What is it?

- A **treatise** is an extended, serious, and usually exhaustive book on a particular subject.  
  
  *Treatise, Black’s Law Dictionary* (10th ed. 2014)

What is it?

- A *practice guide* is a written explanation of how to proceed in a particular area of law or in a particular court or locality
  

- EXAMPLES: California Landlord-Tenant Practice, Civil Procedure Before Trial, California Forms of Pleading and Practice, California Civil Practice
These items are **NOT** considered treatises or practice guides

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*Witkin publishes both subject specific treatises (e.g. Witkin California Criminal Law) as well as the Summary of California Law, which is considered more like a legal encyclopedia.*
Treatises and Practice Guides Online
1. In Westlaw or Lexis, type in the name of a treatise or topic area and select one of the populated options.

2. Alternatively, search by keyword and filter by clicking on secondary sources, jurisdiction, and/or type (texts & treatises).

3. Note that these items are proprietary, so it is common for one treatise to be in one database and not the other (e.g. Corbin on Contracts is available on Lexis but not on Westlaw).
Witkin California Criminal Law

Browse Table of Contents below or search above.
   Witkin California Criminal Law, Fourth Edition

(1) Origin and Purpose of Embezzlement Statutes. At common law there could be no conviction for larceny if the defendant obtained possession lawfully without trespass. It therefore became necessary to create a new offense to cover misappropriation by persons to whom property had been entrusted, e.g., bailees, brokers, and trustees. Embezzlement statutes of various kinds have been enacted, all of them resting on the basic principle stated in P.C. 503: “Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted.” (See People v. Gallagher (1893) 100 C. 466, 468, 35 P. 80 [discussing derivation from common l

People v. Petrin (1954) 122 C.A.2d 578, 581, 584, 265 P.2d 149 [discussing elements of
Chapter III. Defenses

Chapter IV. Crimes Against the Person

Chapter V. Crimes Against Property [Chapter View]

1. Theft [Chapter View]
   a. In General.
   b. Grand and Petty Theft.
   c. Larceny.
   d. Embezzlement. [Chapter View]
         3. Elements of Embezzlement.
         4. Defenses.
      5. [§ 43] Embezzlement by Public Officer or Employee.
   e. Misappropriation of Public funds.
   f. Diversion of Construction Funds.
   g. False Pretenses.
Secondary Sources

State v. Moyer
Supreme Court of Appeals of West Virginia. October 31, 1905
58 W.Va. 146 52 S.E. 30

Error to Circuit Court, Fayette County. William C. Moyer was convicted of embezzlement, and brings error. Reversed. Poffenbarger, J., dissenting.

Show synopsis
Error to Circuit Court, Fayette County.

William C. Moyer was convicted of embezzlement, and brings error. Reversed. Poffenbarger, J., dissenting.

...Under an indictment for embezzlement, it is sufficient for the state to prove the embezzlement of any part of the money.
Secondary Sources (10,000)

1. OUJI-CR5-21 Embezzlement (Secreting)—Elements
   Vernon's Oklahoma Forms 2d · VRN-OKFORM OUJI-CR 5-21

   No person may be convicted of felony/misdemeanor embezzlement unless the State has proved beyond a reasonable doubt each element of the crime. These elements are: First, secreted; Second, personal property; Third, (of value)/(valued at more than $500/$1,000/$25,000); Fourth, of a person/(legal entity); Fifth, with fraudulent intent to appropriate;...

   ...Embezzlement...

   ...No person may be convicted of felony/misdemeanor embezzlement unless the State has proved beyond a reasonable doubt each element of the crime....

2. OUJI-CR5-20 Embezzlement (Appropriating)—Elements
   Vernon's Oklahoma Forms 2d · VRN-OKFORM OUJI-CR 5-20

   No person may be convicted of felony/misdemeanor embezzlement unless the State has proved...
1. § 147. Property subject to embezzlement, generally
California Jurisprudence 3d \ CAJUR CLCPRP § 147

Personal property that may be embezzled includes money, goods, chattels, things in action, and evidences of debt. Shares of corporate stock are personal property that may be the subject of embezzlement. Public funds may be the subject of embezzlement. Any evidence of debt negotiable by delivery only and actually executed is the subject of... 

...2] Public funds may be the subject of embezzlement. [...]

...1] Shares of corporate stock are personal property that may be the subject of embezzlement. [...]

2. § 8:25. Embezzlement—Distinguished from larceny
Expert Series • CACRLAW § 8:25

The crime of embezzlement was created by statute to respond to certain inadequacies in the common law definition of larceny. Under the common law, a defendant could not be charged with larceny for fraudulently converting property that was originally entrusted to him or her by the owner. Trespass, an essential element of larceny, was not present....

...The crime of embezzlement was created to remedy this problem....

...Embezzlement is therefore defined as “the fraudulent appropriation of property by a person to whom it has been entrusted.”....

3. § 8:26. Embezzlement—Elements of embezzlement—Two basic requirements
Expert Series • CACRLAW § 8:26
An intent to restore the property to its owner even if existent at the time of the misappropriation, is not a defense to embezzlement.

