BAR 2025: LAST MINUTE TIPs
Criminal law
(Prepared by: Prof. Victoria C. Garcia)

* **Utilitarian Theory or Protective Theory**

X wanted to establish a car repair shop but he had no funds and the necessary equipment. X approached Y, the VP of W Corporation. Y referred X to SS Finance Corporation. SS Finance agreed to finance the equipment on condition that X must give a 30% warranty deposit. Unknown to X, it was Y who personally advanced the deposit as a short-term loan at 3% interest. X and SS Finance executed a lease-Purchase agreement where the needed equipment was delivered to X and in return X issued postdated checks to cover the deposit. When X failed to pay the monthly rentals, SS Finance repossessed the equipment. X discovered that it was Y who had provide the deposit. X told Y to return the checks and not to deposit the same as the equipment had been taken back. But Y still deposited the checks. The checks bounced and the notices of dishonor sent were returned.

Several counts of Violation of BP 22 were filed against X.

If you are judge, rule? Justify your decision.

Answer:

If I am the judge, I acquit.

In the case of ***Magno vs. CA***, the SC ruled that under the ***Utilitarian or Protective Theory***: "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 provided by law, it should be directed against actual and potential wrongdoers."

In the case at bar, X's 4 checks were issued to collateralize an accommodation, and not to cover an "actual account or credit for value." When Y, the lessor, pulled out the equipment being guaranteed by the checks, there would be no more consideration for the checks issued. Thus, Y should have returned the checks to X. When Y deposited the checks, she becomes the potential and actual wrongdoer, not X.

Following the ***Utilitarian or Protective Theory***, X is acquitted.

* **PROSPECTIVITY and Its Exceptions.**

* **Teddy Pena vs. People** *(2024 J. Amy Lazaro-Javier)*

The SC affirmed the conviction of accused Teddy Pena for 2 cases: Slight Physical Injuries and Unjust Vexation. For Slight Physical Injuries, Teddy was meted with a straight penalty of 15 days of Arresto Menor with P5,000.00 moral damages. For Unjust vexation, Teddy was meted with a straight penalty of 15 days of Arresto Menor with P200.00 Fine.

Teddy filed a MR. In said MR, he moves the SC to modify his penalty from imprisonment to community service in accordance with the Community Service Act or RA 11362. The trial court's conviction of Teddy was promulgated on 29 June 2016, while RA 11362 took effect only on 08 August

2019 and the SC's Guidelines for Community Service (A.M.No.20-26-14SC) took effect on 02 November 2020.

Should the MR be granted? Explain.

Answer:

YES, the Motion for Reconsideration should be granted.

The **GENERAL RULE** is: penal laws are prospective in application. **EXCEPTION:** Under Article 22 of the RPC, penal laws which are favorable to the person guilty of the felony, who is not a habitual criminal, are given retroactive effect.

Here, although accused Teddy's conviction was promulgated in 2016, and RA 11362 or The Community Service Act took effect only 3 years thereafter in 2019 and the SC's Guidelines for Community Service in 2020, the benefit granted under RA 11362 can still be availed by him because it is more favorable to Teddy and that he is not a habitual criminal.

Therefore, the MR should be granted.

* ***Mens Rea* & *Actus Reus* in *Acts Mala In Se***

* **Garma vs. People** *(2022, J. Amy Lazaro-Javier)*

When twin brothers A & B saw X, Y, and Z – 3 farmers working for Brgy. Captain W, they inquired from them where Brgy. Captain W was. X, Y, and Z replied that the brgy. captain was in his residence. To this, A uttered: "Patayin mi koman" (We should have killed him). Thereafter, A and B left. X, Y, and Z informed W about their encounter with A and B and the words uttered against him. W became terrified and called for police assistance.

A case of Grave Threats was filed against brothers A and B. The MTCC convicted them as charged. On appeal, if you are the RTC Judge, how will you rule? Reasons.

Answer:

As the RTC Judge, I acquit. A and B are not liable of the felony of Grave Threats.

Like any other crime defined by the RPC, Grave Threats must have an *actus reus* and *mens rea*. In the case of ***Garma vs. People***, the SC ruled that in the felony of Grave Threats, the *actus reus* is the actual speaking or uttering of the threats of, e.g., death or serious bodily harm. The *mens rea* is that the accused intends that the recipient of their words would feel intimidated by their words or that the accused intended the words to be taken seriously. Whether the complainant was actually intimidated or took the treat seriously is not part of the *mens rea*.

In the case at bar, both the ***actus reus*** and the ***mens rea*** of Grave Threats are wanting. A's utterance: "Patayin mi koman" (We should have killed him) does not pose a threat with the intent to intimidate the Brgy. Chairman. Rather, it is a mere comment or expression with no element of intimidation.

Hence, as the Judge, I acquit A and B.

* **Intent to Perpetrate the Crime in Crimes *Mala Prohibita***

* **Sama vs. People** *(2021 J. Amy Lazaro-Javier)*

PO X and his team, composed of police officers and DENR employees, were conducting a surveillance on illegal loggers in Mindoro when they heard the sound of a chainsaw and saw a tree slowly falling. They immediately went to the area and found Y and Z in the act of cutting a Dita tree. The team inquired from Y and Z if they had a license to cut the tree. Y and Z said: none. Hence, the team informed Y and Z of their violation and they were brought to the PNP station.

Y and Z are charged with the crime of Violation of PD 705 or The Revised Forestry Code of the Philippines.

Y and Z argued that they are members of the Iraya-Mangyan Indigenous Peoples (IPs), and they cut the tree for the construction of the Iraya-Mangyan IPs' community toilet. They maintain that their act of harvesting the Dita tree is part and parcel of the Iraya-Mangyans' rights to cultural integrity and ancestral domain and lands.

If you are the judge, rule. Justify your ruling.

Answer:

As the judge, I **acquit.** Y and Z are not liable for Violation of PD 705 or The Revised Forestry Code of the Philippines.

Although Violation of PD 705 or The Revised Forestry Code of the Philippines is an act *malum prohibitum* where criminal intent is immaterial, the accused's **intent to perpetrate the prohibited act** must still be proven beyond reasonable doubt. Volition or voluntariness or intent to commit the act refers to knowledge of the act being done.

In the case at bar, **there exists reasonable doubt that Y and Z had the volition or voluntariness or knowledge of the prohibited act being done**. Y and Z believed that they supposedly possessed the State authority to cut and collect the Dita tree as Indigenous People for the construction of the indigenous community's communal toilet. In the Mangyans' view, the forest is considered as a common property of all the residents. Mangyans perceive all the resources in their ancestral domain to be communal, thus, they can catch forest animals, cut trees, gather woods without the permission of other residents. The Mangyans' unique way of life negates any finding on the accused's intent to perpetrate the prohibited act.

Hence, as the judge, I acquit.

* **Criminal Intent**
* **Question:**

A hacked X with a samurai hitting his right forearm. Then B, C, & D hit X with steel pipes while E hit him with a stone. Thereafter, they all ran away leaving X wounded.

A, B, C, D, and E are charged with, and convicted by the RTC of, Frustrated Murder. Is the RTC correct? Explain.

Answer:

NO, the RTC is not correct.

A, B, C, D, and E cannot be convicted of Frustrated Murder because there is **NO intent to kill**. The crime committed by is only Serious Physical Injuries.

A, B, C, D, and E were armed with samurai, steel pipes and stone while X was unarmed and defenseless. Accused possessed all the necessary weapons to kill X but chose not to do so. After ganging up on X and after seeing that he was down, accused fled. If they intended to kill X, they could have easily done so, but they did not. ***(Penaranda vs. People, 2021)***

Hence, for want of intent to kill, A, B, C, D, and E are liable only for Serious Physical Injuries.

* **Mistake of Fact**
* **US. Vs. Ah Chong** *(En Banc 1910)*

Ah Chong was acquitted of Homicide because he acted based on mistake of fact, negating criminal intent. ***Ignorantia facti excusat*** *(Ignorance or mistake in point of fact is a sufficient excuse)*.

All the elements of Mistake of Fact are present:

1st, that the act done would have been lawful and justifiable had the facts been as the accused believed them to be. Ah Chong believed Pascual was a robber or thief who forced his way inside and who struck him on the knee. Had it been true, Ah Chong's act is justified as an act of self defense.

2nd, that the intention of the offender in performing the act must be lawful. Ah Chong's intention was to protect his life and property.

3rd, that the mistake is without fault or negligence or carelessness. Ah Chong called out twice: "Who is there?" For the third time, he called out again: "If you enter the room, I will kill you." Pascual did not reply despite an understanding between them that when either returned at night, he should knock at the door and acquaint the other of his identity. The carelessness or negligence was on Pascual, not on Ah Chong.

Hence, Ah Chong should be acquitted as he acted under mistake of fact, without criminal intent.

* **Article 4(1): Proximate Cause Doctrine**
  Aberratio Ictus / Mistake in the blow
* **People vs. Bendecio** *(2020 J. Amy Lazaro-Javier)*

Gerry was fetched by his wife from a drinking spree. On their way home, Gerry bumped into Nestor. Nestor asked him: "anong problema?" Gerry responded: "Kuya Nestor ako ito. Hindi mo na ba ko nakikilala?" But Nestor rebuffed: "Hind kita kilala, bastos ka eh!"

Gerry and his wife thereafter did not mind Nestor and continued to walk home. Once home, Gerry was closing the front door when he noticed Nestor standing outside the doorway, about an arm's length away from him. Suddenly Nestor drew a gun, aimed at Gerry, and fired. But it was not Gerry who was hit, instead it was Gerry's 7-year old daughter, Jonabel, who died a day after being brought to the hospital.

What crime is committed by Nestor Bendecio?

Answer:

Nestor Bendecio is guilty of the complex crime of Murder with Attempted Murder.

Nestor's intent was to kill Gerry. He commenced the commission of murder by suddenly firing his gun towards Gerry who was unarmed and was

not in a position to defend himself. Treachery attended the attempted killing of Gerry. Even a frontal attack could be treacherous. Gerry did not die because Nestor missed. Hence, Attempted Murder.

As for the death of Jonable, 7 years old, it was a case of *aberratio ictus or mistake in the blow*. Under Article 4 of the RPC, criminal liability is imposed for the act committed in violation of law and for all the natural and logical consequences resulting therefrom. Thus, while it may not have been appellant's intention to shoot Jonabel, he is still liable because Jonabel's death was the natural and direct consequence of his felonious deadly assault against Gerry. Notably, treachery attended Jonabel's killing. Treachery may still be appreciated in *aberratio ictus* pursuant to the SC's ruling in **People vs. Flora.** Just because Jonabel was not the intended victim does not make the accused's sudden attack any less treacherous.

It is a complex crime, under Article 48 of the Revised Penal Code, because Nestor's single act of firing resulted in the: 1) attempted murder of Gerry, a grave felony; and the 2) consummated murder of Jonnabel, another grave felony.

* ***Error in Personae*** **/ Mistake in the identity**
* **People vs. Oanis** *(En Banc)*

PO X was looking for Y, a wanted criminal. He was informed that Y was hiding in a brothel and being cared for by a hooker named Z. PO X went inside the brothel, forcing his way into the room of Z. Upon entering the room, he saw a man sleeping on the bench face down. PO X immediately fired at the man, thinking he was the wanted criminal, but it turned out that the man was the younger brother of Z.

