MOCKBAR 2022

Criminal Law & Special Penal Laws

All Bar candidates should be guided that only laws, rules, issuances, and jurisprudence pertinent to the topics in this syllabus as of June 30, 2022 are examinable materials within the coverage of the 2023 Bar Examinations. The computation of penalties, including its application under the Indeterminate Sentence Law, shall be excluded from the coverage.

Sources: Fiscal Petralba's Syllabus and Discussion, Criminal Law Reviewer by Campanilla, UST Golden Notes 2022, Ateneo Blue Notes 2022, UP BOC 2022 and AUSL Purple Notes 2022.

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BOOK 1 OF THE RPC

A. GENERAL PRINCIPLES

DEFINITION OF TERMS

1. **Criminal Law**
   A branch of municipal law which defines crimes, treat of their nature, and provides for their punishment.

   It is a branch of public law that treats of acts or omissions, which are primarily wrongs against the State. Hence, a criminal case is denominated *"People of the Philippines v xxx"*

2. **Crime**
   An act committed or omitted in violation of a public law forbidding or commanding it [Ching v. Secretary of Justice, G.R. No. 164317 (2006)]. The commission or omission by a person having capacity, of any act, which is either prohibited or compelled by law and the commission or omission of which is punishable by a proceeding brought in the name of the government whose law has been violated.

3. **Felony**
   Crime punishable under the Revised Penal Code (RPC)

4. **Offense**
   A crime punished under a special penal law.

5. **Misdemeanor**
   Minor infraction of the law, such as a violation of an ordinance.

6. **Penal Laws**
   Acts of the Legislature prohibiting certain acts or omissions and establishing penalties for their violations. Those that define crimes, treat of their nature, and provide for their punishment.

SOURCES OF PHILIPPINE CRIMINAL LAW

1. Revised Penal Code
2. Special Penal Laws
3. Penal Presidential Decrees issued during Martial Law

THEORIES IN CRIMINAL LAW

1. **Classical or Juristic Theory**
   The basis of criminal liability is human free will. The purpose of the penalty is retribution in view of the voluntariness of the act or omission of the offender. The emphasis is on the offense and not on the offender.

2. **Positivist or Realist Theory**
   Man is inherently good but the offender is socially sick. The basis is the sum of social and economic phenomena which condition man to do wrong in spite of or contrary to his volition. The purpose of the penalty is reformation and the emphasis is on the offense and not on the offender.

   The Revised Penal Code is based on the classical school of thought. (People u. Hon. Sandiganbayan, G.R. Nos. 115439-41, July 16, 1997) However, there are some aspects of the Code which are based on positivist theory.

Legal Maxims

1. **Nullum crimen nulla poena sine lege**
   Our country adheres to the principle of *"nullum crimen, nulla poena sine lege,"* that is, there is no crime where there is no law punishing it.

2. **Actus non facit reum, nisi mens sit rea**
   The act cannot be criminal unless the mind is criminal.

3. **Actus me invito factus non est meus actus**
   An act done by me against my will is not my act

Constitutional Limitations on the Power of Congress to Enact Penal Laws in the Bill of Rights

1. Equal Protection;
2. Due Process;
3. Non-imposition of cruel and unusual punishment or excessive fines;
4. No Bill Of Attainder shall be enacted; A bill of attainder is a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative act for a judicial determination of guilt. (People v. Ferrer, G.R. No. L-32613-14, 1972).
5. No ex post facto law shall be enacted;

CRIMES AND THEIR CLASSIFICATIONS

According to gravity	1. Grave 2. Less grave 3. Light

According to the mode of commission	1. Intentional and 2. Culpable.
According to their nature	1. mala in se and 2. mala prohibita
According to the law punishing them	1. **Felony** – RPC violation 2. **Offense** – SPL violation 3. **Infraction** – violation of local laws/ordinances

1. MALA IN SE AND MALA PROHIBITA

Mala In Se	Mala Prohibita
Crime is inherently wrong from its very Nature. (***Ex:*** Killing a person)	An act or omission becomes a crime only by reason of a law punishing it. (***Ex:*** Cutting a coconut tree does not make you a bad person or a dangerous person. But, if there is a law that punishes it, then,you will be penalized)
So serious in their effects on society as to call for almost unanimous condemnation of its members.	Violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society.
Intent governs. Generally, good faith and lack of intent are defenses, unless the act is culpable.	Good faith and lack of intent are generally not available as defenses.
Generally refers to felonies punished by the RPC, although some acts mala in se, are punished by special laws.	Generally refers to acts made criminal by special laws.
The degree of accomplishment of the crime is taken into account in punishing the offender;	The act gives rise to a crime only when consummated;
Mitigating and aggravating circumstances are taken into account;	Mitigating and aggravating circumstances are generally not taken into account;
Penalty is determined on the basis of the degree of participation of the offender;	Penalty on the offenders are the same
There are 3 stages of execution: attempted, frustrated, consummated; and	There are no stages of execution; and
Penalties may be divided into degrees and periods.	There is no division of penalties.

GR: Intentional felony under the RPC is committed by means of dolo. Since dolo or criminal intent is an element of intentional felonies, they are mala in se.

XPN: Technical malversation is an intentional felony, yet the SC declared it as malum prohibitumm.

Ysidoro v. People, G.R. No. 192330 (2012)

Mayor's act, no matter how noble or miniscule the amount diverted, constitutes the crime of technical malversation. Criminal intent is not an element of technical malversation. The law punishes the act of diverting public property earmarked by law or ordinance for a particular public purpose to another public purpose.

Q: Is there an act that can be classified as malum in se and malum prohibitum at the same time?

Yes. Settled in the rule that violation of Anti-Graft and Corrupt Practices Act (R.A. No. 3019) partakes of the nature of malum prohibitum.

However, the offense under Section 3(e) of R.A. No. 3019 may be committed either by dolo, as when the accused acted with evident bad faith or manifest partiality, or by culpa, as when the accused committed gross inexcusable negligence. Since malice, evident bad faith or manifest partiality is an element of violation of Section 3(e) of R.A. No. 3019, this crime also partakes the character of malum in se.

Matalam v. People, G.R. Nos. 221849-50 (2016)

If a high-ranking public officer in DAR-ARMM refuses to remit accounts to the Pag-IBIG Funds and GSIS despite the notice from GSIS to do so, he is guilty of violating RA No. 8291 (the GSIS Act of 1997) and the IRR of RA No. 7742 (the Pag-IBIG Law). He cannot claim that since the funds were released to the Regional Director of ARMM and not to DARARMM, his role is merely procedural and ministerial. Both laws provide that the refusal of the heads of the offices of the national government who are involved in the collection of premiums, accounts due to the GSIS/collection

and remittance of employee savings to pay or remit the accounts would make them liable. The non-remittance of GSIS and Pag-IBIG Fund premiums is malum prohibitum. What the relevant laws punish is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts.

Lucido v People, G.R. No. 217764 (2017)

If a person is charged with child abuse in violation of Sec. 10(a) of RA 7610 for physically abusing a child placed under his or her care, intent to debase, degrade or demean the minor is not essential to establish guilt. It must be stressed that crimes punished by RA 7610 are mala prohibita.

BUT SEE:

Briñas v. People, G.R. No. 254005 (2021)

A prosecution for child abuse under Section 10(a) in relation to Section 3(b)(2) requires the presence of a specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being. Such specific intent may be refuted by proof that the acts were merely offshoots of emotional outrage in the spur of the moment and/or that the accused merely intended to discipline the child. In the case where the defense of disciplining a child is advanced, the Court may likewise consider if the disciplining acts are commensurate to, and may reasonably address, the misbehavior of the child being dealt with. If the alleged disciplinary measures are excessive and run counter to the purpose of disciplining a child, then the defense will be rejected and the accused may be held liable for child abuse.

Knowledge

Matalam v. People, G.R. Nos. 221849-50 (Resolution), (2016)

Mala Prohibita – Intent to commit the crime and intent to perpetrate the act must be distinguished.

A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself. When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.

Mala in Se – Volition, or intent to commit the act, is different from criminal intent.

Volition or voluntariness refers to knowledge of the act being done. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes mala in se.

Example:
A bag was left in the classroom and the said bag contains shabu, which Juan is not aware of. Juan took the bag to the law office for safekeeping. Possession of drugs is mala prohibita.

While good faith is not a defense in mala prohibita, **there has to be volition**. Here, Juan had no intention of possessing shabu, he only had intention of possessing the bag, so this is not about good faith, but this is about his knowledge (or lack thereof) of the act.

BUT, if Juan had knowledge that the bag contained shabu, then it would be different, that is now punishable by law. So, the defense in the earlier example is not good faith, but rather the lack of volition to commit the act (because of lack of knowledge that the bag contained shabu).

Example:
A clerk corrected a wrong entry in a public document. Did he voluntary do that? Yes. Is that inherently wrong? No. Is there good faith? Yes, and good faith is a defense in mala in se.

Defenses

People v. Comia G.R. No. 115156 (1995)

Mala Prohibita – Lack of criminal intent and good faith are not exempting circumstances. The act of transporting a prohibited drug is a malum prohibitum because it is punished under a special law. It is a wrong because it is prohibited by law. Without the law punishing the act, it cannot be considered a wrong. As such, the mere commission of said act is what constitutes the offense punished.

Mala in Se – The rule is that in acts mala in se there must be a criminal intent, but in those mala prohibita it is sufficient if the prohibited act was intentionally done.

Note: "Care must be exercised in distinguishing the difference between the intent to commit the crime and the intent to perpetrate to act."

Rizan v. Sandiganbayan, G.R. No. 186739-960 (2013)

There is no showing that the mayor possessed that "criminal mind" when he issued the subject permits to transport salvaged forest products and to regulate and monitor these products in order to avert the occurrence of illegal logging: in the area. He is not liable for usurpation of function of the DENR because of good faith.

Mala in Se in a Special Penal Law

Garcia v. CA, GR 157171 (2006)

Clearly, the acts prohibited in Section 27(b) are mala in se. For otherwise, even errors and mistakes committed due to overwork and fatigue would be punishable.

Given the volume of votes to be counted and canvassed within a limited amount of time, errors and miscalculations are bound to happen. And it could not be the intent of the law to punish unintentional election canvass errors. However, intentionally increasing or decreasing the number of votes received by a candidate is inherently immoral, since it is done with malice and intent to injure another.

See Sama v. People, G.R. No. 224469, January 05, 2021, Lazaro-Javier, J. where the Supreme Court distinguished betwee crimes mala in se and crimes mala prohibita. When the acts complained of are inherently immoral, they are deemed mala in se, even if they are punished by a special law. Accordingly, criminal intent must be clearly established with the other elements of the crime; otherwise, no crime is committed. On the other hand, in crimes that are mala prohibita, the criminal acts are not inherently immoral but become punishable only because the law says they are forbidden.

Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done [in contrast to knowledge of the nature of his act]. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes mala in se. (Diosdado Sama v. People, G.R. No. 224469, January 05, 2021, Lazaro-Javier, J.)

The doctrine of continuing crime is not applicable to mala prohibita cases.

The applicability of continuing crimes to transgressions, under the RPC is straightforward because the crimes under the RPC are generally, mala in se, that is, they are wrong in themselves. In these crimes, the intent of the offender is crucial. In a continuing crime, it is the singularity or multiplicity of this criminal intent that determines the penalty to be imposed, without any regard to the number of criminal transgressions. In contrast, offenses punishable by special penal laws are generally mala probihita, in which case, the intent of the offender is immaterial. When an act is declared illegal by law, the intent of the offender in committing the same is immaterial. In crimes which are mala prohibita what need not be . proved is criminal intent, that is, intent to commit the crime. In such cases, criminal intent is conclusively presumed to exist from the commission/omission of an act prohibited by law and therefore need not be proved. In order to hold the offender guilty or accountable for the offense it is sufficient that there is a conscious intent to perpetrate the act prohibited by the special law. The essence of mala prohibita is voluntariness in the commission of the act constitutive of the crime. (People v. Ramoy and Padilla, G.R. No. 212738, March 9, 2022, Gaerlan, J.)

Cadajas y Cabias v. People, G.R. No. 247348, [November 16, 2021

The better approach to distinguish between mala in se and mala prohibita crimes is the determination of the inherent immorality or vileness of the penalized act. If the punishable act or omission is immoral in itself, then it is a crime mala in se; on the contrary, if it is not immoral in itself, but there is a statute prohibiting its commission by reasons of public policy, then it is mala prohibita. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statute

It is decisively clear that the crime of child pornography as defined and penalized under R.A. No. 9775 should be classified as a crime mala in se. As parens patriae, this act of grooming minors for sexual abuse should not be tolerated. We should not be complicit in reinforcing this belief upon the minors that sex with children is acceptable and thereby fuel a pedophile's fantasies prior to committing sexual abuse, which clearly happened in the instant case. Contrary to the appreciation of evidence of the other members of this Court, the circumstances of this case showed the intent of petitioner to abuse AAA and engage in acts of child pornography by inducing the latter to exhibit her private parts to him. Petitioner, being the one with mental maturity, should have known that it was not just legally, but inherently wrong for AAA, a minor, to show her private parts, particularly, through a mobile device. If indeed, petitioner loved AAA, he should have protected her dignity, being a minor. However, as the exchanges of petitioner and AAA would show, it was through petitioner's prodding that led to AAA's act of exhibiting her private parts. Thus, this Court concurs with the findings of the courts a quo that the prosecution was able to establish beyond reasonable doubt that petitioner induced or coerced the minor victim to perform in the creation of child pornography and that the same was done through a computer system.

Absorption Rules

GR: The general rule is that a Mala in se felony (such as reckless imprudence resulting in damage to property) cannot absorb mala prohibita crimes.

> It is because the reason for being liable for mala in se and mala prohibita are different. What makes a felony mala in se is because of criminal intent (dolo) whereas what makes a felony mala prohibita is because a special law punishes them.

XPN: When the Special Law where the crime Mala Prohibita is based on expressly allows for absorption such as sexual abuse of a minor under R.A. 7160 and statutory rape, acts of lasciviousness.

Note: A felony cannot be complexed with an offense.

Thus, when an act offends against a provision of the RPC and an SPL, the offender can be prosecuted for:

1. Two Crimes, such as estafa and violation of BP 22, because they do not absorb each other
2. Only one crime, when the special law bars the prosecution of other offenses
3. One crime absorbing the others as an element or as an aggravating circumstance.

2. SCOPE AND CHARACTERISTICS

There are three characteristics of criminal law or cardinal features of principles of criminal law to wit: (1) generality, (2) territoriality, and (3) prospectivity.

a) Generality

GR: Penal laws are obligatory on all persons who live or sojourn in Philippine territory, regardless of nationality, gender, or other personal circumstances, *subject* to the principles of public international law and to treaty stipulations (Art. 14, NCC).

The foreign characteristic of an offender does not exclude him from operation of penal laws.

Military Offender
Penal laws are obligatory to military men residing or sojourning in the Philippines. However, service-connected crimes shall be tried by court-martial as mandated by R.A. No. 7055.

XPNs:

1. Treaty Stipulations
2. Laws of Preferential Application
3. Principles of Public International Law
4. Warship Rule
5. Presidential Immunity
6. Legal Pluralism

Certain exempting circumstances under the RPC and domestic laws (e.g., RA 9344)

- We cannot hold insane persons liable (RPC)
- We cannot hold criminally liable minors 15 years old and below (Juvenile Justice and Welfare Act)

Treaty Stipulations

(Arts. 2 and 14, NCC)

The Visiting Forces Agreement (VFA) signed on Feb. 10, 1988 is an agreement between the Philippine and US Government regarding the treatment of US Armed Forces visiting the Philippines.

Rules on Jurisdiction under the VFA

Crime	Jurisdiction
Crime is punishable under Philippine laws, but not under US laws.	The Philippines has exclusive jurisdiction.
Crime is punishable under US laws, but not under Philippine laws.	The US has exclusive jurisdiction.
Crime is punishable under both US and Philippine laws.	The Philippines has primary but concurrent jurisdiction with the US.

Rules on Concurrent Jurisdiction (Art. V (3), VFA)

GR: Philippine authorities shall have the primary right to exercise jurisdiction over offenses committed by United States personnel.

XPNs:

a. If the offense was committed solely against the property or security of the United States.
b. If the offense was solely against the property or person of United States personnel.
c. If the offense arose out of any act or omission done in performance of official duty.

Note: The authorities of the Philippines and the United States shall notify each other of the disposition of all cases in which both the authorities of the Philippines and the United States have the right to exercise jurisdiction.

Offenses Relating to Security for purposes of the VFA (Art. V (2)(c), VFA)

a. Treason
b. Sabotage
c. Espionage
d. Violation of any law relating to national defense

Waiver of Jurisdiction
The authorities of either government may request the authorities of the other government to waive their primary right to exercise jurisdiction in a particular case.

GR: Philippine authorities will, upon request by the United States, waive their primary right to exercise jurisdiction.

XPNs: In cases of particular importance to the Philippines, for example, crimes punishable under:

a. R.A. 7659 (Heinous crimes)
b. R.A. 7610 (Child Abuse cases)
c. R.A. 9165 (Dangerous Drugs cases)

Laws of Preferential Application

(Art. 2, NCC)

Rules on Jurisdiction

(Secs. 4 to 5, R.A. 75)

GR: The following persons are exempt from arrest and imprisonment, and their properties exempt from distraint, seizure and attachment [AMS]:

a. Ambassadors
b. Public Ministers
c. Domestic Servants of ambassadors or ministers

XPNs: If the writ or process sued out or prosecuted is:

a. Against a person who is a citizen or inhabitant of the Philippines, provided:
    i. The person is in the service of an ambassador or a public minister; and
    ii. Process is founded upon a debt contracted before he entered upon such service.
b. Against the Domestic Servant of an ambassador or a public minister, provided:
    i. The name of the servant has been registered in the Department of Foreign Affairs (DFA), and transmitted by the Secretary of Foreign Affairs to the Chief of Police of the City of Manila; but
    ii. The registration was only made after the writ or process has been issued or commenced.

Note: R.A. No. 75 is not applicable when the foreign country adversely affected does not provide similar protection to our diplomatic representatives [Sec. 7, R.A. No. 75].

Principles of Public International Law

Who are Exempt [SCAMMP]

a. Sovereigns and other heads of state
b. Charges d' affaires
c. Ambassadors
d. Ministers
e. Minister resident
f. Plenipotentiary [Art. 14, Vienna Convention on Diplomatic Relations]

Who are Not Exempt [CVC]

a. Consuls
b. Vice-consuls
c. Other Commercial representatives of foreign nations who do not possess such status and cannot claim the privileges and immunities accorded to ambassadors and ministers [Sec. 249, Wheaton, International Law].

Condition for Immunity to Apply

Diplomatic immunity only applies when the diplomatic officer is engaged in the performance of his official functions (Minucher v. Hon. CA, G.R. No. 142396, February 11, 2003). Immunity does not cover slander or reckless imprudence resulting in homicide for not being function-related.

A Chinese diplomat, who killed another Chinese diplomat in Cebu, is immune from criminal prosecution. (The Vienna Convention on Diplomatic Relations) Unlike consular officers, **diplomatic agents are vested with blanket diplomatic immunity** from civil and criminal suits. (Minucher v. Hon. CA, G.R. No. 142396, February 11, 2003)

Note:
There are two kinds of immunity:

1. immunity from prosecution and
2. immunity from arrest.

Thus, a person can still be arrested even if he is immune from prosecution. Here, what can be done is to revoke the diplomatic papers and send him back, but cases cannot be filed against him.

Such is not the case for heads of state who have both immunity from prosecution and immunity from arrest.

Warship Rule

A warship of another country, even though docked in the Philippines, is considered an extension of the territory of its respective country [Art. 27, United Nations Convention on the Laws of the Sea].

Presidential Immunity

The President of the Philippines is entitled to immunity from suit subject to the following conditions:

1. The immunity has been asserted;
2. During the period of his incumbency and tenure; and
3. The act constituting the crime is committed in the performance of his duties.

However, after the tenure of the President, he can be criminally charged since the presidential immunity is not anymore invocable.

Legal Pluralism

Legal pluralism in certain areas/cultures (E.g.: Muslim Code and IPRA)

- Muslims can contract more than one marriage, provided that the requisites in the Muslim Code are met.
- Ips can practice their own modes of settling disputes as they have their own tribal councils.

Article 349 of the Revised Penal Code on bigamy is not obligatory to Muslims married in accordance with the Muslim laws because of P.D. No. 1083 (The Code of Muslim Personal Laws). However, if the marriage is not solemnized in accordance with Muslim Law, the accused cannot claim criminal exemption from liability for bigamy on the basis of his religious belief as a Muslim because of the generality principle.

RA No. 75 penalizes acts which would impair the proper observance by the Republic and inhabitants of the Philippines of the immunities, rights, and privileges of duly accredited foreign diplomatic representatives in the Philippines.

Fiscal: There is a new law discouraging tribal communities against child marriages because we have a new law against statutory rape and the new law has increased the age of the victim to 16 years old. It used to be 12 or below but now that has been increased and so, around that time that the law passed, there was also another discouraging tribal communities from child marriages because we know there are certain groups, including Muslims, who allow marriages between parties who are not yet considered adults or 18 years old.

In the Muslim culture, for example, we have multiple marriages. Multiple marriages is allowed in other cultures or tribal groups. But we have the RPC punishing bigamy. So, which is which now? That is a phenomenon as a legal pluralism. **In legal pluralism, it is possible that there are two laws with inconsistent effects but they do not cancel each other.**

For example, we have the FC. It says that marriage must be between man and woman and the age must be at least 18. Also, we have the law against bigamy where a person can only have one spouse. But, under the Muslim culture, they can have younger brides and they can also have more than one spouse. So, which is which? Now, they do not cancel each other just because they have that provision under the FC or RPC, does not mean the Muslim Code is cancelled or vice versa. So, we have two laws which are apparently inconsistent with each other but they do not cancel each other. Both are valid and they can stand. However, it must be subject to certain conditions. For the Muslim Code, the marriage must be celebrated in a Muslim province.

Under the IPRA, there can be violations where there are penalties under our penal laws but these violations need not go to court. They can be subject to prosecution or any other alternative by the tribal courts. In a sense, that is an exception.

b) Territoriality

(Art. 2, RPC)

Penal laws of the country have force and effect only within its territory. It cannot penalize crimes committed outside its territory. The territory of the country is not limited to the land where its sovereignty resides but includes its atmosphere, interior waters and maritime zone.

Theory on Aerial Jurisdiction – Absolute Theory
The subjacent state has complete jurisdiction over the atmosphere above it *subject* only to the innocent passage by aircraft of a foreign country.

If the crime is committed in an aircraft, no matter how high, as long as it is within the Philippine atmosphere, Philippine criminal law will govern. The Philippines has complete and exclusive sovereignty over the airspace above its territory [Art. 1, Convention on International Civil Aviation].

Exceptions

1. **Universal jurisdiction**
   (jus cogens crimes; obligation erga omnes) All countries have the obligation to prosecute.

   Although the crime of piracy was committed in the domestic waters of Singapore, the Philippine laws were applied because piracy has been declared by the United Nations as a crime against humanity, a crime against the law of nations, which can be prosecuted anywhere. (Pp. vs. Tulin)

2. **International jurisdiction**
   Refers to the jurisdiction of international courts/tribunals like the ICC; ICTY; ICTR; etc. Courts created by States to try international crimes.

   TN: This is subject to jurisdictional requirements *(i.e. ratification of relevant treaty)*

   The ICC issue regarding the issue of sovereignty is an issue on universal jurisdiction but it is not an issue in the case of international criminal tribunals. Why? Because, in international criminal tribunals, the countries subject to the jurisdiction of these tribunals willingly surrender part of their jurisdiction when they ratify the treaty that created the tribunal. So, there is only one permanent international criminal tribunal, the ICC. The ICC is a criminal court that was created under the Rome Statute. The Rome Statute is voluntary for states. If they ratify it, they bound themselves to comply with the provisions of the treaty. Because of the principle of *pacta sunct servanda*. So if someone is tried in the ICC, it is not because other countries are meddling with our jurisdiction. It is because we willingly gave up part of our jurisdiction when we ratified the Rome Statute.

   Do not confuse it with universal jurisdiction since universal jurisdiction is an example of states meddling with the affairs of other states.

   But, not all criminal tribunals are created because of a treaty. Right now, there is a move to create a criminal tribunal for the Ukraine War in order to punish war crimes. Of course, Russia will never ratify that kind of treaty, therefore, if that tribunal is finally created, it is not one created by a treaty unlike the ICC because the ICC was created by a treaty.

   Or we have ICTY or ICTR or maybe even the Nuremberg tribunal. Those are also criminal tribunals

but these are not created by treaties unlike the ICC so in international criminal tribunals such as the ICC, even if the crime was not committed in the place where the criminal tribunal is sitting, that crime can be tried before the criminal tribunal as long as the provisions of the treaty allows it.

3. **Transnational crimes** – committed across borders; may give rise to the duty to extradite. Examples: Cybercrime, Trafficking of Wildlife, Human Trafficking, United Nations Convention against Transnational Organized Crime (UNTOC), and Child Pornography.

Example:

The Bangladesh Bank Heist

You've heard about this money being laundered through RCBC and the money belonged to Bank of Bangladesh which was placed in the custody or deposited with the US Federal Reserves in US. Part of the crime was committed within the Philippine territory. It was a continuing crime.

The 'I Love You' Virus

In the year 2000, there was this Filipino student, Reonel De Guzman, an AMA College student who created the 'I Love You' virus. We were not sure if he intentionally or accidentally released the virus, but it affected a lot of computers including the Pentagon.

Among the most affected were US Government and US businesses. But where is the inventor now? We did not extradite him because in Extradition Treaties, there has to be reciprocity. You can only give up your jurisdiction over the person to the country where a crime has been committed.

Here, De Guzman committed the crime in US although he was here in the Philippines. The act that he did was punished under the US Law. Unfortunately, there was no Cybercrime law yet at that time in the Philippines. Thus, he could not be punished under our laws. If he could not be punished under our local laws, he cannot be extradited. There has to be reciprocity. It should be punished in both jurisdictions.

4. **Extraterritorial jurisdiction [SFION] [Art. 2, RPC]**:
    a. Crimes committed while on a Philippine **S**hip or airship
    b. **F**orging/Counterfeiting of Coins or Currency Notes in the Philippines
    c. **I**ntroduction of no. 2 into the country
    d. Offenses committed by public **O**fficers or employees in the exercise of their functions
    e. Crimes against **N**ational Security and the law of nations, defined in Title One of Book Two of this Code

Crimes committed aboard a Philippine Ship or airship
[Art. 2 (1), RPC]

Requisites:

a. Crime is committed while the ship is treading in:
    i. Philippine waters (interterritorial), or
    ii. The high seas (extraterritorial).
b. The ship or airship must not be within the territorial jurisdiction of another Country.
c. The ship or airship must be registered in the Philippines under Philippine laws [US v. Fowler, G.R. No. 496 (1902)].

Note:

- Even if totally or wholly owned by a Filipino citizen, if it is not registered in the Philippines, it cannot be considered as a Philippine ship or airship.
- A person who commits an offense on board a Philippine ship or airship while the same is outside Philippine territory can be tried by our courts. The ship or airship must be in international waters.
- But when the Philippine vessel or aircraft is in the territory of a foreign country, the crime committed on the said vessel or aircraft is subject to the laws of that foreign country, because it is an extension of the territory of the country to which the ship belongs.

Foreign Merchant Vessel

The Philippines observes the English Rule.

Foreign Warships

The nationality of such warship determines the applicable penal laws to crimes committed therein; considered to be an extension of the territory of the country to which they belong.

There are two fundamental rules in International Law regarding crimes committed aboard a foreign merchant vessel (not military vessel), if the same is within the 12-mile territorial water of the Philippines (not internal or archipelagic water or high seas), to wit:

1. **French Rule** (Flag State Principle) - Under the French Rule, crimes committed aboard foreign merchant vessels within the territorial waters of the Philippines are subject to the jurisdiction of the flag state unless their commission affects the peace and security of our country of another country are not triable in the country unless it affects peace and security of the territory. (**Ex.** smoking opium)

2. **English Rule** (Coastal State Principle) - Under the English Rule, crimes committed aboard foreign merchant vessels within the territorial waters of the Philippines (coastal State) are subject to the jurisdiction of the Philippines unless their commission does not affect the peace and security of our country, or has no pernicious effect therein.

Comments:
The Philippines adopts the English Rule. Though technically different in application, both the English and French rules may bring the same result. The French nationality rule and English territoriality rule apply only if the vessel is a merchant vessel, not when the vessel is a warship.

You will only apply the English and French Rules in a conflict of laws situation, meaning, both countries have laws punishing the act. If there is no conflict situation, there is no need to apply the English and French Rules.

Example:
if the merchant vessel is Philippine- registered and it is in a territory that does not punish the possession of recreational marijuana (like Los Angeles, USA), and someone onboard is carrying marijuana, while it may not be punishable in LA, it is still punishable as a crime because the merchant vessel is an extension of the Philippines. There is no need to consider local laws in LA because, in the first place, the possession of marijuana for recreational use does not affect it as it does not punish it as a crime.

Difference between jurisdiction of Merchant Vessels and Foreign Warships Merchant Vessels (applying English Rule)
Acts committed on a merchant vessel within the territorial limits of the Philippines are subject to Philippine penal laws if they breach public order [People v. Wong Cheng, G.R. No. L-18924 (1922)] and local courts are not deprived of jurisdiction over offenses on board a merchant vessel if they disturb the order of the country [US v. Bull, G.R. No. L-5270 (1910)].

Foreign Warships are reputed to be the territory of the country to which they belong and are not subject to the laws of another state [US v. Fowler, G.R. No. L-496 (1902)].

- Nationality of Vessel – determined by the country of registry and not its ownership.
- **Example:** A Filipino-owned vessel registered in China must fly the Chinese flag.

Forging/Counterfeiting of Coins or Currency Notes in the Philippines [Art. 2 (2), RPC]

Forgery
Committed by giving a treasury or bank note or any instrument payable to bearer or to order the appearance of a true genuine document or by erasing, substituting, counterfeiting or altering, by any means, the figures, letters, words, or signs contained therein [Art. 169, RPC].

Introduction of Forged/Counterfeited Obligations and Securities in the Country [Art. 2 (3), RPC]

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

Rationale
Introduction of those in no. 2 is just as dangerous as forging the same, to the economic interest of the country. To maintain and preserve the financial credit stability of the state.

When Public Officers or Employees Commit an Offense in the Exercise of their Functions [Art. 2 (4), RPC]

Offense committed by a public officer abroad must refer to the discharge of one's functions.

