CRIMINAL LAW REVIEWER

For the 2011 Bar Examinations

ELMER P. BRABANTE

CRIMINAL LAW

I. Revised Penal Code / Special Laws, Presidential Decrees, and Executive Orders

A. Book 1 (Articles 1-99, RPC, excluding provisions on civil liability), including related Special Laws

1. FUNDAMENTAL PRINCIPLES

Definition of Criminal Law

(1) Criminal law is that branch of municipal law which defines crimes, treats of their nature and provides for their punishment.
(2) It is that branch of public substantive law which defines offenses and prescribes their penalties. It is substantive because it defines the state's right to inflict punishment and the liability of the offenders. It is public law because it deals with the relation of the individual with the state.

DIFFERENCE BETWEEN *MALA IN SE* AND *MALA PROHIBITA*

Violations of the Revised Penal Code are referred to as malum in se, which literally means, that the act is inherently evil or bad or *per se* wrongful. On the other hand, violations of special laws are generally referred to as *malum prohibitum*.
Note, however, that not all violations of special laws are mala *prohibita*. While intentional felonies are always mala in se, it does not follow that prohibited acts done in violation of special laws are always mala *prohibita*. Even if the crime is punished under a special law, if the act punished is one which is inherently wrong, the same is malum in se, and, therefore, good faith and the lack of criminal intent is a valid defense; unless it is the product of criminal negligence or culpa.
Likewise when the special laws requires that the punished act be committed knowingly and willfully, criminal intent is required to be proved before criminal liability may arise.
When the act penalized is not inherently wrong, it is wrong only because a law punishes the same.
For example, Presidential Decree No. 532 punishes piracy in Philippine waters and the special law punishing brigandage in the highways. These acts are inherently wrong and although they are punished under special law, the acts themselves are mala in se; thus, good faith or lack of criminal intent is a defense.

Distinction between crimes punished under the Revised Penal Code and crimes punished under special laws

1. As to moral trait of the offender
   In crimes punished under the Revised Penal Code, the moral trait of the offender is considered. This is why liability would only arise when there is dolo or culpa in the commission of the punishable act.
   In crimes punished under special laws, the moral trait of the offender is not considered; it is enough that the prohibited act was voluntarily done.
2. As to use of good faith as defense
   In crimes punished under the Revised Penal Code, good faith or lack of criminal intent is a valid defense; unless the crime is the result of culpa
   In crimes punished under special laws, good faith is not a defense
3. As to degree of accomplishment of the crime
   In crimes punished under the Revised Penal Code, the degree of accomplishment of the crime is taken into account in punishing the offender; thus, there are attempted, frustrated, and consummated stages in the commission of the crime.
   In crimes punished under special laws, the act gives rise to a crime only when it is consummated; there are no attempted or frustrated stages, unless the special law expressly penalize the mere attempt or frustration of the crime.
4. As to mitigating and aggravating circumstances
   In crimes punished under the Revised Penal Code, mitigating and aggravating

circumstances are taken into account in imposing the penalty since the moral trait of the offender is considered.
In crimes punished under special laws, mitigating and aggravating circumstances are not taken into account in imposing the penalty.

5. As to degree of participation
In crimes punished under the Revised Penal Code, when there is more than one offender, the degree of participation of each in the commission of the crime is taken into account in imposing the penalty; thus, offenders are classified as principal, accomplice and accessory.
In crimes punished under special laws, the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal or accomplice or accessory to consider.

	Mala in Se	*Mala Prohibita*
Basis	Moral state of the offender; hence, good faith or lack of criminal intent is a defense.	Voluntariness; hence, good faith or lack of criminal intent is not a defense, unless intent is an element of the crime such as in Sec. 3[e] of RA 3019.
Modifying circumstances	Taken into account in imposing the penalty on the offender precisely because his moral trait is the basis of his crime. Hence, greater perversity deserves a higher penalty; whereas, lesser depravity deserves mitigation.	Not considered because the law intends to discourage the commission of the act specially prohibited.
Degree of participation	Penalty is computed on the basis of whether the malefactor is a principal offender, or merely an accomplice or accessory.	The penalty on the offenders is the same as they are all deemed principals.
Stage of accomplishment	The penalty imposed depends on whether the crime is consummated, frustrated or attempted.	Violation of law is punished only when accomplished or consummated because intent is inherent in attempted or frustrated stage and intent is not relevant in crimes *mala prohibita*.
Moral turpitude	Generally involve moral turpitude logically, so for its basis is the moral state of the offender.	Not involved because the act would not have been wrong if not for the prohibition of law.
Law violated	Generally, the Revised Penal Code.	Generally, special penal laws.

SCOPE OF APPLICATION

Art. 2. Application of its provisions. – *Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago, including its atmosphere, its interior waters and maritime zone, but also outside of its jurisdiction, against those who:*

1. *Should commit an offense while on a Philippine ship or airship;*
2. *Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;*
3. *Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the presiding number;*
4. *While being public officers or employees, should commit an offense in the exercise of their functions; or*
5. *Should commit any of the crimes against national security and the law of nations, defined in Title One of Book Two of this Code.*

The provision in Article 2 embraces two scopes of applications:

(1) Intraterritorial - refers to the application of the Revised Penal Code within the Philippine territory;

(2) Extraterritorial – refers to the application of the Revised Penal Code outside the Philippine territory.

Intraterritorial application

In the intraterritorial application of the Revised Penal Code, Article 2 makes it clear that it does not refer only to Philippine archipelago but it also includes the atmosphere, interior waters and maritime zone. So whenever you use the word territory, do not limit this to land area only.

As far as jurisdiction or application of the Revised Penal Code over crimes committed on maritime zones or interior waters, the Archipelagic Rule shall be observed. So the three-mile limit on our shoreline has been modified by the rule. Any crime committed in interior waters comprising the Philippine archipelago shall be subject to our laws although committed on board a foreign merchant vessel.

A vessel is considered a Philippine ship only when it is registered in accordance with Philippine laws. Under international law, as long as such vessel is not within the territorial waters of a foreign country, Philippine laws shall govern.

Extraterritorial application

Extraterritorial application of the Revised Penal Code on crime committed on board Philippine ship or airship refers only to a situation where the Philippine ship or airship is not within the territorial waters or atmosphere of a foreign country. Otherwise, it is the foreign country's criminal law that will apply.

However, there are two situations where the foreign country may not apply its criminal law even if a crime was committed on board a vessel within its territorial waters and these are:

(1) When the crime is committed in a war vessel of a foreign country, because war vessels are part of the sovereignty of the country to whose naval force they belong;

(3) When the foreign country in whose territorial waters the crime was committed adopts the French Rule, which applies only to merchant vessels, except when the crime committed affects the national security or public order of such foreign country.

CHARACTERISTICS OF THE PHILIPPINE CRIMINAL LAW

1. Generality
2. Territoriality
3. Prospectivity

Generality

(1) Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in the Philippine territory, subject to the principles of public international law and to treaty stipulations *(Art. 14, NCC)*.

(2) The law is binding upon all persons who reside or sojourn in the Philippines, irrespective of age, sex, color, creed, or personal circumstances.

(3) Generality of criminal law means that the criminal law of the country governs all persons within the country regardless of their race, belief, sex, or creed. However, it is subject to certain exceptions brought about by international agreement. Ambassadors, chiefs of states and other diplomatic officials are immune from the application of penal laws when they are in the country where they are assigned. Note that consuls are not diplomatic officers. This includes consul-general, vice-consul or any consul in a foreign country, who are therefore, not immune to the operation or application of the penal law of the country where they are assigned. Consuls are subject to the penal laws of the country where they are assigned.

(4) It has no reference to territory. Whenever you are asked to explain this, it does not include territory. It refers to persons that may be governed by the penal law *(Dean Ortega)*.

Territoriality

(1) The law is applicable to all crimes committed within the limits of Philippine territory, which includes its atmosphere, interior waters and maritime zone (Art. 2).

(2) Territoriality means that the penal laws of the country have force and effect only within its territory. It cannot penalize crimes committed outside the same. This is subject to certain exceptions brought about by international agreements and

practice. The territory of the country is not limited to the land where its sovereignty resides but includes also its maritime and interior waters as well as its atmosphere.

(3) Terrestrial jurisdiction is the jurisdiction exercised over land. Fluvial jurisdiction is the jurisdiction exercised over maritime and interior waters. Aerial jurisdiction is the jurisdiction exercised over the atmosphere.

The Archipelagic Rule

(1) All bodies of water comprising the maritime zone and interior waters abounding different islands comprising the Philippine Archipelago are part of the Philippine territory regardless of their breadth, depth, width or dimension.

(2) On the fluvial jurisdiction there is presently a departure from the accepted International Law Rule, because the Philippines adopted the Archipelagic Rule. In the International Law Rule, when a strait within a country has a width of more than 6 miles, the center lane in excess of the 3 miles on both sides is considered international waters.

Three international law theories on aerial jurisdiction

(1) The atmosphere over the country is free and not subject to the jurisdiction of the subjacent state, except for the protection of its national security and public order.
Under this theory, if a crime is committed on board a foreign aircraft at the atmosphere of a country, the law of that country does not govern unless the crime affects the national security.

(2) Relative Theory – The subjacent state exercises jurisdiction over its atmosphere only to the extent that it can effectively exercise control thereof. The Relative Theory
Under this theory, if a crime was committed on an aircraft which is already beyond the control of the subjacent state, the criminal law of that state will not govern anymore. But if the crime is committed in an aircraft within the atmosphere over a subjacent state which exercises control, then its criminal law will govern.

(3) Absolute Theory – The subjacent state has complete jurisdiction over the atmosphere above it subject only to innocent passage by aircraft of foreign country.
Under this theory, if the crime is committed in an aircraft, no matter how high, as long as it can establish that it is within the Philippine atmosphere, Philippine criminal law will govern. This is the theory adopted by the Philippines.

Exceptions to the application of the Code:

(1) The Philippine ship or airship must be duly registered under the Philippine laws. Such vessel when beyond the maritime zone is considered as extension of Philippine national territory. But if said Philippine vessel or aircraft within the territory of a foreign country when the crime is committed, the laws of that country will apply as a rule.
(2) The reason for the exception in pars. 2 and 3 is to preserve the financial credit and stability of the state.
(3) The offense committed by a public officer abroad, like the disbursing official of a Philippine Embassy, must refer to the discharge of his functions, like bribery or malversation. This exception does not apply to public officers of the Philippine government who enjoy diplomatic immunity because in such a case the principles of public international law will govern.
(4) The reason for the exception regarding crimes against national security and the law of the nations is to safeguard the existence of the state. Piracy is triable anywhere. Piracy and mutiny are crimes against the law of nations, while treason and espionage are crimes against the national security of the state.

Prospectivity / irretrospectivity

(1) No *ex post facto* law or bill of attainder shall be enacted *(Sec. 22, Art. III, Constitution)*.
(2) Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same *(Art. 22, RPC)*.

(3) No felony shall be punishable by any penalty not prescribed by law prior to its commission *(Art. 21, RPC)*.
(4) Laws shall have no retroactive effect, unless the contrary is provided *(Art. 4, NCC)*.
(5) Doctrinal application of the prospectivity rule:
    (a) The prospectivity rule applies to administrative rulings and circulars, and to judicial decisions which though not laws, are evidence of what the laws mean. Thus under Art. 8, NCC, judicial decisions applying the laws or the Constitution form part of the legal system. *Legis interpretation legis uim obtinet*. This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society.
    (b) *Lex prospicit, non respicit*. The law looks forward, not backward. The rationale against retroactivity is that a law usually derides rights which may have already become vested or impairs the obligations of contract, hence, constitutional. Prior to the statute's nullification it must have been in force and had to be complied with (doctrine of operative fact). It would be to deprive the law of its quality of fairness and justice if there be no recognition of what transpired prior to such adjudication *(Co vs. CA, GR 100776, 10/28/93)*.

Acts or omissions will only be subject to a penal law if they are committed after a penal law had already taken effect. Vice-versa, this act or omission which has been committed before the effectivity of a penal law could not be penalized by such penal law because penal laws operate only prospectively.

In some textbooks, an exemption is said to exist when the penal law is favorable to the offender, in which case it would have retroactive application; provided that the offender is not a habitual delinquent and there is no provision in the law against its retroactive application.

The exception where a penal law may be given retroactive application is true only with a repealing law. If it is an original penal law, that exception can never operate. What is contemplated by the exception is that there is an original law and there is a repealing law repealing the original law. It is the repealing law that may be given retroactive application to those who violated the original law, if the repealing penal law is more favorable to the offender who violated the original law. If there is only one penal law, it can never be given retroactive effect.

Rule of prospectivity also applies to administrative rulings and circulars. In *Co v. CA, decided on October 28, 1993,* it was held that the principle of prospectivity of statutes also applies to administrative rulings and circulars. In this case, Circular No. 4 of the Ministry of Justice, dated December 15, 1981, provides that "where the check is issued as part of an arrangement to guarantee or secure the payment of an obligation, whether pre-existing or not, the drawer is not criminally liable for either estafa or violation of BP22." Subsequently, the administrative interpretation of was reversed in Circular No. 12, issued on August 8, 1984, such that the claim that the check was issued as a guarantee or part of an arrangement to secure an obligation or to facilitate collection, is no longer a valid defense for the prosecution of BP22. Hence, it was ruled in *Que v. People* that a check issued merely to guarantee the performance of an obligation is, nevertheless, covered by BP 22. But consistent with the principle of prospectivity, the new doctrine should not apply to parties who had relied on the old doctrine and acted on the faith thereof. No retrospective effect.

<u>Consequences if repeal of penal law is total or absolute</u>

(1) If a case is pending in court involving the violation of the repealed law, the same shall be dismissed, even though the accused may be a habitual delinquent. This is so because all persons accused of a crime are presumed innocent until they are convicted by final judgment. Therefore, the accused shall be acquitted.
(2) If a case is already decided and the accused is already serving sentence by final judgment, if the convict is not a habitual delinquent, then he will be entitled to a release unless there is a reservation clause in the penal law that it will not apply to those serving sentence at the time of the repeal. But if there is no reservation, those who are not habitual delinquents even if they are already serving their sentence will receive the benefit of the

repealing law. They are entitled to release.

This does not mean that if they are not released, they are free to escape. If they escape, they commit the crime of evasion of sentence, even if there is no more legal basis to hold them in the penitentiary. This is so because prisoners are accountabilities of the government; they are not supposed to step out simply because their sentence has already been, or that the law under which they are sentenced has been declared null and void.

If they are not discharged from confinement, a petition for habeas corpus should be filed to test the legality of their continued confinement in jail.

Consequences if repeal of penal law is partial or relative

(1) If a case is pending in court involving the violation of the repealed law, and the repealing law is more favorable to the accused, it shall be the one applied to him. So whether he is a habitual delinquent or not, if the case is still pending in court, the repealing law will be the one to apply unless there is a saving clause in the repealing law that it shall not apply to pending causes of action.
(2) If a case is already decided and the accused is already serving sentence by final judgment, even if the repealing law is partial or relative, the crime still remains to be a crime. Those who are not habitual delinquents will benefit on the effect of that repeal, so that if the repeal is more lenient to them, it will be the repealing law that will henceforth apply to them.

For example, under the original law, the penalty is six years. Under the repealing law, it is four years. Those convicted under the original law will be subjected to the four-year penalty. This retroactive application will not be possible if there is a saving clause that provides that it should not be given retroactive effect.

Under Article 22, even if the offender is already convicted and serving sentence, a law which is beneficial shall be applied to him unless he is a habitual delinquent in accordance with Rule 5 of Article 62.

Consequences if repeal of penal law is express or implied

(1) If a penal law is impliedly repealed, the subsequent repeal of the repealing law will revive the original law. So the act or omission which was punished as a crime under the original law will be revived and the same shall again be crimes although during the implied repeal they may not be punishable.
(2) If the repeal is express, the repeal of the repealing law will not revive the first law, so the act or omission will no longer be penalized.

These effects of repeal do not apply to self-repealing laws or those which have automatic termination. An example is the Rent Control Law which is revived by Congress every two years.

When there is a repeal, the repealing law expresses the legislative intention to do away with such law, and, therefore, implies a condonation of the punishment. Such legislative intention does not exist in a self-terminating law because there was no repeal at all.

Constitutional limitations on the power of Congress to enact penal laws in the Bill of Rights

Equal protection

No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws *(Sec. 1, Art. III).*

(1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been

duly notified and his failure to appear is unjustifiable *(Sec. 14, Art. III)*.

(3) No person or class of persons shall be deprived to the same protection of the laws which is enjoyed by other persons or other classes in the same place and in like circumstances *(Tolentino vs. Board of Accountancy)*. For classification to be reasonable, it must:
   (a) Rest on substantial distinctions;
   (b) Germane to the purpose of the law;
   (c) Not limited to existing conditions only;
   (d) Apply equally to all members of the same class.

Due process

The law must observe both substantive and procedural due process *(Sec. 1, Art. III)*.
No person shall be held to answer for a criminal offense without due process of law *(Sec. 14[1], Art. III)*.

To satisfy due process, official actions must be responsive to the supremacy of reasons and the dictates of justice *(Relucio III vs. Macaraeg, Jr., 73 SCRA 635)*. It is satisfied if the following conditions are present:

(1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;
(2) Jurisdiction must be lawfully acquired by it over the person of the defendant or over the property which is the subject of proceedings;
(3) The defendant must be given an opportunity to he heard;
(4) Judgment must be rendered lawful hearing *(Banco Español de Filipinas vs. Palanes, 37 Phil. 921)*.

In criminal proceedings, due process requires that the accused be informed why he is being proceeded against and what charge he has to meet, with his conviction being made to rest on evidence that is not tainted with falsity after full opportunity for him to rebut it and the sentence being imposed in accordance with a valid law. It is assumed, therefore, that the court that renders the decision is one of competent jurisdiction *(Ang Tibay vs. CA, 69 Phil. 635)*.

Non-imposition of cruel and unusual punishment or excessive fines- *Act Prohibiting the Imposition of Death Penalty in the Philippines (R.A. 9346)*

(1) Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. Neither shall death penalty be imposed, unless, for compelling reasons involving heinous crimes, the Congress hereafter provides for it. Any death penalty already imposed shall be reduced to reclusion perpetua *(Sec. 19, Art. III)*.
(2) The employment of physical, psychological, or degrading punishment against any prisoner or detainee or the use of substandard or inadequate penal facilities under subhuman conditions shall be dealt with by law.
(3) The imposition of the penalty of death is hereby prohibited. Accordingly, RA 8177 (Act Designating Death by Lethal Injection) is hereby repealed. RA 7659 (Death Penalty Law) and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly *(Sec. 1, RA 9346)*.

Bill of attainder

(1) No *ex post facto* law or bill of attainder shall be enacted *(Sec. 22, Art. III, Constitution)*.
(2) A bill of attainder applies only to statutes and a statute becomes a bill of attainder when it applies either to named individuals or to easily ascertainable members of a group inflicting punishment on them amounting to a deprivation of any right, civil or political, without judicial trial. Stated otherwise, the singling out of a definite class, the imposition of a burden on it, and a legislative intent, suffice to stigmatize a statute as a bill of attainder *(Montegro vs. Castañeda, 91 Phil. 882)*.
(3) A bill of attainder is a legislative act which inflicts punishment without trial; the essence of which is the substantial legislative fiat for a judicial determination of guilt.

***Ex post facto* law**

(1) Penalties that may be imposed. – No felony shall be punishable by any penalty not prescribed by law prior to its commission *(Art. 21, RPC)*.
(2) Characteristics of *ex post facto* law:
   (a) Refers to criminal matters;
   (b) Prejudicial to the accused;
   (c) Retroactive in application.
(3) A law to be called *ex post facto* must refer to penal matters, retroactive in application and prejudicial to the accused.
(4) *Ex post facto* law is one which:

(a) Provides for the infliction of punishment upon a person for an act done which, when it was committed, was innocent;
(b) Aggravates a crime or makes it greater than when it was committed;
(c) Changes the punishment or inflicts a greater punishment than the law annexed to the crime when it was committed;
(d) Changes the rules of evidence and receives less or different testimony then was required at the time of the commission of the offense in order to convict the offender;
(e) Assuming to regulate civil rights and remedies only, in effect imposes a penalty or the disposition of a right which when done was lawful;
(f) Deprives the person s accused of crime of some lawful protection to which they have become entitled, such as the protection of a former conviction or acquittal, or of the proclamation of amnesty;
(g) In relation to the offense or its consequences, alters the situation of a person to his disadvantage.

2. FELONIES

***Art. 3. Definitions**. – Acts and omissions punishable by law are felonies (delitos).*
Felonies are committed not only be means of deceit (dolo) but also by means of fault (culpa).
There is deceit when the act is performed with deliberate intent and there is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

CLASSIFICATIONS OF FELONIES

(1) According to the manner of their commission

Under Article 3, they are classified as, intentional felonies or those committed with deliberate intent; and culpable felonies or those resulting from negligence, reckless imprudence, lack of foresight or lack of skill.

(2) According to the stages of their execution

Under Article 6., felonies are classified as attempted felony when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance; frustrated felony when the offender commences the commission of a felony as a consequence but which would produce the felony as a consequence but which nevertheless do not produce the felony by reason of causes independent of the perpetrator; and, consummated felony when all the elements necessary for its execution are present.

(3) According to their gravity

Under Article 9, felonies are classified as grave felonies or those to which attaches the capital punishment or penalties which in any of their periods are afflictive; less grave felonies or those to which the law punishes with penalties which in their maximum period was correccional; and light felonies or those infractions of law for the commission of which the penalty is arresto menor.

It is necessary to determine whether the crime is grave, less grave or light to determine whether these felonies can be complexed or not, and to determine the prescription of the crime and the prescription of the penalty. In other words, these are felonies classified according to their gravity, stages and the penalty attached to them. Take note that when the Revised Penal Code speaks of grave and less grave felonies, the definition makes a reference specifically to Article 25 of the Revised Penal Code. Do not omit the phrase "In accordance with Article 25" because there is also a classification of penalties under Article 26 that was not applied.

If the penalty is fine and exactly P200.00, it is only considered a light felony under Article 9.

If the fine is imposed as an alternative penalty or as a single penalty, the fine of P200.00 is considered a correctional penalty under Article 26.

If the penalty is exactly P200.00, apply Article 26. It is considered as correctional penalty and it prescribes in 10 years. If the offender is apprehended at any time within ten years, he can be made to suffer the fine.

This classification of felony according to gravity is

important with respect to the question of prescription of crimes.

In the case of light felonies, crimes prescribe in two months. After two months, the state loses the right to prosecute unless the running period is suspended. If the offender escapes while in detention after he has been loose,, if there was already judgment that was passed, it can be promulgated even if absent under the New Rules on Criminal Procedure. If the crime is correctional, it prescribes in ten years, except arresto mayor, which prescribes in five years.

ELEMENTS OF CRIMINAL LIABILITY

Art. 4. Criminal liability. *– Criminal liability shall be incurred:*

1. By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

2. By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or an account of the employment of inadequate or ineffectual means.

(1) The rationale of the rule is found in the doctrine, *el que es causa de la causa es causa del mal causado* (He who is the cause of the cause is the cause of the evil caused).
(2) Elements:
   (a) A felony is committed;
   (b) The wrong done must be the direct, natural and logical consequence of felony committed even though different from that intended.

Article 4, paragraph 1 presupposes that the act done is the proximate cause of the resulting felony. It must be the direct, natural, and logical consequence of the felonious act.
Proximate cause is that cause which sets into motion other causes and which unbroken by any efficient supervening cause produces a felony without which such felony could not have resulted. He who is the cause of the cause is the evil of the cause. As a general rule, the offender is criminally liable for all the consequences of his felonious act, although not intended, if the felonious act is the proximate cause of the felony or resulting felony. A proximate cause is not necessarily the immediate cause. This may be a cause which is far and remote from the consequence which sets into motion other causes which resulted in the felony.

Wrongful act done be different from what was intended

What makes the first paragraph of Article 4 confusing is the qualification "although the wrongful act done be different from what was intended". There are three situations contemplated under paragraph 1 of Article 4:

(1) Aberratio ictus or mistake in the blow;
(2) Error in personae or mistake in identity; and
(3) *Praeter intentionem* or where the consequence exceeded the intention.

Aberration ictus

(1) In aberratio ictus, a person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else. In aberratio ictus, the intended victim as well as the actual victim are both at the scene of the crime.
(2) Distinguish this from error in personae, where the victim actually received the blow, but he was mistaken for another who was not at the scene of the crime. The distinction is important because the legal effects are not the same.
(3) In aberratio ictus, the offender delivers the blow upon the intended victim, but because of poor aim the blow landed on somebody else. You have a complex crime, unless the resulting consequence is not a grave or less grave felony. You have a single act as against the intended victim and also giving rise to another felony as against the actual victim. To be more specific, let us take for example A and B. A and B are enemies. As soon as A saw B at a distance, A shot at B. However, because of poor aim, it was not B who was hit but C. You can readily see that there is only one single act – the act of firing at B. In so far as B is concerned, the crime at least is attempted homicide or attempted murder, as the case may be, if there is any qualifying circumstance. As far as the third party C is concerned, if C were killed, crime is homicide. If C was only wounded, the crime is only physical injuries. You cannot have attempted or frustrated homicide or murder as far as C is concerned, because as far as C is

concern, there is no intent to kill. As far as that other victim is concerned, only physical injuries – serious or less serious or slight.

(4) If the resulting physical injuries were only slight, then you cannot complex; you will have one prosecution for the attempted homicide or murder, and another prosecution for slight physical injuries for the innocent party. But if the innocent party was seriously injured or less seriously injured, then you have another grave or less grave felony resulting from the same act which gave rise to attempted homicide or murder against B; hence, a complex crime.

(5) In other words, aberratio ictus, generally gives rise to a complex crime. This being so, the penalty for the more serious crime is imposed in the maximum period. This is the legal effect. The only time when a complex crime may not result in aberratio ictus is when one of the resulting felonies is a light felony.

Error in *personae*

(1) In error in personae, the intended victim was not at the scene of the crime. It was the actual victim upon whom the blow was directed, but he was not really the intended victim. There was really a mistake in identity.

(2) This is very important because Article 49 applies only in a case of error in personae and not in a case of *abberatio ictus*.

(3) In Article 49, when the crime intended is more serious than the crime actually committed or vice-versa, whichever crime carries the lesser penalty, that penalty will be the one imposed. But it will be imposed in the maximum period. For instance, the offender intended to commit homicide, but what was actually committed with parricide because the person he killed by mistake was somebody related to him within the degree of relationship in parricide. In such a case, the offender will be charged with parricide, but the penalty that would be imposed will be that of homicide. This is because under Article 49, the penalty for the lesser crime will be the one imposed, whatever crime the offender is prosecuted under. In any event, the offender is prosecuted for the crime committed not for the crime intended.

Praeter intentionem

(1) In **People v. Gacogo, 53 Phil 524,** two persons quarreled. They had fist blows. The other started to run away and Gacogo went after him, struck him with a fist blow at the back of the head. Because the victim was running, he lost balance, he fell on the pavement and his head struck the cement pavement. He suffered cerebral hemorrhage. Although Gacogo claimed that he had no intention of killing the victim, his claim is useless. Intent to kill is only relevant when the victim did not die. This is so because the purpose of intent to kill is to differentiate the crime of physical injuries from the crime of attempted homicide or attempted murder or frustrated homicide or frustrated murder. But once the victim is dead, you do not talk of intent to kill anymore. The best evidence of intent to kill is the fact that victim was killed. Although Gacogo was convicted for homicide for the death of the person, he was given the benefit of paragraph 3 of Article13, that is, " that the offender did not intend to commit so grave a wrong as that committed".

(2) This is the consequence of *praeter intentionem*. In short, *praeter intentionem* is mitigating, particularly covered by paragraph 3 of Article 13. In order however, that the situation may qualify as praeter intentionem, there must be a notable disparity between the means employed and the resulting felony. If there is no disparity between the means employed by the offender and the resulting felony, this circumstance cannot be availed of. It cannot be a case of praeter intentionem because the intention of a person is determined from the means resorted to by him in committing the crime.

IMPOSSIBLE CRIME

(1) An impossible crime is an act which would be an offense against person or property were it not for the inherent impossibility of its accomplishment or on account of the

employment of inadequate or ineffectual means.

(2) Accused was a houseboy in a house where only a spinster resides. It is customary for the spinster to sleep nude because her room was warm. It was also the habit of the houseboy that whenever she enters her room, the houseboy would follow and peek into the keyhole. Finally, when the houseboy could no longer resist the urge, he climbed into the ceiling, went inside the room of his master, placed himself on top of her and abused her, not knowing that she was already dead five minutes earlier. Is an impossible crime committed?

Yes. Before, the act performed by the offender could not have been a crime against person or property. The act performed would have been constituted a crime against chastity. An impossible crime is true only if the act done by the offender constitutes a crime against person or property. However, with the new rape law amending the Revised Penal Code and classifying rape as a crime against persons, it is now possible that an impossible crime was committed. Note, however, that the crime might also fall under the Revised Administrative Code – desecrating the dead.

(3) A was driving his car around Roxas Boulevard when a person hitched a ride. Because this person was exquisitely dressed, A readily welcomed the fellow inside his car and he continued driving. When he reached a motel, A suddenly swerved his car inside. A started kissing his passenger, but he found out that his passenger was not a woman but a man, and so he pushed him out of the car, and gave him fist blows. Is an impossible crime committed? If not, is there any crime committed at all?

It cannot be an impossible crime, because the act would have been a crime against chastity. The crime is physical injuries or acts of lasciviousness, if this was done against the will of the passenger. There are two ways of committing acts of lasciviousness. Under Article 336, where the acts of lasciviousness were committed under circumstances of rape, meaning to say, there is employment of violence or intimidation or the victim is deprived of reason. Even if the victim is a man, the crime of acts of lasciviousness is committed. This is a crime that is not limited to a victim who is a woman. Acts of lasciviousness require a victim to be a woman only when it is committed under circumstances of seduction. If it is committed under the circumstances of rape, the victim may be a man or a woman. The essence of an impossible crime is the inherent impossibility of accomplishing the crime or the inherent impossibility of the means employed to bring about the crime. When we say inherent impossibility, this means that under any and all circumstances, the crime could not have materialized. If the crime could have materialized under a different set of facts, employing the same mean or the same act, it is not an impossible crime; it would be an attempted felony.

(4) Under Article 4, paragraph 2, impossible crime is true only when the crime committed would have been against person or against property. It is, therefore, important to know what are the crimes under Title VIII, against persons and those against property under Title X. An impossible crime is true only to any of those crimes.

STAGES OF EXECUTION

Art. 6. Consummated, frustrated, and attempted felonies. – Consummated felonies as well as those which are frustrated and attempted, are punishable.

A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when the offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the

perpetrator.

There is an attempt when the offender commences the commission of a felony directly or over acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than this own spontaneous desistance.

Art. 7. When light felonies are punishable. – Light felonies are punishable only when they have been consummated, with the exception of those committed against person or property.

The classification of stages of a felony in Article 6 are true only to crimes under the Revised Penal Code. This does not apply to crimes punished under special laws. But even certain crimes which are punished under the Revised Penal Code do not admit of these stages.

The purpose of classifying penalties is to bring about a proportionate penalty and equitable punishment. The penalties are graduated according to their degree of severity. The stages may not apply to all kinds of felonies. There are felonies which do not admit of division.

Formal crimes

Formal crimes are crimes which are consummated in one instance. For example, in oral defamation, there is no attempted oral defamation or frustrated oral defamation; it is always in the consummated stage.

So also, in illegal exaction under Article 213 is a crime committed when a public officer who is authorized to collect taxes, licenses or impose for the government, shall demand an amount bigger than or different from what the law authorizes him to collect. Under sub-paragraph a of Article 213 on Illegal exaction, the law uses the word "demanding". Mere demanding of an amount different from what the law authorizes him to collect will already consummate a crime, whether the taxpayer pays the amount being demanded or not. Payment of the amount being demanded is not essential to the consummation of the crime.

The difference between the attempted stage and the frustrated stage lies on whether the offender has performed all the acts of execution for the accomplishment of a felony. Literally, under the article, if the offender has performed all the acts of execution which should produce the felony as a consequence but the felony was not realized, then the crime is already in the frustrated stage. If the offender has not yet performed all the acts of execution – there is yet something to be performed – but he was not able to perform all the acts of execution due to some cause or accident other than his own spontaneous desistance, then you have an attempted felony.

You will notice that the felony begins when the offender performs an overt act. Not any act will mark the beginning of a felony, and therefore, if the act so far being done does not begin a felony, criminal liability correspondingly does not begin. In criminal law, there is such a thing as preparatory act. These acts do not give rise to criminal liability.

An overt act is that act which if allowed to continue in its natural course would definitely result into a felony.

In the attempted stage, the definition uses the word "directly". This is significant. In the attempted stage, the acts so far performed may already be a crime or it may be just an ingredient of another crime. The word "directly'" emphasizes the requirement that the attempted felony is that which is directly linked to the overt act performed by the offender, not the felony he has in his mind.

In criminal law, you are not allowed to speculate, not to imagine what crime is intended, but apply the provisions of the law of the facts given.

When a person starts entering the dwelling of another, that act is already trespassing. But the act of entering is an ingredient of robbery with force upon things. You could only hold him liable for attempted robbery when he has already completed all acts performed by him directly leading to robbery. The act of entering alone is not yet indicative of robbery although that may be what he may have planned to commit. In law, the attempted stage is only that overt act which is directly linked to the felony intended to be committed.

In **US v. Namaja,** the accused was arrested while he was detaching some of the wood panels of a store. He was already able to detach two wood panels. To a layman, the only conclusion that will come to your mind is that this fellow started to enter the store to steal something. He would not be there just to sleep there. But in criminal law, since the act of removing the panel indicates only at most the

intention to enter. He can only be prosecuted for trespass. The removal of the panelling is just an attempt to trespass, not an attempt to rob. Although, Namaja was prosecuted for attempted robbery, the Supreme Court held it is only attempted trespass because that is the crime that can be directly linked to his act of removing the wood panel.
There are some acts which are ingredients of a certain crime, but which are, by themselves, already criminal offenses.

In abduction, your desire may lead to acts of lasciviousness. In so far the woman being carried is concerned, she may already be the victim of lascivious acts. The crime is not attempted abduction but acts of lasciviousness. You only hold him liable for an attempt, so far as could be reasonably linked to the overt act done by him. Do not go far and imagine what you should do.

Desistance

Desistance on the part of the offender negates criminal liability in the attempted stage. Desistance is true only in the attempted stage of the felony. If under the definition of the felony, the act done is already in the frustrated stage, no amount of desistance will negate criminal liability.

The spontaneous desistance of the offender negates only the attempted stage but not necessarily all criminal liability. Even though there was desistance on the part of the offender, if the desistance was made when acts done by him already resulted to a felony, that offender will still be criminally liable for the felony brought about his act. What is negated is only the attempted stage, but there may be other felony constituting his act.

Illustrations:

A fired at B and B was hit on the shoulder. But B's wound was not mortal. What A then did was to approach B, and told B, “Now you are dead, I will kill you.” But A took pity and kept the revolver and left. The crime committed is attempted homicide and not physical injuries, because there was an intention to kill. The desistance was with the second shot and would not affect the first shot because the first shot had already hit B. The second attempt has nothing to do with the first.

In another instance, A has a very seductive neighbor in the person of B. A had always been looking at B and had wanted to possess her but their status were not the same. One evening, after A saw B at her house and thought that B was already asleep, he entered the house of B through the window to abuse her. He, however, found out that B was nude, so he lost interest and left. Can a be accused of attempted rape? No, because there was desistance, which prevented the crime from being consummated. The attempted stage was erased because the offender desisted after having commenced the commission of the felony.

The attempted felony is erased by desistance because the offender spontaneously desisted from pursuing the acts of execution. It does not mean, however, that there is no more felony committed. He may be liable for a consummated felony constituted by his act of trespassing. When A entered the house through the window, which is not intended for entrance, it is always presumed to be against the will of the owner. If the offender proceeded to abuse the woman, but the latter screamed, and A went out of the window again, he could not be prosecuted for qualified trespass. Dwelling is taken as an aggravating circumstance so he will be prosecuted for attempted rape aggravated by dwelling.

In deciding whether a felony is attempted or frustrated or consummated, there are three criteria involved:

(1) The manner of committing the crime;
(2) The elements of the crime; and
(3) The nature of the crime itself.

Manner of committing a crime

For example, let us take the crime of bribery. Can the crime of frustrated bribery be committed? No. (Incidentally, the common concept of bribery is that it is the act of one who corrupts a public officer. Actually, bribery is the crime of the receiver not the giver. The crime of the giver is corruption of public official. Bribery is the crime of the public officer who in consideration of an act having to do with his official duties would receive something, or accept any promise or present in consideration thereof.)

The confusion arises from the fact that this crime requires two to commit -- the giver and the receiver. The law called the crime of the giver as corruption of public official and the receiver as bribery. Giving the idea that these are independent crimes, but actually, they cannot arise without the other. Hence, if only one side of the crime is present, only corruption, you cannot

have a consummated corruption without the corresponding consummated bribery. There cannot be a consummated bribery without the corresponding consummated corruption. If you have bribery only, it is only possible in the attempted stage. If you have a corruption only, it is possible only in the attempted stage. A corruptor gives money to a public officer for the latter not to prosecute him. The public officer received the money but just the same, arrested him. He received the money to have evidence of corruption. Do not think that because the corruptor has already delivered the money, he has already performed all the acts of execution, and, therefore, the corruption is already beyond the attempted stage. That thinking does away with the concept of the crime that it requires two to commit. The manner of committing the crime requires the meeting of the minds between the giver and the receiver.

When the giver delivers the money to the supposed receiver, but there is no meeting of the minds, the only act done by the giver is an attempt. It is not possible for him to perform all the acts of execution because in the first place, the receiver has no intention of being corrupted. Similarly, when a public officer demands a consideration by official duty, the corruptor turns down the demand, there is no bribery.

If the one to whom the demand was made pretended to give, but he had reported the matter to higher authorities, the money was marked and this was delivered to the public officer. If the public officer was arrested, do not think that because the public officer already had the money in his possession, the crime is already frustrated bribery, it is only attempted bribery. This is because the supposed corruptor has no intention to corrupt. In short, there is no meeting of the minds. On the other hand, if there is a meeting of the minds, there is consummated bribery or consummated corruption. This leaves out the frustrated stage because of the manner of committing the crime.

But indirect bribery is always consummated. This is because the manner of consummating the crime does not admit of attempt or frustration.

You will notice that under the Revised Penal Code, when it takes two to commit the crime, there could hardly be a frustrated stage. For instance, the crime of adultery. There is no frustrated adultery. Only attempted or consummated. This is because it requires the link of two participants. If that link is there, the crime is consummated; if such link is absent, there is only an attempted adultery. There is no middle ground when the link is there and when the link is absent.

There are instances where an intended felony could already result from the acts of execution already done. Because of this, there are felonies where the offender can only be determined to have performed all the acts of execution when the resulting felony is already accomplished. Without the resulting felony, there is no way of determining whether the offender has already performed all the acts or not. It is in such felonies that the frustrated stage does not exist because without the felony being accomplished, there is no way of stating that the offender has already performed all the acts of execution. An example of this is the crime of rape. The essence of the crime is carnal knowledge. No matter what the offender may do to accomplish a penetration, if there was no penetration yet, it cannot be said that the offender has performed all the acts of execution. We can only say that the offender in rape has performed all the acts of execution when he has effected a penetration. Once there is penetration already, no matter how slight, the offense is consummated. For this reason, rape admits only of the attempted and consummated stages, no frustrated stage. This was the ruling in the case of **People v. Orita.**

In rape, it requires the connection of the offender and the offended party. No penetration at all, there is only an attempted stage. Slightest penetration or slightest connection, consummated. You will notice this from the nature of the crime requiring two participants.

This is also true in the crime of arson. It does not admit of the frustrated stage. In arson, the moment any particle of the premises intended to be burned is blackened, that is already an indication that the premises have begun to burn. It does not require that the entire premises be burned to consummate arson. Because of that, the frustrated stage of arson has been eased out. The reasoning is that one cannot say that the offender, in the crime of arson, has already performed all the acts of execution which could produce the destruction of the premises through the use of fire, unless a part of the premises has begun to burn. If it has not begun to burn, that means that the offender has not yet performed all the acts of execution. On the other hand, the moment it begins to burn, the crime is consummated. Actually, the frustrated stage is

already standing on the consummated stage except that the outcome did not result. As far as the stage is concerned, the frustrated stage overlaps the consummated stage.

Because of this reasoning by the Court of Appeals in **People v. Garcia,** the Supreme Court followed the analysis that one cannot say that the offender in the crime of arson has already performed all the acts of execution which would produce the arson as a consequence, unless and until a part of the premises had begun to burn.

In **US v. Valdez,** the offender had tried to burn the premises by gathering jute sacks laying these inside the room. He lighted these, and as soon as the jute sacks began to burn, he ran away. The occupants of the room put out the fire. The court held that what was committed was frustrated arson.

This case was much the way before the decision in the case of **People v. Garcia** was handed down and the Court of Appeals ruled that there is no frustrated arson. But even then, the analysis in the case of **US v. Valdez** is correct. This is because, in determining whether the felony is attempted, frustrated or consummated, the court does not only consider the definition under Article 6 of the Revised Penal Code, or the stages of execution of the felony. When the offender has already passed the subjective stage of the felony, it is beyond the attempted stage. It is already on the consummated or frustrated stage depending on whether a felony resulted. If the felony did not result, frustrated.

The attempted stage is said to be within the subjective phase of execution of a felony. On the subjective phase, it is that point in time when the offender begins the commission of an overt act until that point where he loses control of the commission of the crime already. If he has reached that point where he can no longer control the ensuing consequence, the crime has already passed the subjective phase and, therefore, it is no longer attempted. The moment the execution of the crime has already gone to that point where the felony should follow as a consequence, it is either already frustrated or consummated. If the felony does not follow as a consequence, it is already frustrated. If the felony follows as a consequence, it is consummated.

The trouble is that, in the jurisprudence recognizing the objective phase and the subjective phase, the Supreme Court considered not only the acts of the offender, but also his belief. That although the offender may not have done the act to bring about the felony as a consequence, if he could have continued committing those acts but he himself did not proceed because he believed that he had done enough to consummate the crime, Supreme Court said the subjective phase has passed. This was applied in the case of **US v. Valdez,** where the offender, having already put kerosene on the jute sacks, lighted the same, he had no reason not to believe that the fire would spread, so he ran away. That act demonstrated that in his mind, he believed that he has performed all the acts of execution and that it is only a matter of time that the premises will burn. The fact that the occupant of the other room came out and put out the fire is a cause independent of the will of the perpetrator.

The ruling in the case of **US v. Valdez** is still correct. But in the case of **People v. Garcia,** the situation is different. Here, the offender who put the torch over the house of the offended party, the house being a nipa hut, the torch which was lighted could easily burn the roof of the nipa hut. But the torch burned out.

In that case, you cannot say that the offender believed that he had performed all the acts of execution. There was not even a single burn of any instrument or agency of the crime.

The analysis made by the Court of Appeals is still correct: that they could not demonstrate a situation where the offender has performed all the acts of execution to bring about the crime of arson and the situation where he has not yet performed all the acts of execution. The weight of the authority is that the crime of arson cannot be committed in the frustrated stage. The reason is because we can hardly determine whether the offender has performed all the acts of execution that would result in arson, as a consequence, unless a part of the premises has started to burn. On the other hand, the moment a particle or a molecule of the premises has blackened, in law, arson is consummated. This is because consummated arson does not require that the whole of the premises be burned. It is enough that any part of the premises, no matter how small, has begun to burn.

There are also certain crimes that do not admit of the attempted or frustrated stage, like physical injuries. One of the known commentators in criminal law has advanced the view that the crime of physical injuries can be committed in the attempted as well as the frustrated stage.

He explained that by going through the definition of an attempted and a frustrated felony under Article 6, if a person who was about to give a fist blow to another raises his arms, but before he could throw the blow, somebody holds that arm, there would be attempted physical injuries. The reason for this is because the offender was not able to perform all the acts of execution to bring about physical injuries.

On the other hand, he also stated that the crime of physical injuries may be committed in the frustrated stage when the offender was able to throw the blow but somehow, the offended party was able to sidestep away from the blow. He reasoned out that the crime would be frustrated because the offender was able to perform all the acts of execution which would bring about the felony were it not for a cause independent of the will of the perpetrator.

The explanation is academic. You will notice that under the Revised Penal Code, the crime of physical injuries is penalized on the basis of the gravity of the injuries. Actually, there is no simple crime of physical injuries. You have to categorize because there are specific articles that apply whether the physical injuries are serious, less serious or slight. If you say physical injuries, you do not know which article to apply. This being so, you could not punish the attempted or frustrated stage because you do not know what crime of physical injuries was committed.

Questions & Answers

1. Is there an attempted slight physical injuries?

   If there is no result, you do not know. Criminal law cannot stand on any speculation or ambiguity; otherwise, the presumption of innocence would be sacrificed. Therefore, the commentator's opinion cannot stand because you cannot tell what particular physical injuries was attempted or frustrated unless the consequence is there. You cannot classify the physical injuries.

2. A threw muriatic acid on the face of B. The injuries would have resulted in deformity were it not for timely plastic surgery. After the surgery, B became more handsome. What crime is committed? Is it attempted, frustrated or consummated?

The crime committed here is serious physical injuries because of the deformity. When there is deformity, you disregard the healing duration of the wound or the medical treatment required by the wound. In order that in law, a deformity can be said to exist, three factors must concur:

(1) The injury should bring about the ugliness;
(2) The ugliness must be visible;
(3) The ugliness would not disappear through natural healing process.

Along this concept of deformity in law, the plastic surgery applied to B is beside the point. In law, what is considered is not the artificial or the scientific treatment but the natural healing of the injury. So the fact that there was plastic surgery applied to B does not relieve the offender from the liability for the physical injuries inflicted. The crime committed is serious physical injuries. It is consummated. In determining whether a felony is attempted, frustrated or consummated, you have to consider the manner of committing the felony, the element of the felony and the nature of the felony itself. There is no real hard and fast rule.

Elements of the crime

In the crime of estafa, the element of damage is essential before the crime could be consummated. If there is no damage, even if the offender succeeded in carting away the personal property involved, estafa cannot be considered as consummated. For the crime of estafa to be consummated, there must be misappropriation already done, so that there is damage already suffered by the offended party. If there is no damage yet, the estafa can only be frustrated or attempted.

On the other hand, if it were a crime of theft, damage or intent to cause damage is not an element of theft. What is necessary only is intent to gain, not even gain is important. The mere intent to derive some profit is enough but the thinking must be complete before a crime of theft shall be consummated. That is why we made that distinction between theft and estafa.

If the personal property was received by the offender, this is where you have to decide whether what was transferred to the offender is juridical possession or physical possession only. If the offender did not receive the personal property, but took the same from the possession of the owner without the latter's consent, then

there is no problem. That cannot be estafa; this is only theft or none at all.

In estafa, the offender receives the property; he does not take it. But in receiving the property, the recipient may be committing theft, not estafa, if what was transferred to him was only the physical or material possession of the object. It can only be estafa if what was transferred to him is not only material or physical possession but juridical possession as well.

When you are discussing estafa, do not talk about intent to gain. In the same manner that when you are discussing the crime of theft, do not talk of damage.

The crime of theft is the one commonly given under Article 6. This is so because the concept of theft under the Revised Penal Code differs from the concept of larceny under American common law. Under American common law, the crime of larceny which is equivalent to our crime of theft here requires that the offender must be able to carry away or transport the thing being stolen. Without that carrying away, the larceny cannot be consummated.

In our concept of theft, the offender need not move an inch from where he was. It is not a matter of carrying away. It is a matter of whether he has already acquired complete control of the personal property involved. That complete control simply means that the offender has already supplanted his will from the will of the possessor or owner of the personal property involved, such that he could exercise his own control on the thing.

Illustration:

I placed a wallet on a table inside a room. A stranger comes inside the room, gets the wallet and puts it in his pocket. I suddenly started searching him and I found the wallet inside his pocket. The crime of theft is already consummated because he already acquired complete control of my wallet. This is so true when he removed the wallet from the confines of the table. He can exercise his will over the wallet already, he can drop this on the floor, etc.
But as long as the wallet remains on the table, the theft is not yet consummated; there can only be attempted or frustrated theft. If he has started lifting the wallet, it is frustrated. If he is in the act of trying to take the wallet or place it under, attempted.

"Taking" in the concept of theft, simply means exercising control over the thing.

If instead of the wallet, the man who entered the room pretended to carry the table out of the room, and the wallet is there. While taking the table out of the room, I apprehended him. It turned out that he is not authorized at all and is interested only in the wallet, not the table. The crime is not yet consummated. It is only frustrated because as far as the table is concern, it is the confines of this room that is the container. As long as he has not taken this table out of the four walls of this room, the taking is not complete.

A man entered a room and found a chest on the table. He opened it found some valuables inside. He took the valuables, put them in his pocket and was arrested. In this case, theft is consummated.

But if he does not take the valuables but lifts the entire chest, and before he could leave the room, he was apprehended, there is frustrated theft.

If the thing is stolen from a compound or from a room, as long as the object has not been brought out of that room, or from the perimeter of the compound, the crime is only frustrated. This is the confusion raised in the case of **US v. Diño** compared with **People v. Adio** and **People v. Espiritu.**

In **US v. Diño,** the accused loaded boxes of rifle on their truck. When they were on their way out of the South Harbor, they were checked at the checkpoint, so they were not able to leave the compound. It was held that what was committed was frustrated Theft.

In **People v. Espiritu,** the accused were on their way out of the supply house when they were apprehended by military police who found them secreting some hospital linen. It was held that what was committed was consummated theft.

The emphasis, which was erroneously laid in some commentaries, is that, in both cases, the offenders were not able to pass the checkpoint. But why is it that in one, it is frustrated and in the other, it is consummated?

In the case of **US v. Diño,** the boxes of rifle were stocked file inside the compound of the South

Harbor. As far as the boxes of rifle are concerned, it is the perimeter of the compound that is the container. As long as they were not able to bring these boxes of rifle out of the compound, the taking is not complete. On the other hand, in the case of **People v. Espiritu,** what were taken were hospital linens. These were taken from a warehouse. Hospital linens were taken from boxes that were diffused or destroyed and brought out of the hospital. From the moment they took it out of the boxes where the owner or the possessor had placed it, the control is complete. You do not have to go out of the compound to complete the taking or the control.

This is very decisive in the problem because in most problems given in the bar, the offender, after having taken the object out of the container changed his mind and returned it. Is he criminally liable? Do not make a mistake by saying that there is a desistance. If the crime is one of theft, the moment he brought it out, it was consummated. The return of the thing cannot be desistance because in criminal law, desistance is true only in the attempted stage. You cannot talk of desistance anymore when it is already in the consummated stage. If the offender has already acquired complete control of what he intended to take, the fact that he changed his mind and returned the same will no longer affect his criminal liability. It will only affect the civil liability of the crime because he will no longer be required to pay the object. As far as the crime committed is concerned, the offender is criminally liable and the crime is consummated theft.

Illustration:

A and B are neighbors. One evening, A entered the yard of B and opened the chicken coop where B keeps his fighting cocks. He discovered that the fighting cocks were not physically fit for cockfighting so he returned it. The crime is consummated theft. The will of the owner is to keep the fighting cock inside the chicken coop. When the offender succeeded in bringing the cock out of the coop, it is clear that his will completely governed or superseded the will of the owner to keep such cock inside the chicken coop. Hence, the crime was already consummated, and being consummated, the return of the owner's property is not desistance anymore. The offender is criminally liable but he will not be civilly liable because the object was returned.

When the receptacle is locked or sealed, and the offender broke the same, in lieu of theft, the crime is robbery with force upon things. However, that the receptacle is locked or sealed has nothing to do with the stage of the commission of the crime. It refers only to whether it is theft or robbery with force upon things.

Nature of the crime itself

In crimes involving the taking of human life – parricide, homicide, and murder – in the definition of the frustrated stage, it is indispensable that the victim be mortally wounded. Under the definition of the frustrated stage, to consider the offender as having performed all the acts of execution, the acts already done by him must produce or be capable of producing a felony as a consequence. The general rule is that there must be a fatal injury inflicted, because it is only then that death will follow.

If the wound is not mortal, the crime is only attempted. The reason is that the wound inflicted is not capable of bringing about the desired felony of parricide, murder or homicide as a consequence; it cannot be said that the offender has performed all the acts of execution which would produce parricide, homicide or murder as a result.

An exception to the general rule is the so-called subjective phase. The Supreme Court has decided cases which applied the subjective standard that when the offender himself believed that he had performed all the acts of execution, even though no mortal wound was inflicted, the act is already in the frustrated stage.

Composite crimes

Composite crimes are crimes which, in substance, consist of more than one crime but in the eyes of the law, there is only one crime. For example, the crimes of robbery with homicide, robbery with rape, robbery with physical injuries.

In case the crime committed is a composite crime, the conspirator will be liable for all the acts committed during the commission of the crime agreed upon. This is because, in the eyes of the law, all those acts done in pursuance of the crime agreed upon are acts which constitute a single crime.

Illustrations:

A, B, and C decided to commit robbery in the house of D. Pursuant to their agreement, A would ransack the second floor, B was to wait outside, and C would stay on the first floor. Unknown to B and C, A raped the girl upstairs. All of them will be liable for robbery with rape. The crime committed is robbery with rape, which is not a complex crime, but an indivisible felony under the Article 294 of the Revised Penal Code. Even if B and C did not know that rape was being committed and they agreed only and conspired to rob, yet rape was part of robbery. Rape can not be separated from robbery.

A, B and C agreed to rob the house of D. It was agreed that A would go the second floor, B would stay in the first floor, and C stands guard outside. All went to their designated areas in pursuit of the plan. While A was ransacking the second floor, the owner was awakened. A killed him. A, B and C will be liable for robbery with homicide. This is because, it is well settled that any killing taking place while robbery is being committed shall be treated as a single indivisible offense.

As a general rule, when there is conspiracy, the rule is that the act of one is the act of all. This principle applies only to the crime agreed upon.

The exception is if any of the co-conspirator would commit a crime not agreed upon. This happens when the crime agreed upon and the crime committed by one of the co-conspirators are distinct crimes.

Exception to the exception: In acts constituting a single indivisible offense, even though the co-conspirator performed different acts bringing about the composite crime, all will be liable for such crime. They can only evade responsibility for any other crime outside of that agreed upon if it is proved that the particular conspirator had tried to prevent the commission of such other act.

The rule would be different if the crime committed was not a composite crime.

Illustration:

A, B and C agreed to kill D. When they saw the opportunity, A, B and C killed D and after that, A and B ran into different directions. C inspected the pocket of the victim and found that the victim was wearing a ring – a diamond ring – and he took it. The crimes committed are homicide and theft. As far as the homicide is concerned, A, B and C are liable because that was agreed upon and theft was not an integral part of homicide. This is a distinct crime so the rule will not apply because it was not the crime agreed upon. Insofar as the crime of theft is concerned, C will be the only one liable. So C will be liable for homicide and theft.

CONSPIRACY AND PROPOSAL

> *Art. 8. Conspiracy and proposal to commit felony. – Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.*
>
> *A conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.*

Two ways for conspiracy to exist:

(1) There is an agreement.
(2) The participants acted in concert or simultaneously which is indicative of a meeting of the minds towards a common criminal goal or criminal objective. When several offenders act in a synchronized, coordinated manner, the fact that their acts complimented each other is indicative of the meeting of the minds. There is an implied agreement.

Two kinds of conspiracy:

(1) Conspiracy as a crime; and
(2) Conspiracy as a manner of incurring criminal liability

When conspiracy itself is a crime, no overt act is necessary to bring about the criminal liability. The mere conspiracy is the crime itself. This is only true when the law expressly punishes the mere conspiracy; otherwise, the conspiracy does not bring about the commission of the crime because conspiracy is not an overt act but a mere preparatory act. Treason, rebellion,

sedition, and coup d'etat are the only crimes where the conspiracy and proposal to commit to them are punishable.

Question & Answer

> Union A proposed acts of sedition to Union B. Is there a crime committed? Assuming Union B accepts the proposal, will your answer be different?
>
> There is no crime committed. Proposal to commit sedition is not a crime. But if Union B accepts the proposal, there will be conspiracy to commit sedition which is a crime under the Revised Penal Code.

When the conspiracy is only a basis of incurring criminal liability, there must be an overt act done before the co-conspirators become criminally liable.

When the conspiracy itself is a crime, this cannot be inferred or deduced because there is no overt act. All that there is the agreement. On the other hand, if the co-conspirator or any of them would execute an overt act, the crime would no longer be the conspiracy but the overt act itself.

Illustration:

A, B, C and D came to an agreement to commit rebellion. Their agreement was to bring about the rebellion on a certain date. Even if none of them has performed the act of rebellion, there is already criminal liability arising from the conspiracy to commit the rebellion. But if anyone of them has committed the overt act of rebellion, the crime of all is no longer conspiracy to commit rebellion but rebellion itself. This subsists even though the other co-conspirator does not know that one of them had already done the act of rebellion.

This legal consequence is not true if the conspiracy is not a crime. If the conspiracy is only a basis of criminal liability, none of the co-conspirators would be liable, unless there is an overt act. So, for as long as anyone shall desist before an overt act in furtherance of the crime was committed, such a desistance would negate criminal liability.

Illustration:

Three persons plan to rob a bank. For as long as none of the conspirators has committed an overt act, there is no crime yet. But when one of them commits any overt act, all of them shall be held liable, unless a co-conspirator was absent from the scene of the crime or he showed up, but he tried to prevent the commission of the crime

As a general rule, if there has been a conspiracy to commit a crime in a particular place, anyone who did not appear shall be presumed to have desisted. The exception to this is if such person who did not appear was the mastermind.

We have to observe the distinction between the two because conspiracy as a crime, must have a clear and convincing evidence of its existence. Every crime must be proved beyond reasonable doubt.

When the conspiracy is just a basis of incurring criminal liability, however, the same may be deduced or inferred from the acts of several offenders in carrying out the commission of the crime. The existence of a conspiracy may be reasonably inferred from the acts of the offenders when such acts disclose or show a common pursuit of the criminal objective. This was the ruling in **People v. Pinto, 204 SCRA 9.**

Although conspiracy is defined as two or more person coming to an agreement regarding the commission of a felony and deciding to commit it, the word "person" here should not be understood to require a meeting of the co-conspirator regarding the commission of the felony. A conspiracy of the second kind can be inferred or deduced even though they have not met as long as they acted in concert or simultaneously, indicative of a meeting of the minds toward a common goal or objective.

Conspiracy is a matter of substance which must be alleged in the information, otherwise, the court will not consider the same.

In **People v. Laurio, 200 SCRA 489,** it was held that it must be established by positive and conclusive evidence, not by conjectures or speculations.

In **Taer v. CA, 186 SCRA 5980,** it was held that mere knowledge, acquiescence to, or approval of the act, without cooperation or at least, agreement to cooperate, is not enough to constitute a conspiracy. There must be an intentional participation in the crime with a view to further the common felonious objective.

When several persons who do not know each other simultaneously attack the victim, the act of one is the act of all, regardless of the degree of injury inflicted by any one of them. All will be liable for the consequences. A conspiracy is possible even when participants are not known to each other. Do not think that participants are always known to each other.

Illustrations:

A thought of having her husband killed because the latter was maltreating her. She hired some persons to kill him and pointed at her husband. The goons got hold of her husband and started mauling him. The wife took pity and shouted for them to stop but the goons continued. The wife ran away. The wife was prosecuted for parricide. But the Supreme Court said that there was desistance so she is not criminally liable.

A law student resented the fact that his brother was killed by A. He hired B to kill A and offered him P50,000.00. He disclosed to B that A was being arraigned in the City Hall of Manila and told him to execute the plan on the following day. In the evening of that same day, the law student changed his mind so he immediately went to the police and told them to dispatch police officers to prevent B from committing the crime. Unfortunately, the police were caught in traffic causing their delay, so that when they reached the place, B had already killed A. In this case, there was no proposal but a conspiracy. They have conspired to execute a crime but the crime involved here is murder and a conspiracy to commit murder is not a crime in itself but merely a basis for incurring criminal liability. This is just a preparatory act, and his desistance negates criminal liability.

Proposal is true only up to the point where the party to whom the proposal was made has not yet accepted the proposal. Once the proposal was accepted, a conspiracy arises. Proposal is unilateral, one party makes a proposition to the other; conspiracy is bilateral, it requires two parties.

As pointed out earlier, desistance is true only in the attempted stage. Before this stage, there is only a preparatory stage. Conspiracy is only in the preparatory stage.

The Supreme Court has ruled that one who desisted is not criminally liable. "When a person has set foot to the path of wickedness and brings back his foot to the path of righteousness, the law shall reward him for doing so."

Where there are several persons who participated, like in a killing, and they attacked the victim simultaneously, so much so that it cannot be known what participation each one had, all these participants shall be considered as having acted in conspiracy and they will be held collectively responsible.
Do not search for an agreement among the participants. If they acted simultaneously to bring about their common intention, conspiracy exists. And when conspiracy exists, do not consider the degree of participation of each conspirator because the act of one is the act of all. As a general rule, they have equal criminal responsibility.

Question & Answer

There are several offenders who acted simultaneously. When they fled, a victim was found dead. Who should be liable for the killing if who actually killed the victim is not known?

> There is collective responsibility here. Without the principle of conspiracy, nobody would be prosecuted; hence, there is the rule on collective responsibility since it cannot be ascertained who actually killed the victim.

There is conspiracy when the offenders acted simultaneously pursuing a common criminal design; thus, acting out a common criminal intent.

Illustration:

A, B and C have been courting the same lady for several years. On several occasions, they even visited the lady on intervening hours. Because of this, A, B and C became hostile with one another. One day, D invited the young lady and she accepted the invitation. Eventually, the young lady agreed to marry D. When A, B and C learned about this, they all stood up to leave the house of the young lady feeling disappointed. When A looked back at the young lady with D, he saw D laughing menacingly. At that instance, A stabbed D. C and B followed. In this case, it was held that conspiracy was present.

The common notion is that when there is conspiracy involved, the participants are punished as principals. This notion is no longer absolute. In the case of **People v. Nierra,** the Supreme Court ruled that even though there was conspiracy, if a co-conspirator merely cooperated in the commission of the crime with insignificant or minimal acts, such that even without his cooperation, the crime could be carried out as well, such co-conspirator should be punished as an accomplice only. The reason given is that penal laws always favor a milder form of responsibility upon an offender. So it is no longer accurate to think that when there is a conspiracy, all are principals.

Notwithstanding that there is conspiracy, a co-conspirator may be held liable only as an accomplice. That means the penalty which shall be imposed upon him is one degree lower.
For example, there was a planned robbery, and the taxi driver was present during the planning. There, the conspirators told the taxi driver that they are going to use his taxicab in going to the place of robbery. The taxi driver agreed but said, "I will bring you there, and after committing the robbery I will return later". The taxi driver brought the conspirators where the robbery would be committed. After the robbery was finished, he took the conspirators back to his taxi and brought them away. It was held that the taxi driver was liable only as an accomplice. His cooperation was not really indispensable. The robbers could have engaged another taxi. The taxi driver did not really stay during the commission of the robbery. At most, what he only extended was his cooperation. That is why he was given only that penalty for an accomplice.

A, B, and C, under the influence of marijuana, broke into a house because they learned that the occupants have gone on an excursion. They ransacked the house. A got a colored TV, B saw a camera and took that, and C found a can of salmon and took that. In the crime of robbery with force upon things, the penalty is based on the totality of the value of the personal property taken and not on the individual property taken by him.

In **Siton v. CA,** it was held that the idea of a conspiracy is incompatible with the idea of a free for all. There is no definite opponent or definite intent as when a basketball crowd beats a referee to death.

MULTIPLE OFFENDERS (DIFFERENCES, RULES, EFFECTS)

Habituality (*Reiteracion*)	Habitual Deliquency	Recidivism	Quasi-Recidivism
Served out sentence for the first offense	Convicted of the first offense	Final judgment rendered in the first offense	Convicted of the first offense
Previous and subsequent offenses must not be embraced in the same title of the Code, but the previous offense must be one to which the law attaches an equal or greater penalty or for two crimes which it attaches a lighter penalty	Any of the habitual delinquency crimes: serious or less serious physical injuries, theft, robbery, estafa, or falsification	Requisites that the offenses be included in the same title of the Code	First crime need not be a felony, but the second crime must be a felony
Not always aggravating	Additional penalty as provided by law	Always to be taken into consideration in fixing the penalty to be imposed upon the accused. If not offset by a mitigating circumstance, serves to	Maximum period of the penalty prescribed by law for the new felony

		increase the penalty only to the maximum	
Second offense is committed after serving sentence for the first offense	Offender is found guilty within 10 years from his last release or last conviction for the third time or oftener	No period of time between the former conviction and the last conviction	Second offense is committed after conviction before service the sentence or while serving sentence
A generic aggravating circumstance and may be offset by an ordinary mitigating circumstance	Cannot be offset by an ordinary aggravating circumstance	A generic aggravating circumstance and may be offset by an ordinary mitigating circumstance	A special aggravating circumstance which cannot be offset by an ordinary mitigating circumstance

COMPLEX CRIMES vs. SPECIAL COMPLEX CRIMES

> *Art. 48. Penalty for complex crimes. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.*

Philosophy behind plural crimes: The treatment of plural crimes as one is to be lenient to the offender, who, instead of being made to suffer distinct penalties for every resulting crime is made to suffer one penalty only, although it is the penalty for the most serious one and is in the maximum period. Purpose is in the pursuance of the rule of pro reo.

If be complexing the crime, the penalty would turn out to be higher, do not complex anymore.

Example: Murder and theft (killed with treachery, then stole the right).
Penalty: If complex - Reclusion temporal maximum to death.
If treated individually - Reclusion temporal to Reclusion Perpetua.

Complex crime is not just a matter of penalty, but of substance under the Revised Penal Code.

Plurality of crimes may be in the form of:

(1) Compound crime;
(2) Complex crime; and
(3) Composite crime.

A compound crime is one where a single act produces two or more crimes.

A complex crime strictly speaking is one where the offender has to commit an offense as a means for the commission of another offense. It is said that the offense is committed as a necessary means to commit the other offense. "Necessary" should not be understood as indispensable, otherwise, it shall be considered absorbed and not giving rise to a complex crime.

A composite crime is one in which substance is made up of more than one crime, but which in the eyes of the law is only a single indivisible offense. This is also known as special complex crime. Examples are robbery with homicide, robbery with rape, rape with homicide. These are crimes which in the eyes of the law are regarded only as a single indivisible offense.

Composite Crime/Special Complex Crime

This is one which in substance is made up of more than one crime but which in the eyes of the law is only a single indivisible offense. This is also known as a special complex crime. Examples are robbery with homicide, robbery with rape, and rape with homicide.

The compound crime and the complex crime are treated in Article 48 of the Revised Penal Code. But in such article, a compound crime is also designated as a complex crime, but "complex crimes" are limited only to a situation where the resulting felonies are grave and/or less grave.

Whereas in a compound crime, there is no limit as to the gravity of the resulting crimes as long as a single act brings about two or more crimes. Strictly speaking, compound crimes are not

limited to grave or less grave felonies but covers all single act that results in two or more crimes.

Illustration:

A person threw a hand grenade and the people started scampering. When the hand grenade exploded, no on was seriously wounded all were mere wounded. It was held that this is a compound crime, although the resulting felonies are only slight.

Illustration of a situation where the term "necessary" in complex crime should not be understood as indispensable:

Abetting committed during the encounter between rebels and government troops such that the homicide committed cannot be complexed with rebellion. This is because they are indispensable part of rebellion. (Caveat: Ortega says rebellion can be complexed with common crimes in discussion on Rebellion)

The complex crime lies actually in the first form under Article 148.

The first form of the complex crime is actually a compound crime, is one where a single act constitutes two or more grave and/or less grave felonies. The basis in complexing or compounding the crime is the act. So that when an offender performed more than one act, although similar, if they result in separate crimes, there is no complex crime at all, instead, the offender shall be prosecuted for as many crimes as are committed under separate information.

When the single act brings about two or more crimes, the offender is punished with only one penalty, although in the maximum period, because he acted only with single criminal impulse. The presumption is that, since there is only one act formed, it follows that there is only one criminal impulse and correctly, only one penalty should be imposed.

Conversely, when there are several acts performed, the assumption is that each act is impelled by a distinct criminal impulse and for ever criminal impulse, a separate penalty. However, it may happen that the offender is impelled only by a single criminal impulse in committing a series of acts that brought about more than one crime, considering that Criminal Law, if there is only one criminal impulse which brought about the commission of the crime, the offender should be penalized only once.

There are in fact cases decided by the Supreme Court where the offender has performed a series of acts but the acts appeared to be impelled by one and the same impulse, the ruling is that a complex crime is committed. In this case it is not the singleness of the act but the singleness of the impulse that has been considered. There are cases where the Supreme Court held that the crime committed is complex even though the offender performed not a single act but a series of acts. The only reason is that the series of acts are impelled by a single criminal impulse.

3. CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

There are five circumstances affecting criminal liability:

(1) Justifying circumstances;
(2) Exempting circumstances;
(3) Mitigating circumstances;
(4) Aggravating circumstances; and
(5) Alternative circumstances.

There are two others which are found elsewhere in the provisions of the Revised Penal Code:

(6) Absolutory cause; and
(7) Extenuating circumstances.

In justifying and exempting circumstances, there is no criminal liability. When an accused invokes them, he in effect admits the commission of a crime but tries to avoid the liability thereof. The burden is upon him to establish beyond reasonable doubt the required conditions to justify or exempt his acts from criminal liability. What is shifted is only the burden of evidence, not the burden of proof.

Justifying circumstances contemplate intentional acts and, hence, are incompatible with dolo. Exempting circumstances may be invoked in culpable felonies.

Distinctions between justifying circumstances and exempting circumstances

In justifying circumstances –

(1) The circumstance affects the act, not the actor;
(2) The act complained of is considered to have been done within the bounds of law; hence, it is legitimate and lawful in the eyes of the law;
(3) Since the act is considered lawful, there is no crime, and because there is no crime, there is no criminal;
(4) Since there is no crime or criminal, there is no criminal liability as well as civil liability.

In exempting circumstances –

(1) The circumstances affect the actor, not the act;
(2) The act complained of is actually wrongful, but the actor acted without voluntariness. He is a mere tool or instrument of the crime;
(3) Since the act complained of is actually wrongful, there is a crime. But because the actor acted without voluntariness, there is absence of dolo or culpa. There is no criminal;
(4) Since there is a crime committed but there is no criminal, there is civil liability for the wrong done. But there is no criminal liability. However, in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

When you apply for justifying or exempting circumstances, it is confession and avoidance and burden of proof shifts to the accused and he can no longer rely on weakness of prosecution's evidence

Justifying circumstances

Art. 11. Justifying circumstances. – The following do not incur any criminal liability:

1. Anyone who acts in defense of his person or rights, provided that the following circumstances concur;

First. Unlawful aggression.

Second. Reasonable necessity of the means employed to prevent or repel it.

Third. Lack of sufficient provocation on the part of the person defending himself.

2. Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural or adopted brothers or sisters, or his relatives by affinity in the same degrees and those consanguinity within the fourth civil degree, provided that the first and second requisites prescribed in the next preceding circumstance are present, and the further requisite, in case the revocation was given by the person attacked, that the one making defense had no part therein.

3. Anyone who acts in defense of the person or rights of a stranger, provided that the first and second requisites mentioned in the first circumstance of this Art. Are present and that the person defending be not induced by revenge, resentment, or other evil motive.

4. Any person who, in order to avoid an evil or injury, does not act which causes damage to another, provided that the following requisites are present;

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

5. Any person who acts in the fulfillment of a duty or in the lawful exercise of a right or office.

6. Any person who acts in obedience to an order issued by a superior for some lawful purpose.

Since the justifying circumstances are in the nature of defensive acts, there must be always unlawful aggression. The reasonableness of the means employed depends on the gravity of the aggression. If the unlawful aggressor was killed, this can only be justified if it was done to save the life of the person defending or the person being defended. The equation is "life was taken to save life."

Self Defense

In justifying circumstances, the most important is self-defense. When this is given in the bar, it is the element of unlawful aggression that is in issue. Never confuse unlawful aggression with provocation. Mere provocation is not enough.

Illustration:

A and B are long standing enemies. Because of their continuous quarrel over the boundaries of

their adjoining properties, when A saw B one afternoon, he approached the latter in a menacing manner with a bolo in his hand. When he was about five feet away from B, B pulled out a revolver and shot A on the chest, killing him. Is B criminally liable? What crime was committed, if any?

The act of A is nothing but a provocation. It cannot be characterized as an unlawful aggression because in criminal law, an unlawful aggression is an attack or a threatened attack which produces an imminent danger to the life and limb of the one resorting to self-defense. In the facts of the problem given above, what was said was that A was holding a bolo. That bolo does not produce any real or imminent danger unless a raises his arm with the bolo. As long as that arm of A was down holding the bolo, there is no imminent danger to the life or limb of B. Therefore, the act of B in shooting A is not justified.

Defense of rights is included in the circumstances of defense and so is defense of honor.

In **US v. Mateo,** while a woman was sleeping, her sister and brother-in-law went to see a movie and came home late that evening. The accused was already asleep. The brother-in-law came up first while his wife was still in the staircase. He started feeling through the dark, and in the process, he awakened the accused. Believing that her honor was at stake, she got a pair of scissors and stabbed the man. When the lights were turned on, she realized that she had stabbed her brother-in-law. The accused claimed as having acted in defense of her honor and mistake of fact. She said that she believed that her own honor was at stake. It was held that the whole matter is purely her imagination. Touching the arm could not produce such danger as would really be imminent to the honor of the woman.

Apparently, under the Revised Penal Code, the honor of a woman in respect of her defense is equated with her virginity.

In **US v. Jaurigue,** it was held that it was not possible to rape the accused because the whole thing transpired in the church, where there were so many people. Therefore, her availing of defense of honor is not tenable. She could not possibly be raped in that place. Defense of honor here is being equated with one of abuse of chastity of a woman. In this case, the offended party placed his hand on the thigh of the woman who was then praying. There was already some sort of aggression but it was not enough to warrant the act resorted to by the accused in getting a small knife from her bag and thrusting it on the chest of the offended party.

Do not confuse unlawful aggression with provocation. What justifies the killing of a supposed unlawful aggressor is that if the offender did not kill the aggressor, it will be his own life that will be lost. That will be the situation. If that is not the situation, even if there was an unlawful aggression that has already begun, you cannot invoke self-defense.

Illustration:

Two policemen quarreled inside a police precinct. One shot the other. The other was wounded on his thigh. The policeman who was wounded on the thigh jumped on the arm of the fellow who shot him. In the process, they wrestled for possession of the gun. The policeman who shot the other guy fell on the floor. On that point, this policeman who was shot at the thigh was already able to get hold of the revolver. In that position, he started emptying the revolver of the other policeman who was lying on the floor. In this case, it was held that the defense of self-defense is no available. The shooting was not justified.

In **People v. Rodriguez,** a woman went into the house of another woman whom she suspected of having an affair with her husband. She started pouring gasoline on the house of the woman. Since the woman has children inside the house, she jumped out to prevent this other woman from pouring gasoline around the house. The woman who was pouring gasoline had a bolo, so she started hacking the other woman with it. They grappled with the bolo. At that moment, the one who jumped out of the house was able to wrest the bolo away and started hacking the other woman. It was held that the hacking was not justified. Actually, when she killed the supposed unlawful aggressor, her life and limb were no longer in imminent danger. That is the focal point.

At the time the accused killed the supposed unlawful aggressor, was her life in danger? If the answer is no, there is no self-defense. But while there may be no justifying circumstance, do not forget the incomplete self-defense. This

is a mitigating circumstance under paragraph 1 of Article 13. This mitigating circumstance is either privileged or ordinary. If ordinary, it has the effect of reducing the imposable penalty to the minimum period. But if it is privileged, it has the effect of lowering the penalty by one to two degrees, depending on how the court will regard the absence or presence of conditions to justify the act.

Defense of property rights

This can only be invoked if the life and limb of the person making the defense is also the subject of unlawful aggression. Life cannot be equal to property.

Defense of stranger

If the person being defended is already a second cousin, you do not invoke defense of relative anymore. It will be defense of stranger. This is vital because if the person making the defense acted out or revenge, resentment or some evil motive in killing the aggressor, he cannot invoke the justifying circumstance if the relative defended is already a stranger in the eyes of the law. On the other hand, if the relative defended is still within the coverage of defense of relative, even though he acted out of some evil motive, it would still apply. It is enough that there was unlawful aggression against the relative defended, and that the person defending did not contribute to the unlawful aggression.

Question & Answer

The person being defended was a relative – a first cousin. But the fellow who killed the aggressor had some score to settle with the aggressor. Is he entitled to a justifying circumstance?

> Yes. In law, the condition that a person making the defense did not act out of revenge, resentment or evil motive is not a requirement in defense of relative. This is only required in defense of strangers.

Incomplete self-defense or incomplete justifying circumstance or incomplete exempting circumstances

When you say incomplete justifying circumstance, it means that not all the requisites to justify the act are present or not the requisites to exempt from criminal liability are present.

How, if at all, may incomplete self-defense affect the criminal liability of the offender?

If the question specifically refers to incomplete self-defense, defense of relative or defense of stranger, you have to qualify your answer.

First, to have incomplete self-defense, the offended party must be guilty of unlawful aggression. Without this, there can be no incomplete self-defense, defense of relative, or defense of stranger.

Second, if only the element of unlawful aggression is present, the other requisites being absent, the offender shall be given only the benefit of an ordinary mitigating circumstance.

Third, if aside from the element of unlawful aggression another requisite, but not all, are present, the offender shall be given the benefit of a privileged mitigating circumstance. In such a case, the imposable penalty shall be reduced by one or two degrees depending upon how the court regards the importance of the requisites present. Or absent.

If the question refers generally to justifying or exempting circumstances, the question should be, “how may incomplete justifying circumstance affect criminal liability of the offender, if at all?”

Make a separate answer with respect to self-defense, defense of relative or defense of stranger because in these cases, you always have to specify the element of unlawful aggression; otherwise, there would be no incomplete self-defense, defense of relative or defense of stranger. In general, with respect to other circumstances, you need only to say this:
If less than a majority of the requisites necessary to justify the act or exempt from criminal liability are present, the offender shall only be entitled to an ordinary mitigating circumstance.

If a majority of the requisites needed to justify the act or exempt from criminal liability are present, the offender shall be given the benefit of a privileged mitigating circumstance. The penalty shall be lowered by one or two degrees. When there are only two conditions to justify the act or to exempt from criminal liability, the presence of one shall be regarded as the majority.

State of necessity

The state of necessity must not have been created by the one invoking the justifying circumstances. For example, A drove his car beyond the speed limit so much so that when he reached the curve, his vehicle skidded towards a ravine. He swerved his car towards a house, destroying it and killing the occupant therein. A cannot be justified because the state of necessity was brought about by his own felonious act.

Civil liability referred to in a state of necessity is based not on the act committed but on the benefit derived from the state of necessity. So the accused will not be civilly liable if he did not receive any benefit out of the state of necessity. On the other hand, persons who did not participate in the damage or injury would be pro tanto civilly liable if they derived benefit out of the state of necessity.

Civil liability is based on the benefit derived and not on the act, damage or injury caused. It is wrong to treat this as an exception to the rule that in justifying circumstances, there is no criminal nor civil liability, on the principle that "no one should enrich himself at the expense of another".

Illustration:

A and B are owners of adjoining lands. A owns the land for planting certain crops. B owns the land for raising certain goats. C used another land for a vegetable garden. There was heavy rain and floods. Dam was opened. C drove all the goats of B to the land of A. The goats rushed to the land of A to be saved, but the land of A was destroyed. The author of the act is C, but C is not civilly liable because he did not receive benefits. It was B who was benefited, although he was not the actor. He cannot claim that it was fortuitous event. B will answer only to the extent of the benefit derived by him. If C who drove all the goats is accused of malicious mischief, his defense would be that he acted out of a state of necessity. He will not be civilly liable.

Fulfillment of duty

In the justifying circumstance of a person having acted out of fulfillment of a duty and the lawful exercise of a right or office, there are only two conditions:

(1) The felony was committed while the offender was in the fulfillment of a duty or in the lawful exercise of a right or office; and

(2) The resulting felony is the unavoidable consequence of the due fulfillment of the duty or the lawful exercise of the right or office.

Invariably, when you are given a problem on this premise, and the first condition is present, but the second is not because the offender acted with culpa, the offender will be entitled to a privelege mitigating circumstance. This is what you call incomplete justification of fulfillment of duty or incomplete justification of exercise of a right. In that case, the penalty would be reduced by one or two degrees.

In **People v. Oanis and Callanta,** the accused Chief of Police and the constabulary soldier were sent out to arrest a certain Balagtas, supposedly a notorious bandit. There was an order to kill Balagtas if he would resist. The accused arrived at the house of a dancer who was supposedly the girlfriend of Balagtas. When they were there, they saw a certain person who resembled Balagtas in all his bodily appearance sleeping on a bamboo bed but facing the other direction. The accused, without going around the house, started firing at the man. They found out later on that the man was not really Balagtas. They tried to invoke the justifying circumstance of having acted in fulfillment of a duty.

The second requisite is absent because they acted with negligence. There was nothing that prevented them from looking around the house and looking at the face of the fellow who was sleeping. There could not be any danger on their life and limb. Hence, they were held guilty of the crime of murder because the fellow was killed when he was sleeping and totally defenseless. However, the Supreme Court granted them the benefit of incomplete justification of fulfillment of duty and the penalty was reduced by one or two degrees.

Do not confuse fulfillment of a duty with self-defense.

Illustration:

A, a policeman, while waiting for his wife to go home, was suddenly stabbed at the back by B, a hoodlum, who mistook him for someone else. When A saw B, he drew his revolver and went

after B. After firing a shot in the air, B did not stop so A shot B who was hit at a vital part of the body. B died. Is the act of A justified?

Yes. The justifying circumstance of self-defense cannot be invoked because the unlawful aggression had already ceased by the time A shot B. When the unlawful aggressor started fleeing, the unlawful aggression ceased. If the person attacked runs after him, in the eyes of the law, he becomes the unlawful aggressor. Self-defense cannot be invoked. You apply paragraph 5 on fulfillment of duty. The offender was not only defending himself but was acting in fulfillment of a duty, to bring the criminal to the authorities. As long as he was not acting out of malice when he fired at the fleeing criminal, he cannot be made criminally liable. However, this is true only if it was the person who stabbed was the one killed. But if, let us say, the policeman was stabbed and despite the fact that the aggressor ran into a crowd of people, the policeman still fired indiscriminately. The policeman would be held criminally liable because he acted with imprudence in firing toward several people where the offender had run. But although he will be criminally liable, he will be given the benefit of an incomplete fulfillment of duty.

Exempting circumstances

Art. 12. Circumstances which exempt from criminal liability. – the following are exempt from criminal liability:

1. An imbecile or an insane person, unless the latter has acted during a lucid interval.

When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement in one of the hospitals or asylums established for persons thus afflicted, which he shall not be permitted to leave without first obtaining the permission of the same court.

2. A person under nine years of age.

3. A person over nine years of age and under fifteen, unless he has acted with discernment, in which case, such minor shall be proceeded against in accordance with the provisions of Art. 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformably with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education otherwise, he shall be committed to the care of some institution or person mentioned in said Art. 80.

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

5. Any person who act under the compulsion of irresistible force.

6. Any person who acts under the impulse of an uncontrollable fear of an equal or greater injury.

7. Any person who fails to perform an act required by law, when prevented by some lawful insuperable cause.

In exempting circumstances, the reason for the exemption lies on the involuntariness of the act – one or some of the ingredients of voluntariness such as criminal intent, intelligence, or freedom of action on the part of the offender is missing. In case it is a culpable felony, there is absence of freedom of action or intelligence, or absence of negligence, imprudence, lack of foresight or lack of skill.

Imbecility and insanity

There is complete absence of intelligence. Imbecile has an IQ of 7. The intellectual deficiency is permanent. There is no lucid interval unlike in insanity.

The insanity that is exempting is limited only to mental aberration or disease of the mind and must completely impair the intelligence of the accused. Under common law countries, emotional or spiritual insanity are exempting circumstances unlike in this jurisdiction because the Revised Administrative Code, as defined is limited to mental aberration of the mind. This was the ruling in **People v. Dungo.**

In **People v. Rafanan, decided on November 21, 1991,** the following are the two tests for exemption on grounds of insanity:

(1) The test of cognition, or whether the accused acted with complete deprivation of

intelligence in committing said crime; and
(2) The test of volition, or whether the accused acted in total deprivation of freedom of will.

Schizoprenia (dementia praecox) can only be considered a mitigating circumstance because it does not completely deprive the offender of consciousness of his acts.

Minority

In exempting circumstances, the most important issue is how the minority of the offender affected his criminal liability. It seems that the view of many is that when the offender is a youthful offender, he must necessarily be confined in a reformatory. This is wrong. A youthful offender can only be confined in a reformatory upon order of the court. Under the amendment to Presidential Decree No. 603, Presidential Decree No. 1179 requires that before a youthful offender may be given the benefit if a suspension of sentence, there must be an application filed with the court which should pronounce sentence. Note that the commitment of the offender in a reformatory is just a consequence of the suspension of the sentence. If the sentence is not suspended, there is no commitment in a reformatory. The commitment is in a penitentiary, since suspension of sentence requires certain conditions:

(1) The crime committed should not be punishable by reclusion perpetua or death penalty;
(2) The offender should not have been given the benefit of a suspended sentence before. This means he is a first timer;
(3) He must be below 18 years old because a youthful offender is one who is below 18.

Note that the age of majority has been reduced to 18. There is no more bracket where the offender is a minor yet no longer entitled to a mitigating circumstance. An offender below 18 is always entitled to a mitigating or exempting circumstance.

How does the minority of the offender affect his criminal liability?

(1) If the offender is within the bracket of nine years old exactly or less, he is exempt from criminal liability but not from civil liability. This type of offenders are absolutely exempt. Even if the offender nine years or below acted with discernment, this should not be taken against him because in this age bracket, the exemption is absolute.

(2) If over nine but below 15, a distinction has to be made whether the offender acted with or without discernment. The burden is upon the prosecution to prove that the offender acted with discernment. It is not for the minor to prove that he acted without discernment. All that the minor has to show is that he is within the age bracket. If the prosecution would want to pin criminal liability on him, it has to prove that the crime was committed with discernment. Here, if the offender was exempt from criminal liability because the prosecution was not able to prove that the offender acted with discernment, he is only civilly liable but he will be committed to the surveillance of his parents who will be required to report to the court periodically on the progress or development of the offender.

    If the offender is proven to have acted with discernment, this is where the court may give him the benefit of a suspended sentence. He may be given the benefit of a suspended sentence under the conditions mentioned earlier and only if he would file an application therefor.

    Suspension of sentence is not automatic. If the youthful offender has filed an application therefor.

(3) If at the time the judgment is to be promulgated he is already above 18, he cannot avail of a suspended sentence. The reason is because if the sentence were to be suspended, he would be committed in a reformatory. Since he cannot be committed to a reformatory anymore because he is not less than 18 years old, he would have to be committed to a penitentiary. That means promulgation of the sentence shall not be suspended. If the sentence should not be suspended, although the minor may be qualified, the court will promulgate the sentence but the minor shall be entitled to the reduction of the penalty by at least two degrees.

