

# CALIFORNIA CRIMINAL LAW CONCEPTS

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THIRTEENTH EDITION



DERALD D. HUNT  
DEVALLIS RUTLEDGE

# **CALIFORNIA CRIMINAL LAW CONCEPTS**

**Thirteenth Edition**

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We deeply appreciate the welcome support and helpful suggestions received from the many instructors who have adopted *California Criminal Law Concepts* for use in their classrooms.

The authors look forward to your contacting them at E-mail: DeraldHunt@aol.com or Fax: (714) 966-1514.

*Derald D. Hunt*  
*Devallis Rutledge*

# PREFACE

## TO THE STUDENT...

**How to Make the Best use of *California Criminal Law Concepts*.** If you will use the “Seven Step Plan” which follows, you will learn more in less time and with less effort. Also, your retention of this new knowledge will be greatly increased!

**Step 1: Read the “Terminology Defined” list.** You will find this list at the end of each chapter, along with a matching-type Terminology Quiz. These terms will help you to better understand the meaning of what you are reading. You are encouraged to take the Terminology Quiz after reading the chapter and/or reviewing the list.

**Step 2: Read the True-False and Essay-Discussion Items.** These are found at the end of each chapter. If you do this *before* you read the chapter, it will help you to recognize the answers to these items when you later study the text.

**Step 3: Make a preliminary survey.** Get an idea of what the material in each chapter is about—what the key concepts are—before you read. Do this by noting text section headings and subheadings.

**Step 4: Read for understanding.** Formulate mental questions as you read. Look for answers to the end-of-chapter True-False and Essay-Discussion items as you read.

**Step 5: Test yourself.** Be sure you can answer the True-False and Essay-Discussion questions before you leave each chapter.

**Step 6: Take notes.** High-light or underline key points in your text. Use your notebook and the margins of your text to note what you have read. Write brief answers to the end-of-chapter test items.

**Step 7: Review.** Analyze the major points of the chapter and review any sections you do not understand. Make notes on questions you can ask at the next class meeting.

## ABOUT THE TEXT...

**New Law and Court Decisions.** This **Revised Edition** of *California Criminal Law Concepts* includes over 400 Penal Code and other criminal laws. Also included are the most recent criminal law up-dates and the most recent appellate court decisions applicable to California criminal law. Examples, taken from cited cases, are used to illustrate key points of law.

**Scope and Purpose.** *California Criminal Law Concepts* is designed to provide law enforcement/administration of justice students with all necessary material for a thorough foundation and solid basic understanding of California criminal law. Supplemental texts, penal or vehicle codes are normally not needed.

**Meets Current Standardized Core Curriculum.** In 1988, and again in 1992 and 1993, the recommended state-wide Criminal Justice “Core Curriculum” was revised or reviewed via a joint project of the California Association of Administration of Justice Educators (CAAJE), and the Community College Chancellor’s office.

This edition of *California Criminal Law Concepts* meets the objectives and scope of these revisions and of Education Code Title V criteria for the newly revised “**Concepts of Criminal Law**” course as outlined in the Community College Chancellor’s report.

**Recruit and Reserve Academy Training.** *California Criminal Law Concepts* exceeds the Criminal Law instructional segment as specified by the Commission on Peace Officer Standards and Training (POST), for the Basic Academy and for Level III Reserve Officer Training. The manual also meets all Criminal Law and Laws of Arrest Performance Objectives required for the POST basic course (Functional Area 3).

## TO THE INSTRUCTOR...

This revised edition of *California Criminal Law Concepts* includes many new features designed for you and your students' increased convenience and effectiveness. Included in this new edition you will find:

**Compendium of Landmark Cases (With Key Holdings).** Appendix F provides a quick reference list of landmark court decisions. Cases are listed in alphabetical order and each includes a summary of the court's key holding in that case.

**New Expanded Index.** For faster easier referencing, the index in this edition is more than twice the size of previous editions.

**New Chapter Revisions.** Based on instructor and student input, several chapters have been reorganized into a more logical sequence of topics.

**Current Laws of Arrest.** Chapter 7, covering this critical area, has been completely revised and updated to include the newest statutes and court decisions. The most recent Constitutional law, modifications of the *Miranda* decision, articulable suspicion, and detention and arrest laws and procedures are included.

**Controlled Substances.** Chapter 17, Controlled Substance and Alcohol Abuse Crimes, has been thoroughly revised and updated. It is now more complete, less technical and easier to read.

