

CRIMINAL LAW NOTES

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BOOK ONE

CRIMINAL LAW - branch of public substantive law which defines crimes, treats of their nature, and provides for their punishment.

Nature of Criminal Law:

1. **SUBSTANTIVE LAW** - it defines the State's right to inflict punishment and the liability of the offenders.
2. **PUBLIC LAW** - it deals with the relation of the individual with the State.

THEORIES/PHILOSOPHIES IN CRIMINAL LAW

Classical (Juristic) Theory

The basis of criminal responsibility is human free will. Man has the intellect to know what is legal from illegal. He has the freedom to choose whether to obey the law or violate it. If he opts to violate the law, then he must bear the consequences. *Best remembered by the maxim "An eye for an eye, a tooth for a tooth."* [Note: *If you want to impress the examiner, use the Latin version – Oculo pro oculo, dente pro dente.*]

The purpose of penalty is retribution. Since he injured the society, then society has the right to demand that he must pay and suffer for what he did.

There is direct and mechanical proportion between crime and penalty which penalty has been determined before hand.

The emphasis is the act itself, with little regard for the criminal. There is scant regard for the human element of the crime. The law does not look into why the offender committed the crime. Capital punishment is a product of this kind of this school of thought. Man is regarded as a moral creature who understands right from wrong. So that when he commits a wrong, he must be prepared to accept the punishment therefore.

RPC is generally governed by this theory.

Positivist (Realistic) Theory

The basis of criminal responsibility is the sum of the social, natural and economic phenomena to which the actor is exposed. Man is essentially good but by reason of outside factors or influences he is constrained to do wrong despite his volition to the contrary.

The purpose of penalty is reformation. There is great respect for the human element because the offender is regarded as socially sick who needs treatment, not

punishment. Cages are like asylums, jails like hospitals. They are there to segregate the offenders from the "good" members of society.

Penalty is to be imposed only upon the recommendation of social scientists, psychologists and experts. The penalty is imposed on a case to case basis after examination of the offender by a panel of social scientists which do not include lawyers as the panel would not want the law to influence their consideration.

The emphasis is on the individual.

Eclectic or Mixed Theory

This combines both positivist and classical thinking. Crimes that are economic and social and nature should be dealt with in a positivist manner; thus, the law is more compassionate. Heinous crimes should be dealt with in a classical manner; thus, capital punishment.

Utilitarian Theory

A man is punished only if he is proved to be an actual or potential danger to society.

The primary purpose of the punishment under criminal law is the protection of society from actual and potential wrongdoers. The courts, therefore, in exacting retribution for the wronged society, should direct the punishment to potential or actual wrongdoers, since criminal law is directed against acts and omissions which the society does not approve. Consistent with this theory, the mala prohibita principle which punishes an offense regardless of malice or criminal intent, should not be utilized to apply the full harshness of the special law.

Theory to Which the Philippines Adhere

1. Since the Revised Penal Code was adopted from the Spanish *Codigo Penal*, which in turn was copied from the French Code of 1810 which is classical in character, it is said that our Code is also classical. This is no longer true because with the American occupation of the Philippines, many provisions of common law have been engrafted into our penal laws. The Revised Penal Code today follows the mixed or eclectic philosophy. For example, intoxication of the offender is considered to mitigate his criminal liability, unless it is intentional or habitual; the age of the offender is considered; and the woman who killed her child to conceal her dishonor has in her favor a mitigating circumstance. Besides, there are provisions which are based on positivist school like provisions on minority, modifying circumstances, and provisions on impossible crimes.
2. For special laws, there are following the positivist theory such as the Law on Probation, Special

protection to children. Others follow the classical school such as Heinous Crimes Law and the Dangerous Drugs Law.

3. Jurisprudence usually applies utilitarian theory (e.g. accused of BP 22 – no danger to society, thus just pay fine).

CLASSICAL	POSITIVIST	MIXED/ ECLECTIC
The basis of criminal liability is human free will and the purpose of the penalty is retribution.	That man is subdued occasionally by a strange and morbid phenomenon which constrains him to do wrong in spite of or contrary to his volition.	This combines both positivist and classical thinking.
That man is essentially a moral creature with an absolute free will to choose between good and evil, thereby placing more stress upon the effect or result of the felonious act done upon the man, the criminal himself.	That crime is essentially a social and natural phenomenon, and as such, it cannot be treated and checked by the application of abstract principles of law and jurisprudence nor by the imposition of a punishment, fixed and determined a priori; rather through the enforcement of individual measures in each particular case.	Crimes that are economic and social in nature should be dealt with in a positivist manner, thus the law is more compassionate.
It has endeavored to establish a mechanical and direct proportion between crime and penalty.		Heinous crimes should be dealt with in a classical manner, thus capital punishment.
There is a scant regard to the human element.		

POWER TO ENACT PENAL LAWS

Essentially legislative. The power is plenary. Congress may determine what acts or omissions are deemed reprehensible and provide a penalty therefore. The power includes the prerogative to set forth a presumption of the commission of violation of penal law and placed the burden on the accused to overcome this presumption. As in the presumption of authorship of theft from the possessor of stolen goods or falsification.

BASIS OF THE POWER TO ENACT PENAL LAWS

1. Police Power of the State
2. Right of the State to Self Preservation and Defense

LIMITATIONS IN THE ENACTMENT OF PENAL LAWS

1. Penal laws must be GENERAL IN APPLICATION/equal application to all. Otherwise, it would violate the equal protection clause of the constitution.
2. Penal laws must not partake of the nature of an EX POST FACTO LAW.
 - Makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act.
 - Aggravates a crime, or makes it greater than it was, when committed.
 - Changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.
 - Alters the legal rules on evidence, and authorizes conviction upon less or different testimony than the law required at the time of the commission of the offense.
 - Assuming to regulate civil rights and remedies only in effect imposes penalty or deprivation of a right for something which when done was lawful.
 - Deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of a proclamation of amnesty.
3. Penal laws must not partake of the nature of a bill of attainder.

BILL OF ATTAINDER - is a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative act for a judicial determination of guilt.

4. No person shall be held to answer for a criminal offense without due process of law (*Art III, Sec 14[1]*)
5. Penal laws must not impose cruel and unusual punishment nor excessive fines.

CONSTRUCTION OF PENAL LAWS

1. Application of the Principle of Pro Reo. Penal laws are to be construed liberally in favor of the accused and strictly against the government. All doubts are to be resolved in favor of the accused. e.g.
 - a. whether the offender clearly fall within the terms of the law.
 - b. whether the act or omission is within the coverage of the law
 - c. whether the conviction is for a lesser offense
 - d. whether to impose a lesser penalty

This is in consonance with the fundamental rule that all doubts shall be construed in favor of the accused and consistent with presumption of innocence of the accused. This is peculiar only to criminal law.

Q: One boy was accused of parricide and was found guilty. This is punished by reclusion perpetua to death. Assuming you were the judge, would you give the accused the benefit of the Indeterminate Sentence Law (ISLAW)? The ISLAW does not apply when the penalty imposed is life imprisonment or death. Would you consider the penalty imposable or the penalty imposed, taking into consideration the mitigating circumstance of minority?

If you will answer "no", then you go against the Doctrine of Pro Reo because you can interpret the ISLAW in a more lenient manner. Taking into account the doctrine, we interpret the ISLAW to mean that the penalty imposable and not the penalty prescribed by law, since it is more favorable for the accused to interpret the law.

2. Application of the Principle of Prospective Interpretation. Laws are to be interpreted as applying only to those acts or omissions committed after the effectivity of the law UNLESS the law is favorable to the accused who is not a habitual delinquent and the law does not provide for its non-retroactivity.
3. As to the RPC, in cases of conflict with official translation, the original Spanish text is controlling. This does not apply to penal laws enacted after 1932.
4. No interpretation by analogy.

REPEAL OF PENAL LAWS

1. **ABSOLUTE OR TOTAL REPEAL** - when the crime punished under the repealed law has been decriminalized by the same. (e.g. *Republic Act No. 7363, which decriminalized subversion.*)

CONSEQUENCES:

1. **Cases 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 the case is **on appeal**, the judgment of conviction shall be reversed, thus accused be acquitted.
3. In cases **already decided** and as to those 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. Thus, the remedy is to file a petition for habeas corpus.

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.

If the convict, on the other hand, is a habitual delinquent, he will continue serving the sentence in spite of the fact that the law under which he was convicted has already been absolutely repealed. This is so because penal laws should be given retroactive application to favor only those who are not habitual delinquents.

Q: A, a prisoner, learns that he is already overstaying in jail because his jail guard, B, who happens to be a law student advised him that there is no more legal ground for his continued imprisonment, and B told him that he can go. A got out of jail and went home. Was there any crime committed?

A: As far as A, the prisoner who is serving sentence, is concerned, the crime committed is evasion of sentence.

As far as B, the jail guard who allowed A to go, is concerned, the crime committed is infidelity in the custody of prisoners.

4. If convicted under old law, convict cannot demand compensation from the government, however, the law shall be applied retroactively because the law is favorable to him.

2. **PARTIAL OR RELATIVE REPEAL** - when the crime punished under the repealed law continues to be a crime in spite of the repeal, so this means the repeal merely modified the conditions affecting the crime under the repealed law. Thus, there might be increase or decrease of penalty, conditions for criminal liability either deleted or added, or the coverage of law is expanded or limited.

CONSEQUENCES:

1. **Pending prosecution** - if the repealing law is more favorable to the offender, 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. **As to those already serving sentence in jail** - even if the repealing law is partial, then the crime still remains to be a crime. Those who are not habitual delinquents will benefit on the effect of that repeal, so if the repeal is more lenient to them, it will be the repealing law that will henceforth apply to them.
3. **EXPRESS** - takes place when a subsequent law contains a provision that such law repeals an earlier enactment.
e.g. Republic Act No. 6425 (The Dangerous Drugs Act of 1972), there is an express provision of repeal of Title V of the Revised Penal Code.

Significance: If a law expressly repeals a prior law is itself repealed, the repeal of the repealing law will not survive the first law UNLESS otherwise provided, so the act or omission will no longer be penalized.

4. **IMPLIED** - takes place when there is a law on a particular subject matter but is inconsistent with the first law, such that the two laws cannot stand together one of the two laws must give way. IT IS NOT FAVORED. It requires a competent court to declare an implied repeal.

It is the earlier that will give way to the later law because the later law expresses the recent legislative sentiment. So you can have an implied

repeal when there are two inconsistent laws. If the two laws can be reconciled, the court shall always try to avoid an implied repeal. For example, under Article 9, light felonies are those infractions of the law for the commission of which a penalty of arresto mayor or a fine not exceeding P200.00 or both is provided. On the other hand, under Article 26, a fine whether imposed as a single or an alternative penalty, if it exceeds P6,000.00 but is not less than P 200.00, is considered a correctional penalty. These two articles appear to be inconsistent. So to harmonize them, the Supreme Court ruled that if the issue involves the prescription of the crime, that felony will be considered a light felony and, therefore, prescribes within two months. But if the issue involves prescription of the penalty, the fine of P200.00 will be considered correctional and it will prescribe within 10 years. Clearly, the court avoided the collision between the two articles.

Significance: If a law which impliedly repeals a prior law is itself repealed, the repeal of the repealing law will revive the original law UNLESS otherwise provided. So the act or omission which was punished as a crime under the original law will be revived and the same shall again be crime although during the implied repeal they may not be punishable.

NOTE: 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.

REQUIREMENTS OF CRIMINAL LAW (Sir Sagsago)

1. **Principle of Legality** – For an act or omission to be punished, there must be an statutory enactment declaring the act/omission to be a crime and imposing a penalty therefor. All crimes are of statutory origin.

The principle declares that for any human conduct to be considered as a criminal act, there must be a specific statute or law declaring such conduct as a crime and providing for a penalty.

Any human conduct, no matter how evil or reprehensible it may be, can not subject the actor to punishment if there is no law punishing the act.

This is expressed in the maxim "Nullum crimen noella pena sine legi".

This principle is the opposite of "Common Law Crimes" (often called "Court Declared/Created Crimes").

- a. **Nullum crimen, nulla poena sine lege** - *There is no crime when there is no law punishing the same. This is true to civil law countries, but not to common law countries.*
- b. There are no common law crimes in the Philippines or those acts or omission declared by courts to be crimes because they violate good customs, principles, precepts or public morals.
- c. For an omission to be punishable, there must be a law directing the doing of an act so that he who claims to have been injured by the omission cannot rely on a duty based solely on humanity.
- d. The principle is observed in the Philippines in that, under Article 5, it is the duty of the court to dismiss or acquit the accused charged with an act or omission not punished by any law, and to recommend that the act or omission be made the subject of a Penal Legislation.

2. **Publication of Penal Laws** in the Official Gazette or news paper of general circulation (Ma'am Lulu – 15 day publication shall not be reduced). This is compliance with due process or fairness. Once there is publication, there is constructive notice. Ignorance of the law, excuses no one from compliance therewith. The liability does not depend on the actual knowledge of the law.

DEVELOPMENT OF CRIMINAL LAW IN THE PHILIPPINES

Code of Kalantiao

If you will be asked about the development of criminal law in the Philippines, do not start with the Revised Penal Code. Under the Code of Kalantiao, there were penal provisions. Under this code, if a man would have a relation with a married woman, she is penalized. Adultery is a crime during those days. Even offending religious things, such as gods, are penalized. The Code of Kalantiao has certain penal provisions. The Filipinos have their own set of penology also.

Spanish Codigo Penal

When the Spanish Colonizers came, the Spanish Codigo Penal was made applicable and extended to the Philippines by Royal Decree of 1870. This was made effective in the Philippines in July 14, 1876.

Who is Rafael Del Pan?

He drafted a correctional code which was after the Spanish Codigo Penal was extended to the Philippines. But that correctional code was never enacted into law. Instead, a committee was organized

headed by then Anacleto Diaz. This committee was the one who drafted the present Revised Penal Code.

The present Revised Penal Code

When a committee to draft the Revised Penal Code was formed, one of the reference that they took hold of was the correctional code of Del Pan. In fact, many provisions of the Revised Penal Code were no longer from the Spanish Penal Code; they were lifted from the correctional code of Del Pan. So it was him who formulated or paraphrased this provision making it simpler and more understandable to Filipinos because at that time, there were only a handful who understood Spanish.

Code of Crimes by Guevarra

During the time of President Manuel Roxas, a code commission was tasked to draft a penal code that will be more in keeping with the custom, traditions, traits as well as beliefs of the Filipinos. During that time, the code committee drafted the so-called Code of Crimes. This too, slept in Congress. It was never enacted into law. Among those who participated in drafting the Code of Crimes was Judge Guellermo Guevarra.

Since that Code of Crimes was never enacted as law, he enacted his own code of crimes. But it was the Code of Crimes that was presented in the Batasan as Cabinet Bill no. 2. Because the code of crimes prepared by Guevarra was more of a moral code than a penal code, there were several oppositions against the code.

Proposed Penal Code of the Philippines

Through Assemblyman Estelito Mendoza, the UP Law Center formed a committee which drafted the Penal Code of the Philippines. This Penal Code of the Philippines was substituted as Cabinet Bill no. 2 and this has been discussed in the floor of the Batasang Pambansa. So the Code of Crimes now in Congress was not the Code of Crimes during the time of President Roxas. This is a different one. Cabinet Bill No. 2 is the Penal Code of the Philippines drafted by a code committee chosen by the UP Law Center, one of them was Professor Ortega. There were seven members of the code committee. It would have been enacted into law it not for the dissolution of the Batasang Pambansa dissolved. The Congress was planning to revive it so that it can be enacted into law.

Special Laws

During Martial Law, there are many Presidential Decrees issued aside from the special laws passed by the Philippine Legislature Commission. All these special laws, which are penal in character, are part of our Penal Code.

SOURCES OF PENAL LAWS IN THE PHILIPPINES

(Sir Sagsago)

1. The Revised Penal Code (Act No 3815) effective on Jan 1, 1932.
 - a. Principally based on the Spanish Penal Code of 1887, however some crimes are based on American concepts such as perjury, libel, malversation.
 - b. Original text was Spanish and translated into English.
 - c. Inadequate to meet crimes arising from or related to modern technology such as computer-related offenses as hacking.
 - d. Many provisions have repealed and/or amended such as provisions on dangerous drugs, gambling, provisions involving minor offenders.
 - e. Consists of 2 major parts known as Book I and Book II. The first deals with criminal liability in general and the principles concerning penalties. Book II enumerates and defines the specific crimes and provides for their specific penalties.
2. Special Laws – refers to those penal laws other than the RPC.
 - a. Those of National Application
 - i. Those Passed by Congress
 1. Acts – those passed during the American Regime
 2. Commonwealth Acts – those passed during the commonwealth period (1936-1946)
 3. Republic Acts – during the time the Philippines became a republic (since 1946)
 4. Batas Pambansa – passed by the Batasang Pambansa during Martial Law.
 - ii. Those passed during Martial Law by the President known as Presidential Decrees
 - iii. Those passed by administrative bodies and are referred to as Administrative Penal Circulars or rules and regulations.
 - b. Those of Local Application – city or municipal ordinances

CHARACTERISTICS OF CRIMINAL LAW

1. GENERALITY

“Penal laws and those of public security and safety shall be obligatory upon all who live or sojourn in Philippine territory.” (Art 14, NCC) In other words, it applies to all persons within the country regardless of their race, belief, sex, or creed. This answers the question: who are bound by the law? To whom is the penal law applicable? They may be

permanent or temporary residents or are transients like tourists.

EXCEPTIONS:

1. Those exempt by reason **Treaty Stipulations**
e.g. RP-US Accord, signed on Feb 10, 1998, Phils agreed that:
 - a. US shall have a right to exercise within the Phils all criminal and disciplinary jurisdiction conferred on them by the military of the US over US personnel in RP
 - b. US exercises exclusive jurisdiction over US personnel with regard to offenses relating to the security of the US punishable under the law of US, but not under the laws of RP
 - c. US shall have primary right to exercise jurisdiction over US personnel subject to military of the US in rel to:
 - c.1. Offenses solely against the property or security of the US or offenses solely against the property or person of US personnel;
 - c.2. Offenses arising out of any act or mission done in performance of official duty.
2. Those exempt by reason of **Principles Of Public International Law**
e.g.
 - sovereigns and heads (chiefs) of foreign states whether on official or personal visit, including members of their personal (spouse, children) or official family (those who accompany the heads of state)

Functional Immunity – because they are performing state functions

Personal Immunity – because of their personal circumstances.
 - Ambassadors, ministers plenipotentiary, ministers resident, and charges d’affaires (foreign delegates to international conventions including members of their official retinue or entourage). They can avail only of functional immunity.

N.B. Consuls are not diplomatic officers. This includes consul general, vice-consul or any consul or other commercial representatives in a foreign country, who are therefore not immune to the operation or application of the penal law of the foreign state where they are assigned. Consuls are subject to the penal laws of the country where they are assigned.

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.

3. Those exempt by **Laws of Preferential Application**

- Constitution – Immunity granted to President during his term of office and parliamentary immunity to members of Congress
- RA 75 – foreign resident, diplomatic and consular representatives IF foreign country also grants the same to Filipino diplomatic or consular representatives. This includes domestic servants of ambassadors provided registered with the DFA.

It is not applicable when the foreign country adversely affected does not provide similar protection to our diplomatic representatives. PRINCIPLE OF RECIPROCIDY.

2. TERRITORIALITY

GENERAL RULE: Penal laws are applicable or enforceable only within the limits of the territorial jurisdiction of the authority which enacted the law. Thus, ordinances are enforceable only within the territorial limits of the city/municipality which enacted them, while laws of national application are enforceable only within Philippine territory.

Intraterritorial Application – refers to the application of the RPC within the Philippine territory.

In the intraterritorial application of the RPC, 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 RPC 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.

Thus:

- a. Within the bodies of land - TERRITORIAL / TERRESTRIAL JURISDICTION
- b. Only within the fluvial or maritime territory as defined in the constitution - FLUVIAL JURISDICTION

Archipelago Doctrine Or Archipelagic Rule. Under this doctrine, we connect the outmost points of our archipelago with straight baselines and waters enclosed thereby as internal waters. The entire archipelago is regarded as one integrated unit instead of being fragmented into so many thousand islands. As for our territorial seas, these are more defined according to the Jamaica Convention on the Law of the Seas, concluded in 1982, in which the Philippines is a signatory.

Q: If a foreign merchant vessel is in the center lane and a crime was committed there, under the International Law Rule, what law will apply?

A: The law of the country where that vessel is registered will apply, because the crime is deemed to have been committed in the high seas.

Under the Archipelagic Rule as declared in Article 1, of the Constitution, all waters in the archipelago regardless of breadth width, or dimension are part of our national territory. Under this Rule, there is no more center lane, all these waters, regardless of their dimension or width are part of Philippine territory.

So if a foreign merchant vessel is in the center lane and a crime was committed, the crime will be prosecuted before Philippine courts.

- c. Up to 24 miles from the base of the territorial sea for purposes of enforcing the Tariff and Customs Law
- d. Within the 200 miles of the Exclusive Economic Zone for purposes of protecting the economic wealth
- e. AERIAL JURISDICTION - the jurisdiction over the atmosphere.

Three Theories on Aerial Jurisdiction:

1. OPEN SPACE THEORY - that 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 only to the extent that it can effectively exercise control thereof.

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:

- a. **Principle of Ex Territoriality in International Law** – penal laws apply to offenses committed within the premises of the Philippines which are considered extensions of Philippine Territory.
- b. **Principle of Extraterritoriality** under Article 2, RPC (binding on crimes even committed outside the Phils.)
 1. Offenses committed while on a Philippine ship or airship

REQUISITES

- a. Ship or airship must not be within the territorial jurisdiction of another country
- b. Ship/airship must be registered in the Phils.
 - Philippine ship or airship – must be understood as that which is registered in the Philippine Bureau of Customs.
 - This applies only to *commercial ships/planes* which may be owned by government or private person for commercial or private purposes for as long as registered in the Phils.

As to warship/war planes, all crimes committed on board warships and war planes of the Philippines are subject to Phil. Penal laws by virtue of the principle of public international law to the effect that they are extensions of the territory which owns them

- The *nationality* of the vessel as a Phil ship/ airship is determined by its registration in accordance with Phil laws(nationality test) and not by the nationality of the owners (control test) . All others registered elsewhere are foreign vessels. However, in times of war, enemy vessels are those owned by nationals of the enemy country.
- This applies if the Phil ship is (1) in the international waters or high seas, and (2) in the territorial waters of a foreign country. But in the latter case, under the principle of comity among states, the foreign state is given priority to exercise its jurisdiction. If it does not, then Phil penal laws will apply. If the ship is in Philippine water, all crimes committed on board are triable by Phil courts under Phil. penal laws by virtue of the Principle of Territoriality.

Rules as to crimes committed on board **Foreign Merchant Vessels** which are in the territorial waters of another state:

French Rule (Flag or Nationality Rule) - the stress is on the nationality of the vessel.

GENERAL RULE: Crimes are triable by the courts of the country which owns the vessel.

EXCEPTION: Crimes affect the security, peace and order of the host country.

English/American/Anglo-Saxon Rule (Territoriality Principle or Situs of the Crime Rule) - strictly enforces the territoriality of criminal law or the place where the vessel is.

GENERAL RULE: Crimes are triable by the courts of the foreign country where a foreign vessel is within its jurisdiction.

EXCEPT: Crime affects only the internal management of the vessel in which case it is subject to the penal law of the country where it is registered.

- In the Phils, we follow the English Rule.
- Do Phil penal laws apply to crimes committed on board foreign vessels which are within Phil waters?
 - a. NO if the vessel is a warship
 - b. YES if the vessel is unregistered or is a pirate ship
 - c. If a merchant vessel
 - (1) YES if the Phil is the port of destination (under the principle of territoriality) UNLESS it pertains merely to the internal management/discipline (English Rule)
 - (2) NO if the vessel is merely passing in transit, UNLESS the offense affects the security, peace and order of the Phil.

Phil ship		Foreign ship	
In Phil	Out Phil	In Phil	Out Phil
Territoriality	Extra-Territoriality -commercial ship -if in a) High Seas or b) territorial waters of foreign country [(b) is subj to principle of comity, i.e. foreign country given priority to exercise jurisdiction] <i>(extraterritoriality is applicable in (b) if the foreign country adopts French Rule</i> <i>Exc. affects security, peace & order</i> Principle of PIL -warship	RPC: -- unregistered/ pirate ship NOT RPC: -warship RPC (territoriality) -merchant vessel -Phil is point of destination NOT RPC -merchant vessel -passing in transit Exc. Affects security, peace & order	French: nationality Exc affects security, peace & order English: Territoriality Exc. internal

Looking at the second column, it can be seen that 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 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.

(2) 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.

Q: A vessel is not registered in the Philippines. A crime is committed outside Philippine territorial waters. Then the vessel entered our territory. Will the Revised Penal Code apply?

A: Yes. Under the old Rules of Criminal Procedure, for our courts to take cognizance of any crime committed on board a vessel during its voyage, the vessel must be registered in the Philippines in accordance with Philippine laws.

Under the Revised Rules of Criminal Procedure, however, the requirement that the vessel must be licensed and registered in accordance with Philippine laws has been deleted from Section 25, paragraph c of Rule 110 of the Rules of Court. The intention is to do away with that requirement so that as long as the vessel is not registered under the laws of any country, our courts can take cognizance of the crime committed in such vessel.

More than this, the revised provision added the phrase "in accordance with generally accepted principles of International Law". So the intention is clear to adopt generally accepted principles of international law in the matter of exercising jurisdiction over crimes committed in a vessel while in the course of its voyage. Under international law rule, a vessel which is not registered in accordance with the laws of any country is considered a pirate vessel and piracy is a crime against humanity in general, such that wherever the pirates may go, they can be prosecuted.

Prior to the revision, the crime would not have been prosecutable in our court. With the revision, registration is not anymore a requirement and replaced with generally accepted principles of international law. Piracy is considered a crime against the law of nations.

In your answer, reference should be made to the provision of paragraph c of Section 15 of the Revised Rules of Criminal Procedure. The crime may be regarded as an act of piracy as long as it is done with "intent to gain".

- Foreign Merchant Vessel in Transit: possession of dangerous drugs is NOT punishable, but use of the same is punishable.
- Foreign Merchant Vessel NOT in Transit: Mere possession of dangerous drugs is punishable.

Q: A crew member of a foreign vessel which docked in Manila Bay was found in possession of ten kilos of shabu. Is he liable under our laws?

A: NO if the vessel is merely in transit, unless he sniffs the shabu

YES if the Phil is the port of destination

2. Forging or counterfeiting any coin or currency note of the Philippines or obligations and securities issued by the Government of the Philippines

Reason: to protect the monetarial system of the country

Note that the act of forging/counterfeiting maybe done in a foreign country and the actors maybe foreigners.

If forgery was committed abroad, it must refer only to Phil coin, currency note, or obligations and securities.

3. Introduction into the Philippines of the above-mentioned obligations and securities
4. While being public officers or employees, an offense is committed in the exercise of their functions, like:
 - a. Direct Bribery (A210)
 - b. Indirect Bribery (A211)
 - c. Qualified Bribery (A211-A)
 - d. Corruption (A212)

- e. Fraud Against Public Treasury and Similar Offenses (A213)
- f. Possession of Prohibited Interest (A216)
- g. Misversation of Public Funds or Property (A217)
- h. Failure to Render Accounts (A218)
- i. Failure to Render Account Before Leaving the Country (A219)
- j. Illegal Use of Public Funds or Property (A220)
- k. Failure to Make Delivery of Public Funds / Property (A221)
- l. Falsification (A171)

GENERAL RULE: RPC governs only when the crime committed pertains to the exercise of the public official's functions, those having to do with the discharge of their duties in a foreign country. The functions contemplated are those, which are, under the law, to be performed by the public officer in the Foreign Service of the Philippine government in a foreign country.

EXCEPTION: RPC governs if the crime was committed within the Philippine Embassy or within the embassy grounds in a foreign country. This is because embassy grounds are considered an extension of sovereignty.

Illustration:

A Philippine consulate official who is validly married here in the Philippines and who marries again in a foreign country cannot be prosecuted here for bigamy because this is a crime not connected with his official duties. However, if the second marriage was celebrated within the Philippine embassy, he may be prosecuted here, since it is as if he contracted the marriage here in the Philippines.

Q: A consul was to take a deposition in a hotel in Singapore. After the deposition, the deponent approached the consul's daughter and requested that certain parts of the deposition be changed in consideration for \$10,000.00. The daughter persuaded the consul and the latter agreed. Will the crime be subject to the Revised Penal Code? If so, what crime or crimes have been committed?

A: Yes. Falsification. Normally, the taking of the deposition is not the function of the consul, his function being the promotion of trade and commerce with another

country. Under the Rules of Court, however, a consul can take depositions or letters rogatory. There is, therefore, a definite provision of the law making it the consul's function to take depositions. When he agreed to the falsification of the deposition, he was doing so as a public officer in the service of the Philippine government.

5. Crimes against national security and the law of nations, defined in Title One of Book two of the Revised Penal Code.

Paragraph 5 of Article 2, use the phrase "as defined in Title One of Book Two of this Code."

This is a very important part of the exception, because Title I of Book 2 (crimes against national security) does not include rebellion. So if acts of rebellion were perpetrated by Filipinos who were in a foreign country, you cannot give territorial application to the Revised Penal Code, because Title I of Book 2 does not include rebellion.

Crimes against law of nations are: (1) piracy in the high seas and (2) mutiny in the high seas

Q: how about terrorism?

A: (Sir Sagsago) Following present trends, it is possible that a new crime known as Global Terrorism may be considered as a crime against the law of nations.

Pirates are those humanis generis or universal criminals and may be tried under the laws of the country which first acquired jurisdiction over them.

EXCEPTION TO THE EXCEPTION

Penal laws not applicable within or without Phil territory if so provided in treaties and laws of preferential application. (Art 2, RPC)

3. PROSPECTIVITY

GENERAL RULE: A penal law cannot make an act punishable in a manner in which it was not punishable when committed. It does not have any retroactive effect. PROSPECTIVITY is the equivalent of IRRETROSPECTIVITY.

"Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed prior to the date of effectivity of this Code shall be punished in

accordance with the Code or Act in force at the time of their commission." (Article 366, RPC)

EXCEPTION: Whenever a new statute dealing with the crime establishes conditions more lenient or favorable to the accused.

EXCEPTIONS to the EXCEPTION:

1. Where the new law is expressly made inapplicable in pending actions or existing cause of action.
2. Where the offender is a habitual delinquent.

Rule of prospectivity also applies to administrative rulings and circulars and to judicial decisions and rules of procedure

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.

Title 1 FELONIES AND CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Chapter 1 FELONIES

Offense - A crime punished under a special law is called as statutory offense.

Misdemeanor - A minor infraction of the law, such as a violation of an ordinance. (not used in the Phil)

Infraction - act or omission punishable by an ordinance.

Crime – act or omission in violation of any penal law forbidding or commanding it under pain of penalty. It is a generic term.

FELONY - act or omission punishable by the Revised Penal Code. Do not use this term in reference to a violation of special law.

Elements of Felonies in general:

1. There must be an act or omission.

To be considered as a felony there must be an act or omission; a mere imagination no matter how wrong does not amount to a felony.

Act - any bodily movement tending to produce some effect in the external world, it being unnecessary that the same be actually produced as the possibility of its production is sufficient.

Omission - is the inaction, the failure to perform a positive duty that one is bound to do. There must be a law requiring the doing or performance of an act.

2. The act or omission must be punishable by the RPC.

Basis: Nullum Crimen, nulla poena sine lege.

The term felony is limited only to violations of the Revised Penal Code. When the crime is punishable under a special law you do not refer to this as a felony. So whenever you encounter the term felony, it is to be understood as referring to crimes under the Revised Penal Code

This is important because there are certain provisions in the Revised Penal Code where the term "felony" is used, which means that the provision is not extended to crimes under special laws. A specific instance is found in Article 160 - Quasi-Recidivism, which reads:

A person who shall commit a felony after having been convicted by final judgment, before beginning to serve sentence or while serving the same, shall be punished under the maximum period of the penalty.

Q: If a prisoner who is serving sentence is found in possession of dangerous drugs, can he be considered a quasi-recidivist?

A: No. The violation of Presidential Decree No. 6425 (The Dangerous Drugs Act of 1972) is not a felony. The provision of Article 160 specifically refers to a felony and felonies are those acts and omissions punished under the Revised Penal Code.

Q: Is illegal possession of bladed weapon a felony?

A: No. *It is not under the Revised Penal Code.*

3. The act is performed or the omission incurred by means of dolo or culpa.

CLASSIFICATION OF FELONIES

1. According to their Inherent Nature

Mala In Se - the act is inherently evil or bad per se, or wrongful. Even without a law, they are in themselves bad and ought not to be done.

They are committed by dolo or culpa.

Criminal liability is based on the moral trait of the offender hence the existence of intent or dolo is essential in determining criminal liability.

Good faith and lack of intent are defenses.

In determining the penalty, the following are considered:

- (a) presence of modifying circumstances
- (b) degree of accomplishment of crime (attempted, frustrated, consummated)
- (c) degree of participation of the offender (principal, accomplice, accessory)

Violations of the RPC are mala in se.

e.g. killing of human being, disenfranchising a voter, sex crimes, destroying property of other people

Mala Prohibita - the act penalized is not inherently wrong, it is wrong only because a law punishes the same. They are violations of regulatory statutes or rules of convenience designed to secure a more orderly regulation of the affairs of society

Laws defining crimes mala prohibita condemn behavior directed not against any particular individual but against public order. Violation is deemed wrong against society as a whole and generally unattended with any particular harm to definite persons (PP v. Doria; Jan 22, 1999)

Moral trait is not considered

Good faith or lack of criminal intent are not defenses. However, it must be proven that there was an **intent to perpetrate the act**, i.e. the act was performed voluntarily, willfully and persistently despite knowledge that the act is prohibited. The act was not casual or accidental performance.

In crimes involving possession of prohibited articles, this requirement is met by proof of an **intent to possess (animus possidendi)**. E.g. A found a box. He was opening it when he was caught by the police. He didn't know that it contains a gun. Having no intent to possess the gun, he should not be held liable. However, if he was caught during the time that he was

putting the gun into his bag, he may be held liable because of the presence of intent to possess.

Modifying circumstances are not taken into account, as well as the degree of participation of the offenders. They are punished generally only when consummated unless the law provides a penalty for the attempted or frustrated stage.

Violations of special laws are mala prohibita. 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.

Crimes, which although punished by special laws, are nevertheless mala in se (thus good faith and the lack of criminal intent is a valid defense):

- (1) if the act punished is one which is inherently wrong,

E.g. special law regarding disenfranchising a voter; or the special law that pertains to child abuse. These acts are inherently wrong and although they are punished under special law, the acts themselves are mala in se.

- (2) Offenses which are derivatives of crimes under the Revised Penal Code

E.g. cattle rustling, carnapping, piracy in Phil waters, highway robbery, theft, robbery

Summary:

Mala In Se Vs. Mala Prohibita

	MALA IN SE	MALA PROHIBITA
As to nature	wrong from its very nature	Wrong because it is prohibited by law
As to basis of criminal liability	Criminal liability Is based on the moral trait of the offender, that is why liability would only arise when there is dolo or culpa in commission of the punishable act.	The moral trait of the offender is not considered, it is enough that the prohibited act be voluntarily done.
As to use of good faith as a defense	Good faith or lack of criminal intent is a valid defense, UNLESS the crime is the result of culpa.	Good faith is not a defense.
As to use of	Intent is an	Criminal intent is

intent as an element	element.	immaterial.
As to degree of accomplishment of the crime	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 a crime.	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.
As to mitigating and aggravating circumstances	Mitigating and aggravating circumstances are taken into account in imposing the penalty.	Mitigating and aggravating circumstances are not taken into account in imposing the penalty.
As to degree of participation	When there are more than one offender, the degree of participation of each in the commission of the crime is taken into account of imposing the penalty. Thus offenders are classified as principals, accomplice, and accessory.	The degree of participation of any offender 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.
As to what laws are violated	Generally, RPC is violated.	Generally, Special Laws are violated.

Test to determine if violation of special law is malum prohibitum or malum in se

Analyze the violation: Is it wrong because there is a law prohibiting it or punishing it as such? If you remove the law, will the act still be wrong?

If the wording of the law punishing the crime uses the word "willfully", then malice must be proven. Where malice is a factor, good faith is a defense.

In violation of special law, the act constituting the crime is a prohibited act. Therefore culpa is not a basis of liability, unless the special law punishes an omission.

When given a problem, take note if the crime is a violation of the Revised Penal Code or a special law.

2. According to the Means by which they are Committed

a. Intentional Felonies – the act is performed or the omission is incurred by means of deceit or dolo, that is, with deliberate intent or malice to do an injury.

Dolo - is equivalent to malice which is the intent to do injury to another.

They may be by any positive acts or in the form of omissions.

Crimes by omission result when there is a failure to act when required by law; a refusal to do what the law commands. E.g. Misprision of Treason, Arbitrary Detention (Art.125), Failure to Issue Receipts, Refusal to Render Assistance Towards the Administration of Justice, Abandonment of Persons in Danger of Dying, Abandonment of Minors

Elements:

1. **criminal intent** on the part of the offender.
 - The purpose to use a particular means to effect such result
 - Intent to commit an act with malice, being purely mental, is presumed. Such presumption arises from the proof of commission of an unlawful act.
 - Its existence is shown by overt acts.
2. **freedom of action** on the part of the offender in doing the act.
 - Voluntariness on the part of the person to commit the act or omission
 - If without freedom, no longer a human being but merely a tool.
3. **intelligence** on the part of the offender in doing the act.
 - Capacity to know and understand the consequences of one's act (discernment: aware of the nature of his action)
 - Without this power, necessary to determine the morality of human acts, no crime can exist.

How To Disprove The Elements

1. Freedom : by proof of irresistible force or uncontrollable fear
2. Intelligence : by proof of insanity or infancy
3. Intent : by proof of good faith OR by proof that the accused acted under a State Of Mistake Of Fact (Misapprehension of Facts)

MISTAKE OF FACT - Misapprehension of fact on the part of the person who caused injury to another. He is not, however, criminally liable because he did not act with criminal intent.

When the offender acted out of a mistake of fact, criminal intent is negated, so do not presume that the act was done with criminal intent. This is absolute if crime involved dolo.

Mistake of fact would be relevant only when the felony would have been intentional or through dolo, but not when the felony is a result of culpa. When the felony is a product of culpa, do not discuss mistake of fact. Also, it has no application to felonies which are in the nature of strict liability crimes such as statutory rape.

Requisites of Mistake of Fact as a Defense:

1. that the act done would have been lawful had the facts been as the accused believed them to be.
2. that the intention of the accused in performing the act be lawful.
3. that the mistake must be without fault or carelessness on the part of the accused.
 - a. US v Achong (15 P 488) – the accused had no alternative but to take the facts as they appeared to him, and such facts justified his act of killing his roommate.
 - b. Pp v Oanis (74 P 257) – the accused police officers were at fault when the shot the escaped convict, who was sleeping, without first ascertaining his identity.

Mistake of Fact vs. Mistake of Identity

In mistake of fact, there is no criminal intent: while in mistake of identity, there is criminal intent, only it is directed at the wrong person in the belief that he was the proper object of the crime. In the first, the mistake refers the situation, while in the second the mistake is with respect to the identity of the persons involved. Where an unlawful act is willfully done, a mistake in the identity of the intended victim cannot be considered exempting, nor can it be considered reckless imprudence.

E.g. A husband shoots a woman engaged in sexual intercourse believing her to be his wife, but she is not. There is no mistake of fact as what is involved is a mistake in identity.

Mistake of Fact vs Mistake of Law

Mistake of fact is different from mistake of law because the latter refers to a situation where a person relies upon a law or decision which is subsequently found to be invalid or erroneous.

4 Kinds of Intent According to the American Model Penal Code

1. Purposeful – where the accused had the desire to cause the result. This is synonymous to the concept of specific intent.
2. Knowing – where the accused knew what he was doing and understood the probable results thereof though he did intend the result. This is similar to general criminal intent.
3. Reckless – where the accused is indifferent to the results of his acts.
4. Negligent – the failure of the accused to do something that a reasonable man would do, it is inattentiveness.

b. Culpable Felonies – act is performed without malice but by means of fault or culpa (culpa - imprudence or negligence).

Imprudence – deficiency of action, *lack of skill*, or if the *person fails to take the necessary precaution* to avoid injury to person / damage to property.

E.g. A, after being taught how to drive for 1 hr, drove his car in session and hit B.

Negligence – deficiency of perception, *lack of foresight*, if a *person fails* to pay proper attention and to use due diligence in *foreseeing the injury/* damage impending to be caused.

Elements:

1. **lack of skill/ lack of foresight** the part of the offender.
2. **freedom of action** on the part of the offender in doing the act.
3. **intelligence** on the part of the offender in doing the act.

How to Disprove Negligence

By proof of due care.

E.g. The rule is that one crossing a thru-stop street has the right of way over one making a U-turn. Except if the one making the U-turn has already negotiated half of the turn and is almost on the other side so that he is visible to the person on the thru-stop street, the latter must give way. He has the last clear chance to avoid the accident.

Negligence as a Felony

Under Article 3, it is beyond question that culpa or criminal negligence is just a mode by which a felony may arise; a felony may be committed or incurred through dolo or culpa.

However, Justice J.B.L. Reyes pointed out that criminal negligence is a quasi-offense. His reason is that if criminal negligence is not a quasi-offense, and only a modality, then it would have been absorbed in the commission of the felony and there would be no need for Article 365 as a separate article for criminal negligence. Therefore, criminal negligence, according to him, is not just a modality; it is a crime by itself, but only a quasi-offense.

Under Art 365, negligence is not just a mode of committing a felony but is in itself the felony. The resulting injuries or damage are considered for purposes of determining the proper penalty to be imposed.

Thus, if the result of the lack of due care of the accused, there resulted death, injuries and damage to property, the nomenclature of the offense is Reckless/Simple Imprudence Resulting to Homicide, Serious Physical Injuries and Damage to Property.

HOWEVER, per Decision of Justice Davide in the case of Reodica vs CA, July 8, 1999, if there results a light felony, such as Slight Physical Injuries, the same should be subject of a Separate information on the principle that there is no complex crime involving a light felony. (It is doubtful whether a negligent act is susceptible of being divided into several parts. Thus, if the accused is acquitted in one, can he still be held liable for the other offense involving the same alleged negligent act?)

Note: There is no crime of Negligence / Imprudence Resulting to Attempted/Frustrated Homicide/Murder because intent and negligence cannot co-exist as they are incompatible.

Reason Why Negligence is Punished

A man must use common sense and exercise due reflection in all his acts; it is his duty to be cautious, careful and prudent.

This is to compel a person to be careful if not for his own protection, then for the protection of the public.

Penalty for Felony From Negligent Act is Lower

General Rule: The penalty for a felony resulting from negligence is lower than that provided for if the felony was intentional.

Exception: Crime of Malversation where the penalty is the same whether it is intentional or committed through negligence.

Principle of Inclusion of Offenses

Intentional felony includes culpable felony.

There are felonies where an accused is prosecuted under an Information charging him with committing the felony intentionally, but he may be convicted for committing the same through negligence, even without amending the Information. This is because an Intentional Felony included a Felony through negligence. This is illustrated in the cases of falsification and malversation.

Crimes which Cannot be Committed By Negligence

- a. If the elements of the crime include malice.
- b. If the nature of the crime requires a special state of mind.
- c. If the nature of the crime requires intent like political crimes which is always intentional.

Intentional	Culpable
Acts is malicious	Not malicious
With deliberate intent	Injury caused is unintentional being incident of another act performed without malice
Has intention to cause injury	Wrongful act results from imprudence, negligence, lack of foresight, lack of skill

3. According to Whether they Produce Material Injuries

- a. **Real Crimes** – if they produce actual damage or injury to life, security or property.
- b. **Impossible Crime** – an act, which would have been an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of inadequate or ineffective means.

Legal Impossibility – based on the legal nature /concept of the offense, the intended crime can never be produced. E.g Shooting a dead person or stealing one’s own property

Physical Impossibility – the intended crime cannot be produced due to factors or

circumstances beyond the control of or unknown to the accused. E.g. Pick-pocketing an empty pocket.

The accused must not be aware of the impossibility of the accomplishment of the intended crime.

This is a crime of last resort in that the acts performed should not be punished by any other provision of the RPC.

The correct and complete nomenclature of the crime is “Impossible crime of Theft, Estafa, Homicide, Physical Injuries”, as the case may be.

An impossible crime has no stages of execution and has a fixed penalty of Arresto Mayor.

This is an example of positivist theory. The accused is penalized because while objectively he has not committed a crime, subjectively, he is a potential criminal. He is punished to protect society from his criminal tendencies.

4. According to Whether they Have Stages of Execution

- a. **Formal Crimes** – those committed in one instance and have no attempted and frustrated stages. E.g. threats, libel, defamation, slander, alarms and scandal, coercion
- b. **Material Crimes** – those with at least 2 stages of execution, the attempted and consummated.

5. According to their Stages of Execution (See Discussion Below)

- 1. **Attempted Felonies**
- 2. **Frustrated Felonies**
- 3. **Consummated Felonies**

6. According to their Gravity

- a. **Light Felony** – the penalty is Arresto Menor or a fine not exceeding P200
- b. **Less Grave Felony** – punished by a correctional penalty (from 1 month and 1 day to 6 years) or a fine from P201 to P6,000
- c. **Grave Felony** – the penalty is more than 6 years imprisonment or a fine of more than P6,000.
- d. **Heinous Crime**

Notes:

Where a penalty of imprisonment is provided whether as a joint or alternative penalty to fine, it is the basis for the classification.

The classification is important: 1) for purposes of determining whether the offense has prescribed;

2) to determine whether the offense may be subject to complexing; and 3) to determine whether a subsidiary penalty may be imposed.

7. According to Number of Acts involved in the Offense

- a. **Singular** – there is one crime meriting one penalty for each injury to a person arising from separate acts.
- b. **Plural** – 2 or more crimes result but only one penalty is imposed.
 - b1. Complex crime proper (delito compuesto) – one act gives rise to 2 or more grave or less grave felonies.
 - b2. Compound (delito complejo) – one offense is a necessary means to commit the other.
 - b3. Special Complex / Composite – 2 or more offenses but the law considers them as one, thus 1 penalty.
e.g. robbery with rape, robbery with homicide
 - b4. Delito Continuado (Continued Crimes) – where the offender performs a series of overt acts violating one and the same penal provision committed at the same place and about the same time for the same criminal purpose, regardless of series of acts done, it is regarded in law as one.

8. According to Situs or Place of Commission

- a. **Localized** – all the elements took place in one jurisdiction.
- b. **Transitory** – elements took place in 2 or more jurisdictions.

9. According to the Time Frame of the Commission

- a. **Instantaneous** – those which arise at the very moment the acts of execution are performed.
- b. **Continued** - where the offender performs a series of overt acts violating one and the same penal provision committed at the same place and about the same time for the same criminal purpose, regardless of series of acts done, it is regarded in law as one.
e.g. The taking of several personal properties belonging to different persons constitute but one theft “Two birds with one stone”; The robbery of different buildings which is part of an intent to commit a general robbery within a specific area is only one robbery

Note: Continued offense is always instantaneous.

- c. **Continuing** - this is but one offense consisting of several acts executed within a span of time. Thus, several acts involving illegal recruitment committed within a year time give rise to only one offense of Estafa by Deceit.

e.g. Political crimes of treason or rebellion

Note: Continuing offense may be localized or transitory.

10. According to the Requirement of Complaint

- a. **Private** – those which cannot be prosecuted de officio or those which require the offended party file a complaint for the criminal case to be instituted.
e.g. crimes against chastity
- b. **Public** – those which may be instituted without a prior complaint by the offended party.

11. According to whether a private injury is involve

- a. **Victimless Crimes** – those which do not result to any injury to a private person.
- b. **Crimes with Private Victims or Offended Parties** – those where the injury or damage to a person is the essence of the crime; such as crimes against property or persons.

12. According to Motive and Goal

- a. **Ordinary or Common Crimes** – those committed for personal or private reasons.
- b. **Political** – those which involve the use of force, violence, deception, economic or any other illegal means, to create, maintain, or enhance the power interests, ideology of a group, organization or institution, to the detriment of or destruction of other rival groups, often causing fear and victimization of innocent persons.

b1. Political Crimes of Domination and Oppression or State Crimes – if committed by powerful institution or the state.

e.g. Domestic spying, human rights violation, restriction of political rights.

b2. Political Crimes of Group Conflicts, Hate Crimes, or Bias Crimes – if committed by rival groups.

e.g. killing based on racism

b3. Political Crimes of Rebellion, sedition, coup d’etat – crimes committed by groups against the existing social and political order. This is the type being followed in the Philippines. The first 2 types are punished as ordinary crimes.

Notes: Ordinary crimes committed in furtherance of Political Crimes are not

considered as separate crimes, but are integral parts and therefore absorbed in the political crime.

Political crimes are often continuing and Transitory.

13. According to Magnitude

- a. **Crimes against Nations** – those which can be tried by any state.
- b. **Crimes against a particular state** – those which are defined by domestic law of a state and tried in that particular state.

ELEMENTS OF A CRIME

1. **The Actus Reus** – this is the physical aspect consisting of an overt physical activity capable of producing an effect upon the outside world. They include overt physical positive acts, omissions or oral declarations. They do not, however, include ideas, beliefs, thoughts, or personal status of a person except that of being a vagrant.

Overt acts – refers to acts which are observable or capable of being felt, seen or heard.

e.g. Overt positive act: stabbing or picking a property; Omission: failure to render assistance to a person in danger of dying or failure to file a complaint within the period mandated by law; Declarations: libel and slander.

2. **The Mens Rea** – this refers to the mental component of a crime. It is the state of mind required in order that a person will be criminally liable. It is often equated with evil, or criminal mind, or intent. Hence the maxim, "**Actus non facit reum, nisi mens sit rea**" - *The act cannot be criminal where the mind is not criminal.*

This is true to a felony characterized by dolo, but not a felony resulting from culpa. This maxim is not an absolute one because it is not applied to culpable felonies, or those that result from negligence. (Ortega)

However, (According to Sir Sagsago) the criminal mind may either be an intentional or negligent mind (indifferent mind)

For one to be criminally liable for a felony by dolo, there must be a confluence of both an evil act and an evil intent. "Actus non facit reum, nisi mens sit rea" (PP vs. Manuel 476 SCRA 461)

As a general rule, mistake of fact, good faith, or mistake of law are valid defenses in a prosecution for a felony by dolo. "Actus non facit reum, nisi mens sit rea" (PP. vs. Manuel)

The existence of intent is shown by the overt acts of the person.

Criminal intent is presumed from the commission of an unlawful act, but not from the proof of the commission of an act which is not unlawful.

Mens rea of the crime depends upon the elements of the crime. You can only detect the mens rea of a crime by knowing the particular crime committed. Without reference to a particular crime, this term is meaningless. For example, in theft, the mens rea is the taking of the property of another with intent to gain. In falsification, the mens rea is the effecting of the forgery with intent to pervert the truth.

In criminal law, we sometimes have to consider the crime on the basis of intent. For example, attempted or frustrated homicide is distinguished from physical injuries only by the intent to kill. Attempted rape is distinguished from acts of lasciviousness by the intent to have sexual intercourse. In robbery, the mens rea is the taking of the property of another coupled with the employment of intimidation or violence upon persons or things; remove the employment of force or intimidation and it is not robbery anymore.

Criminal Intent, categorized into two (in intentional offenses the mens rea is either):

1. General Criminal Intent – intent is presumed from the mere doing of a wrong act. So this does not require proof, the burden is upon the wrongdoer to prove that he acted without such criminal intent.
2. Specific Criminal Intent – (according to Sir Sagsago) it is when the offender intended the result of the act. It is the use of specific means to achieve a specific result.

Intent is not presumed because it is an ingredient or element of a crime, like intent to kill in the crimes of attempted or frustrated homicide/parricide/murder. The prosecution has the burden of proof.

Specific intent may be proved by proof of SCIENTER or knowledge of a particular fact or illegality which will result in criminal liability. This may be actual or constructive.

e.g. Adultery/concubinage – knowledge that the woman/man is married; Indirect assault - that the victim is a public officer; to be accessory there must be knowledge of the commission of a crime by the principal; in Fencing, that the article is the subject of theft or robbery.

Q: May a crime be committed without criminal intent?

A: Yes. *Criminal intent is not necessary in these cases:*

(1) *When the crime is the product of culpa or negligence, reckless imprudence, lack of foresight or lack of skill;*

(2) *When the crime is a prohibited act under a special law or what is called malum prohibitum (and/or strict liability crimes under RPC such as Statutory rape).*

INTENT vs. DISCERNMENT:

INTENT - the determination to do a certain thing; an aim or purpose of the mind. It is the design to resolve or determination by which a person acts.

DISCERNMENT - the mental capacity to tell right from wrong. It relates to the moral significance that a person ascribes to his act and relates to the intelligence as an element of dolo, distinct from intent.

INTENT vs. MOTIVE

MOTIVE	INTENT
Reason/moving power which impels one to commit an act for a definite result. Simply put, motive is the personal or private reason why an offender commits a crime. E.g. hatred, jealousy, profit, revenge, reward.	Purpose to use a particular means to bring about a desired result (not a state of mind, not a reason for committing a crime)
NOT an element of the crime	Element of the crime EXCEPT culpable felonies
Generally not necessary to be proven EXCEPT when identity of the perpetrator is in doubt.	Essential in intentional felonies.
When there is motive in the commission of a crime, it always comes before intent. But a crime maybe committed without motive. It is not an element of a felony.	If intentional, a crime cannot be committed without intent. Intent is manifested by the instrument used by the offender. It is an element of a felony except in cases of culpa.
A matter of procedure.	A matter of criminal law.

When is Motive Relevant/Necessary

General Rule: Proof of Motive is not necessary for conviction.

Exceptions:

1. When it is an essential element of a crime as in libel and malicious mischief, direct assault, political crimes
2. When the evidence against the accused is purely circumstantial. (JBL)
3. When there is doubt as to the identity of the accused (JBL)
4. When the act produces several crimes as in entering the estate of another, motive is necessary to determine whether the offense is trespass, vagrancy or theft.
5. When it is necessary to ascertain the truth between 2 antagonistic theories or versions of the killing. L(JBL)
6. When the identification of the accused proceeds from an unreliable source and the testimony is inconclusive and not free from doubt. (JBL)
7. When there are no eyewitnesses to the crime, and where suspicion is likely to fall upon a number of persons. (JBL)

Note: Proof of motive alone is not sufficient to support a conviction. There must be a reliable evidence from which it may be reasonably deduced that the accused was a malefactor. (JBL)

Motive, How Proven

Testimony of witnesses on the acts or statements of the accused before or immediately after the commission of the offense. Such deeds or words may indicate the motive.

3. **Voluntariness** – the act or omission must be the result of the conscious choice and deliberate will of the accused. **It requires the Concurrence of:**
 - a. Freedom of action – the accused was not under duress, threat, coercion.
 - b. Intelligence – the ability to discern, to be aware of one’s acts, as either good or bad, and of its possible consequences.
 - c. Intent

Even culpable felonies require voluntariness. It does not mean that if there is no criminal intent, the offender is absolved of criminal liability, because there is culpa to consider.

In culpable felonies, there is no voluntariness if either freedom, intelligence or imprudence, negligence, lack of foresight or lack of skill is lacking. Without voluntariness, there can be no dolo or culpa, hence, there is no felony.

The Following are Not Voluntary

- a. acts resulting from force or threat

- b. acts resulting from reflexes, convulsive bodily movements
- c. acts done while a person is asleep, unconscious, or in a state of hypnosis
- d. any movement which is not the product of the conscious effort or determination of a person.

Illustrations:

In a case decided by the Supreme Court, two persons went wild boar hunting. On their way, they met Pedro standing by the door of his house and they asked him where they could find wild boars. Pedro pointed to a place where wild boars were supposed to be found, and the two proceeded thereto. Upon getting to the place, they saw something moving, they shot, unfortunately the bullet ricocheted killing Pedro. It was held that since there was neither dolo nor culpa, there is no criminal liability.

In US v. Bindoy, accused had an altercation with X. X snatched the bolo from the accused. To prevent X from using his bolo on him, accused tried to get it from X. Upon pulling it back towards him, he hit someone from behind, instantly killing the latter. The accused was found to be not liable. In criminal law, there is pure accident, and the principle damnum absque injuria is also honored.

Article 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, where it not for the inherent impossibility of its accomplishment or on account of the employment of an inadequate or ineffectual means.

Par 1. Criminal Liability for a Felony Committed Different from that intended to be committed

RATIONALE: He who is the cause of the cause is the cause of the evil caused.

Requisites:

1. The act or omission must be a felony

NO Intentional Felony

- a. When the act or omission is not punishable by RPC; or
- b. When the act is covered by any of the justifying circumstances.

A pregnant woman who committed suicide is not liable for intentional abortion because committing a suicide is not a felony.

A person who wanted to kill himself jumped from the tenth floor of a building and a person was injured when he fell down is not liable because he was not committing a felony.

The act of getting back a property is not a felony because the act is lawful.

Three Possible Consequences in Committing a Felony

- a. NO harm is produced (e.g. victimless crimes)
- b. Intended Injury is produced - there is liability if the actual result is the intended result (causation)
- c. Not intended Injury is Produced – there is liability if the act is the proximate or legal cause of the injury

2. Injury or damage done to another is the direct, natural and logical consequence of the felony.

Note: The act may produce the immediate injury or such injury is not produced instantly.

The relation of cause and effect must be shown (Doctrine of Causation):

- a. Unlawful act is the efficient cause
- b. Accelerating cause
- c. Proximate cause

PROXIMATE CAUSE - is that cause which in the natural and continuous sequence, unbroken by any efficient supervening cause, produces a felony, without which such felony could not have resulted. 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.

The act may be against person; honor, security or rights; property (destruction, loss, diminution of value). The act may be intentional or an imprudent act. The act may create fear causing a person to act which may cause injury upon him.

Any person who creates in another person's mind an immediate sense of danger, which causes the latter to do something resulting in the latter's injuries, is liable for the resulting injuries. (Pp v Page, 77 S 348)

- In criminal law, as long as the act of the accused contributed to the death of the victim, even if the victim is about to die, he will still be liable for the felonious act of putting to death that victim.
- Supreme Court rationalized that what made B cut his throat, in the absence of evidence that

he wanted to commit suicide, is the belief that sooner or later, he would die out of the wound inflicted by A. Because of that belief, he decided to shorten the agony by cutting his throat. That belief would not be engendered in his mind were it not because of the profuse bleeding from his wound. Now, that profusely bleeding would not have been there, were it not for the wound inflicted by A. As a result, A was convicted for manslaughter.

- Death is presumed to be the natural consequence of physical injuries inflicted in the ff:
 - a. Victim at the time the physical injuries were inflicted was in normal health
 - b. Death may be expected from the physical injuries inflicted
 - c. Death ensued within a reasonable time
- In a case where a wife had to go out to the cold to escape a brutal husband and because of that she was exposed to the element and caught pneumonia, the husband was made criminally liable for the death of the wife.
- Even though the attending physician may have been negligent and the negligence brought about the death of the offending party – is no defense at all, because without the wound inflicted by the offender, there would have been no occasion for a medical treatment.
- Even if the wound was called slight but because of the careless treatment, it was aggravated, the offender is liable for the death of the victim not only of the slight physical injuries. Reason – without the injury being inflicted, there would have been no need for any medical treatment. That the medical treatment proved to be careless or negligent, is not enough to relieve the offender of the liability for the inflicting injuries.
- When a person inflicted wound upon another, and his victim upon coming home got some leaves, pounded them and put lime there, and applying this to the wound, developed locked jaw and eventually he died, it was held that the one who inflicted the wound is liable for his death.
- In another instance, during a quarrel, the victim was wounded. The wound was superficial, but just the same the doctor put inside some packing. When the victim went home, he could not stand the pain, so he pulled out the packing. That resulted into profuse bleeding and he died because of loss of blood. The offender who caused the wound, although the wound caused was only slight, was held answerable for the death of the victim, even if the victim would not have died were it not for the fact that he pulled out that packing. The principle is that without the wound, the act of the physician or the act of

the offended party would not have anything to do with the wound, and since the wound was inflicted by the offender, whatever happens on that wound, he should be made punishable for that.

- In **Urbano v. IAC**, after so many weeks of treatment in a clinic, the doctor pronounced the wound of B already healed. Thereafter, B went back to his farm. Two months later, B came home and he was chilling. Before midnight, he died out of tetanus poisoning. The heirs of B filed a case of homicide against A. The Supreme Court held that A is not liable. It took into account the incubation period of tetanus toxic. Medical evidence were presented that tetanus toxic is good only for two weeks. That if, indeed, the victim had incurred tetanus poisoning out of the wound inflicted by A, he would not have lasted two months. What brought about tetanus to infect the body of B was his working in his farm using his bare hands. Because of this, the Supreme Court said that the act of B of working in his farm where the soil is filthy, using his own hands, is an **efficient supervening cause** which relieves A of any liability for the death of B. A, if at all, is only liable for physical injuries inflicted upon B. If you are confronted with this facts of the Urbano case, where the offended party died because of tetanus poisoning, reason out according to that reasoning laid down by the Supreme Court, meaning to say, the incubation period of the tetanus poisoning was considered. Since tetanus toxic would affect the victim for no longer than two weeks,, the fact that the victim died two months later shows that it is no longer tetanus brought about by the act of the accused. The tetanus was gathered by his working in the farm and that is already an efficient intervening cause.
- **Doctrine of Supervening Cause** – cause that intervenes between the act of the accused and the expected injury breaking the connection of the act and injury and becomes the proximate cause of the injury.
 - a. Act of the victim himself
 - b. Act of 3rd person
 - c. External factor

Supervening event may be the subject of amendment of original information or of a new charge without double jeopardy.

- **Who are Liable:** The one who caused the proximate cause is the one liable. The one who caused the immediate cause is also liable, but merely contributory or sometimes totally not liable.

Felony is NOT the proximate cause when:

1. there is an active force that intervened between the felony committed and the resulting injury, and the active force is a distinct act or fact absolutely foreign from the felonious act of the accused; or
2. the resulting injury is due to the intentional act of the offended party.

Either actual or proximate, the ff situations may be produced

- a. Felonious act immediately produces an injury
- b. Felonious act does not immediately produce an injury. This may be a cause which is far and remote from the consequence which sets into motion other causes which resulted in the felony.
- c. In case act is performed in an individual and death resulted, the person injured must be the one who suffered the consequences of death.
- d. Injury must be capable of producing death
- e. If a person who has internal ailment suffered injury because of the wound inflicted. There is criminal liability of the person who inflicted the wound causing injury and such injury is the actual cause, or accelerated the death, or the proximate cause. It is not a defense that the victim is suffering from internal ailment.

3 Situations Where Wrongful act done be different from what was intended:

1. Aberratio Ictus / Mistake in the Blow

- A person directed the blow at an intended victim but because of poor aim, that blow landed on somebody else.
- The intended victim as well as the actual victim are both at the scene of the crime.
- It generally gives rise to a COMPLEX CRIME, that being so, the penalty for the serious crime is imposed in the maximum period.
- The only time when complex crime may not result is when one of the resulting felonies is LIGHT FELONY. Light felonies are considered separate crimes.
- **Doctrine of Transferred Intent** – where an act is directed at a particular victim, the intent behind the act will be applied if an unintended victim is likewise injured.
e.g. With intent to kill, X shot Y killing him. The bullet exited and accidentally wounded Z on the leg. The crime would be Homicide with Attempted Homicide (not Homicide with Physical injuries. If Y was not killed, the crime is Attempted homicide with attempted homicide.

However, According to Ortega, as far as the third party is concerned, if he was killed, crime is homicide. If he was only wounded, the

crime is only physical injuries. You cannot have attempted or frustrated homicide or murder because there is no intent to kill. As far as that other victim is concerned, only physical injuries – serious or less serious or slight.

2. Error in Personae/ Mistake in Identity

- 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 the intended victim, there was really a mistake in identity.
- It is mitigating if the crime committed is different from that which is intended. If the crime committed is not different from that which was intended, error in personae does not affect the criminal liability of the offender.
- In mistake of identity, if the crime committed was the same as the crime intended, but on a different victim, error in persona does not affect the criminal liability of the offender. But if the crime committed was different from the crime intended, Article 49 will apply and the penalty for the lesser crime will be applied. In a way, mistake in identity is a mitigating circumstance where Article 49 applies. Where the crime intended is more serious than the crime committed, the error in persona is not a mitigating circumstance.

Illustrations:

A thought of killing B. He positioned himself at one corner where B would usually pass. When a figure resembling B was approaching, A hid and when that figure was near him, he suddenly hit him with a piece of wood on the nape, killing him. But it turned out that it was his own father. The crime committed is parricide, although what was intended was homicide. Article 49, therefore, will apply because out of a mistake in identity, a crime was committed different from that which was intended.

In another instance, A thought of killing B. Instead of B, C passed. A thought that he was B, so he hit C on the neck, killing the latter. Just the same, the crime intended to be committed is homicide and what was committed is actually homicide, Article 49 does not apply. Here, error in personae is of no effect.

3. Praeter Intentionem / Consequence went beyond the Intention

- The injurious result is greater than that intended.
- It is mitigating, particularly covered by par. 3, Art. 13—That the offender had no intention to commit so grave a wrong as that committed.
- 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.

Illustrations:

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 Article 13, that is, "that the offender did not intend to commit so grave a wrong as that committed".

A stabbed his friend when they had a drinking spree eleven times. His defense is that he had no intention of killing his friend. He did not intend to commit so grave a wrong as that committed. It was held that the fact that 11 wounds were inflicted on A's friend is hardly compatible with the idea that he did not intend to commit so grave a wrong that committed.

In another instance, the accused was a homosexual. The victim ridiculed or humiliated him while he was going to the restroom. He was so irritated that he just stabbed the victim at the neck with a lady's comb with a pointed handle, killing the victim. His defense was that he did not intend to commit so grave a wrong as that of killing him.

That contention was rejected, because the instrument used was pointed. The part of the body wherein it was directed was the neck which is a vital part of the body. In praeter intentionem, it is mitigating only if there is a notable or notorious disparity between the means employed and the resulting felony. In criminal law, intent of the offender is determined on the basis employed by him and the manner in which he committed the crime. Intention of the offender is not what is in his mind; it is disclosed in the manner in which he committed the crime.

In still another case, the accused entered the store of a Chinese couple, to commit robbery. They hogtied the Chinaman and his wife. Because the wife was so talkative, one of the offenders got a pandesal and put it in her mouth. But because the woman was trying to wriggle from the bondage, the pandesal slipped through her throat. She died because of suffocation. The offender were convicted for robbery with homicide because there was a resulting death, although their intention was only to rob. They were given the benefit of paragraph 3 of Article 13, "that they did not intend to commit so grave a wrong as that committed". There was really no intention to bring about the killing, because it was the pandesal they put into the mouth. Had it been a piece of rag, it would be different. In that case, the Supreme Court gave the offenders the benefit of praeter intentionem as a mitigating circumstance. The means employed is not capable of producing death if only the woman chewed the pan de sal.

A man raped a young girl. The young girl was shouting so the man placed his hand on the mouth and nose of the victim. He found out later that the victim was dead already; she died of suffocation. The offender begged that he had no intention of killing the girl and that his only intention was to prevent her from shouting. The Supreme Court rejected the plea saying that one can always expect that a person who is suffocated may eventually die. So the offender was prosecuted for the serious crime of rape with homicide and he was not given the benefit of paragraph 3, Article 13.

Differentiating this first case with the case of the Chinaman and his wife, it would seem that the difference lies in the means employed by the offender.

In praeter intentionem, it is essential that there is a notable disparity between the means employed or the act of the offender and the felony which resulted. This means that the

resulting felony cannot be foreseen from the acts of the offender. If the resulting felony can be foreseen or anticipated from the means employed, the circumstance of praeter intentionem does not apply.

For example, if A gave B a karate blow in the throat, there is no praeter intentionem because the blow to the throat can result in death.

So also, if A tried to intimidate B by poking a gun at the latter's back, and B died of a cardiac arrest, A will be prosecuted for homicide but will be given the mitigating circumstance praeter intentionem.

NOTE: All three instances under paragraph 1, Article 4 are the product of dolo. In aberratio ictus, error in personae and praeter intentionem, never think of these as the product of culpa. They are always the result of an intended felony, and, hence dolo. You cannot have these situations out of criminal negligence. The crime committed is attempted homicide or attempted murder, not homicide through reckless imprudence.

Par 2. IMPOSSIBLE CRIME

It is an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Requisites:

1. the act performed would be an offense against persons or property;
2. the act was done with evil intent;
3. its accomplishment is inherently impossible or that the means employed is either inadequate (e.g. small quantity of poison which is inadequate to kill a person) or ineffectual (accused fired a gun, not knowing that it was empty);
4. the act performed should not constitute a violation of another provision of the RPC or of special law.

Felonies against Persons

1. Parricide (Art. 246);
2. Murder (Art. 248);
3. Homicide (Art. 249);
4. Infanticide (Art. 255);
5. Abortion (Art. 256; Art. 257; Art. 258; Art. 259);
6. Duel (Art. 260);
7. Physical injuries (Art. 263; Art. 264; Art. 265; Art. 266); and
8. Rape (Art. 266-A).

Felonies Against Property

1. Robbery (Arts. 294; 297; 298; 299; 302);
2. Brigandage (Arts. 306; 307);
3. Theft (Arts. 308; 310; 311);

4. Usurpation (Arts. 312; 313);
5. Fraudulent insolvency (Art. 314);
6. Swindling and other Deceits (Arts. 315; 316; 317; 318);
7. Removal, sale or pledge of mortgaged property (Art. 319);
8. Arson (Arts. 320; 321; 323; Art. 324; 325; 326);
9. Malicious mischief (Arts. 327; 328; Art. 330; Art. 331).

RATIONALE OF PUNISHING IMPOSSIBLE CRIME

The law punishes the impossible crime to suppress criminal propensity or tendencies of the perpetrator.

- Felony against persons or property should not be actually committed, otherwise he would be liable for that felony.
- There is no attempted or frustrated impossible crime.
- Pointing a gun is not an overt act to commit a crime of murder, thus no attempted. It would constitute grave threats and not an impossible crime.

Nature of Impossibility:

1. **Legal Impossibility** – intended acts, even if completed would not amount to a crime.
 - It would apply to those circumstances where: the motive, desire, and expectation is to perform an act in violation of the law.
 1. There is an intention to perform the physical act.
 2. There is a performance of the intended physical act.
 3. The consequence resulting from the intended act does not amount to a crime. e.g. stealing a property that turned out to be owned by the stealer.
2. **Physical Impossibility** - when extraneous circumstances unknown to the actor or beyond his control prevent the consummation of the intended crime.
e.g. murder a corpse

Q: 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?

A: Yes. With the new rape law amending the RPC 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.

Q: 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?

A: *It cannot be an impossible crime, because the act would have been a crime against chastity. The crime is act of lasciviousness, if this was done against the will of the passenger. 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.*

Q: A entered a department store at about midnight, when it was already closed. He went directly to the room where the safe or vault was being kept. He succeeded in opening the safe, but the safe was empty. Is an impossible crime committed? If not, what crime is possibly committed?

A: This is not an impossible crime. That is only true if there is nothing more to steal. But in a department store, where there is plenty to steal, not only the money inside the vault or safe. The fact that the vault had turned out to be empty is not really inherently impossible to commit the crime of robbery. There are other things that he could take. The crime committed therefore is attempted robbery, assuming that he did not lay his hands on any other article. This could not be trespass to dwelling because there are other things that can be stolen.

Q: A and B were lovers. B was willing to marry A except that A is already married. A thought of killing his wife. He prepared her breakfast every morning, and every morning, he placed a little dose of arsenic poison into the breakfast of the wife. The wife consumed all the food prepared by her husband including the poison but nothing happened to the wife. Because of the volume of the household chores that the wife had to attend to daily, she developed a physical condition that rendered her so strong and resistance to any kind of poisoning, so the amount of poison applied to her breakfast has no effect to her. Is there an impossible crime?

A: No impossible crime is committed because the fact itself stated that what prevented the poison from taking effect is the physical condition of the woman.

So it implies that if the woman was not of such physical condition, the poison would have taken effect. Hence, it is not inherently impossible to realize the killing. The crime committed is frustrated parricide.

If it were a case of poisoning, an impossible crime would be constituted if a person who was thinking that it was a poison that he was putting into the food of the intended victim but actually it was vetsin or sugar or soda. Under any and all circumstances, the crime could not have been realized. But if due to the quantity of vetsin or sugar or soda, the intended victim developed LBM and was hospitalized, then it would not be a case of impossible crime anymore. It would be a case of physical injuries, if the act done does not amount to some other crime under the Revised Penal Code.

Do not confuse an impossible crime with the attempted or frustrated stage.

Q: Scott and Charles are roommates in a boarding house. Everyday, Scott leaves for work but before leaving he would lock the food cabinet where he kept his food. Charles resented this. One day, he got an electric cord tied the one end to the door knob and plugged the other end to an electric outlet. The idea was that, when Scott comes home to open the door knob, he would be electrocuted. Unknown to Charles, Scott is working in an electronic shop where he received a daily dosage of electric shock. When Scott opened the doorknob, nothing happened to him. He was just surprised to find out that there was an electric cord plugged to the outlet and the other hand to the door knob. Whether an impossible crime was committed or not?

A: *It is not an impossible crime. The means employed is not inherently impossible to bring about the consequence of his felonious act. What prevented the consummation of the crime was because of some cause independent of the will of the perpetrator.*

Q: A and B are enemies. A, upon seeing B, got the revolver of his father, shot B, but the revolver did not discharge because the bullets were old, none of them discharged. Was an impossible crime committed?

A: *No. It was purely accidental that the firearm did not discharge because the bullets were old. If they were new, it would have fired. That is a cause other than the spontaneous desistance of the offender, and therefore, an attempted homicide.*

But if let us say, when he started squeezing the trigger, he did not realize that the firearm was empty. There was no bullet at all. There is an impossible crime, because under any and all circumstances, an unloaded firearm will never fire.

Whenever you are confronted with a problem where the facts suggest that an impossible crime was

committed, be careful about the question asked. If the question asked is: "Is an impossible crime committed?", then you judge that question on the basis of the facts. If really the facts constitute an impossible crime, then you suggest that an impossible crime is committed, then you state the reason for the inherent impossibility.

If the question asked is "Is he liable for an impossible crime?", this is a catching question. Even though the facts constitute an impossible crime, if the act done by the offender constitutes some other crime under the RPC, he will not be liable for an impossible crime. He will be prosecuted for the crime constituted so far by the act done by him. The reason is an offender is punished for an impossible crime just to teach him a lesson because of his criminal perversity. Although objectively, no crime is committed, but subjectively, he is a criminal. That purpose of the law will also be served if he is prosecuted for some other crime constituted by his acts which are also punishable under the RPC.

Q: A and B are neighbors. They are jealous of each other's social status. A thought of killing B so A climbed the house of B through the window and stabbed B on the heart, not knowing that B died a few minutes ago of bangungot. Is A liable for an impossible crime?

A: No. A shall be liable for qualified trespass to dwelling. Although the act done by A against B constitutes an impossible crime, it is the principle of criminal law that the offender shall be punished for an impossible crime only when his act cannot be punished under some other provisions in the Revised Penal Code.

In other words, this idea of an impossible crime is a one of last resort, just to teach the offender a lesson because of his criminal perversity. If he could be taught of the same lesson by charging him with some other crime constituted by his act, then that will be the proper way. If you want to play safe, you state there that although an impossible crime is constituted, yet it is a principle of criminal law that he will only be penalized for an impossible crime if he cannot be punished under some other provision of the Revised Penal Code.

If the question is "Is an impossible crime committed?", the answer is yes, because on the basis of the facts stated, an impossible crime is committed. But to play safe, add another paragraph: However, the offender will not be prosecuted for an impossible crime but for _____ [state the crime]. Because it is a principle in criminal law that the offender can only be prosecuted for an impossible crime if his acts do not constitute some other crimes punishable under the Revised Penal Code. An impossible crime is a crime of last resort.

Modified concept of impossible crime

*In a way, the concept of impossible crime has been modified by the decision of the Supreme Court in the case of **Intod v. CA, et al., 215 SCRA 52**. In this case, four culprits, all armed with firearms and with intent to kill, went to the intended victim's house and after having pinpointed the latter's bedroom, all four fired at and riddled said room with bullets, thinking that the intended victim was already there as it was about 10:00 in the evening. It so happened that the intended victim did not come home on the evening and so was not in her bedroom at that time. Eventually the culprits were prosecuted and convicted by the trial court for attempted murder. The Court of Appeals affirmed the judgment but the Supreme Court modified the same and held the petitioner liable only for the so-called impossible crime. As a result, petitioner-accused was sentenced to imprisonment of only six months of arresto mayor for the felonious act he committed with intent to kill: this despite the destruction done to the intended victim's house. Somehow, the decision depreciated the seriousness of the act committed, considering the lawlessness by which the culprits carried out the intended crime, and so some members of the bench and bar spoke out against the soundness of the ruling. Some asked questions: Was it really the impossibility of accomplishing the killing that brought about its non-accomplishment? Was it not purely accidental that the intended victim did not come home that evening and, thus, unknown to the culprits, she was not in her bedroom at the time it was shot and riddled with bullets? Suppose, instead of using firearms, the culprits set fire on the intended victim's house, believing she was there when in fact she was not, would the criminal liability be for an impossible crime?*

Until the Intod case, the prevailing attitude was that the provision of the Revised Penal Code on impossible crime would only apply when the wrongful act, which would have constituted a crime against persons or property, could not and did not constitute another felony. Otherwise, if such act constituted any other felony although different from what the offender intended, the criminal liability should be for such other felony and not for an impossible crime. The attitude was so because Article 4 of the Code provides two situations where criminal liability shall be incurred.

Because criminal liability for impossible crime presupposes that no felony resulted from the wrongful act done, the penalty is fixed at arresto mayor or a fine from P200.00 to P500.00, depending on the "social danger and degree of criminality shown by the offender" (Article 59), regardless of whether the wrongful act was an impossible crime against persons or against property.

There is no logic in applying paragraph 2 of Article 4 to a situation governed by paragraph 1 of the same

Article, that is, where a felony resulted. Otherwise, a redundancy and duplicity would be perpetrated.

In the Intod case, the wrongful acts of the culprits caused destruction to the house of the intended victim; this felonious act negates the idea of an impossible crime. But whether we agree or not, the Supreme Court has spoken, we have to respect its ruling.

Article 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties.

No Crime Unless There Is A Law Punishing It

When a person is charged in court, and the court finds that there is no law applicable, the court will acquit the accused and the judge will give his opinion that the said act should be punished.

Article 5 covers two situations:

(1) *The court cannot convict the accused because the acts do not constitute a crime. The proper judgment is acquittal, but the court is mandated to report to the Chief Executive that said act be made subject of penal legislation and why.*

Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law:

- ✓ it shall render the proper decision, and
- ✓ shall report the matter to the Chief Executive, through the Department of Justice, for the passage of an appropriate law
- ✓ which induces the court to believe that said act (not punished by any law) should be made the subject of litigation.

(2) *Where the court finds the penalty prescribed for the crime too harsh considering the conditions surrounding the commission of the crime, the judge should impose the law. The most that he could do is to recommend to the Chief Executive to grant executive clemency.*

Thus, the court shall:

- ✓ submit to the Chief Executive, through the Department of Justice
- ✓ such statement or report as may be deemed proper,
- ✓ without suspending the execution of the sentence,
- ✓ when a strict enforcement of the provisions of this code would result in the imposition of a clearly excessive penalty.
- ✓ Taking into consideration the degree of malice and the injury caused by the offense.

NOTE: Par 2 does not apply to crimes punishable by special, including profiteering, and illegal possession of firearms or drugs. There can be no executive clemency for these crimes.

Article 6. Consummated, frustrated, and attempted felonies.

STAGES IN THE COMMISSION OF FELONY, Where Applicable and its Purpose

Only to intentional felonies by positive acts but not to: (i). Felonies by omission (ii) Culpable felonies and (iii) Violations of special laws, unless the special law provides for an attempted or frustrated stage. Examples of the exception are The Dangerous Drugs Law which penalizes an attempt to violate some of its provisions, and The Human Security Act of 2007. *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.

STAGES IN THE COMMISSION OF FELONY

A. The first: The Mental Stage / Internal Acts

General Rule: Mental acts such as thoughts, ideas, opinions and beliefs, are not subject of penal legislations. One may express an idea which is contrary to law, morals or is unconventional, but as long as he does not act on them or induce others to act on them, such mental matters are outside the realm of penal law and the person may not be subjected to criminal prosecution.

B. The Second: The External Stage which is where the accused performs acts which are observable

1). The Preparatory acts: Acts which may or may not lead to the commission of a concrete crime. Being equivocal they are not as rule punishable except when there is an express provision of law punishing specific preparatory acts.

Example: (i) the general rule: buying of a gun, bolo or poison, even if the purpose is to use these to kill a person; so also with conspiracies and proposals. (ii) the exception: possession of picklocks and false keys is punished; as with conspiracies to commit treason, rebellion, sedition and coup d'etat

2) The Acts of execution – punishable by RPC: the attempted, frustrated and consummated stages.

STAGES OF EXECUTION

1. **ATTEMPTED** - 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.

ELEMENTS:

- a. the offender commences the commission of the felony directly by overt acts;
- b. he does not perform all the acts of execution which should produce the felony;
- c. the non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

Overt or external act - is some physical deed or activity, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the voluntary desistance of the perpetrator, will logically and necessarily ripen into a concrete offense.

Felony is Deemed Commenced by Overt Act when the ff are present:

- a. That there be external acts;
- b. Such external acts have direct connection with the crime intended to be committed.

The accused has not yet passed the SUBJECTIVE PHASE or that phase encompassed from the time an act is executed which begins the commission of the crime until the time of the performance of the last act necessary to produce the crime, but where the accused has still control over his actions and their results.

The accused was not able to continue performing the acts to produce the crime. He was prevented by external forces and not because he himself chose not to continue. Such as when his weapon was snatched, or his intended victim managed to escape, or he was overpowered or arrested.

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.

The attempt which the Penal Code punishes is that which has a connection to a particular, concrete offense, that which is the beginning of the

execution of the offense by overt acts of the perpetrator, leading directly to its realization and commission. The act must not be equivocal but indicates a clear intention to commit a particular and specific felony.

Examples:

1. The accused pressed a chemically -soaked cloth on the mouth of the woman to induce her to sleep, while he lay on top of her and pressed his body to her. The act is not the overt act that will logically and necessarily ripen into rape. They constitute unjust vexation. (Note: it would be attempted rape if he tried to undress the victim or touch her private parts) (Balleros vs. People, Feb, 22, 2006)
2. One found inside a house but no article was found on him, is liable for trespass and not for attempted theft or robbery even if he is a notorious robber
3. One found removing the glass window panes or making a hole in the wall is not liable for attempted robbery but for attempted trespass
4. Overt act begins when the husband mixed the poison with the food his wife is going to take. Before this, there is no attempted stage yet.

INDETERMINATE OFFENSE – one where the purpose of the offender in performing an act is not certain. The accused may be convicted for a felony defined by the acts performed by him up to the time of desistance.

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.

1. Reason: This is an absolute cause by way of reward to those who, having set one foot on the verge of crimes, heed the call of their conscience and return to the path of righteousness. The law encourages a person to desist from committing a crime.
2. The reason for the desistance is immaterial.
3. Exceptions: when the accused is liable despite his desistance
 - a) when the act performed prior to the desistance already constituted the attempted stage of the intended felony. For example: the accused, with intent to kill, shot at the victim but missed after which he "desisted", his acts already constituted attempted homicide.
 - b) When the acts performed already gave rise to the intended felony. The decision not to continue is not a legal but factual desistance. As in the case of a thief who returned what he stole.

- c) When the acts performed constitute a separate offense. Pointing a gun at another and threatening to kill, and then desisting gives rise to grave threats.

- b. all acts of execution would produce the felony as a consequence
- c. Felony is not produced
- d. By reason of causes independent of the will of the perpetrator.

Kinds of Desistance

1. Legal Desistance – the desistance referred to in law which would obviate criminal liability unless the overt or preparatory acts already committed in themselves constitute a felony other than what the actor intended. It is made during the attempted stage.
2. Factual Desistance – actual desistance of the actor which is made after the attempted stage of the crime; the actor is still liable for the attempt.

The accused has passed the subjective phase and is now in the OBJECTIVE PHASE, or that portion in the commission of the crime where the accused has performed the last act necessary to produce the intended crime and where he has no more control over the results of his acts.

The non-production of the crime should not be due to the acts of the accused himself, for if it were he would be liable not for the frustrated stage of the intended crime, but possibly for another offense.

Crimes which Do not Admit of Frustrated and Attempted Stages

1. Crimes punishable by Special Penal Laws, UNLESS the law provides otherwise.
2. **Formal Crimes** - *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. Other examples are slander, adultery, threats, coercion, alarms and scandal, or acts of lasciviousness.*

Thus: where the accused shot the victim mortally wounding him, but he himself saved the life of his victim, his liability is that for serious physical injuries as the intent to kill is absent.

Attempted or Frustrated

Homicide/murder. Where the accused, with intent to kill, injured the victim but the latter did not die, when is the crime attempted or frustrated?

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 subparagraph 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.

1. First View: "The subjective phase doctrine". If at that point where the accused has still control over the results of his actions but is stopped by reason outside of his own desistance and the subjective phase has not been passed, the offense is attempted
2. Second View: **The Mortal Wound or Life Threatening Injury Doctrine:** If a mortal wound or life threatening injury had been inflicted, the offense is frustrated, else it is attempted (Palaganas vs. PP., Sept. 12, 2006)
3. Third View: The belief of the accused should be considered in that if the accused believed he has done all which is necessary to produce death, then it is frustrated.

3. Impossible Crimes
4. Crimes consummated by mere attempt (e.g. attempt to flee to an enemy country, treason, corruption of minors, etc.)
5. Felonies by omission
6. Crimes committed by agreement (e.g. betting in sports like "ending", corruption of public officers, indirect bribery)

The belief of the accused should be considered in that if the accused believed he has done all which is necessary to produce death, then it is frustrated.

Crimes Which Do Not Admit of Frustrated Stage

– those which, by the definition of a frustrated felony, the offender cannot possibly perform all acts of execution to bring the desired result without consummating the offense.

2. **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.

1. Rape, since the gravamen is whether there is penetration or not, no matter how slight, hence rape is either attempted or consummated.

ELEMENTS:

- a. offender performs all the acts of execution

2. Arson

3. Indirect Bribery, because it is committed by accepting gifts offered to the public official by reason of his office. No acceptance, no crime. If accepted, crime is consummated.
 4. Corruption of Public Officers, because the offense requires the concurrence of will of both parties, thus when the offer is accepted, the offense is consummated. If offer is rejected, the offense is merely attempted.
 5. Adultery, because the essence of the crime is sexual congress.
 6. Physical Injury since it cannot be determined whether the injury will be slight, less serious, or serious unless and until consummated.
7. Theft

Theft is consummated once the article is in the material physical possession of the accused, whether actual or constructive. His ability to dispose off the thing is immaterial and does not constitute an element.

N.B. Decisions of the CA as to bulky items where the accused must have the opportunity dispose off or appropriate the articles have already been reversed. The doctrine now is that theft has no frustrated stage. (Valenzuela vs. PP. June 21, 2007)

3. **CONSUMMATED** - when all the elements necessary for its execution and accomplishment are present.

ATTEMPTED	FRUSTRATED	CONSUMMATED	IMPOSSIBLE CRIME
Evil intent is not accomplished	Evil intent is not accomplished	Evil intent is accomplished	Evil intent is not accomplished
Evil intent is possible of accomplishment	Evil intent is possible of accomplishment	The result sought is achieved	Evil intent is not possible of accomplishment
Overt acts of execution are started. Not all acts of execution are present.	All acts of execution are present.	All acts of execution are present.	All acts of execution are present.
Due to reasons other than spontaneous desistance of the perpetrator.	Due to intervening causes independent of the will of the perpetrator.		Evil intent cannot be accomplished because it's inherently impossible of accomplishment or the means employed by the offender is inadequate or ineffectual.

Factors in Determining Stage of Execution

1. Manner of committing a crime

Some crimes have only the consummated stage (Formal crimes) such as threats, coercion, alarms and scandal, slander, acts of lasciviousness. In rape the gravamen is whether there is penetration or not, no matter how slight, hence rape is either attempted or consummated.

No frustrated bribery. Bribery is the crime of the receiver not the giver. The crime of the giver is corruption of public official. 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, Frustrated, Consummated, Impossible Crime, Distinguished

attempted stage. If you have a corruption only, it is possible only in the attempted stage. 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.

2. Elements of the crime

- a. Theft: it is consummated once the article is in the material physical possession of the accused, whether actual or constructive. His ability to dispose off the thing his immaterial and does not constitute an element. N.B. Decisions of the CA as to bulky items where the accused must have the opportunity dispose off or appropriate the articles have already been reversed. The doctrine now is that theft has no frustrated stage (Valenzuela vs. PP. June 21, 2007)
- b. Estafa: It is not the material possession but the existence of damage which consumates the crime.
- c. Robbery with Force Upon Things: The thing must be brought out of the building to consummate the crime.
- d. Robbery with violence against or intimidation of persons, the crime is consummated the moment the offender gets hold of the thing taken and/or is in a position to dispose of it freely.

3. Nature of the crime itself

- a. parricide, homicide, and murder .

- a.1. With intent to kill, but no mortal wound is inflicted – attempted
- a.2. With intent to kill, and mortal wound is inflicted – frustrated
- a.3. With intent to kill and victim dies – consummated
- b. Crimes which require the participation of two persons have no frustrated stage. Examples: Adultery and concubinage; corruption of a public official.
- c. There are crimes which are punished according to their results and not the intention of the accused such as physical injuries. 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. 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.
- d. Arson: there can be no frustrated stage. It is in the attempted stage if the fire was not yet applied to the building. If no part of the building was burned, it is still attempted arson no matter how far gone were the acts of the accused. 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.

Article 7. When light felonies are punishable.

General Rule: Light felonies are punishable only when they have been consummated.

Exception: Those committed against persons or property, punishable even if attempted or frustrated.

The exception with regard to crimes against persons is actually unnecessary as the only light felony against persons is slight physical injuries which must be consummated.

The exception can apply, however, to attempted or frustrated light felonies against property.

LIGHT FELONIES - are those infractions of law for the commission of which the penalty of arresto menor or a fine not exceeding 200 pesos or both, is provided.

Examples: slight physical injuries(art. 266), theft(art. 309 pars. 7 and 8), alteration of boundary marks(art.

313), malicious mischief(art. 328 par. 3; art. 329 par. 3), intriguing against honor(art. 364)

NOTE: Only principals and accomplices are liable; accessories are NOT liable even if committed against persons or property.

Article 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.

CONSPIRACY TO COMMIT A FELONY – is one when two or more persons come into an agreement concerning the commission of a crime and decide to commit it.

General Rule: Still a preparatory act, and therefore, is not, as a rule, punishable.

Exception: When there is a specific provision or law punishing a specific kind of conspiracy. (**Examples:** Conspiracy to commit treason, rebellion, insurrection, sedition, coup d'etat, monopolies and combinations in restraint of trade [TRICSM], highway robbery, espionage, direct bribery and arson – said felonies need not actually be committed).

Requisites of conspiracy:

1. that two or more persons come to an agreement;
2. that the agreement concerned the commission of a felony; and
3. that the execution of the felony be decided upon.

Overt Acts in Conspiracy Must Consists of:

1. Active participation in the actual commission of the crime itself; or
2. Moral assistance to his co-conspirators by being present at the time of the commission of the offense.
3. Exerting a moral ascendance over the other co-conspirators by moving them to execute or implement the criminal plan. (Pp. vs Abut, April 24, 2003)

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

Kinds of Conspiracy:

1. **Conspiracy as a Felony** - when the mere agreement is punished. No overt act is necessary to bring about the criminal liability. The mere conspiracy is the crime itself. However, 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. Thus, their liability is for

the crime actually committed and they will not be punished again for the act of conspiring. The prior agreement (conspiracy) will be absorbed and becomes conspiracy as a mode of incurring criminal liability.

Illustrations:

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.

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.

2. **Conspiracy as a manner or incurring criminal liability** - this presupposes that a crime was actually committed by two or more persons who agreed to its commission and who performed acts to bring about the crime. This agreement and cooperation is the conspiracy which serves as the basis to make all equally liable under the principle that the "act of one is the act of all". There must be an overt act done before the co-conspirators become criminally liable.

Kinds:

- a. Express - conspirators meet and plan prior to the execution; participants are conspirators prior to the commission of the crime.
- b. Implied - did not meet prior to the commission of the crime; they participated in such a way that they are acting in concert. Conspiracy is deduced from the manner of commission.

General Rule: The act of one is the act of all. When conspiracy is established, all who participated therein irrespective of the quantity or quality of his participation is liable equally, whether conspiracy is pre-planned or instantaneous.

Exception: One or more conspirators committed some other crime which is not part of the intended 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.

Exception to the exception: When the act constitutes an indivisible offense (e.g. composite crime).

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.

Conspirators Liable as Principals

For conspiracy to exist, there must be an intentional felony, not a culpable felony, and it must be proved that all those to be considered as PDPs performed the following:

A. Unity of Intention / Unity of Purpose -

They participated, agreed, or concurred in the criminal design, intent or purposes or resolution.

1. This participation may be prior to the actual execution of the acts which produced the crime (**Anterior Conspiracy**) or it may be at the very moment the acts are actually being executed and carried out (**Instant Conspiracy**).
2. Hence it is not necessary to prove that before the commission of the crime, the several accused actually came and met together to plan or discuss the commission of the crime.
3. "Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create a joint criminal responsibility" (Sim Jr. vs. CA, 428 SCRA 459)

B. Unity of Action / Unity in the execution -

All participated in the execution or carrying out of the common intent, design, purpose or objective by acts intended to bring about the common objective.

1. Each must have performed an act, no matter how small or insignificant so long as it was intended to contribute to the realization of the crime conspired upon.

This requires that the principal by direct participation must be at the crime scene (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), EXCEPT in the following instances: (still a principal by direct participation)

- a). When he is the mastermind
- b). When he orchestrates or directs the actions of the others from some other place
- c). His participation or contribution was already accomplished prior to the actual carrying out of the crime conspired such: his role was to conduct surveillance or to obtain data or information about the place or the victims; to purchase the tools or weapons, or the get away vehicle, or to find a safe house
- d). His role/participation is to be executed simultaneously but elsewhere, such as by creating a diversion or in setting up a blocking force (e.g. to cause traffic).

- e). His role/participation is after the execution of the main acts such as guarding the victim; looking for a buyer of the loot; "laundering" the proceeds of the crime.

Participation In Both (Intention And Action), Why Necessary:

1. Mere knowledge, acquiescence or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the criminal design and purpose. Conspiracy transcends companionship.
2. He who commits the same or similar acts on the victim but is a stranger to the conspiracy is separately liable. Simultaneous acts by several persons do not automatically give rise to conspiracy.

Examples:

1. X joined in the planning of the crime but was unable to join his companions on the day of the crime because he was hospitalized. He is not liable.
2. X is the common enemy of A and B who are strangers to one another. Both A and B chanced upon X. A stabbed X while B shot him. A and B will have individual liabilities.

EXCEPTION: When a person joins a conspiracy after its formation, he thereby adopts the previous acts of the conspirators which are admissible against him. This is under the ***Principle of Conspiracy by Adoption.***

Proof of Conspiracy

Best proof of conspiracy: express conspiracy

Direct proof of conspiracy is not necessary. The existence thereof maybe inferred under the **Doctrine Of Implied Conspiracy** which directs that if two or more persons:

- (i) Aimed by their acts towards the accomplishment of the same unlawful object.
- (ii) Each doing a part so that their acts, though apparently independent, were in fact connected and cooperative.
- (iii) Indicating a closeness of personal association and a concurrence of sentiment.
- (iv) A conspiracy maybe inferred though no actual meeting among them to concert is proved.

Note: 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.

It is enough that at the time of the commission of the offense, the offenders acted in concert, each doing his part to fulfill their common design.

Effect of Conspiracy

There will be a joint or common or collective criminal liability, otherwise each will be liable only to the extent of the act done by him.

In the case of **People v. Nierra**, SC 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.

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.

For what crime will the co-conspirators be liable?

