



CALIFORNIA CRIMINAL LAW MANUAL

Seventh Edition

DERALD D. HUNT

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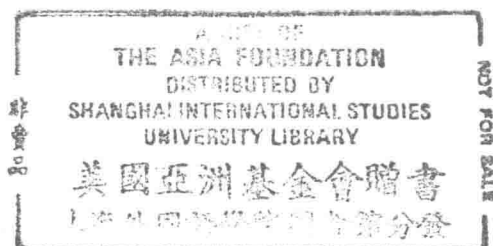
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To Ruby.

My loyal advocate

and loving wife.



ACKNOWLEDGMENTS

I deeply appreciate the welcome support received from those professors in the many California community colleges, state colleges and universities who use *California Criminal Law Manual* in their classrooms.

These instructors' suggestions for making the text more complete and useful for themselves and their students have been gratefully adopted in the current edition.

I am especially indebted to Deputy District Attorney, Devallis Rutledge, for his extensive contribution as consulting legal editor to this revised edition.

Finally, I want to thank Jack A. Fleming, Dean, Vocational Education, Moorpark College, for his valuable assistance on the Instructor's Manual and Arland R. Bassett, Professor of Criminal Justice, Golden West College, for his contribution to Appendix D, Basic Legal Research.

Derald D. Hunt

PREFACE

ABOUT THE TEXT...

New Law and Court Decisions. This Revised Edition of *California Criminal Law Manual* includes over 400 Penal and other criminal code sections. All applicable new law is covered. Also included are the most recent appellate court decisions germane to California criminal law. Examples, taken from cited cases, are used to illustrate key points of law.

Scope and Purpose. This Manual provides the law enforcement/ administration of justice student with all necessary material for a thorough foundation and solid basic understanding of California criminal law. Supplemental texts are usually not necessary.

Meets New Standardized Core Curriculum. In 1988, the recommended state-wide criminal justice Core Curriculum was revised. This was a joint project by the California Community College Chancellor's office and the California Association of Administration of Justice Educators (CAAJE).

This edition of *California Criminal Law Manual* meets the scope, objectives and Education Code Title V criteria for the newly revised Criminal Law course as outlined in the Chancellor's report.

Recruit and Reserve Academy Training. *California Criminal Law Manual* covers 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 STUDENT...

How to Best Use *California Criminal Law Manual*. 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 understand more clearly 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 key points in your text. Use the margins of your text and your notebook for noting 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.

TO THE INSTRUCTOR...

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

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.

Corpus Delicti Chart. Appendix A provides a comprehensive chart covering the elements of the most frequently used sections of the Penal Code, listed in alphabetical order by 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 each chapter's end. This list and the accompanying quiz, helps students to "learn the language" of the discipline.

Matching-type Terminology Quiz. This quiz, based on the 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 more writing and critical thinking in their course work. The essay-discussion items will help your students to accomplish this objective.

Multiple-Choice Test Bank. A new M/C test bank comprised of from five to ten items per chapter is now provided for your convenience in the Instructor's Guide.

Instructor's Guide. A complete Instructor's Guide (including a keyed, multiple-choice test bank) is available upon request to instructors, only. Answers to all end-of-chapter tests are included in the Instructor's Guide. The Guide can be obtained without charge by writing to **Burgess Publishing Company, 7108 Ohms Lane, Edina, MN 55435.** Please use an official form or college letterhead for your request.