**Crime Elements (*Corpus Delicti*) Chart.** Appendix A provides a comprehensive chart covering the elements of the most frequently referred to sections of the Penal Code, listed in alphabetical order by name of offense.

**Penal Code Index.** For easy reference, Appendix B provides an extensive list of code sections in alphabetical order by name of offense. Also, Appendix C lists important and frequently used Penal Code sections in numerical order by section number.

**Basic Legal Research.** Appendix D offers your students easy-to-understand instructions on how to

find case law and how to write a basic legal brief. A sample brief, showing proper format, is also included to assist your students.

**Terms and Definitions.** A List of legal and technical terms and their definitions applicable to the text is found at the end of each chapter. This list and the accompanying quiz, helps students to "learn the language" of the discipline.

**Matching-type Terminology Quiz.** This quiz, based on the end-of-chapter Terminology List, is also found at the end of each chapter. Students are encouraged to answer this quiz in each chapter of their text during home-study or in class.

**True-false Quiz for Each Chapter.** This test covers key points relative to each chapter. It is easily scored on a "Scantron" or other electronically scored answer sheet. These items provide you with excellent weekly (or periodic) feedback for diagnostic and review purposes.

**Essay-discussion Items.** These items serve a dual purpose. They provide material for stimulating class discussion. They are also useful as the basis for a more comprehensive essay test such as a midterm or final examination. Education Code, Title V, now requires students to do writing and critical thinking as part of their course work. The essay-discussion items will help your students to accomplish this objective.

**Confidential Instructor's Guide.** Now available as a printed booklet or a 3 1/2 computer disk. Both the printed Instructor Guide and the computer disk includes overhead projector transparency material, end-of-chapter test items, and a M/C test bank. The transparency material outlines key points for each chapter using WordPerfect 5.1.

The Instructor's Guide can be obtained by instructors (only) without charge by contacting **Burgess Publishing Company, 7108 Ohms Lane, Edina, MN 55435, Fax 612-831-3167.** Please use an official college form or college letterhead when making your request.

**A Personal Note to Instructors:** If you would like to receive legal up-dates from time-to-time, please contact the authors at E-mail: [DeraldHunt@aol.com](mailto:DeraldHunt@aol.com) or Fax: (714) 966-1514.

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## CHAPTER 1

# SCOPE AND SOURCE OF CRIMINAL LAW

### 1.1 INTRODUCTION

**T**he basic purpose of criminal law is to establish limits on certain human behavior or activity considered harmful to society. It is *not* about oppressing people or preventing them from enjoying life. Laws are the “tools” we use to build and maintain an orderly society.

If each of us lived in a state of isolation from all other human beings, there would be little, if any, need for criminal law—or any law at all—for that matter. Obviously, we do not exist as hermits. In fact, we live in a very complex society requiring daily interaction with many other people.

In such a society, each person must know what he or she can and cannot legally do regarding our frequent contacts and dealings with others. In order to avoid societal chaos, we must have rules to govern our activities. This is why, for example, we have rules regarding the operation of vehicles on our crowded streets and highways.

Even in a complex society such as ours, if everyone did the “right” thing in relation to all other members of society, we would need few criminal laws. Unfortunately, there will always be individuals who attempt to oppress the helpless, who steal the possessions of others, or in one way or another violate the life, liberty, or property of others by force, fear or fraud.

**Limitations and Controls.** The law tends to provide limitations and controls. It is obvious that professionals already in the system must understand the law. Students preparing for modern-day law enforcement, corrections, or security employment, must also be well grounded in the fundamentals of criminal law. This foundation provides the framework within which each must function.

Historically, our first criminal laws came into being as a result of society’s struggle to control those persons whose antisocial activity was destructive of a desirable environment in which people wanted to live. Safety, stability, and integrity are necessary for the healthy growth and benefit of the community as a whole.

We may think of crime as a violation of the *basic controls* of society, and we may think of criminal law as necessary to deter misconduct and otherwise deal with those individuals who would disrupt society. Criminal law is an instrument of social control. Without laws, criminal or civil, we would have no protection from the predatory whims of others.

In order to gain the protection of society’s laws, the law-abiding members must be willing to give up a small part of their freedom to do just as they wish at all times. This is especially true when one individual’s activities interfere with the rights of others. With the above in mind, we may define crime as *social conduct considered harmful to individuals and to our institutions* and therefore made punishable by law.

