

CRIMINAL LAW

Ateneo de Davao College of Law

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MEMORY AID IN CRIMINAL LAW I

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CRIMINAL LAW

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

LIMITATIONS ON CONGRESS POWER TO ENACT LAWS

- E** 1) No Ex post facto laws enacted. -- See **People vs. Ferrer**, 48 SCRA 382 (1972)
B 2) No Bill of attainder enacted.
A 3) Of general Application.
C 4) No Crue! or inhuman punishment inflicted, or excessive fines imposed.
(Recall **EBAC**)

COMMENTS:

1) **LAW** -- system of rules governing human conduct, just, obligatory, promulgated by competent authority and of general observance and benefit.

2) **CRIMINAL LAW** defined

3) **Ex post facto law:**

C a) Makes an act CRIMINAL now when act was innocent when done.

I b) INCREASES the penalty

A c) AGGRAVATES the crime

A d) ALTERS the legal rules of evidence to make it easier to convict the accused. (Recall **CIAA**)

4) Two tests of **ex post facto law:**

a) Prejudicial to accused

b) Retroactive effect

5) **Bill of attainder defined:** (Cite **People vs. Ferrer – 48 SCRA 382** where the Supreme Court upheld the constitutionality of **R.A. 1700 (Anti-Subversion Law)** defining the CPP-NPA as an organized conspiracy to overthrow the government as not being a bill of attainder because membership must still be judicially determined to have been done “**knowingly, willfully and by overt acts**” as distinguished from mere nominal membership. There is still a **judicial**

determination of guilt, not legislative determination of guilt or innocence of the accused which the Constitution frowns upon.

ARTICLE 1.

Time when Act takes effect. – This Code shall take effect on the 1st of January 1932.

THREE BASIC PRINCIPLES of CRIMINAL LAW

- Pro** 1) Prospectivity -- Penal law being **prospective** in nature and not retroactive, except under **Article 22** of RPC.
- Gen** 2) Generality – Refers to people and how penal laws apply to people, including resident aliens. (**Article 14, Civil Code**)
- Ter** 3) Territoriality – Criminal laws are only enforceable within Philippine territory, except those provided in **Article 2, RPC** (See Exceptions under Article 2, RPC -- Recall **SCION**)

COMMENTS:

1) PROSPECTIVITY

a) *Crimes punishable by penal laws already in force at time of their commission, **EXCEPT** if favorable to accused, provided accused is not a habitual delinquent.*

b) Effects of REPEAL of penal law:

1) *If new penal law has lighter penalty, new penal law applied **RETROACTIVELY**, except if accused is a habitual delinquent.*

2) *If new law carries a heavier penalty, the old law in force at time of commission of offense shall be applied.*

In other words, always apply penal law which is favorable to accused.

2) GENERALITY

a) **Article 14 (Civil Code)** -- “Penal laws shall be obligatory upon those who live or sojourn in Philippine territory, subject to principles of PIL and to treaty stipulations.”

b) *Even foreigners not exempt from our penal laws, except heads of state, foreign ministers and diplomats.*

3) TERRITORIALITY

a) *Criminal laws are enforceable only within Philippine territory, except as found in Article 2 (**Extraterritoriality**)*

ARTICLE 2.

Application of its provisions. -- *Except as provided in treaties and laws of preferential application, the provisions of this Code shall take effect not only within the Philippine archipelago, including its atmosphere, its interior waters and maritime zone, but also outside its jurisdiction, against those who:*

- S** 1) Should commit an offense while on a Philippine Ship or airship.
- C** 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.
- I** 3) Should be liable for acts connected with the Introduction into these islands of the obligations and securities mentioned in the preceding number.
- O** 4) When being public Officers or employees, should commit an offense in the exercise of their functions.
- N** 5) Should commit any of the crimes against National security and the law of nations, as defined in Title One of Book II of this Code.
- (Recall SCION)

Note:

Jurisdictional Rules:

- 1) **French rule** – such crimes are not triable in territorial state, unless affecting peace and security of the state. (**Nationality rule**)
- 2) **English rule** – such crimes are triable in the territorial state, unless such crime only affects the internal management of the vessel. (**Territoriality rule**)

COMMENTS:

1) **1st par.** -- A Philippine ship, although beyond three miles from our seashore, is considered part of our national territory hence, subject to jurisdiction of our courts. It is the registration of the vessel, or aircraft, in accordance with Philippine law, not citizenship of owner, which determines whether or not it is a Philippine ship or airship.

Regarding foreign merchant vessels -- in Phils., we adopt the English rule that such crimes are triable in our country, unless affects only internal affairs of foreign vessel.

In U.S. vs. Look Chaw, (p. 29, Reyes) SC held that mere possession of opium aboard a foreign merchant vessel in transit is not triable in our court, except if landed in our shores, or smoked opium inside vessel which pollutes our air, and due to its pernicious effects constituting breach of our public order, in People vs. Wong Cheng (p. 30, Reyes).

Regarding warships -- considered extensions of territory of foreign country hence, cannot be subject to the laws of another state.

2) **2nd and 3rd par.** – intended to protect the economic interest of our country. Introduction of fake currency notes as dangerous as act of counterfeiting these coins and currencies.

3) **4th par.** -- refers to crimes against public officers and committed in the discharge of their functions while abroad -- such as Direct bribery, Indirect bribery, Illegal exactions, Possession of prohibited interest, Malversation of public funds, Failure of accountable officer to render accounts, Technical

malversation, Failure to make delivery of public funds or property, and Falsification under Article 171.

4) 5th par. -- *refers to Treason, Conspiracy and Proposal to commit treason, Espionage, Inciting to war and giving motives for reprisals, Violation of neutrality, Correspondence with enemy country, Flight to enemy country, and Piracy and mutiny on the high seas.*

SCHOOLS of THOUGHT in CRIMINAL LAW

1) **Classical** -- Basis of criminal liability is human free will; purpose of penalty being **retribution and deterrence**; penalty proportionate to offense; basis of crime is human nature;

2) **Positivist** -- Man is subdued by strange, morbid phenomenon which constrains him to do wrong despite his will to the contrary; purpose of penalty is reformation.

3) **Eclectic** -- Combination of best features of classical and positivist schools of thought from which the RPC is patterned after. Ideally, the classical theory should be applied to grievous crimes, while the positivist is made to apply on economic and social crimes.

4) **Utilitarian** -- This school of thought espouses the idea that the primary function of punishment in criminal law is to protect society from potential and actual wrongdoers. The retributive aspect of penal laws should be directed against them. "thus, it behooves upon a court of law that in applying the punishment imposed upon the accused, the objective of the retribution of a wronged society should be directed against 'actual and potential wrongdoers.'

DISTINCTIONS: CRIMES MALA IN SE vs. MALA PROHIBITA

a) **Mala in se** -- crimes punishable under RPC; determine whether or not act done with *dolo* or *culpa*; criminal intent, degree of participation and stage of execution as distinguished from crimes **mala prohibita**.

b) **Mala prohibita** -- crimes punishable under special law; presence of *dolo* or *culpa*, criminal intent, degree of participation and stage of execution, and attendant circumstances are immaterial and irrelevant.

See Padilla vs. Dizon, 158 SCRA 127 (1988)

In this case, the SC dismissed Judge Dizon from the service gross ignorance of the law for acquitting Lo Chi Fai for Violation of CB *Circular No. 960* on the flimsy ground that Lo Chi Fai had no intention or ***mens rea*** to violate the law when malice, or ***mens rea***, is completely immaterial in a crime **mala prohibita**.

COMMENTS:

1) **Crimes mala in se** are crimes wrong in themselves, or those so serious in their nature, and effects, to society they call for almost unanimous condemnation; while **crimes mala prohibita** are violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society, like dangerous drugs, or illegal possession of firearms.

2) In **crimes mala prohibita**, only question is: did accused perform the prohibited act. If he did, he is automatically liable, and no more questions asked.

ARTICLE 3.

Definition -- Acts and omissions punished by law are felonies. (**delitos**)

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

There is **deceit** when the act is performed with deliberate intent; and there is **fault** when the wrongful acts results from imprudence, negligence, lack of foresight, or lack of skill.

ELEMENTS OF FELONY

- 1) Involves an act or omission.
- 2) Punishable by RPC.
- 3) Committed by either **dolo or culpa**.

a) There is **dolo** if the criminal act is done *Freely, Intelligently, and Intentionally* while there is **culpa** if the criminal act is done *Freely, Intelligently and Negligently*. (Recall **FIInt/FINe**)

COMMENTS:

1) In elements of felony, act is performed/not performed(omission) with: **DOLO/CULPA + INJURY**.

2) In crimes **mala prohibita**, only question is: did accused perform the prohibited act. If he did, automatically liable, and no more questions asked.

3) Requisites of **DOLO**:

a) **Freedom** -- negated by irresistible force or uncontrollable fear hence, exempt from criminal liability.

b) **Intelligence** -- negated by insanity or imbecility, or minority hence, also exempt from criminal liability.

c) **Intent** -- means purpose to use a particular means to effect a particular result; deduced from overt acts of accused.

eg. If X box Y on stomach, no intent to kill; but if Mike Tyson boxes Y on stomach, intent to kill can be inferred.

4) Also explain **ACTUS REUS NISI MENS SIT REA**

ACTUS REUS + MENS REA = DELITO

CRIMINAL ACT/OMISSION + CRIMINAL INTENT = CRIME

Whether by **DOLO** (Intentional felony)

Or by **CULPA** (Culpable felony)

DISTINCTIONS BETWEEN INTENT and MOTIVE

a) ***Intent*** -- purpose to use a particular means to effect a particular result; objective phase. Criminal law, as a general rule, is concerned only with ***INTENT***, and whether or not the accused acted freely, intelligently and INTENTIONALLY. In ***Ah Chong*** and ***Oanis*** cases, MISTAKE OF FACT negatives INTENT.

b) ***Motive*** -- moving power which impels one to action for a definite result. Not an element of a crime except if doubt exists as to the identity, liability, or participation of the accused.

See ***People vs. Temblor***, 161 SCRA 623 (1988)

In this case, SC affirmed Accused Temblor's conviction and held that proof of motive is not essential in light of positive identification of accused who actually saw the witness shot by Accused Temblor. Motive is not an essential element of the crime but assumes importance only when there is doubt as to the identity and circumstances regarding the commission of the crime, and if one tries to prove the guilt of the accused through mere circumstantial evidence.

COMMENTS:

1) Cite ***Padilla vs. Dizon***, 158 SCRA 127 (1988)

ARTICLE 4.

Criminal liability -- *Criminal liability shall be incurred:*

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

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

ELEMENTS of MISTAKE OF FACT – Article 4, RPC

A 1) ***Act*** would have been lawful had facts been as accused believed them.

I 2) ***Intention*** of accused is lawful.

M 3) ***Mistake*** is not attended by fault or negligence on part of the accused.

(Distinguish contrasting decisions between ***U.S. vs. Ah Chong*** – 15 Phil. 488 (1910) from ***People vs. Oanis*** – 74 Phil. 257 (1943)

Mo 4) No ***Motive***

No 5) ***No*** reasonable opportunity “to ascertain the facts without risk to himself.”

In ***Oanis***, use of ***excessive force*** negatives accused's defense of honest mistake of fact. If there is negligence, mistake of fact is not exempting but one can invoke ***PRAETER INTENTIONEM***.

(Recall ***AIM/MoNo***)

KINDS OF MISTAKE

- 1) **Error in personae** -- Mistake in person
- 2) **Aberratio ictus** – Mistake in blow
- 3) **Praeter intentionem** – no intent to commit so grave a wrong as that committed

Note: Proximate cause vs. remote cause (See **Urbano vs. IAC**, 157 SCRA 1 (1998); **People vs. Abarca**, 153 SCRA 735 (1987); also **Bataclan vs. Medina**, 102 Phil. 181, p. 74, Reyes)

COMMENTS:

- 1) “By person committing a **felony**, although wrongful act be different from that intended” -- since it refers to a felony, it must be a **mala in se**, and not punishable under special law.
- 2) In **People vs. Abarca**, it must be a “wrongful act” and under **Article 247**, killing is an absolatory cause which is not a wrongful act. Hence, from frustrated homicide/murder, it was downgraded to “physical injuries” for the injuries sustained by the Amparado couple.
- 3) If there is negligence, apply Article 365 (**culpa**), not Article 4 which is more of **dolo**.
- 4) In par. 1 of Article 4, “**inherent impossibility**” refers to “legal impossibility” (theft of one’s own watch) or “**physical impossibility**” (killing a dead person).
- 5) No attempted or frustrated state in impossible crimes.

ARTICLE 5.

Duty of the court in connection with acts which should be expressed but which are not covered by the law, and in cases of excessive penalties. -- Whenever a court has knowledge of any act which it may deem proper to repress but which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of justice, such statement as it may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the 1) degree of malice and 2) the injury causes by the offense.

COMMENTS:

- 1) In 1st par., must acquit because of **NULLUM CRIMEN NULLA POENA SINE LEGE**.
- 2) In 2nd par., in cases of excessive penalties, judge should not suspend execution of sentence but submit recommendation to the Chief Execution/President, through the Secretary of Justice, recommending executive clemency, considering
 - a) Lesser degrees of malice

- b) No injury, or injury is not serious
- 3) Example is wife who killed husband who kept a mistress, and beat her repeatedly.

ARTICLE 6.

Consummated, frustrated and attempted felonies. -- Consummated felonies, as well as those which are frustrated and attempted, are punishable.

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

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

STAGES OF EXECUTION

- 1) **Consummated** – all elements necessary for EXECUTION and ACCOMPLISHMENT are present.
- 2) **Frustrated** -- all acts of EXECUTION performed but not produce felony as a consequence by reason of Causes Independent of the will of perpetrator. (Recall Caln)
- 3) **Attempted** – commences commission of felony directly by overt acts, but not perform all acts of EXECUTION by reason of some Cause Or Accident other than his own spontaneous desistance.) (Recall CorA)

COMMENTS:

1) Use of firearm:

a) If X shot Y and Y was hit only on the thigh, or arms, with intent to kill because Y was running away – crime is **attempted homicide/murder**. (because not all acts of execution were performed because of CorA)

b) If X shot Y and Y was hit with a mortal wound on the head, or heart but survived due to medical intervention – crime is **frustrated homicide/murder** (because all acts of execution are present due to mortal wound but crime not accomplished because of Caln)

c) If X shot Y and Y suffered a mortal wound on the head and he subsequently died – crime is **consummated homicide/murder** (because all acts of execution and accomplishment are present).

2) In case of rape:

a) If X tried to commence sexual intercourse, but because of Y's resistance, and he was distracted and scared for fear of discovery -- crime is **attempted rape**. (because not all acts of execution were performed because of CorA)

Cite *People vs. dela Pena*, 233 SCRA 573 (1994)

Facts: Accused dela Pena waylaid 9-year-old Rose Marasigan on her way to school. Due to her resistance, and then playing dead, the accused panicked, could not get an erection, and fled. Valenzuela RTC held it's consummated rape and penalty was **reclusion perpetua**.

Held: SC, however, modified Valenzuela RTC decision and held it's **only attempted rape**. Although mere touching consummates rape, rape presupposes an erect penis because without erection, there can be no penetration, no matter how slight, and without penetration, there can be no consummation.

Cite *People vs. Campuhan*, (2000 case)

Facts: Mother saw accused and houseboy Campuhan in the act of almost raping her 4-year-old daughter in a kneeling position. Medical findings indicated hymen was still intact but since in **previous Orita ruling** entry into **labia** without rupture of hymen already consummated rape, issue is whether or not its consummated, or attempted, rape only.

Held: SC held it's **attempted rape** only. Touching here means the penis indeed touched the **labia** and slid into the female organ, and not merely stroke the external surface. Some degree of penetration beneath the surface must be achieved, and the **labia majora** must be entered. Victim herself testified that penis grazed but did not penetrate her organ.

"There was only a shelling of the castle, but no bombardment of the drawbridge yet."

b) If X shot Y and Y was hit with a mortal wound on the head, or heart but survived due to medical intervention – crime is **frustrated homicide/murder** (because all acts of execution are present due to mortal wound but crime not accomplished because of **Caln**)

Cite *People vs. Orita*, 184 SCRA 105 (1990)

Facts: Accused PC soldier Orita followed 19-year-old Cristina Abayan from party, used knife to force her to have sexual intercourse, but while on top, she managed to escape. Samar RTC convicted him of frustrated rape and case went on appeal.

Held: SC held it's **consummated rape**, and not mere frustrated rape only. Citing ***People vs. Erinia***, no frustrated stage anymore and ***Erinia*** ruling was a stray decision. It is settled that slight penetration consummates rape, and perfect penetration not essential. Mere touching of lips of vagina, without laceration of vagina or emission, already consummates rape.

3) In case of arson:

a) If X was still placing flammable materials in strategic places in Y's house, and arrested, then crime is **attempted arson** only.

b) If X has already finished placing all flammable materials in strategic places in Y's house, and lighted his match but arrested at that point (or wind blow it away), then crime is **frustrated arson**.

c) If X placed flammable materials in Y's house, lighted his match and burned any part of house, no matter how minor, then crime is **consummated arson**.

ARTICLE 7.

When light felonies are punishable. -- Light felonies are punishable only when they have been consummated, with the exception of those committed against persons or property.

ARTICLE 8.

Conspiracy and proposal to commit felony. -- Conspiracy and proposal to commit felony are punishable only in cases in which the law specially provides a penalty therefor.

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

There is a **proposal** when the person who has decided to commit a felony proposes its execution to some other person or persons.

Distinguish **Conspiracy vs. proposal** (Article 8, RPC)

a) Once proposal is accepted, it becomes a conspiracy.

COMMENTS:

1) Conspiracy and proposal to commit a crime are merely **preparatory acts**, within the subjective phase -- hence, the law regard them as innocent or at least permissible, except in certain exceptional cases.

2) Mere proposal to commit treason, rebellion and coup are punishable already.

3) Mere conspiracy to commit treason, rebellion, coup and sedition are also punishable already because of threat to public order.

4) The conspirators should not actually commit treason, rebellion, coup and sedition otherwise, they will be held liable for treason, rebellion, etc, and not mere conspiracy to commit treason, rebellion, etc.

ARTICLE 9.

Grave felonies, less grave felonies and light felonies. -- Grave felonies are those to which the law attaches the **capital punishment**, or penalties which is any of their periods are afflictive, in accordance with Article 25.

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional. x x x

*Light felonies are those infractions of law for the commission of which the penalty of **arresto menor** or a fine not exceeding P200, or both, is provided.*

Classification of felonies:

1) **Grave felonies** -- law attaches capital punishment, or in any of their periods are afflictive.

2) **Less grave felonies** -- law punishes with penalty which in maximum period is correctional.

3) **Light felonies** -- law provides penalty of **arresto menor**, or fine not more than P200, or both, is provided.

COMMENTS:

1) *Article 9 read in relation to Article 25 (Classification of penalties):*

a) **Afflictive** penalties: *Reclusion perpetua, reclusion temporal down to prision mayor.*

b) **Correctional** penalties: *Prision correccional down to arresto mayor.*

c) **Light** penalties: *Arresto menor*

ARTICLE 10.

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

COMMENTS:

1) *The provisions of RPC on penalties cannot apply to offenses punishable under special laws.*

2) *Distinguish **reclusion perpetua** (RPC) from **life imprisonment** (special laws).*

3) *Plea of guilt, attendant circumstances not apply to offenses punishable under special law. eg. No plea of guilt in **R.A. 9165**.*

4) **"Supplementary"** means supplying what is lacking, or additional. *If the special law is silent, then court can apply provisions of RPC in a suppletory effect.*

CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY

1) **JUSTIFYING CIRCUMSTANCES** (Article 11) -- *Act is lawful such that there is no crime and no criminal hence, accused incurs no criminal liability nor civil liability.*

- 2) **EXEMPTING CIRCUMSTANCES** (Article 12) – Act is wrongful, but actor not acted voluntarily, intelligently nor intentionally, neither is there **dolo** or **culpa**. Hence, there is no criminal but there is civil liability, except in **no. 4** (accident) and **no. 7** (lawful, insuperable cause).
- 3) **MITIGATING CIRCUMSTANCES** (Article 13) – there is criminal and civil liability but reduced.
- 4) **AGGRAVATING CIRCUMSTANCES** (Article 14) – There is criminal and civil liability and penalty increased.
- 5) **ALTERNATIVE CIRCUMSTANCES** (Article 15) – It's either mitigating or aggravating depending on the nature and effects of the crime.

JUSTIFYING CIRCUMSTANCES (Article 11)

ARTICLE 11.

Justifying circumstances. -- The following do not incur any criminal liability:

- D** 1) Anyone who acts in Defense of his person or rights, provided the following circumstances concur:
 First. Unlawful aggression.
 Second. Reasonable necessity of the means employed to prevent or repel it.
 Third. Lack of sufficient provocation on the part of the person defending himself.
- R** 2) Anyone who acts in person of the person or rights of his Relatives such as spouse, ascendants, descendants or legitimate, natural or adopted brothers or sisters, or of his relatives by affinity in the same degrees, and those by consanguinity within the fourth civil degree, provided that the first two requisites are present, and in case provocation was given by the person attacked, the one defending had no art therein.
- S** 3) Anyone who acts in defense of Stranger, provided that the first two requisites are present and that the person defending be not induced by revenge, resentment or other evil motive.
- A** 4) Any person who, In order to Avoid evil or injury, does an act which causes injury to another provided the following requisites are present: x x x
- R** 5) Any person who acts if fulfillment of duty or lawful exercise of Right or office.
- A** 6) Any person who Acts in obedience to an order issued by a superior for lawful purpose (Recall **DRSARA**)

1) SELF-DEFENSE

a) Elements of **self-defense**:

- U** 1) Unlawful aggression -- physical act manifesting actual or imminent danger to life or limb.
- R** 2) Reasonable necessity of means employed -- there must be no other means to prevent or repel aggression so means must be reasonable; no excessive force.
- L** 3) Lack of sufficient provocation – or no provocation at all given by person defending himself or provocation not sufficient to cause violent aggression on part of victim.

(Recall URL)

- b) See **People vs. Narvaez** --121 SCRA 389 (1983); and **People vs. Ignacio** – (Feb. 10, 2000)
- c) **Defense of property** cannot justify killing a human being, even an intruder unless there is actual, grave or imminent danger to one's life because mere defense of property can never be equated with value of human life.

COMMENTS:

1) *Self defense here pertains to defense of person or body of person assaulted, his rights to property, and honor prompted by instinct of self preservation and impossibility for State to protect each citizen from unlawful aggression all the time.*

*In self-defense, defense of relative and strangers, most important element is presence of **Unlawful aggression on part of victim**. Without unlawful aggression, there can be no "reasonable necessity" and nothing to prevent or repeal nor "lack of sufficient provocation" on part of accused, which become immaterial.*

2) **UNLAWFUL AGGRESSION:**

*This is equivalent to physical assault or threatened assault which is **IMMEDIATE** (or actual), or at least **IMMINENT**. In other words, there must be a direct, immediate and actual or at least, imminent peril, or threat, to one's life or limb.*

3) **PERIL to one's life:**

- a) **Actual** – danger must be present, or actually exist.)
- b) **Imminent** -- danger is on the point of happening; it's not required that attack already begins, for it may be too late.

4) *A slap on the face constitutes unlawful aggression since face represents a person's dignity and hence, a serious personal attack. But mere insulting words, without actual physical assault, not constitute unlawful aggression to warrant killing.*

5) **RETALIATION** negates self defense. In retaliation, aggression commenced by injured party/victim already ceased when accused attacked him. In self-defense, required that aggression still existing when unlawful aggressor was injured or disabled by person making defense. Hence, there must be no appreciable length of time between aggression made by injured part and killing done by one making defense.

6) *When aggressor flees, there is no more unlawful aggression, except if aggressor flees to take a more advantageous position, like getting a weapon, or asking assistance.*

7) *The rule now is **STAND GROUND WHEN IN THE RIGHT**. So where accused is where he has the right to be, law does not require him to retreat when his assailant is rapidly advancing upon him with a deadly weapon.*

8) Also, there is no unlawful aggression when there is agreement to fight since X and Y here are reciprocal aggressors of each other.

9) **Reasonable belief** can constitute valid self-defense: If X used a toy pistol in assaulting Y, Y may kill X in valid self defense constituting **MISTAKE OF FACT**.

10) **Defense of property** can be invoked as justifying circumstance only when it is coupled with an **attack on the person** of one entrusted with said property.

Cite People vs. Narvaez, 121 SCRA 389 (1983)

Facts: Fleischer and Rubia, with three workers, tried to fence off the property of Narvaez, and rudely awakened him from his nap. When he tried to talk to him, Fleischer berated him instead, saying: **“No, gaddemit, proceed. Go ahead.”** Overcome with passion and obfuscation, he shot Fleischer and when Rubia fled towards the jeep to get a rifle, Narvaez shot him dead too. South Cotabato CFI convicted him for double murder with **two reclusion perpetua**. On appeal, he set up defense of property, particularly **Article 429** (self-help doctrine) which recognizes that “the owner or lawful possessor may use force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.”

Held: SC modified conviction to two homicides only because treachery was negative by passion and obfuscation when he was berated by Fleischer. There was incomplete defense of property because although there was unlawful aggression, and lack of provocation on part of Narvaez, there was no reasonable necessity to kill two victims since the aggression on Narvaez’s property was not coupled with an attack or direct assault on his person. But because of **incomplete defense of property** where two requisites are present, accused was entitled to a lowering by two degrees.

11) REASONABLE NECESSITY:

a) This refers to **RATIONAL EQUIVALENCE** (only what law requires), and not **MATERIAL COMMENSURABILITY**.

If X attacks Y with a bladed weapon, X may use his gun to ward off the aggression.

b) The **“reasonable necessity”** depends upon circumstances, particularly time, location, physical condition, relative size and weight of parties, and kind of weapon used.

c) Means employed by person making defense need only be **RATIONALLY EQUIVALENT OR NECESSARY** to prevent or repel an aggression.

2) DEFENSE OF RELATIVE

a) Elements of **defense of relative**:

U 1) Unlawful aggression;

R 2) Reasonable necessity of means employed; and

P 3) In case Provocation was given by person attacked, one defending had no part therein. (Recall URP)

b) In **People vs. Ricohermorso**, 56 SCRA 431 (1974) the son had prior knowledge that his father, and his brother-in-law were the unlawful aggressors hence, **no defense of relative** can be credited in his favor. Neither was there state of **necessity** or avoidance of greater evil because in holding the arms of the victim's son, he did not prevent, but instead facilitated, even ensured, evil.

COMMENTS:

1) *Covers defense of spouse, ascendants, descendants, legitimate, natural or adopted brothers and sisters or relatives by affinity up to the fourth civil degree.*

2) *The first two requisites must be present, and third, that in case provocation was given by person being attacked, the one defending had "no part therein" meaning, no knowledge, or participation, in the aggression.*

3) *The gauge of **reasonable necessity** in defense of relative is "as it appears to the person repelling the aggression" or that he did not know that his relative commenced the aggression.*

4) *Reason here is that the one defending relative was prompted by some noble or generous sentiment in protecting a relative. But if he knew, he becomes criminally liable, even as a co-conspirator, or at least an accomplice.*

3) DEFENSE OF STRANGER

a) Elements of **defense of stranger**:

U 1) Unlawful aggression;

R 2) Reasonable necessity of means employed; and

N 3) Person defending Not induced by revenge, resentment or other evil motive.

(Recall URN)

b) Check also **Article 69** on effects of incomplete self-defense, defense of relative and defense of stranger – results in lowering of penalty by one degree, provided majority of requisites are present.

COMMENTS:

1) *The first two requisites must be present, and third, that the one defending be not induced by revenge, resentment or other evil motive.*

2) **Strangers** -- any person not included in the enumeration of relatives in par. 2. Hence, second cousins are deemed "strangers," also your "best friend."

3) *Basis: ordinary man is not expected to stand idly while his companion is killed without attempting to save his friend's life.*

4) AVOIDANCE OF GREATER EVIL or INJURY

- E** 1) Evil sought to be avoided actually exists.
G 2) Injury feared Greater than that done to avoid it.
O 3) No Other practical and less harmful means of preventing it.
(Recall EGO)

COMMENTS:

- 1) “Causes damage to another” -- refers to injury to persons and damage to property.
2) 1st requisite: Evil must actually exist and not merely expected or anticipated to happen in the future.
2nd requisite: Instinct of self-preservation makes one feel that his own safety more important than that of another. But greater evil should not be brought about by negligence of the actor, and must not result in violation of a law.

3rd requisite: Although there is no civil liability under **Article 11**, only exception is state of Necessity where civil liability is borne by persons benefited in proportion to extent of benefit received.

- 3) Cite **People vs. Ricohermoso, 56 SCRA 431 (1974)**

FACTS: Geminiano went to house of Ricohermoso to ask for his share in the land cultivated by Ricohermoso which belonged to Geminiano. Ricohermoso, however, unsheathed his bolo and attacked Geminiano from the left while Severo(Ricohermoso’s father-in-law) got an axe and attacked Geminiano from the right. At the same time, Severo’s son suddenly embraced Geminiano’s son, Marianito who was carrying a gun slung on his shoulder, that Marianito fainted. Geminiano died and when prosecuted for murder, Severo’s son invoked Necessity allegedly in order to avoid greater evil or injury.

HELD: SC affirmed conviction of Ricohermoso, Severo as well as Severo’s son, Juan for **Murder** of Geminiano, under theory of conspiracy. Juan cannot invoke avoidance of greater evil because on the contrary, by disabling Marianito, he insured evil to be consummated by “forestalling any interference in the felonious assault.” After all, Marianito’s act of defending his father who was being attacked is not an evil but legitimate defense of relative. This is because it was accused Ricohermoso and Severo who were unlawful aggressors here.

5) FULFILLMENT OF DUTY or LAWFUL EXERCISE OF RIGHT/OFFICE

- Per** 1) Accused acted in **Performance** of duty or lawful exercise of right or office.
Due 2) Injury caused as necessary consequence of **Due** performance of duty or lawful exercise of right or office.

(Recall PerDue)

COMMENTS:

1) **Fulfillment of duty:**

In People vs. Oanis, although Oanis and companion acted in performance of duty, they acted not in due performance thereof because they acted with excessive force in summarily killing the victim without first ascertaining the identity, without any risk to themselves.

In People vs. Delima, police acted in due performance of duty when he shot the fleeing escaped prisoner who refused to part with his bamboo lance and in fact, earlier tried to hit the police with his lance.

6) **OBEDIENCE TO SUPERIOR ORDER**

- O 1) **Order** issued by superior.
P 2) Lawful **Purpose** (or at least patently lawful)
M 3) **Means** to carry out order also lawful.

(Recall OPM)

COMMENTS:

1) Obedience to superior order:

Cite Tabuena vs. Sandiganbayan, 268 SCRA 332 (1997)

FACTS: President Marcos ordered Tabuena, General Manager of MIAA, through a Memorandum to pay P55 million directly to the Office of the President what MIAA owned to PNCC, pursuant to Ongpin memorandum. As instructed, Tabuena delivered in three installments, on January 10, 1986 and January 16, 1986 the amounts of P25 million, respectively, and on January 31, 1986 the remaining P5 million. Sandiganbayan convicted Tabuena for Malversation and case appealed.

HELD: SC reversed Sandiganbayan decision, and acquitted Tabuena, and Peralta, for Malversation. Tabuena is entitled to the justifying circumstance of "obedience to superior order" since the order was patently lawful to pay an existing obligation, and he as subordinate was not aware of the illegality. In brief, he was acting in an **honest mistake of fact** committed in good faith.

EXEMPTING CIRCUMSTANCES (Article 12)

ARTICLE 12.

Exempting circumstances. -- The following are exempt from criminal liability:

- I** 1) An Insane or imbecile person, unless the latter has acted during a lucid interval. x
x x
- U** 2) A person 15 years of age or Under at the time of the commission of the crime x x
x
- D** 3) A person above 15 years of age but below 18 years old, unless he acted with Discernment, in which case, such minor shall be proceeded against in accordance with **Article 80** of this Code. x x x
- Acc** 4) Any person who, while performing a lawful act with due care, causes an injury by mere Accident without fault or intention of causing it.
- For** 5) Any person who acts under the compulsion of an Irresistible **Force**.
- Fear** 6) Any person who acts under the impulse of an Uncontrollable **Fear**.
- Fail** 7) Any person who **Fails** to perform lawful act when prevented by some lawful or insuperable cause.
(Recall **IUDAccForFearFail**)

1) INSANITY

- a) Basis for exemption is **complete deprivation of intelligence** and complete deprivation or absence of **freedom of will**, not mere feeble-mindedness (Recall “**cognition**” and “**volition**” tests).
- b) Insanity must exist and proven **before and during** commission of crime, **not after** which is already immaterial as defense.
See **People vs. Pambid** – March 15, 2000/**People vs. Puno** – 105 SCRA 151 (1981).
- c) Senility or second childhood is only mitigating.
- d) The **presumption** is that every person is sane hence, one who alleges insanity has the burden of proof of establishing that accused was really insane at the time of the commission of the offense. But once accused has been declared medically insane, the presumption is that he is continuously insane and the burden is on the prosecution to establish that accused, who was medically insane, acted during a **lucid interval**.
- e) Presumption is that child acted **without discernment** and prosecution has burden of proof to show otherwise.

COMMENTS:

- 1) Two tests for insanity:
 - a) Complete deprivation of intelligence (**Cognition test**)
 - b) Complete deprivation of freedom of will (**Volition test**)
- 2) While insanity is not always exempting if insane acts during a lucid interval, imbecility is always exempting. An imbecile is one who, although advanced in age, has low mental development of between 2 and 7 years old.
- 3) Mere abnormality (or mild mental retardation) does not exempt from criminal liability. There must be complete deprivation of intelligence, or **discernment** (capacity to distinguish right from wrong).

4) If A is sane (not hospitalized nor declared insane), burden of proof rests of A as accused to establish that he was insane when he committed crime because presumption is in favor of sanity.

But if A already declared insane/hospitalized, he is presumed to be **“continuously insane”** and burden of proof shifts to B, the victim, to prove that A who injured B acted during a lucid interval.

5) In schizophrenia or split personality, if advanced schizophrenia, it is exempting; if only mild schizophrenia, only mitigating (such illness of the offender which diminishes exercise of willpower of offender without depriving him of consciousness of his actions.)

6) If sane during commission of crime but becomes insane during conviction -- court must suspend service of sentence until he recovers.

7) Evidence of insanity must refer to time immediately preceding and during the commission of the crime. Insanity **subsequent** to the commission of the time will only suspend proceedings, until accused recovers. If accused becomes insane only during service of sentence, accused is hospitalized until he recovers, then resumes service of sentence.

8) Hypnotism and somnambulism can also be exempting, akin to insanity.

2) **15 YEARS OF AGE or UNDER**

a) If 15 years old or under (**ABSOLUTE IRRESPONSIBILITY**) – no criminal and no civil liability.

COMMENTS:

1) 15 years of age or under is exempt from any criminal liability because of **ABSOLUTE IRRESPONSIBILITY**.

2) Reckoning period is age at the time of the commission of the crime, not during the date of his trial.

3) **ABOVE 15 BUT BELOW 18, UNLESS ACTED WITH DISCERNMENT**

EFFECTS OF MINORITY/ DEGREE OF RESPONSIBILITY

a) Under 15 years old, or exactly 15 years old (**ABSOLUTE IRRESPONSIBILITY**)

b) Over 15 years old but less than 18 (with or without discernment (**CONDITIONAL RESPONSIBILITY**).

1) Without discernment – no liability

2) With discernment – mitigated liability (**privileged mitigating**)

d) Over 18 years old and less than 70 years old (**FULL RESPONSIBILITY**) – full criminal and full civil liability.

e) Over 70 years old (**MITIGATED RESPONSIBILITY**) – one degree lower similar to a **privileged mitigating circumstance**.

If death penalty meted out, it shall be suspended, just like a pregnant woman and within one year after her delivery.

COMMENTS:

1) Over 15 years old but less than 18 years of age -- depends on whether or not he acted **“with discernment.”** Discernment means capacity to appreciate the moral consequences of his unlawful act, or distinguish difference between right or wrong.

2) If minor is adjudged criminally irresponsible for acting “with discernment,” he enjoys suspended sentence under **P.D. 603.**

a) If behaves properly – case dismissed.

b) If misbehaves/incorrigible -- go back to court for execution of judgment.

c) Meantime, time spent under detention -- deducted from actual service of sentence imposed.

If penalty less than 6 years -- can apply for probation.

3) When minor is disallowed from availing of suspended sentence:

a) If penalty is death or life imprisonment.

b) If availed of suspended sentence once before (incorrigible).

c) Upon conviction, already over 18 years of age already.

4) ACCIDENT

A 1) Accused performing a lawful Act.

C 2) With due Care.

I 3) Causes Injury to another by mere accident.

N 4) No fault or intention of causing it.

(Recall ACIN)

COMMENTS:

1) **Accident** defined:

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

2) If, however, the consequences are foreseeable, and injury occurs due to act of accused, it is a case of negligence, and accused not exempt from criminal liability.

3) If X shot the ground to stop a quarrel, and Y, a bystander, was hit and killed -- crime is **Reckless imprudence resulting in homicide**, and not an accident because the consequence was foreseeable because crowded place.

4) Repeated blows and excessive force negatives accident.

5) **IRRESISTIBLE FORCE**

a) Basis is complete absence of **FREEDOM**, or **VOLUNTARIESS**.

b) Elements of **irresistible force**:

P 1) Compulsion by means of **physical** force.

I 2) Physical force is **Irresistible**.

T 3) Physical force from **Third person/outsider**.

(Recall **PIT**)

c) Force which renders victim to a mere instrument without any freedom hence, incapable of committing a crime.

See **People vs. Lorenzo**, 130 SCRA 311 (1984); **People vs. Foronda**, 222 SCRA 71 (1993)

COMMENTS:

1) **Force** here must be **so irresistible** as to reduce actor to a mere instrument who acts not only without a will, but even against his will. Actor thus acts without freedom, intelligence or intent.

2) There is physical violence employed which must be present and actual, or imminent and impending inducing a well-grounded apprehension of death of serious bodily harm if act is not done by actor. Threat of future injury is not enough.

3) Also, the compulsion is such character that there is **“no opportunity for escape”** nor **“self defense in equal combat.”**

6) **UNCONTROLLABLE FEAR**

Gr 1) Threat causes fear of equal, or **Greater** evil than that required to commit it.

Im 2) Evil so **Imminent** and grave that ordinary man would succumb to it.

(Recall **GrIm**)

COMMENTS:

1) This refers more to something like **psychological threat**, not force or physical violence of irresistible force.

2) The fear of **“greater evil”** must be so grave and imminent that ordinary man would have succumbed to it.

3) Threat is also not remote, fanciful or speculative, but actual or at least imminent and impending. Not threat of mere future injury.

4) Like irresistible force, there is **“no opportunity for escape”** nor **“self defense in equal combat.”**

7) **FAIL DUE TO LAWFUL/INSUPERABLE CAUSE**

Fa 1) Accused **Fails** to perform an act.

Re 2) Act **Required** by law to be done.

In 3) Failure due to lawful or **Insuperable** cause.

(Recall **FaReIn**)

See *People vs. Bandian*, 63 Phil. 530 (1936)

ABSOLUTORY CAUSES

- a) Distinguish *Entrapment* vs. *Instigation*
See *Araneta vs. CA*, 142 SCRA 532 (1986)

COMMENTS:

1) Example is a public officer who fails to deliver the person arrested within 36 hours to the proper judicial authority because of the distance which required a journey of three days. Should have been liable for arbitrary detention except for a “**lawful, insuperable cause.**”

2) Also refers to **ABSOLUTORY CAUSE** were act committed should have been a crime but for reasons of public policy and sentence, no penalty is imposed.

3) Distinguish **ENTRAPMENT vs. INSTIGATION:**

a) In **entrapment**, the police officer merely facilitates or provides ways and means/ opportunity for accused to execute accused’s criminal design crime and arrests the accused in the act. The original **mens rea**, however, still emanates from the accused hence, it is not a bar for prosecution.

b) In **instigation**, the police officer himself directly induces or instigates accused to commit a crime and arrests him in the act. **Mens rea** here emanates from police officer himself who becomes a **principal by inducement**. Hence, this is a bar for prosecution.

4) Cite *Araneta vs. CA (1986)*

Facts: Petitioner Aquilina Araneta approached and suggested to Mrs. Yopongco for the former to facilitate Mrs. Yopongco’s claim for death benefits of her husband under Workmen’s Compensation. Ms. Araneta was caught in the act of receiving money and convicted by lower court. On appeal, she interposed the defense of instigation.

Held: SC affirmed her conviction because it was Ms. Araneta who initiated the idea of Ms. Yopongco. The **mens rea** came from her hence, it was a **legitimate entrapment**, and not unlawful instigation.

MITIGATING CIRCUMSTANCES

ARTICLE 13.

Mitigating circumstances: The following are mitigating circumstances.

- N** 1) Those mentioned in the preceding chapter, when **N**ot all requisites to justify or exempt the act are attendant.
- U** 2) That the offender is **U**nder eighteen (18) years of age or over 70. In the case of the minor, he shall be proceeded against in accordance with Article 80.

- I* 3) That the offender had no Intention to commit so grave a wrong as that committed.
- S* 4) That Sufficient provocation or threat on the part of the offended party immediately preceded the act.
- A* 5) That act was committed in ImmEDIATE vindication of a grave offense to the one committing a felony x x x.
- N* 6) That of having acted from an impulse so powerful as Naturally to produce passion and obfuscation.
- S* 7) That offender voluntarily Surrenders or confesses his guilt prior to the presented of evidence for the prosecution. .
- S* 8) That offender is deaf, dumb or blind or Suffering from physical defect which restricts his means of action, defense or communication with his fellow beings.
- I* 9) Such Illness of the offender which would diminish exercise of willpower without depriving him of consciousness of his acts.
- N* 10) Other circumstances of similar or analogous Nature.
(Recall **NUISANSSIN**)

a) Distinguish ordinary mitigating from privileged mitigating

Privileged mitigating:

- 1) ***Above 15 but less than 18 years:*** Penalty always one degree lower than that prescribed by law.
- 2) ***Incomplete justifying or exempting:*** lower by at least one degree provided majority of the conditions to justify or exempt are present.
- 3) ***Two or more mitigating and no aggravating:*** always lower by one degree. But if there is ***one aggravating***, lower only to the minimum period of the prescribed penalty and not lower it by degree, regardless of number of mitigating circumstances.

COMMENTS:

1) *Mitigating circumstances do not justify or exempt from criminal and civil liability, but merely reduces liability of the offender.*

Basis is the diminution of freedom of action, intelligence or intent, and on the milder, or lesser, perversity of the offender.

2) ***Effects of ordinary/privileged mitigating:***

a) *Ordinary mitigating is susceptible of being offset by any aggravating circumstance; while privileged mitigating cannot be offset by aggravating circumstance.*

b) *Ordinary mitigating lowers it to minimum period, if not offset by aggravating circumstance; while privileged mitigating lowers it not only to period, but by an entire degree than that provided by law. (eg. Minority of 15 but less than 18 years old)*

1) INCOMPLETE JUSTIFYING OR EXEMPTING

- a) Unlawful aggression must always be present to constitute incomplete justifying or exempting.
- b) If there are three requisites, at least two must be present to effect a lowering by one degree.

COMMENTS:

- 1) *Incomplete justifying include:*

- a) *All six justifying circumstances when not all requisites attendant. (But first, **unlawful aggression** must be present in self defense, defense of relative/stranger)*
- b) *Exempting such as Minority, Accident, and Uncontrollable fear.*

- 2) *Example is **People vs. Narvaez** where it could have been legitimate defense of property, except that “**reasonableness of means employed**” to prevent or repel aggression was not attendant.*

2) OVER 15 BUT UNDER 18 YEARS OF AGE or OVER 70 YEARS OLD

- a) If minor more than 15 years old but less than 18 years and acted **with discernment** – court shall apply suspended sentence under **P.D. 603**.
- b) If more than 15 but less than 18 years – always one degree lower (**privileged mitigating**)

COMMENTS:

- 1) *The **AGE** of accused at time of commission of crime determines whether or not avail of this mitigating circumstance.*
- 2) **Over 70 years old:**
- a) *It is ordinary mitigating circumstance only.*
 - b) *It becomes privileged mitigating if the offender committed an offense punishable by **death** (Article 47, par. 1) and when death sentence already imposed, it shall be suspended and commuted.*

3) NO INTENT TO COMMIT SO GRAVE A WRONG

- a) Must be a notable and evident **DISPROPORTION** of the **means employed** and the **resulting INJURY**.
- b) Basis is **INTENTION** when crime actually committed, not when crime planned.

COMMENTS:

- 1) **INTENTION** being internal, the intent to kill or not is judged based on the overt acts and means employed.

2) *Basis: the weapon used, the part of body injured, the injury inflicted, and the manner injury is inflicted determine whether or not accused intended the wrong committed.*

If X boxed Y at the stomach, no intent to kill. But if Tyson boxes Y at the stomach, intent to kill can be inferred because Tyson is a professional boxer.

4) SUFFICIENT PROVOCATION OR THREAT IMMEDIATELY PRECEDED ACT

Pr 1) *Provocation* must be sufficient.

Of 2) Provocation originated from **Offended** party; and

Im 3) *Immediately* preceded the act.

(Recall **PrOfIm**)

a) See requisites (Recall **PrOfIm**)

b) Must **immediately precede** the criminal act coming from the offended party in order for it to be a mitigating circumstance.

c) See **People vs. Pagal**, 79 SCRA 570 (1977) where both accused killed their former employer due to previous maltreatment. SC, however, did not credit in their favor sufficient threat or provocation because maltreatment as a source of provocation was not immediate, but happened several weeks, or months, prior to the killing.

COMMENTS:

1) *“Sufficient provocation” means adequate to excite a person to commit the wrong, and must be proportionate to its gravity.*

2) *“Provocation” means any unjust or improper conduct or act of offended party which is capable of exciting, inciting or irritating anyone to the point of triggering the attack.*

3) Provocation must be **IMMEDIATE** or immediately **PRECEDE commission of crime**.

4) Also, provocation must originate or come from offended party.

Eg. A immediately stabbed B for calling him a thief or wife shot husband who boxed her and maltreated her repeatedly.

5) IN IMMEDIATE VINDICATION OF A GRAVE OFFENSE.

a) Felony must be committed in **immediate vindication** of a grave offense done on the offended, his spouse, ascendant, descendant, etc. **“Immediate”** here means **“proximate”** allowing a lapse of a period of time.

b) See **People vs. Parana**, 64 Phil. 331 (1937) where SC lowered crime from murder to homicide and credited as mitigating circumstance **“immediate vindication of a grave offense”** after accused was slapped by Mr. Montinola the night before, although the killing happened the following morning already, after several hours had already lapsed.

- c) Distinguish **Sufficient Provocation** from **Immediate Vindication**
- 1) In **provocation**, cause need not be grave offense; in **vindication**, cause must be a grave offense.
 - 2) In **provocation**, cause must be immediate; in **vindication**, cause need not be immediate, but only **proximate**.

COMMENTS:

- 1) Unlike sufficient provocation where provocation must immediately precede the act, "**immediate vindication**" means "**proximate**." Probably because offense to honor lingers longer and is worse than mere provocation.
- 2) Basis for determining gravity of offense in vindication are as follows: social standing of accused, the place, the time, the persons witnessing the incident when insulted was hurled.

6) IMPULSE SO POWERFUL AS NATURALLY TO PRODUCE PASSION OR OBFUSCATION.

- a) See requisites of **passion or obfuscation**
- b) Must arise from legitimate feelings and emotions like intense jealousy arising from married or amorous relations (**People vs. Mui** – 117 SCRA 696(1982) but not if coming from a spirit of lawlessness, or if stemming from carnal lust. (**People vs. Aquino** – January 20, 2000).
- c) This can never co-exist with **evident premeditation** which requires lapse of time to premeditate the commission of the offense.

COMMENTS:

- 1) Basis: causes naturally producing in a person powerful excitement or uncontrollable fury that he loses his reason and self-control, thereby diminishing the exercise of his willpower.
- 2) Even if there is passion and obfuscation, if committed in a spirit of lawlessness (like vengeance or retaliation) cannot be basis for this mitigating circumstance. Common-law relationship generally cannot invoke this mitigating circumstance, except where grave abuse was evident against the other.
- 3) Vindication of grave offense cannot co-exist with **passion and obfuscation**. Invoke only one. If longer period of time, preferable to invoke **vindication of grave offense**.
- 4) Neither can one invoke both "**sufficient provocation**" as well as "**passion and obfuscation**." Invoke only one.
- 5) Passion and obfuscation incompatible with treachery. This is because passion and obfuscation means overcome by raging fury that he loses his self-control at the spur of the moment ("**nabigla**") while treachery means offender

consciously and deliberately adopted means, methods in attack. (“hindi biglaan”).

7) VOLUNTARY SURRENDER OR CONFESSION OF GUILT.

a) Requisites of **voluntary surrender**:

- Not** 1) That offender was Not actually arrested yet;
Su 2) That offender Surrenders to a person In authority; and
Vo 3) That surrender is Voluntary and unconditional and not because there is no means for escape.

(Recall **NotSuVo**)

See **People vs. Dulos**, 237 SCRA 141 (1994)

b) Requisites of **voluntary plea of guilt**:

- C** 1) Confess his guilt spontaneously.
O 2) It is done is Open court; and
P 3) Done Prior to presentation of evidence for prosecution.

(Recall **COP**)

See **People vs. Jose**, 37 SCRA 450 (1971)

c) In both instances, just like all ordinary mitigating circumstances, it will lower the penalty to **minimum period** and if two ordinary mitigating circumstances are present without any aggravating, it lowers penalty by **one degree**.

d) These are two separate and distinct mitigating circumstances.

COMMENTS:

1) **Basis for mitigation:**

- a) *He acknowledges his guilt (remorse) hence, lesser perversity.*
b) *Saves government from trouble and expense of arresting him.*

2) **Voluntary surrender:**

- a) *Must not be cornered yet hence, spontaneous.*
b) *If warrant of arrest already issued, yet returned unserved because accused cannot be located, surrender still voluntary.*

2) **Must own up to the crime committed.** *Merely requesting a policeman to accompany him to headquarters without admitting liability is not voluntary surrender.*

3) *In **People vs. Dulos**, 237 SCRA 141 (1984) after accused military officer shot GRO Susan’s boyfriend after Susan left with her boyfriend after receiving P500 from Dulos’ group, he went to Camp Siongco. Dulos was not placed under custody of military authorities as he was free to roam. Although accused*

claimed to have surrendered his gun to his superior officer Maj. Bermones this is not voluntary surrender contemplated by law.

4) **Plea of guilt:**

a) *Plea of guilt must be made before presentation of evidence for prosecution. If plea of guilt on appeal, not considered mitigating.*

b) *Extrajudicial confession not mitigating, because it must be made in open court.*

c) *Once prosecution starts presenting first witness, no more plea of guilt allowed.*

d) *A conditional plea of guilt is not mitigating. Because a "plea of not guilty" will be entered if accused puts a condition.*

5) Cite **People vs. Jose (1971)** -- When his co-accused were convicted and sentenced to death, Pineda argued that it was the duty of the court to insist on his presence during all stages of the trial. SC, however, said that while a plea of guilt is mitigating, it also constitutes an admission of all the material facts alleged in the **Information**, including all the attendant aggravating circumstances. Since Pineda pleaded guilty, it was not incumbent upon the trial court to receive his evidence, or require his presence in court.

8) **OFFENDER IS DEAF, DUMB OR BLIND OR SUFFERING FROM PHYSICAL DEFECT.**

a) The physical defect must affect the means of action, defense or communication of the offender with his fellow human beings.

COMMENTS:

1) **"Physical defect"** here refers to being armless, cripple, or a stutterer, whereby his means to act or defend himself or communication with his fellow human beings is limited.

2) **Basis:**

Because offender is deaf, dumb or blind, he has no complete freedom of action and there's diminution of freedom/ voluntariness. But this must be related to the capacity to commit offense.

9) **SUCH ILLNESS OF THE OFFENDER WHICH RESTRICTS HIS MEANS OF ACTION, ETC.**

a) Such illness must only **diminish** the exercise of the willpower of the offender but must **not** deprive him of the consciousness of this acts; otherwise, it will be exempting.

COMMENTS:

1) Refers to a diseased mind but not amounting to insanity -- such as "mild behavior disorder," "post-traumatic stress disorder," or "**acute neurosis**."

2) Diseases of a pathological state which trouble the conscience or will, like a mother who, under influence of a puerperal fever, killed her child the day following her delivery.

3) Cite case of **People vs. Bandian** should also apply here.

10) OTHER CIRCUMSTANCES OF SIMILAR OR ANALOGOUS NATURE.

a) Similar to mitigating circumstances found in paragraphs 1 to 9 of Article 13.

COMMENTS:

1) Analogous circumstances:

- a) Over 60 years old, and with failing eyesight.
- b) Voluntary restitution of property stolen by accused or immediate restitution of amount malversed is akin to voluntary surrender.
- c) Testifying for the prosecution is analogous to voluntary surrender.

AGGRAVATING CIRCUMSTANCES (Article 14)

ARTICLE 14.

Aggravating circumstances. – The following are aggravating circumstances.

- A** 1) That Advantage taken by the offender of his public position.
- I** 2) That crime be committed in Contempt of, or Insult to public authorities.
- D** 3) That act be committed with insult or Disregard due the offended party by reason of rank, age, or sex, or it be committed in the Dwelling of the offended party, if latter gave no provocation.
- A** 4) That act be committed with Abuse of confidence or obvious ungratefulness.
- D** 5) That crime be committed in the Palace of Chief Executive, or in his presence, or where public officers are engaged in the Discharge of their functions, or in a place Devoted to religious worship.
- U** 6) That crime be committed in the nighttime, Uninhabited place, or by a band whenever such circumstances may facilitate the commission of the offense.
- S** 7) That crime be committed on occasion of a Shipwreck, earthquake, or other calamity or misfortune.
- A** 8) That crime be committed with the Aid of armed men who insure or afford impunity.
- R** 9) That accused is a Recidivist.
- P** 10) That accused has been Previously punished for an offense...
- P** 11) That crime be committed in consideration of a Prize, reward or promise.

- I* 12) That crime be committed by means of Inundation, fire, poison, explosion, or by use of any other means involving great waste or ruin.
- E* 13) That crime be committed with Evident premeditation.
- E* 14) The craft, fraud or disguise be Employed.
- A* 15) That Advantage be taken by the offender of superior strength, or means employed to weaken the defense.
- T* 16) That crime be committed with Treachery. There is treachery when x x x
- M* 17) That Means employed or circumstances brought about which add ignominy to the natural effects of the crime.
- E* 18) That there is unlawful Entry or when entrance is effected by a way not intended for the purpose. .
- D* 19) That a wall, Door or window be broken.
- S* 20) That crime be committed with aid of of minors below 15 years of age, or by means of motor vehicle, motorized watercraft, airship, or other Similar means.
- A* 21) That wrong done in the commission of the crime be deliberaely Augmented by causing other wrong not necessary for its commission.
- (Recall AIDADUSAPIEEATMEDSA)

1) **GENERIC AGGRAVATING**

- a) Generally applies to all crimes, and if there is qualifying circumstance like treachery in murder, the other aggravating become mere **GENERIC AGGRAVATING**;
- b) Can be offset by ordinary mitigating circumstance and may be proved even if not alleged in **Information**;
- c) If not offset, serves to increase penalty to maximum period of penalty prescribed by law.

2) **QUALIFYING AGGRAVATING**

- a) Changes the nature of the felony itself, like abuse of trust and confidence in theft, making it qualified theft instead of simple theft.
- b) Cannot be offset by ordinary mitigating circumstance and cannot be proved if not expressly alleged in **Information**.
- c) Cannot be offset by ordinary mitigating circumstance because it changes not only nature but also name of offense itself, that offender becomes liable for a new and more serious offense.

3) **INHERENT AGGRAVATING**

- a) Considered integral part of the felony already, like unlawful entry in robbery with force upon things and does not increase the penalty.

COMMENTS:

- 1) *Qualifying circumstances:*
- a) *Changes the nature of the crime*

b) *Changes the designation of the offense*
Hence, they must be alleged in the **Information** otherwise, they only become generic aggravating circumstances if proven during trial.

2) *Qualifying circumstances must also be proven beyond reasonable doubt because they increase penalty by **DEGREE, not only by PERIOD.***

Eg. If qualified rape because incestuous rape and victim under 18, or victim is below seven years old, penalty is mandatory death.

1) That Advantage taken by the offender of his public position

a) The offender must be a public officer who availed of influence or reputation inherent in his position to commit crime.

b) Not appreciated when it is in an inherent element of the crime.

c) See **People vs. Gapain**, 231 SCRA 728 (1994)

COMMENTS:

1) *Offender must be a public officer who deliberately took advantage of his public position to commit crime. (A jail warden who maltreats a prisoner under his custody.*

2) *Cannot be considered aggravating if already made an integral element of crime, as in Article 171. (eg. A DECS cashier who falsified check from P100,000.00 to P100,00.00 and pocketed the difference).*

2) That crime be committed in Contempt of, or Insult to public authorities.

a) Public authority is not the person against whom crime is committed otherwise, could be direct assault.

b) Requisites: Offended party is engaged in exercise of his functions and despite offender's knowledge that offended party is public authority, offender committed crime in presence of public authority.

c) See **People vs. Rodil**, 109 SCRA 308 (1981)

COMMENTS:

1) *Basis: Lack of respect for persons in authority*

2) *Must be committed in the presence of a PIA, and not a mere agent.*

3) **Person in authority** -- a public officer who is directly vested with jurisdiction, that is a public officer who has the power to govern and execute the laws. (eg. A councilor, mayor, government, barangay captain, and now school teacher, town or municipal health officer, agent of BIR, chief of police)

4) **Agent of a PIA** -- a subordinate public officer charged with the maintenance of public order and protection and security of life and property.

(eg. A barrio policeman, councilman, and any person who comes to the aid of a PIA)

5) *Crime should not be committed against public authority, or else it becomes direct assault.*

Lack of knowledge that he is a PIA is a defense since offender had no intention to insult public authority.

3) That act be committed with Disregard due the offended party by reason of rank, age, or sex, or it be committed in the Dwelling of the offended party.

a) *This applies only to crimes against persons or honor.*

b) *This does not apply when offender acted with passion or obfuscation.*

c) See **People vs. Mandolado**, 123 SCRA 128 (1983)

COMMENTS:

1) *If all four aggravating circumstances are present, they shall be considered only as one.*

2) *Disregard on account of **RANK** – there must be a disparity in rank, like an attempt on the life of a general by a mere sergeant.*

a) *Cite **People vs. Rodil (1981)***

3) *Disregard on account of **AGE** – the victim must be either too young or too old and the offender rather strong, such as when aggressor is 45 years old and the victim is an octogenarian.*

4) **Disregard on account of SEX** – *the victim must be female.*

a) *This aggravating circumstance of disregard of SEX not attendant when the offender acted with passion and obfuscation.*

b) *When condition of being a woman is indispensable in commission of the crime, like rape or forcible abduction.*

5) **Disregard of DWELLING** – *refers to building or structure, exclusively used for rest and comfort.*

a) *Combination of house and store or a market stall where victim slept is not a “dwelling.”*

b) *Basis: Violation of sanctity of privacy and abode.*

c) *This does not apply if offended party gave the provocation.*

d) *Dwelling is aggravating, even if offended did not enter the upper part of the house where where victim was, but shot from under the house.*

e) *Even if killing took place outside dwelling, it applies if commission of crime begun in the dwelling. Also, dwelling includes dependencies, the foot of the staircase, and enclosures under the house.*

6) DWELLING NOT APPLICABLE:

- a) When both offender and offended party are occupants of the same house.
- b) When dwelling is inherent in crime: robbery by use of force upon things, or trespass to dwelling.
- c) Where dwelling where crime was committed did not belong to the offended party (stranger or guest only) but a victim raped in the boarding house where she is a bedspacer constitutes "dwelling."

Cite People vs. Daniel (1978)

4) That act be committed with Abuse of confidence or obvious ungratefulness.

- a) There must be a relationship of trust and confidence and offender abused such trust and such abuse facilitated commission of the crime.
- b) Relationship of trust and confidence must be:
 - 1) Immediate and
 - 2) Personal.

COMMENTS:

1) ABUSE OF CONFIDENCE:

- a) This is inherent and not aggravating in Malversation, Qualified theft, Estafa by conversion, and Qualified seduction.

2) OBVIOUS UNGRATEFULNESS:

- a) The ungratefulness must be obvious, manifest and clear.

Cite People vs. Mandolado (1983)

FACTS: Mandolado and three others, who were trainees/draftees of AFP, just knew each other and got drunk on a bus terminal. Mandolado and his companion suddenly started firing.

HELD: SC held there is no "obvious ungratefulness" here because the accused and the victims only met for the first time hence, no personal and immediate relationship upon which confidence might rest between them.

5) That crime be committed in the Palace of Chief Executive, or in his presence, or where public officers are engaged in the Discharge of their functions, or in a place Devoted to religious worship.

- a) Necessary to show that accused deliberately and consciously sought any of these places to facilitate the commission of the crime.

COMMENTS:

1) PLACE WHERE PUBLIC AUTHORITIES ENGAGE IN DISCHARGE OF DUTIES:

a) Public authorities must be in their office discharging their public functions; and public authority may be the offended party.

2) CONTEMPT OF OR INSULT TO PUBLIC AUTHORITIES:

a) Public authorities are outside their office; and public authority should not be the offended party.

3) If it is Malacanang, always aggravating. Also if involves the President who need not be in the Palace. His presence alone in the place enough to constitute this as aggravating.

4) Cemetery is not a place devoted for religious worship.

6) That crime be committed in the nighttime, Uninhabited place, or by a band.

a) **Nighttime** means literally “nocturnity” or nighttime, not mere absence of light such as in a movie house; nighttime must also be consciously and deliberately adopted in order to facilitate commission of crime, avoid detection or arrest, and ensure or afford impunity.

b) **Uninhabited place** means there is no opportunity to ask for help although not literally isolated or uninhabited (See *People vs. Desalisa*, 299 SCRA 35 (1994) where **uninhabited place** was considered aggravating because of shrubs and trees rendering assistance nil or unavailable, even if it was not actually uninhabited because of the presence of neighbors, who are relatives of the victim.

c) **By a band** means at least four armed men, or malefactors. Each of them must be armed since if one of the four is not armed, band is not aggravating.

d) Offender must be shown to especially seek these circumstances to ensure commission of crime; or offender took advantage thereof to insure or afford impunity.

COMMENTS:

1) These three aggravating can be considered SEPARATELY.

2) Aggravating if:

a) When it facilitated the commission of the crime.

b) When offender especially sought it to insure commission of crime for purpose of affording impunity (avoiding arrest), or facilitating means of escape, or to insure concealment of offense.

3) NIGHTTIME

a) Crime must begin and accomplished in nighttime.

b) Crime actually committed in darkness of night. Does not apply if place is well-lighted.

c) This literally means “nocturnity” or from dusk till dawn. Dark place like theater not nighttime.

4) **UNINHABITED PLACE**
a) Could be **LITERAL** or where there are no other houses or isolated place. Or **FIGURATIVE** where there is no reasonably possibility of victim getting help.

b) Cite **People vs. Desalisa, 299 SCRA 35 (1994)**

5) **BAND**
a) Whenever more than 3 armed malefactors shall have acted together in the commission of an offense, it is a **BAND**.

b) All four armed men must take direct part in the commission of offense. If one of four armed men is a mere inducer, not a band.

c) **"Band"** is considered in crimes against property, but not in crimes against chastity.

d) Band is inherent in **BRIGANDAGE** hence, not aggravating here.

7) **That crime be committed on occasion of a Shipwreck, earthquake, or other calamity or misfortune.**

a) Requisites:

1) There is a calamity or misfortune.

2) Offender took advantage of the chaotic condition from such misfortune.

b) Basis of penalty: Commission of the crime adds to the suffering of the victim by offender taking advantage of the calamity or misfortune instead of helping the victim, showing greater perversity of the offender.

COMMENTS:

1) Basis: Greater perversity of accused who, in the midst of a great calamity, instead of helping would add to the suffering of victims by taking advantage of their misfortune.

2) **"Other calamity or misfortune"** refers to other ocnditions of distress like conflagration, shipwreck, earthquake or epidemic.

8) **That crime be committed with the Aid of armed men who insure or afford impunity.**

a) Requisites:

1) That armed men took part in commission of the crime.

2) That accused availed himself or relief upon their aid to commit crime.

b) If there are more than three armed men, aid of armed men is absorbed in the employment of a **band**.

COMMENTS:

1) This shall not apply when the attacking party and party attacked were equally armed.

2) If there are four armedmen, "**aid of armed men**" is absorbed by band. Armed men include "**armed women.**"

9) **That accused is a Recidivist.**

a) *Requisites:*

- 1) Offender is on trial for one offense.
- 2) He was previously convicted by final judgment of another crime.
- 3) Both first and second offenses are embraced in the same Title.
- 4) Offender is convicted of the new offense.

b) What controls is the **time of trial**, not the time of the commission of the offense. Time of trial means from arraignment *until after sentence is announced* by the judge in open court.

COMMENTS:

1) Section 7 of Rule 120 provides when judgment in a criminal case becomes final:

- a) After lapse of period for perfecting an appeal.
- b) When sentence has been partially or totally satisfied or served.
- c) When defendant expressly waived his right to appeal.
- d) When accused applied for probation.

2) There is **recidivism** even if the lapse of time between two felonies is more than ten (10) years. Recidivism taken into account no matter how many years intervened between 1st and 2nd felonies.

3) Pardon does not obliterate fact that accused was a recidivist. But amnesty extinguishes penalty and its effects.

4) Cite **People vs. Molina (2000)**

10) **That accused has been Previously punished for an offense**

a) *Requisites:*

- 1) Accused is on trial for an offense.
- 2) Accused has previously served sentence for another offense, to which the law attaches an equal or greater penalty, or for two or more crimes to which it attaches a lighter penalty than that for the new offense.

b) ***Recidivism vs. Habituality (Reiteracion):***

1) In **recidivism**, enough that accused previously convicted by final judgment of an offense; in **habituality**, offender must be previously punished (must actually serve sentence for first offense).

2) In **recidivism**, two offenses must be embraced in same title of RPC; in **habituality**, two offenses need not be embraced in same Title of RPC.

Habitual delinquency -- within ten (10) years from last release or last conviction, of the crimes of *Falsification, Robbery, Estafa. Theft, Serious or Less serious physical injuries* (Recall **FRETSel**), the offender is found **GUILTY** of any of said crimes a third time or oftener. **Ten years** from last release, or last conviction.

COMMENTS:

1) *Four kinds of Repetition:*

a) **RECIDIVISM**

b) **REITERACION** (HABITUALITY)

c) **HABITUAL DELINQUENCY** (MULTI-RECIDIVISM)

d) **QUASI-RECIDIVISM** -- Any person who shall commit a **FELONY** after having been convicted by final judgment, before beginning to serve sentence, or while serving th same, shall be punished by **MAXIMUM** period of penalty prescribed by law for the **NEW FELONY**.

2) *Cite **People vs. Dioso, 132 SCRA 616***

11) That crime be committed in consideration of a Prize, reward or promise.

a) *Requisites:*

1) Involves at least two principals: 1st, principal by inducement and 2nd, principal by direct participation. Both equally liable.

2) The price, reward or promise is previous to, and in consideration, of the commission of the criminal act.

COMMENTS:

1) *There must be two ore more principals here, the one who gives or offers the price or promise, and the one who accepts it,*

2) *When this is present, both are liable. Evidence must show that one of accused used money or other valuable consideration to induce another to perform the unlawful act.*

12) That crime be committed by means of Inundation, fire, poison, explosion, or by use of any other means involving great waste or ruin.

a) *The wasteful means used by offender to accomplish the criminal purpose.*

COMMENTS:

1) *If crime is arson, use of fire is inherent so absorbed. If someone dies, crime is still arson provided intention was really to put house on fire, not to kill.*

2) *Killing by means of inundation, fire, poison, explosion qualifies killing to **murder**.*

3) *All these must be deliberately used by offender to facilitate commission of crime.*

13) That act be committed with Evident premeditation.

a) *Requisites of evident premeditation:*

T 1) **Time** when offender came to **DETERMINATION** to commit crime; and

A 2) Overt **Acts** indicating that offender clung tenaciously to his determination to commit crime; and

La 3) Sufficient **Lapse** of time between **determination and execution** allowing offender to calmly reflect on consequences of his actions.

(Remember **TALa**)

b) This is **negatived by passion and obfuscation** and two can never co-exist in one crime.

c) See **People vs. Lug-aw**, 299 SCRA 308 (1994)

See **People vs. Ilaoa**, 233 SCRA 231(1994)

COMMENTS:

1) *This means "deliberate, conscious planning" of unlawful act before executing it.*

2) *Cannot be appreciated unless proof as to how and **WHEN** plan was hatched, or what time **ELAPSED** before crime was carried out.*

3) *Conspiracy generally presupposed evident premeditation.*

4) *Evident premeditation, while inherent in robbery, may be aggravating in robbery with homicide if premeditation included the killing of the victim.*

5) *Cite **People vs. Lug-aw**, 299 SCRA 308 (1994)*

FACTS: Victim Pal-loy was fencing boundary limits of land he was farming in Mountain Province when his daughter heard a shot. She immediately went uphill and saw Lug-aw and companion from a distance and her father about to draw his bolo when Lug-aw shot him dead. Lower court convicted accused for **Murder** qualified by treachery and evident premeditation.

HELD: SC reduced murder to **Homicide** only. No evident premeditation because no proof as to the initial attack or that accused had sufficient time to reflect coolly and cling tenaciously to this criminal intent to kill. There is likewise no treachery because **"no particulars on how aggression commenced, or how acts leading to death actually unfolded."**

6) *Cite **People vs. Ilaoa**, 233 SCRA 231 (1994)*

FACTS: The five accused were charged for gruesome murder of Nestor de Loyola who sustained 43 stab wounds. The conviction based on following circumstances: 1) Deceased was last seen drinking with some of accused; 2) Drunken voices of Ruben and Nestor were heard and victim Nestor was later seen being mauled by five accused; and 3) Some of accused borrowed tricycle of Alex around 2 am.

HELD: SC reduced it from Murder to **HOMICIDE only** because: a) No evident premeditation because no proof of time when they decided to kill. Rather, evidence suggests a series of circumstances culminating in the killing constitutes an unbroken chain of events with no interval of time separating them for calculation and meditation. Also, **no cruelty** was present because not shown that they took delight in unduly prolonging victim's physical suffering, but probably carried only by the intensity of the attack due to the fight.

14) That craft, fraud or disguise be Employed.

- a) **Craft** -- involves intellectual trickery and cunning on accused's part.(eg. Accused used chocolates containing drugs to perpetrate rape; usually involves overt acts)
- b) **Fraud** -- involves insidious words or machinations to induce victim to act in a manner which would enable offender to carry out his criminal design; usually involves entrapping or beguiling language)
- c) **Disguise** -- deliberately resorting to a device to conceal identity.
See **People vs. Empacis**, 222 SCRA 59 (1993)

COMMENTS:

1) Cite People vs. Empacis, 222 SCRA 59 (1993)

FACTS: In Cebu, Empacis and Longomez pretended to be customers, bought food, rice and cigarettes and fired at victim until Peter, 13-year-old son, helped his father and two fled.

HELD: Since accused Empacis and Langomes pretended to be **bona fide** customers to gain entry into the victim's store, SC affirmed conviction for **robbery with homicide** and considered aggravating circumstance of **CRAFT/FRAUD** by falsely pretending to be legitimate customers.

15) That Advantage be taken by the offender of superior strength.

- a) Requisites: There are **three tests**:
 - I** 1) **Notorious Inequality** of forces;
 - N** 2) **Numerical superiority** of accused over victim; and
 - K** 3) **Kind of weapon** used by accused out of proportion to defense available to victim.
(Recall **INK**)
- b) Basis: To purposely use **excessive force** out of proportion to the means of defense available to person attacked, or victim. The means used, however, must not totally or completely eliminate possible defense of victim otherwise, it falls under **treachery**.
- c) No abuse of superior strength if crime committed out of passion and obfuscation during a quarrel. For instance, if there is a quarrel between X and Y where X has a gun while Y only has a bladed weapon and X killed Y, there is no abuse of superior strength.
- d) Abuse of superior strength must be alleged in the **Information** and proven during trial beyond reasonable doubt. Burden of proof rests on prosecution to establish that accused

deliberately and consciously took advantage of his superior strength to weaken the defense and/or afford or ensure impunity.

COMMENTS:

- 1) *No abuse of superior strength in parricide because presumed that husband is stronger physically than the wife.*
- 2) *Treachery oftentimes absorbs superior strength.*
- 3) *Abuse of superior strength is aggravating in coercion and forcible abduction, when greatly in excess of that required to commit the offense.*
- 4) *The **gravamen** of the offense is abuse of superiority by taking advantage of offenders' collective strength to overcome their weaker victims.*
- 5) *This is oftentimes absorbed in treachery. One who, while fighting wit another, casts sand or dirt upon the latter's eyes and then would or kills him, employs means to weaken defense of victim.*

16) That crime be committed with Treachery.

a) *Requisites:*

Co 1) That offender **Consciously** adopted this particular means; and
Me 2) That the **Means** would ensure commission of crime without **Risk** to himself **Arising** from **Defense** that offended party might make.

*(Recall **CoMe**/ Also **RADe**)*

b) *An attack from behind or at the back is always treacherous but even a frontal attack constitutes treachery if it is **so sudden, unexpected and unprovoked**.*

c) *In "**People vs. Lug-aw**," there can be no treachery if there are "no particulars on how aggression commenced, or circumstances showing how acts leading to death actually unfolded."*

d) ***Treachery** sometimes absorbs superior strength or evident premeditation, and if there is unlawful killing, the other aggravating circumstances like dwelling, nighttime, uninhabited place, abuse of confidence, band, etc. would become mere generic aggravating circumstances which can be offset by ordinary mitigating circumstances.*

e) *See **People vs. Jose**, (January 31, 2000)*

COMMENTS:

- 1) *There is no treachery when attack is preceded by a warning or if accused gave the deceased a chance to prepare. No treachery if there is a quarrel.*
- 2) *Treachery is never presumed. It must be proven as clearly and convincingly as the crime itself because it increases the penalty.*
- 3) *Applies only to crime against persons.*
- 4) *Mere suddenness of attack not enough to constitute treachery. Mode of attack must be deliberately and consciously adopted, such as when victim was asleep, or being held, or attacked from behind.*

5) When aggression is **CONTINUOUS**, treachery must be present in beginning of the assault. If **NOT CONTINUOUS**, and there was an **INTERRUPTION**, sufficient that treachery was present at precise moment the fatal blow was given.

6) If principal by inducement did not specify details on **MEANS** to carry out assault, treachery cannot be taken against the inducer.

7) When there is conspiracy, treachery is considered against **ALL** offenders.

8) Treachery, evident premeditation and superior strength are by their nature inherent in the crime of treason.

9) Nighttime and craft are absorbed in treachery, except if treachery rests upon an independent factual basis.

10) Treachery cannot co-exist with passion and obfuscation.

11) Cite **People vs. Verchez, 233 SCRA 174 (1994)** where SC held there was no treachery employed by Verchez, et al who were suspected bank robbers in a hideout when they shot it out with PC agents. This is because the lawmen should have been prepared to deal with any resistance when they attacked the hideout of Verchez et al.

In **People vs. Jose, (Jan. 31, 2000)** SC held it was murder qualified by treachery when Jose suddenly hacked Felix Zacarias at the back, at around 1:00 a.m. after victim became drunk and boisterous and challenged anyone to a fight. Treacherous because victim was unarmed, and attacked unprovoked and unexpected, under cover of darkness. Challenging anyone to a fight does not constitute sufficient provocation.

17) That Means employed or circumstances brought about which add ignominy to the natural effects of the crime.

a) **Requisites of ignominy:**

1) Crime must be against chastity, less serious physical injuries, light or grave coercion, and murder.

2) The circumstance consciously adopted to make the crime more humiliating and shameful to the victim.

b) Ignominy – adopted to increase moral suffering or humiliation and disgrace of the victim.

c) See **People vs. Jose, 37 SCRA 450 (1971)**

COMMENTS:

1) **IGNOMINY** refers to circumstance pertaining to the **MORAL order**, or that which adds disgrace and obloquy to the material injury caused by the crime.

2) This is applicable to crimes against chastity, and persons.

3) Cite **People vs. Torrefiel**, where SC said there was ignominy when accused raped a woman after winding cogon grass around his genital organ.

4) *Means employed or circumstances brought about which tend to make the crime more humiliating or put offended party to greater shame, or ridicule, like a married man being raped before the husband.*

18) That crime committed after unlawful Entry.

- a) **Unlawful entry** – when entrance is effected by a way not intended for the purpose. Must be to effect entrance, and not exit.
- b) Inherent and therefore, not aggravating in 1) *Trespass to dwelling*; 2) *Robbery with force upon things*; and 3) *Robbery with violence against or intimidation of persons*.
- c) See ***People vs. Baello***, 224 SCRA 218 (1993)

COMMENTS:

- 1) *Breaking a door falls under par. 19, not under this paragraph because entry here must be effected through entrance not intended for such purpose.*
- 2) *Basis: greater perversity of the offender for not respecting walls erected by men to safeguard their lives and property.*
- 3) *Unlawful entry is inherent in **ROBBERY with force upon things**.*

19) That a wall, Door or window be broken as means to commission of crime..

- a) **Requisites:**
- 1) A wall, roof, window or door must be broken.
- 2) Such were broken to effect entrance.
- b) When breaking of wall, door or window is *lawful*:
- 1) Involving an officer who would break wall, etc to make a lawful arrest where accused is believed to be.
- 2) Involving an officer who may break open any door or window to execute search warrant or to liberate himself.

20) That crime be committed with aid of minor below 15 years of age, or by means of motor vehicle, motorized watercraft, airship or other Similar means.

- a) **Basis:** To counteract the great facility afforded modern criminals in their means of committing crimes, especially in absconding and fleeing from the crime scene.
- b) Necessary that the motor vehicle be an important tool to commit crime and must be motorized vehicle (bicycles not included).
- c) To punish criminal taking advantage of minors' irresponsibility when committing crimes. (**Minority** is privileged mitigating, and if below 15 years of age, even exempting).

COMMENTS:

- 1) *Motor vehicle: aggravating where accused used the motor vehicle in going to the place of the crime, in carrying away the effects thereof, and in facilitating their escape.*
- 2) *If motor vehicle used only to facilitate escape, it is not aggravating.*

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

a) **Cruelty** is when offender derives pleasure in increasing **physical suffering or pain** of victim. eg. stabbing a dying victim repeatedly while in the throes of death to augment the physical pain of victim. Several stab wounds on victim's body, even a decapitated body, does not automatically mean cruelty absent proof that offender deliberately performed acts to increase the physical suffering of victim. But if victim already dead, no more cruelty.

b) **Ignominy** is adding insult to injury by increasing the **moral suffering** or shame of the victim eg. In **People vs. Jose**, where the accused Jose, Pineda, et al forced actress Maggie dela Riva to strip naked for them and dance suggestively while they ogled over her naked body, SC held this act constitutes **ignominy**.

c) **Cruelty and ignominy** are never presumed but must be specified and alleged in the **Information** and proven beyond reasonable doubt during trial, just like the elements of the crime committed.

See **People vs. Ilao-a, 233 SCRA 231(1994)**

COMMENTS:

1) *There is no cruelty when other wrong was done after victim was dead.*

2) Cite **People vs. Ilaoa (supra)** where SC held tht the fact that victim's decapitated body bore 43 stab wounds, 24 of which were fatal, and was found dumped in the street is not sufficient basis for a finding of cruelty absent proof that accused Ilao-a derived pleasure and satisfaction in increasing the physical pain of victim. Number of wounds alone not sufficient criterion for appreciation of cruelty nor dismemberment of victim's dead body.

ALTERNATIVE CIRCUMSTANCES (Article 15)

ARTICLE 15.

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

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

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

ALTERNATIVE CIRCUMSTANCES

a) Kinds of alternative circumstances:

I 1) **Intoxication**

R 2) **Relationship**

E 3) **Education**

(Recall **IRE**)

b) **Intoxication** is *mitigating*:

Ha 1) If not **Habitual**

In 2) Not **Intentional** or subsequent to the plan to commit the felony.

It is *aggravating* if **Habitual** and **Intentional** or subsequent to plan to commit felony.

c) **Relationship** is *aggravating* in crimes against persons but *mitigating* in crimes against property.

d) **Education** is *aggravating* if one uses his high educational attainment to commit crime with impunity, especially a lawyer, for instance but *mitigating* if accused has so little, or is bereft of any education that he could not fully appreciate the gravity of his actions.

See **People vs. Bandian, (supra)** where accused mother charged with infanticide was acquitted by the SC because of lawful, insuperable cause, as well as her very low level of education that she did not know that she was already giving birth when answering the call of nature, especially because she was a **primipara**.

Not *mitigating* in the following crimes:

1) Crimes against property

2) Crimes against chastity, including rape.

3) Crime of treason

COMMENTS:

1) In **People vs. Atop (1998)**, SC held rape was not qualified by *aggravating circumstance of relationship* when 11-year-old Regina was raped four times by her lola's live-in partner because law cannot be stretched to include common-law relations. In this case, no blood relationship is attendant, nor any legal bond that links Atop to his victim, Regina.

2) In **People vs. Renejane, 158 SCRA 258 (1998)** SC held that drunkenness is not necessarily an *aggravating circumstance*. Fact that accused was with the two victims and they were drinking prior to crime did not necessarily qualify it as *aggravating*. Intoxication is *aggravating* only if habitual or intentional. No finding of either by lower court, and it was an ordinary drinking party. Neither can this be considered *mitigating* in absence of proof that intake of alcohol blurred accused's sense of reason and deprived him of certain degree of control. Policemen victim around one month earlier arrested Renejane for illegal possession of marijuana.

3) **LACK OF EDUCATION:** Not illiteracy alone, but also lack of intelligence necessary for this to apply. Lack of education cannot be taken into account

where defendant admitted he studied in the 1st grade in a public elementary school. **Article 15** only applies to one who really has not received any instruction.

a) Ordinarily, lack of education mitigating in all crimes, **except:** Crimes against property like Estafa, theft and robbery, arson; Crimes against chastity; Treason; and Murder.

ABSOLUTORY CAUSES: ENTRAPMENT vs. INSTIGATION

a) **Entrapment** is a scheme used by police officer to facilitate and secure apprehension of accused; **mens rea**, however, still emanated from accused and public officer merely facilitate commission of a crime. Hence, it is **not** an absolatory cause and accused is criminally liable.

b) **Instigation** is where public officer directly induces accused into committing the offense which accused would otherwise not have had committed on his own. Hence, instigation is an absolatory cause where accused is not criminally liable akin to an exempting circumstance. (See **Araneta vs. Court of Appeals, supra**)

b) **Instigation** is an exempting circumstance, just like an absolatory cause in Article 247.

COMMENTS:

1) **Absolatory causes** are those where act committed is a crime, but for reasons of public policy and sentiment, there is no penalty imposed.

2) In **ENTRAPMENT**, ways and means are resorted to by the public officer for purpose of trapping and capturing accused in the act of executing his criminal plan; **Mens rea** came from accused hence, it is not a bar to prosecution and conviction of lawbreaker.

3) In **INSTIGATION**, police officer practically induces accused into commission of offense and accused merely adopts idea, and carries it into execution; **Mens rea** emanates from police officer hence, it is a **BAR** to prosecution and conviction of accused.

DEGREE OF PARTICIPATION (Article 16)

ARTICLE 16.

Who are criminally liable: The following are criminally liable for **grave and less grave felonies:**

- 1) Principals
- 2) Accomplices
- 3) Accessories

The following are criminally liable for **light felonies:**

- 1) Principals
- 2) Accomplices

COMMENTS:

- 1) *Accessories are not liable for light felonies because in light felonies, social wrong and individual prejudice is so small that penal sanction not deemed necessary.*
- 2) ***Light felonies** are punishable only when they have been consummated. But when light felonies are committed against persons or property, they are punishable even if only in the attempted or frustrated stage of execution.*
- 3) *Only principals and accomplices are liable for light felonies. And only natural persons liable for crime because of highly **PERSONAL** nature of criminal responsibility.*
- 4) *Officers, not corporation, are criminally liable.*

ARTICLE 17.

Principals: *The following are considered principals:*

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

Note:

a) ***Principal by direct participation** must actually participate in the commission of the crime which directly tended to the same end; must actually be present in the scene of the crime otherwise, his absence is deemed as **“desistance”** on his part, except is he is a **principal by inducement**.*

b) ***Principal by inducement:** the inducement must be:*

Ma 1) ***Made** directly to procure the commission of the crime: and*

De 2) *Inducement is **Determining or moving cause** for commission of crime through the accused’s moral ascendancy or direct instructions or promise of reward or prize;*

***Principal by inducement** is usually not in scene of the crime as the **“mastermind”** and his absence is not considered **“desistance”** on his part, unlike a **principal by direct participation**.*

*(See **People vs. Agapito dela Cruz, 97 SCRA 385 (1980)**)*

c) ***Principal by indispensable cooperation:** the offender here performs another act without which the crime would not have been committed or accomplished, or his participation is **absolutely necessary** to the consummation of the crime, unlike an accomplice whose cooperation is dispensable since even without accomplice’s participation, crime would still be committed.*

COMMENTS:

1) For an accused to be held guilty as co-principal by reason of **CONSPIRACY**, it must be established that he performed an **OVERT ACT** in furtherance of conspiracy, either:

- a) By actively participating in the commission of crime.
- b) By lending moral assistance by being present at scene of crime.
- c) Or by exerting moral ascendancy over rest of co-conspirators to move them to execute the plan.

2) **Mere KNOWLEDGE** without cooperation or agreement to cooperate is not enough to constitute conspiracy. Silence also does not make one a co-conspirator.

3) The existence of conspiracy does not require agreement for an appreciable length of time prior to execution of its purpose, provided there is **UNITY in planning and execution of crime**.

4) Conspiracy arises on very instant that plotters agree, **EXPRESSLY or IMPLIEDLY**, to commit felony and forthwith decide to pursue it.

5) When there is conspiracy, not necessary to ascertain each **SPECIFIC ACT** of each co-conspirator. Also, no conspiracy to commit offense through negligence.

6) Cite **People vs. Nunag, 173 SCRA 274 (1989)** where SC held that only accused Nunag, Mandap and Manalili raped 15-year-old Lornza Lopez so, each liable for three separate crimes of rape, being principals by **DIRECT PARTICIPATION**. The other two were held liable only as principals by **INDISPENSABLE COOPERATION** since no evidence to establish they also raped since victim passed out occasionally during rape.

7) Cite **People vs. Dela Cerna, 21 SCRA 569 (1967)** where SC held that Dela Cerna cannot be held liable for death of Casiano, relative of victim Rafael who filed ejectment against Dela Cerna. This is because co-conspirators are liable only for acts done pursuant to conspiracy. But for other acts done **outside agreement of conspirators**, or which are not necessary and logical consequence of intended crime, only the actual perpetrators are liable.

8) **PRINCIPAL BY INDUCEMENT**: one cannot be a principal by inducement without first being shown that crime was actually committed. No principal by inducement if no principal by direct participation.

9) Cite **People vs. Dela Cruz (supra)** where Dela Cruz was convicted as principal by inducement for killing of Chinese businessman Yu Chi Chong, the other brother of intended victim, because without Dela Cruz who planned everything, crime would not have been conceived, much less committed.

