

1 California Criminal Law (4th), Defenses

I. INTRODUCTION

- A. [§1] In General.
- B. [§2] Affirmative Defenses.
- C. [§3] Alibi.

II. LACK OF CAPACITY

A. [§4] Children.

B. Mental Retardation.

- 1. [§5] In General.
- 2. [§6] Application of Statute.
- 3. [§7] Legal Standard.
- 4. [§8] Postconviction Claims.

C. Insanity and Other Mental Aberrations.

- 1. [§9] In General.
- 2. Insanity Defense.
 - (a) [§10] In General.
 - (b) [§11] Temporary Insanity.
 - (c) [§12] Insane Delusion.
- 3. Test of Insanity.
 - (a) [§13] M'Naghten Test: Inability To Distinguish Right From Wrong.
 - (b) [§14] A.L.I. Test: Capacity To Appreciate Criminality of Conduct.
 - (c) [§15] Proposition 8: M'Naghten Test Restored.
 - (d) [§16] "Legally" or "Morally" Wrong.
 - (e) [§17] Requirement of Mental Disease or Defect.
- 4. [§18] Distinctions Based on Time of Insanity.
- 5. [§19] Burden of Proof on Defendant.
- 6. [§20] Presumption of Insanity From Commitment.
- 7. Mental Aberrations Not Constituting Insanity.
 - (a) [§21] Irresistible Impulse.
 - (b) [§22] Delirium Tremens.
 - (c) [§23] Psychopaths and Sociopaths.
 - (d) [§24] Miscellaneous Disorders.
- 8. [§25] Mental Incapacity.

D. Diminished Capacity.

- 1. [§26] Former Law.
- 2. Abolition of Defense.
 - (a) [§27] Statutory Provisions.
 - (b) [§28] Statutes Are Constitutional.
 - (c) [§29] Limitations on Evidence.

E. Intoxicated Persons.

- 1. [§30] Voluntary Intoxication Is No Defense.
- 2. Crime Requiring Particular Mental State.
 - (a) [§31] No Constitutional Right to Intoxication as Defense.
 - (b) [§32] Intoxication May Negate Actual Intent.
 - (c) [§33] Scope of Defense.

(d) [§34] Evidence Must Be Sufficient To Raise Issue.

F. Unconscious Persons.

1. [§35] Defense of Unconsciousness.
2. [§36] Scope of Defense.
3. [§37] Presumption of Consciousness.
4. [§38] From Involuntary Intoxication.
5. [§39] From Voluntary Intoxication.

G. Corporations and Other Associations.

1. [§40] In General.
2. [§41] Corporations.
3. [§42] Partnership as Entity.
4. [§43] Individual Partners.

III. CONDITIONS AFFECTING INTENT

A. [§44] Ignorance of Law Is No Defense.

B. Mistake of Law.

1. [§45] In General.
2. [§46] Reliance on Advice, Statute, or Regulation.

C. Mistake of Fact.

1. [§47] Mistake Negating Criminal Intent or Knowledge.
2. [§48] Mistake Resulting From Mental Illness.
3. [§49] Mistake of Fact Distinguished From Mistake of Law.
4. [§50] Where Criminal Intent Is Not Required.
5. Mistake about Consent in Sex Case.
 - (a) [§51] Reasonable Mistake as Defense.
 - (b) [§52] Sufficiency of Evidence To Raise Defense.
6. Mistake about Minor's Age.
 - (a) [§53] Unlawful Sexual Intercourse (Statutory Rape).
 - (b) [§54] Other Acts Against Children.

D. Duress and Necessity.

1. [§55] In General.
2. Duress.
 - (a) [§56] Availability of Defense.
 - (b) [§57] No Defense to Homicide.
 - (c) [§58] Fear of Bodily Harm.
 - (d) [§59] Threat of Harm to Another.
 - (e) [§60] Threat of Future Danger.
 - (f) [§61] No "Imperfect Duress."
3. Necessity.
 - (a) [§62] Availability of Defense.
 - (b) [§63] Elements of Defense.
 - (c) [§64] Burden on Defendant.
 - (d) [§65] Lack of Alternatives.
 - (e) [§66] Necessity as Defense to Prison Escape.

IV. SELF-DEFENSE

A. In General.

1. [§67] Nature of Defense.

2. [§68] Conditions for Exercise.
3. [§69] Prisoners and Ex-Felons.

B. Apparent Necessity.

1. [§70] General Requirement.
2. [§71] Exception: Simple Battery.

C. Determining Whether Belief Is Reasonable.

1. [§72] Reasonableness Based on Defendant's Perspective.
2. [§73] Evidence of Mental Illness Is Not Admissible.
3. [§74] Threats by Third Person.