    When the offender is over nine but below 15, the penalty to be imposed is discretionary on the court, but lowered by at least two degrees. It may be lowered by three or four degrees, depending upon whether the court

deems best for the interest of the offender. The limitation that it should be lowered by at least two degrees is just a limitation on the power of the court to reduce the penalty. It cannot be less than two degrees.

(4) If the offender is 15 years old and above but below 18, there is no exemption anymore but he is also given the benefit of a suspended sentence under the conditions stated earlier and if at the time the sentence is promulgated, he is not 18 years old or over yet. If the sentence is promulgated, the court will impose a penalty one degree lower. This time it is fixed. It is to be imposed one degree lower and in the proper periods subject to the rules in Article 64.

Damnum absque injuria

Under Article 12, paragraph 4, the offender is exempt not only from criminal but also from civil liability. This paragraph embodies the Latin maxim "damnum absque injuria".

Illustration:

A person who is driving his car within the speed limit, while considering the condition of the traffic and the pedestrians at that time, tripped on a stone with one of his car tires. The stone flew hitting a pedestrian on the head. The pedestrian suffered profuse bleeding. What is the liability of the driver?

There is no civil liability under paragraph 4 of Article 12. Although, this is just an exempting circumstance, where generally there is civil liability, yet, in paragraph 4 of Article 12, there is no civil liability as well as criminal liability. The driver is not under obligation to defray the medical expenses.

However, correlate paragraph 4 of Article 12 with the second paragraph of Article 275. Article 275 gives you the crime of abandoning the victim of one's own accident. It is a crime. Here, the accident referred to in paragraph 2 of Article 275 is in the concept of paragraph 4 of Article 12. This means that the offender must be performing a lawful act, that he was doing it with due care but somehow, injury resulted by mere accident without fault or intention of causing it.

If at the very beginning, the offender was negligent, you do not apply Article 275, paragraph 2. Instead, it will be Article 365 on criminal negligence. Notice that in the last paragraph of Article 365, in the case of the so-called hit and run drivers who have injured somebody and would abandon the victim of the accident, the penalty is qualified to a higher degree. Here, under paragraph 4 of Article 12, the infliction of the injury by mere accident does not give rise to a criminal or civil liability, but the person who caused the injury is duty bound to attend to the person who was injured. If he would abandon him, it is in that abandonment that the crime arises which is punished under the second paragraph of Article 275.

Compulsion of irresistible force and under the impulse of an uncontrollable fear

The offender must be totally deprived of freedom. If the offender has still freedom of choice, whether to act or not, even if force was employed on him or even if he is suffering from uncontrollable fear, he is not exempt from criminal liability because he is still possessed with voluntariness. In exempting circumstances, the offender must act without voluntariness.

In a situation where the offender would otherwise be exempt, but the requisites for exemption are not all present, the offender is still entitled to a mitigating circumstance of incomplete exemption under paragraph 1 of Article 13. Apply the rule if majority of the requisites to exempt from criminal liability are present. The offender shall be given the benefit of privelege mitigating circumstances. That means that the penalty prescribed of the crime committed shall be reduced by one or two degrees in accordance with Article 69 of the Revised Penal Code. If less than a majority of the requisites for exemption are present, the offender shall be given only the benefit of ordinary mitigating circumstances. That means the penalty shall be reduced to the minimum period of the prescribed penalty, unless the mitigating circumstance is offset by an aggravating circumstance.

Mitigating circumstances

Art. 13. Mitigating circumstances. – The following are mitigating circumstances;

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify or to

exempt from criminal liability in the respective cases are not attendant.

2. That the offender is under eighteen year of age or over seventy years. In the case of the minor, he shall be proceeded against in accordance with the provisions of Art. 80.

3. That the offender had no intention to commit so grave a wrong as that committed.

4. That sufficient provocation or threat on the part of the offended party immediately preceded the act.

5. That the act was committed in the immediate vindication of a grave offense to the one committing the felony (delito), his spouse, ascendants, or relatives by affinity within the same degrees.

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

7. That the offender had voluntarily surrendered himself to a person in authority or his agents, or that he had voluntarily confessed his guilt before the court prior to the presentation of the evidence for the prosecution;

8. That the offender is deaf and dumb, blind or otherwise suffering some physical defect which thus restricts his means of action, defense, or communications with his fellow beings.

9. Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts.

10. And, finally, any other circumstances of a similar nature and analogous to those above mentioned.

Distinctions between ordinary mitigating circumstances and privileged mitigating circumstances

(1) As to the nature of the circumstances
Ordinary mitigating circumstances can be offset by aggravating circumstances.
Privilege mitigating circumstance can never be offset by any aggravating circumstance.

(2) As to effect
Ordinary mitigating circumstances, if not offset, will operate to reduce the penalty to the minimum period, provided the penalty is a divisible one.
Privilege mitigating circumstances operate to reduce the penalty by one or two degrees, depending upon what the law provides.

You can easily detect whether the circumstance which mitigates the liability of the offender is privilege or not, that is, if the penalty is reduced by degree. If the penalty is lowered by one or two degrees, it is privilege; therefore, even if there is an aggravating circumstance, do not compensate because that would be violating the rules.

The circumstances under Article 13 are generally ordinary mitigating, except in paragraph 1, where it is privilege, Article 69 would apply. So also, paragraph 2, in cases where the offender is below 18 years old, such an offender if criminally liable is entitled to the lowering of penalty by one degree. But if over nine but under 15, he is entitled to a discretionary penalty of at least two degrees lower. When there is a lowering of penalties by degrees, it is a privilege. It cannot be offset by an aggravating circumstance.

Although the bulk of the circumstances in Article 13 are ordinary mitigating circumstances, yet, when the crime committed is punishable by a divisible penalty, two or more of this ordinary mitigating circumstances shall have the effect of a privilege mitigating circumstances if there is no aggravating circumstance at all.

Correlate Article 13 with Articles 63 and 64. Article 13 is meaningless without knowing the rules of imposing the penalties under Articles 63 and 64.

In bar problems, when you are given indeterminate sentences, these articles are very important.

When the circumstance which mitigates criminal liability is privileged, you give effect to it above all considerations. In other words, before you go into any circumstance, lower first the penalty to the proper degree. That is precisely why this circumstance is considered privileged. It takes preference over all other circumstances.

Question & Answer

A 17 year old boy committed parricide. Will he be given the benefit of Indeterminate Sentence Law? Then, the facts state, penalty for parricide is reclusion perpetua to death.

You have learned that the Indeterminate Sentence Law does not apply, among other situations, when the penalty imposed is death or life imprisonment. But then in the problem given, the offender is a 17-year old boy. That circumstance is privileged. So before you go in the Indeterminate Sentence Law, you have to apply that circumstance first. Being a 17-year old boy, therefore, the penalty would go one degree lower and the penalty for parricide which now stands at reclusion perpetua will go down to reclusion temporal. Reclusion temporal is already governed by the Indeterminate Sentence Law.

> The answer, therefore, is yes. He shall be given the benefit of the Indeterminate Sentence Law. Although the penalty prescribed for the crime committed is reclusion perpetua, that is not the imposable penalty, since being 17 years old is a privilege mitigating circumstance. That privilege lowers the penalty by one degree. The imposable penalty, therefore, is reclusion temporal. The Indeterminate Sentence Law applies to this and so the offender will be given its benefit.
>
> Criminal laws are to be construed always in a manner liberal or lenient to the offender. Between giving the offender the benefit of the Indeterminate Sentence Law and withholding it away from him, there is more reason to give him its benefit. It is wrong for you to determine whether the Indeterminate Sentence Law will apply or not on the basis of reclusion perpetua because that is not the imposable penalty. The moment you do that, you disregard the privileged character of minority. You are only treating it as an ordinary mitigating circumstance. Privilege mitigating circumstance will apply over and above all other considerations. When you arrive at the correct penalty, that is the time when you find out whether the Indeterminate Sentence Law will apply or not.

For purposes of lowering the penalty by one or two degrees, the age of the offender at the time of the commission of the crime shall be the basis, not the age of the offender at the time the sentence is to be imposed. But for purposes of suspension of the sentence, the age of the offender at the time the crime was committed is not considered, it is the age of the offender at the time the sentence is to be promulgated.

Praeter intentionem

The common circumstance given in the bar of praeter intentionem, under paragraph 3, means that there must be a notable disproportion between the means employed by the offender compared to that of the resulting felony. If the resulting felony could be expected from the means employed, this circumstance does not avail. This circumstance does not apply when the crime results from criminal negligence or culpa. When the crime is the product of reckless imprudence or simple negligence, mitigating circumstances does not apply. This is one of the three instances where the offender has performed a felony different from that which he intended. Therefore, this is the product of intentional felony, not a culpable one.

Sufficient threat or provocation

This is mitigating only if the crime was committed on the very person who made the threat or provocation. The common set-up given in a bar problem is that of provocation was given by somebody. The person provoked cannot retaliate against him; thus, the person provoked retaliated on a younger brother or on an elder father. Although in fact, there is sufficient provocation, it is not mitigating because the one who gives the provocation is not the one against whom the crime was committed.

Question & Answer

A was walking in front of the house of B. B at that time was with his brother C. C told B that sometime in the past, A boxed him, and because he was small, he did not fight back. B approached A and boxed him, but A cannot hit back at B because B is bigger, so A boxed C. Can A invoke sufficient provocation to mitigate criminal liability?

> No. Sufficient provocation must come from the offended party. There may actually be sufficient provocation which immediately preceded the act, but if provocation did not come from the person offended, paragraph 4, Article 13 will not apply.

The commission of the felony must be immediate to the threat or provocation in order that this circumstance be mitigating. If there is sufficient break of time before the provocation or threat and the consequent commission of the crime, the law presupposes that during that

interval, whatever anger or diminished self control may have emerged from the offender had already vanished or disappeared. In applying this mitigating circumstance, the courts are generally considering that there must be no break between the provocation or threat and the commission of the felony. In other words, the felony was committed precisely because he was then and there provoked.

However, the recent rulings of the Supreme Court, as well as the Court of Appeals, has stretched this criterion – it is not only a matter of time anymore. Before, there was a ruling that if a period of one hour had lapsed between the provocation and the commission of the felony, this mitigating circumstance is no longer applicable.

Illustration:

The accused went to a barrio dance. In that gathering, there was a bully and he told the accused that he is not allowed to go inside. The accused tried to reason out but the bully slapped him several times in front of so many people, some of whom were ladies who were being courted by the accused, so he was humiliated and embarrassed. However, he cannot fight the bully at that time because the latter was much bigger and heavier. Accused had no choice but to go home. When he saw the bully again, this time, he was armed with a knife and he stabbed the bully to death. The evidence for the accused showed that when he went home, he was not able to sleep throughout the night, thinking of the humiliation and outrage done to him, despite the lapse of about 22 hours. The Supreme Court gave him the benefit of this mitigating circumstance. The reason stated by the Supreme Court for allowing the accused to be benefited by this mitigating circumstance is that the effect of the humiliation and outrage emitted by the offended party as a provocation upon the accused was still present when he committed the crime and, therefore, the reason for paragraph 4 still applies. The accused was still acting under a diminished self control because he was thinking of the humiliation he suffered in the hands of the offended party. The outrage was so serious unless vindicated.

This is the correct interpretation of paragraph 4, Article 13. As long as the offender at the time he committed the felony was still under the influence of the outrage caused by the provocation or threat, he is acting under a diminished self control. This is the reason why it is mitigating.

You have to look at two criteria:

(1) If from the element of time, there is a material lapse of time stated in the problem and there is nothing stated in the problem that the effect of the threat or provocation had prolonged and affected the offender at the time he committed the crime, then you use the criterion based on the time element.

(2) However, if there is that time element and at the same time, facts are given indicating that at the time the offender committed the crime, he is still suffering from outrage of the threat or provocation done to him, then he will still get the benefit of this mitigating circumstance.

In **People v. Diokno,** a Chinaman eloped with a woman. Actually, it was almost three days before accused was able to locate the house where the Chinaman brought the woman. Here, sufficient provocation was one of the mitigating circumstances considered by the Supreme Court in favor of the accused.

Vindication of a grave offense

The word "offense" should not be taken as a crime. It is enough if what was imputed or what was done was wrong. In considering whether the wrong is a grave one upon the person who committed the crime, his age, education and social status will be considered.

Here, in vindication of a grave offense, the vindication need not be done by the person upon whom the grave offense was committed. So, unlike in sufficient threat or provocation where the crime should be inflicted upon the very person who made the threat or provocation, here, it need not be the same person who committed the grave offense or who was offended by the wrong done by the offended party.

The word "immediate" here does not carry the same meaning as that under paragraph 4. The word "immediate" here is an erroneous Spanish translation because the Spanish word is "proxima" and not "immediatementa." Therefore, it is enough that the offender committed the crime with the grave offense done to him, his spouse, his ascendant or descendant or to his

brother or sister, whether natural, adopted or legitimate and that is the proximate cause of the commission of the crime.

Passion or obfuscation

This stands on the premise or proposition that the offender is suffering from a diminished self control because of the passion or obfuscation. The same is true with the circumstances under paragraphs 4 and 5. So, there is a ruling to the effect that if the offender is given the benefit of paragraph 4, he cannot be given the benefit of paragraph 5 or 6, or vice-versa. Only one of the three mitigating circumstances should be given in favor of the offender.

However, in one case, one of the mitigating circumstances under paragraphs 4, 5 and 6 stands or arises from a set of facts, and another mitigating circumstance arises from another set of facts. Since they are predicated on different set of facts, they may be appreciated together, although they arose from one and the same case. Hence, the prohibition against considering all these mitigating circumstances together and not as one applies only if they would be taken on the basis of the same set of facts.

If the case involves a series of facts, then you can predicate any one of these circumstances on one fact and the other on another fact and so on.

The passion must be legitimate. As a rule, it cannot be based on common law relationship because common law relationships are illicit. However, consider whether passion or obfuscation is generated by common law relationship or by some other human consideration.

In a case where the relationship between the accused and the woman he was living with was one of common law, he came home and surprised his common law wife having sexual intercourse with a friend. This infuriated him. He killed the friend and he claimed passion or obfuscation. The trial court denied his claim because the relationship was a common law one.

On review, the accused was given the benefit of the circumstances and the basis of considering passion or obfuscation in favor of the accused was the act of the common law wife in committing adultery right from the conjugal bed. Whether or not they are married, any man who discovers that infidelity was committed on the very bed provided by him to the woman would naturally be subjected to obfuscation.

When a married person surprised his better half in the act of sexual intercourse with another, he gets the benefit of Article 247. However, that requisite which in the first place, the offender must have surprised his/her spouse actually committing sexual intercourse should be present. If the surprising was done not in the actual act of sexual intercourse but before or after it, then Article 247 does not apply.

Although this is the ruling, still, the accused will be given the benefit of sufficient provocation if the intercourse was done in his dwelling. If this act was done somewhere else and the accused kills the paramour or the spouse, this may be considered as mitigation of a grave offense to him or otherwise as a situation sufficient to create passion or obfuscation. Therefore, when a married man upon coming home, surprises his wife who was nude and lying with another man who was also nude, Article 247 does not apply. If he kills them, vindication of a grave offense will be mitigating in favor of the offender.

Illustrations:

A is courting B, a receptionist in a beerhouse. C danced with B. A saw this and stabbed C. It was held that jealousy is an acknowledged basis of passion.

A, a male classmate is escorting B, a female classmate. On the way out, some men whistled lustfully. The male classmate stabbed said men. This was held to be obfuscation.

When a man saw a woman bathing, almost naked, for which reason he raped her, such man cannot claim passion as a mitigating circumstance.

A man and a woman were living together for 15 years. The man left the village where they were living and never returned home. The common law wife learned that he was getting married to a classmate. On the scheduled wedding day, she stabbed the groom in the chest, instantly killing him. She confessed and explained that any woman cannot tolerate what he did to her. She gave him the best years of her life. She practically waited for him day and night. It was held that passion and obfuscation were

considered mitigating. Ingratitude was shown here.

Voluntary surrender

The essence of voluntary surrender requires that the offender, after having committed the crime, had evaded the law enforcers and the law enforcers do not know of his whereabouts. In short, he continues to elude arrest. If, under this circumstance, the offender would come out in the open and he gives himself up, his act of doing so will be considered as indicative of repentance and he also saves the government the time and the expense of looking for him.

As a general rule, if after committing the crime, the offender did not flee and he went with the responding law enforcers meekly, voluntary surrender is not applicable.

However, there is a ruling that if after committing the crime, the offender did not flee and instead waited for the law enforcers to arrive and he surrendered the weapon he used in killing the victim, the ruling was that voluntary surrender is mitigating. In this case, the offender had the opportunity to go into hiding, the fact that he did not flee is not voluntary surrender.

However, if he comes out from hiding because he is seriously ill and he went to get medical treatment, the surrender is not considered as indicative of remorse or repentance. The surrender here is only done out of convenience to save his own self. Hence, it is not mitigating.

Even if the offender may have gone into hiding, if the law enforcers had already known where he is hiding and it is just a matter of time before he is flushed out of that place, then even if the law enforcers do not know exactly where he was hiding and he would come out, this is not voluntary surrender.

Whether or not a warrant of arrest had been issued against the offender is immaterial and irrelevant. The criterion is whether or not the offender had gone into hiding or had the opportunity to go into hiding and the law enforcers do not know of his whereabouts. If he would give up, his act of surrendering under such circumstance indicates that he is willing to accept the consequences of the wrong he has done and also thereby saves the government the effort, the time and the expenses to be incurred in looking for him.

Where the offender went to the municipal building not to own responsibility for the killing, such fact is not tantamount to voluntary surrender as a mitigating circumstance. Although he admitted his participation in the killing, he tried to avoid responsibility by claiming self-defense which however he was not able to prove. **People v. Mindac, decided December 14, 1992.**

Surrender to be considered voluntary and thus mitigating, must be spontaneous, demonstrating an intent to submit himself unconditionally to the person in authority or his agent in authority, because (1) he acknowledges his guilt (2) he wishes to save the government the trouble and expenses of searching and capturing him. Where the reason for the surrender of the accused was to insure his safety, his arrest by policemen pursuing him being inevitable, the surrender is not spontaneous.

Physical defect

The physical defect that a person may have must have a relation to the commission of the crime. In a case where the offender is deaf and dumb, personal property was entrusted to him and he misappropriated the same. The crime committed was estafa. The fact that he was deaf and dumb is not mitigating because that does not bear any relation to the crime committed.

Not any physical defect will affect the crime. It will only do so if it has some relation to the crime committed. If a person is deaf and dumb and he has been slandered, he cannot talk so what he did was, he got a piece of wood and struck the fellow on the head. The crime committed was physical injuries. The Supreme Court held that being a deaf and dumb is mitigating because the only way is to use his force because he cannot strike back.

If the offender is blind in one eye, as long as his means of action, defense or communication with others are not restricted, such circumstance is not mitigating. This circumstance must also have a bearing on the crime committed and must depend on how the crime was committed.

Analogous cases

The act of the offender of leading the law enforcers to the place where he buried the instrument of the crime has been considered as

equivalent to voluntary surrender. The act of a thief in leading the authorities to the place where he disposed of the loot has been considered as analogous or equivalent to voluntary surrender.

Stealing by a person who is driven to do so out of extreme poverty is considered as analogous to incomplete state of necessity. However, this is not so where the offender became impoverished because of his own way of living his life. If his lifestyle is one of having so many vices, as a result of which he became poor, his subsequent stealing because of his poverty will not be considered mitigated by incomplete state of necessity.

Aggravating circumstances

Art. 14. Aggravating circumstances. – The following are aggravating circumstances:

1. That advantage be taken by the offender of his public position.

2. That the crime be committed in contempt or with insult to the public authorities.

3. That the act be committed with insult or in disregard of the respect due the offended party on account of his rank, age, or sex, or that is be committed in the dwelling of the offended party, if the latter has not given provocation.

4. That the act be committed with abuse of confidence or obvious ungratefulness.

5. That the crime be committed in the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a place dedicated to religious worship.

6. That the crime be committed in the night time, or in an uninhabited place, or by a band, whenever such circumstances may facilitate the commission of the offense.

Whenever more than three armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a band.

7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

8. That the crime be committed with the aid of armed men or persons who insure or afford impunity.

9. That the accused is a recidivist.

A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of this Code.

10. That the offender has been previously punished by an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

11. That the crime be committed in consideration of a price, reward, or promise.

12. That the crime be committed by means of inundation, fire, poison, explosion, stranding of a vessel or international damage thereto, derailment of a locomotive, or by the use of any other artifice involving great waste and ruin.

13. That the act be committed with evidence premeditation.

14. That the craft, fraud or disguise be employed.

15. That advantage be taken of superior strength, or means be employed to weaken the defense.

16. That the act be committed with treachery (alevosia).

There is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to insure its execution, without risk to himself arising from the defense which the offended party might make.

17. That means be employed or circumstances brought about which add ignominy to the natural effects of the act.

18. That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance of a crime a wall, roof, floor, door, or window be broken.

20. That the crime be committed with the aid of persons under fifteen years of age or by means of motor vehicles, motorized watercraft, airships, or other similar means. (As amended by RA 5438).

21. That the wrong done in the commission of the crime be deliberately augmented by causing other wrong not necessary for its commissions.

Kinds of aggravating circumstances:

(1) Generic or those that can generally apply to all crime;
(2) Specific or those that apply only to a particular crime;
(3) Qualifying or those that change the nature of the crime;
(4) Inherent or those that must of necessity accompany the commission of the crime.

The aggravating circumstances must be established with moral certainty, with the same degree of proof required to establish the crime itself.

Most important of the classification of aggravating circumstances are the qualifying and the generic aggravating circumstances.

In practice, the so-called generic aggravating circumstances are referred to simply as aggravating circumstances. The so-called qualifying aggravating circumstances are simply referred to as qualifying circumstances. This is so because there is no qualifying circumstance that is not aggravating. To say qualifying aggravating circumstance is redundant. In the examination, if you find qualifying circumstances, you have to think about these as aggravating circumstances which are the ingredients of the crime.

Distinctions between aggravating and qualifying circumstances:

In aggravating circumstances –

(1) The circumstance can be offset by an ordinary mitigating circumstance;
(2) No need to allege this circumstance in the information, as long as it is proven during trial. If it is proved during trial, the court would consider the same in imposing the penalty;
(3) It is not an ingredient of a crime. It only affects the penalty to be imposed but the crime remains the same.

In qualifying circumstance –

(1) The circumstance affects the nature of the crime itself such that the offender shall be liable for a more serious crime. The circumstance is actually an ingredient of the crime;
(2) Being an ingredient of the crime, it cannot be offset by any mitigating circumstance;
(3) Qualifying circumstances to be appreciated as such must be specifically alleged in the complaint or information. If not alleged but proven during the trial, it will be considered only as generic aggravating circumstance. If this happens, they are susceptible of being offset by a mitigating circumstance.

An aggravating circumstance is qualifying when it is an ingredient of the crime. Therefore it is included in the provision of law defining the crime. If it is not so included, it is not qualifying.

In Article 248, in the crime of murder, the law specifically mentions thereunder several circumstances which are aggravating under Article 14. All of these will qualify a killing from homicide to murder; however, you understand that only one is qualifying.

If let us say, the accused was charged with murder. Three of these circumstances: treachery, evident premeditation and act was done in consideration of a price, reward or promise were alleged as aggravating. Only one of these is qualifying. If any one of the three circumstances was proven, the crime was already murder. If the other two are also proven, even if they are alleged in the information or complaint, they are only to be taken as generic. If there is any mitigating circumstance in favor of the offender, the two other circumstances which are otherwise qualifying could be offset by the mitigating, provided the mitigating circumstance is not a privileged mitigating circumstance. Therefore, if there are three of the qualifying circumstances alleged in the complaint or information, only one will qualify the crime. The others will merely be considered as generic. Thus, if there is any ordinary mitigating circumstance in favor of the accused, such will be wiped out by these circumstances, although initially they are considered as qualifying. Do not hesitate to offset on the principle that a qualifying circumstance cannot be offset by an ordinary mitigating circumstance because only one is necessary.

Even if any of the qualifying circumstances under Article 248 on murder was proven, if that is not the circumstance alleged in the

information, it cannot qualify the crime. Let us say, what was alleged in the information was treachery. During the trial, what was proven was the price, reward or promise as a consideration for killing. The treachery was not proved. Just the same, the accused cannot be convicted of murder because the circumstance proven is not qualifying but merely generic. It is generic because it is not alleged in the information at all. If any of these qualifying circumstances is not alleged in the information, it cannot be considered qualifying because a qualifying is an ingredient of the crime and it cannot be taken as such without having alleged in the information because it will violate the right of the accused to be informed of the nature of the accusation against him.

Correlate Article 14 with Article 62. Article 62 gives you the different rules regarding aggravating circumstances. Aggravating circumstances will not be considered when it is the crime itself. If the crime charged is qualified trespass to dwelling, dwelling is no longer aggravating. When the aggravating circumstance refers to the material execution of the crime, like treachery, it will only aggravate the criminal liability of those who employed the same.

Illustration:

A person induced another to kill somebody. That fellow killed the other guy and employed treachery. As far as the killing is concerned, the treachery will qualify only the criminal liability of the actual executioner. The fellow who induced him becomes a co-principal and therefore, he is liable for the same crime committed. However, let us say, the fellow was hired to kill the parent of the one who hired him. He killed a stranger and not the parent. What was committed is different from what was agreed upon. The fellow who hired him will not be liable for the crime he had done because that was not the crime he was hired to commit.

Taking advantage of public position

Article 62 was also amended by the Republic Act No. 7659. The legal import of this amendment is that the subject circumstance has been made a qualifying or special aggravating that shall not be offset or compensated by a mitigating circumstance. If not alleged in the information, however, but proven during the trial, it is only appreciated as a generic aggravating circumstance.

The mitigating circumstance referred to in the amendment as not affecting the imposition of the penalty in the maximum are only ordinary mitigating circumstances. Privileged mitigating circumstances always lower the penalty accordingly.

Disrespect due to rank, age, sex

Aggravating only in crimes against persons and honor, not against property like Robbery with homicide (**People v. Ga, 156 SCRA 790**).

Teachers, professors, supervisors of public and duly recognized private schools, colleges and universities, as well as lawyers are persons in authority only for purposes of direct assault and simple resistance, but not for purposes of aggravating circumstances in paragraph 2, Article 14. (**People v. Taoan, 182 SCRA 601**).

Abuse of confidence

Do not confuse this with mere betrayal of trust. This is aggravating only when the very offended party is the one who reposed the confidence. If the confidence is reposed by another, the offended party is different from the fellow who reposed the confidence and abuse of confidence in this case is not aggravating.

Illustrations:

A mother left her young daughter with the accused because she had nobody to leave the child with while she had to go on an errand. The accused abused the child. It was held that the abuse of confidence is not aggravating. What is present is betrayal of trust and that is not aggravating.

In a case where the offender is a servant, the offended party is one of the members of the family. The servant poisoned the child. It was held that abuse of confidence is aggravating. This is only true however, if the servant was still in the service of the family when he did the killing. If he was driven by the master already out of the house for some time and he came back and poisoned the child, abuse of confidence is no longer aggravating. The reason is because that confidence has already been terminated when the offender was driven out of the house.

Dwelling

Dwelling will only be aggravating if it is the dwelling of the offended party. It should also not be the dwelling of the offender. If the dwelling is both that of the offended party and the offender, dwelling is not aggravating.

Dwelling need not be owned by the offended party. It is enough that he used the place for his peace of mind, rest, comfort and privacy. The rule that dwelling, in order to be aggravating must be owned by the offended party is no longer absolute. Dwelling can be aggravating even if it is not owned by the offended party, provided that the offended party is considered a member of the family who owns the dwelling and equally enjoys peace of mind, privacy and comfort.

Illustration:

Husband and wife quarreled. Husband inflicted physical violence upon the wife. The wife left the conjugal home and went to the house of her sister bringing her personal belongings with her. The sister accommodated the wife in the formers home. The husband went to the house of the sister-in-law and tried to persuade the wife to come back to the conjugal home but the wife refused because she is more at peace in her sister's house than in the conjugal abode. Due to the wife's refusal to go back to the conjugal home and live with the husband, the husband pulled out a knife and stabbed the wife which caused her death. It was held that dwelling was aggravating although it is not owned by the offended party because the offended party is considered as a member of the family who owns the dwelling and that dwelling is where she enjoyed privacy. Peace of mind and comfort.

Even a room in a hotel if rented as a dwelling, like what the salesmen do when they are assigned in the provinces and they rent rooms, is considered a dwelling. A room in a hotel or motel will be considered dwelling if it is used with a certain degree of permanence, where the offended party seeks privacy, rest, peace of mind and comfort.

If a young man brought a woman in a motel for a short time and there he was killed, dwelling is not aggravating.

A man was killed in the house of his common law wife. Dwelling is aggravating in this case because the house was provided by the man.

Dwelling should not be understood in the concept of a domicile. A person has more than one dwelling. So, if a man has so many wives and he gave them a places of their own, each one is his own dwelling. If he is killed there, dwelling will be aggravating, provided that he also stays there once in a while. When he is only a visitor there, dwelling is not aggravating.

The crime of adultery was committed. Dwelling was considered aggravating on the part of the paramour. The paramour is not a resident of the same dwelling. However, if the paramour was also residing on the same dwelling, dwelling is not considered aggravating.

The term "dwelling" includes all the dependencies necessary for a house or for rest or for comfort or a place of privacy. If the place used is on the second floor, the stairs which are used to reach the second floor is considered a dwelling because the second floor cannot be enjoyed without the stairs. If the offended party was assaulted while on the stairs, dwelling is already aggravating. For this reason, considering that any dependency necessary for the enjoyment of a place of abode is considered a dwelling.

Illustrations:

A and B are living in one house. A occupies the ground floor while B the upper floor. The stairs here would form part only of B's dwelling, the same being necessary and an integral part of his house or dwelling. Hence, when an attack is made while A is on the stairs, the aggravating circumstance of dwelling is not present. If the attack is made while B was on the stairs, then the aggravating circumstance of dwelling is present.

Whenever one is in his dwelling, the law is presuming that he is not intending to commit a wrong so one who attacks him while in the tranquility of his home shows a degree of perversity in him. Hence, this aggravating circumstance.

Dwelling is not limited to the house proper. All the appurtenances necessary for the peace and comfort, rest and peace of mind in the abode of the offended party is considered a dwelling.

Illustrations:

A man was fixing something on the roof of his house when he was shot. It was held that dwelling is aggravating. Roof still part of the house.

In the provinces where the comfort rooms are usually far from the house proper, if the offended party while answering the call of nature is killed, then dwelling is aggravating because the comfort room is a necessary dependency of the house proper.

A person while in the room of his house, maintaining the room, was shot. Dwelling is aggravating.

If the offender entered the house and the offended party jumped out of the house, even if the offender caught up with him already out of the house, dwelling is still aggravating. The reason is because he could not have left his dwelling were it not for the fact that the attacker entered the house.

If the offended party was inside the house and the offender was outside and the latter shot the former inside the house while he was still outside. Dwelling is still aggravating even if the offender did not enter the house.

A garage is part of the dwelling when connected with an interior passage to the house proper. If not connected, it is not considered part of the dwelling.

One-half of the house is used as a store and the other half is used for dwelling but there is only one entrance. If the dwelling portion is attacked, dwelling is not aggravating because whenever a store is open for business, it is a public place and as such is not capable of being the subject of trespass. If the dwelling portion is attacked where even if the store is open, there is another separate entrance to the portion used for dwelling, the circumstance is aggravating. However, in case the store is closed, dwelling is aggravating since here, the store is not a public place as in the first case.

Balcony is part of the dwelling because it is appurtenant to the house

Dwelling is aggravating in robbery with homicide because the crime can be committed without necessarily transgressing the sanctity of the home (**People v. De Los Reyes, decided October 22, 1992**).

Dwelling is aggravating where the place is, even for a brief moment, a "home", although he is not the owner thereof as when victim was shot in the house of his parents.

Band

In band, there should at least be four persons. All of them should be armed. Even if there are four, but only three or less are armed, it is not a band. Whenever you talk of band, always have in mind four at least. Do not say three or more because it is four or more. The way the law defines a band is somewhat confusing because it refers simply to more than 3, when actually it should be 4 or more.

Correlate this with Article 306 - Brigandage. The crime is the band itself. The mere forming of a band even without the commission of a crime is already a crime so that band is not aggravating in brigandage because the band itself is the way to commit brigandage.

However, where brigandage is actually committed, band becomes aggravating.

Uninhabited place

It is determined not by the distance of the nearest house to the scene of the crime but whether or not in the place of the commission of the offense , there was a reasonable possibility of the victim receiving some help.

Illustration:

A is on board a banca, not so far away. B and C also are on board on their respective bancas. Suddenly, D showed up from underwater and stabbed B. Is there an aggravating circumstance of uninhabited place here? Yes, considering the fact that A and C before being able to give assistance still have to jump into the water and swim towards B and the time it would take them to do that, the chances of B receiving some help was very little, despite the fact that there were other persons not so far from the scene.

Evidence tending to prove that the offender took advantage of the place and purposely availed of it is to make it easier to commit the crime, shall be necessary.

Nighttime

What if the crime started during the daytime and continued all the way to nighttime? This is not aggravating.

As a rule, the crime must begin and end during the nighttime. Crime began at day and ended at night, as well as crime began at night and ended at day is not aggravated by the circumstance of nighttime.

Darkness is what makes this circumstance aggravating.

Illustration:

One evening, a crime was committed near the lamp post. The Supreme Court held that there is no aggravating circumstance of nighttime. Even if the crime was committed at night, but there was light, hence, darkness was not present, no aggravating circumstance just by the fact of nighttime alone.

Even if there was darkness but the nighttime was only an incident of a chance meeting, there is no aggravating circumstance here. It must be shown that the offender deliberately sought the cover of darkness and the offender purposely took advantage of nighttime to facilitate the commission of the offense.

Nocturnity is the period of time after sunset to sunrise, from dusk to dawn.

Different forms of repetition or habituality of the offender

(1) Recidivism under Article 14 (9) - The offender at the time of his trial for one crime shall have been previously convicted by final judgment of another embraced in the same title of the Revised Penal Code.
(2) Repetition or reiteracion under Article 14 (10) - The offender has been previously punished for an offense which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.
(3) Habitual delinquency under Article 62 (5) - The offender within the period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, is found guilty of the any of said crimes a third time or oftener.
(4) Quasi-recidivism under Article 160 - Any person who shall commit a felony after having been convicted by final judgment before beginning to serve such sentence or while serving such sentence shall be punished by the maximum period prescribed by law for the new felony.

Distinctions between recidivism and habitual delinquency

In recidivism -

(1) Two convictions are enough.
(2) The crimes are not specified; it is enough that they may be embraced under the same title of the Revised Penal Code.
(3) There is no time limit between the first conviction and the subsequent conviction. Recidivism is imprescriptible.
(4) It is a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance. If not offset, it would only increase the penalty prescribed by law for the crime committed to its maximum period.
(5) The circumstance need not be alleged in the information.

In habitual delinquency -

(1) At least three convictions are required.
(2) The crimes are limited and specified to: (a) serious physical injuries, (b) less serious physical injuries, (c) robbery, (d) theft, (e) estafa or swindling and (f) falsification.
(3) There is a time limit of not more than 10 years between every convictions computed from the first conviction or release from punishment thereof to conviction computed from the second conviction or release therefrom to the third conviction and so on . . .
(4) Habitual delinquency is a special aggravating circumstance, hence it cannot be offset by any mitigating circumstance. Aside from the penalty prescribed by law for the crime committed, an additional penalty shall be imposed depending upon whether it is already the third conviction, the fourth, the fifth and so on . . .
(5) The circumstance must be alleged in the information; otherwise the court cannot acquire jurisdiction to impose additional penalty.

Recidivism

In recidivism, the emphasis is on the fact that the

offender was previously convicted by final judgement of a felony and subsequently found guilty of another felony embraced in the same title of the Revised Penal Code. The law considers this aggravating when a person has been committing felonies embraced in the same title because the implication is that he is specializing on such kind of crime and the law wants to prevent any specialization. Hence, ordinarily, when a person commits a crime under different titles, no aggravating circumstance is present. It is important that the conviction which came earlier must refer to the crime committed earlier than the subsequent conviction.

Illustration:

In 1980, A committed robbery. While the case was being tried, he committed theft in 1983. He was found guilty and was convicted of theft also in 1983. The conviction became final because he did not appeal anymore and the trial for his earlier crime which was robbery ended in 1984 where he was also convicted. He also did not appeal this decision. Is the accused a recidivist? The subsequent conviction must refer to a felony committed later in order to constitute recidivism. The reason for this is as the time the first crime was committed, there was no other crime of which he was convicted so he cannot be regarded as a repeater.

In recidivism, the crimes committed should be felonies. Recidivism cannot be had if the crime committed is a violation of a special law.

Recidivism does not prescribe. No matter how long ago the offender was convicted, if he is subsequently convicted of a crime embraced in the same title of the Revised Penal Code, it is taken into account as aggravating in imposing the penalty.

Pardon does not erase recidivism, even if it is absolute because only excuses the service of the penalty, but not the conviction.

If the offender has already served his sentence and he was extended an absolute pardon, the pardon shall erase the conviction including recidivism because there is no more penalty so it shall be understood as referring to the conviction or the effects of the crime.

Recidivism may be considered even though not alleged in the information because this is only a generic aggravating circumstance.

It is necessary to allege recidivism in the information, but if the defense does not object to the presentation of evidence during the trial and the same was proven, the court shall consider such aggravating circumstance because it is only generic.

In recidivism, although the law defines it as a circumstance where a person having been convicted by final judgement was previously convicted also by final judgement for a crime embraced in the same title in the Revised Penal Code, it is necessary that the conviction must come in the order in which they are committed.

Question & Answer

In 1975, the offender committed robbery. While the same was being tried in 1978, he committed theft. In 1980, he was convicted of theft and he did not appeal this decision. The trial for robbery ended in 1981. May the judge in imposing the penalty for robbery consider the accused a recidivist considering that he was already convicted in 1980 for the crime of theft which is under the same title of the Revised Penal Code as that of robbery?

> No, because the robbery which was committed earlier would be decided later. It must be the other way around. This is because in 1975 when he committed the robbery, there was no crime committed yet. Thus, even though in imposing the penalty for the robbery, there was already a previous conviction, if that conviction is subsequent to the commission of the robbery, he is not a recidivist. If you will interpret the definition of recidivism, this would seem to be covered but that is not so.

Habitual delinquency

We have to consider the crimes in it and take note of the titles of crimes in the Revised Penal Code.

If the offender had committed and was convicted of each of the crimes under each category so that no two crimes fall under the same title of the Revised Penal Code, you have a situation where the offender is a habitual delinquent but not a recidivist because no two crimes fall under the same title of the Code.

If the first conviction is for serious physical injuries or less serious physical injuries and the second conviction is for robbery, theft or estafa and the third is for falsification, then the moment the habitual delinquent is on his fourth conviction already, you cannot avoid that he is a habitual delinquent and at the same time a recidivist because at least, the fourth time will have to fall under any of the three categories.

When the offender is a recidivist and at the same time a habitual delinquent, the penalty for the crime for which he will be convicted will be increased to the maximum period unless offset by a mitigating circumstance. After determining the correct penalty for the last crime committed, an added penalty will be imposed in accordance with Article 62.

Habitual delinquency, being a special or specific aggravating circumstance must be alleged in the information. If it is not alleged in the information and in the course of the trial, the prosecution tried to prove that the offender is a habitual delinquent over the objection of the accused, the court has no jurisdiction to consider the offender a habitual delinquent. Even if the accused is in fact a habitual delinquent but it is not alleged in the information, the prosecution when introducing evidence was objected to, the court cannot admit the evidence presented to prove habitual delinquency over the objection of the accused.

On the other hand, recidivism is a generic aggravating circumstance. It need not be alleged in the information. Thus, even if recidivism is not alleged in the information, if proven during trial, the court can appreciate the same. If the prosecution tried to prove recidivism and the defense objected, the objection should be overruled. The reason is recidivism is a generic aggravating circumstance only. As such, it does not have to be alleged in the information because even if not alleged, if proven during trial, the trial court can appreciate it.

Right now, the present rule is that it can be appreciated even if not alleged in the information. This is the correct view because recidivism is a generic aggravating circumstance. The reason why habitual delinquency cannot be appreciated unless alleged in the information is because recidivism has nothing to do with the crime committed. Habitual delinquency refers to prior conviction and therefore this must be brought in the information before the court can acquire jurisdiction over this matter.

Generally, the procedure you know that when the prosecutor alleges habitual delinquency, it must specify the crimes committed, the dates when they were committed, the court which tried the case, the date when the accused was convicted or discharged. If these are not alleged, the information is defective.

However, in a relatively recent ruling of the Supreme Court, it was held that even though the details of habitual delinquency was not set forth in the information, as long as there is an allegation there that the accused is a habitual delinquent, that is enough to confer jurisdiction upon the court to consider habitual delinquency. In the absence of the details set forth in the information, the accused has the right to avail of the so-called bill of particulars. Even in a criminal case, the accused may file a motion for bill of particulars. If the accused fails to file such, he is deemed to have waived the required particulars and so the court can admit evidence of the habitual delinquency, even though over and above the objection of the defense.

Reiteracion

This has nothing to do with the classification of the felonies. In reiteracion, the offender has already tasted the bitterness of the punishment. This is the philosophy on which the circumstance becomes aggravating.

It is necessary in order that there be reiteracion that the offender has already served out the penalty. If the offender had not yet served out his penalty, forget about reiteracion. That means he has not yet tasted the bitterness of life but if he had already served out the penalty, the law expects that since he has already tasted punishment, he will more or less refrain from committing crimes again. That is why if the offender committed a subsequent felony which carries with it a penalty lighter than what he had served, reiteracion is not aggravating because the law considers that somehow, this fellow was corrected because instead of committing a serious crime, he committed a lesser one. If he committed another lesser one, then he becomes a repeater.

So, in reiteracion, the penalty attached to the crime subsequently committed should be higher or at least equal to the penalty that he has

already served. If that is the situation, that means that the offender was never reformed by the fact that he already served the penalty imposed on him on the first conviction. However, if he commits a felony carrying a lighter penalty; subsequently, the law considers that somehow he has been reformed but if he, again commits another felony which carries a lighter penalty, then he becomes a repeater because that means he has not yet reformed.

You will only consider the penalty in reiteracion if there is already a second conviction. When there is a third conviction, you disregard whatever penalty for the subsequent crimes committed. Even if the penalty for the subsequent crimes committed are lighter than the ones already served, since there are already two of them subsequently, the offender is already a repeater.

However, if there is only a second conviction, pay attention to the penalty attached to the crime which was committed for the second crime. That is why it is said that reiteracion is not always aggravating. This is so because if the penalty attached to the felony subsequently committed is not equal or higher than the penalty already served, even if literally, the offender is a repeater, repetition is not aggravating.

Quasi-recidivism

This is found in Article 160. The offender must already be convicted by final judgement and therefore to have served the penalty already, but even at this stage, he committed a felony before beginning to serve sentence or while serving sentence.

Illustration:

Offender had already been convicted by final judgement. Sentence was promulgated and he was under custody in Muntinlupa. While he was in Muntinlupa, he escaped from his guard and in the course of his escape, he killed someone. The killing was committed before serving sentence but convicted by final judgement. He becomes a quasi-recidivist because the crime committed was a felony.

The emphasis here is on the crime committed before sentence or while serving sentence which should be a felony, a violation of the Revised Penal Code. In so far as the earlier crime is concerned, it is necessary that it be a felony.

Illustration:

The offender was convicted of homicide. While serving sentence in Muntinlupa, he was found smoking marijuana. He was prosecuted for illegal use of prohibited drugs and was convicted. Is he a quasi-recidivist? No, because the crime committed while serving sentence is not a felony.

Reverse the situation. Assume that the offender was found guilty of illegal use of prohibited drugs. While he was serving sentence, he got involved in a quarrel and killed a fellow inmate. Is he a quasi-recidivist? Yes, because while serving sentence, he committed a felony.

The emphasis is on the nature of the crime committed while serving sentence or before serving sentence. It should not be a violation of a special law.

Quasi-recidivism is a special aggravating circumstance. This cannot be offset by any mitigating circumstance and the imposition of the penalty in the maximum period cannot be lowered by any ordinary mitigating circumstance. When there is a privileged mitigating circumstance, the penalty prescribed by law for the crime committed shall be lowered by 1 or 2 degrees, as the case may be, but then it shall be imposed in the maximum period if the offender is a quasi-recidivist.

In consideration of a price, reward or promise

The Supreme Court rulings before indicate that this circumstance aggravates only the criminal liability of the person who committed the crime in consideration of the price, promise, or reward but not the criminal liability of the person who gave the price, reward or consideration. However, when there is a promise, reward or price offered or given as a consideration for the commission of the crime, the person making the offer is an inducer, a principal by inducement while the person receiving the price, reward or promise who would execute the crime is a principal by direct participation. Hence, their responsibilities are the same. They are both principals and that is why the recent rulings of the Supreme Court are to the effect that this aggravating circumstance affects or aggravates not only the criminal liability of the receiver of the price, reward or promise but also the criminal liability of the one giving the offer.

By means of inundation or fire

Fire is not aggravating in the crime of arson.

Whenever a killing is done with the use of fire, as when to kill someone, you burn down his house while the latter is inside, this is murder.

There is no such crime as murder with arson or arson with homicide. The crime committed is only murder.

If the victim is already dead and the house is burned, the crime is arson. It is either arson or murder.

If the intent is to destroy property, the crime is arson even if someone dies as a consequence. If the intent is to kill, there is murder even if the house is burned in the process.

Illustration:

A and B were arguing about something. One argument led to another until A struck B to death with a bolo. A did not know that C, the son of B was also in their house and who was peeping through the door and saw what A did. Afraid that A might kill him, too, he hid somewhere in the house. A then dragged B's body and poured gasoline on it and burned the house altogether. As a consequence, C was burned and eventually died too.

As far as the killing of B is concerned, it is homicide since it is noted that they were arguing. It could not be murder. As far as the killing of C is concerned, the crime is arson since he intended to burn the house only.

No such crime as arson with homicide. Law enforcers only use this to indicate that a killing occurred while arson was being committed. At the most, you could designate it as "death as a consequence of arson."

Evident premeditation

For evident premeditation to be aggravating, the following conditions must concur:

(1) The time when the accused determined to commit the crime;
(2) An act manifestly indicating that the accused has clung to his determination;
(3) Sufficient lapse of time between such determination and execution, to allow him to reflect upon the consequences of his act.

Illustration:

A, on Monday, thought of killing B on Friday. A knew that B is coming home only on Friday so A decided to kill B on Friday evening when he comes home. On Thursday, A met B and killed him. Is there evident premeditation? None but there is treachery as the attack was sudden.

Can there be evident premeditation when the killing is accidental? No. In evident premeditation, there must be a clear reflection on the part of the offender. However, if the killing was accidental, there was no evident premeditation. What is necessary to show and to bring about evident premeditation aside from showing that as some prior time, the offender has manifested the intention to kill the victim, and subsequently killed the victim.

Illustrations:

A and B fought. A told B that someday he will kill B. On Friday, A killed B. A and B fought on Monday but since A already suffered so many blows, he told B, "This week shall not pass, I will kill you." On Friday, A killed B. Is there evident premeditation in both cases? None in both cases. What condition is missing to bring about evident premeditation? Evidence to show that between Monday and Friday, the offender clung to his determination to kill the victim, acts indicative of his having clung to his determination to kill B.

A and B had a quarrel. A boxed B. A told B, "I will kill you this week." A bought firearms. On Friday, he waited for B but killed C instead. Is there evident premeditation? There is aberratio ictus. So, qualify. Insofar as B is concerned, the crime is attempted murder because there is evident premeditation. However, that murder cannot be considered for C. Insofar as C is concerned, the crime is homicide because there was no evident premeditation.

Evident premeditation shall not be considered when the crime refers to a different person other than the person premeditated against.

While it is true that evident premeditation may be absorbed in treachery because the means, method and form of attack may be premeditated and would be resorted to by the offender. Do not consider both aggravating circumstances of

treachery and evident premeditation against the offender. It is only treachery because the evident premeditation is the very conscious act of the offender to ensure the execution.

But there may be evident premeditation and there is treachery also when the attack was so sudden.

A and B are enemies. They fought on Monday and parted ways. A decided to seek revenge. He bought a firearm and practiced shooting and then sought B. When A saw B in the restaurant with so many people, A did not dare fire at B for fear that he might hit a stranger but instead, A saw a knife and used it to stab B with all suddenness. Evident premeditation was not absorbed in treachery because treachery refers to the manner of committing the crime. Evident premeditation is always absorbed in treachery.

This is one aggravating circumstance where the offender who premeditated, the law says evident. It is not enough that there is some premeditation. Premeditation must be clear. It is required that there be evidence showing meditation between the time when the offender determined to commit the crime and the time when the offender executed the act. It must appear that the offender clung to his determination to commit the crime. The fact that the offender premeditated is not prima facie indicative of evident premeditation as the meeting or encounter between the offender and the offended party was only by chance or accident.

In order for evident premeditation to be considered, the very person/offended party premeditated against must be the one who is the victim of the crime. It is not necessary that the victim is identified. It is enough that the victim is determined so he or she belongs to a group or class who may be premeditated against. This is a circumstance that will qualify a killing from homicide to murder.

Illustration:

A person who has been courting a lady for several years now has been jilted. Because of this, he thought of killing somebody. He, then bought a knife, sharpened it and stabbed the first man he met on the street. It was held that evident premeditation is not present. It is essential for this aggravating circumstance for the victim to be identified from the beginning.

A premeditated to kill any member of particular fraternity. He then killed one. This is murder – a homicide which has been qualified into murder by evident premeditation which is a qualifying circumstance. Same where A planned to kill any member of the Iglesio ni Kristo.

There are some crimes which cannot be aggravated by evident premeditation because they require some planning before they can be committed. Evident premeditation is part of the crime like kidnapping for ransom, robbery with force upon things where there is entry into the premises of the offended party, and estafa through false pretenses where the offender employs insidious means which cannot happen accidentally.

Craft

Aggravating in a case where the offenders pretended to be bona fide passengers of a jeepney in order not to arouse suspicion, but once inside the jeepney, robbed the passengers and the driver (**People v. Lee, decided on December 20, 1991**).

Abuse of superior strength

There must be evidence of notorious inequality of forces between the offender and the offended party in their age, size and strength, and that the offender took advantage of such superior strength in committing the crime. The mere fact that there were two persons who attacked the victim does not per se constitute abuse of superior strength (**People v. Carpio, 191 SCRA 12**).

Treachery

Treachery refers to the employment of means, method and form in the commission of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. The means, method or form employed my be an aggravating circumstance which like availing of total darkness in nighttime or availing of superior strength taken advantage of by the offender, employing means to weaken the defense.

Illustration:

A and B have been quarreling for some time. One day, A approached B and befriended him. B

accepted. A proposed that to celebrate their renewed friendship, they were going to drink. B was having too much to drink. A was just waiting for him to get intoxicated and after which, he stabbed B.

A pretended to befriend B, just to intoxicate the latter. Intoxication is the means deliberately employed by the offender to weaken the defense of the offended party. If this was the very means employed, the circumstance may be treachery and not abuse of superior strength or means to weaken the defense.

What is the essence of treachery?

The essence of treachery is that by virtue of the means, method or form employed by the offender, the offended party was not able to put up any defense. If the offended party was able to put up a defense, even only a token one, there is no treachery anymore. Instead some other aggravating circumstance may be present but not treachery anymore.

Illustration:

A and B quarreled. However A had no chance to fight with B because A is much smaller than B. A thought of killing B but then he cannot just attack B because of the latter's size. So, A thought of committing a crime at nighttime with the cover of darkness. A positioned himself in the darkest part of the street where B passes on his way home. One evening, A waited for B and stabbed B. However, B pulled a knife as well and stabbed A also. A was wounded but not mortal so he managed to run away. B was able to walk a few steps before he fell and died. What crime was committed?

The crime is only homicide because the aggravating circumstance is only nocturnity and nocturnity is not a qualifying circumstance. The reason why treachery cannot be considered as present here is because the offended party was able to put up a defense and that negates treachery. In treachery, the offended party, due to the means, method or form employed by the offender, the offended party was denied the chance to defend himself. If because of the cover of darkness, B was not able to put up a defense and A was able to flee while B died, the crime is murder because there is already treachery. In the first situation, the crime was homicide only, the nighttime is generic aggravating circumstance.

In the example where A pretended to befriend B and invited him to celebrate their friendship, if B despite intoxication was able to put up some fight against A but eventually, B died, then the attendant circumstance is no longer treachery but means employed to weaken the defense. But in murder, this is also a qualifying circumstance. The crime committed is murder but then the correct circumstance is not treachery but means employed to weaken the defense.

In the same manner, if the offender avails of the services of men and in the commission of the crime, they took advantage of superior strength but somehow, the offended party fought back, the crime is still murder if the victim is killed. Although the qualifying circumstance is abuse of superior strength and not treachery, which is also a qualifying circumstance of murder under Article 248.

Treachery is out when the attack was merely incidental or accidental because in the definition of treachery, the implication is that the offender had consciously and deliberately adopted the method, means and form used or employed by him. So, if A and B casually met and there and then A stabbed B, although stabbing may be sudden since A was not shown to have the intention of killing B, treachery cannot be considered present.

There must be evidenced on how the crime was committed. It is not enough to show that the victim sustained treacherous wound. Example: A had a gunshot wound at the back of his head. The SC ruled this is only homicide because treachery must be proven. It must be shown that the victim was totally defenseless.

Suddenness of the attack does not by itself constitute treachery in the absence of evidence that the manner of the attack was consciously adopted by the offender to render the offended party defenseless (**People v. Ilagan, 191 SCRA 643**).

But where children of tender years were killed, being one year old and 12 years old, the killing is murder even if the manner of attack was not shown (**People v. Gahon, decided on April 30, 1991**).

In **People v. Lapan, decided on July 6, 1992,** the accused was prosecuted for robbery with

homicide. Robbery was not proven beyond reasonable doubt. Accused held liable only for the killings. Although one of the victims was barely six years old, the accused was convicted only for homicide, aggravated by dwelling and in disregard of age.

Treachery not appreciated where quarrel and heated discussion preceded a killing, because the victim would be put on guard (**People v. Gupo**). But although a quarrel preceded the killing where the victim was atop a coconut tree, treachery was considered as the victim was not in a position to defend himself (**People v. Toribio**).

Distinction between ignominy and cruelty

Ignominy shocks the moral conscience of man while cruelty is physical. Ignominy refers to the moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive. Cruelty pertains to physical suffering of the victim so the victim has to be alive. In plain language, ignominy is adding insult to injury. A clear example is a married woman being raped before the eyes of her husband.

In a case where the crime committed is rape and the accused abused the victims from behind, the Supreme Court considered the crime as aggravated by ignominy. Hence, raping a woman from behind is ignominious because this is not the usual intercourse, it is something which offends the moral of the offended woman. This is how animals do it.

In a case of homicide, while the victim after having been killed by the offender, the offender shoved the body inside a canal, ignominy is held aggravating.

After having been killed, the body was thrown into pile of garbage, ignominy is aggravating. The Supreme Court held that it added shame to the natural effects of the crime.

Cruelty and ignominy are circumstances brought about which are not necessary in the commission of the crime.

Illustration:

A and B are enemies. A upon seeing B pulled out a knife and stabbed B 60 times. Will that fact be considered as an aggravating circumstance of cruelty? No, there is cruelty only when there are evidence that the offender inflicted the stab wounds while enjoying or delighted to see the victim in pain. For cruelty to exist as an aggravating circumstance, there must be evidence showing that the accused inflicted the alleged cruel wounds slowly and gradually and that he is delighted seeing the victim suffer in pain. In the absence of evidence to this effect, there is no cruelty. Sixty stab wounds do not ipso facto make them aggravating circumstances of cruelty. The crime is murder if 60 wounds were inflicted gradually; absence of this evidence means the crime committed is only homicide.

Cruelty is aggravating in rape where the offender tied the victim to a bed and burnt her face with a lighted cigarette while raping her laughing all the way (**People v. Lucas, 181 SCRA 315**).

Unlawful entry

Unlawful entry is inherent in the crime of robbery with force upon things but aggravating in the crime of robbery with violence against or intimidation of persons.

Motor vehicle

The Supreme Court considers strictly the use of the word "committed", that the crime is committed with the use of a motor vehicle, motorized means of transportation or motorized watercraft. There is a decision by the Court of Appeals that a motorized bicycle is a motor vehicle even if the offender used only the foot pedal because he does not know how to operate the motor so if a bicycle is used in the commission of the crime, motor vehicle becomes aggravating if the bicycle is motorized.

This circumstance is aggravating only when used in the commission of the offense. If motor vehicle is used only in the escape of the offender, motor vehicle is not aggravating. To be aggravating, it must have been used to facilitate the commission of the crime.

Aggravating when a motorized tricycle was used to commit the crime

Organized or syndicated crime group

In the same amendment to Article 62 of the Revised Penal Code, paragraphs were added which provide that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized or

syndicated crime group.

An organized or syndicated crime group means a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of a crime.

With this provision, the circumstance of an organized or syndicated crime group having committed the crime has been added in the Code as a special aggravating circumstance. The circumstance being special or qualifying, it must be alleged in the information and proved during the trial. Otherwise, if not alleged in the information, even though proven during the trial, the court cannot validly consider the circumstances because it is not among those enumerated under Article 14 of the Code as aggravating. It is noteworthy, however, that there is an organized or syndicated group even when only two persons collaborated, confederated, or mutually helped one another in the commission of a crime, which acts are inherent in a conspiracy. Where therefore, conspiracy in the commission of the crime is alleged in the information, the allegation may be considered as procedurally sufficient to warrant receiving evidence on the matter during trial and consequently, the said special aggravating circumstance can be appreciated if proven.

Alternative circumstances

Art. 15. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

The alternative circumstance of relationship shall be taken into consideration when the offended party in the spouse, ascendant, descendant, legitimate, natural, or adopted brother or sister, or relative by affinity in the same degrees of the offender.

The intoxication of the offender shall be taken into consideration as a mitigating circumstances when the offender has committed a felony in a state of intoxication, if the same is not habitual or subsequent to the plan to commit said felony but when the intoxication is habitual or intentional, it shall be considered as an aggravating circumstance.

Four alternative circumstances

(1) Relationship;
(2) Intoxication;
(3) Degree of instruction; and
(4) Education.

Use only the term alternative circumstance for as long as the particular circumstance is not involved in any case or problem. The moment it is given in a problem, do not use alternative circumstance, refer to it as aggravating or mitigating depending on whether the same is considered as such or the other. If relationship is aggravating, refer to it as aggravating. If mitigating, then refer to it as such.

Except for the circumstance of intoxication, the other circumstances in Article 15 may not be taken into account at all when the circumstance has no bearing on the crime committed. So the court will not consider this as aggravating or mitigating simply because the circumstance has no relevance to the crime that was committed.

Do not think that because the article says that these circumstances are mitigating or aggravating, that if the circumstance is present, the court will have to take it as mitigating, if not mitigating, aggravating. That is wrong. It is only the circumstance of intoxication which if not mitigating, is automatically aggravating. But the other circumstances, even if they are present, but if they do not influence the crime, the court will not consider it at all. Relationship may not be considered at all, especially if it is not inherent in the commission of the crime. Degree of instruction also will not be considered if the crime is something which does not require an educated person to understand.

Relationship

Relationship is not simply mitigating or aggravating. There are specific circumstances where relationship is exempting. Among such circumstances are:

(1) In the case of an accessory who is related to the principal within the relationship

prescribed in Article 20;

(2) Also in Article 247, a spouse does not incur criminal liability for a crime of less serious physical injuries or serious physical injuries if this was inflicted after having surprised the offended spouse or paramour or mistress committing actual sexual intercourse.

(3) Those commonly given in Article 332 when the crime of theft, malicious mischief and swindling or estafa. There is no criminal liability but only civil liability if the offender is related to the offended party as spouse, ascendant, or descendant or if the offender is a brother or sister or brother in law or sister in law of the offended party and they are living together. Exempting circumstance is the relationship. This is an absolutory cause.

Sometimes, relationship is a qualifying and not only a generic aggravating circumstance. In the crime of qualified seduction, the offended woman must be a virgin and less than 18 yrs old. But if the offender is a brother of the offended woman or an ascendant of the offended woman, regardless of whether the woman is of bad reputation, even if the woman is 60 years old or more, crime is qualified seduction. In such a case, relationship is qualifying.

Intoxication

This circumstance is ipso facto mitigating, so that if the prosecution wants to deny the offender the benefit of this mitigation, they should prove that it is habitual and that it is intentional. The moment it is shown to be habitual or intentional to the commission of the crime, the same will immediately aggravate, regardless of the crime committed.

Intoxication to be considered mitigating, requires that the offender has reached that degree of intoxication where he has no control of himself anymore. The idea is the offender, because of the intoxication is already acting under diminished self control. This is the rational why intoxication is mitigating. So if this reason is not present, intoxication will not be considered mitigating. So the mere fact that the offender has taken one or more cases of beer of itself does not warrant a conclusion that intoxication is mitigating. There must be indication that because of the alcoholic intake of the offender, he is suffering from diminished self control. There is diminished voluntariness insofar as his intelligence or freedom of action is concerned. It is not the quantity of alcoholic drink. Rather it is the effect of the alcohol upon the offender which shall be the basis of the mitigating circumstance.

Illustration:

In a case, there were two laborers who were the best of friends. Since it was payday, they decided to have some good time and ordered beer. When they drank two cases of beer they became more talkative until they engaged in an argument. One pulled out a knife and stabbed the other. When arraigned he invoked intoxication as a mitigating circumstance. Intoxication does not simply mean that the offender has partaken of so much alcoholic beverages. The intoxication in law requires that because of the quality of the alcoholic drink taken, the offender had practically lost self control. So although the offender may have partaken of two cases of beer, but after stabbing the victim he hailed a tricycle and even instructed the driver to the place where he is sleeping and the tricycle could not reach his house and so he has to alight and walk to his house, then there is no diminished self control. The Supreme Court did not give the mitigating circumstance because of the number of wounds inflicted upon the victim. There were 11 stab wounds and this, the Supreme Court said, is incompatible with the idea that the offender is already suffering from diminished self control. On the contrary, the indication is that the offender gained strength out of the drinks he had taken. It is not the quantity of drink that will determine whether the offender can legally invoke intoxication. The conduct of the offender, the manner of committing the crime, his behavior after committing the crime must show the behavior of a man who has already lost control of himself. Otherwise intoxication cannot legally be considered.

Degree of instruction and education

These are two distinct circumstances. One may not have any degree of instruction but is nevertheless educated. Example: A has been living with professionals for some time. He may just be a maid in the house with no degree of instruction but he may still be educated.

It may happen also that the offender grew up in a family of professionals, only he is the black sheep because he did not want to go to school. But it does not follow that he is bereft of education.

If the offender did not go higher than Grade 3 and he was involved in a felony, he was invoking lack of degree of education. The Supreme Court held that although he did not receive schooling, yet it cannot be said that he lacks education because he came from a family where brothers are all professionals. So he understands what is right and wrong.

The fact that the offender did not have schooling and is illiterate does not mitigate his liability if the crime committed is one which he inherently understands as wrong such as parricide. If a child or son or daughter would kill a parent, illiteracy will not mitigate because the low degree of instruction has no bearing on the crime.

In the same manner, the offender may be a lawyer who committed rape. The fact that he has knowledge of the law will not aggravate his liability, because his knowledge has nothing to do with the commission of the crime. But if he committed falsification, that will aggravate his criminal liability, where he used his special knowledge as a lawyer.

Absolutory cause

The effect of this is to absolve the offender from criminal liability, although not from civil liability. It has the same effect as an exempting circumstance, but it is not called as such in order not to confuse it with the circumstances under Article 12.

(1) Article 20 provides that the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters, or relatives by affinity within the same degrees with the exception of accessories who profited themselves or assisting the offender to profit by the effects of the crime.

(2) Then, Article 89 provides how criminal liability is extinguished:

Death of the convict as to the personal penalties, and as to pecuniary penalties, liability therefor is extinguished if death occurs before final judgment;
Service of the sentence; Amnesty; Absolute pardon; Prescription of the crime; Prescription of the penalty; and Marriage of the offended woman as provided in Article 344.

(3) Under Article 247, a legally married person who kills or inflicts physical injuries upon his or her spouse whom he surprised having sexual intercourse with his or her paramour or mistress in not criminally liable.

(4) Under Article 219, discovering secrets through seizure of correspondence of the ward by their guardian is not penalized.

(5) Under Article 332, in the case of theft, swindling and malicious mischief, there is no criminal liability but only civil liability, when the offender and the offended party are related as spouse, ascendant, descendant, brother and sister-in-law living together or where in case the widowed spouse and the property involved is that of the deceased spouse, before such property had passed on to the possession of third parties.

(6) Under Article 344, in cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offended party shall extinguish the criminal action.

Absolutory cause has the effect of an exempting circumstance and they are predicated on lack of voluntariness like instigation. Instigation is associated with criminal intent. Do not consider culpa in connection with instigation. If the crime is culpable, do not talk of instigation. In instigation, the crime is committed with dolo. It is confused with entrapment.
Entrapment is not an absolutory cause. Entrapment does not exempt the offender or mitigate his criminal liability. But instigation absolves the offender from criminal liability because in instigation, the offender simply acts as a tool of the law enforcers and, therefore, he is acting without criminal intent because without the instigation, he would not have done the criminal act which he did upon instigation of the law enforcers.

Extenuating circumstances

The effect of this is to mitigate the criminal liability of the offender. In other words, this has the same effect as mitigating circumstances, only you do not call it mitigating because this is not found in

Article 13.

Illustrations:

(1) An unwed mother killed her child in order to conceal a dishonor. The concealment of dishonor is an extenuating circumstance insofar as the unwed mother or the maternal grandparents is concerned, but not insofar as the father of the child is concerned. Mother killing her new born child to conceal her dishonor, penalty is lowered by two degrees. Since there is a material lowering of the penalty or mitigating the penalty, this is an extenuating circumstance.

(2) The concealment of honor by mother in the crime of infanticide is an extenuating circumstance but not in the case of parricide when the age of the victim is three days old and above.

(3) In the crime of adultery on the part of a married woman abandoned by her husband, at the time she was abandoned by her husband, is it necessary for her to seek the company of another man. Abandonment by the husband does not justify the act of the woman. It only extenuates or reduces criminal liability. When the effect of the circumstance is to lower the penalty there is an extenuating circumstance.

(4) A kleptomaniac is one who cannot resist the temptation of stealing things which appeal to his desire. This is not exempting. One who is a kleptomaniac and who would steal objects of his desire is criminally liable. But he would be given the benefit of a mitigating circumstance analogous to paragraph 9 of Article 13, that of suffering from an illness which diminishes the exercise of his will power without, however, depriving him of the consciousness of his act. So this is an extenuating circumstance. The effect is to mitigate the criminal liability.

Distinctions between justifying circumstances and exempting circumstances

In justifying circumstances –

(5) The circumstance affects the act, not the actor;
(6) The act complained of is considered to have been done within the bounds of law; hence, it is legitimate and lawful in the eyes of the law;
(7) Since the act is considered lawful, there is no crime, and because there is no crime, there is no criminal;
(8) Since there is no crime or criminal, there is no criminal liability as well as civil liability.

In exempting circumstances –

(5) The circumstances affect the actor, not the act;
(6) The act complained of is actually wrongful, but the actor acted without voluntariness. He is a mere tool or instrument of the crime;
(7) Since the act complained of is actually wrongful, there is a crime. But because the actor acted without voluntariness, there is absence of dolo or culpa. There is no criminal;
(8) Since there is a crime committed but there is no criminal, there is civil liability for the wrong done. But there is no criminal liability. However, in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

When you apply for justifying or exempting circumstances, it is confession and avoidance and burden of proof shifts to the accused and he can no longer rely on weakness of prosecution's evidence

DECREE CODIFYING THE LAWS ON ILLEGAL / UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES (P.D. 1866, AS AMENDED BY R.A. 8294) AS AN AGGRAVATING CIRCUMSTANCE

(1) If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance *(Sec. 1, par. 3)*.
(2) The use of unlicensed firearm to commit homicide or murder is now a special aggravating circumstance; hence, only one crime is committed, i.e., homicide or murder and, therefore, only one information shall be filed *(People vs. Castillo, GR 131592-93, 02/15/2000)*.

As a qualifying aggravating circumstance

Qualifying Aggravating Circumstances in the Commission of a Crime by an Offender Under the Influence of Dangerous Drugs. – Notwithstanding the provisions of any law to the contrary, a positive finding for the use of dangerous drugs shall be a qualifying aggravating circumstance in the commission of a crime by an offender, and the application of the penalty provided for in the Revised Penal Code shall be applicable *(Sec. 25).*

Immunity from prosecution and punishment, coverage

Immunity from Prosecution and Punishment. – Notwithstanding the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure and the provisions of Republic Act No. 6981 or the Witness Protection, Security and Benefit Act of 1991, any person who has violated Sections 7, 11, 12, 14, 15, and 19, Article II of this Act, who voluntarily gives information about any violation of Sections 4, 5, 6, 8, 10, 13, and 16, Article II of this Act as well as any violation of the offenses mentioned if committed by a drug syndicate, or any information leading to the whereabouts, identities and arrest of all or any of the members thereof; and who willingly testifies against such persons as described above, shall be exempted from prosecution or punishment for the offense with reference to which his/her information of testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: Provided, That the following conditions concur:

(1) The information and testimony are necessary for the conviction of the persons described above;
(2) Such information and testimony are not yet in the possession of the State;
(3) Such information and testimony can be corroborated on its material points;
(4) the informant or witness has not been previously convicted of a crime involving moral turpitude, except when there is no other direct evidence available for the State other than the information and testimony of said informant or witness; and
(5) The informant or witness shall strictly and faithfully comply without delay, any condition or undertaking, reduced into writing, lawfully imposed by the State as further consideration for the grant of immunity from prosecution and punishment.

Provided, further, That this immunity may be enjoyed by such informant or witness who does not appear to be most guilty for the offense with reference to which his/her information or testimony were given: Provided, finally, That there is no direct evidence available for the State except for the information and testimony of the said informant or witness *(Sec. 33).*

Termination of the Grant of Immunity. – The immunity granted to the informant or witness, as prescribed in Section 33 of this Act, shall not attach should it turn out subsequently that the information and/or testimony is false, malicious or made only for the purpose of harassing, molesting or in any way prejudicing the persons described in the preceding Section against whom such information or testimony is directed against. In such case, the informant or witness shall be subject to prosecution and the enjoyment of all rights and benefits previously accorded him under this Act or any other law, decree or order shall be deemed terminated.

In case an informant or witness under this Act fails or refuses to testify without just cause, and when lawfully obliged to do so, or should he/she violate any condition accompanying such immunity as provided above, his/her immunity shall be removed and he/she shall likewise be subject to contempt and/or criminal prosecution, as the case may be, and the enjoyment of all rights and benefits previously accorded him under this Act or in any other law, decree or order shall be deemed terminated.

In case the informant or witness referred to under this Act falls under the applicability of this Section hereof, such individual cannot avail of the provisions under Article VIII of this Act *(Sec. 34).*

Minor offenders

Suspension of Sentence of a First-Time Minor Offender. – An accused who is over fifteen (15) years of age at the time of the commission of the offense mentioned in Section 11 of this Act, but not more than eighteen (18) years of age at the time when judgment should have been promulgated after having been found guilty of said offense, may be given the benefits of a suspended sentence, subject to the following conditions:

(a) He/she has not been previously convicted of violating any provision of this Act, or of the Dangerous Drugs Act of 1972, as amended; or of the Revised Penal Code; or of any special penal laws;
(b) He/she has not been previously committed to a Center or to the care of a DOH-accredited physician; and
(c) The Board favorably recommends that his/her sentence be suspended.

While under suspended sentence, he/she shall be under the supervision and rehabilitative surveillance of the Board, under such conditions that the court may impose for a period ranging from six (6) months to eighteen (18) months.

Upon recommendation of the Board, the court may commit the accused under suspended sentence to a Center, or to the care of a DOH-accredited physician for at least six (6) months, with after-care and follow-up program for not more than eighteen (18) months.

In the case of minors under fifteen (15) years of age at the time of the commission of any offense penalized under this Act, Article 192 of Presidential Decree No. 603, otherwise known as the Child and Youth Welfare Code, as amended by Presidential Decree No. 1179 shall apply, without prejudice to the application of the provisions of this Section *(Sec. 66)*.

Discharge After Compliance with Conditions of Suspended Sentence of a First-Time Minor Offender. – If the accused first time minor offender under suspended sentence complies with the applicable rules and regulations of the Board, including confinement in a Center, the court, upon a favorable recommendation of the Board for the final discharge of the accused, shall discharge the accused and dismiss all proceedings.

Upon the dismissal of the proceedings against the accused, the court shall enter an order to expunge all official records, other than the confidential record to be retained by the DOJ relating to the case. Such an order, which shall be kept confidential, shall restore the accused to his/her status prior to the case. He/she shall not be held thereafter to be guilty of perjury or of concealment or misrepresentation by reason of his/her failure to acknowledge the case or recite any fact related thereto in response to any inquiry made of him for any purpose *(Sec. 67)*.

Privilege of Suspended Sentence to be Availed of Only Once by a First-Time Minor Offender. – The privilege of suspended sentence shall be availed of only once by an accused drug dependent who is a first-time offender over fifteen (15) years of age at the time of the commission of the violation of Section 15 of this Act but not more than eighteen (18) years of age at the time when judgment should have been promulgated *(Sec. 68)*.

Promulgation of Sentence for First-Time Minor Offender. – If the accused first-time minor offender violates any of the conditions of his/her suspended sentence, the applicable rules and regulations of the Board exercising supervision and rehabilitative surveillance over him, including the rules and regulations of the Center should confinement be required, the court shall pronounce judgment of conviction and he/she shall serve sentence as any other convicted person *(Sec. 69)*.

Probation or Community Service for a First-Time Minor Offender in Lieu of Imprisonment. – Upon promulgation of the sentence, the court may, in its discretion, place the accused under probation, even if the sentence provided under this Act is higher than that provided under existing law on probation, or impose community service in lieu of imprisonment. In case of probation, the supervision and rehabilitative surveillance shall be undertaken by the Board through the DOH in coordination with the Board of Pardons and Parole and the Probation Administration. Upon compliance

with the conditions of the probation, the Board shall submit a written report to the court recommending termination of probation and a final discharge of the probationer, whereupon the court shall issue such an order.

The community service shall be complied with under conditions, time and place as may be determined by the court in its discretion and upon the recommendation of the Board and shall apply only to violators of Section 15 of this Act. The completion of the community service shall be under the supervision and rehabilitative surveillance of the Board during the period required by the court. Thereafter, the Board shall render a report on the manner of compliance of said community service. The court in its discretion may require extension of the community service or order a final discharge.

In both cases, the judicial records shall be covered by the provisions of Sections 60 and 64 of this Act.
If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused during the suspended sentence period shall be deducted from the sentence to be served *(Sec. 70)*.

Application / Non application of RPC provisions (Sec. 98, R.A. 9165) cf. Art. 10, RPC

Limited Applicability of the Revised Penal Code. – Notwithstanding any law, rule or regulation to the contrary, the provisions of the Revised Penal Code (Act No. 3814), as amended, shall not apply to the provisions of this Act, except in the case of minor offenders. Where the offender is a minor, the penalty for acts punishable by life imprisonment to death provided herein shall be reclusion perpetua to death *(Sec. 98).*

Offenses not subject to the provisions of this Code. – Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary *(Art. 10, RPC)*.

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. 9344); ALSO REFER TO CHILD AND YOUTH WELFARE CODE (P.D. 603, AS AMENDED)

Definition of child in conflict with the law

"Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws *(Sec. 4[e])*.

Minimum age of criminal responsibility

A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws *(Sec. 6)*.

Determination of age

The child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents. In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.
Any person contesting the age of the child in conflict with the law prior to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within twenty-four (24) hours from receipt of the appropriate pleadings of all interested parties.

If a case has been filed against the child in conflict with the law and is pending in the appropriate court, the person shall file a motion

to determine the age of the child in the same court where the case is pending. Pending hearing on the said motion, proceedings on the main case shall be suspended. *(Sec. 7)*.

Exemption from criminal liability

A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws *(Sec. 6)*.

Status Offenees. - Any conduct not considered an offense or not penalized if committed by an adult shall not be considered an offense and shall not be punished if committed by a child *(Sec. 57)*.

Offenses Not Applicable to Children. - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program *(Sec. 58)*.

Exemption from the Application of Death Penalty. - The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law *(Sec. 59)*.

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262)

Battered woman syndrome

"*Battered Woman Syndrome*" refers to a scientifically defined pattern of psychological and behavioral symptoms found in women living in battering relationships as a result of cumulative abuse *(Sec. 3C[c])*.

The battered woman syndrome is characterized by the cycle of violence, which has three phases:

(1) Tension-building phase – minor battering occurs (verbal, physical abuse or other form of hostile behavior). The woman tries to pacify the batterer but this placatory/passive behavior legitimizes her belief that the man has the right to abuse her. At some point, violence "spirals out of control" and leads to acute battering incident.

(2) Acute battering incident – characterized by brutality, destructiveness and sometimes, death. The battered woman deems this incident as unpredictable, yet also inevitable. At this stage, she has a sense of detachment from the attack and the terrible pain. Acute battering incidents are often very savage and out of control, that bystanders or intervenors likely to get hurt.

(3) Tranquil, loving, or nonviolent phase – the couple experience profound relief. On the one hand, the batterer may show a tender and nurturing behavior towards his partner.

The battered woman syndrome is a form of self-defense which is a justifying circumstance. In order to absolve the offender, the defense must prove that all the three phases of cycle of violence have occurred at least twice. If the invocation of self-defense fails, the battered woman syndrome gives rise to two mitigating circumstances: (1) psychological paralysis or diminution of freedom of action, intelligence or intent analogous to illness that diminishes exercise of will power without depriving her of consciousness of her acts, and (2) passion and obfuscation, of having acted upon an impulse so powerful as to have naturally produced passion and obfuscation.

4. PERSONS CRIMINALLY LIABLE

Art. 16. Who are criminally liable. – The following are criminally liable for grave and less grave felonies:

1. *Principals.*
2. *Accomplices.*
3. *Accessories.*

The following are criminally liable for light felonies:

1. *Principals*
2. *Accomplices.*

Art. 17. Principals. – The following are considered principals:

1. *Those who take a direct part in the execution of the act;*
2. *Those who directly force or induce others to commit it;*
3. *Those who cooperate in the commission of the offense by another act without which it would not have been accomplished.*

Art. 18. Accomplices. – Accomplices are those persons who, not being included in Art. 17, cooperate in the execution of the offense by previous or simultaneous acts.

Art. 19. Accessories. – Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. *By profiting themselves or assisting the offender to profit by the effects of the crime.*
2. *By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.*
3. *By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.*

Art. 20. Accessories who are exempt from criminal liability. – The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

Under the Revised Penal Code, when more than one person participated in the commission of the crime, the law looks into their participation because in punishing offenders, the Revised Penal Code classifies them as:

(1) principal;
(2) accomplice; or
(3) accessory.

This classification is true only under the Revised Penal Code and is not used under special laws, because the penalties under the latter are never graduated. Do not use the term principal when the crime committed is a violation of special law. Only use the term "offender." Also only classify offenders when more than one took part in the commission of the crime to determine the proper penalty to be imposed. So, if only one person committed a crime, do not use principal. Use the "offenders," "culprits," or the "accused."

When a problem is encountered where there are several participants in the crime, the first thing to find out is if there is a conspiracy. If there is, as a general rule, the criminal liability of all will be the same, because the act of one is the act of all.

However, if the participation of one is so insignificant, such that even without his cooperation, the crime would be committed just as well, then notwithstanding the existence of a conspiracy, such offender will be regarded only as an accomplice. The reason for this ruling is that the law favors a milder form of criminal liability if the act of the participant does not demonstrate a clear perversity.

As to the liability of the participants in a felony, the Code takes into consideration whether the felony committed is grave, less grave, or light.

When the felony is grave, or less grave, all participants are criminally liable.

But where the felony is only light only the principal and the accomplice are liable. The accessory is not.

But even the principal and the accomplice will not be liable if the felony committed is only light and the same is not consummated unless such felony is against persons or property. If they are not and the same is not consummated, even the principal and the accomplice are not liable.

Therefore it is only when the light felony is against person or property that criminal liability attaches to the principal or accomplice, even though the felony is only attempted or frustrated, but accessories are not liable for liable for light felonies.

Principal by indispensable cooperation distinguished from an accomplice

It is not just a matter of cooperation, it is more than if the crime could hardly be committed. It is not that the crime would not be committed because if that is what you would imply it becomes an ingredient of the crime and that is not what the law contemplates.

In the case of rape, where three men were accused, one was on top of the woman, one held the hands, one held the legs, the Supreme Court ruled that all participants are principals. Those who held the legs and arms are principals by indispensable cooperation.

The accused are father and son. The father told his son that the only way to convince the victim to marry him is to resort to rape. So when they saw the opportunity the young man grabbed the woman, threw her on the ground and placed himself on top of her while the father held both legs of the woman and spread them. The Supreme Court ruled that the father is liable only as an accomplice.

The point is not just on participation but on the importance of participation in committing the crime.

In the first situation, the facts indicate that if the fellow who held the legs of the victim and spread them did not do so, the offender on top could hardly penetrate because the woman was strong enough to move or resist. In the second situation, the son was much bigger than the woman so considering the strength of the son and the victim, penetration is possible even without the assistance of the father. The son was a robust farm boy and the victim undernourished. The act of the father in holding the legs of the victim merely facilitated the penetration but even without it the son would have penetrated.

The basis is the importance of the cooperation to the consummation of the crime. If the crime could hardly be committed without such cooperation, then such cooperation would bring about a principal. But if the cooperation merely facilitated or hastened the consummation of the crime, this would make the cooperator merely an accomplice.

In a case where the offender was running after the victim with a knife. Another fellow came and blocked the way of the victim and because of this, the one chasing the victim caught up and stabbed the latter at the back. It was held that the fellow who blocked the victim is a principal by indispensable cooperation because if he did not block the way of the victim, the offender could not have caught up with the latter.

In another case, A was mauling B. C, a friend of B tried to approach but D stopped C so that A was able to continuously maul B. The liability of the fellow who stopped the friend from approaching is as an accomplice. Understandably he did not cooperate in the mauling, he only stopped to other fellow from stopping the mauling.

In case of doubt, favor the lesser penalty or liability. Apply the doctrine of pro reo.

Principal by inducement

Concept of the inducement – one strong enough that the person induced could hardly resist. This is tantamount to an irresistible force compelling the person induced to carry out the execution of the crime. Ill advised language is not enough unless he who made such remark or advice is a co-conspirator in the crime committed.
While in the course of a quarrel, a person shouted to A, “Kill him! Kill him.” A killed the other fellow. Is the person who shouted criminally liable. Is that inducement? No. It must be strong as irresistible force.

There was a quarrel between two families. One of the sons of family A came out with a shotgun. His mother then shouted, “Shoot!”. He shot and killed someone. Is the mother liable? No.

Examples of inducement:

"I will give you a large amount of money."

"I will not marry you if you do not kill B"(let us say he really loves the inducer).

They practically become co-conspirators. Therefore you do not look into the degree of inducement anymore.

In **People v. Balderrama,** Ernesto shouted to his younger brother Oscar, "Birahin mo na, birahin mo na." Oscar stabbed the victim. It was held that there was no conspiracy. Joint or simultaneous action per se is not indicia of conspiracy without showing of common design. Oscar has no rancor with the victim for him to kill the latter. Considering that Ernesto had great moral ascendancy and influence over Oscar being much older, 35 years old, than the latter, who was 18 yrs old, and it was Ernesto who provided his allowance, clothing as well as food and shelter, Ernesto is principal by inducement.

In **People v. Agapinay, 186 SCRA 812,** the one who uttered "Kill him, we will bury him," while the felonious aggression was taking place cannot be held liable as principal by inducement. Utterance was said in the excitement of the hour, not a command to be obeyed.

In **People v. Madali, 188 SCRA 69,** the son was mauled. The family was not in good graces of the neighborhood. Father challenged everybody and when neighbors approached, he went home to get a rifle. The shouts of his wife "Here comes another, shoot him" cannot make the wife the principal by inducement. It is not the determining cause of the crime in the absence of proof that the words had great dominance and influence over the husband. Neither is the wife's act of beaming the victim with a flashlight indispensable to the commission of the killing. She assisted her husband in taking good aim, but such assistance merely facilitated the felonious act of shooting. Considering that it was not so dark and the husband could have accomplished the deed without his wife's help, and considering further that doubts must be resolved in favor of the accused, the liability of the wife is only that of an accomplice.

Accessories

Two situations where accessories are not criminally liable:

(1) When the felony committed is a light felony;
(2) When the accessory is related to the principal as spouse, or as an ascendant, or descendant or as brother or sister whether legitimate, natural or adopted or where the accessory is a relative by affinity within the same degree, unless the accessory himself profited from the effects or proceeds of the crime or assisted the offender to profit therefrom.

One cannot be an accessory unless he knew of the commission of the crime. One must not have participated in the commission of the crime. The accessory comes into the picture when the crime is already consummated. Anyone who participated before the consummation of the crime is either a principal or an accomplice. He cannot be an accessory.

When an offender has already involved himself as a principal or accomplice, he cannot be an accessory any further even though he performs acts pertaining to an accessory.

Accessory as a fence

The Revised Penal Code defines what manners of participation shall render an offender liable as an accessory. Among the enumeration is "by profiting themselves or by assisting the offender to profit by the effects of the crime". So the accessory shall be liable for the same felony committed by the principal. However, where the crime committed by the principal was robbery or theft, such participation of an accessory brings about criminal liability under Presidential Decree No. 1612 (Anti-Fencing Law). One who knowingly profits or assists the principal to profit by the effects of robbery or theft is not just an accessory to the crime, but principally liable for fencing under Presidential Decree No. 1612.

Any person who, with intent to gain, acquires and/or sell, possesses, keeps or in any manner deals with any article of value which he knows or should be known to him to be the proceeds of robbery or theft is considered a "fence" and incurs criminal liability for "fencing" under said decree. The penalty is higher than that of a mere accessory to the crime of robbery or theft.

Likewise, the participation of one who conceals the effects of robbery or theft gives rise to criminal liability for "fencing", not simply of an accessory under paragraph 2 of Article 19 of the Code. Mere possession of any article of value

which has been the subject of robbery or theft brings about the presumption of "fencing".

Presidential Decree No. 1612 has, therefore, modified Article 19 of the Revised Penal Code.

Questions & Answers

1. May one who profited out of the proceeds of estafa or malversation be prosecuted under the Anti-Fencing Law?

   No. There is only a fence when the crime is theft or robbery. If the crime is embezzlement or estafa, still an accessory to the crime of estafa, not a fence.