Crimes committed in the exercise of their functions

a. Direct bribery [Art. 210]
b. Qualified Bribery [Art. 211-A]
c. Indirect bribery [Art. 211]
d. Corruption [Art. 212]
e. Frauds against the public treasury [Art. 213]
f. Possession of prohibited interest [Art. 216]
g. Malversation of public funds or property [Art. 217]
h. Failure to render accounts [Art. 218]
i. Illegal use of public funds or property [Art. 220]
j. Failure to make delivery of public funds or property [Art. 221]
k. Falsification by a public officer or employee by abuse of his official position [Art. 171]
l. Crimes committed in relation to the performance of a public officer or employee of his/her duties in a foreign country.

Embassy
A crime committed within the grounds of a Philippine embassy on foreign soil shall be subject to Philippine penal laws, although it may or may not have been committed by a public officer in relation to one's official duties.

Embassy grounds are considered as extensions of the sovereignty of the country occupying them [Minucher v. Court of Appeals, G.R. No. 142396 (1992)].

Crimes against National Security and the Law of Nations [Art. 2 (5), RPC]

Crimes against national security

a. Treason [Art. 114]
b. Conspiracy and proposal to commit treason [Art. 115]
c. Misprision of treason [Art. 116]
d. Espionage [Art. 117]
e. Terrorism [R.A. 9372]

Crimes against the law of nations

a. Inciting to war or giving motives for reprisals [Art.118]
b. Violation of neutrality [Art. 119]
c. Correspondence with hostile country [Art. 120]

d. Flight to enemy's country [Art.121]
e. Piracy in general and mutiny on the high seas or in Philippine waters [Art. 122]
f. Terrorism [R.A. 9372]

Note: Crimes against public order (e.g., rebellion, coup d'etat, sedition) committed abroad is under the jurisdiction of the host country.

People v Tulin

Piracy falls under Title One of Book Two of the Revised Penal Code. As such, it is an exception to the rule on territoriality in criminal law. It is likewise, well-settled that regardless of the law penalizing the same, piracy is a reprehensible crime against the whole world. Although the crime of piracy was committed in the domestic waters of Singapore, the Philippine laws were applied because piracy has been declared by the United Nations as a **crime against humanity**, a crime against the law of nations, which can be prosecuted anywhere.

Rational
To safeguard the existence of the state.

However, when the rebellion, coup d'état and sedition are committed abroad, the Philippine courts will not have jurisdiction because these are crimes against public order.

XPN to XPN: Penal laws are not applicable within or without Philippine territory if so provided in treaties and laws of preferential application.

Anti-Terrorism Act of 2020
Repealed the Human Security Act of 2007. Sec. 49 of the Anti-Terror Law now provides that extraterritoriality shall apply to [OTSECG]:

a. **Filipino Citizens or Nationals**

Who commit any of the acts defined and penalized under Sec. 4–12 of this Act Outside the territorial jurisdiction of the Philippines;

b. **Individual Persons, although physically outside the territorial limits of the Philippines** – who commit any of the said crimes:
   i. Inside the **T**erritorial limits of the Philippines;
   ii. On board Philippine **S**hip or Philippine airship;
   iii. Within any **E**mbassy, consulate, or premises belonging to or occupied by the Philippine government in an official capacity;
   iv. Against Philippine **C**itizens or persons of Philippine descent, where their citizenship or ethnicity was a factor in the commission of the crime; and
   v. Directly against the Philippine **G**overnment.

Specific Rule for Aliens:
If the individual who committed said crimes outside the territorial limits of the Philippines is neither a citizen nor a national, the Philippines shall exercise jurisdiction only when such individual enters or is inside the territory of the Philippines.

In the absence of any request for extradition or denial thereof, from the State where the crime was committed or where such alien was a citizen or national, the Anti-Terrorism Council (ATC) shall refer the case to the:

a. Bureau of Immigration (BI) for deportation; or
b. Department of Justice (DOJ) for prosecution ...in the same manner as if the act constituting the offense had been committed in the Philippines [Sec. 49, RA No. 11479].

Venue

GR: For the purpose of venue, the place of the commission of the criminal act, and the place of occurrence of the effect of such act, which is an element of the crime, shall be considered.

Illustration:
If one pulled the trigger of his gun in Quezon City and hit the victim in Manila who died as a consequence, Quezon City and Manila, which are the places of commission of the criminal act and the occurrence of the criminal effect, are proper venues.

AAA v. BBB, G.R. No. 212448 (2018)

If the psychological violence consisting of marital infidelity punishable under R.A. No. 9262 is committed in a foreign land but the psychological effect occurred in the Philippines since the wife and the children of the offender, who suffered mental anguish, are residing in the Philippines, our court can assume jurisdiction.

XPN: The commission of the criminal act consummates the crime and the effect thereof is not an element of the crime, the place of occurrence of the effect shall not be considered for purpose of venue and territoriality principle.

Special Laws

The territoriality principle and extraterritoriality principle in Article 2 of the Revised Penal Code are applicable even if the crime is punishable under special laws.

Thus, Article 2 on territoriality is applicable to VAWC (AAA v. BBB, G.R. No. 212448, January 11, 2018) while that on extraterritoriality applies to piracy under P.D. No. 532 (People v. Tulin, G.R. No. 111709, August 30, 2001), or plunder under R.A. No. 7080.

However, Article 2 of the Code is not applicable to trafficking in persons, terrorism, conspiracy to commit terrorism, financing of terrorism, and conspiracy to commit financing of terrorism because the laws that punish them have specific provisions for extraterritorial rule.

c) Prospectivity

No felony shall be punishable by any penalty not prescribed by law prior to its commission [Art. 21, RPC].

Without prejudice to Art. 22, felonies and misdemeanors, committed prior to the effectivity of the RPC, shall be punished in accordance with the Code or Acts in force at the time of their commission [Art. 366, RPC].

GR: The rule of non-retroactivity applies.

XPN: If favorable to the offender, the law will have a retroactive effect.

XPN to XPN:

1. The offender is a habitual delinquent; and
2. The law otherwise provides.

Ex. The Indeterminate Sentence Law is favorable to the accused. However, it shall be given a prospective effect because the law says so.

Effects of REPEAL of penal law

a. If new penal law has lighter penalty, new penal law applied retroactively, except if accused is a habitual delinquent
b. If new law carries a heavier penalty, the old law in force at the time of commission of offense shall be applied. In other words, always apply penal law which is favorable to the accused.

CONSTITUTIONAL LIMITS ON CRIMINAL LAW

1. **Equal Protection Clause**

2. **Ex-post facto law** (Art. III, Sec. 22)

   A law that makes illegal an act that was legal when committed, increases the penalties for an infraction after it has been committed, or changes the rules of evidence to make conviction easier.

3. **Due process** (Art. III, Sec. 14 [1])

4. **Bill of Attainder**

   A legislative act which inflicts punishment without trial.

5. **Non-imposition of cruel and unusual punishment or excessive fine**

3. PRO REO PRINCIPLE

Pro-reo Doctrine

In dubio pro reo literally means "when in doubt, for the accused." (People v. Ong, G.R. No. 175940, 2008)

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

4. EX POST FACTO LAW

(MACARD)

1. **Makes** criminal an act done before the passage of the law and which was innocent when done, and punishes such an act;
2. **Aggravates** a crime, or makes it greater than it was, when committed;
3. **Changes** the punishment and inflicts a greater punishment than the law annexed to the crime when committed;
4. **Alters** the legal rules of evidence, and authorized conviction upon less or different testimony than the law required at the time of the commission of the offense;
5. Assumes to **Regulate** civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful; and
6. **Deprives** a person accused of a crime some lawful protection to which he has become entitled (e.g. protection of a former conviction or acquittal, proclamation of amnesty); and
7. Waiver of the rights of the accused.

Two Tests of Ex Post Facto Law

a. Prejudicial to accused
b. Retroactive effect

5. INTERPRETATION OF PENAL LAWS

In case of any doubt, the following rules apply:

1. **Penal laws are construed against the government and liberally in favor of the accused**.

2. **Equipoise Doctrine**
   When the evidence of the prosecution and the defense are equally balanced, the scale should be tilted in favor of the accused, according to the constitutional presumption of innocence [Tin v. People, G.R. No. 126480 (2001)].

3. **Spanish Text of the RPC Prevails over its English Translation**
   In the construction or interpretation of the provision of the RPC, the Spanish text is controlling, because it was approved by the Philippine Legislature in its Spanish text [People v. Manaba, G.R. No. L-38725 (1933)].

4. **Repeal may be express or implied**

5. **No interpretation by analogy.**

Application of the Revised Penal Code

GR: Offenses punishable under special laws are not subject to the provisions of Book One of the Revised Penal Code (Article 10).

XPNs:

(1) if the latter expressly says so.

Example:

a. R.A. No. 9165 on crimes involving dangerous drug committed by a minor;
b. R.A. No. 9372 on terrorism;
c. R.A. No. 10168 on financing of terrorism;
d. R.A. No. 9262 on violence against women;
e. R.A. No. 9775 on child pornography;
f. R.A. No. 97 45 on torture; and
g. R.A. No. 7080 on plunder.

(2) in a supplementary manner.

Requisites:

1. The special law is deficient on the rule needed to resolve a particular issue;
2. The special law does not specifically prohibit the application of the provisions of the Code.

6. RETROACTIVE EFFECT OF PENAL LAWS

GR: No felony shall be punishable by any penalty not prescribed by law prior to its commission [Art. 21, RPC].

XPN: Insofar as they favor the person guilty of a felony although at the time of the publication of such laws, a final sentence has been pronounced and the convict is serving the same [Art. 22, RPC].

XPN to the XPN:

1. The new law is expressly made inapplicable to pending actions or existing cause of actions; and
2. The offender is a habitual criminal.

Rationale:

The punishability of an act must be reasonably known for the guidance of society. [People v. Jabinal, G.R. No. L-300661 (1974)].

Note: Be it procedural, substantive, or remedial for as long as the law is favorable to the accused, the law must be given a retroactive application. (People vs. Ramirez)

Effects of Repeal on Penal Law

1. If the repeal makes the penalty lighter to accused, the new law shall be applied.

2. If the new law imposes a heavier penalty, the old law shall be applied.

   When the new law and the old law penalize the same offense, the offender can be tried under the old law if the old law imposes a lighter penalty.

3. If the new law totally repeals the existing law, the crime is obliterated.

   This will release people who are currently serving sentences under the old crime. When the repealing law fails to penalize the offense under the old law, the accused cannot be convicted under the new law.

4. If repeal is implied, there MAY BE criminal liability.

5. If repeal is by reenactment, even without saving clause, or a repeal by implication, it would not destroy criminal liability; and

6. A person erroneously accused and convicted under a repealed statute may be punished under the repealing statute, provided the accused had an opportunity to defend himself against the charge.

Summary on Repeal

	Absolute/Total Repeal	**Partial/Relative Repeal**
Nature of Repeal	Crime punished by repealed law is decriminalized/ no longer punishable, so it is obliterated. Example: When the repealing law fails to penalize the offense under the old law.	Crime punished under the repealed law continues to be a crime.

Effect as to Pending Cases	Pending cases are dismissed and unserved penalties are remitted.	If repeal is favorable to the accused, repealing law must be applied except when reservation in the law states it does not apply to pending cases.
Effect when Sentence is Already Being Served	Offenders are entitled to release.	The more lenient law must be applied except when: (1) reservation exists in law; or (2) when offender is a habitual criminal.

Effects of Amendment:

Amendment	Effect
Makes penalty lighter	New law applies (see Exception above)
Makes penalty heavier	Law in force at the time of commission of the offense applies
Increases fine but decreases penalty of imprisonment	Not ex post facto, so law and penalty is retroactively applied [Cruz]

B. FELONIES

1. CRIMINAL LIABILITIES AND FELONIES

Article 3. Definitions. - Acts and omissions punishable by law are felonies (delitos).

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

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

Felonies
Felonies are acts and omissions punishable by the Revised Penal Code.

3 Elements of Felonies: (AO-P-DC)

1. There must be an **Act**; or **Omission**;
2. The act or omission must be **Punishable** by the RPC; and
3. The act is performed or the omission incurred by means of **Dolo** or **Culpa**.

Note: A criminal act is presumed voluntary. In the absence of indubitable explanation, the act must be declared voluntary and punishable

Act
Act means any bodily movement tending to produce some effect in the external world; the possibility of its production is sufficient. It must be at least an overt act of that felony, that is, an external act which has direct connection with the felony intended to be committed.

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

Dolo
For one to be criminally liable for a felony by dolo, there must be a confluence of both an evil act and an evil intent. Actus non facit reum, nisi mens sit rea. (Manuel v. People, Nov. 29, 2005)

Culpa
In Ivler vs. Modesto-San Pedro, Nov. 10, 2010, the Court explained that criminal negligence in our RPC is treated as a mere quasi-offense, and dealt with separately from willful offenses. It is not merely a modality of committing the crime, but is an offense (quasi-offense) in itself. (Sevilla vs. People, G.R. 194390, Aug. 13, 2014)

Art 365 of the RPC defines imprudence and provides for the penalty. When an act or omission is defined and a penalty is provided therefore, it is a crime in itself.

Culpa is a mode/means AND a crime in itself with its own definition, elements, and penalty; whereas dolo is only a mode/means of committing the crime.

> In cupla, we are charging the offender for the result, so the crime will not be "Homicide Through Reckless Imprudence" but rather "Reckless Imprudence Resulting in Homicide." The penalty will not be for the homicide, it will be for the imprudence.

Note: There is dolo if the criminal act is done freely, intelligently, and intentionally while there is culpa if the criminal act is done freely, intelligently, and negligently.

CASE STUDY

Juan was driving home from a party after taking a few drinks and was cruising along SRP when he lost control of the vehicle, turned over and crossed the separating island to the other lane and hit a truck coming from the opposite direction. Pedro, the truck driver, was driving with due care on his proper lane, but the collision caused the death of Juan, so Pedro was arrested. What crime did Pedro commit, if any?

Dolo - was there an evil act and an evil intent? Culpa - was the injury or damage the result of imprudence? Negligence? Lack of foresight? Lack of skill?

There was no crime committed. There was neither intent nor culpa. As such, it is in the nature of a pure accident, which, under Art. 12 constitutes an exempting circumstance.

Q: Can 2 persons be held liable for the same act, one for dolo and the other for culpa?

Pp. vs. Pugay, G.R. No. 74824 (1988)
Pugay doused the victim with gasoline as part of their fun-making. Later, Samson arrived and lit the victim's clothes. Victim burned and died.

Pugay, the one who poured gasoline, is only liable for reckless imprudence resulting in homicide (culpa) as act was committed with lack of foresight.

Samson is liable for intentional homicide (dolo) because he lit the match despite knowledge that the victim's clothes were already soaking in gasoline. Intent to kill is already presumed because the crime was consummated.

No conspiracy was found; thus, each actor is liable for his own individual act.

Lamera vs. CA (1991)

Lamera was charged in 2 Informations: 1 for culpa under Art. 365 and another for the dolo or intentional felony of abandoning a person in danger punished under Art. 275.

There was no double jeopardy as the 2 crimes do not have identical elements. The abandonment under Art. 275 is the felony itself, while that under Art. 365 is only an aggravating circumstance.

The injuries were inflicted by negligence (Art. 365), but when the driver abandoned the victim, the abandonment was not anymore negligent but intentional. (Art. 275).

Sevilla v. People, GR 194390 (2014)

Sevilla ticked the "No" box in his Personal Data Sheet (PDS) on whether he has a pending criminal case, and was sued for the intentional crime of Falsification of Official Document under Art. 171. He argued that he did not intend to falsify his PDS; rather, a member of his staff prepared his PDS.

He was convicted under Art. 365 for culpa, even if he was charged for an intentional felony, as the elements in Art. 171 as charged include the elements in Art. 365 as basis for conviction.

Reckless imprudence resulting to falsification (Art. 365) of public documents is an offense that is necessarily included in the willful act of falsification of public documents (Art. 171), the latter being the greater offense. As such, he can be convicted of reckless imprudence resulting to falsification of public documents notwithstanding that the Information only charged the willful act of falsification of public documents.

Note the reverse is not true.

Q: Can the crime of Attempted Homicide be committed through reckless imprudence?

No, because there must be intent to kill, which is inconsistent with reckless imprudence.

Q: Can the crime of Theft be committed through reckless imprudence?

No, because the crime of theft requires a specific criminal intent (intent to gain).

Q: Can the crime of Malversation be committed through reckless imprudence?

Yes, what is important in malversation is the nature of the funds. Thus, when an accountable officer (treasurer) leaves public funds with a friend who absconded with the money, you are guilty of malversation because intent to misappropriate is not an element in malversation. It may be an element in estafa, but not in malversation.

DISCERNMENT

- Discernment is the ability to distinguish between right and wrong, the capacity to comprehend the consequence of an act.
- Discernment determines criminal responsibility.

Q: Can a minor over 15 but below 18 be held liable for homicide committed through reckless imprudence?

Here, the homicide was not committed through dolo, but through culpa. Thus, because it was committed through culpa, we do not look at intent.

We only talk about intent if the crime was committed through dolo. When the crime is committed through dolo, intent is an element.

However, the specific criminal intent which is "intent to kill" is very necessary where the homicide or parricide or murder or infanticide is only in its attempted or frustrated stage. That is why the crime of Attempted/Frustrated Homicide CANNOT be committed through reckless imprudence because there must be intent to kill, which is inconsistent with reckless imprudence.

That being said, to answer the question, a minor over 15 can be liable for reckless imprudence resulting in homicide because it is possible that he acted with discernment but without intent. Those two are not inconsistent.

MOTIVE

- Motive is the reason or compelling force why the accused committed the acts complained of. While intent is the purpose of the accused in using a particular means to effect such result.
- Motive is not an element of a crime; criminal intent may be an element (e.g. intent to kill, intent to gain)

Intent	Motive
The purpose to use a particular means to effect such a result;	The reason which impels one to commit an act for a definite result
An element of a crime.	Not an element of a crime.

Q: When is proof of motive essential?

1. When there is doubt to the identity of the accused.
    a. There are two antagonistic theories or versions of the story.
    b. There are no eyewitnesses to the crime, where suspicion is likely to fall upon a number of persons.
    c. If the evidence is merely circumstantial.

d. Motive determines the identity of the offender, not the nature of the crime.

2. To determine voluntariness of the act, or whether the act was intentional or accidental.

3. To determine the aggressor, where the accused invoked self-defense, or defense of a stranger.

4. To determine the specific nature of the crime, i.e., murder in furtherance of rebellion.

People v Temblor

In this case, SC affirmed accused Temblor's conviction and held that proof of motive is not essential in light of positive identification of accused who actually saw the witness shot by Accused Temblor. Motive is not an essential element of the crime, and if one tries to prove the guilt of the accused through mere circumstantial evidence.

KINDS OF CRIMINAL INTENT

1. **General criminal intent**

   Dolo is the general intent which is an essential element of every intentional felony. The general criminal intent (malice) is presumed from the criminal act, and the absence of any general intent must be proven by the accused. However, if the crime is a culpable felony, there are only two elements, to wit: the criminal act and culpa.

2. **Specific criminal intent**

   Specific intent is either expressed or implied. Generally, a specific intent is not presumed. Its existence, as a matter of fact, must be proven by the State just as any other essential element.

   When specific criminal intent is a requisite in a crime, that intent must be alleged in the Information (or charge sheet) and proven by evidence. It cannot be presumed. (De Guzman vs. People)

   This must be proven by direct or circumstantial evidence (Rivera et al vs. People, Jan. 25, 2006)

   The presence or absence of the requisite specific criminal intent (e.g., intent to kill; intent to gain) will change the nature and gravity of the crime.

Proof of intent is necessary to determine what crime is committed

Intent to Kill

Proof of intent to kill may consist in:

- the means used,
- the nature, location and number of wounds,
- the conduct of the malefactors before, at the time, or immediately after the killing of the victim,
- the circumstances under which the crime was committed and
- the motives of the accused.

If the victim dies as a result of a deliberate act, intent to kill is presumed. (People vs. Delim, Jan. 28, 2003.)

Example:
Juan punched Pedro, but instead of sustaining injuries, Pedro died. Here, intent to kill is presumed, so Juan is liable for homicide.

But, if Pedro did not die, then he cannot be liable for attempted homicide because of the lack of intent to kill.

US v. Ah. Chong, G.R. No. L-5272 (1910)

The accused was acquitted because of mistake of fact principle even though the evidence had shown that he attacked the deceased with intent to kill.

Art 249 of RPC (homicide) should be read in relation to Article 3 (dolo). The accused was acquitted not because of the absence of intent to kill (specific intent) but by reason of lack of general intent (dolo or malice).

Intent to Gain

In the following crimes intent to gain is necessary:

- Theft
- Robbery
- Qualified Theft

Example:
A bag was left in the classroom and Juan took the bag to the law office for safekeeping. In order for there to be theft here, there must be specific intent to gain.

Note: To consummate the crime, what is important is the commission of the criminal act by means of the required mode) with the general and specific criminal intent.

VOLUNTARINESS

- Voluntariness, which requires freedom and intelligence, is an essential element of crime.
- In addition to voluntariness, intentional felony must be committed with dolo (malice), culpable felony with culpa, and malum prohibitum under special law with intent to perpetrate the act or with specific intent (such as animus possidendi in illegal possession of firearm).
- ***Ex.*** A kidnapped victim who was forced by the kidnappers to drive a car at 120 km/ hour, and as a consequence, hit another car, cannot be held liable

for reckless imprudence resulting in damage to property because of lack of freedom.

PROXIMATE CAUSE

- Proximate Cause is that cause which, in the natural and continuous sequence, unbroken by any efficient intervening cause, produces the injury and without which the result could not have occurred (Bataclan vs. Medina, 102 Phil. 181)
- Two things that we need to remember:
  (1) There is injury, and
  (2) the injury was the result of that act.
- There must be a relation of "cause and effect", the cause being the felonious act of the offender, and the effect being the resultant injury.
- There must be a connection. Without the connection, the result cannot be attributed to the act. There must be a natural and continuous sequence, unbroken by intervening cause.

The felony committed is not the proximate cause of the resulting injury when:

1. There is an active force that intervened between the felony and the injury, and the active force is a distinct act or fact absolutely foreign from the act of the accused;
2. The injury is due to the intentional act of the victim.

PROXIMATE LEGAL CAUSE

More comprehensively, proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probably result therefrom. (Ramos v. COL Realty, GR 184905, Aug. 28, 2009)

Fiscal: It need not be a direct cause but a logical cause. Example, Juan pushed Pedro into a highway. We said that Juan would be liable because his act started the chain of events being killed so although Jose also contributed with his negligence of speeding, it's not as if, it is not to be expected that when you push someone into a busy street, he will be fine. So, his act of pushing is also part of the proximate cause so he will also be held to account for his actions. It need not be the direct cause. See, in the case of the pushing. But, it is still the logical and natural consequence.

Illustration: Accused who used a deadly weapon putting the other's life in jeopardy and death follows is liable for said death. *(People v Likiran)*

Sole Proximate Cause v. Contributory Negligence

- "We find it unnecessary to delve into the issue of Rodel's contributory negligence, since it cannot overcome or defeat Aquilino's recklessness which is the immediate and proximate cause of the accident." (Ramos v. COL Realty, Aug. 28, 2009)

- In Civil Law and torts (Art. 2179, NCC), there is the concept of contributory negligence that when a person who suffered damage contributed to the negligence, then the liability of the other would be minimized or mitigated.

- In criminal law, there is no contributory negligence. So, the only thing that matters is to find out who committed the act complained of.

Gelig vs. People (2010)

The accused was charged with the ordinary complex crime of Direct Assault with Unintentional Abortion for attacking a pregnant co-teacher that resulted in her abortion.

SC found her liable for Direct Assault, but NOT for Unintentional Abortion as there was no evidence to prove it was a direct result of the attack. (There was a time lapse of more than a month.) The attack was not the proximate cause.

Dinamling v. PP, GR 19952 (2015)

Accused was charged with violation of Sec. 5 (i), RA 9262 for Psychological Abuse. Victim alleged that she was repeatedly hit, humiliated, and abused by the accused and had unintentional abortion. Accused alleged that victim's abortion and other injuries were not proven to be caused by accused.

That it was not proven that the abortion was caused by any injury inflicted by the accused is of no moment. The charge is for psychological abuse, and unless the allegation is that the injuries were the cause of the psychological affect, it has no bearing. Not the proximate cause.

Ramos v COL Realty

More comprehensively, proximate legal cause is that acting first and producing the injury, either immediately or by setting other events in motion, all constituting a natural and continuous chain of events, each having a close causal connection with its immediate predecessor, the final event in the chain immediately effecting the injury as a natural and probable result of the cause which first acted, under such circumstances that the person responsible for the first event should, as an ordinary prudent and intelligent person, have reasonable ground to expect at the moment of his act or default that an injury to some person might probablv

result therefrom.

Fiscal: Can a person be held liable for contributory negligence?

In Ramos v Col Realty, both parties were negligent. If this were a civil case, then since they are both negligent, both of them will be liable to the extent of the negligence. But this is not a civil case, this is a criminal case, and **in a criminal case, there is no such thing as contributory negligence.** So, the one who will be liable is the one who committed the proximate cause. *We do not talk about contributory negligence in criminal case.* That is only a thing in civil cases for the purpose of determining damages. But, for criminal liability, we talk about proximate cause.

a) Classification of Felonies

Classification of Felonies

1. Intentional Felonies
2. Culpable Felonies
3. Those punished by Special Laws

Intentional Felonies

Intentional Felonies

In intentional felonies, the act or omission of the offender is malicious. The act is performed with deliberate intent. The offender, in performing the act or in incurring the omission, has the intention to cause an injury to another.

Requisite

1. Freedom
2. Intelligence
3. Intent

Freedom

A person who acts under the compulsion of an irresistible force, and an uncontrollable fear of an equal or greater injury is exempt from criminal liability.

Intelligence

It is the moral capacity to determine what is right from what is wrong and to realize the consequences of one's acts.

Factors that negate intelligence: minority, insanity, imbecility.

Intent

Intent is a mental state, the existence of which is shown by the overt acts of a person. If there is no intent, there is no felony committed by dolo, but a felony may still exist if culpa is present.

Culpable Felonies

Culpable Felonies

In culpable felonies, the act or omission of the offender is not malicious. The injury caused by the offender to another person is "unintentional, it being simply the incident of another act performed without malice."

Requisites

1. Freedom
2. Intelligence
3. Imprudence, negligence, or lack of foresight or lack of skill.

Imprudence

Imprudence indicates a deficiency of action. It usually involves lack of skill.

> **Ex.** A person fails to take the necessary precaution to avoid injury to person or damage to property.

Negligence

Negligence indicates a deficiency of perception. It usually involves lack of foresight.

> **Ex.** A person fails to pay proper attention and to use diligence in foreseeing the injury or damage impending to be caused.

Those Punished by Special Laws

Those punished by Special Laws

The third class of crimes, are those defined and penalized by special laws, which include crimes punished by municipal or city ordinances. When the crime is punished by a special law, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law.

According to Gravity

Classification of Felonies According to Gravity

1. Light felonies (Art. 7, RPC)
2. Less Grave Felonies (Art. 9, RPC)
3. Grave Felonies (Art. 9, RPC)

Classification According to Penalties [Art. 9]:

1. Grave
2. Less Grave, and
3. Light Felonies

Importance of Classification is to Determine:

1. Whether these felonies can be complexed;
2. The prescription of the crime and of the penalty; and
3. The duration of subsidiary penalty to be imposed.

Grave Felonies

Art. 9. Grave felonies, less grave felonies, and light felonies. — Grave felonies are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive, in accordance with Article 25 of the Code.

Less grave felonies are those which the law punishes with penalties which in their maximum period are correctional, in accordance with the above-mentioned article.

Light felonies are those infraction of law for the commission of which the penalty of arresto menor or a fine not exceeding Forty thousand pesos (P40,000), or both, is provided.

Grave Felonies
Punishable by reclusion perpetua, reclusion temporal, perpetual or temporary absolute disqualification, perpetual or temporary special disqualification and prision mayor.

Those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive. It includes those punishable by:

1. Reclusion perpetua
2. Reclusion temporal
3. Perpetual or Absolute Disqualification
4. Perpetual or Temporary Special Disqualification
5. Prision mayor
6. Fine more than ₱1,200,000.00

Less Grave Felonies

Less Grave Felonies
Punishable by prision correccional, arresto mayor, suspension and destierro.

Those which the law punishes with penalties which in their maximum period are correctional. It includes those punishable by:

1. Prision correccional
2. Arresto mayor
3. Suspension
4. Destierro
5. Fine not exceeding ₱1,200,000 but is not less than ₱40,000

Light Felonies

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

Light Felonies
Light Felonies are those infractions of law for the commission of which the penalty of arresto menor or a fine not exceeding 40,000 pesos or both, is provided.

Light felonies are punishable only when they have been consummated. They produce such light, such insignificant moral and material injuries that public conscience is satisfied with providing a light penalty for their consummation.

[Art. 7]
It includes those punishable by:

1. Arresto menor; or
2. Fine not exceeding ₱40,000; or
3. Both of the above

When Punishable
GR: Only when consummated.

XPN: If it involves crimes committed against persons or property.

Who are Punished
Principals and accomplices only [Art. 16, RPC].

Examples of Light Felonies [MATHS]:

1. Malicious mischief when the value of the damage does not exceed ₱40,000 or cannot be estimated [Art. 328, RPC, as amended by R.A. 10951]
2. Alteration of boundary marks
3. Theft when the value of the thing stolen is less than ₱500 and theft is committed under the circumstances enumerated under Art. 308 (3) [Art. 309, (7) and (8), RPC, as amended by R.A. 10951]
4. Intriguing against Honor
5. Slight physical injuries

Reconciling Discrepancy in Treatment of a Fine Amounting to Exactly ₱40,000

- **Art. 9 in re: Art. 25** - light felony; use this article in determining prescription of crimes.
- **Art. 26** - correctional penalty; use this article **in determining prescription of penalty.**

Mistake of Fact

Mistake of Fact
Ignorance or mistake of fact relieves the accused from criminal liability. Mistake of fact is a misapprehension of fact on the part of the person who caused injury to another. He is not criminally liable, because he did not act with criminal intent.

Mistake of fact may negate specific element of a crime, or dolo or may be a source of mitigating circumstance.

It is different from a mistake in the identity of the victim because here criminal intent is present. To constitute Mistake of Fact, there must also be no negligence. If there is in ascertaining the facts, it will not be imprudence, it will be Art. 4, par (1).

Requisites:

1. The act done would have been lawful had the act been as the accused believed them to be;

2. The mistake of fact was not due to negligence, bad faith, or unlawful intent of the accused (accused must have no opportunity to verify his mistake);

3. The mistake is not accompanied with criminal intent of the offender.

Lack of intent to kill the deceased, because his intention was to kill another, does not relieve the accused from criminal responsibility.

