BASIC COURSE UNIT GUIDE

8

INTRODUCTION TO LAW

This unit guide covers the following learning goals contained in the POST Basic Course performance objective document:

3.1.0 Introduction to Law
3.2.0 Crime Elements
3.3.0 Intent
3.4.0 Parties to Crimes
3.5.0 Defenses
3.7.0 Attempt, Conspiracy, Solicitation
3.8.0 Obstruction of Justice

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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

This unit of instruction is designed as a *guideline* for Performance Objective-based law enforcement basic training. This unit is part of the POST Basic Course Guidelines system developed by California law enforcement trainers and criminal justice educators for the California Commission on Peace Officer Standards and Training.

This Guide is designed to assist the instructor in developing an appropriate lesson plan to cover the performance objectives, which are required as minimum content of the Basic Course.

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3.1.0 INTRODUCTION TO LAW

Learning Goal: The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

3.1.1 The student will identify the difference between "spirit of the law" and "letter of the law".

3.1.2 The student will identify the sources of California law.

A. Constitutional Law (Federal and State)
B. Statutory Law (Federal and State)
C. Case Law (Federal and State)

3.1.3 The student will identify how case decisions affect and clarify statutory law. (Stare Decisis)

3.2.0 CRIME ELEMENTS

Learning Goal: The student will understand and have a working knowledge of the basic elements of crimes as defined in California law.

3.2.1 The student will identify each of the following as being necessary elements of "a crime" as defined by California Penal Code Section 15:

A. An act or omission
B. In violation of statutory law
C. For which there is a punishment

3.2.2 Given the punishment for a crime, the student will classify the crime as a felony, misdemeanor, or infraction. (Penal Code Sections 16 and 17)

3.2.3 The student will identify "corpus delicti" as defined in California criminal law. (Evidence Code)

Learning Goals and Performance Objectives

3.3.0 INTENT

Learning Goal: The student will understand and have a working knowledge of the concept of "intent" in California criminal law.

3.3.1 Given a description of a crime, the student will identify the following concepts of "mental states" which can be legally inferred from acts of the perpetrator:

A. Specific intent
B. Transferred intent
C. General intent
D. Criminal negligence (Evidence Code)

3.4.0 PARTIES TO A CRIME

Learning Goal: The student will understand and have a working knowledge of the concept of "parties to a crime."

3.4.1 The students will identify "principal" and "accessory" as defined by California law. (Penal Code Section 30-32)

3.5.0 DEFENSES

Learning Goal: The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

3.5.1 Given word-pictures or audio-visual presentations depicting possible entrapment situations, the student will identify whether or not entrapment has occurred.

3.5.2 The student will identify those persons who are legally incapable of committing a crime in the State of California. (Penal Code Sections 26, 27, and 29)

Learning Goals and Performance Objectives

3.7.0 ATTEMPT/CONSPIRACY/SOLICITATION

Learning Goal: The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

3.7.1 Given word-pictures or audio-visual presentations depicting a possible attempt to commit a crime, the student will determine if the crime of attempt is complete and, in any situation where the crime is complete, will identify the crime of attempt by its common name and crime classification. (Penal Code Section 664)

3.7.2 Given word-pictures or audio-visual presentations depicting possible conspiracies to commit crimes, the student will determine if the crime of conspiracy is complete, and will identify the crime of conspiracy by its common name and crime classification. (Penal Code Section 182)

3.7.3 Given word-pictures or audio-visual presentations depicting possible solicitations to commit crimes, the student will determine if the crime of solicitations is complete and, in any situation where the crime of solicitation is complete, will identify the crime by its common name and crime classification. (Penal Code Section 653(f)

3.8.0 OBSTRUCTION OF JUSTICE

Learning Goal: The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

3.8.1 Given word-pictures or audio-visual presentations depicting the possible offering or accepting of a bribe, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 67 and 68)

3.8.2 Given word-pictures or audio-visual presentations depicting possible perjuries, the student will determine if the crime is complete and will, in any situation where the crime is complete, identify the crime by its common name and crime classification. (Penal Code Sections 118 and 126)

Learning Goals and Performance Objectives

3.8.3 Given word-pictures or audio-visual presentations depicting possible refusal by an officer to accept an arrested person, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 142)

3.8.4 Given word-pictures or audio-visual presentations depicting the possible impersonation of an officer, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 146a and 538d)

3.8.5 Given word-pictures or audio-visual presentations depicting a possible threat or obstructing of an officer in the fulfillment of official duties, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 69, 71, 136.1, and 148(a) through 148(d)).

3.8.6 Given word-pictures or audio-visual presentations depicting the possible filing of a false police report, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Sections 148.3 and 148.5)

3.8.7 Given word-pictures or audio-visual presentations depicting the possible refusal to join "posse comitatus", the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification. (Penal Code Section 150)

Material/Equipment

Each training institution should develop its own list of equipment and materials for each unit. This list is dependent upon the instructional strategies methods/media considerations.

Overhead Projector
Transparencies
Film Strip Audio/Video Projector
16mm Projector
Reel to Reel or Color Cassette Video Tape

Learning Goal 3.1.0 : The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

Unit Outline & Presentation	Objectives & Instructional Cues
I. INTRODUCTION TO LAW (3.1.0)	
A. The legal system in California, and throughout most of the United States, was derived from the English common law system	
1. English common law originated as unwritten laws and traditions that governed the common people (working classes) of medieval England.	
2. Under the Feudal System in which common law originated, the ruling lords would try their serfs for breaches of the common law; the fact that these laws were not written made it convenient to the landowners and resulted in extreme forms of punishment for relatively minor, and loosely supported, offenses.	
3. As these courts recorded their cases and decisions, a form of case law evolved.	
4. Eventually, through this evolutionary process, coupled with the demise of the Feudal System and the increased demand for justice by the common people, a formalized legal system evolved.	
5. This legal system was adopted by this country.	
B. While the California legal system is, for the most part, based upon the English common law system, California law is less tied to tradition and more people-oriented than is the common law.	
1. Whereas the common law was bound to the "letter of the law," the California legal system is directed more towards the "spirit of the law." (P.C. 4)	3.1.1 The student will identify the difference between "spirit of the law" and "letter of the law."
2. California criminal law is based on the Penal Code statutes; however, any code provision must be interpreted with regard to:	
a. its relation to other code provisions,	
b. the interpretation of its meaning as to:	

Reference Notes

SPIRIT VS. LETTER OF THE LAW

The California Legislature is specific about this point in Penal Code Section 4:

Entitled: Construed according to fair import, Section 4 states: "The rule of common law, that penal statutes are to be strictly construed, has no application to this code."

Section 4 goes on to state: "All its provisions are to be construed according to the fair import of their terms, with a view to effect its objects and to promote justice."

The legislative intent expressed in Penal Code Section 4 is as applicable to law enforcement officers as it is to the courts:

1. When a reasonable question arises as to the meaning or intent of a given law, under a given set of circumstances, that law should be interpreted in terms of the spirit in which it was written, rather than a blind compliance with the letter of the law.

2. For example: The intoxication statute, 647(f) P.C., was enacted to protect society and the inebriate from harm and inconvenience:

   (a) Viewed from the standpoint of the letter of the law, every person who is publicly drunk and unable to care for himself is subject to arrest and prosecution under the statute.

   (b) However, there are circumstances under which the spirit of the law is better served by other than arrest (i.e., release to family or friend, escort home, etc.).

Learning Goal 3.1.0 : The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

Unit Outline & Presentation	Objectives & Instructional Cues

(1) Meaning of words,

(2) Expression of legislative intent,

(3) Scope of its effect.

3. Two other important distinctions between common law and California Law should be noted:

   a. California recognizes no unwritten criminal laws; for a law to be enforceable, it must be codified. Thus, for an arrest to be valid under California law, there must be a written law in existence at the time of arrest. Furthermore, a crime or public offense is an act committed or omitted in violation of a law (written) forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

      (1) Death,

      (2) Imprisonment,

      (3) Fine,

      (4) Removal from office, or

      (5) Disqualification to hold and enjoy any office of honor, or profit, in this State. (P.C. 15)

   b. No one can be punished for a mere <u>intent</u> to violate the law or to do an act prohibited by the law.

   c. Additionally, California does not recognize Ex Post Facto laws. These are laws written after the fact to punish an action that has already taken place, and was not illegal at the time of commission.

Learning Goal 3.1.0 : The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

Unit Outline & Presentation	Objectives & Instructional Cues
C. California law is divided into statutory and case law 1. Statutory law consists of those written laws enacted by the legislative body of the state, a county, or a city. a. Statutory law is codified in state legal codes, or in the administrative code of a county (known as county ordinances), or the municipal code of a city (known as municipal codes). b. The California state codes frequently encountered by law enforcement officers are: (1) Penal Code (2) Vehicle Code (3) Welfare and Institutions Code (4) Health and Safety Code (5) Evidence Code (6) Civil Code (7) Business and Professions Code (8) Education Code (9) Government Code (10) Public Resources Code (11) Fish and Game Code (12) California Administrative Code c. General crimes in California are governed by statutes (sections) in the various California Codes, whereas other state and local codes govern more specialized and/or localized problems or procedures.	3.1.2 The student will identify sources of California law. A. Constitutional law (Federal and State) B. Statutory law (Federal and State) C. Case law (Federal and State)

Learning Goal 3.1.0 : The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

Unit Outline & Presentation	Objectives & Instructional Cues
(1) Substantive Law regulates conduct. It states what a person must do and what he cannot fail to do. (a) Example: Penal Code (2) Procedural Law defines procedures. It prescribes methods for enforcing and/or maintaining rights. (a) Example: Evidence Code	Note: Not all sections of the penal code are booking sections. Some are definitions, procedures, or enabling sections. (e.g., 1538.5 p.c.)
2. "Case law" is the designation given to Appellate Court interpretations of the law. a. By necessity, statutory law is broad and general in scope and must be interpreted by the court in light of the unique circum-stances of each case (refer to Penal Code Section 4). b. Case law serves to clarify and narrow statutory law: (1) When appellate judges interpret laws, their interpretation or opinion is written down and becomes "case law" that must be followed by lower courts and law enforcement officers in order to sustain convictions through the courts. (2) Attorneys cite prior Appellate Court decisions or precedents (case law) to support a particular argument in a case, and judges can recognize past court decisions as guidelines for current decisions. (3) Lower court judges must decide similar cases in light of law from higher courts, or face a reversal of their decision upon appeal.	3.1.3 The student will identify how case decisions affect and clarify statutory law (Stare Decisis).

