CALIFORNIA COMMISSION ON PEACE OFFICER STANDARDS AND TRAINING

Basic Course Workbook Series

Student Materials

Learning Domain 5
Introduction to Criminal Law
Version 5.5

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THE ACADEMY TRAINING MISSION

The primary mission of basic training is to prepare students mentally, morally, and physically to advance into a field training program, assume the responsibilities, and execute the duties of a peace officer in society.

FOREWORD

The California Commission on Peace Officer Standards and Training sincerely appreciates the efforts of the many curriculum consultants, academy instructors, directors and coordinators who contributed to the development of this workbook. The Commission extends its thanks to California law enforcement agency executives who offered personnel to participate in the development of these training materials.

This student workbook is part of the POST Basic Course Training System. The workbook component of this system provides a self-study document for every learning domain in the Basic Course. Each workbook is intended to be a supplement to, not a substitute for, classroom instruction. The objective of the system is to improve academy student learning and information retention and ultimately a police officer dedicated to service and committed to safety.

The content of each workbook is organized into sequenced learning modules to meet requirements as prescribed both by California law and the POST Training and Testing Specifications for the Basic Course.

It is our hope that the collective wisdom and experience of all who contributed to this workbook will help you, the student, to successfully complete the Basic Course and to enjoy a safe and rewarding career as a peace officer serving the communities of California.

ROBERT A. STRESAK
Executive Director

LD 5: Introduction to Criminal Law

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How to Use the Student Workbook

Introduction

This workbook provides an introduction to the training requirements for this Learning Domain. It is intended to be used in several ways: for initial learning prior to classroom attendance, for test preparation, and for remedial training.

Workbook format

To use the workbook most effectively, follow the steps listed below.

Step	Action
1	Read the first two section: How to Use the Workbook and Preface which provide an overview of how the workbook fits into the POST Instructional System and how it should be used.
2	Refer to the overview section at the start of each chapter to review the learning objectives.
3	Read the text.
4	Refer to the Chapter Synopsis section at the end of each chapter to review the key points that support the chapter objectives.
5	Complete the Workbook Learning Activities at the end of each chapter. These activities reinforce the material taught in the chapter.
5	Refer to the Glossary section for a definition of important terms. The terms appear throughout the text and are bolded and underlined the first time they appear (e.g., **term**).

Preface

Introduction

Student workbooks

The student workbooks are part of the POST Basic Course Instructional System. This system is designed to provide students with a self-study document to be used in preparation for classroom training.

Regular Basic Course training requirement

Completion of the Regular Basic Course is required, prior to exercising peace officer powers, as recognized in the California Penal Code and where the POST-required standard is the POST Regular Basic Course.

Student workbook elements

The following elements are included in each workbook:

- chapter contents, including a synopsis of key points,
- supplementary material, and
- a glossary of terms used in this workbook.

Chapter 1

Origins of the Law

Overview

Learning need

Peace officers must know the origins of current law to know the role of law enforcement today.

Learning objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
• identify the relationship among: - Constitutional law - Statutory law - Case law	5.01.EO4

In this chapter

This section focuses on the origins of criminal law. Refer to the chart below for specific topics.

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Current Law

[5.01.EO4]

Introduction

The three origins of law found in today's legal system are:

- constitutional law
- statutory law
- case law

Constitutional law and the Bill of Rights

The rules and provisions found in the federal and state constitutions form the basis of modern **constitutional law**.

The federal courts, as well as all local and state courts, are bound by the U.S. Constitution, which is the supreme law of the land. States may add to, but not take away, any of the civil liberties guaranteed by the U.S. Constitution.

Law enforcement officers are also impacted and bound by the decisions of these courts.

Many of the rules governing criminal procedure, such as due process, search and seizure, self-incrimination, and equal protection, are set forth in the first 10 amendments to the U.S. Constitution, known as the Bill of Rights.

Statutory law

Statutory law consists of the written laws enacted by a legislative body.

All crimes are statutory in California. To be enforceable, a law must be written, a concept based on the legal principle that "there is no crime if there is no statute," and a punishment must be provided.

Continued on next page

Statutory law (continued)

Punishments for a crime are usually noted in the same statute that describes the criminal act itself, or in an adjoining statute. *Penal Code Sections 18* and *19* also provide for punishments for those offenses without a specific punishment.

Both the U.S. and the California State Constitutions prohibit **ex post facto laws**, laws written after the fact to punish an action that has already taken place and was not illegal at the time of commission. In other words, the law must have been enacted before the alleged criminal act took place.