Prosecuted for Murder, PO X raised mistake of fact as a defense. As the judge, rule. Justify your decision.

Answer:

As the judge, I convict. PO X is liable of the crime of Murder.

Murder because it is settled that treachery attends the killing where the accused attacks the victim while the latter is asleep and unable to defend himself. A sleeping victim is not in a position to defend himself, take flight or otherwise avoid the assault, thus ensuring that the crime is successfully executed without any risk to the attacker.

The defense of mistake of fact has no merit. Granting for the sake of argument that the sleeping victim was the wanted criminal, PO X of immediately firing at him was not justified.

This a case of error in *personae* but just because the victim was not the intended target does not make the offender's attack any less treacherous. ***Error in personae*** or mistake in the identity is not an absolutory cause. In **People vs. Sabalones,** SC said: mistake in the identity of the victim carries the same gravity as when the accused zeroes in on his intended victim.

* **Article 4(2): Impossible Crime Doctrine**
* **Question:**

X was instructed by her company, Mega Foam Corp., to collect a check from a client and thereafter, to remit the same to the company. X, however, upon possession of the check, deposited it to her relative's account. The check was dishonored by the drawee bank for insufficiency of funds.

Prosecuted for Qualified Theft, if you are the judge, will you convict X as charged? Explain.

Answer:

No. If I am the judge, I will convict X not of Qualified Theft, but for an Impossible Crime.

Qualified Theft is not committed because in Theft, the thing taken must have value. Here, the check taken had no funds. It was a bum check.

X is, however, liable for an Impossible Crime. All the elements are present:

1) X performed all the acts to consummate the crime of qualified theft, which is a crime against property.

2) X's evil intent cannot be denied, as the mere act of unlawfully taking the check meant for Mega Foam showed her intent to gain or to unjustly enriched.

3) It was only due to the extraneous circumstance of the check being unfunded, a fact unknown to X at that time, that prevented the crime from being produced. The thing unlawfully taken by the X turned out to be absolutely worthless because the check was eventually dishonored. ***(Jacinto vs. People, 2009)***

* **Attempted vs. Frustrated in Intentional Killing (Homicide / Murder / Parricide)**

* **PO2 Cambe vs. People** *(2021 J. Amy Lazaro-Javier)*

PO2 X had a heated altercation with A, B, and C. When W, the mother of A, B, and C tried to intervene and pacify PO2 X, the police officer cursed and pushed W who slumped on the ground. Angry, A, B, and C ganged up on PO2 X. Initially, C hit PO2 X with a bottle of beer in the head, causing X to slump on the ground. The aggression continued and this time the attack came from A and B. Lying dazed, bloodied, and helpless on the ground, PO2 X took out his service pistol and shot A and B in the abdomen and thigh, respectively, when he was about to get ganged up further.

Charged with 2 counts of Frustrated Murder qualified by abuse of superior strength, will you, as the judge, convict the accused as charged?

Answer:

No, I will not convict PO2 X of 2 counts of Frustrated Murder. I will, instead, convict him of 1 count of Frustrated Homicide and 1 count of Attempted Homicide.

PO2 X shot A and B in the abdomen and thigh, respectively, when he was about to get ganged up by A and B. The qualifying AC of abuse of superior strength, as alleged, is not present. There is no showing that PO2 X purposely sought and took advantage of his service firearm in his attempt to kill A and B. PO2 X could not have purposely sought the use of his gun in inflicting injuries on the victims since the crimes were preceded by an

unexpected altercation. Absent the qualifying AC of abuse of superior strength, **PO2 X can be held liable only of Frustrated and Attempted Homicide** for the injuries sustained by A and B, respectively. A sustained a gunshot wound in his abdomen; it is fatal and he could have died were it not for the timely medical intervention given to him. B, on the other hand, suffered a non-fatal gunshot wound in his left thigh which is non-fatal.

* **No Frustrated Theft**
* **Valenzuela vs. People** *(**En Banc** 2007)*

Unlawful taking, which is the deprivation of one‟s personal property, is the element which produces theft in its consummated stage. **Unlawful taking, or *apoderameinto,* is deemed complete from the moment the offender gains possession of the thing, even if he has no opportunity to dispose of the same.** Without unlawful taking as an act of execution, the felony could only be attempted theft, if at all.

Hence, we can only conclude that **under Article 308, RPC, theft cannot have a frustrated stage. There is no crime of frustrated theft. Theft can only be attempted of consummated.** (That it has taken all these years for us to recognize that there can be no frustrated theft under the RPC does not detract from the correctness of this conclusion.)

In the present case, the moment petitioner obtained physical possession of the cases of detergent and loaded them in the pushcart, such seizure motivated by intent to gain, completed without need to inflict violence or intimidation against persons nor force upon things, and accomplished without the consent of the SM Super Sales Club, accused committed consummated theft.

* **Direct or Express Conspiracy**
* **People vs. Galam** *(2019 J. Amy Lazaro-Javier)*

Evidence showed that X and Y, children of W, were having dinner when they heard their father arguing with someone outside the house. X and Y directed and focused their flashlight outside. They saw that brothers A and B were the ones in argument with their father. They heard B threatened their father: “Papatayin ka namin!” and A cursing their father: “Putang-ina mo!” Then, they saw B pointing a gun to their father who said: “Sige, iputok mo!” Indeed, B pulled the trigger and shot their father W in the chest, and thereafter left. X and Y rushed to their father who died instantaneously.

Further evidence showed that 2 days before W was shot, A and B invited the victim to a drinking session where A threatened W: “Make it good or else we will kill you.”

Brothers A and B are now prosecuted as conspirators for the crime of Murder qualified by treachery and evident premeditation. If you are the Judge, will you convict them as charged?

Answer:

If I am the Judge, I will convict A and B as **conspirators for the crime of Homicide** as treachery and evident premeditation are absent.

Conspiracy exists when 2 or more persons come to an agreement concerning the commission of a felony and decide to commit it. In conspiracy, the act of one is the act of all.

Here, A and B's **collective acts – before, during, and after the commission of the crime – indicated a joint purpose, concerted actions, and concurrence of sentiments – all geared towards killing W.**

1st, A and B went together to W's house;

2nd, A and B engaged in a heated argument with W;

3rd, during the heated argument with W, B threatened W: "Papatayin ka namin!" while A cursed W: "Putang-ina mo!"

4th, A did not stop or prevent B when B drew his gun and shot W; and

5th, A and B fled together after shooting W.

Conspiracy is established beyond reasonable doubt.

It is Homicide because treachery and evident premeditation are absent.

For treachery to be appreciated, 2 elements must concur: 1) that the offender deliberately and consciously adopted the ways, means and method employed by him in the commission of the crime; and 2) by reason of said ways, means and methos, the victim was without any defense

Here, both elements are absent as the attack or the shooting was preceded by a heated argument between the accused and the victim, with the latter saying to the former: "Sige, iputok mo!" before he was gunned down. W was not an unsuspecting victim as he was completely oblivious of the impending danger to his life coming from the brothers A and B. Thus, treachery is wanting.

For evident premeditation to be appreciated, 3 elements must concur: 1) the time that the offender has determined to commit the crime; 2) an overt manifestly indicating that he clung to his determination; 3) a sufficient lapse of time between the determination and the actual execution of the crime for him to reflect upon the consequences of his act.

Here, although A and B threatened to kill W 2 days before they actually killed him, there was no evidence that accused performed any overt act to follow through their threats. Although accused could have really intended to kill W when they threatened to kill him 2 days before they gunned him down, their threat alone, without outward acts showing that they clung to their threat to kill does not equate to evident premeditation.

In the absence of treachery and evident premeditation, A and B are guilty only of Homicide, as conspirators.

* **Implied or Inferred Conspiracy:**

* **PO2 Cambe vs. People** *(2021 J. Amy Lazaro-Javier)*

PO2 X had a heated altercation with A, B, and C. As he slumped on the ground, dazed, bloodied, and helpless when ganged up A, B, & C, PO2 X took out his service pistol and fired shots at A, B, & C. After hitting them, he was about to shoot further but the gun jammed. While this was happening, PO X's companion, PO2 Y, shouted: "Ubusin na ang mga ito!" When When the bouncer of the Bar was about to intervene to pacify the parties, PO2 Y threatened him: "Putangina mo, Pablito, umalis ka dyan, wag kang makikialam kung hindi paaptayin kita!" Thereafter both police officers left on board the same motorcycle, leaving the wounded victims.

Is PO2 Y a co-conspirator of PO2 X? Explain.

Answer:

Yes.

Implied or inferred conspiracy is a conspiracy which is deduced from the mode and manner of committing the crime. It is a conspiracy established impulsively at the spur of the moment, based on the turn of events. The offenders acted simultaneously, in a synchronized or coordinated manner, towards a common goal, a common objective.

Here, Police Officers X and Y's collective acts during and after the commission of the crimes indicated a joint purpose – to kill A, B, & C. While there was no express agreement, there was an **implied conspiracy** between X and Y.

That PO2 X and PO2 Y acted in concert to achieve one common purpose, i.e., to kill the victims was shown by the ffg. Acts:

1) PO2 X tried to further shoot A, B, & C even after initially hitting them;

2) PO2 Y did not stop PO2 X from shooting A, B, & C;

3) PO2 Y urged PO2 X: "Ubusin na ang mga ito!" or to finish off the victims;

4) When the bouncer of the Bar was about to intervene to pacify the parties, PO2 Y threatened him: "Putangina mo, Pablito, umalis ka dyan, wag kang makikialam kung hindi paaptayin kita;" and

5) PO2 X and PO2 Y left the scene together on board the same motorcycle.

Implied conspiracy having been established beyond reasonable doubt, although PO2 Cacho was not the one who shot the victim, he is liable to the same extent as PO2 Cambe.

* **Conspiracy not established.**
* **Question:**

A, B, and C conspired to rob the house of E with the express agreement that no other crime shall be committed. At the designated day of the execution of the crime, all 3 proceeded to the house of E and entered it through an open window. A and B ransacked the house of E. Meantime, C looked around the house and found F, the daughter of E, inside her room and raped her. All 3 are now prosecuted for robbery with rape as conspirators.

Is the prosecution proper? Explain.

Answer:

NO. Only C should be prosecuted for the special complex crime of robbery with rape while A and B should be charged with robbery.

Here, A, B, and C expressly agreed to commit robbery only and that no other crime shall be committed. Thus, as conspirators, they are liable only for the crime agreed upon and for such other crimes which could be foreseen and which are the natural and logical consequences of the conspiracy. In ***People vs. Castillo***, the Supreme Court held that **if the conspiracy is only to rob the victims, rape is not a foreseeable consequence.** Thus, only C who raped the victim will be liable for the special complex crime of robbery with rape. A and B, who did not participate in the rape and who were not present at the time of rape so as to be given the opportunity to prevent

its commission, will be liable for robbery only as conspirators. ***(People vs. Disney)***

* **Question:**

Can a head of office be held liable as a conspirator in an anomalous transaction by merely affixing his signature on pertinent documents prepared by their subordinates?

Answer:

NO.