1. For the crime actually committed if it was the crime agreed upon.
2. For any other crime even if not agreed upon, provided it was the direct, natural, logical consequence of, or related to, or was necessary to effect, the crime agreed upon (e.g.killing the guard). Otherwise only the person who committed the different crime will be held liable (e.g. killing a stranger)

When is a co-conspirator freed from liability?

- a. Only if he has performed an overt act either to:
1. Disassociate or detach himself from the plan (*desist before an overt act in furtherance of the crime was committed*)
 2. Prevent the commission of the second or different or related crime
- b. Likewise, if for any reason not attributable to the law enforcement agents, he was not able to proceed to the crime scene and/or execute an act to help realize the common objective, then he cannot be held liable as a co-conspirator. Thus he is not liable if he got sick, overslept, or forgot about it, but not when law agents took him into custody to prevent him from doing his part of the agreement.

Thus in Robbery with Homicide, all who conspired in the robbery will be liable for the homicide unless one of the conspirators proved he tried to prevent the homicide.

Conspiracy As a crime	Conspiracy as a Means to commit a crime
Mere agreement is sufficient to incur criminal liability.	Overt acts are necessary to incur criminal liability.
Punishable only when the law expressly so provides.	Offenders are punished for the crime itself.

PROPOSAL TO COMMIT A FELONY - when one has decided to commit a felony but proposes its execution to some other person or persons.

General Rule: Still a preparatory act, and therefore, is not, as a rule, punishable.

Exception: When there is a specific provision or law punishing a specific kind of proposal. (**Example:** proposal to commit treason, rebellion, insurrection, coup d'etat [TRIC]).

Requisites of proposal:

1. that a person has decided to commit a felony; and
2. that he proposes its execution to some other person or persons.

NOTE: It is not necessary that the person to whom the proposal is made agrees to commit treason or rebellion.

There is no criminal proposal when:

1. the person who proposes is not determined to commit the felony.
2. there is no decided, concrete and formal proposal.
3. it is not the execution of the felony that is proposed.

	Conspiracy	Proposal
Elements	Agreement to commit a felony and decide to commit it.	Person decides to commit a crime and proposes the same to another.
Crimes (The crimes in which conspiracy and proposal are punishable against the security of the state or economic security)	Conspiracy to commit treason, rebellion, sedition, coup d'etat, highway robbery, espionage, direct bribery and arson.	Proposal to commit treason, rebellion, coup d'etat. *no proposal to commit sedition
When exist	Once the proposal was accepted, a conspiracy arises.	Is true only up to the point where the party to whom the proposal was made has not yet accepted the proposal.
	It is bilateral for it requires two parties.	It is unilateral, one party makes a proposition to the other.

Q: 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?

A: 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.

Article 9. Grave felonies, less grave felonies, and light felonies

CLASSIFICATION OF FELONY (*According to their gravity*)

- a. **GRAVE FELONIES** - those to which attaches the capital punishment or penalties which in any of their periods are afflictive (6 years and 1 day to reclusion perpetua) in accordance with article 25 of the code; or fine of more than P6,000.00. They are either 1. Heinous- the penalty is reclusion temporal to reclusion perpetua or 2. Non heinous.

The afflictive penalties in accordance with article 25 of the code are:

- Reclusion perpetua
- Reclusion temporal
- Perpetual or temporary absolute disqualification

Perpetual or temporary special disqualification
Prision mayor

- b. **Less Grave Felonies** - those to which the law punishes with penalties which in their maximum period was correccional (1 month and 1 day to 6 years) in accordance with article 25 of the code; or fine of P200.00 but not more than P6,000.00.

The following are correctional penalties;

Prision correccional
Arresto mayor
Destierro

- c. **Light Felonies** - those infractions of law for the commission of which the penalty is arresto menor (1 day to 30 days) or a fine not exceeding P200 or both.

1. They are punished only in their consummated stages except with respect to light felonies against persons or property. The reason is because they produced such light or insignificant results that society is satisfied if they are punished even if only in their consummated stage.
2. Only principals and accessories are liable.

Basis of the Penalty

The basis is the penalty prescribed by the RPC and not the actual penalty imposed by the court. If both imprisonment and fine are prescribed as penalties, it is the penalty of imprisonment which is used as basis.

Importance of the classification

- (a) To determine the prescription of crime and prescription of penalty

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.

- (b) to determine whether complexing of crimes is proper
(c) imposition of subsidiary penalty
(d) determination of who are liable for the offense
(e) determination what stage of execution is punishable
(f) determination of the period of detention of persons lawfully arrested without warrant.

NOTE: When the RPC speaks of grave and less grave felonies, the definition makes a reference specifically to Article 25 of the RPC. 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 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.

Article 10. 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.

Meaning of the Provision

The first sentence states the rule that when an act/omission is punished by a special law, then it is the special law which shall be applied and the RPC is not to supplant or replace or supply lapses in the special law.

The second sentence directs that the RPC shall only be supplementary unless the special law provides the contrary.

GENERAL RULE: RPC provisions are supplementary to special laws.

EXCEPTIONS:

1. When special laws provide otherwise;
2. When provisions of RPC are impossible of application, either by express provision or by necessary implication.

Provisions of the RPC which do not, as a rule, apply to violations of special laws:

1. Article 3 on criminal intent
2. Article 6 on the stages of execution unless the special law punishes an attempted or frustrated violation of its provisions
3. Article 11 on the justifying circumstances
4. Article 13, 14, 15, on the mitigating, aggravating and alternative circumstances
5. Articles 17, 18 and 19 on the degree of participation
6. Accessory penalties
7. Article 48 on complexing of crimes
8. Graduation of penalties

Provisions of the RPC Applicable to Special Laws

- A. To prevent an injustice to a party
- 1) Article 100 (Every person criminally liable is also civilly liable) may be applied if there is a

private person whose rights or property may have been injured, as in Violation of B.P. 22

- 2) The principle of conspiracy as a mode of incurring liability may be applied whenever it is necessary to charge two or more persons who may have participated in the violation of the special law

B. Whenever the special law adopts the scheme of penalties under the RPC both as to the nomenclature and range of the penalty

1. In such cases the following may now be applied:
 - (a) the effects of modifying circumstances (b) the graduation of penalties and (c) the imposition of the accessory penalties. (as well as stages in the execution, degree of participation, presence of mitigating and aggravating circumstances)

2. In Gallardo vs. Tamayo (June 2, 1994) it was held that the penalty of 6 years and one day to 12 years is not the same as prision mayor.

C. When the act is in truth an act mala in se in which case the presence or absence of criminal intent is material so that the defenses of good faith and mistake of fact are allowed

D. When the offense punished by the special law is in truth a derivative of an act punished under the Revised Penal Code. As for instance: carnapping and cattle rustling are derivatives of robbery and theft.

E. The exempting circumstances under Article 12 apply to Violations of Special Law.

F. Participation of Accomplices (Art. 16)

G. Retroactivity of Penal Laws if Favorable to the Accused (Art. 22)

H. Confiscation of Instruments Used in the Crime (Art. 45)

Approaches if the act is punished both by the RPC and a special law

- A. The felony will **absorb** the offense as in the case of political crimes absorbing violations of the Dangerous Drugs Law, carnapping or cattle rustling and illegal possession of firearms
- B. The violation of the special law may be used as an **aggravating circumstance** to the felony. Thus when an unlicensed firearm is used in the killing, said use is an aggravating circumstance.
- C. The act may give rise to **two separate charges** under the RPC and the special law. Examples: (i) the issuance of bad check may be punished as estafa and as Violation of B.P. 22 (ii) one maybe convicted both for estafa and for illegal recruitment (iii) a public officer may be charged both under

the Revised Penal Code and under the Anti Graft Law.

	RPC	Special Penal Laws
Terms	Prision correccional, prision mayor, etc	Imprisonment
Attempted or Frustrated Stages	Punishable	Gen. Rule: NOT punishable. Exception: Unless otherwise stated.
Plea of Guilty as Mitigating Circumstance	Applicable	NA
Minimum, Medium, and Maximum Periods.	Applicable	NA
Penalty for Accessory or Accomplice	Applicable.	Gen. Rule: NA Exception: Unless stated otherwise.

**Chapter 2
JUSTIFYING CIRCUMSTANCES AND
CIRCUMSTANCES, WHICH EXEMPT FROM
CRIMINAL LIABILITY**

IMPUTABILITY – the quality by which an act may be ascribed to a person as its author or owner. It implies that the act committed has been freely and consciously done and may therefore be put down to the doer as his very own.

RESPONSIBILITY – the obligation of suffering the consequences of crime. It is the obligation of taking the penal and civil consequences of the crime.

GUILT – an element of responsibility, for a man cannot be made to answer for the consequences of a crime unless he is guilty.

CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY, CLASSIFICATIONS:

- I. **Defenses:** those which if proven may result to an acquittal of the offender from the crime charged or lead to non-criminal liability. They are the reasons advanced by the accused why he may not be held criminally liable. They are classified into the following:
 - A. As to form:
 1. Positive or Affirmative - They are often called defenses in the nature of "Admission and Avoidance". The accused admits authorship of the act or omission charged and imputed to him but he puts

up matters to avoid criminally liability or which will result to his acquittal.

- a. All the Justifying, Exempting and Absolutory Causes are Affirmative defenses.
- b. Since the accused has admitted authorship of the act or omission, it's not anymore necessary for the prosecution to prove his participation in the commission of the crime or his identity, hence there may be a reverse order of trial in that it will be the accused who will be the first to present his evidence .
- c. It is incumbent upon the accused to prove his defense by" clear, positive and convincing evidence" and his conviction is not that the prosecution failed to prove his guilt but that he was unable to prove his defense.
- d. **CONSTITUTIONAL DEFENSES**

Defenses based on a Violation of the Due Process Clause

A. The Statute is VOID-FOR-VAGUENESS PRINCIPLE

1. Due Process requires that the terms of a penal statute must be sufficiently explicit to inform those who are subject to it what conduct on their part will render them liable to its penalties.

2. The Doctrine that a penal statute is unconstitutional if it does not reasonably a person on notice as to what the person may not do, or what the person is required to do. As a rule a statue maybe said to be vague when it lacks comprehensible standards that "men of common intelligence must necessarily guess at its meaning and differ as to its application" It is repugnant to the constitution in two aspects: (a) it violates due process for failure to accord persons, especially the parties targeted by it, fair notice of the conduct to avoid and (b) it leaves law enforcers unbridled discretion in carrying out its provisions and become an arbitrary flexing of the government muscle.

3. However an act will be declared void and inoperative on the ground of vagueness and uncertainty, only upon

a showing that the defect is such that the courts are unable to determine, within any reasonable degree of certainty, what the legislature intended

Example: An ordinance of the City of Cincinnati that made it illegal for "three or more persons to assemble on any sidewalk and there conduct themselves in a manner annoying to persons passing by".

B. VOID FOR OVERBREADTH (Overbroad) PRINCIPLE

1. A penal statue is unconstitutional if its language is so broad that it unnecessary interferes with the exercise of constitutional rights, even though the purpose is to prohibit activities that the government may constitutionally prohibit.

2. A statute is overbroad where it operates to inhibit the exercise of individual freedoms guaranteed by the constitution, such as the freedom of religion or speech. When it includes within its coverage not only unprotected activity but also activity protected by the constitution.

3. This principle applies more to felonies or offenses which conflict with the freedom of expression and association such as prosecution for libel, inciting to rebellion or sedition, and violation of the Election Code.

Example: In *Adiong s. COMELEC*, 207 SCRA 712, SC declared as void that portion of the Election Code prohibiting the posting of election propaganda in any place-including private vehicles- other than in the designated common poster area.

C. VOID FOR LACK OF PUBLICITY

1. The Penal Statue was not publicized in the manner provided for by the Constitution, such as publication in a newspaper of general circulation or in the Official Gazette. Hence there is no constructive note to the public and the principle that "Ignorantia legis nemenem excusat" will not apply.

Defenses Based on the Equal Protection Clause

A. DISCRIMINATORY AND SELECTIVE APPLICATION

1. A Penal Law must apply to all persons who are in the same or similar situation.

2. A statute nondiscriminatory on its face maybe grossly discriminatory in its operation. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and unequal; hand, so as to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, there is denial of equal justice and is prohibited.

3. However, the prosecution of one guilty person while others equally guilty are not prosecuted, is not, by itself, a denial of the equal protection of the laws. There must be present an element of **"clear and intentional or purposeful discrimination:"** on the part of the prosecuting officials.

2. Negative - the accused denies authorship or having performed the act or omission imputed to him. Examples are denial, alibi, mistaken identity.

B. As to Effect:

1. Total or Perfect - those the effect of which will totally exonerate the accused. Example: a complete justifying circumstance, amnesty.

2. Partial - those which are intended to lessen the liability of the accused. They include proof the offense is a lesser offenses, or that it is of a lower stage of execution, that the accused has a lower participation and is not the principal.

C. As to source:

1. Legal - those provided for by statutes or by the constitution. For example: prescription of crimes, marriage of the offender and offended, pardon, double jeopardy, amnesty.

2. Factual - those based on the circumstances of the commission of the crime relating to the time, place, manner of commission; identification of the accused; reasons for

the commission. For example: alibi, self-defense; insanity, mistaken identity.

COMPLETE DEFENSES IN CRIMINAL CASES

1. Any of the essential elements of the crime charged is not proved by the prosecution and the elements proved do not constitute any crime.
2. The act of the accused falls under any of the justifying circumstances.
3. The act of the accused falls under any of the exempting circumstances.
4. The case is covered by any of the absolatory causes.
5. Guilt of the accused not established beyond reasonable doubt.
6. Prescription of Crimes.

Circumstances Affecting Criminal Liability as Specifically Provided under the RPC:

Art. 11. Justifying circumstances

JUSTIFYING CIRCUMSTANCES - are those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability. There is no civil liability, except in par. 4 of Art. 11, where the civil liability is borne by the persons benefited by the act.

- a. There is no mens rea or criminal intent.
- b. The circumstances pertain to the act and not to the actor. Hence all who participated in the act will be benefited. Thus if the principal is acquitted there will be no accomplices and accessories.
- c. These apply only to intentional felonies, not to acts by omissions or to culpable felonies or to violations of special laws.
- d. They are limited to the 6 enumerated in Article 11.

The Use of Force Defenses - These are the justifying circumstances where the accused is allowed to use force i.e to inflict injury upon the victim or to destroy property. The force may either be (i) Deadly Force or that which can result to serious physical injuries or even to the death of the victim and (ii) Non-Deadly but reasonable force.

The Use- of-Force-Defenses include (i) self-Defense (ii) Defense of Relative and (iii) Defense of Stranger.

Paragraph 1. Self defense

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.

Concept of Self Defense

Self-defense includes not only the defense of the person or body of the one assaulted but also that of his rights, the enjoyment of which is protected by law. Thus, it includes:

1. The right to honor. Hence, a slap on the face is considered as unlawful aggression directed against the honor of the actor (*People vs. Sabio, 19 SCRA 901*).
2. The defense of property rights, only if there is also an actual and imminent danger on the person of the one defending (*People vs Narvaez, 121 SCRA 389*).

Elements:

1. Unlawful aggression;
2. reasonable necessity of the means employed to repel it; and
3. lack of sufficient provocation on the part of the person defending himself.

Note: The first two are common to the three Use-of-Force-Defenses.

UNLAWFUL AGGRESSION

- is equivalent to an actual physical assault or, at least

- threatened assault of an immediate and imminent kind which is offensive and positively strong, showing the wrongful intent to cause injury.

Aggression, Kinds of:

Lawful

- a) in the exercise of a right
- b) in the fulfillment of a duty

Unlawful

- a) **ACTUAL (REAL/MATERIAL)** – danger must be present, that is, actually in existence.
- b) **IMMINENT** – danger is impending or at the point of happening. It must not consist in a mere threatening attitude nor must it be merely imaginary. The intimidating attitude must be offensive and positively strong.

Unlawful Aggression, Some Principles:

- Unlawful aggression is an indispensable requisite.
- Aggression must be "unlawful" i.e the victim was not acting in accordance with laws, or under color of right. Thus the following do not constitute "unlawful" aggression: (i) the act of a property owner in pushing out an intruder for refusing to leave peacefully (ii) the act of a policeman in handcuffing a law violator (iii) the scolding by a teacher of an unruly student.

- The aggression must come from the victim.
- At the time of the defense, the aggression must still be continuing and in existence. In the following instances there is no more aggression and if the accused still uses forces, he becomes the aggressor:

- a). When the attacker desists, or is prevented or restrained by third persons; or is divested of his weapon, or is overpowered
- b). When the attacker retreats unless it is to secure a more advantage position.

- **Q:** When the person attacked was able to wrest the weapon or has disarmed his attacker, may he use the weapon against the attacker? **A:** No because the aggression has ceased unless the attacker persist to grab back the weapon for in such case, there is still imminent danger tot his life or limb.

- There must be no appreciable lapse of time between the unlawful aggression and the act done to repel or prevent it

- Presumption as to the Aggressor: Where there is no direct evidence who was the aggressor, it may be presumed that the one who was deeply offended by the insult was the one who had a right to demand an explanation from the perpetrator of the insult and he must have been the one who struck first if the proffered explanation was unsatisfactory (*PP. vs. Ramos, 77 Phil. 4*)

- Unlawful aggression is equivalent to assault or at least threatened assault of an immediate and imminent kind. (*Pp vs. Alconga 78 Phil 366*)

- The danger or peril to one's life or limb must be present, that is, must actually exists.

- There must be actual physical force or actual use of weapon.

- No unlawful aggression when there is no imminent and real danger to the life and limb of the accused.

- Paramour surprised in the act of adultery cannot invoke self-defense if he killed the offended husband who was assaulting him.(*US vs. Merced 39 Phil 198*)

- "Foot-kick greeting" is not an unlawful aggression. (*P/P vs. Sabio 19 SCRA 901*)

- A strong retaliation for an injury or threat may amount to an unlawful aggression. (*US vs. Carerro 9 Phil 544*)

- The attack made by the deceased and the killing of the deceased by the defendant should succeed each other without appreciable interval of time. (*P/P vs. Arellano C.A 54 O.G. 7252*)

- A public officer exceeding his authority may become unlawful aggressor. (*P/P vs. Hernandez 59 Phil 343*)

- Nature, character, location and extent of wound of the accused allegedly inflicted by the injured party may belie claim of self defense. (*P/P vs. Tolentino 54 Phil 77*)

- Improbability of the accused being the aggressor belies the claim of self defense. (P/P vs. Diaz 55 SCRA 178)
- The fact that the accused declined to give any statement when he surrendered to a policeman is inconsistent with the plea of self defense. (P/P vs. Manansala 31 SCRA 401)
- When the aggressor flees, unlawful aggression no longer exists. (P/P vs. Alconga 78 Phil 366)
- No unlawful aggression when there is agreement to fight EXCEPT when there is a violation of the agreement.
- One who voluntarily joined a fight cannot claim self defense.
- There is unlawful aggression even if the aggressor used a toy pistol, provided that the accused believed it was a real gun. (P/P vs. Boral 11 CA Rep. 914)
- Mere threatening attitude is not unlawful aggression. (US vs. Guy-sayco 13 Phil 292)
- The person defending is not expected to control his blow.

Q: *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?*

A: *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.*

At what point may a person attacked put up a defense?

1. **Retreat-to-the-Wall Principle.** The doctrine which states that before a person is entitled to use force in self defense he must first attempt to withdraw from the encounter by giving as much ground as possible and it is only there is no more place to retreat that he may now use force to defend himself. This doctrine is impractical and has been abandoned.
2. **Stand-Your-Ground-When-In-The-Right Principle.** The doctrine which holds that when a person is attacked in the place where he has a right to be, he need not retreat but he may

immediately use force to defend himself. The law does not require a person to retreat when his assailant is rapidly advancing upon him with a deadly weapon. REASON: he runs the risk of being attacked in the back of the aggressor.

- a). This is the prevailing doctrine followed. It applies to all especially to law enforcement agents who are expected to stand their ground and to subdue, overcome and arrest criminals.
- b). A related doctrine is **the Castle Doctrine**. When a person is attacked in his dwelling (a man's house is his castle) he is not expected to retreat but he may immediately use force to defend himself and his dwelling. This is availed of where armed persons intrude into a dwelling as it is natural to expect that the armed persons would use their weapons at any time and upon any occupant of the dwelling.

May the attacker claim self defense?

1. As a rule one who initiates an attack can not claim self defense being himself the aggressor.
2. However he is entitled to an incomplete self defense: (a) if he is met with excessive force in return and is forced to defend himself or (b) When he withdraws or retreats from the attack but is pursued by the intended victim and he had to defend himself.

Rule when there is an agreement to a fight or when one accepts a challenge to a fight

Neither one can put up self defense because each is an aggressor to the other and both anticipate the aggression coming from the other. The law leaves them where they are. Except when one is attacked by the other in violation of the terms and conditions of the fight, such as to the time, place and choice of weapons agreed upon, then the person attacked may claim self defense.

REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL THE ATTACK

The question is whether the defense is appropriate and commensurate to the type, degree, and intensity of the aggression taking into consideration the place, occasion and surrounding circumstances of the aggression.

Test of Reasonableness

1. Weapon used by the aggressor
2. Physical condition, character, size and other circumstances of the aggressor
3. Physical condition, character, size and other circumstances of the person defending himself

4. Place and Occasion

Note: Perfect equality between the weapons used, nor material commensurability between the means of attack and defense by the one defending himself and that of the aggressor is not required.

Reason: The person assaulted does not have sufficient opportunity or time to think and calculate.

The Reasonableness Of The Means Include Two Aspects

- (1) Reasonableness of the **Mode of Defense**
- (2) Reasonableness of the **Choice of Weapon**.

A person under attack has the right to defend, but as it proper for him to sue a weapon and if so, whether the weapon chosen is commensurate to the attack.

The law requires Rational Necessity and Rational Equivalence of Weapons and not Factual Equality

This is to be determined by considering both the subjective and objective aspects of the situation. They include the following:

1. The imminence of the danger as it appeared to the accused coupled by the instinct for self-preservation.
2. When the attacker is armed, consider the instrument of aggression and the means of defense most readily and immediately available to the person attacked.
3. Consider the physique, size, age, sex, knowledge of martial arts (the hands and feet of boxers, martial artists, wrestlers, are considered deadly weapons) of the attacker and the person attacked, including the reputation of the attacker as a person of violence.
4. Consider whether under the time and place of the attack, the person attacked can call for immediate assistance.
5. Consider the number of the attackers.

When can Deadly Force be used?

1. When there is an attack on a person's life or limbs i.e he may either be killed or seriously injured
2. In case of an attack upon one's property, it must be coupled with an attack on the person's life or limb which promises death or serious bodily harm, otherwise only reasonable force must be used.

If there is no attack on the person's life or limb, reasonable force may still be used as is necessary to protect the property from being seized, destroyed or interfered with under the **Doctrine of Self Help** provided for In Article 429 of the New Civil Code.

3. In case of an attack on chastity, deadly force is allowed if there is a clear intent to rape, which intent maybe negated by the circumstances of time and place; if there is no clear intent to rape only reasonable force must be used.
4. In case of attack on one's honor or reputation, the use of physical force is never justified. When one is libeled or defamed, he may fight back with a similar libel or defamation provided it is only to the extent which is necessary to free himself from the effects of the libel/defamation. This is called the "**Doctrine of Justified Libel**" or "**The Privilege of a Reply Doctrine**".
5. The Principle of Self defense and Use of Deadly Force does not apply to situations where a person is injured or killed as a result of the installation of Protective Devices/Methods such as by the installation of live electric wires on a fence, or by attack dogs let loose in one's yard.

LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON CLAIMING SELF DEFENSE, Concept

The person attacked must not have given sufficient reason for the victim to attack him.

Provocation - includes any conduct which excites, incites or induces a person to react, it is conduct which vexes or annoys, irritates or angers another.

Situations When Lack of Sufficient Provocation (3rd Element) is Present

1. When no provocation at all was given by the accused.

When a property owner angrily demands why the victim built a fence on his land, which in turn angered the victim to attack the accused, such conduct on the part of the accuse is not provocation.

2. When there was provocation but it was not sufficient i.e. it may have vexed or annoyed but was not sufficient for the victim to make the kind of attack he employed upon the accused. The sufficiency must be measured in relation to the reaction of the victim.
3. When sufficiency provocation was given but it was not immediate to the attack.

Examples Of Sufficient Provocation

1. Imputing to the victim the utterance of vulgar language.
2. Trespassing into the property of the victim.
3. Jokes made in poor taste or bad mouthing the victim.
4. Destroying the victim's property.

Rights Included in Self-Defense/Kinds of Self-Defense

1. Defense of Person (Life and Limb)
2. Defense of Property (only if there is also an actual and imminent danger on the person of the one defending)
3. Defense of Rights Protected by Law (Civil, political and natural)
4. Defense of Chastity
5. Defense of Honor/Reputation (Defense in case of libel)

NOTE: Under RA 9262 (Anti-Violence against Women and their Children Act of 2004), victim-survivors who are found by the court to be suffering from Battered Woman Syndrome (BWS) do not incur criminal and civil liability despite the absence of the necessary elements for the justifying circumstance of self-defense in the RPC. The law provides for an additional justifying circumstance.

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.

Battery – refers to any act of inflicting physical harm upon the woman or her child resulting to physical and psychological or emotional distress.

Some Related Provisions of RA 9262

Legal Provision: Created under R.A. 9262 known as the "Anti Violence Against Women and their Children Act of 2004"

Section 26: Battered Woman Syndrome as a Defense: Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal code.

In the determination of the state of mind of the woman who was suffering from battered woman syndrome at the time of the commission of the crime, the courts shall be assisted by expert psychologists.

Concept of BWS

- a). It is a psychological condition in which a woman commits physical violence against her husband or mate as a result of the continued physical or mental abuse to which he has subjected her.
- b). Under this defense a woman who is constantly abused by her husband may be justified in using force at a time when there is not strictly "immediate danger". The theory is that women in

such circumstances have two choices: either wait for their husband to kill them or strike first in a form of offensive self-defense.

c). Development in the Philippines

1. The Case in which it was first recognized was *People vs. Marivic Genosa*, Jan 15, 2004 419 SCRA 537) involving a wife who was convicted of Parricide for killing her husband who was sleeping.

a). Battered woman: a woman who is repeatedly subjected to any forceful physical or psychological behavior by a man in order to coerce her to do something he wants her to do without concern for her rights.. (they) include wives or women in any form of intimate relationship with men. Furthermore, in order to be classified as a battered woman, the couple must go through the cycle at least twice"

b) Battered women exhibit common personality traits, such as low self esteem, traditional beliefs about home, the family and the female sex role; emotional dependence upon the dominant male; the tendency to accept responsibility for the batterer's action; and false hopes that the relationship will improve.

c) The syndrome is characterized by the so-called "Cycle of Violence" which has three phases:

(i) The Tension Building Phase: minor battering occurs: it could be verbal or slight physical abuse or other form of hostile behavior. The woman tries to pacify the man through a show of kind, nurturing behavior; or by simply staying out of his way. What actually happens is that she allows herself to be abused in way that to her fare minor. Alls he wants is to prevent the escalation of the violence. But her placatory and passive behavior legitimizes his belief that he has the right to abuse her.

(ii). The Acute Battering Phase: this is characterized by brutality, destructiveness and sometimes death. The woman deems this incident as unpredictable yet also inevitable. She has no control: only the man can put an end tog the violence She realizes that she can not reason with him and that resistance would only exacerbate her condition. She has a sense of detachment although she may later

clearly remember the details. Her apparent passivity is because the man is stronger physically and it is useless to fight back.

(iii). The Tranquil, Loving or Non-Violent Phase. The couple experience profound relief. On one hand the man shows a tender and nurturing behavior and he knows he has been viciously cruel and tries to make up for it begging her forgiveness and promising never to beat her again. The woman also tries to convince herself that the battery will never happen again; that her partner will change for the better; that this good, gentle and caring man is the real person she loves.

d). The foregoing cycle happens because / Characteristics of the Syndrome: (i) the woman believes that the violence was her fault (ii) the woman fears for her life and her children's lives (iii) the woman has an irrational belief that the abuser is all powerful and that she is beer off with him than without him for financial reasons and (iv) Love: in spite of constant assault, after a little cajoling, the woman is convinced that the man still loves her.

Q: Must there be unlawful aggression at the time of the killing?

A: In The Genosa case, it was ruled that the accused was not entitled to complete exoneration because there was no unlawful aggression, no immediate and unexpected attack on her at the time she shot him. But the severe beatings repeatedly inflicted constituted a form of cumulative psychological paralysis: diminished her will power, thereby entitling her to the mitigating factor under paragraphs 9 and 10 of Article 13.

HOWEVER, RA 9262 has liberalized it in view of the provisions which reads: "... notwithstanding the absence for the elements of self defense..."

Paragraph 2. Defense of Relative

Anyone who acts in defense of the person or rights of his spouse, ascendants, descendants, or legitimate, natural, or adopted brothers or sisters or of his relatives by affinity in the same degrees, and those by 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 provocation was given by the person attacked, that the one making defense had no part therein.

Elements

1. Unlawful Aggression;
2. Reasonable necessity of the means employed to repel it; and
3. In case the provocation was given by the person attacked, that the one making defense had no part therein.

Relatives Who Can Be Defended (SADBrosAC)

1. Spouse
2. Ascendants
3. Descendants
4. Legitimate, natural or adopted **brothers** or **sisters**
5. Relatives by **affinity** in the same degree
6. Relatives by **consanguinity** within the fourth civil degree

The third element: The One Defending Had No part in the Provocation, Present In The Following Instances:

1. The relative defended did not give any provocation at all
2. If the relative gave provocation, the one defending was not aware of it
3. If the relative gave provocation, the one defending did not participate either actually or morally, as by encouragement

NOTE: Even if the person defending acted out of evil motive, such as revenge, this defense is still available.

The relative defended may be the original aggressor. All that is required is that the relative defending did not take part in such provocation.

Paragraph 3. Defense of Stranger

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 article are present and that the person defending be not induced by revenge, resentment or other evil motive.

STRANGER - Any person not included in the enumeration of relatives mentioned in paragraph 2 of this article.

Elements

1. Unlawful Aggression;
2. Reasonable necessity of the means employed to repel it; and
3. Person defending be not induced by revenge, resentment or other evil motive.

Note: Distinction between relative and stranger is important because of the element of evil motive.

The third element: The Person Defending Should Not Be actuated by Revenge, Resentment, or Other Evil Motive

The accused must prove he acted out of an honest desire to save the life or limb or property of the stranger and not because his true intention was to harm the victim. If otherwise he is deemed to be committing a crime there being present the elements of actus reus and mens rea.

Q: Suppose it was the stranger who gave provocation?

A: The accused is entitled to this defense.

Rationale Behind These Defenses

For self defense: 1. It is the natural and inherent right of every person to defend himself 2. The state can not protect its citizens at all times hence it gives them the right to defend themselves

For Defense of Relative: It is in recognition of the strong ties of blood i.e blood is thicker than water.

For Defense of Strangers: What a man can do in his defense, another can do for him.

Factors Affecting the Credibility of the Defenses

1. The claim of self defense, (as well as of relative and stranger) are inherently weak and easily fabricated, and must be corroborated by independent evidence.
2. The location, number and nature of the wounds of the victim must be considered and may disprove the claim of self-defense.
3. The lack of wounds of the accused may disprove self defense and proof the lack of aggression on the part of the victim
4. A refusal to give a statement upon surrendering, or non-assertion thereof, is inconsistent with a claim of self defense. A claim of self-defense, if true, must be asserted promptly.

Paragraph 4. State of Necessity (Avoidance of Greater Evil or Injury)

Any person who, in order to avoid an evil or injury, does an act which causes injury 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 or less harmful means of preventing it.

Elements:

1. evil sought to be avoided actually exists;
2. injury feared be greater than that done to avoid it; and
3. no other practical or less harmful means of preventing it.

NOTE: The greater evil/necessity should not be brought about by the negligence or imprudence of the actor.

The evil which brought about the greater evil must not result from a violation of law by the actor.

When the accused was not avoiding any evil, he cannot invoke the justifying circumstance of avoidance of a greater evil or injury. (P/P vs Ricohermoso 56 SCRA 431)

Generally, there is No civil liability EXCEPT par 4 when there is another person benefited in which case the latter is the one liable.

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.

Illustrations:

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.

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.

Paragraph 5. Fulfillment of Duty/Lawful Exercise of Right or Office

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

Elements:

1. accused acted in the performance of a duty or in the lawful exercise of a right or office;

2. injury caused or the offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office; and
3. accused was not negligent or that there was no abuse, or excess or oppression on the part of the accused

OFFICE OR DUTY - does not necessarily refer to a public office or public duty as it is to be understood in its generic sense. It includes private office or employment or duty as well as the exercise of a calling or a profession or occupation.

Illustrations:

When injuries are inflicted on a suspect who resists a valid arrest

Shooting an escaping prisoner in order to immobilize and prevent his escape, even if the shooting resulted to his death. But not shooting him again after he was already immobilized, or he gives up.

Killing of rebels by soldiers is not homicide or murder; or destruction of private property in a firefight between rebels/criminals and soldiers/law enforcers.

Amputation of patients by physicians in order to save their lives.

Lawyers calling witnesses as liars are not liable for defamation or unjust vexation.

Scolding lazy students by teachers is not defamation.

Executioners are not criminally liable.

A lawyer who writes a reply-letter describing the adverse party as untruthful and hypocrite.

Application in Relation to Law Enforcers Who Used Force and kill or Injure Suspects/accused

1. Cabanlig vs. Sandiganbayan (July 28, 2005)

FACTS: A suspect who was onboard a police vehicle, suddenly grabbed the armalite rifle of one of the policemen and jumped from the vehicle. One of the policemen shouted "hoy" and the accused policeman simultaneously shot the suspect three times resulting to the death of the suspect. Is he policeman liable for the death of the victim?

HELD: No. He acted in lawful performance of duty.

A policeman in the performance of duty is justified in using force as is reasonably necessary to secure and detain the offender, over come his resistance, prevent escape, recapture him if necessary and protect himself form bodily injury. In case injury or

death results from the policeman's exercise of such force, the policeman could be justified... if the policeman had used necessary force. Since the policeman's duty requires him to overcome the offender, the force exerted ... may therefore differ from that which ordinarily may be offered in self-defense. However, a policeman is never justified in using unnecessary force or in treating the offender with wanton violence, or in resorting to dangerous means when the arrest could be effected otherwise. (Cabanlig vs. Sandiganbayan (July 28, 2005).

2. Re: Duty to Issue Warning.

The duty to issue a warning is not absolutely mandated at all times and at all cost, to the detriment of the life of law enforcers. The directive to issue a warning contemplates a situation where several options are still available to the law enforcers. In exceptional circumstances... where the threat to the life of a law enforcer is already imminent, and there is no other option but to use force to subdue the offender, the law enforcer's failure to issue a warning is excusable. (Cabanlig vs. Sandiganbayan)

Illustration:

*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.

Paragraph 6. Obedience to a Lawful Order of a Superior

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

Elements:

1. An order was issued by a superior acting within the sphere of his lawful rights;
2. The order is for some lawful purpose; and
3. The means to carry out the order is lawful.

SUPERIOR - includes any person higher in rank to the accused and who is entitled to demand obedience for the accused. Such rank is not necessarily in the AFP or PNP but includes both public and private employment and extends even to rank in social standing or in personal relations. He cannot invoke this justifying circumstance.

Rule When the Order is Patently Illegal

General Rule: Subordinate cannot invoke this circumstance.

Exception: When there is compulsion of an irresistible force, or under impulse of uncontrollable fear (when not aware of its illegality and was not negligent in case order not patently illegal)

Subordinate is not liable for carrying out an illegal order if he is not aware of its illegality and he is not negligent.

Article 12. EXEMPTING CIRCUMSTANCES

EXEMPTING CIRCUMSTANCES (or the circumstances for non-imputability) – are those grounds for exemption from punishment, because there is wanting in the agent of the crime any of the conditions which makes the act voluntary, or negligent.

There is a crime but NO criminal.

- BASIS:** The exemption from punishment is based on the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.
- These defenses pertain to the actor and not the act. They are personal to the accused in whom they are present and the effects do not extend to the other participants. Thus if a principal is acquitted, the other principals, accessories and accomplices are still liable.
- They apply to both intentional and culpable felonies and they may be available in violations of special laws.
- They are limited to the 7 enumerated in Article 12.
- Burden of Proof:** Any of the circumstances is a matter of defense and must be proved by the defendant to the satisfaction of the court.

JUSTIFYING CIRCUMSTANCE	EXEMPTING CIRCUMSTANCE
1. It affects the act not the actor.	1. It affects the actor not the act.
2. The act is considered to have been done within the bounds of law; hence, legitimate and lawful in the eyes of the law.	2. The act complained of is actually wrongful, but the actor is not liable.
3. Since the act is considered lawful, there is no crime.	3. Since the act complained of is actually wrong <u>there is a crime</u> but since the actor acted without voluntariness, there is no dolo nor culpa
4. Since there is no crime, nor a criminal, there is also no criminal or civil liability. (except Art. 11, par. 4 - state of necessity)	4. Since there is a crime committed though there is no criminal, there is civil liability, but there is no civil liability in paragraphs 4 (injury by mere accident) and 7 (lawful cause) of Article 12.

Paragraph 1. Imbecility or Insanity

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.

IMBECILE – one while advanced in age has a mental development comparable to that of children between 2 and 7 years old. He is **exempt** in ALL CASES from criminal liability.

-(Sir Sagsago) defect of reason to such degree that his mental capacity is diminished; deprivation of intelligence; it is permanent; it includes moron.

INSANE – one who acts with complete deprivation of intelligence/reason or without the least discernment or with total deprivation of freedom of will. Mere abnormality of the mental faculties will not exclude imputability. Defect in the brain.

A person medically insane is legally insane but not vice-versa.

The following are considered medically sane but legally insane:

1. mental aberration due to illness, e.g. malaria
2. dementia praecox (unable to distinguish between fantasy and reality)
3. schizophrenia
4. manic depressive psychosis (they feel that everyone is against them)
5. lack of control-consciousness (while dreaming)
6. somnambulism
7. epilepsy
8. violent maniac

The following are not medically nor legally insane:

1. feeble-minded
2. amnesia caused by too much alcohol intake
3. acts resulting from passion (temporary insanity)
4. eccentric
5. mental weakness
6. depressed due to physical illness
7. involuntary subliminal t.v. intoxication (too much t.v. watching)
8. pre-menstrual syndrome
9. twink defense (due to large consumption of white sugar)
10. hypnosis (no medical proof of insanity; no judicial acknowledgement)

General Rule: Exempt from criminal liability.

Exception: The act was done during lucid interval.

Note: Defense must prove that the accused was insane at the *immediately prior to or at the time of the*

commission of the crime because the presumption is always in favor of sanity.

Who may prove insanity? Experts (psychologist, psychiatrist), opinion of intimate acquaintance

To appreciate insanity: there must be complete deprivation of intelligence (no discernment, deprived of reason), (Sir Sagsago: thus the following two tests are adopted in the Philippines)

Two (2) tests for exemption on the ground of Insanity:

1. the test of COGNITION - whether the accused acted with complete deprivation of intelligence in committing said crime; knowledge of right and wrong.

M'nghten test (also considered as test of cognition; it is a test of right and wrong)

Propositions:

- a. at the time the act was committed;
- b. the defendant suffers from defect of reason or from disease of mind
- c. causes defendant to not to know what is the nature and quality of act taken or that his act was wrong

2. the test of VOLITION - whether the accused acted in the total deprivation of freedom or will.

Note: These tests are applied in the Philippines. The word crazy is not synonymous with the word insane

Effects of Insanity of the Accused

1. At the time of commission of the crime – exempt
2. During trial – liable but there will be suspension of arraignment, trial or promulgation of judgment, accused is committed to a hospital.
3. After judgment or while serving sentence – execution of judgment is suspended, the accused is committed to hospital. The period of confinement in the hospital is counted for the purpose of prescription of the penalty.

Paragraph 2. Under 9 years of Age

NOTE: On April 28, 2006, Gloria Arroyo signed into law Republic Act 9344 otherwise known as "JUVENILE JUSTICE and WELFARE ACT OF 2006". The law became effective on May 21, 2006.

Under R.A. 9344, minors aged fifteen (15) and below are now absolutely exempt from criminal liability.

The child shall be released to the custody of his of his parents, or guardian, or in the absence thereof, the

child's nearest relative. If they cannot be located or if they refused, the child shall be released to a duly registered nongovernmental or religious organization, a brgy official, or a member of the Brgy Council For The Protection Of Children (BCPC), or when appropriate, the DSWD.

If the child is abandoned, neglected or abused by his parents, or if the parents will not comply with the prevention program, DSWD will file the petition for involuntary commitment pursuant to "The Child and Youth Welfare Code."

Note: Senility although said to be the second childhood, is only mitigating.

Paragraph 3. Over 9 BUT Under 15 Acting Without Discernment

DISCERNMENT - mental capacity of a minor to fully appreciate the consequences of his unlawful act. (Pp vs Navarro CA 51 OG 4062); it is the ability to know what is right and wrong; knowledge of the consequences of one's acts. This is shown by:

1. the manner the crime was committed
2. conduct of the offender after its commission

Note: Under R.A. 9344 (Pangilinan law), a minor above fifteen (15) but below eighteen (18) commits a crime, he is exempt from criminal liability unless it is shown that he acted with discernment. However, should the minor above fifteen but below eighteen be found guilty, R.A. 9344 also mandates the Courts to AUTOMATICALLY suspend the sentence. In all cases, the minor offender must be referred to the appropriate government agency for rehabilitation.

Also, under Section 5 of RA 8539 (Family Court Law), there is no need to apply or file a Petition for suspension of sentence. The law mandates an automatic suspension of service of sentence of the youthful offender.

Minor above 15 but below 18 years old may also be exempted even with discernment in the following crimes:

- a. status offense (e.g. curfew)
- b. vagrancy
- c. mendicancy
- d. PD 1602 (sniffing or possession of rugby)
- e. Prostitution

In information, it must specifically state that the minor accused "acted with discernment".

Paragraph 4. Accident Without Fault or Intention of Causing it

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

Accident - any happening beyond the control of a person the consequence of which are not foreseeable.(in civil: fortuitous event)

Elements:

1. A person is performing a lawful act.
2. With due care (else, it is culpable felony)
3. He causes an injury to another by mere accident.
4. Without fault or intention of causing it.(P/P vs Vitug 8 CAR {2s} 905, 909)

Note: 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".

Since the act must be lawful, accident cannot be claimed as defense in the ff. cases: possessing gun without license when accused killed his companion accidentally, dynamite fishing causing death of scuba diver

Note that mechanical defect can be foreseen.

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.

Paragraph 5. Irresistible Force

Any person who acts under the compulsion of an irresistible force.

IRRESISTIBLE FORCE – offender uses violence or physical force to compel (to coerce) another person to commit a crime.

Elements:

1. That the compulsion is by means of physical force.
2. That the physical force must be irresistible.
3. That the physical force must come from a third person.

Note: The irresistible force must produce such an effect upon the individual that, in spite of all resistance, it reduces him to a mere instrument, and as such, incapable of committing a crime. He must act not only without a will but against his will.

Paragraph 6. Uncontrollable Fear

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

UNCONTROLLABLE FEAR – offender employs intimidation or threat (that might cause injury to the accused or to other person or injury against property) in compelling another to commit a crime.

DURESS – use of violence or physical force.

Elements:

1. That the threat which caused the fear is of an evil greater than or at least equal to, that which he is required to commit.
2. That it promises an evil of such gravity and imminence that the ordinary man would have succumbed to it. (US vs Elicanal 35 Phil 209)

Note: A grave fear is not uncontrollable if there was an opportunity to verify one's fear.

Duress to be a valid defense should be based on real, imminent, or reasonable fear for one's life or limb. It

should not be inspired by fanciful, speculative or remote fear. A threat of future injury is not enough.

ACTUS ME INVITO FACTUS NON EST MEUS ACTUS – any act done by me against my will is not my act.

Paragraph 7. Insuperable Cause

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

LAWFUL CAUSE – the law itself provides for an excuse. E.g. omission to give help to person in danger when it would also cause danger to himself; a priest cannot be compelled to reveal what has been confessed to him (privileged communication)

INSUPERABLE CAUSE – some motive, which has morally, legally or physically prevented a person to do what the law commands; circumstances of time place, occasion that cannot be overcome. E.g. no available transportation – officer not liable for arbitrary detention; mother who was overcome by severe dizziness and extreme debility, leaving child to die – not liable for infanticide. (Pp. vs. Bandian, 63 P 530)

Elements:

1. An act is required by law to be done.
2. Person fails to perform such act.
3. His failure to perform such act was due to some lawful or insuperable cause.

Examples:

a. The municipal president detained the offended party for three days because to take him to the nearest justice of the peace required a journey for three days by boat as there was no other means of transportation. (*US vs. Vicentillo, 19 Phil. 118*)

The distance which required a journey for three days was considered an insuperable cause.

Note: Under the law, the person arrested must be delivered to the nearest judicial authority at most within 18 hours (now 36 hours, Art. 125 RPC); otherwise, the public officer will be liable for arbitrary detention.

b. A mother who at the time of childbirth was overcome by severe dizziness and extreme debility, and left the child in a thicket where said child died, is not liable for infanticide because it was physically impossible for her to take home the child. (*People vs. Bandian, 63 Phil. 530*).

The severe dizziness and extreme debility of the woman constitute an insuperable cause.

ABSOLUTORY CAUSES - that which has the effect of absolving the offender from criminal liability, although not from civil liability. They are those where the act

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committed is a crime but for reasons of public policy and sentiment there is no penalty imposed. It has the same effect as exempting circumstances.

- a. They are based on public policy.
- b. Examples of those in the RPC include:

Spontaneous Desistance During Attempted Stage (Art 6, RPC)

Light Felony is only attempted or frustrated, and is not against persons or property. (Art 7)

Death/Physical Injuries Under Exceptional Circumstances (Art 247)

The accessory is a relative of the principal (Art 20)

Legal grounds for arbitrary detention (Art 124)

Marriage of the offender with the offended party when the crime is rape, abduction, seduction, or acts of lasciviousness. (Article 344)

Legal grounds for trespass. Person entering another's dwelling for the purpose of preventing some serious harm to himself, the occupants of the dwelling or third person. (Art 280 par 3)

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

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, sister, brother-in-law and sister-in-law if 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.

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

- c. Examples which are recognized and developed by jurisprudence include:

In case of SOMNAMBULISM or one who acts while sleeping, the person involved is definitely acting without freedom and without sufficient intelligence, because he is asleep. He is moving like a robot, unaware of what he is

doing. So the element of voluntariness which is necessary in dolo and culpa is not present.

Mistake Of Fact

Set-Up – when an innocent person is intentionally placed by a law enforcer in a situation where it is made to appear that said person committed the crime. The person never committed the imputed crime.

Frame-Up – there is a crime committed by a 3^d person not by the innocent accused. The charge is false and the accused never committed the crime. It usually happens when the police plant, alter, destroy or suppress evidence to implicate innocent person as the author of the crime.

Instigation – is an instance where a law enforcer induced a person to commit a crime and later arrest him in flagranti. There is no commission of the crime were it not for the 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.

If the one who instigated is a private person, not performing a public function, both he and the one induced are criminally liable.

Elements of Instigation

1. Act of persuasion, trickery or fraud carried out by law enforcers to instigate the accused to commit the crime.
2. The origin of criminal design is in the mind of the law enforcer not the innocent accused. Crime is a product of creative activity of the law enforcer.

Test to Determine Instigation

1. *Subjective Test* – the focus is on the accused whether there was predisposition to commit the crime. What is considered is his mental state at the time of inducement.
2. *Objective Test* – the focus is on the conduct of the accused

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.

Difference between instigation and entrapment

1. In instigation, the criminal plan or design exists in the mind of the law enforcer with whom the person instigated cooperated so it is said that the person instigated is acting only as a mere instrument or tool of the law enforcer in the performance of his duties. On the other hand, in entrapment, a criminal design is already in the mind of the person entrapped. It did not emanate from the mind of the law enforcer entrapping him. Entrapment involves only ways and means which are laid down or resorted to facilitate the apprehension of the culprit.
2. Instigation absolves the person instigated from criminal liability. This is based on the rule that a person cannot be a criminal if his mind is not criminal. A sound public policy requires that the courts shall condemn the practice of instigation by directing the acquittal of the accused. On the other hand, entrapment is not an absolute cause. It is not even mitigating.

Forms of Entrapment

Sting Operation or buy-bust operation where for instance in drug cases, the law enforcer pretends to be the buyer and later apprehend the seller of drugs.

Illustrations:

An agent of the narcotics command had been tipped off that a certain house is being used as an opium den by prominent members of the society. The law enforcers cannot themselves penetrate the house because they do not belong to that circle so what they did was to convince a prominent member of society to visit such house to find out what is really happening inside and that so many cars were congregating there. The law enforcers told the undercover man that if he is offered a cigarette, then he should try it to find out whether it is loaded with dangerous drugs or not. This fellow went to the place and mingled there. The time came when he was offered a stick of cigarette and he tried it to see if the cigarette would affect him. Unfortunately, the raid was conducted and he was among those prosecuted for violation of the Dangerous Drugs Act. Is he criminally liable? No. He was only there upon instigation of the law enforcers. On his own, he would not be there.

The reason he is there is because he cooperated with the law enforcers. There is absence of criminal intent.

If the law enforcer were able to enter the house and mingle there, nobody would offer him a cigarette because he is unknown. When he saw somebody, he pleaded to spare him a smoke so this fellow handed to him the cigarette he was smoking and found out that it was loaded with a dangerous drug. He arrested the fellow. Defense was that he would not give a cigarette if he was not asked. Is he criminally liable? Yes. This is a case of entrapment and not instigation. Even if the law enforcer did not ask for a cigarette, the offender was already committing a crime. The law enforcer ascertained if it is a violation of the Dangerous Drugs Act. The means employed by the law enforcer did not make the accused commit a crime. Entrapment is not an absolute cause because in entrapment, the offender is already committing a crime.

In another instance, a law enforcer pretended to be a buyer of marijuana. He approached a person suspected to be a pusher and prevailed upon this person to sell him two kilos of dried marijuana leaves and this fellow gave him and delivered them. He apprehended the fellow. Defense is instigation, because he would not have come out for the marijuana leaves if the law enforcer had not instigated him. It is a case of entrapment because the fellow is already committing the crime from the mere fact that he is possessing marijuana. Even without selling, there is a crime committed by him: illegal possession of dangerous drugs. How can one sell marijuana if he is not in possession thereof. The law enforcer is only ascertaining if this fellow is selling marijuana leaves, so this is entrapment, not instigation. Selling is not necessary to commit the crime, mere possession is already a crime.

A fellow wants to make money. He was approached by a law enforcer and was asked if he wanted to deliver a package to a certain person. When that fellow was delivering the package, he was apprehended. Is he criminally liable? This is a case of instigation; he is not committing a crime.

If the instigator is a law enforcer, the person instigated cannot be criminally liable, because it is the law enforcer who planted that criminal mind in him to commit the crime, without which he would not have been a criminal. If the instigator is not a law enforcer, both will be criminally liable, you cannot have a case of

instigation. In instigation, the private citizen only cooperates with the law enforcer to a point when the private citizen upon instigation of the law enforcer incriminates himself. It would be contrary to public policy to prosecute a citizen who only cooperated with the law enforcer. The private citizen believes that he is a law enforcer and that is why when the law enforcer tells him, he believes that it is a civil duty to cooperate.

If the person instigated does not know that the person is instigating him is a law enforcer or he knows him to be not a law enforcer, this is not a case of instigation. This is a case of inducement, both will be criminally liable.

In entrapment, the person entrapped should not know that the person trying to entrap him was a law enforcer. The idea is incompatible with each other because in entrapment, the person entrapped is actually committing a crime. The officer who entrapped him only lays down ways and means to have evidence of the commission of the crime, but even without those ways and means, the person entrapped is actually engaged in a violation of the law.

If the one who made the instigation is a private person, he and the one induced are criminally liable for the crime committed: the former as principal by induction and the latter as principal by direct participation.

II. **Modifying Circumstances** - those which will either increase or decrease the penalty. They are called mitigating or aggravating circumstances.

**Chapter 3
CIRCUMSTANCES WHICH MITIGATE CRIMINAL LIABILITY**

Article 13. Mitigating Circumstances

Mitigating Circumstances – are those which, if present in the commission of the crime, do not entirely free the actor from criminal liability, but serve only to reduce the penalty.

Note: A mitigating circumstance arising from a single fact absorbs all the other mitigating circumstances arising from the same fact.

Basis: Mitigating circumstances are based on the diminution of either freedom of action, intelligence, or intent, or on the lesser perversity of the offender.

Classes of Mitigating Circumstances:

1. **Ordinary/Generic mitigating** - those enumerated in subsections 1-10 of Article 13. It is generic because it applies to all. It is ordinary because it can be offset by a generic aggravating circumstance.
2. **Privileged mitigating** - those mentioned in articles 68, 69, 64. Also 1 and 2 of Art 13. It cannot be offset by aggravating circumstance.

If both privileged and ordinary mitigating are present, appreciate the privileged (reduce by degree) before appreciate the ordinary mitigating (reduce by period).

If 2 or more mitigating circumstances arise from a single fact, only one will be appreciated. If they arise from several facts, all may be appreciated.

Mitigating circumstances only reduce the penalty, but do not change the nature of the crime.

	Ordinary	Privileged
As to nature	Can be offset by generic aggravating circumstances	Can never be offset by aggravating circumstances.
As to effect	If not offset, will operate to reduce the penalty to the minimum period, provided the penalty is divisible.	Operates to reduce the penalty by 1 or 2 degrees than that provided by law for the crime.
As to Kinds (sources)	those enumerated in subsections 1-10 of Article 13.	those mentioned in articles 68, 69, 64.

3. **Special Extenuating** – those which can be found in some other provisions which also have the same effect of reducing the penalty. It can be ordinary mitigating. They are called Special Mitigating Circumstances”.

Examples: Abandonment in case of adultery; Release of the victim within 3 days with the purpose not attained in the felony of Slight Illegal Detention.

Illustrations:

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.

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.

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.

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.

Paragraph 1. Incomplete Justifying or Exempting Circumstances

Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant.

Note: This applies when some elements necessary to justify the act or to exempt the actor are not attendant. But in the case of "incomplete self-defense, defense of relatives, and defense of a stranger", unlawful aggression must be present, it being an indispensable requisite.

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

A: *If the question specifically refers to incomplete self-defense, defense of relative or defense of stranger, I have to qualify my 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 impossible penalty shall be reduced by one or two degrees depending upon how the court regards the importance of the requisites present or absent.

Q: *How may other incomplete justifying circumstance affect criminal liability of the offender?*

A: *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.

Circumstances of justification which may give place to mitigation

1. Incomplete self-defense, defense of relatives, and defense of stranger

If two requisites are present, it is considered privileged mitigating circumstance. If there is only one present, it is only ordinary mitigating.

Unlawful aggression must be present, it being an indispensable requisite. What is absent is either one or both of the last two requisites.

2. Incomplete justifying circumstance of avoidance of greater evil or injury – if any of the last 2 requisites is absent.
3. Incomplete justifying circumstance of performance of a duty.

There are 2 requisites in this justifying circumstance. SC considered one of the 2 requisites as constituting the majority, thus privileged mitigating. It seems that there is no ordinary mitigating when the justifying or exempting has 2 requisites only. (Pp vs Oanis)

- Incomplete justifying circumstance of obedience to an order.

Circumstances of exemption which may give place to mitigation

- Incomplete exempting of minority over 15 but below 18 – if the minor acted with discernment, he is only entitled to a mitigating circumstance.
- Incomplete exempting circumstance of accident.

Under par. 4 of Article 12, four requisites must be present, namely:

- A person is performing a lawful act.
- With due care (else, it is culpable felony)
- He causes an injury to another by mere accident.
- Without fault or intention of causing it.(P/P vs Vitug 8 CAR {2s} 905, 909)

If the 2nd requisite and the first part of the 4th requisite are absent, the case will fall under article 365 which punishes a felony by negligence or imprudence. In effect, there is mitigating circumstance because the penalty is lower than that provided for intentional felony.

If the first requisite and the 2nd part of the 4th requisite are absent, because the person committed an unlawful act and had the intention of causing the injury, it will be an intentional felony. In this case, there is no mitigating.

- Incomplete exempting circumstance of irresistible force
- Incomplete exempting circumstance of uncontrollable fear – if only one of the 2 requisites is present, there is only a mitigating circumstance.

Note: Paragraphs 1 and 2 of Art 12 cannot give place to mitigating because the mental condition of a person is indivisible. BUT if the offender is suffering from some illness which would diminish the exercise of his will-power, without however depriving him of consciousness of his acts, such circumstance is considered mitigation under par 9 of Art 13.

Paragraph 2. Under 18 or Over 70 years

That the offender is under 18 years of age or over 70 years. In the case of the minor, he shall be proceeded against in accordance with article 192 of PD 603.

BASIS: diminution of intelligence

It contemplates the following:

- An offender over 15 but under 18 years of age.
- An offender over 70 years old.

Note: 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 of the trial or 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.

Offender Over 15 BUT Below 18 is a privilege mitigating circumstance, Effects

- The penalty will be reduced 1 degree lower
- The imposition of penalty imprisonment is suspended
- Subject the offender to diversion program of the government

Q: 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.

A: 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.

Offender Over 70, Only Ordinary Mitigating, Exceptions

GENERAL RULE: If the offender is over 70, he is entitled only to mitigating circumstance.

EXCEPTIONS:

- When he committed an offense punishable by death, that penalty shall not be imposed; AND
- When death penalty is already imposed, it shall be suspended and commuted.

Criminal Responsibility as to Age/Periods of Human Life under RPC

Age	Criminal Responsibility/Effect
15 years and below	Absolute irresponsibility, exempting circumstance *as amended by RA 9344
Above 15 but Below 18	Conditional Responsibility Without Discernment – not criminally liable With Discernment – criminally liable * as amended by RA 9344
Minor	Sentence is suspended

Delinquent	
18 to 70 years	Full Responsibility
Above 70	Mitigated Responsibility, no imposition of death penalty, execution of death penalty may be suspended or commuted.

Paragraph 3. No Intention to Commit so Grave a Wrong

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

BASIS : intent is diminished

Note: It can be taken into account only when the facts proven show that there is a notable and evident disproportion between the means employed to execute the criminal act and its consequences. (US vs Reyes 36 Phil 904) 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.

This usually applies to crimes against persons. It is not applicable to crimes against property, chastity, and culpable felonies which does not produced material harm or injury upon person.

In crimes against persons, if the victim does not die, the absence of the intent to kill reduces the felony to mere physical injuries. It is not considered as mitigating. It is mitigating only when the victim dies.

Factors that may be considered are:

1. Weapon/Means used
2. Location, nature and number of wounds inflicted
3. Distance between the accused and the victim
4. Utterances of the accused
5. Persistence of the attack
6. Mindset of the offender at the time of the commission of crime not his intention at the planning stage.

Paragraph 4. Provocation or Threat

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

Basis: Diminution of will power.

Elements:

1. That the provocation must be sufficient.
2. That it must originate from the offended party.
3. That the provocation must be immediate to the act, i.e., to the commission of the crime by the person who is provoked.

PROVOCATION – any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone.

Provocation	Vindication
Made directly only to the person committing the felony.	Grave offense (maybe a crime or not but the act is unjustifiable) may be also be against the offender's relatives mentioned by law. (Broader) There must be immediate vindication of grave offense.
Cause that brought about the provocation need not be a grave offense.	Offended party must have done a grave offense to the offender or his relatives or property.
Necessary that provocation or threat immediately preceded the act. No time interval.	May be proximate. Time interval allowed.

Note: Threat should not be offensive and positively strong. Otherwise, it would be an unlawful aggression, which may give rise to self-defense and no longer a mitigating circumstance.

Provocation Immediate to the Act

If there is a 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 offended party had already vanished or disappeared. The CRITERIA are:

1. TIME. If from the element of time, there is a material lapse of time 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 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 a mitigating circumstance.

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.

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.

NOTE: 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.

Q: 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?

A: 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.

Paragraph 5. Vindication of Grave Offense

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

Elements:

1. That there be a grave offense done to the one committing the felony, his spouse, ascendants, descendants, legitimate, natural or adopted brothers or sisters, or relatives by affinity within the same degrees;
2. That the felony is committed in immediate vindication of such grave offense.

Note: A lapse of time is allowed between the vindication and the doing of the grave offense as long as the offender is still suffering from mental agony brought about by the offense to him.

The word "immediate" here is an erroneous Spanish translation because the Spanish word is "proxima" and not "immediatamenta." 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.

Paragraph 6. Passion or Obfuscation

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

BASIS: Loss of reasoning and self-control, thereby diminishing the exercise of his will power.

Elements;

1. The accused acted upon an impulse;
2. The impulse must be so powerful that it naturally produced 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.

Passion Must Be Legitimate

Passion or obfuscation may constitute a mitigating circumstance only when the same arose from lawful sentiments.

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.

The passion or obfuscation must arise from an act which must:

1. come from the offended party;
2. unlawful;
3. naturally strong as to condition the mind of the offender to commit the crime; and
4. not far removed from the commission of the crime.

Feelings that may be mitigating

1. anger
2. despair
3. love
4. jealousy
5. embarrassment

Feelings which are not mitigating

1. despair based on immoral relationship (a live-in partner wanting to leave)
2. crime deliberately planned
3. caused by lawful duty/right (arrested during marriage ceremony)
4. caused by lawlessness
5. deep feelings out of religious bigot
6. feelings that has been formed
7. motivated by fight.

NOTE: Exercise of a right or fulfillment of duty is not proper source of passion or obfuscation. (P/P vs Noynay 58 Phil 393)

Passion and obfuscation cannot co-exist with treachery since this means that the offender had time to ponder his course of action.

Passion and Obfuscation	Irresistible Force
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Mitigating	Exempting
No physical force needed	Requires physical force
From the offender himself	Must come from a 3 rd person
Must come from lawful sentiments	Unlawful

Passion and Obfuscation	Provocation
Produced by an impulse which may be caused by provocation	Comes from injured party
Offense which engenders perturbation of mind need not be immediate	Immediately precede the commission of the crime
Effect is loss of reason and self-control on the part of the offender	Same

Paragraph 7. Surrender and Confession of Guilt

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 evidence for the prosecution.

NOTE: If both are present, considered as 2 independent mitigating circumstances.

BASIS: lesser perversity of the offender.

Voluntary Surrender, Elements:

1. Offender had not been actually arrested;
2. Offender surrendered himself to a person in authority or to the latter's agent;
3. Surrender was voluntary and spontaneous.

NOTE: *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.

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.

When the accused said " please accompany me to post bail", it is held that there is no voluntary surrender in this case.

Surrender, When Considered Voluntary

The accused must surrender his person with knowledge that he can be imprisoned.

*Must be **spontaneous**, demonstrating an intent to submit himself unconditionally to the person in authority or his agent in authority, either 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.

Voluntary surrender can be appreciated whether the surrender was done discreetly or by media.

Place of surrender: anywhere

Instances where there is voluntary surrender (Sir Sagsago)

1. The accused hid then he gave himself up before authorities knew where he was.
2. Accused did not leave and waited for officers to come
3. The accused gave himself up to authorities and discloses that he has committed a crime.

Voluntary Plea of Guilt

It contemplates of an arraignment at which the accused voluntarily enters a plea of guilt and admission of guilt during arraignment.

Voluntary Plea of Guilt, Elements:

1. it must be unconditional
2. spontaneous
3. prior to the presentation of evidence by the prosecution
4. at the earliest possible time
5. before a court competent to try the same.

NOTES: *Plea after arraignment* and after trial has begun does not entitle accused to the mitigating circumstance. The plea should be made at the earliest possible opportunity.

If accused pleaded not guilty during arraignment, he is still entitled to the mitigating circumstance if he withdraws his plea of not guilty before the prosecutor could present evidence. (if the prior plea wants to be withdrawn as when the accused wanted to change his plea from guilty to not guilty, file "motion to withdraw the previous plea.")

Even if accused pleaded guilty, he may be allowed to prove other mitigating circumstances.

The accused may ask that the aggravating circumstance be removed before he shall plead guilty. Once the info is changed wherein the aggravating circ. is removed, he can now plea to the charge in the new info

Plea to lesser charge, when considered mitigating. (plea bargaining)

- Plea to a lesser charge is not a mitigating circumstance because to be such, the plea of guilt must be to the offense charge.
- Plea to the offense charged in the **amended info**, lesser than that charged in the original info, is mitigating circumstance.
- In a case where the accused pleaded guilty to lesser offense but was rejected by the prosecution, but the prosecution was not able to prove the more serious offense, the accused can only be convicted for the lesser offense. His rejected offer to plead guilty for lesser offense is mitigating circumstance.

Paragraph 8. Physical Defect of Offender

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

BASIS: diminution of element of voluntariness.

NOTES: Physical defect must restrict means of action, defense or communication with fellow beings.

This provision does not distinguish between educated and uneducated deaf-mute or blind persons. It considers them on equal footing.

The physical defect must relate to the offense committed. Thus, blindness does not mitigate estafa.

Illustrations:

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.

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.

Paragraph 9. Illness of the Offender

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.

BASIS: diminution of intelligence and intent.

Requisites:

1. That the illness of the offender must diminish the exercise of his will power.
2. That such illness should not deprive the offender of the consciousness of his acts.

NOTES: When the offender completely lost the exercise of will-power, it may be an exempting circumstance.

It is said that this paragraph refers only to diseases of pathological state that trouble the conscience or will.

Example: kleptomaniac, pyromaniac, nymphomaniac, obsession for money, witchcraft

Not mitigating: psychological paralysis, psychopath-serial killers, abnormal sexual urges

Paragraph 10. Similar and Analogous Circumstances

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

NOTE: This authorizes the court to consider in favor of the accused "any other circumstance of a similar nature and analogous to those mentioned" in pars.1-9 of Article 13.

Examples:

1. Defendant who is 60 years old with failing eyesight is similar to a case of one over 70 years old.
2. Impulse of jealousy, similar to passion and obfuscation.
3. Testifying for the prosecution, analogous to plea of guilty
4. Outraged feeling of owner of animal taken for ransom is analogous to vindication of grave offense.
5. Voluntary restitution of property is similar to voluntary surrender. (the suspect voluntarily leads the police to where he hid the things he used in the crime: analogous to voluntary surrender)
6. Extreme poverty.

Not Examples:

1. Killing the wrong person.
2. Not resisting arrest is not the same as voluntary surrender.
3. Running amuck is not mitigating.

Chapter 4 CIRCUMSTANCES WHICH AGGRAVATE CRIMINAL LIABILITY

Aggravating Circumstances – those which, if attendant to the commission of the crime, serve to have the penalty imposed in its maximum period provided by law for the offense or those that change the nature of the crime.

BASIS: They are based on the greater perversity of the offender manifested in the commission of the crime as shown by:

- 1) the motivating power itself
- 2) the place of commission
- 3) the means and ways employed

- 4) the time
- 5) the personal circumstances of the offender, or the offended party.

Note: They arise either prior to or simultaneous with the commission of the crime.

Classification:

- 1) **Generic** - those that generally apply to all crimes.
 - a) Advantage taken of public position;
 - b) Contempt or insult of public authorities;
 - c) Crime committed in the dwelling of the offended party;
 - d) Abuse of confidence or obvious ungratefulness;
 - e) Place where crime is committed;
 - f) Nighttime, uninhabited place, or band;
 - g) Recidivism (reincidencia);
 - h) Habituality (reiteracion);
 - i) Craft, fraud or disguise;
 - j) Unlawful entry;
 - k) Breaking of parts of the house;
 - l) Use of persons under 15 years of age.
- 2) **Specific** - those which apply only to specific crimes, such as ignominy in crimes against chastity and cruelty and treachery which are applicable only to crimes against persons.
 - a) Disregard of rank, age or sex due the offended party;
 - b) Abuse of superior strength or means be employed to weaken the defense;
 - c) Treachery (alevosia);
 - d) Ignominy;
 - e) Cruelty;
 - f) Use of unlicensed firearm in the murder or homicide committed therewith (RA 8294).
- 3) **Ordinary** - those which may be offset by a mitigating circumstance and which if not offset, will result to the divisible penalty being imposed in its maximum period.
- 4) **Qualifying** - those that change the nature of the crime.
 - a. Alevosia (treachery) or evident premeditation qualifies the killing of a person to murder.
 - b. Art. 248 enumerates the qualifying aggravating circumstances which quality the killing of person to murder.
- 5) **Inherent** - those that must of necessity accompany the commission of the crime, thus not considered in increasing the penalty to be imposed.
 - a. Evident premeditation in robbery, theft, estafa, adultery and concubinage;
 - b. Abuse of public office in bribery;

- c. Breaking of a wall or unlawful entry into a house in robbery with the use of force upon things;
 - d. Fraud in estafa;
 - e. Deceit in simple seduction;
 - f. Ignominy in rape.
- c. **Special** – those which arise under special conditions to increase the penalty of the offense and cannot be offset by mitigating circumstances
- a. If there be a Mitigating circumstance it will affect the range of the maximum period
 - b. They are as follows:
 - a) That the act resulted to a complex crime (Art. 48)
 - b) That there was error in personae or mistake in the identity of the victim (Article 49)
 - c) That the accused took advantage of his official position(Article 62)
 - d) That the crime was committed by an organized syndicated crime group i.e by at least 2 persons organized to commit a crime for profit (Article 62)
 - e) That the accused is a quasi-recidivist under Art. 160.
 - f) That an unlicensed firearm was used in a killing pursuant to P.D. 1866 as amended by R.A. 8294. (Palaganas vs. PP., Sept. 12, 2006)

- (ii) Art. 248 as to those which qualify homicide to murder
- (iii) Art. 310 as to those which qualify theft
- (iv) Art. 338 as to those which qualify seduction

Special Laws

1. The Dangerous Drugs Law of 2002 provides the circumstance of having been found **positive for the use of dangerous drugs**
2. The Heinous Crime Law such that Reclusion Perpetua (death) shall be imposed in the crime of carnapping if murder, homicide or physical injuries were committed; or in the crime of Kidnapping
3. RA 8294 which provides the circumstance of **“use of unlicensed firearm in the commission of murder or homicide”**
4. The Anti Rape Law enumerates several qualifying circumstances of rape
5. R.A. 7610 “ The Special Protection of children Against Abuse, Exploitation and Discrimination Act” (1992) which provides that if the victim is below 12 years of age, the penalty for the crimes of murder, homicide, intentional mutilation, and serious physical injuries shall be reclusion perpetua ; and incase of qualified seduction, acts of lasciviousness, corruption of minors and white slave trade, the penalty shall be one degree higher than that imposed by the Revised Penal Code.

PRINCIPLES IN THE APPRECIATION

1. Aggravating circumstances shall NOT be appreciated if:
 - a. They constitute a crime specially punishable by law; or
 - b. It is included by the law in defining a crime with a penalty prescribed.

Example: “That the crime be committed by means of fire, ...explosion” (Art 14, par 12) is in itself a crime of arson (Art 321) or a crime involving destruction (Art 324). It is not considered to increase the penalty of arson or for the crime involving destruction.

2. Those which are inherent in the crime i.e those which must of necessity accompany the crime have no effect. (Art 62, par 2)

Example: Dwelling in trespass; Disregard of respect due to the sex in crimes against chastity.

3. Aggravating circumstance which arise from:
 - a. Moral attributes of the offender;
 - b. His private relations with the offended party; or
 - c. Any personal cause

GENERIC	QUALIFYING
Circumstance can be offset by an ordinary mitigating circumstance.	It cannot be offset by any mitigating circumstance
If not offset by any mitigating circumstance, increases the penalty to the maximum period without exceeding the limit prescribed by law.	Gives the crime its proper and exclusive name and places the author of the crime in such a situation as to deserve no other penalty than that specially prescribed by law for said crimes.
Must also be alleged in the information.	Must be specifically alleged in the information. If not, but proven during the trial, it will be considered only as generic.

SOURCES

The Revised Penal Code

1. The basic source is Article 14 which enumerates the ordinary and generic aggravating circumstances
2. As to the qualifying, special or specific aggravating, they are found in certain specific articles in Book II under the respective titles covering the crimes to which they apply

Examples:

- (i) Art. 125 as to those which qualify piracy

Shall only serve to aggravate the criminal liability of the principals, accomplices and accessories as to whom such circumstances are attendant. (Art 62, par 3)

4. The circumstances which consists:
 - a. In the material execution of the act; or
 - b. In the means employed to accomplish it,

Shall serve to aggravate the liability of only those persons who had knowledge of them at the time of the execution of the act or their cooperation therein. Except when there is proof of conspiracy in which case the act of one is deemed to be the act of all, regardless of lack of knowledge of the facts constituting the circumstance. (Art 62, par 4)

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.

5. All aggravating must be alleged in the Information in such a manner as to including a statement of the facts which support their existence. A general allegation is not sufficient. (S9, R110, 2000 Rules of Criminal Procedure)
6. If there are several aggravating circumstances present:
 - a. If they are based on separate and distinct facts, all will be appreciated.
 - b. If they are based on the same circumstance or set of facts, then the **Principle of Absorption** applies such that only one will be appreciated. In crimes against persons for example, treachery is preferred and it will absorb the other circumstances relating to the mode of the commission, but it will not absorb the circumstance that the crime was committed in consideration of a price, promise or reward.
 - c. In case of qualifying circumstances, those which are not absorbed will be considered as ordinary aggravating. Besides, one will

be considered as qualifying circumstance and the other will be considered as generic aggravating circumstance.

Article 14. AGGRAVATING CIRCUMSTANCES

Paragraph 1. Taking Advantage of Public Position

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

Elements:

1. Offender is a public officer;
2. Public officer must use the influence, prestige, or ascendancy of his office as a means to realize his purposes or to commit the crime.

NOTES:

1. This is now a special aggravating under R.A. 7659 (Heinous Crime Law) amending Article 62. If the crime is Violation of the Child Abuse Law, the penalty shall be in the maximum.
2. Applies only to an offender who is a public officer who used the influence, prestige, or ascendancy of his office as a means to realize his purposes or to commit the crime. Did he abuse his office to commit the crime?
3. Does not apply where being a public officer is inherent in the crime like those under the Title "Crimes By Public Officers" like malversation or falsification committed by public officers.
4. Examples: (a) A Jail Warden who orders the guard to beat up an inmate (b) A Police officer who orders his subordinates to steal or rob or maul (c) a Judge who detained his debtor for contempt of Court for refusing to obey the Judge Order for the debtor to appear in the sala of the Judge

Paragraph 2. In Contempt of, or with Insult to Public Authorities

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

Elements:

1. the public authority is engaged in the discharge of his duties;
2. he is not the person against whom the crime is committed;
3. the offender knows of the identity of the public authority; and
4. his presence has not prevented the offender from committing the criminal act.

PUBLIC AUTHORITIES - refer to persons in authorities and not to their agents.

PERSON IN AUTHORITY – person who is directly vested with jurisdiction and has the power to govern and execute the laws.

Examples: *Governor, Mayor, Punong Brgy., Councilors, Government Agents, Chief of Police (in places where they are allowed to prosecute in the absence of a public prosecutor)*

NOTES:

1. Teachers and lawyers are persons in authority for purposes of direct assault (Art. 148) and resistance and disobedience (Art. 152) but not under this article.
2. The public authorities are not the victims of the crime but that the crime was committed in the presence, view or hearing of the public authorities, and the accused knows them to be such. Otherwise, it will constitute direct assault.
3. Aggravating only in crimes against persons and honor, not against property.
4. This is NOT applicable when committed in the presence of a mere agent.

AGENT – subordinate public officer charged with the maintenance of public order and protection and security of life and property.

Example: *barrio vice lieutenant, barrio councilman*

Paragraph 3 Disrespect Due To Rank, Age, Sex

That the act be committed (1) with insult or in disregard of the respect due to the offended party on account of his rank, age, or sex, or (2) it be committed in the dwelling of the offended party, if the latter has not given provocation.

Rules regarding par 1

1. There must be a conscious or deliberate disregard of the respect due to the offended party so that these are incompatible when offender acted under passion, vindication or diminished will power, or was intoxicated.
2. Age, sex and rank apply only to crimes against persons or honor, they cannot be invoked in crimes against property.
 - a). **Age** – refer to old age or tender age of the victim.

Victim is either advanced in age or is relatively young, in relation to the accused.

- i). There must be a disparity in their age, not when both are in the same age level
- ii). This is inherent if the accused is charged with Child Abuse under R.A. 7610 but in cases where the victim of death is a child

below 12 years, the penalty shall be in the maximum, or one degree higher in cases of qualified seduction, acts of lasciviousness with the consent of the minor, corruption of minors and white slave trade.

- b). **Sex** – refers to the female sex, not to the male sex. The victim is a female and the accused is a male but this does not apply to crimes where sex is inherent as in abuses against women under R.A. 9262.

Under R.A. 7610 and RA 9262, there is an aggravating circumstance consisting of the fact that the victim is a **“Child”** who is either (i). below 18 years of age, or (ii). is over 18 but is unable to fully take care of himself or protect himself from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition.”

- c). **Rank** – the designation or title of distinction used to fixed the relative position of the offended party reference to others. There must be difference in the social condition of the offender and the offended party.

The victim is entitled to respect due to his social standing, high position or station in life, or employment, from one who is aware thereof and is lower in rank or position. Examples:

- i). Assault on the Company President by an employee thereof
- ii). Attacking the head of a church by a member

N.B.: Should there be not be abuse of rank on the part of the accused if he is higher in station and he uses this to commit a crime against one lower in rank?

3. These circumstances, if all are present, shall only be considered as one aggravating circumstance.
4. When NOT applicable
 - a. When offender acted with passion and obfuscation.
 - b. When there exists a relationship between the offended party and the offender.
 - c. When the condition of being a woman is indispensable in the commission of the crime. (e.g. parricide, seduction, abduction, and rape)
5. Disregard of sex and age are not absorbed in treachery because in treachery refers to the manner of commission of the crime, while the former pertains to the relationship of the victim.

Rules regarding par 2

1. **Dwelling** - refers to any structure habitually used by a person as his place of rest, comfort, privacy

and peace of mind. It may be man-made or a natural habitat, as a cave used as residence. What is emphasized is not the appearance but the purpose or use thereof.

- a) This includes the basic structure and the dependencies which are either (i) those so continued with it as to be considered integral parts thereof such as the roof, stairways, balcony or (ii) any structure attached to the main structure with a connecting door. Example: store, garage, restaurant, internet – café
2. Dwelling does not mean the permanent residence or domicile of the offended party or that he must be the owner thereof. He must, however, be actually living or dwelling therein even for a temporary duration or purpose.

3. The victim may be the owner, the lessee, a boarder, a stay-in employee, or a temporary visitor.

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.

4. The aggravating circumstance of dwelling requires that the crime be wholly or partly committed therein or in any integral part thereof.

This is also present in the following:

- i). when the accused actually entered the dwelling and committed a crime therein, whether the commission was previously intended or not.
 - ii). When the accused was outside, the act was committed outside but the effect or crime was produced inside the dwelling. E.g. the accused hiding in the bushes aimed his gun to the victim who was inside the house and thereafter killed the latter.
 - iii). When the crime was started outside but it continued and was consummated inside the dwelling.
 - iv). When the crime started in the dwelling even if continued and consummated outside the dwelling.
 - v). When the victim was taken from inside the dwelling and then brought outside where the crime was committed on his person.
5. This is not present when :
 - i). The victim gave sufficient provocation (there must exist a close relation between the provocation made by the victim and the commission of the crime by the accused.
 - ii). The accused is also an occupant of the same dwelling
Except: In case of adultery in the conjugal dwelling. HOWEVER, if the paramour also

dwells in the conjugal dwelling, the applicable aggravating circumstance is abuse of confidence.

- iii). Victim is not a dweller of the house.
- iv). Dwelling is inherent in the crime as in
 - a. robbery with force upon things

However, it is aggravating in robbery with violence against or intimidation of persons because this class of robbery can be committed without the necessity of trespassing the sanctity of the offended party's house.

- b. trespass to dwelling
 - c. violation of domicile.
6. What aggravates in the Commission of the Crime in One's Dwelling
 - a. The abuse of confidence which the offended party reposed in the offender by opening the door to him; or
 - b. The violation of the sanctity of the home by trespassing therein with violence or against the will of the owner.
7. Meaning of Provocation: It must be:
 - a. Given by the owner of the dwelling;
 - b. Sufficient; and
 - c. Immediate to the commission of the crime.

Note: If all these conditions are present, the offended party is deemed to have given provocation and the fact that the crime is committed in the dwelling of the offended party is NOT an aggravating circumstance.

REASON: When it is the offended party who provoked the incident, he loses his right to the respect and consideration due him in his own house.

Paragraph 4 With Abuse of Confidence or Obvious Ungratefulness

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

NOTES:

1. There are 2 aggravating circumstance which must be independently appreciated if present in the same case.
2. While one may be related to the other in the factual situation in the case, they cannot be lumped together as abuse of confidence requires a *special confidential relationship* between the

offender and the victim, but this is not so in ungratefulness.

3. Abuse of confidence requires the existence of a relationship between the accused and victim by reason of which the victim reposed trust and had confidence on the accused, but which the accused abused or took advantage of in order to commit the crime.
 - i. The relationship which involved trust may be:
 - a). Created by contract such as employment: as in the case of a body guard, baby sitter, secretary, house help and domestic helps, a lawyer
 - b). Created by law as an appointed Guardian, an adoptive parent
 - c). By Blood, such as between close relatives
 - d) By Affinity as between in-laws
 - e) By close association and membership in some common organization or group as fraternal group, teacher-pupil, church leaders-members,
 - f) By Human relationships such as between lovers, friends, roommates

Requisites of Abuse of Confidence

- 1) the offended party has trusted the offender;
- 2) the offender abused that trust by committing a crime against the offended party; and
- 3) the abused of trust facilitated the commission of the crime.

Note: If the confidence is reposed by another, the offended party is different from the one who reposed the confidence and abuse of confidence in that case is not aggravating.

Abuse of confidence is inherent in the crime of malversation (Art 217), qualified theft (Art 310), estafa by conversion or misappropriation (Art. 315), and qualified seduction (Art. 337)

Requisites of Obvious Ungratefulness

1. the offended party has trusted the offender;
2. the offender abused that trust by committing a crime against the offended party; and
3. the act be committed with obvious ungratefulness..

Note: Obvious ungratefulness or ingratitude presupposes that the accused was the recipient of some gratuitous act or benevolence or liberality from the victim for which he ought to have been grateful, but instead he committed a crime against the said victim.

Examples: the accused pick pocketed the doctor who save his life; a guest attacked his host; the accused stole from one who loaned money to pay off a debt; boxing the finder of one's lost property or who protected a missing relative.

Paragraph 5 Commission of a Crime in Certain Places

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.

The specified places are:

1. palace of the chief executive even IF ABSENT, i.e malacanang and the mansion, These represent the seat of sovereign authority and must therefore be respected
2. any other place where the president is present, provided that the crime was committed within his view or hearing or so near as to disrupt or disturb the president; like when the president is making the rounds in the market to check on prices ,or where he goes to cut ribbons, or even play golf

Note: Actual performance of duties not necessary when crime is committed in palace or in the presence of the chief executive.

3. where public authorities are in the actual performance of their functions, as in their offices
4. in a place dedicated to religious worship, even if no religious ceremony is going on.

NOTE: Any of these places must have been purposely sought for or they were deliberately chosen. Example: a thief who plies his trade inside church while victims are busy with their prayers.

Except for the third, the other places mentioned are aggravating per se even if no official duties or religious worship are being conducted.

Cemeteries are not considered as place dedicated to worship of God.

Requisites Regarding Public Authorities

1. crime occurred in the public office
2. public duties are actually performing their public duties.

	Par 5. Where public authorities are engaged in the discharge of their duties	Par 2. Contempt or insult to public authorities
	Public authorities in the performance of their official duties	Same
Place where public duty is	In their office.	Outside of their office.

performed		
The offended party	May or may not be the public authority.	Public authority should not be the offended party.

Requisites (Place Dedicated to Religious Worship)

1. the crime occurred in the place dedicated to worship of God regardless of religion;
2. The offender must have decided to commit the crime when he entered the place of worship.

Paragraph 6 (a) Nocturnity (b) Uninhabited place and (c) band

That the crime be committed in the nighttime 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.

NOTES: If all these aggravating circumstances concur in the commission of the crime, all will constitute one aggravating circumstance.

HOWEVER, if their element are distinctly palpable and can subsist independently, they shall be considered independently.

When should these Circumstances Aggravating

1. When it facilitated the commission of the crime; or
2. When especially sought for by the offender to insure the commission of the crime or for the purpose of impunity; or
3. When the offender took advantage thereof for the purpose of impunity.

NOCTURNITY OR NIGHTTIME - refers to the period of darkness between sunset and sunrise or from dawn to dusk.

NOTES:

- a). The crime must be wholly committed at night and not when it started at daytime and ended at night time or that it began at night time and was consummated at daytime. In short it began and ended at night.
- b). The emphasis is the absence of day light hence night time is not appreciated if the place is well lighted or illuminated, or it takes place inside a public establishment, even if dimly lighted as in night clubs.
- c). That the crime was at night time should not be an accidental fact.

- d). The two test to determine its presence :
 - (i) The **Subjective Test:** that the accused purposely sought the night. He could have committed the crime during day time but he waited for night time.
 - (ii) The **Objective Test:** the accused took advantage of it in order to (a) facilitate the commission of the crime (b) hide his identity (c) prevent aid from coming to the victim (d) minimize the defenses of the victim or (e) facilitate his escape.
- e). GENERAL RULE: **Nighttime is absorbed in treachery.**

EXCEPTION: Where both the treacherous mode of attack and nocturnity were deliberately decided upon in the same case, they can be considered separately if such circumstances have different factual bases. Thus:

- *In People vs. Berdida, et. al. (June 30, 1966),* nighttime was considered since it was purposely sought, and treachery was further appreciated because the victim’s hands and arms were tied together before he was beaten up by the accused.
- *In People vs. Ong, et. al. (Jan. 30, 1975),* there was treachery as the victim was stabbed while lying face up and defenseless, and nighttime was considered upon proof that it facilitated the commission of the offense and was taken advantage of by the accused.

UNINHABITED PLACE OR SOLITUDE (DESPOBLADOR) - One where there are no houses at all; a place at a considerable distance from town, or where the houses are scattered at a great distance from each other. Thus help to the victims difficult to come by. Examples: athletic bowl; the road from the gate of Club John Hay to EPZA; Kennon Road; long stretches of highway; the farms in the provinces.

As in night time, the place must have been purposely sought for to better attain the criminal purpose.

What should be considered is whether in the place of the commission of the offense, there was a reasonable possibility of the victim receiving some help.

BAND (CUADRILLA) - exists when MORE THAN THREE armed malefactors (bad elements) shall have acted together in the commission of the crime. Thus, there must be four or more armed men.

The requisite four armed persons contemplated in this circumstance must all be principals by direct participation who acted together in the execution of the acts constituting the crime.

If one of them was a principal by inducement, there would be no *cuadrilla* but the aggravating circumstance

of having acted with the aid of armed men may be considered against the inducer if the other two acted as his accomplice.

NOTES:

- (a) Armed means all of the accused, not just some, are provided with weapons or means of violence or instruments or tools capable of causing injury to a person. E.g. bladed weapons, stones, sticks
- (b) This is not applicable in crimes against chastity but considered in crimes against property, persons, illegal detention and treason.
- (c) It is distinguished from Organized Syndicated Crime Group which was a creation of R.A. 7659 and placed under Article 62. The latter refers to a group of two or more persons collaborating, confederating or mutually helping one another for purposes of gain in the commission of the crime
- (d) It is absorbed in the circumstance of abuse of superior strength. This is inherent in brigandage.

Paragraph 7. On the Occasion of a Calamity or Misfortune

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

Elements:

- 1. The crime was committed when there was calamity or misfortune;
- 2. The offender took advantage of the state of confusion or chaotic condition from such misfortune.

NOTES:

The calamity or misfortune must be serious such as conflagration, shipwreck, earthquake, epidemic, tsunami, volcanic eruption, resulting to widespread panic, chaos, confusion and a break down of discipline due to actual or impending danger to lives or to property.

May be due to an action of nature or to the action of man. Example: looting stores abandoned due to flood.

If the offender was provoked by the offended party during the calamity or misfortune, this aggravating may not be considered.

Reason for the aggravation:

The debased form of criminality met in one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune to despoil them. Therefore it is necessary that the offender took advantage of the calamity or misfortune.

Paragraph 8. With the Aid of Armed Men or Persons Who Insure or Afford Impunity

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

Requisites:

- 1) armed person took part in the commission of the crime, directly or indirectly.
- 2) accused availed of their aid or relied upon them when the crime was committed.

NOTES: There is no conspiracy between the accused and the armed men. He merely calls upon them to intimidate, threaten or break the resistance of the victim. The armed men participate in some minor capacity. Thus, they are merely accomplices.

If there are four-armed men, aid of armed men is absorbed in employment of a band.

Aid of armed men includes armed women.

It is not aggravating:

- 1) where the offender and the offended party are equally armed.
- 2) if the person committing the crime and the armed men are in conspiracy.
- 3) When the others were only casually present and the offender did not avail himself of any of their aid or when he did not knowingly count upon their assistance in the commission of the crime.

	Par 6. By a band	Par 8. With the Aid of Armed men
As to their number	Requires more than 3 armed malefactors i.e. at least four	At least two
As to their action	More than 3 malefactors shall have acted together in the commission of the offense. Thus, band members are all principals.	This is present even if one of the offenders merely relied on their aid, for actual aid is not necessary. Armed men are mere accomplices.

Paragraph 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.

REPETITION OF CRIMES

The four forms of repetition of crimes, or those which involve at least two convictions, are:

1. **RECIDIVISM (REINCIDENCIA)**– where a person, on separate occasions, is convicted of 2 offenses embraced in the same title in the RPC. This is ordinary or generic aggravating and is treated under Paragraph 9 of Article 14
2. **HABITUALITY or REITERACION** – where the offender has been previously punished for 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. This is also ordinary or generic and is treated under paragraph 10 of article 14.
3. **HABITUAL DELINQUENCY OR MULTI-RECIDIVISM** – where a person within a period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, is found guilty of the said crimes a third time or oftener. This is an extraordinary aggravating circumstance and is covered under Article 62 par 5. An additional penalty is added o the penalty for the crime committed.
4. **QUASI-RECIDIVISM** – where a person commits a felony before beginning to serve or while serving sentence on a previous conviction for a felony. This is a special aggravating in that it cannot be offset by mitigating circumstances and is covered under Article 160.

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 the RPC.

Requisites:

1. Offender is on trial for an offense;
2. He was previously convicted by final judgment of another crime;
3. Both the first and second offenses are embraced in the same title of the Code;
4. Offender is convicted of the new offense.

Meaning of “at the time of his trial for one crime”

It is employed in its general sense, including the rendering of the judgment. It is meant to include everything that is done in the course of the trial, from arraignment until sentence is announce in open court.

What is controlling is at the time of trial not at the time of the commission of the crime.

General Rule: To prove recidivism, it is necessary to allege the same in the information and attached thereto certified copy of the sentences rendered against the accused.

Exception: if the accused does not object and he admits in his confession and on the witness stand.

NOTES:

- a. It is important that: (a) there be two separate convictions so that it can not be considered in contemporaneous convictions (b) both be felonies and are found in the same title i.e. Crimes against persons, against property, against chastity and (c) the convictions must follow the chronology of the commission of the crimes.
- b. It does not prescribe no matter how far ago was the first conviction.
- c. The accused need not serve the penalty of his first conviction as he may have been pardoned or placed under probation because what matters is the fact of conviction and not service of sentence. The first penalty may be a fine.
- d. Amnesty extinguishes the penalty and its effects. HOWEVER, pardon does not obliterate the fact that the accused was recidivist. Thus, even if the accused was granted pardon in the first offense but he commits another felony embraced in the same title of the RPC, the first conviction is still counted to make him a recidivist. This is true even pardon is absolute, because pardon only excuses the service of the penalty, but not the conviction.
- e. The purpose/reason is to prevent specialization of crimes. The implication is that the offender is specializing on such kind of crime and the law wants to prevent any specialization.
- f. Being an ordinary aggravating, recidivism affects only the periods of a penalty, EXCEPT in prostitution and vagrancy (Art 202) and gambling (PD 1602) wherein recidivism increases the penalties by degrees. No other generic aggravating produces this effect.
- g. In recidivism, it is sufficient that the succeeding offense be committed after the commission of the preceding offense PROVIDED that at the time of his trial for the second offense, the accused had already been convicted of the first offense.
- h. If both offenses were committed on the same date, they shall be considered as only one, hence, they cannot be separately counted in order to constitute recidivism. Also, judgments of convictions handed down on the same day shall be considered as only one conviction. This is because the RPC requires that to be considered separate convictions, at the time of trial for one crime the accused shall have been previously convicted by final judgment of the other.

Paragraph 10. Habituality or reiteracion

That the offender has been previously punished for 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.

Requisites:

1. The accused is on trial for an offense;
2. He previously served sentence for another offense to which the law attaches an equal or greater penalty or for 2 or more crimes to which attaches a lighter penalty than that for the new offense;
3. He is convicted of the new offense.

NOTES:

- a. The prior offenses may be violations of special laws
- b. Its appreciation is discretionary with the court

Habitual delinquency	Recidivism	Reiteration/Habituality	Quasi-recidivism
Found guilty a third time or oftener.	It is enough that a final judgment has been rendered in the 1 st offense.	Offender served sentence for the 1 st offense.	One prior conviction
Serious/less serious physical injuries, Robbery, theft, estafa, or falsification	An offense embraced in the same Title of the RPC.	Not embraced in the same title. One offense which the law attaches an equal or greater penalty or two offenses to which the law attaches a lighter penalty.	Any offense
Extraordinarily aggravating Imposition of additional penalty.	Generic aggravating	Generic aggravating	Special aggravating.
10 years prescriptive period	Imprescriptible	Imprescriptible	2 nd felony must be committed after conviction by final judgment of the 1 st but before sentence begins or while serving

(NOTE: THE CIRCUMSTANCES COVERED UNDER PARAGRAPHS 11 TO 18 ARE LIKEWISE THE QUALIFYING CIRCUMSTANCES OF MURDER UNDER ARTICLE 148)

Paragraph 11. In consideration of a Price, Promise or Reward

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

Requisites:

1. There are at least 2 principals
 - a. Principal by Inducement (one who offers)
 - b. Principal by Direct Participation (accepts)
2. The PPR should be previous to and in consideration of the criminal act.

Whose Liability is Aggravated

1. If alleged as a general circumstance – only the liability of the receiver is affected.
2. If alleged as a qualifying circumstance – both the liability of the giver and receiver are affected.

NOTES:

- a. This circumstance affects both principals.
- b. This deals with the motive. It involves the giver of the price, promise or reward known as the Principal by Inducement and the actor as Principal by Direct Participation.
- c. "In consideration" means the PPR was the sole reason for the commission of the crime. Had it not been for the PPR the accused would not have committed the crime. The actor should not have his own reasons for committing the crime. Thus motive is essential.
- d. The PPR may be in any form: money, chattels, material services. It need not be actually delivered, it being sufficient that the inducement is accepted. The recipient may be the actor himself or a person closely associated with him such as: promise of a promotion or employment of a family member.
- e. If the reward is given after the commission of the crime without previous promise as an appreciation for the aid shown by the other accused, it cannot be considered for the purpose of increasing the penalty.

Paragraph 12. By Means of Inundation, Fire, Poison, Explosion etc

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

NOTES:

1. The circumstances under this paragraph will only be considered aggravating if used by offender as a means to accomplish a criminal purpose.
2. These artifices used involve great waste, destruction and ruin.
3. These may be (a) inherent in the crime as in Crimes Involving Destruction under Article 332 or (b) they constitute the crimes in themselves, as in Arson.
4. In cases where both burning and death occurs, in order to determine what crime/crimes was/were perpetrated- whether arson, murder, or arson and homicide/murder, it is de rigueur to ascertain the main objective of the malefactor, thus:
 - a). If the main objective is the burning of the building or edifice, (or enclosure for that matter) but death results by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed.
 - b). if the main objective is to kill a particular person who may be in a building or edifice (or enclosure) when fire is resorted to as a means to accomplish such goal, the use of fire becomes a qualifying aggravating circumstance and the crime is murder only even if a property is burned.
 - c). if the objective is to kill particular person, and in fact the offender has already done so, but fire is resorted as a means to cover up the killing, then there are two separate and distinct crimes committed- homicide/murder and arson. (PP. vs. Malngan 503 SCRA 294, Sept. 26, 2006)
 - d) If a person is killed, then the corpse is burned, the burning constitutes the qualifying circumstance of scoffing or ignominy and the crime would be murder
 - d) If the body of the dead is placed in an enclosure as a car or a house
5. When another aggravating already qualifies the crime, any of these circumstances shall be considered as generic aggravating.
6. Examples: opening the irrigation canal to flood the crops or to drown animals; placing a bomb under a bus; parricide/infanticide by poison

Par 12. "by means of inundation, fire, etc.	Par 7. "on the occasion of conflagration, shipwreck, etc.
The crime is committed by means of any such acts involving great waste or ruin.	The crime is committed on the occasion of calamity or misfortune.

