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BASIC COURSE INSTRUCTOR UNIT GUIDE

6

CRIMES AGAINST PROPERTY

June 1, 1994

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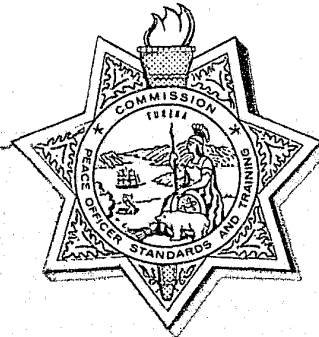
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THE COMMISSION
ON PEACE OFFICER STANDARDS AND TRAINING

STATE OF CALIFORNIA

1279

NCJRS

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ACQUISITIONS

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

The training specifications referenced herein express the required minimum content of this domain.

UNIT GUIDE 6

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Performance Objectives

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SPECIFICATIONS FOR LEARNING DOMAIN #06: CRIMES AGAINST PROPERTY

June 1, 1994

I. INSTRUCTIONAL GOAL

The goal of instruction on **Property Crimes** is to provide students with the ability to recognize when property crimes have occurred, to identify the crimes by their common names, and to classify them as either misdemeanors or felonies.

II. REQUIRED TOPICS

The following topics shall be covered:

- A. Theft
 - 1. Grand theft
 - 2. Petty theft
- B. Defrauding an innkeeper
- C. Appropriation of lost property
- D. Embezzlement
- E. Forgery
- F. Unauthorized entry of property (trespassing)
- G. Burglary
- H. Possession of burglary tools
- I. Alteration of serial numbers
- J. Receiving stolen property

- K. Vandalism
- L. Cruelty to animals
- M. Arson
- N. Possession of a firebomb
- O. Aid, counsel, or procure the burning of property or land
- P. Vehicle theft and joyriding
- Q. Writing checks with intent to defraud

III. REQUIRED TESTS

The POST-constructed knowledge test for Domain #6

IV. REQUIRED LEARNING ACTIVITIES

None

V. HOURLY REQUIREMENTS

Students shall be provided with a minimum of **8 hours** of instruction on property crimes.

VI. ORIGATION DATE

July 1, 1993

VII. REVISION DATES

June 1, 1994

CURRICULUM

I. THEFT (PO 3.9.1)

A. Penal Code Section 484--theft defined

1. Theft may be defined as the taking and carrying away of the personal property of another, without the owner's consent, with the specific intent to permanently deprive the owner thereof.
2. Elements of theft:
 - a. Taking and carrying away
 - b. Property of another
 - c. Without consent of the owner
 - d. Specific intent to deprive permanently
3. The two degrees of theft are grand theft, which constitutes a felony, and petty theft, which constitutes a misdemeanor (Penal Code Section 486).

B. Elements of theft

1. Taking and asportation (taker must not only move or remove the personal property involved, but must secure dominion or control over the property)
 - a. Elements of taking and carrying away (steal, take, carry, lead, or drive away)
 - (1) The distinction here is that the act consists of taking and carrying away, never taking or carrying away. To constitute the necessary asportation, the thief must move the property so that in some degree it occupies a different position than previously occupied and the conditions must be such that the thief secures such dominion over the property as to be able to carry it away.
 - (2) The thief, intending to steal an overcoat from a clothing dummy in front of a store, removed the coat but was unable to carry it away because it was fastened to the dummy by a chain. Not having obtained dominion or control over the coat, there was no asportation; result, no larceny. (People v. Meyer, 75 Cal. 383)
 - (3) Where dominion or control over the property is secured and there be any movement of the property from the place it occupied to another place, even though the distance it was moved is only a matter of inches, asportation is complete.

- (4) Merely grasping the handle of a suitcase with intent to steal would not be asportation but merely an attempt; but once the thief has raised or moved the suitcase from its place, the asportation and the theft are complete. (People v. Davis, 76 Cal. App. 2d 701)
 - (5) It is not necessary that the asportation go to the extent of removing the property from the premises upon which it was stolen. (People v. Arnest, 133 Cal. App. 114, People v. Koury 108 Cal. 3rd Supp. 1)
 - (6) The asportation "need be only for an appreciable time be it ever so short". (People v. Dukes, 16 Cal. App. 2d 105)
 - (7) Once there is asportation, the voluntary return of the property does not affect the guilt of the thief. (People v. Post, 76 Cal. App. 2d 511)
2. To determine the value of the property taken, the reasonable and fair market value shall be the test.
- a. In determining the value of services received, the contract price shall be the test.
 - b. Retail stores - retail value of item taken (market value plus tax)
3. With specific intent to permanently deprive the owner of his property.
- a. It is not necessary that the taking be for the sake of gain, just intention to deprive the owner of his property permanently.
 - b. Specific intent must exist at the time of the taking and not at a later time.
 - c. A taking with the intention of returning the property or a taking without the intent to permanently deprive the owner of his property will not amount to larceny even though the accused, after gaining possession of the property formed that intent. (People v. Brown 105 Cal. 66)
 - d. If one in good faith takes the property of another believing it to be legally one's own or a one's legal right to its possession, he/she is not guilty of theft; to wit, the specific intent to permanently deprive the owner of his property is absent. (People v. Photo, 45 Cal. App. 2d 345)
 - e. Taking of an auto belonging to another in his absence, and without his consent, and without any intention to permanently deprive, is not a violation of Penal Code Section 487h. It might constitute a violation of 499b or 10851 California Vehicle Code. (People v. Tucker, 104 Cal. 440)

NOTE: Additional information concerning vehicle theft and joyriding is contained in Section II of this curricula.