Negating Specific Element

Gaviola v. People, G.R. No. 163927 (2006)

The gist of theft is the intent to deprive another of his personal property for gain. This cannot be where the taker honestly believes the property is his own or that of another, and that he has the right to take possession of it for himself or for another, for the protection of the latter. However, the belief of the accused of his ownership over the property must be honest and in good faith and not a mere sham or pretense. If free claim is dishonest, a mere pretense, taking the property of another will not protect the taker.

This belief of ownership as a defense in theft is in accordance with the mistake of fact doctrine.

Negating Dolo

The Supreme Court in several cases had applied the "mistake of fact" doctrine, which allowed the accused, who committed a crime on a mistaken belief, in the following:

Self Defense

People v. Cervera, G.R. No. 206725 (2018)

The accused, who believed that the victim was a robber and that his life was in danger because of the commencement of unlawful aggression against him, was acquitted due to mistake of fact doctrine in relation to the rule on self-defense.

Performance of Duty

People v. Geruero, G.R. No. 206725 (2018)

Police authorities, who manned a checkpoint because of an information that there were armed rebels on board a vehicle, have the duty to validate the information, to identify them, and to make a bloodless arrest unless they were placed in real mortal danger.

If they shot the suspected vehicle, which did not stop after having been flagged down, and killed the occupants therein who turned out to be unarmed civilians, they are liable for multiple homicides. The mistake of fact principle is not applicable since there is negligence or bad faith on their part.

Irresistible Force

Mistake of fact principle can also be applied in relation to circumstance of lack of voluntariness such as irresistible force or uncontrollable fear

Ex. "A‟ poked something at "B" and threatened to shoot him if he will not shoot the dog. Honestly believing that his life is in danger, "B" shot the dog not knowing that "A" was merely poking a stick at him. "B" is not liable for malicious mischief because of the mistake of fact principle. "B" would have been exempt from criminal liability had the existence of irresistible force been as the accused believed it to be.

b) Elements of Criminal Liability

Article 4. Criminal liability. - Criminal liability shall be incurred:

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

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

Criminal Liability exists:

If a man creates in another person's mind an immediate sense of danger, which causes such person to try to escape, and in so doing, the latter injures himself, the man who creates such a state of mind is responsible for the resulting injuries; (People v. Page, G.R. No. L-37505, 1977).

Elements of Criminal Liability

1. An intentional felony has been committed.
2. The wrong done to the aggrieved party be the direct, natural and logical consequence of the felony committed by the offender.

How criminal liability is incurred:

1. By committing an intentional felony even if the wrong produced as a consequence thereof is not intended by the offender; and
2. By committing an impossible crime.

Article 4(1) of the Revised Penal Code is only applicable if the accused committed an intentional felony.

Suicide - Suicide is not an intentional felony; hence, a pregnant woman who attempted to commit suicide is not liable for abortion by reason of the consequent death of her fetus. But killing one's girlfriend in accordance with a suicide

pact constitutes the crime of assistance to suicide under Article 253 of the Revised Penal Code. This crime is committed by a person who lends his assistance to another to the extent of doing the killing himself.

Practicing Medicine Without License - Practicing medicine without license is an offense punishable under special law but it is not an intentional felony within the meaning of Article 4. Hence, a quack doctor, who killed his patient while treating him is only liable for reckless imprudence resulting in homicide. (People v. Carmen, G.R. No. 137268, March 26, 2001)

Carnapping - As a rule, Article 4 is only applicable if the act committed by the accused constitutes an intentional felony and not an offense under special law. However, there is an exception. The concept of carnapping under Section 3 of R.A. No. 10883 is the same as that of theft and robbery. (People v. Sia, G.R. No. 137457, November 21, 2001)

> **Article 4**. **Criminal Liability –** Criminal liability shall be incurred:
>
> By any person committing a felony (delito) although the wrongful act done be different from that which he intended.

Wrongful Act Different from that Intended is Punishable.

Rationale: El que es causa de la causa es causa del mal causado. "He who is the cause of the cause is the cause of the evil caused." The presumption is that a person intends the ordinary consequences of his voluntary act [People v. Toling, G.R. No. L-27097 (1975)].

One who commits an intentional felony is responsible for all the consequences which may naturally and logically result therefrom, whether foreseen or intended or not [People v. Herrera, G.R. Nos. 140557-58 (2001)].

Requisites [I-DC]:

1. An **I**ntentional felony has been committed.
2. The wrong done to the aggrieved party is the **D**irect, natural and logical **C**onsequence of the felony committed by the offender.

Proximate Cause

Proximate cause has been defined as that which, in natural and continuous sequence, unbroken by any efficient intervening cause, produces injury, and without which the result would not have occurred [Abrogar v. Cosmos Bottling Company and INTERGAMES, Inc., G.R. No. 164749 (2017)].

When not Considered as Proximate Cause:

1. There is an active force between the felony and resulting injury.
2. Resulting injury is due to the intentional act of victim.

When death is presumed to be the natural consequence of physical injuries inflicted:

1. The victim at the time of the physical injuries were inflicted was in normal health;
2. Death may be expected from the physical injuries inflicted; and
3. Death ensued within a reasonable time.

Efficient Intervening Cause

An intervening cause, to be considered efficient, must be "one not produced by a wrongful act or omission, but independent of it, and adequate to bring the injurious result." [Abrogar v. Cosmos Bottling Company and INTERGAMES, Inc, G.R. No. 164749 (2017)]

Effective Intervening Cause

An effective intervening cause interrupts the natural flow of events leading to one's death. It may relieve the offender from liability.

The 4-12-365 Rule

1. If the proximate cause of the death of the victim is a felony, e.g., physical injuries, threat or unjust vexation, the accused is liable for homicide because of Article 4.
2. If the proximate cause of the death of the victim is an act not constituting a felony, Article 4 is not applicable. In such a case, the accused is exempt from criminal liability because of the circumstance of accident under Article 12.
3. If the proximate cause of the death of the victim is a culpable act, Article 12 on accident is not applicable. Lack of culpa is an element of accident. In such a case, the accused is liable for reckless imprudence resulting in homicide under Article 365.

Situations where a person committing a felony is still criminally liable:

1. Error in personae: mistake in the identity of the victim;
2. Aberratio ictus: mistake in the blow;
3. Praeter intentionem: the injurious result is greater than that intended.

Error in Personae

Mistake in identity.

Error in personae or mistake in identity involves only one offended party but the offender committed a mistake in ascertaining the identity of the victim. (Boado, Compact Reviewer in Criminal Law)

A felony is intended, but there is a mistake in the identity of the victim; injuring one person mistaken for another.

In error in personae, unlike in aberration ictus, there are only two persons involved: the actual but unintended victim and the offender.

Here, it is possible that the crime intended is actually lesser

than the crime that results. The offender can only be made to answer for the resulting felony, not the intended one not actually committed, but it may be the used as a basis for the penalty.

Effects
The effect of error in personae depends on the variance between the intended crime and the actual crime committed.

- If there is variance between the penalty of the intended crime and the penalty of the actual crime committed, the lesser penalty between the two shall apply.

- If there is no variance between the penalty of the intended crime and the crime actually committed, then it will not affect the criminal liability of the offender.

  Example:
  There was a fight between Juan and A. In the course of the fight, A saw somebody running and thinking that was the enemy, he fired at the person. It turned out that the actual victim hit by the bullet was his own father. A did not intend to kill his father, so here the crime would not anymore be homicide, the crime would be parricide. The charges will be based on the actual crime, not on the intended crime. However, his penalty will be for homicide, which is the crime intended. Thus, although A would be convicted of the crime of parricide, the penalty will only be that of homicide, the crime with a lesser penalty (reclusion temporal for homicide). This situation is only true for error in personae and not for praeter intentionem.

Penalty
Penalty for lesser crime in its maximum period [Art. 49]

Aberratio Ictus

Mistake in blow.
In aberratio ictus or error in the victim of the blow, the offender intends the injury on one person but the harm fell on another.

When an offender intending to do an injury to one person actually inflicts it on another.

In aberratio ictus, there are three persons involved: the offender, the intended victim, and the actual victim. If the actual victim died, intent to kill is conclusively presumed. Hence, the crime committed against the third person, is homicide or murder. If the actual victim, merely suffered injuries, and there is intent to kill, the crime committed is attempted or frustrated homicide or murder. Intent to kill the third person can be established if the accused is aware of the possibility of hitting others in the process of killing the target victim.

If the third person merely suffered injuries, and there is no intent to kill, the crime committed against him is merely physical injuries.

The following circumstances negate intent to kill:
(1) the accused is not aware of the presence of the third person or there is no showing of such awareness;
(2) the victim was hiding (People v. Violin, G.R. Nos. 114003-06, January 14, 1997); or
(3) The accused did not kill the third person despite opportunity to do so. (People v. Anquillano, G.R. No. 72318, April 30, 1987)

Effects
Consequently, the act may result in an ordinary complex crime (Art. 48) or in two felonies (grave and less grave), although there is just a single intent. Note however that if one of the resulting crimes is a light felony, you cannot complex it and the crimes should be charged separately.

Example:
Juan, the perpetrator, shoots at A with intent to kill, but due to poor aim, hits B instead. Insofar as A is concerned, Juan is liable for attempted murder because he intended to kill A. He already performed an overt act when he fired the gun with intent to kill A. There was treachery because the victim was totally defenseless. However, because of poor aim, it was B who died. Insofar as B is concerned, Juan is liable for murder.

In the case of People v. Flora (G.R. No. 125909, June 23, 2000), the Supreme Court held that treachery is appreciated in Aberratio Ictus. The Flora doctrine was likewise adopted by the court in People v. Adriano (G.R. No. 205228, July 15, 2015).

There are two crimes committed, attempted murder against A and murder against B, but since the two crimes were brought about by a single act, it will give rise to an ordinary complex crime under Art. 48 when a single act constitutes two or more grave or less grave felonies. Thus, the crime to be charged against Juan is the ordinary complex crime of murder with attempted murder.

Penalty
Penalty for graver offense in its maximum period [Art. 48 on complex crimes

The 4-12-365 Rule
If the act, which caused injuries or death of a third person by reason of mistake of blow, is not an intentional felony, Article 4 on aberratio ictus shall not apply.

Illustration:
X prevented A from having a bloody encounter with his father. B tried to remove the hands of X, who was holding A. X pulled the hands of B causing her to fall

over C, her baby. Preventing A from having a bloody encounter with his father and pulling the hands of B are not intentional felonies. X is just exercising his right to defend his father. Hence, X is not criminally liable for the death of the baby. Article 4 on aberratio ictus is not applicable. X is exempt from criminal liability due to an accident under Article 12.

Praeter Intentionem

In praeter intentionem, the injury is on the intended victim but the resulting consequence is much graver than intended. (Boado, Compact Reviewer in Criminal Law)

No intention to commit a grave so wrong. Injury caused greater than that intended.

Praeter intentionem occurs when the consequence went beyond the intention or when the injurious result is greater than that intended. It is a situation wherein the offender directed the blow at his actual victim, and the victim received the blow, But the injurious result is far greater than what is intended.

Praeter intentionem is an **ordinary mitigating circumstance.** The fact that the perpetrator only intended to commit a lesser crime but resulted instead to a graver crime is an ordinary mitigating circumstance. To be considered as a mitigating circumstance, the prime element or requisite is that there must be a notable disparity between the means employed by the offender and the resulting felony.

Example:
Juan boxed Pedro. Pedro fell on the pavement and died. The intended crime was just physical injuries, but death occurred. In this case, since there was a consummated felony, the intent to kill is not anymore necessary because it is already presumed. The mitigating circumstance should also be applied because no one could have foreseen that by the mere act of boxing Pedro, death would result. There was a notable disparity between the means employed, the act of boxing Pedro, and the resulting death. Therefore, he should be given the benefit of mitigating circumstance.

Penalty
Mitigating circumstance of not intending to commit a grave so wrong [Art. 13]

In certain cases, the Court ruled that the mitigating circumstance of lack of intent to commit so grave a wrong cannot be appreciated where the acts employed by the accused were reasonably sufficient to produce the death of the victim [People v. Sales, G.R. No. 177218 (2011)].

There is no felony in the following instances:

1. There is no law punishing the crime (i.e., attempting suicide is not a crime, per se) [See U.S. v. Villanueva, G.R. No. 10606 (1915)].
2. There is a justifying circumstance (i.e., one acting in self-defense is not committing a felony) [Art. 11].

CASE STUDY

Juan has a long standing grudge against Pedro. Juan set an ambush against Pedro. He intended only to inflict physical injuries to teach Pedro a lesson. Under the cover of darkness which he specifically sought in order that Pedro will not be alerted on his ambush, he waited along Pedro's usual route. Upon hearing the sound of an approaching motorcycle, Juan threw a stone at the driver hitting him. A passerby Macario was also hit by the same stone. It turned out that the driver was Juan's son Juanito. Both Macario and Juanito died. What is the crime committed?

This is ordinary complex crime (Art. 48) of parricide with murder. Never mind the intent because the crime is already in the consummated stage. What matters is how the crime is committed.

Since the darkness was specifically sought, it is equivalent to treachery. If you kill someone with treachery, even if there is no intent to kill, what matters is that there is an attendant circumstance, then it will be murder.

Basis for liability: Art. 4, RPC.

- Error in personae against Juanito
- Praeter intentionem for causing death instead of injuries
- Aberratio ictus for injuring passerby Macario

Formula: We always describe the crime according to the elements present. In this case, we have the element of relationship of being a father and son. **The crime charged is always according not to the intent, but according to the result.**

- Penalty (complex crime) is for the graver offense in its maximum. Graver offense in Murder because the Parricide was a result of error in personae where Art. 49 applies. The ordinary mitigating of praeter intentionem has no bearing because the penalty is indivisible.

Q: What would be the crime if Macario, the passerby, did not die?

If Macario did not die but the injury was serious to less serious, then the crime would be the complex crime of parricide with serious or less serious physical injuries because there was no intent to kill in so far as he was concerned.

If Macario did not die but the injury was slight, there will be no complexing. Two separate cases shall be filed, namely slight physical injuries and parricide.

There could never be parricide with attempted murder or frustrated murder, because you cannot have the attempted and frustrated without the intent to kill. And Juan did not have the intent to kill, so there can never be an attempted or frustrated if Macario did not die.

Sevilla v People

Sevilla, a former councilor of Malabon was charged with the felony of falsification of public document. Prosecution alleged that Sevilla made a false narration in his Personal Data Sheet when he ticked "no" to the question of whether there is a pending criminal case against him. Sevilla admitted to ticking the box but averred that he did not intend to falsify his PDS as it was Editha Mendoza, a member of his staff, who actually prepared it.

The Court held that the designated felony by the Sandiganbayan which was "falsification of public document through reckless imprudence" is not a crime in itself but simply a modality of committing it. Quasi-offenses under Article 365 of the RPC are distinct and separate crimes and not a mere modality in the commission of a crime.

Serrano v People

Intent to kill is a state of mind that the courts can discern only through external manifestations, i.e., acts and conduct of the accused at the time of the assault and immediately thereafter. In Rivera v. People, we consider the following factors to determine the presence of an intent to kill: (1) the means used by the malefactors; (2) the nature, location, and number of wounds sustained by the victim; (3) the conduct of the malefactors before, at the time, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.

Rivera et al v People

Evidence to prove intent to kill in crimes against persons may consist, inter alia, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused.

Novicio v People

In People v. Delim, the Court declared that evidence to prove intent to kill in crimes against persons may consist, inter alia, in the means used by the malefactors, the nature, location and number of wounds sustained by the victim, the conduct of the malefactors before, at the time, or immediately after the killing of the victim, the circumstances under which the crime was committed and the motives of the accused. If the victim dies as a result of a deliberate act of the malefactors, intent to kill is presumed.

The number of wounds inflicted is not the sole consideration in proving intent to kill. In Adame v. Hon. Court of Appeals, a single gunshot wound was inflicted on the victim but this Court convicted the accused therein of frustrated homicide

People v Pugay

If his act resulted in a graver offense, as what took place in the instant case, he must be held responsible therefor. Article 4 of the aforesaid code provides, inter alia, that criminal liability shall be incurred by any person committing a felony (delito) although the wrongful act done be different from that which he intended.

People v Umawid

A person committing a felony is criminally liable although the wrongful act done be different from that which he intended (Art. 4, RPC). It is a mistake as to the victim.

d) Impossible Crimes

Article 4. Criminal Liability – Criminal liability shall be incurred:

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

Rationale

The offender shall incur criminal liability for committing an impossible crime because of his **criminal tendency or intention.** Objectively, the offender has not committed a felony, but subjectively, he is a criminal. The only crime punished under Book One is impossible crime.

Penalty

The penalty for impossible crime is arresto mayor or a fine from P200 to P500.

However, it is not applicable to one who attempts to commit a light felony of impossible materialization since the penalty for the impossible crime is graver than that for the consummated light crime. It would be unfair to punish a person, who failed to commit a light felony since it is

impossible to accomplish it, for a graver penalty than that for a person who was able to commit it.

No Attempted or Frustrated Impossible Crime
There is no attempted or frustrated impossible crime. The offender intending to commit an offense has already performed all the acts of execution but does not produce the crime by reason of the fact that its nature is one of impossible accomplishment or that the means employed are essentially inadequate or ineffectual. Since all the acts of execution have already been performed, there could be no attempted impossible crime. The acts performed by the offender are considered as constituting a consummated offense.

	Impossible Crime	Attempted	Frustrated	Consummated
Mens Rea	✔	✔	✔	✔
Concurrence	✔	✔	✔	✔
Result	✖ Not produced by reason of inherent impossibility or employment of inadequate means	✖ Not produced by reason of desistance	✖ Not produced by reason of causes independent of the will of the perpetrator ✓	✔
Causation	✖	✖	✖	✔

Requisites
(1) Act performed would be an **O**ffense against **P**ersons or **P**roperty.
(2) Act was done with **E**vil Intent.
(3) Its accomplishment is inherently **I**mpossible, or that the means employed is either **I**nadequate or **I**neffectual.
(4) Act performed does **N**ot constitute a **V**iolation of another provision of the RPC.

Note: In impossible crimes, the offender should not be aware of the impossibility of his actions. To be impossible under the Article, the act intended by the offender must be by its nature one impossible of accomplishment.

In Intod v. CA, the offenders, intending to kill X, fired at X's bedroom. However, X was in another city then. The Court found the offenders guilty of an impossible crime, not attempted murder.

Congress has not yet enacted a law that provides that intent plus act plus conduct constitutes the offense of attempt irrespective of legal impossibility.

FIRST REQUISITE — Act performed would be an Offense against Persons or Property.

Example:

- **Crime against persons:** Parricide, murder, homicide, infanticide, abortion, duel physical injuries, rape
- **Crimes against property:** Robbery, brigandage, theft, usurpation, culpable insolvency, swindling and other deceits, chattel mortgage, arson, malicious mischief

If the act performed would be an offense other than a felony against persons or against property, there is no impossible crime.

R.A. No. 8353 reclassifies rape from crime against chastity to crime against person. Hence, an offender for raping a dead person without knowing that she was already dead may now be held liable for impossible crime.

SECOND REQUISITE — Act was done with Evil Intent.

There must be intent to injure another.

Illustration:
Offender stabbed the victim knowing that he was already dead. This is not an impossible crime since it was committed without evil intent to kill, the second requisite of impossible crime.

One, who had sexual intercourse with a dead person, is not liable for an impossible crime of rape if he is aware that the latter is already dead. Necrophilia is not a felony punishable under the Revised Penal Code.

US v. Aquino, G.R. No. 11653 (1916)

Accused delivered a child, who was stillborn. She instructed her co-accused to bury her dead child. Her co-accused had deposited and left the dead infant in a small pit containing a little water. Accused are not liable for infanticide since the infant was already dead upon its delivery. Neither are the accused liable for impossible crime of infanticide since they are aware that the child was already dead when it was left in a pit containing water. In sum, they have no criminal intent to kill since they are aware that they cannot kill a dead person.

THIRD REQUISITE — Its accomplishment is inherently Impossible, or that the means employed is either Inadequate or Ineffectual.

In impossible crimes, the act performed by the offender cannot produce an offense against persons or property, because:

1. **Inherently impossible -** legal impossibility (like taking something that you already own) or

physical/factual impossibility (poisoning somebody already dead)

a. Legal impossibility exists when all the intended acts, even if committed, would not have amounted to a crime.

   Example: If the target victim is already dead, it is not factually impossible for the accused in firing his gun to hit him; but it is legally impossible for the accused to kill a person, who is already dead. Hence, shooting at a dead person to kill him is an impossible crime because of the legal impossibility of committing it.

b. Physical or Factual Impossibility exists when an extraneous circumstance unknown to the offender prevented the consignation of the crime. Here, there are circumstances unknown to the offender, the inadequate control of the offender which prevented the consignation of the crime.

   Example: If the victim is not in the room, it is actually impossible for the accused in firing his gun at the room to hit him. Hence, shooting at the room to kill the victim is an impossible crime because of the factual impossibility of committing it.

   Example: A man puts his hand in the coat pocket of another with the intention to steal the latter's wallet and finds the pocket empty.

2. **Inadequate** or **Ineffectual**

Example:
Offender with intent to kill thought that the salt, which he mixed with the coffee of the victim, is arsenic powder. Victim drank the coffee. Murder was not committed due to the employment of ineffectual means. Offender is liable for an impossible crime.

Offender with intent to kill mixed arsenic with the coffee of the victim. Victim drank the coffee. The victim did not die because of the inadequate quantity of the poison. Murder was not committed due to the employment of inadequate means. Offender is liable for an impossible crime.

Offender with intent to kill mixed arsenic with the coffee of the victim. Victim drank the coffee. The quantity of the poison is adequate to kill the victim. But the victim did not die due to timely medical intervention. Offender is liable for frustrated murder.

People u. Callao, G.R. No. 22894 (2018)

If the accused, who stabbed the dead body of the victim, conspired with the one who previously hacked and killed the victim the former is liable for murder and not impossible crime because of the collective responsibility rule.

The liability of the accused for murder is not based on his act of stabbing the dead body of the victim. His liability is based on the act of his co-conspirator in hacking and killing the victim, which by fiction of the law shall be treated as the act of both of them.

Jacinto v. People, G.R. No. 162540 (2009)

If the check is unfunded, stealing the check of the employer by an employee and presenting the same for payment with the bank constitutes an impossible crime. The act of depositing the check is committed with evil intent. The mere act of unlawfully taking the check meant for Mega Inc., showed her intent to gain or be unjustly enriched. There is factual impossibility to accomplish the crime of qualified theft since the check is unfunded.

Taking an unfunded check is an impossible crime. However, the application of the Jacinto principle must be confined to a case where the failure to gain is based on the unfunded condition of the check.

Jacinto vs. People
G.R. No. 162540. July 13, 2009

A worthless check (the offender did not know it to be worthless) which was supposed to be remitted was not remitted by the offender to Megafoam. Instead, the check was deposited to her own account. Since the check was not remitted, Megafoam filed a case of qualified theft against the employee. She was convicted before the lower court up to the CA.

The Supreme Court held that the crime committed was an Impossible Crime. The act could have amounted to qualified theft because, unknown to the said offender, the check was not funded. Therefore, she was not able to get the face value of the said check. Hence, physical circumstances unknown to the offender prevented the consummation of the crime. We have physical or factual impossibility.

According to the Supreme Court, theft has been defined under Art. 308 as the taking of a property with intent to gain the personal property of another. Therefore, it is necessary that the property taken must have value because the taking must be with intent to gain. The mere taking of a check without value would not amount to theft because the check without value is a worthless check.

FOURTH REQUISITE — Act performed does Not constitute a Violation of another provision of the RPC.

IN IMPOSSIBLE CRIMES, THE OFFENDER SHOULD NOT BE AWARE OF THE IMPOSSIBILITY OF HIS ACTIONS.

To be impossible under the Article, the act intended by the offender must be by its nature one impossible of accomplishment.

Note: If the act committed by the accused constitutes an impossible crime and a lesser crime, the fourth requisite of impossible crime can be dispensed with, and thus, the accused should be convicted of an impossible crime.

Case Problem

> Juan was driving going to the province. Along the way, there was a beautiful person giving him a thumb sign indicating she would like to hitchhike. So, Juan stopped to give her a ride and it went to Juan's head that he should take advantage of her, so he tried to take her to the motel to have sexual intercourse. However, she turned out to be a man. Juan was already touching her inappropriately. Is this an impossible crime? If not, what crime was committed?

There are 2 kinds of rape, one is by sexual intercourse and the other one is by sexual assault. Rape by sexual intercourse can only be committed against a woman and it must be committed by a man (Pp. vs. Baleros).

In this case, the victim turned out to not be a woman. So, there seems to be an inherent impossibility.

However, note that there can only be an impossible crime if there is no other crime committed. In this case, since Juan already made certain advances (touched the private parts), then there is already a crime committed which is acts of lasciviousness. Because there is already a crime committed, we cannot anymore say it is an impossible crime.

The crime is Forcible Abduction with Acts of Lasciviousness. Even if the "taking" was initially with consent, the consent was not to take the victim to the motel. If the taking was not forcible, the crime would only be Acts of Lasciviousness.

e) Stages of Execution

Phases Of Felony

1. **Subjective Phase**
   It is that portion of the act constituting the crime, starting from the point where the offender begins the commission of the crime to that point where he still has control over his acts, including their natural course [People v. Villanueva, G.R. No. 160188 (2007)].

   He may or may not proceed in the commission of the crime. He still has control over his acts. Thus, the crime is still be in the attempted stage.

   Subjective standard: Where the offender believed that he already performed all the acts of execution to accomplish the crime, but the crime did not result because the acts performed were not sufficient to produce the felony. (*The filing of cases are based on the **actual results** of the acts performed; not the belief of the offender.*)

2. **Objective Phase**
   It is that portion of acts after the subjective phase, the result of the acts of execution [People v. Villanueva, supra].

   It has been held that if the offender never passes the subjective phase of the offense, the crime is merely attempted. On the other hand, the subjective phase is completely passed in case of frustrated crimes, for in such instances, "[s]ubjectively the crime is complete." [People v. Villanueva, supra]

   From the moment the offender loses control over his acts, it is already in the objective phase of the commission of the crime.

   Once the crime is in this phase and the crime is not accomplished, then the crime is in its frustrated stage.

Development Of A Crime

1. **Internal Acts** (1st Stage)
   Intent, ideas and plans; not punishable, even if, had they been carried out, they would constitute a crime [Reyes, Book 1].

2. **External Acts** (2nd Stage)
   a. **Preparatory Acts** – means or measures necessary for accomplishment of a desired object or end [People v. Lizada, G.R. Nos. 143468-71 (2003)]. (in this case, a crime)

      Example: Buying or preparing poison or weapon with which to kill the intended victim; carrying inflammable materials to the place where a house is to be burned.

   b. **Acts of Execution** – Usually overt acts with a logical relation to a particular concrete offense and is already punishable under the RPC [People v. Lamahang, G.R. No. 43530 (1935)].

Factors In Determining Stage Of Execution Of Felony

1. **Manner of Committing the Crime**

   a. **Formal Crimes** – consummated in one instant, no attempt [Albert, cited in Reyes, Book 1 at 120].

      Formal crimes such as libel are not punishable unless consummated [Disini v. Secretary of Justice, G.R. No. 203335 (2014)].

      Example: The mere act of selling or even acting as a broker to sell marijuana or other prohibited drugs consummates the crime. [People v. Marcos, G.R. No. 83325 (1990)]

   b. **Crimes Consummated by Mere Attempt or Proposal by Overt Act**

      Examples: Flight to enemy's country [Art. 121] and Corruption of Minors [Art. 340]

   c. **Crimes Consummated by Mere Agreement**

      Examples: For betting in sports contests and corruption of public officer [Art. 197 and Art. 212], the manner of committing the crime requires the meeting of the minds between the giver and the receiver [US v. Basa, 8 Phil. 89 (1907)].

   d. **Material Crimes** – those committed with three (3) stages of execution.

2. **Nature of the Crime Itself**
   There are certain crimes requiring a specific intent.

   Examples: Robbery, Theft, Rape (See: Discussion on Specific Criminal Intent)

Three (3) Stages Of Execution:

Article 6. Consummated, frustrated, and attempted felonies. - Consummated felonies as well as those which are frustrated and attempted, are punishable.

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

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

Comments:

- Generally, the stages of the commission of felonies, only applies to felonies, which are crimes punished under the RPC.
- As a general rule, these principles or stages are not applicable for crimes punished under Special Penal Laws (SPL), except if the SPL so provides.
- Generally, felonies may be committed in any of these stages (attempted, frustrated and consummated), but of course we know that there are crimes which have no stages (formal crimes which are always consummated) and we also know crimes where there are only 2 stages.
- There should be a **nexus between the act and the crime intended**.

Attempted Stage

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

The offender is still in the subjective phase because he has not performed all acts necessary for its accomplishment. Therefore, he still has control as he may or may not continue his overt acts. (Boado, Compact Reviewer in Criminal Law)

Elements

(1) The offender **C**ommences the commission of the felony directly by overt acts.
   - There be external acts
   - Such external acts have direct connection with the crime intended to be committed (e.g., acts of lasciviousness from attempted rape)

(2) He does **N**ot perform all the acts of execution which should produce the felony. Thus, the crime intended would not result

(3) The non-performance of all acts of execution was **D**ue to cause or accident other than his own spontaneous desistance.

FIRST ELEMENT — The offender Commences the commission of the felony directly by overt acts.

In attempted felony, the offender performed directly an overt act, which is an act of execution, but it is not enough to produce the felony as a consequence.

Example:

In attempted homicide the accused performed an act to execute his criminal design to kill the victim by inflicting non-mortal wounds upon him, which is not sufficient to kill him as a consequence.

Colinares v. People, G.R. No. 182748 (2011)

If the wounds inflicted upon the victim with intent to kill are non-mortal, the crime committed is attempted homicide.

Pentecostes, Jr. v. People, G.R. No. 167766 (2010)

Inflicting non-mortal wounds upon the victim by shooting him constitutes physical injuries if the accused did not further shoot him to inflict mortal wounds. The crime is not attempted homicide because failure to shoot him further shows lack of intent to kill.

People v. Etino, G.R. No. 206632 (2018)

Medical Certificate of the complainant alone, absent the testimony of the physician who diagnosed and treated him, or any physician for that matter, is insufficient proof of the nature and extent of his injury. If character of the wound is doubtful, such doubt should be resolved in favor of the accused.

Overt Act — Some physical activity or deed, indicating the intention to commit a particular crime, more than a mere planning or preparation, which if carried out to its complete termination following its natural course, without being frustrated by external obstacles nor by the spontaneous desistance of the perpetrator, will logically and necessarily ripen into a concrete offense [Rait v. People, G.R. No. 180425 (2008)].

Overt act is a physical, not mental, act. It refers to any external act which, if allowed to continue, will naturally and logically ripen into a crime. The external acts must have a direct connection with the crime intended to be committed by the offender.

Progression

- The stage of a felony from attempted to frustrated to consummated depends on the progression of the act constituting the crime.

