

ANSWER TO QUESTION 14

The Criminal Liability of Betty:

The crime of arson is statutorily defined in Michigan. MCL 750.71 through 750.80. In regard to the facts presented here, the Michigan Legislature has imposed criminal liability on persons who willfully or maliciously burn a dwelling house, MCL 750.72 (a 20-year felony), or insured property, MCL 750.75 (a 10-year felony). In order to be guilty of arson of a dwelling, there must be proof beyond a reasonable doubt that a home or a building within the curtilage of the home was intentionally set on fire. MCL 750.72. The home need not be occupied. *Id.* In order to be convicted of arson of an insured property, there must be proof beyond a reasonable doubt that an insured property was intentionally set on fire for the purpose of making a claim of insurance with the insurer. MCL 750.75. Here, Betty can be charged with violating both of the above-referenced statutory provisions. The facts establish that she intentionally set fire to her home, an insured property, so that she could make an insurance claim.

Convictions for arson of a dwelling house and for arson of an insured property do not violate state and federal constitutional guarantees against double jeopardy. *People v Ayers*, 213 Mich App 708 (1995). These two arson statutes protect against different harms, and impose different and escalating penalties. One protects those endangered by dwelling fires and requires proof of the burning within the curtilage of a home and the other protects insurers and requires proof that the perpetrator of the act intended to defraud the insurer. *Id.*

The Criminal Liability of Hanna: Hanna did not burn anything. Nonetheless, Hanna may be guilty of arson of a dwelling, MCL 750.72, and arson of an insured property, MCL 750.75, as an aider and abettor of Betty. MCL 767.39. Aiding and abetting is not a separate offense. Rather, it is a statutorily defined theory of prosecution that imposes vicarious criminal liability. *Id.* *People v Robinson*, 475 Mich 1, 6 (2006). One who procures, counsels, aids or abets in the commission of an offense may be convicted and punished as if she directly committed the offense. *Id.* To support a finding that a defendant aided and abetted a crime, the prosecutor must show that: (1) the crime charged was committed by the defendant or some other person; (2) the defendant performed acts or gave encouragement that assisted the commission of the crime; and (3) the defendant intended the commission of the crime

or had knowledge that the principal intended its commission at the time he gave aid and encouragement. *People v Moore*, 470 Mich 56, 67-68 cert den sub nom *Harris v Mich*, 543 US 947 (2004).

Here, the facts indicate that Betty committed the crimes of arson of a dwelling and arson of insured property. Hanna, notwithstanding her protestations, assisted the commission of these crimes by allowing Betty to use Hanna's gasoline to commit the arson. At the time Hanna aided Betty, Hanna knew that Betty intended to commit these crimes. Accordingly, Hanna may be convicted of MCL 750.71 and MCL 750.75 as an aider and abettor.

The Criminal Liability of Bob: Bob did not burn his home and he did not aid in the commission of the arson committed by Betty. The facts tell us Bob was shocked to see Betty distribute the last few ounces of gasoline and ignite the fire. Bob grabbed Betty by the arm and escorted her out of harms way. While Bob came upon Betty in the course of the commission of her crime and he did nothing to stop her from completing the crime, Bob cannot be guilty of arson as an aider and abettor. A defendant's mere presence at a crime, even with knowledge that the offense is about to be committed, is not enough to make him an aider and abettor. *People v Norris*, 236 Mich App 411, 419-420 (1999). Some advice, aid or encouragement is required. Here, nothing provided in these facts supports the conclusion that Bob aided Betty in the commission of the arson. Accordingly, Bob is not guilty of any criminal conduct.