BOOK 1

I. FUNDAMENTAL PRINCIPLES

A. DEFINITION OF CRIMINAL LAW

Q: What is criminal law?

A: Criminal law is that branch of law, which defines crimes, treats of their nature, and provides for their punishment.

Q: What are the theories in criminal law?

A:

1. *Classical theory* – the basis of criminal liability is human free will and the purpose of the penalty is retribution. It is endeavored to establish a mechanical and direct proportion between crime and penalty, and there is scant regard to the human element.

   Note: RPC is generally governed by this theory.

2. *Positivist theory* – the basis of criminal liability is the sum of the social, natural and economic phenomena to which the actor is exposed. The purposes of penalty are prevention and correction. This theory is exemplified in the provisions regarding impossible crimes and habitual delinquency.

3. *Eclectic or Mixed theory* – It is a combination of positivist and classical thinking wherein crimes that are economic and social in nature should be dealt in a positive manner, thus, the law is more compassionate. Ideally, the classical theory is applied to heinous crimes, whereas, the positivist is made to work on economic and social crimes.

4. *Utilitarian or Protective theory*- 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 or omissions which the society does not approve. Consistent with this theory is the *mala prohibita* principle which punishes an offense regardless of malice or criminal intent.

Q: How are penal laws construed?

A: Liberally construed in favor of offender and strictly against the state.

Note: In cases of conflict with official translation, original Spanish text is controlling.

Q: What are the basic maxims in criminal law?

A:

1. *Nullum crimen, nulla poena sine lege* (There is no crime when there is no law punishing the same) – No matter how wrongful, evil or bad the act is, if there is no law defining the act, the same is not considered a crime.

2. *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.

3. *Doctrine of Pro Reo* – Whenever a penal law is to be construed or applied and the law admits of two interpretations, one lenient to the offender and one strict to the offender, that interpretation which is lenient or favorable to the offender will be adopted.

4. *Actus me invito factus non est meus actus* (An act done by me against my will is not my act) – Whenever a person is under a compulsion of irresistible force or uncontrollable fear to do an act against his will, in which that act produces a crime or offense, such person is exempted in any criminal liability arising from the said act.

Q: What is the definition of a crime?

A: A *crime* is the generic term used to refer to a wrongdoing punished either under the RPC or under the special law.

Q: What are the various classifications of crimes?

A:

1. *As to the commission*
   a. *Dolo* or felonies committed with deliberate intent
   b. *Culpa* or those committed by means of fault

2. *As to the stage of execution*
   a. Attempted
   b. Frustrated
   c. Consummated

3. *As to gravity*
   a. Grave felonies
   b. Less grave felonies
   c. Light felonies

4. *As to count*
   a. Composite or special complex
   b. Complex, under Art. 48
   c. Continuing

5. *Classification of felonies as to*
   a. Formal felonies – those which are always consummated. (*e.g.* physical injuries)
   b. Material felonies – those which have various stages of execution.
   c. Those which do not admit of the frustrated stage. (*e.g.* rape and theft)

6. *As to nature*
   a. *Mala in se*
   b. *Mala prohibita*

Q: What is the difference between crimes *mala in se* and crimes *mala prohibita?*

A:

Mala in se	*Mala prohibita*
Acts or omissions which are inherently evil.	Acts which are made evil because there is a law prohibiting it.
Punished under the RPC	Violations of special laws **Note:** Not all violations of special laws are *mala prohibita.* Even if the crime is punished under a special law, if the act punished is one which is inherently wrong, the same is *malum in se*, and, therefore, good faith and the lack of criminal intent is a valid defense; unless it is the product of criminal negligence or culpa.

Q: What are violations of special laws which are considered *mala in se*?

A:

1. Piracy in Philippine waters
2. Brigandage in the highways
   (both under PD 532)

Note: Likewise, when the special laws require that the punished act be committed knowingly and willfully, criminal intent is required to be proved before criminal liability may arise.

Q: If a special law uses the nomenclature of penalties in the RPC, what is the effect on the nature of the crime covered by the special law?

A: Even if a special law uses the nomenclature of penalties under the RPC, that alone will not make the act or omission a crime *mala in se*. The special law may only intend the Code to apply as a supplementary. *(People v. Simon, G.R. No. 93028, July 29, 1994)*

Q: What are the distinctions between crimes punished under the RPC and crimes punished under special laws?

A:

CRIMES UNDER THE RPC	CRIMES UNDER SPECIAL LAW
Involve crimes *mala in se.*	Usually crimes *mala prohibita*
As to moral trait of the offender	
It is considered. This is why liability would only arise when there is *dolo* or *culpa* in the commission of the punishable act	It is not considered. It is enough that the prohibited act was voluntary done.
As to use of good faith as defense	
It is a valid defense unless the crime is the result of culpa.	It is not a defense.
As to the degree of accomplishment of the crime	
May admit attempted and/or frustrated stages	There are no attempted or frustrated stages, unless the special law expressly penalizes the mere attempt or frustration of the crime
As to mitigating and aggravating circumstances	
Taken into account in imposing the penalty since the moral trait of the offender is considered	Not taken into account in imposing the penalty. As an exception, when the special law uses the

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

	nomenclature of the penalties under the RPC, the circumstances can be considered.
As to the degree of participation of offender	
When there is more than one offender, the degree of participation of each in the commission of the crime is taken into account in imposing the penalty; thus, offenders are classified as principal, accomplice and accessory.	It is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal, accomplice or accessory to consider.

Q: What is the legal basis for punishment?

A: The power to punish violators of criminal law comes within the *police power* of the state. It is the injury inflicted to the public which a criminal action seeks to redress, and not the injury to the individual.

B. SCOPE OF APPLICATION AND CHARACTERISTICS OF THE PHILIPPINE CRIMINAL LAW

Q: What are the two scopes of application of the RPC?

A:

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

2. *Extraterritorial* – refers to the application of the RPC outside the Philippine territory.

Q: In what cases does the RPC have an extraterritorial application?

A: Against those who:

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

Q: What is a Philippine ship?

A: One that is registered in accordance with Philippine laws. If the vessel is in the high seas, it is considered as an extension of the Philippine territory and the Philippines still has jurisdiction. But if the vessel is within the territory of another country, jurisdiction is generally with the foreign State because penal laws are primarily territorial in application.

Q: What are the requirements of "an offense committed while on a Philippine ship or airship?"

A:

1. The ship or airship must be registered with the Philippine Bureau of Customs.
2. The ship must be in the high seas or the airship must be in international space.

Note: Under International Law rule, a vessel which is not registered in accordance with the laws of any country is considered a *private vessel* and piracy is a crime against humanity in general, such that wherever pirates may go, they can be prosecuted.

Q: What are the two recognized rules on jurisdiction over merchant vessels?

A: The French rule and the English rule. These rules refer to the jurisdiction of one country over its merchant vessels situated in another country. These do not apply to war vessels over which a country always has jurisdiction.

Q: What is the French rule?

A: The *French rule* recognizes the jurisdiction of the flag country over crimes committed on board the vessel *except* if the crime disturbs the peace and order and security of the host country.

Q: What is the English rule?

A: The *English rule* recognizes that the host country has jurisdiction over crimes committed on board the vessel *unless* they involve the internal management of the vessel.

Note: The effect on jurisdiction of both rules is almost the same because the general rule of one is the exception of the other.

Q: What is the rule on foreign merchant vessels in possession of dangerous drugs?

A:

1. *In transit* – possession of dangerous drugs is not punishable, but the use of the same is punishable.
2. *Not in transit* – mere possession of dangerous drugs is punishable.

Q: When is forgery committed?

A: Forgery is committed by giving to a treasury or bank note or any instrument payable to bearer or to order the appearance of a true genuine document or by erasing, substituting, counterfeiting or altering, by any means, the figures, letters, words or sign contained therein.

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

Obligations and securities of the GSIS, SSS, and Landbank are NOT of the government because they have separate charters.

Those who *introduced* the counterfeit items are criminally liable even if they were not the ones who counterfeited the obligations and securities. On the other hand, those who *counterfeited* the items are criminally liable even if they did not introduce the counterfeit items.

Q: When does a public officer or employee commit an offense in the exercise of their functions?

A: As a general rule, the 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.

Note: This rule is not absolute. The 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.

Q: What are the crimes included?

A:

1. Direct Bribery *(Art. 210)*
2. Indirect Bribery *(Art. 211)*
3. Qualified Bribery *(Art. 211-A)*
4. Corruption *(Art. 212)*
5. Fraud Against Public Treasury and Similar Offenses *(Art. 213)*
6. Possession of Prohibited Interest *(Art. 216)*
7. Malversation of Public Funds or Property *(Art. 217)*
8. Failure to Render Accounts *(Art. 218)*
9. Failure to Render Accounts Before Leaving the Country *(Art. 219)*
10. Illegal Use of Public Funds or Property *(Art. 220)*
11. Failure to Make Delivery of Public Funds or Property *(Art. 221)*
12. Falsification *(Art.171)*

Q: What are the characteristics of criminal law?

A:

1. *Generality* – means that the criminal law of the country governs all persons within the country regardless of their race, belief, sex, or creed.

   Note: The term generality has no reference to territory. It refers to persons that may be governed by the penal law.

2. *Territoriality* – means that the penal laws of the country have force and effect only within its territory.

   Note: The territorial application of criminal laws is again subject to certain exceptions brought about by treaties or international agreements.

   Certain exceptions to the territorial application of criminal laws are also outlined under Art. 2 of the RPC.

3. *Prospectivity* – means that acts or omissions will only be subject to a penal law if they are committed after a penal law had already taken effect.

   Note: This is also called *irretrospectivity*.

Q: What are the exceptions to the rule on generality of penal laws?

A: Exceptions brought about by:

1. Treaty stipulations and international agreements. *E.g. RP-US Visiting Forces Accord.*

2. Laws of Preferential Application

   Note: *RA 75* penalizes acts which would impair the proper observance by the Republic and its inhabitants of the immunities, rights, and privileges of duly-

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accredited foreign diplomatic representatives in the Philippines.

3. The principles of public international law

   a. Sovereigns and other chiefs of states
   b. Ambassadors, ministers, plenipotentiary, ministers resident, and charges d' affaires.

   Note: Consuls, vice-consuls, and other commercial representatives of foreign nation are not diplomatic officers. Consuls are subject to the penal laws of the country where they are assigned.

Q: What is the exception to the prospective application of penal laws?

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

Note: The retroactive effect shall benefit the accused even if at the time of the publication of the law, a final judgment has been pronounced and the convict is serving sentence.

Q: What is the exception to the exception?

A: The new law cannot be given retroactive effect:

1. Where the new law is expressly made inapplicable to pending actions or existing causes of actions.
2. Where the offender is a habitual criminal.

C. CONSTITUTIONAL LIMITATIONS ON THE POWER OF CONGRESS TO ENACT PENAL LAWS IN THE BILL OF RIGHTS

Q: Who has the power to enact penal laws?

A: Only the *legislative branch* of the government can enact penal laws.

Note: While the President may define and punish an act as a crime, such exercise of power is not executive but legislative as he derives such power from the law-making body. It is in essence, an exercise of legislative power by the Chief Executive.

Q: What are the constitutional limitations on the right of the Legislature to enact penal laws?

A:

1. No *ex post facto* law or bill of attainder shall be enacted. *(Sec. 22, Art. III, 1987 Constitution)*

Note: An *ex post facto law* is one wherein if given a retroactive application will be prejudicial to the accused.

A *bill of attainder* is a legislative act which inflicts punishments without trial. Its essence is the substitution of a legislative act for a judicial determination of guilt.

2. No person shall be held to answer for a criminal offense without due process of law. *(Sec. 14, [1], Art. III, 1987 Constitution)*

3. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. *(Sec. 1, Art. III, 1987 Constitution)*

4. Excessive fines shall not be imposed, nor cruel, degrading or inhuman punishment inflicted. *(Sec. 19 [1], Art. III, 1987 Constitution)*

Act Prohibiting the Imposition of Death Penalty in the Philippines (R.A. 9346)

Q: Is the death penalty already abolished?

A: No. What is prohibited under R.A. 9346 is only the imposition of death penalty.

Note: However, the corresponding civil liability should be the civil liability corresponding to death. *(People v. Salome, G.R. No. 169077, Aug. 31, 2006*)

Q: What penalty would be imposed in lieu of the death penalty?

A: In lieu of the death penalty, the following shall be imposed:

1. *Reclusion perpetua*- when the law violated makes use of the nomenclature of the penalties of the RPC; or

2. *Life imprisonment*- when the law violated does not make use of the nomenclature of the penalties of the RPC. *(Sec.2)*

II. FELONIES

Q: What are felonies?

A: Felonies are acts or omissions punishable by the RPC.

Note: *Omission* means inaction, the failure to perform a positive duty which one is bound to do.

There must be a law requiring a certain act to be performed and the person required to do the act fails to perform it.

Punishable under the RPC means this element of a felony is based upon the maxim, *nullum crimen, nulla poena sine lege*, that is, there is no crime where there is no law punishing it.

Q: How are felonies committed?

A: Felonies are committed not only by means of deceit (*dolo*) but also by means of fault (*culpa*).

Q: What are the kinds of felonies?

A:

1. Intentional felonies *(Dolo)*
2. Culpable felonies *(Culpa)*

Q: What are the distinctions between intentional felony and culpable felony?

A:

DOLO	*CULPA*
Act 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 or lack of skill

Q: What is an *act* in contemplation of criminal law?

A: An *act* refers to any kind of body movement that produces change in the outside world. The act must be an external act which has a direct connection with the felony intended to be committed.

Q: What are the requisites of *dolo*?

A:

1. *Criminal intent* – the purpose to use a particular means to effect such result. Intent to commit an act with malice being purely a mental process is presumed. Such presumption arises from the proof of commission of an unlawful act. A mental state, hence, its existence is shown by overt acts.

   Note: If there is NO criminal intent, the act is justified. Offender incurs NO criminal liability. E.g. The existence of a lawful or insuperable cause, commission by mere accident.

2. *Freedom of action* – voluntariness on the part of the person to commit the act or omission.

   Note: If there is lack of freedom, the offender is *exempt* from liability. Example is the presence of irresistible force or uncontrollable fear.

   Note: The word voluntariness in criminal law does not mean acting in one's own volition. In criminal law, voluntariness comprehends the concurrence of freedom of action, intelligence and the fact that the act was intentional.

3. *Intelligence* – means the capacity to know and understand the consequences of one's act.

   Note: If there is lack of intelligence, the offender is *exempt* from liability. E.g. is when the offender is an imbecile, insane, or under 15 years of age.

Note: If any of these requisites is absent, there is no *dolo*. If there is no *dolo*, there could be no intentional felony.

Q: What are the requisites of *culpa*?

A:

1. Criminal negligence on the part of the offender, that is, the crime was the result of negligence, reckless imprudence, lack of foresight or lack of skill.

   Note: Negligence indicates deficiency of perception or failure to pay attention and to use diligence in foreseeing the injury or damage impending to be caused. It usually involves lack of foresight.

   Imprudence indicates deficiency of action or failure to take the necessary precaution to avoid injury to person or damage to property. It usually involves lack of skill.

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2. Freedom of action on the part of the offender, that is, he was not acting under duress.

3. Intelligence on the part of the offender in performing the negligent act.

Note: If any of these requisites is absent, there can be no culpa.

Q: What crimes cannot be committed through *culpa* (negligence or imprudence)?

A:

1. Murder
2. Treason
3. Robbery
4. Malicious mischief

Q: What is *mens rea*?

A: *Mens rea* is referred to as the gravamen of the offense. *Mens rea* of the crime depends upon the elements of the crime. It can only be determined by knowing the particular crime committed.

Note:

1. In theft, the *mens rea* is the taking of the property of another with intent to gain.
2. In falsification, the *mens rea* is the effecting of the forgery with intent to pervert the truth.
3. 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.

Q: What is intent?

A: *Intent* refers to the use of a particular means to effect the desired result. It is a mental state, the existence of which is demonstrated by the overt acts of a person.

Q: What are the categories of intent in criminal law?

A:

1. *General criminal intent* – Is presumed from the mere doing of a wrong act. This does not require proof. The burden is upon the wrongdoer to prove that he acted without such criminal intent.

   Note: In felonies by means of deceit, the third element of voluntariness is a general intent.

2. *Specific criminal 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 proving the same.

   Note: In some particular felonies, proof of specific intent is required to produce the crime such as in frustrated and attempted homicide.

Q: What is the distinction between intent and discernment?

A:

INTENT	DISCERNMENT
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.	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*.

Q: What is motive?

A: It is the moving power or force which impels a person to a desired result.

Q: Is motive determinant of criminal liability?

A: No. Motive alone will not bring about criminal liability because the RPC requires that there must be an overt act or an omission. When there is motive in the commission of a crime, it always comes before the intent.

Note:
In a murder case, the intent to kill is demonstrated by the use of lethal weapon; whereas, the motive may be vengeance.

Motive is material when:

1. The acts bring about variant crimes
2. There is doubt whether the accused committed the crime, or the identity of the accused is doubtful
3. The evidence on the commission of the crime is purely circumstantial
4. There is a need to determine whether direct assault is present in offenses against person in authority committed when he is not in the performance of his official duties
5. In ascertaining the truth between two antagonistic theories or versions of the killing

6. Where there are no eyewitnesses to the crime and where suspicion is likely to fall upon a number of persons.

Q: What are the distinctions between motive and intent?

A:

MOTIVE	INTENT
It is the moving power which impels a person to act for a definite result	It refers to the use of a particular means to achieve the desired result
A crime may be committed without motive. It is not element of the crime	It is an ingredient of *dolo* or malice and thus, an element of deliberate felonies
Is essential only when the identity of perpetrator is in doubt	Is essential in intentional felonies

Q: What are the factors that affect intent?

A:

1. *Mistake of fact*- that which had the facts been true to the belief of the offender, his act can be justified. It is such mistake that will negate criminal liability because of the absence of the element of intent.

Note: Mistake refers to the situation itself, not the identity of the persons involved. Mistake of fact is only a defense in intentional felony but never in culpable felony.

2. *Aberratio ictus* – mistake in the blow
3. *Error in personae* – mistake in the identity
4. *Praeter intentionem* – where the consequence exceeded the intention
5. *Proximate cause* – the cause of the cause is the cause of the evil caused

A. CLASSIFICATION OF FELONIES (ART. 9)

Q: What is the importance of classifying the felonies as to their severity?

A: To determine:

1. Whether these felonies can be complexed or not

2. The prescription of the crime and the prescription of the penalty.

Q: What are the classifications of felonies according to their gravity?

A:

1. *Grave* – those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Art. 25 of the RPC. *(Art. 9, par. 1, RPC)*

2. *Less grave* – those which the law punishes with penalties which in their maximum period are correctional, in accordance with Art. 25 of the RPC. *(Art. 9, par. 2, RPC)*

3. *Light* – 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. *(Art. 9, par. 3, RPC)*

Q: Who are liable for grave or less grave felonies?

A: The principals, accomplices and even accessories, because the degree of the penalty to be imposed depends on 3 factors:

1. Stages of execution
2. The degree of participation
3. The presence of attending circumstances

Q: When are light felonies punishable?

A:

GR: Light felonies are punishable only when they are consummated.

Note: It involves insignificant moral and material injuries, if not consummated, the wrong done is so slight that a penalty is unnecessary.

XPN: Light felonies are punishable in all stages when committed against persons or property.

Note: It presupposes moral depravity.

Q: Who are liable in light felonies?

A: Only the principals and the accomplices are liable in light felonies. Accessories are not liable for light felonies.

Q: What are the crimes considered as light felonies?

A:

1. Slight physical injuries
2. Theft (when the value of thing stolen is less than 5 pesos and theft is committed under the circumstances enumerated under Art. 308 par.3)
3. Alteration of boundary marks

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4. Malicious mischief (when the value of the damage does not exceed 200 or cannot be estimated.
5. Intriguing against honor

B. ELEMENTS OF CRIMINAL LIABILITY (Art. 4)

Q: How is criminal liability incurred?

A: Criminal liability is incurred by any person:

1. Committing a felony although the wrongful act done be different from that which he intended.

2. Performing an act which would be an offense against persons or property, were it not for the inherent possibility of its accomplishment or on account of the employment of inadequate or ineffectual means. *(Art. 4)*

Note: Article 4 does not mean to exclude offenders who are liable even if they do not fall under any of the situations spoken of in the said article. Thus, a person who committed a crime which he really intended is no doubt liable for that offense like, if A, intending to kill his father, shot him, he is liable for the death of his father. The opening sentence of Article 4 should have been: "*Criminal liability shall also be incurred by*".

Q: What situations are contemplated under the first paragraph of Art. 4, *"wrongful act done be different from what was intended"?*

A:

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

Note: The three enumerated situations are always the result of an intended felony, and hence, *dolo*. These situations do not arise out of criminal negligence.

Q: What is *aberratio ictus* or mistake in the blow?

A: In *aberratio ictus*, the offender intends the injury on one person but the harm fell on another. There are three persons present when the felony is committed: the offender, the intended victim, and the actual victim.

Q: What are the distinctions between *aberratio ictus* and *error in personae?*

A:

ABERRATIO ICTUS	*ERROR IN PERSONAE*
A person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else.	The victim actually received the blow, but he was mistaken for another who was not at the scene of the crime.
The offender, the intended victim as well as the actual victim are all at the scene of the crime. It generally gives rise to a complex crime.	There are only two persons present in *error in personae* - the actual but intended victim and the offender.
It generally gives rise to the complex crime. This being so, the penalty for the more serious crime is imposed in the maximum period.	The provisions of Art. 49 applies in *error in personae*, that is, the penalty for the lesser crime will be the one imposed.

Q: What is *praeter intentionem*?

A: In *praeter intentionem*, the injury is on the intended victim but the resulting consequence is so grave a wrong than what was intended.

Note: There must be a notable disparity between the means employed and the resulting felony.

Praeter intentionem is a mitigating circumstance particularly covered by paragraph 3 of Article 13.

Q: A and B went on a drinking spree. While they were drinking, they had some argument so A stabbed B several times. A's defense is that he had no intention of killing his friend and that he did not intend to commit so grave a wrong as that committed. Is *praeter intentionem* properly invoked?

A: No, because *praeter intentionem* is mitigating only if there is a notable disparity between the means employed and the resulting felony. The fact that several wounds were inflicted on B is hardly compatible with the idea that he did not intend to commit so grave a wrong as that committed.

Q: What does Article 4, paragraph 1 - *"Criminal liability shall be incurred by any person committing a felony although the wrongful act done be different from that which he intended"* presuppose?

A: It presupposes that the act done is the proximate cause of the resulting felony. It must be the direct,

natural, and logical consequence of the felonious act.

Q: What is a proximate cause?

A: *Proximate cause* is that cause which sets into motion other causes and which, unbroken by any efficient supervening cause, produces a felony without which such felony could not have resulted. *(He who is the cause of the cause is the cause of the evil of the cause.)*

As a 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.

Q: What are the requisites of proximate cause?

A:

1. The direct, natural, and logical cause
2. Produces the injury or damage
3. Unbroken by any sufficient intervening cause
4. Without which the result would not have occurred

Q: Is proximate cause the same as immediate cause?

A: A proximate cause is not necessarily the immediate cause. Immediate cause may be a cause which is far and remote from the consequence which sets into motion other causes which resulted in the felony.

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.

Proximate cause does not require that the offender needs to actually touch the body of the offended party. It is enough that the offender generated in the mind of the offended party the belief that made him risk himself.

Illustration:

X and Y are crew members of cargo vessel. They had a heated argument. X with a big knife in hand threatened to kill Y. The victim Y, believing himself to be in immediate peril, threw himself into the water. X died of drowning. In this case, Y is liable for homicide for the death of Y.

Even if other causes cooperated in producing the fatal result as long as the wound inflicted is dangerous, that is, calculated to destroy or endanger life, the actor is liable.

It is important that there be no efficient intervening cause.

Q: How is proximate cause negated?

A:

1. Active force, distinct act, or fact absolutely foreign from the felonious act of the accused, which serves as a *sufficient intervening cause*
2. Resulting injury or damage is due to the intentional act of the victim.

Q: What circumstances are considered as *inefficient* intervening causes?

A:

1. The weak physical condition of the victim
2. The nervousness or temperament of the victim
3. Causes which are inherent in the victim, such as the victim's inability to swim
4. Refusal of the injured party of medical attendance
5. Erroneous or unskillful medical treatment

Note: Although the following may have intervened in the commission of the crime, the offender is still liable for the resulting crime because the proximate cause is caused by him.

Q: What circumstances are considered for death to be presumed to be the natural consequence of the physical injuries inflicted?

A:

1. That the victim was in normal condition at the time the physical injuries were inflicted
2. That the death may be expected from the physical injuries inflicted.
3. That death ensued within a reasonable time.

Note: Even if other causes cooperated in producing the fatal result as long as the wound inflicted is dangerous, that is, calculated to destroy or endanger life, the actor is liable. This is true even though the immediate cause of death was erroneous or unskillful medical treatment, refusal of the victim to submit to surgical operation, or that the deceased was suffering from tuberculosis, heart disease or other internal malady.

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ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

C. IMPOSSIBLE CRIME [Art. 4 (2)]

Q: What are the requisites of an impossible crime?

A:

1. Act performed would be an offense against persons or property.

   Note: Kidnapping is a crime against personal security and not against person or property

2. Act was done with evil intent
3. Accomplishment is inherently impossible or means employed is either inadequate or ineffectual
4. Act performed should not constitute a violation of another provision of RPC

Note: The offender must believe that he can consummate the intended crime. A man stabbing another who he knew was already dead cannot be liable for an impossible crime

Q: What is the essence of an impossible crime?

A: The essence of an impossible crime is the inherent impossibility of accomplishing the crime or the inherent impossibility of the means employed to bring about the crime.

Q: What is inherent impossibility?

A: *Inherent impossibility* means that under any and all circumstances, the crime could not have materialized.

Q: What are the two kinds of inherent impossibility?

A:

1. *Legal impossibility* – which occurs where the intended acts, even if completed would not amount to a crime. *E.g*. killing a dead person.

2. *Physical impossibility* – where extraneous circumstances unknown to the accused prevent the consummation of the intended crime. *E.g.* pick pocketing an empty wallet.

Q: What is the reason for penalizing impossible crime?

A: To teach the offender a lesson because of his criminal perversity. Although objectively, no crime is committed, but subjectively, he is a criminal.

Note: It is a principle of criminal law that the offender will only be penalized for an impossible crime if he cannot be punished under some other provision of the RPC. An impossible crime is a crime of last resort.

Q: What are examples of impossible crimes?

A:

1. *In employment of inadequate means* – small quantity of poison which is inadequate to kill a person.

2. *In employment of inefficient means* – accused fired a gun, not knowing that it is empty.

Q: Buddy always resented his classmate, Jun. One day, Buddy planned to kill Jun by mixing poison in his lunch. Not knowing where he can get poison, he approached another classmate Jerry to whom he disclosed his evil plan. Because he himself harbored resentment towards Jun, Jerry gave Buddy a poison, which Buddy placed on Jun's food. However, Jun did not die because, unknown to both Buddy and Jerry, the poison was actually powdered milk. What crime or crimes, if any, did Jerry and Buddy commit?

A: Jerry and Buddy are liable for the so-called impossible crime because, with intent to kill, they tried to poison Jun and thus perpetrate murder, a crime against persons. Jun was not poisoned only because the would-be killers were unaware that what they mixed with the food of Jun was powdered milk, not poison. Criminal liability is incurred by them although no crime resulted, because their act of trying to poison Jun is criminal. **(1998 Bar Question)**

Q: Is impossible crime a formal crime?

A: Yes. By its very nature, an impossible crime is a formal crime. It is either consummated or not consummated at all. There is therefore no attempted or frustrated impossible crime.

Q: Distinguish impossible crime from unconsummated felonies (attempted or frustrated felony)

UNCONSUMMATED FELONIES	IMPOSSIBLE CRIMES
Intent is not accomplished	Intent is not accomplished
Intent of the offender has possibility of accomplishment	Intent of the offender, cannot be accomplished

Accomplishment is prevented by the intervention of certain cause or accident in which the offender had no part	Intent cannot be accomplished because it is inherently impossible to accomplish or because the means employed by the offender is inadequate or ineffectual

D. STAGES OF EXECUTION (Art. 6)

Q: What are the classifications of felonies according to the stage of execution?

A: Consummated, frustrated and attempted

Q: What is the purpose of classification?

A: To bring about a proportionate penalty and equitable punishment.

Note: 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.

Q: What are the crimes that do not admit of division?

A: *Formal crimes* which are consummated in one instance, do not admit of division. *e.g.* physical injuries and oral defamation.

Q: What are the phases of felony?

A:

1. *Subjective phase* – that portion of execution of the crime starting from the point where the offender begins up to that point where he still has control of his acts.

   Note: If it reaches the point where he has no more control over his acts, the subjective phase has passed.

   If the subjective phase is not yet passed, the felony would be a mere attempt.

   If it already passed, but the felony is not produced, as a rule, it is frustrated.

2. *Objective phase* – results of the acts of execution, that is, the accomplishment of the crime.

Note: If the subjective and objective phases are present, there is consummated felony.

Q: When is a felony consummated?

A: A felony is consummated when all the acts necessary for its accomplishment and execution are present.

Q: What are the elements of frustrated felony?

A:

1. The offender performs all the acts of execution.
2. All the acts performed would produce the felony as a consequence.
3. But the felony is not produced.
4. By the reason of causes independent of the will of the perpetrator.

Q: What crimes do not admit of frustrated stage?

A:

1. *Rape* – the gravamen of the offense is carnal knowledge, hence, the slightest penetration to the female organ consummates the felony.

2. *Arson* – the moment the burning property occurs, even if slight, the offense is consummated.

3. *Corruption of public officers* – mere acceptance of the offer consummates the crime.

4. *Physical injury* – consummated at the instance the injuries are inflicted.

5. *Adultery* – the essence of the crime is sexual congress.

6. *Theft* – the essence of the crime is the possession of the thing, once the thing has been taken or in the possession of the person, the crime is consummated.

Q: What are the elements of attempted felony?

A:

1. The offender commences the commission of the felony directly by overt acts

   Note: *Overt acts* are external acts which if continued will logically result in a felony. It is the start of criminal liability because the offender has commenced the commission of an offense with an overt act.

2. He does not perform all the acts of execution which should produce the felony

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3. The non-performance of all acts of execution was due to a cause or accident other than the offender's own spontaneous desistance

Note: The moment the execution of the crime has already gone to that point where the felony should follow as a consequence, it is either already frustrated or consummated. If the felony does not follow as a consequence, it is already frustrated. If the felony follows as a consequence, it is consummated.

The word *directly* emphasizes the requirement that the attempted felony is that which is directly linked to the overt act performed by the offender not the felony he has in his mind.

Q: A person enters the dwelling of another. However, at the very moment of his entry and before he could do anything, he is already apprehended by the household members, can he be charged with attempted robbery?

A: No. He can only be held liable for attempted robbery when he has already completed all acts performed by him directly leading to robbery. The act of entering alone is not yet indicative of robbery although that may be what he may have planned to commit. However, he may be held liable for trespassing.

Q: The accused brought gasoline into a building, with the intent to burn the building, but was apprehended by the security guard, did the crime of arson commence?

A: Yes. The accused in this case is liable for attempted arson because the bringing of the gasoline was already an overt act while the apprehension was the reason other than his own spontaneous desistance.

Q: What are the criteria involved in determining the stage (whether it be in the attempted, frustrated or consummated stage) of the commission of a felony?

A:

1. The manner of committing the crime
2. The elements of the crime
3. The nature of the crime itself

Q: What is the distinction between attempted and frustrated felony?

A: The difference between the attempted stage and the frustrated stage lies on whether the offender has performed all the acts of execution for the accomplishment of a felony.

Literally, under the article, if the offender has performed all the acts of execution which should produce the felony as a consequence but the felony was not realized, then the crime is already in the frustrated stage.

If the offender has not yet performed all the acts of execution (there is yet something to be performed) but he was not able to perform all the acts of execution due to some cause or accident other than his own spontaneous desistance, then you have an attempted felony.

Q: What are the distinctions between attempted, frustrated and consummated felony?

A:

ATTEMPTED	FRUSTRATED	CONSUMMATED
criminal purpose was not accomplished	criminal purpose was not accomplished	Criminal purpose was accomplished.
Offender merely commences the commission of the crime directly by overt acts.	Offender has performed all the acts of execution which would produce the felony as a consequence.	Offender has performed all the acts of execution which would produce the felony as the consequence.
The intervention of certain cause or accident which the offender had no part prevented the accomplishment	The intervention of certain cause or accident which the offender had no part prevented the accomplishment	The felony was produced as a consequence of the act of the offender
Offender has not passed the subjective phase	Offender has reached the objective stage	Subjective and objective phase are present

Q: What are the instances wherein the stages of a crime will not apply?

A:

1. Offenses punishable by Special Penal Laws, unless otherwise provided for.
2. Formal crimes (*e.g., slander adultery, etc.)*
3. Impossible crimes
4. Crimes consummated by mere attempt *(e.g., attempt to flee to an enemy country, treason, corruption of minors)*
5. Felonies by omission

6. Crimes committed by mere agreement *(e.g., betting in sports, corruption of public officers)*

E. CONSPIRACY AND PROPOSAL (Art.8)

Q: What is conspiracy?

A: Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

Q: What are the requisites of conspiracy?

A:

1. There is an agreement
2. The participants acted in concert or simultaneously which is indicative of a meeting of the minds towards a common criminal goal or criminal objective

Q: When does proposal exist?

A: Proposal exists when the person who has decided to commit a felony proposes its execution to some other person or persons.

Q: Is proposal and conspiracy to commit felony punishable?

A:

GR: Conspiracy and proposal to commit a felony are not punishable.

Ratio: Because they are mere preparatory acts.

XPN: They are punishable only in cases in which the law specifically provides a penalty thereof.

Note: It is fundamental that there exists a unity of purpose and the unity in the execution of the unlawful objective among the co-conspirators.

Mere knowledge, acquiescence to, or approval of the act, without cooperation or at least, agreement to cooperate, is not enough to constitute a conspiracy.

A conspiracy is possible even when participants do not know each other.

Q: Is it required that there is an agreement among the participants to constitute conspiracy?

A: No. It is enough that the offenders acted simultaneously or in a synchronized manner to bring about their common intention.

Note:

GR: When conspiracy exists, the degree of participation of each conspirator is not considered because the act of one is the act of all, they have equal criminal responsibility.

XPN: 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. *(People v. Niem, G.R. No. 521, Dec. 20, 1945)*

XPN to the XPN: When the act constitutes a single indivisible offense.

Q: What are the distinctions between conspiracy and proposal to commit a felony?

A:

CONSPIRACY	PROPOSAL
It exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it.	There is proposal when the person who has decided to commit a felony proposes its execution to some other person or persons.
Once the proposal is accepted, a conspiracy arises.	Proposal is true only up to the point where the party to whom the proposal was made has not yet accepted the proposal.
Conspiracy is bilateral, it requires two parties.	Proposal is unilateral, one party makes a proposition to the other.

Q: What are the two kinds of conspiracy?

A:

1. *Conspiracy as a crime* – The mere conspiracy is the crime itself. This is only true when the law expressly punishes the mere conspiracy, otherwise, the conspiracy does not bring about the commission of the crime because conspiracy is not an overt act but a mere preparatory act.

   Note: Treason, rebellion, sedition, and *coup d'etat* are the only crimes where the conspiracy and proposal to commit them are punishable.

2. *Conspiracy as a basis of incurring criminal liability* – When the conspiracy is only a

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

Q: What is implied conspiracy?

A: When the conspiracy is just a basis of incurring criminal liability, it may be deduced or inferred from the acts of several offenders in carrying out the commission of the crime, *i.e.* when such acts disclose or show a common pursuit of the criminal objective.

Q: What are the legal effects of implied conspiracy?

A:

1. Not all those who are present at the scene of the crime will be considered conspirators

2. Only those who participated by criminal acts in the commission of the crime will be considered as co-conspirators

Note: In order to hold someone criminally liable, in addition to mere presence, there should be overt acts that are closely-related and coordinated to establish the presence of common criminal design and community of purpose in the commission of the crime.

Q: Juan and Arturo devised a plan to murder Joel. In a narrow alley near Joel's house, Juan will hide behind the big lamppost and shoot Joel when the latter passes through on his way to work. Arturo will come from the other end of the alley and simultaneously shoot Joel from behind. On the appointed day, Arturo was apprehended by the authorities before reaching the alley. When Juan shot Joel as planned, he was unaware that Arturo was arrested earlier. Discuss the criminal liability of Arturo, if any.

A: Arturo being one of the two who devised the plan to murder Joel, thereby becomes co-principal by direct conspiracy. What is needed only is an overt act and both will incur criminal liability. Arturo's liability as a conspirator arose from his participation in jointly devising the criminal plan with Juan, to kill Jose. And it was pursuant to that conspiracy that Juan killed Joel. The conspiracy here is actual, not by inference only. The overt act was done pursuant to that conspiracy whereof Arturo is co-conspirator. There being a conspiracy, the act of one is the act of all. Arturo, therefore, should be liable as a co-conspirator but the penalty on him may be that of an accomplice only because he was not able to actually participate in the shooting of Joel, having been apprehended before reaching the place where the crime was committed. (**1998 Bar Question**)

F. MULTIPLE OFFENDERS (Differences, Rules and Effects)

See also page 42 regarding the different forms of repetition or habituality of the offender

1. *Recidivism* – the offender at the-time of his trial for one crime shall have been previously convicted by final judgment of another embraced in the same title of the RPC.

   Note: It is important that conviction which came earlier must refer to the crime committed earlier than the subsequent conviction.

   A recidivist is entitled to the benefits of the Indeterminate Sentence Law but is disqualified from availing credit of his preventive imprisonment.

2. *Reiteracion* – the offender has been previously punished for an offense which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

3. *Habitual delinquency* — the offender within the period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, is found guilty of any of the said crimes a third time or oftener.

4. *Quasi-recidivism* — Any person who shall commit a felony after having been convicted by final judgment before beginning to serve such sentence or while serving such sentence shall be punished by the maximum period prescribed by law for the new felony.

G. COMPLEX CRIMES *vis* SPECIAL COMPLEX CRIMES

COMPLEX CRIMES (Art. 48)

Q: What is a complex crime?

A: C*omplex crime* exists when two or more crimes are committed but they constitute only one crime in the eyes of the law. Here, there is only one criminal intent hence, only one penalty is imposed

Q: What are the concepts of complex crimes?

A:

1. A single criminal act constituting 2 or more grave or less grave felonies.

2. Offender has only one criminal intent, hence, there is only one penalty imposed.

Q: What are the kinds of complex crimes?

A:

1. *Compound crime* – when a single act constitutes two or more grave or less grave felonies.

   Requisites:
   a. Only a single act is performed by the offender
   b. The single act produces:
      i. Two or more grave felonies
      ii. One or more grave and one or more less grave felonies
      iii. Two or more less grave felonies.

2. *Complex crime proper* – when an offense is the necessary means for committing the other.

   Requisites:
   a. At least two offenses are committed
   b. One or some of the offenses must be necessary to commit the other
   c. Both or all the offenses must be punished under the same statute

   Note: The first crime must be a necessary means to commit the other.

   There should only be one information charging a complex crime.

   Only one penalty is imposed for complex crimes because there is only one criminal act.

3. *Special complex crime* – known as *composite crime*, the component crimes constitute a single indivisible offense and are thus penalized as one crime

Q: When is there no complex crime?

A:

1. When one offense is committed to conceal the other

2. When one crime is an element of the other, for in that case, the former shall be absorbed by the latter. *E.g.* trespassing which is an element of the robbery with force upon things

3. When the crime has the same elements as the other crime committed *E.g.* estafa and falsification of private documents have the same element of damage. Thus there is no complex crime of estafa through falsification of private document

4. When one of the offenses is penalized by a special law

5. In continued crimes

Q: What is the penalty for complex crimes under Article 48?

A:

GR: When a complex crime is committed, the penalty for the most serious crime in its maximum period shall be imposed.

XPN: When the law imposes a single penalty for special complex crimes.

Q: What is a continuing crime?

A: It is a single crime, consisting of a series of acts but arising from one criminal resolution (*e.g.* violation of BP 22).

Q: What is a continued crime?

A: Here, the offender is impelled by a single criminal impulse but committed a series of acts at about the same time in about the same place and all the overt acts violate one and the same provision law. *e.g.* theft of 13 cows belonging to different owners committed by the accused at the same place and at the same time.

Q: What are the distinctions between special complex crimes and complex crimes under Art. 48?

A:

SPECIAL COMPLEX CRIME	COMPLEX CRIME UNDER ART. 48
Combination of	The combination is not

CRIMINAL LAW TEAM:
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offenses are fixed or specified by law *E.g.* robbery with homicide, robbery with rape	specified, that is, grave and/ or less grave; or one offense being necessary means to commit the other
The penalty for the specified combination is also specific	The penalty imposed is the penalty for the most serious offense in the maximum period

Q: What is plurality of crimes?

A: It is the successive execution by the same individual of different criminal acts upon any of which no conviction has yet been declared

Q: What are the kinds of plurality of crimes?

A:

1. *Formal or ideal* – only one criminal liability
    a. Complex crime – defined in Art 48
    b. When the law specifically fixes a single penalty for 2 or more offenses committed
    c. Continued crimes
2. *Real or material* – there are different crimes in law and in the conscience of the offender. In such cases, the offender shall be punished for each and every offense that he committed

Q: Can there be a complex crime of *coup d'état* with rebellion?

A: Yes. If there was conspiracy between the offender/ offenders committing the rebellion. By conspiracy, the crime of one would be the crime of the other and vice versa. This is possible because the offender in *coup d'état* may be any person or persons belonging to the military or the national police or a public officer, whereas rebellion does not so require. Moreover, the crime coup d'etat may be committed singly, whereas rebellion requires a public uprising and taking up arms to overthrow the duly constituted government. Since the two crimes are essentially different and punished with distinct penalties, there is no legal impediment to the application of Art. 48 of the Revised Penal Code. **(2003 Bar Question)**

Q: Can there be a complex crime of *coup d'etat* with sedition?

A: Yes, *coup d'état* can be complexed with sedition because the two crimes are essentially different and distinctly punished under the Revised Penal Code. Sedition may not be directed against the government or non-political in objective, whereas coup d'état is always political in objective as it is directed against the government and led by persons or public officer holding public office belonging to the military or national police. Art. 48 of the Code may apply under the conditions therein provided. **(2003 Bar Question)**

III. CIRCUMSTANCES WHICH AFFECT CRIMINAL LIABILITY

Q: What are the circumstances affecting criminal liability?

A: JEMAA

1. Justifying circumstances
2. Exempting circumstances
3. Mitigating circumstances
4. Aggravating circumstances
5. Alternative circumstances

Q: What are the other two circumstances found in the RPC affecting criminal liability?

A:

1. *Absolutory cause* – has the effect of an exempting circumstance and it is predicated on lack of voluntariness such as instigation

2. *Extenuating circumstances* – the effect of extenuating circumstances is to mitigate the criminal liability of the offender

Q: What are examples of absolutory causes?

A:

1. Accessory is a relative of the principal. *(Art. 20)*
2. Discovering secrets through seizure of correspondence of ward by their guardian is not penalized. *(Art. 219)*
3. When only slight or less serious physical injuries are inflicted by the person who surprised his/her spouse or daughter in the act of sexual intercourse with another person. *(Art. 247)*
4. Crime of theft, swindling or malicious mischief is committed against a relative. *(Art. 332)*
5. Marriage of the offender with the offended party when the crime committed is rape, abduction, seduction, or acts of lasciviousness. *(Art. 344)*
6. Instigation
7. Trespass to dwelling when the purpose of entering another's dwelling against the latter's will is to prevent some serious harm to himself, the occupants of the dwelling or a third person, or for the purposes of rendering some services to humanity or justice, or when entering cafes, taverns, inns and other public houses, while the same are open. *(Art. 280 par. 2)*
8. Adultery and concubinage if the offended party shall have consented or pardoned the offenders. *(Art. 344)*

Q: Is mistake of fact an absolutory cause?

A: Yes. The offender is acting without criminal intent. So in mistake of fact, it is necessary that had the facts been true as the accused believed them to be, the act is justified. If not, there is criminal liability, because there is no more mistake of fact anymore. The offender must believe he is performing a lawful act.

Q: Does instigation absolve the offender from criminal liability?

A: Yes. 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.

Note: This is based on the rule that a person cannot be a criminal if his mind is not criminal.

Q: What if the person instigated does not know that the person instigating him is a law enforcer?

A: If the person instigated does not know that the person 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.

Q: Is entrapment an absolutory cause?

A: No. Entrapment is not an absolutory cause. Entrapment does not exempt the offender or mitigate his criminal liability.

Q: What is the effect if the person entrapped knew that the person trying to entrap him is a law enforcer?

A: In entrapment, the person entrapped should not know that the person trying to entrap him is 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 law.

Q: What is the criteria to determine if the act is an entrapment or instigation?

A: In the case of *People v. Doria* the SC held that the conduct of the apprehending officers and the predisposition of the accused to commit the crime must be examined:

In buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur-buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale.

The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense.

Criminals must be caught but not at all cost. At the same time, however, examining the conduct of the police should not disable courts into ignoring the accused's predisposition to commit the crime. If there is overwhelming evidence of habitual delinquency, recidivism or plain criminal proclivity, then this must also be considered. Courts should look at all factors to determine the predisposition of an accused to commit an offense in so far as they are relevant to determine the validity of the defense of inducement.

Q: What are the distinctions between instigation and entrapment?

A:

INSTIGATION	ENTRAPMENT
A law enforcement agent induces an innocent person to commit a crime and would arrest him upon or after the commission of the crime.	A person has planned, or is about to commit a crime and ways are resorted to by a public officer to trap and catch the criminal.
The law enforcement agent conceives the commission of the crime and suggests it to the accused.	Idea to commit the crime comes from the offender.
An absolutory cause.	Not an absolutory cause.

Q: What are examples of extenuating circumstances?

A: In cases of infanticide and abortion, concealment of dishonor is an extenuating circumstance insofar as the unwed mother and the maternal grandparents are concerned

JUSTIFYING CIRCUMSTANCES (Art. 11)

Q: What are justifying circumstances?

A: They are those acts of a person said to be in accordance with law, such that a person is deemed not to have transgressed the law and is free from both criminal and civil liability.

They are:

1. Self-defense
2. Defense of relatives
3. Defense of stranger
4. Avoidance of greater evil or injury
5. Fulfillment of duty or exercise of right or office
6. Obedience to an order of a superior

Note: Justifying circumstances are in the nature of defensive acts, hence, unlawful aggression must always exist.

Q: Who has the burden of evidence in criminal case?

A: In criminal cases, the burden of proving guilt is always the plaintiff/prosecution. But if the accused sets up an affirmative defense, the burden is on him to prove such by "clear, affirmative and strong evidence"

The foregoing rests on the maxim: EL INCOMBIT PROBOTION QUI DECIT NON QUI NEGAT (He who asserts, not he who denies, must prove)

1. SELF-DEFENSE

Q: What rights are included in self-defense?

A: 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. Defense of the person
2. Defense of rights protected by law
3. The right to honor.

Note: Hence, a slap on the face is considered as unlawful aggression since the face represents a person and his dignity. It is a serious, personal attack *(Rugas v. People, G.R. No. 147789, Jan.14, 2004)*

4. The defense of property rights can be invoked if there is an attack upon the property although it is not coupled with an attack upon the person of the owner of the premises. All the elements for justification must however be present. *(People v. Narvaez, G.R. Nos. L-33466-67, Apr. 20, 1983)*

5. Self-defense in libel. Physical assault may be justified when the libel is aimed at the person's good name, and while the libel is in progress, one libel deserves another.

Note: What is important is not the duality of the attack but whether the means employed is reasonable to prevent the attack.

Q: What are the requisites of self-defense?

A:

1. Unlawful aggression
2. Reasonable necessity of the means employed to prevent or repel it
3. Lack of sufficient provocation on the part of the person defending himself

Q: What is the reason for lawfulness of self-defense?

A: It is impossible for the State to protect all its citizens. Also, a person cannot just give up his rights without resistance being offered.

Q: What is the meaning of *"stand ground when right"?*

A: The law does not require a person to retreat when his assailant is rapidly advancing upon him with a deadly weapon.

Ratio: He runs the risk of being attacked in the back by the aggressor.

Q: What are the effects of self-defense?

A:

1. *When all the elements are present* – the person defending himself is free from criminal liability and civil liability.

2. *When only a majority of the elements are present* – privileged mitigating circumstance provided there is unlawful aggression.

Q: What is unlawful aggression?

A: It is an attack or a threatened attack which produces an imminent danger to the life and limb of the one resorting to self-defense.

Q: What are the types of unlawful aggression?

A:

1. *Actual* – the danger must be present, that is, actually in existence.

2. *Imminent* – the danger is on the point of happening. It is not required that the attack has already begun, for it may be too late.

Note: What justifies the killing of a supposed unlawful aggressor is that if the offender did not kill the aggressor, it will be his own life that will be lost.

No unlawful aggression when there was an agreement to fight and the challenge to fight has been accepted. But aggression which is ahead of a stipulated time and place is unlawful.

Q: To give rise to self-defense, should the aggression be legal or illegal?

A: The aggression must be illegal, like the attack of the husband against paramour of his wife whom he surprised in an uncompromising situation, or a chief of police who threw stones at the accused who was running away to elude arrest of a crime committed in his presence. The aggression must be lawful.

Q: What is the effect if there is a mistake of fact on the part of the accused?

A: In relation to mistake of fact, the belief of the accused may be considered in determining the existence of unlawful aggression. *E.g.* there is self-defense even if the aggressor used a toy gun provided that the accused believed it to be a real gun.

Q: **What is the test in order to know if self-defense exists?**

A: One must ask: At the time the accused killed the supposed unlawful aggressor, was his or her life in danger?

Q: **What factors are taken into consideration in determining whether or not the means employed by the person defending himself are reasonable?**

A:

1. Nature and quality of the weapon used by the aggression.
2. Physical condition, character, size and other circumstances of both the offender and defender.
3. Place and occasion of the assault.

Note: Perfect equality between the weapons used by the one defending himself and that of the aggressor is not required or material commensurability between the means of attack and defense.

Ratio: The person assaulted does not have sufficient tranquility of mind to think and to calculate and to choose the weapon used. What the law requires is rational equivalence.

Q: What are the requisites which must be present to satisfy the "reasonable necessity of the means employed to prevent or repel it?"

A:

1. Means were used to prevent or repel
2. Means must be necessary and there is no other way to prevent or repel it
3. Means must be reasonable—depending on the circumstances, but generally proportionate to the force of the aggressor

Q: **In what instances can there be lack of sufficient provocation on the person defending himself?**

A:

1. No provocation at all was given to aggressor by person defending himself.
2. Even if provocation was given, it was not sufficient.
3. Even if provocation was sufficient, it was not given by the person defending himself.
4. Even if provocation was given by person defending himself, it was not the proximate and immediate to the act of aggression.
5. Sufficient means proportionate to the damage caused by the act, and adequate to stir one to its commission.

Q: What is the effect if the aggressor retreats?

A: The aggression ceases except when retreat is made to take a more advantageous position to insure the success of the attack begun, unlawful aggression continues.

Q: What are the distinctions between self-defense and retaliation?

A:

SELF-DEFENSE	RETALIATION
In self-defense, the unlawful aggression was still existing when the aggressor was injured or disabled by the person making the defense.	In retaliation, the inceptual unlawful aggression had already ceased when the accused attacked him.

Q: One night, Lina, a young married woman, was sound asleep in her bedroom when she felt a man on top of her. Thinking it was her husband Tito, who came home a day early from his business trip, Lina let him have sex with her. After the act, the man said, "I hope you enjoyed it as much as I did." Not recognizing the voice, it dawned upon Lina that the man was not Tito, her husband. Furious, Lina took out Tito's gun and shot the man. Charged with homicide, Lina denies culpability on the ground of defense of honor. Is her claim tenable?

A: No, Lina's claim that she acted in defense of honor is not tenable because the unlawful aggression on her honor had already ceased. Defense of honor as included in self-defense, must have been done to prevent or repel an unlawful aggression. There is no defense to speak of where the unlawful aggression no longer exists. **(1998 Bar Question)**

2. DEFENSE OF RELATIVES

Q: What are the requisites of defense of relatives?

A:

1. Unlawful aggression.
2. Reasonable necessity of the means employed to prevent or repel it.
3. Relative being defended gave no provocation.

Note: The law gives a leeway on the third requisite, even if the relative being defended gave the provocation, if the relative making the defense had no part therein, he can successfully invoke the defense of relative.

Q: Who are the relatives covered?

A:

1. Spouse
2. Ascendants
3. Descendants
4. Legitimate, adopted brothers and sisters, or relatives by affinity in the same degrees.
5. Relatives by consanguinity within the 4th civil degree.

Q: What if the person being defended is already a second cousin?

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

3. DEFENSE OF STRANGERS

Q: What are the requisites of defense of strangers?

A:

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

Q: Who is a stranger?

A: Any person not included in the enumeration of relatives mentioned above.

Q: What is the distinction between defense of relatives and defense of strangers?

A:

DEFENSE OF RELATIVES	DEFENSE OF STRANGERS
In defense of relatives, even though the person making the defense acted out of some evil motive, he can still invoke the justifying circumstance, as long as he did not contribute to the unlawful aggression	In defense of strangers, if the person making the defense acted out of revenge, resentment or some evil motive in killing the aggressor, he cannot invoke the justifying circumstance.

A. Anti-Violence against Women and their Children Act of 2004 (R.A. 9262)

Q: What is a battered woman syndrome (BWS)?

A: 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.

The battered woman syndrome is characterized by the so-called cycle of violence, which has 3 phases.

Q. What are the cycles of violence?

A:

1. Tension building phase
2. Acute battering incident
3. Tranquil, loving (or at least non-violent) phase

Note: One must undergo 3 phases to establish the pattern of violence. One must pass 2 cycles, each with 3 phases.

Q. Who is a battered woman?

A: She is 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.

Battered women includes 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 battering cycle at least twice. Any woman may find herself in an abusive relationship with a man once. If it occurs a second time, and she remains in the situation, she is defined as a battered woman. (*People v. Genosa, G.R. No. 135981, Jan. 15, 2004*)

Q. Can BWS be used as a defense?

A: Yes. Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal or civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the RPC.

In layman's terms, if an abused woman kills or inflict physical injuries on her abusive husband or live-in partner, once the trial court determines that she is suffering from the "Battered Woman Syndrome," the court will declare her not guilty *(People v.Genosa)*

The law now allows the battered woman syndrome as a valid defense in the crime if parricide independent of self defense under the RPC. *(Sec. 26)*

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Note: 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 psychiatrists/ psychologists.

4. AVOIDANCE OF GREATER EVIL OR STATE OF NECESSITY

Q: What are the requisites of state of necessity?

A:

1. Evil sought to be avoided actually exists.
2. Injury feared be greater than that done to avoid it.
3. There be no other practical and less harmful means of preventing it, and
4. There must be no contribution on the part of the accused what caused the evil to arise.

Note: The state of necessity must not have been brought about by the negligence or imprudence by the one invoking the justifying circumstances.

Q: What does damage to another cover?

A: Damage to another covers injury to persons and damage to property.

Q: What does the term *"evil"* mean?

A: The term "evil" means harmful, injurious, disastrous, and destructive. As contemplated, it must actually exist. If it is merely expected or anticipated, the one acting by such notion is not in a state of necessity.

Q: Who must be liable civilly?

A: The persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they received.

Note: Generally, there is no civil liability in justifying circumstances. However, it is only in par. 4 of this Article where there is civil liability. The civil liability referred to herein 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 civilly liable if they derived benefit out of the state of necessity.

5. FULFILLMENT OF DUTY

Q: What are the requisites of fulfillment of duty?

A:

1. Accused acted in the performance of a duty or in the lawful exercise of a right or office.
2. Injury caused or offense committed be the necessary consequence of the due performance of duty or the lawful exercise of such right or office.

Note: If the police officer acted with negligence or imprudence in apprehending violators of the law, the justifying circumstance of fulfillment of duty cannot be invoked.

The shooting by guards of escaping prisoners is always justified. *(People v. Delima, G.R. No. 138692, June 16, 2003)*

Q: Lucresia, a store owner, was robbed of her bracelet in her home. The following day, at about 5 o'clock in the afternoon, a neighbor, 22-year old Jun-Jun, who had an unsavory reputation, came to her store to buy bottles of beer. Lucresia noticed her bracelet wound around the right arm of Jun-Jun. As soon as the latter left, Lucresia went to a nearby police station and sought the help of a policeman on duty, Pat. Willie Reyes. He went with Lucresia to the house of Jun-Jun to confront the latter. Pat Reyes introduced himself as a policeman and tried to get hold of Jun-Jun who resisted and ran away. Pat Reyes chased him and fired two warning shots in the air Jun-Jun continued to run and when he was about 7 meters away. Pat Reyes shot him in the right leg. Jun-Jun was hit and he fell down but he crawled towards a fence, intending to pass through an opening underneath. When Pat. Reyes was about 5 meters away, he fired another shot at Jun-Jun hitting him at the right lower hip. Pat Reyes brought Jun-Jun to the hospital, but because of profuse bleeding, he eventually died. Pat Reyes was subsequently charged with homicide. During the trial, Pat Reyes raised the defense, by way of exoneration, that he acted in the fulfillment of a duty. Is the defense tenable? Explain.

A: No. The defense of having acted in the fulfillment of a duty requires as a condition, inter alia, that the injury or offense committed be the unavoidable or necessary consequence of the due performance of the duty *(People v. Oanis, G.R. No. L-47722, July 27, 1943).* It is not enough that the accused acted in fulfillment of a duty. After Jun-Jun was shot in the right leg and was already crawling, there was no need for Pat. Reyes to shoot him further. Clearly, Pat. Reyes acted beyond the call of duty which brought about the cause of death of the victim. (**2000 Bar Question**)

6. OBEDIENCE TO AN ORDER ISSUED FOR SOME LAWFUL PURPOSE

Q: What are the requisites of obedience to an order issued for some lawful purpose?

A:

1. An order has been issued by a superior
2. Such order must be for some lawful purpose
3. Means used by the subordinate to carry out said order is lawful

Note: Both the person who gives the order, and the person who executes it, must be acting within the limitations prescribed by law.

Q: Is good faith on the part of the subordinate material?

A: Yes. If he obeyed an order in good faith, not being aware of its illegality, he is not liable. However, the order must not be patently illegal. If the order is patently illegal, this circumstance cannot be validly invoked.

Note: Even if the order is patently illegal, the subordinate may still be able to invoke the exempting circumstances of having acted upon the compulsion of an irresistible force, or under the impulse of an uncontrollable fear.

EXEMPTING CIRCUMSTANCES (Art. 12)

Q: Who are exempted from criminal liability?

A:

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

2. A child fifteen years of age or under is exempt from criminal liability under R.A. 9344

3. A person over fifteen years of age and under eighteen, unless he has acted with discernment, in which case, such child shall be subject to appropriate proceedings in accordance with R.A. 9344.

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

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

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

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

Q: What is the basis for the exemption from criminal liability?

A: The reason for the exemption lies on the involuntariness of the act, that is, one or some of the ingredients of voluntariness such as criminal intent, intelligence, or freedom of action on the part of the offender is missing.

Q: In case of exempting circumstances, is there a crime committed?

A: Yes. There is a crime committed but no criminal liability arises from it because of the complete absence of any of the conditions which constitute free will or voluntariness of the act.

Q: Who has the burden of proof?

A: Any of the circumstances is a matter of defense and must be proved by the defendant to the satisfaction of the court.

1. IMBECILITY AND INSANITY

Q: What are the distinctions between imbecility and insanity?

A:

IMBECILITY	INSANITY
An imbecile is one who, while advanced in age, has a mental development comparable to that of children between two to seven years of age.	Insanity exists when there is a complete deprivation of intelligence in committing the act.
No lucid interval	There is lucid interval
Exempt in criminal liability in all cases	Not exempt from criminal liability if it can be shown that he acted during lucid interval

Q: What are the two tests for exemption on grounds of insanity?

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A:

1. *Test of cognition* – whether the accused acted with complete deprivation of intelligence in committing said crime.

2. *Test of volition* – whether the accused acted in total deprivation of freedom of will.

Note: In the Philippines, both cognition and volition tests are applied. There must be complete deprivation of the intellect or will or freedom.

Q: Is the presumption in favor of sanity?

A: Yes. The defense must prove that the accused was insane at the time of the commission of the crime.

Note: Mere abnormalities of the mental facilities are not enough.

Q: What are the effects of the insanity of the accused?

A:

1. *At the time of the commission of the crime* – exempt

2. *During trial* – proceedings suspended, accused is committed to a hospital

3. *After judgment or while serving sentence* – execution of judgment is suspended, the accused is committed to a hospital. The period of confinement in the hospital is counted for the purpose of the prescription of the penalty.

Q: When should insanity be present?

A: Insanity at the time of the commission of the crime and not at the time of the trial will exempt one from criminal liability.

Q: What is the effect of insanity at the time of the trial?

A: In case of insanity at the time of the trial, there will be suspension of the trial until the mental capacity of the accused is restored to afford him fair trial.

Q: What are the other instances of insanity?

A:

a. *Dementia praecox (Schizoprenia)*- is covered by the term insanity because homicidal attack is common in such form of psychosis. It is characterized by delusions that he is being interfered with sexually, or that his property is being taken, thus the person has no control over his acts.

b. *Kleptomania* or presence of abnormal, persistent impulse or tendency to steal, to be considered exempting will still have to be investigated by competent psychiatrist to determine if the unlawful act is due to irresistible impulse produced by his mental defect, thus loss of willpower. If such mental defect only diminishes the exercise of his willpower and did not deprive him of the consciousness of his acts, it is only mitigating.

c. *Epilepsy* which is chronic nervous disease characterized by compulsive motions of the muscles and loss of consciousness may be covered by the tern insanity.

Note: Feeblemindedness is not imbecility because the offender can distinguish right from wrong. An imbecile and an insane to be exempted must not be able to distinguish right from wrong.

2. MINORITY

B. Juvenile Justice and Welfare Act of 2006 (R.A. 9344)

Q: What is the meaning of "*a child in conflict with the law*"?

A: It refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

Note: The child in conflict with the law shall enjoy the presumption of minority. He/she shall enjoy all the rights of a child in conflict with the law until he/she is proven to be 18 years old or older.

Q: What is the minimum age of criminal responsibility?

A:

AGE BRACKET	CRIMINAL LIABILITY	TREATMENT
15 years old or below	Exempt	The child shall be subjected to an intervention program
Above 15 but below 18, who acted *without* discernment	Exempt	The child shall be subjected to an intervention program
Above 15 but below 18, who acted *with* discernment	Not exempt	Such child shall be subjected to the appropriate proceedings in accordance with R.A. 9344

Note: The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws

Q: How can the age be determined?

A: The age of a child may be determined from the child's:

1. Birth certificate
2. Baptismal certificate
3. Any other pertinent documents

Note: In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor.

Q: What is automatic suspension of sentence as provided for in Sec. 38 of R.A. 9344?

A: Once the child who is under 18 years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided*, *however*, That suspension of sentence shall still be applied even if the juvenile is already 18 years of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. *(Sec. 38)*

Note: The suspension of sentence under sec.38 R.A.9344 applies regardless of the penalty imposed. The provision therefore modifies the ruling in Declarador v. Gubatan

SEC. 38. *Automatic Suspension of Sentence.* - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: *Provided*, *however*, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

Upon suspension of sentence and after considering the various circumstances of the child, the court shall impose the appropriate disposition measures as provided in the Supreme Court Rule on Juveniles in Conflict with the Law. (*A.M. No. 02-1-18-SC, November 24, 2009)*

Q: What are the exempting provisions under this act?

A:

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

2. *Offenses not applicable to children (Sec. 58)*- Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of:

   a. *Vagrancy and prostitution* under Section 202 of RPC
   b. *Sniffing of rugby* under Presidential Decree No. 1619

   Ratio: Such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: *Provided*, That said persons shall undergo appropriate counseling and treatment program.

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3. Under Sec 59 with regard to *e*xemption from the application of death penalty.

3. ACCIDENT WITHOUT FAULT OR INTENTION OF CAUSING IT *(DAMNUM ABSQUE INJURIA)*

Q: What are the requisites of *damnum absque injuria*?

A:

1. A person is performing a lawful act
2. With due care
3. He causes injury to another by mere accident

   Note: It is something that happens outside the sway of our will, and although it comes about through some act of our will, lies beyond the bounds of humanly foreseeable consequences.

4. Without fault or intention of causing it

Q: Is the offender exempt from criminal and civil liability?

A: Yes. 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.

Illustration:

A chauffeur, while driving his automobile on the proper side of the road at a moderate speed and with due diligence, suddenly and unexpectedly saw a man in front of his vehicle coming from the sidewalk and crossing the street without any warning that he would do so. Because it was not physically possible to avoid hitting him, the said chauffeur ran over the man with his car. It was held that he was not criminally liable, it being a mere accident. *(U.S. v. Tayongtong, 21 Phil. 476)*

Q: What is the effect of accident in relation to Art. 275, par. 2 (failure to help or render assistance to another whom he has accidentally wounded or injured) and Art. 365 (imprudence and negligence).

A: In the case of *Lamera v. CA, GR. No. 93475* two informations are filed against the petitioner, first is for reckless imprudence (Article 365), falls under the sole chapter (Criminal Negligence) of Title Fourteen (Quasi Offenses) of Book Two of the Revised Penal Code. The crime for Abandonment of one's victim (par. 2, Art. 275), falls under Chapter Two (Crimes Against Security) of Title Nine (Crimes Against Personal Liberty and Security) of Book Two of the same Code.

Quasi offenses under Article 365 are committed by means of *culpa*. Crimes against Security are committed by means of *dolo*.

Article 365, failure to lend help to one's victim is neither an offense by itself nor an element of the offense therein penalized. Its presence merely increases the penalty by one degree. The last paragraph of the Article specifically provides:

The penalty next higher in degree to those provided for in this article shall be imposed upon the offender who fails to lend on the spot to the injured parties such help as may be in hand to give.

Such being the case, it must be specifically alleged in the information. The information against petitioner in this case does not so allege.

Upon the other hand, failure to help or render assistance to another whom one has accidentally wounded or injured is an offense under paragraph 2 of Article 275 of the same code which reads: The penalty of *arresto mayor* shall be imposed upon: xxx *" Anyone who shall fail to help or render assistance to another whom he has accidentally wounded or injured".*

4. COMPULSION OF IRRESISTIBLE FORCE

Q: What is the basis for this exempting circumstance?

A: The basis is the complete absence of freedom.

Q: What is irresistible force?

A: It is a degree of force which is external or physical force which reduces the person to a mere instrument and the acts produced are done without his will and against his will.

Q: What are the requisites of compulsion of irresistible force?

A:

1. Compulsion is by means of physical force
2. Physical force must be irresistible
3. Physical force must come from a third person

Note: It presupposes that a person is compelled by means of extraneous force or violence to commit a crime.

The force must be so irresistible as to reduce the actor to a mere instrument who acted not only without will but against his will.

Passion or obfuscation cannot amount to irresistible force.

Q: Baculi, who was not a member of the band which murdered some American school teachers, was in a plantation gathering bananas. Upon hearing the shooting, he ran. However, Baculi was seen by the leaders of the band who called him, and striking him with the butts of their guns, they compelled him to bury the bodies. Is he liable as an accessory to the crime of crime?

A: It was held that Baculi was not criminally liable as accessory for concealing the body of the crime of murder committed by the band because he acted under the compulsion of an irresistible force. *(U.S. v. Caballeros, 4 Phil. 350)*

5. UNCONTROLLABLE FEAR

Q: What is the basis of this exempting circumstance?

A: The basis is complete absence of freedom.

Q: What are the requisites of uncontrollable fear?

A:

1. Threat, which causes the fear, is of an evil greater than or at least equal to that which he is required to commit.

2. It promises an evil of such gravity and imminence that the ordinary man would have succumbed to it.

Q: What are the elements?

A:

1. Existence of an uncontrollable fear

2. Fear must be real and imminent

3. Fear of an injury is greater than or equal to that committed

Q: What is the difference between irresistible force and uncontrollable fear?

A:

IRRESISTIBLE FORCE	UNCONTROLLABLE FEAR
A person is compelled by another to commit a crime by means of violence or physical force.	A person is compelled by another to commit a crime by means of intimidation or threat.

Q: The evidence on record shows that at the time the ransom money was to be delivered, appellants Arturo Malit and Fernando Morales, unaccompanied by any of the other accused, entered the van wherein Feliciano Tan was. At that time, Narciso Saldaña, Elmer Esguerra and Romeo Bautista were waiting for both appellants from a distance of about one (1) kilometer. Is their defense of uncontrollable fear tenable?

A: By not availing of this chance to escape, appellants' allegation of fear or duress becomes untenable. It was held that in order that the circumstance of uncontrollable fear may apply, it is necessary that the compulsion be of such a character as to leave no opportunity to escape or self-defense in equal combat. Moreover, the reason for their entry to the van, where the father of the victims was, could be taken as their way of keeping Feliciano Tan under further surveillance at a most critical time. *(People v. Saldana, G.R. No. 148518, Apr. 15, 2004)*

6. PREVENTED BY SOME LAWFUL OR INSUPERABLE CAUSE

Q: What is the basis of this exempting circumstance?

A: The basis is absence of intent.

Q: What is insuperable cause?

A: Some motive which has lawfully, morally, or physically prevented a person to do what the law commands.

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

Q: What are the requisites under this exempting circumstance?

A:

1. An act is required by law to be done.

2. A person fails to perform such act.

3. Failure to perform such act was due to some lawful or insuperable cause.

Q: What are the distinctions between justifying circumstances and exempting circumstances?

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A:

JUSTIFYING CIRCUMSTANCE	EXEMPTING CIRCUMSTANCE
The circumstance affect the act, not the actor.	The circumstance affect the actor.
The act complained of is considered to have been done within the bounds of law; hence, it is considered lawful, there is no crime, and because there is no crime, there is no criminal.	Since the act complained of is actually wrongful, there is a crime. But because the actor acted without voluntariness there is absence of *dolo* or culpa. There is no criminal
Since there is no crime or criminal, there is no criminal liability as well as civil liability.	Since there is a crime committed but there is no criminal, there is civil liability for the wrong done. However in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

C. The Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165)

1. Immunity from prosecution and punishment

Q: Who shall be exempt from prosecution and punishment under RA 9165?

A: Any person who:

1. Has violated Sections 7, 11, 12, 14, 15, and 19, Article II of RA 9165
2. Voluntarily gives information
    a. About any violation of Sections 4, 5, 6, 8, 10, 13, and 16, Article II of this Act
    b. About any violation of the offenses mentioned if committed by a drug syndicate, or
    c. Leading to the whereabouts, identities and arrest of all or any of the members thereof
3. Willingly testifies against such persons as described above

Provided, That the following conditions concur:

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

Note: Notwithstanding the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure and the provisions of Republic Act No. 6981 or the Witness Protection, Security and Benefit Act of 1991

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

MITIGATING CIRCUMSTANCES (Art. 13)

Q: What are mitigating circumstances?

A: 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: One single fact cannot be made the basis of more than one mitigating circumstance. Hence, a mitigating circumstance arising from a single fact absorbs all the other mitigating circumstances arising from the same fact.

Q: What is the basis of mitigating circumstances?

A: The basis is diminution of either freedom of action, intelligence, or intent or on the lesser perversity of the offender.

Q: What are those circumstances which can mitigate criminal liability?

A:

1. Incomplete justifying or exempting circumstance
2. The offender is under 18 or over 70 years old.
3. No intention to commit so grave a wrong *(praeter inentionem)*
4. Sufficient threat or provocation
5. Vindication of a grave offense
6. Passion or obfuscation
7. Voluntary surrender
8. Physical defect
9. Illness of the offender
10. Similar and analogous circumstances

Q: What are the classes of mitigating circumstances?

A:

1. Ordinary mitigating

2. Privileged mitigating

Q: What are the distinctions between ordinary mitigating and privileged mitigating?

A:

ORDINARY MITIGATING	PRIVILEGED MITIGATING
Can be offset by aggravating circumstances	Can never be offset by any aggravating circumstance.
Ordinary mitigating circumstances, if not offset, will operate to reduce the penalty to the minimum period, provided the penalty is a divisible one.	Privileged mitigating circumstances operate to reduce the penalty by one to two degrees, depending upon what the law provides.

1. INCOMPLETE JUSTIFYING OR EXEMPTING CIRCUMSTANCE

Q: What is the concept of incomplete justifying or exempting circumstance?

A: Incomplete justifying/exempting circumstance means that not all the requisites to justify the act are present or not all the requisites to exempt from criminal liability are present.

Q: What condition is necessary before incomplete self-defense, defense of relative, or defense of stranger may be invoked?

A: The offended party must be guilty of unlawful aggression. Without unlawful aggression, there can be no incomplete self-defense, defense of relative, or defense of stranger.

Q: How may incomplete self-defense, defense of relative, or defense of stranger affect the criminal liability of the offender?

A: 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.

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

Q: How may incomplete justifying circumstance (with respect justifying circumstances other than those mentioned above) or incomplete exempting 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.

2. UNDER 18 OR OVER 70 YEARS OLD

Q: Who are covered under this mitigating circumstance?

A: Offenders who are:

1. Over 15 but under 18 years old who acted with discernment

2. Over 70 years old

Note: It is the age of the accused at the time of the commission of the crime which should be determined. His age at the time of the trial is immaterial.

Q: What are the legal effects of the various age brackets of the offender with respect to his criminal liability?

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A:

AGE BRACKET	EFFECT ON CRIMINAL LIABILITY
15 and under	Exempting circumstance
Over 15 under 18,	*Exempting circumstance*, provided he acted without discernment. *Mitigating circumstance*, provided he acted with discernment
18 or over	Full criminal responsibility
Over 70	Mitigating circumstance; no imposition of death penalty; execution of death sentence if already imposed is suspended and commuted.

Note: The modifications/changes introduced by RA 9344 have been incorporated in the table above.

C. The Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165)

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

Q: Is a minor offender entitled to a privilege mitigating circumstance of minority under R.A. 9165?

A:

GR: No, because the law itself prohibits the application of RPC to R.A. 9165.

XPN: If the offender is a minor and the penalty is life imprisonment to death, then the penalty shall be *reclusion perpetua* to death, adopting therefore the nomenclature of the penalties under the RPC. By adopting the nomenclature of the penalties under the RPC, the RPC shall apply, and a minor would now be entitled to a privilege mitigating circumstance of minority. (*People v. Simon, G.R. No. 93026, July 29, 1994*)

3. NO INTENTION TO COMMIT SO GRAVE A WRONG *(PRAETER INTENTIONEM)*

Q: What is the basis of this mitigating circumstance?

A: The basis is diminution of intent.

Q: Should there be a notable and evident disproportion between the means employed by the offender compared to that of the resulting felony?

A: Yes. If the resulting felony could be expected from the means employed, this circumstance does not avail.

Note: This circumstance is not applicable when offender employed brute force.

Q: Does it apply to felonies by negligence?

A: No, it is not applicable because the offender acts without intent. The intent in intentional felonies is replaced by negligence or imprudence.

There is no intent on the part of the offender, which may be considered as diminished.

Q: What are the factors in order to ascertain the intention?

A:

1. The weapon used
2. The part of the body injured
3. The injury inflicted
4. The manner it is inflicted

Note: This provision addresses the intention of the offender at the particular moment when the offender executes or commits the criminal act and not during planning stage.

Q: Is this mitigating circumstance applicable when the offender employed brute force?

A: No. *E.g.* If the rapist choked the victim, the choking contradicts the claim that he had no intention to kill the girl.

Q: In crimes against persons, what if the victim does not die?

A: The absence of the intent to kill reduces the felony to mere physical injuries. It is not considered as mitigating. It is only mitigating when the victim dies.

4. SUFFICIENT THREAT OR PROVOCATION

Q: What is the basis of this mitigating circumstance?

A: The basis is loss of reasoning and self-control, thereby diminishing the exercise of his will power.

Q: What is provocation?

A: Provocation is any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone.

Q: What are the requisites of sufficient threat or provocation as a mitigating circumstance?

A:

1. Provocation must be sufficient.
2. It must originate from the offended party.
3. It must be immediate to the act.

Q: How is sufficient threat or provocation as a mitigating circumstance distinguished from threat or provocation as an element of self- defense?

A: As an element of self defense it pertains to its absence on the part of the person defending himself while as a mitigating circumstance, it pertains to its presence on the part of the offended party. *(People v. CA, G.R No. 103613, Feb. 23, 2001)*

Note: Sufficiency depends on:

1. The act constituting the provocation
2. The social standing of the person provoked
3. Time and place provocation took place

Q: Tomas' mother insulted Petra. Petra kills Tomas because of the insults. Can Petra avail of the mitigating circumstance?

A: No. There is no mitigating circumstance because it was the mother who insulted her, not Thomas.

Q: Why does the law require that "provocation must be immediate to the act," *i.e.,* to the commission of the crime by the person who is provoked?

A: If there was an interval of time, the conduct of the offended party could not have excited the accused to the commission of the crime, he having had time to regain his reason and to exercise self-control. Moreover, the law presupposes that during that interval, whatever anger or diminished self-control may have emerged from the offender had already vanished or diminished.

Note: As long as the offender at the time he committed the felony was still under the felony was still under the influence of the outrage caused by the provocation or threat, he is acting under a diminished self-control. This is the reason why it is mitigating. However, you have to look at two criteria:

1. If from the element of time, there is a material lapse of time stated in the problem and there is nothing stated in the problem that the effect of the threat or provocation had prolonged and affected the offender at the time he committed the crime, then, you use the criterion based on time element.
2. However, if there is that time element and at the same time, facts are given indicating that at the time the offender committed the crime, he is still suffering from outrage of the threat or provocation done to him, then, he will still get the benefit of this mitigating circumstance.

Q: Should threat be offensive and positively strong?

A: No. Threat should not be offensive and positively strong because if it was, the threat to inflict real injury is an *unlawful aggression* which may give rise to self-defense and thus, no longer a mitigating circumstance.

5. VINDICATION OF A GRAVE OFFENSE

Q: What is the basis of this mitigating circumstance?

A: The basis is loss of reasoning and self-control, thereby, diminishing the exercise of his will power.

Note: This has reference to the honor of a person. It concerns the good names and reputation of the individual *(People v. Anpar, 37 Phil. 201)*

Q: What are the requisites of vindication of a grave offense as a mitigating circumstance?

A:

1. Grave offense has been 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 degree.

2. Felony is committed in vindication of such grave offense.

Q: What is the meaning of the word offense in this particular mitigating circumstance?

A: The word offense should not be construed as equivalent to crime. It is enough that what was done was wrong.

Note: The vindication need not be done by the person upon whom the grave offense was committed or who was offended by the wrong done by the offended party.

Q: What factors should be considered in determining whether the wrong is grave or not?

A:

1. Age

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2. Education
3. Social status

Q: Is lapse of time allowed between the vindication and the doing of the grave offense?

A: Yes. It is enough that:
1. The offender committed the crime;
2. The grave offense was done to him, his spouse, his ascendant or descendant or to his brother or sister, whether natural, adopted or legitimate
3. The grave offense is the proximate cause of the commission of the crime.

Note: A mitigating circumstance only when the same arose from lawful sentiments.

Q: Compare the circumstances of sufficient threat or provocation and vindication of a grave offense.

A:

SUFFICIENT THREAT OR PROVOCATION	VINDICATION OF GRAVE OFFENSE
It is made directly only to the person committing the felony.	The grave offense may be committed also against the offender's relatives mentioned in the law.
The cause that brought about the provocation need not be a grave offense.	The offended party must have done a grave offense against the offender or his relatives mentioned in the law.
It is necessary that the provocation or threat immediately preceded the act. There must be no interval of time between the provocation and the commission of the crime.	The vindication of the grave offense may be proximate which admits of interval of time between the grave offense committed by the offended party and the commission of the crime of the accused.

6. PASSION OR OBFUSCATION

Q: What is the basis of this mitigating circumstance?

A: The basis is loss of reasoning and self-control, thereby diminishing the exercise of his will power.

Q: What is passion or obfuscation?

A: Passion and obfuscation refer to emotional feeling which produces excitement so powerful as to overcome reason and self-control. It must come from prior unjust or improper acts. The passion and obfuscation must emanate from legitimate sentiments.

Q: What are the elements of passion or obfuscation as a mitigating circumstance?

A:
1. Accused acted upon an impulse
2. Impulse must be so powerful that it naturally produced passion or obfuscation in him.

Note: The passion or obfuscation should arise from lawful sentiments in order to be mitigating.

Q: What are the requisites of passion or obfuscation?

A:
1. That there is an act, both unlawful and sufficient to produce such a condition of mind.
2. That the said act which produced the obfuscation was not far removed from the commission of the crime by a considerable length of time, during which the perpetrator might recover his natural equanimity.

Note: This particular mitigating circumstance stands on the premise that the offender is suffering from a diminished self-control because of the passion or obfuscation.

Q: What is the rule when the three mitigating circumstances of sufficient threat or provocation (par. 4), vindication of a grave wrong (par. 5) and passion or obfuscation (par. 6) are present?

A:

GR: 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.

XPN: If the mitigating circumstances under paragraphs 4, 5 and 6 arise from different sets of facts, they may be appreciated together, although they may have arisen from one and the same case.