- What this person above is doing is a mystery. What his crime would be depends on his intention and the results of his actions.
- Assume that the man firing a gun is targeting somebody. If that person was hit and he dies, the crime is consummated.
- But if the victim was hit and he did not die, it would depend on whether or not there is intent to kill.
    - If the person was hit and there is no intent to kill, it cannot be attempted or frustrated homicide, but the crime may be serious, less serious, or slight physical injuries.
    - If the person was hit and there is intent to kill, the crime may either be attempted (no fatal wounds) or frustrated homicide (with fatal wound).
- Now, if the person was not hit and there is no intent to kill, it cannot be attempted or frustrated homicide, neither can it be physical injuries.
- If the person was not hit and there is intent to kill, can it be in the attempted stage?
- Yes, because there is an overt act. Never mind that he was not hit, the over act is the firing of the gun. If the firing of the gun was with intent to kill, never mind the injuries, it will be attempted if there is no fatal wound inflicted.
- Overt act is a physical, not mental, act. This indicates that mental desire or intention is complied.
- Also, if the acts committed do not CLEARLY indicate that the ACTOR is performing acts to a definite end resulting in a crime, then it is NOT yet in an attempted offense.
- It must be clear that the ACTOR is performing such acts towards that end, which is a crime which that he mentally intended. The overt acts must necessarily ripen to a complete offense.
- In consummated and frustrated, all the acts necessary for their commission has been performed or committed.
- The difference between frustrated and attempted is that the reason why the crime did not ripen or result is because of the different stages of the crime, either objective stage or subjective stage.

SECOND ELEMENT — He does Not perform all the acts of execution which should produce the felony. Thus, the crime intended would not result.

In an attempted felony, the offender fails to perform all the acts of execution; thus, his external acts would "not produce" the felony as a consequence.

THIRD ELEMENT — The non-performance of all acts of execution was Due to cause or accident other than his own spontaneous desistance.

The non-performance of all acts of execution was due to cause or accident other than his own spontaneous desistance.

> **Example:**
> The accused in order to kill the victim inflicted a non-mortal wound upon him but a policeman immediately arrested him. His timely apprehension is the cause other than his spontaneous desistance, which prevented him from performing all acts of execution or from inflicting a mortal wound upon the victim.

Defense
In attempted felony, if the cause of the failure to perform all acts of execution is the spontaneous desistance of the accused, that is a defense.

> **Desistance** – It is an absolutory cause, which negates criminal liability because the law encourages a person to desist from committing a crime.
>
> **The accused will be exempt from criminal liability only when:**
> 1. Spontaneous desistance is done during the attempted stage;
> 2. Made before all the acts of execution are performed, i.e. during the attempted stage (after commencement, but before consummation); and
> 3. No crime under another provision of the Code or other penal law is committed.

XPN: In certain cases, although negated by the attempted stage, there may be other felonies arising from his act.

> **Example**: An attempt to kill that results in physical injuries still leads to liability for the injuries inflicted.

Rationale for non-liability
It is sort of a reward granted by law to those who, having one foot on the verge of crime, heed the call of their conscience and return to the path of righteousness. The law does not punish him.

When is desistance spontaneous?
"Spontaneous" means proceeding from natural feeling or native tendency without external constraint; synonymous with impulsive, automatic and mechanical.

People v. Lizada, G.R. Nos. 143468-71 (2003)

The term spontaneous is not equivalent to voluntary. Even if the desistance is voluntary, the same could not exempt the offender from liability for attempted felony if there is an external constraint.

Accused had previously raped the victim several times. During the subject incident, accused was wearing a pair of short pants but naked from waist up. He entered the bedroom of victim, went on top of her, held her hands, removed her panty, mashed her breasts and touched her sex organ. However, accused saw Rossel peeping through the door and dismounted. He berated Rossel for peeping and ordered him to go back to his room and to sleep. Accused then left the room of the victim.

Accused intended to have carnal knowledge of victim. The overt acts of accused proven by the prosecution were not merely preparatory acts. By the series of his overt acts accused had commenced the execution of rape, which, if not for his desistance, will ripen into the crime of rape.

Although accused voluntarily desisted from performing all the acts of execution, however, his desistance was not spontaneous as he was impelled to do so only because of the sudden and unexpected arrival of Rossel. Hence, accused is guilty only of attempted rape.

Rivera v People

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

Essential elements of an attempted felony:
1. The offender commences the commission of the felony directly by overt acts;
2. He does not perform all the acts of execution which should produce the felony;
3. The offender's act be not stopped by his own spontaneous desistance;
4. The non-performance of all acts of execution was due to cause or accident other than his spontaneous desistance.

The first requisite of an attempted felony consists of two elements, namely:
1. There be external acts;
2. External acts have a direct connection with the crime.

Example:
Stage of Crime When Firearm is Used

- **To be attempted,** the trigger must be pulled with intent to kill (w/n there is wound is immaterial).
- **To be frustrated**, fatal wound must be inflicted.
- **Grave threats,** if merely brandished or used to threaten.
- **Other Light Threats** if merely drawn during a fight.

Illustration:

Juan took Juana to a motel with the intention of raping her. When they arrived, Juana started crying, and Juan took pity on Juana. Thus, he did not anymore proceed on doing whatever it is that he designed. But remember that he intended to rape Juana. So, there are already preliminary and external overt acts. Was there a crime of rape in its attempted stage?

- There is a crime, but it is not an attempted rape. Because of the definition of "attempted." This cannot be a crime in its attempted stage because, here, we have spontaneous desistance.

- That's not to say that there is no more crime, it is possible that there is still another crime, so maybe abduction, acts of lasciviousness, or a violation of an SPL like RA 7610, if victim is a minor.

- In this sense, the desistance, becomes an absolutory cause. It can be another crime, consummated or another stage, but never attempted of another crime.

Illustration:

Juan wanted to have carnal knowledge with Juana through means of force or outside legal means. One evening, he waited for Juana to pass by and when he saw Juana, he started hugging Juana and kissing her. Then, the Barangay Tanod Pedro passed by and rescue Juana. Was there a crime of rape in its attempted stage? If not, what is the crime?

- The crime is not yet attempted rape, because it said that the acts must logically and necessarily ripen to a concrete offense of rape.

- While it is true that these are overt acts, you cannot yet determine if it will indeed result to rape. While it is true that there is the intention of Juan to rape Juana, but the intention remains in his mind.

- You can only prove the intention through overt acts, and, so far, the overt acts will not show you that he intended to rape Juana.

- The acts merely showed you that he performed lascivious conduct. Thus, the crime is acts of lasciviousness.

Rivera vs. Pp
G.R. No. 166326, January 25, 2006

The victim was mauled, hit with hollow blocks. Rivera brothers were able to pin him down on the ground. Suddenly, there was the siren of the police, so the Rivera brothers fled. The medical certificate showed that the victim only suffered superficial injuries, only slight physical injuries, yet they were charged of attempted murder.

Q: What is the criminal liability of the Rivera brothers, if any?

- The Rivera Brothers are liable for attempted murder. The first element was present, they boxed the victim, they mauled him, their intention was to kill him.

- Second, they were not able to perform all acts of execution because of the arrival of the police. Therefore, the non-consummation of the crime was because of a cause or accident other than the accused's own spontaneous desistance.

Why attempted murder? Why not slight physical injuries?
Because there was intent to kill.

Intent to kill may be proved by evidence of:

1. motive;
2. nature or number of weapons used in the commission of the crime;
3. nature and number of wounds inflicted;
4. the manner the crime was committed;
5. words uttered by the offender at the time the injuries are inflicted by him on the victim. (PP vs Caballero, G.R.Nos 149028-30, Apr 2, 2003)

Frustrated Stage

Elements
(1) The offender performs all the acts of execution
(2) All the acts performed would produce the felony as a consequence
(3) But the felony is not produced by reason or causes independent of the will of the perpetrator

FIRST ELEMENT — The offender performs all the acts of execution.

In a frustrated felony, the offender performed all the acts of execution that would produce the felony as a matter of consequence.

Example:
In frustrated homicide, the accused performed all acts necessary to execute his criminal design to kill

the victim by inflicting mortal wounds upon him, which is sufficient to kill him as a consequence. In frustrated felony, there is no need to perform further acts to implement his criminal intention.

SECOND ELEMENT — All the acts performed would produce the felony as a consequence.

In a frustrated felony, the offender performs all the acts of execution; thus, his external acts "would produce" the felony as a consequence; but just the same, the crime is not produced.

People v. Abella, G.R. No. 198400 (2013)

Inflicting mortal wound upon the victim constitutes frustrated homicide even if the accused spontaneously desisted from further shooting him. The fact that the wounds are mortal indicates intent to kill. Moreover, spontaneous desistance from further shooting is not a defense in frustrated homicide.

THIRD ELEMENT — But the felony is not produced by reason or causes independent of the will of the perpetrator.

Defense
In frustrated felony, if the failure to produce the crime despite the performance of all acts of execution is independent of the will of the accused, that is a defense.

Absolutory Cause
If the felony is consummated, the offender cannot undo what was done. He would not be absolved from criminal liability.

Example:
A stole chicken under the house of B. Realizing that what he did was wrong A returned the chicken to the same place where he took it. Since the crime of theft was already consummated the return of the stolen property does not relieve him of criminal responsibility. A had already performed all the acts of execution, which produced the crime of theft before he returned the chicken.

People v Labiaga

In a frustrated felony, the offender has performed all the acts of execution which should produce the felony as a consequence; whereas in an attempted felony, the offender merely commences the commission of a felony directly by overt acts and does not perform all the acts of execution

In a frustrated felony, the reason for the non-accomplishment of the crime is some cause independent of the will of the perpetrator; on the other hand, in an attempted felony, the reason for the non-fulfillment of the crime is a cause or accident other than the offender's own spontaneous desistance.

In frustrated murder, there must be evidence showing that the wound would have been fatal were it not for timely medical intervention. If the evidence fails to convince the court that the wound sustained would have caused the victim's death without timely medical attention, the accused should be convicted of attempted murder and not frustrated murder.

Not all crimes have a Frustrated Stage
There are crimes that do not admit of a frustrated stage. By the definition of a frustrated felony, the offender cannot possibly perform all the acts of execution to bring the desired result without consummating the offense.

GR: Felonies that do not require any result do not have a frustrated stage.

Crimes which do not admit of frustrated stage:

a. **Arson** – The crime of arson is already consummated even if only a portion of the wall or any part of the house is burned. The consummation of the crime does not depend upon the extent of the damage caused [People v. Hernandez, G.R. No. L-31770 (1929)].
b. **Bribery and Corruption of Public Officers** – If there is a meeting of the minds, there is consummated bribery or consummated corruption [US v. Basa, 8 Phil. 89 (1907)].
c. **Indirect bribery,** because the offense is committed by accepting gifts offered to the public officer by reason of his office;
d. **Corruption of public officers**, since the crime requires the concurrence of the will of both parties;
e. **Adultery,** because the essence of the crime is sexual congress
f. **Physical injury** since its determination whether slight, less serious, or serious can only be made once it is consummated

Other Crimes Without Frustrated Stage

1. **Theft (including Qualified Theft)**

Accused stole boxes of detergent from a super- market, but guards were able to apprehend them. The accused argued that the crime to be charged to him should be frustrated, not consummated, theft since he was not able to freely dispose of the articles stolen.

SC said that "The ability of the offender to freely dispose of the property stolen is not an element of the crime of theft." "Judicial interpretation of penal laws should be aligned with what was the evident legislative intent, as expressed in the language of the law." Theft can only be attempted (no unlawful taking) or consummated (there is unlawful taking).

There is no frustrated theft as there is no in-between. It is not material that the offender benefit from the taking, what is important in theft is the taking with the intent to gain. Accused committed Consummated Theft, but convicted only for Attempted Theft because charges were for Frustrated Theft. (Valenzuela vs. People, 552 Phil 381, June 21, 2007)

Accused stole boxes of Ponds cream from a supermarket, but security guards were able to apprehend them. SC reiterated the Valenzuela ruling. Accused committed Consummated Theft, but convicted only for Attempted Theft because charges were for Frustrated Theft. (Canceran vs People, GR 206442, July 1, 2015)

2. Rape

In PP v Aca-ac, SC ruled that there could be no more Frustrated Rape. The slightest penetration will consummate the Rape. It may be noted that this ruling refers to Rape by Carnal Knowledge, not by Sexual Assault (oral or anal). It may however be applied by analogy.

Necessarily, rape is attempted if there is no penetration of the female organ because not all acts of execution were performed. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage of rape can ever be committed. (PP vs Aca-ac, G.R. 142500, 20 April 2001; also PP vs. Orita)

People v. Orita, G.R. No. 88724 (1990)

The offender performed all acts of execution by sexually penetrating the victim's vagina. But since sexual penetration or the touching of the labia of the pudendum consummates rape, there are no occasions where the offender performed all the acts of execution and yet the. felony was not produced as a consequence. In sum, there is no such thing as frustrated rape since the performance of all the acts of execution immediately consummates rape.

Attempted Rape
In the crime of Rape, penetration is an essential act of execution to produce the felony. Thus, for there to be an Attempted Rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accident other than his own spontaneous desistance, the penetration, however slight, is not completed. (Perez vs CA, G.R. No. 143838, May 9, 2002)

There must be a connection between the overt act and the crime intended
There is no dispute about the absence of sexual intercourse in this case. The question is whether or not the act of the petitioner, i.e., pressing of a chemical-soaked cloth while on top of the victim, constitutes an overt act of Rape.

By the overt act of pressing the chemical- soaked cloth, can we conclude that the offender's purpose is to have carnal knowledge?

Where the purpose of the offender in performing an act is not certain, meaning the nature of the act in relation to its objective is ambiguous, then what obtains is an attempt to commit an indeterminate offense, which is not a juridical fact from the standpoint of the RPC. (Baleros vs People, 22 Feb 2006)

Indeterminate Offense
It is one where the intent of the offender in performing an act is not certain. The accused may be convicted of a felony defined by the acts performed by him up to the time of desistance.

The intention of the accused must be viewed from the nature of the acts executed by him and the attendant circumstances, and not from his admission.

In indeterminate offense, the overt act of a person in relation to the intended felony is ambiguous.

It is necessary that the overt act must be necessarily connected to the felony. Only then he will be punished of the said attempted felony.

3. Direct Bribery

The moment the public officer accepts the gift, promise, or consideration, the crime is consummated, but when the public officer refuses to be corrupted, the crime is attempted only

Valenzuela v People

There is no crime of frustrated theft under the RPC.

The elements of theft under Art. 308: (1) that there be taking of personal property; (2) that said property belongs to another; (3) that the taking be done with intent to gain; (4) that the taking be done without the consent of the owner; and (5) that the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

The operative act of "free disposal" is not contemplated in the definition nor the classification of the law.

So long as the circumstances that qualify the taking are present, the completion of the operative act that is the taking of personal property of another establishes, at least, that the transgression went beyond the attempted stage.

Unlawful taking is most material in this respect. Unlawful taking, which is the deprivation of one's personal property, is the element which produces the felony in its consummated stage. At the same time, without unlawful

taking as an act of execution, the offense could only be attempted theft, if at all. With these considerations, we can only conclude that under Article 308 of the Revised Penal Code, theft cannot have a frustrated stage. Theft can only be attempted or consummated.

People v Acaac

Necessarily, rape is attempted if there is no penetration of the female organ because not all acts of execution were performed. Taking into account the nature, elements and manner of execution of the crime of rape and jurisprudence on the matter, it is hardly conceivable how the frustrated stage of rape can ever be committed.

Perez v CA

Under Article 6 of the Revised Penal Code, there is an attempt when the offender commences the commission of felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In the crime of rape, penetration isan essential act of execution to produce the felony.

Thus, for there to be an attempted rape, the accused must have commenced the act of penetrating his sexual organ to the vagina of the victim but for some cause or accidentother than his own spontaneous desistance, the penetration, however slight, is not completed. Here, there was no penetration at all.

Attempted/Frustrated Homicide

- The (specific criminal intent) intent to kill determines whether the crime committed is physical injuries or homicide.

- Such intent is made manifest by the acts of the accused which are undoubtedly intended to kill the victim. (PP vs Gonzalez, G.R. No. 139542, June 21, 2001)

Attempted from Murder/Parricide/Infanticide (HMPI)

- "The settled rule is that where the wound inflicted on the victim is not sufficient to cause his death, the crime is only attempted murder, since the accused did not perform all the acts of execution that would have brought about death."

- The nature of injury (fatal) differentiates attempted from frustrated HMPI. (Velasco v. People – GR No. 166479, Feb 28, 2006, PP v. Valledor, July 3, 2002)

- In order that there be frustrated stage of murder, infanticide, parricide, homicide, there must be a fatal wound that is inflicted. If there is no fatal wound inflicted, not all the acts of execution has been delivered yet.

Consummated Stage

Requisite

All the elements necessary for its execution and accomplishment are present.

Formal crimes are always consummated. A crime is formal if (Boado):

1. The offender cannot possibly perform all the acts of execution to bring the desired result without consummating the offense, such as slander and libel.

2. When the crime is treated by the RPC in accordance with the results, i.e., the result should be there before liability can be determined, e.g., physical injuries, the crime is only in the consummated stage. In physical injuries, it cannot be determined whether the injury will be slight, less serious, or serious unless consummated.

3. When intent is absent such as in culpa and in malum prohibitum.

Summary

Attempted Felony	Frustrated Felony	Consummated Felony
As to Acts Performed		
Overt acts of execution are started BUT Not all acts of execution are present	All acts of execution are finished BUT Crime sought to be committed is not achieved	All acts of execution are finished
As to Why a Felony is Not Produced		
Due to reasons other than the spontaneous desistance of the perpetrator	Due to intervening causes independent of the will of the perpetrator	
As to Position in Timeline		
Offender still in subjective phase because he still has control of his acts, including their natural cause.	Offender is already in the objective phase because all acts of execution are already present and the cause of	Offender is in the objective phase as all acts of execution are already present and a felony is produced

	its non-accomplish- ment is other than the offender's will	

When Stages Do Not Apply

1. Crimes punished under special laws (general rule);
2. Crimes by omission;
3. Formal crimes (e.g., physical injuries)

Physical Injury Does Not Have Stages

- The reason why there are no stages is because, technically speaking, there is no crime of Physical Injuries alone. The crimes are Serious, Less Serious, and Slight Physical Injuries.

- Until the injuries are inflicted (consummated), there is no way of telling what the resulting injuries, and therefore what the crime, would be.

CASE STUDIES

Richard held a grudge against Piolo. While the latter was resting on a rocking chair one evening, Richard surreptitiously crept behind Piolo and delivered a forceful thrust with his knife. Thinking that he accomplished his plan to kill Piolo, he fled. It turned out however that the knife merely damaged the pillow on which Piolo rested, but the latter was not even scratched. What crime was committed? (attempted? frustrated? consummated? or Impossible Crime?)

- There is an overt act and there is intent to kill.

- If we say that all the acts of execution were performed, it can only be either frustrated or Consummated. Also, the means used here, the knife, is NOT ineffectual. So, this is not an impossible crime.

- In this case, he already started performing an overt act (stab using the knife), which is the creeping behind with a knife and actually delivering the thrust. However, it cannot be in the consummated stage because Piolo did not die, neither can it be frustrated because there was no fatal wound.

- Thus, since not all the acts of execution were performed (no fatal or mortal wound), then the crime would only be attempted murder.

- It is attempted murder because there was an intent to kill and because there was treachery (qualifying circumstance).

Juan shot Pedro, hitting the latter on the arm. Although Pedro was bleeding profusely, Pedro survived. In fact, the injury inflicted would not have caused the death of the victim. Charges for Frustrated Murder were filed against Juan. Is this correct? Cite relevant case/s.

- No, the charge for frustrated murder is not correct. In this case, the injury inflicted would not have caused the death of the victim, thus it is not a fatal or mortal wound. Since the Pedro's gunshot wound was not mortal, Juan should be charged with attempted murder and not frustrated murder.

- In the case of People v. Labiaga (G.R. No. 02867, July 15, 2013), the accused Labiaga was in the house of Gregorio Conde when he suddenly shot Gregorio in the forearm. Gregorio shouted for help. One of his daughters, Judy Conde, came to his rescue. However, the accused shot Judy to the stomach. Accused was charged with murder and frustrated murder.

- The Supreme Court affirmed the conviction for murder but modified the conviction for frustrated murder. Gregorio Conde failed to present proof that the wound he sustained was fatal. If the wound sustained by the victim is not fatal or not mortal, the crime is only in the attempted stage. The reason is that it is only when the wound sustained is mortal or fatal that it can be said that the said offender has already performed all the acts of execution which would produce the felony.

Juan gave P10,000 cash to Mayor Pedro in consideration of an agreement to give a favorable consideration to Juan's bid in the construction of a public building. Mayor Pedro later discovered that the money was counterfeit. The construction did not push through. Is this Impossible Crime? Is this Attempted/Frustrated Bribery?

- No, it is not an impossible crime as this does not involve a crime against person or property. This is consummated direct bribery.

- In direct bribery, it is not the consideration that determines the commission of the crime because in direct bribery, what matters is that there is an agreement to perform something related to the public office, and the public officer accepted the offer. Remember that in direct bribery, the consideration can even be a mere promise.

Attempted & Frustrated and Impossible Crime, distinguished

1. **All** - The evil intent of the offender is not accomplished
2. **Impossible crime** - The evil intent cannot be accomplished because it is inherently impossible.

3. **Attempted & Frustrated** - Evil intent is possible for accomplishment, what prevented its accomplishment is the intervention of certain cause or accident in which the offender had no part.

To determine whether the crime is only ATTEMPTED, FRUSTRATED, CONSUMMATED

1. The nature of the offense
2. The elements constituting the felony
3. The manner of committing the felony must be considered

Plurality of Crimes

Consists in the successive execution, by the same individual, of different criminal acts, upon any of which no conviction has yet been declared. If there is conviction by final judgment and the crimes fall under the same title of the RPC, it is recidivism. (Reyes, Book I)

Plurality of Crimes

1. **Real or material plurality**
   Different crimes in law, as well as in the conscience of the offender. The offender shall be punished for each and every offense that he committed.

2. **Formal or ideal plurality**
   Only one criminal liability:
   a. When the offender commits any of the complex crimes in Art. 48;
   b. When the law specifically fixes a single penalty for 2 or more offenses committed (special complex crimes); and
   c. When the offender commits continuous crimes

Material Plurality	**Formal Plurality**	**Continuous Crime**
Separate criminal liability for each crime committed.	Only 1 criminal liability for 2 or more crimes.	Only 1 criminal intent carried out by a series of acts.
Separate intents, separate crimes, separate liability.	One main intent, one complex crime for 2 or more offenses, one liability.	1 intent, several acts, 1 continuous crime.

Compound Crime	**Complex Crime Proper**	**Special Complex Crime**
Definition		
Single act constitutes two or more grave or less grave felonies [Art. 48].	An offense is a necessary means to commit another offense [Art. 48].	The law fixes one penalty for two or more crimes committed.
Elements		
Requisites [S-S21]: (1) That only a **S**ingle act is performed by the offender (2) That the single acts produces: a. **2** or more grave felonies, or b. **1** or more grave and 1 or more less grave felonies, or 2 or more less grave felonies	**Requisites [2-N-SS]:** (1) That at least **2** offenses are committed (2) That one or some of the offenses must be **N**ecessary to commit the other (3) That both or all the offenses must be punished under the **S**ame **S**tatute.	**Requisites [2-SI-SCI]:** (1) **2** or more crimes are committed But the law (2) treats them as a **Si**ngle, **I**ndivisible, and unique offense (3) Product of **S**ingle **C**riminal Impulse
Imposable Penalty		
Penalty for most serious crime shall be imposed in its maximum period [Art. 48]	Penalty for most serious crime shall be imposed in its maximum period [Art. 48]	That which is indicated in the Revised Penal Code

When confronted by two or more crimes committed at the same time, the rule of thumb in the determination of what the crime is:

- First, determine whether it is a special complex crime. In the order of preference, the first would be "is this crime and this crime, do they constitute a special complex crime?"

- Second, if not a complex crime, is there a continued or continuous crime? If yes, then you will not complex and you will have a one simple crime.

  Example: Juan snatched the victim. Pedro detained the victim. Jose collected the ransom. It seems there are many crimes committed, but this actually constitutes only a single crime or a continued crime.

- Third, do the formulas under Article 48 apply? If neither special complex nor continued, then apply article 48. If you apply article 48, then there is a one complex crime.

- Fourth, if Article 48 does not apply, next question is "is the crime absorbed?" If yes, then there is only one crime. However, if the doctrine of absorption still does not apply, then, there will be separate crimes.

f) Continuing Crimes

A continued (continuous or continuing) crime is defined as a single crime, consisting of a series of acts but all arising from one criminal resolution. Although there is a series of acts, there is only one crime committed; hence, only one penalty shall be imposed.

It is a continuous, unlawful act or series of acts set on foot by a single impulse and operated by an unintermittent force, however long a time it may occupy. Although there are series of acts, there is only one crime committed. Hence, only one penalty shall be imposed.

However, when two acts are deemed distinct from one another although proceeding from the same criminal impulse, two offenses were committed. The principle cannot be applied. (People vs. Ramos, 59 O.G. 4052)

Note: The concept of continuing offense has a different meaning and application in criminal procedure. Where one where any of the elements of the offense were committed in different localities; the accused may be indicted in any of those localities.

Examples of continuing crime

1. Rebellion, insurrection, conspiracy, and proposal to commit such crimes
2. Violation of BP 22. Venue is determined by the place where the elements of making, issuing, or drawing of the check and delivery thereof are committed.
3. Abduction and kidnapping which are both transitory and continuing in time if the victim was transported and/or held for a time period.
4. Acts of violence against women and their children may manifest as transitory or continuing crimes

Illustrations

- Juan was kidnapped and was brought to Mandaue to eat then detained in Lapu2. The following day, kidnapper negotiated for ransom which was held in Talisay - several acts, several days, only 1 crime and 1 penalty; these series of acts form part of 1 crime with 1 set of elements.

- If Juan was in Manila to invest in a company, met at Cebu for site visit, contract was entered in Bacolod, after transactions in between, Juan finally gave the money. The giving of the money is the last element of estafa that is completed – there is only 1 crime of estafa although there were series of acts/events.

How Applied

Whenever the Supreme Court concludes that the criminals should be punished only once, because they acted in conspiracy or under the same criminal impulse:

- It is necessary to embody these crimes under one single information.
- It is necessary to consider them as complex crimes even if the essence of the crime does not fit the definition of Art 48, because there is no other provision in the RPC.

Requisites

1. Plurality of acts performed separately during a period of time;
2. Unity of penal provision infringed upon; and
3. Unity of criminal intent and purpose.

Plurality of acts

Continued Crime not a Complex Crime

A continued crime is not a complex crime because the offender in continued crime does not perform a single act, but a series of acts, and one offense is not a necessary means for committing the other.

Note: Several acts not several crimes.

Illustration

X defrauded A through falsification of a public document by obtaining the title of a lot, belonging to B, and by misrepresenting to A that B was badly in need of money and was offering the title of the said lot as collateral for a loan of P1500. X executed a Deed of Real Estate Mortgage, signing the name of B and induced A to deliver the amount of P1500. X likewise defrauded C through the same means and for the same amount.

The series of acts committed by X amounts to a continued, continuous, or continuing offense. There was only one deceit practiced by X on the 2 victims, i.e. that being in need of money, B was willing to mortgage 2 lots as security for a total loan of P3000. That there were 2 victims, however, did not accordingly convert the crime into 2 separate offenses, as the determinative factor is the unity or multiplicity of the criminal intent or of the transactions.

The singularity of the offense committed by petitioner is further demonstrated by the fact that the falsification of the 2 public documents as a means of committing estafa were performed on the same date, in the same place, at the same time and on the same occasion. (Mallari vs. People, G.R. No. L-58886)

Continued crime principle applies to crimes against persons

The accused and his companion ran amok in the passengers' section of the upper deck of a motorboat. Eleven persons were killed and twenty other persons were seriously wounded by him and his companion. The accused confessed that he and his companion had a common motive to run amok. It was held that since the killings were the result of a single impulse and

that neither the accused nor his companion had in mind killing any particular individual, the acts complained of should be considered as resulting from a single criminal impulse and constituting a single offense. (People vs. Emit, CA-G.R. No. 13477-R)

Series of acts born of a single criminal impulse may be perpetrated during a long period of time

Illustration

A sent an anonymous letter to B, demanding P5,000 under threats of death and burning the latter's house. 2 months later, A sent another letter to B, making the same threats. 4 months later, A sent another letter to B, making the same threats. 6 months thereafter, A sent another letter to B, making the same threats. This time, A was arrested for grave threats. (Reyes, Book I)

It was held that the different acts of sending letters of demand for money with threats to kill and burn the house of the offended party constitute only one and the same crime of grave threats born of a single criminal impulse to attain a definite objective. (People vs. Moreno, C.A., 34 O.G. 1767)

Rebellion and crimes absorbed by it are continuing crimes

The crimes of insurrection or rebellion, subversion, conspiracy or proposal to commit such crimes, and other crimes and offenses committed in the furtherance on the occasion thereof, or incident thereto, or in connection therewith are all in the nature of continuing offenses which set them apart from the common offenses, aside from their essentially involving a massive conspiracy of nationwide magnitude.

Unity of penal provision

Accused, after uttering defamatory words against the offended party, attacked and assaulted the latter, resulting in slight physical injuries. This is not delito continuado since oral defamation is punishable under Article 358 and slight physical injuries under Article 266. (People u. Ramos, 59 O.G. 4052)

Unity of criminal intent and purpose

One Larceny Doctrine

For prosecution of theft cases, the one larceny doctrine provides that the taking of several things, whether belonging to the same or different owners, at the same time and place, constitutes one larceny only so long as there is a single criminal impulse [Santiago v. People, G.R. No. 109266 (1993)].

Examples:

- Prior jurisprudence holds that where the defendant took the thirteen cows at the same time and in the same place where he found them grazing, he performed but one act of theft. (PP v Tumlos, 67 Phil 320)
- The act of taking the two roosters, in response to the unity of thought in the criminal purpose on one occasion, constitutes a single crime of theft. (PP v Jaranillo 33 SCRA 563)
- Robbery inside a jeepney with many passengers

Unlike the Single Impulse Rule which would result in an ordinary complex crime, under the Single Larceny Rule, there will only be one simple crime.

This rule was applied in Anti-Graft cases in Miriam Santiago v. Garchitorena, G.R. No. L–109266, Dec. 2, 1993, stating there was only 1 injury caused. Here, the effect would be different. It's like the effect of absorption.

Santiago vs. Garchitorena

Whether a series of criminal acts over a period of time creates a single office or separate offenses

Ruling:

The trend in theft cases is to follow the so-called "single larceny" doctrine, that is, the taking of several things, whether belonging to the same or different owners, at the same time and place constitutes but one larceny. Many courts have abandoned the "separate larceny doctrine," under which there is a distinct larceny as to the property of each victim. Also abandoned was the doctrine that the government has the discretion to prosecute the accused or one offense or for as many distinct offenses as there are victims.