In the cases of ***Arias vs. Sandiganbayan En Banc*** *(1989),* ***Macairan et. al. vs. People*** *(2021),* ***Linsangan vs. Ombudsman*** *(2020),* the SC has consistently ruled that: a mere signature or approval appearing on a document does **NOT** meet the required quantum of proof to establish the existence of conspiracy. The ***Arias Doctrine*** teaches that Heads of office could rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. To sustain a conspiracy charge and conviction, there should be grounds other than the accused's mere signature or approval appearing on a voucher. The prosecution must be able to clearly show the accused's participation in the planning, preparation, and perpetration of the alleged conspiracy to defraud the government.

The SC stressed: not every person who signs documents required in SOP or standard operating procedures automatically becomes a conspirator in a crime. **Liability as a co-conspirator, depends upon the wrong committed, and not solely by reason of being the head of a government agency.**

* **Multiple Conspiracy:**

Wheel/Circle Conspiracy

Chain Conspiracy

Question:

S, the Chief Accountant, enticed M (Accountant), D (Budget Examiner), and C (Clerk) to join him. All three agreed to help her carry out her plan. They typed fake Letters of Advice of Allotments (LAAs). M and D took charge of negotiating these fake LAAs to contractors at 26% of the gross amount. S manipulated the general ledger, journal vouchers and general journal through negative entries to conceal the illegal disbursements. Other 36 employees at the DPWH, like R and B, tempted by the prospect of earning big money, allowed their names to be used and signed spurious documents. R and B signed false/fake tally sheets or statements of ghost deliveries of materials. However, testimonies of brgy. captains and residents of Cebu proved that there were no actual deliveries of road construction and maintenance materials for the asphalting and repair of roads described in the tally sheets and other supporting documents signed by R and B.

These DPWH employees, including R and B, were charged and thereafter convicted, as conspirators, for the complex crime of *Estafa* through Falsification of Public Documents.

R and B appealed arguing that they are not part of the conspiracy. Rule on their argument in the appeal.

Answer:

R and B are correctly convicted as conspirators for the complex crime of *Estafa* through Falsification of Public Documents.

The conspiracy present in this case is wheel or circle conspiracy. Under a **wheel or circle conspiracy, a single person or group, the "hub" deals individually with two or more group of persons, the "spokes."**

Here, the 36 employees DPWH employees who acted to defraud the government were controlled by a single hub: S, M, D, and C, who controlled each and every spokes of the conspiracy. The fake delivery receipts and tally sheets signed by R and B were the basis for the issuance of the general vouchers upon which check payments were made to the suppliers who participated in the fraud. Hence, R and B's acts in signing the false tally sheets and delivery receipts are indispensable to the consummation of the crime of *Estafa* through Falsification of Public Documents. ***(Fernan and Torrevilas vs. People, 2007)***

* **Self Defense as a Justifying Circumstance**

* **Ganal, Jr. vs. People** *(2020 J. Amy Lazaro-Javier)*

In ***Ganal Jr. vs. People***, the SC found reasonable necessity of the means employed to repel the aggression although Ganal inflicted 5 bullet wounds and 2 lacerations on Julwin who was merely armed with 2 large stones and a knife.

The SC said: The test is whether the accused subjective belief as to the imminence and seriousness of the danger was reasonable or not, and the reasonableness of the accused's belief must be viewed from their standpoint at the time they acted. The right of a person to take life in self-defense arises from his belief in the necessity for doing so; and his belief and the reasonableness thereof are to be judged in the light of the circumstances as they then appeared to him, NOT in the light of circumstances as they would appear to others."

* **Question:**

A, intending to kill B, shot the latter with a gun at close range. Although hit but not mortally wounded, B grappled with A for the possession of the gun until B succeeded in wresting it from A. Immediately thereafter, B fired the gun at A whom he killed.

Prosecuted for Homicide, B interposed self-defense. The prosecution, however, contended self-defense was untenable because A had already been disarmed.

As the judge, decide, explaining your decision.

Answer:

As the judge, I convict. I will convict B of Homicide for having killed A with the MC of sufficient provocation.

In the case of ***People vs. Dayag*** *(En Banc 1980)*, the SC held that as the victim was killed after the accused has wrested the gun from him, the

inceptive unlawful aggression the victim commenced has ceased to exist. Since there was no more unlawful aggression to stop or repel, self-defense cannot be invoked.

In the case at bar, the contention of the prosecution that self-defense was untenable because A had already been disarmed must be sustained. The reason is there is no more unlawful aggression to be prevented or repelled; it has already ceased to exist.

* **PO2 Cambe vs. People** *(2021 J. Amy Lazaro-Javier)*

PO2 X had a heated altercation with A, B, and C. When W, the mother of A, B, and C tried to intervene and pacify PO2 X, the police officer cursed and pushed W who slumped on the ground. Angry, A, B, and C ganged up on PO2 X. Initially, C hit PO2 X with a bottle of beer in the head, causing X to slump on the ground. The aggression continued and this time the attack came from A and B. Lying dazed, bloodied, and helpless on the ground, PO2 X took out his service pistol and shot A and B in the abdomen and thigh, respectively, when he was about to get ganged up further.

Charged with Frustrated and Attempted Homicide, PO2 X claimed self-defense. Is there self-defense? Explain.

Answer:

There is no self-defense. Only the first 2 elements are present.

The 1st element – unlawful aggression – is present. PO2 X was subjected to the A, B, & C's hostility and aggression. Initially, C hit X with a bottle of beer in the head, causing X to slump on the ground. The aggression continued and this time the attack came from A and B. Evidently, the group was determined to cause more injury to PO2 X while the latter was still dazed, bloodied, and helpless on the ground. All these acts placed the life and limb of X in actual, material, and imminent danger.

The 2nd element – reasonable necessity of the means employed to repel the unlawful aggression – is also present. PO2 X employed reasonable means to save himself. Here, PO2 X was already slumped on the ground wounded, A and B poised to follow up and attack him, too. X's instinct of self-preservation caused him to act fast and repel at once the clear and imminent attack on his life and limb. The only available tool of defense for him at that time was his service pistol which he readily drew to shoot A and B. At that moment, there was an actual threat to X's life and limb. Though A and B were unarmed with a gun or any lethal weapon, the sheer number of the victims and their companions and their clear capacity to improvise, using bottles for example, to overcome their opponent was a real and imminent danger to reckon with.

However, the 3rd element – lack of sufficient provocation on the part of the person defending himself – is <u>absent</u>. Here, accused provoked the victims. The verbal altercation which started when the accused admonished the victims escalated into a shooting incident. It was PO2 X's act of pushing and cursing W, the mother, that triggered A, B, & C to assault him.

Considering that only 2 of the 3 elements of self-defense are present, PO2 Cambe did not act in self-defense. He is, however, entitled to the privileged MC of Incomplete self-defense.

* **Battered Woman Syndrome under RA 9262**
* **Question:**

X had been married to Y for 10 years. Since their marriage, Y had been jobless and a drunkard, preferring to stay with his "barkadas" until the wee hours of the morning. X was the breadwinner and attended to the needs of their two (2) growing children. Many times, when Y was drunk, he would beat X and their children, and shout invectives against them. In fact, in one of the beating incidents, X suffered a deep stab wound on her chest that required a prolonged stay in the hospital. Due to the beatings and verbal abuses committed against her, and that feeling of helplessness, depression, and fear whenever she sees her husband, she consulted a psychologist. One evening, when Y arrived home drunk, he suddenly kicked X several times while cursing her. Then Y pulled a knife and attacked X. X grappled for the possession of the knife. She succeeded as Y was drunk. X then stabbed Y 3 times which caused his instantaneous death.

Prosecuted for Parricide, what defense should X raise? Explain.

Answer:

X may claim that her state of mind at the time of the stabbing incident was that of one suffering from Battered Woman Syndrome.

In the *en banc* case of ***People vs. Genosa***, for the defense of battered woman syndrome to lie in favor of the accused woman or wife, there must be at least 2 battering episodes of abuses; a cycle of violence characterized by 3 phases: tension building phase, acute battering phase, tranquil or loving phase. Further, under Section 26 of RA 9262, "victim-survivors who are found by the courts to be suffering from Battered-Woman Syndrome do not incur any criminal and civil liability, notwithstanding the absence of any of the elements for the justifying circumstance of self-defense under the RPC."

In the case at bar, X has been suffering from this cycle of violence for 10 years. In fact, she already consulted a psychologist as the physical and verbal abuses done by Y has caused her to feel helpless, depress, and afraid whenever she sees her husband. Hence, even though at the time she stabbed her husband to death, the unlawful aggression commenced by him had ceased to exist as she already gained possession of the knife, X incurs no criminal and civil liability.

* **Insanity as an Exempting Circumstance**
* **People vs. Macalindong** *(2021 J. Amy Lazaro-Javier)*

The Exempting Circumstance of Insanity requires 2 elements:

1) the insanity of the accused constitutes a complete deprivation of intelligence, reason, or discernment; and

2) such insanity existed at the time of, or immediately preceding, the commission of the crime.

Here, Macalindong's plea of insanity – that he was suffering from schizophrenia – at the time he killed Jovelia was unsubstantiated. Although he claimed that he blacked out, he did not state when the black-out happened; was it at the time of or immediately preceding the act of killing.

* **Minority as a Mitigating Circumstance**
* **Question:**

A child over fifteen (15) years of age acted with discernment in the commission of Rape. What is the duty of the court if he is already eighteen 23 years of age at the time of the determination of his guilt for the offense charged?

Answer:

The court shall render the judgment of conviction. The penalty to be imposed shall consider the **privileged MC of minority, hence, based on Article 68, 2nd par., RPC, it shall be lowered by 1 degree**. Further, the said offender shall be entitled to Section 51, RA 9344, i.e., in lieu of confinement in a regular penal institution, he shall serve his sentence in agricultural camp and other training facilities that may be established, maintained, supervised, and controlled by the BUCOR in coordination with the DSWD.

He can no longer be given a suspended sentence because under Section 40 of RA 9344 as amended, suspended sentence can be given or extended only until the child in conflict with the law reaches the maximum age of 21years.

* **Praeter Intentionem & Voluntary Surrender as Mitigating**
* **Question:**

While in the middle of their quarrel, X, the husband, punched His wife Y hitting her face. Thereafter, X went to the kitchen to get a knife and proceeded to stab Y hitting her chest. Y tried to walk towards the door of their house but collapsed. X then went to her aid, embraced her, and cried. He asked his children to call for help, but Y died soon thereafter.

As a neighbor had called the police, X voluntarily went with the police authorities who brought him to the police station for questioning. X was, thereafter, charged with Parricide.

Are the mitigating circumstances of: **a)** praeter intentionem or lack of intention to commit so grave a wrong as that committed, and **b)** voluntary surrender, present in the commission of the crime? Explain.

Answer:

The mitigating circumstance **of lack of intention to commit so grave a wrong as that committed was also NOT present**. There was no notable disparity between the means employed by the offender and the resulting felony Parricide. Intent to kill was revealed by X's act of attacking his wife with a deadly weapon, a knife, and inflicting upon her mortal wounds on the chest. The location and nature of Y's stab wounds belie X's claim of lack of intention to commit so grave a wrong against the victim.

The mitigating circumstance of **voluntary surrender is NOT present,** also. The essence of Voluntary Surrender is **spontaneity and the intent of**

the accused to give himself up and submit himself to the authorities either because he acknowledges his guilt or wishes to save the authorities the trouble and expense that may be incurred for his search and capture.

