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# Qustions and Answers

# QUESTIONS AND ANSWERS

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Prostitution, old as life itself, has stained the pages of history from time immemorial. "We can trace it from the earliest twilight in which history dawns," relates Sanger in his *History of Prostitution,* "to the clear daylight of today, without a pause, or a moment of obscurity." In times of war and crisis as in peace, the problem has required the concerted attention of the police and has proved one of the most difficult of all police problems to control. Because of the traditional seriousness of the problem and, in particular, because if its deplorable impact on the war effort, this issue of *Questions and Answers* will be devoted to a consideration of how and in what manner the police are enabled to combat prostitution through power to arrest.[2]

*Question 1:* Do legislatures under their general police power have the right to pass laws relating to the subject of prostitution?

*Answer:*

Yes. Legislatures have that right and may impose restrictions of a punishable nature. Under statutes, whose constitutionality has been upheld repeatedly, legislation to stop all forms of money-making from earnings of prostitution has been deemed a constitutional exercise of the lawmakers. See 50 *Corpus Juris,* p. 801.

*Question 2:* What are some of the principal statutory charges relating to prostitution which may be utilized by the police as bases for arrest?

*Answer:*

Legislatures in all the states have prescribed a variety of charges and to these specific reference must be made. Among the many charges in effect are the following: enticing, importing or transporting a woman for the purpose of prostitution, accepting the earnings of a prostitute, aiding and abetting prostitution, prostitution, associating with a prostitute, frequenting a house of prostitution, harboring a minor for the purpose of prostitution, keeping a bawdyhouse or house of ill-fame or disorderly house, being an inmate of a house of ill-fame or bawdyhouse or disorderly house, nightwalking, streetwalking, vagrancy, disorderly conduct, operating or maintaining a place or conveyance for the purpose of prostitution, soliciting, pandering, pimping, and procuring or soliciting a woman to leave home for purpose of prostitution. In most instances, these are criminal offenses.

*Question 3:* What are the legal meanings of "prostitute" and "prostitution?"

*Answer:*

A "prostitute" is one who submits herself to indiscriminate sexual intercourse and is "universally understood to be a woman who has given herself up to indiscriminate lewdness," in the words of the court in *Commonwealth v. Lavery,* 93 Atl. 276. Such intercourse must be indiscriminate and not confined to one man. As another tribunal remarked: "However illicit the relation may be, so long as a woman remains faithful to one lover and is motivated only by affection or passion and not pecuniary gain, she is not, in the language of ordinary folk, termed a 'prostitute'" *State v. Marsh,* 158 Minn. 111. Again, it should be emphasized that

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it is not necessary for a woman to receive compensation in order to be classed as a prostitute. Whether or not she receives compensation is immaterial in the approved usage of the language, the court opinioned in *People v. Berger,* 169 N.Y.S. 319. Finally, the term prostitute refers only to females. A man can neither be a prostitute nor can he practice prostitution. *People v. Anonymous,* 292 N.Y.S. 282. As regards "prostitution," the term may be described as a means of pursuing as a business or occupation through the sale of one's body for carnal intercourse. For various interpretations of the term consult *Words and Phrases,* vol. 34, pp. 638-642.

*Question 4:* With what crimes may a prostitute be charged?

*Answer:*

Since offenses relating to prostitutes are prescribed by statute and ordinance, those relating to the particular jurisdiction involved must be evaluated before specific charge can be preferred. In Illinois, as an example, a prostitute may be charged with the following violations as provided by the *Illinois Revised Statutes:* (1) *Vagrancy,* Chapter 38, sec. 578, (2) *Common Night Walking,* Chapter 38, sec. 578, (3) *Disorderly conduct,* Chapter 38, secs. 162-171, (4) *Being an inmate of a house of prostitution,* Chapter 38, sec. 163, (5) *Soliciting to prostitution,* Chapter 38, sec. 163. "Numerous charges are available to the police to halt the activities of prostitutes.

