable as a witness"
- 250. "Writing"
- 255. "Original"

Section 260. "Duplicate"

Law Revision Commission Comments:

1965—Division 2 contains definitions of general application only. Words and phrases that have special significance only to a particular division or article are defined in the division or article in which the defined term is used. For example, Sections 900–905 define terms that are used only in Division 8 (Privileges), and Sections 950–953 define terms that are used in the article relating to the lawyer–client privilege. Some additional sections of general application that are of a definitional nature include Sections 7–11 in Division 1.

§ 100. Application of definitions

Unless the provision or context otherwise requires, these definitions govern the construction of this code.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 100 is a standard provision found in the definitional portion of recently enacted California codes. See, e.g., Vehicle Code § 100.

§ 105, "Action"

"Action" includes a civil action and a criminal action.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Defining the word "action" to include both a civil action or proceeding and a criminal action or proceeding eliminates the necessity of repeating "civil action and criminal action" in numerous code sections.

§ 110. "Burden of producing evidence"

"Burden of producing evidence" means the obligation of a party to introduce evidence sufficient to avoid a ruling against him on the issue.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—The phrases defined in Sections 110 and 115 provide a convenient means for distinguishing between the burden of proving a fact and the burden of going forward with the evidence. They recognize a distinction that is well established in California. Witkin, California Evidence §§ 53–60 (1958). The practical effect of the distinction is discussed in the Comments to Division 5 (commencing with Section 500), especially in the Comments to Sections 500 and 550. (As amended in the Legislature).

§ 115. "Burden of proof"

"Burden of proof" means the obligation of a party to establish by evidence a requisite degree of belief concerning a fact in the mind of the trier of fact or the court. The burden of proof may require a party to raise a reasonable doubt concerning the existence or nonexistence of a fact or that he establish the existence or nonexistence of a fact by a preponderance of the evidence, by clear and convincing proof, or by proof beyond a reasonable doubt.

Except as otherwise provided by law, the burden of proof requires proof by a preponderance of the evidence.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-See the Comment to Section 110.

After stating the general definition of "burden of proof," the first paragraph of Section 115 gives examples of specific burdens that may

be imposed by statutory or decisional law. The list of examples is not exclusive, and in some cases the law may prescribe some other burden of proof. For example, under Penal Code Section 872, the prosecution's burden of proof at a preliminary hearing is to establish "sufficient cause"—i.e., a "strong suspicion"—of the accused's guilt. Garabedian v. Superior Court, 59 Cal 2d 124, 28 Cal Rptr 318, 378 P2d 590 (1963); Rogers v. Superior Court, 46 Cal 2d 3, 291 P2d 929 (1955).

The second paragraph of Section 115 makes it clear that "burden of proof" refers to the burden of proving the fact in question by a preponderance of the evidence unless a heavier or lesser burden of proof is specifically required in a particular case by constitutional, statutory, or decisional law. See the definition of "law" in Evidence Code § 160. (As amended in the Legislature.)

§ 120. "Civil action"

"Civil action" includes civil proceedings.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Defining "civil action" to include civil proceedings eliminates the necessity of repeating "civil action or proceeding" in numerous code sections, and, together with the definition of "criminal action" in Section 130, it assures the applicability of the Evidence Code to all actions and proceedings. See EVIDENCE CODE § 300.

§ 125. "Conduct"

"Conduct" includes all active and passive behavior, both verbal and nonverbal.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This broad definition of "conduct" is self-explanatory.

§ 130. "Criminal action"

"Criminal action" includes criminal proceedings. Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—See the Comment to Section 120.

§ 135. "Declarant"

"Declarant" is a person who makes a statement.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Ordinarily, the word "declarant" is used in the Evidence Code to refer to a person who makes a hearsay statement as distinguished from the witness who testifies to the content of the statement. See EVIDENCE CODE § 1200 and the Comment thereto.

§ 140. "Evidence"

"Evidence" means testimony, writings, material objects, or other things presented to the senses that are offered to prove the existence or nonexistence of a fact. Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—"Evidence" is defined broadly to include the testimony of witnesses, tangible objects, sights (such as a jury view or the appearance of a person exhibited to a jury), sounds (such as the sound of a voice demonstrated for a jury), and any other thing that may be presented as a basis of proof. The definition includes anything offered in evidence whether or not it is technically inadmissible and whether or not it is received. For example, Division 10 (commencing with Section 1200) uses "evidence" to refer to hearsay which may be excluded as inadmissible but which may be admitted if no proper objection is made. Thus, when inadmissible hearsay or opinion testimony is admitted without objection, this definition makes it clear that it constitutes evidence that may be considered by the trier of fact.