Note: The passion must be legitimate. As a rule, it cannot be based on common law relationship because common law relationships are illicit.

Q: When is passion or obfuscation not a mitigating circumstance?

A: If the act is committed in the spirit of:
1. Lawlessness

2. Revenge

Q: What are the distinctions between passion/obfuscation and provocation?

A:

PASSION/OBFUSCATION	PROVOCATION
It is produced by an impulse which may cause provocation	The provocation comes from the injured party
The offense need not be immediate. It is only required that the influence thereof lasts until the moment the crime is committed	It must immediately precede the commission of the crime.

Q: What are the distinctions between passion/obfuscation and irresistible force?

A:

PASSION OBFUSCATION	IRRESISTIBLE FORCE
Mitigating circumstance	Exempting circumstance
It cannot give rise to irresistible force because passion or obfuscation has no physical force.	It requires physical force.
The passion or obfuscation is in the offender himself	It must come from a third person.
It must arise from lawful sentiments.	It is unlawful.

7. VOLUNTARY SURRENDER AND CONFESSION OF GUILT

Q: What is the basis of this mitigating circumstance?

A: The basis is the lesser perversity of the offender.

Q: What are the requisites of voluntary surrender as a mitigating circumstance?

A:

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

Q: When is surrender considered voluntary?

A: When it is spontaneous, demonstrating intent to submit himself unconditionally to the person in authority or his agent.

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.

Note: If after committing the crime, the offender did not flee and instead he went with the responding law enforcers meekly, voluntary surrender is not applicable.

If after committing the crime, the offender did not flee and instead waited for the law enforcers to arrive, and then he surrendered the weapon he used in killing the victim, voluntary surrender is mitigating.

If the offender comes out from hiding because he is seriously ill and he wants to get medical treatment, the surrender is not considered as indicative of remorse or repentance. The surrender is not mitigating.

Q: What does *"spontaneous"* mean?

A: It emphasizes the idea of inner impulse acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.

E.g. If the accused surrendered after 5 years, not spontaneous anymore.

If the accused surrendered after talking to town councilor, no longer a voluntary surrender since there is external stimulus.

Q: Does the law require that the accused surrender prior to the order of arrest?

A: "The law does not require that the accused surrender prior to the order of arrest" what matters is the spontaneous surrender of the accused upon learning that a warrant of arrest had been issued against him and that voluntary surrender is obedience to the order of arrest issued against him *(People v. Cahilig, 68 Phil. 740)*

Q: Why is voluntary surrender is mitigating?

A: 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 which thereby saves the government the effort, time and expenses to be incurred in searching for him.

Q: Who is a person in authority?

A: He is one directly vested with jurisdiction, whether as an individual or as a member of some court/government/corporation/board/commission.

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Note: Barrio captain/chairman included.

Q: Who is an agent of person in authority?

A: He is a person who by direct provision of law, or by election, or by appointment by competent authority is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority.

Q: If the accused escapes from the scene of the crime in order to seek advice from a lawyer, and the latter ordered him to surrender voluntarily to the authorities, which the accused followed by surrendering himself to the municipal mayor, will his surrender be considered mitigating?

A: Yes, because he fled to the scene of a crime not to escape but to seek legal advice.

Q: Supposing that after the accused met a vehicular accident causing multiple homicide because of reckless imprudence, he surrenders to the authorities immediately thereafter, will his surrender mitigate his liability because of Art. 13?

A: No. In cases involving felonies committed by means of *culpa,* the court is authorized under Art. 365 to impose a penalty upon offender without regard to the rules on mitigating and aggravating circumstances.

Q: What are the requisites of confession of guilt as a mitigating circumstance?

A:

1. Offender voluntarily confessed his guilt.
2. It was made in open court (that is before the competent court that is to try the case).
3. It was made prior to the presentation of evidence for the prosecution.

Note: Plea of guilty is not applicable to special law.

If both plea of guilt and voluntary surrender are present, they are considered as two independent mitigating circumstances.

Q: Will a conditional plea of guilty be considered as a mitigating circumstance?

A: To be mitigating, the plea of guilty must be without conditions. But conditional plea of guilty may still be mitigating if the conditions imposed by the accused are found to be meritorious.

Q: Upon learning that the police wanted him for the killing of Polistico, Jeprox decided to visit the police station to make inquiries. On his way, he met a policeman who immediately served upon him the warrant for his arrest. During the trial, in the course of the presentation of the prosecution's evidence, Jeprox withdrew his plea of not guilty. Can he invoke the mitigating circumstances of voluntary surrender and plea of guilty? Explain.

A: Jeprox is not entitled to the mitigating circumstance of voluntary surrender as his going to the police station was only for the purpose of verification of the news that he is wanted by the authorities. In order to be mitigating, surrender must be spontaneous and that he acknowledges his guilt.

Neither is plea of guilty a mitigating circumstance because it was a qualified plea. Besides, Art. 13 (7) provides that confession of guilt must be done before the prosecution had started to present evidence. **(1992 Bar Question)**

8. PHYSICAL DEFECT

Q: What is the basis of this mitigating circumstance?

A: The basis is the diminution of the element of voluntariness.

Q: What is physical defect?

A: A person's physical condition, such as being deaf and dumb, blind, armless, cripple, or stutterer, whereby his means of action, defense or communication with others are restricted or limited. The physical defect that a person may have must have a relation to the commission of the crime.

Q: Suppose X 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. X was charged with physical injuries. Is X entitled to a mitigating circumstance by reason of his physical defect?

A: Yes, 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.

Note: The law says that the offender is deaf and dumb, meaning not only deaf but also dumb, or that he is blind, meaning in both eyes, but even if he is only deaf and not dumb, or dumb but not deaf, or blind only in eye, he is still entitled to a mitigating circumstance under this article as long as his physical defects

restricts his means of communication, defense, communication with his fellowmen.

The law does not make a distinction between educated and uneducated deaf-mute or blind persons.

The physical defect that a person may have must have a relation to the commission of the crime. Not any physical defect will affect the crime. It will only do so if it has some relation to the crime committed. This circumstance must also have a bearing on the crime committed and must depend on how the crime was committed.

9. ILLNESS OF THE OFFENDER

Q: What is the basis of this mitigating circumstance?

A: The basis is diminution of intelligence and intent.

Q: What are the requisites of illness of the offender as a mitigating circumstance?

A:

1. Illness of the offender must diminish the exercise of will power.

2. Such illness should not deprive the offender the consciousness of his acts.

Note: Illness of the mind, not amounting to insanity, may be mitigating.

If the illness not only diminishes the exercise of the offender's will power but deprives him of the consciousness of his acts, it becomes an exempting circumstance to be classified as insanity or imbecility.

10. SIMILAR AND ANALOGOUS CIRCUMSTANCES

Q: What are the examples of analogous circumstances?

A:

1. The act of the offender of leading the law enforcers to the place where he buried the instrument of the crime has been considered as equivalent to voluntary surrender.

2. Stealing by a person who is driven to do so out of extreme poverty is considered as analogous to incomplete state of necessity. *(People v. Macbul, 74 Phil. 436)* Unless he became impoverished because of his own way of living his life, *i.e.* he had so many vices.

3. Defendant who is 60 years old with failing eyesight is similar to a case of a person over 70 years of age. *(People v. Reantillo and Ruiz, C.A. G.R. No. 301, July 27, 1938)*

4. Impulse of jealous feeling, similar to passion and obfuscation.

5. Voluntary restitution of property, similar to voluntary surrender.

6. Outraged feeling of the owner of animal taken for ransom is analogous to vindication of grave offense

7. *Esprit de corps* is similar to passion and obfuscation

Q: What are the circumstances which are neither exempting nor mitigating?

A:

1. Mistake in the blow or *aberratio ictus*
2. Mistake in the identity
3. Entrapment
4. Accused is over 18 years of age
5. Performance of righteous action

Q: Give circumstances which are considered as specific mitigating circumstances?

A:

1. Illegal detention (voluntary release within 3 days; without attaining purpose; before criminal action)
2. Adultery (abandonment of spouse)
3. Infanticide/abortion (intent to conceal dishonor of mother)

AGGRAVATING CIRCUMSTANCES (Art. 14)

Q: What are aggravating circumstances?

A: Those which, if attendant in the commission of the crime:

1. Serve to have the penalty imposed in its maximum period provided by law for the offense; or

2. Change the nature of the crime.

Q: What is the basis of aggravating circumstances?

A: The basis is the greater perversity of the offender manifested in the commission of the felony as shown by:

1. Motivating power itself

2. Place of commission
3. Means and ways employed
4. Time
5. Personal circumstances of offender or offended party

Q: What are the kinds of aggravating circumstances?

A:

1. *Generic* or those that can generally apply to all crime
2. *Specific* or those that apply only to a particular crime
3. *Qualifying* or those that change the nature of the crime
4. *Inherent* or those that must of necessity accompany the commission of the crime
5. *Special* or those which arise under special conditions to increase the penalty of the offense and cannot be offset by mitigating circumstances

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

Q: What are those circumstances which aggravate criminal liability?

A:

1. Advantage taken of public position
2. Contempt or insult to public authorities
3. Disregard of age, sex, or dwelling of the offended party
4. Abuse of confidence and obvious ungratefulness
5. Palace and places of commission of offense
6. Nighttime, uninhabited place or band
7. On occasion of calamity or misfortune
8. Aid of armed men, etc.
9. Recidivist
10. *Reiteracion* or habituality
11. Price, reward, or promise
12. By means of inundation, fire, etc.
13. Evident premeditation
14. Craft, fraud or disguise
15. Superior strength or means to weaken the defense
16. Treachery
17. Ignominy
18. Unlawful entry
19. Breaking wall
20. Aid of minor or by means of motor vehicle or other similar means
21. Cruelty

Note: Nos.1-6, 9-10, 14, 18, 19 are generic aggravating circumstances

Nos. 3, 7, 8, 11, 12, 15-17, 20, 21 are specific aggravating circumstances
No. 16 is a case of qualified aggravating circumstance

Nos. 1, 13, 17, 19 are inherent aggravating circumstances

Q: What are the distinctions between generic aggravating and qualifying circumstances?

A:

GENERIC AGGRAVATING CIRCUMSTANCES	QUALIFYING AGGRAVATING CIRCUMSTANCES
Can be offset by an ordinary mitigating circumstance.	Cannot be offset by any mitigating circumstances.
It is not an ingredient of a crime. It only affects the penalty to be imposed but the crime remains the same.	The circumstance is actually an ingredient of the crime. The circumstance affects the nature of the crime itself such that the offender shall be liable for a more serious crime.
No need to allege this circumstance in the information, as long as it is proven during trial. If it is proved during trial, the same is considered in imposing the penalty.	To be appreciated as such must be specifically alleged in the complaint or information. If not alleged but proven during the trial, it will be considered only as generic aggravating circumstance. If this happens, they are susceptible of being offset by an ordinary mitigating circumstance.

Note: When there is more than one qualifying aggravating circumstance present, one of them will be appreciated as qualifying aggravating while the others will be considered as generic aggravating.

Q: Is generic aggravating circumstance necessary to be alleged in the information?

A: Under sec. 8 and 9 of Rule 110 of the ROC, even generic aggravating circumstances should be alleged in the information.

Section 8. *Designation of the offense*. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and specify its qualifying and aggravating circumstances. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it.

Section 9. *Cause of the accusation*. — The acts or omissions complained of as constituting the offense and the qualifying and aggravating circumstances must be stated in ordinary and concise language and not necessarily in the language used in the statute but in terms sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.

Q: The accused was charged with murder. Three of these circumstances: treachery, evident premeditation and the act was done in consideration of a price, reward or promise, were alleged as aggravating. May the three circumstances be appreciated as qualifying?

A: No, only one of these is qualifying. If any one of the three circumstances was proven, the crime already constitutes murder. If the other two are also proven, even if they are alleged in the information or complaint, they are only to be taken as generic. If there is any mitigating circumstance in favor of the offender, the two other circumstances which are otherwise qualifying could be offset by the ordinary mitigating circumstances.

Q: Suppose in a crime of murder, the qualifying circumstance alleged in the information was treachery. During the trial, what was proven was the price, reward or promise as a consideration for killing. May the accused be convicted of murder?

A: No, the accused cannot be convicted of murder because the circumstance proven was not the one alleged in the information, hence, it is not qualifying but merely generic.

If any of these qualifying circumstances is not alleged in the information, it cannot be considered qualifying because a qualifying circumstance is an ingredient of the crime and it cannot be taken as such without having been alleged in the information.

This is because it will violate the right of the accused to be informed of the nature of the accusation against him.

Q: If the crime charged is qualified trespass to dwelling, is dwelling aggravating?

A: No. This is because aggravating circumstances which in themselves constitute a crime specially punishable by law or which in themselves are included by law in defining a crime and prescribing a penalty therefor shall not be taken into account for the purpose of increasing the penalty *(Art. 62, par. 1).* Since dwelling is an element of the crime of qualified trespass to dwelling, it should not be taken into account in increasing the penalty.

Q: What are personal aggravating circumstances?

A: Aggravating circumstances, which are personal, such as those which arise from:

1. The moral attributes of the offender
2. His private relations with the offended party
3. Any personal cause

Q: How are personal aggravating circumstances appreciated?

A: It shall only serve to aggravate the liability of those persons as to whom such circumstances are attendant. *(Art. 62, par. 3)*

Q: What is the rule regarding the appreciation of an aggravating circumstance if there are several accused?

A:

GR: The circumstances which consist in the:

1. Material execution of the act; or
2. Means employed to accomplish it,

will only aggravate the criminal liability of those persons who employed or who had knowledge of them at the time of the execution of the act or their cooperation therein.

XPN: 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)*

1. TAKING ADVANTAGE OF PUBLIC POSITION

Q: When is it applicable?

A: Only when the offender is a public officer. The offender must have abused his public position or at least, use of the same facilitated the commission of the offense.

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Note: Public officer must have used the influence, prestige or ascendancy of his office as the means by which he realizes his purpose.

Q: What is the basis for this aggravating circumstance?

A: Greater perversity of the offender as shown by the means:

1. Of personal circumstance of the offender
2. Used to secure the commission of the crime

Note: To be applicable, the public officer must use his:

a. influence
b. prestige
c. ascendancy

Q: When is it not applicable?

A: It is not applicable in offenses where taking advantage of official position is made by law an integral element of the crime. *e.g.* malversation or falsification of a document committed by public officers.

Note: Taking advantage of a public position is also inherent in the case of accessories under Art. 19, par. 3 (harboring, concealing, or assisting in the escape of the principal of the crime), and in crimes committed by public officers (Arts. 204-245).

2. CONTEMPT OR INSULT TO PUBLIC AUTHORITIES

Q: What are the requisites of contempt or insult of public authorities as an aggravating circumstance?

A:

1. Public authority is engaged in the exercise of his functions.

2. Such public authority is not the person against whom the crime is committed.

3. Offender knows him to be a public authority.

4. His presence has not prevented the offender from committing the crime.

Q: Who is a public authority?

A: A public authority, also called a person in authority, is a public officer who has the power to govern and execute the laws. *e.g.* municipal mayor, *barangay captain,* chief of police.

Note: Teachers, professors, supervisors of public and duly recognized private schools, colleges and universities, as well as lawyers are persons in authority only for purposes of direct assault and simple resistance, but not for purposes of aggravating circumstances in par. 2, Art. 14.

Q: Who are agents of a person in authority?

A: Agents of a person in authority are any person, who, by direct provision of law or any election or appointment by competent authority, are charged with the maintenance of public order and the protection and security of life and property such as *barrio* councilman, *barrio* policeman and barangay leader, and any person who comes to the aid of persons in authority. *(Art. 152, RPC)*

Note: Par. 2 of Art. 14 does not apply when the crime is committed in the presence of an agent only.

Q: Is it necessary that the offender has knowledge that a public authority is present?

A: Knowledge that a public authority is present is essential. Lack of such knowledge indicates lack of intention to insult the public authority.

Note: If crime committed is against the public authority while in the performance of his duty, the offender commits *direct assault* without this aggravating circumstance.

3. DISREGARD OF RANK, AGE, SEX OR DWELLING OF OFFENDED PARTY

Q: What are the requisites of "disregard of rank, age, sex or dwelling" as an aggravating circumstance?

A: The act be committed:

1. With insult or in disregard of the respect due to the offended party on account of his:
   a. Rank
   b. Age
   c. Sex

2. That it be committed in the dwelling of the offended party, if the latter has not given sufficient provocation.

Note: Applies only to crimes against persons or honor, and not against property like Robbery with homicide.

The four circumstances enumerated should be considered as one aggravating circumstance only.

Q: What does *"with insult or in disregard"* mean?

A: It means that in the commission of the crime, the offender deliberately intended to offend or insult the rank, sex or age of the offended party.

Q: To what does rank refer?

A: It refers to official, civil or social position or standing. The designation or title of distinction used to fix the relative position of the offended party in reference to others.

There must be a difference in the social condition of the offender and the offended party.

Q: When is age considered as an aggravating circumstance?

A: *Age* applies in cases where the victim is of tender age or is of old age.

Q: What does sex refer?

A: *Sex* refers to the female sex, not to male sex.

Q: What is dwelling?

A: *Dwelling* is a building or structure exclusively used for rest or comfort. It includes temporary dwelling, dependencies, foot of the staircase, and enclosure of the house.

Q: Should the dwelling be owned by the offended party?

A: No. It is enough that he used the place for his peace of mind, rest, comfort and privacy.

Note: 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.

It is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense. It is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault. *i.e*. triggerman fired the shot from outside the house, his victim was inside.

Q: When is dwelling not aggravating?

A:

1. When owner of the dwelling gave sufficient and immediate provocation.
2. When the offender and the offended party are occupants of the same house.
3. In the crime of robbery by use of force upon things.
4. In the crime of trespass to dwelling.
5. The victim is not a dweller of the house.
6. When both the offender and the offended party are occupants of the same house except in case of adultery in the conjugal dwelling, the same is aggravating, however, if the paramour also dwells in the conjugal dwelling, the applicable aggravating circumstance is abuse of confidence.

Q: What if one half of the house is used as a store and the other half is used for dwelling but there is only one entrance?

A: If the dwelling portion is attacked, dwelling is not aggravating because whenever a store is open for business, it is a public place and as such, is not capable of being the subject of trespass.

Note: Where the dwelling portion is attacked and even if the store is open, there is another separate entrance to the portion used for dwelling, the circumstance is aggravating.

If the wife commits the crime of adultery the aggravating circumstance of dwelling can still be appreciated.

If the wife killed her husband in the conjugal house the aggravating circumstance of dwelling cannot be appreciated.

If the employer raped their maid the aggravating circumstance of dwelling cannot be appreciated.

Q: What is the meaning of provocation in the aggravating circumstance of dwelling?

A: The provocation must be:

1. Given by the owner of the dwelling
2. Sufficient
3. Immediate to the commission of the crime

Note: If all these conditions are present, the offended party is deemed to have given the provocation, and the fact that the crime is committed in the dwelling of the offended party is not an aggravating circumstance.

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Q: When is the aggravating circumstance of disregard of rank, age, sex not considered for the purpose of increasing the penalty?

A:

1. When the offender acted with passion or obfuscation. (All three circumstances)

2. When there exists a relationship between the offended party and the offender. (circumstance of sex only), *e.g.* parricide, rape, abduction and seduction.

3. When the condition of being a woman is indispensable in the commission of the crime.

4. ABUSE OF CONFIDENCE OR OBVIOUS UNGRATEFULNESS

Q: What are the requisites of abuse of confidence as an aggravating circumstance?

A:

1. Offended party had trusted the offender.

2. Offender abused such trust by committing a crime against offended party.

3. Abuse of confidence facilitated the commission of the crime.

Note: This is aggravating only when the very offended party is the one who reposed the confidence.

Q: Must the confidence between the parties be immediate and personal?

A: Yes, as would give the accused the advantage or make it easier for him to commit the crime. The confidence must be a means of facilitating the commission of a crime.

Q: In what crimes is abuse of confidence inherent?

A:

1. Malversation
2. Qualified theft
3. *Estafa* by conversion or misappropriation
4. Qualified seduction

Note: Abuse of confidence is not considered for the purpose of increasing the penalty.

Q: What are the requisites of obvious ungratefulness as an aggravating circumstance?

A:

1. The offended party had trusted the offender.
2. The offender abused such trust by committing a crime against the offended party.
3. The act be committed with obvious ungratefulness.

Note: The ungratefulness must be such clear and manifest ingratitude on the part of the accused.

Abuse of confidence and obvious ungratefulness are treated as separate aggravating circumstances.

5. PALACE AND PLACES OF .COMMISSION OFFENSE

Q: What are the requisites of palace and places of commission of offense as an aggravating circumstance?

A: The crime be committed:

1. In the palace of the Chief Executive; or
2. In his presence; or
3. Where public authorities are engaged in the discharge of their duties; or
4. In a place dedicated to religious worship.

Q: If the crime is in the Malacañang palace or church, is it always aggravating?

A: Yes. Regardless of whether or not official duties or religious functions are being conducted. Chief Executive's presence alone in any place where the crime is committed is enough to constitute the aggravating circumstance.

Note: The President or Chief Executive need not be in the Palace to aggravate the liability of the offender.

As regards other places where public authorities are engaged in the discharge of their duties, there must be some performance of public functions.

Q: Supposing, a crime was committed in the presidential mansion. Can the aggravating circumstance of palace of the Chief Executive be appreciated?

A: No. The mansion is not the palace.

Q: Are cemeteries considered as places dedicated to worship of God?

A: No. Cemeteries, however respectable they may be, are not considered as place dedicated to the worship of God.

Note: The place must be dedicated to public religious worship. Private chapels not included.

The offender must have the intention to commit a crime when he entered the place.

Q: Is a polling precinct a public place?

A: A polling precinct is a public place during election day.

Q: What are the distinctions between paragraph 5 and paragraph 2?

A:

WHERE PUBLIC AUTHORITIES ARE ENGAGED IN THE DISCHARGE OF THEIR DUTIES (PAR. 5)	CONTEMPT OR INSULT TO PUBLIC AUTHORITIES (PAR. 2)
Place where public duty is performed	
In their office.	Outside of their office
The offended party	
May or may not be the public authority	Public authority should not be the offended party.

Note: In both, public authorities are in the performance of their duties.

6. NIGHTTIME, UNINHABITED PLACE OR BAND

Q: What are the requisites?

A: The crime be committed:
1. In the nighttime; or
2. In an uninhabited place; or
3. By a band.

Q: When is it aggravating?

A: When:
1. It facilitated the commission of the crime

2. *It especially sought for* by the offender to ensure the commission of the crime or for the purpose of impunity

   Note: "Especially sought" means that the offender sought it in order to realize the crime with more ease

   "Impunity" means to prevent his (accused) being recognized or to secure himself against detection and punishment.

3. The offender *took advantage* thereof *for the purpose of impunity*

   Note: Took advantage means that the accused availed himself thereof for the successful consummation of his plans.

Q: What is nighttime?

A: *Nighttime or nocturnity* is the period of time after sunset to sunrise, from dusk to dawn.

It is necessary that the commission of the crime was commenced and completed at nighttime.

Q: What makes this circumstance aggravating?

A: Darkness of the night. Hence when the place of the crime is illuminated by light, nighttime is not aggravating.

Note: It must be shown that the offender deliberately sought the cover of darkness and the offender purposely took advantage of nighttime to facilitate the commission of the offense.

Q: Supposing, the crime was committed inside a dark movie house at around 4 p.m. Can the aggravating circumstance of nighttime be appreciated?

A: No, because what should be especially sought for is the darkness of night, not the darkness of the movie house when the lights were only off because it was only 4 in the afternoon.

Q: Supposing, the crime was committed inside a movie house when the lights were still open and the time then was 9 p.m. Can the aggravating circumstance of nighttime be appreciated?

A: No, because even if it was nighttime, the place of the commission was well-lighted when the crime was committed.

Q: What is the rule in the appreciation of nighttime and treachery if present in the commission of a crime?

A:

GR: Nighttime is absorbed in treachery.

XPN: Where both the treacherous mode of attack and nocturnity were deliberately decided upon, they can be considered separately if such circumstances have different factual bases.

Q: What is an uninhabited place *(despoblado)*?

A: It is where there are no houses at all, a place at a considerable distance from town, or where the

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houses are scattered at a great distance from each other.

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

Q: When is uninhabited place aggravating?

A: To be aggravating, it is necessary that the offender took advantage of the place and purposely availed of it as to make it easier to commit the crime.

Q: What is a band?

A: It means that there are at least four malefactors acting together in the commission of the offense.

Note: Band is absorbed in the circumstance of abuse of superior strength.

Under Article 306, the mere forming of a band even without the commission of a crime is already a crime so that band is not aggravating in brigandage because the band itself is the way to commit brigandage. However, where brigandage is actually committed, band becomes aggravating.

This aggravating circumstance is not applicable in crimes against chastity.

Q: If one of the four armed malefactors was a principal by inducement, would there be an aggravating circumstance of a band?

A: None. 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.

7. ON OCCASION OF CALAMITY OR MISFORTUNE

Q: What is the reason for the aggravation?

A: 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.

Q: Under what circumstances is the crime committed under this paragraph?

A: The crime is committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other calamity or misfortune.

Note: Offender must take advantage of the calamity.

Q: To what does other calamity or misfortune refer to?

A: It refers to other conditions of distress similar to the preceding enumeration.

8. AID OF ARMED MEN

Q: What are the elements?

A: The crime be committed with the aid of:

1. Armed men, or
2. Persons who insure or afford impunity

Q: What are the requisites of aid of armed men as an aggravating circumstance?

A:

1. Armed men or persons took part in the commission of the crime, directly or indirectly.
2. Accused availed himself of their aid or relied upon them when the crime was committed.

Note: Arms is not limited to firearms, sticks and stones included

Aid of armed men includes armed women. *(People v. Licop, G.R. No. L-6061, Apr. 29, 1954)*

Q: When is the circumstance of aid of armed men not considered aggravating?

A:

1. Both the attacking party and the party attacked were equally armed.
2. Accused as well as those who cooperated with him in the commission of the crime acted under the same plan and for the same purpose.
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.

Q: What aggravating circumstance will be considered if there are four armed men?

A: If there are four armed men, aid of armed men is absorbed in employment of a band.

If there are three armed men or less, aid of armed men may be the aggravating circumstance.

Q: What are the distinctions between a crime committed by a band under paragraph 6 and a crime committed with the aid of armed men under paragraph 8?

A:

BY A BAND	WITH THE AID OF ARMED MEN
Requires more than three.	At least two
Requires that more than three armed malefactors shall have acted together in the commission of the offense	This circumstance is present even if one of the offenders merely relied on their aid is not necessary.
Band members are all principals	Armed men are mere accomplices.

FORMS OF REPETITION OR HABITUALITY OF THE OFFENDER

Q: What are the different forms of repetition or habituality of the offender?

A:

1. Recidivism
2. *Reiteracion*
3. Habitual delinquency
4. Quasi-recidivism

9. RECIDIVISM

Q: What are the requisites of recidivism?

A:

1. Offender is on trial for one crime
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 RPC
4. Offender is convicted of the new offense

Q: What is the meaning of "*at the time of his trial for one crime?*"

A: It is employed in its generic 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 after sentence is announced by the judge in open court.

Q: What is the reason for considering recidivism as an aggravating circumstance?

A: The law considers this aggravating because when a person has been committing felonies embraced in the same title, the implication is that he is specializing on such kind of crime and the law wants to prevent any specialization.

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

Q. Is recidivism subject to prescription?

A: No. No matter how long ago the offender was convicted, if he is subsequently convicted of a crime embraced in the same title of the Revised Penal Code, it is taken into account as aggravating in imposing the penalty *(People v. Colocar, 60 Phil. 878).*

Q: Does pardon erase recidivism?

A: No, because pardon only excuses the service of the penalty, but not the conviction. *(U.S. v. Sotelo, 28 Phil. 147)*

Q: Is it necessary that the conviction come in the order in which they were committed?

A: Yes. Hence, there is no recidivism if the subsequent conviction is for an offense committed before the offense involved in the prior conviction.

Note: 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 conviction handed down on the same day shall be considered as only one conviction.

Q: In 1980, X committed robbery. While the case was being tried, he committed theft in 1983. He was subsequently found guilty and was convicted of theft also in 1983. The trial for his earlier crime which was robbery ended in 1984 where he was also convicted. Is the accused a recidivist?

A: The accused is not a recidivist. The subsequent conviction must refer to a felony committed later in order to constitute recidivism. The reason for this is, at the time the first crime was committed, there was no other crime of which he was convicted so he cannot be regarded as a repeater.

Q: Supposing, the first offense was acts of lasciviousness in 1980, then the second offense in 2006 was attempted rape. Can the aggravating circumstance of recidivism be appreciated?

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A: No. Acts of lasciviousness and attempted rape are not embraced in the same title of the RPC; acts of lasciviousness is under crimes against chastity while attempted rape is under crimes against persons.

Q: Supposing, the first offense in 1980 was attempted rape, then, the second offense in 2006 was acts of lasciviousness. Can the aggravating circumstance of recidivism be appreciated?

A: Yes, because attempted rape then in 1980 was embraced under crimes against chastity, hence, both crimes are embraced in the same title of the RPC.

Note: If recidivism and reiteracion are both present, only recidivism should be appreciated, recidivism being easier to prove.

If the same set of facts constitutes recidivism and reiteracion, the liability of the accused should be aggravated by recidivism, which can easily be proven.

10. *REITERACION*

Q: What are the requisites of *reiteracion*?

A:

1. Accused is on trial for an offense
2. He previously served sentence for
   a. Another offense to which the law attaches an equal or greater penalty; or
   b. Two or more crimes to which it attaches a lighter penalty than that for the new offense.
3. He is convicted of the new offense.

Q: If the penalty attached to the felony subsequently committed is not equal or higher than the penalty already served, is there reiteracion?

A: No. Hence, *reiteracion* is not always aggravating. However, when there is a third conviction, even if the penalty for the subsequent crimes committed be lighter than the ones already served, the offender is already a repeater.

Q: What are the distinctions between *reiteracion* and recidivism?

A:

REITERACION	RECIDIVISM
It is necessary that offender has served out his sentence for the 1st offense	It is enough that the final judgment has been rendered for the 1st offense.
Previous and subsequent offense must not be embraced in the same title of RPC	Previous and subsequent offense must be included in the same title of RPC
Not always an aggravating circumstance	Always taken into consideration in fixing the penalty to be imposed upon the accused

HABITUAL DELIQUENCY

Q: What is habitual delinquency?

A: A special aggravating circumstance which has the effect of increasing the penalty and imposing an additional penalty which escalates with the increase in the number of convictions.

Q: What are the requisites of habitual delinquency?

A: A person is a habitual delinquent if:

1. Within a period of 10 years from the date of his release or last conviction;
2. Of the crimes of falsification, robbery, *estafa*, theft, serious or less serious physical injuries;
3. He is found guilty of said crimes a third time or oftener.

Note: To be a habitual delinquent, the law requires a 3rd conviction. The 2nd conviction must be committed within 10 years from the 1st conviction or release from prison, from the 2nd to the 3rd conviction, the period must not be more than 10 years from the second conviction and so on.

Habitual delinquency, being a special aggravating circumstance cannot be appreciated unless alleged in the information.

Q: Can an offender be a recidivist and a habitual delinquent at the same time?

A; Yes.

Illustration:

If the 1st conviction is for serious physical injuries or less serious physical injuries and the 2nd conviction is for robbery, theft or estafa and the 3rd is for falsification, then the moment the habitual delinquent is on his fourth conviction, he is a habitual delinquent and at the same time a recidivist because at least, the fourth time will have to fall under any of the three categories.

Note: When the offender is a recidivist and at the same time a habitual delinquent, the penalty for the

crime for which he will be convicted will be increased to the maximum period, unless offset by a mitigating circumstance. After determining the correct penalty for the last crime committed, an added penalty will be imposed in accordance with Article 62.

Q: What are the distinctions between habitual delinquency and recidivism?

A:

HABITUAL DELINQUENCY	RECIDIVISM
At least three convictions are required	Two convictions are enough
The crimes are specified and limited to: (a) serious physical injuries (b) less serious physical injuries (c)robbery (d) theft, (e) estafa or swindling and (f) falsification	The crimes are not specified. It is enough that they may be embraced under the same title of the RPC
There is a time limit of not more than 10 years between every conviction	There is no time limit between the 1st conviction and the subsequent conviction. Recidivism is imprescriptible
Habitual delinquency is a special aggravating circumstance, hence it cannot be offset by any mitigating circumstance.	It is a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance. If not offset, it would only increase the penalty prescribed by law for the crime committed to its maximum period.
The circumstance must be alleged in the information, otherwise the court cannot acquire jurisdiction to impose the penalty.	The circumstance need not be alleged in the information.

QUASI-RECIDIVISM

Q: What is quasi-recidivism?

A: *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 such sentence, or while serving the same.

Note: To be appreciated, quasi-recidivism must be specifically alleged in the information.

Q: What are the elements of quasi-recidivism?

A:

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

Note: The offender must be serving sentence by virtue of final judgment to trigger the application of Art. 160.

Q: When is Art. 160 applicable?

A: Art. 160 applies although the next offense is different in character from the former offense for which the defendant is serving sentence. It makes no difference whether the crime for which an accused is serving sentence at the time of the commission of the offense charged, falls under the RPC or under a special law.

Note: First crime for which the offender is serving sentence need not be a crime under the RPC but the second crime must be one under the RPC. So that if a prisoner is serving sentence for homicide and later on found guilty of violation of the Anti-Dangerous Drugs Law or Illegal Possession of Firearms, this provision is not violated. The reverse however, that is where he is serving sentence for Illegal Possession of Firearms (or any crime for that matter) and then committed homicide which is a violation of the RPC, makes this article applicable.

Q: What is the justification for imposing a severe penalty for quasi-recidivists?

A: The severe penalty is justified because of his perversity and incorrigibility.

Q: What is the difference between quasi-recidivism and recidivism proper, insofar as offsetting of mitigating circumstance is concerned?

A:

QUASI-RECIDIVISM	RECIDIVISM PROPER
Does not require that the offense for which the convict is serving and the new felony committed are embraced in the same title of the Code.	It requires that both the first and the second offenses must embraced in the same title of the Code.
The aggravating circumstances of recidivism may not be offset by any ordinary mitigating circumstance present in the commission of the crime.	The aggravating circumstances of recidivism may be offset by any ordinary mitigating circumstance present in the commission of the crime.

Note: It does not require that the two offenses are embraced in the same title in the RPC.

Q: When can a quasi-recidivist be pardoned?

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A:

GR:

1. When he has reached the age of 70 and has already served out his original sentence, or
2. When he shall complete it after reaching said age

XPN: Unless by reason of his conduct or other circumstances, he shall not be worthy of such clemency.

Note: Quasi-recidivism may be offset by special privileged mitigating circumstances not by ordinary mitigating circumstances.

If both recidivism and quasi-recidivism are present, quasi-recidivism should be appreciated in as much as it indicates greater penalty on the part of the accused and is a special aggravating circumstance.

11. IN CONSIDERATION OF A PRICE REWARD OR PROMISE

Q: What are the requisites under this paragraph?

A:

1. There are at least two principals
   a. Principal by inducement
   b. Principal by direct participation

2. The price, reward, or promise should be previous to and in consideration of the commission of the criminal act.

Note: If without previous promise, it was given voluntarily after the crime had been committed, it should not be taken into consideration for the purpose of increasing the penalty.

Q: Does this aggravating circumstance affect the criminal liability of the one giving the offer?

A: Yes. This aggravating circumstance affects or aggravates not only the criminal liability of the receiver of the price, reward or promise but also the criminal liability of the one giving the offer.

Ratio: When there is a promise, reward or price offered or given as a consideration for the commission of the crime, the person making the offer is an inducer, a principal by inducement; while the person receiving the price, reward or promise who would execute the crime is a principal by direct participation. They are both principals hence, their penalties are the same.

Note: The price, reward or promise need not consist of or refer to material things or that the same were actually delivered, it being sufficient that the offer made by the principal by inducement be accepted by the principal by direct participation before the commission of the offense.

To consider this circumstance, the price, reward, or promise must be the primary reason or the primordial motive for the commission of the crime. Thus, if A approached B and told the latter what he thought of X, and B answered "he is a bad man" to which A retorted, "you see I am going to kill him this afternoon". And so, B told him, "if you do that I'll give you P5,000.00" and after killing X, A again approached B, told him he had already killed X, and B in compliance with his promise, delivered the P5,000.00. In this case, the aggravating circumstance is not present.

12. BY MEANS OF INUNDATION, FIRE, ETC .

Q: What are the aggravating circumstances under this paragraph?

A: If the crime is committed by means of:

1. Inundation
2. Fire
3. Explosion
4. Stranding of the vessel or intentional damage thereto
5. Derailment of locomotive; or
6. By use of any other artifice involving great waste and ruin.

Note: Any of these circumstances cannot be considered to increase the penalty or to change the nature of the offense, unless used by the offender as means to accomplish a criminal purpose.

When used as a means to kill a person, it qualifies the crime to murder.

Not aggravating when the law in defining the crime includes them. *E.g.* Fire is not aggravating in the crime of arson.

Q: What are the rules as to the use of fire?

A:

1. *Intent was only to burn but somebody died* – simple arson but with specific penalty.
2. *If fire was used as a means to kill* – murder.
3. *If fire was used to conceal the killing* - separate crimes of arson and murder/homicide.

13. EVIDENT PREMEDITATION

Q: What are the requisites of evident premeditation?

A:

1. Time when offender determined to commit the crime;
2. Act manifestly indicating that he has clung to its determination;
3. Sufficient lapse of time between the 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.

Note: Premeditation must be clear. It must be based upon external acts and not presumed from mere lapse of time. It must appear that the offender clung to his determination to commit the crime.

In *People v. Mojica, 10 SCRA 515,* the lapse of one hour and forty-five minutes (4:15 p.m. to 6 p.m.) was considered by the Supreme Court as sufficient. In *People v. Cabodoc, 263 SCRA 187,* where at 1:00 p.m., the accused opened his balisong and uttered "I will kill him," and at 4:30 p.m. of the said date, the accused stabbed the victim, it was held that the lapse of three and a half hours (3 ½ hours) from the inception of the plan to the execution of the crime satisfied the last requisite of evident premeditation.

Q: What is the essence of premeditation?

A: The execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment.

Q: Can there be evident premeditation when the killing is accidental?

A: No. In evident premeditation, there must be a clear reflection on the part of the offender. If the killing was accidental, there was no evident premeditation.

Q: What if the victim is different from that intended?

A: When the victim is different from that intended, premeditation is not aggravating although it is not necessary that there is a plan to kill a particular person for premeditation to exist.

14. CRAFT, FRAUD OR DISGUISE

Q: What must be attendant in order for this circumstance to be appreciated?

A: To be appreciated, these circumstances must have facilitated or be taken advantage of by the offender in the commission of a crime.

Note: According to Justice Regalado, the fine distinctions between craft and fraud would not really be called for as these terms in Art 14 are variants of means employed to deceive the victim and if all are present in the same case, they shall be applied as a single aggravating circumstance.

Q: What is craft?

A: *Craft* involves intellectual trickery and cunning on the part of the accused in order not to arouse the suspicion of the victim.

E.g.:

1. A person who pretended to be a customer, then, robbed the place
2. A person who pretended to be a Meralco official, then committed a crime

Q: What is fraud?

A: *Fraud* are deceitful words or machinations used to induce the victim to act in a manner which enables the offender to carry out his design.

Q: What is the distinction between fraud and craft?

A:

FRAUD	CRAFT
Where there is a direct inducement by insidious words or machinations, fraud is present.	The act of the accused done in order not to arouse suspicion of the victim constitute craft.

Note: Craft and fraud may be absorbed in treachery if they have been deliberately adopted as 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.

Q: What is disguise?

A: *Disguise* means resorting to any device to conceal identity.

Note:

1. The test of disguise is whether the device or contrivance resorted to by the offender was intended to make identification more difficult
2. The use of an assumed name in the publication of a libel constitutes disguise

Q: Is it necessary that the accused be able to hide his identity all throughout the commission of the crime?

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A: No. The accused must be able to hide his identity during the initial stage if not all throughout the commission of the crime and his identity must have been discovered only later on to consider this aggravating circumstance.

Q: What is the test in order to determine if disguise exist?

A: Whether the device or contrivance resorted to by the offender was intended to or did make identification more difficult, such as the use of a mask or false hair or beard. If in spite of the disguise, the offender was recognized, disguise cannot be aggravating.

Q: What is the distinction among Craft, Fraud, and Disguise

CRAFT	FRAUD	DISGUISE
Involves the use of intellectual trickery and cunning not to arouse the suspicion of the victim	Involves the use of direct inducement by insidious words or machinations	Involves the use of devise to conceal identity

15. ABUSE OF SUPERIOR STRENGTH OR MEANS TO WEAKEN DEFENSE

Q: What is abuse of superior strength?

A: To use purposely excessive force out of proportion with the means of defense available to the person attacked.

There must be evidence of notorious inequality of forces between the offender and the offended party in their age, size and strength, and that the offender took advantage of such superior strength in committing the crime.

Note: 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.

Q: Is the mere fact that there were two persons who attacked the victim enough to constitute abuse of superior strength?

A: No. It must be shown that the offenders have taken advantage of their collective strength to overpower their relatively weaker victim or victims.

Q: What is the meaning of "*advantage be taken*"?

A: It means to deliberately use excessive force that is out of proportion to the means for self-defense available to the person attacked. *(People v. Lobrigas)*

Q: When does means employed to weaken defense exist?
A: It exists when the offended party's resisting power is materially weakened.

Q: What are the requisites of means to weaken defense?

A:

1. Means were purposely sought to weaken the defense of the victim to resist the assault
2. The means used must not totally eliminate possible defense of the victim, otherwise, it will fall under treachery.

Q: In what cases is it applicable?

A: It is applicable only to crimes against persons, and sometimes to crimes against property, such as robbery with homicide.

Note: Means to weaken the defense is absorbed in treachery.

16. TREACHERY

Q: What is treachery?

A: *Treachery* (aleviosa) refers to the employment of means, method, or form in the commission of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.

Note:

Rules regarding treachery:

1. Applicable only to crimes against persons.
2. Means, methods, or forms need not insure accomplishment of crime
3. Mode of attack must be thought of by the offender, and must not spring from the unexpected turn of events.

Treachery cannot co-exist with passion or obfuscation *(People v. Pansensoy, G.R. No. 140634, Sept. 12, 2002)*

Q: What is the test of treachery?

A: The test of treachery 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.

Q: What are the requisites of treachery?

A:

1. At the time of the attack, victim was not in the position to defend himself

2. Offender consciously adopted the particular means, method or form of attack employed by him.

Note: The location of the wounds does not give rise to the presumption of the presence of treachery.

Q: What is the essence of treachery?

A: The essence of treachery is that by virtue of the means, method or form employed by the offender, the offended party was not able to put up any defense.

Q: When is treachery absent?

A: Treachery is out when the attack was merely incidental or accidental because in the definition of treachery, the implication is that the offender had consciously and deliberately adopted the method, means and form used or employed by him.

Note: Suddenness of the attack does not by itself constitute treachery in the absence of evidence that the manner of the attack was consciously adopted by the offender to render the offended party defenseless except if the victims are children of tender years.

Q: What are those instances that may be absorbed by treachery?

A:

1. Abuse of superior strength
2. Aid of armed men
3. By a band
4. Means to weaken the defense
5. Craft
6. Nighttime

Q: Must treachery be present at the beginning of the assault?

A: It depends.

1. *When the aggression is continuous*- treachery must be present at the beginning of the assault.
2. *When the assault was not continuous*- it is sufficient that treachery was present when the fatal blow was given.

Note: Alevosia should be considered even if:

1. The victim was not predetermined but there was generic intent to treacherously kill any first two persons belonging to a class.
2. There was *aberratio ictus* and the bullet hit a person different from that intended.
3. There was *error in personae,* hence, the victim was not the one intended by the accused.

Q: Supposing, the victim hid behind a drum where he could not be seen by the offender. The offender, knowing that the victim was hiding behind the drum shot at the drum. The bullet penetrated the drum and hit the victim which caused his death. Can the aggravating circumstance of treachery be appreciated?

A: Yes. The victim was not in a position to defend himself.

Q: What is the distinction among Treachery, Abuse of Superior Strength, Means Employed to Weaken Defense

TREACHERY	ABUSE OF SUPERIOR STRENGTH	MEANS EMPLOYED TO WEAKEN DEFENSE
Means, methods or forms are employed by the offender to make it impossible or hard for the offended party to put any sort of resistance	Offender does not employ means, methods or forms of attack, he only takes advantage of his superior strength	Means are employed but it materially weakens the resisting power of the offended party

17. IGNOMINY

Q: To what does ignominy pertain to?

A: It pertains to the moral order, which adds disgrace to the material injury caused by the crime. Ignominy adds insult to injury or adds shame to the natural effects of the crime. Ignominy shocks the moral conscience of man.

E.g.

1. A married woman being raped before the eyes of her husband.
2. Raping a woman from behind
3. After having been killed, the body was thrown into pile or garbage.
4. Accused embraced and kissed the offended party not out of lust but out of anger in front of many people
5. Victim was raped successively by five men.

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Q: What are the requisites for ignominy?

A:

1. Crime must be against
   a. Chastity
   b. less serious physical injuries
   c. light or grave coercion
   d. murder

2. The circumstance made the crime more humiliating and shameful for the victim.

Note: Ignominy is not present where the victim was already dead when such acts were committed against his body or person

Q: To what crimes is ignominy inherent?

A:

1. Libel
2. Acts of lasciviousness

Q: What is the distinction between ignominy and cruelty?

A:

IGNOMINY	CRUELTY
Ignominy refers to the moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive.	Cruelty pertains to physical suffering of the victim so the victim has to be alive.

Note: Ignominy and cruelty are circumstances brought about which are not necessary in the commission of the crime.

18. UNLAWFUL ENTRY

Q: When is an entry considered unlawful?

A: When an entry is effected by a way not intended for that purpose.

The use of unauthorized entrance must not be for the purpose of escape.

Note: This circumstance is inherent in the crimes of trespass to dwelling and robbery with force upon things. But it is aggravating in the crime of robbery with violence against or intimidation of persons.

Q: Why is unlawful entry aggravating?

A: One who acts, not respecting the walls erected by men to guard their property and provided for their personal safety, shows greater perversity, a greater audacity and hence the law punishes him with more severity.

Q: Supposing, the owners of the house commonly use the window as their ordinary means to enter the house, then the accused entered the door. Can the aggravating circumstance of unlawful entry be appreciated?

A: Yes**.** The aggravating circumstance of unlawful entry may still be appreciated.

19. BREAKING WALL

Q: What are the requisites for breaking a wall?

A:

1. A wall, roof, window, or door was broken
2. They were broken to effect entrance

Q: Give instances where breaking is lawful.

A:

1. An officer in order to make an arrest may break open door or window of any building in which the person to be arrested is or is reasonably believed to be *(Sec. 11, Rule 133 of Rules of Court);*
2. An officer if refused admittance may break open any door or window to execute the search warrant or liberate himself *(Sec. 7, Rule 126 of Rules of Court);*
3. Replevin (*Sec.4, Rule 60 of Rules of Court)*

Q: What is the distinction between breaking wall and unlawful entry?

A:

BREAKING WALL	UNLAWFUL ENTRY
It involves the breaking of the enumerated parts of the house.	Presupposes that there is no such breaking as by entry through the window.

20. AID OF MINORS OR USE OF MOTOR VEHICLES OR THER SIMILAR MEANS

AID OF MINORS

Q: Why is this considered an aggravating circumstance?

A: To repress professional criminals to avail themselves of minors, taking advantage of their irresponsibility and to counteract the great facilities found by modern criminals to commit the crime and abscond once the same is committed.

The use of a minor in the commission of the crime shows the greater perversity of the offender because he is educating the innocent minor in committing a crime.

USE OF MOTOR VEHICLES

Q: Why is this considered as an aggravating circumstance?

A: The use of motor vehicles in the commission of a crime poses difficulties to the authorities in apprehending the offenders.

This circumstance is aggravating only when used to facilitate the commission of the offense.

Note: If motor vehicle is used only in the escape of the offender, motor vehicle is not aggravating. *(People v. Espejo, L-27708, Dec. 19, 1970)*

Q: What does the phrase "other similar means" mean?

A: It means should be understood as referring to motorized vehicles or other efficient means of transportation similar to automobile or airplane.

Q: Supposing, the accused robbed a house then found a car in front of the house which he used for his escape, can the aggravating circumstance of use of motor vehicle ne appreciated?

A: No. The crime has already been accomplished.

Note: Even if the motor vehicle used is a public vehicle, the circumstance may still be appreciated.

21. CRUELTY

Q: When does cruelty exist?

A: When the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary and prolonged physical pain in the consummation of the crime.

Q: What are the requisites of cruelty as an aggravating circumstance?

A:

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.

Q: Is cruelty inherent in crimes against persons?

A: No. In order for it to be appreciated, there must be positive proof that the wounds found on the body of the victim were inflicted while he was still alive to unnecessarily prolong physical suffering.

Note: 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.

E.g. Cruelty is aggravating in rape where the offender tied the victim to a bed and burnt her face with a lighted cigarette while raping her laughing all the way.

Q: What are the other aggravating circumstances?

A:

1. Organized or syndicated crime group
2. Under influence of dangerous drugs
3. Use of unlicensed firearm

C. The Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165)

4. As a qualifying aggravating circumstance

Note: Notwithstanding the provisions of any law to the contrary, a positive finding for the use of dangerous drugs shall be a qualifying aggravating circumstance in the commission of a crime by an offender, and the application of the penalty provided for in the Revised Penal Code shall be applicable. *(Sec. 25)*

D. Decree Codifying the Laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives (P.D. 1866, as amended by R.A. 8294)

Q: What changes were brought about by R.A. 8294 on P.D. 1866?

A:

1. The use of an unlicensed firearm to commit murder or homicide is an aggravating circumstance. Hence, illegal possession or use of unlicensed firearm is no longer punished as a separate offense.

2. If the illegal possession or use of unlicensed firearm or explosives is in furtherance of, or incident to, or in connection with the crimes of rebellion, insurrection, or subversion shall be absorbed as an element of such crimes.

3. Penalty for mere possession of an unlicensed firearm is based on whether

the firearm is low-powered or high-powered.

4. Unlicensed firearm shall include: firearms with expired license; or unauthorized use of licensed firearm in the commission of the crime.

Q: When is the use of unlicensed firearm considered absorbed as an element of the crime of rebellion, or insurrection, sedition or attempted *coup d' etat* ?

A: If the unlicensed firearm is used in furtherance of or incident to, or in connection with the crime of rebellion, or insurrection, sedition, or attempted *coup d' etat*. *(Sec.1)*

Q: When is the use of unlicensed firearm considered an aggravating circumstance?

A: In the crimes of homicide and murder *(Sec.1)*

Q: When is the use of explosives considered an aggravating circumstance?

A: When a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of the aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance. *(Sec. 2, RA 8294)*

E. Anti-Torture Act of 2009 (RA 9745)

Note: The provisions of the RPC insofar as they are applicable shall be suppletory to this Act. Moreover, if the commission of any crime punishable under Title Eight (Crimes Against Persons) and Title Nine (Crimes Against Personal Liberty and Security) of the Revised Penal Code is attended by any of the acts constituting torture and other cruel, inhuman and degrading treatment or punishment as defined herein, the penalty to be imposed shall be in its maximum period.*(Sec. 22, RA 9745)*

F. Anti-Violence Against Women and Their Children Act of 2004 (RA 9262)

Note: Being under the influence of alcohol, any illicit drug, or any other mind-altering substance shall not be a defense under this Act. *(Sec. 27, RA 9262)*

ALTERNATIVE CIRCUMSTANCES (Art.15)

Q: What is the basis of alternative circumstances?

A: The basis is the nature and effects of the crime and the other conditions attending its commission.

Q: What are alternative circumstances?

A: 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.

Q: What are the four alternative circumstances?

A:

1. Relationship
2. Intoxication
3. Degree of instruction
4. Education of the offender

1. RELATIONSHIP

Q: When is relationship taken into consideration?

A: When the offended party is the:

1. Spouse
2. Ascendant
3. Descendant
4. Legitimate, natural, or adopted brother or sister;
5. Relative by affinity in the same degree of the offender
6. Other relatives included by analogy to ascendants and descendants. *e.g.* Stepparents – It is their duty to bestow upon their stepchildren a mother/father's affection, care and protection.

Note: The relationship of uncle and niece is not covered by any of the relationship mentioned

Q: When is relationship exempting?

A:

1. In the case of an accessory who is related to the principal within the relationship prescribed in Article 20.

2. In Art. 247, a spouse will not incur criminal liability for a crime of less serious physical injuries or serious physical injuries if this was inflicted after having surprised the offended spouse or paramour or mistress committing actual sexual intercourse.

3. Under Art. 332, in the crime of theft, malicious mischief and swindling or estafa, there is no criminal liability if the offender is related to the offended party as spouse, ascendant, or descendant or if the offender is a brother or sister or brother-in-law or sister-in-law of the offended party and they are living together.

Q: When is relationship mitigating?

A:

1. In crimes against property, by analogy to Art. 332 (persons exempt from criminal liability).

   Thus, Relationship is mitigating in the crimes of robbery (Arts. 294-302), usurpation (Art. 312), fraudulent insolvency (Art. 314) and arson (Arts 321-322, 325-326)

2. In crimes against persons when it comes to physical injuries, it is mitigating when the offense committed is less serious physical injuries or slight physical injuries, if the offended party is a relative of a lower degree. *(Reyes, p.473)*

Q: When is relationship aggravating?

A:

1. In crimes against persons in cases:

   a. When the offended party is a relative of a higher degree than the offender;

   b. When the offender and the offended party are relatives of the same level, as killing a brother; *(People v. Alisub, 69 Phil. 362)*

   c. Where the crime is physical injuries:
      i. *Serious physical injuries* – even if the offended party is a descendant of the offender;

         The serious physical injuries must not be inflicted by a parent upon his child by excessive chastisement

      ii. *Less serious physical injuries or slight physical injuries* – if the offended party is a relative of a higher degree of the offender;

   d. When the crime committed is homicide or murder, relationship is aggravating even if the victim of the crime is a relative of a lower degree;

   e. In rape, relationship is aggravating where a stepfather raped his stepdaughter *(People v. De Leon, 50 Phil. 539)* or in a case where a father raped his own daughter *(People v. Porras, 58 Phil. 578)*.

2. In crimes against chastity.

Q: When is relationship neither aggravating nor mitigating?

A: Relationship is neither aggravating nor mitigating when relationship is an element of the offense. *e.g.* parricide, adultery and concubinage.

Note: In the crime of qualified seduction, relationship is a qualifying aggravating circumstance, where the offender is a brother or an ascendant of the offended woman, whether or not the woman is a virgin or over 18 years of age.

2. INTOXICATION

Q: When is intoxication mitigating?

A: If intoxication is:

1. Not habitual; or

2. Not subsequent to the plan to commit a felony, or

3. At the time of the commission of the crime, the accused has taken such quantity of alcoholic drinks as to blur his reason and deprive him of certain degree of control.

Note: To be mitigating, the state of intoxication of the accused must be proved. Once intoxication is established by satisfactory evidence, in the absence of proof to the contrary, it is presumed to be non-habitual or unintentional.

Q: When is intoxication aggravating?

A: If intoxication is

1. Habitual; or

2. Intentional *(subsequent to the plan to commit a felony).*

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Note: The moment intoxication is shown to be habitual or intentional to the commission of the crime, the same will immediately aggravate, regardless of the crime committed.

Q: Who is a "habitual drunkard?"

A: He is one given to intoxication by excessive use of intoxicating drinks.

Q: What determines whether intoxication is mitigating or not?

A: The basis is the effect of the alcohol upon the offender, not the quantity of the alcoholic drink he had taken in.

3. DEGREE OF INSTRUCTION OR EDUCATION OF THE OFFENDER

Q: Is degree of instruction or education mitigating?

A:

GR: Lack or low degree of instruction is mitigating in all crimes.

XPN: Not mitigating in:

1. Crimes against property (*e.g.* arson, estafa, threat)
2. Crimes against chastity
3. Murder or homicide
4. Rape
5. Treason – because love of country should be a natural feeling of every citizen, however unlettered or uncultured he may be. *(People v. Lansanas, 82 Phil. 193)*

Illustration:

If the offender is a lawyer who committed rape, the fact that he has knowledge of the law will not aggravate his liability.

But if a lawyer committed falsification, that will aggravate his criminal liability because he used his special knowledge as a lawyer. He took advantage of his learning in committing the crime.

Q: Is the degree of instruction and education two distinct circumstances?

A: Yes. One may not have any degree of instruction but is nevertheless educated.

Note: It is not illiteracy alone but the lack of intelligence of the offender that is considered.

Low degree of education is never aggravating in the manner that high degree is never mitigating.

Q: Supposing, the crime was done not in a civilized society, can the alternative circumstance of low degree of instruction be a mitigating circumstance?

A: Yes. It is still considered as a mitigating circumstance.

IV. PERSONS CRIMINALLY LIABLE

Q: Who are criminally liable?

A: The following are criminally liable for grave and less grave felonies:

1. Principals
2. Accomplices
3. Accessories

Note: This classification is true only under the RPC and is not used under special law, because the penalties under special laws are not graduated. However, if a special law provides for the same graduated penalties as those provided under the RPC, the classification under the RPC may be adopted.

This article applies only when the offenders are to be judged by their individual, and not collective, liability.

Q: Who can be the parties in the commission of a crime?

A:

1. Active subject (the criminal)
2. Passive subject (the injured party)

Q: Who can be active subjects of a crime?

A: Only natural person can be the active subject of crime because of the highly personal nature of the criminal responsibility.

Note: Under the RPC, natural persons act with personal malice or negligence, artificial persons cannot act with malice or negligence.

Q: Who can be passive subjects of a crime?

A: A corporation and partnership can be passive subjects of a crime.

Note: A juridical person like a corporation cannot commit a crime that requires willful purpose or malicious intent.

Q: May corpses or animals be passive subjects of a crime?

A:

GR: Corpses and animals cannot be passive subjects because they have no rights that may be impaired.

XPN: Under Art. 253, the crime of defamation may be committed if the imputation tends to blacken the memory of one who is dead.

PRINCIPALS (Art. 17)

Q: What are the different classifications of criminal responsibility?

A:

1. *Individual criminal responsibility* – When there is no conspiracy, each of the offenders is liable only for the act performed by him.

2. *Quasi - collective criminal responsibility* – Some offenders in the crime are principals and the others are accomplices.

3. *Collective criminal responsibility* – Where there is conspiracy, the act of one is the act of all. All conspirators are liable as co-principals regardless of the extent and character of their participation.

Q: What are the kinds of principals?

A:

1. Principal by direct participation
2. Principal by induction/inducement
3. Principal by indispensable cooperation

1. PRINCIPAL BY DIRECT PARTICIPATION

Q: What are the requisites for principals by direct participation?

A:

1. They participated in the criminal resolution.
2. They carried out the plan and personally took part in its execution by acts, which directly tended to the same end.

Note: Principals by direct participation are those who materially execute the crime. They appear at the crime scene and perform acts necessary in the commission of the crime.

Q: What is the effect if the second element is missing?

A: If the second element is missing, those who did not participate in the commission of the acts of execution cannot be held criminally liable because there is no conspiracy, unless the crime agreed upon to be committed is treason, sedition, *coup d' etat* or rebellion.

This is because the conspiracy contemplated here is a manner of committing a crime which is not punishable as a rule unless it is a conspiracy to

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commit treason, sedition, *coup d' etat* or rebellion which is expressly punishable as a crime by the RPC.

Q: What does personally took part in the commission of the crime mean?

A: It means that:

1. The principal by direct participation must be at the scene of the commission 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 a principal by direct participation.

E.g. One serving as guard pursuant to the conspiracy is a principal by direct participation.

Q: What is the rule in determining criminal liability in case of conspiracy?

A:

GR: If there is conspiracy, the criminal liability of all the participants will be the same, because the act of one is the act of all.

XPN: If the participation of one is so insignificant, such that even without his cooperation, the crime would be committed just as well, then notwithstanding the existence of a conspiracy, such offender will be regarded only as an accomplice.

Ratio: The law favors milder form of criminal liability if the act of the participant does not demonstrate a clear perversity.

Q: What is the effect of conspiracy if not all the elements of the crime is present as regards the co-conspirator?

A:

GR: When there is conspiracy, the fact that the element of the offense is not present as regards one of the conspirators is immaterial.

XPN:

1. In *parricide* – the element of relationship must be present as regards the offenders.
2. In *murder* – where treachery is an element of the crime, all offenders must have knowledge of the employment of the treachery at the time of the execution of the act.

2. PRINCIPALS BY INDUCTION/ INDUCEMENT

Q: What is meant by inducement?

A: The inducement contemplated is one strong enough that the person induced could hardly resist. Inducement is tantamount to an irresistible force compelling the person induced to carry out the execution of the crime.

Q: Who is a principal by inducement?

A: To be a principal by inducement, the inducer's utterances must be such nature and made in such manner as to become the determining cause of the crime.

Note: Principals by inducement are liable even if they do not appear at the scene of the crime.

Q: What are the two ways of directly inducing another to commit a crime?

A:

1. By directly forcing another to commit a crime by:

   a. *Using irresistible force* – such physical force as would produce an effect upon the individual that in spite of all resistance, it reduces him to a mere instrument

   b. *Causing uncontrollable fear* – compulsion by means of intimidation or threat that promise an evil of such gravity and eminence that the ordinary man would have succumbed to it.

Note: In these cases, there is no conspiracy. Only the one using force or causing fear is criminally liable. The material executor is not criminally liable because of exempting circumstances of irresistible force and uncontrollable fear.

2. By directly inducing another to commit a crime by:

   a. Giving price, or offering reward or promise

      Requisites:

      i. Inducement must be made directly with the intention of procuring the commission of the crime;
      ii. Such inducement be the determining cause of the commission of the crime by the material executor.

Note: The one giving the price or offering the reward or promise is a principal by inducement while the one committing the crime in consideration thereof is a principal by direct participation. There is collective criminal responsibility.

b. Using word or command.

Requisites:

i. The one uttering the words of command must have the intention of procuring the commission of the crime;
ii. He must have an ascendancy or influence over the person who acted;
iii. Words used must be so direct, so efficacious, and powerful as to amount to physical or moral coercion;
iv. Words of command must be uttered prior to the commission of the crime;
v. Material executor of the crime has no personal reason to commit the crime.

Note: The one who used the words of command is a principal by inducement while the one committing the crime because of the words of command is a principal by direct participation. There is collective criminal responsibility.

Words uttered in the heat of anger and in the nature of command that had to be obeyed do not make one an inductor.

Mere imprudent advice is not inducement.

If the person who actually committed the crime had his own reason to commit it, it cannot be said that the inducement was influential in producing the criminal act.

Q: When will the criminal liability of the principal by inducement arise?

A: A principal by inducement becomes liable only when the crime is committed by the principal by direct participation.

Q: **What is the effect of the acquittal of the principal by direct participation on the liability of the principal by inducement?**

A:

1. Conspiracy is negated by the acquittal of co-defendant.
2. One cannot be held guilty of having instigated the commission of a crime without first being shown that the crime has been actually committed by another.

Note: If the one charged as principal by direct participation is acquitted because he acted without criminal intent or malice, his acquittal is not a ground for the acquittal of the principal by inducement.

Q: What are the distinctions between a principal by inducement and an offender who made a proposal to commit a felony?

A:

PRINCIPAL BY INDUCEMENT	OFFENDER WHO MADE PROPOSAL TO COMMIT A FELONY
In both, there is inducement to commit a crime	
Becomes liable only when the crime is committed by the principal by direct participation	The mere proposal to commit a felony is punishable is not punishable except in proposal to commit treason or rebellion. However, the person to whom the proposal is made should not commit the crime; otherwise, the proponent becomes a principal by inducement.
Involves any crime	The proposal to be punishable must involve only treason or rebellion

Q: A asked B to kill C because of grave injustice done to A by C. A promised B a reward. B was willing to kill C, not so much because of the reward promised to him but because he also had his own long-standing grudge against C, who had wronged him in the past. If C is killed by B, would A be liable as a principal by inducement?

A: No, A would not be liable as principal by inducement because the reward he promised B is not the sole impelling reason which made B to kill C.

To bring about criminal liability of a co-principal, the inducement made by the inducer must be the sole consideration which caused the person induced to commit the crime and without which the crime would not have been committed. The facts of the case indicate that B, the killer supposedly induced by A, had his own reason to kill C out of a long standing grudge. **(2002 Bar Question)**

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3. PRINCIPALS BY INDISPENSABLE COOPERATION

Q: Who is a principal by indispensable cooperation?

A: Those who:

1. Participated directly in the criminal resolution; or

2. Cooperated in the commission of the crime by performing an act, without which it would not have been accomplished.

Q: What does *cooperation in the commission of the offense* mean?

A: To desire or wish a common thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case.

Note: A principal by indispensable cooperation may be a co-conspirator under the doctrine of implied conspiracy. He becomes a co-conspirator by indispensable cooperation, although the common design or purpose was not previously agreed upon.

If the cooperation is not indispensable, the offender is only an accomplice.

ACCOMPLICES (Art. 18)

Q: Who is an accomplice?

A: An accomplice is one who:

1. Concurs with the criminal design of the principals by direct participation;

2. Cooperates in the execution of the offense by previous or simultaneous acts, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way;

Note: Cooperation of an accomplice is only necessary, not indispensable.

Before there can be an accomplice, there must be a principal by direct participation.

In case of doubt, the participation of the offender will be considered that of an accomplice rather than that of a principal.

Q: What is the effect if he the person charged as an accomplice inflicts a mortal wound?

A: He becomes a principal by direct participation.

Q: Distinguish an accomplice from a principal by indispensable cooperation?

A:

PRINCIPAL BY INDISPENSABLE COOPERATION	ACCOMPLICE
If the crime could hardly be committed without such cooperation, then such cooperation would bring about a principal.	If the cooperation merely facilitated or hastened the consummation of the crime, this would make the cooperator merely an accomplice.

Note: In determining whether the offender is a principal or accomplice, the basis is the importance of the cooperation to the consummation of the crime.

Q: What are the distinctions between accomplice and conspirator?

A:

ACCOMPLICE	CONSPIRATOR
In both, they agree with the criminal design	
They come to know about it after the principals have reached the decision, and only then do they agree to cooperate in its execution.	They come to know the criminal intention because they themselves have decided upon such course of action.
They are merely instruments who perform acts not essential to the perpetration of the offense.	They are the authors of the crime.

ACCESSORIES (Art. 19)

Q: Who are accessories?

A: Those who do not participate in the criminal design, nor cooperate in the commission of the felony, but with knowledge of the commission of the crime, he subsequently takes part in three ways by:

1. Profiting or assisting the offender to profit by the effects of the crime;

2. Concealing or destroying the body of the crime to prevent its discovery;

   Note: Where the accused misleads the authorities by giving them false information, such act is equivalent to concealment and he should be held as an accessory.

3. Harboring, concealing or assisting in the escape of the principal of the crime.

Note: One cannot be an accessory unless he knew of the commission of the crime.

An accessory must not have participated in the commission of the crime.

The accessory comes into the picture when the crime is already consummated, not before the consummation of the crime.

Q: What if the offender has already involved himself as a principal or accomplice?

A: He cannot be an accessory any further even though he performs acts pertaining to an accessory.

Q: In what situations are accessories not criminally liable?

A:

1. When the felony committed is a light felony.

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

1. PROFITING OR ASSISTING THE OFFENDER TO PROFIT BY THE EFFECTS OF THE CRIME

Illustration:

If a person having participated as principal or accomplice in robbery or theft but knowing that the property being offered to him is the proceeds or subject matter of the said crime, bought or purchased or dealt in any manner with which such property, obtaining benefit from said transaction or helping the thief or robber to profit there from.

Note: The accessory must receive the property from the principal. He should not take it without the consent of the principal. If he took it without the consent of the principal, he is not an accessory but a principal in the crime of theft.

2. DESTROYING THE *CORPUS DELICTI*

Q: What is a *corpus delicti*?

A: The *corpus delicti* is the body of the crime, not necessarily the corpse.

It is a compound fact made up of two things:

1. The proof of the occurrence of certain events
2. Some person's criminal responsibility

Thus, even if the corpse is not recovered, as long as that killing is established beyond reasonable doubt, criminal liability will arise and if there is someone who destroys the *corpus delicti* to prevent discovery, he becomes an accessory. (*Inovero v. Coronel, CA, 65 O.G. 3160)*

3. HARBORING OR CONCEALING AN OFFENDER

Q: Who may be guilty as an accessory by harboring, concealing or assisting in the escape of the principal of the crime?

A:

1. Public officers

Requisites:

a. Accessory is a public officer

b. He harbors, conceals, or assists in the escape of the principal

c. He acts with abuse of his public functions

d. The crime committed by the principal is any crime, provided it is not a light felony.

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

2. Private person

Requisites:

a. Accessory is a private person

b. He harbors, conceals or assists in the escape of the author of the crime

c. The crime committed by the principal is either:

i. Treason
ii. Parricide
iii. Murder

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iv. Attempt against the life of the President
v. That the principal is known to be habitually guilty of some other crime.

Q: Can an accessory be held criminally liable without the principal being found guilty?

A:

GR: The accessory cannot be held criminally liable without the principal being found guilty of any such crime.

XPN: When the principal was not held liable because of an exempting circumstance under Art. 12.

Ratio: A person does not become criminally liable by merely harboring or assisting in the escape of an innocent man.

Note: Correlate this Article with the provisions of the Anti-Fencing Law *(P.D. 1612)* and Obstruction of Justice *(P.D. 1829)*. Both laws will be discussed under Special Penal Laws.

ACCESSORIES EXEMPT FROM CRIMINAL LIABILITY (Art. 20)

Q: What is the criminal liability of an accessory?

A:

GR: An accessory is exempt from criminal liability, when the principal is his:
1. Spouse
2. Ascendant
3. Descendant
4. Legitimate, natural, or adopted brother, sister or relative by affinity within the same degree.

XPN: Not so exempt even if the principal is related to him, if such accessory:
1. Profited by the effects of the crime; or
2. Assisted the offender to profit from the effects of the crime.

Ratio: Such acts are prompted not by affection but by greed.

Note: The exemption provided for in this article is based on the ties of blood and the preservation of one's name, which compels on to conceal the crimes committed by relatives so near as those mentioned in this article.

Nephew and niece are not included.

Public officer contemplated under par.3 of Art. 19 is exempt by reason of relationship to the principal, even if such public officer acted with abuse of his public functions.

The benefits of the exception in Art. 20 do not apply to P.D. 1829 (Obstruction of Justice).

A. Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (P.D. 1829)

1. Punishable acts

Q: What are the acts punished under P.D. 1829?

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

1. Preventing witnesses from testifying in any criminal proceeding or from reporting the commission of any offense or the identity of any offender/s by means of bribery, misrepresentation, deceit, intimidation, force or threats

2. Altering, destroying, suppressing or concealing any paper, record, document, or object, with intent to impair its verity, authenticity, legibility, availability, or admissibility as evidence in any investigation of or official proceedings in, criminal cases, or to be used in the investigation of, or official proceedings in, criminal cases

3. Harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction

4. Publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances for the same purpose or purposes

5. Delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings in the fiscal's offices, in Tanodbayan, or in the courts

6. Making, presenting or using any record, document, paper or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation of, or official proceedings in, criminal cases

7. Soliciting, accepting, or agreeing to accept any benefit in consideration of abstaining from, discounting, or impeding the prosecution of a criminal offender

8. Threatening directly or indirectly another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent such person from appearing in the investigation of, or official proceedings in, criminal cases, or imposing a condition, whether lawful or unlawful, in order to prevent a person from appearing in the investigation of or in official proceedings in, criminal cases

9. Giving of false or fabricated information to mislead or prevent the law enforcement agencies from apprehending the offender or from protecting the life or property of the victim; or fabricating information from the data gathered in confidence by investigating authorities for purposes of background information and not for publication and publishing or disseminating the same to mislead the investigator or the court. *(Sec. 1)*

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

Note: Article 20, RPC is applicable with PD 1829 because it is beneficial to the accused. It is to be interpreted in favor of the accused because in an absolutory cause, the offender is not criminally liable by reason of public policy. Because the reason is public policy, it should apply to both the RPC and special laws.

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V. PENALTIES

A. GENERAL PRINCIPLES (Arts. 21-24)

Q: What are penalties?

A: *Penalties* are the punishment imposed by lawful authority upon a person who commits a deliberate or negligent act which is against the law.

Q: What are the judicial conditions of penalty?

A:

1. Productive of suffering, without however affecting the integrity of human personality.
2. Commensurate with the offense.
3. *Personal* – no one should be punished with the crime of another.
4. *Legal* – it is a consequence of a judgment according to law.
5. *Certain* – no one may escape its effects.
6. Equal to all.
7. Correctional.

Q: What are the penalties that may be imposed?

A: A felony shall be punishable only by the penalty prescribed by law at the time of its commission.

It is a guaranty to the citizen of this country that no act of his will be considered criminal until the government has made it so by law and has provided a penalty

Ratio: A law cannot be rationally obeyed unless it is first shown and a man cannot be expected to obey an order that has not been given.

Q: What are the classes of injuries caused by a crime?

A:

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 either to his person, property, honor or chastity.
Repaired though the imposition of the corresponding penalty.	Repaired through indemnity.
The State has an interest in this class or injury.	The State has no reason to insist in its payment.
Offended party cannot pardon the offender so as to relieve him of the penalty.	It can be waived by the offended party.

Q: What are the measures of prevention that are not considered as penalty?

A:

1. The arrest and temporary detention of accused persons (preventive imprisonment) 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 a reformatory institution.

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. *(Art. 24) E.g.* Parents who are deprived of their parental authority if found guilty of the crime of corruption of their minor children, in accordance with Art. 342 of the Civil Code.

Q: Why are the measures above-mentioned not considered as penalties?

A:

1. They are not imposed as a result of judicial proceedings. Those mentioned in par. 1, 3 and 4 are merely preventive measures before conviction of offenders.

2. The offender is not subjected to or made to suffer these measures in expiation of or as punishment for a crime.

Note:

1. Par. 1 refers to accused persons who are detained "by reason of insanity or imbecility. It does not refer to the confinement of an insane or imbecile who has not been arrested for a crime.

2. Pars. 3 and 4 refer to administrative suspension and administrative fines and not to suspension or fine as penalties for violations of the RPC. Fines in par. 4 do not constitute as penalties because they are not imposed by the court.

3. Where a minor offender was committed to a reformatory pursuant to Art. 80 (now P.D. 603), and while thus detained he commits a crime therein, he cannot be considered a quasi-recidivist since his detention was only a preventive measure, whereas a quasi-recidivism presupposes the commission of a crime during the service of the penalty for a previous crime.

4. Commitment of a minor is not a penalty because it is not imposed by the court in a judgment. The imposition of the sentence in such a case is suspended.

B. PURPOSES

Q: What are the purposes for the imposition of penalty under the RPC?

A:

1. *Retribution or expiation* – penalty is commensurate with the gravity of the offense.
2. *Correction or reformation* – as shown by the rules which regulate the execution of the penalties consisting in deprivation of liberty.
3. *Social defense* – shown by its inflexible severity to recidivists and habitual delinquents.

C. CLASSIFICATION OF PENALTIES (ARTS. 25-26)

Q: What are the general classifications of penalties?

A:

1. *Principal penalties* – those expressly imposed by the court in the judgment of conviction.
2. *Accessory penalties* – those that are deemed included in the imposition of the principal penalties.

Q: What are the principal penalties, according to their divisibility?

A:

1. *Indivisible penalties* – those which have no fixed duration, *e.g.* death and *reclusion perpetua*
2. *Divisible penalties* – those that have fixed duration and are divisible into three periods. *e.g. reclusion temporal* down to *arresto menor.*

Q: What are the penalties, according to their gravity?

A:

1. Capital
2. Afflictive
3. Correctional
4. Light.

Q: How are fines imposed?

A: *Fines* may be imposed as an alternative or single penalty.

Q: What are fines according to their gravity?

A:

1. Afflictive – over P6,000
2. Correctional – P200 to P6,000
3. Light – less than P200

Q: E and M are convicted of a penal law that imposes a penalty of fine or imprisonment or both fine and imprisonment. The judge sentenced them to pay the fine, jointly and severally, with subsidiary imprisonment in case of insolvency.

1. **Is the penalty proper? Explain.**
2. **May the judge impose an alternative penalty of fine or imprisonment? Explain.**

A:

1. Imposing the penalty of fine jointly and severally on the two convicted accused is not proper. The penalty should be imposed individually on every person accused of the crime. Any of the convicted accused who is insolvent and unable to pay the fine, shall serve the subsidiary imprisonment.

2. The judge may not validly impose an alternative penalty. Although the law may prescribe an alternative penalty for a crime, It does not mean that the court may impose the alternative penalties at the same time. The sentence must be definite, otherwise, the judgment cannot attain finality **(2005 Bar Question).**

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D. DURATION AND EFFECT OF PENALTIES (Arts. 27 – 45)

Q: What is the duration of penalties?

A:

PENALTY	DURATION
Reclusion perpetua	20 years and 1 day to 40 years
Reclusion temporal	12 years and 1 day to 20 years
Prision mayor and *Temporary disqualification*	6 years and 1 day to 12 years
Prision correcional Suspension and *Destierro*	6 months and 1 day to 6 years
Arresto mayor	1 month and 1 day to 6 months
Arresto menor	1 day to 1 month
Bond to keep the peace	Discretionary on the Court

Q: What are the rules on computation of penalties?

A:

1. *Offender is in prison* – duration of the temporary penalties is from the day on which the judgment of conviction becomes final
2. *Offender not in prison* – duration of penalty consisting in the deprivation of liberty is from the day that the offender is placed at the enforcement of the penalty
3. *Other penalties* – duration is from the day on which the offender commences to serve his sentence

Q: What are the distinctions between the penalty of reclusion perpetua and life imprisonment?

A:

RECLUSION PERPETUA	LIFE IMPRISONMENT
Pertains to the penalty imposed for violation of the RPC	Pertains to the penalty imposed for violation of special laws
It has fixed duration	It has no fixed duration
It carries with it accessory penalties	It does not carry with it accessory penalty

Note: Although *reclusion perpetua* has been given a fixed duration, it has remained to be an indivisible penalty. Indivisible penalties have no durations.

Q: When is death penalty imposed?

A: Death penalty is imposed in the following crimes:

1. Treason
2. Piracy
3. Qualified Piracy
4. Qualified Bribery
5. Parricide
6. Murder
7. Infanticide
8. Kidnapping
9. Robbery with Homicide
10. Destructive Arson
11. Rape with Homicide
12. Plunder
13. Certain violations of the Dangerous Drugs Act
14. Carnapping

Q: Is death penalty already abolished?

A: No. There is still death penalty. What is prohibited under R.A. 9346 is only the imposition of the penalty of death.

Note: However, the corresponding civil liability should be the civil liability corresponding to death. (*People vs. Salome, G.R. No. 169077, Aug. 31, 2006)*

In lieu of the death penalty, the following shall be imposed:

1. The penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the RPC; or
2. The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC. *(Sec.2, R.A. 9346)*

Q: When is death penalty not imposable?

A:

1. *Under age* – offender is below 18 years of age at the time of the commission of the crime
2. *Over age* – offender is more than 70 years old
3. *No court majority* – when upon appeal or automatic review of the case by the Supreme Court, the vote of eight members is not obtained for the imposition of death penalty

Note: Automatic review is available only in cases where death penalty is imposed. *(R.A. 7659)*

Q: What is the nature of *destierro*?

A: *Destierro* is a principal penalty. It is a punishment whereby a convict is banished to a

certain place and is prohibited from entering or coming near that place designated in the sentence, not less than 25 kilometers but not to extend beyond 250 kilometers

Note: If the convict should enter the prohibited places, he commits the crime of evasion of service of sentence under Article 157.

Q: In what crimes is the penalty of *destierro* imposed?

A:

1. In the crime of grave threat or light threat, when the offender is required to put up a bond for good behavior but failed or refused to do so under Article 284, such convict shall be sentenced to destierro so that he would not be able to carry out his threat
2. In the crime of concubinage, the penalty prescribed for the concubine is destierro under Article 334
3. Where the penalty prescribed is arresto Mayor, but the offender is entitled to privileged mitigating circumstance and lowering the prescribed penalty by one degree, the penalty one degree lower is destierro. Thus, it shall be the one imposed

Q: What penalties are considered both principal and accessory penalties?

A:

1. Perpetual or temporary absolute disqualification
2. Perpetual or temporary special Disqualification
3. Accessory penalties

Note: Accessory penalties need not be stated in the sentence. The accessory penalties follow the principal penalty imposed for the crime as a matter of course; they are automatically imposed even though they are not stated in the judgment

Q: What is civil interdiction?

A: *Civil interdiction* is an accessory penalty. Civil Interdiction shall deprive the offender during the time of his sentence:

1. The rights of parental authority, or guardianship either as to the person or property of any ward;
2. Marital authority;
3. The right to manage his property; and
4. The right to dispose of such property by any act or any conveyance inter vivos.

Q: What principal penalties is civil interdiction an accessory penalty?