2. If principal committed robbery by snatching a wristwatch and gave it to his wife to sell, is the wife criminally liable? Can she be prosecuted as an accessory and as a fence?

   The liability of the wife is based on her assisting the principal to profit and that act is punishable as fencing. She will no longer be liable as an accessory to the crime of robbery.

In both laws, Presidential Decree No. 1612 and the Revised Penal Code, the same act is the basis of liability and you cannot punish a person twice for the same act as that would go against double jeopardy.

Acquiring the effects of piracy or brigandage

It is relevant to consider in connection with the criminal liability of accessories under the Revised Penal Code, the liability of persons acquiring property subject of piracy or brigandage.

The act of knowingly acquiring or receiving property which is the effect or the proceeds of a crime generally brings about criminal liability of an accessory under Article 19, paragraph 1 of the Revised Penal Code. But if the crime was piracy of brigandage under Presidential Decree No. 533 (Anti-piracy and Anti-Highway Robbery Law of 1974), said act constitutes the crime of abetting piracy or abetting brigandage as the case may be, although the penalty is that for an accomplice, not just an accessory, to the piracy or brigandage. To this end, Section 4 of Presidential Decree No. 532 provides that any person who knowingly and in any manner… acquires or receives property taken by such pirates or brigands or in any manner derives benefit therefrom… shall be considered as an accomplice of the principal offenders and be punished in accordance with the Rules prescribed by the Revised Penal Code.

It shall be presumed that any person who does any of the acts provided in this Section has performed them knowingly, unless the contrary is proven.

Although Republic Act No. 7659, in amending Article 122 of the Revised Penal Code, incorporated therein the crime of piracy in Philippine territorial waters and thus correspondingly superseding Presidential Decree No. 532, Section 4 of the Decree which punishes said acts as a crime of abetting piracy or brigandage, still stands as it has not been repealed nor modified, and is not inconsistent with any provision of Republic Act No. 7659.

Destroying the corpus delicti

When the crime is robbery or theft, with respect to the second involvement of an accessory, do not overlook the purpose which must be to prevent discovery of the crime.

The corpus delicti is not the body of the person who is killed, even if the corpse is not recovered, as long as that killing is established beyond reasonable doubt, criminal liability will arise and if there is someone who destroys the corpus delicti to prevent discovery, he becomes an accessory.

Harboring or concealing an offender

In the third form or manner of becoming an accessory, take note that the law distinguishes between a public officer harboring, concealing or assisting the principal to escape and a private citizen or civilian harboring concealing or assisting the principal to escape.

In the case of a public officer, the crime committed by the principal is immaterial. Such officer becomes an accessory by the mere fact that he helped the principal to escape by harboring or concealing, making use of his public function and thus abusing the same.

On the other hand, in case of a civilian, the mere fact that he harbored concealed or assisted the principal to escape does not ipso facto make him

an accessory. The law requires that the principal must have committed the crime of treason, parricide, murder or attempt on the life of the Chief Executive. If this is not the crime, the civilian does not become an accessory unless the principal is known to be habitually guilty of some other crime. Even if the crime committed by the principal is treason, or murder or parricide or attempt on the life of the Chief Executive, the accessory cannot be held criminally liable without the principal being found guilty of any such crime. Otherwise the effect would be that the accessory merely harbored or assisted in the escape of an innocent man, if the principal is acquitted of the charges.

Illustration:

Crime committed is kidnapping for ransom. Principal was being chased by soldiers. His aunt hid him in the ceiling of her house and aunt denied to soldiers that her nephew had ever gone there. When the soldiers left, the aunt even gave money to her nephew to go to the province. Is aunt criminally liable? No. Article 20 does not include an auntie. However, this is not the reason. The reason is because one who is not a public officer and who assists an offender to escape or otherwise harbors, or conceals such offender, the crime committed by the principal must be either treason, parricide murder or attempt on the life of the Chief executive or the principal is known to be habitually guilty of some other crime.

The crime committed by the principal is determinative of the liability of the accessory who harbors, conceals knowing that the crime is committed. If the person is a public officer, the nature of the crime is immaterial. What is material is that he used his public function in assisting escape.

However, although under paragraph 3 of Article 19 when it comes to a civilian, the law specifies the crimes that should be committed, yet there is a special law which punishes the same act and it does not specify a particular crime. Presidential Decree No. 1829, which penalizes obstruction of apprehension and prosecution of criminal offenders, effective January 16, 1981, punishes acts commonly referred to as "obstructions of justice". This Decree penalizes under Section 1(c) thereof, the act, inter alia, of "(c) Harboring or concealing, or facilitating the escape of any person he knows or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction."

Here, there is no specification of the crime to be committed by the offender for criminal liability to be incurred for harboring, concealing, or facilitating the escape of the offender, and the offender need not be the principal – unlike paragraph 3, Article 19 of the Code. The subject acts may not bring about criminal liability under the Code, but under this decree. Such an offender if violating Presidential Decree No. 1829 is no longer an accessory. He is simply an offender without regard to the crime committed by the person assisted to escape. So in the problem, the standard of the Revised Penal Code, aunt is not criminally liable because crime is kidnapping, but under Presidential Decree No. 1829, the aunt is criminally liable but not as an accessory.

Whether the accomplice and the accessory may be tried and convicted even before the principal is found guilty

There is an earlier Supreme Court ruling that the accessory and accomplice must be charged together with the principal and that if the latter be acquitted, the accomplice and the accessory shall not be criminally liable also, unless the acquittal is based on a defense which is personal only to the principal. Although this ruling may be correct if the facts charged do not make the principal criminally liable at all, because there is no crime committed.

Yet it is not always true that the accomplice and accessory cannot be criminally liable without the principal first being convicted. Under Rule 110 of the Revised Rules on Criminal Procedure, it is required that all those involved in the commission of the crime must be included in the information that may be filed. And in filing an information against the person involved in the commission of the crime, the law does not distinguish between principal, accomplice and accessory. All will be accused and whether a certain accused will be principal or accomplice or accessory will depend on what the evidence would show as to his involvement in the crime. In other words, the liability of the accused will depend on the quantum of evidence adduced by the prosecution against the particular accused. But the prosecutor must initiate proceedings versus the principal.

Even if the principal is convicted, if the evidence presented against a supposed accomplice or a supposed accessory does not meet the required proof beyond reasonable doubt, then said accused will be acquitted. So the criminal liability of an accomplice or accessory does not depend on the criminal liability of the principal but depends on the quantum of evidence. But if the evidence shows that the act done does not constitute a crime and the principal is acquitted, then the supposed accomplice and accessory should also be acquitted. If there is no crime, then there is no criminal liability, whether principal, accomplice, or accessory.

Under paragraph 3, Article 19, take note in the case of a civilian who harbors, conceals, or assists the escape of the principal, the law requires that the principal be found guilty of any of the specified crimes: treason, parricide, etc. The paragraph uses the particular word "guilty". So this means that before the civilian can be held liable as an accessory, the principal must first be found guilty of the crime charged, either treason, parricide, murder, or attempt to take the life of the Chief Executive. If the principal is acquitted, that means he is not guilty and therefore, the civilian who harbored, concealed or assisted in the escape did not violate art. 19. That is as far as the Revised Penal Code is concerned. But not Presidential Decree No. 1829. This special law does not require that there be prior conviction. It is a malum prohibitum, no need for guilt, or knowledge of the crime.

In **Taer v. CA,** accused received from his co-accused two stolen male carabaos. Conspiracy was not proven. Taer was held liable as an accessory in the crime of cattle rustling under Presidential Decree No. 533. [Taer should have been liable for violation of the Anti-fencing law since cattle rustling is a form of theft or robbery of large cattle, except that he was not charged with fencing.]

In **Enrile v. Amin,** a person charged with rebellion should not be separately charged under Presidential Decree No. 1829. The theory of absorption must not confine itself to common crimes but also to offenses punished under special laws which are perpetrated in furtherance of the political offense.

DECREE PENALIZING OBSTRUCTION OF APPREHENSION AND PROSECUTION OF CRIMINAL OFFENDERS (P.D. 1829)

Punishable acts under Sec. 1

Any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases are punished by committing any of the following acts:

(1) Preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats;
(2) Altering, destroying, suppressing or concealing any paper, record, document, or object with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases;
(3) Harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction;
(4) Publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes;
(5) Delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts;
(6) Making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to effect the course or outcome of the investigation of, or official proceedings in criminal cases;
(7) Soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discontinuing, or impeding the prosecution of a criminal offender;
(8) Threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person

from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of, or in official proceedings in criminal cases;

(9) Giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background investigation and not for publication and publishing or disseminating the same to mislead the investigator or the court.

If any of these is penalized by any other law with a high penalty, the higher penalty shall be imposed.

Compare with Article 20, RPC (accessories exempt from criminal liability)

(1) Art. 19. Accessories. – Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:
   1. By profiting themselves or assisting the offender to profit by the effects of the crime.
   2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.
   3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

(2) Art. 20. Accessories who are exempt from criminal liability. – The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article (by profiting themselves or assisting the offender to profit by the effects of the crime).

5. PENALTIES

General Principles

(1) Art. 21. Penalties that may be imposed. – No felony shall be punishable by any penalty not prescribed by law prior to its commission.

(2) Judicial conditions for penalty:
   (a) Must be productive of suffering but the limit is the integrity of human personality;
   (b) Must be proportionate to the crime in the sense that different penalties are prescribed for different felonies;
   (c) Must be personal as it must be imposed only upon the criminal and no other;
   (d) Must be legal as it must be the consequence of a judgment according to law;
   (e) Must be certain so that one cannot escape from it;
   (f) Must be equal in the sense that it applies to all persons regardless of circumstances;
   (g) Must be correctional.

Purposes

(1) The purpose of the State in punishing crimes is to secure justice. The State has an existence of its own to maintain a conscience of its own to assert, and moral principles to be vindicated. Penal justice must therefore be exercised by the State in the service and satisfaction of a duty and rests primarily on the moral rightfulness of the punishment inflicted.

(2) Padilla gave five theories justifying penalty:
   (a) Prevention - The State must punish the criminal to prevent or suppress the danger to the State and to the public arising from the criminal acts of the offender;
   (b) Correction or reformation - The object of punishment in criminal cases is to correct and reform, as the State has the

duty to take care of and reform the criminal;

(c) Exemplarity – The criminal is punished to serve as an example to deter others from committing crimes;

(d) Social defense – The State has the right to punish the criminal as a measure of a self-defense so as to protect society from the wrong caused by the criminal; and

(e) Justice – The absolute theory of penalty rests on the theory that crime must be punished by the State as an act of retributive justice, a vindication of absolute right and moral law violated by the criminal.

ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY (R.A. 9346)

(1) The imposition of the penalty of death is hereby prohibited. Accordingly, RA 8177 (Act Designating Death by Lethal Injection) is hereby repealed. RA 7659 (Death Penalty Law) and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly *(Sec. 1, RA 9346)*.

(2) In lieu of the death penalty, the following shall be imposed:
   (a) The penalty of *reclusion perpetua* when the law violated makes use of the nomenclature of the penalties of the RPC;
   (b) The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC;

(3) Persons convicted of offenses punished with *reclusion* perpetua, or whose sentences will be reduced to *reclusion perpetua* by reason of the Act shall not be eligible for parole under the ISLAW.

Measures of prevention not considered as penalty

The following are the measures of prevention or safety which are not considered penalties under Article 24:

(1) The arrest and temporary detention of accused persons as well as their detention by reason of insanity or imbecility or illness requiring their confinement in a hospital.

(2) The commitment of a minor to any of the institutions mentioned in art. 80 for the purposes specified therein.

(3) Suspension from the employment or public office during the trial or in order to institute proceedings.

(4) Fines and other corrective measures which, in the exercise of their administrative disciplinary powers, superior officials may impose upon their subordinates.

(5) Deprivation of rights and reparations which the civil laws may establish in penal form.

Why does the Revised Penal Code specify that such detention shall not be a penalty but merely a preventive measure?

This article gives justification for detaining the accused. Otherwise, the detention would violate the constitutional provision that no person shall be deprived of life, liberty and property without due process of law. And also, the constitutional right of an accused to be presumed innocent until the contrary is proved.

Correlating Article 24 with Article 29

Although under Article 24, the detention of a person accused of a crime while the case against him is being tried does not amount to a penalty, yet the law considers this as part of the imprisonment and generally deductible from the sentence.

When will this credit apply? If the penalty imposed consists of a deprivation of liberty. Not all who have undergone preventive imprisonment shall be given a credit

Under Article 24, preventive imprisonment of an accused who is not yet convicted, but by express provision of Article24 is not a penalty. Yet Article 29, if ultimately the accused is convicted and the penalty imposed involves deprivation of liberty, provides that the period during which he had undergone preventive detention will be deducted from the sentence, unless he is one of those disqualified under the law.

So, if the accused has actually undergone preventive imprisonment, but if he has been convicted for two or more crimes whether he is a recidivist or not, or when he has been previously summoned but failed to surrender and so the court has to issue a warrant for his arrest, whatever credit he is entitled to shall be forfeited.

If the offender is not disqualified from the credit

or deduction provided for in Article 29 of the Revised Penal Code, then the next thing to determine is whether he signed an undertaking to abide by the same rules and regulations governing convicts. If he signed an undertaking to abide by the same rules and regulations governing convicts, then it means that while he is suffering from preventive imprisonment, he is suffering like a convict, that is why the credit is full.

But if the offender did not sign an undertaking, then he will only be subjected to the rules and regulations governing detention prisoners. As such, he will only be given 80% or 4/5 of the period of his preventive detention.

From this provision, one can see that the detention of the offender may subject him only to the treatment applicable to a detention prisoner or to the treatment applicable to convicts, but since he is not convicted yet, while he is under preventive imprisonment, he cannot be subjected to the treatment applicable to convicts unless he signs and agrees to be subjected to such disciplinary measures applicable to convicts.

Detention prisoner has more freedom within the detention institution rather than those already convicted. The convicted prisoner suffers more restraints and hardship than detention prisoners.

Under what circumstances may a detention prisoner be released, even though the proceedings against him are not yet terminated?

Article 29 of the Revised Penal Code has been amended by a Batas Pambansa effective that tool effect on September 20, 1980. This amendment is found in the Rules of Court, under the rules on bail in Rule 114 of the Rules on Criminal Procedure, the same treatment exactly is applied there.

In the amendment, the law does not speak of credit. Whether the person is entitled to credit is immaterial. The discharge of the offender from preventive imprisonment or detention is predicated on the fact that even if he would be found guilty of the crime charged, he has practically served the sentence already, because he has been detained for a period already equal to if not greater than the maximum penalty that would be possibly be imposed on him if found guilty.

If the crime committed is punishable only by destierro, the most the offender may be held under preventive imprisonment is 30 days, and whether the proceedings are terminated or not, such detention prisoner shall be discharged.

Understand the amendment made to Article 29. This amendment has been incorporated under Rule 114 precisely to do away with arbitrary detention.

Proper petition for habeas corpus must be filed to challenge the legality of the detention of the prisoner.

Questions & Answers

If the offender has already been released, what is the use of continuing the proceedings?

The proceedings will determine whether the accused is liable or not. If he was criminally liable, it follows that he is also civilly liable. The civil liability must be determined. That is why the trial must go on.

DURATION AND EFFECT OF PENALTIES

Art. 27. Reclusion perpetua. — Any person sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon.

Reclusion temporal. — The penalty of reclusion temporal shall be from twelve years and one day to twenty years.

Prision mayor and temporary disqualification. — The duration of the penalties of prision mayor and temporary disqualification shall be from six years and one day to twelve years, except when the penalty of disqualification is imposed as an accessory penalty, in which case its duration shall be that of the principal penalty.

Prision correccional, suspension, and destierro. — The duration of the penalties of prision correccional, suspension and destierro shall be from six months and one

day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.

Arresto mayor. – The duration of the penalty of arresto mayor shall be from one month and one day to six months.

Arresto menor. – The duration of the penalty of arresto menor shall be from one day to thirty days.

Bond to keep the peace. – The bond to keep the peace shall be required to cover such period of time as the court may determine.

Art. 28. Computation of penalties. – If the offender shall be in prison, the term of the duration of the temporary penalties shall be computed from the day on which the judgment of conviction shall have become final.

If the offender be not in prison, the term of the duration of the penalty consisting of deprivation of liberty shall be computed from the day that the offender is placed at the disposal of the judicial authorities for the enforcement of the penalty. The duration of the other penalties shall be computed only from the day on which the defendant commences to serve his sentence.

Art. 29. Period of preventive imprisonment deducted from term of imprisonment. – Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, except in the following cases:

1. *When they are recidivists or have been convicted previously twice or more times of any crime; and*
2. *When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.*

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment. (As amended by Republic Act 6127, June 17, 1970).

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment. (As amended by E.O. No. 214, July 10, 1988).

Section Two. – Effects of the penalties according to their respective nature

Art. 30. Effects of the penalties of perpetual or temporary absolute disqualification. – The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. *The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.*
2. *The deprivation of the right to vote in any election for any popular office or to be elected to such office.*
3. *The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.*

   In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.
4. *The loss of all rights to retirement pay or other pension for any office formerly held.*

Art. 31. Effect of the penalties of perpetual or temporary special disqualification. – The penalties of perpetual or temporal special disqualification for public office, profession or calling shall produce the following effects:

1. *The deprivation of the office, employment, profession or calling affected;*
2. *The disqualification for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of such disqualification.*

Art. 32. Effect of the penalties of perpetual or temporary special disqualification for the

exercise of the right of suffrage. – The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

Art. 33. Effects of the penalties of suspension from any public office, profession or calling, or the right of suffrage. – The suspension from public office, profession or calling, and the exercise of the right of suffrage shall disqualify the offender from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence.

The person suspended from holding public office shall not hold another having similar functions during the period of his suspension.

Art. 34. Civil interdiction. – Civil interdiction shall deprive the offender during the time of his sentence of the rights of parental authority, or guardianship, either as to the person or property of any ward, of marital authority, of the right to manage his property and of the right to dispose of such property by any act or any conveyance inter vivos.

Art. 35. Effects of bond to keep the peace. – It shall be the duty of any person sentenced to give bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the offense sought to be prevented, and that in case such offense be committed they will pay the amount determined by the court in the judgment, or otherwise to deposit such amount in the office of the clerk of the court to guarantee said undertaking.

The court shall determine, according to its discretion, the period of duration of the bond. Should the person sentenced fail to give the bond as required he shall be detained for a period which shall in no case exceed six months, is he shall have been prosecuted for a grave or less grave felony, and shall not exceed thirty days, if for a light felony.

Art. 36. Pardon; its effect. – A pardon shall not work the restoration of the right to hold public office, or the right of suffrage, unless such rights be expressly restored by the terms of the pardon.

A pardon shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

Art. 37. Cost; What are included. – Costs shall include fees and indemnities in the course of the judicial proceedings, whether they be fixed or unalterable amounts previously determined by law or regulations in force, or amounts not subject to schedule.

Art. 38. Pecuniary liabilities; Order of payment. – In case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities, the same shall be met in the following order:

1. The reparation of the damage caused.
2. Indemnification of consequential damages.
3. The fine.
4. The cost of the proceedings.

Art. 39. Subsidiary penalty. – If the convict has no property with which to meet the fine mentioned in the paragraph 3 of the nest preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each eight pesos, subject to the following rules:

1. If the principal penalty imposed be prision correccional or arresto and fine, he shall remain under confinement until his fine referred to in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.
2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.
3. When the principal imposed is higher than prision correccional, no subsidiary imprisonment shall be imposed upon the culprit.
4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period

of time established in the preceding rules, shall continue to suffer the same deprivations as those of which the principal penalty consists.chan robles virtual law library

5. *The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him, from the fine in case his financial circumstances should improve. (As amended by RA 5465, April 21, 1969).*

Reclusion perpetua

What is the duration of reclusion perpetua?

Do not answer Article 27 to this question. The proper answer would be that reclusion perpetua has no duration because this is an indivisible penalty and indivisible penalties have no durations.

Under Article 27, those sentenced to reclusion perpetua shall be pardoned after undergoing the penalty for 30 years, unless such person, by reason of his conduct or some other serious cause, shall be considered by the Chief Executive as unworthy of pardon.

Under Article 70, which is the Three-Fold Rule, the maximum period shall in no case exceed 40 years. If a convict who is to serve several sentences could only be made to serve 40 years, with more reason, one who is sentenced to a singly penalty of reclusion perpetua should not be held for more than 40 years.

The duration of 40 years is not a matter of provision of law; this is only by analogy. There is no provision of the Revised Penal Code that one sentenced to reclusion perpetua cannot be held in jail for 40 years and neither is there a decision to this effect.

Destierro

What is the duration of destierro?

The duration of destierro is from six months and one day, to six year, which is the same as that of *prision correcional* and suspension. Destierro is a principal penalty. It is a punishment whereby a convict is vanished to a certain place and is prohibited from entering or coming near that place designated in the sentence, not less than 25 Km. However, the court cannot extend beyond 250 Km. If the convict should enter the prohibited places, he commits the crime of evasion of service of sentence under Article 157. But if the convict himself would go further from which he is vanished by the court, there is no evasion of sentence because the 240-Km. limit is upon the authority of the court in vanishing the convict.

Under the Revised Penal Code, destierro is the penalty imposed in the following situations:

1. When a legally married person who had surprised his or her spouse in the act of sexual intercourse with another and while in that act or immediately thereafter should kill or inflict serious physical injuries upon the other spouse, and/or the paramour or mistress. This is found in Article 247.
2. In the crime of grave threat or light threat, when the offender is required to put up a bond for good behavior but failed or refused to do so under Article 284, such convict shall be sentenced to destierro so that he would not be able to carry out his threat.
3. In the crime of concubinage, the penalty prescribed for the concubine is destierro under Article 334.
4. Where the penalty prescribed by law is arresto mayor, but the offender is entitled privileged mitigating circumstance and lowering the prescribed penalty by one degree, the penalty one degree lower is destierro. Thus, it shall be the one imposed.

Civil Interdiction

Civil interdiction is an accessory penalty. Civil interdiction shall deprive the offender during the time of his sentence:

(1) The rights of parental authority, or guardianship either as to the person or property of any ward;
(2) Marital authority;
(3) The right to manage his property; and
(4) The right to dispose of such property by any act or any conveyance inter vivos.

Can a convict execute a last will and testament? Yes.

PRIMARY CLASSIFICATION OF PENALTIES

Principal penalties and accessory penalties

The penalties which are both principal and accessory penalties are the following:

(1) Perpetual or temporary absolute disqualification;
(2) Perpetual or temporary special disqualification.

Questions & Answers

1. If the penalty of suspension is imposed as an accessory, what is the duration?
   Its duration shall be that of the principal penalty.
2. If the penalty of temporary disqualification is imposed as principal penalty, what is the duration?
   The duration is six years and one day to 12 years.
3. What do we refer to if it is perpetual or temporary disqualification?
   We refer to the duration of the disqualification.
4. What do we refer to if it is special or absolute disqualification?
   We refer to the nature of the disqualification.

The classification of principal and accessory is found in Article 25.

In classifying the penalties as principal and accessory, what is meant by this is that those penalties classified as accessory penalties need not be stated in the sentence. The accessory penalties follow the principal penalty imposed for the crime as a matter of course. So in the imposition of the sentence, the court will specify only the principal penalty but that is not the only penalty which the offender will suffer. Penalties which the law considers as accessory to the prescribed penalty are automatically imposed even though they are not stated in the judgment. As to the particular penalties that follow a particular principal penalty, Articles 40 to 45 of the Revised Penal Code shall govern.

If asked what are the accessory penalties, do not just state the accessory penalties. State the principal penalty and the corresponding accessory penalties.

Penalties in which other accessory penalties are inherent:

(1) Article 40. Death - perpetual absolute disqualification, and civil interdiction during 30 years following date of sentence;
(2) Article 41. Reclusion perpetua and reclusion temporal - civil interdiction for life or during the period of the sentence as the case may be, and perpetual absolute disqualification;
(3) Article 42. Prision mayor - temporary absolute disqualification perpetual special disqualification from the right of suffrage;
(4) Article 43. Prision correccional - suspension from public office, from the right to follow a profession or calling, and perpetual special disqualification from the rights of suffrage if the duration of said imprisonment shall exceed 18 months.
(5) Article 44. Arresto - suspension of the right to hold office and the right of suffrage during the term of the sentence.

There are accessory penalties which are true to other principal penalties. An example is the penalty of civil interdiction. This is an accessory penalty and, as provided in Article 34, a convict sentenced to civil interdiction suffers certain disqualification during the term of the sentence. One of the disqualifications is that of making a conveyance of his property inter vivos.

Illustration:

A has been convicted and is serving the penalty of prision mayor. While serving sentence, he executed a deed of sale over his only parcel of land. A creditor moved to annul the sale on the ground that the convict is not qualified to execute a deed of conveyance inter vivos. If you were the judge, how would you resolve the move of the creditor to annul the sale?

Civil interdiction is not an accessory penalty in prision mayor. The convict can convey his property.

Questions & Answers

What accessory penalty is common to all principal penalties?
Confiscation or forfeiture on the instruments or proceeds of the crime.

Bond to keep the peace

One of the principal penalties common to the others is bond to keep the peace. There is no crime under the Revised Penal Code which carries this penalty.

Bond for good behavior

Bond for good behavior is prescribed by the Revised Penal Code for the crimes of grave threats and light threats under Article 234. You cannot find this penalty in Article 25 because Article 25 only provides for bond to keep the peace. Remember that no felony shall be punished by any penalty not prescribed by law prior to its commission pursuant to Article 21.

Questions & Answers

1. If bond to keep the peace is not the same as bond for good behavior, are they one and the same bond that differ only in name?

No. The legal effect of each is entirely different. The legal effect of a failure to post a bond to keep the peace is imprisonment either for six months or 30 days, depending on whether the felony committed is grave or less grave on one hand, or it is light only on the other hand. The legal effect of failure to post a bond for good behavior is not imprisonment but destierro under Article 284. Thus, it is clear that the two bonds are not the same considering that the legal effect or the failure to put up the bond is not the same.

Divisible and indivisible penalties

When we talk of period, it is implying that the penalty is divisible.

If, after being given a problem, you were asked to state the period in which the penalty of reclusion perpetua is to be imposed, remember that when the penalty is indivisible, there is no period. Do not talk of period, because when you talk of period, you are implying that the penalty is divisible because the period referred to is the minimum, the medium, and the maximum. If it is indivisible, there is no such thing as minimum, medium and maximum.

The capital punishment

You were asked to state whether you are in favor or against capital punishment. Understand that you are not taking the examination in Theology. Explain the issue on the basis of social utility of the penalty. Is it beneficial in deterring crimes or not? This should be the premise of your reasoning.

Designation of penalty

Since the principal penalties carry with them certain accessory penalties, the courts are not at liberty to use any designation of the principal penalty. So it was held that when the penalty should be reclusion perpetua, it is error for the court to use the term "life imprisonment". In other words, the courts are not correct when they deviate from the technical designation of the principal penalty, because the moment they deviate from this designation, there will be no corresponding accessory penalties that will go with them.

Illustration:

When the judge sentenced the accused to the penalty of reclusion perpetua, but instead of saying reclusion perpetua, it sentenced the accused to life imprisonment, the designation is wrong.

Reclusion perpetua as modified

Before the enactment of Republic Act No. 7659, which made amendments to the Revised Penal Code, the penalty of reclusion perpetua had no fixed duration. The Revised Penal Code provides in Article 27 that the convict shall be pardoned after undergoing the penalty for thirty years, unless by reason of his conduct or some other serious cause, he is not deserving of pardon. As amended by Section 21 of Republic Act No. 7659, the same article now provides that the penalty of reclusion perpetua shall be from 20 years to 40 years. Because of this, speculations arose as to whether it made reclusion perpetua a divisible penalty.

As we know, when a penalty has a fixed duration, it is said to be divisible and, in accordance with the provisions of Articles 65 and 76, should be divided into three equal portions to form one period of each of the three portions. Otherwise, if the penalty has no fixed duration, it is an indivisible penalty. The nature of the penalty as divisible or indivisible is decisive of the proper penalty to be imposed under the Revised Penal Code inasmuch as it determines whether the rules in Article 63 or the rules in Article 64 should be observed in fixing the penalty.

Thus, consistent with the rule mentioned, the Supreme Court, by its First Division, applied Article 65 of the Code in imposing the penalty for rape in **People v. Conrado Lucas, GR No. 108172-73, May 25, 1994**. It divided the time included in the penalty of reclusion perpetua into three equal portions, with each portion composing a period as follows:

Minimum - 20 years and one day, to 26 years and eight months;
Medium - 26 years, eight months and one day, to 33 years and four months;
Maximum - 34 years, four months and one day, to 40 years.

Considering the aggravating circumstance of relationship, the Court sentenced the accused to imprisonment of 34 years, four months and one day of reclusion perpetua, instead of the straight penalty of reclusion perpetua imposed by the trial court. The appellee seasonably filed a motion for clarification to correct the duration of the sentence, because instead of beginning with 33 years, four months and one day, it was stated as 34 years, four months and one day. The issue of whether the amendment of Article 27 made reclusion perpetua a divisible penalty was raised, and because the issue is one of first impression and momentous importance, the First Division referred the motion to the Court en banc.

In a resolution promulgated on January 9, 1995, the Supreme Court en banc held that reclusion perpetua shall remain as an indivisible penalty. To this end, the resolution states:

> After deliberating on the motion and re-examining the legislation history of RA 7659, the Court concludes that although Section 17 of RA 7659 has fixed the duration of Reclusion Perpetua from twenty years (20) and one (1) to forty 40 years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty.
>
> Verily, if reclusion perpetua was classified as a divisible penalty, then Article 63 of the Revised Penal Code would lose its reason and basis for existence. To illustrate, the first paragraph of Section 20 of the amended RA No. 6425 provides for the penalty of reclusion perpetua to death whenever the dangerous drugs involved are of any of the quantities stated herein. If Article 63 of the Code were no longer applicable because reclusion perpetua is supposed to be a divisible penalty, then there would be no statutory rules for determining when either reclusion perpetua or death should be the imposable penalty. In fine, there would be no occasion for imposing reclusion perpetua as the penalty in drug cases, regardless of the attendant modifying circumstances.
>
> Now then, if Congress had intended to reclassify reclusion perpetua as divisible penalty, then it should have amended Article 63 and Article 76 of the Revised Penal Code. The latter is the law on what are considered divisible penalties under the Code and what should be the duration of the periods thereof. There are, as well, other provisions of the Revised Penal Code involving reclusion perpetua, such as Article 41 on the accessory penalties thereof and paragraphs 2 and 3 of Article 61, which have not been touched by a corresponding amendment.

Ultimately, the question arises: "What then may be the reason for the amendment fixing the duration of reclusion perpetua?" This question was answered in the same case of **People v. Lucas** by quoting pertinent portion of the decision in **People v. Reyes, 212 SCRA 402,** thus:

> The imputed duration of thirty (30) years for reclusion perpetua, thereof, is only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of penalties. Since, however, in all the graduated scales of penalties in the Code, as set out in Article 25, 70 and 21, reclusion perpetua is the penalty immediately next higher to reclusion temporal, it follows by necessary implication that the minimum of reclusion perpetua is twenty (20) years and one (1) day with a maximum duration thereafter to last for the rest of the convict's natural life, although, pursuant to Article 70, it appears that the maximum period for the service of penalties shall not exceed

forty (40) years. It would be legally absurd and violative of the scales of penalties in the Code to reckon the minimum of Reclusion Perpetua at thirty (30) years since there would thereby be a resultant lacuna whenever the penalty exceeds the maximum twenty (20) years of Reclusion Temporal but is less than thirty (30) years.

Subsidiary penalty

Is subsidiary penalty an accessory penalty? No.

If the convict does not want to pay fine and has so many friends and wants to prolong his stay in jail, can he stay there and not pay fine? No.

After undergoing subsidiary penalty and the convict is already released from jail and his financial circumstances improve, can he be made to pay? Yes, for the full amount with deduction.

Article 39 deals with subsidiary penalty. There are two situations there:

(1) When there is a principal penalty of imprisonment or any other principal penalty and it carries with it a fine; and
(2) When penalty is only a fine.

Therefore, there shall be no subsidiary penalty for the non-payment of damages to the offended party.

This subsidiary penalty is one of important matter under the title of penalty. A subsidiary penalty is not an accessory penalty. Since it is not an accessory penalty, it must be expressly stated in the sentence, but the sentence does not specify the period of subsidiary penalty because it will only be known if the convict cannot pay the fine. The sentence will merely provide that in case of non-payment of the fine, the convict shall be required to save subsidiary penalty. It will then be the prison authority who will compute this.

So even if subsidiary penalty is proper in a case, if the judge failed to state in the sentence that the convict shall be required to suffer subsidiary penalty in case of insolvency to pay the fine, that convict cannot be required to suffer the accessory penalty. This particular legal point is a bar problem. Therefore, the judgment of the court must state this. If the judgment is silent, he cannot suffer any subsidiary penalty.

The subsidiary penalty is not an accessory penalty that follows the principal penalty as a matter of course. It is not within the control of the convict to pay the fine or not and once the sentence becomes final and executory and a writ of execution is issued to collect the fine, if convict has property to levy upon, the same shall answer for the fine, whether he likes it or not. It must be that the convict is insolvent to pay the fine. That means that the writ of execution issued against the property of the convict, if any, is returned unsatisfied.

In **People v. Subido,** it was held that the convict cannot choose not to serve, or not to pay the fine and instead serve the subsidiary penalty. A subsidiary penalty will only be served if the sheriff should return the execution for the fine on the property of the convict and he does not have the properties to satisfy the writ.

Questions & Answers

The penalty imposed by the judge is fine only. The sheriff then tried to levy the property of the defendant after it has become final and executory, but it was returned unsatisfied. The court then issued an order for said convict to suffer subsidiary penalty. The convict was detained, for which reason he filed a petition for habeas corpus contending that his detention is illegal. Will the petition prosper?

Yes. The judgment became final without statement as to subsidiary penalty, so that even if the convict has no money or property to satisfy the fine, he cannot suffer subsidiary penalty because the latter is not an accessory and so it must be expressly stated. If the court overlooked to provide for subsidiary penalty in the sentence and its attention was later called to that effect, thereafter, it tried to modify the sentence to include subsidiary penalty after period to appeal had already elapsed, the addition of subsidiary penalty will be null and void. This is tantamount to double jeopardy.

If the fine is prescribed with the penalty of imprisonment or any deprivation of liberty, such imprisonment should not be higher than six years or prision correccional. Otherwise, there is no subsidiary penalty.

When is subsidiary penalty applied

(1) If the subsidiary penalty prescribed for the non-payment of fine which goes with the principal penalty, the maximum duration of the subsidiary penalty is one year, so there is no subsidiary penalty that goes beyond one year. But this will only be true if the one year period is higher than 1/3 of the principal penalty, the convict cannot be made to undergo subsidiary penalty more than 1/3 of the duration of the principal penalty and in no case will it be more than 1 year - get 1/3 of the principal penalty - whichever is lower.

(2) If the subsidiary penalty is to be imposed for nonpayment of fine and the principal penalty imposed be fine only, which is a single penalty, that means it does not go with another principal penalty, the most that the convict will be required to undergo subsidiary imprisonment is six months, if the felony committed is grave or less grave, otherwise, if the felony committed is slight, the maximum duration of the subsidiary penalty is only 15 days.

There are some who use the term subsidiary imprisonment. The term is wrong because the penalty is not only served by imprisonment. The subsidiary penalty follows the nature of the principal penalty. If the principal penalty is destierro, this being a divisible penalty, and a penalty with a fixed duration, the non-payment of the fine will bring about subsidiary penalty. This being a restriction of liberty with a fixed duration under Article 39 for the nonpayment of fine that goes with the destierro, the convict will be required to undergo subsidiary penalty and it will also be in the form of destierro.

Illustration:

A convict was sentenced to suspension and fine. This is a penalty where a public officer anticipates public duties, he entered into the performance of public office even before he has complied with the required formalities. Suppose the convict cannot pay the fine, may he be required to undergo subsidiary penalty?

Yes, because the penalty of suspension has a fixed duration. Under Article 27, suspension and destierro have the same duration as prision correccional. So the duration does not exceed six years. Since it is a penalty with a fixed duration under Article 39, when there is a subsidiary penalty, such shall be 1/3 of the period of suspension which in no case beyond one year. But the subsidiary penalty will be served not by imprisonment but by continued suspension.

If the penalty is public censure and fine even if the public censure is a light penalty, the convict cannot be required to pay the fine for subsidiary penalty for the non-payment of the fine because public censure is a penalty that has no fixed duration.

Do not consider the totality of the imprisonment the convict is sentenced to but consider the totality or the duration of the imprisonment that the convict will be required to serve under the Three-Fold Rule. If the totality of the imprisonment under this rule does not exceed six years, then, even if the totality of all the sentences without applying the Three-Fold Rule will go beyond six years, the convict shall be required to undergo subsidiary penalty if he could not pay the fine.

Illustration:

A collector of NAWASA collected from 50 houses within a certain locality. When he was collecting NAWASA bills, the charges of all these consumers was a minimum of 10. The collector appropriated the amount collected and so was charged with estafa. He was convicted. Penalty imposed was arresto mayor and a fine of P200.00 in each count. If you were the judge, what penalty would you impose? May the convict be required to undergo subsidiary penalty in case he is insolvent to pay the fine?

The Three-Fold Rule should not applied by the court. In this case of 50 counts of estafa, the penalty imposed was arresto mayor and a fine of P200.00. Arresto mayor + P200.00 x 50. Arresto Mayor is six months x 50 = 25 years. P200.00 x 50 = P10,000.00. Thus, I would impose a penalty of arresto mayor and a fine of P200.00 multiplied by 50 counts and state further that "as a judge, I am not in the position to apply the Three-Fold Rule because the Three-Fold Rule is to be given effect when the convict is already serving sentence in the penitentiiary. It is the prison authority who will apply the Three-Fold Rule. As far as the court is concerned, that will be the penalty to be imposed."

For the purposes of subsidiary penalty, apply the Three-Fold Rule if the penalty is arresto mayor and a fine of P200.00 multiplied by 3. This

means one year and six months only. So, applying the Three- Fold Rule, the penalty does not go beyond six years. Hence, for the non-payment of the fine of P10,000.00, the convict shall be required to undergo subsidiary penalty. This is because the imprisonment that will be served will not go beyond six years. It will only be one year and six months, since in the service of the sentence, the Three-Fold Rule will apply.

It is clearly provided under Article 39 that if the means of the convict should improve, even if he has already served subsidiary penalty, he shall still be required to pay the fine and there is no deduction for that amount which the convict has already served by way of subsidiary penalty.

APPLICATION OF PENALTIES

Art. 46. Penalty to be imposed upon principals in general. — The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.

Whenever the law prescribes a penalty for a felony is general terms, it shall be understood as applicable to the consummated felony.

Art. 47. In what cases the death penalty shall not be imposed. — The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except in the following cases:

1. *When the guilty person be more than seventy years of age.*
2. *When upon appeal or revision of the case by the Supreme court, all the members thereof are not unanimous in their voting as to the propriety of the imposition of the death penalty. For the imposition of said penalty or for the confirmation of a judgment of the inferior court imposing the death sentence, the Supreme Court shall render its decision per curiam, which shall be signed by all justices of said court, unless some member or members thereof shall have been disqualified from taking part in the consideration of the case, in which even the unanimous vote and signature of only the remaining justices shall be required.*

Art. 48. Penalty for complex crimes. — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

Art. 49. Penalty to be imposed upon the principals when the crime committed is different from that intended. — In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

1. *If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.*
2. *If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.*
3. *The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either of the latter offenses, in which case the penalty provided for the attempted or the frustrated crime shall be imposed in its maximum period.*

Art. 50. Penalty to be imposed upon principals of a frustrated crime. — The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

Art. 51. Penalty to be imposed upon principals of attempted crimes. — A penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

Art. 52. Penalty to be imposed upon accomplices in consummated crime. — The penalty next lower in degree than that prescribed by law for the consummated shall be imposed upon the accomplices in the commission of a consummated felony.

Art. 53. Penalty to be imposed upon accessories to the commission of a consummated felony. – The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.

Art. 54. Penalty to imposed upon accomplices in a frustrated crime. – The penalty next lower in degree than prescribed by law for the frustrated felony shall be imposed upon the accomplices in the commission of a frustrated felony.

Art. 55. Penalty to be imposed upon accessories of a frustrated crime. – The penalty lower by two degrees than that prescribed by law for the frustrated felony shall be imposed upon the accessories to the commission of a frustrated felony.

Art. 56. Penalty to be imposed upon accomplices in an attempted crime. – The penalty next lower in degree than that prescribed by law for an attempt to commit a felony shall be imposed upon the accomplices in an attempt to commit the felony.

Art. 57. Penalty to be imposed upon accessories of an attempted crime. – The penalty lower by two degrees than that prescribed by law for the attempted felony shall be imposed upon the accessories to the attempt to commit a felony.

Art. 58. Additional penalty to be imposed upon certain accessories. – Those accessories falling within the terms of paragraphs 3 of Article 19 of this Code who should act with abuse of their public functions, shall suffer the additional penalty of absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, and that of absolute temporary disqualification if he shall be guilty of a less grave felony.

Art. 59. Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible. – When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of arresto mayor or a fine from 200 to 500 pesos.

Art. 60. Exception to the rules established in Articles 50 to 57. – The provisions contained in Articles 50 to 57, inclusive, of this Code shall not be applicable to cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

Art. 61. Rules for graduating penalties. – For the purpose of graduating the penalties which, according to the provisions of Articles 50 to 57, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. *When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degrees shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.*
2. *When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.*
3. *When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.*
4. *when the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum*

prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner not especially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

Section Two. – Rules for the application of penalties with regard to the mitigating and aggravating circumstances, and habitual delinquency.

Art. 62. Effect of the attendance of mitigating or aggravating circumstances and of habitual delinquency. – Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

1. Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

2. The same rule shall apply with respect to any aggravating circumstance inherent in the crime to such a degree that it must of necessity accompany the commission thereof.

3. Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

4. The circumstances which consist in the material execution of the act, or in the means employed to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had knowledge of them at the time of the execution of the act or their cooperation therein.

5. Habitual delinquency shall have the following effects:

(a) Upon a third conviction the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prision correccional in its medium and maximum periods;

(b) Upon a fourth conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its minimum and medium periods; and

(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its maximum period to reclusion temporal in its minimum period.

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For the purpose of this article, a person shall be deemed to be habitual delinquent, is within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, he is found guilty of any of said crimes a third time or oftener.

Art. 63. Rules for the application of indivisible penalties. – In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. When there are neither mitigating nor aggravating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

3. When the commission of the act is attended by some mitigating

circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.

4. *When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.*

Art. 64. Rules for the application of penalties which contain three periods. – In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. *When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.*
2. *When only a mitigating circumstances is present in the commission of the act, they shall impose the penalty in its minimum period.*
3. *When an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.*
4. *When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.*
5. *When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.*
6. *Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.*
7. *Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater and lesser extent of the evil produced by the crime.*

If crime committed is parricide, penalty is reclusion perpetua. The accused, after committing parricide, voluntarily surrendered and pleaded guilty of the crime charged upon arraignment. It was also established that he was intoxicated, and no aggravating circumstances were present. What penalty would you impose?

Reclusion perpetua, because it is an indivisible penalty.

When there are two or more mitigating circumstances and there is no aggravating circumstance, penalty to be imposed shall be one degree lower to be imposed in the proper period. Do not apply this when there is one aggravating circumstance.

Illustration:

There are about four mitigating circumstances and one aggravating circumstance. Court offsets the aggravating circumstance against the mitigating circumstance and there still remains three mitigating circumstances. Because of that, the judge lowered the penalty by one degree. Is the judge correct?

No. In such a case when there are aggravating circumstances, no matter how many mitigating circumstances there are, after offsetting, do not go down any degree lower. The penalty prescribed by law will be the penalty to be imposed, but in the minimum period. Cannot go below the minimum period when there is an aggravating circumstance.

Go into the lowering of the penalty by one degree if the penalty is divisible. So do not apply the rule in paragraph 5 of Article 64 to a case where the penalty is divisible.

Article 66

When there are mitigating circumstance and

aggravating circumstance and the penalty is only fine, when it is only ordinary mitigating circumstance and aggravating circumstance, apply Article 66. Because you determine the imposable fine on the basis of the financial resources or means of the offender. But if the penalty would be lowered by degree, there is a privileged mitigating circumstance or the felony committed is attempted or frustrated, provided it is not a light felony against persons or property, because if it is a light felony and punishable by fine, it is not a crime at all unless it is consummated. So, if it is attempted or frustrated, do not go one degree lower because it is not punishable unless it is a light felony against person or property where the imposable penalty will be lowered by one degree or two degrees.

Penalty prescribed to a crime is lowered by degrees in the following cases:

(1) When the crime is only attempted or frustrated
If it is frustrated, penalty is one degree lower than that prescribed by law.
If it is attempted, penalty is two degrees lower than that prescribed by law.
This is so because the penalty prescribed by law for a crime refers to the consummated stage.

(2) When the offender is an accomplice or accessory only
Penalty is one degree lower in the case of an accomplice.
Penalty is two degrees lower in the case of an accessory.
This is so because the penalty prescribed by law for a given crime refers to the consummated stage.

(3) When there is a privilege mitigating circumstance in favor of the offender, it will lower the penalty by one or two degrees than that prescribed by law depending on what the particular provision of the Revised Penal Code states.

(4) When the penalty prescribed for the crime committed is a divisible penalty and there are two or more ordinary mitigating circumstances and no aggravating circumstances whatsoever, the penalty next lower in degree shall be the one imposed.

(5) Whenever the provision of the Revised Penal Code specifically lowers the penalty by one or two degrees than what is ordinarily prescribed for the crime committed.

Penalty commonly imposed by the Revised Penal Code may be by way of imprisonment or by way of fine or, to a limited extent, by way of destierro or disqualification, whether absolute or special.

In the matter of lowering the penalty by degree, the reference is Article 71. It is necessary to know the chronology under Article 71 by simply knowing the scale. Take note that destierro comes after arresto mayor so the penalty one degree lower than arresto mayor is not arresto menor, but destierro. Memorize the scale in Article 71.

In Article 27, with respect to the range of each penalty, the range of arresto menor follows arresto mayor, since arresto menor is one to 30 days or one month, while arresto mayor is one month and one day to six months. On the other hand, the duration of destierro is the same as prision correccional which is six months and one day to six years. But be this as it is, under Article 71, in the scale of penalties graduated according to degrees, arresto mayor is higher than destierro.

In homicide under Article 249, the penalty is reclusion temporal. One degree lower, if homicide is frustrated, or there is an accomplice participating in homicide, is prision mayor, and two degrees lower is prision correccional.

This is true if the penalty prescribed by the Revised Penal Code is a whole divisible penalty -- one degree or 2 degrees lower will also be punished as a whole. But generally, the penalties prescribed by the Revised Penal Code are only in periods, like prision correcional minimum, or prision correcional minimum to medium.

Although the penalty is prescribed by the Revised Penal Code as a period, such penalty should be understood as a degree in itself and the following rules shall govern:

(1) When the penalty prescribed by the Revised Code is made up of a period, like prision correccional medium, the penalty one degree lower is prision correccional minimum, and the penalty two degrees lower is arresto mayor maximum. In other words, each degree will be made up of only one period because the penalty prescribed is

also made up only of one period.

(2) When the penalty prescribed by the Code is made up of two periods of a given penalty, every time such penalty is lowered by one degree you have to go down also by two periods.

Illustration:

If the penalty prescribed for the crime is prision correccional medium to maximum, the penalty one degree lower will be arresto mayor maximum to prision correccional minimum, and the penalty another degree lower will be arresto mayor minimum to medium. Every degree will be composed of two periods.

(3) When the penalty prescribed by the Revised Penal Code is made up of three periods of different penalties, every time you go down one degree lower, you have to go down by three periods.

Illustration:

The penalty prescribed by the Revised Penal Code is prision mayor maximum to reclusion temporal medium, the penalty one degree lower is prision correccional maximum to prision mayor medium. Another degree lower will be arresto mayor maximum to prision correccional medium.

These rules have nothing to do with mitigating or aggravating circumstances. These rules refer to the lowering of penalty by one or two degrees. As to how mitigating or aggravating circumstances may affect the penalty, the rules are found in Articles 63 and 64. Article 63 governs when the penalty prescribed by the Revised Penal Code is indivisible. Article 64 governs when the penalty prescribed by the Revised Penal Code is divisible. When the penalty is indivisible, no matter how many ordinary mitigating circumstances there are, the prescribed penalty is never lowered by degree. It takes a privileged mitigating circumstance to lower such penalty by degree. On the other hand, when the penalty prescribed by the Revised Penal Code is divisible, such penalty shall be lowered by one degree only but imposed in the proper period, when there are two or more ordinary mitigating circumstance and there is no aggravating circumstance whatsoever.

Article 75 – Fines

With respect to the penalty of fine, if the fine has to be lowered by degree either because the felony committed is only attempted or frustrated or because there is an accomplice or an accessory participation, the fine is lowered by deducting 1/4 of the maximum amount of the fine from such maximum without changing the minimum amount prescribed by law.

Illustration:

If the penalty prescribed is a fine ranging from P200.00 to P500.00, but the felony is frustrated so that the penalty should be imposed one degree lower, 1/4 of P500.00 shall be deducted therefrom. This is done by deducting P125.00 from P500.00, leaving a difference of P375.00. The penalty one degree lower is P375.00. To go another degree lower, P125.00 shall again be deducted from P375.00 and that would leave a difference of P250.00. Hence, the penalty another degree lower is a fine ranging from P200.00 to P250.00. If at all, the fine has to be lowered further, it cannot go lower than P200.00. So, the fine will be imposed at P200.00. This rule applies when the fine has to be lowered by degree.

Article 66

In so far as ordinary mitigating or aggravating circumstance would affect the penalty which is in the form of a fine, Article 66 of the Revised Penal Code shall govern. Under this article, it is discretionary upon the court to apply the fine taking into consideration the financial means of the offender to pay the same. In other words, it is not only the mitigating and/or aggravating circumstances that the court shall take into consideration, but primarily, the financial capability of the offender to pay the fine. For the same crime, the penalty upon an accused who is poor may be less than the penalty upon an accused committing the same crime but who is wealthy

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For instance, when there are two offenders who are co-conspirators to a crime, and their penalty consists of a fine only, and one of them is wealthy while the other is a pauper, the court may impose a higher penalty upon the wealthy person and a lower fine for the pauper.

Penalty for murder under the Revised Penal Code is reclusion temporal maximum to death. So, the penalty would be reclusion temporal maximum – reclusion perpetua – death. This

penalty made up of three periods.

The Three-Fold Rule

Under this rule, when a convict is to serve successive penalties, he will not actually serve the penalties imposed by law. Instead, the most severe of the penalties imposed on him shall be multiplied by three and the period will be the only term of the penalty to be served by him. However, in no case should the penalty exceed 40 years.

This rule is intended for the benefit of the convict and so, you will only apply this provided the sum total of all the penalties imposed would be greater than the product of the most severe penalty multiplied by three but in no case will the penalties to be served by the convict be more than 40 years.

Although this rule is known as the Three-Fold rule, you cannot actually apply this if the convict is to serve only three successive penalties. The Three-Fold Rule can only be applied if the convict is to serve four or more sentences successively. If the sentences would be served simultaneously, the Three-Fold rule does not govern.

The chronology of the penalties as provided in Article 70 of the Revised Penal Code shall be followed.

It is in the service of the penalty, not in the imposition of the penalty, that the Three-Fold rule is to be applied. The three-Fold rule will apply whether the sentences are the product of one information in one court, whether the sentences are promulgated in one day or whether the sentences are promulgated by different courts on different days. What is material is that the convict shall serve more than three successive sentences.

For purposes of the Three-Fold Rule, even perpetual penalties are taken into account. So not only penalties with fixed duration, even penalties without any fixed duration or indivisible penalties are taken into account. For purposes of the Three-Fold rule, indivisible penalties are given equivalent of 30 years. If the penalty is perpetual disqualification, it will be given and equivalent duration of 30 years, so that if he will have to suffer several perpetual disqualification, under the Three-Fold rule, you take the most severe and multiply it by three. The Three-Fold rule does not apply to the penalty prescribed but to the penalty imposed as determined by the court.

Illustration:

Penalties imposed are –

One prision correcional	minimum – 2 years and 4 months
One arresto mayor	1 month and 1 day to 6 months
One prision mayor	6 years and 1 day to 12 years

Do not commit the mistake of applying the Three- Fold Rule in this case. Never apply the Three-Fold rule when there are only three sentences. Even if you add the penalties, you can never arrive at a sum higher than the product of the most severe multiplied by three.

The common mistake is, if given a situation, whether the Three-Fold Rule could be applied. If asked, if you were the judge, what penalty would you impose, for purposes of imposing the penalty, the court is not at liberty to apply the Three-Fold Rule, whatever the sum total of penalty for each crime committed, even if it would amount to 1,000 years or more. It is only when the convict is serving sentence that the prison authorities should determine how long he should stay in jail.

INDETERMINATE SENTENCE LAW (RA 4103, AS AMENDED)

The purpose of the Indeterminate Sentence law is to avoid prolonged imprisonment, because it is proven to be more destructive than constructive to the offender. So, the purpose of the Indeterminate Sentence Law in shortening the possible detention of the convict in jail is to save valuable human resources. In other words, if the valuable human resources were allowed prolonged confinement in jail, they would deteriorate. Purpose is to preserve economic usefulness for these people for having committed a crime -- to reform them rather than to deteriorate them and, at the same time, saving the government expenses of maintaining the convicts on a prolonged confinement in jail.

If the crime is a violation of the Revised Penal Code, the court will impose a sentence that has a minimum and maximum. The maximum of the indeterminate sentence will be arrived at by

taking into account the attendant mitigating and/or aggravating circumstances according to Article 64 of the Revised Penal Code. In arriving at the minimum of the indeterminate sentence, the court will take into account the penalty prescribed for the crime and go one degree lower. Within the range of one degree lower, the court will fix the minimum for the indeterminate sentence, and within the range of the penalty arrived at as the maximum in the indeterminate sentence, the court will fix the maximum of the sentence. If there is a privilege mitigating circumstance which has been taken in consideration in fixing the maximum of the indeterminate sentence, the minimum shall be based on the penalty as reduced by the privilege mitigating circumstance within the range of the penalty next lower in degree.

If the crime is a violation of a special law, in fixing the maximum of the indeterminate sentence, the court will impose the penalty within the range of the penalty prescribed by the special law, as long as it will not exceed the limit of the penalty. In fixing the minimum, the court can fix a penalty anywhere within the range of penalty prescribed by the special law, as long as it will not be less than the minimum limit of the penalty under said law. No mitigating and aggravating circumstances are taken into account.

The minimum and the maximum referred to in the Indeterminate Sentence Law are not periods. So, do not say, maximum or minimum period. For the purposes of the indeterminate Sentence Law, use the term minimum to refer to the duration of the sentence which the convict shall serve as a minimum, and when we say maximum, for purposes of ISLAW, we refer to the maximum limit of the duration that the convict may be held in jail. We are not referring to any period of the penalty as enumerated in Article 71.

Courts are required to fix a minimum and a maximum of the sentence that they are to impose upon an offender when found guilty of the crime charged. So, whenever the Indeterminate Sentence Law is applicable, there is always a minimum and maximum of the sentence that the convict shall serve. If the crime is punished by the Revised Penal Code, the law provides that the maximum shall be arrived at by considering the mitigating and aggravating circumstances in the commission of the crime according to the proper rules of the Revised Penal Code. To fix the maximum, consider the mitigating and aggravating circumstances according to the rules found in Article 64. This means –

(1) Penalties prescribed by the law for the crime committed shall be imposed in the medium period if no mitigating or aggravating circumstance;
(2) If there is aggravating circumstance, no mitigating, penalty shall be imposed in the maximum;
(3) If there is mitigating circumstance, no aggravating, penalty shall be in the minimum;
(4) If there are several mitigating and aggravating circumstances, they shall offset against each other. Whatever remains, apply the rules.
(5) If there are two or more mitigating circumstance and no aggravating circumstance, penalty next lower in degree shall be the one imposed.

Rule under Art 64 shall apply in determining the maximum but not in determining the minimum.

In determining the applicable penalty according to the Indeterminate Sentence Law, there is no need to mention the number of years, months and days; it is enough that the name of the penalty is mentioned while the Indeterminate Sentence Law is applied. To fix the minimum and the maximum of the sentence, penalty under the Revised Penal Code is not the penalty to be imposed by court because the court must apply the Indeterminate Sentence Law. The attendant mitigating and/or aggravating circumstances in the commission of the crime are taken into consideration only when the maximum of the penalty is to be fixed. But in so far as the minimum is concerned, the basis of the penalty prescribed by the Revised Penal Code, and go one degree lower than that. But penalty one degree lower shall be applied in the same manner that the maximum is also fixed based only on ordinary mitigating circumstances. This is true only if the mitigating circumstance taken into account is only an ordinary mitigating circumstance. If the mitigating circumstance is privileged, you cannot follow the law in so far as fixing the minimum of the indeterminate sentence is concerned; otherwise, it may happen that the maximum of the indeterminate sentence is lower than its minimum.

In one Supreme Court ruling, it was held that for purposes of applying the Indeterminate Sentence Law, the penalty prescribed by the Revised Penal Code and not that which may be

imposed by court. This ruling, however, is obviously erroneous. This is so because such an interpretation runs contrary to the rule of pro reo, which provides that the penal laws should always be construed an applied in a manner liberal or lenient to the offender. Therefore, the rule is, in applying the Indetermiante Sentence Law, it is that penalty arrived at by the court after applying the mitigating and aggravating circumstances that should be the basis.

Crimes punished under special law carry only one penalty; there are no degree or periods. Moreover, crimes under special law do not consider mitigating or aggravating circumstance present in the commission of the crime. So in the case of statutory offense, no mitigating and no aggravating circumstances will be taken into account. Just the same, courts are required in imposing the penalty upon the offender to fix a minimum that the convict should serve, and to set a maximum as the limit of that sentence. Under the law, when the crime is punished under a special law, the court may fix any penalty as the maximum without exceeding the penalty prescribed by special law for the crime committed. In the same manner, courts are given discretion to fix a minimum anywhere within the range of the penalty prescribed by special law, as long as it will not be lower than the penalty prescribed.

Disqualification may be divided into three, according to –

(1) The time committed;
(2) The penalty imposed; and
(3) The offender involved.

Application on the imposed sentence

Rules to determine the indeterminate sentence under the RPC:

(1) Minimum – one degree next lower to the penalty imposed. This is determined without considering the attending circumstances to eh penalty prescribed. The term of the minimum is left to the discretion of the court, which is unqualified. The only limitation is that it is within the range of the penalty next lower in degree to that prescribed in the RPC for the offense committed. Where there is a privileged mitigating or the number of mitigating circumstances is such as to entitle the accused to the penalty next lower in degree, the starting point to determine the minimum o the indeterminate sentence of the indeterminate sentence is the next lower than that prescribed for the offense.

(2) Maximum – the penalty imposed as provided by law. The period will depend upon the attending circumstances. Example: homicide in which one mitigating circumstance attended its commission.

Maximum – penalty prescribed by law, that is *reclusion temporal*. The period of that penalty will now depend upon the attending circumstance. Since there is one mitigating and no aggravating it will be in the minimum or *reclusion temporal* minimum period.

Minimum – one degree next lower to *reclusion temporal* is determined without considering the mitigating circumstance and that will be *prision mayor*. The range of *prision mayor* will depend upon the discretion of the Court.

The indeterminate penalty is therefore a minimum of *prision mayor* (within the range fixed by the court) to a maximum of *reclusion temporal* minimum period.

(3) The Indeterminate Sentence Law cannot be applied if it will result in the lengthening of the sentence of the accused. This will apply only to offenses punished by special laws.

Coverage

1. The law covers crimes punishable under the RPC or by special law:
   (a) Revised Penal Code_ maximum term of indeterminate sentence is the penalty in view of the attending circumstances that can properly be imposed under the RPC. Minimum is one degree lower than the penalty prescribed by the Code. The minimum penalty should be within any period of the penalty next lower in degree to that prescribed by law and the maximum should be within the proper period of the penalty where the sentence is a straight penalty.
   (b) Special law – maximum term of indeterminate sentence shall not exceed the maximum fixed by law and the

minimum shall not be less than the minimum prescribed by said law. Example: Penalty is one year to five years. Indeterminate Sentence may be 1 year or 3 years to 5 years.

2. The Indeterminate Sentence Law shall not apply to:
   (1) Persons convicted of offense punishable with death penalty or life imprisonment;
   (2) Persons convicted of treason, conspiracy or proposal to commit treason;
   (3) Persons convicted of misprision of treason, rebellion, sedition, espionage;
   (4) Persons convicted of piracy;
   (5) Persons who are habitual delinquents;
   (6) Persons who shall have escaped from confinement or evaded sentence;
   (7) Those who have been granted conditional pardon by the Chief Executive and shall have violated the term thereto;
   (8) Those whose maximum term of imprisonment does not exceed one year, but not to those already sentenced by final judgment at the time of the approval of Indeterminate Sentence Law.

Conditions of parole

(1) Every prisoner released from confinement on parole by virtue of RA 4103 shall, as such times and in such manner as may be required by the conditions of his parole, as may be designated by the Board for such purpose, report personally to such government officials or other parole officers for a period of surveillance equivalent to the remaining portion of the maximum sentence imposed upon him or until final release and discharge.
(2) If during the period of surveillance such parolee shall show himself to be a law-abiding citizen and not violate any laws, he may be issued a final certificate of release and discharge.
(3) Whenever any prisoner released on parole, during the period of surveillance, violate any of the conditions of his parole, an order of his re-arrest may be issued and served in any part of the Philippines. In such case, he shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison, unless granted a new parole.

EXECUTION AND SERVICE

Art. 78. When and how a penalty is to be executed. — No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions in which the penalties are to be suffered shall be observed with regard to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet. The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments and also for the correction and reform of the convicts.

Art. 79. Suspension of the execution and service of the penalties in case of insanity. — When a convict shall become insane or an imbecile after final sentence has been pronounced, the execution of said sentence shall be suspended only with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of Article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence.

Art. 80. Suspension of sentence of minor delinquents. — Whenever a minor of either sex, under sixteen years of age at the date of the commission of a grave or less grave

felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall suspend all further proceedings and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law of the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation and supervision by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of public schools or his representatives, subject to such conditions as are prescribed hereinbelow until such minor shall have reached his majority age or for such less period as the court may deem proper.

The court, in committing said minor as provided above, shall take into consideration the religion of such minor, his parents or next of kin, in order to avoid his commitment to any private institution not under the control and supervision of the religious sect or denomination to which they belong.

The Director of Public Welfare or his duly authorized representatives or agents, the superintendent of public schools or his representatives, or the person to whose custody or care the minor has been committed, shall submit to the court every four months and as often as required in special cases, a written report on the good or bad conduct of said minor and the moral and intellectual progress made by him.

The suspension of the proceedings against a minor may be extended or shortened by the court on the recommendation of the Director of Public Welfare or his authorized representative or agents, or the superintendent of public schools or his representatives, according as to whether the conduct of such minor has been good or not and whether he has complied with the conditions imposed upon him, or not. The provisions of the first paragraph of this article shall not, however, be affected by those contained herein.

If the minor has been committed to the custody or care of any of the institutions mentioned in the first paragraph of this article, with the approval of the Director of Public Welfare and subject to such conditions as this official in accordance with law may deem proper to impose, such minor may be allowed to stay elsewhere under the care of a responsible person.

If the minor has behaved properly and has complied with the conditions imposed upon him during his confinement, in accordance with the provisions of this article, he shall be returned to the court in order that the same may order his final release.

In case the minor fails to behave properly or to comply with the regulations of the institution to which he has been committed or with the conditions imposed upon him when he was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him.

The expenses for the maintenance of a minor delinquent confined in the institution to which he has been committed, shall be borne totally or partially by his parents or relatives or those persons liable to support him, if they are able to do so, in the discretion of the court; Provided, That in case his parents or relatives or those persons liable to support him have not been ordered to pay said expenses or are found indigent and cannot pay said expenses, the municipality in which the offense was committed shall pay one-third of said expenses; the province to which the municipality belongs shall pay one-third; and the remaining one-third shall be borne by the National Government: Provided, however, That whenever the Secretary of Finance certifies that a municipality is not able to pay its share in the expenses above mentioned, such share which is not paid by said municipality shall be borne by the National Government. Chartered cities shall pay two-thirds of said expenses; and in case a chartered city cannot pay said expenses, the internal revenue allotments which may be due to said city shall be withheld and applied in settlement of said indebtedness in accordance with section five hundred and eighty-eight of the Administrative Code.

Section Two. – Execution of principal penalties.

Art. 81. When and how the death penalty is to be executed. – The death sentence shall be executed with reference to any other and shall consist in putting the person under sentence to death by electrocution. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the person under sentence during electrocution as well as during the proceedings prior to the execution.

If the person under sentence so desires, he shall be anaesthetized at the moment of the electrocution.

Art. 82. Notification and execution of the sentence and assistance to the culprit. – The court shall designate a working day for the execution but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, in so far as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or persons in charge of the management of his business, of the administration of his property, or of the care of his descendants.

Art. 83. Suspension of the execution of the death sentence. – The death sentence shall not be inflicted upon a woman within the three years next following the date of the sentence or while she is pregnant, nor upon any person over seventy years of age.

In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua with the accessory penalties provided in Article 40.

Art. 84. Place of execution and persons who may witness the same. – The execution shall take place in the penitentiary of Bilibid in a space closed to the public view and shall be witnessed only by the priests assisting the offender and by his lawyers, and by his relatives, not exceeding six, if he so request, by the physician and the necessary personnel of the penal establishment, and by such persons as the Director of Prisons may authorize.

Art. 85. Provisions relative to the corpse of the person executed and its burial. – Unless claimed by his family, the corpse of the culprit shall, upon the completion of the legal proceedings subsequent to the execution, be turned over to the institute of learning or scientific research first applying for it, for the purpose of study and investigation, provided that such institute shall take charge of the decent burial of the remains. Otherwise, the Director of Prisons shall order the burial of the body of the culprit at government expense, granting permission to be present thereat to the members of the family of the culprit and the friends of the latter. In no case shall the burial of the body of a person sentenced to death be held with pomp.

Art. 86. Reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor. – The penalties of reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor, shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

Art. 87. Destierro. – Any person sentenced to destierro shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not more than 250 and not less than 25 kilometers from the place designated.

Art. 88. Arresto menor. – The penalty of arresto menor shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.

(1) PROBATION LAW (P.D. 968, AS AMENDED)

Among the different grounds of partial extinction of criminal liability, the most important is probation. Probation is a manner of disposing of an accused who have been convicted by a trial court by placing him under supervision of a

probation officer, under such terms and conditions that the court may fix. This may be availed of before the convict begins serving sentence by final judgment and provided that he did not appeal anymore from conviction.

Without regard to the nature of the crime, only those whose penalty does not exceed six years of imprisonment are those qualified for probation. If the penalty is six years plus one day, he is no longer qualified for probation.

If the offender was convicted of several offenses which were tried jointly and one decision was rendered where multiple sentences imposed several prison terms as penalty, the basis for determining whether the penalty disqualifies the offender from probation or not is the term of the individual imprisonment and not the totality of all the prison terms imposed in the decision. So even if the prison term would sum up to more than six years, if none of the individual penalties exceeds six years, the offender is not disqualified by such penalty from applying for probation.

On the other hand, without regard to the penalty, those who are convicted of subversion or any crime against the public order are not qualified for probation. So know the crimes under Title III, Book 2 of the Revised Penal Code. Among these crimes is Alarms and Scandals, the penalty of which is only arresto menor or a fine. Under the amendment to the Probation Law, those convicted of a crime against public order regardless of the penalty are not qualified for probation.

May a recidivist be given the benefit of Probation Law?

As a general rule, no.

Exception: If the earlier conviction refers to a crime the penalty of which does not exceed 30 days imprisonment or a fine of not more than P200.00, such convict is not disqualified of the benefit of probation. So even if he would be convicted subsequently of a crime embraced in the same title of the Revised Penal Code as that of the earlier conviction, he is not disqualified from probation provided that the penalty of the current crime committed does not go beyond six years and the nature of the crime committed by him is not against public order, national security or subversion.

Although a person may be eligible for probation, the moment he perfects an appeal from the judgment of conviction, he cannot avail of probation anymore. So the benefit of probation must be invoked at the earliest instance after conviction. He should not wait up to the time when he interposes an appeal or the sentence has become final and executory. The idea is that probation has to be invoked at the earliest opportunity.

An application for probation is exclusively within the jurisdiction of the trial court that renders the judgment. For the offender to apply in such court, he should not appeal such judgment.

Once he appeals, regardless of the purpose of the appeal, he will be disqualified from applying for Probation, even though he may thereafter withdraw his appeal.

If the offender would appeal the conviction of the trial court and the appellate court reduced the penalty to say, less than six years, that convict can still file an application for probation, because the earliest opportunity for him to avail of probation came only after judgment by the appellate court.

Whether a convict who is otherwise qualified for probation may be give the benefit of probation or not, the courts are always required to conduct a hearing. If the court denied the application for probation without the benefit of the hearing, where as the applicant is not disqualified under the provision of the Probation Law, but only based on the report of the probation officer, the denial is correctible by certiorari, because it is an act of the court in excess of jurisdiction or without jurisdiction, the order denying the application therefore is null and void.

Consider not only the probationable crime, but also the probationable penalty. If it were the non-probationable crime, then regardless of the penalty, the convict cannot avail of probation. Generally, the penalty which is not probationable is any penalty exceeding six years of imprisonment. Offenses which are not probationable are those against natural security, those against public order and those with reference to subversion.

Persons who have been granted of the benefit of probation cannot avail thereof for the second time. Probation is only available once and this may be availed only where the convict starts

serving sentence and provided he has not perfected an appeal. If the convict perfected an appeal, he forfeits his right to apply for probation. As far as offenders who are under preventive imprisonment, that because a crime committed is not bailable or the crime committed, although bailable, they cannot afford to put up a bail, upon promulgation of the sentence, naturally he goes back to detention, that does not mean that they already start serving the sentence even after promulgation of the sentence, sentence will only become final and executory after the lapse of the 15-day period, unless the convict has waived expressly his right to appeal or otherwise, he has partly started serving sentence and in that case, the penalty will already be final and executory, no right to probation can be applied for.

Definition of terms

1. Probation – a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.
2. Probationer – a person placed on probation.
3. Probation officer – one who investigates for the court a referral for probation or supervises a probationer or both.

Purpose

1. Probation is only a privilege. So even if the offender may not be disqualified of probation, yet the court believes that because of the crime committed it was not advisable to give probation because it would depreciate the effect of the crime, the court may refuse or deny an application for probation.
2. The purposes of the law are:
   (a) Promote the correction and rehabilitation of a n offender by providing him with individualized treatment;
   (b) Provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence;
   (c) Prevent the commission of offenses;
   (d) Decongest our jails; and
   (e) Save the government much needed finance for maintaining convicts in jail.

Grant of probation, manner and conditions

1. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment or conviction. Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. An application for probation shall be filed with the trial court. The filing of the application shall be deemed a waiver of the right to appeal. An order granting or denying probation shall not be appealable *(Sec. 4)*.
2. No person shall be placed on probation except upon prior investigation by the probation officer and a determination by the court that the ends of justice and the best interest of the public as well as that of the defendant will be served thereby *(Sec. 5)*.
3. The probation officer shall submit to the court the investigation report on a defendant not later than 60 days from receipt of the order of said court to conduct the investigation. The court shall resolve the application for probation not later than 15 days after receipt of said report. Pending submission of the investigation report and the resolution of the petition, the defendant may be allowed on temporary liberty under his bail filed under the criminal case. Where no bail is filed or that the defendant is incapable of filing one, the court may allow the release of the defendant on recognizance to the custody of a responsible member of the community who shall guarantee his appearance whenever required by the court *(Sec. 7)*.
4. Every probation order issued by the court shall contain conditions requiring that the probationer shall:
   (a) Present himself to the probation officer within 72 hours from receipt of probation order designated to undertake his supervision at such place as may be specified in the order;
   (b) Report to the probation officer at least once a month at such time and place as specified by said officer.
   The court may also require the probationer to:
   (c) Cooperate with a program of supervision;
   (d) Meet his family responsibilities;
   (e) Devote himself to a specific employment and not to change said employment without the prior written approval of the probation officer;

(f) Undergo medical, psychological or psychiatric examination and treatment and enter and remain in a specified institution, when required for that purpose;
(g) Pursue a prescribed secular study or vocational training;
(h) Attend or reside in a facility established for instruction, recreation or residence of persons on probation;
(i) Refrain from visiting houses of ill-repute;
(j) Abstain from drinking intoxicating beverages to excess;
(k) Permit the probation officer or an authorized social worker to visit his home and place of work;
(l) Reside at premises approved by it and not to change his residence without his prior written approval; or
(m) Satisfy any other conditions related to the rehabilitation of the defendant and not unduly restrictive of his liberty or incompatible with his freedom of conscience *(Sec. 10)*.

5. Discretionary conditions - The trial court which approved the application for probation may impose any condition which may be constructive to the correction of the offender, provided the same would not violate the constitutional rights of the offender and subject to this two restrictions: (1) the conditions imposed should not be unduly restrictive of the probationer; and (2) such condition should not be incompatible with the freedom of conscience of the probationer

Criteria of placing an offender on probation

In determining whether an offender may be placed on probation, the court shall consider all information relative to the character, antecedents, environment, mental and physical condition of the offender, and available institutional and community resources. Probation shall be denied if the court finds that:

(a) The offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
(b) There is undue risk that during the period of probation the offender will commit another crime; or
(c) Probation will depreciate the seriousness of the offense committed *(Sec. 8)*.

Disqualified offenders

The following are disqualified offenders:

(1) Those sentenced to serve maximum term of imprisonment of more than 6 years (6 years or less is the probationable penalty);
(2) Those convicted of subversion or any crime against the national security or the public order;
  (a) Treason
  (b) Conspiracy and proposal to commit treason
  (c) Misprision of treason
  (d) Espionage
  (e) Inciting to war and giving motives for reprisal
  (f) Violation of neutrality
  (g) Correspondence with hostile country
  (h) Flight to enemy country
  (i) Piracy and mutiny
  (j) Rebellion, insurrection, coup, sedition
  (k) Illegal assemblies and associations
  (l) Direct/indirect assault, resistance and disobedience
  (m) Public disorders–Tumults, alarms and scandals
  (n) Delivery of prisoners from jail
  (o) Evasion of service of sentence
  (p) Quasi-recidivism
(3) Those who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or fine of not less than 200 pesos;
(4) Those who have been once on probation under the provisions of PD 968;
(5) Those who are already serving sentence at the time the substantive provisions of PD 968 became applicable pursuant to Sec. 33 thereof *(Sec. 9)*;
(6) Those entitled to the benefits under the provisions of PD 603 and similar laws;
(7) Those who have perfected an appeal because appeal and probation are mutually exclusive remedies.

Period of probation

(1) The period of probation of a defendant sentenced to a term of imprisonment of not more than one year shall not exceed two years, and in all other cases, said period shall not exceed six years.

(2) When the sentence imposes a fine only and the offender is made to serve subsidiary imprisonment in case of insolvency, the period of probation shall not be less than nor be more than twice the total number of days of subsidiary imprisonment as computed at the rate established in Art. 39 of the RPC.

Imprisonment of	Probation
Not more than one year	Not exceeding two (2) years
One (1) year to six (6) years	Not exceeding six (6) years
Fine with subsidiary imprisonment	
As computed under Art. 39	Twice the period computed

Arrest of probationer

At the time during probation, the court may issue a warrant for the arrest of a probationer for any serious violation of the conditions of the probation. The probationer, once arrested and detained, shall immediately be brought before the court for a hearing of the violation charged. The defendant may be admitted to bail pending such hearing. In such case, the provisions regarding release on bail of persons charged with a crime shall be applicable to probationers arrested under this provision.

In the hearing, which shall be summary in nature, the probationer shall have the right to be informed of the violation charged and adduce evidence in his favor. The court shall not be bound by the technical rules of evidence but may inform itself of all the facts which are material and relevant to ascertain the veracity of the charge. The State shall be represented by a prosecuting officer in any contested hearing. If the violation is established, the court may revoke or continue his probation and modify the conditions thereof. If revoked, the court shall order the probationer to serve sentence originally imposed. An order revoking the grant of probation or modifying the terms and conditions thereof shall not be appealable.

Termination of probation; exception

After the period of probation and upon consideration of the report and recommendation of the probation officer, the court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation and thereupon the case if deemed terminated.

The final discharge of the probationer shall operate to restore to him all civil rights lost or suspended as a result of his conviction and to fully discharge his liability for any fine imposed as to the offense for which probation was granted.

Any person convicted for drug trafficking or pushing under RA 9165, regardless of the imposable penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law *(Sec. 24, RA 9165)*.

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. 9344); ALSO REFER TO CHILD AND YOUTH WELFARE CODE (P.D. 603, AS AMENDED)

Definition of child in conflict with the law

Child in conflict with law refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

(b) Exemption from criminal liability

A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.
A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.
The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws *(Sec. 6)*.

Juvenile justice and welfare system

Juvenile Justice and Welfare System refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development *(Sec. 4[m])*.

"Diversion" refers to an alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

"Diversion Program" refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

"Intervention" refers to a series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

6. MODIFICATION AND EXTINCTION OF CRIMINAL LIABILITY

Art. 23. Effect of pardon by the offended party. – A pardon of the offended party does not extinguish criminal action except as provided in Article 344 of this Code; but civil liability with regard to the interest of the injured party is extinguished by his express waiver.

TOTAL EXTINCTION OF CRIMINAL LIABILITY

Art. 89. How criminal liability is totally extinguished. – Criminal liability is totally extinguished:

1. *By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment. 2. By service of the sentence;*
2. *By amnesty, which completely extinguishes the penalty and all its effects;*
3. *By absolute pardon;*
4. *By prescription of the crime;*
5. *By prescription of the penalty;*
6. *By the marriage of the offended woman, as provided in Article 344 of this Code.*

Art. 90. Prescription of crime. – Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.
Crimes punishable by other afflictive penalties shall prescribe in fifteen years.
Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.
The crime of libel or other similar offenses shall prescribe in one year.
The crime of oral defamation and slander by deed shall prescribe in six months.
Light offenses prescribe in two months.
When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article. (As amended by RA 4661, approved June 19, 1966).

Art. 91. Computation of prescription of offenses. – The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.
The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

Art. 92. When and how penalties prescribe. – The penalties imposed by final sentence prescribe as follows:

1. *Death and reclusion perpetua, in twenty years;*
2. *Other afflictive penalties, in fifteen years;*
3. *Correctional penalties, in ten years; with the exception of the penalty of arresto mayor, which prescribes in five years;*
4. *Light penalties, in one year.*

Art. 93. Computation of the prescription of penalties. – The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government

has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

PARTIAL EXTINCTION OF CRIMINAL LIABILITY

Art. 94. Partial Extinction of criminal liability. – Criminal liability is extinguished partially:

1. *By conditional pardon;*
2. *By commutation of the sentence; and*
3. *For good conduct allowances which the culprit may earn while he is serving his sentence.*

Art. 95. Obligation incurred by person granted conditional pardon. – Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein otherwise, his non-compliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Article 159 shall be applied to him.

Art. 96. Effect of commutation of sentence. – The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

Art. 97. Allowance for good conduct. – The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:

1. *During the first two years of his imprisonment, he shall be allowed a deduction of five days for each month of good behavior;*
2. *During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;*
3. *During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and*
4. *During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good*

Art. 98. Special time allowance for loyalty. – A deduction of one-fifth of the period of his sentence shall be granted to any prisoner who, having evaded the service of his sentence under the circumstances mentioned in Article 58 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe to in said article.

Art. 99. Who grants time allowances. – Whenever lawfully justified, the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

Always provide two classifications when answering this question.

Criminal liability is totally extinguished as follows:

(1) By the death of the convict as to personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment
(2) By service of sentence;
(3) By amnesty which completely extinguished the penalty and all its effects;
(4) By absolute pardon;
(5) By prescription of the crime;
(6) By prescription of the penalty;
(7) By the marriage of the offended women as in the crimes of rape, abduction, seduction and acts of lasciviousness.

Criminal liability is partially extinguished as follows:

(1) By conditional pardon;
(2) By commutation of sentence;
(3) For good conduct, allowances which the culprit may earn while he is serving sentence;
(4) Parole; and
(5) Probation.

Total extinction of criminal liability

Among the grounds for total extinction as well as those for partial extinction, you cannot find among them the election to public office. In one case, a public official was charged before the Sandiganbayan for violation of Anti-Graft and Corrupt Practices Act. During the ensuing election, he was nevertheless re-elected by the constituents, one of the defenses raised was that of condonation of the crime by his constituents, that his constituents have pardoned him. The Supreme Court ruled that the re-election to public office is not one of the grounds by which criminal liability is

extinguished. This is only true to administrative cases but not criminal cases.

Death of the offender

Where the offender dies before final judgment, his death extinguishes both his criminal and civil liabilities. So while a case is on appeal, the offender dies, the case on appeal will be dismissed. The offended party may file a separate civil action under the Civil Code if any other basis for recovery of civil liability exists as provided under Art 1157 Civil Code. (**People v. Bayotas, decided on September 2, 1994**)

Amnesty and pardon

The effects of amnesty as well as absolute pardon are not the same. Amnesty erases not only the conviction but also the crime itself. So that if an offender was convicted for rebellion and he qualified for amnesty, and so he was given an amnesty, then years later he rebelled again and convicted, is he a recidivist? No. Because the amnesty granted to him erased not only the conviction but also the effects of the conviction itself.

Suppose, instead of amnesty, what was given was absolute pardon, then years later, the offended was again captured and charged for rebellion, he was convicted, is he a recidivist?
Yes. Pardon, although absolute does not erase the effects of conviction. Pardon only excuses the convict from serving the sentence. There is an exception to this and that is when the pardon was granted when the convict had already served the sentence such that there is no more service of sentence to be executed then the pardon shall be understood as intended to erase the effects of the conviction.

So if the convict has already served the sentence and in spite of that he was given a pardon that pardon will cover the effects of the crime and therefore, if he will be subsequently convicted for a felony embracing the same title as that crime, he cannot be considered a recidivist, because the pardon wipes out the effects of the crime.

But if he was serving sentence when he was pardoned, that pardon will not wipe out the effects of the crime, unless the language of the pardon absolutely relieve the offender of all the effects thereof. Considering that recidivism does not prescribe, no matter how long ago was the first conviction, he shall still be a recidivist.

Illustrations:

When the crime carries with it moral turpitude, the offender even if granted pardon shall still remain disqualified from those falling in cases where moral turpitude is a bar.

Pedro was prosecuted and convicted of the crime of robbery and was sentenced to six years imprisonment or prision correccional. After serving sentence for three years, he was granted absolute pardon. Ten years later, Pedro was again prosecuted and convicted of the crime of theft, a crime embraced in the same title, this time he shall be a recidivist. On the other hand, if he has served all six years of the first sentence, and his name was included in the list of all those granted absolute pardon, pardon shall relieve him of the effects of the crime, and therefore even if he commits theft again, he shall not be considered a recidivist.

In **Monsanto v. Factoran, Jr., 170 SCRA 191,** it was held that absolute pardon does not ipso facto entitle the convict to reinstatement to the public office forfeited by reason of his conviction. Although pardon restores his eligibility for appointment to that office, the pardoned convict must reapply for the new appointment
.
Pardon becomes valid only when there is a final judgment. If given before this, it is premature and hence void. There is no such thing as a premature amnesty, because it does not require a final judgment; it may be given before final judgment or after it.

Prescription of crimes; Prescription of penalties

Prescription of the crime begins, as a general rule on the day the crime was committed, unless the crime was concealed, not public, in which case, the prescription thereof would only commence from the time the offended party or the government learns of the commission of the crime.

"Commission of the crime is public" -- This does not mean alone that the crime was within public knowledge or committed in public.

Illustration:

In the crime of falsification of a document that was registered in the proper registry of the

government like the Registry of Property or the Registry of Deeds of the Civil registry, the falsification is deemed public from the time the falsified document was registered or recorded in such public office so even though, the offended party may not really know of the falsification, the prescriptive period of the crime shall already run from the moment the falsified document was recorded in the public registry. So in the case where a deed of sale of a parcel of land which was falsified was recorded in the corresponding Registry of Property, the owner of the land came to know of the falsified transaction only after 10 years, so he brought the criminal action only then. The Supreme Court ruled that the crime has already prescribed. From the moment the falsified document is registered in the Registry of Property, the prescriptive period already commenced to run.

When a crime prescribes, the State loses the right to prosecute the offender, hence, even though the offender may not have filed a motion to quash on this ground the trial court, but after conviction and during the appeal he learned that at the time the case was filed, the crime has already prescribed, such accused can raise the question of prescription even for the first time on appeal, and the appellate court shall have no jurisdiction to continue, if legally, the crime has indeed prescribed.

The prevailing rule now is, prescription of the crime is not waivable, the earlier jurisprudence to the contrary had already been abrogated or overruled. Moreover, for purposes of prescription, the period for filing a complaint or information may not be extended at all, even though the last day such prescriptive period falls on a holiday or a Sunday.

For instance, light felony prescribes in 60 days or two months. If the 60th day falls on a Sunday, the filing of the complaint on the succeeding Monday is already fatal to the prosecution of the crime because the crime has already prescribed.

The rules on Criminal Procedure for purposes of prescription is that the filing of the complaint even at the public prosecutor's office suspends the running of the prescriptive period, but not the filing with the barangay. So the earlier rulings to the contrary are already abrogated by express provision of the Revised Rules on Criminal Procedure.

The prescription of the crime is interrupted or suspended -

(1) When a complaint is filed in a proper barangay for conciliation or mediation as required by Chapter 7, Local Government Code, but the suspension of the prescriptive period is good only for 60 days. After which the prescription will resume to run, whether the conciliation or mediation is terminated for not;

(2) When criminal case is filed in the prosecutor's office, the prescription of the crime is suspended until the accused is convicted or the proceeding is terminated for a cause not attributable to the accused.

But where the crime is subject to Summary Procedure, the prescription of the crime will be suspended only when the information is already filed with the trial court. It is not the filing of the complaint, but the filing of the information in the trial which will suspend the prescription of the crime.

On the prescription of the penalty, the period will only commence to run when the convict has begun to serve the sentence. Actually, the penalty will prescribe from the moment the convict evades the service of the sentence. So if an accused was convicted in the trial court, and the conviction becomes final and executory, so this fellow was arrested to serve the sentence, on the way to the penitentiary, the vehicle carrying him collided with another vehicle and overturned, thus enabling the prisoner to escape, no matter how long such convict has been a fugitive from justice, the penalty imposed by the trial court will never prescribe because he has not yet commenced the service of his sentence. For the penalty to prescribe, he must be brought to Muntinlupa, booked there, placed inside the cell and thereafter he escapes.

Whether it is prescription of crime or prescription of penalty, if the subject could leave the Philippines and go to a country with whom the Philippines has no extradition treaty, the prescriptive period of the crime or penalty shall remain suspended whenever he is out of the country.