### 1.2 ORIGIN AND DEVELOPMENT OF CRIMINAL LAW

Most of our early criminal law was based on custom or other recognized patterns of human behavior which appeared to be beneficial to the group as a whole. Even today, laws pertaining to incestuous marriages (between closely related blood relatives) can be traced to early tribal taboos. Other crimes relating to theft, murder, child molesting, etc., have a similar basis.

Criminal law is almost as ancient in one form or another as is humankind on earth. No doubt even early cavemen eventually established some sort of basic rules as to who would eat first, who had to tend the fire, who was to stand guard, etc. No doubt, those who

didn't conform to the "law" were punished in some way by the rest of the group. Their survival was based on being able to depend on one another to follow the rules. Obviously, these rules or "laws" were not written, but were undoubtedly well understood by each member of the group.

As family groups eventually joined one another to form tribes, new rules or laws were developed to avoid conflict and to assure the peaceful functioning of the group. Children were no doubt taught local customs and taboos by parents and other members of the tribe. As society developed and began to place its thoughts in writing, there emerged the concept of statutory (written) law. This was to have a profound effect on the entire civilized world.

**Development of Written Law.** The first "written" law was in the form of cuneiform symbols chiselled into rock tablets or impressed on wet clay tablets which were then baked or dried hard in the sun. One of the most famous examples is the *Code of Hammurabi*. This large stone tablet, now preserved in the Louvre Museum in Paris, was believed by scholars to have been written by King Hammurabi of Babylonia about 2100 B.C.

We can trace many of our legal concepts and procedures back to the Code of Hammurabi. These include: making perjury a crime, written contracts, juries, judges and the "swearing in" of witnesses. While the bulk of our modern law is based on English jurisprudence (body of law), we have also inherited traces of Roman law (Latin medical-legal terms) as well as French and Spanish legal concepts.

As civilization developed, we find concepts such as trial by jury emerging in early England during the 12th century. We also begin to see the emergence of representative government—that is, the election or appointment of representatives who were granted authority to pass laws. These "legislatures" adopted new laws as society and modes of conduct changed. And so it is today. Our California State Legislature and Congress pass new laws and rescind old ones as the need for change is perceived. We also find our courts placing new interpretations on old laws.

**The Norman (French) Period.** In 1066, William the Conqueror, a French military leader, conquered the British Isles and declared himself king. William found various individual courts in existence which were dominated by the sheriff.

Prior to 1066, no action had been taken by the various kings of Britain to reduce the laws to writing. Rather, they allowed the sheriff to enforce the various tribal or village rules as he saw fit to keep order. Criminal courts, as such, were as yet unknown. William, however, demonstrated a genius for organization. He gradually took measures to reduce the arbitrary power of the sheriff. For example, he commanded the sheriff to act, henceforth, *only* in the king's name. William thus established some degree of uniformity. Additionally, he placed all courts under royal control and issued a proclamation inviting the common people of the country to seek justice in his courts. This had never been permitted before.

In time, English courts became more centralized and uniform in their administration of the law. Within one hundred years following William's conquest, the known common law crimes were being more or less equally enforced throughout the country. The various acts which constituted crimes, were enforced by the courts based on reason and human experience of the past. Certain acts, therefore, constituted crimes by "common understanding" or by "public consent."

**The Westminster Period.** Gradually, during the Westminster period in England (1285-1500), procedures became more formal. As such, the known or general custom of the kingdom became more rigid. For example, to establish that a certain practice was "custom" and therefore "law," lawyers found it useful to give examples and illustrations from their own experience. They also cited facts from other trials that they could personally recall. These illustrations of what had been done before were not binding on the court, but were forerunners of what we know as "*stare decisis*" or "precedent" today. (See Section 1.5).

With the passing of time and creation of the English Parliament, new crimes were added to the "list." Thus, we see both the legislature (Parliament) and the courts adding to the body of common law.

**The Common Law.** As defined by Blackstone, "common law" consists of doctrines that are not set down in any written statute or ordinance, but rather, depend upon long-time usage for their authority.

Common law is obviously much more ancient than statute law. It can be described as the total of doctrines, decisions, precedents, reasonings and practices comprising the legal heritage of Anglo-American law and the source of our legal thinking.

The common law, in the sense in which it is used here, can be described as that body of law which gets its authority, not from express enactments of the legislature, like statute law, but from the fact that it has existed from time immemorial.

