**621.57 WILFUL TRESPASS A MISDEMEANOR**

The grocery store and restaurant owner may require persons, whether they are customers or not, to stay away from his premises if they persist in calling him names and otherwise antagonizing him. OAG Nov. 27, 1951 (605-B).

## CHAPTER 622

## LARCENY

**622.01 LARCENY; WHAT CONSTITUTES**

HISTORY. PS 1851 c 101 s 13, 15, 23; PS 1858 c 90 s 13-15, 23; 1866 c 95 s 13-15, 23; 1876 c 55 s 1; GS 1878 c 95 s 23-25, 33; 1883 c 65 s 1; 1883 c 72; 1883 c 321 s 1; Penal Code s 415; GS 1894 s 6709; 1897 c 279; RL 1905 s 5078; GS 1913 s 8870.

Applicability of statutes making part ownership no defense as applied to larceny by a partner. 32 MLR 68.

Larceny; principal convicted as receiver of stolen goods. 34 MLR 255.

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of $20,920.71 plus interest, but the evidence was insufficient to establish that $80,995.42 additional, was misappropriated. Physicians and Hospitals Supply Co. v Johnson, 231 M 548, 44 NW(2d) 224.

All profits made by an agent in the course of an agency belong to the principal, whether they are fruits of performance or of violation of the agent's duty, and it is immaterial that the principal has suffered no damage, or even that the transaction concerned was profitable to him. Where the agent of the buyer received a secret commission from the seller of a business, election by the buyer, upon discovery of fraud in the transaction to rescind the contract of sale and recover from the seller that with which he had parted, did not preclude a subsequent action by the buyer against his agent to recover secret commissions obtained in violation of duties of the agency. Tarnowski v Resop, 236 M 33, 51 NW(2d) 801.

In a prosecution for larceny by false pretenses in order to introduce evidence of other frauds or attempted frauds the evidence must show a common scheme or plan to obtain money from others in a manner similar to the other fraudulent representation involved in the prosecution. State v Gulbrandson, ..... M ....., 57 NW(2d) 419.

One who is induced to part with his automobile for a check on a bank in which the pretended buyer had no account is entitled to recover under a policy insuring the owner against theft or larceny of the automobile. Central Surety & Insurance Corp. v Williams, 211 SW(2d) 891.

Where the owner of a motor car had it repaired, paid the sum of $187.66 to a mechanic, and after obtaining possession of the car stopped payment on the check, he was guilty of the crime of larceny. The mechanic had a lien upon the car under the provisions of sections 514.18 and 514.19. Such lien was a special property interest entitling the mechanic to the possession of the car until the lien was lawfully discharged. The giving and stopping of the check was a fraudulent act depriving the mechanic of special property and it constituted the crime of larceny. OAG June 25, 1948 (133-B-45).

A promise to repay a loan out of his next pension check and failure to do so is not a misrepresentation as to a past or existing fact. OAG Dec. 5, 1949 (133-B-35).

A person giving a check without funds may be charged either with larceny by false pretense, under section 622.01, or may be charged with issuing a check without funds under section 422.04. OAG Feb. 2, 1950 (133-B-43).

A person is guilty of larceny where in order to get possession of his automobile on which the garageman had a lien, gave the garageman a check for the amount due, and after getting possession of the automobile stopped payment on the check. OAG June 25, 1948 (133-B-45).

A person who lawfully comes into possession of money and thereafter misappropriates it to his own use violates sections 622.01 and 622.07, depending upon the facts in the case. OAG Nov. 20, 1951 (133-B-45).

### 622.02 COMMISSION NO DEFENSE

HISTORY. RS 1851 c 101 s 23; PS 1858 c 90 s 23; GS 1866 c 95 s 23; GS 1878 c 95 s 33; Penal Code s 415½; GS 1894 s 6710; RL 1905 s 5079; GS 1913 s 8871.

Applicability of statutes making part ownership no defense in larceny by a partner. 32 MLR 68.

### 622.03 OBTAINING MONEY BY FRAUDULENT DRAFT

In prosecution for giving a check without funds or credit, with intent to defraud, and where the check was drawn on the account of a timber company by an agent of the owner and additional merchandise was obtained from the payee after giving of check the state had the burden of proving beyond a reasonable doubt that the payee instructed the agent not only to deliver the check, knowing that he had no funds in bank with which to meet it, but also for the purpose of obtaining credit for additional merchandise which the owner must have instructed the agent to purchase from payee. State v Billington, 228 M 79, 36 NW(2d) 393.