10) Cite ***People vs. Montealegre*** (1988) where SC held that accused was convicted as co-principal for having collaborated with Capalad in killing the police officer. The two acted in concert and even if accused himself did not stab victim, accused was equally guilty for having prevented the police from resisting the attack against him. Accused Montealegre ws a principal by **INDISPENSABLE COOPERATION**.

ARTICLE 18.

Accomplices. -- *Accomplices are those persons who, not being included in Article 17, cooperate in the execution of the offense by previous or simultaneous acts.*

Note:

a) An **ACCOMPLICE** cooperates by **previous or simultaneous acts** in the commission of the crime with the principal but his participation is not indispensable but only minor; performs **material or moral aid** but which is **not indispensable** to commission of crime because even without his participation, crime would have been committed nonetheless. (See ***“People vs. Doctolero”***)

b) Example is if X lent his car to Y and Z for the latter to commit kidnapping but Y and Z have their own cars such that crime would have been committed even without X lending his car. X is therefore liable only as an **accomplice** provided he knew of the illicit act to be performed by Y and Z.

COMMENTS

1) Participation of an **ACCOMPLICE** presupposes the commission of the crime by the principal by **DIRECT PARTICIPATION**.

2) An accomplice does NOT have previous agreement, or understanding, and is not in conspiracy with the principal by direct participation.

3) While a co-conspirator **DECIDES** that a crime should be committed, an accomplice merely **ASSENTS** to the plan and cooperate in its accomplishment.

4) While a co-conspirator is an **AUTHOR** of the crime, accomplices are merely **INSTRUMENTS** who perform acts not essential to the perpetration of the offense.

5) The cooperation of an accomplice is not due to conspiracy, and his participation is not indispensable to commission of crime. An accomplice merely supplies principal with **MATERIAL or MORAL AID** without conspiracy with the principal. The **MORAL aid** may be through advice, encouragement and agreement.

6) If homicide, the wounds inflicted by a co-conspirator should not be mortal, and should not have caused the death of the victim.

ARTICLE 19.

Accessories: Accessories are those who, **having knowledge** of the commission of the crime, without having participated therein either as principals or accomplices, take part subsequent to its commission in any of the following manner:

Pro 1) By **Profiting** themselves, or assisting the offender, to profit by the effects of the crime.

Co 2) By **Concealing** or destroying body of the crime, effects or instruments thereof in order to prevent its discovery; and

Ha 3) By **Harboring**, concealing or assisting in the escape of the principal of the crime, provided the accessory acts with abuse of his public functions, or whenever the author of the crime is guilty of treason, parricide, murder or attempt on the life of the Chief Execution, or is habitually guilty of some other crime.

(Recall **ProCoHa**)

COMMENTS:

1) An accessory always takes part **AFTER** the commission of the offense.

2) **PROFITING** – the accessory must receive the property from the principal.

3) **CONCEALING** – the “**corpus delicti**” or body of the crime.

4) **HARBORING, CONCEALING, OR ASSISTING IN ESCAPE OF PRINCIPAL**

a) **PUBLIC officer** who assists in escape by taking advantage of his public functions.

b) **PRIVATE person** who harbors, conceals or assists in escape and offender is guilty of Treason, Parricide, Murder, or Attempt on the life of the President, or is known to be Habitually guilty of some other crime.

5) Relate to **P.D. 1612** (Anti-Fencing Law of 1979)

ARTICLE 20.

Accessories exempt from criminal liability. -- Penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters, or relatives by affinity within the same degrees, with the **single exception** of accessories falling within the provisions of **paragraph 1 of Article 19.**

Note:

a) Takes part **SUBSEQUENT** to commission of crime, or “**after the fact**” in any of the three (3) modes, or manner.

b) Generally, a relative who conceals, harbors or assists in escape of an accused relative is exempt from criminal liability except if that relative profited from the effects or instruments of crime because he is not prompted by **profit motive, not by blood relations.**

c) **Article 19** limits the instances wherein an accessory is liable for by “harboring, concealing or assisting in escape of principal” to crimes where principal accused is guilty of **Treason, Parricide, Murder, or Attempt on the life** of Chief Executive or where principal accused

is **Habitually** guilty of some other crime. (Recall **TPMAHa**) So if crime committed by accused is *robbery or kidnapping*, there is no accessory.

d) X assisted Y, a cellphone snatcher, by selling the stolen cellphone and dividing the proceeds between them. X can be held liable not only as accessory for theft or robbery (which is **crime mala in se**), but also as a principal in the crime of **Fencing** for “buying, selling or possessing goods which he knew, or should have known, to be proceeds of robbery, or theft.”

But X must be charged first in a separate **Information** for violation of the *Anti-Fencing Law*, a **crime mala prohibita**. There is **no double jeopardy** here even if X is being charged for two crimes arising from the same criminal act because the elements of the two crimes are different, separate and distinct from each other.

Although both offenses refer to the same criminal act of the accused, they are punishable under **two different laws** (one under RPC and the other under a special law) hence, X can be prosecuted and convicted for two crimes for a single criminal act without infringing on his right to double jeopardy or to due process of law.

COMMENTS:

1) *Nephew or niece is not included here.*

2) *An accessory is **not EXEMPT** from criminal liability even if principal is related to him, if such accessory **PROFITS** from the effects of the crime, or assisted the offender to profit from the effects of the crime.*

3) *Reason here is that offender is prompted not by defense of relative but more by greed, and personal gain.*

4) *Exemption here is based on ties of blood, and preservation of the cleanliness of one's name, which compels one to conceal crimes committed by relatives.*

PENALTIES

a) Penalty is a punishment inflicted on an offender in the form of deprivation of life, liberty or property after due process of law, for accused's act of violating the law. It is essentially legislative.

b) The criminal act brings about a **social injury** (offense against the state or breach of the King's peace) and **personal injury** (offense or damage to the private offended party). This *social injury* can be pardoned by the Chief Executive but such pardon does not extinguish civil liability on the part of the private offended party. The *personal injury*, on the other hand, can only be pardoned by the private offended party but such pardon does not wipe out the criminal liability.

c) Further, pardon by the Chief Executive could only come **after conviction** while a pardon by the private offended party must be done **prior to conviction**, and if possible, preferably before the institution of the criminal case.

RECLUSION PERPETUA vs. LIFE IMPRISONMENT

- a) While ***reclusion perpetua*** is penalty for violation under RPC, life imprisonment is a penalty for violation of a special law.
- b) While ***reclusion perpetua*** has a fixed duration of 20 years and one day to 40 years, life imprisonment has no fixed duration and could be literally for life.
- c) While ***reclusion perpetua*** has accessory penalties, life imprisonment carries no accessory penalties.

DURATION/DEGREE vs. PERIODS OF PENALTIES

- a) Memorize duration of principal penalties under **Article 27, RPC**. Also master the ***minimum, medium and maximum periods*** of the principal penalties, particularly ***reclusion temporal and prision correccional***.
- b) A ***degree*** could refer to one entire penalty (eg. death or *reclusion perpetua*) or one whole unit of penalties under the graduated scale of penalty in **Article 71** while a ***period*** is composed of three equal portions of a divisible penalty.
- c) ***Principal penalties vs. accessory penalties***: Principal penalties include death, *reclusion perpetua*, *reclusion temporal*, *prision mayor*, *prision correccional*, *arresto mayor*, *arresto menor* while accessory penalties include: a) Perpetual or temporary absolute/special disqualification; b) Suspension from public office, the right to vote and be voted for; c) Civil interdiction; d) Indemnification for damages; e) Forfeiture or confiscation of instruments and proceeds of the offense; and f) Payment of costs.

COMPLEX CRIMES

- a. See **Article 48 (RPC)**

KINDS OF COMPLEX CRIMES

- 1) When a single act constitutes two or more grave or less grave felonies, otherwise called **COMPOUND CRIMES** eg. X shoots Y, killing Y and injuring Z riding on a bike with Y. Crime is Complex crime of Homicide/Murder with serious physical injuries.
- 2) Or when an offense is a necessary means for committing another, otherwise called **COMPLEX CRIME PROPER**. eg. DECS treasurer falsified amount in check from P1,000 to P10,000 and pocketed the difference. Crime is complex crime of ***Malversation through Falsification***.

(NOTE: Also remember ***composite crimes or special complex crime/ continued crimes*** or ***"single larceny doctrine"*** and continuing crime.)

- (3) If it is a complex crime, remember always the penalty: find the most serious crime, then apply the ***maximum period*** of the most serious crime. Example: If complex crime of ***Robbery with homicide*** and assuming penalty for homicide is ***reclusion temporal*** while penalty for robbery is ***prision mayor***. Find the most serious crime which obviously is homicide because of its higher penalty, and after this apply the penalty of homicide which is ***reclusion temporal*** in its maximum period. Hence, penalty for complex crime of robbery with homicide is ***reclusion temporal maximum***.

a) Just disregard the penalty for **robbery** because since it is the less serious crime and irrelevant for purposes of finding the penalty for such complex crime.

COMPUTATION OF PENALTIES

a) Remember the **Table of Penalties** discussed in class.
b) Recall **Article 46** where if penalty is silent, penalty is presumed to be imposed upon **principals in a consummated felony**. Also recall **Articles 50 to 57** on penalties for principals/accomplices/accessories in a *consummated, frustrated and attempted felony, etc.* with **Article 46** on principal of a consummated felony as baseline, or frame of reference.

c) Also master the application of **Article 63** (Rules for the application of indivisible penalties) and **Article 64** (Rules for application of divisible penalties). In indivisible penalties, if neither aggravating nor mitigating is present, apply the lesser penalty. If mitigating only, apply lesser penalty. If aggravating only, apply higher penalty.

d) In divisible penalties under **Article 64**, if neither mitigating nor aggravating, medium period. If one mitigating and no aggravating, minimum period. If one aggravating and no mitigating, apply maximum period. If both mitigating and aggravating present, offset each other.

e) If two mitigating and no aggravating, **one degree lower** If three mitigating and no aggravating, **one degree lower** and since one mitigating left and no aggravating, *apply minimum period*.

Remember, however, if there are three or more mitigating circumstances but one aggravating, *apply the minimum period* of the appropriate penalty but you cannot lower it by one degree anymore because of the presence of one aggravating circumstance.

THREE-FOLD RULE

a) See **Article 70 (RPC)** on the **Three-Fold Rule**

APPLYING THE THREE FOLD RULE

1) If convict has to serve two or more penalties, he must serve them **SIMULTANEOUSLY** if nature of penalties permit.

2) Otherwise, he shall serve them **SUCCESSIVELY** in order of their respective severity, for purposes of being granted pardon.

3) Notwithstanding such rule, maximum duration of convict's sentence shall **not be more than three-fold** corresponding to the most severe of penalties imposed upon him.

4) Such maximum period shall in **no case exceed 40 years**.

5) For purposes of this rule, the duration of perpetual penalties shall be computed at **thirty (30) years**.

PROBLEM:

If John Villanueva, the accused was convicted of four crimes with the following penalties as mentioned hereunder, and applying the three-fold rule under **Article 70** of RPC, what is the appropriate penalty to be imposed on the accused.

<i>Homicide</i>	-- 18 yrs, 3 mos, 1 day x 3 = <u>54 yrs., 9 mos, and 3 days</u>
<i>Frustrated robbery</i>	-- 10 yrs, 2 mos, 1 day
<i>Less serious physical inj.</i>	-- 2 mos.
<i>Slight physical injuries</i>	-- 10 days
<hr/>	
TOTAL	<u>28 yrs., 7 mos., and 12 days</u> ----- <u>40 years</u>

ANSWER:

Applying **Article 70** under three-fold rule, the appropriate penalty to be imposed on the accused Mr. Villanueva is **28 years, 7 mos, and 12 days** because it is the lowest penalty.

It cannot be **54 years, 9 mos, and 3 days** which is obtained by multiplying by 3 the penalty for the most serious crime because it is more than 40 years which is the maximum. Neither can it be **40 years** because if you add up all the penalties applying the **Material accumulation system**, the total is only **28 yrs, 7 mos, and 12 days** which is less than 40 years, the maximum provided by law under the three-fold rule.

INDETERMINATE SENTENCE LAW (ACT 4103)

APPLICATION

First, the court shall sentence accused to an **INDETERMINATE sentence** by first determining **MAXIMUM** taking into account the following: a) Degree of participation of accused; b) Stage of execution of crime; and c) Attendant circumstances.

Second, after finding maximum, look for the **MINIMUM** which is found within any of the range of the next lower penalty.

DISQUALIFIED from availing of *Indeterminate Sentence Law* are the following: **1)** Those convicted of death penalty or life imprisonment; **2)** Those with imprisonment not exceeding one year; **3)** Those convicted of treason, conspiracy or proposal to commit treason; **4)** *Misprision of treason*, rebellion, sedition and espionage; **5)** Convicted of piracy; **6)** Habitual delinquent; **7)** Those who escaped from confinement or evaded sentence.

Advantage of Indeterminate Sentence Law (ISL) is after serving the minimum, one can apply for **parole** and can leave prison and live a normal life, but subject, of course, to supervision of parole officer.

PROBLEM:

Assuming that the penalty for homicide is **reclusion temporal**, and the accused X was 17 years old when he committed the offense, and there is one mitigating and no aggravating circumstance attending the commission of the crime, answer the following:

- (a) What is the exact range of the **maximum** of the Indeterminate Sentence of X, and why?
- (b) What is the exact range of the **minimum** of the Indeterminate Sentence of X, and why?
- (c) If you are a very strict judge, what is the **most serious, or highest penalty** you can impose on X?
- (d) If you are a very lenient judge, what is the **least serious, or lowest penalty** you can impose on X?

ANSWER:

(a) If I were the judge, I will first look for the **maximum**, taking into account the **attendant circumstances** in the commission of the crime. Considering that **homicide** is punishable with **reclusion temporal**, and since X was a minor when he committed the offense, the penalty should be one degree lower, or **prision mayor**. And since there is one mitigating circumstance present and no aggravating, the maximum should be within the range of **prision mayor in its minimum period**, or exactly within the **range of 6 years, one day to 8 years**.

(b) After finding the maximum, I'll look for the **minimum** by simply going one degree lower from **prision mayor**, which is **prision correccional**. Therefore, the minimum of the penalty to be imposed on X is within any of the **range of prision correccional**, which is **six months and one day to six years**.

(c) If I were a very strict judge, the highest penalty, or most serious penalty, I can impose on X is **6 years up to 8 years**. This means that after serving 6 years, accused can be released **on parole** subject to terms and conditions of the Board of Pardon and Parole, and under supervision of a parole officer.

(d) If I were a very lenient judge, the lowest penalty, or least serious penalty, I can impose on X is **6 months and one day to six years and one day**.

PROBATION

a) If penalty is not more than six years, one can apply for probation, in which case sentence is suspended.

b) Probation and appeal are mutually exclusive. If one applies for probation, one accepts correctness of lower court's decision hence, waiver of right to appeal. Once convict appeals, he challenges lower court's decision and if appeal denied later, he can no longer apply for probation.

c) The following are **disqualified** from applying for probation:

- 1)** If imprisonment exceeds six years;
 - 2)** If previously convicted of offense with penalty of not less than one month and one day or **arresto mayor**;
 - 3)** If availed of probation before;
 - 4)** If convicted of subversion, etc or crimes against national security and public order;
- and

- 5) If already serving sentence when this law became applicable.
- d) After service of probation, accused is still civilly liable because probation only extinguishes the criminal liability, just like in parole, commutation of service of sentence, pardon, etc.

CHILD AND YOUTH WELFARE CODE (P.D. 603)

- a) Under **P.D. 603**, if you are a minor which means less than 21 years of age, upon **commission, trial and conviction of offense**, you are entitled to a **suspended sentence** and serve time in a welfare institution like DSWD or gov't agency, not in prison.
- b) But to enjoy suspended sentence, the accused must be a minor at **time of commission, trial, conviction and application** for suspended sentence under **P.D. 603**.
- c) Those **DISQUALIFIED** from availing of suspended sentence are the following:
- 1) Those convicted of an offense punishable by *death or life imprisonment*;
 - 2) Those who have previously availed of suspended sentence; and
 - 3) Those convicted for an offense by the military tribunals.
- d) If the youthful offender has shown good behavior, he will be released, and his records shall remain confidential. If he is found to be incorrigible, he will be sent back to court for pronouncement of judgment, in which case he will be read his sentence of conviction and serve sentence, although the period of preventive imprisonment will be deducted from his actual sentence.

EFFECTS OF PARDON by PRESIDENT

- a) In **Monsanto vs. Factoran**, SC laid down the following pronouncement on the effects of pardon:
- 1) Pardon does **not automatically restore right to hold public office or be reinstated** to previous public position, unless it is expressly stated in the pardon.
 - 2) Pardon merely **restores the eligibility** of the accused public officer, and removes her disqualification from seeking said public office but it does **not ipso facto restore her position** and she must reapply to the same position, especially because "public office is a public trust."
 - 3) Pardon is **not acquittal**, but on the contrary, **pardon implies guilt**. Pardon, after all, means forgiveness, and not forgetfulness.
 - 4) Pardon only extinguishes criminal liability which was pardoned by the act of the President but such pardon does not wipe out civil liability which persists and can still be recovered despite the pardon, just like in probation, commutation.
 - 5) Upon being pardoned, it means that the pending appeal from the conviction of the Sandiganbayan, or lower court, is automatically withdrawn. As such, the conviction of the Sandiganbayan, or lower court, becomes final.
 - 6) Neither is accused entitled to **reinstatement and backwages** which was a form of penalty for her conviction which already became final upon her being pardoned. Only that

she was extended clemency or forgiveness by the Chief Executive hence, she did not have to serve time in prison.

CIVIL INDEMNITY FOR CRIMES

a) Remember **Article 100** stating that “every person criminally liable is also civilly liable.”

1) ***If acquittal based on reasonable doubt*** (because prosecution could not prove the guilt of the accused beyond reasonable doubt) – does not bar complainant from filing separate and independent civil action for civil liability arising from crime. This is because the amount of evidence required for civil indemnity or damages arising from crime is merely “***preponderance of evidence***” and not guilt beyond reasonable doubt.

2) ***If acquittal based on finding that accused did not commit the crime at all*** – this bars complainant from filing a separate civil action for damages.

b) And **Article 1157** enumerates the sources of obligations being:

“1st, law;
2nd, contracts;
3rd, quasi-contracts;
4th, delicts or acts and omissions punished by law; and
5th, quasi-delicts.”

c) Also recall **Article 102** on “***subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments***” and **Article 103** on “***subsidiary civil liability of other persons, particularly employers, teachers, persons and corporations***” for acts or omissions of their servants, pupils, workmen, apprentices or employees in the discharge of their duties, which caused damage or injury to another. ***These are obligations, or civil indemnity arising from crime, or delict, or ex delicto.***

These are, however, subject to the following conditions or requisites:

- 1) That the employer is engaged in some kind of business or industry.
- 2) That there exists an employer-employee relationship between the offender and his employer.
- 3) That the felony was committed by the employee while in the performance of his duties.
- 4) That the employee from whom civil liability was sought was insolvent. (**Article 103. RPC**)

d) Aside from civil indemnity arising from crime, or ***delict***, there is ***also civil indemnity arising from quasi-delict***. This is found under **Article 2176** and **Article 2180** on

“subsidiary civil liability of father, mother or guardian, owners and managers of establishment, employers, teachers or heads of establishments of arts and trade on the acts or omission of their minor children, employees, pupils, students or apprentices.”

PROBLEM:

D, the driver of a passenger jeepney, while drunk and overspeeding, bumped a P, the pedestrian and because of the sudden brakes, A, B and C passengers suffered slight physical injuries.

- a) What are the causes of action of the pedestrian P, passengers A, B and C against D for recovery of civil liability for the negligence of D.
- b) If D is insolvent, whom can they ran after, and under what causes of action.

ANSWER:

a) P, the pedestrian, can sue D to recover civil liability on the basis of **Article 100 of RPC** known as ***culpa criminal, or ex delicto***. The three passengers A, B and C, on the other hand, can sue D on the basis of ***culpa contractual***, there being an existing contractual relation between D and the passengers for D to safely carry them to their destination.

b) If D is insolvent, P the pedestrian can sue the employer/operator on the basis of **Article 103** on the subsidiary civil liability of the employer/operator in the form of ***subsidiary civil liability of the owner/employer arising from delict***. Or as an option, P may also sue the employer/operator on the basis of **Article 2176 and Article 2180** in the form of ***subsidiary civil liability of the owner/employer arising from quasi- delict***. This is, howevr, subject to the condition imposed by **Article 2177** which states that “civil liability arising from *quasi-delict* under **Article 2176** is separate and distinct from civil liability arising from crime under **Article 103**. But plaintiff cannot recover damages twice from the same act or omission of the defendant.”

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P E N A L T I E S

By ATTY. TEODORO V. ANGEL

Penalties In General

Penalties are punishment/suffering in the form of deprivation of liberty or property, inflicted by the state for an act or omission punished by law.

Article 21. Penalties that may be imposed. - No felony shall be punishable by any penalty not prescribed by law prior to its commission.

Relate this to Art. 5: “*Nullum crimen nulla poena sine lege.*”

Notes:

1. Penalties are suffering inflicted by State for violation or transgression of a penal law;
2. Suffering means “*pain*” – deprivation of life, liberty or property;
3. Basically, penalty reflects classical theory.

JURIDICAL CONDITIONS OF PENALTY:

1. ***Productive of suffering*** – without affecting integrity/dignity of human being that “no cruel, degrading or inhuman punishment be inflicted” ;
2. ***Proportionate to offense*** – Commensurate to offense committed, e.g. grave, less grave, light felonies.
3. ***Personal*** – Once convict dies, criminal liability is extinguished; only civil liability is passed on if there’s already final judgment in the criminal case.
4. ***Legal*** – Judgment according to law such that if there’s no law, no penalty; There must be a law and due process must be accorded.
5. ***Must be correctional (Positivist)*** -- To encourage reformation, examples: parole, probation.

THEORIES JUSTIFYING PENALTY:

1. ***PREVENTION*** – For State to prevent or suppress danger from accused;
2. ***REFORMATION*** – To correct or reform the offender;
3. ***EXEMPLARITY*** – to serve as an example and deterrent for criminals;
4. ***SELF-DEFENSE*** – State’s measure of self-defense to protect society from threat of criminal acts of accused;
5. ***JUSTICE*** – State’s act of retributive justice for the moral law violated by the accused.

THREE-FOLD PURPOSES OF PENALTIES

1. **Retribution (Classical)** – The law exacts vengeance for offended party instead; the penalty is commensurate to the offense;
2. **Correction (Positivist)** -- For the reformation of the accused.
3. **Social Defense** -- As a form of protection by the State against offenders, especially for heinous crimes.

Article 22. Retroactive effect of penal laws. - Penal laws shall have a retroactive effect insofar as they favor the person guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of **Article 62** of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same.

Notes:

1. A new penal law gives retroactive effect if beneficial to accused in whatever stage : before trial, during trial, when there's a final judgment already.

Reason behind retroactive effect: To give life/consistency to public policy of State, particularly Congress which eliminates crime/lowers penalty;

2. **General Rule:** If still detained under old law when new law shortened the penalty already, the remedy is to file a petition for Habeas Corpus.

(Ratio): Because if the new law imposes a lower penalty, the excess penalty under the old law because illegal automatically.

Exceptions:

1. One cannot avail of beneficial effect if habitual delinquent ;
2. If the new law provides that it is not applicable to pending cases.

Article 23. Effect of pardon by the offended party. - A pardon by the offended party does **not extinguish criminal action** except as provided in **Article 344** of this Code; but civil liability with regard to the interest of the injured party is extinguished by his express waiver. (Read also **Art. 36**)

Notes:

1. Although pardon by offended party does **not extinguish criminal action** (because pardon is not a ground for Motion to dismiss in criminal cases), usually, the court dismisses the case.
2. **Reason** – It is difficult to prove accused's guilt beyond reasonable doubt without the Complainant's participation;
3. Actually, fiscal or Ombudsman prosecutors can issue subpoena and cit witness in contempt for refusing to testify. (See: R.A. 6770)

EXCEPTION (where pardon by offended party extinguishes criminal action/liability)

1) In **private crimes** like seduction, abduction, rape or acts of lasciviousness which cannot be prosecuted **de officio** except upon **Complaint** filed by offended party herself, or her parents, grandparents or guardian, or when offender already expressly pardoned by the offended party, etc.

Notes: Pardon here must be done **PRIOR** to the filing of the **Information** in court, otherwise, once the **Information** is already filed in court, it is no longer within the control of the offended party.

EXCEPT: **Article 344** provides that marriage by offender extinguishes criminal case, even if the case is already filed.

Article 24. Measures of prevention or safety which are not considered penalties. -- The following shall not be considered as penalties:

1. The **arrest and temporary detention** of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.
2. The **commitment of a minor** to any of the institutions mentioned in **Article 80** and for the purposes specified therein.
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.

Classification of Penalties

Article 25. Penalties which may be imposed. - The penalties which may be imposed according to this Code, and their different classes, are those included in the following:

Principal Penalties

Capital punishment:

Death.

Afflictive penalties:

Reclusion perpetua,
Reclusion temporal,
Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Prision mayor.

Correctional penalties:

Prision correccional,
Arresto mayor,
Suspension,
Destierro.

Light penalties:

Arresto menor,
Public censure.

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

Accessory Penalties

Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and be voted for, the profession or calling.
Civil interdiction,
Indemnification,
Forfeiture or confiscation of instruments and proceeds of the offense,
Payment of costs.

Article 26. Fine - When afflictive, correctional, or light penalty. - A fine, whether imposed as a single or as an alternative penalty, shall be considered an **afflictive penalty**, if it exceeds 6,000 pesos; a **correctional penalty**, if it does not exceed 6,000 pesos but is not less than 200 pesos; and a **light penalty** if it be less than 200 pesos.

Notes:

1) In **People vs. Lucas** (240 SCRA 664), the Supreme Court categorically held that despite amendment of **R.A. 7659, reclusion perpetua** is still an indivisible penalty.

2) **Reclusion Perpetua** vs. **Life Imprisonment**

- | | |
|---|--------------------------------|
| 1. Under the RPC | 1. Under special law |
| 2. With accessory penalties | 2. Without accessory penalties |
| 3. Has fixed duration (20 years, 1 day to 40 years) | 3. Without fixed duration |

Duration and Effect of Penalties

Duration of penalties

Article 27. Reclusion perpetua. - The penalty of reclusion perpetua shall be from twenty years and one day to forty years.

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

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

Prision correccional, suspension, and destierro. - The duration of the penalties of prision correccional, suspension and destierro shall be from six months and one day to six years, except when suspension is imposed as an accessory penalty, in which case, its duration shall be that of the principal penalty.

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

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

Bond to keep the peace. - The bond to keep the peace shall be required to cover such period of time as the court may determine. (As amended by Section 21, **Republic Act No. 7659.**)

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

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

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

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

If the detention prisoner does **not agree** to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with ***four-fifths*** of the time during which he has undergone preventive imprisonment. (As amended by **Republic Act No. 6127**, June 17, 1970).

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is ***destierro***, he shall be released after thirty (30) days of preventive imprisonment. (As amended by Republic Act No. 6127, and further amended by **E.O. No. 214**, prom. July 10, 1987.)

Notes:

1. Preventive Imprisonment:
 - a. Imprisonment of accused of crime but not yet convicted (either non-bailable or can't afford to post bail)
 - b. Called a detention prisoner
 - c. Sometimes called ***advanced service of service***

2. If acquitted, claim from Department of Justice for victims of unjust imprisonment (Maximum of ***P1,000.00 per month***)

Effects of the penalties according to their respective nature

Article 30. Effects of the penalties of perpetual or temporary absolute disqualification.

- The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

1. The deprivation of the public offices and employments which the offender may have held even if conferred by popular election.

2. The deprivation of the right to vote in any election for any popular elective office or to be elected to such office.

3. The disqualification for the offices or public employments and for the exercise of any of the rights mentioned.

In case of temporary disqualification, such disqualification as is comprised in paragraphs 2 and 3 of this article shall last during the term of the sentence.

4. The loss of all rights to retirement pay or other pension for any office formerly held.

Article 31. Effect of the penalties of perpetual or temporary special disqualification. -

The penalties of perpetual or temporary special disqualification for public office, profession or calling shall produce the following effects:

1. The deprivation of the office, employment, profession or calling affected;

2. The disqualification for holding similar offices or employments either perpetually or during the term of the sentence, according to the extent of such disqualification.

Article 32. Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage. - The perpetual or temporary special disqualification for the exercise of the right of suffrage shall deprive the offender perpetually or during the term of the sentence, according to the nature of said penalty, of the right to vote in any popular election for any public office or to be elected to such office. Moreover, the offender shall not be permitted to hold any public office during the period of his disqualification.

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

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

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

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

The court shall determine, according to its discretion, the period of duration of the bond. (Read also **Article 284**)

Should the person sentenced fail to give the bond as required he shall be detained for a period which shall in no case exceed six months, if he shall have prosecuted for a grave or less grave felony, and shall not exceed thirty days, if for a light felony.

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

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

Notes:

1. Pardon under **Article 36** by the President extinguishes the criminal liability, but not civil liability;
2. Pardon under **Article 23** by the offended party extinguishes the civil liability but not the criminal liability.
3. So, if “You are hereby pardoned and restored to your full civil and legal rights...”, then principal and also accessory penalties are extinguished.
4. But if “You are hereby pardoned,” the accessory penalties still remain.

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

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

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

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

1. If the principal penalty imposed be **prision correccional or arresto** and fine, he shall remain under confinement until his fine referred in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.
2. When the principal penalty imposed be only a **fine**, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been

prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

3. When the principal penalty imposed is ***higher than prision correccional*** no subsidiary imprisonment shall be imposed upon the culprit.

4. If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict, during the period of time established in the preceding rules, shall continue to suffer the same deprivation as those of which the principal penalty consists.

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve. (As amended by **Republic Act No. 5465**, April 21, 1969.)

Notes:

1. ***Subsidiary penalty/imprisonment*** -- where convict sentenced to pay fine but cannot pay fine, hence, subsidiary imprisonment of one day for each P8.00 of fine.

Example: **P80.00 fine** – cannot pay, therefore, spend 10 days in prison.

2. No subsidiary imprisonment if convict cannot pay (1) reparation, (2) indemnification -- since these are civil liabilities to offended party.

3. Applies only to insolvent people.

4. Does not violate the constitutional prohibition against imprisonment for nonpayment of debt which refers to contractual debts only, not to an obligation arising from crime.

5. There is no subsidiary imprisonment if principal penalty is higher than ***prision correccional***.

So, if principal penalty is ***prision mayor*** plus fine, no more subsidiary penalty for nonpayment of fine.

When no subsidiary penalty:

1. For non-payment of reparation, indemnification, and costs;
2. If principal penalty is higher than ***prision correccional***;
3. If not expressly mentioned in judgment of conviction (because subsidiary penalty is not an accessory penalty).

Note: Accessory penalties are deemed imposed with principal penalty, even if not mentioned in the judgment.

SECTION 3

Penalties in which other accessory penalties are inherent

Article 40. *Death - Its accessory penalties.* –

The death penalty, when it is **not** executed by reason of commutation or pardon shall carry with it that of:

- (a) perpetual absolute disqualification and
- (b) that of civil ***interdiction*** during ***thirty years following the date of sentence***, **unless** such accessory penalties have been expressly remitted in the pardon.

Article 41. *Reclusion perpetua and reclusion temporal.* - Their accessory penalties.

The penalties of ***reclusion perpetua*** and ***reclusion temporal*** shall carry with them that of

- (a) ***civil interdiction*** for life or during the period of the sentence as the case may be, and
 - (b) that of ***perpetual absolute disqualification*** which the offender shall suffer even though pardoned as to the principal penalty,
- unless** the same shall have been expressly remitted in the pardon.

Article 42. *Prision mayor* - Its accessory penalties. –

The penalty of prision mayor shall carry with it that of

- (a) ***Temporary absolute disqualification*** and
 - (b) that of ***perpetual special disqualification from the right of suffrage*** which the offender shall suffer although pardoned as to the principal penalty,
- unless** the same shall have been expressly remitted in the pardon.

Article 43. *Prision correccional* - Its accessory penalties. –

The penalty of ***prision correccional*** shall carry with it that of:

- (a) ***Suspension from public office***, from the right to follow a profession or calling, and

- (b) That of ***perpetual special disqualification from the right of suffrage***, if the duration of said imprisonment shall exceed eighteen months.

The offender shall suffer the disqualification provided in this article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Article 44. Arresto - Its accessory penalties. - The penalty of ***arresto*** shall carry with it that of suspension of the right to hold office and the right of suffrage during the term of the sentence.

Article 45. Confiscation and forfeiture of the proceeds or instruments of the crime. - Every penalty imposed for the commission of a felony shall carry with it the forfeiture of the proceeds of the crime and the instruments or tools with which it was committed.

Such proceeds and instruments or tools shall be confiscated and forfeited in favor of the Government, ***unless*** they be the property of a third person not liable for the offense, but those articles which are not subject of lawful commerce shall be destroyed.

Notes:

1. This confiscation also applies to special laws:
Example: Shabu/marijuana will not be returned to the drug pusher;
2. In illegal gambling, the cards, dice, chips are confiscated by ***Order*** of the court.
3. In ***People vs. Jose*** popular known known as the Maggie dela Riva case, the Supreme Court granted **writ of replevin** filed by financing company because the Pontiac car, although earlier declared by the lower court an instrument of crime, was a property belonging to a 3rd party (the financing company) not liable for the offense.

Application of Penalties

Rules for the application of penalties to the persons criminally

liable and for the graduation of the same

Article 46. Penalty to be imposed upon principals in general. - The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.(Read also **Articles 50 -51**)

Whenever the law prescribes a penalty for a felony in general terms, it shall be understood as applicable to the **consummated felony**.

Article 47. In what cases the death penalty shall not be imposed; Automatic review of death penalty cases. -- The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except when the guilty person is **below eighteen (18) years of age** at the time of the commission of the crime or is **more than seventy years of age** or when upon appeal or automatic review of the case by the Supreme Court, the required **majority vote is not obtained** for the imposition of the death penalty, in which cases the penalty shall be reclusion perpetua.

`In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court **en banc**, within twenty (20) days but not earlier than fifteen (15) days after the promulgation of the judgment or notice of denial of any motion for new trial or reconsideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. (As amended by Section 22, **Republic Act No. 7659**.)

Article 48. Penalty for complex crimes. - When a single act constitutes **two or more grave or less grave felonies**, or when an offense is a **necessary means** for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its **maximum** period.(As amended by **Act No. 4000**.)

COMPLEX CRIMES: When a single act constitutes:

1. **Two or more grave or less grave felonies** --- (otherwise known as **compound crimes**)

Example: One shot by X killed A and hit B who suffered slight physical injuries. Here there is only one criminal intent. Apply the penalty for the most serious crime which is homicide punishable by **reclusion temporal**.

But if X shot and killed A then afterwards shot B who suffered slight physical injuries, there is **no complex crime** because there are two criminal intents. Apply the

penalty for homicide in its maximum plus penalty for slight physical injuries which is ***prision correccional***.

2. **An offense which is a necessary means for committing another offense** --- (otherwise known as **complex crime proper**)

Examples:

1) ***Malversation through falsification***: X, a treasurer, falsifies a check of P20,000 to P200,000. Here, there is one criminal intent which is to malverse public funds. The falsification was a necessary means to commit the crime of malversation.

But if falsification came much later to conceal the malversation of funds, then the crime committed is Malversation **and** Falsification since there are two criminal intents.

2) ***Robbery with homicide***: X and Y killed G, a security guard of a bank, in order to rob the bank. The killing was necessary to rob the bank, and there is only one criminal intent which is to rob the bank.

The penalty for the **most serious crime** is imposed, and same is applied in it **maximum period**.

REASONS:

1. Singularity of act/ single criminal impulse so there is single offense;
2. One ***mens rea*** - lesser perversity of the accused;
3. Beneficial to the accused by imposing one penalty at its maximum.

SPECIAL KINDS OF COMPLEX CRIMES:

1. **COMPOSITE CRIMES or SPECIAL COMPLEX CRIMES** – considered by law as single indivisible offense. Because these are common complex crimes, so they have a fixed penalty already. The penalty for specified combinations of crimes is specific.

Examples:

1. ***Robbery with homicide*** – penalty is ***reclusion perpetua*** to death;
2. Carnapping with homicide
3. ***Kidnapping with homicide*** – if death resulted on occasion of kidnapping, automatic penalty of death whether or not the killing was purposely sought or a mere afterthought.

2. **CONTINUED CRIME (DELITO CONTINUADO)** – Series of several overt acts about the same.

Ti 1. Time,

PL 2. Place and

Viol 3. Violate same provision of law.

- “**Single larceny**” doctrine
- Animated by a single or one criminal intent, purpose or resolution
- Cases: **People vs. de Leon; People vs. Jaranilla.**

Example:

Theft of six (6) roosters belonging to 2 different owners from same chicken house at the same time.

3. CONTINUING CRIMES or TRANSITORY/MOVING CRIMES –

- One where any of the elements of an offense is committed in different localities/venues so that the accused can be charged/prosecuted in any of those localities/venues.
- An offense **continuing in time**

Examples:

1. Rebellion where once a rebel before, still a rebel at present so he can be arrested/prosecuted provided he performs overt acts of rebellion;
2. Check issued in Quezon City, deposited in Manila and encashed in Makati – may be prosecuted in any of the places where any acts of making, issuing or encashing of the check is done.
3. Adultery committed in Quezon City, Makati, Davao City and Cebu City.

NOTES:

1. **Complex crimes** apply to crimes through negligence.

Ex. Mayor accidentally discharges firearm – Complex crime of reckless imprudence resulting in homicide with slight physical injuries

2. **Cannot complex** if under different statutes or if one crime is punished by a special law.

Ex: A killed B with unlicensed firearm – No complex crime of Homicide/murder with illegal possession of firearms; there are two separate offenses. (In fact, **Murder** aggravated by the use of unlicensed firearms)

3. **Article 48** which applies maximum penalty for most serious crime does not apply also if law provides for one single penalty for special complex crimes or composite crimes.

PENALTIES:

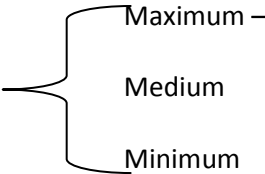
DEATH

Indivisible

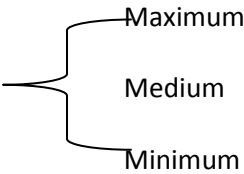
REC. PERPETUA

Indivisible

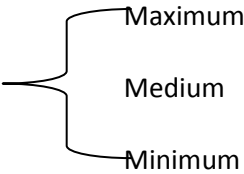
REC. TEMPORAL



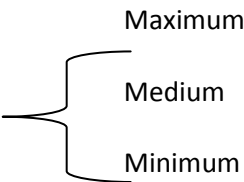
PRISION MAYOR



PRISION CORRECIONAL



ARRESTO MAYOR



ARRESTO MENOR

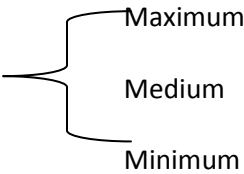


TABLE SHOWING THE DURATION OF DIVISIBLE PENALTIES AND THE TIME INCLUDED IN EACH OF THEIR PERIODS

Penalties	Time included in the penalty in its entirety	Time included in its minimum period	Time included in its medium period	Time included in its maximum
Reclusion temporal	From 12 years and 1 day to 20 years.	From 12 years and 1 day to 14 years and 8 months.	From 14 years, 8 months and 1 day to 17 years and 4 months.	From 17 years, 4 months and 1 day to 20 years.
Prision mayor , absolute disqualification and special temporary disqualification	From 6 years and 1 day to 12 years.	From 6 years and 1 day to 8 years.	From 8 years and 1 day to 10 years.	From 10 years and 1 day to 12 years.
Prision correccional , suspension and destierro	From 6 months and 1 day to 6 years.	From 6 months and 1 day to 2 years and 4 months.	From 2 years, 4 months and 1 day to 4 years and 2 months.	From 4 years, 2 months and 1 day to 6 years.
Arresto mayor	From 1 month and 1 day to months.	From 1 to 2 months.	From 2 months and 1 day to 4 months.	From 4 months and 1 day to 6 months.
Arresto menor	From 1 to 30 days.	From 1 to 10 days.	From 11 to 20 days.	From 21 to 30 days.

Notes:

1. **Degree**

- Could refer to one entire penalty ex. Death, **reclusion temporal**;
- Could refer to one whole unity of penalties in the graduated scales of Art. 71 (could be composed of 3 periods, 2 periods, or even just 1 period which also becomes a degree)

2. **Period**

- Is one of equal portions (maximum, medium, minimum)
- Comprises a degree in a divisible penalty

Article 49. Penalty to be imposed upon the principals when the crime committed is different from that intended. - In cases in which the felony committed is different from that which the offender intended to commit, the following rules shall be observed:

1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.
2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.
3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either of the latter offenses, in which case the penalty provided for the attempted or the frustrated crime shall be imposed in its maximum period.(Read also **Articles. 61, 62, and 65**)

Covers:

1. ***Aberratio ictus*** or mistake in blow
2. ***Error in personae*** or error in person
3. ***Praeter intentionem*** – injury or harm exceeds intent

Penalty imposed upon principal when crime committed is different from crime intended is always the lighter penalty.

Examples:

1. A shot B in the breast but B eluded and suffered serious physical injuries only.
 - **Intended felony/crime:** Homicide (*Reclusion Temporal*)
 - **Actual felony/crime:** Serious physical injury (*Prision mayor*)
 - **Penalty:** *Prision mayor* for actual crime imposed, being the lighter penalty, but applied in its maximum period.
2. A slapped B but B died of heart attack
 - **Intended crime** – slight physical injuries (Arresto Mayor)
 - **Actual crime committed** – Homicide (Recl. Temporal)
 - **Penalty:** Arresto mayo for intended crime, being the lighter penalty is imposed.

Reasons:

1. Lesser perversity of the offender; doubt in favor of the accused;
2. No intention to commit so grave a wrong as that actually committed.

Article 50. Penalty to be imposed upon principals of a frustrated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the principal in a frustrated felony.

Article 51. Penalty to be imposed upon principals of attempted crimes. - The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the principals in an attempt to commit a felony.

Article 52. Penalty to be imposed upon accomplices in a consummated crime. - The penalty next lower in degree than that prescribed by law for the consummated felony shall be imposed upon the accomplices in the commission of a consummated felony.

Article 53. Penalty to be imposed upon accessories to the commission of a consummated felony. - The penalty lower by two degrees than that prescribed by law for the consummated felony shall be imposed upon the accessories to the commission of a consummated felony.

Article 54. Penalty to be imposed upon accomplices in a frustrated crime. - The penalty next lower in degree than that prescribed by law for the frustrated felony shall be imposed upon the accessories in the commission of a frustrated felony.

Article 55. Penalty to be imposed upon accessories of a frustrated crime. - The penalty lower by two degrees than that prescribed by law for the frustrated felony shall be imposed upon the accessories to the commission of a frustrated felony.

Article 56. Penalty to be imposed upon accomplices in an attempted crime. - The penalty next lower in degree than that prescribed by law for an attempt to commit a felony shall be imposed upon the accomplices in an attempt to commit the felony.

Article 57. Penalty to be imposed upon accessories of an attempted crime. - The penalty lower by two degrees than that prescribed by law for the attempt shall be imposed upon the accessories to the attempt to commit a felony.

Summary of Articles 50 to 57

		Stages of Execution		
Degree of Participation		CONSUMMATED	FRUSTRATED	ATTEMPTED
	PRINCIPAL	Art. 46 0	Art. 50 -1	Art. 51 -2
	ACCOMPLICE	Art. 52 -1	Art. 54 -2	Art. 56 -3
	ACCESSORY	Art. 53 -2	Art. 55 -3	Art. 57 -4

Application:

In simple rape, penalty for:

- Principal – **Reclusion perpetua**
- Accomplice – **Reclusion temporal** (1 degree lower)
- Accessory – **Prision mayor** (2 degrees lower)

Article 58. Additional penalty to be imposed upon certain accessories. - Those accessories falling within the terms of paragraph 3 of article 19 of this Code who should act with abuse of their public functions, shall suffer the additional penalty of absolute perpetual disqualification if the principal offender shall be guilty of a grave felony, and that of absolute temporary disqualification if he shall be guilty of a less grave felony.

Article 59. Penalty to be imposed in case of failure to commit the crime because the means employed or the aims sought are impossible. - When the person intending to commit an offense has already performed the acts for the execution of the same but nevertheless the crime was not produced by reason of the fact that the act intended was by its nature one of impossible accomplishment or because the means employed by such person are essentially inadequate to produce the result desired by him, the court, having in mind the social danger and the degree of criminality shown by the offender, shall impose upon him the penalty of **arresto mayor** or a fine from 200 to 500 pesos.

Article 60. Exceptions to the rules established in articles 50 to 57. - The provisions contained in **Articles 50 to 57**, inclusive, of this Code shall not be applicable to cases in which the law expressly prescribes the penalty provided for a frustrated or attempted felony, or to be imposed upon accomplices or accessories.

Article 61. Rules for graduating penalties. - For the purpose of graduating the penalties which, according to the provisions of **Articles 50 to 57**, inclusive, of this Code, are to be imposed upon persons guilty as principals of any frustrated or attempted felony, or as accomplices or accessories, the following rules shall be observed:

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degree shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in **Article 71** of this Code.
2. When the penalty prescribed for the crime is composed of **two indivisible penalties**, or of one or more divisible penalties to be imposed to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.
3. When the penalty prescribed for the crime is composed of **one or two indivisible penalties** and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.

4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the **penalty next lower in degree** shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.

5. When the law prescribes a penalty for a crime in some manner **not especially provided** for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.(As amended by **Com. Act No. 217.**)

Rules for the application of penalties with regard to the mitigating and aggravating circumstances, and habitual delinquency

Article 62. Effects of the attendance of mitigating or aggravating circumstances and of habitual delinquency. - Mitigating or aggravating circumstances and habitual delinquency shall be taken into account for the purpose of diminishing or increasing the penalty in conformity with the following rules:

1) Aggravating circumstances which in themselves constitute a crime specially punishable by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty.

1(a). When in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances.

The maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized/syndicated crime group.

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

2) The same rule shall apply with respect to any aggravating circumstances inherent in the crime to such a degree that it must be necessity accompany the commission thereof.

3) Aggravating or mitigating circumstances which arise from the moral attributes of the offender, or from his private relations with the offended party, or from any other personal cause, shall only serve to aggravate or mitigate the liability of the principals, accomplices and accessories as to whom such circumstances are attendant.

4) The circumstances which consist in the **material execution of the act**, or in the **means employed** to accomplish it, shall serve to **aggravate or mitigate the liability** of those persons only who had **knowledge** of them at the time of the execution of the act or their **cooperation therein**.

5) Habitual delinquency shall have the following effects:

x x x

Article 63. Rules for the application of indivisible penalties. - In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

1. When in the commission of the deed there is present only **one aggravating circumstance**, the greater penalty shall be applied.

2. When there are **neither mitigating nor aggravating circumstances** in the commission of the deed, the lesser penalty shall be applied.

3. When the commission of the act is attended by **some mitigating circumstance** and there is **no aggravating circumstance**, the lesser penalty shall be applied.

4. When **both mitigating and aggravating circumstances** attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

Article 64. Rules for the application of penalties which contain three periods. - In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of **Articles 76 and 77**, the courts shall observe for the application of the penalty the following rules, according to whether there are or are no mitigating or aggravating circumstances:

1. When there are **neither aggravating nor mitigating circumstances**, they shall impose the penalty prescribed by law in its **medium period**.
2. When only a **mitigating circumstance** is present in the commission of the act, they shall impose the penalty in its **minimum period**.
3. When only an **aggravating circumstance** is present in the commission of the act, they shall impose the penalty in its **maximum period**.
4. When **both mitigating and aggravating circumstances** are present, the court shall reasonably **offset** those of one class against the other according to their relative weight.
5. When there are **two or more mitigating circumstances** and **no aggravating** circumstances are present, the court shall impose the **penalty next lower** to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
6. Whatever may be the number and nature of the aggravating circumstances, the courts shall **not impose a greater penalty** than that prescribed by law, in its **maximum** period.
7. Within the **limits of each period**, the courts shall determine the extent of the penalty according to the number and nature of the **aggravating and mitigating circumstances** and the greater or lesser extent of the evil produced by the crime.

Article 65. Rule in cases in which the penalty is not composed of three periods. - In cases in which the penalty prescribed by law is **not composed of three periods**, the courts shall apply the rules contained in the foregoing articles, dividing into three equal portions of time included in the penalty prescribed, and forming one period of each of the three portions.

Article 66. Imposition of fines. - In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.

Article 67. Penalty to be imposed when not all the requisites of exemption of the fourth circumstance of article 12 are present.- When all the conditions required in circumstance

number 4 of **Article 12** of this Code to exempt from criminal liability are not present, the penalty of **arresto mayor** in its maximum period to **prision correccional** in its minimum period shall be imposed upon the culprit if he shall have been guilty of a grave felony, and arresto mayor in its minimum and medium periods, if of a less grave felony.

Article 68. Penalty to be imposed upon a person under eighteen years of age. - When the offender is a minor under eighteen years and his case is one coming under the provisions of the paragraph next to the last of article 80 of this Code, the following rules shall be observed:

- 1) Upon a person **under fifteen but over nine years of age**, who is not exempted from liability by reason of the court having declared that he acted with discernment, a discretionary penalty shall be imposed, but always lower by two degrees at least than that prescribed by law for the crime which he committed.
- 2) Upon a person **over fifteen and under eighteen years of age** the penalty next lower than that prescribed by law shall be imposed, but always in the proper period.

Article 69. Penalty to be imposed when the crime committed is not wholly excusable. - A penalty lower by one or two degrees than that prescribed by law shall be imposed if the deed is **not wholly excusable** by reason of the lack of some of the conditions required to justify the same or to exempt from criminal liability in the several cases mentioned in article 11 and 12, provided that the majority of such conditions be present. The courts shall impose the penalty in the period which may be deemed proper, in view of the number and nature of the conditions of exemption present or lacking.

Article 70. Successive service of sentences. - When the culprit has to serve two or more penalties, he shall serve them **simultaneously** if the nature of the penalties will so permit; otherwise, the following rules shall be observed:

In the imposition of the penalties, the order of their respective severity shall be followed so that they may be executed **successively** or as nearly as may be possible, should a pardon have been granted as to the penalty or penalties first imposed, or should they have been served out.

For the purpose of applying the provisions of the next preceding paragraph the respective severity of the penalties shall be determined in accordance with the following scale:

1. Death,
2. *Reclusion perpetua*,
3. *Reclusion temporal*,
4. *Prision mayor*,
5. *Prision correccional*,
6. *Arresto mayor*,
7. *Arresto menor*,
8. *Destierro*,
9. Perpetual absolute disqualification,
- 10 Temporary absolute disqualification.
11. Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling, and
12. Public censure.

Notwithstanding the provisions of the rule next preceding, the maximum duration of the convict's sentence shall **not be more than threefold the length** of time corresponding to the most severe of the penalties imposed upon him. No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the same maximum period.

Such maximum period shall in no case **exceed forty years**.

In applying the provisions of this rule the duration of perpetual penalties (penal perpetua) shall be computed at **thirty years**. (As amended by **Com. Act No. 217**.)

THREE FOLD RULE

Rules to apply:

1. When convict has to serve two (2) or more penalties, serve them **simultaneously** if nature of penalties permits, i.e. Refers to multiple death penalties or accessory penalties served along with principal penalties;
2. Otherwise, serve them **successively** in order of their respective severity, for purposes of being granted pardon;

3. Notwithstanding this rule, the **maximum duration** of convict's sentence shall **not be more than three fold** the length of time corresponding to the most severe of penalties imposed upon him.
4. Such maximum period shall in **no case exceed 40 years**.
- 5) For purposes of this rule, the duration of **perpetual penalties** is computed at **30 years**.

Application:

A. Assuming accused has to serve the following penalties:

Reclusion Temporal – 20 years x 3 = 90 years (par. 3)	
(+)	Prision Mayor – 10 years, 2 months
	<u>Arresto Menor – 30 days</u>
	30 years, 3 months (par.2)
	* 40 years (par. 4)

So in this example, apply or choose **paragraph 2** or material accumulation system since it is the lowest penalty.

B. Assuming accused has to serve the following penalties:

	R. Perpetua	-- 30 years x 3 = 90 years (par. 3)
(+)	P. Mayor	-- 12 years
	<u>A. Menor</u>	-- 30 days
		42 years, 30 days (par. 2)
		* 40 years (par. 4)

So in this example, apply **paragraph 4** since it is the lowest penalty

NOTES:

1. Three-fold rule applies only to penalties **not** yet served;
2. The three-fold rule applies although penalties were imposed for different crimes, at different times, under separate Informations.

Article 71. Graduated scales. - In the cases in which the law prescribes a penalty lower or higher by one or more degrees than another given penalty, the rules prescribed in **Article 61** shall be observed in graduating such penalty.

The lower or higher penalty shall be taken from the graduated scale in which is comprised the given penalty.

The courts, in applying such lower or higher penalty, shall observe the following graduated scales:

SCALE NO. 1

1. Death,
2. Reclusion perpetua,
3. Reclusion temporal,
4. Prision mayor,
5. Prision correccional,
6. Arresto mayor,
7. Destierro,
8. Arresto menor,
9. Public censure,
10. Fine.

SCALE NO. 2

1. Perpetual absolute disqualification,
2. Temporary absolute disqualification
3. Suspension from public office, the right to vote and be voted for, the right to follow a profession or calling,
4. Public censure,
5. Fine.

Article 72. *Preference in the payment of the civil liabilities.* - The civil liabilities of a person found guilty of two or more offenses shall be satisfied by following the chronological order of the dates of the final judgments rendered against him, beginning with the first in order of time.

Provision common to the last two preceding sections

Article 73. *Presumption in regard to the imposition of accessory penalties.* - Whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, according to the provisions of **Articles 40, 41, 42, 43, 44, and 45** of this Code, it must be understood that the accessory penalties are also imposed upon the convict.

Article 74. *Penalty higher than reclusion perpetua in certain cases.* - In cases in which the law prescribes a penalty higher than another given penalty, without specifically designating the name of the former, if such higher penalty should be that of death, the same penalty and the accessory penalties of **Article 40**, shall be considered as the next higher penalty.

Article 75. *Increasing or reducing the penalty of fine by one or more degrees.* - Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

The same rules shall be observed with regard to fines that do not consist of a fixed amount, but are made proportional.

Article 76. *Legal period of duration of divisible penalties.* - The legal period of duration of divisible penalties shall be considered as divided into three parts, forming three periods, the minimum, the medium, and the maximum in the manner shown in the following table:

Article 77. *When the penalty is a complex one composed of three distinct penalties.* - In cases in which the law prescribes a penalty composed of three distinct penalties, each one shall form a period; the lightest of them shall be the minimum, the next the medium, and the most severe the maximum period.

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying for analogy the prescribed rules.

Execution and Service of Penalties

General provisions

Article 78. *When and how a penalty is to be executed.* - No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

X X X

Article 79. *Suspension of the execution and service of the penalties in case of insanity.*

- When a convict shall become **insane or an imbecile** after final sentence has been pronounced, the execution of said sentence shall be **suspended** only with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code. The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence.

Article 80. *Suspension of sentence of minor delinquents.* - Whenever a minor of either sex, under **sixteen years of age** at the date of the commission of a grave or less grave felony, is accused thereof, the court, after hearing the evidence in the proper proceedings, instead of pronouncing judgment of conviction, shall **suspend all further proceedings** and shall commit such minor to the custody or care of a public or private, benevolent or charitable institution, established under the law for the care, correction or education of orphaned, homeless, defective, and delinquent children, or to the custody or care of any other responsible person in any other place subject to visitation and supervision by the Director of Public Welfare or any of his agents or representatives, if there be any, or otherwise by the superintendent of public schools or his representatives, subject to such conditions as are prescribed hereinbelow until such minor shall have reached his majority or for such less period as the court may deem proper.(As amended by **Republic Act No. 47.**)

If the minor has behaved properly and has complied with the conditions imposed upon him during his confinement, in accordance with the provisions of this article, he shall be returned to the court in order that the same may order his final release.

In case the minor fails to behave properly or to comply with the regulations of the institution to which he has been committed or with the conditions imposed upon him when he

was committed to the care of a responsible person, or in case he should be found incorrigible or his continued stay in such institution should be inadvisable, he shall be returned to the court in order that the same may render the judgment corresponding to the crime committed by him. (As amended by **R.A. 9344**)

x x x

Execution of principal penalties.

Article 81. *When and how the death penalty is to be executed.* - The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to **death by electrocution**. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the persons under sentence during electrocution as well as during the proceedings prior to the execution.

If the person under sentence so desires, he shall be anaesthetized at the moment of the execution. As soon as facilities are provided by the Bureau of Prisons, the method of carrying out the sentence shall be changed to gas poisoning.

The death sentence shall be carried out not later than one (1) year after the judgment has become final. (As amended by Sec. 24, Republic Act No. 7659.)

Article 82. *Notification and execution of the sentence and assistance to the culprit.* - The court shall designate a working day for the execution, but not the hour thereof; and such designation shall not be communicated to the offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, in so far as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or persons in charge of the management of his business, of the administration of his property, or of the care of his descendants.

Article 83. *Suspension of the execution of the death sentence.* - The death sentence shall not be inflicted upon a woman while she is **pregnant or within one (1) year after delivery**, nor upon any person **over seventy years of age**. In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua with the accessory penalty provided in **Article 40**.

In all cases where the death sentence has become final, the records of the case shall be forwarded immediately by the Supreme Court to the Office of the President for possible exercise of the pardoning power. (As amended by **Sec. 25, R.A. 7659**)

Article 84. *Place of execution and persons who may witness the same.* - The execution shall take place in the penitentiary of Bilibid in a space closed to the public view and shall be witnessed only by the priests assisting the offender and by his lawyers, and by his relatives, not exceeding six, if he so request, by the physician and the necessary personnel of the penal establishment, and by such persons as the Director of Prisons may authorize.

Article 85. *Provision relative to the corpse of the person executed and its burial.* - Unless claimed by his family, the corpse of the culprit shall, upon the completion of the legal proceedings subsequent to the execution, be turned over to the institute of learning or scientific research first applying for it, for the purpose of study and investigation, provided that such institute shall take charge of the decent burial of the remains. Otherwise, the Director of Prisons shall order the burial of the body of the culprit at government expense, granting permission to be present thereat to the members of the family of the culprit and the friends of the latter. In no case shall the burial of the body of a person sentenced to death be held with pomp.

Article 86. *Reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor.* - The penalties of *reclusion perpetua*, *reclusion temporal*, *prision mayor*, *prision correccional* and *arresto mayor*, shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

Article 87. *Destierro.* - Any person sentenced to ***destierro*** shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be **not more than 250 and not less than 25 kilometers** from the place designated.

Article 88. *Arresto menor.* - The penalty of ***arresto menor*** shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.

Indeterminate Sentence Law (Act 4103)

Section 1. Hereafter, in imposing a prison sentence for an offense punished by the Revised Penal Code, or its amendments, the court shall sentence the accused to an **indeterminate sentence** the **maximum term** of which shall be that which, in view of the attending circumstances, could be properly imposed under the rules of the said Code, and the **minimum** which shall be within the range of the **penalty next lower** to that prescribed by the Code for the offense; and if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the **maximum term** of which shall not exceed the maximum fixed by said law and the **minimum** shall not be less than the minimum term prescribed by the same.

RULES:

1. Court shall sentence the accused to indeterminate sentence where determination of **maximum penalty** depends on attending circumstances (**Articles 63, 64, 68, 69**)
2. Court then sets/determines **minimum penalty** within any of the range of the **next lower penalty**.

Purposes:

1. Redeem valuable human material;
2. Prevent unnecessary deprivation of liberty and economic usefulness with due regard for social order.

Problems/Application:

1ST PROBLEM:

- 1) X was found guilty as principal in homicide. There are no mitigating circumstances in his favor and no aggravating circumstances either.
 - a) Considering the above, answer the following:

- 1) What is the range of the **maximum** penalty?
- 2) What is the range of the **minimum** penalty?
- 3) If you are a very **strict judge**, what is the **highest penalty** you can impose?
- 4) If you are a very **lenient judge**, what is the **lowest penalty** you can impose?

a. First, find the range of the **maximum** by taking into account the following:

- Degree of participation
- Stage of execution
- Attending circumstances

b. Second, after finding the maximum, next determine the range of the **minimum**

- This is found within any of the range of the **next lower penalty** from where the maximum is found.

1) **MAXIMUM:**

Homicide --- ***Reclusion
Temporal***

Maximum – 17 yrs, 4 mos, 1 day – 20 yrs.

Medium – 14 yrs, 8 mos, 1 day – 17 yrs, 4 mos.
(maximum or upper limit)

Minimum – 12 yrs, 1 day – 14 yrs, 8 mos.

2) **MINIMUM:**

Prision Mayor
(next lower penalty)

Maximum – 10 yrs, 1 day – 12 yrs.

Medium – 8 yrs, 1 day – 10 yrs.

Minimum – 6 yrs, 1 day – 8 yrs

3) If a very strict judge, the **HIGHEST POSSIBLE PENALTY** he can impose is 12 years to 17 years, 4 months.

4) If a very lenient judge, the **LOWEST POSSIBLE PENALTY** he can impose is 6 years, 1 day to 14 years, 8 months, 1 day.

Notes:

1) After serving 6 years, 1 day, convict is eligible for parole subject to terms and conditions by Board of Pardon and Parole

2) If convict violates terms and conditions, he will be arrested and will serve remaining sentence.

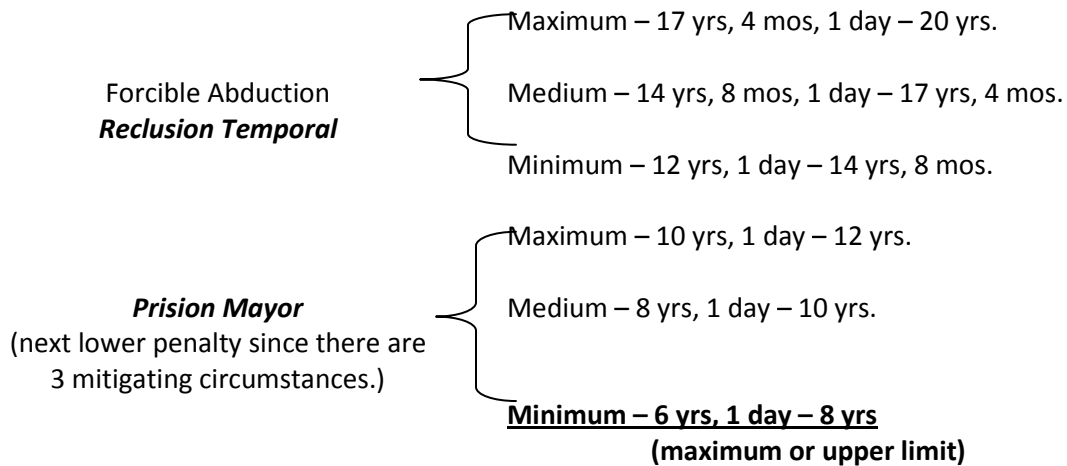
2ND PROBLEM:

2) Assuming X was convicted for **Forcible abduction**. There are 3 mitigating circumstances and no aggravating circumstances.

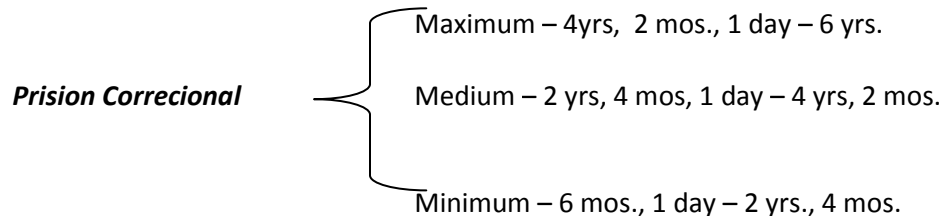
a) Considering the above, answer the following:

- 1) What is the range of the **maximum** penalty?
- 2) What is the range of the **minimum** penalty?
- 3) If you are a very **strict judge**, what is the **highest penalty** you can impose?
- 4) If you are a very **lenient judge**, what is the **lowest penalty** you can impose?

1) **MAXIMUM:**



2) **MINIMUM:**



3) If a very strict judge, the **HIGHEST POSSIBLE PENALTY** he can impose is 6 years to 8 years.

4) If a very lenient judge, the **LOWEST POSSIBLE PENALTY** he can impose is 6 months, 1 day to 6 years and 1 day.

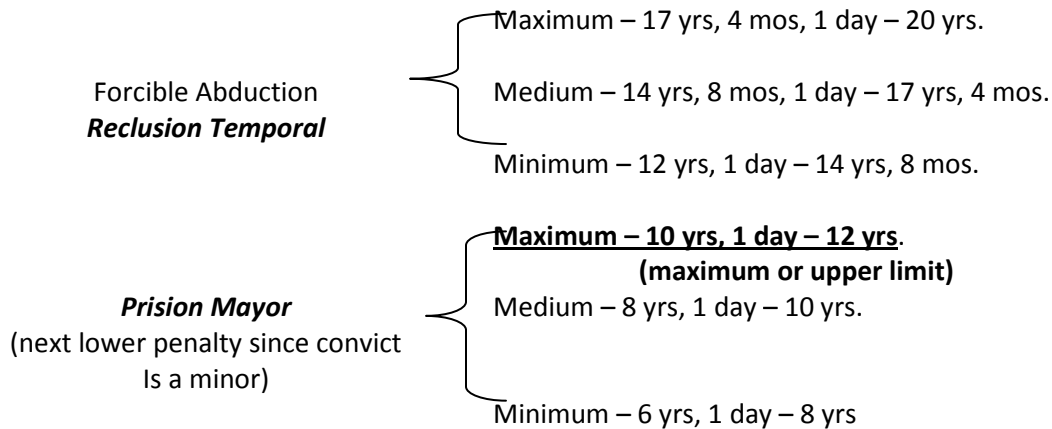
3RD PROBLEM:

3) Assuming 16-year-old accused was convicted of Forcible Abduction. There is 1 aggravating and no mitigating circumstance.

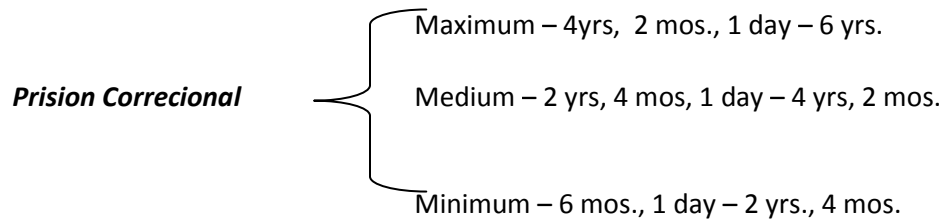
a) Considering the above, answer the following:

- 1) What is the range of the **maximum** penalty?
- 2) What is the range of the **minimum** penalty?
- 3) If you are a very **strict judge**, what is the **highest penalty** you can impose?
- 4) If you are a very **lenient judge**, what is the **lowest penalty** you can impose?

1) **MAXIMUM:**



2) **MINIMUM:**



- 3) If a very strict judge, the **HIGHEST POSSIBLE PENALTY** he can impose is 6 years to 12 years
- 4) If a very lenient judge, the **LOWEST POSSIBLE PENALTY** he can impose is 6 months, 1 day to 10 years 1 day

Sec. 2. This Act shall **not apply** to:

1. Persons convicted of offenses punished with ***death penalty or life-imprisonment***;
2. To those convicted of ***treason, conspiracy or proposal to commit treason***;
3. To those convicted of ***misprision of treason, rebellion, sedition or espionage***;
4. To those ***convicted of piracy***;
5. To those who are ***habitual delinquents***;
6. To those who have ***escaped from confinement or evaded sentence***;
7. To those who having been ***granted conditional pardon*** by the Chief Executive shall have ***violated the terms thereof***;
8. To those whose maximum term of imprisonment does ***not exceed one year***, nor to those already sentenced by final judgment at the time of approval of this Act, except as provided in ***Section 5*** hereof.

Notes:

- 1) Does not apply if penalty is death or reclusion perpetua because these are indivisible penalties;
- 2) Does not apply if penalty imposed is one year or less;
- 3) Applies to special law, e.g. 17 years old convict, or illegal possession of firearms

CRIMINAL LAW I
BAR EXAMINATION

PROFESSOR: ATTY. TEODORO V. ANGEL

SEPTEMBER 2006

INSTRUCTIONS:

This is a 3-hour exam consisting of twenty (23) essay questions. Write your answers in your exam booklet and number them according to the corresponding numbered item in the questionnaire. Write only on the front side of each page of your examination booklet.

Avoid erasures as much as possible and refrain from writing in capital letters. Corresponding deductions will be given for illegible handwriting, unnecessary markings, obnoxious erasures and palpable guesswork. A fatal consequence will ensue for failure to follow instructions or cheating, not so much for **dolo** but for **culpa**. Cheating being a capital offense, penalty for cheating is **reclusion perpetua** to death and perpetual absolute disqualification from becoming a lawyer. **You may only cheat and lie officially when you become full-fledged lawyers already.**

Make your answers as complete and as comprehensive as possible, always citing the appropriate legal provision or doctrine, and pertinent jurisprudence, if any. If you do not have the faintest idea of the answer, attempt to answer it nonetheless using general principles or doctrines of law, logic or even plain common sense. Rest assured you will get some credit for your answer, if not for the profundity or depth of your arguments, at least well, for the sheer effort.

I wish you luck and have a challenging time answering this exam.

PROBLEMS:

1) Cite the basic distinctions between **intent** from **motive** as elements of a crime and in imputing criminal liability.

ANSWER:

Intent is purpose to use a particular means to effect a particular result; objective phase. Criminal law, as a general rule, is concerned only with INTENT, and whether or not the accused acted freely, intelligently and intentionally. In Ah Chong and Oanis cases, mistake of fact negatives intent.

Motive, on the other hand, is the moving power which impels one to action for a definite result. Not an element of a crime except if doubt exists as to the identity, liability, or participation of the accused and if one seeks to secure the conviction of the accused only through circumstantial evidence.

MISTAKE OF FACT

2) Mr. Derla lives with his family in a small rented apartment in an urban poor community located at the outskirts of Davao City. Due to a number of robberies in the neighborhood, Mr. Derla armed himself with a .38 **paltik** revolver. Around midnight sometime in January 2006, he was awakened by the barking of dogs and he immediately grabbed his gun as he went out to investigate. It was pitch black yet he could see a dark figure with a bladed weapon in hand, around 15 meters away, menacingly moving towards him. He fired six successive shots at his would-be-assailant who died at the spot. When the lights were turned on, the assailant happened to be his 70-year-old father-in-law carrying a newspaper on his way to the kitchen to eat midnight snacks and read the newspaper.

- a) *If you were Derla's lawyer, what defenses will you invoke in behalf of your client?*

ANSWER:

If I were Mr. Derla's lawyer, I will invoke defense of mistake of fact. In the case at bar, all requisites of mistake of fact are present because the act and intention of Mr. Derla would have been lawful and constituted legitimate self defense had facts been as Mr. Derla believed them to be. Further, Mr. Derla was not negligent considering that the danger here was immediate and impending, in light of the fact that the neighborhood has witnessed several robberies in the past.

- b) *If you were Judge, rule on the liability of Mr. Derla.*

ANSWER:

If I were the Judge, I will hold Mr. Derla liable for simple imprudence resulting in homicide, the homicide resulting from simple lack of precaution on the part of Mr. Derla to ascertain the identity of the intruder. Considering that the intruder was still 15 meters away, there was still reasonable opportunity for Mr. Derla to ascertain the identity without imminent danger or risk to himself. Finally, firing six successive shots at the supposed intruder constituted excessive force which negates the defense of mistake of fact.

I will, however, credit in Mr. Derla's favor the mitigating circumstance of praeter intention, or no intention to commit so grave a wrong as that actually committed.

3) A, B and C are members of an **akyat-bahay** gang who have been casing out the house of Bong Fernandez, a movie celebrity. At midnight on March 15, 2006, the three armed men barged into the house of the actor, tied him up with his wife and 9-year-old daughter, and carted valuables worth P200,000.00 and cash amounting to P50,000.00.

As soon as Bong Fernandez untied himself, he grabbed his **Armalite**, chased the suspects and engaged them in a fierce gunbattle, killing A while seriously injuring B and C who were then arrested. Bong Fernandez immediately surrendered to the police afterwards.

- a) *If you were the Fiscal, for what crime will you charge the suspects, and what aggravating circumstances are attendant.*

ANSWER:

As Fiscal, I will charge the suspects for the crime of Robbery because with intent to gain, they used violence against and intimidation of persons to

gain entry into the house of Bong Fernandez, and carted away valuables and cash. The aggravating circumstances attendant here are as follows: Evident premeditation for casing the house of the victim; Nighttime for using nocturnity to ensure or afford impunity; and Abuse of superior strength for using their collective strength against the defenseless victims.

b) How about the criminal liability, if any, of Bong Fernandez.

ANSWER:

Bong Fernandez can be held liable for homicide for the death of A, and serious physical injuries for the injuries sustained by B and C. Bong Fernandez cannot invoke complete self defense nor defense of property because the aggression was no longer existing, nor the danger actual or impending, when he chased the victims. It could be more of retaliation although Bong Fernandez should be credited with the mitigating circumstances of passion and obfuscation or immediate vindication of a grave offense in his favor.

4) John delos Reyes was only 14 years old when he committed the crime of attempted robbery by forcibly opening the door of a jewelry shop owned by a Chinese businessman. He was charged, and convicted, by the lower court when he was already 16 years old, and he immediately appealed his case to the Supreme Court. The Supreme Court, however, affirmed his conviction and by this time John delos Reyes was already 21 years old.

a) If John delos Reyes sought suspension in the service of his sentence under P.D. 603, would he qualify for suspended sentence?

ANSWER:

John would no longer qualify for suspended sentence because under P.D. 603, the youthful offender must be under 18 years of age when he committed the crime, upon conviction and upon service of sentence. Considering that John was already 21 years of age upon conviction, his application for suspended sentence must be denied.

b) Assuming he cannot avail of suspended sentence, what benefit, if any, can be appreciated in favor of John delos Reyes.

ANSWER:

John, however, can avail of the privileged mitigating circumstance of minority and his penalty lowered by at least two degrees.

DEFENSE OF RELATIVE

Jose ("**Jose**" for brevity) and Fred ("**Fred Sr.**" for brevity) are neighbors with a long-standing feud due to a boundary dispute. One day Jose was drinking beer with his **barkada** when Fred Sr. passed by. In an effort to reconcile, Jose cordially invited Fred Sr. to join them, but Fred Sr. sarcastically replied: "**Di ako umiinom kasama mga traidor.**"

This led to a heated argument which soon escalated into an armed struggle, both Jose and Fred Sr. being armed with a bladed weapon. It was not clear who struck first but it was shown that Jose, being bigger and stronger, overpowered Fred Sr. and stabbed him thrice. Jose was about to strike again when **Fred, Jr.**, the victim's 25-year-old son, arrived and shot Jose at the back, killing him on the spot. Fred, Sr. himself died while being rushed to the hospital.

In the lower court, **Fred, Jr.** was charged and convicted for **Murder** because of **treachery** for shooting Jose at the back, along with generic aggravating circumstance of **evident premeditation** because of the family feud and **abuse of superior strength** because of the use of .45 caliber in killing Jose, his father's arch enemy.

a) *If you were Fred Jr.'s lawyer handling his appeal, what defenses will you raise in your client's favor and assign as error in the lower court's decision.*

ANSWER:

If I were Fred Jr's lawyer handling his appeal, I will invoke defense of relatives. In the case at bar, all requisites of defense of relative are attendant. There was unlawful aggression on the part of Jose in stabbing Fred Sr. and no sufficient provocation on the part of Fred Sr. Most importantly, assuming the provocation was given by Fred Sr., the son Fred Jr. had no part, or participation nor knowledge therein.

There can be no treachery nor evident premeditation for as the Supreme Court stressed in a decided case, where there are no particulars as to how aggression commenced, and as to how the acts unfolded leading to the death of the victim in a fight, there is no treachery nor evident premeditation. Neither can there be abuse of superior strength because it was the only weapon available to Fred Jr. which he used to thwart further aggression against his father.

EFFECTS OF PARDON

6) Mr. Villarama is the chief of the **Bureau of Immigration and Deportation (BID)** who was arrested **in flagrante** receiving P500,000.00 from a Japanese tourist in exchange for releasing the latter's visa and facilitating his **Alien Certificate of Registration (ACR)**. He was prosecuted, and convicted for **Direct bribery** before the lower court but immediately elevated his appeal to the Supreme Court.

In the meantime, because of his powerful connections with a certain fat guy named **Jose Pidal** who was a fraternity *brod* in Ateneo de Manila, he was granted absolute pardon by President Gloria M. Arroyo. On account of such pardon, Mr. Villarama now insists on his immediate reinstatement without loss of seniority rights or any interruption in his government service. Mr. Villarama likewise seeks payment of all backwages denied him during the period of his suspension, contending that pardon extended him was equivalent to an acquittal.

a) If you were the Judge, rule upon the arguments of Mr. Villarama and whether or not you will grant, or deny, his demand for immediate reinstatement and backwages.

ANSWER:

If I were the Judge, I will deny his demand for immediate reinstatement and backwages. This is because pardon merely implies forgiveness, but not forgetfulness, meaning the accused was found guilty but merely extended pardon, or clemency, by the President. Pardon can therefore only remove the disqualification from seeking public office, but does not work automatic restoration as she must re-apply for the same position.

He is neither entitled to backwages since having been found guilty in judicial proceedings, forfeiture of wages during such time is presumed to have been rightfully done and justly suffered, and forms part of his penalty.

b) What is the effect of his being granted pardon to his pending appeal?

ANSWER:

The effect of his being granted pardon is that his appeal is deemed automatically withdrawn. Consequently, his unreversed conviction by the lower court became final.

ARTICLE 247

7) Peter, a security guard, found his wife completely naked in bed and ***in flagrante delicto*** with his best friend, Benjie. Peter, however, could not do anything but fled when Benjie shot him with the latter's .45 caliber but missed. Overwhelmed with anger, Peter looked for a weapon and was able to borrow a shotgun from his friend.

After a lapse of two hours, Peter followed Benjie to the cockpit which Benjie frequents, and upon seeing Benjie, Peter immediately fired upon Benjie, killing him on the spot. Two innocent bystanders, however, were also seriously hit and would have died were it not for timely medical intervention. The victims sued Peter in the lower court where he was convicted

for **Murder** for the death of Benjie, and **Frustrated homicide** for the injuries sustained by the two innocent bystanders.

- a) *As Peter's legal counsel, what defense will you raise in your client's favor?*

ANSWER:

As Peter's lawyer, I will raise the defense of Article 247, or Death under exceptional circumstances which is akin to an absolatory cause. In the case at bar, since Peter killed the paramour immediately thereafter after he caught Benjie in flagrante delicto with his wife, even after two hours had lapse, this would still fall under this absolatory cause in a decided case. The only condition that it must be established that the killing was the "proximate result of the outrage overwhelming the accused upon catching the other spouse in the basest act of infidelity." The penalty of Peter is destierro only.

Considering that killing under Article 247 is not a criminal act, Peter cannot be held criminally liable for the injuries sustained by the victims. He is, however, civilly liable.

- 8) Explain the concept of **mala in se** and **mala prohibita**, and the differences between the two.

ANSWER:

Mala in se are crimes punishable under RPC; determine whether or not act done with dolo or culpa; criminal intent, degree of participation and stage of execution as distinguished from crimes mala prohibita.

Mala prohibita are crimes punishable under special law; presence of dolo or culpa, criminal intent, degree of participation and stage of execution, and attendant circumstances are immaterial and irrelevant.

ARTICLE 4

- 9) Jess was enjoying the bus ride home after a hard day's work at the office when Mario announced a hold-up, brandishing an **Uzi** and a hand grenade. Shocked, Jess instinctively jumped out of the speeding bus, his head hitting the cement pavement, causing his instantaneous death. When prosecuted, Mario argued that he never intended to kill Jess, but it was Jess' own negligence in jumping out of the speeding bus which led to Jess' untimely death.

- a) *Decide on the criminal liability of Mario, if any, for Jess' death.*

ANSWER:

Mario should be held liable for the death of Jess and his argument that he had no intent to kill Jess should be set aside. Considering it was Mario's unlawful act of threatening the victims which was the proximate cause of Jess being forced to jump, Mario should be held liable for the direct, natural and logical consequences of his criminal act which was presumed to have been done voluntarily, intelligently and intentionally.

PEOPLE VS. RICOHERMOSO

A and B simultaneously attacked V, the victim, with bladed weapons. S, the victim's son carrying a gun, was about to come to his rescue when C, the son of A, held S from behind, grappled with the gun and eventually rendered S unconscious.

When prosecuted for murder for V's death, A interposed the defense of ***Necessity***, or that he acted to avoid a greater evil or injury befalling on his relatives. A likewise interposed ***Defense of relative*** in his favor.

a) If you were the Judge, decide on the criminal liability of AS, particularly on AS' defense of Necessity as well as Defense of relative.

ANSWER:

No. C's defense of Necessity is untenable because instead of avoiding evil which was the unlawful killing of the victim V, C facilitated or even insured the killing by rendering unconscious the son of V who would have come to V's rescue. Further, the act of S in trying to help his father is not an evil because it would have constituted legitimate defense of relative since A and B were the unlawful aggressors here.

Neither can C invoke Defense of relative. This is because it was A and B who were the unlawful aggressors who attacked V, without provocation. More importantly, C acted in conspiracy with A and B in killing the victim Fred, Sr. and C knew beforehand of the attack earlier conceived by all the offenders.

10) Alex was invited to a drinking spree by friends. After having too much to drink, Alex and Bitoy had a verbal argument, which led to Alex stabbing Bitoy, resulting in the death of Bitoy for which Alex was charged with ***Homicide***.

a) Will the intoxication of Alex be considered aggravating or mitigating, and why?

ANSWER:

The intoxication of Alex here not being habitual nor intentional or subsequent to the plan to commit a felony in order to embolden the accused,

but purely accidental, the intoxication of Alex shall be considered mitigating in determining his criminal liability.

12) Distinguish between *reclusion perpetua* from *life imprisonment*.

ANSWER:

Death is an indivisible penalty which a range of 20 years and one day to 40 years. The imposition of reclusion perpetua carries with it also the imposition of accessory penalties.

Life imprisonment, on the hand, literally means for life and imposed for crimes punishable under special laws. It has no accessory penalties.

13) Pedro, a Filipino national, shot dead an African national while on board ***MV Pilipinas***, a merchant vessel sailing in the Pacific Ocean. Although the vessel is owned by Lucio Tan, a Filipino, it was registered in Singapore where it came from. When ***MV Pilipinas*** docked at Manila Bay, Pedro was arrested and an ***Information*** for ***Murder*** was filed against Pedro. Pedro immediately filed a ***Motion to Quash the Information*** alleging lack of jurisdiction, the crime having been committed in the high seas.

a) *If you were the Judge, rule upon the motion filed by Pedro.*

ANSWER:

As judge, I will grant the Motion to Quash. Under the law, it is the registration in accordance with Singaporean law, and not the citizenship of the Filipino owner, which will qualify it as a Singaporean merchant ship. Considering that the crime was committed in the high seas, and involving a serious felony, such crimes are triable under the laws of Singapore it being a Singaporean merchant ship.

14) Discuss the three basic principles of criminal law.

ANSWER:

1) **PROSPECTIVITY**

a) *Crimes punishable by penal laws already in force at time of their commission, EXCEPT that they can be given retroactive effect if such penal law is favorable to accused, provided accused is not a habitual delinquent.*

2) **GENERALITY**

a) *Article 14 (Civil Code) -- "Penal laws shall be obligatory upon those who live or sojourn in Philippine territory, subject to principles of PIL and to treaty stipulations."*

b) Even foreigners not exempt from our penal laws, except heads of state, foreign ministers and diplomats.

3) TERRITORIALITY

a) Criminal laws are enforceable only within Philippine territory, except as found in Article 2 (Extraterritoriality)

CIVIL LIABILITY

15) Luis was charged and convicted for kidnapping before the Regional Trial Court of Malolos, Bulacan. While the case was pending appeal, the victim Raul died. Luis argued that with the victim Raul's death, Luis' criminal and civil liabilities are extinguished.

a) What is the effect of the victim's death to the criminal and civil liabilities of the accused Luis?

ANSWER:

The death of the victim does not extinguish the criminal nor civil liability of the offender. The criminal liability subsists because the offense is against the state. The civil liability, on the other hand, still remains since the right to seek indemnity would now devolve upon the heirs, and the estate of the deceased victim.

b) Assuming it was the accused Luis who died instead, what is the effect of Luis' death to Luis' criminal and civil liability?

ANSWER:

On the other hand, if it were Luis who died while his conviction is pending appeal before the Supreme Court, his criminal liability is extinguished with his death. His civil liability is likewise extinguished because pecuniary penalties are extinguished when the death of the offender occurs pending appeal, or before final judgment. This is of course without prejudice to the institution of a separate civil action but predicated on a source of obligation not arising from delict but from other sources such as law, contracts, quasi contracts and quasi delicts. (People vs. Bayotas, September 2, 1994)

16) Sammy is a Filipino goldsmith based in Hongkong. He counterfeited old peso coins already out of circulation as a hobby. When he went home to the Philippines, he bought with him some of these coins to add to his prized collection but he was arrested for **Counterfeiting and importation of coins**. He filed a **Motion to Quash the Information** on two

grounds: **1st**, that the act of counterfeiting having been consummated in Hongkong, the Philippines does not have jurisdiction; and **2nd**, the obsolete peso coins were valueless anyway and no prejudice was committed against public interest.

a) *If you were the Judge, rule on the arguments of Sammy.*

ANSWER:

If I were the Judge, I will deny the Motion to Quash for lack of merit. In the case at bar, counterfeiting of coins of the Philippines and uttering or importing them to the country is a crime which is still covered by Philippine law even if committed abroad because of the principle of extraterritoriality contemplated under Article 2 of the RPC. Neither is there any legal basis to Sammy's contention that obsolete coins cannot be the subject of counterfeiting, since counterfeiting of coins is not limited to coins still in circulation, but also covers coins already out of circulation, the danger being that the counterfeiter might later apply his skill to coins which are still legal tender.

RAPE

17) Lina, an 11-year-old elementary student was on her way to school when Lito waylaid her, removed her panty and tried to commence sexual intercourse with her. Lina initially offered stiff resistance but when she realized the futility of resisting, she played dead. Because of Lina's tenacious resistance, and her later playing dead, Lito got scared and could not sustain an erection so he contented himself with rubbing his organ on hers. Lito was later arrested and prosecuted for **Consummated rape**, the Fiscal believing that mere touching of the penis to the external genitalia of the female victim already consummates the sexual assault.

a) *What crime was committed by Lito.*

ANSWER:

Lito committed the crime of attempted rape only, and not consummated. It is attempted raped only because jurisprudence provides that where penetration is not sufficiently established, and where there is a mere rubbing of the external genitalia because the offender cannot sustain an erection, rape is committed in the attempted stage only. This is because without an erection, there can be no penetration, and without penetration, there can be no consummation since not all acts of execution have been performed by the offender.