**The Adoption of Common Law in America.** With the exception of Louisiana, the United States can trace the foundations of its criminal law to early English common law. However, even Louisiana, which had a French and Spanish heritage, adopted the common law of England by passage of a statute in 1805.

As the first settlers from England arrived, they formed agreements among themselves called “compacts.” In these compacts, they adopted much of the common law of England for their governance. Following the Declaration of Independence, many states either adopted the common law outright, or passed criminal statutes, which in fact, incorporated into written law most of the basic principles of the old common law.

**Common Law Crimes.** There are no common law (unwritten) crimes in this state. On the contrary, for an act or omission to constitute a crime in California, it must be in violation of (1) a written statute which (2) must provide a penalty for its violation. The laws which are passed by authorized bodies of local, state and federal governments make up our statutory law.

There are no common law offenses against the United States government (*United States v. Britton*, 108 U. S. 199). To constitute a crime, a written law must exist declaring any act or omission a criminal offense. The statute must also provide a punishment for its violation. In California, the law is wholly statutory and there are no common law crimes (*People v. Harris*, 191 Cal. App. 2d 754).

It is expressly provided by statute in California that no act or omission is criminal or punishable, except as prescribed or authorized by code or statute (PC 6).

### 1.3 SOURCES OF CRIMINAL LAW

Our criminal law in this country comes from the following three primary sources:

1. United States and State Constitutions.
2. Statutes (laws) passed by Congress, state legislatures and local governments.

3. Prevailing decisions (case law) of the appellate courts in criminal cases.

**Federal and State Constitution as Sources of Criminal Law.** The United States Constitution is the supreme law of the land (U.S. Constitution, Article VI).

We recognize the United States Constitution as well as the constitution of our own state as the fundamental written “law of the land.” These two documents provide the framework for our criminal justice system in that they: (1) define and limit the powers of government and (2) provide for establishment and maintenance of our court system.

**Bill of Rights.** The first ten amendments to the United States Constitution were adopted in 1787, at the same time as was the Constitution. They are known as the *Bill of Rights*. Many of these amendments are very important to criminal law, such as free speech (First Amendment), trial by jury and right to an attorney (Sixth Amendment). The greatest impact, however, comes from the Fourth Amendment (searches, seizures, warrants) and the Fifth Amendment (self-incrimination).

**The California Constitution.** Our state Constitution begins with a Declaration of Rights, which reflects the same concerns as the Bill of Rights. For example, the right to freedom from unreasonable searches and seizures is found in Article 1, Section 13. The right against self-incrimination is contained in Article 1, Section 15.

During the late 1970s and early 1980s, the California Supreme Court based many of its decisions on this state’s Constitution. Suspects were given more rights under the California Constitution than they are entitled to under federal law. These “independent state grounds,” caused many cases to be lost, even though they could have been prosecuted under federal standards. The people of this state moved to stop this trend when they enacted Proposition 8, known as “The Victims’ Bill of Rights,” which amended the California Constitution in 1982. This topic is discussed in your text under Section 2.10.

**United States Congress and State Legislature as Sources of Criminal Law.** In addition to the United States and California Constitutions, much of our criminal law comes from statutes which appear in the various codes, such as the Penal Code, Vehicle Code,



Welfare and Institutions Code, etc. Of California's approximately forty different codes, only five or six are used with any degree of frequency by police officers.

From our early beginnings in this country, our courts have consistently ruled that both congress and the state legislature have the inherent power to pass laws defining, prohibiting, and punishing criminal conduct. The only restriction is that they may not pass any laws that conflict with, and thus violate, constitutional restrictions and limitations.

The United States Congress and our own California State Legislature are the two most prolific sources of our criminal law. They are both in a position to respond to changing needs of society. When a criminal law becomes outdated, it can be repealed and thus eliminated. When new technology or new societal needs are identified, new laws may be passed, or previously existing laws may be amended and updated.

**Decisions of the Courts.** Our appellate courts constitute another major source of our criminal law. Once a law is passed by the legislature, or directly by the people using the initiative petition (e.g., Proposition 8), it may need interpretation. The law may not be clear to everyone. Different words or terms may mean different things to different people. Obviously, if we are to have a "government of laws," some entity must have the authority to define the statute as to the legislature's meaning and intent.