A: It is an accessory penalty in:

1. Death penalty if it is commuted to life imprisonment;
2. *Reclusion perpetua*;
3. *Reclusion temporal*.

Q: What are the effects of penalties?

A:

1. *Perpetual or temporary absolute disqualification from public office:*
   a. Deprivation of public offices and employment, even if by election;
   b. Deprivation of the right to vote or to be elected;

      Note: A plebiscite is not mentioned or contemplated in Art. 30, par 2 (deprivation of the right to vote), hence, the offender may vote in that exercise, subject to the provisions of pertinent election laws at the time

   c. Disqualification for the offices or public employments and for the exercise of any rights mentioned;
   d. Loss of right to retirement pay or pension for any office formerly held.

   Note: Perpetual absolute disqualification lasts during the lifetime of the convict

   Temporary absolute disqualification lasts during the term of the sentence, and is removed after the service of the same

2. *Perpetual or temporary special disqualification from public office, profession or calling:*
   a. Deprivation of the office, employment, profession or calling affected;
   b. Disqualification for holding similar offices or employments perpetually during the term of the sentence.

3. *Perpetual or temporary special disqualification for the right of suffrage:*

a. Deprivation of the right to vote or to be elected to any public office;
b. Cannot hold any public office during the period of the disqualification.

Note: The purpose of which is to preserve the purity of elections; one rendered infamous by conviction of felony or other base offenses indicative of moral turpitude is unfit to exercise such rights

4. *Suspension from public office, profession or calling or the right of suffrage:*
   a. Disqualification from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence;
   b. If suspended from public office, he cannot hold another office having similar functions during the period of suspension.

5. *Civil interdiction*
   a. Deprivation of the rights of parental authority or guardianship of any ward
   b. Deprivation of marital authority
   c. Deprivation of the right to manage his property and of the right to dispose of such property by any act or any conveyance *inter vivos*

6. *Bond to keep peace*
   a. Offender must present two sufficient sureties who shall undertake that the offender will not commit the offense sought to be prevented and in case such offense be committed, they will pay the amount determined by the court; or
   b. Offender must deposit such amount with the clerk of court to guarantee said undertaking; or
   c. Offender may be detained if he cannot give the bond, for a period:
      i. Not to exceed 6 months – for grave or less grave felony; or
      ii. Not to exceed 30 days – for a light felony.

Note: Bond to keep peace is different from bail bond which is posted for the provisional release of a person arrested for or accused of a crime.

Under Sec. 23, RA 9262, the Court may order any person against whom a protection order is issued to give a bond to keep the peace, to present two sufficient sureties who shall undertake that such person will not commit the violence sought to be prevented.

Q: What are the distinctions between bond to keep peace and bond for good behavior?

A:

BOND TO KEEP THE PEACE	BOND FOR GOOD BEHAVIOR
Failure to post a bond to keep the peace results to imprisonment either for 6 months or 30 days, depending on whether the felony committed is grave or less grave on one hand, or it is light only	The legal effect of failure to post a bond for good behavior is not imprisonment but *destierro* under Article 284

PENALTIES IN WHICH OTHER ACCESSORY PENALTIES ARE INHERENT (Arts. 40 – 44)

Q: What are the inherent accessory penalties of principal penalties?

A:

1. *Death, when not executed by reason of commutation or pardon*
   a. Perpetual absolute disqualification, and
   b. Civil interdiction during 30 years, if not expressly remitted in the pardon

2. *Reclusion perpetua and reclusion temporal*
   a. Civil interdiction for life or during the sentence
   b. Perpetual absolute disqualification unless expressly remitted in the pardon of the principal penalty

3. *Prision mayor*
   a. Temporary absolute disqualification
   b. Perpetual special disqualification from suffrage, unless expressly remitted in the pardon of the principal penalty

4. *Prision correcional*
   a. Suspension from public office, profession or calling, and
   b. Perpetual special disqualification from suffrage, if the duration of imprisonment exceeds 18 months, unless expressly remitted in the pardon of the principal penalty

5. *Arresto mayor* – suspension of the right to hold office and the right of suffrage during the term of the sentence

Note: The RPC does not provide for any accessory penalty for *destierro*.

PREVENTIVE IMPRISONMENT (Art. 39)

Q: What is preventive imprisonment?

A: Period of detention undergone by an accused where the crime with which he is charged is non-bailable or, even if bailable, he is unable to post the requisite bail

Q: When will preventive imprisonment apply?

A: It will apply to all sentences regardless of the duration thereof, including the so-called perpetual penalties as long as they involve deprivation of liberty. It will also apply to *destierro*.

Q: When is the detention prisoner entitled to the full-credit of his preventive imprisonment?

A: If the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.

In the 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, whether or not he agreed to abide by the same disciplinary rules of the institution.

Q: When will he be credited only with four-fifths the time during which he has undergone preventive imprisonment?

A: If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners

EFFECTS OF PARDON (Art. 36)

Q: What is the effect of pardon by the President on the political rights of the accused?

A:

GR: Executive pardon does not restore the right to hold public office or the right to suffrage

XPN: When such rights are expressly restored

Q: What are the limitations of the pardoning power of the President?

A:

1. Executive pardon can only be exercised after conviction by final judgment
2. Executive pardon does not extend to cases of impeachment

Q: What is the effect of the grant of pardon on the principal and accessory penalties imposed?

A:

GR: Pardon granted in general terms extinguishes only the principal penalty and does not include the accessory penalty

XPN:

1. When absolute pardon is granted after the term of imprisonment has expired, it removes all that is left of the consequences of the conviction

2. If pardon expressly provides, accessory penalty is extinguished.

Q: What are the distinctions between executive pardon and pardon by the offended party?

A:

EXECUTIVE PARDON	PARDON BY THE OFFENDED PARTY
Covers any crime, unless otherwise provided by the Constitution or the laws	Crimes against chastity under the RPC
Extinguishes criminal liability	Does not extinguish criminal liability
Executive pardon does not include civil liability	Civil liability can be waived
Granted only after conviction by final judgment	Should be given before the institution of the criminal action

COSTS (Art. 37)

Q: What is cost or cost of suit?

A: It is the expenses of litigation allowed by the Rules of Court to be assessed against or to be recovered by a party in litigation.

Q: What do costs include?

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A:

1. Fees
2. Indemnities, in the course of judicial proceedings

Q: To whom are costs chargeable?

A:

1. *In case of conviction* – chargeable to the accused
2. *In case of acquittal* – costs are *de officio*, each party bearing his own expenses

Note: Payment of costs is discretionary to the courts

PECUNIARY LIABILITIES (Art. 38)

Q: What do pecuniary liabilities include?

A: In the following order:

1. Reparation of the damage caused
2. Indemnification of the consequential damages
3. Fine
4. Costs of proceedings

Note:

1. The order of payment applies in case the property of the offender is *not* sufficient for the payment of his pecuniary liabilities.
2. The order of payment is mandatory.

SUBSIDIARY PENALTY

Q: When is subsidiary penalty imposed?

A:

1. When there is a principal penalty of imprisonment or any other principal penalty and it carries with it a fine; or
2. When penalty is only a fine.

Note: A subsidiary penalty is not an accessory penalty.

It must be expressly stated in the sentence and convict must have been insolvent to pay the fine and not mere refusal to pay it.

The sentence will merely provide that in case of non-payment of the fine, the convict shall be required to save subsidiary penalty

There shall be no subsidiary penalty for the non-payment of damages to the offended party

Q: When is subsidiary imprisonment not imposed?

A:

1. When penalty imposed is higher than *prision correctional.*
2. When the penalty imposed is fine and a penalty not to be executed by confinement in a penal institution and which has no fixed period.
3. For failure to pay the reparation of the damaged caused, indemnification of the consequential damages, and costs of the proceedings.

CONFISCATION AND FORFEITURES OF THE PROCEEDS OR INSTRUMENTS OF THE CRIME (Art. 45)

Q: What are the rules on confiscation and forfeiture of the proceeds of the crime?

A:

1. Every penalty imposed carries with it the forfeiture of the proceeds of the crime and the instruments or tools used in the commission of the crime.
2. Confiscation and forfeiture are in favor of the government
3. Property of a 3rd person not liable for the offense is not subject to confiscation and forfeiture
4. Property not subject of lawful commerce (whether it belongs to the accused or 3rd person) shall be destroyed

Note: Confiscation and forfeiture are additional penalties. Hence, once the sentence has become final, the court can no longer modify, alter, or change it by ordering confiscation and forfeiture.

Q: What are the cases when confiscation and forfeiture cannot be effected?

A:

1. The instruments belong to an innocent third party.
2. Such properties have not been placed under the jurisdiction of the court.
3. When it is legally or physically impossible.

E. APPLICATION OF PENALTIES (Arts. 44-77)

Q: How are penalties applied?

A:

GR: Penalty prescribed by law in general terms shall be imposed upon the principals for the consummated felony

XPN: When the law fixes the penalty for frustrated or attempted felony

Q: When is the graduated scale followed?

A: The graduated scale is followed when the law prescribes a penalty lower or higher by one or more degrees than another given penalty.

Scale 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 2

1. Perpetual or Temporary Absolute Disqualification
2. Perpetual or Temporary Special Disqualification
3. Suspension from public office, the right to vote and to be voted for, the profession or calling
4. Public Censure
5. Fine

Q: How is graduation of penalties done?

A: Graduation of penalties may be by:

1. By *Degrees*:
   a. Stages of execution (consummated, frustrated, or attempted); and
   b. Degree of criminal participation of the offender (principal, accomplice or accessory).

2. By *Periods (*maximum, medium, and minimum)

Q: What is the computation of penalties for principals, accomplices and accessories?

A:

CONSUMMATED	FRUSTRATED	ATTEMPTED
Principal		
0	**1**	**2**
Accomplice		
1	**2**	**3**
Accessory		
2	**3**	**4**

Interpretation:

0 – represents the penalty prescribed by law, which is to be imposed on the principal in a consummated offense.

1 – represents that penalty prescribed by law must be lowered by one degree to meet the different situations and so on with numbers 2, 3, 4…

Note: The rules in the diagram shall not apply to cases were the law prescribed the penalty for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

Q: What factors are considered in determining the extent of the penalty to be imposed under RPC?

A:

1. Stage reached.
2. Participations of the persons liable.
3. Aggravating or mitigating circumstances attendant.

Q: What are the rules in application of indivisible penalties?

A:

1. *Single indivisible* – it shall be applied regardless of any mitigating or aggravating circumstances

2. *Composed of two indivisible penalties*
   a. *Only one aggravating circumstance* – greater penalty shall be imposed
   b. *No mitigating and no aggravating circumstances* – lesser penalty shall be imposed
   c. *Mitigating circumstance and no aggravating* – lesser penalty shall be imposed
   d. *Both mitigating and aggravating circumstances are present* – court shall offset each other

Note: Moral value, not numerical weight, should prevail

GR: When penalty is composed of two indivisible penalties, the penalty cannot be lowered by one degree, no matter how many mitigating circumstances are present

XPN: Privileged mitigating circumstances of Arts. 68 (person under 18 years old) and 69 (incomplete justifying or exempting circumstance)

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Q: What are the rules in the application of divisible penalties?

A: Applies only when the penalty has three periods

1. *No aggravating and no mitigating* – medium period
2. *Only a mitigating* – minimum
3. *Only an aggravating* – maximum
4. *When there are aggravating and mitigating* – court shall offset those of one class against the other according to their relative weight
5. *Two or more mitigating and no aggravating* – penalty next lower, in the period applicable, according to the number and nature of such circumstances
6. *Two or more aggravating* – Limitation: No penalty greater than the maximum period of the penalty prescribed by law shall shall be imposed
7. Court can determine the extent of the penalty within the limits of each period, according to the number and nature of the aggravating and mitigating circumstances and the greater or lesser the extent of the evil produced by the crime

Note: In applying the rules for graduating penalties, mitigating and aggravating circumstances are disregarded. Mitigating and/or aggravating circumstances should be considered only after the penalty next lower in degree is already determined.

Q: What are the cases where mitigating and aggravating circumstances are not considered in the imposition of the penalty?

A:

1. When penalty is single and indivisible
2. On felonies through negligence
3. The penalty to be imposed upon a Moro or other non-Christian inhabitants. It lies in the discretion of the court
4. When penalty is only fine imposed by an ordinance
5. When penalties are prescribed by special laws

Q: What is the rule when the penalty is not composed of three periods?

A: Divide time included in the penalty into three equal portions and one portion will correspond to one period.

Note: Penalties consisting in deprivation of liberty cannot be served simultaneously.

Q: What is the three-fold rule?

A: The three-fold rule provides that the maximum duration of convict's sentence shall not be more than 3 times the length of the most severe of the penalties imposed upon him but in no case to exceed 40 years.

The three-fold rule applies only when the convict has to serve at least 4 sentences successively.

Subsidiary penalty forms part of the penalty.

Subsidiary imprisonment: This shall be excluded in computing for the maximum duration.

It applies although penalties were imposed for different crimes at different times and under separate information.

Note: The three-fold rule must be addressed to the warden and not to the judge.

Q: What are the penalties that may be served simultaneously?

A:

1. Perpetual absolute disqualification
2. Perpetual special disqualification
3. Temporary absolute disqualification
4. Temporary special disqualification
5. Suspension
6. Destierro
7. Fine and bond to keep the peace
8. Civil interdiction
9. Confiscation and payment of cost

Note: The above penalties, except destierro, maybe served simultaneously with imprisonment.

ADDITIONAL PENALTIES TO BE IMPOSED UPON CERTAIN ACCESSORIES (Art. 58)

Q: What are the additional penalties that could be imposed to certain accessories?

A: Public officers who help the author of the crime by misusing their office and duties shall suffer the additional penalties of:

1. *Absolute perpetual disqualification*- if the principal offender is guilty of a grave felony;

2. *Absolute temporary disqualification*- if the principal offender is guilty of less grave felony.

Q: What are the rules under Art. 49?

A:

1. *If penalty for felony committed is higher than that intended* – Lower penalty in its maximum period shall be imposed

2. *If penalty for felony committed is lower than that intended* – Lower penalty in its maximum period shall be imposed

3. *If the act committed also constitutes an attempt or frustration of another crime and the law prescribes a higher penalty for whether of the latter* – Penalty for the attempted or frustrated crime in its maximum period shall be imposed.

Note: Art. 49 applies in error in personae or when there is mistake in the identity of the victim of the crime.

The penalty fro the intended crime and the actual crime committed are compared and the lower penalty is imposed in the maximum period.

PENALTY FOR IMPOSSIBLE CRIME (Art. 59)

Q: What is the penalty to be imposed in case of failure to commit a crime because the means employed or the aims sought are impossible?

A: The penalty for impossible crime is *arresto mayor* or fine ranging from P200-P500.

Q: What is the basis for the imposition of penalty for impossible crime?

A:

1. The social danger it could cause
2. Degree of criminality shown by the offender.

1. Indeterminate Sentence Law (R.A. 4103, as amended)

Q: What is an indeterminate sentence?

A: It is a sentence with a minimum term and a maximum term which the court is mandated to impose for the benefit of a guilty person who is not disqualified therefore, when the maximum imprisonment exceeds 1 year.

Q: What is the purpose of the indeterminate sentence law?

A: The purpose of the indeterminate sentence law is to avoid prolonged imprisonment because it is proven to be more destructive than constructive to offenders.

Q: When does indeterminate sentence apply?

A: Indeterminate sentence applies mandatorily to violations of both the RPC and special laws where imprisonment would exceed one year, and where the penalty is divisible. *(Sec.1)*

Q: How is the indeterminate sentence imposed?

A: In imposing a prison sentence for an offense punished by the RPC or special penal laws, the court shall sentence the accused to an indeterminate sentence, which has a maximum and a minimum term based on the penalty actually imposed.

RPC	SPL
Maximum	
That which could be properly imposed under the RPC, considering the aggravating and mitigating circumstances	Anywhere within the range of penalty prescribed by the special law, as long as it will not exceed the limit of the penalty.
Minimum	
Within the range of penalty one degree lower than that prescribed by the RPC for the felony committed, without considering the aggravating and mitigating circumstances.	Anywhere within the range of penalty prescribed by the special law, as long as it will not be less than the minimum limit of the penalty under said law.

Note: The minimum and the maximum referred to in the indeterminate sentence law are not periods.

The term minimum refers to the duration of the sentence which the convict shall serve as a minimum to be eligible for parole.

The term maximum refers to the maximum limit of the duration that the convict may be held in jail.

For special laws, it is anything within the inclusive range of prescribed penalty. Courts are given

discretion in the imposition of the indeterminate penalty.

Q: Who are disqualified from availing the benefits of the indeterminate sentence law?

A: The indeterminate sentence law shall not apply to persons:

1. Convicted of:
   a. An offense punishable with death penalty*, reclusion perpetua* or life imprisonment
   b. Treason, conspiracy or proposal to commit treason
   c. Misprision of treason, rebellion, sedition, espionage
   d. Piracy
2. Who are habitual delinquents
3. Who shall have escaped from confinement or evaded sentence
4. Granted conditional pardon by the Chief Executive and shall have violated the term (condition) thereto
5. Whose maximum term of imprisonment does not exceed one year
6. Sentenced to the penalty of *destierro* or suspension only; Any person convicted of a crime but the penalty imposed upon him does not involve imprisonment
7. Who are already serving final judgment upon the approval of the Indeterminate Sentence Law. *(Sec. 2)*

Note: Recidivists are entitled to an indeterminate sentence.

Although the penalty prescribed for the felony committed is death or *reclusion perpetua*, if after considering the attendant circumstances, the imposable penalty is reclusion temporal or less, the Indeterminate Sentence Law applies.

An offender is not disqualified to avail of the benefits of the indeterminate sentence law even if the crime is committed while he is on parole.

Q: When is a prisoner qualified for release on parole?

A: Whenever any prisoner shall:

1. Have served the minimum penalty imposed upon him
2. Appear to the board of indeterminate sentence, from the reports of the prisoner's work and conduct, and from the study and investigation made by the board itself that:
   a. Fitted by his training for release;
   b. Reasonable probability that such prisoner will live and remain at liberty without violating the law;
   c. Release will not be incompatible with the welfare of society.

Q: When is a prisoner on parole entitled to final release and discharge?

A: If during the period of surveillance such paroled prisoner shall:

1. Show himself to be a law abiding citizen and;
2. Not violate any law,

The Board may issue a final certification in his favor, for his final release and discharge. *(Sec. 6)*

Q: What are the sanctions for the violation of the conditions of parole?

A: When the paroled prisoner shall violate any of the conditions of his parole, he may be:

1. Rearrested; and
2. Thereafter, he shall serve the remaining unexpired portion of the maximum sentence for which he was originally committed to prison.

Q: The penalty provided by law is 6 months to 3 years. Decide if the following penalties are correct:

1. **2 years;**
2. **1 year;**
3. **10 months;**
4. **6 months to 10 months;**
5. **6 months to 2 years.**

A:

1. Incorrect, a straight penalty cannot be imposed under the ISLAW.
2. Correct, because if the range of the penalty is one year or less, you can impose a straight penalty of one year. Here ISLAW is not applicable.
3. Correct, same as (b).
4. Incorrect, if the maximum penalty is one year or less, then it is not covered by ISLAW. Hence, there is no need to provide for maximum and minimum periods in imposing a penalty.
5. Correct, if the maximum period of the penalty imposed is more than one year, the ISLAW applies.

F. EXECUTION AND SERVICE OF PENALTIES (Arts. 78-88)

Q: What are the rules in case of insanity?

A:

1. When a convict becomes insane or imbecile after final sentence has been pronounced, the execution of such 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, the above provisions shall be observed.

4. But the payment of his civil or pecuniary liabilities shall not be suspended.

Q: When is death penalty not imposed?

A:

1. When the convict is below 18 yrs old at the time of the commission of the crime.

2. When the convict is over 70 yrs old at the time of the commission of the crime.

3. When upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for imposition of the death penalty, in which cases the penalty shall be reclusion perpetua. *(Art. 47)*

Q: Is the death penalty already been abolished?

A: No. What is prohibited under R.A. 9346 is only the imposition of the penalty of death.

In lieu of the death penalty, the following shall be imposed:

1. The penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the RPC; or

2. The penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the RPC. *(Sec.2, R.A. 9346)*

Note: However, the corresponding civil liability should be the civil liability corresponding to death. (*People vs. Salome, G.R. No. 169077, Aug. 31, 2006)*

Q: When is the execution of death penalty suspended?

A:

1. When the convict is a woman who is pregnant or within 1 year after delivery. *(Art. 83)*

2. When a convict shall become insane or an imbecile after final sentence has been pronounced. *(Art. 79)*

Q: When is death penalty imposed but not carried out?

A:

1. In case of commutation of sentence.

2. If convict attains the age of 70 yrs. Old in which case the penalty will be automatically lowered to reclusion perpetua.

Note: Only a penalty by final judgment can be executed. A judgment is final if the accused has not appealed within 15 days or he has expressly waived in writing that he will not appeal.

Q: In what cases is *destierro* imposed?

A:

1. Death or serious physical injuries is caused or are inflicted under exceptional circumstances. *(Art. 247)*

2. Failure to give bond for good behavior in grave and light threats. *(Art. 284)*

3. Penalty for the concubine in concubinage *(Art. 334)*

4. When, after reducing the penalty by one or more degrees, destierro is the proper penalty.

Q: How is *destierro* executed?

A:

1. Convict shall not be permitted to enter the place designated in the sentence nor within the radius specified, which shall not be more than 250 and not less than 25 km from the place designated.

2. If the convict enters the prohibited area, he commits evasion of sentence.

Q: Where is the place of service of *arresto menor*?

A:

1. In the municipal jail;

2. In the house of the offender, but under the surveillance of an officer of the law whenever the court provides in the decision due to the health of the offender. But the reason is not satisfactory just because the offender is a respectable member of the community. *(Art. 88)*

1. Probation Law (P.D. 968, as amended)

Q: What is probation?

A: It is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer. *(Sec. 3 [a])*

Note: Probation is only a privilege and its grant rests solely upon the discretion of the court.

Q: What are the purposes of probation?

A:

1. To promote the correction and rehabilitation of an offender by providing him with individualized treatment

2. To provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence

3. To prevent the commission of offenses
4. To decongest our jails
5. To save the government much needed finance for maintaining convicts in jail.

Q: When may probation be availed of?

A: Probation may be availed of before the convict begins serving sentence by final judgment provided that he/she did not appeal his/her conviction anymore.

Note: The application for probation must be done within 15 days from the promulgation of judgment.

Q: If a person already perfected an appeal, can he still avail of probation?

A:
GR: No. Even if a person may be eligible for probation, the moment he perfects an appeal from the judgment of conviction, he cannot avail of probation anymore. The benefit of probation must be invoked at the earliest instance after conviction.*(Francisco v. CA, G.R. No. 108747 April 6, 1995)*

XPN: The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of PD 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly. *(Sec. 42, RA 9344)*

Q: What is the effect of the filing for application for probation?

A: A judgment of conviction becomes final when the accused files a petition for probation. However, the judgment is not executory until the petition for probation is resolved. The filing of the petition for probation is a waiver by the accused of his right to appeal the judgment of conviction.

Ratio: When one applies for probation, he admits the correctness of the court's decision. On the other hand, if he appeals, he is not satisfied with the court's decision, thus he wants the appellate court to reverse or modify the decision of the lower court.

Q: What is the effect of probation on the civil liability of the offender?

A: The probation law provides only for the suspension of the sentence imposed on the accused by virtue of his application. It has absolutely no bearing on civil liability. Although the execution of sentence is suspended by the grant of suspension, it does not follow that the civil liability of the offender, if any, is extinguished.

Q: Where should the offender file his application for probation?

A: An application for probation is exclusively within the jurisdiction of the trial court that rendered the judgment. The courts are always required to conduct a hearing whether a convict who is otherwise disqualified for probation may be given the benefit of probation or not.

Q: Who can apply for probation?

A:
GR: Only those whose penalty does not exceed six years of imprisonment are qualified for probation, without regard to the nature of the crime. Hence, if the penalty is six years and one day, he is no longer qualified for probation.

XPN:
1. First time minor offenders under Ra 9165
2. Violation of the omnibus election code

Q: Suppose the offender was convicted of several offenses which were tried jointly and one decision was rendered where multiple sentences imposed several prison terms as penalty, each prison term does not exceed six years although the totality of the prison terms exceeded six years, is he qualified to apply for probation?

A: Yes, the offender is still qualified for probation. The basis of determining whether the penalty disqualifies the offender from probation or not is the term of the individual imprisonment and not the totality of all the prison terms imposed in the decision.

Hence, even if the prison term would sum up to more than six years, if none of the individual penalty exceeds six years, the offender is not disqualified from applying for probation.

Q: May a recidivist be given the benefit of probation?

A:

GR: No.

XPN: If the earlier conviction refers to a crime, the penalty of which does not exceed 30 days of imprisonment or a fine of not more than P200, such convict is not disqualified from the benefit of probation. Hence, even if he would be convicted subsequently of a crime embraced in the same title of the RPC as that of the earlier conviction, he is not disqualified from availing of probation provided that the penalty of the current crime committed does not go beyond six years and the nature of the crime committed by him is not against public order, national security or subversion.

Q: What are the criteria for placing an offender on probation?

A: In determining whether an offender may be placed on probation, the court shall consider:

1. All information relative, to the character, antecedents, environment, mental and physical condition of the offender; and
2. Available institutional and community resources.

Q: Who are disqualified from availing the benefits of the probation law?

A: The benefits of the probation law shall not be extended to those:

1. Sentenced to serve a maximum term of imprisonment of more than six years;
2. Convicted of subversion or any crime against the national security or the public order, such as alarms and scandals, regardless of the penalty imposed;
3. Who have previously been convicted by final judgment of an offense punished by imprisonment of not less than one month and one day and/or a fine of not less than two hundred pesos;
4. Who have been once on probation under the provisions of PD 968; and
5. Who are already serving sentence at the time the substantive provisions of PD 968 became applicable pursuant to Section 33 of PD 968. *(Sec. 9)*

Note: In determining whether a convict is entitled to probation, consider not only the probationable crime, but also the probationable penalty. If it were a non-probationable crime, then regardless of the penalty, the convict cannot avail of probation.

Q: When will the application for probation be denied?

A: The court shall deny the application for probation if it finds:

1. That the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
2. That there is an undue risk that during the period of probation the offender will commit another crime; or
3. Probation will depreciate the seriousness of the crime.

Q: What are the kinds of conditions imposed under the probation law?

A:

1. Mandatory conditions
2. Discretionary conditions

Q: What are the mandatory conditions?

A: They are:

1. The convict must report to the Probation Officer (PO) designated in the court order approving his application for probation within 72 hours from receipt of notice of such order approving his application; and
2. The convict, as a probationer, must report to the PO at least once a month during the period of probation unless sooner.

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Note: These conditions are mandatory, hence, the moment any of these is violated, the probation is terminated.

Q: What are the discretionary conditions?

A: The trial court which approved the application for probation may impose any condition which may be constructive to the correction of the offender, provided the same would not violate the constitutional rights of the offender and subject to these two restrictions:

1. The conditions imposed should not be unduly restrictive of the probationer; and
2. Such condition should not be incompatible with the freedom of conscience of the probationer.

Q: What are the rules on the grant of probation?

A:

1. After having convicted and sentenced a defendant, the trial court may suspend the execution of the sentence, and place the defendant on probation, upon application by the defendant within the period for perfecting an appeal.

2. The filing of application for probation operates as a waiver of the right to appeal.

3. Probation may be granted whether the sentence imposed a term of imprisonment or fine only.

4. The application shall be filed with the trial court, and the order granting or denying probation shall not be appealable.

5. Accessory penalties are deemed suspended once probation is granted.

Q: What is the remedy of an offender if his or her application for probation is denied?

A: An order denying probation is not appealable, hence, the remedy is *certiorari*.

Q: What is the period of probation?

A:

PENALTY IMPOSED	PERIOD OF PROBATION
Imprisonment for not more than one year	The period of probation shall not exceed two years
Imprisonment of more than one year	The period of probation shall not exceed 6 years
The sentence imposes only a fine and the offender is made to serve subsidiary imprisonment	The period of probation shall be twice the total number of days of subsidiary imprisonment

Q: What are the sanctions imposed if the probationer commits any serious violation of the conditions of probation?

A:

1. The court may issue a warrant for the arrest of a probationer.

2. If violation is established, the court may:
   a. Revoke his probation; or
   b. Continue his probation and modify the conditions thereof. This order is not appealable.

3. If probation is revoked, the probationer shall serve the sentence originally imposed.

Q: When may probation be terminated?

A: The court may order the final discharge of the probationer upon finding that, he has fulfilled the terms and conditions of probation.

Q: What are the effects of the termination of probation?

A:

1. Case is deemed terminated.
2. Restoration of all civil rights lost or suspended.
3. Fully discharges liability for any fine imposed.

Note: Any person convicted for drug trafficking or pushing under RA 9165, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.*(Sec. 24, RA 9165)*

Note: Probation is not coterminous with its period. The mere expiration of the period for probation does not, ipso facto, terminate the probation. There must be an order issued by the court discharging the probationer. If the accused violates the condition of the probation before the issuance of said order or court, the probation may be revoked by the Court.

Q: Efren, a bus driver, was charged with reckless imprudence resulting in homicide for the death of John. The trial court convicted Efren of the crime charged. Efren applied for probation which was given due course by the trial court. Thereafter,

Efren filed an appeal regarding the award of damages. The trial court denied to give due course to the notice of appeal because it has already granted probation and that such is deemed as a waiver of the right of the accused to appeal. May the accused file an appeal regarding the award of damages notwithstanding the grant of probation?

A: Yes, although the appeal in this case involved only the civil aspect of the trial court's judgment. It is significant to note that the civil liability of the accused is not part of the penalty for the crime committed. It is personal to the victim. The probation law provides only for the suspension of the sentence imposed on the accused by virtue of his application for probation. It has absolutely no bearing on civil liability. Although the execution of sentence is suspended by the grant of probation, it does not follow that the civil liability of the offender, if any, is extinguished. *(Salvan v. People, G.R. No. 153845, Sept. 11, 2003)*

2. Juvenile Justice and Welfare Act of 2006 (R.A. 9344)

Q: What is the meaning of "*a child in conflict with the law*"?

A: It refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

Note: The child in conflict with the law shall enjoy the presumption of minority. He/she shall enjoy all the rights of a child in conflict with the law until he/she is proven to be 18 years old or older.

Q: What is the minimum age of criminal responsibility?

A:

AGE BRACKET	CRIMINAL LIABILITY	TREATMENT
15 years old or below	Exempt	The child shall be subjected to an intervention program
Above 15 but below 18, who acted *without* discernment	Exempt	The child shall be subjected to an intervention program
Above 15 but below 18, who acted *with* discernment	Not exempt	Such child shall be subjected to the appropriate proceedings in accordance with R.A. 9344

Note: The exemption from criminal liability herein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws

Q: What is juvenile justice and welfare system?

A: Juvenile Justice and Welfare System" refers to a system dealing with children at risk and children in conflict with the law, which provides child-appropriate proceedings, including programs and services for prevention, diversion, rehabilitation, re-integration and aftercare to ensure their normal growth and development. *(Sec. 4, RA 9344)*

EFFECTS OF THE ATTENDING MITIGATING AND/OR AGGRAVATING CIRCUMSTANCES AND OF HABITUAL DELINQUENCY (Art. 62)

Q: Who shall be considered as a habitual delinquent?

A: For the purpose of this article, a person shall be deemed to be habitual delinquent, if with in a period of ten 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 said crimes a third time or oftener.

Q: What are the effects of aggravating circumstance, mitigating circumstance and habitual delinquency?

A:

1. *Aggravating circumstances (generic and specific)* – increases the penalty, without however, exceeding the maximum provided by law

2. *Mitigating circumstances* – diminishes the penalty

3. *Habitual delinquency* – increases the penalty because of multiple convictions in certain specific crimes or recidivism, which is generally implied in habitual delinquency and imposes an additional penalty

Q: What are the rules on aggravating and mitigating circumstances?

A:

1. Aggravating circumstances that are not taken into account to increase the penalty are those which:

a. In themselves constitute a crime specially punished by law; or
b. Are included by the law in defining a crime and prescribing the penalty therefore; or
c. Are inherent in the crime.

2. Aggravating or mitigating circumstances that serve to aggravate or mitigate the liability of the offenders to whom such circumstances are attendant are which arise from:
   a. The moral attributes of the offender; or
   b. From his private relations with the offended party; or
   c. From any other personal cause.

3. Circumstances that 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 are those which consist:
   a. In the material execution of the act; or
   b. In the means employed to accomplish it.

Q: What are the requisites of habitual delinquency?

A:

1. Offender had been convicted of any of the crimes of:
   a. Serious or less serious physical injuries
   b. Robbery
   c. Theft
   d. Estafa
   e. Falsification

2. After that conviction or after serving his sentence, he again committed, and, within 10 years from his release or 1st conviction, he was again convicted of any of the said crimes for the second time.

3. After 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.

Q: What are the additional penalties for habitual delinquency?

A:

1. *Upon 3rd conviction – Prision correcional* in its medium and maximum periods
2. *Upon 4th conviction – Prision mayor* in its medium and minimum periods
3. *Upon 5th or additional* conviction – *Prision mayor* in its minimum period to *Reclusion temporal* in its minimum period

Note: Total penalties not to exceed 30 years.

Total penalties refer to the penalties:

1. For the last crime of which he is found guilty;
2. Additional penalty.

Q: What are the distinctions between habitual delinquency and recidivism?

A:

HABITUAL DELIQUENCY	RECIDIVISM
As to the crimes committed	
Offender had been convicted of any of the crimes of: serious physical injuries, robbery, theft, estafa, or falsification.	Sufficient that accused on the date of trial shall have been previously convicted by final judgment of another crime embraced in the same title of RPC.
As to period of time the crimes are committed	
Offender found guilty of any of the crimes within 10 years from his last release or last conviction.	No period of time between the former conviction and the last conviction.
As to number of crimes committed	
3rd conviction or oftener.	2nd conviction is sufficient.
As to effects	
An additional penalty is imposed	If not offset by mitigating circumstances, serves to increase the penalty only to the maximum

Q: Juan de Castro already had three (3) previous convictions by final judgment for theft when he was found guilty of Robbery with Homicide. In the last case, the trial judge considered against the accused both recidivism and habitual delinquency. The accused appealed and contended that in this last conviction, the trial court cannot consider against him a finding of

recidivism and, again, of habitual delinquency. Is the appeal meritorious? Explain.

A: No, the appeal is not meritorious. Recidivism and habitual delinquency are correctly considered in this case because the basis of recidivism is different from habitual delinquency.

Juan is a recidivist because ha had been previously convicted by final judgment for theft and again found guilty for robbery with homicide, which are both crimes against property, embraced under the same Title (Title Ten, Book Two) of the Revised Penal Code. The implication is that he is specializing in the commission of crimes against property, hence aggravating in the conviction for robbery with homicide.

Habitual delinquency, which brings about an additional penalty when an offender is convicted a third time or more for specified crimes, is correctly considered because Juan had already three (3) previous convictions by final judgment for theft and again convicted for robbery with homicide. And the crimes specified as basis for habitual delinquency includes, inter alia, theft and robbery. **(2001 Bar Question)**

Q: A was charged with homicide. During the trial, uncontradicted evidence consisting of medical certificates were presented showing that the accused had sustained injuries in ten (10) previous occasions while engaged in fisticuffs with different persons. He was also confined at the National Mental Hospital for mental ailment diagnosed as "homicidal and suicidal instincts". During his second confinement thereat, he escaped. Upon conviction, the prosecutor objected to the application of the Indeterminate Sentence Law contending that the accused is a habitual delinquent and an escapee from the National Mental Hospital. If you are the Judge, rule on the objection.

A: The objection should be overruled. A could not be legally considered a habitual delinquent. Habitual delinquency cannot be validly invoked without being alleged in the information and proven during trial. Besides there is no indication that A was convicted within ten (10) years from last conviction or release, three times, or oftener of the crimes of robbery, theft, estafa, physical injuries, or falsification. Being an escapee from a mental hospital will not disqualify him from the application of the ISL as Section 2 thereof contemplates having escaped from confinement or evaded sentence. Confinement presupposes imprisonment by virtue of final judgment. **(1991 Bar Question)**

VI. MODIFICATION AND EXTINCTION OF CRIMINAL LIABILITY

Q: How is criminal liability extinguished?

A: Criminal liability may be extinguished either, totally or partially.

Q: What are circumstances which totally extinguish criminal liability?

A:

1. Death of the convict as to personal penalties; and as to pecuniary penalties, liability thereto is extinguished only when death of the offender occurs before final judgment

   Note: Extinguishment of criminal liability is a ground for motion to quash.

   The death of the offended party however does not extinguish criminal liability of the accused because it is a crime against the State.

2. Service of sentence
3. Amnesty which completely extinguished the penalty and all its effects
4. Absolute pardon
5. Prescription of the crime
6. Prescription of the penalty
7. Marriage of the offended woman as in the crimes of rape, abduction, seduction and acts of lasciviousness

Q: What are circumstances which totally extinguish criminal liability?

A:

1. Conditional pardon
2. Commutation of sentence
3. For good conduct allowances which the culprit may earn while he is serving sentence
4. Parole
5. Probation

Q: What is the effect of offender's death?

A:

1. *If before final judgment* – his death extinguishes both his criminal and civil liabilities.

2. *If while the case is on appeal* – case on appeal will be dismissed. Offended party may file a separate civil action under the Civil Code if any other basis for recovery of civil liability exists as provided under Art. 1157 Civil Code.

Note: However, civil liability arising from sources other than the crime committed survives and may be pursued in a separate civil action. *(People v. Bayotas, G.R. no. 152007, Sept. 2, 1994)*

A. PRESCRIPTION OF CRIMES UNDER THE RPC (Art. 90)

Q. What is prescription of crimes?

A: Prescription of crimes is the forfeiture or loss of the right of the State to prosecute the offender after the lapse of certain time.

GR: Prescription of the crime begins on the day the crime was committed.

XPN: When the crime was concealed, prescription would only commence from the time the offended party or the government learns of the commission.

CRIMES	PRESCRIPTION
Crimes punishable by death, *Reclusion perpetua, Reclusion temporal*	20 years
Crimes punishable by other afflictive penalties	15 years
Crimes punishable by other correctional penalties	10 years, except those punishable by *arresto mayor* wherein the prescriptive period is 5 years.
Libel or other similar offenses	1 year
Oral defamation and slander by deed	6 months
Light offenses	2 months

Note: In computing the period, the first day is excluded and the last day included. Period is subject to leap years.

Prescription does not take away the court's jurisdiction but only absolves the defendant and acquits him.

When fine is imposed as an alternative penalty to imprisonment, and the fine constitutes a higher penalty than the penalty of imprisonment, the basis of the prescriptive period is the fine.

Q: What is the rule where the last day of prescriptive period falls on a Sunday or legal holiday?

A: Where the last day of the prescriptive period for filing an information falls on a Sunday or legal holiday, the information could no longer be filed on the next day as the crime has already prescribed.

Q: What will be the basis of computation if the penalty is a compound one?

A: The highest penalty is the basis of the application of the rules contained herein.

Q: Suppose, in 1980, A commits a crime, then goes into hiding, he resurfaces 20 years later, and the government finds a witness, can they institute a case?

A: No. However, if the accused left for the United States, yes, he can be prosecuted still.

The mere filing of a complaint with: 1. Chief of Police; 2. office of the NBI; or 3. Office of the Provincial Director of PNP does not interrupt the prescriptive period.

Ratio: They do not constitute the court. They are neither part of the judiciary nor part of the courts of justice.

Q: What is the effect if the accused fails to move to quash before pleading?

A: The accused is deemed to have waived all objections, except if the grounds are:

1. Facts charged do not constitute an offense
2. Court has no jurisdiction
3. Criminal action or liability has been extinguished
4. The averments, if true, would constitute a legal excuse or justification *(Sec.9, Rule 117, Rules of Court)*

PRESCRIPTION OF OFFENSES PUNISHABLE UNDER SPECIAL LAWS AND MUNICIPAL ORDINANCES

IMPOSABLE PENALTY	PRESCRIPTION
Imprisonment of six (6) years or more	12 years
Imprisonment of two years but less than six years	8 years
Offenses under the NIRC	5 years
Imprisonment of over one month but less than two years	4 years
Fine or imprisonment of not over one month or both	1 year
Violations of municipal ordinances	2 months

Q: What are the rules in computation of prescription of offenses?

A:

1. Period of prescription commences to run from the day the crime is discovered by the offended party, the authorities or their agents.
2. It is interrupted by the filing of the complaint or information.
3. It runs again when such proceedings terminate without the accused being convicted or acquitted or are unjustifiably stopped for any reason not immutable to him.
4. It shall not run when offender is absent from the Philippines.

Note: If dismissal is final, accused can no longer be prosecuted even if still within the prescriptive period, on the ground of double jeopardy.

The filing of the complaint or information in court for preliminary investigation interrupts the running of the prescriptive period.

The term "proceedings" should now be understood either executive or judicial in character: executive when it involves the investigation phase and judicial when it refers to the trial and judgment stage. With this clarification, any kind of investigative proceeding instituted against the guilty person which may ultimately lead to his prosecution should be sufficient to toll prescription. *(Panaguiton, Jr. v. DOJ, GR 167571, Nov. 25, 2008)*

B. PRESCRIPTION OF PENALTIES

Q: What is prescription of penalties?

A: Prescription of penalties is the loss or forfeiture of the right of the government to execute the final sentence after the lapse of certain time.

Q: When will the prescriptive period commence to run?

A: Prescriptive period of penalties will only commence to run from the moment the convict evades the service of sentence. *(Art. 91)*

Q. When will such period be interrupted?

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ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

A: It is interrupted when the convict;

1. Gives himself up
2. Is captured
3. Goes to a foreign country with which the Philippines has no extradition treaty; or
4. Commits any crime before the expiration of the period of prescription

Q: What are the situations which do not follow Art. 91?

A:

1. *Continuing crimes* – prescriptive period will start to run only at the termination of the intended result).

2. *In crimes against false testimony* – prescriptive period is reckoned from the day a final judgment is rendered and not at the time when the false testimony was made).

3. *Election offense* –
   a. If discovery of the offense is incidental to judicial proceedings, prescription begins when such proceeding terminates; or
   b. From the date of commission of the offense.

Q: What is the effect of filing an amended complaint or information upon period of prescription?

A: If the amendment charges a different crime, the date of amended complaint or information should be considered. If it is merely a correction of a defect, the date of the original complaint or information should be considered.

IMPOSABLE PENALTY	PRESCRIPTION
Death, *reclusion perpetua, reclusion temporal*	20 years
Other afflictive penalties	15 years
Correctional penalties except *arresto mayor*	10 years
Light penalties	1 year

Q: What are the distinctions between prescription of crimes and prescription of penalties?

A:

PRESCRIPTION OF CRIMES	PRESCRIPTION OF PENALTIES
Loss or forfeiture of the State to prosecute.	Loss of forfeiture of the State to enforce judgment
Starts counting upon discovery of the commission of the crime	Starts counting upon the escape or evasion of service of sentence
Mere absence from the Philippines interrupts the running of the prescription	Absence from the Philippines interrupts the period only when he goes to a foreign country without extradition treaty with us.
Commission of another crime before the expiration of the period does not interrupt prescription.	Commission of another crime before expiration of the period interrupts the prescription.

Q: One fateful night in January 1990, while 5-year old Albert was urinating at the back of their house, he heard a strange noise coming from the kitchen of their neighbor and playmate, Ara. When he peeped inside, he saw Mina, Ara's stepmother, very angry and strangling the 5-year old Ara to death. Albert saw Mina carry the dead body of Ara, place it inside the trunk of the car and drive away. The dead body of Ara was never found. Mina spread the news in the neighborhood that Ara went to live with her grandparents in Ormoc City. For fear of his life, Albert did not tell anyone, even his parents and relatives, about what he witnessed. Twenty and a half (20 & ½) years after the incident, and right after his graduation in Criminology, Albert reported the crime to NBI authorities. The crime of homicide prescribes in 20 years. Can the state still prosecute Mina for the death of Ara despite the lapse of 20 and 1/2 years? Explain.

A: Yes, the State can still prosecute Mina for the death of Ara despite the lapse of 20 and ½ years. Under Article 91, RFC, the period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents. In this case at bar, the commission of the crime was known only to Albert, who was not the offended party nor an authority or an agent of an authority. It was discovered by the NBI authorities only when Albert revealed to them the commission of the crime. Hence, the period of prescription of 20 years for homicide commenced to run only from the time Albert revealed the same to the NBI authorities. **(2000 Bar Question)**

ALLOWANCE FOR GOOD CONDUCT (Art. 97)

IMPRISONMENT	DEDUCTION
First 2 years	5 days for each month of good behavior
3-5 years	8 days for each month of

	good behavior
6-10 years	10 days for each month of good behavior
11 and so on years	15 days for each month of good behavior

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BOOK II

I. CRIMES AGAINST NATIONAL SECURITY (114-123)

Q: What are the crimes against National Security?

A:

1. Treason *(Art.114)*
2. Conspiracy and proposal to commit treason *(Art.115)*
3. Misprision of Treason *(Art.116)*
4. Espionage *(Art.117)*
5. Inciting to war and giving motives for reprisal *(Art.118)*
6. Violation of Neutrality *(Art.119)*
7. Correspondence with hostile country *(Art.120)*
8. Flight to enemy country *(Art.121)*

Q: What are the crimes against the law of nations?

A:

1. Piracy and mutiny *(Art.122)*
2. Qualified Piracy and Mutiny

Q: Where can the crimes against the law of nations be tried?

A: It may be punished anywhere because they are considered crimes against the family of nations.

Q: When can the crime against national security be committed?

A: **GR**: All crimes against national security can only be committed in times of war.

XPN:

1. Espionage
2. Inciting to war or giving motives for reprisal
3. Violation of neutrality
4. Mutiny and piracy. *(Boado 2008 p.366)*

Chapter One: Crimes Against National Security (Art. 114-123)

TREASON (Art. 114)

Q: What is the crime of treason?

A: It is a breach of allegiance to a government, committed by a person who owes allegiance to it.

Q: What is allegiance?

A: It is the obligation of fidelity and obedience, which one owes to the government under which he lives, in return for the protection he receives.

Q: What are the elements of treason?

A:

1. Offender is a Filipino citizen or an alien residing in the Philippines.
2. There is a war in which the Philippines is involved.

Note: Formal declaration of the existence of a state of war is not necessary.

3. Offender either –
   a. Levies war against the government, or
   b. Adheres to the enemies by giving them aid and comfort.

Note: Treason is a war crime. It can only be committed in times of war. There must be actual hostilities.

Q: What are the two modes of committing treason?

A:

1. Levying war against the government, or
2. Adhering to the enemies, giving them aid and comfort.

Note: Emotional or intellectual sympathy to the enemy, without giving the enemy aid or comfort, is not treason.

Giving information to *(People v. Paar, 86 Phil. 864)* or commandeering foodstuffs *(People v. Mangahas, 93 Phil. 118)* for enemy is evidence of both adherence and aid or comfort.

Q: Who are the persons that may be liable for the crime of treason?

A: Filipino citizens and resident aliens can be liable for treason. A citizen owes permanent allegiance while a resident alien owes temporary allegiance to the government.

Q: Can treason be committed outside the Philippines?

A: It depends.

1. If the offender is a *Filipino citizen*, he can commit this crime even if he is outside the Philippines.
2. Treason by an *alien* must be committed in the Philippines *(EO 44)* except in case of conspiracy.

Q: Is there a crime of treason thru negligence?

A: There is no treason thru negligence. The overt act of giving aid or comfort to the enemy must be intentional.

Note: Mere acceptance of public office and discharge of official duties under the enemy do not constitute per se the felony of treason, except when the position is policy-determining.

Q: What are the elements of levying of war?

A:

1. There must be an actual assembling of men
2. For the purpose of executing a treasonable design by force

Note: Levying of war must be in collaboration with a foreign enemy.

Q: What is the meaning of *adherence to the enemy*?

A: Adherence to the enemy means that the citizen intellectually or emotionally favors the enemies and harbors sympathies or convictions disloyal to his country's policy or interest. It means that there is intent to betray.

Note: Adherence alone without aid and comfort does not constitute treason, although it may be inferred from the acts committed.

Q: X sold alum crystals and water pipes to the enemy. Is treason committed?

A: The sale of said articles does not *per se* constitute treason, because the said materials are not exclusively for war purposes and their sale does not necessarily carry an intention on the part of the vendor to adhere to the enemy. *(People v. Agoncillo 80 Phil. 33)*

Q: How may adherence be proved?

A: Adherence may be proved:

1. By one witness,
2. From the nature of the act itself, or
3. From the circumstances surrounding the act.

Q: What is the meaning of *aid and comfort*?

A: It means any 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 to resist or to attack the enemies of the government.

Q: What is the extent of aid or comfort?

A: It must be a deed or physical activity and it must be intentional.

Note: A mere expression of opinion does not constitute an act of treason.

Q: What are the ways of proving treason?

A:

1. *Two-witness rule* – The testimony of two witnesses is required to prove the same overt act of giving aid or comfort.

   Note: The testimonies must refer to the same act, place and moment of time.

   If the overt act is separable, two witnesses must also testify to each part of the overt act.

Q: A testified that he saw X going to the house of C in search of the latter's revolver. B testified that when C went to the garrison, X required C to produce his revolver. Is the two-witness rule complied with?

A: No. Although both acts may logically be presumed to have answered the same purpose, that of confiscating C's revolver, the singleness of the purpose is NOT enough to make one of two acts.

Q: One witness said he heard a gun report, and saw a smoking gun in the hand of the accused and saw the victim fall. Another witness, who was deaf, said he saw the accused raise and point the gun and saw a puff of smoke from it. Is the two-witness rule complied with?

A: Yes. Although the testimonies are not identical, the testimonies of both would certainly be to the same overt act. *(Hauft v. United States)*

2. *Confession* of the accused in open court.

Note: The confession means pleading guilty in open court that is before the judge while actually hearing the case. Extrajudicial confession or confession made before the investigators is not sufficient to convict a person of treason.

Q: Is suspended allegiance a defense in treason?

A: No, because sovereignty is not suspended in times of war. What is suspended is only the exercise thereof. Hence, the allegiance of a citizen is not abrogated by the enemy occupation.

Note: Duress or controllable fear and obedience to the *de facto* government are defenses for treason.

Q: X furnished women to the enemy. Does the act constitute treason?

A: Commandeering of women to satisfy the lust of the enemies or to enliven the entertainment held in their honor was NOT treason even though the women and the entertainments helped to make life more pleasant for the enemies. *(People v. Perez, 83 Phil.)*

Q: X is a spy and an informer of the enemy. Can X be held liable for treason?

A: Yes, because such acts strengthen the enemy in the conduct of war.

Q: When common crimes (*e.g.* murder, robbery, arson) are committed in the furtherance of the crime of treason, can they be considered crimes separate from treason?

A: No, because there is no complex crime of treason with murder. The common crimes committed in furtherance of treason are the overt acts of aid and comfort and are therefore inseparable from treason itself. Neither are they considered separate offenses.

Q: Is treason a continuing offense?

A: Yes. It can be committed by a single act or by series of acts. It can be committed in one single or different time. In treason, there is only one criminal intent. A person who commits treason is not criminally responsible for as many crimes of treason as the overt acts as he has intentionally committed to give aid to the enemy.

Note: The offender can still be prosecuted even after war.

Q: What are the circumstances inherent in the crime of treason?

A: Treachery, abuse of superior strength and evident premeditation are inherent in the crime of treason, therefore, not aggravating.

Q: Does the crime of treason admit stages?

A: No, mere attempt consummates the crime of treason.

Q: How is treason distinguished from sedition?

A:

TREASON	SEDITION
Violation by a subject of his allegiance to his sovereign or country.	Raising of commotions or disturbances in a state
Requires a state of war with another country.	Conflict is merely internal

Q: How is treason distinguished from rebellion?

A:

TREASON	REBELLION
The purpose of levying war is to help the enemy.	The purpose is merely to substitute the government with the rebels' own form of government

CONSPIRACY AND PROPOSAL TO COMMIT TREASON (Art. 115)

Q: What are the elements of *conspiracy* to commit treason?

A:

1. In time of war
2. Two or more persons come to an agreement to:
   a. Levy war against the government, or
   b. Adhere to enemies and to give them aid or comfort
3. They decide to commit it

Q: What are the elements of *proposal* to commit treason?

A:

1. In time of war
2. A person who has decided to levy war against the government, or to adhere to the enemies and give them aid and comfort.
3. Proposes its execution to some other person or persons.

Note: As a general rule, conspiracy and proposal to commit a felony is not punishable *(Art. 8).* Article 115 is an exception, as it specifically penalizes conspiracy and proposal to commit treason.

Q: Why are conspiracy and proposal to commit treason punishable?

A: In treason, the very existence of the State is in jeopardy.

Note: Two-witness rule does not apply because this is a separate and distinct offense from that of treason.

Q: If actual acts of treason are committed after the conspiracy or after the proposal is accepted, what crime is committed?

A: The crime of treason is already consummated the moment the proposal or conspiracy to commit treason is accepted. The conspiracy or proposal is then considered merely as means in the commission thereof.

MISPRISION OF TREASON (Art. 116)

Q: What are the elements of misprision of treason?

A:

1. Offender must be owing allegiance to the government of the Philippines
2. Offender is not a foreigner
3. He has knowledge of any conspiracy to commit treason against the said government

Q: X, a Filipino citizen, has knowledge of treason committed by someone and does not report its commission to the proper authorities. Can he be held liable for Misprision of Treason?

A: No. Art. 116 does not apply when the crime of treason is already committed. This is so because Art. 116 speaks of "knowledge of any *conspiracy against*" the Government of the Philippines, not knowledge of treason actually committed by another.

4. He conceals or fails to disclose and make known the same as soon as possible to the:
   a. Governor
   b. Fiscal of the province
   c. Mayor or fiscal of the city in which he resides.

Note: Art. 116 is an exception to the rule that mere silence does not make a person criminally liable. It is a crime of omission.

Q: How is the offender punished?

A: Offender is punished as a principal in the crime of misprision of treason.

Q: What does the phrase *"shall be punished as an accessory to the crime of treason"* mean?

A: The phrase does not mean that the offender is legally speaking, an accessory to the crime of treason, because he is already a principal in the crime of misprision of treason. It simply means that the penalty imposed is that of an accessory to the crime of treason.

Note: Relatives, who as accessories are exempt from criminal liability under Art. 20, are punishable under this article assuming that Art. 20 is applicable, because:

1. This article is of special application, whereas Art. 20 of general application
2. Security of State is more paramount than mere relationship and
3. The offender commits the distinct crime of misprision of treason which is separate and distinct from treason.

Q: When the crime of treason is already committed and the accused does not report its commission to the proper authorities, is he liable for misprision of treason?

A: No, because treason is already committed. Misprision of treason contemplates the failure of a citizen to report any such conspiracy to commit treason.

ESPIONAGE (Art. 117)

Q: What is the crime of espionage?

A: *Espionage* is the offense of gathering, transmitting, or losing information respecting the national defense with intent, or there is reason to believe that information is to be used to the injury of the Republic of the Philippines or to the advantage of any foreign nation.

Note: Espionage is not conditioned on citizenship of the offender.

Q: What are the two modes of committing espionage?

A:

1. *First mode:* By entering, without authority, a warship, fort or military or naval establishments or reservation to obtain any information, plans or other data of confidential nature relative to the defense of the Philippines.

2. *Second mode:* By disclosing to the representative of a foreign nation the contents of the articles data or information referred to in par. No. 1 of

117 which he had in his possession by reason of the public office he holds.

Note: Being a public officer is a requirement in the second mode, while it is only aggravating in the first.

Q: What are the elements of the *first mode* of committing espionage?

A:

1. That the offender (a Filipino or a resident agent) enters any of the places mentioned therein

   Note: Under the first mode the offender is *any* person, whether a citizen or a foreigner, a private individual or a public officer.

2. That he has no authority therefore
3. That his purpose is to obtain information, plans, photographs or other data relative to the defense of the Philippines.

Q: What are the elements of the *second mode* of committing espionage?

A:

1. That the offender is a public officer;
2. That he has in possession the articles, data or information referred in paragraph 1 of Art. 117, by reason of the public office he holds;
3. That he discloses their contents to a representative of a foreign nation.

Q: Under the *first mode* of committing espionage, is it necessary that the offender succeeds in obtaining the information?

A: No. It suffices that the offender entered the places mentioned without authority for the purpose of obtaining information relevant to national security.

Q: Is wiretapping a form of espionage?

A: It depends on the purpose of the information obtained. If the purpose has nothing to do with the country's defense or national security, wiretapping is not espionage.

Q: Is it necessary that the country is at war for the crime of espionage to be committed?

A: No, espionage can be committed in times of peace or war.

Q: What are the acts of espionage punished under Commonwealth Act 616 (An Act to Punish Espionage and Other Offenses against the National Security)?

A:

1. Unlawful obtaining of information relative to the defense of the Philippines or to the advantage of any foreign nation
2. Unlawful disclosing of information relative to the defense of the Philippines
3. Disloyal acts in time of peace
4. Disloyal acts in time of war
5. Conspiracy to violate any of the said acts;
6. Harboring or concealing violators of the law
7. Photographing from aircraft of vital military information

Q: What are the distinctions between espionage and treason?

A:

ESPIONAGE	TREASON
May be committed both in time of peace and in time of war.	Committed only in time of war
May be committed in many ways.	Is limited in two ways of committing the crime: levying war and adhering to the enemy giving him aid and comfort.
Both are crimes not conditioned by the citizenship of the offender.	

INCITING TO WAR OR GIVING MOTIVES FOR REPRISAL (Art. 118)

Q: What are the elements of this crime?

A:

1. Offender performs unlawful or unauthorized acts
2. Such acts provoke or give occasion for a war involving or liable to involve the Philippines or expose the Filipino citizens to reprisals on their persons and property

Q: What is reprisal?

A: It is any kind of forcible or coercive measure whereby one State seeks to exercise a deterrent effect or to obtain redress or satisfaction, directly or indirectly, for consequences of the illegal acts of another State which has refused to make amends for such illegal conduct.

Note: Reprisal is resorted to for the purpose of settling a dispute or redressing a grievance without going to war.

Intention of the offender is immaterial.

It is committed in time of peace.

In inciting to war, the offender is any person. If the offender is a public officer, the penalty is higher.

Q: What is the extent of reprisals?

A: Reprisals are not limited to military action. It could be economic reprisals or denial of entry into their country. *E.g*. X burns a Singaporean flag. If Singapore bans the entry of Filipinos, that is reprisal.

VIOLATION OF NEUTRALITY (Art. 119)

Q: What are the elements of this crime?

A:

1. There is a war in which the Philippines is not involved
2. A regulation is issued by a competent authority to enforce neutrality
3. Offender violates such regulation.

Note: Committed only *in times of war* and neutrality of the Philippines is violated

Q: What is neutrality?

A: *Neutrality* is a condition of a nation that, in times of war, takes no part in the dispute but continues peaceful dealings with the belligerents.

Note: It is a status created under international law, by means of a stand on the part of a State not to side with any of the parties at war.

Q: Who has the authority to issue a regulation for the enforcement of neutrality?

A: The regulation must be issued by competent authority like the President of the Philippines or the Chief of Staff of the Armed Forces of the Philippines, during a war between different countries in which the Philippines is not taking sides.

CORRESPONDENCE WITH HOSTILE COUNTRY (Art. 120)

Q: What are the elements of this crime?

A:

1. There is war in which the Philippines is involved
2. Offender makes correspondence with the enemy country or territory occupied by enemy troops
3. Correspondence is either –
   a. Prohibited by the Government
   b. Carried on in ciphers or conventional signs
   c. Containing notice or information which might be useful to the enemy or intended by the offender to aid the enemy

Q: What is correspondence?

A: It is communication by means of letters or it may refer to the letters which pass between those who have friendly or business relations.

Q: What does correspondence to hostile country contemplate?

A: It contemplates correspondence to officials of the enemy country, not correspondence with private individuals in the enemy country.

Note: Even if the correspondence contains innocent matters, if the correspondence is prohibited by the government, it is punishable because of the possibility that the information useful to the enemy might be revealed unwittingly.

Q: What are ciphers?

A: Secret message or code.

Note: If ciphers were used, there is no need for prohibition by the Government to consummate the crime. If ciphers were not used, there is need for prohibition.

Q: What are the circumstances qualifying the crime of correspondence to hostile country?

A: That the:

1. Notice or information might be useful to the enemy
2. Offender intended to aid the enemy.

Note: Both must concur.

Q: X, with intent to aid the enemy, gave the latter notice and information. Is he liable under Art.120?

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

A: If the offender intended to aid the enemy by giving such notice or information, the crime amounts to treason. *(Reyes 2008 p.31)*

FLIGHT TO ENEMY'S COUNTRY (Art. 121)

Q: What are the elements of this crime?

A:

1. Existence of war in which the Philippines is involved
2. Offender owes allegiance to the Philippines
3. Offender attempts to flee or go to the enemy country
4. Going to enemy country is prohibited by competent authority

Q: Who can be held liable under Art. 121?

A: The offender may be Filipino citizens or resident aliens because Art. 121 contemplates both permanent and temporary allegiance. An alien resident may be held guilty for this crime because he owes allegiance to the Philippines.

Note: Mere attempt to flee to enemy country when prohibited by competent consummates the felony.

There must be prohibition by competent authority. If there is none, even if one went to an enemy country, there is no crime.

PIRACY IN GENERAL AND MUTINY ON THE HIGH SEAS (Art. 122)

Q: What is piracy?

A: Piracy is robbery or depredation in the high seas, without lawful authority and done with *animo furandi* (with intent to steal) and in the spirit and intention of universal hostility.

Q: In general, what is the nature of the crime of piracy?

A: Piracy is a crime against all mankind. Pirates are in law, *hostis humani generis.*

Q: What are the modes of committing piracy?

A:

1. *First mode:* By attacking or seizing a vessel on the high seas or in Philippine waters; or
2. *Second mode:* By seizing the whole or part of the cargo or equipment of the vessel while on the high seas or the personal belongings of its complements or passengers.

Q: What are the elements of piracy?

A:

1. Vessel is on high seas or in Philippine waters
2. Offenders are not members of its complement or passengers of the vessel,
3. Offenders –
   a. Attack that vessel, or
   b. Seize the whole or part of the cargo of said vessel, its equipment or personal belongings of its complement or passengers.

Q: What is the meaning of high seas?

A: *High seas* mean 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 government, parts of the sea that are not included in the exclusive zone, in the territorial seas, or in the internal waters of a state, or in the archipelagic waters of an archipelagic state. *(UNCLOS)*

Q: Under the law, what does "Philippine seas" refer to?

A: *Philippine seas* shall refer to all bodies of water, such as but not limited to seas, gulf, 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 Philippines by historic or legal title, including territorial sea, the sea-bed, insular shelves, and other submarine areas over which the Philippines has sovereignty and jurisdiction. *(Sec. 2, P.D. 532)*

Q: What are the kinds of piracy under Art. 122, as amended by R.A. 7659?

A: Piracy in high seas and piracy in Philippine waters.

Q: Which court has jurisdiction over piracy committed in the high seas?

A: Jurisdiction is with any court where offenders are found or arrested. The jurisdiction of piracy, unlike all other crimes, has no territorial limit.

Q: Which court has jurisdiction over piracy committed in Philippine waters?

A: Jurisdiction is vested with Philippine courts.

Q: If piracy was committed outside the Philippine waters, will the Philippine courts have jurisdiction over the offense?

A: Yes, for piracy falls under Title I Book 2 of the Revised Penal Code. As such, it is an exception to the rule on territoriality in criminal law. The same principle applies even if the offenders were charged, not with a violation of qualified piracy under the Code but under a special law, P.D. 532 which penalizes piracy in Philippine waters. *(People v. Catantan, 278 SCRA 761 [1997])*

Q: How is piracy distinguished from robbery on the high seas?

A:

PIRACY	ROBBERY ON THE HIGH SEAS
The offender is an outsider.	The offender is a member of the complement or a passenger of the vessel.

Q: What is mutiny?

A: It is the unlawful resistance to a superior officer or the raising of commotions and disturbances on board a ship against the authority of its commander.

Q: Distinguish piracy from mutiny.

A:

PIRACY	MUTINY
Offenders are strangers to the vessel. Hence, offenders are neither passengers nor crew members.	Offenders are members of the complement or the passengers of the vessel.
Intent to gain is an element of piracy.	Intent to gain is immaterial. The offenders may only intend to ignore the ship's officer or they may be prompted by a desire to commit plunder.
Attack from the outside.	Attack from the inside.

QUALIFIED PIRACY (Art. 123)

Q: What are the special qualifying circumstances under Art. 123?

A:

1. Seizure of the vessel by boarding or firing upon the same
2. Abandonment of the victims without any means of saving themselves
3. When the crime is accompanied by murder, homicide, physical injuries or rape.

Note: Qualified piracy has been categorized as a heinous crime.

Q: Is there a crime of qualified mutiny?

A: Yes, although Art. 123 merely refers to qualified piracy, there is also a crime of qualified mutiny. Mutiny is qualified under the following circumstances:

1. When the offenders abandoned the victims without means of saving themselves;
2. When mutiny is accompanied by rape, murder, homicide or physical injuries.

Note: The first circumstance which qualifies piracy does not apply to mutiny that is seizure of the vessel by boarding or firing upon the same.

Q: When piracy is committed and accompanied by murder, homicide, physical injuries and rape, can these crimes be complexed with piracy?

A: When any of these crimes accompany piracy, there is no complex crime. Instead, there is only one crime committed – qualified piracy. Murder, rape, homicide, physical injuries are mere circumstances qualifying piracy and cannot be punished as separate crimes, nor can they be complexed with piracy.

Note: Qualified piracy is considered a special complex crime. It is punishable by *reclusion perpetua* to death regardless of the number of victims.

Offenders are not liable for the separate crimes of murder, homicide, physical injuries or rape.

A. Anti-Piracy and Anti- Highway Robbery (P.D.532)

1. Definition of terms

Q: What constitutes Philippine waters?

A: *Philippine Waters* shall refer to all bodies of water, such as but not limited to seas, gulfs, bays around, between and connecting each of the Islands of the Philippine Archipelago, irrespective of its depth, breadth, length or dimension, and all other waters belonging to the Philippines by historic

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

or legal title, including territorial sea, sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.

Q: What is a vessel?

A: It is vessel or watercraft used for transport of passengers and cargo from one place to another through Philippine waters. It shall include all kinds and types of vessels or boats used in fishing.

Q: What constitutes Philippine highway?

A: *Philippine Highway* shall refer to any road, street, passage,highway and bridges or other parts thereof or railway or railroad within the Philippines used by persons or vehicles or locomotives or trains for the movement or circulation of persons or transportation of goods, articles or property or both.

Q: What is piracy?

A: *Piracy* is any attack upon or seizure of any vessel or the taking away of the whole or part thereof or its cargo, equipment or the personal belongings of its complement or passengers, irrespective of the value thereof, by means of violence against or intimidation of persons or force upon things committed by any person including a passenger or member of the complement of said vessel, in Philippine waters, shall be considered as piracy. The offenders shall be considered as pirates and punished as hereinafter provided.

Q: What is highway robbery or brigandage?

A: *Highway Robbery/Brigandage* is the seizure of any person for ransom, extortion or other unlawful purposes or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means, committed by any person on any Philippine Highway.

2. Punishable acts

Q: What is the punishable act under P.D. 532?

A: It punishes the act of aiding or abetting piracy.

Note: Under the present law (Article 122 as amended by R.A. 7659 and P.D. 532) piracy may be committed in the Philippine waters or in the high seas by any person (outsider, passenger, or member of the complement of the vessel) *(People v. Roger Tulin, G. R. No. 111709, Aug. 30, 2001).*

Mutiny may be committed in Philippine waters or in the high seas by members of the crew or passenger.

Q: What are the elements?

A:

1. A person knowingly aids or protects pirates,
2. Acquires or receives property taken by such pirates, or in any manner derives any benefit therefrom,
3. Directly and indirectly abets the commission of the piracy.

Q: What is the distinction between Art. 122 and P.D. 532, with respect to piracy committed in Philippine waters?

A:

ART. 122	P.D. 532
Art. 122 limits the offenders to non-passengers or non-members of the crew.	No qualification as to the criminal, hence, offender may be a crew, a passenger or a stranger.

B. Anti-Hijacking Law (PD 6235)

Q: What are the punishable acts under PD 6235?

A:

1. Usurping or seizing control of an aircraft of Philippine registry while it is in flight, compelling the pilots thereof to change the course or destination of the aircraft;

2. Usurping or seizing control of an aircraft of foreign registry while within Philippine territory, compelling the pilots thereof to land in any part of the Philippine territory;

3. Carrying or loading on board an aircraft operating as a public utility passenger aircraft in the Philippines, any flammable, corrosive, explosive, or poisonous substances;

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 in accordance with the rules and regulations set and promulgated by the Air Transportation Office on this matter;

Note: *Aggravating circumstances to nos. 1 and 2:*

a. When the offender has fired upon the pilot, member of the crew, or passenger of the aircraft;

b. When the offender has exploded or attempted to explode any bomb or explosive to destroy the aircraft;
c. Whenever the crime is accompanied by murder, homicide, serious physical injuries or rape;

Q: What are the necessary requisites before the Anti-Hijacking Law or R.A. 6235 may apply?

A: The aircraft must be of Philippine registry and it must be in flight.

Q: When is an aircraft considered in flight?

A: An aircraft is considered in flight from the moment all exterior doors are closed following the embarkation until such time when the same doors are again opened for disembarkation.

Note: This means that there are passengers that boarded. The aircraft shall be deemed to be already in flight even if its engine has not yet been started.

Q: If the aircraft is of Philippine registry but it is not in flight and any of the four circumstances mentioned under R.A. 6235 is committed, what law applies?

A: The Anti-Hijacking Law will not apply and the acts will be punished accordingly under the RPC or the applicable special penal laws. 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.

Q: If the aircraft is of foreign registry, is it required that it is in flight before R.A. 6235 applies?

A: No, because aircrafts of foreign registry are considered in transit while they are in foreign countries.

Q: Is there hijacking in the attempted stage?

A: No. R.A. 6235 is a special law where the attempted stage is not punishable.

Q: In the course of the hijacking, 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-Hijacking 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 *per se* is not punished.

Q: What distinguishes crimes against the law of nations from crimes against national security?

A:

CRIMES AGAINST THE LAW OF NATIONS	CRIMES AGAINST NATIONAL SECURITY
Can be prosecuted anywhere in the world because these crimes are considered crimes against humanity.	Can be tried only in the Philippines. The acts against national security may be committed abroad and still be punishable under our law, but it cannot be tried under foreign law.

C. Human Security Act of 2007(R.A. 9372)

Q: What are the punishable acts of terrorism?

A: Any person who commits an act punishable under any of the following provisions of the:

1. RPC
   a. Piracy in General and Mutiny in the High Seas or in the Philippine Waters *(Art.122)*
   b. Rebellion or Insurrection *(Art. 134)*
   c. *Coup d'etat,* including acts committed by private person *(Art.134-a)*
   d. Murder *(Art.248)*
   e. Kidnapping and Serious Illegal Detention *(Art.267)*
   f. Crimes Involving Destruction *(Art.324)*

2. Special Penal Laws:
   a. The Law on Arson *(P.D.1613)*
   b. Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990 *(R.A.6969)*
   c. Atomic Energy Regulatory and Liability Act of 1968 *(R.A.5207)*
   d. Anti-Hijacking Law *(R.A.6235)*
   e. Anti-Piracy and Anti-Highway Robbery Law of 1974 *(P.D. 532)* and
   f. Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives *(P.D. 1866 as amended)*

Note: The acts under special laws must:

i. Sow and create a condition of widespread and extraordinary fear and panic among the populace;
ii. Coerce the government to give in to an unlawful demand. *(Sec. 3)*

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3. Persons who conspire to commit the crime of terrorism.

Q: Who are the persons liable under this act?

A:

1. *Principal* – Any person who commits any of the acts under Section 3 and 4**.**

2. *Accomplice* – any person who not being a principal under Article 17 of the RPC or a conspirator as defined under Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts.

3. *Accessory* – any person who having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism and without having participated therein either as principal or accomplice under Articles 17 and 18 of the RPC, takes part subsequent to its commission in any of the following manner:
    a. By profiting himself or assisting the offender to profit by the effects of the crime,
    b. By concealing or destroying the body of the crime or the effects or instruments thereof in order to prevent its discovery,
    c. By harboring, concealing, or assisting in the escape of the principal or conspirator of the crime.

    XPN*:* Spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters or relatives by affinity within the same degree.

    XPN to the XPN: those falling under (a).

II. CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE (124-133)

ARBITRARY DETENTION OR EXPULSION, VIOLATION OF DWELLING PROHIBITION,INTERRUPTION, AND DISSOLUTION OF PEACEFUL MEETING AND CRIMES AGAINSTRELIGIOUS WORSHIP (Arts. 124-133)

Note: All offenses in this Title are required to be committed by public officers, except offending the religious feelings.

Q: What are the classes of arbitrary detention?

A:

1. Detaining a person without legal ground
2. Delay in the delivery of detained persons to the proper authorities
3. Delaying release

ARBITRARY DETENTION (Art. 124)

Q: What are the elements of the crime of arbitrary detention?

A:

1. Offender is a public officer or employee
2. He detains a person
3. Detention is without legal grounds.

Q: When is a person considered in detention?

A: A person is detained when he is placed in confinement or there is restraint on his person.

Q: Can there be arbitrary detention even if the victims were not kept in an enclosure?

A: Yes. The prevailing jurisprudence on kidnapping and illegal detention is that the curtailment of the victim's liberty need not involve any physical restraint upon the victim's person. If the acts and actuations of the accused can produce such fear in the mind of the victim sufficient to paralyze the latter, to the extent that the victim is compelled to limit his own actions and movements in accordance with the wishes of the accused, then the victim is, for all intent and purposes, detained against his will. *(Benito Astorga v. People, G.R. No. 154130, Oct. 1, 2003)*

Q: When is detention said to be without legal grounds?

A: The detention of a person is without legal ground:

1. When he has not committed any crime or, at least, there is no reasonable ground for suspicion that he has committed a crime.

   XPN: A valid warrantless arrest (*Sec.5, Rule 113, Revised Rules of Court).*

2. When he is not suffering from violent insanity or any other ailment requiring compulsory confinement in a hospital.

Q: Is it necessary that the public officer be a police officer for him to be held liable for arbitrary detention?

A: No. It is important, however, that the public officer must be vested with the authority to detain or order the detention of persons accused of a crime such as policemen and other agents of law, judges or mayors.

Note: In arbitrary detention, the offender is a public officer whose functions have something to do with the protection of life and/or property and maintenance of peace and order. Thus, if the one, who arrests another without legal ground, is without authority to do so, like a clerk in the Office of the Central Bank Governor, arbitrary detention is not the proper charge but illegal detention.

Q: Can a *barangay* chairman be guilty of this crime?

A: Yes. He has authority, in order to maintain peace and order, to cause the arrest and detention of a person. *(Boado, 2008)*

Q: Can private individuals be held liable for arbitrary detention?

A: Yes, if they conspired with such public officers.

Q: What are the legal grounds for the detention of persons without which a public officer may be held liable?

A:

GR:

1. Commission of a crime
2. Violent insanity or other ailment requiring compulsory confinement of the patient in a hospital
3. When the person to be arrested is an escaping prisoner

XPN: When the peace officers acted in good faith even if the 3 grounds mentioned above are not obtaining, there is no arbitrary detention.

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Illustration:

2 BIR secret agents, strangers in the municipality who were spying the neighborhood of the market place and acting generally in a manner calculated to arouse the suspicion of any one not advised as to their duty, were arrested by policemen of the town. The Supreme Court held that the police officers acted in good faith and cannot be held liable for arbitrary detention. *(U.S v. Batalliones, 23 Phil. 46)*

Q: May arbitrary detention be committed through simple negligence?

A: Yes, as when a prisoner was released by a judge but the police officer believing that the order is illegal, re-arrested the prisoner and put him back in jail.

Note: In arbitrary detention, the law does not fix any minimum period of detention.

The penalty for arbitrary detention depends upon the period involved. A greater penalty is imposed if the period is longer.

Q: Can arbitrary detention be committed thru imprudence?

A: The crime of arbitrary detention can be committed through imprudence.

Illustration:

A police officer re-arrests a woman who had been released by means of verbal order of the judge. The police officer acted without malice, but did not verify the order of release before proceeding to make the re-arrest. He is liable for arbitrary detention through simple imprudence.

Q: What are the forms of illegal detention?

A:

1. Detaining a person without legal grounds
2. A legal ground exists but the arrest was made without a warrant, and the public officer does not deliver the arrested person to the proper judicial authority within the period of 12, 18, or 36 hours, as the case may be
3. Delaying release by competent authority with the same period mentioned in number 2.

Q: What are the distinctions between arbitrary detention and illegal detention?

A:

ARBITRARY DETENTION	ILLEGAL DETENTION
The principal offender must be a public officer.	The principal offender is a private person.
The offender who is a public officer has a duty which carries with it the authority to detain a person.	The offender, even if he is a public officer, does not include as his function the power to arrest and detain a person.

Q: If the public officer who effected the arrest has no such authority to detain a person, what crime can he be made liable for?

A: If the offender does not have the authority to detain a person or to make such arrest, the crime committed by him is illegal detention. A public officer who is acting outside the scope of his official duties is no better than a private citizen.

Q: What are the distinctions between arbitrary detention and unlawful arrest?

A:

ARBITRARY DETENTION	UNLAWFUL ARREST
The offender is a public officer possessed with authority to make arrests.	The offender may be any person.
The purpose for detaining the offended party is to deny him of his liberty.	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: The crime of unlawful arrest is, however, absorbed in the crime of arbitrary detention.

Q: X, a police officer, falsely imputes a crime against A to be able to arrest him but he appears to be not determined to file a charge against him. What crime, if any, did X commit?

A: The crime is arbitrary detention through unlawful arrest. *(Boado, 2008)*

Q: Suppose X planted evidence to effect the arrest, what crime, if any, is committed?

A: It is arbitrary detention through incriminating innocent persons.

DELAY IN THE DELIVERY OF DETAINED PERSONS TO THE PROPER JUDICIAL AUTHORITY (Art. 125)

Q: What are the elements of this crime?

A:

1. Offender is a public officer or employee
2. He has detained a person for some legal ground
3. He fails to deliver such person to the proper judicial authorities within:
   a. *12 hours* for crimes/offenses punishable by light penalties or their equivalent;
   b. *18 hours* for crimes/offenses punishable by correctional penalties or their equivalent;
   c. *36 hours* for crimes/offenses punishable by afflictive penalties or their equivalent.

Q: What are the circumstances considered in determining liability of officer detaining a person beyond legal period?

A:

1. The means of communication
2. The hour of arrest
3. Other circumstances such as the time of surrender and material possibility of the fiscal to make the investigation and file in time the necessary information.

Q: What situations are contemplated by Art. 125?

A: Art. 125 contemplates a situation where arrest was made without a warrant but there exists a legal ground for the arrest. It does not apply when the arrest is on the strength of a warrant of arrest, because in the latter case, a person arrested can be detained indefinitely until his case is decided by the court or he posts bail for his temporary release.

Q: Under Art. 125, when does the detention becomes arbitrary?

A: 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.

Q: What is meant by delivery?

A: *Delivery* means the filing of correct information or complaint with the proper judicial authorities. It does not mean physical delivery or turnover of arrested person to the court.

Q: What is meant by proper judicial authorities?

A: It refers to the courts 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.

Q: If a person is arrested pursuant to a warrant of arrest, within what period should a police officer turn over the arrested person to the judicial authority?

A: There is no time limit specified except that the return must be made within a reasonable time. The period fixed by law under Art. 125 does not apply because the arrest was made by virtue of warrant of arrest.

Q: Should the person arrested without a warrant opt to avail his right to a preliminary investigation, what must he execute?

A: Under the Revised Rules of Court, he should waive in writing his rights under Art. 125.

Note: Waiver must be under oath and with the assistance of counsel

Q: What is the length of waiver?

A:

1. *Light offense*- 5 days
2. *Serious and less serious offenses* -7 to 10 days

Q: What if the person arrested does not want to waive his rights under Art. 125?

A: The arresting officer will have to comply with Art. 125 and file the case immediately in court without preliminary investigation.

Note: The filing of the information in court beyond the specified period does not cure illegality of detention hence detaining officer is still liable for under Art. 125. Neither does it affect the legality of the confinement under process issued by the court.

Q: What is the difference between delay in the delivery of detained persons (Art. 125) and arbitrary detention (Art. 124)?

A:

DELAY IN THE DELIVERY OF DETAINED PERSONS	ARBITRARY DETENTION
The detention is legal at the	The detention is

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outset but becomes arbitrary when the detention exceeds any of the periods of time specified in Art. 125, without the person detained having been charged before the proper judicial authority.	illegal at the very inception because of the absence of lawful cause for such arrest.

DELAYING RELEASE (Art. 126)

Q: What are the punishable acts?

A:

1. Delaying the performance of 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.

Q: What are the elements of delaying release?

A:

1. Offender is a public officer or employee
2. There is a judicial executive order for the release of the 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. Service of notice of such order to the prisoner, or
   b. Performance of such judicial or executive order for the release of the prisoner, or
   c. Proceedings upon a petition for the release of such person.