18) X and Y staged a daring hold-up of Metrobank, Magsaysay by pointing a gun at the bank manager and demanding P500,000.00 in cash. Without their knowledge, the bank heist was recorded through a hidden camera, and the police immediately alerted through a secret alarm system. X and Y were about to flee when they were arrested by responding policemen who were posted outside. Upon prosecution, X and Y sought to downgrade the crime charged to **Attempted robbery** because they were not able to take out the loot outside hence, asportation was not complete.

a) **Rule on the argument of X and Y and decide on their criminal liability.**

ANSWER:

X and Y should be held liable for consummated robbery because with intent to gain, and using violence against or intimidation of persons, the offenders barged into the bank and were about to flee with their loot when they were arrested. The fact alone that they were not in a position to dispose of the stolen goods does not make them liable for a lighter offense because asportation or taking with intent to gain was already complete when the money was already in their possession, although they were unable to dispose of the same due to the timely arrival of the police authorities.

DEFENSE OF PROPERTY

19) Mang Ricky is the caretaker of a 15-hectare lot in Malagos, Calinan, Davao City owned by the Lopezes. The farm, fully planted with fruit trees, particularly durian, mangosteen and lanzones, suffer from substantial losses due to frequent theft that Mang Ricky decided to arm himself with a shotgun. One night he heard the dogs barking so he went out to check. At a distance he could see the figure of an adult man carrying something and running away. He immediately fired, killing Pedro, a petty 15-year-old thief in the neighborhood who was unarmed.

Mang Ricky immediately surrendered himself to the authorities. When prosecuted, Mang Ricky interposed **Defense of property** and **Performance of duty** as a caretaker and guard of the farm premises in killing Pedro, an intruder.

a) **If you were the judge, would you acquit or convict Mang Ricky. If you convict, what mitigating circumstances can be appreciated in his favor.**

ANSWER:

If I were the Judge, I would convict Mang Ricky with Murder. In the instant case, the accused is liable for Murder because the unlawful killing

was attended by treachery, the offender adopting means to insure the commission of the crime while rendering the victim defenseless. Mang Ricky cannot raise defense of property because defense of property can only be invoked if there is a an actual or imminent danger to one's life also. In this case, the means employed by Mang Ricky was unreasonable, and for using excessive force, the aggravating circumstance of abuse of superior strength can also be appreciated against him.

Neither is there basis to Mang Ricky's argument of performance of duty because by acting with excessive force, he no longer acted in due and lawful performance of duty hence, he must be held criminally as well as civilly liable.

Mang Ricky, however, can avail of incomplete defense of property as well as voluntary surrender which should lower his criminal liability by at least one degree.

20) Cite instances when the death penalty shall not be imposed.

ANSWER:

1) When the accused is less than 18 years of age at the commission of the offense; 2) When the accused is more than 70 years of age; 3) When upon appeal or automatic review of the case by the Supreme Court, the required majority vote for the imposition of the death penalty cannot be obtained; and 4) In case of a pregnant woman, and within one year after delivery.

SUBSIDIARY WRIT OF EXECUTION

D, the driver of a jeepney, was overspeeding and drank when he figured in an accident causing injuries to P, a pedestrian. D was charged and convicted of Reckless imprudence resulting in serious physical injuries to P, and was made to suffer eight months of **prision correccional** and to indemnify the victim, P the sum of P10,000.00 and P2,000.00 in attorney's fees.

A writ of execution was served upon D but remained unsatisfied due to D's insolvency. P moved for a **subsidiary writ of execution** against O, the operator. O, however, opposed the motion on ground that he was not impleaded in the original case and to include him now would be, in effect, amending the decision in the lower court.

a) If you were the Judge, rule on the motion for issuance of a subsidiary writ of execution.

ANSWER

:If I were the judge, I will grant the motion for issuance of a subsidiary writ of execution against the operator O, and without the need for filing a separate civil action to recover civil liability. Under the law, the employer and operator O is subsidiarily civilly liable once it is established that he is the employer of D engaged in business or industry, that D caused the injury while in the discharge of his functions, and that D who is primarily civilly liable is insolvent. Considering that all three requisites are attendant, O as operator is subsidiarily civilly liable although he was not impleaded in the earlier case. It is enough that he is notified of the motion for issuance of a subsidiary writ of execution. (See Carpio vs. Doroja)

BIGAMY

22) X, a salesman, married A on March 15, 1980 in Cebu City. After one year of tumultuous married life, X left A and settled in Davao City where he was reassigned. On June 15, 1982, X married B, a pretty ***colegiala*** from Ateneo de Davao University and the marriage was registered that same day at the local Civil Registry.

In January 1997, A discovered the second marriage of X to B, and A filed a case for bigamy sometime in January 1998. X moved to dismiss the case alleging prescription contending that registration of his second marriage to B on June 15, 1982 operates as constructive notice to A. Bigamy prescribes in 15 years.

a) If you were the Judge, decide on the motion to dismiss filed by X on ground of prescription.

ANSWER:

If I were the Judge, I will deny the Motion to Dismiss because A can still prosecute X despite the lapse of 16 years from the registration of the second marriage in on June 15, 1982. Under the law, prescription of offenses commences to run from the time the crime is discovered by the offended party, the authorities or their agents. The facts of the case indicate that the second bigamous marriage was discovered by the first wife, A only in January 1997, which must be the reckoning period to count when the crime prescribes. Hence, when A filed the case in January 1998, the period of prescription has run only for a period of one year.

Prescription cannot be counted from the time of registration because constructive notice only operates in registration of ordinary contracts like deed of sale of real property, but does not apply in special contracts like marriage.

23) Mr. Cayan is a thin and fragile-looking 16-year old senior high school student in Davao City High School. Mr. Boiser is a tough, rude classmates who loves making fun of him. One day, when Mr. Cayan flunk their Physics final exam, Mr. Boiser teased him in class by saying aloud: ***“Kung ganun ako ka-bobo sa Physics, tatayo na lang ako ng beauty parlor. Appear!”*** eliciting laughter from the class.

Deeply resenting the joke, Mr. Cayan skipped their afternoon class, bought a ***balisong***, and drank the whole afternoon while waiting for Mr. Boiser to come out of their afternoon class. When Mr. Boiser finally came out of the gate around 6:30 p.m., Mr. Cayan pulled out his ***balisong***, and stabbed the victim several times at the back. Mr. Boiser was rushed to the hospital but died on the way while Mr. Cayan calmly surrendered to the authorities. During his trial for murder, Mr. Cayan’s lawyer sought to exempt Mr. Cayan from criminal liability on ground of insanity because while under detention, Mr. Cayan allegedly exhibited signs of severe schizophrenia characterized by sudden mood swings from depression to outright aggression, suicidal tendencies, and homosexual inclinations.

a) ***If you were the Fiscal, for what crime will you charge Mr. Cayan in the Information.***

ANSWER:

I will charge Mr. Cayan for the crime of Murder, qualified by treachery. I will also allege the aggravating circumstances of evident premeditation considering the lapse of time from planning to execution indicating that he tenaciously clung to his determination to kill, and nighttime which he deliberately resorted to in order to insure or afford impunity.

b) ***As Judge, rule on the defense of insanity raised by Mr. Cayan’s defense counsel.***

ANSWER:

As judge, I will set aside the defense of insanity invoked by Mr. Cayan’s defense counsel for lack of merit and obviously a mere belated afterthought to exculpate Mr. Cayan. Insanity, to be exempting, means complete deprivation of intelligence and freedom of the will, and not mere abnormality. Further, insanity must be reckoned through the acts of the accused before and during the commission of the offense, and not after. The facts indicate that Mr. Cayan was fully aware of the consequences of his actions when he planned his criminal act, in carrying it out, and in surrendering to the authorities.

**MEMORY AID IN
CRIMINAL LAW II**

By: Atty. Teodoro V. Angel

**CRIMES AND PENALTIES
*Book II (RPC)***

**TITLE I CRIMES AGAINST NATIONAL SECURITY AND THE
LAW OF NATIONS**

ARTICLE 114 -- Treason

Elements:

- 1) That offender ***owes allegiance*** to the government of the Philippines.
- 2) That there is a ***war*** in which the Philippines is involved.
- 3) That the offender ***EITHER:***

Le ***a)Levies*** war against the government, or

Ad ***b)Adheres*** to the enemies, giving them aid or comfort.

(Recall LeAd)

- a) ***Levying war*** -- means an actual assembling of men for the purpose of executing a treasonable design by force.
- b) ***Adhering to the enemy*** -- means mentally favoring the enemy, emotionally.
- c) ***Giving aid or comfort*** -- means an act which strengthens the enemy in the conduct of war, or weaken the defense of our country in resisting the enemy.

Two ways of proving treason

- a) Two-witness rule
- b) Confession of guilt in open court

Rules on treason

- a) Espionage during peace becomes treason during war.
- b) Treachery and evident premeditation are inherent and necessarily absorbed in the crime of treason but not ignominy or cruelty in commission of treason.

Laurel vs. Misa, 77 PR 856

Anastacio Laurel filed petition for *habeas corpus* because detained for treason during Word War II. He argued that his allegiance to the country is suspended during war, as well as sovereignty of the country vis-a-vis its citizens because the State was incapable of providing protection to its citizens during the war.

Held: SC denied petition for habeas corpus and convicted Laurel for treason. SC said citizen owes permanent and absolute allegiance, not temporary or conditional allegiance to country. No such thing as “suspended conjugal fidelity” in marriage, just like allegiance to country. Further, only exercise of sovereignty suspended, but not sovereignty itself, otherwise

it would lead to political suicide and provide a perfect excuse for powerful nations to invade and oppress weaker states with impunity.

People vs. Perez, 83 PR 314.

Held: *Commandeering of women to satisfy the lust of Japanese officers during World War II is not treason because it does not directly strengthen the enemy and weaken our defense. Whatever "favorable effect to Japanese is merely trivial, imperceptible and unintentional."*

ARTICLE 115 -- Conspiracy and Proposal to Commit Treason

The conspiracy or proposal to commit the crime of treason shall be punished

x x x.

A) CONSPIRACY

- 1) That it is committed in **times of war**.
- 2) That two or more persons **come to an agreement** to levy war against the Government, or to adhere to the enemies and to give them aid and comfort. (In short, that there was an agreement to commit treason in any of the two (2) modes).

B) PROPOSAL

- 1) That it is committed in **times of war**.
 - 2) That a person **decides to commit treason** in any of the two modes.
 - 3) That he **proposes** its execution to some other persons.
- a) As a general rule, mere conspiracy and proposal to commit a felony is not punishable because there are mere preparatory acts in the subjective phase. This is an **exception to the general rule**.
- b) In conspiracy and proposal to commit treason, the **two-witness rule** does **not** apply here because this is a separate and distinct offense from treason.

ARTICLE 116 -- Misprision of Treason

Elements:

- 1) That the offender **owes allegiance** to the Philippines, and without being a foreigner;
- 2) That he has **knowledge of any conspiracy** to commit treason against the Government;
- 3) That he (a) **Conceals** or (b) Does **not disclose** and make known the same, as soon as possible to the proper authority.

Note:

- a) Article 116 does **not** apply when treason is already committed by someone and the accused does not report its commission to the proper authorities.
- b) The offender here is punished as principal in **Misprision of treason**, and not as a mere accessory to treason.

ARTICLE 117 -- Espionage

Two ways of committing espionage

- a) By **entering** without authority a warship, for, naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippine archipelago.
- b) By **disclosing** to the representative of a foreign nation the contents of the articles, data or information referred to in **par. no. 1** which he had in his possession by reason of the public office he holds.

Commonwealth Act No. 616 (An Act to Punish Espionage and other Offenses Against National Security)

Acts penalized:

- 1) Unlawful **obtaining** or permitting to be obtained information affecting national defense.
- 2) Unlawful **disclosing** of information affecting national defense.
- 3) **Disloyal acts** or words in times of **peace**.
- 4) **Disloyal acts** or words in times of **war**.
- 5) **Conspiracy** to commit the preceding acts.

Note:

- a) Harboring or concealing violators of this law is also an offense.
- b) **Espionage** may also be committed both in times of peace and war, but usually during peace. Because the act of relaying confidential information which constitutes **espionage during peace becomes treason during war** (for strengthening the enemy and weakening the defense of our country against the foreign enemy).

ARTICLE 118 -- Inciting to war and giving motives for reprisal

Elements:

- 1) That the offender performs unlawful or unauthorized acts.
 - 2) That such acts provoke or give occasion for a war involving, or liable to involve, the Philippines, or exposes Filipino citizens to reprisals on their persons or their property.
- a) By the nature of the crime, it can only be committed during **times of peace**.

ARTICLE 119 -- Violation of neutrality

Elements:

- 1) That there is a **war** in which the Philippines is not involved;
- 2) That there is a **regulation** issued by competent authority for the purpose of enforcing neutrality;
- 3) That the offender **violates** such regulation.

Note:

- a) This crime can only be committed in **times of war**, although the Philippines is not yet involved in such war precisely, there is a regulation to ensure neutrality which offender violated.

ARTICLE 120 -- Correspondence with enemy country

Elements:

- a) That there is a **war** involving the Philippines;
- b) That offender shall have **correspondence** with the enemy country, or with a territory occupied by the enemy troops;
- c) That such **correspondence** falls under the following:
 - 1) Prohibited by the government.
 - 2) Carried on in ciphers or conventional signs;
 - 3) Contains notice or information which might be **useful to the enemy**, or intended by the offender to **aid the enemy**.

ARTICLE 121 – Flight to enemy country

Elements:

- 1) That there is a **war** in the Philippines is involved.
- 2) That the offender **owes allegiance** to the Philippines.
- 3) That the offender **attempts to flee**, or go to the enemy country.
- 4) That going to the enemy country is **prohibited** by competent authority.

Note:

- a) This felony may also be committed by a foreigner, as he owes allegiance to the government, although in a **temporary capacity**.

ARTICLE 122 -- Piracy in general and mutiny on high seas or in Philippine waters. (As amended by **Sec. 3, R.A. 7659**).

Two ways/modes of piracy:

- 1) By **attacking or seizing** a vessel on the high seas.
- 2) By **seizing** the whole or part of the cargo or equipment of the vessel, while on the high seas, OR their personal belongings of its complement or passengers, the offenders **not** being members of the complement, or passengers.

Elements:

- 1) That a vessel is on the **high seas**.
- 2) That the offenders are **strangers** to the vessel, meaning they are **not** members of the complement, or passengers of the vessel.
- 2) That the offenders: a) **Attack** that vessel or b) **Seize** the whole or part of the cargo of said vessel, its equipment, or the personal belongings of its complement or passengers.

Note:

- a) Hence, if the offenders who seized the vessel by violence or intimidation or force upon things are members of the crew or passengers thereof, crime is **not piracy** but **ROBBERY IN THE HIGH SEAS**.

b) **Mutiny on the high seas** -- this involves the (1) Unlawful resistance to a superior officer; and (2) Raising of commotion and disturbances on board a ship against the authority of its commander, while ship is on the high seas.

Distinguished from piracy -- in piracy, the offenders are strangers to the vessels and there is intent to gain.

c) **High seas** -- refers to any waters on the seacoast, which are without the boundaries of the low-water mark, although such waters may be in the jurisdictional limits of a foreign government.

PD 532 (An Act Punishing the Act of Aiding or Abetting Piracy)

Requisites:

- 1) Offender knowingly
 - a) **Aids** or protects pirates;
 - b) **Acquires** or receives property taken by such pirates;
 - c) Directly or indirectly **abets** the commission of piracy.
- 2) Directly or indirectly **abets the commission of piracy.**

ARTICLE 123 -- Qualified piracy

*The penalty of **reclusion perpetua to death** shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:*

- S** 1) *When they have **seized** a vessel by boarding or firing upon the same;*
- A** 2) *Whenever the pirates have **abandoned** their victims without means of saving themselves;*
- M** 3) *Whenever the crime is accompanied by **murder**, homicide, physical injuries or rape. (As amended by Sec. 3, R.A. No. 7659)*
- (Recall SAM)**

Note:

- a) Any of said crimes accompanying the commission of piracy becomes an element of **qualified piracy**. As such, they cannot make the crime complex.
- b) There is qualified mutiny under Article 123, but limited under par. 2 and 3 of **Article 123**.

People vs. Lol-lo and Saraw, 43 PR 19

On June 30, 1920, six **vintas** intercepted two Dutch boats, killed the men and raped two women by "methods too horrible to be described." The Muslim pirates Lol-Lo and Saraw, with their companions, put holes and abandoned victims without means of saving themselves and fled to Tawi-Tawi where they were arrested. The two challenged the jurisdiction of Zamboanga CFI because crime committed outside of Philippine jurisdiction.

Held: *SC affirmed their conviction and sustained Zamboanga CFI jurisdiction because piracy (qualified piracy at that!) can be prosecuted anywhere. Pirates being *hostes humani generis* and piracy being a crime against humanity, it can be prosecuted anywhere where any of the elements of the crime was committed. Piracy has no territorial limits. Application also of EXTRATERRITORIALITY principle. (Article 2, par. 5)*

People vs. Rodriguez, 135 SRA 485;

Held: PD 532 expressly provides that qualified piracy is punishable by mandatory death. Hence, the mitigating circumstance of plea of guilt cannot be appreciated in accused's favor.

People vs. Siyoh, Kiram, 141 SCRA 356.)

Held: Since the crime committed was a special complex crime of qualified piracy with murder, the penalty shall be death, regardless of number of persons killed during the piracy.

R.A. 6235 (Ant--Aircraft Piracy or Hijacking Law of 1971)

Acts punished:

- 1) Usurping or seizing control of an aircraft of Philippine registry, while it is in flight, and ***compelling the pilots*** thereof to change the course or destination.
- 2) ***Usurping or seizing control*** of an aircraft of foreign registry, while within Philippine territory, compelling the pilots thereof to land in any part of Philippine territory.
- 3) ***Carrying or loading on board*** an aircraft operating as a public utility passenger aircraft in the Philippines such ***flammable, corrosive, explosive*** or poisonous substances.
- 4) Loading, shipping or transporting on board a cargo aircraft operating as a public utility in the Philippines ***flammable, corrosive or poisonous substances***, if not done in accordance with **Air Transportation Office** rules and regulations.

Aircraft is "in flight" -- from the moment all exterior doors are closed following embarkation, until such time when the same doors are again opened for disembarkation.

TITLE II CRIMES AGAINST FUNDAMENTAL LAWS OF THE STATE

ARTICLE 124 -- Arbitrary detention

Any public officer or employee who ***detains, without legal grounds***, a person shall suffer:

- 1) If detention has ***not exceeded three days***;
x x x The commission of a ***crime, violent insanity or any other ailment*** requiring the compulsory confinement of patient in a hospital considered legal grounds for detention of persons.

(Recall CIA)

Valid grounds for warrantless arrest:

- 1) When a person to be arrested has ***actually committed***, is already committing, or attempting to commit an offense in his presence;
- 2) When an offense has ***just been committed***, and arresting officer has ***personal knowledge of facts*** indicating that the person to be arrested has committed it; and
- 3) When person to be arrested is an ***escaped prisoner***.

Probable cause – reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a reasonable man in believing that the accused to be arrested is **probably guilty thereof**. Act done in good faith.

Distinguish: Arbitrary detention vs. Illegal detention:

- 1) In **Arbitrary detention**, principal offender is a public officer; in **Illegal detention**, principal offender is a private person, or a public officer acting in a private capacity beyond the scope of his authority.
- 2) In **Arbitrary detention**, offender who is a public officer has a duty which carries with it the authority to make an arrest; in **Illegal detention**, the offender is a private person, or a public officer who does not have the authority or power to detain.

ARTICLE 125 -- Delay in the delivery of detained persons.

*Penalty imposed upon a public officer who detains any person for some **legal ground** and **fails to deliver** such person to proper judicial authorities:*

- 1) ***Within 12 hours*** for crimes punishable by light penalties;
- 2) ***Within 18 hours*** for crimes punishable by correctional penalties;
- 3) ***Within 36 hours*** from crimes punishable by afflictive or capital penalties.

Umil vs. Ramos, 187 SCRA 311

It's a petition for habeas corpus alleging that Umil et al were being unlawfully detained without probable cause. ***Held: SC denied habeas corpus petition since they were caught in the act of committing acts of rebellion, and petitioner Dural had gunshot wounds sustained after killing 2 Capcom soldiers the day before being hospitalized.***

People vs. Burgos, 144 SCRA 1

Appeal from the Davao RTC decision convicting Ruben Burgos for *Illegal Possession of Firearms in Furtherance of Subversion*. Earlier Burgos was arrested by police authorities without any warrant in Digos, Davao del Sur while plowing the field for allegedly possessing unlicensed firearms which his wife earlier surrendered to the authorities, under duress.

Held: SC reversed conviction and held that warrantless arrest of petitioner Burgos void because Burgos was not committing a crime when arrested. Policemen also had no personal knowledge Burgos was "probably guilty" of illegal possession of firearms, except for the polluted information of Cesar Masamlok who has motive to testify against Burgos. It was tantamount to a "fishing expedition" hence, the gun was inadmissible in evidence.

Note:

- a) ***"Shall fail to deliver to proper judicial authorities"*** does not mean physical delivery but the making of an accusation or charge, or filing of an **Information** against the person arrested, with the corresponding court or judge.

- b) **Request for preliminary investigation** – the person so arrested may request for a preliminary investigation, but he must sign a waiver of **Article 125**.
- c) **Article 125** does **not** apply when arrest is by virtue of a warrant of arrest. In such case, the accused can be detained indefinitely.
- d) In **illegal detention**, the offender is a private individual; and the detention is legal from the beginning, but becomes illegal after a certain period of time when offended party is not delivered to the proper judicial authorities within the specified period.

ARTICLE 126 -- Delaying release

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That there is a **judicial or executive order** for the release of a prisoner or detention prisoner *or* there is a proceeding upon a petition for the liberation of such person.
- 3) That the offender **without good reason**:
 - a) **Delays the service** of the notice of such order to the prisoner;
 - b) **Delays the performance** of such judicial or executive order for the release of the prisoner, or the proceedings upon a petition for the release of such person.

ARTICLE 127 -- Expulsion. — *The penalty of prison correccional shall be imposed upon any public officer or employee who, not being thereunto authorized by law, shall expel any person from the Philippine Islands or shall compel such person to change his residence.*

ARTICLE 128 -- Violation of domicile

Penalty upon any public officer or employee who, not being authorized by judicial order, shall perform the following acts:

- En** 1) **Enter** the dwelling against the will of the owner thereof;
- Se** 2) **Search** papers or other effects found therein without the previous consent of the owner, or
- Ref** 3) *Having surreptitiously entered said dwelling and being required to leave, **refuses** to do so.*

(Recall EnSeRef)

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he is **not authorized** by judicial order to enter the dwelling and/or to make a search for papers and other effects.
- a) **Special aggravating circumstances** are:
 - 1) If committed at nighttime; 2) If any papers or effects not constituting evidence of a crime are **not** immediately returned, after a search is made by the offender.

ARTICLE 129 -- Search warrants maliciously obtained and abuse in serve of those legally obtained

Elements (or punishable acts)

- 1) By procuring a search warrant **without just cause**, or
- 2) Though having procured the same **with just cause**:
 - a) By **exceeding** his authority, or
 - b) By **using unnecessary severity** in executing this search warrant legally obtained.

ARTICLE 130 – Searching domicile without witnesses.

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he **searches the domicile**, papers or other belongings of any person.
- 3) That the owner, or any member in his family, or **two witnesses residing** in the same locality, are **not** present.

ARTICLE 131 – Prohibition, interruption and dissolution of peaceful meeting

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he performs any of the following prohibited acts:
 - a) **Prohibiting or interrupting** the holding of a peaceful meeting or dissolving the same, without legal ground.
 - b) **Hindering** any person from joining any lawful association or from attending any of its meetings.
 - c) **Prohibiting or hindering** any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses, or redress of grievances.

Note:

- a) There is no legal ground to prohibit the meeting when the danger is **not** imminent, and the evil to be prevented is not a serious one.
- b) The offender must be a stranger, and not a participant thereto.
- c) The venue is **not** a religious place.
- d) Even if it's a religious ceremony attended by members of religious sect but it's done in a **public place**, and it's interrupted, the crime is **Interruption of peaceful meeting** under Article 131.

ARTICLE 132 -- Interruption of religious worship

Note:

- a) Must be committed in a **religious place and during a religious ceremony or gathering** otherwise, crime would be more of violation of **Article 131 (Prohibition, interruption and dissolution of peaceful meeting)**.
- b) This article refers to the exercise of religious manifestations, and not to quasi-religious ceremonies such as a mere house blessing.

- c) The crime may be committed by a public officer or private person.

ARTICLE 133 -- Offending religious feelings

*Penalty is imposed upon anyone who, in a **place devoted** to religious worship or during the **celebration** of any religious ceremony, shall perform acts **notoriously offensive** to the feelings of the faithful*

Note:

- a) The act must be directly to the religious belief itself, and must be notoriously offensive to the feelings of the faithful. Otherwise, it is only **unjust vexation**.
- b) In **People vs. Baes, (68 PR 203)** the SC laid down three tests of what acts constitute “notoriously offensive to the feelings of the faithful:”
- 1) If act **ridicules religious dogma**. 2) If act **mocks or scoffs** at a religious ceremony. 3) If act **destroys** an object of veneration.

Further, SC held that what is “notoriously offensive” depends on the feelings of the Catholic faithful, or members of the religious congregation.

TITLE III CRIMES AGAINST PUBLIC ORDER

ARTICLE 134 – Rebellion and coup

*The crime of rebellion is committed **1) by rising publicly** and **2) by taking arms** against the Government for the purpose of removing from the allegiance to said Government or its law, the territory of the Republic of the Philippines, or any part thereof, of any body of land, naval or other armed forces, or **depriving** the Chief Executive or the Legislature of any of their powers or prerogatives.*

Enrile vs. Salazar, 186 SCRA 217

Senator Juan Ponce Enrile, et al arrested by military for “*Complex crime of rebellion with murder and multiple frustrated murder*” for failed coup attempt from November 29 to December 10, 1989 where President Aquino was almost overthrown. He filed a *Motion to Quash Information* because no such crime as complex crime but only simple rebellion which absorbs common crimes like murder, etc.

Held: *SC sustained Enrile and held it’s only simple rebellion which absorbs common crimes like murder, kidnapping committed on occasion or in furtherance thereof. Further, to allow complexing which would result in death penalty would defeat purpose of complex crimes which is to favor the accused, especially since this is a political offense treated with leniency which, according to Atty. Angel based on this case, is based on social contract theory which implicitly recognizes people’s sovereign right to overthrow existing government which no longer represents their interests.*

Enrile vs. Hon. Judge Amin, 189 SCRA 573

Along with complex crime of rebellion in QC RTC, Enrile also charged for violation of **P.D. 1829** which punishes act of **Concealing or Harboring Fugitives**. Enrile again filed *MTQ*

Information alleging that simple rebellion necessarily absorbs also the act of concealing or harboring fugitives under P.D. 1829.

Held: SC sustained Enrile and held that absorption theory in rebellion applies not only to common crimes like murder, kidnapping committed in furtherance or on occasion thereof, but likewise applies and extends to crimes punishable under special laws like P.D. 1829.

People vs. Lovedioro, 250 SCRA 389)

Held: SC held that gravamen of offense in rebellion is “public armed uprising.” Certainly the act of Lovedioro with two others in shooting a policeman cannot constitute rebellion. Lovedioro has burden of proof to establish that killing was done with a political motive and he failed to discharge that burden. Rather, it was a mere belated afterthought to mitigate his liability.

ARTICLE 134-A Coup d’etat

Coup d’etat is a **swift attack**, accompanied by violence, intimidation, threat, strategy or stealth, 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, singly or simultaneously, carried out anywhere in the Philippines by any person or persons **belonging to the military or police** or holding any public office or employment, **with or without civilian support or participation**, for the purpose of **seizing or diminishing state power**.

ARTICLE 135 -- Penalty for rebellion and coup d’etat. — Any person who **promotes, maintains, or heads** rebellion or insurrection shall suffer the penalty of reclusion perpetua.

Any person **merely participating or executing the commands of others in a rebellion** shall suffer the penalty of reclusion temporal.

Any person who **leads or in any manner directs or commands others to undertake a coup d’etat** shall suffer the penalty of reclusion perpetua.

Any **person in the government service who participates, or executes directions or commands of others in undertaking a coup d’etat** shall suffer the penalty of prision mayor in its maximum period.

Any **person not in the government service who participates, or in any manner supports, finances, abets or aids in undertaking a coup d’etat** shall suffer the penalty of reclusion temporal in its maximum period.

When the rebellion, insurrection, or coup d'etat shall be under the command of unknown leaders, any person who in fact directed the others, spoke for them, signed receipts and other documents issued in their name, as performed similar acts, on behalf of the rebels shall be deemed a leader of such a rebellion, insurrection, or coup d'etat.

Article 136. -- Conspiracy and proposal to commit coup d'etat, rebellion or insurrection. — *The conspiracy and proposal to commit coup d'etat shall be punished by prison mayor in minimum period and a fine which shall not exceed eight thousand pesos (P8,000.00).*

The conspiracy and proposal to commit rebellion or insurrection shall be punished respectively, by prison correccional in its maximum period and a fine which shall not exceed five thousand pesos (P5,000.00) and by prison correccional in its medium period and a fine not exceeding two thousand pesos (P2,000.00).

Article 137 --Disloyalty of public officers or employees. — *The penalty of prison correccional in its minimum period shall be imposed upon **public officers or employees** who **have failed to resist a rebellion** by all the means in their power, **or shall continue to discharge the duties of their offices under the control of the rebels** or shall **accept appointment to office under them.** (Reinstated by E.O. No. 187).*

ARTICLE 138 -- Inciting to rebellion

*Penalty shall be imposed upon any person who, **without taking arms** or being in open hostility against the Government, shall **incite others** to the execution of any of the acts specified in **Article 134** of this code, by means of speeches, proclamations, writing, emblems, banners or other representations tending to the same end.*

ARTICLE 139 -- Sedition

*The **crime of sedition** is committed by persons who rise publicly and **tumultuously** in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:*

- 1) To prevent the **promulgation of a law**, or the holding of any popular election.*
- 2) To prevent the **National Government**, or any provincial or municipal government, or any public officer thereof from **freely exercising its or his functions**, or prevent the execution of any administrative order.*
- 3) To **inflict any act of hate or revenge** against the person or property of a **public officer** or employee.*
- 4) To **inflict any act of hate or revenge**, for any political or social end, against **private persons** or any social class; and*
- 5) To **despoil**, for any political or social end, any person, municipality or province, or the National Government, of all its property or any part thereof.*

a) While rebellion intends to overthrow the existing duly-constituted government, sedition is much more limited in scope as enumerated in Article 139.. Also it is done *“tumultuously.”*

ARTICLE 140 -- Penalty for sedition -- The leader of a sedition shall suffer the penalty of prision mayor in its minimum period and a fine not exceeding 10,000 pesos.

Other persons participating therein shall suffer the penalty of prision correccional in its maximum period and a fine not exceeding 5,000 pesos.

ARTICLE 141 – Conspiracy to commit sedition-- Persons conspiring to commit the crime of sedition shall be punished by prision correccional in its medium period and a fine not exceeding 2,000 pesos. (Reinstated by E.O. No. 187)

ARTICLE 142 – Inciting to sedition

*Penalty shall be imposed upon any person who, **without taking any direct part in sedition, 1) should incite others** to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writing, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish or **circulate scurrilous libels** against the government , or any of the duly constituted authorities thereof x x x.*

Espuelas vs. People, 90 SCRA 524)

Espuelas had his picture taken as if committing suicide, because he was disillusioned with the Roxas administration “infested with Hitlers and Mussolinis” and “crooks.”

Held: SC affirmed Espuelas’ conviction in Bohol CFI and CA for violation of Article 142 for circulating scurrilous libel against government. Asking people to put under juez de cuchillo all the Roxas people in power who are all crooks is Inciting to sedition through scurrilous libel.

Article 143 -- Act tending to prevent the meeting of the Assembly and similar bodies. — The penalty of prision correccional or a fine ranging from 200 to 2,000 pesos, or both, shall be imposed upon any person who, by **force or fraud, prevents the meeting** of the National Assembly (Congress of the Philippines) or of any of **its committees or subcommittees, constitutional commissions** or committees or divisions thereof, or of any **provincial board or city or municipal council or board**. (Reinstated by E.O. No. 187).

Article 144 -- Disturbance of proceedings. — The penalty of arresto mayor or a fine from 200 to 1,000 pesos shall be imposed upon any person who **disturbs the meetings** of the National Assembly (Congress of the Philippines) or of any of its committees or subcommittees,

constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board, or in the presence of any such bodies should behave in such manner as to interrupt its proceedings or to impair the respect due it. (Reinstated by E.O. No. 187).

ARTICLE 145 – Violation of parliamentary immunity

(See *Martinez vs. Morfe*, 44 SCRA 22 in relation to Article 6, Sec. 11 of 1987 Constitution which grants parliamentary immunity to a Senator or member of House of Representatives for all offenses punishable by ***not more than six years imprisonment*** while Congress is in session.)

ARTICLE 146 -- Illegal assembly

Persons liable:

- 1) The organizers or leaders of the meeting.
- 2) Persons merely present at the meeting. (but must have common intent to commit the felony of illegal assembly.)

Note:

a) Audience must be actually incited. If in the meeting the audience is incited to the commission of rebellion or sedition, crime committed is **ILLEGAL ASSEMBLY** insofar as organizers or leaders and persons present. The one inciting them is liable for the crime of **INCITING TO REBELLION or SEDITION**.

ARTICLE 147 -- Illegal association

Persons liable:

- 1) Founders, directors and president of the association.
- 2) Members of the association.

ARTICLE 148 -- Direct assault

Penalty shall be imposed upon **1) Any person who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerating in crimes of rebellion and sedition, OR 2) Shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.**

Qualified when:

- 1) Committed with a **weapon**.
- 2) Offender is a **public officer** or employee.
- 3) Offender **lays hands** upon a person in authority.

Note:

- a) Additional penalty for attacking ambassador or minister. **(R.A. 75)**
- b) Offender must have prior knowledge that the victim is a person in authority or an agent of the PIA and has intent to defy authorities.

People vs. Delfino Beltran, 138 SCRA 521;

Delfino Beltran and 5 others shot Mayor Crisolgico and police authorities who approached them because they were making trouble and were very boisterous at night inside Puzon compound. Without provocation, Beltran's group fired at mayor.

Held: SC affirmed conviction of Beltran for "double attempted murder with DIRECT ASSAULT" because they attacked and shot at mayor's group while mayor and police were directly in the discharge of their official functions to maintain peace and order. Beltran et al could not claim self-defense because they were the unlawful aggressors when they fired without warning on mayor's group, and ran after mayor's group after hitting them.

People vs. Dollantes, 151 SCRA 592;

In April 1983 barangay captain Gabutero was delivering a speech to start dance when Pedro Dollantes danced "***nagkorantsa***" with knife, and challenging everyone. Barangay captain admonished him, and Mr. Dollantes and eight others attacked and stabbed him to death.

Held: SC affirmed conviction for "Direct Assault resulting in Murder" because barangay captain, a person in authority, was killed and attacked while directly performing his official functions.

People vs. Hecto, 135 SCRA 113

Barangay Captain Pedrosa confronted Hecto brothers for not paying slaughter fees and they almost fought. A few weeks later, the Hecto brothers attacked Pedrosa.

Held: SC affirmed conviction for Direct assault because although Pedrosa was not attacked while directly performing his official functions, it was "on occasion of such performance" meaning, it was "by reason of such past performance of official duties."

ARTICLE 149 -- Indirect assault

Elements:

- 1) That a person in authority or his agent is the victim of any of the forms of direct assault defined in Article 148.
 - 2) That a person comes to the aid of such PIA or his agent.
 - 3) That the offender makes use of force, or intimidation, upon such person coming to the aid of the PIA or his agent.
- a) ***Indirect assault*** can only be committed when a direct assault is also committed.

Article 150. Disobedience to summons issued by the National Assembly, its committees or subcommittees, by the Constitutional Commissions, its committees, subcommittees or divisions. — Penalty X X X shall be imposed upon any person who, having been duly summoned to attend as a witness before the National Assembly, (Congress), its special or standing

committees and subcommittees, the Constitutional Commissions and its committees, subcommittees, or divisions, or before any commission or committee chairman or member authorized to summon witnesses, **refuses, without legal excuse, to obey** such summons, or being present before any such legislative or constitutional body or official, **refuses to be sworn or placed under affirmation or 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.** The same penalty shall be imposed upon any person who shall restrain another from attending as a witness, or who shall induce disobedience to a summon or refusal to be sworn by any such body or official.

Article 151. Resistance and disobedience to a person in authority or the agents of such person.

— The penalty of *arresto mayor* and a fine not exceeding 500 pesos shall be imposed upon any person who not being included in the provisions of the preceding articles shall resist or seriously disobey any person in authority, or the agents of such person, while engaged in the performance of official duties.

When the disobedience to an agent of a person in authority is not of a serious nature, the penalty of *arresto menor* or a fine ranging from 10 to P100 pesos shall be imposed upon the offender.

ARTICLE 152 -- Persons in authority

Any person who is **directly vested with jurisdiction**, whether as an individual or as a member of some court or government corporation, board or commission. A barangay captain and a barangay chairman shall also be deemed as a **person in authority**.

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 barrio councilman, barrio policeman and a barangay leader, and any person who comes to the aid of a person in authority, shall be deemed an agent of a person in authority.

Also, **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 professional duties, or on the **occasion of such performance**, are deemed as **persons in authority**.

ARTICLE 153 - Tumults and other disturbances of public order.

Punishable acts:

- 1) Causing any **serious disturbance** in public peace, office or establishment.
- 2) Interrupting or disturbing public performances, functions or gatherings, **not** included in Articles 131-132.
- 3) Making an **outcry** tending to incite rebellion or sedition in any meeting, association or public place.

- 4) **Displaying placards** or emblems which provoke a disturbance of public order in such place.
- 5) **Burying with pomp** the body of a person who has been legally executed.

Note:

- a) Serious disturbance must be planned or intended.
- b) Outcry – 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.

Article 154. Unlawful use of means of publication and unlawful utterances. — *The penalty of arresto mayor and a fine ranging from P200 to P1,000 pesos shall be imposed upon:*

1. Any person who by means of printing, lithography, or any other means of publication shall publish or cause to be published as news any false news which may endanger the public order, or cause damage to the interest or credit of the State;

2. Any person who by the same means, or by words, utterances or speeches shall encourage disobedience to the law or to the constituted authorities or praise, justify, or extol any act punished by law;

3. Any person who shall maliciously publish or cause to be published any official resolution or document without proper authority, or before they have been published officially; or

4. Any person who shall print, publish, or distribute or cause to be printed, published, or distributed books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.

ARTICLE 155 -- Alarms and scandal

Penalty shall be imposed upon any person who:

*1) Shall **discharge** any firearm, rocket, firecracker or their explosive calculated to cause alarm or danger.*

*2) Shall **instigate** any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility.*

*3) Shall, while **wandering about at night** or while engaged in any other nocturnal amusement, shall disturb the public peace.*

*4) Shall, while **intoxicated**, cause any public disturbance or scandal not falling under Article 153.*

Note:

- a) The act being punished here is producing alarm or danger as a consequence.

- b) **Charivari** – includes a medley of discordant voices, a mock serenade made of kettles, tin, horns designed to annoy or insult.

ARTICLE 156 -- Delivering prisoners from jail

Elements:

- 1) That there is a person confined in jail, or penal establishment (detention included).
 - 2) That the offender **removes** such person, or **helps the escape** of such person.
- a) Offender is usually an **outsider**.
- b) Employment of violence, intimidation or bribery is not necessary.

Alberto vs. dela Cruz, 98 SCRA 406)

Held: SC held that Governor Cledera could not be held liable under Article 156 because Delivering prisoners from jail necessarily involves an OUTSIDER or a person with no custody at all of the escaped prisoner. Neither can Gov. Cledera be held liable under Infidelity in the Custody of Prisoners because this provision requires offender must have DIRECT and ACTUAL CUSTODY of escaped prisoner, which Gov. Cledera does not have. “Evasion through negligence” is defined as “definite laxity amounting to deliberate non-performance of duty.”

ARTICLE 157 -- Evasion of service of sentence

Elements:

- 1) That the offender is a convict by **final judgment**.
- 2) That he is **serving his sentence** consisting of deprivation of liberty.
- 3) That he **evades the service** of his sentence by escaping during the term of his sentence (by reason of final judgment).

Qualified by:

- 1) Means of **unlawful entry**.
- 2) By breaking doors, windows, gates, walls, roofs or floors.
- 3) By using picklocks, false keys, disguise, deceit, violence or intimidation.
- 4) Through connivance with other convicts or employees of the penal institution.

Tanega vs. Masakayan, 19 SCRA 564;

Held: SC held that petitioner Adelaida Tanega could not invoke prescription of penalty because prescription of penalty only commences upon her “evasion of service of sentence.” In this case, prescription never even commenced to run in her favor because “evasion of service of sentence” presupposed she was convicted, and put to jail, and evaded sentence by escaping while in jail. Here she was never put to jail at all because she hid from the authorities upon her conviction hence, in effect, there was no evasion of sentence to speak of at all.

People vs. Abilong, 82 SCRA 172)

Held: SC held that violation of the terms of *destierro* also constitutes violation of service of sentence. This is because “imprisonment” which is literal English translation is wrong, the correct interpretation being Spanish which refers to “deprivation of liberty” as penalty for conviction. And certainly *destierro* is a form of deprivation of liberty as punishment for an offense hence, entering Manila during the 2-year prohibited period constitutes Violation of service of sentence also.

ARTICLE 158 -- Evasion of service of sentence on occasion of disorder, conflagration, calamity

Penalty shall be imposed upon any person who shall **evade service of his sentence**, by leaving the penal institution where he shall have been confined, on the occasion of a disorder resulting from a conflagration, earthquake, explosion or similar catastrophe by suffering an **increase of one-fifth of time still remaining to be served**, but not to exceed six months, if he fails to give himself up **within 48 hours** following issuance of a proclamation by the Chief Executive announcing passing away of such calamity.

If convict gives himself up **within 48 hours**, he shall be entitled to a reduction under **Article 98**.

Note:

- 1) If the offender fails to give himself up, he gets an increased penalty.
- 2) If the offender gives himself up, he is entitled to a **reduction in his sentence**.

ARTICLE 159 -- Other cases of evasion of service of sentence

Penalty shall be imposed upon any convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon.

Note:

- a) Violation of conditional pardon is a distinct crime. Conditions extend to special laws.
- b) Offender must be found guilty of subsequent offense before he can be prosecuted under **Article 159**.

ARTICLE 160 – Commission of another crime during service of penalty for another previous offense

Elements:

- 1) That the offender was already convicted by final judgment.
 - 2) That offender committed a new felony before beginning to serve such sentence, or while serving the same.
- a) **Quasi-recidivism** -- is a special aggravating circumstance where a person, after having been convicted by final judgment of a previous offense, shall commit a new felony before beginning to serve such sentence, or while serving the same.
 - b) First crime which the offender is serving sentence need not be felony (could be ***mala in se*** or ***mala prohibita***). But the new offense must be a felony (***mala in se***).
 - c) Not required that the two offenses are embraced in the same title of this Code.
 - d) Being special aggravating circumstance, it cannot be offset by ordinary mitigating circumstances.

People vs. Dioso, 132 SCRA 616

Dioso, along with Abarca, was serving sentence in Muntinglupa for robbery. While serving sentence, he committed another felony, that of murder for the killing of a certain Angelito Reyno, a rival gang member which he stabled to death.

Held: SC affirmed his conviction and being a quasi-recidivist for committing a new felony (murder) while serving sentence for robbery, the maximum penalty for the new felony (murder) shall be applied, which is DEATH penalty, regardless of any mitigating or aggravating circumstances attending the commission of the crime.

TITLE IV CRIMES AGAINST PUBLIC INTEREST

Article 161. Counterfeiting the great seal of the Government of the Philippine Islands, forging the signature or stamp of the Chief Executive. — The penalty of reclusion temporal shall be imposed upon any person who shall **forge the Great Seal of the Government of the Philippine Islands or the signature or stamp of the Chief Executive.**

Article 162. Using forged signature or counterfeit seal or stamp. — The penalty of prision mayor shall be imposed upon any person who shall knowingly make use of the counterfeit seal or forged signature or stamp mentioned in the preceding article.

a) The offender should not be the forger here also.

ARTICLE 163 -- Making and importing and uttering false coins

Elements:

- 1) That there be false or counterfeit coins.
 - 2) That the offender either made, imported or uttered such coins.
 - 3) That in case of uttering such false or counterfeit coins, he connived with the counterfeiters or importers.
- a) Coin is also or counterfeited if it is forged, or if it is not authorized by the government as legal tender, regardless of its intrinsic value.
- b) **To utter** is to pass counterfeited coins, including delivery or the act of giving them away.
- c) Former coins withdrawn from circulation may also be counterfeited but coins of foreign country are not included.

People vs. Kong Leon, 48 OG 661

Accused Kong Leon was arrested for possession of U.S. gold coins already out of circulation and charged with counterfeiting of gold coins. He set up the defense that counterfeiting only includes coins still in circulation.

Held: SC affirmed his conviction for counterfeiting. This is because counterfeiting of coins are not limited to coins still in circulation, but also extends to coins OUT of circulation or

already withdrawn by the state, the legislative intent being to curb counterfeiting and preclude the possibility that the counterfeiter may only be honing his skills and later apply his trade to counterfeiting coins still in actual circulation.

ARTICLE 164 -- Mutilation of coins

Punishable acts:

- 1) Mutilating coins of the 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.

Note:

- a) Mutilation of foreign currency **not** included.
- b) Mutilation is the offense of taking off part of the metal either by filing it or substituting it for another metal of interior quality.
- c) Coins must be in legal tender and **still in circulation**, unlike in **counterfeiting of coins** which can apply to coins already withdrawn or out of circulation.

ARTICLE 165 -- Selling of false or mutilated coins without connivance

Punishable acts:

- 1) Possession of coin, counterfeited or mutilated by another person, with **intent to utter** the same, knowing that it is false or mutilated.

Elements:

- a) Possession; b) With intent to utter;
- 2) Knowledge
- 3) Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Elements:

- a) Actually uttering
- b) Knowledge

Note:

- a) Does **not** require legal tender.
- b) Accused must have knowledge of the fact that the coin is false.

ARTICLE 166 -- Forging treasury or bank notes or other documents payable to bearer; importing and uttering the same

Punishable acts:

- 1) Forging or falsification of treasury or bank notes or other documents payable to bearer.
- 2) Importation of such false or forged obligations or notes.
- 3) Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

Note:

- a) Notes and other obligations and securities that may be forged or falsified under **Article 166**: Treasury or bank notes; certificates; and other obligations and securities, payable to bearer

ARTICLE 167 -- Counterfeiting, importing and uttering instruments payable to bearer

Elements:

- 1) That there be an instrument payable to order or other such document of credit not payable to bearer.
- 2) That the offender either **forged, imported or uttered** such instrument.
- 3) That in case of uttering, he connived with the forger or importer.

ARTICLE 168 -- Illegal possession and use of false treasury or bank notes and notes payable to bearer.

Elements:

- 1) That any treasury or bank notes or certificate or other obligations 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) That the **offender knows** that any of those instruments is forged or falsified.
- 3) That he performs any of these acts:
 - a) **Using** any of such forged or falsified instruments.
 - b) **Possession with intent to use** any of such forged or falsified instruments.

ARTICLE 169 -- Forgery. How committed.

Forgery is committed by any of the following means:

- 1) By **giving** to a treasury or bank note or any instrument payable to bearer or order the appearance of a true genuine document.
- 2) By **erasing, substituting, counterfeiting or altering** by any means the figures, letters, words or signs contained therein.

People vs. Galano, 54 OG 897

The accused Galano wrote "Victory" at the back of P1-bill which is a pre-war treasury note and used it to buy 4 *balut* eggs, and make it appear to be a genuine pre-war treasury note. This is because by affixing the word "Victory" in this pre-war treasury notes, they can now be used as legal tender after the war, per government policy.

Held: SC affirmed conviction under Article 169, 1st par. which was "by giving to a treasury or bank note the appearance of a true genuine document" although it was, in fact, already withdrawn from circulation.

ARTICLE 170 -- Falsification of legislative documents.

Elements:

- 1) That there be a bill, resolution or ordinance enacted or approved or pending approval by the National Assembly or any provincial board or municipal council.

- 2) That the offender **alters** the same.
- 3) That he has **no proper authority**.
- 4) That the alteration has changed the meaning of the document.

Note:

a) **Forgery** as used in **Article 169** refers to the falsification and counterfeiting of treasury notes or any instruments payable to bearer or to order. On the other hand, **Falsification** is the commission of any of the eight (8) acts mentioned in Article 171 of legislative, public, official, commercial or private documents, or wireless, or telegraphic messages.

b) The crime of **Falsification** must involve a writing which is a document in the legal sense.

c) **Classification of documents:**

1) **Public document** -- **a)** a document created, executed or issued by a public official in response to exigencies of the public service, or in execution of which a public official intervened; **b)** an instrument authorized by a notary public, or a competent public official with the solemnities required by law.

2) **Official document** -- document issued by a public official in the exercise of the functions of his office; also considered a public document.

3) **Commercial document** -- defined and regulated by the Code of Commerce or other commercial law.

4) **Private document** -- a deed or instrument executed by a private person without the intervention of a notary public, or other person legally authorized, by which document, some disposition or agreement is provided, evidenced or set forth.

d) **Importance of classification:**

1) In private documents, criminal liability will not arise, unless there is damage caused to a third person. Mere falsity will not bring about criminal liability.

2) In public or commercial documents, criminal liability can arise although no third person suffered damage. Intent to cause damage is immaterial since what is being punished is the violation of the sanctity of the public document.

ARTICLE 171 – Falsification by public officer of public documents.

*Penalty shall be imposed upon any public officer or employee or notary who, **taking advantage of his official position, shall falsify** a document by committing any of the following acts:*

C 1) **Counterfeiting** or imitating any handwriting, signature or rubric.

C 2) **Causing** to appear that persons have participated in any act or proceeding when they in fact did not participate.

A 3) **Attributing** to persons who have participated in an act or proceeding statements other than those in fact made by them.

S 4) Making untruthful **Statements** in a narration of facts.

T 5) Altering **True** dates.

A 6) Making any **Alteration** or intercalation in a genuine document which changes its meaning.

I 7) ***Issuing*** in an authenticated form a document purporting to be a copy of an original when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine document.

R 8 Intercalating any instrument or note ***Relative*** to the issuance thereof in a protocol, ***Registry*** or official book.

(Recall CCASTAIR)

Elements:

- 1) That the offender is a public officer, employee or notary public.
- 2) That he ***takes advantage of his official position.***

Requisites:

- a) That offender has a duty to make or prepare or otherwise intervene in the preparation of the document.
- b) That offender has official custody of the document which he falsified.
- c) That offender performs ***any*** of the following ***eight (8)*** criminal acts.

Note:

- a) In ***par. f, g and h***, document must be a genuine document.
- b) Falsification may be committed by simulating or fabricating a document.
- c) In case offender is an ***ecclesiastical minister***, the act of ***Falsification*** is committed with respect to any record or document of such character that its falsification may affect civil status of persons.

Siquian vs. People, 171 SCRA 223)

Mayor Siquian issued a ***Certification*** that “position exists and funds are available therefor” for the position of Clerk in the Office of Municipal Secretary for a certain complainant, Jesusa Carreon. Truth, however, is that no such position existed and no money in the plantilla allocated for such purpose. Hence, the complaint for ***Falsification*** against Mayor Siquian who argued that he acted in good faith, and had no criminal intent to cause harm or damage.

Held: ***The SC affirmed his conviction and held all requisites for Falsification are present, thus:***

P 1) ***A Public officer taking advantage of his public position***

U 2) ***Making Untruthful statement in a narration of facts.***

L 3) ***Has Legal obligation to disclose the truth.***

A 4) ***Such narration of facts is Absolutely false. (Recall PULA)***

SC pointed out that Mayor Siquian was certainly a public officer who took advantage of his public position when he issued that “untruthful statement” which is “absolutely false,” and who has the legal obligation to disclose the truth in issuing such Certification. The Certification being a public document, criminal intent or intent to cause damage is immaterial because what is being punished is the destruction of truth being solemnly proclaimed in said public document.

“Absolutely false” means there is “no iota of colorable truth in such narration of facts.”

ARTICLE 172 -- Falsification by private individual and use of falsified documents.

Punishable acts:

- 1) Falsification of public, official or commercial document by a private individual.
- 2) Falsification of private document by any person.

Note:

a) Possessor of a falsified document is presumed to be the author of the falsification.

b) Damage, or intent to cause damage, is not necessary in **Article 172, par. 1.**

c) In **Falsification of a private document**, the offender must have counterfeited the false document, and he must have performed an independent act which operates to the prejudice of a third person, unlike in **Falsification of public document where damage is immaterial.**

d) **Falsification as a means to commit Estafa/Malversation** – when a document is falsified through any of the acts of *Falsification* enumerated under **Article 171** and such **Falsification** is a necessary means to commit **Estafa or Malversation** – crime is a **complex crime of Estafa/Malversation through Falsification of Public Document**. Document falsified, however, must be a public, official or commercial document.

e) If document falsified is a private document which requires another independent act of the falsification in order to defraud another -- crime is only one crime of **Falsification of a Private Document**, and not a complex crime anymore because the deceit involved in **Estafa** here is absorbed in the deceit in **Falsification of a Private Document**.

Dava vs. People, 202 SCRA 62

Petitioner Dava bumped two pedestrians, where one died and the other suffered serious physical injuries. His license was confiscated pending trial for two felonies, *Homicide and Serious Physical Injuries through Reckless Imprudence*. More than one year later, he was arrested in possession and use of a fake license.

Held: *SC affirmed his conviction for violation of Article 172 for Falsification by private individual and use of falsified documents. Being in possession and use of a fake and falsified license which is a public document, he is also presumed to be the author thereof. Further, the license being a public document, intent to cause damage is immaterial. The suspicious circumstances in obtaining license after over one hour from application through intervention of fixers also gave rise to presumption that license was fake or falsified.*

ARTICLE 173 -- Falsification of wireless, cable, telegraph and telephone messages, and use of falsified messages

Punishable acts:

- 1) **Uttering** fictitious wireless telegraph or telephone messages.
- 2) **Falsifying** wireless, telegraph or telephone messages.
- 3) **Using** such falsified messages.

a) Private individual cannot be a principal by direct participation under **Article 173**, unless he is an employee of a corporation engaged in the business of sending or receiving wireless, telegraph or telephone messages.

ARTICLE 174 -- False medical certificates, false certificates of merit or service, etc.

Penalty shall be imposed:

1) Any physician or surgeon who, in connection with the practice of his profession, shall **issue a false certificate**; and

2) Any public officer who shall issue a false certificate of merit or service, good conduct or similar circumstances.

a) Also covers a private individual who falsified a certificate falling in the classes mentioned in nos. 1 and 2.

ARTICLE 175 -- Using false certificates

Elements:

1) That a physician or surgeon has **issued a false medical certificate**, or a public officer has issued a false certificate of merit of service, good conduct or similar circumstances.

2) That the offender **knew** that the certificate was false.

3) That he **used** the same.

ARTICLE 176 – Manufacturing and possession of instruments or implements for falsification

Punishable acts:

1) **Making or introducing** into the Philippines any stamps, dies, marks or other instruments or implements for counterfeiting.

2) **Possession with intent to use** the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

ARTICLE 177 -- Usurpation of authority or official functions

*Penalty shall be imposed upon any person who 1) shall knowingly and **falsely represent** himself to be an officer, agent or representative of any department or agency of the Philippine government, or of any foreign government, or who, under pretense of official position, 2) shall perform any act pertaining to an person in authority or public officer of the Philippine government x x x without being lawfully entitled to do so.*

Note:

1) There must be a positive, express and explicit representation.

2) To be liable, the offender should have **misrepresented** himself to be an officer, agent or representative of any department or agency of the government; or should have performed an act pertaining to a person in authority, or public officer.

ARTICLE 178 – Using fictitious name and concealing true name

Elements: (Using fictitious name)

- 1) That the offender uses a name other than his real name.
- 2) That he uses that fictitious name publicly.
- 3) That the purpose of the offender is
 - a) To **conceal** a crime.
 - b) To **evade** the execution of a judgment.
 - c) To **cause damage** to public interest.

Elements: (Concealing true name)

- 1) That the offender conceals
 - a) His true name.
 - b) All other personal circumstances.
- 2) That the purpose is only to **conceal his identity**.

Article 179. Illegal use of uniforms or insignia. —Penalty shall be imposed upon any person who shall publicly and improperly make use of insignia, uniforms or dress pertaining to an office not held by such person or to a class of persons of which he is not a member.

ARTICLE 180 -- False testimony against a defendant

Elements:

- 1) That there be a criminal proceeding.
- 2) That offender testifies falsely under oath against the defendant.
- 3) That offender who gives **testimony that it is false**.
- 4) That defendant against whom false testimony is given is either acquitted or convicted in a final judgment.

Note:

- a) Defendant must be sentenced to at least a correctional penalty or a fine, or must be acquitted.
- b) Witness who gave false testimony is liable even if the testimony was not considered by the court.

Article 180 -- False testimony against a defendant. — Any person who shall give false testimony against the defendant in any criminal case shall suffer:

1. The penalty of reclusion temporal, if the defendant in said case shall have been sentenced to death;
2. The penalty of prision mayor, if the defendant shall have been sentenced to reclusion temporal or reclusion perpetua;
3. The penalty of prision correccional, if the defendant shall have been sentenced to any other afflictive penalty; and

4. The penalty of arresto mayor, if the defendant shall have been sentenced to a correctional penalty or a fine, or shall have been acquitted.

In cases provided in subdivisions 3 and 4 of this article the offender shall further suffer a fine not to exceed 1,000 pesos.

Article 181 -- False testimony favorable to the defendants. — Any person who shall give false testimony in favor of the defendant in a criminal case, shall suffer the penalties of arresto mayor in its maximum period to prision correccional in its minimum period a fine not to exceed 1,000 pesos, if the prosecution is for a felony punishable by an afflictive penalty, and the penalty of arresto mayor in any other case.

Article 182 -- False testimony in civil cases. — Any person found guilty of false testimony in a civil case shall suffer the penalty of prision correccional in its minimum period and a fine not to exceed 6,000 pesos, if the amount in controversy shall exceed 5,000 pesos, and the penalty of arresto mayor in its maximum period to prision correccional in its minimum period and a fine not to exceed 1,000 pesos, if the amount in controversy shall not exceed said amount or cannot be estimated.

ARTICLE 183 -- Perjury

Elements:

- A/S** 1) That the accused made a **Statement** under oath, or executed an **Affidavit** upon a material matter.
- C** 2) That the statement or affidavit was made before a **Competent** officer, authorized to receive and administer oath.
- A** 3) That in that statement or affidavit, the accused made a willful and deliberate **Assertion** of falsehood.
- L** 4) That the sworn statement or affidavit containing the falsity is required by **Law**.
(Recall **A/SCAL**)

Note:

- a) **Material matter** is 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 or inquiry or which legitimately affects the credit of any witness who testifies.
- b) **Oath** is any form of attestation by which a person signifies that he is bound in conscience to form an act faithfully and truthfully.
- c) **Affidavit** is a sworn statement in writing.

Diaz vs. People, 191 SCRA 86

Petitioner Reolandi Diaz stated in his Personal Data Sheet (PDS) or CSC Forum 212 that he was “a four year BA student in 1950-1954 at Cosmopolitan and Harvardian Colleges” for

purposes of his promotion/reappointment as School Administrative Assistance at Jose Abad Santos High School. These statements later turned out to be false so he was prosecuted for Falsification. Pampanga CTFI held him liable for Falsification, which IAC affirmed. **Held:**

SC modified the IAC and CFI decision, and instead convicted him for Perjury. All elements of perjury are present, thus:

- A/S** 1) ***It was an Affidavit/Statement under oath upon a material matter.***
C 2) ***By a Competent officer authorized to administer oath.***
A 3) ***Containing deliberate Assertion of falsehood.***
L 4) ***Such sworn statement or Affidavit is required by Law, or for legal purposes.***
(Recall A/SCAL)

The CSC Form 212 was a Statement under oath where affiant swears to the truth of all the contents therein, and duly sworn to before a competent officer. Because it was a sworn statement under oath, crime is Perjury, and not Falsification. It was a material matter because such statement was for a legal purpose, which is for his reappointment/promotion as School Administrative Assistant of Jose Abad Santos National High School. It contained a deliberate assertion of falsehood because records and investigation later showed he was never enrolled at Cosmopolitan and Harvardian Colleges.

ARTICLE 184 -- Offering false testimony in evidence. (Subornation in perjury)

Elements:

- 1) That the offender ***offered in evidence a false witness or false testimony.***
- 2) That he knew the witness the witness, or the testimony was false.
- 3) That the offer was made in a judicial or official proceeding.

Note:

- a) Applies when the offender induces a witness to testify falsely.

ARTICLE 185 -- Machinations in public auction

Penalty shall be imposed upon any person who 1) shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who 2) shall attempt to cause bidders to stay away from an auction by threats, gifts, promise or any other artifice, with intent to cause the reduction of the thing auctioned.

Ouano vs. CA, 188 SCRA 799)

Ouano and Echavez agreed that Ouano will desist, as well as another buyer, in the bidding of 3,710 square meters of land in Mandawe, Cebu owned by DBP while they had an internal agreement that they would later divide the property between them. The owner of the land, DBP, however, refused to approve their internal arrangement, and sold property to Echavez alone. CFI and CA affirmed sale to Echavez exclusively so Ouano filed petition for certiorari to SC.

Held: SC modified CFI and CA decision and FORFEITED land in favor of state. SC declared the entire sale to Echavez void because it was sold in a manner contrary to law, and constituted a violation of Article 185, or Machinations in public auction where the bidders

caused other bidders to stay away from auction to reduce the price of thing auctioned. Article 1411 of the Civil Code was also applied.

Article 186. Monopolies and combinations in restraint of trade. — The penalty of prision correccional in its minimum period or a fine ranging from 200 to 6,000 pesos, or both, shall be imposed upon:

1. Any person who shall enter into any contract or agreement or shall take part in any conspiracy or combination in the form of a trust or otherwise, in restraint of trade or commerce or to prevent by artificial means free competition in the market;

2. Any person who shall monopolize any merchandise or object of trade or commerce, or shall combine with any other person or persons to monopolize and merchandise or object in order to alter the price thereof by spreading false rumors or making use of any other article to restrain free competition in the market;

3. Any person who, being a manufacturer, producer, or processor of any merchandise or object of commerce or an importer of any merchandise or object of commerce from any foreign country, either as principal or agent, wholesaler or retailer, shall combine, conspire or agree in any manner with any person likewise engaged in the manufacture, production, processing, assembling or importation of such merchandise or object of commerce or with any other persons not so similarly engaged for the purpose of making transactions prejudicial to lawful commerce, or of increasing the market price in any part of the Philippines, of any such merchandise or object of commerce manufactured, produced, processed, assembled in or imported into the Philippines, or of any article in the manufacture of which such manufactured, produced, or imported merchandise or object of commerce is used.

If the offense mentioned in this article affects any food substance, motor fuel or lubricants, or other articles of prime necessity, the penalty shall be that of prision mayor in its maximum and medium periods it being sufficient for the imposition thereof that the initial steps have been taken toward carrying out the purposes of the combination.

Any property possessed under any contract or by any combination mentioned in the preceding paragraphs, and being the subject thereof, shall be forfeited to the Government of the Philippines.

Whenever any of the offenses described above is committed by a corporation or association, the president and each one of its agents or representatives in the Philippines in case of a foreign corporation or association, who shall have knowingly permitted or failed to prevent the

commission of such offense, shall be held liable as principals thereof.

Article 187-- Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys. — *The penalty of prision correccional or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed on any person who shall knowingly import or sell or dispose of any article or merchandise made of gold, silver, or other precious metals, or their alloys, with stamps, brands, or marks which fail to indicate the actual fineness or quality of said metals or alloys.*

Any stamp, brand, label, or mark shall be deemed to fail to indicate the actual fineness of the article on which it is engraved, printed, stamped, labeled or attached, when the rest of the article shows that the quality or fineness thereof is less by more than one-half karat, if made of gold, and less by more than four one-thousandth, if made of silver, than what is shown by said stamp, brand, label or mark. But in case of watch cases and flatware made of gold, the actual fineness of such gold shall not be less by more than three one-thousandth than the fineness indicated by said stamp, brand, label, or mark.

Article 188. Subsisting and altering trade-mark, trade-names, or service marks. — *The penalty of prision correccional in its minimum period or a fine ranging from 50 to 2,000 pesos, or both, shall be imposed upon:*

- 1. Any person who shall substitute the trade name or trade-mark of some other manufacturer or dealer or a colorable imitation thereof, for the trademark of the real manufacturer or dealer upon any article of commerce and shall sell the same;*
- 2. Any person who shall sell such articles of commerce or offer the same for sale, knowing that the trade-name or trade- mark has been fraudulently used in such goods as described in the preceding subdivision;*
- 3. Any person who, in the sale or advertising of his services, shall use or substitute the service mark of some other person, or a colorable imitation of such mark; or*
- 4. Any person who, knowing the purpose for which the trade-name, trade-mark, or service mark of a person is to be used, prints, lithographs, or in any way reproduces such trade-name, trade-mark, or service mark, or a colorable imitation thereof, for another person, to enable that other person to fraudulently use such trade-name, trade-mark, or service mark on his own goods or in connection with the sale or advertising of his services.*

A trade-name or trade-mark as herein used is a word or words, name, title, symbol, emblem, sign or device, or any combination thereof used as an advertisement, sign, label, poster, or

otherwise, for the purpose of enabling the public to distinguish the business of the person who owns and uses said trade-name or trade-mark.

*A **service mark** as herein used is a mark used in the sale or advertising of services to identify the services of one person and distinguish them from the services of others and includes without limitation the marks, names, symbols, titles, designations, slogans, character names, and distinctive features of radio or other advertising.*

ARTICLE 189 -- Unfair competition, fraudulent registration of trademark, tradename or service mark

Punishable acts:

- a) Selling his goods, giving them the general appearance of the goods of another manufacturer or dealer **(unfair competition)**
- b) Affixing to his goods or using in connection with his services a false designation of origin, or any false description or representation; selling such goods or services **(fraudulent designation of original; false description).**
- c) Procuring fraudulently from the patent office the registration of trade name, trademark or service mark.

Note:

- a) Mere offer to sell completes the crime.
- b) Evidence of actual fraudulent intent is not necessary.

**TITLE V -- COMPREHENSIVE DANGEROUS
DRUGS ACT**

**Read R.A. 9165 (amending R.A. 6425); also Read Comprehensive Dangerous Drugs Act: by
Dascil and Aquino**

Section 1. Short Title. – This Act shall be known and cited as the "Comprehensive Dangerous Drugs Act of 2002"

SALIENT FEATURES:

The new law provides for several new salient features among which are as follows:

- 1. It increases the range of penalties;
- 2. It lowers the number of grams from 200 to 10 in order to make the offense of possession non-bailable;
- 3. It denies the applicability of the rules on plea bargaining;
- 4. It makes the probation law inapplicable. A convicted drug pusher or trafficker, regardless of the penalty imposed, cannot be allowed to avail of the probation law.
- 5. It imposes the maximum penalties on members of law enforcement agencies found guilty of planting evidence.

Article 1 – Definition of terms

(j) ***Dangerous Drugs.*** – *Include those listed in the Schedules annexed to the 1961 Single Convention on Narcotic Drugs, as amended by the 1972 Protocol, and in the Schedules annexed to the 1971 Single Convention on Psychotropic Substances as enumerated in the attached annex which is an integral part of this Act.*

Note: Under the old law, dangerous drugs refer either to prohibited drug or regulated drug. The new law conforms with the internationally accepted definition of dangerous drugs. There is no distinction between the two (2) categories under the new law.

Article II – Unlawful Acts and Penalties

Section 4: Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals;

Section 5. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

Section 6. Maintenance of a Den, Dive or Resort where any dangerous drug is used or sold in any form

Section 8. Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.

Section 11. Possession of Dangerous Drugs

In order for possession to be perfected, three (3) things are required: 1) occupancy; 2) apprehension or taking; and 3) that the taking be with an intent to possess (animus possidendi)

Note that not only actual possession is being punished by the law, but likewise constructive possession.

US vs. Chan Guy Juan (23 Phil. 105)

Facts: Sometime in May 1910, the steamer Ton-Yek anchored in the Bay of Calbayog, Samar. A Chinese named Lee See, one of the passengers, disembarked and went to the house of the appellant, Chan Guy Juan in the town of Calbayog and engaged in a lengthy conversation. Lee See then returned to the boat and the appellant employed one Isidro Cabinico to

go alongside of the steamer with his baroto and receive from the said ee See a certain sack containing, as the appellant said, sugar.

On arriving at the steamer, Lee See, who was on deck, tied a rope around the sack, and lowered it into Cabinico's baroto. The latter, while on his way to the house of the appellant with the sack and its contents, was arrested and the contents of the sack examined and found to consist of a small amount of sugar and twenty-eight (28) cans of opium. This opium was confiscated by the local authorities. The case against Cabinico was dismissed while those against the two Chinesemen were proceeded with, resulting in the conviction of both.

Held: The High Court held that the law never intended to hold a person guilty of the possession of the prescribed drug when in fact he merely had the custody of the same without knowledge of its nature, and this court so held in disposing of the case against Cabinico. But it is equally clear that the law never intended the possession of the drug should be limited to mere manual touch or personal custody. Upon such a holding, a guilty principal could often escape by taking the precaution to never have the drug in his actual possession, and thus defeat the intent of the law. The words "having possession of" must therefore be extended to include constructive possession; that is, the relation between the owner of the drug and the drug itself when the owner is not in actual physical possession, but when it is still under his control and management and subject to his disposition. It is immaterial whether Lee See or Chan Guy Juan was the real owner of the opium found in the sack of sugar. The evidence shows both were guilty principals in the effort to land the opium from the steamer.

Cabinico was the innocent agent of the defendant in this case, and the responsibility for carrying the opium ashore therefore reverts to this defendant. One who employs an innocent agent to commit a crime is liable as a principal, although he does nothing to further himself in the actual commission of the crime.

R.A. NO. 6245	R.A. NO. 9165
40 grams or more of opium	10 grams or more of opium
40 grams or more of morphine	10 grams or more of morphine
40 grams or more of heroin	10 grams o more of heroin
40 grams or more of cocaine or cocaine hydrochloride	10 grams or more of cocaine or cocaine hydrochloride
200 grams or more of "shabu" or	50 grams or more of "shabu" or

methylamphetamine hydrochloride	methylamphetamine hydrochloride
50 grams or more of marijuana resin or marijuana oil	10 grams or more of marijuana resin or marijuana oil
750 grams or more of Indian hemp or marijuana	500 grams or more of marijuana
NO COUNTERPART	10 grams or more of other dangerous drugs, such as but not limited to methylenedioxymethamphetamine (MDMA) or “ecstasy”, paramethoxyamphetamine (PMA), trimethoxyamphetamine (TMA), lysergic acid diethylamine (LSD), gamma hydroxybutyrate (GHB) , and those similarly designed or newly introduced drugs and their derivatives.

Section 15. Use of Dangerous Drugs

Section 16. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof.

Section 19. Unlawful Prescription of Dangerous Drugs

Section 21. Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/Paraphernalia and/or Laboratory Equipment. – The PDEA shall take charge and have custody of all dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment so confiscated, seized and/or surrendered, for proper disposition in the following manner:

- (1) The apprehending team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized. x x x
- (2) Within ***twenty-four (24) hours*** upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;
- (3) A certification of the forensic laboratory examination results, which shall be done under oath by the forensic laboratory examiner, shall be issued within twenty-four (24) hours after the receipt of the subject item/s x x x

(4) After the filing of the criminal case, the Court shall, within **seventy-two (72) hours**, conduct an ocular inspection of the confiscated, seized and/or surrendered dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals, including the instruments/paraphernalia and/or laboratory equipment, and through the PDEA shall within **twenty-four (24) hours** thereafter **proceed with the destruction or burning of the same**, in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the DOJ, civil society groups and any elected public official. The Board shall draw up the guidelines on the manner of proper disposition and destruction of such item/s which shall be borne by the offender: Provided, That those item/s of lawful commerce, as determined by the Board, shall be donated, used or recycled for legitimate purposes: Provided, further, That a representative sample, duly weighed and recorded is retained;

(5) The Board shall then issue a sworn certification as to the fact of destruction or burning of the subject item/s which, together with the representative sample/s in the custody of the PDEA, shall be submitted to the court having jurisdiction over the case. In all instances, the representative sample/s shall be kept to a minimum quantity as determined by the Board;

(6) The alleged offender or his/her representative or counsel shall be allowed to personally observe all of the above proceedings and his/her presence shall not constitute an admission of guilt. In case the said offender or accused refuses or fails to appoint a representative after due notice in writing to the accused or his/her counsel within seventy-two (72) hours before the actual burning or destruction of the evidence in question, the Secretary of Justice shall appoint a member of the public attorney's office to represent the former;

(7) After the promulgation and judgment in the criminal case wherein the representative sample/s was presented as evidence in court, the trial prosecutor shall inform the Board of the final termination of the case and, in turn, shall request the court for leave to turn over the said representative sample/s to the PDEA for proper disposition and destruction within twenty-four (24) hours from receipt of the same; and

Section 23. Plea-Bargaining Provision. – Any person charged under any provision of this Act regardless of the imposable penalty shall not be allowed to avail of the provision on plea-bargaining.

Section 24. Non-Applicability of the Probation Law for Drug Traffickers and Pushers. – Any person convicted for drug trafficking or pushing under this Act, regardless of the penalty imposed by the Court, cannot avail of the privilege granted by the Probation Law or Presidential Decree No. 968, as amended.

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

Section 33. Immunity from Prosecution and Punishment. – Notwithstanding the provisions of Section 17, Rule 119 of the Revised Rules of Criminal Procedure and the provisions of Republic Act No. 6981 or the Witness Protection, Security and Benefit Act of 1991, any person who has violated Sections 7, 11, 12, 14, 15, and 19, Article II of this Act, who voluntarily gives information about any violation of Sections 4, 5, 6, 8, 10, 13, and 16, Article II of this Act as well as any violation of the offenses mentioned if committed by a drug syndicate, or any information leading to the whereabouts, identities and arrest of all or any of the members thereof; and who willingly testifies against such persons as described above, shall be exempted from prosecution or punishment for the offense with reference to which his/her information of testimony were given, and may plead or prove the giving of such information and testimony in bar of such prosecution: *Provided*, That the following conditions concur:

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

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

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

Section 77. *The Dangerous Drugs Board.* – The Board shall be the policy-making and strategy-formulating body in the planning and formulation of policies and programs on drug prevention and control. It shall develop and adopt a comprehensive, integrated, unified and balanced national drug abuse prevention and control strategy. It shall be under the Office of the President.

Section 82. *Creation of the Philippine Drug Enforcement Agency (PDEA).* – To carry out the provisions of this Act, the PDEA, which serves as the implementing arm of the Board, and shall be responsible for the efficient and effective law enforcement of all the provisions on any dangerous drug and/or controlled precursor and essential chemical as provided in this Act.

Section 84. *Powers and Duties of the PDEA.* – The PDEA shall:

(a) *Implement or cause the efficient and effective implementation of the national drug control strategy formulated by the Board* x x x

(b) *Undertake the enforcement of the provisions of Article II of this Act relative to the unlawful acts and penalties* x x x

(c) *Administer oath, issue subpoena and subpoena duces tecum relative to the conduct of investigation involving the violations* of this Act;

(d) *Arrest and apprehend as well as search all violators and seize or confiscate, the effects or proceeds of the crimes* x x x;

(e) *Take charge and have custody of all dangerous drugs and/or controlled precursors and essential chemicals seized, confiscated or surrendered* to any national, provincial or local law enforcement agency, if no longer needed for purposes of evidence in court;

(f) x x x ;

(g) *Recommend* to the DOJ the *forfeiture of properties and other assets of persons and/or corporations* found to be violating the provisions of this Act and in accordance with the pertinent provisions of the Anti-Money-Laundering Act of 2001;

(h) *Prepare for prosecution or cause the filing of appropriate criminal and civil cases for violation of all laws* on dangerous drugs, controlled precursors and essential chemicals, and other similar controlled substances, and assist, support and coordinate with other government agencies for the proper and effective prosecution of the same; x x

People vs. Barros (231 SCRA 557)

Facts: Francis Yag-as and James Ayan, members of the Philippine Constabulary (PC), Mountain Province Command, rode in a bus bound for Sabangan, Mountain Province. Upon reaching Chackchakan, Bontoc, Mountain Province, they saw the accused carrying a carton and put the same under his seat. Upon reaching Sabangan, the police officers searched the carton and found marijuana. They invited the accused to the detachment for questioning. The latter denied the ownership of said carton. The trial court decided against the Accused.

Held: The general rule is that a search and seizure must be carried out through or with a judicial warrant; otherwise such search and seizure becomes "unreasonable" within the meaning of the above quoted constitutional provision. The evidence secured thereby-i.e., the "fruits" of the search and seizure-will be inadmissible in evidence "for any purpose in any proceeding."

The requirement that a judicial warrant must be obtained prior to the carrying out of a search and seizure is, however, not absolute. There are certain exceptions recognized in our law, one of which relates to the search of moving vehicles. Peace officers may lawfully conduct searches of moving vehicles-automobiles, trucks, etc.without need of a warrant, it not being practicable to secure a judicial warrant before searching a vehicle, since such vehicle can be quickly moved out of the locality or jurisdiction in which the warrant may be sought. In carrying out warrantless searches of moving vehicles, however, peace officers are limited to routine checks, that is, the vehicles are neither really searched nor their occupants subjected to physical or body searches, the examination of the vehicles being limited to visual inspection.

When, however, a vehicle is stopped and subjected to an extensive search, such a warrantless search would be constitutionally permissible only if the officers conducting the search have reasonable or probable cause to believe, before the search, that either the motorist is a law-offender or the contents or cargo of the vehicle are or have been instruments or the subject matter or the proceeds of some criminal offense.

In the case at bar, however, we have been unable to find in the record of this case any circumstance which constituted or could have reasonably constituted probable cause for the peace officers to search the carton box allegedly owned by appellant Barros. The carrying of such a box by appellant onto a passenger bus could not, by itself, have convinced M/Sgt. Francis Yag-as and S/ Sgt. James Ayan either that the appellant was a law violator or the contents of the box were instruments or the subject matter or proceeds of some criminal offense. The carrying of carton boxes is common practice among our people, especially those coming from the rural areas since such boxes constitute the most economical kind of luggage possible. The peace officers here involved had not received any information or "tip-off" from an informer; nor such a "tip-off" was alleged by the police officers before or during the trial. The police officers also did not contend that they had detected the odor of dried marijuana, or appellant Barros; had acted suspiciously in the course of boarding the bus and taking a seat during the trip to Sabangan, nor in the course of being asked whether he owned the carton box later ascertained to contain four (4) kilos of marijuana.

So far as the record itself is concerned, therefore, it would appear that there existed no circumstance which might reasonably have excited the suspicion of the two (2) police officers riding in the same bus as appellant. There was, in brief, no basis for a valid warrantless arrest. Accordingly, the search and seizure of the carton box was equally non-permissible and invalid. The "fruits" of the invalid search and seizure-i.e., the four (4) kilos of marijuana-should therefore not have been admitted in evidence against appellant.

It might be supposed that the non-admissibility of evidence secured through an invalid warrantless arrest or a warrantless search and seizure may be waived by an accused person. The *a priori* argument is that the invalidity of an unjustified warrantless arrest, or an arrest effected with a defective warrant of arrest may be waived by applying for and posting of

bail for provisional liberty, so as to estop an accused from questioning the legality or constitutionality of his detention or the failure to accord him a preliminary investigation. We do not believe, however, that waiver of the latter (by, e.g., applying for and posting of bail) necessarily, constitutes, or carries with it, waiver of the former--an argument that the Solicitor General appears to be making impliedly. Waiver of the non-admissibility of the "fruits" of an invalid warrantless arrest and of a warrantless search and seizure is not casually to be presumed, if the constitutional right against unlawful searches and seizures is to retain its vitality for the protection of our people. In the case at bar, defense counsel had expressly objected on constitutional grounds to the admission of the carton box and the four (4) kilos of marijuana when these were formally offered in evidence by the prosecution. We consider that appellant's objection to the admission of such evidence was made clearly and seasonably and that, under the circumstances, no intent to waive his rights under the premises can be reasonably inferred from his conduct before or during the trial.

The accused silence during the warrantless search should not be lightly taken as consent to that search, but rather a "demonstration of regard for the supremacy of law" As a result thereof, appellant is convicted of the crime charged.

Section 90. Jurisdiction. – The Supreme Court shall designate special courts from among the existing Regional Trial Courts in each judicial region to exclusively try and hear cases involving violations of this Act. The number of courts designated in each judicial region shall be based on the population and the number of cases pending in their respective jurisdiction.

The DOJ shall designate special prosecutors to exclusively handle cases involving violations of this Act.

The ***preliminary investigation*** of cases filed under this Act shall be terminated within a period of thirty ***(30) days from the date of their filing.***

When the preliminary investigation is conducted by a public prosecutor and a probable cause is established, the corresponding ***information shall be filed*** in court ***within twenty-four (24) hours from the termination of the investigation.*** If the preliminary investigation is conducted by a judge and a probable cause is found to exist, the corresponding information shall be filed by the proper prosecutor within forty-eight (48) hours from the date of receipt of the records of the case.

Trial of the case under this Section shall be finished by the court **not later than sixty (60) days from the date of the filing of the information**. Decision on said cases shall be rendered within a period of fifteen (15) days from the date of submission of the case for resolution.

TITLE VI -- CRIMES AGAINST PUBLIC MORALS

(Offenses against Decency and Good Customs)

Article 200 -- Grave scandal

Elements:

- 1) Offender performs an act or acts.
- 2) Such act or acts are **highly scandalous** as offending against decency or good customs.
- 3) The highly scandalous conduct is **not expressly falling** within any other article of this Code.
- 4) The act or acts complained of be committed in a **public place or within the public knowledge or view**.

Note:

- a) Distinction should be made as to the place where the offensive act was committed:
 - 1) If in **public place**, there is criminal liability irrespective of whether the immoral act was in open public view.
 - 2) If in **private place**, public view is required.

Article 201 -- Immoral doctrines, obscene publications and indecent shows

Penalty shall be imposed upon:

- 1) Those who shall **publicly expound** or proclaim doctrines openly contrary to public morals;
- 2) (a) The **authors of obscene literature**, published with their knowledge if any form; the editors publishing such literature; and the owners/operators of the establishment selling the same.

(b) Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plans, scenes, acts or shows, whether live or in film, x x x which (1) **glorify criminals** or condone crimes; (2) serve no other purpose but to **satisfy the market for violence, lust or pornography**; (3) **offend any race** or religion; (4) tend to abet traffic in and **use of prohibited drugs**; and (5) are **contrary to law**, public order, morals, good customs, established policies, lawful orders, decrees and edicts;

- (3) Those who **shall sell, give away or exhibit films**, prints, engraving, sculptures or literature which are offensive to morals.

People vs. Aparici, 52 OG 249

Held: The test of obscenity is its tendency to deprave or corrupt those whose minds are susceptible to such immoral influences, and whether or not such act, publication or performance

*shocks the ordinary and common sense of men as indecency. **The perceptible and discernible reaction of the public or audience witnessing the act will determine whether it is indecent or not. When the dancer had nothing on except a too abbreviated pair of nylon panties to interrupt her stark nakedness, and the spectators were howling and shouting, "Sige muna, sige, nakakalibog," it was clear that her dancing was indecent.***

People vs. Padan, 101 PR 749

On September 14, 1953, police raided a *toro* show in Tondo, Manila where Marina Padan was caught in the act of sexual intercourse with Mr. Cosme, her *toro* partner.

Held: Test of obscenity is whether or not it is devoid of any socially redeeming value. An actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no redeeming features. One can see nothing but clear and unmitigated obscenity, indecency and an offense to public morals, inspiring nothing but lust and lewdness, and exerting a corrupting influence on the youth of the land.

Article 202 -- Vagrants and prostitutes

The following are **vagrants**:

- 1) Any person having **no apparent means of subsistence** yet who has the physical ability to work and neglects to apply himself or herself to some lawful 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;
- 3) Any idle 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** or women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.

TITLE VII (CRIMES AGAINST PUBLIC OFFICERS)

Article 203 -- Requisites to be a public officer.

Requisites to be a public officer:

- 1) **Taking part in the performance of public functions** in the Government or performance in said Government or in any of its branches public duties as an employee, agent or subordinate official of any rank or class.
- 2) That his authority to take part in the performance of public functions or to perform public duties must be:
 - L** a) By direct provisions of **Law**.
 - E** b) By popular **Election**.
 - A** c) By appointment by competent **Authority**.

CRIMES OF MALFEASANCE AND MISFEASANCE IN OFFICE

- 1) **MISFEASANCE** -- improper performance of some act which might lawfully be done.
- 2) **MALFEASANCE** -- performance of some act which ought not to be done.
- 3) **NONFEASANCE** -- omission of some act which ought to be performed.

Article 204 -- Knowingly rendering unjust judgment.

Elements:

- 1) That the offender is a **judge**.
- 2) That he renders a judgment in a **case submitted** to him for decision.
- 3) That judgment is **unjust**.
- 4) That judge **knows** that his judgment is unjust.

Article 205 -- Judgment rendered through negligence. .

Elements:

- 1) That offender is a **judge**.
- 2) That he renders a **judgment** in a case submitted to him for decision.
- 3) That judgment is **manifestly unjust**.
- 4) That it is due to his **inexcusable negligence or ignorance**.

Article 206 -- Unjust interlocutory order. — Any judge who shall **knowingly render an unjust interlocutory order or decree** shall suffer the penalty of *arresto mayor* in its minimum period and suspension; but if he shall have acted by reason of *inexcusable negligence or ignorance* and the interlocutory order or decree be manifestly unjust, the penalty shall be suspension.

Article 207 -- Malicious delay in the administration of justice.

Elements:

- 1) That the offender is a **judge**.
- 2) That there is a proceeding in his court.
- 3) That he **delays** the administration of justice.
- 4) That the **delay is malicious**, or caused by the judge with deliberate intent to inflict damage on either party in the case.

Article 208 -- Prosecution of offenses: negligence and tolerance.

Elements:

- 1) **Maliciously refraining** from instituting prosecution against violators of the law.
- 2) **Maliciously tolerating** the commission of offenses.

PREVARICACION -- this is **dereliction of duty** when knowing the commission of a crime, offender does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, offender merely **tolerates its commission**. Offender must also act with **malice** and deliberate intent to *favor the violator of the law*.

Article 209 -- Betrayal of trust by an attorney or solicitor. Revelation of secrets.

Punishable acts:

- 1) Causing **damage to his client**, either:
 - a) by any **malicious breach** of professional duty; or
 - b) **Inexcusable negligence** or ignorance. (Must establish damage to client)
- 2) **Revealing any of the secrets** of his client learned by him in his professional capacity. (Damage is **not** necessary)
- 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 the first client, or after having received confidential information from said client. **(But if there is consent, there is no crime.)**

Article 210 -- Direct bribery.

Punishable acts:

- 1) Agreeing to perform, or by performing, in consideration of any offer, promise, gift or promise, an **act constituting a crime**, in connection with the performance of his official duties.
- 2) Accepting a gift in consideration of the execution of an act which **does not constitute a crime**, in connection with the performance of his official duty.
- 3) Agreeing to refrain, or by **refraining, from doing something which is his official duty to do**, in consideration of gift, promise, or reward.