When the offender leaves for a country to which the Philippines has an extradition treaty, the running of the prescriptive period will go on even if the offender leaves Philippine territory for that country. Presently the Philippines has an

extradition treaty with Taiwan, Indonesia, Canada, Australia, USA and Switzerland. So if the offender goes to any of these countries, the prescriptive period still continues to run.

In the case of the prescription of the penalty, the moment the convict commits another crime while he is fugitive from justice, prescriptive period of the penalty shall be suspended and shall not run in the meantime. The crime committed does not include the initial evasion of service of sentence that the convict must perform before the penalty shall begin to prescribe, so that the initial crime of evasion of service of sentence does not suspend the prescription of penalty, it is the commission of other crime, after the convict has evaded the service of penalty that will suspend such period.

Marriage

In the case of marriage, do not say that it is applicable for the crimes under Article 344. It is only true in the crimes of rape, abduction, seduction and acts of lasciviousness. Do not say that it is applicable to private crimes because the term includes adultery and concubinage. Marriages in these cases may even compound the crime of adultery or concubinage. It is only in the crimes of rape, abduction, seduction and acts of lasciviousness that the marriage by the offender with the offended woman shall extinguish civil liability, not only criminal liability of the principal who marries the offended woman, but also that of the accomplice and accessory, if there are any.

Co-principals who did not themselves directly participate in the execution of the crime but who only cooperated, will also benefit from such marriage, but not when such co-principal himself took direct part in the execution of the crime.

Marriage as a ground for extinguishing civil liability must have been contracted in good faith. The offender who marries the offended woman must be sincere in the marriage and therefore must actually perform the duties of a husband after the marriage, otherwise, notwithstanding such marriage, the offended woman, although already his wife can still prosecute him again, although the marriage remains a valid marriage. Do not think that the marriage is avoided or annulled. The marriage still subsists although the offended woman may re-file the complaint. The Supreme Court ruled that marriage contemplated must be a real marriage and not one entered to and not just to evade punishment for the crime committed because the offender will be compounding the wrong he has committed.

Partial extinction of criminal liability

Good conduct allowance

This includes the allowance for loyalty under Article 98, in relation to Article 158. A convict who escapes the place of confinement on the occasion of disorder resulting from a conflagration, earthquake or similar catastrophe or during a mutiny in which he has not participated and he returned within 48 hours after the proclamation that the calamity had already passed, such convict shall be given credit of 1/5 of the original sentence from that allowance for his loyalty of coming back. Those who did not leave the penitentiary under such circumstances do not get such allowance for loyalty. Article 158 refers only to those who leave and return.

Parole

This correspondingly extinguishes service of sentence up to the maximum of the indeterminate sentence. This is the partial extinction referred to, so that if the convict was never given parole, no partial extinction.

B. Book II (Articles 114-365), including related Special Laws

1. CRIMES AGAINST NATIONAL SECURITY (114-123)

Crimes against national security

1. Treason *(Art. 114)*;
2. Conspiracy and proposal to commit treason *(Art. 115)*;
3. Misprision of treason *(Art. 116)*; and

4. Espionage *(Art. 117)*.

Crimes against the law of nations

1. Inciting to war or giving motives for reprisals *(Art. 118)*;
2. Violation of neutrality *(Art. 119)*;
3. Corresponding with hostile country *(Art. 120)*;
4. Flight to enemy's country *(Art. 121)*; and
5. Piracy in general and mutiny on the high seas *(Art. 122)*.

The crimes under this title can be prosecuted even if the criminal act or acts were committed outside the Philippine territorial jurisdiction. However, prosecution can proceed only if the offender is within Philippine territory or brought to the Philippines pursuant to an extradition treaty. This is one of the instances where the Revised Penal Code may be given extra-territorial application under Article 2 (5) thereof. In the case of crimes against the law of nations, the offender can be prosecuted whenever he may be found because the crimes are regarded as committed against humanity in general.

Almost all of these are crimes committed in times of war, except the following, which can be committed in times of peace:

(1) Espionage, under Article 114 – This is also covered by Commonwealth Act No. 616 which punishes conspiracy to commit espionage. This may be committed both in times of war and in times of peace.
(2) Inciting to War or Giving Motives for Reprisals, under Article 118 – This can be committed even if the Philippines is not a participant. Exposing the Filipinos or their properties because the offender performed an unauthorized act, like those who recruit Filipinos to participate in the gulf war. If they involve themselves to the war, this crime is committed. Relevant in the cases of Flor Contemplacion or Abner Afuang, the police officer who stepped on a Singaporean flag.
(3) Violation of Neutrality, under Article 119 – The Philippines is not a party to a war but there is a war going on. This may be committed in the light of the Middle East war.

Article 114. Treason

Elements

1. Offender is a Filipino or resident alien;
2. There is a war in which the Philippines is involved;
3. Offender either –
   (a) levies war against the government; or
   (b) adheres to the enemies, giving them aid or comfort within the Philippines or elsewhere

Requirements of levying war

1. Actual assembling of men;
2. To execute a treasonable design by force;
3. Intent is to deliver the country in whole or in part to the enemy; and
4. Collaboration with foreign enemy or some foreign sovereign

Two ways of proving treason

1. Testimony of at least two witnesses to the same overt act; or
2. Confession of accused in open court.

Article 115. Conspiracy and Proposal to Commit Treason

Elements of conspiracy to commit treason

1. There is a war in which the Philippines is involved;
2. At least two persons come to an agreement to –
   (a) levy war against the government; or
   (b) adhere to the enemies, giving them aid or comfort;
3. They decide to commit it.

Elements of proposal to commit treason

1. There is a war in which the Philippines is involved;
2. At least one person decides to –
   (a) levy war against the government; or
   (b) adhere to the enemies, giving them aid or comfort;
3. He proposes its execution to some other persons.

Article 116. Misprision of Treason

Elements

1. Offender owes allegiance to the government, and not a foreigner;
2. He has knowledge of conspiracy to commit treason against the government;
3. He conceals or does not disclose and make known the same as soon as possible to the governor or fiscal of the province in which he resides, or the mayor or fiscal of the city in which he resides.

While in treason, even aliens can commit said crime because of the amendment to the article, no such amendment was made in misprision of treason. Misprision of treason is a crime that may be committed only by citizens of the Philippines.

The essence of the crime is that there are persons who conspire to commit treason and the offender knew this and failed to make the necessary report to the government within the earliest possible time. What is required is to report it as soon as possible. The criminal liability arises if the treasonous activity was still at the conspiratorial stage. Because if the treason already erupted into an overt act, the implication is that the government is already aware of it. There is no need to report the same. This is a felony by omission although committed with dolo, not with culpa.

The persons mentioned in Article 116 are not limited to mayor, fiscal or governor. Any person in authority having equivalent jurisdiction, like a provincial commander, will already negate criminal liability.

Whether the conspirators are parents or children, and the ones who learn the conspiracy is a parent or child, they are required to report the same. The reason is that although blood is thicker than water so to speak, when it comes to security of the state, blood relationship is always subservient to national security. Article 20 does not apply here because the persons found liable for this crime are not considered accessories; they are treated as principals.

In the 1994 bar examination, a problem was given with respect to misprision of treason. The text of the provision simply refers to a conspiracy to overthrow the government. The examiner failed to note that this crime can only be committed in times of war. The conspiracy adverted to must be treasonous in character. In the problem given, it was rebellion. A conspiracy to overthrow the government is a crime of rebellion because there is no war. Under the Revised Penal Code, there is no crime of misprision of rebellion.

Article 117. Espionage

Acts punished

(1) By entering, without authority therefore, a warship, fort or naval or military establishment or reservation to obtain any information, plans, photograph or other data of a confidential nature relative to the defense of the Philippines;

Elements

(a) Offender enters any of the places mentioned;
(b) He has no authority therefore;
(c) His purpose is to obtain information, plans, photographs or other data of a confidential nature relative to the defense of the Philippines.

(2) By disclosing to the representative of a foreign nation the contents of the articles, data or information referred to in paragraph 1 of Article 117, which he had in his possession by reason of the public office he holds.

Elements

(a) Offender is a public officer;
(b) He has in his possession the articles, data or information referred to in paragraph 1 of Article 117, by reason of the public office he holds;
(c) He discloses their contents to a representative of a foreign nation.

Article 118. Inciting to War or Giving Motives for Reprisals

Elements

1. Offender performs unlawful or unauthorized acts;
2. The acts provoke or give occasion for –
   (a) a war involving or liable to involve the Philippines; or

(b) exposure of Filipino citizens to reprisals on their persons or property.

Article 119. Violation of Neutrality

Elements

1. There is a war in which the Philippines is not involved;
2. There is a regulation issued by a competent authority to enforce neutrality;
3. Offender violates the regulation.

National security should be interpreted as including rebellion, sedition and subversion. The Revised Penal Code does not treat rebellion, sedition and subversion as crimes against national security, but more of crimes against public order because during the time that the Penal Code was enacted, rebellion was carried out only with bolos and spears; hence, national security was not really threatened. Now, the threat of rebellion or internal wars is serious as a national threat.

Article 120. Correspondence with Hostile Country

Elements

1. It is in time of war in which the Philippines is involved;
2. Offender makes correspondence with an enemy country or territory occupied by enemy troops;
3. The correspondence is either –
   (a) prohibited by the government;
   (b) carried on in ciphers or conventional signs; or
   (c) containing notice or information which might be useful to the enemy.

Article 121. Flight to Enemy's Country

Elements

1. There is a war in which the Philippines is involved;
2. Offender must be owing allegiance to the government;
3. Offender attempts to flee or go to enemy country;
4. Going to the enemy country is prohibited by competent authority.

In crimes against the law of nations, the offenders can be prosecuted anywhere in the world because these crimes are considered as against humanity in general, like piracy and mutiny. Crimes against national security can be tried only in the Philippines, as there is a need to bring the offender here before he can be made to suffer the consequences of the law. The acts against national security may be committed abroad and still be punishable under our law, but it cannot be tried under foreign law.

Article 122. Piracy in general and Mutiny on the High Seas or in Philippine Waters

Acts punished as piracy

1. Attacking or seizing a vessel on the high seas or in Philippine waters;
2. Seizing in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers.

Elements of piracy

1. The vessel is on the high seas or Philippine waters;
2. Offenders are neither members of its complement nor passengers of the vessel;
3. Offenders either –
   a. attack or seize a vessel on the high seas or in Philippine waters; or
   b. seize in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers;
4. There is intent to gain.

Originally, the crimes of piracy and mutiny can only be committed in the high seas, that is, outside Philippine territorial waters. But in August 1974, Presidential Decree No. 532 (The Anti-Piracy and Anti-Highway Robbery Law of 1974) was issued, punishing piracy, but not mutiny, in Philippine territorial waters. Thus came about two kinds of piracy: (1) that which is punished under the Revised Penal Code if committed in the high seas; and (2) that which is punished under Presidential Decree No. 532 if

committed in Philippine territorial waters.

Amending Article 122, Republic Act No. 7659 included therein piracy in Philippine waters, thus, pro tanto superseding Presidential Decree No. 532. As amended, the article now punishes piracy, as well as mutiny, whether committed in the high seas or in Philippine territorial waters, and the penalty has been increased to reclusion perpetua from reclusion temporal.

But while under Presidential Decree No. 532, piracy in Philippine waters could be committed by any person, including a passenger or member of the complement of a vessel, under the amended article, piracy can only be committed by a person who is not a passenger nor member of the complement of the vessel irrespective of venue. So if a passenger or complement of the vessel commits acts of robbery in the high seas, the crime is robbery, not piracy.

Note, however, that in Section 4 of Presidential Decree No. 532, the act of aiding pirates or abetting piracy is penalized as a crime distinct from piracy. Said section penalizes any person who knowingly and in any manner aids or protects pirates, such as giving them information about the movement of the police or other peace officers of the government, or acquires or receives property taken by such pirates, or in any manner derives any benefit therefrom; or who directly or indirectly abets the commission of piracy. Also, it is expressly provided in the same section that the offender shall be considered as an accomplice of the principal offenders and punished in accordance with the Revised Penal Code. This provision of Presidential Decree No. 532 with respect to piracy in Philippine water has not been incorporated in the Revised Penal Code. Neither may it be considered repealed by Republic Act No. 7659 since there is nothing in the amendatory law is inconsistent with said section.

Apparently, there is still the crime of abetting piracy in Philippine waters under Presidential Decree No. 532.

Considering that the essence of piracy is one of robbery, any taking in a vessel with force upon things or with violence or intimidation against person is employed will always be piracy. It cannot co-exist with the crime of robbery. Robbery, therefore, cannot be committed on board a vessel. But if the taking is without violence or intimidation on persons of force upon things, the crime of piracy cannot be committed, but only theft.

Elements of mutiny

1. The vessel is on the high seas or Philippine waters;
2. Offenders are either members of its complement, or passengers of the vessel;
3. Offenders either –
   (a) attack or seize the vessel; or
   (b) seize the whole or part of the cargo, its equipment, or personal belongings of the crew or passengers.

Mutiny is the unlawful resistance to a superior officer, or the raising of commotions and disturbances aboard a ship against the authority of its commander.

Distinction between mutiny and piracy

As to offenders	Mutiny is committed by members of the complement or the passengers of the vessel.	Piracy is committed by persons who are not members of the complement or the passengers of the vessel.
As to criminal intent	In mutiny, there is no criminal intent.	In piracy, the criminal intent is for gain.

Article 123. Qualified Piracy

Elements

1. The vessel is on the high seas or Philippine waters:
2. Offenders may or may not be members of its complement, or passengers of the vessel;
3. Offenders either –
   (a) attack or seize the vessel; or
   (b) seize the whole or part of the cargo, its equipment., or personal belongings of the crew or passengers;
4. The preceding were committed under any of the following circumstances:
   (a) whenever they have seized a vessel by boarding or firing upon the same;

(b) whenever the pirates have abandoned their victims without means of saving themselves; or
(c) whenever the crime is accompanied by murder, homicide, physical injuries or rape.

If any of the circumstances in Article123 is present, piracy is qualified. Take note of the specific crimes involve in number 4 c (murder, homicide, physical injuries or rape). When any of these crimes accompany piracy, there is no complex crime. Instead, there is only one crime committed – qualified piracy. Murder, rape, homicide, physical injuries are mere circumstances qualifying piracy and cannot be punished as separate crimes, nor can they be complexed with piracy.

Although in Article 123 merely refers to qualified piracy, there is also the crime of qualified mutiny. Mutiny is qualified under the following circumstances:

(1) When the offenders abandoned the victims without means of saving themselves; or
(2) When the mutiny is accompanied by rape, murder, homicide, or physical injuries.

Note that the first circumstance which qualifies piracy does not apply to mutiny.

A. ANTI-PIRACY AND ANTI- HIGHWAY ROBBERY (P.D.532)

Definition of terms

Philippine waters – refers to all bodies of water, such as but not limited to seas, gulfs, bays around, between and connecting each of the islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.

Vessel – any vessel or watercraft used for transport of passengers and cargo from one place to another through Philippine waters. It shall include all kinds and types of vessels or boats used in fishing.

Philippine highway – refers to any road, street, passage, highway and bridges or other parts thereof, or railway or railroad within the Philippines used by persons, or vehicles, or locomotives or trains for the movement or circulation of persons or transportation of goods, articles, or property or both.

Piracy – means any attack upon or seize of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters. The offenders shall be considered as pirates.

Highway Robbery / Brigandage – the seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine highway.

Punishable acts

1. Piracy. - any attack upon or seize of any vessel, or the taking away of the whole or part thereof or its cargo, equipment, or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things committed by any person, including a passenger or member of the complement of said vessel, in Philippine waters.
   Aggravating circumstances, which impose the penalty of death (reclusion perpetua):
   (a) When physical injuries or other crimes are committed as a result or on the occasion thereof;
   (b) Rape, murder or homicide if committed as a result or on the occasion of piracy; or
   (c) When the offenders abandoned the victims without means of saving themselves; or
   (d) When the seizure is accomplished by firing upon or boarding a vessel.

2. Highway robbery or brigandage - seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means,

committed by any person on any Philippine highway.

3. Aiding pirates or highway robbers / brigands or abetting piracy or highway robbery / brigandage – Any person who knowingly and in any manner aids or protects pirates or highway robbers/brigands, such as giving them information about the movement of police or other peace officers of the government, or acquires or receives property taken by such pirates or brigands or in any manner derives any benefit therefrom; or any person who directly or indirectly abets the commission of piracy or highway robbery or brigandage, shall be considered as an accomplice of the principal offenders. Unless the contrary is proven any person who does any of the acts has performed them knowingly.

B. ANTI-HIJACKING LAW (PD 6235)

Anti hi-jacking is another kind of piracy which is committed in an aircraft. In other countries, this crime is known as aircraft piracy.

Punishable acts

(1) Usurping or seizing control of an aircraft of Philippine registry while it is in flight, compelling the pilots thereof to change the course or destination of the aircraft;
(2) Usurping or seizing control of an aircraft of foreign registry while within Philippine territory, compelling the pilots thereof to land in any part of Philippine territory;
(3) Carrying or loading on board an aircraft operating as a public utility passenger aircraft in the Philippines, any flammable, corrosive, explosive, or poisonous substance; and
(4) Loading, shipping, or transporting on board a cargo aircraft operating as a public utility in the Philippines, any flammable, corrosive, explosive, or poisonous substance if this was done not in accordance with the rules and regulations set and promulgated by the Air Transportation Office on this matter.

Between numbers 1 and 2, the point of distinction is whether the aircraft is of Philippine registry or foreign registry. The common bar question on this law usually involves number 1. The important thing is that before the anti hi-jacking law can apply, the aircraft must be in flight. If not in flight, whatever crimes committed shall be governed by the Revised Penal Code. The law makes a distinction between aircraft of a foreign registry and of Philippine registry. If the aircraft subject of the hi-jack is of Philippine registry, it should be in flight at the time of the hi-jacking. Otherwise, the anti hi-jacking law will not apply and the crime is still punished under the Revised Penal Code. The correlative crime may be one of grave coercion or grave threat. If somebody is killed, the crime is homicide or murder, as the case may be. If there are some explosives carried there, the crime is destructive arson. Explosives are by nature pyrotechnic. Destruction of property with the use of pyrotechnic is destructive arson. If there is illegally possessed or carried firearm, other special laws will apply.

On the other hand, if the aircraft is of foreign registry, the law does not require that it be in flight before the anti hi-jacking law can apply. This is because aircrafts of foreign registry are considered in transit while they are in foreign countries. Although they may have been in a foreign country, technically they are still in flight, because they have to move out of that foreign country. So even if any of the acts mentioned were committed while the exterior doors of the foreign aircraft were still open, the anti hi-jacking law will already govern.

Note that under this law, an aircraft is considered in flight from the moment all exterior doors are closed following embarkation until such time when the same doors are again opened for disembarkation. This means that there are passengers that boarded. So if the doors are closed to bring the aircraft to the hangar, the aircraft is not considered as in flight. The aircraft shall be deemed to be already in flight even if its engine has not yet been started.

1. The pilots of the Pan Am aircraft were accosted by some armed men and were told to proceed to the aircraft to fly it to a foreign destination. The armed men walked with the pilots and went on board the aircraft. But before they could do anything on the aircraft, alert marshals arrested them. What crime was committed?

The criminal intent definitely is to take control of the aircraft, which is hi-jacking. It is a question now of whether the anti-hi-jacking law shall govern.

The anti hi-jacking law is applicable in this case. Even if the aircraft is not yet about to fly, the requirement that it be in flight does not hold true

when in comes to aircraft of foreign registry. Even if the problem does not say that all exterior doors are closed, the crime is hi-jacking. Since the aircraft is of foreign registry, under the law, simply usurping or seizing control is enough as long as the aircraft is within Philippine territory, without the requirement that it be in flight.

Note, however, that there is no hi-jacking in the attempted stage. This is a special law where the attempted stage is not punishable.

2. A Philippine Air Lines aircraft is bound for Davao. While the pilot and co-pilot are taking their snacks at the airport lounge, some of the armed men were also there. The pilots were followed by these men on their way to the aircraft. As soon as the pilots entered the cockpit, they pulled out their firearms and gave instructions where to fly the aircraft. Does the anti hi-jacking law apply?

No. The passengers have yet to board the aircraft. If at that time, the offenders are apprehended, the law will not apply because the aircraft is not yet in flight. Note that the aircraft is of Philippine registry.

3. While the stewardess of a Philippine Air Lines plane bound for Cebu was waiting for the passenger manifest, two of its passengers seated near the pilot surreptitiously entered the pilot cockpit. At gunpoint, they directed the pilot to fly the aircraft to the Middle East. However, before the pilot could fly the aircraft towards the Middle East, the offenders were subdued and the aircraft landed. What crime was committed?

The aircraft was not yet in flight. Considering that the stewardess was still waiting for the passenger manifest, the doors were still open. Hence, the anti hi-jacking law is not applicable. Instead, the Revised Penal Code shall govern. The crime committed was grave coercion or grave threat, depending upon whether or not any serious offense violence was inflicted upon the pilot.

However, if the aircraft were of foreign registry, the act would already be subject to the anti hi-jacking law because there is no requirement for foreign aircraft to be in flight before such law would apply. The reason for the distinction is that as long as such aircraft has not returned to its home base, technically, it is still considered in transit or in flight.

As to numbers 3 and 4 of Republic Act No. 6235, the distinction is whether the aircraft is a passenger aircraft or a cargo aircraft. In both cases, however, the law applies only to public utility aircraft in the Philippines. Private aircrafts are not subject to the anti hi-jacking law, in so far as transporting prohibited substances are concerned.

If the aircraft is a passenger aircraft, the prohibition is absolute. Carrying of any prohibited, flammable, corrosive, or explosive substance is a crime under Republic Act No. 6235. But if the aircraft is only a cargo aircraft, the law is violated only when the transporting of the prohibited substance was not done in accordance with the rules and regulations prescribed by the Air Transportation Office in the matter of shipment of such things. The Board of Transportation provides the manner of packing of such kind of articles, the quantity in which they may be loaded at any time, etc. Otherwise, the anti hi-jacking law does not apply.

However, under Section 7, any physical injury or damage to property which would result from the carrying or loading of the flammable, corrosive, explosive, or poisonous substance in an aircraft, the offender shall be prosecuted not only for violation of Republic Act No. 6235, but also for the crime of physical injuries or damage to property, as the case may be, under the Revised Penal Code. There will be two prosecutions here. Other than this situation, the crime of physical injuries will be absorbed. If the explosives were planted in the aircraft to blow up the aircraft, the circumstance will qualify the penalty and that is not punishable as a separate crime for murder. The penalty is increased under the anti hi-jacking law.

All other acts outside of the four are merely qualifying circumstances and would bring about higher penalty. Such acts would not constitute another crime. So the killing or explosion will only qualify the penalty to a higher one.

C. HUMAN SECURITY ACT OF 2007(R.A. 9372)

Punishable acts of terrorism; who are liable

Terrorism.- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);

c. Article 134-a (Coup d' Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
   1. Presidential Decree No. 1613 (The Law on Arson);
   2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
   3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
   4. Republic Act No. 6235 (Anti-Hijacking Law);
   5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
   6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended *(Sec. 3)*.

Conspiracy to Commit Terrorism. - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same *(Sec. 4)*.

Accomplice. - Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment *(Sec. 5)*.

Accessory. - Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a) *(Sec. 6)*.

2. CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE (124-133)

Crimes against the fundamental laws of the State

1. Arbitrary detention (Art. 124);
2. Delay in the delivery of detained persons to the proper judicial authorities (Art. 125);
3. Delaying release (Art. 126);
4. Expulsion (Art. 127);
5. Violation of domicile (Art. 128);
6. Search warrants maliciously obtained and abuse in the service of those legally obtained (Art. 129);
7. Searching domicile without witnesses (Art. 130);
8. Prohibition, interruption, and dissolution of peaceful meetings (Art. 131);
9. Interruption of religious worship (Art. 132); and

10. Offending the religious feelings (Art. 133);

Crimes under this title are those which violate the Bill of Rights accorded to the citizens under the Constitution. Under this title, the offenders are public officers, except as to the last crime – offending the religious feelings under Article 133, which refers to any person. The public officers who may be held liable are only those acting under supposed exercise of official functions, albeit illegally.

In its counterpart in Title IX (Crimes Against Personal Liberty and Security), the offenders are private persons. But private persons may also be liable under this title as when a private person conspires with a public officer. What is required is that the principal offender must be a public officer. Thus, if a private person conspires with a public officer, or becomes an accessory or accomplice, the private person also becomes liable for the same crime. But a private person acting alone cannot commit the crimes under Article 124 to 132 of this title.

Article 124. Arbitrary Detention

Elements

1. Offender is a public officer or employee;
2. He detains a person;
3. The detention is without legal grounds.

Meaning of absence of legal grounds

1. No crime was committed by the detained;
2. There is no violent insanity of the detained person; and
3. The person detained has no ailment which requires compulsory confinement in a hospital.

The crime of arbitrary detention assumes several forms:

(1) Detaining a person without legal grounds under;
(2) Having arrested the offended party for legal grounds but without warrant of arrest, and the public officer does not deliver the arrested person to the proper judicial authority within the period of 12, 18, or 36 hours, as the case may be; or
(3) Delaying release by competent authority with the same period mentioned in number 2.

Distinction between arbitrary detention and illegal detention

1. In arbitrary detention --
   The principal offender must be a public officer. Civilians can commit the crime of arbitrary detention except when they conspire with a public officer committing this crime, or become an accomplice or accessory to the crime committed by the public officer; and
   The offender who is a public officer has a duty which carries with it the authority to detain a person.
2. In illegal detention --
   The principal offender is a private person. But a public officer can commit the crime of illegal detention when he is acting in a private capacity or beyond the scope of his official duty, or when he becomes an accomplice or accessory to the crime committed by a private person.
   The offender, even if he is a public officer, does not include as his function the power to arrest and detain a person, unless he conspires with a public officer committing arbitrary detention.

Note that in the crime of arbitrary detention, although the offender is a public officer, not any public officer can commit this crime. Only those public officers whose official duties carry with it the authority to make an arrest and detain persons can be guilty of this crime. So, if the offender does not possess such authority, the crime committed by him is illegal detention. A public officer who is acting outside the scope of his official duties is no better than a private citizen.

In a case decided by the Supreme Court a Barangay Chairman who unlawfully detains another was held to be guilty of the crime of arbitrary detention. This is because he is a person in authority vested with the jurisdiction to maintain peace and order within his barangay. In the maintenance of such peace and order, he may cause the arrest and detention of troublemakers or those who disturb the peace and order within his barangay. But if the legal basis for the apprehension and detention does not exist, then the detention becomes arbitrary.

Whether the crime is arbitrary detention or illegal detention, it is necessary that there must be an actual restraint of liberty of the offended party. If there is no actual restraint, as the offended party may still go to the place where he wants to go, even though there have been warnings, the crime of arbitrary detention or illegal detention is

not committed. There is either grave or light threat.

However, if the victim is under guard in his movement such that there is still restraint of liberty, then the crime of either arbitrary or illegal detention is still committed.

Distinction between arbitrary detention and unlawful arrest

(1) As to offender
In arbitrary detention, the offender is a public officer possessed with authority to make arrests.
In unlawful arrest, the offender may be any person.

(2) As to criminal intent
In arbitrary detention, the main reason for detaining the offended party is to deny him of his liberty.
In unlawful arrest, the purpose is to accuse the offended party of a crime he did not commit, to deliver the person to the proper authority, and to file the necessary charges in a way trying to incriminate him.

When a person is unlawfully arrested, his subsequent detention is without legal grounds.

Article 125. Delay in the Delivery of Detained Persons to the Proper Judicial Authorities

Elements

1. Offender is a public officer or employee;
2. He detains a person for some legal ground;
3. He fails to deliver such person to the proper judicial authorities within –
   (a) 12 hour for light penalties;
   (b) 18 hours for correctional penalties; and
   (c) 36 hours for afflictive or capital penalties.

This is a form of arbitrary detention. At the beginning, the detention is legal since it is in the pursuance of a lawful arrest. However, the detention becomes arbitrary when the period thereof exceeds 12, 18 or 36 hours, as the case may be, depending on whether the crime is punished by light, correctional or afflictive penalty or their equivalent.

The period of detention is 12 hours for light offenses, 18 hours for correctional offences and 36 hours for afflictive offences, where the accused may be detained without formal charge. But he must cause a formal charge or application to be filed with the proper court before 12, 18 or 36 hours lapse. Otherwise he has to release the person arrested.

Note that the period stated herein does not include the nighttime. It is to be counted only when the prosecutor's office is ready to receive the complaint or information.

This article does not apply if the arrest is with a warrant. The situation contemplated here is an arrest without a warrant.

When a person is arrested without a warrant, it means that there is no case filed in court yet. If the arresting officer would hold the arrested person there, he is actually depriving the arrested of his right to bail. As long as there is no charge in the court yet, the arrested person cannot obtain bail because bail may only be granted by the court. The spirit of the law is to have the arrested person delivered to the jurisdiction of the court.

If the arrest is by virtue of a warrant, it means that there is already a case filed in court. When an information is filed in court, the amount of bail recommended is stated. The accused person is not really denied his right to bail. Even if he is interrogated in the police precinct, he can already file bail.

Note that delivery of the arrested person to the proper authorities does not mean physical delivery or turn over of arrested person to the court. It simply means putting the arrested person under the jurisdiction of the court. This is done by filing the necessary complaint or information against the person arrested in court within the period specified in Article 125. The purpose of this is for the court to determine whether the offense is bailable or not and if bailable, to allow him the right to bail.

Under the Rule 114 of the Revised Rules of Court, the arrested person can demand from the arresting officer to bring him to any judge in the place where he was arrested and post the bail here. Thereupon, the arresting officer may release him. The judge who granted the bail will just forward the litimus of the case to the court trying his case. The purpose is in order to deprive the arrested person of his right to post the bail.

Under the Revised Rules of Court, when the person arrested is arrested for a crime which gives him the right to preliminary investigation

and he wants to avail his right to a preliminary investigation, he would have to waive in writing his rights under Article 125 so that the arresting officer will not immediately file the case with the court that will exercise jurisdiction over the case. If he does not want to waive this in writing, the arresting officer will have to comply with Article 125 and file the case immediately in court without preliminary investigation. In such case, the arrested person, within five days after learning that the case has been filed in court without preliminary investigation, may ask for preliminary investigation. In this case, the public officer who made the arrest will no longer be liable for violation of Article 125.

Article 126. Delaying Release

Acts punished

1. Delaying the performance of a judicial or executive order for the release of a prisoner;
2. Unduly delaying the service of the notice of such order to said prisoner;
3. Unduly delaying the proceedings upon any petition for the liberation of such person.

Elements

1. Offender is a public officer or employee;
2. There is a judicial or executive order for the release of a prisoner or detention prisoner, or that there is a proceeding upon a petition for the liberation of such person;
3. Offender without good reason delays –
   (a) the service of the notice of such order to the prisoner;
   (b) the performance of such judicial or executive order for the release of the prisoner; or
   (c) the proceedings upon a petition for the release of such person.

Article 127. Expulsion

Acts punished

1. Expelling a person from the Philippines;
2. Compelling a person to change his residence.

Elements

1. Offender is a public officer or employee;
2. He either –
   (a) expels any person from the Philippines; or
   (b) compels a person to change residence;
3, Offender is not authorized to do so by law.

The essence of this crime is coercion but the specific crime is "expulsion" when committed by a public officer. If committed by a private person, the crime is grave coercion.

In **Villavicencio v. Lukban, 39 Phil 778**, the mayor of the City of Manila wanted to make the city free from prostitution. He ordered certain prostitutes to be transferred to Davao, without observing due processes since they have not been charged with any crime at all. It was held that the crime committed was expulsion.

Article 128. Violation of Domicile

1. Entering any dwelling against the will of the owner thereof;
2. Searching papers or other effects found therein without the previous consent of such owner; or
3. Refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave the same

Common elements

1. Offender is a public officer or employee;
2. He is not authorized by judicial order to enter the dwelling or to make a search therein for papers or other effects.

Circumstances qualifying the offense

1. If committed at nighttime; or
2. If any papers or effects not constituting evidence of a crime are not returned immediately after the search made by offender.

Under Title IX (Crimes against Personal Liberty and Security), the corresponding article is qualified trespass to dwelling under Article 280. Article 128 is limited to public officers. The public officers who may be liable for crimes against the fundamental laws are those who are possessed of the authority to execute search warrants and warrants of arrests.

Under Rule 113 of the Revised Rules of Court, when a person to be arrested enters a premise

and closes it thereafter, the public officer, after giving notice of an arrest, can break into the premise. He shall not be liable for violation of domicile.

There are only three recognized instances when search without a warrant is considered valid, and, therefore, the seizure of any evidence done is also valid. Outside of these, search would be invalid and the objects seized would not be admissible in evidence.

(1) Search made incidental to a valid arrest;
(2) Where the search was made on a moving vehicle or vessel such that the exigency of the situation prevents the searching officer from securing a search warrant;
(3) When the article seized is within plain view of the officer making the seizure without making a search therefore.

There are three ways of committing the violation of Article 128:

(1) By simply entering the dwelling of another if such entering is done against the will of the occupant. In the plain view doctrine, public officer should be legally entitled to be in the place where the effects were found. If he entered the place illegally and he saw the effects, doctrine inapplicable; thus, he is liable for violation of domicile.
(2) Public officer who enters with consent searches for paper and effects without the consent of the owner. Even if he is welcome in the dwelling, it does not mean he has permission to search.
(3) Refusing to leave premises after surreptitious entry and being told to leave the same. The act punished is not the entry but the refusal to leave. If the offender upon being directed to eave, followed and left, there is no crime of violation of domicile. Entry must be done surreptitiously; without this, crime may be unjust vexation. But if entering was done against the will of the occupant of the house, meaning there was express or implied prohibition from entering the same, even if the occupant does not direct him to leave, the crime of is already committed because it would fall in number 1.

Article 129. Search Warrants Maliciously Obtained, and Abuse in the Service of Those Legally Obtained

Acts punished

1. Procuring a search warrant without just cause;

   Elements

   (a) Offender is a public officer or employee;
   (b) He procures a search warrant;
   (c) There is no just cause.

2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured.

   Elements

   (a) Offender is a public officer or employee;
   (b) He has legally procured a search warrant;
   (c) He exceeds his authority or uses unnecessary severity in executing the same.

Article 130. Searching Domicile without Witnesses

Elements

1. Offender is a public officer or employee;
2. He is armed with search warrant legally procured;
3. He searches the domicile, papers or other belongings of any person;
4. The owner, or any members of his family, or two witnesses residing in the same locality are not present.

Crimes under Articles 129 and 130 are referred to as violation of domicile. In these articles, the search is made by virtue of a valid warrant, but the warrant notwithstanding, the liability for the crime is still incurred through the following situations:

(1) Search warrant was irregularly obtained - This means there was no probable cause determined in obtaining the search warrant. Although void, the search warrant is entitled to respect because of presumption of regularity. One remedy is a motion to quash the search warrant, not refusal to abide by it. The public officer may also be prosecuted for perjury, because for him to succeed in obtaining a search warrant without a probable cause, he must have perjured himself or induced someone to commit perjury to convince the court.
(2) The officer exceeded his authority under the warrant - To illustrate, let us say that there

was a pusher in a condo unit. The PNP Narcotics Group obtained a search warrant but the name of person in the search warrant did not tally with the address stated. Eventually, the person with the same name was found but in a different address. The occupant resisted but the public officer insisted on the search. Drugs were found and seized and occupant was prosecuted and convicted by the trial court. The Supreme Court acquitted him because the public officers are required to follow the search warrant to the letter. They have no discretion on the matter. Plain view doctrine is inapplicable since it presupposes that the officer was legally entitled to be in the place where the effects where found. Since the entry was illegal, plain view doctrine does not apply.

(3) When the public officer employs unnecessary or excessive severity in the implementation of the search warrant. The search warrant is not a license to commit destruction.

(4) Owner of dwelling or any member of the family was absent, or two witnesses residing within the same locality were not present during the search.

Article 131. Prohibition, Interruption, and Dissolution of Peaceful Meetings

Elements

1. Offender is a public officer or employee;
2. He performs any of the following acts:
   (a) prohibiting or by interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same;
   (b) hindering any person from joining any lawful association, or attending any of its meetings;
   (c) prohibiting or hindering any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

The government has a right to require a permit before any gathering could be made. Any meeting without a permit is a proceeding in violation of the law. That being true, a meeting may be prohibited, interrupted, or dissolved without violating Article 131 of the Revised Penal Code.

But the requiring of the permit shall be in exercise only of the government's regulatory powers and not really to prevent peaceful assemblies as the public may desire. Permit is only necessary to regulate the peace so as not to inconvenience the public. The permit should state the day, time and the place where the gathering may be held. This requirement is, therefore, legal as long as it is not being exercised in as a prohibitory power.

If the permit is denied arbitrarily, Article 131 is violated. If the officer would not give the permit unless the meeting is held in a particular place which he dictates defeats the exercise of the right to peaceably assemble, Article 131 is violated.

At the beginning, it may happen that the assembly is lawful and peaceful. If in the course of the assembly the participants commit illegal acts like oral defamation or inciting to sedition, a public officer or law enforcer can stop or dissolve the meeting. The permit given is not a license to commit a crime.

There are two criteria to determine whether Article 131 would be violated:

(1) Dangerous tendency rule – applicable in times of national unrest such as to prevent coup d'etat.

(2) Clear and present danger rule – applied in times of peace. Stricter rule.

Distinctions between prohibition, interruption, or dissolution of peaceful meetings under Article 131, and tumults and other disturbances, under Article 153

(1) As to the participation of the public officer
In Article 131, the public officer is not a participant. As far as the gathering is concerned, the public officer is a third party.
If the public officer is a participant of the assembly and he prohibits, interrupts, or dissolves the same, Article 153 is violated if the same is conducted in a public place.

(2) As to the essence of the crime
In Article 131, the offender must be a public officer and, without any legal ground, he prohibits, interrupts, or dissolves a peaceful meeting or assembly to prevent the offended party from exercising his freedom of speech and that of the assembly to petition a grievance against the government.
In Article 153, the offender need not be a public officer. The essence of the crime is that of creating a serious disturbance of any sort in a public office, public building or even

a private place where a public function is being held.

Article 132. Interruption of Religious Worship

Elements

1. Offender is a public officer or employee;
2. Religious ceremonies or manifestations of any religious are about to take place or are going on;
3. Offender prevents or disturbs the same.

Qualified if committed by violence or threat.

Article 133. Offending the Religious Feelings

Elements

1. Acts complained of were performed in a place devoted to religious worship, or during the celebration of any religious ceremony;
2. The acts must be notoriously offensive to the feelings of the faithful.

There must be deliberate intent to hurt the feelings of the faithful.

HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Period of detention

Period of Detention Without Judicial Warrant of Arrest. - The provisions of Article 125 of the Revised Penal Code to the contrary notwithstanding, any police or law enforcement personnel, who, having been duly authorized in writing by the Anti-Terrorism Council has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall, without incurring any criminal liability for delay in the delivery of detained persons to the proper judicial authorities, deliver said charged or suspected person to the proper judicial authority within a period of three days counted from the moment the said charged or suspected person has been apprehended or arrested, detained, and taken into custody by the said police, or law enforcement personnel: Provided, That the arrest of those suspected of the crime of terrorism or conspiracy to commit terrorism must result from the surveillance under Section 7 and examination of bank deposits under Section 27 of this Act.

The police or law enforcement personnel concerned shall, before detaining the person suspected of the crime of terrorism, present him or her before any judge at the latter's residence or office nearest the place where the arrest took place at any time of the day or night. It shall be the duty of the judge, among other things, to ascertain the identity of the police or law enforcement personnel and the person or persons they have arrested and presented before him or her, to inquire of them the reasons why they have arrested the person and determine by questioning and personal observation whether or not the suspect has been subjected to any physical, moral or psychological torture by whom and why. The judge shall then submit a written report of what he/she had observed when the subject was brought before him to the proper court that has jurisdiction over the case of the person thus arrested. The judge shall forthwith submit his/her report within three calendar days from the time the suspect was brought to his/her residence or office.

Immediately after taking custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism, the police or law enforcement personnel shall notify in writing the judge of the court nearest the place of apprehension or arrest: Provided ,That where the arrest is made during Saturdays, Sundays, holidays or after office hours, the written notice shall be served at the residence of the judge nearest the place where the accused was arrested.

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon the police or law enforcement personnel who fails to notify and judge as Provided in the preceding paragraph *(Sec. 18).*

Period of Detention in the Event of an Actual or Imminent Terrorist Attack. -- In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three (3) days without the written approval of a municipal, city, provincial or regional official of the Human Rights Commission or judge of the municipal, regional trial court, Sandiganbayan or a justice of the Court of Appeals nearest the place of the arrest. If the arrest is made during Saturdays,

Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials mentioned above that is nearest the place where the accused was arrested. The approval in writing of any of the said officials shall be secured by the police or law enforcement personnel concerned within five (5) days after the date of the detention of the persons concerned. Provided, however, that within three (3) days after the detention the suspects, whose connection with the terror attack or threat is not established, shall be released immediately *(Sec. 19)*.

ANTI-TORTURE ACT (R.A. 9745)

Torture refers to an act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him/her or a third person information or a confession; punishing him/her for an act he/she or a third person has committed or is suspected of having committed; or intimidating or coercing him/her or a third person; of for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a person in authority or agent of a person of authority. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions *(Sec. 3[a])*.

Punishable acts under Sec. 4

1. Physical torture -- a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:
   (1) Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach;
   (2) Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten;
   (3) Electric shock;
   (4) Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s);
   (5) The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation;
   (6) Being tied or forced to assume fixed and stressful bodily position;
   (7) Rape and sexual abuse, including the insertion of foreign objects into the sex organ or rectum, or electrical torture of the genitals;
   (8) Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.;
   (9) Dental torture or the forced extraction of the teeth;
   (10) Pulling out of fingernails;
   (11) Harmful exposure to the elements such as sunlight and extreme cold;
   (12) The use of plastic bag and other materials placed over the head to the point of asphyxiation;
   (13) The use of psychoactive drugs to change the perception, memory. alertness or will of a person, such as:
      (i) The administration of drugs to induce confession and/or reduce mental competency; or
      (ii) The use of drugs to induce extreme pain or certain symptoms of a disease; and
   (14) Other analogous acts of physical torture; and

2. Mental/Psychological Torture -- acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:
   (1) Blindfolding;
   (2) Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts;
   (3) Confinement in solitary cells or secret detention places;
   (1) Prolonged interrogation;
   (5) Preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner;
   (6) Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed;
   (7) Maltreating a member/s of a person's family;

(8) Causing the torture sessions to be witnessed by the person's family, relatives or any third party;
(9) Denial of sleep/rest;
(10) Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will;
(11) Deliberately prohibiting the victim to communicate with any member of his/her family; and
(12) Other analogous acts of mental/psychological torture.

Acts punishable by *reclusion perpetua* under Sec. 14:

(1) Torture resulting in the death of any person;
(2) Torture resulting in mutilation;
(3) Torture with rape;
(4) Torture with other forms of sexual abuse and, in consequence of torture, the victim shall have become insane, imbecile, impotent, blind or maimed for life; and
(5) Torture committed against children.

Who are liable

SEC. 13. *Who are Criminally Liable.* - Any person who actually participated Or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture or other cruel, inhuman and degrading treatment or punishment by previous or simultaneous acts shall be liable as principal.

Any superior military, police or law enforcement officer or senior government official who issued an order to any lower ranking personnel to commit torture for whatever purpose shall be held equally liable as principals.

The immediate commanding officer of the unit concerned .of the AFP or the immediate senior public official of the PNP and other law enforcement agencies shall be held liable as a principal to the crime of torture or other cruel or inhuman and degrading treatment or punishment for any act or omission, or negligence committed by him/her that shall have led, assisted, abetted or allowed, whether directly or indirectly, the commission thereof by his/her subordinates. If he/she has knowledge of or, owing to the circumstances at the time, should have known that acts of torture or other cruel, inhuman and degrading treatment or punishment shall be committed, is being committed, or has been committed by his/her subordinates or by others within his/her area of responsibility and, despite such knowledge, did not take preventive or corrective action either before, during or immediately after its commission, when he/she has the authority to prevent or investigate allegations of torture or other cruel, inhuman and degrading treatment or punishment but failed to prevent or investigate allegations of such act, whether deliberately or due to negligence shall also be liable as principals.

Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice, takes part subsequent to its commission in any of the following manner:

(a) By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment or punishment;
(b) By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects or instruments thereof in order to prevent its discovery; or
(c) By harboring, concealing or assisting m the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: *Provided,* That the accessory acts are done with the abuse of the official's public functions.

3. CRIMES AGAINST PUBLIC ORDER (134-159)

Crimes against public order

1. Rebellion or insurrection (Art. 134);
2. Conspiracy and proposal to commit rebellion (Art. 136);
3. Disloyalty to public officers or employees (Art. 137);
4. Inciting to rebellion (Art. 138);
5. Sedition (Art. 139);

6. Conspiracy to commit sedition (Art. 141);
7. Inciting to sedition (Art. 142);
8. Acts tending to prevent the meeting of Congress and similar bodies (Art. 143);
9. Disturbance of proceedings of Congress or similar bodies (Art. 144);
10. Violation of parliamentary immunity (Art. 145);
11. Illegal assemblies (Art. 146);
12. Illegal associations (Art. 147);
13. Direct assaults (Art. 148);
14. Indirect assaults (Art. 149);
15. Disobedience to summons issued by Congress, its committees, etc., by the constitutional commissions, its committees, etc. (Art. 150);
16. Resistance and disobedience to a person in authority or the agents of such person (Art. 151);
17. Tumults and other disturbances of public order (Art. 153);
18. Unlawful use of means of publication and unlawful utterances (Art. 154);
19. Alarms and scandals (Art. 155);
20. Delivering prisoners from jails (Art. 156);
21. Evasion of service of sentence (Art. 157);
22. Evasion on occasion of disorders (Art. 158);
23. Violation of conditional pardon (Art. 159); and
24. Commission of another crime during service of penalty imposed for another previous offense (Art. 160).

Article 134. Rebellion or Insurrection

Elements

1. There is a public uprising and taking arms against the government;
2. The purpose of the uprising or movement is –
   a. to remove from the allegiance to the government or its laws Philippine territory or any part thereof, or any body of land, naval, or other armed forces; or
   b. to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

The essence of this crime is a public uprising with the taking up of arms. It requires a multitude of people. It aims to overthrow the duly constituted government. It does not require the participation of any member of the military or national police organization or public officers and generally carried out by civilians. Lastly, the crime can only be committed through force and violence.

Rebellion and insurrection are not synonymous. Rebellion is more frequently used where the object of the movement is completely to overthrow and supersede the existing government; while insurrection is more commonly employed in reference to a movement which seeks merely to effect some change of minor importance, or to prevent the exercise of governmental authority with respect to particular matters of subjects (Reyes, *citing* 30 Am. Jr. 1).

Rebellion can now be complexed with common crimes. Not long ago, the Supreme Court, in Enrile v. Salazar, 186 SCRA 217, reiterated and affirmed the rule laid down in People v. Hernandez, 99 Phil 515, that rebellion may not be complexed with common crimes which are committed in furtherance thereof because they are absorbed in rebellion. In view of said reaffirmation, some believe that it has been a settled doctrine that rebellion cannot be complexed with common crimes, such as killing and destruction of property, committed on the occasion and in furtherance thereof.

This thinking is no longer correct; there is no legal basis for such rule now.

The statement in People v. Hernandez that common crimes committed in furtherance of rebellion are absorbed by the crime of rebellion, was dictated by the provision of Article 135 of the Revised Penal Code prior to its amendment by the Republic Act No. 6968 (An Act Punishing the Crime of Coup D'etat), which became effective on October 1990. Prior to its amendment by Republic Act No. 6968, Article 135 punished those "who while holding any public office or employment, take part therein" by any of these acts: engaging in war against the forces of Government; destroying property; committing serious violence; exacting contributions, diverting funds for the lawful purpose for which they have been appropriated.

Since a higher penalty is prescribed for the crime of rebellion when any of the specified acts are committed in furtherance thereof, said acts are punished as components of rebellion and, therefore, are not to be treated as distinct crimes. The same acts constitute distinct crimes when committed on a different occasion and not in furtherance of rebellion. In short, it was because Article 135 then punished said acts as components of the crime of rebellion that precludes the application of Article 48 of the Revised Penal Code thereto. In the eyes of the law then, said acts constitute only one crime and that is rebellion. The Hernandez doctrine was

reaffirmed in Enrile v. Salazar because the text of Article 135 has remained the same as it was when the Supreme Court resolved the same issue in the People v. Hernandez. So the Supreme Court invited attention to this fact and thus stated:

"There is a an apparent need to restructure the law on rebellion, either to raise the penalty therefor or to clearly define and delimit the other offenses to be considered absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name. The court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is purely within its province."

Obviously, Congress took notice of this pronouncement and, thus, in enacting Republic Act No. 6968, it did not only provide for the crime of coup d'etat in the Revised Penal Code but moreover, deleted from the provision of Article 135 that portion referring to those –

"…who, while holding any public office or employment takes part therein [rebellion or insurrection], engaging in war against the forces of government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated …"

Hence, overt acts which used to be punished as components of the crime of rebellion have been severed therefrom by Republic Act No. 6968. The legal impediment to the application of Article 48 to rebellion has been removed. After the amendment, common crimes involving killings, and/or destructions of property, even though committed by rebels in furtherance of rebellion, shall bring about complex crimes of rebellion with murder/homicide, or rebellion with robbery, or rebellion with arson as the case may be.

To reiterate, before Article 135 was amended, a higher penalty was imposed when the offender engages in war against the government. "War" connotes anything which may be carried out in pursuance of war. This implies that all acts of war or hostilities like serious violence and destruction of property committed on occasion and in pursuance of rebellion are component crimes of rebellion which is why Article 48 on complex crimes is inapplicable. In amending Article135, the acts which used to be component crimes of rebellion, like serious acts of violence, have been deleted. These are now distinct crimes. The legal obstacle for the application of Article 48, therefore, has been removed. Ortega says legislators want to punish these common crimes independently of rebellion. Ortega cites no case overturning Enrile v. Salazar.

In **People v. Rodriguez, 107 Phil. 569,** it was held that an accused already convicted of rebellion may not be prosecuted further for illegal possession of firearm and ammunition, a violation of Presidential Decree No. 1866, because this is a necessary element or ingredient of the crime of rebellion with which the accused was already convicted.

However, in People v. Tiozon, 198 SCRA 368, it was held that charging one of illegal possession of firearms in furtherance of rebellion is proper because this is not a charge of a complex crime. A crime under the Revised Penal Code cannot be absorbed by a statutory offense.
In People v. de Gracia, it was ruled that illegal possession of firearm in furtherance of rebellion under Presidential Decree No. 1866 is distinct from the crime of rebellion under the Revised Penal Code and, therefore, Article 135 (2) of the Revised Penal Code should not apply. The offense of illegal possession of firearm is a malum prohibitum, in which case, good faith and absence of criminal intent are not valid defenses.

In People v. Lobedioro, an NPA cadre killed a policeman and was convicted for murder. He appealed invoking rebellion. The Supreme Court found that there was no evidence shown to further the end of the NPA movement. It held that there must be evidence shown that the act furthered the cause of the NPA; it is not enough to say it.

Rebellion may be committed even without a single shot being fired. No encounter needed. Mere public uprising with arms enough.

Article 135, as amended, has two penalties: a higher penalty for the promoters, heads and maintainers of the rebellion; and a lower penalty for those who are only followers of the rebellion.

<u>Distinctions between rebellion and sedition</u>

(1) As to nature -- In rebellion, there must be taking up or arms against the government. In sedition, it is sufficient that the public uprising be tumultuous.

(2) As to purpose -- In rebellion, the purpose is always political. In sedition, the purpose may be political or social. Example: the uprising of squatters against Forbes park residents. The purpose in sedition is to go against established government, not to overthrow it.

When any of the objectives of rebellion is pursued but there is no public uprising in the legal sense, the crime is direct assault of the first form. But if there is rebellion, with public uprising, direct assault cannot be committed.

Article 134-A. Coup d' etat

Elements

1. Offender is a person or persons belonging to the military or police or holding any public office or employment;
2. It is committed by means of a swift attack accompanied by violence, intimidation, threat, strategy or stealth;
3. The attack is directed against the duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power;
4. The purpose of the attack is to seize or diminish state power.

The essence of the crime is a swift attack upon the facilities of the Philippine government, military camps and installations, communication networks, public utilities and facilities essential to the continued possession of governmental powers. It may be committed singly or collectively and does not require a multitude of people. The objective may not be to overthrow the government but only to destabilize or paralyze the government through the seizure of facilities and utilities essential to the continued possession and exercise of governmental powers. It requires as principal offender a member of the AFP or of the PNP organization or a public officer with or without civilian support. Finally, it may be carried out not only by force or violence but also through stealth, threat or strategy.

Persons liable for rebellion, insurrection or coup d' etat under Article 135

1. The leaders –
   a. Any person who promotes, maintains or heads a rebellion or insurrection; or
   b. Any person who leads, directs or commands others to undertake a coup d'etat;
2. The participants –
   a. Any person who participates or executes the commands of others in rebellion, insurrection or coup d' etat;
   b. Any person not in the government service who participates, supports, finances, abets or aids in undertaking a coup d'etat.

Article 136. Conspiracy and Proposal to Commit Coup d' etat, Rebellion or Insurrection

Conspiracy and proposal to commit rebellion are two different crimes, namely:

1. Conspiracy to commit rebellion; and
2. Proposal to commit rebellion.

There is conspiracy to commit rebellion when two or more persons come to an agreement to rise publicly and take arms against government for any of the purposes of rebellion and decide to commit it.

There is proposal to commit rebellion when the person who has decided to rise publicly and take arms against the government for any of the purposes of rebellion proposes its execution to some other person or persons.

Article 137. Disloyalty of Public Officers or Employees

Acts punished

1. By failing to resist a rebellion by all the means in their power;
2. By continuing to discharge the duties of their offices under the control of the rebels; or
3. By accepting appointment to office under them.

Offender must be a public officer or employee.

Article 138. Inciting to Rebellion or Insurrection

Elements

1. Offender does not take arms or is not in open hostility against the government;
2. He incites others to the execution of any of the acts of rebellion;
3. The inciting is done by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.

Distinction between inciting to rebellion and proposal to commit rebellion

1. In both crimes, offender induces another to commit rebellion.
2. In proposal, the person who proposes has decided to commit rebellion; in inciting to rebellion, it is not required that the offender has decided to commit rebellion.
3. In proposal, the person who proposes the execution of the crime uses secret means; in inciting to rebellion, the act of inciting is done publicly.

Article 139. Sedition

Elements

1. Offenders rise publicly and tumultuously;
2. Offenders employ force, intimidation, or other means outside of legal methods;
3. Purpose is to attain any of the following objects:
   a. To prevent the promulgation or execution of any law or the holding of any popular election;
   b. To prevent the national government or any provincial or municipal government, or any public officer from exercising its or his functions or prevent the execution of an administrative order;
   c. To inflict any act of hate or revenge upon the person or property of any public officer or employee;
   d. To commit, for any political or social end, any act of hate or revenge against private persons or any social classes;
   e. To despoil for any political or social end, any person, municipality or province, or the national government of all its property or any part thereof.

The crime of sedition does not contemplate the taking up of arms against the government because the purpose of this crime is not the overthrow of the government. Notice from the purpose of the crime of sedition that the offenders rise publicly and create commotion ad disturbance by way of protest to express their dissent and obedience to the government or to the authorities concerned. This is like the so-called civil disobedience except that the means employed, which is violence, is illegal.

Persons liable for sedition under Article 140

1. The leader of the sedition; and
2. Other person participating in the sedition.

Article 141. Conspiracy to Commit Sedition

In this crime, there must be an agreement and a decision to rise publicly and tumultuously to attain any of the objects of sedition.

There is no proposal to commit sedition.

Article 142. Inciting to Sedition

Acts punished

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.;
2. Uttering seditious words or speeches which tend to disturb the public peace;
3. Writing, publishing, or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace.

Elements

1. Offender does not take direct part in the crime of sedition;
2. He incites others to the accomplishment of any of the acts which constitute sedition; and
3. Inciting is done by means of speeches, proclamations, writings, emblems, cartoons,

banners, or other representations tending towards the same end.

Only non-participant in sedition may be liable.

Considering that the objective of sedition is to express protest against the government and in the process creating hate against public officers, any act that will generate hatred against the government or a public officer concerned or a social class may amount to Inciting to sedition. Article 142 is, therefore, quite broad.

The mere meeting for the purpose of discussing hatred against the government is inciting to sedition. Lambasting government officials to discredit the government is Inciting to sedition. But if the objective of such preparatory actions is the overthrow of the government, the crime is inciting to rebellion.

Article 143. Acts Tending to Prevent the Meeting of the Congress of the Philippines and Similar Bodies

Elements

1. There is a projected or actual meeting of Congress or any of its committees or subcommittees, constitutional committees or divisions thereof, or of any provincial board or city or municipal council or board;
2. Offender, who may be any person, prevents such meetings by force or fraud.

Article 144. Disturbance of Proceedings

Elements

1. There is a meeting of Congress or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board;
   due it.
2. Offender does any of the following acts:
   a. He disturbs any of such meetings;
   b. He behaves while in the presence of any such bodies in such a manner as to interrupt its proceedings or to impair the respect

Article 145. Violation of Parliamentary Immunity

Acts punished

1. Using force, intimidation, threats, or frauds to prevent any member of Congress from attending the meetings of Congress or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or from expressing his opinion or casting his vote;

   Elements

   1. Offender uses force, intimidation, threats or fraud;
   2. The purpose of the offender is to prevent any member of Congress from –
      a. attending the meetings of the Congress or of any of its committees or constitutional commissions, etc.;
      b. expressing his opinion; or
      c. casting his vote.
2. Arresting or searching any member thereof while Congress is in regular or special session, except in case such member has committed a crime punishable under the Code by a penalty higher than prision mayor.

   Elements
   1. Offender is a public officer of employee;
   2. He arrests or searches any member of Congress;
   3. Congress, at the time of arrest or search, is in regular or special session;
   4. The member arrested or searched has not committed a crime punishable under the Code by a penalty higher than prision mayor.

Under Section 11, Article VI of the Constitution, a public officer who arrests a member of Congress who has committed a crime punishable by prision mayor (six years and one day, to 12 years) is not liable Article 145.

According to Reyes, to be consistent with the Constitution, the phrase "by a penalty higher than prision mayor" in Article 145 should be amended to read: "by the penalty of prision mayor or higher."

Article 146. Illegal Assemblies

Acts punished

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the Code;

   Elements

   (a) There is a meeting, a gathering or group of persons, whether in fixed place or moving;
   (b) The meeting is attended by armed persons;
   (c) The purpose of the meeting is to commit any of the crimes punishable under the Code.

2. Any meeting in which the audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition, or assault upon person in authority or his agents.
   (a) There is a meeting, a gathering or group of persons, whether in a fixed place or moving;
   (b) The audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault.

Persons liable for illegal assembly

1. The organizer or leaders of the meeting;
2. Persons merely present at the meeting, who must have a common intent to commit the felony of illegal assembly.

If any person present at the meeting carries an unlicensed firearm, it is presumed that the purpose of the meeting insofar as he is concerned is to commit acts punishable under the Revised Penal Code, and he is considered a leader or organizer of the meeting.

The gravamen of the offense is mere assembly of or gathering of people for illegal purpose punishable by the Revised Penal Code. Without gathering, there is no illegal assembly. If unlawful purpose is a crime under a special law, there is no illegal assembly. For example, the gathering of drug pushers to facilitate drug trafficking is not illegal assembly because the purpose is not violative of the Revised Penal Code but of The Dangerous Drugs Act of 1972, as amended, which is a special law.

Two forms of illegal assembly

(1) No attendance of armed men, but persons in the meeting are incited to commit treason, rebellion or insurrection, sedition or assault upon a person in authority. When the illegal purpose of the gathering is to incite people to commit the crimes mentioned above, the presence of armed men is unnecessary. The mere gathering for the purpose is sufficient to bring about the crime already.
(2) Armed men attending the gathering – If the illegal purpose is other than those mentioned above, the presence of armed men during the gathering brings about the crime of illegal assembly.
   Example: Persons conspiring to rob a bank were arrested. Some were with firearms. Liable for illegal assembly, not for conspiracy, but for gathering with armed men.

Distinction between illegal assembly and illegal association

In illegal assembly, the basis of liability is the gathering for an illegal purpose which constitutes a crime under the Revised Penal Code.

In illegal association, the basis is the formation of or organization of an association to engage in an unlawful purpose which is not limited to a violation of the Revised Penal Code. It includes a violation of a special law or those against public morals. Meaning of public morals: inimical to public welfare; it has nothing to do with decency., not acts of obscenity.

Article 147. Illegal Associations

1. Associations totally or partially organized for the purpose of committing any of the crimes punishable under the Code;
2. Associations totally or partially organized for some purpose contrary to public morals.

Persons liable

1. Founders, directors and president of the association;
2. Mere members of the association.

Distinction between illegal association and illegal assembly

1. In illegal association, it is not necessary that there be an actual meeting.

   In illegal assembly, it is necessary that there is an actual meeting or assembly or armed persons for the purpose of committing any of the crimes punishable under the Code, or of individuals who, although not armed, are incited to the commission of treason, rebellion, sedition, or assault upon a person in authority or his agent.

2. In illegal association, it is the act of forming or organizing and membership in the association that are punished.

   In illegal assembly, it is the meeting and attendance at such meeting that are punished.

3. In illegal association, the persons liable are (1) the founders, directors and president; and (2) the members.

   In illegal assembly, the persons liable are (1) the organizers or leaders of the meeting and (2) the persons present at meeting.

Article 148. Direct Assault

Acts punished

1. Without public uprising, by employing force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition;

   Elements

   (a) Offender employs force or intimidation;
   (b) The aim of the offender is to attain any of the purposes of the crime of rebellion or any of the objects of the crime of sedition;
   (c) There is no public uprising.

2. Without public uprising, by attacking, by employing force or by seriously intimidating or by seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.

   Elements

   (a) Offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance;
   (b) The person assaulted is a person in authority or his agent;
   (c) At the time of the assault, the person in authority or his agent is engaged in the actual performance of official duties, or that he is assaulted by reason of the past performance of official duties;
   (d) Offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
   (e) There is no public uprising.

The crime is not based on the material consequence of the unlawful act. The crime of direct assault punishes the spirit of lawlessness and the contempt or hatred for the authority or the rule of law.

To be specific, if a judge was killed while he was holding a session, the killing is not the direct assault, but murder. There could be direct assault if the offender killed the judge simply because the judge is so strict in the fulfillment of his duty. It is the spirit of hate which is the essence of direct assault.

So, where the spirit is present, it is always complexed with the material consequence of the unlawful act. If the unlawful act was murder or homicide committed under circumstance of lawlessness or contempt of authority, the crime would be direct assault with murder or homicide, as the case may be. In the example of the judge who was killed, the crime is direct assault with murder or homicide.

The only time when it is not complexed is when material consequence is a light felony, that is, slight physical injury. Direct assault absorbs the lighter felony; the crime of direct assault can not be separated from the material result of the act. So, if an offender who is charged with direct assault and in another court for the slight physical Injury which is part of the act, acquittal or conviction in one is a bar to the prosecution in the other.

Example of the first form of direct assault:

Three men broke into a National Food Authority warehouse and lamented sufferings of the people. They called on people to help themselves to all the rice. They did not even help themselves to a single grain.

The crime committed was direct assault. There was no robbery for there was no intent to gain. The crime is direct assault by committing acts of sedition under Article 139 (5), that is, spoiling of the property, for any political or social end, of any person municipality or province or the national government of all or any its property, but there is no public uprising.

Person in authority is any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission. A barangay chairman is deemed a person in authority.

Agent of a person in authority is any person who by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barangay councilman, barrio policeman, barangay leader and any person who comes to the aid of a person in authority.

In applying the provisions of Articles 148 and 151, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities and lawyers in the actual performance of their duties or on the occasion of such performance, shall be deemed a person in authority.

In direct assault of the first form, the stature of the offended person is immaterial. The crime is manifested by the spirit of lawlessness.

In the second form, you have to distinguish a situation where a person in authority or his agent was attacked while performing official functions, from a situation when he is not performing such functions. If attack was done during the exercise of official functions, the crime is always direct assault. It is enough that the offender knew that the person in authority was performing an official function whatever may be the reason for the attack, although what may have happened was a purely private affair.

On the other hand, if the person in authority or the agent was killed when no longer performing official functions, the crime may simply be the material consequence of the unlawful act: murder or homicide. For the crime to be direct assault, the attack must be by reason of his official function in the past. Motive becomes important in this respect. Example, if a judge was killed while resisting the taking of his watch, there is no direct assault.

In the second form of direct assault, it is also important that the offended party knew that the person he is attacking is a person in authority or an agent of a person in authority, performing his official functions. No knowledge, no lawlessness or contempt.
For example, if two persons were quarreling and a policeman in civilian clothes comes and stops them, but one of the protagonists stabs the policeman, there would be no direct assault unless the offender knew that he is a policeman.

In this respect it is enough that the offender should know that the offended party was exercising some form of authority. It is not necessary that the offender knows what is meant by person in authority or an agent of one because *ignorantia legis non excusat*.

Article 149. Indirect Assault

Elements

1. A person in authority or his agent is the victim of any of the forms of direct assault defined in Article 148;
2. A person comes to the aid of such authority or his agent;
3. Offender makes use of force or intimidation upon such person coming to the aid of the authority or his agent.

The victim in indirect assault should be a private person who comes in aid of an agent of a person in authority. The assault is upon a person who comes in aid of the person in authority. The victim cannot be the person in authority or his agent.

There is no indirect assault when there is no direct assault.

Take note that under Article 152, as amended, when any person comes in aid of a person in authority, said person at that moment is no longer a civilian – he is constituted as an agent of the person in authority. If such person were the one attacked, the crime would be direct assault.

Due to the amendment of Article 152, without the corresponding amendment in Article 150, the crime of indirect assault can only be committed when assault is upon a civilian giving aid to an agent of the person in authority. He does not become another agent of the person in authority.

Article 150. Disobedience to Summons Issued by Congress, Its Committees or Subcommittees, by the Constitutional Commissions, Its Committees, Subcommittees or Divisions

Acts punished

1. By refusing, without legal excuse, to obey summons of Congress, its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees or divisions, or by any commission or committee chairman or member authorized to summon witnesses;
2. By refusing to be sworn or placed under affirmation while being before such legislative or constitutional body or official;
3. By refusing to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions;
4. By restraining another from attending as a witness in such legislative or constitutional body;
5. By inducing disobedience to a summons or refusal to be sworn by any such body or official.

Article 151. Resistance and Disobedience to A Person in Authority or the Agents of Such Person

Elements of resistance and serious disobedience under the first paragraph

1. A person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender;
2. Offender resists or seriously disobeys such person in authority or his agent;
3. The act of the offender is not included in the provision of Articles 148, 149 and 150.

Elements of simple disobedience under the second paragraph

1. An agent of a person in authority is engaged in the performance of official duty or gives a lawful order to the offender;
2. Offender disobeys such agent of a person in authority;
3. Such disobedience is not of a serious nature.

Distinction between resistance or serious disobedience and direct assault

1. In resistance, the person in authority or his agent must be in actual performance of his duties.
   In direct assault, the person in authority or his agent must be engaged in the performance of official duties or that he is assaulted by reason thereof.
2. Resistance or serious disobedience is committed only by resisting or seriously disobeying a person in authority or his agent.
   Direct assault (the second form) is committed in four ways, that is, (1) by attacking, (2) by employing force, (3) by seriously intimidating, and (4) by seriously resisting a persons in authority or his agent.
3. In both resistance against an agent of a person in authority and direct assault by resisting an agent of a person in authority, there is force employed, but the use of force in resistance is not so serious, as there is no manifest intention to defy the law and the officers enforcing it.
   The attack or employment of force which gives rise to the crime of direct assault must be serious and deliberate; otherwise, even a case of simple resistance to an arrest, which always requires the use of force of some kind, would constitute direct assault and the lesser offense of resistance or disobedience in Article 151 would entirely disappear.

   But when the one resisted is a person I authority, the use of any kind or degree of force will give rise to direct assault.

   If no force is employed by the offender in resisting or disobeying a person in authority, the crime committed is resistance or serious disobedience under the first paragraph of Article 151.

Who are deemed persons in authority and agents of persons in authority under Article 152

Examples of persons in authority

1. Municipal mayor;
2. Division superintendent of schools;
3. Public and private school teachers;
4. Teacher-nurse;
5. President of sanitary division;
6. Provincial fiscal;
7. Justice of the Peace;
8. Municipal councilor;
9. Barrio captain and barangay chairman.

A person in authority is one directly vested with jurisdiction, that is, the power and authority to govern and execute the laws.

An agent of a person in authority is one charged with (1) the maintenance of public order and (2) the protection and security of life and property.

Article 153. Tumults and Other Disturbances of Public Order

Acts punished

1. Causing any serious disturbance in a public place, office or establishment;
2. Interrupting or disturbing performances, functions or gatherings, or peaceful meetings, if the act is not included in Articles 131 and 132;
3. Making any outcry tending to incite rebellion or sedition in any meeting, association or public place;
4. Displaying placards or emblems which provoke a disturbance of public order in such place;
5. Burying with pomp the body of a person who has been legally executed.

The essence is creating public disorder. This crime is brought about by creating serious disturbances in public places, public buildings, and even in private places where public functions or performances are being held.

For a crime to be under this article, it must not fall under Articles 131 (prohibition, interruption, and dissolution of peaceful meetings) and 132 (interruption of religious worship).

In the act of making outcry during speech tending to incite rebellion or sedition, the situation must be distinguished from inciting to sedition or rebellion. If the speaker, even before he delivered his speech, already had the criminal intent to incite the listeners to rise to sedition, the crime would be inciting to sedition. However, if the offender had no such criminal intent, but in the course of his speech, tempers went high and so the speaker started inciting the audience to rise in sedition against the government, the crime is disturbance of the public order.

The disturbance of the pubic order is tumultuous and the penalty is increased if it is brought about by armed men. The term "armed" does not refer to firearms but includes even big stones capable of causing grave injury.

It is also disturbance of the public order if a convict legally put to death is buried with pomp. He should not be made out as a martyr; it might incite others to hatred.

Article 154. Unlawful Use of Means of Publication and Unlawful Utterances

Acts punished:

1. Publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any false news which may endanger the public order; or cause damage to the interest or credit of the State;
2. Encouraging disobedience to the law or to the constituted authorities or praising, justifying or extolling any act punished by law, by the same means or by words, utterances or speeches;
3. Maliciously publishing or causing to be published any official resolution or document without proper authority, or before they have been published officially;
4. Printing, publishing or distributing (or causing the same) books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.

Actual public disorder or actual damage to the credit of the State is not necessary.

Republic Act No. 248 prohibits the reprinting, reproduction or republication of government publications and official documents without previous authority.

Article 155. Alarms and Scandals

Acts punished

1. Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, calculated to cause (which produces) alarm of danger;
2. Instigating or taking an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;
3. Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusements;

4. Causing any disturbance or scandal in public places while intoxicated or otherwise, provided Article 153 in not applicable.

When a person discharges a firearm in public, the act may constitute any of the possible crimes under the Revised Penal Code:

(1) Alarms and scandals if the firearm when discharged was not directed to any particular person;
(2) Illegal discharge of firearm under Article 254 if the firearm is directed or pointed to a particular person when discharged but intent to kill is absent;
(3) Attempted homicide, murder, or parricide if the firearm when discharged is directed against a person and intent to kill is present.

In this connection, understand that it is not necessary that the offended party be wounded or hit. Mere discharge of firearm towards another with intent to kill already amounts to attempted homicide or attempted murder or attempted parricide. It cannot be frustrated because the offended party is not mortally wounded.

In Araneta v. Court of Appeals, it was held that if a person is shot at and is wounded, the crime is automatically attempted homicide. Intent to kill is inherent in the use of the deadly weapon.

The crime alarms and scandal is only one crime. Do not think that alarms and scandals are two crimes.

Scandal here does not refer to moral scandal; that one is grave scandal in Article 200. The essence of the crime is disturbance of public tranquility and public peace. So, any kind of disturbance of public order where the circumstance at the time renders the act offensive to the tranquility prevailing, the crime is committed.

Charivari is a mock serenade wherein the supposed serenaders use broken cans, broken pots, bottles or other utensils thereby creating discordant notes. Actually, it is producing noise, not music and so it also disturbs public tranquility. Understand the nature of the crime of alarms and scandals as one that disturbs public tranquility or public peace. If the annoyance is intended for a particular person, the crime is unjust vexation.

Even if the persons involved are engaged in nocturnal activity like those playing patintero at night, or selling balut, if they conduct their activity in such a way that disturbs public peace, they may commit the crime of alarms and scandals.

Article 156. Delivering Prisoners from Jail

Elements

1. There is a person confined in a jail or penal establishment;
2. Offender removes therefrom such person, or helps the escape of such person.

Penalty of arresto mayor in its maximum period to prision correccional in its minimum period is imposed if violence, intimidation or bribery is used.

Penalty of arresto mayor if other means are used.

Penalty decreased to the minimum period if the escape of the prisoner shall take place outside of said establishments by taking the guards by surprise.

In relation to infidelity in the custody of prisoners, correlate the crime of delivering person from jail with infidelity in the custody of prisoners punished under Articles 223, 224 and 225 of the Revised Penal Code. In both acts, the offender may be a public officer or a private citizen. Do not think that infidelity in the custody of prisoners can only be committed by a public officer and delivering persons from jail can only be committed by private person. Both crimes may be committed by public officers as well as private persons.

In both crimes, the person involved may be a convict or a mere detention prisoner.

The only point of distinction between the two crimes lies on whether the offender is the custodian of the prisoner or not at the time the prisoner was made to escape. If the offender is the custodian at that time, the crime is infidelity in the custody of prisoners. But if the offender is not the custodian of the prisoner at that time, even though he is a public officer, the crime he committed is delivering prisoners from jail.

Liability of the prisoner or detainee who escaped – When these crimes are committed, whether infidelity in the custody of prisoners or delivering prisoners from jail, the prisoner so escaping may also have criminal liability and this is so if the prisoner is a convict serving sentence by final judgment. The crime of evasion of service of sentence is committed by the prisoner who escapes if such prisoner is a convict serving sentence by final judgment.

If the prisoner who escapes is only a detention prisoner, he does not incur liability from escaping if he does not know of the plan to remove him from jail. But if such prisoner knows of the plot to remove him from jail and cooperates therein by escaping, he himself becomes liable for delivering prisoners from jail as a principal by indispensable cooperation.

If three persons are involved – a stranger, the custodian and the prisoner – three crimes are committed:

(1) Infidelity in the custody of prisoners;
(2) Delivery of the prisoner from jail; and
(3) Evasion of service of sentence.

Article 157. Evasion of Service of Sentence

Elements

1. Offender is a convict by final judgment;
2. He is serving sentence which consists in the deprivation of liberty;
3. He evades service of his sentence by escaping during the term of his imprisonment.

Qualifying circumstances as to penalty imposed

If such evasion or escape takes place –

1. By means of unlawful entry (this should be "by scaling" - Reyes);
2. By breaking doors, windows, gates, walls, roofs or floors;
3. By using picklock, false keys, disguise, deceit, violence or intimidation; or
4. Through connivance with other convicts or employees of the penal institution.

Evasion of service of sentence has three forms:

(1) By simply leaving or escaping from the penal establishment under Article 157;
(2) Failure to return within 48 hours after having left the penal establishment because of a calamity, conflagration or mutiny and such calamity, conflagration or mutiny has been announced as already passed under Article 158;
(3) Violating the condition of conditional pardon under Article 159.

In leaving or escaping from jail or prison, that the prisoner immediately returned is immaterial. It is enough that he left the penal establishment by escaping therefrom. His voluntary return may only be mitigating, being analogous to voluntary surrender. But the same will not absolve his criminal liability.

Article 158. Evasion of Service of Sentence on the Occasion of Disorders, Conflagrations, Earthquakes, or Other Calamities

Elements

1. Offender is a convict by final judgment, who is confined in a penal institution;
2. There is disorder, resulting from –
   a. conflagration;
   b. earthquake;
   c. explosion; or
   d. similar catastrophe; or
   e. mutiny in which he has not participated;
3. He evades the service of his sentence by leaving the penal institution where he is confined, on the occasion of such disorder or during the mutiny;
4. He fails to give himself up to the authorities within 48 hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

The leaving from the penal establishment is not the basis of criminal liability. It is the failure to return within 48 hours after the passing of the calamity, conflagration or mutiny had been announced. Under Article 158, those who return within 48 hours are given credit or deduction from the remaining period of their sentence equivalent to 1/5 of the original term of the sentence. But if the prisoner fails to return within said 48 hours, an added penalty, also 1/5, shall be imposed but the 1/5 penalty is based on the remaining period of the sentence, not on the original sentence. In no case shall that penalty exceed six months.

Those who did not leave the penal establishment are not entitled to the 1/5 credit. Only those who left and returned within the 48-hour period.

The mutiny referred to in the second form of evasion of service of sentence does not include riot. The mutiny referred to here involves subordinate personnel rising against the supervisor within the penal establishment. One who escapes during a riot will be subject to Article 157, that is, simply leaving or escaping the penal establishment.

Mutiny is one of the causes which may authorize a convict serving sentence in the penitentiary to leave the jail provided he has not taken part in the mutiny.

The crime of evasion of service of sentence may be committed even if the sentence is destierro, and this is committed if the convict sentenced to destierro will enter the prohibited places or come within the prohibited radius of 25 kilometers to such places as stated in the judgment.

If the sentence violated is destierro, the penalty upon the convict is to be served by way of destierro also, not imprisonment. This is so because the penalty for the evasion cannot be more severe than the penalty evaded.

Article 159. Other Cases of Evasion of Service of Sentence

Elements of violation of conditional pardon

1. Offender was a convict;
2. He was granted pardon by the Chief Executive;
3. He violated any of the conditions of such pardon.

In violation of conditional pardon, as a rule, the violation will amount to this crime only if the condition is violated during the remaining period of the sentence. As a rule, if the condition of the pardon is violated when the remaining unserved portion of the sentence has already lapsed, there will be no more criminal liability for the violation. However, the convict maybe required to serve the unserved portion of the sentence, that is, continue serving original penalty.

The administrative liability of the convict under the conditional pardon is different and has nothing to do with his criminal liability for the evasion of service of sentence in the event that the condition of the pardon has been violated. Exception: where the violation of the condition of the pardon will constitute evasion of service of sentence, even though committed beyond the remaining period of the sentence. This is when the conditional pardon expressly so provides or the language of the conditional pardon clearly shows the intention to make the condition perpetual even beyond the unserved portion of the sentence. In such case, the convict may be required to serve the unserved portion of the sentence even though the violation has taken place when the sentence has already lapsed.

In order that the conditional pardon may be violated, it is conditional that the pardonee received the conditional pardon. If he is released without conformity to the conditional pardon, he will not be liable for the crime of evasion of service of sentence.

Article 160. Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense

Elements

1. Offender was already convicted by final judgment of one offense;
2. He committed a new felony before beginning to serve such sentence or while serving the same.

A. -DECREE CODIFYING THE LAWS ON ILLEGAL / UNLAWFUL POSSESSION, MANUFACTURE, DEALING IN, ACQUISITION OR DISPOSITION, OF FIREARMS, AMMUNITION OR EXPLOSIVES (P.D. 1866, AS AMENDED BY R.A. 8294) AS AN ELEMENT OF THE CRIMES OF REBELLION, INSURRECTION, SEDITION, OR ATTEMPTED COUP D'ETAT

(1) Violation of Sec. 3 in furtherance of or incident to, or in connection with the crime of rebellion, insurrection, sedition or attempted *coup d'etat* , shall be absorbed as an element of the crime of rebellion or insurrection, sedition or attempted *coup*, thus such use has no effect on the penalty.

(2) The penalty for mere possession of unlicensed firearm shall be based on whether the firearm is low-powered or high-powered. High-powered firearms are those with bores bigger

than .38 cal. And 9mm and those with lesser bores but considered as powerful, such as .357 cal. And .22 center-fire magnum, and firearms with firing capability of full automatic or by a bust of two or three.

(3) Simple illegal possession of firearms can only be committed if no other crime was committed with such firearm by the possessor.

(4) Ownership is not an essential element of illegal possession of firearms/ammunition. The law requires mere possession which includes not only actual but also constructive possession or the subjection of the thing to one's control and management *(Gonzales vs. CA, GR 95523, 08/18/1997)*.

(5) The crime should be denominated homicide aggravated by illegal possession of firearm because it is the latter which aggravates the crime of homicide under the amendatory law *(People vs. Castillo, GR 113940, GR 113940, 02/15/2000)*.

(6) Possible crimes that may be committed:
   (a) Mere possession - simple illegal possession of firearm;
   (b) Commission of homicide or murder - Homicide or murder with the unlicensed firearm as aggravating circumstance, unless the Informations for the homicide or murder was filed separately and separate trials were held for the homicide or murder and for the illegal possession of firearms, in which case the accused can be convicted for both crimes.
   (c) Rebellion, insurrection, sedition or *coup d'etat* - use of unlicensed firearm is absorbed as an element of these crimes.
   (d) Any other crimes committed such as alarms and scandal - only for that crime and the use of unlicensed firearm is absolved (no liability for such use and neither does it serve as an aggravating circumstance).

B. HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Punishable acts of terrorism; Who are liable

SEC. 3. Terrorism.- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:
a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d' Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
1. Presidential Decree No. 1613 (The Law on Arson);
2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
4. Republic Act No. 6235 (Anti-Hijacking Law);
5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

SEC. 4. Conspiracy to Commit Terrorism. - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.
There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.

SEC. 5. Accomplice. - Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment.

SEC. 6. Accessory. - Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a).

Absorption principle in relation to complex crimes

4. CRIMES AGAINST PUBLIC INTEREST (161-187)

Crimes against public interest

1. Counterfeiting the great seal of the Government of the Philippines (Art. 161);
2. Using forged signature or counterfeiting seal or stamp (Art. 162);
3. Making and importing and uttering false coins (Art. 163);
4. Mutilation of coins, importation and uttering of mutilated coins (Art. 164);
5. Selling of false or mutilated coins, without connivance (Art. 165);
6. Forging treasury or bank notes or other documents payable to bearer, importing and uttering of such false or forged notes and documents (Art. 166);
7. Counterfeiting, importing and uttering instruments not payable to bearer (Art. 167);
8. Illegal possession and use of forged treasury or bank notes and other instruments of credit (Art. 168);
9. Falsification of legislative documents (Art. 170);
10. Falsification by public officer, employee or notary (Art. 171);
11. Falsification by private individuals and use of falsified documents (Art. 172);
12. Falsification of wireless, cable, telegraph and telephone messages and use of said falsified messages (Art. 173);
13. False medical certificates, false certificates of merit or service (Art. 174);
14. Using false certificates (Art. 175);
15. Manufacturing and possession of instruments or implements for falsification (Art. 176);
16. Usurpation of authority or official functions (Art. 177);
17. Using fictitious name and concealing true name (Art. 178);
18. Illegal use of uniforms or insignia (Art. 179);
19. False testimony against a defendant (Art. 180);
20. False testimony favorable to the defendant (Art. 181);
21. False testimony in civil cases (Art. 182);
22. False testimony in other cases and perjury (Art. 183);
23. Offering false testimony in evidence (Art. 184);
24. Machinations in public auction (Art. 185);
25. Monopolies and combinations in restraint of trade (Art. 186);
26. Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys (Art. 187);
27. Substituting and altering trade marks and trade names or service marks (Art. 188);
28. Unfair competition and fraudulent registration of trade mark or trade name, or service mark; fraudulent designation of origin, and false description (Art. 189).

The crimes in this title are in the nature of fraud or falsity to the public. The essence of the crime under this title is that which defraud the public in general. There is deceit perpetrated upon the public. This is the act that is being punished under this title.

Article 161. Counterfeiting the Great Seal of the Government of the Philippine Islands, Forging the Signature or Stamp of the Chief Executive

Acts punished

1. Forging the great seal of the Government of the Philippines;
2. Forging the signature of the President;
3. Forging the stamp of the President.

Article 162. Using Forged Signature or Counterfeit Seal or Stamp

Elements

1. The great seal of the Republic was counterfeited or the signature or stamp of the Chief Executive was forged by another person;
2. Offender knew of the counterfeiting or forgery;
3. He used the counterfeit seal or forged signature or stamp.

Offender under this article should not be the forger.

Article 163. Making and Importing and Uttering False Coins

Elements

1. There be false or counterfeited coins;
2. Offender either made, imported or uttered such coins;
3. In case of uttering such false or counterfeited coins, he connived with the counterfeiters or importers.

Kinds of coins the counterfeiting of which is punished

1. Silver coins of the Philippines or coins of the Central Bank of the Philippines;
2. Coins of the minor coinage of the Philippines or of the Central Bank of the Philippines;
3. Coin of the currency of a foreign country.

Article 164. Mutilation of Coins

Acts punished

1. Mutilating coins of the legal currency, with the further requirements that there be intent to damage or to defraud another;
2. Importing or uttering such mutilated coins, with the further requirement that there must be connivances with the mutilator or importer in case of uttering.

The first acts of falsification or falsity are –

(1) Counterfeiting – refers to money or currency;
(2) Forgery – refers to instruments of credit and obligations and securities issued by the Philippine government or any banking institution authorized by the Philippine government to issue the same;
(3) Falsification – can only be committed in respect of documents.

In so far as coins in circulation are concerned, there are two crimes that may be committed:

(1) Counterfeiting coins -- This is the crime of remaking or manufacturing without any authority to do so.

In the crime of counterfeiting, the law is not concerned with the fraud upon the public such that even though the coin is no longer legal tender, the act of imitating or manufacturing the coin of the government is penalized. In punishing the crime of counterfeiting, the law wants to prevent people from trying their ingenuity in their imitation of the manufacture of money.

It is not necessary that the coin counterfeited be legal tender. So that even if the coin counterfeited is of vintage, the crime of counterfeiting is committed. The reason is to bar the counterfeiter from perfecting his craft of counterfeiting. The law punishes the act in order to discourage people from ever attempting to gain expertise in gaining money. This is because if people could counterfeit money with impunity just because it is no longer legal tender, people would try to counterfeit non-legal tender coins. Soon, if they develop the expertise to make the counterfeiting more or less no longer discernible or no longer noticeable, they

could make use of their ingenuity to counterfeit coins of legal tender. From that time on, the government shall have difficulty determining which coins are counterfeited and those which are not. It may happen that the counterfeited coins may look better than the real ones. So, counterfeiting is penalized right at the very start whether the coin is legal tender or otherwise.

It is not necessary that the coin be of legal tender. The provision punishing counterfeiting does not require that the money be of legal tender and the law punishes this even if the coin concerned is not of legal tender in order to discourage people from practicing their ingenuity of imitating money. If it were otherwise, people may at the beginning try their ingenuity in imitating money not of legal tender and once they acquire expertise, they may then counterfeit money of legal tender.

(2) Mutilation of coins -- This refers to the deliberate act of diminishing the proper metal contents of the coin either by scraping, scratching or filling the edges of the coin and the offender gathers the metal dust that has been scraped from the coin.