*Question 5:* A police officer sees a woman apparently soliciting on the street for purposes of prostitution. What procedure should he follow in making an arrest?

*Answer:*

Interrogate the woman and her prey. By all means attempt to secure an admission from her and from the man that prostitution was contemplated. Since the act of soliciting is a public offense, admissions made in the presence of the officer can be admitted at trial to support the charge. Inasmuch as the offense was committed in the presence of the officer no warrant is necessary. The officer may sign a complaint and can testify in court even though he does not know the name of the man and cannot produce him at the trial.

*Question 6:* What is "pimping" and can a bellhop or hotel clerk, who procures women for hotel guests for purposes of prostitution be charged with pimping?

*Answer:*

The term "pimping" is synonymous with pandering and relates to the unlawful procuring of a female for purposes of gratifying the lust of others. More particularly, a pimp is one (a male) who "knowing one is a prostitute, knowingly derives his support partly or entirely from proceeds of her prostitution." See *People v. Simpson,* 250 Pac. 408. As a rule, to constitute pimping, the following elements must be proved: (1) Defendant must be a male, (2) He must have knowledge that the female is a prostitute, (3) He must derive earnings from her which support him wholly or partly, (4) He must know such earnings are the proceeds from her prostitution. When these conditions are present, a bellhop or clerk can be charged with the offense of pimping. Moreover, a single transaction is sufficient to support conviction. This was so held in *Fleming v. City of Atlanta,* 95 S. E. 271.

Other charges may, as a rule, be lodged against bellhop or hotel clerk for procuring a female for hotel guests. Under the Illinois law, the facts warranting, he can be charged with: (1) *being an inmate of a house of prostitution,* Chapter 38, sec. 169 of the *Revised Statutes,* (2) *soliciting to prostitution,* Chapter 38, sec. 163, (3) *pandering,* as provided by Chapter 38, sec. 170.

*Question 7:* Suppose a passenger in a taxi cab requests the driver to take him to a house of prostitution. Has the driver committed an offense and if so what?

*Answer:*

As in other phases of the prostitution problem, the statutes and local ordinances of the particular jurisdiction in which the offense occurred must be consulted. In

most jurisdictions, where conversations in the taxi cab and elsewhere show that the driver solicited the customer, the driver is indictable for soliciting. Or, where taxi driver accepted a fare for transporting the customer to a place of prostitution for illicit purposes, the offense of pandering may be charged against the driver. Or, if the taxi driver has accepted money or other considerations from the keeper or inmates of a bawdyhouse in consequence of bringing customers to the place, the driver is likewise indictable for pandering. Evidence that the driver has taken passengers at other times to such houses is competent since it tends to raise a presumption of guilt.

*Question 8:* Do the terms bawdyhouse, house of ill-fame, brothel, and house of assignation mean the same at law?

*Answer:*

The terms are used interchangeably in many of the statutes. Moreover, judicial tribunals have assigned identical meanings to them in many instances. In *State v. Price,* 92 S. W. 174, as an example, the court approved definition of a bawdyhouse as a house of ill-fame, kept for the resort and commerce of lewd people of both sexes. Again, in *State v. Keithley,* 127 S. W. 406, the court pointed out that a bawdyhouse is a house of ill-fame, an assignation house one resorted to for purposes of prostitution and is synonymous with bawdyhouse or brothel. Thus the terms may all be considered to refer to a place kept for the purpose of illicit sexual intercourse visited by the public for such purposes.

*Question 9:* Does a woman, who plies her trade as a common harlot in her own house and entertains men indiscriminately for hire, violate an act prohibiting the keeping of a house of ill-fame?

*Answer:*

As a rule it is not necessary that more than one woman live or resort together to constitute a bawdyhouse. Nor does the fact that the sexual misconduct occurs in her own home immunize her from penalties of the law. Such was the dictum in *State v. Clough,* 165 N. W. 59.