Paragraph 13. Evident Premeditation

That the act be committed with the evident premeditation.

Note: (pre is prior, meditate is to think or to reflect) this means the commission of the crime was the result

of cool thought and reflection. The accused carefully planned and deliberated on the crime. The commission is not the result of a reflex action or an-on-the-spur of the moment decision.

Conditions/Requisites which the Prosecution must Prove:

- 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 and to allow his conscience to overcome the resolution of his will.

NOTES:

- a. The essence of evident premeditation is that the execution of the criminal act is preceded by cool thought and reflection upon the resolution to carry out the criminal intent within a space of time sufficient to arrive at a calm judgment. (*PEOPLE vs. ABADIES, GR No. 135975, August 14, 2002*)
- b. Evident premeditation is presumed to exist when conspiracy is directly established. When conspiracy is merely implied, evident premeditation cannot be presumed, the latter must be proved like any other fact. (*PEOPLE vs. SAPIGAO, et. al., GR No. 144975, June 18, 2003*)
- c. This is however inherent in crimes against property, such as in theft, robbery and estafa. But in Robbery with Homicide, the premeditation must be to cause death in the course of the robbery.
- d. In cases of aberration ictus, it does not apply unless the accused determined to kill not only the intended victim but others who might help or interpose a resistance.
- e. When the offender decides to kill a particular person and premeditated on the killing of the latter, but when he carried out his plan he actually killed another person, it cannot properly be said that he premeditated on the killing of the actual victim. Unless the accused determined to kill not only the intended victim but others who might help or interpose a resistance.
- f. But if the offender premeditated on the killing of *any* person, it is proper to consider against the offender the aggravating circumstance of premeditation, because whoever is killed by him is contemplated in his premeditation.
- g. Premeditation is absorbed by reward or promise. It is also absorbed in kidnapping for ransom; robbery with force upon things where there is entry into the premises of the offended party; estafa through false pretenses where the offender employs insidious means which cannot happen accidentally.
- h. Examples: Assassinations, ambushes, assaults due to a desire for vengeance

Paragraph 14. Craft, Fraud or Disguises

That craft, fraud, or disguise be employed.

Note: These are referred to as the intellectual means of committing a crime because they involve cunning, deception and the use of the intellect.

Requisite:

The offender must have actually used craft, fraud, or disguise to facilitate the commission of the crime.

CRAFT (ASTUCIA) - intellectual cunning or trickery.

Examples of Craft: luring the victim to the killing place; pretending to be relatives or employees of the Post Office to gain entry; pretending to be collecting agents; pretending to be legitimate passengers of taxicabs and thereafter the driver is robbed and killed; pretending a person needs help and thereby vehicles are stopped in the highway only to be robbed; the modus operandi of carnappers of telling the driver to stop due to a defect and then taking over the car when the driver stops

FRAUD (FRAUDE) - insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design.

Examples of fraud: inducing a victim to sleep in one's house; sending a letter purportedly written by a friend of the victim to lure the victim to come to the place where he is robbed; Telling a maid to give money and valuables as his employer met an accident and needs money for hospitalization; courting a lady and pretending to be an ardent suitor

Notes: Fraud is inherent in estafa by means of deceit Both craft (trickery) and fraud (deception) are intended to catch the victim unaware and to throw him off guard.

Craft and fraud may be absorbed in treachery if they have been deliberately adopted as the means, methods or forms for the treacherous strategy, or they may co-exist independently where they are adopted for a different purpose in the commission of the crime.

Illustration:

In Pp vs San Pedro, Jan 22, 1980, where the accused pretended to hire the driver in order to get his car, it was held there was craft directed to the theft of the vehicle, separate from the means subsequently used to treacherously to kill the defenseless driver.

In Pp. vs Masilang, July 11, 1986, there was also craft where after hitching a ride, the accused requested the driver to take them to a place to visit somebody, when in fact they had already planned to kill the driver.

CRAFT	FRAUD
The Act of the accused done in order not to arouse the suspicion of the victim constitutes craft.	When there is a direct inducement by insidious words or machinations, fraud is present.

DISGUISE (DISFRAZ) – resorting to any device to enable the offender to conceal his identity and to escape liability.

Notes: The test is whether the device or contrivance resorted to by the offender was intended to or make identification more difficult.

If he is recognized or identified, the disguise will not be considered aggravating.

Disguise includes all attempt to hide one's identity in the commission of a crime. It is not limited to wearing mask, moustaches, false glasses but also hiding one's identity in crimes of libel as hiding under the name "concerned citizen" or the use of assumed name; or muffling one's voice.

Paragraph 15 Taking Advantage of Superior Strength

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

Note: This paragraph contemplates 2 aggravating circumstances, either of which qualifies a killing to murder.

ADVANTAGE BE TAKEN – the deliberate use of excessive force out of proportion to the means of defense available to the victim. It connotes inequality of forces based on factors such as: (a) superiority in numbers (b) weapons used (c) physique, body built, age, sex (d) others such as the weakened condition of the victim on account of illness, physical defect or diminished reasoning (e) skill of the accused in unarmed combat or martial arts

Test for Abuse of Superior Strength

The relative strength of the offender and his victim and whether or not he took advantage of his greater strength.

NO Advantage of Superior Strength in the Following

1. One who attacks with passion and obfuscation does not take advantage of his superior strength.
2. When a quarrel arose unexpectedly and the fatal blow was struck at a time when the aggressor and his victim were engaged against each other as man to man.

By a Band	Abuse of Superior Strength
The element of band is appreciated when the offense is committed by more than 3 malefactors regardless of the comparative strength of the victim/s.	The gravamen of this circumstance is the taking advantage by the culprits of their collective strength to overpower their relatively weaker victim/s.
	Hence, what is taken into account here is not the number of the aggressors and the fact that they are armed, but their relative physical strength vis-a-vis the offended party.

Note: Abuse of Superior Strength absorbs cuadrilla/band.

Abuse of superior strength is inherent in the crime of parricide where the husband kills the wife. It is generally accepted that the husband is physically stronger than the wife.

Abuse of superior strength is also present when the offender uses a weapon which is out of proportion to the defense available to the offended party.

MEANS EMPLOYED TO WEAKEN DEFENSE – the offender employs means to materially weaken the resisting power of the offended party.

Examples:

1. Where one, struggling with another, suddenly throws a cloak over the head of his opponent and while in this situation he wounds or kills him.
2. One who, while fighting with another, suddenly cast sand or dirt upon the latter's eyes and then wounds or kills him.
3. When the offender who had the intention to kill the victim, made the deceased intoxicated, thereby materially weakening the latter's resisting power.
4. Covering the face of the victim with a sack; pulling down his pants; putting a sleeping pill to get him drowsy.

This circumstance is applicable only to crimes against persons, and sometimes against person and property, such as robbery with physical injuries or homicide.

Paragraph 16. Treachery

That the act be committed with treachery (alevosia).

TREACHERY (alevosia) – is present 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.

Elements:

1. the malefactors employ such means, methods or manner of execution that ensures his or her safety from the defensive or retaliatory act of the victim for the latter is not in a position to defend himself at the time of the attack;
2. such means, method or form of execution is consciously or deliberately adopted by the accused (not an on-the spur-of-the-moment decision).

The attack comes without warning and in a swift, deliberate and unexpected manner, affording the hapless, unarmed, and unsuspecting victim no chance to resist or escape.

Test: It is not only the relative position of the parties but, more specifically, whether or not the victim was forewarned or afforded the opportunity to make a defense or to ward off the attack.

NOTES:

- a. This is the qualifying circumstance of murder which is preferred over the others and it usually absorbs the other circumstances which have relation to the means or method of attack such as nighttime, uninhabited place, use of poison or explosion, fire or evident premeditation. If they are not absorbed they are appreciated as ordinary aggravating
- b. Applicable only to crimes against persons.
- c. Means, methods or forms need not insure the accomplishment of the commission of the crime.
- d. Applies even if the crime against persons is complexed with other crimes, such as direct assault.
- e. Killing a child is always treacherous.
- f. Rule as to Frontal Attacks:
GENERALLY: there is no treachery as the victim cannot be said to be unaware as he is face-to-face with his attacker.
EXCEPTIONS:
 - i. if the attack was so sudden, deliberate and unexpected and consciously adopted or
 - ii. if the victim was forced into a position where he is defenseless, as in the Teehankee case
- g. In case the attack was preceded by a quarrel: there is no treachery
- h. In case of Attack from Behind: Generally considered as treacherous if this mode was consciously adopted.
- i. Other situations where victim is said to be defenseless: a) where he was preoccupied: as when he was busy studying or eating or watching an ongoing activity or was answering the call of nature, or was working; b) victim was asleep or resting; c) body was found with hands tied.

- j. In case of several accused, treachery affects only those who had prior knowledge of or were aware of it, that is, in case of conspiracy.

When Must Treachery be Present

1. When the Aggression is Continuous – it must be present in the beginning of the assault.
2. When the Aggression is NOT Continuous – it is sufficient that it was present at the moment the fatal blow was given.

Note: Rule in case of a continuous attack or if there was a break in the attack. Applies to situations where, at the time of the infliction of the wound, the victim was defenseless a). There is no treachery if there was no treachery at the inception of the attack b) Even if there be no treachery at the inception of the attack but there was a break in the attack, then treachery is to be appreciated

Treachery Shall be Considered Even if:

1. The victim was not predetermined BUT there was a generic intent to treacherously kill any 1st 2 persons belonging to a class. (same rule for evident premeditation)
2. There was aberratio ictus (rule is different for evident premeditation)
3. There was error in personae (rule is different for evident premeditation)

REASON FOR THE RULE: When there is treachery, it is impossible for either the intended or the actual victim to defend himself against the aggression.

What Circumstances Absorbed by Treachery

1. Craft
2. Abuse of Superior Strength
3. Employing means to weaken the defense
4. Band
5. Aimed of armed men
6. Nighttime

Treachery cannot co-exist with passion and obfuscation.

Treachery	Abuse of Superior Strength	Means Employed to Weaken the Defense
Means, methods, or forms employed to make it difficult on the part of the offended party to defend himself.	No means employed. Offender merely takes advantage of his superior strength.	Means employed to materially weaken the resisting power of the offended party.

Paragraph 17. Ignominy

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

IGNOMINY – is a circumstance pertaining to the moral order, which adds disgrace or obloquy to the material injury caused by the crime.

Meaning Of “Which Add Ignominy To The Natural Effects Of The Act”

It means adding mental torture or insult to the injury. The means employed or the circumstances brought about must tend to make the effects of the crime more humiliating to victim or to put the offended party to shame, or add to his moral suffering. Thus it is incorrect to appreciate ignominy where the victim was already dead when his body was dismembered, for such act may not be considered to have added to the victim’s moral suffering or humiliation. (*People vs. Carmina, G.R. No. 81404, January 28, 1991*)

NOTES:

- a. This is appreciated in crimes against persons, chastity, honor, coercion, unjust vexation.
- b. Examples: kissing a girl in public; hanging the victim in a tree; throwing the body in a urinal or garbage pit; removing the pants; boxing the priest who is saying mass; committing rape dog style.
- c. This is the only aggravating which may arise after the commission of the crime; as chopping off the arms and legs or sex organ of the victim after killing him.

Ignominy	Cruelty
Shocks moral conscience	Physical
Moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive	Pertains to the physical suffering of the victim so the victim has to be alive.

Paragraph 18. Unlawful Entry

That the crime be committed after an unlawful entry.

There is an unlawful entry when an entrance is effected by a way not intended for the purpose.

UNLAWFUL ENTRY – when entrance is effected by a way not intended for a purpose. The passage is other than the door.

Reason for the Aggravation

One who acts, not respecting the walls erected by men to guard their property and provide for their safety, shows a greater perversity, a greater audacity, hence the law punishes him with more severity.

NOTES:

- a. Unlawful entry must be a means to effect entrance and not for escape.
- b. The entry must be to commit a crime and not just to violate the dwelling else the unlawful entry becomes trespass .
- c. This is inherent in crimes of trespass to dwelling, robbery with force upon things.

Paragraph 19. Breaking of a Wall, Roof, Floor, Window

That as a means to the commission of a crime a wall, roof, floor, door, or window be broken.

NOTES:

- a. These pertains to the wall, roof, floor of a dwelling and the breaking is for the purpose of gaining ENTRY in order to commit a crime inside. Else it is attempted trespass or malicious mischief. If the wall, etc. is broken in order to get out of the place, it is not aggravating.
- b. It is not necessary that the offender should have entered the building. Thus, if the offender broke the window to enable himself to reach a purse which he took while his body was outside the building, the crime of theft was attended by this aggravating.
- c. It is inherent in Robbery With Force Upon Things

Par 19	Par 18
It involves the breaking (rompimiento) of the enumerated parts of the house.	Presupposes that there is no breaking.

Breaking In is Lawful in the following

- 1. An officer, in order to make an arrest, may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be.
- 2. An officer, if refused admittance, may break open a door or window to execute the search warrant or liberate himself.
- 3. Replevin, S4, Rule 60 of the Rules of Court.

Paragraph 20. (a) With the Aid of a Minor and (b) Use of a Motor Vehicle

That the crime be committed with the aid of persons under fifteen years of age, or by means of motor vehicle, airships, or other similar means.

With the Aid of a Minor

MINOR – is one below 15. Suppose the accused is a minor over 15 but below 18?

Reason of the Aggravation

The purpose is to prevent the corruption of minors.

Use Of Motor Vehicle, Airships, Or Other Similar Means

MOTOR VEHICLE - refers to modes of transporting people and goods ran by motor energy not muscle effort. A bicycle to which is attached a motor is a motor vehicle.

Reason of the Aggravation

It is intended to counteract the great facilities found by modern criminals in said means to commit crime and flee and abscond once the same is committed.

Meaning of "or Other Similar Means"

Should be understood as referring to motorized vehicles or other efficient means of transportation similar to automobile or airplane.

NOTES:

- a) Must be used to commit, or to facilitate the commission of the crime
- b) If used to kill a person as by hitting running over him, this may qualify the killing to murder
- c). Examples: (i) transporting the victim on board a car as in abduction or kidnapping (ii) widespread robbery using a vehicle to go around the neighborhood.

Paragraph 21 By Inflicting Another Wrong Not Necessary to the Commission (Cruelty)

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

CRUELTY - making the victim suffer slowly and deliberately. It is synonymous to torture or slow death or acts of sadism. It is usually done by inflicting wounds on the victim while the victim is still alive and at intervals of time to cause maximum pain. Or that the method of killing involves lingering pain or suffering. Example: death by skinning him alive, or by slow fire. (Memory Aid: Pinikpikan)

Requisites:

- 1. The injury caused be deliberately increased by causing other wrong;
- 2. The other wrong be unnecessary for the execution of the purpose of the offender.

NOTES:

- a. Other crimes such as rape, unnecessary deaths or physical injuries are appreciated as aggravating the crimes of robbery with homicide.
- b. There must be evidence showing the accused inflicted the alleged wounds slowly and gradually while the victim is still alive to prolong his suffering and that he is delighted in seeing the victim suffer in pain. In the ABSENCE of this effect, there is no cruelty.

- c. Cruelty is not inherent in crimes against persons.
- d. Cruelty cannot be presumed.
- e. If the victim was already dead when the acts of mutilation were being performed, this would also qualify the killing to murder due to outraging of his corpse.

IGNOMINY (PAR.17)	CRUELTY (PAR. 21)
Involves moral suffering	Refers to physical suffering

Chapter 5
ALTERNATIVE CIRCUMSTANCES

Article 15. Alternative Circumstances

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:

- 1) relationship
- 2) intoxication
- 3) degree of instruction and education of the offender.

RELATIONSHIP - it shall be taken when the offended party is the:

- a) spouse
- b) ascendant
- c) descendant
- d) legitimate, natural or adopted brother or sister, or
- e) relative by affinity in the same degree of the offender.

Note: Under Article 15, relatives by consanguinity within the 4th civil degree are not included. Also not included is the relationship of uncle and niece.

Other Relatives Included (By Analogy)

1. The relationship of step parents and step children.
REASON: It is the duty of stepparents to bestow upon their stepchildren a mother's/father's affection, care and protection.
2. The relationship of adopted parent and adopted child.

Effect of Relationship In general:

- i). As basis for a justifying circumstance
- ii). As an absolatory cause under Articles 20, 247 and 332
- iii). As an alternative circumstance under Article 15

Relationship is Exempting when:

- a) accessory is related to the principal (Art. 20)

- b) a spouse does not incur criminal liability for a crime of less serious physical injuries or serious physical injuries if it was inflicted after having surprised the offended spouse and the paramour actually in the act of having sex. (Art. 247)
- c) in the crimes of theft, malicious mischief and estafa, if the offender is the spouse, ascendant, or descendant or if the offender is a sister or brother-in-law of the offended party and they are living together. (Art. 332) This is an absolatory cause.

Relationship is Qualifying when:

- a) Qualified seduction: brother (Art. 337)
- b) Rape (Art. 335): when the victim is under 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim.

Relationship is Mitigating

1. As a rule in crimes against property (as in case by a mother-in-law who stole from his son-in-law; robbery, usurpation, fraudulent insolvency, and arson)
2. In less grave or light offenses where the victim is a relative of a lower degree

Relationship is Aggravating

- a. In crimes against person
 - i. It is aggravating where the offended party is a relative of higher degree than the offender or when the offender and the offended party are relatives of the same level.
 - ii. BUT when it comes to physical injuries
 1. It is aggravating when serious physical injuries even if the offended party is descendant of the offender. It is also aggravating if the offended party is a relative of higher degree of the offender.
 2. It is mitigating when less serious or slight physical injuries, if the offended party is a relative of a lower degree.
 - iii. In the crime of Homicide or Murder, relationship is aggravating even if the victim is a relative of lower degree.
 - iv. In Rape, relationship is aggravating when a stepfather raped his stepdaughter or a father raped her daughter.

- b. In crimes against chastity, relationship is always aggravating regardless of whether the offender is a relative of higher or lower degree of the offended party.
- c. In crimes against honor
- d. Where the offense is a grave felony

- e. If the offense is a less grave or light felony, it is aggravating if the victim is a relative of an equal or higher degree

INTOXICATION - is ipso facto mitigating, thus if the prosecution wants to deny the offender the benefit of this mitigating, they should prove that it is HABITUAL and INTENTIONAL.

Presupposes that when the accused committed the crime, he had taken in alcohol in such quantity as to have affected his mental faculties, blurred his reasoning and diminished his self control.

There is no fixed rule as to the minimum quantity of alcohol in-take required before it is said that a person's mental faculties had been affected. This is dependent on several factors such as the type or kind of liquor taken in i.e. hard vs. soft liquor or wine, brandy vs. gin vs. scotch vs. beer; manner of in-take e.g. straight or on the rocks or food is taken; as well as the personal factors such as sex, age, state of health and other factors affecting the alcohol tolerance of a person.

Test: (i) external conduct of a person (ii) breathalyzer to determine if a person was driving under the influence of liquor (iii) Rhomberg test and tandem gait, etc

When It is Mitigating

It is Mitigating if intoxication is not habitual; or intentional such that the crime is said to be the result of an impulse or urge or delusion due to the effects of alcohol or if not subsequent to the plan to commit a felony.

When It is Aggravating

It is aggravating when the intoxication is intentional i.e. to strengthen the resolve or to use as shield or excuse; or habitual i.e the accused is used to taking in alcohol as to be alcoholic. However the drinking of wine as an appetizer is not included.

NOTE: When it is proven that the accused was intoxicated when he committed the crime, the presumption is in favor of mitigation and it is for the prosecution to prove it was intentional or habitual.

DEGREE OF INSTRUCTION AND EDUCATION

What is involved is whether or not the accused finished formal education or schooling. However what is considered is not so much the illiteracy or literacy but the level of intelligence. The emphasis is the lack of sufficient intelligence and knowledge of the full significance of one's actions

NOTES:

- a. Some are naturally intelligent and mentally alert though illiterate while some literates are densely ignorant
- b. Note that the rule does not apply to persons 15 years of age or below even if naturally intelligent or gifted in secondary school because they are presumed to be incapable of forming criminal intent.

When it is Mitigating

Generally it is mitigating, especially to crimes mala prohibita, but not to crimes universally condemned as evil or those which are mala in se or where the natural law posits the general and obvious rule that said crime should not be done, like rape, murder, or robbery.

When it is Aggravating

When the accused has a high degree of education which he used or availed of to commit or facilitate the commission of the crime. Examples are:

- i) A law student who used his knowledge to defraud another
- ii) Physician who kills his patients
- iii) A handwriting expert who falsifies using his knowledge
- iv) A Financial Analyst defrauding a business entity
- v) Computer expert who hacks

Title 2

PERSONS CRIMINALLY LIABLE FOR FELONIES

WHO ARE CRIMINALLY LIABLE

Article 16. 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

NOTES:

- a. The classification into principals, accomplices and accessories is based on the **Degree of Participation** in the commission of a crime where at least two persons participated.
- b. This classification does not apply to violations of special laws where the violators are referred to plainly as offenders, violators, culprits or criminals EXCEPT if the latter provides for the same graduated penalties as those of RPC.
- c. The classification into the three major classes does not apply if the several offenders acted in conspiracy as all will be considered as principals.

- d. The purposes of the classification is to determine the proper penalty to be imposed upon the accused. This is one of the factors in determining the proper penalty to be actually imposed.
- e. When there are several participants, the first thing to do is find out if there is CONSPIRACY. However, if the participation of 1 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 may be regarded only as an accomplice. The reason for this is that the law favors a milder form of criminal liability if the act of the participant does not demonstrate clear perversity.
- f. Accessories are not liable for light felonies. REASON: In the commission of light felonies, the social wrong as well as the individual prejudice is so small that penal sanction is unnecessary.

PRINCIPLES OF CRIMINAL LIABILITY

- a. To be guilty of a crime, one must commit the crime himself (principal) or if committed by another, he must, in some manner, participate either in its commission (accomplice) or in the fruits thereof (accessory).
- b. A person cannot escape punishment when he participates in the commission of a crime on the ground that he simply acted as an agent or representative of a party.
- c. Criminally liability is purely personal and is limited to the acts/omissions of an accused and not for the acts or omissions of third persons (*res inter alios acta rule*). Except when there exists a conspiracy between two or more persons where the act of one becomes the act of all resulting to a joint criminal responsibility or collective liability.
- d. There are 2 Parties in all crimes

ACTIVE SUBJECT (THE CRIMINAL) – those enumerated under Article 16.

AS A RULE only natural persons who are alive can be held criminally liable.

REASONS:

- (i) The element of mens rea can only be found in natural persons: malice in intentional felonies and indifference in culpable felonies are attributes of natural persons *i.e. because of the highly personal nature of the criminal responsibility.*
- (ii) juridical persons cannot be arrested

- (iii) the principal penalties consisting of deprivation of life or of liberty, restriction of liberty, deprivation of rights, and the accessory penalties of disqualification, cannot be served by juridical persons.

When may a juridical entity be held criminally liable?

A juridical entity may be prosecuted and held liable if the offense is punishable by a fine.
e.g. cancellation of license or franchise

For what acts may a juridical person be held liable?

1. For acts committed by its responsible officers, policy makers or those having charge of the management and operation of the entity.
2. A corporation also incurs criminal liability for the acts of its employees or agents if (i) the employee or agent committed the offense while acting within the scope of his employment and (ii) the offense was committed with at least an intent to benefit the employer (PP. vs. Chowderry, 235 SCRA 572)

Who are liable if the violation was made by a juridical entity?

Per Ching vs. Secretary of Justice (Feb. 06, 2006) the principles maybe summarized as follows

1. The juridical entity itself where the penalty is one which can properly be imposed on it, such as fine or revocation of license
2. The officers, employees or agents who actually executed the prohibited act or incurred the omission

Example: Llamado vs. CA (270 SCRA 423) it was held that even if the officer of the corporation had no involvement in the negotiation of the transaction for which he, as treasurer of the corporation, issued a postdated check which bounced, he is liable for Violation of B.P. 22.

3. The person specifically mentioned by law violated to be held liable.

Examples:

- a). Section 8 of R.A. 8042 (Migrant and Overseas Filipino Act of 1995) provides: "In cases of juridical persons the offices having control, management, and direction of their business shall be held liable"

- b). P.D. 1612 (Anti Gambling Law) provides that the President shall be liable if gambling is carried on by a juridical entity
 - c). In case of libel under Art. 360 the persons liable shall be the editor of a book or pamphlet, business manager of a daily newspaper, magazine or serial publication
 - d). when the President of the corporation fails to remit contributions to PAG-IBIG
4. a). An employee or officer even if not among those enumerated by the law violated, if, with knowledge of the illegal act/business, he consciously contributes his efforts to its conduct or promotion (PP. vs. Chowderry)
- b). The culpability of the employee hinge on his knowledge of the offense and his active participation on its commission. Where it is shown that the employee was merely acting under the direction of his superiors and was unaware that his acts constituted a crime, he may not be held criminally liable for an act done for and in behalf of his employer (PP. vs. Corpuz, October 1, 2003)
5. Those who, by virtue of their managerial position or similar relations to the corporation could be deemed responsible for its commission, if by virtue of their relations to the corporation, they had the power to prevent the act (crime by omission)

Where the act is a violation by a juridical entity, the officers or employee cannot put up the following defenses:

- 1. It is no defense that he did not benefit from the act
- 2. The accused cannot hide behind the principle of separate corporate personality of the juridical entity in order to escape liability

PASSIVE SUBJECT (THE INJURED PARTY) – is the holder of the injured right: the man, the juristic person, the group, and the State.

GENERAL RULE: Corpses and animals cannot be passive subjects because they have no rights that may be injured.

EXCEPTION: Under A253, RPC, the crime of defamation may be committed if the imputation tends to blacken the memory of one who is dead.

Article 17. PRINCIPALS

THREE TYPES OF 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.

NOTE: There are three kinds of principals depending on the nature of their participation in the commission of the crime. However, irrespective of what type of principal they belong, their penalty will be the same.

Par 1. PRINCIPAL BY DIRECT PARTICIPATION (PDP)

PRINCIPAL BY DIRECT PARTICIPATION (PDP) - refers to those who actually and directly take part in the execution of the act. In all crimes there must always be those who actually perform the act which brings about the crime. They may be only one person or more. Whenever there are two or more involved in a crime, it becomes necessary to find out those who actually executed the act so that all may be held equally liable.

Requisites:

- 1. That they participated in the criminal resolution; and
- 2. That they carried out their plan and personally took part in its execution by acts which directly tended to the same end.

NOTE: If The 2nd element is absent, those who did not participate in the commission of the of the acts of execution cannot be held criminally liable, UNLESS the crime agreed to be committed is treason, sedition, coup d'etat, or rebellion.

Meaning of "personally took part in its execution"

- 1. That PDP must be at the scene of the crime, personally taking part in its execution.
- 2. Under conspiracy, although he was not present in the scene of the crime, he is equally liable as PDP.

To hold two or more persons as principals by direct participation, it must be shown that there exists a conspiracy between and among them. This is not the conspiracy punished as a crime but the conspiracy as a mode or manner of incurring criminally or that legal relationship whereby, in the eyes of the law, it may be said that the act of any one is the act of all.

For conspiracy to exist, there must be an intentional felony, not a culpable felony, and it must be proved that all those to be considered as PDPs performed the following:

A. **Unity of Intention** - They participated, agreed, or concurred in the criminal design, intent or purposes or resolution.

1. This participation may be prior to the actual execution of the acts which produced the crime (**Anterior Conspiracy**) or it may be at the very moment the acts are actually being executed and carried out (**Instant Conspiracy**).
2. Hence it is not necessary to prove that before the commission of the crime, the several accused actually came and met together to plan or discuss the commission of the crime.
3. "Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create a joint criminal responsibility" (Sim Jr. vs. CA, 428 SCRA 459)

B. **Unity of Action** - All participated in the execution or carrying out of the common intent, design, purpose or objective by acts intended to bring about the common objective.

1. Each must have performed an act, no matter how small or insignificant so long as it was intended to contribute to the realization of the crime conspired upon. This requires that the principal by direct participation must be at the crime scene, except in the following instances: (still a principal by direct participation)
 - a). When he is the mastermind
 - b). When he orchestrates or directs the actions of the others from some other place
 - c). His participation or contribution was already accomplished prior to the actual carrying out of the crime conspired such: his role was to conduct surveillance or to obtain data or information about the place or the victims; to purchase the tools or weapons, or the get away vehicle, or to find a safe house
 - d). His role/participation is to be executed simultaneously but elsewhere, such as by creating a diversion or in setting up a blocking force (e.g. to cause traffic).
 - e). His role/participation is after the execution of the main acts such as guarding the victim; looking for a buyer of the loot; "laundering" the proceeds of the crime.

Participation In Both (Intention And Action), Why Necessary:

3. Mere knowledge, acquiescence or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a

view to the furtherance of the criminal design and purpose. Conspiracy transcends companionship.

4. He who commits the same or similar acts on the victim but is a stranger to the conspiracy is separately liable. Simultaneous acts by several persons do not automatically give rise to conspiracy.

Examples:

1. X joined in the planning of the crime but was unable to join his companions on the day of the crime because he was hospitalized. He is not liable.
2. X is the common enemy of A and B who are strangers to one another. Both A and B chanced upon X. A stabbed X while B shot him. A and B will have individual liabilities.

EXCEPTION: When a person joins a conspiracy after its formation, he thereby adopts the previous acts of the conspirators which are admissible against him. This is under the **Principle of Conspiracy by Adoption.**

Proof of Conspiracy

Best proof of conspiracy: express conspiracy

Direct proof of conspiracy is not necessary. The existence thereof maybe inferred under the Doctrine of Implied Conspiracy which directs that if two or more persons:

- (v) Aimed by their acts towards the accomplishment of the same unlawful object.
- (vi) Each doing a part so that their acts, though apparently independent, were in fact connected and cooperative.
- (vii) Indicating a closeness of personal association and a concurrence of sentiment.
- (viii) A conspiracy maybe inferred though no actual meeting among them to concert is proved.

Effect of Conspiracy

There will be a joint or common or collective criminal liability, otherwise each will be liable only to the extent of the act done by him.

For what crime will the co-conspirators be liable?

1. For the crime actually committed if it was the crime agreed upon.
2. For any other crime even if not agreed upon, provided it was the direct, natural, logical consequence of, or related to, or was necessary to effect, the crime agreed upon (e.g.killing the guard). Otherwise only the person who committed the different crime will be held liable (e.g. killing a stranger)

When is a co-conspirator freed from liability?

- a. Only if he has performed an overt act either to:
 1. Disassociate or detach himself from the plan
 2. Prevent the commission of the second or different or related crime
- b. Likewise, if for any reason not attributable to the law enforcement agents, he was not able to proceed to the crime scene and/or execute an act to help realize the common objective, then he cannot be held liable as a co-conspirator. Thus he is not liable if he got sick, overslept, or forgot about it, but not when law agents took him into custody to prevent him from doing his part of the agreement.

Thus in Robbery with Homicide, all who conspired in the robbery will be liable for the homicide unless one of the conspirators proved he tried to prevent the homicide.

Par 2. PRINCIPALS BY INDUCEMENT (PI)

PRINCIPALS BY INDUCEMENT (PI) - those who induce PDP to commit a crime. 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. Advised language is not enough, unless he who made such remark or advise is a co-conspirator in the crime committed.

Requisites:

1. that the inducement be made directly with the intention of procuring the commission of the crime.
2. that such inducement be the determining cause of the commission of the crime.

NOTES:

- The one who induced is merely an accomplice if he merely goaded or provided encouragement to the offender.
- If the inducement was made while the crime is already taking place, inducement cannot be said to be the reason for the felonious act.
- One cannot be held guilty of having instigated the commission of the crime without first being shown that the crime was actually committed or attempted by another.
- NO PI or PIC unless there is PDP. But there can be PDP without PI or PIC.

Ways of becoming a principal by inducement:

1. by directly forcing another to commit a crime

- by using irresistible force;
- by causing uncontrollable fear.

Note: The PDP may set up the use of force as an exempting circumstance.

2. by directly inducing another to commit a crime. The inducement assumes several forms such as the following:

- By the giving of a price, promise or reward. This must be made with the intention of procuring the commission of the crime and not as an expression of appreciation. The same must be the sole reason for the commission of the crime.

This also serves as an aggravating circumstance which will affect both the giver and the recipient.

- By giving Words of Command.
 1. The utterer must have an ascendancy or influence over the PDP, or is one entitled to obedience from the PDP
 2. The words must be so direct, so efficacious, so powerful and persistently made, as to amount to physical or moral force
 3. Must be made directly with the intention of procuring the commission of the crime and is therefore the determining cause and it thus precedes the crime
 4. They do not include thoughtless or imprudent utterances. Mere advises, counsel or suggestions or exhortations.
 5. Command prior to the commission.
 6. Executor had no personal reason.

- By the use of Inciting Words. These are words uttered while a crime is going on by one who is present and are directed to a participant in the crime, such as the words "sige pa, kick him, kill him, bugbugin mo". The following must however be considered
 1. Whether the words were uttered by one with moral ascendancy over the accused and to whom obedience is due from the accused
 2. Whether the utterances were the result of the excitement generated by the situation (*not inciting word*) or that the utterer was caught up in his own excitement or emotion, or whether the utterer was coolly and deliberately uttering such words with the intention that they be acted upon (*inciting word*)
 3. Whether the crime would be committed anyway even without the utterances (*not inciting word*), or if such utterances were the moving cause of the crime (*inciting word*)

- By earnest and persistent solicitation or cajoling amounting to moral force by one with authority or influence over the accused (Sir Sagsago)
E.g. everyday W tells H that she hates C and that H must kill C. after 2 years, H actually killed C.

Principal by induction	Offender who made proposal to commit a felony
There is an inducement to commit a crime	Same.
Becomes liable only when the crime is committed by PDP.	The mere proposal to commit a felony is punishable in treason or rebellion. However, the person whom the proposal is made should not commit the crime. Otherwise, the proponent becomes PI.
Involves any crime.	The proposal to be punishable must involve only treason or rebellion.

Effects of Acquittal of PDP Upon Liability of PI

1. Conspiracy is negated by the acquittal of co-defendant.
2. One cannot be held guilty of having instigated the commission of the crime without first being shown that the crime was actually committed or attempted by another.

BUT if the one charged is PDP is acquitted because he acted without intent or malice, his acquittal is not a ground for the acquittal of the PI.

REASON: In exempting circumstance, such as when the act is not voluntary because of lack of intent on the part of the accused, there is a crime committed only that there is no criminal.

Par 3. PRINCIPALS BY INDISPENSABLE COOPERATION (PIC)

PRINCIPALS BY INDISPENSABLE COOPERATION (PIC)

- those who cooperate in the commission of the offense by another act without which it would not have been accomplished. There must be a community of design or common purpose between the PIC and the PDP, but not a conspiracy. The PIC knows or is aware of the intention or purpose of the PDP and he cooperates or concurs in its realization by performing an act without which the offense would not have been accomplished.

Requisites:

1. Participation in the criminal resolution, that is, there is unity of criminal purpose and intention

immediately before the commission of the crime charged.

2. Cooperation in the commission of the offense by performing another act, without which it would not have been accomplished.

The cooperation may be:

- a. By moral cooperation such as (i) providing technical advise, expertise on how to execute the crime such as on how to avoid security arrangements (ii) revealing the combination numbers of a bank vault, or the location of warning devices (iii) revealing the whereabouts of a victim.
- b. By Physical external acts such as:
 1. Providing the weapon or tools, or the key to open the building
 2. Providing the mode of transportation to enable the accused to reach the place of the scene of the crime
 3. Dragging he victim to the place of execution
 4. Leaving open the doors, giving the key to open the building
 5. Holding on to a victim to preventing him victim from resisting or drawing a weapon
 6. Holding back a person from going to the assistance of a victim
- c. Through Negligent Acts such as
 1. The bank employee who failed to ascertain the identity of the presenter of a check and who initials it
 2. The guarantor who failed to ascertain the identity of the holder of a check presented for encashment
 3. A security guard whose laxity enabled a killer to enter the compound and kill an occupant therein

NOTE: 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 case of doubt, favor the lesser penalty/liability.

ART. 18. ACCOMPLICES

ACCOMPLICES - those persons who, not being included in article 17, cooperate in the execution of the offense by previous or simultaneous acts. They are also referred to as the "**Accessories Before the Fact**".

Requisites:

- a) that there be community of design; i.e., knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose;
- b) that he performs previous or simultaneous acts that are not indispensable to the commission of the crime; and
- c) that there be a relation between the acts done by the principal and those attributed to the person charged as an accomplice.

NOTES:

1. There is no conspiracy between the accomplice and the PDP but there is community of design between them i.e the accomplice knows and is aware of the intent, purpose or design of the PDP. He then concurs, or approves of the intent of the PDP by cooperating in the accomplishment of the purpose through an assistance given the PDP.
2. The cooperation of the accomplice is not indispensable in that the crime would still be accomplished even without his cooperation. His cooperation or assistance may facilitate or make easier the commission the crime but the crime would still be accomplished anyway. The acts of the accomplice must however be related to the acts of the PDP but they merely show that the accomplice agrees, approves or concurs with what the PDP intends to do or what he has done.
3. The cooperation may be in the following forms:
 - a. Moral cooperation as in word of encouragement or advises
 - b. Through external acts which are either previous or simultaneous to the execution of the criminal acts, such as :
 1. Giving of additional weapons or ammunition or a faster mode of transportation, or food to the accused
 2. Blocking, or tripping a person who intends to assist the victim
 3. Throwing stones, spitting, kicking, or delivering a blow, at the victim
 4. Continuing to choke the victim after seeing that a deadly or fatal blow had been inflicted on the victim

Note: The act of the accomplice should not be more fatal or more deadly or mortal than that delivered by the PDP

Example: (PP. vs. Cual, Mach 9, 2000). X and the victim Y were fighting and grappling for the possession of a steel pipe. B arrived and hacked at Y who ran away. X stood by while B pursued Y and killed him. Is X an accomplice?

Accomplice	Principal By Indispensable Cooperation
Acts of an accomplice	cooperation of the PIC is

are not indispensable to the consummation of the offense in that the crime would still be consummated even without his cooperation.	one without which the offense would not have been accomplished.
No conspiracy between the accomplice and the PDP.	Conspiracy exist between the PIC and the PDP.

Example: PP. vs. Roland Garcia: Jan. 15, 2002

FACTS: In a case of kidnapping for ransom, the police arrested the accused who received the money from the wife of the victim. They learned the victim was kept in a house. The police proceeded to the house where they surprised X and Y who were seated and who tried to enter a room to get guns. The two were not among the four who actually kidnapped the victim. The victim was found in a room handcuffed and blindfolded.

QUESTION: What is the criminal liability of X and Y?

HELD: At the time X and Y were caught, the victim had already been rendered immobile, his eyes blindfolded and his hands handcuffed. He could not have gone elsewhere and escaped. It is clear X and Y were merely guarding the house for purpose of either helping the other accused in facilitating the successful denouement of the crime or repelling any attempt to rescue the victim. They thus cooperated in the execution of the offense by previous and/or simultaneous acts by means of which they aided or facilitated the execution of the crime but without indispensable act for its accomplishment. They are merely accomplices.

Further, the crime could have been accomplished even without the participation of X and Y. " In some exceptional cases, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of he crime was...of minor character".

NOTE: Had it been that the victim as not immobilized and could still escape, then X and Y would be considered as principals as they would still be considered as detaining and preventing the escape of the victim.

Accomplice	Co-conspirator
Liability is 1 degree lower than that of the principal.	Liability is collective, not individual.
Came to know of the criminal intention after the principals have reached a decision.	Know of the criminal intention as he is one of the authors.
Merely concur and cooperate in the commission of the crime.	Decide to commit the crime.
Merely the instruments	Authors of the crime.

who perform acts not essential for the perpetration of the offense.	
Acts are not indispensable.	Acts are indispensable.

Article 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.

NOTE: They are referred to as the **Accessories Proper or the Accessories- After- the-Fact**. This is because their participation in the crime comes only after the crime has been committed by others. It is only then that they enter into the picture.
Requirement of Scianter: All 3 kinds of accessories require that they must have knowledge of the commission of the crime otherwise they are not liable even if they did an act described in Article 19.

KINDS:

1. The First Kind: **By profiting themselves or assisting the offender to profit by the effects of the crime.**
 - a. The effects of the crime includes the property taken as well as the price, promise or reward given as the determining cause of the crime.
 - b. **"Profiting themselves"** include any act of dealing with the property including accepting as a gift, donation, security or purchasing it a lower price. The transaction involving the property however must be mutual and voluntary with whosoever the accessory dealt with otherwise he is liable as the principal in theft or robbery.

Example: X pick-pocketed the money stolen by Z from another. X is not an accessory even if he profited himself but is liable for theft. Or if X poked a gun at Z and took the money, he

would be liable for robbery. If Z dropped some of the money he stole which X picked up, X is liable for theft not as an accessory.

- c. **"Assisting the offender profit"** includes acts of looking for a buyer, though no commission is received, or of secreting it away or joining in its disposal.
- d. Relation to Pres. Decree No. 1612 or "The Anti Fencing Law"
 1. If the crimes involve theft or robbery, the acts may be punished as **"FENCING"** i.e. the act of any person " who, with intent to gain for himself or for another, shall buy, receive, possess, etc. or in any 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 robbery or theft"
 2. The knowledge (scianter) may be actual or constructive
 3. The venue is where the property is found
 4. The prior conviction of the thief/robber is not required to convict the fence. But it be proved the property came from robbery/theft, not any other offense such as estafa, malversation, kidnapping.
 5. An accessory cannot again be prosecuted for fencing and vise-versa
 6. FENCE – person who commits the act of fencing. He is not accessory but a principal in the crime defined and punished by Anti-Fencing Law.
 7. Mere possession of anything of value which has been the object of robbery or theft shall be prima facie evidence of fencing.
 8. if committed by juridical person, the President, General Manager or any officer who knows the commission of the crime shall be liable
 9. Fencing includes the situation where there is failure of any establishment to obtain the necessary permit regarding things obtained from unlicensed dealer.
- e. If the property was the proceeds of Highway Robbery or Piracy, the dealer is not liable as an accessory but for Violation of P.D. 532 for the crime of Aiding/Abetting Brigands or Pirates
2. The Second Act: **By concealing or destroying the body of the crime or the effects or instruments in order to prevent its discovery.**
 - a. To conceal or destroy the body of the crime includes all manner of interfering with, or

altering the original conditions of the crime scene, or of anything therein which may be considered as evidence, prior to a completion of the evidence gathering by the law enforcers.

Examples:

1. Changing the position of the body of the victim
 2. Placing a weapon or removing one or replacing a weapon
 3. Throwing pieces of evidence as cigarettes butts
 4. Washing off the blood stains or cleaning the crime scene
 5. Placing a suicide note
 6. Making unnecessary foot prints
- b. The object or purpose must be to prevent the authorities from discovering what truly transpired such as the number and identity of the assailants; how the crime was committed, and all matters related to the solution of the crime and prosecution of the offenders.
1. Thus one who help moved the body not knowing the reason why is not an accessory
 2. One who acted out of curiosity or who moved the body for fear of reprisal or of being blamed as the killer is not an accessory
3. The Third Act: **By harboring, concealing or assisting in the escape of the principal.**
- a. There are two kinds of accessories under this mode:
1. A Public Officer- he must abuse his public function and the crime by the principal maybe any crime. If there was no abuse then he will be considered as a private person.

Example: The Mayor hides a suspect in his office to prevent identification or provides a false alibi for him
 2. A Private Person- the principal must be guilty of treason, parricide, murder, attempt on the life of the chief executive, or is habitually guilty of some other crime.
- b. Meaning of the term "guilty". For purposes of charging a person as an accessory, the term does not mean a judicial pronouncement of guilt but means "probably guilty of". But where the court later finds that the crime committed by the principal is not any of the enumerated offenses, then the private person who assisted him escape is not an accessory.

- c. The acts include (i) giving of material help such as food, money or clothing (ii) providing shelter, a safe house or hideaway (iii) providing a mode of transportation (iv) providing disguises, false identification papers, as well as by (v) refusing to cooperate with the authorities or to identify the principal or (vi) giving disinformation or false data
- d. Under Pres. Decree No. 1829, the same act maybe punished as "Obstruction of Justice" - the crime committed by any person who assist in the escape of a person who committed any crime. This includes any act that would prevent the accused from being prosecuted such as using force, threat, intimidation, undue influence to prevent a person from being a witness.

May the Accessory be tried and declared guilty ahead of the principal?

As a rule the answer is no because of the principle that the liability of the Accessory is Subordinate to that of the Principal. There must first be a person convicted as a principal before there can be an accessory.

However, the accessory maybe prosecuted ahead of the principal even if the principal has not yet been identified or arrested or has surrendered if: First; the act of the accessory is under either paragraph (a) or (b) or Second; even under paragraph C if the principal has not yet been placed under the jurisdiction of the authorities.

Once the principal is later tried but the case against the accessory has not yet been terminated, the trial against the accessory must be suspended to await the outcome of the trial against the principal. However the two cases maybe consolidated and tried jointly, if proper.

Instances when an accessory may be convicted without conviction on the part of the principal:

1. if the act committed by the accessory is under subsection 1 and 2;
2. if the principal is acquitted by reason of an exempting circumstance;
3. if the principal is not in the custody of proper authorities;
4. if the accessory helped the principal to escape.

NOTE: Neither the letter nor spirit of the law requires that the principal be convicted first before one may be punished as an accessory. As long as the corpus delicti is proved and the accessory's participation is shown, he can be held criminally liable.

If the principal is acquitted, should the accessory be also acquitted?

If the principal was acquitted by reason of a justifying circumstance, then the accessory must also be acquitted.

If the principal was acquitted due to an exempting circumstance, the accessory may still be convicted.

If the ground is that the guilt was not proven beyond reasonable doubt, the accessory may still be convicted if his acts fall under either paragraph (a) or (b)

If the principal dies, may the accessory still be prosecuted?

Yes, if the act is under either paragraph (a) or (b)

But if his act falls under paragraph (c) there are two views on the matter. The first view holds that he cannot be prosecuted for in legal contemplation there was no principal whom he assisted. The second view holds that the accessory may still be prosecuted because the death merely extinguished the liability of the principal but the crime remains and the participation of the accessory in it may still be proved.

Principal	Accessories
Takes direct part or cooperates in, or induces the commission of the crime	Does not Take direct part or cooperates in, or induces the commission of the crime
Cooperates in the commission of the offense by acts either prior thereto or simultaneous therewith	Does not cooperate in the commission of the offense.
Participates during commission of the crime	Participation is subsequent to the commission of the crime.

ART. 20. ACCESSORIES EXEMPT FROM CRIMINAL LIABILITY

Who are Exempt

The penalties prescribed for accessories shall not be imposed if the principal is his:

- a. Spouse,
- b. Ascendant,
- c. Descendant,
- d. Legitimate, natural and adopted brothers and sisters, or
- e. Relatives by affinity within the same degree

In other words, those who are accessories under paragraph (b) and (c) if the principal is a relative. With the SINGLE EXCEPTION of accessories falling within the provisions of paragraph 1 of the next preceding article.

The relatives are the same as those under Article 15 (Relatives by consanguinity within the 4th civil degree are NOT exempted)

BASIS: This is in recognition of the ties of blood and is an absolutory cause.

Notes:

- a. A person is not liable for defending his blood relatives within the 4th civil degree. But he is liable if he helps them escape or if he destroys the evidence against them.
- b. Those under paragraph (a) are not exempt because it is presumed what motivated them is greed, rather than ties of blood.
- c. Accessories to a light offense are also exempt.
- d. Public officers under par 3 of Art 19 are also exempt because ties of blood constitutes a more powerful incentive than the call of duty.
- e. The benefits of the exemption under Art 20 do not apply to PD 1829 which penalizes the act of any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehensions of suspects and the investigation and prosecution of criminal cases.

**Title 3
PENALTIES**

**Chapter 1
PENALTIES IN GENERAL**

PENALTY - is the suffering that is inflicted by the state for the transgression of a law.

Juridical Conditions of Penalty:

1. must be **productive of suffering**, without however affecting the integrity of the human personality
2. must be **proportional/commensurate** with the offense – different crimes must be punished with different penalties.
3. must be **personal** – no one should be punished for the crime of another.
4. must be **legal** – it is a consequence of the judgment according to law.
5. must be **certain** – no one may escape its effects.
6. must be **equal** for all.
7. must be **correctional**.

Purpose of the State in Punishing Crimes

The State has an existence of its own to maintain, a conscience to asset, and moral principles to be vindicated. Penal justice must therefore be exercised by the State in the service and satisfaction of a duty, and rest primarily on the moral rightfulness of the punishment inflicted (to secure justice). The basis of

the right to punish violations of penal law is the police power of the state.

Theories Justifying Penalty:

1. **PREVENTION** – the state must punish the criminal to prevent or suppress the danger to the state arising from the criminal acts of the offender.
2. **SELF-DEFENSE** – the state has a right to punish the criminal as measure of self-defense so as to protect society from the threat and wrong inflicted by the criminal.
3. **REFORMATION** – the object of punishment in criminal cases is to correct and reform the offender.
4. **EXEMPLARITY** – the criminal is punished to serve as example to deter others from committing crimes.
5. **JUSTICE** – 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.

3-Fold Purpose of Penalty Under the Code

1. Retribution or Expiation – the penalty is commensurate with the gravity of the offense.
2. Correction or Reformation – shown by the rules which regulate the execution of penalties consisting in deprivation of liberty.
3. Social Defense – shown by its inflexible severity to recidivists and habitual delinquents.

PENALTIES THAT MAY BE IMPOSED (Article 21, RPC)

RULE: No felony shall be punishable by any penalty not prescribed by law prior to its commission. In other words, a felony shall be punishable only by the penalty prescribed by law at the time of its commission.

This announces the policy of the State as regards punishment of crimes.

REASON: The law cannot be rationally obeyed UNLESS it is first shown. NO act will be considered criminal until the Government has made it so by law.

RETROACTIVE EFFECT OF PENAL LAWS (Article 22, RPC).

GENERAL RULE: Penal laws are applied prospectively.

EXCEPTION: Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony. Provided that:

1. The offender 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.

2. The new law does not provide against the retroactive application of the law.

The Favorable Retroactive Application of the Law (if justified) May Find the Defendant in 1 of the 3 Situations:

1. The crime has been committed and the prosecution begins.
2. The sentence has been passed but service has not begun.
3. The sentence is being carried out.

NOTES:

The retroactive effect of criminal statutes does not apply to culprit's civil liability.

REASON: The rights of the offended persons or innocent 3rd parties are not within the gift of the arbitrary disposal of the state.

An Offense Causes 2 Classes of Injuries

Social Injury	Personal Injury
Produced by the disturbance and alarm which are the outcome of the offense.	Caused to the victim of the crime who suffered damage to his person, property, honor or chastity.
Is sought to be repaired through the imposition of penalties.	Repaired through indemnity.
Offended party cannot pardon the offender so as to relieve him of the penalty.	The offended party may waive the indemnity and the State has no reason to insist in its payment.

When Criminal Liability Under the Repealed Law Subsists

1. When the provisions of the former law are reenacted; or
2. When the repeal is by implication – When a penal law which impliedly repealed an old law, is itself repealed, the repeal of the repealing law revives the prior penal law, unless the language of the statute provides otherwise. When the repeal is absolute, criminal liability is obliterated.
3. When there is a saving clause.

EFFECT OF PARDON BY THE OFFENDED PARTY (Article 23, Rpc)

GENERAL RULE: A pardon by the offended party does not extinguish criminal liability of the offender.

REASON: A crime is committed against the state. Only the Chief Executive can pardon the offenders. BUT civil liability with regard to the interest of the injured party is extinguished by his express waiver.

EXCEPTIONS: Pardon by the offended party will bar criminal prosecution in the ff crimes:

1. Adultery and Concubinage (A344, RPC)

EXPRESS OR IMPLIED pardon must be given by the offended party to BOTH offenders.

Pardon must be given PRIOR to the institution of the criminal action.

2. Seduction, Abduction, Acts of Lasciviousness (A344, RPC)

EXPRESS pardon by the offended party or her parents or grandparents or guardian.

Pardon must be given prior to the institution of the criminal action. However, marriage between the victim and the offender EVEN AFTER the institution of the criminal action or conviction of the offender will extinguish the criminal action or remit the penalty already imposed against the offender, his co-principals, accomplices and accessories.

NOTE: Pardon under A344 is only a bar to criminal prosecution, it does not extinguish criminal liability. It is not one among the causes under A89.

3. Rape (as amended by RA 8353)

The subsequent valid marriage between the victim and the offender extinguishes criminal liability or the penalty imposed.

In case the legal husband is the offender, subsequent forgiveness by the wife as offended party shall also produce the same effect.

MEASURES OF PREVENTION OR SAFETY WHICH ARE NOT CONSIDERED PENALTIES (A24, RPC):

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 article 80 and for the purposes specified therein.

Where a minor offender was committed to a reformatory pursuant to A80 (now PD 603), and thus while detained he commits a crime therein, he cannot be considered a quasi-recidivist since his

detention was only preventive measure. Quasi-recidivism presupposes the commission of a crime during the service of the penalty for a previous crime.

Commitment of a minor is not a penalty because the imposition of sentence in such case is suspended.

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 law may establish in penal form.

Reasons Why they are NOT Penalties

1. Because this 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.
2. Because they are not imposed as a result of judicial proceedings.
3. The offender is not subjected to or made to suffer these measures as a punishment for a crime.

**CHAPTER 2
Classification of Penalties**

CLASSIFICATION OF PENALTY (A25, RPC):

PRINCIPAL PENALTIES – those expressly imposed by the court in the judgment of conviction. Principal penalties may either be:

1. divisible those that have fixed duration and are divisible into three (3) periods:
2. indivisible those which have no fixed duration (death; reclusion perpetua; perpetual absolute or special disqualification; public censure)

Capital punishment: Death.

Afflictive penalties:

Reclusion perpetua,
Reclusion temporal,
Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Prision mayor.

Correctional penalties:

Prision correccional,

Arresto mayor,
Suspension,
Destierro.

Light penalties:

Arresto menor,
Public censure.

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

ACCESSORY PENALTIES

Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and
be voted for, the profession or calling.
Civil interdiction,
Indemnification,
Forfeiture or confiscation of instruments and
proceeds of the offense,
Payment of costs.

AS TO SUBJECT MATTER	AS TO GRAVITY
Corporal (death)	Capital
Deprivation of freedom (reclusion, prision, arresto)	Afflictive
Restriction of freedom (destierro)	Correctional
Deprivation of rights (disqualification and suspension)	Light
Pecuniary fine	

OUTLINE OF ACCESSORY PENALTIES INHERENT IN PRINCIPAL PENALTIES:

DEATH	RECLUSIO N PERPETU A/ TEMPORA L	PRISION MAYOR	PRISION CORRECTIO NAL
Perpetual absolute disqualification	Civil interdiction for life or during the sentence	Temporary absolute disqualification	Suspension from public office, profession or calling

Civil interdiction during 30 years, if not expressly remitted in the pardon	Perpetual absolute disqualification, unless expressly remitted in the pardon of the principal penalty	That of perpetual special disqualification from suffrage, unless expressly remitted in the pardon of the principal penalty	Perpetual special disqualification from suffrage, if the duration of imprisonment exceeds/ 8 months, unless expressly remitted in the pardon of the principal penalty
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Note: DESTIERRO has no accessory penalty.

FINE - WHEN AFFLICTIVE, CORRECTIONAL, OR LIGHT PENALTY (Article 26, RPC)

A fine, whether imposed as a single or as an alternative penalty, shall be considered:

1. afflictive penalty - if it exceeds 6,000 pesos
2. correctional penalty - if it does not exceed 6,000 pesos but is not less than 200 pesos
3. light penalty - if it be less than 200 pesos.

NOTES:

- a. The classification applies if the fine is imposed as a single (e.g. 200 to 6000) or alternative penalty (e.g. arresto mayor or fine from 200 to 1000). Hence, it does not apply if the fine is imposed together with another penalty.
- b. HOWEVER, penalty cannot be imposed in the alternative since it is the duty of the court to indicate the penalty imposed definitely and positively. Thus, the court cannot sentence the guilty person in a manner such as "to pay fine of P1000, or to suffer an imprisonment of 2 years, and to pay the cost."
- c. If the fine imposed by the law for the felony is exactly P200, it is a light felony.

Pp vs Yu Hai, 99 P 725

Under A9, RPC, where the fine in question is exactly P200, it is a light penalty, thus the offense is a light felony. Whereas, under A26, RPC, it is a correctional penalty, hence the offense involved is a less grave felony. This discrepancy shall be resolved liberally in favor of the accused, hence A9 prevails over A26.

Article 9	Article 26
Applicable in determining the prescriptive period of felonies.	Applicable in determining the prescriptive period of penalties.

Chapter 3
Duration and Effect of Penalties

SECTION 1
Duration of penalties

DURATION OF EACH DIFFERENT PENALTIES (A27, RPC):

1. **RECLUSION PERPETUA** - 20 years and 1 day to 40 years.
2. **RECLUSION TEMPORAL** – 12 years and 1 day to 20 years.
3. **PRISION MAYOR AND TEMPORARY DISQUALIFICATION** – 6 years and 1 day to 12 years, except when disqualification is accessory penalty, in which case its duration is that of the principal penalty.
4. **PRISION CORRECTIONAL, SUSPENSION AND DESTIERRO** – 6 months and 1 day to 6 years, except when suspension is an accessory penalty, in which case its duration is that of the principal penalty.
5. **ARRESTO MAYOR** – 1 month and 1 day to 6 months.
6. **ARRESTO MENOR** – 1 day to 30 days
7. **BOND TO KEEP THE PEACE** – the period during which the bond shall be effective is discretionary to the court. (As amended by Section 21, Republic Act No. 7659.)

DESTIERRO – is a punishment whereby a convict is banished to a certain place and is prohibited from entering or coming near that place designed in the sentence, within a radius not less than 25 kilometers, nor more than 250 kilometers. It is a principal, divisible and correctional penalty

If the convict should enter the prohibited places, he commits the crime of Evasion of Service of sentence under ART. 157, RPC.

DESTIERRO IS IMPOSED IN THE FOLLOWING SITUATIONS:

1. When a legally 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. (Serious physical injuries or death under exceptional cases)

2. In the crime of grave threat or light threat, when the offender is required to put a bond for good behavior but failed or refused to do so under ART. 284, such convict shall be sentenced to Destierro so that he would not be able to carry out his threat. (Failure to give a bond for good behavior)
3. In the crime of concubinage, the penalty prescribed for the concubinage is Destierro under ART. 334.
4. Where the penalty prescribed by law is Arresto Mayor but then, the offender is entitled to a privileged mitigating circumstance and lowering the prescribed penalty by one degree, the penalty one degree lower is Destierro. (After reducing the penalty by 1 or more degrees, destierro is the proper penalty.

Death Penalty shall not be imposed in the following instances:

1. when the guilty person is below 18 years of age at the time of the commission of the crime.
2. is more than 70 years of age.
3. when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of he death penalty, in which cases the penalty shall be reclusion perpetua,

Situations in which the execution of death penalty be suspended:

1. if convict is pregnant, or within 1 year after her delivery
2. convicts become insane or an imbecile after conviction
3. court orders suspension by reason of:
 - a. doubt as to the identity of the convict
 - b. there is a request for executive clemency
4. President grants reprieve.

RULES FOR THE COMPUTATION OF PENALTIES (A28, RPC):

1. WHEN THE OFFENDER IS IN PRISON – the duration of temporary penalties (permanent/temporary absolute disqualification, detention. Suspension) is from the day on which the judgment of conviction becomes final.

REASON: Under A24, the arrest and temporary detention of the accused is not penalty.

2. WHEN THE OFFENDER IS NOT IN PRISON – the duration of the penalty consisting in deprivation of liberty, is from the day that the

offender is placed at the disposal of judicial authorities for the enforcement of the penalty.

3. THE DURATION OF OTHER PENALTIES – the duration is from the day on which the offender commences to serve his sentence.

NOTE: If on appeal, the service of sentence should commence from the date of the promulgation of the decision of the appellate court, not from the date the judgment of the trial court was promulgated.

PERIOD OF PREVENTIVE IMPRISONMENT DEDUCTED FROM TERM OF IMPRISONMENT (A29, RPC)

Instances When Accused Undergoes Preventive Suspension

1. when the offense charged is nonbailable; or
2. even if bailable he cannot furnish the required bail.

NOTES:

- a. Offenders or accused 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.
- b. 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 (4/5)** of the time during which he has undergone preventive imprisonment. (As amended by Republic Act No. 6127, June 17, 1970).
- c. Offenders not entitled to be credited with the full time or 4/5 of the time of their preventive imprisonment:
 1. When they are recidivists, or have been convicted previously twice or more times of any crime;

Habitual delinquents are not entitled to credit of time under preventive imprisonment since they are necessarily recidivists or have been convicted previously twice or more times of any crime.
 2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.
- d. In case of youthful offender who has been proceeded against under the Child and Youth

Welfare Code, he shall be credited in the service of his sentence with the full time of his actual detention, regardless if he agreed to abide by the same disciplinary rules of the institution or not.

- e. Duration of Reclusion Perpetua is to be computed at 30 years, thus even if the accused is sentenced to life imprisonment, he is entitled to the full time or 4/5 of the time of preventive suspension.
- f. Credit is given in the service of sentences consisting of deprivation of liberty, whether perpetual or temporary. Thus, persons who had undergone preventive imprisonment but the offense is punishable by a fine only would not be given credit.
- g. 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.
- h. In case the maximum penalty to which the accused may be sentenced is destierro (deprivation of liberty), he shall be released after thirty (30) days of preventive imprisonment. (As amended by Republic Act No. 6127, and further amended by E.O. No. 214, prom. July 10, 1987.) This is true although destierro has the duration of 6 months and 1 day to 6 years because the accused sentenced to such penalty does not serve it in prison.

SECTION 2

Effects of the penalties according to their respective nature

EFFECTS OF THE PENALTIES OF PERPETUAL OR TEMPORARY ABSOLUTE DISQUALIFICATION (Article 30, RPC)

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 elective 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.
4. the loss of all rights to retirement pay or other pension for any office formerly held.

NOTES:

- In case of **temporary disqualification**, the disqualification in 2 and 3 (not in 1 and 4) shall last during the term of the sentence and is removed after the service of the same.
- In **absolute disqualification**, all these effects last during the lifetime of the convict and even after the service of the sentence.
- A plebiscite is not mentioned or contemplated in number 2, hence, the offender may vote in that exercise, subject to the provisions of pertinent election laws at the time.

EFFECTS OF THE PENALTIES OF PERPETUAL OR TEMPORARY SPECIAL DISQUALIFICATION (Arts 31 and 32):

- For public office, profession or calling**
 - the deprivation of the office, employment, profession, or calling affected;
 - the disqualification for holding similar offices or employments either perpetually or during the term of the sentence according to the extent of such disqualification.
- For the exercise of the right of suffrage**
 - Deprivation of the right to vote in any popular election for any public office or to be elected to such office perpetually or during the term of the sentence;
 - Cannot hold any public office during the period of disqualification.

EFFECTS OF THE PENALTIES OF SUSPENSION FROM ANY PUBLIC OFFICE, PROFESSION OR CALLING, OR THE RIGHT OF SUFFRAGE (Article 33, RPC)

- Disqualification 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.

CIVIL INTERDICTION (A34, RPC)

CIVIL INTERDICTION – deprivation from 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.

Effects of Civil Interdiction

Deprivation of the following rights:

- parental authority
- guardianship over the person or property of the ward

- marital authority
- right to manage property and to dispose of the same by acts inter vivos.

Note: He can dispose of such property by will or donation mortis causa.

Civil Interdiction is Accessory to the Following Principal Penalties

- If death penalty is commuted to life imprisonment;
- Reclusion perpetua;
- Reclusion temporal.

EFFECTS OF BOND TO KEEP THE PEACE (Article 35, RPC). - 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 its 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. (Read also Art. 284)

Should the person sentenced fail to give the bond as required he shall be detained for a period which shall in no case exceed 6 months, if he shall have prosecuted for a grave or less grave felony, and shall not exceed 30 days, if for a light felony.

Bond to keep peace	Bond for good behavior
A principal penalty, not an accessory penalty.	This penalty is not found in article 25.
No particular felony where this is prescribed.	This is a penalty particular to article 284- grave or light threats.
The consequence of failure to put up this bond is imprisonment for 6 months or 30 days depending on whether the felony committed is grave or less grave felony or light.	Failure to put up a bond results in destierro.

NOTE: Bond to keep the peace is different from bail bond which is posted for the provisional release of a person arrested for or accused of a crime. Bond to keep the peace or for good behavior is imposed as a penalty in threats.

PARDON; ITS EFFECT (Article 36, RPC)

- 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.

2. Shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence.

Who Grants Pardon

The President of the Republic of the Philippines.

Limitations to President's Power to Pardon

1. Can be exercised only after final judgment.
2. Does not extend to cases of impeachment.
3. Does not extinguish civil liability – only criminal liability

Effects of Pardon to Accessory Penalties

GENERAL RULE: Pardon in general terms does not include accessory penalties.

EXCEPTIONS:

- a. If the absolute pardon is granted after the term of imprisonment has expired, it removes all that is left of the consequences of conviction. However, if the penalty is life imprisonment and after the service of 30 years, a pardon is granted, the pardon does not remove the accessory penalty of absolute perpetual disqualification.
- b. If the facts and circumstances of the case show that the purpose of the President is precisely to restore the rights i.e. granting absolute pardon after election to a post but before the date fixed by law for assuming office to enable him to assume the position in deference to the popular will.

	Pardon by the Chief Executive (Art 36)	Pardon by the Offended Party (Art 23)
Crime covered	Any crime, unless otherwise provided by or subject to conditions in the Constitution or the laws.	Crimes against chastity under RPC only (also in rape)
Extinguishment of Criminal Liability	Extinguishes criminal liability	Does not extinguish criminal liability although it may constitute a bar to the prosecution of the offender
Effect on civil liability	Cannot affect the civil liability ex delicto of the	Offended party can waive the civil liability

	offender	
When granted	Only after conviction by final judgment	Only before the institution of criminal action
To whom granted	Any or all of the accused	In adultery and concubinage, must include both offenders
Whether it can be conditional	May be absolute or conditional	Cannot validly be made subject to condition

COST; WHAT ARE INCLUDED (Article 37, RPC)

Costs shall include:

1. Fees; and
2. 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.

NOTES:

- a. Costs (expenses of the litigation) are chargeable to the accused in case of conviction. In case of acquittal, the costs are de officio, each party bearing his own expense.
- b. No costs are allowed against the Republic of the Philippines, until law provides to the contrary.
- c. The payment of costs is fully discretionary on the court.

PECUNIARY LIABILITIES, ORDER OF PAYMENT (A38, RPC)

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 costs of the proceedings.

NOTES:

- 1 and 2 are payable to the offended party.
- 3 and 4 are payable to the state.
- Order of payment is mandatory.

When is it applicable?

It is applicable "in case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities. Hence, if the offender has sufficient or no property, it is not applicable.

SUBSIDIARY PENALTY (A39, RPC) - is a subsidiary personal liability to be suffered by the convict who has no property with which to meet the fine at the rate of one day for each 8 pesos, subject to the rules provided in Article 39.

When Subsidiary Penalty is Proper

- a. It is proper when the convict is insolvent and:
 - 1. when there is a principal penalty of imprisonment or any other principal penalty and carries with it a fine; and
 - 2. when the penalty is only a fine.

Notes:

- a. When the penalty prescribed is imprisonment, it is the penalty actually imposed by the court, not the penalty provided for by the RPC, which should be considered in determining whether or not subsidiary penalty should be imposed.
- b. Subsidiary imprisonment is not an accessory penalty. Accessory penalties are deemed imposed even when not mentioned, while subsidiary imprisonment must be expressly imposed.

Rules As to Subsidiary Penalty

- 1. If the principal penalty imposed be prison correccional or arresto and fine, he shall remain under confinement until his fine referred 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 penalty imposed is higher than prison 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 deprivation as those of which the principal penalty consists.
- 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 Republic Act No. 5465, April 21, 1969.)

Penalty	Duration of stay
Prision correccional or arresto and fine	Remain under confinement until his fine is satisfied; but it shall not exceed 1/3 of the term of sentence, and not more than 1 year.

Fine	a. grave or less grave felony: not more than 6 months. b. Light: not more than 15 days
Higher than Prison Correccional	No subsidiary imprisonment
Not confinement in a penal institution, but penalty is of fixed duration	Follow above rules

NOTES:

- **FINE:** Subsidiary penalty applies only for the non-payment of the fine, criminal aspect; and not the civil aspect. The latter is what article 38 contemplates.
- **PUBLIC CENSURE AND FINE:** 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.
- **DESTIERRO AND FINE:** The convict can be required to undergo the subsidiary penalty, as destierro, though not imprisonment, is still a penalty to be served. Hence, subsidiary penalty applies.
- **TOTALITY OF PENALTY UNDER THE 3-FOLD RULE:** Do not consider the totality of the imprisonment that 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 3-fold rule. If the totality of the imprisonment under this rule does not exceed 6 years, then even if the totality of the sentences without applying the 3-fold rule will go beyond 6 years, the convict shall be required to undergo subsidiary penalty if he could not pay the fine.

Where No Subsidiary Imprisonment is Imposed

- 1. Penalty imposed is higher than prison correccional.
- 2. Non-payment of reparation, indemnification, and costs. It is only for fines.
- 3. Non-payment of costs.
- 4. Penalty imposed is a fine and another penalty without fixed duration like censure.

SECTION 3

Penalties in which other accessory penalties are inherent

ARTICLE 40. DEATH, ITS ACCESSORY PENALTIES

The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of:

- a. perpetual absolute disqualification; and

- b. civil interdiction during thirty years following the date of sentence, UNLESS such accessory penalties have been expressly remitted in the pardon.

ARTICLE 41. RECLUSION PERPETUA AND RECLUSION TEMPORAL, THEIR ACCESSORY PENALTIES

- a. civil interdiction for life or during the period of the sentence as the case may be; and
- b. perpetual absolute disqualification which the offender shall suffer even though pardoned as to the principal penalty, UNLESS the same shall have been expressly remitted in the pardon.

ARTICLE 42. PRISION MAYOR, ITS ACCESSORY PENALTIES

- a. temporary absolute disqualification; and
- b. perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, UNLESS the same shall have been expressly remitted in the pardon.

ARTICLE 43. PRISION CORRECCIONAL, ITS ACCESSORY PENALTIES

- a. suspension from public office, from the right to follow a profession or calling; and
- b. perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, UNLESS the same shall have been expressly remitted in the pardon.

ARTICLE 44. ARRESTO, ITS ACCESSORY PENALTIES

- a. suspension of the right to hold office and the right of suffrage during the term of the sentence.

NOTES:

- No accessory penalty for destierro.
- Absolute pardon for any crime for which 1 year imprisonment or more was meted out restores the prisoner to his political rights.
- Where the penalty is less than 1 year, disqualification does not attach, EXCEPT when the crime committed is one against property. The nature of the crime is material. Thus, in the latter case, the person convicted of theft for less than 10 months cannot vote unless he is pardoned.
- If the penalty imposed is 1 year imprisonment or more, the nature of the crime is immaterial.
- The accessory penalties are understood to be always imposed upon the offender by the mere fact that the law fixes a certain penalty for the crime.

- The accessory penalties do not affect the jurisdiction of the court in which the information is filed because they do not modify or alter the nature of the penalty provided by law. What determines jurisdiction in criminal cases is the principal penalty.

Reclusion Perpetua	Life Imprisonment
Specific duration of 20 years and 1 day to 40 years and accessory penalties	No definite term or accessory penalties
Imposable on felonies punished by RPC	Imposable on crimes punished by special laws

ARTICLE 45. CONFISCATION AND FORFEITURE OF THE PROCEEDS OR INSTRUMENTS OF THE CRIME

1. Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.
2. Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, UNLESS they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce (whether it belongs to the accused or 3rd person) shall be destroyed.

NOTES:

- There cannot be forfeiture or confiscation UNLESS there's a criminal case filed, tried and accused is convicted.
- The court cannot order the forfeiture of the goods the owner of which is not indicted although there is sufficient ground to hold him guilty of the acts for which the accused has been convicted.
- Instruments of the crime belonging to innocent 3rd persons may be recovered through intervention.
- Confiscation can be ordered only if the property is submitted in evidence or placed at the disposal of the court.
- When the order of forfeiture has already become final, the articles which were forfeited can not be returned, even in case of acquittal.
- Confiscation and forfeiture are additional penalties. When the penalty imposed did not include confiscation, the subsequent order of confiscation would be an additional penalty, amounting to an increase of the penalty already imposed, thereby placing the accused in double jeopardy. In case the accused appeals, confiscation not ordered by the trial court may be ordered by the appellate court. (Question: Forfeiture and confiscation of instruments and proceeds of the offense are accessory penalties. Are they not deemed imposed?)

- The government cannot appeal the modification of the sentence if the defendant did not appeal. But if the defendant appeals, it removes all bars to the review and correction of the penalty even if there is an increase thereof as the result.

When Art 45 Cannot Apply

1. The instruments belong to innocent 3rd parties
2. Such properties have not been placed under the jurisdiction of the court
3. When it is legally or physically impossible.

CHAPTER FOUR Application of Penalties

SECTION 1 Rules for the application of penalties to the persons criminally liable and for the graduation of the same

ARTICLE 46. PENALTY TO BE IMPOSED UPON PRINCIPALS IN GENERAL

General Rule: The penalty prescribed by law for the commission of a felony shall be imposed upon the **principals** in the commission of such felony. (Read also Arts. 50 -51)

Whenever the law prescribes a penalty for a felony in general terms, it shall be understood as applicable to the **consummated felony**.

Exception: When the law fixes a penalty for the frustrated or attempted felony. Whenever it is believed that the penalty lower by 1 or 2 degrees corresponding to said acts of execution is not proportionate to the wrong done, the law fixes a distinct penalty for the principal in the frustrated or attempted felony.

The Graduation of Penalties Refer to:

- a. By Degree
 1. Stages of Execution (attempted, frustrated, consummated)
 2. Degree of the criminal participation of the offender (principal, accomplice, accessory)
- b. By Period
 1. Minimum, medium, maximum – refers to the proper period of the penalty which should be imposed when aggravating or mitigating circumstances attend to the commission of the crime.

ARTICLE 47. IN WHAT CASES THE DEATH PENALTY SHALL NOT BE IMPOSED

- a. Under Age - guilty person is below eighteen (18) years of age at the time of the commission of the crime.

REASON: Minority is always a mitigating circumstance.

- b. Over Age - guilty person is more than seventy (70) years of age (at the time RTC sentenced him)
- c. No court Majority - when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.

Automatic Review Of Death Penalty Cases

In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court en banc (at least 8 justices must concur – RA 296), within twenty (20) days but not earlier than fifteen (15) days after the promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. (As amended by Section 22, Republic Act No. 7659.)

The purpose of the automatic review is to protect the accused to the end that justice and legality of death penalty is clearly and conclusively determined.

Justification for the Death Penalty: Social defense and Exemplarity. Not considered cruel and unusual because it does not involve torture or lingering death.

Crimes Punishable by Death Under Death Penalty Law (RA 7659, December 31, 1993)

1. Treason
2. Qualified Piracy
3. Qualified Bribery
4. Parricide
5. Murder
6. Infanticide
7. Kidnapping and Serious Illegal Detention
8. Robbery – with Homicide, Rape, Intentional Mutilation, or Arson
9. Rape – with the use of a deadly weapon, or by 2 or more persons; with Homicide; where the victim became insane
10. Qualified Rape
11. Destructive Arson
12. Plunder
13. Violation of Certain Provisions of Dangerous Drugs Act
14. Carnapping

NOTES:

- Death penalty shall be imposed in all cases in which it must be imposed under existing law. It is the duty of the judicial officers to respect and apply the law regardless of their private opinion.

- The trial court must require the prosecution to present evidence, despite plea of guilty when the crime charged is punished with death.
- **REPUBLIC ACT NO. 9346 – An Act Prohibiting the Imposition of Death Penalty in the Philippines**

In lieu of the death penalty, the following shall be imposed:

Reclusion perpetua – Revised Penal Code
Life imprisonment – Special Laws

Not eligible for parole under the Indeterminate Sentence Law: Persons convicted of offenses punished by reclusion perpetua, or whose sentence will be reduced to reclusion perpetua.

ARTICLE 48. PENALTY FOR COMPLEX CRIMES

COMPLEX CRIME - When a single act constitutes 2 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. (As amended by Act No. 4000.)

Although there are 2 or more crimes actually committed, they constitute only 1 crime in the eyes of the law as well as in the conscience of the offender who has only 1 criminal intent. Hence, there is only 1 penalty imposed for the commission of complex crime.

Philosophy behind:

The treatment of plural crimes as one is to be lenient to the offender, who, instead of being made to suffer distinct penalty only, although it is the penalty for the most serious one and in the maximum period. It is in consonance with the doctrine of pro reo.

Kinds of Complex Crimes

1. **Compound Crime** - a single act constituting 2 or more grave or less grave felonies. No regard for the gravity of crimes, as long as there is only 1 act.

Requisites:

- a. that only a single act is performed by the offender;
- b. that the single act produces:
 - i. 2 or more grave felonies
 - ii. 1 or more grave or 1 or more less grave felonies
 - iii. 2 or more less grave felonies.

No Single Act in the Following Cases

- a. Several shots from Thomson sub-machine gun causing several deaths, although caused by a single act of pressing the trigger, are considered several acts. It is not the act of pressing the trigger which should be considered as producing the several felonies,

but the number of bullets which actually produced them.

- b. When 2 persons are killed one after the other, by different acts, although these 2 killings were the result of a single criminal impulse. The different acts must be considered as distinct crimes.
- c. When the acts are wholly different, not only in themselves, but also because they are directed against 2 different persons, as when one fires his gun twice in succession, killing one and injuring another.
- d. Light felonies (like slight physical injuries) produced by the same act should be treated and punished as separate offenses or may be absorbed by a grave felony (as they are necessary consequence thereof).

NOTES:

- Rape with homicide is a special complex crime not covered by Art 48.
- When in obedience to an order several accused simultaneously shot many persons, without evidence how many each killed, there is only a single offense, there being a single criminal impulse. This is a ruling in Pp vs Lawas, June 30, 1955. This is applicable only if there is no evidence at all to show the number of persons killed by each several defendants.
- The "single criminal impulse," "same motive" or the "single purpose" theory has no legal basis, for Art 48 speaks of "a single act." However, the theory is acceptable when it is not certain who among the accused killed or injured each of the several victims.
- When a complex crime is charged and one offense is not proven, the accused can be convicted of the other.
- There is no complex crime of arson with homicide under Art 48, Art 320 of the RPC, as amended by RA 7659, having provided one penalty therefor.
- Art 48 is applicable to crimes through negligence.
- When 2 crimes produced by a single act are respectively within the exclusive jurisdiction of 2 courts of different jurisdiction, the court of higher jurisdiction shall try the complex crime. Since both crimes were the result of a single act, the information cannot be split into 2.

2. **Complex Crime Proper** - an offense is a necessary means for committing another.

Requisites:

- a. at least 2 offenses are committed
- b. 1 or some of the offenses must be necessary to commit the other
- c. both or all the offenses must be punishable under the same statute (RPC).

NOTES:

- Kidnapping the victim to murder him in a secluded place – ransom was not paid so victim was killed. Kidnapping was a necessary means to commit murder. Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art 48, nor be treated as separate crimes but shall be punished as a special complex crime under the last paragraph of Art 267, as amended by RA 7659. But where the victim was taken from his home but it was solely for the purpose of killing him and not for detaining him illegally or for the purpose of ransom, the crime is simple murder.
- Necessary means does not mean indispensable means. Indispensable would mean it is an element of the crime. The crime can be committed by another means. The means actually employed (another crime) was merely to facilitate and insure the consummation of the crime.
- When the definition of a felony one offense is a means to commit the other, there is no complex crime.
- Subsequent acts of intercourse, after forcible abduction with rape, are separate acts of rape.
- Not complex crime when trespass to dwelling is a direct means to commit a grave offense. Trespass will be considered as aggravating (unlawful entry or breaking part of the dwelling)
- No complex crime, when one offense is committed to conceal the other.
- Where the offender had in his possession the funds which he misappropriated, falsification of a public or official document involving said funds is a separate offense. The falsification was made to conceal the malversation. But when the offender had to falsify a public document to obtain possession of the funds which he misappropriated, the falsification is a necessary means to commit the malversation.
- There is no complex crime of rebellion – with murder, arson, robbery, or other common crimes. They are mere ingredients of the crime of rebellion – absorbed already. But one who, for some independent or personal motives, commits murder or other common offenses in addition to rebellion, may be prosecuted for and convicted of such common offenses.
- Art 48 is intended to favor the accused.
- Complex crime proper may be committed by two persons, as in seduction through usurpation of official functions.
- But when 1 of the offenses, as a means to commit the other, was committed by one of

the accused through reckless imprudence, that accused who committed the offense through reckless imprudence is liable for his act only.

- When the homicide, physical injuries, and the burning of a house are the result of one single act of negligence, there is only one penalty, but there are three civil liabilities.
- When 2 felonies constituting a complex crime are punishable by imprisonment and fine, respectively, only the penalty of imprisonment should be imposed.
REASON: Fine is not included in the in the list of penalties in the order of severity and it is the last in the graduated scales in Art 71.
- When a single act constitutes 2 grave or less grave or one grave and one less grave, and the penalty for one is imprisonment while for the other is fine, the severity of the penalty for the more serious crime should not be judged by the classification of each of the penalties involved, but by the nature of the penalties.
- In the order of severity of penalties, arresto mayor and arresto menor are considered more severe than destierro and arresto menor is higher in degree
- Art 48 applies only to cases where the Code does not provide for a definite specific penalty for a complex crime.
- One information should be filed when a complex crime is committed.

There is **NO COMPLEX CRIME** in the following:

1. In case of continuing crime
2. When one offense is committed to conceal the other
3. When the other crime is an indispensable part or an element of the other offenses as defined
4. Where one of the offenses is penalized by special law
5. When the law provides for a single penalty for **special complex crime**
 - a. Robbery with Homicide
 - b. Robbery with Rape
 - c. Rape with Homicide
 - d. Kidnapping with serious physical injuries
 - e. Kidnapping with Homicide or murder

Composite Crime - are special complex crimes composed of two felonies, punishable under a separate article in the RPC. In substance, it is made up of more than 1 crime but in the eyes of the law there is only a single indivisible crime.

PLURALITY OF CRIMES – consist in the successive execution by the same individual of different criminal acts upon any of which no conviction has yet been declared.

Kinds of Plurality of Crimes

1. **Formal or Ideal Plurality** – only one criminal liability.

It is further divided into 3 groups where a person committing multiple crimes is punished with one penalty in the following cases.

- a. When the offender commits any of the complex crimes defined in Art 48 of the RPC.
 - b. When the law specifically fixes single penalty for 2 or more offenses committed.
 - c. When the offender commits continued crimes.
2. **Real or Material Plurality** – there are different crimes in law as well as in the conscience of the offender. In such cases, the offender shall be punished for each and every offense that he committed

CONTINUED CRIME - a single crime consisting of a series of overt acts arising from a single criminal resolution or intent not susceptible of division. Although there is a series of acts, there is one crime committed. Hence, only one penalty shall be imposed.

Examples of Continued Crime

1. A collector of a commercial firm misappropriates for his personal use several amounts collected by him from several persons. There is only one crime because the different and successive appropriations are but different moments during which one criminal resolution arises.
2. Juan steals 2 books belonging to 2 different persons. He commits only one crime because there is unity of thought in the criminal purpose of the offender.
3. Different acts of sending letters of demand for money with threats to kill and burn the house of the offended party constitutes only one offense of grave threats born of a single criminal impulse to attain a definite objective. Thus, the series of acts born of a single criminal impulse may be perpetrated during a long period of time.

Test: There must be singularity of act, singularity of singular impulse is not written into the law. So long as the act or acts complained of resulted in a single criminal impulse, it is usually held to constitute a single offense. The test is not whether one of the two offenses is an essential element of the other.

Continued crime is NOT a complex crime

A continued crime is not a complex crime because the offender in continued crime does not perform a single act but a series of acts, and one offense is not a necessary means for committing the other.

Not being complex crime, the penalty for continued crime is not to be imposed in the maximum period

No actual provision in the RPC or any penal law punishing continued crime – it is applied in connection with 2 or more crimes committed with a single intention.

Continued Crime is Different From a Transitory Crime

A continued crime must be understood in the light of substantive law, while transitory/moving crime, in the light of procedural law and is only intended as a factor in determining the proper venue or jurisdiction for that matter of the criminal action pursuant to Section 14, Rule 110 of the Rules of Court. This is so because “a person charged with a transitory offense may be tried in any jurisdiction where the offense is in part committed or where any of the essential ingredients thereof took place. The singleness of the crime, committed by executing 2 or more acts, is not considered.

Real/Material Plurality	Continued Crime
There is a series of acts performed by the offender.	Same
Each act performed by the offender constitutes a separate crime because each act is generated by a criminal impulse.	Different acts constitute only one crime because all of the acts performed arise from one criminal resolution.

Plurality of Crime	Recidivism
No conviction of any of the crimes committed.	There must be conviction by final judgment of the first or prior offense.

ARTICLE 49. PENALTY TO BE IMPOSED UPON THE PRINCIPALS WHEN THE CRIME COMMITTED IS DIFFERENT FROM THAT INTENDED, RULES-

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. (Read also Arts. 61, 62, and 65)

NOTES:

1. Art 49 has reference to Art 4 par 1.
2. Art 49 has no application to cases where a more serious consequence not intended by the offender befalls the same person. Thus, it is not applicable to cases involving aberratio ictus and praeter intentionem.
3. It is applicable only in cases of error in personae or mistake in identity AND the penalty for the crime committed is different from that which is intended to be committed. Since only one crime is produced by the act of the offender, there could be no complex crime.
4. In pars 1 and 2, the lower penalty in its maximum period is always imposed.
5. In par 3, the penalty for the attempted or frustrated crime shall be imposed in its maximum period. This rule no 3 is not necessary and may well be covered by Art 48, in view of the fact that the same act also constitutes an attempt or a frustration of another crime.

Art 49	Art 48
Lesser penalty is to be imposed to be applied in the maximum period.	Penalty for the more or most serious crime shall be imposed, the same to be applied in its maximum period.

Article 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.

Article 51. Penalty to be imposed upon principals of attempted crimes. - The 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.

Article 52. Penalty to be imposed upon accomplices in a consummated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.

Article 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.

Article 54. Penalty to be imposed upon accomplices in a frustrated crime. - The penalty

next lower in degree than that prescribed by law for the frustrated felony shall be imposed upon the accessories in the commission of a frustrated felony.

Article 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.

Article 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.

Article 57. Penalty to be imposed upon accessories of an attempted crime. - The penalty lower by two degrees than that prescribed by law for the attempt shall be imposed upon the accessories to the attempt to commit a felony.

DIAGRAM for the Application of Arts 50 - 57

	Consummated	Frustrated	Attempted
Principals	Penalty Imposed by law	1 degree lower	2 degrees lower
Accomplices	1 degree lower	2 degrees lower	3 degrees lower
Accessories	2 degrees lower	3 degrees lower	4 degrees lower

Exceptions To The Rules Established In Articles 50 To 57

When the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories. (Art 60, RPC) e.g. Special penalty for attempted or frustrated robbery with homicide. (Art 297, RPC)

2 Cases Where the Accomplice is Punished with the Same Penalty Imposed upon Principal

- a. The ascendants, guardians, curators, teachers and any person who by abuse of authority or confidential relationship, shall cooperate as accomplices in the crimes of rape, acts of lasciviousness, seduction, corruption of minors, white slave trade or abduction. (Art 346)
- b. One who furnished the place for the perpetration of slight illegal detention. (Art 268)

Accessory Punished as Principal

Knowingly concealing certain evil practices. (art 142)

Cases Where Penalty Imposed on Accessories are One Degree Lower Instead of Two Degrees Lower

- a. Knowingly using counterfeited seal or forged signature or stamp of the President. (Art 162)
- b. Illegal Possession and use of a false treasury or bank note. (Art 168)
- c. Using a falsified document. (Art 173, Par 3)
- d. Using a falsified dispatch. (Art 173, par 2)

NOTES:

- 1. Bases for the determination of the extent of the penalty to be imposed:
 - a. Stages of Execution
 - b. Participation of the Person Liable
 - c. Presence of Aggravating or Mitigating Circumstances
- 2. **Degree** – one entire penalty or one unit of the penalties enumerated in the graduated scales provided for under Art 71.
- 3. **Period** – one of the 3 equal portions, called minimum, medium, and maximum, of a divisible penalty. However, a period of a divisible penalty when prescribed by the RPC as a penalty for a felony, is in itself a degree (e.g Art 140).
- 4. The rules in Arts 53, 55 and 57 do not apply if the felony is light because accessories are not liable for the same

Degree	Period
Refers to the penalty imposible for a felony committed considering the stages of execution and the degree of participation of the offender.	Refers to the duration of the penalty consisting of the maximum, medium and minimum, after considering the presence or absence of aggravating circumstances
May refer to both divisible and indivisible penalties.	Refers only to divisible penalties.

ARTICLE 58. ADDITIONAL PENALTY TO BE IMPOSED UPON CERTAIN ACCESSORIES

NOTES:

- 1. This Art applies only if the accessories falling within the terms of paragraph 3 of article 19 (public officers) who should act with abuse of their public functions. Thus, it is further limited to those whose participation in the crime is characterized by misuse of public office or authority.
- 2. The Art is limited only to grave or less grave felonies since it is not possible to have accessories liable for light felonies.

Additional Penalties for Public Officers who are Accessories:

- a. Absolute Perpetual Disqualification - if the principal offender shall be guilty of a grave felony.
- b. Absolute Temporary Disqualification - if the principal shall be guilty of a less grave felony.

ARTICLE 59. PENALTY FOR IMPOSSIBLE CRIME

The penalty is arresto mayor or a fine from 200 to 500 pesos.

Basis for the Imposition of Proper Penalty

- 1. Social danger; and
- 2. Degree of criminality shown by the offender

NOTES:

- 1. Art 59 is limited to grave or less grave felonies.
- 2. However, considering Art 4, Art 59 is actually limited to offenses against persons or property.

ARTICLE 61. RULES FOR GRADUATING PENALTIES

NOTE: The rules provided in this Art should also apply in determining the minimum of the indeterminate penalty under the Indeterminate Sentence Law (ISLAW). They are also applicable in lowering the penalty by one or two degrees by reason of the presence of privileged mitigating circumstance, or when the penalty is divisible and there are 2 or more mitigating circumstances (generic) and no aggravating circumstance.

Graduated Scale in Art 71

- 1. Indivisible Penalties
 - a. Death
 - b. Reclusion Perpetua
- 2. Divisible Penalties (maximum, medium, minimum)
 - a. Reclusion Temporal
 - b. Prision Mayor
 - c. Prision Correccional
 - d. Arresto Mayor
 - e. Destierro
 - f. Arresto Menor
 - g. Public Censure
 - h. Fine

Rules to be Observed in Lowering the Penalty By 1 or 2 Degrees

Rule 1. When the penalty is single and indivisible - the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in article 71 of this Code.

e.g. Reclusion Perpetua, the penalty next lower shall be Reclusion Temporal

Rule 2. When the penalty is composed of two indivisible penalties - the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.

e.g. Reclusion Perpetua to Death, the penalty immediately following the lesser of the penalties, which is reclusion perpetua, is reclusion temporal.

When the penalty is composed of one or more divisible penalties to be imposed 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.

e.g. One divisible penalty to be imposed to its full extent is Reclusion Temporal, the penalty immediately following such divisible penalty is prision mayor. 2 divisible penalties to be imposed to their full extent are prision correccional to prision mayor, the penalty immediately following the lesser of the penalties is arresto mayor.

Rule 3. When the penalty 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 period of that immediately following in said respective graduated scale.

Two Indivisible Penalties and the Maximum Period of a Divisible Penalty

e.g. Penalty for murder is Reclusion Temporal in its maximum period to Death, Reclusion Perpetua being in between is included in the penalty. Thus, the penalty consists in 2 indivisible penalties of death and reclusion perpetua and 1 divisible penalty of reclusion temporal in its maximum. The point of reference is the proper divisible penalty which is reclusion temporal. Under the 3rd rule, the penalty next lower is composed of the medium and minimum periods of RT and the maximum of prision mayor.

One Indivisible Penalty and the Maximum Period of a Divisible Penalty

e.g. RT in its maximum period RP.

Rule 4.

When the penalty is composed of several periods (at least 3), 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. In other words, the penalty next lower in degree is the penalty consisting in the 3 periods down in the scale.

e.g. The penalty which is composed of several periods corresponding to different divisible penalties is PM in its medium period to RT in its minimum. The period immediately following the minimum, which is PM in its medium period, is prision mayor in its minimum. The 2 periods next following are the maximum and medium periods of PC, the penalty next following in the scale

prescribed in Art 71 since it cannot be taken from the penalty prescribed.

Rule 5. When the law prescribes a penalty 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. (As amended by Com. Act No. 217.)

When the Penalty has Two Periods – the penalty next lower is that consisting of 2 periods down the scale.

e.g. The penalty next lower than PC in its minimum and medium period is Arresto mayor in its medium and maximum periods.

When the Penalty has One Period – the penalty next lower is the next period down the scale.

e.g. The penalty immediately inferior to PM in its maximum period is PM in its medium period.

NOTE: Mitigating and Aggravating Circumstances are Disregarded in the Application of the Rules for Graduating Penalties. It is ONLY after the penalty next lower in degree is already determined that the mitigating and/or aggravating circumstances should be considered.

SECTION 2

Rules For The Application Of Penalties With Regard To The Mitigating And Aggravating Circumstances, And Habitual Delinquency

Article 62. RULES REGARDING AGGRAVATING AND MITIGATING

Par 1. Aggravating circumstances are NOT to be taken into account when:

1. they themselves constitute a crime specially punishable by law
e.g. by "means of fire" – in arson
2. they are included by the law in defining a crime and prescribing the penalty therefor
e.g. dwelling is not aggravating in robbery with force upon things (Art 299)

When Maximum of the Penalty shall be Imposed Regardless of Mitigating

- a. When in the commission of the crime, advantage was taken by the offender of his public position.
- b. If the offense was committed by any person who belongs to an organized/syndicated crime group.

ORGANIZED/SYNDICATED CRIME GROUP - a group of two or more persons collaborating,

confederating or mutually helping one another for purposes of gain in the commission of any crime.

Par 2. Same rule shall apply with respect to any aggravating circumstances *inherent in the crime* to such a degree that it must be necessary accompany the commission thereof.

e.g. Evident premeditation is inherent in robbery and theft.

Par 3. Aggravating or mitigating circumstances which arise from any of the following shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

1. From the moral attributes of the offender
2. From his private relations with the offended party
3. From any other personal cause

Par 4. The following circumstances 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:

1. material execution of the act (e.g. with treachery)
2. means employed to accomplish it (e.g. used of poison)

Par 5. Habitual delinquency shall have the following effects (**Additional Penalty for Habitual Delinquency**):

- (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.

REASON: If graver punishment for committing the 2nd offense has proved insufficient to restrain his proclivities and to amend his life, he is deemed to have shown a dangerous propensity to crimes. Hence, he is punished with a severer penalty for committing any of those crimes the 3rd time or oftener. Moreover, it is to render more effective social defense and the reformation of multirecidivists.

Total Penalties NOT to Exceed 30 Years

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. The 2 penalties refer to the penalty for the last crime of which he is found guilty and the additional penalty for a habitual delinquent.