In the case at bar, there was no showing of spontaneity on the part of accused-appellant as it was not he who asked for the police to go to their house. Although he did not resist when the police officers brought him to the police station for questioning, such lack of resistance does not equate to voluntary surrender. In the case of ***People vs. Nidera*** *(2020),* the SC said: **The voluntariness of one's surrender should denote a positive act and not a mere compliant or submissive behavior in the presence of authorities.**

* **Recidivism as an Aggravating Circumstance**
* **Question:**

X, convicted of Rape, was granted absolute pardon by the President. A year thereafter, he is convicted of Homicide. Is X a recidivist?

Answer:

Yes. X is a recidivist.

All the elements are present:

1. He is on trial for Homicide.
2. He has been previously convicted by final judgment of Rape.
3. Both Rape and Homicide are under Title 8.
4. He is also convicted of Homicide.

The fact that he was granted absolute pardon by the President excuses him only from service of sentence, but is does not erase the effects of the crime.

* **Quasi-Recidivism as a SPECIAL Aggravating Circumstance**
* **Question:**

X, an unlettered prisoner serving sentence for Homicide, killed a co-prisoner with evident premeditation, after which he voluntarily surrendered to the prison guard and confessed his crime.

Upon arraignment, he pleaded guilty to the Murder charge.

A brief trial ensued to ascertain beyond reasonable doubt the guilt of X and the presence or absence of modifying circumstances.

As the Judge, what penalty will you imposed on X? Explain fully your sentence.

Answer:

As the Judge, I will impose the penalty of **RP, without eligibility for parole.**

X is a quasi-recidivist. He killed his fellow prisoner while he was serving the sentence for Homicide. Under Article 160 of the RPC, in quasi-recidivism, the penalty for the 2nd crime is to be imposed in its maximum period without regard to the attending mitigating and aggravating circumstances.

The penalty for Murder is RP to Death. As a quasi-recidivist, the maximum penalty, Death, should be imposed. But since RA 9346 proscribed the imposition of death penalty, it shall be reduced to Reclusion Perpetua. Under Administrative Matter No. 15-08-02-SC, when there are circumstances warranting the imposition of death penalty, but the same is not imposed in view of RA 9346, the phrase "without eligibility for parole" shall be used to qualify *reclusion perpetua* in order to emphasize that the accused should have been sentenced to suffer death penalty had it not been for RA 9346.

* **Treachery & Evident Premeditation as Aggravating**
* **People vs. Corpuz** *(2019 J. Amy Lazaro-Javier)*

X left their house and rode his motorcycle to buy feeds. Just after a few meters, he was flagged down by Y. When X stopped, Y confronted him about a dog. A heated verbal altercation ensued. As X and Y were arguing and pushing each other, X fell on the ground, and Y immediately went on top of him. While X and Y were continuously fighting, Y's brother, Z, appeared with a gun in hand. He walked up to X and shot him twice in the head. Thereafter, Z, still holding his gun, walked away into the fields.

The Information for Murder filed against Z alleges the aggravating circumstances of **treachery** and **evident premeditation**.

If you are the Judge, based on the facts, will you convict Z as charged? Justify your decision.

Answer:

Yes. If I am the Judge, I will convict Z of Murder. The killing was qualified by treachery. There is no evident premeditation.

There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution of the crime that tend directly and especially to ensure its execution without risk to himself arising from the defense which the offended party might take.

Here, treachery is present. X was wrestling with Y after a heated verbal altercation which became physical. X fell and Y was able to pin X down by placing himself on top of him. Z suddenly arrived carrying a gun and shot X twice. Z's act of shooting X while he was pinned down by Y effectively denied the victim the chance to defend himself or to retaliate against his attacker. Further, X was shot twice, ensuring that he would be mortally injured or killed.

Evident premeditation requires the following elements: 1) the time that the offender has determined to commit the crime; 2) an overt act manifestly indicating that he clung to his determination; and 3) a sufficient lapse of time between the determination and the actual commission of the crime to reflect upon the consequences of his acts. To warrant a finding of evident premeditation, it must appear that the decision to commit the crime was a result of meditation, calculation, reflection or persistent attempt.

Here, all the elements are absent. There was no evidence on the time Z's plan to kill X was hatched and how much time had elapsed before it was carried out. When Z saw the victim pinned on the ground by Y, he walked to them and shot X twice. There was no showing that the killing was plotted or

that there was enough time for Z to reflect on the consequences of killing X before actually carrying it out.

Hence, I will convict Z of Murder qualified by treachery. Evident premeditation is absent.

* **FIREARMS as special AC**
* **Question:**

X shot and killed Y with an unlicensed firearm. The police filed 2 charges against X – one for Homicide and another for Illegal Possession of Firearm – before the Office of the Public Prosecutor. X's defense counsel, in the counter-affidavit, contended that only one charge should have been filed against him – the complex crime of Homicide with Illegal Possession of Firearm as the use of the unlicensed firearm was a necessary means to commit Homicide.

As the Public Prosecutor, resolve with reasons.

Answer:

As the Public Prosecutor, I will indict X for Homicide with the special aggravating circumstance of use of an unlicensed firearm.

Under Section 29 of RA 10591, the use of a loose firearm, when inherent in the commission of a crime punishable under the RPC or any other special penal laws, shall be considered as an aggravating circumstance.

In the case at bar, X shot and killed Y with an unlicensed pistol. Since the use of firearm was inherent in the commission of the crime of Homicide, it shall serve as a special aggravating circumstance. Hence, the 2 charges filed by the police, as well as the contention of X's defense counsel, are erroneous because the use of the unlicensed firearm was in inherent in X's act of killing Y.

* **Relationship as an Absolutory Cause**
* **Question:**

X and Y got married. Just a year after their marriage, Y became seriously ill and died, leaving behind her husband X. Since Y's death, X became addicted to drugs. One time, in need of money to buy a plastic sachet of shabu, X visited the house of W, his mother-in-law, to borrow money. But W was not in the house. While X was waiting at the sala of the house, he noticed that the helper was busy in the kitchen. X entered the open bedroom of his mother-in-law and took the watch, necklace, earrings, and ring that he saw on top of the dresser. Then, he immediately left.

Prosecuted for Theft, he claims that his relationship with W, as her son-in-law, absolves him from criminal liability despite the death of his wife.

Is X's argument meritorious?

Answer:

Yes, X's argument has merit.

Article 332 of the RPC provides for an absolutory cause in the crimes of theft, estafa(swindling), and malicious mischief between or among "spouses, ascendants and descendants, or relatives by affinity in the same line." In the case of ***Intestate Estate of Manolita Gonzales vda. De***

Carungcong vs. People, the SC held that for purposes of Article 332(1), RPC, the relationship by affinity created between the surviving spouse and the blood relatives of the deceased spouse **survives the death of either party to the marriage which created the affinity**.

In the case at bar, X is related to W, his mother-in-law, by affinity in the same line as ascendants and descendants. And such relationship by affinity between X and W survives the death of Y, who was X's wife and W's daughter.

Hence, X incurs only civil liability and is free from criminal liability by virtue of his relationship W, the offended party.

* **Instigation vs. Entrapment**

* **People vs. Naelga** *(2009)*

In an **entrapment**, ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. In **instigation**, the instigator practically induces the would-be defendant into the commission of the offense, and himself becomes a co-principal. **Entrapment** is no bar to prosecution and conviction; in **instigation**, the defendant would have to be acquitted.

A buy-bust operation is a form of entrapment, which in recent years has been accepted as a valid and effective mode of arresting violators of the Dangerous Drugs Law.

While accused-appellant claims that it was PO2 Sembran who approached and asked him to buy *shabu* for him, the same cannot be considered as an act of instigation, but an act of "feigned solicitation". Instigation is resorted to for purposes of entrapment, based on the tip received from the police informant that accused-appellant was peddling illegal drugs in the public market.

* **When is a "look-out" a principal? When is he an Accomplice?**

* **Question:**

X, Y, and Z arrived together in the house of W, each armed with a handgun. X and Y barged into said house, while Z stood guard by the door thereof. After X and Y had left with W in the tow, Z stood by the door and warned W's wife and son not to leave the house.

The next day W was found lifeless with 13 stabbed wounds, in a deep ravine meters away from his house.

X, Y and Z were charged as co-principals in the crime of Murder.

Z argued he is a mere accomplice as he is a mere look-out.

Is Z a principal or a mere accomplice?

Answer:

Z is a principal by direct participation, not a mere accomplice.

A look-out is a co-Principal if he is part of the criminal design; an author of the crime; a co-conspirator. A look-out is an Accomplice if he is not an author of the crime, but merely concurs with the criminal design authored by the principal.

In the case at bar, the overt acts of X, Y and Z were so synchronized and executed with precision evincing a preconceived plan/design to achieve a common purpose, i.e., the killing of W. Obviously, there was preconceived plan. And the tasks assigned to Z in the commission of the crime were: a) to act as lookout; and b) to ensure that the wife and son of W remain in their house to prevent them from seeking police assistance.

Hence, Z, though a mere lookout, is equally guilty for the killing of W. He is a principal by direct participation as he was part of the agreement or conspiracy. ***(People vs. Delim En Banc 2003)***

* **PD 1612 FENCING**

Can an accused be charged both as an Accessory in the crime of Theft/Robbery and as a Fence under PD 1612?

Answer:

NO.

The accessory in the crimes of robbery and theft could be prosecuted as such under the RPC **OR** under PD 1612. If prosecuted under PD 1612, he ceases to be a mere accessory but becomes a principal in the crime of fencing. The State may thus choose to prosecute him either under the RPC or PD 1612, although the preference for the latter would seem inevitable considering that Fencing is a malum prohibitum, and PD 1612 creates a presumption of fencing, and prescribes a higher penalty based on the value of the property.

* **Article 48: Complex Crimes**
* **Question:**

X threw a grenade in the *miting de avance* of Y, a gubernatorial candidate. In the explosion that resulted, 3 persons died, 10 were fatally wounded but survive, and 12 sustained minor injuries.

What case or cases should be filed against X?

Answer:

X should be charged with the complex crime of Multiple Murder with Multiple Frustrated Murder and Multiple Attempted Murder.

All the elements of a complex crime are present:

1st, X performed a single act – the throwing of the grenade that caused the explosion; and

2nd, the explosion resulted to 25 grave felonies: 3 murder, 10 frustrated murder, and 12 attempted murder.

It is Murder because of the qualifying circumstance of explosion with the use of a grenade.

* **Continued Crime/Continuous Crime/Delito Continuado**

The elements of Continued Crime, as stated by the SC in the case of ***Santiago vs. Garchitorena*** are:

1) there should be unity of criminal intent or purpose
2) there should be plurality of acts performed
3) there should be unity of penal provision violated

* **Death of the Offender**
* **Question:**

X was convicted by the RTC of Manila for raping Y in a secluded area in Tondo. Feeling aggrieved, X appealed the judgment of conviction. While the case was on appeal, X succumbed to death due to a heart attack. Uncertain as to the possible outcome of the appeal, Y consults her lawyer, Atty. Z, who assured her that only the criminal liability of X was extinguished with his death.

Is the Atty. Z, correct? Explain.

Answer:

No. Atty. Z is not correct. Since X died while his case was pending appeal, both his criminal liability and civil liability are totally extinguished.