- C. Grand theft as defined in Penal Code Section 487 is committed in the following cases:

1. When the money, labor, or real or personal property taken is of a value **exceeding \$400** (the fair market value, contract price), (Penal Code Section 487(a)) or
2. When the value of the following exceeds \$100:
 - a. Domestic fowls
 - b. Avocados (based on wholesale value)
 - c. Citrus fruit (based on wholesale value)
 - d. Deciduous fruit
 - e. Nuts
 - f. Artichokes
 - g. Olives
 - h. Other fruits and vegetables and other farm crops (Penal Code Section 487(b)(1)(A).
 - i. Fish, shellfish, kelp, algae, crustaceans and other aquacultural products
(Penal Code Section 487(b)(2))
3. When the money, labor, real or personal property is taken by a servant, agent or employee from his employer and aggregates \$400 or more in any 12 consecutive month period (Penal Code Section 487(b)(3), or
4. When the property taken is **from the person of another** (Penal Code Section 487(c))
5. When the property taken is one of the following; (regardless of value)
 - a. Horse
 - b. Mare
 - c. Gelding
 - d. Bovine animal (cow)
 - e. Caprine animal (goat)
 - f. Mule
 - g. Jack
 - h. Jenny

- i. Sheep (bovine)
- j. Lamb
- k. Hog
- l. Sow
- m. Boar
- n. Gilt
- o. Barrow
- p. Pig

(Penal Code Section 487(d))

6. Firearm

(Penal Code Section 487(d))

D. Penal Code Section 488--Petty theft

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

E. Types of thefts

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

a. Elements

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

b. Discussion points

- (1) The false pretense, while usually an oral statement, may be in writing, or by the act or silence of a person, or by a person knowingly allowing his agent to make the false statements.
- (2) Statements which amount to no more than an expression of opinion are not false pretenses.
- (3) If a person makes a false statement believing it to be true, this would not constitute theft by false pretenses as there would be no intent to defraud.
- (4) Victim must have relied upon the truth of one or more of the false representations for parting with his property. Not necessary that it was the sole reason for parting with property. Victim not obligated to investigate into truthfulness of representation.
- (5) A representation of a future fact is not sufficient.
- (6) The false pretense must be of a past fact or present one--this is a fraudulent pretense.
 - (a) "Tricks of the trade" and "puffing" (e.g. exaggerating about the quality or value of something) are not illegal.
 - (b) Without any false representation as to the character, quality, or quantity of merchandise sold, owner can make false and exaggerated statements to induce a sale, (e.g., "Due to low overhead and volume buying, we can sell our goods 25% cheaper than anyone else", when in fact the goods are higher than elsewhere).
- (7) Corroboration required (Penal Code Section 532(b))

c. Attempts

- (1) To constitute offense of attempt to secure money by false pretenses, it is not necessary that victim rely on or be deceived by pretenses (People v. Wallace, 1947, 78 CA 2d, 726)

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

a. Elements

- (1) Defendant has specific intent to bilk victim

- (2) Defendant gains possession of the property through trick, device, fake or fraudulent representations, etc.
 - (a) Appeals to the sympathy, emotions, desires of the victim
 - (b) Usually offering a promise of financial or other gain, or a tremendous advantage
- (3) Owner is under the assumption of not losing title to the property
 - b. Theft by trick and device and obtaining money by false pretenses are frequently so similar in the modus operandi employed by the swindler that, depending upon the conclusion which may be formed as to the intent of the parties, the crime may be viewed as either theft or obtaining property by false pretenses and a verdict or conviction of either offense may be sustained. In both offenses the victim parts with property because of fraud and deceit practiced by the defendant. If false representations do not relate to the past or present, or are mere matters of opinion or promise, then false pretenses is eliminated.
 - c. The basic test to distinguish between theft by false pretenses and trick and device is found in the intent of the owner. In false pretenses, the owner of the property turns it over to the defendant intending that he/she shall become unconditional and unrestricted owner (gives up complete title and all ownership rights). In trick and device, the owner never intends that the property shall belong to or become the property of the defendant; the owner never intends to part with the title to the defendant, but merely turns the possession of the property to the defendant to be used by him according to an agreement between the parties.
 - d. Some types of theft by trick or device include the pigeon drop, paddy hustle, and Jamaican switch.
3. Access Cards - The plastic world of access cards (credit cards) has led to the adoption of a number of sections governing their misuse.
 - a. Penal Code Section 484d - Definitions
As used in this section and sections 484e to 484j, inclusive:
 - (1) "Cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.
 - (2) "Access card" means any card, plate, code, account number, or other means of account access that can be used, alone or in conjunction with another access card, to obtain money, goods, services, or any other thing of value, or that can be used to initiate a transfer of funds other than a transfer originated solely by a paper instrument.