HABITUAL DELINQUENT - a person who within a period of 10 years from the date of his **release or last conviction** of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, he is found guilty of any of said crimes a third time or oftener. (As amended by Section 23, Republic Act No. 7659.)

Requisites of Habitual Delinquency

1. That the offender had been convicted of any of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification.
2. That after that conviction or after serving his sentence, he again committed, and, within 10 years from his release or first conviction, he was again convicted of any of the said crimes for the 2nd time.
3. That after his conviction of, or after serving sentence for the 2nd offense, he again committed, and, within 10 years from his last release or last conviction, he was again convicted of any of said offenses, the 3rd time or oftener.

Habitual Delinquency	Recidivism
Crimes to be committed are specified	Same title
Within 10 years	No time fixed by law
Must be found guilty the 3 rd time or oftener	2 nd conviction
Additional penalty is imposed.	If not offset by MC, increases penalty to maximum.

What to be Alleged in the Information

1. The dates of the commission of the previous crimes.
2. The date of the last conviction or release.
3. The dates of the other previous convictions or releases.

Effect of Plea of Guilty When Allegations are Insufficient – NOT an admission that the offender is a habitual delinquent, but only a recidivist.

Effect of failure to Object to Admission of Decision showing dates of Previous Conviction – failure to allege said dates in the information is deemed cured.

NOTES:

- Habitual delinquency has the effect, not only of increasing the penalty because of recidivism which is implied in habitual delinquency, but also of imposing an additional penalty.
- 10 year period to be computed from the time of last release or conviction to the date of conviction of subsequent offense (not to the date of commission).
- Subsequent crime must be committed after conviction of the former crime. Cases still pending are not to be taken into consideration.
- When the offender has committed several crimes mentioned in the definition of habitual delinquent, without first convicted of any of them before committing the others, he is not a habitual delinquent.
- Convictions on the same day or about the same time are considered as one only.
- Crimes committed on the same date, although convictions on different dates, are considered only one.
- Previous convictions are considered every time a new offense is committed.
- Commissions of any of those crimes need not be consummated. It applies at any stage of the execution because subjectively, the offender reveals the same degree of depravity or perversity as the one who commits a consummated crime.
- Habitual delinquency applies to accomplices and accessories. It applies to all participants because it reveals persistence in them of the inclination to wrongdoing and of the perversity of character that led them to commit the previous crime.
- A crime committed by the offender during minority is not counted because the proceedings as regards that crime are suspended.
- The imposition of the additional penalty for habitual delinquents is mandatory NOT discretionary.
- Modifying circumstances applicable to additional penalty.
- Habitual delinquency is NOT a crime but simply a fact or circumstance which if present gives rise to the imposition of the additional penalties.
- Penalty for habitual delinquency is a real penalty that determines jurisdiction.
- A habitual delinquent is necessarily a recidivist.
- But in imposing the additional penalty, recidivism is not aggravating inasmuch as recidivism is a qualifying or inherent in habitual delinquency. The additional penalty must be imposed in its minimum.
- An offender can be a habitual delinquent without being a recidivist when no 2 crimes committed are embraced in the same title of the RPC.
- The imposition of additional penalties on habitual delinquents is constitutional for it is simply a punishment on future crimes on account of the criminal propensities of the accused.

ARTICLE 63. RULES FOR THE APPLICATION OF INDIVISIBLE PENALTIES

1. Penalty is **single indivisible**, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.
2. When the penalty is composed of **two indivisible penalties**, the following rules shall be observed:
 - a. When there is only one aggravating circumstance, the *greater penalty shall be applied*.
 - b. When there is neither mitigating nor aggravating circumstances in the commission of the deed, the *lesser penalty shall be applied*.
 - c. When there is mitigating circumstance and no aggravating circumstance, the *lesser penalty shall be applied*.

Thus, the penalty cannot be lowered by 1 degree no matter how many mitigating circumstances are present.

Exception: When a privileged mitigating circumstance under Art 68 or 69 is present.

- d. When *both* mitigating and aggravating circumstances attended the commission of the act, the courts 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.

In this Par 4, moral value and not numerical weight shall be taken into account.

NOTES:

- Art 63 is applicable only when the penalty is either one indivisible penalty or two indivisible penalties. Thus, it is NOT applicable if the penalty is reclusion temporal in its maximum to death, because although this penalty includes 2 indivisible penalties, it has 3 periods.

ARTICLE 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 courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. No aggravating and no mitigating - medium period.
2. Only a mitigating circumstance is present - minimum period.
3. Only an aggravating circumstance is present - maximum period.

Note: When there are 2 aggravating circumstance and no mitigating – the penalty prescribed for the crime should be imposed in its maximum period.

4. Both mitigating and aggravating circumstances are present - offset those of one class against the other according to their relative weight.

Note: The mitigating must be ordinary, not privileged; the aggravating must be generic or specific, not qualifying or inherent.

5. Two or more mitigating and no aggravating - penalty next lower, *in the period* applicable, according to the number and nature of such circumstances.

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.

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 courts shall determine the extent of the penalty *according to the number and nature* of the aggravating and mitigating circumstances and the greater or lesser *extent of the evil* produced by the crime.

NOTES:

- Art 64 applies only when the penalty has 3 periods because they are divisible. If the penalty is composed of 3 different penalties, each forms a period in accordance with Art 77.

- Art 64 is not applicable when the penalty is (a) indivisible; (b) prescribed by special law; or (c) fine.
- Cases where the attending aggravating or mitigating circumstances are not considered in the imposition of penalties:
 - a. Penalty is single and indivisible.
 - b. Felonies thru negligence.
 - c. Penalty to be imposed upon a Moro or other Non-Christian inhabitants.
 - d. Penalty is only a fine imposed by an ordinance (subject to discretion of court –see Art 66).
 - e. Penalties are prescribed by special laws.

ARTICLE 65. RULE IN CASES IN WHICH THE PENALTY IS NOT COMPOSED OF THREE PERIODS

In cases in which the penalty prescribed by law is not composed of three periods, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

Computation When the Penalty Has 3 Periods
(See Reyes Book 1)

Computation When the Penalty is Not Composed of 3 Periods (See Reyes Book 1)

ARTICLE 66. IMPOSITION OF FINES

1. In imposing fines the courts may fix any amount within the limits established by law.
2. The court must consider:
 - a. The mitigating and aggravating circumstances; and
 - b. More particularly to the wealth or means of the culprit.
3. The following may also be considered by the court:
 - a. Gravity or seriousness of the crime committed;
 - b. Heinousness of its perpetration;
 - c. Magnitude of its effects on the offender's victims.

NOTE: When the minimum of the fine is not fixed by law, the court has the discretion to determine the fine provided it shall not exceed the maximum authorized by law.

ARTICLE 67. PENALTY TO BE IMPOSED WHEN NOT ALL THE REQUISITES OF EXEMPTION OF THE FOURTH CIRCUMSTANCE OF ARTICLE 12 ARE PRESENT

Requisites of Art 12 par 4:

1. Act causing injury must be lawful;

2. Act performed with due care;
3. Injury was caused by mere accident;
4. No fault or intention to cause injury.

NOTES:

1. When all the conditions required in circumstance number 4 of article 12 of this Code to exempt from criminal liability are not present, the following penalties shall be imposed:
 - a. arresto mayor in its maximum period to prison correccional in its minimum period - if culprit shall have been guilty of a grave felony
 - b. arresto mayor in its minimum and medium periods - if culprit shall have been guilty of a less grave felony.
2. If all the conditions are not present, the act should be considered as reckless imprudence if the act is executed without taking those precautions or measures which the most common prudence would require; and simple imprudence, if it is a mere lack of precaution in those cases where either the threatened harm is not imminent or the danger is not openly visible.
3. The penalty provided under Art 67 is the same as that in Art 365.

ARTICLE 68. PENALTY TO BE IMPOSED UPON A PERSON UNDER EIGHTEEN YEARS OF AGE

NOTES:

1. Art 68 is not immediately applicable to a minor under 18 years of age.
2. Art 68 applies to such minor if his application for suspension of sentence is disapproved or while in the reformatory institution he becomes incorrigible, in which case he shall be returned to court for the imposition of the proper penalty. The penalties to be imposed are:
 - a. Under 15 but over 9 years of age when acted with discernment - at least 2 degrees lower than that prescribed by law for the crime committed.
 - b. Over 15 (should be 15 or over) and under 18 years of age - the penalty next lower than that prescribed by law shall be imposed, but always in the proper period. (1 degree lower)

If the act is attended by 2 or more mitigating and no aggravating, the penalty being divisible, a minor over 15 and under 18 may still get a penalty 2 degrees lower.

ARTICLE 69. PENALTY TO BE IMPOSED WHEN THE CRIME COMMITTED IS NOT WHOLLY EXCUSABLE

A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is not wholly excusable by reason of the lack of some of the conditions required to justify the same or to exempt

from criminal liability in the several cases mentioned in article 11 and 12 (INCOMPLETE JUSTIFYING AND INCOMPLETE EXEMPTING), provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

ARTICLE 70. SUCCESSIVE SERVICE OF SENTENCES

1. When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit.

The penalties which can be served simultaneously are:

- a. Perpetual absolute disqualification,
- b. Perpetual special disqualification,
- c. Temporary absolute disqualification,
- d. Temporary special disqualification,
- e. Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling,
- f. Distierro,
- g. Public censure,
- h. Fine and bond to keep the peace,
- i. Civil interdiction,
- j. Confiscation and payment of costs.

Note: The above penalties, except distierro, can be served simultaneously with imprisonment.

2. Otherwise, the order of their severity shall be followed.

In such case, they may be executed successively or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

Note: The time of the 2nd sentence will not commence to run until the expiration of the first.

The respective severity of the penalties is as follows:

1. Death,
2. Reclusion perpetua,
3. Reclusion temporal,
4. Prision mayor,
5. Prision correccional,
6. Arresto mayor,
7. Arresto menor,
8. Destierro,
9. Perpetual absolute disqualification,
10. Temporary absolute disqualification.
11. Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling, and

12. Public censure.

In applying the provisions of this rule the duration of perpetual penalties (penal perpetua) shall be computed at thirty years.(As amended by Com. Act No. 217.)

Three-Fold Rule - the maximum duration of the convict’s sentence shall not be more than 3 times the length of time corresponding to the most severe of the penalties imposed upon him.

No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period. (Thus, Subsidiary imprisonment shall be excluded in computing for the maximum duration)

Such maximum period shall in no case exceed forty years.

Notes:

- The phrase “the most severe of the penalties” includes equal penalties.
- If only 2 or 3 penalties corresponding to different crimes committed by the convict are imposed, it is hardly possible to apply the 3-fold rule.
- The 3-fold rule applies only when the convict has to serve at least four sentences. Sentences must be served successively, not simultaneously. It applies although sentences are promulgated by different courts, at different times, for different crimes, and under separate informations.
- The 3-fold rule must be used only when the product of the greatest penalty multiplied by 3 is less than the sum of all the penalties to be imposed.
- For purposes of the rule, indivisible penalties shall be given an equivalent duration of 30 years, so that if he will have to suffer several perpetual disqualification, under the rule, you take the most severe and multiply it by 3. The rule does not apply to the penalty prescribed but to the penalty imposed as determined by the court.

Different Systems of Penalty

1. Material Accumulation System – no limitation whatsoever, and accordingly all the penalties for all the violations were imposed even if they reached beyond the natural span of human life. (e.g. Pars 1 to 3 of Art 70)
2. Juridical Accumulation System – Limited to not more than the 3-fold length of time corresponding the most severe penalty and in no case to exceed 40 years.
3. Absorption System – the lesser penalties are absorbed by graver penalties.

ARTICLE 71. GRADUATED SCALES

In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in article 61 shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

1. Death,
2. Reclusion perpetua,
3. Reclusion temporal,
4. Prision mayor,
5. Prision correccional,
6. Arresto mayor,
7. Destierro,
8. Arresto menor,
9. Public censure,
10. Fine.

SCALE NO. 2

1. Perpetual absolute disqualification,
2. Temporary absolute disqualification
3. Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling,
4. Public censure,
5. Fine.

Art 25	Art 70	Art 71
Penalties are classified into principal and accessory penalties. Principal is further classified into capital, afflictive, correctional, and light.	Penalties are classified according to severity.	Provides for the scale to be observed in graduating of penalties by degrees. Penalties are classified into 2 graduated scales. Scale 1 refers to personal penalties, while scale 2 refer to penalties consisting in deprivation of political rights.
Destierro is placed above arresto menor because it is classified as correctional penalty.	Destierro is placed under arresto menor according to severity. Destierro is lighter than arresto menor.	Destierro is above arresto menor because it is classified as correctional penalty which is higher than arresto menor, a light penalty

ARTICLE 72. PREFERENCE IN THE PAYMENT OF THE CIVIL LIABILITIES

The civil liabilities of a person found guilty of two or more offenses shall be satisfied by following the chronological order of the dates of the final judgments rendered against him, beginning with the first in order of time.

NOTES:

- This Art is applicable in case the person guilty of 2 or more offenses has 2 or more civil liabilities.
- Criminal liability – successive service of sentence if cannot be served simultaneously; Civil liability – follow chronological order of the dates of the final judgments.

SECTION 3

Provision Common To The Last Two Preceding Sections

ARTICLE 73. PRESUMPTION IN REGARD TO THE IMPOSITION OF ACCESSORY PENALTIES

Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of Articles 40, 41, 42, 43, 44, and 45 of this Code, it must be understood that the accessory penalties are also imposed upon the convict. Note: Subsidiary imprisonment must be stated in the decision because it is not considered a accessory penalty.

ARTICLE 74. PENALTY HIGHER THAN RECLUSION PERPETUA IN CERTAIN CASES

In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of article 40, shall be considered as the next higher penalty.

NOTE: If the law or decision says higher than RP or 2 degrees higher than RT, then the penalty imposed is RP or RT as the case may be and not death. Death must be designated by name. However, the accessory penalties of death when not executed by reason of commutation or pardon shall be imposed..

ARTICLE 75. INCREASING OR REDUCING THE PENALTY OF FINE BY ONE OR MORE DEGREES

Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional.

Fine w/ a Minimum	Fine w/o a minimum
Maximum is fixed	Same
Courts cannot change the minimum fixed by law	Court can imposed any amount not exceeding the maximum
When both minimum and maximum is fixed, court can impose an amount higher than the maximum	When only the maximum is fixed, court can impose any amount not exceeding the maximum

ARTICLE 76. LEGAL PERIOD OF DURATION OF DIVISIBLE PENALTIES

The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table:

TABLE SHOWING THE DURATION OF DIVISIBLE PENALTIES AND THE TIME INCLUDED IN EACH OF THEIR PERIODS

Penalties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time included in its maximum period
Reclusion Temporal	From 12 years and 1 day to 20 years	From 12 years and 1 day to 14 years and 8 months	From 14 years, 8 months and 1 day to 17 years	From 17 years, 4 months and 1 day to 20 years
Prision Mayor, absolute disqualification and special temporary disqualification	From 6 years and 1 day to 12 years	From 6 years and 1 day to 8 years	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years
Prision Correccional, suspension and destierro	From 6 months and 1 day to 6 years	From 6 months and 1 day to 2 years and 4 months	From 2 years, 4 months and 1 day to 4 years and 2 months	From 4 years 2 months and 1 day to 6 years
Arresto Mayor (does not follow the rule)	From 1 month and 1 day to 6 months	From 1 month and 1 day to 2 months	From 2 months and 1 day to 4 months	From 4 months 1 day to 6 months
Arresto Menor	From 1 to 30 days	From 1 to 10 days	From 11 to 20 days	From 21 to 30 days

ARTICLE 77. WHEN THE PENALTY IS A COMPLEX ONE COMPOSED OF THREE DISTINCT PENALTIES

In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period (Known as the COMPLEX PENALTY).

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying for analogy the prescribed rules.

EXECUTION AND SERVICE OF PENALTY

- “No penalty shall be executed except by virtue of a final judgment”
- The judgment must be final before it can be executed because the accused may still appeal within 15 days from its promulgation. But if the dependant has expressly waived in writing his right to appeal, the judgment becomes final immediately.

RULES IN SUSPENSION OF THE EXECUTION AND SERVICE OF PENALTIES IN CASE OF INSANITY:

1. When a convict becomes insane or imbecile after final sentence has been pronounced, the execution of said sentence is suspended only as regards the personal penalty.
2. If he RECOVERS his reason, his sentence shall be executed, unless the penalty has prescribed.
3. Even if while serving his sentence, the convict becomes insane or imbecile, Article 79 shall be observed.
4. But the payment of his civil or pecuniary liabilities shall not be suspended.

**Title 4
EXTINCTION OF CRIMINAL LIABILITY**

- **There are two (2) classifications when Criminal Liability are extinguished:**
 - a. TOTAL
 - b. PARTIAL

CRIMINAL LIABILITY IS TOTALLY EXTINGUISHED AS FOLLOWS:

1. By the death of the convict as to personal penalties, and as to the pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment.

- The death of the convict, whether before or after final judgment, extinguishes criminal liability, because one of the juridical conditions of penalty is that it is PERSONAL. At this instance, his civil liability is also extinguished.
- While the 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 of the Civil Code.

2. By service of sentence

- Crime is debt incurred by the offender as a consequence of his wrongful act and the penalty is but the amount of his debt.
- Service of sentence does not extinguish the civil liability.

3. By amnesty which completely extinguishes the penalty and all its effects

AMNESTY, Defined.

It is an act of the sovereign power granting oblivion or a general pardon for a past offense and is rarely, if ever, exercised in the favor of a single individual, and is usually exerted in behalf of certain classes of persons, who are subject to trial but have not yet been convicted.

- Amnesty erases not only the conviction but also the crime itself.
- While amnesty wipes out all traces and vestiges of the crime, it does not extinguish the civil liability of the offender.

4. By absolute pardon.

PARDON. Defined.

It is an act of grace proceeding from the power entrusted with the execution of the laws which exempts the individual on whom it is bestowed from the punishment of the law inflicts for the crime he has committed.

- Pardon, whether absolute or conditional, is in the nature of a deed, for the validity of which delivery is an indispensable requisite.

AMNESTY AND PARDON DISTINGUISHED.

PARDON	AMNESTY
- includes any crime and is exercised individually by the president	- is a blanket of pardon to classes of persons on communities who may be guilty of political offenses
- exercised when the person is already convicted	- may be exercised even before trial or investigation is had
- pardon looks forward and relieves the offender from the consequences of an offense or which he has been convicted, that is its abolishes or forgives the punishment	- amnesty looks backward and abolishes and puts into oblivion the offense itself.
- pardon being a private act of the President must be pleaded and proved by the person pardoned	- amnesty being by proclamation of the chief executive with the concurrence of Congress, is a public act of which the courts should take

judicial notice

* BOTH DO NOT EXTINGUISH THE CIVIL LIABILITY OF THE OFFENDER

5. By prescription of the crime.

- It is the forfeiture or loss of the right of the state to Prosecute the offender after the lapse of a certain time.
- Prescription of the crime begins, as a general rule on the day of 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.
- Prescription of the crime is not waivable.

The prescription of the felony is suspended when:

1. When a complaint is filed in a proper barangay for conciliation or mediation 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 or not.
 2. When criminal case is filed in the Fiscal'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.
 3. 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 court which will suspend the prescription.
- The prescription of penalty, the period will only commence to run when the convict has began to serve the sentence.

Prescription of Crimes

Reclusion perpetua or temporal	20 years
Punishable by afflictive penalties	15 years
Punishable by correctional penalties	10 years
Punishable by Arresto Mayor	5 years
Crime of libel/similar offenses	1 year
Oral defamation/slander by deed	6 months
Light Offenses	2 months

- In computing the period for prescription, the first day is to be excluded and that last day included
- When fine is an alternative penalty higher than the other penalty which is

imprisonment – the prescription is based on the fine

*** Whether it is prescription of crime or penalty, if the subject left the country, and went in a country with which the Philippines has no extradition treaty, the prescriptive period shall remain suspended whenever he is out of the country.**

PRESCRIPTION OF PENALTIES	
Death and Reclusion Perpetua	20 years
Afflictive Penalties	15 years
Correccional Penalties	10 years
Arresto Mayor	5 years
Light Penalties	1 year

7. By the marriage of the offended woman.

- In cases of rape, seduction, abduction or acts of lasciviousness. Hence, marriage contracted only to avoid criminal liability is devoid of legal effects.

CRIMINAL LIABILITY IS EXTINGUISHED AS FOLLOWS:

1. By conditional pardon.

- Conditional pardon delivered and accepted is considered a contract between the sovereign power of the Executive and the convict that the former will release the latter upon compliance with the condition.

PRESCRIPTION OF PENALTIES	
Death and Reclusion Perpetua	20 years
Afflictive Penalties	15 years
Correccional Penalties	10 years
Arresto Mayor	5 years
Light Penalties	1 year

2. By commutation of the sentence.

- It is a change in the decision of the Court made by the Chief Executive by reducing the degree of the penalty inflicted upon the convict, or by decreasing the length of the imprisonment or the amount of the fine.

INSTANCES WHERE COMMUTATION IS APPLIED:

1. When the convict sentenced to death is over 70 years of age.
2. When 10 justices of the Supreme Court fail to reach a decision for the affirmance of the death penalty

3. For good conduct allowances which the culprit may earn while he is serving sentence.

- This includes the allowance for loyalty under Article 98 in relation to Article 158.

4. By parole.

PAROLE, defined.

Parole consists in the suspension of the sentence of a convict after serving the minimum term of the indeterminate penalty, without granting a pardon, prescribing the terms upon which the sentence shall be suspended.

- The mere commission not conviction by the Court, of any crime is sufficient to warrant parolees arrest and reincarnation.

DISTINCTION BETWEEN CONDITIONAL PARDON AND PAROLE

CONDITIONAL PARDON	PAROLE
- may be given at anytime after final judgment	- may be given after the prisoner has served the minimum penalty
- granted by the Chief Executive under the provisions of the Administrative Code	- granted by the Board of Pardons and Parole under the provision of the Indeterminate Sentence Law
- for violation of the conditional pardon, the convict may be ordered rearrested or reincarnated by the Chief Executive or may be prosecuted under Art. 159 of the Code	- for violation of the terms of the parole, the convict cannot be prosecuted under Art. 159. He can be rearrested and reincarcerated to serve the unserved portion of his original penalty

OBLIGATIONS OF THE PERSON GRANTED CONDITIONAL PARDON

- 1) He must comply strictly with the conditions imposed on the pardon.
- 2) Failure to comply with the conditions shall result in the revocation of the pardon.
- 3) He becomes liable under Art. 159. This is the Judicial remedy.

**Title 5
CIVIL LIABILITY**

Article 20, NCC.

“Every person who, contrary, to law, willfully or negligently causes damage to another, shall indemnify the latter for the same.

Article 1161, NCC

“Civil obligations arising from criminal offenses shall be governed by the penal laws, subject to the provisions of Article 2177, and of the pertinent provisions of Chapter 2, Preliminary Title, on Human

Relations and Title XVIII of this book, regulating damages/

- The basis of civil liability is the obligation of everyone to repair or to make whole the damage caused to another by reason of his act or omission, whether done intentionally or negligently and whether or not punishable by law.
- If the felony committed could not or did not cause any damage to another, the offender is not civilly liable even if he is criminally liable for the felony committed.
- Extinction of the penal action does not carry with it extinction of the civil liability, unless the extinction proceeds from a declaration in a final judgment that the fact, from which the civil liability might arise did not exist.

CIVIL LIABILITY MAY EXIST, ALTHOUGH THE ACCUSED IS NOT HELD CRIMINALLY LIABLE, IN THE FOLLOWING CASES:

1. Acquittal on REASONABLE DOUBT – when the guilt of the offender has not been proved beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted.
2. Acquittal from A CAUSE OF NON IMPUTABILITY – the exemption from criminal liability in favor of an imbecile insane person, etc.
3. ACQUITTAL IN THE CRIMINAL ACTION FOR NEGLIGENCE does not preclude, the offended party from filing a civil action to recover damages, based on the new theory that the act is a quasi-delict.
4. WHERE THERE IS ONLY CIVIL RESPONSIBILITY – when the Court finds and so states in its judgment that there is only civil responsibility, and not criminal responsibility, and that this finding is the cause of the acquittal.
5. IN CASES OF INDEPENDENT CIVIL ACTIONS under Article 31, 32, 33, 34, and 1167 of NCC.

CIVIL LIABILITY OF THE OFFENDER FALLS UNDER THREE CATEGORIES:

1. RESTITUTION AND RESTORATION

- Restitution or restoration presupposes that the offended party was divested of property, and such property must be returned.
- If the property is in the hands of a third person/party, the same shall nevertheless be taken from him and restored to the offended party, even though such third party may be a holder for value and a buyer in good faith of the property, except

when such third party buys the property from a public sale where the law protects the buyer.

- Restitution is applicable only to crimes against property.
- The obligation of the offender transcends to his heirs, even if the offender dies, provided he died after judgment became final, the heirs shall assume the burden of the civil liability, but this is only to the extent that they inherit property from the deceased, if they do not inherit, they cannot inherit the obligations.
- The right of the offended party transcends to heirs upon death. The heirs of the offended party step into the shoes of the latter to demand civil liability from the offender.

2. REPARATION

- When the stolen property cannot be returned because it was sold to an unknown person, he will be required by the Court if found guilty to pay the actual price of the thing plus its sentimental value.

3. INDEMNIFICATION FOR CONSEQUENTIAL DAMAGES

- It is ordinarily the remedy granted to the victims of crimes against persons
- Indemnification of consequential damages refers to the loss of earnings, loss of profits. This does not refer only to the consequential damages suffered by the offended part, this also includes consequential damages to third party who also suffers because of the commission of the crime.

SUBSIDIARY LIABILITY

Requisites:

1. The employer must be engaged in business or in trade or industry while the accused was his employee.
 2. At the time the crime was committed the employer-employee relationship must be existing between the two;
 3. The employee must have been found guilty of the crime charged and accordingly held civilly liable; and
 4. the writ of execution for the satisfaction of the civil liability was returned unsatisfied because the accused-employee does not have enough property to pay the civil liability.
- all the requisites must concur
 - there is no need to file a civil action against the employer in order to enforce the subsidiary civil liability for the crime committed by his

employee, it is enough that the writ of execution is returned unsatisfied

SUBSIDIARY CIVIL LIABILITY IS IMPOSED IN THE FOLLOWING:

1. In case of a felony committed under the compulsion of an irresistible force. The person who employed the irresistible force is subsidiarily liable.
2. In case of a felony committed under an impulse of an equal or greater injury. The person who generated such an impulse is subsidiarily liable.
3. The owners of taverns, inns, hotels, motels, where the crime is committed within their establishment die to non-compliance with general police regulations, if the offender who is primarily liable cannot pay the proprietor, or owner is subsidiarily liable.
4. Felonies committed by employers, pupils, servants, in the course of their employment, schooling or household chores. The employer, master, teacher is subsidiarily liable civilly, while the offender is primarily liable.
5. In case the accomplice and the principal cannot pay, the liability of the person subsidiary liable is absolute.

Penalties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time included in its maximum period
Reclusion Temporal	From 12 years and 1 day to 20 years	From 12 years and 1 day to 14 years and 8 months	From 14 years, 8 months and 1 day to 17 years	From 17 years, 4 months and 1 day to 20 years
Prision Mayor, absolute disqualification and special temporary disqualification	From 6 years and 1 day to 12 years	From 6 years and 1 day to 8 years	From 8 years and 1 day to 10 years	From 10 years and 1 day to 12 years
Prision Correccional, suspension and	From 6 months and 1 day	From 6 months and 1 day to 2 years	From 2 years, 4 months	From 4 years 2 months and 1 day to

destierro	to 6 years	and 4 months	s and 1 day to 4 years and 2 months	6 years
Arresto Mayor	From 1 month and 1 day to 6 months	From 1 month and 1 day to 2 months	From 2 months and 1 day to 4 months	From 4 months 1 day to 6 months
Arresto Menor	From 1 to 30 days	From 1 to 10 days	From 11 to 20 days	From 21 to 30 days

BOOK II

**TITLE I
CRIMES AGAINST NATIONAL SECURITY AND THE LAWS OF NATIONS**

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.

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 can not be tried under foreign law.

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.*

Section 1 – Treason and Espionage

Article 114. Treason

Elements

1. Offender is a Filipino or resident alien (owes allegiance to the government);
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

Treason – breach of allegiance to the government by a person who owes allegiance to it.

Allegiance – obligation of fidelity and obedience which individuals owe to the government under which they live or to their sovereign, in return for protection they receive.

- **Treason is a war crime** – punished by state as a measure of self-protection.
- Committed in times of war (not peace) when
 - There is actual hostilities
 - No need for a declaration of war
- Mere acceptance of public office and discharge of official duties under the enemy do not constitute

per se the felony of treason. But when the position is policy-determining, the acceptance of public office and discharge of official duties constitute treason

Ways to Commit Treason:

1. **Levying war** against government which requires:
 - a. actual assembling of men
 - b. for the purpose of executing a treasonable design, by force

Levying war – must be with intent to overthrow the government as such, not merely to repeal a particular statute or to resist a particular officer.

Not necessary that those attempting to overthrow the government by force of arms should have the apparent power to succeed in their design, in whole or in part.

It is not necessary that there be a formal declaration of the existence of the state of war.

2. **Adherence to enemies** – following must concur together:
 - a. actual adherence
 - b. give aid or comfort

Adherence – intellectually or emotionally favors the enemy and harbors sympathies or convictions disloyal to his country's policy or interest

Aid or comfort – act which strengthens or tends to strengthen the enemy of the government in the conduct of war against the government, *or* an act which weakens or tends to weaken the power of the government or the country to resist or to attack the enemies of the government or country. The act committed need not actually strengthen the enemy

Enemy – applies only to the subjects of a foreign power in a state of hostility with the traitor's country. It does not embrace rebels in the insurrection against their own country. The aid or comfort given to the enemies must be after the declaration of war between the countries.

Persons liable:

1. **Filipino** – permanent allegiance; can commit treason anywhere
2. **Alien Residing** – temporary allegiance; commit treason only while residing in Philippines.

Ways to Prove

1. **Treason**
 - a. testimony of at least 2 witnesses to the same overt act

b. judicial confession of accused

To convict: testimonies must relate to the same overt act – not two similar acts

If act is separable – each witness can testify to parts of it, but the act, as a whole, must be identifiable as an overt act

Confession must be in open court

Reason for **2-witness rule** – special nature of the crime requires that the accused be afforded a special protection not required in other cases so as to avoid a miscarriage of justice. Extreme seriousness of the crime, for which death is one of the penalties provided by law, and the fact that the crime is committed in abnormal times, when small differences may in mortal enmity wipe out all scruples in sacrificing the truth

2. Adherence

- a. one witness
- b. nature of act itself
- c. circumstances surrounding act

- **Treason is a continuing crime.** Even after the war, offender can still be prosecuted.
- **No treason through negligence** since it must be intentional
- **No complex crime** of treason with murder – murder is the overt act of aid or comfort and is therefore inseparable from treason itself. Treason absorbs crimes committed in furtherance thereof. Also, no separate crimes.
- Treason committed in a foreign country may be prosecuted in the Phils.
- Treason by an alien must be committed in the Phils, EXCEPT in case of conspiracy.
- **DEFENSES**
 - duress or uncontrollable fear
 - obedience to de facto government
- **NOT DEFENSES**
 - suspended allegiance
 - joining the enemy army thus becoming a citizen of the enemy

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.
- **GENERAL RULE**, conspiracy and proposal to commit a felony is not punishable (Art 8). **Art 115 is an exception** as it specifically penalizes conspiracy and proposal to commit treason.
 - Two-witness rule – not applicable since this is a crime separate and distinct from treason.
 - If actual acts of treason are committed after the conspiracy or proposal, the crime committed will be treason, and the conspiracy or proposal is considered absorbed.

Article 116. Misprision of Treason

Elements

1. Offender must be owing 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 proper authority.
- It is a crime of omission. It is an exception to the rule that mere silence does not make a person criminally liable.
 - *Crime doesn't apply if crime of treason is already committed and it is not reported.*
 - *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.*
 - *The phrase "shall be punished as an accessory to the crime of treason" mentioned in the provision does not mean that the offender is an accessory to the crime of treason because he is actually a principal in a crime of misprision of treason. It simply means that the penalty imposed is that of an accessory to the crime of treason.*

Article 117. Espionage

Espionage – is the offense of gathering, transmitting, or losing information respecting the national defense with intent or reason to believe that the information is

to be used to the injury of the Republic of the Philippines or the advantage of a foreign nation.

Modes of Committing Espionage

1. By **entering, without authority**, 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

1. Offender enters any of the places mentioned;
2. He has no authority therefore;
3. His purpose is to obtain information, plans, photographs or other data of a confidential nature relative to the defense of the Philippines.

Note: There must be an intention to obtain information relative to the defense of the Phils., although it is not necessary that the information is obtained.

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

1. Offender is a public officer;
2. 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;
3. He discloses their contents to a representative of a foreign nation.

Persons Liable

1. first mode:
 - a. Filipino (being a public officer is aggravating)
 - b. alien residing
 2. second mode:
 - a. offender is a public officer
- Espionage is not conditioned on citizenship.
 - Wiretapping is not espionage if the purpose is not connected with the defense.

TREASON	ESPIONAGE
Both not conditioned by citizenship of offender	
Committed in war time	war and peace time
Limited in two ways of committing the crime: levying war, and adhering to the enemy giving him aid or comfort	Committed in many ways

Commonwealth Act No. 616 – An Act to Punish Espionage and Other Offenses against National Security

Some Acts punished

1. Unlawfully obtaining or permitting to be obtained information affecting national defense;
2. Unlawful disclosing of information affecting national defense;
3. Disloyal acts or words in times of peace(i.e causing in any manner insubordination, disloyalty, mutiny or refusal of duty of any member of the military, naval, or air forces of the Philippines) ;
4. Disloyal acts or words in times of war;
5. Conspiracy to violate the foregoing acts;
6. Harboring or concealing violators of law (i.e. the offender harbors a person whom he knows as someone who committed or is about to commit a violation of this Act; and the person harbors or conceals such person); and
7. Photographing from aircraft of vital information.

Section 2 – Provoking War Disloyalty in Case of War

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.
- Crime is committed in time of **peace**.
 - Intent of the offender is immaterial.
 - In inciting to war, the offender is any person. If the offender is a public officer, the penalty is higher.
 - Reprisals are not limited to military action; it could be economic reprisals, or denial or entry into their country
 - Example: X burns Chinese flag. If China bans the entry of Filipinos into China, that is reprisal.

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.

NEUTRALITY – the condition of a nation that in times of war it takes no part in the contest of arms between others.

- Being a public officer or employee has higher penalty

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.

CORRESPONDENCE – is a communication by means of letters; or it may refer to the letters which pass between those who have friendly or business relations.

- A hostile country exists *only* during hostilities or after the declaration of war
- Correspondence to enemy country is correspondence to officials of enemy country even if said official is related to the offender
- It is not correspondence with private individual in enemy country
- If ciphers were used, no need for prohibition of the government
- If ciphers were not used, there is a need for prohibition of the government.
- Even if the correspondence contains innocent matters, if it is prohibited by the government, it is punishable because of the possibility that some information useful to the enemy might be revealed unwittingly.

Qualifying Circumstances

1. Notice or information might be useful to the enemy
2. Offender intended to aid the enemy (crime amounts to treason)

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.

Persons liable

1. Filipino citizen
2. Alien residing in the Philippines
 - mere attempt consummates the crime
 - there must be a prohibition. If there is none, even if one went to enemy country, there is no crime
 - an alien resident may be held guilty for this crime because an alien owes allegiance to Phil. gov't although temporary.

Section 3 – Piracy and Mutiny on the High Seas

Article 122. Piracy in general and Mutiny on the High Seas or in Philippine Waters

Piracy – it is robbery or forcible depredation on the high seas, without lawful authority and done with *animo furandi* and in the spirit and intention of universal hostility.

Mutiny – the unlawful resistance to a superior, or the raising of commotions and disturbances on board a ship against the authority of its commander

Modes of Committing Piracy in the High Seas or in Philippine waters

1. Attacking or seizing a vessel on the high seas OR in Philippine waters (PD 532 as amended 7659);
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, the offenders being strangers to the vessels

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.

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 raise commotions and disturbances on board a ship against the authority of its commander or make unlawful resistance to a superior officer.

High seas – any waters on the sea coast which are without the boundaries of the low water mark although such waters may be in the jurisdictional limits of a foreign gov't; **parts of the sea** that are not included in the exclusive economic zone, in territorial seas, or in the internal waters of a state, or in archipelagic waters of an archipelagic state (US convention on the Law of the Sea)

Philippine waters – 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 waters belonging to the Phils. by historic or legal title, inc. territorial sea, the seabed, the insular shelves, and other submarine areas over which the Phils has sovereignty and jurisdiction. (Sec 2, PD No. 532)

Piracy in high seas – jurisdiction of any court where offenders are found or arrested because piracy is a crime not against any particular state but against all mankind (Hostis Humanis Generis).

Piracy in internal waters – jurisdiction of Philippine courts

For purposes of the Anti-Fencing Law, piracy is part of robbery and theft.

Piracy is a CONTINUING CRIME, hence the offense may begin in the high seas and end in the territorial waters of a state.

Those who pose as passengers or crew and then rob the passengers are still pirates. They include legitimate passengers or crews who conspire with the pirates.

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.

PIRACY	MUTINY
Robbery or forcible depredation on the high seas, without lawful authority and done with <i>animus furandi</i> and in the spirit and intention of universal hostility	unlawful resistance to a superior, or the raising of commotions and disturbances on board a ship against the authority of its commander
Intent to gain is an element	Intent to gain is not an element
Attack from outside. Offenders are	Attack from inside. Offender is a member

strangers to the vessel	of the complement or a passenger of the vessel
-------------------------	------------------------------------------------

PIRACY	ROBBERY ON HIGH SEAS
offender is an outsider	offender is a member of the complement or a passenger of the vessel
In both, there is intent to gain and the manner of committing the crime is the same	

WITHIN PHIL. WATERS	
Art 122, RPC	PD 532, Anti-Piracy
offender is an outsider	offender crew or a passenger of the vessel

PD 532 (ANTI-PIRACY AND ANTI-HIGHWAY ROBBERY LAW OF 1974)

Vessel – any vessel or watercraft used for (a) transport of passengers and cargo or (b) for fishing

Punishes the act of AIDING OR ABETTING PIRACY

Requisites

1. knowingly aids or protects pirates;
2. acquires or receives property taken by such pirates, or in any manner derives any benefit;
3. directly or indirectly abets the commission of piracy

Note: Under PD 532, piracy may be committed even by passenger or member of the complement of the vessel.

Article 123. Qualified Piracy

Qualifying Circumstances of Piracy:

- 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. (*cannot be punished as separate crimes, nor can they be complexed with piracy*)

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 because the mutineers being

already in the vessel cannot seize the vessel by boarding or firing upon the same.

- Parricide or infanticide should be included (accdg to Judge Pimentel)
- The rape/murder/homicide/ physical injuries must have been committed on the passengers or on the complement of the vessel
- **QUALIFIED PIRACY – a SPECIAL COMPLEX CRIME** punishable by reclusion perpetua to death regardless of the number of victims.

Republic Act No. 6235 (The Anti Hi-Jacking Law)

Anti hi-jacking is another kind of piracy which is committed in an aircraft. In other countries, this crime is known as aircraft piracy.

Four situations governed by anti hi-jacking law:

- (1) *usurping or seizing control of an aircraft of Philippine registry (including helicopters) while it is in flight, or compelling the pilots thereof to change the course or destination of the aircraft (hi-jacking of Phil Aircraft)*

Hi-jacking of Phil Aircraft, How Committed

- Compelling pilot to change destination.*
- Usurping or seizing control while the plane is in flight.*

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 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 pyro-techniques. Destruction of property with the use of pyro-technique is destructive arson. If there is illegally possessed or carried firearm, other special laws will apply.

Plane is in flight after all exterior doors are closed following embarkation until 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.

- (2) *usurping or seizing control of an aircraft of foreign registry while within Philippine territory, or compelling the pilots thereof to land in any part of Philippine territory (hi-jacking of Foreign Aircraft); Hi-jacking of Foreign Aircraft, How Committed*

- Compelling the plane to land in the Phils (not be the point of destination)*
- Usurping or seizing control of the plane even if not in flight.*

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.

Q: 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?

A: *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 it 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.

Q: 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?

A: *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.*

Q: 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?

A: *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.*

Qualifying Cicumstances (par 1 & 2)

1. Firing upon the pilot, member of the crew or passenger of the aircraft (For 'firing upon' to qualify the offense, the offender must have actually fired his weapon. Mere attempt is not enough. For 'firing upon' to qualify the offense, the offender need not succeed in hitting the pilot, crew member or passenger)
2. exploding or attempting to explode any bomb or explosive to destroy the aircraft; or
3. the crime is accompanied by murder, homicide, serious physical injuries, or rape

Q: In the course of the hi-jack, a passenger or complement was shot and killed. What crime or crimes were committed?

A: *The crime remains to be a violation of the anti hi-jacking law, but the penalty thereof shall be higher because a passenger or complement of the aircraft had been killed. The crime of homicide or murder is not committed.*

Q The hi-jackers threatened to detonate a bomb in the course of the hi-jack. What crime or crimes were committed?

A: *Again, the crime is violation of the anti hi-jacking law. The separate crime of grave threat is not committed. This is considered as a qualifying circumstance that shall serve to increase the penalty.*

- (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.

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.

Note: There is no attempted or frustrated hi-jacking even if the hi-jackers are overpowered.

R.A. 9372. AN ACT TO SECURE TO SECURE THE STATE AND PROTECT OUR PEOPLE FROM TERRORISM (THE HUMAN SECURITY ACT OF 2007)

- I. It created the crime known as terrorism and declared it to be "a crime against the Filipino

people, against humanity, and against the law of nations”.

II. Defines the crime of terrorism to be the commission of “any of the crimes of :

- A. Under the Revised Penal Code.
 - i. Piracy in general and Mutiny in the High Seas or in the Philippine Waters
 - ii. rebellion
 - iii. Coup d’etat
 - iv. Murder
 - v. Kidnapping and Serious Illegal Detention
- B. Under Special Laws
 - i. Arson under P.D. 1613
 - ii. Violation of R.A. 6969 (Toxic Substance and Nuclear Waste Control)
 - iii. R.A. 5207 (Atomic Energy Regulatory and Liability Act of 1968)
 - iv. Hijacking
 - v. Piracy in Phil. Waters and Highway Robbery
 - vi. P.D. 1866 (Possession and Manufacture of Firearms/explosives) thereby showing 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.

III. Requirements for Terrorism

- A. The accused (maybe a single individual or a group) must commit any of the enumerated crimes
- B. There results a condition of widespread and extraordinary fear and panic among the populace
 - i. The extent and degree of fear and panic, including the number of people affected in order to meet the term “populace”, are questions of facts to be determined by the courts and on a case to case basis.
 - ii. Is the term “populace’ to be interpreted as referring to the local inhabitants where the acts were committed, or does it refer to the national population?
- C. The purpose of the accused must be to coerce the government to give into an unlawful demand
 - i. The word “demand” is too broad as to cover not only political, criminal or monetary demands but also those which maybe categorized as social or economic. This however is qualified by the word “unlawful”.

IV. Other Acts/Persons Liable

- A. Conspiracy to commit terrorism. The penalty is the same as terrorism itself (i.e. 40 years of imprisonment)
- B. Accomplices - he cooperates in the execution of either terrorism or conspiracy to commit terrorism by previous or simultaneous acts (Penalty is 17 yrs. 4 months and one day to 20 years)
- C. Accessory - The acts punished are the same as that under Article 19 of the RPC. The penalty is 10 yrs. And one day to 12 years

- 1. The law however adopts the absolatory cause of exemption of accessories from liability with respect to their relatives

V. Surveillance of Suspects and Interception and Recording of Communications

- A. Authorizes the grant of Judicial Authorization to listen, intercept, and record, any communication, message, conversation, discussion, or of spoken or written words between members of (i) a judicially declared and outlawed terrorist organization or association or group, or (ii) of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism

- 1. The Judicial Authorization can only be issued by the Court of Appeals (a) upon a written application filed by a police or law enforcement official or members of his team and (b). after an ex parte hearing establishing (c). probable cause that terrorism/conspiracy to commit terrorism has been committed, or is being committed, or is about to be committed (note that the wording is not **attempted**)

- 2. The applicant must have been authorized in writing to file the application by the Anti Terrorism Council (The Body created to implement the law and assume responsibility for the effective implementation of the anti-terrorism[policy of the country)

- 3. The Judicial Authority is effective for a maximum period not to exceed 30 days from date of receipt of the written order and may be extended for another similar period

- B. Punishes the act of failure to notify the person subject of the surveillance, monitoring or interception, if no case was filed within the 30 day period/life time of the Order of Court authorizing the surveillance

- C. Punishes any person who conducts any unauthorized or malicious interceptions and or recording of any form of communications, messages, conversations, discussions or spoken or written words
- VI. Provides for a Judicial Declaration of Terrorists and Outlawed organization, association, or group of persons, by any RTC upon application by the DOJ and upon prior notice to the group affected.
- VII. Procedure when a suspected terrorist is arrested
- A. A suspected terrorist maybe arrested by any law enforcement personnel provided:
 1. The law enforcement agent was duly authorized in writing by the Anti Terrorism Council
 2. The arrest was the result of a surveillance or examination of bank deposits
 - B. Upon arrest and prior to actual detention, the law enforcement agent must present the suspected terrorist before any judge at the latter's residence or office nearest the place of arrest, at any time of the day or night. The judge shall, within three days, submit a written report of the presentation to the court where the suspect shall have been charged.
 - C. Immediately after taking custody of a person charged or suspected as a terrorist, the police or law enforcement personnel shall notify in writing the judge of the nearest place of apprehension or arrest, but if the arrest is made during non-office days or after office hours, the written notice shall be served at the nearest residence of the judge nearest the place of arrest
 - D. Failure to notify in writing is punished by 10 years and one day to 12 years of imprisonment
- VIII. Period of Detention has been extended to three days
- A. The three day period is counted from the moment the person charged or suspected as terrorist has been apprehended or arrested, detained and taken into custody
 - B. In the event of an actual or imminent terrorist attack, suspects may not be detained for more than three days without the written approval of the Human Rights Commission, or judge of the MTC RTC, Sandiganbayan or Court of Appeals nearest the place of arrest
 - C. If arrest was on a nonworking day or hour, the person arrested shall be brought to the residence of any of the above named officials nearest the place of arrest.
- D. Failure to deliver the person charged or suspected as terrorists to the proper judicial authority within three days is punished by 10 years and one day to 12 years.
- IX. Other Acts Punished As Offenses (punished by imprisonment of 10 years and one day to 12 years) which acts are related to the arrest/detention of suspected terrorists
- A. Violation of the rights of a person detained
 1. Right to be informed of the nature and cause of the arrest; to remain silent; to counsel
 2. To communicate and confer with counsel at any time without restriction
 3. To communicate at any time and without restrictions with members of family or relatives and be visited by them
 4. To avail of the services of a physician of choice
 - B. Offenses relating to an official log book:
 1. Failure to keep official logbook detailing the name of the person arrested the date and time of initial admission for custody and arrest; state of his health; date and time of removal from his cell, and his return thereto; date and time of visits and by whom; all other important data bearing on his treatment while under arrest and custody
 2. Failure to promptly issue a certified true copy of the entries of the log book
 - C. Using threat, intimidation, coercion, inflicting physical pain, or torment or mental emotional, moral or psychological pressure which shall vitiate the free will
 - D. Punishes Infidelity in the Custody of Detained Persons
 1. The penalty is 12 years and one day to 20 years if the person detained is a prisoner by final judgment
 2. The penalty is 6 years and one day to 12 years if the prisoner is a detention prisoner
 - E. Punishes the act of knowingly furnishing False Testimony, forged document or spurious evidence in any investigation or hearing under the law (12 yrs and one day to 20 years)
- X. Prosecution under the Law is a bar to another prosecution under the Revised Penal code or any

other special law for any offense or felony which is necessarily included in the offense charged under the law

XI. If the suspect is acquitted he is entitled to P500,000.00 for every day of detention without a warrant of arrest.

A. Any person who delays the release or refuses to release the amount shall be punished by imprisonment of 6 months

XII. Provisions on the Identity of the Informant

A. The officer to whom the name of the suspect was first revealed shall record the real name and specific address of the informant and shall report the same to his superior officer who shall in turn transmit the information to the Congressional Oversight Committee within 5 days after the suspect was placed under arrest, or his properties sequestered seized or frozen.

B. The data shall be considered confidential and shall not be unnecessarily revealed until after the proceedings against the suspect shall have been terminated.

NOTE: It would seem that the confidentiality of the informant's identity is not permanent but may be revealed, not like the provisions of the Rules of Evidence which considers the confidentiality as permanent)

XIII. Territorial Application of the law:

The law applies to any person who commits an act covered by the law if committed:

- A. Within the terrestrial domain, interior waters, maritime zone and airspace of the Philippines
- B. Inside the territorial limits of the Philippines
- C. On board a Philippine ship or airship
- D. Within any embassy, consulate, diplomatic premises belonging to or occupied by the Philippine government in an official capacity
- E. Against Philippine citizens or persons of Philippine descent where their citizenship or ethnicity was a factor in the commission of the crime
- F. Directly against the Philippine government.

XIV. The provisions of the law shall be automatically suspended one month before and two months after the holding of any election.

TITLE II CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE

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; conspires with a public officer; becomes an accessory or accomplice. 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.

Arbitrary Detention

The term Detention Includes:

- a. **Lock up** – actual deprivation of a person of his liberty by confinement in a room or any enclosure.
- b. Rendering him physically immobile even if the victim is not confined such as tying him to a post.
- c. By placing physical or psychological restraint on the freedom of locomotion or movement.

Crimes which May Arise if a Person Detains Another

- a. Arbitrary Detention (Art 124, RPC)
- b. Unlawful Arrest (Art 269, RCP)
- c. Arbitrary Detention (Art 125)
- d. Coercion (Art 286)
- e. Abduction (Art 342)
- f. Kidnapping or Illegal Detention (Art 267-268)

The crime of arbitrary detention assumes several forms (classes of arbitrary detention)

- (1) ***Detaining a person without legal grounds (Arbitrary Detention Proper);***
- (2) ***Having arrested the offended party for legal grounds but without warrant of arrest, and the public officer does not deliver (or delays in the delivery) 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.

Note: Detention may either be intentional or through negligence.

Article 124. Arbitrary Detention

Elements

1. Offender is a public officer or employee (whose official duties include the authority to make an arrest and detain persons);
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.

Persons Liable

Those vested with jurisdiction to order the detention of another who is accused of committing a crime. Otherwise the crime is Illegal Detention. They Include:

- a. Local Executive Officials
- b. Punong Barangay
- c. Judges
- d. Prosecutors
- e. Law Enforcement Agents
- f. Commissioner on Immigration
- g. Private Person in conspiracy with the public officials or who participated as accomplices or accessories

Legal Grounds for the Arrest and Detention of A Person

- a. Commission of crime
- b. Violent insanity
- c. Ailment which requires compulsory confinement in a hospital

Essence of the Crime

NO warrant of arrest but a public officer arrests and detains a person without legal grounds or the arrest does not fall under the situation of a warrantless arrest.

Valid warrantless arrest

1. **Arrest in Flagranti** – When in the presence of the arresting officer, the person arrested has committed, is actually committing or attempting to commit an offense.

Time and place of the arrest is the time and place of the commission of the crime EXCEPT in cases of HOT PURSUITS.

“In his presence” – when the officer sees the offense being committed although at a distance, or hear the disturbance created thereby and proceeds at once to the scene thereof, or when the offense is continuing, or has not been consummated at the time the arrest is made, the offense is said to be committed in his presence.

2. **Arrest Based on Probable Cause** – When an offense has just in fact been committed and he has probable cause to believe, based on personal knowledge of facts and circumstances that the person to be arrested has committed it.

Personal Knowledge of facts and circumstances – based on interviews of witnesses or complainant or based on facts gathered after conducting on-the-spot crime scene investigation.

There must be an immediacy between the time of the arrest and the time of the commission of the crime.

3. **Arrest of escapees**, whether detention prisoner or prisoner by final judgment.

GOOD FAITH ARREST – the legality of the arrest does not depend upon the judicial fact of a crime but upon the nature of the deed performed by the person arrested, when its characterization as a crime may reasonably inferred by the officer.

- Legality of arrest is not affected by the subsequent conviction or acquittal of the accused. The liability of the officer is distinct from the liability of the person arrested.
- Arbitrary Detention under Art 124 may be complexed with less serious or serious physical injuries, or with attempted or frustrated homicide/murder.
- The penalty depends upon the length of the detention. A greater penalty is imposed if the period is longer
- In ADDITION, the arresting officer may be held liable for violation of RA 7438 or the Law Providing for the Rights of Person Arrested, under Investigation or Detained, if the officer:
 - a. Fails to immediately Mirandize the person (inform the right to remain silent and to counsel)
 - b. Takes his confession without Mirandizing him or without the right having been validly waived
 - c. Refuses visitation to the person arrested.
- Arrest can be made without warrant because rebellion is a continuing crime.

Periods of Detention Penalized

1. Detention has not exceeded 3 days
2. Detention has continued for more than 3 days but not more than 15 days
3. Detention has continued for more than 15 days but not more than 6 months
4. Detention exceeded 6 months

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 (as principal) 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.

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.

Note: When a person is unlawfully arrested, his subsequent detention is without legal grounds.

Q: A had been collecting tong from drivers. B, a driver, did not want to contribute to the tong. One day, B was apprehended by A, telling him that he was driving carelessly. Reckless driving carries with it a penalty of immediate detention and arrest. B was brought to the Traffic Bureau and was detained there until the evening. When A returned, he opened the cell and told B to go home. Was there a crime of arbitrary detention or unlawful arrest?

A: *Arbitrary detention. The arrest of B was only incidental to the criminal intent of the offender to detain him. But if after putting B inside the cell, he was turned over to the investigating officer who booked him and filed a charge of reckless imprudence against him, then the crime would be unlawful arrest. The detention of the driver is incidental to the supposed crime he did not commit. But if there is no supposed crime at all because the driver was not charged at all, he was not given place under booking sheet or report arrest, then that means that the only purpose of the offender is to stop him from driving his jeepney because he refused to contribute to the tong.*

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.

• *At the beginning, the detention is legal since it is in the pursuance of a lawful arrest.*

• *This article does not apply if the arrest is with a warrant. The situation contemplated here is an arrest by virtue of some legal ground or valid warrantless arrest. This is known as citizen's arrest.*

If there is valid warrant of arrest, there is no time limit specified except that the return must be made within a reasonable time. The period fixed by law under Article 125 does not apply because the arrest was made by virtue of a warrant of arrest, he can be detained indefinitely until case is decided or he post a bail for his temporary release.

- 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 public officer 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.

RATIONALE: To prevent any abuse resulting from confining a person without informing him of his offense and without permitting him to go on bail.

DELIVERY TO PROPER AUTHORITIES - filing the appropriate charges with the proper judicial authorities.

PROPER JUDICIAL AUTHORITIES – refers to the court of justice or judges of said courts vested with judicial power to order the temporary detention or confinement of a person charged with having committed a public offense. It also includes prosecutor’s office

Where to File Charges

- In Chartered Cities – Office of the City Prosecutor. Direct filing in court is not allowed.
- In Provinces
 - Offense requires preliminary investigation (penalty is more than 4 years and 2 months) – file with the proper officer authorized to conduct preliminary investigation (Provincial Prosecutor)
 - Offense does not require preliminary investigation – file with the MTC/MTTC.

How to Count the Hours

According to Sir Sagsago, the hours should be counted from the time of arrest continuously and without interruption, including the hours of the night or non-office days. However, if the last hour ends on a non-office hour, the charges shall be files upon the start of the next office hour.

According to Ortega, 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.

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.*

Circumstances Considered in Determining Liability of Officer Detaining a Person Beyond the Legal Period

- The means of communication
 - The hour of arrest
 - Other circumstances such as the time of surrender and the material possibility of the prosecutor to make the investigation and file in time the necessary information.
- The officer may set up insuperable cause as a defense such as failure to file on time due to distance and lack of transportation to the nearest court/prosecutor’s office; fortuitous event; or that the officer was wounded and have himself be medically attended to.
 - The filing of the information in court beyond the specified periods does not cure the illegality of detention because the violation had already been committed.
 - Violation of Art 125 does not affect the legality of confinement under a warrant subsequently issued by a competent court.
 - To prevent committing this felony, officers usually ask accused to execute a **waiver of Art. 125** which should be under oath and with assistance of counsel. Such waiver is not violative of the constitutional right of the accused

LENGTH OF WAIVER

- light offense – 5 days
- serious and less serious offenses – 7 to 10 days (Judge Pimentel)
- If the offender is a private person – the crime is ILLEGAL DETENTION under Art 267.

ARBITRARY DETENTION (124)	DELAY IN DELIVERY OF DETAINED (125)
Detention is illegal from the beginning	Detention is legal in the beginning, but illegality starts from the expiration of the

	specified periods without the persons detained having been delivered to the proper judicial authority
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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.
- Wardens and jailers are the persons most likely to violate this provision.
 - The penalty depends on the length of the delay i.e. 12, 18, or 36 hours.

Persons Authorized to Order the Release of A Person in Custody of the Law

1. The courts when
 - a. Detained person posts bail
 - b. Case is dismissed
 - c. Accused is acquitted
 - d. Petition for habeas corpus is filed and the court finds no valid reason to detain him.
2. Board of Pardon and Parole Upon the grant of Parole
3. Office of the President upon the grant of Presidential Pardon or Amnesty
4. Commissioner of the Board of Immigration and Deportation
5. Office of the prosecutor with respect to cases they are acting on if
 - a. No probable cause
 - b. Arrest is not proper
 - c. There is meritorious ground (humanitarian reasons)

Article 127. Expulsion

Acts punished

1. Expelling a person from the Philippines; or
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 right violated is the liberty of abode and of changing the same.
 - *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.*
 - Only the court by final judgment can order a person to change his residence.
 - Only the Chief Executive has the power to deport undesirable aliens
 - Crime does not include expulsion of undesirable aliens (PERSONA NON GRATA), destierro or when sent to prison
 - If a Filipino who, after voluntarily leaving the country, is illegally refused re-entry is considered a victim of being forced to change address
 - Threat to national security is not a valid ground to expel or to compel one to change address

Q: Certain aliens were arrested and they were just put on the first aircraft which brought them to the country so that they may be out without due process of law. Was there a crime committed?

A: Yes. *Expulsion.*

Q: If a Filipino citizen is sent out of the country, what crime is committed?

A: *Grave coercion, not expulsion, because a Filipino cannot be deported. This crime refers only to aliens.*

Violation of Domicile

CASTLE DOCTRINE – there is a penal sanction for the violation of a person's right to privacy of his home or of the sanctity of his dwelling. A man's house is his castle which the law protects.

Domicile is to be given a broader meaning as that of a dwelling.

Forms/Kinds of Violation of Domicile

1. Violation of Domicile Proper (Art 128)
2. Search Warrant Maliciously Obtained and Abuse in the Service of those Legally Obtained (Art 129)
3. Searching Domicile without Witnesses (Art 130)

Article 128. Violation of Domicile

Acts punished

1. Entering any dwelling against the will of the owner thereof;

Lack of consent – not sufficient as the law requires that the offender's entry must be over the owner's objection.

Against the will of owner – presupposes opposition or prohibition by the owner, whether express or implied and not merely absent of consent (e.g. door is closed though it is not locked, oral objection of the owner, owner physically blocks entry).

If the door is open and the accused entered, this mode is not committed.

Owner need not be present when entry was made.

It includes surreptitious entry through an opening not intended for the purpose.

Justified Trespass Even without Court Order

- a. to prevent serious injury to himself, to an occupant of a dwelling or a third person
- b. to stop an ongoing crime
- c. to arrest a criminal in a hot pursuit
- d. to render service to humanity or justice
- e. to seize or search the effects of a crime

If the offender who enters the dwelling against the will of the owner thereof is a private individual, the crime committed is **trespass to dwelling** (Art 280)

2. Searching papers or other effects found therein without the previous consent of such owner;

Mere lack of consent – sufficient.

Even if he is welcome in the dwelling, it does not mean he has permission to search.

Search is not just by looking through a room by the physical acts of opening rooms, opening of drawers, or handling or lifting of things and articles.

There are 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.

If the offender is a private person, the crime would be unjust vexation or theft if he takes things away.

When a public officer searched a person "outside his dwelling" without a search warrant and such person is not legally arrested for an offense, the crime committed by the public officer is either:

- **grave coercion** if violence or intimidation is used (Art 286), or
- **unjust vexation** if there is no violence or intimidation (Art 287)

Public officer without a search warrant cannot lawfully enter the dwelling against the will of the owner, even if he knew that someone in that dwelling is in lawful possession of opium.

3. Refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave the same

Entry must be done surreptitiously; without this, crime may be unjust vexation.

The order to leave must be given promptly. The act of entertaining ratifies surreptitious entry.

If the surreptitious entry had been made through an opening not intended for that purpose, offender is liable under the first mode since it is an entry over the implied objection of the inhabitant.

Inhabitant may be the lawful possessor/occupant using the premises as his dwelling.

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. (like search warrant, warrant of arrest, writ of execution, writ of attachment).

Circumstances qualifying the offense (Special Aggravating Circumstances)

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.

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

1. Offender is a public officer or employee;
 2. He procures a search warrant;
 3. There is no just cause.
2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured.

Elements

1. Offender is a public officer or employee;
2. He has legally procured a search warrant;
3. He exceeds his authority or uses unnecessary severity in executing the same.

SEARCH WARRANT – is an order in writing issued in the name of the People of the Philippines, signed by the judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

Requisites for the Issuance of Search Warrant

A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examining under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

- Search warrant is valid for 10 days from its date of issue.
- The search is limited to what is described in the warrant, all details must be set forth with particularity.
- Example of a warrant maliciously obtained: the applicant has no personal knowledge of the facts but makes it appear that he does; applicant concocts a story in that he has ulterior motives in securing a search warrant.

The act of executing an affidavit in support of the application or of testifying falsely before the judge are separate offenses of perjury.

- Examples of abuse in service of warrant:

- X, owner, was handcuffed while search was going on
 - Tank was used to ram gate prior to announcement that a search will be made
 - Persons who were not respondents were searched
 - Searching places not specified in the warrant
 - Seizing articles not mentioned in the warrant.
- The destruction of property or injuries arising from the violence or threat are separate offenses.

- An exception to the necessity of a search warrant is the right of search and seizure as an incident to a lawful arrest.
- *Plain view doctrine is inapplicable if the officer was not legally entitled to be in the place where the effects were found. Since the entry was illegal, plain view doctrine does not apply.*

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.
- **Order** of those who must witness the search
 - a. Homeowner
 - b. Members of the family of sufficient age and discretion
 - c. Responsible members of the community
 - Validity of the search warrant can be questioned only in two courts: where issued or where the case is pending. The latter is preferred for objective determination.
 - Art 130 does not apply to searches of vehicles or other means of transportation.
 - Search warrant under the Tariff and Customs Code does not include dwelling house.

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 interrupting, without legal ground, the holding of a peaceful meeting, or dissolving the same (e.g. denial of permit in arbitrary manner);
 - b. hindering any person from joining any lawful association, or from 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.

Acts punished

1. Prohibiting or interrupting, without legal grounds, the holding of a peaceful meeting, or by dissolving the same.

Grounds for prohibiting, interrupting or dissolving a meeting:

1. Lack of a required permit where the meeting is to be held in a public place where peace and order will be affected, or when others are prevented from using the place. Example: meeting in a street, or bridge or sidewalk

The requirement of a permit is only for purposes of regulation but not as an exercise of prohibitory powers. Thus, the refusal to issue a permit without any valid ground constitutes prohibition of a peaceful meeting.

2. When the meeting constitutes a trespass to private property
- 3, When the meeting is not peaceful as when it becomes chaotic or the participants are enjoined to do acts of destruction of property or acts of violence , or when the meeting becomes seditious

- The accused officer must be a stranger, not a participant in the meeting; otherwise his act may either be unjust vexation or tumultuous disturbance.
- Dissolution is usually in the form of dispersal or by the arrest of the leaders or the speakers
- *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.*
- *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 person talking on a prohibited subject at a*

public meeting contrary to agreement that no speaker should touch on politics may be stopped. *The permit given is not a license to commit a crime.*

- But stopping the speaker who was attacking certain churches in public meeting is a violation of this article
- Those holding peaceful meetings must comply with local ordinances. Example: Ordinance requires permits for meetings in public places. But if a police stops a meeting in a private place because there's no permit, officer is liable for stopping the meeting.

2. Hindering any person from joining any peaceful meeting, such as by threatening to arrest them, unless the meeting is that of criminal associations. Example: joining the meeting of the CPP is not prohibited, but that of the NPA is prohibited..

3. Prohibiting or hindering another from addressing a Petition to the authorities for redress of grievances. Provided the address is done in an orderly manner and there is no damage to public peace or order.

- If the offender is a private individual, the crime is **disturbance of public order**
- Interrupting and dissolving a meeting of the municipal council by a public officer is a crime against the legislative body and not punishable under this article.

Criteria to determine whether Article 131 would be violated:

- (1) **Dangerous tendency rule**
- (2) **Clear and present danger 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.

NOTE: The Provisions of Article 131 should be read in conjunction with B.P. 880 otherwise known as the Public Assembly Act of 1985.

B.P. 880: AN ACT ENSURING THE FREE EXERCISE BY THE PEOPLE OF THEIR RIGHT PEACEABLY TO ASSEMBLE AND PETITION THE GOVERNMENT AND FOR OTHER PURPOSES

1. This is known as "The Public Assembly Act of 1985"
- II. Declares the policy of the state to "the ensure the free exercise of the right of the people to peaceably assemble and petition the government for redress of grievances, without prejudice to the rights of others to life, liberty and equal protection of the law".
- III. Defines public assembly to mean: "any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances"
 - A. Public place includes any highway, boulevard, avenue, road, street, bridge or other thoroughfare, park, plaza square, an/or any open space of public ownership where the people are allowed access
 - B. It does not cover assemblies for religious purposes which shall be governed by local ordinances and those by workers and laborers resulting from labor disputes to be governed by the Labor Code and BP. 227
- IV. Establishes the policy of Maximum Tolerance to be observed in dealing with public assemblies or in the dispersal thereof. It means the highest degree of restraint from the military, police: and other peace keeping authorities.
- V. As to the requirement of a permit:
 - A. A written permit shall be required for any person/persons to organize and hold a public assembly in a public place during any election campaign period

B. No permit shall be required:

- i) if the public assembly shall be done or made in a freedom park duly established by law or ordinance
- ii) If done or made in private property in which case only the consent of the owner or the one entitled to its legal possession is required
- iii). If done or made in the campus of a government owned and operated educational institution which shall be subject to the rules and regulations of said educational institution
- iv). Political meetings or rallies held during any election campaign period

C. Procedure for issuance of a permit

- i). A Written applications shall be filed with the office of the mayor at least five (5) working days before the scheduled public assembly
- ii). The Mayor's Office shall acknowledge in writing the receipt of the application and Posting of the application by the Mayor's office in a conspicuous place of the city/municipal building
 - a). If the application is acceptance the application shall post it on the premises of the mayor and shall be deemed to have been filed
- iii) Action by the Mayor within 2 working days from date of application . If they fail to act within two days, the permit shall be deemed granted
 - a) He may grant
 - b). He may deny or modify but only on the ground that there is imminent and grave danger of a substantive evil
 - (i) The applicant must be informed in writing within 24 hours who may be heard or may contest it in a court of law

VI. Dispersal

1. No public assembly with a permit shall be dispersed unless it becomes violent (or when it becomes seditious, or if held in a private property against the will of the owner who requests for its dispersal because there is now a trespass to property)
2. When the public assembly is held without a permit where a permit is required it may be peacefully dispersed

Note: It is provided that "tear gas ,smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property

VII. Acts Punished include the following:

1. Holding of any public assembly without having first secured the written permit , or use of such permit for such purposes in any place other than those set out in the permit. However, the persons liable are the leader or organizer, but not the participants
2. Arbitrary and unjustified denial or modification of a permit by the Mayor or official acting in his behalf
3. Unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit
4. Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly
5. The unnecessary firing of firearms to disperse the public assembly
6. Law enforcers who (i) refuse to provide assistance when requested by leaders or organizers of public assemblies (ii) do not wear proper and complete uniforms (iii) do not observe maximum tolerance (iv) carry firearms and (v) who use anti riot devises to disperse a peaceful public assembly
7. The following acts are prohibited, if committed within 100 meters from the area of activity of the public assembly or on the occasion thereof:
 - a).carrying or a deadly or offensive weapon or devise
 - b) carrying of bladed weapon and the like
 - c). malicious burning of any object in the streets or thoroughfares
 - d). carrying of fire arms by members of a law enforcement unit
 - e). interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems

VIII. As interpreted in BAYAN vs. EDUARDO ERMITA (April 25, 2006)

- A. BP. 880 is constitutional. It is not an absolute ban of public assemblies but simply a regulation of the time, place and manner of the holding of public assemblies.

1. It is a "content neutral" not "content-based" regulation.

Note: "Content-neutral regulations" are those imposed without reference to the contents of the speech. They are tests demanding standards and need only a substantial government interest to support them. "Content-based regulations" are those imposed because of the contents of the speech. They are censorial and bear a heavy presumption of constitutional invalidity. They are subject to the test of over breadth and vagueness.

2. It is not over broad as it regulates the exercise to peaceful assembly and petition only to the extent needed to avoid a clear and present danger of the substantive evils Congress ahs the right to prevent
 3. There is no prior restraint, since the content of the speech is not relevant to the regulation
 4. The delegation of powers to the Mayor provides a precise and sufficient standard- the clear and present danger test
- B. Rallyists who can show the police an application duly filed on a given date can, after two days from said date, rally in accordance with their application without the need to show a permit, the grant of the permit being then presumed under the law, and it will be the burden of the authorities to show that there has been a denial of the application
- C. The so called calibrated preemptive response policy is null and void
- D. Until a freedom park shall have been established, all public parks and plazas of the municipality/city concerned shall in effect be deemed freedom parks; no prior permit of whatever kind shall be required to hold an assembly therein. The only requirement will be written notices to the police and the mayor's office to allow proper coordination and orderly activities.

REMEDIES IN CASE OF VIOLATION OF FUNDAMENTAL RIGHTS

1. Criminal Case – Title II
2. Civil Case – Art 32
3. Special Extraordinary Remedy
 - a. **PETITION FOR WRIT OF HABEAS CORPUS** – present the body of a person

detained and explained why detained and why he should be further detain.

- b. **PETITION FOR WRIT OF AMPARO** – amparo came from the word “amparant” which means to protect.
1. Amparo Libertat – to protect, similar to habeas corpus
 2. Amparo contra legis – to compel judicial review of constitutionality of statute
 3. Amparo Casacion – to compel judicial review of constitutionality of judicial decisions
 4. Amparo Administrativo – judicial review of administrative action
 5. Amparo agrario – protect rights of peasants

Note: 2 to 5 are covered by certiorari.

Under Philippine Jurisdiction, WRIT OF AMPARO is limited.

The petition for a writ of amparo is a remedy available to any person whose right to life, liberty and security is violated or threatened with violation by an unlawful act or omission.

Who Violates

Public official or employee, or of a private individual or entity.

Coverage

- a. extralegal killings (e.g. killings without due process or judicial safeguards, i.e. salvage)
- b. enforced disappearances
 - b.1. arrest, detention, abduction by government official, organized group or private individual with direct acquiescence of government
 - b.2. in case where a person is missing, state’s refusal to disclose whereabouts
 - b.3. refusal to acknowledge deprivation of liberty
- c. threats – not limited to actual threat but may be future threat

Note: The petition need not specify a particular relief. The petitioner may asks for reliefs he believes appropriate in his case or he can ask for general prayer.

Interim Reliefs

(a) Temporary Protection Order.

The court, justice or judge, upon motion or motu proprio, may order that the petitioner or the aggrieved party and any member of the immediate family be protected in a government agency or by an accredited person or private institution capable of keeping and securing their safety. If the petitioner is an organization, association or institution, the protection may be extended to the officers involved.

It is also seen in VAWC (Violence Against Women and Children)

(b) Inspection Order

The court, justice or judge, upon verified motion and after due hearing, may order any person in possession or control of a designated land or other property, to permit entry for the purpose of inspecting, measuring, surveying, or photographing the property or any relevant object or operation thereon.

(c) Production Order

The court, justice or judge, upon verified motion and after due hearing, may order any person in possession, custody or control of any designated documents, papers, books, accounts, letters, photographs, objects or tangible things, or objects in digitized or electronic form, which constitute or contain evidence relevant to the petition or the return, to produce and permit their inspection, copying or photographing by or on behalf of the movant.

(d) Witness Protection Order

The court, justice or judge, upon motion or motu proprio, may refer the witnesses to the Department of Justice for admission to the Witness Protection, Security and Benefit Program, pursuant to Republic Act No. 6981. The court, justice or judge may also refer the witnesses to other government agencies, or to accredited persons or private institutions capable of keeping and securing their safety.

It may be filed as independent petition in RTC where act was committed. It may be filed as a motion in a criminal case. If filed prior to the filing of the criminal case, it may be consolidated in the criminal case subsequently filed.

- c. **PETITION FOR WRIT OF HABEAS DATA** – to compel any person to produce any

information he has in his custody like secret dossiers (compilation of any and all information even if some are fabricated against a person)

Crimes In Violation of the Freedom of Religion

Article 132. Interruption of Religious Worship

Concept

The crime committed by any public officer or employee who shall prevent or disturb the manifestations or ceremonies of any religion.

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.

Qualifying Circumstances

1. violence
2. threats

Notes

- **Manifestation or ceremonies** refer to the rituals or rites or practices such as the holding of a mass or religious service, baptisms and other sacraments or prayer meetings.
 - They may be unorthodox such as crying, dancing, gyrating or with the use of props
 - They extend to all kinds of worships so long as these are not indecent or violative of laws or public morals
- The term *any religion* is broad enough to include not only the institutional religions, whether Christian or not
- Reading of Bible and then attacking certain churches in a public plaza is not a ceremony or manifestation of religion, but only a meeting of a religious sect. But if done In private home, it's a religious service.
- Religious Worship includes people in the act of performing religious rites for a religious ceremony or a manifestation of religion. Examples: mass, baptism, marriage
- X, a private person, boxed a priest while the priest was giving homily and maligning a relative of X. is X liable? X may be liable under Art. 133 (Offending religious feelings) because X is a private person.
- If the prohibition or disturbance is committed only in a meeting or rally of a sect, it would be punishable under Art 131.

Article 133. Offending the Religious Feelings

Concept or essence

The crime committed by any person i.e. a public officer or a private person, who performs acts notoriously offensive to the feelings of the faithful which are committed either: (i) in a place dedicated to religious worship or (ii) during the celebration of any religious ceremony.

Elements

1. Acts complained of were performed
 - a. in a place devoted to religious worship (not necessarily that there is a religious ceremony) or
 - b. during the celebration of any religious ceremony.
2. The acts must be notoriously offensive to the feelings of the faithful.

RELIGIOUS CEREMONIES – are those religious acts performed outside of a church, such as procession and special prayers for burying dead person but *NOT* prayer rallies.

Acts notoriously offensive to the feelings of the faithful - is one which *ridicules* or makes fun of a practice, tenet, dogma, ritual or belief as mocking or scoffing or attempting to damage an object of religious veneration; otherwise the offense is unjust vexation. These may be oral or written statements or actions.

- May be committed by a public officer or a private individual.
- Whether the act is offensive is to be viewed from the members of the religious group involved.
- There must be deliberate *intent* to hurt the feelings of the faithful, mere arrogance or rudeness is not enough.
- Example of religious ceremony (acts performed outside the church): processions and special prayers for burying dead persons *but NOT* prayer rallies

CRIME	NATURE OF CRIME	WHO ARE LIABLE	IF ELEMENT MISSING
Prohibition, Interruption and Dissolution of Peaceful Meeting (131)	Crime against the fundamental law of the state	Public officers, outsiders	If not by public officer = tumults
Interruption of Religious Worship (132)	Crime against the fundamental law of the state	Public officers, outsiders	If by insider = unjust vexation if not religious

			=tumult or alarms if not notoriously offensive =unjust vexation
Offending the Religious Feeling (133)	Crime against public order	Public officers, Private persons outsiders	if not tumults =alarms and scandal If meeting illegal at onset =inciting to sedition or rebellion

TITLE III CRIMES AGAINST PUBLIC ORDER

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).

The crimes involve political crimes; those crimes affecting legislative bodies and legislative officers; crimes against public officers and crimes causing disturbance of public peace and order.

Political Crimes Proper - refer to the crimes of rebellion, coup d'etat, sedition and their derivative lesser offenses of conspiracy, proposal, and inciting. There used to be a crime known as "subversion" penalized by martial law decrees but these have been repealed so that subversion is a non-existent crime.

They are those directly aimed against the political order, as well as such common crimes as may be committed to achieved a political purpose. The decisive factor is the intent or motive.

Crimes of Political Coloration – common crimes in furtherance of political crimes.

Principles Include

- Political crimes are transitory and continuing
- That of absorption of common crimes with political coloration, except in the case of sedition. The offenses absorbed include offenses with higher penalties and offenses penalized under special laws
- They maybe committed in times of war and in times of peace

Article 134. Rebellion/Insurrection

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.

Historical Concept

Rebellion is considered as the last remedy of an oppressed people against an oppressive or tyrannical ruler, as a heroic and noble fight to bring about a change in the social, political and social order for the better. Thus several rebellions or revolutions are glorified and considered as historical events such as:

the American Revolution which brought the birth of the USA; the French Revolution which brought an end to monarchical governments and the rights of Kings; the Philippine Revolt against Spain.

This explains why traditionally rebellion was given a not so-high penalty. However, the penalty has been increased to deter rebels so much so that this blunted the "noble and heroic character" of rebellion and has instead been considered as affecting national security.

Rebellion vs. Insurrection

Rebellion *is more frequently used where the object of the movement is completely to overthrow and supersede the existing government. It is a crime of the masses, of the multitude.*

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). It is the localized version of rebellion.*

How Committed:

By Rising Publicly and Taking Up Arms Against the Government

- *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 may be committed even without a single shot being fired. No encounter needed. Mere public uprising with arms enough. If there is no public uprising, the crime is **direct assault** in the first form.*
- This connotes a civil uprising involving the masses, a sizable number of people seeking to change the established order through force and violence. The movement is not a passive movement, not just a propaganda war but it involves actual fighting with government soldiers or policemen, the destruction of public property, kidnapping, extortion.
- Modern rebellion however is not confined to just an open fight with the government as rebels resort to all means to achieve their purpose. These include the so called "**Above Ground**", or using legitimate means such as formation of associations or groups sympathetic to the cause of the rebels among the various sectors of society, such as from students, laborers, farmers; intellectuals and professionals. This is coupled by the so called "**Under Ground Means**" or the use of violence.

Purposes of Rebellion are always political:

1. To remove from the allegiance to the government or its laws, the territory of the republic or any part thereof.
 - a. This may either be a **complete overthrow** of the existing government to be replaced by that of the rebels. This is often called a "**power grab**". Examples are the present Communist Rebellion
 - b. It may also be a **partial overthrow** or **secession**. A portion of the territory is taken away to form another government different form and independent of the existing government. An example is the MILF-MNLF Secession movement which is to establish a Bangsa Republic in Mindanao and Palawan.
2. To remove any body of land, naval or other armed forces
 - a. The Armed Forces are the instruments of power, the coercive portion of the government by which it carries out and imposes its will and preserves itself. Alienating the armed forces affects the very existence of the government. This includes mutiny by soldiers.
3. To deprive the chief executive or congress, wholly or partially, of any of their powers or prerogatives (This is rarely done)

NOTE: purpose of uprising must be shown but it is not necessary that it be accomplished

Rule when other crimes are committed during a Rebellion (known as **crimes with political coloration**)

1. **Principle of Absorption:** Rebellion absorbs other crimes committed in furtherance of rebellion whether they be of a lesser or higher penalty or punished by special laws.
 - a) diverting public funds is **malversation absorbed in rebellion**
 - b) **illegal possession of firearms** in furtherance of rebellion is **absorbed** by the crime of rebellion
 - c) a **private crime may be committed during rebellion**. Rape, even if not in furtherance of rebellion cannot be complexed with rebellion.
2. **Separate crimes:** those committed for private purposes (without political motivation) PP vs. Geronimo

- a.)if killing or robbing were done for private purposes of for profit, without any political motivation, the crime would be separately punished and would not be embraced by rebellion (PP vs. Fernando)

3. **Is the principle of Complexing applicable?**
Not under the PP. vs. Hernandez and Enrile vs. Salazar decisions which have not yet been overturned.

- a). In Gonzales vs. Abaya (449 SCRA 445) the court, aside from recognizing coup d' etat as a political crime, affirmed that common crimes committed in furtherance of a political crime, are absorbed.

Notes

- Mere giving of aid or comfort is not criminal in the case of rebellion. There must be **actual** participation.
- One maybe convicted of rebellion even if he did not engage in actual fighting as when he was in conspiracy with the rebels and he acted as a courier, supplier of food and ammunitions and weapons
- Public officer must take active part, because **mere silence or omission is not punishable as rebellion. No crime of misprision of rebellion.**
- in rebellion, it is **not a defense** that the accused never took the oath of allegiance, or that they never recognized the government

Distinctions between rebellion and sedition

- (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.*

Rebellion vs Treason

1. *Rebellion is levying of war against the government during peace time for any purpose mentioned in Art 134. While Treason is the levying of war against the government if performed to aid the enemy.*
2. *Rebellion always involves taking up arms against the government. While treason may be committed by mere adherence to the enemy giving them aid or comfort.*

Rebellion vs Subversion

1. *Rebellion is a crime against public order. While subversion is a crime against national security.*
2. *In rebellion, there must be public uprising to overthrow the government. While in the latter,*

being officers and ranking members of subversive groups constitute subversive.

Article 134-A. Coup d' etat

Concept

A swift attack directed against the duly constituted authorities, or any military camp, or installation, communications network, public utilities or facilities needed for the exercise and continued possession of power, in order to seize or diminish state power.

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.

The participants are a compact group of people, selected from the military/PNP or persons holding public office or employment, *with or without civilian support or participation.*

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.

Origin: Of French origin: it is said that it was Napoleon who first successfully staged and initiated it .

Essential Features

1. The success depends on the elements of surprise, swiftness and secrecy. There is the use of stealth, strategy, threat, violence. It is never announced. It is always calculated to be over in a matter of days.
2. It is initiated principally by soldiers/PNP with or without civilian support
3. The purpose is either to seize state power "Power Grab" or to diminish state power i.e to destabilize and assume a position where the coupeters can dictate upon the government
4. The centers of attack are the seat of power usually the presidential palace, military establishments, communication facilities

Distinguished from Rebellion

1. As to the manner of commission: In rebellion it is by rising publicly whereas coup makes use of secrecy, stealth and strategy
2. As to the number of participants: rebellion involves a multitude of people whereas a coup involves a selected group of members of the AFP/PNP
3. As to civilian participation: in rebellion the rebels are civilians whereas a coup is a move by military/police members
4. As to purpose: rebellion is either to overthrow the government or to secede whereas a coup may be to cause destabilization or to paralyze the government

QUESTION: Can rebellion be complexed with coup d'etat?

Article 135. Penalty for Rebellion, Insurrection or Coup d'etat

Persons Liable For Rebellion and Coup D'etat and their Penalties

Rebellion or Insurrection

1. **Leaders** – reclusion perpetua
 - a. any person who
 - i. promotes;
 - ii. maintains; or
 - iii. heads a rebellion or insurrection
2. **Participants** – reclusion temporal
 - a. Any person who
 - i. participates; or
 - ii. executes the commands of others in rebellion or insurrection
3. **Deemed Leader** – reclusion perpetua

Coup d'etat

1. **Leaders** – reclusion perpetua
 - a. any person who
 - i. leads;
 - ii. in any manner directs; or
 - iii. commands others to undertake coup d'etat
2. **Participants (gov't)**– reclusion temporal
 - a. any person in the gov't service who
 - i. participates; or
 - ii. executes directions or commands of others in undertaking coup d'etat
3. **Participants (not gov't)**– prison mayor
 - a. any person not in the gov.t service who
 - i. participates;
 - ii. supports;
 - iii. finances;
 - iv. abets; or
 - v. aids in undertaking a coup d'etat

4. **Deemed Leader** – reclusion perpetua

Who shall be deemed the leader of the rebellion, insurrection or coup d'etat in case he is unknown?

Any person who in fact

1. directed the others,
2. spoke for them,
3. signed receipts and other documents issued in their name, or
4. performed similar acts, on behalf of the rebels

Related Crimes

Article 136. Conspiracy and Proposal to Commit Coup d' etat, Rebellion or Insurrection

Conspiracy to commit rebellion

Elements

1. Two or more persons come to an **agreement** to rise publicly and take arms against the government;
2. for any of the **purposes of rebellion**; and
3. they **decide to commit it**

Proposal to commit rebellion.

Elements

1. a person who has decided to rise publicly and take arms against the government;
 2. for any of the **purposes of rebellion**; and
 3. **proposes its execution** to some other person or persons
- The penalty is higher if it relates to coup d'etat
 - Organizing a group of soldiers, soliciting membership in, and soliciting funds for the organization show conspiracy to overthrow the gov't
 - The mere fact of giving and rendering speeches favoring Communism would not make the accused guilty of conspiracy if there is no evidence that the hearers then and there agreed to rise up in arms against the gov't
 - The advocacy of Communism or Communistic theory is not a criminal act of conspiracy unless converted into advocacy of action
 - Only when the Communist advocates action and actual uprising, war or otherwise, does he become guilty of conspiracy to commit rebellion (PP vs. Hernandez)

Article 137. Disloyalty of Public Officers or Employees

Acts punished

1. By failing to resist a rebellion by all the means in their power (Suppose they are outnumbered and out armed such that resistance is futile?);
 2. By continuing to discharge the duties of their offices under the control of the rebels (This gives a semblance of support to the rebels); or
 3. By accepting appointment to office under rebels.
- Offender must be a public officer or employee.
 - There must be actual rebellion for this crime to be committed.
 - It must not be committed in conspiracy with rebels or coup plotters for this crime to be committed.
 - If position is accepted in order to protect the people, not covered by this article.

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.(public means)
- To incite is to stir up, to agitate, to encourage. The words of incitement should have been premeditated and not just spontaneous outbursts else it constitutes merely tumultuous disturbance.
 - There is **no inciting to coup d`etat**.
 - If rebellion is actually committed, the inciter becomes a principal by inducement. The inciter should not have taken up arms otherwise he is a participant in rebellion and the inciting is just part of the rebellion.
 - There is **no misprision of rebellion or coup d`etat**
 - Inciting must have been intentionally calculated to seduce others to rebellion

Proposal to Commit Rebellion (136)	Inciting to Rebellion (138)
In both, the offender induces another to commit rebellion	
In both, the crime of rebellion should not be committed by the persons to whom it is proposed or who are incited	
If they commit rebellion because of the proposal or inciting, the proponent or the one inciting may become a <i>principal by inducement</i> in the crime of rebellion	
The person who proposes has decided to commit rebellion	It is not required that the offender has decided to commit rebellion

The person who proposes the execution of the crime uses secret means	The act of inciting is done publicly
----------------------------------------------------------------------	--------------------------------------

Article 139. Sedition

Concept

This consist of making disturbances, commotions, or resorting to acts of violence or destruction, or violation of public peace and order, for the purpose of expressing discontent, disagreement, disapproval, opposition, criticism to: (i) a government policy, program or course of action, (ii) or to a law, rule or regulation or (iii) to a government official or his official action or (iv) to members of a social class.

Sedition is the raising of commotions or disturbances in the State. Its ultimate objects is a violation of the public peace or at least such a course of measures as evidently engenders it (PP vs. Perez)

- Basically this is in **the nature of a civil disobedience**. The accused desire to make known their discontent, disapproval or protest or dissatisfaction, but instead of availing of the legal means - such as through the media, the courts, or administrative remedies, the accused resort to violence or illegal methods.

Examples

- 1). The act of supporters of an official who block and take over a government building to prevent the replacement of said official
 - 2). Market vendors who fight with personnel of the engineer's office demolishing their illegal structures in the city market
 - 3). Barricading session road to protest increase in passenger fares
- The purpose may either be political or social but not the downfall or overthrow of the government. The accused are not rebelling against the government.

Examples:

to protest the increase in oil prices or the policy on land reform; or against the increase of new taxes; or appointment of an official; or cheating in the election

Elements

1. Offenders rise
 - a. publicly; and
 - b. 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 freely 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.

- **TUMULTUOUS** – if caused by more than 3 persons who are armed or provided with the means of violence.
- The acts maybe directed to private persons or their property, or to public officials or to property of any political subdivision.

Examples:

1. Staging a violent demonstration in front of the SM building to protest the failure to protect small and medium scale businessmen.
2. Destroying the trucks of illegal loggers.
3. Vendors stoning the car of the chief of police for preventing them from selling in side walks

- If other crimes are committed, such as killings, physical injuries, or destruction of properties, these are separate crimes as the principle of absorption does not apply to the crime of sedition. **Common crimes are not absorbed** in sedition (PP vs. Umali)
- Preventing election through legal means is NOT sedition
- If the purpose of the offenders is to attain the objects of rebellion or sedition by force or violence, but there is no public uprising, the crime committed is direct assault

Sedition vs Treason

Sedition, in its more general sense, is the raising of commotions or disturbances in the State. While treason, in its more general sense, is the violation by a subject of his allegiance to his sovereign.

Article 140. Penalty for Sedition

Persons liable

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 conspiracy to commit sedition but **no proposal to commit sedition**

Article 142. Inciting to Sedition

Acts punished (3 ways of inciting to sedition)

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.

(The enumeration is broad enough to cover any means methods or form by which people are stirred to commit acts constituting sedition. These include text messages and graffiti on walls as well as dramas, radio/television plays or programs)

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.

2. Uttering seditious words or speeches which tend to disturb the public peace

(A guest speaker for instance in a town fiesta starts lambasting the administration with words calculated to make the people get angry);

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.

“**scurrilous**” means low, vulgar, foul, baseless, mean, libelous

“**Doctrine of Seditious Libel**”- publications or speeches which tend to overthrow or undermine the security of the government or weaken the confidence of the people in the government. They tend to stir up general discontent or induce the people to resort to illegal means.

Note that the Doctrine of Seditious Libel is one of the four crimes serving as limitations to the freedom of the speech and of the press. The other three are Prosecutions under Article 154 for Unlawful Means of Publication; Obscenity Raps

under Article 201 and a Prosecution for Libel against a private person under Article 353.

Uttering and Writing (acts Nos 2 and 3), When Punishable

1. when they tend to disturb or obstruct any public officer in executing the functions of his office; or
2. when they tend to instigate others to cabal and meet together for unlawful purposes; or
3. when they suggest or incite rebellious conspiracies or riots; or
4. when they lead or tend to stir up the people against the lawful authorities or to disturb the peace of the community, the safety and order of the gov't.

4 Aspects of Freedom of Speech

(Chavez v Gonzales, 545 S 441)

1. **Freedom from Prior Restraint** – prior to actual dissemination free from censorship by the government.

Prior Restraint may be:

- a. **Content Neutral** – regulation with regard to the time, manner, place of the meeting. This is allowed.
- b. **Content Base** – based on the subject matter of the utterance. This is presumed unconstitutional. The government must show clear and present danger.

Speeches which May be Suppressed

1. caters pornography
2. false and misleading advertisement
3. advocacy of lawless action
4. Pose Danger to National Security

Unprotected Speeches

1. libelous
 2. lewd and obscene speeches
 3. fighting words
2. Freedom from punishment subsequent publication.
 3. Freedom of Access to Information.
 4. Freedom of Circulation.

Tests to determine whether the writing, publication, or speech, is seditious or protected exercise of the freedom of speech and press

1. **The Dangerous Tendency Rule:** The publication, writing or speech is seditious if the words have a tendency to create a danger of public uprising; if they could easily produce disaffection among the people and a state of feeling incompatible with a disposition to remain loyal and obedient to the laws.

This is the rule which is often applied in times of emergency.

2. **The Clear and Present Danger Rule:** To be seditious the writing or speech must pose a danger of public uprising state which is not only clear but is also imminent or at the point of happening, a certainty. There is probability of a serious injury to the state.

This is the rule applied during normal situations. It is more liberal as it allows critics, and political opponents of the government, especially during election times, to bring to the public what they perceive to be shortcomings of the government.

Thus the written article or the speech may be very critical and may use strong language, yet, as long as the possibility of an uprising is remote, such article or speech is not seditious.

3. **The Balancing of Interest Test:** The courts should weigh between the freedom of speech and the danger to the state.

- Article 142 punishes also a person "who shall knowingly conceal such evil practices" as inciting to sedition although this act is that of an accessory. This is similar to misprision of treason.
- *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.*

Chapter 2 - Crimes Against Popular Representations

Section 1 - Crimes Against Legislative Bodies and similar bodies

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 commissions or 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.
 - If the force results to physical injuries or damage to property, or if the fraud consists of falsification of documents, these are complexed with violation of Article 143.
 - If it is a meeting of congress, the accused may further be subjected to Congressional Contempt. Local legislative bodies do not have the inherent right to punish for contempt. This right must be expressly given by law.
 - The offenders are any persons.
 - Examples: barricading the entrance to Congress; or sending letters to the committee members that the meeting is postponed by falsifying the signature of the committee chairman.
 - If by the use of force, these must be no public uprising else the crime is sedition.
 - Chief of Police and Mayor who prevented the meeting of the municipal council are liable under Art 143, when the defect of the meeting is not manifest and requires an investigation before its existence can be determined.

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;
2. Offender does any of the following acts:
 - a. He disturbs any of such meetings (Example: cutting off the electric power; noise barrage);
 - 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 due it. (Examples: singing, farting; loud laughter; (what about sending of a shut-up note?)

NOTE: Complaint must be filed by *member* of the Legislative body. Accused may also be punished for *contempt* by the legislative body.

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 prison mayor.

Elements

1. Offender is a public officer or 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 prison 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 **prison mayor (6 years and 1 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 prison mayor" in Article 145 should be amended to read: "by the penalty of prison mayor or higher."
 - **Parliamentary immunity does not mean exemption from criminal liability**, except from a crime that may arise from any *speech* that the member of Congress may deliver on the floor during regular or special session.
 - Members of congress enjoy immunity from arrest while congress is in session. Presumably this is to enable them to attend to their legislative duties. They cannot therefore be arrested unless it is for a crime punishable by more than 6 years imprisonment.
 - This privilege attaches to the legislator by virtue of his office and is enjoyed by him even if he is not actually joining the sessions of congress.
 - The immunity from arrest covers both warrantless arrest and arrest by virtue of a warrant. They include offenses committed prior to his election.
 - Session refers to the year long regular session or special session and not the day-to-day session.

Chapter 3 – Illegal Assemblies and Associations

Article 146. Illegal Assemblies

Acts punished / Forms of Illegal Assemblies

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the Code;

Elements

1. There is a meeting, a gathering or group of persons, whether in fixed place or moving;
 2. The meeting is attended by armed persons;
 3. 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.

Elements

1. There is a meeting, a gathering or group of

Illegal Assembly (146)	Illegal Association (147)
There must be an actual meeting of armed persons to commit any of the crimes punishable under the RPC, 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	No need for such
Constitutes crime under RPC	<i>Includes a violation of a special law or those against public morals.</i>
It is the meeting and the attendance at such that are punished	Act of forming or organizing and membership in the association is punished
Persons liable: leaders and those present	Persons liable: founders, directors, president and members

persons, whether in a fixed place or moving;

2. The audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault.

Two Kinds of Illegal Assembly:

1. A **meeting** where the **purpose is to commit any felony** and attended by **armed men**. If there are no armed persons, there is no 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*)
2. A **meeting** where the audience are **incited to commit treason, rebellion or insurrection, sedition or assault** upon persons in authority or their agents. It is not necessary that there are armed persons.

Persons liable

1. The organizers 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. (when presence is out of curiosity –not liable)

When a Person Carries Unlicensed Firearm in the 1st Assembly

If any person present at the meeting carries an unlicensed firearm, it will be **presumed** as to him that the 1) purpose of the meeting is to commit a felony and 2) he will be deemed the 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.
- **Assembly** means a meeting or gathering or group of persons, whether in a fixed place or moving, as a meeting inside a bus.
- If the **meeting is to commit an act punished by special law**, such as drug pushing or to engage in gun running, there is **no illegal assembly** even if all participants are armed because the purpose is not violative of the Revised Penal Code.
- If the assembly is in the **public places** defined by BP. 885, what will apply may be The **Public Assembly Act**.