In the case at bench, the original information charged petitioner with performing a single criminal act — that of her approving the application for legalization of aliens not qualified under the law to enjoy such privilege. The Supreme Court ordered the prosecution to consolidate the 32 Amended Informations into one information charging only one offense under the original case number.

Comments:

- The single larceny doctrine usually applies only to crimes against property.
- However, in Santiago, the crime was not under crimes against property. It was a case for Malversation, which is a crime committed by public officers.
- Hence, the single larceny doctrine is not technically limited to crimes against property, as it may be applied to other crimes where there is taking of property, though not strictly under crimes against property.

Foreknowledge Principle

Where the accused repetitively performed one element of a crime (or component of a complex crime) over a period of

time on a more or less regular basis, having foreknowledge of its occurrence.

Application to Special Laws

The concept is applicable to crimes under special laws. This is in line with Art. 10, which states that the RPC shall be supplementary to special laws, unless the latter provides the contrary.

Squatting or violation of PD 772 — Thus, even if the illegal occupancy was committed prior to the effectivity of the law, the person squatting on a resident of another may be charged for violation thereof.

Economic abuse under RA 9262 (Violence against women and their children act) — The offender continually commits the crime of economic abuse when he fails to support his children

B.P. Blg. 22 —

Accused issued two postdated checks in the amount of P200,000 for each in payment of a car purchased for P400,000. He is aware that the checks are unfunded. He is liable for two counts of violation of B.P. Blg. 22.

The basis of delito continuado principle is the singularity of the criminal intent or impulse. Hence, this rule does not apply in malum prohibitum because malice or criminal intent is immaterial. Violation of B.P. Blg. 22 is malum prohibutum. Without applying the delito continuado principle, he is liable for as many counts of violation of BP Blg. 22 as there are bouncing checks issued. (Lim u. People, G.R. No. 143231, October 26, 2001)

However, the two acts of issuing bum checks under a single criminal impulse to defraud the victim in the amount of P400,000 constitute delito continuado of estafa. In sum, with the application of the delito continuado principle, he is liable for one count of estafa through issuance of dishonored checks.

Ordinary Complex Crimes

Governed by Art 48 of RPC, which only applies to felonies.

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

The underlying philosophy of complex crimes, which follows the **pro reo principle**, is intended to favor the accused by imposing a single penalty irrespective of the crimes committed. The rationale being, that the accused who commits two crimes with single criminal impulse demonstrates lesser perversity than when the crimes are committed by different acts and several criminal resolutions. [People v. Gaffud, Jr., G.R. No. 168050 (2008)]

Two (2) Essence of Complex Crime

1. It is designed to favor the accused by treating several crimes as one crime.
2. It is also designed to punish the accused by requiring the application of the penalty for the most serious component in its maximum period

Art. 48 is Not Applicable in the following instances:

1. When the crimes have common elements;
2. When the crimes involved are subject to the rule of absorption;
3. Where the two offenses resulting from a single act are specifically punished as a single crime.

   Example: Less serious physical injuries with serious slander of deed, since this is punished under Art. 265 (2)

4. Acts penalized under Art. 365 (those resulting criminal negligence) [Ivler v. Modesto-San Pedro, supra].
5. In special complex crimes or composite crimes.

Morales v People, G.R. No. 240337. January 4, 2022
We recognized in Ivler that there are two approaches in the prosecution of quasi-crimes. The first approach applies Article 48 of the RPC while the second approach forbids its application. Article 48 deals with complex crimes. It allows the single prosecution of multiple felonies falling under either of two categories, namely: (1) when a single act constitutes two or more grave or less grave felonies; and (2) when an offense is a necessary means for committing the other. Light felonies are excluded in Article 48 and must be charged separately from resulting acts penalized as grave or less grave offense. In complex crimes, the accused will serve only the maximum penalty for the most serious crime. It is a procedural tool for the benefit of the accused. In contrast, the second approach sanctions a single prosecution for all the effects of the quasi-crime collectively alleged in one charge, regardless of their number and severity. After exhaustively discussing numerous case law, We declared that Article 48 of the RPC is not applicable to quasi-crimes. We forbade the "complexing" of a single quasi-crime by breaking its resulting acts into separate offenses (except light felonies) to keep inviolate the conceptual distinction between quasi-crimes and intentional crimes. This way, the splitting of charges under Article 365 which results to rampant occasions of impermissible second prosecution based on the same act/s or omission/s are avoided.

Accordingly, We laid down the rule that there shall be no splitting of charges under Article 365. Only one information shall be filed regardless of the number or severity of the consequences of the imprudent or negligent act. The judge will do no more than apply the penalties under Article 365 for each consequence alleged and proven.

We thus declare that De los Santos is abandoned. We agree with Our pronouncements in Ivler. Article 48 does not apply to quasi-offenses under Article 365 because reckless imprudence is a distinct crime and not a mere way of committing a crime. Simple or reckless imprudence does not strictly fall under the term "felonies" or acts or omissions committed by fault or culpa.

Kinds of Complex Crimes

1. Compound Crime
2. Complex Crime Proper

Compound Crime

When a single act constitutes 2 or more grave or less grave felonies.

Requisites

1. That only a Single act is performed by the offender
2. That the single act produces:
    a. 2 or more grave felonies; or
    b. 1 or more grave and 1 or more less grave felonies, or 2 or more less grave felonies.

Note: Here, usually we use the word "WITH" like direct assault WITH serious physical injuries, because there are 2 crimes.

Illustrations

1. **Direct Assault with Homicide or Physical Injuries**

    Illustration
    Let us say for example that the Barangay Tanod was attacked, and you know that he is an agent of a person in authority. If he is attacked, there will be a crime of direct assault. But by reason of the attack, the Barangay Tanod sustained serious physical injuries. There was no intent to kill, so it is serious physical injuries. Now, we have two crimes, but there is only one act. So, we complex them. The crime would be direct assault with serious physical injuries.

2. **Multiple Murders**

    A single bullet killing two persons [People v. Pama, C.A., 44 O.G. 3339 (1992)].

    The single act of rolling the hand grenade on the floor of the gymnasium, which resulted in the death of the victims, constituted a compound crime of multiple murders [People v. Mores, G.R. No. 189846 (2013)]; but if 3 separately shot, that's not anymore a complex crime as it is a result of 3 separate acts.

3. **Single Act of Pressing the Trigger**

    When an offender knows the special property of automatic guns and he continuously pressed the trigger and several bullets came out – NOT a compound crime but there will be as many counts as the number of persons killed/wounded. [People v. Bermas, G.R. Nos. 76416 and 94312 (1999)]

    Note: When various victims expire from separate shots – NOT a complex crime.

4. **Rape with less serious physical injuries**

    The act of raping a girl, causing her physical injuries which required medical attention for about 20 days. This is a complex crime of rape with less serious physical injuries [U.S. v. Andaya, 34 Phil. 690 (1916)].

Light Felonies
Light felonies produced by the same act should be treated and punished as separate offenses or may be absorbed by the grave felony.

E.g. The light felonies of damage to property and slight physical injuries, both resulting from a single act of imprudence, do not constitute a complex crime. They cannot be charged in one information. They are separate offenses subject to distinct penalties. (Lontok vs. Gorgonio, G.R. No. L-37396)

When the crime is committed by force or violence, slight physical injuries are absorbed. Thus, where a person in authority or his agent, who was attacked in the performance of his duty, suffered slight physical injuries only, the crime of slight physical injuries is absorbed in the crime of direct assault. (People vs. Benitez, G.R. No. 48396)

Several Killings ☆
If there are several acts involved in killing several victims, there is no compound crime. Article 48 requires a single act producing several crimes.

GR: When various victims expire from separate shots, such acts constitute separate and distinct crimes. [People v. Tabaco, G.R. Nos. 100382-100385 (1997)] Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes. [People v. Orias, G.R. No. 186539 (2010)]

People v Orias

Accused were convicted for the crime of robbery with

homicide.

Ruling:
In a complex crime, although two or more crimes are actually committed, they constitute only one crime in the eyes of the law, as well as in the conscience of the offender. Hence, there is only one penalty imposed for the commission of a complex crime.

Complex crime has two (2) kinds. The first is known as compound crime, or when a single act constitutes two or more grave or less grave felonies. The second is known as complex crime proper, or when an offense is a necessary means for committing the other.

The case at bar does not fall under any of the two instances stated above. It is clear from the evidence on record that the three (3) crimes of murder did not result from a single act but from several individual and distinct acts. Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.

In the instant case, the acts of the accused-appellant Orias and Elarcosa demonstrate the existence of conspiracy, thereby imputing collective criminal responsibility upon them, as the act of one is the act of all. Verily, the ruling in Lawas that "it is impossible to ascertain the individual deaths caused by each and everyone" of the defendants does not apply here.

XPN:

1. Lawas Principle
2. Abella Principle

Single Criminal Impulse Doctrine

People v. Lawas, G.R. No. L- 7618 (1967)

Facts:
Lawas and Benaojan are heads of the home guards in Balimbing and Salong, respectively. They received a report that the Moros raided the barrio of Malingao, killing 11 Christian residents. They learned that the Moros who committed it came from the barrio of Baris and proceeded there where they divided themselves into two groups, one headed by Lawas and the other by Benaojan. They gathered around 70 of the Maranaos (including men, women, children) and brought them to the barrio of Salong and there they took away animals and many personal belongings from Datu Lomangcolob. The principal witness for the robbery charge was Manaronsong Lomangcolob, son of Datu Lomangcolob, testified that the animals were taken away by the home guards.

Lawas and Agustin Osorio began investigating the Moros and started questioning them. During the investigation, for reasons which are disputed, the home guards on duty started firing at the Moros and most of them were killed. Unidentified home guards then started firing and stabbing at the women and children. About 35 women and children and about 16 Moros (during the investigation) were killed. Three witnesses for the prosecution claim that the Moros were fired at when Datu Lomangcolob refused to be tied at the hands, while the defense claims that they were fired at because they attempted to grab the arms of the home guards. The most credible witness is Pedro Lacson, resident of Barrio Salong, because he was impartial to the case. He corroborated the principle parts of Manaronsong Lomangcolob, and that a commotion ensued and Lawas ordered his men to fire and that non-companions of Lawas went and killed the women and children *(around 50)*. While Lawas and A. Osorio testified that during the investigation, the Moros suddenly rushed at the home guards to grab their guns and so a commotion arose, which led to Lawas ordering his men to cease fire because there were women and children present. The court did not agree with both the prosecution's and defense's theories. It inferred that the Maranaos resisted to having their hands tied, which resulted to the commotion, that they showed an attitude of hostility or resistance, and that Lawas believed that the Moros were about to resist and even attempted to fight for the arms, so he gave the order to fire.

Issue:
Whether each of the accused should be considered as having committed many crimes as there were persons who were killed, or only for one complex crime of multiple homicide.

Ruling:
The Court held that only one complex crime of multiple homicide can be charged. There was no intent on the part of the appellants either to fire at each and every one of the victims as separately and distinctly from each other. It has been held that if the act or acts complained of resulted from a single criminal impulse, it constitutes a single offense (Article 43 of the Revised Penal Code; People vs. Acosta, 60 Phil. 158).

There is also absolutely no evidence as to the number of persons killed by each and every one of the appellants, so even if the Court were induced to hold each appellant responsible for each and every death caused by him, it is impossible to carry that desire into effect as it is impossible to ascertain the individual deaths caused by each and everyone.

Note: There was no conspiracy to perpetuate the killing, thus collective criminal responsibility could not be imputed upon the accused. Since it was impossible to ascertain the number of persons killed by each of them, the Court was "forced" to find all the accused guilty of only one offense of multiple homicide instead of holding each of them responsible for 50 deaths.

The Lawas doctrine is more of an exception than the general rule.

Comments:

- If several accused killed several victims pursuant to a single criminal impulse to obey the order of their commander to fire their guns at the victims, they shall be held liable for compound crime of multiple murders.
- In this case, there were separate acts by separate offenders, but SC did not follow the Orias Doctrine. SC here did not mention of one act, instead the case was based on **one impulse**, regardless of the number of assailants.

The Uniqueness of Lawas

People v. Nelmida, G.R. No. 184500 (2012)

Facts:
Appellants and co-accused were charged in an Amended Information with the crime of double murder with multiple frustrated murder and double attempted murder. It was alleged that they were in conspiracy and that they fired and shot at some policemen and the mayor of Lanao del Norte using high-powered firearms.

Appellants ambushed the mayor's party at the road going to Salvador, Lanao del Norte with the accused assembling themselves in a diamond position on both sides of the road. The moment the yellow pick-up service vehicle of the mayor passed by the shed, accused opened fire and rained bullets on the vehicle using high-powered firearms.

Issue:
Whether the crime charged should be a complex crime

Ruling:
Appellants and their co-accused simultaneous act of riddling the vehicle boarded by Mayor Tawan-tawan and his group resulted in the death of 2 security escorts of the Mayor.

The Court believed that appellants should be convicted not of a complex crime but of separate crimes of 2 counts of murder and 7 counts of attempted murder as the killing and wounding of the victims in this case were not the result of a single act but of several acts of the appellants.

Deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes.

In the case at bar, the killing and wounding of the victims were not the result of a single discharge of firearms since appellants and co-accused opened fire and rained bullets on the vehicle boarded by the mayor. Moreover, more than one gunman fired at the vehicle of the victims. Each act by each gunman pulling of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to a complex crime.

Comments:

- In Lawas case, the Supreme Court was merely forced to convict the accused of a compound crime because of the impossibility of ascertaining the number of persons killed by each accused. Hence, to apply the single criminal impulse rule, the circumstance of a case must be similar to that in Lawas case.
- The Lawas principle should only be applied in a case where:
  (1) It is impossible to ascertain the number of deaths caused by each accused and
  (2) There is no conspiracy.
- In this case, SC found that there was conspiracy. Under the same facts, SC ruled that the accused were guilty of several counts of separate murders and attempted murders. Single impulse rule not applied.
- Even if it cannot be determined who among the several gunmen killed who among the several victims, the Single Impulse Doctrine shall not be applied if CONSPIRACY among the several accused is established. For each act of shooting, there shall be one crime.
- So, if there are several acts of shooting, then there shall be several crimes. Who will be liable if we cannot determine who shot who? All of the participants will be liable because the act of 1 will be deemed as the act of all.

Abandoned Ruling
(But was still discussed in class anyway)

PP vs. Sanidad

"Although several independent acts were performed by the accused in firing separate shots from their individual firearms, it was not possible to determine who among them actually killed victim Rolando. The evidence shows a single criminal impulse to kill Marlon's group as a whole. Where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a single complex offense."

Comments:

- The case of Nelmida abandoned the Lawas ruling which was applied in PP v Sanidad, because it limited the application of single impulse doctrine only in cases where there is no conspiracy.

- Where there is conspiracy, then the Nelmida will be applied, where the act of 1 is the act of all, and there will be as many separate crimes as there as acts and there are casualties. For each casualty, 1 crime, separate. Not complex. That is if there is conspiracy. If there is no conspiracy, we go back to Lawas. Because Lawas is not abandoned, it's just that it became the exception rather than the rule. And then take into consideration that even if Lawas is the XPN rather than the rule, but if the crime is committed inside prisons involving gangs, we still apply Lawas even if there is conspiracy.

Lawas doctrine is more of an exception than the general rule

People v. Remollino, G.R. No. L-14008 (1960)]

When one fires his firearm in succession, killing and wounding several persons, the different acts must be considered as distinct crimes. The Lawas ruling is not applicable because there is only one accused, who killed the victims. In sum, the circumstance of "impossibility of ascertaining the number of persons killed by each accused" on which the application of the Lawas is based is not obtaining in this case.

Single Criminal Purpose Doctrine

People v. Abella, G.R. No. L-32205 (1978)

If several prisoners killed fellow prisoners pursuant to a single criminal purpose to take revenge, they shall be held liable for compound crime of multiple murders.

Comments:

- However, in Nelmida itself, it also provides for another exception and that is when the incident involves gangs conspiring inside a prison. It means the Lawas (which is the XPN rather than the rule) is applied when the incident is committed inside a prison involving gangs where there is supposedly a conspiracy, where they agree to commit a crime. Even if there is conspiracy, but where the incident involves gangs and the crime is committed inside prisons, SC said that the Lawas ruling may still apply.
- The Abella principle should only be applied in a case where:
  (1) There is conspiracy and
  (2) The killings were perpetrated by prisoners against fellow prisoners.
- The "single purpose rule" was adopted in consideration of the plight of the prisoners; hence, it is only applicable if the offenders committed the crimes in prison against their fellow prisoners.

Other cases adopting Single Impulse Doctrine: (All involve prisoners; conspiracy present)

"Where a conspiracy animates several persons with a single purpose, "their individual acts in pursuance of that purpose are looked upon as a single act – the act of execution – giving rise to a complex offense".

- People v. De los Santos, 122 Phil. 55 (1965)
- People v. Garcia, 185 Phil. 362 (1980)
- People v. Pincalin, 190 Phil. 117 (1981)

In these 3 cases, the SC ruled that even if there is conspiracy, even if there is single impulse, it may still be applied.

In these cases, we do not know who injured who, and there is conspiracy. Yet owing to the fact on the difficulty of determining the extent of the agreement or the plan or the people involved, the SC maintained its rulings involving prisons.

"Double" or "Multiple"

When we say double murder, double homicide, multiple murder, multiple homicide it falls under this ordinary complex crime. Meaning, that the murders, the multiple or double murders are the result of only one act. If you threw a hand grenade and 5 people were killed, that's multiple murder. That's only one complex crime with only one penalty. But the penalty, as you know, is the maximum of the higher or more serious crime.

This is different from 2 counts of murder or 4 counts of murder which are several crimes separately and not as complex crimes.

Robbery with Robbery

Napolis Case

Facts:
The robbers went inside the store by making a hole through the wall (by the use of force upon things) but in order to complete the crime of robbery by force upon things, they must take something. But when they entered the store, they weren't able to take anything. There was unlawful entry, but the crime was not completed. So, what they did was they went inside where the couple dwells. Once they got inside the living quarters, they pointed guns and demanded for personal properties (offenders employing violence and intimidation, which is another type of robbery). It was supposed to be only 1 robbery because there is only 1 taking. It should have been robbery with violence or intimidation against persons and the unlawful entry would probably be merely an aggravating circumstance.

Ruling:

This is a complex crime of Robbery with Robbery. SC was aware that there was only 1 taking. However, robbery with intimidation carries with it a lower penalty compared to use of force upon things. It has been an established principle that between the 2 kinds of robbery, the graver offense is that of with intimidation but while it is true that the nature of the crime is graver, the RPC provides for a lower penalty. The SC said that in order not to result to unfairness, they will just complex it. The formula should have been strictly adhered.

"The argument to the effect that the violence against or intimidation of a person supplies the "controlling qualification", is far from sufficient to justify said result. We agree with the proposition that robbery with "violence or intimidation against the person is evidently graver than ordinary robbery committed by force upon things", but, precisely, for this reason, we cannot accept the conclusion deduces therefrom in the cases above cited – reduction of the penalty for the latter offense owing to the concurrence of violence or intimidation which made it a more serious one. It is, to our mind, more plausible to believe that Art. 294 applies only where robbery with violence against or intimidation of person takes place without entering an inhabited house, under the conditions set forth in Art. 299."

Comments:

- If only they were able to take something from the store, it would have been robbery with the use of force upon things as a means to commit the robbery with intimidation. But this was not the case because there is only 1 taking
- Because there was only 1 taking, there should have been only 1 SIMPLE CRIME OF ROBBERY, but which is not applied in the Napolis case since the SC complexed it.
- It was not complexed because of the formula, it was complexed because the SC wanted to impose a higher penalty. That's the only reason there.

Fiscal: Although Napolis is an old case, it was reiterated in 2015, making it more recent. However, I see that this is soon going to be abandoned with the amendment of the RPC (RA 10951).

Fransdilla v People

Brief Background:
Accused were convicted of the crime of robbery. Accused Fransdilla went inside the house of complainant first stating that she was an employee of POEA while four men were outside. Fransdilla asked to use the phone and thereafter, the four men went in the house. Fransdilla contended that there was no conspiracy and insisted on her innocence.

Ruling:
All the accused were guilty of committing the complex crime of robbery in an inhabited house by armed men under Article 299 and robbery with violence against or intimidation of persons under Article 249 of the RPC.

Napolis v. Court of Appeals is controlling in this case. To start with, the information fully alleged the complex crime of robbery in an inhabited house under Article 299, Revised Penal Code, and robbery with intimidation or violence under Article 294, Revised Penal Code by averring that "the above named accused, conspiring together, confederating with and mutually helping one another did then and there wilfully, unlawfully and feloniously with intent to gain, and by means of violence and intimidation upon person rob the residence . . . ." And, secondly, the Prosecution competently proved the commission of the complex crime by showing during the trial that the accused, after entering the residential house of the complainants at No. 24-B Mabait St., Teacher's Village, Quezon City, took away valuables, including the vault containing Cynthia's US dollar currencies, and in the process committed acts of violence against and intimidation of persons during the robbery by slapping and threatening Lalaine and tying her up, and herding the other members of the household inside the bodega of the house.

Under Article 48 of the Revised Penal Code , the penalty for the complex crime is that for the more serious felony, which, in this case, was the robbery in an inhabited house by armed men punishable by reclusion temporal, to be imposed in the maximum period (i.e. , 17 years, four months and one day to 20 years).

CASE STUDY:

A, B, C and D agreed to ambush the vehicle of E and kill him. As E was driving home, all accused fired multiple successive shots at E's vehicle. As a result, E and his passengers F, G and H were killed. Is there material plurality, (A,B, C, D for E; A, B, C, D for F; A, B, C, D for G; A, B, C, D for H) or is this a case of 1 multiple murder with a single criminal liability (A, B, C, D for E, F, G, H)?

MATERIAL PLURALITY

In People v. Orias, SC said, "deeply rooted is the doctrine that when various victims expire from separate shots, such acts constitute separate and distinct crimes." There is material plurality because there are several acts. Here, one is not a means of committing another and formula of one act equal to 2 or more is not present.

Since there is conspiracy, we will apply the Nelmida ruling, not the Lawas. We will go back to the general rule that one act is equal to one crime. Lawas is different from Nelmida because what happened in Lawas is that the SC ruled that if there are many victims and many accused, we don't know who fired at who, then there's a single impulse and we will thus complex. However, Nelmida further clarified that we should also apply

the Lawas Doctrine if there's conspiracy involving gangs inside a prison.

Once there's conspiracy, it doesn't matter anymore who killed who because in conspiracy, the act of one is the act of all. Single Impulse Doctrine is more of an exception to the general rule. In Lawas, there was no conspiracy, it was more of certain executioners taking orders from a single person (like in Maguindanao massacre). The thing is, whoever those actual shooters were, they were not acting in their own volition, but because somebody gave an order. There will be only 1 multiple murder which is different if there's conspiracy. In Nelmida case, there will be as many crimes as there are casualties.

CASE STUDY

During a quarrel and in the heat of anger, Juan shot Pedro. The same bullet which hit Pedro also hit his son Juanito. Both died. What's the crime?

- Ordinary complex crime because one act equals two crimes. Homicide, insofar as Pedro is concerned, and parricide for his son Juanito. Thus, we have a complex crime of parricide with homicide.
- Parricide and homicide, both of these crimes are grave offenses. According to Art 48, the penalty to be imposed is that for the graver offense. What is the graver offense? Parricide. But the penalty of the graver offense will be imposed in its maximum.

Summary

GR: 1 act, resulting in 1 injury = 1 crime; thus, 1 killing with 1 dead = 1 crime

XPN: 1 act, resulting in 2 or more injuries = 1 complex crime under Art. 48; thus, 1 shot with 2 dead = 1 complex crime

GR: 2 or more acts, resulting in 2 or more deaths = 2 or more crimes

XPN: 2 or more acts, resulting in 2 or more deaths; but no conspiracy & perpetrators of each crime cannot be determined [or if with conspiracy, may still apply when the milieu is in the prison (Lawas Doctrine)]; these 2 or more acts will be treated as one single impulse = 1 complex crime (so be treated as 1 act so will be the same as the exception above);

XPN to XPN (Nelmida Doctrine) –
So, you will go back to the general rule. When there is conspiracy, there will be as many crimes as are deaths. Act of one is act of all.

Complex Crime Proper

When one offense is necessary to commit another. The first offense is committed to insure and facilitate the commission of the next crime.

Note: 2 crimes and not 2 acts

Requisites

1. That at least 2 offenses are committed;
2. One or some of the offenses must be Necessary to commit the other; and

   Note: necessary means is not equivalent to indispensable means)

3. Both or all of the offenses must be Punished under the same statute.

Note: Here, we use the word "THROUGH", because one is the means of committing the other, like Estafa THROUGH Falsification of Public Documents.

Penalty for Complex Crime
Article 48 of RPC requires the commission of at least two crimes. But the two or more grave or less grave felonies must be the result of a single act, or an offense must be a necessary means for committing the other. They constitute only one crime in the eyes of the law because the offender has only one criminal intent, hence, there is only one penalty imposed.

The penalty for complex crime is the penalty for the most serious crime, the same to be applied in its maximum period. If different crimes resulting from one single act are punished with the same penalty, the penalty for any one of them shall be imposed, the same to be applied in the maximum period. When two felonies constituting a complex crime are punishable by imprisonment and fine, respectively, only the penalty of imprisonment should be imposed. (Reyes, Book I)

When penalized by a special law
There is no complex crime where one of the offenses is penalized by a special law.

Art. 48 will not apply if one crime is punishable under the RPC, and the other punishable under a Special Penal Law.

> **E.g.** Murder or homicide is distinct from the crime of Illegal Possession of Unlicensed Firearm, where the firearm is used in perpetuating the killing. Murder and homicide are defined and penalized by the RPC as crimes against persons. They are mala in se because malice or dolo is a necessary ingredient therefor. On the other hand, the offense of illegal possession of firearms is defined and punished by a special penal law. It is a malum prohibitum. In punishing illegal possession of firearms, the criminal intent of the possessor is not taken into account. All that is needed is intent to perpetrate the act prohibited by law, coupled by animus possidendi. However, it must be clearly understood that this

animus possidendi is without regard to any other criminal or felonious intent which an accused may have harbored in possessing the firearm. (People vs. Quijada, G.R. Nos. 115008-09)

When No Complex Crime Proper

1. A crime which has the same element as the other crime committed or a crime which is incidental to the other.
2. When the provision provides for a two-tiered penalty.

   Violation of SPLs and a provision of RPC. A felony and an offense cannot be complexed.

   E.g. Usurpation of property (Art. 312), Malicious procurement of a search warrant (Art. 129), Bribery (Art. 210, par. 1)

3. Subsequent acts of intercourse, after forcible abduction with rape, are separate acts of rape.
4. When trespass to dwelling is a direct means to commit a grave offense.
5. When one offense is committed to conceal the other.

   E.g. After committing homicide, the accused, in order to conceal the crime, set fire to the house where it had been perpetrated (People vs. Bersabal, G.R. No. 24532)

   Setting fire to the house is arson. Neither homicide nor arson was necessary to commit the other.

6. Where one of the offenses is penalized by special law.

   Where one of the offenses is penalized by a special law.

   E.g. Murder or Homicide remains distinct from the crime of Illegal Possession of Unlicensed Firearm, where the firearm is used in perpetuating the killing. (People vs. Quijada, supra)

   Thus, there is no complex crime of estafa and BP 22. These are treated as separate crimes although arising out of one transaction only and a produce of single act of issuing a worthless check.

7. There is no complex crime of rebellion with murder, arson, robbery, or other common.
8. In case of continuous crimes.
9. When the other crime is an indispensable element of the other offense.

   A crime which is an element of the other, where the former shall be absorbed.

   E.g. Trespassing as an element of robbery in an inhabited place.

Not all crimes that are used as a means to commit another would produce a complex crime.

Complexing Rape and Forcible Abduction

PP vs. Garcia

Brief Background:
Accused abducted victim Cleopatra Changlapon as she was crossing the street. The accused then took turns raping her.

Ruling:
There can only be 1 complex crime of forcible abduction with rape. The crime of forcible abduction was only necessary for the first rape. The subsequent acts of rape can no longer be separate complex crimes of forcible abduction with rape. They should be detached from and considered independently of the forcible abduction. The accused should be convicted of 1 complex crime of forcible abduction with Rape and 3 separate acts of rape.

The penalty for complex crimes is the penalty for the most serious crime which shall be imposed in its maximum period. Rape is the more serious of the two crimes and, when committed by more than two persons, is punishable with reclusion perpetua to death under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. Thus, accused-appellant should be sentenced to the maximum penalty of death for forcible abduction with rape.

Comments:

- The Garcia ruling tells us that since there was only one act of abducting, then there should only be one complex crime of Forcible Abduction with Rape and the others would simply be Rape.

Illustrations

- To rob a house, you have to commit trespass to dwelling which is already a crime in itself; but if together with trespass, you entered the house and took something without the consent of the owner, the crime would be robbery with the use of force upon things.

  Q: What happens to the trespass crime?

  This is not a complex crime, as trespass is a necessary element of robbery by the use of force upon things, thus absorbed in robbery.

- Gikulata with no intent to kill; after 2 days, it turned out there was head injury resulting to death; the physical injuries as a means of committing the other will not produce a complex crime; it will be absorbed in the homicide.

- You forged the title of the land, placing your name as the owner of such then sold it to another; the other person was deceived by the falsified document; 2 crimes – falsification of (public) document and deceived another (swindling); you won't be able to deceive the other were it not for the falsified the document; so the falsified document is already a crime but it was used as a means to commit the other; in this case, there is a complex crime.

  Estafa and falsification of private documents have the same element of damage. Thus, there is NO complex crime of estafa through falsification of private documents.

  But falsification of public, official, or commercial documents does not have the element of damage, hence, there is a complex crime of estafa through falsification of such documents.

General Rules In Complexing Crimes

1. **Information** – only one (1) shall be filed
2. **Jurisdiction** – When two crimes produced by a single act are respectively within the exclusive jurisdiction of two courts of different jurisdiction, the court of higher jurisdiction shall try the complex crime.
3. **Penalty** –
   - Where both penalties provide for imprisonment - penalty to be imposed is the penalty for the most serious crime, applied in its maximum.
   - Where one of the penalties is imprisonment and the other is fine - only the penalty of imprisonment should be imposed.
4. **When the other offense is not proven** – accused can be convicted of the other.

g) Special Complex Crimes or Composite Crimes

In substance, there is more than one crime; but from the eyes of the law, there is only one. The law treats it as a single crime for which it prescribes a single penalty. It is also called a composite crime.

