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To

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and

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Containing the text of the acts of the 1941 and 1943 Sessions of the Legislature, both new and amendatory, and notes showing repeals, together with annotations from the various courts, state and federal, and the opinions of the Attorney General, construing the constitution, statutes, charters and court rules of Minnesota together with Law Review Articles and digest of all common law decisions.

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Part IV. Crimes, Criminal Procedure, Imprisonment and Prisons

CHAPTER 93

General Provisions

9906. Crimes defined and classified.

1. Definition of "crime", "offense", "misdemeanor".

Minnesota v. Probate Court, 309US270, 60SCR523, 84LEd 744, 126ALR530, aff'g 205M545, 287NW297.

A conscious and intentional purpose to break the law is an essential ingredient of the crime of conspiracy. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 2409.

Violations of Uniform Traffic Act are crimes, including aiding and abetting. Op. Atty. Gen., (605B), Mar. 3, 1941.

9909. Persons punishable.

It was conceded that even if city council acted arbitrarily in denying a license to defendant to operate busses, it was no defense to a prosecution for violation of the ordinance by operating without a license. State v. Palmer, 212M388, 3NW(2d)666. See Dun. Dig. 6805.

Situs of crime of fraud. Op. Atty. Gen. (605b-27), Dec. 3, 1942.

Where a specific criminal intent is an essential ingredient of the crime charged, the doctrine of respondeat superior is inapplicable to impute to an employer knowledge of facts known only by his employee. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 2409, 5833.

9914. Intoxication or criminal propensity no defense.

1. Intoxication.

In prosecution for assault in second degree, reading of this section to jury did not constitute prejudicial error, though court read caption "Intoxication or criminal propensity no defense". State v. Dimler, 206M81, 287NW 785. See Dun. Dig. 2479.

9915. Criminal responsibility of insane persons.

District court may commit a defendant to any state hospital, and may commit him to hospital for dangerous insane, even without a finding that he has homicidal tendencies. Op. Atty. Gen., (248B-3), March 18, 1940.

Estate and guardian of one committed to asylum for dangerous insane by district court for safekeeping and treatment until recovery and trial for crime are liable for cost of maintenance while a patient in state hospital, the same as a patient committed by probate court. Op. Atty. Gen. (248A-1), Jan. 3, 1942.

9916. Conviction of lesser crime, when.

While statute has made what formerly in many cases constituted only an attempt the crime of abortion itself, it has not abolished attempt altogeher, a party may, however, be guilty of an attempt to commit any of the acts constituting the crime, such as an attempt to prescribe or administer a drug or other substance mentioned, or to use an instrument with intent to produce an abortion. State v. Tennyson, 212M158, 2NW(2d)833, 139ALR987. See Dun. Dig. 23, 2414.

Where evidence justified a finding of guilty or not guilty of abortion, but not of an attempt to commit an abortion, it was not error to refuse to submit to jury question whether defendant was guilty of an attempt. Id. See Dun. Dig. 2414, 2486.

9917. Principal defined.

One having knowledge that others intended to commit larceny was guilty of that offense himself where he assisted them, though only out of curiosity. State v. Eggermont, 206M274, 288NW390. See Dun. Dig. 2415.

An accountant in finance division of highway department was an accomplice as a matter of law in false auditing and payment of claims on state where he assisted in having claims approved with full knowledge that they were irregular. State v. Elsberg, 209M167, 295 NW913. See Dun. Dig. 2415.

A woman upon whom an abortion is performed or attempted is not an accomplice in commission of offense, and her testimony need not be corroborated. State v. Tennyson, 212M158, 2NW(2d)833, 139ALR987. See Dun. Dig. 26, 2415, 2457.

Where acts of several participants are declared by statute to constitute separate and distinct crimes, participants guilty of one crime are not accomplices of those who are guilty of a separate and distinct crime. Id. See Dun. Dig. 2415.

One who procured, conspired with, or commanded another to burn her house was not guilty of substantive crime of arson where she attempted to prevail upon the party who was to commit the crime not to go on with the plan. State v. Peterson, 213M56, 4NW(2d)826. See Dun. Dig. 517b, 1563a.

One who has procured, counseled, or commanded another to commit a crime may withdraw before the act is done and avoid criminal responsibility by communicating the fact of his withdrawal to the party who is to commit the crime. State v. Peterson, 213M56, 4NW(2d) 826. See Dun. Dig. 2415, 2416.

In the misdemeanors there is no distinction between principals and accessories; all concerned in the commission of the offense are deemed principals, and indicted and punished accordingly. State v. McBride, 215M123, 9NW(2d)416. See Dun. Dig. 2415.

