

## **6 California Criminal Law (4th), Criminal Judgment**

### **I. VERDICT**

#### **A. Conduct and Deliberation of Jury.**

1. Custody and Deliberations.
  - (a) [§1] Custody.
  - (b) Deliberations.
    - (1) [§2] In General.
    - (2) [§3] Judge's Entrance into Jury Room.
  - (c) [§4] Admonition.
  - (d) [§5] Alternate Jurors.
  - (e) [§6] Change of Foreperson.
  - (f) Jury Nullification.
    - (1) [§7] In General.
    - (2) [§8] Discharge of Juror for Failure To Follow Court's Charge.
2. Return for Additional Information.
  - (a) [§9] In General.
  - (b) Instructions.
    - (1) [§10] Procedure.
    - (2) [§11] Illustrations.
  - (c) Evidence.
    - (1) [§12] In General.
    - (2) [§13] Scope and Context.
  - (d) [§14] Summations.
3. Unlawful Separation After Submission.
  - (a) [§15] Rule and Presumption.
  - (b) [§16] Defendant's Consent Is Not Required.
  - (c) [§17] Nonprejudicial Separation.
4. Papers and Exhibits in Jury Room.
  - (a) [§18] In General.
  - (b) [§19] Papers Received in Evidence.
  - (c) [§20] Exhibits.
  - (d) [§21] Written Instructions and Notes of Proceedings.
  - (e) [§22] Substantial Likelihood Test for Reversible Error.
5. Misconduct.
  - (a) [§23] In General.
  - (b) Unauthorized Reception of New Evidence.
    - (1) [§24] In General.
    - (2) [§25] Actual Bias Test.
    - (3) [§26] New Articles or Broadcasts.
    - (4) [§27] Evidence Inadvertently Given to Jury.
    - (5) [§28] Biblical References.
  - (c) Unauthorized Communications With Nonjurors.
    - (1) [§29] In General.
    - (2) [§30] With Judge.
    - (3) [§31] With Bailiff.

- (4) [§32] With Others.
- (d) [§33] Premature Discussion Among Jurors.
- (e) [§34] Improper Discussion Among Jurors.
- (f) [§35] Consumption of Alcohol.
- (g) [§36] Juror Proclamations.
- (h) [§37] Other Misconduct.

**B. Rendition of Verdict.**

- 1. Disagreement.
  - (a) [§38] Judge's Power To Discharge for Jury Disagreement.
  - (b) Retrial After Discharge.
    - (1) [§39] Retrial Is Proper.
    - (2) [§40] Right to Free Transcript.
  - (c) Permissible Urging of Agreement.
    - (1) [§41] In General.
    - (2) [§42] Illustrations.
- 2. Improper Coercion.
  - (a) [§43] Known Minority for Acquittal.
  - (b) [§44] Allen Instruction Disapproved.
  - (c) [§45] Suggestion of Guilt or Hint of Leniency.
  - (d) [§46] Stressing Simplicity of Case.
- 3. Return.
  - (a) [§47] Verdict Forms.
  - (b) [§48] Return and Polling of Jury.
  - (c) Manner and Place of Rendering Verdict.
    - (1) [§49] Open Court.
    - (2) [§50] Presence of Defendant.
  - (d) [§51] Recording Verdict.
- 4. Reconsideration of Defective Verdict.
  - (a) [§52] In General.
  - (b) [§53] Limitations.
- 5. Discharge.
  - (a) [§54] In General.
  - (b) [§55] Jury May Not Be Reconvened After Discharge.
  - (c) Communication With Discharged Jurors.
    - (1) [§56] Information Conveyed to Jurors.
    - (2) Right to Juror Identifying Information.
      - (aa) [§57] Statutory Procedure.
      - (bb) [§58] Case Law.
- 6. Form of Verdict.
  - (a) [§59] General Verdict.
  - (b) [§60] Special Verdict.
  - (c) [§61] Distinction: Findings in Trial by Court.
- 7. Content.
  - (a) Findings of Special Issues.
    - (1) [§62] Prior Conviction.
    - (2) [§63] Armed With Weapon.