Under Article 89 of the RPC, death extinguishes criminal liability, as well as civil liability, if the offender dies before conviction by final judgment. The only exception is when the civil arises from other sources of obligations such as law, contracts, quasi-contracts, and quasi-delicts.

Here, the civil liability arises from the crime of Rape itself, hence, it, too, is extinguished upon X's death pending appeal of his conviction.

* **Good Conduct Time Allowance**
* **Guinto vs. DOJ /Inmates of New Bilibid vs. DOJ** ***(En Banc 2024)***

Article 97 of the RPC, as amended by RA 10592, is clear that **any convicted prisoner is entitled to GCTA** as long as the prisoner is in any penal institution, rehabilitation or detention center, or any other local jail.

The DOJ, in enacting its IRR, exceeded its power of subordinate legislation when it excluded recidivists, habitual delinquents, escapees, and persons convicted of heinous crimes from the benefits of RA 10592 or The Good Conduct Time Allowance Act. The DOJ expanded the scope of RA 10592 when it excluded recidivists, habitual delinquents, escapees, and persons deprived of liberty convicted of heinous crimes from earning GCTA credits when the law itself did not do so.

* **Civil Liability needs No Proof other than Conviction**

Civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.

* **Section 4 of The Probation Law as Amended**
* **Question:**

X was found guilty of Frustrated Homicide by the RTC, and was sentenced with a penalty of 4 years and 8 months, as minimum, to 6 years and 1 day to 8 years, as maximum. Upon appeal, the Court of Appeals downgraded the conviction to Attempted Homicide with a reduced penalty of 4 years 2 months and 1 day to 6 years.

May X apply for probation? Explain.

Answer:

Yes, X may apply for probation.

Under Section 4 of PD 968, as amended by RA 10707, when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified thru the imposition of a probationable penalty, the defendant shall be allowed to apply for probation based on the modified decision before such decision becomes final.

In the case at bar, the RTC imposed upon X a non-probationable penalty of 8 years maximum, hence, he cannot apply for probation. When upon appeal, the CA downgraded X's conviction to Attempted Homicide and reduced the sentence to a probationable penalty of 6 years maximum, X may apply for probation by express provision of the Probation Law, as amended.

* **Piracy under PD 532: The Anti-Piracy Law of 1974**
* **Question:**

While the inter-island vessel M/V Sta. Monica was anchored in the harbor of Cebu and passengers were disembarking, 5 crew members A, B, C, D, and E, at knife point, took part of the vessel's cargoes and hurriedly left. Not far, they were arrested. A complaint for Piracy under Article 122 of the RPC is filed against them.

If you are the Investigating Public Prosecutor, will you indict A, B, C, D, and E as charged? Explain.

Answer:

No. If I am the Public Prosecutor, I will not indict them as charged. Piracy under Article 122, RPC, is not the proper charge because the 2nd element, i.e., that the offenders are not members of the compliment or passengers of the vessel, is absent. A, B, C, D, and E are crew members of the vessel.

I will resolve to indict them of Piracy under PD 532, The Anti-Piracy Law of 1974. Under PD 532, Piracy refers to any attack upon or seizure of any vessel, or the taking away in whole or in part of 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 use of force upon things, **committed by <u>any person</u>, including a passenger or member of the complement of said vessel**, while the vessel is on Philippine waters.

Since in the case at bar, the persons who took part of the vessel's cargoes, at knife point, were crew members of the vessel itself, the proper charge is Piracy under PD 532.

* **Article 125, RPC vs. Section 29, RA 11479**
* **Question:**

X was suspected, and arrested, by the police for developing and manufacturing nuclear or chemical weapons, an act punished as Terrorism under Section 4 of RA 11479: The Anti-Terrorism Act.

After arrest, interrogation and booking, the police placed X behind bars. A criminal complaint for Violation of the Anti-Terrorism Act was only filed against him 14 days from the time of his arrest.

X's counsel immediately file a case of Arbitrary Detention under Article 125 for failing to deliver him to the proper authorities within 36 hours.

Are the police liable under Article 125, RPC?

Answer:

Yes. The police officers are liable for Arbitrary Detention under Article 125 for failing to deliver X to the proper judicial authorities within 36 hours.

In the ***en banc*** case of ***Calleja vs. Executive Secretary*** *(2021)*, the SC ruled that: Article 125 of the RPC is the GENERAL RULE that applies even to Anti-Terrorism Act-related offenses. Section 29 of RA 11479 is the EXCEPTION to the general rule which will ONLY become operative if the following requisites are present:

1) there is probable cause to believe that the crime committed is that punished under Sections 4 to 12 of the Anti-Terrorism Act; and

2) that the arresting peace officer has secured a written authorization from the Anti-Terrorism Council for the said purpose.

In the case at bar, both requisites are wanting. **1st,** the arrest and detention of X was based on mere suspicion. **2nd,** the arresting peace officers were not armed with a written authorization from the Anti-Terrorism Council to effect the arrest. Since both requisites were not complied with, the arresting peace officer must observe the periods provided under Article 125, RPC. For failure to do so, they are liable.

* **Theory of Absorption / Political Offense Doctrine in Rebellion & Coup d'etat**

Common crimes which are committed in furtherance of, incident to, or in connection with the political crimes of Rebellion and Coup d'etat are divested of their character as common offenses and assume the political complexion of the main crime of which they are mere ingredients hence these common crimes are merely absorbed.

Further, in ***Enrile vs. Salazar***, the SC ruled that this theory of absorption in Rebellion and Coup d'etat must not confine itself to common crimes but also to offenses under special penal laws which perpetrated in furtherance of the political offense. In said case, the SC said that the charge for Violation of PD 1829 or Obstruction of Justice committed by the accused is already absorbed in the Rebellion case.

For the Theory of Absorption to lie in favor of the accused, there must be evidence to show in what manner the commission of the common crime has promoted, fostered, or espoused the ideals of the rebels.

* **Article 148: Direct Assault**
* **Article 151: Resistance & Disobedience**
* **Question:**

The people in the neighborhood sought the assistance of the police. X was running amuck and shouting on the street because his wife left him. Police officers Y and Z arrived. PO Y and Z tried to arrest X, but X was resisting and struggling. X grabbed the shirt of PO Y and kicked him on the right foot twice. The police officers prevailed and brought X to the PNP station for questioning.

His neighbors did not file any charge against X, but PO Y filed a case of Direct Assault against X.

Is the charge correct?

Answer:

NO. The charge is wrong. The 1st element of Direct Assault, i.e., that offender makes an attack, employs force, makes serious resistance or serious intimidation, is absent.

In the case of ***Mallari vs. People*** *(2020)*, the SC said that when a person being apprehended by a policeman resists, or uses force that is not dangerous, grave, or severe, the offense is not Direct Assault under Article 148, RPC. The proper offense is Resistance and Disobedience to an Agent of a Person in Authority under Article 151, RPC.

In this case, X grabbed the shirt of PO Y, then kicked him twice on the right foot. X's resistance and use of force are not serious to be deemed direct assault. Thus, X should be charged of Resistance and Disobedience under Article 151, RPC.

* **Pointing a Gun amounts to Direct Assault**
* **Pablo vs. People GR 231267 13 Feb. 2023**

The 1st element, that offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance is present. Accused's act of **pointing and aiming a gun** may not be as forceful as described in *People vs. Mallari*, but the same is **serious** enough to even an agent of persons in authority. Prudence dictates that one cannot simply pull out a gun and aim towards a person in a heat of argument or altercation.

Pablo's successive acts of pulling out a gun then aiming the same towards the traffic enforcers constitute **serious intimidation.** In sum, Pablo's act amounted to Direct Assault of an Agent of Person in Authority, in its 2nd form, under Article 148 of the RPC.

* **Falsification of Public Docment**
* **Liwanag vs. People** *(2019 J. Amy Lazaro-Javier)*

In Falsification of Public or Official Document, the presence of intent to gain/injure a 3rd person is neither an element nor a valid defense. For what is punished is the **violation of the public faith and the destruction or perversion of the truth which the document solemnly proclaims.** In Falsification of Public Document, the controlling consideration is the public character of the document falsified.

*** Article 177: Usurpation of Public Authority / Usurpation of Official Functions**

* **Ruzol vs. Sandiganbayan**

Ruzol stands accused of Usurpation of Official Functions under Article 177 of the RPC for issuing 221 permits to transport salvaged forest products under the alleged false pretense of official position and without being lawfully entitled to do so, such authority properly belonging to the DENR.

It is settled that good faith is a defense in criminal prosecutions for Usurpation of Official Functions. Under our criminal law system, evil intent must unite with unlawful act for a crime to exist, i.e., there is no crime when the criminal mind is wanting. *Actus non facit reum, nisi men sit rea.*

Here, Ruzol did not possess the criminal mind. As Mayor, his intention was to regulate or monitor salvaged forest products to avert the occurrence of illegal logging.

* **Section 11, RA 9165: Illegal Possession of Prohibited Drugs**
* **Shi vs. People** *(2022 J. Amy Lazaro-Javier)*

Possession, under the law, includes not only actual possession, but also constructive possession. **Actual possession** exists when the drug is in the immediate physical possession or control of the accused. While **constructive possession** exists when the drug is under the dominion and control of the accused or when he/she has the right to exercise dominion and control over the place where it is found.

Here, Shi was in constructive possession of the shabu found inside her husband's car based on the following circumstances:

1st, the car carrying the packs of shabu was owned by her husband. As husband and wife, it is presumed that they jointly exercise ownership and dominion over the car.

2nd, Shi was present during the sale of the illegal drugs. Her husband was seated on the front passenger's seat, while she was seated at the back of her husband. Beside her was the police officer who acted as the poseur buyer. During the exchange, the poseur-buyer showed off the P2million cash inside the bag in her presence. Shi also saw that in exchange for the cash, her husband took out a big plastic bag containing white powdery substance and handed it to the poseur-buyer. During this shady transaction, Shi was just silent.

Hence, Shi is liable under Section 11, RA 9165. While her husband was in actual/physical possession of the prohibited drugs, Shi was in constructive possession.

* **Section 21: Chain of Custody Rule**
* **People vs. Almayda** *(2023 J. Amy Lazaro-Javier)*

In case of warrantless seizures:

GENERAL RULE: the physical inventory and taking of photographs of the seized items must be conducted at the place of the seizure.

EXCEPTION to the rule: the physical inventory and taking of photographs of the seized items may be conducted at the nearest police station or at the nearest office of the apprehending officer or team when the police officers provide justification that: 1) it is not practicable to conduct the same at the place of seizure; or 2) the items seized are threatened by immediate or extreme danger at the place of seizure.

Here, the physical inventory and photograph-taking of the seized items were conducted at the PDEA Office, without any justification. Hence, ACQUITTAL.

* **Plea Bargaining under RA 9165**
* **People vs. Montierro** *(**En Banc** 2022)*

Trial courts may **overrule** the objection of the prosecution and approve the plea-bargaining proposal when the objection is not supported by the evidence on record or is solely anchored on an internal rules or guidelines of

the DOJ that is inconsistent with the Supreme Court's Plea-Bargaining Framework in Drug Cases.