Learning Goal 3.1.0 : The student will understand and have a working knowledge of the legal principles upon which criminal law in California operates.

Unit Outline & Presentation	Objectives & Instructional Cues
c. Case law is based on the principle of "Stare Decisis" which is Latin for "Let the decision stand." This principle is also known as "precedent."	
D. Civil law versus criminal law	
1. A civil action (defined as a tort) is a wrong against the <u>person</u>.	
2. The violation of a criminal law is a crime against the <u>People</u> of the State of California.	
E. Classification of crimes	
1. Crimes and public offenses include:	
a. Felonies	
b. Misdemeanors	
c. Infractions	
2. Punishment	
a. Felony punishable by death, imprisonment in state prison, and/or fine.	
b. Misdemeanor punishable by fine and/or imprisonment in county jail for not more than one year	
c. Infraction punishable by fine only	All reference to dollar amounts as they relate to specific punishments have been deleted due to the fact that they frequently change.
d. Certain crimes are subject to punishment in either state prison or county jail. For enforcement purposes, a wobbler is always treated as a felony.	
e. The classification of crimes as infractions, misdemeanors, or felonies is essential for officers to understand as it directly affects the powers of arrest.	

Reference Notes

P.C. 18 Punishment for felony not otherwise prescribed; alternate sentence to county jail.

Except in cases where a different punishment is prescribed by any law of this state, every offense declared to be a felony, or to be punishable by imprisonment in a state prison, is punishable by imprisonment in any of the state prisons for 16 months, or two or three years; provided, however, every offense which is prescribed by any law of the state to be a felony punishable by imprisonment in any of the state prisons or by a fine, but without an alternate sentence to the county jail, may be punishable by imprisonment in the county jail not exceeding one year or by a fine, or by both.

P.C. 19 Punishment for misdemeanor; punishment not otherwise prescribed.

Except in cases where a different punishment is prescribed by any law of this State, every offense declared to be a misdemeanor is punishable by imprisonment in the county jail not exceeding six months, or by fine not exceeding one thousand dollars, or by both.

Learning Goal 3.2.0 : The student will understand and have a working knowledge of the basic elements of crimes as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
II. CRIME ELEMENTS (3.2.0)	
A. Penal Code Section 15 defines a crime or public offense as an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: death, imprisonment, fine, removal from office, or disqualification to hold and enjoy any office of honor, trust, or profit in this State.	
1. The terms "crime" and "public offense" are synonymous	3.2.1 The student will identify each of the following as being necessary elements of "a crime" as defined by California Penal Code Section 15:
2. In order for an act to constitute a crime under California law, the following elements must be established:	
a. An act which is forbidden by law.	A. An act or omission B. In violation of statutory law C. For which there is a punishment
(1) To constitute an act, within this context, requires more than mere thought alone.	
(2) In a few instances, however, the act requirement can be established by speech alone--for instance, challenging to fight in a public place is a violation of Penal Code Section 415 - Disturbing the Peace.	
b. A crime can also be established through failure to act, but only when a specific action is mandated by law.	
(1) Examples include failure to support, failure to obey traffic law, failure to pay taxes, failure to aid a police officer when so directed.	
(2) Passive participation in some forbidden acts can also constitute a crime under this requirement; for instance, passive participation in the act of sodomy or oral copulation, if otherwise prohibited, such as in a jail.	

Reference Notes

P.C. 19a Punishment for misdemeanor; maximum confinement.

In no case shall any person sentenced to confinement in a county or city jail, or in a county or joint county penal farm, road camp, work camp, or other county adult detention facility, or committed to the sheriff for placement in any such county adult detention facility, on conviction of a misdemeanor, or as a condition of probation upon conviction of either a felony or a misdemeanor, or upon commitment for civil contempt, or upon default in the payment of a fine upon conviction of either a felony or a misdemeanor or for any reason except upon conviction of more than one offense when consecutive sentences have been imposed, be committed for a period in excess of one year; provided, however, that the time allowed on parole shall not be considered as part of the period of confinement.

P.C. 17 Felony; misdemeanor; classification of offenses.

(a) A felony is a crime which is punishable with death or by imprisonment in the state prison. Every other crime or public offense is a misdemeanor except those offenses that are classified as infractions.

(b) When a crime is punishable, in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the county jail, it is a misdemeanor for all purposes under the following circumstances:

(1) After a judgment imposing a punishment other than imprisonment in the state prison.

(2) When the court upon committing the defendant to the Youth Authority and designates the offense to be a misdemeanor.

(3) When the court grants probation to a defendant without imposition of sentence and at the time of granting probation, or on application of the defendant or probation officer thereafter, the court declares the offense to be a misdemeanor.

(4) When the prosecuting attorney files in a court having jurisdiction over misdemeanor offenses a complaint specifying that the offense is a misdemeanor, unless the defendant at the time of his arraignment or plea objects to the offense being made a misdemeanor, in which event the complaint shall be amended to charge the felony and the case shall proceed on the felony complaint.

(5) When, at or before the preliminary examination and with the consent of the prosecuting attorney and the defendant, the magistrate determines that the offense is a misdemeanor, in which event the case shall proceed as if the defendant had been arraigned on a misdemeanor complaint.

(c) When a defendant is committed to the Youth Authority for a crime punishable in the discretion of the court, by imprisonment in the state prison or by fine or imprisonment in the County Jail, the offense shall, upon the discharge of the defendant from the Youth Authority, thereafter be deemed a misdemeanor for all purposes.

Learning Goal 3.2.0 : The student will understand and have a working knowledge of the basic elements of crimes as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
c. Additionally, the act or failure to act must be in violation of a written law (statute), which affixes one of the designated punishments upon conviction.	
d. Most penal statutes define the punishment immediately after defining the elements of each particular crime; however,	
(1) Where the statute fails to specify the punishment, but the act is designated as a felony or misdemeanor, the general punishment sections (Penal Code Sections 18 and 19) satisfy this requirement.	
(2) If the statute does not specify a punishment and does not indicate whether the crime is a misdemeanor or felony, it is considered a misdemeanor and punished under the general misdemeanor punishment section (177 P.C.).	
B. Crimes are divided into three classifications under California criminal law, Penal Code Section 16:	3.2.2 Given the punishment for a crime, the student will classify the crime as a felony, misdemeanor or infraction (Penal Code Sections 16 and 17).
1. The most serious crimes are felonies.	
a. Penal Code Section 17 defines a felony as a crime which is punishable with death or by imprisonment in the state prison.	
b. Penalty for a felony that is not specifically prescribed is 16 months, 2 or 3 years and/or by fine. (Penal Code Section 18)	
2. Less serious than felonies are misdemeanors.	Note: See Reference Notes on determining classification of crime.
a. Misdemeanor crimes are crimes punishable by up to one year in county jail (Section 19a P.C.) and/or by a fine. (Penal Code Section 19)	
3. The least degree of crimes are infractions.	
a. An infraction is not punishable by imprisonment (Penal Code Section 19c).	

Reference Notes

P.C. 19c. Infractions; punishment; jury trial; right to public defender.

An infraction is not punishable by imprisonment. A person charged with an infraction shall not be entitled to a trial by jury. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense to represent him unless he is arrested and not released on his written promise to appear, his own recognizance, or a deposit of bail.

Note: Explain to students law to determine classification of crime:

1. Within the Section PC 415.
2. Punishment Section follows the definition of crime PC 242-243.
3. General punishment as referred to in Section PC 417.

Unit Outline & Presentation	Objectives & Instructional Cues
b. The maximum punishment for an infraction is a fine. Minimum and maximum fines are subject to legislative change. c. A person charged with an infraction shall not be entitled to a trial by jury (Penal Code Section 19c). d. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at <u>public expense</u> for representation, unless the person is arrested and not released on a written promise to appear, on own recognizance, or a deposit of bail (Penal Code Section 19c). (1) Normally, a citation will be issued in lieu of arrest on all infractions. (2) The only time a person would be physically arrested for an infraction--thus invoking the possibility of having a public defender assigned--is if the person refused to sign the citation, and then only if the person was subsequently refused bail or release on own recognizance. (a) However, failure to appear in court, or otherwise comply with the requirements of the citation received for an infraction, amounts to a misdemeanor (853.7 P.C.). (b) Under these circumstances, the accused will face a misdemeanor prosecution for failure to appear, in addition to prosecution for the infraction. e. Except as otherwise provided by law, all provisions of law relating to misdemeanors shall apply to infractions, including but not limited to powers of peace officers (Section 19d P.C.).	

Learning Goal 3.2.0 : The student will understand and have a working knowledge of the basic elements of crimes as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
C. Prior to arresting for any crime, the corpus delicti of that crime must be established	
1. The term "corpus delicti" is Latin and it means "body of the crime" or elements of the crime.	3.2.3 The student will identify "corpus delicti" as defined in California criminal law (Evidence Code)
a. The corpus delicti of every crime consists of all of the elements of that crime, as they are specified in the statute defining the crime, plus one or more person's culpability.	
b. Human culpability must be established to prove that the act was caused by a human being and was not the result of a natural phenomenon (i.e., lightning, earthquake, etc.), or the independent act of an animal or other non human being.	
c. However, identity of the perpetrator is never a part of the corpus delicti of any crime.	
(1) To establish that a crime has occurred does not require <u>any</u> identifying characteristics of the suspect, but proof that the act was committed by a (any) human being is required. For example, a dead body is discovered in an open field with numerous wounds about the abdomen.	
(a) Before an officer can establish whether or not a crime has occurred, the officer must establish that the death was caused by another human being.	
(b) Possibly, the person died of other causes, i.e., kicked by an animal, committed suicide, etc.	
2. The corpus delicti of every crime consists of the following elements:	

Unit Outline & Presentation	Objectives & Instructional Cues
a. The commission of a prohibited act, or failure to perform a required act, by one or more human beings. (Refer to Penal Code Section 15) b. The presence of a designated state of mind (general or specific intent, or criminal negligence) to distinguish the crime from an accident, mistake of fact, etc. c. The union of the prohibited act or omission with the required state of mind (the required criminal intent must accompany the criminal act or omission). d. Lastly, in some crimes it must be established that the prohibited act or omission was the <u>legal</u> cause of the injury that the law seeks to prevent. For example, if "A" knocks "B" into the street during a robbery and "B" is hit and killed by a passing vehicle, "A" would be guilty of "B's" murder, even though "A" did not actually commit the murder. (1) Here, "A" is not the actual cause of "B's" death, but "A" is the <u>legal</u> cause of the injury that the law seeks to prevent. (2) Accordingly, the law recognizes that if it were not for the unlawful act of "A" (the robbery), "B" would not have been killed. 3. At the preliminary hearing the first thing that the State (District Attorney) must establish is the corpus delicti of the crime(s) charged. a. In California, the corpus delicti can be proved with a bare minimum of evidence; a mere prima facie showing is sufficient. (1) Example: A murder conviction held wherein the body was never located--a prima facie showing of the corpus delicti was sufficient.	Proximate cause of death doctrine

Reference Notes

People v. Hood (1969) 1 Cal. 3rd 44 - general and specific intent.

