BASIC COURSE INSTRUCTOR UNIT GUIDE

5

INTRODUCTION TO CRIMINAL LAW

July 1993

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. It 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.

UNIT GUIDE 5

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Introduction to Law

"SPIRIT" OF THE LAW v. "LETTER" OF THE LAW

Given a word picture depicting an officer's response to a crime, the student will identify whether the officer's response was in accordance with the "spirit" or "letter" of the law.

Performance Objective 3.1.1

CURRICULUM

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 discipline 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 situation in accordance with the intent of the legislature 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. (Penal Code Section 4)

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

(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 effect at the time of arrest. Furthermore, a crime or public offense is an act committed or omitted in violation of a written law 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. (Penal Code Section 15)

   b. No one can be punished for a mere intent 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.

DEFINITION OF TERMS

Given a definition of one of the following terms, the student will identify the term that matches the definition.

A. **Spirit of the law** means that the law is applied in accordance with the intent of the legislature and not in literal compliance with the words of the statute

B. **Letter of the law** means that the law is strictly applied in accordance with the literal meaning of the statute, leaving no room for interpretation

C. **Common law** is the body of laws that originated and developed in England. It is based on court decisions, on the doctrines implicit in those decisions, and on custom and usage

D. **Statutory law** is written law enacted by the legislative body of a nation, state, county, or city

E. **Constitutional law** is the law of a nation or state which addresses the organization and powers of government, and the fundamental principles which regulate the relations of government with its citizens

F. **Municipal codes** are statutes enacted by a city

G. **Ordinances** are statutes enacted by a city or county

H. **Stare decisis** means "let the prior decision stand." It is a policy of law by which courts usually abide by previously decided principles. This policy is also called "precedent." The application of this policy creates a body of law called "case law"

I. **Case law** is a body of law based on prior judicial decisions (i.e., precedent)

J. A **crime** is an act committed or omitted in violation of a law forbidding or commanding it, and for which punishment is imposed upon conviction

K. A **tort** is a private or civil wrong or injury, other than breach of contract, for which the court will provide a remedy. An act or omission is tortious if it violates a legal duty owed to another person

L. A **felony** is the most serious of crimes, punishable by death or imprisonment in a state prison

M. A **misdemeanor** is an offense of lesser gravity than a felony, for which punishment may be a fine or imprisonment in a local jail rather than a state prison

N. An **infraction** is a public offense which is punishable by a fine only

O. A **"wobbler"** is a term for a crime that may be punished by imprisonment in either the county jail or the state prison

P. **Corpus delicti** literally means the "body of the crime." The **corpus delicti** are the basic facts necessary to prove the commission of a crime

Q. **Intent** is a state of mind inferred from evidence. The presence of a designated state of mind (general intent, specific intent, or criminal negligence) distinguishes a crime from an accident or mistake of fact

R. **Specific intent** denotes a design, resolve, or determination to commit an act the law prohibits. Specific intent is a state of mind that must be proved along with the other elements of the crime

S. **Transferred intent** is when the intended act misses or goes beyond the person it was intended to injure and causes the intended results to fall on a third person. Transferred intent requires that the intention of the criminal act be transferred from the intended victim to another victim. The intended act must, however, be unlawful

DEFINITION OF TERMS (Cont.)

T. **General intent** is the intent to do that which the law prohibits. It is not necessary for the prosecutor to prove the defendant intended the precise harm or result that occurred. General intent requires that the accused merely intended to commit the act even if he or she had no intention or knowledge of violating the law

U. **Criminal negligence** is failure to use the degree of care required to avoid criminal consequences

V. **Principals** are all persons concerned in the commission of a crime, whether it be felony or misdemeanor, and whether they directly committed the act constituting the offense, or indirectly committed the act by aiding, abetting, counseling, encouraging or threatening (Penal Code Section 31)

W. An **accessory** is a person who, after a felony has been committed, harbors, conceals or aids a principal, with the intent of helping the principal to escape or avoid arrest, trial or conviction. (Penal Code Section 32)

X. An **accomplice** to a crime is a co-principal who may testify against another principal (Penal Code Section 1111)

Y. A **feigned accomplice** to a crime is one who pretends to consult and act with others in the planning or commission of a crime, but only for the purpose of discovering their plans and confederates and securing evidence against them