Section 140 is a better statement of existing law than Code of Civil

Procedure Section 1823, which is superseded by Section 140. Although Section 1823 by its terms restricts "judicial evidence" to that "sanctioned by law," the general principle is well established that matter which is technically inadmissible under an exclusionary rule is nonetheless evidence and may be considered in support of a judgment if it is offered and received in evidence without proper objection or motion to strike. e.g., People v. Alexander (1963) 212 Cal. App.2d 84, 27 Cal. Rptr. 720, 1963 Cal. App. LEXIS 2819 ("illustrations of this principle are numerous and cover a wide range of evidentiary topics such as incompetent hearsay, secondary evidence violating the best evidence rule, inadmissible opinions, lack of foundation, incompetent, privileged or unqualified witnesses, and violations of the parol evidence rule"). See Witkin, California Evidence §§ 723-724 (1958).

Under this definition, a presumption is not evidence. See also EVIDENCE CODE § 600 and the Comment thereto.

§ 145. "The hearing"

"The hearing" means the hearing at which a question under this code arises, and not some earlier or later hearing.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-"The hearing" is defined to mean the hearing at which the particular question under the Evidence Code arises and, unless a particular provision or its context otherwise indicates, not some earlier or later hearing. This definition is much broader than would be a reference to the trial itself, the definition includes, for example, preliminary hearings and post-trial proceedings.

§ 150. "Hearsay evidence"

"Hearsay evidence" is defined in Section 1200.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Because of its special significance to Division 10, the substantive definition of "hearsay evidence" is contained in Section 1200. See the Comment to Section 1200.

§ 160, "Law"

"Law" includes constitutional, statutory, and deci-

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-This definition makes it clear that a reference to "law" includes the law established by judicial decisions as well as by constitutional and statutory provisions.

§ 165, "Oath"

'Oath" includes affirmation or declaration under penalty of periury.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-Similar definitions are found in other California codes. e.g., VEHICLE CODE § 16.

§ 170. "Perceive"

"Perceive" means to acquire knowledge through one's senses.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This definition is self-explanatory.

§ 175. "Person"

"Person" includes a natural person, firm, association, organization, partnership, business trust, corporation, limited liability company, or public entity.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1994 ch 1010 § 103 (SB 2053).

Law Revision Commission Comments:

1965-This broad definition is similar to definitions found in other codes. e.g., Govt. Code § 17; Vehicle Code § 470. See also Code Civ. Proc. § 17.

§ 177. "Dependent person"

"Dependent person" means any person who has a physical or mental impairment that substantially restricts his or her ability to carry out normal activities or to protect his or her rights, including, but not limited to, persons who have physical or developmental disabilities or whose physical or mental abilities have significantly diminished because of age. "Dependent person" includes any person who is admitted as an inpatient to a 24-hour health facility, as defined in Sections 1250, 1250.2, and 1250.3 of the Health and Safety Code.

Added Stats 2004 ch 823 § 2 (AB 20).

§ 180. "Personal property"

"Personal property" includes money, goods, chattels, things in action, and evidences of debt.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-This definition is the same as the definition of "personal property" in Section 17(3) of the Code of Civil Procedure.

§ 185. "Property"

"Property" includes both real and personal property. Enacted Stats 1965 ch 299 § 2. operative January 1, 1967.

Law Revision Commission Comments:

1965-This definition is the same as the definition of "property" in Section 17(1) of the Code of Civil Procedure.

§ 190. "Proof"

"Proof" is the establishment by evidence of a requisite degree of belief concerning a fact in the mind of the trier of fact or the court.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This definition is more accurate than the definition of "proof" in Code of Civil Procedure Section 1824, which is superseded by Section 190. The disjunctive reference to "the trier of fact or the court" is needed because, even when the jury is the trier of fact, the court is required to determine preliminary questions of fact on the basis of proof.

§ 195. "Public employee"

"Public employee" means an officer, agent, or employee of a public entity.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This definition specifically includes public officers and agents. thereby eliminating any distinction between employees and officers and making it unnecessary to repeat the phrase "officer, agent, or employee" in numerous code sections.