This is the role of the court and can be recognized as an extension of the old English common law. The result of this procedure is known as case law or precedent and is based on the legal principle of *stare decisis*, which is discussed below in Section 1.5.

## 1.4 THE PURPOSE AND NATURE OF CRIMINAL LAW

Crimes are prohibited and punished on the grounds of public policy to prevent injury to the public. Injury to the public may include destruction or interference with government, human life, private property, or other valued institutions or interests. Such considerations as desire for vengeance or compensation for injury may also be involved.

Punishment is often said to be the purpose of the criminal law. This is true only up to a point. The real purpose of criminal law is to define socially intoler-

able conduct, and to hold conduct within limits which are reasonably acceptable from the social point of view (*Sire v. United States*, 241 Fed. Rptr. 2d 640).

Perhaps it may be said that whatever purpose is served by punishment, one purpose is that of compelling persons to cease or refrain from committing crime and forcing or persuading them to conform to established rules of conduct designed for the protection of government, life, and property.

**Definition of Crime — PC 15.** A crime is a public offense against the state (*People v. Weber*, 84 Cal. App. 2d 126). Penal Code Section 15, defines a crime or public offense as "...an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments:

1. Death
2. Imprisonment
3. Fine
4. Removal from office
5. Disqualification to hold and enjoy any office of honor, trust or profit in this state."

The terms "crime" and "public offense" mean the same thing and includes felonies, misdemeanors and infractions (*People v. Hamilton*, 191 Cal. App. 3d Supp 13).

The word "crime," in its more extended sense, includes every violation of any public law. A general course of conduct, practice, habit, mode of life, or status which is prejudicial to public welfare may be prohibited by law, and punishment therefor may be provided by the state. Every course of conduct or practice or habit or mode of life or status falling within that class of wrongs is covered by the term "crime" (*People v. Babb*, 103 Cal. App. 2d 326).

All public offenses or crimes in California are statutory, and the court cannot have recourse to common law to determine prohibited acts (*Ex parte Harder*, 9 Cal. App. 2d 153). That a criminal action is being prosecuted by the People, and not in the interest of any person injured, is a fundamental principle of criminal law (*People v. Clark*, 117 Cal. App. 2d 134).

## 1.5 CONCEPTS OF STARE DECISIS

*Stare decisis*, (pronounced: star-ray dee-sigh-sis) means "adhering to precedent." It also means that

previously decided cases are to have a great impact and influence on the decisions in current cases. The purpose of this doctrine, which originated during the eighteenth century in England, is to provide consistency and orderliness. The laws by which people are governed should be relatively fixed, definite, and known. The term “precedent,” is more commonly used today.

**Precedent.** It is important to understand that a court often makes its decision based on previous court decisions called “precedent.” Courts, especially intermediate appellate courts, try to rule consistently with past decisions in order to maintain an orderly system so that people will know what conduct is permissible and what is not.

**Departure From Precedent.** For various reasons, courts do not always follow precedent. Sometimes one appellate court will simply disagree with another. Sometimes a given court will change its collective mind and disregard its own earlier opinion. The following two cases provide brief examples of where the court has reversed itself.

- Husband and wife may now be found guilty of conspiracy (*People v. Pierce*, 61 Cal. 2d 879). Previously husband and wife were considered one person in marriage and could not be guilty of conspiring (*People v. Miller*, 82 Cal. 107, decided in 1889).

- In the crime of unlawful sexual intercourse (PC 261.5), ignorance as to the victim’s age was previously no defense. The court has since reversed its position. Now a good faith belief (based on reasonable cause) that the victim was 18 years of age or more is a valid defense to the crime (*People v. Hernandez*, 61 Cal. 2d 529).

Most commonly, “new law” is made, not so much by departing from precedent, but because new facts are involved. Every case has something about it that is different from any situation which has gone before. It is the application of the Constitution or statutes to these different factual situations which typically results in new law.

## 1.6 CLASSIFICATION OF LAWS

**Substantive vs. Adjective Law.** Criminal law may be classified into two broad categories. It is either *substantive* (laws defining crimes) or *adjective* (rules of procedure for administering the law).

Substantive criminal laws may define activity or behavior that is either *prohibited* (e.g., theft, assault) or *required* (e.g., supporting a child, registering a car). It is obviously a crime to do that which is prohibited by law. It is also a crime to *fail* to do that which the law *requires* one to do.

Substantive law can be further defined as: “that part of the law which the courts are established to enforce,” as opposed to the rules (adjective or procedural law) by which substantive law is administered.

