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BASIC COURSE INSTRUCTOR UNIT GUIDE

6

CRIMES AGAINST PROPERTY

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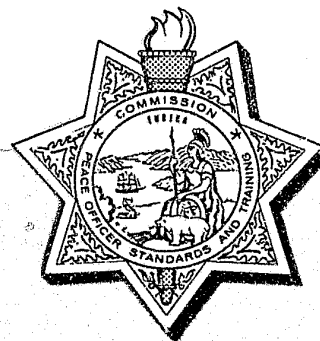
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

The curricula contained in this document is designed as a *guideline* for the delivery of performance-based law enforcement training. It is part of the POST Basic Course guidelines system developed by California law enforcement trainers and criminal justice educators in cooperation with the California Commission on Peace Officer Standards and Training.

UNIT GUIDE 6

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CURRICULUM

I. THEFT

A. Theft defined (Penal Code Section 484)

Theft may be defined as the taking and carrying away of the personal property of another, without the owner's consent, with the specific intent to permanently deprive the owner thereof.

1. Elements of theft

- a. Taking and carrying away
- b. Property of another
- c. Without consent of the owner
- d. Specific intent to deprive permanently

2. Crime classification

- a. Grand theft - felony
- b. Petty theft - misdemeanor (Penal Code Section 486).

3. Discussion

a. Taking and asportation

- (1) To constitute the necessary asportation, the thief must move the property so that in some degree it occupies a change in location and the conditions must be such that the thief secures such dominion over the property as to be able to carry it away.
- (2) The thief, intending to steal an overcoat from a clothing dummy in front of a store, removed the coat but was unable to carry it away because it was fastened to the dummy by a chain. Not having obtained dominion or control over the coat, there was no asportation; result, no larceny. (People v. Meyer, 75 Cal. 383)
- (3) Where dominion or control over the property is secured and there be any movement of the property from the place it occupied to another place, even though the distance it was moved is only a matter of inches, asportation is complete.
- (4) Merely grasping the handle of a suitcase with intent to steal would not be asportation but merely an attempt; but once the thief has raised or moved the suitcase from its place, the asportation and the theft are complete. (People v. Davis, 76 Cal. App. 2d 701)

- (5) It is not necessary that the asportation go to the extent of removing the property from the premises upon which it was stolen. (People v. Arnest, 133 Cal. App. 114, People v. Koury 108 Cal. 3rd Supp. 1)
- (6) The asportation "need be only for an appreciable time be it ever so short". (People v. Dukes, 16 Cal. App. 2d 105)
- (7) Once there is asportation, the voluntary return of the property does not affect the guilt of the thief. (People v. Post, 76 Cal. App. 2d 511)
- b. With specific intent to permanently deprive the owner of his property
 - (1) It is not necessary that the taking be for the sake of gain, just intention to deprive the owner of his property permanently.
 - (2) Specific intent must exist at the time of the taking and not at a later time.
 - (3) A taking with the intention of returning the property or a taking without the intent to permanently deprive the owner of his property will not amount to larceny even though the accused, after gaining possession of the property formed that intent. (People v. Brown 105 Cal. 66)
 - (4) If one in good faith takes the property of another believing it to be legally one's own or a one's legal right to its possession, he/she is not guilty of theft; to wit, the specific intent to permanently deprive the owner of his property is absent. (People v. Photo, 45 Cal. App. 2d 345)
- c. To determine the value of the property taken, the reasonable and fair market value shall be the test.
 - (1) In determining the value of services received, the contract price shall be the test.
 - (2) Retail stores - retail value of item taken (market value plus tax)
- B. **Grand theft** as defined in Penal Code Section 487 is committed in the following cases:
 - 1. When the money, labor, or real or personal property taken is of a value **exceeding** \$400 (the fair market value, contract price), (Penal Code Section 487(a)) or
 - 2. When the value of the following exceeds \$100:
 - a. Domestic fowls
 - b. Avocados (based on wholesale value)
 - c. Citrus fruit (based on wholesale value)
 - d. Deciduous fruit
 - e. Nuts

- f. Artichokes
 - g. Olives
 - h. Other fruits and vegetables and other farm crops (Penal Code Section 487(b)(1)(A).
 - i. Fish, shellfish, kelp, algae, crustaceans and other aquacultural products (Penal Code Section 487(b)(2))
3. When the money, labor, real or personal property is taken by a servant, agent or employee from his employer and aggregates \$400 or more in any 12 consecutive month period (Penal Code Section 487(b)(3), or
4. When the property taken is **from the person of another** (Penal Code Section 487(c))
5. When the property taken is one of the following; (regardless of value)
- a. Horse
 - b. Mare
 - c. Gelding
 - d. Bovine animal (cow)
 - e. Caprine animal (goat)
 - f. Mule
 - g. Jack
 - h. Jenny
 - i. Sheep (bovine)
 - j. Lamb
 - k. Hog
 - l. Sow
 - m. Boar
 - n. Gilt
 - o. Barrow
 - p. Pig

(Penal Code Section 487(d))

6. Firearm

(Penal Code Section 487(d))

- C. **Petty theft** as defined in Penal Code Section 488 includes those thefts which are not classified as grand theft.

D. **Other types of thefts**

1. **Theft by False Pretense** defined - Penal Code Section 532, (corroboration required) - The significant characteristic of a case of obtaining property by false pretenses is that it resembles a legitimate transaction, usually in the nature of an exchange, transfer or sale of property. In order to induce the victim to part with his property, the defendant will, knowingly and with intent to defraud, misrepresent that which the victim is to receive. The victim, believing and relying on the representation to be true, parts with title to property which one would not have done had he known the true facts.

a. Elements

- (1) Specific intent to defraud--defendant must know of the falsity
- (2) An actual fraud committed
- (3) False pretenses must be used for the purpose of perpetrating the fraud.
- (4) The false pretenses used must have been the cause which induced the owner to part with the property or title to property.

b. Discussion

- (1) The false pretense, while usually an oral statement, may be in writing, or by the act or silence of a person, or by a person knowingly allowing his agent to make the false statements.
- (2) Statements which amount to no more than an expression of opinion are not false pretenses.
- (3) If a person makes a false statement believing it to be true, this would not constitute theft by false pretenses as there would be no intent to defraud.
- (4) Victim must have relied upon the truth of one or more of the false representations for parting with his property. Not necessary that it was the sole reason for parting with property. Victim not obligated to investigate into truthfulness of representation.
- (5) A representation of a future fact is not sufficient.