§ 200. "Public entity"

"Public entity" includes a nation, state, county, city and county, city, district, public authority, public agency, or any other political subdivision or public corporation, whether foreign or domestic.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—The broad definition of "public entity" includes every form of public authority, both foreign and domestic. Occasionally, "public entity" is used in the Evidence Code with limiting language to refer specifically to entities within this State or the United States. e.g., Evidence Code § 452(b). Cf. Evidence Code § 452(f).

§ 205. "Real property"

"Real property" includes lands, tenements, and hereditaments.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This definition is substantially the same as the definition of "real property" in Section 17(2) of the Code of Civil Procedure.

§ 210. "Relevant evidence"

"Relevant evidence" means evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-This definition restates existing law. e.g., Larson v. Solbakken (1963) 221 Cal. App.2d 410, 34 Cal. Rptr. 450, 1963 Cal. App. LEXIS 2159; People v. Lint (1960) 182 Cal. App.2d 402, 6 Cal. Rptr. 95, 1960 Cal. App. LEXIS 2124. Thus, under Section 210, "relevant evidence" includes not only evidence of the ultimate facts actually in dispute but also evidence of other facts from which such ultimate facts may be presumed or inferred. This retains existing law as found in subdivisions 1 and 15 of Code of Civil Procedure Section 1870, which are superseded by the Evidence Code. In addition, Section 210 makes it clear that evidence relating to the credibility of witnesses and hearsay declarants is "relevant evidence." This restates existing law. See Code Civ. Proc. §§ 1868, 1870(16) (credibility of witnesses), which are superseded by the Evidence Code, and Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VIII. Hearsay Evidence), 6 Cal. Law Revision Comm'n, Rep., Rec. & Studies Appendix at 339-340, 569-575 (1964) (credibility of hearsay declarants).

§ 220. "State"

"State" means the State of California, unless applied to the different parts of the United States. In the latter case, it includes any state, district, commonwealth, territory, or insular possession of the United States.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—This definition is more precise than the comparable definition found in Section 17(7) of the Code of Civil Procedure. For example, Section 220 makes it clear that "state" includes Puerto Rico, even though Puerto Rico is now a "commonwealth" rather than a "territory."

§ 225. "Statement"

"Statement" means (a) oral or written verbal expression or (b) nonverbal conduct of a person intended by him as a substitute for oral or written verbal expression.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—The significance of this definition is explained in the Comment to Evidence Code Section 1200.

§ 230. "Statute"

"Statute" includes a treaty and a constitutional provision.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—In the Evidence Code, "statute" includes a constitutional provision. Thus, for example, when a particular section is subject to any exceptions "otherwise provided by statute," exceptions provided by the Constitution also are applicable.

§ 235, "Trier of fact"

"Trier of fact" includes (a) the jury and (b) the court when the court is trying an issue of fact other than one relating to the admissibility of evidence.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—"Trier of fact" is defined to include not only the jury but also the court when it is trying an issue of fact without a jury. The definition is not exclusive; a referee, court commissioner, or other officer conducting proceedings governed by the Evidence Code may be a trier of fact. See Evidence Code § 300.

§ 240. "Unavailable as a witness"

- (a) Except as otherwise provided in subdivision (b), "unavailable as a witness" means that the declarant is any of the following:
- (1) Exempted or precluded on the ground of privilege from testifying concerning the matter to which his or her statement is relevant.
 - (2) Disqualified from testifying to the matter.
- (3) Dead or unable to attend or to testify at the hearing because of then-existing physical or mental illness or infirmity.
- (4) Absent from the hearing and the court is unable to compel his or her attendance by its process.
- (5) Absent from the hearing and the proponent of his or her statement has exercised reasonable diligence but has been unable to procure his or her attendance by the court's process.
- (6) Persistent in refusing to testify concerning the subject matter of the declarant's statement despite having been found in contempt for refusal to testify.
- (b) A declarant is not unavailable as a witness if the exemption, preclusion, disqualification, death, inability, or absence of the declarant was brought about by the procurement or wrongdoing of the proponent of his or her statement for the purpose of preventing the declarant from attending or testifying.
- (c) Expert testimony that establishes that physical or mental trauma resulting from an alleged crime has caused harm to a witness of sufficient severity that the witness is physically unable to testify or is unable to testify without suffering substantial trauma may constitute a sufficient showing of unavailability pursuant to paragraph (3) of subdivision (a). As used in this section, the term "expert" means a physician and surgeon, including a psychiatrist, or any person described by subdivision (b), (c), or (e) of Section 1010.