Codes

Statutory law is recorded in the various state, county, or municipal **codes**. State codes include all current statutes enacted by the state legislature. County and municipal codes include all current **ordinances** (statutes) enacted by a county or city. Statutes are arranged systematically in the codes for easy reference.

The California codes most likely to be encountered by law enforcement officers are:

- Penal Code
- Vehicle Code
- Welfare and Institutions Code
- Health and Safety Code
- Evidence Code
- Business and Professions Code
- Education Code
- Government Code
- Fish and Game Code
- California Code of Regulations

Continued on next page

Case law

Case law is based upon previous appellate court decisions that are binding on lower court decisions. This principle is known as **precedent**.

The primary purposes of case law are to:

- interpret the Constitution
- clarify statutes

California trial courts must follow both state and federal appellate court decisions.

Judicial review

Both the state and federal legislative branches can declare certain behavior to be criminal and punishable by law. However, this power is limited.

Civil and individual rights, particularly those found in the Bill of Rights, limit legislative authority. The judicial branch, through the power of **judicial review**, protects the rights of the individual from unconstitutional legislation.

Chapter Synopsis

Learning need

Peace officers must know the origins of current law to know the role of law enforcement today.

Current law [5.01.EO4]

The following table identifies the three origins for current law:

Constitutional law	The rules and provisions which are found in federal and state constitutions, specifically the Bill of Rights.
Statutory law	The laws which are enacted by a legislative body and recorded in the various state, county, or municipal codes.
Case law	Laws which are based on previous appellate court decisions that have become binding on lower court decisions.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text you should be able to prepare a response.

Activity questions

1. How does case law differ from statutory law?

2. Discuss the process that an officer would use to locate the correct enforcement section in a California Code (Penal Code, Business & Professions Code, etc.)

Chapter 2

Distinctions in the Law

Overview

Learning need

Peace officers must know the nuances of the written law to correctly interpret the law.

Learning objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
• differentiate between the letter of the law and the spirit of the law	5.02.EO1
• differentiate between criminal and civil law	5.02.EO3

In this chapter

This section focuses on the important distinctions in the law. Refer to the chart below for specific topics.

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Letter of the Law vs. Spirit of the Law

[5.02.EO1]

Introduction

California's legal system is based partly on English common law. One critical distinction is that common law was bound to the *letter of the law*. The California legal system requires consideration of the *spirit of the law* and the intent of the legislature.

Letter of the law

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

Spirit of the law

Spirit of the law means the law is applied in accordance with the intent of the legislature, the promotion of fairness and justice, and not solely in literal compliance with the words of the statute.

Interpretation of the law

Although California criminal law is required to be statutory, each code provision must be interpreted with regard to:

- its relationship to other statutes
- the intent of the legislative body
- the meaning of the words
- the scope of its effect

Statutes must be interpreted by the courts and peace officers according to the spirit, rather than, the letter of the law. "All statutes must be construed according to the fair import of their terms, with a view to effect its objects to promote justice." *(Penal Code Section 4)*

Continued on next page

Letter of the Law vs. Spirit of the Law, Continued

Policing in our communities

A review of the world's criminal law systems reveals a common understanding of what constitutes serious crime. These crimes include murder, manslaughter, assault, rape, burglary, theft, perjury, and threats to the government such as treason. These crimes and the fear carried by these crimes have a substantial impact on communities, and law enforcement plays a major role in reducing them. Minor crimes such as graffiti, littering, and public disorder also have a negative impact on communities and need to be addressed. Criminal law can be used by peace officers to help reduce crime and the fear of crime, and to increase the quality of life for all citizens.

Example

The following is an example of interpreting the spirit of the law.

Penal Code Section 647(f) was enacted to protect society and the inebriate from harm and inconvenience. If the statute is interpreted according to the strict letter of the law, every person who is publicly drunk and unable to care for themselves is subject to arrest and prosecution. However, there are circumstances when society and the inebriate are better served by applying the spirit of the law, making release to a friend or family member or provision of an escort home a better choice than arrest.

Criminal and Civil Law

[5.02.EO3]

Introduction

Laws are classified as either criminal or civil and share the common purpose of controlling wrongful behavior. Frequently, an act will be committed that harms both the community and an individual, resulting in both civil action and criminal prosecution.

Criminal law

Criminal law deals with violations of the criminal statutes. Such violations are called **crimes** and are considered public wrongs against all the people of the State of California.

The consequence for violating criminal law is prosecution. The state prosecutes a criminal when a crime has been committed.

One aim of criminal law is punishment, which may include death, incarceration, fines payable to the city, county, state, or nation, and removal from office or disqualification from holding office. The purpose of punishment is to deter criminal behavior and to rehabilitate criminals.

