

## **6 California Criminal Law (4th), Reversible Error**

### **I. IN GENERAL**

- A. [§1] Theory and Scope of Doctrine.
- B. [§2] Admission and Exclusion of Evidence.
- C. [§3] Unfairness Without Error.
- D. [§4] Analysis of Reversible Error Problem.
- E. [§5] Illustrations.

### **II. TESTS OF REVERSIBLE ERROR**

- A. [§6] Former Test of Possible Prejudice.
- B. Present Test of Probable Prejudice.**
  - 1. [§7] In General.
  - 2. [§8] Illustrations.
  - 3. [§9] When Probability Test Applies.
- C. [§10] Penalty Phase Error: Test of Reasonable Possibility of Prejudice.
- D. Constitutional Error.**
  - 1. Development of Law.
    - (a) [§11] Reasonable Possibility Standard (Fahy).
    - (b) [§12] Harmless Beyond Reasonable Doubt Standard (Chapman).
  - 2. Confessions and Admissions.
    - (a) [§13] Federal Rule: Chapman Standard.
    - (b) [§14] California Rule: Chapman Standard.
  - 3. Instructional Error.
    - (a) [§15] Former California Per Se Rule and Exceptions.
    - (b) [§16] Federal Rule: Chapman Standard.
    - (c) California Rule: Chapman Standard.
      - (1) [§17] Error Harmless Beyond Reasonable Doubt.
      - (2) [§18] Error Not Harmless Beyond Reasonable Doubt.
    - (d) [§19] Continued Validity of Per Se Rule in California.
    - (e) [§20] Reasonable Likelihood Test.
  - 4. [§21] Comment on Defendant's Failure To Testify.
  - 5. [§22] Other Errors.

### **III. REVERSIBLE ERROR PER SE**

- A. In General.**
  - 1. [§23] Development of Concept.
  - 2. [§24] Limitation of Concept.
- B. Denial or Impairment of Specific Rights.**
  - 1. [§25] Right to Counsel.
  - 2. [§26] Jury Trial.
  - 3. [§27] Public or Speedy Trial.
  - 4. [§28] Physical Presence or Mental Competence.
  - 5. [§29] Presentation of Evidence.
  - 6. [§30] Other Examples.

### **IV. SUBSTANTIALITY OF ERROR**

- A. [§31] In General.
- B. Rule That Unsubstantial Error Is Not Reversible.**

1. [§32] Rule Applied.
2. Departures From Rule.
  - (a) [§33] Defendant Charged With Death of Victim.
  - (b) [§34] Defendant Not Charged With Death of Victim.

**C. Substantial Error Not Reversible Under Circumstances.**

1. Error Invited: Estoppel.
  - (a) [§35] Nature of Doctrine.
  - (b) Illustrations.
    - (1) [§36] Error in Giving, or Failing To Give, Instruction.
    - (2) [§37] Other Errors.
  - (c) [§38] Tactical Decision Based on Misunderstanding of Law.
  - (d) [§39] Doctrine Is Not Applicable Where Trial Judge Has Duty To Instruct.
  - (e) [§40] Effect of Defense Counsel's Misconduct.
2. Error Forfeited by Failure To Object.
  - (a) [§41] In General.
  - (b) [§42] Defendant Appearing in Pro. Per.
  - (c) [§43] Where Objection May Not Be Necessary.
  - (d) [§44] Where Objection Has Additional Legal Consequences.
  - (e) Forfeiture Doctrine Applied.
    - (1) [§45] Objections Involving Evidence.
    - (2) [§46] Objections Involving Jury.
    - (3) [§47] Objections Involving Sentencing.
    - (4) [§48] Objections Involving Absence of Court Ruling.
    - (5) [§49] Other Objections.
  - (f) Misconduct: Request for Admonition Is Required.
    - (1) [§50] Misconduct of Prosecutor.
    - (2) [§51] Misconduct of Judge.
    - (3) [§52] Exception: Where Request Would Be Futile.
3. Error Cured by Trial Judge.
  - (a) [§53] Forms of Corrective Action.
  - (b) [§54] Exception: Error Incurable or Cure Inadequate.
4. [§55] Where Defendant's Guilt Is Clear.
5. [§56] Where Defendant Is Given Fair Trial.

**D. Substantial Error Reversible Under Circumstances.**

1. [§57] Close Case.
2. [§58] Numerous Errors With Cumulative Effect.
3. Error Intentional or in Bad Faith.
  - (a) [§59] Bad Faith as Factor.
  - (b) [§60] Bad Faith Alone Insufficient.