The introduction of evidence to establish the unavailability of a witness under this subdivision shall not be deemed procurement of unavailability, in absence of proof to the contrary.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 1984 ch 401 § 1; Stats 1988 ch 485 § 1; Stats 2010 ch 537 § 1 (AB 1723), effective January 1, 2011.

Law Revision Commission Comments:

1965—Usually, the phrase "unavailable as a witness" is used in the Evidence Code to state the condition that must be met whenever the admissibility of hearsay evidence is dependent upon the declarant's present unavailability to testify. See, e.g., Evidence Code §§ 1230, 1251, 1291, 1292, 1310, 1311, 1323. See also Code Civ. Proc § 2016(d)(3) and Penal Code §§ 1345 and 1362, relating to depositions.

"Unavailable as a witness" includes, in addition to cases where the declarant is physically unavailable (i.e., dead, insane, or beyond the reach of the court's process), situations in which the declarant is legally unavailable (i.e., prevented from testifying by a claim of privilege or disqualified from testifying). Of course, if the declaration made out of court is itself privileged, the fact that the declarant is unavailable to testify at the hearing on the ground of privilege does not make the declaration admissible. The exceptions to the hearsay rule that are set forth in Division 10 (commencing with Section 1200) of the Evidence Code do not declare that the evidence described is necessarily admissible. They merely declare that such evidence is not inadmissible under the hearsay rule. If there is some other rule of law-such as privilege which makes the evidence inadmissible, the court is not authorized to admit the evidence merely because it falls within an exception to the hearsay rule. Accordingly, the hearsay exceptions permit the introduction of evidence where the declarant is unavailable because of privilege only if the declaration itself is not privileged or is not inadmissible for some other reason.

Subdivision (b) is designed to establish safeguards against sharp practices and, in the words of the Commissioners on Uniform State Laws, to assure "that unavailability is honest and not planned in order to gain an advantage." Uniform Rules of Evidence, Rule 62 Comment. Under this subdivision, a party may not arrange a declarant's disappearance in order to use the declarant's out-of-court statement. Moreover, if the out-of-court statement is that of the party himself, he may not create "unavailability" under this section by invoking a privilege not to testify.

Section 240 substitutes a uniform standard for the varying standards of unavailability provided by the superseded Code of Civil Procedure sections providing hearsay exceptions. e.g., Code Civ. Proc § 1870 (4), (8). The conditions constituting unavailability under these superseded sections vary from exception to exception without apparent reason. Under some of these sections, the evidence is admissible if the declarant is dead; under others, the evidence is admissible if the declarant is dead or insane; under still others, the evidence is admissible if the declarant is absent from the jurisdiction. Despite the express language of these superseded sections, Section 240 may, to a considerable extent, restate existing law. Compare People v. Spriggs (1964) 60

Cal 2d 868, 36 Cal Rptr 841, 389 P2d 377, 1964 Cal. LEXIS 297 (generally consistent with Section 240), with the older cases, some but not all of which are inconsistent with the Spriggs case and with Section 240. See the cases cited in Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VIII Hearsay Evidence), 6 Cal Law Revision Comm'n Rep, Rec & Studies Appendix at 411 note 7 (1964). (As amended in the Legislature.)

§ 250. "Writing"

"Writing" means handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing, any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967. Amended Stats 2002 ch 945 § 1 (AB 1962).

Law Revision Commission Comments:

1965—"Writing" is defined very broadly to include all forms of tangible expression, including pictures and sound recordings.

§ 255. "Original"

"Original" means the writing itself or any counterpart intended to have the same effect by a person executing or issuing it. An "original" of a photograph includes the negative or any print therefrom. If data are stored in a computer or similar device, any printout or other output readable by sight, shown to reflect the data accurately, is an "original."

Added Stats 1977 ch 708 § 1.

§ 260. "Duplicate"

A "duplicate" is a counterpart produced by the same impression as the original, or from the same matrix, or by means of photography, including enlargements and miniatures, or by mechanical or electronic rerecording, or by chemical reproduction, or by other equivalent technique which accurately reproduces the original.

Added Stats 1977 ch 708 § 2.

DIVISION 3

General Provisions

Chapter

- 1. Applicability of Code
- 2. Province of Court and Jury
- 3. Order of Proof
- 4. Admitting and Excluding Evidence
- 5. Weight of Evidence Generally

CHAPTER 1

Applicability of Code

300. Applicability of code

§ 300. Applicability of code

Except as otherwise provided by statute, this code applies in every action before the Supreme Court or a

court of appeal or superior court, including proceedings in such actions conducted by a referee, court commissioner, or similar officer, but does not apply in grand jury proceedings.