Under said Plea Bargaining Framework, the court shall not allow plea bargaining if the prosecution's objection to the plea bargaining is valid and supported by evidence to the effect that: **a)** the offender is a recidivist, habitual offender, known in the community as a drug addict and troublemaker, has undergone rehabilitation but had a relapse, or has been charged many times; or **b)** when the evidence of guilt is strong.

* **Section 3(b) of RA 3019**
* **Soriano vs. Sandiganbayan** *(**En Banc** 1984)*

X was charged with Qualified Theft in a complaint filed before the Fiscal's Office of Quezon City. It was assigned to Assistant City Prosecutor Y. Prosecutor Y demanded from X P500,000.00 as the price for the dismissal of the case. Prosecutor Y was thereafter charged with Violation of Section 3(b), RA 3019.

Is Prosecutor Y liable as charged?

Answer:

No. Prosecutor Y is not liable of Violation of Section 3(b), RA 3019. He is, however, liable of Direct Bribery.

Section 3(b), RA 3019 punishes the act of "directly or indirectly receiving any gift, present, share, percentage, or benefit, for himself or for another person, in CONNECTION WITH ANY CONTRACT OR TRANSACTION between the gov't and any other party wherein the public officer in his official capacity has to intervene under the law."

The offender under Section 3(b) is a public officer who, in his official capacity, has to intervene under the law in any contract or transaction between the government and any other party.

The investigation conducted by a Prosecutor is not a contract. Likewise, it is not a transaction because a transaction, like a contract, is one which involves some consideration as credit transactions. Hence, he cannot be held liable under Section 3(b), RA 3019.

Prosecutor Y committed Direct bribery.

* **Section 3(e) of RA 3019**
* **Leonardo vs. People** *(2021 J. Amy Lazaro-Javier)*

The accused committed a Violation of Section 3(e) of RA 3019.

The elements of Section 3(e) of RA 3019 are:

1) The accused must be a public officer discharging administrative, judicial, or official functions;

2) he must be acting with manifest partiality, evident bad faith, or gross inexcusable negligence; and

3) he caused undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his official functions.

Here:

1st element is present. Accused, then mayor of Quezon was a public officer discharging administrative and official functions.

2nd element is present. Accused acted with both manifest partiality and evident bad faith when he took advantage of his public office, his being the mayor of the municipality of Quezon, to secure unwarranted benefits for himself. He allowed Quezon's bid deposit to be credited to his own personal purchase price.

3rd element is present. He caused undue injury to the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his official functions. Here, the Deed of Sale of the items purchased, including the 2 equipment that he personally purchased, were all placed in the name of the municipality of Quezon as the vendee or buyer. He did this in order to utilize the P100k bid deposit of Quezon for his own benefit.

* **Article 217: Malversation**
* **Venezuela vs. People** *(2018)*

Article 217 last paragraph states**:** 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 put such missing funds or property to personal use.

Based on said provision, **demand merely creates a *prima facie presumption*** that missing funds have been put to personal use by the accountable public officer. But demand itself is <u>not</u> an element of, and is not indispensable to constitute malversation. Malversation is committed from the very moment the accountable officer misappropriates public funds and fails to satisfactorily explain his inability to produce the public funds he received.

* **Article 220: Technical Malversation**

The SC has unequivocally ruled in ***Parungao vs. Sandiganbayan*** that in the absence of a law or ordinance appropriating the public funds allegedly technically malversed, the use thereof for another public purpose will not make the accused guilty of violation of Article 220 of the RPC.

* **RA 7080: Plunder**
* **What evidence is needed to establish Plunder? Is it necessary to prove each and every act alleged in the Information as constituting the crime of plunder?**

No. As provided for under **Section 4**, RA 7080: For the purpose of establishing the crime of Plunder, it is NOT necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth. It is sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

* **Article 223: Conniving with or Consenting to Evasion**
* **Article 224: Evasion Through Negligence**
* **Pineda vs. People** *(2023 J. Amy Lazaro-Javier)*

The SC said that Article 223 and 224 are two different modes of committing Infidelity in the Custody of Prisoners with material differences.

Article 223 Conniving With/Consenting to Evasion requires some form of agreement coupled with deliberate intent to allow the prisoner to escape; WHILE

Article 224 Evasion through Negligence contemplates lack of the diligence required in custody of prisoners which culminates in the latter's escape.

The deliberate intent to allow the prisoner to escape, which is a requisite in ***Conniving With/Consenting to Evasion*** is inconsistent with the very idea of negligence or *culpa* in ***Evasion through Negligence***.

The Variance does not apply.

* **Article 247 Death Under Exceptional Circumstances**

* **Question:**

A, husband, arrives home one night and hears noise emanating from their master's bedroom. Curious, he peeps through the slightly open door and sees B, another man, kissing C, A's wife, who is completely naked. Blinded by rage and fury, A draws a gun and fires in rapid succession upon the two (2) who instantaneously die. One (1) of the bullets exits through the window and hits D, a passerby.

What crime/s, if any, did A commit?

Answer:

A committed parricide for the unlawful killing of his wife, C, and homicide on two (2) counts for the unlawful killing of B and D.

A is not entitled to the beneficent provision of Article 247 of the Revised Penal Code considering that he did not surprise C, his wife, in the act of sexual intercourse with B or immediately thereafter when he killed B and C. The facts indicate that B was simply kissing C, albeit completely naked, when A shot them both. A is also criminally liable for the death of B and D because he is responsible for all the natural, direct, and logical consequences of his felonious act.

* **Article 255: Infanticide**

* **Question:**

After a heated argument over his philandering, X punched on the head of his wife Y, who was six and a half months pregnant. Because of the impact, Y lost her balance, fell on the floor with her head hitting a hard object. Y died and the child was expelled prematurely. After 36 hours, the child died.

What crime did X commit?

Answer:

X committed the **complex crime of Parricide with Infanticide.** The death of Y, the legitimate spouse of X constitutes Parricide under Article 246 because of relationship. The death of the child constitutes Infanticide under Article 255 because the child, having an intra-uterine life of less than 7 months, died after 24 hours. It is a complex crime because X's single act of punching the head of his wife resulted to 2 grave felonies of parricide and infanticide.

* **Article 266-B (1): Qualified rape**
* **People vs. Atop** *(**En Banc** 1998)*

X was charged with Qualified Rape under Article 266-B(1), with the twin qualifying circumstances of minority and relationship. X was the live-in partner of the grandmother of the victim, Y, 11 years old.

The RTC convicted the accused as charged. According to the RTC, the crime is Qualified Rape because of the accused's common-law relationship with the victim's grandmother.

Is the RTC, correct?

Answer:

The RTC is wrong. Article 266-B (1) is inapplicable. X is liable for Statutory Rape.

Qualified Rape under Article 266-B (1) of the RPC is committed only "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 3rd civil degree, or the common law spouse of the parent of the victim," and not by reason of any other kinship. Outside these enumerations and consistent with the doctrine that criminal law must be construed in favor of the accused, no other relationship, kinship, or association between the offender and the victim may aggravate the imposable penalty for the crime committed. The law cannot be stretched to include persons attached by common-law relationship.

Here, there was no blood relationship or legal bond that links the accused to his victim. Thus, the AC of relationship cannot be considered against him. The fact that the victim is the granddaughter or descendant of the accused's live-in partner cannot justify the conviction for Qualified Rape.

* **Child Abuse under Section 10(a) of RA 7610**
* **Javarez vs People** *(2020 J. Amy Lazaro-Javier)*

Accused is not liable under Section 10(a) of RA 7610 for lack of intent to debase, degrade, or demean the intrinsic worth and dignity of a child as a human being. He is liable for Slight Physical Injuries only.

In the cases of ***Bongalon vs. People*** *(2013)* and ***Jabalde vs. People*** *(2016)*, the SC ruled that the laying of hands against a child, when done in the spur of the moment and in anger, cannot be deemed as an act of child abuse under Section 10(a) of RA 7610, absent the evidence of intent to debase, degrade, or demean the intrinsic worth and dignity of the child as a human being on the part of the offender.

Here, accused was not shown to have intended to debase, degrade, or demean the boy's intrinsic worth and dignity as a human being. He only hit the child with a broomstick to stop him and his classmate from fighting over pop rice.

Accused, however, is liable for Slight Physical Injuries for intentionally inflicting physical harm on the child. His act of laying hands on the child was attended by malicious intent to physically harm him which is an element of the crime of Slight Physical Injuries. It is slight physical injuries as there was no evidence of Y's actual incapacity for labor or of the required medical attendance.

* **RA 9262 applies to Lesbian Relationship**
* **Garcia vs. Drilon** *(2013)* / **Jacinto vs. Fouts** *(2022)*

As defined, VAWC may likewise be committed "against a woman with whom the person has or had a sexual or dating relationship." The use of the gender-neutral word "person" encompasses even lesbian relationships.

What is required is that the offender, whether a man or a woman, must be related or connected to the woman victim by marriage, former marriage, or a sexual or dating relationship.

* **Acharon vs People** *(En Banc 2021)*
* **Calingasan vs. People** *(2022)*

SC acquitted the accused:

Sections 5(i) and (e) of RA 9262, in so far as it deals with denial of financial support, are ***mala in se***, not *mala prohibita*, even though RA 9262 is a violation of special penal law.

For criminal liability to arise under Section 5(i), in so far as it deals with denial of financial support**,** there must be evidence on record that the accused WILLFULLY AND CONSCIOUSLY WITHHELD FINANCIAL SUPPORT legally due to the woman for the purpose of INFLICTING MENTAL & EMOTIONAL ANGUISH UPON HER. In other words, the ***actus reus*** of the offense is the willful denial of support, while the ***mens rea*** is the intention to inflict mental or emotional anguish upon the woman.

Here, accused did not deliberately deny his wife and son financial support for the purpose of causing them mental and emotional anguish. His subsequent failure to give support was due to circumstances beyond his control. He was arrested and incarcerated in Canada, and upon release, he could not find a job. He only lives by relying on the support and help of his siblings.

* **Article 267: Kidnapping & Serious Illegal Detention**

In the cases of ***People vs. Dionaldo*** and ***People vs. Elizalde***, the Court explained that if the victim was detained for the purpose extorting ransom and the victim dies during the detention, then the crime committed shall be the **special complex crime of Kidnapping for Ransom with Homicide.**

In the special complex crime of Kidnapping for Ransom with Homicide, the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought.

* **Question:**

M forcibly took S and detained her in the rest house against her will. On the 4th day of her detention, M ordered S to undress while pointing a gun at her. Afraid, S complied. Then M forced S to lie down and climbed on top of her. While the accused was unzipping his pants, police officers barged into the rest house and arrested M. M is prosecuted for the crime of Kidnapping with Attempted Rape.

As the Judge, decide.

Answer:

As the Judge, I will hold M liable for 2 crimes, i.e., **the separate crimes of Kidnapping and Serious Illegal Detention and Attempted Rape.**

There is Kidnapping and Serious Illegal Detention because M kidnaps and detains S, a female, illegally. There is Attempted Rape because M's overt acts of ordering S, at gunpoint, to undress and lie down, then climbing on top of her and unzipping his pants reveal his intent to penetrate S. He was only stopped by the arrival of the police.

The special complex crime of Kidnapping and Serious Illegal Detention with Rape will not lie. In the special complex crime of Kidnapping and Serious Illegal Detention with Rape, the constitutive elements of the crime, namely Kidnapping and Serious Illegal Detention and Rape, must be both in the consummated stage. Here, Rape is merely attempted.