Requisites of mutilation under the Revised Penal Code

(1) Coin mutilated is of legal tender;
(2) Offender gains from the precious metal dust abstracted from the coin; and
(3) It has to be a coin.

Mutilation is being regarded as a crime because the coin, being of legal tender, it is still in circulation and which would necessarily prejudice other people who may come across the coin. For example, X mutilated a P 2.00 coin, the octagonal one, by converting it into a round one and extracting 1/10 of the precious metal dust from it. The coin here is no longer P2.00 but only P 1.80, therefore, prejudice to the public has resulted.

There is no expertise involved here. In mutilation of coins under the Revised Penal Code, the offender does nothing but to scrape, pile or cut the coin and collect the dust and, thus, diminishing the intrinsic value of the coin.

Mutilation of coins is a crime only if the coin mutilated is legal tender. If the coin whose metal content has been depreciated through scraping, scratching, or filing the coin and the offender collecting the precious metal dust, even if he would use the coin after its intrinsic value had been reduced, nobody will accept the same. If it is not legal tender anymore, no one will accept it, so nobody will be defrauded. But if the coin is of legal tender, and the offender minimizes or decreases the precious metal dust content of the coin, the crime of mutilation is committed.

In the example, if the offender has collected 1/10 of the P 2.00 coin, the coin is actually worth only P 1.80. He is paying only P1.80 in effect defrauding the seller of P .20. Punishment for mutilation is brought about by the fact that the intrinsic value of the coin is reduced.

The offender must deliberately reduce the precious metal in the coin. Deliberate intent arises only when the offender collects the precious metal dust from the mutilated coin. If the offender does not collect such dust, intent to mutilate is absent, but Presidential Decree No. 247 will apply.

Presidential Decree No. 247 (Defacement, Mutilation, Tearing, Burning or Destroying Central Bank Notes and Coins)

It shall be unlawful for any person to willfully deface, mutilate, tear, burn, or destroy in any manner whatsoever, currency notes and coins issued by the Central Bank.

Mutilation under the Revised Penal Code is true only to coins. It cannot be a crime under the Revised Penal Code to mutilate paper bills because the idea of mutilation under the code is collecting the precious metal dust. However, under Presidential Decree No. 247, mutilation is not limited to coins.

1. The people playing cara y cruz, before they throw the coin in the air would rub the money to the sidewalk thereby diminishing the intrinsic value of the coin. Is the crime of mutilation committed?

   Mutilation, under the Revised Penal Code, is not committed because they do not collect the precious metal content that is being scraped from the coin. However, this will amount to violation of Presidential Decree No. 247.

2. When the image of Jose Rizal on a five-peso bill is transformed into that of Randy Santiago, is there a violation of Presidential Decree No. 247?

   Yes. Presidential Decree No. 247 is violated by such act.

3. Sometime before martial law was imposed, the people lost confidence in banks that they preferred hoarding their money than depositing it in banks. Former President Ferdinand Marcos declared upon declaration of martial law that all bills without the Bagong Lipunan sign on them will no longer be recognized. Because of this, the people had no choice but to surrender their money to banks and exchange them with those with the Bagong Lipunan sign on them. However, people who came up with a lot of money were also being charged with hoarding for which reason certain printing presses did the stamping of the Bagong Lipunan sign themselves to avoid prosecution. Was there a violation of Presidential Decree No. 247?

   Yes. This act of the printing presses is a violation of Presidential Decree No. 247.

4. An old woman who was a cigarette vendor in Quiapo refused to accept one-centavo coins for payment of the vendee of cigarettes he purchased. Then came the police who advised her that she has no right to refuse since the coins are of legal tender. On this, the old woman accepted in her hands the one-centavo coins and then threw it to the face of the vendee and the police. Was the old woman guilty of violating Presidential Decree No. 247?

   She was guilty of violating Presidential Decree No. 247 because if no one ever picks up the coins, her act would result in the diminution of the coin in circulation.

5. A certain customer in a restaurant wanted to show off and used a P 20.00 bill to light his cigarette. Was he guilty of violating Presidential Decree No. 247?

   He was guilty of arrested for violating of Presidential Decree No. 247. Anyone who is in possession of defaced money is the one who is the violator of Presidential Decree No. 247. The intention of Presidential Decree No. 247 is not to punish the act of defrauding the public but what is being punished is the act of destruction of money issued by the Central Bank of the Philippines.

Note that persons making bracelets out of some coins violate Presidential Decree No. 247.

The primary purpose of Presidential Decree No. 247 at the time it was ordained was to stop the practice of people writing at the back or on the edges of the paper bills, such as "wanted: pen pal".

So, if the act of mutilating coins does not involve gathering dust like playing cara y cruz, that is not mutilation under the Revised Penal Code because the offender does not collect the metal dust. But by rubbing the coins on the sidewalk, he also defaces and destroys the coin and that is punishable under Presidential Decree No. 247.

Article 165. Selling of False or Mutilated Coin, without Connivance

Acts punished

1. Possession of coin, counterfeited or mutilated by another person, with intent to utter the same, knowing that it is false or mutilated;

   Elements

   (a) Possession;
   (b) With intent to utter; and
   (c) Knowledge.

2. Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

   Elements

   (a) Actually uttering; and
   (b) Knowledge.

Article 166. Forging Treasury or Bank Notes or Other Documents Payable to Bearer; Importing and Uttering Such False or Forged Notes and Documents

Acts punished

1. Forging or falsification of treasury or bank notes or other documents payable to bearer;
2. Importation of such false or forged obligations or notes;
3. Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

Article 167. Counterfeiting, Importing, and Uttering Instruments Not Payable to Bearer

Elements

1. There is an instrument payable to order or other documents of credit not payable to bearer;
2. Offender either forged, imported or uttered such instrument;
3. In case of uttering, he connived with the forger or importer.

Article 168. Illegal Possession and Use of False Treasury or Bank Notes and Other Instruments of Credit

Elements

1. Any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person;
2. Offender knows that any of those instruments is forged or falsified;
3. He either –
   (a) uses any of such forged or falsified instruments; or
   (b) possesses with intent to use any of such forged or falsified instruments.

How Forgery is Committed Under Article 169

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document;
2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or sign contained therein.

Forgery under the Revised Penal Code applies to papers, which are in the form of obligations and securities issued by the Philippine government as its own obligations, which is given the same status as legal tender. Generally, the word "counterfeiting" is not used when it comes to notes; what is used is "forgery." Counterfeiting refers to money, whether coins or bills.

The Revised Penal Code defines forgery under Article 169. Notice that mere change on a document does not amount to this crime. The essence of forgery is giving a document the appearance of a true and genuine document. Not any alteration of a letter, number, figure or design would amount to forgery. At most, it would only be frustrated forgery.

When what is being counterfeited is obligation or securities, which under the Revised Penal Code is given a status of money or legal tender, the crime committed is forgery.

1. Instead of the peso sign (₱), somebody replaced it with a dollar sign ($). Was the crime of forgery committed?

   No. Forgery was not committed. The forged instrument and currency note must be given the appearance of a true and genuine document. The crime committed is a violation of Presidential Decree No. 247. Where the currency note, obligation or security has been changed to make it appear as one which it purports to be as genuine, the crime is forgery. In checks or commercial documents, this crime is committed when the figures or words are changed which materially alters the document.

2. An old man, in his desire to earn something, scraped a digit in a losing sweepstakes ticket, cut out a digit from another ticket and pasted it there to match the series of digits corresponding to the winning sweepstakes ticket. He presented this ticket to the Philippine Charity Sweepstakes Office. But the alteration is so crude that even a child can notice that the supposed digit is merely superimposed on the digit that was scraped. Was the old man guilty of forgery?

   Because of the impossibility of deceiving whoever would be the person to whom that ticket is presented, the Supreme Court ruled that what was committed was an impossible crime. Note, however, that the decision has been criticized. In a case like this, the Supreme Court of Spain ruled that the crime is frustrated. Where the alteration is such that nobody would be deceived, one could easily see that it is a forgery, the crime is frustrated because he has done all the acts of execution which would bring about the felonious consequence but nevertheless did not result in a consummation for reasons independent of his will.

3. A person has a twenty-peso bill. He applied toothache drops on one side of the bill. He has a mimeograph paper similar in texture to that of the currency note and placed it on top of the twenty-peso bill and put some weight on

top of the paper. After sometime, he removed it and the printing on the twenty-peso bill was reproduced on the mimeo paper. He took the reverse side of the P20 bill, applied toothache drops and reversed the mimeo paper and pressed it to the paper. After sometime, he removed it and it was reproduced. He cut it out, scraped it a little and went to a sari-sari store trying to buy a cigarette with that bill. What he overlooked was that, when he placed the bill, the printing was inverted. He was apprehended and was prosecuted and convicted of forgery. Was the crime of forgery committed?

The Supreme Court ruled that it was only frustrated forgery because although the offender has performed all the acts of execution, it is not possible because by simply looking at the forged document, it could be seen that it is not genuine. It can only be a consummated forgery if the document which purports to be genuine is given the appearance of a true and genuine document. Otherwise, it is at most frustrated.

Article 170. Falsification of Legislative Documents

Elements

1. There is a bill, resolution or ordinance enacted or approved or pending approval by either House of the Legislature or any provincial board or municipal council;
2. Offender alters the same;
3. He has no proper authority therefor;
4. The alteration has changed the meaning of the documents.

The words "municipal council" should include the city council or municipal board – Reyes.

The crime of falsification must involve a writing that is a document in the legal sense. The writing must be complete in itself and capable of extinguishing an obligation or creating rights or capable of becoming evidence of the facts stated therein. Until and unless the writing has attained this quality, it will not be considered as document in the legal sense and, therefore, the crime of falsification cannot be committed in respect thereto.

Five classes of falsification:

(1) Falsification of legislative documents;
(2) Falsification of a document by a public officer, employee or notary public;
(3) Falsification of a public or official, or commercial documents by a private individual;
(4) Falsification of a private document by any person;
(5) Falsification of wireless, telegraph and telephone messages.

Distinction between falsification and forgery:

Falsification is the commission of any of the eight acts mentioned in Article 171 on legislative (only the act of making alteration), public or official, commercial, or private documents, or wireless, or telegraph messages.

The term forgery as used in Article 169 refers to the falsification and counterfeiting of treasury or bank notes or any instruments payable to bearer or to order.

Note that forging and falsification are crimes under Forgeries.

Article 171. Falsification by Public Officer, Employee or Notary or Ecclesiastical Minister

Elements

1. Offender is a public officer, employee, or notary public;
2. He takes advantage of his official position;
3. He falsifies a document by committing any of the following acts:
   (a) Counterfeiting or imitating any handwriting, signature or rubric;
   (b) Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
   (c) Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
   (d) Making untruthful statements in a narration of facts;
   (e) Altering true dates;
   (f) Making any alteration or intercalation in a genuine document which changes its meaning;
   (g) Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or

(h) Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

4. In case the offender is an ecclesiastical minister who shall commit any of the offenses enumerated, with respect to any record or document of such character that its falsification may affect the civil status of persons.

For example, a customer in a hotel did not write his name on the registry book, which was intended to be a memorial of those who got in and out of that hotel. There is no complete document to speak of. The document may not extinguish or create rights but it can be an evidence of the facts stated therein.

Note that a check is not yet a document when it is not completed yet. If somebody writes on it, he makes a document out of it.

The document where a crime was committed or the document subject of the prosecution may be totally false in the sense that it is entirely spurious. This notwithstanding, the crime of falsification is committed.

It does not require that the writing be genuine. Even if the writing was through and through false, if it appears to be genuine, the crime of falsification is nevertheless committed.

Questions & Answers

1. A is one of those selling residence certificates in Quiapo. He was brought to the police precincts on suspicion that the certificates he was selling to the public proceed from spurious sources and not from the Bureau of Treasury. Upon verification, it was found out that the certificates were indeed printed with a booklet of supposed residence certificates. What crime was committed?

   Crime committed is violation of Article 176 (manufacturing and possession of instruments or implements for falsification). A cannot be charged of falsification because the booklet of residence certificates found in his possession is not in the nature of "document" in the legal sense. They are mere forms which are not to be completed to be a document in the legal sense. This is illegal possession with intent to use materials or apparatus which may be used in counterfeiting/forgery or falsification.

2. Public officers found a traffic violation receipts from a certain person. The receipts were not issued by the Motor Vehicle Office. For what crime should he be prosecuted for?

   It cannot be a crime of usurpation of official functions. It may be the intention but no overt act was yet performed by him. He was not arrested while performing such overt act. He was apprehended only while he was standing on the street suspiciously. Neither can he be prosecuted for falsification because the document is not completed yet, there being no name of any erring driver. The document remains to be a mere form. It not being completed yet, the document does not qualify as a document in the legal sense.

3. Can the writing on the wall be considered a document?

   Yes. It is capable of speaking of the facts stated therein. Writing may be on anything as long as it is a product of the handwriting, it is considered a document.

4. In a case where a lawyer tried to extract money from a spinster by typing on a bond paper a subpoena for estafa. The spinster agreed to pay. The spinster went to the prosecutor's office to verify the exact amount and found out that there was no charge against her. The lawyer was prosecuted for falsification. He contended that only a genuine document could be falsified. Rule.

   As long as any of the acts of falsification is committed, whether the document is genuine or not, the crime of falsification may be committed. Even totally false documents may be falsified.

<u>There are four kinds of documents:</u>

(1) Public document in the execution of which, a person in authority or notary public has taken part;
(2) Official document in the execution of which a public official takes part;
(3) Commercial document or any document recognized by the Code of Commerce or any commercial law; and
(4) Private document in the execution of which only private individuals take part.

Public document is broader than the term official document. Before a document may be considered official, it must first be a public document. But not all public documents are official documents. To become an official document, there must be a law which requires a public officer to issue or to render such document.

Example: A cashier is required to issue an official receipt for the amount he receives. The official receipt is a public document which is an official document.

Article 172. Falsification by Private Individual and Use of Falsified Documents

Acts punished

1. Falsification of public, official or commercial document by a private individual;
2. Falsification of private document by any person;
3. Use of falsified document.

Elements under paragraph 1

1. Offender is a private individual or public officer or employee who did not take advantage of his official position;
2. He committed any act of falsification;
3. The falsification was committed in a public, official, or commercial document or letter of exchange.

Elements under paragraph 2

1. Offender committed any of the acts of falsification except Article 171(7), that is, issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;
2. Falsification was committed in any private document;
3. Falsification causes damage to a third party or at least the falsification was committed with intent to cause such damage.

Elements under the last paragraph

In introducing in a judicial proceeding –

1. Offender knew that the document was falsified by another person;
2. The false document is in Articles 171 or 172 (1 or 2);
3. He introduced said document in evidence in any judicial proceeding.

In use in any other transaction –

1. Offender knew that a document was falsified by another person;
2. The false document is embraced in Articles 171 or 172 (1 or 2);
3. He used such document;
4. The use caused damage to another or at least used with intent to cause damage.

Article 173. Falsification of Wireless, Cable, Telegraph and Telephone Messages, and Use of Said Falsified Messages

Acts punished

1. Uttering fictitious wireless, telegraph or telephone message;

   Elements

   (a) Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;
   (b) He utters fictitious wireless, cable, telegraph or telephone message.
2. Falsifying wireless, telegraph or telephone message;

   Elements

   (a) Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;
   (b) He falsifies wireless, cable, telegraph or telephone message.
3. Using such falsified message.

   Elements

   (a) Offender knew that wireless, cable, telegraph, or telephone message was falsified by an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;
   (b) He used such falsified dispatch;
   (c) The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice.

Article 174. False Medical Certificates, False Certificates of Merits or Service, Etc.

Persons liable

1. Physician or surgeon who, in connection with the practice of his profession, issues a false certificate (it must refer to the illness or injury of a person); [The crime here is false medical certificate by a physician.]
2. Public officer who issues a false certificate of merit of service, good conduct or similar circumstances; [The crime here is false certificate of merit or service by a public officer.]
3. Private person who falsifies a certificate falling within the classes mentioned in the two preceding subdivisions.

Article 175. Using False Certificates

Elements

1. The following issues a false certificate:
   (a) Physician or surgeon, in connection with the practice of his profession, issues a false certificate;
   (b) Public officer issues a false certificate of merit of service, good conduct or similar circumstances;
   (c) Private person falsifies a certificate falling within the classes mentioned in the two preceding subdivisions.
2. Offender knows that the certificate was false;
3. He uses the same.

Article 176. Manufacturing and Possession of Instruments or Implements for Falsification

Acts punished

1. Making or introducing into the Philippines any stamps, dies, marks, or other instruments or implements for counterfeiting or falsification;
2. Possession with intent to use the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

Article 177. Usurpation of Authority or Official Functions

Acts punished

1. Usurpation of authority;

   Elements

   (a) Offender knowingly and falsely represents himself;
   (b) As an officer, agent or representative of any department or agency of the Philippine government or of any foreign government.
2. Usurpation of official functions.

   Elements

   (a) Offender performs any act;
   (b) Pertaining to any person in authority or public officer of the Philippine government or any foreign government, or any agency thereof;
   (c) Under pretense of official position;
   (d) Without being lawfully entitled to do so.

Article 178. Using Fictitious Name and Concealing True Name

Acts punished

1. Using fictitious name

   Elements

   (a) Offender uses a name other than his real name;
   (b) He uses the fictitious name publicly;
   (c) Purpose of use is to conceal a crime, to evade the execution of a judgment or to cause damage [to public interest – Reyes].
2. Concealing true name

   Elements

   (a) Offender conceals his true name and other personal circumstances;
   (b) Purpose is only to conceal his identity.

Article 179. Illegal Use of Uniforms or Insignia

Elements

1. Offender makes use of insignia, uniforms or dress;
2. The insignia, uniforms or dress pertains to an office not held by such person or a class of persons of which he is not a member;
3. Said insignia, uniform or dress is used publicly and improperly.

Wearing the uniform of an imaginary office is not punishable.

So also, an exact imitation of a uniform or dress is unnecessary; a colorable resemblance calculated to deceive the common run of people is sufficient.

Article 180. False Testimony against A Defendant

Elements

1. There is a criminal proceeding;
2. Offender testifies falsely under oath against the defendant therein;
3. Offender who gives false testimony knows that it is false.
4. Defendant against whom the false testimony is given is either acquitted or convicted in a final judgment.

Three forms of false testimony

1. False testimony in criminal cases under Article 180 and 181;
2. False testimony in civil case under Article 182;
3. False testimony in other cases under Article 183.

Article 181. False Testimony Favorable to the Defendant

Elements

1. A person gives false testimony;
2. In favor of the defendant;
3. In a criminal case.

Article 182. False Testimony in Civil Cases

Elements

1. Testimony given in a civil case;
2. Testimony relates to the issues presented in said case;
3. Testimony is false;
4. Offender knows that testimony is false;
5. Testimony is malicious and given with an intent to affect the issues presented in said case.

Article 183. False Testimony in Other Cases and Perjury in Solemn Affirmation

Acts punished

1. By falsely testifying under oath;
2. By making a false affidavit.

Elements of perjury

1. Offender makes a statement under oath or executes an affidavit upon a material matter;
2. The statement or affidavit is made before a competent officer, authorized to receive and administer oaths;
3. Offender makes a willful and deliberate assertion of a falsehood in the statement or affidavit;
4. The sworn statement or affidavit containing the falsity is required by law, that is, it is made for a legal purpose.

Article 184. Offering False Testimony in Evidence

Elements

1. Offender offers in evidence a false witness or testimony;
2 He knows that the witness or the testimony was false;
3. The offer is made in any judicial or official proceeding.

Article 185. Machinations in Public Auctions

Acts punished

1. Soliciting any gift or promise as a consideration for refraining from taking part in any public auction;

   Elements

   (a) There is a public auction;
   (b) Offender solicits any gift or a promise from any of the bidders;
   (c) Such gift or promise is the consideration for his refraining from taking part in that public auction;
   (d) Offender has the intent to cause the reduction of the price of the thing auctioned.

2. Attempting to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

   Elements

   (a) There is a public auction;
   (b) Offender attempts to cause the bidders to stay away from that public auction;
   (c) It is done by threats, gifts, promises or any other artifice;
   (d) Offender has the intent to cause the reduction of the price of the thing auctioned.

Article 186. Monopolies and Combinations in Restraint of Trade

Acts punished

1. Combination to prevent free competition in the market;

   Elements

   (a) Entering into any contract or agreement or taking part in any conspiracy or combination in the form of a trust or otherwise;
   (b) In restraint of trade or commerce or to prevent by artificial means free competition in the market.

2. Monopoly to restrain free competition in the market;

   Elements

   (a) By monopolizing any merchandise or object of trade or commerce, or by combining with any other person or persons to monopolize said merchandise or object;
   (b) In order to alter the prices thereof by spreading false rumors or making use of any other artifice;
   (c) To restrain free competition in the market

3. Manufacturer, producer, or processor or importer combining, conspiring or agreeing with any person to make transactions prejudicial to lawful commerce or to increase the market price of merchandise.

   Elements

   (a) Manufacturer, producer, processor or importer of any merchandise or object of commerce;
   (b) Combines, conspires or agrees with any person;
   (c) Purpose is to make transactions prejudicial to lawful commerce or to increase the market price of any merchandise or object of commerce manufactured, produced, processed, assembled or imported into the Philippines.

Article 187. Importation and Disposition of Falsely Marked Articles or Merchandise Made of Gold, Silver, or Other Precious Metals of Their Alloys

Elements

1. Offender imports, sells or disposes articles made of gold, silver, or other precious metals or their alloys;
2. The stamps, brands, or marks of those articles of merchandise fail to indicate the actual fineness or quality of said metals or alloys;
3. Offender knows that the stamps, brands, or marks fail to indicate the actual fineness or quality of the metals or alloys.

Article 188. Substituting and Altering Trademarks, Trade names, or Service Marks

Acts punished

1. Substituting the trade name or trademark of some other manufacturer or dealer, or a

colorable imitation thereof for the trade name or trademark of the real manufacturer or dealer upon any article of commerce and selling the same;
2. Selling or offering for sale such articles of commerce knowing that the trade name or trademark has been fraudulently used;
3. Using or substituting the service mark of some other person, or a colorable imitation of such mark n the sale or advertising of his services;
4. Printing, lithographing or reproducing trade name, trademark, or service mark of one person or a colorable imitation thereof to enable another person to fraudulently use the same knowing the fraudulent purpose for which it is to be used.

Article 189. Unfair Competition, Fraudulent Registration of Trade Name, Trademark, or Service Mark, Fraudulent Designation of Origin, and False Description

Acts punished

1. Unfair competition;

   Elements

   (a) By selling his goods;
   (b) Giving them the general appearance of the goods of another manufacturer or dealer;
   (c) The general appearance is shown in the goods themselves, or in the wrapping of their packages, or in the device or words therein, or in any feature of their appearance;
   (d) There is actual intent to deceive the public or defraud a competitor.

2. Fraudulent designation of origin; false description:

   Elements

   (a) By affixing to his goods or using in connection with his services a false designation of origin, or any false description or representation; and
   (b) Selling such goods or services.

3. Fraudulent registration

   Elements

   (a) By procuring fraudulently from the patent office;
   (b) The registration of trade name, trademark or service mark

A. THE NEW PUBLIC BIDDING LAW (R.A. 9184)

Section 65. Offenses and Penalties. - (a) Without prejudice to the provisions of Republic Act No. 3019, otherwise known as the "Anti-Graft and Corrupt Practice Act" and other penal laws, public officers who commit any of the following acts shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day, but not more than fifteen (15) years:

1. Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.
2. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of Bids or other documents.
3. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular bidder.
4. Splitting of contracts which exceed procedural purchase limits and competitive bidding.
5. When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act.

When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense.

In addition, the public officer involved shall also suffer the penalty of temporary disqualification from public office, while the private individual shall be permanently disqualified from transacting business with the government.

(b) Private individuals who commit any of the following acts, including any public officer, who conspires with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but not more than fifteen (15) years:

1. When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest Bid.
2. When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest of create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.
3. When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure as undue advantage to any one of them.
4. When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or suppress competition and thus produce a result disadvantageous to the public.

In addition, the persons involved shall also suffer the penalty of temporary or perpetual disqualification from public office and be permanently disqualified from transacting business with the government.

(c) Private individuals who commit any of the following acts, and any public officer conspiring with them, shall suffer the penalty of imprisonment of not less than six (6) years and one (1) day but more than fifteen (15) years:

1. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.
2. Submit Bidding Documents of whatever kind and nature than contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.
3. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.
4. Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or to accept and award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

(d) When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.

Prohibited acts

(1) Without prejudice to the provisions of the Anti-Graft Law, the prohibited acts are:

(a) Opening any sealed and any and all documents required to be sealed, or divulging their contents prior to the appointed time for the public opening of bids and other documents;

(b) Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of action provided for in the implementing rules and regulations;

(c) Unduly influencing or exerting undue pressure on any member of the Bids and Awards Committee (BAC) or any officer or employee of the procuring entity to take a particular action which favors or tend to favor a particular bidder;

(d) Splitting of contracts which exceed procedural purchase limits and competitive bidding; and

(e) Abusing the exercise by the head of agency of his power to reject any and all bids with manifest preference to any bidder who is closely related to him.

(2) In public bidding, there must be competition

that is legitimate, fair, and honest. Thus, the three principles of a public bidding are:
(a) The offer to the public;
(b) An opportunity for competition; and
(c) A basis for exact comparison of bids.

(3) A contract granted without the competitive bidding required by law is void, and the party to whom it is awarded cannot benefit from it.

Information Technology Foundation of the Philippines vs. COMELEC
GR No. 159139 (01/13/2004)

(1) There is grave abuse of discretion (a) when an act is done contrary to the Constitution, the law or jurisprudence; or (b) when it is executed whimsically, capriciously or arbitrarily out of malice, ill will or personal bias. In the present case, the COMELEC approved the assailed Resolution and awarded the subject Contract not only in clear violation of law and jurisprudence, but also in reckless disregard of its own bidding rules and procedure. For the automation of the counting and canvassing of the ballots in the 2004 elections, COMELEC awarded the Contract to Mega Pacific Consortium, an entity that had not participated in the bidding. Despite this, the poll body signed the actual automation contract with Mega Pacific eSolutions, Inc., a company that joined the bidding but had not met the eligibility requirements.

(2) COMELEC awarded this billion-peso undertaking with inexplicable haste, without adequately checking and observing mandatory financial, technical and legal requirements. It also accepted the proferred computer hardware and software even if, at the time of the award, they had undeniably failed to pass 8 critical requirements designed to safeguard the integrity of elections, especially the following 3 items:
(a) They failed to achieve the accuracy rating criteria of 99.9995% set-up by the COMELEC itself;
(b) They were not able to detect previously downloaded results at various canvassing or consolidation levels and to prevent these from being inputted again;
(c) They were unable to print the statutorily required audit trails of the count/canvass at different levels without any loss of data.

(3) COMELEC flagrantly violated the public policy on public biddings (a) by allowing MPC/MPEI to participate in the bidding even though it was not qualified to do so; and (b) by eventually awarding the Contract to MPC/MPEI. Now, with the latest explanation of COMELEC, it is clear that the Commission further desecrated the law on public bidding by permitting the winning bidder to change and alter the subject of the Contract (software), in effect allowing a substantive amendment without public bidding.

B. ANTI-ALIAS LAW (C.A. 142, AS AMENDED BY RA 6085)

Punishable acts

1. Use of any name and/or names and alias or aliases different from his original or real name and duly recorded in the proper local civil registry *(Sec. 1, 4)*.

2. Use of any name different from the one with which he was registered at birth in the office of the local civil registry, or with which he was baptized for the first time, or, in case of an alien, with which he was registered in the Bureau of Immigration upon entry; or such substitute name as may have been authorized by a competent court *(Sec. 3)*.

Exception

(1) An individual can make use of a second name without infringing upon the law in the following instances:
(a) As a pseudonym solely for literary, cinema, television, radio or other entertainment purposes and in athletic events where the use of pseudonym is a normally accepted practice;
(b) When the use of the second name or alias is judicially authorized and duly recorded in the proper local civil registry;
(c) The use of fictitious name or a different name belonging to a single person in a single instance without any sign or indication that the user intends to be known by this name in addition to his real name from that day forth.

5. CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

ARTS. 190 - 194 HAD BEEN REPEALED R.A 9165.

A. THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. 9165)

Punishable acts

1. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals
   (a) Import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.
   (b) Import any controlled precursor and essential chemical;
   (c) Import or bring into the Philippines any dangerous drug and/or controlled precursor and essential chemical through the use of a diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same;
   (d) Organizes, manages or acts as a "financier" of any of the illegal activities;
   (e) Acts as a "protector/coddler" of any violator of the provisions under this Section. *(Sec. 4)*.

2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.
   (a) Sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.
   (b) Sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.
   If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.
   (c) For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case. If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.
   (d) Organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.
   (e) Act as a "protector/coddler" of any violator *(Sec. 5).*

3. Maintenance of a Den, Dive or Resort
   (a) Maintain a den, dive or resort where any dangerous drug, or controlled precursor and essential chemical is used or sold in any form.
   (b) Where any dangerous drug is administered, delivered or sold to a minor who is allowed to use the same in such a place.
   (c) Should any dangerous drug be the proximate cause of the death of a person using the same in such den, dive or resort, the penalty shall be imposed on the maintainer, owner and/or operator.
   (d) Organize, manage or act as a "financier"
   (e) Act as a "protector/coddler" of any violator *(Section 6).*

4. Employees and Visitors of a Den, Dive or Resort
   (a) Any employee of a den, dive or resort, who is aware of the nature of the place as such; and
   (b) Any person who, not being included in the provisions of the next preceding, paragraph, is aware of the nature of the place as such and shall knowingly visit

the same *(Sec. 7)*.

5. Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals
   (a) Engage in the manufacture of any dangerous drug, controlled precursor and essential chemical.
   The presence of any controlled precursor and essential chemical or laboratory equipment in the clandestine laboratory is a prima facie proof of manufacture of any dangerous drug. It shall be considered an aggravating circumstance if the clandestine laboratory is undertaken or established under the following circumstances:
   (1) Any phase of the manufacturing process was conducted in the presence or with the help of minor/s:
   (2) Any phase or manufacturing process was established or undertaken within one hundred (100) meters of a residential, business, church or school premises;
   (3) Any clandestine laboratory was secured or protected with booby traps;
   (4) Any clandestine laboratory was concealed with legitimate business operations; or
   (5) Any employment of a practitioner, chemical engineer, public official or foreigner.
   (b) Organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.
   (c) Acts as a "protector/coddler" of any violator *(Section 8)*.

6. Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals
   (a) Illegally divert any controlled precursor and essential chemical *(Sec. 9)*.

7. Manufacture or Delivery of Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.
   (a) deliver, possess with intent to deliver, or manufacture with intent to deliver equipment, instrument, apparatus and other paraphernalia for dangerous drugs, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain or conceal any dangerous drug and/or controlled precursor and essential chemical;
   (b) if the equipment, instrument, apparatus and other paraphernalia will be used to inject, ingest, inhale or otherwise introduce into the human body a dangerous drug;
   (c) Use a minor or a mentally incapacitated individual to deliver such equipment, instrument, apparatus and other paraphernalia for dangerous drugs *(Sec. 10)*.

8. Possession of Dangerous Drugs in the following quantities, regardless of the degree of purity thereof:
   (a) 10 grams or more of opium;
   (b) 10 grams or more of morphine;
   (c) 10 grams or more of heroin;
   (d) 10 grams or more of cocaine or cocaine hydrochloride;
   (e) 50 grams or more of methamphetamine hydrochloride or "shabu";
   (f) 10 grams or more of marijuana resin or marijuana resin oil;
   (g) 500 grams or more of marijuana; and
   (h) 10 grams or more of other dangerous drugs such as, but not limited to, methylenedioxymethamphetamine (MDA) or "ecstasy", paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxyamphetamine (GHB), and those similarly designed or newly introduced drugs and their derivatives, without having any therapeutic value or if the quantity possessed is far beyond therapeutic requirements,
   Otherwise, if the quantity involved is less than the foregoing quantities, the penalties shall be graduated *(Sec. 11)*.

9. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs
   (a) possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body: Provided, That in the case of medical practitioners and various professionals who are required to carry such equipment,

instrument, apparatus and other paraphernalia in the practice of their profession, the Board shall prescribe the necessary implementing guidelines thereof.

The possession of such equipment, instrument, apparatus and other paraphernalia fit or intended for any of the purposes enumerated in the preceding paragraph shall be prima facie evidence that the possessor has smoked, consumed, administered to himself/herself, injected, ingested or used a dangerous drug and shall be presumed to have violated Section 15 *(Sec. 12).*

10. Possession of Dangerous Drugs During Parties, Social Gatherings or Meetings regardless of the quantity and purity of such dangerous drugs *(Sec. 13).*

11. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings
    (a) possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons *(Sec. 14).*

12. Use of Dangerous Drugs. – A person apprehended or arrested, who is found to be positive for use of any dangerous drug, after a confirmatory test *(Sec. 15).*

13. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof
    (a) Plant, cultivate or culture marijuana, opium poppy or any other plant regardless of quantity, which is or may hereafter be classified as a dangerous drug or as a source from which any dangerous drug may be manufactured or derived
        (1) in the case of medical laboratories and medical research centers which cultivate or culture marijuana, opium poppy and other plants, or materials of such dangerous drugs for medical experiments and research purposes, or for the creation of new types of medicine, the Board shall prescribe the necessary implementing guidelines for the proper cultivation, culture, handling, experimentation and disposal of such plants and materials.
    (b) Organize, manage or act as a "financier";
    (c) Act as a "protector/coddler" *(Section 16).*

14. Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals
    (a) Practitioner, manufacturer, wholesaler, importer, distributor, dealer or retailer who violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drug and/or controlled precursor and essential chemical *(Sec. 17)*

15. Unnecessary Prescription of Dangerous Drugs
    (a) Practitioner, who shall prescribe any dangerous drug to any person whose physical or physiological condition does not require the use or in the prescribed dosage, particularly those who are involved in the care of persons with severe pain *(Sec. 18).*

16. Unlawful Prescription of Dangerous Drugs – make or issue a prescription or any other writing purporting to be a prescription for any dangerous drug *(Sec. 19).*

17. Misappropriation, Misapplication or Failure to Account by Public Officer or Employee for the Confiscated, Seized and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment Including the Proceeds or Properties Obtained from the Unlawful Act Committed
    (a) any public officer or employee who misappropriates, misapplies or fails to account for confiscated, seized or surrendered dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment including the proceeds or properties obtained from the unlawful acts;
    (b) Any elective local or national official found to have benefited from the proceeds of the trafficking of dangerous drugs as prescribed in this Act, or have

received any financial or material contributions or donations from natural or juridical persons found guilty of trafficking dangerous drugs as prescribed in this Act, shall be removed from office and perpetually disqualified from holding any elective or appointive positions in the government, its divisions, subdivisions, and intermediaries, including government-owned or -controlled corporations *(Sec. 27)*.

18. Criminal Liability of Government Officials and Employees. – The maximum penalties of the unlawful acts provided for in this Act shall be imposed, in addition to absolute perpetual disqualification from any public office, if those found guilty of such unlawful acts are government officials and employees.

19. Criminal Liability for Planting of Evidence – Any person who is found guilty of "planting" any dangerous drug and/or controlled precursor and essential chemical, regardless of quantity and purity, shall suffer the penalty of death *(Sec. 28).*

20. Criminal Liability of Officers of Partnerships, Corporations, Associations or Other Juridical Entities
    *(*a) In case any violation is committed by a partnership, corporation, association or any juridical entity, the partner, president, director, manager, trustee, estate administrator, or officer who consents to or knowingly tolerates such violation shall be held criminally liable as a co-principal.
    (b) The penalty provided for the offense under this Act shall be imposed upon the partner, president, director, manager, trustee, estate administrator, or officer who knowingly authorizes, tolerates or consents to the use of a vehicle, vessel, aircraft, equipment or other facility, as an instrument in the importation, sale, trading, administration, dispensation, delivery, distribution, transportation or manufacture of dangerous drugs, or chemical diversion, if such vehicle, vessel, aircraft, equipment or other instrument is owned by or under the control or supervision of the partnership, corporation, association or juridical entity to which they are affiliated *(Sec. 31).*

21. Additional Penalty if Offender is an Alien
    (a) In addition to the penalties prescribed in the unlawful act committed, any alien who violates such provisions of this Act shall, after service of sentence, be deported immediately without further proceedings, unless the penalty is death *(Sec. 31).*

Financier. – Any person who pays for, raises or supplies money for, or underwrites any of the illegal activities prescribed under this Act.

Illegal Trafficking. – The illegal cultivation, culture, delivery, administration, dispensation, manufacture, sale, trading, transportation, distribution, importation, exportation and possession of any dangerous drug and/or controlled precursor and essential chemical.

Protector/Coddler. – Any person who knowingly and willfully consents to the unlawful acts provided for in this Act and uses his/her influence, power or position in shielding, harboring, screening or facilitating the escape of any person he/she knows, or has reasonable grounds to believe on or suspects, has violated the provisions of this Act in order to prevent the arrest, prosecution and conviction of the violator.

Attempt or conspiracy, effect on liability

Any attempt or conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same as provided under this Act:
    (a) Importation of any dangerous drug and/or controlled precursor and essential chemical;
    (b) Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical;
    (c) Maintenance of a den, dive or resort where any dangerous drug is used in any form;
    (d) Manufacture of any dangerous drug and/or controlled precursor and essential chemical; and
    (e) Cultivation or culture of plants which are sources of dangerous drugs *(Sec. 26).*

6. CRIMES AGAINST PUBLIC MORALS (200-202)

Crimes against public morals

1. Gambling (Art. 195) – repealed by PD 1602, RA 9287;
2. Importation, sale and possession of lottery tickets or advertisements (Art. 196) - repealed by PD 1602, RA 9287;
3. Betting in sport contests (Art. 197) - repealed by PD 1602, RA 9287;
4. Illegal betting on horse races (Art. 198) - repealed by PD 1602, RA 9287;
5. Illegal cockfighting (Art. 199) – repealed by PD 449;
6. Grave scandal (Art. 200);
7. Immoral doctrines, obscene publications and exhibitions (Art. 201); and
8. Vagrancy and prostitution (Art. 202).

Article 195. What Acts Are Punishable in Gambling

Acts punished

1. Taking part directly or indirectly in –
   (a) any game of monte, jueteng, or any other form of lottery, policy, banking, or percentage game, dog races, or any other game or scheme the results of which depend wholly or chiefly upon chance or hazard; or wherein wagers consisting of money, articles of value, or representative of value are made; or
   (b) the exploitation or use of any other mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value;
2. Knowingly permitting any form of gambling to be carried on in any place owned or controlled by the offender;
3. Being maintainer, conductor, or banker in a game of jueteng or similar game;
4. Knowingly and without lawful purpose possessing lottery list, paper, or other matter containing letters, figures, signs or symbol which pertain to or are in any manner used in the game of jueteng or any similar game.

Article 196. Importation, Sale and Possession of Lottery Tickets or Advertisements

Acts punished

1. Importing into the Philippines from any foreign place or port any lottery ticket or advertisement; or
2. Selling or distributing the same in connivance with the importer;
3. Possessing, knowingly and with intent to use them, lottery tickets or advertisements; or
4. Selling or distributing the same without connivance with the importer of the same.

Note that possession of any lottery ticket or advertisement is prima facie evidence of an intent to sell, distribute or use the same in the Philippines.

Article 197. Betting in Sport Contests

This article has been repealed by Presidential Decree No. 483 (Betting, Game-fixing or Point-shaving and Machinations in Sport Contests):

Section 2. Betting, game-fixing, point-shaving or game machination unlawful. – Game-fixing, point-shaving, game machination, as defined in the preceding section, in connection with the games of basketball, volleyball, softball, baseball; chess, boxing bouts, jai-alia, sipa, pelota and all other sports contests, games or races; as well as betting therein except as may be authorized by law, is hereby declared unlawful.

Article 198. Illegal Betting on Horse Race

Acts punished

1. Betting on horse races during periods not allowed by law;
2. Maintaining or employing a totalizer or other device or scheme for betting on races or

realizing profit therefrom during the periods not allowed by law.

When horse races not allowed

1. July 4 (Republic Act No. 137);
2. December 30 (Republic Act No. 229);
3. Any registration or voting days (Republic Act No. 180, Revised Election Code); and
4. Holy Thursday and Good Friday (Republic Act No. 946).

Article 199. Illegal Cockfighting

This article has been modified or repealed by **Presidential Decree No. 449 (The Cockfighting Law of 1974):**

- Only allows one cockpit per municipality, unless the population exceeds 100,000 in which case two cockpits may be established;
- Cockfights can only be held in licensed cockpits on Sundays and legal holidays and local fiestas for not more than three days;
- Also allowed during provincial, municipal, city, industrial, agricultural fairs, carnivals, or exposition not more than three days;
- Cockfighting not allowed on December 30, June 12, November 30, Holy Thursday, Good Friday, Election or Referendum Day, and registration days for referendums and elections;
- Only municipal and city mayors are allowed to issue licenses for such.

Article 200. Grave Scandal

Elements

1. Offender performs an act or acts;
2. Such act or acts be highly scandalous as offending against decency or good customs;
3. The highly scandalous conduct is not expressly falling within any other article of this Code; and
4. The act or acts complained of be committed in a public place or within the public knowledge or view.

In grave scandal, the scandal involved refers to moral scandal offensive to decency, although it does not disturb public peace. But such conduct or act must be open to the public view.

In alarms and scandals, the scandal involved refers to disturbances of the public tranquility and not to acts offensive to decency.

Any act which is notoriously offensive to decency may bring about criminal liability for the crime of grave scandal provided such act does not constitute some other crime under the Revised Penal Code. Grave scandal is a crime of last resort.

Distinction should be made as to the place where the offensive act was committed, whether in the public place or in a private place:

(1) In public place, the criminal liability arises irrespective of whether the immoral act is open to the public view. In short public view is not required.

(2) When act offensive to decency is done in a private place, public view or public knowledge is required.

Public view does not require numerous persons. Even if there was only one person who witnessed the offensive act for as long as the third person was not an intruder, grave scandal is committed provided the act does not fall under any other crime in the Revised Penal Code.

Illustrations:

(1) A man and a woman enters a movie house which is a public place and then goes to the darkest part of the balcony and while there the man started performing acts of lasciviousness on the woman.
If it is against the will of the woman, the crime would be acts of lasciviousness. But if there is mutuality, this constitutes grave scandal. Public view is not necessary so long as it is performed in a public place.

(2) A man and a woman went to Luneta and slept there. They covered themselves their blanket and made the grass their conjugal bed.
This is grave scandal.

(3) In a certain apartment, a lady tenant had the habit of undressing in her room without shutting the blinds. She does this every night at about eight in the evening. So that at this hour of the night, you can expect people outside gathered in front of her window looking at her silhouette. She was charged of grave scandal. Her defense was that she was doing it in her own house.

It is no defense that she is doing it in her private home. It is still open to the public view.

(4) In a particular building in Makati which stands right next to the house of a young lady who goes sunbathing in her poolside. Every morning several men in the upper floors would stick their heads out to get a full view of said lady while in her two-piece swimsuit. The lady was then charged with grave scandal. Her defense was that it is her own private pool and it is those men looking down at her who are malicious.
This is an act which even though done in a private place is nonetheless open to public view.

Article 201. Immoral Doctrines, Obscene Publications and Exhibitions and Indecent Shows

Acts punished

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;
2. The authors of obscene literature, published with their knowledge in any form, the editors publishing such literature; and the owners/operators of the establishment selling the same;
3. Those who, in theaters, fairs, cinematographs, or any other place, exhibit indecent or immoral plays, scenes, acts, or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are proscribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race, or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts; and
4. Those who shall sell, give away, or exhibit films, prints, engravings, sculptures, or literature which are offensive to morals.

Article 202. Vagrants and Prostitutes

Vagrants

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
2. Any person found loitering about public or semi-public buildings or places or trampling or wandering about the country or the streets without visible means of support;
3. Any idle or dissolute person who ledges in houses of ill fame;
4. Ruffians or pimps and those who habitually associate with prostitutes;
5. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;
6. Prostitutes, who are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.

Prostitutes are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Test of Obscenity: Whether or not the material charged as obscene has the tendency to deprave and corrupt the minds of those open to the influence thereof, or into whose hands such material may come to (Kottinger Rule).

The test is objective. It is more on the effect upon the viewer and not alone on the conduct of the performer.

If the material has the tendency to deprave and corrupt the mind of the viewer then the same is obscene and where such obscenity is made publicly, criminal liability arises.

Because there is a government body which deliberates whether a certain exhibition, movies and plays is pornographic or not, if such body approves the work the same should not be charged under this title. Because of this, the test of obscenity may be obsolete already. If allowed by the Movies and Television Review and Classification Board (MTRCB), the question is moot and academic.

The law is not concerned with the moral of one person. As long as the pornographic matter or exhibition is made privately, there is no crime committed under the Revised Penal Code because what is protected is the morality of the public in general. Third party is there. Performance of one to another is not.

Illustration:

A sexy dancing performed for a 90 year old is not obscene anymore even if the dancer strips naked. But if performed for a 15 year old kid, then it will corrupt the kid's mind. (Apply Kottinger Rule here.)

In some instances though, the Supreme Court did not stick to this test. It also considered the intention of the performer.

In People v. Aparici, the accused was a performer in the defunct Pacific Theatre, a movie house which opens only at midnight. She was arrested because she was dancing in a "different kind of way." She was not really nude. She was wearing some sort of an abbreviated bikini with a flimsy cloth over it. However, on her waist hung a string with a ball reaching down to her private part so that every time she gyrates, it arouses the audience when the ball would actually touch her private part. The defense set up by Aparici was that she should not be criminally liable for as a matter of fact, she is better dressed than the other dancers. The Supreme Court ruled that it is not only the display of the body that gives it a depraved meaning but rather the movement of the body coupled with the "tom-tom drums" as background. Nudity alone is not the real scale. (Reaction Test)

If a person is found wandering in an estate belonging to another, whether public or private, without any lawful purpose, what other crimes may be committed?

When a person is apprehended loitering inside an estate belonging to another, the following crimes may be committed:

(1) Trespass to property under Article 281 if the estate is fenced and there is a clear prohibition against entering, but the offender entered without the consent of the owner or overseer thereof. What is referred to here is estate, not dwelling.
(2) Attempted theft under Article 308, paragraph 3, if the estate is fenced and the offender entered the same to hunt therein or fish from any waters therein or to gather any farm products therein without the consent of the owner or overseer thereof;
(3) Vagrancy under Article 202 if the estate is not fenced or there is no clear prohibition against entering.

Prostitution and vagrancy are both punished by the same article, but prostitution can only be committed by a woman.

The term prostitution is applicable to a woman who for profit or money habitually engages in sexual or lascivious conduct. A man if he engages in the same conduct – sex for money – is not a prostitute, but a vagrant.

In law the mere indulging in lascivious conduct habitually because of money or gain would amount to prostitution, even if there is no sexual intercourse. Virginity is not a defense. Habituality is the controlling factor; is has to be more than one time.

There cannot be prostitution by conspiracy. One who conspires with a woman in the prostitution business like pimps, taxi drivers or solicitors of clients are guilty of the crime under Article 341 for white slavery.

7. CRIMES COMMITTED BY PUBLIC OFFICERS (203-245)

Crimes committed by public officers

1. Knowingly rendering unjust judgment (Art. 204);
2. Judgment rendered through negligence (Art. 205);
3. Unjust interlocutory order (Art. 206);
4. Malicious delay in the administration of justice (Art. 207);
5. Prosecution of offenses; negligence and tolerance (Art. 208);
6. Betrayal of trust by an attorney or solicitor – Revelation of secrets (Art. 209);
7. Direct bribery (Art. 210);
8. Indirect bribery (Art. 211);
9. Qualified bribery (Art. 211-A);
10. Corruption of public officials (Art. 212);
11. Frauds against the public treasury and similar offenses (Art. 213);
12. Other frauds (Art. 214);
13. Prohibited transactions (Art. 215);
14. Possession of prohibited interest by a public officer (Art. 216);
15. Malversation of public funds or property - Presumption of malversation (Art. 217)
16. Failure of accountable officer to render accounts (Art. 218);
17. Failure of a responsible public officer to render accounts before leaving the country (Art. 219);
18. Illegal use of public funds or property (Art. 220);

19. Failure to make delivery of public funds or property (Art. 221);
20. Conniving with or consenting to evasion (Art. 223);
21. Evasion through negligence (Art. 224);
22. Escape of prisoner under the custody of a person not a public officer (Art. 225);
23. Removal, concealment or destruction of documents (Art. 226);
24. Officer breaking seal (Art. 227);
25. Opening of closed documents (Art. 228);
26. Revelation of secrets by an officer (Art. 229);
27. Public officer revealing secrets of private individual (Art. 230);
28. Open disobedience (Art. 231);
29. Disobedience to order of superior officer when said order was suspended by inferior officer (Art. 232);
30. Refusal of assistance (Art. 233);
31. Refusal to discharge elective office (Art. 234);
32. Maltreatment of prisoners (Art. 235);
33. Anticipation of duties of a public office (Art. 236);
34. Prolonging performance of duties and powers (Art. 237);
35. Abandonment of office or position (Art. 238);
36. Usurpation of legislative powers (Art. 239);
37. Usurpation of executive functions (Art. 240);
38. Usurpation of judicial functions (Art. 241);
39. Disobeying request for disqualification (Art. 242);
40. Orders or requests by executive officers to any judicial authority (Art. 243);
41. Unlawful appointments (Art. 244); and
42. Abuses against chastity (Art. 245).

The designation of the title is misleading. Crimes under this title can be committed by public officers or a non-public officer, when the latter become a conspirator with a public officer, or an accomplice, or accessory to the crime. The public officer has to be the principal.

In some cases, it can even be committed by a private citizen alone such as in Article 275 (infidelity in the custody of a prisoner where the offender is not a public officer) or in Article 222 (malversation).

Requsites to be a public officer under Article 203

1. Taking part in the performance of public functions in the government; or
   Performing in said government or in any of its branches public duties as an employee, agent or subordinate official, or any rank or class;
2. His authority to take part in the performance of public functions or to perform public duties must be –
   (a) By direct provision of the law;
   (b) By popular election; or
   (c) By appointment by competent authority.

Originally, Title VII used the phrase "public officer or employee" but the latter word has been held meaningless and useless because in criminal law, "public officer" covers all public servants, whether an official or an employee, from the highest to the lowest position regardless of rank or class; whether appointed by competent authority or by popular election or by direct provision of law.

Under Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act), the term public officer is broader and more comprehensive because it includes all persons whether an official or an employee, temporary or not, classified or not, contractual or otherwise. Any person who receives compensation for services rendered is a public officer.

Breach of oath of office partakes of three forms:

(1) Malfeasance - when a public officer performs in his public office an act prohibited by law. Example: bribery.
(2) Misfeasance - when a public officer performs official acts in the manner not in accordance with what the law prescribes.
(3) Nonfeasance - when a public officer willfully refrains or refuses to perform an official duty which his office requires him to perform.

Article 204. Knowingly Rendering Unjust Judgment

1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. Judgment is unjust;
4. The judge knows that his judgment is unjust .

Article 205. Judgment Rendered through Negligence

1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. The judgment is *manifestly* unjust;
4. It is due to his *inexcusable negligence* or ignorance.

Article 206. Unjust Interlocutory Order

1. Offender is a judge;
2. He performs any of the following acts:
   (a) Knowingly rendering an unjust interlocutory order or decree; or
   (b) Rendering a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

The crime of knowingly rendering an unjust judgment, or knowingly issuing an unjust interlocutory order, may be committed only by a judge of a trial court and never of an appellate court. The reason for this is that in appellate court, not only one magistrate renders or issues the interlocutory order. An appellate court functions as a division and the resolutions thereof are handed down only after deliberations among the members of a division so that it cannot be said that there is malice or inexcusable negligence or ignorance in the rendering of a judgment or order that is supposedly unjust as held by the Supreme Court in one administrative case.

There is more injustice done in cases of judgment than mere interlocutory order that is why the penalty is higher in the first case.

Article 207. Malicious Delay in the Administration of Justice

1. Offender is a judge;
2. There is a proceeding in his court;
3. He delays in the administration of justice;
4. The delay is malicious, that is, with deliberate intent to inflict damage on either party in the case.

Malice must be proven. Malice is present where the delay is sought to favor one party to the prejudice of the other.

These have been interpreted by the Supreme Court to refer only to judges of the trial court.

Article 208. Prosecution of Offenses; Negligence and Tolerance

Acts Punished

1. Maliciously refraining from instituting prosecution against violators of the law;
2. Maliciously tolerating the commission of offenses.

Elements of dereliction of duty in the prosecution of offenses

1. Offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;
2. There is a dereliction of the duties of his office, that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission;
3. Offender acts with malice and deliberate intent to favor the violator of the law.

A public officer engaged in the prosecution of offenders shall maliciously tolerate the commission of crimes or refrain from prosecuting offenders or violators of the law.

This crime can only be committed by a public officer whose official duty is to prosecute offenders, that is, state prosecutors. Hence, those officers who are not duty bound to perform these obligations cannot commit this crime in the strict sense.

When a policeman tolerates the commission of a crime or otherwise refrains from apprehending the offender, such peace officer cannot be prosecuted for this crime but they can be prosecuted as:

(1) An accessory to the crime committed by the principal in accordance with Article 19, paragraph 3; or
(2) He may become a fence if the crime committed is robbery or theft, in which case he violates the Anti-Fencing Law; or
(3) He may be held liable for violating the Anti-Graft and Corrupt Practices Act.

However, in distant provinces or municipalities where there are no municipal attorneys, the local chief of police is the prosecuting officer. If he is the one who tolerates the violations of laws or otherwise allows offenders to escape, he can be prosecuted under this article.

This is also true in the case of a barangay chairman. They are supposed to prosecute violators of laws within their jurisdiction. If they do not do so, they can be prosecuted for this crime.

Prevaricacion

This used to be a crime under the Spanish Codigo Penal, wherein a public officer regardless of his duty violates the oath of his office by not carrying out the duties of his office for which he was sworn to office, thus, amounting to dereliction of duty.

But the term prevaricacion is not limited to dereliction of duty in the prosecution of offenders. It covers any dereliction of duty whereby the public officer involved violates his oath of office. The thrust of prevaricacion is the breach of the oath of office by the public officer who does an act in relation to his official duties.

While in Article 208, dereliction of duty refers only to prosecuting officers, the term prevaricacion applies to public officers in general who is remiss or who is maliciously refraining from exercising the duties of his office.

Illustration:

The offender was caught for white slavery. The policeman allowed the offender to go free for some consideration. The policeman does not violate Article 208 but he becomes an accessory to the crime of white slavery.

But in the crime of theft or robbery, where the policeman shared in the loot and allowed the offender to go free, he becomes a fence. Therefore, he is considered an offender under the Anti-Fencing Law.

Relative to this crime under Article 208, consider the crime of qualified bribery. Among the amendments made by Republic Act No. 7659 on the Revised Penal Code is a new provision which reads as follows:

> *Article. 211-A. Qualified Bribery – If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by Reclusion Perpetua and/or death in consideration of any offer, promise, gift, or present, he shall suffer the penalty for the offense which was not prosecuted.*
>
> *If it is the public officer who asks or demands such gift or present, he shall suffer the penalty of death.*

Actually the crime is a kind of direct bribery where the bribe, offer, promise, gift or present has a consideration on the part of the public officer, that is refraining from arresting or prosecuting the offender in consideration for such offer, promise, gift or present. In a way, this new provision modifies Article 210 of the Revised Penal Code on direct bribery.

However, the crime of qualified bribery may be committed only by public officers "entrusted with enforcement" whose official duties authorize then to arrest or prosecute offenders. Apparently, they are peace officers and public prosecutors since the nonfeasance refers to "arresting or prosecuting." But this crime arises only when the offender whom such public officer refrains from arresting or prosecuting, has committed a crime punishable by reclusion perpetua and/or death. If the crime were punishable by a lower penalty, then such nonfeasance by the public officer would amount to direct bribery, not qualified bribery.

If the crime was qualified bribery, the dereliction of the duty punished under Article 208 of the Revised Penal Code should be absorbed because said article punishes the public officer who "maliciously refrains from instituting prosecution for the punishment of violators of the law or shall tolerate the commission of offenses". The dereliction of duty referred to is necessarily included in the crime of qualified bribery.

On the other hand, if the crime was direct bribery under Article 210 of the Revised Penal Code, the public officer involved should be prosecuted also for the dereliction of duty, which is a crime under Article 208 of the Revised Penal Code, because the latter is not absorbed by the crime of direct bribery. This is because in direct bribery, where the public officer agreed to perform an act constituting a crime in connection with the performance of his official duties, Article 210 expressly provides that the liabilty thereunder shall be "in addition to the penalty corresponding to the crime agreed upon, if the crime shall have been committed.

Illustration:

A fiscal, for a sum of money, refrains from prosecuting a person charged before him. If the penalty for the crime involved is reclusion perpetua, the fiscal commits qualified bribery. If the crime is punishable by a penalty lower than reclusion perpetua, the crime is direct bribery.

In the latter situation, three crimes are committed: direct bribery and dereliction of duty on the part of the fiscal; and corruption of a public officer by the giver.

Article 209. Betrayal of Trust by An Attorney or Solicitor – Revelation of Secrets

Acts punished

1. Causing damage to his client, either–
   (a) By any malicious breach of professional duty;
   (b) By inexcusable negligence or ignorance.

   Note: When the attorney acts with malicious abuse of his employment or inexcusable negligence or ignorance, there must be damage to his client.
2. Revealing any of the secrets of his client learned by him in his professional capacity;
3. Undertaking the defense of the opposing party in the same case, without the consent of his first client, after having undertaken the defense of said first client of after having received confidential information from said client.

Under the rules on evidence, communications made with prospective clients to a lawyer with a view to engaging his professional services are already privileged even though the client-lawyer relationship did not eventually materialize because the client cannot afford the fee being asked by the lawyer. The lawyer and his secretary or clerk cannot be examined thereon.

That this communication with a prospective client is considered privileged, implies that the same is confidential. Therefore, if the lawyer would reveal the same or otherwise accept a case from the adverse party, he would already be violating Article 209. Mere malicious breach without damage is not violative of Article 209; at most he will be liable administratively as a lawyer, e.g., suspension or disbarment under the Code of Professional Responsibility.

Illustration:

B, who is involved in the crime of seduction wanted A, an attorney at law, to handle his case. A received confidential information from B. However, B cannot pay the professional fee of A. C, the offended party, came to A also and the same was accepted.

A did not commit the crime under Article 209, although the lawyer's act may be considered unethical. The client-lawyer relationship between A and B was not yet established. Therefore, there is no trust to violate because B has not yet actually engaged the services of the lawyer A. A is not bound to B. However, if A would reveal the confidential matter learned by him from B, then Article 209 is violated because it is enough that such confidential matters were communicated to him in his professional capacity, or it was made to him with a view to engaging his professional services.

Here, matters that are considered confidential must have been said to the lawyer with the view of engaging his services. Otherwise, the communication shall not be considered privileged and no trust is violated.

Illustration:

A went to B, a lawyer/notary public, to have a document notarized. A narrated to B the detail of the criminal case. If B will disclose what was narrated to him there is no betrayal of trust since B is acting as a notary public and not as a counsel. The lawyer must have learned the confidential matter in his professional capacity.

Several acts which would make a lawyer criminally liable:

(1) Maliciously causing damage to his client through a breach of his professional duty. The breach of professional duty must be malicious. If it is just incidental, it would not give rise to criminal liability, although it may be the subject of administrative discipline;
(2) Through gross ignorance, causing damage to the client;
(3) Inexcusable negligence;
(4) Revelation of secrets learned in his professional capacity;
(5) Undertaking the defense of the opposite party in a case without the consent of the first client whose defense has already been undertaken.

Note that only numbers 1, 2 and 3 must approximate malice.

A lawyer who had already undertaken the case of a client cannot later on shift to the opposing party.

This cannot be done.

Under the circumstances, it is necessary that the confidential matters or information was confided to the lawyer in the latter's professional capacity.

It is not the duty of the lawyer to give advice on the commission of a future crime. It is, therefore, not privileged in character. The lawyer is not bound by the mandate of privilege if he reports such commission of a future crime. It is only confidential information relating to crimes already committed that are covered by the crime of betrayal of trust if the lawyer should undertake the case of opposing party or otherwise divulge confidential information of a client.

Under the law on evidence on privileged communication, it is not only the lawyer who is protected by the matter of privilege but also the office staff like the secretary.

The nominal liability under this article may be constituted either from breach of professional duties in the handling of the case or it may arise out of the confidential relation between the lawyer and the client.

Breach of professional duty

Tardiness in the prosecution of the case for which reason the case was dismissed for being non-prosecuted; or tardiness on the part of the defense counsel leading to declaration of default and adverse judgment.

Professional duties – Lawyer must appear on time. But the client must have suffered damage due to the breach of professional duty. Otherwise, the lawyer cannot be held liable.

If the prosecutor was tardy and the case was dismissed as non-prosecuted, but he filed a motion for consideration which was granted, and the case was continued, the lawyer is not liable, because the client did not suffer damage.

If lawyer was neglectful in filing an answer, and his client declared in default, and there was an adverse judgment, the client suffered damages. The lawyer is liable.

Breach of confidential relation

Revealing information obtained or taking advantage thereof by accepting the engagement with the adverse party. There is no need to prove that the client suffered damages. The mere breach of confidential relation is punishable.

In a conjugal case, if the lawyer disclosed the confidential information to other people, he would be criminally liable even though the client did not suffer any damage.

The client who was suing his wife disclosed that he also committed acts of unfaithfulness. The lawyer talked about this to a friend. He is, thus, liable.

Article 210. Direct Bribery

Acts punished

1. Agreeing to perform, or performing, in consideration of any offer, promise, gift or present – an act constituting a crime, in connection with the performance of his official duties;
2. Accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty;
3. Agreeing to refrain, or by refraining, from doing something which it is his official duty to do, in consideration of gift or promise.

Elements

1. Offender is a public officer within the scope of Article 203;
2. Offender accepts an offer or a promise or receives a gift or present by himself or through another;
3. Such offer or promise be accepted, or gift or present received by the public officer –
   (a) With a view to committing some crime; or
   (b) In consideration of the execution of an act which does not constitute a crime, but the act must be unjust; or
   (c) To refrain from doing something which it is his official duty to do.
4. The act which offender agrees to perform or which he executes be connected with the performance of his official duties.

It is a common notion that when you talk of bribery, you refer to the one corrupting the public officer. Invariably, the act refers to the giver, but this is wrong. Bribery refers to the act of the receiver and the act of the giver is corruption of public official.

Distinction between direct bribery and indirect bribery

Bribery is direct when a public officer is called upon to perform or refrain from performing an official act in exchange for the gift, present or consideration given to him.

If he simply accepts a gift or present given to him by reason of his public position, the crime is indirect bribery. Bear in mind that the gift is given "by reason of his office", not "in consideration" thereof. So never use the term "consideration." The public officer in Indirect bribery is not to perform any official act.

Note however that what may begin as an indirect bribery may actually ripen into direct bribery.

Illustration:

Without any understanding with the public officer, a taxi operator gave an expensive suiting material to a BLT registrar. Upon receipt by the BLT registrar of his valuable suiting material, he asked who the giver was. He found out that he is a taxi operator. As far as the giver is concerned, he is giving this by reason of the office or position of the public officer involved. It is just indirect bribery.

If the BLT registrar calls up his subordinates and said to take care of the taxis of the taxi operator so much so that the registration of the taxis is facilitated ahead of the others, what originally would have been indirect bribery becomes direct bribery.

In direct bribery, consider whether the official act, which the public officer agreed to do, is a crime or not.

If it will amount to a crime, it is not necessary that the corruptor should deliver the consideration or the doing of the act. The moment there is a meeting of the minds, even without the delivery of the consideration, even without the public officer performing the act amounting to a crime, bribery is already committed on the part of the public officer. Corruption is already committed on the part of the supposed giver. The reason is that the agreement is a conspiracy involving the duty of a public officer. The mere agreement is a felony already.

If the public officer commits the act which constitutes the crime, he, as well as the corruptor shall be liable also for that other crime.

Illustrations:

(1) If the corruptor offers a consideration to a custodian of a public record to remove certain files, the mere agreement, without delivery of the consideration, brings about the crime of direct bribery and corruption of public official.

    If the records were actually removed, both the public officer and the corruptor will in addition to the two felonies above, will also be liable for the crime committed, which is infidelity in the custody of the public records for which they shall be liable as principals; one as principal by inducement, the other as principal by direct participation.

(2) A party litigant approached the court's stenographer and proposed the idea of altering the transcript of stenographic notes. The court stenographer agreed and he demanded P 2,000.00.

    Unknown to them, there were law enforcers who already had a tip that the court stenographer had been doing this before. So they were waiting for the chance to entrap him. They were apprehended and they said they have not done anything yet.

    Under Article 210, the mere agreement to commit the act, which amounts to a crime, is already bribery. That stenographer becomes liable already for consummated crime of bribery and the party who agreed to give that money is already liable for consummated corruption, even though not a single centavo is delivered yet and even though the stenographer had not yet made the alterations.

    If he changed the transcript, another crime is committed: falsification.

The same criterion will apply with respect to a public officer who agrees to refrain from performing his official duties. If the refraining would give rise to a crime, such as refraining to prosecute an offender, the mere agreement to do so will consummate the bribery and the corruption, even if no money was delivered to him. If the refraining is not a crime, it would only amount to bribery if the consideration be delivered to him.

If it is not a crime, the consideration must be delivered by the corruptor before a public officer can be prosecuted for bribery. Mere agreement, is not enough to constitute the crime because the act to be done in the first place is legitimate or in the performance of the official duties of the public official.

Unless the public officer receives the consideration for doing his official duty, there is no bribery. It is necessary that there must be

delivery of monetary consideration. This is so because in the second situation, the public officer actually performed what he is supposed to perform. It is just that he would not perform what he is required by law to perform without an added consideration from the public which gives rise to the crime.

The idea of the law is that he is being paid salary for being there. He is not supposed to demand additional compensation from the public before performing his public service. The prohibition will apply only when the money is delivered to him, or if he performs what he is supposed to perform in anticipation of being paid the money.

Here, the bribery will only arise when there is already the acceptance of the consideration because the act to be done is not a crime. So, without the acceptance, the crime is not committed.

Direct bribery may be committed only in the attempted and consummated stages because, in frustrated felony, the offender must have performed all the acts of execution which would produce the felony as a consequence. In direct bribery, it is possible only if the corruptor concurs with the offender. Once there is concurrence, the direct bribery is already consummated. In short, the offender could not have performed all the acts of execution to produce the felony without consummating the same.

Actually, you cannot have a giver unless there is one who is willing to receive and there cannot be a receiver unless there is one willing to give. So this crime requires two to commit. It cannot be said, therefore, that one has performed all the acts of execution which would produce the felony as a consequence but for reasons independent of the will, the crime was not committed.

It is now settled, therefore, that the crime of bribery and corruption of public officials cannot be committed in the frustrated stage because this requires two to commit and that means a meeting of the minds.

Illustrations:

(1) If the public official accepted the corrupt consideration and turned it over to his superior as evidence of the corruption, the offense is attempted corruption only and not frustrated. The official did not agree to be corrupted.

If the public officer did not report the same to his superior and actually accepted it, he allowed himself to be corrupted. The corruptor becomes liable for consummated corruption of public official. The public officer also becomes equally liable for consummated bribery.

(2) If a public official demanded something from a taxpayer who pretended to agree and use marked money with the knowledge of the police, the crime of the public official is attempted bribery. The reason is that because the giver has no intention to corrupt her and therefore, he could not perform all the acts of execution.

Be sure that what is involved is a crime of bribery, not extortion. If it were extortion, the crime is not bribery, but robbery. The one who yielded to the demand does not commit corruption of a public officer because it was involuntary.

Article 211. Indirect Bribery

Elements

1. Offender is a public officer;
2. He accepts gifts;
3. The gifts are offered to him by reason of his office.

The public official does not undertake to perform an act or abstain from doing an official duty from what he received. Instead, the official simply receives or accepts gifts or presents delivered to him with no other reason except his office or public position. This is always in the consummated stage. There is no attempted much less frustrated stage in indirect bribery.

The Supreme Court has laid down the rule that for indirect bribery to be committed, the public officer must have performed an act of appropriating of the gift for himself, his family or employees. It is the act of appropriating that signifies acceptance. Merely delivering the gift to the public officer does not bring about the crime. Otherwise it would be very easy to remove a public officer: just deliver a gift to him.

Article 211-A. Qualified Bribery

Elements

1. Offender is a public officer entrusted with law enforcement;
2. He refrains from arresting or prosecuting an offender who has committed a crime;
3. Offender has committed a crime punishable by reclusion perpetua and/or death;
4. Offender refrains from arresting or prosecuting in consideration of any offer, promise, gift, or present.

Note that the penalty is qualified if the public officer is the one who asks or demands such present.

Presidential Decree No. 46 (Excluded from coverage)

Presidential Decree No. 46 prohibits giving and acceptance of gifts by a public officer or to a public officer, even during anniversary, or when there is an occasion like Christmas, New Year, or any gift-giving anniversary. The Presidential Decree punishes both receiver and giver.

The prohibition giving and receiving gifts given by reason of official position, regardless of whether or not the same is for past or future favors.

The giving of parties by reason of the promotion of a public official is considered a crime even though it may call for a celebration. The giving of a party is not limited to the public officer only but also to any member of his family.

Presidential Decree No. 749 (excluded from coverage)

The decree grants immunity from prosecution to a private person or public officer who shall voluntarily give information and testify in a case of bribery or in a case involving a violation of the Anti-graft and Corrupt Practices Act.

It provides immunity to the bribe-giver provided he does two things:

(1) He voluntarily discloses the transaction he had with the public officer constituting direct or indirect bribery, or any other corrupt transaction;
(2) He must willingly testify against the public officer involved in the case to be filed against the latter.

Before the bribe-giver may be dropped from the information, he has to be charged first with the receiver. Before trial, prosecutor may move for dropping bribe-giver from information and be granted immunity. But first, five conditions have to be met:

(1) Information must refer to consummated bribery;
(2) Information is necessary for the proper conviction of the public officer involved;
(3) That the information or testimony to be given is not yet in the possession of the government or known to the government;
(4) That the information can be corroborated in its material points;
(5) That the information has not been convicted previously for any crime involving moral turpitude.

These conditions are analogous to the conditions under the State Witness Rule under Criminal Procedure.

The immunity granted the bribe-giver is limited only to the illegal transaction where the informant gave voluntarily the testimony. If there were other transactions where the informant also participated, he is not immune from prosecution. The immunity in one transaction does not extend to other transactions.

The immunity attaches only if the information given turns out to be true and correct. If the same is false, the public officer may even file criminal and civil actions against the informant for perjury and the immunity under the decree will not protect him.

Article 212. Corruption of Public Officials

Elements

1. Offender makes offers or promises or gives gifts or presents to a public officer;
2. The offers or promises are made or the gifts or presents given to a public officer, under circumstances that will make the public officer liable for direct bribery or indirect bribery.

Article 213. Frauds against the Public Treasury and Similar Offenses

Acts punished

1. Entering into an agreement with any interested party or speculator or making use of any other scheme, to defraud the

government, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds;
2. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law, in collection of taxes, licenses, fees, and other imposts;
3. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially, in the collection of taxes, licenses, fees, and other imposts;
4. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law, in the collection of taxes, licenses, fees, and other imposts.

Elements of frauds against public treasury under paragraph 1

1. Offender is a public officer;
2. He has taken advantage of his office, that is, he intervened in the transaction in his official capacity;
3. He entered into an agreement with any interested party or speculator or made use of any other scheme with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds;
4. He had intent to defraud the government.

The essence of this crime is making the government pay for something not received or making it pay more than what is due. It is also committed by refunding more than the amount which should properly be refunded. This occurs usually in cases where a public officer whose official duty is to procure supplies for the government or enter into contract for government transactions, connives with the said supplier with the intention to defraud the government. Also when certain supplies for the government are purchased for the high price but its quantity or quality is low.

Illustrations:

(1) A public official who is in charge of procuring supplies for the government obtained funds for the first class materials and buys inferior quality products and pockets the excess of the funds. This is usually committed by the officials of the Department of Public Works and Highways.
(2) Poorest quality of ink paid as if it were of superior quality.
(3) One thousand pieces of blanket for certain unit of the Armed Forces of the Philippines were paid for but actually, only 100 pieces were bought.
(4) The Quezon City government ordered 10,000 but what was delivered was only 1,000 T-shirts, the public treasury is defrauded because the government is made to pay that which is not due or for a higher price.

Not all frauds will constitute this crime. There must be no fixed allocation or amount on the matter acted upon by the public officer.

The allocation or outlay was made the basis of fraudulent quotations made by the public officer involved.

For example, there was a need to put some additional lighting along the a street and no one knows how much it will cost. An officer was asked to canvass the cost but he connived with the seller of light bulbs, pricing each light bulb at P550.00 instead of the actual price of P500.00. This is a case of fraud against public treasury.

If there is a fixed outlay of P20,000.00 for the lighting apparatus needed and the public officer connived with the seller so that although allocation was made a lesser number was asked to be delivered, or of an inferior quality, or secondhand. In this case there is no fraud against the public treasury because there is a fixed allocation. The fraud is in the implementation of procurement. That would constitute the crime of "other fraud" in Article 214, which is in the nature of swindling or estafa.

Be sure to determine whether fraud is against public treasury or one under Article 214.

Elements of illegal exactions under paragraph 2

1. Offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts;
2. He is guilty of any of the following acts or omissions:
   (a) Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law; or
   (b) Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; or
   (c) Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

This can only be committed principally by a public officer whose official duty is to collect taxes, license fees, import duties and other dues

payable to the government.

Not any public officer can commit this crime. Otherwise, it is estafa. Fixers cannot commit this crime unless he conspires with the public officer authorized to make the collection.

Also, public officers with such functions but are in the service of the Bureau of Internal Revenue and the Bureau of Customs are not to be prosecuted under the Revised Penal Code but under the Revised Administrative Code. These officers are authorized to make impositions and to enter into compromises. Because of this discretion, their demanding or collecting different from what is necessary is legal.

This provision of the Revised Penal Code was provided before the Bureau of Internal Revenue and the Tariff and Customs Code. Now, we have specific Code which will apply to them. In the absence of any provision applicable, the Revised Administrative Code will apply.

The essence of the crime is not misappropriation of any of the amounts but the improper making of the collection which would prejudice the accounting of collected amounts by the government.

<u>On the first form of illegal exaction</u>

In this form, mere demand will consummate the crime, even if the taxpayer shall refuse to come across with the amount being demanded. That will not affect the consummation of the crime.

In the demand, it is not necessary that the amount being demanded is bigger than what is payable to the government. The amount being demanded maybe less than the amount due the government.

Note that this is often committed with malversation or estafa because when a public officer shall demand an amount different from what the law provides, it can be expected that such public officer will not turn over his collection to the government.

<u>Illustrations:</u>

(1) A taxpayer goes to the local municipal treasurer to pay real estate taxes on his land. Actually, what is due the government is P400.00 only but the municipal treasurer demanded P500.00. By that demand alone, the crime of illegal exaction is already committed even though the taxpayer does not pay the P500.00.

(2) Suppose the taxpayer came across with P500.00. But the municipal treasurer, thinking that he would abstract the P100.00, issued a receipt for only P400.00. The taxpayer would naturally ask the municipal treasurer why the receipt was only for P400.00. The treasurer answered that the P100.00 is supposed to be for documentary stamps. The taxpayer left.

He has a receipt for P400.00. The municipal treasurer turned over to the government coffers P400.00 because that is due the government and pocketed the P100.00.

The mere fact that there was a demand for an amount different from what is due the government, the public officer already committed the crime of illegal exaction.

On the P100.00 which the public officer pocketed, will it be malversation or estafa?

In the example given, the public officer did not include in the official receipt the P100.00 and, therefore, it did not become part of the public funds. It remained to be private. It is the taxpayer who has been defrauded of his P100.00 because he can never claim a refund from the government for excess payment since the receipt issued to him was only P400.00 which is due the government. As far as the P100.00 is concerned, the crime committed is estafa.

(3) A taxpayer pays his taxes. What is due the government is P400.00 and the public officer issues a receipt for P500.00 upon payment of the taxpayer of said amount demanded by the public officer involved. But he altered the duplicate to reflect only P400.00 and he extracted the difference of P100.00.

In this case, the entire P500.00 was covered by an official receipt. That act of covering the whole amount received from the taxpayer in an official receipt will have the characteristics of becoming a part of the public funds. The crimes committed, therefore, are the following:

(a) Illegal exaction – for collecting more than he is authorized to collect. The mere act of demanding is enough to constitute this crime.
(b) Falsification – because there was an alteration of official document which is the duplicate of the official receipt to show an amount less than the actual amount collected.
(c) Malversation – because of his act of misappropriating the P100.00 excess

which was covered by an official receipt already, even though not payable to the government. The entire P500.00 was covered by the receipt, therefore, the whole amount became public funds. So when he appropriated the P100 for his own benefit, he was not extracting private funds anymore but public funds.

Should the falsification be complexed with the malversation?

As far as the crime of illegal exaction is concerned, it will be the subject of separate accusation because there, the mere demand regardless of whether the taxpayer will pay or not, will already consummate the crime of illegal exaction. It is the breach of trust by a public officer entrusted to make the collection which is penalized under such article. The falsification or alteration made on the duplicate can not be said as a means to commit malversation. At most, the duplicate was altered in order to conceal the malversation. So it cannot be complexed with the malversation.

It cannot also be said that the falsification is a necessary means to commit the malversation because the public officer can misappropriate the P100.00 without any falsification. All that he has to do is to get the excess of P100.00 and misappropriate it. So the falsification is a separate accusation.

However, illegal exaction may be complexed with malversation because illegal exaction is a necessary means to be able to collect the P100.00 excess which was malversed.

In this crime, pay attention to whether the offender is the one charged with the collection of the tax, license or impost subject of the misappropriation. If he is not the one authorized by disposition to do the collection, the crime of illegal exaction is not committed.

If it did not give rise to the crime of illegal exaction, the funds collected may not have become part of the public funds. If it had not become part of the public funds, or had not become impressed with being part of the public funds, it cannot be the subject of malversation. It will give rise to estafa or theft as the case may be.

(3) The Municipal Treasurer demanded P500.00 when only P400.00 was due. He issued the receipt at P400.00 and explained to taxpayer that the P100 was for documentary stamps. The Municipal Treasurer placed the entire P500.00 in the vault of the office. When he needed money, he took the P100.00 and spent it.

The following crimes were committed:

(a) Illegal exaction – for demanding a different amount;
(b) Estafa – for deceiving the taxpayer; and
(c) Malversation – for getting the P100.00 from the vault.

Although the excess P100.00 was not covered by the Official Receipt, it was commingled with the other public funds in the vault; hence, it became part of public funds and subsequent extraction thereof constitutes malversation.

Note that numbers 1 and 2 are complexed as illegal exaction with estafa, while in number 3, malversation is a distinct offense.

The issuance of the Official Receipt is the operative fact to convert the payment into public funds. The payor may demand a refund by virtue of the Official Receipt.

In cases where the payor decides to let the official to "keep the change", if the latter should pocket the excess, he shall be liable for malversation. The official has no right but the government, under the principle of accretion, as the owner of the bigger amount becomes the owner of the whole.

<u>On the second form of illegal exaction</u>

The act of receiving payment due the government without issuing a receipt will give rise to illegal exaction even though a provisional receipt has been issued. What the law requires is a receipt in the form prescribed by law, which means official receipt.

<u>Illustration:</u>

If a government cashier or officer to whom payment is made issued a receipt in his own private form, which he calls provisional, even though he has no intention of misappropriating the amount received by him, the mere fact that he issued a receipt not in the form prescribed by law, the crime of illegal exaction is committed. There must be voluntary failure to issue the Official Receipt.

<u>On the third form of illegal exaction</u>

Under the rules and regulations of the government, payment of checks not belonging to the taxpayer, but that of checks of other persons,

should not be accepted to settle the obligation of that person.

Illustration:

A taxpayer pays his obligation with a check not his own but pertaining to another. Because of that, the check bounced later on.

The crime committed is illegal exaction because the payment by check is not allowed if the check does not pertain to the taxpayer himself, unless the check is a manager's check or a certified check, amended already as of 1990. (See the case of Roman Catholic.)

Under Article 213, if any of these acts penalized as illegal exaction is committed by those employed in the Bureau of Customs or Bureau of Internal Revenue, the law that will apply to them will be the Revised Administrative Code or the Tariff and Customs Code or National Revenue Code.

This crime does not require damage to the government.

Article 214. Other Frauds

Elements

1. Offender is a public officer;
2. He takes advantage of his official position;
3. He commits any of the frauds or deceits enumerated in Article 315 to 318.

Article 215. Prohibited Transactions

Elements

1. Offender is an appointive public officer;
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation;
3. The transaction takes place within the territory subject to his jurisdiction;
4. He becomes interested in the transaction during his incumbency.

Article 216. Possession of Prohibited Interest By A Public Officer

Persons liable

1. Public officer who, directly or indirectly, became interested in any contracts or business in which it was his official duty to intervene;
2. Experts, arbitrators, and private accountants who, in like manner, took part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they had acted;
3. Guardians and executors with respect to the property belonging to their wards or the estate.

Article 217. Malversation of Public Funds or Property – Presumption of Malversation

Acts punished

1. Appropriating public funds or property;
2. Taking or misappropriating the same;
3. Consenting, or through abandonment or negligence, permitting any other person to take such public funds or property; and
4. Being otherwise guilty of the misappropriation or malversation of such funds or property.

Elements common to all acts of malversation under Article 217

1. Offender is a public officer;
2. He had the custody or control of funds or property by reason of the duties of his office;
3. Those funds or property were public funds or property for which he was accountable;
4. He appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

This crime is predicated on the relationship of the offender to the property or funds involved. The offender must be accountable for the property misappropriated. If the fund or property, though public in character is the responsibility of another officer, malversation is not committed unless there is conspiracy.

It is not necessary that the offender profited because somebody else may have misappropriated the funds in question for as long as the accountable officer was remiss in his duty

of safekeeping public funds or property. He is liable for malversation if such funds were lost or otherwise misappropriated by another.

There is no malversation through simple negligence or reckless imprudence, whether deliberately or negligently. This is one crime in the Revised Penal Code where the penalty is the same whether committed with dolo or culpa.

Q: What crime under the Revised Penal Code carries the same penalty whether committed intentionally or through negligence?

A: Malversation under Article 217. There is no crime of malversation through negligence. The crime is malversation, plain and simple, whether committed through dolo or culpa. There is no crime of malversation under Article 365 – on criminal negligence – because in malversation under Article 217, the same penalty is imposed whether the malversation results from negligence or was the product of deliberate act.

The crime of malversation can be committed only by an officer accountable for the funds or property which is appropriated. This crime, therefore, bears a relation between the offender and the funds or property involved.

The offender, to commit malversation, must be accountable for the funds or property misappropriated by him. If he is not the one accountable but somebody else, the crime committed is theft. It will be qualified theft if there is abuse of confidence.

Accountable officer does not refer only to cashier, disbursing officers or property custodian. Any public officer having custody of public funds or property for which he is accountable can commit the crime of malversation if he would misappropriate such fund or property or allow others to do so.

1. An unlicensed firearm was confiscated by a policeman. Instead of turning over the firearm to the property custodian for the prosecution of the offender, the policeman sold the firearm. What crime was committed?

   The crime committed is malversation because that firearm is subject to his accountability. Having taken custody of the firearm, he is supposed to account for it as evidence for the prosecution of the offender.

2. Can the buyer be liable under the Anti-fencing law?

   No. The crime is neither theft nor robbery, but malversation.

3. A member of the Philippine National Police went on absence without leave. He was charged with malversation of the firearm issued to him. After two years, he came out of hiding and surrendered the firearm. What crime was committed?

   The crime committed was malversation. Payment of the amount misappropriated or restitution of property misappropriated does not erase criminal liability but only civil liability.

   When private property is attached or seized by public authority and the public officer accountable therefor misappropriates the same, malversation is committed also.

Illustration:

If a sheriff levied the property of the defendants and absconded with it, he is not liable of qualified theft but of malversation even though the property belonged to a private person. The seizure of the property or fund impressed it with the character of being part of the public funds it being in custodia legis. For as long as the public officer is the one accountable for the fund or property that was misappropriated, he can be liable for the crime of malversation. Absent such relation, the crime could be theft, simple or qualified.

Illustration:

A government cashier did not bother to put the public fund in the public safe/vault but just left it in the drawer of his table which has no lock. The next morning when he came back, the money was already gone. He was held liable for malversation through negligence because in effect, he has abandoned the fund or property without any safety.

A private person may also commit malversation under the following situations:

(1) Conspiracy with a public officer in committing malversation;
(2) When he has become an accomplice or accessory to a public officer who commits malversation;
(3) When the private person is made the custodian in whatever capacity of public funds or property, whether belonging to national or local government, and he misappropriates the same;
(4) When he is constituted as the depositary or administrator of funds or property seized or

attached by public authority even though said funds or property belong to a private individual.

Illustration:

Municipal treasurer connives with outsiders to make it appear that the office of the treasurer was robbed. He worked overtime and the co-conspirators barged in, hog-tied the treasurer and made it appear that there was a robbery. Crime committed is malversation because the municipal treasurer was an accountable officer.

Note that damage on the part of the government is not considered an essential element. It is enough that the proprietary rights of the government over the funds have been disturbed through breach of trust.

It is not necessary that the accountable public officer should actually misappropriate the fund or property involved. It is enough that he has violated the trust reposed on him in connection with the property.

Illustration:

(1) It is a common practice of government cashiers to change the checks of their friends with cash in their custody, sometimes at a discount. The public officer knows that the check is good because the issuer thereof is a man of name. So he changed the same with cash. The check turned out to be good.

With that act of changing the cash of the government with the check of a private person, even though the check is good, malversation is committed. The reason is that a check is cleared only after three days. During that period of three days, the government is being denied the use of the public fund. With more reason if that check bounce because the government suffers.

(2) An accountable public officer, out of laziness, declares that the payment was made to him after he had cleaned his table and locked his safe for the collection of the day. A taxpayer came and he insisted that he pay the amount so that he will not return the next day. So he accepted the payment but is too lazy to open the combination of the public safe. He just pocketed the money. When he came home, the money was still in his pocket. The next day, when he went back to the office, he changed clothes and he claims that he forgot to put the money in the new funds that he would collect the next day. Government auditors came and subjected him to inspection. He was found short of that amount. He claimed that it is in his house -- with that alone, he was charged with malversation and was convicted.

Any overage or excess in the collection of an accountable public officer should not be extracted by him once it is commingled with the public funds.

Illustration:

When taxpayers pay their accountabilities to the government by way of taxes or licenses like registration of motor vehicles, the taxpayer does not bother to collect loose change. So the government cashier accumulates the loose change until this amounts to a sizable sum. In order to avoid malversation, the cashier did not separate what is due the government which was left to her by way of loose change. Instead, he gets all of these and keeps it in the public vault/safe. After the payment of the taxes and licenses is through, he gets all the official receipts and takes the sum total of the payment. He then opens the public vault and counts the cash. Whatever will be the excess or the overage, he gets. In this case, malversation is committed.