- (3) "Expired access card" means an access card which shows on its face it has elapsed.
 - (4) "Card issuer" means any person who issues an access card or the agent of such person with respect to such card. The card issuer is the owner of the access card.
 - (5) "Retailer" means every person who is authorized by an issuer to furnish money, goods, services or anything else of value upon presentation of an access card by a cardholder.
 - (6) An access card is "incomplete" if part of the information, other than the signature of the cardholder which an issuer requires to appear on the access card before it can be used by a cardholder, has not been stamped, embossed, imprinted, or written on it.
 - (7) "Revoked access card" means an access card which is no longer authorized for use by the issuer, such authorization having been suspended or terminated and written notice thereof having been given to the card-holder.
- b. Penal Code Section 484e - Theft of access card elements-484e has four exclusive subsections, each containing specific elements (subsection 484e(4) is a felony).
 - c. Penal Code Section 484f - Forgery of access card. (felony)
 - d. Penal Code Section 484g - Use of forged access cards: misrepresentation as to identity of cardholder.
 - e. Penal Code Section 484h - Retailer with intent to defraud furnishes money, goods, services on forged access card; failure to furnish as represented to issuer and receipt of payment.
 - f. Penal Code Section 484i - Filling in incomplete card: counterfeit cards.

F. Enhancement

Petty theft with a prior conviction for petty theft (jail time served) constitutes a felony.
(Penal Code Section 666)

II. VEHICLE THEFT/JOYRIDING (PO 3.9.4)

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

1. Joyriding is defined as the taking of an automobile, without its owner's permission, and with the specific intent to temporarily take and use or operate such vehicle.
2. Elements of joyriding:
 - a. Taking
 - b. automobile (or other vehicle)
 - c. without permission of its owner
 - d. with specific intent to temporarily take and use
3. A violation of Penal Code Section 499(b) requires a specific intent to take and use or operate a vehicle.

Reference: People v. Diaz (1989) 212 C.A.3d 745, 751, 260 Cal.Rptr. 806, 809.

B. Vehicle Code Section 10851--Vehicle Theft defined

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

To constitute a violation of Vehicle Code Section 10851 there must be a specific intent to either permanently or temporarily deprive the owner of [his][her] title to or possession of the vehicle.

C. Penal Code Section 487h--Grand Theft Auto (Motor Vehicle)

1. The crime of Grand Theft of a motor vehicle is committed by a person who steals, takes or drives away the motor vehicle of another with the specific intent

to deprive the owner permanently of [his][her] property is guilty of a violation of section 487h regardless of the value of the motor vehicle.

2. Elements of Grand Theft Auto (Motor Vehicle)
 - a. Steals, takes or drives
 - b. Automobile (Motor Vehicle) of another
 - c. Specific intent to deprive owner permanently
 - d. Of his or her property (vehicle) regardless of its value

A violation of Penal Code Section 487h requires a specific intent to **permanently** deprive the owner of their property. If this element cannot be proven, then a jury will more than likely find a defendant guilty of violating Vehicle Code section 10851 only.

NOTE: It is not necessary that the taking be for the sake of gain, just intention to deprive the owner of [his][her] property permanently.

III. DEFRAUDING AN INNKEEPER (PO 3.9.2)

A. Elements of defrauding an innkeeper, etc. (Penal Code Section 537)

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

NOTE: In addition, it includes persons who obtain credit by use of false pretenses at such places, or who, after obtaining credit, absconds surreptitiously, or by force, menace, or threats, removes any part of his baggage without paying for his food or accommodations.

The distinction between defrauding an innkeeper and theft is that theft involves wrongful taking and defrauding an innkeeper involves consensual acquisition.

B. Crime classification

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

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

C. Evidence that such person left the named locations without paying or offering to pay shall be prima facie evidence that the person obtained the food or accommodations with intent to defraud the proprietor or manager.

D. Examples include

1. eating in a restaurant and failing to pay the bill or
2. staying at a hotel and leaving without paying.