Note: The prisoners could be prisoners by final judgment or detention prisoners.

Wardens and jailers are the officers most likely to violate this provision.

EXPULSION (Art. 127)

Q: What are the punishable acts?

A:

GR:

1. Expelling a person from the Philippines
2. Compelling a person to change his residence.

XPN: In cases of ejectment, expropriation or when penalty imposed is *destierro*.

Q: What are the elements of expulsion?

A:

1. Offender is a public officer or employee
2. He either:
   a. Expels any person from the Philippines
   b. Compels a person to change residence
3. Offender is not authorized to do so by law

Q: What is the essence of the crime of expulsion?

A: The essence of this crime is coercion but it is specifically termed expulsion when committed by a public officer.

Q: If any of the punishable acts under Art. 127 is committed by a private person, what crime can he be made responsible for?

A: Grave coercion

Q: X, the mayor of City of Manila wanted to make the city free from prostitution. He ordered certain prostitutes to be transferred to Davao, without observing due process. What is the crime committed by X?

A: Expulsion. *(Villaviciencio v. Lucban, G.R No. L 14639, Mar. 25, 1919)*

Q: What is the crime committed if aliens are deported without an order from the President or the Commissioner of Immigration and Deportation after due proceedings?

A: Expulsion.

Note: Only the courts by a final judgment can order a person to change his residence.

Pursuant to Sec. 69 of the Revised Administrative Code, only the President of the Philippines is vested with authority to deport aliens.

Q: What crime is committed when a Filipino who, after voluntarily leaving the country, is illegally refused re-entry by a public officer?

A: Expulsion, because it is considered a victim of being forced to change his address.

VIOLATION OF DOMICILE (Art. 128)

Q: What are the modes of committing this crime?

A:

1. *First mode:* Entering any dwelling against the will of the owner thereof

   Note: In the first mode, lack of consent would not suffice as the law requires that the offender's entry must be over the owner's objection, express or implied.

2. *Second mode:* Searching papers or other effects found therein without the previous consent of such owner

   Note: In the second mode, mere lack of consent is sufficient.

3. *Third mode:* Refusing to leave the premises after having surreptitiously entered said dwelling and after having been required to leave the same

   Note: In the third mode, what is punished is the refusal to leave, the entry having been made surreptitiously.

Q: What are the common elements?

A:

1. Offender is public officer or employee;

2. He is not authorized by judicial order to enter the dwelling and/or to make a search for papers and for other effects.

Q: How is the crime of violation of domicile committed?

A: Violation of domicile is committed by a public officer authorized to implement a search warrant or warrant of arrest but at the time of incident, he is not armed with warrant.

Q: Suppose the public officer is not authorized to execute search warrants and warrants of arrests, what crime can he be liable for?

A: Qualified trespass to dwelling *(Art. 280, RPC).*

Q: Suppose the punishable acts under Art. 128 are committed by a private person, what crime did he commit?

A: Trespass to dwelling.

Q: If a public officer searches a person outside his dwelling, not armed with a search warrant or a warrant of arrest, are the provisions of Art. 128 applicable?

A: No, because the papers and other effects mentioned in Art. 128 must be found in dwelling. The crime committed is grave coercion, if violence and intimidation are used *(Art. 286*), or unjust vexation, if there is no violence or intimidation *(Art. 287).*

Q: Are the provisions under Art. 128 applicable if the occupant of the premises is not the owner?

A: Yes, it would be sufficient if the inhabitant is lawful occupant using the premises as his dwelling, although he is not the property owner.

Q: What are the qualifying circumstances under Art. 128?

A:

1. If committed at night time

2. If any papers or effects not constituting evidence of a crime are not returned immediately after the search is made by the offender.

Q: What is the meaning of against the will of the owner?

A: It presupposes opposition or prohibition by the owner, whether express or implied, and not merely the absence of consent.

Note: If the surreptitious entry had been made through an opening not intended to that purpose, the offender would be liable under the first mode since it is entry over the implied objection of the inhabitant.

WARRANTS MALICIOUSLY OBTAINED AND ABUSE IN THE SERVICE OF THOSE LEGALLY OBTAINED (Art. 129)

Q: What are the punishable acts?

A:

1. Procuring a search warrant without just cause.

   Elements:
   a. That the offender is a public officer or employee
   b. That he procures a search warrant
   c. That there is no just cause

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2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured

   Elements:
   a. That the offender is a public officer or employee
   b. That he has legally procured a search warrant
   c. That he exceeds his authority or uses unnecessary severity in executing the same

Q: What is a search warrant?

A: It is an order in writing, issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

Note: A search warrant shall be valid for ten days from its date.

Q: What is the requisite for the issuance of search warrant?

A: A search warrant shall not issue except upon probable cause in connection with one specific offense to be determined personally by the judge after examination 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. *(Sec. 4, Rule 126, Revised Rules of Criminal Procedure)*

Q: What is the test for lack of just cause?

A: Whether the affidavit filed in support of the application for search warrant has been drawn in such a manner that perjury could be charged thereon and affiant be held liable for damages caused.

Q: What is the effect if the search warrant is secured through a false affidavit?

A: The crime punished by this article cannot be complexed but will be a separate crime from perjury, since the penalty herein provided shall be "in addition" to the penalty of perjury.

Q: When is a search warrant considered illegally obtained?

A: When a search warrant was procured without a probable cause.

SEARCHING DOMICILE WITHOUT WITNESSES (Art. 130)

Q: What are the elements of this crime?

A:

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. Owner or any member of his family, or two witnesses residing in the same locality are not present.

Note: In crimes under Art. 129 and 130, the search is made by virtue of a valid warrant, but the warrant notwithstanding, the liability for the crime is still incurred through the following situations:

1. Search warrant was irregularly obtained
2. The officer exceeded his authority under the warrant
3. When the public officer employs unnecessary or excessive severity in the implementation of the search warrant
4. Owner of dwelling or any member of the family was absent, or two witnesses residing within the same locality were not present during the search

Q: What is the order of those who must witness the search?

A:

1. Homeowner
2. Members of the family of sufficient age and discretion
3. Responsible members of the community

Q: Suppose, X, a suspected pusher lives in a condominium unit. Agents of the PDEA obtained a search warrant but the name of person in the search warrant did not tally with the address indicated therein. Eventually, X was found but in a different address. X resisted but the agents insisted on the search. Drugs were found and seized and X was prosecuted and convicted by the trial court. Is the search valid?

A: No, because the public officers are required to follow the search warrant by the latter. They have no discretion on the matter.

Q: Compare Art. 128 with Arts. 129 and 130.

A:

ART. 128	ARTS. 129 AND 130
The public officer is not armed with a warrant.	The public officer is armed with a warrant but it was maliciously obtained or even if it was issued regularly, there was abuse in the implementation thereof.

Note: The papers or other belongings must be in the dwelling of the owner at the time the search is made.

Art. 130 does not apply to searches of vehicles and other means of transportation.

PROHIBITION, INTERRUPTION AND DISSOLUTION OF PEACEFUL MEETINGS (Art. 131)

Q: What are the punishable acts?

A:

1. Prohibiting or interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same
2. Hindering any person from joining any lawful association or from attending any of its meetings
3. Prohibiting or hindering any person from addressing, either alone or together with others, any petition to the authorities for correction of abuses or redress of grievances.

Q: What are the common elements?

A:

1. Offender is a public officer
2. He performs any of the acts mentioned above

Q: To be held liable under Art. 131, is it necessary that the offender be a stranger, not a participant of a meeting that has been interrupted and dissolved?

A: Yes. If the offender is a participant of the meeting, he is liable for unjust vexation

Note: Interrupting and dissolving the meeting of municipal council by a public officer is a crime against a legislative body not punished under Art. 131, but under Art . 143 *(Acts Tending to Prevent the Meeting of the Assembly and Similar bodies)* and Art. 144 *(Disturbance of Proceedings).*

If the offender is a private individual, the crime is disturbance of public order under Art. 153.

Q: Is the right to peaceful assembly absolute?

A: The right to peaceful assembly is not absolute. It may be regulated in order that it may not be injurious to the equal enjoyment of others having equal rights, nor injurious to the right of the community or society.

Q: In requiring a permit before any meeting or assembly is held, can it be construed as preventing peaceful assemblies?

A: No, the permit requirement shall be in exercise only of the government's regulatory powers and not really to prevent peaceful assemblies. This requirement is legal as long as it is not being exercised as a prohibitory power.

Q: If the application for the permit to peaceably assemble is arbitrarily denied, what crime is committed?

A: The crime committed is prohibition to peaceably assemble in accordance with Art. 131.

Q: Suppose, the officer would not give the permit unless the meeting is held in particular place which he dictates and such place defeats the exercise of the rights to peaceably assemble, is Art. 131 violated?

A: Yes.

Note: Meeting must be peaceful and there must be no ground for prohibiting, dissolving, or interrupting that meeting.

Q: What are the tests for determining whether there is a violation of Art. 131?

A:

1. Dangerous Tendency Rule
2. Clear and Present Danger Rule

Q: What are the distinctions between Prohibition, Interruption, or Dissolution of Peaceful Meetings under Art. 131 and Tumults and other Disturbances, under Art. 153?

A:

ART. 131	ART. 153
The public officer is not a participant. As far as the gathering is concerned, the public officer is a third party.	The public officer is a participant of the assembly.

CRIMINAL LAW TEAM:
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The offender must be public officer.	The offender need not be in public office

INTERRUPTION OF RELIGIOUS WORSHIP (Art. 132)

Q: What are the elements of this crime?

A:

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

Note: Qualified by violence or threats.

If the prohibition or disturbance is committed only in a meeting or rally of a sect, it would be punishable under Art. 131. *E.g.* reading of Bible and then attacking certain churches in public plaza.

Religious worship includes people in the act of performing religious rites for religious ceremony or manifestation of religion. *E.g.* mass, baptism and marriage ceremony.

Q: X, a private person, boxed a priest while the priest was giving homily and maligning a relative of X. Is X liable under Art 131?

A: No, because X is a private person. He may be liable under Art. 133

OFFENDING THE RELIGIOUS FEELINGS (Art. 133)

Q: What are the elements of this crime?

A:

1. Acts complained of were performed:
   a. In a place devoted to religious worship (not necessary that there is religious worship)
   b. During the celebration of any religious ceremony
2. Acts must be notoriously offensive to the feelings of the faithful.

Note: Art. 133 is the only crime against the fundamental law of the State that may be committed not only by public officer but also by a private person.

Q: What are the religious ceremonies covered by Arts. 132 and 133?

A: Religious ceremonies covered are those religious acts performed outside of a church, such as procession and special prayers for burying person.

Note: If committed in a place devoted to religious purpose, there is no need for an ongoing ceremony.

Q: When is an act considered notoriously offensive?

A: When the act is directed against religious practice or dogma or ritual for the purpose of ridicule, as mocking or scoffing at or attempting to damage an object of religious veneration.

Note: Offense of feeling is judged from complainant's point of view.

There must be deliberate intent to hurt the feelings of the faithful, mere arrogance or rudeness is not enough.

Q: May the crime be committed by a public officer or a private individual?

A: Yes. The offender can be any person.

A. Human Security Act of 2007 (R.A. 9372)

Q: What is the period of detention without judicial warrant of arrest?

A:

GR: Notwithstanding Art. 125 of RPC , any police of law enforcement personnel who has taken custody of a person charged or suspected of the crime of terrorism or conspiracy to commit terrorism shall deliver said charged person to the proper judicial authority within 3 days counted from the moment of the arrest.

Note: Anti-terrorism law amended Art. 125 of the RPC insofar as terrorism and conspiracy to commit terrorism are concerned.

XPN: In the event of an actual or imminent terrorist attack, suspects may be detained for more than 3 days upon the written approval of:

1. Municipal, city, provincial or regional official of a Human Rights Commission or
2. Judge of the Municipal, RTC, the Sandiganbayan or
3. A justice of the CA nearest the place of the arrest. *(Sec. 19)*

Note: If the arrest is made during Saturdays, Sundays, holidays or after office hours, the arresting police or law enforcement personnel shall bring the person thus arrested to the residence of any of the officials

mentioned above. The written approval of any of said officials shall be secured within 5 days after the date of detention. Provided that within 3 days after the date of detention of the suspects, whose connection with the terror attack or threat is not established, shall be released immediately.

B. Anti-Torture Act (R.A. 9745)

Q. What are the punishable acts under Anti-Torture Act or RA. 9745?

A. Physical torture is a form of treatment or punishment inflicted by a person in authority or agent of a person in authority upon another in his/her custody that causes severe pain, exhaustion, disability or dysfunction of one or more parts of the body, such as:

1. Systematic beating, headbanging, punching, kicking, striking with truncheon or rifle butt or other similar objects, and jumping on the stomach
2. Food deprivation or forcible feeding with spoiled food, animal or human excreta and other stuff or substances not normally eaten
3. Electric shock
4. Cigarette burning; burning by electrically heated rods, hot oil, acid; by the rubbing of pepper or other chemical substances on mucous membranes, or acids or spices directly on the wound(s)
5. The submersion of the head in water or water polluted with excrement, urine, vomit and/or blood until the brink of suffocation
6. Being tied or forced to assume fixed and stressful bodily position
7. Rape and sexual abuse, including the insertion of foreign bodies into the sex organ or rectum, or electrical torture of the genitals
8. Mutilation or amputation of the essential parts of the body such as the genitalia, ear, tongue, etc.
9. Dental torture or the forced extraction of the teeth
10. Pulling out of fingernails
11. Harmful exposure to the elements such as sunlight and extreme cold
12. The use of plastic bag and other materials placed over the head to the point of asphyxiation
13. The use of psychoactive drugs to change the perception, memory, alertness or will of a person, such as: (i) the administration of drugs to induce confession and/or reduce mental competency; or (ii) the use of drugs to induce extreme pain or certain symptoms of a disease
14. Other analogous acts of physical torture

B. Mental/Psychological torture refers to acts committed by a person in authority or agent of a person in authority which are calculated to affect or confuse the mind and/or undermine a person's dignity and morale, such as:

1. Blindfolding
2. Threatening a person(s) or his/her relative(s) with bodily harm, execution or other wrongful acts
3. Confinement in solitary cells or secret detention places
4. Prolonged interrogation
5. Preparing a prisoner for a "show trial", public display or public humiliation of a detainee or prisoner
6. Causing unscheduled transfer of a person deprived of liberty from one place to another, creating the belief that he/she shall be summarily executed
7. Maltreating a member/s of a person's family
8. Causing the torture sessions to be witnessed by the person's family, relatives or any third party

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ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

9. Denial of sleep/rest

10. Shame infliction such as stripping the person naked, parading him/her in public places, shaving the victim's head or putting marks on his/her body against his/her will

11. Deliberately prohibiting the victim to communicate with any member of his/her family; and

12. Other analogous acts of mental/psychological torture *(Sec.4)*

Q. Who are punished under Anti-Torture Act?

A:

1. Any person who actually participated or induced another in the commission of torture or other cruel, inhuman and degrading treatment or punishment or who cooperated in the execution of the act of torture by previous or simultaneous acts shall be liable as principal.

2. Any superior military, police or law enforcement officer or senior government official who issued an order to a lower ranking personnel to subject a victim to torture or other cruel, inhuman and degrading treatment or punishment for whatever purpose shall be held equally liable as principal. Any public officer or employee shall be liable as an accessory if he/she has knowledge that torture or other cruel, inhuman and degrading treatment or punishment is being committed and without having participated therein, either as principal or accomplice takes part subsequent to its commission in any of the following manner:

    a. By themselves profiting from or assisting the offender to profit from the effects of the act of torture or other cruel, inhuman and degrading treatment

    b. By concealing the act of torture or other cruel, inhuman and degrading treatment or punishment and/or destroying the effects of instruments thereof in order to prevent its discovery; or

    c. By harboring, concealing or assisting in the escape of the principal/s in the act of torture or other cruel, inhuman and degrading treatment or punishment: Provided, that the accessory acts are done with the abuse of the official's public function.

III. CRIMES AGAINST PUBLIC ORDER (134-159)

REBELLION, *COUP D'ETAT,* SEDITION AND DISLOYALTY

Q: What are political crimes?

A: Those that are directly aimed against the political order, as well as such common crimes as may be committed to achieve a political purpose. The decisive factor is the intent or motive.

Note: Killing, robbing, *etc,* for private purposes or profit without any political motivation would be separately punished and would not be absorbed in the rebellion. *(People v. Geronimo, G. R. No. 176268, March 10, 2008)*

REBELLION AND INSURRECTION (Art. 134)

Q: What are the elements of this crime?

A:

1. There be:
   a. Public uprising, and
   b. Taking arms against government

2. Purpose of the uprising or movement is either to –

   a. Remove from the allegiance to said Government or its laws:
      i. The territory of the Philippines or any part thereof; or
      ii. Any body of land, naval or other armed forces; or

   b. Deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogative.

Note: The use of unlicensed firearm is absorbed in the crime of rebellion if used in furtherance of or incident to, or in connection with the crime of rebellion, or insurrection, or sedition. *(Sec.1*

If the act is to deprive the Judiciary of its power or prerogatives, the crime committed is sedition.

Q: What is the essence of the crime of rebellion?

A: The essence of rebellion is public uprising and the taking of arms. It aims to overthrow the duly constituted government. It is generally carried out by civilians.

Note: If there is no public uprising, the crime is direct assault.

Q: What is the nature of the crime of rebellion?

A: Rebellion is a crime of the masses. It requires a multitude of people. It is vast movement of men and a complex network of intrigues and plots.

Q: Who are liable for rebellion?

A: The persons liable for rebellion are the leaders and their followers.

Illustration:

The acts of accused who is not a member of the HUKBALAHAP organization of sending cigarettes and food supplies to a Huk leader; the changing of dollars into pesos for a top level communist; and the helping of Huks in opening accounts with the bank which he was an official, do not constitute rebellion. *(Carino v. People, 7 SCRA 900)*

In one case, accused not only confessed his membership with the Sparrow Unit but also his participation and that of his group in the killing of policeman Manatad while the latter was manning the traffic in Mandaue City. It is of judicial notice that the Sparrow Unit is the liquidation squad of the New People's Army with the objective of overthrowing the duly constituted government. It is therefore not hard to comprehend that the killing of Manatad was committed, as a means to, or in furtherance of, the subversive ends of the NPA. The crime committed is rebellion, not murder with direct assault *(People v. Dasig, 221 SCRA 549)*

Q: What is the difference between rebellion and insurrection?

A:

REBELLION	INSURRECTION
The object of the movement is completely to overthrow and supersede the existing government.	The movement seeks merely to effect some change of minor importance, or to prevent the exercise of governmental authority with respect of particular matters of subjects.

Q: What are the distinctions between rebellion and sedition?

A:

REBELLION	SEDITION
There must be taking up of arms against the government.	It is sufficient that public uprising be tumultuous.
Purpose is always political, that is to overthrow the government.	Purpose may be political or social, that is merely to go against the established government not to overthrow it.

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Q: What are the distinctions between rebellion and treason?

A:

REBELLION	TREASON
The uprising is against the government.	The levying of war is done to aid the enemy.
The purpose is to substitute the existing government with another.	The purpose is to deliver the government to the enemy.

Note: Mere giving of aid or comfort is not criminal in the case of rebellion. There must be an actual participation. Hence, mere silence or omission of public officer is not punishable in rebellion.

Q: What are the distinctions between rebellion and subversion?

A:

REBELLION	SUBVERSION
Crime against public order.	Crime against national security.
There must be public uprising to overthrow the government.	Being officers and ranking members of subversive groups constitute subversion.

Q: On May 5, 1992, at about 6:00 a.m., while Governor Alegre of Laguna was on board his car traveling along the National Highway of Laguna. Joselito and Vicente shot him on the head resulting in his instant death. At that time, Joselito and Vicente were members of liquidation squad of the New People's Army and they killed the governor upon orders of their senior officer Commander Tiago. According to Joselito and Vicente, they were ordered to kill Governor Alegre because of his corrupt practices. If you were the prosecutor, what crime will you charge Joselito and Vicente?

A: If I were the prosecutor, I would charge Joselito and Vicente with the crime of rebellion, considering that the killers were members of the liquidation squad of the NPA and the killing was upon orders of their commander; hence, politically-motivated. This was the ruling in *People v. Avila, SCRA 1568,* involving identical facts which is a movement taken judicial notice of as engaged in rebellion against the Government.

Note: Crimes done for private purposes without political motivation should be separately punished.

Rebellion is a continuing crime along with the crime of conspiracy or proposal to commit rebellion.

In rebellion, it is not a defense that the accused never took the oath of allegiance, or that they never recognized the government.

COUP D'ETAT (134-A)

Q: What are the elements of this crime?

A:

1. Offender is a person or persons belonging to 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. Attack is directed against 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. Purpose of the attack is to seize or diminish state power

Note: The use of unlicensed firearm is absorbed in the crime of rebellion if used in furtherance of or incident to, or in connection with the crime of attempted *coup d'etat.*

Q: What is the essence of the crime of *coup d'etat?*

A: The essence of the crime is a swift attack upon the facilities of the Philippine government, military camps and installations, communication networks, public utilities and facilities essential to the continued possession of governmental powers.

Q: What is the objective of *coup d'etat?*

A: The objective of *coup d'etat* is to destabilize or paralyze the government through the seizure of facilities and utilities essential to the continued possession and exercise of governmental powers.

Q: How is *coup d'etat* carried out?

A: It may be carried by force or violence or through, stealth, threat, or strategy.

Q: Who are the principal offenders of *coup d'etat?*

A: The principal offenders are members of the AFP or of the PNP organization or a public officer with or without civilian support.

Q: What are the distinctions between *coup d'etat* and rebellion?

A:

COUP D'ETAT	REBELLION
Essence is a swift attack against the government, its military camp or installations, communication network and public facilities and utilities essential to the continued exercise of governmental powers.	Essence of the crime is public uprising and taking up arms against the government.
May be carried out singly or simultaneously.	Requires a public uprising, or multitude of people.
Principal offenders must be members of the military, national police or public officer, with or without civilian support.	Offenders need to be committed by the uniformed personnel of the military or the police.
The purpose is merely to paralyze the existing government.	The purpose is to overthrow the existing government.

Note: State power includes the executive, legislative and judicial power.

PENALTY FOR REBELLION OR INSURRECTION OR *COUP D'ETAT* (Art. 135)

Q: Who are the persons liable for rebellion, insurrection or coup d'etat?

1. *Leader* –
   a. Any person who promotes, maintains, or heads a rebellion or insurrection
   b. Any person who leads, directs, or commands others to undertake a *coup d'etat*

2. *Participants* –
   a. Any person who participates or executes the commands of others in rebellion, or insurrection
   b. Any person in the government service who participates, or executes directions or commands of others in undertaking a *coup d'etat*
   c. Any person not in the government service who participates, supports, finances, abets, or aids in undertaking a *coup d'etat*.

Note: The crime of *coup d'etat* may be committed with or without civilian participation.

Q: Who shall be deemed the leader of the rebellion, insurrection or *coup d'etat* in case he is unknown?

A: Any person who in fact:
1. Directed the others
2. Spoke for them
3. Signed receipts and other documents issued in their name
4. Performed similar acts on behalf of the rebels

CONSPIRACY AND PROPOSAL TO COMMIT REBELLION OR INSURRECTION (Art. 136)

Q: When is there conspiracy to commit rebellion?

A: There is conspiracy to commit rebellion when two or more persons come to an agreement to rise publicly and take arms against the government for any of the purposes of rebellion and decide to commit it.

Q: When can there be proposal to commit rebellion?

A: There is proposal to commit rebellion when the person who has decided to rise publicly and take arms against the government for any of the purposes of rebellion proposes its execution to some other person or persons.

Q: Is advocacy to communism tantamount to conspiracy to commit rebellion?

A: No, because mere advocacy of theory or principle is insufficient to constitute conspiracy to commit rebellion unless the advocacy is converted into action.

Note: 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 government.

DISLOYALTY OF PUBLIC OFFICER AND EMPLOYEES (Art. 137)

Q: What are the punishable acts in the crime of disloyalty of public officers/employees?

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

A:

1. Failing to resist a rebellion by all means in their power

2. Continuing to discharge the duties of their offices under the control of the rebels

Note: The offender must be a public officer or employee and there must be an actual rebellion

Offender must not be in conspiracy with the rebels. Otherwise, the crime they commit is rebellion.

INCITING TO REBELLION OR INSURRECTION (Art. 138)

Q: What are the elements of the crime of inciting to rebellion/insurrection?

A:

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. Inciting is done by means of speeches, proclamations, writings, emblems, banners, or other representations tending to the same end

Note: Inciting must have been intentionally calculated to induce others to commit rebellion.

Q: What is the difference between inciting to rebellion and proposal to commit rebellion?

A:

INCITING TO REBELLION	PROPOSAL TO COMMIT REBELLION
It is not required that the offender has decided to commit rebellion.	The person who proposes has decided to commit rebellion.
The act of inciting is done publicly	The person who proposes the execution of the crime uses secret means.
The offender induces another to commit rebellion.	
The crime of rebellion should not be actually 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 principal by inducement in the crime of rebellion.	

SEDITION (Art. 139)

Q: What are the elements of the crime of sedition?

A:

1. Offender rise

   a. Publicly, and
   b. Tumultuously

2. They employ force, intimidation or other means outside of legal methods

3. Offenders employ any of those means to attain any of the following objects to:

   a. Prevent the promulgation or execution of any law or the holding of any popular election
   b. Prevent the national government, or any public officer from freely exercising its or his functions, or prevent the execution of any administrative order
   c. Inflicting any act of hate or revenge of any person or property of any public officer or employee
   d. Commit, for any political or social end, any act of hate or revenge against private persons or any social cases
   e. Despoil, for any political or social end any person, municipality or province, or the National Government of all its property or any part thereof

Note: The offender may be a public or private person.

The use of unlicensed firearm is absorbed in the crime of rebellion if used in furtherance of or incident to, or in connection with the crime of sedition.

Q: Does the crime of sedition contemplate rising up of arms against government?

A: No, the purpose of the offenders in rising publicly is merely to create commotion and disturbance by way of protest to express their dissent and disobedience to the government or to the authorities concerned.

Note: The objective of sedition is not always against the government, its property or officer. It could be against a private person or social class.

Q: What is the difference between sedition and treason?

A:

SEDITION	TREASON
Sedition involves disturbance of public	There is no public uprising.

order resulting from tumultuous uprising.	

Q: What are tumultuous acts?

A: Acts are considered tumultuous if caused by more than 3 persons who are armed or provided with the means of violence.

Q: What differentiates sedition from crime of tumults and other disturbance of public order?

A:

SEDITION	TUMULTS AND OTHER DISTURBANCE OF PUBLIC ORDER
Sedition involves disturbance of public order resulting from tumultuous uprising.	There is no public uprising.

Q: What is the crime committed if there is no public uprising?

A: 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.

Note: Public uprising and an object of sedition must concur.

In sedition, it is immaterial if the object be completely attained.

Q: Suppose murder is committed in the course of sedition, can murder be absorbed in the crime of sedition?

A: No. Murder cannot be absorbed in sedition. If murder is committed, it shall be treated as a separate crime.

Ratio: Murder is not an object of sedition.

Note: There is no complex crime of sedition with murder.

CONSPIRACY TO COMMIT SEDITION (Art. 141)

Q: Is there a crime of proposal to commit sedition?

A: None. Only conspiracy is punished and not proposal to commit sedition.

Note: To be liable, there must be an agreement and determination to rise publicly and tumultuously to attain any of the objects specified in *Art. 139.*

INCITING TO SEDITION (Art. 142)

Q: What are the punishable acts in the crime of inciting to sedition?

A:

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc

2. Uttering seditious words or speeches which tend to disturb the public peace

3. Writing, publishing or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace

   Note: Scurrilous means low, vulgar, mean or foul.

Note: It is the use of words, emblems, etc. and not the performance of an act that is punished in inciting to sedition.

In inciting to sedition, the offender must not take part in any public or tumultuous uprising.

Q: When are uttering seditious words/speeches and writing, publishing or circulating scurrilous libels punishable?

A: Such are seditious when they:

1. Tend to disturb or obstruct any lawful officer in executing the functions of his office

2. Tend to instigate others to cabal and meet together for unlawful purposes

3. Suggest or incite rebellious conspiracies or riots

4. Lead or tend to stir up the whole people against the lawful authorities or to disturb the peace of the community, the safety and order of the Government

Q: What are the two rules relative to seditious words?

A:

1. *Clear and present danger rule* – words must be of such nature that by uttering them there is a danger of public uprising

and that such danger should be both clear and imminent

2. *Dangerous tendency rule* – if words used tend to create a danger of public uprising, then those words could properly be subject of penal clause

Q: Which of the above rules is adopted in the Philippine jurisdiction?

A: It is the dangerous tendency rule that is generally adopted in the Philippines with respect to sedition cases. It is enough that the words used may tend to create danger of public uprising.

Q: What are some instances of inciting to sedition?

A:

1. Meeting for the purpose of discussing hatred against the government

2. Lambasting government officials to discredit the government.

Q: Suppose the objective of abovementioned acts is to overthrow the government, what is the crime committed?

A: The crime would be inciting to rebellion.

CRIMES AGAINST POPULAR REPRESENTATION

ACTS TENDING TO PREVENT THE .MEETING OF THE CONGRESS OF THE PHILIPPINES AND SIMILAR BODIES (Art. 143)

Q: What are the elements of the crime?

A:

1. There be projected or actual meeting of the Congress or any of its committees or subcommittees, constitutional committees or divisions thereof, or of any provincial board or city or municipal council or board

2. Offender, who may be any person, prevents such meeting by force or fraud

Note: The chief of police and mayor who prevented the meeting of the municipal council are under Art. 143, when the defect of the meeting is not manifest and requires an investigation before its existence can be determined.

Under P.D. 1829, any person who disturbs the proceedings in the fiscal's office, in *Tanodbayan*, or in the courts while in the prosecution of criminal cases, may be held liable for violation of the said decree.

DISTURBANCE OF PROCEEDINGS (Art. 144)

Q: What are the elements of the crime?

A:

1. There is a meeting of Congress or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or any provincial board or city or municipality council or board

2. Offender does any of the following acts:
   a. Disturbs any such meetings
   b. 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

Note: Disturbance created by a participant in the meeting is not covered by Art. 144.

Complaint must be filed by a member of legislative body.

The same act may be made the basis for contempt since it is coercive in nature while the crime under this article is punitive.

VIOLATION OF PARLIAMENTARY IMMUNITY (Art. 145)

Q: What are the punishable acts in violation of parliamentary immunity?

A:

1. Using force, intimidation, threats, or frauds to prevent any member of Congress from –
   a. Attending the meetings of congress or of any of its committees or subcommittees, constitutional commissions or committees
   b. Expressing his opinions
   c. Casting his vote

2. Arresting or searching any member thereof while Congress is in regular or special session.

Note: The offender in Par. 1 may be any person.

Parliamentary immunity does not protect members of Congress from responsibility before the legislative body itself.

Q: What is session?

A: It refers to the entire period from its initial convening until its final adjournment.

Note: The 1987 Constitution exempts members of Congress from arrest while Congress is in session for all offenses punishable by a penalty less than *prision mayor.*

It is not necessary that the member is actually prevented from exercising any of his functions. It is sufficient that Congress is in session.

ILLEGAL ASSEMBLIES (Art. 146)

Q: What are the forms of illegal assemblies?
A:

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the RPC.

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 a person in authority or his agents.

   Note: It is necessary that the audience is actually incited.

Note: The word "arm" in this article is not limited to firearm. However, if the person present carries an unlicensed firearm, the presumption, insofar as he is concerned, is that the purpose of the meeting is to commit acts punishable under this Code, and that he is the leader or organizer of the meeting.

Q: Should persons merely present at the meeting have a common intent to commit the felony of illegal assembly?

A: Yes. Absence of such intent may exempt the person present from criminal liability.

Q: Suppose in the meeting, the audience is incited to the commission of rebellion or sedition, what is the criminal liability of the leaders or organizers thereof and the persons present therein?

A: The leaders or organizers of the meeting and the persons present therein are liable for the crime of illegal assembly.

Q: What is the criminal liability of the person inciting them?

A: The person inciting is liable for the crime of inciting to rebellion or sedition.

Q: What are the elements of the first form of illegal assembly?

A:

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 RPC

Note: In the first form of illegal assembly, armed men attend the gathering with the purpose of committing any of the crimes punishable under RPC. The presence of armed men during the gathering brings about the crime of illegal assembly.

Not all persons at the meeting of the first form of illegal assembly need to be armed.

If none of the persons present in the meeting are armed, there is no crime. *E.g.* Persons unarmed conspiring in a meeting to commit qualified theft is not punishable.

Q: What are the elements of the second form of illegal assembly?

A:

1. There is a meeting, a gathering group of 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

Note: In this second form of illegal assembly, armed men may or may not attend the meeting but persons in the meeting are incited to commit treason, rebellion or insurrection, sedition or assault upon a person in authority.

When the illegal purpose of the gathering is to incite people to commit the crimes mentioned above, the presence of armed men is unnecessary. The mere gathering for the purpose is sufficient to bring about the crime already.

A person invited to give speech in an illegal assembly or meeting and incites the members of such assembly

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

is guilty of inciting to sedition only and not punishable under illegal assembly.

Q: What is the gravamen of illegal assembly?

A: The gravamen of illegal assembly is mere assembly of or gathering of people for illegal purpose punishable by the RPC. Without gathering, there is no illegal assembly.

Q: Who are persons liable for illegal assembly?

A: The persons liable are:
1. Organizers or leaders of the meeting
2. Persons merely present at the meeting

Q: If the presence of a person is out of curiosity, is he liable?

A: No, since he does not have intent to commit felony of illegal assembly.

Q: Suppose the illegal purpose for the gathering is for the commission of a crime punishable under special laws (*i.e.* the gathering of drug lords to facilitate drug trafficking), is illegal assembly committed?

A: No. If the unlawful purpose is a crime under a special law, there is no illegal assembly. The crime committed would be illegal association.

ILLEGAL ASSOCIATION (Art. 147)

Q: What are illegal associations?

A:
1. Associations totally or partially organized for the purpose of committing any of the crimes punishable under the RPC.

2. Associations totally or partially organized for some purpose contrary to public morals.

Q: What are public morals?

A: Public morals refer to matters which affect the interest of society and public inconvenience and are not limited to good customs. It refers to acts that are in accordance with natural and positive laws.

Q: Who are the persons liable for the crime of illegal associations?

A: The persons liable are the following:
1. Founders, directors and president of the association
2. Mere members of the association.

Q: What are the distinctions between illegal assembly and illegal association?

A:

ILLEGAL ASSEMBLY	ILLEGAL ASSOCIATION
The basis of liability is the gathering for an illegal purpose which constitutes a crime under the RPC.	The basis is the formation of or organization of an association to engage in an unlawful purpose which is not limited to a violation of the RPC.
Necessary that there is an actual meeting or assembly.	Not necessary that there be an actual meeting.
Meeting and the attendance at such meeting are the acts punished.	Act of forming or organizing and membership in the association are the acts punished.

ASSAULT UPON, AND RESISTANCE AND DISOBEDIENCE TO PERSONS IN AUTHORITY AND THEIR AGENTS

DIRECT ASSAULTS (Art. 148)

Q: What are the two ways to commit direct assault?

A:
1. *First form:* Without public uprising, by employing force or intimidation for attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition.

2. *Second form:* Without public uprising, by attacking, by employing force, or by seriously intimidating or seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on the occasion of such performance.

Q: What are the elements of the first form?

A:
1. That the offender employs force or intimidation.
2. That the aim of the offender is to attain any of the purposes of the crime of rebellion or any of the objects in the crime of sedition.
3. That there is no public uprising.

Q: What are the elements of the second form?

A:

1. That the offender:
   a. Makes an attack
   b. Employs force
   c. Makes a serious intimidation
   d. Makes a serious resistance

2. The person assaulted is a person in authority or his agent

3. That at the time of the assault the person in authority or his agent
   a. Is engaged in the actual performance of official duties, or
   b. That he is assaulted, by reason of the past performance of official duties

4. That the offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties

5. That there is no public uprising

Note: In the second form, there is a need to distinguish a situation where a person in authority or his agent was attacked while performing official functions.

If attack was done during the exercise of official functions, the crime is always direct assault.

It is also important to distinguish whether the person is a person in authority or merely an agent of the latter.

Illustration:

When the accused, with his hand or fist, hit a policeman who was in the performance of his duty, in the breast and nothing more, no direct assault is committed because the victim is only an agent of a person in authority, the employment of force must be of serious character to show defiance of the law and its representative of all hazards. However, if the victim is a person in authority, not a mere agent, the force necessary to constitute the crime need not be serious, as the law with respect to the person in authority uses the phrase "lays hands upon a person in authority." *(U.S v. Tabiana, 37 Phil. 51; U.S. v. Gumban, 39 Phil. 76)*

Note: It is also important that the offender knew that the person he is attacking is a person in authority or an agent of the person in authority, performing his official functions. No knowledge means no lawlessness or contempt.

Q: What are considered as not in actual performance of official duties?

A:

1. When the person in authority or the agent of a person in authority exceeds his powers or acts without authority
2. Unnecessary use of force or violence
3. Descended to matters which are private in nature

Q: Suppose the person in authority or the agent was killed when no longer performing official functions, what crime was committed?

A: The crime may simply be the material consequence of the unlawful act, murder or homicide, as the case may be.

Q: What is penalized in the crime of direct assault?

A: The crime of direct assault punishes the spirit of lawlessness and the contempt or hatred for the authority or the rule of law.

Q: Can the crime of direct assault be complexed with the material consequence of the unlawful act?

A: Yes, as a rule, where the spirit of the contempt or lawlessness is present, it is always complexed with the material consequences of the unlawful act. If the unlawful act was murder or homicide committed under circumstance of lawlessness or contempt of authority, the crime would be direct assault with murder or homicide, as the case may be.

Illustration:

Thus, if A would attack a policeman while engaged in the performance of his duties, that of maintaining peace and order during a *barangay* fiesta, the crime would be murder of homicide with direct assault depending on the presence of qualifying circumstances in killing the victim. *(People v. Abalos, 258 SCRA 253)*

In one case, when the victim intervened to prevent a violent encounter between the accused and the Ramos group, he was discharging his duty as *Barangay* Captain to protect life and property and enforce law and order in the barrio, thus, the assault resulting in his death is homicide with direct assault. *(People v. Rillorta, 180 SCRA 102)*

Note: Under Art. 152 of the RPC and P.D. 299, a *Barangay* Chairman is a person in authority. If only serious physical injuries have been inflicted, the crime would be direct assault with serious physical injuries. If the shot directed against a public officer did not hit him but he is in actual performance of duty, the offense is attempted homicide with direct assault.

Q: What is the exception to the above rule?

A: The only time it is not complexed is when material consequence is a light felony, that is, slight physical injury because the said injuries are considered as an incident or consequence of the force and violence employed. Direct assault absorbs the lighter felony.

Q: Who is a person in authority?

A: Any person directly vested with jurisdiction, whether as an individual or as a member of some court or governmental corporation, board, or commission. A barrio captain and a *barangay* chairman shall also be deemed a person in authority. *(Art. 152 par. 1)*

Q: Who is considered as an agent of a person in authority?

A: Any person who by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a *barangay kagawad, barangay tanod, barangay* leader and any person who comes to the aid of a person in authority.

Note: Teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges, and universities and lawyers in the actual performance of their duties or on the occasion of such performance, shall be deemed a person in authority.

Q: Is it important that the offender knows that the person he is attacking is a person in authority?

A: No, it is enough that the offender should know that the offended party was exercising some form of authority. It is not necessary that the offender knows what is meant by person in authority.

Q: What kind of force is required to be employed to constitute direct assault?

A: The force must be serious and must be of such character as to show contempt of authority. Casual force which usually accompanies resistance or disobedience to authorities is not sufficient.

Q: When is it important to ascertain the motive for the assault?

A: If the assault took place when the offended party was not engaged in the performance of his official duties in this case, it must be shown that the assault was committed by reason of the past performance of official duties.

Q: What does *"on the occasion of such performance"* means?

A: It means the impelling motive of the attack is the performance of official duty.

Note: For the crime to be direct assault, the attack must be by reason of his official function in the past.

Q: When is direct assault qualified?

A:

1. When the assault is committed with a weapon
2. When the offender is a public officer or employee
3. When the offender lays hand upon a person in authority

Note: Even when the person in authority or the agent agrees to fight, direct assault is still committed.

When the person in authority or the agent provoked/attacked first the innocent party, the latter is entitled to defend himself and may raise justifying or mitigating circumstances as the case may be.

Q: Because of the approaching town fiesta in San Miguel, Bulacan, a dance was held in *Barangay* Carinias. A, the *Barangay* Captain, was invited to deliver a speech to start the dance. While A was delivering his speech, B, one of the guests, went to the middle of the dance floor making obscene dance movements, brandishing a knife and challenging everyone present to a fight. A approached B and admonished him to keep quiet and not to disturb the dance and peace of the occasion. B, instead of heeding the advice of A, stabbed the latter at his back twice when A turned his back to proceed to the microphone to continue his speech. A fell to the ground and died. At the time of the incident A was not armed. What crime was committed? Explain.

A: The complex crime of direct assault with murder was committed. A, as a *Barangay* Captain, is a person in authority and was acting in an official capacity when he tried to maintain peace and order during the public dance in the *Barangay* by admonishing B to keep quiet and not to disturb the dance and peace of the occasion. When B, instead of heeding A's advice, attacked the latter, B acted in contempt and lawless defiance of authority constituting the crime of direct assault, which characterized the stabbing of A. And since A was stabbed at the back when he was not in a position

to defend himself nor retaliate, there was treachery in the stabbing. Hence, the death caused by such stabbing was murder and having been committed with direct assault, a complex crime of direct assault in murder was committed by B. **(2000 Bar Question)**

Note: Evidence of motive of the offender is important when the person in authority or his agent who is attacked or seriously intimidated is not in the performance of his official duty.

Direct assault cannot be committed during rebellion. Crime of slight physical injuries is absorbed by direct assault if committed against an agent of a person in authority. If committed against a person in authority, it will be considered as separate crime.

The crime of direct assault is not committed when the person in authority or his agent is suspended or under suspension when he is attacked.

Direct assault absorbs light felony because light felony is the means of committing direct assault.

INDIRECT ASSAULTS (Art. 149)

Q: What are the elements of indirect assault?

A:

1. Person in authority or his agent is the victim of the forms of direct assault
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

Q: To whom is the assault directed in the crime of indirect assault?

A: The victim in the crime of indirect assault is not the person in authority or his agent but the person who comes in the aid of a person in authority or his agent.

Q: What brings about the crime of indirect assault?

A: Indirect assault comes about only when direct assault is committed.

Note: When any person comes in aid of a *person in authority*, said person at that moment is no longer a civilian, he is constituted as an agent of the person in authority. If such person was the one attacked, by employing violence against him of serious nature or character, the crime would be direct assault. *(Article 152, as amended)*

As Article 149 now stands, the crime of indirect assault can only be committed if a private person who comes in the aid of an *agent* of a person in authority on the occasion of direct assault against the latter, is assaulted. He does not become another agent of the person in authority.

DISOBEDIENCE TO SUMMONS ISSUED BY CONGRESS, ITS COMMITTEES OR SUBCOMMITTEES, BY THE CONSTITUTIONAL COMMISSIONS, ITS COMMITTEES, SUBCOMMITTEES OR DIVISIONS (Art. 150)

Q: What are the punishable acts?

A:

1. Refusing, without legal excuse, to obey summons of Congress, it's 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. Refusing to be sworn or placed under affirmation while being presented before such legislative or constitutional body or official
3. 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. Restraining another from attending as a witness in such legislative or constitutional body
5. Inducing disobedience to a summons or refusal to be sworn by any such body or official

Q: Who are the persons liable under Art. 150?

A:

1. Any person who commits any of the above acts
2. Any person who:
   a. Restrains another from attending as a witness
   b. Induces him to disobey a summons
   c. Induces him to refuse to be sworn to such body

CRIMINAL LAW TEAM:
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Note: Any of the acts enumerated may also constitute contempt of Congress and could be punished as such independent of the criminal prosecution.

Congress' power to cite a witness in contempt is considered implied or incidental to the exercise of legislative power.

The testimony of a person summoned must be upon matters into which the legislature has jurisdiction to inquire.

RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR THEIR AGENTS (Art. 151)

RESISTANCE AND SERIOUS DISOBEDIENCE (Art. 151, par. 1)

Q: What are the elements of the crime?

A:

1. 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. Act of the offender is not included in the provisions of Arts. 148, 149 and 150

SIMPLE DISOBEDIENCE (Art. 151, par. 1)

Q: What are the elements of simple disobedience?

A:

1. An agent of a person in authority is engaged in the performance of official duty or gives a lawful order to the offender
2. Offender disobeys such agent of a person in authority
3. Such disobedience is not a serious nature

Note: The accused must have knowledge that the person giving the order is a peace officer.

Q: What are the distinction between resistance or serious disobedience and direct assault?

A:

RESISTANCE OR SERIOUS DISOBEDIENCE	DIRECT ASSAULT
Person in authority or his agent must be in actual performance of his duties.	Person in authority or his agent must be engaged in the performance of official duties or that he is assaulted by reason thereof.
Committed only by resisting or seriously disobeying a person in authority or his agent.	Committed in four ways By: 1. Attacking. 2. Employing force 3. Seriously intimidating 4. Seriously resisting a person in authority or his agent
The use of force is not so serious, as there is no manifest intention to defy the law and the officers enforcing it.	The attack or employment of force which give rise to the crime of direct assault must be serious and deliberate.

Q: What is the crime committed if the person who was resisted is a person in authority and the offender used force in such resistance?

A: The use of any kind or degree of force will give rise to direct assault.

Q: Suppose the offender did not use any force in resisting a person in authority, what crime is committed?

A: The crime committed is resistance or serious disobedience.

Note: Art. 151 covers failure to comply with orders directly issued by authorities in the exercise of their official duties, and not with judicial decisions merely declaratory of rights or obligations (*E.g.* decision rendered in a civil case).

The disobedience contemplated consists in the failure or refusal to obey a direct and lawful order from the authority or his agent, otherwise resistance is justified.

Disobedience in the 2nd par. must not be serious, otherwise it will fall under the 1st par.

PERSONS IN AUTHORITY AND AGENTS OF PERSON IN AUTHORITY (Art. 152)

Q: Who is a person in authority?

A: A person in authority is one directly vested with jurisdiction, that is, the power and authority to govern and execute the laws.

Q: Enumerate the examples of persons in authority.

A:

1. Mayors
2. Division superintendent of school
3. Public and private school teachers
4. Provincial Fiscal
5. Judges
6. Lawyers in actual performance of duties
7. *Sangguniang Bayan* member
8. *Barangay* Chairman
9. Members of the *Lupong Tagapamayapa*

Note: Items 7, 8, and 9 of the enumeration are added by the LGC which expressly provides that said persons "shall be deemed as person(s) in authority in their jurisdictions." (*Sec. 388*)

Teachers, lawyers and heads of schools are persons in authority only for purposes of Art. 152 in relation to Arts. 148 and 151, and in connection with their duties.

Q: Who is an agent of a person in authority (APA)?

A: Any person who by direct provision of law or by election or by appointment by competent authority is charged with the:

1. Maintenance of public order; and
2. Protection and security of life and property.

Note: Agents of persons in authority includes:

1. *Barangay Kagawad*
2. *Barangay Tanod*
3. *Barangay* Councilman
4. Any person who comes to the aid of persons in authority.

PUBLIC DISORDER

TUMULTS AND OTHER DISTURBANCES OF PUBLIC ORDER (Art.153)

Q: What are the punishable acts?

A:

1. Causing any serious disturbance in a public place, office or establishment.

2. Interrupting or disturbing performances, functions or gatherings, or peaceful meetings, if act is not included in Arts. 131 and 132.

3. Making any outcry tending to incite sedition in any meeting, association or public place.

4. Displaying placards, or emblems which provoke a disturbance of public order in such place.

5. Burying with pomp the body of a person who has been legally executed.

Note: Burying with pomp the body of a person contemplates an ostentatious display of a burial.

If the person who disturbs or interrupts a meeting considered as religious worship is a public officer, he shall be liable under Art.131 or 132.

Q: What is the essence of tumults and other disturbances?

A: The essence of this crime is creating public disorder. This crime is brought about by creating serious disturbances in public places, public buildings, and even in private places where public functions or performances are being held.

Note: Tumults and other disturbances can be complexed with direct assault if the tumults and disturbances of public disorder is directed to a person in authority or an agent of a person in authority.

Q: When is the disturbance deemed tumultuous?

A: When it is caused by more than three persons who are armed or provided with means of violence.

Q: What does the word *"armed"* mean?

A: The term armed does not refer to firearms only but includes even big stones capable of causing grave injury.

Q: What is the difference between making any outcry tending to incite sedition or rebellion (par. 3 of Art. 153) and inciting to rebellion or sedition?

A:

MAKING ANY OUTCRY TENDING TO INCITE SEDITION OR REBELLION	INCITING TO SEDITION OR REBELLION
The meeting at the outset was legal, and became a public disorder only because of such outcry.	The meeting from the beginning was unlawful.
The outbursts which by nature may tend to incite rebellion or sedition are spontaneous.	The words uttered are deliberately calculated with malice, aforethought to incite others to rebellion or sedition.

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Note: Serious disturbance requires that such must be planned or intended.

Q: What does outcry mean?

A: Outcry means to shout subversive or provocative words tending to stir up the people to obtain by means of force or violence any of the objects of rebellion or sedition.

Note: Crime is qualified if disturbance or interruption is of a tumultuous character.

UNLAWFUL USE OF MEANS OF PUBLICATION AND UNLAWFUL UTTERANCES (Art. 154)

Q: What are the punishable acts?

A:

1. Publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any false news which may endanger the public order, or cause damage to the interest or credit of the State.

2. Encouraging disobedience to the law or to the constituted authorities or by praising, justifying or extolling any act punished by law, by the same means or by words, utterances and speeches.

3. Maliciously publishing, causing to be published any official resolution or document without proper authority, or before they have been published officially.

4. Printing, publishing, or distributing books, pamphlets, periodicals or leaflets which do not bear the real printer's name, or which are classified as anonymous.

Q: Is it necessary that the publication caused damaged to the State?

A: No. Mere possibility to cause such danger or damage is sufficient.

Note: To be liable, the offender must know that the news is false.

R.A. 248 prohibits the reprinting reproduction, republication of government publications and official documents without previous authority.

If the printer/owner of the printing establishment took part in the preparation and publication of the libelous writings he shall be liable under Art. 360.

If the publication is both obscene and anonymous, the offense cannot be complexed as they involve different acts separately punished under this Article and Art. 201 on obscene publications.

ALARMS AND SCANDALS (Art. 155)

Q: What are the punishable acts?

A:

1. Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, calculated to cause alarm or danger.

2. Instigating or taking an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility.

3. Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusements.

4. Causing any disturbance or scandal in public places while intoxicated or otherwise, provided the act is not covered by Art. 153.

Q: What is the essence of the crime of alarms and scandals?

A: The essence of the crime is disturbance of public tranquility and public peace.

Q: If a firearm is discharged, what are the crimes that may possibly arise?

A:

1. *Alarms and scandals* – If the offender discharges a firearm in a public place but the firearm is not pointed to a particular person when discharged.

2. *Illegal discharge of firearm* – If the firearm was directed to a particular person who was not hit if intent to kill is not proved.

3. *Attempted homicide or murder* – If the person was hit, automatically, the crime is attempted homicide or murder, if there is intent to kill.

Note: When a person uses lethal weapon against another, such as firearm, intent to kill is inherent.

4. *Physical injuries* – If the person was hit and injured but there was no intent to kill.

5. *Grave coercion* – If the threat was directed, immediate and serious and the person is compelled or prevented to do something against the will.

Note: The discharge may be in one's home since the law does not distinguish as to where in town.

The discharge of firearms and rockets during town fiestas and festivals are not covered by the law.

Q: What is charivari?

A: *Charivari* is a mock serenade of discordant noises made of cans, pans, kettles, tins, horns etc. designed to annoy and insult. This brings about the crime of alarms and scandals.

Ratio: Punishing, instigating or taking active part in charivari and other disorderly meeting is to prevent more serious disorders.

Q: What offenses are possibly committed by creating noise and annoyance?

A:

1. *Alarms and scandals* – If the disturbance affects the public in general (*i.e.* by playing noisily during the wee hours in the morning in the neighborhood).

2. *Unjust vexation* – If the noise is directed to a particular person or a family.

DELIVERING PRISONERS FROM JAIL (Art. 156)

Q: What are the elements of the crime?

A:

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

Illustration:

As long as the person who was assisted in his escape is a prisoner, whatever means is employed by the person who removed him from jail, is punishable under this law. If a twin brother of a prisoner helped the latter escape by substituting himself, and because of their very similar appearance was not at once noticed by the guard, that twin brother is liable.

Even if the prisoner returned to jail after several hours, the one who removed him from jail is liable. So that if A, pretending to be an NBI agent, asked the jailer of prisoner B to turn the latter over him on the pretext that he (A) will investigate the prisoner, but after several hours of drinking liquor with B in a store, returned the said prisoner to the jailer, A is criminally liable under this article.

Illustration:

So also a jail guard who, while he was off duty, brought a released prisoner inside the jail to substitute for a detention prisoner whom he brought out of jail, returning him inside the jail after five hours may be held liable under this article. *(People v. del Barrio,., 4 C.A. Rep 337)*

Q: Who may be the offender/s?

A:

1. Usually, an outsider to the jail

2. It may also be:
   a. An employee of the penal establishment who does not have the custody of the prisoner

   b. A prisoner who helps the escape of another prisoner.

Q: Suppose the prisoner was confined in a hospital when he was assisted in escaping, is the crime delivery of prisoners from jail committed?

A: Yes, because the hospital may be considered as an extension of the jail.

Illustration:

Even if the prisoner is in hospital or asylum or any place for detention of prisoner, as long as he is classified as a prisoner, that is, a formal complaint or information has been filed in court, and he has been officially categorized as a prisoner, this article applies, as such place is considered extension of the penal institution. Thus, if A was arrested by a policeman for theft and locked in jail but minutes before the case is filed in court, B helped him escape, B is not liable under this article.

Q: What is the difference between delivering the prisoners in jail and infidelity in the custody of prisoners?

A:

DELIVERING PRISONERS FROM JAIL	INFIDELITY IN THE CUSTODY OF PRISONERS
The offender is not the custodian of the prisoner at the time of the escape/removal	The offender is the custodian at the time of the escape/removal

Note: In both, the offender may be a public officer or a private citizen. In both crimes, the person involved may be a convict or a mere detention prisoner.

Q: What is the liability of the convicted prisoner serving sentence who escaped?

A: He is liable for the crime of evasion of service under Art. 157.

Q: Suppose the one who escaped is only a detention prisoner, what is his liability?

A: He does not incur liability from escaping if he does not know of the plan to remove him from jail. If such prisoner knows of his plot to remove him from jail and cooperates therein by escaping, he himself becomes liable for delivering prisoners from jail as a principal by indispensable cooperation.

Q: What are the qualifying circumstance?

A: Use of violence, intimidation or bribery.

Q: What does the qualifying circumstance of bribery under this article contemplate?

A: The offender's act of employing bribery as a means of removing or delivering the prisoner from jail, and not the offender's act of receiving or agreeing to receive a bribe as a consideration for committing the offense.

Q: What is the mitigating circumstance?

A: If it takes place outside the penal establishment by taking the guards by surprise.

Note: This felony may also be committed through imprudence or negligence.

Q: Suppose Michael was convicted of robbery and he is serving his sentence in Muntinlupa. Together with his friends, Sarah and the jail warden, Z hatched the plan of escaping from the prison facility which eventually materialized. Determine the criminal liability of Michael, Sarah and Z.

A:

1. Sarah, a stranger or an outsider is liable for delivery of prisoner from jail.

2. Z, the jail warden committed the crime of infidelity in the custody of prisoners;

3. Michael is liable for the crime of evasion of sentence.

EVASION OF SERVICE OF SENTENCE (Art. 157)

Q: What are the elements of the crime?

A:

1. Offender is a convict by final judgment

2. He is serving his sentence which consist of deprivation of liberty

3. He evades the service of his sentence by escaping during the term of his sentence

Note: The crime is a continuing offense which may be prosecuted in any place where the offender was found.

This article does not apply to minor delinquents, detention prisoners or deportees.

Q: What are the qualifying circumstances under Art. 157?

A: If evasion or escape takes place:

1. By means of unlawful entry (by scaling)

2. By breaking doors, windows, gates, walls, roofs, or floors

3. By using picklocks, false keys, disguise, deceit, violence or intimidation; or

4. Through connivance with other convicts or employees of the penal institution

Q: What are the forms of evasion of service of sentence?

A: Evasion of service of sentence has three forms:

1. By simply leaving or escaping from the penal establishment under Art. 157

2. Failure to return within 48 hours after having left the penal establishment because of a calamity, conflagration or mutiny and such calamity, conflagration

or mutiny has been announced as already passed under Art. 158.

3. Violating the condition of conditional pardon under Article 159.

Note: The term jail-breaking is synonymous with evasion of sentence.

Q: Suppose X, a prisoner convicted of theft was able to escape from the penal institution but only minutes after the escape, he changed his mind prompting him to return to penal facility, is X liable for the crime evasion of sentence?

A: Yes. It is enough that he left the penal establishment by escaping from it. His voluntary return may only be mitigating being analogous to voluntary surrender, but the same will not absolve his criminal liability.

Q: If a prisoner is sentenced to *destierro*, can he be liable for the crime of evasion of service?

A: Yes, because *destierro* involves deprivation of liberty, although partial, as the prisoner is deprived of his liberty to enter a prohibited area. So, if he enters the prohibited area, he commits evasion of service of sentence.

Q: A foreigner was found guilty of violation of the law, and was ordered by the court to be deported. Later on, he returned to the Philippines in violation of the sentence. Is he guilty of evasion of service of sentence?

A: No, because the law is not applicable to offenses executed by deportation. *(U.S. v. Loo Hoe, 36 Phil 867)*

Q: What if the offender escaped within the 15-day period for making an appeal?

A: The crime is not evasion because judgment is not yet final.

Note: Persons convicted under this article are disqualified from the benefits of the Indeterminate Sentence Law.

EVASION OF SERVICE OF SENTENCE ON THE OCCASION OF DISORDERS, CONFLAGRATIONS, EARTHQUAKES OR OTHER CALAMITIES (Art. 158)

Q: What are the elements of the crime?

A:

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
   d. Similar catastrophe
   e. Mutiny in which he has not participated

3. Offender evades the service of his sentence by leaving the penal institution where he is confined on the occasion of such disorder or during the mutiny

4. Offender fails to give himself up to the authorities within 48 hours following the issuance of proclamation by Chief Executive announcing the passing away of such calamity.

Q: What is the basis of liability under Art. 158?

A: Liability is based on the failure to return within 48 hours after the passing of the calamity, conflagration or mutiny had been announced and not the leaving from the penal establishment.

Q: What constitutes mutiny in the second form of evasion of service of sentence?

A: The mutiny referred to here involves subordinate personnel rising against the supervisor within the penal establishment.

Q: What is a mutiny?

A: A *mutiny* is an organized unlawful resistance to a superior officer similar to sedition or a revolt.

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 one partakes in mutiny, he will be liable for the offenses which he committed during the mutiny whether or not he returns. *(People v. Padilla, G. R. No. 121917, Mar. 12, 1997)*

Note: The penalty of commission of this felony is an increase by 1/5 of the time remaining to be served under the original sentence, in no case to exceed 6 months.

The special allowance for loyalty (*E.g.* deduction of sentence) authorized by Art. 98 and 158 (2nd par.)

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

refers to those convicts, who having evaded the service of their sentences by leaving the penal institution, give themselves up within 48 hours. They will be entitled to a deduction of 1/5 of their respective sentences.

OTHER CASES OF EVASION OF SERVICE (Art. 159)

VIOLATION OF CONDITIONAL PARDON

Q: What is a conditional pardon?

A: *Conditional pardon* is a contract between the Chief Executive, who grants the pardon and the convict, who accepts it.

The condition imposed upon the prisoner not to be guilty of another crime is not limited to those punishable by the RPC. It includes those punished under special law. *(People v. Corral, 74 Phil. 357)*

Usually, the condition of a conditional pardon is that the prisoner shall not commit any crime anymore. So, if he committed an offense while on pardon, he has violated this article. However, there must be a final conviction for the second offense. Otherwise, we could not say that there is a violation of the condition of the pardon as he would be presumed to be innocent.

Note: However, under the Revised Administrative Code, no conviction is necessary. The President has the power to arrest and reincarcerate the offender without trial.

The court cannot require the convict to serve the unexpired portion of the original sentence if it does not exceed six years, the remedy is left to the President who has the authority to recommit him to serve the unexpired portion of his original sentence.

The period when convict was at liberty is not deducted in case he is recommitted.

Q: What are the elements of this crime?

A:

1. Offender was a convict
2. He was granted a conditional pardon by the Chief Executive
3. He violated any of the conditions of such pardon

Q: When can there be a violation of the conditional pardon?

A: When the condition is violated during the remaining period of the sentence. If the condition of the pardon is violated when the remaining unserved portion of the sentence has already lapsed, there will be no criminal liability for the violation. However, the convict maybe required to serve the unserved portion of the sentence, that is, continue serving original penalty.

Q: What is the difference between violation of conditional pardon and evasion of service of sentence?

A:

VIOLATION OF CONDITIONAL PARDON	EVASION OF SERVICE OF SENTENCE
It is not a public offense for it does not cause harm or injury to the right of another person nor does it disturb public order.	It is a public offense separate and independent from any other act.

Note: Violation of conditional pardon is a distinct crime.

A. Decree Codifying the Laws on Illegal / Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives (P.D. 1866, as amended by R.A. 8294)

Note: If the unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted *coup d'etat*, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat. *(Sec. 1, RA 8294)*

B. Human Security Act of 2007 (R.A. 9372)

Q: What are the punishable acts of terrorism?

A:

1. Any person who commits an act punishable under any of the following provisions of the:

    a. *RPC*:
        i. Piracy in General and Mutiny in the High Seas or in the Philippine Waters
        ii. Rebellion or Insurrection
        iii. *Coup d'etat*, including acts committed by private persons
        iv. Murder
        v. Kidnapping and Serious Illegal Detention
        vi. Crimes Involving Destruction; or

b. *Special Penal Laws:*
   i. The Law on Arson
   ii. Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990
   iii. Atomic Energy Regulatory and Liability Act of 1968
   iv. Anti-Hijacking Law
   v. Anti-Piracy and Anti-Highway Robbery Law of 1974 and
   vi. Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives

Note: The abovementioned act must:
1. Sow and create a condition of widespread and extraordinary fear and panic among the populace
2. Coerce the government to give in to an unlawful demand. *(Sec. 3)*

2. Persons who conspire to commit the crime of terrorism.

Q: Who are liable under R.A. 9372?

A:

1. *Principal* – Any person who commits any of the acts under Section 3 and 4

2. *Accomplice* – any person who not being a principal under Article 17 of the RPC or a conspirator as defined under Section 4 hereof, cooperates in the execution of either the crime of terrorism or conspiracy to commit terrorism by previous or simultaneous acts

3. *Accessory* – any person who having knowledge of the commission of the crime of terrorism or conspiracy to commit terrorism and without having participated therein either as principal or accomplice under Articles 17 and 18 of the RPC, takes part subsequent to its commission in any of the following manner:

   a. By profiting himself or assisting the offender to profit by the effects of the crime

   b. By concealing or destroying the body of the crime or the effects or instruments thereof in order to prevent its discovery

   c. By harboring, concealing, or assisting in the escape of the principal or conspirator of the crime.

   XPN: Spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters or relatives by affinity within the same degree

   XPN to the XPN: those falling under (a).

Q: Is prosecution under R.A. 9372 a bar to another prosecution under the RPC or any other special penal laws?

A: When a person has been prosecuted under a provision of this Act, upon a valid complaint or information or other formal charge sufficient in form and substance to sustain a conviction and after the accused had pleaded to the charge, the acquittal of the accused or the dismissal of the case shall be a bar to another prosecution for any offense or felony which is necessarily included in the offense charged under this Act. *(Sec. 49)*

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IV. CRIMES AGAINST PUBLIC INTEREST (161-187)

FORGERIES

COUNTERFEITING THE GREAT SEAL OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, FORGING THE SIGNATURE OR STAMP OF THE CHIEF EXECUTIVE (Art. 161)

Q: What are the punishable acts?

A:

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 of the Government of the Philippines

Note: When the President's signature is forged, it is not falsification but forging of signature of the Chief Executive under this article.

USING FORGED SIGNATURE OR COUNTERFEIT SEAL OR STAMP (Art. 162)

Q: What are the elements of this crime?

A:

1. 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

Note: Offender here should not be the forger or the cause of counterfeiting; otherwise the crime committed is forgery under Art. 161.

In using the forged signature or stamp of the President of forged seal, 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 2 degrees lower, under Art. 162, he is punished by a penalty only 1 degree lower.

COUNTERFEITING COINS

MAKING AND IMPORTING AND UTTERING FALSE COINS (Art. 163)

Q: What are the elements of this crime?

A:

1. There be false or counterfeited coins
2. Offender made, imported or uttered such coins
3. In case of uttering such false or counterfeited coins, he connived with the counterfeiters or importers

Q: What is counterfeiting?

A: Counterfeiting means to imitate a coin that is genuine. It gives an appearance of one of legal tender. The coin is counterfeit even if it has more intrinsic value than the coin of legal tender.

Q: A person gave a copper cent the appearance of a silver piece, it being silver plated, and attempted to pay with it a package of cigarettes which he bought at a store. What crime, if any, was committed?

A: Such person is ***not*** liable for counterfeiting of coin, but for *estafa* under Art. 318. *(Reyes, 2008)*

Q: What is the criterion used in determining whether a coin is a counterfeit or not?

A: The criterion is that the imitation must be such as to deceive an ordinary person in believing it to be genuine. Consequently, if the imitation is so imperfect that no one was deceived, the felony cannot be consummated.

Q: Can former coins withdrawn from circulation be counterfeited under Art.163?

A: Yes. Art. 163 mentions "coin" without any qualifying words such as "current."

Note: The reason for punishing the fabrication of coin withdrawn from circulation is the possibility that the counterfeiter may later apply his trade to the making of coins in actual circulation. *(Reyes, 2008)*

Q: What is punished in "importing" false coins?

A: It is the mere act of importing that is being punished, even if the coins are not placed in circulation.

Q: What is meant by "uttering" of coins?

A: Uttering means to circulate, to pass counterfeit coins.

Q: What are the kinds of coins the counterfeiting of which is punished?

A:

1. Silver coin of the Philippines or coins of the Central Bank of the Philippines
2. Coin of the minor coinage of the Philippines or of the Central of the Bank of the Philippines
3. Coin of the currency of a foreign country.

Note: With respect to par. 3 the use of the word 'currency' is not correct because the Spanish text uses the word 'moneda' which embraces not only those that are legal tender, but also those out of circulation.

Q: What are the acts of falsification or falsity?

A:

1. *Counterfeiting* – refers to money or currency

2. *Forgery* – refers to instruments of credit and obligations and securities issued by the Philippine Government of any banking institution authorized by the Philippine government to issue the same

3. *Falsification* – can only be committed in respect of documents

Q: What crimes may be committed in relation to coins in circulation?

A: Counterfeiting and mutilation of coins.

MUTILATION OF COINS IMPORTATION AND UTTERANCE OF MUTILATED COINS (Art. 164)

Q: What are the punishable acts?

A:

1. Mutilating coins of legal currency with the further requirement that there be intent to damage or defraud another

2. Importing or uttering such mutilated coins, with the further requirement that there must be connivance with the mutilator or importer in case of uttering.

Q: What is mutilation?

A: Mutilation means diminishing or taking off by ingenuous means part of the metal in the coin either by filing or substituting it for another metal of inferior quality.

Q: What are the requisites of mutilation?

A:

1. Coin mutilated is of legal tender
2. Offender gains from the precious metal dust abstracted from the coin
3. It has to be a coin.

Note: Foreign notes and coins are not included under this article. Also, there must be intention to mutilate.

SELLING OF FALSE OR MUTILATED COIN, WITHOUT CONNIVANCE (Art. 165)

Q: What are the punishable acts?

A:

1. Possession of coins counterfeited or mutilated by another person, with intent to utter the same, knowing that it is false or mutilated.

2. Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Note: Constructive possession or the subjection of the thing to one's control is included.

Accused must have knowledge of the fact that the coin is false.

Q: In Art. 165, is it necessary that the counterfeited coin is a legal tender?

A: G.R.: No.

XPN: If the coin is a mutilated coin, it must be a legal tender.

Q: What if the false or mutilated coins are found in possession of the counterfeiters or mutilators or importers?

A: Such possession does not constitute a separate offense but is punished either under Art. 163 or 164.

Note: P.D. 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.

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FORGING TREASURY OR BANK NOTES OR OTHER DOCUMENTS PAYABLE TO BEARER; IMPORTING, AND UTTERING SUCH FALSE OR FORGED NOTES AND DOCUMENTS; IMPORTING, AND UTTERING SUCH FALSE OR FORGED NOTES AND DOCUMENTS (Art. 166)

Q: What are the punishable acts?

A:

1. Forging or falsification of treasury or bank notes or other documents payable to bearer.

2. Importation of such false or forged obligations or notes.

   Note: It means to bring them into the Philippines, which presupposes that the obligations or notes are forged or falsified in a foreign country.

3. Uttering obligations or note knowing them to be false or forged, whether such offer is accepted or not, with a representation.

   Note: It means offering obligations or notes knowing them to be false or forged, whether such offer is accepted or not, with a representation.

Q: X pleaded guilty to the charge of having passed a P20 counterfeit bill in a store. Can he be held guilty of violating Art. 166?

A: No. Uttering forged bill must be with connivance with the authors of the forgery to constitute a violation of Art. 166. *(Reyes, 2008)*

Q: What is the difference between forgery and falsification?

A:

FORGERY	FALSIFICATION
Committed by giving to a treasury or bank note or any instrument payable to the bearer or to order the appearance of true and genuine document.	Committed by erasing, substituting, counterfeiting, or altering by any means, the figures, letters, words, or signs contained therein.

Q: What are the notes and other obligations and securities that may be forged or falsified under Art. 166?

A:

1. Treasury or bank notes
2. Certificates and
3. Other obligations and securities payable to bearer

Note: Falsification of PNB checks is not forgery under Art. 166 of RPC but falsification of commercial documents under Art. 172 in connection with Art. 171 of the RPC.

COUNTERFEITING, IMPORTING AND UTTERING INSTRUMENTS NOT PAYABLE TO BEARER (Art. 167)

Q: What are the elements of this crime?

A:

1. There be an instrument payable to order or other document of credit not payable to bearer

2. Offender forged, imported or uttered such instrument

3. In case of uttering, he connived with the forger or importer

Q: What are the acts of forgery punished under Art. 167?

A:

1. *Forging* instruments payable to order or documents of credit not payable to bearer
2. *Importing* such false instruments
3. *Uttering* such false instruments in connivance with the forger or the importer

Note: Connivance is not required in uttering if the utterer is the forger.

Counterfeiting under this article must involve an instrument payable to order or other document of credit not payable to bearer.

ILLEGAL POSSESSION AND USE OF FALSE TREASURY OR BANK NOTES AND OTHER INSTRUMENTS (Art. 168)

Q: What are the elements of this crime?

A:

1. Any treasury or bank notes 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 performs any of these acts:
    a. Using any of such forged or falsified instrument; or
    b. Possessing with intent to use any of such forged or falsified instruments

Note: The act being punished under Art. 168 is knowingly possessing with intent to use any such forged treasury or bank notes.

Q: Is possession of false treasury or bank notes alone without intent to use a criminal offense enough to consummate the crime?

A: No. But mere possession with intent to utter consummates the crime of illegal possession of false notes.

Note: A person in possession of falsified document and who makes use of the same is presumed to be the material author of falsification.

The accused has the burden to give satisfactory explanation of his possession of forged bills.

FORGERY (Art. 169)

Q: How is forgery committed?

A:

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document

2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or signs contained therein. *(Art. 169)*

Q: X caused the printing of the checks and directed the printer to incorporate therein the important details and wordings contained in checks regularly issued by a US government office. What crime did X commit?

A: X committed forgery within the meaning of par.1 of Art. 169 of the RPC on instruments payable to order. *(People v. Orqueza)*

Q: A received a treasury warrant, a check issued by the Government. It was originally made payable to B, or his order. A wrote B's name on the back of said treasury warrant as if B had indorsed it, and then presented it for payment. It was paid to A. What crime did A commit?

A: This is forgery because when **A** wrote B's name on the back of the treasury warrant which was originally made payable to B or his order, he converted the treasury warrant to one payable to bearer. It had the effect of erasing the phrase "or his order" upon the face of the warrant. *(U.S. v. Solito)*

Note: Forgery under the RPC applies to papers, which are in the form of obligations and securities issued by the Philippine Government as its own obligations, which are given the same status as legal tender. *E.g.* Treasury and bank notes.

If all acts are done but genuine appearance is not given, the crime is frustrated.

Q: When is counterfeiting not forgery?

A: The subject of forgery should be treasury or bank notes. If the subject of forgery were a document other than these, the crime would be falsification. *(Boado, 2008)*

Q: What is the essence of forgery?

A: The essence of forgery is giving a document the appearance of a true and genuine document.

Q: In checks and other commercial documents, how is forgery committed?

A: Forgery is committed when the figures or words are changed which materially alters the document.

Q: In a case where the accused, instead of carrying out his intention, threw away the forged note, can he be made liable?

A: No, for the law will not close the door of repentance on him, who having set foot on the path of crime, retraces his steps before it is too late *(People v. Padilla, 36 O. G. 2404)*

FALSIFICATION OF LEGISLATIVE DOCUMENTS (Art. 170)

Q: What are the elements of this crime?

A:

1. There be 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 therefore
4. Alteration has changed the meaning of the document

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Note: The offender must not be a public official entrusted with the custody or possession of such document, otherwise Art. 171 will apply.

The bill, resolution or ordinance must be genuine.

Q: Define document.

A: It is any written instrument by which a right is established or an obligation is extinguished, or every deed or instrument executed by a person by which some disposition or agreement is proved, evidenced or set forth.

Q: What are the kinds of documents?

A:

1. *Public document* – any instrument notarized by a notary public or competent public official with the solemnities required by law.

   E.g.
   a. Civil service examination papers
   b. Official receipt required by the government to be issued upon receipt of money for public purposes
   c. Residence certificate
   d. Driver's license

2. *Official document* – any instrument issued by the government or its agents or officers having authority to do so and the offices, which in accordance with their creation, they are authorized to issue.

   E.g. Register of attorneys officially kept by the Clerk of the Supreme Court in which it is inscribed the name of each attorney admitted to the practice of law.

3. *Private document* – every deed or instrument by a private person without the intervention of the notary public or of any other person legally authorized, by which document some disposition or agreement is proved, evidenced or set forth.

4. *Commercial document* – any instrument executed in accordance with the Code of Commerce of any mercantile law containing disposition of commercial rights or obligations.

   E.g.
   a. Bills of exchange
   b. Letters of Credit
   c. Checks
   d. Quedans
   e. Drafts
   f. Bills of lading

Note: Under the Rules of Court, there are only two kinds of document private and public document.

Public document is broader than the term official document. Before a document may be considered official, it must first be public document. To become an official document, there must be a law which requires a public officer to issue or to render such document.

E.g. 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.

Q: What are examples of writings that do not constitute documents?

A:

1. A draft of a municipal payroll which is not yet approved by the proper authority

2. Mere blank forms of official documents, the spaces of which are not filled up

3. Pamphlets or books which are mere merchandise, not evidencing any disposition or agreement

Q: What are the five classes of falsification?

A:

1. Falsification of legislative documents

2. Falsification of a document by a public officer, employee or notary public

3. Falsification of public or official, or commercial documents by a private individual

4. Falsification of private document by any person

5. Falsification of wireless, telegraph and telephone messages

Q: How is document falsified?

A: A document is falsified by fabricating an inexistent document or by changing the contents of an existing one through any of the 8 ways enumerated under Art. 171.

Note: R.A. 248 prohibits the reprinting, reproduction or republication of government publications without

FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE OR NOTARY OR ECCLESIASTICAL MINISTRY (Art. 171)

Q: What are the elements of this crime?

A:

1. Offender is a public officer, employee, or notary public.

2. He takes advantage of his official position –
   a. He has the duty to make or prepare or to otherwise intervene in the preparation of the document; or
   b. He has the official custody of the document which he falsifies.

3. He falsifies a document by committing any of the following acts:
   a. Counterfeiting or imitating any handwriting, signature or rubic;

      Note: It is not necessary that the imitation be perfect, it is enough that there be an attempt to imitate, and the two signatures (the genuine and the forged), bear some resemblance to each other.

   b. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
   c. Attributing to persons who have participated in an act or proceeding statement other than those in fact made by them;
   d. Making untruthful statements in a narration of facts

      Elements:
      i. That the offender makes in a document untruthful statements in a narration of facts;
      ii. That he has legal obligation to disclose the truth of the facts narrated by him;
      iii. The facts narrated by the offender are absolutely false.
      iv. The untruthful narration must be such as to affect the integrity of the document or to change the effects which it would otherwise produce.

      Note: This kind of falsification may be committed by omission.

   e. Altering true dates

      Note: This mode of falsification is committed only if the true date is essential.

   f. Making any alteration or intercalation in a genuine document which changes its meaning

      Note: The alteration must affect either the veracity of the document or the effect thereof.

      The alteration which makes a document speak the truth does not constitute falsification.

   g. Issuing in authenticated form a document purporting to be a copy of any original document when no such copy a statement contrary to, or different from that of the genuine original

   h. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book.

   Note: In 1st, 2nd, 6th, 7th (2nd part), 8th mode of falsification, there must be genuine document.

   In other paragraphs of 171, falsification may be committed by simulating or fabricating a document.

   Where the vault keeper extracted the original of marriage contract in the file and changed it with another document so as not to disrupt the numbering of the documents numerically filed, to help prove the claim that no marriage was solemnized, he is guilty of Falsification for intercalating any instrument or note relative to the issuance thereof in a protocol, registry or official book.

4. In case the offender is an ecclesiastical minister, the act of falsification is committed with respect to any record or document of such character that the falsification may affect the civil status of persons.

Q: X was charged with falsification because in her certificate of candidacy for the position of councilor she had 'willfully and unlawfully' made the false statement that she was eligible to said

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office although she knew fully well that she was under 23 years old. Was the charge proper?

A: No. When the accused certified she was eligible for the position, she practically wrote *a conclusion of law*. Hence she may not be declared guilty of falsification because Art. 171 punishes untruthful statements *in narration of facts. (People v. Yanza)*

Q: Who are the persons liable?

A:

1. Public officer, employees, or notary public who takes advantages of official position

2. Ecclesiastical minister if the act of falsification may affect the civil status of persons

3. Private individual, if in conspiracy with public officer

Q: Augustina filed a criminal complaint against Bernante for falsification of public document because the latter allegedly falsified leave forms. It was alleged that Bernante made it appear in his leave application that he was on forced leave and on vacation leave on certain dates. In truth, Bernante was serving a 20-day prison term because of his conviction of the crime of slight physical injuries. Is Bernante liable for the crime of falsification of documents?

A: No. Augustina failed 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 law 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 a narration of facts absent any legal obligation to disclose where he would spend his vacation leave and forced leave. *(Enemecio v. Office of the Ombudsman [Visayas] G.R. No. 146731, Jan. 13, 2004)*

FALSIFICATION BY PRIVATE INDIVIDUALS AND USE OF FALSIFIED DOCUMENTS (Art. 172)

Q: What are the punishable acts?

A:

1. Falsification of public official or commercial document by a private individual.

   Elements under paragraph 1:

   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
   c. The falsification is committed in a public, official, or commercial document or letter of exchange

   Note: Under this par., damage is not essential. It is presumed.

   Lack of malice or criminal intent may be put up as a defense under this article, as when it is with the authority of the heirs of a deceased in a deed of sale.

   Cash disbursement vouchers or receipts evidencing payments are not commercial documents.

   A mere blank form of an official document is not in itself a document.

   The possessor of falsified document is presumed to be the author of falsification.

2. Falsification of private document by any person

   Elements under paragraph 2:

   a. Offender committed any of the acts of falsification except Art. 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 cause damage to a third party or at least the falsification was committed with intent to cause such damage

   Note: It is not necessary that the offender profited or hoped to profit.

   There is no falsification through reckless imprudence if the document is private and no actual damage is caused.

   If the *estafa* was already consummated at the time the falsification of a private document was committed for the purpose of concealing the *estafa*, the falsification is not punishable. As regards to the

falsification of the private document, there was no damage or intent to cause damage.

A private document may require the character of a public document when it becomes part of an official record and is certified by public officer duly authorized by law.

The crime is falsification of public documents even if the falsification took place before the private document become part of the public record.

Damage to one's honor is included. *(People v. Marasigan)*

Q: Is there a complex crime of *estafa* through falsification of a private document?

A: NO, because the immediate effect of falsification of private document is the same as that of *estafa*.

Q: In falsification of private documents, what will determine whether the crime committed is estafa or falsification?