Note that the moment any money is commingled with the public fund even if not due the government, it becomes impressed with the characteristic of being part of public funds. Once they are commingled, you do not know anymore which belong to the government and which belong to the private persons. So that a public vault or safe should not be used to hold any fund other that what is due to the government.

When does presumption of misappropriation arise?

When a demand is made upon an accountable officer and he cannot produce the fund or property involved, there is a prima facie presumption that he had converted the same to his own use. There must be indubitable proof that thing unaccounted for exists. Audit should be made to determine if there was shortage. Audit must be complete and trustworthy. If there is doubt, presumption does not arise.

Presumption arises only if at the time the demand to produce the public funds was made, the accountability of the accused is already determined and liquidated. A demand upon the accused to produce the funds in his possession and a failure on his part to produce the same will not bring about this presumption unless and until the amount of his accountability is already known.

In Dumagat v. Sandiganbayan, 160 SCRA 483, it was held that the prima facie presumption under the Revised Penal Code arises only if there is no issue as to the accuracy, correctness and regularity of the audit findings and if the fact that public funds are missing is indubitably established. The audit must be thorough and complete down to the last detail, establishing with absolute certainty the fact that the funds are indeed missing.

In De Guzman v. People, 119 SCRA 337, it was held that in malversation, all that is necessary to prove is that the defendant received in his possession the public funds and that he could not account for them and that he could not give a reasonable excuse for their disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is the shortage in the accounts which he has not been able to explain satisfactorily.

In Cabello v. Sandiganbaya, 197 SCRA 94, it was held it was held that malversation may be committed intentionally or by negligence. The dolo or culpa bringing about the offences is only a modality in the perpetration of the offense. The same offense of malversation is involved, whether the mode charged differs from the mode established in the commission of the crime. An accused charged with willful malversation may be convicted of Malversation through her negligee.

In Quizo v. Sandiganbayan, the accused incurred shortage (P1.74) mainly because the auditor disallowed certain cash advances the accused granted to employees. But on the same date that the audit was made, he partly reimbursed the amount and paid it in full three days later. The Supreme Court considered the circumstances as negative of criminal intent. The cash advances were made in good faith and out of good will to co-employees which was a practice tolerated in the office. The actual cash shortage was only P1.74 and together with the disallowed advances were fully reimbursed within a reasonable time. There was no negligence, malice, nor intent to defraud.

In Ciamfranca Jr. v. Sandiganbayan, where the accused in malversation could not give reasonable and satisfactory explanation or excuse for the missing funds or property accountable by him, it was held that the return of the funds or property is not a defense and does not extinguish criminal liability.

In Parungao v. Sandiganbayan, 197 SCRA 173, it was held that a public officer charged with malversation cannot be convicted of technical malversation (illegal use of public funds under Article 220). To do so would violate accused's right to be informed of nature of accusation against him.

Technical malversation is not included in the crime of malversation. In malversation, the offender misappropriates public funds or property for his own personal use, or allows any other person to take such funds or property for the latter's own personal use. In technical malversation, the public officer applies the public funds or property under his administration to another public use different from that for which the public fund was appropriated by law or ordinance. Recourse: File the proper information.

Article 218. Failure of Accountable Officer to Render Accounts

Elements

1. Offender is public officer, whether in the service or separated therefrom by resignation or any other cause;
2. He is an accountable officer for public funds or property;
3. He is required by law or regulation to render account to the Commission on Audit, or to a provincial auditor;
4. He fails to do so for a period of two months after such accounts should be rendered.

Article 219. Failure of A Responsible Public Officer to Render Accounts before Leaving the Country

Elements

1. Offender is a public officer;
2. He is an accountable officer for public funds or property;
3. He unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Commission on Audit showing that his accounts have been finally settled.

When an accountable officer leaves the country without first settling his accountability or otherwise securing a clearance from the Commission on Audit regarding such accountability, the implication is that he left the country because he has misappropriated the funds under his accountability.

Who can commit this crime? A responsible public officer, not necessarily an accountable one, who leaves the country without first securing clearance from the Commission on Audit.

The purpose of the law is to discourage responsible or accountable officers from leaving without first liquidating their accountability.

Mere leaving without securing clearance constitutes violation of the Revised Penal Code. It is not necessary that they really misappropriated public funds.

Article 220. Illegal use of public funds or property

Elements

1. Offender is a public officer;
2. There are public funds or property under his administration;
3. Such fund or property were appropriated by law or ordinance;
4. He applies such public fund or property to any public use other than for which it was appropriated for.

Illegal use of public funds or property is also known as technical malversation. The term technical malversation is used because in this crime, the fund or property involved is already appropriated or earmarked for a certain public purpose.

The offender is entrusted with such fund or property only to administer or apply the same to the public purpose for which it was appropriated by law or ordinance. Instead of applying it to the public purpose to which the fund or property was already appropriated by law, the public officer applied it to another purpose.

Since damage is not an element of malversation, even though the application made proved to be more beneficial to public interest than the original purpose for which the amount or property was appropriated by law, the public officer involved is still liable for technical malversation.

If public funds were not yet appropriated by law or ordinance, and this was applied to a public purpose by the custodian thereof, the crime is plain and simple malversation, not technical malversation. If the funds had been appropriated for a particular public purpose, but the same was applied to private purpose, the crime committed is simple malversation only.

Illustration:

The office lacked bond papers. What the government cashier did was to send the janitor, get some money from his collection, told the janitor to buy bond paper so that the office will have something to use. The amount involved maybe immaterial but the cashier commits malversation pure and simple.

This crime can also be committed by a private person.

Illustration:

A certain road is to be cemented. Bags of cement were already being unloaded at the side. But then, rain began to fall so the supervisor of the road building went to a certain house with a garage, asked the owner if he could possibly deposit the bags of cement in his garage to prevent the same from being wet. The owner of the house, Olive, agreed. So the bags of cement were transferred to the garage of the private person. After the public officer had left, and the workers had left because it is not possible to do the cementing, the owner of the garage started using some of the cement in paving his own garage. The crime of technical malversation is also committed.

Note that when a private person is constituted as the custodian in whatever capacity, of public funds or property, and he misappropriates the same, the crime of malversation is also committed. See Article 222.

Illustration:

The payroll money for a government infrastructure project on the way to the site of the project, the officers bringing the money were ambushed. They were all wounded. One of them, however, was able to get away from the scene of the ambush until he reached a certain house. He told the occupant of the house to safeguard the amount because it is the payroll money of the government laborers of a particular project. The occupant of the house accepted the money for his own use. The crime is not theft but

malversation as long as he knew that what was entrusted in his custody is public fund or property.

Article 221. Failure to Make Delivery of Public Funds of Property

Acts punished

1. Failing to make payment by a public officer who is under obligation to make such payment from government funds in his possession;
2. Refusing to make delivery by a public officer who has been ordered by competent authority to deliver any property in his custody or under his administration.

Elements of failure to make payment

1. Public officer has government funds in his possession;
2. He is under obligation to make payment from such funds;
3. He fails to make the payment maliciously.

Article 223. Conniving with or Consenting to Evasion

1. Offender is a public officer;
2. He had in his custody or charge a prisoner, either detention prisoner or prisoner by final judgment;
3. Such prisoner escaped from his custody;
4. He was in connivance with the prisoner in the latter's escape.

Classes of prisoners involved

1. If the fugitive has been sentenced by final judgment to any penalty;
2. If the fugitive is held only as detention prisoner for any crime or violation of law or municipal ordinance.

Article 224. Evasion through Negligence

Elements

1. Offender is a public officer;
2. He is charged with the conveyance or custody of a prisoner or prisoner by final judgment;
3. Such prisoner escapes through negligence.

Article 225. Escape of Prisoner under the Custody of a Person not a Public Officer

Elements

1. Offender is a private person;
2. The conveyance or custody of a prisoner or person under arrest is confided to him;
3. The prisoner or person under arrest escapes;
4. Offender consents to the escape, or that the escape takes place through his negligence.

The crime is **infidelity in the custody of prisoners** if the offender involved is the custodian of the prisoner.

If the offender who aided or consented to the prisoner's escaping from confinement, whether the prisoner is a convict or a detention prisoner, is not the custodian, the crime is delivering prisoners from jail under Article156.

The crime of infidelity in the custody of prisoners can be committed only by the custodian of a prisoner.

If the jail guard who allowed the prisoner to escape is already off-duty at that time and he is no longer the custodian of the prisoner, the crime committed by him is delivering prisoners from jail.

Note that you do not apply here the principle of conspiracy that the act of one is the act of all. The party who is not the custodian who conspired with the custodian in allowing the prisoner to escape does not commit infidelity in the custody of the prisoner. He commits the crime of delivering prisoners from jail.

Q: If a private person approached the custodian of the prisoner and for a certain consideration, told the custodian to leave the door of the cell unlocked for the prisoner to escape. What crime had been committed?

A: It is not infidelity in the custody of prisoners because as far as the private person is concerned, this crime is delivering prisoners from jail. The infidelity is only committed by the custodian.

This crime can be committed also by a private person if the custody of the prisoner has been confided to a private person.

Illustration:

A policeman escorted a prisoner to court. After the court hearing, this policeman was shot at with a view to liberate the prisoner from his custody. The policeman fought the attacker but he was fatally wounded. When he could no longer control the prisoner, he went to a nearby house, talked to the head of the family of that house and asked him if he could give the custody of the prisoner to him. He said yes. After the prisoner was handcuffed in his hands, the policeman expired. Thereafter, the head of the family of that private house asked the prisoner if he could afford to give something so that he would allow him to go. The prisoner said, "Yes, if you would allow me to leave, you can come with me and I will give the money to you." This private persons went with the prisoner and when the money was given, he allowed him to go. What crime/s had been committed?

Under Article 225, the crime can be committed by a private person to whom the custody of a prisoner has been confided.

Where such private person, while performing a private function by virtue of a provision of law, shall accept any consideration or gift for the non-performance of a duty confided to him, Bribery is also committed. So the crime committed by him is infidelity in the custody of prisoners and bribery.

If the crime is delivering prisoners from jail, bribery is just a means, under Article 156, that would call for the imposition of a heavier penalty, but not a separate charge of bribery under Article 156.

But under Article 225 in infidelity, what is basically punished is the breach of trust because the offender is the custodian. For that, the crime is infidelity. If he violates the trust because of some consideration, bribery is also committed.

A higher degree of vigilance is required. Failure to do so will render the custodian liable. The prevailing ruling is against laxity in the handling of prisoners.

Illustration:

A prison guard accompanied the prisoner in the toilet. While answering the call of nature, police officer waiting there, until the prisoner escaped. Police officer was accused of infidelity.

There is no criminal liability because it does not constitute negligence. Negligence contemplated here refers to deliberate abandonment of duty.

Note, however, that according to a recent Supreme Court ruling, failure to accompany lady prisoner in the comfort room is a case of negligence and therefore the custodian is liable for infidelity in the custody of prisoner.

Prison guard should not go to any other place not officially called for. This is a case of infidelity in the custody of prisoner through negligence under Article 224.

Article 226. Removal, Concealment, or Destruction of Documents

Elements

1. Offender is a public officer;
2. He abstracts, destroys or conceals a document or papers;
3. Said document or papers should have been entrusted to such public officer by reason of his office;
4. Damage, whether serious or not, to a third party or to the public interest has been caused.

Crimes falling under the section on infidelity in the custody of public documents can only be committed by the public officer who is made the custodian of the document in his official capacity. If the officer was placed in possession of the document but it is not his duty to be the custodian thereof, this crime is not committed.

Illustration:

A letter is entrusted to a postmaster for transmission of a registered letter to another. The postmaster opened the letter and finding the money, extracted the same. The crime committed is infidelity in the custody of the public document because under Article 226, the law refers also to papers entrusted to public officer involved and currency note is considered to be within the term paper although it is not a document.

With respect to official documents, infidelity is committed by destroying the document, or removing the document or concealing the document.

Damage to public interest is necessary. However, material damage is not necessary.

Illustration:

If any citizen goes to a public office, desiring to go over public records and the custodian of the records had concealed the same so that this citizen is required to go back for the record to be taken out, the crime of infidelity is already committed by the custodian who removed the records and kept it in a place where it is not supposed to be kept. Here, it is again the breach of public trust which is punished.

Although there is no material damage caused, mere delay in rendering public service is considered damage.

Removal of public records by the custodian does not require that the record be brought out of the premises where it is kept. It is enough that the record be removed from the place where it should be and transferred to another place where it is not supposed to be kept. If damage is caused to the public service, the public officer is criminally liable for infidelity in the custody of official documents.

Distinction between infidelity in the custody of public document, estafa and malicious mischief

- In infidelity in the custody of public document, the offender is the custodian of the official document removed or concealed.
- In estafa, the offender is not the custodian of the document removed or concealed.
- In malicious mischief, the offender purposely destroyed and damaged the property/document.

Where in case for bribery or corruption, the monetary considerations was marked as exhibits, such considerations acquires the nature of a document such that if the same would be spent by the custodian the crime is not malversation but Infidelity in the custody of public records, because the money adduced as exhibits partake the nature of a document and not as money. Although such monetary consideration acquires the nature of a document, the best evidence rule does not apply here. Example, photocopies may be presented in evidence.

Article 227. Officer Breaking Seal

Elements

1. Offender is a public officer;
2. He is charged with the custody of papers or property;
3. These papers or property are sealed by proper authority;
4. He breaks the seal or permits them to be broken.

If the official document is sealed or otherwise placed in an official envelope, the element of damage is not required. The mere breaking of the seal or the mere opening of the document would already bring about infidelity even though no damage has been suffered by anyone or by the public at large. The offender does not have to misappropriate the same. Just trying to discover or look what is inside is infidelity already.

The act is punished because if a document is entrusted to the custody of a public officer in a sealed or closed envelope, such public officer is supposed not to know what is inside the same. If he would break the seal or open the closed envelop, indications would be that he tried to find out the contents of the document. For that act, he violates the confidence or trust reposed on him.

A crime is already committed regardless of whether the contents of the document are secret or private. It is enough that it is entrusted to him in a sealed form or in a closed envelope and he broke the seal or opened the envelop. Public trust is already violated if he managed to look into the contents of the document.

Distinction between infidelity and theft

- There is infidelity if the offender opened the letter but did not take the same.
- There is theft if there is intent to gain when the offender took the money.

Note that he document must be complete in legal sense. If the writings are mere form, there is no crime.

Illustration:

As regard the payroll, which has not been signed by the Mayor, no infidelity is committed because the document is not yet a payroll in the legal sense since the document has not been signed yet.

In "breaking of seal", the word "breaking" should not be given a literal meaning. Even if actually, the seal was not broken, because the custodian managed to open the parcel without breaking the seal.

Article 228. Opening of Closed Documents

Elements

1. Offender is a public officer;
2. Any closed papers, documents, or object are entrusted to his custody;
3. He opens or permits to be opened said closed papers, documents or objects;
4. He does not have proper authority.

Article 229. Revelation of Secrets by An Officer

Acts punished

1. Revealing any secrets known to the offending public officer by reason of his official capacity;

   Elements

   (a) Offender is a public officer;
   (b) He knows of a secret by reason of his official capacity;
   (c) He reveals such secret without authority or justifiable reasons;
   (d) Damage, great or small, is caused to the public interest.

2. Delivering wrongfully papers or copies of papers of which he may have charge and which should not be published.

   Elements

   (a) Offender is a public officer;
   (b) He has charge of papers;
   (c) Those papers should not be published;
   (d) He delivers those papers or copies thereof to a third person;
   (e) The delivery is wrongful;
   (f) Damage is caused to public interest.

Article 230. Public Officer Revealing Secrets of Private individual

Elements

1. Offender is a public officer;
2. He knows of the secrets of a private individual by reason of his office;
3. He reveals such secrets without authority or justifiable reason.

Article 231. Open Disobedience

Elements

1. Officer is a judicial or executive officer;
2. There is a judgment, decision or order of a superior authority;
3. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities;
4. He, without any legal justification, openly refuses to execute the said judgment, decision or order, which he is duty bound to obey.

Article 232. Disobedience to Order of Superior Officer When Said Order Was Suspended by Inferior Officer

Elements

1. Offender is a public officer;
2. An order is issued by his superior for execution;
3. He has for any reason suspended the execution of such order;
4. His superior disapproves the suspension of the execution of the order;
5. Offender disobeys his superior despite the disapproval of the suspension.

Article 233. Refusal of Assistance

1. Offender is a public officer;
2. A competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service;
3. Offender fails to do so maliciously.

Any public officer who, upon being requested to render public assistance within his official duty to render and he refuses to render the same when it is necessary in the administration of justice or for public service, may be prosecuted for refusal of assistance.

This is a crime, which a policeman may commit when, being subpoenaed to appear in court in connection with a crime investigated by him but because of some arrangement with the offenders, the policeman does not appear in court anymore to testify against the offenders. He tried to assail the subpoena so that ultimately the case would be dismissed. It was already held that the policeman could be prosecuted under this crime of refusal of assistance and not that of dereliction of duty.

Illustration:

A government physician, who had been subpoenaed to appear in court to testify in connection with physical injury cases or cases involving human lives, does not want to appear in court to testify. He may be charged for refusal of assistance. As long as they have been properly notified by subpoena and they disobeyed the subpoena, they can be charged always if it can be shown that they are deliberately refusing to appear in court.

It is not always a case or in connection with the appearance in court that this crime may be committed. Any refusal by the public officer to render assistance when demanded by competent public authority, as long as the assistance requested from them is within their duty to render and that assistance is needed for public service, the public officers who are refusing deliberately may be charged with refusal of assistance.

Note that the request must come from one public officer to another.

Illustration:

A fireman was asked by a private person for services but was refused by the former for lack of "consideration".

It was held that the crime is not refusal of assistance because the request did not come from a public authority. But if the fireman was ordered by the authority to put out the fire and he refused, the crime is refusal of assistance.

If he receives consideration therefore, bribery is committed. But mere demand will fall under the prohibition under the provision of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

Article 234. Refusal to Discharge Elective Office

Elements

1. Offender is elected by popular election to a public office;
2. He refuses to be sworn in or to discharge the duties of said office;
3. There is no legal motive for such refusal to be sworn in or to discharge the duties of said office.

Article 235. Maltreatment of Prisoners

Elements

1. Offender is a public officer or employee;
2. He has under his charge a prisoner or detention prisoner;
3. He maltreats such prisoner in either of the following manners:
   (a) By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either –
      (1) By the imposition of punishment not authorized by the regulations; or
      (2) By inflicting such punishments (those authorized) in a cruel and humiliating manner; or
   (b) By maltreating such prisoners to extort a confession or to obtain some information from the prisoner.

This is committed only by such public officer charged with direct custody of the prisoner. Not all public officer can commit this offense.

If the public officer is not the custodian of the prisoner, and he manhandles the latter, the crime is physical injuries.

The maltreatment does not really require physical injuries. Any kind of punishment not authorized or though authorized if executed in excess of the prescribed degree.

Illustration:

Make him drink dirty water, sit on ice, eat on a can, make him strip, hang a sign on his neck saying "snatcher".

But if as a result of the maltreatment, physical injuries were caused to the prisoner, a separate crime for the physical injuries shall be filed. You do not complex the crime of physical injuries with the maltreatment because the way Article 235 is worded, it prohibits the complexing of the crime.

If the maltreatment was done in order to extort confession, therefore, the constitutional right of the prisoner is further violated. The penalty is qualified to the next higher degree.

The offended party here must be a prisoner in the legal sense. The mere fact that a private citizen had been apprehended or arrested by a law enforcer does not constitute him a prisoner. To be a prisoner, he must have been booked and incarcerated no matter how short it is.

Illustration:

A certain snatcher was arrested by a law enforcer, brought to the police precinct, turned over to the custodian of that police precinct. Every time a policeman entered the police precinct, he would ask, "What is this fellow doing here? What crime has he committed?". The other policeman would then tell, "This fellow is a snatcher." So every time a policeman would come in, he would inflict injury to him. This is not maltreatment of prisoner because the offender is not the custodian. The crime is only physical injuries.

But if the custodian is present there and he allowed it, then he will be liable also for the physical injuries inflicted, but not for maltreatment because it was not the custodian who inflicted the injury.

But if it is the custodian who effected the maltreatment, the crime will be maltreatment of prisoners plus a separate charge for physical injuries.

If a prisoner who had already been booked was make to strip his clothes before he was put in the detention cell so that when he was placed inside the detention cell, he was already naked and he used both of his hands to cover his private part, the crime of maltreatment of prisoner had already been committed.

After having been booked, the prisoner was made to show any sign on his arm, hand or his neck; "Do not follow my footsteps, I am a thief." That is maltreatment of prisoner if the offended party had already been booked and incarcerated no matter how short, as a prisoner.

Before this point in time, when he is not yet a prisoner, the act of hanging a sign on his neck will only amount to slander because the idea is to cast dishonor. Any injury inflicted upon him will only give rise to the crime of physical injuries.

Article 236. Anticipation of Duties of A Public Office

Elements

1. Offender is entitled to hold a public office or employment, either by election or appointment;
2. The law requires that he should first be sworn in and/or should first give a bond;
3. He assumes the performance of the duties and powers of such office;
4. He has not taken his oath of office and/or given the bond required by law.

Article 237. Prolonging Performance of Duties and Powers

Elements

1. Offender is holding a public office;
2. The period provided by law, regulations or special provision for holding such office, has already expired;
3. He continues to exercise the duties and powers of such office.

Article 238. Abandonment of Office or Position

Elements

1. Offender is a public officer;
2. He formally resigns from his position;
3. His resignation has not yet been accepted;
4. He abandons his office to the detriment of the public service.

Article 239. Usurpation of Legislative Powers

Elements

1. Offender is an executive or judicial officer;
2. He (a) makes general rules or regulations beyond the scope of his authority or (b)

attempts to repeal a law or (c) suspends the execution thereof.

Article 240. Usurpation of Executive Functions

Elements

1. Offender is a judge;
2. He (a) assumes a power pertaining to the executive authorities, or (b) obstructs the executive authorities in the lawful exercise of their powers.

Article 241. Usurpation of Judicial Functions

Elements

1. Offender is an officer of the executive branch of the government;
2. He (a) assumes judicial powers, or (b) obstructs the execution of any order or decision rendered by any judge within his jurisdiction.

Article 242. Disobeying Request for Disqualification

Elements

1. Offender is a public officer;
2. A proceeding is pending before such public officer;
3. There is a question brought before the proper authority regarding his jurisdiction, which is not yet decided;
4. He has been lawfully required to refrain from continuing the proceeding;
5. He continues the proceeding.

Article 243. Orders or Request by Executive Officers to Any Judicial Authority

Elements

1. Offender is an executive officer;
2. He addresses any order or suggestion to any judicial authority;
3. The order or suggestion relates to any case or business coming within the exclusive jurisdiction of the courts of justice.

Article 244. Unlawful Appointments

Elements

1. Offender is a public officer;
2. He nominates or appoints a person to a public office;
3. Such person lacks the legal qualifications therefore;
4. Offender knows that his nominee or appointee lacks the qualification at the time he made the nomination or appointment.

Article 245. Abuses against Chastity

Acts punished

1. Soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer;
2. Soliciting or making immoral or indecent advances to a woman under the offender's custody;
3. Soliciting or making immoral or indecent advances to the wife, daughter, sister or relative within the same degree by affinity of any person in the custody of the offending warden or officer.

Elements:

1. Offender is a public officer;
2. He solicits or makes immoral or indecent advances to a woman;
3. Such woman is -
   (a) interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or
   (b) under the custody of the offender who is a warden or other public officer directly

charged with the care and custody of prisoners or persons under arrest; or

(c) the wife, daughter, sister or relative within the same degree by affinity of the person in the custody of the offender.

The name of the crime is misleading. It implies that the chastity of the offended party is abused but this is not really the essence of the crime because the essence of the crime is mere making of immoral or **indecent solicitation or advances**.

Illustration:

Mere indecent solicitation or advances of a woman over whom the public officer exercises a certain influence, because the woman is involved in a case where the offender is to make a report of result with superiors, or otherwise a case which the offender was investigating.

This crime is also committed if the woman is a prisoner and the offender is her jail warden or custodian, or even if the prisoner may be a man if the jail warden would make the immoral solicitations upon the wife, sister, daughter, or relative by affinity within the same degree of the prisoner involved.

Three instances when this crime may arise:

(1) The woman, who is the offended party, is the party in interest in a case where the offended is the investigator or he is required to render a report or he is required to consult with a superior officer.

This does not include any casual or incidental interest. This refers to interest in the subject of the case under investigation.

If the public officer charged with the investigation or with the rendering of the report or with the giving of advice by way of consultation with a superior, made some immoral or indecent solicitation upon such woman, he is taking advantage of his position over the case. For that immoral or indecent solicitation, a crime is already committed even if the woman did not accede to the solicitation.

Even if the woman may have lied with the hearing officer or to the public officer and acceded to him, that does not change the crime because the crime seeks to penalize the taking advantage of official duties.

It is immaterial whether the woman did not agree or agreed to the solicitation. If the woman did not agree and the public officer involved pushed through with the advances, attempted rape may have been committed.

(2) The woman who is the offended party in the crime is a prisoner under the custody of a warden or the jailer who is the offender.

If the warden or jailer of the woman should make immoral or indecent advances to such prisoner, this crime is committed.

This crime cannot be committed if the warden is a woman and the prisoner is a man. Men have no chastity.

If the warden is also a woman but is a lesbian, it is submitted that this crime could be committed, as the law does not require that the custodian be a man but requires that the offended be a woman.

Immoral or indecent advances contemplated here must be persistent. It must be determined. A mere joke would not suffice.

Illustrations:

(1) An investigating prosecutor where the woman is charged with estafa as the respondent, made a remark to the woman, thus: "You know, the way of deciding this case depends on me. I can just say this is civil in character. I want to see a movie tonight and I want a companion." Such a remark, which is not discerned if not persistent will not give rise to this crime. However, if the prosecutor kept on calling the woman and inviting her, that makes the act determined and the crime is committed.

(2) A jailer was prosecuted for abuse against chastity. The jailer said, "It was mutual on their part. I did not really force my way upon the woman. The woman fell in love with me, I fell in love with the woman." The woman became pregnant. The woman admitted that she was not forced. Just the same, the jailer was convicted of abuse against chastity.

Legally, a prisoner is an accountability of the government. So the custodian is not supposed to interfere. Even if the prisoner may like it, he is not supposed to do that. Otherwise, abuse against chastity is committed.
Being responsible for the pregnancy is itself taking advantage the prisoner.

If he forced himself against the will of the woman, another crime is committed, that is, rape aside from abuse against chastity.

You cannot consider the abuse against chastity as absorbed in the rape because the basis of penalizing the acts is different from each other.

(3) The crime is committed upon a female relative of a prisoner under the custody of the offender, where the woman is the daughter, sister or relative by affinity in the same line as of the prisoner under the custody of the offender who made the indecent or immoral solicitation.

The mother is not included so that any immoral or indecent solicitation upon the mother of the prisoner does not give rise to this crime, but the offender may be prosecuted under the Section 28 of Republic Act No. 3019 (Anti-graft and Corrupt Practices Act).

Why is the mother left out? Because it is the mother who easily succumbs to protect her child.

If the offender were not the custodian, then crime would fall under Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

ANTI-GRAFT AND CORRUPT PRACTICES ACT (R.A. 3019,AS AMENDED)

Coverage

(1) The law covers the corrupt practices of any:
  (a) Public officers -- which includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exemption service receiving compensation, even nominal, from the government *(Sec. 2[b])*.
  (b) Private individuals -- having family or close personal relations with any public official (Family relation includes the spouse or relatives by consanguinity or affinity in the third civil degree. Close personal relations include close personal relationship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer) *(Sec. 4)*;
  (c) Relatives -- spouse of or any relative by consanguinity or affinity within the third civil degree, of the President, Vice President, Senate President, and Speaker of the House *(Sec. 5)*;
  (d) Members of Congress *(Sec. 6)*.

Punishable acts

(1) In addition to acts or omissions of public officers already penalized by existing law, the following acts under Section 3 of the law constitute corrupt practices of any public officer:
  (a) Persuade, induce or influence another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense;
  (b) Directly or indirectly request or receive any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract of transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law;
  (c) Directly or indirectly request or receive any gift, present or other pecuniary or material benefit for himself of for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given;
  (d) Accept or have any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof within one year after its termination;
  (e) Officers and employees of offices or government corporations charged with the grant of license or permits or other concessions, to cause any undue injury to any party, including the Government, or give any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence;
  (f) Neglect or refuse, after due demand or request, without sufficient justification to act within a reasonable time on any matter pending before him for the

purpose of obtaining directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party;

(g) Enter, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;

(h) Directly or indirectly have financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;

(i) Directly or indirectly become interested, for personal gain, or having a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercise discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong;

(j) Knowingly approve or grant any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled;

(k) Divulge valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

(2) Any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene *(Sec. 4)*.

(3) For any private person knowingly to induce or cause any public official to commit any of the offenses defined in Sec. 3.

(4) For the spouse of or any relative, by consanguinity or affinity, within the third civil degree of the President, Vice President, Senate President, or Speaker of the House, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government *(Sec. 5)*;

(5) For any Member of Congress during the term for which he has been elected

(a) To acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or adopted by Congress during the same term. The same applies to any public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution and acquires or receives any such interest during his incumbency *(Sec. 6)*;

(b) Or other public officer, who, having such interest prior to the approval of such law or resolution authored or recommended by him, to continue for thirty days after such approval to retain such interest *(Sec. 6)*.

Exceptions

(1) Sec. 5 does not apply to any person who, prior to the assumption of office of any of the officials mentioned therein to whom he is related, has already been dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, rules or regulations, nor to any act lawfully performed in an official capacity or in the exercise of profession.

(2) Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage *(Sec. 14)*.

The mere act of a public officer demanding an amount from a taxpayer to whom he is to render public service does not amount to bribery, but will

amount to a violation of the Anti-graft and Corrupt Practices Act.

Illustration:

A court secretary received P500 .00 from a litigant to set a motion for an early hearing. This is direct bribery even if the act to be performed is within his official duty so long as he received a consideration therefor.

If the secretary persuaded the judge to make a favorable resolution, even if the judge did not do so, this constitutes a violation of Anti-Graft and Corrupt Practices Act, Sub-Section A.

Under the Anti-Graft and Corrupt Practices Act, particularly Section 3, there are several acts defined as corrupt practices. Some of them are mere repetitions of the act already penalized under the Revised Penal Code, like prohibited transactions under Article 215 and 216. In such a case, the act or omission remains to be mala in se.

But there are acts penalized under the Anti-Graft and Corrupt Practices Act which are not penalized under the Revised Penal Code. Those acts may be considered as mala prohibita. Therefore, good faith is not a defense.

Illustration:

Section 3 (e) of the Anti-Graft and Corrupt Practices Act – causing undue injury to the government or a private party by giving unwarranted benefit to the party whom does not deserve the same.

In this case, good faith is not a defense because it is in the nature of a malum prohibitum. Criminal intent on the part of the offender is not required. It is enough that he performed the prohibited act voluntarily. Even though the prohibited act may have benefited the government. The crime is still committed because the law is not after the effect of the act as long as the act is prohibited.

Section 3 (g) of the Anti-Graft and Corrupt Practices Act – where a public officer entered into a contract for the government which is manifestly disadvantageous to the government even if he did not profit from the transaction, a violation of the Anti-Graft and Corrupt Practices Act is committed.

If a public officer, with his office and a private enterprise had a transaction and he allows a relative or member of his family to accept employment in that enterprise, good faith is not a defense because it is a malum prohibitum. It is enough that that the act was performed.

Where the public officer is a member of the board, panel or group who is to act on an application of a contract and the act involved one of discretion, any public officer who is a member of that board, panel or group, even though he voted against the approval of the application, as long as he has an interest in that business enterprise whose application is pending before that board, panel or group, the public officer concerned shall be liable for violation of the Anti-Graft and Corrupt Practices Act. His only course of action to avoid prosecution under the Anti-graft and Corrupt Practices Act is to sell his interest in the enterprise which has filed an application before that board, panel or group where he is a member. Or otherwise, he should resign from his public position.

Illustration:

Sen. Dominador Aytono had an interest in the Iligan Steel Mills, which at that time was being subject of an investigation by the Senate Committee of which he was a chairman. He was threatened with prosecution under Republic Act No. 3019 so he was compelled to sell all his interest in that steel mill; there is no defense. Because the law says so, even if he voted against it, he commits a violation thereof.

These cases are filed with the Ombudsman and not with the regular prosecutor's office. Jurisdiction is exclusively with the Sandiganbayan. The accused public officer must be suspended when the case is already filed with the Sandiganbayan.

Under the Anti-Graft and Corrupt Practices Act, the public officer who is accused should not be automatically suspended upon the filing of the information in court. It is the court which will order the suspension of the public officer and not the superior of that public officer. As long as the court has not ordered the suspension of the public officer involved, the superior of that public officer is not authorized to order the suspension simply because of the violation of the Anti-Graft and Corrupt Practices Act. The court will not order the suspension of the public officer without first passing upon the validity of the information filed in court. Without a hearing, the suspension would be null and void for being violative of due process.

Illustration:

A public officer was assigned to direct traffic in a very busy corner. While there, he caught a thief in the act of lifting the wallet of a pedestrian. As he

could not leave his post, he summoned a civilian to deliver the thief to the precinct. The civilian agreed so he left with the thief. When they were beyond the view of the policeman, the civilian allowed the thief to go home. What would be the liability of the public officer?

The liability of the traffic policeman would be merely administrative. The civilian has no liability at all.
Firstly, the offender is not yet a prisoner so there is no accountability yet. The term "prisoner" refers to one who is already booked and incarcerated no matter how short the time may be.

The policeman could not be said as having assisted the escape of the offender because as the problem says, he is assigned to direct traffic in a busy corner street. So he cannot be considered as falling under the third 3rd paragraph of Article 19 that would constitute his as an accessory.

The same is true with the civilian because the crime committed by the offender, which is snatching or a kind of robbery or theft as the case may be, is not one of those crimes mentioned under the third paragraph of Article 19 of the Revised Penal Code.

Where the public officer is still incumbent, the prosecution shall be with the Ombudsman.

Where the respondent is separated from service and the period has not yet prescribed, the information shall be filed in any prosecution's office in the city where the respondent resides. The prosecution shall file the case in the Regional Trial Court unless the violation carries a penalty higher than prision correccional, in which case the Sandiganbayan has jurisdiction.

The fact that the government benefited out of the prohibited act is no defense at all, the violation being mala prohibita.

Section 3 (f) of the Anti-Graft and Corrupt Practices Act – where the public officer neglects or refuses to act on a matter pending before him for the purpose of obtaining any pecuniary or material benefit or advantage in favor of or discriminating against another interested party.

The law itself additionally requires that the accused's dereliction, besides being without justification, must be for the purpose of obtaining from any person interested in the matter some pecuniary or material benefit or for the purpose of favoring any interested party, or discriminating against another interested party. This element is indispensable.

In other words, the neglect or refusal to act must motivated by gain or benefit, or purposely to favor the other interested party as held in **Coronado v. SB,** decided on August 18, 1993.

ANTI-PLUNDER ACT (R.A. 7080, AS AMENDED)

Definition of terms

Plunder is a crime defined and penalized under Republic Act No. 7080, which became effective in 1991. This crime somehow modified certain crimes in the Revised Penal Code insofar as the overt acts by which a public officer amasses, acquires, or accumulates ill-gotten wealth are felonies under the Revised Penal Code like bribery (Articles 210, 211, 211-A), fraud against the public treasury [Article 213], other frauds (Article 214), malversation (Article 217), when the ill-gotten wealth amounts to a total value of P50,000,000.00. The amount was reduced from P75,000,000.00 by Republic Act No. 7659 and the penalty was changed from life imprisonment to reclusion perpetua to death.

Short of the amount, plunder does not arise. Any amount less than P50,000,000.00 is a violation of the Revised Penal Code or the Anti-Graft and Corrupt Practices Act.

While the crime appears to be malum prohibitum, Republic Act No. 7080 provides that "in the imposition of penalties, the degree of participation and the attendance of mitigating and aggravating circumstances shall be considered by the court".

Ill-gotten wealth

Ill-gotten wealth means any asset, property, business enterprise or material possession of any person within the purview of Sec. 2, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

(1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;
(2) By receiving, directly or indirectly, any commission, gift, share, percentage,

kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project by reason of the office or position of the public officer concerned;

(3) By illegal or fraudulent conveyance or disposition of asset belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

(4) By obtaining, receiving, or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business or undertaking;

(5) By establishing agricultural, industrial, or commercial monopolies or other combinations and/or implementations of decrees and orders intended to benefit particular persons or special interests; or

(6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people, and the Republic of the Philippines *(Sec. 1d)*.

Plunder

Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1(d) hereof, in the aggregate amount or total value of at least Fifty million pesos (P50,000,000.00), shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment thereof forfeited in favor of the State *(Sec. 2)*.

Series / Combination

There should be committed by a combination or through a series of acts. There should be at least two acts otherwise the accused should be charged with the particular crime committed and not with plunder. A combination means at least two acts of a different category; while a series means at least two acts of the same category *(Estrada vs. Sandiganbayan, GR 148560, 11/21/2001)*.

Pattern

Rule of Evidence - For purposes of establishing the crime of plunder, it shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth, it being sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy *(Sec. 4)*.

HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Failure to Deliver Suspect to the Proper Judicial Authority within Three Days. - The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any police or law enforcement personnel who has apprehended or arrested, detained and taken custody of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism and fails to deliver such charged or suspected person to the proper judicial authority within the period of three days *(Sec. 20)*.

Infidelity in the custody of detained persons

Any public officer who has direct custody of a detained person or under the provisions of this Act and who by his deliberate act, misconduct, or inexcusable negligence causes or allows the escape of such detained person shall be guilty of an offense and shall suffer the penalty of: (a) twelve (12) years and one day to twenty (20) years of imprisonment, if the detained person has already been convicted and sentenced in a final judgment of a competent court; and (b) six years and one day to twelve (12) years of imprisonment, if the detained person has not been convicted and sentenced in a final judgment of a competent court *(Sec. 44)*.

False prosecution

Damages for Unproven Charge of Terrorism. - Upon acquittal, any person who is accused of terrorism shall be entitled to the payment of damages in the amount of Five hundred thousand pesos (P500,000.00) for every day that he or she has been detained or deprived of liberty or arrested without a warrant as a result of such an accusation. The amount of damages shall be automatically charged against the appropriations of the police agency or the Anti-Terrorism Council that brought or sanctioned the filing of the charges against the accused. It shall also be released within fifteen (15) days from the date of the acquittal of the accused. The award of damages mentioned above shall be without prejudice to the right of the acquitted accused to file criminal or administrative charges against those responsible for charging him with the case of terrorism.

Any officer, employee, personnel, or person who delays the release or refuses to release the amounts awarded to the individual acquitted of the crime of terrorism as directed in the paragraph immediately preceding shall suffer the penalty of six months of imprisonment.

If the deductions are less than the amounts due to the detained persons, the amount needed to complete the compensation shall be taken from the current appropriations for intelligence, emergency, social or other funds of the Office of the President.

In the event that the amount cannot be covered by the current budget of the police or law enforcement agency concerned, the amount shall be automatically included in the appropriations of the said agency for the coming year *(Sec. 50).*

8. CRIMES AGAINST PERSONS (246-266)

Crimes against persons

1. Parricide (Art. 246);
2. Murder (Art. 248);
3. Homicide (Art. 249);
4. Death caused in a tumultuous affray (Art. 251);
5. Physical injuries inflicted in a tumultuous affray (Art. 252);
6. Giving assistance to suicide (Art. 253);
7. Discharge of firearms (Art. 254);
8. Infanticide (Art. 255);
9. Intentional abortion (Art. 256);
10. Unintentional abortion (Art. 257);
11. Abortion practiced by the woman herself or by her parents (Art. 258);
12. Abortion practiced by a physician or midwife and dispensing of abortives (Art. 259);
13. Duel (Art. 260);
14. Challenging to a duel (Art. 261);
15. Mutilation (Art. 262);
16. Serious physical injuries (Art. 263);
17. Administering injurious substances or beverages (Art. 264);
18. Less serious physical injuries (Art. 265);
19. Slight physical injuries and maltreatment (Art. 266); and
20. Rape (Art. 266-A).

The essence of crime here involves the taking of human life, destruction of the fetus or inflicting injuries.

As to the taking of human life, you have:

(1) Parricide;
(2) Murder;
(3) Homicide;
(4) Infanticide; and
(5) Giving assistance to suicide.

Note that parricide is premised on the relationship between the offender and the offended. The victim is three days old or older. A stranger who conspires with the parent is guilty of murder.

In infanticide, the victim is younger than three days or 72 hours old; can be committed by a stranger. If a stranger who conspires with parent, both commit the crime of infanticide.

Article 246. Parricide

Elements

1. A person is killed;
2. The deceased is killed by the accused;
3. The deceased is the father, mother, or child, whether legitimate or illegitimate, or a

legitimate other ascendant or other descendant, or the legitimate spouse, of the accused.

This is a crime committed between people who are related by blood. Between spouses, even though they are not related by blood, it is also parricide.

The relationship must be in the direct line and not in the collateral line.

The relationship between the offender and the offended party must be legitimate, except when the offender and the offended party are related as parent and child.

If the offender and the offended party, although related by blood and in the direct line, are separated by an intervening illegitimate relationship, parricide can no longer be committed. The illegitimate relationship between the child and the parent renders all relatives after the child in the direct line to be illegitimate too.

The only illegitimate relationship that can bring about parricide is that between parents and illegitimate children as the offender and the offended parties.

Illustration:

A is the parent of B, the illegitimate daughter. B married C and they begot a legitimate child D. If D, daughter of B and C, would kill A, the grandmother, the crime cannot be parricide anymore because of the intervening illegitimacy. The relationship between A and D is no longer legitimate. Hence, the crime committed is homicide or murder.

Since parricide is a crime of relationship, if a stranger conspired in the commission of the crime, he cannot be held liable for parricide. His participation would make him liable for murder or for homicide, as the case may be. The rule of conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party.

Illustration:

A spouse of B conspires with C to kill B. C is the stranger in the relationship. C killed B with treachery. The means employed is made known to A and A agreed that the killing will be done by poisoning.

As far as A is concerned, the crime is based on his relationship with B. It is therefore parricide. The treachery that was employed in killing Bong will only be generic aggravating circumstance in the crime of parricide because this is not one crime that requires a qualifying circumstance.

But that same treachery, insofar as C is concerned, as a stranger who cooperated in the killing, makes the crime murder; treachery becomes a qualifying circumstance.

In killing a spouse, there must be a valid subsisting marriage at the time of the killing. Also, the information should allege the fact of such valid marriage between the accused and the victim.

In a ruling by the Supreme Court, it was held that if the information did not allege that the accused was legally married to the victim, he could not be convicted of parricide even if the marriage was established during the trial. In such cases, relationship shall be appreciated as generic aggravating circumstance.

The Supreme Court has also ruled that Muslim husbands with several wives can be convicted of parricide only in case the first wife is killed. There is no parricide if the other wives are killed although their marriage is recognized as valid. This is so because a Catholic man can commit the crime only once. If a Muslim husband could commit this crime more than once, in effect, he is being punished for the marriage which the law itself authorized him to contract.

That the mother killed her child in order to conceal her dishonor is not mitigating. This is immaterial to the crime of parricide, unlike in the case of infanticide. If the child is less than three days old when killed, the crime is infanticide and intent to conceal her dishonor is considered mitigating.

Article 247. Death or Physical Injuries Inflicted under Exceptional Circumstances

Elements

1. A legally married person, or a parent, surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person;
2. He or she kills any or both of them, or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter;
3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he

or she has not consented to the infidelity of the other spouse.

Two stages contemplated before the article will apply:

(1) When the offender surprised the other spouse with a paramour or mistress. The attack must take place while the sexual intercourse is going on. If the surprise was before or after the intercourse, no matter how immediate it may be, Article 247 does not apply. The offender in this situation only gets the benefit of a mitigating circumstance, that is, sufficient provocation immediately preceding the act.
(2) When the offender kills or inflicts serious physical injury upon the other spouse and/or paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

You have to divide the stages because as far as the first stage is concerned, it does not admit of any situation less than sexual intercourse.

So if the surprising took place before any actual sexual intercourse could be done because the parties are only in their preliminaries, the article cannot be invoked anymore.

If the surprising took place after the actual sexual intercourse was finished, even if the act being performed indicates no other conclusion but that sexual intercourse was had, the article does not apply.

As long as the surprising took place while the sexual intercourse was going on, the second stage becomes immaterial.

It is either killing or inflicting physical injuries while in that act or immediately thereafter. If the killing was done while in that act, no problem. If the killing was done when sexual intercourse is finished, a problem arises. First, were they surprised in actual sexual intercourse? Second, were they killed immediately thereafter?

The phrase "immediately thereafter" has been interpreted to mean that between the surprising and the killing of the inflicting of the physical injury, there should be no break of time. In other words, it must be a continuous process.

The article presumes that a legally married person who surprises his or her better half in actual sexual intercourse would be overcome by the obfuscation he felt when he saw them in the act that he lost his head. The law, thus, affords protection to a spouse who is considered to have acted in a justified outburst of passion or a state of mental disequilibrium. The offended spouse has no time to regain his self-control.

If there was already a break of time between the sexual act and the killing or inflicting of the injury, the law presupposes that the offender regained his reason and therefore, the article will not apply anymore.

As long as the act is continuous, the article still applies.

Where the accused surprised his wife and his paramour in the act of illicit intercourse, as a result of which he went out to kill the paramour in a fit of passionate outburst. Although about one hour had passed between the time the accused discovered his wife having sexual intercourse with the victim and the time the latter was actually killed, it was held in People v. Abarca, 153 SCRA 735, that Article 247 was applicable, as the shooting was a continuation of the pursuit of the victim by the accused. Here, the accused, after the discovery of the act of infidelity of his wife, looked for a firearm in Tacloban City.

Article 247 does not provide that the victim is to be killed instantly by the accused after surprising his spouse in the act of intercourse. What is required is that the killing is the proximate result of the outrage overwhelming the accused upon the discovery of the infidelity of his spouse. The killing should have been actually motivated by the same blind impulse.

Illustration:

A upon coming home, surprised his wife, B, together with C. The paramour was fast enough to jump out of the window. A got the bolo and chased C but he disappeared among the neighborhood. So A started looking around for about an hour but he could not find the paramour. A gave up and was on his way home. Unfortunately, the paramour, thinking that A was no longer around, came out of hiding and at that moment, A saw him and hacked him to death. There was a break of time and Article 247 does not apply anymore because when he gave up the search, it is a circumstance showing that his anger had already died down.

Article 247, far from defining a felony merely grants a privilege or benefit, more of an exempting circumstance as the penalty is intended more for the protection of the accused than a punishment. Death under exceptional character cannot be qualified by either aggravating or mitigating circumstances.

In the case of **People v. Abarca, 153 SCRA 735,** two persons suffered physical injuries as they were caught in the crossfire when the accused shot the victim. A complex crime of double frustrated murder was not committed as the accused did not have the intent to kill the two victims. Here, the accused did not commit murder when he fired at the paramour of his wife. Inflicting death under exceptional circumstances is not murder. The accused was held liable for negligence under the first part, second paragraph of Article 365, that is, less serious physical injuries through simple negligence. No aberratio ictus because he was acting lawfully.

A person who acts under Article 247 is not committing a crime. Since this is merely an exempting circumstance, the accused must first be charged with:

(1) Parricide – if the spouse is killed;
(2) Murder or homicide – depending on how the killing was done insofar as the paramour or the mistress is concerned;
(3) Homicide – through simple negligence, if a third party is killed;
(4) Physical injuries – through reckless imprudence, if a third party is injured.

If death results or the physical injuries are serious, there is criminal liability although the penalty is only destierro. The banishment is intended more for the protection of the offender rather than a penalty.

If the crime committed is less serious physical injuries or slight physical injuries, there is no criminal liability.

The article does not apply where the wife was not surprised in flagrant adultery but was being abused by a man as in this case there will be defense of relation.

If the offender surprised a couple in sexual intercourse, and believing the woman to be his wife, killed them, this article may be applied if the mistake of facts is proved.

The benefits of this article do not apply to the person who consented to the infidelity of his spouse or who facilitated the prostitution of his wife.

The article is also made available to parents who shall surprise their daughter below 18 years of age in actual sexual intercourse while "living with them." The act should have been committed by the daughter with a seducer. The two stages also apply. The parents cannot invoke this provision if, in a way, they have encouraged the prostitution of the daughter.

The phrase "living with them" is understood to be in their own dwelling, because of the embarrassment and humiliation done not only to the parent but also to the parental abode.

If it was done in a motel, the article does not apply.

Illustration:

A abandoned his wife B for two years. To support their children, A had to accept a relationship with another man. A learned of this, and surprised them in the act of sexual intercourse and killed B. A is not entitled to Article 248. Having abandoned his family for two years, it was natural for her to feel some affection for others, more so of a man who could help her.

Homicide committed under exceptional circumstances, although punished with destierro, is within the jurisdiction of the Regional Trial Court and not the MTC because the crime charged is homicide or murder. The exceptional circumstances, not being elements of the crime but a matter of defense, are not pleaded. It practically grants a privilege amounting to an exemption for adequate punishment.

Article 248. Murder

Elements

1. A person was killed;
2. Accused killed him;
3. The killing was attended by any of the following qualifying circumstances –
   (a) With treachery, taking advantage of superior strength, with the aid or armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
   (b) In consideration of a price, reward or promise;
   (c) By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any

other means involving great waste and ruin;

(d) On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;

(e) With evident premeditation;

(f) With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

4. The killing is not parricide or infanticide.

Homicide is qualified to murder if any of the qualifying circumstances under Article 248 is present. It is the unlawful killing of a person not constituting murder, parricide or infanticide.

In murder, any of the following qualifying circumstances is present:

(1) Treachery, taking advantage of superior strength, aid or armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

There is treachery when the offender commits any of the crimes against the person employing means, methods or forms in the execution thereof that tend directly and especially to insure its execution without risk to himself arising from the defense which the offended party might make.

This circumstance involves means, methods, form in the execution of the killing which may actually be an aggravating circumstance also, in which case, the treachery absorbs the same.

Illustration:

A person who is determined to kill resorted to the cover of darkness at nighttime to insure the killing. Nocturnity becomes a means that constitutes treachery and the killing would be murder. But if the aggravating circumstance of nocturnity is considered by itself, it is not one of those which qualify a homicide to murder. One might think the killing is homicide unless nocturnity is considered as constituting treachery, in which case the crime is murder.

The essence of treachery is that the offended party was denied the chance to defend himself because of the means, methods, form in executing the crime deliberately adopted by the offender. It is a matter of whether or not the offended party was denied the chance of defending himself.

If the offended was denied the chance to defend himself, treachery qualifies the killing to murder. If despite the means resorted to by the offender, the offended was able to put up a defense, although unsuccessful, treachery is not available. Instead, some other circumstance may be present. Consider now whether such other circumstance qualifies the killing or not.

Illustration:

If the offender used superior strength and the victim was denied the chance to defend himself, there is treachery. The treachery must be alleged in the information. But if the victim was able to put up an unsuccessful resistance, there is no more treachery but the use of superior strength can be alleged and it also qualifies the killing to murder.

One attendant qualifying circumstance is enough. If there are more than one qualifying circumstance alleged in the information for murder, only one circumstance will qualify the killing to murder and the other circumstances will be taken as generic.

To be considered qualifying, the particular circumstance must be alleged in the information. If what was alleged was not proven and instead another circumstance, not alleged, was established during the trial, even if the latter constitutes a qualifying circumstance under Article 248, the same cannot qualify the killing to murder. The accused can only be convicted of homicide.

Generally, murder cannot be committed if at the beginning, the offended had no intent to kill because the qualifying circumstances must be resorted to with a view of killing the offended party. So if the killing were at the "spur of the moment", even though the victim was denied the chance to defend himself because of the suddenness of the attack, the crime would only be homicide. Treachery contemplates that the means, methods and form in the execution were consciously adopted and deliberately resorted to by the offender, and were not merely incidental to the killing.

If the offender may have not intended to kill the victim but he only wanted to commit a crime against him in the beginning, he will still be liable for murder if in the manner of

committing the felony there was treachery and as a consequence thereof the victim died. This is based on the rule that a person committing a felony shall be liable for the consequences thereof although different from that which he intended.

Illustration:

The accused, three young men, resented the fact that the victim continued to visit a girl in their neighborhood despite the warning they gave him. So one evening, after the victim had visited the girl, they seized and tied him to a tree, with both arms and legs around the tree. They thought they would give him a lesson by whipping him with branches of gumamela until the victim fell unconscious. The accused left not knowing that the victim died.

The crime committed was murder. The accused deprived the victim of the chance to defend himself when the latter was tied to a tree. Treachery is a circumstance referring to the manner of committing the crime. There was no risk to the accused arising from the defense by the victim.

Although what was initially intended was physical injury, the manner adopted by the accused was treacherous and since the victim died as a consequence thereof, the crime is murder -- although originally, there was no intent to kill.

When the victim is already dead, intent to kill becomes irrelevant. It is important only if the victim did not die to determine if the felony is physical injury or attempted or frustrated homicide.

So long as the means, methods and form in the execution is deliberately adopted, even if there was no intent to kill, there is treachery.

(2) In consideration of price, reward or promises;

(3) Inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of a motor vehicle, or with the use of other means involving great waste and ruin;

The only problem insofar as the killing by fire is concerned is whether it would be arson with homicide, or murder.

When a person is killed by fire, the primordial criminal intent of the offender is considered. If the primordial criminal intent of the offender is to kill and fire was only used as a means to do so, the crime is only murder. If the primordial criminal intent of the offender is to destroy property with the use of pyrotechnics and incidentally, somebody within the premises is killed, the crime is arson with homicide. But this is not a complex crime under Article 48. This is single indivisible crime penalized under Article 326, which is death as a consequence of arson. That somebody died during such fire would not bring about murder because there is no intent to kill in the mind of the offender. He intended only to destroy property. However, a higher penalty will be applied.

In **People v. Pugay and Samson, 167 SCRA 439,** there was a town fiesta and the two accused were at the town plaza with their companions. All were uproariously happy, apparently drenched with drink. Then, the group saw the victim, a 25 year old retard walking nearby and they made him dance by tickling his sides with a piece of wood. The victim and the accused Pugay were friends and, at times, slept in the same place together. Having gotten bored with their form of entertainment, accused Pugay went and got a can of gasoline and poured it all over the retard. Then, the accused Samson lit him up, making him a frenzied, shrieking human torch. The retard died.

It was held that Pugay was guilty of homicide through reckless imprudence. Samson only guilty of homicide, with the mitigating circumstance of no intention to commit so grave a wrong. There was no animosity between the two accused and the victim such that it cannot be said that they resort to fire to kill him. It was merely a part of their fun making but because their acts were felonious, they are criminally liable.

(4) On occasion of any of the calamities enumerated in the preceding paragraph c, or an earthquake, eruption of volcano, destructive cyclone, epidemic or any other public calamity;

(5) Evident premeditation; and

(6) Cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Cruelty includes the situation where the victim is already dead and yet, acts were

committed which would decry or scoff the corpse of the victim. The crime becomes murder.

Hence, this is not actually limited to cruelty. It goes beyond that because even if the victim is already a corpse when the acts deliberately augmenting the wrong done to him were committed, the killing is still qualified to murder although the acts done no longer amount to cruelty.

Under Article 14, the generic aggravating circumstance of cruelty requires that the victim be alive, when the cruel wounds were inflicted and, therefore, must be evidence to that effect. Yet, in murder, aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.

Illustration:

Two people engaged in a quarrel and they hacked each other, one killing the other. Up to that point, the crime is homicide. However, if the killer tried to dismember the different parts of the body of the victim, indicative of an intention to scoff at or decry or humiliate the corpse of the victim, then what would have murder because this circumstance is recognized under Article 248, even though it was inflicted or was committed when the victim was already dead.

The following are holdings of the Supreme Court with respect to the crime of murder:

(1) Killing of a child of tender age is murder qualified by treachery because the weakness of the child due to his tender age results in the absence of any danger to the aggressor.
(2) Evident premeditation is absorbed in price, reward or promise, if without the premeditation the inductor would not have induced the other to commit the act but not as regards the one induced.
(3 Abuse of superior strength is inherent in and comprehended by the circumstance of treachery or forms part of treachery.
(4) Treachery is inherent in poison.
(5) Where one of the accused, who were charged with murder, was the wife of the deceased but here relationship to the deceased was not alleged in the information, she also should be convicted of murder but the relationship should be appreciated as aggravating.
(6) Killing of the victims hit by hand grenade thrown at them is murder qualified by explosion not by treachery.
(7) Where the accused housemaid gagged a three year old boy, son of her master, with stockings, placed him in a box with head down and legs upward and covered the box with some sacks and other boxes, and the child instantly died because of suffocation, and then the accused demanded ransom from the parents, such did not convert the offense into kidnapping with murder. The accused was well aware that the child could be suffocated to death in a few minutes after she left. Ransom was only a part of the diabolical scheme to murder the child, to conceal his body and then demand money before discovery of the body.

The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or deprivation of his liberty. If there is no showing that the accused intended to deprive their victims of their liberty for some time and there being no appreciable interval between their being taken and their being shot, murder and not kidnapping with murder is committed.

Article 249. Homicide

Elements

1. A person was killed;
2. Offender killed him without any justifying circumstances;
3. Offender had the intention to kill, which is presumed;
4. The killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

Homicide is the unlawful killing of a person not constituting murder, parricide or infanticide.

Distinction between homicide and physical injuries:

In attempted or frustrated homicide, there is intent to kill.

In physical injuries, there is none. However, if as a result of the physical injuries inflicted, the victim died, the crime will be homicide because the law punishes the result, and not the intent of

the act.

The following are holdings of the Supreme Court with respect to the crime of homicide:

(1) Physical injuries are included as one of the essential elements of frustrated homicide.
(2) If the deceased received two wounds from two persons acting independently of each other and the wound inflicted by either could have caused death, both of them are liable for the death of the victim and each of them is guilty of homicide.
(3) If the injuries were mortal but were only due to negligence, the crime committed will be serious physical injuries through reckless imprudence as the element of intent to kill in frustrated homicide is incompatible with negligence or imprudence.
(4) Where the intent to kill is not manifest, the crime committed has been generally considered as physical injuries and not attempted or frustrated murder or homicide.
(5) When several assailants not acting in conspiracy inflicted wounds on a victim but it cannot be determined who inflicted which would which caused the death of the victim, all are liable for the victim's death.

Note that while it is possible to have a crime of homicide through reckless imprudence, it is not possible to have a crime of frustrated homicide through reckless imprudence.

Article 251. Death Caused in A Tumultuous Affray

Elements

1. There are several persons;
2. They do not compose groups organized for the common purpose of assaulting and attacking each other reciprocally;
3. These several persons quarreled and assaulted one another in a confused and tumultuous manner;
4. Someone was killed in the course of the affray;
5. It cannot be ascertained who actually killed the deceased;
6. The person or persons who inflicted serious physical injuries or who used violence can be identified.

Tumultuous affray simply means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer is if death results, or who inflicted the serious physical injury, but the person or persons who used violence are known.

It is not a tumultuous affray which brings about the crime; it is the inability to ascertain actual perpetrator. It is necessary that the very person who caused the death cannot be known, not that he cannot be identified. Because if he is known but only his identity is not known, then he will be charged for the crime of homicide or murder under a fictitious name and not death in a tumultuous affray. If there is a conspiracy, this crime is not committed.

To be considered death in a tumultuous affray, there must be:

(1) a quarrel, a free-for-all, which should not involve organized group; and
(2) someone who is injured or killed because of the fight.

As long as it cannot be determined who killed the victim, all of those persons who inflicted serious physical injuries will be collectively answerable for the death of that fellow.

The Revised Penal Code sets priorities as to who may be liable for the death or physical injury in tumultuous affray:

(1) The persons who inflicted serious physical injury upon the victim;
(2) If they could not be known, then anyone who may have employed violence on that person will answer for his death.
(3) If nobody could still be traced to have employed violence upon the victim, nobody will answer. The crimes committed might be disturbance of public order, or if participants are armed, it could be tumultuous disturbance, or if property was destroyed, it could be malicious mischief.

The fight must be tumultuous. The participants must not be members of an organized group. This is different from a rumble which involves organized groups composed of persons who are to attack others. If the fight is between such groups, even if you cannot identify who, in particular, committed the killing, the adverse party composing the organized group will be collectively charged for the death of that person.

Illustration:

If a fight ensued between 20 Sigue-Sigue Gang men and 20 Bahala-Na- Gang men, and in the course thereof, one from each group was killed, the crime would be homicide or murder; there

will be collective responsibility on both sides. Note that the person killed need not be a participant in the fight.

Article 252. Physical Injuries Inflicted in A Tumultuous Affray

Elements

1. There is a tumultuous affray;
2. A participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only;
3. The person responsible thereof cannot be identified;
4. All those who appear to have used violence upon the person of the offended party are known.

If in the course of the tumultuous affray, only serious or less serious physical injuries are inflicted upon a participant, those who used violence upon the person of the offended party shall be held liable.

In physical injuries caused in a tumultuous affray, the conditions are also the same. But you do not have a crime of physical injuries resulting from a tumultuous affray if the physical injury is only slight. The physical injury should be serious or less serious and resulting from a tumultuous affray. So anyone who may have employed violence will answer for such serious or less serious physical injury.

If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray. The offended party cannot complain if he cannot identify who inflicted the slight physical injuries on him.

Article 253. Giving Assistance to Suicide

Acts punished

1. Assisting another to commit suicide, whether the suicide is consummated or not;
2. Lending his assistance to another to commit suicide to the extent of doing the killing himself.

Giving assistance to suicide means giving means (arms, poison, etc.) or whatever manner of positive and direct cooperation (intellectual aid, suggestions regarding the mode of committing suicide, etc.).

In this crime, the intention must be for the person who is asking the assistance of another to commit suicide.

If the intention is not to commit suicide, as when he just wanted to have a picture taken of him to impress upon the world that he is committing suicide because he is not satisfied with the government, the crime is held to be inciting to sedition.

He becomes a co-conspirator in the crime of inciting to sedition, but not of giving assistance to suicide because the assistance must be given to one who is really determined to commit suicide.

If the person does the killing himself, the penalty is similar to that of homicide, which is reclusion temporal. There can be no qualifying circumstance because the determination to die must come from the victim. This does not contemplate euthanasia or mercy killing where the crime is homicide (if without consent; with consent, covered by Article 253).

The following are holdings of the Supreme Court with respect to this crime:

(1) The crime is frustrated if the offender gives the assistance by doing the killing himself as firing upon the head of the victim but who did not die due to medical assistance.
(2) The person attempting to commit suicide is not liable if he survives. The accused is liable if he kills the victim, his sweetheart, because of a suicide pact.

In other penal codes, if the person who wanted to die did not die, there is liability on his part because there is public disturbance committed by him. Our Revised Penal Code is silent but there is no bar against accusing the person of disturbance of public order if indeed serious disturbance of public peace occurred due to his attempt to commit suicide. If he is not prosecuted, this is out of pity and not because he has not violated the Revised Penal Code.

In mercy killing, the victim is not in a position to commit suicide. Whoever would heed his advice is not really giving assistance to suicide but doing the killing himself. In giving assistance to suicide, the principal actor is the person committing the suicide.

Both in euthanasia and suicide, the intention to

the end life comes from the victim himself; otherwise the article does not apply. The victim must persistently induce the offender to end his life. If there is only slight persuasion to end his life, and the offender readily assented thereto.

Article 254. Discharge of Firearms

1. Offender discharges a firearm against or at another person;
2. Offender had no intention to kill that person.

This crime cannot be committed through imprudence because it requires that the discharge must be directed at another.

> If the firearm is directed at a person and the trigger was pressed but did not fire, the crime is frustrated discharge of firearm.

If the discharge is not directed at a person, the crime may constitute alarm and scandal.

The following are holdings of the Supreme Court with respect to this crime:

(1) If serious physical injuries resulted from discharge, the crime committed is the complex crime of serious physical injury with illegal discharge of firearm, or if less serious physical injury, the complex crime of less serious physical injury with illegal discharge of firearm will apply.
(2) Firing a gun at a person even if merely to frighten him constitutes illegal discharge of firearm.

Article 255. Infanticide

Elements

1. A child was killed by the accused;
2. The deceased child was less than 72 hours old.

This is a crime based on the age of the victim. The victim should be less than three days old.

The offender may actually be the parent of the child. But you call the crime infanticide, not parricide, if the age of the victim is less than three days old. If the victim is three days old or above, the crime is parricide.

Illustration:

An unmarried woman, A, gave birth to a child, B. To conceal her dishonor, A conspired with C to dispose of the child. C agreed and killed the child B by burying the child somewhere.

If the child was killed when the age of the child was three days old and above already, the crime of A is parricide. The fact that the killing was done to conceal her dishonor will not mitigate the criminal liability anymore because concealment of dishonor in killing the child is not mitigating in parricide.

If the crime committed by A is parricide because the age of the child is three days old or above, the crime of the co-conspirator C is murder. It is not parricide because he is not related to the victim.

If the child is less than three days old when killed, both the mother and the stranger commits infanticide because infanticide is not predicated on the relation of the offender to the offended party but on the age of the child. In such a case, concealment of dishonor as a motive for the mother to have the child killed is mitigating.

Concealment of dishonor is not an element of infanticide. It merely lowers the penalty. If the child is abandoned without any intent to kill and death results as a consequence, the crime committed is not infanticide but abandonment under Article 276.

If the purpose of the mother is to conceal her dishonor, infanticide through imprudence is not committed because the purpose of concealing the dishonor is incompatible with the absence of malice in culpable felonies.

If the child is born dead, or if the child is already dead, infanticide is not committed.

Article 256. Intentional Abortion

Acts punished

1. Using any violence upon the person of the pregnant woman;
2. Acting, but without using violence, without the consent of the woman. (By administering drugs or beverages upon such pregnant woman without her consent.)
3. Acting (by administering drugs or

beverages), with the consent of the pregnant woman.

Elements

1. There is a pregnant woman;
2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;
3. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom;
4. The abortion is intended.

Abortion is the violent expulsion of a fetus from the maternal womb. If the fetus has been delivered but it could not subsist by itself, it is still a fetus and not a person. Thus, if it is killed, the crime committed is abortion not infanticide.

Distinction between infanticide and abortion

It is infanticide if the victim is already a person less that three days old or 72 hours and is viable or capable of living separately from the mother's womb.

It is abortion if the victim is not viable but remains to be a fetus.

Abortion is not a crime against the woman but against the fetus. If mother as a consequence of abortion suffers death or physical injuries, you have a complex crime of murder or physical injuries and abortion.

In intentional abortion, the offender must know of the pregnancy because the particular criminal intention is to cause an abortion. Therefore, the offender must have known of the pregnancy for otherwise, he would not try an abortion.

If the woman turns out not to be pregnant and someone performs an abortion upon her, he is liable for an impossible crime if the woman suffers no physical injury. If she does, the crime will be homicide, serious physical injuries, etc.

Under the Article 40 of the Civil Code, birth determines personality. A person is considered born at the time when the umbilical cord is cut. He then acquires a personality separate from the mother.

But even though the umbilical cord has been cut, Article 41 of the Civil Code provides that if the fetus had an intra-uterine life of less than seven months, it must survive at least 24 hours after the umbilical cord is cut for it to be considered born.

Illustration:

A mother delivered an offspring which had an intra-uterine life of seven months. Before the umbilical cord is cut, the child was killed.

If it could be shown that had the umbilical cord been cut, that child, if not killed, would have survived beyond 24 hours, the crime is infanticide because that conceived child is already considered born.

If it could be shown that the child, if not killed, would not have survived beyond 24 hours, the crime is abortion because what was killed was a fetus only.

In abortion, the concealment of dishonor as a motive of the mother to commit the abortion upon herself is mitigating. It will also mitigate the liability of the maternal grandparent of the victim – the mother of the pregnant woman – if the abortion was done with the consent of the pregnant woman.

If the abortion was done by the mother of the pregnant woman without the consent of the woman herself, even if it was done to conceal dishonor, that circumstance will not mitigate her criminal liability.

But if those who performed the abortion are the parents of the pregnant woman, or either of them, and the pregnant woman consented for the purpose of concealing her dishonor, the penalty is the same as that imposed upon the woman who practiced the abortion upon herself .

Frustrated abortion is committed if the fetus that is expelled is viable and, therefore, not dead as abortion did not result despite the employment of adequate and sufficient means to make the pregnant woman abort. If the means are not sufficient or adequate, the crime would be an impossible crime of abortion. In consummated abortion, the fetus must be dead.

One who persuades her sister to abort is a co-principal, and one who looks for a physician to make his sweetheart abort is an accomplice. The physician will be punished under Article 259 of the Revised Penal Code.

Article 257. Unintentional Abortion

1. There is a pregnant woman;
2. Violence is used upon such pregnant

woman without intending an abortion;
3. The violence is intentionally exerted;
4. As a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

If the pregnant woman aborted because of intimidation, the crime committed is not unintentional abortion because there is no violence; the crime committed is light threats.

If the pregnant woman was killed by violence by her husband, the crime committed is the complex crime of parricide with unlawful abortion.

Unintentional abortion may be committed through negligence as it is enough that the use of violence be voluntary.

Illustration:

A quarrel ensued between A, husband, and B, wife. A became so angry that he struck B, who was then pregnant, with a soft drink bottle on the hip. Abortion resulted and B died.

In **US v. Jeffry, 15 Phil. 391,** the Supreme Court said that knowledge of pregnancy of the offended party is not necessary. In **People v. Carnaso, decided on April 7, 1964,** however, the Supreme Court held that knowledge of pregnancy is required in unintentional abortion.

Criticism:

Under Article 4, paragraph 1 of the Revised Penal Code, any person committing a felony is criminally liable for all the direct, natural, and logical consequences of his felonious acts although it may be different from that which is intended. The act of employing violence or physical force upon the woman is already a felony. It is not material if offender knew about the woman being pregnant or not.

If the act of violence is not felonious, that is, act of self-defense, and there is no knowledge of the woman's pregnancy, there is no liability. If the act of violence is not felonious, but there is knowledge of the woman's pregnancy, the offender is liable for unintentional abortion.

Illustration:

The act of pushing another causing her to fall is a felonious act and could result in physical injuries. Correspondingly, if not only physical injuries were sustained but abortion also resulted, the felonious act of pushing is the proximate cause of the unintentional abortion.

Article 258. Abortion Practiced by the Woman Herself or by Her Parents

Elements

1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Abortion is caused by –
   (a) The pregnant woman herself;
   (b) Any other person, with her consent; or
   (c) Any of her parents, with her consent for the purpose of concealing her dishonor.

Article 259. Abortion Practiced by A Physician or Midwife and Dispensing of Abortives

Elements

1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Offender, who must be a physician or midwife, caused or assisted in causing the abortion;
4. Said physician or midwife took advantage of his or her scientific knowledge or skill.

If the abortion is produced by a physician to save the life of the mother, there is no liability. This is known as a therapeutic abortion. But abortion without medical necessity to warrant it is punishable even with the consent of the woman or her husband.

Illustration:

A woman who is pregnant got sick. The doctor administered a medicine which resulted in Abortion. The crime committed was unintentional abortion through negligence or imprudence.

Article 260. Responsibility of Participants in A Duel

Acts punished

1. Killing one's adversary in a duel;
2. Inflicting upon such adversary physical injuries;
3. Making a combat although no physical injuries have been inflicted.

Persons liable

1. The person who killed or inflicted physical injuries upon his adversary, or both combatants in any other case, as principals.
2. The seconds, as accomplices.

There is no such crime nowadays because people hit each other even without entering into any pre-conceived agreement. This is an obsolete provision.

A duel may be defined as a formal or regular combat previously consented to by two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight to settle some antecedent quarrel.

If these are not the conditions of the fight, it is not a duel in the sense contemplated in the Revised Penal Code. It will be a quarrel and anyone who killed the other will be liable for homicide or murder, as the case may be.

The concept of duel under the Revised Penal Code is a classical one.

Article 261. Challenging to A Duel

Acts punished

1. Challenging another to a duel;
2. Inciting another to give or accept a challenge to a duel;
3. Scoffing at or decrying another publicly for having refused to accept a challenge to fight a duel.

Illustration:

If one challenges another to a duel by shouting "Come down, Olympia, let us measure your prowess. We will see whose intestines will come out. You are a coward if you do not come down", the crime of challenging to a duel is not committed. What is committed is the crime of light threats under Article 285, paragraph 1 of the Revised Penal Code.

Article 262. Mutilation

Acts punished

1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction;
   Elements
   (a) There be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium;
   (b) The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction
2. Intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

Mutilation is the lopping or clipping off of some part of the body.

The intent to deliberately cut off the particular part of the body that was removed from the offended party must be established. If there is no intent to deprive victim of particular part of body, the crime is only serious physical injury.

The common mistake is to associate this with the reproductive organs only. Mutilation includes any part of the human body that is not susceptible to grow again.

If what was cut off was a reproductive organ, the penalty is much higher than that for homicide.

This cannot be committed through criminal negligence.

Article 263. Serious Physical Injuries

How committed

1. By wounding;
2. By beating;
3. By assaulting; or
4. By administering injurious substance.

In one case, the accused, while conversing with the offended party, drew the latter's bolo from its scabbard. The offended party caught hold of the edge of the blade of his bolo and wounded himself. It was held that since the accused did not wound, beat or assault the offended party, he cannot be guilty of serious physical injuries.

Serious physical injuries

1. When the injured person becomes insane, imbecile, impotent or blind in consequence of the physical injuries inflicted;
2. When the injured person –
   (a) Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, afoot, an arm, or a leg;
   (b) Loses the use of any such member; or
   (c) Becomes incapacitated for the work in which he was theretofore habitually engaged, in consequence of the physical injuries inflicted;
3. When the person injured –
   (a) Becomes deformed; or
   (b) Loses any other member of his body; or
   (c) Loses the use thereof; or
   (d) Becomes ill or incapacitated for the performance of the work in which he was habitually engaged for more than 90 days in consequence of the physical injuries inflicted;
4. When the injured person becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

The crime of physical injuries is a crime of result because under our laws the crime of physical injuries is based on the gravity of the injury sustained. So this crime is always consummated, notwithstanding the opinion of Spanish commentators like Cuello Calon, Viada, etc., that it can be committed in the attempted or frustrated stage.

If the act does not give rise to injuries, you will not be able to say whether it is attempted slight physical injuries, attempted less serious physical injuries, or attempted serious physical injuries unless the result is there.

The reason why there is no attempted or frustrated physical injuries is because the crime of physical injuries is determined on the gravity of the injury. As long as the injury is not there, there can be no attempted or frustrated stage thereof.

Classification of physical injuries:

(1) Between slight physical injuries and less serious physical injuries, you have a duration of one to nine days if slight physical injuries; or 10 days to 20 days if less serious physical injuries. Consider the duration of healing and treatment.

The significant part here is between slight physical injuries and less serious physical injuries. You will consider not only the healing duration of the injury but also the medical attendance required to treat the injury. So the healing duration may be one to nine days, but if the medical treatment continues beyond nine days, the physical injuries would already qualify as less serious physical injuries. The medical treatment may have lasted for nine days, but if the offended party is still incapacitated for labor beyond nine days, the physical injuries are already considered less serious physical injuries.

(2) Between less serious physical injuries and serious physical injuries, you do not consider the period of medical treatment. You only consider the period when the offended party is rendered incapacitated for labor.

If the offended party is incapacitated to work for less than 30 days, even though the treatment continued beyond 30 days, the physical injuries are only considered less serious because for purposes of classifying the physical injuries as serious, you do not consider the period of medical treatment. You only consider the period of incapacity from work.

(3) When the injury created a deformity upon the offended party, you disregard the healing duration or the period of medical treatment involved. At once, it is considered serious physical injuries.

So even though the deformity may not have incapacitated the offended party from work, or even though the medical treatment did not go beyond nine days, that deformity will bring about the crime of serious physical injuries.

Deformity requires the concurrence of the following conditions:

(a) The injury must produce ugliness;
(b) It must be visible;
(c) The ugliness will not disappear through natural healing process.

Illustration:

Loss of molar tooth – This is not deformity as it is not visible.
Loss of permanent front tooth – This is deformity as it is visible and permanent.
Loss of milk front tooth – This is not deformity as it is visible but will be naturally replaced.

Serious physical injuries is punished with higher penalties in the following cases:

(1) If it is committed against any of the persons referred to in the crime of parricide under Article 246;
(2) If any of the circumstances qualifying murder attended its commission.

Thus, a father who inflicts serious physical injuries upon his son will be liable for qualified serious physical injuries.

Article 264. Administering Injurious Substances or Beverages

Elements

1. Offender inflicted upon another any serious physical injury;
2. It was done by knowingly administering to him any injurious substance or beverages or by taking advantage of his weakness of mind or credulity;
3. He had no intent to kill.

Article 265. Less Serious Physical Injuries

Matters to be noted in this crime

1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time;
2. The physical injuries must not be those described in the preceding articles.

Qualified as to penalty

1. A fine not exceeding P 500.00, in addition to arresto mayor, shall be imposed for less serious physical injuries when –
   (a) There is a manifest intent to insult or offend the injured person; or
   (b) There are circumstances adding ignominy to the offense.
2. A higher penalty is imposed when the victim is either –
   (a) The offender's parents, ascendants, guardians, curators or teachers; or
   (b) Persons of rank or person in authority, provided the crime is not direct assault.

If the physical injuries do not incapacitate the offended party nor necessitate medical attendance, slight physical injuries is committed. But if the physical injuries heal after 30 days, serious physical injuries is committed under Article 263, paragraph 4.

Article 265 is an exception to Article 48 in relation to complex crimes as the latter only takes place in cases where the Revised Penal Code has no specific provision penalizing the same with a definite, specific penalty. Hence, there is no complex crime of slander by deed with less serious physical injuries but only less serious physical injuries if the act which was committed produced the less serious physical injuries with the manifest intent to insult or offend the offended party, or under circumstances adding ignominy to the offense.

Article 266. Slight Physical Injuries and Maltreatment

Acts punished

1. Physical injuries incapacitated the offended party for labor from one to nine days, or required medical attendance during the same period;
2. Physical injuries which did not prevent the offended party from engaging in his habitual work or which did not require medical attendance;
3. Ill-treatment of another by deed without causing any injury.

This involves even ill-treatment where there is no sign of injury requiring medical treatment.

Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

But if the slapping is done to cast dishonor upon the person slapped, the crime is slander by deed. If the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or

anger, the crime is still ill-treatment or slight physical injuries.

Illustration:

If Hillary slaps Monica and told her "You choose your seconds . Let us meet behind the Quirino Grandstand and see who is the better and more beautiful between the two of us", the crime is not ill-treatment, slight physical injuries or slander by deed; it is a form of challenging to a duel. The criminal intent is to challenge a person to a duel.

The crime is slight physical injury if there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance.

Article 266-A. Rape, When and How Committed

Elements under paragraph 1

1. Offender is a man;
2. Offender had carnal knowledge of a woman;
3. Such act is accomplished under any of the following circumstances:
   (a) By using force or intimidation;
   (b) When the woman is deprived of reason or otherwise unconscious;
   (c) By means of fraudulent machination or grave abuse of authority; or
   (d) When the woman is under 12 years of age or demented.

Elements under paragraph 2

1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
   (a) By inserting his penis into another person's mouth or anal orifice; or
   (b) By inserting any instrument or object into the genital or anal orifice of another person;
3. The act of sexual assault is accomplished under any of the following circumstances:
   (a) By using force or intimidation; or
   (b) When the woman is deprived of reason or otherwise unconscious; or
   (c) By means of fraudulent machination or grave abuse of authority; or
   (d) When the woman is under 12 years of age or demented.

Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as A Crime against Persons, Amending for the Purpose the Revised Penal Code) repealed Article335 on rape and added a chapter on Rape under Title 8.

Classification of rape

(1) Traditional concept under Article 335 - carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.
(2) Sexual assault - committed with an instrument or an object or use of the penis with penetration of mouth or anal orifice. The offended party or the offender can either be man or woman, that is, if a woman or a man uses an instrument on anal orifice of male, she or he can be liable for rape.

Rape is committed when a man has carnal knowledge of a woman under the following circumstances:

(1) Where intimidation or violence is employed with a view to have carnal knowledge of a woman;
(2) Where the victim is deprived of reason or otherwise unconscious;
(3) Where the rape was made possible because of fraudulent machination or abuse of authority; or
(4) Where the victim is under 12 years of age, or demented, even though no intimidation nor violence is employed.

Sexual assault is committed under the following circumstances:

(1) Where the penis is inserted into the anal or oral orifice; or
(2) Where an instrument or object is inserted into the genital or oral orifice.

If the crime of rape / sexual assault is committed with the following circumstances, the following penalties are imposed:

(1) Reclusion perpetua to death/ prision mayor to reclusion temporal --
   (a) Where rape is perpetrated by the accused with a deadly weapon; or
   (b) Where it is committed by two or more persons.
(2) Reclusion perpetua to death/ reclusion temporal --
   (a) Where the victim of the rape has become insane; or
   (b) Where the rape is attempted but a killing was committed by the offender on the occasion or by reason of the rape.
(3) Death / reclusion perpetua --

Where homicide is committed by reason or on occasion of a consummated rape.

(4) Death/reclusion temporal --
   (a) Where the victim is under 18 years of age and the offender is her ascendant, stepfather, guardian, or relative by affinity or consanguinity within the 3rd civil degree, or the common law husband of the victim's mother; or
   (b) Where the victim was under the custody of the police or military authorities, or other law enforcement agency;
   (c) Where the rape is committed in full view of the victim's husband, the parents, any of the children or relatives by consanguinity within the 3rd civil degree;
   (d) Where the victim is a religious, that is, a member of a legitimate religious vocation and the offender knows the victim as such before or at the time of the commission of the offense;
   (e) Where the victim is a child under 7 yrs of age;
   (f) Where the offender is a member of the AFP, its paramilitary arm, the PNP, or any law enforcement agency and the offender took advantage of his position;
   (g) Where the offender is afflicted with AIDS or other sexually transmissible diseases, and he is aware thereof when he committed the rape, and the disease was transmitted;
   (h) Where the victim has suffered permanent physical mutilation;
   (i) Where the pregnancy of the offended party is known to the rapist at the time of the rape; or
   (j) Where the rapist is aware of the victim's mental disability, emotional disturbance or physical handicap.

Prior to the amendment of the law on rape, a complaint must be filed by the offended woman. The persons who may file the same in behalf of the offended woman if she is a minor or if she was incapacitated to file, were as follows: a parent; in default of parents, a grandparent; in default or grandparent, the judicial guardian.

Since rape is not a private crime anymore, it can be prosecuted even if the woman does not file a complaint.

If carnal knowledge was made possible because of fraudulent machinations and grave abuse of authority, the crime is rape. This absorbs the crime of qualified and simple seduction when no force or violence was used, but the offender abused his authority to rape the victim.

Under Article 266-C, the offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the offender's liability. Similarly, the legal husband may be pardoned by forgiveness of the wife provided that the marriage is not void ab initio. Obviously, under the new law, the husband may be liable for rape if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape.

Incestuous rape was coined in Supreme Court decisions. It refers to rape committed by an ascendant of the offended woman. In such cases, the force and intimidation need not be of such nature as would be required in rape cases had the accused been a stranger. Conversely, the Supreme Court expected that if the offender is not known to woman, it is necessary that there be evidence of affirmative resistance put up by the offended woman. Mere "no, no" is not enough if the offender is a stranger, although if the rape is incestuous, this is enough.

The new rape law also requires that there be a physical overt act manifesting resistance, if the offended party was in a situation where he or she is incapable of giving valid consent, this is admissible in evidence to show that carnal knowledge was against his or her will.

When the victim is below 12 years old, mere sexual intercourse with her is already rape. Even if it was she who wanted the sexual intercourse, the crime will be rape. This is referred to as statutory rape.

In other cases, there must be force, intimidation, or violence proven to have been exerted to bring about carnal knowledge or the woman must have been deprived of reason or otherwise unconscious.

Where the victim is over 12 years old, it must be shown that the carnal knowledge with her was obtained against her will. It is necessary that there be evidence of some resistance put up by the offended woman. It is not, however, necessary that the offended party should exert all her efforts to prevent the carnal intercourse. It is enough that from her resistance, it would appear that the carnal intercourse is against her will.

Mere initial resistance, which does not indicate refusal on the part of the offended party to the sexual intercourse, will not be enough to bring

about the crime of rape.

Note that it has been held that in the crime of rape, conviction does not require medico-legal finding of any penetration on the part of the woman. A medico-legal certificate is not necessary or indispensable to convict the accused of the crime of rape.

It has also been held that although the offended woman who is the victim of the rape failed to adduce evidence regarding the damages to her by reason of the rape, the court may take judicial notice that there is such damage in crimes against chastity. The standard amount given now is P 30,000.00, with or without evidence of any moral damage. But there are some cases where the court awarded only P 20,000.00.

An accused may be convicted of rape on the sole testimony of the offended woman. It does not require that testimony be corroborated before a conviction may stand. This is particularly true if the commission of the rape is such that the narration of the offended woman would lead to no other conclusion except that the rape was committed.

Illustration:

Daughter accuses her own father of having raped her.

Allegation of several accused that the woman consented to their sexual intercourse with her is a proposition which is revolting to reason that a woman would allow more than one man to have sexual intercourse with her in the presence of the others.

It has also been ruled that rape can be committed in a standing position because complete penetration is not necessary. The slightest penetration – contact with the labia – will consummate the rape.

On the other hand, as long as there is an intent to effect sexual cohesion, although unsuccessful, the crime becomes attempted rape. However, if that intention is not proven, the offender can only be convicted of acts of lasciviousness.

The main distinction between the crime of attempted rape and acts of lasciviousness is the intent to lie with the offended woman.

In a case where the accused jumped upon a woman and threw her to the ground, although the accused raised her skirts, the accused did not make any effort to remove her underwear. Instead, he removed his own underwear and placed himself on top of the woman and started performing sexual movements. Thereafter, when he was finished, he stood up and left. The crime committed is only acts of lasciviousness and not attempted rape. The fact that he did not remove the underwear of the victim indicates that he does not have a real intention to effect a penetration. It was only to satisfy a lewd design.

Is there a complex crime under Article 48 of kidnapping with rape? Read kidnapping.

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262)

"Violence against women and their children" refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or dating relationship, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty. It includes, but is not limited to, the following acts:

A. "Physical Violence" refers to acts that include bodily or physical harm;

B. "Sexual violence" refers to an act which is sexual in nature, committed against a woman or her child. It includes, but is not limited to:

a) rape, sexual harassment, acts of lasciviousness, treating a woman or her child as a sex object, making demeaning and sexually suggestive remarks, physically attacking the sexual parts of the victim's body, forcing her/him to watch obscene publications and indecent shows or forcing the woman or her child to do indecent acts and/or make films thereof, forcing the wife and mistress/lover to live in the conjugal home or sleep together in the same room with the abuser;

b) acts causing or attempting to cause the victim to engage in any sexual activity by force, threat of force, physical or other harm or threat of physical or other

harm or coercion;

c) Prostituting the woman or child.