Note:

- a) Must be in the discharge or performance of his official duties.

Dacumos vs. Sandiganbayan, 195 SCRA 833

The petitioner, a revenue examiner of BIR, offered to settle the tax liability of *R. Revilla Interiors* in the amount of 35,000.00 instead of P73,307.31. The manager of the firm reported the matter to the NBI and entrapment was arranged. Petitioner accepted the tendered white enveloped containing money previously dusted, and then he was arrested. Petitioner Dacumos set up defense of instigation and that charges against him were fabricated.

Held: SC affirmed conviction. It was not instigation but a legitimate entrapment. Court is not inclined to believe that the complainant would be so vindictive as to falsely incriminate the petitioner with the serious charge of bribery just because the petitioner refused to reduce the tax assessment. The technical report on the test conducted by the NBI for flourescent powder on the petitioner's hands invited easy acceptance.

Article 211 – Indirect bribery.

Elements:

- 1) Offender is a **public officer**.
- 2) He **accepts gifts**.
- 3) The gifts are offered to him by **reason of his office**.

Note:

- a) Distinctions between **Direct bribery vs. Indirect bribery**:
- 1) In **Direct bribery**, there is an agreement between the public officer and the giver of the gift or present; while in **Indirect bribery**, there is usually no such agreement.
 - 2) In **Direct bribery**, the offender agrees to perform an act or refrains from doing something because of the gift or promise; while in **Indirect bribery**, it is not necessary that the officer would do any particular act or even promise to do an act, as it is enough that he accepts gifts by reason of his office.

Article 211-A -- Qualified bribery.

*Any public officer who, entrusted with law enforcement, refrains from arresting or prosecuting an offender who has committed a crime punishable by **reclusion perpetua** and/or death, in consideration of any offer, promise, gift or present, shall suffer the penalty for the offense which was **not prosecuted**.*

Article 212 -- Corruption of public official.

Penalty shall be imposed upon any person who shall have made the offer or promise or given the gifts or presents.

Article 213 -- Frauds against national treasury and similar offenses.

Penalty shall be imposed upon any public officer who:

- 1) x x x
- 2) *Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:*
 - a) *Demanding the payment of **sums different or larger** than those authorized by law.*
 - b) ***Failing voluntarily to issue a receipt**, as provided by law, for any sum of money collected by him officially.*
 - c) ***Collecting or receiving**, directly or indirectly, by way of payment or otherwise, things or objects of a **nature different** from that provided by law.*

Note:

- 1) **Illegal exaction under par. 1** -- offender is a public officer who must take advantage of his office, that is he intervened in the transaction in his official capacity; the public officer entered into an agreement with any interested party or speculator, or made use of any other scheme with regard to furnishing supplies, making of contracts, or the adjustment or settlement of accounts relating to public funds or property; the public officer had intent to defraud the government.
- 2) **Illegal exaction under par. 2** -- offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts; that he commits any of the following three (3) acts or omissions.

Article 214 -- Other frauds. — *In addition to the penalties prescribed in the provisions of Chapter Six, Title Ten, Book Two, of this Code, the penalty of temporary special disqualification in its maximum period to perpetual special disqualification shall be imposed upon any public officer who, taking advantage of his official position, shall commit any of the frauds or deceits enumerated in said provisions.*

Article 215 -- Prohibited transactions. — *The penalty of prison correccional in its maximum period or a fine ranging from 200 to 1,000 pesos, or both, shall be imposed upon any appointive public officer who, during his incumbency, shall directly or indirectly become interested in any transaction of exchange or speculation within the territory subject to his jurisdiction.*

Article 216 -- Possession of prohibited interest by a public officer.

Note:

- a) Actual fraud is **not necessary**.
- b) Intervention must be by virtue of the public office held.

Article 217 -- Malversation.

*Any public officer who, by reason of the duties of his office, is accountable for public funds of property, shall appropriate the same, or shall take or misappropriate or shall **consent, or through abandonment or negligence**, shall permit any other person to take such public funds or property, wholly or partially, shall be guilty of **Malversation** of public funds or property.*

*The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be **prima facie evidence** that he has put such missing funds or property to personal use.*

Punishable acts:

- 1) Appropriating public funds or property.
- 2) Taking or misappropriating the same.
- 3) **Consenting or through abandonment or negligence** by 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.

Common elements:

- 1) That the offender is a **public officer** who has:
 - a) Official custody of public funds or property or the duty to collect or receive funds due to the government.
 - b) The obligation to account for them to the government.
- 2) That he has the **custody** or control of funds or property by reason of the duties of his office.
- 3) That those funds or property were public funds or property for which he was **accountable**.

- 4) That he **appropriated**, took, misappropriated or consented or through **abandonment or negligence, permitted another** person to take them.

Note:

- a) **Malversation** may be committed by private individuals in the following cases:
 - 1) Those in conspiracy with public officers guilty of **Malversation**.
 - 2) Those who are accessory or accomplice to a public officer.
 - 3) Custodian of public funds or property in whatever capacity.
 - 4) Depositary or administrator of public funds or property.
- b) In such case, damage not necessary to the government.

Labatagos vs. Sandiganbayan, 183 SCRA 415

Labatagos was cashier of MSU, General Santos City. Upon audit she was found to have a shortage of P105,711.94 which, she argued, were amounts she gave to her superiors but the receipts were lost.

Held: *The SC affirmed her conviction for Malversation. Considering that the receipts were lost, and accused could not produce the amount, the presumption that she misappropriated the missing amounts remained un rebutted. Malversation, after all, can be committed not only through personal misappropriation of public funds, but by knowingly or negligently allowing others to misappropriate public funds for private use.*

Ilogon vs. Sandiganbayan, 218 SCRA 766

Petitioner Ilogon was both postmaster and cashier of Bureau of Posts in Cagayan de Oro City. As cashier, she accepted payments, made collections and extended '**vales**' or advances to postal employees. Later she had a shortage of P118,871.29 and sued for **Malversation**. He argued he did not personally benefit from the amount.

Held: *SC affirmed Sandiganbayan conviction for Malversation.. Humanitarian grounds like giving 'vales' or cash advances is not a valid defense. He is still liable for knowingly or negligently allowing others to misappropriate public funds. That extending cash advances was a long-standing practice at the Bureau of Post is not a defense. Further, giving of "vales" is also prohibited under PD 1445, Section 69, otherwise known as the Government Auditing Code of the Philippines.*

Article 218 – Failure to render accounts.

Elements:

- 1) That the offender is a public officer, whether in the service or separated therefrom.
- 2) That he must be an accountable officer for public funds or property.
- 3) That he is required by law or regulation to render accounts to the Commission on Audit, or to the provincial auditor.
- 4) That he **fails to do so for a period of two months**, after such accounts should be rendered.

Article 219 -- Failure to render accounts before leaving the country.

Elements:

- 1) That offender is a public officer.
- 2) That he must be an accountable officer for public funds or property.
- 3) That he unlawfully left (or about to leave) the Philippines **without securing from the COA** a certificate showing that his accounts have been finally settled.

Article 220 -- Illegal use of public funds or property.

Elements:

- 1) That the offender is a public officer.
- 2) That there is public fund or property under his administration.
- 3) That such public fund or property has been appropriated by law or ordinance.
- 4) That 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:

a) Unlike in **Malversation** where offender in certain cases profits from the proceeds of the crime, in **Technical malversation** the offender does not derive personal gain or profit from the effects of the crime.

b) In **Malversation**, the public fund is applied to the personal use of the offender or of another person, while in **Technical malversation**, the public fund is applied to another public use, but not for the personal use of the offender or another person.

Article 221 -- Failure to make delivery of public funds or property.

Elements:

- 1) **Failing to make payment** by a public officer who is under obligation to make such payment from the government funds in his possession.
- 2) **Refusing to make delivery** by public officer who has been ordered by competent authority to deliver any property in his custody or under his administration
 - a) The failure to make payment must be made maliciously.

Article 222 – Officers included in the preceding provisions. — The provisions of this chapter shall apply to private individuals who in any capacity whatever, have charge of any insular, provincial or municipal funds, revenues, or property and to any administrator or depository of funds or property attached, seized or deposited by public authority, even if such property belongs to a private individual.

Article 223 -- Conniving with or consenting to evasion.

Elements:

- 1) That the offender is a **public officer**.
- 2) That he had custody or charge of a prisoner, either detention prisoner or **prisoner by final judgment**.
- 3) That such prisoner **escaped** from his custody.

- 4) That he was in connivance with the prisoner in the ***latter's escape***.

Article 224 -- Evasion through negligence.

Elements:

- 1) That the offender is a public officer.
- 2) That he has charge with the conveyance or custody of a prisoner either detention prisoner or prisoner by final judgment.
- 3) That such prisoner ***escapes through negligence***.

Note:

- a) That is being punished here is ***"definite laxity amounting to deliberate non-performance of duty"*** on the part of the guard.

Rodillas vs. Sandiganbayan, 161 SCRA 347

Accused Patrolman Rodillas was directed by his superior to escort a certain Zenaida de Andres in a hearing before Judge Pardo in Caloocan City. After the hearing, they ate lunch, and allowed her to go to the comfort room where she escaped through the window.

Held: *SC affirmed his conviction for Evasion through negligence under Article 224. By allowing Zenaida to go to the comfort room without first checking the CR for possible escape, and for not reporting the escape immediately to the authorities, he is liable under Article 224. It is his duty to take the necessary precaution to assure the absence of any means of escape but through "definite laxity amounting to deliberate non-performance of duty," he allowed the detention prisoner to escape.*

Article 225 -- Escape of prisoner under custody of a person not a public officer.

Note:

- a) This article does not apply the principle in conspiracy that the ***"crime of one is the crime of all."*** If the offender is not the custodian of the prisoner, offender is guilty of ***Delivery prisoners from jail*** under **Article 156**.

Article 226 -- Removal, concealment or destruction of documents. — Any public officer who shall remove, destroy or conceal documents or papers officially entrusted to him, shall suffer:

1. The penalty of prision mayor and a fine not exceeding 1,000 pesos, whenever serious damage shall have been caused thereby to a third party or to the public interest.
2. The penalty of prision correccional in its minimum and medium period and a fine not exceeding 1,000 pesos, whenever the damage to a third party or to the public interest shall not have been serious.

In either case, the additional penalty of temporary special disqualification in its maximum period to perpetual disqualification shall be imposed.

Article 227 -- Officer breaking seal. — Any public officer charged with the custody of papers or property sealed by proper authority, who shall break the seals or permit them to be broken, shall suffer the penalties of prision correccional in its minimum and medium periods, temporary special disqualification and a fine not exceeding 2,000 pesos.

Article 228 -- Opening of closed documents. — Any public officer not included in the provisions of the next preceding article who, without proper authority, shall open or shall permit to be opened any closed papers, documents or objects entrusted to his custody, shall suffer the penalties or arresto mayor, temporary special disqualification and a fine of not exceeding 2,000 pesos.

Article 229 -- Revelation of secrets by an officer. — Any public officer who shall reveal any secret known to him by reason of his official capacity, or shall wrongfully deliver papers or copies of papers of which he may have charge and which should not be published, shall suffer the penalties of prision correccional in its medium and maximum periods, perpetual special disqualification and a fine not exceeding 2,000 pesos if the revelation of such secrets or the delivery of such papers shall have caused serious damage to the public interest; otherwise, the penalties of prision correccional in its minimum period, temporary special disqualification and a fine not exceeding 50 pesos shall be imposed.

Article 230 -- Public officer revealing secrets of private individual. — Any public officer to whom the secrets of any private individual shall become known by reason of his office who shall reveal such secrets, shall suffer the penalties of arresto mayor and a fine not exceeding 1,000 pesos.

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OTHER OFFENSES OR IRREGULARITIES BY PUBLIC OFFICERS

Article 231 -- Open disobedience. — Any judicial or executive officer who shall openly refuse to execute the judgment, decision or order of any superior authority made within the scope of the jurisdiction of the latter and issued with all the legal formalities, shall suffer the penalties of arresto mayor in its medium period to prision correccional in its minimum period, temporary special disqualification in its maximum period and a fine not exceeding 1,000 pesos.

Article 232 -- Disobedience to order of superior officers, when said order was suspended by inferior officer. — Any public officer who, having for any reason suspended the execution of the orders of his superiors, shall disobey such superiors after the latter have disapproved the suspension, shall suffer the penalties of prision correccional in its minimum and medium periods and perpetual special disqualification.

Article 233 -- Refusal of assistance. — The penalties of arresto mayor in its medium period to prision correccional in its minimum period, perpetual special disqualification and a fine not

exceeding 1,000 pesos, shall be imposed upon a public officer who, upon demand from competent authority, shall fail to lend his cooperation towards the administration of justice or other public service, if such failure shall result in serious damage to the public interest, or to a third party; otherwise, arresto mayor in its medium and maximum periods and a fine not exceeding 500 pesos shall be imposed.

Article 234 -- Refusal to discharge elective office. — *The penalty of arresto mayor or a fine not exceeding 1,000 pesos, or both, shall be imposed upon any person who, having been elected by popular election to a public office, shall refuse without legal motive to be sworn in or to discharge the duties of said office.*

Article 235 -- Maltreatment.

*Penalty shall be imposed upon any public officer or employee who shall **overdo himself** in the correction or handling of a prisoner or detention prisoner under his charge.*

Qualified *if the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner.*

Elements:

- 1) That the offender is a public officer or employee.
- 2) That he has under his charge a prisoner or detention prisoner.
- 3) That he **maltreats such prisoner** in either of the following manner:
 - a) By overdoing himself in the correction and handling of a prisoner or detention prisoner under his charge either --
 - 1) By the imposition of punishments not authorized by the regulations.
 - 2) By inflicting such punishments authorized by law but in a cruel and humiliating manner.
 - b) By **maltreating such prisoner** to extort a confession or to obtain some information from the prisoner.

Article 236 -- Anticipation of duties of a public office. — *Any person who shall assume the performance of the duties and powers of any public officer or employment without first being sworn in or having given the bond required by law, shall be suspended from such office or employment until he shall have complied with the respective formalities and shall be fined from 200 to 500 pesos.*

Article 237 -- Prolonging performance of duties and powers. — *Any public officer shall continue to exercise the duties and powers of his office, employment or commission, beyond the period provided by law, regulation or special provisions applicable to the case, shall suffer the penalties of prison correccional in its minimum period, special temporary disqualification in its minimum period and a fine not exceeding 500 pesos.*

Article 238 -- Abandonment of office or position.

Elements:

- 1) That the offender is a public officer.
- 2) That he **formally resigns** from his position.
- 3) That his resignation has **not** yet been accepted.
- 4) That he **abandons his office** to the detriment of the public service.

Article 239 -- Usurpation of legislative powers. — *The penalties of prision correccional in its minimum period, temporary special disqualification and a fine not exceeding 1,000 pesos, shall be imposed upon any public officer who shall encroach upon the powers of the legislative branch of the Government, either by making general rules or regulations beyond the scope of his authority, or by attempting to repeal a law or suspending the execution thereof.*

Article 240 -- Usurpation of executive functions. — *Any judge who shall assume any power pertaining to the executive authorities, or shall obstruct the latter in the lawful exercise of their powers, shall suffer the penalty of arresto mayor in its medium period to prision correccional in its minimum period.*

Article 241 -- Usurpation of judicial functions. — *The penalty of arresto mayor in its medium period to prision correccional in its minimum period and shall be imposed upon any officer of the executive branch of the Government who shall assume judicial powers or shall obstruct the execution of any order or decision rendered by any judge within its jurisdiction.*

Article 242 -- . Disobeying request for disqualification. — *Any public officer who, before the question of jurisdiction is decided, shall continue any proceeding after having been lawfully required to refrain from so doing, shall be punished by arresto mayor and a fine not exceeding 500 pesos.*

Article 243 -- Orders or requests by executive officers to any judicial authority. — *Any executive officer who shall address any order or suggestion to any judicial authority with respect to any case or business coming within the exclusive jurisdiction of the courts of justice shall suffer the penalty of arresto mayor and a fine not exceeding 500 pesos.*

Article 244 -- Unlawful appointments.

Elements:

- 1) That the offender is a public officer.
- 2) That he **nominates or appoints** a person to a public office.
- 3) That such person **lacks** the legal qualification.
- 4) That the offender knows that his nominee or appointee **lacks the qualifications** at the time he made the nomination or appointment.

Article 245 -- Abuses against chastity.

Elements:

- 1) That the offender is a public officer.
- 2) That offender **solicits or makes immoral or indecent advances** to a woman.
- 2) Such woman must be
 - a) Interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or directly charged with the care and custody of prisoners or persons under arrest; or
 - b) Under the custody of such offender who is a warden or other public officer.
 - c) The wife, daughter, sister or relative within the same degree by affinity of the person under the custody of the offender.

TITLE VIII (CRIMES AGAINST PERSONS)

Article 246 -- Parricide.

Any person who shall kill his father, mother or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide, and shall be punished x x x

Elements:

- 1) That a person is killed.
 - 2) That the deceased is killed by the accused.
 - 3) That the deceased is the father, mother or child (but not less than three days old), whether legitimate or illegitimate, or a legitimate other ascendant or descendant, or the legitimate spouse, of the accused.
- a) Cases of parricide when penalty shall not be **reclusion perpetua** to death:
- 1) Parricide through negligence.
 - 2) Parricide by mistake (**Article 249**)
 - 3) Parricide under exceptional circumstances (**Article 247**)
- 4) Crime is **PARRICIDE** -- If killing of legitimate or illegitimate father, mother or child or **legitimate** spouse or legitimate other ascendant or descendant. If illegitimate spouse, crime is murder. If killing of legitimate brother or sister, crime is not parricide but homicide or murder.
 - 5) If killing of child less than 3 days old and capable of intra-uterine life outside the uterus -- crime is **Infanticide**. If incapable of surviving outside the uterus, crime is **Abortion**.
 - 6) If stranger helps husband kill the wife -- husband liable for **Parricide**, but stranger is liable for **Murder (or homicide)** because no relationship with the wife.

People vs. Jumawan, 166 SCRA 739

Presentacion Jumawan conspired with her father, and two brothers, in killing her husband, Rodolfo with whom he is no longer in love. Together they killed her husband by stabbing him around 9:30 p.m. on June 19, 1976 inside a store owned by their relative.

Held: SC affirmed conviction for Murder qualified by treachery and the generic aggravating circumstances of superior strength and evident premeditation. SC held, however, it could not be Parricide because the relationship of husband and wife was not alleged in the Information which is an indispensable requirement for the conviction of parricide.

Article 247 -- Death under exceptional circumstances.

Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them **in the act or immediately thereafter**, or shall inflict upon any of them any serious physical injury, shall suffer the penalty of **destierro**.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

Elements:

- 1) That a legally married person or parent surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person.
- 2) That he/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) That he has not promoted or facilitated the prostitution of his wife or daughter, or that he and she has not consented to the infidelity of the other spouse.

Note:

- a) The discovery, the escape, the pursuit and the killing must all form part of one continuous act.
- b) This is applicable only when the daughter is single.

People vs. Abarca, 153 SCRA 735

Abarca, after having surprised his wife in sex with Kingsley Paul Koh, shot him dead after more than one hour had lapsed. Also seriously injured were the Amparado couple and in the lower court he was convicted for the **Complex crime of Murder with Double Frustrated Murder**.

Held: SC reversed the conviction, and sentenced him only to Destierro under Article 247. Neither was he held liable for the serious physical injuries sustained by the Amparado couple because killing, or injuries, suffered under Article 247 is not an unlawful act. Also, despite the lapse of more than one hour since discovery up to the killing, SC held it was still committed "immediately thereafter" since the killing was the "proximate result of the outrage overwhelming the accused in finding the other spouse in the basest act of sexual infidelity."

Article 248 -- Murder.

Any person who shall kill another, not falling within the provisions of Article 246, shall be guilty of murder and punished by **reclusion perpetua** to death if committed with any of the following attendant circumstances.

P 1) In consideration of a **P**rice, reward or promise.

I 2) By means of **I**nundation, fire, poison, explosion, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.

E 3) On occasion of an **E**arthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

T 4) With **T**reachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense of means or persons to insure or afford impunity.

E 5) With **E**vident premeditation.

A 6) With cruelty, by deliberately and inhumanly **A**ugmenting the suffering of the victim, or outraging or scoffing at his person or corpse. (Recall **PIETEA**)

Elements:

1) A person was killed.

2) Accused killed him.

3) The killing was attended by any of the attendant circumstances enumerated under **Article 248**.

4) The killing is not parricide or infanticide.

Note:

a) Murder is committed when only one of the circumstances described is present. When more than one are present, the others are treated as **generic aggravating** circumstances.

b) When the other circumstances are absorbed, they cannot be considered generic.

c) Any of the qualifying circumstances must be alleged in the **Information**.

People vs. Buensuceso, 132 SCRA 143

Pat. Buensuceso with Pat. Aguilar shot the victim Tayag for refusing to surrender his fan knife while the victim was already retreating backwards, and later fell on his knees. The victim was hit several times and died on the spot.

Held: *The SC affirmed their conviction for Murder, qualified by treachery indicated by the wounds at his back, that he was retreating backwards, and that he was completely defenseless. Further, SC held that where victim died from several wounds inflicted by different persons and it is not known which person inflicted the mortal wound, all of them are liable for victim's death under theory of conspiracy.*

Article 249 -- Homicide.

Any person who, not falling within the provision of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of **homicide** and punished by **reclusion temporal**.

Elements:

- 1) A person was killed.
- 2) Offender killed him without any justifying circumstances.
- 3) Offender has the intention to kill, which is presumed.
- 4) The killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide.

Note:

- a) Intent to kill is conclusively presumed when death resulted. Evidence of intent to kill is important only in attempted or frustrated homicide.
- b) **Accidental homicide** – is the death of a person brought by a lawful act performed with proper care and skill, and without homicidal intent.

People vs. Pugay, 167 SCRA 439

Deceased Miranda was a 25-year-old mental retardate. His friend Pugay played games with him by putting gasoline on the victim, while Samson lighted a match, setting Miranda inadvertently on fire and killing him. Cavite CFI convicted them for murder, qualified by treachery with the mitigating circumstance of *praeter intentionem*.

Held: SC modified crime to Homicide through Reckless Imprudence. It could not be Murder because there was no intent to kill nor treachery, the two accused merely playing games on the deceased. They also had no motive to kill deceased, who is their friend. Rather, through their recklessness and negligence in putting gasoline and setting fire on the victim, they caused his death hence, crime is Homicide through Reckless Imprudence.

Article 250 -- Penalty for frustrated parricide, murder or homicide.

The courts may impose upon the person guilty of the frustrated crime of parricide, murder or homicide a penalty lower by one degree than that which should be imposed under the provisions of **Article 50**.

Article 251 -- Death caused in a tumultuous affray.

*When, while several persons not composing groups organized for the common purpose of assaulting and attacking each other reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it cannot be ascertained who actually killed the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by **prision mayor**.*

*If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of **prision correccional** in its medium and maximum periods shall be imposed upon all those who shall have used violence upon the person of the victim.*

Elements:

- 1) That there be several persons.
- 2) That they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally.

3) That several persons quarreled and assaulted one another in a confused and tumultuous affray.

4) That someone was killed in the course of the affray.

5) That it cannot be ascertained who actually killed the deceased.

6) That the person or persons who inflicted serious physical injuries who use violence can be identified.

Note:

a) At least four (4) persons must take part.

b) Persons killed need not be participants therein.

c) If person who inflicted fatal wound is known, crime is ***homicide***.

Article 252 -- Physical injuries inflicted in a tumultuous affray.

When in a tumultuous affray only serious physical injuries are inflicted upon the participants thereof and the person responsible therefor cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.

Elements:

1) That there is a tumultuous affray.

2) That a participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only.

3) That the person responsible thereof cannot be identified.

4) That all those who appear to have used violence upon the person of the offended party are known.

Note:

a) The injured party must be a participant in the affray.

b) Only the ones who used violence are liable.

c) Slight physical injuries excluded.

Article 253 -- Giving assistance to suicide.

*Any person who shall assist another to commit suicide shall suffer the penalty of **prision mayor**; if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of **reclusion temporal**. However, if the suicide is not consummated, the penalty of **arresto mayor** in its medium and maximum period shall be imposed.*

Punishable acts:

1) Assisting another to commit suicide, whether the suicide is consummated or not.

2) Lending his assistance to another to commit suicide to the extent of doing the killing himself.

Note:

a) Mercy killing is the practice of painlessly putting to death a person suffering from some incurable disease. Not considered as included in Article 253 because the person killed does not want to die. A doctor who resorts to euthanasia may be liable for murder.

Article 254 -- Illegal discharge of firearms.

*Any person who shall shoot another with any firearm shall suffer the penalty of **prision correccional** in its minimum and medium periods, unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide or any other crime for which a higher penalty is prescribed by this Code.*

Elements:

- 1) That the offender discharges a firearm against or at another person.
- 2) That the offender has no intention to kill that person.

Article 255 -- Infanticide.

The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime is committed for the purpose of concealing her dishonor, she shall suffer a lower penalty x x x.

Elements:

- 1) That a child was killed by the accused.
- 2) That the deceased child was less than 72 hours old.

Note:

- a) Other person who kills a child less than three days old to suffer penalty for murder.
- b) Only the mother and maternal grandparents of the child are entitled to the mitigating circumstances of concealing the dishonor.
- c) Concealing dishonor is not an element of the crime.

Article 256 -- Intentional abortion.

Any person who shall intentionally cause an abortion shall suffer:

- 1) *The penalty of **reclusion temporal** if he shall use any violence upon the person of the pregnant woman.*
- 2) *The penalty of **prision mayor**, if without using violence he shall act without the consent of the woman.*
- 3) *The penalty of **prision correccional** in its medium and maximum periods if the woman shall have consented.*

Acts punished:

- 1) By using any violence upon the person of the pregnant woman.
- 2) By acting, but without using violence, without the consent of the woman (by administering drugs/beverages upon a pregnant woman without her consent).

3) By acting, with the consent of the pregnant woman (by administering drugs/beverages).

Elements:

- 1) That there is a pregnant woman.
- 2) That violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman.
- 3) That 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.

Note:

- a) Intentional abortion is the intentional killing of a child below three days of age incapable of surviving outside the uterus. If fetus could sustain an independent life and is killed, the crime is infanticide. Otherwise, it is abortion.
- b) The person who caused the abortion is liable under Article 256. The woman is liable under **Article 258**, if she consented to the abortion caused on her. If she did not consent to the abortion, she is not liable.

Article 257 -- Unintentional abortion.

*The penalty of **prision correccional** in its minimum and medium periods shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.*

Elements:

- 1) That there is a pregnant woman.
- 2) That violence is used upon such pregnant woman without intending an abortion.
- 3) That the violence is intentionally exerted.
- 4) That as a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

Note:

- a) Violence is used upon such pregnant woman, without intending an abortion.
- b) Violence is intentionally exerted.

People vs. Salufranja, 159 SCRA 401

Filomeno Salufrania, out of jealousy, attacked and boxed his wife who was eight months pregnant, killing her and the fetus inside her womb. He was sued and convicted in the lower court for **Complex crime of parricide with intentional abortion**.

Held: SC modified crime to Complex crime of parricide with Unintentional abortion. Mere boxing on the stomach, taken together with the immediate strangling of the victim in a fight, is not sufficient proof to show intent to cause abortion. Appellant may have merely intended to kill the victim, but not necessarily to cause an abortion.

Article 258 -- Abortion practiced by the woman herself, or by her parents.

The penalty of x x x shall be imposed upon a woman who shall practice an abortion upon herself or shall consent that any other person should do so.

Elements:

- 1) That there is a pregnant woman who has suffered an abortion.
- 2) That the abortion is intended.
- 3) That abortion is caused by:

Note:

- a) The offender, who must be a physician, or midwife, causes or assists in causing the abortion.
- b) The physician or midwife takes advantage of his scientific knowledge or skill.
- c) As to pharmacists, there is no proper prescription from a physician and the offender dispenses any abortive substance.
- d) **RA 4729** -- Law which regulates the sale, dispensation, and/or distribution of contraceptive drugs or devices.

Article 259 -- Abortion practiced by a physician, midwife and dispensing of abortives.

Penalty shall be imposed upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer penalty x x x and a fine x x x

Elements:

- 1) That there is a pregnant woman who has suffered an abortion.
- 2) That the abortion is intended.
- 3) That the offender, who must be a physician or midwife, caused or assisted in causing the abortion.
- 4) Said physician or midwife took advantage of his scientific knowledge or skill.

Article 260 -- Responsibility of participants in a duel. — *The penalty of reclusion temporal shall be imposed upon any person who shall kill his adversary in a duel.*

If he shall inflict upon the latter physical injuries only, he shall suffer the penalty provided therefor, according to their nature.

In any other case, the combatants shall suffer the penalty of arresto mayor, although no physical injuries have been inflicted.

The seconds shall in all events be punished as accomplices.

Article 261 -- Challenging to a duel. — *The penalty of prision correccional in its minimum period shall be imposed upon any person who shall challenge another, or incite another to give or accept a challenge to a duel, or shall scoff at or decry another publicly for having refused to*

accept a challenge to fight a duel.

Article 262 – Mutilation

The penalty of x x x shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Elements:

- a) Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction.
- b) The mutilation is caused purposely and deliberately to deprive the offended party of some essential organ for reproduction.
- c) Intentionally making other mutilation by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive of that part of his body.

Article 263 -- Serious physical injuries.

Any person who shall wound, beat or assault another, shall be guilty of x x x and shall suffer:

- 1) *The penalty of **prision mayor**, if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent or blind.*
- 2) *The penalty of **prision correccional** in its medium and maximum periods if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or power to hear, smell, or shall have lost n eye, a hand, a foot and an arm, or a leg, or shall have lost the use of any such member, or shall have become incapacitated for work in which he was habitually engaged.*
- 3) *The penalty of **prision correccional** in its minimum and medium periods if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a **period of more than 90 days.***
- 4) *The penalty of **arresto mayor** in its maximum period to **prision correccional** in its minimum period, if the physical injuries shall have caused the illness or incapacity for labor of the injured person for more than 30 days.*

How committed:

- 1) By wounding.
- 2) By beating.
- 3) By assaulting or
- 4) By administering injurious substances.

Elements:

- 1) When the person becomes insane, imbecile, impotent, or blind in consequence of the physical injuries inflicted.
- 2) When the injured person --
 - a) Loses the use of speech or the power to hear or smell, or loses an eye, a hand, a foot, an arm or a leg.
 - b) Loses the use of any such member; or
 - c) Becomes incapacitated for the work in which he was habitually engaged, in consequence of the physical injuries inflicted.
- 3) When the injured person becomes ill or incapacitated from labor for more than 30 days (but not more than 90 days) as a result of the physical injuries inflicted.

Article 264 -- Administering injurious substances.

Penalty shall be imposed upon any person who, without intent to kill, shall inflict upon another any serious physical injury, by knowingly administering to him any injurious substances or beverages, or by taking advantage of his weakness of mind or credulity.

Elements:

- 1) Offender inflicted upon another any serious physical injury.
- 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.

Article 265 -- Less serious physical injuries.

Any person who shall inflict upon another physical injuries x x x which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries x x x

Note:

- 1) Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time.
- 2) The physical injuries must not be those described in the preceding articles.

Article 266 -- Slight physical injuries and maltreatment.

The crime of slight physical injuries shall be punished:

- 1) By **arresto menor** when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from **one to nine days**, or shall require medical attendance during the same period.
- 2) By **arresto menor** or a fine x x x and censure when the offender has caused physical injuries which does not prevent the offended party from engaging in his habitual work nor require medical attendance.
- 3) By **arresto menor** in its minimum period or a fine x x x when the offender shall **ill treat another by deed without causing injury**.

Acts punished:

- 1) Physical injuries 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.

Article 266-A *Rape -- When and how committed*

Elements under par. 1:

- 1) Offender is a man.
- 2) Offender had carnal knowledge of a woman.
- 3) Such act is accomplished under any of the following circumstances:
 - a) By using force or intimidation.
 - b) When the woman is deprived of reason or otherwise unconscious.
 - c) By means of fraudulent machination or grave abuse of authority.
 - d) Or when the woman is under 12 years of age or demented, although no force or intimidation is employed.

Elements under par. 2:

- 1) Offender commits an act of sexual assault.
- 2) The act of sexual assault is committed by any of the following means:
 - a) By inserting his penis into another person's mouth or anal orifice; or
 - b) By inserting any instrument or object into the genital or anal orifice of another person.
- 3) The act of sexual assault is accomplished under any of the following circumstances:
 - a) By using force or intimidation; or
 - b) When the woman is deprived of reason or otherwise unconscious; or
 - c) By means of fraudulent machination or grave abuse of authority; or
 - d) When the woman is under 12 years of age, or demented.

Republic Act 8353 -- *An Act Expanding the Definition of Rape, Reclassifying Rape as a Crime Against Persons*

Classification of rape:

- 1) Traditional concept under **Article 335** -- carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.
- 2) **Sexual assault** -- committed with an instrument or an object, or the use of the penis with penetration of mouth, or anal orifice. The offended party, or the offender, can either be a man or woman, that is if a woman or a man uses an instrument on anal orifice of male, he or she can be liable for rape.

Note:

- a) Sexual assault is committed under the following circumstances:
 - 1) Where the penis is inserted into the anal or oral orifice; or
 - 2) Where an instrument or object is inserted into the genital or oral orifice.
- b) Aggravating/qualifying circumstances where rape is punishable by **MANDATORY DEATH**.
 - 1) When the victim is **under 18 years of age**, and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.
 - 2) When the victim is under the custody of the **police or military authorities**, of any law enforcement or penal institution.
 - 3) When the rape is **committed in full view** of the spouse, parent or any of the children or other relatives within the third civil degree of consanguinity.
 - 4) When the **victim is a religious** engaged in legitimate religious vocation or calling and is personally known to be such by the offender, before or at the time of the commission of the crime.
 - 5) When the victim is a **child below 7 years old**.
 - 6) When the offender knows that he is **afflicted with HIV/AIDS** or any other sexually transmissible disease.
 - 7) When committed by any member of the **AFP or para-military units** thereof of 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.
 - 8) When by reason or on occasion of the rape, the victim has suffered **permanent physical mutilation or disability**.
 - 9) When the offender **knew of the pregnancy** of the offended party at the time of the commission of the crime.
 - 10) When the offender **knew of the mental disability**, emotional disorder and/or physical disability of the offended party at the time of the commission of the crime.

People vs. Orita, 184 SCRA 105 (1990)

Accused PC soldier Orita followed 19-year-old Cristina Abayan from party, used knife to force her to have sexual intercourse, but while on top, she managed to escape. Samar RTC convicted him of frustrated rape and case on appeal.

Held: *SC held it's consummated rape, and not mere frustrated rape only. Citing People vs. Erinia, no frustrated stage anymore and Erinia ruling was a stray decision. It is settled that slight penetration consummates rape, and perfect penetration not essential. Mere touching of lips of vagina, without laceration of vagina or emission, already consummates rape.*

People vs. dela Pena, 233 SCRA 573 (1994)

Accused dela Pena waylaid 9-year-old Rose Marasigan on her way to school. Due to her resistance, and then playing dead, the accused dela Pena panicked, could not get an erection, and fled. Valenzuela RTC held it is consummated rape and penalty was **reclusion perpetua**.

Held: SC, however, modified Valenzuela RTC decision and held it's only attempted rape. Although mere touching consummates rape, rape presupposes an erect penis because without erection, there can be no penetration, no matter how slight, and without penetration, there can be no consummation. Also, both the rape victim and accused testified that there was no clear penetration because the victim at first resisted, and the accused could not sustain an erection.

People vs. Campuhan, (2000 case)

Mother saw accused and houseboy Campuhan in the act of almost raping her 4-year-old daughter in a kneeling position. Medical findings indicated hymen was still intact but since in previous **Orita ruling** entry into labia without rupture of hymen already consummated rape, issue is whether or not crime is consummated, or attempted, rape only.

Held: SC held crime is attempted rape only. Touching here means the penis indeed touched the labia and slid into the female organ, and not merely stroke the external surface. Some degree of penetration beneath the surface must be achieved, and the labia majora must be entered. Victim herself testified that penis grazed but did not penetrate her organ. As the SC pointed out so eloquently, "there was only a shelling of the castle, but no bombardment of the drawbridge yet."

People vs. Atento, 166 SCRA 739

The victim Glenda Aringo is only 16 years of age but has a mental age of 9 to 12 years old. She was raped by their neighbor, Cesar Atento, a 39-year-old storekeeper, five times until she got pregnant. When prosecuted for rape, she testified against accused but when asked to describe the rape act, she said it was "**Masarap.**"

Held: The SC affirmed the accused's conviction for statutory rape because although she has a physical age of 16 years, she has a mental age of a 9 to 12 year old. She was, in effect, deprived of reason under 2nd par. or accused can also be liable under the last par. of Article 266-A the mental age of the victim being less than 12 years.

TITLE IX CRIMES AGAINST LIBERTY and SECURITY

ARTICLE 267 -- Kidnapping and serious illegal detention.

Any private individual who shall kidnap or detain another for in any other manner deprives him of his liberty, shall suffer the penalty of **reclusion perpetua** to death:

- 1) If the kidnapping or detention shall have **lasted more than three days.**
- 2) If it shall have been committed simulating public authority.
- 3) If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
- 4) If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be **death** where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

Note:

- a) Detention for more than three days not necessary when any of the other circumstances is present.
- b) Victim need not be placed in an enclosure; restraint need not be permanent.
- c) Qualifying circumstances: if
 - 1) Purpose is to extort ransom.
 - 2) Victim is killed, raped or tortured as a consequence.
- d) Ransom -- is the money, price or consideration paid or demanded for redemption of a captured person that would release the hostage from captivity.
- e) **Complex crime of kidnapping with murder** – when victim is killed because of his refusal to pay the ransom and where kidnapping is a necessary means to commit the murder.

But where the purpose is to kill him and not for detaining him, crime committed is **murder**.

- f) Distinctions between **Illegal detention** from **Arbitrary detention**:
 - 1) In **Illegal detention**, offender is a private individual who unlawfully kidnaps, detains or deprives a person of his liberty; while in **Arbitrary detention**, offender is a public officer who detains a person without legal grounds.
 - 2) In **Illegal detention**, crime is against *Personal Liberty and Security*; while **Arbitrary detention** is a crime against *Fundamental Law of the State*.
- g) Two tests for kidnapping: 1st, **actual detention** for an appreciable period of time; and 2nd, **intent to detain**.

People vs. Tomio, 202 SCRA 77

Victim Nagao, a Japanese tourist in the country, was approached by Tomio, with two other Japanese who planted marijuana in Nagao's pocket and in collusion with WPD policemen, had Nagao arrested. The three Japanese made it appear that they advanced his bail and demanded \$100,000.00 from him and refused to let him go until they paid him the amount which the victim had to ask from his father in Japan. Meantime, Nagao was able to contact a friend and the three Japanese were entrapped and arrested.

Held: SC affirmed conviction of the three Japanese for kidnapping for ransom. While victim Nagao had freedom of locomotion, he had no freedom to leave at will because of detention by threats and intimidation, although not by actual force or violence. He could not escape from his captors because he could not speak Japanese, his passport and money were confiscated.

People vs. Lim, 190 SCRA 706

Aida Villanueva, ten years old, and Avelyn Villanueva, 7 years old, went to the pier to fetch their mother. Since their mother did not arrive, and taking pity on the two children, Ms.

Lim sheltered them for which Ms. Lim was prosecuted and convicted for kidnapping in the Masbate RTC.

Held: SC reversed conviction, and acquitted Ms. Lim. Using the two tests, 1st, there was no actual detention because they could leave anytime, and secondly, Ms. Lim had no intent to detain the two children. Also, no motive to kidnap because Ms. Lim could very well afford helpers.

People vs. Padica, 221 SCRA 362.

Victim Francis Banaga was brought by Padica et al to a certain place, and then immediately killed. After a few hours after killing victim, they called the victim's father to ask for ransom.

Held: SC modified lower court's decision, and held crime committed is only MURDER, and not Complex crime of Kidnapping for ransom with murder. It's only MURDER because the primordial criminal intent or principal purpose was really to kill, and kidnapping or detention was merely incidental neither was there intent to detain for an appreciable period of time. No ransom here because ransom is money asked in exchange for liberty and here the money was asked only when the victim was already dead.

ARTICLE 268 -- Slight illegal detention.

If the offender shall voluntarily release the person so kidnapped or detained within three (3) days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty x x x and a fine x x x.

Note:

a) If offender voluntarily releases victim **within three days** from commencement of detention, and without having achieved the purpose intended, and before institution of criminal proceedings against him, his liability is mitigated.

ARTICLE 269 -- Unlawful arrest.

*The penalty of x x x shall be imposed upon any person who shall **arrest or detain another** for the purpose of delivering him to the proper authorities.*

Note:

- a) Offender is any person, whether public officer or private individual.
- b) No period of detention fixed. Motive is controlling and must be coupled with the intention to deliver detainee to proper authorities.

ARTICLE 270 -- Kidnapping and failure to return a minor.

*The penalty of **reclusion perpetua** shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.*

Elements:

- 1) That the offender is entrusted with the custody of a minor person (over or under 7 years old but less than 21).
- 2) That he deliberately fails to return minor to his parents or guardian.

Note:

- a) When committed by either parent, penalty is only ***arresto mayor***.

People vs. Ty, 263 SCRA 754.

The mother Johanna Sombong brought daughter Arabella, 7-month-old baby to Ty couple, owner of Sir John Medical and Maternity Clinic in Caloocan. After more than five years, mother returned and sued Ty couple who referred the child to a relative who could better take care of Arabella. The Ty couple was convicted in the lower court for ***Kidnapping and failure to return a minor***.

Held: *The SC reversed conviction, and acquitted Ty couple. In the first place, they did not have direct and actual custody of child since the child was left, and abandoned to them, without their prior knowledge or consent. Second, there was no deliberate nor persistent failure or refusal to return the child to the mother since they immediately contacted the child's foster parents when the mother reappeared to claim her back. Gravamen of offense is DELIBERATE AND PERSISTENT FAILURE to return a minor.*

ARTICLE 271 -- Inducing a minor to abandon his home.

The penalty of x x x and a fine of x x x shall be imposed upon anyone who shall induce a minor to abandon the home.

Elements:

- 1) A minor (whether over or under 7 years of age) is living in the home of his parents, or guardians, or the person entrusted with his custody.
- 2) Offender induces said minor to abandon such home.

Note:

- a) Inducement must be actual, and committed with criminal intent and determined by a will to cause damage.
- b) Father or mother may commit crimes under **Articles 270 and 271**, where they are living separately, and the custody of their minor child having been given to one of them, the other parent induces said minor to leave his home.

ARTICLE 272 -- Slavery.

Elements:

- 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.

ARTICLE 273 -- Exploitation of child labor.

Elements:

- 1) The offender retains a minor in his service.
- 2) That it is against the will of the minor.

3) That 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.

ARTICLE 274 -- Services rendered under compulsion for payment of debt.

Elements:

- 1) That the offender compels a debtor to work for him, either as a house servant or farm laborer.
- 2) That it is against the debtor's will.
- 3) That the purpose is to require or enforce the payment of a debt.

ARTICLE 275 -- Abandonment of one's own victim and persons in danger.

Prohibited acts:

- 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.
- 2) Failing to help or render assistance to another whom the offender has accidentally wounded or injured.
- 3) Failing to deliver a child, **under seven years**, whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

Note:

- a) Par. 2 of **Article 275** applies only when someone is accidentally injured by the accused.

ARTICLE 276 -- Abandoning a minor.

Elements:

- 1) That the offender has the custody of a child.
- 2) That the child is under seven (7) years.
- 3) That he abandons such child.
- 4) That he has no intent to kill the child when the child is abandoned.

Note:

- a) Where there is intent to kill, this article does not apply.
- b) A permanent, conscious and deliberate abandonment is required in this Article.

ARTICLE 277 -- Abandonment of minor by person entrusted with his custody/Indifference of parents

Elements:

- 1) That the offender has charge of the rearing or education of a minor.
- 2) That he delivers said minor to a public institution or other persons.
- 3) That the one who entrusted such child to the offender has not consented to such act, or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

Note:

- a) The second paragraph actually refers to the ***indifference of parents***, or deliberate failure of parents to give education to their children which their status in life requires.

ARTICLE 278 -- Exploitation of minor.

Prohibited acts:

- 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 who are not his children or descendants in exhibitions of acrobat, gymnast, ropewalker, diver, or wild animal tamer, the offender being an acrobat, etc. or circus manager or engaged in a similar calling.
- 3) Employing any descendant ***under 12 years of age*** in dangerous exhibitions enumerated in the next preceding par., the offender being engaged in any of the said callings.
- 4) Delivering a child ***under 16 gratuitously*** to any person following any callings enumerated, or to any habitual vagrant or beggar, the offender being ascendant, guardian, teacher or person entrusted in any capacity with the care of such child.
- 5) Inducing any child ***under 16*** to abandon the home of its ascendants, guardians, curators or teachers to follow any person engaged in any callings mentioned, or to accompany any habitual vagrant or beggar, the offender being any person.

ARTICLE 279 -- Additional penalties for other offenses. *The imposition of the penalties prescribed in the preceding articles, shall not prevent the imposition upon the same person of the penalty provided for any other felonies defined and punished by this Code.*

ARTICLE 280 -- Qualified trespass to dwelling.

*Any private person who shall **enter the dwelling of another against the latter's will**, shall be punished by x x x and a fine x x x.*

Elements:

- 1) That the offender is a private person.
- 2) That he enters the dwelling of another.
- 3) That such entrance is ***against the latter's will***.

Note:

- a) Qualified if committed by means of violence or intimidation.
- b) Lack of permission does not amount to prohibition; there must be opposition on the part of the owner of the house to the entry of the accused.
- c) Prohibition must be in existence prior to or at the time of entrance.

ARTICLE 281 -- Other forms of trespass.

Elements:

- 1) Offender enters the closed premises or the fenced estate of another.
- 2) The entrance is made, while either of them is uninhabited.
- 3) The prohibition to enter is manifest.

- 4) The trespasser has **not secured** the permission of the owner or caretaker thereof.

Note:

- a) Distinguish **Article 280** (*Qualified trespass*) from **Article 281** (*Other forms of trespass*)
 - 1) In Article 280, offender is a private person; while under Article 281 offender is any person.
 - 2) In Article 280, offender enters a dwelling house; while under Article 281 offender enters closed premises or fenced estate.
 - 3) In Article 280, offender enters an inhabited place; while under Article 281 offender enters an uninhabited place.
 - 4) In Article 280, act constituting the crime is entering the dwelling against the owner's will; while under Article 281 the crime is entering the closed premises or the fenced estate, without securing the permission of the owner or caretaker thereof.
 - 5) In Article 280, prohibition to enter is express or implied; while under Article 281 prohibition to enter must be manifest.
- b) **P.D. 772** -- penalizes squatting and other similar acts.

ARTICLE 282 -- Grave threats.

Prohibited acts:

- 1) Threatening another with the infliction upon his person, honor or property or that of his family 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) Making such threat without the offender attaining his purpose.
- 3) Threatening another with the inflicting upon his person, honor or property or that of his family any wrong amounting to a crime, the treat not being subject to a condition.

Note:

- a) The essence of the crime is **intimidation**.
- b) Qualifying circumstances: if threat was made in writing or through a middleman.
- c) The act threatened must be wrong.
- d) The crime is consummated as soon as the threats come to the knowledge of the person threatened. Not necessary that the offended party was present at the time the threats were made.
- e) Threats made in connection with the commission of other crimes are absorbed by the latter, but 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, the crime is grave threats, and the minor crime which accompanied it should be disregarded.

Reyes vs. People, 27 SCRA 686.

Petitioner Rosauro Reyes was terminated by Agustin Hallare as civilian employee of Sangley Point, Cavite. So Reyes led a rally where he shouted, "**Putang ina mo, Agustin. Lumabas ka. Papatayin kita.**" Reyes was thus prosecuted for grave threats and grave oral defamation where lower court convicted him for both crimes.

Held: SC affirmed his conviction for **GRAVE THREATS**. This is because the words uttered were intended to threaten victim with a physical harm amounting to a crime, with the deliberate purpose of creating the belief it will be carried out. However, SC held there was no **GRAVE ORAL DEFAMATION** because the words “Putang ina mo” is a common expression employed to show anger, but not really intended to slander or defame the victim’s mother. This should not be taken literally by hearer as reflective of the mother being a prostitute but accompanying the threats for emphasis, and out of anger.

ARTICLE 283 -- Light threats.

Elements:

- 1) That the offender makes a threat to commit a wrong.
- 2) That the wrong does **not constitute a crime**.
- 3) That there is a demand for money or that other condition is imposed, even though not unlawful.
- 4) That the offender has or has not attained his purpose.

Note:

- a) **Blackmailing** may be punished under Article 283.

ARTICLE 284 -- Bond for good behavior.

x x x The person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail x x x.

Note:

- a) Cases when a person is obliged to file the bond:
- 1) When he threatens another under circumstances mentioned in **Article 282**.
 - 2) When he threatens another under circumstances mentioned under **Article 283**.

ARTICLE 285 -- Other light threats.

The penalty of x x x and a fine of x x x shall be imposed upon

- 1) Any person who x x x shall **threaten another with a weapon**, or draw such weapon in a quarrel, unless it be in lawful self-defense.
- 2) Any person who, in the **heat of anger**, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts shows that he did **not persist** in the idea involved in his threat x x x.
- 3) Any person who shall **orally threaten** to do another any harm not constituting a felony.

ARTICLE 286 -- Grave coercion.

Elements:

- 1) That a person prevented another from doing something **not prohibited** by law,
or
- 2) That he **compelled him to do something against his will**, whether it be right or wrong.

3) That the prevention or compulsion be effected by violence, either by material force or such display of force as would produce intimidation and control the will of the offended party.

4) That the person that restrained the will and liberty of another did ***not have the authority of law or the right to do so, neither in the exercise of any lawful right.***

Note:

a) 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; if the act was already done when violence was exerted, the crime is unjust vexation.

b) Coercion is consummated even if the offended party did not accede to the purpose of the coercion.

Timoner vs. People, 125 SCRA 830.

Petitioner Daet Mayor Timoner ordered two policemen and six men to demolish stalls along Maharlika Highway. The group fenced off the stalls which protruded into the sidewalk which were used as barbershops, sauna, etc. Petitioner was sued, and convicted, for grave coercion in the lower court and CA.

Held: SC reversed the conviction and held there was no grave coercion. The reason: the 3rd element of grave coercion which is that the one preventing another from doing something not prohibited by law, or the one compelling another from doing something against his will was NOT AUTHORIZED BY LAW was conspicuously absent. Petitioner Timoner, after all, was authorized to dismantle the stalls pursuant to the recommendation of the Municipal Health Officer that the stalls were nuisance per se, for failing to comply with the health and sanitation standards of the office.

ARTICLE 287 -- Light coercion.

Elements:

1) That the offender must be a creditor.
2) That the offender seizes anything belonging to the debtor.
3) That the seizure of the thing be accomplished by means of violence, or a display of material force producing intimidation.

4) That the purpose of the offender is to apply the same to the payment of debt.

Note:

a) If no violence is employed, crime is unjust vexation.

b) ***Unjust vexation*** -- includes any human conduct which, although not productive of some physical or material harm, would unjustly annoy or vex an innocent person. The paramount question to determine whether or not there is unjust vexation is whether the offender's act caused annoyance, irritation, vexation, torment, distress or disturbance to the mind of the person to whom it is directed.

ARTICLE 288 -- Other similar coercions. (Compulsory purchase of merchandise and payment of wages by means of tokens.)

Prohibited acts:

- 1) Forcing or compelling 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.
- 2) Paying the wages due his laborer or employee by means of token or objects other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

ARTICLE 289 -- Formation, maintenance and prohibition of combination of capital or labor through violence or threats.

Elements:

- 1) That the offender employs violence or threats in such degree s to compel or force the laborers or employee in the free and legal exercise of their industry or work.
- 2) That the purpose is to organize, maintain or prevent coalitions of capital or labor , strike of laborers or lockout of employees.

ARTICLE 290 -- Discovering secrets through seizure of correspondence.

Elements:

- 1) That the offender is a private individual or even a public officer not in the exercise of his official functions.
- 2) That he ***seizes the papers or letters*** of another.
- 3) That the purpose is to discover the secrets of the other person.
- 4) That the informed is informed of the contents of the papers or letters seized.

ARTICLE 291 -- Revealing secrets through abuse of office.

Elements:

- 1) That the offender is a manager, employee or servant.
- 2) That he learns the secrets of his principal or master in such capacity.
- 3) That he reveals such secrets.

Note:

- a) Damage is not necessary.

ARTICLE 292 -- Revealing industrial secrets.

Elements:

- 1) That the offender is a person in charge, employee, or workman of a manufacturing or industrial establishment.
- 2) That the manufacturing/industrial establishment has a secret of the industry which offender has learned.
- 3) That the offender reveals such secrets.
- 4) That prejudice is caused to the owner.

TITLE X (CRIMES AGAINST PROPERTY)

ARTICLE 293 -- Who are guilty of robbery.

Elements:

- 1) That there be personal property belonging to another.
- 2) That there is unlawful taking of that property.
- 3) That taking must be with intent to gain.
- 4) That there is violence against or intimidation of person or use of force upon things.

Note:

- a) Robbery is the taking of personal property belonging to another with intent to gain, by means of violence against or intimidation of any person, use of force upon things.
- b) **Classification of robbery:**
 - 1) Robbery with violence against or intimidation of persons. (**Articles 294, 297 and 298**)
 - 2) Robbery by use of force upon things. (**Article 299 and Article 302**)

ARTICLE 294 -- Robbery with violence against or intimidation of persons.

Any person guilty of robbery with the use of violence against or intimidation of person shall suffer.

- 1) *The penalty of **reclusion perpetua** to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by **rape**, or **intentional mutilation** or **arson**.*

Note:

- a) Crime defined in this article is a **special complex crime** -- the rule is that an intent to take personal property belonging to another must precede the killing. The original design must be **Robbery**.
- b) Robbery and homicide are separate offenses when the homicide was not committed **"on occasion of"** or **"by reason of"** the robbery. If the original design is not to commit robbery, but the robbery is only after the homicide as an afterthought and a minor incident in the homicide, crimes are **separate crimes of Robbery and Homicide** because there are two separate criminal intents.
- c) When homicide is not proved, the crime is only robbery and vice-versa.
- d) Rape committed on occasion of robbery is still **Robbery with rape** even if the rape was committed in another place.
- e) Distinctions between **Robbery with violence vs. Grave coercion**:
 - 1) In both crimes, there is violence used by the offender but in **Robbery with violence**, there is intent to gain but with **Grave coercion**, there is no intent to gain.

People vs. Biruar, 130 SCRA 513

Petitioner Biruar and ten others performed several criminal acts. First, they went to the house of a certain Mosende in Mati, took his shotgun, and then proceeded to the house of a certain 70-year-old Kalitas, a neighbor of Mosende. Since Kalitas offered resistance with his shotgun, they shot him dead, and absconded with a large amount, but not before setting

Kalitas' house on fire. Issue here is whether or not it is a **composite crime of Robbery with homicide** or three separate crimes.

Held: SC affirmed conviction for three separate crimes of 1) Robbery in band (for robbery in Mosende's house), and 2) Robbery with homicide (for robbery and killing of Kalitas) and 3) Arson (for setting Kalitas' house on fire). This could not be a composite crime, unlike in *People vs. de Leon* where theft of three fighting cocks in same place constitutes one composite crime of theft because in *De Leon* the theft was committed at the same time, in same occasion, and promoted by a single criminal resolution. In the instant case, certainly the criminal intent in robbing Mosende was separate and distinct from the criminal intent in robbing and killing Kalintas, and in putting the latter's house on fire.

People vs. Moreno, 220 SCRA 292.

Indian couple in Ermita was robbed by Moreno who basically acted as a lookout, while Maniquez raped the first maid, while Deloria raped the second maid, Together they absconded with a large amount but were later arrested and prosecuted.

Held: SC affirmed lower court's conviction. Maniquez and Deloria were both convicted for Robbery with rape since they both raped the two maids, respectively. Moreno, on the other hand, was only held liable for Robbery since he was outside, and did not participate in the rape of the two maids, but only in the Robbery..

People vs. Dinola, 183 SCRA 747

Petitioner Dinola pointed a bladed weapon to the victim, and succeeded in raping her around 3 a.m. in her aunt's house. After raping her, he lit a candle and saw her *Citizen* watch, which he grabbed, and then fled. Lower court held crime was Special complex crime of Robbery with rape.

Held: SC modified lower court's decision and held crime committed was RAPE AND ROBBERY. Considering that the primordial criminal intent was really to RAPE, and the taking of the watch was a mere AFTERTHOUGHT, even accidental which came from a separate criminal INTENT, two separate crimes were committed, RAPE AND ROBBERY. However, if the intent was to rob but rape was also committed even before the robbery, the Complex crime of Robbery with rape is committed. But if the original design was really to rape, and the accused after committing rape also committed robbery because the opportunity presented itself, two distinct offenses of RAPE AND ROBBERY are committed.

GENERAL RULE:

1) If the first act was to RAPE, then ROB as an afterthought -- two separate crimes of **RAPE AND ROBBERY** because two separate criminal ACTS, and two separate criminal INTENTS. (*People vs. Dinola*, 183 SCRA 747).

2) If intent was really to ROB but RAPED first or rape preceded the ROBBING -- crime is a **COMPLEX CRIME of ROBBERY WITH RAPE**. (*People vs. Moreno*, 220 SCRA 292).

Cite also **Article 62, Par. 4** (catch-all provision in determining extent of participation of accused, respectively).

Article 62, par. 4 -- “The circumstances which consist in the **MATERIAL EXECUTION** of the act, or in the **MEANS EMPLOYED** to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had **KNOWLEDGE** of them at the time of the execution of the act, or their **COOPERATION** therein.”

ARTICLE 295 -- Robbery with physical injuries committed in an uninhabited place and by a band, or with the use of firearm in a street, road or alley.

Note:

- a) Requisites for liability for acts of other members of the band:
- 1) He was a member of the band.
 - 2) He was present at the commission of a robbery by that band.
 - 3) The other members of the band committed an assault.
 - 4) He did not attempt to prevent the assault.

People vs. Salvilla, 184 SCRA 671

Salvilla and three others, armed with guns, took P20,000.00 from owner of lumber yard in Iloilo, but refused to leave because they wanted additional amount. They were soon overpowered, but in the gunfight the children of the owner of lumber yard suffered serious physical injuries. Lower court held crime was Complex crime of Robbery with serious physical injuries and serious illegal detention.

Held: SC affirmed lower court's decision. It was a Complex crime of ROBBERY with SPI and SERIOUS ILLEGAL DETENTION because the detention was used as a NECESSARY MEANS TO commit robbery, or for the additional amount. The detention was not merely incidental but deliberately employed as a NECESSARY MEANS as part of the robbery. SC further stated that taking (or asportation) is already complete when offender unlawfully deprives owner of the personal without animus revertendi. Once personal property under dominion and control of robber (even for a short time and without opportunity to dispose), robbery is already consummated.

People vs. Astor, 149 SCRA 325

Held: Where, however, the offenders were left without any choice but to detain the victims as security, until arrangements for their safe passage was made and in order to forestall their arrest, the detention here is ABSORBED in the crime of ROBBERY constituting violence against or intimidation of persons. The crime committed is only ROBBERY and the detention here is ABSORBED because the detention becomes an INDISPENSABLE MEANS in committing robbery, and therefore forming an integral part thereof. Cannot make it a separate crime of Serious illegal detention because there was NO DETENTION for an

appreciable period of time since victims were immediately set free when the coast was clear, and offenders were already free to escape. (Distinguish this from People vs. Salvilla)

ARTICLE 296 -- Definition of a band and penalty incurred by the members thereof.

When **more than three armed malefactors** take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an **unlicensed firearm**, penalty to be 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 unlicensed firearm.

Note:

a) When at least four armed malefactors take part in the commission of the robbery, it is deemed committed by a band.

People vs. Jaranilla, 55 SCRA 563.

Jaranilla and two others stole six fighting cocks from the **tangkal** or chicken coop which was fastened by nails as lock. Upon fleeing, they were intercepted by a certain Pat. Jabatin whom Jaranilla shot dead. Iloilo CFI convicted hem for **complex crime of Robbery with homicide** and penalty is *reclusion perpetua*.

Held: SC modified decision to two separate crimes of Theft and Homicide. It is not Robbery because there was no force upon things in taking of the fighting cocks because locks of the chicken coop were simply fastened by nail. It's merely Theft because there was unlawful taking, without force upon things, or violence upon persons. The killing of Pat. Jabatin was a separate crime of Homicide because killing merely supervened and was not part of the original plan. Hence, only Jaranilla who shot policemen was liable for Homicide, while his two companions who had no prior knowledge or cooperation in the killing was only liable for the Theft. (See Article 62, par. 4)

SPECIAL LAWS:

R.A. 6539 (Carnapping)

Section 1. This Act shall be known and may be cited as the "**Anti-Carnapping Act of 1972.**"

Section 2. Definition of terms.

"Carnapping" is the taking, with intent to gain, of a motor vehicle belonging to another without the latter's consent, or by means of violence against or intimidation of persons, or by using force upon things.

It should be emphasized that the Supreme Court had the occasion to declare that intent to gain, or animus lucrandi, as an element of the crime of carnapping, is an internal act and hence presumed from the unlawful taking of the vehicle. 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.

Also, when a person is found in possession of a thing taken in the doing of a recent wrongful act, he is presumed to be the taker and the doer of the whole act.

"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.

"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.

Section 12 Defacing or tampering with serial numbers of motor vehicle engines, engine blocks and chassis. It shall be unlawful for any person to deface or otherwise tamper with the original or registered serial number of motor vehicle engines, engine blocks and chassis.

Section 13 Penal Provisions. Any person who violates any provisions of this Act shall be punished with imprisonment for not less than two years nor more than six years and a fine equal in amount to the acquisition cost of the motor vehicle, motor vehicle engine or any other part involved in the violation. x x x

Section 14. Penalty for Carnapping. Any person who is found guilty of carnapping, as this term is defined in Section two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than fourteen years and eight months and not more than seventeen years and four months,

when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than seventeen years and four months and not more than thirty years, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of life imprisonment to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed in the commission of the carnapping.

People vs. Dela Cruz. 183 SCRA 763.

Danilo dela Cruz was the mastermind of the carnapping who shot the victim and car owner, Anthony Banzon, while Beloso acted as the one who advertised the ad for cars, while Salvador met the interested buyers. They were all arrested and prosecuted under R.A. 6539.

Held: *SC affirmed their conviction for Carnapping with homicide. SC held that where homicide is committed in the occasion of robbery or carnapping, penalty is for Carnapping with homicide, and it is immaterial that death supervened by mere accident without fault or intention of causing it.*

- **P.D. 532 (Highway Robbery)**

Section 1. Title. This Decree shall be known as the Anti-Piracy and Anti-Highway Robbery Law of 1974.

Section 2. Definition of Terms. The following terms shall mean and be understood, as follows:

a. Philippine Waters. It 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 or legal title, including territorial sea, the sea-bed, the insular shelves, and other submarine areas over which the Philippines has sovereignty or jurisdiction.

b. Vessel. Any vessel or watercraft used for transport of passengers and cargo from one place to another through Philippine Waters. It shall include all kinds and types of vessels or boats used in fishing.

c. Philippine Highway. It 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.

d. Piracy. 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.

-Penalized by reclusion temporal in its medium and maximum periods if no physical injuries or other crimes are committed as a result of or on the occasion thereof.

e. Highway Robbery/Brigandage. The seizure of any person for ransom, extortion or other unlawful purposes, or the taking away of the property of another by means of violence against or intimidation of person or force upon things of other unlawful means, committed by any person on any Philippine Highway.

-Penalized by reclusion temporal in its minimum period if no physical injuries or other crimes are committed during or on the occasion of commission of robbery or brigandage.

People vs. Puno, 219 SCRA 85..

On January 31, 1989, the accused Puno and companion “kidnapped” Mrs. Sarmiento, the wife of Puno’s boss. While on board the car, Puno and his companion were able to get P7,000.00 cash for her and three checks worth P100,000.00. The victim was able to jump and Puno and companion were arrested, and prosecuted for Kidnapping for ransom. Quezon City RTC, however, held them liable for P.D. 532 or Highway robbery.

Held: SC modified decision, and held Puno and companion liable for Robbery under Article 294, par. 5. Not Kidnapping because no intent to detain her for an appreciable period of time, and detention was merely incidental to the primordial criminal intent which was ROBBERY. Not Ransom because ransom is money, price or consideration paid for redemption of a captured person, or release from captivity, which is not immediately obtained, unlike here where the P7,000.00 and three checks were immediately given to them. Neither is it a violation of PD 532 because the robbery was not done indiscriminately in the public highway, but the target was already earlier particularly targeted.

P.D. 401, R.A. 7832, and R.A. 8041

(Theft of electricity, illegal water, electric or telephone connections)

- **P.D. 401, as amended by P.D. 401-A**

Section 1 -- Any person who ***installs any water, electrical, telephone or piped gas*** connection without previous authority from the Metropolitan Waterworks and Sewerage System, the Manila Electric Company, the Philippine Long Distance Telephone Company, or the Manila Gas Corporation, as the case may be, ***tampers and/or*** uses tampered water, electrical or gas ***meters, jumpers or other devices whereby water, electricity or piped gas is stolen; steals or pilfers*** water, electric or piped gas meters, or water, electric and/or telephone wires, or piped gas pipes or conduits; ***knowingly possesses stolen or pilfered*** water, electrical or gas meters as well as stolen or pilfered water, electrical and/or telephone wires, or piped gas pipes and conduits, shall, upon conviction, be punished with prison correccorreccional in its minimum period or a fine ranging from two thousand to six thousand pesos, or both.

- **RA no. 7832**

Section 1. Short Title. - *This Act shall be referred to as the "Anti-electricity and Electric Transmission Lines/Materials Pilferage Act of 1994."*

Section 2. Illegal Use of Electricity. - *It is hereby declared unlawful for any person, whether natural or juridical, public or private, to:*

*(a) Tap, make or cause to be made any connection with overhead lines, service drops, or other electric service wires, without previous authority or consent of the private electric utility or rural electric cooperative concerned;*1awphil@alf

(b) Tap, make or cause to be made any connection to the existing electric service facilities of any duly registered consumer without the latter's or the electric utility's consent or authority;

(c) Tamper, install or use a tampered electrical meter, jumper, current reversing transformer, shorting or shunting wire, loop connection or any other device which interferes with the proper or accurate registry or metering of electric current or otherwise results in its diversion in a manner whereby electricity is stolen or wasted;

(d) Damage or destroy an electric meter, equipment, wire or conduit or allow any of them to be so damaged or destroyed as to interfere with the proper or accurate metering of electric current; and

(e) Knowingly use or receive the direct benefit of electric service obtained through any of the acts mentioned in subsections (a), (b), (c), and (d) above.

Section 4. Prima Facie Evidence. - (a) *The presence of any of the following circumstances shall constitute prima facie evidence of illegal use of electricity, as defined in this Act, by the person benefitted thereby, and shall be the basis for: (1) the immediate disconnection by the electric utility to such person after due notice, (2) the holding of a preliminary investigation by the prosecutor and the subsequent filing in court of the pertinent information, and (3) the lifting of any temporary restraining order or injunction which may have been issued against a private electric utility or rural electric cooperative:*

(i) The presence of a bored hole on the glass cover of the electric meter, or at the back or any other part of said meter;

(ii) The presence inside the electric meter of salt, sugar and other elements that could result in the inaccurate registration of the meter's internal parts to prevent its accurate registration of consumption of electricity;

(iii) The existence of any wiring connection which affects the normal operation or registration of the electric meter;

(iv) The presence of a tampered, broken, or fake seal on the meter, or mutilated, altered or tampered meter recording chart or graph, or computerized chart, graph, or log;

(v) The presence in any part of the building or its premises which is subject to the control of the consumer or on the electric meter, of a current reversing transformer, jumper, shorting and/or shunting wire, and/or loop connection or any other similar device;

(vi) The mutilation, alteration, reconnection, disconnection, bypassing or tampering of instruments, transformers, and accessories;

(vii) The destruction of, or attempt to destroy, any integral accessory of the metering device box which encases an electric meter, or its metering accessories; and

(viii) The acceptance of money and/or other valuable consideration by any officer of employee of the electric utility concerned or the making of such an offer to any such officer or employee for not reporting the presence of any of the circumstances enumerated in subparagraphs (i), (ii), (iii), (iv), (v), (vi), or (vii) hereof: Provided, however, That the discovery of any of the foregoing circumstances, in order to constitute prima facie evidence, must be personally witnessed and attested to by

an officer of the law or a duly authorized representative of the Energy Regulatory Board (ERB).

Section 9. Restriction on the Issuance of Restraining Orders or Writs of Injunction. - *No writ of injunction or restraining order shall be used by any court against any private electric utility or rural electric cooperative exercising the right and authority to disconnect electric service as provided in this Act, unless there is prima facie evidence that the disconnection was made with evident bad faith or grave abuse of authority.*

- **R.A. 8041**

SECTION 1. Short Title. — This Act shall be known as the "National Water Crisis Act of 1995."

SECTION 8. Anti-Pilferage. — It is hereby declared unlawful for any person to:

- (a) Destroy, damage or interfere with any canal, raceway, ditch, lock, pier, inlet, crib, bulkhead, dam, gate, service, reservoir, aqueduct, water mains, water distribution pipes, conduit, pipes, wire benchmark, monument, or other works, appliance, machinery buildings, or property of any water utility entity, whether public or private;**
- (b) Do any malicious act which shall injuriously affect the quantity or quality of the water or sewage flow of any waterworks and/or sewerage system, or the supply, conveyance, measurement, or regulation thereof, including the prevention of, or interference with any authorized person engaged in the discharge of duties connected therewith;
- (c) Prevent, obstruct, and interfere with the survey, works, and construction of access road and water mains and distribution network and any related works of the utility entity.
- (d) Tap, make, or cause to be made any connection with water lines without prior authority or consent from the water utility concerned;
- (e) Tamper, install or use tampered water meters, sticks, magnets, reversing water meters, shortening of vane wheels and other devices to steal water or interfere with accurate registry or metering of water usage, or otherwise result in its diversion in a manner whereby water is stolen or wasted;

- (f) Use or receive the direct benefit of water service with knowledge that diversion, tampering, or illegal connection existed at the time of that use, or that the use or receipt was otherwise without the authorization of the water utility;
- (g) Steal or pilfer water meters, main lines, pipes and related or ancillary facilities;
- (h) Steal water for profit or resale;
- (i) Knowingly possess stolen or tampered water meters; and
- (j) Knowingly or willfully allow the occurrence of any of the above.

SECTION 9. Prima Facie Evidence. — The presence of any of the following circumstances shall constitute prima facie evidence of theft, pilferage, or of any unlawful acts enumerated in Section 8 hereof:

- (a) The existence of illegal or unauthorized tapping to the water main or distribution pipe;

(b) *The existence of any illegal connection such as a reversed meter, shortened vane wheel, bypass or other connections which adversely affect the registration of the water meter;*

- (c) The presence of a bored hole in the glass cover of the water meter, or at the back of or any part of the meter including the vertical vane;
- (d) The presence of tampered, or fake seals on the meters. Inspection of tampered water meters shall be done in the presence of the registered water consumer;
- (e) The presence of a reversed meter in the premises, insertion of rod wire, or stick in the meter, filed or shortened vane wheel, removal or altering of any part of the meter mechanism, use of magnet and any similar illegal devices which interfere with the meter registration;
- (f) Destruction of the meter protection and other metering accessories; or
- (g) Abnormal imprints, traces or marks found in the meter assembly.

The prima facie shall not apply to tenants who have occupied the house or dwelling for ninety (90) days or less.

SECTION 10. Special Aggravating Circumstances. — The following shall be considered as aggravating:

- (a) ***When the violation is committed in conspiracy with at least another person, both of whom shall be considered as principals;***
- (b) When the offense is committed by, or in connivance with, private plumber, officer or employee of the water utility concerned, who shall be considered as principals;
or
- (c) When the violation is coupled with the sale from a source which is illegal, or unregistered, or unauthorized, or a source with a tampered meter.

P.D. 533 (Cattle Rustling Law)

Ordonio vs. CA, 199 SCRA 873.

Held: SC affirmed lower court's conviction of Ordonio for cattle rustling and the mere act of tying the calf without returning it despite owner's demand already consummates the act of cattle rustling. This is because cattle rustling is the taking away "by any means, methods or schemes, without the consent of the owner, of an animal, whether or not for profit, whether committed with or without violence against or intimidation of persons, or force upon things."

R.A. 8550 (Illegal Fishing)

Hizon vs. CA, 265 SCRA 517.

P.D. 330 and P.D. 705 (Illegal Logging)

Mustang vs. CA, June 19, 1996.

P.D. 1612 (Fencing)

ARTICLE 297 -- Attempted and frustrated robbery committed under certain circumstances.

*When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offense shall be punished by **reclusion temporal** in its maximum to **reclusion perpetua**, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.*

ARTICLE 298 -- Execution of deeds by means of violence or intimidation. Any person who, with intent to defraud another, by means of violence or intimidation, shall compel him to sign, execute or deliver any public instrument or documents, shall be held guilty of robbery and punished by the penalties respectively prescribed in this Chapter.

ARTICLE 299 -- Robbery in an inhabited place or public building or edifice devoted to worship.

*Any armed person who shall commit robbery in an inhabited house, or public building or edifice devoted to religious worship, shall be punished by **reclusion temporal**, if the value of the property taken shall exceed P250.00, and if --*

a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

- 1) Through an opening not intended for entrance or egress.*
- 2) By breaking any wall, roof, or floor or breaking any door or window.*
- 3) By using false keys, picklocks or similar tools.*
- 4) By using any fictitious name or pretending the exercise of public authority.*

b) x x x

Note:

a) Inhabited house includes any shelter, ship or vessel constituting the dwelling of one or more persons, even though the inhabitants are temporarily absent.

b) Public building is every building owned by the government, or temporarily used by the same even though owned by a private person or temporarily occupied.

c) The whole body of the culprit must be inside the building to constitute entering.

*d) False keys can be genuine keys stolen from the owner, or any key other than those intended by the owner for use in the lock forcibly opened. The key must be stolen. If, however, the inmates inside the house were forced to produce the key, crime is **Robbery with intimidation**.*

*e) If they key was used to open a locked wardrobe, receptacle, drawer or inside door, the crime is **Theft**.*

*f) It is **Estafa** or **Theft** if the locked or sealed receptacle is not forced open in the building where it is kept, or taken therefrom to be broken outside (eg. The locked receptacle is considered into the custody of the offender, or if the receptacle is found outside the building and is forcibly opened.).*

ARTICLE 300 -- Robbery in an uninhabited place and by a band.

The robbery mentioned in the next preceding Article, if committed in an uninhabited place and by a band, shall be punished by the maximum period of the penalty provided therefor.

Note:

*a) **Qualified robbery with force upon things** – when the robbery is committed in an uninhabited place, and by a band.*

ARTICLE 301 -- What is an inhabited house, public building or building dedicated to religious worship and their dependencies.

Inhabited house means any shelter, ship or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

ARTICLE 302 -- Robbery in an uninhabited place or in a private building.

*Any robbery committed in an uninhabited place or in a building other than those mentioned in the 1st par. Of Article 299, if the value of the property taken exceeds P250, shall be punished by **prision correccional** in its medium and maximum periods, provided that any of the following circumstances is present.*

Note:

- a) Same manner of commission as **Article 299**.

ARTICLE 303 -- Robbery of cereals, fruits or firewood in an uninhabited place or private building.

When the robbery consists in the taking of cereals, fruits or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.

ARTICLE 304 -- Possession of picklocks or similar tools.

Any person who shall without lawful cause have in his possession picklocks or similar tools specially adopted to the commission of the crime of robbery, shall be punished by x x x

Elements:

- 1) That the offender has in his possession picklocks of similar tools.
- 2) That such picklocks or similar tools are specially adopted to the commission of robbery.
- 3) That the offender does not have lawful cause for such possession.

ARTICLE 305 -- False keys.

Note:

- a) Tools not mentioned in the next preceding article.
- b) Genuine keys stolen from the owner.
- c) Any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

ARTICLE 306 -- Who are brigands. Penalty.

*When **more than three armed persons form a band of robbers** for the purpose of committing robbery in the highway, or kidnapping performs for the purpose of extortion or to obtain ransom, for any other purpose to be attained by means of force and violence, they shall be deemed to be **highway robbers or brigands**.*

Note:

P.D. 532 (Highway Robbery)

-- repealing Articles 306 and 307

Highway robbery or brigandage:

-- the seizure of any person for ransom, extortion or other unlawful purposes or the taking away of the property of another by means of violence against or intimidation of persons or force upon things, or other unlawful means, committed by any person on any Philippine highway.

b) Any person who aids or abets the commission of highway robbery or brigandage shall be considered **accomplices**:

- 1) By giving information about the movement of police or other peace officers of the government.
- 2) Acquires or receives property taken from such brigands.
- 3) In any manner derives any benefit therefrom.
- 4) Directly or indirectly abets the commission of highway robbery.

c) Distinctions between **Brigandage vs. Robbery in band**:

- 1) In **Brigandage**, the purpose is to commit robbery in the highway; or to kidnap a person for ransom, or any other purpose attained by force and violence; in **Robbery in band**, purpose is to commit robbery, but not necessarily in highway.
- 2) In **Brigandage**, agreement is to commit several robberies is one of the purposes; in **Robbery in band**, agreement is to commit a particular robbery.
- 3) In **brigandage**, mere formation is punished; in **Robbery in band**, actual commission of robbery is necessary.

ARTICLE 307 -- Aiding and abetting a band of brigands.

Any person knowingly and in any manner aiding, abetting or protecting a band of brigands, or giving them information of the movements of the police, or other peace officers of the Government, or acquiring or receiving the property taken by such brigands, shall be punished x x x.

ARTICLE 308 -- Who are liable for Theft.

Elements:

- 1) That there be taking of personal property.
- 2) That said property belongs to another.
- 3) That the taking be done with intent to gain.
- 4) That the taking be done without the consent of the owner.
- 5) That the taking be accomplished without the use of violence against, or intimidation of person, or force upon things.

Note:

- a) What distinguishes **Theft from robbery** is that in **Theft**, the offender does not use violence or intimidation or does enter a house or building through any of the means specified in *Article 299 or Article 302* in taking personal property of another with intent to gain.
- b) **Asportation** is complete from the moment the offender had full possession of the thing.
- c) Actual or real gain is not necessary, as long as taking was with intent to gain.
- d) **P.D. 581** -- punished "*highgrading*" or "*theft of gold.*"
- e) **P.D. 401** -- punishes the use of tampered water, or electrical meters, to steal water or electricity.

ARTICLE 309 -- Penalties for Theft..

ARTICLE 310 -- Qualified theft.

*The crime of theft shall be punished by the penalties next higher by two degrees than those specified in the next preceding article, if committed by a **domestic servant, or with grave abuse of confidence**, or if the property stolen is a motor vehicle, mail matter, or large cattle, or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond, or fishery, or if property is taken on the occasion of a fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicle accident or civil disturbance.*

Note:

a) **P.D. 533 (Anti-Cattle Rustling Law of 1974)**

-- The **taking away by any means, method or scheme**, without the consent of the owner/raiser, of any of the animals (classified as large cattle), whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat, or hide, without the consent of the owner/raiser.

b) **P.D. 1612 (Anti-Fencing Law)**

1) **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 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.

2) Section 5. **Presumption of Fencing.**

-- Mere possession of any goods, article, items, object or anything of value which has been the subject of robbery or thievery shall be **prima facie** evidence of fencing.

3) Section 6. **Clearance/Permit to Sell/Used Second-Hand Vehicles**

-- All stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the INP in the two or city where such store, establishment or entity is located.

-- Any person who fails to secure the required clearance/permit shall also be punished as a **fence**.

Empelis vs. IAC, 132 SCRA 398.

Held: *In the case at bar, petitioners were seen carrying away 50 coconuts while they were still in the premises of the plantation. SC held they would come within the definition of QUALIFIED THEFT because the property stolen was coconuts within premises of the plantation. Considering, however, that petitioners were not able to perform all acts of execution since they were arrested in the act of stealing while still within the plantation, the crime is FRUSTRATED qualified theft.*

ARTICLE 311 -- Theft of property of the National Library and National Museum.

If the property stolen be any property of the National Library or of the National Museum, the penalty shall be x x x.

ARTICLE 312 -- Occupation of real property or usurpation of real rights in property.

Elements:

- 1) That the offender takes possession of any real property or usurps any real rights in property.
- 2) That the real property or real rights belong to another.
- 3) That violence against or intimidation of persons is used by the offender in occupying or usurping real property or usurping real rights in property.
- 4) That there is intent to gain.

Note:

a) Distinctions between ***Theft/robbery vs. Article 312***

- 1) In Theft/robbery, the gravamen of offense is taking or ***asportation***; while in Article 312, the ***gravamen*** of the offense is occupation or usurpation.
- 2) In Theft/robbery, personal property is taken; while in Article 312, real property or real right is involved.
- 3) In ***Theft/robbery***, there is intent to gain; while in ***Article 312***, there is also intent to gain.

ARTICLE 313 -- Altering boundaries or landmarks.

Elements:

- 1) That there be boundaries, marks or monuments of towns, provinces, or estates or any other marks intended to designate the boundaries of the same.
- 2) That the offender alters said boundary marks.

ARTICLE 314 -- Fraudulent insolvency.

Elements:

- 1) That the offender is a debtor and that he has an obligation due and payable.
- 2) That he absconds with his property.
- 3) That there be prejudice to his creditors.

ARTICLE 315 -- Swindling (Estafa)

Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x

1) *With unfaithfulness of abuse of confidence, namely:*

b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make deliveries of or to

return the same, even though such obligation be totally or partially guaranteed b7 a band, or by denying having received such money, goods, or other property.

2) By means of any of the following false pretenses:

d) By postdating a check or issuing a check in payment of an obligation when the offender has no funds in the bank, or his funds deposited herein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be deemed prima facie evidence of deceit constituting false pretense or fraudulent act.

Elements of Article 315, no. 1 (a):

- 1) That the offender has an onerous obligation to deliver something of value.
- 2) That offender alters its substance, quantity of quality.
- 3) That damage or prejudice is caused to another.

Elements of Article 315, par. 1 (b):

- 1) That money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery, or to return the same.
- 2) That there be misappropriation, or conversion of such money or property by the offender, or denial of his part of such receipt.
- 3) That such misappropriation or conversion or denial is to the prejudice of another.
- 4) That there is a demand made by the offended party to the offender.

3 ways to commit Article 315, par. No. 2 (a)

- 1) By using fictitious name.
- 2) By falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions.
- 3) By means of other similar deceptions.

Elements of Article 315, par. No. 2 (d)

- 1) That the offender postdated a check, or issued a check in payment of an obligation.
- 2) That such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were insufficient to cover the amount of the check.

Note:

a) Distinctions between ***Theft and Estafa***:

- 1) In ***theft***, a person who received from the offender party anything of value only has **material/physical possession** of the same; while in ***estafa***, the offender receives the thing and has **juridical possession** of the thing which he can assert even against the lawful owner, and misappropriates the same.

b) Distinctions between ***Estafa and Malversation:***

1) In ***Estafa***, the offender is entrusted with private funds or property; while in ***Malversation***, the offender is entrusted with public funds or property.

2) In ***Estafa***, the offender is a private individual or even a public officer who is not accountable for public funds or property; while in ***Malversation***, the offender is usually a public officer accountable for public funds or property.

3) In ***Estafa***, the crime is committed by misappropriating, converting or denying having received money, goods, or other personal property; while in ***Malversation***, crime is committed by appropriating, taking or misappropriating or consenting, or through abandonment or negligence, permitting any other person to take public funds or property.

4) Both ***Estafa*** and ***Malversation*** are continuing offense.

c) Prosecution under B.P. 22 shall be without prejudice to any liability for violation of Article 315, par. 2 (d) while while B.P. 22 is a crime ***mala prohibita***, Article 315, par. 2 (d) is a crime ***mala in se***.

d) The fine under B.P. 22 is based on the amount of the check and is without regard to the amount of damage caused.

e) **B.P. 22** --***Bouncing Checks Law***

Two (2) offenses punished in B.P. 22:

1) ***Making or drawing and issuing a check knowing at the time of issue that he does not have sufficient funds.***

Elements:

- a) That a person draws a check.
- b) That the check is made or drawn and issued to apply ***“on account”*** for ***“for value.”***
- c) That the person knows that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check upon presentment.
- d) That the check is subsequently dishonored by the drawee bank.

2) ***Failing to keep sufficient funds to cover check if presented within a period of 90 days from the date appearing thereon.***

Elements:

- a) That a person has sufficient funds with the drawee bank when he makes or issues a check.
- b) That e fails to keep sufficient funds or maintain a credit to cover the full amount if presented within a period of 90 days from the date appearing thereon.
- c) That the check is dishonored.

Exceptions:

- a) When the check is presented after 90 days from the date of the check.
- b) When the drawer pays the holder the full amount thereon within five (5) banking days after receiving notice of dishonor, or non-payment, by the drawee.
- c) When the drawer makes arrangements for payment in full by the drawee within five (5) working days after receipt of notice of dishonor, or non-payment.

g) Distinctions between **B.P. 22 and Article 315, par. 2 (d)**

1) Under **B.P. 22**, only the drawer or persons who signed the check for a judicial or artificial person are liable but endorsers are not liable; while under **Article 315, par. 2 (d)** not only the drawer but also the endorsers who acted with deceit knowing that the check is worthless will be criminally liable.

2) Under **B.P. 22**, violation is a *malum prohibitum* thus, good faith is not a defense; while under **Article 315, par. 2 (d)**, the offender should be able to obtain money or property from the offended party because of the issuance of the check.

3) Under **B.P. 22**, violation is a crime against public interest which affects the entire banking system; while under **Article 315, par. 2 (d)** the crime is *mala in se* and therefore requires criminal intent.

4) Under **B.P. 22**, deceit and damage are not elements of the crime and the mere issuance of bum check creates criminal liability; under **Article 315, par. 2 (d)** deceit and damage must be established.

5) Under **B.P. 22**, the drawer or issuer is given 5 banking days after receipt of notice of dishonor to pay the value of the check or make arrangement for payment thereof, otherwise presumption of **knowledge** arises; while under **Article 315, par. 2 (d)** the drawer is given 3 calendar days to fund the check from receipt of notice of dishonor otherwise, presumption of **deceit** arises. (*Nierras vs. Dacuycuy*, 181 SCRA 1)

Saddul vs. vs. CA, 192 SCRA 277.

Saddul was general manager and vice-president of AMPI, the local agent of Land Rover of United States. Mr. Cuevas, on the other hand, was AMPI President. Because Mr. Lyndsay of *Land Rover USA* dealt directly with Saddul, Cuevas felt bad and eased out Saddul, who formed his own company as distributor of spare parts from *Land Rover USA*. Pursuant to instructions from Ms. Lyndsay, Saddul sold spare parts worth almost P150,000.00 and opened a special account in trust for *Land Rover USA* and did not remit the proceeds to AMPI President Cuevas. Saddul was prosecuted and convicted for **Estafa** under **Article 315, par. 1 (b)** by lower court and CA hence, the instant petition for certiorari before the SC.