CONTENTS

<i>Acknowledgments</i>	iv
<i>Preface</i>	v

Chapter 1 SCOPE AND SOURCE OF CRIMINAL LAW

1.1	Introduction	1
1.2	Origin and Development of Law	1
1.3	Sources of Criminal Law	2
1.4	Purpose and Nature of Criminal Law	4
1.5	Concepts of <i>Stare Decisis</i>	4
1.6	Classification of Laws	4
1.7	Statute of Limitation	5
1.8	Case Citations and Appeals	6
1.9	Attorney General Opinions	7
1.10	Police Power of the State	7
1.11	The Concept of Preemption	8
1.12	<i>Ex Post Facto</i> Laws	8
1.13	Distinction Between Crimes and Torts	8
1.14	Definition of Terms	9
1.15	Venue and Jurisdiction	9
	Terminology Defined	10
	True-False Quiz	10
	Essay-Discussion Items	11
	Terminology Quiz	12

Chapter 2 CLASSIFICATION OF CRIMES AND PENALTIES

2.1	Language of Criminal Statutes	13
2.2	Vague and Indefinite Statutes	13
2.3	Construction of Penal Statutes	13
2.4	Conflict Between Statutes	14
2.5	Penal Code Terms Defined	14
2.6	Felonies, Misdemeanors, and Infractions Defined	15
2.7	Punishment for Offenses Not Otherwise Prescribed	16
2.8	Victim's Bill of Rights	17
2.9	Major Proposition 8 Changes	17
2.10	Prior Conviction — Penalty Enhancements	19
2.11	Prior Convictions — C.Y.A. Commitments	20
2.12	Lesser and Included Offenses	20
2.13	When Jeopardy Attaches	21

Terminology Defined	22
True-False Quiz	22
Essay-Discussion Items	22
Terminology Quiz	23

Chapter 3 THE ELEMENTS OF CRIMES

3.1	The <i>Corpus Delicti</i>	25
3.2	The Criminal Act	25
3.3	Multiple Offenses — Punishment	27
3.4	Proximate Cause	27
3.5	Criminal Intent — How Manifested	28
3.6	Types of Intent	29
3.7	How Intent Is Proved	30
3.8	Intent in Negligence Cases	30
3.9	Motive and Intent Distinguished	31
3.10	Intoxication as Affecting Intent	31
3.11	Diminished Capacity	32
	Terminology Defined	32
	True-False Quiz	32
	Essay-Discussion Items	33
	Terminology Quiz	33

Chapter 4 CAPACITY TO COMMIT CRIME — INSANITY DEFENSE

4.1	Persons Capable of Committing Crime ..	35
4.2	Children Under Age Fourteen	35
4.3	Idiots	36
4.4	Ignorance or Mistake of Fact	36
4.5	Unconsciousness of Act	36
4.6	Accident and Misfortune	37
4.7	Crimes Committed Under Threats	37
4.8	Insanity as a Defense	37
	Terminology Defined	38
	True-False Quiz	38
	Essay-Discussion Items	39
	Terminology Quiz	39

Chapter 5 PARTIES TO CRIME

5.1	Common Law Parties to Crime	41
5.2	Principals Defined	41
5.3	Penal Code Provisions	41
5.4	Aid and Abet Defined	42

5.5	Co-principals Equally Guilty	44
5.6	Accessory Defined	44
5.7	Accomplice Defined	45
5.8	Feigned Accomplice,	46
	Terminology Defined	46
	True-False Quiz	46
	Essay-Discussion Items	47
	Terminology Quiz	47

Chapter 6 ATTEMPTS — SOLICITATION — OBSTRUCTING JUSTICE — CONSPIRACY

6.1	Attempt Defined	49
6.2	Abandonment of Attempt	50
6.3	Possibility of Completion	50
6.4	Solicitation to Commit Crime	50
6.5	Obstructing Justice — Compounding Crimes	51
6.6	Perjury	51
6.7	Subornation of Perjury	52
6.8	Bribery	52
6.9	Other Bribery Statutes	53
6.10	Falsifying Evidence	54
6.11	Conspiracy	54
6.12	Overt Act in Conspiracy	55
6.13	Agreement Conspiracy	55
6.14	Abandonment of Conspiracy	56
6.15	Criminal Liability in Conspiracy	56
	Terminology Defined	56
	True-False Quiz	57
	Essay-Discussion Items	57
	Terminology Quiz	58