- (6) The false pretense must be of a past fact or present one--this is a fraudulent pretense.
 - (a) "Tricks of the trade" and "puffing" (e.g. exaggerating about the quality or value of something) are not illegal.
 - (b) Without any false representation as to the character, quality, or quantity of merchandise sold, owner can make false and exaggerated statements to induce a sale (e.g., "Due to low overhead and volume buying, we can sell our goods 25% cheaper than anyone else", when in fact the goods are higher than elsewhere).
- (7) Corroboration required (Penal Code Section 532(b))
- (8) To constitute offense of attempt to secure money by false pretenses, it is not necessary that victim rely on or be deceived by pretenses (People v. Wallace, 1947, 78 CA 2d, 726)

2. **Theft by Trick or Device** - Penal Code Sections 488 and 487, also Penal Code Section 332 (3 Card Monte) - More commonly referred to as a "bunco" or confidence game. This is a form of swindle in which a theft is committed by use of trick, device, secret, stealth, or fraud. Or, as is most often the case, by false fraudulent representation, there is held out to the victim the promise of financial or other gain much to be desired, or an appeal to the sympathy, emotions, or desires of the victim.

a. Elements

- (1) Defendant has specific intent to bilk victim
- (2) Defendant gains possession of the property through trick, device, fake or fraudulent representations, etc.
 - (a) Appeals to the sympathy, demotions, desires of the victim
 - (b) Usually offering a promise of financial or other gain, or a tremendous advantage
- (3) Owner is under the assumption of not losing title to the property

b. Discussion

- (1) Theft by trick and device and obtaining money by false pretenses are frequently so similar in the modus operandi employed by the swindler that, depending upon the conclusion which may be formed as to the intent of the parties, the crime may be viewed as either theft or obtaining property by false pretenses and a verdict or conviction of either offense may be sustained. In both offenses the victim parts with property because of fraud and deceit practiced by the defendant. If false representations do not relate to the past or present, or are mere matters of opinion or promise, then false pretenses is eliminated.

- (2) The basic test to distinguish between theft by false pretenses and trick and device is found in the intent of the owner. In false pretenses, the owner of the property turns it over to the defendant intending that he/she shall become unconditional and unrestricted owner (gives up complete title and all ownership rights). In trick and device, the owner never intends that the property shall belong to or become the property of the defendant; the owner never intends to part with the title to the defendant, but merely turns the possession of the property to the defendant to be used by him according to an agreement between the parties.

c. Examples of theft by trick or device include:

- (1) The pigeon drop
- (2) Paddy hustle
- (3) Jamaican switch

3. **Access Cards** - The plastic world of access cards (credit cards) has led to the adoption of a number of sections governing their misuse.

a. Definitions (Penal Code Section 484d)

- (1) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.
- (2) "Access card" means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds other than a transfer originated solely by a paper instrument.
- (3) "Expired access card" means an access card which shows on its face it has elapsed.
- (4) "Card issuer" means any person who issues an access card or the agent of such person with respect to such card. The card issuer is the owner of the access card.
- (5) "Retailer" means every person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of an access card by a cardholder.
- (6) An access card is "incomplete" if part of the information, other than the signature of the cardholder which an issuer requires to appear on the access card before it can be used by a cardholder, has not been stamped, embossed, imprinted, or written on it.
- (7) "Revoked access card" means an access card which is no longer authorized for use by the issuer, such authorization having been

suspended or terminated and written notice thereof having been given to the card-holder.

b. Penal Code Section 484e - Theft of access card elements

(1) 484e has five exclusive subsections

(2) Depending upon the subsection, can be misdemeanor or felony

c. Penal Code Section 484f - Forgery of access card (felony)

d. Penal Code Section 484g - Use of forged access cards: misrepresentation as to identity of cardholder

e. Penal Code Section 484h - Retailer with intent to defraud furnishes money, goods, services on forged access card; failure to furnish as represented to issuer and receipt of payment

f. Penal Code Section 484i - Filling in incomplete card: counterfeit cards

E. Petty theft with priors

Petty theft with a prior conviction for a theft-related offense and jail time served constitutes a felony. (Penal Code Section 666)

F. Related statutes

Penal Code Section 491	Dogs are personal property
Penal Code Section 492	Larceny of written instrument
Penal Code Section 493	Passenger tickets; railroad, vessel, or public conveyances
Penal Code Section 494	Written instruments completed but not delivered
Penal Code Section 495	Severing and removing part of the realty
Penal Code Section 496c	Copying information relating to title to real property
Penal Code Section 498	Theft of utility services
Penal Code Section 499c	Trade secrets
Penal Code Section 499d	Aircraft

II. JOYRIDING/VEHICLE THEFT

A. Joyriding defined (Penal Code Section 499(b))

1. Joyriding is defined as the taking of a automobile (or other specified vehicle), without its owner's permission, and for the purpose of temporarily using or operating such vehicle.
2. Elements
 - a. Taking
 - b. automobile (or other specified vehicle)
 - c. without permission of its owner
 - d. for the purpose of temporarily using or operating
3. Crime classification: Misdemeanor
4. Intent: A violation of Penal Code Section 499(b) is a general intent crime. (CalJic no. 16.305, People v. Frye 34 CR2d 180)

B. Vehicle Theft defined (Vehicle Code Section 10851)

1. Vehicle Theft is committed by a person who drives or takes a vehicle not their own, without the consent of the owner thereof, and with the specific intent to either permanently or temporarily deprive the owner of their title to or possession of such vehicle.
2. Elements
 - a. Driving or taking
 - b. vehicle not the person's own
 - c. without consent of the owner
 - d. with specific intent to permanently or temporarily deprive owner
 - e. of title or possession of such vehicle

NOTE: See Vehicle Code Section 670 for definition of "vehicle".

3. Crime Classification: Felony
4. Intent: To constitute a violation of Vehicle Code Section 10851 there must be a specific intent to either permanently or temporarily deprive the owner of their title to or possession of the vehicle.
5. Related Statutes: Vehicle Code Section 10855 - Embezzled Vehicle

Whenever any person who has leased or rented a vehicle wilfully and intentionally fails to return the vehicle to its owner within five days after the lease or rental agreement has expired, that person shall be presumed to have embezzled the vehicle.

C. Grand Theft Auto (Motor Vehicle) (Penal Code Section h)

1. The crime of grand theft of a motor vehicle is committed by a person who steals, takes or drives away the motor vehicle of another with the specific intent to deprive the owner permanently of their property is guilty of a violation of Section 487h regardless of the value of the motor vehicle.
2. Elements
 - a. Steals, takes or drives
 - b. motor vehicle, special construction equipment, trailer or vessel of another with
 - c. specific intent to deprive owner permanently
 - d. of his or her property
3. Crime classification: Felony
4. Intent
 - a. A violation of Penal Code Section 487h requires a specific intent to permanently deprive the owner of their property.
 - b. If this element cannot be proven, then a jury will more than likely find a defendant guilty of violating Vehicle Code section 10851 only.