Characteristics

1. It offends against only one provision of law, whether of the RPC or of special penal laws;
2. It penalizes two specific crimes and imposes one specific penalty; and
3. The composite crime absorbs all other crimes committed in the course of the commission of the composite crimes

Requisites [2-SI-SCI]:

1. **2** or more crimes are committed
2. But the law treats them as a **S**ingle, **I**ndivisible, and unique offense
3. Product of **S**ingle **C**riminal **I**mpulse

No attempted and frustrated stages of component crimes

The component crimes in a special complex crime have no attempted or frustrated stages (unless provided by law) because the intention of the offender is to commit the principal crime which is to rob (not to kill), and in the process, another crime is committed [People v. Dillatan, G.R. No. 212191 (2018)].

The components of special complex crimes under the Revised Penal Code, and special laws are as follows:

	Rape	Killing	Physical Injuries	Arson
Arson (RPC) and Arson (P.D. No. 1613)		✓		
Carnapping	✓	✓		
Kidnapping	✓	✓	✓	
Hijacking	✓	✓	✓	
Piracy (RPC) and Highway Robbery (P.D. No. 532)	✓	✓	✓	
Rape		✓	✓	
Attempted Rape		✓		
Robbery	✓	✓	✓	✓
Attempted Robbery		✓		

Special Complex Crime of Robbery

For special complex crimes and also for Art. 296 of the Revised Penal Code, when there is a robbery, and only the robbery is agreed upon, all the conspirators will be liable for crimes other than and in addition to the crime of Robbery that are committed in the course of committing the robbery.

Because in the case of Robbery with Homicide, when there is a Homicide as well, the nature of the crime will change into a simple crime of Robbery to a special complex crime; and in order to become a special complex crime, what is necessary is what was the primary intent. If the primary intent is to rob, all other crimes will be special complex.

Primary intent is to kill – no special complex crime

But if the primary intent is to kill, then we do not have a special complex; we will have separate crimes. In which case, those

who agreed on the killing will all be liable for the killing regardless of the degree of participation, because the act of one is the act of all. For the robbery in the course of the killing, only those who agreed on the robbery or theft would be liable for that.

Primary intent is to rob – special complex crime
This is not true if the main intention is to rob, because once the main intention is to rob, then any other crimes committed will be special complex. So, if rape is committed in the course of robbery, it will become Robbery with Rape, NOT Rape and Robbery.

> Basta Robbery ang main intention, mo-special complex na ta; and the ruling for special complex crimes follows Art. 296(2) of the Revised Penal Code. Under Art. 296(2) which is Robbery in Band, all persons, all conspirators will be liable not only for Robbery which was the only crime agreed upon but also for the Homicide which is also not agreed upon actually but foreseeable in a robbery with violence. They can even be liable for non-foreseeable crimes such as rape committed in the course of the robbery, provided that they did not try to prevent it. If they did not try to prevent it, even if they did not participate in the rape, even if the rape wasn't agreed upon, they would still be liable for the rape.

Robbery With Homicide

There is Robbery with Homicide even if the killing is not premeditated. What is determinative is that the killing took place "by reason of or on the occasion of" the robbery.

There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery and homicide, must be consummated.

The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide. (People vs. Layug, G.R. No. 223679)

In cases when the prosecution failed to conclusively prove that homicide was committed for the purpose of robbing the victim, no accused can be convicted of robbery with homicide. (People vs. Chavez y Bitancor alias "NOY", G.R. No. 207950)

Note: Additional homicide is not aggravating.

If homicide was committed, those who were unaware could be held liable for the homicide. The consistent doctrinal rule is that when a homicide takes place by reason or on the occasion of the robbery, all those who took part in the robbery shall be guilty of the special complex crime of robbery with homicide whether or not they actually participated in the killing, unless there is proof that they had endeavored to prevent the killing. [People v. Magdamit, G.R. No. 118130 (1997)]

The victim in the Homicide is not necessarily the victim in the Robbery. The death may be by reason of or on the occasion of the robbery.

Illustration

> Even if Juan, the robber, only robbed Pedro, but the former hit a passer-by, Jose, instead, the crime is still Robbery with Homicide. The killing was committed on the occasion of the robbery even if it was not by reason of the robbery.

Comments:

- Dili importante ang victim, even if co-robber ang namatay, ang importante is ang perpetrator (must be a co-robber). The co-robber—kung siya ang namatay—pwede nga robbery with homicide BUT only if the killing was committed by another robber.

- BUT if there was a shootout and you could not identify anymore who shot who, it should be charged to the robber. It will still be robbery with homicide even if you don't know who shot who (like in a shootout).

- However, if there was an admission by the police that they were the ones who shot the co-robber, it can no longer be robbery with homicide, because the killing was not committed by one of the robbers.

People v Aspili

Brief Background:
Accused boarded the vessel of the victims while it was taking shelter due to the bad weather. They then robbed the vessel. Some victims jumped to the sea with two of them dying due to suffocation by drowning. On the other hand, Narcisa Batayola and Josie Gonzales likewise attempted to jump but accused (at different times) held them and together with his co-accused, raped her.

Ruling:
Evidence shows that what was committed is the special complex crime of robbery with homicide aggravated by rape.

The records disclose that the appellants took control of the vessel M/L Elsa by threatening the crew and passengers with their bolos and pistols. (TSN, pp. 452-459, August 26, 1970; pp. 137-148, November 16, 1970) Narcisa Batayola, a prosecution witness, testified that after the commotion that ensued when appellants wielded their weapons, some of the appellants immediately started ransacking the cargoes and taking the contents thereof. These acts of the appellants therefore manifest an unlawful intent to gain, through violence and intimidation of persons, by taking the vessel and personal property of the crew and passengers, which comprises the crime of robbery.

The overwhelming evidence reveals that the original design of the malefactors was to commit robbery in order to facilitate their escape from the penal colony. Their original intent did not comprehend the commission of rape. Hence, the crime of rape cannot be regarded as the principal offense. In this case, since it attended the commission of robbery with homicide, the rape is deemed to aggravate the crime but damages or indemnification for the victim may be awarded. Instead of ignominy, it is the rape itself that aggravates the crime

Since rape and homicide co-exist in the commission of robbery, the offense committed by the appellants is the special complex crime of robbery with homicide, aggravated by rape, punishable under Paragraph 1 of Article 294 of the Revised Penal Code (RPC). It does not matter if the technical name assigned to the offense is rape with homicide and with robbery in band, for the real nature of the crime charged is determined not by the title of the complaint, nor by the specification of the provision of the law alleged to have been violated, but by the facts recited in the complaint or information. (See People v. Oliviera, 67 Phil. 427 [1939]) As the acts constituting robbery with homicide were clearly set forth in the complaint and proven during trial, then the appellants may be held liable for such crime, regardless of the erroneous designation of the offense.

People v Pulusan

Brief Background:
Accused were charged with the crime of robbery attended with multiple homicide and multiple rape for robbing a passenger jeepney, killing four of the passengers and raping the only female passenger repeatedly. The trial court convicted accused of the crime of robbery with homicide.

Ruling:

The crime charged in the information was "highway robbery attended with multiple homicide with multiple rape."

As manifest in its preamble, the object of the decree is to deter and punish lawless elements who commit acts of depredation upon persons and properties of innocent and defenseless inhabitants who travel from one place to another thereby disturbing the peace and tranquility of the nation and stunting the economic and social progress of the people. A conviction for highway robbery requires proof that the accused were or organized for the purpose of committing robbery indiscriminately. There is no such proof in this case. Neither is there proof that the four men previously attempted to commit similar robberies indiscriminately.

The trial court thus correctly found Pulusan and Rodriguez guilty of the crime of robbery with homicide aggravated by rape under Article 294 (1) of the Revised Penal Code. In the interpretation of an information, controlling is not the designation but the description of the offense charged under the allegations in the information. Pulusan and Rodriguez are liable under the aforesaid article of the penal code.

Regardless of the number of homicides committed on the occasion of a robbery, the crime is still robbery with homicide. In this special complex crime, the number of persons killed is immaterial and does not increase the penalty prescribed in Art. 294 of the Revised Penal Code. There is no crime of robbery with multiple homicide under the said Code. The same crime is committed even if rape and physical injuries are also committed on the occasion of said crime. Moreover, whenever the special complex crime of robbery with homicide is proven to have been committed, all those who took part in the robbery are liable as principals therein although they did not actually take part in the homicide.

Rape had not been proven to be the original intention of the appellants, the crime having been committed simply because there was a female passenger in the jeep. Hence, rape can only be considered as an aggravating circumstance and not a principal offense

People v. Dillatan, G.R. No. 212191 (2018)

Brief Background:
The victims were riding together on their motorcylce when the accused tailed them. Accused caught up to them and declared a holdup. Afterwards, Dillatan uttered, "barilin mo na," which resulted to the injuries of the victims. Lower court convicted accused of robbery with homicide.

Ruling:
It bears to reiterate at this point that the component crimes in a special complex crime have no attempted or frustrated stages because the intention of the offender/s is to commit the principal crime which is to rob but in the process of committing the said crime, another crime is committed.

"Homicide," in the special complex crime of robbery with homicide, is understood in its generic sense and forms part of the essential element of robbery, which is the use of violence or the use of force upon anything. Stated differently, all the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. Thus, as in the present case where, aside from the killing of Homer, the Spouses Acob, on the occasion of the same robbery, also sustained injuries, regardless of the severity, the crime committed is still robbery with homicide as the injuries sustained by the Spouses Acob are subsumed under the generic term "homicide" and, thus, become part and parcel

of the special complex crime of robbery with homicide.

Nonetheless, it is also settled that in robbery with homicide, the victims who sustained injuries, but were not killed, shall also be indemnified. Hence, the nature and severity of the injuries sustained by these victims must still be determined for the purpose of awarding civil indemnity and damages.

Fiscal's Comments:
Supreme Court has, time and again, stated and ruled that all other crimes committed while a special complex crime is committed will be absorbed by the special complex crime.

In order to constitute a special complex crime of Robbery with "anything" - Robbery with Homicide, Robbery with Rape, Robbery with Serious Physical Injuries - the main objective must be TO ROB. So, if there is Homicide committed in the course of committing the Robbery, that will make the Robbery a special complex crime. Even if there are other crimes committed aside from the Robbery and the Homicide, the special complex crime will not change its name. It will continue as being **Robbery with Homicide.**

The Supreme Court further said and clarified that just because the special complex crime is indivisible and all other component crimes are absorbed, it does not mean that the victims of other crimes will not anymore be awarded of the civil liability. They can still be awarded of the civil liability, but insofar as the designation of the crime, it will remain to be the special complex crime.

Note: If the purpose is to rob and to kill, the crime would not be a special complex crime. The crime would be robbery and murder, depending on the circumstances. It can also be murder and theft. In such instances, the killing is premeditated.

CASE STUDY

A, B, C and D. They agreed to rob a bank. The only agreement is to rob a bank. They did not agree to kill anybody. They did not agree to rape anybody. They only agreed to rob a bank. But, in the course of the robbery, D killed the security guard, X. C raped another victim, Y.

If homicide is committed on the occasion of robbery, automatic, the crime has changed into a special complex crime of Robbery with Homicide. (Indivisible Crime which you cannot chop chop)

There is no such crime as Robbery with Homicide with Rape. The only designation is Robbery with Homicide. The rape will be treated as an ordinary circumstance, but it will only be considered as such insofar as C is concerned.

Q: Who will be liable for Robbery with Homicide?

EVERYONE, even those who did not agree to it; because now, it is a special complex crime and all crimes foreseeable in the course of the execution of the main crime agreed upon, they will all be liable.

Q: And how about for rape which is not foreseeable?

Art. 296(2) says that they will also be liable even if they did not agree to it; even if they did not participate in it, provided that they did not try to prevent it.

Thus:

1. **A, B, D** – Robbery with Homicide

2. **C** – Robbery with Homicide *with ordinary aggravating circumstance of Rape

Robbery With Rape

To be convicted of robbery with rape, the following elements must concur:

(1) the taking of personal property is committed with violence or intimidation against persons;
(2) the property taken belongs to another;
(3) (the taking is characterized by intent to gain or animus lucrandi; and
(4) the robbery is accompanied by rape. (People v. Bringcula y Fernandez, G.R. No. 226400)

First. The intent to rob must precede the rape. In robbery with rape, the intention of the felony is to rob and the felony is accompanied by rape. Intent to gain, as an element of the crime of robbery, is an internal act; hence, presumed from the unlawful taking of things. Second. In robbery with rape to stand, it must be shown that the rape was committed by reason of or on the occasion of robbery and not the other way around. (People vs. Spinilla, G.R. No. 224922)

Note: Additional rape is not aggravating

Robbery In Band Or Cuadrilla Theory

ARTICLE 296. Definition of a Band and Penalty Incurred by the Members Thereof. — When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band (cuadrilla).

Any member of a band who is present at the commission of a robbery in an uninhabited place and by a band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

All conspirators are liable even for acts not agreed upon but committed on the occasion of Robbery in band [Art. 296(2)]

"The conspiracy to rob is all that is needed to be proven to punish all principals to the crime of robbery with rape". (even if only 1 of them raped)

People v. Mendoza, GR 123186 (1998)

When two or more persons are charged as co- conspirators in the crime of robbery with rape, the conspiracy to rob is all that is needed to be proven to punish them all as principals in the crime of robbery with Rape.

The rape may have been perpetrated by only one of them, but they will all be convicted of robbery with rape, because the rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them actually took part in the rape.

People v. Verceles, GR 130650 (2002)

We have previously ruled that once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape.

The rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape.

Cuadrilla not applied

People v. Carandang, GR L-31012 (1937)

Only those who committed the rapes were held liable for robbery with rape, even if one of them actually watched the rapes.

Here are some cases that discussed the Cuadrilla Theory. It is the one that is provided under Art. 296. Art. 296 is also known as the Cuadrilla Theory. The Cuadrilla Theory is named as such because "cuadro" means "four"; and in Robbery in Band, you must have at least 4 armed participants.

Now, remember again that although Art. 296 specifically refers to Robbery in Band, the Supreme Court in these cases applied the Cuadrilla Theory to all special complex crimes, not only to Robbery in Band.

Prevailing Doctrine

People v. Canturia, GR 108490 (1995)

Members of a band who committed rape during a robbery are liable for Robbery with Rape; others who were unaware of the rape are liable only for Robbery in Band.

Thus, those who are aware but did not try to prevent the rape will be liable for the Robbery with Rape, even if they did not take part. Only those who are unaware will not be liable.

So we have Canturia case. This case was asked in the Bar Exam recently. So here, members of the band committed rape in the course of the robbery. Others were unaware, so they were not liable for the rape.

Art. 296, Paragraph 2 applies here. Rape being an "unforeseeable offense" in Robbery, only band members who committed the rape or who knew of the rape but did not prevent the same can be held liable (Regalado). Other band members will only be liable for Robbery in Band.

Carandang And Canturia Cases

- Both involve more than 3 accused
- In both, only robber-rapists were liable for Robbery with Rape, the others only for Robbery
- But in Canturia, other accused were aware of the rape but did not take part
- In Canturia, there is a band, in Carandang, only 2 were shown to be armed.

Foreseeability

Only Regalado uses the "foreseeability" of crimes. Fiscal opines that this discussion is correct.

In foreseeable crimes, it does not matter whether or not a band committed it, or there was conspiracy, or the accused was present. If the crime is Robbery with Homicide, **homicide being a foreseeable crime, even if the mastermind is not present, he may be held liable**.

As said in Lascuna, only the conspiracy must be proved despite the accused's absence thereat, also despite the absence of the conspiracy to kill. Only the conspiracy to rob must be proved.

Rape is considered not foreseeable in the commission of robbery. Hence, the law must be taken into consideration. Article 296 states that those who were not present during the commission of the rape are not liable for the same.

Article 296, if you have to be strict about it, must be committed by a band. Not all conspiracies constitute a band because there may be conspiracies involving twenty persons, but it may not be a band when only two people are armed.

For non-foreseeable offenses, the rule applies to a band. What about when there is a conspiracy? Article 296 also applies, according to Fiscal.

Note:

- What is important is the foreseeability of the crime.
- If it is robbery with rape, apply Article 296(2) kay di foreseable ang rape sa robbery; but if there's a killing, homicide transforms it into a special complex crime because homicide is foreseeable in robbery and all will be liable for the special complex crime.

Now, this rule under Art. 296 (Cuadrilla Theory) has been adopted by the Supreme Court to apply for ALL OTHER special complex crimes. This is now not limited to Robbery with Homicide. What you can find in the law is only specific to the crime of Robbery with Homicide. Art. 296, as you can see, is limited to Robbery with Homicide. But in the application of that law, it has been expanded to include as well other special complex crimes such as:

A, B, C and D agreed to kidnap X. The only agreement is to kidnap X. They did not agree to kill X. They did not agree to rape X. But aside from being kidnapped, X was also killed and raped.

CASE STUDY

A woman and her child are killed in Deca Homes in Minglanilla. Police investigation showed that the killers were laborers of the woman who renovated her house. Certain valuables were stolen. Police wanted to file robbery with homicide, the penalty is only one even if placed in its maximum because it is reclusion perpetua. But then, further investigation showed that the woman, prior to her death, had emailed her husband saying that the guy had a grudge against her because she did not loan them money. What does that mean?

It means that the main purpose is not to rob. The main purpose is revenge; hence, the crime now will not be Robbery with Homicide. It will be 2 counts of Murder plus, either Robbery or Theft.

Why? Because insofar as the woman is concerned, it seems that there is evident premeditation. In so far as the child is concerned, there is without a doubt an abuse of superior strength.

2 Counts of murder, that makes already 2 Reclusion Perpetua, plus naa pa jud Robbery with use of force upon things or Robbery with violence or intimidation (if the things were taken before they were killed). But if the things were taken as an afterthought after the victims were killed, then we cannot have Robbery anymore because by the definition itself, we cannot intimidate dead people. So what we now have is Theft.

Attempted or Frustrated Robbery with Homicide

If the Homicide is attended with circumstances qualifying it as Murder, Parricide, or Infanticide, the penalty of any of these 3 crimes shall be imposed. The crimes will still be Attempted or Frustrated Robbery with Homicide, a special complex crime punished under Art. 297. In these cases, the main objective must be to rob.

If the homicide is actually murder, parricide or infanticide, because murder, parricide, infanticide carries with it a heavier penalty, then the heavier penalty shall be imposed but the name or designation of the crime will remain the same.

Here, homicide MUST be consummated. If homicide is not consummated, the crime is not a special complex crime. There is no special complex crime of Consummated Robbery with Attempted or Frustrated Homicide.

The crime committed may either be:

1. the special complex crime of robbery with serious physical injuries under Art. 295
2. an ordinary complex crime if homicide was used to commit the robbery (Art. 48)
3. two separate offenses of robbery and attempted/frustrated homicide
4. Robbery only if the physical injuries are slight, applying the doctrine of absorption

Q: Is there a Complex Crime of Attempted or Frustrated Robbery with Attempted or Frustrated Homicide?

Yes. If there is intent to kill, the crime would be the ordinary complex crime of Attempted or Frustrated Robbery with Attempted or Frustrated Homicide or Murder or Parricide or Infanticide under Art. 48, where the violence against persons which was employed to take the property also constituted, say, attempted homicide. These are NOT special complex crimes. To be SCC, the homicide must be consummated or the physical injuries must be serious. If not serious, we cannot consider it as SCC.

Q: What if less serious?

Then the crime is not SCC but an ordinary CC. Why? Because it is allowed under 48, because we have 2 grave or less grave offenses, but we must follow the formula which is one is a means of committing another. So therefore, the less serious physical injuries must be a means of committing the robbery. If the less serious physical injuries only occurred on the occasion of the robbery, but is not necessary in committing the robbery, and not used as a means, then no ordinary complexing under 48. What we will have are 2 separate crimes.

Consummated Robbery with Attempted/Frustrated Homicide is not a special complex crime. This is an ordinary complex crime if attempted or frustrated homicide is a mode of committing robbery.

Example:

Juan intended to rob Western Union. However, the guard was so alert, so he was able to foil his plan. As Juan was

fleeing, a cigarette vendor saw him and started to chase him. Juan shot the vendor (fatal shot, but he survived). Would this be an ordinary complex crime under Art. 48 considering that both the robbery and the homicide were not consummated?

- No. The frustrated homicide was NOT a mode of committing the robbery so Art. 48 cannot be applied. There are two separate offenses.

Attempted or Frustrated Robbery with Slight Physical Injuries

If there is no Intent to Kill:

- If the physical injuries were committed on the occasion of and as a means to commit the Attempted or Frustrated Robbery, the injuries are absorbed; no complexing.
- If the physical injuries were committed on the occasion of the Attempted or Frustrated Robbery, but not as a means of committing the latter, there are separate crimes.

Remember: Slight physical injuries is a light felony, and you cannot complex a light felony.

Example

- Juan committed robbery against Pedro by inflicting slight physical injuries – Doctrine of Absorption
- Juan was robbing Pedro when a bystander passed by. Juan shot the bystander - There are two crimes committed.
- If the slight physical injuries were committed on occasion of but not as a means of committing robbery, then there would be two separate crimes.
- This cannot be a complex crime under Art. 48 since slight physical injuries is a light felony.
- This is not a special complex crime since only robbery with serious physical injuries is punished as a special complex crime.

SUMMARY

- See first if it the crime committed is a Special complex crime - if defined as an SCC by law.
- If it is not an SCC, check if it falls under Art. 48, ordinary complex crime (if 1 act = 2 or more grave or less grave; used as a means to commit the crime).
- If it is an element of the crime itself then, apply doctrine of absorption.
- If it is not among 3 mentioned above, then charge it as separate crimes.

Rape with Homicide

Homicide must always be consummated, otherwise, they are separate offenses. The rape may either be consummated or attempted.

The elements of the special complex crime of rape with homicide are: (a) the appellant had carnal knowledge of a woman; (b) carnal knowledge of a woman was achieved by means of force, threat or intimidation; and (c) by reason or on occasion of such carnal knowledge by means of force, threat or intimidation, the appellant killed a woman. (People vs. Alfredo Reyes Alias "Boy Reyes", G.R. No. 207946)

Kidnapping With Homicide

Where the person kidnapped is killed in the course of the detention, regardless of whether the killing was purposely sought or was merely an afterthought, the kidnapping and murder or homicide can no longer be complexed under Art. 48, nor be treated as separate crimes, but shall be punished as a special complex crime under the last paragraph of Art. 267, as amended by RA No. 7659. (People vs. Elizalde Y Sumagdon and Placente y Busio, G.R. No. 210434)

Kidnapping With Rape

No matter how many rapes had been committed in the special complex crime of kidnapping with rape, the resultant crime is only one kidnapping with rape. This is because these composite acts are regarded as a single indivisible offense as in fact R.A. No. 7659 punishes these acts with only one single penalty. However, for the crime of kidnapping with rape, as in this case, the offender should not have taken the victim with lewd designs, otherwise, it would be complex crime of forcible abduction with rape. (People vs. Mirandilla, Jr., G.R. No. 186417)

Main Purpose is always the determining factor

1. **To deprive liberty is the main purpose** - Special Complex Crime of Kidnapping with Rape

If the accused abducted the victim without clear manifestation of lewd design, the crime committed is kidnapping and serious illegal detention since it will appear that the intention of the accused is to deprive the victim of her liberty.

If as a consequence of illegal detention, the victim was raped, the crime committed is a special complex crime of kidnapping with rape. This is the crime committed regardless of the number of rapes. Multiple rapes will be considered as a component of this special complex crime [and treated as aggravating circumstances] (People vs. Anticamara, G.R. No. 178771, June 8, 2011; People vs. Mirandilla, Jr., G.R. No. 186417, July 27, 2011; 2013 Bar Exam).

If as a consequence of illegal detention, the victim was raped and then killed, the crime committed is a special complex crime of kidnapping with homicide. Rape will be considered as component of this special complex crime [and treated as aggravating circumstances] (People vs. Larranaga, 138874-75, February 3, 2004).

2. **Lewd design is the main purpose** - No Special Complex Crime

The difference between rape through forcible abduction and kidnapping with rape lies on the criminal intention of the accused at the precise moment of abduction.

If the abduction is committed with lewd design, with respect to the first rape, the crime committed is [ordinary] complex crime of rape through forcible abduction. Subsequent rapes will be considered as separate crimes. On the other hand, if the abduction is committed without lewd design, the crime committed is special complex crime of kidnapping with rape. Subsequent rapes will be considered as components of this special complex crime (People vs. Mirandilla, Jr., G.R. No. 186417, July 27, 2011). Even though the victim was detained for one week and in the course thereof, she was raped, the crime committed is complex crime of rape through forcible abduction if the abduction is committed with lewd design (People vs. Amaro, G.R. No. 199100, July 18, 2014; 2000 Bar Exam).

If the accused was molesting the victim immediately after abduction, this circumstance is a proof that abduction is committed with lewd design (People vs. Jose, supra). After eating the food given by the accused, the victim became dizzy and thereafter, she passed out. When she regained consciousness, she notices that she and the accused are naked inside a room. She was raped and detained for 6 days. The crime committed is complex crime of rape through forcible abduction (People vs. Amaro, supra).

Comments:

- "Kidnapping under Art. 267 (when victim is killed or dies, or for ransom, or with Rape)" - Kidnapping which could be with homicide or murder. The law says Kidnapping with Death. Here, the death could be homicide, parricide, or murder.
- "Robbery with Homicide or Serious Physical Injuries (Arts. 294 and 295); Robbery with Rape or intentional mutilation or arson (Art. 294)" - Robbery with less serious physical injuries is not special complex, but it can be complexed under Art. 48 (ordinary). Robbery with slight physical injuries cannot be complexed because slight physical injuries is a light felony, it should be charged separately.

Arson With Homicide

No complex crime of arson with homicide

In cases where both burning and death occur, in order to determine what crime/crimes was/were perpetrated — whether arson, murder or arson and homicide/murder, it is de rigueur to ascertain the main objective of the malefactor:

1. If the main objective is the burning of the building or edifice, but death results by reason or on the occasion of arson, the crime is simply arson, and the resulting homicide is absorbed;

2. If the main objective is to kill a particular person who may be in a building or edifice, when fire is resorted to as the means to accomplish such goal the crime committed is murder only;

3. If the objective is to kill a particular person, and in fact the offender has already done so, but fire is resorted to as a means to cover up the killing, then there are two separate and distinct crimes committed — homicide/murder and arson. (People v. Dolendo y Fediles, G.R. No. 223098)

PP vs. Malngan,G. R. No. 170470 (2006)

Arson resulting in death is simply arson. Art. 320, as amended by RA 7659 for Destructive Arson. For other kinds of arson, PD 1613 applies.

Comments:

- We have two kinds of arson. Originally, the laws that we have on arson in the RPC are articles 320 up to 326, but when PD 1613 was enacted, it repealed art 321 to 326.
- So, we only have art 320 and PD 1613, and then here comes RA 7659 which changed the penalties for destructive arson.
- If the thing or the structure that is burned is residential then even if death results therefrom the crime will simply be simple arson. It does not matter nga daghan actually nasunog because for example daghan natakdan but the fact is that if the intention was not to burn as many, ang intention must be to burn a residence and natakdan ang uban that will not change the class of arson, it will still be simple arson.

Note: If you are reading Campanilla and Boado, their discussion on the special complex crime of arson with homicide is somewhat different.

Campanilla writes:

- In Malngan case and People vs. Cedenio, G.R. No. 93485, June 27, 1994, the Supreme Court described the crime as simple arson but the penalty imposable is that prescribed under Section 5 of PD No. 1613, which punishes arson where death resulted. In Abayon case, the Supreme Court described the crime as arson resulting to death punishable under Section 5 of PD No. 1613.

- However, People vs. Villacorta, G.R. No. 172468, October 15, 2008, the Supreme Court, En Banc convicted the accused of destructive arson with homicide under Article 320 of the Revised Penal Code which punishes arson where death resulted as a

consequence thereof. In People vs. Jugueta, G.R. No. 202124, April 05, 2016, the Supreme Court, En Banc described destructive arson with homicide under Article 320 as a special complex crime.

- Whether the crime is described as simple arson, arson resulting to death, or special complex crime of arson with homicide, homicide shall not be considered as a separate crime. Arson, regardless of its description, will absorb homicide. Arson, regardless of its description, is punishable under Section 5 of PD No. 1613 and Article 320 of the Revised Penal Code, both of which prescribes a grave penalty where arson is committed with a resulting death.

2. CIRCUMSTANCES AFFECTING CRIMINAL LIABILITY

Circumstances Affecting Criminal Liability

1. Justifying Circumstances
2. Exempting Circumstances
3. Mitigating Circumstances
4. Aggravating Circumstances
5. Alternative Circumstances
6. Absolutory Causes

	As to lawfulness of act	As to presence of criminal liability	As to prese-nce of civil liability
Justifying	No felony	No liability [Art. 11]	No Civil Liability *Except Par. 4 (avoidance of greater evil or injury).*
Exempting	There is a Felony		With Civil Liability *Except Par. 4 and 7*
Mitigating		Decreased Criminal Liability	With Civil Liability
Aggravating		Increased Criminal Liability	
Alternative		Increased or Decreased Criminal Liability [Art. 15]	

a) Justifying Circumstances

Justifying Circumstances are those where the act of a person is said to be in accordance with law, so that such person is deemed not to have transgressed the law and is free from both criminal and civil liability. There is no crime and there is no criminal. There is also no civil liability, except in par. 4 of Art. 11, RPC (avoidance of greater evil or injury).

Basis

1. The law recognizes the non-existence of a crime by express provision; and
2. Lack of criminal intent.

Effect of Invoking Justifying Circumstance

The moment the offender invokes any of the acts amounting to justifying circumstance, he is in effect admitting the commission of the crime, but he wants to evade criminal liability by invoking justifying circumstances.

Burden of Proof

It is incumbent upon the accused to prove the justifying circumstances claimed by him to the satisfaction of the court. *However,* the burden to prove guilt beyond reasonable doubt is not thereby lifted from the shoulders of the State, which carries it until the end of the proceedings. In other words, only the onus probandi shifts to the accused, for self-defense is an affirmative allegation that must be established with certainty by sufficient and satisfactory proof. (People v. Roman, G.R. No. 198110, July 31, 2013; Nadyahan v. People, G.R. No. 193134, March 2, 2016)

Note: Onus probandi means the obligation to prove an assertion or allegation that one makes; the burden of proof.

Justifying Circumstances (3DEFO)

1. Self-Defense;
2. Defense of Relatives;
3. Defense of Stranger;
4. Avoidance of greater evil or injury (State of Necessity);
5. Fulfillment of duty or lawful exercise of right or office;
6. Obedience to an order issued for some lawful purpose; and
7. Battered Woman Syndrome (Although not a justifying circumstance per se however it has the effect of a justifying circumstance)

Requisites of Each Circumstance [D3AFS]:

Justifying Circumstance	Requisites
Defense of person, right, property, or honor **(URL)**	1. **U**nlawful aggression; 2. **R**easonable necessity of means employed to prevent or repel it; and 3. **L**ack of sufficient provocation on the part of the person defending himself.
Defense of relatives **(URN)**	1. **U**nlawful aggression; 2. **R**easonable necessity of means employed to prevent or repel it; and 3. Lack of sufficient provocation ***on part of a relative***, or, in case of provocation, the one making the defense had **N**o part therein.