A: If the falsification of the private document was ***essential*** in the commission of *estafa* because without the falsification, *estafa* cannot be committed, the crime is falsification. *Estafa* becomes the consequence of the crime. If the estafa can be committed even ***without*** resorting to falsification, the main crime is *estafa*.

3. Use of falsified document.

Elements under the last paragraph:

a. In introducing in a judicial proceeding –
   i. Offender knew that the document was falsified by another person
   ii. The falsified document is in Articles 171 or 172 (1 or 2)
   iii. He introduced said document in evidence in a judicial proceeding

b. In use in any other transaction –
   i. Offender knew that a document was falsified by another person
   ii. The false document is embraced in Art. 171 or 172 (1 or 2)
   iii. He used such document
   iv. The use caused damaged to another or at least used with intent to cause damage

Note: The user of the falsified documents is deemed the author of the falsification, if: 1.The use was so closely connected with the falsification; and 2. the user had capacity of falsifying the document.

Q: Is damage a requirement in the use of falsified document?

A: The element of damage to another is a requisite ***only*** when the falsified document is introduced in evidence in a proceeding *other than judicial*.

Q: If a person used a falsified document what should be the proper charge against him?

A: Falsification of documents because of the legal principle that when a person made use of falsified document, he is deemed to be the falsifier.

Note: Only when he is acquitted therefrom will he be prosecuted for the crime of use of falsified document. *(Boado, 2008)*

Note: If the crime was use of falsified document, the nature of the document is not controlling. In this crime, the purpose for knowingly using falsified document is essential. But if the document is presented in court, even if rejected, the mere offer thereof is criminal. *(Boado, 2008)*

Q: Is there such crime as attempted/ frustrated falsification?

A: None. Falsification is consummated the moment the genuine document is altered of the moment the false document is executed. (Reyes, 2008)

Q: In what instance will falsification not give rise to criminal liability?

A: Where the intent to pervert the truth is absent. Intentional falsification requires criminal intent to falsify. Lack of criminal intent is shown by the following circumstances:

a. Accused did not benefit out of the falsification, and
b. No damage has been caused either to the government or third person. *(Boado, 2008)*

Q: What are the distinctions between falsification of public document and private document?

A:

FALSIFICATION OF PUBLIC DOCUMENT	FALSIFICATION OF PRIVATE DOCUMENT
Mere falsification is enough	Aside from falsification, prejudice to a third person or intent to cause it, is essential.

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Can be complexed with other crimes if the act of falsification was the necessary means in the commission of such crimes, like estafa, theft, or malversation. *E.g.* Malversation through falsification of a public document; Estafa through falsification of a public document.	There is no complex crime of estafa through falsification of a private document. Hence, when one makes use of a private document, which he falsified, to defraud another, there results only one crime: that of falsification of a private document.

Note: Falsification has no attempted or frustrated stage. Falsification is consummated the moment the genuine document is altered or the moment the false document is executed.

Q: Does the payment made shows lack of damage and consequently, negates criminal intent?

A: No. The absence of damage does not necessarily imply that there can be no falsification as it is merely an element to be considered to determine whether or not there is criminal intent to commit falsification. It is a settled rule that in the falsification of public or official documents, it is not necessary that there be present the idea of gain or the intent to injure a third person. This is so because in the falsification of a public document, the principal thing punished is the violation of the public faith and the destruction of the truth as therein solemnly proclaimed. *(Lastrilla v. Granda, G. R. No 160257, Jan. 31, 2006)*

FALSIFICATION OF WIRELESS, CABLE, TELEGRAPH, AND TELEPHONE MESSAGES, AND USE OF SAID FALSIFIED MESSAGES (Art. 173)

Q: What are the punishable acts?

A:

1. Uttering fictitious, wireless, telegraph or telephone message

2. Falsifying wireless, telegraph or telephone message
   Elements:
   a. Offender is an officer or employee of the government or an officer or employee of a private corporation engaged in the service of sending or receiving wireless, cable or telephone message
   b. He falsifies wireless, cable telegraph or telephone message

3. Using such falsified message
   Elements:
   a. Offender knew that wireless, cable, telegraph, or telephone message was falsified by an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message
   b. He used such falsified dispatch
   c. The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice

Note: Act No. 1851, Sec. 4, punishes private individuals who forge or alter telegrams.

The public officer, to be liable must be engaged in the service of sending or receiving wireless, cable and telegraph or telephone message.

For uttering or falsifying, a private individual may be a principal by inducement but not direct participation. For use of a falsified message, the offender may be any person.

Q: A telegraph operator, who received two telegrams for transmission, reduced the number of words of the telegraph messages by twelve and eight words, without having been authorized to do so by the sender. He pocketed the differences in the prices charged in the sums of P 0.72 and 0.48, respectively. What crime, if any, did the telegraph operator commit?

A: He was guilty of falsification of telegraph messages. *(U.S. v. Romero)*

FALSE MEDICAL CERTIFICATES, FALSE CERTIFICATES OF MERIT OR SERVICE ETC. (Art. 174)

Q: What are the punishable acts?

A:

1. Issuance of false certificate by a physician or surgeon in connection with the practice of his profession

   Note: It is essential that the medical certificate is used knowing it to be false.

2. Issuance of a false certificate or merit or service, good conduct or similar circumstances by a public officer;

   Note: Intent to gain is immaterial. But if the public officer issued the false certificate in

consideration of a promise, gift or reward, he will also be liable bribery.

3. Falsification by a private person of any certificate falling within 1 and 2.

Q: What is a certificate?

A: Any writing by which testimony is given that a fact has or has not taken place.

Q: Who are the people liable under this Article?

A:

1. Physician or surgeon
2. Public officer
3. Private individual who falsified a certificate falling in the classes mentioned in nos. 1 and 2.

Note: Falsification of certificate of large cattle is not covered by Art. 174. The certificate of large cattle is a public document and its falsification is covered by Art. 171 or Art. 172, depending on whether the offender is a public officer or a private individual.

The phrase "or similar circumstances" in Art. 174 does not seem to cover property, because the circumstance contemplated must be similar to "merit," "service," or "good conduct."

USING FALSE CERTIFICATES (Art. 175)

Q: What are the elements of this crime?

A:

1. A physician or surgeon had issued a false medical certificate, or public officer had issue a false certificate or service, good conduct, or similar circumstance, or a private person had falsified any of said certificates

2. Offender knew that the certificate was false

3. He used the same

Note: When any of false certificates mentioned in Art. 174 is used in judicial proceedings, Article 172 does not apply because it is limited only to those false documents embraced in Articles 171 and 172.

Ratio: Use of false document in judicial proceeding under Art. 172 is limited to those false document embraced in Arts. 171 and 172.

MANUFACTURING AND POSSESSION .OF INSTRUMENTS OR IMPLEMENTS FOR FALSIFICATION (Art. 176)

Q: What are the punishable acts?

A:

1. Making or introducing into the Philippines any stamps, dies, marks, or other instruments or implements for counterfeiting or falsification

2. Possessing with intent to use the instrument or implements for counterfeiting or falsification made in or introduced into the Philippines by another person

Q: Is it necessary that the implements confiscated form a complete set for counterfeiting or falsification?

A: No, it being enough that they may be employed by themselves or together with other implements to commit the crime of counterfeiting or falsification.

Art. 165 and 176 punish not only actual physical possession, but also constructive possession or the subjection of the thing to one's control.

OTHER FALSITIES

USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS (Art. 177)

Q: What are the forms of usurpation?

A:

1. *Usurpation of Authority* – Knowingly and falsely representing oneself to be an officer, agent or representative of any department or agency of the Philippine Government or any foreign government.

   Note: Under the first form, mere false representation is sufficient to bring about criminal liability.

   There must be positive, express and explicit representation.

2. *Usurpation of Official Functions* – Performing any act pertaining to any person in authority or public officer of the Philippine Government or of a foreign government or any agency thereof, under pretense of official position, and without being lawfully entitled to do so.

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Note: Under the second form, without false pretense there is no crime of usurpation of authority.

Q: Can a public official commit this crime?

A: Yes. Violation of Art. 177 is not restricted to private individuals, public officials may also commit this crime.

Note: It does not apply to an occupant under color of title. If it can be proven that the usurpation of authority or official functions by accused was done in good faith or under cloth of authority, then the charge of usurpation will not apply.

R.A. 75 provides penalty for usurping authority of diplomatic, consular or other official of foreign government.

Q: To whom does the authority or function usurped pertain?

A: The function or authority usurped must pertain to:

1. The government
2. Any person in authority
3. Any public officer

USING FICTICIOUS NAME AND CONCEALING TRUE NAME (Art. 178)

Q: What are the punishable acts?

A:

1. Using fictitious name

   Elements:
   a. Offender uses a name other than his real name
   b. He uses the fictitious name publicly
   c. Purpose of use is to conceal a crime, to evade the execution of a judgment or to cause damage (to public interest)

   Note: If the purpose is to cause damage to *private* interest, the crime will be *estafa* under Art. 315, subdivision 2 Par (a).

2. Concealing true name

   Elements:
   a. Offender conceals his true name and other personal circumstances
   b. Purpose is only to conceal his identity

Q: What is a "fictitious name"?

A: Fictitious name is any other name which a person publicly applies to himself without authority of law.

Q: What are the distinctions between using fictitious name and concealing true name?

A:

USING FICTITIOUS NAME	CONCEALING TRUE NAME
Element of publicity must be present.	Element of publicity is not necessary.
The purpose is either to conceal a crime, to evade the execution of a judgment, or to cause damage.	The purpose is merely to conceal identity.

Note: The crime under this article may be complexed with the crime of delivering prisoners from jail, but may not be complexed with evasion of service of sentence.

COMMONWEALTH ACT No. 142, as amended by R.A. No. 6085 (An Act Regulating the Use of Aliases)

Q: What does this law prohibit?

A:

GR: No person shall use 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.

XPN: Pseudonym solely for literary, cinema, television, radio, or other entertainment and in athletic events where the use of pseudonym is normally accepted practice.

Note: Any person desiring to use an alias shall apply for authority therefore in proceedings like those legally provided to obtain judicially authority for a change of name.

No person shall be allowed to secure such judicial authority for more than one alias.

The judicial authority for the use of alias, the Christian name and the alien's immigrant name shall be recorded in the proper local civil registry, and no person shall use any name/s other than his original or real name unless the same is or are duly recorded in the proper local civil registry.

Q: Does the common-law wife incur criminal liability if he uses the surname of his common-law husband?

A: 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 with for the past 20 years and has been introducing herself to the public as his wife.

ILLEGAL USE OF UNIFORM OR INSIGNIA (Art. 179)

Q: What are the elements of the crime?

A:

1. Offender makes use of insignia, uniform or dress
2. The insignia, uniform or dress pertains to an office not held by the offender or to a class of persons of which he is not a member
3. Said insignia, uniform, or dress is used publicly and improperly

Q: Is it required that there be exact imitation of uniform to constitute illegal use of uniforms or insignia?

A: No. Colorable resemblance calculated to deceive ordinary persons is sufficient.

Q: What is meant by "improper" use of uniform or insignia?

A: It means that the offender has no right to use the uniform or insignia.

Note: Using uniform, decoration, or regalia of a foreign State is punished by R.A. 75.

Wearing insignia, badge or emblem of rank of the members of the AFP or Constabulary is punished by R.A. 493 except if used in playhouse or theater or in moving picture films.

Wearing the uniform of an imaginary office is not punishable.

EO 297 punishes the illegal manufacture, sale, distribution and use of PNP uniforms, insignias and other accoutrements.

FALSE TESTIMONY

Q: What is a false testimony?

A: A false testimony is a declaration under oath of a witness in a judicial proceeding which is contrary to what is true, or to deny the same or to alter essential truth.

Note: 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.

Q: What are the three forms of false testimony?

A: False testimony in:

1. Criminal Cases
2. Civil Cases
3. Other Cases

Q: Can a false testimony be committed thru negligence?

A: No. False testimony requires a criminal intent and cannot be committed thru negligence. It could not be frustrated or attempted.

Q: What is the reason for punishing false testimony?

A: Falsehood is ever reprehensible; but it is particularly odious when committed in a judicial proceeding, as it constitutes an imposition upon the court and seriously exposes it to a miscarriage of justice.

FALSE TESTIMONY AGAINST THE DEFENDANT (Art. 180)

Q: What are the elements of this crime?

A:

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

Note: The offender must however testify on material matters so that even if he actually lied during his testimony on immaterial matters, like his or her age, this article is not violated.

Violation of this article requires criminal intent. Hence, it cannot be committed through negligence.

Q: Is there false testimony even if the testimony is not considered by the court?

A: Yes, because what is being considered here is the tendency of the testimony to establish or aggravate

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the guilt of the accused and not the result that the testimony may produce.

Note: Defendant must be sentenced to at least a correctional penalty or a fine or must be acquitted.

The offender need not impute guilt upon the accused to be liable. For this crime to come into play, the decision in the criminal case where he testified must have been already final.

Art. 180 applies to Special Penal Laws because Special Penal Laws follow the nomenclature of the RPC.

FALSE TESTIMONY FAVORABLE TO THE DEFENDANT (Art. 181)

Q: What is essential in this crime?

A: Intent to favor the accused

Note: False testimony in favor of a defendant need not directly influence the decision of acquittal and it need not benefit the defendant. The intent to favor defendant is sufficient.

Q: Is rectification made spontaneously after realizing the mistake a false testimony?

A: No.

Note: False testimony by negative statement is still in favor of the defendant.

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.

Q: Can a defendant who falsely testified in his own behalf in a criminal case be guilty of false testimony favorable to the defendant?

A: Yes. It must not be forgotten that the right of an accused to testify in his own behalf is secured to him, not that he may be enabled to introduce false testimony into the record, but to enable him to spread upon the record the truth as to any matter within his knowledge which will tend to establish his knowledge. *(U.S. v. Soliman)*

Note: The ruling in Soliman would only apply if the defendant voluntarily goes upon the witness stand and falsely imputes to some other person the commission of a grave offense. If he merely denies the commission of the crime or his participation therein, he should not be prosecuted for false testimony. *(Reyes 2008, p.269)*

FALSE TESTIMONY IN CIVIL CASES (Art. 182)

Q: What are the elements of this crime?

A:

1. Testimony must be given in a civil case.
2. It must relate to the issues presented in said case
3. It must be false
4. It must be given by the defendant knowing the same to be false
5. It must be malicious and given with an intent to affect the issued presented in said case

Q: Suppose the false testimony is given a special proceeding (*i.e.* probate proceeding), what is the crime committed?

A: Perjury is committed if the false testimony is given in special proceedings. Art. 182 is not applicable when the false testimony is given in special proceedings.

Note: The basis of penalty is the amount involved in the civil case.

The criminal action in false testimony must be suspended when there is a pending determination of the falsity of the subject testimonies of private respondents in the civil case. *(Ark Travel Express v. Judge Abrogar, 410 SCRA 148, 2003)*

Q: What is the effect on prescriptive period of the classification of the false testimony as to whether it was given in favor or against the accused in a criminal case?

A: The classification significant in determining when the prescriptive period begins to run:

1. In ***Favor***- right after the witness testified falsely, the prescriptive period commences to run because the basis of the penalty on the false witness is the felony charged to the accused regardless of whether the accused was acquitted or convicted or the trial has terminated.

2. ***Against***- period will not begin to run as long as the case has not been decided with finality because the basis of the penalty on the false witness is the sentence on the accused testified against it. When the accused is acquitted, there is also a corresponding penalty on the false witness for his false testimony. *(Boado, 2008)*

FALSE TESTIMONY IN OTHER CASES AND PERJURY IN SOLEMN AFFIRMATION (Art. 183)

Q: What are the punishable acts?

A:

1. Falsely testifying under oath
2. Making a false affidavit.

Q: What are the elements of perjury?

A:

1. Accused made a statement under oath or executed an affidavit upon a material matter
2. Statement or affidavit was made before a competent officer, authorized to receive and administer oath
3. In that statement or affidavit, the accused made a willful and deliberate assertion of a falsehood
4. Sworn statement or affidavit containing the falsity is required by law

Note: The SC held that the statement need not be required but that it was sufficient if it was authorized by law to be made. *(People v. Angangco G.R. No. L-47683, Oct. 12, 1943)*

Q: What is perjury?

A: Perjury is the willful and corrupt assertion of falsehood under oath or affirmation administered by authority of law on a material matter.

Q: What is an oath?

A: Oath is any form of attestation by which a person signifies that he is bound in conscience to perform an act faithfully and truthfully.

Q: What is meant by *"material matter?"*

A: Material matter means the main fact which is the subject of the inquiry or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies.

Q: What is the test to determine the materiality of the matter?

A: The test is not whether the evidence was proper to be admitted but whether if admitted it could properly influence the result of the trial.

Q: What are the distinctions between perjury and false testimony?

A:

PERJURY	FALSE TESTIMONY
Any willful and corrupt assertion of falsehood on material matter under oath and not given in judicial proceedings	Given in the course of a judicial proceeding
There is perjury even during the preliminary investigation.	Contemplates actual trial where judgment of conviction or acquittal is rendered.
Perversion of truth	

Note: Mere assertion of falsehood is not enough to amount to perjury. The assertion must be deliberate and willful.

Q: What could be used as a defense?

A: Good faith or lack of malice is a defense in perjury. The assertion must be deliberate and willful.

Note: Falsely testifying under oath must not be in a judicial proceeding.

OFFERING FALSE TESTIMONY IN EVIDENCE (Art. 184)

Q: What are the elements of this crime?

A:

1. Offender offered in evidence a false witness or false testimony
2. He knew the witness or testimony was false
3. Offer was made in a judicial or official proceeding

Note: Art. 184 does not apply when the offender *induced* a witness to testify falsely. Art. 184 applies when the offender knowingly presented a false witness, and the latter testified falsely.

Q: What is subordination of perjury?

A: It refers to the act of a person of procuring a false witness to testify and thereby commit perjury. It is the act of the procurer.

Q: Does subordination of perjury exist under the RPC?

A: No, subordination of perjury no longer exists under the RPC but the act is punished as plain

perjury under Art. 183. It is, however, required that the false witness must first be convicted of perjury before the subordinate may be prostituted for his acts.

Note: 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.

FRAUDS, MACHINATIONS IN PUBLIC AUCTIONS (Art.185)

Q: What are the punishable acts?

A:

1. Soliciting any gift or promise as a consideration for refraining from taking part in any public auction.

   Elements:
   a. There is a public auction
   b. Offender solicits any gift or compromise from any of the bidders
   c. Such gift or promise is the consideration for his refraining from taking part in that public auction
   d. Offender has the intent to cause the reduction of the price of the thing auctioned

   Note: The crime is consummated by mere act of soliciting a gift or promise, and it is not required that the person making the proposal actually refrains from taking part in any auction.

2. Attempting to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

   Elements:
   a. There is a public auction
   b. Offender attempts to cause the bidders to stay away from that public auction
   c. It is done by threats, gifts, promises or any other artifice
   d. Offender has the intent to cause the reduction of the price of the thing auctioned

   Note: Mere attempt to cause prospective bidders to stay away from the auction is sufficient to constitute an offense. The threat need not be effective nor the offer or gift accepted.

   Execution sales should be opened to free and full competition in order to secure the maximum benefit for the debtors.

MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE (Art. 186)

Q: What is monopoly?

A: It 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 article or control the sale or the whole supply of a particular commodity.

Q: What is combination in restraint of trade?

A: Combination in restraint of trade is an agreement or understanding between two or more persons, in the form of 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 authority.

Note: Monopoly refers to end while combination in restraint of trade refers to means.

Q: What are the punishable acts?

A:

1. Combination to prevent free competition in the market.

   Elements:
   a. Entering into any contract or agreement or taking part in any conspiracy or combination in the form of a trust or otherwise
   b. In restraint of trade or commerce or to prevent by artificial means free competition in the market

2. Monopoly to restrain free competition in the market.

   Elements:
   a. By monopolizing any merchandise or object of trade or commerce, or by combining with any other person or persons to monopolize said merchandise or object

b. In order to alter the prices thereof by spreading false rumors or making use of any other artifice
c. To restrain free competition in the market

3. Manufacturer, producer, or processor or importer (persons liable) combining, conspiring or agreeing with any person (how crime committed) to make transactions prejudicial to lawful commerce or to increase the market price of merchandise (purpose of the crime).

Elements:
a. Manufacturer, producer, processor or importer of any merchandise or object of commerce
b. Combines, conspires, or agrees with any person
c. Purpose is to make transactions prejudicial to lawful commerce or to increase the market price of any merchandise or object of commerce manufactured, produced, processed, assembled or imported into the Philippines

Q: What is unfair competition?

A: 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 one having established goodwill or committing any act calculated to produce the result. *(Sec. 168.2, R.A. 8293)*

Q: What is the test of unfair competition?

A: The test is whether certain goods have been clothed with the appearance which is likely to deceive the ordinary purchaser exercising ordinary care.

Q: What are the grounds for liability under Art. 186?

A: The grounds for liability are:
1. Knowingly permitting commission of the punishable acts; or
2. Failing to prevent the commission of the said acts.

Note: Any property possessed under any contract or combination contemplated in this article shall be forfeited in favor of the Government.

Mere conspiracy or combination is punished.

When the offense is committed by a corporation or association, the president and directors or managers who knowingly permitted or failed to prevent the commission of such offense are liable.

The penalty is higher if the items involved are food substance, motor fuel or lubricants and goods or prime necessity.

IMPOSITION AND DISPOSITION OF FALSELY MARKED ARTICLES OR MERCHANDISE MADE OF GOLD, SILVER, OR OTHER PRECIOUS METALS OR THEIR ALLOYS (Art. 187)

Q: What are the elements of this crime?

A:
1. Offender imports, sells, or disposes of any of those articles or merchandise
2. Stamps, brands, or marks of those articles of merchandise fail to indicate the actual fineness or quality of said metals or alloys
3. Offender knows that the stamps, brands or marks fail to indicate the actual fineness or the quality of the metals or alloys

Note: Manufacturer who alters the quality or fineness of anything pertaining to his art or business is liable for *estafa* under Art. 315 subdivision 2 (b) of the RPC.

Q: What are the articles of the merchandise involved?

A:
1. Gold
2. Silver
3. Other precious metals
4. Their alloys

Note: Selling the misbranded articles is not necessary.

SUBSTITUTING AND ALTERING TRADEMARKS, TRADE NAMES OR SERVICE MARKS (Art. 188)

Q: What are the punishable acts?
A:
1. Substituting the trade name or trademark of some other manufacturer or dealer, or a colorable imitation thereof, for the tradename or trademark of the real manufacturer or dealer upon any article of commerce and selling the same

2. Selling or offering for sale such articles of commerce, knowing that the trade name or trademark has been fraudulently used
3. Using or substituting the service mark of some other person or colorable imitation of such mark, in the sale or advertising of his services
4. Printing, lithographing or reproducing tradename, trademark, or servicemark of one person, or a colorable imitation thereof, to enable the person to fraudulently use the same knowing the fraudulent purpose for which it is to be used.

UNFAIR COMPETITION, FRAUDULENT REGISTRATION OF TRADENAME, TRADEMARK, OR SERVICE MARK, FRAUDULENT DESIGNATION OF ORIGIN, AND FALSE DESCRIPTION (Art. 189)

Q: What are the punishable acts?

A:

1. Selling goods, giving them the general appearance of the goods of another manufacturer or dealer. *(Unfair competition)*

2. Affixing to his good or using in connection with his services a false designation of origin, or any false description or representation and selling such goods or services *(Fraudulent designation of origin. (False description)*

Note: Arts. 188 and 189 have been repealed by R.A. 8293. The Intellectual Property Code of the Philippines.

B. The New Public Bidding Law (R.A. 9184)

Q: What are the prohibited acts under R.A. 9184?

A:

1. Public officers who commit any of the following acts:

a. Open any sealed Bid including but not limited to Bids that may have been submitted through the electronic system and any and all documents required to be sealed or divulging their contents, prior to the appointed time for the public opening of Bids or other documents.

b. Delaying, without justifiable cause, the screening for eligibility, opening of bids, evaluation and post evaluation of bids, and awarding of contracts beyond the prescribed periods of Bids or other documents.

c. Unduly influencing or exerting undue pressure on any member of the BAC or any officer or employee of the procuring entity to take a particular bidder.

d. Splitting of contracts which exceed procedural purchase limits and competitive bidding.

e. When the head of the agency abuses the exercise of his power to reject any and all bids as mentioned under Section 41 of this Act with manifest preference to any bidder who is closely related to him in accordance with Section 47 of this Act.

Note: When any of the foregoing acts is done in collusion with private individuals, the private individuals shall likewise be liable for the offense.

2. Private individuals who commit any of the following acts, including any public officer, who conspires with them:

a. When two or more bidders agree and submit different Bids as if they were bona fide, when they knew that one or more of them was so much higher than the other that it could not be honestly accepted and that the contract will surely be awarded to the pre-arranged lowest bid.

b. When a bidder maliciously submits different Bids through two or more persons, corporations, partnerships or any other business entity in which he has interest of create the appearance of competition that does not in fact exist so as to be adjudged as the winning bidder.

c. When two or more bidders enter into an agreement which call upon one to refrain from bidding for Procurement contracts, or which call for withdrawal of bids already submitted, or which are otherwise intended to secure as undue advantage to any one of them.

d. When a bidder, by himself or in connivance with others, employ schemes which tend to restrain the natural rivalry of the parties or operates to stifle or

suppress competition and thus produce a result disadvantageous to the public.

3. Private individuals who commit any of the following acts, and any public officer conspiring with them:

a. Submit eligibility requirements of whatever kind and nature that contain false information or falsified documents calculated to influence the outcome of the eligibility screening process or conceal such information in the eligibility requirements when the information will lead to a declaration of ineligibility from participating in public bidding.

b. Submit Bidding Documents of whatever kind and nature than contain false information or falsified documents or conceal such information in the Bidding Documents, in order to influence the outcome of the public bidding.

c. Participate in a public bidding using the name of another or allow another to use one's name for the purpose of participating in a public bidding.

d. Withdraw a Bid, after it shall have qualified as the Lowest Calculated Bid/Highest Rated Bid, or to accept and award, without just cause or for the purpose of forcing the Procuring Entity to award the contract to another bidder. This shall include the non-submission of requirements such as, but not limited to, performance security, preparatory to the final award of the contract.

4. When the bidder is a juridical entity, criminal liability and the accessory penalties shall be imposed on its directors, officers or employees who actually commit any of the foregoing acts.*(Sec. 65)*

V. CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

A. The Comprehensive Dangerous Drugs Act of 2002 (R.A. 9165)

Q: What are the punishable acts under this act?

A:

1. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals *(Sec.4)*

Note: Any person, who, unless authorized by law, shall import or bring into the Philippines any dangerous drug, regardless of the quantity and purity involved, including any and all species of opium poppy or any part thereof or substances derived therefrom even for floral, decorative and culinary purposes.

2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals. *(Sec.5)*

Note: Selling is any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration. *(Sec.5)*

Q: What are the elements of this crime?

A:

1. The identity of the buyer and the seller
2. The object, and the consideration
3. The delivery of the thing sold and the payment therefor.

Note: All these require evidence that the sale transaction transpired, coupled with the presentation in court of the *corpus delicti, i.e.,* the body or substance of the crime. *(People v. Capuno, G.R.185715, 19 January 2011)*

3. Maintenance of a Den, Dive or Resort *(Sec.6)*

Q: Who are liable?

A:

1. Owner of den, dive or resort where any dangerous drug is used or sold in any form

2. Employee of den dive or resort who is aware of the nature of the place as such

3. Visitor of den, dive or resort who is aware of the nature of the place as such and shall knowingly visit the same

Note: If such den or dive is owned by a 3rd person, the following is required:

1. That the criminal complaint shall allege that such place is intentionally used in the furtherance of the crime
2. That the prosecution shall prove such intent on the part of the owner to use the property for such purpose
3. That the owner shall be included as an accused in the criminal complaint

Such den, dive or resort shall be confiscated and escheated in favor of the government.

4. Manufacture of:
   a. Dangerous Drugs and/or Controlled Precursors and Essential Chemicals
   b. Equipment, Instrument, Apparatus, and Other Paraphernalia for Dangerous Drugs and/or Controlled Precursors and Essential Chemicals *(Sec.8)*

Q: What do you mean by manufacturing?

A: It is the:

1. The production, preparation, compounding or processing of any dangerous drug and/or controlled precursor and essential chemical, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis,
2. And shall include any packaging or repackaging of such substances, design or configuration of its form, or labeling or relabeling of its container;
3. Except preparation, compounding, packaging or labeling of a drug or other substances by a duly authorized practitioner as an incident to his/her administration or dispensation of such drug or substance in the course of his/her professional practice including research, teaching and chemical analysis of dangerous drugs or such substances that are not intended for sale or for any other purpose. *(Sec.8)*

4. Possession of:
   a. Dangerous drugs *(Sec. 11)*
   b. Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs *(Sec. 12)*
   c. Dangerous Drugs during Parties, Social Gatherings or Meetings *(Sec. 13)*

d. Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs during Parties, Social Gatherings or Meetings *(Sec. 14)*

Q: What are the elements of this crime?

A:

1. The accused was in possession of an item or an object identified to be a prohibited or regulated drug
2. Such possession is not authorized by law
3. The accused was freely and consciously aware of being in possession of the drug.

5. Use of dangerous drugs *(Sec.15)*

Note: Use is any act of injecting, intravenously or intramuscularly, of consuming, either by chewing, smoking, sniffing, eating, swallowing, drinking or otherwise introducing into the physiological system of the body, and of the dangerous drugs.

Q: What are the elements of this crime?

A:

1. The accused was apprehended for the use of dangerous drugs
2. He was found to be positive for use of any dangerous drugs
3. No other dangerous drug was found in his possession.

NOTE: Where the person tested is also found to have in his possession any other dangerous drugs, s/he shall be prosecuted in accordance with Sec. 11, for illegal possession of dangerous drugs.

Notwithstanding the provisions of any law to the contrary, a positive finding for the use of dangerous drugs shall be a qualifying aggravating circumstance in the commission of a crime by an offender, and the application of the penalty provided for in the RPC shall be applicable.

6. Cultivation or culture of plants classified as Dangerous Drugs or are sources thereof *(Sec. 16)*

Q: What do you mean by *cultivation* in R.A. 9165?

A: Cultivation is any act of knowingly planting, growing, raising, or permitting the planting, growing or raising of any plant which is the source of a dangerous drug.

7. Maintenance and Keeping of Original Records of Transactions on Dangerous Drugs and/or Controlled Precursors and Essential Chemicals *(Sec.17)*

Q: Who are liable?

A: Any practitioner, manufacturer, wholesaler, importer, distributor, dealer or retailer who violates or fails to comply with the maintenance and keeping of the original records of transactions on any dangerous drug and/or controlled precursor and essential chemical in accordance with Section 40 of this Act.

8. Unnecessary Prescription of Dangerous Drugs *(Sec. 18)*

Q: Who are liable?

A: Any practitioner, who shall prescribe any dangerous drug to any person whose physical or physiological condition does not require the use or in the dosage prescribed therein, as determined by the Board in consultation with recognized competent experts who are authorized representatives of professional organizations of practitioners, particularly those who are involved in the care of persons with severe pain.

9. Unlawful Prescription of Dangerous Drugs *(Sec. 19)*

Q: Who are liable?

A: Any person, who, unless authorized by law, shall make or issue a prescription or any other writing purporting to be a prescription for any dangerous drug.

Q: What is the effect of attempt or conspiracy on the criminal liability?

A: The accused shall be penalized by the same penalty prescribed for the commission of the same as provided under:

1. Importation of any dangerous drug and/or controlled precursor and essential chemical
2. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical
3. Maintenance of a den, dive or resort where any dangerous drug is used in any form
4. Manufacture of any dangerous drug and/or controlled precursor and essential chemical
5. Cultivation or culture of plants which are sources of dangerous drugs.

VI. CRIMES AGAINST PUBLIC MORALS (200-202)

GAMBLING AND BETTING

Note: Arts. 195-196 have been repealed and modified by P.D. Nos. 449, 483 and 1602, as amended by Letters of Instructions No. 816.

OFFENSES AGAINST DECENCY AND GOOD CUSTOMS

Note: Decency means propriety of conduct, proper observance of the requirements of modesty, good taste, etc.

Customs are established usages, social conventions carried on by tradition and enforced by social disapproval of any violation thereof.

GRAVE SCANDAL ART. 200

Q: What are the elements of grave scandal?

A:

1. Offender performs an act or acts
2. Such act or acts be highly scandalous as offending against decency or good customs

   Note: The offense must be directed on the sense of decency or good customs not on property such as scattering human feces on buildings.
3. Highly scandalous conduct is not expressly falling within any article of this code
4. Act or acts complained of be committed in a public place or within the public knowledge or view

Note: If the act or acts of the offender are punished under another article of the RPC, Art. 200 is not applicable.

If in public place, there is criminal liability irrespective of whether the immoral act is open to the public view. Public view is not required. It is sufficient if committed in public place.

If committed in the public place, the act is deemed committed in public view because of the possibility of being witnessed by third persons.

If in private place, public view or public knowledge is required.

Q: What is the difference between grave scandal and alarms and scandal?

A:

GRAVE SCANDAL	ALARM AND SCANDAL
The scandal involved refers to moral scandal offensive to decency, although it does not disturb public peace. But such conduct or act must be open to the public view.	The scandalous acts are committed against the will of the woman. Force or intimidation is employed.

Q: What is the difference between grave scandal and acts of lasciviousness?

A:

GRAVE SCANDAL	ACTS OF LASCIVIOUSNESS
The performance of scandalousacts is mutually consented.	The scandalous acts are committed against the will of woman. Force or intimidation is employed.

IMMORAL DOCTRINES, OBSCENE PUBLICATIONS AND EXHIBITIONS, AND INDECENT SHOWS (Art. 201)

Q: Who are the persons liable?

A:

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals
2. The authors of obscene literature, published with their knowledge in any form, the editors publishing such literature; and the owners/operators of the establishment selling the same
3. Those who, in theaters, fairs, cinematographs or any other place, exhibit incident or immoral plays, scenes, acts, or shows, it being understood that the obscene literature or incident or immoral plays, scenes, acts, or show, whether live or in film which are prescribed by virtue hereof shall include those which:

   a. Glorify criminals or condone crimes
   b. Serve no other purpose but to satisfy the market for violence, lust or pornography
   c. Offend any race, or religion
   d. Tend to abet traffic in and use of prohibited drugs

e. Are contrary to law, public order, morals, good customs, established policies, unlawful orders, decrees and edicts

Note: Publicity is an essential element.

Mere nudity in paintings and picture is not obscene.

Pictures with slight degree of obscenity having no artistic value and being intended for commercial purposes fall within this article.

4. Those who shall sell, give away, or exhibit, film, prints, engravings, sculptures, or literature which are offensive to morals. Publicity is essential.

Q: What is the test of obscenity?

A: Whether or not the material charged as obscene has the tendency to deprave and corrupt the minds of those open to the influence thereof, or into whose hands such material may come to *(Kottinger Rule)*

Note: The test is objective. It is more on the effect upon the viewer and not alone on the conduct of the performer.

Q: When is the author and the publisher of the obscene literature liable under Art. 201?

A: Writing obscene literature is not punished, but the author is liable if it is published with his knowledge. In every case, the editor publishing it is liable. *(Reyes, 2008)*

Q: If the viewing of pornographic materials is done privately, can there be violation of Art. 201?

A: No. What is protected is the morality of the public in general. The law is not concerned with the moral of one person.

VAGRANTS AND PROSTITUTES (Art. 202)

Q: Who are vagrants?

A: Vagrants are those who loiter around public or private places without any visible means of support but who are physically able to work and without any lawful purpose.

Q: What is the rationale of penalizing vagrancy?

A: 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.

Note: Being jobless does not make one a vagrant. What the law penalizes is the neglect and refusal to work and the loitering in or about public places without giving a good account of his presence therein.

Q: Who are the persons liable?

A:

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some calling

2. Any person found loitering about public or semi-public buildings or places or tramping or wandering about the country or the streets without visible means of support

Note: Article 202 (2) does not violate the equal protection clause; neither does it discriminate against the poor and the unemployed. Offenders of public order laws are punished not for their status, as for being poor or unemployed, but for conducting themselves under such circumstances as to endanger the public peace or cause alarm and apprehension in the community. Being poor or unemployed is not a license or a justification to act indecently or to engage in immoral conduct.

Vagrancy must not be so lightly treated as to be considered constitutionally offensive. It is a public order crime which punishes persons for conducting themselves, at a certain place and time which orderly society finds unusual, under such conditions that are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society, as would engender a justifiable concern for the safety and well-being of members of the community. *(People v. Siton, GR 169364, September 18, 2009)*

3. Any middle or dissolute person who lodges in houses of ill-fame; ruffians or pimps and those who habitually associate with prostitutes

4. Any person who not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose

5. Prostitutes.

CRIMINAL LAW TEAM:
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Q: 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?

A: When a person is apprehended loitering inside an estate belonging to another, the following crimes may be committed:

1. *Trespass to property* – If the estate is fenced there is a clear prohibition against entering, but the offender entered without the consent of the owner or overseer thereof.

2. *Attempted theft* – 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* – If the estate is not fenced or there is no clear prohibition against entering.

Q: Who are prostitutes?

A: They are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.

Q: Is sexual intercourse a necessary element to constitute prostitution?

A: No, the mere indulging in lascivious conducts habitually because of money or gain would amount to prostitution. Virginity is not a defense. Habituality is the controlling factor; it has to be more than once.

Q: Is there a crime of prostitution by conspiracy?

A: None. One who conspires with a woman in the prostitution business like pimps, taxi drivers or solicitors of clients are guilty of the crime under Art. 341 for white slavery.

Note: Under this article, a prostitute is limited to a woman. A city or municipal ordinance however may cover a male prostitute usually called "call boy." He cannot, however, be punished under Art. 202. He can be prosecuted under the ordinance concerned.

Q: What are the distinctions between vagrancy and prostitution?

A:

VAGRANCY	PROSTITUTION
Can be committed by either a man or woman.	Can only be committed by a woman.
A man if he engages in sex for money is not a prostitute, but a vagrant.	A woman who for profit or money habitually engages in sexual or lascivious conduct is a prostitute.

Note: Art. 202 is not applicable to minors.

VII. CRIMES COMMITTED BY PUBLIC OFFICERS

PRELIMINARY PROVISIONS

PUBLIC OFFICERS (Art. 203)

Q: How can a person be considered a public officer?

A: To be a public officer, one must:

1. Take part in the performance of public functions in the government, or in performing in said government or in any of its branches public duties as an employee, agent or subordinate official, or 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 by –
   a. Direct provision of the law
   b. Popular election
   c. Appointment by competent authority

Note: Under R.A. 3019, the term "public officer**"** is broader and more comprehensive because it includes all persons whether an official or an employee, temporary or not, classified or not, contractual or otherwise.

Any person who receives compensation for services rendered is a public officer.

Note: Public officers include every public servant from the lowest to the highest rank provided that they exercise public functions.

Q: Javier was charged with malversation of public funds. She was the private sector representative in the National Book Development Board (NBDB), which was created by Republic Act (R.A.) No. 8047, otherwise known as the "Book Publishing Industry Development Act". Is Javier, a private sector representative to the board a public officer?

A: Yes. Notwithstanding that Javier came from the private sector to sit as a member of the NBDB, the law invested her with some portion of the sovereign functions of the government, so that the purpose of the government is achieved. In this case, the government aimed to enhance the book publishing industry as it has a significant role in the national development. Hence, the fact that she was appointed from the public sector and not from the other branches or agencies of the government does not take her position outside the meaning of a public office.*(Javier v. Sandiganbayan, GR 147026-27, September 11, 2009)*

MALFEASANCE AND MISFEASANCE IN OFFICE

Q: What are the three forms of breach of oath/duty?

A:

1. *Misfeasance* – when a public officer performs official acts in the manner not in accordance with what the law prescribes.

2. *Nonfeasance* – when a public officer willfully refrains or refuses to perform an official duty which his office requires him to perform.

3. *Malfeasance* – when a public officer performs in his public office an act prohibited by law.

Q: What are crimes of misfeasance?

A:

1. Knowingly rendering unjust judgment
2. Rendering judgment through negligence
3. Rendering unjust interlocutory order
4. Malicious delay in the administration of justice

Q: What is a crime of nonfeasance?

A: Dereliction of duty in the prosecution of offenses

Q: What are crimes of malfeasance?

A:

1. Direct bribery
2. Indirect bribery

KNOWINGLY RENDERING UNJUST JUDGMENT (Art. 204)

Q: What are the elements of this crime?

A:

1. Offender is a judge
2. 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

Q: What is judgment?

A: A judgment is the final consideration and determination of a court of competent jurisdiction upon the matters submitted to it, in action or proceeding.

It must be written in the official language, personally and directly prepared by the judge and signed by him and shall contain clearly and distinctly a statement of the facts and the law upon which it is based.

Q: What is an unjust judgment?

A: An unjust judgment is one which is contrary to law or is not supported by the evidence or both.

Q: What are the sources of unjust judgment?

A:

1. Error
2. Ill-will or revenge
3. Bribery

Note: There must be evidence that the decision rendered is unjust. It is not presumed. The Supreme Court must have declared the judgment as unjust in a *certiorari*, prohibition, or administrative proceeding.

Abuse of discretion or mere error of judgment cannot likewise serve as basis for rendering an unjust judgment in the absence of proof of an allegation of bad faith.

Q: Can this crime be committed by the member/justices of the appellate courts?

A: No, it may be committed only by a judge of a trial court and never of a collegiate body.

Ratio: In collegiate courts like the CA and SC, not only one magistrate renders or issues the judgment or interlocutory order. Conclusions and resolutions thereof are handed down only after deliberations among the members, so that it cannot be said that there is malice or inexcusable negligence or ignorance in the rendering of a judgment or order that is supposedly unjust.

Note: Judges cannot be subjected to liability – civil, criminal or administrative – for any of their official acts, no matter how erroneous, as long as they acted in good faith.

JUDGMENT RENDERED THROUGH NEGLIGENCE (Art. 205)

Q: What are the elements of this crime?

A:

1. Offender is a judge
2. He renders a judgment in a case submitted to him for decision
3. Judgment is manifestly unjust
4. It is due to his inexcusable negligence or ignorance

Q: What is meant by *"manifestly unjust judgment"?*

A: A "manifestly unjust judgment" is a judgment which cannot be explained with reasonable interpretation or is a clear, incontrovertible and notorious violation of a legal precept. It must be patently contrary to law if rendered due to ignorance or inexcusable negligence.

Note: Before a civil or criminal action against a judge for violations of Articles 204 and 205 can be entertained, 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: (a) an action for certiorari or prohibition in a higher court impugning the validity of a judgment, or (b) an administrative proceeding in the Supreme Court against the judge precisely for promulgating an unjust judgment or order. *(De Vera v. Pelayo, G.R. No. 137354, July 6, 2000)*

UNJUST INTERLOCUTORY ORDER (Art. 206)

Q: What are the elements of this crime?

A:

1. Offender is a judge
2. He performs any of the following acts:
   a. Knowingly renders an unjust interlocutory order or decree; or
   b. Renders a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

Q: What is an interlocutory order?

A: It is one issued by the court deciding a collateral or incidental matter; it is not a final determination of the issues of the action or proceeding.

E.g. Judge's order or resolution denying the Demurrer to Evidence submitted by the accused.

Q: What is the test in determining whether the order is considered an interlocutory order?

A: If the order answers the question – *Does it leave something to be done in the trial court with respect to the merits of the case?* – in the affirmative, then it is interlocutory; if it does not, it is final.

MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE (Art. 207)

Q: What are the elements of this crime?

A:

1. Offender is a judge
2. There is a proceeding in his court
3. He delays the administration of justice
4. Delay is malicious, that is, with deliberate intent to inflict damage on either party in the case

Note: Mere delay without malice is not punishable.

If the delay is not malicious, but committed through gross negligence, the crime committed is that under R.A. 3019, Sec. 3(e).

PROSECUTION OF OFFENSE; NEGLIGENCE AND TOLERANCE (Art. 208)

Q: What are the punishable acts?

A:

1. Maliciously refraining from instituting prosecution against violators of the law.
2. Maliciously tolerating the commission of offenses.

Q: What are the elements of dereliction of duty in the prosecution of offenses?

A:

1. Offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute offenses

2. There is dereliction of the duties of his office, that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission

3. Offender acts with malice and deliberate intent to favor the violator of the law

Q: Who can be offenders in Art. 208?

A:

1. *A public officer* (officer in the prosecution department whose duty is to institute criminal proceedings upon being informed)

2. *An officer of the law* (by reason of position held by them are duty-bound to cause prosecution and punishment of offenders)

Note: There must be a duty on the part of the public officer to prosecute or move for the prosecution of the offender. However, a fiscal is under no compulsion to file information based upon a complaint if he is convinced that the evidence before him is insufficient to warrant filing an action in court.

Q: What does *"maliciously"* connote?

A: "Maliciously" connotes that the act complained of must be the result of a deliberate evil intent and does not cover a mere voluntary act.

Note: A dereliction of duty caused by a poor judgment or honest mistake is not punishable.

The crime committed by the law-violator must be proved first. If the guilt of the law-violator is not proved, the person charged with dereliction of duty is not liable.

Q: Who can be liable for dereliction of duty in the prosecution of offenses?

A: This crime can only be committed by a public officer whose official duty is to prosecute offenders, that is, state prosecutors. Hence, those officers who are not duty bound to perform these obligations cannot commit this crime in the strict sense.

Q: If a police officer tolerates the commission of a crime or otherwise refrains from apprehending the offender, is he liable for dereliction of duty?

A: No. Such police officer cannot be prosecuted for dereliction of duty but he can be prosecuted as follows:

1. An accessory to the crime committed by the principal in accordance with Article 19, paragraph 3

2. He may become a fence if the crime committed is robbery or theft, in which case he violates the Anti-Fencing Law

3. He may be held liable for violating the Anti-Graft and Corrupt Practices Act

Q: Can a *Barangay* Chairman be held liable for dereliction of duty?

A: Yes, because a *Barangay* Chairman is expressly authorized by law to prosecute violators of laws within their jurisdiction. If he does not do so, he can be prosecuted for dereliction of duty.

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Q: What is *prevaricacion*?

A: There is *prevaricacion* when a public officer regardless of his duty violates the oath of his office by not carrying out the duties of his office for which he was sworn to, thus, amounting to dereliction of duty.

Q: What is covered in *prevaricacion*?

A: *Prevaricacion* covers any dereliction of duty whereby the public officer involved violates his oath of office. The thrust of *prevaricacion* is the breach of the oath of office by the public officer who does an act in relation to his official duties. It is not limited to dereliction of duty in the prosecution of offenders.

Q: What is the difference between *prevaricacion* and dereliction of duty?

A:

PREVARICACION	DERELICTION OF DUTY
Applies to public officers in general who is remiss or who is maliciously refraining from exercising the duties of his office.	Dereliction of duty refers only to prosecuting officers.

BETRAYAL OF PUBLIC TRUST BY AN ATTORNEY OR SOLICITOR REVELATION OF SECRETS (Art. 209)

Q: What are the punishable acts?

A:

1. Causing damage to his client, either by any malicious breach of professional duty by inexcusable negligence or ignorance.

   Note: Damage is ***not*** necessary.

2. Revealing any of the secrets of his client learned by him in his professional capacity.

3. Undertaking the defense of the opposing party in the same case, without the consent of his first client, after having undertaken the defense of said first client or after having received confidential information from said client.

   Note: if the client consents to the attorney's taking the defense of the other party, there is no crime.

Q: What is the rule with regard to communications made with prospective clients?

A: Under the rules on evidence, communications made with prospective clients to a lawyer with a view to engaging his professional services are already privileged even though client-lawyer relationship did not eventually materialize because the client cannot afford the fee being asked by the lawyer.

Note: That privilege communication with a prospective client implies that the same is confidential. Therefore, if the lawyer would reveal the same or otherwise accept a case from the adverse party, he would already be violating Article 209.

It is not only the lawyer who is protected by the matter of privilege but also the office staff like the secretary.

Q: Are all information confided to counsel classified as privileged?

A: No. A distinction must be made between confidential communications relating to past crimes already committed, and future crimes intended to be committed, by the client. It is admitted that the announced intention of a client to commit a crime is not included within the confidences which his attorney is bound to respect. (Boado, 2008)

Q: Who is a *Procurador Judicial*?

A: 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.

DIRECT BRIBERY (Art. 210)

Q: What is bribery?

A: Bribery is the crime of the public officer who receives a gift, present, offer or promise by reason or in connection with the performance of his official duties. *It is a crime of the receiver.* The crime of the giver is corruption of public officers. Bribery requires the concurrence of the will of the corruptor and the public officer otherwise the crime is not consummated *(Boado, 2008)*

Q: What are the kinds of bribery?

A:

1. *Agreeing to perform or performing an act pertaining to the duties of the office which constitutes a crime* – If the act or omission amounts to a crime, it is not necessary that the corruptor should deliver the consideration or the doing of the act.

Mere promise is sufficient. The moment there is a meeting of the minds, even without the delivery of the consideration, even without the public officer performing the act amounting to a crime, bribery is already committed on the part of the public officer. Corruption is already committed on the part of the supposed giver.

Illustration:
This is the first kind of direct bribery. If a court stenographer, in consideration of a gift or present or even a promise, agrees with the accused to alter the notes taken by him during the trial to make it appear that the witness testified favorably to the accused, when in truth, his testimony was adverse to him, said stenographer is guilty of bribery. He agreed to perform falsification which is a crime. He and the accused shall likewise be held liable for Falsification of Public Documents.

2. *Accepting a gift in consideration of the execution of an act which does not constitute a crime (but which must be unjust)* – If the act or omission does not amount to a crime, the consideration must be delivered by the corruptor before a public officer can be prosecuted for bribery. Mere agreement is not enough to constitute the crime because the act to be done in the first place is legitimate or in the performance of the official duties of the public official.

Illustration:
Thus, the Secretary of the Municipal Mayor who was under instruction to receive the application of awards in the municipality's public market for only ten persons there being only ten stalls that could be leased, and in consideration of some money received from the eleventh applicant, making it appear that his application was the tenth is guilty of this form of Direct Bribery. The act of the secretary who is a public officer is not a crime but it is unjust, it being unfair to the tenth applicant.

3. *Abstaining from the performance of official duties.*

Illustration:
A police traffic officer who, in consideration of gift received or promise offered by a taxi driver who beat the red light, refrains from issuing a TVR and from confiscations the driver's license when it is his duty to do so, commits this third form of Direct Bribery.

Q: What are the elements of direct bribery?

A:

1. Offender is a public officer within the scope of Article 203

2. Offender accepts an offer or 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 of committing some crime
   b. In consideration of the execution of an act which does not constitute a crime, but the act must be unjust
   c. To refrain from doing something, which is his official duty to do;

4. That act which the offender agrees to perform or which he executes be connected with the performance of his official duties.

Q: Is it required that the act was committed?

A: No. The last phrase of Art. 210 which provides *" if the same shall have been committed"* does not presume that the act was committed.

Q: A gave X, a public officer, money to alter the entry in the registry of the Land Registration Authority. What crimes were committed?

A:

1. On the part of the officer:
   a. Direct Bribery
   b. Falsification of public document.
2. On the part of the corruptor:
   a. Corruption of public officer
   b. Falsification of public document, as principal by inducement. *(Boado, 2008)*

Q: Is there frustrated bribery (direct or indirect)?

A: None. Bribery cannot be committed in the frustrated stage, for the reason that if the corruption of the official is accomplished, the crime is consummated.

Q: Suppose the public official accepted the consideration and turned it over to his superior as evidence of corruption, what is the crime committed?

A: The offense is attempted corruption only and not frustrated. The official did not agree to be corrupted.

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Q: Suppose the public official did not report the same to his superior and actually accepted it, he allowed himself to be corrupted, what is the crime committed?

A: The corruptor becomes liable for consummated corruption of public official. The public officer also becomes equally liable for consummated bribery.

Q: What are the distinctions between bribery and robbery?

A:

BRIBERY	ROBBERY
The person arrested has committed the crime and he is threatened to give money so as not to be prosecuted.	The person arrested has not committed a crime.
The transaction is generally mutual and voluntary.	The transaction is neither mutual nor voluntary but consummated by the use of force or intimidation.

Q: Is temporary performance of public function sufficient to constitute a person a public officer?

A: Yes. A private person may commit this crime only in the case in which custody of prisoners is entrusted to him.

Q: Does the crime of direct bribery involve moral turpitude?

A: Yes, direct bribery is a crime involving moral turpitude.

Moral turpitude can be inferred from the third element. The fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing an official duty in exchange for some favors, denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general. Also, the fact that the offender takes advantage of his office and position is a betrayal of the trust reposed on him by the public. It is a conduct clearly contrary to the accepted rules of right and duty, justice, honesty and good morals. *(Magno v. COMELEC, G.R. No. 147904, Oct. 4, 2002)*

Q: Deputy Sheriff Ben Rivas received from the RTC Clerk of Court a Writ of Execution in the case of Ejectment filed by Mrs. Maria Estrada vs. Luis Ablan. The judgment being in favor of Estrada, Rivas went to her lawyer's office where he was given the necessary amounts constituting the sheriffs fees and expenses for execution in the total amount of P550.00, aside from P2000.00 in consideration of prompt enforcement of the writ from Estrada and her lawyer. The writ was successfully enforced. What crime, if any, did the sheriff commit?

A: The sheriff committed the crime of Direct Bribery under the second paragraph of Article 210, RPC, since the P2000.00 was received by him "in consideration" of the prompt enforcement of the writ of execution which is an official duty of the sheriff to do.

INDIRECT BRIBERY (Art. 211)

Q: What is indirect bribery?

A: It is the crime of any public officer who shall accept gifts offered to him by reason of his office.

Note: If the public officer does not accept the gift, this crime is not committed but the offeror is guilty of Corruption of Public Officials under Article 212.

Q: What are the elements of indirect bribery?

A:

1. Offender is a public officer
2. He accepts gifts
3. Said gifts are offered to him by reason of his office

Note: Mere acceptance of the gift because of the offender's position constitutes bribery

The article uses the words "gift" and not "promise", and "accept", not just receive.

The gift is given in anticipation of future favor from the public officer.

Q: Should there be a clear intention on the part of the public officer to take the gift offered?

A: Yes, and he should consider the property as his own for that moment. Mere physical receipt unaccompanied by any other sign, circumstance or act to show such acceptance is not sufficient to convict the officer.

Q: What are the distinctions between direct bribery and indirect bribery?

A:

DIRECT BRIBERY	INDIRECT BRIBERY
Public officer receives gift	
There is agreement between the public officer and the corruptor.	There is no agreement between the public officer and the corruptor.

The public officer is called upon to perform or refrain from performing an official act.	The public officer is not necessarily called upon to perform any official act. It is enough that he accepts the gifts offered to him by reason of his office.

Note: There is no attempted or frustrated indirect bribery because it is committed by accepting gifts to the public officer by reason of his office.

QUALIFIED BRIBERY (Art. 211-A)

Q: What are the elements of qualified bribery?

A:

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. He refrains from arresting or prosecuting the offender in consideration of any promise, gift or present

Note: The crime involved in qualified bribery is a heinous crime. The public officer need not receive a gift or present because a mere offer or promise is sufficient.

CORRUPTION OF PUBLIC OFFICIALS (Art. 212)

Q: What are the elements of this crime?

A:

1. Offender makes offers or promise or gives gifts or presents to a public officer
2. The offers or promises are made or the gifts or presents are given to a public officer under circumstances that will make the public officer liable for direct bribery or indirect bribery

Note: Bribery is the act of the receiver; corruption of Public official is the act of the giver.

Q: When the public officer refuses to be corrupted, what crime is committed?

A: Attempted corruption of public official only.

FRAUD AND ILLEGAL EXACTIONS AND TRANSACTIONS FRAUDS AGAINST THE PUBLIC TREASURY.AND SIMILAR OFFENSES (Art. 213)

Q: What are the punishable acts?

A:

1. Entering into an agreement with any interested party or speculator or making use of any other scheme, to default the Government, in dealing with any person or with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property funds.
2. Demanding, directly or indirectly, the payment of sums different or larger than those authorized by law, in the collection of taxes, licenses, fees and other imposts.

   Note: By mere demanding an amount different, whether bigger or smaller, than what should be paid, even if the debtor refuses, illegal exaction is committed.
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.

Q: What are the elements of fraud against public treasury?

A:

1. Offender is a public officer
2. He should have 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:
   a. Furnishing supplies
   b. The making of contracts or
   c. The adjustment or settlement of accounts relating to public property or funds

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4. Accused had intent to defraud the Government.

Q: Should there be a fixed allocation on the matter?

A: No. The allocation or outlay was made the basis of fraudulent quotations made by the public officer involved.

Note: The fraud is in the implementation of procurement.

Q: What is the essence of the crime of fraud against public treasury?

A: The essence of this crime is making the government pay for something not received or making it pay more than what is due.

Q: What are the elements of illegal exactions?

A:

1. Offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts.

2. He is guilty of any of the following acts or omissions: *(Forms of Illegal Exactions)*

   a. First form: *Demanding, directly or indirectly, the payment of sums different or larger that those authorized by law* – Mere demand will consummate the crime, even if the taxpayer shall refuse to come across with the amount being demanded.

      Note: Criminal intent must be shown that public officer demanded the payment of sums of money knowing them to be excessive.

      If good faith is present, there is no criminal liability.

   b. Second form: *Failing voluntarily to issue a receipt as provided by law, for any sum of money collected by him officially* – The act of receiving payment due to the government without issuing a receipt will give rise to illegal exaction even though a provisional receipt has been issued. What the law requires is a receipt in the form prescribed by law, which means official receipt.

   c. Third form: *Collecting or receiving directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law –*

      GR: Under the rules and regulations of the government, payment of checks not belonging to the taxpayer should not be accepted to settle the obligation of a taxpayer.

      XPN: If the check is a manager's check or a certified check.

Q: What is the essence of the crime of illegal exaction?

A: The essence of the crime is not misappropriation of any of the amounts but the improper making of the collection which would prejudice the accounting of collected amounts by the government.

Q: Who may be liable for illegal exaction?

A: Illegal exaction is usually committees by a public officer charged with the duty to collect taxes, license fees, import duties and other dues payable to the government.

Note: Damage to the government is not required. Public officers with such functions but are in the service of the BIR or Bureau of Customs are not to be prosecuted under the Revised Penal Code but under the NIRC or the Revised Administrative Code.

Illustration:
If sums are received without demanding the same, a felony under this article is not committed. However, if the sum is given as a sort of gift or gratification, the crime is indirect bribery.

Where there is deceit in demanding a greater fee than those prescribed by law, the crime committed is estafa and not illegal exaction.

This felony may be complexed with malversation. *E.g.* A tax collector who collected a sum larger than that authorized by law spent all of them is guilty of two crimes: (1) illegal exaction, for demanding a greater amount; and (2) malversation, for misappropriating the amount collected.

OTHER FRAUDS (Art. 214)

Q: What are the elements of this crime?

A:

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 Articles 315-318

Q: Which court has jurisdiction?

A: The RTC has jurisdiction over the offense regardless of the amount or penalty involved, because the principal penalty is disqualification.

PROHIBITED TRANSACTIONS (Art. 215)

Q: What are the elements of this crime?

A:

1. Offender is an appointive public officer
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation
3. Transaction takes place within the territory subject to his jurisdiction
4. He becomes interested in the transaction during his incumbency

E.g. Buying and selling stocks listed in the stock exchange by an official of the SEC.

Purchasing of stock or shares in a company is simple investment and not a violation of the article. However, regularly buying securities for resale is speculation.

Note: Actual fraud is not required for violation of Article 215. The act being punished is the possibility that fraud may be committed or that the officer may place his own interest above that of the government.

POSSESSION OF PROHIBITED INTEREST BY A PUBLIC OFFICER (Art. 216)

Q: Who are the persons liable under this article?

A:

1. Public officer who, directly or indirectly, became interested in any contract 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.

Note: The mere violation of the prohibition is punished although no fraud occurs therefrom.

For a public official to be subject of this crime, it is necessary that by reason of his office, he has to intervene in said contracts or transactions.

In Article 216, the offender includes not only appointive but also elective public officials. In fact, under the second paragraph of the said article, even private individuals can be held liable.

Act is punished because of the possibility that fraud may be committed or that the officer may place his own interest above that of the Government or of the party which he represents.

Constitutional prohibition exists:
Congress cannot personally appear as counsel; cannot be interested financially in any franchise or special privilege granted by government; cannot intervene in any matter before office of Government;

Executive cannot hold any other office;

Constitutional Commission cannot hold any other office, or engage in practice of profession or management of business, or be financially interested in a contract with or franchise/privilege by the government.

MALVERSATION OF PUBLIC FUNDS OR PROPERTY (Art. 217)

Q: What are the punishable acts?

A:

1. Appropriating public funds or property
2. Taking or misappropriating the same
3. Consenting, or through abandonment or negligence, permitting any other person to take such public funds or property
4. Being otherwise guilty of the misappropriation or malversation of such funds or property.

Note: The nature of the duties of the public officer and not the name of the office controls. *(People v. Reyes, SB Case No. 26892, August 15, 2006)*

Q: What are the common elements to all acts of malversation?

A:

1. Offender is a public officer

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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 negligence, permitted another person to take them

Q: What is the thrust of the crime of malversation?

A: Malversation is predicated on the relationship of the offender to the property or funds involved.

Q: In general, who can be held liable for the crime of malversation?

A: The crime of malversation can be committed only by an officer accountable for the funds or property which is appropriated.

Q: Who are "accountable officers"?

A: Accountable officers include cashiers, disbursing officers or property custodians and any public officer having custody of public funds or property for which he is accountable.

Q: Is it necessary that the offender actually misappropriated the funds?

A: No, somebody else may have misappropriated the funds in question. It is enough that he has violated the trust reposed on him in connection with the property.

Q: Is it necessary that the offender profited by his malversation?

A: No. His being remiss in the duty of safekeeping public funds violates the trust reposed.

Q: Is there a crime of malversation through negligence?

A: None. The crime is plain malversation whether committed through *dolo* or *culpa*.

Q: If the charge is for intentional malversation but what was proved was culpable malversation, can the offender be convicted under that Information?

A: Yes. The dolo or culpa present in the offense is only a modality in the perpetration of the felony. Even if the mode charged differs from the mode proved, the same offense of malversation is involved and conviction thereof is proper. *(People v. Pepito)*

Q: Is damage to the government necessary to constitute malversation?

A: No. It is not an element of the offense. It is enough that the proprietary rights of the government over the funds have been disturbed through breach of trust.

Q: Suppose the money is refunded on the same day it was misappropriated, is malversation committed?

A: Yes, refund of funds on the same day of misappropriation does not exempt the offender from criminal liability. The return of the funds malversed is only mitigating not exempting circumstance.

Q: Suppose the offender is willing to pay the amount misappropriated or willing to make some restitution of the property misappropriated, can he still be liable for malversation?

A: Yes, because the payment or restitution does not extinguish criminal liability for malversation but only the civil liability of the offender.

Q: If the disbursement of public funds is unauthorized, will that make up a case of malversation?

A: No. There is only malversation only if the public officer who has custody of public funds should appropriate, take, misappropriate; or consents or permits any other person, through abandonment or negligence, to take such public funds or property.

Note: Where the payment of public funds has been made in good faith renders him only civilly but not criminally liable. *(Boado, 2008)*

Q: A private property was attached or levied by the sheriff, can it be a subject of the crime of malversation?

A: Yes, though the property belonged to a private person, the levy or attachment of the property impressed it with the character of being part of the public property it being in *custodia legis.*

Q: Suppose the municipal treasurer allowed a private person's check to be encashed using the funds in his custody, can he be liable for malversation?

A: Yes, the act of changing the cash of the government with the check of a private person, even though the check is good, malversation is committed.

Ratio: A check is cleared only after three days. During that period of three days, the government is being denied the use of the public fund.

Q: May a private person commit the crime of malversation?

A: Yes, a private person may also commit malversation under the following situations:

1. Conspiracy with a public officer in committing malversation

2. When he has become an accomplice or accessory to a public officer who commits malversation

3. When the private person is made the custodian in whatever capacity of public funds or property, whether belonging to national or local government, and misappropriates the same

4. When he is constituted as the depositary or administrator of funds or property seized or attached by public authority even though said funds or property belong to a private individual

Q: Is demand an element of malversation?

A: No. Demand merely raises a *prima facie* presumption that missing funds have been put to personal use.

Q: If falsification of documents was resorted to for the purpose of concealing malversation, is a complex crime committed?

A: No, for complex crimes require that one crime is used to ***commit*** another. If the falsification is resorted to for the purpose of ***hiding*** the malversation, the falsification and malversation are separate offenses. *(People v. Sendaydiego)*

Q: When does presumption of misappropriation arise?

A: When a demand is made upon an accountable officer and he cannot produce the fund or property involved. The presumption arises only if at the time the demand to produce the public funds, the accountability of the accused is already determined and liquidated, that is, a complete and trustworthy audit should have been undertaken.

Note: The moment any money is commingled with the public fund even if not due the government, it becomes impressed with the characteristic of being part of public funds.

An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is the shortage in the accounts which he has not been able to explain satisfactorily.

Q: What are the distinctions between malversation and *estafa*?

A:

MALVERSATION	*ESTAFA*
Committed by an accountable public officer.	Committed by a private person or even a public officer who acts in a private capacity.
Deals with public funds or property.	Deals with private property.
May be committed without personal misappropriation, as when the accountable officer allows another to misappropriate the same.	Committed by personal misappropriation only.

Q: A Municipal Treasurer, accountable for public funds or property, encashed with public funds private checks drawn in favor of his wife. The checks bounced, the drawer not having enough cash in the drawee bank. The Municipal Treasurer, in encashing private checks from public funds, violated regulations of his office. Notwithstanding restitution of the amount of the checks, can the Municipal Treasurer nevertheless be criminally liable? What crime did he commit? Explain.

A: Yes, notwithstanding the restitution of the amount of the check, the Municipal Treasurer will be criminally liable as restitution does not negate criminal liability although it may be considered as mitigating circumstance similar or analogous to voluntary surrender. *(People v. Velasquez, 73 Phil. 98)* He will be criminally liable for malversation. However, if the restitution was made immediately under vehement protest against an imputation of malversation and without leaving the office, he may not be criminally liable. **(1999 Bar Question)**

FAILURE OF ACCOUNTABLE OFFICER TO RENDER ACCOUNTS (Art. 218)

Q: What are the elements of this crime?

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

A:

1. Offender is a public officer, whether in the service or separated therefrom
2. He must be an accountable officer for public funds or property
3. He is required by law or regulation to render accounts 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

Note: This is a felony by omission and misappropriation is not necessary. Demand for accounting is necessary. It is not necessary that there be misappropriation. If there is misappropriation, he would be liable also for malversation under Art. 217.

FAILURE OF A RESPONSIBLE PUBLIC OFFICER TO RENDER ACCOUNTS BEFORE LEAVING THE COUNTRY (Art. 219)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. He must be an accountable officer for public funds or property
3. He must have unlawfully left (or be on point of leaving) the Philippines without securing from the Commission on Audit a certificate showing that his accounts have been finally settled

Note: Mere act of leaving without securing clearance constitutes the crime under Art.219. It is not necessary that the public officer really misappropriated public funds.

ILLEGAL USE OF PUBLIC FUNDS OR PROPERTY (Art. 220)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. There is public fund or property under his administration
3. Such public fund or property has been appropriated by law or ordinance
4. He applies the same to a public use other than that for which such fund or property has been appropriated by law or ordinance

Note: Illegal use of public funds or property is also known as technical malversation.

The presumption of criminal intent will not, however, automatically apply to all charges of technical malversation because disbursement of public funds for public use is *per se* not an unlawful act.*(Abdulla v. People, G.R. No. 150129, April 6, 2005)*

Q: Why is it termed "technical malversation"?

A: Because under this article, the fund or property involved is already appropriated or earmarked for a certain public purpose.

Q: How is technical malversation committed?

A: Instead of applying it to the public purpose for which the fund or property was already appropriated by law, the public officer applied it to another purpose.

Q: X appropriated the salary differentials of secondary school teachers of the Sulu State College contrary to the authorization issued by the DBM. Can X be held liable for technical malversation?

A: No. The third element is lacking. The authorization given by DBM is not an ordinance or law contemplated in Art. 220. *(Abdulla v. People)*

Q: Suppose the application made proved to be more beneficial to the public than the original purpose for which the amount or property is appropriated, is there technical malversation?

A: Yes, because damage is not an essential element of technical malversation.

Q: Suppose the funds had been appropriated for a particular public purpose, but the same was applied to private purpose, what is the crime committed?

A: The crime committed is simple malversation only.

Q: What are the distinctions between technical malversation and malversation?

A:

TECHNICAL MALVERSATION	MALVERSATION
Offenders are accountable public officers in both crimes.	
Offender derives no personal gain or benefit.	Generally, the offender derives personal benefit.
Public fund or property is diverted to another public use other than that provided for in the law.	Conversion is for the personal interest of the offender or of another person.

FAILURE TO MAKE DELIVERY OF PUBLIC FUNDS OR PROPERTY (Art. 221)

Q: What are the punishable acts?

A:

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

Q: What are the elements of this crime?

A:

1. That the public officer has government funds in his possession

2. That he is under obligation to make payments from such funds

3. That he fails to make payment maliciously

OFFICERS INCLUDED IN THE PRECEDING PROVISIONS (Art. 222)

Q: Who are the individuals that may be liable under Art.217-221?

A:

1. Private individual 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

Note: Sheriffs and receiver fall under the term "administrator".

Judicial administrator is not covered by this article. *(Appointed to administer estate of deceased and not in charge of property attached, impounded or placed in deposit by public authority)*

Private property is included if it is attached, seized or deposited by public authority.

Q: How is malversation committed by a private person?

A:

1. When a private person conspired with a public officer to commit malversation
2. When he is an accomplice or accessory
3. Where a private person was constituted a custodian in whatever capacity even without a public officer involved and he misappropriated the same. *(Boado, 2008)*

Q: AA was designated custodian of the distrained property of JJ by the BIR. He assumed the specific undertakings which included the promise that he will preserve and the equipment. Subsequently, he reported to the BIR that JJ surreptitiously took the distrained property. Did AA become a public officer by virtue of his designation as custodian of distrained property by the BIR?

A: No. To be a public officer, one must:

1. Take part in the performance of public functions in the government, or in performing in said government or in any of its branches public duties as an employee, agent or subordinate official, or 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 by:
   a. Direct provision of the law, or
   b. Popular election, or
   c. Appointment by competent authority. *(Azarcon v. Batausa*)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. He is charged with the conveyance or custody of a prisoner, either detention prisoner or prisoner by final judgment
3. Such prisoner escapes through his negligence

Note: There must have been definite laxity amounting to deliberate non-performance of duty.

There is real and actual evasion of service of sentence when the custodian permits the prisoner to obtain relaxation of his imprisonment.

Illustration:
The fact that the public officer recaptured the prisoner who escaped from his custody does not afford complete exculpation.

If a policeman on guard duty unlocked the door of the jail to let a detention prisoner to go out so he can clean the premises, but on the latter's third trip to a nearby faucet, he walked behind the police

headquarters, climbed over the wall and escape, this crime is not committed.

Mere order, however to a prisoner to keep close while answering the telephone is not a sufficient precaution under the circumstances and of the escape of the prisoner, he is liable under this article. He should have locked the prisoner back in jail before answering the telephone as there was nothing in the call necessitating preference to accused's official duty of locking him back in jail.

Q: Will mere laxity amount to negligence within the contemplation of Art. 224?

A: Yes. It is the duty of any police officer having custody of a prisoner to take necessary precautions to assure the absence of any means of escape. A failure to undertake these precautions will make his act one of definite laxity or negligence amounting to deliberate non-performance of duty. *(Rodillas v. Sandiganbayan, cited in Boado 2008 p. 609)*

Note: But in *People v. Nava*, negligence here is one which approximates malice or deliberate non-performance of duty. He may be charged administratively but not criminally. *(Boado, 2008)*

Q: What is the liability of the escaping the prisoner?

A:

1. *If the fugitive is serving his 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 any criminal liability.

ESCAPE OF PRISONER UNDER THE CUSTODY OF A PERSON NOT A PUBLIC OFFICER (Art.225)

Q: What are the elements of this crime?

A:

1. Offender is a public person

2. Conveyance or custody of prisoner or person under arrest is confided to him

3. Prisoner or person under arrest escapes

4. Offender consents to the escape of the prisoner or person under arrest or that the escape takes place through his negligence

Note: The elements of this felony are similar to that of infidelity in the custody of prisoners, except that the offender is a private person to whom the custody of prisoner shall have been confided.

Illustration:
When such private person shall accept any consideration or gift for the non-performance of a duty confided to him, bribery is committed in addition because he is performing a public function, hence, at that instance, he is deemed to be a public officer.

Note: This article is not applicable if a private person was the one who made the arrest and he consented to the escape of the person arrested.

Q: How is the infidelity committed by private person?

A: Under Article 225, infidelity can also be committed by a private person to whom the prisoner was entrusted and he connived with the prisoner *(Art.223)* or through his negligence *(Art. 224)* the prisoner was allowed to escape.

Note: If the escape was with consideration, bribery is deemed committed in addition because he was performing a public function, hence is, at that instance, deemed to be a public officer. *(Boado, 2008)*

REMOVAL, CONCEALMENT OR DESTRUCTION OF DOCUMENT (Art. 226)

Note: This crime is also called infidelity in the custody of documents.

Q: What are the elements of this crime?

A:

1. The offender is a public officer

2. He abstracts, destroys, or conceals documents or papers

   Note: Destroying or concealing documents or papers does not require proof of illicit purpose.

3. Said documents or papers should have been entrusted to such public officer by reason of his office

   Note: The document must be complete and one by which a right can be established or an obligation could be extinguished.

4. Damage, whether serious or not, to a third party or to the public interest should have been caused.

Note: The damage to third persons or to the public must be actual but need not be pecuniary or material.

Damage in this article may consist in mere alarm to the public or in the alienation of its confidence in any branch of the government service.

If the act charged is removal of the documents, there must be proof of an illicit or unlawful purpose on the part of the offender unlike in cases of destroying or concealing the same for which no proof of criminal purpose or objective is required.

Q: Must removal be for an illicit purpose?

A: Yes. Removal is for an illicit purpose when the intention of the offender is to:

1. Tamper with it
2. Profit by it
3. Commit an act constituting a breach of trust in the official care thereof.

Q: When is the crime consummated?

A: The crime of removal of public document in breach of official trust is consummated upon its removal or secreting away from its usual place in the office and after the offender had gone out and locked the door, it being immaterial whether he has or has not actually accomplished the illicit purpose for which he removed said document.

Q: What is punished in the crime of infidelity in the custody of documents?

A: It is the breach of public trust which is punished.

Q: In what ways the crime of infidelity of documents may be committed?

A:

1. *Removal* – presupposes appropriation of the official documents. It does not require that the record be brought out of the premises where it is kept. It is enough that the record be removed from the place where it should be transferred to another place where it is not supposed to be kept.

2. *Destruction* – Is equivalent to rendering useless or the obliteration of said documents; the complete destruction thereof is not necessary.

3. *Concealment* – means that the documents are not forwarded to their destination and it is not necessary that they are secreted away in a place where they could not be found.

Q: Suppose, in the case for bribery or corruption, the monetary consideration was marked as exhibits, the custodian spent the money so marked, what is the crime committed?

A: The crime committed is infidelity in the custody of documents because the money adduced as exhibits partake the nature of a document and not as money.

Note: "Papers" would include checks, promissory notes and paper money.

Delivering the document to the wrong party is infidelity in the custody thereof.

OFFICER BREAKING SEAL (Art. 227)

Q: What are the elements of this crime?

A:

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 seals or permits them to be broken

Q: Is damage or intent to cause damage necessary?

A: No. The crime may be committed through negligence.

Note: It is the breaking of the seals and not the opening of a closed envelope which is punished.

Damage is presumed.

Q: What constitutes the crime of breaking the seal?

A: The mere breaking of the seal or the mere opening of the document would already bring about infidelity even though no damage has been suffered by anyone or by the public at large.

Q: What is the rationale for penalizing the act of breaking the seal?

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A: The act is being punished because the public officer, in breaking the seal or opening the envelope, violates the confidence or trust reposed on him.

OPENING OF CLOSED DOCUMENTS (Art. 228)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. Any closed papers, documents or objects 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

Note: The closed document must be entrusted to the custody of the accused by reason of his office.

Q: Suppose in the opening of the closed document, the public officer abstracted its contents, what crime/s is/are committed?

A: The public officer is liable under Art. 228. He is also liable for theft.

REVELATION OF SECRETS BY AN OFFICER (Art. 229)

Q: What are the punishable acts?

A:

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

Note: This article punishes minor official betrayals, infidelities of little consequences affecting usually the administration of justice, executive of official duties or the general interest of the public order.

Note: The "secrets" referred to in this article are those which have an official or public character, the revelation of which may prejudice public interest. They refer to secrets relative to the administration of the government.

Note: Charge here means control or custody. If the public officer is merely entrusted with the papers but not with the custody, he is not liable under this provision.

If the papers contain secrets which should not be published, and the public officer having charge thereof removes and delivers them wrongfully to a third person, the crime is revelation of secrets. On the other hand, if the papers do not contain secrets, their removal for an illicit purpose is infidelity in the custody of documents.

Q: Are military secrets or those affecting national security covered in this article?

A: No, because military secrets or those affecting national interest are covered by the crime of espionage.

Q: What is the difference between Revelation of Secrets by an Officer and Infidelity in the Custody of Document/Papers by Removing the same?

A:

REVELATION OF SECRETS BY AN OFFICER	INFIDELITY IN THE CUSTODY OF THE DOCUMENTS/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.

PUBLIC OFFICER REVEALING SECRETS OF PRIVATE INDIVIDUAL (Art. 230)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. He knows of the secrets of private individual by reason of his office
3. He reveals such secrets without authority or justifiable reason

Note: The revelation will not amount to a crime under this article if the secrets are contrary to public interest or to the administration of justice.

If the offender is an attorney, he is properly liable under Art. 209 (betrayal of trust by an attorney)

Q: Should the secrets be revealed publicly?

A: No. The crime is consummated if the same are communicated to another even in close intimacy.

Q: Should damage be suffered by the private individual for the officer to be liable?

A: No. The reason for this provision is to uphold faith and trust in public service.

Note: Revelation to any one person is necessary and sufficient, for public revelation is not required.

OTHER OFFENSES OR IRREGULARITIES BY PUBLIC OFFICERS

OPEN DISOBEDIENCE (Art. 231)

Q: What are the elements of this crime?

A:

1. Offender is a judicial or executive officer
2. There is judgment, decision or order of a superior authority
3. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities

   Note: Judgment should have been rendered in a hearing
4. Offender without any legal justification openly refuses to execute the said judgment, decision or order, which he is duty bound to obey

   Note: The refusal must be clear, manifest and decisive or a repeated and obstinate disobedience in the fulfillment of an order. The refusal must be intentional and must not be confused with omission arising from oversight, mistake or erroneous interpretation of the order.

DISOBEDIENCE TO ORDER OF SUPERIOR OFFICER, WHEN SAID ORDER WAS SUSPENDED BY INFERIOR OFFICER (Art. 232)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. An order is issued by his superior for execution

   Note: The order of the superior must be legal or issued within his authority, otherwise, this article does not apply.
3. He has for any reason suspended the execution of such order
4. His superior disapproves the suspension of the execution of the order
5. Offender disobeys his superior despite the disapproval of the suspension

   Note: The disobedience must be open and repeated.

Note: What is punished by the law is insubordination of the act of defying the authority which is detrimental to public interest.

REFUSAL OF ASSISTANCE (Art. 233)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. Competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service
3. Offender fails to do so maliciously

Q: Give some of the instances of the crime refusal of assistance.

A: Investigators and medico-legal officers refusing to appear to testify in court after having been subpoenaed

Q: Is the crime of refusal of assistance committed only in connection with the administration of justice?

A: No, any refusal by a public officer to render assistance when demanded by competent public authority, as long as the assistance requested from him is within his duty to render and that assistance is needed for public service, constitutes refusal of assistance.

Note: The request must come from one public office to another.

REFUSAL TO DISCHARGE ELECTIVE OFFICE (Art. 234)

Q: What are the elements of this crime?

A:

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

Ratio: Discharge of duties becomes a matter of duty and not a right.

Note: Refusal to discharge the duties of an appointive office is not covered.

If the elected officer is underage or disqualified, his refusal to be sworn in or to discharge the duties of the office is justified.

MALTREATMENT OF PRISONERS (Art.235)

Q: What are the elements of this crime?

A:

1. Offender is a public officer or employee
2. He has under his charge a prisoner or detention prisoner

   Note: To be considered as a detention prisoner, the person arrested must be placed in jail even for a short time.

3. He maltreats such prisoner either of the following manners:

   a. By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either:
      i. By the imposition of punishments not authorized by the regulations
      ii. By inflicting such punishments (those authorized) in a cruel or humiliating manner

   b. By maltreating such prisoner to extort a confession or to obtain some information from the prisoner.

Note: Maltreatment should not be due to personal grudge, otherwise, offender is liable for physical injuries only.

Illustration:
The public officer/employee either imposed punishment not authorized by the regulation or by law, or inflicted punishment/disciplinary action authorized by law in a cruel or humiliating manner.