Chapter 7 LAWS OF ARREST

7.1	Arrest Defined	59
7.2	Encounters and Detentions	59
7.3	Peace Officer Defined	61
7.4	Peace Officer Status — Primary Duty	61
7.5	Arrests by Peace Officers Without Warrant	63
7.6	Duty Following Arrest	64
7.7	Private Person Arrests	65
7.8	Misdemeanor Citations	66
7.9	Probable Cause to Arrest	67
7.10	Entrapment	68
7.11	Accomplishing the Arrest	69
7.12	Resisting Arrest	70
7.13	The Miranda Admonishment	71
7.14	Arrest Pursuant to Warrant	75
7.15	Escape and Fresh Pursuit	77
7.16	Posse Comitatus	77

7.17	Threatened Offenses	77
7.18	Immunity from Arrest	78
7.19	Arrested Person's Rights	78
7.20	Law Enforcement and Civil Liability	78
	Terminology Defined	79
	True-False Quiz	79
	Essay-Discussion Items	80
	Terminology Quiz	80

Chapter 8 OFFENSES AGAINST THE PUBLIC PEACE

8.1	Disturbing the Peace	81
8.2	Unlawful Assembly	82
8.3	Failure to Disperse	83
8.4	Rout and Riot Defined	84
8.5	Inciting a Riot	84
8.6	Lynching — Prisoner Rescue	85
8.7	Disturbing Public and Religious Meetings	85
8.8	Trespassing	85
8.9	Forcible Entry and Detainer	87
8.10	School Disturbance Laws	87
8.11	Disorderly Conduct	88
8.12	Public Security and Safety	91
	Terminology Defined	92
	True-False Quiz	92
	Essay-Discussion Items	92
	Terminology Quiz	93

Chapter 9 DANGEROUS WEAPONS CONTROL LAWS

9.1	Prohibited Weapons	95
9.2	Firearms Concealed on Person or in Vehicle	97
9.3	Deadly Weapons	98
9.4	Prohibited Weapons and Devices	98
9.5	Tear Gas Possession	99
9.6	Illegal Use of Firearms	99
9.7	Concealable Weapon Restrictions	100
9.8	Firearms in Public Places	100
9.9	Related Code Sections	101
	Deadly Weapons Control Law Chart ...	102
	Terminology Defined	103
	True-False Quiz	103
	Essay-Discussion Items	103
	Terminology Quiz	104

Chapter 10 TYPES OF ASSAULT

10.1	Simple Assault	105
------	----------------------	-----

10.2	Battery	106
10.3	Exhibiting Deadly Weapon	108
10.4	Assault with a Deadly Weapon	108
10.5	Assault With Caustic Chemicals	109
10.6	Poisoning Food, Drink, Water, Medicine	109
10.7	Throwing Objects or Shooting at Vehicles, Dwellings, Aircraft	109
10.8	Assault with Intent to Commit Certain Felonies	110
10.9	Administering Stupefying Drugs	110
10.10	Train Wrecking	110
10.11	Mayhem	111
10.12	Abandonment of Assault	111
10.13	Assaults — Justification and Excuse	111
10.14	Battery Against Cohabiting Persons ..	111
10.15	Victims of Violent Crime Statute	112
	Terminology Defined	112
	True-False Quiz	113
	Essay-Discussion Items	113
	Terminology Quiz	114

Chapter 11 HOMICIDES

11.1	Homicide Defined	115
11.2	Murder Defined	115
11.3	Degrees of Murder	116
11.4	Penalty for Murder	118
11.5	Proximate Cause — Felony Murder Rule	120
11.6	Manslaughter	120
11.7	Voluntary Manslaughter	120
11.8	Involuntary Manslaughter	121
11.9	Vehicle Manslaughter	122
11.10	Excusable Homicide	122
11.11	Justifiable Homicide by Public Officers ...	123
11.12	Justifiable Homicide by Any Person	123
11.13	Capital Crimes	124
	Homicide Chart	125
	Terminology Defined	126
	True-False Quiz	126
	Essay-Discussion Items	127
	Terminology Quiz	127