D. Use of Force.

1. [§75] Reasonable Force.
2. [§76] Presumption That Force Used in Residence Is Reasonable.

E. Right To Stand Ground.

1. [§77] No Retreat Rule.
2. Exception: Aggressor or Other Wrongdoer.
 - (a) [§78] Duty To Retreat.
 - (b) [§79] Right of Defense After Retreat or Withdrawal.
 - (c) [§80] Nonfelonious Aggressor.
3. [§81] Pursuit and Punishment.

F. Imperfect Self-Defense.

1. [§82] Availability of Defense.
2. [§83] Defense Is Not Available Where Defendant Provokes Adversary.
3. [§84] Delusion Is Not Sufficient for Defense.
4. [§85] Illustrations.

V. DEFENSE OF THIRD PERSON

- A. [§86] Availability of Defense.
- B. [§87] Imperfect Defense of Others.

VI. DEFENSE OF PROPERTY

- A. [§88] In General.
- B. [§89] Use of Deadly Mechanical Devices.

VII. PREVENTION OF CRIME

- A. [§90] Dangerous Felony, Breach of Peace, or Public Offense.
- B. [§91] Misdemeanor or Nondangerous Felony.

VIII. APPREHENSION OF CRIMINAL

- A. [§92] Killing by Officer.
- B. [§93] Killing by Private Person.
- C. [§94] Where Misdemeanor Is Committed.
- D. Limitations on Use of Deadly Force.**

1. [§95] Constitutional Limitations.
2. [§96] Limitations on Private Person.

IX. CONSENT OF VICTIM

- A. [§97] General Rule: Consent Is Not Defense.
- B. [§98] Crime Involving Lack of Consent.
- C. [§99] Apparent Consent Improperly Obtained.

X. ENTRAPMENT

- A. In General.**

1. [§100] Nature of Defense.
2. [§101] Policy Basis for Defense.

B. Persons Who May Entrap.

1. [§102] Law Enforcement Officer.
2. [§103] Private Person Acting With Government Agent.
3. [§104] No Entrapment by Private Person Acting Alone.

C. Test of Entrapment.

1. [§105] Former Law: Origin of Criminal Intent.
2. [§106] Current Law: Permissible Conduct of Officer.

D. Claim and Trial of Defense.

1. [§107] Claim Is Consistent With Denial of Act.
2. [§108] Burden of Proof.
3. [§109] Instructions.
4. [§110] Showing Sufficient for Defense.
5. [§111] Illustrations of Defense Rejected.

E. Related Defenses.

1. [§112] Outrageous Police Conduct.
2. [§113] Entrapment by Estoppel.
3. [§114] Sentencing Entrapment or Manipulation.

XI. FORMER JEOPARDY

A. In General.

1. [§115] Constitutional and Statutory Provisions.
2. [§116] Nature and Elements of Defense.
3. [§117] Federal and State Standards Are Both Applicable.

B. Proceedings Not Included.

1. Civil Proceedings.
 - (a) [§118] Criminal and Civil Proceedings Distinguished.
 - (b) [§119] Civil Proceedings Are Not Subject to Bar of Double Jeopardy.
 - (c) [§120] Civil Forfeiture.
2. [§121] Pretrial Criminal Proceedings.
3. [§122] Single Trial With Multiple Convictions or Acquittals.
4. Proceedings Relating to Sentencing.
 - (a) [§123] Trial of Noncapital Sentencing Allegations.
 - (b) [§124] Enhancing and Aggravating Factors.
 - (c) [§125] Special Circumstance and Aggravation.
5. [§126] Prison Disciplinary Proceedings.
6. [§127] Revocation of Probation or Parole.
7. [§128] Post-Trial Proceedings Not Subject to Defense.
8. [§129] Perjury in Criminal Trial.