Enacted Stats 1965 ch 299 \S 2, operative January 1, 1967. Amended Stats 1967 ch 17 \S 35; Stats 1998 ch 931 \S 141 (SB 2139), effective September 28, 1998; Stats 2002 ch 784 \S 101 (SB 1316).

Law Revision Commission Comments:

1965—Section 300 makes the Evidence Code applicable to all proceedings conducted by California courts except those court proceedings to which it is made inapplicable by statute. The provisions of the code do not apply in administrative proceedings, legislative hearings, or any other proceedings unless some statute so provides or the agency concerned chooses to apply them.

Various code sections—in the Evidence Code as well as in other codes—make the provisions of the Evidence Code applicable to a certain extent in proceedings other than court proceedings. e.g., Govr.

Code § 11513 (a finding in a proceeding conducted under the Administrative Procedure Act may not be based on hearsay evidence unless the evidence would be admissible over objection in a civil action); Penal Code § 939.6 (a grand jury, in investigating a charge, may receive only evidence admissible over objection in a criminal action); Evidence Code § 910 (provisions of the Evidence Code relating to privileges are applicable in all proceedings of every kind in which testimony can be compelled to be given); and Evidence Code § 1566 (Sections 1560–1565 are applicable in nonjudicial proceedings).

Section 300 does not affect any other statute relaxing rules of evidence for specified purposes. See, e.g., Code Civ. Proc. § 117g (judge of small claims court may make informal investigation either in or out of court), § 1768 (hearing of conciliation proceeding to be conducted informally), § 2016(b) (inadmissibility of testimony at trial is not ground for objection to testimony sought from a deponent, provided that such testimony is reasonably calculated to lead to the discovery of admissible evidence); Penal Code § 1203 (judge must consider probation officer's investigative report on question of probation); Welf. & Inst. Code § 706 (juvenile court must consider probation officer's social study in determining disposition to be made of ward or dependent child).

1998—Section 300 is amended to reflect elimination of the justice court. Cal. Const. art. VI, §§ 1, 5(b).

2002—Section 300 is amended to reflect unification of the municipal and superior courts pursuant to Article VI, Section 5(e), of the California Constitution.

CHAPTER 2

Province of Court and Jury

Section

310. Questions of law for court

311. Procedure when foreign or sister-state law cannot be determined

312. Jury as trier of fact

§ 310. Questions of law for court

- (a) All questions of law (including but not limited to questions concerning the construction of statutes and other writings, the admissibility of evidence, and other rules of evidence) are to be decided by the court. Determination of issues of fact preliminary to the admission of evidence are to be decided by the court as provided in Article 2 (commencing with Section 400) of Chapter 4.
- (b) Determination of the law of an organization of nations or of the law of a foreign nation or a public entity in a foreign nation is a question of law to be determined in the manner provided in Division 4 (commencing with Section 450).

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Subdivision (a) of Section 310 restates the substance of and supersedes the first sentence of Section 2102 of the Code of Civil Procedure. Subdivision (b) restates the existing rule that foreign law is not a question of fact but is a question of law to be decided by the court. See Gallegos v. Union—Tribune Publishing Co., 195 Cal App 2d 791, 16 Cal Rptr 185 (1961).

Section 310 refers specifically to the law of organizations of nations in order to make certain that the law of supranational organizations that have lawmaking authority—such as the European Economic Community—is to be determined as other foreign law is determined. This probably does not change the law of California, for it seems likely that the law of a supranational organization would be regarded as the law in the member nations by virtue of the treaty arrangements among them. Of course, the Evidence Code does not require California courts to give the force of law to anything that does not have the force of law. The Evidence Code merely prescribes the procedure for determining the existing foreign law.

The judicial notice provisions of the Evidence Code have no effect on which party has the burden of establishing the applicable foreign law under Probate Code Section 259 (relating to the right of nonresident aliens to inherit). The applicable foreign law is, however, to be determined in accordance with the judicial notice provisions of the Evidence Code. Estate of Gogabashvele (1961) 195 Cal App 2d 503, 16 Cal Rptr 77, 1961 Cal. App. LEXIS 1482. (As amended in the Legislature.)