Article 147. Illegal Associations

Concept

Those associations organized for the purpose of committing any felony or for some purpose contrary to public morals. These include the criminal gangs as the Kidnap for Ransom Gangs, Bahala Na Gang; Siguesigue Commandos.

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.

PUBLIC MORALS – refers to matters which affect the interest of society and public convenience and is not limited to good customs. These are inimical to public welfare; it has nothing to do with decency, not acts of obscenity.

Persons liable

1. Founders, directors and president of the association;
 2. Mere members of the association.
- Be it noted that R.A 1700 which outlawed the Communist Party of the Philippines and declared it an illegal association has been repealed. Hence membership therein is not punished.
 - The association is still illegal even if it is duly registered with the SEC as what matters is not the stated purposes in its registration papers but the actual and hidden purposes.

Crimes Against Persons in Authority and their Agents

Chapter 4 – Assault, Resistance, and Disobedience

- A. They include: (1) Direct Assault (2) Indirect Assault (3) Resistance and Disobedience and (4) Disobedience to Summons of Congress and Constitutional Commissions
- B. Distinctions between:

Public Officer (PO) - any person who takes part in the performance of public functions in the government (Art. 203)

Person in Authority (PIA) - one who is directly vested with jurisdiction to execute or enforce the laws, whether as individual or as a member of some court or governmental corporation, board or commission.

Agent of Person in Authority (APIA) - one who, by direct provision of law, by election or by appointment by competent authority, is generally charged with the maintenance of peace and order and the protection and security of life and property.

Hence a public officer is not necessarily a PIA or APIA but the latter are always public officers.

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.

(This is very rare. It is the second form which is commonly committed.)

Elements

1. Offender employs force or intimidation;
2. 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;
3. There is no public uprising.

Note: It does not seem to require that the offended party is PIA or APIA.

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

1. Offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance;
2. The person assaulted is a person in authority or his agent;
3. 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;
4. Offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
5. There is no public uprising.

Attack Or Employment Of Force Or Serious Intimidation

This includes any offensive or antagonistic movement of any kind, with or without a weapon. This may be an actual physical contact or the instilling of fear or threat of an evil on the person of the victim, but not on his property.

- Examples: boxing, pointing a gun, brandishing a weapon, shouting and berating, challenging to a fight, throwing an article at him
- The degree of force required depends on whether the victim is a PIA or APIA. In case of a **PIA actual force is not necessary** because mere laying of hands is sufficient, such as by pushing or shoving him or pulling at his collar. If he were an **APIA, actual force is required** because mere laying of hands would constitute simple resistance.
- As to **intimidation and resistance the same must be serious and actual whether the victim is a PIA or APIA** otherwise the offense is resistance and disobedience under article 151. Example is pointing a gun

	Force employed	Intimidation/Resistance
PIA	need not be serious	serious
APIA	Serious	serious

Offended Party Must Be A Pia Or A Apia And Has Not Yet Been Separated From The Service

Thus the crime is committed even if at the time of commission the PIA/APIA is on leave, on vacation, or under suspension, but no when he has retired or was dismissed or removed.

The following are **PIAs**:

- Any person directly vested with jurisdiction (he has the power to govern, execute the laws and administer justice) *whether as an individual or as a member of some court or government corporation, board, or commission* (Art. 152)
- Teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities. They must be within the school premises during school hours or are actually performing the tasks outside the school premises
- Lawyers in the actual performance of their professional duties or on the occasion of such performance.

Note that teachers (under b) and lawyers (under c) are PIAs only for purposes of Direct Assault (A148) and Resistance and Disobedience (A151) but not for purposes of Indirect Assault (A149).

- Under the Local Government Code (Sec 388):
 - the Punong Barangay,
 - Sanguniang

Barangay members and (c) members of the Lupong Tagapamayapa

- others: see Art 152

The following are APIAS:

- Those who, by direct provision of law, or by election or by appointment by competent authority, are charged with the 1) maintenance of public order and 2) the protection and security of life and property (AGENTS PROPER) (Art 152) such as:
 - Law Enforcement Agents such as the PNP and the NBI irrespective of their rank
 - Barangay Tanods, barangay leader
 - Municipal treasurer being the agent of the provincial treasurer; agents of the BIR
 - The postmaster being the agent of the Director of Posts
 - Malacañang confidential agent
 - barrio councilman
 - barrio policeman

But Members of the AFP are not included

Other brgy officials and members who may be designated by law or ordinance and charged with the maintenance of public order, protection and the security of life, property, or the maintenance of a desirable and balanced environment, and any brgy member who comes to the aid of PIA

- Any person who comes to the aid of PIAs who is under direct assault. (AGENTS BY ASSISTANCE)

Note that if a teacher or lawyer is the person who comes to the assistance of the PIA, then he is considered as an APIA.

Thus private persons may be victims but to a limited extent: (i). when they are considered by law as PIAs or APIAs such as teachers and lawyers (ii). and those who come to the aid of PIAs

Accused Must Know The Victim As PIA/APIA Which Fact Must Be Alleged In The Information

There must be a clear intent on the part of the accused to defy the authorities, to offend, injure or assault the victim as a PIA/APIA

Time Of The Assault PIA Or APIA Is Engaged In The Actual Performance Of Official Duties, Or That He Is Assaulted By Reason Of The Past Performance Of Official Duties

- a. If the assault **is during the occasion of the performance of official duties** *the motive of the accused is immaterial*. As long as the victim was assaulted in his office or in the premises where he holds office, or even while on his way to office, it is not required that he was actually doing an act related to his duties.
 - b. When assault is made by **reason** of the performance of his duty there is **no need for actual performance** of his official duty when attacked
 - c. If **not on the occasion** then the **motive is important** as the assault must be because of the past performance of official duties by the victim. The length of time between the performance of the duty and the time of the assault is immaterial. If the motive cannot be established, there is no direct assault but some lesser offense.
 - d. Instances Not considered in the performance of Duties:
 - i. exceeds his power or acts without authority
 - ii. descend to matters which are private in nature
 - iii. agreement to fight
- (a). A fight between the Incumbent Mayor and the Acting Mayor as to who shall occupy the office
 - (b). NBI vs. Police concerning who shall take custody of a suspect
2. Where the PIA/APIA act with abuse of their official functions, or when they exceed their powers they are deemed to be acting in a private capacity. They become aggressors and the accused has a right to defend himself
 3. Where they voluntarily descend to matters which are purely personal. But not when the PIA/APIA is dragged down to purely personal matters by the accused.

Kinds of Direct Assault of the 2nd Form

1. Simple Assault
2. Qualified Assault

Qualifying Circumstances

- a. When the accused **lays hand** upon the victim who is a **PIA**
 - b. When the **accused** is himself a **Public Officer** or **employee**
 - c. When the assault is with a **weapon**
- Even when the PIA or APIA **agrees** to fight, direct assault is still committed, except when the attack is made in lawful defense; the character of PIA or APIA is not laid off at will but attaches to him until he ceases to be in office.
 - When the PIA or APIA **provoked/attacked first**, innocent party is entitled to defend himself and cannot be held liable for assault or resistance nor for physical injuries, because he acts in legitimate self-defense.
 - Direct assault cannot be committed during rebellion

Article 149. Indirect Assault

Concept: The crime committed by any person who uses force or intimidation upon any person **coming to the aid of an APIA who is under direct assault**. The person who is assaulted should not be a PIA because the third person automatically becomes an APIA and the attack on him would constitute direct assault also.

Elements

Rule When Material Injury Results

The crime of Direct Assault aims to punish lawlessness and defiance of authority and not the material injury which results from such defiance. When material injury however results, the following are the rules:

1. **Where death, serious or less serious physical injuries result, they are to be complexed with direct assault.** Example: A policeman was shot to death while directing traffic: the crime is Homicide with Direct Assault
2. **If only slight physical injuries are committed, the slight physical injury is a qualifying circumstance if the victim is a PIA but it will be absorbed if the victim is an APIA** (PP. vs. Acierto, 57 Phil. 614)

When the Attack does not Constitute Direct Assault

1. If **both** accused and victim are PIAs/APIAs and they **contend** or there is conflict arising from the exercise of their respective functions or jurisdictions.

(no **assault** upon or **disobedience**)

Examples:

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 APIA is an agent proper such as a law enforcement agent. Direct Assault is being committed against him, not merely Resistance or Disobedience.
 - A Third person comes to his assistance. It is not required that the assistance be by virtue of the order or request of the APIA.
 - The third person is himself attacked. This is the gist of indirect assault.
 - Indirect assault can be committed only when a direct assault is also committed.

Examples:

1. A policeman is having a hard time pushing a suspect inside a police car because the suspect is pulling back. A third person who came to help put the suspect inside the car was kicked by the suspect. The kicking of the third person constitutes Physical Injuries merely. The police is not under Direct Assault.
2. The Mayor is pushed and shoved while on his way home by an irate person whose house was demolished. A vendor who pulls the Mayor away is himself slapped. The crime on the Mayor is direct assault and the crime on the third person is also direct assault.

But if the third person directs the vendor to stop but the vendor tells him not to interfere, the crime against the third person would be resistance under Article 151.
3. X came to help The Chief of Police who was being pushed and shoved by vendors who were not allowed to sell on the sidewalk. X was also kicked and boxed and thrown to the ground. Y came to help X but was himself kicked and boxed. What is the crime against Y?

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.
- The testimony of a person summoned must be upon matters which the legislature has jurisdiction to inquire.

ARTICLE 151. RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR THE AGENTS OF SUCH PERSON

Concept

The crime committed by any person who shall resist or seriously disobey any PIA or APIA while engaged in the performance of official duties.

The **essence** is the failure to comply with, or refusal to obey, orders directly issued by the authorities. Such orders are peremptory and not merely a declaration of facts or rights. They are directed to the accused for compliance or implementation without allowing any exercise of discretion by him.

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.

Whether it be resistance or disobedience depends upon the degree of defiance by the offender

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 APIA 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.

Examples:

1. Refusal to submit to the authority of the police and proceed to the police station by pushing and shoving the police
 2. Refusal to hand over one's driver's license when required to do so
 3. Refusal to vacate premises despite writ issued by court to place a party in possession, or disobeying a writ of injunction
 4. Refusal to give up article subjects of lawful seizure
 5. But merely questioning the manner of arrest is not resistance
- While being arrested and there's serious resistance, person resisting must know that the one arresting him is an officer
 - Picketing (economic coercion) must be lawful; otherwise police can disperse them
 - **Disobedience in 2nd par must not be serious**; otherwise it will be under the 1st par
 - **Resistance must not be serious**; otherwise it's direct assault

Direct Assault (148)	Resistance & Disobedience to PIA or APIA (151)
PIA or APIA must be engaged in the performance of official duties or that he is assaulted by reason thereof	PIA or APIA must be in actual performance of his duties
Direct assault (2 nd form) is committed in 4 ways- by attacking, employing force, seriously intimidating, and seriously resisting a PIA or APIA	Committed by resisting or seriously disobeying a PIA or APIA
Use of force against APIA must be serious and deliberate	Resistance – force not serious. Simple disobedience – force against an APIA is not so serious.

Chapter 5 - Public Disorders

Article 153. Tumults and Other Disturbances of Public Order

Acts punished

1. Causing any serious disturbance in a public place, office or establishment

- This includes those in private places where public functions or performances are being held.
- Serious disturbance must be planned or intended.

Examples:

- Challenging people to a fight inside city hall or at the market; unruly behavior at the corridors of Justice Hall
 - Firing a gun within the premises of a public building, and if somebody was hurt there is a separate crime of reckless imprudence resulting to physical injuries
2. Interrupting or disturbing performances, functions or gatherings or peaceful meetings, if the act is not included in Articles 131 and 132
 - The act must not be the crime of Prohibition, interruption or dissolution of peaceful meetings (Art. 131) or Interruption of Religious worship (Art. 132)
 - If the act of disturbing or interrupting a meeting or religious ceremony is **NOT committed by public officers**, or if **committed by public officers who are participants** therein, **this article applies**. Art 131 and 132 punish the same acts committed by public officers who are not participants in a meeting

Examples:

- throwing bottles at the stage during a Miss Barangay Coronation; intentional loud singing and derisive laughter by the losing candidates during the oath taking of the winning candidates of the school student organization
 - If while addressing the employees, the mayor was stoned by the accused the crime is the complex crime of direct assault with disturbance of public order
3. Making an outcry tending to incite rebellion or sedition in any meeting association or public place;

OUTCRY – to shout spontaneously subversive or provocative words tending to stir up the people so as to obtain by means of force or violence any of the objects of rebellion or sedition.

- The outcry must not be intentional premeditated but is an emotional outburst or an on-the-spot utterances, otherwise the crime is inciting to sedition or rebellion if the utterances were pre-planned with the expectation that the crowd would react positively.

4. Displaying placards or emblems which provoke a disturbance of public order in such place;
5. Burying with pomp the body of a person legally executed.
 - These persons have been proven guilty beyond reasonable doubt of a heinous crime. They should not be made martyrs or heroes else it would create hatred on the part of the public.

Qualifying Circumstance – tumultuous

The first two acts (1) and (2) are punished with a higher penalty if it is tumultuous in character i.e. committed by more than 3 persons who are armed or provided with means of violence *The term "armed" does not refer to firearms but includes even big stones capable of causing grave injury.*

Article 154. Unlawful Use of Means of Publication and Unlawful Utterances

This is the second limitation to the Freedom of the Speech and of the Press. Mass media is supposed to provide information on matters of public interest, to entertain, to serve as medium for the expression and free exchange of opinions and ideas. But when, under the guise of dissemination of news and information, it instead causes disturbance to public peace and order, then a criminal prosecution is justified.

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.
 - Not any false news gives rise to prosecution. Only those which affect public order give rise to a prosecution. Yellow journalism or sensationalism do not ipso facto constitute a violation of this article
 - Thus publishing that a woman gave birth to a fish-baby is not the news contemplated. But publishing falsely that the Congress has decided to impeach the President is punishable
 - ***To publish need not be by print media but may be oral,*** as in radio or TV announcements.
 - The offender must know that the news is false, to be liable.
 - Actual public disorder or actual damage to the credit of the state is not necessary. The mere possibility of causing such damage is enough.
2. Encouraging disobedience to the law or to the constituted authorities or praising, justifying,

extolling any act punished by law by the same means or by words, utterances or speeches;

- Example: praising the act of the Magdalo soldiers as a supreme sacrifice worthy of emulation by all soldiers.
3. Maliciously publishing or causing to be published any official resolution or document without proper authority, or before they have been published officially (*Malicious and unauthorized publication or premature publication of official resolutions or documents.*)
 - These resolutions may still be withdrawn or amended. Example: publishing a Resolution of the City Prosecutor’s Office before it is officially docketed and mailed to the parties. The intention must be to cause damage.
 - **RA 248** prohibits reprinting, reproduction or republication of government publications and official documents without previous authority.
 4. Printing publishing or distributing (or causing the same) books, pamphlets periodicals, leaflets or *any published material*, which do not bear the real printer’s name or those classified as anonymous.
 - These are those publications the subject or contents of which are prohibited by law, such as obscene materials.

ARTICLE 155. ALARMS AND SCANDALS

Concept: These offenses must be caused in public places or must affect public peace and tranquility but the disturbances are only of minor degree, or not as serious or tumultuous as those under Article 153.

The crime alarms and scandal is only one crime. Do not think that alarms and scandals are two crimes.

ALARMS - acts which frighten or scare people, causes them to panic or to become nervous and tense.

SCANDAL - has no reference to acts of indecency or affecting public morals which are properly the subject of Grave Scandal.

Acts punished

1. Discharging any firearm, rocket or firecracker or other explosive in any town or public place, calculated to cause (which produces) alarm or danger;
 - The gun should ***not be pointed*** at any person or in the general direction of a person
 - It does not matter that the gun was fired within the premises of one’s house so long as there were people who were disturbed.

- It is the result, not the intent that counts. Act must produce alarm or danger as a consequence.
- If a gun is pointed at any person the following are the possible crimes:

(a) **Grave threats** if the gun is not discharged (not fired)

(b) **Illegal discharge** if fired but there is no intent to kill

(c) If with intent to kill and the gun is fired resulting to a harm, it is **homicide, frustrated or attempted homicide** depending on the actual material injury

(d) If fired but with intent merely to injure; it is **slight, less serious, or serious physical injuries**

(e) If the pointing or firing is to compel the victim to do something or to prevent him from doing something lawful, it is **grave coercion**

2. Instigating or taking part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility.

CHARIVARI - means mock serenade or simply making noise from materials, not music, and the purpose is to disturb public peace. It should not be directed to any particular individual else it is unjust vexation.

3. Disturbing the public peace while wandering about at night or while engaged in other nocturnal amusements;

- 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.
- Examples are:
 - a). shouting at night even if by a vendor
 - b). holding a party in one's house but with loud music
 - c). partying or quarreling in the street
 - d). jamming or acting as street musicians

4. Causing any disturbance or scandal in public places while intoxicated or otherwise (which are only slight and not tumultuous) provided Article 153 is not applicable.

- This is a catch all phrase.
- Public nuisance is covered by this act.

- As in the case of a drunk walking and bumping passers-by. Or the act of two people fighting each other in the market.

Article 156. Delivering Prisoners from Jail

Concept

This is the crime committed by a person who removes/springs a prisoner from jail or helps him escape.

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.

Committed in 2 Ways:

1. By removing a prisoner confined in jail or penal institution – to take away a person from confinement with or without the active participation of the person released.

- The act of removal may be by any means, such as substituting him with another, but if the method used is violence, intimidation or bribery, then the offense becomes qualified and the penalty is higher.

2. By helping said person to escape – furnish material means to facilitate escape.

- The prisoner may be a **mere detention prisoner** or a **prisoner by final judgment**.
- This article applies even if the prisoner is in the hospital or asylum when he is removed or when the offender helps him escape, because it is considered as an extension of penal institution.
- The **offender is usually an outsider to the jail** i.e he is not a jail guard. But a jail guard may be liable if he was not then on duty at that time he removed or assisted in the removal of a prisoner from jail.

Vs. Infidelity In The Custody Of Prisoners

- a. *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.

- b. In both crimes, the person involved may be a convict or a mere detention prisoner.

- c. 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.
- 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
- What is the liability of the prisoner who escaped?
 1. If he is a **convict**, he is liable for **evasion of service of sentence**
 2. If a mere **detention prisoner**, Ortega says he is **not liable** if he does not know of the plan to remove him from jail but he is **liable for delivering prisoners from jail as a principal by indispensable cooperation** if such prisoner knows of the plot to remove him from jail and cooperates therein by escaping.

But if **he himself escaped**, some say he does **not incur any liability** however if he is later convicted for his crime then he will not be entitled to an Indeterminate Sentence.

Personal opinion: he is liable for he delivered himself from jail.

3. If the crime committed by the prisoner for which he is confined or serving sentence is treason, murder, or parricide, the act of taking the place of the prisoner in prison is that of an accessory under Art 19, par 3.
- This felony may also be committed through *imprudence or negligence*

Qualifying Circumstance:

Penalty of arresto mayor in its maximum period to prision correccional in its minimum period is imposed **if violence, intimidation or bribery is used.**

Mitigating Circumstance:

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.**

Chapter 6 Evasion of Service of Sentence

EVASION - means to escape or to avoid serving a penalty. Only prisoners who have been sentenced by

final judgment are liable for evasion. The penalty of the accused must be one of imprisonment or destierro.

3 Kinds Of Evasion:

1. Evasion by Escaping under ordinary circumstances (Article 157)
2. Evasion by Escaping on the occasion of a disorder or mutiny (Art. 158)
3. Evasion by Violation of a Conditional Pardon (Art. 159)

ARTICLE 157. EVASION OF SERVICE OF SENTENCE

Concept

The crime committed by a prisoner by final judgment who escapes during the term of his imprisonment, or, having been sentenced to destierro, shall enter the designated prohibited area. (Note: the escapee is referred to in police/prison parlance as a Jailbird)

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 sentence.

Qualifying Circumstances

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.

- In case of destierro (*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*), the penalty for the evasion is also destierro. This is so because the penalty for the evasion can not be more severe than the penalty evaded.

Is there evasion if the prisoner enters the prohibited area due to an emergency? Such as bringing a loved one to the hospital or attending a burial? NO, because of avoidance of greater evil.

- In case the prisoner voluntarily returns, his liability remains but the penalty maybe mitigated as this is analogous to voluntary surrender.
- This is a **continuing offense**.

- This article does not apply to minor delinquents, detention prisoners or deportees.
- If the offender escaped within the 15-day appeal period, *crime is not evasion because judgment is not yet final.*

Article 158. Evasion of Service of Sentence on the Occasion of Disorders, Conflagrations, Earthquakes, or Other Calamities

Concept: There is a disorder resulting from a conflagration, earthquake, explosion or similar catastrophe, or a mutiny in which he has not participated; a prisoner by final judgment escapes or leaves the penal establishment; 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 the calamity.

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 leaves 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.

- It is not the act of escaping which constitutes the evasion because it is normal for people to try to save their lives during a catastrophe or calamity. **What gives rise to the crime is the failure to return or to give himself up return within 48 hours.**

- If the **prisoner returns within 48 hours, he is given a deduction from the remaining period of his sentence equivalent to 1/5 of his original sentence for loyalty.**

If he did not return, 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 escape are not given any deduction.

- **Mutiny** is an organized unlawful resistance to a superior officer, a sedition, or a revolt.

It does not include prison riots but it includes subordinate prison officials rising against their superiors. Disarming the guards is not mutiny. Neither does it include mass jail breaks.

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. If the escapee participated and escaped, he is liable for evasion under Article 157.

- Will the foregoing provision apply to prisoners in the provincial or city jails? Yes, by analogy. Suppose it was a death convict who, while awaiting his execution, escaped?

Article 159. Other Cases of Evasion of Service of Sentence (Conditional Pardon)

Concept: This is in truth Violation of Conditional Pardon. A convict accepted the grant of a conditional pardon, which thus becomes a contract between him and the Chief Executive. This has the effect of suspending the enforcement of a sentence, or which exempt the convict from serving the unexpired portion of his prison penalty.

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.

Additional Requirements

1. The violation usually consists of the commission of another offense (even if punishable by special law). (Thus liable under Art 159 and for the crime committed)
2. The prisoner must first be convicted by final judgment of the subsequent offense (before he can be prosecuted under Art 159).
3. 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 liability** therefore of the accused consists of: (1) Prosecution for the new offense and (2) Prosecution for Violation of Conditional pardon and (3) Administrative, or to serve his sentence upon order of the President (recommitment). *The administrative liability is different and has nothing to do with his criminal liability. 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.

But under the **Revised Administrative Code, no conviction is necessary.** President has the power to arrest, and reincarnate offender without trial.

Illustration

1. Convict served 5 years of his 12 years sentence for robbery, and then he accepted a conditional pardon. He must comply with the conditions or he should not commit any offense during the 7 year period. If within the 7 year period he committed physical injuries, then the consequences are as follows:
 - a) He will be prosecuted for Physical Injuries
 - b) If found guilty then he will be prosecuted for Violation of Conditional Pardon
 - c) The President may order him to serve his original sentence. This is upon the discretion of the President.
 2. If the physical injury was committed after the lapse of 7 years, the convict is not liable for Violation of Conditional Pardon. He will just be liable for the new offense he committed. However, the President may, at his discretion, order that the convict go back to jail to serve the remaining 7 years of his original sentence, if so provided in the pardon.
- When the penalty remitted is destierro, under no circumstance may the penalty for violation of conditional pardon be destierro

Penalties for Violation

1. **Prision correccional minimum** if the remitted portion (i.e the portion which was not served) is **up to 6 years**. This is why it is said that Violation of Conditional Pardon is a substantive offense.
2. **No new penalty** (only the **unexpired portion of his original sentence**) if the unserved portion is **more than 6 years**. This is the reason for the view that Violation is not a substantive offense.

Is the violation of conditional pardon a substantive offense?

If the remitted portion of the sentence is less than six years or up to six years, there is an added penalty of prision correccional minimum for the violation of the conditional pardon; hence, the violation is a substantive offense if the remitted portion of the sentence does not exceed six years because in this case a new penalty is imposed for the violation of the conditional pardon.

But if the remitted portion of the sentence exceeds six years, the violation of the conditional pardon is not a substantive offense because no new penalty is imposed for the violation.

Note: The Supreme Court, however, has ruled in the case of **Angeles v. Jose** that this is not a substantive offense. This has been highly criticized.

Chapter 7

Article 160. Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense (Quasi-Recidivism)

Elements of Quasi-Residivism

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.*
- **Quasi-Recidivism** is a **special aggravating circumstance** where a person, after having been convicted by final judgment shall commit a new felony before beginning to serve his sentence for a previous offense or while serving the same. It cannot be offset by ordinary mitigating circumstance.
 - The first offense may be any crime but the second must always be a felony; i.e. the first crime may be either from the RPC or special laws but he second crime must belong to the RPC, not special laws
 - The legal consequence is that the penalty for the new offense will be in its maximum period irrespective of ordinary mitigating circumstances
 - The new offense may be committed: (i) while the convict is being transported to prison (ii) while in prison or (iii) during the period of time that he escaped from prison
 - If the new offense and previous are both under the same title of the RPC, it is recidivism. Quasi-recidivism will be favored over recidivism in view of the intention of the Code to punish those who commit an offense even after having been already convicted.
 - **The aggravating circumstance of reiteracion**, on the other hand, requires that the offender shall have served out his sentence for the prior offense

- **Who Can be Pardoned: General rule:** A quasi-recidivist may be pardoned at age **70** IF he shall have already served out his original sentence.
Exception: unworthy or habitual delinquent.
- If **new felony is evasion of sentence**, *offender is not a quasi-recidivist*.
- The penalty **maximum period of the penalty for the new felony** should be imposed. Mitigating circumstances can only be appreciated if the maximum penalty is divisible.
- Quasi-recidivism may be **offset by special privileged mitigating circumstance** (e.g. minority)

TITLE IV CRIMES AGAINST PUBLIC INTEREST

Concept

These are crimes which involve deceit, misrepresentation, or falsity against the public at large. If the misrepresentation or deceit or falsity was purposely availed of against a particular person the same will constitute estafa.

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 above crimes are grouped into three categories:

- A. Forgeries:** these refer to deceits involving:
 1. The seal of the government, the signature and stamp of the chief executive
 2. Coins
 3. Treasury or bank notes, obligations and securities of the government
 4. Documents
- B. Other Falsities:** these are deceits pertaining to :
 - (1). Authority, rank or title
 - (2) Names
 - (3) Uniforms and insignias and
 - (4) False Testimonies
- C. Frauds or acts involving machinations in public biddings and Combinations and Monopolies in Restraint of Trade and Commerce**

A. FORGERIES

I. Those involving the seal of the government, the signature, or stamp of the Chief Executive.

- The acts punished are: (1). The act of counterfeiting the seal of the government (2). Forging the signature of the Chief Executive or his stamp and (3). Using the forged signature or counterfeit seal or stamp

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**.
- The act of forging the signature is ordinarily punished as falsification but it is set apart as a distinct crime with a much higher penalty (reclusion temporal) to emphasize its gravity.
 - The act of counterfeiting or forging the signature must be on what purports to be an official document purporting to have been signed by the Chief Executive in his official capacity, otherwise the offense is ordinary falsification.
 - Example: (i). In what purports to be an appointment paper or grant of a pardon bearing the heading of the Office of the President (ii). Forging the signature in a private thank-you-letter is falsification.

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 or the cause of the counterfeiting.
 - Under this, the participation of the offender is in effect that of an accessory. Although the general rule is that he should be punished by a penalty of 2 degrees lower, under Art 162 he is punished by a penalty only 1 degree lower.

II. Those involving coins: (a) Counterfeit/false or (ii) mutilated coins

- A. **Counterfeit/false coins**- those that are forged or not authorized by the Central bank to be minted for circulation as legal tender, regardless if they are of intrinsic value. They include coins which have been demonetized (no longer circulated) so as to prevent the accused from using his skill upon genuine coins.

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.

The acts punished

- a. The act of counterfeiting, minting or making **COUNTERFEITING** – means the imitation of legal or genuine coin.

Q: X has in his possession a coin which was legal tender at the time of Magellan and is considered a collector's item. He manufactured several pieces of that coin. Is the crime committed?

A: *Yes. 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.*

- b. The act of importing
 - c. The act of uttering - passing of counterfeited coins as legal tender
 - d. Possession with intent to utter. Thus possession of coins as a collection is not punished
- **FEIGNING** - to represent by false appearance when no original exists.

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.

- B. **Mutilated Coins**- these are genuine coins or coins of legal tender whose intrinsic value has been diminished due to the diminution of their metallic contents.

Acts punished

1. Mutilating coins or any act upon the coin the purpose of which is to accumulate the metallic contents, such as by chipping off a portion, scraping its surface or boring a hole.
2. Selling, Importing or uttering such mutilated coins
3. Possession with intent to utter

Article 164. Mutilation of Coins

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.

Acts punished

1. Mutilating coins of the **legal currency**, with the further requirements that there be **intent** to damage or to defraud another;
 - **Mutilation** – to take off part of the metal either by filling it or substituting it for another metal of inferior quality. To accumulate the metallic contents, such as by chipping off a portion, scraping its surface or boring a hole. *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.*
 - The coin must be of legal tender or current coins of the Phils.
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.
 - There must be intention to mutilate. *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. It also punishes the act of amassing coins in excess of P50.00

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.

Q: 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?

A: *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.*

Q: 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?

A: *Yes. Presidential Decree No. 247 is violated by such act.*

Q: 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?

A: *Yes. This act of the printing presses is a violation of Presidential Decree No. 247.*

Q: 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?

A: *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.*

Q: 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?

A: *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".

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

1. Possession;
 2. With intent to utter; and
 3. Knowledge.
2. Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Elements

1. Actually uttering; and
 2. Knowledge.
- Possession or uttering **does not require** that coins be **legal tender**
 - Crime under this Article includes **constructive possession** or the subjection of thing to one's control
 - **R.A. 427** punishes possession of silver or nickel coins in excess of P50.00. It is a measure of national policy to protect the people from the conspiracy of those hoarding silver or nickel coins and to preserve and maintain the economy.

III. Forgeries committed upon Treasury or Bank Notes, Obligations and Securities

- This is related to Banking and Finance. The subject matter are papers in the form of obligations and securities issued by the government as its own obligations which are also sued as legal tender.
- Not included are paper bills as the crime relative to them is "counterfeiting"
- They do not include commercial checks
- The reason is to maintain the integrity of the currency and to ensure the credit and standing of the government
- Examples:
 1. Bonds issued by the Land Bank in connection with the Land Reform Program
 2. Postal Money Orders
 3. Treasury Warrants
 4. Treasury Certificates
 5. Sweepstake Tickets (Lotto tickets?)

The Acts punished

1. The act of forging or Forgery
2. The act of importing or uttering
3. The act of possession or use
 - (a). Possession must be with intent to utter
 - (b). Possessor must know the notes are forged

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;

FORGING – is committed by giving to a treasury or banknote or any document payable to bearer or to order, the appearance of a true and genuine document. Such as the act of manufacturing or producing fake treasury warrants.

FALSIFICATION – is committed by erasing, substituting, counterfeiting, or altering, by any means, the letters, figures, words or signs contained therein. (Art 169, RPC)

- if the note does not resemble a true and genuine document in that it can not possibly fool any person the act is considered as frustrated forgery
- Where the accused encashed a treasury warrant by posing and signing as payee, the crime is falsification.

2. Importation of such false or forged obligations or notes;

Bringing the coins into the Phils. It presupposes that obligations or notes are forged or falsified in a foreign country.

3. Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

This means offering obligations or notes knowing them to be false or forged, whether such offer is accepted or not, with a representation, by words or actions, that they are genuine and with an intent to defraud.

What May be Counterfeited Under Art 166:

1. Treasury or bank notes;
 2. Certificates;
 3. Other obligations and securities, payable to bearer.
- **Forging PNB checks is not included under Article 166.** that is **falsification of commercial document under Article 172.**
 - **Obligation or security** includes bonds, certificate of indebtedness, bills, national bank notes, coupons, treasury notes, certificates of deposit, checks, drafts for money, and sweepstakes money

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.

- The accused has the burden to give a satisfactory explanation of his possession of forged bills. Mere possession of false money bill, without intent to use it to the damage of another, is not a crime

ART 169 - HOW FORGERY IS COMMITTED

How Committed:

- 1) By giving to treasury or bank note or any instrument payable to bearer or to order the appearance of a true and genuine document
 - 2) By erasing, substituting, or altering by any means the figures, letters, words or signatures contained therein
- Includes falsification and counterfeiting
 - Falsifying lotto or sweepstakes ticket constitutes the complex crime of attempted estafa through falsification of a gov't security
 - *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.*

Q: Instead of the peso sign (₱), somebody replaced it with a dollar sign (\$). Was the crime of forgery committed?

A: *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.

Q: 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?

A: *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.*

Q: 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?

A: *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.*

IV. Forgeries Upon Documents

- The proper term is **Falsification**
- 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.

- **Document** (in the legal sense) is :
 - (1) any writing, whether paper based or in any solid surface, which is complete in itself and capable of creating rights or extinguishing obligations, or defining the relations between persons. Examples: deeds and contracts, receipts, promissory notes, checks.
 - (2) a writing used as evidence of the facts contained in the document such as death/birth certificates; clearances, medical records, x-rays; driver's license.
 - *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.*

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

- A mere **blank** form of an official document is not in itself a document
- **General Classification:** (In falsification, it is essential to specify the document falsified)
 1. **Falsification of Legislative Document** punished under Art. 170- bills, resolutions, ordinances whether approved or pending approval, by any legislative body
 - a). the act of falsification is limited to alterations of a genuine legislative document
 - b). if by any other means, such as simulating a legislative document, the offense is ordinary falsification.
 2. **Falsification of a Non-Legislative Document**
 - a). Document proper under Article 171 and 172
 - b). Wireless, Telegram, cablegram, telephone Messages under Article 173
 - c). Certificates under Article 174

- **Kinds of Documents Proper**

1. **Public Documents:** they consists of the following
 - a). Those which embody the official acts or records of acts of the sovereign authority,

official bodies and tribunals, and of the public officers, legislative, judicial and executive, whether of the Philippines or of a foreign country such as Decisions / Resolutions; Administrative Orders; Marriage Contract; Oaths of Office (Public Document Proper)

- b). Those created, executed, or issued by a public officer or in which he participates, **virtute officii** (by virtue of his office) such as clearances; certificates of appearance, designation of personnel; receipts. These are the so called "**Official Documents**".

Public document is broader than the term official document. Before a document may be considered official, it must first be a public document. Thus all official documents are public documents 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.

- c). Those acknowledged before a Notary Public such as deeds and conveyances except last wills and testaments
- d). Private documents (punished as falsification of public documents):
- i). which already formed part of the public records (**Public by Incorporation**) such as private deeds submitted to the office of the Register of Deeds; acknowledgment letter sent to the Local Civil Registrar; Protest letters to the Assessor's Office; libelous letters offered as exhibits in a trial; letters formally seeking opinions
- (ii). those which are intended to form part of the public record (**Public by Intention**)

Per *Monteverde vs. PP* (Aug. 12, 2000) involving falsification of sales invoices required by the BIR, it was held: : " If the document is intended by law to be part of the public or official record, the preparation of which being in accordance with rules and regulations issued by the government, the falsification of that document, although it was a private

document at the time of the falsification, is regarded as falsification of public or official documents"

Examples: Falsification of Civil Service or Bar Exam Booklets; Application letters and personal data sheets sent to personnel officers.

Query: What about attendance sheets during seminars or conferences? If the purpose is to use as evidence of those who attend and reference for sanction, the crime would be falsification of public document. If only for personal purpose, falsification of private document.

Note: In case of falsification of Travel Documents (Visa, Passport, and any document submitted in connection therewith) the law applicable is **R.A. 8239** or the **Philippine Passport Act**.

2. Commercial Documents:

- (a) those used by merchants or business people to promote trade or credit transactions or commercial dealings; and
- (b) those defined and regulated by the Code of Commerce or other commercial laws..

Examples: commercial checks; sales receipts and invoices; trust receipts; deposit and withdrawal slips and bank passbooks; tickets issued to passengers; enrollment forms; grades; warehouse receipts; airway bills; bank checks, cash files, journals, books, ledgers, drafts, letters of credit and other negotiable instruments.

- Cash disbursement vouchers or receipts evidencing payments are not commercial documents

3. **Private Documents** - any other document, deed or instruments executed by private persons without the intervention of a notary public or of other persons legally authorized, by which some disposition or agreement is proved, evidenced or set forth.

Examples: unnotarized deeds, letters, private receipts, class cards, time records in private employment. Vouchers of business people are private, not commercial, documents (*Batulanon vs. PP*, 502 SCRA 35)

Importance of distinguishing Falsification of Public from Falsification of Private Documents

1. As to penalty: a higher penalty is imposed for falsification of public documents
2. As to modes of commission: there are 8 ways of falsifying a public documents as against 7 as to private documents
3. As to complexing with Estafa: Estafa cannot be complexed with Falsification of Private document. The reason is because both have a common element which is damage
 - a). The crime is falsification if the deception cannot be committed without falsification, i.e. the falsification is committed as a means to commit estafa.
 - b). It is estafa if the estafa can be committed without the necessity of falsifying a document
4. As to requirement of damage: In falsification of a private document the act of falsification must be coupled with either (a) actual damage even if there was no intent to cause damage or (b) an intent to cause damage even if no actual damage resulted. In falsification of public document, the gravamen of the offense is the perversion of truth; the loss of faith and confidence by the public in the document even if there is no actual damage to the public

Principles Involving Falsification:

1. The Falsification maybe complexed with the crimes of Estafa (save private documents) malversation or theft.
2. Maybe committed intentionally or through negligence
 - a). Examples through negligence: (i) The Register of Deeds who issued a duplicate title without noting on its back a notice of the encumbrances (ii) A Clerk who issues a certified true copy of a birth certificate but inadvertently copied the wrong entries (iii) a person who signs a check to accommodate a payee without verifying the payee's identification
 - b). Thus the accused who is charged with intentional falsification may be convicted for falsification thru negligence without amending the Information because the former includes the latter (see PP vs Uy 475 SCRA 248)

3. As to the liability of Heads of Offices as final approving authority if it turns out the document to which they affixed their signatures contains falsities:
 - a). The Arias Principle (Arias vs. Sandiganbayan, 180 SCRA 315) as reiterated in Magsuce vs. Sandiganbayan (Jan. 3, 1995) holds: "All heads of offices have a right to rely to a reasonable extent on their subordinate and on the good faith of those who prepared the documents, and are not liable for the falsification"
 - b). Exceptions: (i). Where there is a clear evidence of conspiracy with the authors (ii) if through their negligence, they brought about the commission of the crime. Thus in PP. vs. Rodis the Head of Office was held liable where the document signed by him contained anomalies which were glaring in the document.
4. The following are accepted as defenses
 - a). Good faith and lack of intent to pervert the truth. As in the case of a co-employee who signed for another in the payroll because the latter was sick
 - b). Alterations which are in the nature of corrections such as changing the civil status from single to married in a Community Tax Certificate
 - c). Alterations which do not affect the integrity or veracity of the document. Example: The Certification by the treasurer that he paid the salary on July 10 when in truth it was on July 12
 - d) Minor inaccuracies as in a deed of sale which declared the consideration was paid in cash when it was paid in two installments
5. Presumption of Authorship of the Falsification: In the absence of satisfactory explanation, one found in possession of and who used a forged document is the forger of said document. If a person had in his possession a falsified document and he made sue of it, taking advantage of it and profiting thereby, the clear presumption is that he is the material author of the falsification. (Nierva vs. PP. 503 SCRA 114).
6. There is a ruling that generally, falsification of public/commercial documents have no attempted or frustrated stages unless the falsification is so imperfect that it may be

considered as frustrated. (Personal Opinion: the crime should be consummated since what was frustrated was not the act but the purpose of the offender)

7. There are as many falsifications as there are documents falsified; or as there are separate acts of falsification committed by one person within the same period of time.
 - a). The falsification of several signatures in one payroll is only one falsification
 - b). Several checks falsified at the same time gives rise to several separate crimes
8. Falsification is not a continuing crime (NOT an instantaneous crime)

Proof of Falsification

- An allegation of forgery and a perfunctory comparison of the signature/handwritings by themselves cannot support a claim of forgery, as forgery cannot be presumed and must be proved by clear, positive and convincing evidence and the burden of proof lies on the party alleging forgery.
- Criteria to determine forgery or falsification: per *Ladignon vs. CA* (390 Phil. 1161 as reiterated in *Rivera vs. Turiano* (March 7, 2007)

The process of identification must include not only the material differences between or among the signatures/handwritings but a showing of the following:

- (i) the determination of the extent, kind and significance of the resemblance and variation (of the handwriting or signature)
- (ii) that the variation is due to the operation of a different personality and not merely an expected and inevitable variation found in the genuine writing of the same writer
- (iii) that the resemblance is a result more or less of a skillful imitation and not merely a habitual and characteristic resemblance which normally appears in genuine handwriting

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.
- Accused must not be a public official entrusted with the custody or possession of such document, otherwise Art 171 applies.
 - Offender may be a public official or a private individual.
 - The bill, resolution or ordinance must be genuine.
 - The words "municipal council" should include the city council or municipal board – Reyes.

Article 171. Falsification by Public Officer, Employee or Notary or Ecclesiastical Minister

Coverage

This article provides: (1) the penalty of falsification if committed by a public officer or employee or a notary or an ecclesiastical minister. The penalty is higher if committed by public officer than if committed by a private person. The document may be any document. (2) the eight acts of falsification.

Elements

1. Offender is a public officer, employee, or notary public;
 - As for an ecclesiastic, the document he falsified must affect the civil status of a person, else he will be considered as a private person. The usual document involved is a marriage contract
2. He takes advantage of his official position;

When:

- He has the duty to make or prepare or otherwise to intervene in the preparation of the document

The public officer must take advantage of his official position or that there was abuse of office. By this is meant that his functions include participating in the preparation, recording, keeping, publishing or sending out to the public of the falsified document otherwise he will be punished as a private person. As for instance: secretaries, the Clerk of Court; the record officers; those who issue receipts or licenses; the Register of Deeds; Local Civil Registrar.

If he did not take advantage of his official position, he would be guilty of falsification of public document by a private individual.

- He has the official custody of the document which he falsifies
3. He falsifies a document by committing any of the modes of falsification.

DOCUMENT- any written statement by which a right is established or an obligation extinguished or by which a fact may be proven or affirmed.

Modes of Falsifying a Document:

- a. BY COUNTERFEITING, IMITATING ANY HANDWRITING, SIGNATURE OR RUBRIC.

Elements:

1. that there be an intent to imitate, or an attempt to imitate; and
2. that the two signatures or handwritings, the genuine and the forged, bear some semblance, to each other.

- To counterfeit a handwriting or signature is to create one that is so similar to the genuine as to make it difficult to distinguish and thus easily fool the public. This act includes creating or simulating a fictitious handwriting or signature
- Lack of similitude/imitation of a genuine signature will not be a ground for conviction under par. 1 but such is not an impediment to conviction under par.2.

- b. CAUSING IT TO APPEAR THAT PERSONS HAVE PARTICIPATED IN ANY ACT OR PROCEEDING WHEN THEY DID NOT IN FACT SO PARTICIPATE

Requisites:

- a) that the offender caused it to appear in a document that a person or persons participated in an act or proceeding (refers to document)
- b) that such persons did not in fact so participate in the action proceeding

- There is no need to imitate the signature or handwriting
- This includes simulating a public document like a Warrant of Arrest as having been issued by a judge
- Examples: impersonating a person in a document; voting in place of a registered voter, posing as payee if a negotiable instrument in order to encash the same

- c. ATTRIBUTING TO PERSONS WHO HAVE PARTICIPATED IN AN ACT OR PROCEEDING STATEMENTS OTHER THAN THOSE IN FACT MADE BY THEM

Requisites:

- a) that persons participated in an act or proceeding
- b) that such person or persons made statements in that act or proceeding
- c) that the offender in making a document, attributed to such person, statements other than those in fact made by such person.

- This is twisting the statements or putting words into the mouth of another
- Substituting a forged will where the accused is now named as an heir in lieu of the original where he was not so named
- Where the accused was instructed to prepare a Special Power of Attorney over a parcel of land, with himself as the agent but he instead prepared a deed of sale with himself as the vendee

- d. MAKING UNTRUTHFUL STATEMENTS IN A NARRATION OF FACTS

Requisites:

- a) That the offender makes in a document statements in a narration of facts
- b) That he has the legal obligation to disclose the truth of the facts narrated by him
- c) That the facts narrated by the offender are absolutely false
- d) That the perversion of truth in the narration of facts was made with the wrongful intent of injuring a third person (accused knows what he imputes is false)

- The falsity involves a **material** fact
- Untruthful statements are not contained in an affidavit or a statement required by law to be sworn to.
- **by legal obligation** is meant that the law requires a full disclosure of facts such as in a public official's Statements of Assets and Liabilities; the Personal Data Sheet submitted to the NBI; the contents of an Application for Marriage; the Community Tax Certificate
- **Narration of facts** means an assertion of a fact and does not include statements of opinion or conclusions of law. Thus when the accused placed himself as "eligible" in his statement of candidacy when in truth he is disqualified, this is not a narration of fact but a conclusion of law. Similarly, the accused as claimant to a land stated in his application that he entitled to the ownership when under the law he is disqualified, is not liable
- There is no falsification if there is some colorable truth in the statement of facts by the accused

- False statements in an application form of the Civil Service, which was under oath, for police examination is perjury not falsification
- But when a third person, not the Affiant, alters a prepared Affidavit, the crime committed by him is falsification under mode number 6
- This kind of falsification may be committed by omission.
- *Enemecio v. Office of the Ombudsman, 1/13/04*
As the ombudsman correctly pointed out, Enemecio was not able to point to any law imposing upon Bernante the legal obligation to disclose where he was going to spend his leave of absence. "Legal obligation" means that there is a requiring the disclosure of the truth of the facts narrated. Bernante may not be convicted of the crime of falsification of public document by making false statements in narration of facts absent any legal obligation to disclose where he would spend his vacation leave and forced leave.

e. ALTERING TRUE DATES

- This requires that the date must be **material** as in the date of birth or marriage; date of arrest; date when a search warrant was issued; date of taking the oath of office
- The alteration of the date or dates in a document must affect either the veracity of the document or the effects thereof.
- Alteration of dates in official receipts to prevent discovery of malversation is falsification

f. MAKING ALTERATIONS (CHANGE) OR INTERCALATIONS (INSERTIONS) IN A GENUINE DOCUMENT WHICH CHANGES ITS MEANING

Requisites:

- a) That there be an alteration or intercalation (insertion) on a document
 - b) That it was made on a genuine document
 - c) That the alteration and intercalation has changed the meaning of the document
 - d) That the change made the document speak something false
- The change must affect the integrity of the document. It must make the document speak something false so that alterations to make it speak the truth cannot be falsification.
 - Examples

1. Changing the grades in one's Transcript of Records
2. Changing one's time of arrival in the DTR
3. Changing the stated consideration a deed of sale
4. Deleting a condition in a contract of lease

g. ISSUING IN AN AUTHENTICATED FORM A DOCUMENT PURPORTING TO BE A COPY OF AN ORIGINAL WHEN NO SUCH ORIGINAL EXIST, OR INCLUDING IN SUCH COPY A STATEMENT CONTRARY TO, OR DIFFERENT FROM, THAT OF THE GENUINE ORIGINAL

- This can only be committed by the Official Custodian of documents who takes advantage of their position.
- Example: Issuing a Certified True Copy of a birth certificate of a person when no such certificate exists or
- Issuing a true copy of a title and indicating therein the land is mortgaged when no such encumbrance exist on the original on file with the office
- Intent to gain or prejudice is not necessary because it is the interest of the community that is guaranteed.

h. INTERCALATING ANY INSTRUMENT OR NOTE RELATIVE TO THE ISSUANCE THEREOF IN A PROTOCOL, REGISTRY OR OFFICIAL BOOK

- Example: Inserting a Birth Certificate in the recorded of the Civil Registrar to make it appear the birth was recorded
- This involves a genuine document

Persons who may be held liable

1. **Public officer, employee, or notary public** who takes advantage of his official position

If offender does not take advantage of his public position, he may still be liable for falsification of documents by a private person under Art 172.

2. **Ecclesiastical minister** if the act of falsification may affect the civil status of persons
3. **Private individual**, if in conspiracy with public officer

NOTE: In the 1st, 2nd, 6th, 7th (second part), 8th mode of falsification, there must be a genuine document. The rest, it is enough that there must an appearance of a true and genuine document.

Q: 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.

A: 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.

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;

Elements

- a. Offender is a private individual or public officer or employee who did not take advantage of his official position;
- b. He committed any act of falsification enumerated in Art 171;
- c. The falsification was committed in a public, official, or commercial document or letter of exchange.

- Take note of the definition of public, official, and commercial documents.
- Under this paragraph, **damage is not essential**, it is *presumed*
- **Lack of malice or criminal intent** may be put up as a defense under this article
- The **possessor** of falsified document is **presumed to be the author** of the falsification

2. Falsification of private document by any person;

Elements

- a. 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,
- b. Falsification was committed in any private document;
- c. Falsification causes damage to a third party or at least the falsification was committed with intent to cause such damage.

- There are only seven acts of falsification of a private person. In the falsification of a private document the damage includes damage to honor.

- It is not necessary that the offender profited or hoped to profit
- A document falsified as a necessary means to commit another crime (**complex crime**) must be **public, official or commercial**. Hence, there is **no complex crime of estafa through falsification of private document** because the immediate effect of the latter is the same as that of estafa
- **If the estafa was already consummated at the time the falsification of a private document was committed** for the purpose of concealing estafa, **the falsification is not punishable**. As regards the falsification of the private document, there was **no damage or intent to cause damage**
- The crime is **falsification of public documents even if the falsification took place before the private document became part of the public records**.

3. Use of falsified document (including Introduction thereof in any judicial proceeding)

Elements

In introducing in a judicial proceeding –

- a. Offender knew that the document was falsified by another person;
 - b. The false document is in Articles 171 or 172 (1 or 2);
 - c. He introduced said document in evidence in any judicial proceeding.
- In introducing a falsified document in a judicial proceeding, damage is not required. Example: The act of the defendant in introducing a falsified receipt to show that the debt was paid.

In use in any other transaction –

- a. Offender knew that a document was falsified by another person;
 - b. The false document is embraced in Articles 171 or 172 (1 or 2);
 - c. He used such document (not in judicial proceeding);
 - d. The use caused damage to another or at least used with intent to cause damage.
- In the crime use of a falsified document, the user is not the falsifier but a third person, who must know the falsity of the document.
 - **The user of the falsified document is deemed the author of the falsification, if:**
 1. the use was so closely connected in time with the falsification, and
 2. the user has the capacity of falsifying the document

Falsification of PRIVATE Documents	Falsification of PUBLIC/ OFFICIAL Documents
Damage to third party is an element of the offense	Damage to third party is immaterial; What is punished is the violation of public faith and perversion of truth which the document proclaims
No complex crime of estafa thru falsification of private document.	There is complex crime when committed as a means to commit estafa.

Falsification by Private Individual (Art 172)	Falsification by Public Officer (Art 171)
Prejudice to 3 rd person is taken into account. If damage is not apparent or if no intent to cause it, no falsification.	Prejudice to 3 rd person is immaterial.

Q: 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?

A: *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.*

Q: 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?

A: *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.*

Q: Can the writing on the wall be considered a document?

A: *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.*

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

- 1, 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;
2. He **utters** fictitious wireless, cable, telegraph or telephone message.

2. Falsifying wireless, telegraph or telephone message;

Elements

- 1, 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;
2. He **falsifies** wireless, cable, telegraph or telephone message.

Examples: making up a false "break-up" telegram or decreasing the number of the words in a message even if the contents are not changed

3. **Using** such falsified message.

Elements

1. 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;
2. He used such falsified dispatch;
3. The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice.

The crime of using may be committed by any person. The offender may not be connected to the government or to such corp.

- A private individual may be a principal by inducement but not by direct participation
- Act No 1851, Sec 4. punishes private individuals who forge or alter telegram.

Section 5

Crimes Affecting Medical Certificate, Certificates of Merit and the Like

Article 174. False Medical Certificates, False Certificates of Merits or Service, Etc.

Persons liable and Acts Punished

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.**]

The contents are not true in that the person was never examined; or that he actually had no illness; or that the illness is not as serious as stated in the certificate; or that the period of confinement or rest is not as stated therein.

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.]

As in the case of a barangay captain who issues a Certificate of Good Moral Character to a bully, or a head of office who issues a Certificate of Exemplary Conduct to an employee with several disciplinary penalties

3. Private person who falsifies a certificate falling within the classes mentioned in the two preceding subdivisions.

The name of the crime is Falsification of a Medical Certificate or Certificate of Merit to distinguish it from ordinary falsification

Example: the patient who altered the period of days of confinement

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.

- When any of false certificates mentioned in Art 174 is used in judicial proceedings, Art 172 does not apply because it is limited only to those false documents embraced in Art 171 and 172.

Article 176. Manufacturing and Possession of Instruments or Implements for Falsification

Acts punished:

1. Making any stamps, dies, marks, or other instrument or implements for counterfeiting or falsification.

- Examples: false seals, false branding instruments
- The implements need not be a complete set. It is enough that they may be employed by themselves or together with other implements to commit the crime of counterfeiting or falsification.

2. Introducing into the Philippines of said instruments or implements

3. Possession with intent to use (animus utendi) the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

- **Constructive possession** is also punished. Art 165 and 176 RPC, also punish constructive possession

V. OTHER FALSITIES

Note: the subject of these falsities are not papers, instruments or documents but : (1) official authority or functions; (2) rank, title, names, (3) uniforms and insignias and (4) testimonies under oath. These are also capable of being falsified or subjected to acts of deception.

Section 1

Art. 177. Usurpation of Authority or official functions

Acts punished

1. **Usurpation of Authority**- the crime committed by a person who knowingly and falsely represents himself to be an officer agent, representative or any department or agency of the Philippine government or foreign country. :

Elements

1. Offender knowingly and falsely represents himself;
 2. As an officer, agent or representative of any department or agency of the Philippine government or of any foreign government.
- The representation must be active, i.e by words or acts and the accused need not actually perform any function pertaining to the office misrepresented. What is punished is the act of false misrepresentation. There must be a positive, express and explicit representation and not merely a failure to deny. Representation may be shown by acts. He who does not object when introduced as a ranking official is not guilty of usurpation.
 - This is different from the crime of Usurpation of Powers under articles 239 to 241 which deals with interference in the functions of one department by another department
 - This includes any government owned or controlled corporations
 - Example: a private person greets tourists, gives them the key to the city, welcomes them, by declaring that he is the city mayor
2. **Usurpation of Functions** - the crime committed by any person who actually performs an act pertaining to a public official of the government or any agency thereof accompanied by a pretense that he is such public official.

Elements

1. Offender performs any act;
 2. Pertaining to any person in authority or public officer of the Philippine government or any foreign government, or any agency thereof;
 3. Under pretense of official position;
 4. Without being lawfully entitled to do so.
- There must be a pretense or false assertion of being a public official. In the absence thereof, there is no usurpation of functions.
 - Thus one who enters a public school and starts teaching pupils, without claiming to be a teacher, is not liable. Same with one who asks questions on witnesses about a crime without asserting he is a police investigator. Or one who directs traffic might be performing a civic action.
 - One who introduces himself to be an NBI agent and begins interrogating witnesses is liable. As

with one who claims to be a BIR agent and begins going over the books of a businessman, or one who claims to be with the Department of Labor and starts inquiries as to the employment status of employees.

- There is such a crime as Seduction through Usurpation of Official Functions.
- The offender may himself be a public official who assumes a position without color of law. As in the case of a number one councilor who took over the position of the mayor who was on leave despite opinions that it be the vice mayor who must be the acting mayor.
- The usurpation must pertain to a department or agency of the Philippine Government or any foreign government.
- However, if the authority or function usurped pertains to a diplomatic, consular or other accredited officers of a foreign government (usurpation must be with intent to defraud such foreign government or the Gov't of the Phils), the offender is also liable under **R.A. 75**. (fined not more than P5,000 or imprisoned for not more than 5 years or both)
- If it can be proven that the usurpation of authority of official functions by accused was done in good faith or under cloth of authority, then the charge of usurpation will not apply. E.g. Estrada v. Desierto

Estrada v. Desierto, 12/9/04

Hefti was charged with Usurpation of Official Function for issuing a notice of distraint, a function of the BIR Commissioner. While it is true that under Sec 206 of the NIRC as amended, the Commissioner of the BIR and not any Officer of the BIR was the one granted with the power to issue a notice of distraint, it bears to stress, however, that when respondent Hefti exercised such function of the BIR Commissioner, she was then designated Officer-In-Charge of the BIR by Pres. Arroyo, xxx. Suffice it to say that when respondent Hefti issued the notice of distraint, she was clothed with authority to issue the same in view of her appointment as the then Officer-In-Charge of the BIR. Hence, the charge for Usurpation of Official Function does not apply to said respondent

Article 178. Using Fictitious Name and Concealing True Name

1. **Using Fictitious Name**

Elements

1. Offender uses a name other than his real (registered or baptismal) name;
2. He uses the fictitious name publicly;
3. Purpose of use is to:

- a) conceal a crime,
- b) evade the execution of a judgment, or
- c) cause damage to public interest.

- A fictitious name is any name which a person publicly applies to himself without authority of law.
- The purpose is material even if it is simply to cause confusion among the public
- If the purpose is to cause damage to a private person's interest, the crime may constitute **estafa**
- If the purpose is to obstruct justice the offense is punished under **P.D. 1829**
- The use of Aliases is punished under **C.A. 142**

Commonwealth Act No. 142 as amended by RA 6085 (Regulating the Use of Aliases)

Persons Liable

1. any person who uses 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 registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court.

Exception: Pseudonym **solely** for literary, cinema, television, radio, or other entertainment and in athletic events where the use of pseudonym is a normally accepted practice.

2. any person who having been baptized with a name different from what was registered, or who had obtained judicial authority for use of an alias, or who uses a pseudonym, **represents himself in any public or private document w/o stating or affixing his real or original name or aliases or pseudonym** he is authorized to use.

- A judicial authority must first be secured by a person who desires to use an alias just like those legally provided to obtain judicial authority for a change of name.
- The petition for an alias shall set forth: person's baptism and family name and the name recorded in the civil registry, if different, his immigrant's name, if alien, and his pseudonym, if he has such names other than the original; and the reasons for the use of the desired alias.
- However, a common-law wife does not incur criminal liability under the Anti-Alias Law if she uses the surname of the man

she has been living w/ for the past 20 years and has been introducing herself to the public as his wife

- When may a person use a name other than his registered or baptismal name?
 1. When allowed by the court in a petition for a change of name
 2. When used in the field of entertainment, literature or sports
 - a). Pen names of authors.
 - b). Names in the entertainment industry:
 - c). Sport's Monickers such as "Flash": Speedy"" Bata", "Sugar"
 3. When allowed by law such as when a woman marries or when a person is legally adopted
 4. Under the Witness Protection Program in order to protect the identity and safety of the witness

2. **Concealing True Name and other Personal Circumstances**

Elements

1. Offender conceals his true name and other personal circumstances;
 2. Purpose is only to conceal his identity
- Such as in order to avoid giving support or to avoid debtors .

Use of Fictitious Name	Concealing true name
Element of publicity must be present	Publicity not necessary
Purpose is to conceal a crime, to evade the execution of a judgment or to cause damage to public interest	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.**

Examples: unlawful use of ecclesiastical habit of a religious order; school uniforms; uniform of the boy's scout; the regalia of the Knights of Columbus

- If the uniform, insignia, badge, emblem or rank, medal, patch or identification card pertains to members of the **military** what applies is **R.A. 493** (except if used in playhouse or theater or in moving picture films). If it pertains to the uniform, regalia or decoration of a **foreign state**, (use with intent to deceive or mislead) it is punished under **R.A. 75**.
- The use must be **malicious** i.e. to give the impression that the accused is a member of the office or class and thereby enjoy the prestige and honor of that office or class.
- 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.
- The term "improperly" means that the offender has no right to use the uniform or insignia.

Section 2 False Testimony

False Testimony – committed by a person who, being under oath and required to testify as to the truth of a certain matter at a hearing before a competent authority, shall deny the truth or say something contrary to it.

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 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**.
- Violation of this article requires **criminal intent**. Hence, it cannot be committed through negligence.
 - The offender **need not impute guilt** upon the accused to be liable.

- The defendant/accused must at least be sentenced to a correctional penalty or a fine, or must have been acquitted. The offense committed must be a felony
- The witness who gave false testimony is liable **even if the court did not consider his testimony**.
- If the accused violated a special law, the false testimony is punished under Art 183.
- **Penalty depends upon sentence imposed on the defendant** except in the case of a judgment of acquittal. Since Article 180 does not prescribe the penalty where the defendant in a criminal case is sentenced to a **light penalty, false testimony in this instance cannot be punished** considering that a penal must be strictly construed.
- Prescriptive period of the offense shall run from the time of finality of the decision in the criminal case.
- Perjury requires malice and cannot be willful where the oath is according to belief or conviction as to its truth (Villanueva vs. Secretary of Justice 495 SCRA 475)

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.
- False testimony by negative statement is still in favor of the defendant.
 - False testimony in favor of defendant need not directly influence the decision of acquittal nor benefit the defendant (intent to favor defendant sufficient)
 - A statement of mere opinion is not punishable.
 - Conviction or acquittal is not necessary (final judgment is not necessary), but gravity of crime in principal case should be shown.
 - A defendant who voluntarily goes up on the witness stand and falsely imputes to another person the commission of the offense is liable under this article. If he merely denies the commission of the offense, he is not liable.
 - Rectification made spontaneously after realizing mistake is not false testimony (not liable if there is no evidence that the accused acted with malice or criminal intent to testify falsely)
 - The penalty in this article is less than that which is provided in the preceding article because there is no danger to life or liberty of the defendant.
 - The prescriptive period commences from the time of giving false testimony.
 - The persons liable are usually the witnesses for the accused. NOT the accused himself

since it is his right to put a defense in his favor. BUT if he imputes a crime to a 3rd person, then there is liability for false testimony.

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.
- This **article is not applicable** when testimony is given in a **special proceeding**. In this case, the crime is **perjury**.
 - **Basis of penalty: amount** involved in the civil case, whether it exceeds 5K or not.

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 (element of materiality);
 - **Material Matter** – is the main fact which is the subject of the inquiry.
 - A matter is **material** when it is directed to prove a **fact in issue**.
 - a matter is relevant when it tends in any reasonable degree to establish the probability or improbability of a fact in issue.
 - a matter is pertinent when it concerns collateral matters which make more or less probable the proposition at issue.
2. The statement or affidavit is made before a **competent officer**, authorized to receive and administer oaths;

A "competent person authorized to administer an oath" means a person who has a right to inquire into the questions presented to him upon matters under his jurisdiction

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.

- **Subornation of perjury** is committed If a person **procures another to swear falsely** and the witness suborned does testify under circumstances rendering him guilty of perjury. It is not expressly penalized under RPC. This is now treated as plain perjury under 183 in rel to Art 17, the one inducing another as principal by inducement and the one induced as principal by direct participation.
- **Solemn affirmation** refers to **non-judicial** proceedings and affidavits.
- **OATH** – any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.
- **AFFIDAVIT** – a sworn statement in writing, a declaration in writing, made upon oath before an authorized magistrate or officer.
- A false affidavit to a criminal complaint may give rise to perjury.
- Good faith or lack of malice is a valid defense.
- There is **no perjury through negligence or imprudence** since the assertion of falsehood must be willful and deliberate.
- Even if there is no law requiring the statement to be made under oath, as long as it is made for a legal purpose, it is sufficient
- Perjury is an offense which covers false oaths **other than those taken in the course of judicial proceedings**
- False testimony before the justice of the peace during a preliminary investigation may give rise to the crime of perjury, not false testimony in judicial proceedings. The latter crime contemplates an actual trial where a judgment of conviction or acquittal is rendered
- The venue for perjury based on false affidavits is where the affidavits were used.

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**.

- This article applies when the offender, **w/o inducing** another **but knowing** him to be a false witness, **presented** him and the latter testified falsely in a judicial or official proceeding
- The felony is **consummated** the moment a false witness is **offered** in any judicial or official proceeding. Looking for a false witness is not punished by law as that is not offering a false witness
- The false witness need not be convicted of false testimony. A mere offer to present him is sufficient.
- **Sir Sagsago:** If one pays a witness of the other party to testify falsely, he committed what the American Law considers as Subornation Of Perjury. There is no corresponding offense under the RPC. The nearest crime would be obstruction of justice.

Chapter 3 FRAUDS

Article 185. Machinations in Public Auctions

Concept

The crime committed by any person who intends to cause the reduction of the price of a thing auctioned and shall either (1) solicit any gift or a promise as a consideration for refraining from taking part in any public auction, and (2) attempt to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

Acts punished

1. Soliciting any gift or promise as a consideration for refraining from taking part in any public auction;

Elements

1. There is a **public auction**;
2. Offender **solicits any gift or a promise** from any of the bidders;
3. Such gift or promise is the **consideration for his refraining from taking part** in that public auction;
4. Offender has the **intent to cause the reduction of the price** of the thing auctioned.

Consummated by mere solicitation.

2. Attempting to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

Elements

1. There is a **public auction**;
2. Offender **attempts to cause the bidders to stay away** from that public auction;

3. It is done by **threats, gifts, promises or any other artifice**;
4. Offender has the **intent to cause the reduction of the price** of the thing auctioned.

Consummated by mere attempt.

- When a thing is sold it is either through a direct sale to a particular individual or through public bidding. Public bidding is preferred in order to obtain the best and most advantageous price. This is especially true with respect to judgment debtors in case of judgment sales. The best and highest price is achieved by leaving it to any interested buyer to offer a better price over those offered by others. *Any a scheme so that the article will be sold at a low price*, is called **machination**.
- In the second mode, the threat, coercion or force is absorbed but the bribery is a separate offense.
- Examples:

1. X knows Y is interested to buy a piano worth P250,000.00 being sold at an auction. X approaches Y and says he can bid as high as P250,000.0 but will not bid if Y just give him P25,000.00 so that Y has no competitor.

2. Y wants to buy the piano and knows that X is ready to bid against him. He tells X not to bid and accept P25,000.00 instead.

- The threat need not be effective nor the offer or gift accepted for the crime to arise
- Execution sales should be opened to free and full competition in order to secure the maximum benefit for the debtors

Article 186. Monopolies and Combinations in Restraint of Trade

Introduction

In an open market economy, the price of goods is supposed to be determined by the relationship of supply and demand. Hence, any act, scheme or strategy, by which the price of goods and commodities are intentionally affected, are punished. This includes practices such as resorting to artificial shortage or hoarding of goods, spreading false rumors.

Likewise there should be free competition in the market. The law thus punishes any scheme of a person or persons to monopolize goods and commodities, including all acts to kill competitors, such as under pricing of goods.

However, Article 186 is ineffective in the face of conglomerates, mergers and combinations of big

companies; and the diversification of the products of big companies; mass production of goods by companies so that they can afford to sell at prices lower than those offered by retailers.

Acts punished

1. Combination or conspiracy to prevent free competition in the market;

Elements

1. Entering into any contract or agreement or taking part in any conspiracy or combination in the form of a trust or otherwise;
 2. 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

1. 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;
 2. In order to alter the prices thereof by spreading false rumors or making use of any other artifice;
 3. 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

1. Manufacturer, producer, processor or importer of any merchandise or object of commerce;
 2. Combines, conspires or agrees with any person;
 3. 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.
- **Combination** to prevent free competition in the market – by entering into a **contract or agreement** or taking part in any conspiracy or combination in the form of trust or otherwise, **in**

restraint of trade or commerce or to prevent by artificial means free competition in the market; it is enough that initial steps are taken. It is ***not necessary that there be actual restraint of trade***

- **Monopoly** to restrain free competition in the market – by monopolizing any merchandise or object of trade or commerce, or by combining with any person/s to monopolize said merchandise or object in order to alter the prices thereof by **spreading false rumors or making use of any other artifice to restrain free competition** in the market
- **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 the merchandise
- Also liable as **principals**
 - a. **corporation/ association**
 - b. **agent/representative**
 - c. **director/manager who willingly permitted or failed to prevent** commission of above offense
- When offense is committed by a corporation or association, the president and the directors or managers are liable
- Crime is **aggravated** if the items involved are:
 - a. **food** substance
 - b. **motor fuel or lubricants**
 - c. goods of **prime necessity**
- RA 3720 – created Food and Drug Administration
- RA 6361 – created Price Control Council
- RA 1180 – an Act to regulate the Retail Business
- **A MONOPOLY is a privilege or peculiar advantage vested in one or more persons or companies, consisting in the exclusive right or power to carry on a particular business or trade, manufacture a particular article, or control the sale or the whole supply of a particular commodity. It is a form of market structure in which one or only a few firms dominate the total sales of a product or service. On the other hand, COMBINATION IN RESTRAINT OF TRADE is an agreement or understanding between two or more persons, in the form of a contract, trust, pool, holding company or other form of association, for the purpose of unduly restricting competition, monopolizing trade and commerce in a certain commodity, controlling its production, distribution and price, or otherwise interfering with freedom of trade without statutory authority. Combination in restraint of trade refers to the means while monopoly refers to the end**

Frauds in Commerce and Industry

- A. Crimes involving Metal Products: Articles made of precious metals such as gold, silver, are supposed to bear marks, brands or stamps, which must

indicate the actual fineness or quality of said metal products i.e carat, so as not to deceive the public. Hence Article 187 punishes the act of importing, selling or disposing off these articles knowing that their actual fineness is not indicated in their brand, mark or stamps.

B. As to deceptions involving trademarks, trade names and service marks, the acts punished relative thereto, such as: Infringement, Unfair competition, Fraudulent Registration, False Designation of Origin; are punished by the Intellectual Property Code (RA 8293)

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 or merchandise made of gold, silver, or other **precious metals** or their alloys;
2. The stamps, brands, or marks of those articles or 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.

Notes

- When evidence show the article to be imported, selling the misbranded articles is not necessary
- The manufacturer who alters the quality or fineness is liable for estafa under Art 315, 2(b)

Art 188 and 189 which are inconsistent with RA 8293 are repealed

Article 188. Substituting and Altering Trademarks, Trade names, or Service Marks (repealed)

- **TRADE-NAME or TRADE-MARK** – is a word/s, name, title, symbol, emblem, sign or device, or any combination thereof uses as an advertisement, sign, label, poster, or otherwise, for the purpose of enabling the public to distinguish the business of the person who owns and uses said trade-name or trade-mark
- **SERVICE MARK** – is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes w/o limitation the marks, names, symbols, titles, designations, slogans,

character names, and distinctive features or radio or other advertising

- The tradename, trademark or service mark need not be identical; a colorable imitation is sufficient. There must not be differences which are glaring and striking to the eye
- **'Mark'** means any visible sign capable of distinguishing the goods or services of an enterprise and shall include a stamped or marked container
- **Tradename:** identify or distinguish an enterprise; not necessarily attached or affixed to the goods of the owner
- **Trademarks:** to indicate origin of ownership of goods to which it is affixed
- In trademarks, it is not necessary that the goods of the prior user and the later user of the trademark are of the same categories. The meat of the matter is the likelihood of confusion, mistake or deception upon purchasers of the goods of the junior user of the mark and goods manufactured by the previous user
- The tradename or trademark must be registered. Trademark must not be merely descriptive or generic
- The exclusive right to an originally valid trademark or tradename is lost, if for any reason it loses its distinctiveness or has become 'publici juris'

Article 189. Unfair Competition, Fraudulent Registration of Trade Name, Trademark, or Service Mark, Fraudulent Designation of Origin, and False Description (repealed)

UNFAIR COMPETITION: consists in employing deception or any other means contrary to good faith by which any person shall pass off the goods manufactured by him or in which he deals, or his business. Or services for those of the one having established goodwill, or committing any acts calculated to produce such result.

Unfair Competition	Infringement of trademark or tradename
Broader, more inclusive	Limited range
Identified in the mind of the public whether or not a mark or tradename is employed	Identified a peculiar symbol or mark with his goods and thereby has acquired a property right in such symbol or mark
Gives his goods the general appearance of the goods of another	Sells goods on which trademark is affixed

Republic Act No. 8293 (An Act Prescribing the Intellectual Property Code and Establishing the

Intellectual Property Office, Providing for Its Power and Functions, and for Other Purposes)

Section 155. Remedies; Infringement. –

Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisement intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided*, that the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

Section 168. Unfair Competition, Rights, Regulation and Remedies.

168.1. Any person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or service so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of

another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, or in any other feature or their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or any agent of any vendor engaged in selling such goods with a like purpose; or

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who has identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Section 156, 157 and 161 shall apply *mutatis mutandis*.

Section 169. False Designation or Origin; False Description or Representation.

169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Section 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.

Section 170. Penalties. – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P 50,000.00) to Two hundred thousand pesos (P 200,000.00), shall be imposed on any person who is

found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

RA 455- LAW ON SMUGGLING

Acts Punishable:

1. That the merchandise must have been fraudulently or knowingly imported contrary to law
2. That the defendant if he is not the importer himself, must have received, concealed, bought, sold or in any manner facilitated the transportation, concealment, or sale of the merchandise and that he must be shown to have knowledge that the merchandise had been illegally imported.

Title V

Crimes Relative to Opium and Other Prohibited Drugs

(The **provisions of Article 190 to 194** have been **repealed**. First there was **R.A. 6425** known as the **Dangerous Drugs Law of 1972** as amended by R.A. 7659. This law has in turn been replaced by **R.A. 9165** otherwise known as the **Comprehensive Dangerous Drugs Act of 2002**. Some salient provisions are summarized hereunder).

1. Campaign against Drugs and Protection of State
2. Balance - Medicinal purpose
3. Rehabilitation

Declaration of Policy (Sec. 2)

1. It is the policy of the State to safeguard the integrity of its territory and the well-being of its citizenry particularly the youth, from the harmful effects of dangerous drugs on their physical and mental well-being and to defend the same against acts or omissions detrimental to their development and preservation. (Campaign against Drugs and Protection of State – Sir Sagsago)
2. To provide effective mechanisms or measures to re-integrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation. (Balance - Medicinal purpose; Rehabilitation – Sir Sagsago)

Change in the classification of dangerous substances.

The old classification between Prohibited and Regulated Drugs have been replaced by classifying dangerous substances into **(i) Dangerous Drugs (DD)** and **(ii) Controlled Precursors and Essential Chemicals (CP/EC)**

DD and CP/EC are not defined but refer to those substances which are enumerated in the list of schedules prepared and adopted by International Conventions.

Controlled Precursors and Essential Chemicals – include those listed in Tables I and II of the 1988 UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

Dangerous Drugs – include those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances.

Factors Affecting Criminal Liability:

1. The **kind** of dangerous substance involved: the penalty is higher if what are involved are DD.
2. The **Act** performed by the accused such as:
Dangerous Drugs

- a. **Importation** of dangerous drugs (even for floral, decorative and culinary purposes) and/or controlled precursors and essential chemicals

Qualifying circumstances

- (i) if the importation was through the use of a diplomatic passport, diplomatic facilities or any other means involving the offender's **official status**
- (ii) **organizes**, manages or acts as a financier

- The **protector or coddler** is also liable
- **Financier** - a person who pays for, raises, or supplies money for, or underwrites any of the illegal activities involving dangerous substances.
- **Protector or Coddler** - a person who knowingly and willfully consents to the unlawful acts provided for in the law and who uses his influence, power or position in shielding, harboring, screening or facilitating the escape of any person whom he knows or has grounds to believe has violated the provisions of this Act in order to prevent the arrest, prosecution and conviction of the violator.

- b. **Sale, administration, trading, dispensation, delivery, distribution and transportation** of dangerous drugs.

Note: The quantity of the substance involved is immaterial.

Qualifying circumstances

- (i) within **100 meters from a school**
- (ii) if **minors/ mentally incapacitated** individuals are used as **runners, couriers and messengers** of drug pushers;
- (iii) if the victim of the offense is a **minor**, or should a prohibited/ regulated drug

involved in any offense under this section be the **proximate cause of the death** of a victim thereof

(iv) **organizes**, manages or acts as a financier

- The **protector or coddler** is also liable
- The consummation of the crime of illegal sale of drugs may be sufficiently established even in the absence of money. The payment could precede or follow delivery of the drug sold. IN abuy-bust operation, what is important is the fact that the poseur-buyer received the shabu from the offender and the same was presented as evidence in court. (Pp vs Yang, Feb 16, 2004) Without evidence that the accused handed over the shabu to the buyer, he may not be convicted. However, where the accused intended to sell shabu and commenced by overt acts the commission of the intended crime by showing the substance to the buyer, he will be guilty of the crime attempted sale of shabu. (Pp vs Adam, Oct 13, 2003)

c. **Maintenance of a den, dive or resort** where any controlled precursor and essential chemical is sold or used.

Qualifying circumstances

- (i) where a DD is administered, delivered or sold to a **minor** who is allowed to use the same in such place; or
- (ii) should a prohibited drug be the **proximate cause of the death** of the person using the same in such den, dive or resort
- (iii) **organizes**, manages or acts as a financier

- The **protector or coddler** is also liable
- If place owned by third person, the same shall be confiscated and escheated in favor of gov't **IF** (a) Complaint specifically allege that such place used intentionally for furtherance of crime (b) prosecution proves intent on part of owner (c) owner included as accused in criminal complaint
- **OPIUM DIVE or RESORT:** place where dangerous drug and/or controlled precursor and essential chemical is administered, delivered, stored for illegal purposes, distributed, sold or used in any form (*to be habitual – prior conviction, reputation of place*)

d. Being an **employee or visitor** of a den, dive or resort who are aware of the nature of such place

- For the employee who is aware of nature of place and any person who knowingly visits such place.

- A person who visited another who was smoking opium shall not be liable if the place is not an opium dive or resort.

e. **Manufacture of DD**

Aggravating circumstance: Clandestine lab is undertaken under the ff circumstances

- (i) any phase conducted in presence or with help of minors
- (ii) established/ undertaken w/in 100m of residential, business, church or school premises
- (iii) lab secured/ protected by booby traps
- (iv) concealed with legitimate business operations
- (v) employment of practitioner, chemical eng'r, public official or foreigner

Qualifying circumstance: organizes, manages or acts as financier

Prima facie proof of manufacture: presence of controlled precursor and essential chemical or lab equipment in the clandestine lab

CLANDESTINE LABORATORY - Any facility used for illegal manufacture of any DD.

f. **Manufacture or delivery of equipment, instrument, apparatus and other paraphernalia** for DD and/or CP/EC

Acts punishable

- (i) deliver
- (ii) possess with intent to deliver
- (iii) manufacture with intent to deliver the paraphernalia, knowing, or under circumstances where one reasonably should know

Qualifying circumstance: use of a **minor or a mentally incapacitated** individual to **deliver** such equipment, instrument, apparatus or other paraphernalia

g. **Possession of a DD** regardless of degree of purity

The possession of different substances gives rise to separate charges of possession even if the drugs were seized in the same place and occasion. (PP. vs. Empleo, 503 SCRA 464; PP. vs. Tira 430 SCRA 134) The kinds of drugs have different respective amounts for the graduation of penalties. Thus one may be charged for possession of Marijuana separate from possession of shabu (methamphetamine hydrochloride)

- One may be charged for sale of shabu and a separate charge of possession of another gram of shabu which was not the subject of the sale
- One charged for sale or delivery may be convicted of possession if the sale or possession was not proven
- Penalties are graduated to the amount of drugs, i.e. In this charge of possession, the quantity of the substance determines the penalty to be imposed
- **Possession:** unauthorized, either actual or constructive, irrespective of quantity, with intent to possess (full knowledge that was possessed was any of prohibited or regulated drug)
- "Actual possession is when the drug is in the immediate physical possession or control of the accused... constructive possession exists when the drug is under the dominion or control of the accused or when he has a right to exercise dominion or control over the place where it is found" (PP vs. Tira,430 SCRA 134)

Thus a person may be convicted for possession of drugs found inside his bedroom even if at the time of the seizure, he was physically absent there from (PP vs. Torres, Sept. 12, 2006)

- *What is punished is present possession, not past possession*
- It is not necessary to allege in information that the accused is not authorized to possess opium

Elements of possession of opium (RA 6425)

- (i) occupancy or taking
- (ii) intent to possess

h. Possession of drug paraphernalia during parties, social gatherings or meetings or in the proximity of at least two persons

The maximum penalty shall be imposed regardless of the quantity and purity of dangerous drugs.

- i. **Possession of equipment,** instrument, apparatus and other paraphernalia fit for introducing DD into the body
 - Possession of such equipment - **prima facie** evidence that possessor has *used* a dangerous drug and shall be presumed to have violated Sec.15, use of DD.
 - The **possession of PARAPHERNALIA is absorbed by USE of DD.**

- **Qualifying** circumstance: party, social gathering, or in the proximate company of at least 2 persons.

j. Use of DD provided the accused is not charged for possession

- Must be found positive after a confirmatory test
- 1st conviction – minimum of 6 mos. of rehabilitation
- 2nd conviction – imprisonment and fine
- Where the accused is also found to be in **possession of DD**, this Section shall not apply. Sec. 11, possession of DD, shall apply. Hence, **USE is subsumed by POSSESSION.**

Ex. If the offender is caught with possession of paraphernalia, possession of DD, and use of DD, the offense is **POSSESSION OF DD**

k. Cultivation or culture of plants classified as DD or sources thereof.

- This need not be in a plantation. One plant of marijuana in a flower pot is included.
- The land/portions thereof and/or greenhouses in which any of the said plants is cultivated or cultured shall be confiscated and escheated to the State, unless the **owner** thereof **prove that he did not know** of such cultivation or culture despite the exercise of **due diligence** on his part.

Qualifying circumstance:

- (i) the land is part of the **public domain**
- (ii) **organizes**, manages or acts as financier

- Protector/Coddler is also liable.

l. Offenses by physicians and drug stores:

- (i) **failure to maintain and keep records of transactions** of any DD or CP/EC
 - Persons liable: practitioner, manufacturer, wholesaler, importer, distributor, dealer, or retailer
 - The additional penalty of revocation of his license to practice his profession in case of a practitioner, or of his or its business license in case of manufacturer, seller, importer, distributor or dealer, shall be imposed
- (ii) **Unnecessary prescription** of DD

- Person liable: practitioner who shall prescribe any DD for any person whose physical/ psychological condition does not require the use thereof in the dosage therein

(iii) **Unlawful prescription** of DD

Controlled Precursors and Essential Chemicals

1. Importation

- The maximum penalty shall be imposed:
 - a. upon any person who, without being authorized, shall import or bring into the Philippines controlled precursors and essential chemicals through the use of diplomatic passport, diplomatic facilities or any other means involving his/her official status intended to facilitate the unlawful entry of the same. In addition, the diplomatic passport shall be confiscated and cancelled
 - b. **organizes**, manages or acts as a financier
- The **protector or coddler** is also liable

2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation

- The maximum penalty shall be imposed:
 - a) If the sale, trading, etc. transpires within one hundred (100) meters from the school.
 - b) For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the trade.
 - c) If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug involved in any offense herein provided be the proximate cause of death of a victim thereof.
 - d) **organizes**, manages or acts as a financier

The **protector or coddler** is also liable

3. Maintenance of a Den, Dive or Resort

- If such den, dive or resort is owned by a third person, the same shall be confiscated and escheated in favor of the government.
- The **protector or coddler** is also liable

4. Employees and Visitors of a Den, Dive or Resort
5. Manufacture of Controlled Precursors and Essential Chemicals
6. Illegal Chemical Diversion of Controlled Precursors and Essential Chemicals

CHEMICAL DIVERSION - sale, distribution, transport of legitimately imported, in-transit, manufactured or procured CP/EC to any person or entity engaged in manufacture of dangerous drug and concealment of such transaction through fraud, destruction of documents, fraudulent use of permits, misdeclaration, use of front companies or mail fraud.

7. Manufacture or Delivery of Equipment, Instrument, Apparatus and Other Paraphernalia
 - The maximum penalty shall be imposed upon any person, who uses a minor or a mentally incapacitated individual to deliver such equipment, instrument, etc.
8. Failure to Maintain and Keep Original Records of Transactions
 - An additional penalty shall be imposed through the revocation of the license to practice his /her profession, in case of a practitioner, or of the business, in case of a manufacturer, seller, importer, etc.
 - The presence of any controlled precursor and essential chemical or laboratory equipment in a clandestine laboratory is a prima facie proof of manufacture of dangerous drugs.
 - Every penalty imposed shall carry with it the confiscation and forfeiture, in favor of the government, of all the proceeds and properties derived from the unlawful act, including, but not limited to
 - a) money and other assets obtained thereby, and
 - b) the instruments or tools with which the particular unlawful act was committed, unless they are the property of a third person not liable for the unlawful act, but those which are not of lawful commerce shall be ordered destroyed. (Sec. 20)
 - Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provisions of plea-bargaining. (Sec. 23)
 - Any person convicted for drug trafficking or pushing under this Act, regardless of the

penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law (PD No. 968, as amended). (Sec. 24)

- Notwithstanding the provisions of the 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 applicable penalty provided for in the RPC shall be applicable. (Sec. 25)

3. The **Quantity** of the dangerous substance if the act of that of possession

4. The presence of **special aggravating circumstances**.

- These vary according to the act of the accused. Thus in the act of importing: that the accused is a diplomat or a financier. In cases of sale, delivery, administration or transporting: that it took place within a radius of 100 meters from a school; the use of a minor or a mentally incapacitated person; or that the victim is a minor or a mentally incapacitate person; or that the DD is the proximate cause of the death; or that the suspect is a financier
- The application of these circumstances is doubtful considering that the penalties provided for by the Act do not follow the nomenclature and scheme of the penalties under the Revised Penal Code and they do not have periods

Attempt or Conspiracy to commit the following unlawful acts shall be penalized by the same penalty prescribed for the commission of the same under this Act:

- (i) **importation** of DD and/or CP/EC
- (ii) **sale, trading, administration, dispensation, delivery, distribution and transportation** of DD and/or CP/EC
- (iii) **maintenance of a den**, dive or resort for DD
- (iv) **manufacture** of DD and/or CP/EC
- (v) **cultivation** or culture of plants which are sources of DD.

- Note that the law does not include possession as being the subject of an attempt or conspiracy (Is this omission intentional or by oversight?)
- The penalty for such attempt and conspiracy is the same penalty prescribed for the **commission**. Thus, where the offense of sale was not consummated, the accused should not be prosecuted under mere possession, but under Sec. 26 (Justice Peralta)
- The maximum penalties of the unlawful acts 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. (Sec. 28)

- 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. 29)
- In case any violation of this Act is committed by a partnership, corporation, association or any juridical entity, the partner, president, director, manager, trustee, estate or administrator, or officer who consents to or knowingly tolerates such violation shall be held criminally liable as a co-principal. (Sec. 30)
- 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 death is the penalty. (Sec. 31)

New Acts Punished

The law seeks to address certain abuses by law enforcers as well as causes of unsuccessful prosecution or dismissal of drug cases filed in court.

1. Creation of a new qualifying aggravating circumstance applicable to offenses under the Revised Penal Code consisting of a “ **POSITIVE FINDING FOR THE USE OF DANGEROUS DRUGS**”. This must be corroborated by a confirmatory drug test

- Under the old law what constituted an aggravating circumstance was that the accused committed a crime” while under the influence of drug”. Under the new law, the accused need not be high on drugs during the time of committing of a crime so long as the test showed he is a user of drugs
- The application of the new qualifying aggravating circumstance poses a problem to felonies which do not have qualified forms such as parricide, threats, physical injuries, robbery. (In such a case it is suggested the circumstance must be appreciated as a special aggravating to give meaning to the intent of the congress to punish more severely the users who commits crimes)

2. Defining and Penalizing the offense of “**Planting of Evidence**” i.e planting of any dangerous substances in the person, house, effects, or in the immediate vicinity of an innocent individual for the purpose of implicating, incriminating or imputing the commission of any violation of this Act”

- If what is planted is not a dangerous substances the crime is that of Incriminating an Innocent Person/Incriminatory Machination under the Revised Penal Code.

- The penalty is death
3. Penalizing any public officer who misappropriates, misapplies or fails to account for the DD/CP/EC, paraphernalia, proceeds or properties obtained from unlawful acts. (Note: Consider this as Malversation or Infidelity of Dangerous Drugs, Drug paraphernalia and Drug Proceeds)
 4. Penalizes the following acts of law enforcers:
 - a). Failure or refusal after due notice, to appear as witnesses for the prosecution
 - b). Failure of the immediate superior to exert reasonable efforts to present the witness in court
 - c). Failure of the immediate superior to notify the court of the transfer or re-assignment of a witness during the pendency of the case to another territorial jurisdiction. Note that the transfer or re-assignment to the witnesses to another territorial jurisdiction must only be for compelling reason and provided the court was notified 24 hours in advance.
 5. Defines and Penalizes the act of Delay and Bungling in the Prosecution of Drug Cases i.e. the prosecution causes the unsuccessful prosecution or the dismissal through patent laxity, inexcusable neglect or unreasonable delay. There must first be an Order of dismissal or Judgment of acquittal, based on the fault of the prosecution.
 6. In case of conviction:
 - a). the convict suffers the accessory penalty of disqualification to exercise civil rights and political rights and that rights are suspended during the pendency of an appeal from such a conviction.
 - b). After conviction by the RTC: there shall be hearing for the confiscation and forfeiture of unexplained wealth of the accused. In case the article declared forfeited is a vehicle, the same shall be auctioned not later than five days from the order of confiscation or forfeiture
 7. Prohibition against plea bargaining and disqualification from probation for those convicted of drug trafficking
 8. Provides as a ground for removal from office of an elective official; that of having benefited from the proceeds of drug trafficking or receipt of any financial or material contribution or donation from persons found guilty of drug trafficking
2. any **elective local or national official** who have **benefited from the proceeds of trafficking of DD** or have received any financial/material contributions or donations from natural or juridical persons guilty of drug trafficking
 3. if the violation of the Act is committed by a partnership, corporation, association or any judicial person, the partner, president, director, or manager who consents to or knowingly tolerates such violation shall be held criminally liable as co-principal
 4. partner, president, director, manager, officer or stockholder, who knowingly authorizes, tolerates, or consents to the use of a vehicle, vessel, or aircraft as an instrument in the importation, sale, delivery, distribution or transportation of DD, or to the use of their equipment, machines or other instruments in the manufacture of any DD, if such vehicle, vessel, aircraft, equipment, or other instrument, is owned or under the control and supervision of partnership, corporation, association or judicial entity to which they are affiliated
 5. any person who is found **guilty of planting** any DD and/or CP/EP, regardless of quantity or purity (penalty of death)
 6. any person violating a regulation issued by the Dangerous Drugs Board
 7. any person authorized to conduct drug test who issues false or fraudulent drug test results knowingly, willfully or through gross negligence
 8. any gov't officer tasked with the prosecution of drug-related cases under this Act who delays or bungles the prosecution
 - For the purpose of enforcing the provisions of this Act, all school heads, supervisors and teachers shall be deemed to be persons in authority and, as such, are vested with the power to apprehend, arrest, or cause the apprehension or arrest of any person who shall violate any of the said provision. They shall be considered as persons in authority if they are in the school or within its immediate vicinity, or beyond such immediate vicinity if they are in attendance in any school or class function in their official capacity as school heads, supervisors or teachers
 - Any teacher or school employee who discovers or finds that any person in the school or within its immediate vicinity is violating this Act shall have the duty to report the violation to the school head or supervisor who shall, in turn, report the matter to the proper authorities. Failure to report in either case shall, after

Other Persons Liable

1. **public officer or employee** who **misappropriates, misapplies or fails to account** for confiscated, seized, or surrendered DD, plant sources of DD, etc.

hearing, constitute sufficient cause for disciplinary action by the school authorities (sec 44)

Provisions Against Act affecting the Integrity of the evidence or their possible appropriation by agents

1. Conduct of a Physical Inventory and Photographing of the Evidence
 - a. Immediately upon the arrest, seizure or confiscation
 - b. In the presence of (i) the accused or person from whom the articles were taken or his representative (ii) a representative from the DOJ (iii) representative from the Media and (iv) an elected official. These persons must also sign the written inventory
2. Submission of the article within 24 hours to the Crime Laboratory for Quantitative (how many kilos or grams) and qualitative (what kind of substance was involved) examination
3. Requirement that the results of the crime laboratory examination must be under oath
4. Upon the filing of the Information in Court:
 - a. Conduct of an ocular inspection or examination of the evidence by the court within 72 hours. This may be in the place where the evidence are kept if the same cannot be presented in court, or the evidence are actually brought and presented in court.
 - b. Destruction of the articles within 24 hours following the inspection but representative samples are taken and preserved
5. Destruction of the representative samples after conviction, forfeiture and confiscation of other proceeds of the crime and

Provisions Intended To Benefit The Drug Dependent- The Following Are Applicable Only If The Charge Is For The Use Of Dd/Cp/Ec

1. **Community service** in lieu of imprisonment
2. **Exemption from Criminal Liability** for *first time offenders* who underwent treatment and *rehabilitation* in a Drug Rehabilitation Center under the supervision of the Dangerous Drugs Board and were discharged thereafter

Rules for Exemption from Criminal Liability of Drug Dependents through Voluntary Submission

- A. Drug dependent who is **finally discharged** from confinement shall be **exempt** subject to the ff. conditions:
 1. complied with the Rules of the Center
 2. never been charged or convicted of any offence under this Act, the Dangerous Drugs Act of 1972, the RPC, or any special penal laws.
 3. no record of escape from the Center; provided if he escaped, he surrendered by himself or through his parent, spouse, guardian or relative w/in the 4th w/in 1 week.
 4. poses no serious danger to himself, family or community
- B. **Voluntary submission** of a drug dependent to confinement, treatment and rehabilitation by the drug dependent himself or through his parent, guardian or relative w/in the 4th in a center and with the compliance with such conditions therefor as the Dangerous Drugs Board may prescribe shall **exempt** him from criminal liability for possession or use of the DD
- C. Should the drug dependent **escape** from the center, he may submit himself for confinement w/in **1 week** from the date of his escape, or his parent, guardian or relative may, w/in the same period surrender him for confinement.
- D. upon application of the Board, the Court shall issue an order for recommitment if the drug dependent does not resubmit himself for confinement or if he is not surrendered for recommitment
- E. **If, subsequent to such recommitment, he should escape again, he shall no longer be exempt** from criminal liability for the use or possession of any DD.
- F. If a person charged with an offense with an impossible penalty of **less than 6 years and 1 day**, and the Court or prosecutor, at any stage of the proceedings, finds that the person charged with an offense is a **drug dependent**, the fiscal or court as the case may be, shall **suspend** all further proceedings and transmit records of the case to the Board. If the Board determines that public interest requires that such person be committed, it shall file a **petition for commitment**. After commitment and discharge, the **prosecution shall continue**. In case of conviction, the judgment shall, if certified by the center for **good behavior**, indicate that he shall be given **full credit** for the period of confinement; provided when the offense is

use of DD, and the accused is **not a recidivist**, the **penalty shall have deemed to have been served in the center upon release.**

G. the period of prescription of the offense charged shall not run during the time that the respondent/accused is under detention or confinement in a center

H. A drug dependent who is **discharged** as rehabilitated, **but does not qualify for exemption**, may be charged under this Act, but shall be placed on **probation** and undergo **community service in lieu of imprisonment and/or fine** in the court's discretion

I. A drug dependent who is not rehabilitated after the second commitment to the Center under the voluntary submission program shall, upon recommendation of the Board, be charged for violation of Sec 15 (use of DD) and be prosecuted like any other offender. If convicted, he shall be credited for the period of confinement in the Center

3. **Suspension of sentence of a Minor First Offender, Rules**

A. **Supervision and rehabilitative surveillance of the Dangerous Drugs Board** and under such conditions that the court may impose for a period of 6-18 mos.