General: When the definition of a crime consists of only the description of a particular act, without reference to intent to do a further act or achieve a future consequence the intention is deemed to be a general criminal intent.

Specific: When the definition of crime refers to defendant's intent to do some further act or achieve some additional consequence, the crime is deemed to be one of specific intent.

Learning Goal 3.2.0 : The student will understand and have a working knowledge of the basic elements of crimes as defined in California law.

Unit Outline & Presentation	Objectives & Instructional Cues
(2) Only the guilt of the accused must be proven beyond a reasonable doubt.	Refer to Penal Code Section 1096.
b. The corpus delicti cannot, however, be proven solely on the basis of an extra-judicial (out of court) admission or confession.	

Learning Goal 3.3.0 : The student will understand and have a working knowledge of the concept of "intent" in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
III. INTENT (3.3.0)	
A. In every crime or public offense, there must exist a union or joint operation of act and intent or criminal negligence (Section 20 P.C.).	3.3.1 Given a description of a crime, the student will identify the following concepts of mental states which can be legally inferred from acts of the perpetrator.
1. The type of required intent varies with the crime charged; however, some degree of intent or criminal negligence must be proved - or legally inferred - in all crimes.	
2. Intent refers to the accused state of mind during commission of the crime.	
B. Four types of criminal intent are recognized under California criminal law: general, specific, transferred intent and criminal negligence.	A. Specific intent B. Transferred intent C. General intent D. Criminal negligence (Evidence Code)
1. General Intent	
a. The intent requirements, in general intent crimes, are met if the accused merely intended to do the outlawed act, even if the accused do not intend (or even know) that they were violating the law.	
b. In some instances, in fact, the general intent requirement can be satisfied even though the accused did not intend to commit the unlawful act or omission.	
c. For this reason, general intent is also known as presumed intent, since the law presumes that the accused possessed the necessary intent, simply because he committed the unlawful act or omission.	
(1) A presumption, under law, is an assumption of fact that the law <u>requires</u> to be made from another fact or group of facts established by the evidence.	

Learning Goal 3.0 : The student will understand and have a working knowledge of the concept of "intent" in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
(2) For instance, when a motorist fails to stop for a red light or stop sign, the law automatically presumes the necessary general intent, and it makes no difference that the accused did not intentionally fail to stop, or even that the individual did not know of the requirement required to stop.	
d. In essence, then, no <u>specific</u> state of mind (intent) must be established for general intent crimes.	
2. Specific Intent	
a. Specific intent crimes do require a particular designed state of mind, which must be proved along with the other elements (corpus delicti) of the crime.	
b. The specific intent requirement is usually written into the statute defining the crime, and can be recognized by the inclusion of words or any other language that would call for a particular state of mind such as "with the intent to..."	
c. Unlike general intent, specific intent cannot be <u>presumed</u>, but it can be <u>inferred</u> through circumstantial evidence.	
(1) The specific intent that must be proved is the intent to do the unlawful act, not necessarily the intent to cause the consequence of the act.	
(a) For example, in theft, it must be proven that the defendant intended to deprive the owner of the property permanently, not the fact that the victim could ill afford the loss of the property stolen.	

Learning Goal 3.3.0 : The student will understand and have a working knowledge of the concept of "intent" in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues

3. Transferred Intent

   a. Under this doctrine, criminal intent, in some instances, can be transferred from one object to another.

      (1) For example: "A" shoots at "B" with the intent to kill the person, but misses "B" and hits and kills "C" (a bystander).

      (2) "A" would be guilty of murder even though "A" did not have the necessary specific intent to kill "C" - the Doctrine of Transferred Intent would transfer the intent from "B" to "C."

   b. This doctrine can be applied only if the act involved does not require a different state of mind or criminal intent.

      (1) For example: "A" shoots at "B" with the intent to kill "B", but misses and the bullet enters "B's" vacant house and causes a fire therein.

      (2) "A" would be guilty of attempted murder, but would not be guilty of arson because "A" did not have the required specific intent to commit arson - the intent was to commit murder; not to commit arson.

   c. In all instances, the intended act must have been unlawful in the first place, or the Doctrine of Transferred intent cannot be applied.

      (1) For instance, in the process of lawfully correcting a child, "A" accidentally strikes and injures "B" (an on-looker).

Learning Goal 3.3.0 : The student will understand and have a working knowledge of the concept of "intent" in California criminal law.

Unit Outline & Presentation	Objectives & Instructional Cues
(2) Here, "A's" act was not unlawful, thus the individual would not be guilty of battery on "B" or the child, since "A" did not have the intent to commit a prohibited act (no union of act and intent). However, "B" may have a civil action against "A." 4. Criminal Negligence a. Criminal negligence--negligence is failure to exercise that degree of care which a person of ordinary prudence (a reasonable person) would exercise under the same circumstances. b. Since there must be a joint operation of <u>act and intent</u> to constitute a crime, criminal negligence becomes intent. Example:A person getting drunk, then killing another in a vehicle accident. The "intent" to commit the "act" (death) was criminal negligence as if the person "intended" to cause the death.	

Reference Notes

I. Historical View of Parties to a Crime

A. At early common law all parties involved in the commission of treason or a misdemeanor were principals.

B. At early common law, there were four categories of parties involved in the commission of felonies.

1. Principal in the first degree

a. One who actually committed a crime by his own hand, an inanimate agency, as through an innocent human agent.

2. Principal in the second degree

a. One who was present when a crime was committed by another and who abided or abetted in its commission but who himself took no part in its actual commission.

3. Accessory before the fact

a. A person who, prior to the commission of a crime, procured, commended, or counseled the commission of a felony by another person but who was absent when the felony was committed.

4. Accessory after the fact

a. A person who received, relieved, comforted, or assisted another personally, with knowledge that the other committed a felony.

Learning Goal 3.4.0 : The student will understand and have a working knowledge of the concept of "parties to a crime."

Unit Outline & Presentation	Objectives & Instructional Cues
IV. PARTIES TO A CRIME (3.4.0)	
A. Principal Defined (P.C. 31)	3.4.1 The student will identify "principal" and "accessory" as defined by California law. (Penal Code Section 30-32)
1. All persons concerned in the commission of a crime, whether it is a felony or a misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of 14 years, lunatics or idiots, to commit any crime, or who, by fraud, contrivance or force, occasion the drunkenness of another for the purpose of causing him to commit any crime, or who, by threats, menaces, command, or coercion compel another to commit any crime, are principals in any crime so committed.	
2. All persons concerned in the commission of a crime, who by the operation of the other provisions of this code are principals therein, shall be prosecuted, tried, and punished as principals.	
B. Accessory Defined - Penal Code Section 32	
1. Every person who, after a <u>felony</u> has been committed, harbors, conceals or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction or punishment, having knowledge that said principal has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony.	
2. Section 33 of the Penal Code provides the punishment for accessories is a felony.	
3. There is no such thing as accessory to a misdemeanor.	

Reference Notes

II. Parties to a Crime under Modern California Law

A. Today the complex common law distinctions with regard to parties to crimes have been eliminated. California Penal Code Section 30-32 states as follows:

1. The parties to crimes are classified as:

   a. Principals
   b. Accessories

2. An accessory aids a felon to avoid his liability for his illegal actions.

3. There must be specific intent to assist him to avoid arrest, trial, conviction, or punishment.

4. Conceals implies a conscious effort to hide or conceal the existence of the offense or the subject's involvement in the offense.

5. The word "charged" implies a formal complaint, indictment, or arrest.

Learning Goal 3.4.0 : The student will understand and have a working knowledge of the concept of "parties to a crime."

Unit Outline & Presentation	Objectives & Instructional Cues

C. Accomplice Defined - Penal Code Section 1111

1. A person who knowingly, voluntarily and with a common intent with the principal offender, unites in the commission of a crime is an accomplice.

2. One who is liable to prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given. The purpose of Section 1111 is to define a rule of evidence.

   a. The testimony of an accomplice must be against the defendant charged in the action.

   b. Testimony of an accomplice must be corroborated, except in juvenile hearings,

      (1) In re: Mitchel P. (1978) 22 CA 3RD 946, unless accomplices repudiate their testimony at the hearing.

      (2) In re: Miguel L. (1982) 129 CA 3RD 208)

3. Accomplice must be a:

   a. Principal

   b. Who testifies for the prosecution

4. "Feigned" accomplice

   a. A feigned accomplice is one who participates in a crime for prosecution purposes lacking criminal intent.

   b. Feigned accomplice testimony need not be corroborated.

Learning Goal 3.5.0 : The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

Unit Outline & Presentation	Objectives & Instructional Cues
V. DEFENSES (3.5.0)	
A. Definition of Entrapment	
Black's Law Dictionary defines entrapment as the act of police in inducing a person to commit a crime not contemplated by the person for the purpose of prosecuting the individual.	3.5.1 Given word-pictures or audio-visual presentations depicting possible entrapment situations, the student will identify whether or not entrapment has occurred
1. In one of the leading cases in California, the court stated, "The law does not tolerate a person, particularly a law enforcement officer, generating in the mind of a person who is innocent of any criminal purpose, the original intent to commit a crime entrapping such a person into the commission of a crime which he would not have committed or even contemplated, but for such inducement."	
2. The main purpose of the law is to prevent crime and not to encourage it.	
a. Thus, the defense of entrapment is used where an officer is the procuring cause of the crime and puts the unlawful design or intent into the mind of the accused.	
b. There must be a union or joint operation of act, intent, or criminal negligence in the commission of every crime (Penal Code Section 20).	
c. The fact that the defendant lacks such requisite intent by being entrapped constitutes a basic defense.	
B. Entrapment as a Defense	
1. Generally considered as a defense to a criminal charge in both State and Federal Courts.	
2. The current judicial test for entrapment is the "innocence" test. Under this test, the court will ask whether a crime was a result of "Creative Activity" of the police or whether the police merely offered an opportunity for the suspect to commit the crime.	