IV. APPROPRIATION OF LOST PROPERTY (PO 3.9.3)

A. Elements (Penal Code Section 485)

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

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

B. Crime classification

1. Misdemeanor when value is equivalent to petty theft statutes (Penal Code Section 490)
2. Felony when value is equivalent to grand theft statutes (Penal Code Section 489)

V. UNAUTHORIZED ENTRY OF PROPERTY/TRESPASSING (PO 3.13.1)

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

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

B. Trespass to Land (Penal Code Section 602(j))

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

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

2. Crime classification: misdemeanor

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

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

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

2. Crime classification: misdemeanor

D. Unauthorized entry defined (Penal Code Section 602.5)

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

VI. BURGLARY (PO 3.13.2)

A. Definition (Penal Code Section 459)

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

B. Elements

1. Entry

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

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

- a. A house or building is a structure with walls and enclosed by a roof
- b. An open pit mine is covered under the burglary statute
- c. Enclosed telephone booths and showcases can be the subjects of burglary
- d. Vehicles - other property
 - (1) The vehicle must be locked to constitute burglary. Taking property from an unlocked vehicle is theft.
 - (2) Entering the locked trunk of an unlocked vehicle is a burglary.
 - (3) Inhabited camper need not be locked (California Vehicle Code Section 243)
- e. Inhabited means currently being used for dwelling purposes whether occupied or not

3. Specific intent

- a. to commit grand theft, petty theft, or some other felony
- b. must exist at the time of the entry.

c. The intended theft or felony need not be completed.

C. Crime classification: felony

VII. POSSESSION OF BURGLARY TOOLS

A. Definition (Penal Code Section 466)

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

B. Elements

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

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

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

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

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

C. Crime classification: misdemeanor

VIII. ALTERATION OF SERIAL NUMBERS OR IDENTIFICATION MARKS (PO 3.13.5)

A. Definition (Penal Code Section 537e)

1. Any person who **knowingly** buys, sells, receives, disposes of, conceals, or has in his possession a radio, piano, phonograph, sewing machine, washing machine, typewriter, adding machine, comptometer, bicycle, safe or vacuum cleaner, dictaphone, watch, watch movement, watch case, or any mechanical or electrical device, appliance, contrivance, material, piece of apparatus or equipment, computer parts
2. from which the manufacturer's name plate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed.
3. Related section: Tampering with Identification Marks on a Firearm (Penal Code Section 12090)

B. Crime classification

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

IX. RECEIVING STOLEN PROPERTY (PO 3.14.1)

A. Elements (Penal Code Section 496)

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

B. Application

1. Receiving stolen property is distinct from theft (Stanley, in re, 1928, 90 CA 132)
2. Mere possession of stolen property is insufficient to prove the offense of receiving stolen property. (People v. Jolley, 1939, 35 CA2d 159).
3. Possession accompanied by suspicious circumstances will justify inference that property was received with knowledge that it had been stolen. (People v. Kot, 1959, 171 CA2d 9).
4. Among the circumstances which, coupled with the possession of stolen property, have been held to connect the defendant with the crime and to sustain his conviction are:
 - a. Flight
 - b. False statements as to how the property came into defendant's possession
 - c. Assuming a false name and an inability to establish the existence of the person from whom the defendant claimed to have received the property
 - d. Sale of the property under a false name and at an inadequate price
 - e. Sale of the property with marks of identification removed
 - f. Failure to account for its possession and giving false testimony
 - g. An effort to throw away the stolen property (People v. Russell, 120 CA 622, etc.)

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

C. Crime classification: Felony (wobbler)

X. EMBEZZLEMENT (PO 3.11.1)

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

B. Elements:

1. A fiduciary relationship (entrustment)
 - a. A relationship of trust and confidence is essential to the crime of embezzlement.
 - b. This would include public officers and employees, trustees, executors, corporation or association officers, and ordinary agents or employees.
2. Property belonging to another
 - a. The property belonging to another is self-evident, but vital.
 - b. The property may consist of money, goods, chattels, things in evidence of debt, right of action, or real property.
 - c. The value of the property and to whom the property lawfully belongs are important factors when determining the penalty for embezzlement as per Penal Code Section 514.

NOTE: According to Penal Code Section 487 which defines grand theft, "where the money, labor, real or personal property is taken by a servant, agent or employee from his principal or employer and aggregates \$400 or more in any 12 consecutive month period, then the same shall constitute grand theft".

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

C. Application

1. The main distinctions between ordinary theft and embezzlement are:
 - a. Ordinary theft requires the intent to permanently deprive the owner of his property
 - b. Embezzlement requires intent to temporarily or permanently deprive the owner of his property for use other than the original purpose.

- c. Ordinary theft consists of the non-consensual taking and carrying away of the personal property of another
- d. In embezzlement, the defendant acquired the property with the owner's consent.

