941.10 History: 1955 c. 696; Stats. 1955 s. 941.10.

941.11 History: 1955 c. 696; Stats. 1955 s. 941.11.

See note to sec. 1, art. I, on exercises of police power, citing Voss v. State, 204 W 432, 236 NW 128.

941.12 History: 1955 c. 696; Stats. 1955 s. 941.12.

941.13 History: 1955 c. 696; Stats. 1955 s. 941.13; 1969 c. 243.

941.20 History: 1955 c. 696; Stats. 1955 s. 941.20; 1965 c. 403, 417.

On endangering safety by conduct regardless of life see notes to 941.30.

Pointing a loaded cocked revolver at a person, by a boy 13 years of age, is within sec. 4391, Stats. 1898. Horton v. Wylie, 115 W 505, 92 NW 245.

See note to 940.02, citing Schmidt v. State, 159 W 15, 149 NW 388.

941.22 History: 1955 c. 696; Stats. 1955 s. 941.22.

A .22-caliber rifle is not within the scope of sec. 4397, Stats. 1898. Taylor v. Seil, 120 W 32, 97 NW 498.

An instrument commonly known as an "air pistol", discharging a .177-caliber slug by means of air compression, is not a "pistol" in the meaning of 340.69, Stats. 1947. 37 Atty. Gen. 236.

941.23 History: 1955 c. 696; Stats. 1955 s. 941.23; 1969 c. 272.

On searches and seizures see notes to sec. 11, art. I.

The evidence, though not showing a revolver was loaded, was sufficient to sustain a conviction under 340.69, Stats. 1929, for going armed with a concealed and dangerous weapon. An automobile driver who had a dangerous weapon within reach on a shelf in the back of his seat violated the statute. If a weapon is hidden from ordinary observation, it is "concealed" within the statute, absolute invisibility being unnecessary. Mularkey v. State, 201 W 429, 230 NW 76.

941.24 History: 1959 c. 13; Stats. 1959 s. 941.24.

941.30 History: 1955 c. 696; Stats. 1955 s. 941.30.

On injury by conduct regardless of life see notes to 940.23.

941.30, Stats. 1965, creates a separate crime of endangering a person's life by conduct which is of such a nature as normally would cause or be likely to cause or result in death and which is performed with the general intention to do harm without concern whether such harm would result in death, but does not include as an element proof of a specific intent to harm a particular person. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

To be "imminently dangerous to another" as contemplated by 941.30, there need be no movement with an instrumentality, but the threat to use the instrumentality and the ability to use it immediately constitute imminency. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

The phrase "depraved mind, regardless of human life" as used in 941.30 does not mean insanity or feeblemindedness, but does connote the same intent as in first-degree murder except for the absence of the design to effect death. State v. Dolan, 44 W (2d) 68, 170 NW (2d) 822.

941.31 History: 1955 c. 696; Stats. 1955 s. 941.31.

The statute (sec. 4398a, Stats. 1913) creates 2 distinct classes of statutory offenses: first the having in possession or dealing with explosive compounds with intent that the same shall be used in this state, or elsewhere, for the injury or destruction of public or private property, or the assassination, murder or injury of persons; and, second, the having in possession or dealing with any such compound "knowing that such explosive compounds are intended to be used by any other person or persons for any such purpose." The latter offense is not committed where the accused believes that the explosive is to be used by persons who appear to be cooperating with him but are in fact detectives, and who have no intention of using the explosive unlawfully. Koscak v. State, 160 W 255, 152 NW 181.

941.32 History: 1955 c. 696; Stats. 1955 s. 941.32.

941.33 History: 1955 c. 696; Stats. 1955 s. 941.33.

941.34 History: 1959 c. 214; Stats. 1959 s. 941.34.

941.35 History: 1959 c. 469; 1959 c. 641 s. 41; Stats. 1959 s. 941.35; 1965 c. 56.

CHAPTER 942.

Crimes Against Reputation and Civil Liberties.

942.01 History: 1955 c. 696; Stats. 1955 s. 942.01.

On libel see notes to sec. 3, art. I.

A defective averment of publication will be disregarded after verdict if the defect could have been obviated by amendment before trial; as where obscurity might have been removed by correcting the punctuation. Barnum v. State, 92 W 586, 66 NW 617.

In a prosecution for slander it is not necessary to prove injury to reputation, it being sufficient that the slanderous words "exposed one to hatred, contempt or ridicule." Neither is it necessary to prove the speaking of all of the slanderous words charged, if a substantial part of them be proved. Hyde v. State, 159 W 651, 150 NW 965.

In a prosecution under 348.41, Stats. 1925, if the defense is a denial and not justification, evidence as to what defendant said at a subsequent time and place is inadmissible as this section provides the slander is deemed malicious if no justification is shown. Malone v. State, 192 W 379, 212 NW 879.

A telegram requesting plaintiff to settle on money collected, or face an embezzlement

charge, was libelous per se. Flynn v. Western U. T. Co. 199 W 124, 225 NW 742.