Reference Notes

ENTRAPMENT - WHEN A DEFENSE

DEFINITION

A person is not guilty of a crime when he commits an act or engages in conduct, otherwise criminal, when the idea to commit the crime did not originate in the mind of the defendant but originated instead in the mind of another and was suggested to the defendant by a law enforcement officer or a person acting under the direction, suggestion, or control of a law enforcement officer for the purpose of inducing the defendant to commit the crime in order to entrap him and cause his arrest.

HISTORY

In 1932, the U.S. Supreme Court established entrapment as a defense in Sorrells v. United States.* In that case, a revenue agent, working in an undercover capacity, visited Sorrells' home, evidently after receiving information that Sorrells was violating the National Prohibition Act. The agent and Sorrells entered into a conversation during which the agent asked his host for liquor several times without success. Finally, after the agent steered the conversation to reminiscences of World War I and noted that both men had served in the same outfit, he again made his request. This time Sorrells departed and returned in about 30 minutes with liquor. He was arrested, and at the trial, the judge found as a matter of law that there was no entrapment and refused to submit the issue to the jury.

The Supreme Court reversed the conviction, ordered a new trial, and held the issue of entrapment should have been submitted to the jury. In announcing the general rule, the Court quoted favorably from Butts v. United States.* The Court said that a man could not be punished "...for the commission of an offense of the like of which he had never been guilty, either in thought or deed, and evidently never would have been guilty if the officers of the law had not inspired, incited, persuaded, and lured him to attempt to commit it."

California historically used the "origin of criminal intent" test. In other words, when examining fact situations for entrapment, the following question would resolve the dispute. "In whose mind did the criminal intent originate: if the defendant had it first, or if it could be proved that he had a predisposition to commit the offense, no entrapment existed.

However, in 1979, the California Supreme Court changed the test in People v. Barraza 23 C3 675. The new question to ask is, "Would a normally law abiding person commit the crime if similarily induced?" The court also added that if the police used begging, badgering, cajolling, false friendship, or the use of an irrestible inducement, it would tend to indicate entrapment. Practically speaking, there hasn't been any serious enforcement problems as a result of this change.

Learning Goal 3.5.0 : The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

Unit Outline & Presentation	Objectives & Instructional Cues
C. Considerations:	
1. Where the defendant, acting in pursuance of individual intent, committed criminal acts, even where others afforded the person the opportunity of committing the crime, the defense of entrapment would not relieve the defendant from responsibility.	Note: People v. Barraza 23 C3d 675
2. There is a distinction between:	
a. Inducing in the mind of a person the commission of an unlawful act and,	
b. Setting a plan to capture and secure evidence of guilt against a person who commits a crime of the individual's own volition and conception.	
3. Entrapment may be committed by a law enforcement officer or by a private person acting at the direction of law enforcement personnel.	
4. Entrapment may not be committed by a private citizen who is not acting for law enforcement officials.	
5. In the absence of any evidence that any persuasion or inducement was used or offered the defendant to do what he did, there could be no entrapment.	3.5.2 The student will identify those persons who are legally incapable of committing a crime in the State of California (Penal Code Sections 26, 27, and 29).
D. Under California Law, Certain Persons are Legally Incapable of Committing Crimes	
1. Penal Code Section 26 states: All persons are capable of committing crimes except those belonging to the following classes:	
a. The first class encompasses children under the age of fourteen, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness:	

Reference Notes

P.C. 28 - Evidence of Mental Disease, Mental Defect, or Mental Disorder

(a) Evidence of mental disease, mental defect, or mental disorder shall not be admitted to negate the capacity to form any mental state, including, but not limited to, purpose, intent, knowledge, premeditation, deliberation, or malice aforethought, with which the accused committed the act. Evidence of mental disease, mental defect, or mental disorder is admissible solely on the issue whether or not the accused actually formed a required specific intent, premeditated, deliberated, or harbored malice aforethought, when a specific intent crime is charged.

(b) As a matter of public policy there shall be no defense of diminished capacity, diminished responsiblity, or irresistible impulse in a criminal action or juvenile adjudication hearing.

(c) This section shall not be applicable to an insanity hearing pursuant to Section 1026 or 1429.5.

(d) Nothing in this section shall limit a court's discretion, pursuant to the Evidence Code, to admit or exclude psychiatric or psychological evidence on whether the accused had a mental disease, mental defect, or mental disorder at the time of the alleged offense.

P.C. 29 - Mental State; Restriction on Expert Testimony; Determination by Trier of Fact

In the guilt phase of a criminal action, any expert testifying about a defendant's mental illness, mental disorder, or mental defect shall not testify as to whether the defendant had or did not have the required mental states, which include, but are not limited to, purpose, intent, knowledge, or malice aforethought, for the crimes charged. The question as to whether the defendant had or did not have the required mental states shall be decided by the trier of fact.

Learning Goal 3.5.0 : The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

Unit Outline & Presentation	Objectives & Instructional Cues
(1) This amounts to a legal question that is determined by the court at the time of the trial.	
(2) Law enforcement officers proceed as if the juvenile did know the wrongfulness of the act, except for very young children or exceptional cases (common sense).	In re: Gladys R. 1 Cal 3rd 855
(3) The handling officer should, however, record any evidence that could have a bearing on this factor.	
b. The second class of persons legally incapable of committing crimes are idiots, which are those persons virtually without mentality.	
(1) Idiots possess an I.Q. between 0 and 24 as contrasted with the average I.Q. of between 90 and 100.	
c. The third class are persons who committed the act or made the omission charged under an ignorance or mistake of fact, which disproves any criminal intent.	
(1) These persons are excused by law since they did not possess the necessary union of act and intent (Penal Code Section 20):	
(a) An example would be the person who inadvertently takes someone else's coat (or anything else), out of mistaken identity.	
d. The fourth class of persons, legally incapable of committing crimes, are persons who committed the act charged without being conscious thereof.	
(1) Again, if the person is not conscious of the act, he does not possess the necessary union of act and intent (20 Penal Code)	

Learning Goal 3.5.0 : The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

Unit Outline & Presentation	Objectives & Instructional Cues
(2) Examples would include persons acting under delirium of fever, involuntary intoxication, while sleepwalking, under adverse reaction to legally prescribed drugs, etc. e. The fifth class who committed the act or made the omission charged through misfortune or by accident, when it appears that there was no evil design, intention, or culpable negligence. (1) Examples of acts committed by accident would include breaking a window while playing baseball, unintentionally bumping into someone and knocking him down, etc. f. The sixth class under this section covers persons (unless the crime be punishable with death) who committed the act or made the omission charged under threats or menaces sufficient to show that they had reasonable cause to, and did believe, their lives would be endangered if they refused. (1) Where the crime committed is punishable by the death penalty, no amount of threats, coercion, or duress will relieve a person who cooperates in the commission of the offense. (2) This exception covers only threats or menaces to the accused's life - threats to others could bring the self-defense statute (197.2 P.C.) into play, but would not excuse a crime under this section. 2. For this exception to come into play, the accused must act under a reasonable mistake of fact, which disproves any criminal intent and/or negligence.	

Reference Notes

P.C. 21a--Attempt to commit crime; specific intent and ineffectual act (defintion).

Learning Goal 3.5.0 : The student will understand and have a working knowledge of the concept of entrapment, and who is legally incapable of committing a crime in California.

Unit Outline & Presentation	Objectives & Instructional Cues
3. The law does not, however, excuse a criminal action that results from ignorance of the law. a. It is not a valid defense that the accused did not know that the action he took - or failed to take - was unlawful. b. When a person does an unlawful act voluntarily, he is presumed to have intended what he did as well as all natural, probable, and usual consequences of such act (People vs. Wade, 71 CA 2d 646). c. This is true, even if the accused had previously been advised by his attorney that his action - or inaction - would be legal. d. It also applies both to general and specific intent crimes, since the intent requirement in crimes applies to the intent to commit the unlawful act, and does not require that the person intended to violate the law. 4. The common denominator to Penal Code Section 26 is the lack of, or the inability to form the necessary criminal intent. 5. In order to recognize and preserve all available evidence, it is often necessary to anticipate the suspect's likely defense(s) to the crime(s) charged.	

Learning Goal 3.7.0 : The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

Unit Outline & Presentation	Objectives & Instructional Cues
VI. ATTEMPT/CONSPIRACY/SOLICITATION (3.7.0)	
A. Attempt Defined - 664 PC	
An attempt to commit a crime is a crime itself. Every person who attempts to commit any crime, but fails, or is prevented or intercepted in the perpetration thereof, is guilty of an attempt to commit the crime.	3.7.1 Given word-pictures or audio-visual presentations depicting a possible attempt to commit a crime, the student will determine if the crime of attempt is complete, and in any situation where the crime is complete, will identify the crime of attempt by its common name and crime classification (Penal Code Section 664)
1. Elements which form "attempt" are:	
a. Specific intent	
b. Direct, ineffectual, overt act toward the commission of the crime	
c. Apparent ability to commit a crime or at least the thought that ability is present	
d. The attempted crime must have been legally possible of commission.	
2. In addition to requiring specific intent, there must exist a direct, ineffectual overt act. Mere preparation is not a sufficient overt act. The act must come dangerously close to completion of the crime; i.e., "a substantial step forward."	
3. The fact that the conditions rendered the actual completion of the crime impossible, does not prevent the accused from being guilty of an attempt. For example, where a pickpocket reaches into the victim's pocket but finds the pocket empty.	
4. There can be no crime of attempt if there is a legal impossibility of completion, such as attempted murder on a corpse.	
5. Once the overt act towards the commission of the crime has been performed, that crime is complete. Abandonment is a defense only and does not relieve criminal liability. Abandonment may be used as a	

Reference Notes

CONSPIRACY:

A. Penal Code Section 182 says:

1. If two or more persons conspire

a. To commit any crime

b. Falsely and maliciously to indict another for any crime, or to procure another to be charged or arrested for any crime

c. Falsely to move or maintain any suit, action or proceeding

d. To cheat and defraud any person of any property by any means which are in themselves criminal, or to obtain money or property by false pretenses or by false promises with fraudulent intent not to perform such promises.

e. To commit any act injurious to the public health, to public morals, or to pervert or obstruct justice, or the due administration of the laws.

f. To commit any crime against the person of the President or Vice-President of the United States, the governor of any state or territory, any United States justice or judge, or the secretary of any of the executive departments of the United States.