III. DEFRAUDING AN INNKEEPER

A. Elements (Penal Code Section 537)

1. Any person who obtains any
2. food, fuel, services or accommodations
3. at any hotel, inn, restaurant, boarding house, lodging house, apartment house, bungalow court, motel, marina, marine facility, auto camp, ski area, public or private campground, without paying for same,
4. with intent to defraud.

B. Crime classification

1. Misdemeanor if the value is \$400 or less
2. Felony if the value is over \$400

NOTE: Exception 537(b) - infraction which relates to ski areas

C. Discussion

1. The distinction between defrauding an innkeeper and theft is that theft involves wrongful taking and defrauding an innkeeper involves consensual acquisition.
2. Evidence that such person left the named locations without paying or offering to pay shall be prima facie evidence that the person obtained the food or accommodations with intent to defraud the proprietor or manager. Examples include:
 - a. eating in a restaurant and failing to pay the bill or
 - b. staying at a hotel and leaving without paying.
3. This section is not used to charge a theft of gas from a service station.

IV. APPROPRIATION OF LOST PROPERTY

A. Elements (Penal Code Section 485)

1. One who finds
2. lost property
3. under circumstances which give knowledge of or means of inquiry as to the true owner, and
4. who appropriates such property to their own use or to the use of another person not entitled thereto,
5. without first making reasonable and just efforts to find the owner and to restore the property.

NOTE: It is only when the property is lost that the statute applies. The statute does not apply to property which is abandoned.

B. Crime classification: Misdemeanor unless found property is specified under grand theft statute

V. UNAUTHORIZED ENTRY OF PROPERTY/TRESPASSING

A. Trespass with Credible Threat to Cause Injury defined (Penal Code Section 601)

1. Any person who makes a credible threat to cause serious bodily injury with the intent to place that other person in fear for their safety or the safety of their immediate family and who within 30 days of the threat unlawfully enters the real property with the intent to execute the threat against the target of the threat
2. Crime classification: Felony

B. Entering and Occupying Real Property defined (Penal Code Section 602(I))

1. Any person who enters and occupies real property or structures of any kind without the consent of the owner, the owner's agent, or the person in lawful possession
2. Crime classification: Misdemeanor

C. Trespass to Land defined (Penal Code Section 602(j))

1. Entering any lands, whether unenclosed or enclosed by fence, for the purpose of injuring any property or property rights or with the intention of interfering with, obstructing or injuring any lawful business or occupation carried on by the owner of the land, the owner's agent or by the person in lawful possession.

NOTE: Consider constitutional implications (e.g. free speech)

2. Crime classification: misdemeanor

D. Intentional Interference with Business by Obstructing or Intimidating Customers defined (Penal Code Section 602.1)

1. Any person who intentionally interferes with any lawful business or occupation carried on by the owner or agent of a business establishment open to the public, by obstructing or intimidating those attempting to carry on business, or their customers, and who refuses to leave the premises of the business establishment after being requested to leave by the owner or the owner's agent, or by a peace officer.

NOTE: Consider constitutional implications (e.g. free speech)

2. Crime classification: Misdemeanor

E. Unauthorized entry defined (Penal Code Section 602.5)

1. Every person other than a public officer or employee acting within the course and scope of his employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other such place without consent of the owner, his agent, or the person in lawful possession thereof.
2. Crime classification: Misdemeanor

NOTE: The suspect does not have to be asked to leave in order for this section to apply.

VI. BURGLARY

A. Burglary defined (Penal Code Section 459)

Every person who enters any house, room, apartment, tenement, shop, warehouse, store, mill, barn, stable, outhouse or other building, tent, vessel, railroad car, locked or sealed cargo container, whether or not mounted on a vehicle, trailer coach, as defined in Section 635 of the Vehicle Code, any house car, as defined in Section 362 Vehicle Code, inhabited camper as defined in 243 Vehicle Code, vehicle as defined by said code when the doors are locked, aircraft as defined by Section 21012 of the Public Utilities Code, mine or any underground portion thereof, with intent to commit grand or petty larceny or any felony, is guilty of burglary.

B. Elements

1. Entry into building or other specified structure
2. with the intent to commit
3. grand or petty theft or felony

C. Crime classification: Felony

D. Discussion

1. Entry

- a. Does not have to be forcible entry
- b. May be an authorized entry as into a store open for business
- c. Body of person does not have to physically enter structure, as in use of lasso to rope cases of oil through gate

2. A building or other place described in Penal Code Section 459

- a. A house or building is a structure with walls and enclosed by a roof.
- b. An open pit mine is covered under the burglary statute.
- c. Enclosed telephone booths and showcases can be the subjects of burglary.
- d. Inhabited camper need not be locked (California Vehicle Code Section 243)
- e. Inhabited means currently being used for dwelling purposes whether occupied or not

3. Vehicles - other property

- a. The vehicle must be locked to constitute burglary.

- b. Taking property from an unlocked vehicle is theft.
- c. Entering the locked trunk of an unlocked vehicle is a burglary.

E. Intent

- 1. Specific intent to commit grand theft, petty theft, or some other felony must exist at the time of entry
- 2. The crime is completed upon entry.
- 3. The intended theft or felony need not be completed.

VII. POSSESSION OF BURGLARY TOOLS

A. Possession of Burglar Tools defined (Penal Code Section 466)

1. Every person having upon him or her in his or her possession a picklock, crow, key bit, crowbar, screwdriver, vise grip pliers, water-pump pliers, slidehammer slim jim, tension bar, lock pick gun, tubular lock pick, floor-safe door puller, master key, or other instrument or tool with intent feloniously to break or enter any building, or
2. who shall knowingly make or alter, or shall attempt to make or alter, any key or other instrument above named so that the same will fit or open the lock of a building, without being requested so to do by some person having the right to open the same, or who shall make, alter, or repair any instrument or thing, knowing or having a reason to believe that it is intended to be used in committing a misdemeanor or felony.

B. Elements

1. Possession of certain tools or
2. knowingly making or attempting to make a key or other instrument to fit another building without legal request, and

NOTE: It is the responsibility of the maker to ascertain right to open or make, alter, or repair any instrument or thing.

3. specific intent to break or enter any building, and

NOTE: "Building" in this section refers to any structure mentioned in Penal Code Section 459.

4. for the purpose of committing any misdemeanor or felony.

C. Crime classification: Misdemeanor

VIII. ALTERATION OF SERIAL NUMBERS OR IDENTIFICATION MARKS

A. Alteration of Serial Numbers or Identification Marks defined (Penal Code Section 537e)

1. Any person who knowingly buys, sells, receives, disposes of, conceals, or has in his possession a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, safe or vacuum cleaner, dictaphone, watch, watch movement, watch case, or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, computer parts
2. from which the manufacturer's name plate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed.