Likewise, there is no complex crime of Kidnapping with Attempted Rape under Article 48, RPC, because there is no single act which results in two or more grave or less grave felonies. Neither is Kidnapping and Serious Illegal Detention a necessary means for committing Rape.

* **Article 285: Other Light Threats**
* **Escolano vs. People GR 226991 10 December 2018**

Petitioner's utterances were made because there was provocation. AAA, BBB, and CCC were throwing ketchup sachets at petitioner's daughter Perlin. The latter evaded this by getting inside their house, so complainants hit petitioner on the hand and feet, instead. The complainants continued to throw these sachets which angered petitioner.

Evidently, petitioner's statements: "bobo, walang utak, putang ina" and the threat to "ipahabol" and "ipakagat sa aso" were all said out of frustration or annoyance. Petitioner merely intended that the children stop their unruly behavior. And after petitioner had uttered those words, it was not shown that she continued her slurs.

Thus, petitioner committed the crime of Other Light Threats, under Article 285(2) of the RPC, by orally threatening another in the heat of anger with some wrong constituting a crime, without persisting in the idea involve in the threat.

* **Qualified Trafficking in Persons**
* **Question:**

X was caught in the act of offering the sexual services of 2 girls, both 17 years old, for P2,000 each. Said minors consented to the illicit transaction because they needed money to feed their families.

X is now prosecuted for Qualified Trafficking in Persons under RA 9208 as amended. She moves for an acquittal because the girls were not in the act of engaging in sexual intercourse with their clients.

Is X's argument meritorious? Explain.

Answer:

X's argument has no merit.

Section 4(e) of RA 9208, as amended, punishes the act of maintaining or hiring a person to engage in prostitution or pornography. The exploitation of minors, through either prostitution or pornography, is explicitly prohibited. And the crime of trafficking is considered consummated even if no sexual

intercourse had taken place since the **mere transaction consummates the crime**. The 2 minors' acquiescence or consent to the illicit transaction was not given out of their own free will. ***(People vs. Ramirez,** 2019)*

* **Special Complex Crime of Robbery with Homicide**
* **People vs. Casabuena** *(2020 J. Amy Lazaro-Javier)*

In the special complex crime of Robbery with Homicide, it is irrelevant if the victim of homicide is one of the robbers. Felony would still be Robbery with Homicide.

Article 294 states:

> **ARTICLE 294.** *Robbery with violence against or intimidation of persons. – Penalties.* – Any person guilty of robbery with the use of violence against or intimidation of **ANY 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 x x x

The 1st paragraph of Article 294 of the RPC is plain and clear. The law only requires the crime of Homicide be committed by reason of or on occasion of robbery. It is not necessary that the person killed must be the victim of the robbery. It can be one of the robbers or an innocent bystander. The word **"any" is all-inclusive, including anyone of the robbers themselves.** Neither does it impose that the person who perpetrated the killing must be the same person who committed the robbery. There should be no distinction in the application of a statute where none is indicated. This is in consonance with the fundamental principle in statutory construction that where the law does not distinguish, the courts should not distinguish.

Article 294, paragraph 1 of the RPC is different from Article 297 of the same Code which reads:

> 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 offenses** shall be punished by reclusion temporal in its maximum period to reclusion perpetua, unless the homicide committed shall deserve a higher penalty under the provisions of this Code.

Under **Article 297 of the RPC, to** warrant a conviction for the special complex crime of Attempted Robbery with Homicide**, it is necessary that both the attempted robbery and the killing be perpetrated by the same person.** Said article speaks of the same person being guilty of such offenses – robbery and homicide.

* **Article 294(5): Simple Robbery**
* **Axel Tria vs. People** *(2023 J. Amy Lazaro-Javier)*

Y hacked X's Facebook page: "Buy and Sell" and uploaded therein X's half-naked photo.

X confronted Y about the photos. Y offered to delete them on the following conditions: a) X's payment of the P55,000.00 he demanded; b) X to stay with him in a hotel for 3 days; and c) for them to reconcile as if nothing

happened. X told Y that she only had P20,000.00. Y told X to give him the P15,000.00 while the remaining P5,000.00 would be for their hotel expenses.

X reported the matter to the CIDG Anti-Cybercrime Group which arranged an entrapment operation against Y. During the operation, X met with Y at Gaisano Mall and handed him P15,000.00 as agreed, resulting in Y's arrest.

What crime is committed by Y?

Answer:

Y committed the crime of Simple Robbery under Article 294(5) in relation to RA 10175 or The Anti-Cybercrime Prevention Act of 2012.

As held by the SC in the case of ***Axel Tria vs. People*** *(2023 J. Lazaro-Javier)*, Y is liable of Simple Robbery as the act of taking was attended by intimidation with no resulting death or bodily injury. All the elements are:

1) that there is personal property belonging to another;
2) that there is unlawful taking of that property;
3) the taking is with intent to gain; and
4) there is violence against or intimidation of persons.

Here, Y demanded from X P55,000.00 in exchange for the deletion of her nude photos posted on her Facebook page. She haggled until Y agreed to reduce it to P20,000.00; P15,000.00 would be given to Y while the P5,000.00 would pay for their hotel expenses.

There was intimidation in the act of taking as X was forced to part with her money in exchange for the deletion of her nude photos posted on her Facebook page. The taking was deemed complete the moment Y gained possession of her money. And Y's intent to gain is presumed from the act of taking.

Hence, Y is guilty of Robbery with Violence against or Intimidation of persons under Article 294(5). However, since the crime was committed with the use of communication technologies, the imposable penalty is raised in accordance with RA 10175 or the Cybercrime Prevention Act of 2012:

* **Direct Bribery not necessarily included in Simple Robbery**
* **Remolano vs People** *(2021 J. Amy Lazaro-Javier)*

An accused cannot be convicted of Direct Bribery in an Information that alleges Simple Robbery as it deprives him of his right to be informed of the nature and cause of accusation against him, as well as his right to due process.

It is wrong for the CA to convict him of Direct Bribery under the said Information for Simple Robbery because the 2nd element of Direct Bribery: *that the offender accepts an offer or a promise or receives a gift or present*, is not an element of Simple Robbery/Extortion.

It is settled that the 2nd element of Direct Bribery: ***that the offender accepts an offer or a promise or receives a gift or present***, proceeds from a mutual and voluntary transaction, i.e., the offended party should have had voluntarily offered to pay the accused.

In the crime of Robbery/Extortion under Article 294(5), RPC, there was **NO** mutual and voluntary agreement to give the money or property. What is present is intimidation.

The crime of Direct Bribery is neither included nor necessarily included in the crime of Robbery, and vice versa. Thus, the Variance Doctrine would not apply.

* **Robbery by Force Upon Things**
* **Question:**

A, B, and C, all armed, enter the house of E by breaking the knob of the front house. Once inside, A, B and C then start ransacking the house. After the three (3) are almost done, E, owner of the house appears and is punched by A causing him to suffer less serious physical injuries. What crime/s, if any, did A, B, C and D commit? Explain.

Answer:

A, B, C, and D are liable for the complex crime of robbery in an inhabited house under Article 299 of the RPC and robbery with violence against or intimidation of persons under Article 294(5) of the RPC.

Based on the given facts, A, B, and C were all armed and entered the house of E by breaking the doorknob of its front door and took valuables therein. This constitutes robbery in an inhabited house under Article 299 of the RPC. One (1) of the robbers also inflicted slight physical injuries on the owner of the house which constitutes robbery with violence against or intimidation of person under Article 294, paragraph 5 (simple robbery).

In the case of ***Napolis vs. CA*** *(1972)*, the SC held that when the elements of both provisions of Article 294, paragraph 5 and Article 299 are present, the crime is a complex crime which calls for the imposition of the penalty for the most serious offense in its maximum period. ***(Fransdilla v. People,*** *2015**)***

* **Theft**
* **Pante vs. People** *(2021)*

In fine, a "finder," under Article 308 par. 2(1) of the RPC, is not limited to the actual finder of the lost property since the gist of the offense is the furtive taking and misappropriation of the property found.

Though not the actual finder, there is no dispute that Pante knew for a fact that his 2 co-accused minors did not own the subject money. He knew that his co-accused minor merely found the money along the road while delivering bread. Instead of returning the money, Pante convinced his co-accused not to return the money and to divide it among themselves. At that moment, Pante placed himself precisely in the situation as if he was the actual finder. Otherwise stated, petitioner was a "finder in law" and his act in appropriating the money was of the same character as the original finder, i.e., the finder in fact.

Having obtained possession of Word's money, Pante had the obligation to return the lost property to its rightful owner or to the local authorities, but he unjustifiably refrained from doing so. Pante is guilty of Theft. The RPC does not require the thief to know the owner of the lost

property as he has the option to return the lost property to the owner or to the local authorities.

* **Qualified Theft vs. Carnapping**
* **Question:**

X owns a motorized lawnmower which he uses to maintain his front yard. His neighbor, Y, has long been jealous of X especially with how the latter's yard is well maintained. On several occasions, Y had asked X if he could borrow the lawnmower but the latter repeatedly refused. One day, Y saw the lawnmower unattended and parked on the sidewalk in front of X's house. Seeing no one watching he started the lawnmower and brought it to his yard and mowed his lawn. Upon finishing, Y returned the lawnmower to where it had been previously parked. Unknown to him, X has CCTVs monitoring the front of his house and Y was caught getting and using the lawnmower.

What crime is committed by Y? Explain.

Answer:

Y is liable for Qualified Theft.

Carnapping, as defined in RA 10883, expressly excludes lawn mowers from its definition of motor vehicles covered by the said law. On the other hand, the Revised Penal Code's Article 310 on Qualified Theft, covers the taking of a motor vehicle under which the lawn mower herein falls. Considering that the taking was done without violence or intimidation, Y should be held liable for Qualified Theft under Article 310.

* **Estafa vs. Carnapping**
* **Jocson Jr. vs. People** *(2022)*

X borrowed the Honda motorcycle of Y to buy cigarettes. Y acceded to the request but accused X did not return the motorcycle.

Is X liable of *Estafa* or Carnapping?

Answer:

X is liable of Carnapping under RA 10883.

In the case of ***Jocson Jr. vs. People*** *(2022)*, the SC said that in both *Estafa* and Carnapping, the offended party is divested of possession of his personal property. The distinction lies in the nature of possession the offender has over the thing in his custody. Carnapping, just like robbery and theft, only contemplates physical or material possession. In estafa, both the material and juridical possession over the money, goods, or any other personal property must be transferred to the offender.

In the present case, when X borrowed the motorcycle to purchase cigarettes, only the physical or material possession over the vehicle was conveyed to him by Y, not its juridical possession. Hence, X is liable of Carnapping, not *Estafa*.

Moreover, in ***People vs. Bustinera*** *(2004)*, the SC ruled that the offender's possession over the thing may be **initially lawful**, but turn unlawful due to his act or omission.

In the present case, **X's possession of the subject motorcycle was initially lawful as the vehicle was freely conveyed to him for the sole purpose of buying cigarettes. However, accused X transgressed Y's consent when he did not return the same, thereby constituting an act of unlawful taking.**

The element of intent to gain or *animus lucrandi* is an internal act that is presumed from the unlawful taking of the motor vehicle. Here, the motorcycle was actually taken by X without Y's consent when he failed to return it despite repeated demands.