Chapter 12 KIDNAPPING — SEXUAL ASSAULT — CRIMES OF RESTRAINT

12.1	Kidnapping Defined	129
12.2	Kidnapping for Ransom — Extortion — Robbery	130
12.3	Extortion by Posing as Kidnapper	131
12.4	Child Abduction	131
12.5	False Imprisonment	132

12.6	Crimes of Restraint	133
12.7	Rape and Unlawful Sexual Intercourse ..	133
	Terminology Defined	136
	True-False Quiz	136
	Essay-Discussion Items	137
	Terminology Quiz	137

Chapter 13 PUBLIC SAFETY AND MORALS

13.1	Obscene Matter	139
13.2	Harmful Matter — Minors	141
13.3	Contributing to Delinquency of Minor ..	142
13.4	Crimes Against Children	142
13.5	Sodomy and Oral Copulation	143
13.6	Incest	145
13.7	Indecent Exposure	145
13.8	Annoying or Molesting Children	146
13.9	Loitering Near Schools — Public Places ..	146
13.10	Sex Offender Registration	146
13.11	Abortion	147
	Terminology Defined	147
	True-False Quiz	147
	Essay-Discussion Items	148
	Terminology Quiz	149

Chapter 14 BURGLARY

14.1	Burglary Defined	151
14.2	The Act of Entry in Burglary	151
14.3	The Intent in Burglary	152
14.4	Structures Subject to Burglary	153
14.5	Degrees of Burglary	154
14.6	Punishment for Burglary	154
14.7	Burglary with Explosives or Acetylene Torch	155
14.8	Possession of Burglars' Tools — Unauthorized Keys — Devices	155
14.9	Unlawful Forced Entry	156
	Terminology Defined	156
	True-False Quiz	156
	Essay-Discussion Items	157
	Terminology Quiz	157

Chapter 15 ROBBERY and EXTORTION

15.1	Robbery Defined	159
15.2	Elements of Robbery	159
15.3	Ownership and Value of Property	160
15.4	Miscellaneous Aspects — Increased Penalty	161
15.5	Punishment for Robbery	161
15.6	Extortion Defined	161

15.7	Consent — Force — Fear — Threats	161
15.8	Threat of Unlawful Injury	162
15.9	Attempted Extortion	162
15.10	Obtaining Signature by Threat	162
15.11	Sending Threatening Letters	162
15.12	Penalty for Extortion	163
	Robbery and Extortion-Comparison of Elements Chart	163
	Terminology Defined	163
	True-False Quiz	163
	Essay-Discussion Items	164
	Terminology Quiz	165

Chapter 16 THEFT and EMBEZZLEMENT

16.1	Theft Defined	167
16.2	The Act of Taking in Theft	168
16.3	The Intent in Theft	168
16.4	Analysis of Types of Theft	169
16.5	Theft in General	169
16.6	Theft by False Pretenses	169
16.7	Theft by Trick or Device	170
16.8	Theft by Embezzlement	170
16.9	Theft of Access Cards	171
16.10	Theft of Lost Property	172
16.11	Degrees of Theft	173
16.12	Punishment for Theft	174
16.13	Petty Theft Prior Convictions	174
	Theft Analysis Chart	175
16.14	Separate and Related Thefts	176
16.15	Receiving Stolen Property	176
16.16	Related Thefts	177
16.17	Disposal of Stolen Property by Officials	177
16.18	Defrauding an Innkeeper	178
16.19	Articles with Serial Numbers Removed, Altered	178
	Terminology Defined	178
	True-False Quiz	178
	Essay-Discussion Items	179
	Terminology Quiz	179

Chapter 17 CONTROLLED SUBSTANCE and ALCOHOL ABUSE CRIMES

17.1	Controlled Substances Act	181
17.2	Definitions	181
17.3	Opiates-Psychedelics-Stimulants- Depressants	182
17.4	Controlled Substance Possession	182
17.5	Elements of Possession	183
17.6	Under the Influence	183