Learning Goal 3.7.0 : The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

Unit Outline & Presentation	Objectives & Instructional Cues
defense when it is free and voluntary and abandoned before the act is put into final execution, and when there is no outside cause prompting such abandonment. 6. Classification is relative to the type of crime attempted. B. Conspiracy - 182 PC - Felony 1. Conspiracy may be defined as: two or more persons agree to commit any crime, and one of them does an overt act in furtherance of the conspiracy. 2. The basic elements of the crime of conspiracy are: a. Two or more persons b. Agree to commit any crime c. An overt act in furtherance of the conspiracy 3. The two or more persons may be husband and wife. The persons must be legally able to testify (not lunatics, etc.). In addition, if any undercover officer is involved, there must be at least two other persons who are defendants. It is not necessary that the accused know one or all the parties to the conspiracy. Each accused must know and enter into the unlawful agreement with at least one other member of the conspiracy. All parties to the conspiracy are equally responsible for the actions of all other parties taken in furtherance of the conspiracy. This is known as vicarious liability. It includes those crimes committed in preparation for, during, commission of, and during escape and arrest, whether planned or not. It does not include independent crimes, not in furtherance of the conspiracy by individual members of the conspiracy. In addition, crimes committed prior to the accused entry into a conspiracy cannot be charged against the accused; however, they may be used as evidence at trial.	3.7.2 Given word-pictures or audio-visual presentations depicting possible conspiracies to commit crimes, the student will determine if the crime of conspiracy is complete, and will identify the crime of conspiracy by its common name and crime classification. (Penal Code Section 182)

Reference Notes

Objective of the Conspiracy Statute:

1. The conspiracy statute is extremely broad in scope; so broad, in fact, that the statute could be held unconstitutional if it is misused.

2. The primary objective of this statute is to provide a tool for prosecuting organized crime, especially those members so removed from the actual commission of the crime as to make prosecution under other statutes impossible.

3. A conspiracy to commit a crime outside of California is not punishable under California law, even when the overt acts were committed in California, unless the overt acts amount to one or more specific crimes and are prosecuted under the specific crime statues.

4. A conspiracy entered into outside of California to commit a crime in California can be prosecuted under California law provided the overt act takes place in California. (see PC 27.3)

Prosecution:

1. It is very difficult to prove the agreement.

    a. Although the agreement can legally be inferred from the circumstances of the crime or overt act, it frequently is not.

    b. Frequently, the prosecution must provide evidence of the agreement in addition to the above inference.

Learning Goal 3.7.0 : The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

Unit Outline & Presentation	Objectives & Instructional Cues

4. Related factors

   a. The conspired crime does not have to be completed - or even attempted - to sustain a conspiracy conviction.

      (1) The conspiracy to commit the crime constitutes the offense.

      (2) The agreement and overt act are the minimum requirements.

   b. The conviction of any member of the conspiracy is in no way dependent upon conviction - or even prosecution - of any other member.

   c. Individual conspirators can be convicted under the conspiracy statute of the specific crime statute(s) violated, but normally not both (see 654 P.C).

5. Section 184 PC requires that an overt act be taken beyond the agreement and/or planning stage, by one or more of the conspirators. The overt act must be more than mere planning, but need not amount to an attempt to commit the crime or even be unlawful in nature. The overt act, must however, be in furtherance of the conspiracy and must take place within California.

6. Conspiracy is a specific intent crime, requiring the accused to have specific intent to do an unlawful act or do a lawful act by unlawful means (People vs. Jones, 228 CA 2d 74). It must be proved that the accused entered into a criminal agreement with specific intent to commit a crime or perform an act prohibited by the conspiracy statute (People vs. Smith, 63 Cal. 2d 779). Normally, the overt act is used - along with other factors - to establish the intent to commit a specific crime (i.e., procuring a gun to commit robbery or murder, procuring burglary tools to commit a burglary, etc.)

Learning Goal 3.7.0 : The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

Unit Outline & Presentation	Objectives & Instructional Cues
7. In order to avoid criminal liability, a conspirator: a. Must withdraw from all aspects of the conspiracy. b. Must remain away from the scene at time of crime. c. Must make abandonment known to all confederates known to the person prior to crime. d. Although not technically required, the person should also tell authorities about the conspiracy - otherwise, it is extremely difficult to prove abandonment.	
C. Solicitation to commit certain crimes	
1. Penal Code Section 653(f) defines solicitation as follows: a. Every person who, with the intent that the crime be committed, solicits another to offer or accept or join in the offer or acceptance of a bribe, or to commit or join in the commission of robbery, burglary, grand theft, receiving stolen property, extortion, perjury, subornation of perjury, forgery, kidnapping, arson or assault with a deadly weapon or instrument, or by means of force likely to produce great bodily injury, or, by the use of force or a threat of force, to prevent or dissuade any person who is or may become a witness from attending upon, or testifying at, any trial proceeding, or inquiry authorized by law, is punishable as felony. b. Every person who solicits another to commit or join the commission of murder is punishable by imprisonment in the state prison. c. Every person who solicits another to commit rape by force or violence, sodomy by force or violence, oral copulation by force or	3.7.3 Given word-pictures or audio-visual presentations depicting possible solicitations to commit crimes, the student will determine if the crime of solicitation is complete, and in any situation where the crime of solicitation is complete, will identify the crime by its common name and crime classification (Penal Code Section 653(f))

Learning Goal 3.7.0 : The student will understand and have a working knowledge of attempt, conspiracy, and solicitation as the terms relate to crime.

Unit Outline & Presentation	Objectives & Instructional Cues

violence, or by any violation of Section 264.1, 288 or 289, is punishable by imprisonment in a state prison.

d. Every person who solicits another to buy, sell, or transport a controlled substance is guilty of a misdemeanor. Subsequent conviction is a felony.

e. An offense charged in violation of subdivision (a), (b), or (c) must be proved by the testimony of two witnesses, or of one witness and corroborating circumstances. An offense charged in violation of subdivision (d) may be proved by the testimony of one witness and corroborating circumstances.

2. Analysis of elements

a. The solicitation completes the crime - no overt act toward the crime is necessary.

b. Requires specific intent.

c. Additionally, the crime is complete whether the person solicited responds favorably or not, or whether or not person solicited previously contemplated the crime himself.

3. Conviction requires two witnesses or one witness and other corroborating evidence. The witnesses may include the person(s) who were solicited. The corroboration is required at the trial only - the solicited person's testimony can be sufficient for everything short of conviction.

Reference Notes

Giving or Offering Bribes to Executive Officers:

Every person who gives or offers any bribe to any executive officer in this State, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer, is punishable by imprisonment in the state prison not less than one nor more than fourteen years, and is disqualified from holding any office in this State.--1957, Chapter 50.

Asking or Receiving Bribes:

Every executive or ministerial officer, employee or appointee of the State of California, county or city therein or political subdivision thereof, who asks, receives, or agrees to receive, any bribe, upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, is punishable by imprisonment in the state prison not less than one nor more than fourteen years; and, in addition thereto, forfeits his office, and is forever disqualified from holding any office in this State.--1933.

Other bribery statues:

1. 67.5 P.C.- Giving or offering bribe to ministerial (administrative) officer, State of California, county or city employee or political subdivision thereof.
2. 85 P.C. - Giving or offering to members of the legislature (F).
3. 86 P.C. - Asking or receiving by members of the legislature (F).
4. 92 P.C. - Giving or offering to judge, jurors, referee, arbitrator or umpire (F).
5. 93 P.C. - Asking or receiving by judge, juror, referee, arbitrator or umpire (F).
6. 95 P.C. - Attempt to influence juror's decision (F).
7. 136.1 P.C. - Intimidation victim/witnesses to prevent appearance at trial (F).
8. 137 P.C. - Offering or giving a witness to withhold true or give false testimony (F).
9. 138 P.C. - Receiving by or offering to a witness (F).
10. 165 P.C. - Giving or offering to any member of council, board of supervisors, board of trustees, or any city or county or public corporation (F).
11. 337(b) P.C.- 337(c) 337(d) 337(e) Giving or offering bribe to a participant or official in an athletic or sporting event (F).

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
VII. OBSTRUCTION OF JUSTICE (3.8.0)	
A. Bribery	
1. Bribery involves approximately 15 separate statutes, each of which defines the giving, offering, or receiving of a bribe by a certain classification of individuals.	3.8.1 Given word-pictures or audio-visual presentations depicting the possible offering or accepting of a bribe, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Section 67 and 68).
2. Accordingly, it is necessary to generalize the bribery elements found in all statutes.	
a. Common bribery elements	
(1) Asking, giving, accepting, or offering <u>anything</u> of value <u>or advantage</u>, or the promise of same.	
(2) To or by the class of person named in each specific bribe statute.	
(3) With <u>specific intent</u> to corruptly influence, with respect to any act, decision, vote, opinion, or other official function or duty of such person.	
b. Bribery of an executive officer, which includes peace officers.	Police Officers Are Executive Officers
(1) Penal Code Section 67 defines bribery of a peace officer as follows:	
(a) Every person who gives or offers any bribe to any executive officer in this state, with intent to influence him in respect to any act, decision, vote, opinion, or other proceeding as such officer,	People v. Buice 230 CA 2nd 324 (1964)
(b) is punishable by imprisonment in the state prison and is disqualified from holding any office in this state.	