Held: SC reversed the conviction, and acquitted Saddul from Estafa. 1st, Saddul did not receive the personal property in trust or in commission with the duty to return or deliver the proceeds from AMP, which was also a mere agent, but from Land Rover USA, the principal. 2nd, there was no conversion or misappropriation by Saddul because he merely followed Land Rover's instruction to hold the money "in trust" for the principal pending reconciliation of

accounts with AMPI. 3rd, there was no injury to AMPI because AMPI was not the owner of the goods, but a mere agent; and 4h, there was no demand from Cuevas or AMPI for the return of the proceeds of the spare parts knowing perhaps that AMPI was not the owner of the goods.

Trust receipts (P.D. 115)

Allied Banking Corp. vs. Ordonez, 192 SCRA 246;

Lee vs. Rodil, 175 SCRA 100.

B.P. 22 (Bouncing checks)

ARTICLE 316 -- Other forms of Swindling -- The penalty of *arresto mayor* in its minimum and medium period and a fine of not less than the value of the damage caused and not more than three times such value, shall be imposed upon:

1. Any person who, pretending to be owner of any real property, shall convey, sell, encumber or mortgage the same.
2. Any person, who, knowing that real property is encumbered, shall dispose of the same, although such encumbrance be not recorded.
3. The owner of any personal property who shall wrongfully take it from its lawful possessor, to the prejudice of the latter or any third person.
4. Any person who, to the prejudice of another, shall execute any fictitious contract.
5. Any person who shall accept any compensation given him under the belief that it was in payment of services rendered or labor performed by him, when in fact he did not actually perform such services or labor.
6. Any person who, while being a surety in a bond given in a criminal or civil action, without express authority from the court or before the cancellation of his bond or before being relieved from the obligation contracted by him, shall sell, mortgage, or, in any other manner, encumber the real property or properties with which he guaranteed the fulfillment of such obligation.

Article 317 -- Swindling a minor — Any person who taking advantage of the inexperience or emotions or feelings of a minor, to his detriment, shall induce him to assume any obligation or to

give any release or execute a transfer of any property right in consideration of some loan of money, credit or other personal property, whether the loan clearly appears in the document or is shown in any other form, shall suffer the penalty of arresto mayor and a fine of a sum ranging from 10 to 50 per cent of the value of the obligation contracted by the minor.

Article. 318 -- Other deceits — *The penalty of arresto mayor and a fine of not less than the amount of the damage caused and not more than twice such amount shall be imposed upon any person who shall defraud or damage another by any other deceit not mentioned in the preceding articles of this chapter.*

Any person who, for profit or gain, shall interpret dreams, make forecasts, tell fortunes, or take advantage of the credulity of the public in any other similar manner, shall suffer the penalty of arresto mayor or a fine not exceeding 200 pesos.

CHattel Mortgage

Article 319 -- Removal, sale or pledge of mortgaged property. — *The penalty or arresto mayor or a fine amounting to twice the value of the property shall be imposed upon:*

1. Any person who shall knowingly remove 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 the execution of the mortgage, without the written consent of the mortgagee, or his executors, administrators or assigns.

2. Any mortgagor who shall sell or pledge 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 hereof in the office of the Register of Deeds of the province where such property is located.

Articles 320 to 325 on arson are repealed by P.D. 1613.(See Annex)

ARTICLE 327 -- Malicious mischief.

Any person who shall deliberately cause damage to the property of another not falling within the terms of the next preceding chapter shall be guilty of malicious mischief.

Caballes vs. DAR, 168 SCRA 247.

ARTICLE 328 -- Special cases of malicious mischief.

Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes 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, shall be punished x x x

ARTICLE 329 – Other mischiefs-- The mischiefs not included in the next preceding article shall be punished:

1. By arresto mayor in its medium and maximum periods, if the value of the damage caused exceeds 1,000 pesos;
2. By arresto mayor in its minimum and medium periods, if such value is over 200 pesos but does not exceed 1,000 pesos; and
3. By arresto menor or fine of not less than the value of the damage caused and not more than 200 pesos, if the amount involved does not exceed 200 pesos or cannot be estimated.

Article 330 -- Damage and obstruction to means of communication — The penalty of prision correccional in its medium and maximum periods shall be imposed upon any person who shall damage any railway, telegraph or telephone lines.

If the damage shall result in any derailment of cars, collision or other accident, the penalty of prision mayor shall be imposed, without prejudice to the criminal liability of the offender for the other consequences of his criminal act.

For the purpose of the provisions of the article, the electric wires, traction cables, signal system and other things pertaining to railways, shall be deemed to constitute an integral part of a railway system.

Article 331 -- Destroying or damaging statues, public monuments or paintings — Any person who shall destroy or damage statues or any other useful or ornamental public monument shall suffer the penalty of arresto mayor in its medium period to prision correccional in its minimum period.

Any person who shall destroy or damage any useful or ornamental painting of a public nature shall suffer the penalty of arresto menor or a fine not exceeding 200 pesos, or both such fine and imprisonment, in the discretion of the court.

ARTICLE 332 -- Persons exempt from criminal liability.

No criminal, but only civil liability, shall result from the commission of the crime of **theft, swindling or malicious mischief committed** or caused mutually by the following persons:

- 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 shall have passed into the possession of another.
- 3) Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall **not be applicable to strangers** participating in the commission of the crime.

TITLE XI CRIMES AGAINST CHASTITY

ARTICLE 333 –Who are guilty of ADULTERY

Adultery is committed by 1) Any MARRIED woman who shall have sexual intercourse with a man not her husband and 2) By the man who has carnal knowledge of the married woman, KNOWING her to be married, even if the marriage be subsequently declared void.

Elements:

- 1) That the woman is married.
- 2) That she has sexual intercourse with a man not her husband.
- 3) That the man **KNEW** her to be married.

Notes:

- 1) Abandonment of the wife by the husband without justification is only a mitigating circumstance.

ARTICLE 334 -- CONCUBINAGE

Concubinage is committed as follows:

- 1) **Any husband who shall keep a mistress in the conjugal dwelling,**
 - 2) **Or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife,**
 - 3) **Or shall cohabit with her in any other place, shall be punished by x x x**
- The concubine shall suffer the penalty of destierro.**

Note:

- 1) As regards the concubine, she must also know that the man is married.

ARTICLE 335 -- RAPE (Repealed by R.A. 8353)

ARTICLE 336 -- Acts of lasciviousness

Any person who shall commit any act of lasciviousness upon any other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by x x x.

Note:

- 1) Distinguish from **ABUSES AGAINST CHASTITY** (Article 246) -- Article 246 is committed by a PUBLIC officer and a mere indecent proposal made earnestly and persistently is

sufficient; while in **ACTS OF LASCIVIOUSNESS**, the offender is usually a PRIVATE individual and it is necessary that some actual act of lasciviousness is executed by the offender.

ARTICLE 337 -- Qualified seduction

The seduction of a virgin over 12 years and under 18 years of age, committed by any person in public authority, priest, house servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by x x x.

The penalty next higher in degree imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over 18 years of age.

Seduction is committed when offender has carnal knowledge of any of the persons and under the circumstances described herein.

Two classes:

1) Seduction of a virgin **over 12 years and under 18 years of age** by certain persons, such as a PIA, priest, teacher, etc.

2) Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age and reputation.

Note:

1) Virginity here does not mean physical virginity. The RPC does not exclude the idea of abduction of a virtuous woman of good reputation.

2) Committed through Abuse of **AUTHORITY**, Abuse of **CONFIDENCE**, and Abuse of **ReLATIONSHIP**. (Recall **ACRe**)

Babanto vs. Zosa, 120 SCRA 834

The accused here, a policeman, brought the victim, only 13 years of age, to the ABC Hall and raped her. He was charged in the lower court with rape but convicted only for qualified seduction because according to the lower court, there was no use of force or violence.

Held: *SC modified and convicted accused instead for RAPE because there was, in fact, resistance when she kicked the accused while the accused was lifting her dress and removing her panty, and when she cried afterwards. Accused could not be held liable for Qualified seduction because of failure to allege virginity in the Information which is indispensable to secure conviction for Qualified seduction.*

Perez vs. CA, 168 SCRA 236

Yolanda Mendoza first filed a case for **Consented Abduction** against Eleuterio Perez which was dismissed. She subsequently filed a case for **Qualified seduction**. Accused Perez filed a Motion to Quash invoking double jeopardy.

Held: *SC held there was no double jeopardy and denied the Motion to Quash. In Consented abduction, the gravamen of the offense is the, scandal, shame and embarrassment caused to family for the abduction of the woman over 12 and under 18 years of age. In Qualified seduction, on the other hand, the gravamen of the offense is the wrong done on the woman herself who was seduced (there was sexual intercourse) through Abuse of*

authority, confidence or relationship. In Consented abduction, there must be taking while in Qualified seduction, there is no taking although in both crimes there is consent.

ARTICLE 338 -- Simple seduction

Elements:

- 1) That the offended party is over 12 but less than 18 years of age.
- 2) That she must be a woman of good reputation, single or widow.
- 3) That the offender has sexual intercourse with woman.
- 4) That it is committed by means of **DECEIT**.

Note:

- 1) Virginity of the offended party is **not** required.
- 2) **Deceit** here means false promise to marry the offended party.

ARTICLE 339 -- Acts of lasciviousness with the consent of the offended party.

Punishable here is any other acts of lasciviousness committed by he same persons and the same circumstances as those provided in Articles 337 and 338.

Elements:

- 1) That the offender commits acts of lasciviousness or lewdness.
- 2) That the acts are committed upon a woman who is a virgin, or a single widow of good reputation, over 12 but under 18 years of age, or a sister or descendant, regardless of her reputation or age.
- 3) That the offender accomplishes the acts by Abuse of **AUTHORITY**, Abuse of **CONFIDENCE**, or Abuse of **RELATIONSHIP** or **DECEIT**.

ARTICLE 340 -- Corruption of minors.

Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by x x x and if the culprit is a public officer or employee, he shall also suffer he penalty of temporary absolute disqualification.

Note:

- 1) If the culprit is a public officer or employee, including those in GOCC, he shall also suffer penalty of **Absolute disqualification**.
- 2) It is not necessary that the unchaste acts shall have been done. Mere **PROPOSAL** consummates the offense.

ARTICLE 341 -- White slave trade.

Penalty shall be imposed upon any person who shall engage in the business or shall profit by prostitution or shall enlist the services of any other person for the purpose of prostitution.

Prohibited acts:

- 1) Engaging in the business of prostitution.
- 2) Enlisting the services of woman for the purpose of prostitution.

Note:

- 1) Habituality is not necessary.
- 2) **"Under the pretext"** means one who is engaged in the services of a woman ostensibly as a maid but in reality for the purposes of prostitution, still guilty of the offense.

ARTICLE 342 -- Forcible abduction.

The abduction of any woman against her will and with lewd designs shall be punished by x x x.

Elements:

- 1) That the person abducted is any woman, regardless of her age, civil status or reputation.
- 2) That the abduction is against her will.
- 3) That the abduction is with lewd designs.

Note:

- 1) The taking of the woman may be accomplished by means of **DECEIT** first, and then by means of violence and intimidation.
- 2) If the female abducted is under **12 years of age**, crime is forcible abduction, even if she voluntarily goes with her abductor.
- 3) Sexual intercourse is not necessary. **Intent to seduce** is enough.
- 4) Husband cannot be guilty of forcible abduction since lewd design is wanting.
- 5) Distinguished from **GRAVE COERCION**:
 - a) In **Forcible Abduction**, there is lewd designs; while in **Grave Coercion**, there is no lewd design, provided there is no deprivation of liberty for an appreciable length of time.
- 6) **Attempted rape** is absorbed by forcible abduction as attempted rape constitutes the element of lewd design.

People vs. Alburo, 184 SCRA 655

Alburo, a jeepney driver, abducted Evelyn from school and brought her to Beverly Hills in Cebu where he raped her inside the jeepney. As defense, he said they were 'sweethearts.'

Held: SC affirmed Alburo's conviction for complex crime of FORCIBLE ABDUCTION WITH RAPE. It is a complex crime because the taking or abduction of Evelyn was a necessary means to commit the crime of rape. If, however, there was no taking anymore but mere sexual intercourse through violence or intimidation, crime is RAPE.

People vs. Godines, 196 SCRA 765.

Godinez and Moreno robbed the Vilaksi couple. After that, they dragged the victim, Esther Ancajas a few meters from the house, and raped her among tall cogon grass. Masbate RTC convicted them for Robbery, and Forcible abduction with rape.

Held: SC lower court's decision and convicted them for robbery, and two rapes. The crime of forcible abduction was absorbed in the crime of rape because the main purpose was to rape, and the taking or forcible abduction was not a necessary means since they could have raped the victim inside the house, anyway. Taking was only incidental and not necessary to

the commission of rape. If, taking, however, was a necessary means, crime is Forcible abduction with rape.

ARTICLE 343 -- Consented abduction.

The abduction of a virgin over twelve and under 18 years of age, carried out with her consent and with LEWD DESIGNS, shall be punished by the penalty of x x x.

Elements:

- 1) That the offender must be a **VIRGIN**.
- 2) That she must be over 12 and under 18 years of age.
- 3) That the taking away must be with her **CONSENT**, after solicitation or cajolery from the offended party.
- 4) That the taking away of the offended party must be with **LEWD DESIGNS**.

Note:

- 1) If the girl is under 12 years of age, it is always **FORCIBLE ABDUCTION**.
- 2) The taking of the virgin need not have the character of permanency. A temporary taking is sufficient, as long as there is lewd design.

ARTICLE 344 -- Prosecution of crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.

The crimes of adultery and concubinage shall not be prosecuted except upon the complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.

The offense of SEDUCTION, ABDUCTION, RAPE OR ACTS OF LASCIVIOUSNESS shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor in any case, if the offender has been expressly pardoned by the abovenamed persons, as the case may be.

In cases of SEDUCTION, ABDUCTION, ACTS OF LASCIVIOUSNESS AND RAPE, the marriage of the offender with the offended party shall extinguish the criminal action, or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories AFTER THE FACT of the abovementioned crimes.

Note:

- 1) Adultery and concubinage must be prosecuted upon the complaint signed by the offended spouse.
- 2) Both the guilty parties, if both alive, must be included in the complaint for adultery, or concubinage.
- 3) When the offended party is of age and is in complete possession of her mental and physical faculties, she alone can file the **Complaint**.
- 4) **Express pardon** of the offender is a bar to prosecution for seduction, abduction, rape or acts of lasciviousness.

5) **Condonation** is not pardon in concubinage or adultery -- any subsequent acts of the offender showing that there was no repentance will not bar the prosecution of the offense.

6) Pardon by the offended party who is a minor must have the **concurrence of parents** -- except when the offended party has no parents.

7) Seduction, abduction and acts of lasciviousness must be prosecuted upon the complaint filed by: 1) *Offended party*; 2) *Her parents*; 3) *Grandparents*; 4) *Guardians*. And strictly in the **ORDER** named above.

People vs. Ibay-Somera, 174 SCRA 653.

Held: SC held that since the German husband was no longer lawfully married to petitioner Imelda Pilapil at the time he filed the case for adultery, the complaint must be dismissed. **Article 344** provides that adultery can only be prosecuted upon the sworn written complaint by the "offended spouse." Since the German husband was no longer an "offended spouse" by virtue of the divorce decree in 1986 he obtained in Germany which is recognized here in Philippines also because of nationality principle, the petitioner's **Motion to Quash the Information** is hereby granted. There is no more marriage vow to protect nor any danger of introducing spurious heirs into the family since there is no spousal relationship to speak of anymore.

ARTICLE 345 -- Civil liability of persons guilty of crimes against chastity.

Persons guilty of rape, seduction or abduction, shall also be sentenced:

1) ***To indemnify the offended woman.***

2) ***To acknowledge the offspring, unless the law should prevent him from so doing.***

3) ***In every case to support the offspring.***

The adulterer and the concubine in the case provided for in Articles 333 and 334 may also be sentenced in the same proceeding, or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.

ARTICLE 346 -- Liability of ascendants, guardians, teachers or other persons entrusted with the custody of the offended party.

The ascendants, guardians, curators, teachers, and any person who, by abuse of authority or confidential relationship, shall cooperate as accomplices in the perpetration of the crimes embraced in chapters second, third and fourth of this Title, shall be punished as PRINCIPALS.

TITLE XII CRIMES AGAINST CIVIL STATUS OF PERSONS

ARTICLE 347 -- Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child.

The simulation of births and the substitution of one child for another shall be punished by x x x. The same penalty shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status.

Prohibited acts:

- 1) **Simulation** of births.
- 2) **Substitution** of one child for another.
- 3) **Concealment** or abandonment of a legitimate child with intent to cause such child to lose its civil status.

Note:

- 1) **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. Simulation is a crime which alters the civil status of a person.
- 2) A physician or surgeon or public officer who cooperates in the execution of the crime is also criminally liable.

ARTICLE 348 -- Usurpation of civil status.

Penalty shall be imposed upon any person who shall usurp the civil status of another, should he do so for the purpose of DEFRAUDING the offended party of his heirs.

Note:

- 1) **Civil status** -- includes one's public station or the rights, duties, capacities and incapacities which determine a person to a given class. There must be intent to enjoy the rights arising from the civil status of another.
- 2) The crime is **qualified** if the purpose is to defraud offended parties and heirs.
- 3) **Usurping** the civil status of another is committed by assuming the filiation, or the parental or conjugal rights of another.

ARTICLE 349 -- Bigamy

Penalty shall be imposed upon any person who shall contract a second, or subsequent, marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

Note:

- 1) Nullity of marriage is not a defense in charge of bigamy.
- 2) The second marriage must have all the essential requisites for validity.
- 3) Validity of marriage is a **prejudicial question** to liability for bigamy.
- 4) A person convicted of bigamy may still be prosecuted for concubinage because they are separate and distinct, the first crime or **Bigamy** being a crime against **Civil status** while **Concubinage** is a crime against **Chastity**.

ARTICLE 350 -- Marriage contracted against the provisions of laws.

Penalty shall be imposed upon any person who shall contract marriage KNOWING that the requirements of the law have not been complied with, or that the marriage is in DISREGARD of a legal impediment.

Elements:

- 1) That the offender contracted marriage.
- 2) That he ***knew*** at the time that the requirements of the law were not complied with; or that the marriage was in disregard of a legal impediment.
- 3) That the offender must be guilty of ***BIGAMY***.

Qualifying circumstances:

- 1) If either of the contracting parties obtains the consent of the other by means of violence, intimidation or fraud, he shall be held criminally liable.

ARTICLE 351 -- Premature marriage.

1) Liable is any widow who shall marry within 301 days from the date of he death of her husband, or before having delivered, if she shall have been pregnant at the time of his death, shall be punished x x x.

2) The same penalty shall be imposed upon any woman whose marriage shall have been annulled, or dissolved, if she shall marry BEFORE her delivery, or before the expiration of the period of 301 days after the legal separation.

Note:

- 1) This period may be disregarded if the first husband was impotent or sterile.
- 2) Period of ***301 days*** is important only for cases where the woman is not pregnant or without knowledge of such pregnancy. If pregnant, prohibition is good only up to time of delivery.

ARTICLE 352 -- Performance of illegal marriage ceremony.

Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.

Note:

- 1) Priests, or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any legal marriage ceremony.
- 2) Offender must be authorized to solemnize marriage. Otherwise, he is liable under ***Article 177*** for ***Usurpation of authority***.

TITLE XIII CRIMES AGAINST HONOR

ARTICLE 353 -- Definition of LIBEL.

Libel is a public and malicious imputation of a crime, 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.

Note:

- 1) Defamation is the proper term for libel as used in **Article 353**.
- 2) Communication of the defamatory matter to some third persons is essential because it constitutes **PUBLICATION**.
- 3) **Malice** is 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.
- 4) **Malice in fact** -- may be shown by proof of ill will, hatred, or purpose to injure; also known as express Malice.
Malice in law -- is presumed from defamatory imputation; proof is not required because it is presumed to exist from the defamatory imputation.
- 5) When the communication is **PRIVILEGED**, malice is not presumed from the defamatory words.
- 6) Identification of the offended party is required in the 4th element.
- 7) Test to determine whether or not libelous – tend to induce hearers to readers to impeach his honesty, virtue or reputation or to hold him to public ridicule.

THREE ELEMENTS of LIBEL:

- M** 1) **Malice** -- whether Malice in law, or Malice in fact.
- V** 2) **Victim** -- must be sufficiently identifiable.
- P** 3) **Publication** -- it must be made known to another person, preferably in a more or less permanent form of communication like print, radio, phonograph, painting, theatrical exhibition or cinematographic exhibition, or any similar means. (Recall **MVP**)

Newsweek vs. IAC, 142 SCRA 171

Newsweek came out with an article “*Island of Fear*” which, according to the landowners who are also complainants, depicted them as oppressing and killing their workers, with impunity. Hence, their case for libel asking for damages which the Bacolod RTC and CA sustained.

Held: SC, however, reversed the lower court and CA and held that the article was not actionable. The reason: the complainants consisting of an association with 8,500 members are not sufficiently identifiable. To be libelous, it is essential that the “statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be.”

Santos vs. CA, 203 SCRA 692

Petitioner Nanerico Santos as columnist of *Manila Daily Bulletin* wrote and published in his column an article entitled “***Charges against CMS Stock Brokerage, Inc.***” The article was quoted verbatim from an unverified complaint filed with the SEC charging CMS brokerage officials with insider trading and fraudulent practices in the stock market. The CMS officials sued Santos.

Held: SC held article was not libelous. The reason: the article is but a faithful reproduction of a pleading filed before a quasi-judicial body, without any embellishments, wild imputations, distortions or defamatory comments calculated to damage the reputation of the offended parties and expose them to ridicule. Generally, malice is presumed (Malice in law) in every defamatory imputation but such presumption does not arise if the communication is Qualifiedly privileged under 2nd par. of Article 354, thus: "A fair and true report, made in good faith, without any comments or remarks, of any JUDICIAL, legislative or other officials proceedings, which are not of confidential nature x x x."

Borjal vs. CA, 301 SCRA 1.

In 1988, there was a transportation crisis so government and private sector organized the **First National Convention on Land Transportation**. Francisco Wenceslao, an engineer, journalist and businessman, was chosen Executive Director for the FNLCT project. His task: to raise at least P1.8 million for the convention, and he sent various solicitation letters for this purpose. Art Borjal, columnist of **Philippine Star**, came out with articles of an alleged "false hero" making unauthorized use of names of President Aquino and Transportation Secretary Rainerio Reyes in the program, of shady deals and of deceiving people. Wenceslao sued Borjal for libel asking damages which the RTC and CA sustained.

Held: SC reversed RTC and CA decision, and acquitted Borjal. In relation to the three elements of libel, 1st, the victim was not sufficiently identifiable, because had Wenceslao not identified himself, the public would have remained "blissfully ignorant of his identity"; 2nd, there was no Malice in law, nor any MALICE IN FACT which requires that they were published with knowledge that they are false, or in utter disregard of whether they are false or not. In this case, Borjal's article had FACTUAL BASIS because President Aquino and Secretary Reyes, in fact, declined to be included in the project yet Wenceslao still included their names, and there were some shady deals which transpired; 3rd, there was publication, but publication here was privileged, and not libelous. SC further said that the enumeration of Conditionally/qualifiedly privileged communication which served as Exceptions to complaint for libel under Article 354 are not exclusive. Another exception to libel is if publication involves "Fair comment on matters involving public interest" which is the doctrine enunciated in *Borjal vs. CA*.

ARTICLE 354 -- Requirement of publicity.

Every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown, EXCEPT in the following cases:

- 1) A private communication made by any person to another in the performance of any legal, moral or social duty; and
- 2) 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, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

Note:

- 1) **Malice in law** -- every defamatory imputation is presumed to be malicious, even if it be true, if no good intention or justifiable motive.
- 2) The presumption is rebutted if it is shown by the accused that:
 - a) The defamatory imputation is **TRUE**, in case the law allows proof of the truth of the imputation.
 - b) It is published with **GOOD INTENTION**.
- c) There is **JUSTIFIABLE MOTIVE** for making it.
- 3) Malice is **not presumed** in the following cases:
 - a) A **private communication** made by any person to another in the performance of any legal, moral or social duty.
 - b) A **fair and true report**, of any judicial, legislative or other proceedings, or of any other act performed by public officers in the exercise of their functions.

R. A. 4200 (Anti-Wire Tapping Act)

Section 1. Unlawful acts by any person or participant, not authorized by all the parties to any private communication or spoken word:

- 1) To tap any wire or cable.
- 2) To use any other device or arrangement.
- 3) To secretly overhear, intercept or record such communication by using a device known as detectaphone, walkie-talkie, tape recorded.
- 4) To knowingly possess any tape, wire or disc record or copies of any communication or spoken word.
- 5) To replay the same for any person or persons.
- 6) To communicate the contents thereof, verbally or in writing.
- 7) To furnish transcriptions thereof, whether complete or partial.

EXCEPTIONS:

1) When the use of the record or copies are for purposes of evidence in any civil, criminal investigation or trial of offenses.

2) When a peace officer is authorized by written order from the court to execute any of the acts punishable in cases involving:

- a) Treason.
- b) Espionage.
- c) Provoking war and disloyalty in case of war.
- d) Piracy.
- e) Mutiny in the high seas.
- f) Rebellion.
- g) Conspiracy and proposal to commit rebellion.
- h) Sedition.
- i) Inciting to sedition.
- j) Conspiracy to commit sedition.

- k) Kidnapping.
- l) Other offenses against national security.

WRITTEN ORDER GRANTED:

- 1) Written application and examination under oath.
- 2) Reasonable grounds to believe that a violation was committed.
- 3) Reasonable to believe that evidence is essential to the conviction of any person.
- 4) No other means readily available for obtaining such evidence.

Section 4. *Any recording, communication or spoken word obtained in violation of the provisions of this Act shall be **INADMISSIBLE IN EVIDENCE** in any judicial, quasi-judicial or administrative hearing or investigation.*

ARTICLE 355 -- Libel by means of writings or similar means.

A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by x x x in addition to the civil action which may be brought by the offended party.

ARTICLE 356 -- Threatening to publish and offer to prevent such publication for a compensation.

Penalty shall be imposed upon any person who threatens another to punish a libel concerning him or the parents, spouse, child or other member of the family of the latter, or upon anyone who shall offer to prevent the publication of such libel for a compensation or money consideration.

Note:

- 1) **PROHIBITED ACTS:**
 - a) Threatening another to publish a libel concerning him, his parents, spouse, child or other members of the family.
 - b) Offering to prevent the publication of such libel for compensation, or money consideration.
- 2) Blackmail – any unlawful extortion of money by threats of accusation or exposure. It could also constitute Light threats under **Article 283**.

ARTICLE 357 -- Prohibited publication of acts referred to in the course of official proceedings.

Penalty shall be imposed upon any reporter, editor or manager of a newspaper, daily or magazine who shall publish facts connected with the private life of another, and offensive to the honor, virtue and reputation of said person, even though said publication be made in connection with or under the pretext that is necessary in the narration of any judicial or administrative proceedings, wherein such facts have been mentioned.

Elements:

- 1) The 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:

- 1) Prohibition applies even if the facts are involved in official proceedings.
- 2) **"Gag Law"** -- Newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children will necessarily be barred from publication.
- 3) Sources of news reports may not be revealed unless the court, or a House Committee of Congress, finds that such revelation is demanded by the security of the State.

ARTICLE 358 -- Slander (Oral defamation)

Oral defamation shall be punished if it is of a serious and insulting nature.

Note:

- 1) ***Kinds of slander:***
 - a) Simple slander and
 - b) Grave slander when it is of a serious and insulting nature.
- 2) Factors that determine the ***gravity*** of oral defamation:
 - a) Upon the expression used.
 - b) On the personal relations of the accused and the offended party.
 - c) Circumstances surrounding the case.
- 3) Slander need ***not*** be heard by the offended party.

Victorio vs. CA, 173 SCRA 645

Atty. Ruiz, a prominent practicing lawyer since 1926, a former Justice of the Peace and member of the Provincial Board of Nueva Ecija, a law professor and former president of the Nueva Ecija Bar Association, was the former lawyer of petitioners Victorio. Later, the Victorio family hired another lawyer, Atty. Castillo and in one case, Atty. Ruiz became opposing counsel. After hearing, Danilo and Exequiel Victorio uttered the words: ***"Kayabang ng putang inang abogadong Ruiz na iyan. Tunaw naman according to utalk, suwapang at estapapador naman."*** Atty. Ruiz sued them for *Slander*.

Held: SC sustained their conviction for Grave oral defamation. The word "estapador" implies deceit and dishonesty in the exercise of his profession. The slanderous statements were uttered without provocation, in a loud voice, and totally unfounded, intended to besmirch the reputation and cast aspersion on the person, integrity and reputation of Atty. Ruiz. No need to prove special damage because the words were slanderous per se.

ARTICLE 359 -- Slander by deed.

Penalty shall be imposed upon any person who shall perform any act not included in this Title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature, the penalty shall be lower.

Note:

- 1) A crime against honor which is committed by performing any act which casts dishonor, discredit or contempt upon another person.
- 2) ***Slander by deed*** necessarily refers to the performance of an act, not the use of words.
- 3) If in addition to slander by deed, there was also present any circumstances like use of force and with lewd design short of intent to life, separate act of ***Acts of lasciviousness***.
- 4) Slapping the face of another is ***Slander by deed*** if the intention is to cause shame and humiliation.
- 5) Irritation or annoyance -- common element of ***Slander by deed, Unjust vexation, and Acts of lasciviousness***.
 - a) Without any concurring factor, it is only ***Unjust Vexation***;
 - b) If purpose of slapping is to cause shame or to humiliate, it is ***Slander by deed***.

ARTICLE 360 -- Persons responsible.

Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing, or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.

Note:

- 1) ***Persons liable for libel:***
 - a) Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing, or by similar means.
 - b) The author, editor of the book or pamphlet.
 - c) The editor, business manager of newspaper or magazine responsible to the same extent as if he were the author.
 - d) The owner of the printing plant which publishes the libelous article, and all the other persons who in any way participate.
- 2) The offended party must file the complaint for defamation imputing a crime which cannot be prosecuted ***de officio***.
- 3) Libel imputing a vice or defect, not being an imputation of a crime, is always prosecuted upon the ***Information*** signed and filed by the Fiscal.

ARTICLE 361 -- Proof of Truth.

In every criminal prosecution for libel, the truth may be given in evidence to the court, and if it appears that the matter charged as libelous is true, and moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.

Note:

- 1) **Defenses in Libel/Defamation:**
- a) It appears that the matters charged as libelous is true.
- b) It was published with **good motives**.
- c) And it was published for a **justifiable end**.

ARTICLE 362 -- Libelous remarks.

Libelous remarks or comments connected with the matter privileged under the provisions of Article 354, if made with MALICE, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.

ARTICLE 363 -- Incriminating innocent persons.

Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime, shall be punished by x x x.

Elements:

- 1) That the offender performs an act.
- 2) That by such act he directly **incriminates** or imputes to an innocent person the commission of a crime.
- 3) That such act does **not** constitute **Perjury**.

Note:

1) ***Incriminating innocent persons vs. Perjury by making false accusations:*** In ***Incriminating innocent persons***, this is limited to the act of planting evidence and the like in order to incriminate an innocent person; while in ***Perjury by making false accusations***, it is the giving of false statement under oath, or making a false affidavit, imputing to the person the commission of a crime.

R.A. 4200 (Anti-Wire Tapping Act)

Ganaan vs. IAC, 145 SCRA 112

The issue here is whether listening to the conversation of another through the use of an extension telephone is prohibited under the ***Anti-Wire Tapping Act***.

Held: ***SC acquitted petitioners and held that R.A. 4200 does not include or punish listening to telephone conversation of another through extension phone. An extension telephone cannot be placed in the same category as a dictaphone, dictograph, walkie-talkie or other devices enumerated in Section 1 of R.A. 4200. The law clearly refers only to a "tap" of a wire or cable, or the use of a "device or arrangement" for purpose of secretly overhearing, intercepting or recording the communication. There must be either physical interruption through a wiretap, and the deliberate installation of a device, or arrangement, in order to overhear, intercept or record the spoken words. It refers to instruments whose installation or presence cannot be presumed by the parties being overheard because they are not of common usage, and their purpose is precisely for tapping, intercepting or record telephone conversation. On the other hand, a person calling another by phone may safely presume that the other may have an extension line and runs the risk of being heard by a third party.***

Ramirez vs. CA, 248 SCRA 590.

Held: RA 4200 also clearly makes it illegal for any person, not authorized by the parties to any private communication, to secretly record such communication by means of tape recorder. The law makes no distinction as to whether the party should to be penalized by the statute ought to be a party other than or different from those involved in the private communication.

ARTICLE 364 -- Intriguing against Honor.

Penalty shall be imposed for any INTRIGUE which has for its principal purpose to blemish the honor or reputation of a person.

Note:

- 1) This crime is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another.
- 2) ***Intriguing against honor*** is any scheme or plot by means which consists of some trickery.

TITLE IV QUASI-OFFENSES/CRIMINAL NEGLIGENCE

ARTICLE 365 -- Imprudence and negligence.

Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of x x x

RECKLESS IMPRUDENCE consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of INEXCUSABLE LACK OF PRECAUTION on the part of the person performing, or failing to perform such act, taking into consideration his employment or occupation, degree of intelligence, physical condition and other circumstances regarding PERSONS, TIME and PLACE.

SIMPLE IMPRUDENCE consists in the LACK OF PRECAUTION displayed in those cases in which the damage impending to be cases is not immediate nor the danger clearly manifest.

Note:

- 1) ***Acts punished constituting recklessness or imprudence:***
 - a) By committing through ***reckless imprudence*** any act which, had it been intentional, would constitute grave or less grave felony or light felony.
 - b) By committing through ***simple imprudence or negligence*** any act which would otherwise constitute a grave or less serious felony.
 - c) By causing through ***simple imprudence or negligence*** some wrong which, if done maliciously, would have constituted a light felony.
- 2) Imprudence or negligence is not a crime in itself, but is simply a way of committing a crime.

3) A negligent act causing damage may produce civil liability arising from a crime or create an action for ***quasi-delict*** under the Civil Code. The injured party may choose which remedy to enforce and cannot recover on both.

4) ***Imprudence vs. negligence distinguished:***

a) ***Imprudence*** is deficiency of action; while ***Negligence*** is deficiency of perception.

b) ***Imprudence*** is failure in precaution; while ***Negligence*** is failure in inadvertence.

c) ***Imprudence*** may be avoided by paying proper attention and using due diligence in foreseeing them; while ***Negligence*** may be avoided by taking the necessary precaution once they are foreseen.

5) When the reckless or simple imprudence only resulted in damage to property, the penalty is only a ***fine***.

Carillo vs. People, 229 SCRA 386.

The deceased, a 13-year-old girl named Catherine Acosta, was suffering from acute pain in the lower part of her abdomen. It was appendicitis. Dr. Madrid, a surgeon, operated on the girl, while Dr. Carillo, an anesthesiologist, assisted him. Dr. Carillo, contrary to SOP, did not weigh the girl before administering anesthesia to her. Apparently the child suffered from an overdose of ***Nubain***. The child later went on a coma, then died three days after.

Held: *SC held Dr. Carillo and Dr. Madrid liable for Simple imprudence resulting in homicide. Simple imprudence is defined as “mere lack of precaution in a situation where either the threatened harm is not immediate or the danger not openly visible.” Put in another way, the gravamen of the offense of simple imprudence is the failure to exercise the diligence called for by the situation which was not immediately life-destructive, but which culminated in the present case in the death of a human being, in this case the victim Catherine.*

ARTICLE 366 -- Application of laws enacted prior to this Code.

Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed PRIOR to the date of effectiveness of this Code shall be punished in accordance with the Code, or acts in force at the time of their commission.

ARTICLE 367 -- Repealing clause.

-- GOOD LUCK TO THE BAR EXAMS --

SALIENT PROVISIONS OF SPECIAL LAWS

- **P.D. 1613 (AMENDING THE LAW ON ARSON)**

Section 1. Arson. Any person who burns or sets fire to the property of another shall be punished by Prison Mayor.

The same penalty shall be imposed when a person sets fire to his own property under circumstances which expose to danger the life or property of another.

Section 2. Destructive Arson. The penalty of Reclusion Temporal in its maximum period to Reclusion Perpetua shall be imposed if the property burned is any of the following:

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
4. Any building where evidence is kept for use in any legislative, judicial, administrative or other official proceedings.
5. Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building.
6. Any building, whether used as a dwelling or not, situated in a populated or congested area.

Section 3. Other Cases of Arson. The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:

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;
4. Any rice mill, sugar mill, cane mill or mill central; and

5. Any railway or bus station, airport, wharf or warehouse.

Section 4. *Special Aggravating Circumstances in Arson.* The penalty in any case of arson shall be imposed in its maximum period;

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.

The offense is committed by a syndicate if its is planned or carried out by a group of three (3) or more persons.

Section 5. *Where Death Results from Arson.* If by reason of or on the occasion of the arson death results, the penalty of Reclusion Perpetua to death shall be imposed.

Section 6. *Prima Facie evidence of Arson.* Any of the following circumstances shall constitute prima facie evidence of arson:

1. If the fire started simultaneously in more than one part of the building or establishment.
2. If substantial amount of flammable substances or materials are stored within the building not necessary in the business of the offender nor for household use.
3. If gasoline, kerosene, petroleum or other flammable or combustible substances or materials soaked therewith or containers thereof, or any mechanical, electrical, chemical, or electronic contrivance designed to start a fire, or ashes or traces of any of the foregoing are found in the ruins or premises of the burned building or property.
4. If the building or property is insured for substantially more than its actual value at the time of the issuance of the policy.
4. If during the lifetime of the corresponding fire insurance policy more than two fires have occurred in the same or other premises owned or under the control of the offender and/or insured.

5. If shortly before the fire, a substantial portion of the effects insured and stored in a building or property had been withdrawn from the premises except in the ordinary course of business.

6. If a demand for money or other valuable consideration was made before the fire in exchange for the desistance of the offender or for the safety of the person or property of the victim.

Section 7. *Conspiracy to commit Arson.* Conspiracy to commit arson shall be punished by Prison Mayor in its minimum period.

Section 8. *Confiscation of Object of Arson.* The building which is the object of arson including the land on which it is situated shall be confiscated and escheated to the State, unless the owner thereof can prove that he has no participation in nor knowledge of such arson despite the exercise of due diligence on his part.

Section 9. *Repealing Clause.* The provisions of Articles 320 to 326-B of the Revised Penal Code and all laws, executive orders, rules and regulations, or parts thereof, inconsistent with the provisions of this Decree are hereby repealed or amended accordingly.

- ***R.A. 7877 (Anti Sexual Harassment Act)***

This law declares that all forms of sexual harassment in the employment, education or training environment are unlawful.

Definition

Work, education or training-related sexual harassment is committed by the following:

- 1) an employer
- 2) employee
- 3) manager;
- 4) supervisor,
- 5) agent of the employer
- 6) teacher,
- 7) instructor,
- 8) professor,
- 9) coach,
- 10) trainor, or
- 11) Any other person.

In order to be liable under this law, the following persons enumerated above

Should possess any of the following in a work, training or education environment:

- 1) having authority;
- 2) influence, or
- 3) moral ascendancy over another.

Prohibited Acts

- 1) demands
- 2) requests, or
- 3) otherwise requires any sexual favor from the other,

Such acts are deemed a violation of the law regardless of whether the demand, request or requirement for submission is accepted by the object of said act.

Work-related environment

In a work-related or employment environment, sexual harassment is committed when:

- 1) The sexual favor is made as a **condition** in the hiring or in the employment, 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;
- 2) The above acts would impair the employee's rights or privileges under existing labor laws; or
- 3) The above acts would result in an intimidating, hostile, or offensive environment for the employee.

Education or Training Environment

In an education or training environment, sexual harassment is committed:

- 1) Against one who is under the care, custody or supervision of the offender;
- 2) Against one whose education, training, apprenticeship or tutorship is entrusted to the offender;
- 3) When the sexual favor is made a condition to the giving of a passing grade, or in the granting of honors and scholarships or the payment of a stipend, allowance or other benefits, privileges or considerations; or
- 4) When the sexual advances result in an intimidating, hostile or offensive environment for the student, trainee or apprentice.

Solidary Liability

The employer or head of office, educational or training institution shall be solidarily liable for damage arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

Prescription

Any action arising from the violation of provisions of this law shall prescribe in three (3) years.

- ***RA 9262 (Anti-Violence against Women and their Children)***

Definition

Violence against women and their children refers to any act or series of act against a wife, a former wife, or with whom one has or had a sexual or dating relationship, or has a common child, or against her child, legitimate or illegitimate, within or outside the family abode, which result or likely to result in physical, sexual, psychological harm or suffering, or threats of such acts.

Kinds of Violence

Acts of violence may be physical, sexual or economic.

SEXUAL VIOLENCE includes rape, harassment, lasciviousness, demeaning and sexually suggestive remarks, physical attack on part of the victim's body, forcible exposure of the woman or her child to obscene publications and show, and forcing the victim to engage in sexual activity.

PSYCHOLOGICAL VIOLENCE, on the other hand, includes mental or emotional abuse like stalking, intimidation, damage to property, public humiliation, repeated verbal abuse and marital infidelity, and deprivation of right to custody and/or visitation of common children, among others.

ECONOMIC ABUSE includes withdrawal of financial support, preventing the victim from engaging in a legitimate profession, work or business, except on valid grounds; depriving enjoyment of conjugal community or property; destroying household property; and controlling the victim's own money or property or solely controlling the conjugal money or property.

Provisional Reliefs

A protection order shall be issued to prevent further acts of violence. The protection order may be the Barangay Protection Order (BPO), temporary protection order (TPO) and the permanent protection order (PPO).

Some of the relief that may be issued includes prohibiting the respondent from harassing, annoying, contacting or communicating with the petitioner directly or indirectly; removing the respondent from the residence of the petitioner regardless of ownership of residence, removing the personal effects of the respondent from the residence.

A petition or protection order may be filled by:

- 1) offended party;
- 2) parents or guardians of the offended party;
- 3) relatives within the fourth (4th) civil degree of the victim;
- 4) officers or social workers of the DSWD;
- 5) police officers, Punong Barangay or Barangay Kagawad,
- 6) counselor, therapist, or healthcare provider of the petitioner;
- 7) at least two (2) concerned responsible citizens of the City or Municipality of the site of violence.

- **RA 9346 (ACT PROHIBITING THE IMPOSITION OF DEATH PENALTY)**

SECTION 1. The imposition of the penalty of death is hereby prohibited. Accordingly, Republic Act No. Eight Thousand One Hundred Seventy-Seven (R.A. No. 8177), otherwise known as the Act Designating Death by Lethal Injection is hereby repealed. Republic Act No. Seven Thousand Six Hundred Fifty-Nine (R.A. No. 7659), otherwise known as the Death Penalty Law, and all other laws, executive orders and decrees, insofar as they impose the death penalty are hereby repealed or amended accordingly.

SEC. 2. In lieu of the death penalty, the following shall be imposed.

- (a) the penalty of *reclusion perpetua*, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
- (b) the penalty of life imprisonment, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code.

SEC. 3. Person convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduced to *reclusion perpetua*, by reason of this Act, shall not be eligible for parole under Act No. 4180, otherwise known as the Indeterminate Sentence Law, as amended.

SEC. 4. The Board of Pardons and Parole shall cause the publication at least one a week for three consecutive weeks in a newspaper of general circulation of the names of persons convicted of offenses punished with *reclusion perpetua* or life imprisonment by reason of this Act who are being considered or recommend for commutation or pardon; *Provided, however*, That nothing herein shall limit the power of the President to grant executive clemency under Section 19, Article VII of the Constitutions.

SEC. 5. This Act shall take effect immediately after its publication in two national newspapers of general circulation.

- **REPUBLIC ACT NO. 9344**

Section 1 – Short Title and Scope -- This Act shall be known as the "Juvenile Justice and Welfare Act of 2006." It shall cover the different stages involving children at risk and children in conflict with the law from prevention to rehabilitation and reintegration.

SEC. 4. Definition of Terms.

(d) "**Child at Risk**" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

- (1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
- (2) being exploited including sexually or economically;
- (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
- (4) coming from a dysfunctional or broken family or without a parent or guardian;
- (5) being out of school;
- (6) being a streetchild;
- (7) being a member of a gang;

(8) living in a community with a high level of criminality or drug abuse; and

(9) living in situations of armed conflict.

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

(j) "**Diversion Program**" refers to the program that the child in conflict with the law is required to undergo after he/she is found responsible for an offense without resorting to formal court proceedings.

(q) "**Restorative Justice**" refers to a principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.

SEC. 5. Rights of the Child in Conflict with the Law. - Every child in conflict with the law shall have the following rights, including but not limited to:

(a) the right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;

(b) the right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release; x x x

(l) in general, the right to automatic suspension of sentence;

(m) the right to probation as an alternative to imprisonment, if qualified under the Probation Law;

SEC. 6. Minimum Age of Criminal Responsibility. - A child fifteen (15) years of age or under at the **time of the commission** of the offense shall be exempt from criminal liability. However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

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

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

SEC. 23. System of Diversion. - Children in conflict with the law shall undergo diversion programs without undergoing court proceedings subject to the conditions herein provided:

(a) Where the imposable penalty for the crime committed is not more than six (6) years imprisonment, the law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.

b) In victimless crimes where the imposable penalty is not more than six (6) years imprisonment, the local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC;

(c) Where the imposable penalty for the crime committed exceeds six (6) years imprisonment, diversion measures may be resorted to only by the court.

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.

SEC. 42. Probation as an Alternative to Imprisonment. - 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 Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.

- **REPUBLIC ACT No. 7610**

Section 1. Title. - This Act shall be known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act."

Section 3. Definition of Terms. -

(a) "**Children**" refers to person below eighteen (18) years of age or those over but are unable to fully take care of themselves or protect themselves from abuse, neglect, cruelty, exploitation or discrimination because of a physical or mental disability or condition;

(b) "**Child abuse**" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

Section 5. Child Prostitution and Other Sexual Abuse. - Children, whether male or female, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited to, the following:

(1) Acting as a procurer of a child prostitute;

(2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;

(3) Taking advantage of influence or relationship to procure a child as prostitute;

(4) Threatening or using violence towards a child to engage him as a prostitute; or

(5) Giving monetary consideration goods or other pecuniary benefit to a child with intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse of lascivious conduct with a child exploited in prostitution or subject to other sexual abuse; Provided, That when the victims is under twelve (12) years of age, the perpetrators shall be prosecuted under Article 335, paragraph 3, for rape and Article 336 of Act No. 3815, as amended, the Revised Penal Code, for rape or lascivious conduct, as the case may be: Provided, That the penalty for lascivious conduct when the victim is under twelve (12) years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Section 7. Child Trafficking. - Any person who shall engage in trading and dealing with children including, but not limited to, the act of buying and selling of a child for money, or for any other consideration, or barter, shall suffer the penalty of reclusion temporal to reclusion perpetua. The penalty shall be imposed in its maximum period when the victim is under twelve (12) years of age.

Section 9. Obscene Publications and Indecent Shows. - Any person who shall hire, employ, use, persuade, induce or coerce a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials shall suffer the penalty of prision mayor in its medium period.

If the child used as a performer, subject or seller/distributor is below twelve (12) years of age, the penalty shall be imposed in its maximum period.

Any ascendant, guardian, or person entrusted in any capacity with the care of a child who shall cause and/or allow such child to be employed or to participate in

an obscene play, scene, act, movie or show or in any other acts covered by this section x x x.

Section 10. Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. –

a) Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development x x x

b) Any person who shall keep or have in his company a minor, twelve (12) years or under or who in ten (10) years or more his junior in any public or private place, hotel, motel, beer joint, discotheque, cabaret, pension house, sauna or massage parlor, beach and/or other tourist resort or similar places x x x

c) Any person who shall induce, deliver or offer a minor to any one prohibited by this Act to keep or have in his company a minor as provided in the preceding paragraph x x x

MEMORY AID IN CRIMINAL LAW II

By: Atty. Angel

CRIMES AND PENALTIES -- Book II (RPC)

TITLE I CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

ARTICLE 114 -- Treason

Elements:

- 1) That offender ***owes allegiance*** to the government of the Philippines.
- 2) That there is a ***war*** in which the Philippines is involved.
- 3) That the offender ***EITHER:***

Le a) ***Levies*** war against the government, or

Ad b) ***Adheres*** to the enemies, giving them aid or comfort.

(Recall **LeAd**)

a) ***Levying war*** -- means an actual assembling of men for the purpose of executing a treasonable design by force.

b) ***Adhering to the enemy*** -- means mentally favoring the enemy, emotionally.

c) ***Giving aid or comfort*** -- means an act which strengthens the enemy in the conduct of war, or weaken the defense of our country in resisting the enemy.

Two ways of proving treason

- a) Two-witness rule
- b) Confession of guilt in open court

Rules on treason

- a) Espionage during peace becomes treason during war.
- b) Treachery and evident premeditation are inherent and necessarily absorbed in the crime of treason but not ignominy or cruelty in commission of treason.

Laurel vs. Misa, 77 PR 856

Anastacio Laurel filed petition for *habeas corpus* because detained for treason during Word War II. He argued that his allegiance to the country is suspended during war, as well as sovereignty of the country vis-a-vis its citizens because the State was incapable of providing protection to its citizens during the war.

Held: SC denied petition for habeas corpus and convicted Laurel for treason. SC said citizen owes permanent and absolute allegiance, not temporary or conditional allegiance to country. No such thing as "suspended conjugal fidelity" in marriage, just like allegiance to country. Further, only exercise of sovereignty suspended, but not sovereignty itself, otherwise it would lead to political suicide and provide a perfect excuse for powerful nations to invade and oppress weaker states with impunity.

People vs. Perez, 83 PR 314.

Held: Commandeering of women to satisfy the lust of Japanese officers during World War II is not treason because it does not directly strengthen the enemy and weaken our defense. Whatever "favorable effect to Japanese is merely trivial, imperceptible and unintentional."

ARTICLE 115 -- Conspiracy and Proposal to Commit Treason

The conspiracy or proposal to commit the crime of treason shall be punished

x x x.

A) CONSPIRACY

- 1) That it is committed in ***times of war***.
- 2) That two or more persons ***come to an agreement*** to levy war against the Government, or to adhere to the enemies and to give them aid and comfort. (In short, that there was an agreement to commit treason in any of the two (2) modes).

B) PROPOSAL

- 1) That it is committed in ***times of war***.
- 2) That a person ***decides to commit treason*** in any of the two modes.
- 3) That he ***proposes*** its execution to some other persons.

a) As a general rule, mere conspiracy and proposal to commit a felony is not punishable because there are mere preparatory acts in the subjective phase. This is an **exception to the general rule**.

b) In conspiracy and proposal to commit treason, the **two-witness rule** does **not** apply here because this is a separate and distinct offense from treason.

ARTICLE 116 -- Misprision of Treason

Elements:

- 1) That the offender **owes allegiance** to the Philippines, and without being a foreigner;
- 2) That he has **knowledge of any conspiracy** to commit treason against the Government;
- 4) That he (a) **Conceals** or (b) Does **not disclose** and make known the same, as soon as possible to the proper authority.

Note:

a) Article 116 does **not** apply when treason is already committed by someone and the accused does not report its commission to the proper authorities.

b) The offender here is punished as principal in **Misprision of treason**, and not as a mere accessory to treason.

ARTICLE 117 -- Espionage

Two ways of committing espionage

- a) By **entering** without authority a warship, for, naval or military establishment or reservation to obtain any information, plans, photographs, or other data of a confidential nature relative to the defense of the Philippine archipelago.
- b) By **disclosing** to the representative of a foreign nation the contents of the articles, data or information referred to in **par. no. 1** which he had in his possession by reason of the public office he holds.

Commonwealth Act No. 616 (An Act to Punish Espionage and other Offenses Against National Security)

Acts penalized:

- 1) Unlawful **obtaining** or permitting to be obtained information affecting national defense.
- 2) Unlawful **disclosing** of information affecting national defense.
- 3) **Disloyal acts** or words in times of **peace**.
- 4) **Disloyal acts** or words in times of **war**.
- 5) **Conspiracy** to commit the preceding acts.

Note:

a) Harboring or concealing violators of this law is also an offense.

b) **Espionage** may also be committed both in times of peace and war, but usually during peace. Because the act of relaying confidential information which constitutes **espionage during**

peace becomes treason during war (for strengthening the enemy and weakening the defense of our country against the foreign enemy).

ARTICLE 118 -- Inciting to war and giving motives for reprisal

Elements:

- 1) That the offender performs unlawful or unauthorized acts.
- 2) That such acts provoke or give occasion for a war involving, or liable to involve, the Philippines, or exposes Filipino citizens to reprisals on their persons or their property.
- a) By the nature of the crime, it can only be committed during ***times of peace***.

ARTICLE 119 -- Violation of neutrality

Elements:

- 1) That there is a ***war*** in which the Philippines is not involved;
- 2) That there is a ***regulation*** issued by competent authority for the purpose of enforcing neutrality;
- 3) That the offender ***violates*** such regulation.

Note:

- a) This crime can only be committed in ***times of war***, although the Philippines is not yet involved in such war precisely, there is a regulation to ensure neutrality which offender violated.

ARTICLE 120 -- Correspondence with enemy country

Elements:

- a) That there is a ***war*** involving the Philippines;
- b) That offender shall have ***correspondence*** with the enemy country, or with a territory occupied by the enemy troops;
- c) That such ***correspondence*** falls under the following:
 - 1) Prohibited by the government.
 - 2) Carried on in ciphers or conventional signs;
 - 3) Contains notice or information which might be ***useful to the enemy***, or intended by the offender to ***aid the enemy***.

ARTICLE 121 – Flight to enemy country

Elements:

- 1) That there is a ***war*** in the Philippines is involved.
- 2) That the offender ***owes allegiance*** to the Philippines.
- 3) That the offender ***attempts to flee***, or go to the enemy country.
- 4) That going to the enemy country is ***prohibited*** by competent authority.

Note:

- a) This felony may also be committed by a foreigner, as he owes allegiance to the government, although in a ***temporary capacity***.

ARTICLE 122 -- Piracy in general and mutiny on high seas or in Philippine waters. (As amended by **Sec. 3, R.A. 7659**).

Two ways/modes of piracy:

- 1) By **attacking or seizing** a vessel on the high seas.
- 2) By **seizing** the whole or part of the cargo or equipment of the vessel, while on the high seas, OR their personal belongings of its complement or passengers, the offenders **not** being members of the complement, or passengers.

Elements:

- 1) That a vessel is on the **high seas**.
- 2) That the offenders are **strangers** to the vessel, meaning they are **not** members of the complement, or passengers of the vessel.
- 3) That the offenders: a) **Attack** that vessel or b) **Seize** the whole or part of the cargo of said vessel, its equipment, or the personal belongings of its complement or passengers.

Note:

a) Hence, if the offenders who seized the vessel by violence or intimidation or force upon things are members of the crew or passengers thereof, crime is **not piracy** but **ROBBERY IN THE HIGH SEAS**.

b) **Mutiny on the high seas** -- this involves the (1) Unlawful resistance to a superior officer; and (2) Raising of commotion and disturbances on board a ship against the authority of its commander, while ship is on the high seas.

Distinguished from piracy -- in piracy, the offenders are strangers to the vessels and there is intent to gain.

c) **High seas** -- refers to any waters on the seacoast, which are without the boundaries of the low-water mark, although such waters may be in the jurisdictional limits of a foreign government.

PD 532 (An Act Punishing the Act of Aiding or Abetting Piracy)

Requisites:

- 2) Offender knowingly
 - a) **Aids** or protects pirates;
 - b) **Acquires** or receives property taken by such pirates;
 - c) Directly or indirectly **abets** the commission of piracy.
- 2) Directly or indirectly **abets the commission of piracy**.

ARTICLE 123 -- Qualified piracy

*The penalty of **reclusion perpetua to death** shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:*

- S** 1) *When they have **seized** a vessel by boarding or firing upon the same;*
- A** 2) *Whenever the pirates have **abandoned** their victims without means of saving themselves;*

M 3) Whenever the crime is accompanied by **murder, homicide, physical injuries or rape. (As amended by Sec. 3, R.A. No. 7659)**
(Recall SAM)

Note:

- a) Any of said crimes accompanying the commission of piracy becomes an element of **qualified piracy**. As such, they cannot make the crime complex.
- b) There is qualified mutiny under Article 123, but limited under par. 2 and 3 of **Article 123**.

People vs. Lol-lo and Saraw, 43 PR 19

On June 30, 1920, six **vintas** intercepted two Dutch boats, killed the men and raped two women by “methods too horrible to be described.” The Muslim pirates Lol-Lo and Saraw, with their companions, put holes and abandoned victims without means of saving themselves and fled to Tawi-Tawi where they were arrested. The two challenged the jurisdiction of Zamboanga CFI because crime committed outside of Philippine jurisdiction.

Held: SC affirmed their conviction and sustained Zamboanga CFI jurisdiction because piracy (qualified piracy at that!) can be prosecuted anywhere. Pirates being hostes humani generis and piracy being a crime against humanity, it can be prosecuted anywhere where any of the elements of the crime was committed. Piracy has no territorial limits. Application also of EXTRATERRITORIALITY principle. (Article 2, par. 5)

People vs. Rodriguez, 135 SRA 485;

Held: PD 532 expressly provides that qualified piracy is punishable by mandatory death. Hence, the mitigating circumstance of plea of guilt cannot be appreciated in accused’s favor.

People vs. Siyoh, Kiram, 141 SCRA 356.)

Held: Since the crime committed was a special complex crime of qualified piracy with murder, the penalty shall be death, regardless of number of persons killed during the piracy.

R.A. 6235 (Ant--Aircraft Piracy or Hijacking Law of 1971)

Acts punished:

- 1) Usurping or seizing control of an aircraft of Philippine registry, while it is in flight, and **compelling the pilots** thereof to change the course or destination.
- 2) **Usurping or seizing control** of an aircraft of foreign registry, while within Philippine territory, compelling the pilots thereof to land in any part of Philippine territory.
- 3) **Carrying or loading on board** an aircraft operating as a public utility passenger aircraft in the Philippines such **flammable, corrosive, explosive** or poisonous substances.
- 4) Loading, shipping or transporting on board a cargo aircraft operating as a public utility in the Philippines **flammable, corrosive or poisonous substances**, if not done in accordance with **Air Transportation Office** rules and regulations.

Aircraft is “in flight” -- from the moment all exterior doors are closed following embarkation, until such time when the same doors are again opened for disembarkation.

TITLE II CRIMES AGAINST FUNDAMENTAL LAWS OF THE STATE

ARTICLE 124 -- Arbitrary detention

*Any public officer or employee who **detains, without legal grounds**, a person shall suffer:*

1) *If detention has **not exceeded three days**;*

*x x x The commission of a **crime, violent insanity or any other ailment** requiring the compulsory confinement of patient in a hospital considered legal grounds for detention of persons.*

*(Recall **CIA**)*

Valid grounds for warrantless arrest:

1) When a person to be arrested has **actually committed**, is already committing, or attempting to commit an offense in his presence;

2) When an offense has **just been committed**, and arresting officer has **personal knowledge of facts** indicating that the person to be arrested has committed it; and

3) When person to be arrested is an **escaped prisoner**.

Probable cause – reasonable ground of suspicion supported by circumstances sufficiently strong in themselves to warrant a reasonable man in believing that the accused to be arrested is **probably guilty thereof**. Act done in good faith.

Distinguish: Arbitrary detention vs. Illegal detention:

1) In **Arbitrary detention**, principal offender is a public officer; in **Illegal detention**, principal offender is a private person, or a public officer acting in a private capacity beyond the scope of his authority.

2) In **Arbitrary detention**, offender who is a public officer has a duty which carries with it the authority to make an arrest; in **Illegal detention**, the offender is a private person, or a public officer who does not have the authority or power to detain.

ARTICLE 125 -- Delay in the delivery of detained persons.

*Penalty imposed upon a public officer who detains any person for some **legal ground** and **fails to deliver** such person to proper judicial authorities:*

1) **Within 12 hours** for crimes punishable by light penalties;

2) **Within 18 hours** for crimes punishable by correctional penalties;

3) **Within 36 hours** from crimes punishable by afflictive or capital penalties.

Umil vs. Ramos, 187 SCRA 311

It's a petition for habeas corpus alleging that Umil et al were being unlawfully detained without probable cause. **Held: SC denied habeas corpus petition since they were caught in the**

act of committing acts of rebellion, and petitioner Dural had gunshot wounds sustained after killing 2 Capcom soldiers the day before being hospitalized.

People vs. Burgos, 144 SCRA 1

Appeal from the Davao RTC decision convicting Ruben Burgos for *Illegal Possession of Firearms in Furtherance of Subversion*. Earlier Burgos was arrested by police authorities without any warrant in Digos, Davao del Sur while plowing the field for allegedly possessing unlicensed firearms which his wife earlier surrendered to the authorities, under duress.

Held: SC reversed conviction and held that warrantless arrest of petitioner Burgos void because Burgos was not committing a crime when arrested. Policemen also had no personal knowledge Burgos was “probably guilty” of illegal possession of firearms, except for the polluted information of Cesar Masamlok who has motive to testify against Burgos. It was tantamount to a “fishing expedition” hence, the gun was inadmissible in evidence.

Note:

- a) ***“Shall fail to deliver to proper judicial authorities”*** does not mean physical delivery but the making of an accusation or charge, or filing of an ***Information*** against the person arrested, with the corresponding court or judge.
- b) ***Request for preliminary investigation*** – the person so arrested may request for a preliminary investigation, but he must sign a waiver of ***Article 125***.
- c) ***Article 125*** does ***not*** apply when arrest is by virtue of a warrant of arrest. In such case, the accused can be detained indefinitely.
- d) In ***illegal detention***, the offender is a private individual; and the detention is legal from the beginning, but becomes illegal after a certain period of time when offended party is not delivered to the proper judicial authorities within the specified period.

ARTICLE 126 -- Delaying release

Elements:

- 1) That the offender is a ***public officer*** or employee.
- 2) That there is a ***judicial or executive order*** for the release of a prisoner or detention prisoner *or* there is a proceeding upon a petition for the liberation of such person.
- 3) That the offender ***without good reason:***
 - a) ***Delays the service*** of the notice of such order to the prisoner;
 - b) ***Delays the performance*** of such judicial or executive order for the release of the prisoner, or the proceedings upon a petition for the release of such person.

ARTICLE 127 -- Expulsion.

ARTICLE 128 -- Violation of domicile

Penalty upon any public officer or employee who, not being authorized by judicial order, shall perform the following acts:

- En** 1) **Enter** the dwelling against the will of the owner thereof;
Se 2) **Search** papers or other effects found therein without the previous consent of the owner, or
Ref 3) Having surreptitiously entered said dwelling and being required to leave, **refuses** to do so.

(Recall EnSeRef)

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he is **not authorized** by judicial order to enter the dwelling and/or to make a search for papers and other effects.
- a) **Special aggravating circumstances** are:
 - 1) If committed at nighttime; 2) If any papers or effects not constituting evidence of a crime are **not** immediately returned, after a search is made by the offender.

ARTICLE 129 -- Search warrants maliciously obtained and abuse in serve of those legally obtained

Elements (or punishable acts)

- 1) By procuring a search warrant **without just cause**, or
- 2) Though having procured the same **with just cause**:
 - a) By **exceeding** his authority, or
 - b) By **using unnecessary severity** in executing this search warrant legally obtained.

ARTICLE 130 – Searching domicile without witnesses.

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he **searches the domicile**, papers or other belongings of any person.
- 3) That the owner, or any member in his family, or **two witnesses residing** in the same locality, are **not** present.

ARTICLE 131 – Prohibition, interruption and dissolution of peaceful meeting

Elements:

- 1) That the offender is a **public officer** or employee.
- 2) That he performs any of the following prohibited acts:
 - a) **Prohibiting or interrupting** the holding of a peaceful meeting or dissolving the same, without legal ground.
 - b) **Hindering** any person from joining any lawful association or from attending any of its meetings.
 - c) **Prohibiting or hindering** any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses, or redress of grievances.

Note:

- a) There is no legal ground to prohibit the meeting when the danger is **not** imminent, and the evil to be prevented is not a serious one.
- b) The offender must be a stranger, and not a participant thereto.
- c) The venue is **not** a religious place.
- d) Even if it's a religious ceremony attended by members of religious sect but it's done in a **public place**, and it's interrupted, the crime is **Interruption of peaceful meeting** under Article 131.

ARTICLE 132 -- Interruption of religious worship

Note:

- a) Must be committed in a **religious place and during a religious ceremony or gathering** otherwise, crime would be more of violation of **Article 131** (*Prohibition, interruption and dissolution of peaceful meeting*).
- b) This article refers to the exercise of religious manifestations, and not to quasi-religious ceremonies such as a mere house blessing.
- c) The crime may be committed by a public officer or private person.

ARTICLE 133 -- Offending religious feelings

*Penalty is imposed upon anyone who, in a **place devoted** to religious worship or during the **celebration** of any religious ceremony, shall perform acts **notoriously offensive** to the feelings of the faithful*

Note:

- a) The act must be directly to the religious belief itself, and must be notoriously offensive to the feelings of the faithful. Otherwise, it is only **unjust vexation**.
- b) In **People vs. Baes, (68 PR 203)** the SC laid down three tests of what acts constitute "notoriously offensive to the feelings of the faithful."
 - 1) If act **ridicules religious dogma**.
 - 2) If act **mocks or scoffs** at a religious ceremony.
 - 3) If act **destroys** an object of veneration.

Further, SC held that what is "notoriously offensive" depends on the feelings of the Catholic faithful, or members of the religious congregation.

TITLE III CRIMES AGAINST PUBLIC ORDER

ARTICLE 134 – Rebellion and coup

*The crime of rebellion is committed **1) by rising publicly** and **2) by taking arms** against the Government for the purpose of removing from the allegiance to said Government or its law, the territory of the Republic of the Philippines, or any part thereof, of any body of land, naval or other armed forces, or **depriving** the Chief Executive or the Legislature of any of their powers or prerogatives.*

Enrile vs. Salazar, 186 SCRA 217

Senator Juan Ponce Enrile, et al arrested by military for “*Complex crime of rebellion with murder and multiple frustrated murder*” for failed coup attempt from November 29 to December 10, 1989 where President Aquino was almost overthrown. He filed a *Motion to Quash Information* because no such crime as complex crime but only simple rebellion which absorbs common crimes like murder, etc.

Held: SC sustained Enrile and held it’s only simple rebellion which absorbs common crimes like murder, kidnapping committed on occasion or in furtherance thereof. Further, to allow complexing which would result in death penalty would defeat purpose of complex crimes which is to favor the accused, especially since this is a political offense treated with leniency which, according to Atty. Angel based on this case, is based on social contract theory which implicitly recognizes people’s sovereign right to overthrow existing government which no longer represents their interests.

Enrile vs. Hon. Judge Amin, 189 SCRA 573

Along with complex crime of rebellion in QC RTC, Enrile also charged for violation of **P.D. 1829** which punishes act of **Concealing or Harboring Fugitives**. Enrile again filed *MTQ Information* alleging that simple rebellion necessarily absorbs also the act of concealing or harboring fugitives under P.D. 1829.

Held: SC sustained Enrile and held that absorption theory in rebellion applies not only to common crimes like murder, kidnapping committed in furtherance or on occasion thereof, but likewise applies and extends to crimes punishable under special laws like P.D. 1829.

People vs. Lovedioro, 250 SCRA 389)

Held: SC held that gravamen of offense in rebellion is “public armed uprising.” Certainly the act of Lovedioro with two others in shooting a policeman cannot constitute rebellion. Lovedioro has burden of proof to establish that killing was done with a political motive and he failed to discharge that burden. Rather, it was a mere belated afterthought to mitigate his liability.

ARTICLE 134-A Coup d’etat

Coup d’etat is a swift attack, accompanied by violence, intimidation, threat, strategy or stealth, 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, singly or simultaneously, carried out anywhere in the Philippines by any person or persons belonging to the military or police or holding any public office or employment, with or without civilian support or participation, for the purpose of seizing or diminishing state power.

ARTICLE 135 -- Penalty for rebellion and coup

ARTICLE 136 – Conspiracy and proposal to commit rebellion and coup

ARTICLE 137 -- Disloyalty of public officers or employees

ARTICLE 138 -- Inciting to rebellion

Penalty shall be imposed upon any person who, **without taking arms** or being in open hostility against the Government, shall **incite others** to the execution of any of the acts specified in **Article 134** of this code, by means of speeches, proclamations, writing, emblems, banners or other representations tending to the same end.

ARTICLE 139 -- Sedition

The **crime of sedition** is committed by persons who rise publicly and **tumultuously** in order to attain by force, intimidation, or by other means outside of legal methods, any of the following objects:

- 1) To prevent the **promulgation of a law**, or the holding of any popular election.
- 2) To prevent the **National Government**, or any provincial or municipal government, or any public officer thereof from **freely exercising its or his functions**, or prevent the execution of any administrative order.
- 3) To **inflict any act of hate or revenge** against the person or property of a **public officer** or employee.
- 4) To **inflict any act of hate or revenge**, for any political or social end, against **private persons** or any social class; and
- 5) To **despoil**, for any political or social end, any person, municipality or province, or the National Government, of all its property or any part thereof.

a) While rebellion intends to overthrow the existing duly-constituted government, sedition is much more limited in scope as enumerated in Article 139.. Also it is done **"tumultuously."**

ARTICLE 140 -- Penalty for sedition

ARTICLE 141 -- Conspiracy to commit sedition

ARTICLE 142 -- Inciting to sedition

Penalty shall be imposed upon any person who, **without taking any direct part in sedition**, **1)** should **incite others** to the accomplishment of any of the acts which constitute sedition, by means of speeches, proclamations, writing, emblems, cartoons, banners, or other representations tending to the same end, or upon any person or persons who shall utter seditious words or speeches, write, publish or **circulate scurrilous libels** against the government , or any of the duly constituted authorities thereof x x x.

Espuelas vs. People, 90 SCRA 524)

Espuelas had his picture taken as if committing suicide, because he was disillusioned with the Roxas administration "infested with Hitlers and Mussolinis" and "crooks."

Held: *SC affirmed Espuelas' conviction in Bohol CFI and CA for violation of Article 142 for circulating scurrilous libel against government. Asking people to put under juez de cuchillo all the Roxas people in power who are all crooks is Inciting to sedition through scurrilous libel.*

ARTICLE 143 -- Acts preventing meeting of National Assembly

ARTICLE 144 -- Disturbance of proceedings

ARTICLE 145 – Violation of parliamentary immunity

(See *Martinez vs. Morfe*, 44 SCRA 22 in relation to **Article 6, Sec. 11 of 1987 Constitution** which grants parliamentary immunity to a Senator or member of House of Representatives for all offenses punishable by **not more than six years imprisonment** while Congress is in session.)

ARTICLE 146 -- Illegal assembly

Persons liable:

- 1) The organizers or leaders of the meeting.
- 2) Persons merely present at the meeting. (but must have common intent to commit the felony of illegal assembly.)

Note:

a) Audience must be actually incited. If in the meeting the audience is incited to the commission of rebellion or sedition, crime committed is **ILLEGAL ASSEMBLY** insofar as organizers or leaders and persons present. The one inciting them is liable for the crime of **INCITING TO REBELLION or SEDITION**.

ARTICLE 147 -- Illegal association

Persons liable:

- 1) Founders, directors and president of the association.
- 2) Members of the association.

ARTICLE 148 -- Direct assault

Penalty shall be imposed upon **1) Any person who, without a public uprising, shall employ force or intimidation for the attainment of any of the purposes enumerating in crimes of rebellion and sedition, OR 2) Shall attack, employ force, or seriously intimidate or resist any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.**

Qualified when:

- 1) Committed with a **weapon**.
- 2) Offender is a **public officer** or employee.

3) Offender **lays hands** upon a person in authority.

Note:

- a) Additional penalty for attacking ambassador or minister. **(R.A. 75)**
- b) Offender must have prior knowledge that the victim is a person in authority or an agent of the PIA and has intent to defy authorities.

People vs. Delfino Beltran, 138 SCRA 521;

Delfino Beltran and 5 others shot Mayor Crisolgico and police authorities who approached them because they were making trouble and were very boisterous at night inside Puzon compound. Without provocation, Beltran's group fired at mayor.

Held: SC affirmed conviction of Beltran for "double attempted murder with DIRECT ASSAULT" because they attacked and shot at mayor's group while mayor and police were directly in the discharge of their official functions to maintain peace and order. Beltran et al could not claim self-defense because they were the unlawful aggressors when they fired without warning on mayor's group, and ran after mayor's group after hitting them.

People vs. Dollantes, 151 SCRA 592;

In April 1983 barangay captain Gabutero was delivering a speech to start dance when Pedro Dollantes danced "**nagkorantsa**" with knife, and challenging everyone. Barangay captain admonished him, and Mr. Dollantes and eight others attacked and stabbed him to death.

Held: SC affirmed conviction for "Direct Assault resulting in Murder" because barangay captain, a person in authority, was killed and attacked while directly performing his official functions.

People vs. Hecto, 135 SCRA 113

Barangay Captain Pedrosa confronted Hecto brothers for not paying slaughter fees and they almost fought. A few weeks later, the Hecto brothers attacked Pedrosa.

Held: SC affirmed conviction for Direct assault because although Pedrosa was not attacked while directly performing his official functions, it was "on occasion of such performance" meaning, it was "by reason of such past performance of official duties."

ARTICLE 149 -- Indirect assault

Elements:

- 1) That a person in authority or his agent is the victim of any of the forms of direct assault defined in Article 148.
- 2) That a person comes to the aid of such PIA or his agent.
- 3) That the offender makes use of force, or intimidation, upon such person coming to the aid of the PIA or his agent.
- a) **Indirect assault** can only be committed when a direct assault is also committed.

ARTICLE 150 -- Disobedience to summons issued by the National Assembly

ARTICLE 151 – Resistance and disobedience to PIA and agents of a PIA

ARTICLE 152 -- Persons in authority

Any person who is **directly vested with jurisdiction**, whether as an individual or as a member of some court or government corporation, board or commission. A barangay captain and a barangay chairman shall also be deemed as a **person in authority**.

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 barrio councilman, barrio policeman and a barangay leader, and any person who comes to the aid of a person in authority, shall be deemed an agent of a person in authority.

Also, **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 professional duties, or on the **occasion of such performance**, are deemed as **persons in authority**.

ARTICLE 153 - Tumults and other disturbances of public order.

Punishable acts:

- 1) Causing any **serious disturbance** in public peace, office or establishment.
- 2) Interrupting or disturbing public performances, functions or gatherings, **not** included in Articles 131-132.
- 3) Making an **outcry** tending to incite rebellion or sedition in any meeting, association or public place.
- 4) **Displaying placards** or emblems which provoke a disturbance of public order in such place.
- 5) **Burying with pomp** the body of a person who has been legally executed.

Note:

- a) Serious disturbance must be planned or intended.
- b) Outcry – 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.

ARTICLE 154 -- Unlawful use of means of publication and unlawful utterances

ARTICLE 155 -- Alarms and scandal

Penalty shall be imposed upon any person who:

- 1) Shall **discharge** any firearm, rocket, firecracker or their explosive calculated to cause alarm or danger.
- 2) Shall **instigate** any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility.
- 3) Shall, while **wandering about at night** or while engaged in any other nocturnal amusement, shall disturb the public peace.
- 4) Shall, while **intoxicated**, cause any public disturbance or scandal not falling under Article 153.

Note:

- a) The act being punished here is producing alarm or danger as a consequence.
- b) **Charivari** – includes a medley of discordant voices, a mock serenade made of kettles, tin, horns designed to annoy or insult.

ARTICLE 156 -- Delivering prisoners from jail

Elements:

- 1) That there is a person confined in jail, or penal establishment (detention included).
- 2) That the offender **removes** such person, or **helps the escape** of such person.
- a) Offender is usually an **outsider**.
- b) Employment of violence, intimidation or bribery is not necessary.

Alberto vs. dela Cruz, 98 SCRA 406)

Held: SC held that Governor Cledera could not be held liable under Article 156 because Delivering prisoners from jail necessarily involves an OUTSIDER or a person with no custody at all of the escaped prisoner. Neither can Gov. Cledera be held liable under Infidelity in the Custody of Prisoners because this provision requires offender must have DIRECT and ACTUAL CUSTODY of escaped prisoner, which Gov. Cledera does not have. "Evasion through negligence" is defined as "definite laxity amounting to deliberate non-performance of duty."

ARTICLE 157 -- Evasion of service of sentence

Elements:

- 1) That the offender is a convict by **final judgment**.
- 2) That he is **serving his sentence** consisting of deprivation of liberty.
- 3) That he **evades the service** of his sentence by escaping during the term of his sentence (by reason of final judgment).

Qualified by:

- 1) Means of **unlawful entry**.
- 2) By breaking doors, windows, gates, walls, roofs or floors.
- 3) By using picklocks, false keys, disguise, deceit, violence or intimidation.
- 4) Through connivance with other convicts or employees of the penal institution.

Tanega vs. Masakayan, 19 SCRA 564;

Held: SC held that petitioner Adelaida Tanega could not invoke prescription of penalty because prescription of penalty only commences upon her "evasion of service of sentence." In this case, prescription never even commenced to run in her favor because "evasion of service of sentence" presupposed she was convicted, and put to jail, and evaded sentence by escaping while in jail. Here she was never put to jail at all because she hid from the authorities upon her conviction hence, in effect, there was no evasion of sentence to speak of at all.

People vs. Abilong, 82 SCRA 172)

Held: SC held that violation of the terms of *destierro* also constitutes violation of service of sentence. This is because “imprisonment” which is literal English translation is wrong, the correct interpretation being Spanish which refers to “deprivation of liberty” as penalty for conviction. And certainly *destierro* is a form of deprivation of liberty as punishment for an offense hence, entering Manila during the 2-year prohibited period constitutes Violation of service of sentence also.

ARTICLE 158 -- Evasion of service of sentence on occasion of disorder, conflagration, calamity

Penalty shall be imposed upon any person who shall **evade service of his sentence**, by leaving the penal institution where he shall have been confined, on the occasion of a disorder resulting from a conflagration, earthquake, explosion or similar catastrophe by suffering an **increase of one-fifth of time still remaining to be served**, but not to exceed six months, if he fails to give himself up **within 48 hours** following issuance of a proclamation by the Chief Executive announcing passing away of such calamity.

If convict gives himself up **within 48 hours**, he shall be entitled to a reduction under **Article 98**.

Note:

- 1) If the offender fails to give himself up, he gets an increased penalty.
- 2) If the offender gives himself up, he is entitled to a **reduction in his sentence**.

ARTICLE 159 -- Other cases of evasion of service of sentence

Penalty shall be imposed upon any convict who, having been granted conditional pardon by the Chief Executive, shall violate any of the conditions of such pardon.

Note:

- a) Violation of conditional pardon is a distinct crime. Conditions extend to special laws.
- b) Offender must be found guilty of subsequent offense before he can be prosecuted under **Article 159**.

ARTICLE 160 – Commission of another crime during service of penalty for another previous offense

Elements:

- 1) That the offender was already convicted by final judgment.
- 2) That offender committed a new felony before beginning to serve such sentence, or while serving the same.
 - a) **Quasi-recidivism** -- is a special aggravating circumstance where a person, after having been convicted by final judgment of a previous offense, shall commit a new felony before beginning to serve such sentence, or while serving the same.
 - b) First crime which the offender is serving sentence need not be felony (could be ***mala in se*** or ***mala prohibita***. But the new offense must be a felony (***mala in se***).
 - c) Not required that the two offenses are embraced in the same title of this Code.

d) Being special aggravating circumstance, it cannot be offset by ordinary mitigating circumstances.

People vs. Dioso, 132 SCRA 616

Dioso, along with Abarca, was serving sentence in Muntinglupa for robbery. While serving sentence, he committed another felony, that of murder for the killing of a certain Angelito Reyno, a rival gang member which he stabled to death.

Held: SC affirmed his conviction and being a quasi-recidivist for committing a new felony (murder) while serving sentence for robbery, the maximum penalty for the new felony (murder) shall be applied, which is DEATH penalty, regardless of any mitigating or aggravating circumstances attending the commission of the crime.

TITLE IV CRIMES AGAINST PUBLIC INTEREST

ARTICLE 161 -- Counterfeiting seal and forging signature of the Chief Executive of the Government of the Philippine Islands

ARTICLE 162 -- Using counterfeit seal and forged signature of the Chief Executive

a) The offender should not be the forger here also.

ARTICLE 163 -- Making and importing and uttering false coins

Elements:

- 1) That there be false or counterfeit coins.
 - 2) That the offender either made, imported or uttered such coins.
 - 3) That in case of uttering such false or counterfeit coins, he connived with the counterfeiters or importers.
- a) Coin is also or counterfeited if it is forged, or if it is not authorized by the government as legal tender, regardless of its intrinsic value.
- b) ***To utter*** is to pass counterfeited coins, including delivery or the act of giving them away.
- d) Former coins withdrawn from circulation may also be counterfeited but coins of foreign country are not included.

People vs. Kong Leon, 48 OG 661

Accused Kong Leon was arrested for possession of U.S. gold coins already out of circulation and charged with counterfeiting of gold coins. He set up the defense that counterfeiting only includes coins still in circulation.

Held: SC affirmed his conviction for counterfeiting. This is because counterfeiting of coins are not limited to coins still in circulation, but also extends to coins OUT of circulation or already withdrawn by the state, the legislative intent being to curb counterfeiting and preclude the possibility that the counterfeiter may only be honing his skills and later apply his trade to counterfeiting coins still in actual circulation.

ARTICLE 164 -- Mutilation of coins

Punishable acts:

- 1) Mutilating coins of the 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.

Note:

- a) Mutilation of foreign currency **not** included.
- b) Mutilation is the offense of taking off part of the metal either by filing it or substituting it for another metal of interior quality.
- c) Coins must be in legal tender and **still in circulation**, unlike in **counterfeiting of coins** which can apply to coins already withdrawn or out of circulation.

ARTICLE 165 -- Selling of false or mutilated coins without connivance

Punishable acts:

- 1) Possession of coin, counterfeited or mutilated by another person, with **intent to utter** the same, knowing that it is false or mutilated.

Elements:

- b) Possession; b) With intent to utter;
- 2) Knowledge
- 3) Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Elements:

- a) Actually uttering
- b) Knowledge

Note:

- a) Does **not** require legal tender.
- b) Accused must have knowledge of the fact that the coin is false.

ARTICLE 166 -- Forging treasury or bank notes or other documents payable to bearer; importing and uttering the same

Punishable acts:

- 1) Forging or falsification of treasury or bank notes or other documents payable to bearer.
- 2) Importation of such false or forged obligations or notes.
- 3) Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

Note:

- b) Notes and other obligations and securities that may be forged or falsified under **Article 166**: Treasury or bank notes; certificates; and other obligations and securities, payable to bearer

ARTICLE 167 -- Counterfeiting, importing and uttering instruments payable to bearer

Elements:

- 1) That there be an instrument payable to order or other such document of credit not payable to bearer.
- 2) That the offender either ***forged, imported or uttered*** such instrument.
- 3) That in case of uttering, he connived with the forger or importer.

ARTICLE 168 -- *Illegal possession and use of false treasury or bank notes and notes payable to bearer.*

Elements:

- 1) That any treasury or bank notes or certificate or other obligations 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) That the ***offender knows*** that any of those instruments is forged or falsified.
- 3) That he performs any of these acts:
 - a) ***Using*** any of such forged or falsified instruments.
 - b) ***Possession with intent to use*** any of such forged or falsified instruments.

ARTICLE 169 -- *Forgery. How committed.*

Forgery is committed by any of the following means:

- 1) By ***giving*** to a treasury or bank note or any instrument payable to bearer or order the appearance of a true genuine document.
- 2) By ***erasing, substituting, counterfeiting or altering*** by any means the figures, letters, words or signs contained therein.

People vs. Galano, 54 OG 897

The accused Galano wrote "Victory" at the back of P1-bill which is a pre-war treasury note and used it to buy 4 *balut* eggs, and make it appear to be a genuine pre-war treasury note. This is because by affixing the word "Victory" in this pre-war treasury notes, they can now be used as legal tender after the war, per government policy.

Held: SC affirmed conviction under Article 169, 1st par. which was "by giving to a treasury or bank note the appearance of a true genuine document" although it was, in fact, already withdrawn from circulation.

ARTICLE 170 -- *Falsification of legislative documents.*

Elements:

- 1) That there be a bill, resolution or ordinance enacted or approved or pending approval by the National Assembly or any provincial board or municipal council.
- 2) That the offender ***alters*** the same.
- 3) That he has ***no proper authority***.
- 4) That the alteration has changed the meaning of the document.

Note:

a) **Forgery** as used in **Article 169** refers to the falsification and counterfeiting of treasury notes or any instruments payable to bearer or to order. On the other hand, **Falsification** is the commission of any of the eight (8) acts mentioned in Article 171 of legislative, public, official, commercial or private documents, or wireless, or telegraphic messages.

b) The crime of **Falsification** must involve a writing which is a document in the legal sense.

c) *Classification of documents:*

1) **Public document** -- **a)** a document created, executed or issued by a public official in response to exigencies of the public service, or in execution of which a public official intervened; **b)** an instrument authorized by a notary public, or a competent public official with the solemnities required by law.

2) **Official document** -- document issued by a public official in the exercise of the functions of his office; also considered a public document.

3) **Commercial document** – defined and regulated by the Code of Commerce or other commercial law.

4) **Private document** – a deed or instrument executed by a private person without the intervention of a notary public, or other person legally authorized, by which document, some disposition or agreement is provided, evidenced or set forth.

d) *Importance of classification:*

1) In private documents, criminal liability will not arise, unless there is damage caused to a third person. Mere falsity will not bring about criminal liability.

2) In public or commercial documents, criminal liability can arise although no third person suffered damage. Intent to cause damage is immaterial since what is being punished is the violation of the sanctity of the public document.

ARTICLE 171 – Falsification by public officer of public documents.

*Penalty shall be imposed upon any public officer or employee or notary who, **taking advantage of his official position, shall falsify** a document by committing any of the following acts:*

C 1) **Counterfeiting** or imitating any handwriting, signature or rubric.

C 2) **Causing** to appear that persons have participated in any act or proceeding when they in fact did not participate.

A 3) **Atributing** to persons who have participated in an act or proceeding statements other than those in fact made by them.

S 4) Making untruthful **Statements** in a narration of facts.

T 5) Altering **T rue** dates.

A 6) Making any **Alteration** or intercalation in a genuine document which changes its meaning.

I 7) **I ssuing** in an authenticated form a document purporting to be a copy of an original when no such original exists, or including in such copy a statement contrary to, or different from, that of the genuine document.

R 8 Intercalating any instrument or note **Relative** to the issuance thereof in a protocol, **Registry** or official book.

(Recall **CCASTAIR**)

Elements:

- 1) That the offender is a public officer, employee or notary public.
- 2) That he **takes advantage of his official position.**

Requisites:

- a) That offender has a duty to make or prepare or otherwise intervene in the preparation of the document.
- b) That offender has official custody of the document which he falsified.
- c) That offender performs **any** of the following **eight (8)** criminal acts.

Note:

- a) In **par. f, g and h**, document must be a genuine document.
- b) Falsification may be committed by simulating or fabricating a document.
- c) In case offender is an **ecclesiastical minister**, the act of *Falsification* is committed with respect to any record or document of such character that its falsification may affect civil status of persons.

Siquian vs. People, 171 SCRA 223)

Mayor Siquian issued a **Certification** that “position exists and funds are available therefor” for the position of Clerk in the Office of Municipal Secretary for a certain complainant, Jesusa Carreon. Truth, however, is that no such position existed and no money in the plantilla allocated for such purpose. Hence, the complaint for **Falsification** against Mayor Siquian who argued that he acted in good faith, and had no criminal intent to cause harm or damage.