Thus, hitting a prisoner by a *latigo* even if the purpose is to instill discipline is not authorized by law and constitutes violation of this article. On the other hand, requiring prisoners to dig a canal where culverts shall be placed to prevent flooding in the prison compound is authorized by law and does not violate this article; but if the public officer would order the prisoner to do so from morning up to late evening without any food, then this article is involved, as he inflicted such authorized punishment in a cruel and humiliating manner.

Q: If the public officer who maltreated the prisoner is not charged with the custody of such prisoner, what crime is he responsible for?

A: The public officer is liable for physical injuries.

Q: What is meant by *"under his charge"*?

A: "Under his charge" means actual charge.

Q: When a person is maltreated by a public officer who has actual charge of prisoners, how many crimes may be committed?

A: Two crimes are committed, namely – maltreatment under Art.235 and physical injuries. Maltreatment and physical injuries may not be complexed because the law specified that the penalty for maltreatment shall be in addition to his liability for the physical injuries or damage caused.

Q: To what does maltreatment refer to?

A: Maltreatment refers not only in physical maltreatment but also moral, psychological, and other kinds of maltreatment because of the phrase "physical injuries or damage caused" and "cruel or humiliating manner." *(Boado 2008, p. 614)*

Note: The practice of presenting captured persons in national television for public viewing is a form of maltreatment because they are being presented as criminals even before they are charged which is humiliating. *(Boado, 2008)*

Q: Suppose the person maltreated is not a convict or a detention prisoner, what crime is/or committed?

A: The crime committed would either be:

1. *Coercion*- if the person not yet confined in jail is maltreated to extort a confession, or

2. *Physical injuries*- if the person maltreated has already been arrested but is not yet booked in the office of the police and put in jail.

Illustration:
If a *Barangay* Captain maltreats a person after the latter's arrest but before confinement, the offense is not maltreatment but physical injuries. The victim must actually be confined either as a convict or a detention prisoner. *(People v. Baring, 37 O.G. 1366)*

ANTICIPATION OF DUTIES OF A PUBLIC OFFICE (Art. 236)

Q: What are the elements of this crime?

A:

1. Offender is entitled to hold public office or employment, either by election or appointment

2. Law requires that he should first be sworn in and/or should first give a bond

3. He assumes the performance of the duties and powers of such office

4. He has not taken his oath of office and/or give the bond required by law

PROLONGING PERFORMANCE OF DUTIES AND POWERS (Art. 237)

Q: What are the elements of this crime?

A:

1. Offender is holding a public office

2. Period provided by law, regulations or special provisions for holding such office, has already expired

3. He continues to exercise the duties and powers of such office

Q: Who are the officers contemplated?

A: Those who have been suspended, separated, declared over-aged or dismissed.

ABANDONMENT OF OFFICE OR POSITION (Art. 238)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. He formally resigns from his position
3. His resignation has not yet been accepted
4. He abandons his office to the detriment of the public service

Note: There must be a formal or written resignation.

Q: Supposing the purpose of abandonment is to evade the discharge of duties, what will be the crime?

A: The crime of Abandonment of Office or Position will be qualified if the purpose behind the abandonment is to evade the discharge of duties consisting of preventing, prosecuting or punishing any of the crimes against national security (*E.g.* espionage or treason), in which case, the penalty is higher.

Q: What are the differences between abandonment of office and negligence and tolerance in prosecution of offense (Art.208)?

A:

ABANDONMENT OF OFFICE	DERELICTION OF DUTY
Committed by a public officer.	Committed only by public officers who have the duty to institute prosecution of the punishment of violations of 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.

USURPATION OF LEGISLATIVE POWERS (Art. 239)

Q: What are the elements this crime?

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A:

1. Offender is an executive or judicial officer

2. Offender makes general rules or regulations beyond the scope of his authority or attempts to repeal a law or suspends the execution thereof

USURPATION OF EXECUTIVE FUNCTIONS (Art. 241)

Q: What are the elements of this crime?

A:

1. Offender is a judge

2. He:
   a. Assumes a power pertaining to the executive authorities; or
   b. Obstructs executive authorities in the lawful exercise of their powers.

Note: Legislative officers are not liable for usurpation of executive functions.

USURPATION OF JUDICIAL FUNCTIONS (Art. 242)

Q: What are the elements of this crime?

A:

1. Offender is an officer of the executive branch of the Government

2. He assumes judicial powers, or obstructs the execution of any order or decision rendered by any judge within the jurisdiction

Note: Art. 239 to 241 punish interference by officers of one of the three department of the government with the functions of an official of another department.

DISOBEYING REQUEST FOR DISQUALIFICATION (Art. 242)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. Proceeding is pending before such public officer
3. There is a question brought before the proper authority regarding his jurisdiction, which is yet to be decided
4. He has been lawfully required to refrain from continuing the proceeding
5. He continues the proceeding

Note: The offender is any public officer who has been lawfully required to refrain from continuing with his course of action. He must wait until the question of jurisdiction is finally settled.

ORDERS OR REQUESTS BY EXECUTIVE OFFICERS TO ANY JUDICIAL AUTHORITY (Art. 243)

Q: What are the elements of this crime?

A:

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.

Note: Legislative or judicial officers are not liable under this article.

Mere suggestion is punishable.

UNLAWFUL APPOINTMENTS (Art. 244)

Q: What are the elements of this crime?

A:

1. Offender is a public officer
2. He nominates or appoints a person to a public office
3. Such person lacks the he legal qualification thereof
4. Offender knows that his nominee or employee lacks the qualifications at the time he made the nomination or appointment

Q: Is the act of recommending punishable under this article?

A: No, mere recommending, even if with the knowledge that the person recommended is not qualified, is not a crime. He must nominate.

Note: There must be a law providing for qualifications of a person to be nominated or appointed to a public office.

ABUSES AGAINST CHASTITY (Art. 245)

Q: What are the punishable acts?

A:

1. Soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer

2. Soliciting or making immoral or indecent advances to a woman under the offender's custody

3. Soliciting or making 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

Q: What are the elements of this crime?

A:

1. Offender is a public officer

2. He solicits or makes immoral or indecent advances to a woman

3. Such woman is:
   a. Interested in matters pending before the offender for decision or with respect to which he is required to submit a report to or consult with a superior officer; or

   b. Under the custody of the offender 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.

Note: The crime is committed by mere proposal. If the offender succeeds in committing a crime against chastity, the solicitation and advances are considered as merely as preparatory acts.

Proof of solicitation is not necessary when there is sexual intercourse.

Q: What is the essence of the crime abuses against chastity?

A: The essence of the crime is mere making of immoral or indecent solicitation or advances.

Q: What are the instances where abuse of chastity may arise?

A:

1. *The woman, who is the offended party, is the party in interest in a case where the offender is the investigator or he is required to render a report or he is required to consult with a superior officer.* – This does not include any casual or incidental interest. This refers to interest in the subject of the case under investigation.

   Note: It is immaterial whether the woman did not agree or agreed to the solicitation.

   This covers any public officer before whom matters are pending for resolution or for which he is required to submit a report or consult a superior.

2. *The woman who is the offended party in the crime is a prisoner under the custody of a warden or the jailer who is the offender.* – This crime cannot be committed if the warden is a woman and the prisoner is a man. Men have no chastity. Only a lady can be a complainant here so that a gay guard or warden who makes immoral proposals or indecent advances to a male prisoner is not liable under this law.

   Note: Immoral or indecent advances contemplated here must be persistent. It must be determined. A mere joke would not suffice.

3. *The crime is committed upon a female relative of a prisoner under the custody of the offender, where the woman is the daughter, sister or relative by affinity in the same line as of the prisoner under the custody of the offender who made the indecent or immoral solicitation.* – The mother is not included so that any immoral or indecent solicitation upon the mother of the prisoner does not give rise to this crime, but the offender may be prosecuted under the Section 28 of the RA 3019 *(Anti-Graft and Corrupt Practices Act).*

Note: "To solicit" means to propose earnestly and persistently something unchaste and immoral to a woman.

Q: If the jail warden forced himself against the will of the woman prisoner, what is/are the crime/s committed?

A: Rape is committed aside from the abuse against chastity. Abuse of chastity is not absorbed in the crime of rape because the basis of penalizing the acts is different from each other.

A. Anti-Graft and Corrupt Practices Act (R.A. 3019,as amended)

Q: Who are covered under this act?

A: All public officers which includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service, receiving compensation, even nominal from the government.

Note: Government includes:

1. National government
2. Local government
3. GOCCs
4. Other instrumentalities or agencies
5. Their branches

Q: What are the punishable acts under Sec. 3 of R.A. 3019?

A:

1. A public officer:
   a. Persuading, inducing, or influencing another public officer to:
      i. Perform an act constituting a violation of the Rules and Regulations duly promulgated by competent authority, or
      ii. An offense in connection with the official duties of the latter

   Note: An example of the abovementioned punishable act is the act of Former Comelec Chaiman Benjamin Abalos in bribing Romulo Neri the amount of 200 Million Pesos in exchange for the approval of the NBN Project. *(Neri v. Senate Committee on Accountablility of Public Officers and Investigation, G.R. No. 180643, March 25, 2008)*

   b. Allowing himself to be persuaded, induced or influenced to commit such violation or offense.

2. Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

Note: This is a special form of bribery

Q: What are the elements of this crime?

A:

1. The offender is a public officer
2. He requested and/or received, directly or indirectly a gift, present or consideration
3. The gift, present or consideration was for the benefit of the said public officer or for any other person
4. It was requested and/or received in connection with a contract or transaction with the Government
5. The public officer has the right to intervene in such contract or transaction in his official capacity

   Note: R.A. 3019 punishes the separate acts of:
   1. Requesting
   2. Receiving
   3. Requesting and receiving

   Lack of demand is immaterial. After all, it uses the word "or" between requesting and receiving.

3. 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.

Note: This is a special form of bribery

4. 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 one year after its termination.

Q: What are the elements of this crime?

A:

1. The public officer accepted, or having any of his family member accept any employment in a private enterprise
2. Such private enterprise has a pending official business with the public officer
3. It was accepted during:
    i. The pendency thereof, or
    ii. Within 1 year after its termination

5. 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 official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence.

Q: What are the elements of this crime?

A:

1. The accused must be a public officer discharging administrative, judicial or official functions

2. He must have acted with manifest partiality, evident bad faith or inexcusable negligence

3. That his action caused:
    i. Any undue injury to any party, including the government, or
    ii. Giving any private party unwarranted benefits, advantage or preference in the discharge of his functions.

Note: Since bad faith is an element, good faith and lack of malice is a valid defense.

6. Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him.

Q: What are the elements of this crime?

A:

a. Offender is a public officer

b. Public officer neglected or refused to act without sufficient justification after due demand or request has been made on him

c. Reasonable time has elapsed from such demand or request without the public officer having acted on the matter pending before him

d. Such failure to act is for the purpose of:
    i. Obtaining (directly or indirectly) from any person interested in the matter some pecuniary or material benefit or advantage,
    ii. Favoring his own interest,
    iii. Giving undue advantage in favor of or discriminating against any other interested party.

Note: The neglect or delay of public function must be accompanied by an express or implied DEMAND of any benefit or consideration for himself or another. Absent such demand, the officer shall be merely administratively liable.

7. 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.

Q: What are the elements of this crime?

A:

1. Accused is a public officer
2. The public officer entered into a contract or transaction on behalf of the government
3. Such contract or transaction is grossly and manifestly disadvantageous to the government. *(the threshold of the crime)*

Note: Lack of public bidding and violation of administrative orders do not by themselves satisfy the 3rd element. It does not in itself result to manifest and gross disadvantage. The law requires the disadvantage be gross and manifest. *(Caunan v. People)*

8. Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in which he:
    a. Intervenes or takes part in his official capacity; or

b. Is prohibited by the constitution or by law from having any interest

Note: Intervention must be actual and in the official capacity of the public officer.

9. a. Directly or indirectly becoming interested, for personal gains, or
   b. Having a material interest in any transaction or act which:
      i. Requires the approval of a board, panel or group of which he is a member and which exercises discretion in such approval
      ii. Even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Note: Interest for personal gain shall be presumed against those public officials responsible for the approval of manifestly unlawful, inequitable, or irregular transaction or acts by the board, panel or group to which they belong.

10. Knowingly approving or granting any license, permit, privilege or benefit in favor of:
    a. Any person not qualified for or not legally entitled to such license, permit, privilege or benefit; or
    b. A mere representative or dummy of one who is not so qualified or entitled.

11. a. Divulging valuable information of a:
       i. Confidential character
       ii. Acquired by his office or by him on account of his official position to unauthorized person
    b. Releasing such information in advance of its authorized released date.

Note: The ff. persons shall also be punished with the public officer and shall be permanently or temporarily disqualified, in the discretion of the Court, from transacting business in any form with the Government:

1. Person giving the gift, present, share, percentage or benefit in par. 2 and 3.
2. Person offering or giving to the public officer the employment mentioned in par. 4.
3. Person urging the divulging or untimely release of the confidential information in par. 11.

Q: What are the prohibited acts for private individuals?

A: It shall be unlawful:

1. For any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or personal relation, by directly or indirectly requesting or receiving any present, gift, material or pecuniary advantage from any person having some business, transaction, application, request or contract with the government, in which such public officer has to intervene *(Sec. 4)*

Note: Family relations include the spouse or relatives by consanguinity or affinity within 3rd civil degree.

Close Personal relations include:
a. Close personal friendship
b. Social and fraternal relations
c. Personal employment

This all gives rise to intimacy which assumes free access to such public officer.

2. For any person to knowingly induce or cause any public official to commit any of the offenses defined in Sec. 3. *(Sec.6)*

Q: What are the other prohibited acts for the relatives?

A: **GR:** it shall be unlawful for the spouse or relative by consanguinity or affinity within 3rd civil degree of the President, Vice President, Senate President**,** or Speaker of the House to intervene directly or indirectly in any business, transaction, contract or application with the government.

XPN: This will not apply to:

1. Any person who prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business

2. Any transaction, contract or application already existing or pending at the time of such assumption of public office

3. Any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law

4. Any act lawfully performed in an official capacity or in the exercise of a profession.

B. Anti-Plunder Act (R.A. 7080, as amended)

Q: Who are covered under this act?

A: Public officers which means any person holding any public office in the Government of the Republic of the Philippines by virtue of an appointment, election or contract.

Q: What is ill-gotten wealth?

A: It is any asset, property, business enterprise or material possession of any person, acquired by a public officer directly or indirectly through dummies, nominees, agents, subordinates and/or business associates.

Q: How is ill-gotten wealth acquired?

A: It is acquired by any combination or series of the following means or similar schemes:

1. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury

2. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned

3. By the illegal or fraudulent conveyance or disposition of assets belonging to the National government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries

4. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking

5. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of 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 at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines

Q: What is Plunder?

A: It is a crime committed by a public officer by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, by amassing, accumulating or acquiring ill-gotten wealth through a combination or series of overt acts in the aggregate amount or total value of at least P50 million.

Q: What is *combination*?

A: Combination refers to at least 2 of the above enumerations found in different numbers.

e.g. misappropriation in no.(1) and receiving commission in no. (2).

Q: What is *series*?

A: Series refers to at least 2 or more overt acts is under the same category of enumeration.

e.g. misappropriation and raids of public treasury all found in no. (1)

Q: Is it necessary to prove each and every criminal act done by the accused to commit the crime of plunder?

A: No. It is sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

Note: Plunder is a *malum in se.* The degree of responsibility of the offender is determined by his

criminal intent. Hence, it authorizes the application of mitigating and extenuating circumstances in the RPC.

The Law is silent on whether a person can be charged with a predicate crime. *E.g.Garcia pleading guilty before the Sandiganbayan to the lesser offenses of indirect bribery and facilitating money laundering, instead of plunder, which is a non-bailable capital offense, and to return less than half the loot he was accused of stealing.*

C. Human Security Act of 2007 (R.A. 9372)

Q: What is the effect of failure to deliver the suspect to the proper judicial authority under this act?

A: Any police or law enforcement personnel who has taken custody of a person charged with or suspected of the crime of terrorism or the crime of conspiracy to commit terrorism shall deliver the same to the proper judicial authorities within a period of 3 days counted from the moment of apprehension, arrest, detention and taking into custody by the police or law enforcement personnel otherwise, such police or law enforcement personnel shall be penalized with 10 years and 1 day to 12 years imprisonment.

Q: What is the penalty for infidelity in the custody of detained persons?

A: Any public officer who has direct custody of a detained person or under the provisions of this Act and who by his deliberate act, misconduct, or inexcusable negligence causes or allows the escape of such detained person shall be guilty of an offense and shall suffer the penalty of:

1. *12 years and 1 day to 20 years of imprisonment*- if the detained person has already been convicted and sentenced in a final judgment of a competent court

2. *6 years and 1 day to 12 years of imprisonment*- if the detained person has not been convicted and sentenced in a final judgment of a competent court. *(Sec. 44)*

VIII. CRIMES AGAINST PERSONS (246-266)

DESTRUCTION OF LIFE

PARRICIDE (Art. 246)

Q: What are the elements of this crime?

A:

1. Deceased is killed by the accused.
2. Deceased is the:
   a. Father
   b. Mother
   c. Child, whether legitimate or illegitimate
   d. Legitimate other ascendant or other descendant
   e. Legitimate spouse of the accused.

Illustration:

The relationship, except the spouse, must be in the direct line and not in the collateral line. Hence, if A, father of the victim V, was assisted by N (a nephew) in killing V, then A is guilty of parricide while N committed murder (as the deceased was killed while sleeping) and not parricide.

Q: Must the relationship between the offender and the offended party be legitimate?

A: Yes, except when the offender and the offended party are related as parent and child.

Note: If the offender and the offended party, although related by blood and in the direct line, are separated by an intervening illegitimate relationship, parricide can no longer be committed.

The only illegitimate relationship that can bring about parricide is that between parents and illegitimate children as the offender and the offended parties.

The presence of any of the qualifying circumstances in murder will be considered a generic aggravating circumstance in parricide.

Note: The victim must not be less than 3 days old, otherwise, the crime is *infanticide.*

Q: Suppose a stranger conspires in the commission of the crime of parricide, what is his criminal liability?

A: The stranger is liable for homicide or murder, as the case may be, because of the absence of relationship. The rule on conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party. It is immaterial that he knew of the relationship of the accused and the deceased.

Q: To constitute parricide of a spouse, what must be established?

A: There must be a valid subsisting marriage at the time of the killing. Also, the information should allege the fact of such valid marriage between the accused and the victim.

Note: Parricide of spouse requires proof of marriage.

Q: Suppose a Muslim, who has three wives, killed the third. Is he liable for parricide?

A: No. Muslim husbands with several wives can be convicted of parricide only in case the first wife is killed. There is no parricide if the other wives are killed although their marriage is recognized as valid.

Ratio: A Catholic man can commit the crime only once. If a Muslim husband could commit the crime more than once, in effect, he is being punished for the marriage which the law itself authorized him to contract.

Q: What are the cases of parricide where the penalty of *Reclusion Perpetua* to Death shall not be imposed?

A:

1. Parricide through negligence *(Art. 365)*
2. Parricide through mistake *(Art. 249)*
3. Parricide under exceptional circumstances *(Art. 247)*

Q: What are the essential elements of the crime?

A: Relationship of the offender with the victim is the essential element of the crime. Hence, if a person wanted to kill a stranger but by mistake he killed his own father, he will be held liable for parricide but Art. 49 will apply as regards the proper penalty to be imposed.

Q: If a person killed his/her adopted child, would that constitute parricide?

A: No. Since relationship of the offender with the victim is the essential element of the crime, killing an adopted child even if adoption confers on the adopted child all rights and privileges of a legitimate child could not be parricide. It is either murder or homicide as the case may be.

Q: A killed:

1. **A woman with whom he lived without the benefit of clergy**

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

2. **Their child who was only two days old**
3. **Their daughter; and**
4. **Their adopted son**

What crime or crimes did A commit?

A: A committed the following crimes:

1. Homicide or murder as the case may be for the killing of the common-law wife who is not legally considered as spouse.

2. Infanticide for the killing of the child as said child is less than 3 days old *(Art 255, RPC).* However, the penalty corresponding to parricide shall be imposed since A is related to the child within the degree defined in the crime of parricide.

3. Parricide for the killing of their daughter, whether legitimate or illegitimate, as long as she is not less than 3 days old at the time of killing.

4. Murder for the killing of their adopted son as the relationship between A and the said son must be by blood in order for parricide to arise.

DEATH OR PHYSICAL INJURY INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES (Art. 247)

Q: What are the elements of Art. 247?

A:

1. A legally married person or a parent surprises his spouse or daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse.

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.

Note: This article does not define a crime. It provides a defense, which the accused must prove

Q: What is the rationale for Art. 247?

A: The law affords protection to a spouse considered to have acted in a justified outburst of passion or a state of mental disequilibrium. The offended spouse has no time to regain his self-control.

Q: What is the nature of Art. 247?

A: Art. 247 far from defining a felony is more of an exempting circumstance as the penalty intended more for the protection of the accused rather than a punishment. Put differently, it practically grants a privilege amounting to an exemption for adequate punishment.

Q: What are the two stages contemplated under Art. 247?

A:

1. When the offender surprised the other spouse with a paramour or mistress.

   Note: Surprise means to come upon suddenly or unexpectedly.

   The attack must take place while the sexual intercourse is going on. If the surprise was before or after the intercourse, no matter how immediate, Article 247 does not apply.

2. When the offender kills or inflicts serious physical injury upon the other spouse and paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

Q: What is meant by the phrase "*immediately thereafter*"?

A: The phrase immediately thereafter has been interpreted to mean that between the surprising and the killing or the inflicting of the physical injury, there should be no interruption or interval of time. In other words, it must be a continuous process.

Q: What is meant by the phrase *"in the act of committing sexual intercourse"*?

A: It means that there must be actual sexual intercourse. It does not include preparatory acts.

Q: Is it necessary that the spouse actually saw the sexual intercourse?

A: No. It is enough that he/she surprised them under such circumstances that no other reasonable conclusion can be inferred but that a carnal act was being performed or has just been committed.

Note: The killing or infliction of physical injuries must

be in the act of sexual intercourse or immediately thereafter. Thus, where the accused surprised his wife and her paramour in the carnal act but the latter ran away, he first chased him and unable to catch up with him, returned to his wife whom he found at the stairs of their house, no longer in the place where he saw her having sex with the paramour and killed her, he can avail of Art 247.

Illustration:

A bar examinee, who killed the paramour of his wife in a mahjong session, an hour after he had surprised them in the act of sexual intercourse in his house, since at that time, he had to run away and get a gun as the paramour was armed, was granted the benefits of this article. *(People v. Abarca, G.R. No. 74433, Sept.14, 1987)*

Q: When third persons are injured in the course of the firing at the paramour, will the offending spouse be free from criminal liability?

A: No. Inflicting death or physical injuries under exceptional circumstances is not murder. The offender cannot therefore be held liable for frustrated murder for the serious injuries suffered by third persons. It does not mean, however, that the offender is totally free from any responsibility. The offender can be held liable for serious physical injuries through simple imprudence or negligence.

Q: What is the meaning of the phrase *"living with them"?*

A: The phrase living with them is understood to be in their own dwelling because of the embarrassment and humiliation done not only to the parent but also to the parental abode. If it was done in a motel, the article does not apply.

Note: The benefits of Art. 247 may also apply to parents who shall surprise their daughter below 18 years of age in actual sexual intercourse while living with them.

The sexual act is between the daughter and a seducer. The parents cannot invoke this provision, if, in a way, they have encouraged the prostitution of the daughter. The parent need not be legitimate.

Q: A and B are husband and wife. A is employed as a security guard at Landmark, his shift being from 11:00 p.m. to 7:00 a.m. One night, he felt sick and cold, hence, he decided to go home around midnight after getting permission from his duty officer. Upon reaching the front yard of his home, he noticed that the light in the master bedroom was on and that the bedroom window was open. Approaching the front door, he was surprised to hear sighs and giggles inside the bedroom. He opened the door very carefully and peeped inside where he saw his wife B having sexual intercourse with their neighbor C. A rushed inside and grabbed C but the latter managed to wrest himself free and jumped out of the window. A followed suit and managed to catch C again and after a furious struggle, managed also to strangle him to death. A then rushed back to their bedroom where his wife B was cowering under the bed covers. Still enraged, A hit B with fist blows and rendered her unconscious. The police arrived after being summoned by their neighbors and arrested A who was detained, inquested and charged for the death of C and serious physical injuries of B.

1. **Is A liable for C's death? Why?**
2. **Is A liable for B's injuries? Why?**

A:

1. Yes. A is liable for C's death but under the exceptional circumstances in Art. 247 of the RPC where only *destierro* is prescribed. Article 247 governs since A surprised his wife B in the act of having sexual intercourse with C, and the killing of C was immediately thereafter as the discover, escape, pursuit and killing of C form one continuous act. *(US v. Vargas, 2 Phil 194)*

2. Likewise, A is liable for the serious physical injuries he inflicted on his wife but under the same exceptional circumstances in Article 247 of the Revised Penal Code for the same reason. **(2001 Bar Question)**

MURDER (Art. 248)

Q: What are the elements of murder?

A:

1. That a person was killed
2. That the accused killed him
3. That the killing was attended by any of the qualifying circumstances mentioned in *Art. 248*
4. That the killing is not parricide or infanticide

Note: One attending circumstance is enough to qualify the crime as murder and any other will be considered generic aggravating circumstances.

To be considered qualifying, the particular circumstance must be alleged in the information. Otherwise, they will only be considered as generic aggravating circumstances.

Q: What is murder?

A: *Murder* is the unlawful killing of any person which is not parricide or infanticide, provided that any of the following circumstances is present:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense, or of means or persons to insure or afford impunity

2. In consideration of a price, reward or promise

   Note: For reward and promise to be considered, the same must the primary consideration in the commission of a crime or felony.

   If this aggravating circumstance is present in the commission of the crime, it affects not only the person who received the money or reward but also the person who gave it.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding on a vessel, derailment or assault upon a railroad, fall of an airship, by motor vehicles, or with the use of any other means involving great waste and ruin

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of volcano, destructive cyclone, epidemic, or other public calamity

5. With evident premeditation

   Note: The offender must have taken advantage of the same and the resultant condition.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

   Note: Cruelty includes the situation where the victim is already dead and yet, acts were committed which would decry or scoff the corpse of the victim. The crime becomes murder.

   There is no cruelty if the act is the result of an impulse of passion or extreme obfuscation as such will be inconsistent with the concept of deliberateness in augmenting the suffering of the victim

Q: When is there treachery?

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

Note: Treachery is inherent in poison. Abuse of superior strength is inherent in and comprehended by treachery.

Illustration:

The killing of a child of tender age is murder qualified by treachery because of the weakness of the child due to his tender age results in the absence of any danger to the aggressor.

Q: What are the elements of treachery?

A:

1. The employment of means of execution that would insure the safety of the accused from retaliatory acts of the intended victim and leaving the latter without an opportunity to defend himself

2. The means employed were deliberately or consciously adopted by the offender

Q: What is the essence of treachery?

A: The essence of treachery is that the offended party is denied of the chance to defend himself because of the means, methods, or form in executing the crime deliberately adopted by the offender. This is true even if there is no intent to kill.

Note: While the circumstance of by a band is not among those enumerated that could qualify killing as murder, it would seem that if the killer constituted a band, the crime is murder because the circumstance of with aid of armed men is included in the qualifying circumstances. These circumstances however must be alleged in the information, otherwise, they will be considered only as ordinary aggravating circumstances to the crime of homicide.

Illustration:

A sudden and unexpected attack under circumstances which render the victim unable to defend himself by reason of the suddenness and severity of the act constitutes *alevosia*. *(People vs. Santos, 2004)*

Q: What is the crime committed if the person is killed with fire?

A: The primordial criminal intent of the offender is considered:

1. *Murder* – if the primordial criminal intent of the offender is to kill and fire was only used as a means to do so.

2. *Arson* – if the primordial criminal intent of the offender is to destroy the property with the use of pyrotechnics and incidentally, somebody within the premises is killed or if the intent is to burn a house but it just so happens that there is someone inside the house.

   Note: Arson with murder is not a complex crime under Art. 48. This is a single indivisible crime penalized under Art. 326, which is death as a consequence of arson.

3. *Homicide* – if the burning is resorted to as a joke but death resulted.

4. Two separate crimes of *homicide and arson* – if fire is used to conceal the killing of the victims.

Illustration:

To qualify killing to murder by means of inundation, fire, poison, explosion, shipwreck etc., the offender's purpose and design must be to kill the victim in employing the various modes. Thus, A and B to enhance further merriment, poured gas on the cloth of a mental retardate who continued dancing while his cloth is on fire to the delight of the crowd gathered, are not only guilty of murder if the mental retardate died of 3rd degree burns because the fire was employed not to kill the victim. *(People v. Pugay, G.R. No. 74314, Nov. 17, 1988).*

Q: What is required for evident premeditation to qualify the killing to murder?

A: There must be proof as clear as the evidence of the crime itself of the following elements:

1. The time when the offender determined to commit the crime

2. An act manifestly indicating that the offender clung to his or her determination

3. A lapse of time between the determination and the execution, sufficient to allow the offender to reflect upon the consequences of his act.

Q: What is the difference of cruelty as a qualifying circumstance of murder (Art. 248) and cruelty as a generic aggravating circumstance under Art. 14?

A:

CRUELTY (ART. 248)	CRUELTY (ART. 14)
Aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.	Requires that the victim be alive, when the cruel wounds were inflicted and, therefore, must be evidence to that effect.

Illustration:

Dismemberment of a dead body is one manner of outraging or scoffing at the corpse of the victim. *(People vs. Guillermo, 2004)*

Q: Can murder be committed even if at the beginning the offender has no intention to kill the victim?

A: Yes, although generally, murder can only be committed if at the outset, the offender has intent to kill because the qualifying circumstances must be restored to with the view of killing the victim.

However, if the offender may not have intended to kill the victim but he only wanted to commit a crime against him in the beginning, he will still be liable for murder if in the manner of committing the felony, there was treachery and as a consequence thereof, the victim died.

Ratio: This is based on the rule that the person committing a felony shall be liable for the consequences thereof although different from that which is intended.

Q: Where the qualifying circumstances were not those proved in the trial, can the accused be convicted of murder?

A: No, because any of the qualifying circumstances under Art. 248 is an ingredient of murder, not merely qualifying circumstance.

The circumstances must be both alleged and proved in the trial, otherwise, they cannot be considered because the right of the accused to be informed of the charge against him will be violated.

Q: A, a 76-year old woman, was brought to the hospital in coma with slight cerebral hemorrhage. An endotracheal tube was inserted in his mouth to facilitate her breathing. B, a hospital janitor, who had no business in the emergency room, for reasons known only to him, removed the plaster holding the tube in place. A doctor saw him and told him to get out of the room. The plaster was replaced. But when the doctor was gone, B came

back and removed the tube. The victim started to convulse and bleed in the mouth. Only the timely arrival of the nurse prevented the patient's death. The patient was then transferred to another hospital where she died the next day of cardio-respiratory arrest. Is B criminally liable? If so, what crime if any did B commit?

A: Yes, B is criminally liable for murder (qualified by treachery) because the death of A appears to be the proximate cause of the overt acts of B.

Q: A died of cardiorespiratory arrest which evidently was brought about by the convulsion and bleeding in the mouth of the victim due to the removal of B of the endotracheal tube twice. Can the two acts of B be considered as the result of one criminal design?

A: In *People v. Umaging* (*17 SCRA 166)*, the Supreme Court ruled that the removal of the endotracheal tube is attempted murder qualified by treachery because the patient did not die. **(1991 Bar Question)**

HOMICIDE (Art. 249)

Q: What is homicide?

A: *Homicide* is the unlawful killing of any person, which is neither parricide, murder nor infanticide.

Q: What are the elements of homicide?

A:

1. That a person is killed
2. That the accused killed him without any justifying circumstance
3. The accused had 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

Note: Intent to kill is conclusively presumed when death resulted, hence, need not be established.

Evidence of intent to kill is important only in attempted or frustrated homicide.

Physical injuries are included as one of the essential elements of frustrated homicide.
When the wounds that caused death were inflicted by 2 different persons, even if they were not in conspiracy, each one of them is guilty of homicide.

In all crimes against person in which the death of the victim is an element, there must be satisfactory evidence of:

1. The fact of death
2. The identity of the victim.

When there is no way of determining how the attack was committed, treachery cannot be considered and the accused is guilty of homicide only. *(People vs Dela Cruz, G.R. No. 152176, October 1, 2003)*

Q: Is there a crime of frustrated homicide through reckless imprudence?

A: None. This is because intent is inherent in frustrated or attempted homicide.

Illustration:

When there is an agreement to fight between the accused and the deceased, the killing will always be considered as homicide, as treachery cannot exist in that scenario.

If a boxer is killed by his opponent in a boxing bout duly licensed by the government without any violation of the governing rules and regulations, there is no homicide to speak of. If he hit his opponent below the belt without any intention to do so, it is homicide through reckless imprudence if the latter died as a result. If he intentionally hit his opponent on the part of the body causing the death, the crime is homicide.

Illustration:

The shooting of a peace officer who was fully aware of the risks in pursuing the malefactors when done in the spur of the moment is only homicide. *(People v. Porras, G.R. Nos. 114263-64, Mar. 29, 1996)*

Q: What are the distinctions between physical injuries and homicide?

A:

HOMICIDE	PHYSICAL INJURIES
In attempted or frustrated homicide, there is intent to kill.	There is no intent to kill. However, if as a result of the physical injuries inflicted, the victim died, the crime will be homicide *Ratio:* The law punishes the result, and not the intent of the act.

Q: If mortal wounds are inflicted but those were due to negligence, is frustrated homicide committed?

A: No. The crime committed is serious physical injuries through reckless imprudence because the element of intent to kill is incompatible with negligence or imprudence.

Q: Suppose several assailants not acting in conspiracy inflicted wounds on the victim, but it cannot be determined who inflicted which wounds, which caused the death of the victim, who should be guilty for the crime of homicide?

A: All of them liable for homicide.

Q: If homicide or murder is committed with the use of an unlicensed firearm, how should the crime be denominated?

A: The crime would only be homicide or murder as the case may be because the use of firearm is only considered as an aggravating circumstance.

Q: What is accidental homicide?

A: *Accidental homicide* is death of a person brought about by a lawful act performed with proper care and skill and without intent to kill.

DEATH CAUSED IN A TUMULTOUS AFFRAY (Art. 251)

Q: What is a tumultuous affray?

A: *Tumultuous affray* means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer if death results, or who inflicted the serious physical injuries, but the person or persons who used violence are known.

Note: The participants must be more than three considering the definition of tumultuous under Art. 153, third paragraph, that the disturbance or interruption shall be deemed to be tumultuous if caused by more than 3 persons who are armed or provided with the means of violence. The person killed could be participant or anybody caught in the fight.

Q: What are the elements of this crime?

A:

1. There be several persons
2. They did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally and assaulted one another in a confused and tumultuous manner
3. Someone was killed in the course of the affray
4. It cannot be ascertained who actually killed the deceased
5. The person or persons who inflicted serious physical injuries or who used violence can be identified

Note: This article does not apply if there is concerted fight between two organized groups.

There is no particular group against another group. The riots in city jails and/or Muntinlupa brigades do not fall under this article because the participants are members of different gangs. If there is conspiracy, this crime is not committed.

Q: What brings about the crime of tumultuous affray?

A: It is the inability to ascertain actual perpetrator, not the tumultuous affray itself, that brings about the crime. It is necessary that the very person who caused the death cannot be known, and not that he cannot be identified.

Q: What is the crime committed if the person who caused the death is known but he cannot be identified?

A: If he is known but only his identity is not known, he will be charged for the crime of homicide or murder under a fictitious name not death in a tumultuous affray.

Q: If the quarrel or rumble involving organized groups resulted in the death of a person and it cannot be identified who in particular committed the killing, what is the crime committed?

A: The crime would be homicide or murder. There will be collective responsibility on both sides.

Q: Who may be a victim under Article 251?

A: The victim may be a participant in the affray or a mere passerby.

Illustration:

As long as it cannot be determined who killed the victim, all those persons who inflicted serious physical injuries will be collectively answerable for the death of that fellow.

If those who inflicted the serious physical injuries cannot be ascertained too, then those who shall have used violence upon the deceased shall be punished by prision correctional in its medium and maximum periods. Even if the participant only kicked the accused, he will be held liable for the death of the victim although such act did not result in the death of the victim as those who inflicted the serious physical injuries are undeterminable.

If those who actually killed the victim can be determined, they will be the ones who will be held

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liable, and those who inflicted the serious or less serious physical injuries shall be punished for said corresponding offenses provided no conspiracy is established with the killers.

Q: Who may be liable for the death or physical injury in the tumultuous affray?

A:

1. The person who inflicted serious physical injuries upon the victim

2. If they could not be known, then anyone who may have employed violence on that person will answer for his death

3. If nobody could still be traced to have employed violence upon the victim, nobody will answer. The crimes committed might be disturbance of public order, or if participants are armed, it could be tumultuous disturbance, or if property was destroyed, it could be malicious mischief

PHYSICAL INJURIES IN A TUMULTUOUS AFFRAY (Art. 252)

Q: What are the elements of this crime?

A:

1. There is a tumultuous affray as referred to in the preceding article

2. A participant or some participants thereof suffers physical injuries of a less serious nature only

3. Person responsible thereof cannot be identified

4. All those who appear to have used violence upon the person of the offended party are known.

Q: What kind of injury is contemplated in the crime of physical injuries in a tumultuous affray?

A: The physical injury should be serious or less serious and resulting from a tumultuous affray. If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray.

Q: Who may be a victim under Art. 252?

A: The victim must be a participant in the affray.

Q: Who may be liable?

A: Only those who have used violence are punished because if the one who caused the physical injuries is known, he will be liable for physical injuries actually committed and not under this article.

GIVING ASSISTANCE TO SUICIDE (Art. 253)

Q: What are the punishable acts?

A:

1. Assisting another to commit suicide, whether the suicide is consummated or not

2. Lending assistance to another to commit suicide to the extent of doing the killing himself

Note: In this crime, the intention must be for the person who asking the assistance of another to commit suicide. The penalty of the one assisting is mitigated if suicide is not successful.

Q: What is the meaning of giving assistance to suicide?

A: Giving assistance to suicide means giving arms, poison, etc. or whatever manner of positive and direct cooperation, intellectual aid, suggestion regarding the mode of committing the suicide, etc.

Q: Suppose the intention is not to commit suicide, as when he just wanted to have a picture taken of him to impress upon the world that he is committing suicide because he is not satisfied of the government, what is the crime committed by the person giving assistance to facilitate the said act?

A: The crime is inciting to sedition. The person giving the assistance becomes a co-conspirator in the crime of inciting to sedition, but not of giving assistance to suicide because the assistance must be given the one who is really determined to commit suicide.

Q: What is the liability of the person attempting to commit suicide should he survive?

A: He has no liability because committing suicide is not penalized by the RPC. However, he may be held liable for the crime of disturbance of public order if indeed serious disturbance of public peace occurred due to his attempt to commit suicide.

Illustration:

One who upon a plea of his friend to pull the trigger of

the gun to which he himself poked on his temple as he could no longer bear the pain due to a brain cancer, squeezed the said trigger causing the death of his long-suffering friend is liable under this article.

Even if the suicide did not materialize, the person giving assistance to suicide is also liable but the penalty shall be one or two degrees lower depending on whether it is attempted or frustrated suicide.

Q: What is the difference between giving assistance to suicide and mercy killing or euthanasia?

A:

GIVING ASSISTANCE TO SUICIDE	MERCY KILLING OR EUTHANASIA
The principal actor is the person committing the suicide.	The victim is not in a position to commit suicide. Whoever would heed his advice is not really giving assistance to suicide but doing the killing himself.

Note: In both, the intention to end the life comes from the victim himself. The victim must persistently induce the offender to end his life.

DISCHARGE OF FIREARMS (Art. 254)

Q: What are the elements of the crime?

A:

1. Offender discharges a firearm against another person
2. Offender has no intention to kill the person

Q: Can the crime of illegal discharge be committed through imprudence?

A: No, because it requires that the discharge must be directed at another.

Q: What is the purpose of the offender under the article?

A: The purpose of the offender is to merely frighten or intimidate the offended party.

Q: If the firearm is directed at the person and the trigger was pressed but did not fire, what crime is committed?

A: The crime is frustrated discharge of firearm.

Q: If serious or less serious physical injuries resulted from the discharge, what crime is committed?

A: This results to the complex crime of serious or less serious physical injuries with illegal discharge of firearm.

Q: Suppose slight serious physical injuries resulted from the discharge, what crime/s is/are committed?

A: Two crimes are committed, that of illegal discharge of firearm and slight physical injuries. It is important that there should be no intent to kill.

Illustration:

The firing of a gun at a person even if merely to frighten him constitutes illegal discharge of firearm. If the firearm is not discharged at a person, the act is not punished under this article.

Q: Is the discharge towards the house of the victim a discharge of firearm?

A: No. Firing a gun at the house of the offended party, not knowing in what part of the house the people were, is only alarm under Art. 155.

Note: It is not applicable to police officers in the performance of their duties. If the firearm is unlicensed, the crime of illegal Possession of Firearm is absorbed and the offender cannot be punished separately for that offense.

INFANTICIDE (Art. 255)

Q: What is infanticide?

A: It is the killing of any child less than 3 days old or 72 hours of age, whether the killer is the parent or grandparent, any relative of the child, or a stranger.

Note: If the killer is the mother, or father, or legitimate grandfathers, although the crime is still infanticide and not parricide, the penalty however, is that of parricide.

Q: What are the elements of infanticide?

A:

1. A child was killed by the accused.
2. Deceased child was less than 3 days old or less than 72 hours of age
3. Accused killed the said child

Q: If the child is born dead, or if the child is already

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dead, is there infanticide?

A: No. Infanticide is not committed.

Q: Is concealment of dishonor an element of infanticide?

A: No. It merely lowers the penalty.

Note: Only the mother and maternal grandparents of the child are entitled to the mitigating circumstance of concealing dishonor. Mother who claims concealing dishonor must be of good reputation.

Other person who kills or who cooperates with the mother or maternal grandparent in killing a child less than 3 days old will suffer the penalty of murder.

Q: What are the distinctions between infanticide and parricide if the offender is the blood relative, *e.g.* parent of the child?

A:

INFANTICIDE	PARRICIDE
The age of the victim is less than three days old.	The victim is three days old or above.
If done in conspiracy with a stranger, both the parent and the co-conspirator are liable for infanticide.	The co-conspirator is liable for murder because of the absence of relationship.
Concealment of dishonor in killing the child is mitigating.	Concealment of dishonor in killing the child is not a mitigating circumstance

Note: In both, there is intent to kill the child.

Q: Suppose the child is abandoned without any intent to kill and death results as a consequence, what crime is committed?

A: The crime committed is abandonment not infanticide.

INTENTIONAL ABORTION (Art. 256)

Q: What is abortion?

A: *Abortion* is the willful killing of the fetus in the uterus, or the violent expulsion of the fetus from the maternal womb that results in the death of the fetus.

Q: In what ways is the crime of intentional abortion committed?

A:

1. Using any violence upon the person of the pregnant woman
2. By administering drugs or beverages upon such pregnant woman without her consent
3. By administering drugs or beverages with the consent of the pregnant woman

Q: What are the elements of intentional abortion?

A:

1. There is a pregnant woman
2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman
3. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom
4. Abortion is intended

Q: Who are the persons liable for intentional abortion?

A:

1. The person who actually caused the abortion under Art. 256
2. The pregnant woman if she consented under Art. 258

Note: Abortion is not a crime against the woman but against the fetus. The offender must know of the pregnancy because the particular criminal intention is to cause an abortion.

Q: What determines personality?

A: Under Art. 40 of the Civil Code, birth determines personality. A person is considered born at the time when the umbilical cord is cut. He then acquires a personality separate and distinct from his mother. But even though the umbilical cord has been cut, Art. 41 of the Civil Code provides that if the fetus had an intra-uterine life of less than 7 months, it must survive at least 24 hours after the umbilical cord is cut for it to be considered born.

Note: As long as the as the fetus dies as a result of the violence used or drugs administered, the crime of abortion exists even if the fetus is over or less than 7 months.

If the fetus, having an intra-uterine life of less than 7 months, could sustain an independent life after its separation from the maternal womb, and it is killed, the crime is infanticide and not abortion.

Q: Should the fetus die to consummate abortion?

A: Yes. If it is intentional abortion and the fetus does not die, it is frustrated intentional abortion when all acts of execution have been performed by the offender.

If the abortion is not intended and the fetus does not die in spite of the violence intentionally exerted, the crime may only be physical injuries. There is no crime of frustrated unintentional abortion in view of the absence of the intention to cause abortion.

Q: What is the difference between abortion and infanticide?

A:

ABORTION	INFANTICIDE
The victim is not viable but remains to be a fetus.	The victim is already a person less than 3 days old or 72 hours and is viable or capable of living separately from the mother's womb.
No mitigation for parents of pregnant woman even if the purpose is to conceal dishonor.	The mother and maternal grandparents of the child are entitled to the mitigating circumstance of concealing the dishonor.

Q: Suppose the mother as a consequence of abortion suffers death or physical injuries, what crime is committed?

A: The crime is complex crime of murder or physical injuries with abortion.

Q: If despite the employment of sufficient and adequate means to effect abortion, the fetus that is expelled from the maternal womb is viable but unable to sustain life outside the maternal womb, what crime is committed?

A: The crime is frustrated abortion because abortion is consummated only if the fetus is dead.

Q: Suppose the expelled viable fetus could sustain life from the mother's womb, what crime is committed?

A: The crime is already infanticide.

Q: Suppose the means employed in abortion are inadequate or insufficient, what is the crime committed?

A: The crime would be an impossible crime of abortion.

UNINTENTIONAL ABORTION (Art. 257)

Q: What are the elements of unintentional abortion?

A:

1. There is a pregnant woman
2. Violence is used upon such pregnant woman without intending an abortion
3. Violence is intentionally exerted
4. As a result of the violence exerted, the fetus dies either in the womb or after having been expelled therefrom

Illustration:

Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Hence, if A pointed a gun at a pregnant lady, who became so frightened, causing her abortion, he is not liable for unintentional abortion, as there was no violence exerted. If he intended the abortion however, his crime is intentional abortion.

Note: The force or violence must come from another. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

Q: Is the crime of unintentional abortion committed if the pregnant woman aborted because of intimidation?

A: No. The crime committed is not unintentional abortion because there is no violence. The crime committed is light threats.

Q: Suppose a quarrel ensued between a husband and a wife who was pregnant at that time. Violence was resorted to by the husband which resulted to abortion and death of his wife, what is the crime committed?

A: The crime committed is complex crime of parricide with unintentional abortion.

Q: Suppose a quarrel ensued between two women, X and Y, who is then two months pregnant. X has no knowledge that Y is pregnant and being a sports buff that she is, gave Y a hard blow on the stomach. As a result, Y had an

abortion. Is X liable for unintentional abortion despite her lack of knowledge of Y's pregnancy?

A: Yes. The act of employing physical force or violence upon the woman is already a felony. It is not material if the offender knew about the woman being pregnant or not.

Q: Suppose a pregnant woman decided to commit suicide by jumping out of the window of the building but landed on a passerby, she did not die but abortion followed. Is she liable for unintentional abortion?

A: No, because what is contemplated is that the force or violence must come from another person. In this case, when the woman tried to commit suicide but did not die, the attempt to commit suicide is not a felony under the RPC.

Q: Suppose the pregnant woman employed violence to herself specifically calculated to bring about abortion, what crime is committed?

A: The woman is liable for intentional abortion.

Q: If the abortive drug used in abortion is a prohibited drug or regulated drug under R.A. 9165 or the Dangerous Drugs Act, what are the crimes committed?

A: The crimes committed are intentional abortion and violation of R.A. 9165.

Note: If grave threats were made to cause abortion, a complex crime of grave threats and intentional abortion is committed. If light threats were made, two separate crimes of light threats and intentional abortion is committed.

ABORTION PRACTICED BY THE WOMAN HERSELF OR BY HER PARENTS (Art. 258)

Q: What are the elements of this crime?

A:

1. There is a pregnant woman who has suffered abortion
2. Abortion is intended
3. Abortion is caused by:
   a. The pregnant woman herself
   b. Any other person, with her consent
   c. Any of her parents, with her consent for the purpose of concealing her dishonor

Note: The liability of the pregnant woman is mitigated if the purpose for abortion is to conceal her dishonor. However, in case of parents, there is no mitigation even if for the same purpose, unlike in infanticide.

ABORTION PRACTICED BY PHYSICIAN MIDWIFE AND DISPENSING OF ABORTIVES (Art. 259)

Q: What are the elements of this crime as to the physician or midwife?

A:

1. There is a pregnant woman who has suffered abortion
2. Abortion is intended
3. The offender must be a physician or midwife who causes or assisted in causing the abortion
4. Said physician or midwife takes advantage of his or her scientific knowledge or skill.

Q: What are the elements of this crime as to the pharmacists?

A:

1. Offender is a pharmacists
2. There is no proper prescription from a physician
3. Offender dispenses an abortive

Note: As to the pharmacist, the crime is consummated by dispensing an abortive without proper prescription from a physician. It is not necessary that the abortive is 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.

Q: Suppose abortion is resorted to save the life of the mother, is the physician liable for abortion under Art. 259?

A: No. This is resorted to as a therapeutic abortion. In this case, there is medical necessity which would warrant abortion. Simply put, there must be no other practical or less harmful means of saving the life of the mother to make the abortion justified.

Q: Suppose the abortion was performed by a physician without medical necessity to warrant such abortion and the woman or her husband had consented. Is the physician liable for abortion under Art. 259?

A: Yes. The consent of the woman or her husband is not enough to justify abortion.

RESPONSIBILITY OF PARTICANTS IN A DUEL (Art. 260)

Q: What is a duel?

A: It is a formal or regular combat previously consented 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 the other conditions of the fight to settle some antecedent quarrels.

Q: What are the punishable acts?

A:

1. Killing one's adversary in a duel
2. Inflicting upon such adversary physical injuries
3. Making a combat although no physical injuries have been inflicted

Illustration:

A mere fight as a result of an agreement is not necessarily a duel because a duel implies an agreement to fight under determined conditions and with the participation and intervention of seconds who fixed the conditions.

If the fight is not a duel as defined under Art. 260, the resulting death or injury is as homicide, murder or physical injuries as the case may be.

If the accused and the deceased, after a verbal heated argument in the bar, left the place at the same time and pursuant to their agreement, went to the plaza to fight each other to death with knives which they bought on the way, the facts do not constitute the crime of duel since there was no seconds who fixed the conditions of the fight in a more or less formal manner. If one is killed, the crime committed is homicide.

CHALLENGING TO A DUEL (Art. 261)

Q: What are the punishable acts?

A:

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

Note: The punishable act is to challenge to a duel not challenge to a fight because if it is the latter, the crime would be light threats under Art. 285 (2).

Q: Who are the persons liable?

A: The challenger and the instigators.

PHYSICAL INJURIES

MUTILATION (Art. 262)

Q: What is mutilation?

A: *Mutilation* is the lopping or the clipping off of some parts of the body which are not susceptible to growth again.

Q: What are the kinds of mutilation?

A:

1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction.

   Elements:

   a. There must be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium

      Note: In the first kind of mutilation, the castration must be made purposely. Otherwise, it will be considered as mutilation of the second kind.

   b. The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction

2. Intentionally making other mutilation, that is, by lopping or clipping off of any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

Q: Must mutilation be intentional?

A: Yes. Thus, it cannot be committed through criminal negligence. Mayhem refers to any other form of mutilation.

Note: There must be no intent to kill otherwise the offense is attempted or frustrated homicide or murder as the case may be.

Q: Suppose there is no intent to deprive the victim of the particular part of the body, what is the crime committed?

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A: The crime is only serious physical injury.

Note: Cruelty, as understood in Art. 14 (21) is inherent in mutilation and in fact, that is the only felony, where said circumstance is an integral part and is absorbed therein. If the victim dies, the crime is murder qualified by cruelty but the offender may still claim and prove that he had no intention to commit so grave a wrong.

SERIOUS PHYSICAL INJURIES (Art. 263)

Q: How is the crime of serious physical injuries committed?

A: By:

1. Wounding
2. Beating
3. Assaulting
4. Administering injurious substance

Q: What are serious physical injuries?

A:

1. When the injured person becomes insane, imbecile, impotent, or blind in consequence of the physical injuries inflicted.

   Note: *Impotence* includes inability to copulate and sterility.

   Blindness requires loss of vision of both eyes. Mere weakness in vision is not contemplated.

2. When the injured person:
   a. Loses the use of speech or the power to hear or to smell, or looses an eye, a hand, a foot, an arm or a leg; or
   b. Loses the use of any such member, or
   c. Becomes incapacitated for the work in which he was therefore habitually engaged in consequence of the physical injuries inflicted.

   Note: *Loss of hearing* must involve both ears. Otherwise, it will be considered as serious physical injuries under par. 3. Loss of the power to hear in the right ear is merely considered as merely loss of use of some other part of the body.

3. When the injured :
   a. Becomes deformed
   b. Loses any other member of his body or
   c. Loses the use thereof; or
   d. Becomes ill or incapacitated for the performance of the work in which he was habitually engaged for more than 90 days, in consequence of the physical injuries inflicted

   Note: Loss of the index and middle fingers is either a deformity or loss of a member, not a principal one, of his body or use of the same. If the injury would require medical attendance for more than 30 days, the illness of the offended party maybe considered as lasting more than 30 days. The fact that there was medical attendance for that period of time shows that the injuries were not cured for that length of time.

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.

Note: When the category of the offense of serious physical injuries depends on the period of the illness or incapacity for labor, there must be evidence of the length of that period. Otherwise, the offense will be considered as slight physical injuries.

In determining incapacity the injured party must have a vocation or work at the time of the injury. Work includes studies or preparation for a profession.

There is no incapacity if the injured party could still engage in his work although less effectively than before.

Q: What is the nature of physical injuries?

A: The crime of physical injuries is a formal crime because it is penalized on the basis of the gravity of the injury sustained. What is punished is the consequence and not the stage of execution. Hence, it is always consummated. It cannot be committed in the attempted and frustrated stage.

Note: There must be no intent to kill otherwise, the crime would be frustrated or attempted murder, parricide, homicide, as the case may be. Intent to kill is a specific criminal intent that must be conclusively proved in case of physical injuries only.

Ratio: When death results, intent to kill is a general intent which is conclusively presumed. Hence, if death results, even without intent to kill, the crime is homicide at least.

Q: If the offender repeatedly uttered "I will kill you" but he only keeps on boxing the offended

party and injuries resulted, what is the crime committed?

A: The crime is only physical injuries not attempted or frustrated homicide.

Q: How is intent to kill determined?

A: Intent to kill must be manifested by overt acts. It cannot be manifested by oral threats.

Note: Once physical injuries resulted to deformity, it is classified as serious physical injuries.

Q: What are the requisites of deformity?

A:

1. Physical ugliness
2. Permanent and definite abnormality
3. Conspicuous and visible

Note: If the loss of teeth is visible and impairs the appearance of the injured party, it constitutes disfigurement.

The substitution of the artificial teeth for the natural teeth does not repair the injury.

A scar produced by an injury can be considered as a deformity. However, it should not be on the part of the body of the victim which is usually covered by dress or clothes.

Illustration:

1. *Loss of molar tooth* – this is not deformity as it is not visible.

2. *Loss of permanent front tooth* – this is deformity as it is visible and permanent.

3. *Loss of milk front tooth* – this is not deformity as it is visible but will naturally be replaced.

Q: X threw acid on the face of Y and were it not for the timely medical attention, a deformity would have been produced on the face of Y. After the plastic surgery, Y became more handsome than before the injury. What crime was committed? In what stage was it committed?

A: The crime is serious physical injuries because the problem itself states that the injury would have produced a deformity. The fact that the plastic surgery removed the deformity is immaterial because in law, what is considered is not the artificial treatment but the natural healing process.

Q: What are the qualifying circumstances of serious physical injuries?

A:

1. If it is committed by any of the persons referred to in the crime of parricide.
2. If any of the circumstances qualifying murder attended its commission.

Illustration:

A father who inflicts serious physical injuries upon his son will be liable for qualified serious physical injuries.

Q: What distinguishes physical injuries from mutilation?

A: The mutilation must have been caused purposely and deliberately to lop or clip off some part of the body so as to deprive the offended party of such part of the body. This special intention is not present in other kinds of physical injuries.

Q: What are the differences between physical injuries and attempted or frustrated homicide?

A:

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 intention to kill the offended party.	The offender has intent to kill the offended party.

ADMINISTERING INJURIOUS SUBSTANCES OR BEVERAGES (Art.264)

Q: What are the elements of this crime?

A:

1. The offender inflicted serious physical injuries upon another.
2. It was done by knowingly administering to him any injurious substances or beverages or by taking advantage of his weakness of mind or credulity.
3. He had no intent to kill.

Note: To administer an injurious substance or beverage means to direct or cause said substance or beverage to be taken orally by the injured person, who suffered serious physical injuries as a result.

There must be no intent to kill otherwise, frustrated murder will be committed.

It does not apply when the physical injuries that result

are less serious or light. They will be treated under Art. 265 or 266, as the case may be.

LESS SERIOUS PHYSICAL INJURIES (Art. 265)

Q: What are the elements of this crime?

A:

1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or shall require medical attendance for the same period of time.

2. Physical injuries must not be those described in the preceding articles.

Note: The disjunctive conjunction "or" above means that it is either incapacity for work for 10 days or more or the necessity of medical attendance for an equal period which will make the crime of less serious physical injuries.

In the absence of proof as to the period of the offended party's incapacity for labor or required medical attendance, the offense committed is only slight physical injuries.

The phrase "shall require" refers to the period of actual medical attendance.

Q: What are the qualifying circumstances of less serious physical injuries?

A:

1. When there is manifest intent to insult or offend the injured person
2. When there are circumstances adding ignominy to the offense
3. When the victim is the offender's parents, ascendants, guardians, curators, or teachers.
4. When the victim is a person of rank or person in authority, provided the crime is not direct assault.

SLIGHT PHYSICAL INJURIES AND MALTREATMENT (Art. 266)

Q: What are the kinds of slight physical injuries and maltreatment?

A:

1. Physical injuries which incapacitated the offended party for labor from 1 to 9 days, or required medical attendance during the same period

2. Physical injuries which did not prevent the offended party from engaging in his habitual work or which did not require medical attendance.

3. Ill-treatment of another by deed without causing any injury

Note: Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

Q: A disagreement ensued between Cindy and Carina which led to a slapping incident. Cindy gave twin slaps on Carina's beautiful face. What is the crime committed by Cindy?

A:

1. *Slander by deed* – if the slapping was done to cast dishonor to the person slapped.
2. *Ill-treatment* – if the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or anger.

RAPE

RAPE (Art. 266-A) and (R.A. 8353)

Q: How is rape committed?

A:

1. By a man who shall have carnal knowledge of a woman.
2. Sexual Assault

Q: What are the elements of rape by *a man who shall have carnal knowledge of a woman*?

A:

1. Offender is a man
2. Offender had carnal knowledge of the woman
3. Such act is accomplished under any of the following circumstances:
   a. Through force, threat or intimidation
   b. When the offended party is deprived of reason or is otherwise unconscious
   c. By means of fraudulent machination or grave abuse of authority
   d. When the offended party is under 12 years of age or is demented, even though none of the above circumstances mentioned above be present.

Q: What are the elements of rape by *sexual assault*?

A:

1. Offender commits an act of sexual assault
2. The act of sexual assault is committed by any of the following means:
   a. By inserting his penis into another person's mouth or anal orifice, or
   b. By inserting any instrument or object into the genital or anal orifice of another person

3. The act of sexual assault is accomplished under any of the following circumstances:
   a. By using force or intimidation, or
   b. When the woman is deprived of reason or otherwise unconscious, or
   c. By means of fraudulent machination or grave abused of authority, or
   d. When the woman is under 12 years of age or demented.

Note: Under R.A. 8353, the crime of rape can now be committed by a male or female.

When the offender in rape has an ascendancy or influence on the offended party, it is not necessary that the latter put up a determined resistance.

Q: Is there a crime of frustrated rape?

A: None. The slightest penetration of penis into the labia of the female organ consummates the crime of rape. However, mere touching alone of the genitals and mons pubis or the pudendum can only be considered as attempted rape, if not acts of lasciviousness.

There must be sufficient and convincing proof that the penis indeed touched the labia or slid into the female organ, and not merely stroked the external surface thereof, for an accused to be convicted of consummated rape. *(People v. Brioso, G.R. No. 182517, March 13, 2009)*

Note: When the woman is under 12 years of age or is demented, sexual intercourse with her is always rape. In fact, even if the sexual intercourse was with her consent, the man is liable.

Q: What are the effects of the reclassification of rape into a crime against person?

A:

1. The procedural requirement of consent of the offended party to file the case is no longer needed because this is now a public crime, unlike when it was still classified as a crime against chastity.
2. There is now an impossible crime of rape because impossible crimes can only be committed against persons or property.

Q: What are the kinds of rape under R.A. 8353?

A:

1. *The traditional concept under Art. 335* – carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.

2. *Sexual assault* – committed with an instrument or an object or use of the penis with penetration of the mouth or anal orifice. The offended party or offender can either be a man or a woman, that is if the woman or a man uses an instrument in the anal orifice of male, she or he can be liable for rape.

Q: What is the necessary degree of force?

A:

1. Force sufficient to consummate culprit's purpose
2. Consider age, size and strength of parties and their relation to each other

Q: Geronimo, a teacher, was tried and convicted for 12 counts of rape for the sexual assault, he, on several occasions, committed on one of his students by inserting his penis in the victim's mouth. On appeal, Geronimo contends that the acts complained of do not fall within the definition of rape as defined in the RPC, particularly that rape is a crime committed by a man against a woman. Is Geronimo's contention correct?

A: No. Rape maybe committed notwithstanding the fact that persons involved are both males. R.A. 8353 provides that an act of sexual assault can be committed by any person who inserts his penis into the mouth or anal orifice, or any instrument or object into the genital or anal orifice of another person. The law, unlike rape under Art. 266-A, has not made any distinction on the sex of either the offender or the victim. Neither must the courts make such distinction. *(Ordinario v. People, G.R. No. 155415, May 20, 2004)*

Q: Is the victim's reputation considered in the prosecution of rape?

A: No, it is immaterial in rape, there being absolutely no nexus between it and the odious deed committed. A woman of loose morals could still be a victim of rape, the essence thereof being

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

carnal knowledge of a woman without her consent.

Q: When is it considered as qualified rape?

A: With the occurrence of the following circumstances, rape is punishable by death:

1. When by reason or on occasion of the rape, a homicide is committed

2. 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 victim.

   Note: A step-brother or step-sister relationship between the offender and the offended party cannot elevate the crime to qualified rape because they are not related either by blood or affinity. The enumeration is exclusive. Hence, the common law husband of the victim's grandmother is not included.

3. When the victim is under the custody of the police or military authorities or any law enforcement or penal institution.

4. When rape is committed in full view of the husband, parent, any of the children or other relatives within the third civil degree of consanguinity.

5. When the victim is engaged in a legitimate religious vocation or calling and is personally known to be such by the offender before or after the commission of the crime.

6. When the victim is a child below 7 years old.

7. When the offender knows that he is inflicted with HIV/AIDS or any other sexually transmissible decease and the virus or decease is transferred to the victim.

8. When committed by any member of the AFP or paramilitary units thereof or the PNP or any law enforcement agency or penal institution, when the offender took advantage of his position to facilitate the commission of the crime.

9. When by reason or on occasion of the rape, the victim has suffered permanent physical mutilation or disability.

10. When the offender knew of the pregnancy of the offended party at the time of the commission of the rape.

11. When the offender knew of the mental disability, emotional disorder, and/or physical handicap of the offended party at the time of the commission of the crime.

Note: The foregoing circumstances are in the nature of qualifying aggravating circumstances which must be specifically pleaded or alleged with certainty in the information.

Q: What are the effects of pardon on the criminal liability of the accused charged with rape?

A:

1. The offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the offender's liability.

2. Similarly, the legal husband maybe pardoned by forgiveness of the wife provided that the marriage is not *void ab initio. (Art. 266-C)*

Note: Under the new law, the husband may be liable for rape, if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape.

Q: What is incestuous rape?

A: It refers to rape committed by an ascendant of the offended woman.

Q: Is the employment of force and intimidation indispensable in incestuous rape?

A: No, because the overpowering and overbearing moral influence of the ascendant over the daughter takes the place of violence and offer of resistance required in rape cases committed by an accused having no blood relationship with the victim.

Q: Does the absence of signs of external physical injuries signify lack of resistance on the part of the rape victim?

A: No. Resistance from the victim need not be carried to the point of inviting death or sustaining physical injuries at the hands of the rapist.

Note: In rape, the force and intimidation must be viewed in light of the victim's perception and

judgment at the time of commission of the crime. As already settled in the jurisprudence, not all victims react the same way. Moreover, resistance is not an element of rape. A rape victim has no burden to prove that she did all within her power to resist the force or intimidation employed upon her. As long as the force or intimidation employed upon her. As long as the force or intimidation is present, whether it was more or less irresistible is beside the point. *(People v. Baldo, G.R. No. 175238, Feb. 24, 2009)*

Q: What are the elements of statutory rape?

A:

1. Accused had carnal knowledge of a woman.
2. Woman is below 12 years of age.

Note: In statutory rape, the offender's knowledge of the victim's age is immaterial.

Q: Suppose a ten-year old girl consented to the sexual intercourse, will such consent negate rape?

A: No, because consent is immaterial in statutory rape. The mere fact of having sexual relations with a girl below 12 years old consummates the offense and consent is not a defense.

Ratio: It is not necessary that the victim was intimated or force used against her because in statutory rape, the law presumes that the victim on account of her tender age does not and cannot have a will of her own.

Q: Suppose as 31 year old retardate with mental capacity of a 5-year old was raped, what is the crime committed?

A: Statutory rape. Her mental and not only her chronological age is considered. *(People v. Manalpaz, G.R. No. L-41819, Feb. 28, 1978)*

Note: In incestuous rape of a minor, proof of force and violence exerted by the offender are not essential. Moral ascendancy or parental authority of the accused over the offended party takes the place of violence.

Q: Is medical examination an indispensable element in the prosecution of rape?

A: No. The purpose of medical examination is merely corroborative in nature.

Q: If on the occasion or by reason of rape, the victim died, what is the crime committed?

A: The special complex crime or rape with homicide is committed.

Q: What is the difference between attempted rape and acts of lasciviousness?

A:

ATTEMPTED RAPE	ACTS OF LASCIVIOUSNESS
There is intent to effect sexual cohesion, although unsuccessful.	There is no intention to lie with the offended woman. The intention is merely to satisfy lewd design.

Q: What are the three well-known principles to guide the court in rape cases?

A:

1. An accusation for rape can be made with facility, is difficult to prove, but more difficult for person accused, though innocent, to disprove

2. Only two persons are involved, testimony of complainant must be scrutinized with extreme caution.

3. The evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence of the defense.

A. Anti-Violence against Women and their Children Act of 2004 (R.A. 9262)

Q: What does *"violence against women and their children"* mean?

A: *Violence against women and their children* refers to any act or a series of acts committed by any person against a woman who is his wife, former wife, or against a woman with whom the person has or had a sexual or *dating relationship*, or with whom he has a common child, or against her child whether legitimate or illegitimate, within or without the family abode, which result in or is likely to result in physical, sexual, psychological harm or suffering, or economic abuse including threats of such acts, battery, assault, coercion, harassment or arbitrary deprivation of liberty.

Note: The "dating relationship" that the law contemplates can, therefore, exist even without a sexual intercourse taking place between those involved. An "*away-bati*" or a fight-and-kiss thing between two lovers is a common occurrence. Their taking place does not mean that the romantic relation between the two should be deemed broken up during periods of misunderstanding. *(Ang v. CA, GR 182835, April 20, 2010, Justice Abad)*

Q: What are the punishable acts under RA 9262?

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A: The crime of violence against women and their children is committed through any of the following acts:

1. Causing physical harm to the woman or her child
2. Threatening to cause the woman or her child physical harm
3. Attempting to cause the woman or her child physical harm
4. Placing the woman or her child in fear of imminent physical harm
5. Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:
    a. Threatening to deprive or actually depriving the woman or her child of custody to her/his family
    b. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support
    c. Depriving or threatening to deprive the woman or her child of a legal right
    d. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties
6. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions
7. Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family
8. Engaging in purposeful, knowing, or reckless conduct, personally or through another that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:
    a. Stalking or following the woman or her child in public or private places
    b. Peering in the window or lingering outside the residence of the woman or her child
    c. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will
    d. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child
    e. Engaging in any form of harassment or violence;
9. Causing mental or emotional anguish, public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children. *(Sec.5)*

B. Anti-Child Pornography Law (R.A. 9775)

Q: Who are considered children under R.A. 9775?

A: Children refers to a person below 18 years of age or over, but is unable to fully take care of themselves from abuse, neglect, cruelty,

exploitation or discrimination because of a physical or mental disability or condition.

Note: A child shall also refer to:

1. A person regardless of age who is presented, depicted or believed to be a child as defined herein

2. Computer-generated, digitally or manually crafted images or graphics of a person who is represented or who is made to appear to be a child as defined herein.

Q: What is child pornography?

A: Child pornography refers to any public or private representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Q: What are child pornography materials?

A: Child pornography materials refers to the means and methods by which child pornography is carried out:

1. ***As to form*:**

a. **Visual depiction -** which includes not only images of real children but also digital image, computer image or computer-generated image that is indistinguishable from that of real children engaging in an explicit sexual activity. Visual depiction shall include:

i. Undeveloped film and videotapes

ii. Data and/or images stored on a computer disk or by electronic means capable of conversion into a visual image

iii. Photograph, film, video, picture, digital image or picture, computer image or picture, whether made or produced by electronic, mechanical or other means

iv. Drawings, cartoons, sculptures or paintings depicting children

v. Other analogous visual depiction

b. **Audio representation** of a person who is or is represented as being a child and who is engaged in or is represented as being engaged in explicit sexual activity, or an audio representation that advocates, encourages or counsels any sexual activity with children which is an offense under this Act.

Note: Such representation includes audio recordings and live audio transmission conveyed through whatever medium including real-time internet communications

c. **Written text or material** that advocates or counsels explicit sexual activity with a child and whose dominant characteristic is the description, for a sexual purpose, of an explicit sexual activity with a child.

2. ***As to content:*** It includes representation of a person who is, appears to be, or is represented as being a child, the dominant characteristic of which is the depiction, for a sexual purpose, of the:

a. Sexual organ or the anal region, or a representation thereof; or

b. Breasts, or a representation of the breasts, of a female person.

Q: What is explicit sexual activity?

A: Explicit sexual activity refers to actual or simulated:

1. Sexual intercourse or lascivious act including, but not limited to, contact involving genital to genital, oral to genital, anal to genital or oral to anal, whether between persons of the same or opposite sex

2. Bestiality

3. Masturbation

4. Sadistic or masochistic abuse

5. Exhibition of the genitals, buttocks, breast, pubic area and/or anus

6. Use of any object or instrument for lascivious acts

Q: What is grooming?

A: Grooming refers to the act of preparing a child or someone who the offender believes to be a child for sexual activity or sexual relationship by communicating any form of child pornography.

Note: Grooming includes online enticement or enticement through any other means.

Q: What is luring?

A: Luring refers to the act of communicating, by means of a computer system, with a child or someone who the offender believes to be a child for the purpose of facilitating the commission of sexual activity or production of any form of child pornography.

Q: What are primarily sexual purposes?

A: It refers to purposes which will fulfill all the following conditions:

1. The average person applying contemporary community standards would find the work taken as a whole appealing to prurient interest and satisfying only the market for gratuitous sex and violence

2. The work depicts or describes sexual conduct in a patently offensive way

3. The work taken as a whole imbued within its context, manner or presentation, intention and culture, lascivious, literary, artistic, political and scientific value

Q: What are punishable acts under RA 9775?

A: The punishable acts are:

1. To hire, employ, use, persuade, induce or coerce a child to perform in the creation or production of child pornography

2. To produce, direct, manufacture or create any form of child pornography and child pornography materials

3. To sell, offer, advertise and promote child pornography and child pornography materials

4. To possess, download, purchase, reproduce or make available child pornography materials with the intent of selling or distributing them

5. To publish, post, exhibit, disseminate, distribute, transmit or broadcast child pornography or child pornography materials

6. To knowingly possess, view, download, purchase or in any way take steps to procure, obtain or access for personal use child pornography materials

7. To attempt to commit child pornography by luring or grooming a child.

C. Anti-Hazing Law (R.A. 8049)

Q: What is Hazing?

A: Hazing is an initiation rite or practice as a prerequisite for admission into membership in a fraternity, sorority or organization by placing the recruit, neophyte or applicant in some embarrassing or humiliating situations such as forcing him to do menial, silly, foolish and other similar tasks or activities or otherwise subjecting him to physical or psychological suffering or injury.

Q: What are the allowed initiation rites?

A:

1. Those conducted by "organizations" which shall include any club or the AFP, PNP, PMA, or officer and cadet corp of the Citizen's Military Training and CAT. The physical, mental and psychological testing and training procedure and practices to determine and enhance the physical, mental and psychological fitness of prospective regular members of the AFP and the PNP as approved by the Secretary of National Defense and the National Police Commission duly recommended by the Chief of Staff, AFP and the Director General of the PNP.

2. Those conducted by any fraternity, sorority or organization with prior written notice to the school authorities or head of organization 7 days before the conduct of such initiation.

Q: Who are liable?

A:

1. The ff. are liable as ***PRINCIPAL***:

a. The officers and members of the fraternity, sorority or organization who actually participated in the infliction of physical harm.

b. The parents of one of the officer or member of the fraternity, sorority or organization, when they have actual knowledge of the hazing conducted in their home but failed to take any action to prevent the same from occurring.

c. The officers, former officers or alumni of the organization, group, fraternity or sorority who actually planned the hazing although not present when the acts constituting hazing were committed.

Note: The presence of any person during the hazing is *prima facie* evidence of participation therein as principal, UNLESS he prevented the commission of the acts punishable therein.

2. The ff. are liable as ***ACCOMPLICE:***

a. The owner of the place where the hazing is conducted, when he has actual knowledge of the hazing conducted therein but failed to take any action to prevent the same from occurring.

b. The school authorities including faculty members who consent to the hazing or who have actual knowledge thereof, but failed to take any action to prevent the same from occurring.

Q: What are the punishable acts?

A:

1. Hazing or initiation rites in any form or manner by a fraternity, sorority or organization without prior written notice to the school authorities or head of organization 7 days before the conduct of such initiation.
2. Infliction of any physical violence during initiation rites

Q: When will maximum penalty be imposed?

A:

1. When the recruitment is accompanied by force, violence, threat, intimidation or deceit on the person of the recruit who refuses to join

2. When the recruit, neophyte or applicant initially consents to join but upon learning that hazing will be committed on his person, is prevented from quitting

3. When the recruit, neophyte or applicant having undergone hazing is prevented from reporting the unlawful act to his parents or guardians, to the proper school authorities, or to the police authorities, through force, violence, threat or intimidation

4. When the hazing is committed outside of the school or institution

5. When the victim is below 12 years of age at the time of the hazing.

Note: Any person charged under this provision shall not be entitled to the mitigating circumstance that there was no intention to commit so grave a wrong.

D. Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act (R.A. 7610, as amended)

Q: In general, what are the punishable acts under this act?

A:

1. Child prostitution and other sexual abuse *(Sec.5)*
2. Child trafficking.*(Sec. 7)*

Q: What is child prostitution?

A: Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.

Q: What are the punishable acts under Sec. 5?

A: The Punishable acts are the ff:

1. Those who engage in or promote, facilitate or induce child prostitution

which include, but are not limited to, the following:

a. Acting as a procurer of a child prostitute

b. Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means

c. Taking advantage of influence or relationship to procure a child as prostitute

d. Threatening or using violence towards a child to engage him as a prostitute

e. Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution

2. Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse

Note: Provided, That when the victims is under 12 years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the RPC, for rape or lascivious conduct, as the case may be.

Provided, That the penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period

3. Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Q: When is there an attempt to commit Child Prostitution?

A: There is an attempt to commit child prostitution when:

1. Any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

2. Any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments.

Q: What is child trafficking?

A: Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter.

Q: When is there an attempt to commit child trafficking?

A: There is an attempt to commit child trafficking when:

1. A child travels alone to a foreign country without valid reason therefor and without clearance issued by the DSWD or written permit or justification from the child's parents or legal guardian

2. A person, agency, establishment or child-caring institution recruits women or couples to bear children for the purpose of child trafficking

3. A doctor, hospital or clinic official or employee, nurse, midwife, local civil registrar or any other person simulates birth for the purpose of child trafficking

4. A person engages in the act of finding children among low-income families, hospitals, clinics, nurseries, day-care centers, or other child-during institutions who can be offered for the purpose of child trafficking.

E. Juvenile Justice and Welfare Act of 2006 (R.A. 9344)

Q: What are the prohibited acts under RA 9344?

A: In the conduct of the proceedings beginning

from the initial contact with the child, the competent authorities must:

1. Refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names

2. Make no discriminatory remarks particularly with respect to the child's class or ethnic origin. *(Sec. 60)*

Note: The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

1. Employment of threats of whatever kind and nature

2. Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement

3. Employment of degrading, inhuman end cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs which embarrass, humiliate, and degrade his/her personality and dignity

4. Compelling the child to perform involuntary servitude in any and all forms under any and all instances. *(Sec. 61)*

F. Human Security Act of 2007 (R.A. 9372)

Q: What are the punishable acts of terrorism?

A:

1. Any person who commits an act punishable under any of the following provisions of the:

a. **RPC:**
   i. Piracy in General and Mutiny in the High Seas or in the Philippine Waters *(Art.122)*
   ii. Rebellion or Insurrection *(Art.134)*
   iii. *Coup d' etat*, including acts committed by private persons *(Art. 134-a)*
   iv. Murder *(Art. 248)*
   v. Kidnapping and Serious Illegal Detention *(Art. 267)*
   vi. Crimes Involving Destruction *(Art. 324)*

b. **Special Penal Laws:**
   i. The Law on Arson *(P.D 1613)*
   ii. Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990 *(R.A. 6969)*
   iii. Atomic Energy Regulatory and Liability Act of 1968*, (R.A. 5207)*
   iv. Anti-Hijacking Law *(R. A. 6235)*
   v. Anti-Piracy and Anti-Highway Robbery Law of 1974 *(PD 532)*
   vi. Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunitions or Explosives *(PD 1866, as amended*

Note: *Provided* that such acts:
1. Sow and create a condition of widespread and extraodinary fear and panic among the populace
2. Coerce the government to give in to an unlawful demand. *(Sec. 3)*

2. Persons who conspire to commit the crime of terrorism.

Q. Who may be liable under R.A. 9372?

A: The crime of terrorism is committed by any person who engages in any of the following acts punishable under the RPC and other special laws. Provided, that such acts sows and creates a condition of widespread and extraordinary fear and panic among the populace and to coerce the government to give in to an unlawful demand. *(Sec. 3)*

IX. CRIMES AGAINST LIBERTY AND SECURITY

KIDNAPPING AND SERIOUS ILLEGAL DETENTION (Art. 267)

Q: What are the elements of this crime?

A:

1. Offender is a private individual who is not any of the parents of the victim
2. He kidnaps or detains another, or in any other manner deprives the latter of his liberty
3. Act of detention or kidnapping must be illegal
4. In the commission of the offense, any of the following circumstances is present:
    a. Kidnapping or detention 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
    d. The person kidnapped or detained is a minor, female, or a public officer.

Q: What is the essence of this crime?

A: The essence of this offense is the actual deprivation of the victim's liberty coupled with the intent of the accused to effect it. There must be indubitable proof that the actual intent of the malefactor was to deprive the offended party of liberty. The restraint however need not be permanent. *(People v. Pavillare, G.R. No. 129970, Apr. 5, 2000)*

Note: If the person killed, tortured or raped is not the same victim of kidnapping or detention, the crimes may be complexed or be considered as separate offenses.

Q: Is it necessary that the victim be placed in an enclosure?

A: No. It may consist not only in placing a person in an enclosure but also in detaining him or depriving him in any manner of his liberty.

Note: The crime is committed when the offender left the child in the house of another, where the child had freedom of locomotion but not the freedom to leave it at will because of his tender age. *(People v. Acosta, 60 O.G. 6999)*

Although the victim may have at the inception consented to go with the offender to a place but the victim is thereafter prevented, with the use of force, from leaving the place where he was brought to with his consent and is detained against his will, the offender is guilty of kidnapping and serious illegal detention *(People v. Picker, G.R. No. 120409, Oct. 23, 2003).*

Q: What are the distinctions between kidnapping and slight illegal detention?

A:

KIDNAPPING	SLIGHT ILLEGAL DETENTION
Its essence is transporting the offended party from one place to another.	One is restrained of his liberty without necessarily transporting him from one place to another.
The purpose of the offender is to extort ransom either from the victim or from any other person.	A person is transported not for ransom.

Q: If a person is transported from one place to another, what crimes may be possibly committed?

A:

1. *Forcible abduction* – If a woman is transported from one place to another by virtue of restraining her of her liberty and that act is coupled with lewd designs.