17.7	Transportation-Sale-Manufacture	183
17.8	Imitation Controlled Substance	184
17.9	Drug Paraphernalia	184
17.10	Place Drugs Sold or Used	184
17.11	Persons Required to Register	184
	Table of Controlled Substances	185
17.12	Driving Offenses-Alcohol or Drugs	186
	Terminology Defined	186
	True-False Quiz	186
	Essay-Discussion Items	186
	Terminology Quiz	187

Chapter 18 FORGERY — ARSON and MISCELLANEOUS OFFENSES

18.1	Forgery Defined	189
18.2	Intent to Defraud	189
18.3	Types of Forgery and Fictitious Checks ...	189
18.4	Penalties — Forgery and Fictitious Checks	190
18.5	Arson	190
18.6	Unlawfully Causing Fire	191
18.7	Possessions of Flammables and Explosives	191
18.8	Crimes Against Insured Property	191
18.9	Abandoned Appliances	192
18.10	Depositing Objects on Public Highways	192
18.11	Destroying Sign Barriers	192
18.12	Destruction of Landmarks — Trees — Signs	192
18.13	Injuring Works of Art	192
18.14	Injuring or Tampering with Aircraft	192
18.15	Injury to Jail	192
18.16	Miscellaneous Offenses	192
	Terminology Defined	193
	True-False Quiz	194
	Essay-Discussion Items	194
	Terminology Quiz	195

APPENDICES

Appendix A.	<i>Corpus Delicti</i> Chart	197
Appendix B.	Penal Code Index	207
Appendix C.	Penal Code — Key Sections	211
Appendix D.	Basic Legal Research — Case Law and How to Find It	215
Appendix E.	Index of Criminal Code Sections ..	221
SUBJECT INDEX	229

CHAPTER 1

SCOPE AND SOURCE OF CRIMINAL LAW

1.1 INTRODUCTION

If each of us lived in a state of isolation from all other human beings, there would be little, if any, need for criminal laws — 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 personal activities. This is why, for example, we have rules to govern 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.

Substantive and Adjective Law. Criminal law may be classified into two major categories. It is either *substantive* (laws defining crimes) or *adjective*, (rules of procedure for administering the law). Our criminal law is found in about forty various California State codes. Some of these codes are the Penal, Vehicle, Health and Safety, Welfare and Institutions, Evidence, and Fish and Game, to name a few. The law in these codes, plus interpretation of these laws by our courts, provides the foundation for the administration of criminal justice in our society.

These two primary sources, i.e., California Code books and court interpretations, together with 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.

Limitations and Controls. The law also provides limitations and controls. It is imperative, therefore, that professionals already in the system 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

Criminal law may be described as a collection of regulations covering the behavior of society and individuals therein.

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 caveman 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 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.

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" of the people.

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 known before were not binding on the court, but were forerunners of what we know as "*stare decisis*" or "precedent" in contemporary society.

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, the common law consists of doctrines that are not set down in any written statute or ordinance, but depend, rather, 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 the 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 I, Section 13. The right against self-incrimination is contained in Article I, 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 intolerable conduct, and to hold conduct within limits which are reasonably acceptable from the social point of view (*Sauer 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 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 penalties:

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. (1) 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). (2) In the crime of unlawful sexual intercourse (PC 261.5), ignorance as to the female's age was previously no defense. The court has since reversed its position. Now a good faith belief (based on reasonable cause) that the female 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 situation which typically results in "new law."

1.6 CLASSIFICATION OF LAWS

Classification of Laws. Laws are classified in a number of ways. The first broad classification, as mentioned above, is substantive law. Substantive law, in effect, defines the relationship between individuals, and between the state and individuals. They may be either *civil* (defining, for example, how property is transferred) or *criminal* (defining a crime). Crimes define what activity or behavior is illegal thus prohibited (e.g., theft). Substantive law also prescribes what activity or behavior is *required* (e.g., supporting a child). Substantive law has been defined as "the positive law of duties and rights," or "that

part of the law which the courts are established to administer," as opposed to the rules according to which the substantive law itself is administered.