Requisites for suspension:

1. Accused is a **minor over 15** years at the time of the commission of the offense but not more than 18 years of age when the judgment should have been promulgated. *(in the words of Pros. Ssgsago: A minor is one who is over 15 at the time of the commission of the offense but below 18 at the time of sentencing)*

2. He has **not been previously convicted** of violating this Act, Dangerous Drugs Act of 1972, RPC or any special penal laws

3. He has **not been previously committed** to a Center or to the care of a DOH-accredited physician

4. The Dangerous Drugs **Board favorably recommends** that his/her sentence be suspended

- Where the minor is **under 15** years at the time of the commission, Art 192 of **Child**

And Youth Welfare Code shall apply (suspension of sentence and commitment)

B. the privilege of suspended sentence may be availed of only once

C. if the minor **violates** any of the conditions of his suspended sentence, rules of the Board, or rules of the center, the court shall **pronounce judgment of conviction** and he shall **serve sentence as any other convicted person.**

D. Upon promulgation of sentence, the **court** may, in its **discretion**, place the accused under **probation**, or impose **community service in lieu of imprisonment**

- The suspension is discretionary upon the court. Contra the Family Court Law (RA 8369) which provides that the suspension is mandatory)
- Upon favorable recommendation by the Board the court shall discharge the accused and dismiss all the proceedings
- All records shall be expunged and the minor shall not be criminal liable for perjury for concealment or misrepresentation of refusal to acknowledge or recite any fact concerning his case.

Provisions To Expedite Drug Cases

1. The Preliminary Investigation shall be terminated within 30 days from filing and the Information shall be filed within 24 hours from the termination of the investigation

2. Trial shall be terminated not later than 60 days from date of filing of the Information

3. The decisions shall be rendered within 15 days from submission for decision

Requirement Of A Mandatory Drug Test In The Following

- a). Application and renewal of driver's license
- b). Application for firearm's license or permit to carry
- c). Annually for Officers and members of the AFP, PNP and other law enforcement agencies
- d). For all persons charged before the Prosecutor's Office for an offenses punishable by imprisonment of not less than 6 years and one day
- e). For all candidates for public office whether appointive or elective, national or local

Requirement of a Random Drug test

- a). For high school and college students with parental consent and subject to the rules and regulations of the student handbook

- b). For officer and employees of public and private offices subject to the company's work rules and regulations
 - Those found to be positive for dangerous drugs shall be subject to the provisions of Sec. 15 (Use of Dangerous Drugs), which involves rehabilitation for a minimum period of 6 months for the first offense, or imprisonment of 6 to 12 years for the second offense.
 - 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 (Use of Dangerous Drugs) but not more than eighteen (18) years of age at the time when judgment should be promulgated. (Sec. 68)

Strengthening and Professionalization of the Fight against Drug Menace

- a). Creating of the Philippine Drug Enforcement Agency (PDEA) as the implementing arm of the Dangerous Drugs Board
- b). the NARCOTICS group for the other law enforcement agencies are abolished
- c). Establishment of a PDEA ACADEMY which shall be responsible for the recruitment and training of PDEA agents and personnel and whose graduates shall comprise the operating units of the PDEA

Dangerous Drugs Board – shall be the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control.

Philippine Drug Enforcement Agency (PDEA) – shall serve as the implementing arm of the Board, and shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in the Act.

- Among the powers and duties of the PDEA is to prepare for prosecution or cause the filing of appropriate criminal and civil cases violation of all laws on dangerous drugs, controlled precursors and essential chemicals, and other similar controlled substances, and assist, support and coordinate with other government agencies for the proper and effective prosecution of the same. (Sec. 84 [h])
- The PDEA shall be the lead agency in the investigation of any violation of RA No. 9165. (Sec. 86, last par.)

Rules for Lab Examination of Apprehended/Arrested Offenders

1. If **reasonable ground** to believe that offender is under the influence of DD, conduct examination w/in 24 hrs
2. Positive results shall be **challenged w/in 15 days** after receipt of the result through a **confirmatory test**.
3. **Confirmed** test shall be **prima facie** evidence that offender has **used DD**
4. **Positive** test **must be confirmed** for it to be valid in a court of law

Other Rules

1. In buy-bust operations, there is no law or rule requiring policemen to adopt a uniform way of identifying buy money
2. Absence of ultraviolet powder on the buy money is not fatal for the prosecution
3. if offender is an alien, an additional penalty of deportation w/o further proceedings shall be imposed immediately after service of sentence
4. A person charged under the Dangerous Drugs Act **shall not be allowed to avail of plea-bargaining**
5. A positive finding for the **use of dangerous drugs** shall be a **qualifying aggravating** circumstance in the commission of a crime by the offender
6. if **public official/ employee** is the offender, the **maximum penalty** shall be imposed
7. Any person convicted of drug trafficking or pushing cannot avail of the Probation Law
8. Immunity from prosecution and punishment shall be granted to an informant, provided the ff. conditions concur:
 - a. necessary for conviction
 - b. not yet in the possession of the State
 - c. can be corroborated on material points
 - d. has not been previously convicted of a crime of moral turpitude, except when there is no other direct evidence
 - e. comply with conditions imposed by the State
 - f. does not appear to be the most guilty
 - g. no other direct evidence available

9. **Limited applicability of the RPC** → the **RPC shall not apply** to 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 shall be **reclusion perpetua to death**.

Hence, since RPC nomenclature of penalties is used, the minor is then entitled to mitigating circumstances under the RPC (Martin Simon case). Thus, the minor does not receive the death penalty (Justice Peralta)

Some Principles Applied

1. Drug cases are where the principles of Instigation and Entrapment are most often applied
2. Buy-bust operations are recognized as one of the most effective means of arresting criminals in flagranti. Where the arrest is due to a buy-bust the presentation of the buy-money is not essential, and as a general rule, the identification and presentation of the civilian informer is considered privileged
3. If the accused is a CICL and the penalty is Life Imprisonment, said penalty shall be understood to be Reclusion Perpetua thereby the minor is still entitled to all the beneficial effects arising from his minority, such as the reduction of the penalty by degrees

Cases

PP vs. Adam 10/13/03

Appellant is guilty of the crime of attempted sale of shabu. As gleaned from the testimony of the poseur-buyer, the appellant merely showed the bag containing the shabu and held on to it before it was confiscated. There is no evidence that the poseur-buyer talked about and agreed with the appellant on the purchase price of the shabu. There is no evidence that the appellant handed over the shabu to the poseur-buyer

PP vs. Yang 2/16/04

The consummation of the crime charged herein may be sufficiently established even in the absence of an exchange of money. The offer to sell and then the sale itself arose when the poseur-buyer showed the money to appellant, which prompted the latter to show the contents of the carton, and hand it over to the poseur-buyer. Mere showing of the said regulated drug does not negate the existence of an offer to sell or an actual sale. The absence of actual or completed payment is irrelevant, for the law itself penalizes the very act of delivery of DD, regardless of any consideration. Payment of consideration is likewise immaterial in the distribution of illicit drugs

PP vs. Chua 7/1/03

In a prosecution for illegal possession of a DD, mere possession of a regulated drug w/o legal authority is punishable under the Dangerous Drugs Act. Lack of criminal intent or good faith does not exempt appellants from criminal liability

PP vs. Cadley 3/15/04

A prior surveillance is not a prerequisite for the validity of an entrapment or buy-bust operation, the conduct of which has no rigid or textbook method

PP. vs. Del Norte 3/31/04

In a prosecution for illegal possession of DD, the ff facts must be proven with moral certainty: (1) that the accused is in possession of the object identified as a prohibited or regulated drug; (2) that such possession is not authorized by law; and (3) that the accused freely and consciously possessed the said drug. In this case, proof of the accused's ownership of the house where the prohibited drugs were discovered is necessary

TITLE VI CRIMES AGAINST PUBLIC MORALS

Crimes against public morals

1. Gambling (Art. 195);
2. Importation, sale and possession of lottery tickets or advertisements (Art. 196);
3. Betting in sport contests (Art. 197);
4. Illegal betting on horse races (Art. 198);
5. Illegal cockfighting (Art. 199);
6. Grave scandal (Art. 200);
7. Immoral doctrines, obscene publications and exhibitions (Art. 201); and
8. Vagrancy and prostitution (Art. 202).

GAMBLING AND LOTTERY

Introduction:

The law on gambling exemplifies the adage that what is legal is not necessarily moral. Although gambling is under the title Crimes Against Morals, the law on gambling does not take morality into consideration. It does not punish gambling per se because they adversely affect public morals, but that it punishes are gambling games which are not covered by a franchise or permit from the government.

Article 195. What Acts Are Punishable in Gambling (repealed)

The **applicable laws** are:

- (1) Presidential Decree No. **1602** : (Simplifying and Providing Stiffer Penalties for Violations of Gambling Laws) and

(2) R.A. No. **9287** (An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain provisions of P.D. 1602 and for Other Purposes).

GAMBLING GAMES - refer to any game or scheme whether upon chance or skill, wherein wagers consisting of money, articles or value or representatives of value, are made.

It is the fact that bets are made which makes the game a gambling game. The game may be decided purely on chance, purely on skill, or both.

It becomes illegal and therefore prohibited if it is not authorized by a franchise.

However parlor games are exempted such as those during wakes, unless it clearly appears that the wake is unnecessarily prolonged as to be a cover excuse to conduct illegal gambling

Basis for Liability: A mere spectator is not liable. An accused must participate in an illegal gambling game in any of the following manner:

1. Participating as a bettor
2. Acting as a personnel or staff: such as being the guard or look-out; usher, cook, washer or entertainer
3. Allowing one's vehicle, house, building, or land, to be used in the operation of an illegal gambling game
4. Acting as a collector or agent
5. Acting as coordinator, controller or supervisor
6. Acting as a maintainer, manager, operator
7. Acting as a financier or capitalist
8. Acting as a protector coddler
9. Possession of Gambling paraphernalia or materials
10. Failing to abate or to take action or tolerating, by a public official, of a gambling game within his jurisdiction
11. Any parent, Guardian, or persons exercising moral authority or ascendancy over a minor, ward or incapacitated person who induces or causes the latter to participate in an illegal numbers game

KNOWINGLY PERMITTING GAMBLING TO BE CARRIED ON IN A PLACE OWNED OR CONTROLLED BY THE OFFENDER

ELEMENTS:

1. That a gambling game was carried on in an inhabited or uninhabited place or in any building, vessel or other means of transportation.
2. That the place, building, vessel or other means of transportation is owned or controlled by the offender.
3. That the offender permitted the carrying on of such games, knowing that it is a gambling game.

Penalties: If the foregoing pertains to any numbers game the penalties are specifically those provided for in R.A. 8287

- Gambling in all its forms, unless allowed by law, is generally prohibited. The prohibition does not mean that the Gov't cannot regulate it in the exercise of police power
- Sports Contests: Betting, Game-fixing, Point-shaving, Game Machinations prohibited
- *Before, the Revised Penal Code considered the skill of the player in classifying whether a game is gambling or not. But under the new gambling law, the skill of the players is immaterial.*
- *Under this law, even sports contents like boxing, would be gambling insofar as those who are betting therein are concerned. Under the old penal code, if the skill of the player outweighs the chance or hazard involved in winning the game, the game is not considered gambling but a sport. It was because of this that betting in boxing and basketball games proliferated.*
- *As a general rule, betting or wagering determines whether a game is gambling or not. Exceptions: These are games which are expressly prohibited even without bets. Monte, jueteng or any form of lottery; dog races; slot machines; these are habit-forming and addictive to players, bringing about the pernicious effects to the family and economic life of the players.*
- *Under this decree, a barangay captain who is responsible for the existence of gambling dens in their own locality will be held liable and disqualified from office if he fails to prosecute these gamblers. But this is not being implemented.*
- *Fund-raising campaigns are not gambling. They are for charitable purposes but they have to obtain a permit from Department of Social Welfare and Development. This includes concerts for causes, Christmas caroling, and the like.*

LOTTERY - A form of gambling whereby prizes are distributed among persons who have paid, or agreed to pay, a valuable consideration for the chance to obtain a prize. It requires (i) a consideration (ii) chance or hazard and (iii) prize/advantage/inequality in amount or value which is in the nature of prize. Examples are raffle games.

ELEMENTS:

1. consideration
 2. chance
 3. prize or some advantage or inequality in amount or value which is in the nature of a prize.
- No lottery where there is full value of money (criminal case-Olsen), but if inducement to win prize is reason for purchase/subscription/others then even if full value for money is received – still lottery (Administrative Code, postal law-El Debate)

- Proof that game took place or is about to take place is not necessary; burden of evidence is shifted to accused to show that his possession is lawful or is not connected with jueteng game; but proof to the contrary is necessary when jueteng lists pertain to games played on other dates
- *Mere possession of lottery tickets or lottery lists is a crime punished also as part of gambling. However, it is necessary to make a distinction whether a ticket or list refers to a past date or to a future date.*

Illustration: X was accused one night and found in his possession was a list of jueteng. If the date therein refers to the past, X cannot be convicted of gambling or illegal possession of lottery list without proving that such game was indeed played on the date stated. Mere possession is not enough. If the date refers to the future, X can be convicted by the mere possession with intent to use. This will already bring about criminal liability and there is no need to prove that the game was played on the date stated. If the possessor was caught, chances are he will not go on with it anymore.

There are two criteria as to when the lottery in fact becomes a gambling game:

1. *If the public is made to pay not only for the merchandise that he is buying, but also for the chance to win a prize out of the lottery, lottery becomes a gambling game. Public is made to pay a higher price.*
2. *If the merchandise is not saleable because of its inferior quality, so that the public actually does not buy them, but with the lottery the public starts patronizing such merchandise. In effect, the public is paying for the lottery and not for the merchandise, and therefore the lottery is a gambling game. Public is not made to pay a higher price.*

Illustrations:

- (1) *A certain supermarket wanted to increase its sales and sponsored a lottery where valuable prices are offered at stake. To defray the cost of the prices offered in the lottery, the management increased their prices of the merchandise by 10 cents each. Whenever someone buys from that supermarket, he pays 10 cents more for each merchandise and for his purchase, he gets a coupon which is to be dropped at designated drop boxes to be raffled on a certain period.*

The increase of the price is to answer for the cost of the valuable prices that will be covered at stake. The increase in the price is the consideration for the chance to win in the

lottery and that makes the lottery a gambling game.

But if the increase in prices of the articles or commodities was not general, but only on certain items and the increase in prices is not the same, the fact that a lottery is sponsored does not appear to be tied up with the increase in prices, therefore not illegal.

Also, in case of manufacturers, you have to determine whether the increase in the price was due to the lottery or brought about by the normal price increase. If the increase in price is brought about by the normal price increase [economic factor] that even without the lottery the price would be like that, there is no consideration in favor of the lottery and the lottery would not amount to a gambling game.

If the increase in the price is due particularly to the lottery, then the lottery is a gambling game. And the sponsors thereof may be prosecuted for illegal gambling under Presidential Decree No. 1602.

- (2) *The merchandise is not really saleable because of its inferior quality. A certain manufacturer, Bhey Company, manufacture cigarettes which is not saleable because the same is irritating to the throat, sponsored a lottery and a coupon is inserted in every pack of cigarette so that one who buys it shall have a chance to participate. Due to the coupons, the public started buying the cigarette. Although there was no price increase in the cigarettes, the lottery can be considered a gambling game because the buyers were really after the coupons not the low quality cigarettes.*

If without the lottery or raffle, the public does not patronize the product and starts to patronize them only after the lottery or raffle, in effect the public is paying for the price not the product.

Q: When are promo sales or advertising schemes considered lottery/gambling? (This refers to the practice of advertising goods for sale offering the purchasers a chance to win a prize by giving them coupons to be drawn later)

A: The scheme is considered a lottery or gambling if :
 (1) the public pays more than the price of the article because the excess is used to defray or cover the cost of the prize or (2) the article is not saleable without the prize and it becomes saleable only because of the prize.

Presidential Decree No. 1602 (Prescribing Stiffer Penalties On Illegal Gambling)

PENALTY	ACTS PUNISHED
<p>prison correccional, medium or fine ranging from P1,000 to P6,000</p> <p>in case of recidivism: prision mayor, medium or fine ranging from P5,000 to P10,000</p>	<p>1. Any person who shall directly or indirectly take part in any illegal or unauthorized activities or games of:</p> <p>(1) cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries;</p> <p>(2) cara y cruz, pompiang and the like;</p> <p>(3) 7-11 and any game using dice;</p> <p>(4) black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajao, panguingue and other card games;</p> <p>(5) paik que, high and low, mahjong, domino and other games using plastic tiles and the likes;</p> <p>(6) slot machines, roulette, pinball and other mechanical contraptions and devices;</p> <p>(7) dog racing, boat racing, car racing and other forms of races;</p> <p>(8) basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations;</p> <p>(9) banking or percentage game, or</p>

	<p>any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made;</p> <p>2. Any person who shall knowingly permit any form of gambling in inhabited or uninhabited place or in any building, vessel or other means of transportation owned or controlled by him.</p>
<p>prision correccional, maximum, fine of P6,000</p>	<p>1.gambling in place with reputation of a gambling place, frequent gambling place, gov't bldg or brgy hall</p> <p>2. maintainer or conductor of the above gambling schemes.</p>
<p>prision mayor, medium with temporary absolute disqualification or fine of P6,000</p>	<p>if the maintainer, conductor or banker of said gambling schemes is a government official, or where such government official is the player, promoter, referee, umpire, judge or coach in case of game fixing, point shaving and machination.</p>
<p>prision correccional, medium or fine ranging from P400 to P2,000</p>	<p>any person who, knowingly and without lawful purpose, possess any lottery list, paper or other matter containing letters, figures, signs or symbols pertaining to or in any manner used in the games of jueteng, jai-alai or horse racing bookies, and similar games of lotteries and numbers which have taken place or about to take place.</p>
<p>Temporary absolute disqualification</p>	<p>barangay official who, with knowledge of the existence of a gambling house or place in his jurisdiction fails to abate the same or take</p>

	action
prison correccional maximum or fine ranging from P500 to P2,000	security officer, security guard, watchman, private or house detective of hotels, villages, buildings, enclosures and the like which have the reputation of a gambling place or where gambling activities are being held.

- *Informer's reward.* Any person who shall disclose information that will lead to the arrest and final conviction of the malefactor shall be rewarded twenty percent of the cash money or articles of value confiscated or forfeited in favor of the government.
- **Playing for money is not a necessary element.** The law's purpose is to prohibit absolutely those games
- Any other games if with wager of money, articles, or value are at stake or made
- Individual/team contests: game-fixing, point shaving, other machinations
- Spectators are not liable: must directly or indirectly take part; the law does not make it an offense to be present in a gambling house.
- A game or scheme is punishable even if winning depends upon skill as long as wagers (consisting of money, articles of value or representative of value) are at stake or made
- **Maintainer** – person who sets up and furnishes means to carry on gambling or scheme
- **Conductor-** person who manages or carries on gambling game or scheme

Article 196. Importation, Sale and Possession of Lottery Tickets or Advertisements

ACTS PUNISHED RELATIVE TO LOTTERY TICKETS OR ADVERTISEMENTS

1. By importing into the Philippines from any foreign place or port any lottery ticket or advertisement.
 2. By selling or distributing the same in connivance with the importer.
 3. By possessing , knowingly and with intent to use , lottery tickets or advertisements.
 4. By selling or distributing the same without connivance with the importer.
- The possession of any lottery ticket or advertisement is prima facie evidence of an intent to sell, distribute or use the same.

Article 197. Betting in Sport Contests (repealed)

This article has been repealed by **Presidential Decree No. 483 (Betting, Game-fixing or Point-shaving and Machinations in Sport Contests):**

Act Punished

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. (S2)

- **Betting** – betting money or any object or article of value or representative of value upon the result of any game, races and other sports contests
- **Game-fixing** – any arrangement, combination, scheme or agreement by which the result of any game, races or sports contests shall be predicted and/or knows other than on the basis of the honest playing skill or ability of the players or participants
- **Point-shaving** – any such arrangement, combination, scheme or agreement by which the skill or ability of any player or participant in a game, races or sports contests to make points or scores shall be limited deliberately in order to influence the result thereof in favor of one or the other team, player or participant therein
- **Game Machination** – any other fraudulent, deceitful, unfair or dishonest means, method, manner or practice employed for the purpose of influencing the result of any game, races or sports contests
- Clearance for arrest, detention or prosecution – no person who voluntarily discloses or denounces to the President of the Philippine Amateur Athletic Federation or to the National Sports Association concerned and/or to any law enforcement/ police authority any of the acts penalized by this Decree shall be arrested, detained and/or prosecuted except upon prior written clearance from the President of the Philippines and/or the Secretary of National Defense

Article 198. Illegal Betting on Horse Race

ACTS PUNISHABLE IN ILLEGAL BETTING ON HORSE RACES

1. By betting on horse races during the periods not allowed by law.
2. By 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)**:

Act Punished

Any person who directly or indirectly participates in cockfights, by betting money or other valuable things, or who organizes cockfights at which bets are made, on a day other than those permitted by law, or at a place other than a licensed cockpit.

Holding of Cockfights

Cockfighting shall be allowed only in **licensed** cockpits during:

1. Sundays
2. Legal holidays, except: December 30, June 12, November 30, Holy Thursday, Good Friday, Election or Referendum Day, and registration days for referendums and elections
3. Local fiestas for not more than three days
4. Provincial, municipal or city, industrial, commercial or agricultural fairs, carnivals, or exposition not more than three days upon resolution, subject to approval by Chief of Constabulary or his authorized representative – not allowed w/in month of local fiesta or for more than two occasions a year in same city or municipality

Cockfighting for Entertainment of Tourists or for Charitable Purposes

Chief of Constabulary or his authorized representative may also allow the holding of cockfighting for:

1. Entertainment of foreign dignitaries
2. Tourists
3. Balikbayan
4. For support of national fund-raising campaigns for charitable purposes as may be authorized by the Office of the President, upon resolution of a provincial board, city or municipal council

In licensed cockpits or in playgrounds or parks and may be extended for only one time, for a period not exceeding 3 days, w/in a year to a province, city or municipality

- Permitting gambling of any kind in cockpit is punished under the same Decree (owner, manager or lessee of cockpit that permits gambling shall be criminally liable)

- Spectators in cockfight are not liable unless he participates as bettor
- Only allows one cockpit per municipality, unless the population exceeds 100,000 in which case two cockpits may be established;
- Only municipal and city mayors are allowed to issue licenses for such.

Offenses Against Decency and Good Custom

Article 200. Grave Scandal

Concept:

It is a crime consisting of the performance or doing any act which is highly scandalous as to offend against decency and good custom.

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.
- The act, either a physical observable activity or audible noise, both of which scandalizes those who see or hear them. As for instance the act of engaging in a torrid kissing, urinating or defecating or going around in scanty attire, or loud obscene sex noises
 - They must be done either:
 - a) In a **public place** i.e where people usually go or congregate such as in parks, movie houses, bazaars, malls. In these places the presence of third persons is not required; in other words, public view is not required.
 - (b) **Within public knowledge or public view.** This refers to private houses, rooms, grounds, veranda, but the noises made are so loud or the acts can be seen by third persons. The third person must not however be a Peeping Tom. Note that the number of people who sees it is not material; 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
 - The act must not be punished under any other provision of the Code as this is a crime of last resort or a catch-all crime.
 - The scandalous acts affect public morals or sensitivity and have nothing to do with violations of public peace and tranquility. Thus two persons

fighting or shouting at each other in a public place would constitute Alarm and Scandal. But when these same two persons engage in a strip tease contest in full view of people, the act would be Grave Scandal.

- **DECENCY** means properly observing the requirements of modesty, good taste
- **CUSTOMS** refer to established usage, social conventions carried on by tradition and enforced by social disapproval in case of violation
- The essence of GRAVE SCANDAL is **publicity** and that the acts committed are not only contrary to morals and good customs but must likewise be of such character as to cause public scandal to those witnessing it.

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

Persons Liable and Acts Punished

1. **Those** who shall publicly **expound or proclaim doctrines openly contrary to public morals;**
 - As for instance advocating polygamy or wife-swapping or killing off the mental/physical retardates to improve the Filipino race
 - What about advocating same-sex marriage? Or opening an exclusive "nudist camp"?
2. In reference to obscene literature:
 - (i) The **authors** of obscene literature if they had knowledge of the publishing of their works in any form. Thus writing an obscene literature is not per se punished but if the authors allow said works to be circulated to any third person, then they become liable. If the work is stolen and circulated without their knowledge, they are not liable.
 - (ii) The **editors** publishing such literature
 - (iii) The **owners/operators** of the establishment selling the same
3. In reference to obscene, indecent, or immoral plays, scenes, acts or shows:
 - (i). The persons who **exhibit** them (in theaters, fairs, cinematographs, or any other place) including the producers, actors, movie house/theater owners
 - These include plays, scenes, acts, shows whether live or in film 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
 - 5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts
4. **Persons** who **sell, give away, or exhibit films, prints, engravings, sculptures, or literature, which are offensive to morals.**
 - Hence mere possession of pornographic literature is not per se punished. It is the act

of distributing to people or circulating the same which is punished. Letting one person borrow or read is not however distributing.

- **Publicity** is an essential element. *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.*
- A prosecution for obscenity under this Article is the third limitation to the Freedom of Speech and Press
- **MORALS** imply conformity to generally accepted standards of goodness or rightness in conduct or character.
- **INDECENCY** - an act against the good behavior and a just delicacy.

Test Of Obscenity

What is lewd is not necessarily obscene. Nudity is not by itself obscenity. What then is the **test for obscenity**? (i.e that which offends against chastity, decency or delicacy)

1. Per U.S. vs. Kottinger (1923):

- a). **Tendency to Corrupt Test** - whether the matter has a tendency to deprave or corrupt those whose minds are open to such immoral influence and into whose hands a publication or other article charged as obscene may fall. (This test is too subjective and does not offer an objective criterion. A matter may corrupt one person but may have no effect on another). (Ortega, however, asserts that *the test is objective. It is more on the effect upon the viewer and not alone on the conduct of the performer.*)

e.g. 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.)

- b). That which shocks the ordinary and common sense of man as indecency. (This is vague. Moral values vary according to circumstances of time, place and occasion)

2. **(Commercial or profit motive)** PP vs. Go Pin (1955): In reference to pictures if these were used not exactly for art's sake but rather for commercial purposes, the pictures are not entitled to be protected

3. **(Impure motive or theme of a picture)** per PP. vs. Serrano a Court of Appeals case in 1950

4. **(Redeeming element)** PP vs. Padan (1957) the work must have some redeeming element

(If the performance elicits or arouses sexual reactions) as in PP vs. 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)*

5. Gonzales vs. Katigbak (1985) followed the trend in the United States and adopted the test laid down in the case of Roth vs. California which was later modified in Miller vs. California which set the following guidelines:

a). Whether the average person, applying contemporary standards, would find that the work taken as a whole, appeals to prurient interest (those which are dirty, intended to arouse sexual cravings, things which have something to do with unsafe or healthy sex).

b). Whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable law

c). Whether the work lacks serious literary, artistic, political or scientific value

- QUERRY: Can there be such a thing as "Art for Arts sake"? (Personal opinion: Any human endeavor, especially in the field of arts must be to uplift or improve man either materially, spiritually or aesthetically. They must contribute to what is universal, good, and beautiful)

Mere nudity in paintings and pictures is not obscene.

- May smut or pornographic materials be seized from vendors in the street? The case of Pita vs. Ct. of Appeals (178 SCRA 362) laid down the following guidelines:

- a). The authorities must apply for the issuance of a search warrant from a judge, if in their opinion, an obscenity rap is in order
- b). The authorities must convince the Judge that the materials are obscene and pose a clear and present danger of an evil substantial enough to warrant state interference and action
- c). The Judge must determine on a case-to-case basis if the materials are obscene
- d). If in his opinion the Judge finds probable cause he may issue the search warrant
- e). The proper criminal case must then be filed in court

Personal Opinion: If the magazines, comics or periodicals, pictures or VCD tapes being sold are however clearly pornographic, the seller is actually violating Article 201 and hence he may be arrested in flagranti delicto and the article seized right on the spot. The Pita case should not be made to apply to situations such as this, or where the vendor or the articles might disappear before the search warrant is issued. Otherwise the Pita decision would stifle and defeat the intend of the law to prevent and punish pornography.

- If a work, such as a movie, has been approved by a government agency for public viewing or reading, a charge under Article 201 will not prosper. *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.*
- If a woman who is scantily dressed poses and walks about in a public place, she may be charged for grave scandal. But when she starts gyrating erotically, the charge would be Violation of Article 201 for obscene acts.
- *A sidewalk vendor was arrested and prosecuted for violation of Article 201. It appears that the fellow was selling a ballpen where one who buys the ballpen can peep into the top of the pen and see a girl dancing in it. He put up the defense that he is not the manufacturer and that he was merely selling it to earn a living. The fact of selling the ballpen was being done at the expense of public morals. One does not have to be the manufacturer to be criminally liable. This holds true for those printing or selling Playboy Magazines.*

DISPOSITION OF PROHIBITED ARTICLES

The disposition of the literature, films, prints, engravings, sculptures, paintings or other materials

involved in violation shall be governed by the following rules:

1. Upon conviction of the offender – to be forfeited in favor of the government to be destroyed.
2. Where the criminal case against the violator of the decree results in an acquittal – to be forfeited in favor of the government to be destroyed, after forfeiture proceedings conducted by the chief constabulary.
3. The person aggrieved by the forfeiture action of the Chief of Police may, within 15 days after his receipt of the copy of the decision, appeal the matter to the Secretary of the National Defense for review. The decision of the Secretary of the National Defense shall be final and unappealable. (sec. 2, P.D. 969)

Article 202. Vagrants and Prostitutes; Penalty

(Is this a crime against status?)

Not applicable to CICLs.

Four kinds of Vagrants/Persons Liable

1. **(The Lazy one)**. A person with no apparent means of subsistence, but physically able to work, neglect to apply himself to some lawful calling
 - It is not being unemployed per se which is punished but the refusal to look for work
2. **(The Tourist)** Any person found loitering about public or semi public buildings or places, or tramping or wandering about the country or streets without visible means of support
3. **(The bugao and maton)** An idle or dissolute (immoral, lax, unrestrained; includes maintainer of house of prostitution) person who lodges in houses of ill fame; ruffians (brutal, violent, lawless, barairongs in Ilokano) and one who habitually associates with prostitutes
 - Absence of visible means of support is not required hence wealthy people may be vagrants under this mode
4. **(The suspicious stranger)** One found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable reason
 - The vagrant may have wealth
 - This is a preventive measure to prevent the commission of some other more serious offense
 - The estate is not fenced
 - *The common concept of a vagrant is a person who loiters in public places without any visible means of livelihood and without any lawful*

purpose. While this may be the most common form of vagrancy, yet even millionaires or one who has more than enough for his livelihood can commit vagrancy by habitually associating with prostitutes, pimps, ruffians, or by habitually lodging in houses of ill-repute.

- Vagrancy is not only a crime of the privileged or the poor. The law punishes the act involved here as a stepping stone to the commission of other crimes. Without this article, law enforcers would have no way of checking a person loitering in the wrong place in the wrong time. The purpose of the law is not simply to punish a person because he has no means of livelihood; it is to prevent further criminality. Use this when someone loiters in front of your house every night.
- Any person found wandering in an estate belonging to another whether public or private without any lawful purpose also commits vagrancy, unless his acts constitutes some other crime in the Revised Penal Code.
- 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.

Prostitutes - women who habitually engages in (1) sexual intercourse or (2) or lascivious conduct, for money or profit.

- **Habitually** means not just an occasional intercourse or lascivious but it signifies that the woman resorts to sexual intercourse or

lascivious conduct as a means of livelihood; not just one man.

- Profit may include being financed in a lady's schooling, payment of rentals or by way of articles of value
- If the lady agrees that she will not any more sleep with other men but will become the exclusive bed partner of one man, in exchange for an apartment or house, she is still a prostitute. But when they become lovers, she is no longer a prostitute.
- Example of Lascivious conduct: strip tease dancing before men, or kissing or fondling or being fondled
- A man who engages in nude dancing for a fee, as well as call boys, cannot be charged for prostitution but for vagrancy
- Question: Must the partner of the prostitute be a man in case of lasciviousness conduct?
- *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.*

Related Offense - P.D. 1653 – MENDICANCY

Mendicancy under P.D. 1563 which punishes those who uses begging as a means of living as well as those giving money.

Non applicability to CICLs.

Persons Liable:

1. **Mendicant** – those with no visible and legal means of support, or lawful employment and physically able to work but neglects to apply himself to lawful calling and instead uses begging as means of living (higher penalty if convicted 2 or more times)

2.

A n y p e r	If fenced and with prohibition of entry	Trespass to Dwelling
	If fenced and entered to hunt/fish	Attempted Theft
	If not fenced and with no prohibition of entry	Vagrancy

son who abets mendicancy by giving alms on public roads, sidewalks, parks and bridges except if given through organized agencies operating under rules and regulations of Ministry of Public Information

NOTE: Giving alms through organized agencies operating under the rules and regulations of the Ministry of Public Information is not a violation of the Mendicancy Law.

- Under **R.A 9344**, persons **below 18** years of age shall be **exempt** from prosecution for the crime of **vagrancy and prostitution** under Sec 202 of RPC, **mendicancy** under PD 1563, and **sniffing of rugby** under PD 1619, such prosecution being inconsistent with the United Nations Convention of the Rights of the Child

Title VII. Crimes Committed by Public Officers

Introduction

Although the offenders are principally public officers, there are crimes under this title which may also be committed by private persons by themselves as such, like if the crime of Infidelity in the Custody of a Prisoner and Malversation by a Private person under Article 222. They may also be liable when they conspire with the public officer or when they participate as accomplices or accessories.

ART. 203 - WHO ARE PUBLIC OFFICERS

REQUISITES:

To be a public officer one must be –

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, of any rank or class; and
 2. **That 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, or
 - b) by popular election, or
 - c) by appointment by competent authority
- There is no distinction between a public office and a public employee so long as the person: (i) takes part in performance of public functions or (ii) performs public duties
 - It is not the nature of the appointment which counts but the duties performed. They may be permanent, temporary or casual officers. Hence one appointed as mere laborer but whose function is to sort and file money orders, or emergency helper but whose functions include custody of documents, is a public officer
 - They include members of a special body created by law, to perform a function for the government, as in the Centennial Commission

Malfeasance and Misfeasance in Office

(Arts. 204-212) Dereliction of Duty

Breach of Office are classified into three forms

MALFEASANCE - doing an act prohibited by law or that which ought not to be done or not supposed to be done. As in arresting a person who has not committed a crime or spending money under one's custody

MISFEASANCE - the improper or irregular performance of an act which is allowed to be done

NONFEASANCE - the non performance, failure or refusal to an act which one is required to do

Dereliction of Duty by Officers Related to the Administration of Justice

Introduction

The offenses covered by Articles 204 to 209 pertain to acts by Judges, Prosecutors and Lawyers (who are officers of the Court). They are generally considered as prevarication or crimes involving betrayal of trust

DERELICTION BY JUDGES (Articles 204 to 207)

The Judges referred to are Trial Court Judges and not to Judges of Collegial or Appellate Courts

“(It) has no application to members of collegial courts such as the Sandiganbayan or its divisions, who reach their decision in consultation and accordingly render their collective judgment after due deliberation” (Cortes vs. Chico-Nazario 422 SCRA 541)

ART. 204 – KNOWINGLY RENDERING UNJUST JUDGMENT

ELEMENTS:

1. That the offender is a judge
2. That he renders a judgment in a case submitted to him for decision
3. That the judgment is unjust
4. That the judge knows that his judgment is unjust

JUDGMENT - the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it, in an action or proceeding.

UNJUST JUDGMENT - one which is not in accordance with the law and the evidence.

SOURCES OF UNJUST JUDGMENT

- a) Error, or
- b) ill-will or revenge, or
- c) Bribery

- According to Sir Sagsago, the intention is to favor a party or to cause damage to another; or rendered due to ill will, spite, revenge, or other personal ill motive, but not through bribery. It is not the fact that the decision was reversed on appeal which brings about the crime but proof of the ill motive.
- It also covers those which are rendered through negligence which is manifest or inexcusable, or through ignorance. Example: applying a law which has been repealed or a decision which has been reversed. Judges are required to keep abreast of latest developments in the law and in jurisprudence.
- There is no liability at all for a mere error in good faith
- There must be evidence that judgment is unjust for it cannot be presumed.

ART. 205 - JUDGMENT RENDERED THROUGH NEGLIGENCE

ELEMENTS:

1. That the offender is a judge
2. That he renders a judgment in a case submitted to him for decision
3. That the judgment is manifestly unjust
4. That it is due to his inexcusable negligence or ignorance

“MANIFESTLY UNJUST JUDGMENT” - It so manifestly contrary to law, that even a person having a meager knowledge of the law cannot doubt the injustice.

Abuse of discretion or mere error of judgment is not punishable.

ART.206 – UNJUST INTERLOCUTORY ORDER

ELEMENTS:

1. That the offender is a judge
2. That he performs any of the following acts:
 - a) knowingly renders unjust interlocutory order or decree, or
 - b) renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance

q - is one which decides on an issue related to the case but does not decide the case on the merit or on the evidence.

Example: granting bail to a non-bailable offense.

Note: Before a Judge can be charged for Rendering an Unjust Judgment or Unjust Interlocutory Order, there must be a “ final and authoritative judicial declaration that the decision or order in question is indeed unjust.” The pronouncement may result from either:

1. An action for Certiorari or prohibition in the higher court impugning the validity of the judgment or

2. An administrative proceeding in the Supreme Court against the judge precisely for promulgating an unjust judgment or order (Joaquin vs. Borromeo, 241 SCRA 248)

ART. 207 – MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE

ELEMENTS:

1. That the offender is a judge
2. That there is a proceeding in court
3. That he delays the administration of justice
4. That the delay is malicious, that is, the delay is caused by the judge with deliberate intent to inflict damage on either party in the case

Example: delay in the calendaring of cases; frequent grant of postponements, delaying the decision or failure to render the decision within the time allowed by law

DERELICTION OR PREVARICACION (BETRAYAL OF TRUST) BY PROSECUTORS

ART. 208 - PROSECUTION OF OFFENSES; NEGLIGENCE AND TOLERANCE

Introduction

Article 208 embraces all public officers whose official duties involve the initiation of prosecution for the punishment of law violators. They include:

1. Prosecutors and their assistants
2. BIR agents who fail to report violations of the NIRC
3. Forestry Agents who fail to apprehend and file charges against illegal loggers
4. Chiefs of Police in municipalities who are by law allowed to appear as prosecutors in the MTC/MCTC in the absence of regular Prosecutors
5. Barangay Captains

PUNISHABLE ACTS:

1. By maliciously refraining from instituting prosecution against violators of the law
2. By maliciously tolerating the commission of a crime

REQUISITES:

1. That the offender is a public officer who has a duty to cause the prosecution of, or to prosecute offenses
2. That knowing the commission of the crime, he does not cause the prosecution of the criminal (i.e to gather evidence and then file the appropriate charges) OR knowing that a crime is about to be committed he tolerates its commission
3. That the offender acts with malice and deliberate intent to favor the violator of the law

- If in case of an illegal numbers game, the offense would be under RA. 9286

- The crime committed by the law violator must first be proved as basis for conviction for dereliction.
- Query: May policemen or law enforcement agents be held liable if they see a crime but do not arrest the criminal or do not investigate, gather evidence and charge the criminal? The view is that they are not liable under Article 208 but they are to be held as accessories under Article 19 i.e assisting in the escape of the principal, or that they may be liable under the Anti-Graft and Corrupt Practices Act; or under PD. 1829 for obstruction of justice .

Personal view: If the offense by the criminal is punished by a special law, where there are no accomplices or accessories, the charge should be under Article 208. The same should be true in case the offense tolerated is a light felony

ART. 209 - BETRAYAL OF TRUST BY AN ATTORNEY OR SOLICITOR- REVELATION OF SECRETS

PUNISHABLE ACTS:

1. Causing damage to his client, either:
 - a) by any malicious breach of professional duty; or
 - b) inexcusable negligence or ignorance

Examples: failure to pay the appeal fee or to file an Answer or to submit a Formal Offer of Evidence

2. Revealing any of the secrets of his client learned by him in his professional capacity
 - damage not necessary

This is the second offense involving disclosure of secrets. Secrets are to be construed as including the lawyer's advise; papers, documents and objects delivered by the client; the lawyer's impressions of the client

3. Undertaking the defense of the opposing party in the same case without the consent of his first client
 - if the client consents to the attorney's taking the defense of the other party, there is no crime

PROCURADOR JUDICIAL - a person who had some practical knowledge of law and procedure, but not a lawyer, and was permitted to represent a party in a case before an inferior court.

Note: The crime is without prejudice to the administrative liability of the attorney

BRIBERY

Introduction:

Bribery connotes the idea of a public officer utilizing the power, influence or prestige of his office for the benefit of an individual in exchange for a consideration. The accused must always be a public officer. There must always be consideration. The offense can not be considered bribery if there is no consideration but the act may be considered as a violation of the Anti-Graft and Corrupt Practices Act.

Forms of Bribery

1. Simple Bribery which is either:
 - (a). Direct
 - (b) Indirect
2. Qualified Bribery

Article 210. Direct Bribery

Elements

1. Offender is a public officer within the scope of Article 203;
2. Offender accepts *directly* 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.

Acts punished / Modes of Commission of Direct Bribery (which is the basis for the penalty to be imposed):

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. (e.i. the act amounted to a crime)

Example: Falsification and destruction of papers, records and properties, killing of inmates, robbery and taking of money or valuables, invalid arrests, releasing of persons detained

- Three instances when it is consummated:
 - a). The act agreed upon was not yet performed but a consideration has already been received (even if consideration not actually received because acceptance of offer or gift would be sufficient)
 - b). The act was executed even if the consideration has not yet been received

- c). The act was executed and the consideration has been received

Conspiracy to Commit Bribery: If the officer merely agreed but did not actually do the act and he did not yet receive nor was given the consideration, there is also the crime of bribery. This is in the nature of a conspiracy which is punished.

- This has no frustrated or attempted stage since the mere agreement consummates the crime.
- If the act constituting a crime was committed, the officer is liable for bribery and for the additional crime so committed. The bribe giver will also be liable for the crime. Bribery is never absorbed or complexed but is always punished separately. But in the crime of *Delivering Prisoners*, bribery constitutes a *qualifying aggravating circumstance*.
- Example: The Jail Guard agreed with Mr. BB to kill X, an inmate, in exchange for money. The crime is committed if (i) he has already received the money but was arrested before he can kill X (ii) he killed X but Mr. BB failed to give the money and (iii) He killed X and was paid either before or after the killing. In the second and third instance, the officer and Mr. BB are liable also for murder/homicide for the killing.

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 (but is unjust or the doing is improper or unfair);

- The gift was accepted by the public officer.
- The act done is within the proper functions or duties of the public officer. Hence to constitute bribery, the consideration must be actually received. Future promises or offers or consideration to be given after the doing, such as reward, do not give rise to bribery.
- If the officer performed the act regularly, properly, or in accordance with law, he is not liable even if he already received the consideration.
- If the act was done improperly without any consideration, the officer is not liable for bribery but he may be:
 - (a). Administratively liable
 - (b). Liable under the Anti Graft and Corrupt Practices Act
- If the officer received the consideration but he did not do the act as agreed upon, he may be sued for the recovery of the consideration and for estafa by means of deceit.
- There are only two stages: (i) *attempted* when the officer agreed to do the act for a

consideration and received the consideration but was not able to perform the act and (ii) *consummated* when the act was executed and the officer received the consideration.

- Examples:
 - (a). For money received, the Court sheriff delayed the service of summons to the defendant or that he did not immediately serve the writ of execution until the defendant has sold his properties.
 - (b) The complainant paid the policeman to serve the warrant of arrest of the accused on Saturday so that the accused will not be able to post bail. The police however served the warrant on Friday allowing the accused to post bail. The police is not liable for bribery but the bribe giver is liable for attempted corruption. But he may file a case to recover the money.
 - (c). The police received the money but when he went to arrest on a Friday night, the accused had already posted bail that morning. He is liable for consummated bribery even if the purpose was not achieved.
 - (d). NBI agents learned the money will be given on Friday morning. When the money was given the NBI agents who were waiting, arrested both the giver and the police. Did the policeman commit direct bribery?
 - (e). Receiving money to give preference to a late application over others earlier submitted
- 3. Agreeing to refrain, or by *refraining, from doing* something which it is his official duty to do, in consideration of gift or promise. (There is non-performance of an official duty due to a consideration provided the non-performance does not amount to a crime. If so it is bribery of the first mode.)
 - Examples:
 - a). A stenographer received money such that she did not record the testimony.
 - b). For money received, the clerk did not include the case in the court calendar or that he did not send the required notices to witnesses.
 - c). Omission to accept and/or record a pleading filed

- This third mode of bribery and prevarication (art 208) are similar offenses, both consisting of omissions to do an act required to be performed. HOWEVER, in direct bribery, a gift or promise is given in consideration of the omission. This element is not necessary in prevarication.

Common Principles:

- The accused in the direct bribery case is the public officer only. The bribe giver will be punished for Corruption of a Public Officer.

Private persons are liable if they are performing public functions such as assessors, arbitrators, appraisers and claim commissioners. These private persons are usually designated and/or directed by the court to perform these functions as part of pending proceedings, and to submit their findings to the court. (Art 210 last par)

For purposes of this article, temporary performance of public functions is sufficient to constitute a person a public officer.

- The act or omission must be in relation to the officer's duties or functions otherwise the crime would be estafa.
- The consideration need not be in terms of money or articles of value so long as it has a pecuniary value. This is because the penalty of fine is based on the value of the consideration given. Those in the form of favors or service or non-material considerations may induce a public official to do any of the acts contemplated by law. However there is the question of determining the value as basis for the fine.

The consideration may be given to the officer directly or to members of his family or persons closely associated with the officer.

Examples of Consideration in the form of services: the employment or promotion of a family member in a certain company; or the giving of a contract to the company of the wife; or that the private person will shoulder the expenses of the birthday party of the officer's son.

The borrowing of a vehicle by the LTO Director from a transportation company can be considered as a gift in contemplation of law (Garcia vs. Sandiganbayan 507 SCRA 258)

- Ateneo: Bribery exists when the gift is: 1. voluntarily offered by a private person, 2. solicited by the public officer and voluntarily delivered by the private person, 3. solicited by the public officer but the private person delivers it out of fear of the

consequences should the public officer perform his functions (here, the crime by the giver is not corruption of public officials due to his involuntariness)

- The giving of the consideration must be mutual, either at the suggestion of the bribe giver or upon the solicitation of the officer.

1. If it was the officer who solicited but the private person reported it leading to an entrapment and the subsequent arrest of the officer, the crime is merely *attempted bribery*.
2. If it was the private person who voluntarily gave but the officer used the consideration as evidence, it is *Attempted Corruption of a Public Officer*

- If the private person was compelled to agree to give a consideration due to force, threat or intimidation on the part of the officer, the act is called extortion or mulcting but the proper name of the offense is robbery
- If a person gives money to a public officer as consideration for the officer to do or not to do his duty for the benefit of the person, when will the receipt constitute robbery and when will it be bribery?

1. If the money was given willingly at the instance of the giver, it is *bribery*
2. If he was forced to give, it is *robbery*
3. If the giver committed a crime and at his own instance he gives money so as to avoid arrest and prosecution, the receipt thereof would be *bribery*.
4. If the giver is a family member of a person arrested and was prevailed upon to give so that the case against the relative will not push through, or will be down-graded, the demand and receipt of consideration is *robbery*.
5. If the giver committed a crime and it was the officer who suggested the giving of money to avoid arrest, it is *bribery* so long as the person did so voluntarily but if he was forced to give, then it is robbery. Thus if the person was unwilling to give but he pretended to give but reported instead to the authorities who set up an entrapment, the crime of the officer is *attempted robbery*
6. If the person did not commit a crime but the officer insist and pretend there was a crime and threatens to arrests unless money is given, then the receipt thereof is *robbery*.

Bribery (210)	Robbery (294)
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When the victim has committed a crime and gives money/gift to avoid arrest or prosecution	When the victim did not commit a crime and he is not intimidated with arrest and/or prosecution to deprive him of his personal property
Victim parts with his money or property voluntarily	Victim is deprived of his money or property by force or intimidation

Article 211. Indirect Bribery

Concept: The crime committed by a public officer who accepts a gift given by reason of his office or position. A gift is actually received and not future promises or offers. The officer must have done an act appropriating the gift for himself, his family or employees. " The essential ingredient ... is that the public officer concerned must have accepted the gift or material consideration (Garcia vs. Sandiganbayan 507 SCRA 258)

Elements

1. Offender is a public officer;
 2. He accepts gifts;
 3. The gifts are offered to him by reason of his office.
- Illustrations:
 1. An envelope was left on top of the desk of officer. The officer called his staff and told them to use all the amount to buy food and snacks. This is indirect bribery.
 2. If the officer however gave it to the Jail or to some children, he is not liable
 3. If he simply let the envelope drop on the floor and left it there, he is not liable.
 4. If somebody pays the bill for his meal or drinks, he is not liable for indirect bribery as he did not accept any gift.
 5. Receipt of cash given as "share in winnings" or "balato" are included.
 - The phrase "by reason of his office" means the gift would not have been given were it not for the fact that the receiver is a public officer. The officer need not do any act as the gift is either for past favors or to anticipate future favors, or simply to "impress" or earn the good will of the officer
 - There is no attempted or frustrated indirect bribery. If he does not accept the gifts, he does not commit the crime. If he accepts the gifts, it is consummated.
 - Public officers receiving gifts and private persons giving gifts on any occasion, including Christmas, are liable under PD 46

- The criminal penalty or imprisonment is distinct from the administrative penalty of suspension from the service

Direct bribery	Indirect bribery
Officer agrees to perform or refrain from doing an <i>act</i> .	<i>Not necessary</i> that the officer do an act. It is enough that there is acceptance by reason of office.
Public officer receives gift.	<i>Same</i> .
There is agreement between the public officer and the giver.	No such agreement exist.

Article 211-A. Qualified Bribery

Concept: The crime committed by any public officer who is entrusted with the 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.

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 punishable by reclusion perpetua and/or death;
 3. Offender refrains from arresting or prosecuting in consideration of any offer, promise, gift, or present.
- The offenders are limited to officers entrusted with law enforcement such as members of the regular law enforcement agencies, as well as those tasked to enforce special laws, and prosecutors. This is similar to prevarication under Article 208 but the offense involved here which the officer refused to prosecute are graver being punished by reclusion perpetua or death
 - Actual receipt of consideration is not necessary.
 - The penalty for the officer is that for the offense he did not prosecute. But if it was the officer who solicited the gift, the penalty is death. HOWEVER, the guilt of the person who was not prosecuted must first be proven. Thus, there must be first conviction.

Q: What crime was committed by a law enforcement agent who refused to arrest a rapist or murderer?

A: If it was because of a consideration the crime is qualified bribery. If there was no consideration he is an accessory to the crime.

Q: Suppose it was a drug pusher who was refused to be arrested?

A: Qualified bribery if there was a consideration. If there was none it should be Violation of Article 208 because there are no accessories in the offense of drug pushing

Article 212. Corruption of Public Officials

Concept: This is the crime committed by the bribe giver, promissory or offeror.

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.
- It has only two stages: attempted if the gift, offer or promise was rejected and consummated if the same was accepted.
 - This is in addition to his liability if the act done by the officer is a crime in which case he is a principal by inducement.

Laws Related To Crimes By Public Officers

I. R.A. 7080: Defining and Penalizing the Crime Known as Plunder

1. Plunder - a crime committed by any public officer, by himself, or in connivance with his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, by amassing, accumulating or acquiring ill-gotten wealth in the aggregate amount or total value of **at least 50 million pesos.** (Sec 2)
2. The accumulation must be through a combination or series of overt acts, a pattern indicative of the over all unlawful scheme or conspiracy

Means or schemes to acquire ill-gotten wealth:

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 or any other form of pecuniary benefit from any person and/or entity in connection with any government contract/project or by reason of his office/position
3. By the illegal or fraudulent conveyance or disposition of assets belonging to the government

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 enterprise or undertaking
5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementing decrees and orders intended to benefit particular persons or special interests
6. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves

NOTE: These 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 November 21, 2001*)

3. The penalty is reclusion perpetua to death.
4. For non-public officers their liability will depend on their degree of participation and the attendance of mitigating and aggravating circumstances
5. **MITIGATING AND EXTENUATING CIRCUMSTANCES** shall be considered by the courts in the imposition of penalty
6. **Section 4.** Rule of Evidence

It is not necessary to prove each and every criminal act done. A pattern of overt or criminal acts indicative of the over-all unlawful scheme or conspiracy shall be sufficient

7. Section 6. Prescription of Crimes

The crime punishable under this Act shall prescribe in 20 years. However, the right of the State to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription or laches or estoppel.

Plunder is a crime malum in se because the constitutive crimes are mala in se. The elements of mens rea must be proven in a prosecution for plunder.

II. R.A 3019 or The Anti Graft and Corrupt Practices Act

A. Introduction: This was enacted to fortify the principle that public office is a public trust. Also the provisions of the Revised Penal Code is inadequate to cover all situations and acts whereby a public officer performs an act inimical to public service. Some of the salient features are summarized below.

B. **Section 2.** Definition of Terms

Government – the national government , the local government, the GOCC's & all other instrumentalities or agencies of the government

Public Officer- elective & appointive officials & employees, permanent or temporary, whether in the classified or unclassified or exempt services receiving compensation, even nominal from the government

C. There are eleven acts enumerated as constituting corrupt practices, some of which repeat provisions of the Revised Penal Code, which acts or omissions therefore remain still to be mala in se. Those which are not defined in the Revised Penal Code are acts mala prohibita .

These eleven acts include the following:

- a. Those which involve the receipt of material consideration
- b. Those where, even if there was no consideration, the public officer uses the ascendancy, influence or prestige of his office to influence any course of action pertaining to the government either for himself, a relative or influence (Influence Peddling), or where the government stands to be prejudiced
- c. Acts constituting an improper exercise of duties especially in the granting of permits and licenses
- d. Acts by private individuals, especially relatives of the officer or close associates who take advantage of such relationship or connection with any business in which the public officer has to intervene
- e. Acts which are improper for an officer to do such as non-payment of a debt

Section 3. Corrupt Practices of Public Officials

A. Persuading, inducing or influencing another public official 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 requesting or receiving any gift , present, share, percentage, or benefit, for himself or for any other person, in connection with any other contract or 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 requesting or receiving any gift , present or other pecuniary or material benefit, for himself or 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, without prejudice to Sec. 13 of this act.

D. Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within 1 year after his termination.

E. Causing any undue injury to any party, including the government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or Government corporations charged with the grant of licenses or permits or other concessions.

F. Neglecting or refusing, after due demand or request, without sufficient justification, to act within 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 the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

G. Entering 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 having 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 law from having any interest.

I. Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group which he is a member; and which exercises 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 approving or granting 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 qualified or entitled.

K. Divulging 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 date.

D. Periodic Submission of a Statement of Assets and Liabilities

E. Defines Unexplained wealth as property manifestly out of proportion to the income of a public officer.

1. Possession of unexplained wealth is a ground for removal or dismissal
2. It is a prima facie evidence of corruption
3. Prosecution for unexplained wealth is an exception to the Secrecy of Bank Deposits

F. Prohibition on Private Individuals and Relatives; Exceptions

Section 4. Prohibition on Private individuals.

A. Taking advantage of family or personal close relation with public official is punished.

B. Knowingly inducing or causing any public official to commit any of the offenses defined in Section 3.

Section 5. Prohibition on certain relatives

The spouse or any relative, by consanguinity, within the 3rd civil degree, of the President, the Vice-President, Senate President, or the Speaker of the House of Representatives is prohibited to intervene directly or indirectly, in any business, transaction, contract or application with the government.

EXCEPTIONS TO THE PROVISIONS:

1. Any person who prior to the assumption of office of any of those officials to whom he is related, has been already 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

2. 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 the requisites provided by law, or rules or regulations issued pursuant to law.

3. Any act lawfully performed in an official capacity or in the exercise of a profession

G. Section 6. Prohibition on Members of Congress

Members of Congress during their term are prohibited to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly & particularly favored or benefited by any law or resolution authored by them

The prohibition shall also apply 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

The member of Congress or other public officer, who, having such interest prior to the approval of a law or resolution authored or recommended by him, continues for thirty days after such approval to retain his interest also violates this section.

H. Section 8. Prima facie evidence of and dismissal due to unexplained wealth.

A public official who has been found to have acquired during his incumbency, whether in his name or the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his lawful income (RA 1319) – GROUND FOR FORFEITURE OF UNEXPALINED WEALTH

I. **Section 11.** Prescription of offenses
15 YEARS – prescriptive period of all offenses under the Act

J. **Section 12.** Termination of office

NO PUBLIC OFFICER IS ALLOWED TO RESIGN OR RETIRE:

1. Pending investigation, criminal or administrative or
2. Pending a prosecution against him
3. For any offense under the Act or under the provisions of the RPC on Bribery

K. **Section. 14.** Exception

Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude of friendship according to local custom or usage

L. **Section 13** of the law Provides for Suspension Pendente Lite of the accused public officer

1. After an Information is filed in Court for:
(a) Violation of R.A. 3019 or (b) under Title 7 of the RPC i.e. Crimes Committed by Public Officers or (c) for any offense involving fraud upon government or public funds, the officer shall suspended from office.
2. The suspension applies to any office which the officer charged might be holding and not necessarily the particular office under which he was charged or under which the act was committed. (Sandiganbayan vs Defensor)
3. The crimes maybe simple or complex with another, whether attempted or frustrated and even if the officer's participation is as an accomplice or accessory only.
4. The period was formerly for the whole duration of the trial but the period has been fixed to be the same period as that provided for under the Civil Service Law which is 90 days and which likewise is the period provided for under Section 52 of the Administrative Code fo1987.

Example: In Nicart vs. Sandiganbayan (495 SCRA 73) a Mayor was charged for Malversation before the Sandiganbayan and was imposed a 90 day preventive suspension. He argued that malversation is not covered by the Anti Graft law and he should not be suspended and even then the period should be only 60 days pursuant to section 63 of the Local Government Code. HELD: Malversation is an offense involving fraud against the government funds and is clearly included among the crimes covered by RA 3019. Section 13 of said law provides a suspension for which the period is 90 days pursuant to existing jurisprudence, notably Segovia vs. Sandiganbayan (288 SCRA 328, March 27, 1998)

Note that under the PNP Law (RA 6975) when a PNP member is charged with a grave offense where the penalty prescribed is 6 years and 1 day or more, he shall be suspended from office to last until the termination of the case (Himagan vs. PP, 237 SCRA 538)

5. The Suspension is Mandatory But Not Automatic

- (a). Mandatory in that the officer must be suspended whatever be his position.
- (b). However the suspension is not automatic because before the Court (note: only the Court may order the suspension) there must first be a Motion to Suspend and if the officer does not voluntarily place himself under suspension but contests the Motion, then there must be "Pre Suspension Hearing " to determine the following: (i) The validity of the Information (ii) If the accused was afforded the right to a Preliminary Investigation (iii) If there is a ground to Quash the Information (iv) If the offense charged is a Violation of Title 7 of the Revised penal Code or is covered by the AGCPA. It is only then that the Court issues an Order placing the accused under suspension
- (c). However, if the accused had ample opportunity to be heard on the Prosecution's Motion fro Suspension Pendenti Lite and were allowed to file their comment or opposition thereto, and agreed to submit the Motion for Resolution upon submission of their comment/opposition, there was no more need to set the motion to Suspend for hearing on a specific time

and date. (Bedrey vs. Sandiganbayan, 477 SCRA 286)

- M. Effect of Conviction - Loss of retirement or gratuity benefits. In case of acquittal-reinstatement plus payment of back salaries unless in the meantime the officer has been administratively
- N. A public officer maybe charged under R.A. 3019 and under the Revised Penal Code for the same offense (Ramiscal vs. Sandiganbayan 499 SCRA 75)
- O. Jurisdiction over the offense is with the Sandiganbayan for those public officers occupying a salary grade of 26 or higher

III. Presidential Decree No. 46

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.

IV. Presidential Decree No. 749

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.

V. Republic Act No. 1379 (Forfeiture of Ill-gotten Wealth)

Correlate with RA 1379 -- properly under Remedial Law. This provides the procedure for forfeiture of the ill-gotten wealth in violation of the Anti-Graft and Corrupt Practices Act. The proceedings are civil and not criminal in nature.

Any taxpayer having knowledge that a public officer has amassed wealth out of proportion to this legitimate income may file a complaint with the prosecutor's office of the place where the public officer resides or holds office. The prosecutor conducts a preliminary investigation just like in a criminal case and he will forward his findings to the office of the Solicitor General. The Solicitor General will determine whether there is reasonable ground to believe that the respondent has accumulated an unexplained wealth.

If the Solicitor General finds probable cause, he would file a petition requesting the court to issue a writ commanding the respondent to show cause why the ill-gotten wealth described in the petition should not be forfeited in favor of the government. This is covered by the Rules on Civil Procedure. The respondent is given 15 days to answer the petition. Thereafter trial would proceed. Judgment is rendered and appeal is just like in a civil case. Remember that this is not a criminal proceeding. The basic difference is that the preliminary investigation is conducted by the prosecutor.

Article 213. Frauds against the Public Treasury and Similar Offenses

Concept: The violations punished are equivalent to cheating the public treasury. There are two kinds of frauds punished.

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.

Fraud under Paragraph 1: punishes any public officer who in his official capacity enters into an agreement or scheme to defraud the government. It does not matter that the government was not damaged as mere intent to defraud consummates the crime.

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.
- Usually, when in connivance with suppliers, the government is made to pay for more than what it has received; or there is overpricing; or paying for poor quality of articles or supplies; or for double payment; or paying for "ghost deliveries"
 - Also making the government refund more than what it has to refund
 - There must however be no fixed amount which was set aside or appropriated before hand to be spend or to cover the purchase. Thus if the sum of P100,000.00 was set aside to purchase five computers, even if said computers are of poor quality and are worth only P75,000.00, there is no Fraud against the treasury. But if the officer presents a bill of P100,000.00 to pay for five computers and which amount was given, when in truth the computers are worth only P75,000.00, then this crime is committed.

Illegal Exaction Under paragraph 2

Elements:

1. The offender is a public officer *entrusted* with the collection of taxes, licenses, fees and other imposts.

He is thus an accountable public officer. If otherwise, the crime would be estafa. However officers under the BIR and BoC are covered by the NIRC and Customs Code or the Administrative Code.

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
 - (i). Here mere demand is sufficient even if the payer refused to come across. If he pockets the excess he commits estafa through illegal exaction
 - (ii). Suppose the payor allows him to keep the change and the officer did not turn it over to the government, he commits

malversation. It is to the government that the change must go as an accretion of the amount due (Principle of Accretion) .

- (iii). Suppose the officer demands P1,000.00 when the amount due is only P700.00. He spent the entire P1,000.00. He is guilty of illegal exaction (for demanding a different amount) Estafa for spending the excess of P300.00 and malversation as to the amount of P7000.00 which is government funds

- b) Failing voluntarily to issue a receipt , as provided by law , for any sum of money collected by him officially; or

The crime is committed if what are issued are only provisional receipt

- 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

Payments are to be in the form of cash or the payor's personal check. It does not matter that the object has a higher value than what is due.

- There is no need for misappropriation of funds or intent to defraud because the essence of the crime is the improper or irregular manner of the collection.

Article 214. Other Frauds

Concept: This article does not punish any offense. What is provided is the additional penalty of special disqualification upon a public officer who commits estafa by taking advantage of his official position.

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.

Examples: The Judge entices an accused to hand to him money which the Judge will post as cash bond but he spends it. The head of Office, who collects contributions from his employees to purchase for supplies, but spends the money for himself, if found guilty, would be imposed this additional penalty.

Article 215. Prohibited Transactions

Concept: This prohibits any appointive official who during his incumbency from becoming interested in any transaction of exchange or speculation within his territorial jurisdiction. This is to prevent him from using his influence in his favor

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.

Example: A judge is not to participate in an execution sale.

Article 216. Possession of Prohibited Interest By A Public Officer

Concept: This punishes the act of becoming interested or participating by a public officer *virtute officii* in any contract in which it is his official duty to intervene. Actual fraud is not necessary but the act is punished to prevent the possibility that the officer may commit fraud or places his interest over that of the government.

Hence if he participated in his private capacity he is not liable. Example: The Director of the DSWD assumed the mortgage executed in favor of a creditor. He did so as a private businessman. He is not liable.

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.

Example: The City is in need of a building to rent. The mayor approved the contract of lease with the ABC corporation, owner of the building, but he is a director of said company.

Section 14, Article VI of the Constitution

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the government for his

pecuniary benefit or where he may be called upon to act on account of his office.

Section 13, Article VII of the Constitution

The President, Vice-President, the Members of the Cabinet and their deputies or assistants shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

Section 2, Article IX-A of the Constitution

No member of a Constitutional Commission shall, during his tenure, hold any office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Malversation of Public Funds (Embezzlement)

Classification:

- (1) Ordinary and Technical
- (2) Intentional or culpable

Article 217. Malversation of Public Funds or Property – Presumption of Malversation

Elements

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.

By whom committed/ Persons Liable:

1. Primarily only by an accountable public officer: one who has charge of public funds or properties and is answerable therefore. If he takes property over which another officer is accountable, he is guilty of theft

a). By reason of the functions of his office in that his primary functions pertain to the receipt, care and custody of funds or property. Examples: treasurers, cashiers, disbursing officers; Property Custodians, Clerks of Court, BIR/Customs Collectors; Evidence Custodians. Also a policeman who confiscates contrabands or prohibited articles from persons arrested. Policemen in custody of articles seized by virtue of a search warrant

b). By reason of special designation or by reason of the fact that public funds or properties are entrusted to him by his superior. Example: an employee is tasked to get the salaries of the employees; or supplies are entrusted to a teacher for delivery to the school; or medical supplies are sent to a municipality through the councilor.

2. By a private person :

a). Through conspiracy with the public officer

b). As an accomplice or accessory

c). Under Article 222 when **he has charge of public funds or property** or is the **depository or administrator of funds** seized, attached or deposited by public authority

(i). Forest Rangers seized several logs. The DENR Director deposited them with Mr. X whom he also appointed to be the custodian until the DENR can get trucks to transport the logs. If Mr. X uses the logs as firewood he is liable for malversation

(ii). The Sheriff deposited several household items which he attached from the defendant. These were asked to be safe kept in the garage of Y who consented to be the custodian. The articles were stolen because Y went on a vacation without taking measures against theft. He is liable.

Property Subject of the crime

1. Public properties

a). Strictly public properties – those owned by the government or by the local government units such as office equipments and supplies; guns and bullets issued to the AFP or PNP members; vehicles and modes of transportations issued to a public office; money paid or received as taxes, fines, payments, donations, or income or cash in the public coffers.

- (i). thus a policeman who goes on AWOL without returning his firearm is liable for malversation
- (ii). a driver who sells off the gasoline of the vehicle assigned to him as public transport is guilty of malversation
- (iii). the pharmacists of the government hospital who secretly sells the medicines commits this crime

2. Private properties:

- a). If held in trust by a public office i.e. he has the duty to account of the property, often referred to as "Trust Funds or Trust Properties"
 - (i). Money deposited by a party in court as cash bail bonds or redemption price
 - (ii). Private property deposited in court provided they have not been marked yet as evidence; or when they are ordered to be returned to the owner as evidence
 - (iii). Property under attachment
 - (iv). Proceeds of a sweepstake ticket entrusted to a sales agent
 - (v). Articles the possession of which is prohibited, except for dangerous drugs, or the effects or instruments of a crime in the possession of a policeman
- b). Property in custody of a public office for a public purpose i.e private properties impressed with public character
 - (i) Example: The sheriff who conducted an execution sale spent part of the money realized from the sale instead of turning it over to the plaintiff. He is liable for malversation because the proceeds are impressed with the character of public funds.
 - (ii). Example: Blood kept by the Phil. National Red Cross
- c). Private property considered as public by reason of the (i). Principle of Co-mingling in that all funds commingled with public funds or found in public vaults, are presumed to be public funds/property and (ii) The Principle of Accretion
- d). Private properties which were confiscated or seized even if deposited with a private person

Acts Punished: How Committed

1. **Intentional Acts:**

- (a). **By appropriating:** when the officer himself takes the property for his own use or that of his family or that of a third person

- (i). Thus loose changes taken by the officer constitute malversation as the loose changes properly belong to the government.
- (ii). Likewise, a collector who brings home funds or property and forgot to bring them to his office, and is therefore found short by said amount, is guilty of malversation.

- (b). **By misappropriating:** the officer uses them for a different purpose even if a public purpose but is not authorized to do so

- (i). Thus a cashier who uses his collections to change the personal checks on employees, even at a discount, and even if the checks are good, is guilty of malversation. During the period of time the check is undergoing clearing by the bank, the government is already deprived of the use of the funds.

- 2. By **abandonment or through negligence (culpable malversation)** (i.e. consenting, or through abandonment or negligence, permitting any other person to take such public funds or property)

- (a). The custodian is expected to exercise utmost diligence and care to prevent the public funds/properties under his custody from being lost, destroyed, damaged, either by action of nature or by the acts of people. When these eventualities occur due to his failure to take precautions or exercise care, then he becomes liable.
- (b). If the funds were lost or destroyed the officer must make a prompt report and prove the loss or destruction was not due to his fault or negligence
- (c). Thus the officer is liable even if it was a third person who took and appropriated the property

- 3. Being otherwise guilty of the misappropriation or malversation of such funds or property.

Penalty

The penalty depends on the amount of the fund or property involved

- 1. The Penalty is the same whether the malversation is intentional or through negligence. This is the exception to the rule that the penalty for a crime is lower if committed through negligence
- 2. The accused may be convicted of for culpable malversation under an Information which charges intentional malversation without need of amending the original Information. This is because culpable

malversation is included in intentional malversation and because the penalty is the same whether it was committed intentionally or through negligence. (PP. vs. Ting Lan 475 SCRA 248)

Presumption of Malversation

When there is a formal demand upon the accountable officer to produce funds or properties in his custody and he fails to produce them, his failure to do so shall be prima facie evidence that he put the missing funds to his personal use.

1. For purposes of conviction, it is not necessary that there be direct proof that the officer used the funds to his personal use.
2. The presumption applies only if (i) there is proof of shortage and the amount which is claimed to be missing is certain, and definite and after an audit which is thorough, complete to the last detail and reliable (Dumagat vs. Sandiganbayan, 160 SCRA 483) and (ii) the failure to produce is unexplained.
3. The presumption is rebuttable hence if the accused was able to prove the missing funds were not used by him personally, as when the missing funds were given to employees as "vales", the burden is upon the prosecution to prove the misappropriation

Effect of Restitution or Replacement of the Missing Fund/Property

Note that the accused incurs a criminal liability and is also civilly liable to the government for the missing fund or property, thus:

1. If made before the shortage is recorded: there is no criminal liability because officially there is as yet no shortage
2. If made Upon discovery and recording: the criminal liability remains but this may be considered as mitigating but the civil liability may be extinguished
3. If after the lapse of time: the replacement or restitution has not effect on the criminal liability what so ever

The return of the funds malversed is only mitigating, not exempting.

If there is falsification:

1. The falsification must not be to hide the malversation else it is a separate offense
2. As to the liability of heads of office who sign or approve vouchers or documents containing falsifies, see Arias and Rodis doctrine

Distinguished from Estafa:

- 1.As to the nature of the property involved: in estafa only private properties are involved.
- 2.As to the character of the accused: in malversation he must be the custodian or is accountable over the property involved.
3. As to the need for a prior demand: malversation does not require a prior demand
- 4.As to the requirement of damage: there need not be damage to the government in malversation

Article 220. Illegal use of public funds or property (Technical Malversation)

Concept: This is often referred to as "Juggling of Funds" or "Realignment of Funds". This is the crime committed by a public officer who used or applied funds earmarked or appropriated for a specific public purpose, for another public purpose.

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.
- The funds involved should have been reserved by an appropriation ordinance for a specific public purpose.
 - If the fund were not yet earmarked for a specific public purpose, such as the general fund, the crime is ordinary malversation
 - If the funds earmarked for a public purpose were used for a private purpose, the crime is ordinary malversation
 - It is immaterial that the other public use is more beneficial to the public.
 - The reason is that no public fund or property shall be spend except pursuant to an appropriation or purpose specified by law

Illegal use of public funds or property vs. malversation under Art. 217

ILLEGAL USE OF PUBLIC FUNDS OR PROPERTY		MALVERSION
The offenders are accountable public officers in both crimes.		
The offender does not derive any personal gain or profit	The offender in certain cases profits from the proceeds of the crime.	

The public fund or property is applied to another public use	The public fund or property is applied to the personal use and benefit of the offender or of another person.
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Other Offenses Related to Public Funds

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.
- The accused is an accountable officer and this includes those who may have already been separated from the service
 - This is a crime by omission.

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 (certificate of clearance).

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.
- The refusal is malicious and must have resulted in damage to public interest
 - Example: (i). The Treasurer refuses to give the salary of an employee out of spite; (ii) or refuses to give the payment for the purchase of equipments on the ground the equipments are unnecessary (ii) Property Custodian who refuses to deliver a type writer to a secretary because the secretary is inept at typing

Article 222. Persons Liable Under the Preceding Provisions

Private individuals who may be liable under Art. 217-221:

1. Private individuals who, in any capacity whatsoever, have charge of any national, provincial or municipal funds, revenue or property
2. Administrator, depository of funds or property attached, seized, or deposited by public authority even if such property belongs to a private individual

INFIDELITIES BY A PUBLIC OFFICER

Concept: These offenses involve unfaithfulness in the performance of duties amounting to a violation of the public trust and confidence reposed in the officer.

Kinds:

- (1) In the Custody of Prisoners,
- (2) In the Custody of Documents, and
- (3) In the keeping of Secrets

Infidelity in the Custody of Prisoners (Articles 223 to 225)

Concept: The crime refers to the act of a custodian of a prisoner in allowing or permitting the prisoner to escape. This may be intentionally or by his negligence

Basis of the Penalty:

- (i) The public or private character of the person
- (ii) The status of the prisoner who escaped and
- (iii) the circumstances under which the escape was made

Persons liable:

1. A *Public officer* whose function or duty consists primarily of taking custody of prisoners such as personnel of the BJMP. At the time of the escape,

the personnel must be on duty otherwise his liability is for Delivering Prisoners from Jail

2. A *Private person* pursuant to Article 225 to whom the conveyance or custody of a prisoner person or person under arrest was made.
 - a). With respect to public officials, the person who escaped must be a prisoner where as in infidelity by a private person, the individual may simply be a "person in arrest" i.e one who has been lawfully arrested either with or without a warrant
 - b). If he lets go the prisoner due to a consideration he is liable also for bribery
 - c). Examples: (i) The escort handcuffed his prisoner to a jeepney asking the driver to watch over the prisoner because the escort went to help a blind man cross the street. The driver removed the handcuffs when the wife of the prisoner paid him. He is liable for infidelity and bribery (ii) A policeman arrested a robber whom he entrusted to X as the policeman still had to chase the other robbers. X let the robber go. X committed infidelity

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.

Meaning of Prisoner: The term prisoner refers to:

1. Prisoner by final judgment or mere detention prisoner
2. As to persons "under arrest" they are not yet prisoners until they have already been "booked" i.e fingerprinted, photographed, and placed in the gaol. This is true even if they already are in the police station and detained in the interrogation room. However if they were entrusted to private persons who let them escape, infidelity is committed. Art 225 is not applicable if a private person was the one who made the arrest and he consented to the escape of the person arrested.
3. Persons placed in jail only for "safe keeping purposes", such as drunks, are not prisoners.

Meaning of "Escape"

1. The act of running away or permitting the prisoner to leave
2. The giving of preferential or special treatment or unjustifiable leniency to enable him to avoid the rigors resulting from his imprisonment. Examples :
 - (a) As allowing the prisoner to eat or sleep in the house of the guard or warden (b). Allowing him to repair his cell and convert it into a luxurious room

Kinds of Infidelity

1. Article 223. Conniving with or Consenting to Evasion

Elements

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.
 - This is committed by intentionally allowing a prisoner to escape either by active participation, such as providing him with the means to escape or simply letting him go, or by doing nothing to prevent his escape
 - If the custodian was bribed, there are two separate offenses

2. 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.

Includes:

- a). Failure to take precautionary measures to prevent the escape such as by not checking on whether the facilities permits a escape; not checking on visitors who may bring in tools with which to escape;
- b). Becoming too familiar and friendly with the prisoners resulting to decrease in vigilance
- c). Laxity in escorting the prisoner or permitting him to go to places where he is not supposed to be brought, such as a restaurant

d) There is no distinction between negligence which results merely to an administrative liability and that which amounts to a willful non-performance of duty

- The fact that the public officer recaptured the prisoner who had escaped from his custody does not afford complete exculpation.

Liability of escaping prisoner:

1. If the fugitive is serving sentence by reason of final judgment, he is liable for evasion of the service of sentence under Art. 157.
2. If the fugitive is only a detention prisoner, he does not incur criminal liability.

Q: If a prisoner escapes with the assistance of another, what are the respective criminal liabilities of: (a) the prisoner (b) the person who helped him escape?

Infidelity in the Custody of Documents

Kinds:

1. Through removal, concealment or destruction(Art. 226)
2. By Breaking the seal (Art. 227)
3. By opening of closed documents (Art. 228)

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.

Persons principally liable:

1. *Public officers*

(a) Those who are officially entrusted with the custody of documents it being their function to take care of documents , such as:

- a). The Clerk of Court as regards the records of cases
- b). The Post Master as to mail matters
- c). The Local Civil Registrar
- d). The Register of Deeds or The Assessor
- e). The Election Registrar

(b). or officers who are specially entrusted by their superior officers or by competent authority, with the care and custody of certain

documents even if their primary functions do not pertain to the keeping of documents

Note: If the officer is not the custodian the crime is different i.e theft if he abstracts or takes the documents; malicious mischief or estafa if he destroys or conceals

2. *Private persons* who conspire or who participate as an accomplice or accessory

Meaning of Document:

They refer to written instruments which maybe subject to the crime of falsification

1. Those which are purely public or official documents such as records of birth, titles to land; records of court cases; official communications; payrolls, time records
2. Commercial Papers such as notes, checks, money bills
3. Private documents entrusted to public officials by reason of their office as for example: (a). Letters sent through the mail (b). But not packages, pamphlets, books, periodicals or parcel sent through the mail

When is the crime malversation and when it is infidelity:

- a). When money, objects, or articles are in the possession of an accountable officer, any act of appropriation/misappropriation or loss or destruction will constitute malversation.
- b). But when these money, articles or objects had already been marked in court as Exhibits, they ceased to be properties and become documents (note that they are referred to as documentary exhibits) so that their appropriation, misappropriation or loss, constitutes infidelity in the custody of documents.
- c). But when the trial is over and these articles are ordered to be returned to their owners/possessors, such as in crimes against property, they revert to being properties. Hence any act of appropriation/misappropriation will be malversation.

Acts Punished:

1. By abstracting or removal:

- the crime is consummated the moment the document or paper is removed or taken out from its usual place in the office. It need not be brought out from the building such as when

it is transferred to another room or place where it is not supposed to be kept

- The removal must be for an illicit purpose such as to tamper with it, to profit from it or even to keep it away from the eyes or knowledge of the public, or to show it to the media
- Hence there is no infidelity if the removal is to safe keep the document or to protect it from loss or destruction
- Examples of removal:

(i). When the Postmaster opens a letter and takes the money inside or the letter for transmission contains Postal Money Orders which he removes an encashed. But if they are the mail/letter carriers who take the money, the crime is qualified theft

(ii). But when he received the money order itself - not the letter, which he then signed as payee, collected and spent the amount, he is guilty of malversation through falsification.

(iii). When the records officer transfers the folder of a case from the records section to the library and it can not be located when a party comes to xerox copies

(iii) A secretary who brings home the folder or record in order to study it is not liable as the purpose is not illicit

(iv) Misdelivery of mail matters to third persons is removal

- Actual damage to the public is not necessary as delay in the production of the document is sufficient which may consist alarm to the public or loss of confidence in government service

2. By Destroying as in the act of a letter carrier who burned the mail

3. By concealing: This includes acts of hiding or making unavailable the documents to authorized persons for their inspection, reading, copying or for their own knowledge. This will not apply if the documents or papers are confidential in nature, such as the records of a Youthful Offender who has been acquitted.

Article 227. Officer Breaking Seal

Concept: It is the crime committed by a public officer, charged with the custody of papers or documents, who breaks the seal placed thereon by proper authorities on the documents or permits the seal to be broken. The gist is the fact of breaking the seal even if the contents are not tampered with.

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.

- Example: Destroying the seal placed on ballot Boxes
- Damage or intent to damage is not necessary.

Article 228. Opening of Closed Documents

Concept: The crime committed by a public officer who has custody of closed documents, papers or objects, who opens or permits to be opened the closed papers, documents or objects without any proper authority to do so.

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.

- Examples: (i). Closed envelopes containing election returns (ii). Communications in closed envelopes or folders hand carried by personnel officers to Manila.

Revelation of Secrets.

(Secrets refer to any data or information which is not supposed to be publicized or known without prior approval of the proper officer)

First Kind: Article 229. Revelation of Secrets by An Officer

The Secrets refer to those affecting public interest of minor consequence which are not punished by any other provision of law

- These secrets must be known to him *virtute officii*
- If the accused is a private person, the crime would be under the article on Unlawful Means of Publication
- Damage to public interest is not required
- This article is violated in two ways: (a) by the actual revelation of secrets or (b) wrongful delivery of papers or copies of papers the contents of which should not be known

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.

- Examples: (a) the Secretary who reveals the decision of the Court/Quasi-Judicial/Administrative body prior to its promulgation (b) personnel who informs an applicant of the who has been appointed (c) a prosecutor who reveals the evidence to be presented to court

REVELATION OF SECRETS BY AN OFFICER	INFIDELITY IN THE CUSTODY OF THE DOCUMENT OR PAPERS BY REMOVING THE SAME
The papers contain secrets and therefore should not be published, and the public officer having charge thereof removes and delivers them wrongfully to a third person	The papers do not contain secrets but their removal is for an illicit purpose

Second Kind: 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.

- The secret revealed pertains to private secrets which the public official came to know in his official capacity
- Examples: (a) Revelation of matters known by Probation Officers or Personnel of the DSWD who conduct background checks on accused or parties to a case (b) revelation of what a PAO Lawyer or Prosecution learned about a person he has interviewed as a witness

Crimes Involving Disclosure of Information:

1. Under Infidelity of Public Officers Article 229 and 230)
2. Under Unlawful Means of Publication (Art. 154 par.3) if the revelation is by a private individual
3. Under C.A. 616 or Espionage if the matter pertains to secrets of the state or to the defense the defense of the sate
4. Betrayal of Trust By An Attorney if they pertain to the secrets of a client
5. Under Discovery and Revelation of Secrets under Article 290 (Seizure of Correspondence), 291 (By a manager. Employee or servant) or Article 292 (Revelation of Industrial Secrets) .These pertain to the revelation of private secrets by a private person

Other Offenses or Irregularities by Public Officers

A. Disobedience which is either:

1. Open Disobedience or Inceptive Disobedience

Article 231. Open Disobedience

Elements

- a. Officer is a judicial or executive officer;
- b. There is a judgment, decision or order of a superior authority;
- c. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities;
- d. He, without any legal justification, openly refuses to execute the said judgment, decision or order, which he is duty bound to obey.

- Examples: (i) Refusal of a trial court Judge to comply with the order of the Supreme Court to remand for the reception of additional evidence (ii) Refusal to reinstate dismissed

employee despite Order of the Civil Service Commission (iii) Refusal to Proclaim the winning candidate as found by the Court

government doctor who refuses to conduct anti-dengue vaccinations despite request of the City Mayor

2. Disobedience to the Countermanding Order of Superior

Article 232. Disobedience to Order of Superior Officer When Said Order Was Suspended by Inferior Officer

Concept: The subordinate suspended the execution of the Order of a superior by asking for a reconsideration but suspension was disapproved by the superior and still, the subordinate refuses to carry out the order

Elements

- a. Offender is a public officer;
 - b. An order is issued by his superior for execution;
 - c. He has for any reason suspended the execution of such order;
 - d. His superior disapproves the suspension of the execution of the order;
 - e. Offender disobeys his superior despite the disapproval of the suspension.
- Example: The Secretary of Justice reversed the Resolution of Dismissal of the City Prosecutor and ordered him to file the Information in Court. The City Prosecution initially did not carry out as he filed a reconsideration or objection but were denied, and yet he refuses to comply.

3. Disobedience in the form of a Refusal of Assistance

Article 233. Refusal of Assistance

Concept: The crime committed by a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public services.

Elements

- a. Offender is a public officer;
 - b. A competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service;
 - c. Offender fails to do so maliciously.
- The refusal must be unjustified
 - Examples: (i) The Chief of Police who refuses to cause the service of subpoena issued by the Prosecutor (ii) a government doctor who refuses to testify as a witness on request of the Prosecutor or the Court (iii) A

4. Disobedience in the form of Refusal to Discharge Elective Office

Article 234. Refusal to Discharge Elective Office

Concept: The crime by an elected public official who shall refuse without legal motives i.e valid justification to be sworn in or to discharge the duties of his 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.
- He is not liable if his ground is due to a legal consideration, such as when he was arrested for committing an offense and is imprisoned, or supervening factual reasons, as when he has to go abroad for medical reasons

B. Maltreatment of Prisoners Under Article 235.

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 (by final judgment) 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.

2 Forms of Maltreatment (Sir Sagsago)

- (i). By overdoing himself in the correction or handling a prisoner such as by physical beatings or deprivation of food, or hanging a sign around his neck

(ii). By the imposition of unauthorized punishments or if so authorized, by inflicting such punishments in a cruel or humiliating manner . Examples: punishments such as prevention of visits as punishments or solitary confinements or tying him up or deprivation of sleep, or deprivation of conjugal rights. Or where cleaning the premises is allowed as punishment, by ordering the cleaning at night without sleep, or by ordering the prisoner to clean naked;

- If injuries or damages were suffered, they are separate offenses
- If the purpose of the maltreatment is to compel the prisoner to confess to a crime or to obtain some information, the crime is qualified maltreatment
- The term prisoner is the same as in the prisoner subject of Infidelity i.e one by final judgment or detention prisoner; one who has already been finger printed and booked and placed inside the jail
- Other Related Crimes Upon A Person In Police Custody

i). Physical Injuries: if the person is merely in arrest or is a suspect and is not yet a prisoner and is beaten up

ii). Slander by Deed if the person under arrest is paraded with a note on his body saying "I am a drug pusher"

iii). Coercion if the purpose is to compel the person under arrest or suspect to confess or to make incriminatory admissions

C. Anticipation, Prolonging and Abandonment

1. Article 236. Anticipation of Duties of A Public Office

Concept: The crime by a person who shall assume the performance of the duties and powers of the public office without first being sworn in or given bond.

Elements

- a. Offender is entitled to hold a public office or employment, either by election or appointment;
- b. The law requires that he should first be sworn in and/or should first give a bond;
- c. He assumes the performance of the duties and powers of such office;
- d. He has not taken his oath of office and/or given the bond required by law.

2. Article 237. Prolonging Performance of Duties and Powers

Concept:

The crime committed by a public officer who continues to exercise the duties and powers of his office beyond the period provided by law, regulations or special provisions applicable to the case

Elements

- a. Offender is holding a public office;
 - b. The period provided by law, regulations or special provision for holding such office, has already expired;
 - c. He continues to exercise the duties and powers of such office.
- Exercise of powers ceases upon termination of the fixed term or when the purposes is achieved (*functus officio*) or the office is abolished
 - Except when the officer is allowed to continue in a *hold over capacity*

3. Abandonment of Office or Position under Article 238

Concept: The crime committed by a public officer who before the acceptance of his resignation, shall abandon his office to the detriment of the public service.

Elements

- a. Offender is a public officer;
 - b. He formally resigns from his position;
 - c. His resignation has not yet been accepted;
 - d. He abandons his office to the detriment of the public service.
- It is essentially that the officer has filed a formal resignation to the appointing power
 - Resignation to be effective requires an intent to relinquish the position, the act of relinquishment and the acceptance by the appointing authority. Hence the resignation must be accepted, even if the resignation says "Effective immediately" and meantime the officer must continue discharging the functions of his office
 - If the officer simply goes AWOL without filing any formal resignation, he maybe held liable under the Anti Graft and Corrupt Practices Act. This is abandonment as a ground for dismissal but is not the crime of abandonment
 - The penalty is higher if the purpose is to avoid prosecuting or acting on a crime

ABANDONMENT OF OFFICE (ART. 238)	NEGLIGENCE AND TOLERANCE IN PROSECUTION OF OFFENSES (ART. 208)
Committed by any public officer	Committed only by public officers who have the duty to institute prosecution for the punishment of violations of the law
The public officer abandons his office to evade the discharge of his duty	The public officer does not abandon his office but he fails to prosecute an offense by dereliction of duty or by malicious tolerance of the commission of offenses.

D. Usurpation of Powers:

Concept: These crimes refer to the interference by an officer of one department with the functions of the officials of the other departments of government in violation of the principle of separation of powers. They are different from the crime of Usurpation of Authority which is usually committed by private persons.

1. Article 239. Usurpation of Legislative Powers

Elements

- a. Offender is an executive or judicial officer;
 - b. He (i) makes general rules or regulations beyond the scope of his authority or (ii) attempts to repeal a law or (iii) suspends the execution thereof.
- Example: A Mayor who in the guise of an Administrative Order establishes a curfew hour; or directs the Municipal Treasurer to release money to fund a certain project

2. Article 240. Usurpation of Executive Functions

Elements

- a. Offender is a judge;
 - b. He (i) assumes a power pertaining to the executive authorities, or (ii) obstructs the executive authorities in the lawful exercise of their powers.
- Such as accepting official visitors and presenting them the key to the city. Maybe

committed by the issuance of baseless injunctions against purely administrative matters,

3. Usurpation of Judicial Functions Powers (Art. 241)

Elements

- a. Offender is an officer of the executive branch of the government;
 - b. He (i) assumes judicial powers, or (ii) obstructs the execution of any order or decision rendered by any judge within his jurisdiction.
- Example: (i). A Mayor who arbitrates and decides conflicts between his constituents (ii) The Mayor sends his bodyguards and policemen to stop the execution of a writ of execution or prevent the service of warrants

E. Disobeying Request for Disqualification (Sir Sagsago: Disobeying Request for Inhibition) (Art. 242)

Concept: Committed by any officer who has been formally asked to inhibit or refrain from taking action upon a matter but who continues with the proceeding after having been lawfully required to refrain

Elements

- a. Offender is a public officer;
 - b. A proceeding is pending before such public officer;
 - c. There is a question brought before the proper authority regarding his jurisdiction, which is not yet decided;
 - d. He has been lawfully required to refrain from continuing the proceeding;
 - e. He continues the proceeding.
- The offender is an officer before whom there is pending a judicial quasi-judicial or administrative proceeding and the issue of jurisdiction (can he hear the case?) has been raised and is still under consideration but he continues with the proceeding. This does not apply when the officer is asked to inhibit due to personal bias or loss of trust and confidence in him.

F. Orders or request by executive officer to any judicial authority (Art. 243)

Concept: Crime consists of an executive officer giving an order or suggestion to any judicial

authority in respect to any case or business within the exclusive jurisdiction of the 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.
- Also punished under RA 3019
 - Example: Suggesting who to be appointed as Clerk of Court or how much bail bond to require or who to appoint as de officio counsel

G. Unlawful Appointments (Art. 244)

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.
- But the mere act of recommending is not covered as it simply an act of presenting whereas nominating is vouching for the qualifications of a person
 - To stop political patronage

Abuses Against Chastity

Introduction. This is different from Crimes Against Chastity which are private crimes and require a complaint to be prosecuted.

ART. 245 – ABUSES AGAINST CHASTITY- PENALTIES

ELEMENTS:

1. That the offender is a public officer.
2. That he solicits or makes immoral or indecent advances to a woman.
3. That such woman must be-
 - 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 mother of the person in the custody of the offender is not included.

Acts punished

There are three situations when the crime is committed and in all three a woman is the victim.

1. By soliciting or making immoral advances to a woman interested in matters pending before the public officer for decision, or with respect to which he is required to submit a report to or consult with a superior

- The offender is any public officer including a female officer.
- To solicit is to demand, suggest, proposed or ask for sexual favors. It must be characterized by earnestness and persistence, not just a casual remark even if improper. Mere solicitation consummates the crime even if the solicitation or advances had been rejected
- This crime is consummated by mere proposal.
- Proof of solicitation is not necessary when there is sexual intercourse.
- If as a consequence the officer succeeds in committing an immoral act, the same is a separate offense

2. The solicitation is upon a woman prisoner (i.e. soliciting or making immoral or indecent advances to a woman under the offender's custody)

- The offender is any person who is directly charged with the care and custody of prisoners, or persons under arrest such as Jail Guards and law enforcers who have arrested a woman who has not yet been turned over to the jail. Female guards and law enforcers are included
- If the woman succumbs or consented the jailer is liable

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 Note the mother is not included.

Q: what are the crimes or offenses involving jail guards?

A: They are the following:

1. Delay in the Release of Detained Persons Under Article 125

2. Infidelity in the Custody of Prisoners under Articles 223 and 224
3. Maltreatment of Prisoners Under Article 235
4. Abuses against Chastity under Article 245

R.A. 7877: The Anti Sexual Harassment Act

General Concept: Sexual harassment is the act of a person:

1. Having authority, influence or moral ascendancy over another
2. In a work or training or education environment
3. Demands, requests or otherwise requires any sexual favor from another
4. As a condition to giving a benefit or doing some favor to the victim regardless whether the demand is accepted

Kinds

1. In a work related or employment environment:
 - a). As a condition in the (i) hiring, employment, re-employment of the victim (ii) for granting favorable terms or compensations, or as condition for promotion or grant of privileges (iii) if the refusal results in limitations, segregating or classifying the employee which would discriminate, deprive or diminish employment opportunities
 - b). Would impair the employee's right or privileges under existing labor laws
 - c). Would result in an intimidating, hostile or offensive environment
2. Education or
3. Training environment
 - a). Victim is under the care, custody or supervision of the offender, or one whose education or training or apprenticeship is entrusted to the offender (such as coaches of sports teams)
 - b). The demand is a condition to giving of a passing grade, granting of scholarships, payment of a stipend, allowance or other benefit
 - c). or results to an intimidating or hostile or offensive environment for the student, trainee or apprentice

TITLE VIII. CRIMES AGAINST PERSONS

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).

Categories:

1. Destruction of Life
2. Physical Injuries
 - a. Mutilation
 - b. Serious
 - c. Less Serious
 - d. slight
3. Rape
 - a. Simple
 - b. Qualified

Destruction of Life in general.

- Death and its inevitability has been the subject of inquiry: philosophical, religious, biological and legal approaches
- Homicide - when used in its general sense it denotes that the death of a person was not due to a suicide or because of an accident or to natural causes but because of the act of a person. The term "homicidal death" refers to a death which was caused by another either intentionally or by negligence.
- The following are the terms used depending on who the victim was:
 - a). **Parricide**- the killing of one's father
 - b). **Matricide**- the killing of one's mother
 - c). **Filicide**- the killing of a child
 - d). **Fratricide**- the killing of one's brother or sister
 - e). **Uxoricide**- the killing of one's wife
 - f). **Prolicide**- the killing of one's offspring
 - g). **Hosticide**- the killing of an enemy

- h). **Hospiticide**- the killing of one's host or guest
- i). **Femicide**- the killing of a woman
- j) **Infanticide**- the killing of an infant
- k). **Suicide**- the killing of one's self
- l) **Regicide**- the killing of a king or queen
- m). **Genocide**- the massacre of a people

Classification Under the Revised Penal Code

1. Factors Which Determine What Offense Arose from the Death of a Person

- a). The presence of qualifying aggravating circumstances
- b). The relationship between the accused and the victim
- c). Whether the victim is born or still a fetus
- d) The age of the victim

2. Classification of Crimes Resulting from the Death of a Person

- a). Destruction of Life: the killing of a human being. Question: X killed Y. What are the possible crimes which arose due to the killing? They may either be:
 - (i). Parricide
 - (ii). Murder
 - (iii). Homicide which includes
 - (a) Under Exceptional Circumstances
 - (b) In a tumultuous Affray
 - (c) In a duel
 - (iv). Giving Assistance to a Suicide
 - (v). Infanticide
 - (vi), Abortion

Crimes Involving Destruction of Life

Article 246. Parricide

Elements

1. A person is killed;
2. The deceased is killed by the accused
3. The deceased
 - a). Father or mother
 - b). Child whether legitimate or illegitimate
 - c). Legitimate ascendant
 - d). Legitimate descendant
 - e). Lawful spouse

Cases of parricide when the penalty shall not be *reclusion perpetua* to death:

1. parricide through negligence (art .365)
 2. parricide by mistake (art. 249)
 3. parricide under exceptional circumstances (art. 247)
- Relationship of the offender with the victim is the essential element of the crime.