§ 311. Procedure when foreign or sister-state law cannot be determined

If the law of an organization of nations, a foreign nation or a state other than this state, or a public entity in a foreign nation or a state other than this state, is applicable and such law cannot be determined, the court may, as the ends of justice require, either:

- (a) Apply the law of this state if the court can do so consistently with the Constitution of the United States and the Constitution of this state; or
- (b) Dismiss the action without prejudice or, in the case of a reviewing court, remand the case to the trial court with directions to dismiss the action without prejudice.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Insofar as it relates to the law of foreign nations, Section 311 restates the substance of and supersedes the last paragraph of Section 1875 of the Code of Civil Procedure. With respect to sister-state law, the result reached under existing California case law is probably the same as under Section 311. See, e.g., Gagnon Co. v. Nevada Desert Inn (1955) 45 Cal 2d 448, 289 P2d 466, 1955 Cal. LEXIS 335 ("Whether such a judgment is a bar... is controlled by Nevada law........ We find no Nevada statute or case law covering the case we have here.... Under those circumstances we will assume the Nevada law is not out of harmony with ours and thus we look to our law for a solution of the problem.").

The last paragraph of Section 1875, which Section 311 supersedes, applies "if the court is unable to determine" the applicable foreign law. Instead, Section 311 comes into operation if the applicable out-of-state law "cannot be determined." This revised language emphasizes that every effort should be made by the court to determine the applicable law before the case is otherwise disposed of under Section 311.

The reason why the court cannot determine the applicable foreign or sister-state law may be that the parties have not provided the court with sufficient information to make such determination. In such a case, the court may, of course, grant the parties additional time within which to obtain such information and make it available to the court. If they fail to obtain such information and the court is not satisfied that they made a reasonable effort to do so, the court may dismiss the action without prejudice. On the other hand, where counsel have made a reasonable effort and when all sources of information as to the applicable foreign or sister-state law are exhausted and the court cannot determine it, the court may either apply California law, within constitutional limits, or dismiss the action without prejudice. (As amended in the Legislature.)

§ 312. Jury as trier of fact

Except as otherwise provided by law, where the trial is by jury:

- (a) All questions of fact are to be decided by the jury.
- (b) Subject to the control of the court, the jury is to determine the effect and value of the evidence addressed to it, including the credibility of witnesses and hearsay declarants.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 312 restates the substance of and supersedes Section 2101 and the first sentence of Section 2061 of the Code of Civil Procedure. The rule stated in Section 312 is subject to such exceptions as are otherwise provided by statutory or decisional law. See, e.g., EVIDENCE CODE §§ 310, 311, 457.

CHAPTER 3 Order of Proof

Section

320. Power of court to regulate order of proof

§ 320. Power of court to regulate order of proof

Except as otherwise provided by law, the court in its discretion shall regulate the order of proof.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 320 restates the substance of and supersedes the first sentence of Section 2042 of the Code of Civil Procedure. Under Section 320, as under existing law, the trial judge has wide discretion to determine the order of proof. See California Civil Procedure During Trial, Parrish, Order of Proof, 205 (Cal. Cont. Ed. Bar 1960). Of course, the order of proof ordinarily should be as prescribed in Code of Civil Procedure Section 607 or 631.7 (added in this recommendation) or in Penal Code Sections 1093 and 1094.

Directions of the trial judge which control the order of proof should be distinguished from those which actually exclude evidence. Obviously, it is not permissible, through repeated directions of the order of proof, to prevent a party from presenting relevant evidence on a disputed fact. Foster v. Keating, 120 Cal. App.2d 435, 261 P.2d 529 (1953); California Civil Procedure During Trial, Parrish, Order of Proof, 205, 210 (Cal. Cont. Ed. Bar 1960). See also Murry v. Manley, 170 Cal. App.2d 364, 338 P.2d 976 (1959).

CHAPTER 4

Admitting and Excluding Evidence

Article 1

General Provisions

Section

- 350. Only relevant evidence admissible
- 351. Admissibility of relevant evidence
- 351.1. Exclusion of results of polygraph examination
- 352. Discretion of court to exclude evidence
- 352.1. Address and telephone number of victim of criminal sex act
- 353. Effect of erroneous admission of evidence
- 354. Effect of erroneous exclusion of evidence
- 355. Limited admissibility
- 356. Entire act, declaration, conversation, or writing may be brought out to elucidate part offered

Article 2

Preliminary Determinations on Admissibility of Evidence

- 400. "Preliminary fact"
- 401. "Proffered evidence"
- 402. Procedure for determining foundational and other preliminary facts
- Determination of foundational and other preliminary facts where relevancy, personal knowledge, or authenticity is disputed
- 404. Determination of whether proffered evidence is incriminatory
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- 406. Evidence affecting weight or credibility

ARTICLE 1

General Provisions

§ 350. Only relevant evidence admissible

No evidence is admissible except relevant evidence. Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 350 restates and supersedes that portion of Code of Civil Procedure Section 1868 requiring the exclusion of irrelevant evidence.