B. Crime classification

1. Misdemeanor or
2. felony if the property is an integrated computer chip or panel of a value of \$400 or more

C. Related statutes:

1. Tampering with Identification Marks on a Firearm (Penal Code Section 12090)
2. Tampering with Vehicle Identification Number (Vehicle Code Section 10751)

IX. RECEIVING STOLEN PROPERTY

A. Elements (Penal Code Section 496)

1. Every person, who knowingly
2. buys, receives, conceals or withholds
3. property obtained by theft or extortion
- or
4. every secondhand dealer, who
5. without inquiry as to legal right of seller,
6. buys or receives stolen property under circumstances dictating an inquiry
7. is presumed to have known property to be stolen.

B. Crime classification: Felony

C. Discussion

1. If the person in possession of the stolen property is the thief, the correct charge is theft and receiving stolen property should not be charged. (Stanley, in re, 1928, 90 CA 132)
2. Mere possession of stolen property is insufficient to prove the offense of receiving stolen property. (People v. Jolley, 1939, 35 CA2d 159).
3. Possession accompanied by suspicious circumstances will justify inference that property was received with knowledge that it had been stolen. (People v. Kot, 1959, 171 CA2d 9).
4. Among the circumstances which, coupled with the possession of stolen property, have been held to connect the defendant with the crime and to sustain his conviction are:
 - a. Flight
 - b. False statements as to how the property came into defendant's possession
 - c. Assuming a false name and an inability to establish the existence of the person from whom the defendant claimed to have received the property
 - d. Sale of the property under a false name and at an inadequate price
 - e. Sale of the property with marks of identification removed
 - f. Failure to account for its possession and giving false testimony

g. An effort to throw away the stolen property (People v. Russell, 120 CA 622, etc.)

5. Two or more persons may have joint possession if they have dominion and control.

X. EMBEZZLEMENT

A. Embezzlement defined

Embezzlement is the fraudulent appropriation of property by a person to whom it has been entrusted. (Penal Code Section 503)

B. Elements

1. Fraudulent appropriate
2. Entrusted property
3. Belonging to another

C. Crime Classification (Penal Code Section 514)

1. Every person guilty of embezzlement is punishable in the manner prescribed for theft of property of the kind embezzled (e.g. felony or misdemeanor depending upon the value)
2. Where the embezzlement relates to items other than property, the crime classification is dependent upon the value (e.g. felony or misdemeanor depending upon the value). Examples might include a check or an I.O.U.
3. If the embezzlement involves government funds the offense is a felony regardless of the face amount.

D. Discussion

1. Fraudulent appropriation

- a. There must be an intent to deprive the owner of his property either permanently or temporarily.
- b. According to Penal Code Section 512, the fact that the accused intended to restore property is no defense; if not done before an information or indictment is drawn or found charging the offense.

2. A fiduciary relationship (entrustment)

- a. A relationship of trust and confidence is essential to the crime of embezzlement.
- b. This would include public officers and employees, trustees, executors, corporation or association officers, and ordinary agents or employees.

3. Property belonging to another

- a. The property may consist of money, goods, chattels, things in evidence of debt, right of action, or real property.

- b. The property belongs to another but the suspect originally had lawful, temporary possession.

4. Differences between theft and embezzlement

- a. Ordinary theft requires the intent to permanently deprive the owner of his property
- b. Embezzlement requires intent to temporarily or permanently deprive the owner of his property for use other than the original purpose.
- c. Ordinary theft consists of the non-consensual taking and carrying away of the personal property of another
- d. In embezzlement, the defendant acquired the property with the owner's consent.

XI. FORGERY

A. Forgery defined (Penal Code Section 470)

Every person who, with intent to defraud, signs the name of another, or of a fictitious person, knowing that they have no authority to do so, or falsely makes, alters, forges or counterfeits any specified writings, or counterfeits or forges the seal, or handwriting of another or utters, publishes, passes, or attempts to pass any of the above.

B. Elements

1. Intent to defraud

- a. There must exist a **specific intent to defraud**.
- b. There is no requirement that anyone actually be defrauded.

2. False signature or altered writing

- a. The suspect signs the name of another person or a fictitious person to a document or
- b. alters a document and

3. Lack of authority to sign or alter

4. A writing or other instrument, or

NOTE: It must be an instrument that, if genuine, would have legal significance (i.e. deeds, mortgages, negotiable instruments and contracts).

5. Utters, publishes, passes, or attempts to pass any forged or altered document

C. Crime classification: Felony

D. Related statutes

470a Penal Code Section - Falsification, alteration, etc. of driver's license or identification card to facilitate commission of Forgery--Felony.

470b Penal Code Section - Possession or display of driver's license or identification card with intent to commit forgery--Felony.

475a Penal Code Section - Uttering or passing a check, money order or warrant with intent to defraud--Felony.

476 Penal Code Section - Making, passing or uttering fictitious bill, etc.--Felony.

XII. WRITING CHECKS WITH INTENT TO DEFRAUD

A. Writing Checks with Intent to Defraud defined (Penal Code Section 476a)

Any person who for himself or as the agent or representative of another or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers any check or draft or order upon any bank or depository, or person, or firm, or corporation, for the payment of money, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with said bank or depository, or person, or firm, or corporation, for the payment of such check, draft, or order and all other checks, drafts, or orders upon such funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in the county jail for not more than one year, or in the state prison.

B. Elements

1. Specific intent to defraud

NOTE: It is not necessary that any person shall have been defrauded or shall have suffered a loss.

2. Making, drawing, presenting or delivering a check

3. Knowledge of the insufficient funds and/or lack of credit requires proof that at the time the check was offered, the defendant knew he/she had neither sufficient funds nor credit to cover it.

C. Crime classification: (Penal Code Section 476b)

1. Misdemeanor when the check has a face value of \$200 or less

2. Felony when the check has a face value exceeding \$200

3. Felony when the defendant has a prior conviction of Penal Code Sections 470, 475 or 476 regardless of the face value of the check

XIII. VANDALISM

A. Vandalism defined (Penal Code Section 594)

1. Every person who maliciously commits any of the following acts with respect to any real or personal property not their own, in cases other than those specified by state law
 - a. Defaces with graffiti or other inscribed materials
 - b. Damages
 - c. Destroys

B. Elements

1. Malicious intent
2. to deface, damage or destroy
3. personal or real property
4. not their own

NOTE: Community property can be the subject of a vandalism even if the suspect is a partial owner of the property (People v. Kahanic, 196 Cal. App.3d. 461)

C. Crime classification:

1. Felony when the damage is \$5,000 or more
2. Misdemeanor when the damage is less than \$5,000
3. Felony, regardless of the amount of damage, when the suspect
 - a. has **two** prior convictions for Penal Code Section 594 **and**
 - b. has **served time** for at least one such conviction