- (3) Degree.
      - (aa) [§64] Crimes Divided Into Degrees.
      - (bb) [§65] Crimes Not Divided Into Degrees.
    - (4) [§66] Penalty.
  - (b) [§67] Multiple Defendants.
  - (c) [§68] Multiple Counts.
  - (d) Included Offense or Attempt.
    - (1) [§69] Power and Duty of Jury.
    - (2) [§70] Existence of Reasonable Doubt.
    - (3) [§71] Partial Verdict of Acquittal Where Jury Is Deadlocked.
    - (4) Test Based on Elements of Crime.
      - (aa) [§72] In General.
      - (bb) [§73] Illustrations: Offenses Included.
      - (cc) [§74] Illustrations: Offenses Not Included.
    - (5) Test Based on Accusatory Pleading.
      - (aa) [§75] In General.
      - (bb) [§76] Extensions to Other Forms of Notice.
      - (cc) [§77] Test Does Not Apply in Absence of Notice.
      - (dd) [§78] Enhancement Allegations Are Not Considered.
      - (ee) [§79] Test Does Not Apply to Conviction of Multiple Charged Offenses.
8. Informal, Irregular, and Defective Verdicts.
- (a) [§80] In General.
  - (b) [§81] Surplusage and Clerical Error.
  - (c) [§82] Uncertainty.
  - (d) [§83] Failure To Find.
  - (e) Inconsistent Verdicts on Separate Grounds.
    - (1) [§84] Former Law: Inconsistent Verdicts Are Not Valid.
    - (2) [§85] Current Law: Valid Inconsistent Verdicts.
    - (3) [§86] Enhancement Allegations.
    - (4) [§87] Special Rules for Conspiracy.
  - (f) Inconsistent Verdicts on Joint Defendants.
    - (1) [§88] Nature of Problem.
    - (2) [§89] Appeal by Defendant More Severely Treated.
    - (3) [§90] Appeal by Defendant More Favorably Treated.
  - (g) Unincluded Offense Not Charged.
    - (1) [§91] In General.
    - (2) [§92] Procedure.
9. Impeachment of Verdict.
- (a) [§93] Former Rule Against Impeachment.
  - (b) Present Rule and Limitations.
    - (1) [§94] Statement of Rule.
    - (2) [§95] Illustrations: Subjective Reasoning.
    - (3) [§96] Federal Procedure.
10. Proceedings on Verdict.
- (a) [§97] Verdict of Acquittal.

- (b) [§98] Verdict of Conviction.
- (c) [§99] Right to Bail After Conviction.

## **II. MOTION FOR NEW TRIAL**

### **A. [§100] Nature of New Trial.**

### **B. Grounds.**

1. [§101] Statutory List.
2. [§102] Statutory Grounds Are Normally Exclusive.
3. Newly Discovered Evidence.
  - (a) [§103] In General.
  - (b) [§104] Motion Is "Disfavored."
  - (c) Competency and Strength.
    - (1) [§105] Probability of Different Result.
    - (2) [§106] Cumulative Evidence.
    - (3) [§107] Impeaching Evidence.
    - (4) [§108] Recantation.
  - (d) Discovery and Diligence.
    - (1) [§109] Newly Discovered.
    - (2) [§110] Diligence.
    - (3) [§111] Where Diligence Is Not Required.
4. Insufficiency of Evidence.
  - (a) [§112] Nature of Ground.
  - (b) [§113] Judge's Duty To Weigh Evidence.
  - (c) Judge's Power To Modify Judgment.
    - (1) [§114] Lesser Offense or Degree.
    - (2) [§115] Lesser Penalty.
5. [§116] Error of Law or Misdirection of Jury.
6. [§117] Improper Conduct of Jury.
7. [§118] Misconduct of Prosecuting Attorney.
8. [§119] Absence of Defendant in Felony Trial.
9. [§120] Inability To Obtain Transcript.
10. [§121] Incompetence of Counsel.

### **C. Procedure.**

1. Motion by Defendant.
  - (a) [§122] Necessity and Form.
  - (b) [§123] Time of Motion.
  - (c) Renewal of Motion.
    - (1) [§124] In General.
    - (2) [§125] Change in Law.
  - (d) [§126] Second Motion in Bifurcated Trial.
  - (e) [§127] No Absolute Right to Free Transcript.
2. Affidavits.
  - (a) [§128] In General.
  - (b) [§129] Newly Discovered Evidence.
  - (c) [§130] Counter-Showing.
3. Hearing.
  - (a) [§131] In General.