Q: If a person wanted to kill a stranger but by mistake killed his own father, will it be parricide? Yes, but Art. 49 applies as regards the proper penalty to be imposed.

A stranger who cooperates and takes part in the commission of the crime of parricide, is not guilty of parricide but only homicide or murder, as the case may be. The key element in parricide is the relationship of the offender with the victim. (*PEOPLE vs. DALAG, GR No. 129895, April 30, 2003*)

- The law does not require knowledge of relationship. If a person killed another not knowing that the latter was his son, will he be guilty of parricide? Yes, because the law does not require knowledge of relationship between them
- The spouse must be the lawful spouse
 - The spouses maybe separated by judicial decree or separated in fact
 - The fact of marriage must be alleged in the Information otherwise the killing is homicide or murder as the case maybe, even if the fact of marriage was proved in the course of the trial.
 - The best evidence would be the marriage contract but even in the absence thereof, testimony witnesses may show the lawful relationship as the presumption of marriage also applies, or if the accused does not object to the claim of marriage.
 - In case of Muslim marriages Article 27 of P.D. 1083" The Muslim Code of Personal Laws" allows a Muslim to validly contract marriage with four wives, but the killing of the 2nd, 3rd or 4th wife will not constitute parricide because a Muslim would be punished and penalized more than a non-muslim by reason of a marriage which the law allows him to contract. It is parricide only if the one killed is the first wife.
- The child may be legitimate or illegitimate but should not be less than 3 days old. The father or mother maybe legitimate or not, but in case of other ascendant or descendant, they must be legitimate

Q: GF has a bastard son named BS who has a legitimate son named L. Is parricide committed if: (a) GF kills L (b) L kills GF

Q: Suppose BS is legitimate but L is illegitimate, would the answer be the same?

- The basis of the classification is the blood relationship in the direct ascending and descending lines hence:

- Killing of siblings (brother/sister) and other collateral relatives is not parricide
- Non-relatives or strangers who participate in the killing will be liable for homicide or murder as the case may be
- The killing maybe through negligence as when a father plays with his gun which went off and killed the wife
- If the accused is not aware that the victim is his relative, he will be charged for the actual crime committed but Article 49 will be applied to determine his penalty
- The crime may be aggravated by the circumstances which qualify murder but they will be considered as ordinary aggravating circumstances. For example: The husband may poison the wife or kill her by means of fire, or resort to treachery. Said circumstances will be appreciated as generic aggravating circumstances.

Article 247. Death or Physical Injuries Inflicted under Exceptional Circumstances

Introduction: It is the killing or wounding by one who surprised the spouse in the act of sexual intercourse with another, (called euphemistically **CRIMINAL CONVERSATION** or any illicit sex for that matter) or the minor daughter of the accused spouse and living with the accused spouse, in the act of sexual intercourse with her seducer

Article 247 does not define a crime but grants a privilege or benefit amounting to an exemption from punishment. Thus the commission of the crime under the situation contemplated would constitute an *Absolutory Cause*.

The killing or wounding is regarded as a justifiable outburst of passion.

The accused will be charged for parricide, Murder or Homicide or Physical Injuries, and it is up to the accused to prove the killing or physical injuries were under the circumstances conceived by Article 247. This is a matter of *defense*.

The sexual intercourse must be voluntary on the part of the offending spouse or daughter, otherwise the intercourse would constitute rape and the killing would become the justifying circumstance of defense of a relative.

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.

- The spouses must be legally married. If not the situation may only give rise to the mitigating circumstance of Passion or Obfuscation
- Meaning of the phrase "having surprised" (or **element of surprise**):

- They were the offending spouses with the partner or the daughter and her seducer who were caught by surprise. The phrase does not refer to the accused spouse.
- This includes the situation where the offended spouse had prior suspicion or knowledge of the infidelity but simply resorted to a strategy to catch the guilty parties spouse in flagranti.
- The surprise must take place in the very act of sexual intercourse, during the criminal conversation, not during the preparatory acts or after the sexual act

Q: Must the guilty spouse and partner be aware that they were "discovered" as to be literally surprised, or does Article 247 include situations where the offending spouses and partners were killed without them being aware they were discovered and caught in flagranti?

- At what point must the killing or wounding take place? It must be either:
 - a). During the discovery: i.e simultaneously with the discovery
 - b). Or immediately thereafter:
 - The strict traditional view held that there be no lapse of time from the discovery to the killing.
 - However, the better view is that Article 247 applies so long as there was no unnecessary interruption or break from the time of discovery to the pursuit and then to the moment of the killing or wounding. The discovery, pursuit, and killing must be one continuous process.
 - In the case of PP. vs. Abarca (153 SCRA 735) (one hour passed from the time of discovery to the time the accused went to look for a weapon, returned to look for the accused until he saw him inside a house playing mahjong) Article 247 was applied

because although an interval of time elapsed, the law however does not require the killing to be instantly or simultaneous with the discovery, so long as the killing was the proximate result of the outrage which overwhelmed the accused or that the killing was when the accused was still acting under the influence of the infidelity.

- With respect to the killing of the daughter and her seducer, the daughter must be a minor and the sexual intercourse must be in the dwelling of the accused parent and not elsewhere.

Effect if third persons are killed or wounded:

Per PP. vs. Abarca, a complex crime does not arise if a third person is killed or wounded from the act of the accused in shooting at the guilty spouse or the latter's partner, but the accused may be held liable for reckless imprudence

Example: The accused shot at the offending spouse and partner but the bullet exited and killed a Peeping Tom. If it was proven the killing falls under Article 247, the accused will be liable for the death of the Peeping Tom only if it was proven his presence was known to the accused and who did not take precautions to see that other people will not be hit by the bullet.

Penalty:

1. If death or serious physical injuries resulted, the accused will be imposed the penalty of *destierro*, which is intended more to protect him from the retaliation of relatives of the victim, than as a punishment.
2. If what were inflicted were less serious or slight physical injuries, there is no criminal liability

Article 248. Murder

Concept: It is the crime committed by the killing of a human being which does not constitute parricide or infanticide and where it is both alleged and proven that the killing was attended by any of the qualifying aggravating circumstances under Article 248.

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 waken 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.

- The concept of the qualifying circumstances are the same as in Article 14
 - EXCEPT for "outraging or scoffing at the person or corpse", which occurs after the victim is already dead, all the other circumstances occur either prior to or simultaneous with the act of killing. Scoffing or outraging includes doing any act upon the corpse which adds to the mental suffering or humiliation of the heirs of the victim or which offends the public.

Examples: (i) dismembering the corpse by cutting off the head (ii) urinating on it (ii) putting it on a sack and throwing the sack in a garbage pit (iv) stripping if off the clothes

- Where the circumstance pertains to the means, methods or forms, it is usually treachery which is preferred and the rest are absorbed; such as night time, advantage of superior strength, aid of armed men.
- Where treachery is present with other circumstances not relating to the means, methods or forms, (e.g. price, reward or promise) it is treachery which will be used to qualify and the rest will be considered as merely generic aggravating, provided they were duly alleged in the Information

- Where fire is used, the death of the victim must be the purpose or objective of the accused, such as burning his person, throwing him into a fire or pouring gasoline on his body and lighting it. If the intent or purpose was to destroy property by means of fire and it was incidental that a person was killed, the result is the special complex crime/composite crime of Arson Resulting in Homicide.
- If homicide or murder is committed with the use of an unlicensed firearm, such is considered as an aggravating circumstance. (RA 8294)
- **Rules for the application of the circumstances which qualify the killing to murder**
 1. That murder will exist with only one of the circumstances described in Art. 248
 2. That when the other circumstances are absorbed or included in one qualifying circumstance, they cannot be considered as generic aggravating.
 3. That any of the qualifying circumstances enumerated in Art. 248 must be alleged in the information

- Murder cannot be committed by negligence

Article 249. Homicide

Concept: The unjustified killing of a human being which does not constitute murder, parricide, or infanticide

The accused will be convicted of Homicide in the following instances:

- (1). When in the commission thereof, there is absent any of the qualifying circumstances of murder or
- (2). None of the qualifying circumstance has been alleged in the Information or
- (3). Even if a qualifying circumstance is alleged but it was not proved.

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.
- Intent to kill is conclusively presumed when death results; evidence of intent to kill is important only in attempted or frustrated homicide.

- Intent to kill usually shown by the kind of weapon used and part of the body.
- This may be committed by negligence. However where the victim does not die, the crime is either Reckless Imprudence Resulting in Physical Injuries (Serious, Less Serious or Slight). There is no crime of Reckless Imprudence Resulting to Frustrated or Attempted Homicide because intent is incompatible with negligence
- Where there are two or more persons who inflicted injuries on the person, all are liable for the death if:
 - a). There is conspiracy
 - b). There is no conspiracy but the wounds inflicted by each of the assailants are mortal wounds
 - c). There is no conspiracy but it cannot be determined who inflicted the mortal wounds
- As in all other killings, the accused may be convicted of homicide even if the body of the victim has not been found, so long as the corpus delicti has been proven.

In all crimes against persons in which the death of the victim is an element of an offense, there must be satisfactory evidence of (1) *the fact of death* and (2) *the identity of the victim*.

- **ACCIDENTAL HOMICIDE** - is the death of a person brought about by a lawful act performed with proper care and skill and without homicidal intent.
- Use of unlicensed firearm is an aggravating circumstance.

Article 250. Penalty for Frustrated Parricide, Murder or Homicide

Concept: Article 250 is the authority for the court to impose a penalty one degree lower the impossible penalty for frustrated or attempted murder, parricide or homicide. This is in the court's discretion considering the facts of the case. (Meaning: Instead of a penalty one degree for the frustrated stage, it imposes a penalty 2 degrees lower. Instead of 2 degrees for the attempted stage, it imposes a penalty 3 degrees lower)

Article 251. Death Caused in a Tumultuous Affray

Article 252: Physical Injuries Inflicted in a Tumultuous Affray

Concept: Death or physical injuries caused in a tumultuous affray takes place when a quarrel or fight breaks out among several persons, who do not belong to distinct groups, in a confused manner in the course of which a person is killed or wounded and the author thereof can not be ascertained.

- The tumultuous affray must be a free-for-all fight (labo-labo or "to-whom-it-may-concern") must involve at least four persons who fight against each other
- The participants do not belong to distinct groups otherwise all will be liable under the principle of implied conspiracy
- The resulting harm is either death, serious or less serious physical injuries, but not slight physical injuries and the order of priority as to who shall be liable is as follows:
 1. The author thereof i.e. the one who inflicted the fatal blow or who caused the injury
 2. Anyone who employed violence against the victim

Persons liable in a tumultuous affray (San Beda)

1. The person or persons who inflicted the serious physical injuries are liable.
 2. If it is not known who inflicted the serious physical injuries on the deceased, all the persons who used violence upon the person of the victim are liable, but with lesser liability.
- The participants may also be liable for Disturbance of the Public Order and for Malicious Mischief if they destroyed property.
 - When the quarrel is between a *distinct group of individuals*, one of whom was sufficiently identified as the principal author of the killing, *as against a common, particular victim*, it is not a "tumultuous affray" within the meaning of Art. 251 of The Revised Penal Code. (*PEOPLE vs. UNLAGADA, GR No. 141080, September 17, 2002*)

Elements of Art. 251

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 can not be ascertained who actually killed the deceased;
 6. The person or persons who inflicted serious physical injuries or who used violence can be identified.
- In this case, the victim may be a participant or non-participant thereof.

Elements of Art. 252

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 can not be identified;
 4. All those who appear to have used violence upon the person of the offended party are known.
- Injured must be a participant in the affray

Article 253: Giving Assistance to Suicide

Two ways of commission/ Acts Punished:

1. Assisting another to commit suicide, whether the suicide is consummated or not.

Examples: giving the means such as the poison, the knife, the gun or the rope. It may also include such acts of giving moral and psychological assistance such as encouragement, suggestions as to how and where to commit suicide. The penalty is Prison Mayor if the person died and it is Arresto Mayor medium-maximum if the person does not die.

2. Lending assistance to the extent of doing the killing himself.

The penalty is that of homicide

- The person wanting to commit suicide is not liable
- If the act is the second mode i.e the accused does the killing himself, and the person does not die, the crime is frustrated
- If in the course of the act of suicide a third person is killed or injured, or a property is destroyed, the crime is a complex crime but the suicidee is not liable. Example: The accused shot the suicidee, the bullet exited and killed another, the crime is Giving Assistance to Suicide with Homicide.

Euthanasia or mercy killing - act of ending the life of one who is terminally ill in a relatively painless manner.

It is a practice of painlessly putting to death a person suffering from some incurable disease.

A doctor who resorted to euthanasia may ne held liable for murder since euthanasia is not giving assistance to suicide. (San Beda)

Q: Does the law recognize the "Right to Die with Dignity" on the part of hopeless patients?

Q: Are the relatives liable if they remove the life sustaining gadgets to a brain dead patient?

Q: What about killing a wounded comrade in arms to prevent his capture by the enemy and the possibility of torture, or to prevent vital information from being forced from him?

Note: According Sir Sagsago, in the foregoing 2 questions, we should suspend the application of the law so that there would be no criminal liability.

Article 254. Discharge of Firearms

Concept: The crime committed by any person who shall discharge a firearm at another without intent to kill, and for any undisclosed personal purpose.

Elements:

1. Offender discharges a firearm against or at another person;
2. Offender had no intention to kill that person.
 - The person fired at should not die because if such be the case, the crime is homicide where intent to kill is immediately presumed and lack of intent becomes merely mitigating
 - If there is intent to kill, the crime is either attempted or frustrated homicide
 - The lack of intent to kill may be inferred from the fact that the gun was fired from a distance; or was between the legs, above the head, or to the sides, but not to the body
 - The reasons should not be known, else there would be a different crime based on the reason. Example: coercion (if the purpose is to compel the doing of an act or to prevent an act) or threats (threatening the commission of a wrong)
 - If no bullet came out as the gun jammed, the crime is frustrated discharge of firearm
 - If however injuries were suffered by the person fired at, the crime would be a complex crime, slight injuries would be separate offenses
 - If the gun was not pointed at a person or at his general direction, the crime is alarm and scandal
 - It is not applicable to police officers in the performance of their duties.
 - The crime is discharge of firearm even if the gun was not pointed at the offended party when it was fired, as long as it was initially aimed by the accused at or against the offended party.

R.A. 8294 : Amending Pres. Decree No. 1866 Penalizing the Possession of Unlicensed Firearms (Revilla Law)

Acts Punished:

1. The manufacture, sale, acquisition, disposition or possession of:
 - a). Firearms
 - b). Ammunitions
 - c). Instruments used or intended to be used in the manufacture of firearms and ammunitions

d). Explosives

2. The act of tampering of the firearms' serial number
3. Repacking or altering the composition of lawfully manufactured explosives
4. Carrying any licensed firearm outside of one's residence without any legal authority therefore i.e. permit to carry outside one's residence

Penalty

The penalty for possession of a firearm was originally fixed to be Reclusion Temporal Maximum to Reclusion Perpetua. The penalty now depends on the caliber of the firearm involved thus:

1. Prison Mayor medium period and a fine of P30,000.00 for high powered firearms, such as automatic firearms
2. Prison Correctional maximum and fine of P15,000.00 for low powered firearm such as paltiks

No Other Crime Rule

The crime of illegal possession is committed only if "NO OTHER CRIME WAS COMMITTED BY THE PERSON ARRESTED."

A. Meaning and Coverage of the rule

- The accused will not be convicted for Possession of the unlicensed firearm but for the other crime committed such that there can be no separate convictions for illegal possession of firearm.
- The rule does not extend to the possession of explosives.
- The "other crimes" includes those penalized with lower penalties such as alarm and scandal, slight physical injuries, threats and even unjust vexation. They include violation of special laws such as the Election Code or the Dangerous Drugs Law.
- Possession as a *special aggravating*.
 - The law however provides that if the "Other Crime" is murder or homicide, illegal possession becomes a special aggravating circumstance, which must be alleged in the information. The term "homicide" is used in its generic sense to include parricide, robbery with homicide, or where the crime involved a killing. (See for example: Evangelista vs. Siztoza: Aug. 9, 2001)
 - As such special aggravating, it cannot be offset by mitigating circumstances.

- When possession *absorbed* - But if the manufacture or possession is in furtherance of, or incident to, or in connection with, the crimes of rebellion, insurrection, sedition or coup d'état, such violation shall be absorbed.

B. Should the Gun be actually used in the commission of the other crime?

- The firearm need not be used actually in the commission of the other crime. It suffices that it was in the possession, whether actual or constructive, of the accused at the time he was committing another crime. This is because the wording of the law is "provided no other crime was committed by the persons arrested" (Agote vs. Lorenzo, 464 SCRA 60; Cupcupin vs. PP, 392 SCRA 202)
- Example: where the accused was convicted for illegal possession of drugs only although the gun was just found within the premises where he was arrested (PP. vs. Almeda, 418 SCRA 254)

C. QUESTIONS ON THE APPLICABILITY OF THE RULE:

Q: Must the initial arrest be for the other crime or does the rule include an arrest for the illegal possession but the accused committed intentionally committed another offense? Suppose the police saw a gun tucked in the waistline of X and moved to arrest him (Or police are serving a search warrant for unlicensed firearms). X however picked a stone and threw it a passing car/ or boxed another/or defamed a policeman, or otherwise intentionally committed another crime.

A: (Personal view): The rule should not apply to a situation where the arrest is purposely for the possession of the gun but gun-possessor intentionally commits another offense intentionally to avoid prosecution under P.D. 1866 as amended. He should be charged for Violation of P.D 1866 and for such other offense he intentionally committed.

In order the "No Other Crime Rule" to apply the commission of the other crime and the illegal possession be at least simultaneous with each other.

Q: Can the accused be charged simultaneously for Violation of P.D. 1866 as Amended, and for another offense?

A: Yes. This is to prevent prescription of violation of R.A. 8294 in the event the case for the "other crime" is dismissed or resolved in favor of the accused after the passage of years.

What is proscribed is double or multiple convictions and not the simultaneous filing of charges for violation of R.A. 8294 and violation of some other penal law.

It is only the court which has the power to determine and declare whether the gun-possessor committed an act amounting to a crime and is liable therefore. It is improper for the Prosecutor to assume that the gun-possessor committed acts amounting to a crime. The only way by which the court can exercise this exclusive power is when an Information is actually filed with it.

Thus the Prosecution may prefer to prove the "other crime" and the connection of the gun-possessor to it, specially if it carries a higher penalty, or The gun-possessor may plead guilty to the "other crime" and thereby escape liability for Violation of P.D. 1866 as amended.

It is for the accused to move to suspend the trial of the charge for Violation of P.D. 1866 as amended to await the final out come of the charge for the "other crime". If it is found he is guilty of said "other crime" then this is legal basis for the dismissal of the charge for Illegal Possession, but if he is acquitted, or the case against him is dismissed for any reason, then and only then may it be legally said that there was "no other crime" which was committed and the prosecution may move for the revival and trial of the charge for Illegal Possession. Prescription would not have set in, as opposed to a situation where a charge for Violation of P.D. 1866 is filed many years afterwards. (See Celino vs CA, 526 S 194)

Q: Is it a valid defense for the accused to seek a dismissal because he committed another crime but the victim therein refused to file a complaint?

A: Personal View: It is believed that since no formal charge was filed then there is "no other crime" to speak about. The rule therefore should be construed to mean there was no formal charge or accusation filed in court either by way of an Information or by a Complaint.

"Unlicensed Firearm" includes:

- (1) Firearms with expired license and
- (2). Licensed Firearms which were used without authority in the commission of a crime.

Example: Even if the gun is licensed to an agency but it was used to kill, it constitutes the aggravating circumstance of "Use of An unlicensed firearm" (Catalina Security Agency vs. Gonzales-Decano, 429 SCRA 628).

- Possession to be punishable must not just be a temporary, incidental, or casual or harmless

possession or control. There must be an **“Intent to Perpetrate the Act”** or **animus possidendi**-the prohibited act is done freely, consciously with knowledge that it is prohibited.

- There should be as many separate Informations to be filed corresponding to as many unlicensed firearms were possessed by the accused. Thus if two unlicensed armalites were possessed, then there be two separate charges.
- When an amnesty period is granted to holders of unlicensed firearms to surrender their firearms or apply for a license: (i) there can be no violation of P.D. 1866 during the period of amnesty and (ii) to be liable it must be alleged and proved that the possession was not to surrender the firearm, but that the accused intends to use it to commit another crime (Zuno vs. Dizon (1993) and PP. vs. Asuncion, 161 SCRA 490)

Article 255. Infanticide

Elements

1. A child was killed by the accused;
 2. The deceased child was less than 3 DAYS (72 hours) old. (Question: why 3 days, not 5 or 10?)
- The child must be born alive and is viable or capable of independent existence. But if it was born dead which fact is not known, the act may be considered as the Impossible Crime of Infanticide
 - Pursuant to the Heinous Crime Law, the penalty is Reclusion Perpetua to Death
 - Even if the accused are the parents, the name of the killing is still Infanticide not Parricide (but the penalty is the same)
 - Creates the special mitigating circumstance of “Concealment of mother’s dishonor” to benefit the mother or the maternal grandparents if they are the accused, PROVIDED the mother is of good reputation.

Abortion

Concept: The expulsion of the fetus from the mother’s womb in order to kill it. The crime is against the fetus and not against the mother.

Question: Does the Philippines recognize “The reproductive freedom of a woman”? (Pro-Life vs Pro Choice)

Under Philippine Law, there is no legal abortion except only if it is necessary to save the mother’s life (Therapeutic abortion) under Article 4 of Article 11 (State of Necessity)

Kinds:

A. As to the manner of commission:

1). Article 256. Intentional Abortion

Acts punished

- a. Using any violence upon the person of the pregnant woman (connotes forcing an actual physical contact by the woman with an outside object, such as by boxing, kicking or pressing , throwing, pushing);
- b. Acting, but without using violence, without the consent of the woman. (By administering drugs or beverages or mixing of abortives with the food or drinks)
- c. Acting (by administering drugs or beverages), with the consent of the pregnant woman.

Elements

- a. There is a pregnant woman;
- b. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;
- c. 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;
- d. The abortion is intended.

2). Article 257. Unintentional Abortion

Elements

- a. There is a pregnant woman;
- b. Violence is used upon such pregnant woman without intending an abortion;
- c. The violence is intentionally exerted;
- d. As a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

- The knowledge by the accused that the woman is pregnant is immaterial
- The violence may have been inflicted intentionally or by reckless action
- If both the mother and fetus are killed, the crime would be homicide/murder with unintentional abortion
- Examples: (i) pushing a pregnant woman causing her to fall down so that her stomach hits an object causing her to abort (ii) a reckless driver caused his jeepney to hit a post whereby a woman passenger aborted

B. As to who caused the abortion:

1. Abortion by the mother herself
 - a). If the mother attempts to commit suicide but does not die but the fetus is killed, she is not liable for unintentional abortion
 - b). If the purpose is to conceal her dishonor, this is a special mitigating circumstances and the penalty is one degree lower
2. Abortion by a stranger but with the mother's consent
3. Abortion by the woman's parents but with the consent of the woman

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.
4. Abortion by a physician or a midwife. The penalty is higher than the abortion by others

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.

As to Pharmacists, the elements are:

1. That the offender is a pharmacist.
2. That there is no proper prescription from a physician.
3. That the offender dispenses any abortive.

As to pharmacists, the crime is consummated by dispensing abortive without proper prescription from a physician. It is not necessary that the abortive was actually used.

It is immaterial that the pharmacist knows that the abortive would be used for abortion. Otherwise, he shall be liable as an accomplice should abortion result from the use thereof.

- When the mother is killed, her death is complexed with the killing of the fetus either as (i) Homicide with Intentional Abortion if the killing of the fetus is intentional or (ii) Homicide with Unintentional Abortion if the killing of the fetus is unintentional.
- But if there was no violence employed but the woman was intentionally frightened which resulted to abortion:
 - a). If grave threats were employed precisely to cause the woman to abort the crime is Grave Threats with Intentional Abortion
 - b). If only light threats were employed, the two are separate offenses
 - c). If there was no intention to cause her abort the crime is simply threats
- If abortives are given to a woman to cause her to abort in the belief she is pregnant when in truth she is not, the crime is the Impossible Crime of Abortion. The same is true if the abortives were inherently inadequate or ineffectual. But if the abortives are capable of inducing an abortion but was prevented by medical intervention, the crime is Frustrated Abortion.
- Suppose the woman was purposely placed in such an emotional, mental and psychological depression so that she will abort? Personal opinion: The crime is Intentional Abortion under the second mode

Duels

Article 260. Responsibility of Participants in A Duel

Article 261. Challenging to A Duel

Concept: This is a "*Gentlemen's Fight*".

DUEL - It is a formal man-to-man combat with weapons between two persons who fight according to certain terms and conditions previously agreed upon which govern the conduct of the combat.

It is a formal or regular combat previously concerted between 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 other conditions of the fight.

The combatants are assisted by so called "SECONDS" who arrange the terms of the combat, such as the place, time, the weapons to be used, whether it is a fight to the death or a fight for honor.

As a rule, self-defense cannot be invoked EXCEPT when there is violation of the agreement to fight.

Acts Punished:

a. Under Art 260:

1. Killing the adversary: this is punished with the penalty of homicide
2. Inflicting serious or less serious physical injuries
3. Merely engaging in combat even if no injuries or only slight injuries are inflicted
4. Acting as seconds (punished as accomplices)

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.

b. Under Art 261

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.

Persons responsible under Art. 261 are:

1. Challenger
 2. Instigators
- This kind of fights is already passé
 - Neither one of the combatants can claim self-defense
 - If there are no formal conditions, the fight is an ordinary fight and the laws on crimes against persons will apply
 - One who challenges another to a fight maybe liable for threats

Physical Injuries

Kinds:

- (a) Mutilation
- (b) Serious Physical
- (c) Less Serious and
- (d) Slight

How inflicted:

- a). By wounding, beating, mutilating, assaulting. This may be with or without a weapon
- b). By administering injurious substances or beverages, such as drugs, spoiled food
- c) By taking advantage of the weakness of the mind or credulity of the victim, such as convincing a person

of low intelligence that he can fly, resulting to his own injuries, or inducing him to contort his body

- If the victim dies, the injuries are absorbed if they were inflicted by the same accused but if by third persons who are not in conspiracy with the one who inflicted the mortal wound, the said injuries are separately punished
- Always in the consummated stage and there are no attempted or frustrated stages.
 - Physical Injuries is a crime based on the result, specifically on the gravity of the injury. If there is no injury, not even the infliction of pain, then there is no crime of physical injuries.

Article 262. Mutilation

Concept: To mutilate is to chop off, to clip, to lop off, a portion of the body which protrudes (not internal organs).

Kinds/ Acts Punished

1. Intentionally mutilating an essential organ for reproduction (**castration**)

Elements

1. There be a castration, either totally or partially, that is, mutilation of organs necessary for generation, such as the penis or ovarium;
 2. The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction
- Vasectomy is not mutilation. It does not entail the taking away of male reproductive organ.
2. Intentionally mutilating any other part of the body such as the arms ears, legs, nose (**mayhem**)

- The purpose must be precisely to deprive the victim of the use of the organ or part of the body which was mutilated. If not the offense would be ordinary physical injuries. Hence this cannot be committed by negligence. It is always intentional.
- Example: (a) The case of Mr. Bobbit (b). Cutting off the arm of a champion bowler so he can not bowl anymore. (c). Cutting off the legs of a swimmer so he cannot make use of them.
- Cruelty is inherent in mutilation. This is the only crime where cruelty is an integral part and is absorbed therein. If the victim dies, the crime is murder qualified by cruelty, but the offender may still prove that there is no intention to commit so grave.

Physical Injuries Proper

Introduction: When will the infliction of injuries constitute attempted/frustrated Homicide or physical injuries?

The absence or presence of an Intent to Kill determines what crime was committed. Such intent must be proven clearly and maybe inferred from:

1. The motive of the accused
2. The nature, kind, and type of weapon used
3. The location, number and nature of the wounds of the victim
4. The manner of the attack as when it was treacherous
5. The persistence of the attack
6. Utterances of the accused accompanying the attack

Physical Injuries vs. Attempted or Frustrated homicide

PHYSICAL INJURIES	ATTEMPTED OR FRUSTRATED HOMICIDE
The offender inflicts physical injuries.	Attempted homicide may be committed, even if no physical injuries are inflicted.
Offender has no intent to kill the offended party	The offender has an intent to kill the offended party.

Article 263. Serious Physical Injuries

How committed

1. By wounding;
2. By beating;
3. By assaulting; or
4. By administering injurious substance.

Serious Physical Injuries (Serious Physical Injuries are subdivided into four kinds for purposes of determining the penalty to be imposed)

1. When the injured person becomes insane, imbecile, impotent or blind (total blindness) in consequence of the physical injuries inflicted
 - The blindness must be total in both eyes
 - The impotence (inability to have engage in sex) be total and not just a sexual dysfunction
2. Loss of a Principal Member /Organ of the Body. When the injured person -
 - a. Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, a foot, an arm, or a leg (total loss);
 - 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

Deformity or disfigurement - a permanent, visible ugliness which can not be cured by the action of nature. These must be inflicted on parts of the body which are normally exposed and not usually covered by clothes.

REQUISITES OF DEFORMITY

1. Physical ugliness
2. Permanent and definite abnormality
3. Must be conspicuous and visible

The crime remains even if the victim undergoes surgery later or face lift or artificial means to cover up the ugliness.

Examples: A scar on the face; loss of a front tooth not the molars or the front baby tooth as this can be replaced; slicing off the earlobe.

- b. Loses any other member of his body (Loss of a non-principal member of the 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.

Illness includes the healing period and not just the actual number of days of confinement in the hospital.

- The penalty is higher if (Qualifying Circumstances):
 - (1) it is committed against the relatives who maybe victims of parricide (conformably with the principle that the alternative circumstance of relationship is aggravating in grave or less grave offenses) and
 - (2) attended by the qualifying circumstances of murder.

But these provisions will not apply if the injury of a child was caused by excessive chastisement by a parent.

- If the victim is a child and the accused is the parent, even if the child did not suffer any injury but the cruel and unusual punishments were

inflicted or he was subjected to humiliation, the crime is Child Abuse under R.A. 7610.

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

Concept: The crime which result when injuries are inflicted upon a person which (1) shall incapacitate him for labor ten days to 30 days or (2) shall require medical attendance for the same period

ELEMENTS:

1. The offended party is incapacitated for labor for 10 days or more but not more than 30 days, or needs attendance for the same period.
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.

Article 266. Slight Physical Injuries and Maltreatment

Kinds:

1. Where it incapacitated the victim from labor or required medical attendance from one to nine days
2. Where the victim is not incapacitated from his habitual work or do not require medical attendance. Example: boxing him on the stomach

3. Ill treatment of another by deed without causing injury but the intention is to cause physical pain (such as pulling the hair).

- When there is no evidence of actual injury, it is only slight physical injuries.
- Supervening event converting the crime into serious physical injuries after filing the information for slight physical injuries can still be the subject of a new charge.

R.A. 8049 The Anti Hazing Law

HAZING - An initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or any organization which places the neophyte in some embarrassing or humiliating situations or otherwise subjecting him to physical or psychological suffering.

Requirements:

- (1) A written notice to the school authorities from the head of the organization seven days prior to the rites
- (2) should not exceed 3 days in duration
- (3) presence of 2 representatives of the school or organization

Persons liable:

1. Officers and members who actively participate
 2. Owners of the place as accomplice if the he has actual knowledge but failed to take action to prevent
 3. Parents of officers or members where the hazing took place who have actual knowledge but failed to prevent
 4. School authorities who have knowledge but failed to take action are liable as accomplices
 5. Officers, former officers, alumni who planned the initiation
 6. Officers or members who induced the victim to be present at the hazing
 7. Advisers who failed to prevent the hazing
- The presence of any person during the hazing is prima facie evidence of participation therein as a principal unless he prevented the commission of the prohibited acts.
 - The mitigating circumstance that there was no intention to commit so grave a wrong shall not apply.

Penalties

If there was death, rape, sodomy or mutilation the penalty is reclusion perpetua. For other injuries, the penalty is higher than those provided under the Revised Penal Code. Lack of Intent to commit so grave a wrong is not allowed as a mitigating circumstance.

RA. 7610 The Child Abuse law

1. Includes any form of physical, psychological, or sexual abuse, and criminal neglect (that diminishes the worth of the child)
2. If the victim of the Mutilation or Physical Injuries (Par. 1) is under 12 years old, the penalty under the Penal Code is higher, it is Reclusion Perpetua.
3. If the act upon the minor is already punished by the RPC, it can not be penalized by RA 7610.
 - 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.

Art. 266-A Rape

Introduction: Rape used to be a under Crimes Against Chastity as Article 335 and a private crime. R.A. 8353 has made rape a **Crime Against Persons** as Article 266-A. It is a **public crime** hence:

- (1) There is no need for a prior denunciation by the victim to start criminal proceedings and
- (2) Any person may bring the crime of rape to the attention of the authorities, which will be the basis for police investigation into the crime and subsequent filing of charges.

Expanded Concept of Rape

2 Kinds of Rape:

1. **The Traditional or Conventional Concept** which is the Penile Penetration into the female sex organ and which can be committed by a male only and where the victim is a female only

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.
2. **Rape Through Sexual Assault** either a penile insertion into the mouth or anus or a non-penile insertion into the sex organ or anus

Elements (under paragraph 2)

1. Offender commits an act of sexual assault;
 - 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

How Conventional Rape (*Penile Penetration*) is committed (*an elaboration of the elements under par. 1*)

1. Where the Sex Is Objected to:

a). Through Force, threat, or intimidation

- This presupposes that there was resistance and not just an initial reluctance but there must be a physical overt act manifesting resistance. Mental or verbal resistance is not sufficient. The old doctrines requiring tenacious resistance still apply.
- There is no degree of force required to overcome the resistance as any degree of force, intimidation to compel the victim's submission to the desire of the accused is sufficient
- Where the accused is the father or in case of incestuous rape, resistance is not required due to the moral ascendancy exercised by the father over the daughter
- If at any moment the victims manifest, through overt acts that she does not want sex, any sex with her against her will is rape

b). When the victim is deprived of reason or otherwise unconscious

- Partial deprivation of reason is sufficient which may be due to reasons which are organic, or due to lack of sleep, or fatigue, or was induced by drugs. As when the victim is in a coma or was in that stage of being "half-asleep-half awake"

Q: Suppose substances (Female Viagra) were administered to the victim, without her knowledge which incited her passions and aroused her sexually, which thus made it easier for the accused to have sex with her? NO, because there is no deprivation of reason.

2. **Where there was no objection to the sex or it was consented to:**

a). *By means of fraudulent machinations or grave abuse of authority*

Fraudulent Machination is the use of artifice or deceit to obtain the consent of the victim. The woman consented to the sex by virtue of the artifice or deceit. There was a seduction.

- The most common form of artifice is a false promise of marriage which is the excuse to have sex with the woman. However the solicitation must be shown to be persistent as to overcome the woman's defenses
- If the artifice is a promise of money or material things, there is no rape

Grave abuse of authority connotes that the accused enjoyed a position of influence or ascendancy over the victim which he gravely abused to secure the consent of the woman to have sex with him. The relationship or position of influence or ascendancy may be due to :

- (i). Blood relations
- (ii) Human relations as officer of an organization over members
- (iii) Education as a teacher over a student
- (iv). Employment as the boss seducing the secretary
- (iv). Religion as the minister over his church member
- (v) Public office as a congressman over a poor girl

b). *in cases of Statutory Rape*

- (i). The victim is under 12 years of age. This refers to the *biological age*.
- (ii) The victim is demented. This includes the insane, imbecile, feeble minded or mental retardate provided their *mental age* must be that of a woman below 12 years of age.

Rape Through Sexual Assault, (an elaboration of the elements under par. 2)

The circumstances are the same as in the case of Conventional Rape but the accused:

- a). Inserts his penis into another person's mouth or anal orifice.
 - The accused is any person with a penis and the victim may be a male or female

- The person with a penis actively initiates the insertion and not when the person is the passive participant, as when he was asleep in which case, if the act was without his consent, he may file a case of acts of lasciviousness

b) Or any object or instrument into the genitalia or anal orifice of another (*Object Penetration*)

- The accused maybe a female or male and the victim may also be a male or female
- The insertion must be with "lewed design" i.e to obtain sexual gratification, otherwise it may either be physical injuries or slander by deed.
- This absorbs the crime of Acts of Lasciviousness
- The term object includes parts of the human body like a finger, tongue or toe. "The insertion of one's finger into the genitalia or anal orifice of another constitutes rape by sexual assault and not merely an act of lasciviousness (PP vs. Fetalino, 525 SCRA 170)

Classification of Rape for Purposes of Penalty (NO LONGER APPLICABLE)

1. **Simple Rape** - the penalty is Reclusion Perpetua

2. **Qualified Rape (Art 266-B)**

- a). Where the Penalty is Reclusion Perpetua to Death as in the following:
 - (i). Rape is committed with the use of a deadly weapon or by two or more persons
 - (ii). When by reason or on the occasion of rape the victim became insane
- b). Where the penalty is death
 - (i). when by reason or on the occasion of consummated rape, homicide is committed (Special Complex Crime of Rape)
 - (ii). when any of the 10 qualifying aggravating circumstances are alleged specifically in the Information and duly proven
 - (1) 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
 - (2) Where the victim was under the custody of the police or military authorities, or other law enforcement agency;
 - (3) 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;

- (4) 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;
- (5) Where the victim is a child under 7 yrs of age;
- (6) 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;
- (7) 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;
- (8) Where the victim has suffered permanent physical mutilation;
- (9) Where the pregnancy of the offended party is known to the rapist at the time of the rape; or
- (10) Where the rapist is aware of the victim's mental disability, emotional disturbance or physical handicap.

Special Complex Crimes/Composite Crimes

1. Rape Resulting to Insanity
2. Rape with Permanent Physical Mutilation or Disability
3. Attempted Rape with Homicide
4. Rape with Homicide

Note: In Nos. (1) and (2) the person who became insane or suffered mutilation is the victim of the rape whereas in Nos. (3) and (4) the victim of the homicide may be any person and not necessarily the victim of the rape.

Defenses Which May Extinguish Criminal Liability Or Criminal Action / Effect of Pardon (Art 266-C)

1. The subsequent valid marriage between the offender and the offended party extinguishes (a) the criminal action i.e the case will be dismissed which presupposes the marriage took place before or during the filing of the case or (b) the penalty i.e. the accused, if convicted, will not longer serve the penalty which presupposes the marriage took place after conviction

Since rape is now a crime against persons, marriage extinguishes the penal action only as to the principal but not as to his co-principals, accomplices and accessories.

2. Subsequent Forgiveness by the Wife Upon the Husband which maybe given before, during the case, or after conviction of the husband EXCEPT when the marriage is void ab initio. This is an exception to the rule that forgiveness by the offended party shall not extinguish the penal action in crimes against person.

Q: Is there Marital Rape or, can the husband be guilty of raping the wife?

A: (Personal opinion) No, as to rape in the traditional concept.

1. The marital union maintains the husband's right to the physical access to the wife i.e. Right of Consortium based on connubial relations
2. There was prior marital consent as contained in that absolute answer to the question: " Do you give yourself to him as your lawful husband?" (Note also the Biblical admonition that Woman should submit to their husbands)
3. There is absolutely no attempt to define and categorically create marital rape as a crime
4. There can be no crime by implication (Principle of Legality)
5. The women sponsors did not insist on it although originally they conceived of it. They left it for the courts to determine.

At most the husband will be guilty of *coercion*, unless he acted in conspiracy, or was a principal by inducement, or acted as an accomplice or accessory.

However, the husband maybe guilty of **rape** if there is *legal separation* between the spouses, and rape by sexual assault, this being unnatural.

- Rape has only two stages, the attempted and consummated.
- *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.
- The principle that rape is consummated by the slightest penetration applies to both types of rape.
- The character of the victim is immaterial as rape maybe committed even against a prostitute.
- Rape is not a continuing offense

- Several sexual acts on one occasion is one rape only as when the girl is kept in a room for two hours and the accused had sex for three times.
- But Sex on different occasions constitutes different and separate crimes.
- Where there are two or more rapists who acted in conspiracy, all are liable for each of rape committed by each one of them and for those committed by their co-accused. Thus if 3 raped the same girl, all will be liable for 3 separate rapes.
- If there be several victims, there are as many rapes corresponding to the number of victims
- For purposes of conviction the following principle is observed:
 - A rape charge is easy to make, difficult to prove but more difficult for the accused, though innocent, to disprove.
 - In view of the intrinsic nature of rape where generally only two persons are involved, the testimony of the complainant must be scrutinized with extreme caution (HELL HATH NO FURY LIKE A WOMAN SCORNED).
 - The evidence for the prosecution must stand or fall on its own merits and cannot draw strength from the weakness of the defense evidence

EVIDENCE WHICH MAY BE ACCEPTED IN THE PROSECUTION OF RAPE:

1. Any physical overt act manifesting resistance against the act of rape in any degree from the offended party; or
2. Where the offended party is so situated as to render him/her incapable of giving his consent

Indemnity: for the fact of rape alone

- Simple rape is P50,000.00 for each and every conviction for rape, for each and every accused
- Qualified: P75,000.00
- This is in addition to moral damages which has been set at P50,000.00 and P75,000.00 respectively for simple and qualified rape, without need of evidence since, when a woman is raped, it is presumed she underwent moral suffering
- In incestuous rape, the court pegged P25,000.00 "to set an example for the public good"

TITLE IX.

CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Introduction: These crimes are committed principally by private persons. If a public officer participates, the crime must come from a private person as the principal accused, otherwise the crime would be a crime against the fundamental laws of the state.

Crimes against liberty

1. Kidnapping and serious illegal detention (Art. 267);
2. Slight illegal detention (Art. 268);
3. Unlawful arrest (Art. 269);
4. Kidnapping and failure to return a minor (Art. 270);
5. Inducing a minor to abandon his home (Art. 271);
6. Slavery (Art. 272);
7. Exploitation of child labor (Art. 273);
8. Services rendered under compulsion in payment of debts (Art. 274).

Crimes against security

1. Abandonment of persons in danger and abandonment of one's own victim (Art. 275);
2. Abandoning a minor (Art. 276);
3. Abandonment of minor by person entrusted with his custody; indifference of parents (Art. 277);
4. Exploitation of minors (Art. 278);
5. Trespass to dwelling (Art. 280);
6. Other forms of trespass (Art. 281);
7. Grave threats (Art. 282);
8. Light threats (Art. 283);
9. Other light threats (Art. 285);
10. Grave coercions (Art. 286);
11. Light coercions (Art. 287);
12. Other similar coercions (Art. 288);
13. Formation, maintenance and prohibition of combination of capital or labor through violence or threats (Art. 289);
14. Discovering secrets through seizure of correspondence (Art. 290);
15. Revealing secrets with abuse of office (Art. 291);
16. Revealing of industrial secrets (Art. 292).

Article 267. Kidnapping and Serious Illegal Detention

Introduction: Art. 267 lays down the penalty for kidnapping and enumerates when the detention becomes serious. The concept is of American origin

Elements

1. Offender is a private individual;
2. He kidnaps or detains another, or in any other manner deprives the latter of his liberty;
3. The act of detention or kidnapping must be illegal;
4. In the commission of the offense, any of the following circumstances is present:

- a. The kidnapping lasts for more than 3 days;
 - b. It is committed simulating public authority;
 - c. Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
 - d. The person kidnapped or detained is a minor, female, or a public officer.
- To kidnap is to forcibly take a person from he has a right to be (such as his place of work, residence, rest and recreation, school, street, park or public place) and bring him to another. The taking is always without the consent of the victim. Kidnapping need not be followed by detention as where the talking was only to briefly restrain the victim. It is usually for ransom.
 - To "detain" is to deprive a person of his liberty or restrict his freedom of locomotion or movement, and may not involve a kidnapping. This includes the following situations:
 - a). Lock up or actual physical deprivation of the personal liberty by confinement in an enclosure
 - b) Immobilizing the victim though he has not been placed in an enclosure
 - c). by placing physical, moral or psychological restraint on his freedom of locomotion or movement

Example: The Mayor confronted a DENR Inspection team, calls for reinforcements, refuses their request to leave, orders them to go with him and allows them to leave only the following day.

Held: "The curtailment of the victim's liberty need not involve any physical restraint upon the victim's persons. If the acts and actuations of the accused produced such fear in the mind of the victim sufficient to paralyze the latter, to the extent that he victim is compelled to limit his own actions and movements in accordance with the wishes of the accused, then the victim is detained against his will" (Aslega vs. People, Oct. 01, 2003)

- d). The detention may either be Serious Art. 267 or Slight (Art. 268)

Persons Liable.

1. The offender is a private person and not a Public Officer else the crime is Arbitrary Detention, unless the latter has no duty to arrest or order the detention of another.
2. One who furnished the place of detention is liable as an accomplice unless he was in conspiracy with the other accused.

The circumstances which make the detention serious are:

1. The kidnapping or detention shall have lasted more than 3 days, regardless of who the offended party is;
2. It is committed by simulating public authority;
Example: a person represents himself to be a police investigator who tells victim he will bring him to the police station, but brings him elsewhere
3. If serious physical injuries were inflicted or threats to kill were made;
4. If victim is a minor, female or public officer, no matter how long or how short the detention is. In case of minors, the kidnapper should not be the parent.

QUALIFYING CIRCUMSTANCES: DEATH PENALTY IS IMPOSED

1. Purpose is to extort ransom
2. If victim is killed, raped or tortured as a consequence

Kidnapping for Ransom

The victim is held hostage until demands of the kidnapper are met. The penalty is death.

Ransom is any consideration, whether in the form of money, articles of value, or services or favors, for the release of a person.

It need not be given or received it being sufficient that a demand was made

Examples: (i).The son of the Judge will be released if the Judge dismisses a case or allows the bail to be reduced (2) The grandson of a physician will be released if the physician will perform an operation on the mother of a friend of the kidnappers (3) The wife of a politician will be released if the husband makes a public apology (4) The pupils of a school will be released if the school lowers its tuition fees.

New Special Complex/Composite Crimes

1. Kidnapping/Serious Illegal Detention with Homicide

- a). The person killed is the victim of the kidnapping or illegal detention. If the person killed is a third person, such as the bodyguard, the driver or an innocent person, it is article 48 which applies and the crime is an ordinary complex crime.
- b). Hence previous decisions which say the crime is either murder or kidnapping depending on the intention of the accused do not anymore hold water. It is enough the victim was killed

whether the original intention was to kill or to detain. Regardless of the original intention.

- c). There is no kidnapping with murder but only murder where a 3-year old child was gagged, hidden in a box where it died and ransom asked. The ransom is only a diabolic scheme of the accused to murder the child, to conceal his body and demand money before the discovery of the cadaver. (San Beda)

2. Kidnapping/Serious Illegal Detention with Rape.

The victim of rape is the victim of kidnapping and not a third person else the rape is a separate offense

Includes a situation where several rapes are committed

The taking way must not be with lewd designs

The original idea was not to rape.

3. Kidnapping /Serious Illegal Detention with Physical Injuries as a result of torture or dehumanizing acts

Q: A Woman was kidnapped, ransom was demanded, and then later was killed. What crime was committed?

A: Kidnapping for Ransom with Murder. (PP. vs. Ramos: Oct. 12, 1998)

Q: Suppose the victim was also raped before being killed?

A: It is still Kidnapping for ransom with Murder. The rape will be considered as an aggravating circumstance.

Q: The robbers held hostage the customers of a bank as human shield against the police. Are they also liable for detention?

A: The detention in robbery is absorbed unless the victims are detained to compel delivery of money

Distinguished from Other Crimes Which Involved Detention and Taking Away of a Person

1. **From coercion-** where there is no intent to detain or deprive a person of his liberty.

Examples:

- a). dragging a woman to a waiting car but was let go due to her remonstrations or because she was able to wrest herself free.
- b). a debtor was forcible taken from his store and brought to a house to compel him to pay
- c). A woman was taken to a house and kept there in order to break her will and agree to marry the accused

- d). Where a woman was seen dragging along a missing boy who was crying and refusing to go with her

2. **Abduction-** where the taking away of the woman against her will (Forcible Abduction) or by artifice upon a minor girl (Consented Abduction)) was with lewd designs, which was present at the very moment of the taking away, as it was the purpose thereof.

3. Vs Illegal Detention

ILLEGAL DETENTION	ARBITRARY DETENTION
Committed by a private individual who unlawfully kidnaps, detains or otherwise deprives a person of liberty.	Committed by a public officer or employee who detains a person without legal ground
Crime is against personal liberty and security	Crime against the fundamental law of the State

Article 268. Slight Illegal Detention

Concept: The crime committed by a private person who detains another without the attendance of any of the circumstances under Article 267. The penalty therefore is the same penalty imposed upon one who furnished the place of detention.

Elements

- 1. Offender is a private individual;
- 2. He kidnaps or detains another, or in any other manner deprives him of his liberty;
- 3. The act of kidnapping or detention is illegal;
- 4. The crime is committed without the attendance of any of the circumstances enumerated in Article 267.

Special Mitigating Circumstances

- (1). If the victim is released within 3 days
- (2) without the purpose having been attained and
- (3) before institution of criminal proceedings. Note that this special mitigating does not apply if the detention is serious.

The 3 must concur.

If the victim is female, the detention is under 267, voluntary release is not mitigating.

Thus if the woman victim was released after one hour, the same is not mitigating since the detention is already serious.

Article 269. Unlawful Arrest

Concept: It is the crime committed by any person, whether a private person or public officer, who arrest or detains a person without reasonable ground therefore, for the purpose of delivering him to the proper authorities.

Elements

1. Offender arrests or detains another person;
 2. The purpose of the offender is to deliver him to the proper authorities;
 3. The arrest or detention is not authorized by law or there is no reasonable ground therefor.
- The public officer is one who has no power to arrest or order the detention of another, else it is arbitrary detention.
 - The situation is that the arrest is not a valid warrantless arrest but the victim is brought before the police or prosecutor’s office or court, for the purpose of filing charges against the victim.
 - If the purpose is otherwise, the crime may be detention or coercion or abduction.
 - The term is not “Illegal Arrest”.
 - This maybe complexed with Incriminatory Machination. E.g. A person placed a knife in the bag of another and then arrests him and brings him to the police station
 - No period of detention is fixed by law under Art. 269.

DELAY IN THE DELIVERY OF DETAINED PERSONS (Art. 125)	UNLAWFUL ARREST (Art. 269)
Detention is for some legal ground	Detention is not authorized by law
Crime is committed by failing to deliver such person to the proper judicial authority within a certain period	Committed by making an arrest not authorized by law

Article 270. Kidnapping and Failure to Return A Minor

Concept: The crime committed by a person who as entrusted with the custody of a minor person who shall deliberately fail to restore the latter to his parents or guardians

Elements

1. Offender is entrusted with the custody of a minor person (whether over or under seven years but less than 21 years of age);
2. He deliberately fails to restore the said minor to his parents or guardians.

- The term: Kidnapping” is not accurate since the gist of the offense is the failure to return the minor to his parents or guardians
- The accused maybe a parent.
- Example, a wife is separated from the husband. The husband was awarded custody of their child. The wife was allowed to bring the child to her house on a Friday but to return him on Monday. She failed to do so. ”

Article 271. Inducing A Minor to Abandon His Home

Concept: The crime committed by any person who shall induce a minor to abandon the home of his parents or guardians or persons entrusted with his custody. This includes a parent.

Elements

1. A minor (whether over or under seven years of age) is living in the home of his parents or guardians or the person entrusted with his custody;
 2. Offender induces said minor to abandon such home.
- The Home includes the temporary boarding house or dorm .
 - There must be no force employed threat or intimidation but through the use of false representations. Such as making him believe to become a star in Manila.

Crimes Involving Involuntary Servitude

1. Slavery Proper under Art. 272.

Concept: The crime committed by a person who shall purchase, sell (kidnap) or detain a human being for the purpose of enslaving him.

Elements

1. Offender purchases, sells, kidnaps or detains a human being;
 2. The purpose of the offender is to enslave such human being.
- If the purpose is to assign the person to some immoral traffic, the penalty is higher. This is referred to as **White Slavery** (Why the term white? To distinguish it from the slavery of Black Africans the purpose of which is to make them work as field hands, laborers, house-helpers, against their will and without compensation)

Note: There are two kinds of White Slavery or "pimping" (supplying women as partners for sex)

1. That under Article 272 where the accused is not engaged in prostitution
2. That under Article 341 where the accused is engaged in the business of prostitution

- There is a Flaw in the law: If the detention is not to enslave or to assign to immoral traffic, the crime is serious illegal detention punishable by reclusion perpetua whereas, if the purpose is to enslave the woman the penalty is prison mayor, and if it white slavery the penalty is prison mayor maximum

2. **Exploitation of Child Labor** under **Article 273**

Concept: The crime committed by any person who shall retain a minor in his service as payment of the indebtedness of the minor's ascendant, guardian or person entrusted with the custody of the minor.

Note: The accused is a creditor

Elements

1. Offender retains a minor in his services;
2. It is against the will of the minor;
3. It is under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.

3. **Services Rendered Under Compulsion In Payment Of A Debt (Art 274)**

Concept: The crime committed by a creditor who compels the debtor to work for him as household servant or farm laborer. If in some other capacity as office worker for example, the crime is coercion.

Elements

1. Offender compels a debtor to work for him, either as household servant or farm laborer;
2. It is against the debtor's will;
3. The purpose is to require or enforce the payment of a debt.

Q: What are the crimes committed by a Creditor in relation to the debt owed him?

A: They are:

1. Exploitation of Child labor (Art. 273)
2. Services Rendered Under Compulsion As Payment Of Debt (Art. 274)
3. Light Coercion (Art. 287) seizing, by violence, a property of a debtor to apply as payment of a debt

THE ANTI TRAFFICKING IN PERSONS ACT OF 2003.

The provisions of Articles 271 to article 274 must be read in the light of the provisions of this law.

Per Section 3 **Trafficking In Persons** means:

1. The recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

- It is any form of unlawful activity the subject of which is the (a) any form of sexual exploitation of a person (b) forced labor or services or slavery (c) servitude (d) removal or sale of human organs

2. The recruitment, transportation, transfer, or harboring or receipt of a child for the purpose of exploitation shall also be considered as "trafficking in persons" even if it does not involve any of the means set forth in the preceding paragraph

Acts punished:

1. To recruit, transport, transfer, harbor, provide, or receive a person by any means for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

Debt bondage- the act of pledging of personal services or labor by the debtor or of any person under his control as security or payment of a debt when the length and nature of services is not clearly defined or when the value of the services as reasonable assessed is not applied toward the liquidation of the debt

2. To introduce or match for money or profit or any other consideration, any person or Filipina woman to a foreign national for the same purposes or exploitation.
3. To offer or contract marriage, real or simulated, for said purposes
4. To undertake or organize sex tours and travel plans

5. To maintain or hire a person to engage in prostitution or pornography
6. To adopt or facilitate the adoption of persons for said purposes
7. To recruit, hire, adopt or abduct, by any unlawful means, for the purposes of removal or sale of organs of a person
8. To recruit, transport or adopt a child to engage in armed activities

Crimes Against Security

Crimes Involving Abandonment of Persons

1. Abandonment of Persons (Art. 275)
2. Abandonment of Minors
 - a). By one with temporary custody (Art. 276).
 - b). By one entrusted with the education or care (Art. 277)
 - c). Indifference of Parents (Art. 277)

Abandonment of Persons (Art. 275)

1. Of Persons Found in Danger:

Act punished: Failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.

Elements

1. The place is not inhabited;
2. Accused found there a person wounded or in danger of dying;
3. Accused can render assistance without detriment to himself;
4. Accused fails to render assistance.

Note: This is a crime by omission but there are two legal excuses or justifications which maybe defenses:

- (i). The place must be an "Uninhabited place" which refers to places where there is remote possibility of the wounded or dying person receiving help from anyone. Hence one who fails to help a wounded person in the market alley is not liable.
- (ii) The accused himself would be placed in an equal or more serious danger if he renders assistance

2. Of one's own victim in an accident

Act punished: Failing to help or render assistance to another whom the offender has accidentally wounded or injured;

- The term "accident" is that which constitute the exempting circumstance of accident under Par. 4 of Article 12 and not to those arising from negligence or imprudence.
- Thus if one runs over a person because of loose break and he abandons his victim, the abandonment is absorbed in the crime of reckless imprudence resulting in homicide. But if a hunter tripped in a forest causing his gun to fire and his companion is hit and he abandons the wounded man, the hunter is liable for abandonment.

- **Failure to deliver an abandoned child**

Act punished: By failing to deliver a child, under seven years of age, whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

The child under 7 must be found in an unsafe place.

It is immaterial that the offender did not know that the child is under 7.

Abandonment of Minors

1. **By one with custody of a child below 7 years of age but without intent to kill** (Art. 276)

Elements

1. Offender has the custody of a child;
2. The child is under seven years of age;
3. He abandons such child;
4. He has no intent to kill the child when the latter is abandoned.

Example: The housemaid brought the child to a park but left him there to go window shopping.

If there is intent to kill and the child dies, the crime is murder, parricide or infanticide. If the child does not die, it is in attempted or frustrated stage.

In this case intent to kill is not presumed. Such presumption is applicable only in crimes against persons.

Circumstances qualifying the offense

1. When the death of the minor resulted from such abandonment; or

- If the life of the minor was in danger because of the abandonment, like abandoning him on a busy street

2. **By a person entrusted with the education or /rearing care (Art. 277)**

Act punished: Delivering a minor to a public institution or other persons without the consent of the one (usually parent) who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of the proper authorities.

Elements

- Offender has charge of the rearing or education of a minor;
- He delivers said minor to a public institution or other persons;
- The one who entrusted such child to the offender has not consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

Note: The purpose is to evade the responsibility of rearing the minor or educating him

Example: The uncle to whom the child was left by the parents brings the child to a foster home

3. **Indifference of parents**

Act punished: Neglecting his (offender's) children by not giving them the education which their station in life requires and financial condition permits.

ELEMENTS OF INDIFFERENCE OF PARENTS:

- That the offender is a parent
 - That he neglects his children by not giving them education
 - That his station in life requires such education and his financial condition permits it
 - Failure to give education must be due to deliberate desire to evade such obligation
- The liability of a parent does not depend on whether the other parent is also guilty of neglect. The irresponsible parent cannot exculpate himself from the consequences of his neglect by invoking the other parent's faithful compliance with his/her parental duties
 - The charge cannot however be made in relation to section 10 (a) of R.A. 7610 (i.e. Child Abuse) (De Guzman vs. Perez 496 SCRA 474)

ABANDONMENT OF MINOR BY PERSONS ENTRUSTED WITH CUSTODY (ART. 277)	ABANDONMENT OF MINOR (ART. 276)
The custody of the offender is specific, that is , the custody for the rearing or education of the minor	The custody of the offender is stated in general
Minor is under 21 yrs. of age	Minor is under 7 years of age
Minor is delivered to a public institution or other person	Minor is abandoned in such a way as to deprive him of the care and protection that his tender years need

Article 278. Exploitation of Minors

Note: **Article 278. Exploitation of Minors**, involving employing minors in activities inimical to them (like in circuses) is now *superseded by R.A. 7610 (The Child Abuse Law)*

The Crime of Trespass (Unauthorized Entry)

Kinds:

- Trespass to dwelling** which, depending upon the mode of entry, may be either: (a). *Simple* which is entry without violence or (b) *Qualified* which is entry with violence
- Trespass to Estate or to Property**

Article 280. Qualified Trespass to Dwelling

Elements

- Offender is a private person;
- He enters the dwelling of another;
- Such entrance is against the latter's will.

Trespass to Dwelling - This connotes that a stranger i.e. one who is not an occupant, actually enters the dwelling of another against the will of the owner or lawful occupant, whether express or implied.

Dwelling - the place where a person habitually stays for rest, comfort and peace of mind.

- It includes the basic structure and the dependencies. In trespass and violation of domicile, dwelling is broader as compared to dwelling as an aggravating circumstance.

- b). It may be owned by the victim or is merely leased by him or he is a guest or works thereat as a stay-in.
- c). The occupant need not be present at the time of entry
- The accused is a private person else the crime is Violation of Domicile.
- In **Qualified Trespass**, the entry is by *means of violence or intimidation*
 - The violence or intimidation may be either immediately before, during or immediately after the accused has gained entry
 - It may be against persons or against things
 - The prohibition may be express or implied, in any form, and made at any time, not necessarily at the time of entry.
 - Examples: (i) Pushing aside the victim who is blocking the door (ii) cutting the string used as temporary lock (iii) removing the bolt (iv) kicking the door open
- If there is *no violence* it is **simple trespass**
 - This includes surreptitious entry
 - When the accused entered by pushing open a door with his finger, the crime is simple trespass. But if upon entering an occupant pushes him out and the accused boxed, kicked or fought against the occupant, the crime is qualified trespass
 - A consented entry does not become unconsented thereby giving rise to trespass just because the entrant performed an act whereby he is ordered to leave but he refused.

Example: The maid allowed the accused to enter. When the father learned his intention was to court the daughter, he got mad, berated the accused and told him to leave. The accused refused not until he can see the daughter. Before being forcibly pushed out, the accused answered back and argued with the father. Did the accused commit trespass? Answer: No, because he was allowed to enter by a lawful occupant.

But if the father had previously already told the accused he was not welcome into his house and instructed the maid not to let the accused enter but the maid later allowed the accused to enter, the accused is guilty of trespass.

- The entry must not be to commit a more serious crime inside the dwelling because:
 - The entry maybe absorbed as an element of the crime, such as in robbery
 - It may constitute the aggravating circumstance of unlawful entry or dwelling, as when the accused entered the dwelling in order to kill or injure an occupant.
 - Where a person was found inside a dwelling, and upon discovery he kills an occupant, there are two separate crimes: (i) trespass and (ii) homicide or murder
- The accused may be the owner of the building so long as the occupancy was voluntarily given to the victim. Example: the lessee may file Trespass against the lessor who enters the leased premises against the will of the lessee.
- **Justified trespass** - If the entry is:
 - (a) to prevent serious harm to himself, to an occupant or to a third person
 - (b). to render some service to humanity or justice
 - (c). in case of public houses while they are open

Example: X snatched the wallet of Y who gave chase. X ran inside an apartment and Y followed inside and collared the snatcher. X is liable for trespass but Y is not.

Example: A traveler climbed through a window and entered a house the occupants of which are absent. The traveler had no place to sleep and a typhoon was raging. He is not liable for trespass.

Article 281. Other forms of trespass

Trespass to Fenced Estate or Closed Premises (Trespass to Property)

Elements

1. Offender enters the closed premises or the fenced estate of another;
2. The entrance is made while either of them is uninhabited;
3. The prohibition to enter is manifest (such as a sign, or perimeter fence even if only a strand of barbed wire);
4. The trespasser has not secured the permission of the owner or the caretaker thereof.

QUALIFIED TRESPASS TO DWELLING (ART. 280)	OTHER FORMS OF TRESPASS (ART. 281)
Offender is a private person	The offender is any person

Offender enters a dwelling house	Offender enters closed premises or fenced estate without securing the permission of the owner or caretaker thereof
Place entered is inhabited	Prohibition to enter must be manifest
Act constituting the crime is entering the dwelling against the will of the owner	It is the entering the closed premises or the fenced estate without securing the permission of the owner or caretaker thereof
Prohibition to enter is express or implied	Prohibition to enter must be manifest

Premises – signifies distinct and definite locality. It may mean a room, shop, building or definite area, but in either case, locality is fixed.

Note: This includes unauthorized entry into commercial establishments and private offices. This does not include cars.

Threats and Coercions

Introduction: These are considered as crimes against security because they disturb the peace of mind of a person.

Threats

Concept: Declarations of an intention to inflict a future wrong upon the person, honor or property of another or the latter's family. The acts or words must be so efficacious (must be serious, if not unjust vexation) as to amount to moral pressure and thus produces fear, or mental disturbance.

A. **Grave Threats** under **Article 282** - the act threatened to be done is a crime e.g. to kill, to burn or destroy property, to box or to inflict injuries

Acts punished:

1. Threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime and demanding money or imposing any other condition, even though not unlawful, and the offender attained his purpose

Qualifying Circumstance:

If threat was made in writing or through a middleman.

ELEMENTS OF GRAVE THREATS WHERE THE OFFENDER ATTAINED HIS PURPOSE:

1. That the offender threatens another person with the infliction upon the latter's person, honor or property, or upon that of the latter's family, of any wrong.
2. That such wrong amounts to a crime.
3. That there is a demand for money or that any other condition is imposed, even though not unlawful.
4. That the offender attains his purpose.

If the condition is money, the penalty is higher

2. Making such threat without the offender attaining his purpose;
3. Threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime, the threat not being subject to a condition.

ELEMENTS OF GRAVE THREATS NOT SUBJECT TO A CONDITION:

1. That the offender threatens another person with the infliction upon the latter's person, honor, or property, or upon that of the latter's family, of any wrong.
2. That such wrong amounts to a crime.
3. That the threat is not subject to a condition.

Kinds of grave threats:

1. **Conditional:** the accused makes a demand so that he will not do what he threatened, such as a demand for money or another condition which may not be unlawful. E.g. "I will stone your car if you will fail me".
2. **Unconditional-** there is simply a declaration to do wrong or harm amounting to a crime. E.g.: "I am tired of looking at your face. I might as well kill you"

Note: But if the threat was made in the heat of anger and the accused did not persist, it is Light Threats. E.g: In a heated quarrel the accused uttered: " Uubusin ko kayong magpapamilya" but did not do anything more. If he however gets a weapon and moves towards his opponent, the crime is grave threats.

B. **Light Threats** which may either be:

1. Where the act to be done does not amount to a crime, but it disturbs another. This may be subject to a condition or not. (**Article 283**)

Elements

1. Offender makes a threat to commit a wrong;

2. The WRONG DOES NOT CONSTITUTE A CRIME;
3. There is a demand for money or that other condition is imposed, even though not unlawful;
4. Offender has attained his purpose or, that he has not attained his purpose.

Examples:

- (a). "I will fail you if you will not introduce me to your sister"
- (bi). " I will report your absences to your father if you do not let me copy your answers"
- (c). "I will tell your boyfriend about your dating other men"

2. Other Light Threats (Article 285)

Acts punished

1. Threatening another with a weapon, or by drawing such weapon in a quarrel, unless it be in lawful self-defense;
2. Orally threatening another, in the heat of anger, with some harm constituting a crime, without persisting in the idea involved in his threat;
3. Orally threatening to do another any harm not constituting a felony.

Threats vs Robbery

If there is an intimidation and threat to inflict an injury is coupled with a demand for money, when is it threats and when is it robbery?

1. In threats, the harm/injury is still to be inflicted in the future (future harm) whereas in robbery the harm is to be inflicted right then and there, or that it is actual and immediate (immediate harm)
2. In threats, the harm maybe committed upon the person or honor of the victim or that to his family, or to his property whereas in robbery the harm is to be inflicted does not include the honor of the victim
3. In threats the doing of the harm may be communicated through an intermediary whereas in robbery the doing of the harm is always communicated directly and personally to the victim
4. In threats gain is not immediate whereas in robbery the gain is immediate.

Threats as constituting blackmailing - when the doing of a wrong which does not constitute a crime (Light threat) is subject to a demand for money or other valuable considerations.

Examples:

1. " I will report your cheating to the Dean unless you take charge of my back rentals"

2. "I will inform your best friend that you are dating her boy friend. However, If you let me have your bracelet, then I will not say anything".

NOTE; there are two forms of blackmailing. First is light threats. The second is under the law on libel.

- Threats maybe made in any form: orally or in writing or by deeds and actions; personally or through an intermediary, or via modern facilities of communications, such as by texting or E-mail. The crime is consummated once the threat is made known to the person threatened,
- Threats are absorbed when they are made in connection with another crime, or are used as the means to commit another crime. Thus the threat to kill is absorbed in armed robbery, as the threat to injure is absorbed in rape.
- **Bond for Good Behavior:** this is the amount of money to be deposited by the accused charged with threats to ensure that he shall not molest the person threatened. If he refuses to put up the Bond for Good behavior, he shall be sentenced to destierro. This is separate and different from the bond which the accused is require to put up in order not to be detained pending trial.

WHEN A PERSON IS REQUIRED TO GIVE BAIL BOND (Art 284)

1. When he threatens another under the circumstances mentioned in Art. 282.
2. When he threatens another under the circumstances mentioned in Art. 283.

Coercion

Concept: When a person takes the law into his own hands i.e in that he is without authority of law or has no right to act, and by means of violence, threat or intimidation, he either:

1. Compels another to do something against his will, whether it be right or wrong, or
 2. Prevents another from doing something not prohibited by law. If the act prevented is prohibited by law, the accused is not violating but complementing the law.
- The violence must be actual and immediate, else (if the violence is a future harm), it is threat
 - The purpose of the accused need not be attained
 - Examples: Applying force, violence, or intimidation in order to:
 1. Compel a suspect to make a confession
 2. Compel the driver to change course
 3. Stop a person from making a construction
 4. Prohibit a student from leaving the classroom
 5. Force a tenant into leaving the leased premises coupled with padlocking the door

6. Compel a person to board a vehicle even if after some distance she was able to break free and ran away
 7. Break a girl's spirit so that she will agree to marry the accused, even if she was taken from her house and brought elsewhere.
 8. Take back or recover one's own property from another even if said property has been previously unlawfully taken away (Note that this is not an impossible crime of robbery)
- The penalty is higher if the coercion relates to:
 1. the exercise of suffrage, as preventing a voter from voting
 2. exercise of religion, such as pointing a gun at another to prevent him from making the sign of the Cross

Distinguished from other crimes:

- A. **From robbery:** where property is taken. It is coercion if the taking is not with intent to gain but to prevent the doing of an act Example: The accused took away the bolo of another to prevent the latter from continuing to cut down the pine trees.
- B. **From threats:** if the harm to be done is direct and immediate, it is coercion but if the harm is to be inflicted later, it is threats.
 1. " I will kick you if you will not leave this room". This is coercion as the kicking is to be done right then and there. It is actual and imminent.
 2. " If you will not leave this room, I will kick you". This is threat as the kicking will be later.
- C. **From Illegal Detention:** In coercion the intention is not to deprive a person of his liberty or to restrain his liberty. Example: A guest who refuses to vacate his room for violations of hotel rules even after he was ordered to leave, was forcibly taken out from the room and guarded in the Office of the Hotel Security Force. He was released only after all his things were taken out and the room was locked. The crime is coercion not detention.

Coercion is either:

- A. **Grave Coercion** if there is use of force, violence, or intimidation (**Article 286**)

Acts punished

1. Preventing another, by means of violence, threats or intimidation, from doing something not prohibited by law;
2. Compelling another, by means of violence, threats or intimidation, to do something against his will, whether it be right or wrong.

Elements

1. A person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will; be it right or wrong;
2. The prevention or compulsion be effected by violence, threats or intimidation; and
3. The person that restrained the will and liberty of another had not the authority of law or the right to do so, or in other words, that the restraint shall not be made under authority of law or in the exercise of any lawful right.

B. **Light Coercion** which may also be either:

1. **Coercion by a creditor (Article 287 par 1)** - the crime committed by a creditor who, with violence, shall seize anything belonging to his debtor for the purpose of applying the same to the payment of his debt

Elements

1. Offender must be a creditor;
 2. He seizes anything belonging to his debtor;
 3. The seizure of the thing be accomplished by means of violence or a display of material force producing intimidation;
 4. The purpose of the offender is to apply the same to the payment of the debt.
- If the purpose is not to apply as payment for the debt, the crime is *robbery*
 - If there was no violence employed, but the property was taken without the knowledge of the debtor, the crime should be *theft*
 - If the taking was by deceit or misrepresentation, as when the creditor says he will just borrow the property but applied it to the debt, the crime is *unjust vexation*.
 - If the creditor pretends there is a debt to be paid which was why the thing was given, when truth there is no debt, the crime is *estafa* by means of deceit

2. **Unjust Vexation (Art 287 par 2)** - any conduct which annoys, vexes, disturbs or irritates another, provided there was no force, threat, violence or intimidation.

- This is always in the consummated stage
- This is a crime of last resort
- The same act may constitute either slight physical injuries, acts of lasciviousness, slander by deed, or unjust vexation, depending upon the intention of the accused. Example: holding the testicles of a man or embracing a woman may give rise to several crimes.

- For the crime of unjust vexation to exist, it is not necessary that the offended party be present when the crime was committed by the accused - it is enough that the offended party was embarrassed, annoyed, irritated, or disturbed when he/she learned of the overt acts of the accused. (Maderazo vs. PP 503 SCRA 234)
- b. Those tokens or objects are other than the legal tender currency of the Philippines;
- c. Such employee or laborer does not expressly request that he be paid by means of tokens or objects.

Article 289. Formation, Maintenance, and Prohibition of Combination of Capital or Labor through Violence or Threats

3. Other similar coercions (under Article 288).

Concept: Crime by any person who shall force or compel his laborer or employee to: (a) purchase merchandise or commodity of any kind sold by said employer or (b) accept tokens or objects, other than the legal tender, as payment of wages, unless expressly requested by the employee. Example: compelling wages in the form of casino chips, sweepstake tickets, lotto tickets, or goods or merchandise

Acts punished:

1. Forcing or compelling, directly or indirectly, or knowingly permitting the forcing or compelling of the laborer or employee of the offender to purchase merchandise or commodities of any kind from him;

Elements:

- a. Offender is any person, agent or officer of any association or corporation;
 - b. He or such firm or corporation has employed laborers or employees;
 - c. He forces or compels, directly or indirectly, or knowingly permits to be forced or compelled, any of his or its laborers or employees to purchase merchandise or commodities of any kind from him or from said firm or corporation.
2. Paying the wages due his laborer or employee by means of tokens or object other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

Elements:

- a. Offender pays the wages due a laborer or employee employed by him by means of tokens or object;

Elements

1. Offender employs violence or threats, in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work;
2. The purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employers.

Discovery and Revelation of Secrets

Introduction. These are crimes against personal security because they likewise result to irritation, consternation and similar mental disturbance.

- These crimes may be referred to as involving the revelation of private secrets by private persons. The secrets involved are private secrets in that they do not pertain to matters affecting the government and only private persons are the accused. However, public officers are also liable if they did not acquire the secrets in their official capacity.
- The constitution protects several Zones of Privacy one of which is the privacy of correspondence and communication. These crimes intrude into this zone.
- They are classified into:
 1. Discovering secrets through seizure of correspondence (Art. 290)
 2. Reveling Secrets with abuse of office (291)
 3. Revelation of industrial secrets (Art. 292)

Article 290. Discovering Secrets through Seizure of Correspondence

Concept:

The gist of the crime is the act of seizing the papers or letters of a private individual in order to discover the contents thereof.

Elements

1. Offender is a private individual or even a public officer not in the exercise of his official function;

2. He seizes the papers or letters of another;
3. The purpose is to discover the secrets of such another person;
4. Offender is informed of the contents of the papers or letters seized.

- The penalty depends on whether the accused revealed the contents or not.
- The crime is committed even if it turns out the papers are blank
- Persons exempt: (i) parents, guardians, or persons in custody of minors in respect to the letters of said minors and (b) spouses with respect to the correspondence of either of them. However, in *Zulueta vs. Zulueta*, it was held that a married person has a right to the privacy of letters in his private office and if these are seized by his spouse without his consent, the documents are inadmissible as evidence.
- If the seizure is not to know the contents but to prevent the addressee from receiving the letter, the crime may be malicious mischief.
- According to Ortega, it is not necessary that the offender should actually discover the contents of the letter. Reyes, citing *People v. Singh, CA, 40 OG, Suppl. 5, 35*, believes otherwise.

Article 291. Revealing Secrets with Abuse of Office

- This is the crime committed by a manager, employee, or servant, who in such capacity, learns the secrets of his principal or master, and shall reveal such secrets.
- Secrets refer to any matter which ought not to be known. It need not destroy the reputation of the principal. Example: the fact that the husband and wife do not sleep together; or that the husband is irresponsible.
- If the secrets pertain to illicit matters, such as the principal being a jueteng lord, there is no liability if the revelation is made to the proper authorities.

Question & Answer

Q: Why is there no corresponding penal provision if they were the masters who reveal the secrets of their employees or servants?

Article 292. Revelation of Industrial Secrets (repealed)

Note: **Art. 292** is already *superseded by the Intellectual Property Code*

Title X. Crimes Against Property

Major Classification:

1. Robbery:
 - a) With Violence or Intimidation Against Persons (Hold-up)
 - b) With Force Upon Things (Break-In)
2. Theft
 - a). Simple
 - b). Qualified
3. Estafa
4. Malicious Mischief
 - a). Ordinary
 - b). Special Cases
5. Arson
6. Violation of the Chattel Mortgage Law

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 In General)

Concept:

The taking, with intent to gain, of personal property belonging to another, by means of violence against or intimidation of persons, or by using force upon things.

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
- The two major classifications are based on the manner by which the robbery was committed. The first is commonly called "hold-up" while the second is robbery by "breaking -in"
 - If none of these two methods are used, the taking will constitute theft.
 - If both methods were used, the result is complex a crime i.e. Robbery with Force Upon things complexed with Robbery with Violence.
 - In robbery with violence, the violence need not be present at the start of the taking so long as it was resorted to before the taking was complete.

Elements Common to Robbery and Theft

1. The subject matter must be a *personal* property
 - These include licit as well as illicit articles such as drugs and unlicensed firearms as well as stolen articles
 - The term "Personal Property" does not follow the meaning provided for by the Civil Code. It means such property, whether tangibles or those with physical appearance and form or intangibles, as long as they maybe subject of appropriation and may be carried away without altering its nature.
 - Thus this includes those considered as Real Property by Immobilization or destination" or those attached to the soil or building for so long as they were detached there from and carried away. Such as trees, machineries, statutes, soil, stones and rocks
 - Accessories of real properties such as fruits of trees, fishes, paintings

- In theft the article must have a value because the penalty, and jurisdiction over the offense, is based on the value of the article taken
 - The value must be proved as courts will not take judicial notice thereof. If no value is proved, the court uses the lowest value in the law value as basis

2. The property *must belong to another*

- This means the property does not belong to the accused. Hence there is no robbery or theft of one's own property. The offenses are either Grave Coercion instead of robbery and Impossible Crime of Theft instead of the ordinary crime of theft.
- The victim need not be the owner. He may be a mere possessor or even a robber or thief himself. Thus robbery or theft may be committed against another criminal robber or thief. It is enough that the accused is not the owner of the property.

3 There must be an *act of taking* or "*apoderamiento*", which is the physical act of divesting another of the possession of a thing, or to separate and remove the property from the actual or constructive possession or custody or control of the victim

- The accused must hold the thing in a manner sufficient to enable him to dispose of it had he wanted to
- The possession may be permanent, temporary or transitory

4. There must "*Animus Lucrandi*" or *intent of gain*

- The gain need not be in terms of financial or material gain as this includes: intent to obtain some utility, enjoyment, satisfaction, or pleasure. Example: X boxed Y so that Y will hand over the magazine for X to see the nude pictures. X returned the magazine thereafter.
- If there is *no animus lucrandi* but force was used to get an object, the crime is *coercion*.
- Robbery and theft maybe a continuous offense as in the case of robbery of several persons. The accused entered a classroom and robbed the 20 students of their money at the point of a gun. Or, when the several robberies are component parts of a general plan to rob within a specific place or area. Example: Robbery of several houses in subdivision or robbery of the various stalls in side the shopping mall.

Article 294. Robbery with Violence against or Intimidation of Persons

Introduction:

- The penalties are determined and based on the extent or gravity of the violence employed, its degree of intensity, and the resulting injury or harm
- There are several special complex crimes (also known as Composite Crimes or Special Indivisible Crimes) involving consummated robbery, which according to the order of severity are as follows:
 1. Robbery with Homicide
 2. Robbery with Rape
 3. Robbery with Intentional Mutilations
 4. Robbery with Arson
 5. Robbery with Physical Injuries
 6. Robbery with Unnecessary Violence
- In cases where there was death, rape, or physical injuries inflicted, the foregoing Order of Severity must be followed in giving the name of the crime. There will only be one crime and one specific penalty but the rape and lesser injuries will be utilized as aggravating circumstances.

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 use 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.

Robbery with Homicide

- This is committed "When by reason or on the occasion of robbery, the crime of homicide shall have been committed". This phrase requires that there is a causal connection between the robbery and the death, had it not been for the robbery, there would have been no death.
- Both the robbery and the homicide should be consummated to be penalized by Reclusion Perpetua to Death.
 - If it was the Robbery which was not consummated, but there was a killing, it is still a special complex crime of Attempted or Frustrated Robbery with Homicide but the penalty is as provided for under Article 297
 - If both the robbery and the killing are either attempted or frustrated, the result is either a complex crime of Attempted/Frustrated Robbery with Attempted/Frustrated Homicide under Article 48, or as separate crimes depending on the circumstances
 - If the Robbery is consummated but the homicide is attempted or frustrated, they may be ordinary complex crimes or separate crimes depending on the circumstances
- The term "Homicide" is used in its generic sense and it includes any kind of killing whether it be murder, parricide or infanticide, and irrespective of how many killings were there. The following are not proper terms:
 - Robbery with Murder: if there is any qualifying circumstance which was present, such as treachery, it will be considered as an ordinary aggravating circumstance
 - Robbery with Double, Triple or Multiple Homicide:
- The killing may be intentional, or accidental. The killing may be by the acts of the robber, or by the act of the victim, or act of a third person. The person killed may be the victim of the robbery or his friend, or family member. The

person killed may even be one of the robbers themselves, or a person wanting to assist or even a total stranger.

- The following will constitute robbery with homicide:
 - The robber fired his gun upwards to frighten the victim but the bullet killed a person who was hiding in the ceiling
 - The victim drew a gun to defend but his aim was deflected and instead hit his companion
 - It was a responding policeman who was killed by a robber.
 - The responding policeman fired a shot but missed and killed the victim of robbery
 - The several robbers fought over the loot and one killed another, even if this took place after the taking had taken place and the robbers had fled the scene of robbery
 - One of the victims suffered a stroke due to the tension and dies
 - The gun of a robber accidentally fell and killed a person outside the house
- The killing may be before, during, or immediately after the taking provided that the original intent of the robbers must have been to rob and not to kill, which need not be the sole motive either.

Example: X pointed a knife at Y and divested him of his cell phone. X turned and ran whereupon Y chased him so that X stabbed and killed Y.

- If the original intention was to kill and the idea of taking came only thereafter, there results two separate crimes of theft and murder or homicide. Example: The accused shot to death his enemy. Then he decided to take the victim's necklace.
- All those who conspired in the robbery will be liable for the death unless he proved he endeavored to prevent the killing. Physical absence in the place where the killing took place is not a defense, or that the accused was not aware his co-accused would resort to a killing.

Example: A, B, C and D conspired to rob a house with D acting as look-out at the road. Jose, an occupant refused to give money so A leveled his gun at him. B shielded Jose with his body as he did not like any killing A pushed B aside and shot Jose. C was then at the rooms ransacking it. A, C and D will be liable for Robbery with Homicide, but not B, who tried to prevent it.

Robbery with Rape: "When the robbery shall have been accompanied by rape"

- The rape maybe committed before, during, or after the robbery so long as it was

contemporaneous with the robbery and so long as the original intention was to rob.

- If the original intention is to rape and not to rob so that if the taking came only after the rape because the opportunity presented itself, the taking is theft.
- The victim of the rape may be any person including one of the robbers
- Both the robbery and rape must be consummated other wise there are two separate offenses.
- If there are two or more rapes, the others will be considered as aggravating circumstances of ignominy.
- Illustrations:
 - If the girl is robbed, raped and then killed, the crime is Robbery with Homicide aggravated by rape
 - If the girl is raped, then robbed and then killed the crimes are (i) Rape with Homicide and (ii) Robbery
 - If the girl is raped and then a personal property is taken the crimes are (i) Homicide and (ii) Theft

Robbery with Intentional Mutilation: "when the robbery shall have been accompanied by ...intentional mutilation"

- The injury resulted to insanity, imbecility, impotency or complete blindness
- The victim may be any person including one of the robbers also

Robbery with Arson: "when the robbery shall have been accompanied by... arson"

- The victim should not be killed, raped or mutilated
- The arson is a separate act from the taking as when the accused held up the occupants of a car after which they burned the car

Robbery with Unnecessary Violence and other serious physical injuries: (1) if the violence or intimidation shall have been employed in the commission of the robbery shall have been carried to a degree clearly unnecessary or (2) when in the course of its execution the offender shall have inflicted any of the physical injuries under subdivision 3 and 4 of Article 263.

- The injuries referred to are deformity loss of a non-member part of the body or clearly unnecessary violence) should be inflicted prior to the consummation of the crime or before the taking is complete other wise the injuries are separate offenses

Simple robbery- where there is only an intimidation or where the injuries sustained are less serious or slight

- The act known as “extortion” or “mulcting” is simple robbery such as:
 - by law enforcement agencies known as “kotong cops”
 - by public officers without the consent of the victim. If it the giving is consensual it is bribery
 - by persons pretending to be authorities and threatening to arrest unless money is given
 - by one falsely accusing another of a crime and making a demand for money

Special Aggravating Circumstances with respect to Robbery with Violence or Simple Robbery Only

- **Art. 295** creates the following circumstances which cannot be offset by any mitigating
 1. In uninhabited place (despoblado)
 2. By a band (cuadrilla)
 3. By attacking a moving vehicle (including train) or airship or entering the passenger’s compartment in a train
 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,
- If the crimes are Robbery with Homicide, with Rape, with Serious Physical Injuries, with Arson, and the foregoing are present, they will be treated only as ordinary aggravating circumstances

Robbery by a Band: when more than 3 (at least 4) armed malefactors take part in the crime of robbery (under **Article 296**)

- The “arms” may refer to any object capable of inflicting a bodily injury
- If the weapon happens to be an unlicensed firearm, this becomes a special aggravating circumstance to the penalty committed by the band
- 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.

In other words, the **Effects of a “band”** are:
 a). all will be liable for the crime they agreed to commit
 b) if they merely agreed to commit robbery but a homicide, rape or physical injuries

were committed, those present in the assault and who did not prevent the additional crime will be liable for the additional crimes

Attempted and Frustrated Robbery with Homicide

- A special Complex Crime punished under **Article 297.**
- The term “homicide’ is used in its generic sense as to include murder, parricide, or infanticide provided the homicide was consummated and was committed by reason or on the occasion of the robbery

Article 298. Execution of Deeds by Means of Violence or intimidation

Concept:

This is the crime committed by a any person who, with intent to defraud another, shall compel him to sign, execute or deliver any public instrument or document

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.

Principles:

- This is a special kind of committing robbery
- The document must be capable of producing legal effect and the victim is under a lawful obligation to execute and deliver the document
- The document may be public or private
- If the document is void the crime is coercion
- The purpose of the accused is to defraud the accused, to divest him of his property, else it is coercion
- Examples: Using violence to compel one to execute a deed of sale of his vehicle or to execute a last will and testament

Robbery By the Use of Force Upon Things. (Break-In)

General Principles:

- This is of two kinds. The first is where the robbers broke-into or entered an Inhabited house, public building or edifice devoted to religious worship and the second is where the entry or break in is into an Uninhabited House or a private building.

- The force refers to the mode or manner by which the entry was made. It connotes some kind of a trespass inside where the robbery was committed. It may be actual physical force, such as breaking a wall door, or floor; or it may consist of constructive force, such as use of false keys or using any fictitious name, or pretending the exercise of public authority
- Necessity of Entry: there must be proof that the accused actually physically entered, i.e. the whole body was inside and not just the arms or upper part. In case there was no total entry, the crime is theft if a property was taken or attempted trespass if none was taken.
- To constitute consummated robbery, the article or thing must be brought out of the house or building

Question & Answer

Q: Suppose one accused is inside dropping articles to a co-accused who was outside the building, collecting them. They were caught. Is the crime consummated?

Article 299. Robbery in An Inhabited House or Public Building or Edifice Devoted to Worship

Place of Commission.

The robbery must be inside: (**Article 301.** What is inhabited house, public building or building dedicated to religious worship and their dependencies)

1. **An Inhabited House.** " any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall be temporarily absent therefrom when the robbery is committed "
 - If the ship was for transporting persons or goods and it is sea worthy, the crime should be piracy. Thus the term ship under article 301 must refer those which are not longer sea worthy but are used as dwellings instead.
 - They include dependencies, which refer to structures which are contiguous to, and with interior entrances connected to the house
2. **A Public Building.** One owned by the government or by a private person but was leased, rented or actually being used, by the government, although temporarily unoccupied by the same.
3. **An Edifice devoted to religious worship.** This does not include private houses or commercial

buildings, rented by, leased to, or actually used, for religious services.

- 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 places contiguous to the building or edifice, having an interior entrance connected therewith and which form part of the whole. The yards, orchards and lands for cultivation are not included, even if closed, contiguous to the building, and having direct connection therewith.

Elements under subdivision (a) of Art 299

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.

The manner of entry must be through any of the following modes, *otherwise the crime is theft.*

1. Through an opening not intended for entrance or egress.
 - The only opening for entrance is through an outside door, except in cases where the inside door refer to the door of separate units or rooms used as separate dwellings.
 - The entry then may have been through an open window, a break in the wall or roof or floor, sliding down the fireplace
2. By breaking any wall, roof, floor or breaking any door or window
 - The term "door" refers to the outside door of the dwellings and not to doors of rooms inside the house
 - To "break the door" is not just "forcing the door open" or prying it loose from its grooves.
 - When the padlock was destroyed, the Supreme Court says the crime is robbery because the padlock is an integral part of the door. The Ct. of Appeals says it is theft

- If what was destroyed is the key, it is theft
- The term "wall" is not the dividing wall between rooms, unless the rooms are separate units constituting separate dwellings

3. By using false keys, pick locks or similar tools

- The crime of Possession of Picklocks under **article 304** is *absorbed*
- The key is that used to enter the house and to open a wardrobe or room inside.
- See: Art 305 for definition of false keys

4. By using any fictitious name or pretending the exercise of public authority. This is not limited to the use of aliases but extends to any misrepresentation about the identity of the accused in order to misled an occupant into allowing the accused to enter.

- This presupposes that at the time of entry there were persons in the house or building. This is the reason why this mode of entry does not apply to Robbery in an Uninhabited House
- Examples: pretending to be sheriffs of the court; inspectors of the NPC or as detectives, or as messengers, classmates and the like.

Elements under subdivision (b) of Art 299:

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.

Note: In the two following situations the accused entered the house properly but the taking of property is still robbery.

5. By breaking of doors, wardrobes, chests or any other kind of locked or sealed furniture or receptacles

- The term "door" does not refer to the inside or interior doors, or door of rooms or compartments, but to the doors of furniture, aparadors, closets, cabinets

6. By taking such furniture or objects away to be broken or forced open outside the place of robbery

- The taking of small receptacles, such as jewelry boxes, or piggy banks, even if broken outside is merely theft

The **penalty** of the accused is ***determined by the following factors;***

1. Value of the property taken
2. Whether the accused was armed. But if the firearms were used against or, to intimidate the occupants or victims, the crime is Robbery with Violence.
3. In case of a house, whether it was in the main house or in a dependency
4. Whether it was a mail matter in which case the penalty is one degree higher and
5. If committed by a band and in an uninhabited place. Example four armed malefactors robbed a house built in an isolated place.

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.

Principles:

- Although the law uses the word "uninhabited place" what this actually means is uninhabited house- those not used as residences or dwellings.
 - These would include warehouses, stores, offices, commercial buildings and

establishments, department stores, banks, market stalls.

- The mode of entry is the same as in an Inhabited house except for the use of fictitious names or pretending the exercise of public authority

Article 303. Robbery of Cereals, Fruits or Firewood

- The term cereals refer to seedlings or unhulled grains in their original states
- These are taken from inside a house, or building whether inhabited or uninhabited
- The penalty is one degree lower because it is presumed the acts were impelled by economic necessity or hunger.

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 (i.e. those specifically adopted for the commission of robbery i.e to open locks);
2. Genuine keys stolen from the owner (or forgotten or lost by him – Sir Sagsago);
3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender such as a duplicate made by the accused based on the wax impression of the genuine key borrowed from the owner

Acts punished under Art 304 (Sir Sagsago):

1. Possession of these picklocks or similar tools specially adopted for robbery is a mere preparatory act which is punished
2. The manufacture of said picklocks or similar tools.
 - A master key or skeleton key is a picklock
 - If a key was entrusted to a confidential employee, as a secretary or body guard, for

safekeeping but the latter used them to open and take property, the crime is *qualified theft*

- If the accused used said keys to commit theft or robbery, for example: in the so-called bukas-kotse, the possession is *absorbed*

Brigandage And Highway Robbery (Arts. 306, 307and P.D. 532)

Introduction:

Article 306 defining and penalizing brigandage has been modified by Pres. Decree 532 defining and punishing "highway robbery and brigandage" As thus modified, the term "brigandage" and "highway robbery" are used synonymously and they mean:

- The seizure of any person for ransom, extortion or other unlawful purposes (Is not the seizure of persons the crime of kidnapping ?)
- Or the taking away of property of another by means of violence against or intimidation of person or force upon things or other unlawful means
- Committed by any person on any Philippine Highway
 - Highway refers to the roads connecting distant barrios or towns to one another and not to those located within a city or town.

Notes:

- Highway robbery requires that commission of robbery is not an on the spur of the moment decision by the accused; it requires *habituality* or regularity and the commission thereof is *indiscriminate* and not against a predetermined victim i.e. against any traveling person. In case the accused are more than one, they must be organized for the purpose of committing such crimes in said manner in order to give rise to brigandage. If not, the crime is plain robbery committed in the highway.
- Those who help or assist the highway robbers are guilty of the crime of **Aiding or Abetting Brigands**

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.
- the brigands were formerly called the highwaymen or tulsians who waylay travelers or attack and pillage villages as a way of living. They have their own hideouts in the mountains. They are the equivalent of pirates in the seas.

Discussion of the Elements

1. That there be a **taking** (apoderamiento) or there be a physical act of divesting a person of his possession of a property and bringing it under one's control; an act separating the property from the owner or possessor and without animus revertendi.

Notes:

- **Taking** means the act of depriving another of the possession and dominion of movable property without his privity and consent and without animus revertendi
 - a) The owner or juridical possessor does not give his consent
 - b) or the consent was vitiated
 - c) may occur at or soon after the transfer of physical possession when an act done by the receiver soon after the actual transfer of possession results in unlawful taking (PP vs. Tan 323 SCRA 30)
- It is not necessary that the property be actually carried away out of the physical possession of the lawful possessor or that the thief should have made his escape with it. Neither as transportation or actual manual possession of property is required. Constructive possession of the property is enough (Laurel vs. Abrogar, 483 SCRA 243)
- The taking maybe by the offender's own hands, by his use of innocent persons without any felonious intent, as well as by any mechanical devise such as access device or card, or any agency, animate or inanimate, with intent to gain (Laurel vs. Abrogar) or the property is received or physically delivered to him
- The taking is complete once the thing is placed under one's possession or control even if only for a short time and even if there was no opportunity to dispose off the article. The thing need not be carried away. Hence there is no frustrated theft even of bulky items.
 - The decisions in PP. vs Dino and PP. vs Espiritu concerning frustrated theft of bulky items have been reversed in Valenzuela vs. PP. June 21, 2007 This case expressly declared that theft has no frustrated stage.

Article 308. (Simple)Theft

Concept:

Theft is committed in four ways.

1. The first way defines the **ordinary, simple, or common crime of theft** as the crime committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
2. Theft of lost property
3. Theft after a malicious mischief
4. Theft after a trespass

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;

2. However, if the property was not taken but was received or that it was voluntarily delivered to the accused, and thereafter not returned, the crimes committed are:

- **Theft** if what was transferred to the accused is mere physical possession.
 - The rule is that if a person, to whom a thing was delivered, was under obligation to return the same thing, but does an act amounting to appropriation or conversion, he commits theft
 - Examples: one who ran away with a ball pen after borrowing it; or one who sells a borrowed cell phone or refused to return the article he borrowed
- **Estafa** if what was transferred is both physical and juridical possession i.e the right to possess the thing such as a thing given as collateral for a debt

3. The property is a **personal property** which belongs to another: ie. it does not belong to the accused otherwise the crime committed would be the Impossible Crime of Theft.