D. Crime Classification (Penal Code Section 514)

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

XI. FORGERY (PO 3.12.1)

A. Definition (Penal Code Section 470)

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

B. Elements

1. Intent to defraud
 - a. There must exist a **specific intent to defraud**.
 - b. There is no requirement that anyone actually be defrauded.
2. False signature or altered writing
 - a. The suspect signs the name of another person or a fictitious person to a document or
 - b. alters a document and
3. Lack of authority to sign or alter
4. A writing or other instrument, or

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

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

C. Crime classification: felony

XII. WRITING CHECKS WITH INTENT TO DEFRAUD (PO 3.12.2)

A. Definition (Penal Code Section 476a)

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

B. Elements

1. **Specific intent** to defraud

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

2. Making, drawing, presenting or delivering a check

3. Knowledge of the insufficient funds and/or lack of credit

a. Requires proof that at the time the check was offered, the defendant knew he/she had neither sufficient funds nor credit to cover it.

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

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

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

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

XIII. VANDALISM (PO 3.15.1)

A. Definition (Penal Code Section 594)

1. Every person who maliciously commits any of the following acts with respect to any real or personal property not his or her own, in cases otherwise than those specified by state law
 - a. Sprays, scratches, writes on, or otherwise defaces
 - b. Damages
 - c. Destroys

B. Elements:

1. Malicious intent
2. to damage or destroy
3. personal property not their own

C. Crime classification:

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

D. Related sections:

1. Aerosol containers of paint (Penal Code Section 594.1)
2. Possession of drill bits, cutters, etc. (Penal Code Section 594.2)
3. Vandalism to a church, synagogue, etc. (Penal Code Section 594.3)
4. Noxious or caustic chemicals (Penal Code Section 594.4)
5. Vandalism to government facilities or vehicles (Penal Code Sections 640.5 and 640.7)

XIV. CRUELTY TO ANIMALS (3.15.2)

A. Definition (Penal Code Section 597)

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

B. Elements

1. Maliciously and intentionally
2. maims, mutilates, tortures, wounds or kills
3. a living animal

NOTE: Penal Code Section 599c addresses certain exceptions to killing an animal (i.e., destroying a venomous reptile, any animal known as dangerous to life and certain animals used as legitimate food sources).

C. Crime classification: felony (wobbler)

D. Related statutes:

1. Abandonment of domestic animals (Penal Code Section 597s)
2. Fighting dogs (Penal Code Section 597.5)

XV. ARSON (PO 3.16.1)

A. Terminology (Penal Code Section 450)

1. "Structure" means any building, or commercial or public tent, bridge, tunnel, or powerplant.
2. "Forest land" means any brush covered land, cutover land, forest, grasslands, or woods.
3. "Property" means real property or personal property, other than a structure or forest land.
4. "Inhabited" means currently being used for dwelling purposes whether occupied or not. "Inhabited structure" and "inhabited property" do not include the real property on which an inhabited structure or an inhabited property is located.
5. "Maliciously" imports a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
6. "Recklessly" means a person is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest and, or property. The risk shall be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

B. Elements

1. Wilfully and maliciously setting fires (Penal Code Section 451)
 - a. Wilfully and maliciously
 - b. sets fire to or burns or causes to be burned or
 - c. who aids, counsels or procures the burning of,
 - d. any structure, forest land or property.
2. Recklessly setting fires (Penal Code Section 452)
 - a. Recklessly
 - b. sets fire to or burns or causes to be burned
 - c. any structure, forest land or property

C. Crime classification:

1. All violations of Penal Code Section 451 are felonies.

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

XVI. POSSESSION OF A FIREBOMB (3.16.2)

A. Terminology

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

B. Definition

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

C. Elements

1. Elements of Penal Code Section 453a
 - a. Possession
 - b. of a flammable, explosive or combustible material or substance, or any device in an arrangement or preparation
 - c. with **specific intent** to willfully and maliciously use such material, substance or device
 - d. to set fire to or burn any structure, forest land or property
2. Elements of Penal Code Section 453b
 - a. Possession, manufacture or disposal (illegal) of a
 - b. firebomb

D. Related sections:

1. Definition of destructive device (Penal Code Section 12301)
2. Possession of destructive device (Penal Code Section 12303)
3. Boobytraps (Penal Code Section 12355)

E. Crime classification:

1. Penal Code Section 453a - felony

2. Penal Code Section 453b - felony

XVI. AID, COUNSEL OR PROCURE THE BURNING OF PROPERTY OR LAND
(PO 3.16.3)

A. Terminology (Penal Code Section 450)

1. "Structure" means any building, or commercial or public tent, bridge, tunnel, or powerplant.
2. "Forest land" means any brush covered land, cutover land, forest, grasslands, or woods.
3. "Property" means real property or personal property, other than a structure or forest land.
4. "Inhabited" means currently being used for dwelling purposes whether occupied or not. "Inhabited structure" and "inhabited property" do not include the real property on which an inhabited structure or an inhabited property is located.
5. "Maliciously" imports a wish to vex, defraud, annoy, or injure another person, or an intent to do a wrongful act, established either by proof or presumption of law.
6. "Recklessly" means a person is aware of and consciously disregards a substantial and unjustifiable risk that his or her act will set fire to, burn, or cause to burn a structure, forest and, or property. The risk shall be of such nature and degree that disregard thereof constitutes a gross deviation from the standard of conduct that a reasonable person would observe in the situation. A person who creates such a risk but is unaware thereof solely by reason of voluntary intoxication also acts recklessly with respect thereto.