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
(2) Penal Code Section 68 defines receiving of a bribe by a peace officer as follows: (a) Every executive or ministerial officer, employee, or appointee of the State of California, county, or city therein, or political subdivision thereof, who asks, receives, or agrees to receive, any bribe, (b) upon any agreement or understanding that his vote, opinion, or action upon any matter then pending, or which may be brought before him in his official capacity, shall be influenced thereby, (c) is punishable by imprisonment in the state prison and, in addition thereto, forfeits his office and is forever disqualified from holding any office in this state. 3. Offenses completed a. The offense of offering a bribe is complete once it is evident that the officer is being bribed - final determination rests with the court. b. The offense of giving a bribe is complete when the bribe is delivered to the person being bribed. c. The offense of receiving a bribe is complete once the accused asks, receives, or agrees to receive any bribe in consideration of an unlawful act or influence. d. It is not necessary that any particular language be used by either party, so long as the bribe and unlawful intent can be established.	

Reference Notes

Section 118. Perjury defined.

Every person who, having taken an oath that he will testify, declare, depose, or certify truly before any competent tribunal, officer, or person in any of the cases in which such an oath may by law be administered, willfully and contrary to such oath, states as true any material matter which he knows to be false and every person who testifies, declares, deposes, or certifies "under penalty of perjury" in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law under "penalty of perjury" and willfully states as true any material matter which he knows to be false, is guilty of perjury.--Stats. 1957, Chapter 1612.

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
B. Perjury 1. Definition of perjury PC 118 a. Every person who, having taken an oath to testify, declare, depose, or certify truly before any competent tribunal, officer, or person, b. in any of the cases in which such an oath may by law be administered, c. willfully and contrary to such oath, states as true any material matter which the person knows to be false, d. and every person who testifies, declares, deposes, or certifies under penalty of perjury in any of the cases in which such testimony, declarations, depositions, or certification is permitted by law under penalty of perjury, e. and willfully states as true any material matter which he knows to be false, is guilty of perjury. 2. Definition of material in perjury cases a. In perjury cases, testimony is material when it can be said that it <u>could probably have</u> influenced the tribunal upon the issues of the case. b. Does not depend on whether or not the testimony had <u>in fact</u> any effect or influence - can be perjury even if the <u>trier of fact</u> knew the testimony was too ridiculous to be true. c. In a trial for perjury, the materiality issue is a <u>question of law for the court</u> and not a <u>question of fact</u> for the jury.	3.8.2 Given word-pictures or audio-visual presentations depicting possible perjuries, the student will determine if the crime is complete and will, in any situation where the crime is complete, identify the crime by its common name and crime classification (Penal Code Sections 118 and 126).

Reference Notes

Section 142. Peace officer refusing to receive or arrest parties charged with criminal offense. Penalty. Any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest such person shall be punished by a fine not exceeding ten thousand dollars ($10,000), or by imprisonment in the state prison not exceeding five years or in a county jail not exceeding one year, or by both such fine and imprisonment. Amended, Stats. 1970, Chapter 829.

Note: Refer to Section 847, 838, and 839.

Unit Outline & Presentation	Objectives & Instructional Cues

3. Punishment: Perjury is punishable by imprisonment in the state prison (126 PC)

C. Subornation of Perjury

1. Defined

a. Every person who willfully procures another person to commit perjury is guilty of subornation of perjury (127 P.C.).

b. Subornation of perjury is punishable in the same manner as if personally guilty of the perjury so procured (127 P.C.).

2. Elements of 127 P.C.

a. To obtain a conviction, it is necessary that person procured actually perjured themself,

b. that the perjury resulted from the accused's procurement of it, and

c. that the procurer knew that the testimony procured and given was untrue.

(1) It is not subornation of perjury to procure testimony of something the procurer actually believes to be true.

D. Compounding a Crime - 153 P.C.

1. Section 153 P.C. covers the offense of compounding crimes. There are four elements to this offense:

a. any person having knowledge of a crime

b. receives something of value, or agrees to receive it

c. in return for (1) concealing that crime, or

(2) refraining from prosecution, or (3) withholding evidence

d. except in the cases provided for by law.

Reference Notes

Section 538d. Impersonation of peace officer. Misdemeanor. Any person other than one who by law is given the authority of a peace officer, who willfully wears, exhibits, or uses the authorized badge, insigne, emblem, device, label, certificate, card, or writing, of a peace officer, with the intent of fraudulently personating a peace officer, or of fraudulently inducing the belief that he is a peace officer, is guilty of a misdemeanor.

Any person who willfully wears, exhibits, or uses, or who willfully makes, sells, loans, gives, or transfers to another, any badge, insigne, emblem, device or any label, certificate, card, or writing, which falsely purports to be authorized for the use of one who by law is given the authority of a peace officer, or which so resembles the authorized badge, insigne, emblem, device, label, certificate, card, or writing of a peace officer as would deceive an ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, is guilty of a misdemeanor.--1945.

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
E. Duty of Officer to Accept Private Person's Arrest 1. Penal Code Section 142 states that any peace officer who has the authority to receive or arrest a person charged with a criminal offense and willfully refuses to receive or arrest such person shall be punished by a fine not exceeding ten thousand dollars, or by imprisonment in the state prison or in county jail not exceeding one year; or by both such fine and imprisonment. 2. Accordingly, it is an elective felony to refuse a private person's arrest. a. The law dictates that if the arresting private person is adamant, the arrest must be accepted even if the officer feels it is an illegal arrest.	3.8.3 Given word-pictures or audio-visual presentations depicting possible refusal by an officer to accept an arrested person, the student will determine if the crime is complete, and in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Section 142).
F. Impersonation of Officer - 146a P.C. 1. Any person who falsely represents himself to be a public officer or investigator, inspector, deputy, or clerk in any state department, and who, under such assumed identity: a. Arrests and detains, or; b. Otherwise intimidates any person, or; c. Threatens to arrest or detain, or; d. Searches any person, building, or other property of any person, or; e. Obtains money, property, or other thing of value; 2. Is guilty of a misdemeanor.	3.8.4 Given word-pictures or audio-visual presentations depicting the possible impersonation of an officer, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Sections 146a and 538d).
G. Fraudulent Personation of Peace Officer - 538d P.C. 1. Any person other than one who by law is given the authority of a peace officer who:	

Reference Notes

Section 146a. Impersonation of officers. Any person who falsely represents himself to be a public officer, or investigator, inspector, deputy or clerk in any state department and in such assumed character arrests or detains or threatens to arrest or detain, or otherwise intimidates any person or searches the person, building, or other property of any person, or obtains money, or property, or other thing of value, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than twenty-five hundred dollars ($2,500) or imprisonment for not more than one year or by both such fine and imprisonment.--1931.

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
a. willfully wears, exhibits, or uses the <u>authorized</u> badge, insignia, emblem, device, label, certificate, card, or writing of a peace officer, b. with the intent fraudulently impersonating or inducing the belief he is a peace officer, c. <u>or</u> any person who willfully wears, exhibits, or uses, <u>or</u> who willfully makes, sells, loans, gives, or transfers to another any d. badge, insignia, emblem, device, or any label, certificate, card, or writing, e. which so <u>resembles</u> the authorized badge, insignia, emblem, device, or any label, certificate, card, or writing, f. as would deceive any ordinary reasonable person into believing that it is authorized for the use of one who by law is given the authority of a peace officer, g. is guilty of a misdemeanor.	
H. Resisting Public Officers in the Discharge of their Duties - 148 P.C (Misdemeanor). 1. Every person who willfully resist, delays, or obstructs any public officer, peace officer, or an emergency medical technician, in the discharge or attempt to discharge any duty of their office. 2. No physical contact with the officer is needed for the crime to be complete. Verbal interference is possible when accompanied with willful resistance, delay, or obstruction. May develop into a riotous situation (P.C. Sections 404 and 404.6) when accompanied with urgings to riot. 3. This is a misdemeanor.	3.8.5 Given word-pictures or audio-visual presentations depicting the possible threat or obstructing of an officer in the fulfillment of his/her duties, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Sections 69, 71, 136.1 and 148a through 148d).

Reference Notes

1. Fraudulent personation of a peace officer - 538d P.C.
   Note: People vs. Allen 109 CA 3d 981 (1980
   People vs. Kelley 140 CA 3d 322 (1983)
   RE: Delaying

2. 600 P.C. - This law provides specified felony and misdemeanor punishments for various conduct relative to the harming of or interferring with, or obstructing, a horse used by a peace officer discharging or attempting to discharge his or her duties or resulting in great bodily injury to any person.

   d. Conspiracy to commit most misdemeanors/felonies.

      (1) Certain misdemeanor exceptions exist, i.e., 337.2 P.C., and case law.

   e. Jurisdiction

      (1) Prosecution can be held in any county where the agreement took place, or in the county where the overt act took place.

People v. Mayers 110 CA 3rd 809 (1980)

People v. Pangelinia 117 CA 3rd 414 (1981)

Note: People vs. Allen 109 CA 3d 981 (1980)
People vs. Kelley 140 CA 3d 322 (1983)
RE: Delaying

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues

I. Resisting Public Officers in the Discharge of their Duties - 148(c) (Felony)

1. Any person who during the commission of any offense described in 148(a) removes or takes a firearm from the person of or immediate presence of a public officer or peace officer is guilty of a felony.

2. Any person who removes any weapon, other than a firearm, from the person of or immediate presence of a peace officer is guilty of a felony.

3. Specific intent to take an officer's weapon can be demonstrated by any of the following direct, but ineffective acts:

   a. Defendant unfastened the officer's holster strap.

   b. Firearm was partially removed from the holster.

   c. The firearm safety was released by the defendant.

   d. An independent witness corroborates a statement by the defendant that he or she intended to take the weapon, and the defendant <u>actually touched</u> the weapon.

   e. An independent witness corroborates that the defendant had his or her hand on the firearm and tried to take it from the officer who was holding it.

   f. The defendant's fingerprint was found on the firearm or holster.

   g. Scientific physical evidence shows that the defendant did in fact touch the firearm.

   h. In the course of a struggle, the firearm fell and the defendant tried to pick it up.