Z. **Entrapment** is inducing a person to commit a crime which he did not contemplate for the purpose of prosecuting him. Entrapment is a defense in which the defendant claims that an officer caused him to commit the crime. The test is whether a normally law-abiding citizen would have committed the crime under the same circumstances. (**Barraza**, 1979, 23 Cal. 3d 675)

AA. **Reasonable suspicion** is the amount of knowledge sufficient to induce an ordinarily prudent and cautious person under similar circumstances to believe criminal activity is at hand. In order for an officer to validly detain a person based on reasonable suspicion, the officer must be able to articulate the specific facts which lead to the belief that a crime had occurred (or was about to occur) and that the person detained was connected with the crime

AB. **Probable cause** is a suspicion founded on circumstances that are sufficiently strong to justify a person in the belief that the charge is true

AC. **Persons that cannot be held liable for committing a crime** are: a) Children under the age of 14, in the absence of clear proof, as determined by the court, that at the time of the act they knew of its wrongfulness; b) Idiots or persons who exhibit mental deficiency in its most severe form (severe mental retardation); c) Persons who act under an ignorance or mistake of fact, which disproves any criminal intent; d) Persons who commit an illegal act without being conscious of their actions; e) Persons who commit an illegal act by accident without evil design or intention, or culpable negligence; f) Persons (unless the crime be punishable with death) who commit illegal acts under threats or menaces that lead them to believe their lives would be endangered if they refused to commit the act (Penal Code Section 26)

AD. The **elements of a crime** constitute parts of a crime which must be proved by the prosecution to sustain a conviction

Performance Objective 3.1.4

CURRICULUM

A. 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 most likely 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

c. Other codes that may be encountered are:

(1) Education Code

(2) Government Code

(3) Public Resources Code

(4) Fish and Game Code

(5) California Code of Regulations (formerly California Administrative Code)

d. 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.

(1) Substantive Law regulates conduct. It states what a person must or must not do.

(a) Example: Penal Code

NOTE: Not all sections of the Penal Code are arrest sections. Some are definitions, procedures, or enabling sections. (e.g., Penal Code Section 1538.5)

(2) Procedural Law defines procedures. It prescribes methods for enforcing and/or maintaining rights.

(a) Example: Evidence Code

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 circumstances 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 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.

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".

B. 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.

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.

NOTE: All reference to dollar amounts as they relate to specific punishments has been deleted due to the fact that they frequently change.

C. 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

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.

(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 pay family support, failure to obey traffic law, failure to pay taxes.

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 (Penal Code Section 17).

D. Crimes are divided into three classifications under California criminal law, Penal Code Section 16:

1. Felonies (most serious)

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. Misdemeanors (less serious)

a. Misdemeanor crimes are crimes punishable by up to one year in county jail and/or by a fine. (Penal Code Sections 19 and 19.2)

3. Infractions (least degree)

a. An infraction is not punishable by imprisonment (Penal Code Section 19.6)

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 19.6).

d. A person charged with an infraction shall not be entitled to have the public defender or other counsel appointed at public expense 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 19.6).

(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 (Penal Code Section 853.7 and Vehicle Code Section 40508a).

(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 (Penal Code Section 19.7).

E. 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.

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 an animal acting on its own accord.

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 any identifying characteristics of the suspect, but proof that the act was committed by a 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, struck by lightning, etc.

2. The corpus delicti of every crime consists of the following elements:

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 legal 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 legal 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 wherein the body was never located

b. The corpus delicti cannot, however, be proven solely on the basis of an extra-judicial (out of court) admission or confession.

NOTE: Refer to Penal Code Section 1096

F. 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:

(1) This amounts to a legal question that is determined by the court at the time of the trial. (In re: Gladys R. 1 Cal 3rd 855)

(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).

NOTE: 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 is 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 is 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

(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.

d. The fourth class of persons is persons who committed the act charged without being conscious of it.

(1) Again, if the person is not conscious of the act, he does not possess the necessary union of act and intent. (Penal Code Section 20)

(2) Examples would include persons acting under delirium of fever, diabetic, while sleepwalking, under adverse reaction to legally prescribed drugs, etc.

e. The fifth class is persons 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 is 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 (Penal Code Section 197.2) into play, but would not excuse a crime under this section.