- (b) [§132] Judge To Hear Motion.
- (c) [§133] Juror Testimony.
- 4. [§134] Order.
- 5. Review of Order.
  - (a) [§135] Order Granting.
  - (b) [§136] Order Denying.
- 6. [§137] Failure To Determine Motion.

### **III. JUDGMENT**

#### **A. Motion in Arrest of Judgment.**

- 1. [§138] Nature of Motion.
- 2. [§139] Grounds: Demurrable Defects.
- 3. [§140] Procedure.

#### **B. Arraignment for Judgment.**

- 1. [§141] Time.
- 2. [§142] Conditions Suspending Imposition of Judgment.
- 3. [§143] Motion To Strike Prior Convictions.
- 4. [§144] Waiver of Formal Arraignment Is Disfavored.
- 5. Presence of Defendant.
  - (a) [§145] Requirement of Presence in Felony Case.
  - (b) [§146] Exceptions.
  - (c) [§147] No Requirement in Misdemeanor Case.
- 6. Right of Allocution.
  - (a) [§148] In General.
  - (b) [§149] Scope of Right.
  - (c) [§150] Information Considered.
- 7. [§151] Right to Counsel.

#### **C. Rendition and Entry.**

- 1. [§152] In General.
- 2. [§153] Participation of Victim and Family.
- 3. [§154] Notification of Appeal Rights.
- 4. [§155] Failure To Pronounce at Time Set.

#### **D. Determining Degree of Crime.**

- 1. [§156] Function of Trial Court.
- 2. [§157] Evidence or Admission.
- 3. [§158] Failure To Determine Degree.

#### **E. Temporary Detention in Diagnostic Facility.**

- 1. [§159] In General.
- 2. [§160] Procedure.

### **IV. SENTENCE**

#### **A. [§161] In General.**

#### **B. [§162] Unauthorized Sentence.**

#### **C. [§163] Discretion of Judge Generally.**

#### **D Concurrent or Consecutive Sentences.**

- 1. [§164] General Rule: Subsequent Judgment Must Direct Whether Sentences Are Consecutive.
- 2. [§165] Multiple Convictions in Single Proceeding.

3. [§166] Prior Conviction and Subsequent Sentence.
4. [§167] Where One Judgment Is Reversed.
5. [§168] Where Consecutive Sentence Is Mandatory or Permissive.
6. Discretion of Judge.
  - (a) [§169] Discretion Is Rarely Disturbed.
  - (b) [§170] Limitations.
7. Failure To Direct.
  - (a) [§171] Correction Within 60 Days.
  - (b) [§172] Concurrent Terms Where No Timely Direction Is Made.
8. [§173] Effect of Sentences.

**E. Execution of Judgment.**

1. [§174] Jail Sentence.
2. [§175] State Prison Sentence.
3. [§176] Fines and Fees.
4. Death Penalty.
  - (a) [§177] In General.
  - (b) [§178] Order of Execution.
  - (c) [§179] Place and Manner of Execution.

**F. Insanity After Judgment.**

1. [§180] Sentence Other Than Death.
2. Sentence of Death.
  - (a) [§181] Determination of Insanity and Recovery.
  - (b) [§182] Review of Determination.

**V. VACATION OR CORRECTION BY COURT**

**A. [§183] Correction of Clerical Error.**

**B. No Correction of Judicial Error.**

1. [§184] In General.
2. [§185] Void Judgment.

**C. [§186] Modification of Sentence Before Restraint.**

**D. [§187] No Modification of Sentence After Commencement.**

**E. [§188] Vacation To Permit New Trial Motion.**

**F. [§189] Recall of Sentence.**

**G. [§190] No Judgment N.O.V.**

**VI. MOTION TO VACATE: CORAM NOBIS**

**A. In General.**

1. [§191] Revival of Common Law Writ.
2. [§192] Civil Proceeding.
3. [§193] Grounds for Motion.
4. [§194] Motion by Person No Longer Imprisoned or Restrained.

**B. When Relief Will Be Denied.**

1. [§195] No Proper Ground.
2. [§196] Other Remedy Neglected.
3. [§197] Unreasonable Delay.
4. [§198] Prior Determination of Issue.

**C. Procedure.**

1. [§199] Petition or Motion.

2. [§200] Hearing and Determination.
3. [§201] When Appellate Court Has Jurisdiction.
4. [§202] When Trial Court Has Jurisdiction.
5. [§203] Right to Counsel.

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