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
J. Resisting Executive Officers - 69 P.C. 1. Every person who <u>attempts</u> by means of any threat or violence to deter or prevent an executive officer from performing any duty imposed upon such officer by law, 2. <u>or</u> who knowingly resists by the use of force or violence, such officer in the performance of his duty is guilty of a felony. 3. Explain difference between felonious and misdemeanor resisting.	In re. M.L.B. 110 CA3 501 (1980)
K. False Reporting of Criminal Offense - 148.5 P.C. 1. Every person who reports to any peace officer, listed in 830.1, 830.2, 830.3, 830.4, or any employee authorized to accept reports, district attorney or deputy district attorney that a felony or misdemeanor has been committed, knowing such report to be false. 2. The only element is <u>knowingly</u> reporting to a law enforcement officer false information. 3. This is a misdemeanor. 4. False report of emergency - 148.3 P.C. - Misdemeanor.	3.8.6 Given word-pictures or audio-visual presentations depicting the possible filing of a false police report, the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Section 148.3 and 148.5).
L. Refusing to Join Posse or Aid Officer in Arrest - 150 P.C. 1. Every able bodied person above 18 years of age who neglects or refuses to join the posse comitatus or power of the county, by neglecting or refusing to aid and assist in taking or arresting any person against whom there may be issued any process, or 2. By neglecting to aid and assist in retaking any person who, after being arrested or confined, may have escaped from such arrest or imprisonment, or	3.8.7 Given word-pictures or audio-visual presentations depicting the possible refusal to join "posse comitatus," the student will determine if the crime is complete and, in any situation where the crime is complete, will identify the crime by its common name and crime classification (Penal Code Section 150).

Learning Goal 3.8.0 : The student will understand and have a working knowledge of the laws relative to obstruction of justice and how to identify their elements.

Unit Outline & Presentation	Objectives & Instructional Cues
3. By neglecting or refusing to aid and assist in preventing any breach of the peace, or the commission of a criminal offense, being thereto lawfully required by any uniformed peace officer or by any judge.	
4. Is guilty of a misdemeanor, punishable by a fine only.	People exempt from 150 P.C. - members of the armed forces when on duty (Sections 391 and 560, Military and Veteran's Code).
M. False representation of identity to police officer - 148.9 P.C. (a misdemeanor)	
1. Any person who falsely represents or identifies himself or herself as another person or as a fictitious person to any peace officer listed in Section 830.1 or 830.2, upon a lawful detention or arrest of the person, either to evade the process of the court, or to evade the proper identification of the person by the investigating officer is guilty of a misdemeanor.	

SUPPORTING MATERIAL

AND

REFERENCES

PRINCIPALS - ACCESSORIES - ACCOMPLICES

There are only two classifications of persons involved in the commission of crime in California: 1) principals; and 2) accessories. Our term "principal" has reference to all parties involved in the commission of crime, whether it be felony or misdemeanor, while the term "accessory" refers only to felonies. There is no such thing as an accessory to a misdemeanor in California (Sec. 32 PC).

Under the common law these classifications were further broken down to:

1. Principals of the first degree;
2. Principals of the second degree;
3. Accessory before the fact; and
4. Accessory after the fact.

A principal of the first degree was the person who actually committed the crime, such as the one who struck the fatal blow in murder, the one who entered the building in burglary, the one who physically took and carried away the victim in kidnapping, or who actually performed whatever guilty deed was involved in the particular crime.

A principal in the second degree was one who was actually present at the commission, who aided and abetted the perpetrator, but did not actually commit the crime. Mere presence at the scene was not enough, as he might be an innocent bystander. In addition to being present, he must also aid and abet the perpetrator, such as acting as a lookout in a robbery or burglary, thereby cooperating with the perpetrator and being so situated as to be able to aid or assist him, the perpetrator knowing this to assure success in the accomplishment of the unlawful purpose. Principals of the first and second degree were equally guilty of the offense and subject to identical punishments. It can be seen, therefore, that the distinction between the principal in the first and the principal in the second degree was one purely of terminology. It did not affect the degree of the offenders guilt; it was not required to be mentioned in the indictment; and it has no bearing on the trial or punishment.

As "accessory before the fact" was one who counseled, commanded, procured or otherwise encouraged the guilty party to commit the crime, the former not being present at the actual commission of the offense. He also was equally guilty and subject to the same punishment as the principal in the first or second degree. The only distinction between a principal of the second degree and an accessory before the fact was that the former was present while the latter was not. According to the then existing procedural rules, no conviction was possible if the defendant was charged as a principal and proved to be an accessory, or was charged as an accessory and proved to be a principal. He could not be tried until after the conviction of the principal unless both were tried jointly, in which case

the jury could not consider the question of guilt of the accessory until after they had first found the principal to be guilty. If the principal was never apprehended or had died, the accessory could not be brought to justice. It became apparent that it highly desirable to eliminate entirely the distinction between principals of the first degree and principals of the second degree and accessories before the fact and declare all such parties to be principals. The California Legislature did just that by enacting Section 971 of the Penal Code entitled: "Distinction Between Accessory Before the Fact and Principals Abrogated: All Concerned Prosecuted, etc., as Principals: Allegations," which, as amended in 1951, reads as follows: "The distinction between an accessory before the fact and a principal and between principals in the first and second degree in abrogated; and all persons concerned in the commission of a crime, who by the operation of other provisions of this code are principals therein, shall hereafter be prosecuted, tried and punished as principals and no other facts need be alleged in any accusatory pleading against such person than are required in an accusatory pleading against a principal."

The California Penal Code defines principals as:

"All persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly commit the act constituting the offense, or aid and abet in its commission, or, not being present, have advised and encouraged its commission, and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime, or who by fraud, contrivance, or force, occasion the drunkeness of another for the purpose of causing him to commit any crime, or who by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed."

By the first sentence - "All persons concerned in the commission of crime, whether it be felony or misdemeanor" - we find that the designation "principal" applies to all crimes, misdemeanors as well as felonies. The next portion of that sentence, "whether they directly commit the act, or aid and abet in its commission", needs some explanation. If they directly commit the act is self-explanatory. The word "aid" means to support, help, assist, or strengthen. "Hines v. State, 16 Ga. App. 411; 85 S.E. 452; State v. Harris, 74 Ore. 573, 144 P 109.) To act in cooperation with. (Cornett v. Commonwealth, 198, Ky. 236, 248 S.W. 540, 542.) This work must be distinguished from its synonym "encourage", the difference being that the former connotes active support and assistance, while the latter does not; and also from "abet", which last word imports necessary criminality in the act furthered while "aid" standing alone, does not (Osborne v. Boughman, 85 CA 224, 259P 70).

The words "aid" and "abet" are nearly synonymous terms as generally used; but, strictly speaking, the former term does not imply guilty knowledge or felonious intent, whereas the word "abet" includes knowledge or the wrongful purpose, and counsel and enouragement in the commission of the crime (People v. Dole, 122 C 486, 55 P 581; People v. Morine, 138 C 626, 72 P 166; People v. Yee, 37 CA 579, 174 P 343.).

A striking example of the responsibility of a principal is contained in People v. Hopkins, 101 CA 2nd 704. Briefly, the facts are: - On September 18, 1949, Richard N. Hopkins delivered a friend, Herbert Caro, who was quite ill, to the Park Emergency Hospital in San Francisco. His case was diagnosed as narcotic poisoning, and Hopkins informed the doctor in attendance that Caro had taken heroin earlier that day. Caro died that afternoon. Hopkins made a statement to an inspector of the SFPD that he was a seaman, that he had left his ship in San Francisco on September 17th in early afternoon and visited a tavern in Marin County where he met decedent whom he had known for about three years. Decedent asked him "if he would like to get high tonight" to which he assented and they left in Hopkins' car. Hopkins gave decedent $13.00 and about fifteen minutes later decedent returned to the car, having purchased some heroin. They then drove out to Funston Avenue where they stopped, opened the package, and decedent produced an eye-dropper which he filled with water at a service station. They drove around a few blocks, and then parked on 14th Avenue where they took a cap of heroin and mixed it in a spoon, heated it, and after they had it mixed Hopkins said he took a shot in the arm and then Caro took a shot. Hopkins wrapped a handkerchief around decedent's arm to force Caro's veins out. Hopkins took another shot and then assisted Caro in taking his second shot, in the same manner by wrapping the handkerchief around Caro's arm, as he had when he took the first shot. After Caro took the second shot, he said he felt sick so he got out of the car attempted to vomit. He wasn't able to, and Hopkins got out and walked around the car to Caro who was practically unconscious. He, (Hopkins) then placed Caro in the back seat of the car and took him to the Park Emergency Hospital.

When the decedent injected the heroin into his own arm he violated Sections 11721 and 11009 of the Health & Safety Code, and when Hopkins manipulated the handkerchief-tourniquet around the decedent's arm he assisted him in the commission of an unlawful act not amounting to a felony. As a result of these acts, decedent died. In reviewing the case the District Court of Appeal said; "The help which Hopkins gave decedent brings him within the provisions of Section 31 of the Penal Code. That he aided is clear, that he abetted is clear, since he and decedent set out together with the purpose of doing that which Section 11721 H. & S. denounced.

"In order to charge Hopkins with manslaughter it was not necessary for the testimony before the grand jury to show that he injected heroin, since Section 31 draws no line between persons who directly commit the act constituting the offense and those who aid and abet in its commission."

Going on with Section 31 - "or, not being present, have advised and encouraged its commission". In 1908 the District Court of Appeal, in the case of People v. Frank Lewis, said: "To be a principal it is not necessary that the person be present at the commission of the crime". In that case the defendant was charted in the information with the crime of rape upon a child under the age of sixteen years. The jury returned a verdict of guilty as charged. Defendant appealed from the order denying his motion for a new trial and from the final judgment of conviction.

The prosecutrix was the stepdaughter of defendant. There was no evidence that defendant had sexual intercourse with her or that he was present at the commission of the crime, but there was abundant evidence that he aided and abetted its commission by one Alan Wheeler, a youth of 17 years-of-age. Defendant's contention was that because he was not present when the crime was committed the evidence must be held to be insufficient to justify the verdict.

The evidence was that defendant on several occasions solicited Wheeler to have sexual intercourse with the defendant's step-daughter; that he brought them together under circumstances calculated to arouse their animal passions and to bring about his wicked design; he advised Wheeler to procure vaseline to be used in the act of coition, if found necessary, and he also procured medicated capsules or suppositories and gave them to the girl, and instructed her in Wheeler's presence on how to use them to prevent conception.