§ 351. Admissibility of relevant evidence

Except as otherwise provided by statute, all relevant evidence is admissible.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965-Section 351 abolishes all limitations on the admissibility of relevant evidence except those that are based on a statute, including a constitutional provision. See EVIDENCE CODE § 230. The Evidence Code contains a number of provisions that exclude relevant evidence either for reasons of public policy or because the evidence is too unreliable to be presented to the trier of fact. See, e.g., EVIDENCE CODE § 352 (cumulative, unduly prejudicial, etc. evidence), §§ 900-1073 (privileges), §§ 1100-1156 (extrinsic policies), § 1200 (hearsay). Other codes also contain provisions that may in some cases result in the exclusion of relevant evidence. See, e.g., CIVIL CODE §§ 79.06, 79.09, 227; CODE CIV. PROC. § 1747; EDUC. CODE § 14026; FIN. CODE § 8754; FISH & GAME CODE § 7923; GOVT. CODE §§ 15619, 18573, 18934, 18952, 20134, 31532; Health & Saf. Code §§ 211.5, 410; Ins. Code §§ 735, 855, 10381.5; LABOR CODE § 6319; PENAL CODE §§ 290, 938.1, 3046, 3107, 11105; Pub. Res. Code § 3234; Rev. & Tax. Code §§ 16563, 19282-19289; Unempl. Ins. Code §§ 1094, 2111, 2714; Vehicle Code §§ 1808, 16005, 20012-20015, 40803, 40804, 40832, 40833; WATER CODE § 12516; WELF. & INST. CODE §§ 118, 827.

§ 351.1. Exclusion of results of polygraph examination

- (a) Notwithstanding any other provision of law, the results of a polygraph examination, the opinion of a polygraph examiner, or any reference to an offer to take, failure to take, or taking of a polygraph examination, shall not be admitted into evidence in any criminal proceeding, including pretrial and post conviction motions and hearings, or in any trial or hearing of a juvenile for a criminal offense, whether heard in juvenile or adult court, unless all parties stipulate to the admission of such results.
- (b) Nothing in this section is intended to exclude from evidence statements made during a polygraph examination which are otherwise admissible.

Added Stats 1983 ch 202 § 1, effective July 12, 1983.

§ 352. Discretion of court to exclude evidence

The court in its discretion may exclude evidence if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 352 expresses a rule recognized by statute and in several California decisions. Code Civ. Proc. §§ 1868, 2044 (superseded by the Evidence Code); Adkins v. Brett (1920) 184 Cal. 252, 193 Pac. 251, 1920 Cal. LEXIS 315 ("the matter [of excluding prejudicial evidence] is largely one of discretion on the part of the trial judge"); Moody v. Peirano (1906) 4 Cal. App. 411, 88 Pac. 380, 1906 Cal. App. LEXIS 6 ("a wide discretion is left to the trial judge in determining whether [evidence of a collateral nature] is admissible or not").

§ 352.1. Address and telephone number of victim of criminal sex act

In any criminal proceeding under Section 261, 262, or 264.1, subdivision (d) of Section 286, or subdivision

(d) of Section 288a of the Penal Code, or in any criminal proceeding under subdivision (c) of Section 286 or subdivision (c) of Section 288a of the Penal Code in which the defendant is alleged to have compelled the participation of the victim by force, violence, duress, menace, or threat of great bodily harm, the district attorney may, upon written motion with notice to the defendant or the defendant's attorney, if he or she is represented by an attorney, within a reasonable time prior to any hearing, move to exclude from evidence the current address and telephone number of any victim at the hearing.

The court may order that evidence of the victim's current address and telephone number be excluded from any hearings conducted pursuant to the criminal proceeding if the court finds that the probative value of the evidence is outweighed by the creation of substantial danger to the victim.

Nothing in this section shall abridge or limit the defendant's right to discover or investigate the information.

Added Stats 1985 ch 335 § 3. Amended Stats 1996 ch 1075 § 5 (SB 1444).