D. Related statutes:

1. Possession, purchase, sale of aerosol paint container (Penal Code Section 594.1)
2. Possession of specified tools with the intent to vandalize (Penal Code Section 594.2)
3. Vandalizing place of worship - felony (Penal Code Section 594.3)
4. Vandalism using noxious or caustic chemicals (Penal Code Section 594.4)
5. Vandalism to government facilities or vehicles (Penal Code Sections 640.5 and 640.7)

XIV. CRUELTY TO ANIMALS

A. Cruelty to Animals defined (Penal Code Section 597)

Every person who maliciously maims, wounds, tortures, or mutilates a living animal, or maliciously kills an animal is guilty of an offense punishable by imprisonment in the state prison or in a county jail for not more than one year. (b) Except as otherwise provided in subdivision (a), every person who overdrives, overloads, drives when overloaded, overworks, tortures, torments, deprives of necessary sustenance, drink or shelter, cruelly kills any animal, or causes or procures any animal to be so overdriven, overloaded, driven when overloaded, overworked, tortured, tormented, deprived of necessary sustenance, drink or shelter, or to be cruelly beaten, mutilated, or cruelly killed; and whoever, having the charge or custody of any animal, either as owner or otherwise, subjects any animal to needless suffering, or inflicts unnecessary cruelty upon the same, or in any manner abuses any animal, or fails to provide the same with proper food, drink, shelter or protection from the weather, or who drives, rides or otherwise uses the same when unfit for labor, is for every such offense, guilty of a felony.

B. Elements

1. One who maliciously and **intentionally**
2. maims, mutilates, tortures, wounds or kills
3. any living animal
4. or
5. overloads, overworks or deprives of necessary sustenance, drink or shelter

C. Crime classification: Felony

D. Related statutes:

1. Abandonment of domestic animals (Penal Code Section 597s)
2. Fighting dogs (Penal Code Section 597.5)
3. Eating your housepets (Penal Code Section 598b PC)
4. Elephant abuse (Penal Code Section 596.5)
5. Chicken choking (Penal Code Section 647(a))

XV. ARSON

A. Arson defined (Penal Code Section 451)

A person is guilty of arson when they wilfully and maliciously set fire to or burn or cause to be burned or who aids, counsels or procures the burning of any structure, forest land or property.

B. Elements

1. Wilfully and maliciously
2. sets fire to or burns or causes to be burned or
3. who aids, counsels or procures the burning of,
4. any structure, forest land or property

C. Crime classification:

1. All violations of Penal Code Section 451 are felonies.
2. All violations of Penal Code Section 452 are felonies with the exception of reckless burning of **property**.

C. Terminology (Penal Code Section 450)

1. "Structure" means any building, or commercial or public tent, bridge, tunnel, or powerplant.
2. "Forest land" means any brush covered land, cutover land, forest, grasslands, or woods.
3. "Property" means real property or personal property, other than a structure or forest land.
4. "Inhabited" means currently being used for dwelling purposes whether occupied or not. "Inhabited structure" and "inhabited property" do not include the real property on which an inhabited structure or an inhabited property is located.
5. "Maliciously" imports a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
6. "Recklessly" means a person is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest and, or property. A person who is intoxicated and creates such a risk is, by this definition, acting in a reckless manner.

XVI. AGGRAVATED ARSON

A. Aggravated arson defined (Penal Code Section 451.50)

Aggravated arson may be defined as willful, malicious, deliberate and premeditated arson with intent to or under circumstances likely to cause injury to persons or damage to inhabited dwellings.

B. Elements

1. willfully, maliciously, deliberately with premeditation
2. with intent to cause injury to persons or
3. cause damage to property under circumstances likely to produce injury or cause damage to structures or inhabited dwellings
4. sets fire to, burns, causes to be burned or
5. aids, counsels, or procures the burning of any residence, structure, forest land or property
6. is guilty of aggravated arson if one of following exists:
 - a. prior arson conviction within 10 years
 - b. fire causes damage in excess of \$5,000,000
 - c. fire damages five or more inhabited structures

C. Crime classification: Felony

D. Intent: Aggravated arson may be specific or general intent, depending upon the circumstances.

E. Discussion: This law was enacted to provide enhanced penalties for major arsons that involve entire communities and result in significant property loss and human suffering.

XVII. POSSESSION OF A FIREBOMB

A. Definition

1. Every person who possesses any flammable, explosive or combustible material or substance, or any device in an arrangement or preparation, with intent to willfully and maliciously use such material, substance or device to set fire to or burn any structure, forest land or property. (Penal Code Section 453(a))
2. Every person who possesses, manufactures, or disposes of a firebomb (Penal Code Section 453(b))

B. Elements

1. Elements of Penal Code Section 453a

- a. Possession
- b. of a flammable, explosive or combustible material or substance, or any device in an arrangement or preparation
- c. with **specific intent** to willfully and maliciously use such material, substance or device
- d. to set fire to or burn any structure, forest land or property

2. Elements of Penal Code Section 453b

- a. Possession, manufacture or disposal (illegal) of a
- b. firebomb

C. Crime classification:

1. Penal Code Section 453a - felony
2. Penal Code Section 453b - felony

D. Terminology

1. "Firebomb" means a breakable container containing a flammable liquid with a flashpoint of 150 degrees fahrenheit or less, having a wick or similar device capable of being ignited. A device which is commercially available to provide illumination is not considered a firebomb for the purposes of this section.

E. Related statutes:

1. Definition of destructive device (Penal Code Section 12301)
2. Possession of destructive device (Penal Code Section 12303)

3. Boobytraps (Penal Code Section 12355)

XVIII. AID, COUNSEL OR PROCURE THE BURNING OF PROPERTY OR LAND

- A. Aid, Counsel or Procure the Burning of Property or Land defined (Penal Code Section 455)

Any person who willfully and maliciously attempts to set fire to or attempts to burn or to aid, counsel or procure the burning of any structure, forest land or property or who commits any act preliminary thereto, or in furtherance thereof (Penal Code Section 455)

- B. Elements

1. Willfully and maliciously attempts
2. to set fire to or
3. aids, counsels or procures
4. the burning of any structure, forest land or property or
5. who commits any act preliminary thereto

NOTE: The placing or distributing of any flammable, explosive or combustible material or substance, or any device in or about any structure, forest land or property with the intent to eventually set fire to or burn same, shall for the purposes of this act constitute an attempt to burn.