Witkin California Criminal Law, Fourth Edition • WITCRIM CH V § 29

(1) Origin and Purpose of Embezzlement Statutes. At common law there could be no conviction for larceny if the defendant obtained possession lawfully without trespass. It therefore became necessary to create a new offense to cover misappropriation by persons to whom property had been entrusted, e.g., bailees, brokers, and trustees. Embezzlement...

Witkin California Criminal Law, Fourth Edition • WITCRIM CH V § 31

A relationship of trust and confidence is essential to embezzlement. The defendant is some kind of fiduciary to whom the property is entrusted, and the relationship takes the place of the trespass required for larceny (supra, § 14). Hence, unless receipt of money or property in this capacity is established, the defendant’s appropriation to his or...
embezzlement
5 Witkin Cal. Crim. Law Crimes - Prop § 29
Witkin California Criminal Law  5 Witkin Cal. Crim. Law Crimes - Prop § 29

5 Witkin Cal. Crim. Law Crimes - Prop § 30
Witkin California Criminal Law  5 Witkin Cal. Crim. Law Crimes - Prop § 30
§ 30] Subjects of Embezzlement.

(1) Origin and Purpose of Embezzlement Statutes. At common law there could be no conviction for larceny if the defendant obtained possession lawfully without trespass. It therefore became necessary to create a new offense to cover misappropriation by persons to whom property had been entrusted, e.g., bailees, brokers, and trustees. Embezzlement statutes of various kinds have been enacted, all of them resting on the basic principle stated in P.C. 503: "Embezzlement is the fraudulent appropriation of property by a person to whom it has been intrusted." (See People v. Gallagher (1893) 100 C. 466, 468, 35 P. 80 [discussing derivation from common law]; People v. Petrin (1954) 122 C.A.2d 578, 581, 584, 265 P.2d 149 [discussing elements of...
18 U.S.C.S. § 666 does not define embezzlement. The court must therefore interpret the word according to its traditional meaning. Embezzlement is historically defined as the fraudulent appropriation of property by a person to whom such property has been intrusted, or into whose hands it has lawfully come. An individual commits embezzlement when he: (1) with intent to defraud; (2) converts to his own use; (3) property belonging to another; in a situation where (4) the property initially lawfully came within his possession or control. Element (1), intent, is the mens rea of embezzlement. Elements (2), (3), and (4) are the actus reus and attendant circumstances elements. When all four elements come together, an embezzlement is complete for statute-of-limitations purposes.

**United States v. Sampson**

United States Court of Appeals, Second Circuit  |  Aug 6, 2018  |  898 F.3d 270

The definition of embezzlement, as the term is used in the Bankruptcy Code, is to be determined by federal common law. The basic definition of embezzlement is the fraudulent appropriation of property by a person to whom such property has been entrusted, or into whose hands it has lawfully come. In order to be successful on an embezzlement claim under 11 U.S.C.S. § 523(a)(4) a creditor must show that the debtor acted with fraudulent intent or deceit. Further, retention by a debtor who is acting in good faith and with a reasonable claim of right without secrecy or concealment is generally inconsistent with the fraudulent intent necessary for embezzlement.

**Timlake v. Timlake (In re Timlake)**
Results for: embezzlement

   American Law Reports (ALR) | 99 A.L.R. Fed. 124

   American Law Reports (ALR) | 99 A.L.R. Fed. 124

3. Where is embezzlement committed for purposes of territorial jurisdiction or venue
   American Law Reports (ALR) | 80 A.L.R.3d 514

4. NOTE: Pleading for Theft Consolidation in Virginia: Larceny, Embezzlement, False Pretenses and § 19.2-284
   Washington & Lee Law Review | Jan 01, 1999 | 56 Wash & Lee L. Rev. 249 | 21351 words | John Wesley Bartram*
§ 1.61 - 2. Embezzlement by Public Officials and Those with Duties to an Organization
California White Collar Crime and Business Litigation | 1 California White Collar Crime and Business Litigation Sec. 1.61
§ 1.61 - 2. Embezzlement by Public Officials and Those with Duties to an Organization

§ 143.01 Theft
California Criminal Defense Practice | 6 California Criminal Defense Practice § 143.01
§ 143.01 Theft

5 Witkin Cal. Crim. Law Crimes - Prop § 29
Witkin California Criminal Law | 5 Witkin Cal. Crim. Law Crimes - Prop § 29

§ 1.34 - A. Definition; False Pretenses and Embezzlement Distinguished
California White Collar Crime and Business Litigation | 1 California White Collar Crime and Business Litigation Sec. 1.34
§ 1.34 - A. Definition; False Pretenses and Embezzlement Distinguished
§ 143.01 Theft

THE STATUTORY CRIME OF THEFT IS MADE UP OF THE COMMON-LAW CRIMES OF LARCENY, EMBEZZLEMENT, AND TAKING UNDER FALSE PRETENSES. THEFT IS DIVIDED INTO TWO DEGREES: PETTY THEFT AND GRAND THEFT, DEPENDING ON EITHER THE VALUE OR TYPE OF PROPERTY STOLEN. The mere possession of stolen property is very incriminating, and slight corroborative evidence in addition to possession will justify a conviction.
Picking the “Best” Treatise or Practice Guide

- Consider your **jurisdiction** (e.g. California).

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- 619.260.4612