*Question 10:* The statutes frequently employ the term "dwelling" in referring to houses of ill-fame, brothels, and the like. What constitutes a "dwelling" with reference to the problem of prostitution?

*Answer:*

In common parlance we think of a dwelling as an abode occupied as a residence, as distinguished from an office or store. At law, however, the term "dwelling" or "house" has an entirely different meaning when reference is made to prostitutional offenses. An automobile, a trailer, a coal shed in the rear of a store, a tent, a room in a hotel, one in an office building, a compartment of a steamship, the cabin of a flatboat . . . are all dwellings or houses within the meaning of judicial interpretation. In this connection see *People v. Marron,* 35 Pac. (2nd) 610.

*Question 11:* Proprietor of a store is suspected of letting a room for purposes of prostitution. An officer in plain clothes and a female companion rent the room and then arrest the proprietor. He challenges arrest on the ground that no act of prostitution took place. Is his an effective defense?

*Answer:*

No. An act of prostitution need not be proved. The offense is completed when a room is offered with the intent on the part of the person offering that it shall be used for the purpose of prostitution. As the court said in *Damorjian v. State,* 187 Wis. 445: "One who knowingly offers a room for the purpose of prostitution commits an offense . . . and it is quite immaterial that the act was not accomplished or even intended by the lessee."

*Question 12:* What are some of the circumstantial means of proving a place is used for purposes of prostitution?

*Answer:*

The following are some of the circumstantial means which are deemed competent as evidence at trial: (1) Evidence of the reputation of those habitually coming to the place. (2) Reputation of the inmates and that of the owner or proprietor. (3) Admissions made to police officers by persons concerned with the offense and by statements made by others in the presence of the accused relating to the character of the place, its inmates, and the like. (4) Production of the hotel or room register evidencing the frequency with which rooms are let and the number of persons occupying a room within short periods of time. (5) Evidence that keeper or inmates have been convicted previously of the offense charged. (6) Showing that similar acts (such as soliciting) had occurred within reasonable time previous to the time of arrest.

*Question 13:* A citizen complains in writing on oath to the properly qualified court that he has good reason to believe and does believe that a house at a certain address is wilfully used for prostitution. If a warrant is issued, is it good?

*Answer:*

The facts indicated that the complaint was made merely on information and belief. Such an allegation is not sufficient, for the general rule is this: *probable cause must be shown.* Thus, a warrant which does not show probable cause is deemed by the courts to be illegal and void. (Pertinent decision, *Bach v. State,* 206 Wis. 143.)

*Question 14:* A husband and wife are arrested as proprietors of a bawdyhouse. She challenges her arrest on the ground that what a wife does in her husband's presence she does because of his coercion. Is her defense valid and her arrest thereby illegal?

*Answer:*

For many years the law recognized the presumption that what a wife does in the presence of her husband she does because of coercion. But the presumption has many exceptions. Among these Hawkins in his *"A Treatise of the Pleas of the Crown* (6th Ed., p. 4) relates: "Also a wife may be indicted together with her husband . . . for keeping a bawdy house; for this is an offense as to the government of the house, in which the wife has a principal share; and also such an offense as may generally be presumed to be managed by the intrigues of her sex." Today, in respect to proprietorship of bawdyhouses, the general rule is this: a wife cannot resist a charge of arrest on the grounds of this presumption. See *Haffner v. State,* 176 Wis. 471.

*Question 15:* Suppose that the owner of a building leases it to a party who operates it as a house of prostitution. Can the owner as well as the lessee be charged with keeping a house of prostitution?

*Answer:*

Penalties of statutes relating to the ownership, control and management of leased property utilized for purposes of prostitution are directed not only to the lessee of the property in question but to the owner as well. Whether or not the lessee, or the owner, or both may be charged as keepers depends upon the specific facts of the individual case. A number of tests may be employed in ferreting out the parties responsible. If it can be shown that the owner leased the property for the express purpose of prostitution, he is clearly liable as keeper. If the facts disclose that the owner leased the property knowing that it was to be used for such purposes, his liability can be established likewise. Again, liability of the owner may be shown by marshaling evidence to demonstrate what person or persons exercised control and direction over the place.