§ 353. Effect of erroneous admission of evidence

A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous admission of evidence unless:

- (a) There appears of record an objection to or a motion to exclude or to strike the evidence that was timely made and so stated as to make clear the specific ground of the objection or motion; and
- (b) The court which passes upon the effect of the error or errors is of the opinion that the admitted evidence should have been excluded on the ground stated and that the error or errors complained of resulted in a miscarriage of justice.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Subdivision (a) of Section 353 codifies the well-settled California rule that a failure to make a timely objection to, or motion to exclude or to strike, inadmissible evidence waives the right to complain of the erroneous admission of evidence. See Witkin, California Evidence §§ 700–702 (1958). Subdivision (a) also codifies the related rule that the objection or motion must specify the ground for objection, a general objection being insufficient. Witkin, California Evidence §§ 703–709 (1958).

Section 353 does not specify the form in which an objection must be made; hence, the use of a continuing objection to a line of questioning would be proper under Section 353 just as it is under existing law. See Witkin, California Evidence § 708 (1958).

Subdivision (b) reiterates the requirement of Section 4½ of Article VI of the California Constitution that a judgment may not be reversed, nor may a new trial be granted, because of an error unless the error is prejudicial.

Section 353 is, of course, subject to the constitutional requirement that a judgment must be reversed if an error has resulted in a denial of due process of law. People v. Matteson, 61 Cal 2d 466, 39 Cal Rptr 1, 393 P2d 161 (1964). (As amended in the Legislature.)

§ 354. Effect of erroneous exclusion of evidence

A verdict or finding shall not be set aside, nor shall the judgment or decision based thereon be reversed, by reason of the erroneous exclusion of evidence unless the court which passes upon the effect of the error or errors is of the opinion that the error or errors complained of resulted in a miscarriage of justice and it appears of record that:

- (a) The substance, purpose, and relevance of the excluded evidence was made known to the court by the questions asked, an offer of proof, or by any other means;
- (b) The rulings of the court made compliance with subdivision (a) futile; or
- (c) The evidence was sought by questions asked during cross—examination or recross—examination.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 354, like Section 353, reiterates the requirement of the California Constitution that a judgment may not be reversed, nor may a new trial be granted, because of an error unless the error is prejudicial. Cal. Const., Art. VI, \S 4½.

The provisions of Section 354 that require an offer of proof or other disclosure of the evidence improperly excluded reflect existing law. See WITKIN, CALIFORNIA EVIDENCE § 713 (1958). The exceptions to this requirement that are stated in Section 354 also reflect existing law. Thus, an offer of proof is unnecessary where the judge has limited the issues so that an offer to prove matters related to excluded issues would be futile. Lawless v. Calaway (1944) 24 Cal.2d 81, 91, 147 P.2d 604, 609, 1944 Cal. LEXIS 214. An offer of proof is also unnecessary when an objection is improperly sustained to a question on cross-examination. Tossman v. Newman (1951) 37 Cal.2d 522, 233 P.2d 1, 1951 Cal. LEXIS 304 ("no offer of proof is necessary in order to obtain a review of rulings on cross-examination"); People v. Jones, 160 Cal. 358, 117 Pac. 176 (1911)

§ 355. Limited admissibility

When evidence is admissible as to one party or for one purpose and is inadmissible as to another party or for another purpose, the court upon request shall restrict the evidence to its proper scope and instruct the jury accordingly.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.

Law Revision Commission Comments:

1965—Section 355 codifies existing law which requires the court to instruct the jury as to the limited purpose for which evidence may be considered when such evidence is admissible for one purpose and inadmissible for another. See Adkins v. Brett, 184 Cal. 252, 193 Pac. 251 (1920).

Under Section 352, as under existing law, the judge is permitted to exclude such evidence if he deems it so prejudicial that a limiting instruction would not protect a party adequately and the matter in question can be proved sufficiently by other evidence. See discussion in Adkins v. Brett (1920) 184 Cal. 252, 193 Pac. 251, 1920 Cal. LEXIS 315; Tentative Recommendation and a Study Relating to the Uniform Rules of Evidence (Article VI. Extrinsic Policies Affecting Admissibility), 6 Cal. Law Revision Comm'n, Rep., Rec. & Studies 601, 612, 639–640 (1964).

§ 356. Entire act, declaration, conversation, or writing may be brought out to elucidate part offered

Where part of an act, declaration, conversation, or writing is given in evidence by one party, the whole on the same subject may be inquired into by an adverse party; when a letter is read, the answer may be given; and when a detached act, declaration, conversation, or writing is given in evidence, any other act, declaration, conversation, or writing which is necessary to make it understood may also be given in evidence.

Enacted Stats 1965 ch 299 § 2, operative January 1, 1967.