Where the drawer of a check stopped payment thereon, had received nothing as consideration for the check no one was damaged and the drawer committed no crime. OAG July 11, 1951 (133-B-43).

The warden of the state prison should not receive a convict unless he is a felon; and the fact that he is a felon must appear upon the face of the papers which constitute the commitment. Ordinarily, where a person writes a check on a bank and wilfully defrauds another, he is guilty of larceny and, consequently, is a felon. But the crime of giving a check without funds, as defined in section 622.04, is a misdemeanor and not a felony. OAG Aug. 2, 1949 (341-K-2).

Whether or not a person may be convicted as an habitual offender where he has been convicted three times on a plea of guilty to a gross misdemeanor for issuing a check without funds, depends upon whether there was intent to defraud involving moral turpitude within the meaning of section 617.75. OAG Sept. 27, 1950 (341-I).

### 622.04 GIVING CHECK WITHOUT FUNDS

Presumption of substantive general damages where a bank through negligence dishonors depositor's check. 33 MLR 529.

Where a statute defines a crime as a gross misdemeanor and prescribes imprisonment as punishment therefor, without fixing the place of such imprisonment, commitment must be to the county jail rather than to the state prison or reformatory. State v Masteller, 232 M 196, 45 NW(2d) 109; State v Brandvold, 232 M 202, 45 NW(2d) 111.

Where a contractor during a four-day period took gravel from a gravel pit and paid for it by check which was not paid because of insufficient funds, the checks were not sufficient to convict the accused under section 622.04. OAG March 2, 1951 (133-B-43).

The gist of the offense of cashing fraudulent checks is the fraud involved and whether the checks are signed by the person charged with the offense in his own name or by a trade name is immaterial. The offense is committed when he fraudulently obtains the money. OAG June 29, 1949 (133-B-43).

Every criminal cause must be tried in county where offense was committed. In prosecution for giving check without funds, the crime was committed in the county where the check was used and delivered. OAG March 18, 1952 (133-B-43).

Where defendant obtained credit from a merchant and gave a check in payment of his bill and obtained additional credit, and there were no funds to meet the check, the question of whether or not there was a criminal offense committed is a question of fact. While the giving of an insufficient check in payment of a bill is not a criminal offense, the facts might be such that the defendant could be prosecuted for obtaining additional credit. OAG Nov. 2, 1953 (133-B-43).

### 622.05 GRAND LARCENY, FIRST DEGREE; HOW PUNISHED

HISTORY. RS 1851 c 101 s 15; PS 1858 c 90 s 15; GS 1866 c 95 s 15; GS 1878 c 95 s 25; Penal Code s 417, 420; GS 1894 s 6712, 6715; 1897 c 17; RL 1905 s 5081; GS 1913 s 8874.

Laws 1885, an act to establish a Penal Code approved March 9, 1885, effective Jan. 1, 1886, abolished the common law as it relates to crimes, and from and since Jan. 1, 1886, no act or omission is deemed criminal or punishable except as prescribed by statute. Sections 622.05 to 622.07 define and designate the degrees and prescribe the punishment for larceny. A wilful trespass performed in the unlawful entry and cutting and removing standing timber from the land is deemed larceny. Section 90.35 prohibits the unlawful taking of timber from the lands of that state. Section 621.25 defines the crime of unlawful taking of timber and prescribes a punishment. Apparently prosecution may be had under any of the above quoted sections. Treble damages are now provided for the cutting and carrying out timber from the lands of another under sections 548.05 and 561.04. OAG April 5, 1948 (133-B-64).

The removal, transporting and concealing of timber unlawfully cut on the lands of another is larceny, under sections 622.05 to 622.07. The degree of the crime depends upon the value of the timber. OAG April 6, 1948 (133-B-64).

### 622.06 GRAND LARCENY, SECOND DEGREE; PUNISHMENT

HISTORY. Amended, 1951 c 472 s 1.

Respondent having been convicted of grand larceny, a felony, his disbarment from the practice of law must be ordered. In re King, 232 M 327, 45 NW(2d) 562.