If the owner remains on the premises, the problem of demonstrating control and management is simplified. But if, as in most instances, he does not, then it becomes necessary to marshal every shred of evidence to support the element of control and management. The rule is that an owner of a premises, leased to another is not chargeable with keeping a house of prostitution when not in possession of the prop-

erty, unless he operates and controls it. Towards support of these elements, such evidences as the following are helpful: (1) provisions of the lease agreement as to the distribution of income and profits. (2) facts showing the owner was a frequent visitor at the place. (3) witness testimony that the lessee was known to be operating the property under the owner's direction, and so on. For an interesting case in this connection see *State v. Larson,* 206 Wis. 154.

*Question 16:* What are some of the charges on which arrest may be made of an owner who knowingly permits his building to be used as a house of prostitution?

*Answer:*

Again, the statutes of the particular jurisdiction must be consulted. In Illinois, as an example, such charges as the following may be lodged: (1) leasing to another a house or room knowingly, or permitting it to be used as a house of prostitution. *Revised Statutes,* Chapter 38, sec. 162, (2) pandering (where it can be shown that he received money from inmates), Chapter 38, sec. 170, (3) maintaining a nuisance, Chapter 100, sec. 1. Note also that the owner's building may be padlocked for a period of one year by injunction as provided by Chapter 100 ½, sec. 2.

*Question 17:* Under what circumstances is an officer justified in entering a house of prostitution without warrant to make an arrest for prostitutional activities?

*Answer:*

Statutes of the various states as interpreted by the courts emphasize the situations in which arrest without warrant is permitted. Both at the common law and by statute, an officer may arrest without a warrant for a felony committed in his presence. In some jurisdictions such an arrest may be made for a misdemeanor. With regard to public offenses *not* committed in the officer's presence, the statutes are by no means in accord. Where an offense has been committed out of the officer's presence and he has reasonable grounds to believe the person about to be arrested committed it, arrest without warrant is justified. For a discussion of the general principles involved consult Perkins' monograph, *The Law of Arrest.* And, for an excellent and competent study of arrests in relation to the prostitution problem, see the *Brief Covering City and State Law Available for Protecting the Armed Forces from Venereal Disease* by Myer Rosengard. The Brief is now being mimeographed by the *Federal Division of Social Defense and Protection,* Washington, D. C.

Turning now to a more specific reply to the above inquiry, here are some of the situations in which arrest without warrant may be made: (1) Where a prostitute, pimp, or procuror solicits an officer and takes him to a bawdyhouse, an arrest may be made without warrant on the proposition that an offense has been committed in the officer's presence. (2) Similarly, if an officer by trick, artifice, or other device, makes arrangements for illicit intercourse and thereby enters a bawdyhouse, an arrest without warrant appears justified. (3) Or, suppose an officer, while on beat, sees a person leaving a suspected bawdyhouse, stops the person and secures an admission from him that illicit intercourse for a price was had. The admission suffices to show probable cause that a crime was committed. If admittance is refused, the officer, after he has properly identified himself as an officer of the law, may thereupon enter by force. (4) Finally, with respect to establishments which are required by law to obtain a license to conduct a business or profession (i.e. taverns, beauty shops) the police officer has the right to enter such a place for purposes of determining whether the place is being operated pursuant to the conditions imposed by the license. If the officer finds prostitutive enterprises therein, he may make an arrest without warrant.

It follows, too, that an officer having entered such a place, may then search the premises. Where the arrest is lawful, such search and seizure is considered as incidental to the arrest and does not violate the constitutional provisions relating to unreasonable search and seizure. Evidence found in consequence of the search is competent if it does not violate other evidentiary rules as to admissibility.