* **Article 315(1)(b): *Estafa* thru Misappropriation or Conversion**

* **Question:**

X, an employee of Phil. Public School Teachers Association (PPSTA), was responsible for collecting remittances from the DECS and accepting premium payments from PPSTA members and depositing these payments in PPSTA's bank account, as instructed by the PPSTA Treasurer. When X failed to deposit her collections, she was charged with Estafa.

Is X liable as charged?

Answer:

NO. X is not liable of *Estafa* under Article 315(1)(b).

In Estafa through Misappropriation or Conversion under Article 315(1)(b), it is essential that that the accused acquired both material or physical possession and juridical possession of the thing received. Juridical possession is possession which gives the transferee a right over the property received, which the transferee may set up even against the owner. A sum of money received by an employee on behalf of the employer is not in the juridical possession of the employee; it is only in the employee's material possession. The employee is a mere temporary custodian of the said money.

Here, X, as an employee of PPSTA, had no independent right or title to these funds that she could set up against her employer. She only had material, not juridical, possession of the funds, hence, she cannot be convicted of *Estafa*. As X only failed to deposit her collections, neither can she be convicted of Qualified Theft as there was no evidence that she took the subject payments. ***(Medina vs. People 2023)***

* **Article 315(2)(d): *Estafa* by Issuing or Postdating a Check**

In order to constitute Estafa under Article 315(2)(d), the act of postdating or issuing of a check in payment of an obligation must be the efficient cause of the defraudation, i.e., it should be either prior to or simultaneous with the act of fraud.

* **Nierras vs. Dacuycuy and Lopez** ***(En Banc 1990)***

X, a customer of Pilipinas Shell Petroleum Corporation, purchased oil products from it. Simultaneous with the delivery of the products, he issued 9 checks in payment thereof. Upon presentation to the bank, all checks were dishonored, reason: Account Closed. Pilipinas Shell sent notice of dishonor and demanded from X to deposit funds for the checks or pay all the products purchased. X did not do either.

X is charged with 9 counts of Estafa under Article 315(2)(d), RPC, and 9 counts of Violation of BP 22. He moved to quash the Informations on Estafa under Article 315(2)(d) of the RPC on the ground of double jeopardy.

If you are the Judge, will grant the Motion to Quash?

Answer:

If I am the Judge, I will deny the Motion to Quash as X's argument has no merit.

All charges 9 counts of Estafa under Article 315(2)(d) of the RPC and 9 counts of Violation of BP 22 may proceed without placing X in double jeopardy. Double jeopardy does not set in because:

1st, X is charge with 2 distinct and separate crimes. Their elements differ. Deceit and damage are essential elements in Estafa under Article 315(2)(d) of the RPC, but are not required in Violation of BP 22; and

2nd, Section 5 of BP 22 expressly provides that: Prosecution under BP 22 shall be without prejudice to any liability for violation of any provision of the Revised Penal Code.

* **Syndicated Estafa**
* **Elements:**

1. That the offender commits any of the act of estafa under Article 315 and 316;
2. That the offender is a syndicate consisting of 5 or more persons; and
3. That the defraudation results in the misappropriation of moneys contributed by stockholders or members of rural banks, cooperatives, samahang nayon, farmers' associations, or funds solicited by corporations/associations from the general public.

* **People vs. Aquino** *(2018)*

Accused-appellant is guilty of 21 counts of Syndicated Estafa and is sentenced to suffer life imprisonment for each count.

Records reveal that Felix and his co-accused repeatedly induced the public to invest in Everflow on the undertaking that their investment would yield huge profits. Under such lucrative promise, private complainants were enticed to invest. Initially, Everflow would deliver on their promise, thus hooking the unwary investors into infusing more funds into it. However, as Felix and his co-accused knew from the start that Everflow had no clear trade by which it can pay the assured profits to its investors, they simply abscond with their investors' funds.

It is settled that "where one states that the future profits or income of an enterprise shall be a certain sum, but he actually knows that there will be none, the statements constitute an **actionable fraud** where the hearer believes him and relies on the statement to his injury." **An actionable fraud arises when the accused has knowledge that the venture proposed would not reasonably yield the promised results, and yet, despite such knowledge deliberately continues with the misrepresentation. As case law instructs, "the gravamen of Estafa is the employment of fraud or deceit to the damage or prejudice of another."**

The Court observes that Felix and his co-accused's modus operandi is constitutive of criminal fraud as they used the same to commit a crime.

* **Arson**
* **Question:**

FQ Grocery is a store licensed to sell firecrackers and pyrotechnics. While brothers A and B were manning their store, X and Y arrived on board a motorcycle. Y went inside the store. X, who stayed outside lighted the fuse of a mother rocket or "kwitis." The "kwitis" flew towards the other firecrackers on display at the store, thereby causing the explosion and burning of the store, killing its owner, C, the father of A and B.

What crime is committed by X?

Answer:

X committed the crime of **Destructive Arson.** Art. 320 of the RPC, as amended by RA 7659, punishes as Destructive Arson the malicious burning of buildings, public and private, including a storehouse or factory of inflammable or explosive materials, by any person. In arson, the corpus delicti is proof of the fire's bare occurrence and accused's intent. Here, such is proven by X's act of lighting the rocket in front of the store and pointing it towards the other fireworks on display. X's act would surely result in the burning of the store and the death of its owner. ***(People vs. Pugal,** 2021)*

* **RA 7877: Anti-Sexual Harassment Act**
* **Escandor vs. People** *(2020)*

At the core of sexual harassment in the workplace, as penalized by RA 7877, The Anti-Sexual Harassment Act, is abuse of power by a superior over a subordinate. Sexual harassment engenders three-fold liability:

1) criminal – to address the wrong committed against society itself;
2) civil – to address the private wrong against the victim; and
3) administrative – to protect the public service.

The key elements which distinguish sexual harassment, as penalized by RA 7877, from other chastity-based and vexatious offenses are: **1st,** its setting; and **2nd,** the person who may commit it. As to the setting, the offense may only be committed in the work-related, training-related, or education-related environment. As to the perpetrator, it may be committed by a person who exercises authority, influence, or moral ascendency over another.

Since RA 7877 is a special criminal statute, the offense of sexual harassment is ***malum prohibitum***. Thus, in prosecuting an offender for sexual harassment, intent is immaterial. Mere commission is sufficient to warrant a conviction.

In the present case, all the elements of sexual harassment, penalized by RA 7877, are present in this case. On the **1st** element, it is clear that Escandor had authority over Gamallo. He was the Regional Director of NEDA Region 7, while Gamallo was a contractual employee. Escandor's authority also existed in a work-related environment, hence, the **2nd** element is satisfied. As to the **3rd** element, Escandor's acts of kissing Gamallo, touching her thigh, giving her gifts, asking her out on dates, telling her that

he loved her, undoubtedly amount to a request for sexual favors. Escandor's acts resulted in an intimidating, hostile, and offensive work-environment for Gamallo.

* **RA 11313: Safe Spaces Act**
* **Escandor vs. People** *(2020)*

The Safe Spaces Act aims to ensure the quality, security, and safety of every individual, in both private and public places, including online and workplaces. It supplements the present Anti-Sexual Harassment Act of 1995 by broadening the crime of sexual harassment in the workplace. Moreover, the law explicitly provides that the crime of gender-based sexual harassment may also be committed between peers, by a subordinate to a superior, or by a trainee to trainer. In effect, RA 11313 widens the scope from that set out in the Anti-Sexual Harassment, which required that for any act to be considered harassment, the offender had to be more senior than the person who was harassed.

The Safe Spaces Act does not undo or abandon the definition of sexual harassment under the Anti-Sexual Harassment Law of 1995. **The gravamen of the offense punished under the Safe Spaces Act is the act of sexually harassing a person on the basis of his or her sexual orientation, gender identity and/or expression**, WHILE that of the offense punished under the Sexual Harassment Act of 1995 is abuse of one's authority, influence or moral ascendancy so as to enable the sexual harassment of a subordinate.

* **Libel under the RPC & Online Libel under RA 10175**
* **Question1:**

In her daily gossip column,X writes an unflattering article about Y, a famous businessman/actor, and his separation from his wife, Z. The article portrays Y as an abusive husband and a drunkard. Y charges X with libel. In her defense, X counters that she is not liable of Libel because Y has attained the status of a public figure so that even his personal life has become a legitimate subject of public interest and comment.

Is X liable of Libel?

Answer:

Yes. X is guilty of Libel. All the elements are present.

1st, there is an imputation that Y is an abusive husband and a drunkard;

2nd, there is the publication of the imputation in the tabloid;

3rd, Y is identified as the subject of the defamatory article; and

4th, there is malice. X is attacking the personal life of Y as a husband and not his public life as a famous businessman/actor. Such defamatory utterances are not protected. Any attack upon the private character of a public figure on matters which are not related to his/her works would constitute libel. ***(Fermin vs. People** 28 March 2008)*

* **Question2:**

In case X published the said article not only on the tabloid but also online on social media, can Y file 2 cases: (1) Libel under Article 355 of the RPC; and (2) Cyber-libel under RA 10175, against X at the same time?

Answer:

NO, Y cannot file both cases at the same time.

In ***Disini vs. Secretary of Justice*** *(2014)*, the SC ruled that there should be no question that if a libelous material published on print, is again posted online or vice-versa, that identical material **cannot be the subject of 2 separate libels.** The 2 crimes, one a violation of Article 355 of the RPC, and the other, a violation of Section 4(c)(4) of RA 10175, or The Anti-Cyber Crime Act, **involve the same elements and are in fact one and the same offense.** Online libel is not a new crime but is already punished under Article 355; it merely establishes the computer system as another means of publication. Charging the offender under both laws is against double jeopardy.

* **Quasi-Offenses**

* **Question:**

After a night of merry-making, X, while recklessly driving his Toyota Hi-ace along the highway, hit a Chevrolet car which had already entered the intersection. As a result, Y, who was driving the Chevrolet, sustained serious physical injuries while his friends: A, B, and C, suffered slight physical injuries. Damage to his car amounted to P150,000.00.

What is/are the proper charge/charges against X?

Answer:

The proper charge against X is Reckless Imprudence resulting in Multiple Physical Injuries and Damage to Property.

The ***Ivler Doctrine*** *(Ivler vs. Judge Modesto-San Pedro)*, which was affirmed by the SC in ***Morales vs. People*** *(En Banc 2022)*, states that Article 48 complexity of crimes does not apply to quasi crimes such as reckless imprudence. The rule is that there shall be no splitting of charges under Article 365. Only 1 Information shall be filed regardless of the number or severity of the consequences of the imprudent or negligent act.

* **Criminal Law under the SC's SPJI**

1) Revised Rules on Criminal Procedure – The SC has been developing and disseminating new rules of procedure for criminal cases with focus on fairness and expedition in preliminary investigation, arraignment, and trial.

2) Gender-Restorative Justice for Women – The development of a Manual for handling cases involving women in conflict with the law.

3) Enhanced Justice on Wheels – The project aims to increase accessibility to justice in remote rural areas by bringing judicial services closer to communities & equipping barangay officials to address minor disputes.

GOOD LUCK and GOD BLESS FUTURE ATTORNEY!
PRAYING FOR YOU.
From: vcgarcia