Substantive Criminal Law. Substantive criminal law relates to the definition and classification of crimes. It defines the criminal act, criminal intent, the capacity to commit crime and exemptions from criminal liability. Substantive criminal law also defines parties to crime, and the elements (*corpus delicti*) or characteristics of various offenses.

Adjective or Procedural Law. This is the second broad classification of law. This area of jurisprudence covers matters of procedure. It covers such things as carrying out remedies, redress (compensation), classification of crimes, and punishment. Additionally there are two other more familiar divisions of law which are of concern to those in education and social welfare. The first is penal law, which concerns an individual and his relations with the community. Penal law defines crime and punishment. Penal law is enforced by the appropriate political subdivision (city, county or state). It takes action against the individual on behalf of the state. The second division parallel to penal law is civil law. This relates to actions between individuals of a noncriminal nature.

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 various other California Code books.

These other codes include the Education Code (EC), Welfare and Institutions (W&I) Code, Health and Safety (H&S) Code, Vehicle Code (VC), Fish and Game (F&G) Code, Harbors and Navigation (H&N) Code and the Business and Professions (B&P) Code, just to name 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 term. Section 1.4 of your text lists all possible penalties for a crime.

Civil law has to do mostly with describing or establishing guidelines for various routine and legal relationships and contacts between people. Laws describing the way a contract is drawn up or the terms of a promissory note, are examples.

A civil wrong, such as failure to comply with the terms of a legal contract, or negligently causing another to suffer financial loss, is called a "tort." A civil complaint against someone who commits a tort is filed in small claims court, municipal court, or superior court. In such cases, a judge, jury, court commissioner or court referee decides whether the plaintiff (the one who files suit) or the defendant was at fault. The penalty for committing a tort is

civil damages. If the case is decided in favor of the plaintiff, damages may be awarded to the plaintiff which the defendant must pay. (See Section 1.13 for an additional discussion of the difference between crimes and 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 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 occur:

1. A Grand Jury indictment is returned.
2. An information 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 to the superior 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) involving a minor under the age of 11, 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 of, 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 toll (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. There are four crimes for which there is no statute of limitation. Charges on these crimes can be filed at any time after the crime is committed, discovered or the suspect is arrested. They are:

1. Murder, PC 187
2. Embezzlement of public money, PC 424
3. Kidnapping for ransom, PC 209
4. Falsification of public records, PC 115

There is no limitation of time within which a prosecution for murder, the embezzlement of public funds, kidnapping for ransom or the falsification of public records must be commenced. Prosecution for murder may be commenced at any time after the death of the person killed. Prosecution for the embezzlement of public funds, kidnapping for ransom, or the falsification of public records may be commenced at any time after the *discovery* of the crime (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).

Three Year Limit Following Discovery. Prosecution for each of the following crimes must be commenced within three years after its *discovery* (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. Involuntary manslaughter, PC 192
11. Perjury, PC 118
12. Preparing false evidence, PC 134
13. Presenting false claims, PC 72
14. Sale/falsification medical degree/certificate, B&P Code 580-584
15. Stock sale fraud, Corporations Code 25540, 25541
16. Voluntary manslaughter, PC 192

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

1.8 CASE CITATIONS AND APPEALS

When a superior court case is “taken up on appeal,” the appeal is usually heard first by the District Court of Appeal. The person making the appeal is known as the appellant and is, in essence, asking the appeals court to consider a question of fact or law with respect to the adjudication of his 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 Opinions. When either of the appeals courts (State Supreme Court or District Court of Appeals) 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. Jones*, 65 Cal. App. 2d 381. This citation refers to volume 65, California Appellate Reports, second series, page 381.

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. Smith*, 51 Cal. 2d 152. This designation refers to volume 51, California Reports, second series, page 152. (See Appendix D, for details on Basic Legal Research).