Civil law

Civil law, on the other hand, deals with noncriminal violations of the law or private wrongs committed by one person against another. A civil wrong is called a **tort**, or in the case of failure to comply with the terms of a contract, a **breach of contract**.

The purpose of civil law is **redress**, or in other words, to right a wrong.

Under civil law, the injured party may file a lawsuit for monetary compensation or other relief, not including incarceration. In this case, the plaintiff is the injured party, and any compensation is paid to him or her.

Continued on next page

Civil law (continued)

Law enforcement officers have a duty to investigate any potential criminal violations, even in civil matters.

If the matter is only civil, peace officers lack the authority to force a resolution to the dispute. Their duty is to stand by, preserve the peace and maintain order.

Example: An officer could not force a tenant to pay back rent because the payment of the rent is a civil issue. However, if the landlord were to lock the tenant out of his apartment (without the proper court order) that would be a criminal law violation which the officer could enforce.

Tort by omission

Omission of an act or negligence may also be a tort if it violates a legal duty owed to another person.

Example: A store owner failed to alert customers to a hazardous situation, such as a wet floor, resulting in an injured customer. The store owner's failure to act could lead to a civil action.

Civil actions by crime victims

A person who has been injured as a result of a crime may also file a civil action even though the state files criminal charges. Even when based upon the same occurrence, however, the criminal and civil law suits will proceed independently of each other. There are legal processes that may hold individuals responsible several times for the same act.

Chapter Synopsis

Learning need

Peace officers must know the nuances of the written law to correctly interpret the law.

Letter of the law vs. spirit of the law [5.02.EO1]

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.

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.

The California Penal Code requires that laws are to be applied according to the spirit of the law, in accordance with the intent of the legislative body rather than the literal meaning of the words of the statute.

Criminal and civil law [5.02.EO3]

	Criminal Law	**Civil Law**
Definition	Violations of a criminal statute	Noncriminal violations of the law
Violation terminology	Crime	Tort; Breach of Contract
Prosecutor	The state	The plaintiff
Purpose	Punishment	Redress

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text you should be able to prepare a response.

Activity questions

1. How do the aims of criminal law differ from those of civil law? Write an example for each type of violation showing the fulfillment of these aims.

2. In a crowded department store, a man put his hand down the blouse of a woman against her will and touched her bare skin. When she screamed, store security stopped and held the man. Peace officers were called at the woman's insistence. Do you think officers should treat this offense as a criminal and/or a civil matter? Explain your answer. Would this act be considered to be a public wrong or a private wrong?

Continued on next page

Activity questions (continued)

3. What is meant by the term "spirit of the law?" What is the position of the California Penal Code regarding interpreting statutes by the spirit or the letter of the law? How might this required interpretation benefit citizens?

4. An officer saw two young boys riding their bicycles without a helmet on a public street. If the officer takes the boys home to talk to the parents, rather than cite them, is the officer responding to the spirit or letter of the law? Explain.

Workbook Corrections

Suggested corrections to this workbook can be made by going to the POST website at: www.post.ca.gov

Continued on next page

Student notes

Chapter 3

Criminal Law

Overview

Learning need

To enforce the law, peace officers must know what constitutes a crime and the information required to identify that a crime has occurred.

Learning objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
• recall the statutory definition of a crime	5.03.EO1
• identify the basic elements common to all crimes	5.03.EO5
• identify the basic elements required of an attempt to commit a crime	5.03.EO6
• discuss general, specific, and transferred intent crimes	5.03.EO8
• differentiate between criminal intent and criminal negligence	5.03.EO9

Continued on next page

In this chapter

This section focuses on criminal law. Refer to the chart below for specific topics.

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Crime and Punishment

[5.03.EO1]

Introduction

Crimes are considered a collective wrong against the people of the State of California. Any person accused of committing a crime may be prosecuted and, if convicted, punished as prescribed by law. Enforcing the law on behalf of the state is the responsibility of law enforcement.

Definition of a crime

A crime is a violation of a criminal statute. *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, a penalty that provides the following punishments for the crime:

- death
- imprisonment
- fine, removal from office
- disqualification to hold and enjoy any office of honor, trust, or profit in the State of California

Persons liable for punishment

Persons liable for punishment under the laws of California *(Penal Code Section 27)* include:

- all persons who commit, in whole or in part, any crime within California.
- all persons who commit any offense outside California which, if committed inside California, would be larceny, carjacking, robbery, or embezzlement and bring or are found with any portion of the stolen or embezzled property in California.
- all persons outside California who cause, aid, advise, or encourage another person to commit a crime within California, and who are afterwards found in California.
- all persons who commit perjury outside the state to the extent identified in *Penal Code Section 118.*

Elements of a Crime

[5.03.EO5, 5.03.EO8, 5.03.EO9]

Introduction

To arrest a person for committing a crime, the elements of that crime must be substantiated.