- C. Crime classification: Felony

- D. Related statute: Burning, destroying, etc. insured property with intent to defraud the insurer (Penal Code Section 548)

XIV. REPOSSESSION

A. Law enforcement officer's responsibilities and duties:

1. Officer's primary responsibility at the scene of a repossession dispute is to keep the peace.
 - a. Repossession is a civil matter.
 - b. Officer is not authorized to give legal advice.
 - c. Officer should direct parties to contact their attorneys for legal advice.
 - d. Purpose behind procedures relating to repossession is to avoid violent confrontations.
 - e. Officers should not try to interpret the contract or get involved in any manner in private repossessions, except to keep the peace.
2. Identify involved parties
 - a. Repossessor - will usually have either a company identification, a private license, a copy of the contract or a document describing the property to be repossessed.
 - b. Other disputing party
 - (1) Person may be the buyer, the buyer's spouse or a third person in lawful possession of the property
 - (2) Officer should inquire if the other party objects to the repossession
3. Take positive action if a crime is committed in officer's presence during the dispute
 - a. The most common crimes arising at repossession dispute scenes are:
 - (1) Vandalism (Penal Code Section 594)
 - (2) Assault (Penal Code Section 240)
 - (3) Battery (Penal Code Section 242)
 - (4) Disturbing the peace (Penal Code Section 415)
 - (5) Trespassing (Penal Code Section 602)
 - (6) Forcible Entry (Penal Code Section 418, 603)
 - b. Officer should bear in mind the intent of the repossessor when considering a crime such as burglary
 - c. The intent to steal or commit a felony is normally not present

4. Buyers often want to report repossessed property as stolen.
 - a. Frequently occurs when automobiles are repossessed.
 - b. Officers should inquire as to who has title and whether the buyer is delinquent in the payments prior to initiating a theft report.
 - c. If officer reasonably concludes that the property has been repossessed, the complainant should be referred to the title holder.
 5. In situations where reposessor has not gained possession, the officer should advise the reposessor to seek civil remedy.
 - a. "Claim and Delivery" action
 - b. Issuance by the court of a Writ of Possession (Code of Civil Procedure 509-521).
 - (1) Served by an officer of the court
 - (2) Peace officer may be called to assist court officer with service by "standing by" and providing assistance only as needed to prevent the commission of a crime.
- B. Seller's right to repossess
1. California Civil Code 1812.2 gives the seller, under a conditional or installment contract, the right to retake property in the event of a buyer's default.
 - a. Generally, where goods are sold under a conditional sales contract, title remains with the seller and possession with the buyer.
 - b. This type of contract usually contains specific clauses giving the seller the right to repossess.
 2. The United States Supreme Court has ruled that a notice and hearing are required before a seller can repossess property
 - a. The usual practice of the seller is to have the buyer waive the right of notice and hearing in the contract of sale.
 - b. The court has held that these waivers are valid
 - c. The officer is likely to encounter irate buyers who have had no notice of any repossession proceedings.
 - d. It is not the responsibility of the officer to determine if there has been a notice and hearing or a waiver of notice and hearing.
 3. The following individuals may make a repossession:

- a. The seller of goods to be repossessed and the fulltime employees of the seller (Business and Professions Code Section 7522).
 - (1) Part-time employees may not be used for repossession purposes
 - (2) Members of this group do not need a State license
 - b. The fulltime employees of the financing company which financed the purchase of the goods to be repossessed.
 - (1) If the buyer defaults in the payments, a full-time employee of the financing company may repossess the property
 - (2) This group does not need a State license
 - c. State-licensed private repossessors (Business and Professions Code Sections 7532 and 7533)
 - (1) This group is required to have a State license (Business and Profession Code 7500-7583).
 - (2) They are required to have a license posted at the principal place of business (Business and Professions Code 7532) and each shall carry a pocket card (Business and Professions Code 7533).
 - (3) Any person who violates these provisions is guilty of a misdemeanor (Business and Professions Code 7560).
 - d. Repossessors are required to conduct themselves in a peaceful manner at all times; as with any other person, they cannot commit assault or battery or cause a breach of the peace.
4. A reposessor must have complete dominion and control of the goods as well as complete removal of those goods from the buyer's property in order to have a complete possession.
- a. If the buyer is in a position to protest the seizure of the property, the reposessor does not have control of the property and must abandon the repossession.

Example: A reposessor begins to back an automobile out of the buyer's driveway. If the buyer protests the repossession at any time before the automobile is on a public street, the reposessor must abandon the repossession.

Example: A reposessor begins to back an automobile out of a shopping center parking lot when the buyer comes out of the store and objects to the repossession. The repossession is complete because the automobile is located on public property that is not under the buyer's control and the reposessor had complete control of the car before the buyer started objecting.

- b. As a general rule, repossession is complete if the buyer has to pursue the reposessor in order to object.

Example: The buyer comes out of his house and sees the reposessor driving down the street in the repossessed automobile. The reposessor has established dominion and control over the automobile and any protests by the buyer would be ineffective.

- c. The reposessor may not repossess goods if the buyer objects and the goods are under the buyer's control.
- d. The reposessor may repossess goods from private property open to the public but may not enter any building without permission.

Example: Repossessor may retake property from a driveway or from an open porch as long as the buyer has not objected before the property is under the reposessor's control.

- (1) In no event is a reposessor authorized to defeat a locking mechanism in order to enter any building or enclosure without permission.

- (2) Violation of a person's protected privacy rights can be charged under Penal Code Sections 418, 602 or 603.

NOTE: Local practices may differ regarding repossessors entering enclosed areas other than buildings to recover property. (e.g. a reposessor entering a fenced yard to recover patio furniture)

5. Notification of repossession

- a. The reposessor is required to make immediate notification to the police by the most expeditious means available.
- b. The reposessor must also notify the police in writing within 24 hours of the repossession.

- 6. A person who makes a good faith repossession without complying with the notice and hearing requirements is subject to civil liability, but not criminal liability.

C. Buyer's rights in repossession disputes

- 1. The buyer has a right to object to the reposessor taking the property.

- a. This objection must be made before the reposessor has possession.

Example: If the reposessor gets into an automobile, but does not move it, and the buyer objects, the reposessor does not have possession and cannot take possession.

- b. "...if the buyer is in personal possession of the automobile and protests against such repossession and attempts to obstruct the seller in doing so, under such circumstances, it becomes the duty of the seller to proceed no

further ... and to resort to legal process." (Burgin v. Universal Credit Co. (1940 2 Wash. 2d 364, 98 P.2d 291)

- c. The buyer's spouse has the same privilege as do other persons entrusted with the property.

2. Other personal property involved in repossession

- a. In the event repossession is complete and there is other personal property involved, the buyer has the right to retain that property, provided the property is not an integral part of the repossessed property.

- (1) This personal property may be clothing, tools, etc.

- (2) However, the buyer has no right to remove an automobile radio or other item attached to the vehicle even if purchased separately (fixture law).