2. *Kidnapping with serious illegal detention* – If a woman is transported just to restrain her liberty. There is no lewd design or intent.

3. *Grave coercion* – If a woman is carried away just to break her will, to compel her to agree to demand or request by the offender.

Illustration:
If the victim was not kidnapped or taken away but was restrained and deprived of his liberty, like in the case of a hostage incident where the accused, who was one of the occupants of the house, grabbed a child, poked a knife on the latter's neck, called for media people and demanded a vehicle from the authorities which he could use in escaping, as it turned out that there was an unserved arrest warrant against him, the proper charge is Serious illegal detention (without kidnapping anymore) but likewise under Art.267 of the RPC.

Q: What are the circumstances which qualify the crime of kidnapping and serious illegal detention?

A: Death penalty shall be imposed in the following:

1. If the purpose of the kidnapping is to extort ransom.
2. When the victim is killed or dies as a consequence of the detention.
3. When the victim is raped.
4. When the victim is subjected to torture or dehumanizing acts.

Note: If the victim is a woman or a public officer, the detention is always serious no matter how short the period of detention is.

Q: What is the crime if a 3-year old boy was kidnapped, gagged and hidden in a box where it died and offender asked for ransom?

A: The demand for ransom did not convert the offense from murder to kidnapping. The defendant was well aware that the child would be suffocated to death in a few moments after she left. The demand for ransom is only a part of the diabolic scheme of the defendant to murder the child, to conceal his body and then demand money before the discovery of the cadaver. *(People v. Lora, G.R. No. 49430, Mar. 30, 1982).*

Q: What is the main distinction between illegal detention and arbitrary detention?

A:

ILLEGAL DETENTION	ARBITRARY DETENTION
Committed by a private person who kidnaps, detains or otherwise deprives another of his liberty.	Committed by a public officer who detains a person without legal grounds.
Crime is against personal liberty and security.	Crime against the fundamental law of the State.

Q: What special complex crimes may arise in kidnapping?

A:

1. Kidnapping with homicide
2. Kidnapping with rape
3. Kidnapping with physical injuries

Q: How is the term homicide in the last paragraph of Art. 267 construed?

A: *Homicide* is used in the generic sense and includes murder because the killing is not treated as a separate crime but a qualifying circumstance.

Q: Suppose a group of men kidnapped 3 Chinese children for the purpose of extorting ransom from their parents. Because the parents of the kidnapped victims were not able to meet the conditions by the kidnappers, they killed the victims. What is/are the crime/s committed by the kidnappers?

A: The crime is kidnapping with homicide. As such, it is a single indivisible offense and not a complex crime. Regardless of the number of persons killed who are necessarily the kidnapped victims, there is one crime only of kidnapping with homicide.

Illustration:

Where after taking the victim with her car, the accused called the house of the victim asking for ransom but upon going to their safehouse saw several police cars chasing them, prompting them to kill their victim inside the car, there were two crimes committed – kidnapping for ransom and murder, not a complex crime of kidnapping with murder as she was not taken or carried away to be killed, killing being an afterthought. *(People v. Evanoria, 209 SCRA 577)*

Q: In kidnapping with homicide, would it make any difference if the killing was purposely sought or was merely an after thought?

A: No. Regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and the homicide or murder are not treated as separate crimes nor can they be complexed under Art. 48 but shall be punished as a special complex crime.

Q: Suppose the persons killed on the occasion of kidnapping are other persons, not the victims themselves, what is/are the crime/s committed?

A: Two separate crimes of murder or homicide and kidnapping. The killing would be treated as a separate crime.

Q: Suppose the taking of the victim is only incidental to the basic purpose to kill, what is the crime committed?

A: The crime is only murder not the special complex crime of kidnapping with homicide because the primordial intent is to kill the victim and the deprivation of liberty is merely incidental thereto.

Q: Suppose the kidnapped victim disappeared, will such disappearance negative criminal liability of the kidnappers?

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A: No, because in kidnapping, the essential element is deprivation of the victim's liberty and the subsequent disappearance of the victim will not exonerate the accused from prosecution. Otherwise, kidnappers can easily avoid punishment by the simple expedient of disposing of their victim's bodies.

Q: What is the effect of the voluntary release of the victim on the criminal liability of the kidnappers?

A: Qualify.

1. If it is *serious illegal detention*, the voluntary release has no effect on the criminal liability of the offenders.
2. If it is *slight illegal detention*, the voluntary release will mitigate the criminal liability of the offenders.
3. In *kidnapping for ransom*, voluntary release will not mitigate the crime.

Q: What is a ransom?

A: A *ransom* is the money, price or consideration paid or demanded for the redemption of a captured person or persons, the payment of which releases them from captivity. This is true even though what is being demanded is due to the offender such as debt or rent.

Note: The ransom is merely a qualifying circumstance and no matter how short the detention and kidnapping is, the crime is still committed because ransom is not an element of kidnapping.

Q: What are the distinctions between kidnapping with rape and forcible abduction with rape?

A:

KIDNAPPING WITH RAPE	FORCIBLE ABDUCTION WITH RAPE
The crime is composite or a special complex crime if the woman kidnapped is also raped.	The crime is complex under Art. 48 since forcible abduction is a necessary means to commit the rape.
There is no lewd design	There is lewd design.
Rape is not a separate crime but merely a qualifying circumstance.	Rape is treated as a separate crime.
Even if there are multiple rapes, there is only one crime of kidnapping with rape.	If there are multiple rapes, only one rape shall be complexed with forcible abduction because the abduction is a necessary means to commit only the first rape, thus the other rape incidents will be treated as separate crimes.
If rape was merely attempted, 2 separate crimes are committed- kidnapping and serious illegal detention and attempted rape.	If rape is merely attempted, there is only forcible abduction, the attempt to rape is deemed merely a manifestation of lewd designs.

Q: What distinguishes kidnapping for ransom from robbery, insofar as the delivery of money to the offenders is concerned?

A:

KIDNAPPING FOR RANSOM	ROBBERY
Ransom is paid in exchange for the offended party's liberty.	The motive of the offenders is not to restrain or deprive the victim of his liberty but to divest him of his valuables.

Q: What sets kidnapping apart from forcible abduction?

A:

KIDNAPPING	FORCIBLE ABDUCTION
At the outset, the intention of the offender is merely to detain the victim.	At the outset, the taking of the victim is coupled with lewd designs.

SLIGHT ILLEGAL DETENTION (Art. 268)

Q: What are the elements of this crime?

A:

1. Offender is a private individual
2. He kidnaps or detains another, or in any other manner deprives him of his liberty
3. Act of kidnapping or detention is illegal
4. Crime is committed without the attendance of any of the circumstances enumerated in Art. 267

Q: In cases of kidnapping, what is the liability of the person who furnished the place where the victim is being held?

A: The person has the same liability as the principal although said person generally acts as an accomplice.

Note: When the victim is female the detention is

under Art. 267, voluntarily release is not mitigating.

UNLAWFUL ARREST (Art. 269)

Q: What are the elements of unlawful arrest?

A:

1. Offender arrests or detains another person
2. Purpose of the offender is to deliver him to the proper authorities
3. Arrest or detention is not authorized by law or there is no reasonable ground thereof

   Note: Arrest or detention refers to warrantless arrest.

Note: In unlawful arrest, the detention is only incidental.

Generally, this crime is committed by incriminating innocent persons by the offender's planting evidence to justify the arrest – a complex crime results – that is unlawful arrest through incriminatory machinations under Article 363.

Q: Who may be held liable under this article?

A: Offender is any person, whether a public officer or a private individual. However, the public officer must not be vested with the authority to arrest or detain a person or must not act in his official capacity. Otherwise, Art.124 is applicable and not Art. 269.

Q: What is the essence of the crime of unlawful arrest?

A: The arrest must be made for the purpose of delivering the person arrested to the proper authorities but it was made without any reasonable grounds therefore.

Q: Is there a period of detention fixed by law?

A: None. What is controlling is the motive of the offender.

Q: What variant crimes are committed if a person is arrested and/or detained?

A:

1. If the arrest is made without a warrant and under circumstances not allowing a warrantless arrest, the crime would be unlawful arrest.
2. If the person arrested is not delivered to the authorities, the private individual making the arrest incurs criminal liability for illegal detention under Art.267 or 268.
3. If the offender is a public officer, the crime is arbitrary detention under Article 124.
4. If the detention or arrest is for a legal ground, but the public officer delays delivery of the person arrested to the proper judicial authorities, the crime is delay in the delivery of detained persons under Article 125.

Q: What are the distinctions between Delay in the Delivery of Detained Persons and Unlawful Arrest?

A:

DELAY IN THE DELIVERY OF DETAINED PERSONS	UNLAWFUL ARREST
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

KIDNAPPING AND FAILURE TO RETURN A MINOR (Art. 270)

Q: What are the elements of this crime?

A:

1. Offender is entrusted with the custody of a minor person (whether over or under 7 years but less than 21 years of age)
2. He deliberately fails to restore the said minor to his parents or guardians.

Note: What is actually punishable is not the kidnapping of the minor but rather the deliberate failure or refusal of the custodian of the minor to restore the latter to his parents or guardian. Said failure or refusal must not only be deliberate but must also be persistent as to oblige the parents or guardians of the child to seek the aid of the courts in order to obtain custody.

If any of the foregoing elements is absent, the kidnapping of the minor will then fall under Article 267 (kidnapping and serious illegal detention).

If the accused is any of the parents, Article 267 does not apply. Articles 270 and 271 will apply.

Q: What is the main distinction between

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kidnapping and serious illegal detention and kidnapping and failure to return a minor?

A:

KIDNAPPING AND SERIOUS ILLEGAL DETENTION	KIDNAPPING AND FAILURE TO RETURN A MINOR
Offender is *not* entrusted with the custody of the victim	Offender is entrusted with the custody of the minor
Illegally detaining or kidnapping the minor	What is punished is the deliberate failure of the offender having the custody of the minor to restore him to his parents or guardian

Note: Kidnapping and failure to return a minor is necessarily included in Kidnapping and Serious Illegal Detention of Minor.

INDUCING A MINOR TO ABANDON HIS HOME (Art.271)

Q: What are the elements of this crime?

A:

1. A minor (whether over or under 7 years of age) is living in the home of his parents or guardian or the person entrusted with his custody.
2. Offender induces said minor to abandon such home.

Note: Inducement must be actual, committed with criminal intent, and determined by a will to cause damage. The minor should not leave his home of his own free will. It is not necessary that the minor actually abandons the home.

Q: What is the rationale for penalizing the crime of inducing a minor to abandon his home?

A: This article is intended to discourage and prevent disruption of filial relationship and undue interference with the parents' right and duty to the custody of their minor children and to rear them.

Illustration:

Father or mother may commit crimes under Arts.270 and 271 such where the father and mother are living separately, and the custody of the minor child has been given to one of them, the other parent who kidnaps such minor child from the one having the lawful custody of said child or induces such minor to leave his home is liable.

Note: Mitigated if committed by the father or mother of the victim.

Q: What is the main distinction between kidnapping and serious illegal detention and inducing a minor to abandon his home?

A:

KIDNAPPING AND SERIOUS ILLEGAL DETENTION (ART. 267)	INDUCING A MINOR TO ABANDON HIS HOME (ART. 271)
Cannot be committed by the parents of the minor.	Parents can commit this crime against their own children.

SLAVERY (Art. 272)

Q: What are the elements of Slavery?

A:

1. That the offender purchases, sells, kidnaps or detains a human being.
2. That the purpose of the offender is to enslave such human being.

Q: Is there any qualifying circumstance?

A: Yes, such as when the purpose of the offender is to assign the offended party to some immoral traffic. *E.g.* Prostitution

Q: Is obliging a person to render service to one whom he is indebted without remuneration and to remain there as long as the debt is paid constitutes slavery?

A: Yes. The purpose must be determined. If the purpose is to enslave the victim, it is slavery; otherwise, it is kidnapping or illegal detention.

Q: What is the main distinction between slavery and white slave trade?

A:

SLAVERY	WHITE SLAVE TRADE
The offender is not engaged in prostitution.	The offender is engaged in prostitution.

Q: How is slavery distinguished from illegal detention?

A:

SLAVERY	ILLEGAL DETENTION
The purpose for the detention is to enslave the offended party.	The purpose is to deprive or restrain the offended party of his liberty.

Note: In both, the offended party is detained.

EXPLOITATION OF CHILD LABOR (Art. 273)

Q: What are the elements of this crime?

A:

1. Offender retains a minor in his service
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.

Note: Indebtedness is not a ground for detention.

SERVICES RENDERED UNDER COMPULSION IN PAYMENT OF DEBT (Art. 274)

Q: What are the elements of this crime?

A:

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.

Note: If there is no creditor-debtor relationship between the offender and the offended party, coercion is committed.

Q: What distinguishes Art. 274 from Art. 273?

A:

EXPLOITATION OF CHILD LABOR (ART. 273)	SERVICES RENDERED UNDER COMPULSION IN PAYMENT OF DEBT (ART. 274)
Victim is a minor	Does not distinguish whether victim is a minor or not
Minor is compelled to render services for the supposed debt of his parent or guardian	Debtor himself is the one compelled to work for the offender
Service of minor is not limited to household and farm work	Limited to household and farm work

ABANDONMENT OF PERSONS IN DANGER AND ABANDONMENT OF ONE'S OWN VICTIM (Art. 275)

Q: What are the punishable acts?

A:

1. 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:
   a. The place is not inhabited
   b. Accused found there a person wounded or in danger of dying
   c. Accused can render assistance without detriment to himself
   d. Accused fails to render assistance

2. Failing to help or render assistance to another whom the offender has accidentally wounded or injured.

   Note: The character of the place is immaterial.

3. Failing to deliver a child under seven (7) years of age whom the offender has found abandoned, to the authorities or to his family, or failing to take him to a safe place.

   Note: It is immaterial that the offender did not know that the child is under 7 years.

   The child under 7 years of age must be found in an unsafe place.

Q: What is an uninhabited place?

A: An *uninhabited place* is determined by possibility of person receiving assistance from another. Even if there are many houses around the place may still be uninhabited if possibility of receiving assistance is remote.

Q: Suppose the accident (under the second form of abandonment) is due to reckless imprudence or simple negligence, for what crime shall the offender be prosecuted?

A: If the accident is due to reckless imprudence or simple negligence, Art. 365 will govern. The last paragraph thereof on abandonment of one's victim is a qualifying circumstance and therefore must be alleged in the information.

If the fact of abandonment in the information for reckless or simple negligence is alleged, the accused

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will still be liable for prosecution under Art.275 (2).

ABANDONING A MINOR (Art. 276)

Q: What are the elements of this crime?

A:

1. Offender has the custody of the child
2. Child is under 7 years of age
3. He abandons such child
4. He has no intent to kill the child when the latter is abandoned

Q: What kind of abandonment is contemplated by law?

A: The abandonment contemplated by law is not the momentary leaving of a child but the abandonment of such minor that deprives him of the care and protection from danger to his person.

Q: Suppose there was intent to kill on the part of the offender and the child dies, what is the crime?

A: The crime would be murder, parricide, or infanticide, as the case may be. If the child does not die, it is attempted or frustrated murder, parricide or infanticide, as the case may be.

Note: Intent to kill cannot be presumed from the death the child. The ruling that intent to kill is conclusively presumed from the death of the victim is applicable only to crimes against persons and not to crimes against security, particularly the crime of abandoning a minor under Art.276.

If the intent in abandoning the child is to lose its civil status, the crime under Art.347 (concealment or abandonment of a legitimate child) is committed.

A permanent, conscious and deliberate abandonment is required in this article. There must be an interruption of the care and protection that a child needs by reason of his tender age.

Q: What are the qualifying circumstances?

A:

1. When death of the minor resulted from such abandonment.
2. If life of the minor was in danger because of the abandonment.

Note: If the offender is the parent of the minor who is abandoned, he shall be deprived of parental authority.

ABANDONMENT OF MINOR BY A PERSON ENTRUSTED WITH HIS CUSTODY; INDIFFERENCE OF PARENTS (Art.277)

Q: What are the elements of the crime of abandonment of minor by one charged with the rearing or education of said minor?

A:

1. Offender has charge of the rearing of education of a minor
2. He delivers said minor to a public institution or other persons
3. 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

Q: What are the elements of the crime of Indifference of Parents?

A:

1. Offender is a parent
2. He neglects his children by not giving them education
3. His station in life requires such education and his financial condition permits it

Note: Failure to give education must be due to deliberate desire to evade such obligation.

Q: What are the distinctions between Abandonment of Minor by Person Entrusted with his Custody; Indifference of Parents (Art.277) and Abandoning a Minor (Art.276)?

A:

ABANDONMENT OF MINOR BY A PERSON ENTRUSTED WITH HIS CUSTODY; INDIFFERENCE OF PARENTS (ART. 277)	ABANDONING A 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 minor is stated in general.
Minor is under 18 years 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.

EXPLOITATION OF MINORS (Art.278)

Q: What are the punishable acts?

A:

1. Causing any boy or girl under 16 to perform any dangerous feat of balancing, physical strength or contortion, the offender being any person

2. Employing children under 16 years of age who are not the children or descendants of the offender in exhibitions of acrobat, gymnast, rope walker, diver, or wild animal tamer, the offender being an acrobat, etc., or circus manager or person engaged in any of said callings

3. Employing any descendant under 12 years of age in dangerous exhibitions enumerated in the next preceding paragraph, the offender being engaged in any of the said callings.

4. Delivering a child under 16 years of age gratuitously to any person if any of the callings enumerated in paragraph 2, or to any habitual vagrant or beggar, the offender being an ascendant, guardian, teacher or person entrusted in any capacity with the care of such child.

5. Inducing any child under 16 years of age to abandon the home of its ascendants, guardians, curators or teachers to follow any person entrusted in any of the callings mentioned in paragraph 2 or to accompany any habitual vagrant or beggar, the offender being any person.

Note: Age must be below 16 years. At this age, the minor is still growing.

Q: What kind of business does Art.278 speak of?

A: Art.278 contemplates a business that generally attracts children so that they themselves may enjoy working there unaware of the danger to their own lives and limb, such as circuses.

Q: Suppose the employer is the parent or ascendant of the child who is already 12 years of age, is there a crime of exploitation of minors?

A: The crime of exploitation of minors is not committed if the employer is a parent or ascendant unless the minor is less than 12 years old.

Ratio: Because if the employer is an ascendant, the law regards that he would look after the welfare and protection of the child. Hence, the age is lowered to 12 years. Below that age, the crime is committed.

Q: What are the distinctions between Exploitation of Minors (Art.278, Par.5) and Inducing a Minor to Abandon his Home (Art.271)?

A:

EXPLOITATION OF MINORS (ART. 278, PAR. 5)	INDUCING A MINOR TO ABANDON HIS HOME (ART.271)
The purpose of inducing the minor to abandon the home is to follow any person engaged in any of the callings mentioned.	No such person.
Victim is under 16 years of age.	Victim is a minor (under 18 years of age)

Q: Correlate exploitation of minors to R.A. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act).

A:

EXPLOITATION MINORS	R.A. 7610
Applies to minors below 16 years of age	Applies to minors below 18 years old
The business is of such kind that would place the life or limb of the minor in danger, even though working for him is not against the will of the minor.	As long as the employment is inimical – even though there is no physical risk – and detrimental to the child's interest – against moral, intellectual, physical, and mental development of the minor.
If the child fell and suffered physical injuries while working, the employer shall be liable for said physical injuries in addition to his liability for exploitation of minors.	No such similar provision exists under R.A. 7610.

Q: Does the criminal liability for neglect of child under Art.59 (4) of P.D. 603 attach only if both parents are guilty of neglecting the child's education?

A: No. The law is clear. The crime may be committed by any of the parents. Liability for the crime does not depend on whether the parent is also guilty of neglect. The law intends to punish the neglect of any parent, which neglect corresponds to the failure to give the child the education which the family's station in life and financial condition

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permit. The irresponsible parent cannot exculpate himself from the consequences of his neglect by invoking the other parent's faithful compliance with his or her own parental duties. *(de Guzman v. Perez, G.R. No. 156013, July 25, 2006)*

Note: The neglect of child punished under Art. 59(4) of P.D. 603 is also a crime (known as indifference of parents) penalized under the second paragraph of Art.277 of the RPC *(De Guzman v. Perez, G.R. No. 156013, July 25, 2006).* Hence, it is excluded from the coverage of R.A. 7610.

ADDITIONAL PENALTIES FOR OTHER OFFENSES (Art.279)

Note: The offender is not only liable for the abandonment or exploitation but also for all its consequences. If as a result, physical injuries or death resulted, another crime is committed by authority of Article 279.

QUALIFIED TRESPASS TO DWELLING (Art. 280)

Q: What are the elements of this crime?

A:

1. Offender is a private person
2. He enters the dwelling of another
3. Such entrance is against the latter's will

Q: What is a dwelling?

A: A *dwelling* is a place that a person inhabits or any building or structure exclusively devoted for rest and comfort. Whether a building is a dwelling house or not depends upon the use. It includes the dependencies which have interior communication with the house. It is not necessary that it be a permanent dwelling of a person.

E.g.

1. A person's room in a hotel
2. A room where one resides as a boarder

Note: In general, all members of the household must be presumed to have authority to extend an invitation to enter the house.

Q: What is meant by the phrase *"against the will"*?

A: *Against the will* means that the entrance is either expressly or impliedly prohibited.

Q: What are some of the instances where prohibition to enter a dwelling is implied or presumed?

A:

1. Entering a dwelling of another at late hour of the night
2. When the entrance is made through means not intended for ingress
3. The existence of enmity or strained relations between the accused and the occupant.

Q: Cite examples of trespass by means of violence.

A:

1. Pushing the door violently and maltreating the occupants after entering
2. Cutting of a ribbon string with which the door latch of a closed room was fastened. The cutting of the fastenings of the door was an act of violence
3. Wounding be means of a bolo, the owner of the house immediately after entrance

Q: Give examples of trespass by means of intimidation.

A:

1. Firing a revolver in the air by persons attempting to force their way into a house.
2. The flourishing of a bolo against inmates of the house upon gaining an entrance.

Note: There must be an opposition on the part of the owner of the house to the entry of the accused. Prohibition is not necessary when violence or intimidation was employed by the offender.

Q: What are the various crimes that may be committed when a person trespasses a dwelling?

A:

1. If the purpose in entering the dwelling is not shown, trespass is committed.
2. If the purpose is shown, it may be absorbed in the crime as in robbery with force upon things, the trespass yielding to the more serious crime.
3. But if the purpose is not shown and while inside the dwelling he was found by the occupants, one of whom was injured by him, the crime committed will be trespass to dwelling and frustrated homicide, physical injuries, or if there was no injury,

unjust vexation.

Q: May trespass to dwelling be committed by the owner of the house?

A: Yes. In cases where the owner has allowed the rooms or the houses to be rented by other persons, trespass to dwelling is committed if the owner thereof enters the room or house without the knowledge and consent and against the will of the boarder or tenant.

Q: Under what circumstances the crime of trespass to dwelling is not committed?

A:

1. When the purpose of the entrance is to prevent serious harm to himself, the occupant or third persons.

2. When the purpose of the offender in entering is to render some service to humanity or justice.

3. Anyone who shall enter cafes, taverns, inns and other public houses while they are open.

Q: What are the distinctions between trespass to dwelling and violation of domicile?

A:

TRESPASS TO DWELLING	VIOLATION OF DOMICILE
May be committed by any private person who shall enter the dwelling of another against the latter's will.	May be committed only by a *public officer or employee* and the violation may consist of any of the three acts mentioned in Article 128: 1. Entering the dwelling against the will of the owner without judicial order 2. Searching papers or other effects found in such dwelling without the previous consent of the owner thereof 3. Refusing to leave the dwelling when so requested by the owner thereof, after having surreptitiously entered such dwelling.

Note: When there is no overt act of the crime intended to be committed (*e.g.* theft), the crime is trespass to dwelling.

OTHER FORMS OF TRESPASS TO DWELLING (Art.281)

Q: What are the elements of this crime?

A:

1. Offenders enter the closed premises or the fenced estate of another.

   Note: The term *premises s*ignifies distinct and definite locality. It may mean a room, shop, building or definite area, but in either case, locality is fixed.

2. Entrance is made while either of them is uninhabited.

3. Prohibition to enter is manifest.

4. Trespasser has not secured the permission of the owner or the caretaker thereof.

Q: What are the distinctions between trespass to dwelling and trespass to property?

A:

TRESPASS TO DWELLING	TRESPASS TO PROPERTY
Offender is a private person.	Offender is any person.
Offender enters a dwelling house.	Offender enters closed premises or fenced estate.
Place entered is inhabited.	Place entered is uninhabited.
Act constituting the crime is entering the dwelling against the will of the owner.	Act constituting the crime is 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.

GRAVE THREATS (Art. 282)

Q: What are the punishable acts?

A:

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.

2. By making such threat without the

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offender attaining his purpose. *(Elements for this act are the same with the first except that the purpose is not attained.)*

3. By 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.

Q: What is the essence of this crime?

A: Intimidation. To constitute grave threats, it must inspire terror or fear upon another. It is characterized by moral pressure that produces alarm.

Note: Act threatened to be committed must be wrong or unlawful. *E.g*. threatening to sue is not unlawful.

It is consummated as soon as the threats come to the knowledge of the person threatened. It is not necessary that the offended party was present at the time the threats were made.

Q: What is a threat?

A: *Threat* is a declaration of an intention or determination to injure another by the commission upon his person, honor or property or upon that of his family of some wrong which may or may not amount to a crime.

GR: The threats made in connection with the commission of the crime are absorbed by the latter.

XPN: If the threat was made with the deliberate purpose of creating in the mind of the person threatened the belief that the threat would be carried into effect. In such a case the crime is grave threats, and the minor crime which accompanied it should be disregarded.

Q: What is the difference between Grave Threats and Light Threats?

A:

GRAVE THREATS	LIGHT THREATS
When the wrong threatened to be inflicted amounts to a crime.	When the wrong threatened to be inflicted does *not* amount to a crime.

Q: What are the distinctions between threat and coercion?

A:

THREAT	COERCION
Essence of threat is intimidation	Essence of coercion is violence or intimidation
Wrong or harm done is future and conditional	There is *no* condition involved; hence, there is *no* futurity in the harm or wrong done

Q: What are the distinctions between threat and robbery?

A:

THREAT	ROBBERY
Intimidation is future and conditional.	Intimidation is actual and immediate.
Intimidation may be through an intermediary.	Intimidation is personal.
May refer to the person, honor or property.	Refers to personal property.
Intent to gain is not an essential element.	There is intent to gain.
The danger to the victim is not instantly imminent nor the gain of the culprit immediate.	The danger involved is directly imminent to the victim and the obtainment of gain immediate.

LIGHT THREATS (Art.283)

Q: What are the elements of this crime of Light Threats?

A:

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 composed, even though lawful
4. Offender has attained or has not attained his purpose

Note: Light threat is in the nature of blackmailing. The wrong threatened does not amount to a crime, coupled with a demand for money or other conditions, even though lawful.

Q: What are the two possible crimes involving blackmailing?

A:

1. *Light threats* – If there is no threat to publish any libelous or slanderous matter against the offended party.

2. *Threatening to publish a libel* – If there is such a threat to make a slanderous or libelous publication against the offended party.

E.g. A person threatens to expose the affairs of a married man if the latter does not give money. There is intimidation done under a demand.

BONDS FOR GOOD BEHAVIOR (Art. 284)

Note: The person making the threats under the preceding articles (grave and light threats) may also be required by the court to give bail conditioned upon the promise not to molest the person threatened.

OTHER LIGHT THREATS (Art. 285)

Q: What are the punishable acts under Art. 285?

A:

1. Threatening another with a weapon, or by drawing such weapon in a quarrel, unless it be in lawful self-defense. Here, the weapon must not be discharged

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. Any threat made in a jest or in the heat of anger constitutes light threat only

4. Orally threatening to do another any harm not constituting a felony

Q: What is the nature of other light threats?

A: It is not subject to a demand for money or any material consideration and the wrong threatened does not amount to a crime.

GRAVE COERCIONS (Art. 286)

Q: What are the punishable acts?

A:

1. Preventing another, by means of violence, threat or intimidation, from doing something not prohibited by law

2. Compelling another, by means of violence, threat or intimidation, to do something against his will, whether it be right or wrong

Q: What are the elements of grave coercion?

A:

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. Prevention or compulsion be effected by violence, threats or intimidation.

3. Person that restrained the will and liberty of another has no authority of law or the right to do so.

Note: Coercion is consummated even if the offended party did not accede to the purpose of the coercion. The essence of coercion is an attack on individual liberty.

Q: When can there be grave coercion?

A: Grave coercion arises only if the act which the offender prevented another to do is not prohibited by law or ordinance.

Q: What are the kinds of grave coercion?

A:

1. *Preventive* – The offender uses violence to prevent the victim from doing what he wants to do. Here, the act prevented is not prohibited by law.

2. *Compulsive* – The offender uses violence to compel the offended party to do what he does not want to do. The act compelled may or may not be prohibited by law.

Q: What kind of violence must be employed in grave coercion?

A: The violence employed must be immediate, actual or imminent. Otherwise, coercion is not committed. The essence of coercion is an attack on individual liberty.

Q: Suppose a person prohibits another to do an act because the act done is a crime, and violence and intimidation is employed, is there grave coercion?

A: No, because the act from which a person is prevented from doing is a crime. It may only give rise to threat or physical injuries, if some injuries are inflicted.

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However, in case of grave coercion where the offended party is being compelled to do something against his will, whether it be wrong or not, the crime of grave coercion is committed if violence or intimidation is employed in order to compel him to do the act.

Q: What distinguishes grave coercion from unjust vexation?

A:

GRAVE COERCION	UNJUST VEXATION
The act of preventing by force must be made at the time the offended party was doing or about to do the act to be prevented.	The act was already done when violence is exerted.

LIGHT COERCION (Art. 287)

Q: What are the elements of light coercion?

A:

1. Offender must be a creditor
2. He seizes anything belonging to his debtor
3. Seizure of the thing cannot be accomplished by means of violence or a display of material force producing intimidation
4. Purpose of the offender is to apply the same to the payment of the debt

Note: Light coercion under the 1st par. of Art.287 will be unjust vexation if the 3rd element (employing violence or intimidation) is absent.

Q: What is the purpose of the law for penalizing coercion and unjust vexation?

A: To enforce the principle that no person may take the law into his hands and that our government is one of laws, not of men.

Q: When the property of a debtor is seized, what variant crimes may result?

A:

1. *Light coercion* – If by means of violence, the property is applied to the debt.

2. *Robbery* – If the value of the property seized is greater than that of the debt (intent to gain is present in this case) and violence and intimidation are employed.

3. *Estafa* – If there is no obligation on the part of the offended party but was only feigned. There is *estafa* because deceit is employed.

COMPULSORY PURCHASE OF MERCHANDISE AND PAYMENT OF WAGES BY MEANS OF TOKENS (Art. 288)

Q: What are the punishable acts?

A:

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 said firm or corporation

2. Paying the wages due his laborer or employee by means of tokens or objects 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
   b. Those tokens or objects are other than the legal currency of the Philippines
   c. Such employee or laborer does not expressly request that he be paid by means of tokens or objects

Note: The use of tokens, promissory notes, vouchers, coupons, or any other form alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee.

Inducing an employee to give up any part of his wages by force, stealth, intimidation, threat or by any other means is unlawful under Art. 116 of the Labor Code, and not under the RPC.

FORMATION, MAINTENANCE, AND PROHIBITION OR COMBINATION OF CAPITAL OR LABOR THROUGH VIOLENCE OR THREATS (Art. 289)

Q: What are the elements of this crime?

A:

1. Offender employs violence or threats, in a degree as to compel or force the laborers or employees in the free legal exercise of their industry or work.

2. Purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employers.

Note: The act should not be more serious offense. Preventing employee from joining any registered labor organization is punished under the Labor Code, not under the RPC.

DISCOVERING SECRETS THROUGH SEIZURE OF CORRESPONDENCE (Art. 290)

Q: What are the elements of this crime?

A:

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. Purpose is to discover the secrets of such another person

4. Offender is informed of the contents of the papers or letters seized

Q: What is the nature of this crime?

A: This is a crime against the security of one's papers and effects. The purpose must be to discover its effects. The act violates the privacy of communication. It is necessary that the offender should actually discover the contents of the letter.

Note: Contents of the correspondence need not be secret. The purpose of the offender prevails. Prejudice to the offended party is not an element of the offense.

It is not applicable to parents, guardians, or persons entrusted with the custody of minors with respect to papers or letters of the children or minors placed under the care or custody, or to spouses with respect to the papers or letters of either of them.

Q: Correlate articles 230 (public officer revealing secrets of private individual) and 290 of the RPC?

A:

ART. 230	ART. 290
Public officer comes to know the secret of any private individual by reason of his office.	Offender is a private individual or even a public officer not in the exercise of his official function
The secret is not necessarily contained in papers or letters.	It is necessary that the offender seizes the papers or letters of another to discover the secrets of the latter.
Reveals the secret without justifiable reason.	If there is a secret discovered, it is not necessary that it be revealed.

REVEALING SECRETS WITH ABUSE OF OFFICE (Art. 291)

Q: What are the elements of this crime?

A:

1. Offender is a manager, employee or servant

2. He learns the secrets of his principal or master in such capacity

3. He reveals such secrets

Q: What is the essence of this crime?

A: The essence of this crime is that the offender learned of the secret in the course of employment. He is enjoying a confidential relation with the employer or master so he should respect the privacy of matters personal to the latter.

REVELATION OF INDUSTRIAL SECRETS (Art. 292)

Q: What are the elements of this crime?

A:

1. Offender is a person in charge, employee or workman of a manufacturing or industrial establishment

2. Manufacturing or industrial establishment has a secret of the industry which the offender has learned

3. Offender reveals such secrets

4. Prejudice is caused to the owner

Note: The business secret must not be known to other business entities or persons. It is a matter to be discovered, known and used by and must belong to

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one person of entity exclusively. Secrets must relate to manufacturing process.

The revelation of the secret might be made after the employee or workman has ceased to be connected with the establishment. Damage or prejudice to the owner is a necessary element.

A. Anti-Wire Tapping Act (R.A. 4200)

Q: What are the acts punishable under R.A. 4200?

A: It shall be unlawful for any person:

1. Not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or detectaphone or walkie-talkie or tape recorder, or however otherwise described

2. Be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person.

   Note: That the use of such record or any copies thereof as evidence in any civil, criminal investigation or trial of offenses mentioned in Sec. 3 hereof, shall not be covered by this prohibition.

Q: What are the exceptions to the prohibition?

A: If the wiretapping is done by a public officer who is authorized by written order of the court in cases involving the crimes of treason, espionage, provoking war and disloyalty in case of war, piracy, mutiny in the high seas, rebellion, conspiracy and proposal to commit rebellion, inciting to rebellion, sedition, conspiracy to commit sedition, inciting to sedition, kidnapping as defined by the RPC, and violations of C.A. No. 616, punishing espionage and other offenses against national security.

Q: Is listening to a conversation in an extension line of a telephone wire tapping?

A: No. An extension telephone cannot be placed in the same category as a dictaphone, dictagraph or the other devices under R.A. No. 4200 as the use thereof cannot be considered as "tapping" the wire or cable of a telephone line. *(Gaanan v. IAC, G.R. No. L-69809, Oct. 16, 1986)*

Q: Are cassette tapes obtained from wiretapped telephone conversations admissible as evidence?

A: No. Under the law, absent a clear showing that both parties to the telephone conversation allowed the recording of the same, the inadmissibility of the subject tapes is mandatory under RA 4200. *(Salcedo-Ortanez v. CA, G.R. No. 110662, Aug. 4, 1994)*

B. Human Security Act of 2007 (R.A. 9372)

(1) Surveillance of suspects and interception and recording of communications

Q: Can a police officer or law enforcement official listen or record any communication of a terrorist organization of group of persons?

A:

GR: Yes. A police or police or law enforcement official and the members of his team may, upon a written order of the CA, listen to, intercept and record with the use of any mode, form , kind or type of electronic or other surveillance equipment or intercepting and tracking devices, or with the use of any suitable ways and means for that purpose, any communication, message, conversation, discussion, or spoken or written words between members of a judicially declared and outlawed terrorist organization, association, or group of persons or of any person charged with or suspected of the crime of terrorism or conspiracy to commit terrorism.

Notwithstanding R.A. 4200 (Anti-Wiretapping Law)

XPN: He cannot conduct surveillance, interception and recording of communications between:

1. Lawyers and clients
2. Doctors and patients
3. Journalists and their sources
4. Confidential business correspondence. *(Sec. 7)*

(2) Restriction on travel

Q: When is there restriction on the right to travel?

A: The court, upon application by the prosecutor, shall limit the right of travel of the accused to within the municipality or city where he resides or where the case is pending, in the interest of national security and public safety.

1. In cases where evidence of guilt is not strong.
2. The person charged with the crime of terrorism or conspiracy to commit terrorism is entitled to bail and is granted the same.

Note: Travel outside of said municipality or city, without the authorization of the court, shall be deemed a violation of the terms and conditions of his bail, which shall then be forfeited as provided under the Rules of Court. *(Sec. 26)*

Q: When will the restrictions be terminated?

A: The restrictions shall be terminated:

1. Upon the acquittal of the accused; or
2. Upon the dismissal of the case filed against him; or
3. Earlier upon the discretion of the court on motion of the prosecutor or of the accused.

(3) Examination of Bank Deposits

Q: Is judicial authorization required to examine bank deposits, accounts and record?

A: Yes. Notwithstanding R.A. 1405 *(Bank Secrecy Law)*, the justices of the CA designated as a special court to handle anti-terrorism cases after satisfying themselves of the existence of probable cause in a hearing called for that purpose that:

1. A person charged with or suspected of the crime of terrorism or, conspiracy to commit terrorism

2. Of a judicially declared and outlawed terrorist organization, association, or group of persons

3. Such person is a member of such judicially declared and outlawed organization, association, or group of persons, may authorize in writing any police or law enforcement officer and the members of his/her team duly authorized in writing by the anti-terrorism council to:

   a. Examine, or cause the examination of, the deposits, placements, trust accounts, assets and records in a bank or financial institution; and

   b. Gather or cause the gathering of any relevant information about such deposits, placements, trust accounts, assets, and records from a bank or financial institution. The bank or financial institution concerned, shall not refuse to allow such examination or to provide the desired information, when so, ordered by and served with the written order of the CA. *(Sec. 27)*

Q: What are the requisites for the application to examine bank deposits, accounts and records?

A:

1. *Ex parte* application to the CA by the police or law enforcement official

2. The police of law enforcement official must be authorized in writing by the Anti-Terrorism Council to file such application

3. Examination under oath or affirmation of the applicant and the witnesses he may produce to establish the facts that will justify the need and urgency of examining and freezing the bank deposits, placements, trust accounts, assets and records. *(Sec. 28)*

Q: How long shall the court authorization to examine and obtain information on bank deposits, accounts and records be effective?

A:

1. The time specified in the written order of the CA, which shall not exceed 30 days from the date of receipt of the written order by the applicant police.

2. It may be extended for another period which shall not exceed 30 days from the expiration of the original period, provided:
   a. The authorizing division of the CA is satisfied that such extension is in the public interest
   b. The application for extension or renewal must have been authorized

in writing by the Anti-Terrorism Council

c. Such must be filed by the original applicant.

Q: In case of death or disability of the original applicant who should file the application for examination of bank deposits?

A: The one next in rank to the original applicant among the members of his team shall file the application for extension.

The applicant shall have 30 days after the termination of the period granted by the CA within which to file the appropriated case before the Public Prosecutor's Office for any violation of R.A. 9372. If no case is filed within the said period, the applicant shall immediately notify in writing the person subject of the bank examination and freezing of accounts.

Q: What shall be done after the expiration of the period of authorization?

A: All information, data, excerpts, summaries and other documents obtained from the examination of the bank deposits, shall within 48 hours after the expiration of the period fixed in the written order be deposited with the authorizing division of the CA in a sealed envelope of package. *(Sec. 31)*

The sealed envelope or package shall not be opened and its contents shall not be used as evidence unless authorized in a written order of the authorizing division of CA. *(Sec.33)*

Q: What are the requisites in applying for judicial authorization to open the sealed envelope containing records of bank account:

A:

1. Written application of DOJ filed before the authorizing division of CA

2. Authorization in writing by the Anti-Terrorism Council to file such application

3. Notice in writing to the party concerned not later than 3 days before the scheduled opening

4. The application and notice must clearly state the reason for opening or using the information.

Q: What is the evidentiary value of deposited bank materials?

A: Any information, data, excerpts, summaries, notes, memoranda, work sheets, reports, or documents acquired from the examination of the bank deposits, placements, trust accounts, assets and records shall absolutely not be admissible or usable as evidence against anybody in any judicial, quasi-judicial, legislative, or administrative investigation, inquiry, proceeding or hearing. *(Sec. 35)*

(4) Unauthorized revelation of classified materials

Q: What are classified information?

A: The following are classified information:

1. Written order granted by the authorizing division of the Court of Appeals
2. Order of the Court of Appeals, if any to extend or renew the same
3. The original *ex parte* application of the applicant
4. Application to extend or renew, if any
5. The written authorizations of the Anti-Terrorism Council.
6. The sealed envelope or sealed package and the contents thereof, which are deposited with the authorizing division of the Court of Appeals

Q: What is the penalty for the unauthorized revelation of classified materials?

A: The penalty of 10 years and 1 day to 12 years of imprisonment shall be imposed upon any person, police or law enforcement agent, judicial officer or civil servant who, not being authorized by the Court of Appeals to do so, reveals in any manner or form any classified information under this Act.

C. *Anti-Trafficking in Persons Act of 2003 (R.A. 9208)*

Q: What are the punishable acts under R.A. 9208?

A: It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

1. To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

2. To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under Republic Act No. 6955, any Filipino woman to a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
3. To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage
4. To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation
5. To maintain or hire a person to engage in prostitution or pornography
6. To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
7. To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person
8. To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad.*(Sec.4)*

X. CRIMES AGAINST PROPERTY (293-332)

ROBBERY (Art. 293)

Q: What is robbery?

A: It is the taking of personal property belonging to another, with intent to gain, by means of violence against or intimidation of any person or using force upon anything.

Q: What are the classes of robbery?

A:

1. Robbery with violence against, or intimidation of persons *(Art. 294, 297 and 298)*

2. Robbery by the use of force upon things *(Art. 299 and 302)*

Q: What are the elements of robbery in general?

A:

1. There is personal property belonging to another
2. There is unlawful taking of that property
3. Taking must be with intent to gain
4. There is violence against or intimidation of any person or force upon anything

Note: Where violence or intimidation and force upon things are both present in the commission of the robbery, the violence or intimidation is the controlling element. *Ratio:* Robbery characterized by violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things.

Violence or intimidation upon persons may result in death or mutilation or rape or serious physical injuries.

Robberies committed in different houses constitute separate crimes of robbery. But if the robberies are committed upon different victims on the same occasion and in the same place only one robbery is committed as the robberies are mere incidents of a single criminal intent.

Q: Should the person from whom the property was taken be the owner of such?

A: No. Legal possession is sufficient

Q: Is the identity of real owner essential?

A:

GR: It is not essential so long as the personal property taken does not belong to the accused.

XPN: If the crime is Robbery with Homicide

Q: What is the meaning of unlawful taking?

A: It means appropriating a thing belonging to another and placing it under one's control and possession.

Q: When is unlawful taking complete?

A:

1. *As to robbery with violence against or intimidation of persons* – from the moment the offender gains possession of the thing even if the culprit has had no opportunity to dispose of the same, the unlawful taking is complete

2. *As to robbery with force upon things* – the thing must be taken out of the building/premises to consummate the crime

Note: There must be incontrovertible proof that property was taken from the victim.

Q: What is the presumption of intent to gain?

A: Unlawful taking of personal property.

Note: The element of personal property belonging to another and that of intent to gain must concur.

Q: When should violence and intimidation occur?

A: Violence or intimidation must be present before the taking of personal property is complete. But when violence results in homicide, rape intentional mutilation or any of the serious physical injuries penalized under Pars. 1 and 2 of Art 263, the taking of the personal property is robbery complexed with any of those crimes under Art. 294, even if the taking was already complete when the violence was used by the offender.

Note: Article 294 applies only where robbery with violence against or intimidation of persons takes place without entering an inhabited house under the circumstances in Article 299. When both circumstances are present, the offense shall be considered as complex crime under Art.48 and the penalty shall be for the graver offense in the maximum period. *(Napolis v.CA, G.R. No. L-28865, Feb. 28, 1972)*

Q: What distinguishes robbery with violence from grave threats and grave coercion?

A:

ROBBERY WITH VIOLENCE	GRAVE THREATS	GRAVE COERCION
There is intent to gain	No intent to gain	No intent to gain
Intimidation; Immediate harm	Promises some future harm or injury	Intimidation is immediate and offended party is compelled to do something against his will.

Q: Distinguish robbery from bribery.

A:

ROBBERY	BRIBERY
The victim is deprived of his money, property by force or intimidation	He parts with his money, in a sense, voluntarily

ROBBERY WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS (Art. 294)

Q: What are the punishable acts under Art. 294?

A:

1. When by reason or on occasion of the robbery the crime of homicide is committed

2. When the robbery is accompanied by:
   a. Rape
   b. Intentional mutilation
   c. Arson

3. When by reason or on occasion of such robbery, any of the physical injuries resulting in:
   a. Insanity
   b. Imbecility
   c. Impotency
   d. Blindness is inflicted

4. When by reason or on occasion of robbery, any of the physical injuries resulting in the:
   a. Loss of the use of speech
   b. Loss of the power to hear or to smell
   c. Loss of an eye, a hand, a foot, an arm or a leg
   d. Loss of the use of any of such member
   e. 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 clearly 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:
   a. Becomes deformed
   b. Loses any other member of his body
   c. Loses the use thereof
   d. Becomes ill or incapacitated for the performance of the work in which he is habitually engaged for more than 90 days
   e. 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 Art.263, or if the offender employs intimidation only.

ROBBERY WITH HOMICIDE (PAR. 1)

Q: What is robbery with homicide?

A: If death results or even accompanies a robbery, the crime will be robbery with homicide provided that the robbery and the homicide are consummated.

The crime of robbery with homicide is a special complex crime or a single indivisible crime. All the killings are merged in the composite integrated whole that is, robbery with homicide. The killings must have been perpetrated by reason or on the occasion of robbery.

As long as the homicide resulted, during, or because of the robbery, even if the killing is by mere accident, robbery with homicide is committed.

If aside from homicide, rape or physical injuries are also committed by reason or on the occasion of the robbery, the rape or physical injuries are considered aggravating circumstances in the crime of robbery with homicide.

Whenever a homicide has been made a consequence of or on the occasion of a robbery, all those who took part as principals in the commission of the crime will also be guilty as principals in the

special complex crime of robbery with homicide although they did not actually take part in the homicide unless it clearly appeared that they endeavored to prevent the homicide.

Note: The term homicide is used in the generic sense; it embraces all forms of killing.

Q: Should there be intent to kill?

A: In robbery with homicide, the law does not require that the homicide be committed with intent to kill, the crime exists even though there is no intention to commit homicide.

Q: Should intent to commit robbery precede the killing?

A: Yes. The offender must have the intent to take personal property before the killing.

Q: Suppose the victims were killed, not for the purpose of committing robbery and the idea of taking the money and other personal property of the victims was conceived by the culprits only after killing; is this a case of robbery with homicide?

A: No, because the intention of the perpetrators is really to kill the victim and robbery came only as an afterthought. The perpetrators are liable for two separate crimes of robbery and homicide or murder, as the case may be.

Note: There is no crime of robbery in band with murder or robbery with homicide in band or robbery with multiple homicides.

If on the occasion of the robbery with homicide, robbery with force upon things was also committed, you will not have only one robbery but you will have a complex crime of robbery with homicide and robbery with force upon things

Ratio: Robbery with violence or intimidation upon persons is a separate crime from robbery with force upon things.

In robbery with homicide, the band or uninhabited place is only a generic aggravating circumstance. It will not qualify the crime to a higher degree of penalty.

Q: A, a hired assassin, shot B, and when about to leave the scene, saw the watch of B and forcibly took the same. A, with a gun in his hand, shot to death B, who was trying to get back the watch. What crime was committed?

A: Robbery with homicide.

Q: If what A did in the above example was to fire his gun upward to scare B from pursuing the latter's intention to recover the watch, and fatally hit C who was watching from his window. What is the crime committed?

A: Even if the killing is merely incidental, the crime is still robbery with homicide. The crime of robbery with homicide requires proof of the following elements:

1. The taking of personal property with violence or intimidation against persons
2. The property taken belongs to another
3. The taking was done with *animo lucrandi*
4. On the occasion of the robbery or by reason thereof, homicide was committed.

Well-entrenched in jurisprudence is the doctrine that when homicide takes place as a consequence or on the occasion of a robbery, all those who took part in the robbery are guilty as principals in the complex crime of robbery with homicide, even if they did not actually take part in the homicide. The exception is when it is clearly shown that the accused endeavored to prevent the unlawful killing.

In the case at bar, the lack of direct evidence on how the homicides were committed matters little. The circumstantial evidence leaves scant doubt on the part and participation of the appellants. The well-settled rule is that as long as homicide resulted during, or because of, the robbery, even if the killing is by mere accident, the crime of robbery with homicide is committed.

As we repeatedly explain, it is enough that death results by reason or on the occasion of the robbery inasmuch as it is only the result obtained that is necessary, without reference or distinction as to the circumstances, causes, modes, or persons intervening in the commission of the crime. *(People v. Bolinget, G.R. Nos. 137949-52, Dec. 11, 2003)*

Q: Is there a crime of robbery with multiple homicide?

A: There is no crime of robbery with multiple homicide under the RPC. The crime is robbery with homicide notwithstanding the number of homicides committed on the occasion of the robbery and even if murder, physical injuries and rape were also committed on the same occasion. *(People v. Hijada, G.R. No. 123696, Mar. 11, 2004)*

Q: Jervis and Marlon asked their friend, Jonathan, to help them rob a bank. Jervis and Marlon went inside the bank, but were unable to get any money

from the vault because the same was protected by a time-delay mechanism. They contented themselves with the customers' cellphones and a total of P5,000 in cash. After they dashed out of the bank and rushed into the car, Jonathan pulled the car out of the curb, hitting a pedestrian which resulted in the latter's death. What crime or crimes did Jervis, Marlon and Jonathan commit?

A: Assuming the acts were attended by the use of force and intimidation in robbing the bank, Jonathan, Marlon and Jervis committed the special complex crime of attempted robbery with homicide. The subsequent running over of the pedestrian in the course of their escape was by reason or on occasion of the robbery, therebv qualifying the crime as attempted robbery with homicide. Having acted in conspiracy with Jervis and Marlon, Jonathan should also be charged with attempted robbery with homicide.

On the other hand, the taking of the cellphones and P5,000.00 from the customers are the separate acts of Jervis and Marlon, and do not involve Jonathan as it was not part of their original agreement. Jervis and Marlon should be charged for the crime of robbery.

ROBBERY WITH RAPE (PAR. 2)

Q: What is the crime of robbery with rape?

A: The crime of robbery with rape is a crime against property which is a single indivisible offense. The rape accompanies the robbery. In this case where rape and not homicide is committed, there is only a crime of robbery with rape if both the robbery and the rape are consummated.

If during the robbery, attempted rape were committed, two separate crimes of robbery and attempted rape would be committed.

Q: Does the criminal intent to gain precede the intent to rape?

A: Yes. The law does not distinguish whether rape was committed before, during or after the robbery. It is enough that the robbery accompanied the rape. Robbery must not be a mere accident or afterthought.

Illustration:

Where 6 accused entered the house of the offended party, brandishing firearms and knives and after ransacking the house for money and jewelry, brought the offended party out of the house to a grassy place where she was ordered to undress and although she was able to run away, was chased and caught, and thereafter raped by all of the accused, the latter committed robbery with rape. *(People v. Villagracia, 226 SCRA 374)*

However, if the 2 crimes were separated both by time and space, there is no complex crime of Robbery with Rape.

Q: Together XA, YB and ZC planned to rob Miss OD. They entered her house by breaking one of the windows in her house. After taking her personal properties and as they were about to leave, XA decided on impulse to rape OD. As XA was molesting her, YB and ZC stood outside the door of her bedroom and did nothing to prevent XA from raping OD. What crime or crimes did XA, YB and ZC commit, and what is the criminal liability of each?

A: The crime committed by XA, YB and ZC is the composite crime of robbery with rape, a single, indivisible offense under Art. 294(1) of the RPC.

Although the conspiracy among the offenders was only to commit robbery and only XA raped CD, the other robbers, YB and ZC, were present and aware of the rape being committed by their co-conspirator. Having done nothing to stop XA from committing the rape, YB and ZC thereby concurred in the commission of the rape by their co-conspirator XA.

The criminal liability of all, XA, YB and ZC, shall be the same, as principals in the special complex crime of robbery with rape which is a single, indivisible offense where the rape accompanying the robbery is just a component. **(2004 Bar Question)**

ROBBERY WITH PHYSICAL INJURIES

Q: Should the physical injuries be serious?

A: Yes, to be considered as such, the physical injuries must always be *serious.*

If the physical injuries are only less serious or slight, they are absorbed in the robbery. The crime becomes merely robbery. But if the less serious physical injuries were committed after the robbery was already consummated, there would be a separate charge for the less serious physical injuries. It will only be absorbed in the robbery if it was inflicted in the course of the execution of the robbery. The same is true in the case of slight physical injuries.

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

Q: Suppose a gang robbed a mansion in Forbes Park. On the occasion of the robbery, physical injuries were inflicted on the household members. The robbers also detained the children to compel their parents to come out with the money. What crime/s is/are committed by the robbers?

A: The detention was a necessary means to facilitate the robbery. Thus, the offenders will be held liable for the complex crimes of robbery with serious physical injuries and serious illegal detention.

But if the victims were detained because of the timely arrival of the police, such that the offenders had no choice but to detain the victims as hostages in exchange for their safe passage, the detention is absorbed by the crime of robbery and is not treated as a separate crime.

ROBBERY WITH ARSON (R.A. 7659)

Q: How is this crime committed?

A: The composite crime would only be committed if the *primordial intent* of the offender is to commit *robbery* and there is no killing, rape, or intentional mutilation committed by the offender during the robbery. Otherwise, the crime would be robbery with homicide, or robbery with rape, or robbery with intentional mutilation, in that order and the arson would only be an aggravating circumstance.

Q: Should robbery precede arson?

A: Yes, it is essential that robbery precedes the arson, as in the case of rape and intentional mutilation, because the amendment included arson among the rape and intentional mutilation which have accompanied the robbery.

Note: Arson has been made a component only of robbery with violence against or intimidation of persons but not of robbery by the use of force upon things.

Hence, if the robbery was by the use of force upon things and therewith arson was committed, two distinct crimes are committed.

OTHER CASES OF SIMPLE ROBBERY (Par. 5)

Q: How is this crime committed?

A: Any kind of robbery with less serious physical injuries or slight physical injuries fall under this specie of robbery.

Note: But where there is no violence exerted to accomplish the snatching, the crime committed is not robbery but simple theft.

There is sufficient intimidation where the acts of the offender inspired fear upon the victim although the accused was not armed.

Illustration:

1. Snatching money from the hands of the victim and pushing her as a result of which her skirt was torn and she fell on the ground;
2. Grabbing a pawnshop ticket and intimidating the victim with a revolver

ROBBERY WITH PHYSICAL INJURIES, COMMITTED IN AN UNINHABITED PLACE AND BY A BAND, OR WITH THE USE OF FIREARM ON A STREET, ROAD OR ALLEY (ART. 295)

Q: What are the qualifying circumstances of this crime?

A: If committed:

1. In an uninhabited place
2. By a band
3. By attacking a moving train, street car, motor vehicle, or airship
4. By entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances
5. On a street, road, highway, or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties prescribed in Art.294

ROBBERY COMMITTED BY A BAND (Art. 296)

Q: When is robbery committed by a band?

A: When at least 4 armed malefactors take part in the commission of a robbery, it is deemed committed by a band.

Note: If any arm used be unlicensed firearm, the penalty imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such firearms. This is a special aggravating circumstance applicable only in a case of robbery in band.

Any member of the band who was present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

In robbery by a band, proof of conspiracy is n not required.

ATTEMPTED AND FRUSTRATED ROBBERY COMMITTED UNDER CERTAIN CIRCUMSTANCES (Art. 297)

Q: Where does this article apply?

A: It applies when homicide is committed on the occasion of an attempted or frustrated robbery.

Note: The term homicide is used in a generic sense. It includes murder, parricide and infanticide.

EXECUTION OF DEEDS BY MEANS OF VIOLENCE OR INTIMIDATION (Art. 298)

Q: What are the elements of this crime?

A:

1. Offender has intent to defraud another
2. Offender compels him to sign, execute, or deliver any public instrument or document
3. Compulsion is by means of violence or intimidation

Note: Applies even if the document signed, executed or delivered is a private or commercial document.

Q: What distinguishes execution of deeds by means of violence or intimidation and coercion?

A:

EXECUTION OF DEEDS	GRAVE COERCION
There is an intent to gain	No intent to gain
Fear is produced by threatening to cause an evil or damage which is immediate	Fear is produced in the mind of the offended party in order to obtain something from him by threatening to cause him an evil or damage which is not immediate but remote

ROBBERY IN AN INHABITED HOUSE OR PUBLIC BUILDING OR EDIFICE DEVOTED TO WORSHIP (Art. 299)

Q: What are the elements of the 1st kind of robbery with force upon things under Art. 299?

A:

1. Offender entered an inhabited house, or public building, or edifice devoted to religious worship.

2. 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, the offender took personal property belonging to another with intent to gain.

Q: Define the following:

1. Force upon things
2. Inhabited house
3. Public building
4. Dependencies
5. False keys

A:

1. *Force upon things* requires some element of trespass into the establishment where the robbery was committed; *e.g.* the offender must have entered the premises where the robbery was committed.

   Note: If no entry was effected, even though force may have been employed actually in the taking of the property from within the premises, the crime will only be theft.

2. *Inhabited house* – refers to any shelter, ship or vessel constituting the dwelling of one or more persons even though the inhabitants thereof are temporarily absent therefrom when the robbery is committed.

3. *Public building* – every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same.

4. *Dependencies* – all interior courts, corrals, warehouses, granaries, barns, coach houses, stables, or other departments, or enclosed interior entrance connected therewith and which form part of the whole. Orchards and other lands used for

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cultivation or production are not included, even if closed, contiguous to the building, and having direct connection therewith.

Requisites:

a. It must be contiguous to the building
b. It must have an interior entrance connected therewith
c. It must form part of the whole

Illustration:

A small store located on the ground floor of a house is a dependency of the house, there being no partition between the store and the house, and in going to the main stairway, one has to enter the store which has a door. *(U.S. vs. Ventura, 39 Phil. 523)*

5. *False keys* – genuine keys stolen from the owner or any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

Note: False key or picklock must be used to enter the building. It is only theft when the false key is used to open wardrobe or locked receptacle or drawer or inside door.

Q: What are the elements of the 2nd kind of robbery with force upon things under Art. 299?

A:

1. Offender is inside a dwelling house, public building or edifice devoted to religious worship, regardless of 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 door.

      Note: *Door* refers only to "doors, lids or opening sheets" of furniture or other portable receptacles, not to inside doors of house or building.

   b. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

Note: It is *estafa* or theft, if the locked or sealed receptacle is not forced open in the building where it is kept or taken there from to be broken outside.

ROBBERY IN AN UNINHABITED PLACE AND BY A BAND (Art. 300)

Note: Robbery with force upon things *(Art. 299),* in order to be qualified, must be committed in an uninhabited place and by a band *(Art. 300)* while robbery with violence against or intimidation of persons must be committed in an uninhabited place or by a band *(Art. 295).*

Q: What is an uninhabited place?

A: *Uninhabited place* is one where there are no houses at all, or a considerable distance from town, or where the houses are scattered at a great distance from each other. It also means uninhabited house or building.

ROBBERY IN AN UNINHABITED PLACE OR IN A PRIVATE BUILDING (Art. 302)

Q: What are the elements of this crime?

A:

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. Entrance was effected through an opening not intended for entrance or egress

      Note: If the entrance was made through the door which was open, or closed but unlocked, and not through the window, the person who took personal property from the house with intent to gain is guilty only of theft and not robbery. Where an opening created by the accidental bumping of a vehicle in the store's wall was made the entrance of the malefactor, the taking of the personal property inside the store is robbery and not theft because the hole is not intended for entrance or egress.

   b. Wall, roof, floor, or outside door or window was broken,

      Note: Like Robbery in an inhabited house, the breaking should be made in order to effect the entrance into the place. So if the wall, roof, floor etc. was broken in the course of escaping, the act committed is not Robbery.

c. Entrance was effected through the use of false keys, picklocks or other similar tools

d. Door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken

e. Closed or sealed receptacle was removed, even if the same be broken open elsewhere

Note: Under letters d and e, the robber did not enter through a window or effected entrance by breaking the floor, door, wall, etc., otherwise these circumstances by themselves already make the act as that of robbery. In these 2 letters, the robbers entered through the door, and once inside, broke wardrobe, sealed or close receptacles etc., or took away closed or sealed receptacle to be broken elsewhere.

It must be taken note of, that the entrance by using any fictitious name or pretending the exercise of public authority is not among those mentioned in Art. 302 because the place is uninhabited and therefore without person present. Likewise, in the class of Robbery, the penalty depends on the amount taken disregarding the circumstance of whether the robbers are armed or not as in the case of Robbery in Inhabited Place.

3. With intent to gain, the offender took therefrom personal property belonging to another.

ROBBERY OF CEREALS, FRUITS, OR FIREWOOD IN AN UNINHABITED PLACE OR PRIVATE BUILDING (Art.303)

Note: The palay must be kept by the owner as "seedling" or taken for that purpose by the robbers.

POSSESSION OF PICKLOCKS OR SIMILAR TOOLS (Art. 304)

Q: What are the elements of this crime?

A:

1. Offender has in his possession picklocks or similar tools.
2. Such picklocks or similar tools are specially adopted to the commission of robbery.
3. Offender does not have lawful cause for such possession.

FALSE KEYS (Art. 305)

Q: What do false keys include?

A: *False keys* include:

1. Picklocks or similar tools
2. Genuine keys stolen from the owner
3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender.

Note: Possession of false keys in pars. 2 and 3 above are not punishable. If the key was entrusted to the offender and he used it to steal, crime is not robbery but theft.

BRIGANDAGE (Art. 306)

Q: What is brigandage?

A: *Brigandage* is committed by more than 3 armed persons who form a band of robbers for the purpose of committing robbery in the highway or kidnapping persons for the purpose of extortion or to obtain ransom, or for any other purpose to be attained by means of force and violence.

Q: What is the essence of brigandage?

A: Brigandage is a crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whoever they may potentially be.

Q: What are the distinctions between robbery in band and brigandage under Art. 306?

A:

ROBBERY BY A BAND	BRIGANDAGE UNDER ART. 306
Purpose is to commit robbery not necessarily in highways.	Purpose is to commit robbery in highway; or to kidnap a person for ransom or any other purpose attained by force and violence
Actual commission of robbery is necessary.	Mere formation is punished.

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PD 532 MODIFIED ARTICLES 306 AND 307

Q: What is highway robbery under P.D. 532?

A: *Highway robbery or brigandage* is the seizure for ransom, extortion or other unlawful purposes or the taking away of property of another by means of violence against or other unlawful means, committed by any person on any Philippine Highway.

Any person who aids or protects highway robbers or abets the commission of highway robbery or brigandage shall be considered as an accomplice.

Note: *Philippine highway* – shall refer to any road, street, passage, highway and bridges or other parts thereof, or railway or railroad within the Philippines used by persons, or vehicles, or locomotives or trains for the movement or circulation of persons or transportation of goods, articles, or property or both.

AIDING AND ABETTING A BAND OF BRIGANDS (Art. 307)

Q: What are the elements of this crime?

A:

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
   c. He acquires or receives the property taken by such brigands

THEFT (Art. 308)

Q: What is theft?

A: *Theft* is 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.

Q: Who are the persons liable for theft?

A:

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, fail to deliver the same to the local authorities or to its owner.

   Note: Lost property includes stolen property so that the accused who found a stolen horse is liable if he fails to deliver the same to the owner or to the authorities since the term "lost" is generic in nature and embraces loss by stealing or by any act of a person other than the owner as well as by the act of the owner himself through same casual occurrence. *(People v. Rodrigo, G.R. No. L-18507, Mar. 31, 1966)*

3. Those who after having maliciously damaged the property of another, remove or make use of the fruits or object 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.

Q: What are the elements of theft?

A:

1. There is taking of personal property

   Note: It may be a stolen property but as long as it does not belong to the thief or robber, it can be the subject of the crime.

2. Property taken belongs to another
3. Taking was done with intent to gain

   Note: Intent to gain is presumed in malicious taking of personal property of another.

4. Taking was done without the consent of the owner

   Illustration:

   While praying in a church, A felt and saw his wallet being taken by B, but because of the solemnity of the proceedings, did not make any move; while the taking was with his knowledge, it was without his consent, and Theft is committed.

5. Taking is accomplished without the use of violence against or intimidation of persons of force upon things.

Q: What is the meaning of "*taking*" in law?

A: It means the act of depriving another of the possession and dominion of movable property. The taking must be accompanied by the intention, at the time of the taking, of withholding the thing with some character of permanency.

Q: Can incorporeal property be the subject of theft?

A: Yes. Personal property does not only mean corporeal things but also includes incorporeal property like electricity which can be stolen by using a jumper. *(U.S. v. Carlos, 21 Phil. 533)* The test of what is the proper subject of larceny seems to be not whether the subject is corporeal but whether it is capable of appropriation by another.

Illustration:

In case of theft of checks, the argument that checks cannot be the proper subject of larceny because the paper itself has no intrinsic value and is merely an evidence or token of the existence of money or property elsewhere, while tenable under the common law rule, cannot be sustained in our jurisdiction for the Supreme Court of Spain has repeatedly ruled that checks and other commercial papers are subject of larceny. *(U.S. v. Wickersham, 20 Phil. 440)*

Q: Can there be a crime of frustrated theft?

A: No. Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful taking as an act of execution, the offense could only be attempted theft, if at all.

With these considerations, under Article 308 of the RPC, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

Q: For the crime of theft to be consummated, is it necessary that the offender, once having committed all the acts of execution for theft, is able or unable to freely dispose of the property stolen?

A: No. Since the deprivation from the owner alone has already ensued from such acts of execution. Under Article 308 of the RPC, there is only one operative act of execution by the actor involved in theft—the *taking* of personal property of another. The ability of the offender to freely dispose of the property stolen is not a constitutive element of the crime of theft. Such factor runs immaterial to the statutory definition of theft, which is the taking, with intent to gain, of personal property of another without the latter's consent.

Q: When is the crime of theft produced?

A: Theft is produced when there is deprivation of personal property due to its taking by one with intent to gain.

Q: In theft, is it required for the thief to be able to carry away the thing taken from the owner?

A: No, the consummation of this crime takes place upon the voluntary and malicious taking of the property which is realized upon the material occupation of the taking, that is, when he had full possession thereof even if he did not have the opportunity to dispose of the same.

Note: Proof that the accused is in possession of a recently stolen property gives rise to a valid presumption that he stole the property.

Q: When is unlawful taking complete?

A: Unlawful taking is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.

Q: What is the distinction between theft and *estafa*?

A:

THEFT	*ESTAFA*
The crime is qualified theft if only the physical or material possession of the thing is transferred.	Where both the material and juridical possession are transferred, misappropriation of the property would constitute *estafa*.

Note: In theft, qualified with grave abuse of confidence and *estafa* with abuse of confidence, the offender receives the thing from the offended party.

Q: Mario found a watch in a jeep he was riding, and since it did not belong to him, he approached policeman P and delivered the watch with instruction to return the same to whoever may be found to be the owner. P failed to return the watch to the owner and, instead, sold it and appropriated for himself the proceeds of the sale. Charged with theft, P reasoned out that he cannot be found guilty because it was not he who found the watch and moreover, the watch turned out to be stolen property. Is P's defense valid?

A: No, P's defense is not valid. In a charge for theft, it is enough that the personal property subject thereof belongs to another and not to the offender (P). It is irrelevant whether the person deprived of the possession of the watch has or has no right to the watch. Theft is committed by one who, with intent to gain, appropriates property of another without the consent of its owner. And the crime is committed even when the offender receives property of another but acquires only physical possession to hold the same. **(1998 Bar Question)**

Illustration:

Where the finder of the lost or mislaid property entrusts it to another for delivery to a designated owner, the person to whom it is thus confided, assumes by voluntary substitution, as to both the property and the owner, the same relation as was occupied by the finder. If he misappropriates it, he is guilty of Theft as if he were the actual finder of the same. *(People v. Avila, 44 Phil. 720 [1923])*

QUALIFIED THEFT (Art. 310)

Q: When is theft qualified?

A:

1. If theft is committed by a domestic servant
2. If the theft is committed with grave abuse of confidence
3. If the property stolen is a motor vehicle, mail matter or large cattle
4. If the property stolen consist of coconuts taken from the premises of a plantation
5. If the property stolen is fish taken from a fishpond or fishery
6. If property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

Note: If the offense is to be qualified by abuse of confidence, the abuse must be grave, like an accused who was offered food and allowed to sleep in the house of the complainant out of the latter's pity and charity, but stole the latter's money in his house when he left the place.

Illustration:

An Assistant Agent in Charge and Accounting Cashier of the PNB entrusted with and accountable for all its collections and deposits including equipment and supplies, was accused of having taken P126,190.00 found in his drawer. It was held that the crime of theft is qualified by the relation of trust between the accused and the PNB creating higher degree of confidence which the former gravely abused. He willfully took advantage of his position, his knowledge of the safe combinations and his physical possession of the money to carry out and consummate the Theft.

Q: What is novation theory and when does this apply?

A: Novation theory contemplates a situation wherein the victim's acceptance of payment converted the offender's liability to a civil obligation. It applies only if there is a contractual relationship between the accused and the complainant.

THEFT OF THE PROPERTY OF THE NATIONAL LIBRARY AND NATIONAL MUSEUM (Art. 311)

Note: Theft of property of National Library and National Museum has a fixed penalty regardless of its value, but if the crime is committed with grave abuse of confidence, the penalty for qualified theft shall be imposed.

OCCUPATION OF REAL PROPERTY OR USURPATION OF REAL RIGHTS IN PROPERTY (Art. 312)

Q: What are the punishable acts?

A:

1. Taking possession of any real property belonging to another.
2. Usurping any real rights in property belonging to another.

Q: What are the elements of this crime?

A:

1. Offender takes possession of any real property or usurps any real rights in property.
2. 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.

Note: There is only civil liability if there is no violence or intimidation in taking possession of real property.

Usurpation under Article 312 is committed in the same way as robbery with violence or intimidation of persons. The main difference is that in robbery, personal property is involved; while in usurpation of real rights, it is real property.

If the accused is the owner of the property which he usurped from the possessor, he cannot be held liable for usurpation.

Considering that this is a crime against property, there must be intent to gain. In the absence of the intent to gain, the act may constitute coercion.

Q: What is punished by R.A. 947?

A: Entering or occupying public agricultural land including public lands granted to private individuals.

Q: Who are squatters?

A:

1. Those who have the capacity or means to pay rent or for legitimate housing but are squatting anyway.

2. Also the persons who were awarded lots but sold or lease them out.

3. Intruders of lands reserved for socialized housing, pre-empting possession by occupying the same. *(Urban Development and Housing Act)*

ALTERING BOUNDERIES OR LANDMARKS (Art. 313)

Q: What are the elements of this crime?

A:

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.

Note: Intent to gain is not necessary. Mere act of altering or destruction of the boundary marks is sufficient.

CULPABLE INSOLVENCY FRAUDULENT INSOLVENCY (Art. 314)

Q: What are the elements of fraudulent insolvency?

A:

1. Offender is a debtor, that is, he has obligations due and payable.
2. He absconds with his property.
3. There be prejudice to his creditors.

Q: What is the essence of this crime?

A: The essence of the crime is that any property of the debtor is made to disappear for the purpose of evading the fulfillment of the obligations and liabilities contracted with one or more creditors to the prejudice of the latter.

Note: To abscond does not mean that the debtor should depart and physically conceal his property.

The fraud must result to the prejudice of his creditors. If the accused concealed his property fraudulently but it turned out that he has some other property with which to satisfy his obligation, he is not liable under this article.

Being a merchant qualifies the crime as the penalty is increased.

If these acts are committed after the institution of insolvency proceeding, the Insolvency Law shall apply.

SWINDLING AND OTHER DECEIT

SWINDLING (*Estafa*) (Art. 315)

Q: What are the elements of *estafa* in general?

A:

1. *Accused defrauded another by abuse of confidence or by means of deceit* – 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

2. *Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.*

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Illustration:

When the accused deceived the complainants into believing that there were indeed jobs waiting for them in Taiwan, and the latter sold their carabaos, mortgaged or sold their parcels of land and even contracted loans to raise the P40,000.00 placement fee required of them by the accused, the assurances given by the latter made the complainants part with whatever resources they had, clearly establishing deceit and damage which constitute the elements of *Estafa (People v. Bautista, 214 SCRA 216).*

Under P.D. 115 (Trust Receipts Law), the failure of the entrustee to turn over the proceeds of the sale of the goods, documents, or instruments covered by a trust receipt, to the extent of the amount owing to the entruster, or as appearing in the trust receipt; or the failure to return said goods, documents, or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt constitute *estafa*.

Q: What are the elements of *estafa* with unfaithfulness of abuse of confidence under Article 315 (1)?

A:

1. *Under paragraph (a):*
   a. Offender has an onerous obligation to deliver something of value
   b. He alters its substance, quantity, or quality
   c. Damage or prejudice is caused to another

   Illustration:

   Where the accused is bound by virtue of a contract of sale, payment having been received to deliver first class of rice (*e.g.* milagrosa) but delivered an inferior kind, or that he bound himself to deliver 1000 sacks but delivered less than 1000 because the other sacks were filled with different materials, he is guilty of *estafa* with unfaithfulness or abuse of confidence by altering the quantity or quality of anything of value by virtue of an obligation to do so.

2. *Under paragraph (b):*
   a. 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
   b. There is misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt
   c. Such misappropriation or conversion or denial is to the prejudice of another; and
   d. There is a demand made by the offended party to the offender

   Note: The fourth element is not necessary when there is evidence of misappropriation of the goods by the defendant.

   Illustration:

   Failure to return a dump truck which was delivered to the accused by virtue of a deed of lease after the expiration of the lease contract and despite demands would constitute *Estafa* by misappropriation or conversion by the accused of the subject of the obligation.

   The accused received in trust the money from the complainants for the particular purpose of investing the same with the Philtrust Investment Corp. with the obligation to make delivery thereof upon demand but failed to return the same despite demands. It was admitted that she used the money for her business. Accused is guilty of Estafa through Misappropriation. *(Fontanilla v. People, 258 SCRA 460)*

   A money market transaction however partakes of the nature of a loan, and non-payment thereof would not give rise to criminal liability for Estafa through misappropriation or conversion. In money market placements, the unpaid investor should institute against the middleman or dealer, before the ordinary courts, a simple action for recovery of the amount he had invested, and if there's allegation of fraud, the proper forum would be the SEC. *(Sesbreno v. CA, 240 SCRA 606)*

3. *Under paragraph (c):*
   a. The paper with the signature of the offended party is in blank;
   b. Offended party delivered it to the offender;
   c. Above the signature of the offended party, a document is written by the offender without authority to do so;
   d. The document so written creates a liability of, or causes damage to, the offended party or any third person.

Q: What are the elements of *estafa* by means of false pretenses or fraudulent acts under Article 315 (2)?

A:

1. *Under paragraph (a)* –
   a. Using fictitious name
   b. Falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or
   c. By means of other similar deceits

2. *Under paragraph (b)* – Altering the quality, fineness, or weight of anything pertaining to his art or business.

3. *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.

4. *Under paragraph (d)* –
   a. Offender postdated a check, or issued a check in payment of an obligation;
   b. Such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check.

   Note: Art. 315 (2) (d) is also referred to as *Issuing or postdating check without funds*.

Q: When does Art. 315 (2) (d) apply?

A: Only when:
1. Obligation is not pre-existing
2. Check is drawn to enter into an obligation
3. Does not cover checks where the purpose of drawing the check is to guarantee a loan.

Note: The check must be genuine. If the check is falsified and is cashed with the bank or exchanged for cash, the crime is estafa thru falsification of a commercial document.

The check must be issued in payment of a simultaneous obligation, not one which is pre-existing.

Illustration:

The accused must be able to obtain something from the offended party by means of the check he issued and delivered.

Thus, if A issued a check in favor of B for a debt he has incurred a month or so ago, the dishonor of the check for insufficiency of funds in the bank does not constitute *Estafa*. But if A told B to deliver to him P10,000 and he (A) would issue in his favor a check in the sum of P11,000 as it was a Sunday and A needed the cash urgently, and B gave his P10,000 having in mind the profit of P1,000 when he encashes the check on Monday and the check bounced when deposited, A can be held liable for *Estafa*. In such case, it was clear that B would have not parted with his P10,000 were it not for the issuance of A's check.

It must not be promissory notes, or guaranties.

Q: Is good faith a defense?

A: Yes. The payee's knowledge that the drawer has no sufficient funds to cover the postdated checks at the time of their issuance negates *estafa*.

Note: It is necessary that the offender knew that his check had no sufficient funds in the bank (his failure to cover the amount of the check within 3 days from notice creates a *prima facie* evidence of deceit).

If the checks were issued by the defendant and he received money for them, then stopped payment and did not return the money, and he had an intention to stop payment when he issued the check, there is *estafa*.

Deceit is presumed if the drawer fails to deposit the amount necessary to cover the check within three days from receipt of notice of dishonor or insufficiency of funds in the bank.

Q: Can the fact that the accused was not the actual maker of the check be put up as a defense?

A: No. In the case of *People v. Isleta, et.al. (61 Phil. 332),* and reiterated in the case of *Zalgado v. CA (178 SCRA 146)* it was held that the appellant who only negotiated directly and personally the check drawn by another is guilty of *estafa* because he had "guilty knowledge that at the time he negotiated the check, the drawer has no sufficient funds."

In other words, whether the accused was charged under either paragraph 2(a) or 2(d) of Article 315 of the RPC, he would still be guilty of *estafa* because damage and deceit, which are essential elements of the offense, have been established with satisfactory proof. The fraudulent act was committed prior to or simultaneous with the issuance of the bad check. The guarantee and the simultaneous delivery of the checks by the accused were the enticement and the efficient cause of the defraudation committed against Apolonio who

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suffered damage amounting to P87,000.00 as a result of the fraud committed by Garcia in paying him underfunded checks drawn by three different persons. *(Garcia v. People, G.R. No. 144785, Sept. 11, 2003)*

Q: Is the accused's mere failure to turn over the thing delivered to him in trust despite demand and the duty to do so, constitute estafa under Art. 315 par 1 (b)?

A: No. The essence of *estafa* under Art. 315 (1) (b) of the RPC is the appropriation or conversion of money or property received, to the prejudice of the owner thereof. It takes place when a person actually appropriates the property of another for his own benefit, use and enjoyment. The failure to account, upon demand, for funds or property held in trust is a mere circumstantial evidence of misappropriation. In other words, the demand for the return of the thing delivered in trust and the failure of the accused to account for it are circumstantial evidence of misappropriation. However, this presumption is rebuttable. If the accused is able to satisfactorily explain his failure to produce the thing delivered in trust, he may not be held liable for estafa. In the case at bar, however, since the medrep failed to explain his inability to produce the thing delivered to him in trust, the rule that "the failure to account, upon demand, for funds or property held in trust is circumstantial evidence of misappropriation" applies without doubt. *(Filadams Pharma, Inc. v. CA, G.R. No. 132422, Mar. 30, 2004)*

Q: What are the elements of *Estafa* through fraudulent means under Article 315 (3)?

A:

1. *Under paragraph (a)* –
   a. Offender induced the offended party to sign a document.
   b. Deceit was employed to make him sign the document.
   c. Offended party personally signed the document.
   d. Prejudice was caused.

   Illustration:

   A induced an illiterate owner who was desirous of mortgaging his property for a certain amount, to sign a document which he believed was only a power of attorney but in truth it was a deed of sale. A is guilty of Estafa under par.3(a) and the damage could consist at least in the disturbance in property rights. *(U.S. vs. Malong, GR. No. L-12597, Aug.30, 1917)*

2. *Under paragraph (b)* – Resorting to some fraudulent practice to insure success in a gambling game;

3. *Under paragraph (c)* –
   a. Offender removed, concealed or destroyed.
   b. Any court record, office files, documents or any other papers.
   c. With intent to defraud another.

   Illustration:

   When a lawyer, pretending to verify a certain pleading in a case pending before a court, borrows the folder of the case, and removes or destroys a document which constitutes evidence in the said case, said lawyer is guilty of estafa under par.3(c).

   In partnership – Partners are not liable for *estafa* of money or property received for the partnership when the business commenced and profits accrued.

Q: What are the distinctions between robbery, theft and *estafa*?