- They include illicit articles such as drugs, unlicensed firearms, or property stolen from another and in the possession of the victim

or to movables which can be taken and carried from the place where they are found and brought under the possession of a person. The following are examples:

- (i). jewelries, money, food, clothing,
- (ii). papers, documents, certificates of title
- (iii). commercial papers such as checks, promissory notes
- (iv). rocks, soil, flowing water, water, trees
- Those Intangible properties which are capable of being appropriated such as electricity and other forms of energy are proper subject of theft
 - "Electricity, like gas, is a valuable article of merchandise, bought and sold like other personal property, susceptible of being severed from a mass or larger quantity and of being transported from place to place. Electrical energy may likewise be taken and carried away" (Laurel vs Abrogar)

- Intangibles such as rights and ideas are not subject of theft because they are without form or substance and cannot be "taken" from the place they are found. A naked right existing merely in contemplation of law, although it may be valuable to the person who is entitled to exercise it, is not the subject of theft. They include these: right to produce oil, good will or interest in business, right to engage in business, credit or franchise, a credit line represented by a credit card.

- (a). Plagiarism:
- (b). Trafficking in Persons- theft of body organs
- ©. If what was stolen are feelings and emotions or people, while they maybe stolen in songs, are not subject of theft)

- Example: Laurel vs. Abrogar 483 SCRA 243, Feb. 27, 2006)

Facts: BAYNET Co. sold phone cards which enabled buyers to make calls in the Philippines through the telephone lines, equipments and facilities of the PLDT without the knowledge of the PLDT such that it evaded the charges which would have been paid to the PLDT.

Question & Answer

Q: Is a co-owner liable for theft of the property owned in common?

A: Yes if he takes more than his lawful share. His liability is for the excess.

a). A and three others co-owned P20,000.00 kept in a box. A took away P5,000.00. He is not liable because the amount corresponds to his share.

b). A took the whole P20,000.00. He is liable for theft of P15,000.00

c). A finder of lost treasure who appropriates everything is liable for theft of one-half thereof as the same belongs to the government

- Personal property is that which can be appropriated and can be carried away without changing its nature.
 - They include tangible movable properties which have physical or material existence and susceptible of occupation by another;

Issue: Whether PLDT's business of providing telecommunication services is a proper subject of theft

Held No. The international telephone calls placed by the BAYNET card holders, the telephone services provided by PLDT and its business of providing said services are not personal properties. Personal property subject of theft cannot be interpreted to include "telecommunication or telephone services" or computer services for that matter. A service is not generally considered property and theft of service would not constitute theft since there can be no possibility of asportation. (Laurel vs. Abrogar Feb. 27, 2006)

- NOTE: The acts complained of in Laurel vs. Abrogar maybe penalized under RA 8484, The Access Devices Regulations Act of 1998.
- NOTE: Theft of electricity by the use of jumpers is penalized by R.A. 9832, The Anti Electricity and Electric Transmission Pilferage Act of 1994)

Questions & Answers

Q: Juan used a stolen credit card of Pedro to pay for his hotel accommodations. What crimes may be filed against Juan?

A: The crimes are: (i) Theft on complaint of Pedro as to the taking of the credit card (ii) Violation of R.A. 8484 for using the card to obtain services and (iii) Estafa on complaint of the hotel for pretending and misrepresenting himself to be the owner of the credit card.

Q: JUAN used a "splitter" and was able to watch cable programs provided by ABC Co. Did he commit theft?

- Identity theft

4. The property is capable of pecuniary valuation or estimation. This is necessary for purposes of determining the penalty of the accused and consequently what court has jurisdiction over the theft. They include the following:

- Basis of the valuation is either: (i) the value of the thing itself (ii) its intrinsic value, as in theft of gold (iii) that which is represented as in checks or commercial papers.
- It does not matter that the article is of no value to the accused as when he stole a person's Community Tax Certificate, or sales invoices or I.D. cards.
- If the article is valueless, as for example checks which have already been encashed, they will be valued at the lowest valuation set by law i.e it "does not exceed P5.00"

5. There is **intent to gain** or "**Animus Lucrandi**". The taking is for the purpose of obtaining financial or material gain; utility, satisfaction enjoyment and pleasure.

- If there was an act of taking but without intent of gain, some other offense may be committed. Thus: (a) A took the notebook of B and hid it so that B has nothing to review. The crime would be unjust vexation. (b) If A threw the notebook in a pool of water the crime is malicious mischief (c) But if A took the notebook so that he can study and review and then returned the notebook the crime is still theft as there was gain.

6. There is no violence against or intimidation of persons (not a hold-up) nor force upon things (break-in)

- If there was force employed, it is not upon the person but upon the property. However the force on the property must not be to gain entry into a dwelling, public building or religious edifice.
- Thus where the accused applied force to pull at the shoulder bag, the crime is theft. If the victim pulls away the bag so that the accused pushed down the victim to make him lose his hold, the crime is robbery.
- 3 If they are the windows or door of a vehicle or display rooms or cabinets which are broken to get the things inside, the crime is theft

Principles:

1. Theft is consummated once the taking is complete even if the accused was immediately apprehended, or that it was snatched back from him, or that he had no opportunity to dispose off the thing.

2. There is no frustrated stage. Was there possession of the thing or not? If there was, it is consummated

3. There are as many crimes of theft as there are several occasions of taking, even if the victim is one and the same person.

a). There is only one crime even if there be several victims- a continuous crime of theft- if the things were taken at the same time and place. Example: the theft of two roosters belonging to different persons

b). The "single larceny doctrine", that is, the taking of several things whether belonging to the same or different owners, at the same time and place constitutes but one larceny (Santiago vs. Garchitorea, 228 SCRA 214)

4. It may be complexed with falsification

5. There is a presumption of theft against one found in possession of a stolen article who cannot explain away his possession. Likewise the possession of some part of the stolen property raises the presumption that the possessor stole the whole property

Theft of Lost Property

- The crime committed by any person who, having found lost property, shall fail to deliver the same to local authorities or to its owner.
 - This is a crime by omission but the failure must not be due to valid reasons. Hence it is no defense that the finder did not profit from it
 - It is not necessary that the accused knows who the owner is. It is enough that he knows or ought to know, that the property was lost. It is his duty to turn it over to the authorities.
 - Suppose he turned it over to persons other than to the authorities? He may or may not be liable depending to whom he turned over the property. If it was turned over to one whose employment or position is such that through him the property can be returned to the owner or possessor, then the finder is not liable. Thus the delivery to a radio station for announcement to the public does not give rise to criminal liability.
 - To be liable the failure to deliver must be after the lapse of a sufficient time. Thus: if the accused found a valise which he failed to deliver within 41/2 days. When the owner came to get it, he surrendered it. He is not liable.

- The property must not be res nullius

Questions & Answers

Q: The taxi driver had it be announced over the radio that he found a bag left by a passenger. He advises the owner to get the bag at his house but to bring identification papers with him. After two weeks the owner comes to claim but the bag was stolen from the house of the taxi driver. Is the Taxi Driver liable for theft?

- The term "lost property" is used in its generic sense in that it was separated from the owner or possessor without his consent and this includes property which were stolen or subject of robbery.
- The persons liable are either:
 1. The Finder- in- Fact: this is the actual finder of the property such as the taxi driver who finds a wallet left by a passenger
 2. The Finder-in-Law or the transferee, or the person to whom the Finder-in-Fact turned over or transferred the lost property.

Questions & Answers

Q: The taxi driver turned over the wallet left by a passenger to the Police Desk Sergeant. The latter spent the money. What crime did the policeman commit?

A: Theft. He is the Finder-in-Law (PP. vs. Avila 47 Phil. 720)

Theft After a Malicious Mischief

- "Any person who having maliciously damaged the property of another, shall remove or make use of the fruits or objects of the damage caused by him"
 - The malicious destruction is absorbed in the taking
 - Ex: Shooting a dog and then eating it; or cutting down the neighbor's fruit tree and then gathering its branches as firewood
 - If there was no intent to gain the crime is simply malicious mischief

Theft after a trespass

- "By hunting, fishing or gathering fruits, cereals, forest or farm products after committing trespass". The act of trespass is absorbed. The property trespassed refers to lands and not to buildings.

Article 310. Qualified Theft

- Provides that the penalty shall be 2 degrees higher than that for simple theft if theft is committed under any of the circumstances enumerated thereunder.

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.

These circumstances are categorized according to their nature thus:

- a). Circumstances pertaining to the accused himself, such as the accused is a domestic servant
 - b). Those arising from the offended party, such as when he reposed trust and confidence in the accused
 - c). Those based on the nature of the object stolen such as mail matters
 - d) Those arising from the circumstances of time, place and occasion of the taking
- If committed by a domestic servant. The theft is always qualified theft.
 - If committed with grave abuse of confidence.
 - This presupposes that there should be a relation of dependence, guardianship or vigilance between the accused and the victim which created a high degree of trust and confidence.
 - The trust and confidence should arise in special relations of intimacy and confidence between the offender and the accused. It should be proven that the victim reposed trust and confidence and it was this which enabled the accused to commit the crime.
 - a). Theft by an employee against his employer such as confidential secretary, a bodyguard, or a warehouseman or cashier,

salespersons, a bank teller, by a personal chauffeur

- b). Theft by a one living with the victim as a guest or a stay-in or a room mate
 - c). Theft by a driver as to the gasoline of trucks driven which they are allowed to draw
- Liability of strangers: Since the trust and confidence which was abused is purely personal between the accused and the victim, strangers who participate in the taking are liable for simple theft only.
- When the property stolen is a motor vehicle.
 - This is modified by R.A. 6539 or the Anti-Carnapping Law which defines the crime of carnapping as "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"
 - The act of carnapping includes both "theft" and "robbery".
 - Suppose it was the juridical possession of the motor vehicle which was delivered? The crime is estafa and not theft therefore R.A. 6539 does not apply.

Questions & Answers

(i). What crime was committed by a driver on the "boundary system" who brings the vehicle elsewhere and does not return it?

(ii). What crime was committed by one who was entrusted with the possession or custody of a motor vehicle, who thereafter sells it?

(iii). What crime was committed by one who is given the motor vehicle to test drive it but drives it away and does not return it?

- Motor vehicle refers to any vehicle propelled by any power (such as solar energy) other than muscular power using the public highway.
 - The following are not motor vehicles: road rollers, trolley cars, bulldozers, street sweepers, graders, forklifts, traction engines of all kinds used in agriculture. Taking of these kinds of vehicles will be qualified theft
 - If a motor is attached to a bicycle, it becomes a motor vehicle

- R.A. 6539 creates the special complex crimes of (a). Carnapping Resulting to/Accompanied by Homicide and (b) Carnapping Resulting to/Accompanied by Rape if the owner, driver, or occupant is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

The homicide and rape must be simultaneous with the taking i.e. committed at the time and place of the carnapping.

- When the property is a mail matter.
 - If by the Post Master the crime is Infidelity in the Custody of Documents. If by mail carriers, it is qualified theft
 - Should the mail be unopened? Suppose it has already been read by the addressee? If so the crime is simple theft.
 - Suppose the mail is sent by commercial couriers who take the mail or the contents of letters or packages? It is qualified theft because of grave abuse of confidence
- When the property taken is a Large Cattle
 - This has been modified by P.D. 533 or the **Anti Cattle Rustling Law**
 - **Cattle Rustling** is defined as " the taking, by any means, method or scheme, with or without intent to gain, with or without violence or force upon things, if without the consent of the owner, of any large cattle"
 - Large cattle refers to a horse, bull, ass, carabao, other domesticated members of the bovine family. A goat is a small cattle.
 - The acts punished by P.D. 533 include:
 - mere killing, hence there is no malicious mischief of large cattle
 - the taking of the meat or hide
 - the spreading of poison among the herd
 - the act of co-mingling of cattle
 - If homicide results, the killing is absorbed and becomes an aggravating circumstance. The crime becomes the special complex crime of Cattle Rustling Resulting in/Accompanied by, Homicide
 - But if it was the physical possession of the cattle which was received by the accused who appropriated it for himself, the crime is Qualified Theft of Large Cattle. For example: the neighbor took his cow to the accused to be mated with the bull of the

accused. That night the accused butchered the cow.

- If the cow was entrusted to the accused for him to bring to another but the accused ate the cow, the crime is estafa

- When the property taken is a coconut. The coconut must be taken from a plantation whether they are still in the tree or on the ground The reason for the law is to protect the coconut industry of the Philippines.
- When the property taken is a fish. The taking must be from large fishponds or those ponds for commercial purposes.
- When the taking is on the occasion of a calamity, vehicular accident, or civil disturbance. Example: The accused took the valuable items of the passengers of a bus which fell down the ravine.
- When the property taken is timber from a logging concession.

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
- This is a special kind of theft and is set apart from the others in order to protect the historical and cultural treasures.
 - The accused should not be the museum curator or the librarian because what they commit is malversation

Questions & Answers

Q: Suppose the artifacts were taken from their natural habitat, such as theft of the Kabayan mummies?

A: Yes If they were constituted as part or extension of the Museum

Other Offenses Penalized as Theft

A. Violation of P.D. 133. The laborer/employee who shall steal any material, spare part, produce, or article, he is working on.

Example: (a). a silversmith who steals the silver given him to work on (b). A shoemaker who steals the leather used to make shoes

B. Violation of the Forestry Code which punishes, as qualified theft, the act of cutting, gathering or

removing or smuggling timber or other forest products from any public or private forest in violation of existing rules, regulations or laws

C. **Violation of P.D. 581** which punishes "High Grading" or the taking of gold-bearing ores or rocks from a mining claim or camp.

Usurpation (of real property)

Kinds:

1. Occupation of Real Property or Usurpation of Real Rights in Property (Article 312).

Concept:

The act of taking possession, by means of violence against or intimidation of persons, of any real property or shall usurp any real right in property belonging to another.

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.

Notes:

- This is akin to robbery of real property.
- There must be animus lucrandi otherwise the act is coercion
- This includes the act of squatting
- There are two penalties imposed:
 - (i) The first is for the act of usurpation which is based either on the gain or a fine, and
 - (ii) the penalty for the injury inflicted
- The land should not be public agricultural lands as it is R.A. 947 which applies

2. Altering Boundaries or Landmarks (Article 313)

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.

Notes:

- The boundaries may refer to boundary marks or monuments of towns, provinces or private estates or other marks intended to designate the boundaries of the same, such as trees planted or fences placed around the perimeter.
- This includes titled lands

Culpable Insolvency

Article 314. Fraudulent Insolvency

Concept:

The act of a person who absconds with his property to the prejudice of his creditors, i.e. in order that they cannot collect from him.

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.

Notes:

- The accused must be a debtor
- The term "abscond" means to conceal one's self or one's property, with intent to avoid legal processes
 - Hiding so as not to be served with a complaint, summons or notices or orders
 - The property may be real or personal. Concealing one's property means transferring to another to prevent the creditor from running after that particular property but there must be a real consideration.
 - Simulated sales or transfers (i.e there is no real consideration as ownership remains with the debtor), are punished under estafa
 - Creditors must be prejudiced in that they are unable to collect
 - It is not necessary that insolvency proceeding should have been filed first.

his injury".(Guinhawa vs. People, 468 SCRA 278)

Estafa or Swindling (Embezzlement of Private Funds or Property)

General Principles:

1. Generally there are only two ways of commission:

- A. By misappropriation or abuse of confidence or unfaithfulness
- B. By False pretenses or by means of deceit

If one is charged under one mode, he cannot be convicted under the other mode. Each mode is distinct so that one cannot be said to include the other.

- Estafa by deceit cannot be committed by negligence. It is always intentional in that the accused (a) knowingly asserts or assures the existence or truth of a fact or the doing or performance of an act, or (b) he intentionally omits or conceals or suppresses an important fact or (c) he intentionally fails to do an act which aids in the deception of the victim.
 - Example: The seller of a car who did not inform the buyer that the car had previously been involved in an accident and was damaged so that certain parts had to be repaired, replaced or welded, was found guilty of estafa by deceit.
 - "Concealment which the law denounces as fraudulent implies a purpose or design to hide facts which the other party ought to know. Failure to reveal a fact which the seller is, in good faith, bound to disclose may generally be classified as a deceptive act due to its inherent capacity to deceive. Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation. Moreover, a representation is not confined to words, or positive assertions; it may consist as well of deeds, acts or artifice of a nature calculated to mislead another and thus allow the fraud-feasor to obtain an undue advantage.
 - Fraudulent nondisclosure and fraudulent concealment are of the same genre. Fraudulent concealment presupposes a duty to disclose the truth and that disclosure was not made when opportunity to speak and inform was presented, and that the party to whom the duty of disclosure as to a material fact was due, was induced thereby to act to

- It maybe a (a) continuing offense in that the acts constituting estafa were executed not in an instance but within a span of time and (b) it may be transitory in that the essential elements took place in different jurisdictions.

Questions & Answers

Q: X, who is in Manila, convinced Y who is in Baguio, to send money to X as purchase price of goods which Y was in need. The agreement was through text messages, and sometimes through the use of cell phones and at items through the internet. The money was sent through the Western Union. X misappropriated the money. Can Y file estafa charges in Baguio City?

- There must be damage to a third person to bring about consummated estafa which damage may either be:
 - Actual or material damage such as in the loss of a certain amount of money, or a specific property
 - It may consist in the mere disturbance of property rights.
Example. Mr. X presented misrepresented himself as the President of a company in whose favor certain sums of money were due and payable from Juan. He demanded payment whereupon Juan issued a check made payable to: "The President of the company". Even if Mr. X is unable to encash the check, Juan cannot also make use of the amount covered by the check.
 - Temporary Prejudice.

Questions & Answers

Q: Juan handed P10,000.00 to Pedro for Pedro to give to Juan's brother at the end of the month. Pedro's allowance did not yet arrive so he spent the money in the expectation that he will replace it with his allowance which is due by the end of the month. He did replace it with his allowance and gave the money to Juan's brother. Juan learned about it. Can Juan file charges of estafa against Pedro?

- The damage must be capable of pecuniary valuation because the penalty includes a fine which in turn is based on the amount of damage. Likewise the penalty of imprisonment is based on the amount The exception is **syndicated estafa** under P.D. 1689 where the penalty is fixed: life

imprisonment to death, regardless of the amount involved. A syndicate exists if committed by" **five or more persons formed with the intention of carrying out the unlawful or illegal act, transaction, enterprise or scheme"**

- Novation may be a defense in that it may prevent the rise of criminal liability or it may cast doubt on the true nature of the original basic transaction between the accused and the offended party.
 - It is not a defense once the Information was filed in court
 - Examples:
 - (i). A contract of agency may be converted into a debtor-creditor relationship. Thus the agent and the principal may agree that the agent assume the payment of the value of the article supposed to be sold on consignment. If the agent failed to pay, there can be no charge of estafa.
 - (ii). X discovered that the land sold to him is non-existent and when he informed the seller, the seller offered X an option of either reimbursement of the money or that be given another land in substitution. X agreed but found the land given in substitution was not to his liking. The subsequent agreement which is a novation is a good defense to a charge for estafa.
- The Principle of Multiple Estafa:
 - There are as many separate charges for estafa as there are different and separate acts of misappropriation committed on different dates or occasions.
 - For each amount belonging to a different person i.e there as many separate charges of estafa as there are persons damaged because the damage to one is different from the damage to another person.
 - The principle of continuous crime does not apply to estafa.

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 fraudulent 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 in 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 trustee 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.

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.

Note: This article defines the 2 ways by which estafa in general is committed. It provides the penalty which is dependent upon the amount of fraud or damage involved. However the maximum penalty of imprisonment is 30 years which is to be called as reclusion perpetua.

**FIRST MODE OR KIND:
With Unfaithfulness or by Abuse of Confidence**

I. "By altering the substance, quantity or quality of any thing of value which the offender shall deliver by virtue of an obligation to do so, though based on an immoral or illegal consideration"

- There was an agreement as to the kind, quantity or quality of the thing to be delivered
- The accused misrepresented that the thing he now delivers is of the same kind, quality or quantity agreed upon when in truth it is not

Examples

1. The accused received money and claims the goods he is giving is the 10 kilos agreed upon when in truth it is only 8 kilos; it is the white sugar when in truth it is brown or that it is the 5 kilos of shabu for which he received payment but what he gave is 3 kilos only
2. The accused claimed there were 100 sacks of palay in his warehouse which he used as pledge when in truth there as only 90 sacks.

II. "By misappropriating or converting money or goods or other property received by the offender under an obligation to make delivery or to return, or by denying receipt thereof "

This is what is referred to as "Estafa by Conversion"

Element No. 1.

The personal property was received or voluntarily delivered to the offender under any form of contract or arrangement so long as there was an obligation on the part of the offender to deliver the property to another or to deliver to the offender party, or to return the same property.

- This contracts give juridical possession to the offender which means the transfer or delivery of the property to the accused was made by virtue of an obligation created by a valid contract which was mutually consented to, or created by law, which gives the offender a right to the possession which he can set up even as against the transferor
- Thus in the following examples note that property was received:
 - (a). For safekeeping or for deposit such as goods delivered to the hotel management
 - (b). In trust for delivery to another
 - (c). On commission as in articles given to sales agents to be sold and the agent receives a commission, or to be returned if unsold.(referred to as goods received on consignment)
 - (d). For administration or for the accused to look after
 - (e). Receipt by an agent from the principal
 - (f). Received as pledge or property leased to the accused

In all the foregoing the same property received given is the same property to be returned. (Identity of the Article)Thus the bills coins or checks deposited in the bank, or is given by a lessee as advanced deposit: or paid to a school subject of reimbursement; even if spent, does not constitute conversion. The same bills, coins or checks originally given are not the same bills, coins or checks to be returned, but their equivalents.

Element No. 2.

There was a conversion or diversion i.e after receipt of the property, it was used or disposed of by the accused as though it were his own, or that he deviated or used to the property to a purpose different from that agreed upon.

- Conversation includes personal appropriation although it is not necessary that the accused

personally benefited. It includes as well denying the receipt of the property

- Examples of diversion:
 - (a). The article was to be sold in cash but the accused sold it on credit
 - (b). Article is to be sold but the agent pledged it and failed to account for the money received
 - (c). Note however that if the article is to be sold for a fixed amount but it was sold for less, there is no estafa. But if the agent misappropriates the proceeds there is estafa
 - (d). If the article is only to be pledged but it was instead sold, the crime is theft.
- In case of delay in the fulfillment of a trust: as when the money entrusted to Juan for delivery to Pedro was given to Pedro belatedly. There is no estafa but only civil liability
- If the accused retained or deducted his commission from the proceeds of the sale of the goods:
 - There is estafa if retention was not authorized or agreed upon
 - Even if not authorized there is no estafa if the purpose is as a protection against possible civil controversy as where there is a pending mutual accounting; or the principal failed to pay the accumulated commissions in an amount larger than that retained
 - If the accused was given the option to either return or pay the value of the article, the liability is only civil
- If the thing was delivered to a third person
 - If to a sub-agent there is no estafa even if the reason for the non-return is due to acts of the sub-agent, unless delivery to a third person was expressly prohibited
 - Delivery to a sub agent should not however be a mere subterfuge to explain the non-production of the article
- If the thing was leased and was sold during the period of lease there is estafa or if the lessee asserts ownership and refuses to return.

Questions & Answers

Q: X rented the taxi of Y and used it as a public transport. X thereafter sold the taxi. What crime was committed?

Third element:

That the act resulted to damage or prejudice

- The person damaged need not be the legal owner of the goods as the damage may befall a person other than the owner.

Is demand an element in estafa by conversion?

The case of Lee vs. People (455 SCRA 256) settled the question:

Facts: The accused failed to remit to the corporation the amount he received and collected. He was charged for estafa with abuse of confidence under Article 315 Paragraph 1 (b). He moved to have his conviction be reversed arguing that there as no prior demand made on him to account and remit the money.

Held: Demand is not necessary.

1. Demand is not an element or a condition precedent to the filing of a complaint for estafa. Indeed the accused maybe convicted of the felony under Article 315 (1-b) if the prosecution proved misappropriation or conversion by the accused of the money or property subject of the Information. In a prosecution for estafa, demand is not necessary where there is evidence of misappropriation or conversion.

2. However, failure to account upon demand for funds or property held in trust, is circumstantial evidence of misappropriation. This demand may be formal or verbal. Even a query as to the whereabouts of money is tantamount to a demand.

NOTE: It be understood therefore that demand is not required if there is evidence if misappropriation or conversion. Suppose there is no direct evidence of the misappropriation or conversion, and there was no prior demand made on the accused, will a charge for estafa still prosper? Yes. The effect of this absence of prior demand is that proof of misappropriation is more difficult to obtain. To make the proof easier, a demand may be made so that if the accused failed to account, then this will be circumstantial evidence of actual misappropriation.

III. "By taking advantage of a signature in blank and by writing any document above a signature in blank without the knowledge or consent of the victim"

- This presupposes that: a paper which bore the signature of the victim was voluntarily delivered to the accused; that there was a specific instruction on what the accused was supposed to write; but the accused wrote something different.

- If the document was not voluntarily delivered, the crime is falsification, so also if there was a writing which was altered.
- If however the signature was procured through fraud, the crime is estafa by deceit.
- Example: (1) X handed a signed check to Y with the agreement that Y place the amount of P10,000.00 but Y wrote P20,000.00. (2) X gave a bond paper already signed by him with the instruction for Y to fill up the paper by placing thereon the conditions agreed upon. Y added other conditions.

SECOND MODE OR KIND:

Estafa By Means of False Pretenses or Deceit Executed to or Simultaneously with the Commission of the Fraud

Introduction:

- Deceit assumes so many hues or forms. It so broad as to include any falsehood, or lie, false assertion, or presenting something which the accused knows is untrue. Making assurances of doing an act, giving or delivering, which accused knew he has no capability or intention of fulfilling. (Glib tongue or sweet words)
- The victim must not know or be aware of the true state of things and he must have relied on the misrepresentation of the accused. Had it not been for what the accused told him, the victim would not have transacted with the accused.
 - The deceit, must be prior or simultaneously committed with the act of defraudation
 - The deceit must be the efficient cause or primary consideration which induced the offended party to part with his money or property
 - It need not be of things possible

I. "By using fictitious name, falsely representing to possess power, influence, qualifications, property, credit business, or imaginary transactions"

- Fictitious name is not necessarily an alias but it covers every situation where the accused misrepresents himself in order to be able to catch the victim unaware and therefore willing to deal with the accused. Thus one who projected himself as a Volunteer Teacher and thereby gained the trust of the students, after which he was able to convince them to give their money to him, used a fictitious name.
- Illustrations:

1. Illegal Recruitment where accused represents their capacity to work for a person's visa and to secure a job abroad; or that they have contacts who can facilitate the issuance of visas or the procurement of jobs abroad. This includes the scheme of advertising one's business as "Visa Consultancy" as front for illegal recruitment.
2. Offering Get-rich-quick schemes or pyramiding or promising big return of investments under the " Ponzi scheme"; or to invest in U.S. Treasury Warrants.
3. Hiring a vehicle with assurance to pay when actually he has no money
4. Pretending the assured is dead in order to collect the insurance
5. Encashing a forged check by misrepresenting ones self to be the payee giving rise to estafa through falsification
6. Selling a non existing property
7. Placing orders on a COD basis but thereafter making excuses for not paying on cash basis
8. Pretending the ability to locate buried treasures
9. Putting up a bank then running away with the deposits
10. Enticing people to invest in a business which does not exist
12. Advertising as real estate developers when in truth the accused does not have the capability to fulfill his promises of a house and lot.
13. Those who represented themselves as members of a religious group and convinced people to make donations to them.

- The public official may charge the accused for libel or slander
- Example: To facilitate the release of papers or for a favorable decision, the accused obtained money from complainant supposedly to be given to the officer.

IV. "By Issuing or Postdating a check without or against insufficient acts."

- The deceit is in the act of issuance of a check since there is implicit an assurance that the check will be backed up by funds when presented to the drawee bank.
- Elements (Sir Sagsago):
 1. The accused postdated or issued a check in payment of an obligation contracted at the time of issuance (kaliwa-an)
 2. At the time of issuance, the accused has no funds in the bank or the funds were insufficient
 3. The payee has been defrauded or damaged
- Important considerations:
 - The check was issued for the purpose of contracting or creating an obligation. It was not issued for a pre-existing obligation or one already existing prior to the issuance of the check.
 - Issuing a bad check to pay purchases is estafa
 - If the check is to pay a loan there is no estafa
 - Rediscounting a check is estafa
 - Check issued to pay the installment due on a deed of sale is not estafa
 - The payee did not know or was not informed of the lack or insufficiency of the funds at the time the check was given him
 - The check was issued as payment i.e. to be encashed by the holder, and not as guaranty check or as security check or memorandum check or as an accommodation check
 - If there was no consideration, there is no estafa

Questions & Answers

Q: Money was given on a promise by the accused for approval of certain documents which the accused did not succeed in having be approved. Is there estafa? (Answer).None. There is only a contract of services unless the accused had no intent to perform the services at that time, or if he made representations which were false.

II." Altering the quality, fineness, or weight of anything pertaining to his art or business"

- This has been supplanted by the law on Weight and Measurements which includes the manipulation of weighting scales.

III. "By pretending to have bribed a government employee "

- The claim of bribery is a mere pretense to obtain money from a person.

Questions & Answers

Q: Is the payee liable if he negotiates the check which turned out to be without funds?

A: Yes if he was in conspiracy with the drawer, or under paragraph 2(a) i.e. (by pretending an imaginary transaction, or by means of deceit).

Q: X gave his check to Y for Y to show his creditors that he (Y) be given time to pay . But Y negotiated the check to Z which check bounced. Who is liable?

A: It is Y.

Q: Y gave his check to X as payment and Y negotiated the check to Z. The check bounced. Question: Can Z file estafa charges against either X or Y?

- If the maker or drawer stops the payment of the check for a valid reason, he is not liable. Examples: that the check was stolen or the goods sold to him were defective, are valid reasons for stopping payment.
- Presumption of deceit constituting false pretense or fraudulent acts
 - Deceit is presumed from the failure to deposit the amount necessary to cover the check within three days from receipt of notice from the bank or payee/holder that the check has been dishonored. Proof of receipt of notice, not just the sending, is essential for the presumption to arise.
 - If within the 3 day period the victim accepted another check as replacement for the original check which was dishonored, but the replacement check in turn bounced, the accused is not liable for estafa upon the first check as he was not any more obligated to fund the first check within the 3 day period. The presumption of deceit does not apply any more. (PP vs. Juliano 448 SCRA 370).

Acts punished: under Paragraph (e)

1. Obtaining food, refreshment and accommodation in a hotel, inn, restaurant, boarding house, lodging house or apartment houses without paying therefore (Crime known as Eat, Drink, Sleep and Run)

- The accused impliedly represents that he has the means to pay

2. Obtaining credit at a hotel, inn, restaurant boardinghouse, lodging house, or apartment house by the use of any false pretense

3. Surreptitiously abandoning or removing any part of the luggage after obtaining food, refreshments or accommodations from said establishments without paying

- Refers to transients and not where there is a contract of lease unless false pretenses applies.

Estafa Through any of the following fraudulent means:

I. By inducing another, by means of deceit, to sign any document

- Not by violence else it is either coercion or Execution of Deeds by Means of Violence
- If the victim is willing to sign but a different document is prepared the crime is falsification

II. By resorting to some fraudulent practice to ensure success in a gambling game

- There be honor among gamblers
- Examples: "pikit", using cards with signs (readers), secret connivance among several to win over another

III. By removing, concealing or destroying, in whole or in part, any court record, office files, documents or other papers

- The purpose must be to defraud else it is malicious mischief
- Not by the custodian else it is infidelity
- Example: concealing the receipt of a deposit or cash bond

VIOLATION OF B.P. 22

Purpose:

To prevent the proliferation of worthless checks in the mainstream of daily business and to avert not only undermining of the banking system, but also the infliction of damage and injury upon the trade and commerce occasioned by the indiscriminate issuance of such checks. (They are referred to either as "watered checks", "bouncing checks", or "worthless checks")

B.P. 22 is constitutional and does not violate the prohibition against non-imprisonment for non-payment of a debt. In truth it is not the non-

payment of the debt which is punished but the act of issuing a worthless check.

Acts Punished

1. The making, drawing or issuance of any check to apply on account or for value, knowing at the time of issue that the drawer does not have sufficient funds in ,or credit, with the drawee bank. In this case the check is a worthless check at the time it is issued.
 - If issued by a juridical person those liable are those who signed the check. But a mere employee tasked to sign corporate checks in blank may not be deemed to have knowledge of the insufficiency of funds.
 - One who co-signs without knowledge of lack or insufficiency of the funds is not liable.
2. Failure to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon. The check may be good at time of issue but not at the time of presentation.
 - The fact that the check was presented beyond the 90 day period is of no moment. The 90 day period is not an element but merely a condition for the prima facie presumption of knowledge of insufficiency of funds
 - Under Banking practices the check may be presented within 6 months from its due date, thereafter it becomes stale.

Penalty.

Imprisonment of 30 days and a fine of not less than but not more than double the amount of the check but not to exceed P200,000.00

- Supreme Court Adm. Circular No. 12-2000 authorized judges to impose fine only as a penalty in lieu of imprisonment, depending on the circumstances, thus:

“The circular does not decriminalize B.P. 22 but merely lay down a rule of preference in the application of penalties. Where the circumstances of the case, for instance, clearly indicate good faith or a clear mistake of fact without taint of bad faith, the imposition of fine alone maybe considered as the more appropriate penalty. The rule of preference does not foreclose the possibility of imprisonment... neither doe sit defeat the legislative intent behind the law... the determination of whether the circumstances warrants the imposition of a fine alone rests solely upon the discretion of the judge”

- The court may impose subsidiary penalty for failure to pay the fine

Necessity of Written Notice of Dishonor

- The notice of dishonor must be in writing. Verbal notice is not enough. (Marigomen vs. People, May 26, 2005), (Ongson vs. PP, Aug. 12, 2005)
- The presumption of knowledge can not arise” if such notice of non payment by the drawee bank is not sent to the maker or drawer, or there is no proof as to when such notice was received by the drawer, since there would simply be no way of reckoning the crucial 5 day period (Dico vs. C.A. (Feb. 28, 2005) Ongson vs. PP (Aug. 12, 2005)
- The notice may be sent by the offended party or the drawee bank (Dico vs. CA, Feb. 28, 2005).

Re: presentation of drawee bank representative as witness

- It is not required, much less indispensable, for the prosecution to present the drawee bank’s representative as a witness to testify on the dishonor of the check. The prosecution may present... Only the private complainant as witness to prove all the elements of the offense. Said witness is competent to testify and qualified to testify that upon presentment for payment, the subject check was dishonored by the bank (Recuerdo vs. PP, 443 Phil. 770 ; Ongson vs. PP (Aug. 12, 2005)

Requirements for Liability and Defenses Allowed

Vergara vs. People (February 04, 2005)

Facts: The accused issued a check which was dishonored. She was verbally informed of the dishonor. She then replaced the check with six (6) other checks. Payments were made after the dishonor but the payments were applied first to the interests. Three years later the accused was charged for Violation of B.P. 22.

Held:

1. The requirements for conviction of B.P. 22 are:
 - a). The fact of the issuance of a check
 - b). The fact of dishonor the check
 - c). Knowledge at the time of the issue of the insufficiency of funds
 - (i) It maybe actual knowledge or
 - (ii) Presumed Knowledge if (a) the check was presented within 90 days from the date of the check;

(b) the maker /drawer received written notice of the dishonor and (c) he failed to make arrangements within five (5) banking days from receipt of the written dishonor, for the payment of the check

2. The defenses include:

- a). There was no written notice of dishonor
- b). There is no proof of the receipt of the notice and the date thereof
- c) Arrangements were made for the payment of the checks including replacement with new checks, within five days from receipt of notice
- d) The Utilitarian Theory if there was a full payment despite which a criminal case is filed as a collection suit

“ The accused cannot be penalized for the issuance of a check which has already been satisfied.

B.P. 22 ... was devised to safeguard the interest of the banking system and the legitimate public checking account user. It was not intended to shelter or favor or encourage users of the system to enrich themselves through the manipulation and circumvention of the noble purpose and objective of the law. **Under the Utilitarian Theory or protective theory in criminal law, the primary function of punishment is the protection of the society against actual or potential wrong doers.**

The accused can hardly be classified as a menace against whom the society should be protected. From the time the accused was informed up to the filing of the case, she made payments which covered the value of the checks.”

(Note: In Griffith vs. CA (379 SCRA 94) the accused was acquitted of a charge filed 2 years after the complainant collected more than the value of the check. Ratione Cessat Lex, et Cessat lex)

- (e). In Macalalag vs. People (511 SCRA 400; Dec. 20, 2006) the court held: the principle in Medel vs. CA (299 SCRA 481) as reiterated in Ruiz vs. CA (401 SCRA 410) applies to a prosecution for Violation of B.P. 22. (In Medel the court ruled that if the

stipulated interest is excessive, iniquitous, unconscionable and exorbitant, said interest may be declared illegal and the interest is set at 12% per annum). The trial court may thus determine whether the interest of the loan covered by the check is unconscionable or not. **It may then declare that a check has been fully paid if the interest is unconscionable and hold the accused not liable for violation of B.P. 22 if said amount was paid prior to the presentation of the check with the bank or within the 5 days after notice of dishonor.**

- f). “There is no violation of B.P. 22 if the complainant was actually told by the drawer that he has no sufficient funds in a bank” (Macalag vs. PP, 511 SCRA 400)
- g). If there is a variance or discrepancy in the identity of the check described in the Information with the check presented in court as this violates the right of the accused to be informed of the offense charged and can not thereby be convicted (Dico vs. CA, Feb. 25, 2005)
- h). That the check was issued merely to accommodate the complainant is not a defense (Steve Tan vs. Mendez, June 06, 2002)

3. Other defenses include:

- a). Prescription of the crime
- b). Forgery, or that the accused did not voluntarily part with the check
- c) The check became stale when presented

Questions & Answers

Q: Is wife liable if only the husband signed the check given as security for a loan?

Ladonga vs. PP (Feb. 17, 2005)

This involves the application of the Revised Penal Code in a suppletory character pursuant to Article 10. Thus the following principles apply: a). Provisions on subsidiary imprisonment. b). Principle of Conspiracy as analogous to the provisions on principals. There was however no proof the wife performed an overt act in pursuance of the complicity which overt act may either be active participation in the actual commission of the crime, or it may consist of moral assistance to the co-conspirator by moving them to execute or to implement the criminal design.

Q: May a person be held liable if he issues a check which is drawn against the account of another person?

A: Yes. The law includes within its coverage, the making and issuing of a check by one who has no account with a bank, or where such account was already closed when the check was presented for payment even if the owner of the said account consented to the making of the check.

Distinction From Estafa

1. Violation of B.P. is malum prohibitum a crime against public interest whereas estafa is mala in se
2. Violation of B.P. 22 does not require intent and damage as elements which matters are the elements of estafa
3. Violation of B.P. 22 applies to all kinds of checks whereas estafa applies only to checks issued as payment for a simultaneous obligation
4. In Violation of B.P. 22 the drawer is given 5 days to pay or make arrangements for the payment of the check as against 3 days for estafa

Note: The accused may therefore be prosecuted both for Estafa and for Violation of B.P. 22 over the same check. Further, acquittal or conviction under one law will not give rise to a double jeopardy if the accused is prosecuted under the other law.

Venue of the criminal action for Violation of B.P. 22

1. In the place of issue i.e where the check was actually made or drawn
2. In the place of effective delivery in the event the check is personally given to one to deliver to the payee but the recipient is not acting as the agent of the payee (Lim vs. Rodrigo). If the recipient is the agent, delivery to him is delivery to the payee as the principal.
3. In the place of dishonor i.e. where the drawee bank is located

Note: Violation of B.P. 22 may be a transitory crime

Other Important Considerations:

- There is no independent civil action allowed and no reservation is allowed as the civil liability arising from the crime is mandatorily determined in the criminal case.

- How many charges ought to be filed if there were several checks issued and dishonored? (Personal Opinion- Sir Sagsago): If the checks were issued simultaneously for one and the same transaction, against the same account, and all are dishonored, there should only be one offense of violation of B.P. 22.

Estafa Against Realty

Article 316. Other Forms of Swindling

NOTE: As a rule estafa involves only personal properties. However Article 316 provides the situations when estafa may involve real properties.

I. Any person who, pretending to be the owner of any real property, shall convey, sell, encumber or mortgage 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.
- The property must actually exist but it does not belong to the accused. The latter simply pretends he is the owner.
 - If the property does not exist but the accused pretends it exists, or the property is a personal property, the crime is estafa under article 315 (par. 2-a) i.e. pretending to possess property
 - Examples: selling a public land; mortgage of a land/building which the accused has already sold to another; second sale of the same property to the victim

II. Disposing off encumbered property as if it were unencumbered (in other words, 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.

- The real property has been mortgaged or is under any other valid encumbrance, as when it has been used as property bond, or was attached. If the prior encumbrance is but a verbal agreement, the same is not enforceable hence no estafa is committed.
- The accused must expressly misrepresent that the property is free from any lien or encumbrance. Mere failure to disclose even if intentional, will not constitute a violation. This requires that there be an express warranty that the property is clean.
 - But the failure or omission to disclose constitutes "civil fraud" which may be the basis for damages, but not for estafa under this article.
 - This express warranty is often contained in the body of the Deed of Sale itself
- The rule on constructive notice concerning titled lands does not apply

III. The owner of a personal property who shall wrongfully take it from its lawful possessor to the prejudice of the latter or to a third person

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.
- The taking should be by deceit and not by force else it is coercion.

Example: the debtor enticed the creditor to handover the watch used as a pledge on the pretext that the debt is to be paid. Upon being handed the watch the debtor does not pay and does not return the watch.

- If the possessor is not the lawful possessor, there is no estafa.

Questions & Answers

Q: X saw his stolen cellphone in the possession of Y and pretends he wants to buy the cell phone. After it is given to him by Y, he declares he is the owner and refuses to pay or to return it. Did X commit estafa?

IV. By executing a fictitious contract to the prejudice of another.

- The accused must be a debtor and the purpose is to prevent a creditor from running after the property to collect the debt.
- "Fictitious contract" refers to a simulated contract i.e there is no real consideration such that the ownership remains with the accused. If the ownership has been validly transferred, the crime would be Culpable Insolvency.

V. By accepting compensation for services not actually rendered or for labor not performed.

- The acceptance must be in bad faith in that the accused knows he has not performed any service or labor. If he was in good faith the money may be recovered as this is a case of solution indebiti.
- Ex: Impersonating a laborer and receiving the wages of the latter

VI. Selling or mortgaging of real property used as bond without judicial authority (in other words, 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.

Note: There must be actual damage and not just temporary prejudice.

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.

Notes:

- This covers any form of deception where the accused took advantage of the inexperience or

emotion or feelings of a minor to his detriment and shall induce the minor to:

1. assume any obligation, such as borrowing money with high interest
 2. give any release as by condoning any indebtedness due to the minor
 3. execute any transfer of any property, such as exchanging his property with a less valuable property
- The property involved should not a real property as minors cannot convey or encumber real property without the consent of his parents or guardians, otherwise it would be estafa under Article 318.

Article 318. Other deceits

Acts punished

1. Defrauding or damaging another by any other deceit not mentioned in the preceding articles;
 - "Any other deceit" covers any form of deception which is not punished under either article 315, 316 or 317. It is intended as the catchall provision for that purpose with its broad scope and intendment.
 - Examples:
 - (i). Obtaining a loan on the promise that the accused shall mortgage a property which the accused latter refused to do
 - (ii). A person presents herself as house help, requests for an advance, and then surreptitiously leave
 - (iii) Bus conductor who issues a ticket for a lesser amount than what is actually collected which ticket he then presents to the operator, and thereby pocketing the difference
 - (iv). The false or fraudulent representation by a seller that what he offers for sale is brand new (when in fact it is not) (Guinhawa vs. People, Aug. 25, 2005)
2. Interpreting dreams, by making forecasts, by telling fortunes, or by taking advantage of the credulity of the public in any other similar manner for profit or gain
 - This is called the "**Fortune Teller's Crime**"
 - Q: Suppose the prediction came true?

Chattel Mortgage

Article 319. Removal, Sale or Pledge of Mortgage Property

Acts punished

1. knowingly removing to any province or city any property mortgaged under the chattel mortgage law other than the one in which it was located at the time of the execution of the mortgage, without the written consent of the mortgagee or his representative (i.e. 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.

Notes:

- the removal must be to defraud the mortgagee and not due to any valid reason, such as a change of address, or if the properties are vehicles which travel from one place to another . The purpose is so that the mortgagor cannot foreclose on the mortgage
 - But if the creditor chooses to collect by filing a suit, the debtor is relieved from liability under Article 318
2. Double sale, pledge or mortgage of the property without the written consent of the mortgagor written on the back of the mortgage and recorded in the Office of the Register of Deeds.

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.

Crimes Involving Destruction

1. Arson

Laws Involved

1. **P.D.1613** which repealed Articles 320 to 326-B of the Revised Penal Code
2. **P.D. 1744** which revived Article 320
3. **R.A. 7659** which amended Article 320 as revived.

Concept:

This is the crime committed by any person who destroys property by means of fire.

- There are two categories of the crime of arson (per PP. vs. Malangan 503 SCRA 294) based on their significance on the social, economic, political and national security implications
1. **Destructive Arson** under Article 320, as amended by R.A. 7659.
 - This contemplates the malicious burning of structures, both public and private, hotels, edifices, trains, vessels, aircrafts, factories and other military, government, or commercial establishments
 2. **Simple Arson** under P.D. 1613 which contemplates the malicious burning of public and private structures, regardless of size, not included in Article 320 as Amended
 - These includes houses, dwellings, government buildings, farms, mills, plantations, railways, bus stations, airports, wharves, and other industrial establishments.

Property Subject of Arson

- *As to who owns the property burned:*
 - 1). Property of another, who may be a private person or the government
 - 2). Property of the accused if the arson was under circumstances which exposes danger to the life or property of another
Example: burning ones old house locate in a heavily populated residential
- *As to the kind of property:* these may be real or personal, including plantation, farms, pasture land, crops, forest land, plants and animals except large cattle (as the latter is cattle rustling)

Note: The value of the property is immaterial

Penalty for Arson

For purposes of the penalty arson is classified into:

- 1) Destructive Arson where the penalty is Reclusion Temporal Maximum to Reclusion Perpetua
- 2). Other cases of Arson where the penalty is reclusion temporal to reclusion perpetua
- 3). Simple Arson of another's property punishable by prision mayor and
- 4). Arson of one's property

Factors affecting penalty

- 1). Ownership of the property
- 2). The kind or nature of the property such as: whether it is a building or not, if a building whether it is a public building or a private dwelling ; a religious building or one devoted to culture, education or social service
- 3). The presence of the special aggravating circumstances of:
 - a) If with intent of gain, such as to collect the insurance premium
 - 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 i.e. if planned or carried out by a group of 3 or more persons (syndicated arson)
4. If death results i.e if by reason or on the occasion of arson death results

- This is the special complex crime of Arson Resulting in or accompanied by, Homicide. The term "homicide" is in generic sense and includes several deaths

- Death is not the purpose of the burning otherwise the crime is murder but this crime is where the intention is to burn but a person was killed

Principles

1. Arson is a continuous crime and a single offense is committed even if on the same occasion of the burning, several properties are burned, even if belonging to several persons
2. The justifying circumstances of State of Necessity may be invoked

3. Conspiracy to Commit Arson is punishable as a crime

Article 327. Malicious Mischief

Concept:

The crime committed by any person who shall deliberately cause damage to the property of another due to hate, revenge, jealousy, anger, or any other evil motive.

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;

Principles

1. The destruction should not however be by means of fire otherwise the crime is arson
2. The property should not include large cattle else it is cattle rustling
3. If animal is killed to protect one's farm or property, the principle of defense of property may be invoked
4. This is always intentional and cannot be committed by negligence. If destruction was due to lack of foresight or skill, the nomenclature of the crime is imprudence resulting to damage to property.
5. If the property or part thereof is thereafter taken, the crime is theft and malicious mischief is absorbed
6. For purposes of the penalty malicious mischief is sub classified into:
 - a) **Ordinary Malicious Mischief:** i.e. that of private property where the penalty depends on the value of the property, hence the property must have a valuation i.e. does not exceed P200.00, more than P200.00 but not more than P1,000.00 and over P1,000.00

Example: Writing graffiti or acts of vandalism

- b). **Special Malicious Mischief or Qualified Malicious Mischief (Article 328)**

Acts punished

1. Causing damage to obstruct the performance of public functions, e.g. destroying the stage to prevent the mayor from speaking;
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 in common by the public such as promenades, waiting sheds, seats in the park
e.g. throwing human waste or urinating in a public street

c). Malicious Mischief to means of communication or transportation (Article 330)

- this is committed by damaging any railway, telegraph or telephone lines
- If the damage results to any kind of accident, such as derailment, collision, the penalty is higher. This is in addition to the liability for the other consequences of his act

Example: The accused destroyed the retaining wall of a road causing a jeep to fall down the ravine killing the driver. He is liable for Malicious Mischief (for the destruction of the wall) and a separate offense of Reckless Imprudence resulting in homicide and damage to property

d). Malicious Mischief of public statues or of useful or ornamental monuments or of public ornamental paintings (Article 331).

Example: Painting the statute of the heroes in public parks

Exemption from Criminal Liability for Crimes Against Property

Article 332. Persons Exempt from Criminal Liability

Introduction:

- Article 332 provides for an absolatory cause in the crimes of *theft*, *estafa* and *malicious mischief* by directing that "**No criminal but**

only civil liability, shall result” if the crimes are mutually committed by the persons enumerated therein. This is based on the relationship between the accused and the victim.

- The exemption applies provided the crimes are not complexed with other crimes

Persons exempted from criminal liability

1. Between Spouses; ascendants and descendants, or relatives by affinity in the same line

- This includes between parents and children - in-law; step children and step parents; adopter and adopted, including recognized natural children with their natural parents
- Spouses include common-law spouses but not those simply in a live-in-relationship. This is because the property relations between common-law spouses is that of the co-ownership
- Spouses who are legally separated are included so long as there was no dissolution yet of their property

2 The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another.

- If the property is subject of judicial settlement, and is placed by the court under an administrator after an inventory has been approved, the property is said to have passed into the possession of another

Questions & Answers

Q: Suppose the widowed spouse took and spent the legitime of the heirs, was criminal liability incurred?

3. Brothers and sisters, brothers/sisters-in-law, if living together.

- Not if the accused is just a visitor or given temporary shelter by the victim

TITLE XI CRIMES AGAINST CHASTITY

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).

I. Introduction:

A. (Personal Opinion). In view of the provisions of R.A. 8353 (The Anti Rape Law of 1997), R.A. 9208 (The Anti Trafficking in Persons Act of 2003) the only crimes against chastity should be :

1. Adultery (Art. 333)
2. Concubinage (Art. 334)
3. Acts of Lasciviousness
 - a). Forcible (Art. 336)
 - b). Consented (Art. 339)
4. Abduction
 - a). Forcible (Art. 342)
 - b). Consented (Art. 343)

B. Rape (Article 335) is now Article 266-A and 266-B as crimes against persons

C. Corruption of Minors under Article 340 and White Slave Trade under Article 341 are now punished as Trafficking In Persons.

II. (Personal Opinion). As to the crime of Seduction, a qualification has to be made because it appears this crime has been modified by rape committed by means of fraudulent machination or by grave abuse of authority.

In seduction the victim consented to the sexual intercourse.

A. In qualified seduction (Article 337) what makes the offense qualified is because of the character of the accused, the excess of power or abuse of confidence. Thus the consent of the victim was obtained because of any of the following:

- (i). Abuse of authority such as by persons in authority, guardians, teachers, persons who are entrusted with the education or custody of the victim
- (ii). Abuse of the confidence reposed in them such as by priest, minister, house servants, domestics i.e. one living under the same roof as the victim
- (iii). Abuse of relationship such as by brothers or ascendants

Under the Anti Rape Law, there is rape by “grave abuse of authority” hence it would seem that if the accuse falls under any of the foregoing classification but if the abuse is not “grave”, the offense would still be qualified

seduction. But when is the abuse considered grave, so as to give rise to rape, and when is it mild or not grave?

B. In simple seduction (Article 338) the seduction was "committed by means of deceit".

Deceit was understood to be generally in the form of unfulfilled promise of marriage. Hence, it would seem that if the consent to sex was by any artifice other than by a promise of marriage, the offense would be rape by "fraudulent machination".

C. Requirements for seduction or consented sexual intercourse:

1. The victim is a woman who must be over 12 years because if her age is below 12 the offense is statutory rape
2. She must not be over 18 years (it is presumed that if over 18 years, she is of sufficient understanding to take care of her virtue and chastity). However even if the woman is over 18 if there was "Grave Abuse of Authority" or "fraudulent machination" the crime would be rape.
3. While the law requires the victim to be a "virgin", this is to be understood as referring to a woman of chaste character though she may not literally be virgin.
4. There must be sexual intercourse to be consummated

Adultery and Concubinage

(These two crimes are the crimes of criminal conversation proper)

Article 333. ADULTERY

Concept:

The crime committed by a married woman who shall have sexual intercourse with a man not her husband, and by the man who has carnal knowledge of her, knowing her to be married"

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.

Notes:

- The gist is actual sexual intercourse and not just mere romantic dating, or petting or kissing

- There is no frustrated stage: it is either that the accused were able to engage in sex or not.
- It is not a continuing crime because each separate sex act on a different occasion is a different and a separate crime.
- This may be committed when a married woman marries a second time without the first having been judicially annulled or voided. Her liability is in addition to bigamy
- The Judicial validity of the woman's marriage is not material. It is enough that there was a marriage which has not yet been annulled or declared null and void.

Rationale:

1. The possibility of introducing spurious heirs (Criticism: this reason will not hold water if the woman is proven to be sterile)
2. Violation of the marriage vows and the sanctity of the marriage based on the exclusivity of the sexual partner.

Defenses in Adultery

1. Pardon by the offended spouse if (1) given to both the guilty parties and (2) prior to the institution of the criminal action
2. Pardon may be express or implied, as by sleeping with the woman despite knowledge of the adultery (**Pardon of the Act**)
3. Consent given prior to the adultery, such as in mutual agreement to separate and to live with another partner
4. Recrimination or mutual infidelity is merely mitigating
5. The fact that the woman is legally separated from the husband is no defense.

Principles in the Prosecution of Adultery

1. Direct evidence is not necessary as adultery may be implied from the circumstances of time, place and occasion
2. There may be a separate trial for the man and the woman
3. The man may be acquitted if he did not know the woman is married
4. If the man is married, he may also be liable for concubinage and the married woman man may also be charged as a concubine

Special Extenuating Circumstance of Unjustified Abandonment

- The penalty is at least one degree lower
- The essence is that the woman was forced to commit adultery by reason of extreme necessity which refers to economic necessity and the need for survival, such as providing for the shelter and sustenance of her abandoned family.

Article 334. Concubinage

How committed/ Acts Punished/ Concept: The crime committed by a married man who:

1. Shall keep a mistress in the conjugal dwelling
 - the concubine must live in the conjugal dwelling even for brief periods of time, and not where she occasionally comes for a tryst or to spend the night therein
2. Shall have sexual intercourse with her under scandalous circumstances
 - Proof of sex is not necessary but may be inferred
 - There be a public or open flaunting of the illicit relationship so that the public is scandalized, shocked, or the conduct give rise to general protest, or that the relationship sets a bad example.
 - Example: being seen with the woman in social and public gatherings; introducing or treating the woman as though she were the wife

Questions & Answers

Q: Since public reaction is gauge of the scandal is there concubinage if:

- (i) openly going out is in places where the two are total strangers
- (ii) relatives and acquaintances accept the fact of the relationship, as when the wife left the man who now is cared and loved by another woman?

3. Cohabit with her in any other place
 - To cohabit is to live together as husband and wife.

Questions & Answers

Q: Is concubinage committed by the man in providing the woman her own house or apartment but does not live with her though

he regularly visits her thereat, at which time they engage in sex?

General Notes:

- Unlike in adultery, the fact of criminal conversation or sexual intercourse with a woman does not per se give rise to concubinage. Further, each sexual act is not a separate offense because concubinage is treated as a continuing crime.

Note: In adultery the penalty is the same for both the woman and man (Prison correctional medium and maximum) but in concubinage the penalty for the man is lower by one degree (prison correctional minimum and medium) while the concubine is given a separate penalty which is destierro.

- The woman is liable if she knows him to be married (even if unhappily at that and even if her purpose is to provide comfort and companionship)
- The defenses available in adultery also apply such as consent and pardon.

Questions & Answers

Q: Can the man also claim, by analogy, the circumstance of unjustified abandonment which led him to commit concubinage i.e. out of necessity and the need for survival?

Article 335. Rape

This has been repealed by Republic Act No. 8353 or the **Anti-Rape Law of 1997**. See **Article 266-A**.

Article 336. Acts of Lasciviousness

Concept:

The act of making a physical contact with the body of another person for the purpose of obtaining sexual gratification other than, or without intention of, sexual intercourse.

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.
- The contact may be by the body of the accused such as by the lips, hands, foot; or by means of any object or instrument. In either case there must be no form of insertion into the anus, mouth or sex organ amounting to rape through sexual abuse.
- It is distinguished from Attempted Rape in that there is no intent to have sexual intercourse with the victim. The intent may be inferred from the circumstances of time, place, and occasion, or inferred from the nature of the act itself.
- It is distinguished from Unjust Vexation in that there is no lewd design in unjust vexation

Example: (i) The acts of an ardent lover such as kissing, embracing arising from his passion, are unjust vexation merely. (ii). The touching of the private parts of a woman out of curiosity is unjust vexation.

- If the acts of lasciviousness (including sexual intercourse) is performed upon a child exploited in prostitution or other sexual abuse (i.e. abuse other than the acts of lasciviousness such as when the child is the subject of an obscene publication or pornography or of indecent shows) whether male or female, the acts would constitute sexual abuse punished under R.A. 7610 (The Child Abuse Law) (Olivarez vs. C.A., July 29, 2006)

Kinds:

1. **Forcible (Article 336)** if made under circumstances of forcible rape, i.e through force, threat, violation, intimidation,
 - The accused may be any person and the victim may be a male or female
2. **Consented: (Article 339)** if made under circumstances of seduction whether simple or qualified i.e. a) victim is a female of chaste character, b) over 12 years but below 18 years, or a widow, c) there was deceit or abuse of authority, abuse of confidence or abuse of relationship

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.

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.

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.

Abduction

Concept:

The taking away of a woman with lewd designs i.e. to obtain sexual gratification.

- 1. Forcible (Article 342):** if the taking away is against her will.

Elements

- a. The person abducted is any woman, regardless of her age, civil status, or reputation;
- b. The abduction is against her will;

- c. The abduction is with lewd designs.

Notes:

- This presupposes the use of force, violence threat or intimidation or any method to overcome her resistance, or to deprive her of the ability to resist
- If the woman was thereafter raped, it the crime is Forcible Abduction with Rape, and if there be several rapes, the other rapes are considered as separate crimes.
- From Kidnapping/Serious Illegal Detention
 - In kidnapping, there is no lewd design but to either deprive or restrain the woman of her personal liberty/freedom of movement, or the purpose is to demand a ransom
 - If several rapes were committed on the woman, the crime is kidnapping with rape and the other rapes are absorbed and are aggravating circumstances while in Abduction, the other rapes are separate offenses
- It is Trafficking in Persons if the purpose is for sexual exploitation, forced labor or services, slavery, involuntary servitude or debt bondage, or sale of organs

2. Consented (Article 343:) the taking away of a woman of good reputation, 12 years or over but under 18 years of age, carried out with her consent and with lewd designs.

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

Notes:

- There may or may not be deceit employed to get the woman to agree, as for example, convincing the woman to elope with the man. The consent must be given freely and intelligently.
- There be lewd design else the crime may be inducing a minor to abandon the home

Article 344. Prosecution of Private Crimes

Necessity of a complaint i.e a formal denunciation indicating that the victim and her family opt not to keep the incident a private matter but to bring it out in the open in order to prosecute the offender

I. In **Adultery and Concubinage**: the complaint can only be initiated by the offended spouse who must still be married to the guilty spouse at the time of the bringing of the complaint, and not when the marriage has already been annulled or voided at the time when the action was brought.

- against both guilty parties if both are alive
- provided there was no prior consent or pardon

II. In **Acts of Lasciviousness and abduction**, the complaint must be initiated by the following enumerated persons.

NOTE: The enumeration is both **exclusive** (no other person has the personality to file except those in the enumeration) and **successive** (the order of preference must be followed) :

1. Victim or offended party unless the victim is incapacitated by reasons other than minority. If she is of legal age, she alone can bring the action.
2. By either of the parents if the victim is a minor who refuses to file, or is incapacitated as when she is demented or insane
3. By either of the Grandparents
4. By the legal or the court appointed guardian
5. By the state as *parens patriae* when the victim dies or becomes incapacitated before she can file the complaint and has no known parent, grandparents or guardian

Defenses in Acts of Lasciviousness and Abduction

1. Pardon by the Offended Party

- The pardon must be express
- If the offended party is of legal age and is not otherwise incapacitated, she alone can extend a valid pardon
- If a minor but of sufficient discretion, the victim can extend a valid pardon if she has no parent, otherwise the pardon must be concurred by the parent, grandparent or guardian

2. A valid Marriage between the Offended and the Offender i.e contracted in good faith

- extinguishes the criminal liability (case will be dismissed) or remits the penalty (accused will not suffer the penalty anymore).
- This benefits the co-principals (by indispensable cooperation and inducement but nto co-principals by direct participation), accomplices and accessories

Article 345. Civil Liability of Persons Guilty of Crimes Against Chastity

1. Indemnification of the offended party. Moral damages is recoverable in acts of lasciviousness by the victim as well by the parents
2. Acknowledgement of the offspring, unless the law should prevent him from so doing
3. To support the offspring

In the following there can be no acknowledgement :

- (a). in cases of adultery and concubinage
- (b). where the offended party is married, provided that paternity is not that of the husband
- (c). when paternity can not be determined. Note that DNA testing is accepted to determine paternity

Note: Where there are several accused and paternity can not be determined, all must give support.

TITLE XII. CRIMES AGAINST THE CIVIL STATUS OF PERSONS

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.

Principles

- In simulation and substitution, the child need not be legitimate.
- The purpose of the acts punished must be to cause the loss of the civil status of the child or to obtain the civil status of another.
- Simulation of birth, the act of making it appear that a woman gave birth to a child, must be in the record of birth/birth certificate. A birth certificate is obtained indicating that the woman gave birth to a child when in truth she did not.
 - If the simulation is in any other document, the crime is falsification
 - If the woman feigns or pretends to be pregnant and then makes it appear she gave birth to a baby when in truth the baby is that of another, such pretense is not punished. But when she causes the birth to be recorded, said act constitute the crime of simulation of birth.
 - Where the woman pretends to be pregnant and to give birth in order to demand support from the alleged father, the crime is estafa.
- The abandonment is not to kill but to cause it to lose its civil status. It consists of the practice of leaving an infant at the door of a religious or charitable institution, hospitals, or a foster home or the DSWD. The child be legitimate else it is a crime against security i.e. abandonment by persons having charge of the education or rearing of the child.
- Substitution has for its principal element the putting of a child in place of another born of a different mother. This results to a change of status because a child is introduced into a family although said child is a stranger thereto. The child acquires a name, situation and rights to which it is not lawfully entitled.

Example: Placing a different baby in the crib of another

Article 348. Usurpation of Civil Status

Concept:

The crime committed by any person who shall usurp the civil status of another. It is the act of pretending to be another person so as to enjoy the latter's rights, filiations, paternity or conjugal rights, including his profession or public status. It involves the idea of impersonating another.

- The penalty is higher if the purpose is to defraud the offended party or his heirs such as pretending to be the lost son or nephew of a rich man

- Example: (i) "The Prince and the Pauper" (ii) "The Man in the Iron Mask". (iii). Pretending to be the Cesar Oracion in order to be addressed as "Dean"

Other Related Crimes involving usurpation/impersonation

1. May be Using Fictitious Name as when the accused another to avoid being arrested for traffic violations.
2. Estafa as by pretending to be the creditor or collector
3. Falsification as by pretending to be the payee in a check
4. Perjury

Illegal Marriages

Kinds of Illegal Marriages (i.e. those not recognized or prohibited by law)

1. Bigamous Marriages (Art. 349)
2. Those contracted contrary to the Marriage Law (Art. 350)
3. Premature Marriages (Art. 351)

Article 349. Bigamy

Concept:

The crime committed by a married person who contracts a second or subsequent marriage before the first has been legally dissolved or before the absent spouse had been declared presumptively dead.

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 first marriage must be valid, or at least voidable, and still subsisting and the second marriage would have been valid were it not for the existence of the first marriage
 - If the first marriage is completely void, there is no bigamy. If the second marriage is void, there is no bigamy either. But this may give rise to either adultery or concubinage.

Example: H married first wife. Then he marries second wife. The first wife died whereupon H married third wife. H is guilty of bigamy for the second marriage. But he is not guilty of bigamy for the third marriage because the second marriage is void.

- Bigamy may be committed by reckless imprudence as: (i). by failure to ascertain the whereabouts of the first wife (ii) one who obtains a divorced abroad and thinking it is valid here, remarries.
- The prescriptive period commences after discovery of the second marriage as the principle of constructive notice does not apply to records in the Civil Registry.
- In case the second marriage is based on the absence of the first spouse, there must first be a judicial declaration of presumptive death so that the accused can claim good faith and avoid prosecution for bigamy.
- Venue. In the courts of the city, province or province where the second marriage was celebrated

Article 350. Marriage Contrary to the Marriage law

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 (from Ortega)

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.

Notes:

- Those where the essential requirements have not been complied with such as the requirements of age, marriage license, consent and authority of the solemnizing officer.
- These refer to the void, voidable, and annulable 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 purpose of the prohibition is to prevent doubtful paternity in the event she gives birth during the second marriage. Thus there is no liability in the following instances:
 - a). If she already gave birth prior to the second marriage
 - b). There is proof she was not pregnant by the first husband as when the first husband is sterile, or infertile or was unable to have physical access to the wife
 - c). The second husband is sterile
 - d). The woman is sterile or infertile

Article 352. Performance of Illegal Marriage Ceremony.

This is the crime committed by the solemnizing officer.

TITLE XIII CRIMES AGAINST HONOR

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).

Introduction:

- A person’s name, honor and reputation, is as sacred to him as his very life. Title 13 seeks to give protection thereto by defining certain acts injurious to a person’s name and reputation as crimes and prescribing penalties therefore.
- These crimes, which are in the nature of character assassination, are classified according to the manner of their commission into the following:
 - a). Libel which is by making use of the mass media and literary forms or literary outlets
 - b). Oral Defamation which is by the use of oral utterances
 - c). Slander by Deed which is by performing an act intended to cast dishonor, disrespect or contempt upon a person .
 - d). Incriminatory machinations which may either be:
 - (i) Incriminating an innocent person in the commission of a crime by planting evidence
 - (ii) Intriguing against honor by resorting to any scheme, plot, design, but not by direct spoken words, to destroy the reputation of another
- Elements common to all:
 - a) That there be a matter, oral written or in whatever form, or of an act, which is defamatory to another
 - b).That there is publicity of the defamatory matter
 - c). That there be malice on the part of the accused
 - d). That the person defamed is identifiable
- The foregoing crimes cannot be committed by negligence because all require the element of malice.
- Title 13, especially the article on libel constitutes another limitation to the freedom of speech and of the press as these two freedoms can not be allowed to be used to destroy the good name of an innocent person.

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.

Introduction:

Forms: Libel may be through:

- a). The facilities of the mass media i.e print and broadcast media such as articles, news items, columns, caricatures, editorials in newspapers and magazines; comments, opinions, news aired over the television or radio stations
- b). Modern communication facilities such as through the internet or cellphones, CDs, DVDs
- b). Literary outlets such as through letters, books, poems, songs, stage plays, movies, paintings, drawings, pictures, sculpture and the like

Elements

First Element: There must be a defamatory imputation

This means that the matter claimed to be libelous must impute a crime, vice, defect, or any act, or omission, condition, status or circumstance, tending to cause the dishonor, discredit or contempt to a natural or juridical person, or to blacken the memory of one who is dead.

The purpose is to lower the esteem or honor, or respect, in which a person is regarded, such as :

- a). The victim is humiliated or publicly embarrassed
- b). The victim is vilified, hated, becomes the subject of gossip, nasty stories, suspected of wrongdoings, is avoided
- c). The victim losses face, becomes a laughing stock, is the object of ridicule

Rules to determine whether the language is defamatory or not:

- a). What should be considered is what the matter conveyed to a fair and reasonable man and not the intention of the author or the accused.
- b). Statements should not be interpreted by taking the words one by one out of context; they must be taken in their entirety.
- c). Words are to be given the ordinary meaning as are commonly understood and accepted in the in daily life. The technical meanings

do not apply. This is especially true to idiomatic sayings. Thus "Babae ng Bayan " does not mean a heroine. "Hayok sa Laman" does not mean a meat eater. "Adu client nya nga pagbigasan"

How the imputation is made:

a). By the use of direct and express defamatory words, descriptions or accusations. Examples: (i). He is a thief, swindler, "babaero", ugly, wife beater, a crook (ii) drawing a caricature of a person depicting him as a crocodile

b). By the use of Figures of Speech such as:

(i) Hyperbole - exaggeration according to which a person is depicted as being better or worse, or larger or smaller than is actually the case. Example: (a). Mr. X is the gambling lord (b) She is the mother of all cheaters. (c) Praise undeserved is slander in disguise

(ii) Irony or sarcasm or where words are used to convey a meaning contrary to their literal sense. Examples: (a). "Maria belongs to the ladies called "Kalapating mababa ang lipad" (b). Don't bother asking him for a treat. He is boxer (i.e stingy or a miser) (c) He has a face only a mother can love (d) She is my wife when she is beside me, yours when she is near you. (e). She is very famous because she is a public sweetheart.

(iii) Metaphor or the use of words or phrases denoting one kind of idea in place of another word or phrase for the purpose of suggesting a likeness between the two. Examples: (a) He is Satan personified on earth. (b) She has an angelic face but covered with a skin as thick as the hide of a carabao

c) Or words or phrases with double meanings such as those which apparently are innocent but are deliberately chosen because in reality they convey a different and a derogatory meaning. Example: "He will make a good husband. He is a mama's boy".

Where the alleged libelous matter is susceptible of two or more interpretations, one libelous and the other not libelous, the courts are justified in holding that the real purpose of the writer was to have the public understand what he wrote in the light of the worst possible meaning

What are not defamatory

a). Words commonly used as expletives, denoting anger or disgust rather than as defamation, such as the expressions "Putang inaka, tarandado ka", "Ulol", "Punyeta ka".

b). Expressions of an opinion made by one who is entitled to state an opinion on a subject in which he is interested. Examples:

(i) An heir writes that there was unfairness in the distribution of the properties

(ii) A lady complains over the radio that there was discrimination against Cordillera girls women in the selection of candidates to the Miss Baguio Pageant

(iii). A law student writes in the school news organ that he believes the faculty in the college of law are generally lazy and are not kept abreast with new jurisprudence

(iv). A teacher declared in an interview that the students of one school are less intelligent than those in another school

c). Words which are merely insulting are not actionable as libel or slander per se, and mere words of general abuse however opprobrious, ill-natured, or vexatious whether written or spoken, do not constitute a basis for an action for defamation in the absence of allegation for special damages. The fact that the language is offensive to the plaintiff does not make it actionable by itself (MVR'S Pub. Inc. vs Islamic Da'wah Council of the Phil. 444 Phil. 20; Binay vs. Sec. of Justice Sept. 8, 2006)

Second Element: Publicity of the Libelous Matter

This means the accused caused the libelous material to be known or read or seen or heard by a third person, other than the person to whom it has been written i.e. the victim. Somebody must have read, seen or heard the libelous material due to the acts of the accused.

o The addressing of defamatory words directly to the person concerned, and to no other person, does not constitute an actionable libel.

o If it was the victim himself and not the accused, who showed, informed or relayed the libelous material to others, then the accused is not liable

o Circulation or publicity is not necessarily through the newspaper.

o Examples:

i). Posting the material in the internet or posting in a bulletin board

ii). Showing the caricature, or naked picture, of the victim to another

- iii) Announcements in the radio, or paid advertisements such as "The public is warned not to purchase the skin lotion products of ABC Corp. to prevent possible cancer"
- iv). Asking someone to write a defamatory letter about the victim
- iv). Sending the letter to the victim through a messenger but it is in an unsealed envelope (the presumption is that the letter is intended to be read by anyone other than the victim). Thus if the letter is sent in a sealed envelope, the element of publicity is missing.

Effect: Each separate publication of a libelous matter is a separate crime, whether published in part, or in the same newspaper. Example: (i) There as many crimes of libel as there are various showing or staging of a libelous drama or stage play in different venues and at various times.

(ii) If the same libelous news is published in two or more newspapers, then there be such number of separate libels corresponding to the different newspapers which published the material.

Third Element: The Person libeled must be identified. (Identity of victim)

This means the complainant or plaintiff must prove he is the person subject of the libelous matter, that it his reputation which was targeted.

This element is established by the testimony of witnesses if the complainant was not directly mentioned by name. They must be the public or third persons who can identify the complainant as the person subject of the libel. If third persons can not say it is the plaintiff or complainant who is the subject, then it cannot be said that plaintiff's name has been tarnished.

- o Where the publication is ambiguous as to the person to whom it applies, the testimony of persons who read the publication is admissible for the purpose of showing who is intended to be designated by the words in said publication

How the identification or referral to the plaintiff is made

- a). Directly by his name
- b). By descriptions of his person, his address, nature of his office or work, his actions, or any other data personally connected or related to the plaintiff; or identification from similar other the circumstances
- c) From the likeness of his face or features to the libelous drawing, caricature, painting or sculpture

The victims maybe natural persons who are alive or juridical persons, or deceased persons as to their memory.

Rule if several persons were defamed or libeled

- a). If several persons were libeled in one article, but all are identifiable, then there are as many charges of liable as there are persons libeled
- b). If the article is directed to a class or group of several persons in general terms only without specifying any particular member, there is no victim identified or identifiable, hence there is no actionable libel. No person can claim to have been specifically libeled as to give that person the right to file charges of libel.

Examples:

- (i). Some lady students in the 4th year law class section A, are ugly
- (ii). Two thirds of the law students are cheaters
- (iii). Majority of the policemen are crooks
- (iv). Most lawyers are thieves disguised in coat and tie

- c). If the defamation is directed against a group or class and the statement is so sweeping or all-embracing as to apply to every member of that group or class, then any member can file an action for libel in his own name, not in the name of the group/class. (Note: Philippine laws do not recognize group libel). Or if the statement is sufficiently specific so that each individual can prove that the statement specifically point to him then he may bring an action in his own name.

Examples:

- (i). All those belonging to 4th year law class section A are sex perverts
- (ii) Each and every employee in the accounting office is secretly taking home part of the tuition fees paid.
- (iii) If you are a faculty member of the college of law of U.B. then you have no integrity but you are a yes-man of the school President

- d). But even if directed against a group or class but the statement is directly and personally addressed to a member or members thereof, then only such member(s) can bring an action.

Example: A radio announcer addresses himself to Mr. X and Mr. Y and says: " Mr. X, and you Mr. Y. You Pangalatoks are sex

maniacs". Only Mr. X and Mr. Y can file an action for libel.

Fourth Element: That there be malice on the part of the accused.

Malice is the legal term to denote that the accused is motivated by personal ill-will, spite, hatred, jealousy, anger, and speaks not in response to duty but to do ulterior and unjustifiable harm. The purpose is really to destroy, to injure, to inflict harm.

There are **two kinds of malice**

a). **Malice in Law or Presumed Malice.**

The plaintiff need not prove the existence of malice. It is for the accused to disprove this presumption

This presumption, that accused was actuated with an evil purpose or malice, arises if the article is defamatory on its face, or due to the grossness of the defamatory imputation even if the facts are true, but there was no good intention or justifiable motive.

Examples:

- (a). X writes an article about the sexual escapades of a society matron complete with the details of time, place, and supported by pictures. In such case the law presumes that X was actuated by malice even if what he wrote is true.
- (b). X calls the radio and announces that the family of Juan de la Cruz is a family of thieves and crooks.

b). **Malice in Fact or Malice as a Fact.** -. It is the malice which must be proven by the plaintiff. He must prove the purpose of the accused is to malign or harm or injure his reputation. This arises either because:

- (i) the article is not defamatory on its face or if libelous it is ambiguous
- (ii) the accused was able to overcome the presumption of malice.

Prosecution for Libel

Remedies of the Victim: (i) the person libeled may file a criminal case or a separate civil case for damages (ii) but he may opt to recover damages in the same criminal case

Jurisdiction of the criminal action

- a). Actions based on libel, whether civil or criminal, are within the exclusive jurisdiction of the Regional Trial Court even if the penalty is within the Jurisdiction of the Municipal Trial Courts.
- b). The civil case must also be tried in the RTC trying the criminal case (No separate civil action)
- c) If the libel imputes any of the private crimes, the Prosecution must be upon a complaint filed by the offended party

Venue: as a general rule the action for libel shall be in the RTC of the province/city where the article was first printed and published (**Rule of Place of First Print and Publication**) but it may also be filed elsewhere as follows:

- a). If a private person: in the RTC of the province/city where he resides
- b). If a public official and holding office in Manila: In the RTC of Manila
- c) If a public official holding office outside Manila: in the RTC of the province/city where he holds office

Persons Liable for Libel

1. In case of written libel:

- a). The Authors of the written defamatory article, the artists, sculptor, or painter
- b). Any person who shall publish, exhibit or cause the publication or exhibition thereof (i.e. those persons other than the author, who make known the libelous matter to a third person)
- c). the editor or business manager of the print media where the article was published

2. In case of non-written libel

- a). the speaker, announcer or utterer of the defamatory statements aired over the broadcast media; the host of the show where the libelous statement is made
- b). the producers and makers of the libelous cinematographic film, stage show, play or drama

3. Other persons under the principle of "**Libel by Republication**" i.e. a person is liable, though he is not the author of has nothing to do with the libelous matter, if he knowingly republishes or circulates the said libelous matter.

Defenses Allowed in Libel

Concept:

In general: if the accused proves the absence of any of the elements, then he is not liable. Thus he may show: the material is not defamatory; there is

no publicity; it is impersonal and does not refer to the plaintiff; or that there is no malice.

There are however specific defenses which may refer to any of the elements of libel or are independent defenses in themselves. These defenses were established by jurisprudence, particularly by United States Decisions, as our Libel law is based primarily on American concepts.

I. The Doctrine of Privilege Communication

This is a defense against the element of malice and it applies to both libel and oral defamation. This means that even if the material is considered libelous still there is no malice in the eyes of the law. These consist of **two kinds**: (a) Absolutely Privilege Communication and the (b) Qualifiedly Privileged Communication.

1. Absolutely Privileged Communication:

This refers to a communication, whether oral or written which is defamatory and may even be made in bad faith but which cannot give rise to either criminal or civil liability. This is because there are higher considerations involved which are considered more paramount than the damage to the reputation of a person.

- Privilege Speeches in the halls of Congress
- Communications made by public officers in the performance of their duties, such as the explanations on a matter made by a public officer to his superior though it contains harsh language
- Statements made in judicial proceedings if pertinent and relevant to the case involved, such as the allegations in the pleadings
- Statements and evidence submitted in a Preliminary Investigation.

2. Qualifiedly/Conditionally Privileged Communication:

This refers to communications in which the law presumes the absence of malice, thus they are initially not actionable. The burden therefore is on the plaintiff to prove the existence of actual malice.

Two Kinds of Qualifiedly Privileged Communications Under Article 354.

- a. Private Communications, made by one to another in the performance of a legal, moral or social duty provided that: (i). The one making the communication must have an interest in the subject and (ii) the person to whom the communication was made is one who can act on the matter

- This communication maybe oral or written, private, public or official document which are sent for redress of grievances or to request for appropriate action. But it must be private in that it is intended to be only between the sender and the recipient. Undue publicity removes the privilege.

Hence a so called "Open Letter" is not privileged. Also, accusations made in a public gathering are not privileged.

- The communication must meet these elements:
 - (i). The person who made the communication had a legal, moral or social duty to make the communication, or at least, had an interest to protect, which interest may either be his own or of the one to whom it is made
 - (ii). The communication is addressed to an officer or a board, or superior, having some interest or duty in the matter, and who has the power to furnish the protection sought (or that the recipient is a proper person who can act on the communication) and
 - (iii). The statements in the communication are made in good faith and without malice (Binay vs. Sec. of Justice, Sept. 08, 2006)

- Legal duty: presupposes a provision of law imposing upon the accused the duty to communicate. Such as the complaint by a citizen concerning the misconduct of a public official to the latter's superior even if, upon investigation, the matters are not substantiated. But it may be shown that the charges were maliciously made without reasonable ground for believing them to be true.

Also, a report to the police by a citizen about the suspected criminal activities of another person, even if latter it is proved the suspicions were groundless, is privileged.

- Moral or social duty presupposes the existence of a relationship between the sender and the recipient of the communication, or the confidential and pressing urgency of the communication.
- The sender must have an interest in the subject of the communication and the

recipient must be a proper person who can act on the subject to the communication.

Thus a letter-complaint describing an SLU law professor as lazy incompetent, and an absentee, is privileged if sent to the SLU President. It is not privileged if sent to the President of U.B.

If a teacher writes to his fellow teacher that a student of his is becoming irresponsible and possibly a drug user, the same letter is not privileged. But if sent to the parents of the student for their information and action, it is conditionally privileged.

- In *Alcantara vs. Ponce* (Feb. 28, 2007) the court adopted the ruling in the U.S case of *Borg vs. Borg* in that a "written charge or information filed with the prosecutor or the court is not libelous although proved or be false and unfounded. Furthermore, the information given to a prosecutor by a private person for the purpose of initiating a prosecution is protected by the same cloak of immunity and cannot be used as a basis for an action for defamation."

In this *Alcantara* case, a newsletter submitted by party in a preliminary investigation, which was defamatory, was considered as a privilege communication.

It was also ruled that under the Test of Relevancy, a matter alleged in the course of the proceedings need not be in every case material to the issues or be so pertinent to the controversy that it may become the subject of inquiry in the course of trial, so long as they are relevant.

b.-1: A fair and true report of any official proceeding, or of any statement, report, or speech, made thereat

- The proceeding must not be confidential, such as the hearings before the Senate, as opposed to the close door executive sessions of the senate . Thus if the report is with respect to a public record, it refers only to those made accessible to the public which may be revealed for public interest or protection of the public.

- The report must be without any unnecessary comment or libelous remarks (i.e. no editorializing)
- The report must be accurate and should not intentionally distort the facts. If there is error in the facts reported, the report is still privilege if made in good faith
- Examples: News report of a judicial proceeding, including the filing of a complaint in court; or what a witness testified; or of a verbal and heated argument between two councilors during the session of the city council.
- This defense apply most often to members of the media who write on said matters or report them as news

b-2. Fair and True Report of the Official Acts of a Public Official

- The public and official acts of a public official, including his policies, are legitimate subjects of comments and criticisms, though they may be unfair. Public officials are not supposed to be onion-skinned. "Public officials, like Ceasar's wife, must be beyond reproach and above suspicion".
- But the communication may be actionable:
 - (i) If it contains an imputation which is a false allegation of a fact or a comment based on a false supposition
 - (ii). If the attack, criticism or imputation pertains to his private acts or private life, unless these reflect on his public character and image as a public official.
 - (iii) As stated in the U.S. case of *New York Times vs. Sullivan*, a public official may recover damages if he proves that : *"the statement was made with actual damage, that is, with knowledge that it was false or with reckless disregard of whether it was false or not"*

Matters Considered Privileged By Jurisprudence

1. Fair Comments on Matters of Public Interest

In *Borjal vs. Ct. of Appeals*, (301 SCRA 1, Jan. 14, 1999) it was held that the enumeration in Article 354 is not an exclusive list of qualifiedly privileged communications because "fair comments on matters of public interest are privileged and constitute a valid defense in an action for libel or slander"

They refer to events, developments, or matters in which the public as a whole has a legitimate interest.

Examples

- (i). A news report on the welfare of youth and students in a school allegedly staffed by incompetents, or a dumping ground of misfit teachers, concerns a matter of public interest.
- (ii). An editorial criticizing the owner of a ship which sunk, for his delay in extending financial help to the family of the victims, is not libelous as the in action is a matter of public interest.
- (iii). The arrest and prosecution of law violator is a matter in which the public has a right to know. Thus there is no liability for reporting that a lady was arrested for selling shabu or that a person was charged in court or convicted by a court for Estafa. The persons in question cannot file a case for libel.
- (iv). A radio announcer lambasts a family for their adamant refusal to vacate and remove their structure inside a park.

2. Comments and Criticisms on the Actuations of Public Figures

- Public figures refer to people who place themselves in the public limelight or attention either: by nature of their business or activity, or mode of living, or by adopting a mode of profession or calling which gives the public a legitimate interest in his doings, his affairs and in his character or which affect public interest (these are the celebrities), or because they participate in public affairs or regularly and publicly expound their views on public affairs.

Examples of the first: movie stars; national athletes; those representing the Philippines in world beauty pageants, Manny Pacquiao; hosts of TV shows/programs such as the Tulfo brothers, musicians, novelists. The spouse of the President is a public figure.

Examples of the second: candidates for an elective position; columnists of national

newspapers, TV/radio commentators, Cardinal Sin during his time, Jose Maria Sison.

- As with public officials, the imputation maybe actionable if it is (i) a false allegation of fact or (ii) it is based on a false supposition.

3. Justified Libel or the Privilege of a Reply.

This is fighting libel with libel. This refer to communications made in response to a libel in order to counter and/or remove the libel, provided it is limited to and related to the defamatory imputation and not unnecessarily libelous.

4. Truth And Good Motives or Justifiable Ends.

- It is not enough that what was publicized about another is true. The accused must also prove good motives or intentions and justifiable ends, in order to disprove malice.
- This defense is available only if: (a) What is imputed to another is a crime regardless if the victim is a private or public person or (ii) if the victim is a public officer regardless of whether a crime is imputed, so long as it relates to the discharge of their official duties
- Illustrations: one writes about the criminal activities of another in order to show that crime does not pay, or to set an example of what conduct to avoid.

5. The Principle of Neutral Reportage.

- This is a defense available to one charged not as the author but as a republisher of a libelous material
- The republisher who accurately and disinterestedly reports certain defamatory statements made against public figures, is shielded from liability, regardless of his subjective awareness of the truth or falsity of the accusation. (See *Fil Broadcasting Net Work vs. AGO Medical and Educational Center*, 448 SCRA 413)

Example: A parent of a student goes on radio to denounce a school teacher as being incompetent, absentee, bias and prejudiced. A news reporter quoted the accusations in his news article. He is not liable even if he personally knows the accusations are untrue.

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 (Libel As A Threat (Blackmailing))

Concept:

The law punishes a person who demands a compensation or money consideration by (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

Principles:

1. This a form of blackmailing because there is an extortion for money under threat of so called "exposing" a person. This is often called demand for "Hush Money"
2. If both modes were committed by a single person, there is only one offense. If committed by two different persons there be two separate offenses, unless both are in conspiracy.
3. The crime is consummated once the threats or offers were made.

Examples:

1. The accused threatened to publish in a weekly periodical certain letters written by a married woman unless she paid a certain sum of money.
2. The producer of a TV Program demanded money from a politician otherwise he would expose the sexcapades of the politician.

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 (Oral Defamation)

Concept:

It is understood as the speaking of base and defamatory words which tend to prejudice another in his reputation, office, trade, business or means of livelihood

Kinds:

- (1) Grave when it is of a serious and insulting kind or
- (2) Simple

• **Factors to consider:**

1. The expression used including their sense, grammatical significance and accepted ordinary meaning
2. The personal relations of the accused and the offended party, as when both are bitter enemies
3. The special circumstances of the case and its antecedents, such as the time, place and occasion of the utterances, persons present
4. The social standing and position of the offended party

- Words uttered in the heat of anger or in a quarrel, with some provocation on the part of the victim, is simple slander.

Example: The refusal of the Mayor, without valid justification to approve the monetization of accrued leaves of the accused led the latter to utter scathing words against the Mayor, which utterances were considered slight as the said refusal was deemed sufficient provocation (Villanueva vs. People, April 10, 2006)

Other Considerations:

- The victim may not have heard the words, it is enough that a third person heard them.
- Words uttered in one occasion and place and directed at several persons not mentioned individually constitute only one offense.
- Words used as expletives (i.e. to express anger, displeasure, are not defamatory)

Example: the words "Putang Ina Mo" are common enough expressions in the dialect that are often employed, not really to slander but rather to express anger or displeasure. It is seldom, if ever, taken in its literal sense by the hearer, that is, as a

reflection on the virtues of the mother "(PP. vs. Reyes quoted in Villanueva vs. PP)

specifically known as Planting Evidence punished by the Dangerous Drugs Law

Article 359. Slander by Deed

Concept:

The performance of any act which shall cast dishonor, discredit or contempt upon another person. Depending upon the seriousness of the act, the time, place, occasion, the character of the victim, it is either Grave or Light.

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.

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.

Notes:

- If it is not proven that the purpose of the act is to humiliate or embarrass the act may either be maltreatment or unjust vexation.
- Poking a dirty finger ordinarily connotes the phrase "Fuck you" which is similar to the expression "Putang Ina Mo" and, when there is provocation from the victim, is simple slander by deed (Villanueva vs. Pp)

Incriminating Machinations

I. Incriminating An Innocent Person Under Article. 363.

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.

Notes:

- This refers to acts not constituting perjury but directly tending to cause the false prosecution of another and is limited to "planting evidence"
- The evidence should not however consist of drug or drug paraphernalia else the act is

II. Intriguing Against Honor Under Art. 364.

This refers to any scheme or plot designed to blemish the reputation of a person by means of which consists of some trickery. The accused does not avail directly of spoken or written words, pictures or caricatures, but of some ingenious, crafty or secret plot.

Example: circulating gossips, stories or rumors highly offensive to a lady, that she is "a saint by day but not at night".

(Action for) Malicious Prosecution

Concept:

It is not a crime but a civil case for damages brought after the dismissal of a criminal prosecution, civil suit, or other proceeding for having been filed maliciously and without probable cause.

Note:: Such a complaint states a cause of action if it alleges:

- 1). That the defendant was himself the prosecutor or at least instigated the prosecution
- 2). That the prosecution finally terminated in the acquittal of the plaintiff
- 3). That in bringing the action the defendant acted without probable cause and
- 4). That the defendant was actuated by malice i.e. sinister or improper motives

TITLE XIV. QUASI OFFENSES CRIMINAL NEGLIGENCE

Introduction:

Negligence may either be criminal or not. Non criminal negligence may either be contractual or quasi-delictual. Criminal Negligence is the third among the three classes of crimes, the two others being intentional or malicious crimes and the other being crimes mala prohibita.

Negligence is deficiency of perception or lack of foresight: the failure to foresee impending injury, thoughtlessness, failure to use ordinary care. Whereas, **imprudence** is deficiency of action in avoiding an injury due to lack of skill. Both result to a culpable felony.

Reckless: If the danger to another is visible and consciously appreciated by the accused. It is **simple** if the injury is not immediate or openly visible.

Principles:

**DIVERSION UNDER R.A. 9344
THE JUVENILE JUSTICE AND WELFARE ACT
OF 2006**

1. The degree of diligence required by law varies with the nature of the situation in which a person is placed.
2. Negligence maybe presumed if at the time the accident occurred, the accused was violating a regulation the purpose of which was to prevent the accident.
3. There is no conspiracy in culpable felonies.
4. As to the penalties:
 - The penalty as provided under article 356 depends on whether the negligence/imprudence is reckless or simple and it generally applies to all situations of culpable felonies, unless there is a specific penalty provided in certain crimes. Example: culpable malversation, evasion through negligence.
 - The principle of complex crimes apply if several grave or less graves crimes result

Defenses Allowed:

1. If both the victim and the accused were negligent, the accused may be held liable under the Doctrine of Last Clear Chance i.e it was he who had the sufficient opportunity to avoid the accident after noticing the danger
2. **Emergency Rule:** due to the negligence of another, the accused was placed in an emergency and compelled to act immediately to avoid an impending danger, and in so doing he injured another, even if his choice of action was not the wisest under circumstances. This is similar to the exempting circumstance of accident.
3. The defense of contributory negligent does not apply in criminal cases committed through reckless imprudence, since one cannot allege the negligence of another to evade the effects of his own negligence (Manzanares s. PP, 504 SCRA 354)
4. Contributory negligence on the part of the victim merely mitigates the civil liability of the accused.

NOTE: If, in a vehicular accident, the accused abandons the victims, this act will result to the imposition of a penalty one degree higher. Except in the following instances:

- a). if he leaves because he is in imminent danger of being harmed
- b). he leaves to report to the police
- c). or to summon a physician, nurse or doctor.

1. CONCEPT: Refers To an alternative, child-appropriate process of determining the responsibility and treatment of a child with the law on the basis of his social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

A. The CIJL is placed under diversion programs which may consist of any of the following:

1. Restitution, reparation or indemnification

R.A.7610: Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act.

1. Isidro Olivarez vs. Court of Appeals (July 29,2005)

- A. The Elements of Sexual Abuse Under Section 5, Article III
 1. The accused commits the act of sexual intercourse or lascivious conduct
 2. The said act is performed with a child exploited in prostitution or subjected to other sexual abuse
 3. The child, whether male or female, is below 18 years of age

B. Meaning of Lascivious Conduct per section 32 Article XIII of the Implementing Rules and Regulations:

"The intentional touching, either directly or through clothing, of the genitalia, anus, groin, breast inner thigh, or buttocks, or the introduction of any object into the genitalia, anus, or mouth, or any person, whether of the same or opposite sex, with intent to abuse, humiliate, harass, degrade, or arouse or gratify the sexual desire of any person, bestiality, masturbation, lascivious exhibition of the genitals or pubic area of a person"

C. Is failure to allege the age of victim fatal and violative of the right of accused to be informed?

"...while it is necessary to allege the essential elements of the crime in the information, the failure not do so is not an irremediable vice. When the complaint or resolution by the public prosecutor which contains the missing averments is attached to the information and form part of the records, the defect in the latter is effectively cured, and the accused cannot successfully invoke the defense that his right to be informed is violated"

- D. In addition to moral damages, a fine is awarded for each count of lascivious conduct
- E. Distinction between Acts of Lasciviousness under the RPC from that under Section 5, Art. III of R.A 7610 per the dissenting opinion of Justice Carpio

Section 5 of RA 7610 deals with a situation where the acts of lasciviousness are committed on a child either exploited in prostitution or subjected to OTHER SEXUAL ABUSE. The acts of lasciviousness committed on the child are separate and distinct from the other circumstance-that the child is either exploited in prostitution or subjected to other sexual abuse.

The phrase "other sexual abuse" refers to any sexual abuse other than the acts of lasciviousness complained of and other than exploitation in prostitution. Such "other sexual abuse" could fall under acts encompassing obscene publication and indecent shows mentioned in section 3(d) (3) of RA 7610.

Thus a child performing in indecent shows in a cabaret is a child subjected to "other sexual abuse". A customer in such cabaret who commits acts of lasciviousness on the child is liable for violation of Section 5...

... the element of profit or coercion refers to the practice of prostitution, not to the sexual intercourse or lascivious conduct committed by the accused.

The information must allege that the child is exploited in prostitution or other sexual abuse

CRIMES COMMITTED BY PUBLIC OFFICERS

1. Meaning of the phrase "committed in relation to office"
 - A). Montilla vs. Hilario (90 Phil. 49): the relationship between the crime and the office must be direct and not accidental, such that the offense cannot exist without the office
 - B). PP vs. Montejo (108 Phil. 613): although public office is not an element of the offense charged, as long as the offense charged is intimately connected with the office of the offender and perpetrated while he was in the performance, though improper or irregular, of his official functions, the accused is held indicted for an offense committed in relation to his office

LAWS RELATED TO CRIMES BY PUBLIC OFFICERS

1. R.A. 7080: AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER

1. Plunder:

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GOD BLESS

-o0o-
GOOD LUCK

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