Elements of the crime

Elements of the crime are the basic facts that must be proven by the prosecution to sustain a conviction. If any element is missing, that particular crime is not complete.

Penal Code Section 20 states that "in every crime or public offense, there must exist a union, or joint operation of act and intent, or criminal negligence."

The following table identifies the elements that are basic to every crime:

Element	Further Explanation
Commission of a prohibited act, or an omission of a required act	There must have been an illegal human act or omission, not an act resulting from natural phenomena (lightning, earthquake, flood).
Presence of a designated state of mind (intent)	**Criminal intent** must exist to distinguish the crime from an accident or mistake of fact.

Intent

All crimes require criminal intent which means a mental state or frame of mind that the person knowingly did the particular criminal act (break the law). It may be general, specific or transferred.

The intent or intention is manifested by the circumstances connected with the offense (facts of the case). *(Penal Code Section 29.2)*

Continued on next page

Intent
(continued)

In some crimes intent is presumed and does not have to be proven. These are called **general intent crimes**, i.e. battery, arson, transportation of drugs or ex-felon in possession of a firearm. In general, the person intentionally did that which the law declared to be a crime.

It does not matter that the person does not know that the particular conduct was against the law. General intent presumes that the person was aware of his (or her) actions or was aware of his (or her) conduct. Ignorance of the law is no excuse.

In other crimes intent is an element of the offense that must be proven. These are called **specific intent crimes**, i.e. burglary, or kidnapping for ransom.

Specific intent crimes are recognized by the language of the statutes, such as: with intent to, or, for the purpose of. When the definition of a crime refers to a person's intent to do some further act or achieve some additional consequence, the crime is one of specific intent. Unless this specific intent exists, the crime has not been committed.

Examples:

General intent	Specific intent
Possession of less than an ounce of marijuana, it is not necessary to prove intent, only that the marijuana was possessed.	Possession of marijuana with intent to sell; possession must be proven as well as intent to sell.

Continued on next page

Transferred intent

Transferred intent. When an *unlawful act* affects a person other than, or in addition to, the person it was intended to affect, the intent becomes transferred intent. Criminal intent in these instances is transferred from the intended victim to the actual victim.

Intent may be transferred only if the act involved does not require a different state of mind or criminal intent.

If an action is lawful there is no crime and transferred intent does not apply.

Examples

The defendant shot at an intended victim with intent to kill him, but instead hit and killed a bystander. The defendant is guilty of murder even though he did not have the specific intent to kill the bystander. The intent transfers from the intended victim to the bystander.

During a dispute between motorists on the freeway, Smith rammed his car into Jones' car in an attempt to run Jones off the road. As a result, Jones' car struck Johnson's car, causing Johnson to lose control and hit a utility pole. Subsequently, Johnson died. Smith was charged with murder.

Criminal negligence

In certain crimes, **criminal negligence** meets the requirement of criminal intent. Negligence is the failure to exercise ordinary care. Criminal negligence is a negligent act that is aggravated or reckless and constitutes indifference to the consequences.

Continued on next page

Example

A father left his sleeping 18-month-old daughter strapped in her car child seat inside the closed car even though he knew the temperature that afternoon was expected to exceed 90 degrees. He left the child unattended for a number of hours. The daughter died from the excessive heat buildup inside the vehicle. Although the father had no intent of injuring his daughter, he is still criminally negligent.

Specific crime elements

Each crime has its own set of specific elements that must be proven to establish that a crime has been committed.

For example, *Penal Code Section 459* identifies the crime of burglary. It also states that the crime of burglary is complete when:

- any person
- enters
- a building or specified structure
- with intent to commit grand or petty theft or any felony

NOTE: At a felony preliminary hearing, the district attorney, representing the state, must establish that all the essential elements of the crime are present, otherwise the defendant will not be bound over for trial.

To be a crime there must be criminal intent or criminal negligence. Whether it is a general intent or specific intent crime is really a matter for the prosecutor.

Attempt to Commit a Crime

[5.03.EO6]

Introduction

Any attempt to commit a crime is a crime.

Attempt to commit a crime

An attempt to commit a crime consists of:

- intent to commit that crime
- a direct, but ineffectual, act done toward its commission

Merely *thinking* about committing a crime is not sufficient to constitute an attempt. A crime is committed only when substantial effort has been exerted to carry out the criminal objective.

A crime of attempt is possible whenever the circumstances make accomplishment of the objective apparently possible, even though in fact, it was not accomplished.