The warden of the state prison should not receive a convict unless he is a felon; and the fact that he is a felon must appear upon the face of the papers which constitute the commitment. Ordinarily, where a person writes a check on a bank and wilfully defrauds another, he is guilty of larceny and, consequently, is a felon. But the crime of giving a check without funds, as defined in section 622.04, is a misdemeanor and not a felony. OAG Aug. 2, 1949 (341-K-2).

Grand larceny in the second degree is a crime involving moral turpitude. The state board of health may not suspend the license of an embalmer and funeral director who had been convicted of grand larceny in the second degree for any period of time summarily without giving prior notice to the licensee or affording him an opportunity to be heard; nor may it revoke the license without prior notice of hearing. OAG May 19, 1952 (225-N).

### 622.15 VALUE OF EVIDENCE OF DEBT, HOW ASCERTAINED

In an action for an accounting for funds allegedly embezzled by defendant employee, the burden was on the employer to produce evidence showing what funds came into the employee's possession. The employee's admission made in the course of an investigation rather than in negotiations for settlement was admissible in evidence in an action for accounting for funds allegedly embezzled by the defendant in the amount of $20,920.71 plus interest, but the evidence was insufficient to establish that $80,995.42 additional, was misappropriated. Physicians and Hospitals Supply Co. v Johnson, 231 M 548, 44 NW(2d) 224.

A charge slip is evidence of a debt within the meaning of section 622.15. When stolen, prosecution should be under the provisions of section 622.15. The value of the goods as evidenced by such charge slip is deemed to be the value of the things stolen. OAG Feb. 2, 1949 (133-B-45).

### 622.18 RECEIVING STOLEN PROPERTY, AVERMENT AND PROOF

HISTORY. RS 1851 c 101 s 17-19; PS 1858 c 90 s 17-19; GS 1866 c 95 s 18-20; GS 1878 c 95 s 28-30; Penal Code s 435, 436; GS 1894 s 6730, 6731; RL 1905 s 5093; GS 1913 s 8886.

Larceny; principal convicted as receiver of stolen goods. 34 MLR 255.

### 622.20 RESTORATION OF STOLEN PROPERTY; DUTY OF OFFICERS

HISTORY. RS 1851 c 101 s 20; 1852 Amend p 23 s 112; PS 1858 c 90 s 20; GS 1866 c 95 s 21; 1867 c 86 s 1; GS 1878 c 95 s 31; GS 1894 s 6872; RL 1905 s 5095; GS 1913 s 8888.

### 622.22 STEALING OR PRINTING TRANSPORTATION TICKET, COUPON, OR PASS

HISTORY. GS 1866 c 95 s 16, 17; GS 1878 c 95 s 26, 27; 1893 c 66 s 8; GS 1894 s 2792; RL 1905 s 5186; GS 1913 s 9020.

## CHAPTER 623

## UNLAWFUL BUSINESS PRACTICES

### 623.01 TRUSTS AND COMBINATIONS IN RESTRAINT OF TRADE

Monopolies; royalties in compulsory licensing of patents. 32 MLR 309.

Violation of a criminal statute designed to protect against intentional harm; civil remedy where not expressly provided by statute or common law. 32 MLR 531.

Japanese anti-trust legislation. 32 MLR 588.

Economical consideration in the enforcement of the federal anti-trust laws. 34 MLR 210.

Restraint of trade as applicable to labor or other organizations. Application of the Clayton and Sherman Act to an association of real estate brokers. 34 MLR 364.

Anti-trust laws in case of national emergency. 36 MLR 490.

Principal and agent as joint tortfeasors; liability of an agent for collusion of third party sellers. 37 MLR 401.

Although equity will not enjoin a criminal act, it does have jurisdiction to enjoin an act which actually injures or threatens to injure property or rights of a pecuniary nature, and such jurisdiction is not destroyed by the fact that the act is accompanied by or is itself a violation of the criminal law. Miller v Minneapolis Underwriters Assn., 226 M 367, 33 NW(2d) 49.

An action to adjudge a vacation or annulment of a corporate charter is a civil remedy employed by or in behalf of the state to cancel or recall a franchise privilege which the domestic corporation proceeded against has abused; and an action for the cancelation of a corporate charter is so distinctly a civil proceeding that, in the absence of a statutory requirement to the contrary, a criminal conviction for the violation of the anti-trust statute is neither a condition precedent to the commencement of the action nor to a judgment of forfeiture. Miller v Minneapolis Underwriters Assn., 226 M 367, 33 NW(2d) 49.