There was evidence that about Christmas, 1907 defendant took his step-daughter and Wheeler to San Francisco, as the evidence showed, in furtherance of his said design previously urged from Wheeler. They occupied a small room in which there was one bed and all three slept in it. The second night they occupied a different room in which there were two beds; defendant slept in one and Wheeler and the girl in the other. The Court held that this was ample evidence to convict Lewis of statutory rape, as a principal.

In the case of People v. Wood, 56 CA 431, the Court said; "Where a person provides a room for another to commit statutory rape, both are guilty as being principals to the crime of rape".

In this case defendant and one James Moore were jointly charged by information with the crime of committing statutory rape. As to Moore, the information was dismissed, and upon trial defendant was convicted. He appealed from judgement where by he was sentenced to imprisonment in the county jail for a term of nine months.

Appellant's chief contention was that the verdict was not warranted by the evidence. While it is conceded that defendant did not have sexual intercourse with the girl involved, it conclusively appears from the evidence that at about 2:00 a.m., defendant met Moore and the girl together, and that he, Wood, at the request of Moore, procured a room for their use, to which he conducted them and where they spent the remainder of the night until 6:00 a.m., at which time, as agreed, defendant returned and awakened them. That, as shown by the evidence, he knew the illegal purpose for which the room was to be used and knowingly both aided and abetted Moore in the commission of the crime. The conviction was sustained.

We see, therefore, that a person may be convicted as a principal even though not present at the actual commission of the offense.

Again, going back to Section 31 - "and all persons counseling, advising, or encouraging children under the age of fourteen years, lunatics or idiots, to commit any crime." Here we have a situation where the person who commits the crime, such as a child under the age to fourteen, a lunatic or idiot, might not be guilty of any crime, as Section 26 P.C. refers to those people as being incapable of committing crime, yet, the person who counseled, advised, or encouraged them to perform the prohibited act would be subject to prosecution as a principal by virtue of Section 31. In 1919, when San Pedro was a city separate from Los Angeles, the parents of a four-year-old child who encouraged it to use a tricycle on the sidewalks of the city in violation of an ordinance were guilty of violation of that ordinance as principals (180 C 260, 180 P 605).

Again looking at Section 31 P.C., "or who, by fraud, contrivance, or force, occasion the drunkeness of another for the purpose of causing him to commit any crime." Causing a person to become intoxicated by means of fraud, contrivance, or force for the purpose of causing the intoxication of a married woman to have her commit adultery, would be examples of this portion.

Section 31 continues, "or who by threats, menaces, command, or coercion, compel another to commit any crime, are principals in any crime so committed." We might group those four words, threats, meanaces, command, and coercion under on heading and call it "compulsion," for we find the phraseology of the section requires that the innocent party be compelled to commit the offense through this means. Usually, the actual perpetrator of the offense under these circumstances (unless the offense be punishable with death), would have a defense under Section 26 P.C., however, the person who compelled him to perform the forbidden act would be just as guilty as he would have been had he committed the act himself.

As has been stated, there is no longer an "accessory before the fact" in California. We only have ONE type of accessory; therefore we no longer use the terms "accessory before the fact" or "accessory after the fact," but merely the general term "accessory." We find our definition of an accessory in Section 32 of the Penal Code: "Every person who, after a felony has been committed, harbors, conceals, or aids a principal in such felony, with the intent that said principal may avoid or escape from arrest, trial, conviction, or punishment, having knowledge that said principal, has committed such felony or has been charged with such felony or convicted thereof, is an accessory to such felony."

Note the language used as this section begins: "Every person who, after a felony has been committed." Section 32 P.C. applies only to felonies. There is no such thing as an accessory to a misdemeanor.

To harbor a person means to receive clandestinely and without lawful authority a person for the purpose of so concealing him that another having the right ot lawful custody of such person shall be deprived of same. It may be aptly used to describe the furnishing of shelter, lodging, or food clandestinely or with

concealment, and under certain circumstances, may be equally applicable to those acts divested of any accompanying secrecy (U.S. vs. Grant, 55 F 415).

Under Section 4075 of the Penal Code of the State of Utah, which provided that persons who, after knowledge that a felony has been committed, harbor or protect the person charged therewith or convicted thereof, are accessories, the words "harbor and protect" imply more than a mere withholding of knowledge of the whereabouts of the party charged, and necessarily contemplate some affirmative act of concealment or assistance rendered to the principal personally. (Ex parte Overfield, 39 Nec. 30, 152 P 568.)

The word "conceal," as used in this section, means more than a simple withholding of knowledge possessed by a party that a felony has been committed. This concealment necessarily includes the element of some affirmative act upon the part of the person tending to or looking toward the concealment of the commission is not sufficient to constitute the party an accessory. The word "charged," as used in this section, means a formal complaint, indictment, or information filed against the criminal, or possibly an arrest without warrant might be sufficient. Mere general rumors and common talk that a party has committed a felony is wholly insufficient to fill the measure required by the word "charged." (People v. Len Garnett, 129 C 364)

We find, then, that in order to successfully prosecute a person for the crime of accessory, we will have to establish in the evidence that he had actual knowledge that the principal had committed a felony, had been charged with a felony, or had been convicted thereof; then, with the knowledge, he either harbored, concealed, or aided such principal, and that he did so with a specific intent--that by so harboring, concealing or aiding such principal, it would assist the principal in avoiding arrest, trial, conviction, or punishment.

Section 33 provides that the punishment of an accessory is by imprisonment in the state prison not exceeding five years, or in the county jail not exceeding two years (now reduced to one year by operation of Section 19a P.C., or by a fine not exceeding five thousand dollars.)

Section 791 P.C. reads as follows: "In the case of an accessory, as defined in Section 32, in the commission of a public offense, the jurisdiction is in any competent court within the jursidictional territory of which the offense of the accessory was committed, notwithstanding the principal offense was committed in another jurisdictional territory.

Therefore, if a felony is committed in San Francisco, and the perpetrator flees to Los Angeles, and someone performs any act making him an accessory to such felony, the accessory would be prosecuted in Los Angeles County, notwithstanding the fact that the principal would be prosecuted in the City and County San Francisco.

A person who knowingly, voluntarily, and with common intent with the principal offender unites in the commission of crime is an accomplice (People v. Sieffert, 81 CA 195, 253 P 189). Section 1111 P.C. defines an accomplice as "one who is liable to prosecution for the identical offense charged against the defendant on trial in the case in which the testimony of the accomplice is given." The purpose of this section is to define a rule of evidence, as well as an accessory.

An "accomplice" is one "associated with and culpably implicated with others in the commission of a crime, all being principals" (114 ALR 1315). One who could be indicted as a principal would be an accomplice. The term is used to define a situation from which certain collateral consequences flow, such as the need of corroboration of testimony, or the competency of an accomplice as a witness. It is commonly applied to those testifying against their fellow-criminals; and if in the course of a trial any of the latter are called as witnesses, although they are principals, they are referred to as accomplices (73 ALR 380). We might say, therefore, that any principal or any conspirator, when called upon to testify in the trail of his co-conspirators then becomes identified as an accomplice.

There are some situations in California where a participant in crime cannot be an accomplice. In statutory rape, Section 261.1 P.C., for instance, the prosecutrix being under the statutory age of consent, cannot be an accomplice. The victim of a violation of Section 288 P.C., being under the age of fourteen years, cannot be an accomplice. If the offense is also a violation of Section 288a P.C., and the child, under fourteen, was a willing participant, and it could be established satisfactorily in the evidence that the victim knew the wrongfulness of their act at the time it was committed, the victim would then be an accomplice insofar as the 288a was concerned.

The test of accomplicity, therefore, is whether one can be prosecuted as a principal. He must be liable himself for the identical crime for which the principal is on trial. He must be called as a witness in that trial, and then we will refer to him as an accomplice.

REFERENCES:

California Penal Code Sections 31, 32, 33, 791, 971, & 1111
Hines v. State, 16 Ga App. 411; 85 S. E. 452
State v. Harris, 74 Ore. 573; 144 P 109
Cornett v. Commonwealth, 198 Ky. 236; 248 S. W. 540, 542
Osborne v. Boughman, 85 CA 224; 259 P 70
People v. Dole, 122 C 486; 55 P 581
People v. Morine, 138 C 626; 72 P 166
People v. Wm Yee, 37 CA 579; 174 P 343
People v. Hopkins, 101 CA 2d 704; 226 P 2d 74
People v. Wood, 56 CA 431; 205 P 698
People v. Frank Lewis, 9 CA 279; 98 P 1078
People v. Len Garnett, 129 C 364
People v. Seiffert, 81 CA 195; 253 P 189
Ex Parte Overfield 39 Nev. 30; 152 P 568
73 ALR 380 and 114 ALR 1315.

Reference Materials

This section is set up as reference information for use by training institutions. These materials can be utilized for prime instruction; remediation, additional reading, viewing or for planning local units of instruction. They are presented here as instructional materials that may assist the learner or the academy staff in the teaching-learning process. Each training institution is encouraged to expand this list but only after careful viewing and reading to determine its acceptability.

Black, Henry Campbell, Black's Law Dictionary. Minnesota: West Publishing Company.

California Digest, West Publishing Co., St. Paul, Minnesota.

California Penal Code, Legal Book Corporation, Los Angeles.

California Reporter, West Publishing Co., St. Paul, Minnesota.

Deering's California Penal Code, California: Bancroft-Whitney Co., Publishers. (Compilation of the penal statutes of the State of California, both substantive and adjective in nature.)

Dramer, Daniel L., Criminal Law For California Peace Officers. Avery Publishing Company, San Diego, California.

California Peace Officers Legal Source Book - California Departmemt of Justice.

Health and Safety Code:, California: State of California, Department of General Services.

Payton, George T., Peace Officer's Guide to Criminal Law. Criminal Justice Service, San Jose, California.

Supreme Court Reporter, West Publishing Co., St. Paul, Minnesota.

"The Elements of Intent in Criminal Law"--CCL--3, California Criminal Justice Series, Riverside Academy of Justice

Tierney, Kevin, Courtroom Testimony: A Policeman's Guide, New York: Funk and Wagnalls, 1970, 243 pp.

West's Annotated California Penal Code, Minnesota: West Publishing Co. (An additional source of appellate court decisions that have impacted on the penal statutes of this state.)

In no way is this list an endorsement of any author, publisher, producer, or presentation. Each training institution must read or view these materials, and others to establish their own list of reference materials.