**Adjective or Procedural Law.** Peace officers need some understanding of adjective or procedural law because it includes such things as the rules of submitting evidence in court and arraignment of those charged with a crime. Adjective or procedural law is also concerned with carrying out court orders, redress (compensation) for injuries, and classification of crimes, and punishment. There are two other more familiar divisions of law—criminal and civil—which are of particular concern to law enforcement personnel.

**Criminal vs. Civil Law.** **Criminal law**, as the term implies, concerns itself with defining those specific acts and omissions (failure to act) which constitute a crime in our society. The most common crimes are described and defined in the California Penal Code. However, many other crimes are also found in about forty various other California Code books.

These other codes include the Vehicle Code (VC), Education Code (EC), Welfare and Institutions (W&I) Code, Health and Safety (H&S) Code, Fish and Game (F&G) Code, Harbors and Navigation (H&N) Code and the Business and Professions (B&P) Code, to name just a few.

The penalty for committing a crime, which is doing that which a criminal code section prohibits, or not doing that which a criminal code requires one to do, is usually a fine or a jail or prison term. Section 1.4 of your text lists all possible penalties for a crime.

The various California Codes, court interpretations, and the state and federal constitutional provisions affecting law enforcement, define the duties, responsibilities and authority of peace officers. It is also from these sources that peace officers and others in our justice system derive their legal authority and responsibility.

**Civil law** has to do mostly with describing or establishing rules for various legal (mostly business) rela-

tionships, contracts and other agreements. Civil laws describing the contents of a contract or the terms of a promissory note (loan), are typical examples. Some of our “codified” civil law is found in California Code books such as: Code of Civil Procedure, Business and Professions Code, and the Welfare and Institutions Code, to name a few. Most civil law, however, is found in published court cases. Violations of civil law (called a “tort”), are enforced differently than are violations of criminal law.

There are several other differences between civil and criminal law. They apply primarily to civil law and have to do with: the rules of evidence, the exclusionary rule, the number of jury votes required for a verdict, and the degree and amount of proof required, to name a few. (See Section 1.13 for an explanation of the key differences between criminal law (crimes) and civil law (torts).)

## 1.7 STATUTE OF LIMITATION

Penal Code Chapter 2, “Time of Commencing Criminal Actions,” covers the so-called statute of limitation. These statutes (PC 799-805.5), place a limit on the amount of time which may legally pass between the time the crime was either committed or discovered and prosecution is started (*People v. Chapman*, 47 Cal. App. 3d 597).

By way of introduction, it is necessary to consider the statute of limitation on certain offenses in order to know how long after the commission or discovery of a public offense a suspect can still be prosecuted. In some cases the time starts running from the time the crime is *discovered*. In other instances, the statute of limitation starts running when the crime is *committed*. There is a difference as to the statute of limitation between felonies and misdemeanors. There is also a difference in the statute of limitation between certain felonies and between certain misdemeanors.

**Commencement of Prosecution.** If prosecution is not started within the time provided by the statute of limitation, it is a defense to prosecution. Prosecution for a crime is commenced, thus stopping the statute of limitation, when any one of the following five events occurs:

1. A Grand Jury indictment is returned.
2. An “information” (criminal charge) is filed in superior court.

3. A complaint charging a public offense is filed in an inferior (justice or municipal) court.
4. A case is certified for trial to the superior court from an inferior (municipal) court.
5. An arrest warrant, or bench warrant, is issued naming or adequately describing the defendant.

**Misdemeanors: One-Year Limitation.** Prosecution for a misdemeanor (any offense punishable other than by death or imprisonment in state prison) must be commenced within one year after its commission (PC 802(a)). One of the five events (see Commencement of Prosecution, above) must take place within one year, or the suspect cannot be legally prosecuted. *Note:* if the suspect has been out of the State during any part of this one year, such time does not count against the running of the statute of limitation (PC 803(d)).

**Misdemeanors: Two-Year Limitation.** Prosecution for a misdemeanor violation of PC 647.6 (child molesting) committed with or upon a minor under the age of 14, must be commenced within two years of its commission (PC 802(b)).

**Computation of Time if Defendant is Out of State.** What effect does it have on the statute of limitation if the defendant is out of state at the time, or leaves shortly after, the offense is committed? No time, up to a maximum of three years, during which time the defendant is out of the state, is counted as part of the statute of limitation (PC 803(d)). It is possible, of course, for a defendant to commit a crime, such as fraud or forgery, etc., and not be in this state at the time the crime is completed. It is, also, not unusual for a suspect to flee the state immediately after committing a crime.