Defense of strangers **(URI)**	1. **U**nlawful aggression; 2. **R**easonable necessity of the means employed to prevent or repel it; and 3. The person defending was not **I**nduced by revenge, resentment or other evil motive.
Avoidance of greater evil **(ENIM)**	1. Evil sought to be avoided actually **E**xists. 2. Evil or injury must **N**ot have been produced by the one invoking the justifying circumstances. 3. **I**njury feared be greater than that done to avoid it; and 4. There are no other practical and less harmful **M**eans of preventing it.
Fulfillment of duty or lawful exercise of right **(PN)**	1. Offender acted in **P**erformance of duty or in the lawful exercise of a right or office; and 2. The injury caused or the offense committed be the **N**ecessary consequence of the due performance of duty or the lawful exercise of such right or office.
Obedience to **S**uperior Order **(OPM)**	1. **O**rder must have been issued by a superior; 2. The order is for some lawful **P**urpose; and 3. **M**eans used to carry it out must be lawful.

Self-Defense

Requisites

1. **U**nlawful aggression;
2. **R**easonable necessity of means employed to prevent or repel it; and
3. **L**ack of sufficient provocation on the part of the person defending himself.

Where an accused invokes self-defense, he thereby admits authorship of the crime. The burden of proof is thus shifted on him to prove all the elements of self-defense, to wit: (1) unlawful aggression on the part of the victim; (2) reasonable necessity of the means employed to repel the aggression; and (3) lack of sufficient provocation on the part of the accused [People v Antonio, G.R. No. 144933 (2002)].

Basis

- Impulse of self-preservation;
- State cannot provide protection for each of its constituents [Castanares v. Court of Appeals, Nos. L-41269-70 (1979)].

No Accidental Self-Defense

Self-defense implies a deliberate and positive overt act of the accused to prevent or repel an unlawful aggression of another with the use of reasonable means. The accused has freedom of action, and is aware of the consequences of his acts. From necessity, and limited by it, proceeds the right of self-defense [People v. Toledo, G.R. No. L-28655 (2004)].

FIRST REQUISITE — Unlawful aggression.

Unlawful aggression is an indispensable element of self-defense, whether complete or incomplete under Articles 11 or 13, respectively [People v. San Juan, G.R. No. 144505 (2002)].

Rules in Unlawful Aggression

1. Aggression must be unlawful.
2. The peril to one's life, limb, or right is actual and imminent.
3. Without an appreciable interval of time.
4. Unlawful aggression must come from the person who was attacked by the accused

Lawful Aggression

Aggression is lawful when it is done:

a. For the fulfillment of a duty [People v. Gayraina, G.R. Nos. 39270 & 29271 (1934)]
b. In the exercise of a right in a more or less violent manner [U.S. v. Merced & Patron, G.R. No. 14170 (1918)]

Kinds of Aggression

1. **Actual or material unlawful aggression** - means an attack with physical force or with a weapon, an offensive act that positively determines the intent of the aggressor to cause the injury. [People v. Roman, G..R. No. 198110 (2013)]

2. **Imminent unlawful aggression -** means an attack that is impending or at the point of happening; it must not consist in a mere threatening attitude, nor must it be merely imaginary, but must be offensive and positively strong [People v. Olarbe, G.R. No. 227421 (2018)].

Retaliation

When the killing of the deceased by the accused was after the attack made by the former, the accused must have no time

nor occasion for deliberation and cool thinking. When unlawful aggression ceases, the defender has no longer any right to kill or wound the former aggressor, otherwise, retaliation and not self-defense is committed [People v. Bates, G.R. No. 139907 (2003)].

Unlawful aggression must be a continuing circumstance or must have been existing at the time the defense is made [People v. Dijan, G.R. No. 142682 (2002)].

XPN: When the aggressor retreats to obtain a more advantageous position to ensure the success of the initial attack, unlawful aggression is deemed to continue [Reyes, Book 1].

Relevant Jurisprudence

> Picking up a weapon is unlawful aggression if circumstances show that the intention is to harm the defendant. [People v. Javier, 46 O.G. No. 7 (1950)]
>
> Mere belief of an impending attack is not sufficient but in relation to "mistake of fact," the belief of the accused may be considered in determining the existence of unlawful aggression [People v. Bautista, G.R. No. L-8611 (1956)].

Retaliation is not the same as self-defense. In retaliation, the unlawful aggression that was begun by the injured party already ceased when the accused attacked him, while in self-defense, the unlawful aggression still existed when the aggressor was injured by the accused.

Note: If the unlawful aggression ceased, the accused is not entitled to complete or incomplete self-defense. However, the ceased aggression can be a source of mitigating circumstances of vindication of grave offense.

Without appreciable interval of time

To justify homicide on the ground of self-defense, it is essential that the killing of the deceased by the defendant be simultaneous with the attack made by the deceased, or at least both acts succeeded each other without appreciable interval of time. (U.S. vs. Ferrer, 1 Phil. 56)

When the killing of the deceased by the accused was after the attack made by the deceased, the accused must have no time nor occasion for deliberation and cool thinking. (Reyes, Book I)

Unlawful aggression must come from the person who was attacked by the accused

To constitute an element of self-defense, the unlawful aggression must come, directly or indirectly, from the person who was subsequently attacked by the accused. (People vs. Gutierrez, G.R. No. 31010)

In mutual aggression, both aggressors are criminally liable. Neither of them can invoke pari delicto principle. The rule on pari delicto is a rule in civil cases. This pari delicto principle is not applicable to criminal cases.

Where the parties mutually agree to fight, it becomes immaterial who attacks or receives the wound first, for the first act of force is incidental to the fight itself and in no wise is it an unwarranted and unexpected aggression which alone can legalize self-defense. In this situation, the circumstances modifying criminal liability cannot be applied to either party. (Jacobo y Sementela vs. CA and People, G.R. No. 107699)

How to determine the unlawful aggressor

In the absence of direct evidence to determine who provoked the conflict, it shall be presumed that, in the nature of the order of things, the person who was deeply offended by the insult was the one who believed he had a right to demand explanation of the perpetrator of that insult, and the one who struck the first blow when he was not satisfied with the explanation offered. (U.S. vs. Laurel, G.R. No L7037)

Relevant Jurisprudence

> **Not Unlawful Aggression.** Thrusting hand into the pocket as if for the purpose of drawing a dagger or a pocket knife (U.S. v. Carrero, G.R. No. L-3956 January 10, 1908) or pulling a kitchen knife (People v. Escarlos, G.R. No. 148912, September 10, 2003) is not unlawful aggression; hence, the killing of the victim is not justified.
>
> Even the cocking of the rifle without aiming the firearm at any particular target is not sufficient to conclude that one's life was in imminent danger. It is necessary that the intent be ostensibly revealed by an act of aggression or by some external acts showing the commencement of actual and material unlawful aggression [People v Rubiso, G.R. No. 128871 (2003)].

Other Considerations:

1. Physical & objective circumstance (e.g. wound received by deceased) [People v. Dorico, G.R. No. L-31568 (1973)]
2. Lack of motive of a person defending himself [People v. Berio, G.R. No. 40602 (1934)]
3. Conduct of accused immediately after the incident [People v. Boholst- Caballero, G.R. No. L-23249 (1974)]

> **Unlawful Aggression.** However, opening a knife and making a motion as if to attack is an imminent unlawful aggression (People v. Olarbe, G.R. No. 227421, July 23, 2018), which justified the exercise of self-defense.
>
> A reasonable force made by a police officer to arrest a suspect is not an unlawful aggression since the former is merely performing his duty. However unreasonable and unnecessary force made by the

police officer to arrest a suspect (such as immediately shooting the unarmed person to be arrested) is an unlawful aggression. [People v. Calip, et al., 3 C.A. Rep. 808]

No injury of any kind of gravity was found on the person of the accused when he presented himself to the hospital. In contrast, the physician who examined the cadaver of the victim testified that he had been hit on the head more than once. The gravity of the wounds manifested the determined effort of the accused to kill his victim, not just to defend himself. [People v. Fontanilla, G.R. No. 177743 (2012)]

Others considerations:

1. When there is an agreement to fight and the challenge to fight was accepted [People v. Navarro, G.R. No. L-1878 (1907)].
   Exception: When the aggression which is ahead of an agreed time or place is unlawful aggression [Severino Justo v. Court of Appeals, G.R. No. L- 8611 (1956)].
2. When the paramour kills the offended husband who was assaulting him because the husband's aggression was lawful [Art. 247, RPC] [U.S. v. Merced, G.R. No. 14170 (1918)].

Unlawful aggression from provocation

1. The one who gave the provocation is the VICTIM.
2. However, the crime is NOT the direct result of the provocation, but of the aggression.

CASE STUDY

Juan and Pedro had a quarrel during a drinking session. Pedro started the quarrel. Determined to kill Juan, Pedro tried to stab Juan with a knife, but lost his balance and fell face down to the ground. While Pedro was in such a situation, Juan got a big stone and hit Pedro with it, killing him. Was there unlawful aggression?

None. There was no unlawful aggression anymore because Pedro was already facing the ground.

People v. Antonio, GR 144933 (2002)

Once the aggression has stopped (the original assailant was already facing the ground), there can be no more justifying circumstance of self-defense and mitigating circumstance. In proceeding to stab the original assailant while in that position, his act can no longer be interpreted as an act of self-preservation but a perverse desire to kill.

SECOND REQUISITE — Reasonable necessity of means employed to prevent or repel it.

This presupposes the existence of UNLAWFUL AGGRESSION. The reasonableness of either or both such necessity depends on the existence of unlawful aggression and upon the nature and extent of the aggression.

NOT Absolute Necessity

Reasonable necessity does not mean absolute necessity. It must be assumed that one who is assaulted cannot have sufficient tranquility of mind to think, calculate and make comparisons which can easily be made in the calmness of the home. It is not the indispensable need but the rational necessity which the law requires. In each particular case, it is necessary to judge the relative necessity, whether more or less imperative, in accordance with the rules of rational logic. The defendant may be given the benefit of any reasonable doubt as to whether he employed rational means to repel the aggression. (Mariano y Garcia vs. People, G.R. No. 224102)

Elements of Necessity

(1) Necessity of the course of action taken
(2) Necessity of the means used
(3) The above used must be reasonable

Necessity of the course of action taken

If there was no unlawful aggression or, if there was, it has ceased to exist, there would be no necessity for any course of action to take as there is nothing to prevent or to repel. In determining the existence of unlawful aggression that induced a person to take a course of action, the place and occasion of the assault and the other circumstances must be considered. (Reyes, Book I)

Necessity of the means used

The means employed by the person making a defense must be rationally necessary to prevent or repel an unlawful aggression.

Perfect equality between the weapon used by the one defending himself and that of the aggressor is not required, because the person assaulted does not have sufficient tranquility of mind to think, to calculate and to choose which weapon to use. (People vs. Padua, C.A., 40 O.G. 998)

What the law requires is **rational equivalence,** in the consideration of which will enter as principal factors the emergency, the imminent danger to which the person attacked is exposed, and the instinct, more than reason, that moves or impels the defense, and the proportionately thereof does not depend upon the harm done, but rests upon the imminent danger of such injury. (People vs. Encomienda, G.R. No. L-26750)

Doctrine of Rational Equivalence

Rational equivalence presupposes the consideration not only of the nature and quality of the weapons used by the defender and the assailant, but of the totality of circumstances surrounding the defense vis-à-vis the unlawful aggression [Espinosa v. People, G.R. No. 181071 (2010)].

As to whether the means employed is in proportion to the harm done does not depend on harm done, but the imminent danger of such injury [People v. Gutual, G.R. No. 115233 (1996)].

Perfect equality between the weapon used by the one defending himself and that of the aggressor is not required, nor is the material commensurability between the means of attack and defense. Rational equivalence is enough [People v. Samson, G.R. No. 214883 (2015)].

Test of reasonableness of the means used

1. Nature and quality of the weapon used by the aggressor
2. Aggressor's physical condition, character, size, and other circumstances
3. Circumstances of those of the person defending himself
4. Place and occasion of the assault

When the Assault was Without Use of Weapon

GR: A man is not justified in taking the life of one who assaults him with his fist only, without the use of a dangerous weapon.

XPN: Where the person assaulted has retreated to the wall and uses in a defensive way the only weapon at his disposal [People v. Sumicad, G.R. No. 35524 (1932)].

Note: The general rule contemplates the situation where the contestants are in the open and the person can opt to run away.

Rules in the Use of Firearms

a. If the attacker is already disarmed – there is no need to further use violence [People v. Masangkay, G.R. No. L- 73461 (1988)].
b. If the attacker was disarmed but struggled to re-obtain the weapon – violence may be justified [People v. Rabandaban, G.R. No. L-2228 (1950)].
c. The one defending must aim at the defendant and not indiscriminately fire his deadly weapon [People v. Galacgac, C.A., 54 O.G. 1027]

Plea of self-defense is still proper if the aggressor, despite having been disarmed, still posed a threat to the life of the accused. (People u. Samson, G.R. No. 214883, September 2, 2015)

Interpretation

This element should be interpreted liberally in favor of the law-abiding citizen. [People v. So, 5 CAR [2s] 671, 674]

Belief of the accused may be considered in determining the existence of unlawful aggression

There is self-defense even if the aggressor used a toy pistol, provided the accused believed it was a real gun. (People vs. Boral, 11 C.A. Rep. 914)

When the one defending himself is a peace officer

The peace officer, in the performance of his duty, represents the law which he must uphold. While the law on self-defense allows a private individual to prevent or repel an aggression, the duty of a peace officer requires him to overcome his opponent. A police officer is not required to afford a person attacking him, the opportunity for a fair and equal struggle. (U.S. vs. Mojica, G.R. No. 17650)

Note: The first two requisites thus far explained are common to self-defense, defense of a relative, and defense of a stranger.

THIRD REQUISITE — Lack of sufficient provocation on the part of the person defending himself.

The accused who claims self-defense must not have provoked the aggression of the victim.

The provocation must be sufficient, which means that it should be proportionate to the act of aggression and adequate to stir the aggressor of its commission (People v. Alconga)

Cases in which the 3rd requisite is considered present:

1. When no provocation at all was given to the aggressor by the person defending himself
2. When, even if a provocation was given, it was not sufficient
3. When, even if the provocation was sufficient, it was not given by the person defending himself
4. When, even if a provocation was given by the person defending himself, it was not proximate and immediate to the act of aggression (Reyes, Book I)

Insults

GR: Verbal argument is not considered sufficient provocation.

XPN: Insults in vulgar language are.

SUBJECTS OF SELF-DEFENSE

1. Defense of person
2. Defense of rights
3. Defense of property [People v. Narvaez, G.R. No. L-33466-67 (1983)]

OTHER SUBJECTS OF SELF-DEFENSE

1. Defense of Property

The defense of property rights can be invoked if there is an attack upon the property, although it is not coupled with an attack upon the person of the owner of the premises, so long as all the elements for justification must however be present [People v. Narvaez, G.R. No. L-33466- 67 (1983)].

2. Defense of Home

Violent entry to another's house at nighttime; by a person who is armed with a bolo; and forcing his way into the house, shows he was ready and looking for

trouble [People v. Mirabiles, 45 O.G., 5th Supp., 277].

3. **Defense of Honor and Reputation**
   Placing a hand by a man on the woman's upper thigh is unlawful aggression [People v. Jaurigue, C.A. No. 384 (1946)].

   A slap on the face is also considered as unlawful aggression since the face represents a person and his dignity [Rugas v. People, G.R. No. 147789 (2004)].

Stand Your Ground Principle
A person is justified in the use of deadly force and does not have a duty to retreat if he reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself or herself [U.S. v. Domen, G.R. No. L-12963 (1917)].

Class Discussion:
The first two (2) requisites are required for all kinds of defenses. However, it is only the third one which is unique to Self-Defense.

All requisites must be present so that there would be a justifying circumstance.

If one or more is absent, it could be considered as a mitigating circumstance provided that the element missing should NOT be UNLAWFUL AGGRESSION as it is a sine qua non, for without it any defense is not possible or justified.

Effects of presence of all or lack of some of the requisites for the defense	
ALL Present	Justifying circumstance
Two (2) Requisites present	Privileged mitigating circumstance (Art 69) but Unlawful Aggression must be present
One (1) Requisite present – Unlawful Aggression	Ordinary Mitigating Circumstance

Note: However, take note of the case where the SC ruled that when only unlawful aggression is present, the penalty next lower in degree may be imposed. [see People vs. Cabellon, cited in Reyes, RPC Book 1, page 761] However, Reyes opined that the decision was contrary to the provision of the Article which says: "provided, the majority of such conditions be present"

Defense of Relatives

Requisites
1. Unlawful aggression
2. Reasonable necessity of means employed; and
3. Lack of sufficient provocation on part of a relative, or, in case of provocation, the one making the defense had no part therein.

Relatives Covered
1. Spouse
2. Ascendants
3. Descendants
4. Legitimate, natural, or adopted siblings, or
5. Relatives by Affinity in the same degrees (parents-in-laws, children-in-law, siblings-in-law)
6. Relatives by Consanguinity within 4th civil degree

Unlawful Aggression
Unlawful aggression need not exist as a matter of fact. It can be made to depend upon the honest belief of the one making a defense, as when two sons attacked the victim in the belief that the latter unlawfully attacked their father who was lying on the floor when they arrived. (U.S. v. Esmedia, G.R. No. L-5749)

Reasonable necessity of the means employed to prevent or repel it
The gauge of reasonable necessity of the means employed to repel the aggression as against one's self or in defense of a relative is to be found in the situation as it appears to the person repelling the aggression. The reasonableness of the means adopted is not one of mathematical calculation or material commensurability between the means of attack and defense but the imminent danger against the subject of the attack as perceived by the defender and the instinct more than reason that moves the defender to repel the attack. (Eslabon vs. People, G.R. No. L-66202)

In case the provocation was given by the person attacked, the one making the defense had no part in such provocation.
In case the provocation was given by the person attacked, the one making the defense had no part in such provocation.

There is still a legitimate defense of a relative even if the relative being defended has given provocation, provided that the one defending such relative has no part in the provocation. The relative defended may be the original aggressor. (Reyes, Book I)

Person Being Defended Still in Danger
Unlawful aggression can be made to depend on the honest belief of the one making a defense. However, one may no longer be exempt from criminal liability when he or the person being defended is no longer in danger of bodily harm by the aggressor [US v. Esmedia, G.R. No. L-5740 (1910)].

People v. Lansang, GR 131815 (2002)

The justifying circumstance of defense of a relative will not lie if the unlawful aggression is already non-existent.

Balunueco v. CA, GR 126968 (2003)

Of the three requisites of defense of relatives, unlawful aggression is a condition sine qua non, for without it, any defense is not possible or justified.

Even if the person defending has a grudge against the victim, the justifying circumstance will still apply in defense of relatives, but not if the person defended is a stranger. In the latter case, the person defending must not be motivated by any ill-will against the victim.

Example:
Ruselo is the father. Ervin is the son-in-law. Horeb is the aggressor. Horeb attacked Ruselo. Ervin defended the latter and while in the course of putting up a defense in favor of Ruselo, Ervin killed Horeb.

Was there unlawful aggression and reasonable means to repel the unlawful aggression? Yes.

Can Ervin avail of the defense of a relative? Yes because the person he defended was his father-in- law, whom he is related to by affinity.

What if Ervin's wife died, can he still avail of the said defense? Yes, because the Supreme Court held that the Philippines adopts the Continuing Affinity Rule which states that even if the marriage is extinguished, the affinity will still continue regardless of the issue.

Two Views in Relation to the Termination of Relationship by Death:

1. **Terminated Affinity View –** relationship by affinity terminates with the dissolution of the marriage except when there is a surviving issue

2. **Continuing Affinity View –** relationship by affinity endures even after the dissolution of marriage.

Carungcong vs People, GR 181409 (2010)

For purposes of Article 332(1) of the Revised Penal Code, we hold that 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.

The same principle applies to the justifying circumstance of defense of one's relatives under Article 11[2] of the Revised Penal Code, the mitigating circumstance of immediate vindication of grave offense committed against one's relatives under Article 13[5] of the same Code and the absolutory cause of relationship in favor of accessories under Article 20 also of the same Code.

Defense of Strangers

Requisites

1. Unlawful aggression
2. Reasonable necessity of the means employed; and
3. Person defending was Not induced by revenge, resentment, or other evil motive

Note: Motive is relevant only in this kind of defense.

Rationale: What one may do in his defense, another may do for him. The ordinary man would not stand idly by and see his companion killed without attempting to save his life [U.S. v. Aviado, G.R. No. 13397 (1918)].

Who are deemed strangers
A stranger is any person not included in the enumeration of relatives mentioned in par. 2. Hence, even a close friend or a distant relative is a stranger within the meaning of par. 3. (Reyes, Book I)

Battered Woman Syndrome

RA 9262: "The Anti-Violence against Women and their Children Act of 2004"

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

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

Battered woman syndrome is a defense notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the Revised Penal Code such as unlawful aggression. Even if there was no unlawful aggression, one could not be held liable.

However, Battered Woman Syndrome must not just be alleged. There is a need to establish that the woman is suffering from Battered Woman Syndrome.

Victim-survivors who are found by the courts to be suffering from battered woman syndrome do not incur any criminal and civil liability notwithstanding the absence of any of the elements for justifying circumstances of self-defense under the RPC. (Sec. 26, R.A. 9262)

Battered Woman

(1) That the battering man, with whom the battered woman has a marital, sexual or dating relationship, inflicted physical harm upon her;
(2) That the infliction of physical harm must be cumulative; and
(3) The cumulative abuse results in physical and psychological or emotional distress to the woman.

Cumulative Abuse
Cumulative means resulting from successive addition. This single act of battery or physical harm resulting in physical and psychological or emotional distress is not sufficient to avail of the benefit of justifying circumstance of battered women syndrome.

People v. Genosa, GR 135981 (2004)

It was held that the woman must have actually feared imminent harm from her batterer and honestly believed in the need to kill him in order to save her life. The woman can only entertain fear of imminent harm from the victim after seeing a pattern of violence, which requires at least two battering episodes.

The Cycle of Violence

1. **Tension-building phase**
   During this phase, minor battering occurs. It could be verbal or slight physical abuse. The woman usually tries to pacify the batterer through a show of kind, nurturing way. All she wants is to prevent the escalation of the violence exhibited by the batterer.

2. **Acute battering incident**
   Characterized by brutality, destructiveness, and sometimes death. The battered woman deems this incident as unpredictable, yet also inevitable. During this phase, she has no control. Only the batterer may put an end to the violence. The woman usually realizes that she cannot reason with him, and that resistance would only exacerbate her condition.

3. **Tranquil, loving phase**
   This final phase begins when the acute battering incident ends. During this period, the couple experience profound relief. The batterer may show a tender and nurturing behavior towards his partner. The battered woman tries to convince herself that the battery will never happen again; that her partner will change for the better.

Physical and Psychological or Emotional Distress
There are two aspects in this definition, to wit:
(1) act of inflicting physical harm; and
(2) the resulting physical and psychological or emotional distress. Since the abuse must be cumulative, there must be at least two episodes involving the infliction of physical harm.

If the first episode is infliction of physical harm and the second episode is verbal abuse, the accused cannot avail battered woman syndrome as a defense.

Avoidance of Greater Evil or Injury

Requisites
1. Evil to be avoided actually exists;
2. Evil or injury is not produced by the one invoking the justifying circumstance;
3. Injury feared by greater than that done to avoid it; and
4. No other practical and less harmful means of preventing it.

Civil Liability
In cases falling within avoidance of greater evil or injury, the persons for whose benefit the harm has been prevented, shall be civilly liable in proportion to the benefit which they may have received (Art. 101, RPC). The civil liability here is not ex-delicto.

Although as a rule, there is no civil liability in justifying circumstances, it is only in this instance where there is civil liability, but civil liability is borne by the persons benefited.

State of Necessity
There is necessity when the situation is of grave peril, actual or imminent. It is indispensable that the state of necessity is not brought about by intentional provocation on the part of the party invoking the same. [People v. Retubado, G.R. No. 124058 (2003)]

Kind of Evil
The evil contemplated includes injury to persons and damage to property. This greater evil must not be brought about by the negligence or imprudence of the accused. [Ty v. People, G.R. No. 149275 (2004)]

Comments:
- This is not usually applied in crimes against persons.
- The instinct of self-preservation will always make one feel that his own safety is of greater importance than that of another.
- The greater evil should NOT be brought about by the negligence or imprudence of the actor and it should NOT result from a violation of law by the actor.

Fulfillment of Duty

Requisites
1. The accused acted in the Performance of a duty or on the lawful exercise of a right or office; and
2. The injury caused or offense committed be the Necessary consequence of the due performance of duty or the lawful exercise of such right or office.

Fulfillment of duty
If the custodian, who already had reasons to fear that the prisoner would be able to elude him, fired his gun, he is not liable for his death because of the justifying circumstance of performance of duty. (Valcorza v. People, G.R. No. L-28129)

However, if the prisoner who escaped was fired upon by the guard and he was hit on the thigh at a distance of four meters, there was no absolute necessity to fire again resulting in the death of the prisoner as he could then easily be captured. In such case, the custodian is only entitled to privileged mitigating circumstance of incomplete performance of duty. (People v. Oanis, G.R. No. L-47722; 2000 Bar Exam)

No violence or unnecessary force shall be used in making an arrest and the person arrested shall not be subject to any greater restraint than what is necessary for his detention. (Sec. 2, Rule 118, Rules on Criminal Procedure)

Police Officers
The law does not clothe police officers with authority to arbitrarily judge the necessity to kill, but must be within reasonable limits [People v. Ulep, G.R. No. 132547 (2000)].

Lawful exercise of right or office
Under the Civil Code (Art. 429), the owner or lawful possessor of a thing has the right to exclude any person from the enjoyment and disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property.

If in protecting his possession of the property he injured (not seriously) the one trying to get it from him, he is justified under this paragraph. (Reyes, Book I)

Under this paragraph (lawful exercise of a right), it is not necessary that there be unlawful aggression against the person charged with the protection of the property. If there is unlawful aggression against the person charged with the protection of the property, then par. 1 of Art. 11 applies, it being a defense of right to property.

Warning Shot
To justify the killing by a policeman of a suspected robber as fulfillment of his lawful duty, he must have first fired a warning shot before shooting. [Mamangun v. People, G.R. No. 149152 (2007)]

However, the directive to issue a warning contemplates a situation where several options are available to the officers. When the threat to the life of the law enforcer was imminent and there was no other option but to use force, a police officer conducted himself in the lawful exercise of a right. [People v. Cabanlig, G.R. No. 148431 (2005)].

Masioequina, et. Al. v. Court of Appeals, GR L-51206 (1989)

Police officers who, in the performance of their official duties, inflicted injuries upon persons facing criminal charges are exempt from liability. Unlike in self-defense where unlawful aggression is an element, in performance of duty, unlawful aggression from the victim is not a requisite. For police officers, it is not necessary that they must be attacked.

US v. Mojica, 42 Phil 784

A police officer, in the performance of his duty, must stand his ground and cannot, like a private individual, take refuge in flight; his duty requires him to overcome his opponent. The force which he may exert therefore differs somewhat from that which ordinarily be offered in self-defense.

Sycip, Jr. v. CA and People, G.R. No. 125059 (2000)

The buyer of a townhouse unit has the right to suspend his amortization payments, should the developer fail to develop or complete the project in accordance with duly approved plans and specifications. In the exercise of right to suspend payment under the law, the accused closed her checking account resulting in the dishonor of the checks issued in payment of amortizations of a townhouse.

According to the Supreme Court, the exercise of his right to suspend payments should not render the accused liable under B.P. Blg. 22. The rule on justifying circumstance of exercise of right under the Revised Penal Code was supplementarily applied to B.P. Blg. 22.

Comments:
- It is the duty of peace officers to arrest violators of the law not only when they are provided with the corresponding warrant of arrest, but also when they are not provided with the said warrant, IF THE VIOLATION IS COMMITTED IN THEIR OWN PRESENCE.

- An officer is never justified in using unnecessary force or in treating an offender with wanton violence, or in resorting to dangerous means WHEN ARREST COULD BE EFFECTED.

- The doctrine of self-help in Art. 429 of the NCC justifies the act of the owner or lawful possessor of a thing to use force necessary to protect his proprietary or possessory rights but it must be exercised at the very moment that he is deprived of his property.

CASE STUDY

SPO1 Juan was looking for Pedro, an escapee. Pedro was armed with a bamboo lance when SPO1 Juan found him. He demanded that Pedro surrender, but Pedro lunged at

the latter with the lance. He dodged the lance and fired, but missed. Pedro then ran away still holding the lance. SPO1 Juan pursued him and fired at him, hitting and killing him. Was SPO1 Juan's act justified?

Comments:

- The Supreme Court ruled that the policeman was in the performance of a lawful duty. This is not a case of self-defense. Here, the unlawful aggression already stopped when Pedro ran away.

- If Juan were a private person, and not in the performance of a duty, he would have been convicted because there was no self-defense. (Cabanlig v. Sandiganbayan, July 28, 2005)

Cabanlig v. Sandiganbayan, GR. 148431, July 28, 2005.

Unlike in self-defense where unlawful aggression is an element, in performance of duty, unlawful aggression from the victim is not a requisite. Here, the policeman was in the performance of a lawful duty. This is not a case of self-defense. Here, the unlawful aggression already stopped when Pedro ran away.

If Cabanlig were a private person and not in the performance of a duty, he would have been convicted because there was no self-defense.

Obedience to a Lawful Order

Requisites

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

An order has been issued by a superior

The Japanese imperial army during the occupation cannot be considered as superior officer within the concept of justifying circumstance of obedience to an order. (People v. Manayao, G.R. No. L-822)

Lawful Order

The duty to obey his superior should not be opposed to his higher positive duty to obey the law prohibiting him to commit a crime.

Lawful Means

A police officer should only use force, which is reasonably necessary in apprehending an accused by virtue of warrant issued by competent court. (Campanilla, Criminal Law Reviewer Volume I)

GR: A subordinate cannot invoke this circumstance when order is patently illegal.