B. Definition

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

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

C. Elements

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

5. who commits any act preliminary thereto

D. Crime classification: felony

E. Related sections:

1. Burning, destroying, etc. insured property with intent to defraud the insurer
(Penal Code Section 548)

**PERFORMANCE OBJECTIVES FOR LEARNING DOMAIN #6
CRIMES AGAINST PROPERTY**

KNOWLEDGE TEST:

- 3.9.1 Given a word picture depicting a possible theft, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 484, 484d through 484j, 487 and 488, 499b and Vehicle Code 10851 (7-1-90)
- 3.9.4 Given a word picture depicting a possible vehicle theft, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 487h, 499b and Vehicle Code 10851)
- 3.9.2 Given a word picture depicting the possible defrauding of an innkeeper, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 537)
- 3.9.3 Given a word picture depicting a possible appropriation of lost property, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 485)
- 3.11.1 Given a word picture depicting a possible embezzlement, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 503 and 514) (6-1-93)
- 3.12.1 Given a word picture depicting a possible forgery, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification (felony). (Penal Code Section 470) (6-1-93)
- 3.12.2 Given a word picture depicting a possible writing of checks with intent to defraud, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 476a)
- 3.13.1 Given a word picture depicting a possible trespassing, interfering with lawful business, or unauthorized entry of property, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 602(j), 602(l), 602.1 and 602.5) (6-1-93)
- 3.13.2 Given a word picture depicting a possible burglary, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification (felony). (Penal Code Section 459) (6-1-93)
- 3.13.5 Given a word picture depicting the possible alteration of serial numbers on certain articles, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 537e, subdivisions (1),(2),(3),(6) and (9))

- 3.14.1 Given a word picture depicting the possible receiving of stolen property, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 496)
- 3.15.1 Given a word picture depicting possible vandalism, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 594 and 594.3) (9-1-89)
- 3.16.1 Given a word picture depicting a possible act of arson the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Sections 451 and 452) (6-1-93)
- 3.16.2 Given a word picture depicting the possible possession of a "firebomb," the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 453)
- 3.16.3 Given a word picture depicting possible attempts to set fire to or aid, counsel or procure the burning of any structure, forest land or property, the student will identify if the crime is complete, and if it is complete, will identify it by its common name and crime classification. (Penal Code Section 455)

SUPPORTING MATERIAL

AND

REFERENCES

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

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

Theft Defined

Degrees of Theft

Case Decisions - Value

Examples of Theft by False Pretense

Examples of Trick and Device

Property of Another

Other Property Subject to Theft Covered by Specific Sections

Case Decisions Involving the Crime of Embezzlement

Forgery of Wills, etc.

Penal Code Sections 473 and 476A

Additional Forgery Law Sections

Building

Windows

Buying or Receiving Stolen Goods

Vandalism

Cruelty to Animals

THEFT DEFINED--PENAL CODE SECTION 484(a)

Every person who shall feloniously steal, take, carry, lead, or drive away the personal property of another, or who shall fraudulently appropriate property which has been entrusted to him, or who shall knowingly and designedly, by any false or fraudulent representation or pretense, defraud any other person of money, labor or real or personal property, or who causes or procures others to report falsely of his wealth or mercantile character and by thus imposing upon any person, obtains credit and thereby fraudulently gets or obtains possession of money, or property or obtains the labor or service of another is guilty of theft. In determining the value of the property obtained, for the purposes of this section, the reasonable and fair market value shall be the test and, in determining the value of services received, the contract price shall be the test. If there be no contract price, the reasonable and going wage for the service rendered shall govern. For the purposes of this section, any false and fraudulent representation or pretense made shall be treated as continuing, so as to cover any money, property or service received as a result thereof, and the complaint, information or indictment may charge that the crime was committed on any date during the particular period in question. The hiring of any additional employees, without advising each of them of every labor claim due and unpaid and every judgment that the employer has been unable to meet, shall be prima facie evidence of intent to defraud.

Penal Code 484(b)(c)(d)(e)

Except as provided in California Vehicle Code Section 10855, intent to commit theft by fraud is presumed if one who has leased or rented the personal property of another pursuant to a written contract fails to return the personal property to its owner within 20 days after the owner has made written demand by certified or registered mail following the expiration of the lease or rental agreement for return of the property so leased or rented, or if one presents to the owner identification which bears a false or fictitious name or address for the purpose of obtaining the lease or rental agreement.

The foregoing presumptions are presumptions affecting the burden of producing evidence.

Within 30 days after the lease or rental agreement has expired, the owner shall make written demand for return of the proper property so leased or rented. Notice addressed and mailed to the lessee or renter at the address given at the time of the making of the lease or rental agreement and to any other known address shall constitute proper demand. Where the owner fails to make such written demand the presumption created by subdivision (b) shall not apply.