- b. If the reposessor takes unattached property contained in a repossessed item, the reposessor is responsible for that property to the buyer.

- (1) The buyer has a right to recover on demand.

- (2) If the reposessor later refuses to return or disclaims knowledge of the existence of such personal property, the buyer may maintain a civil action to recover the value of such property (Varela v. Wells Fargo Bank (1970), 15 Ca. Ap. 3d 741).

- (3) Also, the buyer may demand and get a receipt for attached personal property and may likewise recover such property or value at a later time.

D. Third party rights:

- 1. Where the buyer has given a third person permission to use the property or maintain possession, i.e., dominion and control, such third person then stands in the shoes of the buyer.
- 2. This third person may exercise the same rights and privileges as the buyer against the reposessor.
- 3. Property in the possession of a bailor
 - a. "In the possession of a bailor" means in a commercial parking lot where an attendant is on duty or in a check stand.
 - b. In this case the reposessor has no right to take possession.
 - c. The bailor has and keeps possession rights until redeemed by the buyer.

XX. LANDLORD/TENANT DISPUTE

A. Peace Officer's Responsibilities and Duties

1. The officer should try to achieve a lasting solution to the dispute by explaining to the parties what conduct is not lawful and by suggesting alternative solutions that are lawful.
2. Effective handling of landlord/tenant disputes require an understanding of applicable Penal Code provisions.
3. Officer should inform landlord who wishes to have a tenant removed from a rental unit of the requirement to file a civil lawsuit known as an "unlawful detainer." This process is commonly referred to as an eviction.

B. Unlawful conduct by landlord

1. Tenant lockout
 - a. Landlord jams or changes lock on tenant's door to prevent tenant's use of dwelling until rent is paid
 - b. Violation of Penal Code Section 418: Every person using or procuring, encouraging or assisting another to use, any force or violence in entering upon or detaining any lands or other possessions of another, except in the cases and in the manner allowed by law, is guilty of a misdemeanor.
 - c. Crime Classification: Misdemeanor
 - d. Is not a crime when done as allowed pursuant to a lawful eviction.
2. Seizure of tenant's property
 - a. Landlord seizes a tenant's possession in payment for past-due rent.
 - b. Also prohibited by Penal Code Section 418
 - c. Generally, landlords may not take possession of a tenant's property unless they first obtain a court order allowing them to do so. (California Civil Code Section 1861(a))
 - d. Even with a lien, a landlord generally cannot seize any property necessary to the tenant's livelihood or any necessary household items (i.e., stove, refrigerator, tables, chairs, beds, washing machines, etc.)
3. Removal of doors and windows
 - a. Landlord removes the doors or windows to the tenant's dwelling or destroys the tenant's personal property in an effort to harass the tenant.

- b. Violation of Penal Code Section 594 - Every person who maliciously damages or destroys any real or personal property not his own, in cases otherwise than such as are specified in this code, is guilty of a misdemeanor.

NOTE: Even though the landlord may thereby be destroying his own property, the courts have held that since a tenant has a property interest in the premises, any such acts of destruction by the landlord constitute malicious mischief against the tenant.

- c. Crime classification: Misdemeanor

4. Trespass

- a. Landlord enters a tenant's premises without permission from the tenant.
- b. Violation of Penal Code Section 602.5 - Every person other than a public officer or employee acting within the course and scope of his employment in performance of a duty imposed by law, who enters or remains in any noncommercial dwelling house, apartment, or other such place without consent of the owner, his agent, or the person in lawful possession thereof, is guilty of a misdemeanor.
- c. Crime Classification: Misdemeanor
- d. Exceptions to trespass
 - 1. If the entry is reasonable, i.e., to repair a leaking water pipe, or to investigate smoke, it is not considered a trespass.
 - 2. In addition, if the tenant has consented by lease to the landlord's entry at will, then such entry is not trespass.

5. Unlawful interruption of utility services

- a. Landlord disrupts or disconnects one or more of the tenant's utilities.
 - (1) Malicious injury or obstruction of telephone line
 - (a) Penal Code Section 591
 - (b) Felony
 - (2) Malicious removal, injury or obstruction of electric line or any part thereof
 - (a) Penal Code Section 593
 - (b) Felony
 - (3) Malicious obstruction, removal or injury to gas or hazardous liquid pipeline or any part thereof
 - (a) Penal Code Section 593c

(b) Felony

(4) Wilful obstruction or injury of a water pipe, main or works

(a) Penal Code Section 624

(b) Misdemeanor

- b. It is unlawful for the landlord to use any of the above methods in an attempt to force the tenant to vacate the premises. The landlord must bring a civil suit, called an "unlawful detainer" action to legally evict the tenant.

C. Unlawful conduct by tenant

1. The following conduct only applies following the completion of a lawful eviction. During the time that the civil action (unlawful detainer) is under consideration by the court, the tenant cannot be prohibited entry to the dwelling.
2. Re-entry to premises without the permission of the landlord
 - a. Penal Code Section 419 -Every person who has been removed from any lands by process of law, or who has removed from any lands pursuant to the lawful adjudication or direction of any court, tribunal or officer and who afterwards unlawfully returns to settle, reside upon, or take possession of such lands, is guilty of a misdemeanor.
 - b. Penal Code Section 602.5 - Trespassing
 - c. Both sections are classified as misdemeanors

SUPPORTING MATERIAL

AND

REFERENCES

This section is set up as reference information for use by training institutions. These materials can be used for instruction, remediation, additional reading, viewing, or for planning local blocks of instruction. This list is not an endorsement of any author, publisher, producer, or presentation. Each training institution should establish its own list of reference materials.

**TOPICAL LIST OF SUPPORTING MATERIALS AND
REFERENCES INCLUDED IN THIS SECTION**

Case Decisions - Value

Examples of Theft by False Pretense

Examples of Trick and Device

Property of Another

Case Decisions Involving the Crime of Embezzlement

Building

Windows

Stolen Goods Discussion/Buying and Receiving

CASE DECISIONS--VALUE

1. Value to be placed on stolen articles for purpose of establishing felony charge is market value of property, not value of property to any particular individual. (People v. Latham, 1941, 43 CA 2d 35)
2. In prosecuting one for theft, whether the value of the property makes the crime a felony, is ascertained by its value on the open market and not by what it is worth to the owner. (People v. Simpson, 1938, 26 CA 2d 223)