Examples

A woman told a drug dealer that she wanted to purchase heroin from him. Although she did not realize it, the dealer sold the woman talcum powder. The woman has attempted to possess a controlled substance.

A man enters a bank and gives the teller a demand note. The teller pretends to faint and the man runs from the bank. The man has attempted to commit robbery. The crime is not complete because he did not get the money.

Continued on next page

Attempt crimes defined in the penal code

The Penal Code addresses some attempted crimes individually. Attempt crimes having their own penal code section are charged and punished under that section.

For example, if a person attempts to set fire to his former girlfriend's house, he is charged under *Penal Code Section 455*, attempt arson. The crime is punishable by imprisonment in the state prison.

The attempt to commit certain sex crimes is charged under *Penal Code Section 220*.

NOTE: Additional information regarding *Penal Code Section 220* is located in LD 10: *Sex Crime*

Attempt crimes not defined in the penal code

Attempt crimes not defined individually in the Penal Code are charged under the general provisions of *Penal Code Section 664* (attempts; punishment) and the penal code section for the crime attempted. For example, *Penal Code Sections 664 and 459* are charged for an attempt burglary.

Chapter Synopsis

Learning need

To enforce the law, peace officers must know what constitutes a crime and the information required to identify that a crime has occurred.

Crime and punishment [5.03.EO1]

Penal Code Section 15 defines a crime as a violation of a criminal statute and provides the punishments for a crime.

Elements of a crime [5.03.EO5]

The elements of the crime are the basic facts that must be proved by the prosecution to sustain a conviction. If any of the elements is missing, the crime is incomplete.

An attempt to commit a crime [5.03.EO6]

An attempt to commit a crime consists of two elements:

- an intent to commit that crime
- a direct, but ineffectual, act done toward its commission

General, specific and intent crimes [5.03.EO8]

All crimes require criminal intent which means a state of mind that the person knowingly did the particular criminal act (break the law). It may be general, specific, transferred.

Differences between criminal intent and criminal negligence [5.03.EO9]

Criminal intent must exist to distinguish the crime from an accident or mistake of fact. Criminal negligence meets the requirement of criminal intent. Negligence is the failure to exercise ordinary care.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text you should be able to prepare a response.

Activity questions

1. What is criminal negligence? How does it relate to the concept of intent?

2. Define criminal intent. Explain the concept using the example of a suspect charged with vehicular manslaughter after hitting and killing a child playing in her front yard. Evidence shows that the suspect had been driving at least 40 mph on a winding residential street with a speed limit of 25 mph when he lost control of his car and swerved into the yard.

Continued on next page

Activity questions (continued)

3. List and explain in your own words the elements that are essential to every crime.

4. Three 18-year-old female gang members are angry with another female, Cheri, who has left the gang. Together the three work out a plan to surprise Cheri, confront her, and beat her with a baseball bat (assault with a deadly weapon). Because Cheri leaves town abruptly, no further action on the plan is ever taken. Is the crime of assault with a deadly weapon complete? Explain why or why not.

Continued on next page

Activity questions

5. Write a short example illustrating the concept of transferred intent.

Continued on next page

Student notes

Chapter 4

Criminal Prosecution

Overview

Learning need

To arrest a subject, peace officers must determine what type of crime has been committed, who was involved in the commission of the crime, and who cannot be criminally liable.

Learning objectives

The chart below identifies the student learning objectives for this chapter.

After completing study of this chapter, the student will be able to...	E.O. Code
• identify three classes of crimes: - felony - misdemeanor - infraction	 5.04.EO1 5.04.EO2 5.04.EO3
• differentiate among the three parties to a crime: - principals - accessories - accomplices	5.04.EO4
• identify people legally incapable of committing a crime	5.04.EO7

Continued on next page

In this chapter

This section focuses on the prosecution of crimes. Refer to the chart below for specific topics.

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Classification of Crimes

[5.04.EO1, 5.04.EO2, 5.04.EO3]

Introduction

Crimes are classified by severity of punishment into three categories.

- Felonies
- Misdemeanors
- Infractions

Felony

A **felony** is a crime, punishable by a fine and/or imprisonment in state prison, death, or removal from office. *(Penal Code Section 17)*

Misdemeanor

A **misdemeanor** is a crime of lesser gravity than a felony. Misdemeanors are punishable by a fine and/or imprisonment in a county jail. *(Penal Code Section 19)*

"Wobbler"

A crime that can be either a felony or a misdemeanor is commonly referred to as a **wobbler**, an alternative felony/misdemeanor. These crimes are punishable by imprisonment in either the state prison or the county jail and/or a fine.