C. "Psychological violence" refers to acts or omissions causing or likely to cause mental or emotional suffering of the victim such as but not limited to intimidation, harassment, stalking, damage to property, public ridicule or humiliation, repeated verbal abuse and mental infidelity. It includes causing or allowing the victim to witness the physical, sexual or psychological abuse of a member of the family to which the victim belongs, or to witness pornography in any form or to witness abusive injury to pets or to unlawful or unwanted deprivation of the right to custody and/or visitation of common children.

D. "Economic abuse" refers to acts that make or attempt to make a woman financially dependent which includes, but is not limited to the following:

1. withdrawal of financial support or preventing the victim from engaging in any legitimate profession, occupation, business or activity, except in cases wherein the other spouse/partner objects on valid, serious and moral grounds as defined in Article 73 of the Family Code;
2. deprivation or threat of deprivation of financial resources and the right to the use and enjoyment of the conjugal, community or property owned in common;
3. destroying household property;
4. controlling the victims' own money or properties or solely controlling the conjugal money or properties *(Sec. 3).*

Punishable acts

Acts of Violence Against Women and Their Children.- The crime of violence against women and their children is committed through any of the following acts:

(a) Causing physical harm to the woman or her child;

(b) Threatening to cause the woman or her child physical harm;

(c) Attempting to cause the woman or her child physical harm;

(d) Placing the woman or her child in fear of imminent physical harm;

(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;

(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;

(3) Depriving or threatening to deprive the woman or her child of a legal right;

(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own mon4ey or properties, or solely controlling the conjugal or common money, or properties;

(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;

(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;

(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

(1) Stalking or following the woman or her child in public or private places;

(2) Peering in the window or lingering outside the residence of the woman or her child;

(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;

(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and

(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children *(Sec. 5).*

ANTI-CHILD PORNOGRAPHY LAW (R.A. 9775)

Definition of terms

(a) "Child" refers to a person below eighteen (18) years of age or over, but is unable to fully take care of himself/herself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.
For the purpose of this Act, a child shall also refer to:
(1) a person regardless of age who is presented, depicted or portrayed as a child as defined herein; and
(2) computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.

(b) "Child pornography" refers to any representation, whether visual, audio, or written combination thereof, by electronic, mechanical, digital, optical, magnetic or any other means, of child engaged or involved in real or simulated explicit sexual activities.

(c) "Explicit Sexual Activity" includes actual or simulated -
(1) As to form:
(i) sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital, or oral to anal, whether between persons of the same or opposite sex;
(2) bestiality;
(3) masturbation;
(4) sadistic or masochistic abuse;
(5) lascivious exhibition of the genitals, buttocks, breasts, pubic area and/or anus; or
(6) use of any object or instrument for lascivious acts

(d) "Internet address" refers to a website, bulletin board service, internet chat room or news group, or any other internet or shared network protocol address.

(e) "Internet cafe or kiosk" refers to an establishment that offers or proposes to offer services to the public for the use of its computer/s or computer system for the purpose of accessing the internet, computer games or related services.

(f) "Internet content host" refers to a person who hosts or who proposes to host internet content in the Philippines.

(g) "Internet service provider (ISP)" refers to a person or entity that supplies or proposes to supply, an internet carriage service to the public.

(h) "Grooming" refers to the act of preparing a child or someone who the offender believes to be a child for sexual activity or sexual relationship by communicating any form of child pornography. It includes online enticement or enticement through any other means.

(i) "Luring" refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography.(2) Bestiality;

(j) "Pandering" refers to the act of offering, advertising, promoting, representing or distributing through any means any material or purported material that is intended to cause another to believe that the material or purported material contains any form of child pornography, regardless of the actual content of the material or purported material.

(k) "Person" refers to any natural or juridical entity (Sec. 3).

Unlawful or punishable acts

1. To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of any form of child pornography;
2. To produce, direct, manufacture or create any form of child pornography;
3. To publish offer, transmit, sell, distribute, broadcast, advertise, promote, export or import any form of child pornography;
4. To possess any form of child pornography with the intent to sell, distribute, publish, or

broadcast: Provided. That possession of three (3) or more articles of child pornography of the same form shall be prima facie evidence of the intent to sell, distribute, publish or broadcast;

5. To knowingly, willfully and intentionally provide a venue for the commission of prohibited acts as, but not limited to, dens, private rooms, cubicles, cinemas, houses or in establishments purporting to be a legitimate business;
6. For film distributors, theaters and telecommunication companies, by themselves or in cooperation with other entities, to distribute any form of child pornography;
7. For a parent, legal guardian or person having custody or control of a child to knowingly permit the child to engage, participate or assist in any form of child pornography;
8. To engage in the luring or grooming of a child;
9. To engage in pandering of any form of child pornography;
10. To willfully access any form of child pornography;
11. To conspire to commit any of the prohibited acts stated in this section. Conspiracy to commit any form of child pornography shall be committed when two (2) or more persons come to an agreement concerning the commission of any of the said prohibited acts and decide to commit it; and
12. To possess any form of child pornography *(Sec. 4).*

ANTI-HAZING LAW (R.A. 8049)

Hazing; Definition

Hazing is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury *(Sec. 1).*

Allowed initiation rites

No hazing or initiation rites in any form or manner by a fraternity, sorority or organization shall be allowed without prior written notice to the school authorities or head of organization seven (7) days before the conduct of such initiation. The written notice shall indicate the period of the initiation activities which shall not exceed three (3) days, shall include the names of those to be subjected to such activities, and shall further contain an undertaking that no physical violence be employed by anybody during such initiation rites *(Sec. 2).*

Punishable acts; Who are liable

If the person subjected to hazing or other forms of initiation rites suffers any physical injury or dies as a result thereof, the officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm shall be liable as principals. The person or persons who participated in the hazing shall suffer:

1. The penalty of reclusion perpetua (life imprisonment) if death, rape, sodomy or mutilation results there from.
2. The penalty of reclusion temporal in its maximum period (17 years, 4 months and 1 day to 20 years) if in consequence of the hazing the victim shall become insane, imbecile, impotent or blind.
3. The penalty of reclusion temporal in its medium period (14 years, 8 months and one day to 17 years and 4 months) if in consequence of the hazing the victim shall have lost the use of speech or the power to hear or to smell, or shall have lost an eye, a hand, a foot, an arm or a leg or shall have lost the use of any such member shall have become incapacitated for the activity or work in which he was habitually engaged.
4. The penalty of reclusion temporal in its minimum period (12 years and one day to 14 years and 8 months) if in consequence of the hazing the victim shall become deformed or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of more than ninety (90) days.
5. The penalty of prison mayor in its maximum period (10 years and one day to 12 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the

activity or work in which he was habitually engaged for a period of more than thirty (30) days.

6. The penalty of prison mayor in its medium period (8 years and one day to 10 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged for a period of ten (10) days or more, or that the injury sustained shall require medical assistance for the same period.
7. The penalty of prison mayor in its minimum period (6 years and one day to 8 years) if in consequence of the hazing the victim shall have been ill or incapacitated for the performance on the activity or work in which he was habitually engaged from one (1) to nine (9) days, or that the injury sustained shall require medical assistance for the same period.
8. The penalty of prison correccional in its maximum period (4 years, 2 months and one day to 6 years) if in consequence of the hazing the victim sustained physical injuries which do not prevent him from engaging in his habitual activity or work nor require medical attendance.

The responsible officials of the school or of the police, military or citizen's army training organization, may impose the appropriate administrative sanctions on the person or the persons charged under this provision even before their conviction. The maximum penalty herein provided shall be imposed in any of the following instances:

(a) when the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join;
(b) when the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting;
(c) when the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation;
(d) when the hazing is committed outside of the school or institution; or
(e) when the victim is below twelve (12) years of age at the time of the hazing.

The owner of the place where hazing is conducted shall be liable as an accomplice, when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring. If the hazing is held in the home of one of the officers or members of the fraternity, group, or organization, the parents shall be held liable as principals when they have actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring.

The school authorities including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring shall be punished as accomplices for the acts of hazing committed by the perpetrators.

The officers, former officers, or alumni of the organization, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting the hazing were committed shall be liable as principals. A fraternity or sorority's adviser who is present when the acts constituting the hazing were committed and failed to take action to prevent the same from occurring shall be liable as principal.

The presence of any person during the hazing is prima facie evidence of participation therein as principal unless he prevented the commission of the acts punishable herein.

Any person charged under this provision shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

This section shall apply to the president, manager, director or other responsible officer of a corporation engaged in hazing as a requirement for employment in the manner provided herein *(Sec. 4)*.

Organizations include any club or AFP, PNP, PMA or officer or cadet corps of the CMT or CAT.

Section 2 requires a written notice to school authorities from the head of the organization seven days prior to the rites and should not exceed three days in duration.

Section 3 requires supervision by head of the school or the organization of the rites.

Section 4 qualifies the crime if rape, sodomy or mutilation results therefrom, if the person becomes insane, an imbecile, or impotent or blind because of such, if the person loses the use of speech or the power to hear or smell or an eye, a foot, an arm or a leg, or the use of any such member or any of the serious physical injuries or the less serious physical injuries. Also if the victim is below 12, or becomes incapacitated for the work he habitually engages in for 30, 10, 1-9 days.

It holds the parents, school authorities who consented or who had actual knowledge if they did nothing to prevent it, officers and members who planned, knowingly cooperated or were present, present alumni of the organization, owner of the place where such occurred liable.

SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (R.A. 7610, AS AMENDED)

The last paragraph of Article VI of Republic Act No. 7610, provides:

"For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262 (2) and 263 (1) of Act No 3815, as amended of the Revised Penal Code for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve years of age."

The provisions of Republic Act No. 7160 modified the provisions of the Revised Penal Code in so far as the victim of the felonies referred to is under 12 years of age. The clear intention is to punish the said crimes with a higher penalty when the victim is a child of tender age. Incidentally, the reference to Article 249 of the Code which defines and penalizes the crime of homicide were the victim is under 12 years old is an error. Killing a child under 12 is murder, not homicide, because the victim is under no position to defend himself as held in the case of ***People v. Ganohon, 196 SCRA 431.***

For murder, the penalty provided by the Code, as amended by Republic Act No. 7659, is reclusion perpetua to death – higher than what Republic Act no. 7610 provides. Accordingly, insofar as the crime is murder, Article 248 of the Code, as amended, shall govern even if the victim was under 12 years of age. It is only in respect of the crimes of intentional mutilation in paragraph 2 of Article 262 and of serious physical injuries in paragraph 1 of Article 263 of the Code that the quoted provision of Republic Act No. 7160 may be applied for the higher penalty when the victim is under 12 years old.

Coverage

(1) Child Prostitution and other sexual abuse;
(2) Child trafficking;
(3) Obscene publications and indecent shows;
(4) Other acts of abuses; and
(5) Circumstances which threaten or endanger the survival and normal development of children.

Child prostitution, punishable acts

1. Child Prostitution and Other Sexual Abuse. – Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
   The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:
   (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
      (1) Acting as a procurer of a child prostitute;
      (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
      (3) Taking advantage of influence or relationship to procure a child as prostitute;
      (4) Threatening or using violence towards a child to engage him as a prostitute; or
      (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.
   (b) Those who commit the act of sexual intercourse of lascivious conduct with a

child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment *(Sec. 5).*

2. Attempt To Commit Child Prostitution. – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code *(Sec. 6).*

Child trafficking, punishable acts

3. Child Trafficking. – Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age *(Sec. 7).*

2. Attempt to Commit Child Trafficking. – There is an attempt to commit child trafficking under Section 7 of this Act:

(a) When a child travels alone to a foreign country without valid reason therefor and without clearance issued by the Department of Social Welfare and Development or written permit or justification from the child's parents or legal guardian;

(c) When a person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking; or

(d) When a doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking; or

(e) When a person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

A penalty lower two (2) degrees than that prescribed for the consummated felony under Section 7 hereof shall be imposed upon the principals of the attempt to commit child trafficking under this Act *(Sec. 8).*

Common Penal Provisions. –

(a) The penalty provided under this Act shall be imposed in its maximum period if the offender has been previously convicted under this Act;

(b) When the offender is a corporation, partnership or association, the officer or employee thereof who is responsible for the violation of this Act shall suffer the penalty imposed in its maximum period;

(c) The penalty provided herein shall be imposed in its maximum period when the perpetrator is an ascendant, parent guardian, stepparent or collateral relative within the second degree of consanguinity or affinity, or a manager or owner of an establishment which has no license to operate or its license has expired or has been revoked;

(d) When the offender is a foreigner, he shall

be deported immediately after service of sentence and forever barred from entry to the country;

(e) The penalty provided for in this Act shall be imposed in its maximum period if the offender is a public officer or employee: Provided, however, That if the penalty imposed is reclusion perpetua or reclusion temporal, then the penalty of perpetual or temporary absolute disqualification shall also be imposed: Provided, finally, That if the penalty imposed is prision correccional or arresto mayor, the penalty of suspension shall also be imposed; and

(f) A fine to be determined by the court shall be imposed and administered as a cash fund by the Department of Social Welfare and Development and disbursed for the rehabilitation of each child victim, or any immediate member of his family if the latter is the perpetrator of the offense *(Sec. 31).*

JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. 9344); ALSO REFER TO CHILD AND YOUTH WELFARE CODE (P.D. 603, AS AMENDED)

Punishable acts

4. Labeling and Shaming. - In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names. Likewise, no discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin *(Sec. 60)*.

2. Other Prohibited Acts. - The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

(a) Employment of threats of whatever kind and nature;

(b) Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;

(c) Employment of degrading, inhuman end cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity; and

(d) Compelling the child to perform involuntary servitude in any and all forms under any and all instances *(Sec. 61)*.

HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Punishable acts of terrorism; Who are liable

SEC. 3. Terrorism.- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);

b. Article 134 (Rebellion or Insurrection);

c. Article 134-a (Coup d' Etat), including acts committed by private persons;

d. Article 248 (Murder);

e. Article 267 (Kidnapping and Serious Illegal Detention);

f. Article 324 (Crimes Involving Destruction), or under

1. Presidential Decree No. 1613 (The Law on Arson);
2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
4. Republic Act No. 6235 (Anti-Hijacking Law);
5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of

Firearms, Ammunitions or Explosives) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

SEC. 4. Conspiracy to Commit Terrorism. - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.

SEC. 5. Accomplice. - Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment.

SEC. 6. Accessory. - Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner: (a) by profiting himself or assisting the offender to profit by the effects of the crime; (b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery; (c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a).

9. CRIMES AGAINST PERSONAL LIBERTY AND SECURITY (267-292)

Crimes against persons

1. Parricide (Art. 246);
2. Murder (Art. 248);
3. Homicide (Art. 249);
4. Death caused in a tumultuous affray (Art. 251);
5. Physical injuries inflicted in a tumultuous affray (Art. 252);
6. Giving assistance to suicide (Art. 253);
7. Discharge of firearms (Art. 254);
8. Infanticide (Art. 255);
9. Intentional abortion (Art. 256);
10. Unintentional abortion (Art. 257);
11. Abortion practiced by the woman herself or by her parents (Art. 258);
12. Abortion practiced by a physician or midwife and dispensing of abortives (Art. 259);
13. Duel (Art. 260);
14. Challenging to a duel (Art. 261);
15. Mutilation (Art. 262);
16. Serious physical injuries (Art. 263);
17. Administering injurious substances or beverages (Art. 264);
18. Less serious physical injuries (Art. 265);
19. Slight physical injuries and maltreatment (Art. 266); and
20. Rape (Art. 266-A).

The essence of crime here involves the taking of human life, destruction of the fetus or inflicting injuries.

As to the taking of human life, you have:

(1) Parricide;
(2) Murder;
(3) Homicide;
(4) Infanticide; and
(5) Giving assistance to suicide.

Note that parricide is premised on the relationship between the offender and the offended. The

victim is three days old or older. A stranger who conspires with the parent is guilty of murder.

In infanticide, the victim is younger than three days or 72 hours old; can be committed by a stranger. If a stranger who conspires with parent, both commit the crime of infanticide.

Article 246. Parricide

Elements

1. A person is killed;
2. The deceased is killed by the accused;
3. The deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse, of the accused.

This is a crime committed between people who are related by blood. Between spouses, even though they are not related by blood, it is also parricide.

The relationship must be in the direct line and not in the collateral line.

The relationship between the offender and the offended party must be legitimate, except when the offender and the offended party are related as parent and child.

If the offender and the offended party, although related by blood and in the direct line, are separated by an intervening illegitimate relationship, parricide can no longer be committed. The illegitimate relationship between the child and the parent renders all relatives after the child in the direct line to be illegitimate too.

The only illegitimate relationship that can bring about parricide is that between parents and illegitimate children as the offender and the offended parties.

Illustration:

A is the parent of B, the illegitimate daughter. B married C and they begot a legitimate child D. If D, daughter of B and C, would kill A, the grandmother, the crime cannot be parricide anymore because of the intervening illegitimacy. The relationship between A and D is no longer legitimate. Hence, the crime committed is homicide or murder.

Since parricide is a crime of relationship, if a stranger conspired in the commission of the crime, he cannot be held liable for parricide. His participation would make him liable for murder or for homicide, as the case may be. The rule of conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party.

Illustration:

A spouse of B conspires with C to kill B. C is the stranger in the relationship. C killed B with treachery. The means employed is made known to A and A agreed that the killing will be done by poisoning.

As far as A is concerned, the crime is based on his relationship with B. It is therefore parricide. The treachery that was employed in killing Bong will only be generic aggravating circumstance in the crime of parricide because this is not one crime that requires a qualifying circumstance.

But that same treachery, insofar as C is concerned, as a stranger who cooperated in the killing, makes the crime murder; treachery becomes a qualifying circumstance.

In killing a spouse, there must be a valid subsisting marriage at the time of the killing. Also, the information should allege the fact of such valid marriage between the accused and the victim.

In a ruling by the Supreme Court, it was held that if the information did not allege that the accused was legally married to the victim, he could not be convicted of parricide even if the marriage was established during the trial. In such cases, relationship shall be appreciated as generic aggravating circumstance.

The Supreme Court has also ruled that Muslim husbands with several wives can be convicted of parricide only in case the first wife is killed. There is no parricide if the other wives are killed although their marriage is recognized as valid. This is so because a Catholic man can commit the crime only once. If a Muslim husband could commit this crime more than once, in effect, he is being punished for the marriage which the law itself authorized him to contract.

That the mother killed her child in order to conceal her dishonor is not mitigating. This is immaterial to the crime of parricide, unlike in the case of infanticide. If the child is less than three days old when killed, the crime is infanticide and

intent to conceal her dishonor is considered mitigating.

Article 247. Death or Physical Injuries Inflicted under Exceptional Circumstances

Elements

1. A legally married person, or a parent, surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person;
2. He or she kills any or both of them, or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter;
3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

Two stages contemplated before the article will apply:

(1) When the offender surprised the other spouse with a paramour or mistress. The attack must take place while the sexual intercourse is going on. If the surprise was before or after the intercourse, no matter how immediate it may be, Article 247 does not apply. The offender in this situation only gets the benefit of a mitigating circumstance, that is, sufficient provocation immediately preceding the act.

(2) When the offender kills or inflicts serious physical injury upon the other spouse and/or paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

You have to divide the stages because as far as the first stage is concerned, it does not admit of any situation less than sexual intercourse.

So if the surprising took place before any actual sexual intercourse could be done because the parties are only in their preliminaries, the article cannot be invoked anymore.

If the surprising took place after the actual sexual intercourse was finished, even if the act being performed indicates no other conclusion but that sexual intercourse was had, the article does not apply.

As long as the surprising took place while the sexual intercourse was going on, the second stage becomes immaterial.

It is either killing or inflicting physical injuries while in that act or immediately thereafter. If the killing was done while in that act, no problem. If the killing was done when sexual intercourse is finished, a problem arises. First, were they surprised in actual sexual intercourse? Second, were they killed immediately thereafter?

The phrase "immediately thereafter" has been interpreted to mean that between the surprising and the killing of the inflicting of the physical injury, there should be no break of time. In other words, it must be a continuous process.

The article presumes that a legally married person who surprises his or her better half in actual sexual intercourse would be overcome by the obfuscation he felt when he saw them in the act that he lost his head. The law, thus, affords protection to a spouse who is considered to have acted in a justified outburst of passion or a state of mental disequilibrium. The offended spouse has no time to regain his self-control.

If there was already a break of time between the sexual act and the killing or inflicting of the injury, the law presupposes that the offender regained his reason and therefore, the article will not apply anymore.

As long as the act is continuous, the article still applies.

Where the accused surprised his wife and his paramour in the act of illicit intercourse, as a result of which he went out to kill the paramour in a fit of passionate outburst. Although about one hour had passed between the time the accused discovered his wife having sexual intercourse with the victim and the time the latter was actually killed, it was held in People v. Abarca, 153 SCRA 735, that Article 247 was applicable, as the shooting was a continuation of the pursuit of the victim by the accused. Here, the accused, after the discovery of the act of infidelity of his wife, looked for a firearm in Tacloban City.

Article 247 does not provide that the victim is to be killed instantly by the accused after surprising his spouse in the act of intercourse. What is required is that the killing is the proximate result of the outrage overwhelming the accused upon the discovery of the infidelity of his spouse. The killing should have been actually motivated by the same blind impulse.

Illustration:

A upon coming home, surprised his wife, B, together with C. The paramour was fast enough to jump out of the window. A got the bolo and chased C but he disappeared among the neighborhood. So A started looking around for about an hour but he could not find the paramour. A gave up and was on his way home. Unfortunately, the paramour, thinking that A was no longer around, came out of hiding and at that moment, A saw him and hacked him to death. There was a break of time and Article 247 does not apply anymore because when he gave up the search, it is a circumstance showing that his anger had already died down.

Article 247, far from defining a felony merely grants a privilege or benefit, more of an exempting circumstance as the penalty is intended more for the protection of the accused than a punishment. Death under exceptional character cannot be qualified by either aggravating or mitigating circumstances.

In the case of People v. Abarca, 153 SCRA 735, two persons suffered physical injuries as they were caught in the crossfire when the accused shot the victim. A complex crime of double frustrated murder was not committed as the accused did not have the intent to kill the two victims. Here, the accused did not commit murder when he fired at the paramour of his wife. Inflicting death under exceptional circumstances is not murder. The accused was held liable for negligence under the first part, second paragraph of Article 365, that is, less serious physical injuries through simple negligence. No aberratio ictus because he was acting lawfully.

A person who acts under Article 247 is not committing a crime. Since this is merely an exempting circumstance, the accused must first be charged with:

(1) Parricide – if the spouse is killed;
(2) Murder or homicide – depending on how the killing was done insofar as the paramour or the mistress is concerned;
(3) Homicide – through simple negligence, if a third party is killed;
(4) Physical injuries – through reckless imprudence, if a third party is injured.

If death results or the physical injuries are serious, there is criminal liability although the penalty is only destierro. The banishment is intended more for the protection of the offender rather than a penalty.

If the crime committed is less serious physical injuries or slight physical injuries, there is no criminal liability.

The article does not apply where the wife was not surprised in flagrant adultery but was being abused by a man as in this case there will be defense of relation.

If the offender surprised a couple in sexual intercourse, and believing the woman to be his wife, killed them, this article may be applied if the mistake of facts is proved.

The benefits of this article do not apply to the person who consented to the infidelity of his spouse or who facilitated the prostitution of his wife.

The article is also made available to parents who shall surprise their daughter below 18 years of age in actual sexual intercourse while "living with them." The act should have been committed by the daughter with a seducer. The two stages also apply. The parents cannot invoke this provision if, in a way, they have encouraged the prostitution of the daughter.

The phrase "living with them" is understood to be in their own dwelling, because of the embarrassment and humiliation done not only to the parent but also to the parental abode.

If it was done in a motel, the article does not apply.

Illustration:

A abandoned his wife B for two years. To support their children, A had to accept a relationship with another man. A learned of this, and surprised them in the act of sexual intercourse and killed B. A is not entitled to Article 248. Having abandoned his family for two years, it was natural for her to feel some affection for others, more so of a man who could help her.

Homicide committed under exceptional circumstances, although punished with destierro, is within the jurisdiction of the Regional Trial Court and not the MTC because the crime charged is homicide or murder. The exceptional circumstances, not being elements of the crime but a matter of defense, are not pleaded. It practically grants a privilege amounting to an exemption for adequate punishment.

Article 248. Murder

Elements

1. A person was killed;
2. Accused killed him;
3. The killing was attended by any of the following qualifying circumstances –
   (a) With treachery, taking advantage of superior strength, with the aid or armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;
   (b) In consideration of a price, reward or promise;
   (c) By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
   (d) On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
   (e) With evident premeditation;
   (f) With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.
4. The killing is not parricide or infanticide.

Homicide is qualified to murder if any of the qualifying circumstances under Article 248 is present. It is the unlawful killing of a person not constituting murder, parricide or infanticide.

In murder, any of the following qualifying circumstances is present:

(1) Treachery, taking advantage of superior strength, aid or armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity;

There is treachery when the offender commits any of the crimes against the person employing means, methods or forms in the execution thereof that tend directly and especially to insure its execution without risk to himself arising from the defense which the offended party might make.

This circumstance involves means, methods, form in the execution of the killing which may actually be an aggravating circumstance also, in which case, the treachery absorbs the same.

Illustration:

A person who is determined to kill resorted to the cover of darkness at nighttime to insure the killing. Nocturnity becomes a means that constitutes treachery and the killing would be murder. But if the aggravating circumstance of nocturnity is considered by itself, it is not one of those which qualify a homicide to murder. One might think the killing is homicide unless nocturnity is considered as constituting treachery, in which case the crime is murder.

The essence of treachery is that the offended party was denied the chance to defend himself because of the means, methods, form in executing the crime deliberately adopted by the offender. It is a matter of whether or not the offended party was denied the chance of defending himself.

If the offended was denied the chance to defend himself, treachery qualifies the killing to murder. If despite the means resorted to by the offender, the offended was able to put up a defense, although unsuccessful, treachery is not available. Instead, some other circumstance may be present. Consider now whether such other circumstance qualifies the killing or not.

Illustration:

If the offender used superior strength and the victim was denied the chance to defend himself, there is treachery. The treachery must be alleged in the information. But if the victim was able to put up an unsuccessful resistance, there is no more treachery but the use of superior strength can be alleged and it also qualifies the killing to murder.

One attendant qualifying circumstance is enough. If there are more than one qualifying circumstance alleged in the information for murder, only one circumstance will qualify the killing to murder and the other circumstances will be taken as generic.

To be considered qualifying, the particular circumstance must be alleged in the information. If what was alleged was not proven and instead another circumstance, not alleged, was established during the trial, even if the latter constitutes a qualifying circumstance under Article 248, the same cannot qualify the killing to murder. The accused can only be convicted of homicide.

Generally, murder cannot be committed if at the beginning, the offended had no intent to kill because the qualifying circumstances must be

resorted to with a view of killing the offended party. So if the killing were at the "spur of the moment", even though the victim was denied the chance to defend himself because of the suddenness of the attack, the crime would only be homicide. Treachery contemplates that the means, methods and form in the execution were consciously adopted and deliberately resorted to by the offender, and were not merely incidental to the killing.

If the offender may have not intended to kill the victim but he only wanted to commit a crime against him in the beginning, he will still be liable for murder if in the manner of committing the felony there was treachery and as a consequence thereof the victim died. This is based on the rule that a person committing a felony shall be liable for the consequences thereof although different from that which he intended.

Illustration:

The accused, three young men, resented the fact that the victim continued to visit a girl in their neighborhood despite the warning they gave him. So one evening, after the victim had visited the girl, they seized and tied him to a tree, with both arms and legs around the tree. They thought they would give him a lesson by whipping him with branches of gumamela until the victim fell unconscious. The accused left not knowing that the victim died.

The crime committed was murder. The accused deprived the victim of the chance to defend himself when the latter was tied to a tree. Treachery is a circumstance referring to the manner of committing the crime. There was no risk to the accused arising from the defense by the victim.

Although what was initially intended was physical injury, the manner adopted by the accused was treacherous and since the victim died as a consequence thereof, the crime is murder -- although originally, there was no intent to kill.

When the victim is already dead, intent to kill becomes irrelevant. It is important only if the victim did not die to determine if the felony is physical injury or attempted or frustrated homicide.

So long as the means, methods and form in the execution is deliberately adopted, even if there was no intent to kill, there is treachery.

(2) In consideration of price, reward or promises;

(3) Inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of a motor vehicle, or with the use of other means involving great waste and ruin;

The only problem insofar as the killing by fire is concerned is whether it would be arson with homicide, or murder.

When a person is killed by fire, the primordial criminal intent of the offender is considered. If the primordial criminal intent of the offender is to kill and fire was only used as a means to do so, the crime is only murder. If the primordial criminal intent of the offender is to destroy property with the use of pyrotechnics and incidentally, somebody within the premises is killed, the crime is arson with homicide. But this is not a complex crime under Article 48. This is single indivisible crime penalized under Article 326, which is death as a consequence of arson. That somebody died during such fire would not bring about murder because there is no intent to kill in the mind of the offender. He intended only to destroy property. However, a higher penalty will be applied.

In **People v. Pugay and Samson, 167 SCRA 439,** there was a town fiesta and the two accused were at the town plaza with their companions. All were uproariously happy, apparently drenched with drink. Then, the group saw the victim, a 25 year old retard walking nearby and they made him dance by tickling his sides with a piece of wood. The victim and the accused Pugay were friends and, at times, slept in the same place together. Having gotten bored with their form of entertainment, accused Pugay went and got a can of gasoline and poured it all over the retard. Then, the accused Samson lit him up, making him a frenzied, shrieking human torch. The retard died.

It was held that Pugay was guilty of homicide through reckless imprudence. Samson only guilty of homicide, with the mitigating circumstance of no intention to commit so grave a wrong. There was no animosity between the two accused and the victim such that it cannot be said that they resort to fire to kill him. It was merely a part of their fun making but because their acts were felonious, they are criminally liable.

(4) On occasion of any of the calamities enumerated in the preceding paragraph c, or an earthquake, eruption of volcano, destructive cyclone, epidemic or any other public calamity;

(5) Evident premeditation; and

(6) Cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Cruelty includes the situation where the victim is already dead and yet, acts were committed which would decry or scoff the corpse of the victim. The crime becomes murder.

Hence, this is not actually limited to cruelty. It goes beyond that because even if the victim is already a corpse when the acts deliberately augmenting the wrong done to him were committed, the killing is still qualified to murder although the acts done no longer amount to cruelty.

Under Article 14, the generic aggravating circumstance of cruelty requires that the victim be alive, when the cruel wounds were inflicted and, therefore, must be evidence to that effect. Yet, in murder, aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.

Illustration:

Two people engaged in a quarrel and they hacked each other, one killing the other. Up to that point, the crime is homicide. However, if the killer tried to dismember the different parts of the body of the victim, indicative of an intention to scoff at or decry or humiliate the corpse of the victim, then what would have murder because this circumstance is recognized under Article 248, even though it was inflicted or was committed when the victim was already dead.

The following are holdings of the Supreme Court with respect to the crime of murder:

(1) Killing of a child of tender age is murder qualified by treachery because the weakness of the child due to his tender age results in the absence of any danger to the aggressor.
(2) Evident premeditation is absorbed in price, reward or promise, if without the premeditation the inductor would not have induced the other to commit the act but not as regards the one induced.
(3 Abuse of superior strength is inherent in and comprehended by the circumstance of treachery or forms part of treachery.
(4) Treachery is inherent in poison.
(5) Where one of the accused, who were charged with murder, was the wife of the deceased but here relationship to the deceased was not alleged in the information, she also should be convicted of murder but the relationship should be appreciated as aggravating.
(6) Killing of the victims hit by hand grenade thrown at them is murder qualified by explosion not by treachery.
(7) Where the accused housemaid gagged a three year old boy, son of her master, with stockings, placed him in a box with head down and legs upward and covered the box with some sacks and other boxes, and the child instantly died because of suffocation, and then the accused demanded ransom from the parents, such did not convert the offense into kidnapping with murder. The accused was well aware that the child could be suffocated to death in a few minutes after she left. Ransom was only a part of the diabolical scheme to murder the child, to conceal his body and then demand money before discovery of the body.

The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or deprivation of his liberty. If there is no showing that the accused intended to deprive their victims of their liberty for some time and there being no appreciable interval between their being taken and their being shot, murder and not kidnapping with murder is committed.

Article 249. Homicide

Elements

1. A person was killed;
2. Offender killed him without any justifying circumstances;
3. Offender had the intention to kill, which is presumed;
4. The killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

Homicide is the unlawful killing of a person not constituting murder, parricide or infanticide.

Distinction between homicide and physical

injuries:

In attempted or frustrated homicide, there is intent to kill.

In physical injuries, there is none. However, if as a result of the physical injuries inflicted, the victim died, the crime will be homicide because the law punishes the result, and not the intent of the act.

The following are holdings of the Supreme Court with respect to the crime of homicide:

(1) Physical injuries are included as one of the essential elements of frustrated homicide.
(2) If the deceased received two wounds from two persons acting independently of each other and the wound inflicted by either could have caused death, both of them are liable for the death of the victim and each of them is guilty of homicide.
(3) If the injuries were mortal but were only due to negligence, the crime committed will be serious physical injuries through reckless imprudence as the element of intent to kill in frustrated homicide is incompatible with negligence or imprudence.
(4) Where the intent to kill is not manifest, the crime committed has been generally considered as physical injuries and not attempted or frustrated murder or homicide.
(5) When several assailants not acting in conspiracy inflicted wounds on a victim but it cannot be determined who inflicted which would which caused the death of the victim, all are liable for the victim's death.

Note that while it is possible to have a crime of homicide through reckless imprudence, it is not possible to have a crime of frustrated homicide through reckless imprudence.

Article 251. Death Caused in A Tumultuous Affray

Elements

1. There are several persons;
2. They do not compose groups organized for the common purpose of assaulting and attacking each other reciprocally;
3. These several persons quarreled and assaulted one another in a confused and tumultuous manner;
4. Someone was killed in the course of the affray;
5. It cannot be ascertained who actually killed the deceased;
6. The person or persons who inflicted serious physical injuries or who used violence can be identified.

Tumultuous affray simply means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer is if death results, or who inflicted the serious physical injury, but the person or persons who used violence are known.

It is not a tumultuous affray which brings about the crime; it is the inability to ascertain actual perpetrator. It is necessary that the very person who caused the death cannot be known, not that he cannot be identified. Because if he is known but only his identity is not known, then he will be charged for the crime of homicide or murder under a fictitious name and not death in a tumultuous affray. If there is a conspiracy, this crime is not committed.

To be considered death in a tumultuous affray, there must be:

(1) a quarrel, a free-for-all, which should not involve organized group; and
(2) someone who is injured or killed because of the fight.

As long as it cannot be determined who killed the victim, all of those persons who inflicted serious physical injuries will be collectively answerable for the death of that fellow.

The Revised Penal Code sets priorities as to who may be liable for the death or physical injury in tumultuous affray:

(1) The persons who inflicted serious physical injury upon the victim;
(2) If they could not be known, then anyone who may have employed violence on that person will answer for his death.
(3) If nobody could still be traced to have employed violence upon the victim, nobody will answer. The crimes committed might be disturbance of public order, or if participants are armed, it could be tumultuous disturbance, or if property was destroyed, it could be malicious mischief.

The fight must be tumultuous. The participants must not be members of an organized group. This is different from a rumble which involves organized groups composed of persons who are to attack others. If the fight is between such groups, even if you cannot identify who, in

particular, committed the killing, the adverse party composing the organized group will be collectively charged for the death of that person.

Illustration:

If a fight ensued between 20 Sigue-Sigue Gang men and 20 Bahala-Na- Gang men, and in the course thereof, one from each group was killed, the crime would be homicide or murder; there will be collective responsibility on both sides. Note that the person killed need not be a participant in the fight.

Article 252. Physical Injuries Inflicted in A Tumultuous Affray

Elements

1. There is a tumultuous affray;
2. A participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only;
3. The person responsible thereof cannot be identified;
4. All those who appear to have used violence upon the person of the offended party are known.

If in the course of the tumultuous affray, only serious or less serious physical injuries are inflicted upon a participant, those who used violence upon the person of the offended party shall be held liable.

In physical injuries caused in a tumultuous affray, the conditions are also the same. But you do not have a crime of physical injuries resulting from a tumultuous affray if the physical injury is only slight. The physical injury should be serious or less serious and resulting from a tumultuous affray. So anyone who may have employed violence will answer for such serious or less serious physical injury.

If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray. The offended party cannot complain if he cannot identify who inflicted the slight physical injuries on him.

Article 253. Giving Assistance to Suicide

Acts punished

1. Assisting another to commit suicide, whether the suicide is consummated or not;
2. Lending his assistance to another to commit suicide to the extent of doing the killing himself.

Giving assistance to suicide means giving means (arms, poison, etc.) or whatever manner of positive and direct cooperation (intellectual aid, suggestions regarding the mode of committing suicide, etc.).

In this crime, the intention must be for the person who is asking the assistance of another to commit suicide.

If the intention is not to commit suicide, as when he just wanted to have a picture taken of him to impress upon the world that he is committing suicide because he is not satisfied with the government, the crime is held to be inciting to sedition.

He becomes a co-conspirator in the crime of inciting to sedition, but not of giving assistance to suicide because the assistance must be given to one who is really determined to commit suicide.

If the person does the killing himself, the penalty is similar to that of homicide, which is reclusion temporal. There can be no qualifying circumstance because the determination to die must come from the victim. This does not contemplate euthanasia or mercy killing where the crime is homicide (if without consent; with consent, covered by Article 253).

The following are holdings of the Supreme Court with respect to this crime:

(1) The crime is frustrated if the offender gives the assistance by doing the killing himself as firing upon the head of the victim but who did not die due to medical assistance.
(2) The person attempting to commit suicide is not liable if he survives. The accused is liable if he kills the victim, his sweetheart, because of a suicide pact.

In other penal codes, if the person who wanted to die did not die, there is liability on his part because there is public disturbance committed by him. Our Revised Penal Code is silent but there is no bar against accusing the person of disturbance of public order if indeed serious disturbance of public peace occurred due to his

attempt to commit suicide. If he is not prosecuted, this is out of pity and not because he has not violated the Revised Penal Code.

In mercy killing, the victim is not in a position to commit suicide. Whoever would heed his advice is not really giving assistance to suicide but doing the killing himself. In giving assistance to suicide, the principal actor is the person committing the suicide.

Both in euthanasia and suicide, the intention to the end life comes from the victim himself; otherwise the article does not apply. The victim must persistently induce the offender to end his life. If there is only slight persuasion to end his life, and the offender readily assented thereto.

Article 254. Discharge of Firearms

4. Offender discharges a firearm against or at another person;
5. Offender had no intention to kill that person.

This crime cannot be committed through imprudence because it requires that the discharge must be directed at another.

> If the firearm is directed at a person and the trigger was pressed but did not fire, the crime is frustrated discharge of firearm.

If the discharge is not directed at a person, the crime may constitute alarm and scandal.

The following are holdings of the Supreme Court with respect to this crime:

(1) If serious physical injuries resulted from discharge, the crime committed is the complex crime of serious physical injury with illegal discharge of firearm, or if less serious physical injury, the complex crime of less serious physical injury with illegal discharge of firearm will apply.
(2) Firing a gun at a person even if merely to frighten him constitutes illegal discharge of firearm.

Article 255. Infanticide

Elements

4. A child was killed by the accused;
5. The deceased child was less than 72 hours old.

This is a crime based on the age of the victim. The victim should be less than three days old.

The offender may actually be the parent of the child. But you call the crime infanticide, not parricide, if the age of the victim is less than three days old. If the victim is three days old or above, the crime is parricide.

Illustration:

An unmarried woman, A, gave birth to a child, B. To conceal her dishonor, A conspired with C to dispose of the child. C agreed and killed the child B by burying the child somewhere.

If the child was killed when the age of the child was three days old and above already, the crime of A is parricide. The fact that the killing was done to conceal her dishonor will not mitigate the criminal liability anymore because concealment of dishonor in killing the child is not mitigating in parricide.

If the crime committed by A is parricide because the age of the child is three days old or above, the crime of the co-conspirator C is murder. It is not parricide because he is not related to the victim.

If the child is less than three days old when killed, both the mother and the stranger commits infanticide because infanticide is not predicated on the relation of the offender to the offended party but on the age of the child. In such a case, concealment of dishonor as a motive for the mother to have the child killed is mitigating.

Concealment of dishonor is not an element of infanticide. It merely lowers the penalty. If the child is abandoned without any intent to kill and death results as a consequence, the crime committed is not infanticide but abandonment under Article 276.

If the purpose of the mother is to conceal her dishonor, infanticide through imprudence is not committed because the purpose of concealing the dishonor is incompatible with the absence of malice in culpable felonies.

If the child is born dead, or if the child is already dead, infanticide is not committed.

Article 256. Intentional Abortion

Acts punished

1. Using any violence upon the person of the pregnant woman;
2. Acting, but without using violence, without the consent of the woman. (By administering drugs or beverages upon such pregnant woman without her consent.)
3. Acting (by administering drugs or beverages), with the consent of the pregnant woman.

Elements

1. There is a pregnant woman;
2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;
6. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom;
4. The abortion is intended.

Abortion is the violent expulsion of a fetus from the maternal womb. If the fetus has been delivered but it could not subsist by itself, it is still a fetus and not a person. Thus, if it is killed, the crime committed is abortion not infanticide.

Distinction between infanticide and abortion

It is infanticide if the victim is already a person less that three days old or 72 hours and is viable or capable of living separately from the mother's womb.

It is abortion if the victim is not viable but remains to be a fetus.

Abortion is not a crime against the woman but against the fetus. If mother as a consequence of abortion suffers death or physical injuries, you have a complex crime of murder or physical injuries and abortion.

In intentional abortion, the offender must know of the pregnancy because the particular criminal intention is to cause an abortion. Therefore, the offender must have known of the pregnancy for otherwise, he would not try an abortion.

If the woman turns out not to be pregnant and someone performs an abortion upon her, he is liable for an impossible crime if the woman suffers no physical injury. If she does, the crime will be homicide, serious physical injuries, etc.

Under the Article 40 of the Civil Code, birth determines personality. A person is considered born at the time when the umbilical cord is cut. He then acquires a personality separate from the mother.

But even though the umbilical cord has been cut, Article 41 of the Civil Code provides that if the fetus had an intra-uterine life of less than seven months, it must survive at least 24 hours after the umbilical cord is cut for it to be considered born.

Illustration:

A mother delivered an offspring which had an intra-uterine life of seven months. Before the umbilical cord is cut, the child was killed.

If it could be shown that had the umbilical cord been cut, that child, if not killed, would have survived beyond 24 hours, the crime is infanticide because that conceived child is already considered born.

If it could be shown that the child, if not killed, would not have survived beyond 24 hours, the crime is abortion because what was killed was a fetus only.

In abortion, the concealment of dishonor as a motive of the mother to commit the abortion upon herself is mitigating. It will also mitigate the liability of the maternal grandparent of the victim – the mother of the pregnant woman – if the abortion was done with the consent of the pregnant woman.

If the abortion was done by the mother of the pregnant woman without the consent of the woman herself, even if it was done to conceal dishonor, that circumstance will not mitigate her criminal liability.

But if those who performed the abortion are the parents of the pregnant woman, or either of them, and the pregnant woman consented for the purpose of concealing her dishonor, the penalty is the same as that imposed upon the woman who practiced the abortion upon herself .

Frustrated abortion is committed if the fetus that is expelled is viable and, therefore, not dead as abortion did not result despite the employment of adequate and sufficient means to make the pregnant woman abort. If the means are not sufficient or adequate, the crime would be an impossible crime of abortion. In consummated abortion, the fetus must be dead.

One who persuades her sister to abort is a co-principal, and one who looks for a physician to make his sweetheart abort is an accomplice. The

physician will be punished under Article 259 of the Revised Penal Code.

Article 257. Unintentional Abortion

1. There is a pregnant woman;
2. Violence is used upon such pregnant woman without intending an abortion;
6. The violence is intentionally exerted;
4. As a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

If the pregnant woman aborted because of intimidation, the crime committed is not unintentional abortion because there is no violence; the crime committed is light threats.

If the pregnant woman was killed by violence by her husband, the crime committed is the complex crime of parricide with unlawful abortion.

Unintentional abortion may be committed through negligence as it is enough that the use of violence be voluntary.

Illustration:

A quarrel ensued between A, husband, and B, wife. A became so angry that he struck B, who was then pregnant, with a soft drink bottle on the hip. Abortion resulted and B died.

In US v. Jeffry, 15 Phil. 391, the Supreme Court said that knowledge of pregnancy of the offended party is not necessary. In People v. Carnaso, decided on April 7, 1964, however, the Supreme Court held that knowledge of pregnancy is required in unintentional abortion.

Article 258. Abortion Practiced by the Woman Herself or by Her Parents

Elements

1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Abortion is caused by –
   (a) The pregnant woman herself;
   (b) Any other person, with her consent; or
   (c) Any of her parents, with her consent for the purpose of concealing her dishonor.

Article 259. Abortion Practiced by A Physician or Midwife and Dispensing of Abortives

Elements

1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Offender, who must be a physician or midwife, caused or assisted in causing the abortion;
4. Said physician or midwife took advantage of his or her scientific knowledge or skill.

If the abortion is produced by a physician to save the life of the mother, there is no liability. This is known as a therapeutic abortion. But abortion without medical necessity to warrant it is punishable even with the consent of the woman or her husband.

Illustration:

A woman who is pregnant got sick. The doctor administered a medicine which resulted in Abortion. The crime committed was unintentional abortion through negligence or imprudence.

Article 260. Responsibility of Participants in A Duel

Acts punished

1. Killing one's adversary in a duel;
2. Inflicting upon such adversary physical injuries;
3. Making a combat although no physical injuries have been inflicted.

Persons liable

1. The person who killed or inflicted physical injuries upon his adversary, or both combatants in any other case, as principals.
2. The seconds, as accomplices.

There is no such crime nowadays because people hit each other even without entering into any pre-conceived agreement. This is an obsolete provision.

A duel may be defined as a formal or regular combat previously consented to by two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight to settle some antecedent quarrel.

If these are not the conditions of the fight, it is not a duel in the sense contemplated in the Revised Penal Code. It will be a quarrel and anyone who killed the other will be liable for homicide or murder, as the case may be.

The concept of duel under the Revised Penal Code is a classical one.

Article 261. Challenging to A Duel

Acts punished

1. Challenging another to a duel;
2. Inciting another to give or accept a challenge to a duel;
3. Scoffing at or decrying another publicly for having refused to accept a challenge to fight a duel.

Illustration:

If one challenges another to a duel by shouting "Come down, Olympia, let us measure your prowess. We will see whose intestines will come out. You are a coward if you do not come down", the crime of challenging to a duel is not committed. What is committed is the crime of light threats under Article 285, paragraph 1 of the Revised Penal Code.

Article 262. Mutilation

Acts punished

1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction;

   Elements

   (a) There be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium;
   (b) The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction

2. Intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

   Mutilation is the lopping or clipping off of some part of the body.

The intent to deliberately cut off the particular part of the body that was removed from the offended party must be established. If there is no intent to deprive victim of particular part of body, the crime is only serious physical injury.

The common mistake is to associate this with the reproductive organs only. Mutilation includes any part of the human body that is not susceptible to grow again.

If what was cut off was a reproductive organ, the penalty is much higher than that for homicide.

This cannot be committed through criminal negligence.

Article 263. Serious Physical Injuries

How committed

1. By wounding;
2. By beating;
3. By assaulting; or
4. By administering injurious substance.

In one case, the accused, while conversing with the offended party, drew the latter's bolo from its scabbard. The offended party caught hold of the edge of the blade of his bolo and wounded himself. It was held that since the accused did not wound, beat or assault the offended party, he cannot be guilty of serious physical injuries.

Serious physical injuries

1. When the injured person becomes insane, imbecile, impotent or blind in consequence of the physical injuries inflicted;

2. When the injured person –
   (a) Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, afoot, an arm, or a leg;
   (b) Loses the use of any such member; or
   (c) Becomes incapacitated for the work in which he was theretofore habitually engaged, in consequence of the physical injuries inflicted;
3. When the person injured –
   (a) Becomes deformed; or
   (b) Loses any other member of his body; or
   (c) Loses the use thereof; or
   (d) Becomes ill or incapacitated for the performance of the work in which he was habitually engaged for more than 90 days in consequence of the physical injuries inflicted;
4. When the injured person becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

The crime of physical injuries is a crime of result because under our laws the crime of physical injuries is based on the gravity of the injury sustained. So this crime is always consummated, notwithstanding the opinion of Spanish commentators like Cuello Calon, Viada, etc., that it can be committed in the attempted or frustrated stage.

If the act does not give rise to injuries, you will not be able to say whether it is attempted slight physical injuries, attempted less serious physical injuries, or attempted serious physical injuries unless the result is there.

The reason why there is no attempted or frustrated physical injuries is because the crime of physical injuries is determined on the gravity of the injury. As long as the injury is not there, there can be no attempted or frustrated stage thereof.

Classification of physical injuries:

(1) Between slight physical injuries and less serious physical injuries, you have a duration of one to nine days if slight physical injuries; or 10 days to 20 days if less serious physical injuries. Consider the duration of healing and treatment.

    The significant part here is between slight physical injuries and less serious physical injuries. You will consider not only the healing duration of the injury but also the medical attendance required to treat the injury. So the healing duration may be one to nine days, but if the medical treatment continues beyond nine days, the physical injuries would already qualify as less serious physical injuries. The medical treatment may have lasted for nine days, but if the offended party is still incapacitated for labor beyond nine days, the physical injuries are already considered less serious physical injuries.

(2) Between less serious physical injuries and serious physical injuries, you do not consider the period of medical treatment. You only consider the period when the offended party is rendered incapacitated for labor.

    If the offended party is incapacitated to work for less than 30 days, even though the treatment continued beyond 30 days, the physical injuries are only considered less serious because for purposes of classifying the physical injuries as serious, you do not consider the period of medical treatment. You only consider the period of incapacity from work.

(3) When the injury created a deformity upon the offended party, you disregard the healing duration or the period of medical treatment involved. At once, it is considered serious physical injuries.

    So even though the deformity may not have incapacitated the offended party from work, or even though the medical treatment did not go beyond nine days, that deformity will bring about the crime of serious physical injuries.

    Deformity requires the concurrence of the following conditions:

    (a) The injury must produce ugliness;
    (b) It must be visible;
    (c) The ugliness will not disappear through natural healing process.

    Illustration:

    Loss of molar tooth – This is not deformity as it is not visible.

    Loss of permanent front tooth – This is deformity as it is visible and permanent.

    Loss of milk front tooth – This is not deformity as it is visible but will be naturally replaced.

Article 264. Administering Injurious Substances or Beverages

Elements

1. Offender inflicted upon another any serious physical injury;
2. It was done by knowingly administering to him any injurious substance or beverages or by taking advantage of his weakness of mind or credulity;
3. He had no intent to kill.

Article 265. Less Serious Physical Injuries

Matters to be noted in this crime

1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time;
2. The physical injuries must not be those described in the preceding articles.

Qualified as to penalty

1. A fine not exceeding P 500.00, in addition to arresto mayor, shall be imposed for less serious physical injuries when –
   (a) There is a manifest intent to insult or offend the injured person; or
   (b) There are circumstances adding ignominy to the offense.
2. A higher penalty is imposed when the victim is either –
   (a) The offender's parents, ascendants, guardians, curators or teachers; or
   (b) Persons of rank or person in authority, provided the crime is not direct assault.

If the physical injuries do not incapacitate the offended party nor necessitate medical attendance, slight physical injuries is committed. But if the physical injuries heal after 30 days, serious physical injuries is committed under Article 263, paragraph 4.

Article 265 is an exception to Article 48 in relation to complex crimes as the latter only takes place in cases where the Revised Penal Code has no specific provision penalizing the same with a definite, specific penalty. Hence, there is no complex crime of slander by deed with less serious physical injuries but only less serious physical injuries if the act which was committed produced the less serious physical injuries with the manifest intent to insult or offend the offended party, or under circumstances adding ignominy to the offense.

Article 266. Slight Physical Injuries and Maltreatment

Acts punished

1. Physical injuries incapacitated the offended party for labor from one to nine days, or required medical attendance during the same period;
2. Physical injuries which did not prevent the offended party from engaging in his habitual work or which did not require medical attendance;
3. Ill-treatment of another by deed without causing any injury.

This involves even ill-treatment where there is no sign of injury requiring medical treatment.

Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

But if the slapping is done to cast dishonor upon the person slapped, the crime is slander by deed. If the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or anger, the crime is still ill-treatment or slight physical injuries.

Illustration:

If Hillary slaps Monica and told her "You choose your seconds . Let us meet behind the Quirino Grandstand and see who is the better and more beautiful between the two of us", the crime is not ill-treatment, slight physical injuries or slander by deed; it is a form of challenging to a duel. The criminal intent is to challenge a person to a duel.

The crime is slight physical injury if there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance.

Article 266-A. Rape, When and How Committed

Elements under paragraph 1

1. Offender is a man;
2. Offender had carnal knowledge of a woman;

3. Such act is accomplished under any of the following circumstances:
   (a) By using force or intimidation;
   (b) When the woman is deprived of reason or otherwise unconscious;
   (c) By means of fraudulent machination or grave abuse of authority; or
   (d) When the woman is under 12 years of age or demented.

Elements under paragraph 2

1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
   (a) By inserting his penis into another person's mouth or anal orifice; or
   (b) By inserting any instrument or object into the genital or anal orifice of another person;
3. The act of sexual assault is accomplished under any of the following circumstances:
   (a) By using force or intimidation; or
   (b) When the woman is deprived of reason or otherwise unconscious; or
   (c) By means of fraudulent machination or grave abuse of authority; or
   (d) When the woman is under 12 years of age or demented.

Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as A Crime against Persons, Amending for the Purpose the Revised Penal Code) repealed Article335 on rape and added a chapter on Rape under Title 8.

Classification of rape

(1) Traditional concept under Article 335 – carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.
(2) Sexual assault - committed with an instrument or an object or use of the penis with penetration of mouth or anal orifice. The offended party or the offender can either be man or woman, that is, if a woman or a man uses an instrument on anal orifice of male, she or he can be liable for rape.

Rape is committed when a man has carnal knowledge of a woman under the following circumstances:

(1) Where intimidation or violence is employed with a view to have carnal knowledge of a woman;
(2) Where the victim is deprived of reason or otherwise unconscious;
(3) Where the rape was made possible because of fraudulent machination or abuse of authority; or
(4) Where the victim is under 12 years of age, or demented, even though no intimidation nor violence is employed.

Sexual assault is committed under the following circumstances:

(1) Where the penis is inserted into the anal or oral orifice; or
(2) Where an instrument or object is inserted into the genital or oral orifice.

If the crime of rape / sexual assault is committed with the following circumstances, the following penalties are imposed:

(1) Reclusion perpetua to death/ prision mayor to reclusion temporal --
   (a) Where rape is perpetrated by the accused with a deadly weapon; or
   (b) Where it is committed by two or more persons.

(2) Reclusion perpetua to death/ reclusion temporal --
   (a) Where the victim of the rape has become insane; or
   (b) Where the rape is attempted but a killing was committed by the offender on the occasion or by reason of the rape.

(3) Death / reclusion perpetua -- Where homicide is committed by reason or on occasion of a consummated rape.

(4) Death/reclusion temporal --
   (a) Where the victim is under 18 years of age and the offender is her ascendant, stepfather, guardian, or relative by affinity or consanguinity within the 3rd civil degree, or the common law husband of the victim's mother; or
   (b) Where the victim was under the custody of the police or military authorities, or other law enforcement agency;
   (c) Where the rape is committed in full view of the victim's husband, the parents, any of the children or relatives by consanguinity within the 3rd civil degree;
   (d) Where the victim is a religious, that is, a member of a legitimate religious vocation and the offender knows the victim as such before or at the time of the commission of the offense;

(e) Where the victim is a child under 7 yrs of age;
(f) Where the offender is a member of the AFP, its paramilitary arm, the PNP, or any law enforcement agency and the offender took advantage of his position;
(g) Where the offender is afflicted with AIDS or other sexually transmissible diseases, and he is aware thereof when he committed the rape, and the disease was transmitted;
(h) Where the victim has suffered permanent physical mutilation;
(i) Where the pregnancy of the offended party is known to the rapist at the time of the rape; or
(j) Where the rapist is aware of the victim's mental disability, emotional disturbance or physical handicap.

Prior to the amendment of the law on rape, a complaint must be filed by the offended woman. The persons who may file the same in behalf of the offended woman if she is a minor or if she was incapacitated to file, were as follows: a parent; in default of parents, a grandparent; in default or grandparent, the judicial guardian.

Since rape is not a private crime anymore, it can be prosecuted even if the woman does not file a complaint.

If carnal knowledge was made possible because of fraudulent machinations and grave abuse of authority, the crime is rape. This absorbs the crime of qualified and simple seduction when no force or violence was used, but the offender abused his authority to rape the victim.

Under Article 266-C, the offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the offender's liability. Similarly, the legal husband may be pardoned by forgiveness of the wife provided that the marriage is not void ab initio. Obviously, under the new law, the husband may be liable for rape if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape.

Incestuous rape was coined in Supreme Court decisions. It refers to rape committed by an ascendant of the offended woman. In such cases, the force and intimidation need not be of such nature as would be required in rape cases had the accused been a stranger. Conversely, the Supreme Court expected that if the offender is not known to woman, it is necessary that there be evidence of affirmative resistance put up by the offended woman. Mere "no, no" is not enough if the offender is a stranger, although if the rape is incestuous, this is enough.

The new rape law also requires that there be a physical overt act manifesting resistance, if the offended party was in a situation where he or she is incapable of giving valid consent, this is admissible in evidence to show that carnal knowledge was against his or her will.

When the victim is below 12 years old, mere sexual intercourse with her is already rape. Even if it was she who wanted the sexual intercourse, the crime will be rape. This is referred to as statutory rape.

In other cases, there must be force, intimidation, or violence proven to have been exerted to bring about carnal knowledge or the woman must have been deprived of reason or otherwise unconscious.

Where the victim is over 12 years old, it must be shown that the carnal knowledge with her was obtained against her will. It is necessary that there be evidence of some resistance put up by the offended woman. It is not, however, necessary that the offended party should exert all her efforts to prevent the carnal intercourse. It is enough that from her resistance, it would appear that the carnal intercourse is against her will.

Mere initial resistance, which does not indicate refusal on the part of the offended party to the sexual intercourse, will not be enough to bring about the crime of rape.

Note that it has been held that in the crime of rape, conviction does not require medico-legal finding of any penetration on the part of the woman. A medico-legal certificate is not necessary or indispensable to convict the accused of the crime of rape.

It has also been held that although the offended woman who is the victim of the rape failed to adduce evidence regarding the damages to her by reason of the rape, the court may take judicial notice that there is such damage in crimes against chastity. The standard amount given now is P 30,000.00, with or without evidence of any moral damage. But there are some cases where the court awarded only P 20,000.00.

An accused may be convicted of rape on the sole testimony of the offended woman. It does not require that testimony be corroborated before a conviction may stand. This is particularly true if the commission of the rape is such that the

narration of the offended woman would lead to no other conclusion except that the rape was committed.

A. ANTI-WIRE TAPPING ACT (R.A. 4200)

Punishable acts

1. It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described:
2. It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: Provided, That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in section 3 hereof, shall not be covered by this prohibition (Sec. 1).
3. Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings (Sec. *2).*

Exceptions

Nothing contained in this Act, however, shall render it unlawful or punishable for any peace officer, who is (1) authorized by a written order of the Court,

(2) to execute any of the acts declared to be unlawful in the two preceding sections

(3) in cases involving the crimes of

- (a) Treason,
- (b) Espionage,
- (c) Provoking war and disloyalty in case of war,
- (d) Piracy,
- (e) Mutiny in the high seas,
- (f) Rebellion,
- (g) Conspiracy and proposal to commit rebellion,
- (h) Inciting to rebellion,
- (i) Sedition,
- (j) Conspiracy to commit sedition,
- (k) Inciting to sedition,
- (l) Kidnapping as defined by the Revised Penal Code, and
- (m) Violations of Commonwealth Act No. 616, punishing espionage and other offenses against national security:

Provided, That such written order shall only be issued or granted upon written application and the examination under oath or affirmation of the applicant and the witnesses he may produce and a showing:

(1) That there are reasonable grounds to believe that any of the crimes enumerated hereinabove has been committed or is being committed or is about to be committed: Provided, however, That in cases involving the offenses of rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, and inciting to sedition, such authority shall be granted only upon prior proof that a rebellion or acts of sedition, as the case may be, have actually been or are being committed;

(2) That there are reasonable grounds to believe that evidence will be obtained essential to the conviction of any person for, or to the solution of, or to the prevention of, any of such crimes; and

(3) That there are no other means readily available for obtaining such evidence.

The order granted or issued shall specify: (1) the identity of the person or persons whose

communications, conversations, discussions, or spoken words are to be overheard, intercepted, or recorded and, in the case of telegraphic or telephonic communications, the telegraph line or the telephone number involved and its location; (2) the identity of the peace officer authorized to overhear, intercept, or record the communications, conversations, discussions, or spoken words; (3) the offense or offenses committed or sought to be prevented; and (4) the period of the authorization. The authorization shall be effective for the period specified in the order which shall not exceed sixty (60) days from the date of issuance of the order, unless extended or renewed by the court upon being satisfied that such extension or renewal is in the public interest.

All recordings made under court authorization shall, within forty-eight hours after the expiration of the period fixed in the order, be deposited with the court in a sealed envelope or sealed package, and shall be accompanied by an affidavit of the peace officer granted such authority stating the number of recordings made, the dates and times covered by each recording, the number of tapes, discs, or records included in the deposit, and certifying that no duplicates or copies of the whole or any part thereof have been made, or if made, that all such duplicates or copies are included in the envelope or package deposited with the court. The envelope or package so deposited shall not be opened, or the recordings replayed, or used in evidence, or their contents revealed, except upon order of the court, which shall not be granted except upon motion, with due notice and opportunity to be heard to the person or persons whose conversation or communications have been recorded.

The court referred to in this section shall be understood to mean the Court of First Instance within whose territorial jurisdiction the acts for which authority is applied for are to be executed *(Sec. 3).*

B. HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Surveillance of suspects and interception and recording of communications

The provisions of Republic Act No. 4200 (Anti-Wire Tapping Law) to the contrary notwithstanding, a police or law enforcement official and the members of his team may, upon a written order of the Court of Appeals, listen to, intercept and record, with the use of any mode, form, kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any other suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Provided, That surveillance, interception and recording of communications between lawyers and clients, doctors and patients, journalists and their sources and confidential business correspondence shall not be authorized *(Sec. 7).*

Restriction on travel

In cases where evidence of guilt is not strong, and the person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same, the court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety, consistent with Article III, Section 6 of the Constitution. Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court.

He/she may also be placed under house arrest by order of the court at his or her usual place of residence.

While under house arrest, he or she may not use telephones, cellphones, e-mails, computers, the internet or other means of communications with people outside the residence until otherwise ordered by the court.

The restrictions abovementioned shall be terminated upon the acquittal of the accused or of the dismissal of the case filed against him or earlier upon the discretion of the court on motion of the prosecutor or of the accused *(Sec. 26).*

Examination of bank deposits and documents

(a) Judicial Authorization

The provisions of Republic Act No. 1405 as amended, to the contrary notwithstanding, the justices of the Court of Appeals designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that: (1) a person charged with or suspected of the crime of terrorism or, conspiracy to commit terrorism, (2) of a judicially declared and outlawed terrorist organization, association, or group of persons; and (3) of a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to: (a) examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and (b) gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned, shall not refuse to allow such examination or to provide the desired information, when so, ordered by and served with the written order of the Court of Appeals *(Sec. 27).*

(b) Application

The written order of the Court of Appeals authorizing the examination of bank deposits, placements, trust accounts, assets, and records: (1) of a person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of any judicially declared and outlawed terrorist organization, association, or group of persons, or (3) of any member of such organization, association, or group of persons in a bank or financial institution, and the gathering of any relevant information about the same from said bank or financial institution, shall only be granted by the authorizing division of the Court of Appeals upon an ex parte application to that effect of a police or of a law enforcement official who has been duly authorized in writing to file such ex parte application by the Anti-Terrorism Council created in Section 53 of this Act to file such ex parte application, and upon examination under oath or affirmation of the applicant and, the witnesses he may produce to establish the facts that will justify the need and urgency of examining and freezing the bank deposits, placements, trust accounts, assets, and records: (1) of the person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism; (2) of a judicially declared and outlawed terrorist organization, association or group of persons; or (3) of any member of such organization, association, or group of persons *(Sec. 28).*

Unauthorized revelation of classified materials

The penalty of ten (10) years and one day to twelve (12) years of imprisonment shall be imposed upon any person, police or law enforcement agent, judicial officer or civil servant who, not being authorized by the Court of Appeals to do so, reveals in any manner or form any classified information under this Act *(Sec. 46).*

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. 9208)

Punishable acts

1. Acts of Trafficking in Persons. - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
   (a) To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
   (b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
   (c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or

slavery, involuntary servitude or debt bondage;
(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;
(e) To maintain or hire a person to engage in prostitution or pornography;
(f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
(g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and
(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad *(Sec. 4)*.

2. Acts that Promote Trafficking in Persons. - The following acts which promote or facilitate trafficking in persons, shall be unlawful:
(a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;
(b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;
(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;
(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;
(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;
(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and
(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery *(Sec. 5)*.

3. Qualified Trafficking in Persons. - The following are considered as qualified trafficking:
(a) When the trafficked person is a child;
(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;
(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
(f) When the offender is a member of the military or law enforcement agencies; and
(g) When by reason or on occasion of the act of trafficking in persons, the offended

party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS) *(Sec. 6)*.

10. CRIMES AGAINST PROPERTY (293-332)

Crimes against property

1. Robbery with violence against or intimidation of persons (Art. 294);
2. Attempted and frustrated robbery committed under certain circumstances (Art. 297);
3. Execution of deeds by means of violence or intimidation (Art. 298);
4. Robbery in an inhabited house or public building or edifice devoted to worship (Art. 299);
5. Robbery in an inhabited place or in a private building (Art. 302);
6. Possession of picklocks or similar tools (Art. 304);
7. Brigandage (Art. 306);
8. Aiding and abetting a band of brigands (Art. 307);
9. Theft (Art. 308);
10. Qualified theft (Art. 310);
11. Theft of the property of the National Library and National Museum (Art. 311);
12. Occupation of real property or usurpation of real rights in property (Art. 312);
13. Altering boundaries or landmarks (Art. 313);
14. Fraudulent insolvency (Art. 314);
15. Swindling (Art. 315);
16. Other forms of swindling (Art. 316);
17. Swindling a minor (Art. 317);
18. Other deceits (Art. 318);
19. Removal, sale or pledge of mortgaged property (Art. 319);
20. Destructive arson (Art. 320);
21. Other forms of arson (Art. 321);
22. Arson of property of small value (Art. 323);
23. Crimes involving destruction (Art. 324);
24. Burning one's own property as means to commit arson (Art. 325);
25. Setting fire to property exclusively owned by the offender (Art. 326);
26. Malicious mischief (Art. 327);
27. Special case of malicious mischief (Art. 328);
28. Damage and obstruction to means of communication (Art. 330);
29. Destroying or damaging statues, public monuments or paintings (Art. 331).

Article 293. Who Are Guilty of Robbery

Robbery – This is the taking or personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything.

Elements of robbery in general

1. There is personal property belonging to another;
2. There is unlawful taking of that property;
3. The taking must be with intent to gain; and
4. There is violence against or intimidation of any person, or force upon anything.

Article 294. Robbery with Violence against or Intimidation of Persons

Acts punished

1. When by reason or on occasion of the robbery (taking of personal property belonging to another with intent to gain), the crime of homicide is committed;
2. When the robbery is accompanied by rape or intentional mutilation or arson;
3. When by reason of on occasion of such robbery, any of the physical injuries resulting in insanity, imbecility, impotency or blindness is inflicted;
4. When by reason or on occasion of robbery, any of the physical injuries resulting in the loss of the use of speech or the power to hear or to smell, or the loss of an eye, a hand, a foot, an arm, or a leg or the loss of the use of any such member or incapacity for the work in which the injured person is theretofore habitually engaged is inflicted;
5. If the violence or intimidation employed in the commission of the robbery is carried to a degree unnecessary for the commission of the crime;
6. When in the course of its execution, the offender shall have inflicted upon any person not responsible for the commission of the

robbery any of the physical injuries in consequence of which the person injured becomes deformed or loses any other member of his body or loses the sue thereof or becomes ill or incapacitated for the performance of the work in which he is habitually engaged for more than 90 days or the person injured becomes ill or incapacitated for labor for more than 30 days;

7. If the violence employed by the offender does not cause any of the serious physical injuries defined in Article 263, or if the offender employs intimidation only.

Violence or intimidation upon persons may result in death or mutilation or rape or serious physical injuries.

If death results or even accompanies a robbery, the crime will be robbery with homicide provided that the robbery is consummated.

This is a crime against property, and therefore, you contend not with the killing but with the robbery.

As long as there is only one (1) robbery, regardless of the persons killed, the crime will only be one (1) count of robbery with homicide. The fact that there are multiple killings committed in the course of the robbery will be considered only as aggravating so as to call for the imposition of the maximum penalty prescribed by law.

If, on the occasion or by reason of the robbery, somebody is killed, and there are also physical injuries inflicted by reason or on the occasion of the robbery, don't think that those who sustained physical injuries may separately prosecute the offender for physical injuries. Those physical injuries are only considered aggravating circumstances in the crime of robbery with homicide.

This is not a complex crime as understood under Article 48, but a single indivisible crime. This is a special complex crime because the specific penalty is provided in the law.

In **Napolis v. CA,** it was held that when violence or intimidation and force upon things are both present in the robbery, the crime is complex under Article 48.

In robbery with violence of intimidation, the taking is complete when the offender has already the possession of the thing even if he has no opportunity to dispose of it.

In robbery with force upon things, the things must be brought outside the building for consummated robbery to be committed.

On robbery with homicide

The term "homicide" is used in the generic sense, and the complex crime therein contemplated comprehends not only robbery with homicide in its restricted sense, but also with robbery with murder. So, any kind of killing by reason of or on the occasion of a robbery will bring about the crime of robbery with homicide even if the person killed is less than three days old, or even if the person killed is the mother or father of the killer, or even if on such robbery the person killed was done by treachery or any of the qualifying circumstances. In short, there is no crime of robbery with parricide, robbery with murder, robbery with infanticide – any and all forms of killing is referred to as homicide.

Illustration:

The robbers enter the house. In entering through the window, one of the robbers stepped on a child less than three days old. The crime is not robbery with infanticide because there is no such crime. The word homicide as used in defining robbery with homicide is used in the generic sense. It refers to any kind of death.

Although it is a crime against property and treachery is an aggravating circumstance that applies only to crimes against persons, if the killing in a robbery is committed with treachery, the treachery will be considered a generic aggravating circumstance because of the homicide.

When two or more persons are killed during the robbery, such should be appreciated as an aggravating circumstance.

As long as there is only one robbery, regardless of the persons killed, you only have one crime of robbery with homicide. Note, however, that "one robbery" does not mean there is only one taking.

Illustration:

Robbers decided to commit robbery in a house, which turned out to be a boarding house. Thus, there were different boarders who were offended parties in the robbery. There is only one count of robbery. If there were killings done to different boarders during the robbery being committed in a boarder's quarter, do not consider that as separate counts of robbery with homicide because when robbers decide to commit robbery in a certain house, they are only impelled by one criminal intent to rob and there will only be one case of robbery. If there were homicide or death committed, that would only be part of a single robbery. That there were several killings done would only aggravate the commission of the crime

of robbery with homicide.

In People v. Quiñones, 183 SCRA 747, it was held that there is no crime of robbery with multiple homicides. The charge should be for robbery with homicide only because the number of persons killed is immaterial and does not increase the penalty prescribed in Article 294. All the killings are merged in the composite integrated whole that is robbery with homicide so long as the killings were by reason or on occasion of the robbery.

In another case, a band of robbers entered a compound, which is actually a sugar mill. Within the compound, there were quarters of the laborers. They robbed each of the quarters. The Supreme Court held that there was only one count of robbery because when they decided and determined to rob the compound, they were only impelled by one criminal intent to rob.

With more reason, therefore, if in a robbery, the offender took away property belonging to different owners, as long as the taking was done at one time, and in one place, impelled by the same criminal intent to gain, there would only be one count of robbery.

In robbery with homicide as a single indivisible offense, it is immaterial who gets killed. Even though the killing may have resulted from negligence, you will still designate the crime as robbery with homicide.

Illustration:

On the occasion of a robbery, one of the offenders placed his firearm on the table. While they were ransacking the place, one of the robbers bumped the table. As a result, the firearm fell on the floor and discharged. One of the robbers was the one killed. Even though the placing of the firearm on the table where there is no safety precaution taken may be considered as one of negligence or imprudence, you do not separate the homicide as one of the product of criminal negligence. It will still be robbery with homicide, whether the person killed is connected with the robbery or not. He need not also be in the place of the robbery.

In one case, in the course of the struggle in a house where the robbery was being committed, the owner of the place tried to wrest the arm of the robber. A person several meters away was the one who got killed. The crime was held to be robbery with homicide.

Note that the person killed need not be one who is identified with the owner of the place where the robbery is committed or one who is a stranger to the robbers. It is enough that the homicide was committed by reason of the robbery or on the occasion thereof.

Illustration:

There are two robbers who broke into a house and carried away some valuables. After they left such house these two robbers decided to cut or divide the loot already so that they can go of them. So while they are dividing the loot the other robber noticed that the one doing the division is trying to cheat him and so he immediately boxed him. Now this robber who was boxed then pulled out his gun and fired at the other one killing the latter. Would that bring about the crime of robbery with homicide? Yes. Even if the robbery was already consummated, the killing was still by reason of the robbery because they quarreled in dividing the loot that is the subject of the robbery.

In People v. Domingo, 184 SCRA 409, on the occasion of the robbery, the storeowner, a septuagenarian, suffered a stroke due to the extreme fear which directly caused his death when the robbers pointed their guns at him. It was held that the crime committed was robbery with homicide. It is immaterial that death supervened as a mere accident as long as the homicide was produced by reason or on the occasion of the robbery, because it is only the result which matters, without reference to the circumstances or causes or persons intervening in the commission of the crime which must be considered.

Remember also that intent to rob must be proved. But there must be an allegation as to the robbery not only as to the intention to rob.

If the motive is to kill and the taking is committed thereafter, the crimes committed are homicide and theft. If the primordial intent of the offender is to kill and not to rob but after the killing of the victims a robbery was committed, then there are will be two separate crimes.

Illustration:

If a person had an enemy and killed him and after killing him, saw that he had a beautiful ring and took this, the crime would be not robbery with homicide because the primary criminal intent is to kill. So, there will be two crimes: one for the killing and one for the taking of the property after the victim was killed. Now this would bring about the crime of theft and it could not be robbery anymore because the person is already dead.

For robbery with homicide to exist, homicide must be committed by reason or on the occasion of the robbery, that is, the homicide must be committed "in the course or because of the robbery."

Robbery and homicide are separate offenses when the homicide is not committed "on the occasion" or "by reason" of the robbery.

Where the victims were killed, not for the purpose of committing robbery, and the idea of taking the money and other personal property of the victims was conceived by the culprits only after the killing, it was held in People v. Domingo, 184 SCRA 409, that the culprits committed two separate crimes of homicide or murder (qualified by abuse of superior strength) and theft.

The victims were killed first then their money was taken the money from their dead bodies. This is robbery with homicide. It is important here that the intent to commit robbery must precede the taking of human life in robbery with homicide. The offender must have the intent to take personal property before the killing.

It must be conclusively shown that the homicide was committed for the purpose of robbing the victim. In People v. Hernandez, appellants had not thought of robbery prior to the killing. The thought of taking the victim's wristwatch was conceived only after the killing and throwing of the victim in the canal. Appellants were convicted of two separate crimes of homicide and theft as there is absent direct relation and intimate connection between the robbery and the killing.

On robbery with rape

This is another form of violence or intimidation upon person. The rape accompanies the robbery. In this case where rape and not homicide is committed, there is only a crime of robbery with rape if both the robbery and the rape are consummated. If during the robbery, attempted rape were committed, the crimes would be separate, that is, one for robbery and one for the attempted rape.

The rape committed on the occasion of the robbery is not considered a private crime because the crime is robbery, which is a crime against property. So, even though the robber may have married the woman raped, the crime remains robbery with rape. The rape is not erased. This is because the crime is against property which is a single indivisible offense.

If the woman, who was raped on the occasion of the robbery, pardoned the rapist who is one of the robbers, that would not erase the crime of rape. The offender would still be prosecuted for the crime of robbery with rape, as long as the rape is consummated.

If the rape is attempted, since it will be a separate charge and the offended woman pardoned the offender, that would bring about a bar to the prosecution of the attempted rape. If the offender married the offended woman, that would extinguish the criminal liability because the rape is the subject of a separate prosecution.

The intention must be to commit robbery and even if the rape is committed before the robbery, robbery with rape is committed. But if the accused tried to rape the offended party and because of resistance, he failed to consummate the act, and then he snatched the vanity case from her hands when she ran away, two crimes are committed: attempted rape and theft.

There is no complex crime under Article 48 because a single act is not committed and attempted rape is not a means necessary to commit theft and vice-versa.

The Revised Penal Code does not differentiate whether rape was committed before, during or after the robbery. It is enough that the robbery accompanied the rape. Robbery must not be a mere accident or afterthought.

In **People v. Flores, 195 SCRA 295,** although the offenders plan was to get the victim's money, rape her and kill her, but in the actual execution of the crime, the thoughts of depriving the victim of her valuables was relegated to the background and the offender's prurient desires surfaced. They persisted in satisfying their lust. They would have forgotten about their intent to rob if not for the accidental touching of the victim's ring and wristwatch. The taking of the victim's valuables turned out to be an afterthought. It was held that two distinct crimes were committed: rape with homicide and theft.

In **People v. Dinola, 183 SCRA 493,** it was held that if the original criminal design of the accused was to commit rape and after committing the rape, the accused committed robbery because the opportunity presented itself, two distinct crimes – rape and robbery were committed – not robbery with rape. In the latter, the criminal intent to gain must precede the intent to rape.

On robbery with physical injuries

To be considered as such, the physical injuries must always be serious. If the physical injuries are only less serious or slight, they are absorbed in the robbery. The crime becomes merely robbery. But if the less serious physical injuries were committed after the robbery was already consummated, there would be a separate charge for the less serious physical injuries. It will only be absorbed in the

robbery if it was inflicted in the course of the execution of the robbery. The same is true in the case of slight physical injuries.

Illustration:

After the robbery had been committed and the robbers were already fleeing from the house where the robbery was committed, the owner of the house chased them and the robbers fought back. If only less serious physical injuries were inflicted, there will be separate crimes: one for robbery and one for less serious physical injuries.

But if after the robbery was committed and the robbers were already fleeing from the house where the robbery was committed, the owner or members of the family of the owner chased them, and they fought back and somebody was killed, the crime would still be robbery with homicide. But if serious physical injuries were inflicted and the serious physical injuries rendered the victim impotent or insane or the victim lost the use of any of his senses or lost a part of his body, the crime would still be robbery with serious physical injuries. The physical injuries (serious) should not be separated regardless of whether they retorted in the course of the commission of the robbery or even after the robbery was consummated.

In Article 299, it is only when the physical injuries resulted in the deformity or incapacitated the offended party from labor for more than 30 days that the law requires such physical injuries to have been inflicted in the course of the execution of the robbery, and only upon persons who are not responsible in the commission of the robbery.

But if the physical injuries inflicted are those falling under subdivision 1 and 2 of Article 263, even though the physical injuries were inflicted upon one of the robbers themselves, and even though it had been inflicted after the robbery was already consummated, the crime will still be robbery with serious physical injuries. There will only be one count of accusation.

Illustration:

After the robbers fled from the place where the robbery was committed, they decided to divide the spoils and in the course of the division of the spoils or the loot, they quarreled. They shot it out and one of the robbers was killed. The crime is still robbery with homicide even though one of the robbers was the one killed by one of them. If they quarreled and serious physical injuries rendered one of the robbers impotent, blind in both eyes, or got insane, or he lost the use of any of his senses, lost the use of any part of his body, the crime will still be robbery with serious physical injuries.

If the robbers quarreled over the loot and one of the robbers hacked the other robber causing a deformity in his face, the crime will only be robbery and a separate charge for the serious physical injuries because when it is a deformity that is caused, the law requires that the deformity must have been inflicted upon one who is not a participant in the robbery. Moreover, the physical injuries which gave rise to the deformity or which incapacitated the offended party from labor for more than 30 days, must have been inflicted in the course of the execution of the robbery or while the robbery was taking place.

If it was inflicted when the thieves/robbers are already dividing the spoils, it cannot be considered as inflicted in the course of execution of the robbery and hence, it will not give rise to the crime of robbery with serious physical injuries. You only have one count of robbery and another count for the serious physical injuries inflicted.

If, during or on the occasion or by reason of the robbery, a killing, rape or serious physical injuries took place, there will only be one crime of robbery with homicide because all of these – killing, rape, serious physical injuries -- are contemplated by law as the violence or intimidation which characterizes the taking as on of robbery. You charge the offenders of robbery with homicide. The rape or physical injuries will only be appreciated as aggravating circumstance and is not the subject of a separate prosecution. They will only call for the imposition of the penalty in the maximum period.

If on the occasion of the robbery with homicide, robbery with force upon things was also committed, you will not have only one robbery but you will have a complex crime of robbery with homicide and robbery with force upon things (see **Napolis v. CA**). This is because robbery with violence or intimidation upon persons is a separate crime from robbery with force upon things.

Robbery with homicide, robbery with intentional mutilation and robbery with rape are not qualified by band or uninhabited place. These aggravating circumstances only qualify robbery with physical injuries under subdivision 2, 3, and 4 of Article 299.

When it is robbery with homicide, the band or uninhabited place is only a generic aggravating circumstance. It will not qualify the crime to a higher degree of penalty.

In **People v. Salvilla,** it was held that if in a robbery

with serious physical injuries, the offenders herded the women and children into an office and detained them to compel the offended party to come out with the money, the crime of serious illegal detention was a necessary means to facilitate the robbery; thus, the complex crimes of robbery with serious physical injuries and serious illegal detention.

But if the victims were detained because of the timely arrival of the police, such that the offenders had no choice but to detain the victims as hostages in exchange for their safe passage, the detention is absorbed by the crime of robbery and is not a separate crime. This was the ruling in People v. Astor.

On robbery with arson

Another innovation of Republic Act No. 7659 is the composite crime of robbery with arson if arson is committed by reason of or on occasion of the robbery. The composite crime would only be committed if the primordial intent of the offender is to commit robbery and there is no killing, rape, or intentional mutilation committed by the offender during the robbery. Otherwise, the crime would be robbery with homicide, or robbery with rape, or robbery with intentional mutilation, in that order, and the arson would only be an aggravating circumstance. It is essential that robbery precedes the arson, as in the case of rape and intentional mutilation, because the amendment included arson among the rape and intentional mutilation which have accompanied the robbery.

Moreover, it should be noted that arson has been made a component only of robbery with violence against or intimidation of persons in said Article 294, but not of robbery by the use of force upon things in Articles 299 and 302.

So, if the robbery was by the use of force upon things and therewith arson was committed, two distinct crimes are committed.

Article 295. Robbery with Physical Injuries, Committed in An Uninhabited Place and by A Band

Robbery with violence against or intimidation of person qualified is qualified if it is committed

1. In an uninhabited place;
2. By a band;
3. By attacking a moving train, street car, motor vehicle, or airship;
4. By entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances; or
5. On a street, road, highway or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties prescribed in Article 294.

Article 296 defines a robbery by a band as follows: when at least four armed malefactors take part in the commission of a robbery.

Requisites for liability for the acts of the other members of the band

1. He was a member of the band;
2. He was present at the commission of a robbery by that band;
3. The other members of the band committed an assault;
4. He did not attempt to prevent the assault.

Article 297. Attempted and frustrated robbery committed under exceptional circumstances

The article punishes an act when by reason or on occasion of an attempted or frustrated robbery a homicide is committed.

Article 298. Execution of Deeds by Means of Violence or intimidation

Elements

1. Offender has intent to defraud another;
2. Offender compels him to sign, execute, or deliver any public instrument or document.
3. The compulsion is by means of violence or intimidation.

Arts. 299 – 305 comprise the section on robbery by the use of force upon things

Article 299. Robbery in An Inhabited House or Public Building or Edifice Devoted to Worship

Any armed person who shall commit robbery in an inhabited house or public building or edifice devoted to religious worship, shall be punished by reclusion temporal, if the value of the property taken shall exceed 250 pesos, and if:

(a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

1. Through a opening not intended for entrance or egress.

2. By breaking any wall, roof, or floor or breaking any door or window.

3. By using false keys, picklocks or similar tools.

4. By using any fictitious name or pretending the exercise of public authority.

Or if –

(b) The robbery be committed under any of the following circumstances:

1. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle;

2. By taking such furniture or objects to be broken or forced open outside the place of the robbery.

When the offenders do not carry arms, and the value of the property taken exceeds 250 pesos, the penalty next lower in degree shall be imposed.

The same rule shall be applied when the offenders are armed, but the value of the property taken does not exceed 250 pesos.

When said offenders do not carry arms and the value of the property taken does not exceed 250 pesos, they shall suffer the penalty prescribed in the two next preceding paragraphs, in its minimum period.

If the robbery be committed in one of the dependencies of an inhabited house, public building, or building dedicated to religious worship, the penalties next lower in degree than those prescribed in this article shall be imposed.

Elements under subdivision (a)

1. Offender entered an inhabited house, public building
2. The entrance was effected by any of the following means:
   (a) Through an opening not intended for entrance or egress;
   (b) By breaking any wall, roof or floor, or breaking any door or window;
   (c) By using false keys, picklocks or similar tools; or
   (d) By using any fictitious name or pretending the exercise of public authority.
3. Once inside the building, offender took personal property belonging to another with intent to gain.

Elements under subdivision (b):

1. Offender is inside a dwelling house, public building, or edifice devoted to religious worship, regardless of the circumstances under which he entered it;
2. Offender takes personal property belonging to another, with intent to gain, under any of the following circumstances:
   (a) By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle; or
   (b) By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

"Force upon things" has a technical meaning in law. Not any kind of force upon things will characterize the taking as one of robbery. The force upon things contemplated requires some element of trespass into the establishment where the robbery was committed. In other words, the offender must have entered the premises where the robbery was committed. If no entry was effected, even though force may have been employed actually in the taking of the property from within the premises, the crime will only be theft.

Two predicates that will give rise to the crime as robbery:

1. By mere entering alone, a robbery will be committed if any personal property is taken from within;

2. The entering will not give rise to robbery even if something is taken inside. It is the breaking of the receptacle or closet or cabinet where the personal property is kept that will give rise to robbery, or the taking of a sealed, locked receptacle to be broken outside the premises.