DEGREES OF THEFT (Case Decisions)

Penal Code Section 487.1

1. Corpus delicti of Grand Theft of Poultry is established by evidence that, before weighing supposedly empty truck, defendants put rocks in trucks, disposed of rocks while going to seller's ranch, loaded truck with poultry, again weighed truck and paid seller difference between weight slips, and by evidence that weight of rocks multiplied by value per pound of poultry exceeded \$100 (People v. McKibben, 1955, 136 CA 2d 479)
2. The conviction of grand theft by an attorney was sustained where he received \$4,000 from a client with which to pay her bills and to repay \$500 which he had loaned her, and he paid only about \$325 of such bills and retained the balance. (People v. Glenn, 1950, 96 CA 2d 859) (under 1983 law - amount is petty theft.)

CASE DECISIONS--VALUE

1. Value to be placed on stolen articles for purpose of establishing felony charge is market value of property, not value of property to any particular individual. (People v. Latham, 1941, 43 CA 2d 35)
2. In prosecuting one for theft, whether the value of the property makes the crime a felony, is ascertained by its value on the open market and not by what it is worth to the owner. (People v. Simpson, 1938, 26 CA 2d 223)
3. An implied finding that value of property stolen from fur store exceeded \$200 is supported by testimony of two experienced furriers that \$250 plus tax, the price marked on a tag attached to stolen fur piece, was a fair market value and they estimated the wholesale price between \$120 and \$165. (People v. Lizarrage, 1954, 122 CA 2d 436) (under 1983 law value must exceed \$400)

EXAMPLES OF THEFT BY FALSE PRETENSE

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

EXAMPLES OF TRICK AND DEVICE:

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

PROPERTY OF ANOTHER

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

OTHER PROPERTY SUBJECT TO THEFT
COVERED BY SPECIFIC SECTIONS

Penal Code Section 491	Dogs are personal property
Penal Code Section 492	Written instruments, evidences of debt
Penal Code Section 493	Passenger tickets; railroad, vessel, or public conveyances
Penal Code Section 494	Written instruments completed but not delivered
Penal Code Section 495	Severing and removing part of the realty
Penal Code Section 496	Copying information relating to title to real property
Penal Code Section 498	Theft of utility services
Penal Code Section 499c	Trade secrets
Penal Code Section 499d	Aircraft
Penal Code Section 500 1/2	Removal of improvements from mortgaged real property

CASE DECISIONS INVOLVING THE CRIME OF EMBEZZLEMENT

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

FORGERY OF WILLS, ETC.

Penal Code Section 470. Forgery of wills, conveyances, etc. Every person who, with intent to defraud, signs the name of another person, or of a fictitious person, knowing that he has no authority to do so, to, or falsely makes, alters, forges, or counterfeits, any charter, letters, patent, deed, lease, indenture, writing obligatory, will, testament, codicil, bond covenant, bank bill or note, post note, check, draft bill of exchange, contract, promissory note, due bill for the payment of money or property, receipt for money or property, passage ticket, trading stamp, power of attorney, or any certificate of any share, right, or interest in the stock of any corporation or association, or any controller's warrant for the payment of money at the treasury, county order of warrant, request for the payment of money, or the delivery of writing, or acquittance, release, or receipt of money or goods, or any acquittance, release, or discharge of any debt, account, suit, action, demand, or other thing, real or personal, or any transfer or assurance of money, certificate of shares of stock, goods, chattels, or other property whatever, or any letter of attorney, or other power to receive money or to receive or transfer certificates of shares of stock, or annuities, or to let, lease, dispose of, alien, or convey any goods, chattels, lands, or tenements, or other estate, real or personal or any acceptance or endorsement of any bill of exchange, promissory note, draft, order, or any assignment of any bond, writing obligatory, promissory note, or other contract for money or other property; or counterfeits or forges the seal or handwriting of another; or utter, publishes, passes, or attempts to pass, as true and genuine, any of the above names specified and described, knowing the same to be false, altered, forged or who, with intent to defraud, alters, corrupt, or falsifies any record of any will, codicil, conveyance, or other instrument, the record of which is by law evidence, or any record of any judgment of a court or the return of any officer to any process of any court, is guilty of forgery—
Amended Stats. 1958, Ch. 713.

Penal Code Sections 473 and 476A

PENAL CODE 473--Punishment of forgery.

Forgery is punishable as a felony.

PENAL CODE 476A--Issuing bank check with intent to defraud. Protest, "Credit: defined.