Crimes that are considered to be wobblers are treated as felonies by law enforcement officers.

Example: Burglary in the second degree is a wobbler, because it allows sentencing to a county jail or state prison.

Continued on next page

Infraction

A public offense punishable by a fine only is an **infraction**. Normally, the offender is issued a citation in place of arrest.

A person charged with an infraction is not entitled to a jury trial or to representation by a public defender, except in cases involving arrest. A public defender may be appointed later if the person was refused bail or not released under his or her own recognizance.

However, except as otherwise provided by law, all provisions of law relating to misdemeanors (such as powers of peace officers, periods for commencing action, and burden of proof) apply to infractions. *(Penal Code Section 19.7)*

Principals, Accessories, and Accomplices

[5.04.EO4]

Introduction

All individuals who commit crimes in California (and, in certain instances, outside California) are subject to prosecution and punishment by the state. They are parties to crime as either:

- principals
- accessories
- accomplices

Principals

Per *Penal Code Section 31*, **principals** include all persons involved in the commission of a felony or misdemeanor. All principals to a crime can be arrested and prosecuted.

Persons are principal parties to a crime only if there is proof that they had the required criminal intent.

Descriptions of principals

A principal to a crime is anyone who:

- directly committed the offense
- aided and abetted in the commission of the offense
- advised and encouraged the commission of the offense
- counseled, advised, or encouraged children under the age of 14 years, or mentally incapacitated persons, to commit the offense
- by fraud, contrivance, or force, occasioned the drunkenness of another for the purpose of causing that person to commit the offense
- by threats, menaces, command, or coercion compelled another to commit the offense

NOTE: A principal need not be present during the actual commission of the crime.

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Aiding and abetting

A person **aids and abets** in the commission of a crime if he or she actively assists, supports, promotes, encourages, strengthens, or instigates by act or advice, the commission of the offense. The person who aids and abets, must have *knowledge of the unlawful purpose* (intent) of the actual perpetrator of the crime. **Abet** implies having a guilty knowledge and felonious intent. **Aid** is actively assisting or supporting without knowledge of guilt.

Examples

The following are examples of principals to a crime.

At Brian's request, Julia obtained a motel room for use by Brian and an underage girl, knowing that Brian planned to have sexual intercourse with the girl. Julia took Brian and the girl to the room and returned to awaken them at a prearranged time. Both Brian and Julia have committed unlawful sexual intercourse. Even though Julia did not commit the offense herself, she aided and abetted Brian in the commission of an illegal act.

Brian and Ken planned to rob a bank. They decided that Brian would drive the getaway car, and Ken would run into the bank and steal the money. They successfully robbed the bank and drove off with the stolen money. Both Brian and Ken are principals to the robbery, and they are equally culpable for the charge of robbery.

A crowd of gang members attacked a member of a rival gang. The victim was knocked to the ground and kicked repeatedly in the head with heavy boots. The victim died from severe head trauma. Each of the participants in the assault is a principal to murder. It makes no difference which gang member struck the killing blow since each of them is liable for the natural and foreseeable consequences of the brutal attack.

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Accessories

An **accessory** is anyone who, after a felony has been committed, meets all the following requirements: *(Penal Code Section 32)*

- has knowledge that the principal has committed, has been charged with, or has been convicted of committing a felony
- harbors, conceals, or aids a principal in the felony
- has the intention of assisting the principal to avoid or escape arrest, trial, conviction, or punishment

The crime of accessory is punishable by imprisonment in the state prison or in a county jail and/or fine. *(Penal Code Section 33)*

NOTE: There are no accessories to misdemeanor crimes.

Accomplices

A principal to a crime becomes an **accomplice** when he or she testifies for the prosecution against another principal.

Accomplice testimony must be "corroborated by such other evidence as shall tend to connect the defendant with the commission of the offense; and the corroboration is not sufficient if it merely shows the commission of the offense or the circumstances thereof." *(Penal Code Section 1111)*

Example: Two men were arrested for a drive-by shooting. One volunteers to provide testimony against the shooter. His testimony was corroborated by the shooter's fingerprints found on the gun. His corroborated testimony against the shooter makes him an accomplice to the crime.

People Legally Incapable of Committing a Crime

[5.04.EO7]

Introduction

Certain people are presumed by the law to be legally incapable of forming the necessary intent and therefore are incapable of committing crimes.

Incapable persons

Penal Code Section 26 identifies those individuals who are presumed not capable of forming the designated state of mind and committing a crime. They include:

- children under 14
- persons who are mentally incapacitated
- persons who committed the act or omission:
  - under ignorance or mistake of fact,
  - without being conscious of the act,
  - through misfortune or accident, or
  - under threat or menace

Children

Children under the age of 14 are considered too young to form the necessary intent to commit a crime.