"Justification" carries the idea of, and is synonymous with, "reasonable excuse," and is not as final and definite a term as "justified"; "justification" for the use of words may exist without establishing their truth if they were used upon a lawful occasion upon probable cause and from good motives. Where slanderous words have been used they are deemed malicious and a prima facie case has been made; but when the evidence shows or tends to show that the words were spoken with good motives and for justifiable ends, actual malice must be established. State v. Mueller, 208 W 543, 243 NW 478.

Writing and introducing a resolution by a member of a city council, and causing it to be read by the city clerk in proceedings of the council, falsely charging that a circuit judge decided a case favorably to the city in return for appointment of his son to the position of assistant district attorney, charged the judge with an act having a direct tendency to injure him in reputation, degrade and disgrace him in society, and bring him into public distrust, scorn, contempt and hatred; and the malicious publication thereof constitutes libel. In a prosecution for criminal libel under the statute, where the information charged libel and slander in several counts, refusal of the trial court to order it made more definite and certain by limiting it to one specific charge of libel, or to require the district attorney to elect on which count he would proceed, was not prejudicial. Branigan v. State, 209 W 249, 244 NW 767.

In the law of libel, as contrasted with that of slander or oral defamation, comments or epithets of an abusive character tending to bring the person at whom they are directed into contempt, hatred, or ridicule are defamatory per se. Whether use of the words "racketeer" and "Chicago gangster" in a radio broadcast respecting an officer of a co-operative milk pool levying tribute upon farmers was libelous per se presented a question for the jury. Singler v. Journal Co. 218 W 263, 260 NW 431.

A corporation may be guilty of criminal libel, but cannot offend against the so-called criminal gossip law. 4 Atty. Gen. 219.

A person who speaks defamatory words over a telephone line where they may be heard by persons taking down their receivers may be prosecuted. 6 Atty. Gen. 103.

Two witnesses other than the one slandered must hear language used at identically the same time. The date of admission by defendant may be alleged as the date of the crime and proof may be made that the slanderous words were uttered on a date prior to the date of admission. 25 Atty. Gen. 305.

942.02 History: 1955 c. 696; Stats. 1955 s. 942.02.

See notes to sec. 3, art. I, on freedom of speech, citing State v. Evjue, 253 W 146, 32 NW (2d) 305.

942.03 History: 1955 c. 696; Stats. 1955 s. 942.03.

942.04 History: 1955 c. 696; Stats. 1955 s. 942.04; 1959 c. 118; 1965 c. 439.

A master is liable under ch. 223, Laws 1895, for the neglect of his servant to serve a customer in a public restaurant solely because he was colored, notwithstanding the servant's refusal was in direct violation of his master's command, and the servant's act was not ratified. The minimum damages fixed are to be regarded as compensatory. Bryan v. Adler, 97 W 124, 72 NW 368.

A roller-skating rink to which the public is admitted is within the terms of sec. 4398c, Stats. 1898. Jones v. Broadway R. R. Co. 136 W 595, 118 NW 170.

942.04, Stats. 1963, does not apply to the operator of a trailer park who rents space upon which to park house trailers. 52 Atty. Gen. 263.

Resort applications requiring information as to race, creed, color, national origin, etc., would be in violation of 942.04, Stats. 1963. 53 Atty. Gen. 130.

What is a place of "public" accommodation? Arins, 52 MLR 1.

942.05 History: 1955 c. 696; Stats. 1955 s. 942.05.

The superintendent of the Wisconsin school for the deaf has no authority to open U. S. mail addressed to inmates, without authority from them. 12 Atty. Gen. 14.

CHAPTER 943.

Crimes Against Property.

943.01 History: 1955 c. 696; Stats. 1955 s. 943.01; 1969 c. 252.

In a prosecution for wilfully, maliciously or wantonly tearing down a building there must be an allegation and proof that the building was standing or being upon the land of another person than the defendant or the person under whom he seeks to justify the act, and hence evidence that the legal title was in such other person is admissible. Wantonly, as used in sec. 4441, R. S. 1878, means in reckless disregard of the lawful rights of the owner of the building—a heedlessness of the necessary results of the act complained of. Werner v. State, 93 W 266, 67 NW 417.

The evidence was sufficient to sustain a conviction for unlawfully injuring and interfering with the lawful operation of an automobile, and for rioting. Sekat v. State, 218 W 91, 260 NW 246.

In the provision in 343.44, Stats. 1939, for the punishment of any person who "shall wilfully, maliciously or wantonly destroy" or injure any fence, hedge, etc., the quoted adverbs are used in the disjunctive, so that even if they are considered applicable also to the provision in the same section for the punishment of any person who "shall injure or destroy" any personal property of another, neither malice nor wantonness is an essential element that must be proved in addition to wilfulness in order to sustain a conviction for the latter offense. State v. Carroll, 239 W 625, 2 NW (2d) 211.

Where the defendant in a prosecution for destroying a fence admittedly did not own the land on which the fence stood he violated 343.44, Stats. 1953, in tearing down the fence, whether the land belonged to private parties