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

(b) However, if the total amount of all such checks, drafts or orders that the defendant is charged with and convicted of making, drawing or uttering does not exceed two hundred dollars (\$200), the offense is punishable only by imprisonment in the county jail for not more than one year, except that this subdivision shall not be applicable if the defendant has previously been convicted of a violation of Sections 470, 475, or 476 of this code, or of this section of this code, or of the crime of petty theft in a case in which defendant's offense was a violation also of Sections 470, 475, 476 of this code or of this section, or if the defendant has previously been convicted of any offense under the laws of any other state or of the United States which, if committed in this state, would have been punishable as a violation of Sections 470, 475, or 476 of this code or of this section, or if he has been so convicted of the crime of petty theft in a case in which, if defendant's offense had been committed in this state, it would have been a violation also of Section 470, 475, or 476 of this code, or of this section.

(c) Where such check, draft or order is protested, on the grounds of insufficiency of funds or credit, the notice of protest thereof shall be admissible as proof of presentation, nonpayment and protest and shall be presumptive evidence of knowledge of insufficiency of funds or credit with such bank or depositary, or person, or firm, or corporation.

(d) The word "credit", as used herein, shall be construed to mean an arrangement or understanding with the bank or depositary or person of firm or corporation for the payment of such check, draft or order.

(e) If any of the preceding paragraphs, or parts thereof, shall be found unconstitutional or invalid, the remainder of this section shall not thereby be invalidated, but shall remain in full force and effect.--Amended Stats. 1963, Chap. 1448.

The instructor should have overhead transparencies or 35 mm slides of various forged checks and documents for this discussion.

ADDITIONAL FORGERY LAW SECTIONS

470a Penal Code Section

Falsification, alteration, etc. of driver's license or identification card to facilitate commission of Forgery--Felony.

470b Penal Code Section

Possession or display of driver's license or identification card with intent to commit forgery--Felony.

475a Penal Code Section

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

476 Penal Code Section

Making, passing or uttering fictitious bill, etc.--Felony.

BUILDING

"Building" under Penal Code Section 459

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

WINDOWS

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

BUYING OR RECEIVING STOLEN GOODS--PENAL CODE SECTION 496

A. Defined.

1. Every person who buys or receives any property which has been stolen or which has been obtained in any manner constituting theft or extortion, knowing the same to be so stolen or obtained, or who conceals, withholds or aids in concealing or withholding any such property from the owner, knowing the same to be so stolen or obtained, is punishable by imprisonment in a state prison, or in a county jail for not more than one year.
2. Every person whose principal business is dealing in or collecting used or second-hand merchandise or personal property, and every agent, employee or representative of such person, who buys or receives any property which has been stolen or obtained in any manner constituting theft or extortion, under such circumstances as should cause inquiry to ascertain that the person from whom such property was bought or received had the legal right to sell or deliver it, without making such reasonable inquiry, shall be presumed to have bought or received such property knowing it to have been so stolen or obtained. This presumption may, however, be rebutted by proof.
3. When in a prosecution under this section it shall appear from the evidence that the defendant's principal business was as set forth in the preceding paragraph, that the defendant bought, received, or otherwise obtained, or concealed, withheld or aided in concealing or withholding from the owner, any property which had been stolen or obtained in any manner constituting theft or extortion, and that the defendant bought, received, obtained, concealed or withheld such property under such circumstances, as should have caused him to make reasonable inquiry to ascertain that the person from whom he bought, received, or obtained such property had the legal right to sell or deliver it to him, then the burden shall be upon the defendant to show that before so buying, receiving or otherwise obtaining such property, he made reasonable inquiry to ascertain that the person so selling or delivering the same to him had the legal right to sell or deliver it.

DISCUSSION (CASE DECISIONS ON BUYING
OR RECEIVING STOLEN GOODS)

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

VANDALISM

Vandalism: Penalty--Penal Code Section 594(a) Every person who maliciously (1) defaces with paint or other liquid, (2) damages or destroys any real or personal property not his own, in cases otherwise than those specified by state law, is guilty of vandalism.

(b) If the amount of defacement, damage or destruction is one thousand dollars (\$1,000) or more, vandalism is punishable by (1) imprisonment for six months in the county jail, imprisonment in the state prison not to exceed one year and one day, a fine of five thousand dollars (\$5,000), or both such fine and imprisonment.

(c) If the amount of defacement, damage or destruction is less than one thousand dollars (\$1,000), vandalism is punishable by imprisonment in the county jail for not more than six months, a fine or not more than five hundred dollars (\$500), or both. (1872; 1974 ch 582, Section 1.) California Jurisdiction 3d Criminal Law Sections 63, 2747; Witkin Crimes, pp 430, 431, 434, 575.

CRUELTY TO ANIMALS

Criminal acts relative to cruelty to animals are outlined in numerous Penal Code sections. For example, Dog fighting is defined in Penal Code Section 597.5. Other Penal Code sections which define particular offenses relating to this subject may be found in Penal Code sections 597a through 597z, Penal Code Section 598 (Killing birds in cemetery), Penal Code Section 598a (Killing, selling or importing dogs or cats), and Penal Code Section 599 (Selling or giving away baby chicks, rabbits or ducklings) under defined conditions which are adverse to health.

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