An exception occurs if it can be shown that at the time of the crime, the child knew the wrongfulness of the act. Such a finding is a legal question determined by the court, not by individual officers. Officers should record any evidence that could have a bearing on this factor.

NOTE: In California, all children under the age of 18 are subject to the provisions of the juvenile justice system. (See LD 11: *Juvenile Law and Procedure*)

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People Legally Incapable of Committing a Crime, Continued

Lack of mental capacity

Mentally incapacitated, people with very low mentality (which may include mental retardation), are presumed to lack the ability to form intent, and are therefore unable to commit a crime *(Penal Code Section 26).*

Mental incapacitation is a condition that exists from birth. A mentally incapacitated person has an IQ between 0 and 24 on the Binet intelligence scale, in contrast to the average IQ between 90 and 100. Case law states that mental retardation is a defense if the defendant lacked substantial capacity to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

Ignorance or mistake

Individuals who unlawfully act or fail to act because of ignorance or mistake are considered incapable of committing a crime.

It must be determined by the jury that such individuals made an honest and reasonable mistake without any criminal intent or negligence.

Examples

Julia accidentally picked up someone else's coat when she quickly left a meeting. Julia is able to show that she intended to leave with her own very similar coat. Julia returned the coat. Julia has not committed a crime; she has made a mistake.

An adult male held to answer for unlawful sexual intercourse with a minor female presented evidence that he had a good faith, reasonable belief based on the girl’s appearance, actions, and representations that she was 18 years old and a voluntary participant in the act. There is no criminal intent because the defendant reasonably believed that the female had reached the age of consent.

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People Legally Incapable of Committing a Crime, Continued

Unconscious act

Individuals who unconsciously commit an unlawful act or omission are deemed to lack the intent necessary for the act to be considered a crime.

To invoke this defense, the person must demonstrate that the act was involuntary and was caused by an irrational, unconscious response. For instance, the act may have been committed while that person was asleep, delirious with a high fever, suffering from medical seizure or diabetic complications, or involuntarily under the influence of alcohol or drugs.

It is not necessary that the person be incapable of movement. This defense is different from that of insanity or mental disease. The person's actions were controlled by the subconscious rather than the conscious mind.

Misfortune or accident

Individuals who commit an unlawful act or omit an act through misfortune or by accident, with no apparent evil design, intention, or culpable negligence, are not considered responsible for committing a crime.

This defense is most often used in cases of bodily injury or homicide, either excusable or justifiable.

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People Legally Incapable of Committing a Crime, Continued

Examples

A sober person driving a vehicle in good mechanical condition was traveling within the posted speed limit on a dry, clear day. Without warning, a pedestrian darted out from behind a parked car in the middle of the block and into the path of the vehicle. The car struck and injured the pedestrian. The injury was unintentional with no evil design (intent) on the part of the driver.

A woman, defending herself against an unprovoked attack, punched her assailant in the head. The blow caused the assailant to fall onto a sharp object, resulting in the assailant's death. The woman did not have criminal intent, therefore, did not commit a crime.

Threat or menace

Individuals are not held accountable for a crime if they commit the unlawful act or omission (other than a capital crime) under threat or menace that reasonably causes them to believe their life would be endangered if they refused. Individuals who plead threat or menace must have been involved in the situation through no fault of their own.

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Defense of others

Threat or menace may be used as a defense only in cases of self-defense. Action taken in response to threats to others' lives, while not applicable here, may come under justifiable homicide *(Penal Code Section 197.2)*, statutes authorizing the defense of others *(Penal Code Section 692 et seq.)*, or the defense of "necessity."

Examples

Upon approaching a convenience store late at night, Frank was stopped in the parking lot by a man with a gun. The man gave Frank an unloaded pistol and ordered him to rob the convenience store. The man tells Frank that he would be watching him through the window and would "cap him" if he didn't rob the store. Frank robbed the store and gave the gunman the proceeds. Frank has acted under threat or menace and lacks the criminal intent necessary for him to be guilty of a crime.

While Keith and Don were committing a burglary, Keith forced Don to kill the store clerk. Don is not eligible to claim threat or menace because the act of participating in the burglary itself included the possibility of being forced to commit a greater crime.

Chapter Synopsis

Learning need

To arrest a subject, peace officers must determine what type of crime has been committed, who was involved in the commission of the crime, and who cannot be criminally liable.

Crime classifications [5.04.EO1, 5.04.EO2, 5.04.EO3]

Crimes are classified by severity of punishment such as,

Felony:
- A fine, imprisonment in a state prison or death.