EXAMPLES OF THEFT BY FALSE PRETENSE

1. While mere nonperformance of promise is not enough to constitute fraudulent pretense within law of grand theft, promise made with intent not to perform constitutes false pretense. (People v. Otterman, 1957, 154 CA 2d 193). Example: The Williamsons
2. Where one falsely represented that mortgage which he sold was a first mortgage and the only lien on the property covered thereby, and such false statement induced the purchase of the mortgage, that element of theft, formerly termed obtaining money under false pretenses, was committed. (People v. Henniger, 1912, 20 CA 79)
3. In prosecution of chiropractor for conspiracy to commit theft by false pretenses as to effectiveness of certain machines used by him in treatment of cancer and certain other diseases, fact that treatments may have been worth consideration paid is no defense. (People v. Schmitt, 1957, 155 CA 2d 871)
4. Implied finding that defendant chiropractor made false representation with intent to deceive was sustained by evidence that, for purpose of inducing his patients to take and pay for series of treatments given with aid of certain machine, he falsely represented that he had cured hundreds of cases of cancer with the machine. (People v. Schmitt, 1957, 155 CA 2d 87)
5. Theft by false pretenses was sustained where new car purchasers were persuaded to sign blank purchase orders and blank conditional sales contracts; when the contracts were completed, \$350 was inserted as the allowance for the trade-in rather than the \$1,295 which was promised or agreed upon. Evidence indicated victims would not have signed the contract or parted with the old car if they had known the trade-in was to be \$350. (People v. Caruso, 1959, 176 CA 2d 272)
6. Making promise without intent to keep it; conviction of grand theft by false pretenses is sustained by evidence that defendant, without intent to keep promise and in consideration of \$3,500, agreed to provide victim with pasture land. (People v. Rocha, 1955, 130 CA 2d 656)
7. Unconditional promises, made without any intention of performing them, constitutes actionable fraud. (People v. Allen, 1962, 203 CA 2d 659)
8. False characterization of himself by magazine subscription solicitor as veteran, orphan or epileptic in order to secure order for subscription by appealing to sympathy of person solicited, is not akin to type of "puffing" of merchandise which is recognized in marts of trade; such misrepresentation is sufficient to form basis of charge of obtaining money or property under false pretenses. (People v. Conion, 1962, 207 CA 2d 86)
9. Even if property is worth consideration paid therefor, this is not defense to prosecution for obtaining money by false pretenses, where defendant knowingly makes false representation with intent to defraud with the purpose and effect of inducing victims to part with something of value. (People v. Conion, 1962, 207 CA 2d 86)

EXAMPLES OF TRICK AND DEVICE

1. Felonious taking by trick and false representation sustained where defendant and co-conspirator placed co-conspirator's name on prize-drawing ticket register opposite number of ticket in defendant's possession, that he palmed it while pretending to withdraw ticket by chance from drum containing tickets, his co-conspirator was paid prize money. (People v. Carpenter, 1956, 141 CA 2d 884)
2. A conviction of grand theft by larceny, by trick and device is sustained by evidence that, among other things, defendant secured about \$4,000 from the victim on representations that the money would be used in a business venture despite defendant's true intention to appropriate the money for his own use. (People v. Andary, 1953, 120 CA 2d 657)
5. Conviction of theft by trick and device is sustained by evidence that defendant had preconceived design and intent of appropriating to his own use money which victims gave to be used in payment of automobile or freight on auto to be delivered to victim. (People v. Reinschiber, 1956, 141 CA 2d 688)

PROPERTY OF ANOTHER

1. A person rightfully in possession of personal property has such ownership therein as may be the subject of larceny. (People v. Hayes, 72 Cal App 292)
2. Thus, a bailee or other person having lawful possession of property has such property right therein as to make its stealing from the possession of such person amount to larceny. (People v. Bueina, 81 Cal. 135)
3. Since all that the law requires is that the thing taken be the property "of another," it would be no defense to a charge of larceny that the defendant had taken the property from the person of one who had found it. (People v. Beach, 62 Cal App 2nd 803)
4. It would be no defense that the person stealing the property took it from one who had himself stolen it, since the property was still that of the owner from whom it had been stolen.
5. Where the testimony of eye-witnesses showed that a pocketbook was taken from the person of an unidentified victim who was not a witness at the trial, it was held that the pocketbook was in the possession of the victim was sufficient evidence of ownership in her. (People v. Davis, 97 Cal. 194)
6. The crime of grand theft is complete when a man takes property not his own with intent to take it. (People v. Corenevsky, 1954, 124 CA 2d 19)

CASE DECISIONS INVOLVING THE CRIME OF EMBEZZLEMENT

1. Gist of this offense is appropriation to one's own use of property delivered to him for devotion to specific purpose other than his own enjoyment of it. (People v. Path, 1961, 196 CA2d 638).
2. To constitute embezzlement it is not necessary to show actual possession of money or property by the accused, it being sufficient to show that it was under his direction and management. (People v. Hess, 1951, 107 CA2d 407).
3. One may be guilty of embezzlement where he has aided or abetted actual embezzlement though he does not occupy any fiduciary capacity to one whose property is embezzled. (People v. Dolbeer, 1963, 214 ACA 672).

BUILDING

"Building" under Penal Code Section 459

1. Carport attached to a house with a roof and enclosed on two sides only, was a "building" within the meaning of Penal Code Section 459 In re: Christopher Lee J. 102 CA 3d 76 (1980).
2. Enclosed patio attached to a garage which was in turn attached to a house - entering with intent to commit theft is a burglary (135 CA 3d 78 (1982)). (People vs. Cook)

WINDOWS

1. People v. Woods 112 CA 3r 226 (1982): Window rolled down 5 1/2" - cannot be construed as locked. (Some court case held 1/4" was locked)
2. People v. Malcolm, 47 CA 3d 217 (1975) held that where the windows of the vehicle were up, the car locked, and a broken lock on the window wing, and suspect pushed open the window wing to gain entry, there was a vehicle burglary.

DISCUSSION (CASE DECISIONS ON BUYING
OR RECEIVING STOLEN GOODS)

1. 55 CA 256 (People v. Rojas) where defendant had the specific intent to commit the crime and did the acts necessary to commit it, but because of circumstances unknown to him, the substantive crime was lacking, there was an attempt. The criminality of the attempt is not destroyed by the police recovery of the property. Stolen property, recaptured by the police, no longer has the status of stolen goods, but is held by the police in trust for the owner.
2. It is not necessary, to constitute receipt of stolen property, that defendant receive physical possession of property, it being sufficient that property has been concealed on defendant's premises by others with his knowledge or consent. (People v. Rossi, 1936, 15, CA 2d 180).
3. Guilty knowledge of theft need not be that actual and positive knowledge which is acquired from personal observation of fact. (People v. Mercado, 1922, 59 CA 69). May be circumstantial and deductive. (People v. Bolnus, 1957, 153, CA2d 618).
4. Person who is not aware that property is stolen when he comes into possession thereof is guilty of receiving stolen property in violation of this section, if he subsequently learns of its stolen nature and then conceals or withholds it from true owner. (People v. Scaggs, 1957, 153 CA2d 339).

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