In prosecutions of manager of drugstore and employee selling intoxicating liquor without a license in violation of a city ordinance, evidence held sufficient to sustain conviction of both defendants. Id.

All who participate directly or as accessories in the violation of a municipal ordinance prohibiting the keeping for sale of intoxicating liquor are principals. Id.

Where a specific criminal intent is an essential ingredient of the crime charged, the doctrine of respondeat superior is inapplicable to impute to an employer knowledge of facts known only by his employee. State v. Burns, 215M182, 9NW(2d)518. See Dun. Dig. 2415.

A defendant is held criminally liable for having counselled, procured, commanded, incited, authorized, or encouraged another to commit a particular crime. Id.

A person cannot become a party to or criminally responsible for criminal acts of another unless he knows their true character. Id.

The most common instances where a master, without active participation on his part, is liable for the servant's crime, are those arising under statutes providing, either expressly or impliedly, for a vicarious criminal liability. These relate principally to the sale of liquor and food and similar regulations. Id. See Dun. Dig. 2415, 5833.

Prosecution of passenger in automobile operated by another without plates. Op. Atty. Gen. (494B-5), June 20, 1940.

9918. Accessory defined.

Evidence held sufficient to sustain charge that defendant became an accessory after the fact by secreting stolen money in golf bag at his living quarters, thus intending to suppress evidence of the crime. Neal v. U. S., (CCA8), 114F(2d)1000. Cert. den. 61SCR448.

9920. Certain duties of courts and juries.

Legislature, and a city council under a delegated authority, may prescribe definite terms of imprisonment for crimes or violations of city ordinances, as against contention that it deprives judiciary of discretionary power to fix reasonable limits, so long as constitutional rights of citizens have not been violated or invaded. State v. Ives, 210M141, 297NW563. See Dun. Dig. 1661(2).

9930. Attempts—How punished.

While statute has made what formerly in many cases constituted only an attempt the crime of abortion itself, it has not abolished attempt altogether, a party may, however, be guilty of an attempt to commit any of the acts constituting the crime, such as an attempt to prescribe or administer a drug or other substance mentioned, or to use an instrument with intent to produce an abortion. State v. Tennyson, 212M158, 2NW(2d)833, 139 ALR987. See Dun. Dig. 23, 2414.

(2).

This statute does not refer to cutting minimum term in half, and to so construe it would be adding language to statute that legislature had failed to do, but question of minimum sentence is of no importance in view of indeterminate sentence law, under which minimum sentence still remains at nothing. Op. Atty. Gen. (341k-5), July 10, 1940.

9931. Second offenses—Punishment.

Statute providing double penalty for a second offence, even where executive authority has pardoned first offence, is not an interference with executive power, and the court cannot interfere with legislative function of determining punishment. State v. Stern, 210M107, 297NW 321. See Dun. Dig. 2503c.

Pardon for purpose of restoring citizenship in another state was no bar to imposition of a double sentence on subsequent conviction. Id.

Board of parole is not bound by minimum sentences and may parole prisoners at any time. Op. Atty. Gen., (341k-5), June 16, 1941.

9931-3. Same—Information, etc.

Practical and legal effect of sentence under this section following a second conviction for crime doubles term of previous sentence. Op. Atty. Gen., (341i), Sept. 22, 1939.

9932. Imprisonment on two or more convictions.

When a person who is at liberty on a suspended sentence imposed for commission of a first felony commits a second felony, the sentence imposed for second felony cannot be served concurrently with the first sentence, and a person is under sentence for a felony after sentence has been imposed whether he is actually confined in prison or not, so long as sentence has not been fully executed or permanently suspended or a pardon has not been granted. Op. Atty. Gen. (341k-1), July 7, 1942.

Where a defendant has committed two offenses and has been tried on one of them, convicted and is sentenced thereon; then is put on trial for the other offense and is convicted and is sentenced thereon, the two sentences may be served concurrently. Op. Atty. Gen. (341k-1), July 7, 1942.

Where a man has committed two felonies in two counties respectively, both being committed before trial on either crime and before sentence was pronounced for either, and is tried in respective counties and convicted, sentences may be served concurrently though imposed in different district courts, though court has authority to order sentences served consecutively. Op. Atty. Gen. (341k-1), July 7, 1942.

Where one sentenced to reformatory was placed on probation and committed another felony and was sentenced to the reformatory, but judge at the time ordered that both sentences be served concurrently and revoked stay of sentence in first case, portion of sentence providing that it be served concurrently was void. Op. Atty. Gen. (341k-1), Sept. 31, 1942.

Sentences must be served consecutively when two pleas of guilty are received before sentence is pronounced on either crime. Op. Atty. Gen. (341k-1), Apr. 2, 1943.