Held: *The SC affirmed his conviction and held all requisites for Falsification are present, thus:*

- P** 1) ***A Public officer taking advantage of his public position***
U 2) ***Making Untruthful statement in a narration of facts.***
L 3) ***Has Legal obligation to disclose the truth.***
A 4) ***Such narration of facts is Absolutely false. (Recall PULA)***

SC pointed out that Mayor Siquian was certainly a public officer who took advantage of his public position when he issued that “untruthful statement” which is “absolutely false,” and who has the legal obligation to disclose the truth in issuing such Certification. The Certification being a public document, criminal intent or intent to cause damage is immaterial because what is being punished is the destruction of truth being solemnly proclaimed in said public document.

“Absolutely false” means there is “no iota of colorable truth in such narration of facts.”

ARTICLE 172 -- Falsification by private individual and use of falsified documents.

Punishable acts:

- 1) Falsification of public, official or commercial document by a private individual.

- 2) Falsification of private document by any person.

Note:

- a) Possessor of a falsified document is presumed to be the author of the falsification.
- b) Damage, or intent to cause damage, is not necessary in **Article 172, par. 1.**
- c) In **Falsification of a private document**, the offender must have counterfeited the false document, and he must have performed an independent act which operates to the prejudice of a third person, unlike in **Falsification of public document where damage is immaterial.**
- d) **Falsification as a means to commit Estafa/Malversation** – when a document is falsified through any of the acts of *Falsification* enumerated under **Article 171** and such **Falsification** is a necessary means to commit **Estafa or Malversation** – crime is a **complex crime of Estafa/Malversation through Falsification of Public Document**. Document falsified, however, must be a public, official or commercial document.
- e) If document falsified is a private document which requires another independent act of the falsification in order to defraud another -- crime is only one crime of **Falsification of a Private Document**, and not a complex crime anymore because the deceit involved in **Estafa** here is absorbed in the deceit in **Falsification of a Private Document**.

Dava vs. People, 202 SCRA 62

Petitioner Dava bumped two pedestrians, where one died and the other suffered serious physical injuries. His license was confiscated pending trial for two felonies, *Homicide and Serious Physical Injuries through Reckless Imprudence*. More than one year later, he was arrested in possession and use of a fake license.

Held: *SC affirmed his conviction for violation of Article 172 for Falsification by private individual and use of falsified documents. Being in possession and use of a fake and falsified license which is a public document, he is also presumed to be the author thereof. Further, the license being a public document, intent to cause damage is immaterial. The suspicious circumstances in obtaining license after over one hour from application through intervention of fixers also gave rise to presumption that license was fake or falsified.*

ARTICLE 173 -- Falsification of wireless, cable, telegraph and telephone messages, and use of falsified messages

Punishable acts:

- 1) **Uttering** fictitious wireless telegraph or telephone messages.
 - 2) **Falsifying** wireless, telegraph or telephone messages.
 - 3) **Using** such falsified messages.
- a) Private individual cannot be a principal by direct participation under **Article 173**, unless he is an employee of a corporation engaged in the business of sending or receiving wireless, telegraph or telephone messages.

ARTICLE 174 -- False medical certificates, false certificates of merit or service, etc.

Penalty shall be imposed:

- 1) Any physician or surgeon who, in connection with the practice of his profession, shall **issue a false certificate**; and
 - 2) Any public officer who shall issue a false certificate of merit or service, good conduct or similar circumstances.
- a) Also covers a private individual who falsified a certificate falling in the classes mentioned in nos. 1 and 2.

ARTICLE 175 -- Using false certificates

Elements:

- 1) That a physician or surgeon has **issued a false medical certificate**, or a public officer has issued a false certificate of merit of service, good conduct or similar circumstances.
- 2) That the offender **knew** that the certificate was false.
- 3) That he **used** the same.

ARTICLE 176 – Manufacturing and possession of instruments or implements for falsification

Punishable acts:

- 1) **Making or introducing** into the Philippines any stamps, dies, marks or other instruments or implements for counterfeiting.
- 2) **Possession with intent to use** the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

ARTICLE 177 -- Usurpation of authority or official functions

*Penalty shall be imposed upon any person who 1) shall knowingly and **falsely represent** himself to be an officer, agent or representative of any department or agency of the Philippine government, or of any foreign government, or who, under pretense of official position, 2) shall perform any act pertaining to an person in authority or public officer of the Philippine government x x x without being lawfully entitled to do so.*

Note:

- 1) There must be a positive, express and explicit representation.
- 2) To be liable, the offender should have **misrepresented** himself to be an officer, agent or representative of any department or agency of the government; or should have performed an act pertaining to a person in authority, or public officer.

ARTICLE 178 – Using fictitious name and concealing true name

Elements: (Using fictitious name)

- 1) That the offender uses a name other than his real name.
- 2) That he uses that fictitious name publicly.
- 3) That the purpose of the offender is
 - a) To **conceal** a crime.
 - b) To **evade** the execution of a judgment.

- c) To **cause damage** to public interest.

Elements: (Concealing true name)

- 1) That the offender conceals
- c) His true name.
- d) All other personal circumstances.
- 2) That the purpose is only to **conceal his identity**.

ARTICLE 179 -- Illegal use of uniform or insignia.

ARTICLE 180 -- False testimony against a defendant

Elements:

- 1) That there be a criminal proceeding.
- 2) That offender testifies falsely under oath against the defendant.
- 3) That offender who gives **testimony that it is false**.
- 4) That defendant against whom false testimony is given is either acquitted or convicted in a final judgment.

Note:

- a) Defendant must be sentenced to at least a correctional penalty or a fine, or must be acquitted.
- b) Witness who gave false testimony is liable even if the testimony was not considered by the court.

ARTICLE 181 -- False testimony favorable to a defendant

ARTICLE 182 -- False testimony in civil cases

ARTICLE 183 -- Perjury

Elements:

- A/S** 1) That the accused made a **Statement** under oath, or executed an **Affidavit** upon a material matter.
- C** 2) That the statement or affidavit was made before a **Competent** officer, authorized to receive and administer oath.
- A** 3) That in that statement or affidavit, the accused made a willful and deliberate **Assertion** of falsehood.
- L** 4) That the sworn statement or affidavit containing the falsity is required by **Law**.
(Recall **A/SCAL**)

Note:

- a) **Material matter** is 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 or inquiry or which legitimately affects the credit of any witness who testifies.

- b) **Oath** is any form of attestation by which a person signifies that he is bound in conscience to form an act faithfully and truthfully.
- c) **Affidavit** is a sworn statement in writing.

Diaz vs. People, 191 SCRA 86

Petitioner Reolandi Diaz stated in his Personal Data Sheet (PDS) or CSC Form 212 that he was “a four year BA student in 1950-1954 at Cosmopolitan and Harvardian Colleges” for purposes of his promotion/reappointment as School Administrative Assistance at Jose Abad Santos High School. These statements later turned out to be false so he was prosecuted for Falsification. Pampanga CTFI held him liable for Falsification, which IAC affirmed. **Held:**

SC modified the IAC and CFI decision, and instead convicted him for Perjury. All elements of perjury are present, thus:

- A/S 1) It was an Affidavit/Statement under oath upon a material matter.**
 - C 2) By a Competent officer authorized to administer oath.**
 - A 3) Containing deliberate Assertion of falsehood.**
 - L 4) Such sworn statement or Affidavit is required by Law, or for legal purposes.**
- (Recall A/SCAL)**

The CSC Form 212 was a Statement under oath where affiant swears to the truth of all the contents therein, and duly sworn to before a competent officer. Because it was a sworn statement under oath, crime is Perjury, and not Falsification. It was a material matter because such statement was for a legal purpose, which is for his reappointment/promotion as School Administrative Assistant of Jose Abad Santos National High School. It contained a deliberate assertion of falsehood because records and investigation later showed he was never enrolled at Cosmopolitan and Harvardian Colleges.

ARTICLE 184 -- Offering false testimony in evidence. (Subornation in perjury)

Elements:

- 1) That the offender ***offered in evidence a false witness or false testimony.***
- 2) That he knew the witness the witness, or the testimony was false.
- 3) That the offer was made in a judicial or official proceeding.

Note:

- a) Applies when the offender induces a witness to testify falsely.

ARTICLE 185 -- Machinations in public auction

Penalty shall be imposed upon any person who 1) shall solicit any gift or promise as a consideration for refraining from taking part in any public auction, and any person who 2) shall attempt to cause bidders to stay away from an auction by threats, gifts, promise or any other artifice, with intent to cause the reduction of the thing auctioned.

Ouano vs. CA, 188 SCRA 799)

Ouano and Echavez agreed that Ouano will desist, as well as another buyer, in the bidding of 3,710 square meters of land in Mandawe, Cebu owned by DBP while they had an

internal agreement that they would later divide the property between them. The owner of the land, DBP, however, refused to approve their internal arrangement, and sold property to Echavez alone. CFI and CA affirmed sale to Echavez exclusively so Ouano filed petition for certiorari to SC.

Held: SC modified CFI and CA decision and FORFEITED land in favor of state. SC declared the entire sale to Echavez void because it was sold in a manner contrary to law, and constituted a violation of Article 185, or Machinations in public auction where the bidders caused other bidders to stay away from auction to reduce the price of thing auctioned. Article 1411 of the Civil Code was also applied.

ARTICLE 186 -- Monopolies and combinations in restraint of trade

ARTICLE 187-- Importation and disposition of falsely marked articles or merchandise made of gold, silver or other precious metals or their alloys.

ARTICLE 188 – Substituting and altering trademarks, trade names or service marks

ARTICLE 189 -- Unfair competition, fraudulent registration of trademark, tradename or service mark

Punishable acts:

- a) Selling his goods, giving them the general appearance of the goods of another manufacturer or dealer (***unfair competition***)
- b) Affixing to his goods or using in connection with his services a false designation of origin, or any false description or representation; selling such goods or services (***fraudulent designation of original; false description***).
- c) Procuring fraudulently from the patent office the registration of trade name, trademark or service mark.

Note:

- a) Mere offer to sell completes the crime.
- b) Evidence of actual fraudulent intent is not necessary.

TITLE V -- COMPREHENSIVE DANGEROUS DRUGS ACT

Read R.A. 9165 (amending R.A. 6425); also Read Comprehensive Dangerous Drugs Act: by Dascal and Aquino

TITLE VI -- CRIMES AGAINST PUBLIC MORALS

(Offenses against Decency and Good Customs)

Article 200 -- Grave scandal

Elements:

- 1) Offender performs an act or acts.

- 2) Such act or acts are **highly scandalous** as offending against decency or good customs.
- 3) The highly scandalous conduct is **not expressly falling** within any other article of this Code.
- 4) The act or acts complained of be committed in a **public place or within the public knowledge or view**.

Note:

- a) Distinction should be made as to the place where the offensive act was committed:
 - 1) If in **public place**, there is criminal liability irrespective of whether the immoral act was in open public view.
 - 2) If in **private place**, public view is required.

Article 201 -- Immoral doctrines, obscene publications and indecent shows

Penalty shall be imposed upon:

1) Those who shall **publicly expound** or proclaim doctrines openly contrary to public morals;

2) (a) The **authors of obscene literature**, published with their knowledge if any form; the editors publishing such literature; and the owners/operators of the establishment selling the same.

(b) Those who, in theaters, fairs, cinematographs or any other place, exhibit indecent or immoral plans, scenes, acts or shows, whether live or in film, x x x which (1) **glorify criminals** or condone crimes; (2) serve no other purpose but to **satisfy the market for violence, lust or pornography**; (3) **offend any race** or religion; (4) tend to abet traffic in and **use of prohibited drugs**; and (5) are **contrary to law**, public order, morals, good customs, established policies, lawful orders, decrees and edicts;

(3) Those who **shall sell, give away or exhibit films**, prints, engraving, sculptures or literature which are offensive to morals.

People vs. Aparici, 52 OG 249

Held: The test of obscenity is its tendency to deprave or corrupt those whose minds are susceptible to such immoral influences, and whether or not such act, publication or performance shocks the ordinary and common sense of men as indecency. **The perceptible and discernible reaction of the public or audience witnessing the act will determine whether it is indecent or not. When the dancer had nothing on except a too abbreviated pair of nylon panties to interrupt her stark nakedness, and the spectators were howling and shouting, "Sige muna, sige, nakakalibog," it was clear that her dancing was indecent.**

People vs. Padan, 101 PR 749

On September 14, 1953, police raided a *toro* show in Tondo, Manila where Marina Padan was caught in the act of sexual intercourse with Mr. Cosme, her *toro* partner.

Held: *Test of obscenity is whether or not it is devoid of any socially redeeming value. An actual exhibition of the sexual act, preceded by acts of lasciviousness, can have no*

redeeming features. One can see nothing but clear and unmitigated obscenity, indecency and an offense to public morals, inspiring nothing but lust and lewdness, and exerting a corrupting influence on the youth of the land.

Article 202 -- Vagrants and prostitutes

*The following are **vagrants**:*

- 1) *Any person having **no apparent means of subsistence** yet who has the physical ability to work and neglects to apply himself or herself to some lawful 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;*
- 3) *Any idle 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** or women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.*

TITLE VII (CRIMES AGAINST PUBLIC OFFICERS)

Article 203 -- Requisites to be a public officer.

Requisites to be a public officer:

- 1) ***Taking part in the performance of public functions** in the Government or performance in said Government or in any of its branches public duties as an employee, agent or subordinate official of any rank or class.*
- 3) *That his authority to take part in the performance of public functions or to perform public duties must be:*
 - L** a) *By direct provisions of **Law**.*
 - E** b) *By popular **Election**.*
 - A** c) *By appointment by competent **Authority**.*

CRIMES OF MALFEASANCE AND MISFEASANCE IN OFFICE

- 1) **MISFEASANCE** -- *improper performance of some act which might lawfully be done.*
- 2) **MALFEASANCE** -- *performance of some act which ought not to be done.*
- 3) **NONFEASANCE** -- *omission of some act which ought to be performed.*

Article 204 -- Knowingly rendering unjust judgment.

Elements:

- 1) *That the offender is a **judge**.*
- 2) *That he renders a judgment in a **case submitted** to him for decision.*
- 3) *That judgment is **unjust**.*

- 4) That judge **knows** that his judgment is unjust.

Article 205 -- Judgment rendered through negligence. .

Elements:

- 1) That offender is a **judge**.
- 2) That he renders a **judgment** in a case submitted to him for decision.
- 3) That judgment is **manifestly unjust**.
- 4) That it is due to his **inexcusable negligence or ignorance**.

Article 206 -- Unjust interlocutory order.

Article 207 -- Malicious delay in the administration of justice.

Elements:

- 1) That the offender is a **judge**.
- 2) That there is a proceeding in his court.
- 3) That he **delays** the administration of justice.
- 4) That the **delay is malicious**, or caused by the judge with deliberate intent to inflict damage on either party in the case.

Article 208 -- Prosecution of offenses: negligence and tolerance.

Elements:

- 1) **Maliciously refraining** from instituting prosecution against violators of the law.
- 2) **Maliciously tolerating** the commission of offenses.

PREVARICACION -- this is **dereliction of duty** when knowing the commission of a crime, offender does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, offender merely **tolerates its commission**. Offender must also act with **malice** and deliberate intent to *favor the violator of the law*.

Article 209 -- Betrayal of trust by an attorney or solicitor. Revelation of secrets.

Punishable acts:

- 1) Causing **damage to his client**, either:
 - a) by any **malicious breach** of professional duty; or
 - b) **Inexcusable negligence** or ignorance. (Must establish damage to client)
- 2) **Revealing any of the secrets** of his client learned by him in his professional capacity. (Damage is **not** necessary)
- 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 the first client, or after having received confidential information from said client. **(But if there is consent, there is no crime.)**

Article 210 -- Direct bribery.

Punishable acts:

- 1) Agreeing to perform, or by performing, in consideration of any offer, promise, gift or promise, an ***act constituting a crime***, in connection with the performance of his official duties.
- 2) Accepting a gift in consideration of the execution of an act which ***does not constitute a crime***, in connection with the performance of his official duty.
- 3) Agreeing to refrain, or by ***refraining, from doing something which is his official duty to do***, in consideration of gift, promise, or reward.

Note:

- a) Must be in the discharge or performance of his official duties.

Dacumos vs. Sandiganbayan, 195 SCRA 833

The petitioner, a revenue examiner of BIR, offered to settle the tax liability of *R. Revilla Interiors* in the amount of 35,000.00 instead of P73,307.31. The manager of the firm reported the matter to the NBI and entrapment was arranged. Petitioner accepted the tendered white enveloped containing money previously dusted, and then he was arrested. Petitioner Dacumos set up defense of instigation and that charges against him were fabricated.

Held: SC affirmed conviction. It was not instigation but a legitimate entrapment. Court is not inclined to believe that the complainant would be so vindictive as to falsely incriminate the petitioner with the serious charge of bribery just because the petitioner refused to reduce the tax assessment. The technical report on the test conducted by the NBI for fluorescent powder on the petitioner's hands invited easy acceptance.

Article 211 – Indirect bribery.

Elements:

- 1) Offender is a ***public officer***.
- 2) He ***accepts gifts***.
- 3) The gifts are offered to him by ***reason of his office***.

Note:

- a) Distinctions between ***Direct bribery vs. Indirect bribery***:
 - 1) In ***Direct bribery***, there is an agreement between the public officer and the giver of the gift or present; while in ***Indirect bribery***, there is usually no such agreement.
 - 2) In ***Direct bribery***, the offender agrees to perform an act or refrains from doing something because of the gift or promise; while in ***Indirect bribery***, it is not necessary that the officer would do any particular act or even promise to do an act, as it is enough that he accepts gifts by reason of his office.

Article 211-A -- Qualified bribery.

*Any public officer who, entrusted with law enforcement, refrains from arresting or prosecuting an offender who has committed a crime punishable by ***reclusion perpetua*** and/or death, in consideration of any offer, promise, gift or present, shall suffer the penalty for the offense which was ***not prosecuted***.*

Article 212 -- Corruption of public official.

Penalty shall be imposed upon any person who shall have made the offer or promise or given the gifts or presents.

Article 213 -- Frauds against national treasury and similar offenses.

Penalty shall be imposed upon any public officer who:

- 1) x x x
- 2) Being entrusted with the collection of taxes, licenses, fees and other imposts, shall be guilty of any of the following acts or omissions:
 - a) Demanding the payment of **sums different or larger** than those authorized by law.
 - b) **Failing voluntarily to issue a receipt**, as provided by law, for any sum of money collected by him officially.
 - c) **Collecting or receiving**, directly or indirectly, by way of payment or otherwise, things or objects of a **nature different** from that provided by law.

Note:

- 1) **Illegal exaction under par. 1** -- offender is a public officer who must take advantage of his office, that is he intervened in the transaction in his official capacity; the public officer entered into an agreement with any interested party or speculator, or made use of any other scheme with regard to furnishing supplies, making of contracts, or the adjustment or settlement of accounts relating to public funds or property; the public officer had intent to defraud the government.
- 2) **Illegal exaction under par. 2** -- offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts; that he commits any of the following three (3) acts or omissions.

Article 214 -- Other frauds.

Article 215 -- Prohibited transactions.

Article 216 -- Possession of prohibited interest by a public officer.

Note:

- a) Actual fraud is **not necessary**.
- b) Intervention must be by virtue of the public office held.

Article 217 -- Malversation.

Any public officer who, by reason of the duties of his office, is accountable for public funds of property, shall appropriate the same, or shall take or misappropriate or shall **consent, or through abandonment or negligence**, shall permit any other person to take such public funds or property, wholly or partially, shall be guilty of **Malversation** of public funds or property.

*The failure of a public officer to have duly forthcoming any public funds or property with which he is chargeable, upon demand by any duly authorized officer, shall be **prima facie evidence** that he has put such missing funds or property to personal use.*

Punishable acts:

- 1) Appropriating public funds or property.
- 2) Taking or misappropriating the same.
- 3) **Consenting or through abandonment or negligence** by 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.

Common elements:

- 1) That the offender is a **public officer** who has:
 - a) Official custody of public funds or property or the duty to collect or receive funds due to the government.
 - b) The obligation to account for them to the government.
- 2) That he has the **custody** or control of funds or property by reason of the duties of his office.
- 3) That those funds or property were public funds or property for which he was **accountable**.
- 4) That he **appropriated**, took, misappropriated or consented or through **abandonment or negligence, permitted another** person to take them.

Note:

- a) **Malversation** may be committed by private individuals in the following cases:
 - 1) Those in conspiracy with public officers guilty of **Malversation**.
 - 2) Those who are accessory or accomplice to a public officer.
 - 3) Custodian of public funds or property in whatever capacity.
 - 4) Depositary or administrator of public funds or property.
- b) In such case, damage not necessary to the government.

Labatagos vs. Sandiganbayan, 183 SCRA 415

Labatagos was cashier of MSU, General Santos City. Upon audit she was found to have a shortage of P105,711.94 which, she argued, were amounts she gave to her superiors but the receipts were lost.

Held: *The SC affirmed her conviction for Malversation. Considering that the receipts were lost, and accused could not produce the amount, the presumption that she misappropriated the missing amounts remained un rebutted. Malversation, after all, can be committed not only through personal misappropriation of public funds, but by knowingly or negligently allowing others to misappropriate public funds for private use.*

Ilogon vs. Sandiganbayan, 218 SCRA 766

Petitioner Ilogon was both postmaster and cashier of Bureau of Posts om Cagayan de Oro City. As cashier, she accepted payments, made collections and extended '**vales**' or advances to postal employees. Later she had a shortage of P118,871.29 and sued for **Malversation**. He argued he did not personally benefit from the amount.

Held: *SC affirmed Sandiganbayan conviction for Malversation.. Humanitarian grounds like giving 'vales' or cash advances is not a valid defense. He is still liable for knowingly or negligently allowing others to misappropriate public funds. That extending cash advances was a long-standing practice at the Bureau of Post is not a defense. Further, giving of "vales" is also prohibited under PD 1445, Section 69, otherwise known as the Government Auditing Code of the Philippines.*

Article 218 – Failure to render accounts.

Elements:

- 1) That the offender is a public officer, whether in the service or separated therefrom.
- 2) That he must be an accountable officer for public funds or property.
- 3) That he is required by law or regulation to render accounts to the Commission on Audit, or to the provincial auditor.
- 5) That he ***fails to do so for a period of two months***, after such accounts should be rendered.

Article 219 -- Failure to render accounts before leaving the country.

Elements:

- 1) That offender is a public officer.
- 2) That he must be an accountable officer for public funds or property.
- 3) That he unlawfully left (or about to leave) the Philippines ***without securing from the COA*** a certificate showing that his accounts have been finally settled.

Article 220 -- Illegal use of public funds or property.

Elements:

- 1) That the offender is a public officer.
- 2) That there is public fund or property under his administration.
- 3) That such public fund or property has been appropriated by law or ordinance.
- 5) That 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:

- a) Unlike in **Malversation** where offender in certain cases profits from the proceeds of the crime, in **Technical malversation** the offender does not derive personal gain or profit from the effects of the crime.
- b) In **Malversation**, the public fund is applied to the personal use of the offender or of another person, while in **Technical malversation**, the public fund is applied to another public use, but not for the personal use of the offender or another person.

Article 221 -- Failure to make delivery of public funds or property.

Elements:

- 1) **Failing to make payment** by a public officer who is under obligation to make such payment from the government funds in his possession.
- 2) **Refusing to make delivery** by public officer who has been ordered by competent authority to deliver any property in his custody or under his administration
- a) The failure to make payment must be made maliciously.

Article 222 – Officers included in the preceding provisions.

Article 223 -- Conniving with or consenting to evasion.

Elements:

- 1) That the offender is a **public officer**.
- 2) That he had custody or charge of a prisoner, either detention prisoner or **prisoner by final judgment**.
- 3) That such prisoner **escaped** from his custody.
- 4) That he was in connivance with the prisoner in the **latter's escape**.

Article 224 -- Evasion through negligence.

Elements:

- 1) That the offender is a public officer.
- 2) That he has charge with the conveyance or custody of a prisoner either detention prisoner or prisoner by final judgment.
- 3) That such prisoner **escapes through negligence**.

Note:

- a) That is being punished here is **“definite laxity amounting to deliberate non-performance of duty”** on the part of the guard.

Rodillas vs. Sandiganbayan, 161 SCRA 347

Accused Patrolman Rodillas was directed by his superior to escort a certain Zenaida de Andres in a hearing before Judge Pardo in Caloocan City. After the hearing, they ate lunch, and allowed her to go to the comfort room where she escaped through the window.

Held: SC affirmed his conviction for Evasion through negligence under Article 224. By allowing Zenaida to go to the comfort room without first checking the CR for possible escape, and for not reporting the escape immediately to the authorities, he is liable under Article 224. It is his duty to take the necessary precaution to assure the absence of any means of escape but through “definite laxity amounting to deliberate non-performance of duty,” he allowed the detention prisoner to escape.

Article 225 -- Escape of prisoner under custody of a person not a public officer.

Note:

a) This article does not apply the principle in conspiracy that the ***“crime of one is the crime of all.”*** If the offender is not the custodian of the prisoner, offender is guilty of ***Delivery prisoners from jail*** under **Article 156**.

Article 226 -- Removal, concealment or destruction of documents.

Article 227 -- Officer breaking seal.

Article 228 -- Opening of closed documents.

Article 229 -- Revelation of secrets by an officer.

Article 230 -- Public officer revealing secrets of private individual.

Article 231 -- Open disobedience.

Article 232 -- Disobedience to order of superior officer, when said order was suspended by inferior officer.

Article 233 -- Refusal of assistance.

Article 234 -- Refusal to discharge elective office.

Article 235 -- Maltreatment.

*Penalty shall be imposed upon any public officer or employee who shall **overdo himself** in the correction or handling of a prisoner or detention prisoner under his charge.*

***Qualified** if the purpose of the maltreatment is to extort a confession, or to obtain some information from the prisoner.*

Elements:

- 1) That the offender is a public officer or employee.
- 2) That he has under his charge a prisoner or detention prisoner.
- 3) That he **maltreats such prisoner** in either of the following manner:
 - a) By overdoing himself in the correction and handling of a prisoner or detention prisoner under his charge either --
 - 1) By the imposition of punishments not authorized by the regulations.
 - 2) By inflicting such punishments authorized by law but in a cruel and humiliating manner.
 - b) By **maltreating such prisoner** to extort a confession or to obtain some information from the prisoner.

Article 236 -- Anticipation of duties of office or position.

Article 237 -- Prolonging performance of duties or office.

Article 238 -- Abandonment of office or position.

Elements:

- 1) That the offender is a public officer.
- 2) That he **formally resigns** from his position.
- 3) That his resignation has **not** yet been accepted.
- 4) That he **abandons his office** to the detriment of the public service.

Article 239 -- Usurpation of legislative powers.

Article 240 -- Usurpation of executive functions.

Article 241 -- Usurpation of judicial functions.

Article 242 -- Disobeying request for disqualification.

Article 243 -- Orders or requests by executive officers to any judicial authority.

Article 244 -- Unlawful appointments.

Elements:

- 1) That the offender is a public officer.
- 2) That he **nominates or appoints** a person to a public office.
- 3) That such person **lacks** the legal qualification.
- 4) That the offender knows that his nominee or appointee **lacks the qualifications** at the time he made the nomination or appointment.

Article 245 -- Abuses against chastity.

Elements:

- 1) That the offender is a public officer.
- 2) That offender **solicits or makes immoral or indecent advances** to a woman.
- 3) Such woman must be
 - a) Interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or directly charged with the care and custody of prisoners or persons under arrest; or
 - b) Under the custody of such offender who is a warden or other public officer.
 - c) The wife, daughter, sister or relative within the same degree by affinity of the person under the custody of the offender.

TITLE VIII (CRIMES AGAINST PERSONS)

Article 246 -- Parricide.

Any person who shall kill his father, mother or child, whether legitimate or illegitimate, or any of his ascendants or descendants, or his spouse, shall be guilty of parricide, and shall be punished x x x

Elements:

- 1) That a person is killed.
 - 2) That the deceased is killed by the accused.
 - 3) That the deceased is the father, mother or child (but not less than three days old), whether legitimate or illegitimate, or a legitimate other ascendant or descendant, or the legitimate spouse, of the accused.
- a) Cases of parricide when penalty shall not be ***reclusion perpetua*** to death:
- 1) Parricide through negligence.
 - 2) Parricide by mistake (**Article 249**)
 - 3) Parricide under exceptional circumstances (**Article 247**)
- 4) Crime is **PARRICIDE** -- If killing of legitimate or illegitimate father, mother or child or **legitimate** spouse or legitimate other ascendant or descendant. If illegitimate spouse, crime is murder. If killing of legitimate brother or sister, crime is not parricide but homicide or murder.
- 5) If killing of child less than 3 days old and capable of intra-uterine life outside the uterus -- crime is **Infanticide**. If incapable of surviving outside the uterus, crime is **Abortion**.
- 6) If stranger helps husband kill the wife -- husband liable for **Parricide**, but stranger is liable for **Murder (or homicide)** because no relationship with the wife.

People vs. Jumawan, 166 SCRA 739

Presentacion Jumawan conspired with her father, and two brothers, in killing her husband, Rodolfo with whom he is no longer in love. Together they killed her husband by stabbing him around 9:30 p.m. on June 19, 1976 inside a store owned by their relative.

Held: SC affirmed conviction for Murder qualified by treachery and the generic aggravating circumstances of superior strength and evident premeditation. SC held, however, it could not be Parricide because the relationship of husband and wife was not alleged in the Information which is an indispensable requirement for the conviction of parricide.

Article 247 -- Death under exceptional circumstances.

*Any legally married person who, having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon any of them any serious physical injury, shall suffer the penalty of **destierro**.*

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

Elements:

- 1) That a legally married person or parent surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person.
- 2) That he/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) That he has not promoted or facilitated the prostitution of his wife or daughter, or that he and she has not consented to the infidelity of the other spouse.

Note:

- a) The discovery, the escape, the pursuit and the killing must all form part of one continuous act.
- b) This is applicable only when the daughter is single.

People vs. Abarca, 153 SCRA 735

Abarca, after having surprised his wife in sex with Kingsley Paul Koh, shot him dead after more than one hour had lapsed. Also seriously injured were the Amparado couple and in the lower court he was convicted for the ***Complex crime of Murder with Double Frustrated Murder.***

Held: SC reversed the conviction, and sentenced him only to Destierro under Article 247. Neither was he held liable for the serious physical injuries sustained by the Amparado couple because killing, or injuries, suffered under Article 247 is not an unlawful act. Also, despite the lapse of more than one hour since discovery up to the killing, SC held it was still committed “immediately thereafter” since the killing was the “proximate result of the outrage overwhelming the accused in finding the other spouse in the basest act of sexual infidelity.”

Article 248 -- Murder.

Any person who shall kill another, not falling within the provisions of Article 246, shall be guilty of murder and punished by ***reclusion perpetua*** to death if committed with any of the following attendant circumstances.

- P** 1) In consideration of a **Price**, reward or promise.
- I** 2) By means of **Inundation**, fire, poison, explosion, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
- E** 3) On occasion of an **Earthquake**, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
- T** 4) With **Treachery**, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense of means or persons to insure or afford impunity.
- E** 5) With **Evident premeditation**.
- A** 6) With cruelty, by deliberately and inhumanly **Augmenting** the suffering of the victim, or outraging or scoffing at his person or corpse. (Recall **PIETEA**)

Elements:

- 1) A person was killed.
- 2) Accused killed him.
- 3) The killing was attended by any of the attendant circumstances enumerated under **Article 248**.
- 4) The killing is not parricide or infanticide.

Note:

- a) Murder is committed when only one of the circumstances described is present. When more than one are present, the others are treated as **generic aggravating** circumstances.
- b) When the other circumstances are absorbed, they cannot be considered generic.
- c) Any of the qualifying circumstances must be alleged in the **Information**.

People vs. Buensuceso, 132 SCRA 143

Pat. Buensuceso with Pat. Aguilar shot the victim Tayag for refusing to surrender his fan knife while the victim was already retreating backwards, and later fell on his knees. The victim was hit several times and died on the spot.

Held: *The SC affirmed their conviction for Murder, qualified by treachery indicated by the wounds at his back, that he was retreating backwards, and that he was completely defenseless. Further, SC held that where victim died from several wounds inflicted by different persons and it is not known which person inflicted the mortal wound, all of them are liable for victim's death under theory of conspiracy.*

Article 249 -- Homicide.

*Any person who, not falling within the provision of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of **homicide** and punished by **reclusion temporal**.*

Elements:

- 1) A person was killed.
- 2) Offender killed him without any justifying circumstances.
- 3) Offender has the intention to kill, which is presumed.
- 4) The killing was not attended by any of the qualifying circumstances of murder, or that of parricide or infanticide.

Note:

- a) Intent to kill is conclusively presumed when death resulted. Evidence of intent to kill is important only in attempted or frustrated homicide.
- b) **Accidental homicide** – is the death of a person brought by a lawful act performed with proper care and skill, and without homicidal intent.

People vs. Pugay, 167 SCRA 439

Deceased Miranda was a 25-year-old mental retardate. His friend Pugay played games with him by putting gasoline on the victim, while Samson lighted a match, setting Miranda inadvertently on fire and killing him. Cavite CFI convicted them for murder, qualified by treachery with the mitigating circumstance of **praeter intentionem**.

Held: SC modified crime to Homicide through Reckless Imprudence. It could not be Murder because there was no intent to kill nor treachery, the two accused merely playing games on the deceased. They also had no motive to kill deceased, who is their friend. Rather, through their recklessness and negligence in putting gasoline and setting fire on the victim, they caused his death hence, crime is Homicide through Reckless Imprudence.

Article 250 -- Penalty for frustrated parricide, murder or homicide.

The courts may impose upon the person guilty of the frustrated crime of parricide, murder or homicide a penalty lower by one degree than that which should be imposed under the provisions of **Article 50**.

Article 251 -- Death caused in a tumultuous affray.

*When, while several persons **not composing groups organized for the common purpose of assaulting and attacking each other** reciprocally, quarrel and assault each other in a confused and tumultuous manner, and in the course of the affray someone is killed, and it **cannot be ascertained who actually killed** the deceased, but the person or persons who inflicted serious physical injuries can be identified, such person or persons shall be punished by **prision mayor**.*

*If it cannot be determined who inflicted the serious physical injuries on the deceased, the penalty of **prision correccional** in its medium and maximum periods shall be imposed upon all those who shall have use violence upon the person of the victim.*

Elements:

- 1) That there be several persons.
- 2) That they did not compose groups organized for the common purpose of assaulting and attacking each other reciprocally.
- 3) That several persons quarreled and assaulted one another in a confused and tumultuous affray.
- 4) That someone was killed in the course of the affray.
- 5) That it cannot be ascertained who actually killed the deceased.
- 6) That the person or persons who inflicted serious physical injuries who use violence can be identified.

Note:

- a) At least four (4) persons must take part.
- b) Persons killed need not be participants therein.
- c) If person who inflicted fatal wound is known, crime is **homicide**.

Article 252 -- Physical injuries inflicted in a tumultuous affray.

When in a tumultuous affray only serious physical injuries are inflicted upon the participants thereof and the person responsible therefor cannot be identified, all those who appear to have used violence upon the person of the offended party shall suffer the penalty next lower in degree than that provided for the physical injuries so inflicted.

Elements:

- 1) That there is a tumultuous affray.
- 2) That a participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only.
- 3) That the person responsible thereof cannot be identified.
- 4) That all those who appear to have used violence upon the person of the offended party are known.

Note:

- a) The injured party must be a participant in the affray.
- b) Only the ones who used violence are liable.
- c) Slight physical injuries excluded.

Article 253 -- Giving assistance to suicide.

*Any person who shall assist another to commit suicide shall suffer the penalty of **prision mayor**; if such person lends his assistance to another to the extent of doing the killing himself, he shall suffer the penalty of **reclusion temporal**. However, if the suicide is not consummated, the penalty of **arresto mayor** in its medium and maximum period shall be imposed.*

Punishable acts:

- 1) Assisting another to commit suicide, whether the suicide is consummated or not.
- 2) Lending his assistance to another to commit suicide to the extent of doing the killing himself.

Note:

- a) Mercy killing is the practice of painlessly putting to death a person suffering from some incurable disease. Not considered as included in Article 253 because the person killed does not want to die. A doctor who resorts to euthanasia may be liable for murder.

Article 254 -- Illegal discharge of firearms.

*Any person who shall shoot another with any firearm shall suffer the penalty of **prision correccional** in its minimum and medium periods, unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide or any other crime for which a higher penalty is prescribed by this Code.*

Elements:

- 1) That the offender discharges a firearm against or at another person.
- 2) That the offender has no intention to kill that person.

Article 255 -- Infanticide.

The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

If the crime is committed for the purpose of concealing her dishonor, she shall suffer a lower penalty x x x.

Elements:

- 1) That a child was killed by the accused.
- 2) That the deceased child was less than 72 hours old.

Note:

- a) Other person who kills a child less than three days old to suffer penalty for murder.
- b) Only the mother and maternal grandparents of the child are entitled to the mitigating circumstances of concealing the dishonor.
- c) Concealing dishonor is not an element of the crime.

Article 256 -- Intentional abortion.

Any person who shall intentionally cause an abortion shall suffer:

- 1) *The penalty of reclusion temporal if he shall use any violence upon the person of the pregnant woman.*
- 2) *The penalty of **prision mayor**, if without using violence he shall act without the consent of the woman.*
- 3) *The penalty of **prision correccional** in its medium and maximum periods if the woman shall have consented.*

Acts punished:

- 1) By using any violence upon the person of the pregnant woman.
- 2) By acting, but without using violence, without the consent of the woman (by administering drugs/beverages upon a pregnant woman without her consent).
- 3) By acting, with the consent of the pregnant woman (by administering drugs/beverages).

Elements:

- 1) That there is a pregnant woman.
- 2) That violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman.
- 3) That 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.

Note:

- a) Intentional abortion is the intentional killing of a child below three days of age incapable of surviving outside the uterus. If fetus could sustain an independent life and is killed, the crime is infanticide. Otherwise, it is abortion.
- b) The person who caused the abortion is liable under Article 256. The woman is liable under **Article 258**, if she consented to the abortion caused on her. If she did not consent to the abortion, she is not liable.

Article 257 -- Unintentional abortion.

*The penalty of **prision correccional** in its minimum and medium periods shall be imposed upon any person who shall cause an abortion by violence, but unintentionally.*

Elements:

- 1) That there is a pregnant woman.
- 2) That violence is used upon such pregnant woman without intending an abortion.
- 3) That the violence is intentionally exerted.
- 4) That as a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

Note:

- a) Violence is used upon such pregnant woman, without intending an abortion.
- b) Violence is intentionally exerted.

People vs. Salufranja, 159 SCRA 401

Filomeno Salufrania, out of jealousy, attacked and boxed his wife who was eight months pregnant, killing her and the fetus inside her womb. He was sued and convicted in the lower court for **Complex crime of parricide with intentional abortion**.

Held: SC modified crime to Complex crime of parricide with Unintentional abortion. Mere boxing on the stomach, taken together with the immediate strangling of the victim in a fight, is not sufficient proof to show intent to cause abortion. Appellant may have merely intended to kill the victim, but not necessarily to cause an abortion.

Article 258 -- Abortion practiced by the woman herself, or by her parents.

The penalty of x x x shall be imposed upon a woman who shall practice an abortion upon herself or shall consent that any other person should do so.

Elements:

- 1) That there is a pregnant woman who has suffered an abortion.
- 2) That the abortion is intended.
- 3) That abortion is caused by:

Note:

- a) The offender, who must be a physician, or midwife, causes or assists in causing the abortion.
- b) The physician or midwife takes advantage of his scientific knowledge or skill.
- c) As to pharmacists, there is no proper prescription from a physician and the offender dispenses any abortive substance.
- d) **RA 4729** -- Law which regulates the sale, dispensation, and/or distribution of contraceptive drugs or devices.

Article 259 -- Abortion practiced by a physician, midwife and dispensing of abortives.

Penalty shall be imposed upon any physician or midwife who, taking advantage of their scientific knowledge or skill, shall cause an abortion or assist in causing the same.

Any pharmacist who, without the proper prescription from a physician, shall dispense any abortive shall suffer penalty x x x and a fine x x x

Elements:

- 1) That there is a pregnant woman who has suffered an abortion.
- 2) That the abortion is intended.
- 3) That the offender, who must be a physician or midwife, caused or assisted in causing the abortion.
- 4) Said physician or midwife took advantage of his scientific knowledge or skill.

Article 260 -- Responsibility of participants in a duel.

Article 261 -- Challenging to a duel.

Article 262 -- Mutilation.

The penalty of x x x shall be imposed upon any person who shall intentionally mutilate another by depriving him, either totally or partially, of some essential organ for reproduction.

Elements:

- a) Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction.
- b) The mutilation is caused purposely and deliberately to deprive the offended party of some essential organ for reproduction.
- c) Intentionally making other mutilation by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive of that part of his body.

Article 263 -- Serious physical injuries.

Any person who shall wound, beat or assault another, shall be guilty of x x x and shall suffer:

- 1) *The penalty of **prision mayor**, if in consequence of the physical injuries inflicted, the injured person shall become insane, imbecile, impotent or blind.*
- 2) *The penalty of **prision correccional** in its medium and maximum periods if in consequence of the physical injuries inflicted, the person injured shall have lost the use of speech or power to hear, smell, or shall have lost n eye, a hand, a foot and an arm, or a leg, or shall have lost the use of any such member, or shall have become incapacitated for work in which he was habitually engaged.*
- 3) *The penalty of **prision correccional** in its minimum and medium periods if in consequence of the physical injuries inflicted, the person injured shall have become deformed, or shall have lost any other part of his body, or shall have lost the use thereof, or shall have been ill or incapacitated for the performance of the work in which he was habitually engaged for a period of more than 90 days.*

4) The penalty of **arresto mayor** in its maximum period to **prision correccional** in its minimum period, if the physical injuries shall have caused the illness or incapacity for labor of the injured person for more than 30 days.

How committed:

- 1) By wounding.
- 2) By beating.
- 3) By assaulting or
- 4) By administering injurious substances.

Elements:

- 1) When the person becomes insane, imbecile, impotent, or blind in consequence of the physical injuries inflicted.
- 2) When the injured person --
 - a) Loses the use of speech or the power to hear or smell, or loses an eye, a hand, a foot, an arm or a leg.
 - b) Loses the use of any such member; or
 - c) Becomes incapacitated for the work in which he was habitually engaged, in consequence of the physical injuries inflicted.
- 3) When the injured person becomes ill or incapacitated from labor for more than 30 days (but not more than 90 days) as a result of the physical injuries inflicted.

Article 264 -- Administering injurious substances.

Penalty shall be imposed upon any person who, without intent to kill, shall inflict upon another any serious physical injury, by knowingly administering to him any injurious substances or beverages, or by taking advantage of his weakness of mind or credulity.

Elements:

- 1) Offender inflicted upon another any serious physical injury.
- 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.

Article 265 -- Less serious physical injuries.

Any person who shall inflict upon another physical injuries x x x which shall incapacitate the offended party for labor for ten days or more, or shall require medical attendance for the same period, shall be guilty of less serious physical injuries x x x

Note:

- 1) Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time.
- 2) The physical injuries must not be those described in the preceding articles.

Article 266 -- Slight physical injuries and maltreatment.

The crime of slight physical injuries shall be punished:

1) By **arresto menor** when the offender has inflicted physical injuries which shall incapacitate the offended party for labor from **one to nine days**, or shall require medical attendance during the same period.

2) By **arresto menor** or a fine x x x and censure when the offender has caused physical injuries which does not prevent the offended party from engaging in his habitual work nor require medical attendance.

3) By **arresto menor** in its minimum period or a fine x x x when the offender shall **ill treat another by deed without causing injury**.

Acts punished:

1) Physical injuries 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.

Article 266-A Rape -- When and how committed

Elements under par. 1:

1) Offender is a man.

2) Offender had carnal knowledge of a woman.

3) Such act is accomplished under any of the following circumstances:

a) By using force or intimidation.

b) When the woman is deprived of reason or otherwise unconscious.

c) By means of fraudulent machination or grave abuse of authority.

d) Or when the woman is under 12 years of age or demented, although no force or intimidation is employed.

Elements under par. 2:

1) Offender commits an act of sexual assault.

2) The act of sexual assault is committed by any of the following means:

a) By inserting his penis into another person's mouth or anal orifice; or

b) By inserting any instrument or object into the genital or anal orifice of another person.

3) The act of sexual assault is accomplished under any of the following circumstances:

a) By using force or intimidation; or

b) When the woman is deprived of reason or otherwise unconscious; or

c) By means of fraudulent machination or grave abuse of authority; or

d) When the woman is under 12 years of age, or demented.

Republic Act 8353 -- An Act Expanding the Definition of Rape, Reclassifying Rape as a Crime Against Persons

Classification of rape:

- 1) Traditional concept under **Article 335** -- carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.
- 2) **Sexual assault** -- committed with an instrument or an object, or the use of the penis with penetration of mouth, or anal orifice. The offended party, or the offender, can either be a man or woman, that is if a woman or a man uses an instrument on anal orifice of male, he or she can be liable for rape.

Note:

- a) Sexual assault is committed under the following circumstances:
 - 1) Where the penis is inserted into the anal or oral orifice; or
 - 2) Where an instrument or object is inserted into the genital or oral orifice.
- b) Aggravating/qualifying circumstances where rape is punishable by **MANDATORY DEATH**.
 - 1) When the victim is **under 18 years of age**, and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common law spouse of the parent of the victim.
 - 2) When the victim is under the custody of the **police or military authorities**, of any law enforcement or penal institution.
 - 3) When the rape is **committed in full view** of the spouse, parent or any of the children or other relatives within the third civil degree of consanguinity.
 - 4) When the **victim is a religious** engaged in legitimate religious vocation or calling and is personally known to be such by the offender, before or at the time of the commission of the crime.
 - 5) When the victim is a **child below 7 years old**.
 - 6) When the offender knows that he is **afflicted with HIV/AIDS** or any other sexually transmissible disease.
 - 7) When committed by any member of the **AFP or para-military units** thereof of 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.
 - 8) When by reason or on occasion of the rape, the victim has suffered **permanent physical mutilation or disability**.
 - 9) When the offender **knew of the pregnancy** of the offended party at the time of the commission of the crime.
 - 10) When the offender **knew of the mental disability**, emotional disorder and/or physical disability of the offended party at the time of the commission of the crime.

People vs. Orita, 184 SCRA 105 (1990)

Accused PC soldier Orita followed 19-year-old Cristina Abayan from party, used knife to force her to have sexual intercourse, but while on top, she managed to escape. Samar RTC convicted him of frustrated rape and case on appeal.

Held: SC held it's consummated rape, and not mere frustrated rape only. Citing People vs. Erinia, no frustrated stage anymore and Erinia ruling was a stray decision. It is settled that slight penetration consummates rape, and perfect penetration not essential. Mere touching of lips of vagina, without laceration of vagina or emission, already consummates rape.

People vs. dela Pena, 233 SCRA 573 (1994)

Accused dela Pena waylaid 9-year-old Rose Marasigan on her way to school. Due to her resistance, and then playing dead, the accused dela Pena panicked, could not get an erection, and fled. Valenzuela RTC held it is consummated rape and penalty was ***reclusion perpetua***.

Held: SC, however, modified Valenzuela RTC decision and held it's only attempted rape. Although mere touching consummates rape, rape presupposes an erect penis because without erection, there can be no penetration, no matter how slight, and without penetration, there can be no consummation. Also, both the rape victim and accused testified that there was no clear penetration because the victim at first resisted, and the accused could not sustain an erection.

People vs. Campuhan, (2000 case)

Mother saw accused and houseboy Campuhan in the act of almost raping her 4-year-old daughter in a kneeling position. Medical findings indicated hymen was still intact but since in previous ***Orita ruling*** entry into labia without rupture of hymen already consummated rape, issue is whether or not crime is consummated, or attempted, rape only.

Held: SC held crime is attempted rape only. Touching here means the penis indeed touched the labia and slid into the female organ, and not merely stroke the external surface. Some degree of penetration beneath the surface must be achieved, and the labia majora must be entered. Victim herself testified that penis grazed but did not penetrate her organ. As the SC pointed out so eloquently, "there was only a shelling of the castle, but no bombardment of the drawbridge yet."

People vs. Atento, 166 SCRA 739

The victim Glenda Aringo is only 16 years of age but has a mental age of 9 to 12 years old. She was raped by their neighbor, Cesar Atento, a 39-year-old storekeeper, five times until she got pregnant. When prosecuted for rape, she testified against accused but when asked to describe the rape act, she said it was ***"Masarap."***

Held: The SC affirmed the accused's conviction for statutory rape because although she has a physical age of 16 years, she has a mental age of a 9 to 12 year old. She was, in effect, deprived of reason under 2nd par. or accused can also be liable under the last par. of Article 266-A the mental age of the victim being less than 12 years.

TITLE IX CRIMES AGAINST LIBERTY and SECURITY

ARTICLE 267 -- Kidnapping and serious illegal detention.

Any private individual who shall kidnap or detain another for in any other manner deprives him of his liberty, shall suffer the penalty of **reclusion perpetua** to death:

- 1) If the kidnapping or detention shall have **lasted more than three days**.
- 2) If it shall have been committed simulating public authority.
- 3) If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
- 4) If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

The penalty shall be **death** where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances abovementioned were present in the commission of the offense.

Note:

- a) Detention for more than three days not necessary when any of the other circumstances is present.
- b) Victim need not be placed in an enclosure; restraint need not be permanent.
- c) Qualifying circumstances: if
 - 1) Purpose is to extort ransom.
 - 2) Victim is killed, raped or tortured as a consequence.
- d) Ransom -- is the money, price or consideration paid or demanded for redemption of a captured person that would release the hostage from captivity.
- e) **Complex crime of kidnapping with murder** – when victim is killed because of his refusal to pay the ransom and where kidnapping is a necessary means to commit the murder.
But where the purpose is to kill him and not for detaining him, crime committed is **murder**.

- f) Distinctions between **Illegal detention** from **Arbitrary detention**:

- 1) In **Illegal detention**, offender is a private individual who unlawfully kidnaps, detains or deprives a person of his liberty; while in **Arbitrary detention**, offender is a public officer who detains a person without legal grounds.

- 2) In **Illegal detention**, crime is against *Personal Liberty and Security*; while **Arbitrary detention** is a crime against *Fundamental Law of the State*.

- g) Two tests for kidnapping: 1st, **actual detention** for an appreciable period of time; and 2nd, **intent to detain**.

People vs. Tomio, 202 SCRA 77

Victim Nagao, a Japanese tourist in the country, was approached by Tomio, with two other Japanese who planted marijuana in Nagao's pocket and in collusion with WPD policemen, had Nagao arrested. The three Japanese made it appear that they advanced his bail and demanded \$100,000.00 from him and refused to let him go until they paid him the amount which the victim had to ask from his father in Japan. Meantime, Nagao was able to contact a friend and the three Japanese were entrapped and arrested.

Held: *SC affirmed conviction of the three Japanese for kidnapping for ransom. While victim Nagao had freedom of locomotion, he had no freedom to leave at will because of*

detention by threats and intimidation, although not by actual force or violence. He could not escape from his captors because he could not speak Japanese, his passport and money were confiscated.

People vs. Lim, 190 SCRA 706

Aida Villanueva, ten years old, and Avelyn Villanueva, 7 years old, went to the pier to fetch their mother. Since their mother did not arrive, and taking pity on the two children, Ms. Lim sheltered them for which Ms. Lim was prosecuted and convicted for kidnapping in the Masbate RTC.

Held: *SC reversed conviction, and acquitted Ms. Lim. Using the two tests, 1st, there was no actual detention because they could leave anytime, and secondly, Ms. Lim had no intent to detain the two children. Also, no motive to kidnap because Ms. Lim could very well afford helpers.*

People vs. Padica, 221 SCRA 362.

Victim Francis Banaga was brought by Padica et al to a certain place, and then immediately killed. After a few hours after killing victim, they called the victim's father to ask for ransom.

Held: *SC modified lower court's decision, and held crime committed is only MURDER, and not Complex crime of Kidnapping for ransom with murder. It's only MURDER because the primordial criminal intent or principal purpose was really to kill, and kidnapping or detention was merely incidental neither was there intent to detain for an appreciable period of time. No ransom here because ransom is money asked in exchange for liberty and here the money was asked only when the victim was already dead.*

ARTICLE 268 -- Slight illegal detention.

If the offender shall voluntarily release the person so kidnapped or detained within three (3) days from the commencement of the detention, without having attained the purpose intended, and before the institution of criminal proceedings against him, the penalty x x x and a fine x x x.

Note:

a) If offender voluntarily releases victim ***within three days*** from commencement of detention, and without having achieved the purpose intended, and before institution of criminal proceedings against him, his liability is mitigated.

ARTICLE 269 -- Unlawful arrest.

*The penalty of x x x shall be imposed upon any person who shall **arrest or detain another** for the purpose of delivering him to the proper authorities.*

Note:

- a) Offender is any person, whether public officer or private individual.
- b) No period of detention fixed. Motive is controlling and must be coupled with the intention to deliver detainee to proper authorities.

ARTICLE 270 -- Kidnapping and failure to return a minor.

*The penalty of **reclusion perpetua** shall be imposed upon any person who, being entrusted with the custody of a minor person, shall deliberately fail to restore the latter to his parents or guardians.*

Elements:

- 1) That the offender is entrusted with the custody of a minor person (over or under 7 years old but less than 21).
- 2) That he deliberately fails to return minor to his parents or guardian.

Note:

- a) When committed by either parent, penalty is only **arresto mayor**.

People vs. Ty, 263 SCRA 754.

The mother Johanna Sombong brought daughter Arabella, 7-month-old baby to Ty couple, owner of Sir John Medical and Maternity Clinic in Caloocan. After more than five years, mother returned and sued Ty couple who referred the child to a relative who could better take care of Arabella. The Ty couple was convicted in the lower court for **Kidnapping and failure to return a minor**.

Held: *The SC reversed conviction, and acquitted Ty couple. In the first place, they did not have direct and actual custody of child since the child was left, and abandoned to them, without their prior knowledge or consent. Second, there was no deliberate nor persistent failure or refusal to return the child to the mother since they immediately contacted the child's foster parents when the mother reappeared to claim her back. Gravamen of offense is DELIBERATE AND PERSISTENT FAILURE to return a minor.*

ARTICLE 271 -- Inducing a minor to abandon his home.

*The penalty of x x x and a fine of x x x shall be imposed upon anyone who shall **induce a minor to abandon the home**.*

Elements:

- 1) A minor (whether over or under 7 years of age) is living in the home of his parents, or guardians, or the person entrusted with his custody.
- 2) Offender induces said minor to abandon such home.

Note:

- a) Inducement must be actual, and committed with criminal intent and determined by a will to cause damage.
- b) Father or mother may commit crimes under **Articles 270 and 271**, where they are living separately, and the custody of their minor child having been given to one of them, the other parent induces said minor to leave his home.

ARTICLE 272 -- Slavery.

Elements:

- 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.

ARTICLE 273 -- Exploitation of child labor.

Elements:

- 1) The offender retains a minor in his service.
- 2) That it is against the will of the minor.
- 3) That 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.

ARTICLE 274 -- Services rendered under compulsion for payment of debt.

Elements:

- 1) That the offender compels a debtor to work for him, either as a house servant or farm laborer.
- 2) That it is against the debtor's will.
- 3) That the purpose is to require or enforce the payment of a debt.

ARTICLE 275 -- Abandonment of one's own victim and persons in danger.

Prohibited acts:

- 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.
- 2) Failing to help or render assistance to another whom the offender has accidentally wounded or injured.
- 3) Failing to deliver a child, ***under seven years***, whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

Note:

- a) Par. 2 of **Article 275** applies only when someone is accidentally injured by the accused.

ARTICLE 276 -- Abandoning a minor.

Elements:

- 1) That the offender has the custody of a child.
- 2) That the child is under seven (7) years.
- 3) That he abandons such child.
- 4) That he has no intent to kill the child when the child is abandoned.

Note:

- a) Where there is intent to kill, this article does not apply.
- b) A permanent, conscious and deliberate abandonment is required in this Article.

ARTICLE 277 -- Abandonment of minor by person entrusted with his custody/Indifference of parents

Elements:

- 1) That the offender has charge of the rearing or education of a minor.

- 2) That he delivers said minor to a public institution or other persons.
- 3) That the one who entrusted such child to the offender has not consented to such act, or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

Note:

- a) The second paragraph actually refers to the ***indifference of parents***, or deliberate failure of parents to give education to their children which their status in life requires.

ARTICLE 278 -- *Exploitation of minor.*

Prohibited acts:

- 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 who are not his children or descendants in exhibitions of acrobat, gymnast, ropewalker, diver, or wild animal tamer, the offender being an acrobat, etc. or circus manager or engaged in a similar calling.
- 3) Employing any descendant ***under 12 years of age*** in dangerous exhibitions enumerated in the next preceding par., the offender being engaged in any of the said callings.
- 4) Delivering a child ***under 16 gratuitously*** to any person following any callings enumerated, or to any habitual vagrant or beggar, the offender being ascendant, guardian, teacher or person entrusted in any capacity with the care of such child.
- 5) Inducing any child ***under 16*** to abandon the home of its ascendants, guardians, curators or teachers to follow any person engaged in any callings mentioned, or to accompany any habitual vagrant or beggar, the offender being any person.

ARTICLE 279 -- *Additional penalties for other offenses.*

ARTICLE 280 -- *Qualified trespass to dwelling.*

Any private person who shall enter the dwelling of another against the latter's will, shall be punished by x x x and a fine x x x.

Elements:

- 1) That the offender is a private person.
- 2) That he enters the dwelling of another.
- 3) That such entrance is ***against the latter's will.***

Note:

- a) Qualified if committed by means of violence or intimidation.
- b) Lack of permission does not amount to prohibition; there must be opposition on the part of the owner of the house to the entry of the accused.
- c) Prohibition must be in existence prior to or at the time of entrance.

ARTICLE 281 -- *Other forms of trespass.*

Elements:

- 1) Offender enters the closed premises or the fenced estate of another.

- 2) The entrance is made, while either of them is uninhabited.
- 3) The prohibition to enter is manifest.
- 4) The trespasser has **not secured** the permission of the owner or caretaker thereof.

Note:

- a) Distinguish **Article 280** (*Qualified trespass*) from **Article 281** (*Other forms of trespass*)
 - 1) In Article 280, offender is a private person; while under Article 281 offender is any person.
 - 2) In Article 280, offender enters a dwelling house; while under Article 281 offender enters closed premises or fenced estate.
 - 3) In Article 280, offender enters an inhabited place; while under Article 281 offender enters an uninhabited place.
 - 4) In Article 280, act constituting the crime is entering the dwelling against the owner's will; while under Article 281 the crime is entering the closed premises or the fenced estate, without securing the permission of the owner or caretaker thereof.
 - 5) In Article 280, prohibition to enter is express or implied; while under Article 281 prohibition to enter must be manifest.
- b) **P.D. 772** -- penalizes squatting and other similar acts.

ARTICLE 282 -- Grave threats.

Prohibited acts:

- 1) Threatening another with the infliction upon his person, honor or property or that of his family 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) Making such threat without the offender attaining his purpose.
- 3) Threatening another with the inflicting upon his person, honor or property or that of his family any wrong amounting to a crime, the treat not being subject to a condition.

Note:

- a) The essence of the crime is **intimidation**.
- b) Qualifying circumstances: if threat was made in writing or through a middleman.
- c) The act threatened must be wrong.
- d) The crime is consummated as soon as the threats come to the knowledge of the person threatened. Not necessary that the offended party was present at the time the threats were made.
- e) Threats made in connection with the commission of other crimes are absorbed by the latter, but 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, the crime is grave threats, and the minor crime which accompanied it should be disregarded.

Reyes vs. People, 27 SCRA 686.

Petitioner Rosaura Reyes was terminated by Agustin Hallare as civilian employee of Sangley Point, Cavite. So Reyes led a rally where he shouted, "**Putang ina mo, Agustin. Lumabas**

ka. Papatayin kita.” Reyes was thus prosecuted for grave threats and grave oral defamation where lower court convicted him for both crimes.

Held: SC affirmed his conviction for **GRAVE THREATS**. This is because the words uttered were intended to threaten victim with a physical harm amounting to a crime, with the deliberate purpose of creating the belief it will be carried out. However, SC held there was no **GRAVE ORAL DEFAMATION** because the words “Putang ina mo” is a common expression employed to show anger, but not really intended to slander or defame the victim’s mother. This should not be taken literally by hearer as reflective of the mother being a prostitute but accompanying the threats for emphasis, and out of anger.

ARTICLE 283 -- Light threats.

Elements:

- 1) That the offender makes a threat to commit a wrong.
- 2) That the wrong does **not constitute a crime**.
- 3) That there is a demand for money or that other condition is imposed, even though not unlawful.
- 4) That the offender has or has not attained his purpose.

Note:

- a) **Blackmailing** may be punished under Article 283.

ARTICLE 284 -- Bond for good behavior.

x x x The person making the threats may also be required to give bail not to molest the person threatened, or if he shall fail to give such bail x x x.

Note:

- a) Cases when a person is obliged to file the bond:
 - 1) When he threatens another under circumstances mentioned in **Article 282**.
 - 2) When he threatens another under circumstances mentioned under **Article 283**.

ARTICLE 285 -- Other light threats.

The penalty of x x x and a fine of x x x shall be imposed upon

- 1) Any person who x x x shall **threaten another with a weapon**, or draw such weapon in a quarrel, unless it be in lawful self-defense.
- 2) Any person who, in the **heat of anger**, shall orally threaten another with some harm not constituting a crime, and who by subsequent acts shows that he did **not persist** in the idea involved in his threat x x x.
- 3) Any person who shall **orally threaten** to do another any harm not constituting a felony.

ARTICLE 286 -- Grave coercion.

Elements:

- 1) That a person prevented another from doing something **not prohibited** by law,
or

2) That he ***compelled him to do something against his will***, whether it be right or wrong.

3) That the prevention or compulsion be effected by violence, either by material force or such display of force as would produce intimidation and control the will of the offended party.

4) That the person that restrained the will and liberty of another did ***not have the authority of law or the right to do so, neither in the exercise of any lawful right.***

Note:

a) 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; if the act was already done when violence was exerted, the crime is unjust vexation.

b) Coercion is consummated even if the offended party did not accede to the purpose of the coercion.

Timoner vs. People, 125 SCRA 830.

Petitioner Daet Mayor Timoner ordered two policemen and six men to demolish stalls along Maharlika Highway. The group fenced off the stalls which protruded into the sidewalk which were used as barbershops, sauna, etc. Petitioner was sued, and convicted, for grave coercion in the lower court and CA.

Held: *SC reversed the conviction and held there was no grave coercion. The reason: the 3rd element of grave coercion which is that the one preventing another from doing something not prohibited by law, or the one compelling another from doing something against his will was NOT AUTHORIZED BY LAW was conspicuously absent. Petitioner Timoner, after all, was authorized to dismantle the stalls pursuant to the recommendation of the Municipal Health Officer that the stalls were nuisance per se, for failing to comply with the health and sanitation standards of the office.*

ARTICLE 287 -- Light coercion.

Elements:

1) That the offender must be a creditor.
2) That the offender seizes anything belonging to the debtor.
3) That the seizure of the thing be accomplished by means of violence, or a display of material force producing intimidation.

4) That the purpose of the offender is to apply the same to the payment of debt.

Note:

a) If no violence is employed, crime is unjust vexation.

b) ***Unjust vexation*** -- includes any human conduct which, although not productive of some physical or material harm, would unjustly annoy or vex an innocent person. The paramount question to determine whether or not there is unjust vexation is whether the offender's act caused annoyance, irritation, vexation, torment, distress or disturbance to the mind of the person to whom it is directed.

ARTICLE 288 -- Other similar coercions. (Compulsory purchase of merchandise and payment of wages by means of tokens.)

Prohibited acts:

- 1) Forcing or compelling 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.
- 2) Paying the wages due his laborer or employee by means of token or objects other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

ARTICLE 289 -- Formation, maintenance and prohibition of combination of capital or labor through violence or threats.

Elements:

- 1) That the offender employs violence or threats in such degree s to compel or force the laborers or employee in the free and legal exercise of their industry or work.
- 2) That the purpose is to organize, maintain or prevent coalitions of capital or labor , strike of laborers or lockout of employees.

ARTICLE 290 -- Discovering secrets through seizure of correspondence.

Elements:

- 1) That the offender is a private individual or even a public officer not in the exercise of his official functions.
- 2) That he ***seizes the papers or letters*** of another.
- 3) That the purpose is to discover the secrets of the other person.
- 4) That the informed is informed of the contents of the papers or letters seized.

ARTICLE 291 -- Revealing secrets through abuse of office.

Elements:

- 1) That the offender is a manager, employee or servant.
- 2) That he learns the secrets of his principal or master in such capacity.
- 3) That he reveals such secrets.

Note:

- a) Damage is not necessary.

ARTICLE 292 -- Revealing industrial secrets.

Elements:

- 1) That the offender is a person in charge, employee, or workman of a manufacturing or industrial establishment.
- 2) That the manufacturing/industrial establishment has a secret of the industry which offender has learned.
- 3) That the offender reveals such secrets.
- 4) That prejudice is caused to the owner.

TITLE X (CRIMES AGAINST PROPERTY)

ARTICLE 293 -- Who are guilty of robbery.

Elements:

- 1) That there be personal property belonging to another.
- 2) That there is unlawful taking of that property.
- 3) That taking must be with intent to gain.
- 4) That there is violence against or intimidation of person or use of force upon things.

Note:

a) Robbery is the taking of personal property belonging to another with intent to gain, by means of violence against or intimidation of any person, use of force upon things.

b) ***Classification of robbery:***

- 1) Robbery with violence against or intimidation of persons. (**Articles 294, 297 and 298**)
- 2) Robbery by use of force upon things. (**Article 299 and Article 302**)

ARTICLE 294 -- Robbery with violence against or intimidation of persons.

Any person guilty of robbery with the use of violence against or intimidation of person shall suffer.

- 1) *The penalty of **reclusion perpetua** to death when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by **rape**, or **intentional mutilation** or **arson**.*

Note:

a) Crime defined in this article is a **special complex crime** -- the rule is that an intent to take personal property belonging to another must precede the killing. The original design must be **Robbery**.

b) Robbery and homicide are separate offenses when the homicide was not committed **"on occasion of"** or **"by reason of"** the robbery. If the original design is not to commit robbery, but the robbery is only after the homicide as an afterthought and a minor incident in the homicide, crimes are **separate crimes of Robbery and Homicide** because there are two separate criminal intents.

c) When homicide is not proved, the crime is only robbery and vice-versa.

d) Rape committed on occasion of robbery is still **Robbery with rape** even if the rape was committed in another place.

e) Distinctions between **Robbery with violence vs. Grave coercion**:

- 1) In both crimes, there is violence used by the offender but in **Robbery with violence**, there is intent to gain but with **Grave coercion**, there is no intent to gain.

People vs. Biruar, 130 SCRA 513

Petitioner Biruar and ten others performed several criminal acts. First, they went to the house of a certain Mosende in Mati, took his shotgun, and then proceeded to the house of a

certain 70-year-old Kalitas, a neighbor of Mosende. Since Kalitas offered resistance with his shotgun, they shot him dead, and absconded with a large amount, but not before setting Kalitas' house on fire. Issue here is whether or not it is a **composite crime of Robbery with homicide** or three separate crimes.

Held: SC affirmed conviction for three separate crimes of 1) Robbery in band (for robbery in Mosende's house), and 2) Robbery with homicide (for robbery and killing of Kalitas) and 3) Arson (for setting Kalitas' house on fire). This could not be a composite crime, unlike in *People vs. de Leon* where theft of three fighting cocks in same place constitutes one composite crime of theft because in *De Leon* the theft was committed at the same time, in same occasion, and promoted by a single criminal resolution. In the instant case, certainly the criminal intent in robbing Mosende was separate and distinct from the criminal intent in robbing and killing Kalitas, and in putting the latter's house on fire.

People vs. Moreno, 220 SCRA 292.

Indian couple in Ermita was robbed by Moreno who basically acted as a lookout, while Maniquez raped the first maid, while Deloria raped the second maid, Together they absconded with a large amount but were later arrested and prosecuted.

Held: SC affirmed lower court's conviction. Maniquez and Deloria were both convicted for Robbery with rape since they both raped the two maids, respectively. Moreno, on the other hand, was only held liable for Robbery since he was outside, and did not participate in the rape of the two maids, but only in the Robbery..

People vs. Dinola, 183 SCRA 747

Petitioner Dinola pointed a bladed weapon to the victim, and succeeded in raping her around 3 a.m. in her aunt's house. After raping her, he lit a candle and saw her *Citizen* watch, which he grabbed, and then fled. Lower court held crime was Special complex crime of Robbery with rape.

Held: SC modified lower court's decision and held crime committed was RAPE AND ROBBERY. Considering that the primordial criminal intent was really to RAPE, and the taking of the watch was a mere AFTERTHOUGHT, even accidental which came from a separate criminal INTENT, two separate crimes were committed, RAPE AND ROBBERY. However, if the intent was to rob but rape was also committed even before the robbery, the Complex crime of Robbery with rape is committed. But if the original design was really to rape, and the accused after committing rape also committed robbery because the opportunity presented itself, two distinct offenses of RAPE AND ROBBERY are committed.

GENERAL RULE:

1) If the first act was to RAPE, then ROB as an afterthought -- two separate crimes of **RAPE AND ROBBERY** because two separate criminal ACTS, and two separate criminal INTENTS. (*People vs. Dinola*, 183 SCRA 747).

2) If intent was really to ROB but RAPED first or rape preceded the ROBBING -- crime is a **COMPLEX CRIME of ROBBERY WITH RAPE. (People vs. Moreno, 220 SCRA 292).**

Cite also **Article 62, Par. 4** (catch-all provision in determining extent of participation of accused, respectively).

Article 62, par. 4 -- *"The circumstances which consist in the MATERIAL EXECUTION of the act, or in the MEANS EMPLOYED to accomplish it, shall serve to aggravate or mitigate the liability of those persons only who had KNOWLEDGE of them at the time of the execution of the act, or their COOPERATION therein."*

ARTICLE 295 -- Robbery with physical injuries committed in an uninhabited place and by a band, or with the use of firearm in a street, road or alley.

Note:

- a) Requisites for liability for acts of other members of the band:
- 1) He was a member of the band.
 - 2) He was present at the commission of a robbery by that band.
 - 3) The other members of the band committed an assault.
 - 4) He did not attempt to prevent the assault.

People vs. Salvilla, 184 SCRA 671

Salvilla and three others, armed with guns, took P20,000.00 from owner of lumber yard in Iloilo, but refused to leave because they wanted additional amount. They were soon overpowered, but in the gunfight the children of the owner of lumber yard suffered serious physical injuries. Lower court held crime was Complex crime of Robbery with serious physical injuries and serious illegal detention.

Held: *SC affirmed lower court's decision. It was a Complex crime of ROBBERY with SPI and SERIOUS ILLEGAL DETENTION because the detention was used as a NECESSARY MEANS TO commit robbery, or for the additional amount. The detention was not merely incidental but deliberately employed as a NECESSARY MEANS as part of the robbery. SC further stated that taking (or asportation) is already complete when offender unlawfully deprives owner of the personal without animus revertendi. Once personal property under dominion and controf of robber (even for a short time and without opportunity to dispose), robbery is already consummated.*

People vs. Astor, 149 SCRA 325

Held: *Where, however, the offenders were left without any choice but to detain the victims as security, until arrangements for their safe passage was made and in order to forestall their arrest, the detention here is ABSORBED in the crime of ROBBERY constituting violence against or intimidation of persons. The crime committed is only ROBBERY and the detention here is ABSORBED because the detention becomes an INDISPENSABLE MEANS in committing robbery, and therefore forming an integral part thereof. Cannot make it a*

separate crime of Serious illegal detention because there was NO DETENTION for an appreciable period of time since victims were immediately set free when the coast was clear, and offenders were already free to escape. (Distinguish this from People vs. Salvilla)

ARTICLE 296 -- Definition of a band and penalty incurred by the members thereof.

When **more than three armed malefactors** take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an **unlicensed firearm**, penalty to be 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 unlicensed firearm.

Note:

a) When at least four armed malefactors take part in the commission of the robbery, it is deemed committed by a band.

People vs. Jaranilla, 55 SCRA 563.

Jaranilla and two others stole six fighting cocks from the **tangkal** or chicken coop which was fastened by nails as lock. Upon fleeing, they were intercepted by a certain Pat. Jabatin whom Jaranilla shot dead. Iloilo CFI convicted hem for **complex crime of Robbery with homicide** and penalty is *reclusion perpetua*.

Held: SC modified decision to two separate crimes of Theft and Homicide. It is not Robbery because there was no force upon things in taking of the fighting cocks because locks of the chicken coop were simply fastened by nail. It's merely Theft because there was unlawful taking, without force upon things, or violence upon persons. The killing of Pat. Jabatin was a separate crime of Homicide because killing merely supervened and was not part of the original plan. Hence, only Jaranilla who shot policemen was liable for Homicide, while his two companions who had no prior knowledge or cooperation in the killing was only liable for the Theft. (See Article 62, par. 4)

SPECIAL LAWS:

R.A. 6539 (Carnapping)

People vs. Dela Cruz, 183 SCRA 763.

Danilo dela Cruz was the mastermind of the carnapping who shot the victim and car owner, Anthony Banzon, while Beloso acted as the one who advertised the ad for cars, while Salvador met the interested buyers. They were all arrested and prosecuted under R.A. 6539.

Held: SC affirmed their conviction for Carnapping with homicide. SC held that where homicide is committed in the occasion of robbery or carnapping, penalty is for Carnapping with homicide, and it is immaterial that death supervened by mere accident without fault or intention of causing it.

P.D. 532 (Highway Robbery)

People vs. Puno, 219 SCRA 85..

On January 31, 1989, the accused Puno and companion “kidnapped” Mrs. Sarmiento, the wife of Puno’s boss. While on board the car, Puno and his companion were able to get P7,000.00 cash for her and three checks worth P100,000.00. The victim was able to jump and Puno and companion were arrested, and prosecuted for Kidnapping for ransom. Quezon City RTC, however, held them liable for P.D. 532 or Highway robbery.

Held: SC modified decision, and held Puno and companion liable for Robbery under Article 294, par. 5. Not Kidnapping because no intent to detain her for an appreciable period of time, and detention was merely incidental to the primordial criminal intent which was ROBBERY. Not Ransom because ransom is money, price or consideration paid for redemption of a captured person, or release from captivity, which is not immediately obtained, unlike here where the P7,000.00 and three checks were immediately given to them. Neither is it a violation of PD 532 because the robbery was not done indiscriminately in the public highway, but the target was already earlier particularly targeted.

P.D. 533 (Cattle Rustling Law)

Ordonio vs. CA, 199 SCRA 873.

Held: SC affirmed lower court’s conviction of Ordonio for cattle rustling and the mere act of tying the calf without returning it despite owner’s demand already consummates the act of cattle rustling. This is because cattle rustling is the taking away “by any means, methods or schemes, without the consent of the owner, of an animal, whether or not for profit, whether committed with or without violence against or intimidation of persons, or force upon things.”

P.D. 401, R.A. 7832, and R.A. 8041

(Theft of electricity, illegal water, electric or telephone connections)

R.A. 8550 (Illegal Fishing)

Hizon vs. CA, 265 SCRA 517.

P.D. 330 and P.D. 705 (Illegal Logging)

Mustang vs. CA, June 19, 1996.

P.D. 1612 (Fencing)

ARTICLE 297 -- Attempted and frustrated robbery committed under certain circumstances.

*When by reason or on occasion of an attempted or frustrated robbery a homicide is committed, the person guilty of such offense shall be punished by **reclusion temporal** in its maximum to **reclusion perpetua**, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.*

ARTICLE 298 -- Execution of deeds by means of violence or intimidation.

ARTICLE 299 -- Robbery in an inhabited place or public building or edifice devoted to worship.

*Any armed person who shall commit robbery in an inhabited house, or public building or edifice devoted to religious worship, shall be punished by **reclusion temporal**, if the value of the property taken shall exceed P250.00, and if --*

a) The malefactors shall enter the house or building in which the robbery was committed, by any of the following means:

- 1) Through an opening not intended for entrance or egress.*
- 2) By breaking any wall, roof, or floor or breaking any door or window.*
- 3) By using false keys, picklocks or similar tools.*
- 4) By using any fictitious name or pretending the exercise of public authority.*

b) x x x

Note:

a) Inhabited house includes any shelter, ship or vessel constituting the dwelling of one or more persons, even though the inhabitants are temporarily absent.

b) Public building is every building owned by the government, or temporarily used by the same even though owned by a private person or temporarily occupied.

c) The whole body of the culprit must be inside the building to constitute entering.

*d) False keys can be genuine keys stolen from the owner, or any key other than those intended by the owner for use in the lock forcibly opened. The key must be stolen. If, however, the inmates inside the house were forced to produce the key, crime is **Robbery with intimidation**.*

*e) If they key was used to open a locked wardrobe, receptacle, drawer or inside door, the crime is **Theft**.*

*f) It is **Estafa** or **Theft** if the locked or sealed receptacle is not forced open in the building where it is kept, or taken therefrom to be broken outside (eg. The locked receptacle is considered into the custody of the offender, or if the receptacle is found outside the building and is forcibly opened.).*

ARTICLE 300 -- Robbery in an uninhabited place and by a band.

The robbery mentioned in the next preceding Article, if committed in an uninhabited place and by a band, shall be punished by the maximum period of the penalty provided therefor.

Note:

*a) **Qualified robbery with force upon things** – when the robbery is committed in an uninhabited place, and by a band.*

ARTICLE 301 -- What is an inhabited house, public building or building dedicated to religious worship and their dependencies.

Inhabited house means any shelter, ship or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

ARTICLE 302 -- Robbery in an uninhabited place or in a private building.

*Any robbery committed in an uninhabited place or in a building other than those mentioned in the 1st par. Of Article 299, if the value of the property taken exceeds P250, shall be punished by **prision correccional** in its medium and maximum periods, provided that any of the following circumstances is present.*

Note:

- a) Same manner of commission as **Article 299**.

ARTICLE 303 -- Robbery of cereals, fruits or firewood in an uninhabited place or private building.

When the robbery consists in the taking of cereals, fruits or firewood, the culprit shall suffer the penalty next lower in degree than that prescribed in said articles.

ARTICLE 304 -- Possession of picklocks or similar tools.

Any person who shall without lawful cause have in his possession picklocks or similar tools specially adopted to the commission of the crime of robbery, shall be punished by x x x

Elements:

- 1) That the offender has in his possession picklocks of similar tools.
- 2) That such picklocks or similar tools are specially adopted to the commission of robbery.
- 3) That the offender does not have lawful cause for such possession.

ARTICLE 305 -- False keys.

Note:

- a) Tools not mentioned in the next preceding article.
- b) Genuine keys stolen from the owner.
- c) Any keys other than those intended by the owner for use in the lock forcibly opened by the offender.

ARTICLE 306 -- Who are brigands. Penalty.

*When **more than three armed persons form a band of robbers** for the purpose of committing robbery in the highway, or kidnapping performs for the purpose of extortion or to obtain ransom, for any other purpose to be attained by means of force and violence, they shall be deemed to be **highway robbers or brigands**.*

Note:

P.D. 532 (Highway Robbery)

-- repealing Articles 306 and 307

Highway robbery or brigandage:

-- the seizure of any person for ransom, extortion or other unlawful purposes or the taking away of the property of another by means of violence against or intimidation of persons

or force upon things, or other unlawful means, committed by any person on any Philippine highway.

b) Any person who aids or abets the commission of highway robbery or brigandage shall be considered **accomplices**:

- 1) By giving information about the movement of police or other peace officers of the government.
- 2) Acquires or receives property taken from such brigands.
- 3) In any manner derives any benefit therefrom.
- 4) Directly or indirectly abets the commission of highway robbery.

c) Distinctions between **Brigandage vs. Robbery in band**:

- 1) In **Brigandage**, the purpose is to commit robbery in the highway; or to kidnap a person for ransom, or any other purpose attained by force and violence; in **Robbery in band**, purpose is to commit robbery, but not necessarily in highway.
- 2) In **Brigandage**, agreement to commit several robberies is one of the purposes; in **Robbery in band**, agreement is to commit a particular robbery.
- 3) In **brigandage**, mere formation is punished; in **Robbery in band**, actual commission of robbery is necessary.

ARTICLE 307 -- Aiding and abetting a band of brigands.

*Any person knowingly and in any manner **aiding, abetting or protecting a band of brigands**, or giving them information of the movements of the police, or other peace officers of the Government, or acquiring or receiving the property taken by such brigands, shall be punished*
x x x.

ARTICLE 308 -- Who are liable for Theft.

Elements:

- 1) That there be taking of personal property.
- 2) That said property belongs to another.
- 3) That the taking be done with intent to gain.
- 4) That the taking be done without the consent of the owner.
- 5) That the taking be accomplished without the use of violence against, or intimidation of person, or force upon things.

Note:

- a) What distinguishes **Theft from robbery** is that in **Theft**, the offender does not use violence or intimidation or does enter a house or building through any of the means specified in *Article 299 or Article 302* in taking personal property of another with intent to gain.
- b) **Asportation** is complete from the moment the offender had full possession of the thing.
- c) Actual or real gain is not necessary, as long as taking was with intent to gain.
- d) **P.D. 581** -- punished "*highgrading*" or "*theft of gold.*"

e) **P.D. 401** -- punishes the use of tampered water, or electrical meters, to steal water or electricity.

ARTICLE 309 -- Penalties for Theft..

ARTICLE 310 -- Qualified theft.

*The crime of theft shall be punished by the penalties next higher by two degrees than those specified in the next preceding article, if committed by a **domestic servant, or with grave abuse of confidence**, or if the property stolen is a motor vehicle, mail matter, or large cattle, or consists of coconuts taken from the premises of a plantation, fish taken from a fishpond, or fishery, or if property is taken on the occasion of a fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicle accident or civil disturbance.*

Note:

a) **P.D. 533 (Anti-Cattle Rustling Law of 1974)**

-- The **taking away by any means, method or scheme**, without the consent of the owner/raiser, of any of the animals (classified as large cattle), whether or not for profit or gain, or whether committed with or without violence against or intimidation of any person or force upon things. It includes the killing of large cattle, or taking its meat, or hide, without the consent of the owner/raiser.

b) **P.D. 1612 (Anti-Fencing Law)**

1) **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 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.

2) Section 5. **Presumption of Fencing.**

-- Mere possession of any goods, article, items, object or anything of value which has been the subject of robbery or thievery shall be **prima facie** evidence of fencing.

3) Section 6. **Clearance/Permit to Sell/Used Second-Hand Vehicles**

-- All stores, establishments or entities dealing in the buy and sell of any good, article, item, object or anything of value shall before offering the same for sale to the public, secure the necessary clearance or permit from the station commander of the INP in the two or city where such store, establishment or entity is located.

-- Any person who fails to secure the required clearance/permit shall also be punished as a **fence**.

Empelis vs. IAC, 132 SCRA 398.

Held: *In the case at bar, petitioners were seen carrying away 50 coconuts while they were still in the premises of the plantation. SC held they would come within the definition of QUALIFIED THEFT because the property stolen was coconuts within premises of the plantation. Considering, however, that petitioners were not able to perform all acts of*

execution since they were arrested in the act of stealing while still within the plantation, the crime is FRUSTRATED qualified theft.

ARTICLE 311 -- Theft of property of the National Library and National Museum.

If the property stolen be any property of the National Library or of the National Museum, the penalty shall be x x x.

ARTICLE 312 -- Occupation of real property or usurpation of real rights in property.

Elements:

- 1) That the offender takes possession of any real property or usurps any real rights in property.
- 2) That the real property or real rights belong to another.
- 3) That violence against or intimidation of persons is used by the offender in occupying or usurping real property or usurping real rights in property.
- 4) That there is intent to gain.

Note:

a) Distinctions between ***Theft/robbery vs. Article 312***

- 1) In Theft/robbery, the gravamen of offense is taking or ***asportation***; while in Article 312, the ***gravamen*** of the offense is occupation or usurpation.
- 2) In Theft/robbery, personal property is taken; while in Article 312, real property or real right is involved.
- 3) In ***Theft/robbery***, there is intent to gain; while in ***Article 312***, there is also intent to gain.

ARTICLE 313 -- Altering boundaries or landmarks.

Elements:

- 1) That there be boundaries, marks or monuments of towns, provinces, or estates or any other marks intended to designate the boundaries of the same.
- 2) That the offender alters said boundary marks.

ARTICLE 314 -- Fraudulent insolvency.

Elements:

- 1) That the offender is a debtor and that he has an obligation due and payable.
- 2) That he absconds with his property.
- 3) That there be prejudice to his creditors.

ARTICLE 315 -- Swindling (Estafa)

Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

x x x

- 1) ***With unfaithfulness of abuse of confidence, namely:***

b) *By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make deliveries of or to return the same, even though such obligation be totally or partially guaranteed by a bond, or by denying having received such money, goods, or other property.*

2) *By means of any of the following false pretenses:*

d) *By postdating a check or issuing a check in payment of an obligation when the offender has no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check. The failure of the drawer of the check to deposit the amount necessary to cover his check within three (3) days from receipt of notice from the bank and/or the payee or holder that said check has been dishonored for lack or insufficiency of funds shall be deemed prima facie evidence of deceit constituting false pretense or fraudulent act.*

Elements of Article 315, no. 1 (a):

- 1) That the offender has an onerous obligation to deliver something of value.
- 2) That offender alters its substance, quantity or quality.
- 3) That damage or prejudice is caused to another.

Elements of Article 315, par. 1 (b):

- 1) That money, goods, or other personal property be received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery, or to return the same.
- 2) That there be misappropriation, or conversion of such money or property by the offender, or denial of his part of such receipt.
- 3) That such misappropriation or conversion or denial is to the prejudice of another.
- 4) That there is a demand made by the offended party to the offender.

3 ways to commit Article 315, par. No. 2 (a)

- 1) By using fictitious name.
- 2) By falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions.
- 3) By means of other similar deceptions.

Elements of Article 315, par. No. 2 (d)

- 1) That the offender postdated a check, or issued a check in payment of an obligation.
- 2) That such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were insufficient to cover the amount of the check.

Note:

a) Distinctions between ***Theft and Estafa***:

- 1) In ***theft***, a person who received from the offender anything of value only has **material/physical possession** of the same; while in ***estafa***, the offender receives the

thing and has ***juridical possession*** of the thing which he can assert even against the lawful owner, and misappropriates the same.

b) Distinctions between ***Estafa and Malversation***:

1) In ***Estafa***, the offender is entrusted with private funds or property; while in ***Malversation***, the offender is entrusted with public funds or property.

2) In ***Estafa***, the offender is a private individual or even a public officer who is not accountable for public funds or property; while in ***Malversation***, the offender is usually a public officer accountable for public funds or property.

3) In ***Estafa***, the crime is committed by misappropriating, converting or denying having received money, goods, or other personal property; while in ***Malversation***, crime is committed by appropriating, taking or misappropriating or consenting, or through abandonment or negligence, permitting any other person to take public funds or property.