If by the mere entering, that would already qualify the taking of any personal property inside as robbery, it is immaterial whether the offender stays inside the premises. The breaking of things inside the premises will only be important to consider if the entering by itself will not characterize the crime as robbery with force upon things.

Modes of entering that would give rise to the crime of robbery with force upon things if something is taken inside the premises: entering into an opening not intended for entrance or egress, under Article 299 (a).

Illustration:

The entry was made through a fire escape. The fire escape was intended for egress. The entry will not characterize the taking as one of robbery because it is an opening intended for egress, although it may not be intended for entrance. If the entering were done through the window, even if the window was not broken, that would characterize the taking of personal property inside as robbery because the window is not an opening intended for entrance.

Illustration:

On a sari-sari store, a vehicle bumped the wall. The wall collapsed. There was a small opening there. At night, a man entered through that opening without breaking the same. The crime will already be robbery if he takes property from within because that is not an opening intended for the purpose.

Even of there is a breaking of wall, roof, floor or window, but the offender did not enter, it would not give rise to robbery with force upon things.

Breaking of the door under Article299 (b) – Originally, the interpretation was that in order that there be a breaking of the door in contemplation of law, there must be some damage to the door.

Before, if the door was not damaged but only the lock attached to the door was broken, the taking from within is only theft. But the ruling is now abandoned because the door is considered useless without the lock. Even if it is not the door that was broken but only the lock, the breaking of the lock renders the door useless and it is therefore tantamount to the breaking of the door. Hence, the taking inside is considered robbery with force upon things.

If the entering does not characterize the taking inside as one of robbery with force upon things, it is the conduct inside that would give rise to the robbery if there would be a breaking of sealed, locked or closed receptacles or cabinet in order to get the personal belongings from within such receptacles, cabinet or place where it is kept.

If in the course of committing the robbery within the premises some interior doors are broken, the taking from inside the room where the door leads to will only give rise to theft. The breaking of doors contemplated in the law refers to the main door of the house and not the interior door.

But if it is the door of a cabinet that is broken and the valuable inside the cabinet was taken, the breaking of the cabinet door would characterize the taking as robbery. Although that particular door is not included as part of the house, the cabinet keeps the contents thereof safe.

Use of picklocks or false keys refers to the entering into the premises – If the picklock or false key was used not to enter the premises because the offender had already entered but was used to unlock an interior door or even a receptacle where the valuable or personal belonging was taken, the use of false key or picklock will not give rise to the robbery with force upon things because these are considered by law as only a means to gain entrance, and not to extract personal belongings from the place where it is being kept.

The law classifies robbery with force upon things as those committed in:

(1) an inhabited place;
(2) public buildings;
(3) a place devoted to religious worship.

The law also considers robbery committed not in an inhabited house or in a private building.

Note that the manner of committing the robbery with force upon things is not the same.

When the robbery is committed in a house which is inhabited, or in a public building or in a place devoted to religious worship, the use of fictitious name or pretension to possess authority in order to gain entrance will characterize the taking inside as robbery with force upon things.

Article 301 defines an inhabited house, public building, or building dedicated to religious worship and their dependencies, thus:

Inhabited house – Any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

Public building – Includes every building owned by the government or belonging to a private person but used or rented by the government, although temporarily unoccupied by the same.

Dependencies of an inhabited house, public building, or building dedicated to religious worship – All interior courts, corrals, warehouses, granaries, barns, coachhouses, stables, or other departments, or enclosed interior entrance connected therewith and which form part of the whole. Orchards and other lands used for cultivation or production are not included, even if closed, contiguous to the building, and having direct connection therewith.

Article 302. Robbery in An Uninhabited Place or in A Private Building

Elements

1. Offender entered an uninhabited place or a building which was not a dwelling house, not a public building, or not an edifice devoted to religious worship;
2. Any of the following circumstances was present:
   (a) The entrance was effected through an opening not intended for entrance or egress;
   (b) A wall, roof, floor, or outside door or window was broken;
   (c) The entrance was effected through the use of false keys, picklocks or other similar tools;
   (d) A door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken; or
   (e) A closed or sealed receptacle was removed, even if the same be broken open elsewhere.
3. Offender took therefrom personal property belonging to another with intent to gain.

Under **Article 303**, if the robbery under Article 299 and 302 consists in the taking of cereals, fruits, or firewood, the penalty imposable is lower.

Article 304. Possession of Picklock or Similar Tools

Elements

1. Offender has in his possession picklocks or similar tools;
2. Such picklock or similar tools are especially adopted to the commission of robbery;
3. Offender does not have lawful cause for such possession.

Article 305 defines false keys to include the following:

1. Tools mentioned in Article 304;
2. Genuine keys stolen from the owner;
3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender.

Brigandage – This is a crime committed by more than three armed persons who form a band of robbers for the purpose of committing robbery in the highway or kidnapping persons for the purpose of extortion or to obtain ransom, or for any other purpose to be attained by means of force and violence.

Article 306. Who Are Brigands

Elements of brigandage

1. There are least four armed persons;
2. They formed a band of robbers;
3. The purpose is any of the following:
   (a) To commit robbery in the highway;
   (b) To kidnap persons for the purpose of extortion or to obtain ransom; or
   (c) To attain by means of force and violence any other purpose.

Article 307. Aiding and Abetting A Band of Brigands

Elements

1. There is a band of brigands;
2. Offender knows the band to be of brigands;

3. Offender does any of the following acts:
   (a) He in any manner aids, abets or protects such band of brigands;
   (b) He gives them information of the movements of the police or other peace officers of the government; or
   (c) He acquires or receives the property taken by such brigands.

Distinction between brigandage under the Revised Penal Code and highway robbery/brigandage under **Presidential Decree No. 532:**

(1) Brigandage as a crime under the Revised Penal Code refers to the formation of a band of robbers by more than three armed persons for the purpose of committing robbery in the highway, kidnapping for purposes of extortion or ransom, or for any other purpose to be attained by force and violence. The mere forming of a band, which requires at least four armed persons, if for any of the criminal purposes stated in Article 306, gives rise to brigandage.

(2) Highway robbery/brigandage under Presidential Decree No. 532 is the seizure of any person for ransom, extortion or for any other lawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means committed by any person on any Philippine highway.

Brigandage under Presidential Decree No. 532 refers to the actual commission of the robbery on the highway and can be committed by one person alone. It is this brigandage which deserves some attention because not any robbery in a highway is brigandage or highway robbery. A distinction should be made between highway robbery/brigandage under the decree and ordinary robbery committed on a highway under the Revised Penal Code.

In ***People v. Puno***, decided February 17, 1993, the trial court convicted the accused of highway robbery/ brigandage under Presidential Decree No. 532 and sentenced them to reclusion perpetua. On appeal, the Supreme Court set aside the judgment and found the accused guilty of simple robbery as punished in Article 294 (5), in relation to Article 295, and sentenced them accordingly. The Supreme Court pointed out that the purpose of brigandage "is, inter alia, indiscriminate highway robbery. And that PD 532 punishes as highway robbery or Brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on a Philippine highway as defined therein, not acts committed against a predetermined or particular victim". A single act of robbery against a particular person chosen by the offender as his specific victim, even if committed on a highway, is not highway robbery or brigandage.

In ***US v. Feliciano, 3 Phil. 422***, it was pointed out that highway robbery or brigandage is more than ordinary robbery committed on a highway. The purpose of brigandage is indiscriminate robbery in highways. If the purpose is only a particular robbery, the crime is only robbery or robbery in band, if there are at least four armed participants.

Presidential Decree No. 532 introduced amendments to Article 306 and 307 by increasing the penalties. It does not require at least four armed persons forming a band of robbers. It does not create a presumption that the offender is a brigand when he an unlicensed firearm is used unlike the Revised Penal Code. But the essence of brigandage under the Revised Penal Code is the same as that in the Presidential Decree, that is, crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whoever they may potentially be.

Article 308. Who Are Liable for Theft

Persons liable

1. Those who with intent to gain, but without violence against or intimidation of persons nor force upon things, take personal property of another without the latter's consent;
2. Those who having found lost property, fails to deliver the same to the local authorities or to its owner;
3. Those who, after having maliciously damaged the property of another, remove or make use of the fruits or objects of the damage caused by them;
4. Those who enter an enclosed estate or a field where trespass is forbidden or which belongs to another and, without the consent of its owner, hunt or fish upon the same or gather fruits, cereals or other forest or farm products.

Elements

1. There is taking of personal property;
2. The property taken belongs to another;
3. The taking was done with intent to gain;
4. The taking was done without the consent of the owner;
5. The taking is accomplished without the use of violence against or intimidation of persons of force upon things.

Fencing under **Presidential Decree No. 1612** is a distinct crime from theft and robbery. If the participant who profited is being prosecuted with person who robbed, the person is prosecuted as an accessory. If he is being prosecuted separately, the person who partook of the proceeds is liable for fencing.

In **People v. Judge de Guzman,** it was held that fencing is not a continuing offense. Jurisdiction is with the court of the place where the personal property subject of the robbery or theft was possessed, bought, kept, or dealt with. The place where the theft or robbery was committed was inconsequential.

Since Section 5 of Presidential Decree No. 1612 expressly provides that mere possession of anything of value which has been subject of theft or robbery shall be prima facie evidence of fencing, it follows that a possessor of stolen goods is presumed to have knowledge that the goods found in his possession after the fact of theft or robbery has been established. The presumption does not offend the presumption of innocence in the fundamental law. This was the ruling in Pamintuan v. People, decided on July 11, 1994.

Burden of proof is upon fence to overcome presumption; if explanation insufficient or unsatisfactory, court will convict. This is a malum prohibitum so intent is not material. But if prosecution is under the Revised Penal Code, as an accessory, the criminal intent is controlling.

When there is notice to person buying, there may be fencing such as when the price is way below ordinary prices; this may serve as notice. He may be liable for fencing even if he paid the price because of the presumption.

Cattle Rustling and Qualified Theft of Large Cattle – The crime of cattle-rustling is defined and punished under **Presidential Decree No. 533,** the Anti-Cattle Rustling law of 1974, as the taking by any means, method or scheme, of any large cattle, with or without intent to gain and whether committed with or without violence against or intimidation of person or force upon things, so long as the taking is without the consent of the owner/breed thereof. The crime includes the killing or taking the meat or hide of large cattle without the consent of the owner.

Since the intent to gain is not essential, the killing or destruction of large cattle, even without taking any part thereof, is not a crime of malicious mischief but cattle-rustling.

The Presidential Decree, however, does not supersede the crime of qualified theft of large cattle under Article 310 of the Revised Penal Code, but merely modified the penalties provided for theft of large cattle and, to that extent, amended Articles 309 and 310. Note that the overt act that gives rise to the crime of cattle-rustling is the taking or killing of large cattle. Where the large cattle was not taken, but received by the offender from the owner/overseer thereof, the crime is not cattle-rustling; it is qualified theft of large cattle.

Where the large cattle was received by the offender who thereafter misappropriated it, the crime is qualified theft under Article 310 if only physical or material possession thereof was yielded to him. If both material and juridical possession thereof was yielded to him who misappropriated the large cattle, the crime would be estafa under Article 315 (1b).

Presidential Decree No. 533 is not a special law in the context of Article 10 of the Revised Penal Code. It merely modified the penalties provided for theft of large cattle under the Revised Penal Code and amended Article 309 and 310. This is explicit from Section 10 of the Presidential Decree. Consequently, the trial court should not have convicted the accused of frustrated murder separately from cattle-rustling, since the former should have been absorbed by cattle-rustling as killing was a result of or on the occasion of cattle-rustling. It should only be an aggravating circumstance. But because the information did not allege the injury, the same can no longer be appreciated; the crime should, therefore be only, simple cattle-rustling *(People v. Martinada, February 13, 1991)*.

Article 310. Qualified Theft

Theft is qualified if

1. Committed by a domestic servant;
2. Committed with grave abuse of confidence;
3. The property stolen is a motor vehicle, mail matter, or large cattle;
4. The property stolen consists of coconuts taken from the premises of a plantation;
5. The property stolen is fish taken from a fishpond or fishery; or
6. If property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.

Article 311. Theft of the Property of the National Library or National Museum

If the property stolen is any property of the National Library or of the National Museum

Article 312. Occupation of Real Property or Usurpation of Real Rights in Property

Acts punished:

1. Taking possession of any real property belonging to another by means of violence against or intimidation of persons;
2. Usurping any real rights in property belonging to another by means of violence against or intimidation of persons.

Elements

1. Offender takes possession of any real property or usurps any real rights in property;
2. The real property or real rights belong to another;
3. Violence against or intimidation of persons is used by the offender in occupying real property or usurping real rights in property;
4. There is intent to gain.

Use the degree of intimidation to determine the degree of the penalty to be applied for the usurpation.

Usurpation under Article 312 is committed in the same way as robbery with violence or intimidation of persons. The main difference is that in robbery, personal property is involved; while in usurpation of real rights, it is real property. (People v. Judge Alfeche, July 23, 1992)

Usurpation of real rights and property should not be complexed using Article 48 when violence or intimidation is committed. There is only a single crime, but a two-tiered penalty is prescribed to be determined on whether the acts of violence used is akin to that in robbery in Article 294, grave threats or grave coercion and an incremental penalty of fine based on the value of the gain obtained by the offender.

Therefore, it is not correct to state that the threat employed in usurping real property is absorbed in the crime; otherwise, the additional penalty would be meaningless.

The complainant must be the person upon whom violence was employed. If a tenant was occupying the property and he was threatened by the offender, but it was the owner who was not in possession of the property who was named as the offended party, the same may be quashed as it does not charge an offense. The owner would, at most, be entitled to civil recourse only.

On carnapping and theft of motor vehicle

The taking with intent to gain of a motor vehicle belonging to another, without the latter's consent, or by means of violence or intimidation of persons, or by using force upon things is penalized as carnapping under **Republic Act No. 6539 (An Act Preventing and Penalizing Carnapping)**, as amended. The overt act which is being punished under this law as carnapping is also the taking of a motor vehicle under circumstances of theft or robbery. If the motor vehicle was not taken by the offender but was delivered by the owner or the possessor to the offender, who thereafter misappropriated the same, the crime is either qualified theft under Article 310 of the Revised Penal Code or estafa under Article 315 (b) of the Revised Penal Code. Qualified theft of a motor vehicle is the crime if only the material or physical possession was yielded to the offender; otherwise, if juridical possession was also yielded, the crime is estafa.

On squatting

According to the **Urban Development and Housing Act**, the following are squatters:

1. Those who have the capacity or means to pay rent or for legitimate housing but are squatting anyway;
2. Also the persons who were awarded lots but sold or lease them out;
3. Intruders of lands reserved for socialized housing, pre-empting possession by occupying the same.

Article 313. Altering Boundaries or Landmarks

Elements

1. There are boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same;
2. Offender alters said boundary marks.

Article 314. Fraudulent Insolvency

Elements

1. Offender is a debtor, that is, he has obligations due and payable;
2. He absconds with his property;
3. There is prejudice to his creditors.

Article 315. Swindling (Estafa)

Elements in general

1. Accused defrauded another by abuse of confidence or by means of deceit; and
   This covers the three different ways of committing estafa under Article 315; thus, estafa is committed –
   (a) With unfaithfulness or abuse of confidence;
   (b) By means of false pretenses or fraudulents acts; or
   (c) Through fraudulent means.
   (The first form under subdivision 1 is known as estafa with abuse of confidence; and the second and third forms under subdivisions 2 and 3 cover cover estafa by means of deceit.)
2. Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

Elements of estafa with unfaithfulness of abuse of confidence under Article 315 (1)

Under paragraph (a)

1. Offender has an onerous obligation to deliver something of value;
2. He alters its substance, quantity, or quality;
3. Damage or prejudice is caused to another.

Under paragraph (b)

1. Money, goods, or other personal property is received by the offender is trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. There is misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
3. Such misappropriation or conversion or denial is to the prejudice of another; and
4. There is a demand made by the offended party to the offender.

(The fourth element is not necessary when there is evidence of misappropriation of the goods by the defendant. [Tubb v. People, et al., 101 Phil. 114]).

*Under **Presidential Decree No. 115**, the failure of the entrustee to turn over the proceeds of the sale of the goods, documents, or instruments covered by a trust receipt, to the extent of the amount owing to the entruster, or as appearing in the trust receipt; or the failure to return said goods, documents, or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt constitute estafa.*

Under paragraph (c)

1. The paper with the signature of the offended party is in blank;
2. Offended party delivered it to the offender;
3. Above the signature of the offended party, a document is written by the offender without authority to do so;
4. The document so written creates a liability of, or causes damage to, the offended party or any third person.

Elements of estafa by means of false pretenses or fraudulent acts under Article 315 (2)

Acts punished under paragraph (a)

1. Using fictitious name;
2. Falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or
3. By means of other similar deceits.

Under paragraph (b)

Altering the quality, fineness, or weight of anything pertaining to his art or business.

Under paragraph (c)

Pretending to have bribed any government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender.

Under paragraph (d)

1. Offender postdated a check, or issued a check in payment of an obligation;
2. Such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check.

Note that this only applies if –

(1) The obligation is not pre-existing;
(2) The check is drawn to enter into an obligation;

(Remember that it is the check that is supposed to be the sole consideration for the other party to have entered into the obligation. For example, Rose wants to purchase a bracelet and draws a check without insufficient funds. The jeweler sells her the bracelet solely because of the consideration in the check.)

(3) It does not cover checks where the purpose of drawing the check is to guarantee a loan as this is not an obligation contemplated in this paragraph

The check must be genuine. If the check is falsified and is cashed with the bank or exchanged for cash, the crime is estafa thru falsification of a commercial document.

The general rule is that the accused must be able to obtain something from the offended party by means of the check he issued and delivered. Exception: when the check is issued not in payment of an obligation.

It must not be promissory notes, or guaranties.

Good faith is a defense.

If the checks were issued by the defendant and he received money for them, then stopped payment and did not return the money, and he had an intention to stop payment when he issued the check, there is estafa.

Deceit is presumed if the drawer fails to deposit the amount necessary to cover the check within three days from receipt of notice of dishonor or insufficiency of funds in the bank.

Distinction between estafa under Article 315 (2) (d) of the Revised Penal Code and violation of Batas Pambansa Blg. 22:

(1) Under both Article 315 (2) (d) and Batas Pambansa Blg. 22, there is criminal liability if the check is drawn for non-pre-existing obligation.

If the check is drawn for a pre-existing obligation, there is criminal liability only under Batas Pambansa Blg. 22.

(2) Estafa under Article 315 (2) (d) is a crime against property while Batas Pambansa Blg. 22 is a crime against public interest. The gravamen for the former is the deceit employed, while in the latter, it is the issuance of the check. Hence, there is no double jeopardy.
(3) In the estafa under Article 315 (2) (d), deceit and damage are material, while in Batas Pambansa Blg. 22, they are immaterial.
(4) In estafa under Article 315 (2) (d), knowledge by the drawer of insufficient funds is not required, while in Batas Pambansa Blg. 22, knowledge by the drawer of insufficient funds is reqired.

When is there prima facie evidence of knowledge of insufficient funds?

There is a prima facie evidence of knowledge of insufficient funds when the check was presented within 90 days from the date appearing on the check and was dishonored.

Exceptions

1. When the check was presented after 90 days from date;
2. When the maker or drawer --
   (a) Pays the holder of the check the amount due within five banking days after receiving notice that such check has not been paid by the drawee;
   (b) Makes arrangements for payment in full by the drawee of such check within five banking days after notice of non-payment

The drawee must cause to be written or stamped in plain language the reason for the dishonor.

If the drawee bank received an order of stop-payment from the drawer with no reason, it must be stated that the funds are insufficient to be prosecuted here.

The unpaid or dishonored check with the stamped information re: refusal to pay is prima facie evidence of (1) the making or issuance of the check; (2) the due presentment to the drawee for payment & the dishonor thereof; and (3) the fact that the check was properly dishonored for the reason stamped on the check.

Acts punished under paragraph (e)

1. a. Obtaining food, refreshment, or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house;
   b. Without paying therefor;
   c. With intent to defraud the proprietor or manager.
2. a. Obtaining credit at any of the establishments;
   b. Using false pretense;
3. a. Abandoning or surreptitiously removing any part of his baggage in the establishment;
   b. After obtaining credit, food, refreshment, accommodation;
   c. Without paying.

Estafa through any of the following fraudulent means under Article 315 (3)

Under paragraph (a)

1. Offender induced the offended party to sign a document;
2. Deceit was employed to make him sign the document;
3. Offended party personally signed the document;
4. Prejudice was caused.

Under paragraph (b)

Resorting to some fraudulent practice to insure success in a gambling game;

Under paragraph (c)

1. Offender removed, concealed or destroyed;
2. Any court record, office files, documents or any other papers;
3. With intent to defraud another.

In Kim v. People, 193 SCRA 344, it was held that if an employee receives cash advance from his employer to defray his travel expenses, his failure to return unspent amount is not estafa through misappropriation or conversion because ownership of the money was transferred to employee and no fiduciary relation was created in respect to such advance. The money is a loan. The employee has no legal obligation to return the same money, that is, the same bills and coins received.

In **Saddul Jr. v. CA, 192 SCRA 277,** it was held that the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon, is a misappropriation and conversion to the prejudice of the owner. Conversion is unauthorized assumption an exercise of the right of ownership over goods and chattels belonging to another, resulting in the alteration of their condition or exclusion of the owner's rights.

In Allied Bank Corporation v. Secretary Ordonez, 192 SCRA 246, it was held that under Section 13 of Presidential Decree No. 115, the failure of an entrustee to turn over the proceeds of sale of the goods covered by the Trust Receipt, or to return said goods if they are not sold, is punishable as estafa Article 315 (1) (b).

On issuance of a bouncing check

The issuance of check with insufficient funds may be held liable for estafa and Batas Pambansa Blg. 22. Batas Pambansa Blg. 22 expressly provides that prosecution under said law is without prejudice to any liability for violation of any provision in the Revised Penal Code. Double Jeopardy may not be invoked because a violation of Batas Pambansa Blg. 22 is a malum prohibitum and is being punished as a crime against the public interest for undermining the banking system of the country, while under the RevisedPenal Code, the crime is malum in se which requires criminal intent and damage to the payee and is a crime against property.

In estafa, the check must have been issued as a reciprocal consideration for parting of goods (kaliwaan). There must be concomitance. The deceit must be prior to or simultaneous with damage done, that is, seller relied on check to part with goods. If it is issued after parting with goods as in credit accommodation only, there is no estafa. If the check is issued for a pre-existing obligation, there is no estafa as damage had already been done. The drawer is liable under Batas Pambansa Blg. 22.

For criminal liability to attach under Batas Pambansa Blg. 22, it is enough that the check was issued to "apply on account or for value" and upon its presentment it was dishonored by the drawee bank for insufficiency of funds, provided that the drawer had been notified of the dishonor and inspite of such notice fails to pay

the holder of the check the full amount due thereon within five days from notice.

Under Batas Pambansa Blg. 22, a drawer must be given notice of dishonor and given five banking days from notice within which to deposit or pay the amount stated in the check to negate the presumtion that drawer knew of the insufficiency. After this period, it is conclusive that drawer knew of the insufficiency, thus there is no more defense to the prosecution under Batas Pambansa Blg. 22.

The mere issuance of any kind of check regardless of the intent of the parties, whether the check is intended to serve merely as a guarantee or as a deposit, makes the drawer liable under Batas Pambansa Blg. 22 if the check bounces. As a matter of public policy, the issuance of a worthless check is a public nuisance and must be abated.

In **De Villa v. CA, decided April 18, 1991,** it was held that under Batas Pambansa Blg. 22, there is no distinction as to the kind of check issued. As long as it is delivered within Philippine territory, the Philippine courts have jurisdiction. Even if the check is only presented to and dishonored in a Philippine bank, Batas Pambansa Blg. 22 applies. This is true in the case of dollar or foreign currency checks. Where the law makes no distinction, none should be made.

In **People v. Nitafan,** it was held that as long as instrument is a check under the negotiable instrument law, it is covered by Batas Pambansa Blg. 22. A memorandum check is not a promissory note, it is a check which have the word "memo," "mem", "memorandum" written across the face of the check which signifies that if the holder upon maturity of the check presents the same to the drawer, it will be paid absolutely. But there is no prohibition against drawer from depositing memorandum check in a bank. Whatever be the agreement of the parties in respect of the issuance of a check is inconsequential to a violation to Batas Pambansa Blg. 22 where the check bounces.

But overdraft or credit arrangement may be allowed by banks as to their preferred clients and Batas Pambansa Blg. 22 does not apply. If check bounces, it is because bank has been remiss in honoring agreement.

The check must be presented for payment within a 90-day period. If presented for payment beyond the 90 day period and the drawer's funds are insufficient to cover it, there is no Batas Pambansa Blg. 22 violation.

Where check was issued prior to August 8, 1984, when Circular No. 12 of the Department of the Justice took effect, and the drawer relied on the then prevailing Circular No. 4 of the Ministry of Justice to the effect that checks issued as part of an arrangement/agreement of the parties to guarantee or secure fulfillment of an obligation are not covered by Batas Pambansa Blg. 22, no criminal liability should be incurred by the drawer. Circular should not be given retroactive effect. *(Lazaro v. CA, November 11, 1993, citing People v. Alberto, October 28, 1993).*

Article 316. Other Forms of Swindling

Under paragraph 1 – By conveying, selling, encumbering, or mortgaging any real property, pretending to be the owner of the same

Elements

1. There is an immovable, such as a parcel of land or a building;
2. Offender who is not the owner represents himself as the owner thereof;
3. Offender executes an act of ownership such as selling, leasing, encumbering or mortgaging the real property;
4. The act is made to the prejudice to the owner or a third person.

Under paragraph 2 – by disposing of real property as free from encumbrance, although such encumbrance be not recorded

Elements

1. The thing disposed is a real property:
2. Offender knew that the real property was encumbered, whether the encumbrance is recorded or not;
3. There must be express representation by offender that the real property is free from encumbrance;
4. The act of disposing of the real property is made to the damage of another.

Under paragraph 3 – by wrongfully taking by the owner of his personal property from its lawful possessor

Elements

1. Offender is the owner of personal property;
2. Said personal property is in the lawful

possession of another;
3. Offender wrongfully takes it from its lawful possessor;
4. Prejudice is thereby caused to the possessor or third person.

Under paragraph 4 – by executing any fictitious contract to the prejudice of another

Under paragraph 5 – by accepting any compensation for services not rendered or for labor not performed

Under paragraph 6 – by selling, mortgaging or encumbering real property or properties with which the offender guaranteed the fulfillment of his obligation as surety

Elements

1. Offender is a surety in a bond given in a criminal or civil action;
2. He guaranteed the fulfillment of such obligation with his real property or properties;
3. He sells, mortgages, or in any manner encumbers said real property;
4. Such sale, mortgage or encumbrance is without express authority from the court, or made before the cancellation of his bond, or before being relieved from the obligation contracted by him.

Article 317. Swindling A Minor

Elements

1. Offender takes advantage of the inexperience or emotions or feelings of a minor;
2. He induces such minor to assume an obligation or to give release or to execute a transfer of any property right;
3. The consideration is some loan of money, credit or other personal property;
4. The transaction is to the detriment of such minor.

Article 318. Other deceits

Acts punished

1. Defrauding or damaging another by any other deceit not mentioned in the preceding articles;
2. Interpreting dreams, by making forecasts, by telling fortunes, or by taking advantage or the credulity of the public in any other similar manner, for profit or gain.

Article 319. Removal, Sale or Pledge of Mortgaged Property

Acts punished

1. Knowingly removing any personal property mortgaged under the Chattel Mortgage law to any province or city other than the one in which it was located at the time of execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns;

   Elements:

   (a) Personal property is mortgaged under the Chattel Mortgage Law;
   (b) Offender knows that such property is so mortgaged;
   (c) Offender removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage;
   (d) The removal is permanent;
   (e) There is no written consent of the mortgagee or his executors, administrators or assigns to such removal.

2. Selling or pledging personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

   Elements:

   (a) Personal property is already pledged under the terms of the Chattel Mortgage Law;
   (b) Offender, who is the mortgagor of such property, sells or pledges the same or any part thereof;
   (c) There is no consent of the mortgagee written on the back of the mortgage and

noted on the record thereof in the office of the register of deeds.

Article 327. Who Are Liable for Malicious Mischief

Elements

1. Offender deliberately caused damage to the property of another;
2. Such act does not constitute arson or other crimes involving destruction;
3. The act of damaging another's property was committed merely for the sake of damaging it;

There is destruction of the property of another but there is no misappropriation. Otherwise, it would be theft if he gathers the effects of destruction.

Article 328. Special Case of Malicious Mischief

Acts punished

1. Causing damage to obstruct the performance of public functions;
2. Using any poisonous or corrosive substance;
3. Spreading any infection or contagion among cattle;
4. Causing damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used is common by the pubic.

Article 329. Other Mischiefs

All other mischiefs not included in the next preceding article

Article 330. Damage and Obstruction to Means of Communication

This is committed by damaging any railway, telegraph or telephone lines.

Article 331. Destroying or Damaging Statues, Public Monuments, or Paintings

Any person who shall destroy or damage statues or any other useful or ornamental public monument shall suffer the penalty of arresto mayor in its medium period to prision correccional in its minimum period.

Any person who shall destroy or damage any useful or ornamental painting of a public nature shall suffer the penalty of arresto menor or a fine not exceeding 200 pesos, or both such fine and imprisonment, in the discretion of the court.

Article 332. Persons Exempt from Criminal Liability

Crimes involved in the exemption

1. Theft;
2. Estafa; and
3. Malicious mischief.

Persons exempted from criminal liability

1. Spouse, ascendants and descendants, or relatives by affinity in the same line;
2. Widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

Only the relatives enumerated incur no liability if the crime relates to theft (not robbery), swindling, and malicious mischief. Third parties who participate are not exempt. The relationship between the spouses is not limited to legally married couples; the provision applies to live-in partners.

Estafa should not be complexed with any other crime in order for exemption to operate.

A. ANTI-FENCING LAW (P.D. NO. 1612) AND ITS IMPLEMENTING RULES AND REGULATIONS

Definition (a) "Fencing" is the act of any person who, with intent to gain for himself or for

another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

(b) "Fence" includes any person, firm, association corporation or partnership or other organization who/which commits the act of fencing.

Presumption of fencing Presumption of Fencing. Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing *(Sec. 5).*

Exception: With clearance or permit to sell

For purposes of this Act, all stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence *(Sec. 6)*.

Implementing Rules and Regulations

I. Definition of Terms

1. "Used secondhand article" shall refer to any goods, article, item, object or anything of value obtained from an unlicensed dealer or supplier, regardless of whether the same has actually or in fact been used.
2. "Unlicensed dealer/supplier" shall refer to any persons, partnership, firm, corporation, association or any other entity or establishment not licensed by the government to engage in the business of dealing in or of supplying the articles defined in the preceding paragraph.
3. "Store", "establishment" or "entity" shall be construed to include any individual dealing in the buying and selling used secondhand articles, as defined in paragraph hereof.
4. "Buy and Sell" refer to the transaction whereby one purchases used secondhand articles for the purpose of resale to third persons.
5. "Station Commander" shall refer to the Station Commander of the Integrated National Police within the territorial limits of the town or city district where the store, establishment or entity dealing in the buying and selling of used secondhand articles is located.

II. Duty to Procure Clearance or Permit

1. No person shall sell or offer to sell to the public any used secondhand article as defined herein without first securing a clearance or permit for the purpose from the proper Station Commander of the Integrated National Police.
2. If the person seeking the clearance or permit is a partnership, firm, corporation, or association or group of individuals, the clearance or permit shall be obtained by or in the name of the president, manager or other responsible officer-in-charge thereof.
3. If a store, firm, corporation, partnership, association or other establishment or entity has a branch or subsidiary and the used secondhand article is acquired by such branch or subsidiary for sale to the public, the said branch or subsidiary shall secure the required clearance or permit.
4. Any goods, article, item, or object or anything of value acquired from any source for which no receipt or equivalent document evidencing the legality of its acquisition could be presented by the present possessor or holder thereof, or the covering receipt, or equivalent document, of which is fake, falsified or irregularly obtained, shall be presumed as having been acquired from an unlicensed dealer or supplier and the possessor or holder thereof must secure the required clearance or permit before the same can be sold or offered for sale to the public.

III. Procedure for Procurement of Clearances or Permits

1. The Station Commanders concerned

shall require the owner of a store or the president, manager or responsible officer-in-charge of a firm, establishment or other entity located within their respective jurisdictions and in possession of or having in stock used secondhand articles as defined herein, to submit an initial affidavit within thirty (30) days from receipt of notice for the purpose thereof and subsequent affidavits once every fifteen (15) days within five (5) days after the period covered, which shall contain:

(a) A complete inventory of such articles acquired daily from whatever source and the names and addresses of the persons from whom such articles were acquired.

(b) A full list of articles to be sold or offered for sale as well as the place where the date when the sale or offer for sale shall commence.

(c) The place where the articles are presently deposited or kept in stock.

The Station Commander may, at his discretion when the circumstances of each case warrant, require that the affidavit submitted be accompanied by other documents showing proof of legitimacy of the acquisition of the articles.

2. A party required to secure a clearance or permit under these rules and regulations shall file an application therefor with the Station Commander concerned. The application shall state:

(a) The name, address and other pertinent circumstances of the persons, in case of an individual or, in the case of a firm, corporation, association, partnership or other entity, the name, address and other pertinent circumstances of the president, manager or officer-in-charge.

(b) The article to be sold or offered for sale to the public and the name and address of the unlicensed dealer or supplier from whom such article was acquired.

In support of the application, there shall be attached to it the corresponding receipt or other equivalent document to show proof of the legitimacy of acquisition of the article.

3. The Station Commander shall examine the documents attached to the application and may require the presentation of other additional documents, if necessary, to show satisfactory proof of the legitimacy of acquisition of the article, subject to the following conditions:

(a) If the legitimacy of acquisition of any article from an unlicensed source cannot be satisfactorily established by the documents presented, the Station Commander shall, upon approval of the INP Superintendent in the district and at the expense of the party seeking the clearance/permit, cause the publication of a notice in a newspaper of general circulation for two (2) successive days enumerating therein the articles acquired from an unlicensed dealer or supplier, the names and addresses of the persons from whom they were acquired and shall state that such articles are to be sold or offered for sale to the public at the address of the store, establishment or other entity seeking the clearance/permit. In places where no newspapers are in general circulation, the party seeking the clearance or permit shall, instead, post a notice daily for one week on the bulletin board of the municipal building of the town where the store, firm, establishment or entity concerned is located or, in the case of an individual, where the articles in his possession are to be sold or offered for sale.

(b) If after 15 days, upon expiration of the period of publication or of the notice referred to in the preceding paragraph, no claim is made with respect to any of the articles enumerated in the notice, the Station Commander shall issue the clearance or permit sought.

(c) If, before expiration of the same period for publication of the notice or its posting, it shall appear that any of the articles in question is stolen property, the Station Commander shall hold the article in restraint as evidence in any appropriate case to be filed. Articles held in restraint shall be kept and disposed of as the circumstances of each case permit,

taking into account all considerations of right and justice in the case. In any case where any article is held in restraint, it shall be the duty of the Station Commander concerned to advise/notify the Commission on Audit of the case and comply with such procedure as may be proper under applicable existing laws, rules and regulations.

4. The Station Commander concerned shall, within seventy-two (72) hours from receipt of the application, act thereon by either issuing the clearance/permit requested or denying the same. Denial of an application shall be in writing and shall state in brief the reason/s therefor.
5. The application, clearance/permit or the denial thereof, including such other documents as may be pertinent in the implementation of Section 6 of P.D. No. 1612 shall be in the forms prescribed in Annexes "A", "B", "C", "D", and "E" hereof, which are made integral parts of these rules and regulations.
6. For the issuance of clearances/permit required under Section 6 of P.D. No. 1612, no fee shall be charged.

IV. Appeals

Any party aggrieved by the action taken by the Station Commander may elevate the decision taken in the case to the proper INP District Superintendent and, if he is still dissatisfied therewith may take the same on appeal to the INP Director. The decision of the INP Director may also be appealed to the INP Director-General whose decision may likewise be appealed to the Minister of National Defense. The decision of the Minister of National Defense on the case shall be final. The appeal against the decision taken by a Commander lower than the INP Director-General should be filed to the next higher Commander within ten (10) days from receipt of notice of the decision. The decision of the INP Director-General should be appealed within fifteen (15) days from receipt of notice of the decision.

B. BOUNCING CHECKS LAW (B.P. BLG. 22) PLUS ADMINISTRATIVE CIRCULAR NO. 12-2000 RE: PENALTY FOR VIOLATION OF B.P. 22 AND ADMINISTRATIVE CIRCULAR NO. 13-2001 RE: CLARIFICATION OF ADMIN CIRCULAR NO. 12-2000

How violated

A. 1. A person makes or draws and issues any check;
   2. The check is made or drawn and issued to apply on account or for value;
   Thus, it can apply to pre-existing obligations, too.
   3. The person who makes or draws and issued the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment;
   The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

B. 1. A person has sufficient funds in or credit with the drawee bank when he makes or draws and issues a check;
   2. He fails to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within 90 days from the date appearing;
   3. The check is dishonored by the drawee bank.

Punishable acts

Checks without sufficient funds. - Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment, shall be punished by imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

The same penalty shall be imposed upon any person who, having sufficient funds in or credit with the drawee bank when he makes or draws

and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of ninety (90) days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

Where the check is drawn by a corporation, company or entity, the person or persons who actually signed the check in behalf of such drawer shall be liable under this Act *(Sec. 1).*

Evidence of knowledge of insufficient funds

The making, drawing and issuance of a check payment of which is refused by the drawee because of insufficient funds in or credit with such bank, when presented within ninety (90) days from the date of the check, shall be prima facie evidence of knowledge of such insufficiency of funds or credit unless such maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within (5) banking days after receiving notice that such check has not been paid by the drawee *(Sec. 2).*

Preference of imposition of fine

Admin Cir. 13-2001. Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. Blg. 22 such that where the circumstances of both the offense and the offender clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of a fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of a fine alone rests solely upon the Judge. Should the Judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not be deemed a hindrance.

It is, therefore, understood that:

1. Administrative Circular 12-2000 does not remove imprisonment as an alternative penalty for violations of B.P. Blg. 22;
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the Revised Penal Code provisions on subsidiary imprisonment.

ANTI-CARNAPPING ACT OF 1972 (R.A. 6539)

Definition of terms

1. "Carnapping" is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.
2. "Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes. Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating.
3. "Defacing or tampering with" a serial number is the erasing, scratching, altering or changing of the original factory-inscribed serial number on the motor vehicle engine, engine block or chassis of any motor vehicle. Whenever any motor vehicle is found to have a serial number on its motor engine, engine block or chassis which is different from that which is listed in the records of the Bureau of Customs for motor vehicles imported into the Philippines, that motor vehicle shall be considered to have a defaced or tampered with serial number.
4. "Repainting" is changing the color of a motor vehicle by means of painting. There is repainting whenever the new color of a motor vehicle is different from its color as registered in the Land Transportation Commission.

5. "Body-building" is a job undertaken on a motor vehicle in order to replace its entire body with a new body.
6. "Remodeling" is the introduction of some changes in the shape or form of the body of the motor vehicle.
7. "Dismantling" is the tearing apart, piece by piece or part by part, of a motor vehicle.
8. "Overhauling" is the cleaning or repairing of the whole engine of a motor vehicle by separating the motor engine and its parts from the body of the motor vehicle.

Registration

5. Registration of motor vehicle engine, engine block and chassis. Within one year after the approval of this Act, every owner or possessor of unregistered motor vehicle or parts thereof in knock down condition shall register with the Land Transportation Commission the motor vehicle engine, engine block and chassis in his name or in the name of the real owner who shall be readily available to answer any claim over the registered motor vehicle engine, engine block or chassis. Thereafter, all motor vehicle engines, engine blocks and chassis not registered with the Land Transportation Commission shall be considered as untaxed importation or coming from an illegal source or carnapped, and shall be confiscated in favor of the Government.
   All owners of motor vehicles in all cities and municipalities are required to register their cars with the local police without paying any charges *(Sec. 3).*

2. Permanent registry of motor vehicle engines, engine blocks and chassis. The Land Transportation Commission shall keep a permanent registry of motor vehicle engines, engine blocks and chassis of all motor vehicles, specifying therein their type, make and serial numbers and stating therein the names and addresses of their present and previous owners. Copies of the registry and of all entries made thereon shall be furnished the Philippine Constabulary and all Land Transportation Commission regional, provincial and city branch offices: Provided, That all Land Transportation Commission regional, provincial and city branch offices are likewise obliged to furnish copies of all registration of motor vehicles to the main office and to the Philippine Constabulary *(Sec. 4).*

3. Registration of sale, transfer, conveyance, substitution or replacement of a motor vehicle engine, engine block or chassis. Every sale, transfer, conveyance, substitution or replacement of a motor vehicle engine, engine block or chassis of a motor vehicle shall be registered with the Land Transportation Commission. Motor vehicles assembled and rebuilt or repaired by replacement with motor vehicle engines, engine blocks and chassis not registered with the Land Transportation Commission shall not be issued certificates of registration and shall be considered as untaxed imported motor vehicles or motor vehicles carnapped or proceeding from illegal sources *(Sec. 5).*

4. Original Registration of motor vehicles. Any person seeking the original registration of a motor vehicle, whether that motor vehicle is newly assembled or rebuilt or acquired from a registered owner, shall within one week after the completion of the assembly or rebuilding job or the acquisition thereof from the registered owner, apply to the Philippine Constabulary for clearance of the motor vehicle for registration with the Land Transportation Commission. The Philippine Constabulary shall, upon receipt of the application, verify if the motor vehicle or its numbered parts are in the list of carnapped motor vehicles or stolen motor vehicle parts. If the motor vehicle or any of its numbered parts is not in that list, the Philippine Constabulary shall forthwith issue a certificate of clearance. Upon presentation of the certificate of clearance from the Philippine Constabulary and after verification of the registration of the motor vehicle engine, engine block and chassis in the permanent registry of motor vehicle engines, engine blocks and chassis, the Land Transportation Commission shall register the motor vehicle in accordance with existing laws, rules and regulations *(Sec. 6).*

Who are liable

1. If the person violating any provision of this Act is a juridical person, the penalty herein provided shall be imposed on its president or secretary and/or members of the board of directors or any of its officers and employees who may have directly participated in the violation.

2. Any government official or employee who directly commits the unlawful acts defined in this Act or is guilty of gross negligence of duty or connives with or permits the commission of any of the said unlawful act shall, in addition to the penalty prescribed in the preceding paragraph, be dismissed from the service with prejudice to his reinstatement and with disqualification from voting or being voted for in any election and from appointment to any public office *(Sec. 13)*.

(a) Duty of collector of customs

Duty of Collector of Customs to report arrival of imported motor vehicle, etc. The Collector of Customs of a principal port of entry where an imported motor vehicle, motor vehicle engine, engine block chassis or body is unloaded, shall, within seven days after the arrival of the imported motor vehicle or any of its parts enumerated herein, make a report of the shipment to the Land Transportation Commission, specifying the make, type and serial numbers, if any, of the motor vehicle engine, engine block and chassis or body, and stating the names and addresses of the owner or consignee thereof. If the motor vehicle engine, engine block, chassis or body does not bear any serial number, the Collector of Customs concerned shall hold the motor vehicle engine, engine block, chassis or body until it is numbered by the Land Transportation Commission *(Sec. 7)*.

(b) Duty of importers, distributors and sellers

Duty of importers, distributors and sellers of motor vehicles to keep record of stocks. Any person engaged in the importation, distribution, and buying and selling of motor vehicles, motor vehicle engines, engine blocks, chassis or body, shall keep a permanent record of his stocks, stating therein their type, make and serial numbers, and the names and addresses of the persons from whom they were acquired and the names and addresses of the persons to whom they were sold, and shall render an accurate monthly report of his transactions in motor vehicles to the Land Transportation Commission *(Sec. 8)*.

(c) Clearance and permit

1. Clearance and permit required for assembly or rebuilding of motor vehicles. Any person who shall undertake to assemble or rebuild or cause the assembly or rebuilding of a motor vehicle shall first secure a certificate of clearance from the Philippine Constabulary: Provided, That no such permit shall be issued unless the applicant shall present a statement under oath containing the type, make and serial numbers of the engine, chassis and body, if any, and the complete list of the spare parts of the motor vehicle to be assembled or rebuilt together with the names and addresses of the sources thereof.
   In the case of motor vehicle engines to be mounted on motor boats, motor bancas and other light water vessels, the applicant shall secure a permit from the Philippine Coast Guard, which office shall in turn furnish the Land Transportation Commission the pertinent data concerning the motor vehicle engines including their type, make and serial numbers *(Sec. 10)*.

2. Clearance required for shipment of motor vehicles, motor vehicle engines, engine blocks, chassis or body. Any person who owns or operates inter-island shipping or any water transportation with launches, boats, vessels or ships shall within seven days submit a report to the Philippine Constabulary on all motor vehicle, motor vehicle engines, engine blocks, chassis or bodies transported by it for the motor vehicle, motor vehicle engine, engine block, chassis or body to be loaded on board the launch, boat vessel or ship *(Sec. 11)*.

Punishable acts

1. Defacing or tampering with serial numbers of motor vehicle engines, engine blocks and chassis *(Sec. 12)*.
2. Carnapping - the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.
   (a) When the carnapping is committed without violence or intimidation of persons, or force upon things;
   (b) When the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and
   (c) When the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping *(Sec.*

14).

HUMAN SECURITY ACT OF 2007 (R.A. 9372)

Punishable acts of terrorism

SEC. 3. Terrorism.- Any person who commits an act punishable under any of the following provisions of the Revised Penal Code:

a. Article 122 (Piracy in General and Mutiny in the High Seas or in the Philippine Waters);
b. Article 134 (Rebellion or Insurrection);
c. Article 134-a (Coup d' Etat), including acts committed by private persons;
d. Article 248 (Murder);
e. Article 267 (Kidnapping and Serious Illegal Detention);
f. Article 324 (Crimes Involving Destruction), or under
   1. Presidential Decree No. 1613 (The Law on Arson);
   2. Republic Act No. 6969 (Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990);
   3. Republic Act No. 5207, (Atomic Energy Regulatory and Liability Act of 1968);
   4. Republic Act No. 6235 (Anti-Hijacking Law);
   5. Presidential Decree No. 532 (Anti-Piracy and Anti-Highway Robbery Law of 1974); and,
   6. Presidential Decree No. 1866, as amended (Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives) thereby sowing and creating a condition of widespread and extraordinary fear and panic among the populace, in order to coerce the government to give in to an unlawful demand shall be guilty of the crime of terrorism and shall suffer the penalty of forty (40) years of imprisonment, without the benefit of parole as provided for under Act No. 4103, otherwise known as the Indeterminate Sentence Law, as amended.

SEC. 4. Conspiracy to Commit Terrorism. - Persons who conspire to commit the crime of terrorism shall suffer the penalty of forty (40) years of imprisonment.

There is conspiracy when two or more persons come to an agreement concerning the commission of the crime of terrorism as defined in Section 3 hereof and decide to commit the same.

SEC. 5. Accomplice. - Any person who, not being a principal under Article 17 of the Revised Penal Code or a conspirator as defined in Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts shall suffer the penalty of from seventeen (17) years, four months one day to twenty (20) years of imprisonment.

SEC. 6. Accessory. - Any person who, having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism, and without having participated therein, either as principal or accomplice under Articles 17 and 18 of the Revised Penal Code, takes part subsequent to its commission in any of the following manner:

(a) by profiting himself or assisting the offender to profit by the effects of the crime;
(b) by concealing or destroying the body of the crime, or the effects, or instruments thereof, in order to prevent its discovery;
(c) by harboring, concealing, or assisting in the escape of the principal or conspirator of the crime, shall suffer the penalty of ten (10) years and one day to twelve (12) years of imprisonment.

Notwithstanding the above paragraph, the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of subparagraph (a).

ANTI-ARSON LAW (P.D.1613)

<u>Kinds of arson</u>

1. Arson, under Section 1 of Presidential Decree No. 1613;
2. Destructive arson, under Article 320 of the

Revised Penal Code, as amended by Republic Act No. 7659;

3. Other cases of arson, under Section 3 of Presidential Decree No. 1613.

Punishable acts

1. Arson. Any person who burns or sets fire to the property of another shall be punished by Prision Mayor.
   The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another *(Sec. 1)*

2. Destructive Arson. The penalty of Reclusion Temporal in its maximum period to Reclusion Perpetua shall be imposed if the property burned is any of the following:
   (a) Any ammunition factory and other establishment where explosives, inflammable or combustible materials are stored.
   (b) Any archive, museum, whether public or private, or any edifice devoted to culture, education or social services.
   (c) Any church or place of worship or other building where people usually assemble.
   (d) Any train, airplane or any aircraft, vessel or watercraft, or conveyance for transportation of persons or property
   (e) Any building where evidence is kept for use in any legislative, judicial, administrative or other official proceedings.
   (f) Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building.
   (g) Any building, whether used as a dwelling or not, situated in a populated or congested area *(Sec. 2).*

3. Other Cases of Arson. The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:
   (a) Any building used as offices of the government or any of its agencies;
   (b) Any inhabited house or dwelling;
   (c) Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
   (d) Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest;
   (e) Any rice mill, sugar mill, cane mill or mill central; and
   (f) Any railway or bus station, airport, wharf or warehouse *(Sec. 3).*

4. Special Aggravating Circumstances in Arson. The penalty in any case of arson shall be imposed in its maximum period;
   (a) If committed with intent to gain;
   (b) If committed for the benefit of another;
   (c) If the offender is motivated by spite or hatred towards the owner or occupant of the property burned;
   (d) If committed by a syndicate.
   The offense is committed by a syndicate if it is planned or carried out by a group of three (3) or more persons *(Sec. 4).*

5. Where Death Results from Arson. If by reason of or on the occasion of the arson death results, the penalty of Reclusion Perpetua to death shall be imposed *(Sec. 5).*

6. Prima Facie evidence of Arson. Any of the following circumstances shall constitute prima facie evidence of arson:
   (a) If the fire started simultaneously in more than one part of the building or establishment.
   (b) If substantial amount of flammable substances or materials are stored within the building note necessary in the business of the offender nor for household us.
   (c) If gasoline, kerosene, petroleum or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.
   (d) If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.
   (e) If during the lifetime of the corresponding fire insurance policy more than two fires have occurred in the same or other premises owned or under the control of the offender and/or insured.
   (f) If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.
   (g) If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or for the safety of the person

or property of the victim *(Sec. 6).*

7. Conspiracy to commit Arson. Conspiracy to commit arson shall be punished by Prision Mayor in its minimum period *(Sec. 7).*

11. CRIMES AGAINST CHASTITY (333-334, 336-346)

Crimes against chastity

1. Adultery (Art. 333);
2. Concubinage (Art. 334);
3. Acts of lasciviousness (Art. 336);
4. Qualified seduction (Art. 337);
5. Simple seduction (Art. 338);
6. Acts of lasciviousness with the consent of the offended party (Art. 339);
7. Corruption of minors (Art. 340);
8. White slave trade (Art. 34);
9. Forcible abduction (Art. 342);
10. Consented abduction (Art. 343).

The crimes of adultery, concubinage, seduction, abduction and acts of lasciviousness are the so-called private crimes. They cannot be prosecuted except upon the complaint initiated by the offended party. The law regards the privacy of the offended party here as more important than the disturbance to the order of society. For the law gives the offended party the preference whether to sue or not to sue. But the moment the offended party has initiated the criminal complaint, the public prosecutor will take over and continue with prosecution of the offender. That is why under Article 344, if the offended party pardons the offender, that pardon will only be valid if it comes before the prosecution starts. The moment the prosecution starts, the crime has already become public and it is beyond the offended party to pardon the offender.

Article 333. Who Are Guilty of Adultery

Elements

1. The woman is married;
2. She has sexual intercourse with a man not her husband;
3. As regards the man with whom she has sexual intercourse, he must know her to be married.

Adultery is a crime not only of the married woman but also of the man who had intercourse with a married woman knowing her to be married. Even if the man proves later on that he does not know the woman to be married, at the beginning, he must still be included in the complaint or information. This is so because whether he knows the woman to be married or not is a matter of defense and its up to him to ventilate that in formal investigations or a formal trial.
If after preliminary investigation, the public prosecutor is convinced that the man did not know that the woman is married, then he could simply file the case against the woman.

The acquittal of the woman does not necessarily result in the acquittal of her co-accused.

In order to constitute adultery, there must be a joint physical act. Joint criminal intent is not necessary. Although the criminal intent may exist in the mind of one of the parties to the physical act, there may be no such intent in the mind of the other party. One may be guilty of the criminal intent, the other innocent, and yet the joint physical act necessary to constitute the adultery may be complete. So, if the man had no knowledge that the woman was married, he would be innocent insofar as the crime of adultery is concerned but the woman would still be guilty; the former would have to be acquitted and the latter found guilty, although they were tried together.

A husband committing concubinage may be required to support his wife committing adultery under the rule in pari delicto.

There is no frustrated adultery because of the nature of the offense.

For adultery to exist, there must be a marriage although it be subsequently annulled. There is no adultery, if the marriage is void from the beginning.

Adultery is an instantaneous crime which is consummated and completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adultery. Adultery is not a continuing crime unlike concubinage.

Illustration:

Madamme X is a married woman residing in

Pasay City. He met a man, Y, at Roxas Boulevard. She agreed to go with to Baguio City, supposedly to come back the next day. When they were in Bulacan, they stayed in a motel, having sexual intercourse there. After that, they proceeded again and stopped at Dagupan City, where they went to a motel and had sexual intercourse.

There are two counts of adultery committed in this instance: one adultery in Bulacan, and another adultery in Dagupan City. Even if it involves the same man, each intercourse is a separate crime of adultery.

Article 334. Concubinage

Acts punished

1. Keeping a mistress in the conjugal dwelling;
2. Having sexual intercourse, under scandalous circumstances;
3. Cohabiting with her in any other place.

Elements

1. The man is married;
2. He is either –
   (a) Keeping a mistress in the conjugal dwelling;
   (b) Having sexual intercourse under scandalous circumstances with a woman who is not his wife; or
   (c) Cohabiting with a woman who is not his wife in any other place;
3. As regards the woman, she knows that the man is married.

With respect to concubinage the same principle applies: only the offended spouse can bring the prosecution. This is a crime committed by the married man, the husband. Similarly, it includes the woman who had a relationship with the married man.

It has been asked why the penalty for adultery is higher than concubinage when both crimes are infidelities to the marital vows. The reason given for this is that when the wife commits adultery, there is a probability that she will bring a stranger into the family. If the husband commits concubinage, this probability does not arise because the mother of the child will always carry the child with her. So even if the husband brings with him the child, it is clearly known that the child is a stranger. Not in the case of a married woman who may bring a child to the family under the guise of a legitimate child. This is the reason why in the former crime the penalty is higher than the latter.

Unlike adultery, concubinage is a continuing crime.

Article 336. Acts of Lasciviousness

Elements

1. Offender commits any act of lasciviousness or lewdness;
2. It is done under any of the following circumstances:
   (a) By using force or intimidation;
   (b) When the offended party is deprived or reason of otherwise unconscious; or
   (c) When the offended party is another person of either sex.

Note that there are two kinds of acts of lasciviousness under the Revised Penal Code: (1) under Article 336, and (2) under Article 339.

1. Article 336. Acts of Lasciviousness

   Under this article, the offended party may be a man or a woman. The crime committed, when the act performed with lewd design was perpetrated under circumstances which would have brought about the crime of rape if sexual intercourse was effected, is acts of lasciviousness under this article. This means that the offended party is either –
   (a) under 12 years of age; or
   (b) being over 12 years of age, the lascivious acts were committed on him or her through violence or intimidation, or while the offender party was deprived of reason, or otherwise unconscious.

2. Article 339. Acts of Lasciviousness with the Consent of the Offended Party:

   Under this article, the victim is limited only to a woman. The circumstances under which the lascivious acts were committed must be that of qualified seduction or simple seduction, that is, the offender took advantage of his position of ascendancy over the offender woman either because he is a person in authority, a domestic, a household, a priest, a teacher or a guardian,

or there was a deceitful promise of marriage which never would really be fulfilled.

See Article 339.

Always remember that there can be no frustration of acts of lasciviousness, rape or adultery because no matter how far the offender may have gone towards the realization of his purpose, if his participation amounts to performing all the acts of execution, the felony is necessarily produced as a consequence thereof.

Intent to rape is not a necessary element of the crime of acts of lasciviousness. Otherwise, there would be no crime of attempted rape.

Article 337. Qualified Seduction

Acts punished

1. Seduction of a virgin over 12 years and under 18 years of age by certain persons, such as a person in authority, priest, teacher; and

   Elements

   (a) Offended party is a virgin, which is presumed if she is unmarried and of good reputation;
   (b) She is over 12 and under 18 years of age;
   (c) Offender has sexual intercourse with her;
   (d) There is abuse of authority, confidence or relationship on the part of the offender.

2. Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age or reputation.

Person liable

1. Those who abused their authority –
   (a) Person in public authority;
   (b) Guardian;
   (c) Teacher;
   (d) Person who, in any capacity, is entrusted with the education or custody of the woman seduced;
2. Those who abused confidence reposed in them –
   (a) Priest;
   (b) House servant;
   (c) Domestic;
3. Those who abused their relationship –
   (a) Brother who seduced his sister;
   (b) Ascendant who seduced his descendant.

This crime also involves sexual intercourse. The offended woman must be over 12 but below 18 years.

The distinction between qualified seduction and simple seduction lies in the fact, among others, that the woman is a virgin in qualified seduction, while in simple seduction, it is not necessary that the woman be a virgin. It is enough that she is of good repute.

For purposes of qualified seduction, virginity does not mean physical virginity. It means that the offended party has not had any experience before.

Although in qualified seduction, the age of the offended woman is considered, if the offended party is a descendant or a sister of the offender – no matter how old she is or whether she is a prostitute – the crime of qualified seduction is committed.

Illustration:

If a person goes to a sauna parlor and finds there a descendant and despite that, had sexual intercourse with her, regardless of her reputation or age, the crime of qualified seduction is committed.

In the case of a teacher, it is not necessary that the offended woman be his student. It is enough that she is enrolled in the same school.

Deceit is not necessary in qualified seduction. Qualified seduction is committed even though no deceit intervened or even when such carnal knowledge was voluntary on the part of the virgin. This is because in such a case, the law takes for granted the existence of the deceit as an integral element of the crime and punishes it with greater severity than it does the simple seduction, taking into account the abuse of confidence on the part of the agent. Abuse of confidence here implies fraud.

Article 338. Simple Seduction

Elements

1. Offender party is over 12 and under 18

years of age;
2. She is of good reputation, single or widow;
3. Offender has sexual intercourse with her;
4. It is committed by means of deceit.

This crime is committed if the offended woman is single or a widow of good reputation, over 12 and under 18 years of age, the offender has carnal knowledge of her, and the offender resorted to deceit to be able to consummate the sexual intercourse with her.

The offended woman must be under 18 but not less than 12 years old; otherwise, the crime is statutory rape.

Unlike in qualified seduction, virginity is not essential in this crime. What is required is that the woman be unmarried and of good reputation. Simple seduction is not synonymous with loss of virginity. If the woman is married, the crime will be adultery.

The failure to comply with the promise of marriage constitutes the deceit mentioned in the law.

Article 339. Acts of Lasciviousness with the Consent of the Offender Party

Elements

1. Offender commits acts of lasciviousness or lewdness;
2. The acts are committed upon a woman who is a virgin or single or widow of good reputation, under 18 years of age but over 12 years, or a sister or descendant, regardless of her reputation or age;
3. Offender accomplishes the acts by abuse of authority, confidence, relationship, or deceit.

Article 340. Corruption of Minors

This punishes any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another.

It is not required that the offender be the guardian or custodian of the minor.

It is not necessary that the minor be prostituted or corrupted as the law merely punishes the act of promoting or facilitating the prostitution or corruption of said minor and that he acted in order to satisfy the lust of another.

Article 341. White Slave Trade

Acts punished

1. Engaging in the business of prostitution;
2. Profiting by prostitution;
3. Enlisting the services of women for the purpose of prostitution.

Article 342. Forcible Abduction

Elements

1. The person abducted is any woman, regardless or her age, civil status, or reputation;
2. The abduction is against her will;
3. The abduction is with lewd designs.

A woman is carried against her will or brought from one place to another against her will with lewd design.

If the element of lewd design is present, the carrying of the woman would qualify as abduction; otherwise, it would amount to kidnapping. If the woman was only brought to a certain place in order to break her will and make her agree to marry the offender, the crime is only grave coercion because the criminal intent of the offender is to force his will upon the woman and not really to restrain the woman of her liberty.

If the offended woman is under 12 years old, even if she consented to the abduction, the crime is forcible abduction and not consented abduction.

Where the offended woman is below the age of consent, even though she had gone with the offender through some deceitful promises revealed upon her to go with him and they live together as husband and wife without the benefit of marriage, the ruling is that forcible abduction is committed by the mere carrying of the woman as long as that intent is already shown. In other

words, where the man cannot possibly give the woman the benefit of an honorable life, all that man promised are just machinations of a lewd design and, therefore, the carrying of the woman is characterized with lewd design and would bring about the crime of abduction and not kidnapping. This is also true if the woman is deprived of reason and if the woman is mentally retardate. Forcible abduction is committed and not consented abduction.

Lewd designs may be demonstrated by the lascivious acts performed by the offender on her. Since this crime does not involve sexual intercourse, if the victim is subjected to this, then a crime of rape is further committed and a complex crime of forcible abduction with rape is committed.

The taking away of the woman may be accomplished by means of deceit at the beginning and then by means of violence and intimidation later.

The virginity of the complaining witness is not a determining factor in forcible abduction.

In order to demonstrate the presence of the lewd design, illicit criminal relations with the person abducted need not be shown. The intent to seduce a girl is sufficient.

If there is a separation in fact, the taking by the husband of his wife against her will constitutes grave coercion.

Distinction between forcible abduction and illegal detention:

When a woman is kidnapped with lewd or unchaste designs, the crime committed is forcible abduction.

When the kidnapping is without lewd designs, the crime committed is illegal detention.

But where the offended party was forcibly taken to the house of the defendant to coerce her to marry him, it was held that only grave coercion was committed and not illegal detention.

Article 343. Consented Abduction

Elements

1. Offended party is a virgin;
2. She is over 12 and under 18 years of age;
3. Offender takes her away with her consent, after solicitation or cajolery;
4. The taking away is with lewd designs.

Where several persons participated in the forcible abduction and these persons also raped the offended woman, the original ruling in the case of **People v. Jose** is that there would be one count of forcible abduction with rape and then each of them will answer for his own rape and the rape of the others minus the first rape which was complexed with the forcible abduction. This ruling is no longer the prevailing rule. The view adopted in cases of similar nature is to the effect that where more than one person has effected the forcible abduction with rape, all the rapes are just the consummation of the lewd design which characterizes the forcible abduction and, therefore, there should only be one forcible abduction with rape.

In the crimes involving rape, abduction, seduction, and acts of lasciviousness, the marriage by the offender with the offended woman generally extinguishes criminal liability, not only of the principal but also of the accomplice and accessory. However, the mere fact of marriage is not enough because it is already decided that if the offender marries the offended woman without any intention to perform the duties of a husband as shown by the fact that after the marriage, he already left her, the marriage would appear as having been contracted only to avoid the punishment. Even with that marriage, the offended woman could still prosecute the offender and that marriage will not have the effect of extinguishing the criminal liability.

Pardon by the offended woman of the offender is not a manner of extinguishing criminal liability but only a bar to the prosecution of the offender. Therefore, that pardon must come before the prosecution is commenced. While the prosecution is already commenced or initiated, pardon by the offended woman will no longer be effective because pardon may preclude prosecution but not prevent the same.

All these private crimes – except rape – cannot be prosecuted de officio. If any slander or written defamation is made out of any of these crimes, the complaint of the offended party is till necessary before such case for libel or oral defamation may proceed. It will not prosper because the court cannot acquire jurisdiction over these crimes unless there is a complaint from the offended party. The paramount decision of whether he or she wanted the crime

committed on him or her to be made public is his or hers alone, because the indignity or dishonor brought about by these crimes affects more the offended party than social order. The offended party may prefer to suffer the outrage in silence rather than to vindicate his honor in public.

In the crimes of rape, abduction and seduction, if the offended woman had given birth to the child, among the liabilities of the offender is to support the child. This obligation to support the child may be true even if there are several offenders. As to whether all of them will acknowledge the child, that is a different question because the obligation to support here is not founded on civil law but is the result of a criminal act or a form of punishment.

It has been held that where the woman was the victim of the said crime could not possibly conceive anymore, the trial court should not provide in its sentence that the accused, in case a child is born, should support the child. This should only be proper when there is a probability that the offended woman could give birth to an offspring.

Art. 344. Prosecution of the crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness

The crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse.

The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.

The offenses of seduction, abduction, rape or acts of lasciviousness, shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents, or guardian, nor, in any case, if the offender has been expressly pardoned by the above named persons, as the case may be.

In cases of seduction, abduction, acts of lasciviousness and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories after the fact of the above-mentioned crimes.

Art. 345 Civil liability of persons guilty of crimes against chastity

Person guilty of rape, seduction or abduction, shall also be sentenced:

1. To indemnify the offended woman.
2. To acknowledge the offspring, unless the law should prevent him from so doing.
3. In every case to support the offspring.

The adulterer and the concubine in the case provided for in Articles 333 and 334 may also be sentenced, in the same proceeding or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

Art. 346. Liability of ascendants, guardians, teachers, or other persons entrusted with the custody of the offended party

The ascendants, guardians, curators, teachers and any person who, by abuse of authority or confidential relationships, shall cooperate as accomplices in the perpetration of the crimes embraced in chapters, second, third and fourth, of this title, shall be punished as principals.

Teachers or other persons in any other capacity entrusted with the education and guidance of youth, shall also suffer the penalty of temporary special disqualification in its maximum period to perpetual special disqualification.

Any person falling within the terms of this article, and any other person guilty of corruption of minors for the benefit of another, shall be punished by special disqualification from filling the office of guardian.

A. ANTI-PHOTO AND VIDEO VOYEURISM ACT OF 2009 (R.A. 9995)

Section 4. *Prohibited Acts.* - It is hereby prohibited and declared unlawful for any person:

(a) To take photo or video coverage of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, pubic area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy;

(b) To copy or reproduce, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration;

(c) To sell or distribute, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original copy or reproduction thereof; or

(d) To publish or broadcast, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or device.

The prohibition under paragraphs (b), (c) and (d) shall apply notwithstanding that consent to record or take photo or video coverage of the same was given by such person/s. Any person who violates this provision shall be liable for photo or video voyeurism as defined herein.

"Photo or video voyeurism" means the act of taking photo or video coverage of a person or group of persons performing sexual act or any similar activity or of capturing an image of the private area of a person or persons without the latter's consent, under circumstances in which such person/s has/have a reasonable expectation of privacy, or the act of selling, copying, reproducing, broadcasting, sharing, showing or exhibiting the photo or video coverage or recordings of such sexual act or similar activity through VCD/DVD, internet, cellular phones and similar means or device without the written consent of the person/s involved, notwithstanding that consent to record or take photo or video coverage of same was given by such person's *(Sec. 3[d]).*

B. SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION, AND DISCRIMINATION ACT (R.A. 7610, AS AMENDED)

Child prostitution and other acts of abuse; Punishable acts

1. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.
   (a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:
      (1) Acting as a procurer of a child prostitute;
      (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
      (3) Taking advantage of influence or relationship to procure a child as prostitute;
      (4) Threatening or using violence towards a child to engage him as a prostitute; or
      (5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.
   (b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and
   (c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or

which engages in prostitution in addition to the activity for which the license has been issued to said establishment (Sec. 5).

2. Attempt To Commit Child Prostitution. – There is an attempt to commit child prostitution under Section 5, paragraph (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.
There is also an attempt to commit child prostitution, under paragraph (b) of Section 5 hereof when any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments. A penalty lower by two (2) degrees than that prescribed for the consummated felony under Section 5 hereof shall be imposed upon the principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper case, under the Revised Penal Code *(Sec. 6)*.

Compare prosecution for Acts of Lasciviousness under Art. 336, RPC and RA 7610, as amended

Art. 336, RPC	RA 7610, Sec. 5
Art. 336. Acts of lasciviousness. – Any person who shall commit any act of lasciviousness upon other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by prision correccional.	The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following: (b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period

Obscene Publications and indecent shows; Punishable acts

Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.
If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.
Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in an obscene play, scene, act, movie or show or in any other acts covered by this section shall suffer the penalty of prision mayor in its medium period *(Sec. 9)*.

ANTI-TRAFFICKING IN PERSONS ACT OF 2003 (R.A. 9208)

Punishable acts

1. Acts of Trafficking in Persons. - It shall be unlawful for any person, natural or juridical, to commit any of the following acts:
(a) To recruit, transport, transfer; harbor,

provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(b) To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage;

(d) To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation;

(e) To maintain or hire a person to engage in prostitution or pornography;

(f) To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(g) To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person; and

(h) To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad *(Sec. 4)*.

2. Acts that Promote Trafficking in Persons. - The following acts which promote or facilitate trafficking in persons, shall be unlawful:

(a) To knowingly lease or sublease, use or allow to be used any house, building or establishment for the purpose of promoting trafficking in persons;

(b) To produce, print and issue or distribute unissued, tampered or fake counseling certificates, registration stickers and certificates of any government agency which issues these certificates and stickers as proof of compliance with government regulatory and pre-departure requirements for the purpose of promoting trafficking in persons;

(c) To advertise, publish, print, broadcast or distribute, or cause the advertisement, publication, printing, broadcasting or distribution by any means, including the use of information technology and the internet, of any brochure, flyer, or any propaganda material that promotes trafficking in persons;

(d) To assist in the conduct of misrepresentation or fraud for purposes of facilitating the acquisition of clearances and necessary exit documents from government agencies that are mandated to provide pre-departure registration and services for departing persons for the purpose of promoting trafficking in persons;

(e) To facilitate, assist or help in the exit and entry of persons from/to the country at international and local airports, territorial boundaries and seaports who are in possession of unissued, tampered or fraudulent travel documents for the purpose of promoting trafficking in persons;

(f) To confiscate, conceal, or destroy the passport, travel documents, or personal documents or belongings of trafficked persons in furtherance of trafficking or to prevent them from leaving the country or seeking redress from the government or appropriate agencies; and

(g) To knowingly benefit from, financial or otherwise, or make use of, the labor or services of a person held to a condition of involuntary servitude, forced labor, or slavery *(Sec. 5)*.

3. Qualified Trafficking in Persons. - The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through Republic Act No. 8043, otherwise known as the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale. Trafficking is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons, individually or as a group;
(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;
(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;
(f) When the offender is a member of the military or law enforcement agencies; and
(g) When by reason or on occasion of the act of trafficking in persons, the offended party dies, becomes insane, suffers mutilation or is afflicted with Human Immunodeficiency Virus (HIV) or the Acquired Immune Deficiency Syndrome (AIDS) *(Sec. 6)*.

ANTI-VIOLENCE AGAINST WOMEN AND THEIR CHILDREN ACT OF 2004 (R.A. 9262)

Punishable acts

The crime of violence against women and their children is committed through any of the following acts:
(a) Causing physical harm to the woman or her child *(Sec. 5)*;
(b) Threatening to cause the woman or her child physical harm;
(c) Attempting to cause the woman or her child physical harm;
(d) Placing the woman or her child in fear of imminent physical harm;
(e) Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
(1) Threatening to deprive or actually depriving the woman or her child of custody to her/his family;
(2) Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support;
(3) Depriving or threatening to deprive the woman or her child of a legal right;
(4) Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own mon4ey or properties, or solely controlling the conjugal or common money, or properties;
(f) Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions;
(g) Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family;
(h) Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
(1) Stalking or following the woman or her child in public or private places;
(2) Peering in the window or lingering outside the residence of the woman or her child;
(3) Entering or remaining in the dwelling or on the property of the woman or her child against her/his will;
(4) Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child; and
(5) Engaging in any form of harassment or violence;

(i) Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children.

ANTI-SEXUAL HARASSMENT ACT OF 1995 (R.A. 7877)

Committed by any person having authority, influence or moral ascendancy over another in a work, training or education environment when he or she demands, requests, or otherwise requires any sexual favor from the other regardless of whether the demand, request or requirement for submission is accepted by the object of the said act (for a passing grade, or granting of scholarship or honors, or payment of a stipend, allowances, benefits, considerations; favorable compensation terms, conditions, promotions or when the refusal to do so results in a detrimental consequence for the victim).

Also holds liable any person who directs or induces another to commit any act of sexual harassment, or who cooperates in the commission, the head of the office, educational or training institution solidarily.

Complaints to be handled by a committee on decorum, which shall be determined by rules and regulations on such.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

Punishable acts

Work, Education or Training -Related, Sexual Harassment Defined *(Sec. 3)*. - Work, education or training-related sexual harassment is committed by an employer, employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainer, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

(a) In a work-related or employment environment, sexual harassment is committed when:
   (1) The sexual favor is made as a condition in the hiring or in the employment, reemployment or continued employment of said individual, or in granting said individual favorable compensation, terms of conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in any way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee;
   (2) The above acts would impair the employee's rights or privileges under existing labor laws; or
   (3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

(b) In an education or training environment, sexual harassment is committed:
   (1) Against one who is under the care, custody or supervision of the offender;
   (2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
   (3) When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or consideration; or
   (4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act.

12. CRIMES AGAINST CIVIL STATUS (347-352)

Crimes against the civil status of persons

1. Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child (art. 347);
2. Usurpation of civil status (Art. 348);
3. Bigamy (Art. 349);
4. Marriage contracted against provisions of law (Art. 350);
5. Premature marriages (Art. 351);
6. Performance of illegal marriage ceremony (Art. 352).

Article 347. Simulation of Births, Substitution of One Child for Another, and Concealment of Abandonment of A Legitimate Child

Acts punished

1. Simulation of births;
2. Substitution of one child for another;
3. Concealing or abandoning any legitimate child with intent to cause such child to lose its civil status.

Illustration:

People who have no child and who buy and adopt the child without going through legal adoption.

If the child is being kidnapped and they knew that the kidnappers are not the real parents of their child, then simulation of birth is committed. If the parents are parties to the simulation by making it appear in the birth certificate that the parents who bought the child are the real parents, the crime is not falsification on the part of the parents and the real parents but simulation of birth.

Article 349. Usurpation of Civil Status

This crime is committed when a person represents himself to be another and assumes the filiation or the parental or conjugal rights of such another person.

Thus, where a person impersonates another and assumes the latter's right as the son of wealthy parents, the former commits a violation of this article.

The term "civil status" includes one's public station, or the rights, duties, capacities and incapacities which determine a person to a given class. It seems that the term "civil status" includes one's profession.

Article 349. Bigamy

Elements

1. Offender has been legally married;
2. The marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;
3. He contracts a second or subsequent marriage;
4. The second or subsequent marriage has all the essential requisites for validity.

The crime of bigamy does not fall within the category of private crimes that can be prosecuted only at the instance of the offended party. The offense is committed not only against the first and second wife but also against the state.

Good faith is a defense in bigamy.

Failure to exercise due diligence to ascertain the whereabouts of the first wife is bigamy through reckless imprudence.

The second marriage must have all the essential requisites for validity were it not for the existence of the first marriage.

A judicial declaration of the nullity of a marriage, that is, that the marriage was void ab initio, is now required.

One convicted of bigamy may also be prosecuted for concubinage as both are distinct offenses. The first is an offense against civil status, which may be prosecuted at the instance of the state; the second is an offense against chastity, and may be prosecuted only at the instance of the offended party. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.

One who, although not yet married before, knowingly consents to be married to one who is already married is guilty of bigamy knowing that the latter's marriage is still valid and subsisting.

Distinction between bigamy and illegal marriage:

Bigamy is a form of illegal marriage. The

offender must have a valid and subsisting marriage. Despite the fact that the marriage is still subsisting, he contracts a subsequent marriage.

Illegal marriage includes also such other marriages which are performed without complying with the requirements of law, or such premature marriages, or such marriage which was solemnized by one who is not authorized to solemnize the same.

For bigamy to be committed, the second marriage must have all the attributes of a valid marriage.

Article 350. Illegal Marriage

Elements

1. Offender contracted marriage;
2. He knew at the time that –
   (a) The requirements of the law were not complied with; or
   (b) The marriage was in disregard of a legal impediment.

Marriages contracted against the provisions of laws

1. The marriage does not constitute bigamy.
2. The marriage is contracted knowing that the requirements of the law have not been complied with or in disregard of legal impediments.
3. One where the consent of the other was obtained by means of violence, intimidation or fraud.
4. If the second marriage is void because the accused knowingly contracted it without complying with legal requirements as the marriage license, although he was previously married.
5. Marriage solemnized by a minister or priest who does not have the required authority to solemnize marriages.

Article 351. Premature Marriage

Persons liable

1. A widow who is married within 301 days from the date of the death of her husband, or before having delivered if she is pregnant at the time of his death;
2. A woman who, her marriage having been annulled or dissolved, married before her delivery or before the expiration of the period of 301 days after the date of the legal separation.

The Supreme Court has already taken into account the reason why such marriage within 301 days is made criminal, that is, because of the probability that there might be a confusion regarding the paternity of the child who would be born. If this reason does not exist because the former husband is impotent, or was shown to be sterile such that the woman has had no child with him, that belief of the woman that after all there could be no confusion even if she would marry within 301 days may be taken as evidence of good faith and that would negate criminal intent.

Art. 352. Performance of illegal marriage ceremony

Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.

13. CRIMES AGAINST HONOR (353-364)

Crimes against honor

1. Libel by means of writings or similar means (Art. 355);
2. Threatening to publish and offer to prevent such publication for a compensation (Art. 356);
3. Prohibited publication of acts referred to in the course of official proceedings (Art. 357);
4. Slander (Art. 358);
5. Slander by deed (Art. 359);
6. Incriminating innocent person (Art. 363);
7. Intriguing against honor (Art. 364).

Article 353. Definition of Libel

A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstances tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Elements:

1. There must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance;
2. The imputation must be made publicly;
3. It must be malicious;
4. The imputation must be directed at a natural or juridical person, or one who is dead;
5. The imputation must tend to cause the dishonor, discredit or contempt of the person defamed.

Distinction between malice in fact and malice in law

Malice in fact is the malice which the law presumes from every statement whose tenor is defamatory. It does not need proof. The mere fact that the utterance or statement is defamatory negates a legal presumption of malice.

In the crime of libel, which includes oral defamation, there is no need for the prosecution to present evidence of malice. It is enough that the alleged defamatory or libelous statement be presented to the court verbatim. It is the court which will prove whether it is defamatory or not. If the tenor of the utterance or statement is defamatory, the legal presumption of malice arises even without proof.

Malice in fact becomes necessary only if the malice in law has been rebutted. Otherwise, there is no need to adduce evidence of malice in fact. So, while malice in law does not require evidence, malice in fact requires evidence.

Malice in law can be negated by evidence that, in fact, the alleged libelous or defamatory utterance was made with good motives and justifiable ends or by the fact that the utterance was privileged in character.

In law, however, the privileged character of a defamatory statement may be absolute or qualified.

When the privileged character is said to be absolute, the statement will not be actionable whether criminal or civil because that means the law does not allow prosecution on an action based thereon.

Illustration:

As regards the statements made by Congressmen while they are deliberating or discussing in Congress, when the privileged character is qualified, proof of malice in fact will be admitted to take the place of malice in law. When the defamatory statement or utterance is qualifiedly privileged, the malice in law is negated. The utterance or statement would not be actionable because malice in law does not exist. Therefore, for the complainant to prosecute the accused for libel, oral defamation or slander, he has to prove that the accused was actuated with malice (malice in fact) in making the statement.

When a libel is addressed to several persons, unless they are identified in the same libel, even if there are several persons offended by the libelous utterance or statement, there will only be one count of libel.

If the offended parties in the libel were distinctly identified, even though the libel was committed at one and the same time, there will be as many libels as there are persons dishonored.

Illustration:

If a person uttered that “All the Marcoses are thieves," there will only be one libel because these particular Marcoses regarded as thieves are not specifically identified.

If the offender said, “All the Marcoses – the father, mother and daughter are thieves.” There will be three counts of libel because each person libeled is distinctly dishonored.

If you do not know the particular persons libeled, you cannot consider one libel as giving rise to several counts of libel. In order that one defamatory utterance or imputation may be considered as having dishonored more than one person, those persons dishonored must be identified. Otherwise, there will only be one count of libel.

Note that in libel, the person defamed need not be expressly identified. It is enough that he

could possibly be identified because "innuendos may also be a basis for prosecution for libel. As a matter of fact, even a compliment which is undeserved, has been held to be libelous.

The crime is libel is the defamation is in writing or printed media.

The crime is slander or oral defamation if it is not printed.

Even if what was imputed is true, the crime of libel is committed unless one acted with good motives or justifiable end. Poof of truth of a defamatory imputation is not even admissible in evidence, unless what was imputed pertains to an act which constitutes a crime and when the person to whom the imputation was made is a public officer and the imputation pertains to the performance of official duty. Other than these, the imputation is not admissible.

When proof of truth is admissible

1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer;
2. When the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided if its related to the discharged of his official duties.

Requisites of defense in defamation

1. If it appears that the matter charged as libelous is true;
2. It was published with good motives;
3. It was for justifiable ends.

If a crime is a private crime, it cannot be prosecuted de officio. A complaint from the offended party is necessary.

Article 355. Libel by Means of Writings or Similar Means

A libel may be committed by means of -

1. Writing;
2. Printing;
3. Lithography;
4. Engraving;
5. Radio;
6. Photograph;
7. Painting;
8. Theatrical exhibition;
9. Cinematographic exhibition; or
10. Any similar means.

Article 356. Threatening to Publish and Offer to Prevent Such Publication for A Compensation

Acts punished

1. Threatening another to publish a libel concerning him, or his parents, spouse, child, or other members of his family;
2. Offering to prevent the publication of such libel for compensation or money consideration.

Blackmail - In its metaphorical sense, blackmail may be defined as any unlawful extortion of money by threats of accusation or exposure. Two words are expressive of the crime - hush money. (**US v. Eguia, et al., 38 Phil. 857**) Blackmail is possible in (1) light threats under Article 283; and (2) threatening to publish, or offering to prevent the publication of, a libel for compensation, under Article 356.

Article 357. Prohibited Publication of Acts Referred to in the Course of Official Proceedings

Elements

1. Offender is a reporter, editor or manager of a newspaper, daily or magazine;
2. He publishes facts connected with the private life of another;
3. Such facts are offensive to the honor, virtue and reputation of said person.

The provisions of Article 357 constitute the so-called "Gag Law."

Article 358. Slander

Slander is oral defamation. There are two kinds of oral defamation:

(1) Simple slander; and
(2) Grave slander, when it is of a serious and insulting nature.

Article 359. Slander by Deed

Elements

1. Offender performs any act not included in any other crime against honor;
2. Such act is performed in the presence of other person or persons;
3. Such act casts dishonor, discredit or contempt upon the offended party.

Slander by deed refers to performance of an act, not use of words.

Two kinds of slander by deed

1. Simple slander by deed; and
2. Grave slander by deed, that is, which is of a serious nature.

Whether a certain slanderous act constitutes slander by deed of a serious nature or not, depends on the social standing of the offended party, the circumstances under which the act was committed, the occasion, etc.

Article 363. Incriminating Innocent Persons

Elements

1. Offender performs an act;
2. By such an act, he incriminates or imputes to an innocent person the commission of a crime;
3. Such act does not constitute perjury.

This crime cannot be committed through verbal incriminatory statements. It is defined as an act and, therefore, to commit this crime, more than a mere utterance is required.

If the incriminating machination is made orally, the crime may be slander or oral defamation.

If the incriminatory machination was made in writing and under oath, the crime may be perjury if there is a willful falsity of the statements made.

If the statement in writing is not under oath, the crime may be falsification if the crime is a material matter made in a written statement which is required by law to have been rendered.

As far as this crime is concerned, this has been interpreted to be possible only in the so-called planting of evidence.

Article 364. Intriguing against Honor

This crime is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

Intriguing against honor is referred to as gossiping. The offender, without ascertaining the truth of a defamatory utterance, repeats the same and pass it on to another, to the damage of the offended party. Who started the defamatory news is unknown.

Distinction between intriguing against honor and slander:

When the source of the defamatory utterance is unknown and the offender simply repeats or passes the same, the crime is intriguing against honor.

If the offender made the utterance, where the source of the defamatory nature of the utterance is known, and offender makes a republication thereof, even though he repeats the libelous statement as coming from another, as long as the source is identified, the crime committed by that offender is slander.

Distinction between intriguing against honor and incriminating an innocent person:

In intriguing against honor, the offender resorts to an intrigue for the purpose of blemishing the honor or reputation of another person.

In incriminating an innocent person, the offender performs an act by which he directly incriminates or imputes to an innocent person the commission of a crime.

A. ADMINISTRATIVE CIRCULAR 08-2008 RE: GUIDELINES IN THE OBSERVANCE OF A RULE OF PREFERENCE IN THE IMPOSITION OF PENALTIES IN LIBEL CASES

Preference of imposition of fine

All courts and judges concerned should henceforth take note of the foregoing rule of

preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime of libel under Article 355 of the Revised Penal Code;
2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperatives of justice;
3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the *Revised Penal Code* provisions on subsidiary imprisonment.

14. CRIMINAL NEGLIGENCE (365)

Article 365. Imprudence and Negligence

Quasi-offenses punished

1. Committing through reckless imprudence any act which, had it been intentional, would constitute a grave or less grave felony or light felony;
2. Committing through simple imprudence or negligence an act which would otherwise constitute a grave or a less serious felony;
3. Causing damage to the property of another through reckless imprudence or simple imprudence or negligence;
4. Causing through simple imprudence or negligence some wrong which, if done maliciously, would have constituted a light felony.

Distinction between reckless imprudence and negligence:

The two are distinguished only as to whether the danger that would be impending is easily perceivable or not. If the danger that may result from the criminal negligence is clearly perceivable, the imprudence is reckless. If it could hardly be perceived, the criminal negligence would only be simple.

There is no more issue on whether culpa is a crime in itself or only a mode of incurring criminal liability. It is practically settled that criminal negligence is only a modality in incurring criminal liability. This is so because under Article 3, a felony may result from dolo or culpa.

Since this is the mode of incurring criminal liability, if there is only one carelessness, even if there are several results, the accused may only be prosecuted under one count for the criminal negligence. So there would only be one information to be filed, even if the negligence may bring about resulting injuries which are slight.

Do not separate the accusation from the slight physical injuries from the other material result of the negligence.

If the criminal negligence resulted, for example, in homicide, serious physical injuries and slight physical injuries, do not join only the homicide and serious physical injuries in one information for the slight physical injuries. You are not complexing slight when you join it in the same information. It is just that you are not splitting the criminal negligence because the real basis of the criminal liability is the negligence.

If you split the criminal negligence, that is where double jeopardy would arise.

II. Jurisprudence– Pertinent Supreme Court decisions promulgated up to June 30, 2010

III. Excluded Topics

1. All Special Penal Laws and Supreme Court Decisions not pertinent to the above outlined topics are excluded.
2. Penalties of Specific Crimes.