C. [§130] Competency of Court and Jury.

D. [§131] Validity of Accusatory Pleading.

E. Proceedings Constituting Jeopardy.

1. Jury Sworn or Trial Entered Upon.
 - (a) [§132] In General.
 - (b) [§133] Jury Sworn.
 - (c) [§134] Court Trial.

2. [§135] Discharge of Jury: In General.
3. Unwarranted Discharge Without Consent.
 - (a) [§136] General Rule: Retrial Is Prohibited.
 - (b) [§137] Express Objection by Defendant Is Not Required.
 - (c) [§138] Distinction: Discharge Without Objection Before Determination of Truth of Prior Conviction.
4. Discharge by Consent: Mistrial.
 - (a) [§139] Defendant's Motion or Express Consent.
 - (b) [§140] Defendant's Implied Consent.
 - (c) [§141] Complaints About Incidents Are Not Necessarily Consent.
 - (d) [§142] Consent by Defendant or Counsel Alone.
 - (e) [§143] Motion Based on Prosecutorial Misconduct.
5. Mistrial on Court's Own Motion.
 - (a) [§144] Federal Rule.
 - (b) [§145] California Rule.
6. Discharge by Necessity.
 - (a) [§146] Federal Rule.
 - (b) [§147] California Rule.
 - (c) [§148] Illness, Incapacity, or Absence of Defendant, Counsel, or Judge.
 - (d) [§149] Illness, Incapacity, or Absence of Juror.
 - (e) Inability of Jurors To Agree (Hung Jury).
 - (1) [§150] General Principles.
 - (2) [§151] Determination.
 - (3) [§152] Multiple Defendants.
 - (4) [§153] Failure To Receive Partial Verdict: Multiple Counts.
 - (5) [§154] Failure To Receive Partial Verdict: Where Only Greater Offense Is Charged.
 - (5a) [§154A] (New) Failure To Receive Partial Verdict: Where Jury Deadlocks on Enhancement.
 - (6) [§155] Unreported Jury Agreement on Some Offenses.
7. Acquittal.
 - (a) [§156] In General.
 - (b) [§157] Acquittal Directed by Judge.
 - (c) [§158] Defective Verdict.
 - (d) [§159] Jury Deadlocked on Lesser Included Offense.
8. [§160] Dismissal.
9. Conviction.
 - (a) [§161] After Trial.
 - (b) [§162] On Plea of Guilty.
 - (c) [§163] After Submission on Transcript.
 - (d) [§164] Modification of Verdict.
 - (e) [§165] New Trial.
 - (f) [§166] Postverdict Dismissal.
10. Retrial After Appeal and Reversal.
 - (a) [§167] Nature of Problem.

- (b) Retrial on Greater Charge Is Prohibited.
 - (1) [§168] Federal Rule.
 - (2) [§169] Application of Rule to States.
 - (3) [§170] Conviction of Offense That Is Not Jeopardy Barred.
 - (4) [§171] California Rule.
- (c) Increased Punishment: Federal Rule.
 - (1) [§172] No Increased Punishment as Penalty.
 - (2) [§173] Distinction: Increased Sentence Imposed by Jury.
 - (3) [§174] Distinction: Increased Sentence Based on Subsequent Events.
 - (4) [§175] No Increased Punishment Where Prior Sentence Was Acquittal of Greater Punishment.
- (d) Increased Punishment: California Rule.
 - (1) [§176] No Increased Punishment.
 - (2) [§177] Distinction: Appeal From Unauthorized Sentence.
 - (3) [§178] Distinction: Appeal From Order Granting Probation.
 - (4) [§179] Distinction: Appeal by Prosecution.
- (e) Reversal for Insufficiency of Evidence.
 - (1) [§180] Federal Decisions.
 - (2) [§181] California Decisions.
- (f) [§182] Reversal Over Defendant's Objection.

11. Proceedings in Another Jurisdiction.

- (a) [§183] General Rule.
- (b) [§184] California Rule.
- (c) [§185] Illustrations.

F. Same or Included Offense.

- 1. [§186] Nature of Problem.
- 2. Single Act but Distinct Offenses.
 - (a) [§187] Single Act, Several Victims.
 - (b) [§188] Single Act, Several Statutes.
- 3. Included Offenses.
 - (a) [§189] Rule and Test.
 - (b) [§190] Federal Approach.
 - (c) [§191] Greater Offense Is Included in Lesser.
 - (d) [§192] Exceptions.
 - (e) [§193] Homicide and Other Crimes.
 - (f) [§194] Burglary, Robbery, and Other Crimes.
 - (g) [§195] Assault and Other Crimes.
 - (h) [§196] Sex Offenses and Other Crimes.
 - (i) [§197] Other Offenses.

G. Defendant's Acts as Waiver of Defense.

- 1. [§198] New Trial or Reversal on Appeal.
- 2. [§199] Breach of Plea Bargain.
- 3. [§200] Judgment Vacated on Collateral Attack.
- 4. [§201] Dismissal on Technical Grounds or in Interests of Justice.
- 5. [§202] Attempting To Create Jeopardy.

6. [§203] Attempting To Create Violation of Prohibition Against Multiple Prosecution.

7. [§204] Fraud in Procuring Former Conviction.

H. Methods of Raising Defense.

1. [§205] Plea in Trial Court.

2. [§206] Prohibition.

3. [§207] Habeas Corpus.

XII. RES JUDICATA (COLLATERAL ESTOPPEL)

A. In General.

1. [§208] Doctrine in Criminal Cases.

2. [§209] Relationship to Double Jeopardy.