Misdemeanor:
- A fine, imprisonment in a county jail.

Infraction:
- A fine.

Parties to a crime [5.04.EO4]

Principal:
- directly commits a crime, or aids, abets, advises, or encourages another person in the commission of any crime.

Accessory:
- with knowledge that a felony was committed, harbors, aids, or conceals a principal, with the intent, or to avoid arrest or prosecution.

Accomplice:
- is a principal to the crime, and testifies for the prosecution.

People legally incapable of committing a crime [5.04.EO7]

All persons are presumed capable of forming the designated state of mind and of committing a crime except those identified in *Penal Code Section 26* as persons incapable of committing a crime.

Workbook Learning Activities

Introduction

To help you review and apply the material covered in this chapter, a selection of learning activities has been included. No answers are provided. However, by referring to the appropriate text you should be able to prepare a response.

Activity questions

1. What are the three major classifications of crimes? Provide a brief definition of each, including the characteristics that distinguish each from the others. Finally, define a "wobbler" and explain how such crimes should be treated by peace officers.

2. What is the difference between an accessory to a crime and an accomplice to a crime?

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Activity questions (continued)

3. Read the following scenario and identify the role played by each participant. Explain your decisions. Under what conditions would Heidi become an accomplice?

   Juan mentions to Cal that he thinks it would be easy to rob a local convenience store. Edith, overhearing Cal repeating this to Morris, draws a floor plan of the store for Cal. Juan then offers Cal suggestions on implementing the robbery and loans him a ski mask and gloves to use. With no further assistance from Juan or Edith, Cal plans and carries out the robbery of the store. Morris serves as lookout, and his girlfriend, Heidi, drives the getaway vehicle which was borrowed from Desi for a "hot date out on the town." When Cal, Morris, and Heidi show up at Alice's door and tell her of their activities, Alice offers them refuge and help in hiding the money.

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Activity questions (continued)

4. What are the six categories of persons that *Penal Code Section 26* identifies as incapable of committing a crime? Why are all individuals in these categories considered incapable of this?

5. Participate in a facilitated discussion of California Codes in relation to authoritative, punitive, definitive and procedural sections.

Glossary

Introduction	**The following glossary terms apply only to Learning Domain 5: Introduction to Criminal Law**
accessory	One who knowingly assists a perpetrator after the felony has been committed
accomplice	A principal becomes an accomplice when the principal *testifies* for the prosecution against another principal
aids and abets	Actively assisting, supporting, promoting, encouraging, strengthening, or instigating in the commission of a crime by act or advice
breach of contract	Failure to comply with the terms of a contract
case law	Laws that are based upon appellate court decisions
civil law	Noncriminal violations of the law
codes	All current statutes or ordinances enacted by a legislative body
constitutional law	Rules and provisions found in the federal and state constitutions
crimes	Violations of a criminal statute
criminal intent	A mental state or frame of mind that the person knowingly did the particular criminal act (break the law). May be general, specific or transferred intent

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criminal law	Criminal statutes that describe crime and punishment
criminal negligence	A negligent act that is aggravated or reckless, and constitutes indifference to the consequences
elements of the crime	The basic facts that must be proven by the prosecution to sustain a conviction
ex post facto laws	Laws written after the fact to punish an action that has already taken place and was not illegal at the time of commission
felony	The most serious crime, punishable by a fine and/or imprisonment in a state prison, removal from office, or death
general intent crimes	Intent is presumed and does not have to be proven. Definition of a crime consists only of the description of a particular act, without reference to intent
infraction	A public offense punishable by only a fine
judicial review	The power held by the judicial branch that permits it to review actions of the legislative and executive branches of government and declare void acts it finds are in violation of the Constitution
letter of the law	When the law is applied in accordance with the literal meaning of the statute, leaving no room for interpretation

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Glossary, Continued

misdemeanor	A crime of lesser gravity than a felony, punishable by a fine and/or imprisonment in a county jail
ordinances	County and municipal codes or statutes
precedent	Previous appellate court decisions that become binding on later court decisions
principals	All persons involved in the commission of a felony or misdemeanor
redress	To right a wrong
specific intent crimes	An element of a crime that must be proven and cannot be presumed; the requirement of the specific intent element varies according to the definition of the crime
spirit of the law	Interpreting law in accordance with the intent of the legislative body rather than the literal meaning of the words of the statute
statutory law	The written law enacted by a legislative body
tort	Private wrong committed by one person against another
transferred intent	When an unlawful act affects a person other than, or in addition to, the person it was intended to affect
wobbler	A crime that can be punished either as a felony or misdemeanor