2. 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 was 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.

3. The common denominator to Penal Code Section 26 is the inability to form the necessary criminal intent.

4. 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.

TORTS V. CRIMES

Given a word picture depicting a tort, contract dispute, or crime, the student will identify whether the matter is civil or criminal.

Performance Objective 3.1.5

CURRICULUM

A. Civil law versus criminal law

1. A civil action is a wrong against the person.

2. The violation of a criminal law is a crime against the People of the State of California.

CONCEPTS OF CRIMINAL INTENT

Given a word picture depicting a crime, the student will identify which of the following can be legally inferred from the acts of the perpetrator.

A. General intent
B. Specific intent
C. Transferred intent
D. Criminal negligence

Performance Objective 3.3.1

CURRICULUM

A. In every crime or public offense, there must exist a union or joint operation of act and intent or criminal negligence (P.C Section 20).

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. There are four types of criminal intent recognized under California criminal law: general, specific, transferred intent and criminal negligence.

1. General intent

a. The intent requirements, in general intent crimes, is met if the accused merely intended to do the outlawed act, even if the accused did 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 requires to be made from another fact or group of facts established by the evidence.

(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 to stop.

d. In essence, then, no specific 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 presumed, but it can be inferred 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.

3. 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 act and intent 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.

C. Doctrine of transferred intent

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

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

b. "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."

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

(a) 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.

(b) "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.

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

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

b. 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."

CRIMES OF ACCESSORIES, PRINCIPALS, ACCOMPLICES

Given a word picture depicting a crime the student will identify the parties involved as principals or accessories. (Penal Code Sections 31 and 32)

Performance Objective 3.4.3

CURRICULUM

A. Principal defined (Penal Code Section 31)

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, can be prosecuted, tried, and punished as principals.

B. Accessory defined - Penal Code Section 32

1. 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.

2. Section 33 of the Penal Code provides that the punishment for accessories is a felony.

3. There is no such thing as accessory to a misdemeanor.

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: Mitchell 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. Testify 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.

NOTE: See definition of feigned accomplice in Performance Objective 3.1.4, subsection Y.

ENTRAPMENT

Given a word picture depicting the conduct of an undercover officer or a person acting on behalf of a law enforcement agency, the student will identify whether the conduct constitutes entrapment.

Performance Objective 3.5.1

CURRICULUM

A. Definition of entrapment

Black's Law Dictionary defines entrapment as the act of police inducing a person to commit a crime not contemplated by the person for the purpose of prosecuting the individual.

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.

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. If there is no evidence that persuasion or inducement was used or offered to the defendant to do what he did, there could be no entrapment.

NOTE: Discuss "sting" operations, prostitution, narcotic buys, etc.

SUPPORTING MATERIAL

AND

REFERENCES

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TOPICAL LIST OF SUPPORTING MATERIALS AND REFERENCES INCLUDED IN THIS SECTION

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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, Penal Code Section 647(f) , 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.).

GENERAL AND SPECIFIC INTENT

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.

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.

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.

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 pre-disposition 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 similarly induced?" The court also added that if the police used begging, badgering, cajoling, false friendship, or the use of an irresistible inducement, it would tend to indicate entrapment. Practically speaking, there hasn't been any serious enforcement problems as a result of this change.

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 (Penal Code Section 32).

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 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."

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 encouragement 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 u, 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 Penal Code Section 26 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 Penal Code Section 31, "or who, by fraud, contrivance, or force, occasion the drunkenness 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, menaces, 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 Penal Code Section 26, 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." Penal Code Section 32 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 to 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 with-holding 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 Penal Code Section 19a, or by a fine not exceeding five thousand dollars.)

Penal Code Section 791 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 jurisdictional 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, not-withstanding 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). Penal Code Section 1111 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, Penal Code Section 261.1, for instance, the prosecutrix being under the statutory age of consent, cannot be an accomplice. The victim of a violation of Penal Code Section 288, being under the age of fourteen years, cannot be an accomplice. If the offense is also a violation of Penal Code Section 288a, 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 identicai 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.

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