PC 803(d) provides, in effect, that the statute of limitation does not start for up to the first three years that a defendant is not within this state. After that three-year period, the statute starts to run. Of course, if the suspect remains in the state from the time the crime is committed, the statute starts to run immediately.

For those felonies which have a three year statute of limitation, if the suspect remains out of the state for more than six years, without a commencing of prosecution, he or she cannot be prosecuted. In the case of most misdemeanors, the statute would have run out after four years. This is calculated by adding the three years on the out-of-state provision of PC



803(d), and one year on the misdemeanor statute itself.

**No Statute of Limitation.** Prosecution for an offense punishable by death or by imprisonment in the state prison for life or for life without possibility of parole, or for the embezzlement of public money may be commenced at any time (PC 799).

**Three Year Limit—Felonies in General.** Prosecution for any felony, punishable by imprisonment in state prison, except those for which there is no statute of limitation, or for those listed below, shall be commenced within three years after *commission* of the offense (PC 801), except felony thefts and frauds by public officials, which carry a four-year limit (PC 801.5).

**Three Year Limit Following Discovery.** Prosecution for each of the following crimes must be commenced within three years after it is *discovered* (PC 803).

1. Conflict of interest, Government Code 1090, 27443
2. Deceptive government agency ID, Business & Professions Code 22430
3. False affidavit, PC 118a
4. False documentary evidence, PC 132
5. False/forged birth certificates, PC 529a; Health & Safety Code 10690
6. Felony Medi-Cal fraud, Welfare & Institutions Code 14107
7. Felony welfare fraud, W&I Code 11483
8. Grand theft, PC 487
9. Insurance Fraud, Insurance Code 556
10. Perjury, PC 118
11. Preparing false evidence, PC 134
12. Presenting false claims, PC 72
13. Sale/falsification medical degree/certificate, B&P Code 580-584
14. Stock sale fraud, Corporations Code 25540, 25541
15. Theft or embezzlement from an elder or dependent adult.

**Six Year Limit Following Commission.** Prosecution for any offense punishable by imprisonment in the state prison for eight years or more (except for death or life imprisonment) shall be commenced within six years after *commission* of the offense (PC 800).

**Sex Offenses Against Children.** Specified sexual offenses against children may be prosecuted within the applicable limitation period (three or six years) if

reported before that period has expired, or within one year after the victim under 18 years of age reports the crime (PC 803(f)). “Substantial sexual conduct” (vaginal or rectal penetration or oral copulation) alleged to have been committed against a minor victim may be prosecuted within one year of being reported by a victim of any age (PC 803(g)).

## 1.8 CASE CITATIONS AND APPEALS

When a superior court case is “taken up on appeal,” the appeal is usually heard first by the California District Court of Appeal. The person making the appeal is known as the appellant and is, in essence, asking the appellate court to consider a question of fact or law with respect to the adjudication (hearing) of his or her case in the trial court.

The appellant will usually be the defendant in a criminal action, however, the prosecution may also appeal in certain cases (PC 1238). In such instances, the prosecution is known as the appellant, and the adverse party is the respondent.

**Written Appellate Court Opinions.** When either of the two appellate courts (State Supreme Court or District Court of Appeal) makes a decision, a written opinion is filed, explaining the reasoning of that court. Some of these opinions are later published if they contain some novel element. They appear in the California Appellate Reports, abbreviated “Cal. App.” or “C.A.” A typical example of a case citation reflecting a published opinion by the District Court of Appeal would be: *People v. Weaver*, 44 Cal. App. 4th 154. This citation refers to volume 44, California Appellate Reports, fourth series, page 154.

If the decision of an appellate court is further appealed, it is heard by the seven justices of the California Supreme Court. The written decisions reflected by this court are published in California Reports, abbreviated “Cal.” or simply the letter “C.” An example of a case citation of a published opinion of the California Supreme Court would be: *People v. Lucas*, 12 Cal. 4th 415. This designation refers to volume 12, California Reports, fourth series, page 415. (See Appendix D, for details on Basic Legal Research).

The two preliminary reports of cases decided by the appellate courts are subsequently published in bound volumes. However, since it generally takes a year to publish the case reports in volume form,