Where prisoner was sentenced to serve term in St. Cloud Reformatory and was paroled and later was convicted of another crime and was sentenced to state prison, he should serve the reformatory term first and may be transferred to the reformatory for that purpose. Op. Atty. Gen. (341k), Apr. 19, 1943.

9936. Suspension of sentence.

Trial court has discretion to suspend sentence, and where there is no abuse of discretion, appellate court will not interfere with a sentence imposed in exercise of such discretion. State v. Soltau, 212M20, 2NW(2d)155. See Dun. Dig. 2487.

Upon affirmance of conviction for perjury, defendant was informed that, if so advised, he might renew his application for leniency in matter of suspended sentence. Id.

Power of justice of the peace to suspend a sentence must be exercised at time of imposition. There is no power to suspend on conviction for a third offense. Op. Atty. Gen. (266B-21), Nov. 6, 1941.

Municipal court of Chisholm may not refund a fine imposed in a criminal case after it has been paid to the clerk of the court. Op. Atty. Gen. (199B-7), Mar. 19, 1942.

9940. Restoration to civil rights.

A commutation of sentence to a term of 4½ months, with reservation of right to revoke commutation for misconduct, does not restore civil rights. Op. Atty. Gen. (68h), Sept. 13, 1940.

9941. Certification by proper officers.

When board of pardon grants releases through an unconditional commutation of sentence and so certifies, governor on receipt of certification may in his discretion restore such persons to civil rights, but then a prisoner is released through a commutation granted on condition the pardon board's jurisdiction is not completely terminated and governor has no power to restore civil rights before the final disposition of the sentence. Op. Atty. Gen. (68h), May 18, 1943.

9944. Restoration to civil rights, etc.

Section provides a method for restoration of civil rights in addition to that provided through governor. Op. Atty. Gen. (68h), May 18, 1943.

9945. Persons hereafter convicted.

Section provides a method for restoration of civil rights in addition to that provided through governor. Op. Atty. Gen. (68h), May 18, 1943.

CHAPTER 93A

Prevention and Control of Crime—Bureau of Criminal Apprehension

9950-6. Superintendent—Appointment, terms of office, removal, etc.

Apparently stolen property coming into hands of bureau of criminal apprehension and unclaimed should be turned over to sheriff of county where taken, to be disposed of as unidentified stolen property. Op. Atty. Gen., (985), Jan. 15, 1940.

It is improper for superintendent to give courtesy badges to personal friends. Op. Atty. Gen., (985h), Feb. 2, 1940.

9950-7. Employees of bureau; etc.

Judge of a municipal court, who has no clerk, is not required to report to superintendent of bureau of criminal apprehension, at least in all municipal courts organized since March 1, 1906. Op. Atty. Gen. (985F), Mar. 10, 1942.

9950-26. Abandoned or stolen property—Return to owner or sheriff.—That the Bureau of Criminal Apprehension shall make every effort for a period of one year after the seizure or recovery of abandoned or stolen property to return such property to the lawful owner or to the sheriff of the county from which it was stolen. (Act Apr. 23, 1941, c. 389, §1.)
[626.365]

9950-27. Same—Public sale—Notice.—Any such property held by such Bureau for more than one year, in case the owner cannot be found or if it cannot be determined from what county the property was stolen, shall be sold at public auction by the superintendent of the Bureau or his agent, after two weeks' published notice thereof in a legal newspaper in Ramsey County, stating the time and place of such sale and a list of the property to be sold. (Act Apr. 23, 1941, c. 389, §2.)
[626.365]

In view of federal law and regulations automobile tires cannot be sold at public auction, but may be disposed of under statute authorizing transfer of unused property from one state agency to another by commissioner of administration. Op. Atty. Gen. (985), Mar. 24, 1942.

9950-28. Same—Disposition of proceeds.—The proceeds of such sale shall be applied in payment of the necessary expenses of the sale and all necessary costs, storage, or charges incurred in relation to such property. The balance of the proceeds of such sales shall be paid into the general revenue fund. (Act Apr. 23, 1941, c. 389, §3.)
[626.365]

CHAPTER 94

Rights of Accused

9952. Presumption of innocence—Conviction of lowest degree, when.

1. Burden of proof on state.

Violations of a city ordinance need not be proved beyond a reasonable doubt. State v. Jamieson, 211M262, 300 NW809. See Dun. Dig. 2449.

Not all the indicia of crime need be proved in all cases beyond a reasonable doubt, but conviction cannot be sustained without compliance with the reasonable doubt rule in respect to the corpus delicti and the criminal agency of the accused. State v. Kaster, 211M119, 300NW 897. See Dun. Dig. 2451, 2453.