A:

ROBBERY	THEFT	ESTAFA
Only personal prop is involved.	Only personal prop is involved.	Subject matter may be real property
Taking is by means of force upon things or violence against or intimidation of persons.	Not so	Not so
Penalty does not necessarily depend on the amount involved.	Penalty depends on the amount involved	Penalty depends on the amount involved
Offender takes the property without the consent of the owner by using threats, intimidation or violence	Offender takes the property without the consent of the owner and *without* using threats, intimidation or violence	Offender receives the property

Note: The crime is theft even if the property was delivered to the offender by the owner or possessor, if the latter expects an immediate return of the property

delivered, that is, he delivered only the physical or material possession of the property. *(U.S. v. De Vera, 43 Phil. 1000)* However, if what was delivered was juridical possession of the property, that is, a situation where the person to whom it was delivered can set off his right to possess even as against the owner, and the latter should not be expecting the immediate return of the property, the misappropriation or taking of that property is *Estafa*. *(U.S. v. Figueroa, 22 Phil. 270)*

Q: What are the distinctions between *estafa* with abuse of confidence and malversation?

A:

***ESTAFA* WITH ABUSE OF CONFIDENCE**	**MALVERSATION**
Funds or property are always private.	Involves public funds or property.
Offender is a private individual or even a public officer who is not accountable for public funds or property.	Offender who is usually a public officer is accountable for public funds or property.
Crime is committed by misappropriating, converting or denying having received money, goods or other personal property.	Crime is committed by appropriating, taking or misappropriating or consenting, or, through abandonment or negligence, permitting any other person to take the public funds or property.
Offenders are entrusted with funds or property	
Continuing offenses	

Note: *Estafa* through false pretense made in writing is only a simple crime of *estafa*, not a complex crime of *estafa* through falsification.

Q: Alfredo is the corporate treasurer of Multimillion Insurance Company. As corporate treasurer, he would have in his possession an average of P5,000,000 at any given time. In 1984, when the money market rate of interest ranged from 35% to 50%, Alfredo placed P1,000,000 of the corporate funds in the money market in his name without the knowledge of any other corporate official of the company. Upon maturity of the money market placement, Alfredo returned the amount of P1,000,000 to the corporation, but kept to himself the interest income of P250,000. At the end of 1984, when audit examinations of his accounts were undertaken, the auditors found no shortage in his accountabilities. Did Alfredo commit any crime?

A: Yes, Alfredo committed the crime of *estafa* thru abuse of confidence, even if he had no intention to permanently misappropriate the corporate funds for himself. The law on *estafa* is clear and does not make any distinctions between permanent and temporary misappropriations, for as long as damage is suffered by the offended party.

Damage was suffered by the corporation in this case because if the P1 million pesos had not been withdrawn from the corporate coffers it would have earned interest for the benefit of the company.

Estafa, and not qualified theft, is committed because as corporate treasurer, Alfredo has juridical possession of the P5 million in his custody.

This was in the nature of a trust fund entrusted to him for corporate purposes. While it is a general principle that misappropriation of trust funds for short periods does not always amount to *estafa*, it has been held that this principle cannot extend to cases where officers of corporations converted corporate funds to their own use, *(U.S. vs. Sevilla, 43 Phil. 190)*. Fraudulent intent is not even necessary in such cases because the breach of confidence involved in the misappropriation or conversion of trust funds takes the place of fraudulent intent and is in itself sufficient. **(1989 Bar Question)**

Q: Aurelia introduced Rosa to Victoria, a dealer in jewelry who does business in Timog, Quezon City. Rosa, a resident of Cebu City, agreed to sell a diamond ring and bracelet to Victoria on a commission basis, on condition that, if these items can not be sold, they may be returned to Victoria forthwith. Unable to sell the ring and bracelet, Rosa delivered both items to Aurelia in Cebu City with the understanding that Aurelia shall, in turn, return the items to Victoria in Timog, Quezon City. Aurelia dutifully returned the bracelet to Victoria but sold the ring, kept the cash proceeds thereof to herself, and issued a check to Victoria which bounced. Victoria sued Rosa for *estafa* under Article 315, RPC, Victoria insisting that delivery to a third person of the thing held in trust is not a defense in *estafa*. Is Rosa criminally liable for *estafa* under the circumstances?

A: No, Rosa cannot be held criminally liable for *estafa*. Although she received the jewelry from Victoria under an obligation to return the same or deliver the proceeds thereof, she did not misappropriate it. In fact, she gave them to Aurelia specifically to be returned to Victoria. The misappropriation was done by Aurelia, and absent the showing of any conspiracy between Aurelia and Rosa, the latter cannot be held criminally liable for Aurelia's acts. Furthermore, as explained above, Rosa's negligence which may have allowed Aurelia to misappropriate the jewelry does not make her criminally liable for *estafa*. **(1999 Bar Question)**

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Q: Distinguish *estafa* and infidelity in the custody of document.

A:

ESTAFA	INFIDELITY IN THE CUSTODY OF DOCUMENTS
Private individual was entrusted	Public officer entrusted
Intent to defraud	No intent to defraud

Q: Is demand a condition precedent to the existence of *Estafa*?

A:

GR: There must be a formal demand on the offender to comply with his obligation before he can be charged with *estafa*.

XPN:

1. When the offender's obligation to comply is subject to a period, and
2. When the accused cannot be located despite due diligence.

OTHER FORMS OF SWINDLING (Art. 316)

Q: What are the other forms of swindling?

A:

1. Conveying, selling, encumbering, or mortgaging any real property, pretending to be the owner of the same

   Elements:
   a. Thing be immovable
   b. Offender who is not the owner of said property should represent that he is the owner thereof
   c. Offender should have executed an act of ownership *(selling, leasing, encumbering or mortgaging the real property)*
   d. Act is made to the prejudice of the owner or of a third person.

2. Disposing real property knowing it to be encumbered even if the encumbrance be not recorded.

   Elements:
   a. Thing disposed of be real property;
   b. Offender knew that the real property was encumbered, whether the encumbrance is recorded or not
   c. There must be express representation by the offender that the real property is free from encumbrance
   d. Act of disposing of the real property be made to the damage of another

3. Wrongful taking of personal property from its lawful possessor to the prejudice of the latter or a third person;

   Elements:
   a. Offender is the owner of personal property
   b. Said personal property is in the lawful possession of another
   c. Offender wrongfully takes it from its lawful possessor
   d. Prejudice is thereby caused to the possessor or third person

4. Executing any fictitious contract to the prejudice of another.

5. Accepting any compensation given to him under the belief it was in payment of services or labor when he did not actually perform such services or labor. Selling, mortgaging or in any manner encumbering real property while being a surety in bond without express authority from the court or before being relieved from the obligation.

   Elements:
   a. Offender is a surety in a bond given in a criminal or civil action
   b. He guaranteed the fulfillment of such obligation with his real property or properties
   c. He sells, mortgages, or, in any other manner encumbers said real property
   d. 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

SWINDLING A MINOR (Art.317)

Q: What are the elements of this crime?

A:

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. Consideration is some loan of money, credit or other personal property.
4. Transaction is to the detriment of such minor.

Q: Is actual proof of deceit or misrepresentation essential?

A: No. It is sufficient that the offender takes advantage of the inexperience or emotions of the minor.

OTHER DECEITS (ART. 318)

Q: What are the other kinds of deceit under Art. 318?

A:

1. Defrauding or damaging another by any other deceit not mentioned in the preceding articles.
2. Interpreting dreams, making forecasts, telling fortunes, or taking advantage of the credulity of the public in any other similar manner, for profit or gain.

Note: Deceits in this article include false pretenses and fraudulent acts.

CHATTEL MORTGAGE

REMOVAL, SALE OR PLEDGE OF MORTGAGED PROPERTY (Art. 319)

Q: What are the punishable acts?

A:

1. Knowingly removing any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns.

   Elements:
   a. Personal property is mortgaged under the Chattel Mortgage Law
   b. Offender knows that such property is so mortgaged
   c. Offender removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage
   d. Removal is permanent
   e. There is no written consent of the mortgagee or his executors, administrators or assigns to such removal

   Note: Any person can be the offender.

2. Selling or pledging personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

   Elements:
   a. Personal property is already pledged under the terms of the Chattel Mortgage Law
   b. Offender, who is the mortgagor of such property, sells or pledges the same or any part thereof
   c. There is no consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds.

   Note: Chattel mortgage must be valid and subsisting. Removal of the mortgaged personal property must be coupled with intent to defraud.

Q: Distinguish chattel mortgage from *estafa*

A:

CHATTEL MORTGAGE	*ESTAFA*
The property involved is personal property	The property involved is real property
Selling or pledging of personal property already pledged or mortgaged is committed by the mere failure to obtain the consent of the mortgagee in writing even if the offender should inform the purchaser that the thing sold is mortgaged	To constitute *estafa*, it is sufficient that the real property mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing
The purpose of the law is to protect the mortgagee	The purpose is to protect the purchaser, whether the first or the second

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ARSON AND OTHER CRIMES INVOLVING DESTRUCTION

Q: What is arson?

A: *Arson* is the malicious destruction of property by fire.

Note: Laws on arson in force are P.D. 1613 and Art. 320, as amended by R.A. 7659.

Q: What are the kinds of arson?

A:

1. Arson, under Sec.1 of P.D. 1613.
2. Destructive arson, under Art. 320 RPC, as amended by R.A. 7659.
3. Other cases of arson, under Sec. 3 of P.D. 1613.

DESTRUCTIVE ARSON (Art. 320, as amended by RA 7659)

Q: How is Destructive Arson committed?

A:

1. Any person who shall burn:
   a. One or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, or committed on several or different occasions

   b. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not

   c. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure

   d. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities

   e. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

2. Two or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission of another violation of law.

3. Any person who shall burn:
   a. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordinance, storehouse, archives or general museum of the Government.

   b. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

Q: What are the other kinds of arson?

A: The property burned is any of the following:

1. Any building used as offices of the Government or any of its agencies;
2. Any inhabited house or dwelling;
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel;
4. Any plantation, farm, pasture land, growing crop, grain field, orchard, bamboo grove or forest;
5. Any rice mill, sugar mill, cane mill or mill central; and
6. Any railway or bus station, airport, wharf or warehouse. *(Sec.3 P.D. 1613)*

Q: What are the special aggravating circumstances in arson? (Sec. 4, P.D. 1613):

A:

1. If committed with intent to gain.
2. If committed for the benefit of another.
3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned.
4. If committed by a syndicate. *(Sec.4 PD 1613)*

   Note: Offense is committed by a syndicate if it is planned or carried out by a group of three or more persons.

Illustration:

Where the accused was charged with violation of P.D. 613 without specifying the particular provision breached and the information failing to allege whether

or not the burnt house is inhabited, and not having established that it was situated in a populated or congested area, he should be deemed to have been charged only with plain Arson under Sec. 1 of P.D. 613. *(People v. Gutierrez, G.R. No. 100699, July 5, 1996)*

Q: Nestor was had an argument with his live-in partner, Honey concerning their son. During their heated discussion, Nestor intimated to Honey his desire to have sex with her but the same was thwarted. Frustrated and incensed, Nestor set fire on both the plastic partition of the room and Honey's clothes in the cabinet. After realizing what he did, Nestor attempted to put out the flames but it was too late. This resulted to the burning of their home and the other neighboring houses. Nestor was forthwith convicted of destructive arson. Was Nestor's conviction for the crime of destructive arson proper?

A: No, the crime committed by Nestor is simple arson penalized under *Sec.3 par.2 of P.D. 1613* as the properties burned by him are specifically described as houses, contemplating inhabited houses or dwellings under the aforesaid law. Simple Arson contemplates crimes with less significant social, economic, political and national security implications than Destructive Arson. Destructive arson under Article 320 of the RPC, on the other hand, contemplates the burning of buildings and edifices. *(People v. Soriano, G.R. No. 142565. July 29, 2003)*

MALICIOUS MISCHIEF (Art. 327)

Q: What is malicious mischief?

A: *Malicious mischief* is the willful damaging of another's property by any act not constituting arson or crimes of destruction due to hate, revenge or mere pleasure of destroying.

Q: What are the elements of malicious mischief?

A:

1. Offender deliberately caused damage to the property of another
2. Such act does not constitute arson or other crimes involving destruction
3. Act of damaging another's property be committed merely for the sake of damaging it

Note: The property must be personal property.

There is destruction of the property of another but there is no misappropriation. Otherwise, it would be theft if he gathers the effects of destruction.

Malicious mischief does not necessarily involve moral turpitude.

Malicious mischief being a deliberate act cannot be committed thru negligence.

Q: Mario was hired by the PNB as caretaker of its lot situated in Balanga, Bataan. Consequently, Mario put up on the said lot a sign which reads "No Trespassing, PNB Property" to ward off squatters. Despite the sign, Julita, believing that the said lot was owned by her grandparents, constructed a nipa hut thereon. Hence, Mario, together with four others, tore down and demolished Julita's hut. She thus filed with the MTC a criminal complaint for malicious mischief. Mario was subsequently convicted of malicious mischief.

Mario admitted that he deliberately demolished Julita's nipa hut but he, however, contends that the third element of the crime of malicious mischief, i.e., that the act of damaging another's property be committed merely for the sake of damaging it, is not present in this case. He maintains that the demolition of the nipa hut is for the purpose of safeguarding the interest of his employer. Was the court correct in convicting Mario of malicious mischief?

A: Yes, Mario's conviction for malicious mischief must be sustained. As to the third element, Mario was not justified in summarily and extrajudicially demolishing Julita's nipa hut. As it is, Mario proceeded not so much to safeguard the lot as it is the vent to his anger and disgust over the "no tresspassing" sign he placed thereon. Indeed, his act of summarily demolishing the house smacks of his pleasure in causing damage to it. *(Valeroso v. People, G.R. No. 149718. Sept. 29, 2003)*

SPECIAL CASES OF MALICIOUS MISCHIEF AND QUALIFIED MALICIOUS MISCHIEF (Art. 328)

Q: What are the punishable acts under this article?

A:

1. Causing damage to obstruct the performance of public functions.
2. Using any poisonous or corrosive substance.
3. Spreading any infections 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.

DAMAGE OR OBSTRUCTION TO MEANS OF COMMUNICATION (Art. 330)

Q: How is this crime committed?

A: It is committed by damaging any railway, telegraph or telephone lines.

Q: What would qualify this crime?

A: If the damage results in any derailment of cars, collision, or other accident.

DESTROYING OR DAMAGING STATUTES, PUBLIC MONUMENTS OR PAINTINGS (Art. 331)

Q: Who are persons liable for this crime?

A:

1. Any person who shall destroy or damage statutes or any other useful or ornamental public monuments
2. Any person who shall destroy or damage any useful or ornamental painting of a public nature.

EXEMPTION FROM CRIMINAL LIABILITY IN CRIMES AGAINST PROPERTY

PERSONS EXEMPT FROM CRIMINAL LIABILITY (Art. 332)

Q: What are the crimes involved in this article?

A:

1. Theft
2. Swindling (*estafa*)
3. Malicious mischief

Q: Who are the persons exempted under Art. 332?

A: The following persons are exempted from criminal liability:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line.
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another.
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

Q: Who are included in the enumeration?

A: Included are stepfather, adopted children, natural children, concubine, and paramour.

Note: Art. 332 also applies to common-law spouses.

Exemption does not apply to strangers participating in the commission of the crime.

Estafa should not be complexed with any other crime in order for exemption to operate.

A. Anti-Fencing Law (P.D. No. 1612)

Q: What is fencing?

A: *Fencing* is the act of any person who, with intent to gain for himself or for another, shall buy, receive, possess, keep, acquire, conceal, sell or dispose of, or shall buy and sell, or in any other manner deal in any article, item, object or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft. *(Sec. 2 [a])*

Q: What is the essence of fencing?

A: To be liable for fencing, the offender buys or otherwise acquires and then sells or disposes of any object of value which he knows or should be known to him to have been derived from the proceeds of the crime of robbery or theft. *(Caoiti v. CA, G.R. No. 128369, Dec. 22, 1997)*

Q: What is the nature of the crime of fencing?

A: Fencing is a crime involving moral turpitude.

Ratio: In fencing, actual knowledge of the fence of the fact that the property received is stolen, displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which by their very nature are crimes of moral turpitude. (*Dela Torre v. COMELEC, G.R. No. 121592, July 5, 1996*)

Q: Who is a fence?

A: A *fence* includes any person, firm, association, corporation or partnership or other organization who/which commits the act of fencing. *(Sec. 2 [b])*

Q: What are the elements of fencing?

A:

1. A crime of robbery or theft has been committed.

2. Accused who is not a principal or accomplice in the crime, buys, receives,

possesses, keeps, acquires, conceals, or disposes, or buys and sells, or in any manner deals in any article, item, object or anything of value, which has been derived from the proceeds of the crime of robbery or theft.

3. The accused knows or should have known that said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft.

4. There is, on the part of the accused, intent to gain for himself or for another.

Note: Fencing under PD 1612 is a distinct crime from theft and robbery.

If the participant who profited is being prosecuted with the robber, the participant is prosecuted as an accessory. If he is being prosecuted separately, the person who partook of the proceeds is liable for fencing.

Q: Is fencing a continuing offense?

A: Fencing is not a continuing offense. Jurisdiction is with the court of the place where the personal property subject of the robbery or theft was possessed, bought, kept, or dealt with. The place where the theft or robbery was committed was inconsequential.

Q: When does the presumption of fencing arise?

A: The mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be *prima facie* evidence of fencing.

The presumption does not offend the presumption of innocence enshrined in the fundamental law. It only shifted the burden of proof to the defense. Burden of proof is upon the fence to overcome the presumption.

E.g. When the price of an article is way below ordinary prices, this fact may serve as knowledge/notice that the article was derived from the proceeds of theft or robbery.

Q: What distinguishes fencing from robbery?

A: The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of, the crime of robbery or theft. Neither is the crime of robbery or theft made to depend on an act of fencing in order that it can be consummated. *(People v. De Guzman, G.R. No. 77368, October 5, 1993)*

Q: What is the similarity of fence and accessory in the crimes of robbery or theft?

A: There is a similarity in the sense that all the acts of one who is an accessory to the crimes of robbery or theft are included in the acts defined as fencing. In fact, the accessory in the crimes of robbery or theft could be prosecuted as such under the RPC or as a fence under P.D. 1612. *(Dizon-Pamintuan v. People, G.R. No. 111426, July 11, 1994)*

Q: What are the distinctions between P.D. 1612 and Art. 19 par. 1 of the RPC?

A:

FENCING	ACCESSORY
Fencing is limited to theft and robbery. The terms theft and robbery are used as a generic term to refer to any kind of unlawful taking, not just theft or robbery	Not limited in scope
Mere possession of stolen items creates a presumption of fencing.	There is no presumption of violation.
Fencing is a principal crime in itself. As such, it can stand on its own. There is no need to prove that one is guilty of theft or robbery.	It is necessary to prove that the principal committed the crime. Hence, before an accessory could be held liable, the principal must have been convicted first of the crime charged
The penalty is higher than the penalty of an accessory.	Penalty is less than that imposed in fencing.
Malum prohibitum and therefore there is no need to prove criminal intent.	*Malum in se* and therefore there is a need to prove criminal intent
The fence need not be a natural person but may be a firm, association, corporation or partnership or other organization	Natural person only

Q: May one who is charged as an accessory under Art. 19 par. 1 be likewise charged under P.D. 1612 for the same act?

A: Yes. What is prohibited under the Constitution is the prosecution of the accused twice for the same offense.

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

Note: The State may choose to prosecute the offender either under the RPC or PD 1612 although preference for the latter would seem inevitable considering that fencing is a crime malum prohibitum, and PD 1612 creates a presumption of fencing and prescribes a higher penalty based on the value of the property. *(Dizon-Pamintuan v. People, G.R. No. 111426, July 11, 1994)*

Q: When does obtaining a clearance/permit to sell/used second hand articles exempt a person from being liable under anti-fencing law?

A: All stores, establishments or entities dealing in the buy and sell of any good, article item, object of anything of value obtained from an unlicensed dealer or supplier thereof, shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the Integrated National Police in the town or city where such store, establishment or entity is located. The Chief of Constabulary/Director General, Integrated National Police shall promulgate such rules and regulations to carry out the provisions of this section. Any person who fails to secure the clearance or permit required by this section or who violates any of the provisions of the rules and regulations promulgated thereunder shall upon conviction be punished as a fence. *(Sec.6)*

B. Bouncing Checks Law (B.P. Blg. 22)

Q: Who are liable under B.P. 22?

A:

1. Any person who makes or draws and issues any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.
2. Having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, shall fail to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon, for which reason it is dishonored by the drawee bank.*(Sec.1)*

Q: When is there *prima facie* evidence of knowledge of insufficient funds?

A:

GR: There is a *prima facie* evidence of knowledge of insufficient funds when the check was presented within 90 days from the date appearing on the check and was dishonored.

XPN:

1. When the check was presented after 90 days from date
2. When the maker or drawer:
   a. Pays the holder of the check the amount due within five banking days after receiving notice that such check has not been paid by the drawee
   b. Makes arrangements for payment in full by the drawee of such check within five banking days after notice of non-payment.

Q: What penalty may be imposed by the judge for violation of B. P. 22?

A: SC-AC No. 12-2000, as clarified by SC-AC No. 13-2001, established a rule on preference in imposing the penalties. When the circumstances of the case clearly indicate good faith or clear mistake of fact alone may be considered as the preferred penalty. The determination of the circumstances that warrant the imposition of fine rests upon trial judge only. Should the judge deem that imprisonment is appropriate, such penalty may be imposed.

Q: Is being a first time offender the sole factor for the preferential penalty of fine alone?

A: No. This circumstance is however not the sole factor in determining whether he deserves the preferred penalty of fine alone. The penalty to be imposed depends on the peculiar circumstances of each case. It is the trial court's decision to impose any penalty within the confines of the law. *(SC-AC No. 13-2001)*

Note: In the case of *Eduardo Vaca v. CA, G.R. No. 131714, Nov. 16, 1998,* and *Rosa Lim v. People, G.R. No. 130038, Sept. 18, 2000,* as well as in Administrative Circular No. 12-2000, the SC modified the sentence imposed for violation of B.P. 22 by deleting the penalty of imprisonment and imposing only the penalty of fine in an amount double the amount of the check. However, by virtue of the passage of Administrative Circular No. 13-2001, the SC explained that the clear tenor of Administrative

Circular No. 12-2000 is not to remove imprisonment as an alternative penalty but to lay down a rule of preference in the application of the penalties provided for in B.P. 22.

Thus, Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provisions of B.P. 22 such that where the circumstances of both the offense and the offender clearly indicates good faith or a clear mistake of fact without taint of negligence, the imposition of fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

The discretion lies on the Court whether or not they will impose the penalty of imprisonment in cases of violation of BP 22.

C. Anti-Carnapping Act of 1972 (R.A. 6539)

(1) Definition of terms

Q: What is carnapping?

A: *Carnapping* is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of person, or by using force upon things.

Note: The overt act which is being punished under this law as carnapping is also the taking of a motor vehicle under circumstances of theft or robbery.

Q: What is a motor vehicle?

A: Motor vehicle" is any vehicle propelled by any power other than muscular power using the public highways, but excepting road rollers, trolley cars, street-sweepers, sprinklers, lawn mowers, bulldozers, graders, fork-lifts, amphibian trucks, and cranes if not used on public highways, vehicles, which run only on rails or tracks, and tractors, trailers and traction engines of all kinds used exclusively for agricultural purposes. Trailers having any number of wheels, when propelled or intended to be propelled by attachment to a motor vehicle, shall be classified as separate motor vehicle with no power rating.

Q: What do you mean by defacing or tampering with a serial number?

A: "Defacing or tampering with" a serial number is the erasing, scratching, altering or changing of the original factory-inscribed serial number on the motor vehicle engine, engine block or chassis of any motor vehicle. Whenever any motor vehicle is found to have a serial number on its motor engine, engine block or chassis which is different from that which is listed in the records of the Bureau of Customs for motor vehicles imported into the Philippines, that motor vehicle shall be considered to have a defaced or tampered with serial number.

Q: What is repainting?

A: Repainting is changing the color of a motor vehicle by means of painting. There is repainting whenever the new color of a motor vehicle is different from its color as registered in the Land Transportation Commission.

Q: What is body building?

A: "Body-building" is a job undertaken on a motor vehicle in order to replace its entire body with a new body.

Q: What is remodeling?

A: "Remodeling" is the introduction of some changes in the shape or form of the body of the motor vehicle.

Q: What is dismantling?

A: "Dismantling" is the tearing apart, piece by piece or part by part, of a motor vehicle.

Q: What is overhauling?

A: Overhauling" is the cleaning or repairing of the whole engine of a motor vehicle by separating the motor engine and its parts from the body of the motor vehicle.

Q: How is carnapping committed?

A: It can be committed in two ways:

1. When the subject matter is a motor vehicle and the motor vehicle is unlawfully taken through violence, threat or intimidation;

   Illustration:

   Pedro is about to leave from UST. Upon boarding his car, he was poked by X with a gun. X subsequently, took Pedro's car.

2. In any other unlawful means.

Illustration:

Pedro, a law student parked his car somewhere. While attending his Criminal 2 class, Pedro's car was taken.

Note: In either case, the taking is always unlawful from the beginning.

Q: Suppose Pedro's driver drove away his car, is it carnapping?

A: No. The taking of the vehicle is not unlawful from the beginning because the driver was authorized to use the vehicle. The crime is qualified theft of a motor vehicle under Article 310 of the RPC.

Note: If the motor vehicle was not taken by the offender but was delivered by the owner or possessor to the offender, who thereafter misappropriated the same, the crime is either qualified theft or *estafa*.

Qualified theft of a motor vehicle is the crime if only the material or physical possession was yielded to the offender; otherwise, if juridical possession was also yielded, the crime is *estafa*.

(2) Registration

Q: In what instances is registration required?

A:

1. *Registration of motor vehicle engine, engine block and chassis*

Note: Within one year after the approval of this Act, every owner or possessor of unregistered motor vehicle or parts thereof in knock down condition shall register with the Land Transportation Commission the following:

1. Motor vehicle engine
2. Engine block
3. Chassis

Q: Who shall register?

A: The owner in his name or in the name of the real owner who shall be readily available to answer any claim over the registered motor vehicle engine, engine block or chassis.

Q: What is the effect if motor vehicle engines, engine blocks and chassis are not registered?

A: It shall be considered as:

1. Untaxed importation
2. Coming from an illegal source
3. Carnapped

Note: It shall be confiscated in favor of the Government.

Note: All owners of motor vehicles in all cities and municipalities are required to register their cars with the local police without paying any charges.

2. *Registration of sale, transfer, conveyance, substitution or replacement of a motor vehicle engine, engine block or chassis.*

Note: It shall be made with the Land Transportation Commission.

Motor vehicles assembled and rebuilt or repaired by replacement with motor vehicle engines, engine blocks and chassis not registered with the Land Transportation Commission shall not be issued certificates of registration and shall be considered as untaxed imported motor vehicles or motor vehicles carnapped or proceeding from illegal sources.

(3) Who are liable

(a) Duty of collector of customs

Q: What is the duty of collector of customs?

A: The Collector of Customs of a principal port of entry where an imported motor vehicle, motor vehicle engine, engine block chassis or body is unloaded, shall, within 7 days after the arrival of the imported motor vehicle or any of its parts enumerated herein, make a report of the shipment to the Land Transportation Commission, specifying the make, type and serial numbers, if any, of the motor vehicle engine, engine block and chassis or body, and stating the names and addresses of the owner or consignee thereof.

Note: If the motor vehicle engine, engine block, chassis or body does not bear any serial number, the Collector of Customs concerned shall hold the motor vehicle engine, engine block, chassis or body until it is numbered by the Land Transportation Commission.

(b) Duty of importers, distributors and sellers

Q: What is the duty of importers, distributors and sellers?

A: Any person engaged in the importation, distribution, and buying and selling of motor vehicles, motor vehicle engines, engine blocks, chassis or body, shall:

1. Keep a permanent record of his stocks, stating therein:
    a. Their type, make and serial numbers, and the names and

addresses of the persons from whom they were acquired and

b. The names and addresses of the persons to whom they were sold, and

2. Render an accurate monthly report of his transactions in motor vehicles to the Land Transportation Commission.

(c) Clearance and permit

Q: When is clearance and permit required?

A:

1. *For assembly or rebuilding of motor vehicles.* - Any person who shall undertake to assemble or rebuild or cause the assembly or rebuilding of a motor vehicle shall first secure a certificate of clearance from the Philippine Constabulary

   Note*:* That no such permit shall be issued unless the applicant shall present a statement under oath containing the type, make and serial numbers of the engine, chassis and body, if any, and the complete list of the spare parts of the motor vehicle to be assembled or rebuilt together with the names and addresses of the sources thereof.

Note: In the case of motor vehicle engines to be mounted on motor boats, motor bancas and other light water vessels, the applicant shall secure a permit from the Philippine Coast Guard, which office shall in turn furnish the Land Transportation Commission the pertinent data concerning the motor vehicle engines including their type, make and serial numbers.

2. *Clearance required for shipment of motor vehicles, motor vehicle engines, engine blocks, chassis or body*- Any person who owns or operates inter-island shipping or any water transportation with launches, boats, vessels or ships shall within 7 days submit a report to the Philippine Constabulary on all motor vehicle, motor vehicle engines, engine blocks, chassis or bodies transported by it for the motor vehicle, motor vehicle engine, engine block, chassis or body to be loaded on board the launch, boat vessel or ship.

(4) Punishable acts

Q: What are the punishable acts?

A:

1. Defacing or tampering with serial numbers of motor vehicle engines, engine blocks and chassis.
2. Carnapping

D. Human Security Act of 2007 (R.A. 9372)

Q: What are the punishable acts of terrorism?

A:

1. Any person who commits an act punishable under any of the following provisions of the:

   a. *RPC*:
      i. Piracy in General and Mutiny in the High Seas or in the Philippine Waters
      ii. Rebellion or Insurrection
      iii. *Coup d'etat*, including acts committed by private persons
      iv. Murder
      v. Kidnapping and Serious Illegal Detention
      vi. Crimes Involving Destruction; or

   b. *Special Penal Laws:*
      i. The Law on Arson
      ii. Toxic Substances and Hazardous and Nuclear Waste Control Act of 1990
      iii. Atomic Energy Regulatory and Liability Act of 1968
      iv. Anti-Hijacking Law
      v. Anti-Piracy and Anti-Highway Robbery Law of 1974 and
      vi. Decree Codifying the Laws on Illegal and Unlawful Possession, Manufacture, Dealing In, Acquisition or Disposition of Firearms, Ammunitions or Explosives

Note: The abovementioned act must:
1. Sow and create a condition of widespread and extraordinary fear and panic among the populace
2. Coerce the government to give in to an unlawful demand. *(Sec. 3)*

2. Persons who conspire to commit the crime of terrorism.

E. Anti-Arson Law (P.D.1613)

Q: Who are liable under P.D. 1613

A: Any person who:

1. Burns or sets fire to the property of another

2. Any person who person sets fire to his own property under circumstances which expose to danger the life or property of another.*(Sec.1)*

Q: When is there destructive arson?

A: When the property burned is:

1. Any ammunition factory and other establishment where explosives, inflammable or combustible materials are stored.

2. Any archive, museum, whether public or private, or any edifice devoted to culture, education or social services.

3. Any church or place of worship or other building where people usually assemble.

4. Any train, airplane or any aircraft, vessel or watercraft, or conveyance for transportation of persons or property

5. Any building where evidence is kept for use in any legislative, judicial, administrative or other official proceedings.

6. Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building.

7. Any building, whether used as a dwelling or not, situated in a populated or congested area.(Sec.2)

Q: What are the other cases of Arson?

A: When the property burned is:

1. Any building used as offices of the government or any of its agencies

2. Any inhabited house or dwelling

3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel

4. Any plantation, farm, pastureland, growing crop, grain field, orchard, bamboo grove or forest

5. Any rice mill, sugar mill, cane mill or mill central

6. Any railway or bus station, airport, wharf or warehouse.*(Sec.3)*

Q: What are the aggravating circumstance under P.D. 1613?

A:

1. If committed with intent to gain

2. If committed for the benefit of another

3. If the offender is motivated by spite or hatred towards the owner or occupant of the property burned

4. If committed by a syndicate

Note: The offense is committed by a syndicate if its is planned or carried out by a group of three (3) or more persons.

If the foregoing circumstance(s) are present, the penalty shall be imposed to its maximum period.*(Sec.4)*

XI. CRIMES AGAINST CHASTITY

Q: What are private crimes?

A: The crimes of adultery, concubinage, seduction, abduction and acts of lasciviousness are the so-called private crimes. They cannot be prosecuted except upon the complaint initiated by the offended party.

Ratio: The law regards the privacy of the offended party here as more important than the disturbance to the order of society. The law gives the offended party the preference whether to sue or not to sue.

But the moment the offended party has initiated the criminal complaint, the public prosecutor will take over and continue with prosecution of the offender. This is so because when the prosecution starts, the crime already becomes public and it is beyond the offended party to pardon the offender.

ADULTERY AND CONCUBINAGE

ADULTERY (Art. 333)

Q: What are the elements of adultery?

A:

1. 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

Note: For adultery to exist, there must be a marriage although it be subsequently annulled. However, even if the marriage of a guilty woman with the offended party be subsequently declared void, there is still adultery because until the marriage is declared to be null and void by competent authority in a final judgment, the offense to the vows taken and the attack to the family exist.

Adultery is an instantaneous crime which is consummated and completed at the moment of the carnal union.

A single intercourse consummates the crime of adultery. Each sexual intercourse constitutes a crime of adultery, even if it involves the same man.

There is no frustrated adultery because of the nature of the offense.

Abandonment without justification is not exempting, but only mitigating circumstance.

Q: Is acquittal of one of the defendants operates as a cause of acquittal of the other?

A: No, because of the following reasons:

1. There may not be a joint criminal intent, although there is joint physical act.
2. One of the parties may be insane and the other sane, in which case, only the sane could be held liable criminally.
3. The man may not know that the woman is married, in which case, the man is innocent.
4. Death of the woman during the pendency of the action cannot defeat the trial and conviction of the man.
5. Even if the man had left the country and could not be apprehended, the woman can be tried and convicted.

Q: What is the rationale of the law for penalizing adultery?

A: The violation of the marriage vow seems to be the fundamental ground for the punishment of adultery and not the possibility of introducing an offspring into the family.

Note: Even a married woman who due to her age, can no longer conceive, is liable for adultery.

Pardon must come before the institution of the criminal prosecution. Both the offenders must be pardoned by the offended party.

Q: How is adultery distinguished from prostitution?

A:

ADULTERY	PROSTITUTION
It is a private offense.	It is a crime against public morals.
Committed by a woman whether married or not, who for money or profit, habitually indulges in sexual intercourse or lascivious conduct.	Committed by a married woman who shall have intercourse with a man not her husband.

CONCUBINAGE (Art. 334)

Q: What are the punishable acts?

A:

1. Keeping a mistress in the conjugal dwelling.

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2. Having sexual intercourse, under scandalous circumstances, with a woman who is not his wife.
3. Cohabiting with her in any other place.

Note: Unlike in adultery where a single sexual intercourse may constitute such a crime, in concubinage, a married man is liable only when he does the above acts.

Q: What are the elements of concubinage?

A:

1. Man must be married.

2. He committed any of the following acts:
   a. Keeping a mistress in the conjugal dwelling; or
   b. Having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; or
   c. Cohabiting with her in any other place.

3. As regards the woman, she must know him to be married.

Q: Who is included in the complaint?

A: The complaint must include both parties if they are both alive. In case of pardon or when the offended spouse consented, the same shall bar the prosecution of the offenses, provided it be done before the institution or filing of criminal complaint.

Only the offended spouse can bring the prosecution.

This is a crime committed by the married man, the husband. Similarly, it includes the woman who had a relationship with the married man.

Note: Concubinage involves moral turpitude. Concubinage is a continuing crime.

Illustration:

If the charges consist in keeping a mistress in the conjugal dwelling, there is no need of proof of sexual intercourse. The conjugal dwelling is the house of the spouses even if the wife happens to be temporarily absent therefrom. The woman however must be brought to the conjugal house by the accused as concubine to fall under this article. Thus, if the co-accused was voluntarily taken and sheltered by the spouses in their house, and treated as an adopted child being a relative of the complaining wife, her illicit relations with the accused husband does not make her a mistress.

Illustration:

If the charge is cohabiting with a woman not his wife in any other place, proof of actual sexual intercourse may not be necessary too. But the term "cohabit" means intercourse together as husband or wife or living together as husband and wife. The cohabitation must be for some period of time which may be a week, a year or longer as distinguished from occasional or transient meetings for unlawful sexual intercourse.

Q: May a husband be liable for concubinage and adultery at the same time for the same act of illicit intercourse with the wife of another man?

A: Yes, when the husband commits concubinage with a married woman and provided that the two offended parties, *i.e.*, his wife and the husband of his mistress file separate cases against him.

ACTS OF LASCIVIOUSNESS

Q: What are the two kinds of acts of lasciviousness?

A: Acts of lasciviousness:
1. Under *Article 336* (Acts of lasciviousness)
2. Under *Article 339 (*Acts of lasciviousness with the consent of the offended party)

ACTS OF LASCIVIOUSNESS (Art. 336)

Q: What are the elements of this crime?

A:

1. Offender commits any act of lasciviousness or lewdness.
2. Act of lasciviousness is committed against a person of either sex.
3. It is done under any of the following circumstances:
   a. By using force or intimidation;
   b. When the offended party is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority;
   d. When the offended party is under 12 years of age or is demented.

Note: Under Art. 336, acts of lasciviousness is committed when the act performed with lewd design was perpetrated under circumstances which would have brought about the crime of rape if sexual intercourse was effected.

Illustration:

When the accused not only kissed and embraced the complainant but also fondled her breast with particular design to independently derive vicarious pleasure therefrom, the element of lewd design exists.

If lewd design cannot be proven as where the accused merely kissed and embraced the complainant either out of passion or other motive, touching her breast as a mere incident, the act would be categorized as unjust vexation. *(People v. Climaco, 46 O.G. 3186)*

Q: Who may be the offended party?

A: The offended party may be a man or a woman:

1. Under 12 years of age; or
2. Being over 12 years of age, the lascivious acts were committed on him or her through violence or intimidation, or while the offender party was deprived of reason, or otherwise unconscious.

Q: What is required in order to sustain conviction for acts of lasciviousness?

A: It is essential that the acts complained of be prompted by lust or lewd designs and that the victim did not consent or encourage such acts.

Q: Is intent to rape an element of the crime?

A: Intent to rape is not a necessary element of the crime of acts of lasciviousness; otherwise, there would be no crime of attempted rape.

Note: There can be no frustration of acts of lasciviousness, or rape or of adultery.

Ratio: From the moment the offender performs all elements necessary for the existence of the felony, he actually attains his purpose and, from that moment, all the essential elements of the offense have been accomplished.

Q: What are the distinctions between acts of lasciviousness and attempted rape?

A:

ACTS OF LASCIVIOUSNESS	ATTEMPTED RAPE
Purpose is only to commit acts of lewdness.	Purpose is to lie with the offended woman.
Lascivious acts are themselves the final objective sought by the offender.	Lascivious acts are but the preparatory acts to the commission of rape.

Illustration:

Thus, when the accused lifted the dress of the offended party, and placed himself on top of her but the woman awoke and screamed for help and despite that, the accused persisted in his purpose, tearing the drawers, kissing and fondling her breasts, the crime is not only acts of lasciviousness but that of attempted rape.

SEDUCTION, CORRUPTION OF MINORS AND WHITE SLAVE TRADE

SEDUCTION

Q: How is seduction committed?

A: *Seduction* is committed by enticing a woman to unlawful sexual intercourse by promise of marriage or other means of persuasion without use of force.

QUALIFIED SEDUCTION (Art. 337)

Q: What are the acts that constitute qualified seduction?

A:

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, etc.; and

   Elements:
   a. Offended party is a virgin which is presumed if she is unmarried and of good reputation
   b. fShe 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.

   Note: In this case, it is not necessary that the offended party is still a virgin.

Q: Who are the persons liable for qualified seduction?

A:

1. Those who abused their authority:
   a. Person in public authority
   b. Guardian

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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

   Illustration:

   Where the complainant who is 16 years old lives in the same house where the accused, her uncle, also lives, the latter is guilty of Qualified Seduction when he had sexual intercourse with her with consent since he is considered a domestic. *(People v. Subingsubing, G.R. Nos. 104942-43 Nov.25, 1993)*

   A domestic is applied to a person usually living under the same roof, pertaining to the same house, and constituting in this sense a part thereof, distinguishing it from the term servant. *(People vs. Alvarez, 55 SCRA 92)*

3. Those who abused their relationship:
   a. Brother who seduced his sister
   b. Ascendant who seduced his descendant

Note: Qualified seduction involves sexual intercourse which was done with the consent of the woman; otherwise, the crime is rape. The offended woman must be over 12 but below 18 years.

Although in qualified seduction, the age of the offended woman is considered, if the offended party is a descendant or a sister of the offender – no matter how old she is or whether she is a prostitute – the crime of qualified seduction is committed.

Deceit is not necessary in qualified seduction.

Q: What is the meaning of virginity for purposes of qualified seduction?

A: Virginity does not mean physical virginity. It refers to a woman of chaste character or virtuous woman of good reputation.

Note: Virginity is not to be understood in so a material sense as to exclude the idea of abduction of a virtuous woman of a good reputation. Thus, when the accused claims he had prior sexual intercourse with the complainant, the latter is still to be considered a virgin. But if it was established that the girl had carnal relations with other men, there can be no crime of Seduction as she is not a virgin.

SIMPLE SEDUCTION (Art. 338)

Q: What are the elements of simple seduction?

A:

1. Offended party is over 12 and under 18 years of age.
2. She must be of good reputation, single or widow.
3. Offender has sexual intercourse with her.
4. It is committed by means of deceit.

Note: Virginity of offended party is not required.

The deceit generally takes form of an unfulfilled promise to marry, and this promise need not immediately precede the sexual act.

ACTS OF LASCIVIOUSNESS WITH THE CONSENT OF THE OFFENDED PARTY (Art. 339)

Q: What are the elements of this crime?

A:

1. Offender commits acts of lasciviousness or lewdness.

2. Acts are committed upon a woman who is 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.

4. Male cannot be the offended party in this crime.

Note: In other words, where the acts of the offender were limited to acts of lewdness or lasciviousness, and no carnal knowledge was had, but had there been sexual intercourse, the offense would have been seduction, he is guilty of Acts of Lasciviousness under this article.

Q: Distinguish Acts of lasciviousness under Art. 336 from Art. 339.

A:

ARTICLE 336	ARTICLE 339
The acts are committed under circumstances which had there been	The acts of lasciviousness are committed under the circumstances which had

carnal knowledge, would amount to rape.	there been carnal knowledge, would amount to either qualified seduction or simple seduction.
The offended party is a female or male	The offended party should only be female

CORRUPTION OF MINORS (Art. 340, as amended by B.P. 92)

Q: Who are the persons liable under this article?

A: Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another.

Q: Is it necessary that unchaste acts are done?

A: No. Mere proposal consummates the offense.

Note: Victim must be of good reputation, not a prostitute or corrupted person.

Under the present wordings of the law, a single act of promoting or facilitating the corruption or prostitution of minor is sufficient to constitute violation of this article.

Illustration:

This is usually the act of a pimp who offers to pleasure seekers, women for the satisfaction of their lustful desires. A mere proposal would consummate the crime. But it must be to satisfy the lust of another, not his (proponent's). The victim must be below 18.

WHITE SLAVE TRADE (Art. 341)

Q: What are the punishable acts?

A:

1. Engaging in the business of prostitution
2. Profiting by prostitution
3. Enlisting the service of women for the purpose of prostitution

Q: What are the distinctions between corruption of minors and white slave trade?

A:

CORRUPTION OF MINORS	WHITE SLAVE TRADE
It is essential that victims are minors	Minority not need not be established
Victims are of either sex	Victims are females
May not necessarily be for profit	Generally for profit
Committed by a single act	Generally, committed habitually

ABDUCTION

Q: What is abduction?

A: *Abduction* is the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with intent to marry or to corrupt her.

Q: What are the kinds of abduction?

A:

1. Forcible abduction *(Art. 342)*
2. Consented abduction *(Art 343)*

Q: What are elements of forcible abduction?

A:

1. Person abducted is any woman, regardless of her age, civil status, or reputation
2. Abduction is against her will
3. Abduction is with lewd designs

Note: If the female abducted is under 12 years of age, the crime is forcible abduction, even if she voluntarily goes with her abductor.

Where lewd design was not proved or shown, and the victim was deprived of her liberty, the crime is kidnapping with serious illegal detention under Art. 267.

Illustration:

If the accused carried or took away the victim by means of force and with lewd design and thereafter raped her, the crime is forcible abduction with rape, the former being a necessary means to commit the latter. The subsequent 2 other sexual intercourses committed against the will of the complainant would be treated as independent separate crimes of Rape. *(People v. Bacalso, G.R. No. 94531-32, June 22, 1992)*

Q: Is sexual intercourse necessary?

A: Sexual intercourse is not necessary in forcible abduction, the intent to seduce a girl is sufficient.

Note: There is no complex crime of forcible abduction with attempted rape because the attempt to rape is absorbed by the abduction.

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Q: What are the elements of consented abduction?

A:

1. Offended party must be a virgin.
2. She must be over 12 and under 18 years of age.
3. Taking away of the offended party must be with her consent, after solicitation or cajolery from the offender.
4. Taking away of the offended party must be with lewd designs.

Illustration:

If the offended party is under 12 years of age, crime committed is forcible abduction, even if the girl agrees to the elopement.

In consented abduction, it is not necessary that the young victim (a virgin over twelve and under 18) be personally taken from her parent's home by the accused; it is sufficient that he was instrumental in leaving the house. He must however use solicitation, cajolery or deceit, or honeyed promises of marriage to induce the girl to escape from her home.

Ratio: Actually, the purpose of the law is not to punish the wrong done to her, because she consented thereto but to prescribe punishment for the disgrace of her family and the alarm caused to the parents by the disgrace of a beloved one who by her age and sex, is susceptible of deceit, cajolery and even perdition. *(U.S. v. Reyes, 20 Phil. 510)*

PROVISIONS RELATIVE TO THE PRECEDING CHAPTERS OF TITLE ELEVEN

PROSECUTION OF THE CRIMES OF ADULTERY, CONCUBINAGE, SEDUCTION, ABDUCTION, RAPE, AND ACTS OF LASCIVIOUSNESS

Q: Distinguish adultery and concubinage *vis-à-vis* seduction, abduction, rape and acts of lasciviousness.

A:

ADULTERY AND CONCUBINAGE	SEDUCTION, ABDUCTION, RAPE OR ACTS OF LASCIVIOUSNESS
Prosecution	
Must be prosecuted upon complaint signed by the offended spouse	Must be prosecuted upon complaint signed by: 1. Offended party 2. Her parents 3. Grandparents, or 4. Guardians in the order named above.
Pardon	
Must be made by the offended party to both the offenders. May be a bar to prosecution if made before the institution of the criminal action. May be express or implied.	An express pardon by the offended party or other persons named in the law to the offender, as the case may be, bars prosecution. **GR:** Parent cannot validly grant pardon to the offender without the express pardon of the girl. **XPN:** When she is dead or otherwise incapacitated to grant it, that her parents, grandparents or guardian may do so for her. **GR:** Pardon by the offended party who is a minor must have the concurrence of parents. **XPN:** When the offended girl has no parents who could concur in the pardon.

Note: Both the guilty parties, if both alive must be included in the complaint for adultery or concubinage.

GR: Offended party, even if a minor, has the right to institute the prosecution for the above mentioned offenses, independently of her parents, grandparents or guardian.

XPN: If she is incompetent or incapable of doing so upon grounds other than her minority.

If the offended woman is of age, she should be the one to file the complaint.

Q: Who may file the complaint where offended minor fails to file the same?

A:

1. Parents
2. Grandparents
3. Guardian

Note: Right to file the action granted to the parents, grandparents or guardian is exclusive and successive in the order provided.

Q: What is the legal effect of the marriage of the offender and the offended party?

A: Marriage of the offender with the offended party in seduction, abduction, acts of lasciviousness and rape, extinguishes criminal action or remits the penalty already imposed.

CIVIL LIABILITY OF PERSONS GUILTY OF CRIMES AGAINST CHASTITY

Q: What is the civil liability of persons guilty of rape, seduction or abduction?

A:

1. To indemnify the offended woman
2. To acknowledge the offspring, unless the law should prevent him from doing so
3. In every case to support the offspring

Q: What is the civil liability of the adulterer and the concubine?

A: To indemnify for damages caused to the offended spouse.

Note: No civil liability is incurred for acts of lasciviousness.

Q: What is the liability of ascendants, guardians, teachers or other persons entrusted with the custody of the offended party?

A: Persons who cooperate as accomplices but are punished as principals in rape, seduction, abduction etc. They are:

1. Ascendants
2. Guardians
3. Curators
4. Teachers
5. Any other person who cooperates as accomplice with abuse of authority or confidential relationship

A. Anti-Photo and Video Voyeurism Act of 2009 (R.A. 9995)

Q: What are the prohibited acts under R.A. 9995

A:

1. To take photo or video coverage of a person or group of persons performing sexual act or any similar activity or to capture an image of the private area of a person/s such as the naked or undergarment clad genitals, public area, buttocks or female breast without the consent of the person/s involved and under circumstances in which the person/s has/have a reasonable expectation of privacy
2. To copy or reproduce, or to cause to be copied or reproduced, such photo or video or recording of sexual act or any similar activity with or without consideration
3. To sell or distribute, or cause to be sold or distributed, such photo or video or recording of sexual act, whether it be the original copy or reproduction thereof; or
4. To publish or broadcast, or cause to be published or broadcast, whether in print or broadcast media, or show or exhibit the photo or video coverage or recordings of such sexual act or any similar activity through VCD/DVD, internet, cellular phones and other similar means or device.

Note: The prohibition under paragraphs (2), (3) and (4) shall apply notwithstanding that consent to record or take photo or video coverage of the same was given by such person/s. Any person who violates this provision shall be liable for photo or video voyeurism as defined herein.

B. Special Protection of Children Against Child Abuse, Exploitation, and Discrimination Act (R.A. 7610, as amended)

(1) Child Prostitution and other acts of abuse

Q: What are the punishable acts?

A: The Punishable acts are the ff:

1. Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

   a. Acting as a procurer of a child prostitute

   b. Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means

   c. Taking advantage of influence or relationship to procure a child as prostitute

   d. Threatening or using violence towards a child to engage him as a prostitute

   e. Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution

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2. Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse

   Note: Provided, That when the victims is under 12 years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the RPC, for rape or lascivious conduct, as the case may be.

   Provided, That the penalty for lascivious conduct when the victim is under 12 years of age shall be *reclusion temporal* in its medium period

3. Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Q: When is there an attempt to commit Child Prostitution?

A: There is an attempt to commit child prostitution when:

1. Any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house, apartelle or other similar establishments, vessel, vehicle or any other hidden or secluded area under circumstances which would lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

2. Any person is receiving services from a child in a sauna parlor or bath, massage clinic, health club and other similar establishments.

Q: What is the difference between prosecution for acts of lasciviousness under Art. 336, RPC and RA 7610?

A:

Art. 336 RPC	RA 7610
Shall be punished by *prision correccional*	The penalty shall be 1 degree higher than that penalty imposed by law when the victim is under 12 years of age **Note:** The penalty for lascivious conduct when the victim is below 12 years old shall be *reclusion temporal* in its medium period. *(Sec. 5, RA 7610)*

(2) Obscene publications and indecent shows

Q: How are obscene publications and indecent shows committed?

A: Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials.

If the child used as a performer, subject or seller/distributor is below 12 years of age, the penalty shall be imposed in its maximum period. *(Sec. 9)*

C. Anti-Trafficking in Persons Act of 2003 (R.A. 9208)

Note: Trafficked persons shall be recognized as victims of the act or acts of trafficking and as such shall not be penalized for crimes directly related to the acts of trafficking enumerated in this Act or in obedience to the order made by the trafficker in relation thereto. In this regard, the consent of a trafficked person to the intended exploitation set forth in this Act shall be irrelevant. *(Sec. 17)*

Q: What are the punishable acts under R.A. 9208?

A: It shall be unlawful for any person, natural or juridical, to commit any of the following acts:

1. To recruit, transport, transfer; harbor, provide, or receive a person by any means, including those done under the pretext of domestic or overseas employment or training or apprenticeship, for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
2. To introduce or match for money, profit, or material, economic or other consideration, any person or, as provided for under RA. 6955, any Filipino woman to

a foreign national, for marriage for the purpose of acquiring, buying, offering, selling or trading him/her to engage in prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage

3. To offer or contract marriage, real or simulated, for the purpose of acquiring, buying, offering, selling, or trading them to engage in prostitution, pornography, sexual exploitation, forced labor or slavery, involuntary servitude or debt bondage
4. To undertake or organize tours and travel plans consisting of tourism packages or activities for the purpose of utilizing and offering persons for prostitution, pornography or sexual exploitation
5. To maintain or hire a person to engage in prostitution or pornography
6. To adopt or facilitate the adoption of persons for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage
7. To recruit, hire, adopt, transport or abduct a person, by means of threat or use of force, fraud, deceit, violence, coercion, or intimidation for the purpose of removal or sale of organs of said person
8. To recruit, transport or adopt a child to engage in armed activities in the Philippines or abroad. *(Sec.4)*

D. Anti-Violence against Women and their Children Act of 2004 (R.A. 9262)

Q: What are the punishable acts?

A: The crime of violence against women and their children is committed through any of the following acts:

1. Causing physical harm to the woman or her child

2. Threatening to cause the woman or her child physical harm

3. Attempting to cause the woman or her child physical harm

4. Placing the woman or her child in fear of imminent physical harm

5. Attempting to compel or compelling the woman or her child to engage in conduct which the woman or her child has the right to desist from or desist from conduct which the woman or her child has the right to engage in, or attempting to restrict or restricting the woman's or her child's freedom of movement or conduct by force or threat of force, physical or other harm or threat of physical or other harm, or intimidation directed against the woman or child. This shall include, but not limited to, the following acts committed with the purpose or effect of controlling or restricting the woman's or her child's movement or conduct:

   a. Threatening to deprive or actually depriving the woman or her child of custody to her/his family

   b. Depriving or threatening to deprive the woman or her children of financial support legally due her or her family, or deliberately providing the woman's children insufficient financial support

   c. Depriving or threatening to deprive the woman or her child of a legal right

   d. Preventing the woman in engaging in any legitimate profession, occupation, business or activity or controlling the victim's own money or properties, or solely controlling the conjugal or common money, or properties

6. Inflicting or threatening to inflict physical harm on oneself for the purpose of controlling her actions or decisions

7. Causing or attempting to cause the woman or her child to engage in any sexual activity which does not constitute rape, by force or threat of force, physical harm, or through intimidation directed against the woman or her child or her/his immediate family

8. Engaging in purposeful, knowing, or reckless conduct, personally or through another, that alarms or causes substantial emotional or psychological distress to the woman or her child. This shall include, but not be limited to, the following acts:

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a. Stalking or following the woman or her child in public or private places

b. Peering in the window or lingering outside the residence of the woman or her child

c. Entering or remaining in the dwelling or on the property of the woman or her child against her/his will

d. Destroying the property and personal belongings or inflicting harm to animals or pets of the woman or her child

e. Engaging in any form of harassment or violence;

9. Causing mental or emotional anguish**,** public ridicule or humiliation to the woman or her child, including, but not limited to, repeated verbal and emotional abuse, and denial of financial support or custody of minor children of access to the woman's child/children. *(Sec. 5)*

E. Anti-Sexual Harassment Act of 1995 (R.A. 7877*)*

Q. What are the punishable acts under RA 7887?

A.

1. In a **work-related or employment environment,** sexual harassment is committed when:

   a. The sexual favor is made as a condition in the hiring or in the employment, re-employment or continued employment of said individual, or in granting said individual favorable compensation, terms, conditions, promotions, or privileges; or the refusal to grant the sexual favor results in limiting, segregating or classifying the employee which in a way would discriminate, deprive or diminish employment opportunities or otherwise adversely affect said employee
   b. The above acts would impair the employee's rights or privileges under existing labor laws; or
   c. The above acts would result in an intimidating, hostile, or offensive environment for the employee.

2. In an **education or training environment**, sexual harassment is committed:

   a. Against one who is under the care, custody or supervision of the offender
   b. Against one whose education, training, apprenticeship or tutorship is entrusted to the offender
   c. When the sexual favor is made a condition to the giving of a passing grade, or the granting of honors and scholarships, or the payment of a stipend, allowance or other benefits, privileges, or considerations; or
   d. When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Note: Any person who directs or induces another to commit any act of sexual harassment as herein defined, or who cooperates in the commission thereof by another without which it would not have been committed, shall also be held liable under this Act. *(Sec. 3)*

XII. CRIMES AGAINST CIVIL STATUS

SIMULATION OF BIRTHS AND USURPATION OF CIVIL STATUS

SIMULATION OF BIRTHS, SUBSTITUTION OF ONE CHILD FOR ANOTHER AND CONCEALMENT OR ABANDONMENT OF A LEGITIMATE CHILD (Art. 347)

Q: What are the punishable acts?

A:

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.

Q: What are the elements of simulation of births?

A:

1. The child is baptized or registered in the registry of birth as the offender's
2. The child loses its re status and acquires a new one
3. The offender's spouse was to cause the loss of any trace as to the child's true filiation

Q: What are the elements of concealing or abandoning any legitimate child with intent to cause such child to lose its civil status?

A:

1. The child must be legitimate
2. The offender conceals or abandons such child
3. The offender has the intent to cause the child to lose its civil status

Note: The fact that child will be benefited by simulation of birth is not a defense since it creates a false status detriment of members of the family to which the child is introduced.

A father who sells child is not liable under this article since there is no abandonment. The object of the crime under Art 347 is the creation or the causing of the loss of civil status.

The woman who has given birth and the one who furnishes the child are both liable as principals.

Q: When does simulation of birth take place?

A: Simulation of birth takes place when the woman pretends to be pregnant when in fact she is not, and on the day of the supposed delivery, takes the child of another as her own.

Note: Simulation which is a crime is that which alters the civil status of a person.

Physician or surgeon or public officer who cooperates in the execution of the crime is also liable.

USURPATION OF CIVIL STATUS (Art. 348)

Q: How is this crime committed?

A: It is committed when a person represents himself to be another and assumes the filiation or the parental or conjugal rights of such another person.

Q: What does civil status include?

A: Civil status includes one's public station or the rights, duties, capacities and incapacities which determine a person to a given class.

Note: There must be intent to enjoy the rights arising from the civil status of another.

Q: What would qualify this crime?

A: If the purpose is to defraud offended parties and heirs.

ILLEGAL MARRIAGES

BIGAMY (Art. 349)

Q: What are the elements of bigamy?

A:

1. Offender has been legally married
2. 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 New Civil Code
3. He contracts a second or subsequent marriage
4. Second or subsequent marriage has all the essential requisites for validity

Note: Validity of second marriage is a prejudicial question to liability for bigamy.

Nullity of the first marriage is not a defense in bigamy

Bigamy is not a private crime

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA

A person convicted for bigamy may still be prosecuted for concubinage.

Q: Is a judicial declaration of nullity of marriage necessary?

A:

GR: A judicial declaration of nullity of a previous marriage is necessary before a subsequent one can be legally contracted. One who enters into a subsequent marriage without first obtaining such judicial declaration is guilty of bigamy. This principle applies even if the earlier union is characterized by statutes as "void." *(Mercado v. Tan, G.R. No. 137110, Aug. 1, 2000)*

XPN: Where no marriage ceremony at all was performed by a duly authorized solemnizing officer. *(Morigo v. People G.R. No. 145226, Feb. 6, 2004)*

Illustration:

The mere private act of signing a marriage contract bears no semblance to a valid marriage and thus, needs no judicial declaration of nullity. Such act alone, without more, cannot be deemed to constitute an ostensibly valid marriage for which petitioner might be held liable for bigamy unless he first secures a judicial declaration of nullity before he contracts a subsequent marriage. *(Morigo v. People, G.R. No. 145226, Feb. 6, 2004)*

Note: The death of the first spouse during the pendency of the case does not extinguish the crime, because when the offender married the second spouse, the first marriage was still subsisting. The second spouse who knew of the first marriage is an accomplice as well as the person who vouched for the capacity of either of the contracting parties.

Q: When does the prescriptive period commence?

A: Does not commence from the commission thereof but from the time of its discovery by the complainant spouse.

MARRIAGE CONTRACTED AGAINST PROVISIONS OF LAWS (Art. 350)

Q: What are the elements of this crime?

A:

1. Offender contracted marriage
2. He knew at the time that the:
   a. Requirements of the law were not complied with; or
   b. Marriage was in disregard of a legal impediment.

Q: What would qualify this crime?

A: If either of the contracting parties obtains the consent of the other by means of violence, intimidation or fraud.

Note: Offender must not be guilty of bigamy.

Conviction of a violation of Art. 350 involves moral turpitude.

PREMATURE MARRIAGES (Art. 351)

Q: Who are the persons liable?

A:

1. Widow who 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. Woman whose 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.

Note: Period of 301 days may be disregarded if the first husband was impotent or sterile. Period of 301 days, or 10 months, is only for cases where the woman is not, or does not know yet that she is pregnant at the time she becomes a widow. If she is pregnant at the time she becomes a widow, the prohibition is good only up to her delivery.

Q: What is the purpose of the article?

A: To prevent doubtful paternity

Note: Woman will not be liable if she has:
1. Already delivered
2. Conclusive proof that she was not pregnant by her 1st spouse since he was permanently sterile. *(People v. Masinsin, CA 49 OG 3908)*

PERFORMANCE OF ILLEGAL MARRIAGE CEREMONY (Art. 352)

Q: Who are the persons liable under this article?

A: Art. 352 punishes priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony.

Note: Art. 352 presupposes that the priest or minister or civil authority is authorized to solemnize marriages. Otherwise, he is liable under Art.177.

XIII. CRIMES AGAINST HONOR (353-364)

LIBEL
(Art. 353)

Q: What is 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 circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Q: How is libel committed?

A: Libel is a defamation committed by means of writing, printing, lithography, engraving, radio, phonograph, painting or theatrical or cinematographic exhibition, or any similar means.

Note: No distinction between calumny, insult and libel.

Q: Who are liable for libel?

A:

1. Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing or by similar means.

2. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, for defamation contained therein to the same extent as if he were the author thereof.

Q: What are the elements of defamation?

A:

1. There must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance.
2. Imputation must be made publicly.
3. It must be malicious.
4. It must be directed at a natural or juridical person, or one who is dead (identification of the offended party is required).
5. It must tend to cause the dishonor, discredit or contempt of the person defamed.

Q: What is malice?

A: *Malice* is a term used to indicate the fact that the offender is prompted by personal ill-will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed.

Note: In libel cases, the question is not what the victim means but what the words used by him mean. *(Sazon v. CA, G.R. No. 120715, Mar.29, 1996)*

Q: What are the two kinds of malice?

A:

1. *Malice in fact* maybe shown by proof of ill-will, hatred, or purpose to injure.

2. *Malice in law* is presumed from a defamatory imputation. However, presumption is rebutted if it is shown by the accused that:
   a. Defamatory imputation is true, in case the law allows proof of the truth of the imputation;
   b. It is published with good intention; and
   c. There is justifiable motive for making it.

Q: When is malice not presumed?

A: Malice is not presumed in the following:

1. Private communication made by any person to another in the performance of any legal, moral or social, duty.

   Requisites:
   a. Person who made the communication had a legal moral or social duty to make the communication or at least, he had an interest to be upheld;
   b. Communication is addressed to an officer, or a board, or superior, having some interest or duty in the matter;
   c. Statements in the communication are made in good faith without malice (in fact).

2. Fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative, or other official proceedings which are not of confidential nature, or of any statement, report, or speech delivered in the exercise of their functions.

Q: In what way may libel be committed?

A: Libel may be committed by:
1. Writing

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2. Printing
3. Lithography
4. Engraving
5. Radio
6. Phonograph
7. Painting
8. Theatrical exhibition
9. Cinematographic exhibition
10. Any similar mean

Q: Must there be a publication of the libelous article?

A: Yes. There must be some communication of the defamatory matter to some 3rd persons.

Illustration:

The delivery of the article to the typesetter is sufficient publication. *(U.S. v. Crame, 10 Phil.135)*

The sending to the wife of a letter which maligns the husband was considered sufficient publication, for the spouse is a third person to the victim defamed. *(U.S. v. Urbinana, 1 Phil. 471)*

Q: Rima and Alegre exposed various alleged complaints from students, teachers and parents against Ago Medical and Educational Center-Bicol Christian College of Medicine ("AMEC") and its administrators. Rima and Allegre remarked that "AMEC is a dumping ground, garbage of xxx moral and physical misfits"; and AMEC students who graduate "will be liabilities rather than assets" of the society. Claiming that the broadcasts were defamatory, AMEC filed a complaint for damages against FBNI, Rima and Alegre. Are the aforementioned remarks or broadcasts libelous?

A: There is no question that the broadcasts were made public and imputed to AMEC defects or circumstances tending to cause it dishonor, discredit and contempt. Rima and Alegre's remarks are libelous *per se.* Taken as a whole; the broadcasts suggest that AMEC is a money-making institution where physically and morally unfit teachers abound.

Every defamatory imputation is presumed malicious. Rima and Alegre failed to show adequately their good intention and justifiable motive in airing the supposed gripes of the students. As hosts of a documentary or public affairs program, Rima and Alegre should have presented the public issues free from inaccurate and misleading information. *(Filipinas Broadcasting Network, Inc. v. Ago Medical and Educational Center-Bicol Christian College of Medicine, G.R. No. 14199, Jan. 17, 2005)*

Q: Dolores Magno was charged and convicted of libel for the writings on the wall and for the unsigned letter addressed to the Alejandro spouses, containing invectives directed against Cerelito Alejandro. Dolores contends that the prosecution failed to establish the presence of the elements of authorship and publication of the malicious writings on the wall, as well as the unsigned letter addressed to the Alejandro spouses. She argues that since the letter was addressed to the spouses, Fe (Cerelito's wife) was, insofar as Cerelito is concerned, not a third person for purposes of publication. Is she liable?

A: To be liable for libel under *Article 353 of the RPC*, the following elements must be shown to exist:

1. The allegation of a discreditable act or condition concerning another
2. Publication of the charge
3. Identity of the person defamed
4. Existence of malice.

Publication**,** in the law of libel, means the making of the defamatory matter, after it has been written, known to someone other than the person to whom it has been written. If the statement is sent straight to a person for whom it is written there is no publication of it. The reason for this is that "a communication of the defamatory matter to the person defamed cannot injure his reputation though it may wound his self-esteem. A man's reputation is not the good opinion he has of himself, but the estimation in which others hold him."

In this case, there is no dispute that the unsealed envelope containing the libelous letter was handed by Dolores to Evelyn (Cerelito's sister). Contextually, there was a reasonable probability that the contents thereof, particularly the libelous letter, could have been exposed to be read by Evelyn before delivering the same to Cerelito. However, Evelyn categorically admitted not reading the letter at the first instance, reading it only after securing Cerelito's permission. Inasmuch, therefore, as Cerelito voluntarily disclosed the contents of Dolores' libelous letter to Evelyn, the act of publication cannot be ascribed to Dolores insofar as Evelyn is concerned.

It could not be said, however, that there was no publication with respect to Fe. While the letter in question was addressed to "Mr. Cerelito & Fe Alejandro," the invectives contained therein were directed against Cerelito only. *Writing to a person other than the person defamed is sufficient to constitute publication,* for the person to whom the letter is addressed is a *third person* in relation to its

writer and the person defamed therein. Fe, the wife, is contextually a third person to whom the publication was made. *(Dolores Magno v. People of the Philippines, G.R. No. 133896, Jan. 27, 2006)*

Q: What is the common defense in libel?

A: That it is covered by privileged communication.

1. *Absolute privileged* – not actionable even if the author has acted in bad faith like the statements made by members of Congress in the discharge of their official functions;

2. *Conditional or qualified* – like a private communication made by any person to another in the performance of any legal, moral, or social duty, and a fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature. Here, even if the statements are defamatory, there is no presumption of malice. The prosecution must prove malice in fact to convict the accused.

Q: Do defamatory remarks and comments on the conduct or acts of public officers which are related to the discharge of their official duties constitute libel?

A: No, it will not constitute libel if the accused proves the truth of the imputation. But any attack upon the private character of the public officers on matters which are not related to the discharge of their official functions may constitute Libel.

Moreover, a written letter containing libelous matter cannot be classified as privileged when publicly published and circulated. *(Sazon vs. CA, G.R. No. 120715, Mar.29, 1996)*

THREATENING TO PUBLISH AND OFFER TO PREVENT SUCH PUBLICATION FOR A COMPENSATION (Art. 356)

Q: What are the punishable acts?

A:

1. Threatening another to publish a libel concerning him, or his parents, spouse, child, or other members of his family.

2. Offering to prevent the publication of such libel for compensation, or money consideration.

Note: Known as "*blackmail*" – in its metaphorical sense, may be defined as any unlawful extortion of money by threats of accusation or exposure.

Q: In what felonies is blackmail committed?

A:

1. Light threats
2. Threatening to publish, or offering to prevent the publication of, a libel for compensation

Q: Who are the persons liable for libel?

A:

1. Person who publishes, exhibits or causes the publication or exhibition of any defamation in writing or similar means.

2. Author or editor of a book or pamphlet.

3. Editor or business manager of a daily newspaper magazine or serial publication.

4. Owner of the printing plant which publishes a libelous article with his consent and all other persons who in any way participate in or have connection with its publication.

Q: Where should a complaint for libel be filed?

A: Criminal and civil actions for damages in case of written defamations shall be filed simultaneously or separately with the court of first instance of the province or city:

1. Where the libelous article is printed and first published; or
2. Where any of the offended parties actually resides at the time of the commission of the offense.

Note: The court where the criminal action or civil action for damages is first filed shall acquire jurisdiction to the exclusion of other courts.

Offended party must file complaint for defamation imputing a crime which cannot be prosecuted *de oficio*.

PROOF OF TRUTH (Art. 361)

Q: When is proof of truth admissible?

A: Proof of truth is admissible in any of the following:

1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer.

2. When the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided, it is related to the discharge of his official duties.

Note: Proof of truth must rest upon positive, direct evidence upon which a definite finding may be made by the court. But probable cause for belief in the truth of the statement is sufficient.

Q: Is proof of truth enough?

A: No. It is also required that the matter charged as libelous was published with good motives and for justifiable ends.

Q: What are the possible defenses in the crime of libel?

A:

1. It appears that the matters charged as libelous is true
2. It was published with good motives
3. And for a justifiable end

LIBELOUS REMARKS (Art. 362)

Note: Libelous remarks or comments on matters privileged, if made with malice in fact, do not exempt the author and editor.

PROHIBITED PUBLICATION OF ACTS REFERRED TO IN THE COURSE OF OFFICIAL PROCEEDINGS (Art. 357)

Q: What are the elements of this crime?

A:

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.

Note: Prohibition applies even though said publication be made in connection with or under the pretext that it is necessary in the narration of any judicial or administrative proceedings wherein such facts have been mentioned.

Q: What is the so called *Gag Law*?

A: Newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children, etc., will necessarily be barred from publication. Source of news report may not be revealed.

SLANDER (ORAL DEFAMATION) (Art. 358)

Q: What are the kinds of oral defamation?

A:

1. Simple slander
2. Grave slander, when it is of a serious and insulting nature.

Q: What are the distinctions between oral defamation and criminal conversation?

A:

ORAL DEFAMATION	CRIMINAL CONVERSATION
Malicious imputation of any act, omission, condition or circumstance against a person, done orally in public, tending to cause dishonor, discredit, contempt and embarrassment or ridicule to the latter.	Used in making a polite reference to sexual intercourse as in certain crimes, like rape, seduction and adultery.
A crime against honor penalized in Art. 358, RPC.	Has no definite concept as a crime.

Q: What are the factors that determine the gravity of oral defamation?

A:

1. Expressions used
2. Personal relations of the accused and the offended party
3. Circumstances surrounding the case

Note: Social standing and the position of the offended party are also taken into account.

Slander need not be heard by the offended party.

Q: Lando and Marco are candidates in the local elections. In his speeches Lando attacked his opponent Marco alleging that he is the son of Nanding, a robber and a thief who amassed his wealth through shady deals. May Marco file a case against Lando for grave oral defamation? State your reasons.

A: Marco cannot file a case for grave oral defamation. If at all, he may file a case for light slander. In the case of *People v. Laroga (40 O.G. 123).* It was held that defamation in political meeting when feelings are running high and people could not think clearly, only amount to light slander. **(1990 Bar Question)**

SLANDER BY DEED (Art. 359)

Q: What is slander by deed?

A: *Slander by deed* is a crime against honor which is committed by performing any act which casts dishonor, discredit, or contempt upon another person.

Q: What are the elements of slander by deed?

A:

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

Q: What are the kinds of slander by deed?

A:

1. *Simple slander by deed* – performance of an act, not use of words.

2. *Grave slander by deed* - which is of a serious crime.

Q: What determines if an act is slander by deed or not?

A: Whether a certain slanderous act constitutes slander by deed of a serious nature or not, depends on the social standing of the offended party, the circumstances under which the act was committed, the occasion, etc.

Illustration:

Thus, slapping a lady in a dance not for purpose of hurting her but to cause her shame and humiliation for refusing to dance with the accused is slander by deed.

INCRIMINATORY MACHINATIONS

INCRMINATING INNOCENT PERSON (Art. 363)

Q: What are the elements of this crime?

A:

1. Offender performs an act

2. By such act he directly incriminates or imputes to an innocent person the commission of a crime

3. Such act does not constitute perjury

Note: The crime of incriminatory machinations is limited to planting evidence and the like, which tend directly to cause false prosecution.

Q: What are the distinctions between incriminating an innocent person and perjury by making false accusation?

A:

INCRIMINATING AN INNOCENT PERSON	PERJURY BY MAKING FALSE ACCUSATION
Committed by performing an act by which the offender directly incriminates or imputes to an innocent person the commission of a crime.	The gravamen of the offense is the imputation itself, falsely made, before an officer.
Limited to the act of planting evidence and the like, in order to incriminate an innocent person.	Giving of false statement under oath or the making of a false affidavit, imputing to a person the commission of a crime.

Q: What are the distinctions between incriminatory machination and defamation?

A:

INCRIMINATORY MACHINATION	DEFAMATION
Offender performs acts to directly impute to an innocent person the commission of the crime.	Offender avails himself of written or spoken words in besmirching the victim's reputation.

INTRIGUING AGAINST HONOR (Art. 364)

Q: What is intriguing against honor?

A: Any scheme or plot by means which consist of some trickery.

Q: Who is liable?

A: Any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

Q: What is the distinction between intriguing against honor and slander?

A:

INTRIGUING AGAINST HONOR	SLANDER
The source of the defamatory utterance is unknown and the offender simply repeats or passes the same, without subscribing to the truth thereof.	Offender made the utterance, where the source of the defamatory nature of the utterance is known, and offender makes a republication thereof, even though he repeats the libelous statement as coming from another, as long as the source is identified.

a. Administrative Circular 08-2008 Re: Guidelines in the Observance of a Rule of Preference in the Imposition of Penalties in Libel Cases

1. Preference of imposition of fine

Note: Article 355 of the RPC penalizes libel with *prision correctional* in its minimum and medium periods ***or*** fine ranging from 200 to 6,000 pesos, ***or both***, in addition to the civil action which may be brought by the offended party.

In the following cases, the Court opted to impose only a fine on the person convicted of the crime of libel:

In *Sazon v. CA,* the Court modified the penalty imposed upon petitioner, an officer of a homeowners' association, for the crime of libel from imprisonment and fine in the amount of P200.00, to fine only of P3,000.00, with subsidiary imprisonment in case of insolvency, for the reason that he wrote the libelous article merely to defend his honor against the malicious messages that earlier circulated around the subdivision, which he thought was the handiwork of the private complainant.

In *Mari v. CA,* where the crime involved is slander by deed, the Court modified the penalty imposed on the petitioner, an ordinary government employee, from imprisonment to fine of P1,000.00, with subsidiary imprisonment in case of insolvency, on the ground that the latter committed the offense in the heat of anger and in reaction to a perceived provocation.

In *Brillante v. CA,* the Court deleted the penalty of imprisonment imposed upon petitioner, a local politician, but maintained the penalty of fine of P4,0000.00, with subsidiary imprisonment in case of insolvency, in each of the (5) cases of libel, on the ground that the intensely feverish passions evoked during the election period in 1988 must have agitated petitioner into writing his open letter; and that incomplete privileged communication should be appreciated in favor of petitioner, especially considering the wide latitude traditionally given to defamatory utterances against public officials in connection with or relevant to their performance of official duties or against public figures in relation to matters of public interest involving them.

In *Buatis, Jr. v. People,* the Court opted to impose upon petitioner, a lawyer, the penalty of fine only for the crime of libel considering that it was his first offense and he was motivated purely by his belief that he was merely exercising a civic or moral duty to his client when wrote the defamatory letter to private complainant.

The foregoing cases indicate an emergent rule of preference for the imposition of fine only rather than imprisonment in libel cases under the circumstances therein specified.

Q: What are the guidelines in the observace of a rule of preference in the imposition of penalties in libel cases?

A: All courts and judges concerned should henceforth take note of the foregoing rule of preference set by the Supreme Court on the matter of the imposition of penalties for the crime of libel bearing in mind the following principles:

1. This Administrative Circular does not remove imprisonment as an alternative penalty for the crime libel under Article 355 of the RPC

2. The Judges concerned may, in the exercise of sound discretion, and taking into consideration the peculiar circumstances of each case, determine whether the imposition of a fine alone would best serve the interests of justice or whether forbearing to impose imprisonment would depreciate the seriousness of the offense, work violence on the social order, or otherwise be contrary to the imperative of justice

3. Should only a fine be imposed and the accused be unable to pay the fine, there is no legal obstacle to the application of the RPC provision on subsidiary imprisonment.

XIV. CRIMINAL NEGLIGENCE

CRIMINAL NEGLIGENCE IMPRUDENCE AND NEGLIGENCE (Art. 365)

Q: What are the punishable acts?

A:

1. Committing through reckless imprudence any act which, had it been intentional, would constitute a grave or less grave felony or light felony

2. Committing through simple imprudence or negligence an act which would otherwise constitute a grave or a less serious felony

3. Causing damage to the property of another through reckless imprudence or simple imprudence or negligence

4. Causing through simple imprudence or negligence some wrong which, if done maliciously, would have constituted a light felony

Note: Imprudence or negligence is not a crime itself. It is simply a way of committing a crime.

Imprudence indicates a deficiency of action; failure in precaution.

Negligence indicates a deficiency of perception; failure in advertence.

RECKLESS IMPRUDENCE

Q: What are the elements of reckless imprudence?

A:

1. Offender does or fails to do an act.
2. The doing of or the failure to do that act is voluntary.
3. It be without malice.
4. Material damage results.
5. There is an inexcusable lack of precaution on the part of the person performing or failing to perform such act taken into consideration:
   a. Employment or occupation
   b. Degree of intelligence
   c. Physical condition
   d. Other circumstances regarding persons, time and place

SIMPLE IMPRUDENCE

Q: What are the elements of simple imprudence?

A:

1. There is lack of precaution on the part of the offender.

2. Damage impending to be caused is not immediate nor the danger clearly manifested.

Note: Art. 64, relative to mitigating and aggravating circumstances, is not applicable to crimes committed through negligence.

GR: Failing to lend help is a qualifying circumstance; it raises the penalty 1 degree higher.

XPN: The driver can leave his vehicle *without* aiding the victims if he:

1. Is in imminent danger of being harmed
2. Wants to report to the nearest officer of the law, or
3. Desires to summon a physician or a nurse for medical assistance to the injured. *(Sec. 55 of R.A. 4136)*

Q: What is the doctrine of last clear chance?

A: The last clear chance doctrine states that the contributory negligence of the party injured will not defeat the action if it be shown that the accused might, by the exercise of reasonable care and prudence, have avoided the consequences of the negligence of the injured party.

Q: What is emergency rule?

A: The *emergency rule* provides that an automobile driver who, by the negligence of another and not by his own negligence, is suddenly placed in an emergency and compelled to act instantly to avoid a collision or injury is not guilty of negligence if he makes such a choice which a person of ordinary prudence placed in such a position might make even though he did not make the wisest choice.

Q: What are the distinctions between imprudence and negligence?

A:

NEGLIGENCE	IMPRUDENCE
Deficiency of perception	Deficiency of action
Failure in advertence	Failure in precaution
Avoided by paying proper attention and using the diligence in foreseeing them	Taking necessary precaution once foreseen

CRIMINAL LAW TEAM:
ADVISER: JUDGE RICO SEBASTIAN D. LIWANAG; **SUBJECT HEAD:** ZANDY A. ZACATE; **ASST. SUBJECT HEADS:** ANNA FE ABAD & PAUL ROMEO POLLOSO; **MEMBERS:** SHARMAGNE JOY BINAY, MARIA CARMELLA BUSTONERA, MARY GRACE CAMAYO, DELFIN FABRIGAS, JR., SPINEL ALBERT DECLARO, ERIK GALLARDO, KING JAMES CARLO HIZON, CARMINA MAE MANALO, FAYE ANGELA PASCUA, ANTHONY ROBLES, RAISSA SAIPUDIN, ADRIAN VALBUENA