4) Both ***Estafa*** and ***Malversation*** are continuing offense.

c) Prosecution under B.P. 22 shall be without prejudice to any liability for violation of Article 315, par. 2 (d) while B.P. 22 is a crime ***mala prohibita***, Article 315, par. 2 (d) is a crime ***mala in se***.

d) The fine under B.P. 22 is based on the amount of the check and is without regard to the amount of damage caused.

e) **B.P. 22 --Bouncing Checks Law**

Two (2) offenses punished in B.P. 22:

1) ***Making or drawing and issuing a check knowing at the time of issue that he does not have sufficient funds.***

Elements:

- a) That a person draws a check.
- b) That the check is made or drawn and issued to apply ***“on account”*** for ***“for value.”***
- c) That the person knows that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check upon presentment.
- d) That the check is subsequently dishonored by the drawee bank.

2) ***Failing to keep sufficient funds to cover check if presented within a period of 90 days from the date appearing thereon.***

Elements:

- a) That a person has sufficient funds with the drawee bank when he makes or issues a check.

- b) That e fails to keep sufficient funds or maintain a credit to cover the full amount if presented within a period of 90 days from the date appearing thereon.
- c) That the check is dishonored.

Exceptions:

- a) When the check is presented after 90 days from the date of the check.
- b) When the drawer pays the holder the full amount thereon within five (5) banking days after receiving notice of dishonor, or non-payment, by the drawee.
- c) When the drawer makes arrangements for payment in full by the drawee within five (5) working days after receipt of notice of dishonor, or non-payment.

g) Distinctions between **B.P. 22 and Article 315, par. 2 (d)**

1) Under **B.P. 22**, only the drawer or persons who signed the check for a judicial or artificial person are liable but endorsers are not liable; while under **Article 315, par. 2 (d)** not only the drawer but also the endorsers who acted with deceit knowing that the check is worthless will be criminally liable.

2) Under **B.P. 22**, violation is a *malum prohibitum* thus, good faith is not a defense; while under **Article 315, par. 2 (d)**, the offender should be able to obtain money or property from the offended party because of the issuance of the check.

3) Under **B.P. 22**, violation is a crime against public interest which affects the entire banking system; while under **Article 315, par. 2 (d)** the crime is *mala in se* and therefore requires criminal intent.

4) Under **B.P. 22**, deceit and damage are not elements of the crime and the mere issuance of bum check creates criminal liability; under **Article 315, par. 2 (d)** deceit and damage must be established.

5) Under **B.P. 22**, the drawer or issuer is given 5 banking days after receipt of notice of dishonor to pay the value of the check or make arrangement for payment thereof, otherwise presumption of *knowledge* arises; while under **Article 315, par. 2 (d)** the drawer is given 3 calendar days to fund the check from receipt of notice of dishonor otherwise, presumption of *deceit* arises. (*Nierras vs. Dacuycuy*, 181 SCRA 1)

Saddul vs. vs. CA, 192 SCRA 277.

Saddul was general manager and vice-president of AMPI, the local agent of Land Rover of United States. Mr. Cuevas, on the other hand, was AMPI President. Because Mr. Lyndsay of *Land Rover USA* dealt directly with Saddul, Cuevas felt bad and eased out Saddul, who formed his own company as distributor of spare parts from *Land Rover USA*. Pursuant to instructions from Ms. Lyndsay, Saddul sold spare parts worth almost P150,000.00 and opened a special account in trust for *Land Rover USA* and did not remit the proceeds to AMPI President Cuevas. Saddul was prosecuted and convicted for *Estafa* under **Article 315, par. 1 (b)** by lower court and CA hence, the instant petition for certiorari before the SC.

Held: SC reversed the conviction, and acquitted Saddul from *Estafa*. 1st, Saddul did not receive the personal property in trust or in commission with the duty to return or deliver

the proceeds from AMP, which was also a mere agent, but from Land Rover USA, the principal. 2nd, there was no conversion or misappropriation by Saddul because he merely followed Land Rover's instruction to hold the money "in trust" for the principal pending reconciliation of accounts with AMPI. 3rd, there was no injury to AMPI because AMPI was not the owner of the goods, but a mere agent; and 4^h, there was no demand from Cuevas or AMPI for the return of the proceeds of the spare parts knowing perhaps that AMPI was not the owner of the goods.

Trust receipts (P.D. 115)

Allied Banking Corp. vs. Ordonez, 192 SCRA 246;

Lee vs. Rodil, 175 SCRA 100.

B.P. 22 (Bouncing checks)

ARTICLE 316 -- Other forms of swindling.

ARTICLE 317 -- Swindling a minor.

ARTICLE 318 -- Other deceits.

ARTICLE 319 -- Removal, sale or pledge of mortgaged property

ARTICLE 320 -- Destructive arson.

Articles 320 to 325 on arson are repealed by P.D. 1613.

ARTICLE 327 -- Malicious mischief.

*Any person who shall **deliberately cause damage to the property of another** not falling within the terms of the next preceding chapter shall be guilty of malicious mischief.*

Caballes vs. DAR, 168 SCRA 247.

ARTICLE 328 -- Special cases of malicious mischief.

Any person who shall cause damage to obstruct the performance of public functions, or using any poisonous or corrosive substance; or spreading any infection or contagion among cattle; or who causes 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, shall be punished x x x

ARTICLE 329 -- Other mischief.

ARTICLE 330 -- Damage and obstruction to means of communication.

ARTICLE 331 -- Destroying or damaging statues, public monuments or paintings.

ARTICLE 332 -- Persons exempt from criminal liability.

No criminal, but only civil liability, shall result from the commission of the crime of **theft, swindling or malicious mischief committed** or caused mutually by the following persons:

- 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 shall have passed into the possession of another.
- 3) Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

The exemption established by this article shall **not be applicable to strangers** participating in the commission of the crime.

TITLE XI CRIMES AGAINST CHASTITY

ARTICLE 333 --Who are guilty of ADULTERY

Adultery is committed by 1) Any MARRIED woman who shall have sexual intercourse with a man not her husband and 2) By the man who has carnal knowledge of the married woman, KNOWING her to be married, even if the marriage be subsequently declared void.

Elements:

- 1) That the woman is married.
- 2) That she has sexual intercourse with a man not her husband.
- 3) That the man **KNEW** her to be married.

Notes:

- 1) Abandonment of the wife by the husband without justification is only a mitigating circumstance.

ARTICLE 334 -- CONCUBINAGE

Concubinage is committed as follows:

- 5) **Any husband who shall keep a mistress in the conjugal dwelling,**
 - 6) **Or shall have sexual intercourse, under scandalous circumstances, with a woman who is not his wife,**
 - 7) **Or shall cohabit with her in any other place, shall be punished by x x x**
- The concubine shall suffer the penalty of destierro.**

Note:

- 1) As regards the concubine, she must also know that the man is married.

ARTICLE 335 -- RAPE (Repealed by R.A. 8353)

ARTICLE 336 -- Acts of lasciviousness

Any person who shall commit any act of lasciviousness upon any other persons of either sex, under any of the circumstances mentioned in the preceding article, shall be punished by x x x.

Note:

1) Distinguish from **ABUSES AGAINST CHASTITY** (Article 246) -- Article 246 is committed by a **PUBLIC** officer and a mere indecent proposal made earnestly and persistently is sufficient; while in **ACTS OF LASCIVIOUSNESS**, the offender is usually a **PRIVATE** individual and it is necessary that some actual act of lasciviousness is executed by the offender.

ARTICLE 337 -- Qualified seduction

The seduction of a virgin over 12 years and under 18 years of age, committed by any person in public authority, priest, house servant, domestic, guardian, teacher, or any person who, in any capacity, shall be entrusted with the education or custody of the woman seduced, shall be punished by x x x.

The penalty next higher in degree imposed upon any person who shall seduce his sister or descendant, whether or not she be a virgin or over 18 years of age.

Seduction is committed when offender has carnal knowledge of any of the persons and under the circumstances described herein.

Two classes:

1) Seduction of a virgin **over 12 years and under 18 years of age** by certain persons, such as a PIA, priest, teacher, etc.

2) Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age and reputation.

Note:

1) Virginity here does not mean physical virginity. The RPC does not exclude the idea of abduction of a virtuous woman of good reputation.

2) Committed through Abuse of **AUTHORITY**, Abuse of **CONFIDENCE**, and Abuse of **ReLATIONSHIP**. (Recall **ACRe**)

Babanto vs. Zosa, 120 SCRA 834

The accused here, a policeman, brought the victim, only 13 years of age, to the ABC Hall and raped her. He was charged in the lower court with rape but convicted only for qualified seduction because according to the lower court, there was no use of force or violence.

Held: SC modified and convicted accused instead for RAPE because there was, in fact, resistance when she kicked the accused while the accused was lifting her dress and removing her panty, and when she cried afterwards. Accused could not be held liable for Qualified seduction because of failure to allege virginity in the Information which is indispensable to secure conviction for Qualified seduction.

Perez vs. CA, 168 SCRA 236

Yolanda Mendoza first filed a case for **Consented Abduction** against Eleuterio Perez which was dismissed. She subsequently filed a case for **Qualified seduction**. Accused Perez filed a *Motion to Quash* invoking double jeopardy.

Held: SC held there was no double jeopardy and denied the *Motion to Quash*. In **Consented abduction**, the gravamen of the offense is the, scandal, shame and embarrassment caused to family for the abduction of the woman over 12 and under 18 years of age. In **Qualified seduction**, on the other hand, the gravamen of the offense is the wrong done on the woman herself who was seduced (there was sexual intercourse) through Abuse of authority, confidence or relationship. In **Consented abduction**, there must be taking while in **Qualified seduction**, there is no taking although in both crimes there is consent.

ARTICLE 338 -- Simple seduction

Elements:

- 1) That the offended party is over 12 but less than 18 years of age.
- 2) That she must be a woman of good reputation, single or widow.
- 3) That the offender has sexual intercourse with woman.
- 8) That it is committed by means of **DECEIT**.

Note:

- 1) Virginity of the offended party is **not** required.
- 2) **Deceit** here means false promise to marry the offended party.

ARTICLE 339 -- Acts of lasciviousness with the consent of the offended party.

Punishable here is any other acts of lasciviousness committed by he same persons and the same circumstances as those provided in Articles 337 and 338.

Elements:

- 1) That the offender commits acts of lasciviousness or lewdness.
- 2) That the acts are committed upon a woman who is a virgin, or a single widow of good reputation, over 12 but under 18 years of age, or a sister or descendant, regardless of her reputation or age.
- 3) That the offender accomplishes the acts by Abuse of **AUTHORITY**, Abuse of **CONFIDENCE**, or Abuse of **RELATIONSHIP** or **DECEIT**.

ARTICLE 340 -- Corruption of minors.

Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by x x x and if the culprit is a public officer or employee, he shall also suffer he penalty of temporary absolute disqualification.

Note:

- 1) If the culprit is a public officer or employee, including those in GOCC, he shall also suffer penalty of **Absolute disqualification**.
- 2) It is not necessary that the unchaste acts shall have been done. Mere **PROPOSAL** consummates the offense.

ARTICLE 341 -- White slave trade.

Penalty shall be imposed upon any person who shall engage in the business or shall profit by prostitution or shall enlist the services of any other person for the purpose of prostitution.

Prohibited acts:

- 1) Engaging in the business of prostitution.
- 2) Enlisting the services of woman for the purpose of prostitution.

Note:

- 1) Habituality is not necessary.
- 2) ***“Under the pretext”*** means one who is engaged in the services of a woman ostensibly as a maid but in reality for the purposes of prostitution, still guilty of the offense.

ARTICLE 342 -- Forcible abduction.

The abduction of any woman against her will and with lewd designs shall be punished by x x x.

Elements:

- 1) That the person abducted is any woman, regardless of her age, civil status or reputation.
- 2) That the abduction is against her will.
- 3) That the abduction is with lewd designs.

Note:

- 1) The taking of the woman may be accomplished by means of **DECEIT** first, and then by means of violence and intimidation.
- 2) If the female abducted is under **12 years of age**, crime is forcible abduction, even if she voluntarily goes with her abductor.
- 3) Sexual intercourse is not necessary. **Intent to seduce** is enough.
- 4) Husband cannot be guilty of forcible abduction since lewd design is wanting.
- 5) Distinguished from **GRAVE COERCION**:
 - a) In **Forcible Abduction**, there is lewd designs; while in **Grave Coercion**, there is no lewd design, provided there is no deprivation of liberty for an appreciable length of time.
- 6) **Attempted rape** is absorbed by forcible abduction as attempted rape constitutes the element of lewd design.

People vs. Alburo, 184 SCRA 655

Alburo, a jeepney driver, abducted Evelyn from school and brought her to Beverly Hills in Cebu where he raped her inside the jeepney. As defense, he said they were ‘sweethearts.’

Held: SC affirmed Alburo’s conviction for complex crime of FORCIBLE ABDUCTION WITH RAPE. It is a complex crime because the taking or abduction of Evelyn was a necessary means to commit the crime of rape. If, however, there was no taking anymore but mere sexual intercourse through violence or intimidation, crime is RAPE.

People vs. Godines, 196 SCRA 765.

Godinez and Moreno robbed the Vilaksi couple. After that, they dragged the victim, Esther Ancajas a few meters from the house, and raped her among tall cogon grass. Masbate RTC convicted them for Robbery, and Forcible abduction with rape.

Held: *SC lower court's decision and convicted them for robbery, and two rapes. The crime of forcible abduction was absorbed in the crime of rape because the main purpose was to rape, and the taking or forcible abduction was not a necessary means since they could have raped the victim inside the house, anyway. Taking was only incidental and not necessary to the commission of rape. If, taking, however, was a necessary means, crime is Forcible abduction with rape.*

ARTICLE 343 -- Consented abduction.

The abduction of a virgin over twelve and under 18 years of age, carried out with her consent and with LEWD DESIGNS, shall be punished by the penalty of x x x.

Elements:

- 1) That the offender must be a **VIRGIN**.
- 2) That she must be over 12 and under 18 years of age.
- 3) That the taking away must be with her **CONSENT**, after solicitation or cajolery from the offended party.
- 4) That the taking away of the offended party must be with **LEWD DESIGNS**.

Note:

- 1) If the girl is under 12 years of age, it is always **FORCIBLE ABDUCTION**.
- 2) The taking of the virgin need not have the character of permanency. A temporary taking is sufficient, as long as there is lewd design.

ARTICLE 344 -- Prosecution of crimes of adultery, concubinage, seduction, abduction, rape and acts of lasciviousness.

The crimes of adultery and concubinage shall not be prosecuted except upon the complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor in any case, if he shall have consented or pardoned the offenders.

The offense of SEDUCTION, ABDUCTION, RAPE OR ACTS OF LASCIVIOUSNESS shall not be prosecuted except upon a complaint filed by the offended party or her parents, grandparents or guardian, nor in any case, if the offender has been expressly pardoned by the abovenamed persons, as the case may be.

In cases of SEDUCTION, ABDUCTION, ACTS OF LASCIVIOUSNESS AND RAPE, the marriage of the offender with the offended party shall extinguish the criminal action, or remit the penalty already imposed upon him. The provisions of this paragraph shall also be applicable to the co-principals, accomplices and accessories AFTER THE FACT of the abovementioned crimes.

Note:

- 1) Adultery and concubinage must be prosecuted upon the complaint signed by the offended spouse.
- 2) Both the guilty parties, if both alive, must be included in the complaint for adultery, or concubinage.
- 3) When the offended party is of age and is in complete possession of her mental and physical faculties, she alone can file the **Complaint**.
- 4) **Express pardon** of the offender is a bar to prosecution for seduction, abduction, rape or acts of lasciviousness.
- 5) **Condonation** is not pardon in concubinage or adultery -- any subsequent acts of the offender showing that there was no repentance will not bar the prosecution of the offense.
- 6) Pardon by the offended party who is a minor must have the **concurrence of parents** -- except when the offended party has no parents.
- 7) Seduction, abduction and acts of lasciviousness must be prosecuted upon the complaint filed by: 1) *Offended party*; 2) *Her parents*; 3) *Grandparents*; 4) *Guardians*. And strictly in the **ORDER** named above.

People vs. Ibay-Somera, 174 SCRA 653.

Held: SC held that since the German husband was no longer lawfully married to petitioner Imelda Pilapil at the time he filed the case for adultery, the complaint must be dismissed. **Article 344** provides that adultery can only be prosecuted upon the sworn written complaint by the “offended spouse.” Since the German husband was no longer an “offended spouse” by virtue of the divorce decree in 1986 he obtained in Germany which is recognized here in Philippines also because of nationality principle, the petitioner’s **Motion to Quash the Information** is hereby granted. There is no more marriage vow to protect nor any danger of introducing spurious heirs into the family since there is no spousal relationship to speak of anymore.

ARTICLE 345 -- Civil liability of persons guilty of crimes against chastity.

Persons guilty of rape, seduction or abduction, shall also be sentenced:

- 1) ***To indemnify the offended woman.***
 - 2) ***To acknowledge the offspring, unless the law should prevent him from so doing.***
 - 3) ***In every case to support the offspring.***
- The adulterer and the concubine in the case provided for in Articles 333 and 334 may also be sentenced in the same proceeding, or in a separate civil proceeding, to indemnify for damages caused to the offended spouse.***

ARTICLE 346 -- Liability of ascendants, guardians, teachers or other persons entrusted with the custody of the offended party.

The ascendants, guardians, curators, teachers, and any person who, by abuse of authority or confidential relationship, shall cooperate as accomplices in the perpetration of

the crimes embraced in chapters second, third and fourth of this Title, shall be punished as PRINCIPALS.

TITLE XII CRIMES AGAINST CIVIL STATUS OF PERSONS

ARTICLE 347 -- Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child.

The simulation of births and the substitution of one child for another shall be punished by x x x. The same penalty shall be imposed upon any person who shall conceal or abandon any legitimate child with intent to cause such child to lose its civil status.

Prohibited acts:

- 1) **Simulation** of births.
- 2) **Substitution** of one child for another.
- 3) **Concealment** or abandonment of a legitimate child with intent to cause such child to lose its civil status.

Note:

- 1) **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. Simulation is a crime which alters the civil status of a person.
- 2) A physician or surgeon or public officer who cooperates in the execution of the crime is also criminally liable.

ARTICLE 348 -- Usurpation of civil status.

Penalty shall be imposed upon any person who shall usurp the civil status of another, should he do so for the purpose of DEFRAUDING the offended party of his heirs.

Note:

- 1) **Civil status** -- includes one's public station or the rights, duties, capacities and incapacities which determine a person to a given class. There must be intent to enjoy the rights arising from the civil status of another.
- 2) The crime is **qualified** if the purpose is to defraud offended parties and heirs.
- 3) **Usurping** the civil status of another is committed by assuming the filiation, or the parental or conjugal rights of another.

ARTICLE 349 -- Bigamy

Penalty shall be imposed upon any person who shall contract a second, or subsequent, marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

Note:

- 1) Nullity of marriage is not a defense in charge of bigamy.
- 2) The second marriage must have all the essential requisites for validity.

- 3) Validity of marriage is a **prejudicial question** to liability for bigamy.
- 4) A person convicted of bigamy may still be prosecuted for concubinage because they are separate and distinct, the first crime or **Bigamy** being a crime against **Civil status** while **Concubinage** is a crime against **Chastity**.

ARTICLE 350 -- Marriage contracted against the provisions of laws.

Penalty shall be imposed upon any person who shall contract marriage KNOWING that the requirements of the law have not been complied with, or that the marriage is in DISREGARD of a legal impediment.

Elements:

- 1) That the offender contracted marriage.
- 2) That he **knew** at the time that the requirements of the law were not complied with; or that the marriage was in disregard of a legal impediment.
- 3) That the offender must be guilty of **BIGAMY**.

Qualifying circumstances:

- 1) If either of the contracting parties obtains the consent of the other by means of violence, intimidation or fraud, he shall be held criminally liable.

ARTICLE 351 -- Premature marriage.

1) Liable is any widow who shall marry within 301 days from the date of the death of her husband, or before having delivered, if she shall have been pregnant at the time of his death, shall be punished x x x.

2) The same penalty shall be imposed upon any woman whose marriage shall have been annulled, or dissolved, if she shall marry BEFORE her delivery, or before the expiration of the period of 301 days after the legal separation.

Note:

- 1) This period may be disregarded if the first husband was impotent or sterile.
- 2) Period of **301 days** is important only for cases where the woman is not pregnant or without knowledge of such pregnancy. If pregnant, prohibition is good only up to time of delivery.

ARTICLE 352 -- Performance of illegal marriage ceremony.

Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.

Note:

- 1) Priests, or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any legal marriage ceremony.
- 2) Offender must be authorized to solemnize marriage. Otherwise, he is liable under **Article 177** for **Usurpation of authority**.

TITLE XIII CRIMES AGAINST HONOR

ARTICLE 353 -- Definition of LIBEL.

Libel is a public and malicious imputation of a crime, 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.

Note:

- 1) Defamation is the proper term for libel as used in **Article 353**.
- 2) Communication of the defamatory matter to some third persons is essential because it constitutes **PUBLICATION**.
- 3) **Malice** is 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.
- 4) **Malice in fact** -- may be shown by proof of ill will, hatred, or purpose to injure; also known as express Malice.
Malice in law -- is presumed from defamatory imputation; proof is not required because it is presumed to exist from the defamatory imputation.
- 5) When the communication is **PRIVILEGED**, malice is not presumed from the defamatory words.
- 6) Identification of the offended party is required in the 4th element.
- 7) Test to determine whether or not libelous – tend to induce hearers to readers to impeach his honesty, virtue or reputation or to hold him to public ridicule.

THREE ELEMENTS of LIBEL:

- M** 1) **Malice** -- whether Malice in law, or Malice in fact.
- V** 2) **Victim** -- must be sufficiently identifiable.
- P** 3) **Publication** -- it must be made known to another person, preferably in a more or less permanent form of communication like print, radio, phonograph, painting, theatrical exhibition or cinematographic exhibition, or any similar means. (Recall **MVP**)

Newsweek vs. IAC, 142 SCRA 171

Newsweek came out with an article “*Island of Fear*” which, according to the landowners who are also complainants, depicted them as oppressing and killing their workers, with impunity. Hence, their case for libel asking for damages which the Bacolod RTC and CA sustained.

Held: SC, however, reversed the lower court and CA and held that the article was not actionable. The reason: the complainants consisting of an association with 8,500 members are not sufficiently identifiable. To be libelous, it is essential that the “statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be.”

Santos vs. CA, 203 SCRA 692

Petitioner Nanerico Santos as columnist of *Manila Daily Bulletin* wrote and published in his column an article entitled ***“Charges against CMS Stock Brokerage, Inc.”*** The article was quoted verbatim from an unverified complaint filed with the SEC charging CMS brokerage officials with insider trading and fraudulent practices in the stock market. The CMS officials sued Santos.

Held: SC held article was not libelous. The reason: the article is but a faithful reproduction of a pleading filed before a quasi-judicial body, without any embellishments, wild imputations, distortions or defamatory comments calculated to damage the reputation of the offended parties and expose them to ridicule. Generally, malice is presumed (Malice in law) in every defamatory imputation but such presumption does not arise if the communication is Qualifiedly privileged under 2nd par. of Article 354, thus: “A fair and true report, made in good faith, without any comments or remarks, of any JUDICIAL, legislative or other officials proceedings, which are not of confidential nature x x x.”

Borjal vs. CA, 301 SCRA 1.

In 1988, there was a transportation crisis so government and private sector organized the ***First National Convention on Land Transportation***. Francisco Wenceslao, an engineer, journalist and businessman, was chosen Executive Director for the FNLCT project. His task: to raise at least P1.8 million for the convention, and he sent various solicitation letters for this purpose. Art Borjal, columnist of ***Philippine Star***, came out with articles of an alleged “false hero” making unauthorized use of names of President Aquino and Transportation Secretary Rainerio Reyes in the program, of shady deals and of deceiving people. Wenceslao sued Borjal for libel asking damages which the RTC and CA sustained.

Held: SC reversed RTC and CA decision, and acquitted Borjal. In relation to the three elements of libel, 1st, the victim was not sufficiently identifiable, because had Wenceslao not identified himself, the public would have remained “blissfully ignorant of his identity”; 2nd, there was no Malice in law, nor any MALICE IN FACT which requires that they were published with knowledge that they are false, or in utter disregard of whether they are false or not. In this case, Borjal’s article had FACTUAL BASIS because President Aquino and Secretary Reyes, in fact, declined to be included in the project yet Wenceslao still included their names, and there were some shady deals which transpired; 3rd, there was publication, but publication here was privileged, and not libelous. SC further said that the enumeration of Conditionally/qualifiedly privileged communication which served as Exceptions to complaint for libel under Article 354 are not exclusive. Another exception to libel is if publication involves “Fair comment on matters involving public interest” which is the doctrine enunciated in Borjal vs. CA.

ARTICLE 354 -- Requirement of publicity.

Every defamatory imputation is presumed to be malicious, even if true, if no good intention and justifiable motive for making it is shown, EXCEPT in the following cases:

1) ***A private communication made by any person to another in the performance of any legal, moral or social duty; and***

2) ***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, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.***

Note:

1) ***Malice in law*** -- every defamatory imputation is presumed to be malicious, even if it be true, if no good intention or justifiable motive.

2) The presumption is rebutted if it is shown by the accused that:

a) The defamatory imputation is ***TRUE***, in case the law allows proof of the truth of the imputation.

b) It is published with ***GOOD INTENTION***.

c) There is ***JUSTIFIABLE MOTIVE*** for making it.

3) Malice is ***not presumed*** in the following cases:

a) A ***private communication*** made by any person to another in the performance of any legal, moral or social duty.

b) A ***fair and true report***, of any judicial, legislative or other proceedings, or of any other act performed by public officers in the exercise of their functions.

R. A. 4200 (Anti-Wire Tapping Act)

Section 1. Unlawful acts by any person or participant, not authorized by all the parties to any private communication or spoken word:

1) To tap any wire or cable.

2) To use any other device or arrangement.

3) To secretly overhear, intercept or record such communication by using a device known as detectaphone, walkie-talkie, tape recorded.

4) To knowingly possess any tape, wire or disc record or copies of any communication or spoken word.

5) To replay the same for any person or persons.

6) To communicate the contents thereof, verbally or in writing.

7) To furnish transcriptions thereof, whether complete or partial.

EXCEPTIONS:

1) ***When the use of the record or copies are for purposes of evidence in any civil, criminal investigation or trial of offenses.***

2) ***When a peace officer is authorized by written order from the court to execute any of the acts punishable in cases involving:***

a) Treason.

b) Espionage.

c) Provoking war and disloyalty in case of war.

- d) Piracy.
- e) Mutiny in the high seas.
- f) Rebellion.
- g) Conspiracy and proposal to commit rebellion.
- h) Sedition.
- i) Inciting to sedition.
- j) Conspiracy to commit sedition.
- k) Kidnapping.
- l) Other offenses against national security.

WRITTEN ORDER GRANTED:

- 1) Written application and examination under oath.
- 2) Reasonable grounds to believe that a violation was committed.
- 3) Reasonable to believe that evidence is essential to the conviction of any person.
- 4) No other means readily available for obtaining such evidence.

Section 4. *Any recording, communication or spoken word obtained in violation of the provisions of this Act shall be **INADMISSIBLE IN EVIDENCE** in any judicial, quasi-judicial or administrative hearing or investigation.*

ARTICLE 355 -- Libel by means of writings or similar means.

A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by x x x in addition to the civil action which may be brought by the offended party.

ARTICLE 356 -- Threatening to publish and offer to prevent such publication for a compensation.

Penalty shall be imposed upon any person who threatens another to punish a libel concerning him or the parents, spouse, child or other member of the family of the latter, or upon anyone who shall offer to prevent the publication of such libel for a compensation or money consideration.

Note:

1) **PROHIBITED ACTS:**

- a) Threatening another to publish a libel concerning him, his parents, spouse, child or other members of the family.
- b) Offering to prevent the publication of such libel for compensation, or money consideration.
- 2) Blackmail – any unlawful extortion of money by threats of accusation or exposure. It could also constitute Light threats under **Article 283**.

ARTICLE 357 -- Prohibited publication of acts referred to in the course of official proceedings.

Penalty shall be imposed upon any reporter, editor or manager of a newspaper, daily or magazine who shall publish facts connected with the private life of another, and offensive to the honor, virtue and reputation of said person, even though said publication be made in connection with or under the pretext that is necessary in the narration of any judicial or administrative proceedings, wherein such facts have been mentioned.

Elements:

- 1) The 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:

- 1) Prohibition applies even if the facts are involved in official proceedings.
- 2) ***“Gag Law”*** -- Newspaper reports on cases pertaining to adultery, divorce, issues about the legitimacy of children will necessarily be barred from publication.
- 3) Sources of news reports may not be revealed unless the court, or a House Committee of Congress, finds that such revelation is demanded by the security of the State.

ARTICLE 358 -- Slander (Oral defamation)

Oral defamation shall be punished if it is of a serious and insulting nature.

Note:

- 1) ***Kinds of slander:***
 - a) Simple slander and
 - b) Grave slander when it is of a serious and insulting nature.
- 2) Factors that determine the ***gravity*** of oral defamation:
 - a) Upon the expression used.
 - b) On the personal relations of the accused and the offended party.
 - c) Circumstances surrounding the case.
- 3) Slander need ***not*** be heard by the offended party.

Victorio vs. CA, 173 SCRA 645

Atty. Ruiz, a prominent practicing lawyer since 1926, a former Justice of the Peace and member of the Provincial Board of Nueva Ecija, a law professor and former president of the Nueva Ecija Bar Association, was the former lawyer of petitioners Victorio. Later, the Victorio family hired another lawyer, Atty. Castillo and in one case, Atty. Ruiz became opposing counsel. After hearing, Danilo and Exequiel Victorio uttered the words: ***“Kayabang ng putang inang abogadong Ruiz na iyan. Tunaw naman according to utalk, suwapang at estapapador naman.”*** Atty. Ruiz sued them for *Slander*.

Held: SC sustained their conviction for Grave oral defamation. The word “estapador” implies deceit and dishonesty in the exercise of his profession. The slanderous statements were uttered without provocation, in a loud voice, and totally unfounded, intended to besmirch the reputation and cast aspersion on the person, integrity and reputation of Atty. Ruiz. No need to prove special damage because the words were slanderous per se.

ARTICLE 359 -- Slander by deed.

Penalty shall be imposed upon any person who shall perform any act not included in this Title, which shall cast dishonor, discredit or contempt upon another person. If said act is not of a serious nature, the penalty shall be lower.

Note:

3) A crime against honor which is committed by performing any act which casts dishonor, discredit or contempt upon another person.

4) ***Slander by deed*** necessarily refers to the performance of an act, not the use of words.

3) If in addition to slander by deed, there was also present any circumstances like use of force and with lewd design short of intent to life, separate act of ***Acts of lasciviousness***.

4) Slapping the face of another is ***Slander by deed*** if the intention is to cause shame and humiliation.

5) Irritation or annoyance -- common element of ***Slander by deed, Unjust vexation, and Acts of lasciviousness***.

a) Without any concurring factor, it is only ***Unjust Vexation***;

b) If purpose of slapping is to cause shame or to humiliate, it is ***Slander by deed***.

ARTICLE 360 -- Persons responsible.

Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing, or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamation contained therein to the same extent as if he were the author thereof.

Note:

1) Persons liable for libel:

a) Any person who shall publish, exhibit or cause the publication or exhibition of any defamation in writing, or by similar means.

b) The author, editor of the book or pamphlet.

c) The editor, business manager of newspaper or magazine responsible to the same extent as if he were the author.

d) The owner of the printing plant which publishes the libelous article, and all the other persons who in any way participate.

2) The offended party must file the complaint for defamation imputing a crime which cannot be prosecuted ***de officio***.

3) Libel imputing a vice or defect, not being an imputation of a crime, is always prosecuted upon the ***Information*** signed and filed by the Fiscal.

ARTICLE 361 -- Proof of Truth.

In every criminal prosecution for libel, the truth may be given in evidence to the court, and if it appears that the matter charged as libelous is true, and moreover, that it was published with good motives and for justifiable ends, the defendants shall be acquitted.

Note:

- 1) **Defenses in Libel/Defamation:**
- a) It appears that the matters charged as libelous is true.
- b) It was published with **good motives**.
- c) And it was published for a **justifiable end**.

ARTICLE 362 -- Libelous remarks.

Libelous remarks or comments connected with the matter privileged under the provisions of Article 354, if made with MALICE, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.

ARTICLE 363 -- Incriminating innocent persons.

Any person who, by any act not constituting perjury, shall directly incriminate or impute to an innocent person the commission of a crime, shall be punished by x x x.

Elements:

- 1) That the offender performs an act.
- 2) That by such act he directly **incriminates** or imputes to an innocent person the commission of a crime.
- 3) That such act does **not** constitute **Perjury**.

Note:

1) **Incriminating innocent persons vs. Perjury by making false accusations:** In **Incriminating innocent persons**, this is limited to the act of planting evidence and the like in order to incriminate an innocent person; while in **Perjury by making false accusations**, it is the giving of false statement under oath, or making a false affidavit, imputing to the person the commission of a crime.

R.A. 4200 (Anti-Wire Tapping Act)

Ganaan vs. IAC, 145 SCRA 112

The issue here is whether listening to the conversation of another through the use of an extension telephone is prohibited under the **Anti-Wire Tapping Act**.

Held: *SC acquitted petitioners and held that R.A. 4200 does not include or punish listening to telephone conversation of another through extension phone. An extension telephone cannot be placed in the same category as a dictaphone, dictograph, walkie-talkie or other devices enumerated in Section 1 of R.A. 4200. The law clearly refers only to a "tap" of a wire or cable, or the use of a "device or arrangement" for purpose of secretly overhearing, intercepting or recording the communication. There must be either physical interruption through a wiretap, and the deliberate installation of a device, or arrangement, in order to overhear, intercept or record the spoken words. It refers to instruments whose installation or*

presence cannot be presumed by the parties being overheard because they are not of common usage, and their purpose is precisely for tapping, intercepting or record telephone conversation. On the other hand, a person calling another by phone may safely presume that the other may have an extension line and runs the risk of being heard by a third party.

Ramirez vs. CA, 248 SCRA 590.

Held: RA 4200 also clearly makes it illegal for any person, not authorized by the parties to any private communication, to secretly record such communication by means of tape recorder. The law makes no distinction as to whether the party should to be penalized by the statute ought to be a party other than or different from those involved in the private communication.

ARTICLE 364 -- Intriguing against Honor.

Penalty shall be imposed for any INTRIGUE which has for its principal purpose to blemish the honor or reputation of a person.

Note:

- 1) This crime is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another.
- 2) ***Intriguing against honor*** is any scheme or plot by means which consists of some trickery.

TITLE IV QUASI-OFFENSES/CRIMINAL NEGLIGENCE

ARTICLE 365 -- Imprudence and negligence.

Any person who, by reckless imprudence, shall commit any act which, had it been intentional, would constitute a grave felony, shall suffer the penalty of x x x

RECKLESS IMPRUDENCE consists in voluntarily, but without malice, doing or failing to do an act from which material damage results by reason of **INEXCUSABLE LACK OF PRECAUTION** on the part of the person performing, or failing to perform such act, taking into consideration his employment of occupation, degree of intelligence, physical condition and other circumstances regarding **PERSONS, TIME and PLACE**.

SIMPLE IMPRUDENCE consists in the **LACK OF PRECAUTION** displayed in those cases in which the damage impending to be cases is not immediate nor the danger clearly manifest.

Note:

- 1) ***Acts punished constituting recklessness or imprudence:***
 - a) By committing through **reckless imprudence** any act which, had it been intentional, would constitute grave or less grave felony or light felony.
 - b) By committing through **simple imprudence or negligence** any act which would otherwise constitute a rave or less serious felony.
 - c) By causing through **simple imprudence or negligence** some wrong which, if done maliciously, would have constituted a light felony.

2) Imprudence or negligence is not a crime in itself, but is simply a way of committing a crime.

3) A negligent act causing damage may produce civil liability arising from a crime or create an action for ***quasi-delict*** under the Civil Code. The injured party may choose which remedy to enforce and cannot recover on both.

4) ***Imprudence vs. negligence distinguished:***

a) ***Imprudence*** is deficiency of action; while ***Negligence*** is deficiency of perception.

b) ***Imprudence*** is failure in precaution; while ***Negligence*** is failure in inadvertence.

c) ***Imprudence*** may be avoided by paying proper attention and using due diligence in foreseeing them; while ***Negligence*** may be avoided by taking the necessary precaution once they are foreseen.

5) When the reckless or simple imprudence only resulted in damage to property, the penalty is only a ***fine***.

Carillo vs. People, 229 SCRA 386.

The deceased, a 13-year-old girl named Catherine Acosta, was suffering from acute pain in the lower part of her abdomen. It was appendicitis. Dr. Madrid, a surgeon, operated on the girl, while Dr. Carillo, an anesthesiologist, assisted him. Dr. Carillo, contrary to SOP, did not weigh the girl before administering anesthesia to her. Apparently the child suffered from an overdose of ***Nubain***. The child later went on a coma, then died three days after.

Held: SC held Dr. Carillo and Dr. Madrid liable for Simple imprudence resulting in homicide. Simple imprudence is defined as “mere lack of precaution in a situation where either the threatened harm is not immediate or the danger not openly visible.” Put in another way, the gravamen of the offense of simple imprudence is the failure to exercise the diligence called for by the situation which was not immediately life-destructive, but which culminated in the present case in the death of a human being, in this case the victim Catherine.

ARTICLE 366 -- Application of laws enacted prior to this Code.

Without prejudice to the provisions contained in Article 22 of this Code, felonies and misdemeanors, committed PRIOR to the date of effectiveness of this Code shall be punished in accordance with the Code, or acts in force at the time of their commission.

ARTICLE 367 -- Repealing clause.

-- GOOD LUCK TO THE BAR EXAMS --

CRIMINAL LAW I & II
Ateneo de Davao College of Law

By ATTY. TEODORO V. ANGEL

LAST MINUTE REMINDERS AND POINTERS:

What is meant by “SWEETHEART DEFENSE” in rape cases?

“Sweetheart defense in rape, to be credible, should be substantiated by some documentary or other evidence of the relationship – like mementos, love letters, love notes, pictures and the like. Here appellant categorically admitted that no such evidence exists hence, his alleged romantic relationship with victim is just a figment of his imagination.

“Assuming that appellant and victim were sweethearts, it does not mean that he could not rape her. Such a relationship is not a guaranty that he will not assault and tarnish that which she holds so dearly and trample upon her honor and dignity. Indeed, a sweetheart can be forced to engage in sexual intercourse against her will.”

(People vs. Eduardo Limos, 410 SCRA 463 (2003) penned by Justice Sandoval Gutierrez)

PEOPLE VS. ORITA, 184 SCRA 105 (1990)

Facts: Accused PC soldier Orita followed 19-year-old Cristina Abayan from party, used knife to force her to have sexual intercourse, but while on top, she managed to escape. Samar RTC convicted him of frustrated rape and case on appeal.

Held: SC held it’s consummated rape, and not mere frustrated rape only. Citing ***People vs. Erinia***, no frustrated stage anymore and *Erinia* ruling was a stray decision. It is settled that slight penetration consummates rape, and perfect penetration not essential. Mere touching of lips of vagina, without laceration of vagina or emission, already consummates rape.

PEOPLE VS. DELA PENA, 233 SCRA 573 (1994)

Facts: Accused dela Pena waylaid 9-year-old Rose Marasigan on her way to school. Due to her resistance, and then playing dead, that accused panicked, could not get an erection, and fled. Valenzuela RTC held it’s consummated rape and penalty was ***reclusion perpetua***.

Held: SC, however, modified Valenzuela RTC decision and held it’s only attempted rape. Although mere touching consummates rape, rape presupposes an erect penis because without erection, there can be no penetration, no matter how slight, and without penetration, there can be no consummation.

PEOPLE VS. CAMPUHAN, (2000 case)

Facts: Mother saw accused and houseboy Campuhan in the act of almost raping her 4-year-old daughter in a kneeling position. Medical findings indicated hymen was still intact but since in previous Orita ruling entry into labia without rupture of hymen already consummated rape, issue is whether or not its consummated, or attempted, rape only.

Held: SC held it's attempted rape only. Touching here means the penis indeed touched the labia and slid into the female organ, and not merely stroke the external surface. Some degree of penetration beneath the surface must be achieved, and the **labia majora** must be entered. Victim herself testified that penis grazed but did not penetrate her organ.

"There was only a shelling of the castle, but no bombardment of the drawbridge yet."

PEOPLE VS. JOHN NEQUIA, 412 SCRA 628 (2003)

Insertion of finger in another person's orifice constitutes rape.

Nature:

Automatic review of Iloilo RTC decision convicting accused Nequia of rape with death penalty.

Facts:

On January 23, 1999, in Oton, Iloilo, the accused John Nequia, with abuse of confidence, had carnal knowledge of stepdaughter, Mary Ghel Guanco, 13 years old.

Iloilo RTC convicted him of rape under Article 266-A, as amended by **R.A. 8353** and imposed death penalty by lethal injection. Hence, the automatic review by the Supreme Court.

Held:

Supreme Court affirmed conviction for **Qualified rape** in consummated stage and imposed death penalty.

1) It is consummated because in rape, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated because in a manner of speaking, and as indicated in **People vs. Campuhan**, ***"bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle."***

2) The Anti-Rape Law (**RA 8353**) transformed and reclassified rape as a felony against persons, and provided **Rape not only by sexual intercourse**, but also **Rape by sexual assault**. Hence, whatever object or instrumentality chosen by the perpetrator, whether inanimate or animate like a finger, is prohibited by law.

3) As such, for inserting his finger, and then later having sexual intercourse with the victim, the prosecutor should have filed two separate **Informations** -- one for Rape by sexual intercourse under par. 1 of Article 266-A, and secondly, **Rape by sexual assault** under par. 2 of Article 266-A.

PEOPLE VS. JOSEPH ORILLA, 422 SCRA 620 (2004)

The number of ejaculations during rape does not increase the penalty to death since ejaculation is not a qualifying circumstance in rape.

Nature:

Automatic review of Pangasinan RTC decision convicting Joseph Orilla of qualified rape and imposing death penalty.

Facts:

On September 12, 1996, at around 3:00 a.m., the victim, Remilyn Orilla, 15 years old, was awakened by a heavy weight pressing on her body and found appellant Joseph Orilla on top of her. Appellant, carrying a knife, threatened her with death, and then pushed her legs apart and inserted his penis into her vagina where victim felt “some warm matter enter.” Without removing his organ, appellant remained on top and commenced sexual intercourse after a few minutes and the victim again felt the same “substance” enter into her vagina. Then the accused fled.

The Pangasinan RTC convicted accused Joseph Orilla on the basis of testimony of the victim who identified him through his voice, and because of pale of light from the eastern horizon. The lower court convicted him for one count of ***Qualified rape*** but his second act of ejaculating was used to aggravate the offense to warrant imposition of death penalty.

Held:

The Supreme Court affirmed conviction of lower court for one count of rape but penalty is ***reclusion perpetua*** only, and not death penalty.

1) The penalty was reduced to ***reclusion perpetua*** because nowhere in the law is second ejaculation a mode of qualifying the offense by increasing the penalty death. Further, the relationship of the victim to the accused, and the minority of the victim, were not alleged in the ***Information***.

2) The second ejaculation is immaterial because *gravamen* of the offense is carnal knowledge, and not the number of times the accused ejaculated.

GERONIMO ORDINARIO VS. PEOPLE, 428 SCRA 772 (2004)

Rape by sexual assault

Nature:

Petition for review on certiorari of the Makati RTC decision and CA decision convicting accused accused Geronimo Ordinario of twelve (12) counts of rape under Article 266-A of the RPC.

Facts:

From November 9, 1998 to and eleven (11) other occasions shortly afterwards, the accused who is a teacher and head of boy Scout, sexually assaulted Jayson Ramos, a ten-year old student under his care. The Makati RTC and Court of Appeals convicted him for 12 counts of rape by sexual assault. Hence, this appeal.

Held:

The Supreme Court affirmed his conviction for 12 counts of rape by sexual assault.

1) Under Article 266-A, rape is committed in two modes: First, by a man who shall have **carnal knowledge** of a woman under any of the following circumstances x x x Second, by any person who shall commit an act of **sexual assault** by inserting his penis into another person's mouth or anal orifice, or by inserting any instrument or object into the genital or anal orifice of another person.

2) Under the first paragraph, this can only be committed by a man who has **carnal knowledge (sexual intercourse)** with a woman, but under the ***2nd paragraph***, the law did not make any distinction anymore on the sex of either the offense or the victim hence, this can be committed by a man or woman who commits ***rape by sexual assault*** by inserting an instrument or object into the genital or anal orifice of the victim who is either a man or a woman.

PEOPLE VS. ACERO, 425 SCRA 642 (2004)

Sweetheart defense not available in rape of mentally retarded victim

Nature:

Appeal from Davao RTC decision convicting accused Godofredo Acerro of consummated rape with the penalty of ***reclusion perpetua***.

Facts:

The accused-appellant Godofredo Acero was a mere stowaway who works as wash your car boy and helper of the Lugas in Davao City. On May 8, 2000, while Cherry Luga, a mental retardate, went into the comfort room, the appellant followed her there, and locked the bathroom. There the appellant covered his mouth with one hand, threatened her, removed his pants and her shorts and panties, and inserted his penis into her vagina in a standing position. In his defense, he claimed that they were sweethearts. Despite his sweetheart defense, however, the Davao RTC convicted him for consummated rape hence, his appeal.

Held:

SC affirmed his conviction for ***consummated rape***.

1) A person is guilty of rape when he has sexual intercourse with a female who is suffering from a borderline mental deficiency. Based on medical reports, Cherry had an IQ of only 43, and is considered a mental retardate to a moderate degree with a mental age of an average seven-year-old child. In fine, she is an imbecile.

2) Appellant's contention that they were sweethearts does not hold water. A defense based on the ***"sweetheart theory"*** is no defense at all in rape where the victim is a mental retardate because it is settled that sexual intercourse with a mental retardate constitutes rape. Cherry, an imbecile, cannot give legal consent to sexual intercourse.

PEOPLE VS. EDUARDO LIMOS, 410 SCRA 463 (2003)

Sweetheart defense in rape, to be credible, should be substantiated by documentary or other evidence of relationship.

PONENTE: JUSTICE SANDOVAL GUTIERREZ

Nature:

Automatic review of Urdaneta, Pangasinan RTC decision which convicted petitioner for four counts of rape imposing the death penalty for two counts, and ***reclusion perpetua*** for the other two counts of rape.

Facts:

On August 9, 1993, at about 1:00 p.m., the victim Janice C. Ligot, only 13 years old then, was alone in her aunt's house watching television. All of a sudden, the petitioner, Eduardo Limos (her uncle by affinity) grabbed her hands and pulled her inside a room. She tried to offer resistance but he threatened her with a knife and raped her. The rape happened three more times, until she found the courage to inform her aunt who assisted her to undergo medico-legal examination, report to the police authorities, and file a complaint.

Finally, he invoked the "***sweetheart defense***" claiming that the victim and he were lovers, and that she would oftentimes enter his room and have sex with him.

The lower court, however, refused to believe petitioner and convicted him for four counts of rape, with two counts of rape punished with ***reclusion perpetua***.

Held:

The Supreme Court affirmed his conviction for four counts of rape, but lowered the penalty to ***reclusion perpetua*** only, instead of the original death penalty.

1) As to the absence of external injuries, proof of external injuries inflicted on the rape victim is not indispensable in a prosecution of rape committed with force or violence. There is truth in the victim's testimony that petitioner was able to rape her by threatening to kill her with a knife. This constitutes force and intimidation which makes the act of sexual intercourse qualify as rape.

2) Neither is there basis to petitioner's ***sweetheart defense***. The sweetheart defense, to be credible, should be substantiated by some document or other evidence of the relationship – live mementos, love letters, notes, pictures and the like. Here, there was no such evidence presented by appellant. Clearly, his alleged romantic relation with Janice, the victim, was only a figment of his imagination.

PEOPLE VS. SABARDAN, 429 SCRA 10 (2004)

Nature:

Appeal from Rizal RTC decision convicting Domingo Sabardan of Complex crime of Serious illegal detention with Rape.

Facts:

On September 15, 1991, Richelle Banluta, only 12 years old and adopted daughter, left their home after she was scolded by her mother. The accused, a Catechist, invited her to stay in his apartment which was just near their home. She relented feeling that she was safe there.

On the fourth day, however, he forced her to drink beer or juice and when she passed out, he had carnal knowledge with her. She knew this when she woke up the following day naked, and felt severe pains in her vagina which was bleeding profusely, and saw appellant completely naked beside her.

This was followed five more times, each time appellant forcing her to drink either juice or beer, after which she'd pass out. Fortunately, she was rescued on September 30, 1991.

The Rizal RTC convicted accused-appellant of the Complex crime of ***Serious illegal detention with rape*** and sentenced him to ***reclusion perpetua***. Hence, this appeal.

Held:

The Supreme Court modified the Rizal RTC decision, and convicted accused-appellant instead of the crime of ***Rape only***.

1) Where the original and ***PRIMORDIAL*** intention of the accused in keeping the complainant in his apartment was to rape her, and ***NOT to deprive her of her liberty***, the accused is ***guilty only of RAPE***, and not of the *Complex crime of Serious illegal detention with Rape*.

2) Accused also maintained that no rape took place because Richelle did not see his penis inserted into her vagina since she lost consciousness after drinking beer and juice. In rape cases, however, carnal knowledge is proven not only by direct evidence but also by circumstantial evidence, like her dizziness, her vagina bleeding upon waking up, the accused completely naked beside her when she regained consciousness.

What are LIMITATIONS on Congress power to enact laws?

- E*** 1) No enact Ex post facto law shall be enacted.
- B*** 2) No Bill of attainder of attained shall be enacted. (See ***People vs. Ferrer***)
- A*** 3) Criminal law shall be of general Application.
- C*** 4) No Crue! or inhuman punishment or excessive fines shall be imposed.
(Recall ***EBAC***)

What are the THREE BASIC PRINCIPLES of criminal Law?

- Pro*** 1) ***Prospectivity*** -- Crimes punishable by penal laws already in force at the time of their commission, ***EXCEPT*** if favorable to accused, provided accused is not a habitual

offender, although at the time of promulgation of such law a final sentence has been pronounced and the convict is serving the same.

Gen 2) **Generality** – Penal laws shall be obligatory upon those who live or sojourn in Philippine territory, subject to principles of public international law and to treaty stipulations.

Ter 3) **Territoriality** – Criminal laws are only enforceable within Philippine territory, except those provided in **Article 2**, RPC because of the **EXTRATERRITORIALITY** principle. (Recall **ProGenTer**)

What are the THREE SCHOOLS OF THOUGHT of Criminal Law?

1) **Classical** -- Basis of criminal liability is human free will; purpose of penalty being **retribution and deterrence**; penalty proportionate to offense; basis of crime is human nature;

2) **Positivist** -- Man is subdued by strange, morbid phenomenon which constrains him to do wrong despite his will to the contrary; purpose of penalty is reformation, although our penal system is essentially **Classical**.

3) **Eclectic** -- Combination of best features of classical and positivist schools of thought from which the RPC is patterned after, although our penal laws is still essentially classical.

Distinguish crimes MALA IN SE from crimes MALA PROHIBITA

1) ***In crimes Mala in se***, these are crimes punishable under the Revised Penal Code which are inherently wrong or evil in themselves that they call for universal condemnation while ***crimes Mala prohibita*** are crimes punishable by **special law** which are not inherently wrong but constitute violations of rules of convenience designed to secure a more orderly regulation of the affairs of society.

2) ***In crimes Mala in se***, determine whether or not act done with **dolo** or **culpa** hence, good faith is a defense. Also, the criminal intent, degree of participation, stage of execution and attendant circumstances must be determined, unlike in ***crimes Mala prohibita*** where good faith, stages of execution, degree of participation and attendant circumstances are immaterial since it is enough that the offender committed the prohibited act.

See **Padilla vs. Judge Dizon**, -- 158 SCRA 127(1988)

What are the distinctions between INTENT and MOTIVE?

1) **Intent** is the purpose to use a particular means to effect a particular result; objective phase. Criminal law, as a general rule, is concerned only with **INTENT**, and whether or not the accused acted freely, intelligently and **INTENTIONALLY**.

2) **Motive**, on the other hand, is the moving power which impels one to action for a definite result. Not an element of a crime except if doubt exists as to the identity, liability, or participation of the accused and the circumstances attending the commission of the crime.

Define the elements of MISTAKE OF FACT

- A** 1) Act would have been lawful had facts been as accused believed them to be.
I 2) Intention of accused is lawful had facts been as accused believed them to be.
M 3) Mistake is not attended by fault or negligence on part of the accused.
(Recall **AIM**)
See US vs. Ah Chong/People vs. Oanis

PROBLEM:

Mr. Derla lives with his family in a small rented apartment in an urban poor community located at the outskirts of Davao City. Due to a number of robberies in the neighborhood, Mr. Derla armed himself with a .38 **paltik** revolver. Around midnight sometime in January 2006, he was awakened by the barking of dogs and he immediately grabbed his gun as he went out to investigate. It was pitch black yet he could see a dark figure with a bladed weapon in hand, around 15 meters away, menacingly moving towards him. He fired six successive shots at his would-be-assailant who died at the spot. When the lights were turned on, the assailant happened to be his 70-year-old father-in-law carrying a newspaper on his way to the kitchen to eat midnight snacks and read the newspaper.

- b) If you were Derla's lawyer, what defenses will you invoke in behalf of your client?**

ANSWER:

If I were Mr. Derla's lawyer, I will invoke defense of **mistake of fact**. In the case at bar, all requisites of mistake of fact are present because the act and intention of Mr. Derla would have been lawful and constituted legitimate self defense had facts been as Mr. Derla believed them to be. Further, Mr. Derla was not negligent considering that the danger here was immediate and impending, in light of the fact that the neighborhood has witnessed several robberies in the past.

- b) If you were Judge, rule on the liability of Mr. Derla.**

ANSWER:

If I were the Judge, I will hold Mr. Derla liable for **Simple imprudence resulting in homicide**, the homicide resulting from simple lack of precaution on the part of Mr. Derla to ascertain the identity of the intruder. Considering that the intruder was still 15 meters away, there was still reasonable opportunity for Mr. Derla to ascertain the identity without imminent danger or risk to himself. Finally, firing six successive shots

at the supposed intruder constituted excessive force which negates the defense of mistake of fact.

I will, however, credit in Mr. Derla's favor the mitigating circumstance of ***praeter intentionem***, or no intention to commit so grave a wrong as that actually committed.

Define the following: ERROR IN PERSONAE, ABERRATIO ICTUS and PRAETER INTENTIONEM

These are the three ways by which a person may commit a felony and incur criminal liability although the wrongful act done be different from that which he intended.

1) In ***Aberratio ictus***, there is a ***mistake in the blow*** such that the offender intending to cause an injury to one person actually inflicts it on another because of mistake, or lack of precision. For example, when A, intending to kill B, fires his gun at the latter but because of poor aim or lack of precision, A hits C instead who suffers serious physical injury.

2) In ***Error in personae***, there is a ***mistake in the identity*** of the victim. For instance, when A, intending to kill B, his enemy, lay in ambush for the latter to pass along a dark alley, and shot B. It turned out that because of the darkness, A fired his gun at C, the unintended victim in the belief that C was B, his intended victim.

3) In ***Praeter intentionem***, the ***injurious results exceeds the intent*** of the offender. For instance A, without any intent to kill, slaps B on the face and B falls on the asphalt pavement head first, resulting in fracture of B's head, causing the death of B. This is a mitigating circumstance when there is a notorious disparity between the act or means employed by the offender and the resulting felony.

Define, and explain, the THREE STAGES OF EXECUTION.

1) ***Consummated*** – all elements necessary for *EXECUTION* and *ACCOMPLISHMENT* are present.

2) ***Frustrated*** -- all acts of *EXECUTION* performed but not produce felony as a consequence by reason of ***Causes Independent*** of the will of perpetrator.

(Recall ***Caln***)

3) ***Attempted*** – commences commission of felony directly by overt acts, but not perform all acts of *EXECUTION* by reason of some ***Cause Or Accident*** other than his own spontaneous desistance.)

(Recall ***CorA***)

State the concept of IMPLIED CONSPIRACY and its legal effects.

1) ***"Implied conspiracy"*** is conspiracy which can only be inferred or deducted from the manner the participants in the commission of the crime carried out its execution.

Where the offenders acted in concert in the commission of the crime such that their acts are coordinated, or synchronized in the manner indicating they were in pursuit of the same criminal objective, they shall be deemed to be acted in implied conspiracy (even if they did not expressly conspired) and their criminal liability shall be collective, and not individual.

2) However, only those who participated or had knowledge of the criminal acts in the commission of the crime will be considered as co-conspirators, since mere presence, or acquiescence to or approval of the crime, without any act of criminal participation, will not render one criminally liable as co-conspirator.

Distinguish JUSTIFYING from EXEMPTING circumstances.

1) ***JUSTIFYING CIRCUMSTANCES*** (Article 11) -- Act is lawful such that there is no crime and no criminal hence, accused incurs no criminal liability nor civil liability, except in ***no. 4*** (*Necessity or Avoidance of greater evil*).

2) ***EXEMPTING CIRCUMSTANCES*** (Article 12) – Act is wrongful, but actor not acted voluntarily, intelligently nor intentionally, neither is there ***dolo*** or ***culpa***. Hence, there is no criminal but there is civil liability, except in ***no. 4*** (*Accident*) and ***no. 7*** (*Lawful, insuperable cause*).

What are the elements of SELF DEFENSE, DEFENSE OF RELATIVE from DEFENSE OF STRANGER.

SELF DEFENSE

U 1) ***Unlawful*** aggression -- physical act manifesting *Actual* or *Imminent* danger to life or limb.

R 2) ***Reasonable*** necessity of means employed -- there must be no other means to prevent or repel aggression so means must be reasonable; no excessive force.

L 3) ***Lack*** of sufficient provocation – or no provocation at all given by person defending himself or provocation not sufficient to cause violent aggression on part of victim.

(Recall **URL**)

DEFENSE OF RELATIVE

That the first two requisites of Unlawful aggression and Reasonable necessity are present, and where the provocation was given by the person being attacked, the one defending had ***NO PART*** therein.

DEFENSE OF STRANGER

That the first two requisites of Unlawful aggression and Reasonable necessity are present, and that the offender was not prompted by ***REVENGE, RESENTMENT or other EVIL MOTIVE***.

PROBLEM:

Jose ("**Jose**" for brevity) and Fred ("**Fred Sr.**" for brevity) are neighbors with a long-standing feud due to a boundary dispute. One day Jose was drinking beer with his **barkada** when Fred Sr. passed by. In an effort to reconcile, Jose cordially invited Fred Sr. to join them, but Fred Sr. sarcastically replied: "**Di ako umiinom kasama mga traidor.**" This led to a heated argument which soon escalated into an armed struggle, both Jose and Fred Sr. being armed with a bladed weapon. It was not clear who struck first but it was shown that Jose, being bigger and stronger, overpowered Fred Sr. and stabbed him thrice. Jose was about to strike again when **Fred, Jr.**, the victim's 25-year-old son, arrived and shot Jose at the back, killing him on the spot. Fred, Sr. himself died while being rushed to the hospital.

In the lower court, **Fred, Jr.** was charged and convicted for **Murder** because of **treachery** for shooting Jose at the back, along with generic aggravating circumstance of **evident premeditation** because of the family feud and **abuse of superior strength** because of the use of .45 caliber in killing Jose, his father's arch enemy.

a) ***If you were Fred Jr.'s lawyer handling his appeal, what defenses will you raise in your client's favor and assign as error in the lower court's decision.***

ANSWER:

If I were Fred Jr.'s lawyer handling his appeal, I will invoke defense of relatives. In the case at bar, all requisites of defense of relative are attendant. There was unlawful aggression on the part of Jose in stabbing Fred Sr. and no sufficient provocation on the part of Fred Sr. Most importantly, assuming the provocation was given by Fred Sr., the son Fred Jr. had no part, or participation nor knowledge therein.

There can be no treachery nor evident premeditation for as the Supreme Court stressed in a decided case, where there are no particulars as to how aggression commenced, and as to how the acts unfolded leading to the death of the victim in a fight, there is no treachery nor evident premeditation. Neither can there be abuse of superior strength because it was the only weapon available to Fred Jr. which he used to thwart further aggression against his father.

PEOPLE VS. JOSEPH CAJURAO, 410 SCRA 463 (2003)

**No self-defense if one kills an aggressor
already retreating from the fray**

Ruling:

SC modified the conviction of accused from **Murder**, and reduced it to **Homicide**.

1) When there are “no particulars as to how killing began, its perpetration with treachery cannot be merely supposed.” In this case, the witness Pacita Pordios did not see how the incident between accused Cajurao and the victim Betita commenced and developed, before the victim Betita took hold of the lamp from her stall.

2) Accused, however, could not invoke self-defense. For self defense to exist, the unlawful aggression must be actual, or at least imminent, and not merely imaginary. Settled is the rule in jurisprudence that when unlawful aggression ceases (as when victim fled after slapping the accused), the accused Cajurao no longer has the right to kill, or even wound the former aggressor. Self-defense does not justify the unnecessary killing of an aggressor who is already retreating from the fray, like Betita who fled after slapping the accused.

3) What happened here was retaliation especially with the strained relations of the parties, not the justifying circumstance of self defense.

DANILO MENDOZA VS. PEOPLE, 448 SCRA 158 (2005)

**Unlawful aggression an indispensable
element in incomplete self defense**

PONENTE: JUSTICE SANDOVAL GUTIERREZ

Facts:

On November 23, 1994, at Barangay 19, San Nicolas, Ilocos Norte, the petitioner Danilo Mendoza was having a drinking spree with the victim, Alfonso Nisperos, and several others. In the course of their drinking, petitioner suddenly smashed a pitcher of water on the table, and shouted invectives: “Bullshit! You are always asking us to drink!”

The victim reacted, and this led to an altercation. When the victim left and headed for home together with his mother, Loreta, the petitioner waylaid them and after a short while, Loreta heard Alfonso screaming for help. Loreta rushed to her son, and found him lying, face down, with petitioner Mendoza on top of him, stabbing him with a knife.

She approached petitioner and tried to intercede for her son, but petitioner instead attacked her with his knife, hitting her right arm. Petitioner Mendoza then fled. Alfonso was rushed to the Batac General Hospital but was pronounced dead on arrival.

Accused convicted for ***Homicide*** in the lower court.

Held:

The Supreme Court affirmed his conviction for ***Homicide***.

1) In incomplete self defense, unlawful aggression must always be present, it being an indispensable requisite. Just as in complete self defense, the burden of proof rests upon the petitioner to prove the elements of incomplete self defense. It follows that he should have proved before the trial court that there was unlawful aggression on the part of the victim. Considering that petitioner failed to prove unlawful aggression on

the part of the victim, petitioner Mendoza is not entitled to the privileged mitigating circumstance of incomplete self defense.

What are the TWO TESTS OF INSANITY in criminal law?

Two tests for insanity:

- 1) Complete deprivation of intelligence (**Cognition test**)
- 2) Complete deprivation of freedom of will (**Volition test**)

Explain the differences between SUFFICIENT PROVOCATION from IMMEDIATE VINDICATION

1) In **sufficient provocation**, cause need not be grave offense; in **vindication**, cause must be a grave offense. In **provocation**, cause must immediately precede the act; in **immediate vindication**, cause need not be immediately, but only "**proximate**."

2) **Provocation** and **vindication of a grave offense** can never co-exist with **evident premeditation** which requires lapse of time to premeditate the commission of the offense.

3) **Vindication** of grave offense and sufficient **provocation** cannot co-exist with **Passion and obfuscation**. Invoke only one. If longer period of time, preferable to invoke **Vindication** of grave offense.

Distinguish GENERIC AGGRAVATING, QUALIFYING AGGRAVATING and INHERENT AGGRAVATING

GENERIC AGGRAVATING

- 1) Generally applies to all crimes, and if there is qualifying circumstance like treachery in murder, the other aggravating become mere **GENERIC AGGRAVATING**;
- 2) Can be offset by ordinary mitigating circumstance.
- 3) If not offset, serves to increase penalty to maximum period of penalty prescribed by law.

QUALIFYING AGGRAVATING

- 1) Changes the nature of the felony itself, like abuse of trust and confidence in theft, making it **Qualified theft** instead of **simple theft**.
- 2) Cannot be offset by ordinary mitigating circumstance and cannot be proved if not expressly alleged in **Information**.
- 3) Cannot be offset by ordinary mitigating circumstance because it changes not only nature but also name of offense itself, that offender becomes liable for a new and more serious offense.

INHERENT AGGRAVATING

1) Considered integral part of the felony already, like unlawful entry in **Robbery with force upon things** and does not increase the penalty.

2) Qualifying circumstances must also be proven beyond reasonable doubt because they increase penalty by **DEGREE**, not only by **PERIOD**.

Eg. If qualified rape because incestuous rape and victim under 18, or victim is below seven years old, penalty is mandatory death.

What is TREACHERY as an aggravating circumstance?

1) In all aggravating circumstances, including Treachery, there are **two requisites**:

a) That offender consciously and deliberately adopted this particular means to facilitate the commission of the crime.

b) That the means adopted would specially insure the commission of the crime without risk to himself arising from defense that offended party might make.

2) An attack from behind or at the back is always treachery but even a frontal attack constitutes treachery if it is so sudden, unexpected and unprovoked. In **People vs. Lugaw**, Supreme Court held there can be no treachery where “*there are no particulars on how aggression commenced. or circumstances showing how acts leading to death actually unfolded.*”

3) Also, there is no **treachery** or **evident premeditation** or any other aggravating circumstance if the killing was preceded by a fight.

PEOPLE VS. TIMOTEO ESCARLOS, 410 SCRA 463 (2003)

No treachery if killing preceded by a fight

Nature:

Automatic review of Pangasinan RTC decision convicting accused-petitioner Tomy Escarlos of **Murder** with penalty of death.

Facts:

On June 1, 2000, petitioner Escarlos stabbed to death the victim, a certain Barangay Kagawad Antonio Balisaca during the benefit dance in the municipality.

He stabbed the victim four times with a ten-inch knife. Evidence, however, showed that the stabbing incident was preceded by a fight. According to petitioner Escarlos, the victim, who was drunk, confronted him by saying: “**You are here again to create trouble**” and when petitioner answered back, the victim boxed him on the

forehead. The victim was about to pull out a kitchen knife when Escarlos was able to wrest it away from the victim, and stabbed the victim to death.

The Pangasinan RTC convicted petitioner Escarlos for **Murder** qualified by treachery, and imposed on him the death penalty. Hence, this automatic review to the Supreme Court.

Held:

The Supreme Court MODIFIED the conviction, and lowered the same from the original conviction of Murder to only **Homicide**.

1) The Supreme Court held that there was no treachery nor evident premeditation because the killing was preceded by a fight, and was done at “the spur of the moment.” There is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim, or when the victim is aware of the hostility of the assailant towards the former. There is no treachery here because the victim was aware of the imminent danger to his life, and he was afforded the opportunity to put a defense after he slapped the petitioner and petitioner approached him to exact revenge.

2) Petitioner’s invocation of self-defense, however, is untenable. Even assuming the act of accused in berating him then boxing him on the forehead constitutes unlawful aggression, the unlawful aggression no longer existed when petitioner Escarlos stabbed the victim. When unlawful aggression commenced by the victim ceases or no longer exists, the one who resorts to self-defense no longer has a right to kill, or even wound, the former aggressor. In stabbing the victim after Escarlos wrested the knife from him, petitioner Escarlos, in effect, became the unlawful aggressor.

3) In stabbing the victim after rendering the victim defenseless, petitioner went beyond self-preservation, and acted out of vindictiveness and with excessive force.

PEOPLE VS. OSCAR PEREZ, 414 SCRA 107 (2003)

When frontal attack on victim still constitutes treachery

Nature:

Appeal from Malolos, Bulacan RTC decision convicting petitioner Oscar Perez of **Murder** with penalty of **reclusion perpetua**.

Facts:

The couple Rowena Balite and Ildefonso Balite, the victim, own an apartment unit. Adjacent to their unit is the unit owned by Artemio and Emerencia Santos, the uncle/aunt of Rowena, and living with them was accused-appellant Oscar Perez. Since the unit of the Santos spouses had no electrical services, they shared their electrical power supply with the Balite couple.

One night Ildefonso came home and noticed an electric spark from the overloaded electrical socket. He proceeded to the unit of the Santos to temporarily disconnect their power supply to forestall any untoward incident. He talked to Oscar, but Oscar refused. This led to a heated argument, with the two grappling with each other. Artemio, fortunately, arrived and pacified the two after which Ildefonso left and proceeded to his other-in-law's house.

Without his knowledge, Oscar surreptitiously followed him and when they were out of the tenement's compound, Oscar called Ildefonso's name. When Ildefonso turned around, Oscar shot him twice at close range, which led to Ildefonso's death.

The Malolos, Bulacan RTC convicted Oscar for Murder, qualified by treachery, imposing on him **reclusion perpetua**. Oscar appealed and argued that it was only homicide because the killing was preceded by a fight hence, there was no treachery.

Held:

The Supreme Court affirmed Oscar's conviction for **Murder**, qualified by treachery.

1) While as a general rule there is no treachery if an altercation ensued between the accused and the victim, this is subject to an exception. The exception is when after the altercation where the parties were pacified, the victim left the scene to go back home, unaware that the accused followed him, armed with a deadly weapon, and shot him frontally.

2) Further, while generally an attack which is frontal cannot be considered treacherous, treachery can still exist even if attack is frontal if the attack was **so sudden, unexpected, or unprovoked** which did not afford the victim of any opportunity to repel the aggression, or defend himself, or to retaliate.

Differentiate between *IGNOMINY* and *CRUELTY*.

1) **Ignominy** is adding insult to injury by increasing the **moral suffering** or shame of the victim. In **People vs. Jose**, where the accused Jose, Pineda, Canal and Aquino forced movie actress Maggie dela Riva to strip naked for them and dance suggestively, while they ogled over their naked body, this constitutes *ignominy*.

2) **Cruelty** is where offender takes pleasure in increasing the **physical suffering of the victim**, such as stabbing a dying victim repeated while in the throes of death to augment the victim's physical pain. But if preceded by a quarrel, usually there is *no cruelty* against the accused.

Distinguish *RECIDIVISM* from *HABITUALITY (REITERACION)*

1) In **Recidivism**, enough that accused previously convicted by final judgment of an offense; in **Habituality**, offender must be previously punished (must actually serve sentence for first offense).

2) In **Recidivism**, two offenses must be embraced in same title of RPC; in **Habituality**, two offenses need not be embraced in same Title of RPC.

What is HABITUAL DELINQUENCY?

1) **Habitual delinquency** -- within ten (10) years from last release or last conviction, of the crimes of *Falsification, Robbery, Estafa. Theft, Serious or Less serious physical injuries* (Recall **FRETSeI**), the offender is found **GUILTY** of any of said crimes a third time or oftener. **Ten years** from *last release, or last conviction*.

Distinguish ENTRAPMENT vs. INSTIGATION as absolatory cause

1) **Entrapment** is a scheme used by police officer to facilitate and secure apprehension of accused; **mens rea**, however, still emanated from accused and public officer merely facilitate commission of a crime. Hence, it is **not** an absolatory cause and accused is criminally liable.

2) **Instigation** is where public officer directly induces accused into committing the offense which accused would otherwise not have had committed on his own. Hence, instigation is an absolatory cause posing a bar to criminal prosecution and where accused is not criminally liable akin to an exempting circumstance.

(See **Araneta vs. Court of Appeals**)

Differentiate between LIFE IMPRISONMENT from RECLUSION PERPETUA

S 1) While life imprisonment is a penalty for violation of a Special law, **reclusion perpetua** is penalty for violation under RPC,.

A 2) While life imprisonment carries no Accessory penalties, **reclusion perpetua** has accessory penalties.

D 3) While life imprisonment has no fixed Duration and could be literally for life, **reclusion perpetua** has a fixed duration of 20 years and one day to 40 years, (Recall **SAD**)

What are the kinds of COMPLEX CRIMES?

1) When a single act constitutes two or more grave or less grave felonies, otherwise called **COMPOUND CRIMES**. eg. X shoots Y, killing Y and injuring Z riding on a bike with Y. Crime is complex crime of Homicide/Murder with serious physical injuries.

2) Or when an offense is a necessary means for committing another, otherwise called **COMPLEX CRIME PROPER**. eg. DECS treasurer falsified amount in check from P1,000 to P10,000 and pocketed the difference. Crime is complex crime of *Malversation through Falsification*.

Distinguish between an ORDINARY COMPLEX CRIME from a SPECIAL COMPLEX CRIME as to their concept, and as to the imposition of penalties.

1) In terms of **CONCEPT**, an **ordinary complex crime** is made up of two or more crimes being punished in distinct provision of the Revised Penal Code but alleged in one **Information**. This is because they were either brought about by a single felonious act, or because one offense is a necessary means for committing another offense.

A **special complex crime**, on the other hand, is made up of two or more crimes which are considered as components only of a **single indivisible offense** being punished in one provision of the Revised Penal Code.

2) In terms of **PENALTY**, in an **ordinary complex crime** the penalty for the most serious crime shall be imposed, and to be applied in its maximum period.

In a **special complex crime** only one penalty is specifically prescribed for all the component crimes which are regarded as one indivisible offense, and not the penalty for the most serious crime in *ordinary complex crime*.

What are COMPOSITE CRIMES, CONTINUED CRIMES and CONTINUING CRIMES?

1) A **COMPOSITE CRIME** exists when under one provision of law, a crime which carries another crime as component thereof is penalized with one penalty only. This is otherwise called special composite crime such as *Robbery with homicide, Robbery with rape, Robbery with arson, or Rape with homicide*.

2) A **CONTINUED CRIME** is one where the offender acting a single criminal resolution commits a series of acts in the same place at about the same time, and all the overt acts committed violate one and the same legal provision

3) A **CONTINUING CRIME** is used in procedural law, particularly in criminal procedure. This refers to the venue where the particular crime may be prosecuted. A continuing crime may be prosecuted in one place but in any place where some of the essential ingredient of the crime were committed.

What is PROBATION under the Probation Law?

1) It is a disposition under which a defendant, after conviction and sentence, but before he begins to serve sentence and before perfection of an appeal, is released subject to conditions imposed by the court, and subject to the supervision of a probation officer.

2) Probation and appeal are mutually exclusive. If one applies for probation, one accepts correctness of lower court's decision hence, there is waiver of right to appeal. Once convict appeals, on the other hand, he challenges lower court's decision and if appeal denied later, he can no longer apply for probation.

3) After service of probation, accused is still civilly liable because probation only extinguishes the criminal liability, just like in parole, commutation of service of sentence, pardon, etc. (**Article 113**, Revised Penal Code)

Who are DISQUALIFIED from availing of probation?

The following are **DISQUALIFIED** from applying for probation:

- 1) If sentenced to serve a maximum jail term of **more than six years**.
- 2) If previously convicted of offense with penalty of not less than **one month and one day** or **arresto mayor** and/or fine of not less than P200.00.
- 3) If availed of probation **before**;
- 4) If convicted of **subversion**, etc or crimes against national security and public order; and
- 5) If **already serving sentence** when this law became applicable.

What are the effects of PARDON by President?

In **Monsanto vs. Factoran**, Supreme Court laid down the following pronouncement on the effects of pardon:

1) Pardon does **not automatically restore right to hold public office** or be **reinstated** to previous public position, unless it is expressly stated in the pardon.

2) Pardon merely **restores the eligibility** of the accused public officer, and removes her disqualification from seeking said public office but it does **not ipso facto restore her position** and she must reapply to the same position, especially because "public office is a public trust."

3) Pardon is **not acquittal**, but on the contrary, **pardon implies guilt**. Pardon, after all, means forgiveness, and not forgetfulness.

4) Pardon only extinguishes criminal liability which was pardoned by the act of the President but such pardon does **not** wipe out civil liability which persists and can still be recovered despite the pardon, just like in probation, commutation.

5) Upon being pardoned, it means that the pending appeal from the conviction of the Sandiganbayan, or lower court, is automatically withdrawn. As such, the conviction of the Sandiganbayan, or lower court, becomes final.

6) Neither is accused entitled to **reinstatement and backwages** which was a form of penalty for her conviction which already became final upon her being pardoned. Only that she was extended clemency or forgiveness by the Chief Executive hence, she did not have to serve time in prison.

PROBLEM

Mr. Villarama is the chief of the **Bureau of Immigration and Deportation (BID)** who was arrested **in flagrante** receiving P500,000.00 from a Japanese tourist in exchange for releasing the latter's visa and facilitating his **Alien Certificate of Registration (ACR)**. He was prosecuted, and convicted for **Direct bribery** before the lower court but immediately elevated his appeal to the Supreme Court.

In the meantime, because of his powerful connections with a certain fat guy named **Jose Pidal** who was a fraternity *brod* in Ateneo de Manila, he was granted absolute pardon by President Gloria M. Arroyo. On account of such pardon, Mr. Villarama now insists on his immediate reinstatement without loss of seniority rights or any interruption in his government service. Mr. Villarama likewise seeks payment of all backwages denied him during the period of his suspension, contending that pardon extended him was equivalent to an acquittal.

c) If you were the Judge, rule upon the arguments of Mr. Villarama and whether or not you will grant, or deny, his demand for immediate reinstatement and backwages.

ANSWER:

If I were the Judge, I will deny his demand for immediate reinstatement and backwages. This is because pardon merely implies forgiveness, but not forgetfulness, meaning the accused was found guilty but merely extended pardon, or clemency, by the President. Pardon can therefore only remove the disqualification from seeking public office, but does not work automatic restoration as she must re-apply for the same position.

He is neither entitled to backwages since having been found guilty in judicial proceedings, forfeiture of wages during such time is presumed to have been rightfully done and justly suffered, and forms part of his penalty.

d) What is the effect of his being granted pardon to his pending appeal?

ANSWER:

The effect of his being granted pardon is that his appeal is deemed automatically withdrawn. Consequently, his unreversed conviction by the lower court became final.

What is the CIVIL INDEMNITY for crimes?

1) Remember **Article 100** stating that “every person criminally liable is also civilly liable.”

2) If acquittal based on reasonable doubt (because prosecution could not prove the guilt of the accused beyond reasonable doubt), this does **not** bar complainant from filing separate and independent civil action for civil liability arising from crime. This is because the amount of evidence required for civil indemnity or damages arising from crime is merely “**preponderance of evidence**” and not guilt beyond reasonable doubt.

3) If acquittal based on finding that accused did **not** commit the crime at all, this bars complainant from filing a separate civil action for damages.

a) **Article 1157** enumerates the sources of obligations being: “**1st**, law; **2nd**, contracts; **3rd**, quasi-contracts; **4th**, delicts or acts and omissions punished by law; and **5th**, quasi-delicts.”

b) Also recall **Article 102** on “subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments” and **Article 103** on “subsidiary civil liability of other persons, particularly employers, teachers, persons and corporations” for acts or omissions of their servants, pupils, workmen, apprentices or employees in the discharge of their duties, which caused damage or injury to another. These are obligations, or civil indemnity arising from crime, or **delict**, or **ex delicto**.

These are, however, subject to the following conditions or requisites:

a) That the employer is engaged in some kind of business or industry.

b) That there exists an employer-employee relationship between the offender and his employer.

c) That the felony was committed by the employee while in the performance of his duties.

d) That the employee from whom civil liability was sought was insolvent.

4) Aside from the **civil indemnity arising from crime, or delict**, there is **also civil indemnity arising from quasi-delict**. This is found under **Article 2176** and **Article 2180** on “subsidiary civil liability of father, mother or guardian, owners and managers of establishment, employers, teachers or heads of establishments of arts and trade on the acts or omission of their minor children, employees, pupils, students or apprentices.”

PROBLEM:

D, the driver of a passenger jeepney, while drunk and overspeeding, bumped P, a pedestrian and because of the sudden brakes, A, B and C passengers suffered slight physical injuries.

a) What are the **causes of action** of the pedestrian P, passengers A, B and C against D for recovery of civil liability arising the negligence of D.

b) If D is **insolvent**, whom can they ran after, and under what causes of action.

ANSWER:

a) P, the pedestrian, can sue D to recover civil liability on the basis of **Article 100 of RPC** known as **culpa criminal, or ex delicto**. The three passengers A, B and C, on the other

hand, can sue D on the basis of ***culpa contractual***, there being an existing contractual relation between D and the passengers for D to safely carry them to their destination.

b) If D is insolvent, P the pedestrian can sue the employer/operator on the basis of **Article 103** on the basis of ***subsidiary civil liability of the owner/employer arising from delict***. Or as an option, P may also sue the employer/operator on the basis of **Article 2176 and Article 2180** in the form of ***subsidiary civil liability of the owner/employer arising from quasi- delict***.

This is, however, subject to the condition imposed by **Article 2177** which states that “civil liability arising from quasi-delict under **Article 2176** is separate and distinct from civil liability arising from crime under **Article 103**. But plaintiff cannot recover damages twice from the same act or omission of the defendant.”

PROBLEM

Luis was charged and convicted for kidnapping before the Regional Trial Court of Malolos, Bulacan. While the case was pending appeal, the victim Raul died. Luis argued that with the victim Raul’s death, Luis’ criminal and civil liabilities are extinguished.

a) What is the effect of the victim’s death to the criminal and civil liabilities of the accused Luis?

ANSWER

The death of the victim does not extinguish the criminal nor civil liability of the offender. The criminal liability subsists because the offense is against the state. The civil liability, on the other hand, still remains since the right to seek indemnity would now devolve upon the heirs, and the estate of the deceased victim.

b) Assuming it was the accused Luis who died instead, what is the effect of Luis’ death to Luis’ criminal and civil liability?

ANSWER

On the other hand, if it were Luis who died while his conviction is pending appeal before the Supreme Court, his criminal liability is extinguished with his death. His civil liability is likewise extinguished because pecuniary penalties are extinguished when the death of the offender occurs pending appeal, or before final judgment. This is of course without prejudice to the institution of a separate civil action but predicated on a source of obligation not arising from delict but from other sources such as law, contracts, quasi contracts and quasi delicts. (***People vs. Bayotas, September 2, 1994***)

PROBLEM

D, the driver of a jeepney, was overspeeding and drank when he figured in an accident causing injuries to P, a pedestrian. D was charged and convicted of Reckless imprudence resulting in serious physical injuries to P, and was made to suffer eight months of ***prision correccional*** and to indemnify the victim, P the sum of P10,000.00 and P2,000.00 in attorney’s fees.

A writ of execution was served upon D but remained unsatisfied due to D's insolvency. P moved for a subsidiary writ of execution against O, the operator. O, however, opposed the motion on ground that he was not impleaded in the original case and to include him now would be, in effect, amending the decision in the lower court.

a) If you were the Judge, rule on the motion for issuance of a subsidiary writ of execution.

ANSWER

If I were the judge, I will grant the motion for issuance of a subsidiary writ of execution against the operator O, and without the need for filing a separate civil action to recover civil liability. Under the law, the employer and operator O is subsidiarily civilly liable once it is established that he is the employer of D engaged in business or industry, that D caused the injury while in the discharge of his functions, and that D who is primarily civilly liable is insolvent. Considering that all three requisites are attendant, O as operator is subsidiarily civilly liable although he was not impleaded in the earlier case. It is enough that he is notified of the motion for issuance of a subsidiary writ of execution.

(See Carpio vs. Doroja)

When is the Indeterminate Sentence Law NOT APPLICABLE?

The Indeterminate Sentence Law is **not applicable** to the following:

- 1) Those convicted of offenses punished with death, life imprisonment or **reclusion perpetua**.
- 2) Those whose maximum term does **not exceed one year**.
- 3) Those whose sentence impose penalties not involving imprisonment, like **destierro**.
- 4) Those already **sentenced by final judgment** at the time of approval of this Act.
- 5) Those granted **conditional pardon** by the Chief Executive and **violated the terms** thereof.
- 6) Those who **escaped from confinement** or evaded sentence.
- 7) Those who are **habitual delinquents**.
- 8) Those convicted of **treason or conspiracy or proposal to commit treason**.
- 9) Those convicted of **misprision of treason, rebellion, sedition or espionage**.
- 10) Those convicted of **piracy**.

Distinguish between TREASON from MISPRISION OF TREASON.

1) In **Treason**, crime can be committed by a Filipino citizen or resident alien, while **Misprision of treason** can be committed only by a Filipino citizen.

2) The essential elements of **Treason** are the acts of levying war against the government, and/or adhering to the enemy, giving the latter aid or comfort; while the essential elements of **Misprision of treason** are having knowledge of a conspiracy to commit treason, the offender conceals, or does not disclose the same to the government or fiscal of the province x x x.

Elements of PIRACY against QUALIFIED PIRACY.

Piracy becomes **qualified** and punishable with death if attended by the following circumstances:

- S** 1) When offenders **S**eize the vessel by boarding or firing upon the same.
A 2) When offender **A**bandon the victim without means of saving themselves.
M 3) When piracy is accompanied by **M**urder, homicide, physical injuries and rape.
(Recall **SAM**)

Distinguish ARBITRARY DETENTION from ILLEGAL DETENTION from DELAY IN TH DELIVERY OF DETAINED PERSONS.

1) In **Arbitrary detention**, offender is a public officer who, without legal grounds, detains another person while in **Illegal detention**, the offender is a private individual who unlawfully deprives another of the latter's liberty.

2) In **Delay in delivery of detained persons**, offender is a public officer who detains another person with legal ground, yet fails to deliver the detained person to the proper judicial authorities within 12 hours, 18 hours or 36 hours for light felonies, less grave felonies and grave felonies, respectively.

Distinguish between VIOLATION OF DOMICILE from TRESPASS TO DWELLING?

1) **As to the kind of offender**

The offender in **Violation of domicile** is a public officer acting under color of authority; while the offender in **Trespass to dwelling** is a private person or public officer acting in a private capacity.

2) **As to its manner of commission**

Violation of domicile is committed in three (3) different ways:

- a) By **entering** the dwelling of another against the will of the latter;

- b) By **searching** papers and other effects inside the dwelling without the previous consent of the owner;
- c) By **refusing** to leave the premises which he surreptitiously entered, after being required to leave the premises.

On the other hand, **Trespass to dwelling** is committed in one way only:

- (a) By **entering** the dwelling of another against the express, or implied, will of the latter.

Distinguish REBELLION from COUP.

1) In **Rebellion**, this involves an armed uprising with popular civilian support or a multitude of men for the purpose of removing allegiance or overthrowing the existing government, while **Coup** is a swift but limited attack, usually by member of the armed forces or public officers but without popular civilian support, and usually accompanied by violence, intimidation and stealth.

2) In **Rebellion**, this always involves civilians or mass support and is widespread, while **Coup** is participated only by military or police authorities or retired public officials, and without substantial civilian support and targeting military camps or installation, communication networks or public utilities or facilities in order to diminish or seize state power.

Differentiate DIRECT ASSAULT from INDIRECT ASSAULT.

1) To be liable for **Direct assault**, offender should **Attack**, employ **Force**, seriously **Intimidate** or **Resist (AFIR)** a person in authority or an agent of a person in authority while said person in authority, or his agent, was “directly engaged in the performance of his duties” or “on occasion of such performance” meaning, by reason of such past performance of official duties.

2) In **Indirect Assault**, the offender uses force or intimidation upon any person coming to the aid of a person in authority, or his agent. Hence, there has to be a **Direct assault** first involving a person in authority or his agent being attacked, and a third person coming to their aid who himself was attacked before there can be **Indirect assault**.

Explain the concept of QUASI-RECIDIVISM

- 1) Essential elements are as follows:

a) The offender was already convicted by final judgment of one offense (could be *mala in se* or *mala prohibita*).

b) The offender commits a **new felony** (2nd offense must be *mala in se*, and not *mala prohibita*) before beginning sentence, or while serving sentence.