3. [§210] No Application to Retrial of Same Case.

4. [§211] Denial of Collateral Estoppel Does Not Affect Prior Judgment.

5. [§212] Perjury in Criminal Trial: No Collateral Estoppel.

6. [§213] How Defense Is Raised.

B. Elements and Conditions.

1. [§214] In General.

2. Same Parties.

(a) [§215] Different Plaintiffs: Prosecutions by Two Jurisdictions.

(b) [§216] Different Defendants: Defense Is Not Available.

(c) [§217] Prior Civil Proceeding.

(d) [§218] Prior Habeas Corpus Proceeding.

(e) [§219] Prior Probation Revocation Hearing.

(f) [§220] Prior Administrative Proceeding.

(g) [§221] Prior Dependency Proceeding.

(h) [§222] Prior Mentally Disordered Person Proceeding.

3. Final Determination on Merits.

(a) [§223] In General.

(b) [§224] Doctrine Is Not Applicable to Dismissal.

4. Issues Litigated and Determined.

(a) [§225] Nature of Problem.

(b) [§226] Doctrine Applied.

(c) [§227] Doctrine Rejected.

(d) [§228] Retrial of Sentencing Enhancement Allegation.

C. Doctrine Invoked by Prosecution.

1. [§229] Issues of Guilt: Doctrine Applied.

2. [§230] Issues of Guilt: Doctrine Rejected.

3. [§231] Procedural Issues.

4. [§232] Prior Civil Proceeding.

5. [§233] Prior Sexually Violent Predator Proceeding.

XIII. STATUTE OF LIMITATIONS

A. [§234] In General.

B. Jurisdictional Nature of Statute.

1. [§235] Failure To Raise Defense Is Not Waiver.

2. [§236] Express Waiver.

3. [§237] Implied Waiver to Lesser Offense.

4. [§238] Facially Sufficient Accusatory Pleading.

C. [§239] Burden of Proof.

D. Limitations Periods.

1. [§240] Capital Crimes, Embezzlement of Public Money, and Felonies.
2. [§241] Misdemeanors and Infractions.
3. [§242] Special Limitations Periods.

E. Determination of Applicable Limitations Period.

1. [§243] Statutory Provision.
2. [§244] What Constitutes Maximum Punishment.
3. [§245] Where Another Crime Is Element of Offense.
4. [§246] Felony-Misdemeanor.
5. [§247] Lesser Included Offenses.

F. Running of Period.

1. [§248] In General.
2. When Prosecution Is Commenced.
 - (a) [§249] In General.
 - (b) [§250] John Doe DNA Arrest Warrant May Commence Prosecution.
3. When Period Begins To Run.
 - (a) [§251] Commission of Crime.
 - (b) [§252] Discovery of Crime: Statutory Provisions.
 - (c) [§253] What Constitutes Discovery.
 - (d) [§254] Who Qualifies as Discoverer.
4. Conspiracy.
 - (a) [§255] Last Overt Act.
 - (b) [§256] Completion of Primary Object.
5. [§257] Effect of Amendment to Accusatory Pleading.

G. Tolling of Statute.

1. [§258] In General.
2. Sex Offenses Against Minors.
 - (a) [§259] Former Law and Revision.
 - (b) [§260] Statutory Requirements.
 - (c) [§261] Commencement of Prosecution.
 - (d) [§262] Limitations Issue Need Not Be Bifurcated.

XIV. NONUNIFORM ADMINISTRATION OF LAW

A. [§263] Laxity in Enforcement.

B. Intentional Discriminatory Enforcement.

1. [§264] Nature of Defense.
2. [§265] Methods of Raising Defense.
3. [§266] Burden of Proof on Defendant.
4. [§267] Showing Required To Obtain Discovery.
5. [§268] Showing Sufficient To Raise Defense.
6. [§269] Showing Not Sufficient To Raise Defense.

XV. MISCELLANEOUS DEFENSES

A. Immunity for Testifying.

1. [§270] Statutory Immunity.
2. [§271] Nonstatutory Immunity.

B. [§272] Condonation or Compromise.

C. Misfortune or Accident.

1. [§273] In General.

2. [§274] Excusable Homicide.

D. Governmental Authority.

1. [§275] Homicide.

2. [§276] Trespass.

3. [§277] Narcotics Offenses.

4. [§278] Diplomatic Immunity.

5. [§279] Vehicle Offenses.

E. [§280] Physical Force on Student.

XVI. UNTENABLE THEORIES OF DEFENSE

A. [§281] Good Motive.

B. [§282] Repentance, Recantation, or Abandonment.

C. [§283] Contributory Negligence of Victim.

D. [§284] Other Untenable Theories.