2) The second crime must be a crime *mala in se* punishable under the Revised Penal Code, and **not** a crime *mala prohibita* hence, the use of the word “new felony”. The first offense, however, may be a *crime mala in se*, or a *crime mala prohibita*.

3) **Quasi-recidivism** is a special aggravating circumstance where penalty is the maximum period of the new felony, regardless of the presence of any mitigating circumstances.

Distinguish between COUNTERFEITING OF COINS from MUTILATION OF COINS.

1) In **Counterfeiting**, the crime is making of coins while passing them off as genuine when they are actually spurious. In **People vs. Kong Leon**, counterfeiting would involve coins no longer in circulation, the danger being that the counterfeiter may only be honing his skills and may later on counterfeit coins actually in circulation.

2) In **Mutilation of coins**, the crime is abstracting the gold/silver or metal of such coins which would diminish its value. The essence of the crime is thus, the diminution of value by mutilating or destroying the coin that it necessarily involves coins still in circulation, unlike in **Counterfeiting** of coins which could involve coins no longer in circulation.

Elements of FORGERY from FALSIFICATION

1) In **Forgery**, this also involves falsifying but not just any kind of document, but particularly treasury or bank notes, or instruments of credit. (See Article 169, RPC) In **Del Rosario vs. People**, forgery was committed when the last digit “9” of a paper bill with Serial No. F-7969619 was erased, and changed to read “0”.

2) In **Falsification**, there are eight (8) ways of committing it under Article 171 but the most common mode, or catch-all phrase here is par. 4 which reads: **“By making an untruthful statement in a narration of facts.”**

- 3) See **Elements of Falsification: (under Article 171)**
- P** a) That the offender is a Public officer who takes advantage of his public position.
- U** b) That the offender makes an Untruthful statement in a narration of facts.
- L** c) That he has the Legal obligation to tell the truth.
- A** d) That such narration of facts is Absolutely false.
- (Recall PULA)**

In *Syquian vs. People*, “*absolutely false*” means there was no iota of colorable truth in such narration of facts.

Elements of PERJURY

The elements of *Perjury* are as follows:

- A/S** 1) That the offender made a Affidavit or a Statement under oath, upon a material matter.
- C** 2) That said *Affidavit* or Statement under oath was made before a Competent officer authorized to receive and administer such oath.
- A** 3) That in said *Affidavit* or Statement under oath accused made a deliberate Assertion of falsehood.
- L** 4) That said Affidavit or Statement containing falsity is required by Law or for a legal purpose.

(Recall A/SCAL)

In *Diaz vs. People*, the Supreme Court held there was *Perjury* because offender filled up his *Personal Data Sheet*, or CS Form 212, under oath and executed before a Civil Service Officer, stating that he was a 4th year college B.A. student in 1950-1954 at Cosmopolitan and Harvardian Colleges. This despite his knowledge it was deliberately false, and such statement was required by law for him to be reappointed as school administrative assistant of Jose Abad Santos High School.

Distinguish BRIBERY, INDIRECT BRIBERY vs. QUALIFIED BRIBERY

- 1) ***Elements of Direct bribery:***
 - a) A public officer who agrees to perform an act constituting a crime.
 - b) A public officer who agrees to execute an act not constituting a crime, but unjust.
 - c) A public officer who refrains from performing an act required by law.
- In all three instances, the acts were done or not done in consideration of a prize, reward or promise.

2) Elements of Indirect bribery:

- a) A public officer accepts gifts by reason of his office.

Exception: If the gift is unsolicited, of moderate amount and/or given as a token, or given during a special occasion.

3) Elements of Corruption of public official:

- a) Anyone, meaning a private individual or public officer, who offers the bribe, gift or promise is liable for this crime.

Distinguish MALVERSION from TECHNICAL MALVERSION.

- 1) **Elements of Malversation**
 - a) That the offender is a public officer.
 - b) That he has custody or control of public funds or property by reason of his office.
 - c) That he is accountable for such public funds or property.
 - d) That he personally appropriated the public funds or property, or through abandonment or negligence, allowed someone else to misappropriate public funds or property.
- 2) **Elements of Technical Malversation**
 - a) That the offender is a public officer.
 - b) That public funds or property under his custody or administration had been appropriated by law or ordinance for a **particular public purpose**.
 - c) That he applies public funds or property to a **public use other than** that for which they have been appropriated by law or ordinance.
- 3) **Elements of Illegal exaction**
 - a) A public officer demands payment of sums different or larger than those authorized by law.
 - b) He voluntarily fails to issue a receipt.
 - c) Or he collects things or objects different from those authorized by law.

Distinguish between MALVERSION from ESTAFA?

- 1) **Malversation** is committed by an accountable officer involved public funds or property under his custody and accountability, who shall take or misappropriate, or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property.
- 2) **Estafa**, on the other hand, is committed by a non-accountable public officer, or private individual involving funds or property for which he is not accountable to the government.

What is the effect of RESTITUTION of the amount malversed?

- 1) The public officer who misappropriated public funds or property will still be liable for **Malversation** because restitution is not a justifying or mitigating circumstance. However, immediate restitution may be considered as a **mitigating circumstance** analogous to **voluntary surrender**.

Essential Features of R.A. 3019

1) There are eleven (11) prohibited acts or corrupt practices under R.A. 3019, or the *Anti-Graft and Corrupt Practices Act*. The most common, however, or a catch-all provision is **Section 3 (e)** which is “causing **undue injury** to any party, including the government, or giving unwarranted benefits, or preference, o any party in the discharge of his official duties through manifest partiality, evident bad faith or gross inexcusable negligence.”

2) A cashier of a government agency in charge of public funds who misappropriates the same resulting in pecuniary loss to the government can be sued for **Malversation**, as well as Violation of **Section 3 (e) of R.A. 3019**. There is no double jeopardy here because *Malversation* if a crime **mala in se**, while R.A. 3019 is a crime **mala prohibita**. If restitution, however, is made prior to the filing of the **Information**, the R.A. 3019 case must be set aside because there is no more injury here.

3) In prosecuting under Section 3 (e) of R.A. 3019, the prosecution must prove “actual injury” to the offended party; speculative or incidental injury is not sufficient. In other words, the injury must be quantifiable and demonstrable, resulting from eh questioned official act or inaction. Unlike in action for torts, in R.A. 3019 **Section 3 (e)** the “**undue injury**” cannot be presumed. Its existence must be proven as one of the elements of the crime. The undue injury must be specified, quantified and proven to the point of moral certainty.

Elements of PARRICIDE, HOMICIDE and INFANTICIDE

1) In **Parricide**, this involves the unlawful killing of a legitimate or illegitimate father, mother or child, or the killing of a legitimate other ascendant or descendant, or legitimate spouse.

2) In **Murder**, this involves unlawful killing of another involving the attendance of certain qualifying circumstances under Article 248.

3) In **Infanticide**, this involves the killing of a child less than three days of age, and not constituting parricide.

What are the OTHER ACTS considered rape under the Anti-Rape Law of 1997, or R.A. 8353?

1) Offender having carnal knowledge of a woman by means of **fraudulent machination**, or grave abuse of authority.

2) Offender having carnal knowledge of a **demented woman** by a man even if none of the circumstances required in rape is present.

3) Offender committing an act of sexual assault by inserting a person's penis into the victim's **mouth, or anal orifice**, or by inserting any instrument or object into the **genital or anal orifice** of another person.

Will marriage by the offender to the offended party extinguish the criminal action considering that Anti-Rape Law of 1997 reclassified rape from crime against CHASTITY to a crime against PERSONS?

Yes. By express provision of Article 266-C of the Revised Penal Code, as amended, the subsequent valid marriage between the offender and the offended party shall extinguish the criminal action or the penalty imposed, although rape has been reclassified from a **Crime against chastity**, to a **Crime against persons**.

What are the elements of FENCING?

The elements of **fencing** are as follows:

- 1) A crime of **robbery or theft** has been committed.
- 2) The accused, who is **not** a principal or accomplice in the crime, buys, receives, possesses, keeps, acquires, conceals, disposes, or buys and sells, or in any manner **deals in any article item or object of value**, which has been derived from the proceeds of said crime.
- 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) Hence, there is **intent to gain** on the part of the accused, for himself or for another.

Distinguish FENCE from ACCESSORY to THEFT or ROBBERY?

- 1) One difference between a **fence** from an **accessory** to theft or robbery is that a fence is punished as a **PRINCIPAL** under **P.D. No. 1612**, where penalty is higher, whereas an accessory to robbery or theft under the Revised Penal Code is punished two degrees lower than the principal.
- 2) **Fencing** is a **mala prohibita** where criminal intent or good faith is not available as a defense since mere possession already gives rise to criminal liability; whereas **accessory** to theft or robbery can interpose the defense of lack of criminal intent or good faith.
- 3) Because of their different nature, prosecution for fencing will **not** pose **double jeopardy** if the offender is also charged as accessory to robbery or theft.

Elements of KIDNAPPING

- 1) In ***Kidnapping***, the offender is a private individual who kidnaps or detains another but without lewd designs. Otherwise, crime would be ***Forcible abduction***.
- 2) There are two requisites for ***Kidnapping***
 - a) There must be ***actual detention*** for a certain period of time.
 - b) There must be ***intent to detain***.

ROBBERY from ROBBERY WITH HOMICIDE and ROBBERY WITH RAPE from THEFT

- 1) ***Elements of ROBBERY:***
 - a) There is unlawful taking (with intent to gain) of personal property of another.
 - b) The unlawful taking was done through violence against or intimidation of persons, or force upon things.
- 2) If the taking involves real property and not personal property, the crime is ***Occupation of real property*** or ***Usurpation of real rights in property***.
- 3) In **People vs. Quinones**, the Supreme held that there was only ***one Special complex crime of Robbery with homicide*** committed although three victims were killed on the occasion of the robbery, hence penalty is only one ***reclusion perpetua*** for each accused. This is because crime involves a special complex crime with an ***indivisible penalty***, regardless of the number of victims killed.
- 4) In **People vs. Dinola**, it was held that accused Dinola was liable for two separate crimes of ***Rape*** and ***Robbery*** when he first raped the victim, and then chanced upon the watch and seized it. This is because he had two criminal intents, and the forcible taking of the watch was only incidental, and not originally part of his criminal intent, and neither was it a necessary means. In other words, the ***robbery*** merely supervened and came later, after the rape was already consummated.

Basic principles in ROBBERY

- 1) In **People vs. Puno**, accused Puno and another held up Mrs. Sarmiento, divested her of P7,000 and two checks. Supreme Court held that it is simple robbery because of the use of force and intimidation in taking the personal property of the victim. According to the SC, crime could ***not be a violation of P.D. 532, or Highway robbery***, because it was not perpetrated by outlaws indiscriminately on a Philippine highway but was directed against a predetermined or particular victim. Neither can crime be kidnapping because the detention was only incidental considering that the primary criminal intent was really extortion of money through force and intimidation.
- 2) Distinguish **People vs. Salvilla** from **People vs. Astor**. In **People vs. Salvilla**, SC affirmed the lower court's decision finding accused liable for the complex crime of robbery with

serious physical injuries and serious illegal detention. This is because the detention here was used as a “**necessary means**” to commit robbery hence, a complex crime.

In **People vs. Astor**, however, where the detention was merely incidental and used in order to enable the male factors to escape, it would now be absorbed under “use of violence against or intimidation of persons” under the crime of robbery. The detention here is incidental because it was not part of the original plan hence, absorbed. It could not be part of serious illegal detention because serious illegal detention has two requirements: first, actual detention for a considerable period of time; and second, there must be a deliberate intent to detain which is the **gravamen** of the offence. Recall **People vs. Lim** where accused Ms. Lim was acquitted because she had no intent to detain.

ESTAFA UNDER ARTICLE 315, PAR. 2 (B) FROM B.P. 22

1) In **Estafa**, there are two essential elements: deceit (or abuse of confidence) and damage.

2) In **Nierras vs. Dacuycuy**, the SC drew four (4) distinctions between **Estafa** under Article 315, par. 2 (b) from **B.P. 22**, thus:

1st, in B.P. 22, deceit and damage are not essential elements which are essential in estafa:

2nd, B.P. 22 is a crime against public interest while estafa is a crime against property;

3rd, pre-existing obligation is not a defense in B.P. 22 but poses as a defense in estafa; and

4th, B.P. 22 is **mala prohibita** while estafa is **mala in se**.

ESTAFA THROUGH UNFAITHFULNESS/ABUSE OF CONFIDENCE

See **Saddul vs. CA; Allied Banking vs. Ordonez**

1) In **Saddul vs. CA**, Supreme Court C held that a violation of P.D. 115 or the Trust Receipts Law, constitutes a violation of Article 315, par. 1 (b) which is **Estafa through abuse of confidence**.

2) If the accused has **material possession** of a thing and misappropriates the same, crime committed is **Theft** (like a househelper who misappropriates money intended for groceries.) If, however, the accused has **juridical possession** of a thing which possession he can assert even against the lawful owner such as a commission agent who has a percentage or commission of proceeds of sale, crime is **Estafa** if agent misappropriates the same.

LIBEL FROM SLANDER AND SLANDER BY DEED

(See **Newsweek vs. IAC**; **Santos vs. CA**)

1) All these crimes are crimes against honor. In libel, it is a public and malicious imputation of a crime, vice or defect, etc. There are three essential elements in libel:

M 1st, that it is **M**alice (whether Malice in law or Malice in fact); and

V 2nd, that the **V**ictim is sufficiently identifiable.

P 3rd, that there is publication;

(Recall **MVP**)

2) For libel to prosper, the prosecution must first prove Malice in law relying on Article 354 which provides for ***Malice in law*** by stating that “every defamatory imputation is presumed to be malicious, even if true.” If prosecution cannot establish malice in law, it can try to prove Malice in fact or that scurrilous publication was made “in utter disregard of its falsity, or with knowledge of its falsity.”

3) Defenses in libel would be good intention and justifiable motive in the form of a) ***Absolutely privileged*** or b) ***Conditionally privileged*** communication.

a) There is ***Absolutely privileged*** communication if: 1) In aid of legislation and 2) If it involves judicial proceedings.

b) There is ***Conditionally privileged*** communication under the following conditions:

1st, A private communication made to another in performance of a legal, moral or social duty.

2nd, A fair and true report on any judicial, legislative or other official proceedings.

3rd, A statement or report on a public officer in discharge of his official functions.

4th, A fair and true comment on a matter involving public interest. (**Borjal vs. Court of Appeals**)

CRIMINAL LAW I & II **Ateneo de Davao College of Law**

By ATTY. TEODORO V. ANGEL

What are LIMITATIONS on Congress power to enact laws?

E 1) Not enact **E**x post facto laws -- See **People vs. Ferrer**, 48 SCRA 382 (1972)

B 2) Not pass **B**ill of attainder

A 3) Of general **A**pplication

C 4) No **C**rue! or inhuman punishment or excessive fines

(Recall **EBAC**)

What are the THREE BASIC PRINCIPLES of Criminal Law?

- Pro** 1) Prospectivity -- Penal law being **prospective** in nature and not retroactive, except under **Article 22** of RPC.
- Gen** 2) Generality -- Refers to people and how penal laws apply to people, including resident aliens. (**Article 14, Civil Code**)
- Ter** 3) Territoriality -- Criminal laws are only enforceable within Philippine territory, except those provided in **Article 2, RPC** (See Exceptions under **Article 2, RPC** -- Recall **SCION**)

1) PROSPECTIVITY

- a) Crimes punishable by penal laws already in force at time of their commission, **EXCEPT** if favorable to accused, provided accused is not a habitual delinquent.

2) GENERILITY

- a) Article 14 (Civil Code) -- "Penal laws shall be obligatory upon those who live or sojourn in Philippine territory, subject to principles of PIL and to treaty stipulations."
- b) Even foreigners not exempt from our penal laws, except heads of state, foreign ministers and diplomats.

3) TERRITORIALITY

- a) Criminal laws are enforceable only within Philippine territory, except as found in Article 2 (Extraterritoriality)

- S** 1) Should commit an offense while on a Philippine Ship or airship.
- C** 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.
- I** 3) Should be liable for acts connected with the Introduction into these islands of the obligations and securities mentioned in the preceding number.
- O** 4) When being public Officers or employees, should commit an offense in the exercise of their functions.
- N** 5) Should commit any of the crimes against National security and the law of nations, as defined in Title One of Book II of this Code.
(Recall **SCION**)

What are the three schools of thought of Criminal Law?

- 1) **Classical** -- Basis of criminal liability is human free will; purpose of penalty being **retribution and deterrence**; penalty proportionate to offense; basis of crime is human nature;
- 2) **Positivist** -- Man is subdued by strange, morbid phenomenon which constrains him to do wrong despite his will to the contrary; purpose of penalty is reformation.

3) **Eclectic** -- Combination of best features of classical and positivist schools of thought from which the RPC is patterned after.

Distinguish crimes MALA IN SE from crimes MALA PROHIBITA

1) **Mala in se** -- crimes punishable under RPC; determine whether or not act done with *dolo* or *culpa*; criminal intent, degree of participation and stage of execution as distinguished from crimes **mala prohibita**.

2) **Mala prohibita** – crimes punishable under special law; presence of *dolo* or *culpa*, criminal intent, degree of participation and stage of execution, and attendant circumstances are immaterial and irrelevant.

a) Crimes mala in se and crimes wrong in themselves, or those so serious in their nature, and effects, to society they call for almost unanimous condemnation; while crimes mala prohibita are violations of mere rules of convenience designed to secure a more orderly regulation and affairs of society, like dangerous drugs, or illegal possession of firearms.

b) In crimes mala prohibita, only question is: did accused perform the prohibited act. If he did, automatically liable, and no more questions asked.

What are the distinctions between INTENT and MOTIVE?

1) **Intent** -- purpose to use a particular means to effect a particular result; objective phase. Criminal law, as a general rule, is concerned only with **INTENT**, and whether or not the accused acted freely, intelligently and INTENTIONALLY. In **Ah Chong** and **Oanis** cases, MISTAKE OF FACT negatives INTENT.

2) **Motive** -- moving power which impels one to action for a definite result. Not an element of a crime except if doubt exists as to the identity, liability, or participation of the accused.

Define the elements of MISTAKE OF FACT

A 1) Act would have been lawful had facts been as accused believed them.

I 2) Intention of accused is lawful.

M 3) Mistake is not attended by fault or negligence on part of the accused.

(Distinguish contrasting decisions between **U.S. vs. Ah Chong** – 15 Phil. 488 (1910) from **“People vs. Oanis** – 74 Phil. 257 (1943)

Mo 4) No Motive

No 5) No reasonable opportunity “to ascertain the facts without risk to himself.”

In **Oanis**, use of **excessive force** negatives accused’s defense of honest mistake of fact. If there is negligence, mistake of fact is not exempting but one can invoke **PRAETER INTENTIONEM**.

(Recall AIM/MoNo)

Distinguish the following: *Error in personae*, *Aberratio ictus* from *Praeter intentionem*

Define, and explain, the three STAGES OF EXECUTION.

- 1) **Consummated** – all elements necessary for *EXECUTION* and *ACCOMPLISHMENT* are present.
- 2) **Frustrated** -- all acts of *EXECUTION* performed but not produce felony as a consequence by reason of Causes Independent of the will of perpetrator. (Recall Cain)
- 3) **Attempted** – commences commission of felony directly by overt acts, but not perform all acts of *EXECUTION* by reason of some Cause Or Accident other than his own spontaneous desistance.) (Recall CorA)

Distinguish JUSTIFYING from EXEMPTING circumstances.

- 1) **JUSTIFYING CIRCUMSTANCES** (Article 11) -- Act is lawful such that there is no crime and no criminal hence, accused incurs no criminal liability nor civil liability.
- 2) **EXEMPTING CIRCUMSTANCES** (Article 12) – Act is wrongful, but actor not acted voluntarily, intelligently nor intentionally, neither is there **dolo** or **culpa**. Hence, there is no criminal but there is civil liability, except in **no. 4** (accident) and **no. 7** (lawful, insuperable cause).

What are the elements of SELF DEFENSE, DEFENSE OF RELATIVE from DEFENSE OF STRANGER.

- 1) **SELF DEFENSE**
 - U** 1) Unlawful aggression -- physical act manifesting actual or imminent danger to life or limb.
 - R** 2) Reasonable necessity of means employed -- there must be no other means to prevent or repel aggression so means must be reasonable; no excessive force.

L 3) Lack of sufficient provocation – or no provocation at all given by person defending himself or provocation not sufficient to cause violent aggression on part of victim.

2) **DEFENSE OF RELATIVE**

3) **DEFENSE OF STRANGER**

People vs. Narvaez --121 SCRA 389 (1983)

a) **Defense of property** cannot justify killing a human being, even an intruder unless there is actual, grave or imminent danger to one's life because mere defense of property can never be equated with value of human life.

b) **Self defense** here pertains to defense of person or body of person assaulted, high rights to property, and honor prompted by instinct of self preservation and impossibility for State to protect each citizen from unlawful aggression all the time.

In self-defense, defense of relative and strangers, most important element is presence of Unlawful aggression on part of victim. Without unlawful aggression, there can be no "reasonable necessity" and nothing to prevent or repeal nor "lack of sufficient provocation" on part of accused, which become immaterial.

c) **Unlawful aggression:**

This is equivalent to physical assault or threatened assault which is IMMEDIATE (or actual), or at least IMMINENT. In other words, there must be a direct, immediate and actual or at least, imminent peril, or threat, to one's life or limb.

d) PERIL to one's life:

1) Actual – danger must be present, or actually exist.)

2) Imminent -- danger is on the point of happening; it's not required that attack already begins, for it may be too late.

e) A slap on the face constitutes unlawful aggression since face represents a person's dignity and hence, a serious personal attack. But mere insulting words, without actual physical assault, not constitute unlawful aggression to warrant killing.

f) RETALIATION negatives self defense. In retaliation, aggression commenced by injured party/victim already ceased when accused attacked him. In self-defense, required that aggression still existing when unlawful aggressor was injured or disabled by person making defense. Hence, there must be no appreciable length of time between aggression made by injured part and killing done by one making defense.

- g) When aggressor flees, there is no more unlawful aggression, except if aggressor flees to take a more advantageous position, like getting a weapon, or asking assistance.
- h) The rule now is STAND GROUND WHEN IN THE RIGHT. So where accused is where he has the right to be, law does not require him to retreat when his assailant is rapidly advancing upon him with a deadly weapon.
- i) Also, there is no unlawful aggression when there is agreement to fight since X and Y here are reciprocal aggressors of each other.
- j) Reasonable belief can constitute valid self-defense: If X used a toy pistol in assaulting Y, Y may kill X in valid self defense constituting MISTAKE OF FACT.
- k) Defense of property can be invoked as justifying circumstance only when it is coupled with an attack on the person of one entrusted with said property.

People vs. Ricohermoso, 56 SCRA 431 (1974)

FACTS: Geminiano went to house of Ricohermoso to ask for his share in the land cultivated by Ricohermoso which belonged to Geminiano. Ricohermoso, however, unsheathed his bolo and attacked Geminiano from the left while Severo(Ricohermoso's father-in-law) got an axe and attacked Geminiano from the right. At the same time, Severo's son suddenly embraced Geminiano's son, Marianito who was carrying a gun slung on his shoulder, that Marianito fainted. Geminiano died and when prosecuted for murder, Severo's son invoked Necessity allegedly in order to avoid greater evil or injury.

HELD: SC affirmed conviction of Ricohermoso, Severo as well as Severo's son, Juan. Juan cannot invoke avoidance of greater evil because on the contrary, by disabling Marianito, he insured evil to be consummated by forestalling any interference in the felonious assault. After all, Marianito's son of defending his father who was being attacked is not an evil but legitimate defense of relative. Because it was accused Ricohermoso and Severo who were unlawful aggressors here.

What are the two tests of insanity in criminal law?

1) **INSANITY**

a) Basis for exemption is **complete deprivation of intelligence** and complete deprivation or absence of **freedom of will**, not mere feeble-mindedness (Recall "**cognition**" and "**volition**" tests).

b) Insanity must exist and proven **before and during** commission of crime, **not after** which is already immaterial as defense.

See People vs. Pambid – March 15, 2000/People vs. Puno – 105 SCRA 151 (1981).

c) Senility or second childhood is only mitigating.

d) The *presumption* is that every person is sane hence, one who alleges insanity has the burden of proof of establishing that accused was really insane at the time of the commission of the offense. But once accused has been declared medically insane, the presumption is that he is continuously insane and the burden is on the prosecution to establish that accused, who was medically insane, acted during a lucid interval.

e) Presumption is that child acted without discernment and prosecution has burden of proof to show otherwise.

2) ***Two tests for insanity:***

- a) Complete deprivation of intelligence (Cognition test)
- b) Complete deprivation of freedom of will (Volition test)

3) While insanity is not always exempting if insane acts during a lucid interval, imbecility is always exempting. An imbecile is one who, although advanced in age, has low mental development of between 2 and 7 years old.

4) Mere abnormality (or mild mental retardation) does not exempt from criminal liability. There must be complete deprivation of intelligence, or discernment (capacity to distinguish right from wrong).

5) If A is sane (not hospitalized nor declared insane), burden of proof rests of A as accused to establish that he was insane when he committed crime because presumption is in favor of sanity.

But if A already declared insane/hospitalized, he is presumed to be “continuously insane” and burden of proof shifts to B, the victim, to prove that A who injured B acted during a lucid interval.

6) In schizophrenia or split personality, if advanced schizophrenia, it is exempting; if only mild schizophrenia, only mitigating (such illness of the offender which diminishes exercise of willpower of offender without depriving him of consciousness of his actions.)

7)) If sane during commission of crime but becomes insane during conviction -- court must suspend service of sentence until he recovers.

8) Evidence of insanity must refer to time immediately preceding and during the commission of the crime. Insanity subsequently to the commission of the time will only suspend proceedings, until accused recovers. If becomes insane only during service of sentence, accused is hospitalized until he recovers, then resumes service of sentence.

9) Hypnotism and somnambulism can also be exempting akin to insanity.

COMMENTS:

1) Force here must be so irresistible as to reduce actor to a mere instrument who acts not only without a will, but even against his will. Actor thus acts without freedom, intelligence or intent.

10) There is physical violence employed which must be present and actual, or imminent and impending inducing a well-grounded apprehension of death or serious bodily harm if act is not done by actor. Threat of future injury is not enough.

11) Also, the compulsion is such character that there is “no opportunity for escape” nor “self defense in equal combat.”

Distinguish entrapment from instigation?

1) In entrapment, the police officer merely facilitates or provides ways and means/opportunity for accused to execute accused’s criminal design crime and arrests the accused in the act. The original mens rea, however, still emanates from the accused hence, it is not a bar for prosecution.

2) In instigation, the police officer himself directly induces or instigates accused to commit a crime and arrests him in the act. Mens rea here emanates from police officer himself who become a principal by inducement. Hence, this is a bar for prosecution.

Araneta vs. CA, 142 SCRA 532 (1986)

Facts: Petitioner Aquilina Araneta approached and suggested to Mrs. Yopongco for the former to facilitate Mrs. Yopongco’s claim for death benefits of her husband under Workmen’s Compensation. Ms. Araneta was caught in the act of receiving money and convicted by lower court. On appeal, she interposed the defense of instigation.

Held: SC affirmed her conviction because it was Ms. Araneta who initiated the idea of Ms. Yopongco. The mens rea legitimate entrapment, and not unlawful instigation.

Distinguish ordinary mitigating from privileged mitigating

1) ***Privileged mitigating:***

1) *More than nine (90 but less than 15 years:* penalty lower by two degrees than that prescribed by law.

2) *More than 15 but less than 18 years:* Penalty always one degree lower than that prescribed by law.

Explain the differences between “sufficient provocation” from “Immediate Vindication”

1) In **provocation**, cause need not be grave offense; in **vindication**, cause must be a grave offense. In **provocation**, cause must be immediate; in **vindication**, cause need not be immediately, but only proximate.

2) *Unlike sufficient provocation where provocation must immediately precede the act, "immediate vindication" means "proximate." Probably because offense to honor lingers longer and is worse than mere provocation.*

3) *Basis for determining gravity of offense in vindication are as follows: social standing of accused, the place, the time, the persons witnessing the incident when insulted was hurled.*

4) This can never co-exist with **evident premeditation** which requires lapse of time to premeditate the commission of the offense.

5) Basis: causes naturally producing in a person powerful excitement or uncontrollable fury that he loses his reason and self-control, thereby diminishing the exercise of his willpower. Even if there is passion and obfuscation, if committed in a spirit of lawlessness (like vengeance or retaliation) cannot be basis for this mitigating circumstance. Common-law relationship generally cannot invoke this mitigating circumstance, except where grave abuse was evident against the other.

6) Vindication of grave offense cannot co-exist with passion and obfuscation. Invoke only one. If longer period of time, preferable to invoke vindication of grave offense. Neither can one invoke both "sufficient provocation" as well as "passion and obfuscation." Invoke only one.

7) Passion and obfuscation incompatible with treachery. This is because passion and obfuscation means overcome by raging fury that he loses his self-control at the spur of the moment ("nabigla) while treachery means offender consciously and deliberately adopted means, methods in attack. ("hindi biglaan").

Distinguish generic aggravating, qualifying aggravating and intertent aggravating

GENERIC AGGRAVATING

1) Generally applies to all crimes, and if there is qualifying circumstance like treachery in murder, the other aggravating become mere **GENERIC AGGRAVATING**;

2) Can be offset by ordinary mitigating circumstance and may be proved even if not alleged in *Information*;

c) If not offset, serves to increase penalty to maximum period of penalty prescribed by law.

QUALIFYING AGGRAVATING

- 1) Changes the nature of the felony itself, like abuse of trust and confidence in theft, making it qualified theft instead of simple theft.
- 2) Cannot be offset by ordinary mitigating circumstance and cannot be proved if not expressly alleged in **Information**.
- 3) Cannot be offset by ordinary mitigating circumstance because it changes not only nature but also name of offense itself, that offender becomes liable for a new and more serious offense.

INHERENT AGGRAVATING

- 1) Considered integral part of the felony already, like unlawful entry in robbery with force upon things and does not increase the penalty.
- 2) Qualifying circumstances must also be proven beyond reasonable doubt because they increase penalty by DEGREE, not only by PERIOD.
Eg. If qualified rape because incestuous rape and victim under 18, or victim is below seven years old, penalty is mandatory death.

Distinguish the following: recidivism, quasi-recidivism from habituality or reiteracion:

- 1) In **recidivism**, enough that accused previously convicted by final judgment of an offense; in **habituality**, offender must be previously punished (must actually serve sentence for first offense).
- 2) In **recidivism**, two offenses must be embraced in same title of RPC; in habituality, two offenses need not be embraced in same Title of RPC.
- 3) **Habitual delinquency** -- within ten (10) years from last release or last conviction, of the crimes of *Falsification, Robbery, Estafa. Theft, Serious or Less serious physical injuries* (Recall **FRETSeI**), the offender is found **GUILTY** of any of said crimes a third time or oftener. **Ten years** from last release, or last conviction.
- 4) Quasi-recidivism -- Any person who shall commit a FELONY after having been convicted by final judgment, before beginning to serve sentence, or while serving th same, shall be punished by MAXIMUM period of penalty prescribed by law for the NEW FELONY.

People vs. Lug-aw, 299 SCRA 308 (1994)

FACTS: Victim Pal-loy was fencing boundary limits of land he was farming in Mountain Province when his daughter heard a shot. She immediately went uphill and saw Lug-aw and companions from a distance and her father about to draw his bolo when Lug-aw shot him dead. Lower court convicted accused for murder qualified by treacher and evident premeditation.

HELD: SC reduced murder to HOMICIDE only. No evident premeditation because no proof as to the initial attack or that accused had sufficient time to reflect coolly and cling tenaciously to this criminal intent to kill. There is likewise no treachery because "no particulars on who acts leading to death actually unfolded."

Distinguish ENTRAPMENT vs. INSTIGATION as absolatory cause

1) ***Entrapment*** is a scheme used by police officer to facilitate and secure apprehension of accused; ***mens rea***, however, still emanated from accused and public officer merely facilitate commission of a crime. Hence, it is ***not*** an absolatory cause and accused is criminally liable.

2) ***Instigation*** is where public officer directly induces accused into committing the offense which accused would otherwise not have had committed on his own. Hence, instigation is an absolatory cause where accused is not criminally liable akin to an exempting circumstance. (See ***Araneta vs. Court of Appeals, supra***)

Instigation is an exempting circumstance, just like an absolatory cause in Article 247.

In ***ENTRAPMENT***, ways and means are resorted to by the public officer for purpose of trapping and capturing accused in the act of executing his criminal plan; Mens rea came from accused hence, it is not a bar to prosecution and conviction of lawbreaker.

In ***INSTIGATION***, police officer practically induces accused into commission of offense and accused merely adopts idea, and carries it into execution; Mens rea emanates from police officer hence, it is a BAR to prosecution and conviction of accused.

Differentiate between RECLUSION PERPETUA from LIFE IMPRISONMENT

1) While ***reclusion perpetua*** is penalty for violation under RPC, life imprisonment is a penalty for violation of a special law.

2) While ***reclusion perpetua*** has a fixed duration of 20 years and one day to 40 years, life imprisonment has no fixed duration and could be literally for life.

3) While ***reclusion perpetua*** has accessory penalties, life imprisonment carries no accessory penalties.

What are the kinds of COMPLEX CRIMES?

1) When a single act constitutes two or more grave or less grave felonies, otherwise called ***COMPOUND CRIMES*** eg. X shoots Y, killing Y and injuring Z riding on a bike with Y. Crime is complex crime of Homicide/Murder with serious physical injuries.

2) Or when an offense is a necessary means for committing another, otherwise called ***COMPLEX CRIME PROPER***. eg. DECS treasurer falsified amount in check from P1,000 to P10,000 and pocketed the difference. Crime is complex crime of *Malversation through Falsification*.

a) If it is a complex crime, remember always the penalty: find the most serious crime, then apply the **maximum period** of the most serious crime. Example: If complex crime of **Robbery with homicide** and assuming penalty for homicide is **reclusion temporal** while penalty for robbery is **prision mayor**. Find the most serious crime which obviously is homicide because of its higher penalty, and after this apply the penalty of homicide which is **reclusion temporal** in its maximum period. Hence, penalty for complex crime of robbery with homicide is **reclusion temporal maximum**.

b) Just disregard the penalty for **robbery** because since it is the less serious crime and irrelevant for purposes of finding the penalty for such complex crime.

What is PROBATION? Who are disqualified from availing of probation?

If penalty is not more than six years, one can apply for probation, in which case sentence is suspended.

Probation and appeal are mutually exclusive. If one applies for probation, one accepts correctness of lower court's decision hence, waiver of right to appeal. Once convict appeals, he challenges lower court's decision and if appeal denied later, he can no longer apply for probation.

After service of probation, accused is still civilly liable because probation only extinguishes the criminal liability, just like in parole, commutation of service of sentence, pardon, etc.

The following are disqualified from applying for probation:

- 1) If imprisonment exceeds six years;
- 2) If previously convicted of offense with penalty of not less than one month and one day or *arresto mayor*;
- 3) If availed of probation before;
- 4) If convicted of subversion, etc or crimes against national security and public order; and
- 5) If already serving sentence when this law became applicable.

What are the effects of PARDON by President?

In **Monsanto vs. Factoran**, SC laid down the following pronouncement on the effects of pardon:

- 1) Pardon does **not automatically restore right to hold public office** or be **reinstated** to previous public position, unless it is expressly stated in the pardon.

- 2) Pardon merely **restores the eligibility** of the accused public officer, and removes her disqualification from seeking said public office but it does **not ipso facto restore her position** and she must reapply to the same position, especially because “public office is a public trust.”
- 3) Pardon is **not acquittal**, but on the contrary, **pardon implies guilt**. Pardon, after all, means forgiveness, and not forgetfulness.
- 4) Pardon only extinguishes criminal liability which was pardoned by the act of the President but such pardon does not wipe out civil liability which persists and can still be recovered despite the pardon, just like in probation, commutation.
- 5) Upon being pardoned, it means that the pending appeal from the conviction of the Sandiganbayan, or lower court, is automatically withdrawn. As such, the conviction of the Sandiganbayan, or lower court, becomes final.
- 6) Neither is accused entitled to **reinstatement and backwages** which was a form of penalty for her conviction which already became final upon her being pardoned. Only that she was extended clemency or forgiveness by the Chief Executive hence, she did not have to serve time in prison.

What is the civil indemnity for crimes?

- 1) Remember **Article 100** stating that “every person criminally liable is also civilly liable.”
- 2) If acquittal based on reasonable doubt (because prosecution could not prove the guilt of the accused beyond reasonable doubt) – does not bar complainant from filing separate and independent civil action for civil liability arising from crime. This is because the amount of evidence required for civil indemnity or damages arising from crime is merely “preponderance of evidence” and not guilt beyond reasonable doubt.
- 3) If acquittal based on finding that accused did not commit the crime at all – this bars complainant from filing a separate civil action for damages.
 - a) And Article 1157 enumerates the sources of obligations being: “1st, law; 2nd, contracts; 3rd, quasi-contracts; 4th, delicts or acts and omissions punished by law; and 5th, quasi-delicts.”
 - b) Also recall Article 102 on “subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments” and Article 103 on “subsidiary civil liability of other persons, particularly employers, teachers, persons and corporations” for acts or omissions of their servants, pupils, workmen, apprentices or employees in the discharge of their duties, which caused damage or injury to another. These are obligations, or civil indemnity arising from crime, or **delict**, or **ex delicto**.

These are, however, subject to the following conditions or requisites:

- 1) That the employer is engaged in some kind of business or industry.
- 2) That there exists an employer-employee relationship between the offender and his employer.

- 3) That the felony was committed by the employee while in the performance of his duties.
- 4) That the employee from whom civil liability was sought was insolvent.

d) Aside from the **civil indemnity arising from crime, or delict**, there is **also civil indemnity arising from quasi-delict**. This is found under **Article 2176** and **Article 2180** on “subsidiary civil liability of father, mother or guardian, owners and managers of establishment, employers, teachers or heads of establishments of arts and trade on the acts or omission of their minor children, employees, pupils, students or apprentices.”

PROBLEM:

D, the driver of a passenger jeepney, while drunk and overspeeding, bumped a P, the pedestrian and because of the sudden brakes, A, B and C passengers suffered slight physical injuries.

- a) What are the causes of action of the pedestrian P, passengers A, B and C against D for recovery of civil liability for the negligence of D.
- b) If D is insolvent, whom can they run after, and under what causes of action.

ANSWER:

a) P, the pedestrian, can sue D to recover civil liability on the basis of **Article 100 of RPC** known as **culpa criminal, or ex delicto**. The three passengers A, B and C, on the other hand, can sue D on the basis of **culpa contractual**, there being an existing contractual relation between D and the passengers for D to safely carry them to their destination.

b) If D is insolvent, P the pedestrian can sue the employer/operator on the basis of **Article 103** on the subsidiary civil liability of the employer/operator in the form of **subsidiary civil liability of the owner/employer arising from delict**. Or as an option, P may also sue the employer/operator on the basis of **Article 2176 and Article 2180** in the form of **subsidiary civil liability of the owner/employer arising from quasi-delict**. This is, however, subject to the condition imposed by **Article 2177** which states that “civil liability arising from quasi-delict under **Article 2176** is separate and distinct from civil liability arising from crime under **Article 103**. But plaintiff cannot recover damages twice from the same act or omission of the defendant.”

Recent Cases in Criminal Law

By ATTY. TEODORO V. ANGEL

PEOPLE VS. TIMOTEO ESCARLOS, 410 SCRA 463 (2003)

No treachery if killing preceded by a fight

Nature:

Automatic review of Pangasinan RTC decision convicting accused-petitioner Tomy Escarlos of **Murder** with penalty of death.

Facts:

On June 1, 2000, petitioner Escarlos stabbed to death the victim, a certain Barangay Kagawad Antonio Balisaca during the benefit dance in the municipality. He stabbed the victim four times with a ten-inch knife. Evidence, however, showed that the stabbing incident was preceded by a fight. According to petitioner Escarlos, the victim, who was drunk, confronted him by saying: ***“You are here again to create trouble”*** and when petitioner answered back, the victim boxed him on the forehead. The victim was about to pull out a kitchen knife when Escarlos was able to wrest it away from the victim, and stabbed the victim to death.

The Pangasinan RTC convicted petitioner Escarlos for **Murder** qualified by treachery, and imposed on him the death penalty. Hence, this automatic review to the Supreme Court.

Held:

The Supreme Court MODIFIED the conviction, and lowered the same from the original conviction of Murder to only **Homicide**.

1) The Supreme Court held that there was no treachery nor evident premeditation because the killing was preceded by a fight, and was done at “the spur of the moment.” There is no treachery when the assault is preceded by a heated exchange of words between the accused and the victim, or when the victim is aware of the hostility of the assailant towards the former. There is no treachery here because the victim was aware of the imminent danger to his life, and he was afforded the opportunity to put a defense after he slapped the petitioner and petitioner approached him to exact revenge.

2) Petitioner’s invocation of self-defense, however, is untenable. Even assuming the act of accused in berating him then boxing him on the forehead constitutes unlawful aggression, the unlawful aggression no longer existed when petitioner Escarlos stabbed the victim. When unlawful aggression commenced by the victim ceases or no longer exists, the one who resorts to self-defense no longer has a right to kill, or even wound, the former aggressor. In stabbing the victim after Escarlos wrested the knife from him, petitioner Escarlos, in effect, became the unlawful aggressor.

3) In stabbing the victim after rendering the victim defenseless, petitioner went beyond self-preservation, and acted out of vindictiveness and with excessive force.

PEOPLE VS. OSCAR PEREZ, 414 SCRA 107 (2003)

When frontal attack on victim still constitutes treachery

Nature:

Appeal from Malolos, Bulacan RTC decision convicting petitioner Oscar Perez of **Murder** with penalty of **reclusion perpetua**.

Facts:

The couple Rowena Balite and Ildefonso Balite, the victim, own an apartment unit. Adjacent to their unit is the unit owned by Artemio and Emerencia Santos, the uncle/aunt of Rowena, and living with them was accused-appellant Oscar Perez. Since the unit of the Santos spouses had no electrical services, they shared their electrical power supply with the Balite couple.

One night Ildefonso came home and noticed an electric spark from the overloaded electrical socket. He proceeded to the unit of the Santos to temporarily disconnect their power supply to forestall any untoward incident. He talked to Oscar, but Oscar refused. This led to a heated argument, with the two grappling with each other. Artemio, fortunately, arrived and pacified the two after which Ildefonso left and proceeded to his other-in-law's house.

Without his knowledge, Oscar surreptitiously followed him and when they were out of the tenement's compound, Oscar called Ildefonso's name. When Ildefonso turned around, Oscar shot him twice at close range, which led to Ildefonso's death.

The Malolos, Bulacan RTC convicted Oscar for Murder, qualified by treachery, imposing on him **reclusion perpetua**. Oscar appealed and argued that it was only homicide because the killing was preceded by a fight hence, there was no treachery.

Held:

The Supreme Court affirmed Oscar's conviction for **Murder**, qualified by treachery.

1) While as a general rule there is no treachery if an altercation ensued between the accused and the victim, this is subject to an exception. The exception is when after the altercation where the parties were pacified, the victim left the scene to go back home, unaware that the accused followed him, armed with a deadly weapon, and shot him frontally.

2) Further, while generally an attack which is frontal cannot be considered treacherous, treachery can still exist even if attack is frontal if the attack was so sudden, unexpected, or unprovoked which did not afford the victim of any opportunity to repel the aggression, or defend himself, or to retaliate.

PEOPLE VS. JOSEPH CAJURAO, 410 SCRA 463 (2003)

No self-defense if one kills an aggressor already retreating from the fray

Nature:

Appeal from South Cotabato RTC decision convicting accused Joseph Cajurao of **Murder**, with **reclusion perpetua** as penalty.

Facts:

On November 29, 1993, in Surallah, South Cotabato, accused Joseph Cajurao and the victim Santiago Betita had an altercation during a disco at the gymnasium. Betita slapped the accused, and then fled.

Cajurao followed Betita, and when Betita had nowhere to run, Betita grabbed the improvised lamp of Pacita Pordios, a vendor, and ran from one stall to another. Cajurao caught up with the victim, and stabbed the victim on the right nipple.

South Cotabato RTC convicted accused for **Murder**, qualified by treachery. On appeal, accused maintained that it was only **Homicide**, because there could be no treachery since the victim was armed with a lamp, and was aware of the impending attack.

Held:

SC modified the conviction of accused from **Murder**, and reduced it to **Homicide**.

1) When there are “no particulars as to how killing began, its perpetration with treachery cannot be merely supposed.” In this case, the witness Pacita Pordios did not see how the incident between accused and the victim Betita commenced and developed, before the victim Betita took hold of the lamp from her stall.

2) Accused, however, could not invoke self-defense. For self defense to exist, the unlawful aggression must be actual, or at least imminent, and not merely imaginary. Settled is the rule in jurisprudence that when unlawful aggression ceases (as when victim fled after slapping the accused), the accused Cajurao no longer has the right to kill, or even wound the former aggressor. Self-defense does not justify the unnecessary killing of an aggressor who is already retreating from the fray, like Betita who fled after slapping the accused.

3) What happened here was retaliation especially with the strained relations of the parties, not the justifying circumstance of self defense.

DANILO MENDOZA VS. PEOPLE, 448 SCRA 158 (2005)

Unlawful aggression an indispensable element in incomplete self defense

PONENTE: JUSTICE SANDOVAL GUTIERREZ

Nature:

Petition for review on certiorari of a decision of the Court of Appeals.

Facts:

On November 23, 1994, at Barangay 19, San Nicolas, Ilocos Norte, the petitioner Danilo Mendoza was having a drinking spree with the victim, Alfonso Nisperos, and several others. In the course of their drinking, petitioner suddenly smashed a pitcher of water on the table, and shouted invectives: “Bullshit! You are always asking us to drink!”

The victim reacted, and this led to an altercation. When the victim left and headed for home together with his mother, Loreta, the petitioner waylaid them and after a short while,

Loreta heard Alfonso screaming for help. Loreta rushed to her son, and found him lying, face down, with petitioner Mendoza on top of him, stabbing him with a knife.

She approached petitioner and tried to intercede for her son, but petitioner instead attacked her with his knife, hitting her right arm. Petitioner Mendoza then fled. Alfonso was rushed to the Batac General Hospital but was pronounced dead on arrival.

Upon being arraigned, petitioner pleaded not guilty. He later pleaded guilty but tried to interpose incomplete self defense, claiming that it was Alfonso who was the unlawful aggressor. According to petitioner, Alfonso resented his behavior and Alfonso tried to stab him with a knife. He was able to parry the blow, and they rolled over the ground. At that point, petitioner claimed that he stabbed the victim with his own knife.

The lower court convicted petitioner of **Homicide** and sentenced petitioner to six years, and one day of **prision mayor** to 14 years and 8 months of **reclusion temporal**, as maximum. On appeal, the Court of Appeals affirmed his conviction hence, the instant petition before the Supreme Court.

Held:

The Supreme Court affirmed his conviction for **Homicide**.

1) In incomplete self defense, unlawful aggression must always be present, it being an indispensable requisite. Just as in complete self defense, the burden of proof rests upon the petitioner to prove the elements of incomplete self defense. It follows that he should have proved before the trial court that there was unlawful aggression on the part of the victim. Considering that petitioner failed to prove unlawful aggression on the part of the victim, petitioner Mendoza is not entitled to the privileged mitigating circumstance of incomplete self defense.

2) Unlawful aggression on the part of the victim must be established by one invoking incomplete self defense. What is merely absent is either one, or both, of the last requisites, to wit: Reasonable necessity of the means employed to prevent or repeal the unlawful aggression; and Lack of sufficient provocation on the part of the person defending himself.

PEOPLE VS. MAYOR BENITO ASTORGA, 412 SCRA 512 (2003)

Arbitrary detention need not necessarily involve actual physical restraint

Nature:

Petition for certiorari to review Sandiganbayan decision convicting Mayor Benito Astorga of **Arbitrary detention**.

Facts:

On September 1, 1997, Benito Astorga, municipal mayor of Daram, Samar, ordered his armed men to detain five (5) DENR employees for nine (9) hours. These DENR employees were

on an intelligence gathering and forest protection operations against illegal logging in the area. This obviously incurred the ire of petitioner mayor that he ordered them detained.

Sandiganbayan convicted Mayor Astorga for Arbitrary detention hence, the instant petition for review on certiorari before the Supreme Court.

Held:

The Supreme Court affirmed the conviction of accused-petitioner Mayor Astorga in the Sandiganbayan.

1) 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 intents and purposes, illegally detained against his will.

ADONIS ARADILLOS VS. COURT OF APPEALS, 412 SCRA 515 (2004)

Self defense incompatible with Accident; Crime only physical injuries where wound superficial and not sufficient to cause victim's death.

Nature:

Petition for review of Court of Appeals decision convicting accused-petitioner Adonis Aradillos of **Frustrated Homicide**.

Facts:

On February 3, 1992, Aradillos and his companion, Albino Galabo, were cutting a tree inside the property of the husband of Gloria Alviola in Davao City when Alviola berated them, saying: "**Mga squatters. Gagmay biya mo ug lawas.**"

According to the prosecution's version, the two allegedly chased her up to her house, and struck her with a bolo and carpentry bag. The defense version, on the other hand, stated that it was Alviola herself who attacked them first and wrested the bolo of Aradillos, in the process of grappling of which she was seriously injured. Thus, accused Aradillos interposed the defense of both **Accident** as well as **Self defense**.

The Davao Regional Trial Court convicted the two of **Frustrated Homicide**, which the Court of Appeals affirmed on ground that it was unlikely that a woman who was unarmed would attack two men who were carrying a knife. Thus, this appeal to the Supreme Court.

Held:

The Supreme Court modified the conviction of accused, and reduced it from **Frustrated homicide** to only **Less serious physical injuries**.

1) Although the **Information** charged petitioners Aradillos and Galabo with **Frustrated Homicide**, a finding of guilt for the lesser offense of **Less serious physical injuries** may be made considered that the latter offense is necessarily included in the former, since the essential ingredients of physical injuries constitute and form part of those constituting the offense of Murder or Homicide. Similarly, an accused may be convicted of Slight, Less serious or Serious physical injuries in a prosecution for **Homicide** or **Murder**, considering that the inflicting of physical injuries could lead to any of the latter offenses when carried to its utmost degree. This is despite the fact that intent to kill – an essential requisite of the crime of **Homicide** or **Murder** – is not required in a prosecution for physical injuries.

2) **Self defense** is incompatible with claim of **Accident**. This is because while Self defense implies that the act is intentional but justified, in Accident it is unintentional, or done by culpa, and the act done is lawful, unlike here where the act was unlawful.

3) Based on medical findings, it cannot be **Frustrated Homicide** because the wounds were only superficial, and not an intra-cranial injury which would cause the victim's death.

PEOPLE VS. JOHN NEQUIA, 412 SCRA 628 (2003)

**Insertion of finger in another person's orifice
constitutes rape by sexual assault.**

Nature:

Automatic review of Iloilo RTC decision convicting accused Nequia of **Rape** with death penalty.

Facts:

On January 23, 1999, in Oton, Iloilo, the accused John Nequia, with abuse of confidence, had carnal knowledge of stepdaughter, Mary Ghel Guanco, 13 years old. Accused first placed a pillow on her face to prevent her from shouting or making any noise. The accused then removed her clothes and panties, licked her vagina with his tongue, and inserted his fourth finger. Accused then mounted victim and inserted his penis into her vagina, causing her excruciating pain. Then he left.

Iloilo RTC convicted his of **Rape** under Article 266-A, as amended by R.A. 8353 and imposed death penalty by lethal injection. Hence, the automatic review by the Supreme Court.

Held:

Supreme Court affirmed conviction for **Qualified rape** in consummated stage and imposed death penalty.

1) It is consummated because in rape, there are no half measures or even quarter measures, nor is their gravity graduated by the inches of entry. Partial penile penetration is as serious as full penetration. In either case, rape is deemed consummated because in a manner of speaking, and as indicated in ***People vs. Campuhan***, “bombardment of the drawbridge is invasion enough even if the troops do not succeed in entering the castle.”

2) The ***Anti-Rape Law (R.A. 8353)*** transformed and reclassified rape as a felony against persons, and provided rape not only by sexual intercourse, but also rape by sexual assault. The criminalization of the penetration of a person’s sex organ or anal orifice, and the insertion of a person’s penis into the mouth or anal orifice of another, whether man or woman, and the classified thereof as ***Rape by sexual assault***, were designed to prevent not only physical injuries on the victim but also his or her subjection to personal indignity and degradation of his person by the unwanted violation. Therefore, whatever object or instrumentality chosen by the perpetrator, whether inanimate or animate like a finger, is prohibited by law.

3) As such, for inserting his finger, and then later having sexual intercourse with the victim, the prosecutor should have filed two separate ***Informations*** -- one for ***Rape by sexual intercourse*** under par. 1 of Article 266-A, and secondly, ***Rape by sexual assault*** under par. 2 of Article 266-A.

PEOPLE VS. JOSEPH ORILLA, 422 SCRA 620 (2004)

The number of ejaculations during rape does not increase the penalty to death since ejaculation is not a qualifying circumstance in rape.

Nature:

Automatic review of Pangasinan RTC decision convicting Joseph Orilla of ***Qualified rape*** and imposing death penalty.

Facts:

On September 12, 1996, at around 3:00 a.m., the victim, Remilyn Orilla, 15 years old, was awakened by a heavy weight pressing on her body and found appellant Joseph Orilla on top of her. Appellant, carrying a knife, threatened her with death, and then pushed her legs apart and inserted his penis into her vagina where victim felt “some warm matter enter.” Without removing his organ, appellant remained on top and commenced sexual intercourse after a few minutes and the victim again felt the same “substance” enter into her vagina. Then the accused fled.

The Pangasinan RTC convicted accused Joseph Orilla of ***Rape*** on the basis of testimony of the victim who identified him through his voice, and because of a pale of light from the eastern horizon. The lower court convicted him for one count of ***Qualified rape*** and his second act of ejaculating was used to aggravate the offense to warrant imposition of death penalty instead of *reclusion perpetua*.

Held:

The Supreme Court affirmed conviction of lower court for one count of **Rape** but penalty is **reclusion perpetua** only, and not death penalty.

1) The penalty was reduced to **reclusion perpetua** because nowhere in the law is a second ejaculation a mode of qualifying the offense by increasing the penalty to death. Further, the relationship of the victim to the accused, and the minority of the victim, were not alleged in the **Information**.

2) The second ejaculation is immaterial because the **gravamen** of the offense is **carnal knowledge**, and not the number of times the accused ejaculated.

GERONIMO ORDINARIO VS. PEOPLE, 428 SCRA 772 (2004)

Second mode of rape: Rape by sexual assault

Nature:

Petition for review on certiorari of the Makati RTC decision and CA decision convicting accused Geronimo Ordinario of twelve (12) counts of **Rape** under Article 266-A of the RPC.

Facts:

From November 9, 1998 and eleven (11) other occasions shortly thereafter, the accused-petitioner who is a teacher and head of Boy Scout in their school, sexually assaulted Jayson Ramos, a ten-year old student under his care. The incidents happened at the Boy Scout headquarters where he forced the young victim to have oral sex with him. The boy later complained leading to petitioner's arrest, and prosecution.

The Makati RTC and Court of Appeals convicted him for 12 counts of **Rape by sexual assault**. Hence, this appeal.

Held:

The Supreme Court affirmed his conviction for 12 counts of **Rape by sexual assault**.

1) Under Article 266-A, rape is committed in two modes: First, by a man who shall have **carnal knowledge** of a woman under any of the following circumstances x x x Second, by any person who shall commit an act of **sexual assault** by inserting his penis into another person's mouth or anal orifice, or by inserting any instrument or object into the genital or anal orifice of another person.

2) Under the first paragraph, this can only be committed by a man who has **carnal knowledge (sexual intercourse)** with a woman, but under the second paragraph, the law did not make any distinction anymore on the sex of either the offense or the victim hence, this can be committed by a man or woman who commits **rape by sexual assault** by inserting an instrument or object into the genital or anal orifice of the victim who is either a man or a woman.

PEOPLE VS. ACERO, 425 SCRA 642 (2004)

Sweetheart defense not available in rape of mentally retarded victim

Nature:

Appeal from Davao RTC decision convicting accused Godofredo Acero of consummated rape with the penalty of *reclusion perpetua*.

Facts:

The accused-appellant Godofredo Acero was a mere stowaway who works as wash your car boy and helper of the Lugas in Davao City. On May 8, 2000, while Cherry Luga, a mental retardate, went into the comfort room, the appellant followed her there, and immediately locked the bathroom. Then the appellant covered his mouth with one hand, threatened her if she resists, removed his pants and her shorts and panties, and inserted his penis into her vagina in a standing position. Fortunately, Rose Luga, the victim's mother, knocked on the door of the comfort room because she wanted to urinate. The mother was shocked to find the two of them inside, and confronted them. Although appellant refused to admit, he was arrested and prosecuted for rape.

In his defense, he claimed that they were sweethearts. Despite his sweetheart defense, however, the Davao RTC convicted him for consummated rape hence, the instant appeal.

Held:

SC affirmed his conviction for ***Consummated rape***.

1) A person is guilty of rape when he has sexual intercourse with a female who is suffering from a borderline mental deficiency. Based on medical reports, Cherry had an IQ of only 43, and is considered a mental retardate to a moderate degree with a mental age of an average seven-year-old child. In fine, she is an imbecile.

2) Appellant's contention that they were sweethearts does not hold water. A defense based on the ***"sweetheart theory"*** is no defense at all in rape where the victim is a mental retardate because it is settled that sexual intercourse with a mental retardate constitutes rape. Cherry, being an imbecile, cannot give legal consent to sexual intercourse.

PEOPLE VS. EDUARDO LIMOS, 410 SCRA 463 (2003)

**Sweetheart defense in rape, to be credible, should be substantiated
by documentary or other evidence of relationship.**

PONENTE: JUSTICE SANDOVAL GUTIERREZ

Nature:

Automatic review of Urdaneta, Pangasinan RTC decision which convicted petitioner for four counts of rape imposing the death penalty for two counts, and *reclusion perpetua* for the other two counts of rape.

Facts:

On August 9, 1993, at about 1:00 p.m., the victim Janice C. Ligot, only 13 years old then, was alone in her aunt's house watching television. All of a sudden, the petitioner, Eduardo Limos (her uncle by affinity) grabbed her hands and pulled her inside a room. She tried to offer resistance but he threatened her with a knife. Petitioner then took off his pants and brief, removed her shorts and panty, and inserted his penis into her vagina, and made a push and pull movement for around three minutes. When he withdrew his penis, she saw a yellowish sticky substance coming out from his organ, and she felt pain and saw her vagina bleeding. She did not report the incident for fear of her life.

The rape happened three more times, until she found the courage to inform her aunt who assisted her to undergo medico-legal examination, report to the police authorities, and file a complaint.

Petitioner interposed the defense that there were no external injuries found by the examining physician. He further maintained that the natural tendency of a rape victim was to distance herself from her rapist but here, the victim even moved to her grandmother's house where he was staying.

Finally, he invoked the "**sweetheart defense**" claiming that the victim and he were lovers, and that she would oftentimes enter his room and have sex with him.

The lower court, however, refused to believe petitioner and convicted him for four counts of rape, with two counts of rape punished with **reclusion perpetua** while the other two counts punished with death. Hence, this automatic review to the Supreme Court.

Held:

The Supreme Court affirmed his conviction for four counts of rape, but lowered the penalty to **reclusion perpetua** only, instead of the original death penalty.

1) As to the absence of external injuries, proof of external injuries inflicted on the rape victim is not indispensable in a prosecution of rape committed with force or violence. There is truth in the victim's testimony that petitioner was able to rape her by threatening to kill her with a knife. This constitutes force and intimidation which makes the act of sexual intercourse qualify as rape.

2) On petitioner's claim that the natural tendency of rape victim was to distance herself from the rapist, Supreme Court said the victim had no choice. After all, it was her aunt, Marie Ligot who expressly instructed her to transfer to her grandparents' house so she could help her grandmother in taking care of her sickly husband. Being only 13 years old and under her aunt's parental authority, Janice had to obey her aunt.

3) Neither is there basis to petitioner's **sweetheart defense**. The sweetheart defense, to be credible, should be substantiated by some document or other evidence of the relationship – live mementos, love letters, notes, pictures and the like. Here, there was no such evidence presented by appellant. Clearly, his alleged romantic relation with Janice, the victim, was only a figment of his imagination.

4) Finally, for rape to be qualified by the presence of circumstance of **Minority** of the victim and her **Relationship** with the offender, the same must be specially alleged in the **Information**, and duly proven with equal certainty as the crime itself during trial. Here the four **Informations** did not allege the Minority of Janice, nor her Relationship with the petitioner such that the same could not be used to increase the penalty against petitioner. Thus, the death penalty imposed by the lower court is erroneous, and is thereby reduced to **reclusion perpetua**.

PEOPLE VS. SABARDAN, 429 SCRA 10 (2004)

Where accused's primordial intention was to rape and detention merely incidental, crime is Rape only.

Nature:

Appeal from Rizal RTC decision convicting Domingo Sabardan of **Complex crime of Serious illegal detention with Rape**.

Facts:

On September 15, 1991, Richelle Banluta, only 12 years old and adopted daughter, left their home after she was scolded by her mother. The accused, a Catechist, invited her to stay in his apartment which was just near their home. She relented and accepted his invitation, feeling that she was safe there.

On the fourth day, however, he forced her to drink beer or juice and when she passed out, he had carnal knowledge with her. She knew this when she woke up the following day completely naked, and felt severe pains in her vagina which was bleeding profusely, and saw appellant also stark naked beside her.

This was followed five more times, each time appellant forcing her to drink either juice or beer, after which she'd pass out. Fortunately, she was rescued on September 30, 1991.

The Rizal RTC convicted accused-appellant of the Complex crime of Serious illegal detention with rape and sentenced him to **reclusion perpetua**. Hence, this appeal.

Held:

The Supreme Court modified the Rizal RTC decision, and convicted accused-appellant instead of the crime of **Rape only**.

1) Where the original and **PRIMORDIAL intention** of the accused in keeping the complainant in his apartment was to Rape her, and NOT to deprive her of her liberty, the accused is guilty only of **RAPE**, and not of the Complex crime of Serious illegal detention with Rape.

2) Accused argued that there were no tests conducted to establish the presence of sedative or drugs in the drinks given to the victim. The Supreme Court, however, held that a test to determine the presence of any sedative or drugs in the drinks given to a victim is not an indispensable element in the prosecution for rape. It is sufficient that the victim was **deprived of reason or otherwise unconscious** at the time petitioner had carnal knowledge with her.

3) Accused also maintained that no rape took place because Richelle did not see his penis inserted into her vagina since she lost consciousness after drinking beer and juice. In rape cases, however, carnal knowledge is proven not only by direct evidence but also by circumstantial evidence, like her dizziness, her vagina bleeding upon waking up, the accused completely naked beside her when she regained consciousness.

PEOPLE VS. JOSE OBESO, 414 SCRA 447 (2003)

Two requisites for crime of Kidnapping and serious illegal detention

Nature:

Appeal from Cebu RTC decision convicting Jose Obeso of **Serious illegal detention**.

Facts:

On December 9, 1998, at around 3:00 p.m., Elizabeth Cabrana left her three-year-old daughter named Lillibeth, with *Lucy's Store* because she would go carolling, and the child could get on the way. At around 5:00 p.m. when she went back to fetch the child, Elizabeth was shocked to learn that a certain Jose Obeso allegedly took the child away.

Later that day, with the assistance of a barangay **tanod**, they were able to retrieve the child sitting on the lap of the accused-appellant Obeso. Obeso was charged with **Kidnapping and serious illegal detention**, and the Cebu RTC convicted him of the same crime.

Hence, this appeal.

Held:

SC reversed Cebu RTC, and acquitted Obeso of the charge

1) The two elements of Kidnapping and serious illegal detention are: First, **actual detention**; and second, **intent to detain** the victim. In this case, evidence failed to establish actual detention or confinement of the victim, nor the intent to detain her. According to accused, he merely assisted Lillibeth for fear she might be bumped by a vehicle.

2) A review of the narration of events by the prosecution itself shows that it was not able to establish actual confinement, detention or restraint of the child. The testimonies of its witnesses did not adequately prove that she had been forcefully transported, locked up or restrained.

PEOPLE VS. LEONARD NUGUID, 420 SCRA 532 (2004)

Crime is Rape only where accused's real aim was to have carnal knowledge with victim, and not to detain her.

Nature:

Automatic review of Manila RTC decision convicting Leonardo Nuguid of **Complex crime of Serious illegal detention with Rape** hence, penalty of death.

Facts:

On January 1, 2000, at around 2:00 a.m., accused Leonard Nuguid detained the victim Rowena Rianzares for more than three hours and raped her. In fact, when the police authorities barged into the room, he was found on top of the victim, with his pants down.

The Manila RTC convicted accused of the Complex crime of Serious illegal detention with rape and imposed death penalty. Thus, this automatic review.

Held:

The Supreme Court modified the Manila RTC decision, and convicted accused of Simple rape only.

1) Where accused original and primordial aim or objective is to Rape, and the detention was merely incidental to the real objective of accused, the crime is Simple rape only. In this case, even if the accused kept the victim for more than one hour while the police tried to negotiate with him, since it is clear that the accused's **real aim was to have carnal knowledge with the victim**, such circumstance does **not** constitute Kidnapping and serious illegal detention. The crime is **only Rape**.

2) The intent to rape was clearly evident by the fact that accused was on top of the victim Rowena raping her even while he was shouting at the police and other people outside not to enter or else he will kill her.

3) Even if alleged in the **Information**, dwelling cannot be appreciated against the accused. This is because the offender resided in the same house as the victim when the offense was committed. The accused here was a stay-in trainer of the dog school owned by the victim and her husband.

PEOPLE VS. LITO HERNANDEZ, 432 SCRA 106 (2004)

When homicide is committed by reason of, or on occasion of, a robbery

Nature:

Automatic review of Batangas RTC decision convicting Lito Hernandez of **Complex crime of Robbery with Homicide**.

Facts:

On December 19, 1994, at around 12 noon in Batangas, witness Cesar Yuzon saw the accused Hernandez and Nestor Catapang dragging his auntie, 72-year-old Natividad Yuzon Mendoza, and shouted: **"Bakit ninyo kinaladkad ang aking tiya?"** The two accused, however, threatened him with death so he remained silent, and watched the incident from a distance, while hiding from a tree. The two accused took away the earrings, necklace and money of the victim, and strangled her to death.

The Batangas RTC convicted accused Hernandez of the ***Complex crime of Robbery with Homicide***.

Held:

The Supreme Court affirmed the conviction of Hernandez for the ***Complex crime of Robbery with homicide***.

1) In the Complex crime of Robbery with homicide, the original or primordial criminal intent is to commit Robbery, with Homicide being committed only on occasion of, or by reason of, the Robbery. The ***INTENT*** to commit Robbery must precede the taking of human life. The ***homicide*** may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes, modes or persons intervening in the commission of the crime that has to be taken into consideration.

2) There is ***no such felony*** as ***Robbery with homicide through reckless imprudence, or simple negligence***. The constitutive elements of the crime, namely Robbery and Homicide, must be consummated.

3) There is no aggravating circumstance of ***Disrespect of age and sex***. This is because Disregard of age and sex only applies to Crimes against Persons or Honor, not in Complex crime of Robbery with Homicide which is a ***Crime against Property***.

4) Finally, when Homicide is committed by reason of the Robbery, all those who took part as principals in ***Robbery*** shall also be deemed principals in the ***Complex crime of Robbery with Homicide*** although they did not take part in the killing, unless they endeavored to prevent the same.

PEOPLE VS. MAJOR EMILIO COMILING, 410 SCRA 463 (2003)

Nature:

Automatic review of Pangasinan RTC decision convicting Maj. Comiling and two others for ***Complex crime of Robbery with Homicide*** with death penalty.

Facts:

On September 2, 1995, Maj. Comiling, with three others, barged into Masterline Grocery by pretending to be *bona fide* customers. Once inside, they mauled Inciong Co, the owner, and stole P81,000.00, and three Chinese gold necklaces worth P20,000.00. They also shot dead a policeman who responded to call for assistance by the owner.

Pangasinan RTC convicted Maj. Comiling and two others for ***Complex crime of Robbery with Homicide*** and imposed the death penalty.

Held:

SC affirmed conviction of accused for ***Complex crime of Robbery with Homicide*** with death penalty.

1) To sustain a conviction for Robbery with homicide, it is enough that the killing, which is designated as homicide, has a direct relation to the robbery, regardless of whether the robbery takes place before, or after the killing. As long as the killing occurs during or because of the heist, even if the killing is merely accidental, then the Complex crime of Robbery with homicide is committed.

YUPANGCO COTTON MILLS, INC. VS. MENDOZA, 454 SCRA 386 (2005)

Sheriff's seizing properties in implementing Writ of execution not robbery.

Nature:

Petitioner for certiorari to review CA decision in favor of Mendoza and Sheriffs

Facts:

In 1986, DBP foreclosed Artex property. In 1989, Yupangco Cotton Mills bought Artex. In the meantime, SAMAR, a labor union of Artex, won in labor case against Artex. Thereafter, the Labor Arbiter issued a writ of execution on Artex property now owned by Yupangco Cotton Mills. Naturally, Yupangco Cotton Mills was dissatisfied, and filed a **third party claim**.

The Sheriffs, however, on strength of the Writ of execution issued by DOLE, seized the properties of Artex and sold them to satisfy the money claims of Artex in favor of SAMAR. Because of this, Yupangco Cotton Mills filed a case for **Robbery** against Sheriffs, and Mendoza (who earlier bought the property from SAMAR). The Court of Appeals ruled in favor of Sheriffs and Mendoza. Hence, the petition for certiorari filed by Yupangco Cotton Mills before the Supreme Court.

Held:

The Supreme Court dismissed Yupangco Cotton Mills' petition for certiorari and ruled in favor of Mendoza and the Sheriffs.

1) The respondent Sheriffs cannot be reproached or charged for Robbery for the faithful compliance with the writ of execution or with their duties in accordance with NLRC Manual of Execution of Judgment. Further, judgment creditor SAMAR and Mendoza put an indemnity bond as provided in the Manual and required by the third alias writ of execution issued by the Labor Arbiter.

2) In **Robbery**, there must be unlawful taking of the personal property of another, and with intent to gain. In the case at bar, there can be no unlawful taking because respondent Sheriffs took whatever personal property in the premises pursuant to the writ of execution issued by the Labor Arbiter, and pursuant to the orderly administration of justice, and in the unhampered performance of the Sheriff's role in our judicial system, pursuant to the **NLRC Manual on Execution of Judgment**.

PEOPLE VS. LUISITO BUSTINERA, 431 SCRA 284 (2004)

If motor vehicle stolen, crime is Carnapping, not Qualified theft.

Nature:

Appeal from Quezon City RTC decision convicting Luisito Bustinera for **Qualified theft**.

Facts:

From December 25, 1996 to January 9, 1997, accused taxi driver Luisito Bustinera did not return the Daewoo taxi he rented on a boundary basis. His reason was that he was not able to meet the boundary. Instead of returning the taxi, he abandoned the same until it was recovered by the lawful owner. Accused was then charged with **Qualified theft**.

The Quezon City RTC convicted him for **Qualified theft** and the penalty was **reclusion perpetua**. Hence, this appeal.

Held:

Supreme Court modified the conviction of the lower court, and found accused guilty instead for Violation of **R.A. 6539 (Carnapping)**, and not for **Qualified theft**.

1) Considering that the property stolen is a motor vehicle, the crime is **Carnapping**, and not **Qualified theft**. It is now settled that the unlawful taking of a motor vehicle is now covered by the Anti-Carnapping law, or **R.A. 6539**, and not by the provisions on **Qualified theft** or **Robbery**. In the 2000 case of **People vs. Tan** where the accused took a *Mitsubishi Galant*, and in the later case of *Lobitania* which involved the taking of a Yamaha motorized tricycle, the Supreme Court held the unlawful taking of motor vehicle is now covered by Anti-Carnapping law, and not the provisions on **Qualified theft** or **Robbery**.

2) Intent to gain, or **animus lucrandi**, is an internal act which is presumed from the unlawful taking of the motor vehicle. Actual gain is irrelevant as the important consideration is the intent to gain. The mere use of the thing taken without the owner's consent constitutes gain, even if the motor vehicle is later returned.

KENNETH NGO VS. PEOPLE, 410 SCRA 463 (2003)

Check issued in favor of agent which bounced still constitutes BP 22.

Nature:

Petition for review on certiorari of the decision and resolution of the Court of Appeals.

Facts:

Ngo issued three Equitable Banking Corporation (EBC) checks of P75,000.00 each in favor of **Paul Gotianse**, agent of Northern Hill Development Corp. When the three checks were encashed, the same were dishonored for the reason "**Drawn Against Insufficient Funds**." (DAIF)

The Davao RTC convicted Ngo for three counts of BP 22. On appeal, the Court of Appeals affirmed the conviction. Hence, the petition for review on certiorari of the decision and resolution of the Court of Appeals.

Held:

The Supreme Court affirmed the conviction for three counts of B.P. 22.

1) The claim that the prosecution failed to prove that the check had been issued to apply on account or for value in favor of Paul Gotianse is irrelevant. The law does not require that the payee of a check be the same as the obligee of the obligation in consideration for which the check has been issued.

2) Further, when the checks were issued by petitioner to Paul Gotianse as payee, they were issue to apply “**on account**” that is, to settle the former’s obligation to Northern Hill Development, the principal. Petitioner had agreed to settle his debt o the company by issuing the checks payable to its agent, Paul Gotianse. Gotianse was therefore as agent acting for and in behalf of the principal. The prosecution proved the first element of violation of BP 22.

MORIGO VS. PEOPLE, 422 SCRA 376 (2004)

No bigamy if no marriage ceremony took place in first marriage.

Nature:

Petition for review on certiorari the CA decision, and Bohol RTC decision, convicting Lucio Morigo of **Bigamy**.

Facts:

On August 30, 1990, appellant Lucio Morigo married Lucia Barrete. There was, however, no marriage ceremony which took place but the parties merely signed a marriage contract of their own.

On October 4, 1992, the appellant contracted a second marriage to Jereche Lumbago. On September 21, 1993, Lucia Barrete, the first wife, filed a complaint for judicial declaration of nullity of the first marriage before Bohol RTC. The ground cited was that no marriage ceremony actually took place.

On October 19, 1993, appellant was charged with **Bigamy** in an **Information** filed by the City Prosecutor of Tagbilaran Cty with Bohol RTC.

The lower court convicted appellant for Bigamy, and on appeal, the CA affirmed his conviction. Consequently, this petition before the Supreme Court.

Held:

The Supreme Court reversed the conviction of CA, and **acquitted** appellant.

1) In this case, there was no marriage to begin with, and such declaration retroacts to the date of the first marriage. In other words, for all intents and purposes, reckoned from the date of the declaration of the first marriage as void **ab initio** to the date of celebration of the

first marriage, the accused, under the eyes of the law, never contracted the first marriage. Hence, he could not be held liable for Bigamy which required the existence of a prior valid and subsisting marriage.

2) The trial court found that there was no actual marriage ceremony performed between Lucio and Lucia Barrete by a solemnizing officer. Instead what transpired was a mere signing of the marriage contract by the two, without the presence of a solemnizing officer.

3) This must be distinguished from ***Mercado vs. Tan***, 337 SCRA 122 (2000) where the judicial declaration of the nullity of the first marriage was also obtained after the second marriage was already celebrated. The distinction lies on the fact that in Mercado case the first marriage was actually solemnized not just once but twice. First, before a judge where a marriage certificate was duly issued and then six months later before a priest in religious rites. Ostensibly, at least, the first marriage in Mercado appeared to have transpired, although later declared ***void ab initio***.

PHILIPPINE JOURNALISTS INC (PEOPLE'S JOURNAL) VS. THOENEN, 477 SCRA 482 (2005)

Defamatory and false accusation against private individual libelous.

Nature:

Petition to review CA decision which held there was libel committed, reversing lower court's acquittal of accused.

Facts:

A news item appeared in the ***People's Journal*** on September 3, 1990 that "residents of a subdivision in Paranaque have asked the Bureau of Immigration to deport a Swiss national who allegedly shoots wayward neighbors' pets that he finds in his domain, a certain Francis Thoenen, the residents made the complaint through Atty. Efren Angara x x x."

The news article turned out to be completely false. Neither was there a certain Atty. Angara hence, the libel complaint instituted by Mr. Thoenen alleging that the report was false and defamatory, and that petitioners acted irresponsibly in failing to ascertain the truth of the accusations prior to publication. Sued were petitioners *Philippine Journalists, Inc. (Philippine Journal)*, the publisher and reporter Cristina Lee.

The lower court held there was no libel because it was privileged communication for it involved a matter of public interest but on appeal, the Court of Appeals convicted petitioners for libel. Hence, the instant petition before the Supreme Court.

Held:

The Supreme Court affirmed the conviction of the appellants for libel.

1) Even assuming Atty. Angara's letter was privileged communication, it lost its privileged character when it was published in a newspaper and circulated.

2) Neither was it “*fair commentary on a matter of public interest*” under *Borjal vs. Court of Appeals* because Mr. Thoenan is a mere private individual, and not a public official, neither was he a public figure.

GUINGGUING VS. COURT OF APPEALS, 471 SCRA 196 (2005)

**No libel if publication involves Public figure
and done without Actual malice.**

Nature:

Appeal from CA decision and RTC decision which convicted Lim and Boy Guingguing of **Libel**.

Facts:

Petitioner Guingguing published in an ad the records of criminal cases against complainant Cirse “Choy” Torralba, a broadcast journalist who handled two programs for radio stations aired all over Visayas and Mindanao. Pointing out that these criminal cases have already been dismissed or settled, and that such publication was clearly defamatory, Torralba filed a complaint for libel.

The lower court, and Court of Appeals, convicted petitioner Guingguing for libel. Thus, this appeal before the Supreme Court.

Held:

The Supreme Court reversed the conviction of the lower court and Court of Appeals, and **acquitted petitioners from libel**.

1) It is settled that in order to justify a conviction for libel against a public officer, it must be established beyond reasonable doubt that the libelous statements were made or published with **ACTUAL MALICE** (or **MALICE IN FACT**) meaning with **knowledge that such statement was false**, or with **reckless disregard of its truth or falsity**.

2) In the instant case, there are two main determinants: 1st, whether complainant is a **PUBLIC FIGURE**, and assuming that he is a public figure, 2nd, whether the publication of the subject article or advertisement was made with **ACTUAL MALICE**. Sadly, the RTC and the CA failed to duly consider both propositions hence, the acquittal of the petitioners is in order.

3) There is little doubt that complainant is a **PUBLIC FIGURE**. He is broadcast journalist hosting two radio programs aired over Visayas and Mindanao. Measured against the definition provided in Ayer, complainant would definitely qualify as a public figure. Complainant even asserted before trial court that his broadcast was listened to widely such that his notoriety is unquestionable.

4) Further, the criminal cases published were essentially true although they were already dismissed, terminated or settled.

SALVADOR FLOR VS. PEOPLE, 454 SCRA 440 (2005)

**No libel if publication involves Public official
and with some Factual basis**

Nature:

Appeal from RTC and CA decision convicting petitioners Salvador Flor and Nick Ramos for libel.

Facts:

Salvador Flor and Nick Ramos, publisher and correspondent of ***Bicol Forum***, published an article on August 24, 1986 entitled “*Villafuerte’s denial convinces no one.*” The article alleged that Gov. Luis Villafuerte, Minister of the Presidential Commission on Government Reorganization and concurrently Governor of the Province of Camarines Sur, engaged in junkets abroad using cash advances collected by ranking provincial officials. This was being insinuated by the article when it reported that about P700,000.00 collected by way of cash advances by provincial officials were allegedly used for the trips, and remained unaccounted for.

Claiming that the article was defamatory and without basis, Gov. Villafuerte sued the petitioners for libel. The lower court and Court of Appeals convicted petitioners for libel hence, the instant petition.

Held:

The Supreme Court reversed the lower court and Court of Appeals’ conviction, and ***acquitted petitioners from libel.***

1) A public official is not barred from recovering damages in cases involving defamation. His entitlement, however, is limited to instances when the defamatory statement was made with ***ACTUAL MALICE*** – that is with “***knowledge that it was false***” or with “***reckless disregard of whether it was false or not.***”

2) “***Reckless disregard***” means that the accused has a high degree of awareness of their probable falsity or that accused entertained “***serious doubts as to the truth of his publication.***” In short, publishing with such doubts shows reckless disregard for truth or falsity and demonstrates ***ACTUAL MALICE.***

3) Applied to the case at bar, the Supreme Court held that the prosecution failed to meet the “***reckless disregard standard.***” As the records reveal, the issue of cash advances against the coffers of the provincial government of Camarines Sur was a major political topic in said locality at that time. It was clearly a legitimate topic to be discussed not only by the members of the media but by the public as what was involved was the dispensation of taxpayers’ money.

4) The petitioners also relied on information furnished them by one who worked in the Provincial Treasurer's Office and who had access to the pertinent financial records of the provincial government.

5) Finally, while substantiation of the facts supplied is an important reporting standard, still a reporter may rely on information given by a lone source, although it reflects only one side of the story, provided that the reporter does not entertain a "*high degree of awareness of its probable falsity*." The prosecution utterly failed to prove that the petitioner and Ramos entertained such awareness hence, acquittal of the accused is in order.

ISIDRO OLIVAREZ VS. COURT OF APPEALS, 465 SCRA 465 (2005)

Violation of Section 5 of R.A. 7610 when victim coerced or intimidated by petitioner to indulge in lascivious conduct.

Nature:

Petition to review CA decision and Laguna RTC decision convicting petitioner Olivarez for Violation of **Section 5 of R.A. 7610**.

Facts:

Cristina Elitong, a 16-year-old high school student, worked for the petitioner stitching **sampaguita** garlands with her brother. On July 20, 1997, at around 11:30 a.m., petitioner called the victim who approached him. The victim was shocked when petitioner, all of a sudden, embraced her and held her breasts. He then pulled her to the kitchen, and after closing the kitchen door, kissed her on the lips. She pushed him and went back to her work.

The victim later told her mother, and they filed a complaint against the petitioner. The Laguna RTC convicted petitioner for violation of Section 5 of R.A. 7610, or the "**Child Prostitution and Other Sexual Abuse**." Hence, the instant petition.

Held:

The Supreme Court affirmed his conviction for Violation of Section 5 of R.A. 7610.

1) A child is deemed subjected to other sexual abuse when the child indulges in lascivious conduct under the coercion, or influence of any adult. In this case, the victim was sexually abused because she was coerced or intimidated by petitioner to indulge in lascivious conduct.

2) Article III of R.A. 7610 is intentionally captioned as "**Child Prostitution and other Sexual Abuse**" because Congress really intended to cover a situation where the minor may have been coerced or intimidated into lascivious conduct, **not necessarily for money or profit**. In other words, the law covers not only child prostitution, **but also other forms of sexual abuse**.

VICENTE AGOTE VS. HON. MANUEL LORENZO, 431 SCRA 366 (2004)

Nature:

Appeal from Court of Appeals decision and lower court's decision convicted petitioner Vicente Agote for ***Illegal Possession of Firearms*** and ***Violation of COMELEC Gun Ban***.

Facts:

On April 2, 1996, petitioner was found in unlawful possession of one .38 caliber revolver with four live bullets, without the proper license. At the same occasion, he was also found to have violated the COMELEC Gun Ban for carrying the same .38 caliber revolver along V. Mapa Extension, Sta. Mesa, a public place, without first securing written authority from COMELEC, thereby violating COMELEC Resolution No. 2828, in relation to R.A. 7166 (Gun Ban).

Petitioner Vicente Agote was sued, and convicted, for two crimes of Illegal Possession of Firearms (under ***R.A. 8294***) punishable for ten years, one day to 18 years, and Violation of COMELEC Gun Ban, punishable for one year only. On appeal, CA affirmed the conviction hence, the appeal to the Supreme Court.

Held:

The Supreme Court set aside conviction for Illegal Possession of Firearms, and sustained only the conviction for ***Violation of COMELEC Gun Ban*** which has a much lower penalty.

1) The Supreme Court applied ***R.A. 8294 retroactively*** hence, the Illegal Possession of Firearms was deemed ***absorbed*** in the Violation of COMELEC Gun Ban.

2) A simple reading of Section 1 of R.A. 8294 shows that if an unlicensed firearm is used in the commission of any crime, there can be no separate offense of simple Illegal possession of firearms. Hence, if the other crime is Murder or Homicide, then ***Illegal possession of firearms*** becomes an aggravating circumstance, ***not*** a separate offense.

3) In ***People vs. Walpan Ladjaalam***, Supreme said that since ***Direct Assault with Multiple Attempted Homicide*** was committed in this case, appellant cannot no longer be held liable for Illegal possession of firearms. The plain meaning of R.A. 8294 was clearly to favor the accused.

4) Where a violation of COMELEC Gun Bank was committed at the same time when Illegal possession of Firearms was committed, the latter crime of Illegal possession would be disregarded. This is in consonance with the provision of ***R.A. 8294*** that the accused can be convicted of simple Illegal Possession of Firearms, provided that "no other crime was committed by the person arrested."

PEOPLE VS. ANTONIO COMADRE, 431 SCRA 366 (2004)

Use of explosives as qualifying circumstance in Murder

Nature:

Automatic review of Nueva Ecija RTC decision which convicted petitioner Antonio Comadre for ***Complex crime of Murder with Multiple Frustrated Murder***.

Facts:

On August 6, 1995, at around 7:00 p.m., Robert Agbanlog, with four friends, were drinking on the terrace of the victim's house, with his father Jaime Agbanlog seated on the banister of the terrace listening to their conversation. The group noticed appellants Antonio Comadre, George Comadre and Danilo Lozano walking. Then the three stopped in front of the victim's house and Antonio Comadre, all of a sudden, lobbed an object at them which fell on the roof of the terrace.

It turned out to be a hand grenade which exploded, ripping a hole in the roof of the house. As a result thereof, Robert Agbanlog died before reaching the hospital, while his companions were hit by shrapnel and slumped unconscious on the floor.

The Nueva Ecija RTC convicted all three of them for *Complex crime of Murder with Multiple Frustrated Murder* hence, this appeal.

Held:

The Supreme Court affirmed the conviction of Antonio Comadre for *Complex crime of Murder with Multiple Frustrated Murder*, but acquitted his two companions, George Comadre and Danilo Lozano.

1) When the killing is perpetrated with ***Treachery*** and by means of explosives, the ***Use of explosives*** shall be considered as a ***qualifying circumstance***. Not only does jurisprudence support this view but also, since the use of explosives is the principal mode of attack, reason dictates that the Use of explosives should qualify the offense instead of Treachery which will be relegated as a mere *GENERIC aggravating circumstance*.

2) With the removal of death as a penalty and the insertion of the term "x x x as an aggravating circumstance," the unmistakable import is to downgrade the penalty for Illegal possession of explosives and consider its use merely as an aggravating circumstance.

3) Clearly, Congress intended ***R.A. 8294*** to reduce the penalty for Illegal possession of Firearms and Explosives. Also, Congress clearly intended R.A. 8294 to consider as aggravating circumstance, instead of a separate offense, ***Illegal possession for Firearms and Explosives*** when such possession is used to commit other crimes under the Revised Penal Code.

GOOD LUCK TO THE BAR EXAMS!!!