XPNs:

1. When there is compulsion of an irresistible force, or under the impulse of uncontrollable fear.

2. When the accused acted upon orders of superior officers, which he, as military subordinate, could not question, and obeyed the orders in good faith, without being aware of their illegality, without any fault or negligence on his part, he is not liable because he had no criminal intent and he was not negligent. (People vs. Beronilla, G.R. No. L-4445)

Examples:

1. Where the accused acted upon orders of superior officers that they, as military subordinates, could not question, and obeyed in good faith, without being aware of their illegality, without any fault or negligence on their part, the act is not accompanied by criminal intent. A crime is not committed if the mind of the person performing the act be innocent [People. v. Beronilla, G.R. No. L-4445 (1955)].
2. One who prepared a falsified document with full knowledge of its falsity is not excused even if he merely acted in obedience to the instruction of his superior, because the instruction was not for a lawful purpose [People. v. Barroga, G.R. No. L- 31563 (1930)].
3. A soldier who tortured to death the deceased in obedience to the order of his sergeant is not exempt from liability because the order to torture the deceased was illegal, and the accused was not bound to obey it [People. v. Margen, et al., G.R. No. L-2681 (1950)].

Comments:

- Both the person who gives the order and the person who executes it must be acting WITHIN the limitations prescribed by law. (People v. Wilson and Dolores)

- When the order is NOT for a lawful purpose, the subordinate who obeyed is criminally liable.

- The subordinate is not liable for carrying out an illegal order of his superior, if he is NOT aware of the illegality of the order and is not negligent.

b) Exempting Circumstances

Two (2) Kinds of Exempting Circumstance

1. **General exempting circumstances** – can be appreciated in any crime even if it is punishable under special law in favor of any offender, whether principal, accomplice or accessory. General exempting circumstances are those listed in ART 12 of RPC.

2. **Specific exempting circumstance** – can be appreciated in a specific crime or crime in favor of a specific offender.

   The following are specific exempting circumstance:

- **Relationship in favor of accessory** by destroying: or concealing the body; instrument or effects of the crime or by helping the principal to escape under certain conditions; or (Article 20) in theft, malicious mischief or swindling; (Article 332)

- **Exceptional circumstance** in favor of one who inflicted slight or less serious physical injuries upon his spouse or daughter (Article 247)

- **Minority** in prostitution, sniffing rugby, mendicancy, or status offense, e.g., parental disobedience, curfew violation or truancy; and (Sections 57 and 58 of R.A. No. 9344)

  What is important is the chronological age of the accused. The law clearly refers to the age as determined by the anniversary of one's birth date, and not the mental age.

- **Being a trafficked victim** in prostitution, working without permit, rebellion or any other crime committed in relation to trafficking in person or in obedience to the order made by the trafficker in relation thereto. (Section 17 of R.A. No. 9208)

Exempting Circumstances (Non-imputability)
Those grounds for exemption from punishment due to the absence of any conditions in the agent of the crime which makes the act voluntary or negligent.

Technically, one who acts by virtue of any exempting circumstance commits a crime, although by the complete absence of any of the conditions which constitute free will or voluntariness of the act, no criminal liability arise. (Guevara)

There is, therefore, a crime, but no criminal.

The act does not result in criminal liability because the act is not voluntary or negligent. Although it is possible that he may be held civilly liable

Basis:
There is complete absence of voluntariness (i.e., intelligence, freedom of action, or intent), or absence of negligence on the part of the accused.

In exempting circumstances, the determining factor is the knowledge of the offender rather than the voluntariness.

Burden of Proof
Burden of proof to prove the existence of an exempting circumstance lies within the defense. Prosecution has the burden of proof to establish the guilt of the accused. However, once the defendant admits the commission of the offense charged, but raises an exempting circumstance as a defense, the burden of proof is shifted to him. [People v. Concepcion, G.R. No. 148919 (2002)] Accused must establish clear and convincing evidence.

Justifying v. Exempting Circumstances

	Justifying Circumstances [Art. 11, RPC]	**Exempting Circumstance [Art. 12, RPC]**
As to Effect of Circumstance	It affects the act, not the actor. The act is justified.	It affects the actor, not the act. The act is not justified but the actor is exempt from criminal liability.
As to Lawfulness of Act	The act is considered to have been done within the bounds of law; hence, legitimate and lawful in the eyes of the law. Since the act is considered lawful, there is no crime.	The act complained of is actually wrongful, but the actor is not liable. Since the act complained of is actually wrong, there is a crime, but since the actor acted without voluntariness or negligence, there is no dolo or culpa.
As to Liability	There is no criminal liability and no civil liability **XPN:** avoidance of greater evil where civil liability is borne by persons for whose benefit the harm has been prevented).	There is no criminal liability but there is civil liability **XPN:** accident under ART 12(4); insuperable cause).

Exempting Circumstances
1. Imbecility or insanity (par. 1)
2. Minority (par. 2 and 3)
3. Accident without fault or intention of causing (par. 4)
4. Irresistible force (par. 5)
5. Uncontrollable fear (par. 6)

6. Prevented by an insuperable cause (par. 7)

Requisites of Each Circumstance [IMDAI- UI]

Exempting Circumstance	Requisites	Basis
Insanity or imbecility	Imbecile or insane person did not act during lucid interval	Absence of intelligence
Minority; Without **D**iscernment (15B-Bet1518 WD)	1. Accused is **15** years old and **B**elow; and 2. Accused is **Bet**ween **15** and **18** years old, and he acted **W**ithout **D**iscernment	Absence of intelligence
Accident **(LDAW)**	1. A person is performing a **L**awful act; 2. Act was done with **D**ue care; 3. He causes an injury to another by mere **A**ccident; and 4. **W**ithout fault intention of causing it.	Lack of negligence and intent
Irresistible force **(PIT)**	1. There is compulsion is by means of **P**hysical force; 2. Physical force must be **I**rresistible; and 3. Physical force must come from a **T**hird person.	Absence of freedom
Uncontrollable fear **(ERIGE)**	1. **E**xistence of an uncontrollable fear 2. Fear must be **R**eal and **I**mminent. 3. Fear of an injury is **G**reater than or **E**qual to that committed.	Absence of freedom
Insuperable or lawful cause **(RFLi)**	1. That an act is **R**equired by law to be done; 2. That a person **F**ails to perform such act; 3. That his failure to perform such act was due to some **L**awful or **i**nsuperable cause	Lack of intent

Insanity or Imbecility

In exempting circumstance of imbecility, what is important is the **mental age** of the accused.

Imbecile
One who, while advanced in age, has a mental development comparable to that of a child between 2 and 7 years of age [People v. Cayetano, G.R. Nos. 112429-30 (1997)].

If the mental age of the accused is two years, he is an idiot; if seven years old, he is an imbecile. (People u. Butiong, G.R. No. 168932, October 19, 2011) An idiot or imbecile is exempt from criminal liability.

Feeblemindedness is not Imbecility
If the mental age of the accused is 12 years old, he is feebleminded or moron. (People v. Butiong, ibid.) For imbecility, it is necessary that there is a complete deprivation of intelligence in committing the act. Feeblemindedness may, however, be considered a mitigating circumstance [People v. Formigones, G.R. No. L-3246 (1950)].

Insanity
A complete deprivation of intelligence in committing the act, but capable of having lucid intervals.

The Court defines insanity as "a manifestation in language or conduct of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition."

Since the law presumes that all persons are of sound mind, insanity is the exception rather than the general rule. It is a defense in the nature of confession and avoidance. When an accused claims insanity, he or she admits the commission of the criminal act but seeks exemption from criminal liability because of the lack of voluntariness or intelligence (People v. Pilen, G.R. No. 254875, [February 13, 2023], J. Hernando)

GR: Insanity is an exempting circumstance

XPN: During a lucid interval, the insane acts with intelligence, thus, is not exempt from criminal liability.

Rules in Insanity

1. **Presumption of Sanity**
   Burden of proof of insanity is on the defense [People v. Aquino, G.R. No. 87084 (1990)].

   Note: When insanity is interposed as a defense or a ground of a motion to quash, the burden rests upon the accused to establish that fact, for the law presumes every man to be sane.

2. **Insanity should exist before or at the moment of the act or acts under prosecution** [People v. Aquino, supra] Insanity subsequent to commission of crime is not exempting. He is presumed to be sane when he committed it [U.S. v. Guevara, G.R. No. 9265 (1914)].

3. **There must be a complete deprivation of intelligence in committing the act**.
   Mere abnormality of the mental faculties will not exclude imputability [People v. Formigones, supra; Art. 13, par. 9, RPC].

Note: If there is mere abnormality in the mental faculties or partial deprivation of intelligence, there could be **mitigating circumstance.**

To be an exempting circumstance, there must be a **COMPLETE ABSENCE OF KNOWLEDGE.** The accused must be so insane as to be incapable of entertaining a criminal intent. (PP v. Estrada cited in PP v. Valledor)

People v. Toledo y Buriga, G.R. No. 229508, [March 24, 2021]
Article 12, paragraph 1 of the Revised Penal Code exempts insane persons from criminal liability, unless it is shown that they acted during a lucid interval. Under our present legal regime, persons are presumed to be sane 37 and to have intended the ordinary consequences of their voluntary acts. 38 Thus, the accused who invokes insanity as an exempting circumstance is deemed to have admitted or confessed to the criminal act. 39 The commission of the crime having been established through admission, the pivotal issue shifts to the fact of insanity; and the burden of proving such fact must be borne by the accused who invoked it. Moreover, the defense must prove that the accused was insane at the time of the commission of the crime. Proof of the insanity of the accused after the commission of the crime, especially during trial, is immaterial, unless submitted to prove that the insanity is continuous or recurring.

As we have earlier stated, the exempting circumstance of insanity is based on a crucial temporal parameter: the accused must be proven to be insane at the time of the commission of the crime. Consequently, this Court cannot accept the NCMH reports as sufficient proof of Dennis' mental state during the incident with AAA, since these reports pertain only to his mental state at the time of the examinations, which were both conducted months after the incident and after he had been arrested. Without a shred of evidence as to Dennis' mental state before or during the incident, his defense of insanity cannot be countenanced; and all that is left on record are the positive testimonies of AAA, BBB, and CCC, as well as the results of the medico-legal examination conducted on AAA 55 which prove beyond reasonable doubt that Dennis raped AAA when she was still eight (8) years old.

People v. Pilen, G.R. No. 254875, [February 13, 2023], J. Hernando
The Court had the opportunity to formulate a three-way test in determining whether the exempting circumstance of insanity may be appreciated. The three-way test provides that: (1) insanity must be present at the time of the commission of the crime; (2) insanity, which is the primary cause of the criminal act, must be medically proven; and, (3) the effect of the insanity is the inability to appreciate the nature and quality or wrongfulness of the act

An accused whose mental condition is under scrutiny cannot competently testify on their state of insanity. An insane person would naturally have no understanding or recollection of their actions and behavioral patterns. They would have to rely on hearsay evidence to prove their claims as to what actually happened.

Moreover, there was no expert witness presented by the defense to testify on the mental state of the accused from a medical standpoint. While testimonies from medical experts are not absolutely indispensable in cases involving the insanity defense, their observation of the accused are considered to be more accurate and authoritative in determining an accused's mental state. Expert testimonies enable courts to ascertain whether the behavior of the accused actually arose from a mental disease. The nature and degree of an accused's mental illness can be best identified by medical experts equipped with specialized knowledge to diagnose a person's mental health.

How Proven
The state or condition of a person's mind can only be measured and judged by his behavior.

Opinion Testimony
Establishing the insanity of an accused requires opinion testimony which may be given by a witness who is intimately acquainted with the accused, by a witness who has rational basis to conclude that the accused was insane based on the witness' own perception of the accused, or by a witness who is qualified as an expert, such as a psychiatrist. The testimony or proof of the accused's insanity must relate to the time preceding or coetaneous with the commission of the offense with which he is charged [People v. Madarang, G.R. No. 132319 (2000)].

TWO (2) TESTS OF INSANITY:
1. **Cognition** - Whether the accused acted with complete deprivation of intelligence; and

2. **Volition** - Whether the accused acted in total deprivation of freedom of will [People v. Rafanan, G.R. No. L-54135 (1991)].

People v. Opuran, C.R. Nos. 147674-75 (2004)

The basis of the exempting circumstance of insanity is lack of intelligence and not lack of freedom. Thus, even if the mental condition of the accused had passed the volition test (deprivation of freedom), the plea of insanity will not prosper unless it also passed the cognition test (deprivation of intelligence). The controlling rule is cognition test for purposes of the exempting circumstance of insanity.

People v Rafanan

A linguistic or grammatical analysis of those standards suggests that Formigones established two (2) distinguishable tests (a) the test of cognition — "complete deprivation of intelligence in committing the [criminal] act," and (b) the test of volition — "or that there be a total deprivation of freedom of the will." But our caselaw shows common reliance on the test of cognition, rather than on a test relating to "freedom of the will;" examination of our caselaw has failed to turn up any case where this Court has exempted an accused on the sole ground that he was totally deprived of "freedom of the will," i.e., without an accompanying "complete deprivation of intelligence." This is perhaps to be expected since a person's volition naturally reaches out only towards that which is presented as desirable by his intelligence, whether that intelligence be diseased or healthy. In any case, where the accused failed to show complete impairment or loss of intelligence, the Court has recognized at most a mitigating, not an exempting, circumstance in accord with Article 13(9) of the Revised Penal Code: "Such illness of the offender as would diminish the exercise of the will-power of the offender without however depriving him of the consciousness of his acts."

The fact that appellant Rafanan threatened complainant Estelita with death should she reveal she had been sexually assaulted by him, indicates, to the mind of the Court, that Rafanan was aware of the reprehensible moral quality of that assault. In any case, as already pointed out, it is complete loss of intelligence which must be shown if the exempting circumstance of insanity is to be found.

The law presumes every man to be sane. A person accused of a crime has the burden of proving his affirmative allegation of insanity. It has been held that inquiry into the mental state of the accused should relate to the period immediately before or at the very moment the act is committed.

Mental Illnesses Covered

Cases covered under this article are:

1. **Malignant malaria**, which affects the nervous system [People v. Lacena, G.R. No. 46836 (1940)]
2. **Epilepsy** – chronic nervous disease characterized by fits, occurring at intervals, attended by conclusive motions of the muscles and loss of consciousness [People v. Mancao and Aguilar, G.R. No. L-26361 (1927)]
3. **Psychosis or schizophrenia,** except when in remission of symptoms – chronic mental disorder characterized by inability to distinguish between fantasy and reality and often accompanied by hallucinations and delusions [People v. Antonio, Jr., G.R. No. 144266 (2002)]
4. **Somnambulism:** Sleep-walking [People v. Taneo, G.R. No. L-37673 (1933)]
5. **Dementia praecox** – irresistible homicidal impulse [People v. Bonoan, G.R. No. L-45130 (1937)]
6. **Schizophrenia Kleptomania** – only if it produces an irresistible impulse to steal as when the accused has been deprived of his will which would enable him to prevent himself from doing this act
   (**Note**: If it only diminishes the exercise of his will-power, it is not an exempting circumstance but a mitigating circumstance)

Conditions Not Considered as Insanity

1. **Amnesia** – in and of itself, it is no defense to a criminal charge unless it is shown by competent proof that the accused did not know the nature and quality of his action and that it was wrong [People v. Tabugoca, G.R. No. 125334 (1998)].
2. **Craziness** – Unusual behaviors, such as smiling to oneself and calling a chicken late at night, are not proof of complete absence of intelligence because not every aberration of the mind or mental deficiency constitutes insanity [People v. Miraña, G.R. No. 219113 (2018)].
3. **Pedophilia** – Despite his affliction, a pedophile could still distinguish between right and wrong [People v. Diaz, G.R. No. 130210 (1999)].

Remission of Symptoms

One suffering from psychosis who takes medication is "in remission of symptoms"; meaning, he would not actively exhibit the symptoms of psychosis and it is only when one fails to take his medication and/or drinks alcohol that the symptoms of psychosis may be triggered, depriving one of his will. However, that one is in remission of symptoms or has failed to take the prescribed medicine is not a conclusive finding as to the sanity of the accused at the time of the commission of the crime. Psychotic may have varying degrees of awareness of the consequences of his acts, which awareness would also depend on the degree of psychosis at the time of the commission of the act [People v. Antonio, Jr., G.R. No. 144266 (2002)].

People v Antonio

Mere mental disturbance, mere craziness is NOT the insanity contemplated by law.

It is the insanity which would deprive the offender the capacity to distinguish right from wrong and the consequences of his act.

People v. Montesclaros, GR 181084 (2009)

Schizophrenia is only mitigating, not exempting. There is no total deprivation of consciousness of the offender of her acts.

People v. Taneo, G.R. No. 37673 (1933)

A man while sleeping dreamed that he was attacked by his enemies with whom he had quarreled the day before. Suddenly, he got up, took his bolo and killed his wife, wounded his father and several other persons. Finally, he stabbed himself but did not die. Motives of the crime are not shown. Accused is exempt from criminal liability. A state of somnambulism (sleepwalking) is embraced in a plea of insanity since he is not conscious in committing the criminal act.

Juridical Effects of Insanity

When Insanity is Present	Effect on Liability
At the time of the commission of the crime	Exempt from liability *[People v. Formigones, supra]*
During Trial (ART. 79)	He is criminally liable but the proceedings will be suspended and the accused is committed to a hospital.
After Judgment or while serving sentence	Execution of judgment is suspended and the accused is committed to a Hospital. The period of confinement in the hospital is counted for the purpose of the prescription penalty.

Note: The imbecile/insane does not incur criminal liability but their parents/guardians may be held civilly liable.

Minority

Note: Pars. 2 and 3 of Art. 12, and Art. 80 of the RPC, have been amended/repealed by P.D. 603, as amended, and **JUVENILE JUSTICE AND WELFARE ACT OF 2006 (R.A. 9344)**

MINORITY	
15 and below	Age of ABSOLUTE EXEMPTION
Over 15 but below 18	Age of CONDITIONAL LIABILITY
18 and over	Age of CRIMINAL RESPONSIBILITY

Definition of Terms

1. **Child** - person under 18 years.
2. **Child in conflict with the law** - child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws. [Sec. 4(e), R.A. 9344]
3. **Intervention** – a series of activities designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional, and psycho-social well-being [Sec. 4(l), R.A. 9344]

When Exempt from Criminal Liability

1. A child 15 years or under at the time of the commission of the offense shall be exempt from criminal liability.

   If the child commits a crime on or before his 15th birthday, he is exempt from criminal liability without qualification.

   If the child commits a crime a day after his 15th birthday, he must not act with discernment to be exempt from criminal liability.

2. A child above 15 years but below 18 years of age who acted without discernment shall be exempt from criminal liability. [Sec. 6, R.A. 9344]

In both cases, the child shall be subjected to an intervention program. [Sec. 6, R.A. 9344]

3. A child above 15 years but below 18 years of age who acted with discernment is only entitled to privileged mitigating circumstance, which will lower the penalty by one degree.

Discernment

Capacity of the child at the time of the commission of the offense to understand the differences between right and wrong and the consequences of the wrongful act. [Sec. 4, A.M. No. 01-1-18-SC, Revised Rule on Children in Conflict with the Law]

Such capacity may be known and should be determined by taking into consideration all the facts and circumstances afforded by the records in each case, the very appearance, the very attitude, the very comportment and behavior of said minor.

People v. Jacinto, G.R. No. 182239 (2011)

Choosing an isolated and dark place to perpetrate the crime and to prevent detection and boxing the victim to weaken her defense are indicative of the accused's mental capacity to fully understand the consequences of his unlawful action.

Note: The concept of non-discernment is not equivalent to that of lack of evident premeditation

Jose v. People, G.R. No. 162052 (2005)

Conspiracy presupposes capacity of the parties to such conspiracy to discern what is right from what is wrong. Without discernment, a child cannot conspire with his co-accused. In sum, the prosecution must prove that the child acted with discernment when the crime was committed to make him liable as a conspirator.

Burden of proof

Any person alleging the age of the child in conflict with the law has the burden of proving the age of the child. (OCA Circular No. 97-2019)

Any person contesting the age of the child in conflict with the law PRIOR to the filing of the information in any appropriate court may file a case in a summary proceeding for the determination of age before the Family Court which shall decide the case within 24 hours from receipt of the appropriate pleadings of all interested parties. (Sec. 7, R.A. No. 9344)

Presumption of Minority

A child in conflict with the law enjoys the presumption of minority. [Sec. 5, A.M. No. 01- 1-18-SC]. In case of doubt as to the age of the child, it shall be resolved in his/her favor. [Sec. 7, R.A. 9344]

Determination of Age

1. Child's birth certificate
2. Baptismal certificate
3. Other pertinent documents
4. In the absence of such documents, age may be based on:
    a. Testimony of the child
    b. Testimony of a member of the family related by affinity or consanguinity
    c. Testimony of other persons
    d. Physical appearance of the child
    e. Other relevant evidence [Sec. 5, A.M. No. 01-1-18-SC]

Any person alleging the age of the child in conflict with the law has the burden of proving the age of such child. [Sec. 7, R.A. 9344]

Civil Liability

The exemption from criminal liability does not include exemption from civil liability, which shall be enforced in accordance with existing laws. [Sec. 6, R.A. 9344]

Retroactive Application

A child, who is already serving sentence, shall likewise benefit from the retroactive application of R.A. No. 9344. He shall be immediately released if he is so qualified under this Act or other applicable law. (Section 68 of R.A. No. 9344; People v. Monticafoo, G.R. No. 193507, January 30, 2013)

Specific Exempting Circumstance of Minority

1. **Status Offenses** - Status offenses refer to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. The child shall also be recorded as a **child at risk** and not as a child in conflict with the law. These shall include curfew violations, truancy, parental disobedience and the like. A child shall not be punished for committing a status offense.

    Samahang Ng Mga Progresibong Kabataan v. Quezon City, G.R. No. 225442 (2017)

    R.A. No. 9344 does not prohibit the enactment of regulations that curtail the conduct of minors, when the similar conduct of adults is not considered as an offense or penalized (i.e,, status offenses). Instead what they prohibit is the imposition of penalties on minors for violations of these regulations.

2. **Prostitution, Mendicancy and Sniffing Rugby** - persons below 18 years of age shall be exempt from prosecution it being consistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program.

GR: The parents shall be liable for damages.

XPNs: If they were able to prove that they were exercising reasonable supervision over the child at the time the child committed the offense and exerted reasonable effort and utmost diligence to prevent or discourage the child from committing another offense. [Sec. 20-D, R.A. 9344, as amended by R.A. 10630]

Accident

An unintended and unforeseen injurious occurrence; something that does not occur in the usual course of events

or that could not be reasonably anticipated; an unforeseen and injurious occurrence not attributable to mistake, negligence, neglect, or misconduct [Calera v. Hoegh Fleet Services Philippines, Inc., G.R. No. 250584 (2021)].

Requisites

1. A person is performing a Lawful act;
2. Act was done with Due care;
3. He causes injury by mere Accident; and
4. Without fault or intention of causing it.

Accident v. Avoidance of greater evil

	Accident [Art. 12 (4)]	**Avoidance of Greater Evil [Art. 11(4)**
As to Type of Circumstance	Exempting	Justifying
As to Cause of Damage	Offender accidentally causing the damage.	Offender deliberately caused the damage.

When claim of accident is not appreciated

1. Repeated blows; and
2. Threatening words preceding it and still aiming the gun at the prostate body of the victim.

Accident vs. Culpa vs. Intent

1. If there is intent, offender is liable even if another person was hurt or a different crime resulted (error in personae, aberratio ictus, praeter intentionem)

2. If there is no intent but there is culpa, offender is still liable, but for a lesser crime/penalty.

3. If there is no intent nor culpa, there could either be mistake of fact or accident and hence, no liability

Toledo v. People, Sept. 24, 2004

An accident is a fortuitous circumstance, event or happening; an event happening wholly or partly through human agency, an event which under the circumstances is unusual or unexpected by the person to whom it happens.

COMMENTS:

- The basis of exemption for accident is the lack of criminal intent.
- For an accident to be exempting, the act has to be lawful.
- In case of accident, the actor must not abandon the victim or else he will be liable for abandonment under Art. 275 (2).

Irresistible Force

Means that the offender uses violence or physical force to compel another person to commit a crime.

Requisites

1. There was compulsion by means of physical force
2. Physical force must be irresistible
3. Physical force comes from a third person

Actus me invito factus non est meus actus.
An act done by me against my will is not my act.

The person invoking this circumstance must show that the force exerted was such that it reduced him to a mere instrument who acted not only without his will but against it [People v. Lising, G.R. No. 106210-11 (1998)].

The duress, force, fear or intimidation must be present, imminent and impending, and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done [People v. Villanueva, G.R. No. L-9529 (1958)].

Uncontrollable Fear

Means that the offender employs intimidation or threat in compelling another to commit a crime. The compulsion is by means of intimidation or threat, not force or violence.

Requisites

1. Existence of an uncontrollable fear of an injury
2. Fear must be real and imminent.
3. Fear of an injury is greater than or equal to that committed [People v. Petenia, G.R. No. L-51256 (1986)].

A threat of future injury is not enough. Fear should not be speculative, fanciful, or remote. Such compulsion must leave no opportunity to the accused for escape or self- defense in equal combat. [People v. Moreno, G.R. No. L-64 (1946)].

Duress is unavailing where the accused had every opportunity to run away if he had wanted to or to resist any possible aggression because he was also armed. (People vs. Palencia, G.R. No. L-38957)

Impulses of uncontrollable fear and irresistible force are both grounded on duress or complete absence of freedom of action or of the will of the actor who has been reduced to a mere instrument of the offender.

People v. Moreno, G.R. No. L-64 (1946)

A was taken to a farm by outlaw members B and C. B gave A a bolo and told the latter that the chief outlaw wanted A to kill the farmer who was sleeping inside the hut. A refused, but after B told A "you have to comply with that

order of the chief outlaw, otherwise you will have to come along with us." A killed the farmer. A is criminally liable. The threat, which is made by B, will not produce uncontrollable fear since there is no showing that B was present when A killed the farmer.

In Treason
In the eyes of the law, nothing will excuse that act of joining an enemy, but the fear of immediate death [People v. Bagalawis, G.R. No. L-262 (1947)].

	Irresistible Force	Uncontrollable Fear
As to Recipient of Force/Fear	Irresistible force must operate directly upon the person of the accused.	Uncontrollable fear may be generated by a threatened act directly to a third person.
As to Type of Evil/Injury Feared	Injury feared may be lesser degree than the damage caused by the accused.	Evil feared must be greater or at least equal to the damage caused to avoid it.
As to Source of Force/Fear	Offender uses physical force or violence to compel another person to commit a crime.	Offender employs intimidation or threat in compelling another to commit a crime.

Lawful or Insuperable Cause

It is an exempting circumstance for felonies by omission.

It means insurmountable. A cause which has lawfully, morally or physically prevented a person to do what the law commands [People v. Bandian, G.R. No. 45186 (1936)].

It occurs when the law imposes a duty on the offender to perform an act but his failure to do so is due to a lawful cause.

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

When prevented by some lawful cause
If the priest does not disclose and make known the same to the proper authority, he is exempt from criminal liability, because under the law, the priest cannot be compelled to reveal any information which he came to know by reason of the confession made to him in his professional capacity. (Reyes, Book I)

When prevented by insuperable cause
Insuperable cause is some motive, which has lawfully, morally or physically prevented a person to do what the law commands.

The municipal president detained the offended party for 3 days because to take him to the nearest justice of the peace required a journey for 3 days by boat as there was no other means of transportation. The distance which required a journey for 3 days was considered an insuperable cause. The accused was exempt from criminal liability. (U.S. vs. Vicentillo, G.R. No. L-6082)

A mother who at the time of childbirth was overcome by severe dizziness and extreme debility, and left the child in a thicket where said child died, is not liable for infanticide, because it was physically impossible for her to take home the child. (People vs. Bandian, G.R. No. 45186). The severe dizziness and extreme debility of the woman constitute an insuperable cause.

c) Mitigating Circumstances

Mitigating Circumstances are those circumstances which, if present or attendant in the commission of a felony, would reduce the imposable penalty because it shows lesser perversity or criminality of the offender.

Mitigating circumstances need not be alleged in the information in order to be appreciated by the court, provided that such circumstance is shown and proven during the trial.

There is a lesser criminality on the part of the offender because the offender acted with the diminution of any of the elements of voluntariness.

Kinds of Mitigating Circumstances:

1. **Ordinary –** lowers penalty by PERIOD

   Ex. The penalty of reclusion temporal prescribed by law for homicide shall be applied in its minimum period.

   If the penalty consists of two indivisible penalties (reclusion perpetua to death), ordinary mitigating circumstance requires the application of the lesser penalty of reclusion perpetua.

2. **Privileged –** lowers the penalty by DEGREE

   Ex. The penalty of reclusion temporal for homicide shall be lowered to prision mayor.

   Takes precedence over other rules on graduating penalties, including ISLAW

The privileged mitigating of MINORITY is taken into consideration right at the start of the case, for the purpose of computing bail bond, and at the end of the case, for the purpose of probation.

3. **Specific or particular** (Extenuating circumstances which are not found in Art. 13)
    a. Art 247, where death or serious injuries results
    b. Intent to conceal dishonor (infanticide & abortion)
    c. Voluntary release of detained person under Art 268
    d. Abandonment in adultery

4. **Special**
    a. Error in personae
    b. Over 70 years old
    c. Two (2) or more Mitigating and no aggravating circumstance.

TAKE NOTE:

- Only ordinary mitigating circumstances may be offset by ordinary aggravating circumstances. Privileged Mitigating circumstances cannot be offset by either special aggravating circumstance or an ordinary aggravating circumstance.
- If a privileged mitigating circumstance and ordinary aggravating circumstance attended the commission of a felony, the former shall be taken into account in graduating penalty and the latter in applying the reduced penalty in its maximum.
- There are categories to determine the graduation of penalties.
- Mitigating and Aggravating circumstances apply only to crimes punished under the RPC and not those under special laws

XPN: Privileged/ordinary mitigating circumstance of minority as it is applicable to all crimes.

The following are the Mitigating Circumstances under Article 13:

(RAPID VIP SO)

1. Requisites of Justifying/Mitigating Circumstances incomplete
2. Age (Under 18, over 70)
3. Passion or Obfuscation
4. Immediate vindication of a grave offense
5. Deaf and dumb, and blind, or other physical defect
6. Voluntary plea of guilt
7. Illness of the offender
8. Praeter Intentionem
9. Sufficient provocation or threat
10. Other circumstances

Incomplete Justification or Exemption

Applicability

If all of the requisites of a circumstance mentioned in ART 11 or 12 are present, justifying or exempting circumstance shall be appreciated.

If majority of the requisites of such circumstance are present, the privileged mitigating circumstance of incomplete justification or exemption shall be appreciated. (Article 69)

If only minority of the requisites of such circumstance is present, the ordinary mitigating circumstance of incomplete justification or exemption shall be appreciated. (Article 13)

In case of privileged mitigating circumstance of incomplete justification or exemption, the penalty prescribed by law shall be **lowered by one or two degrees**. (Article 69)

Effect

The courts have the discretion of imposing the penalty lower by one or two degrees than that prescribed by law, in view of the number and nature of the conditions of exemption present or lacking.

Rules on Incomplete Justification

1. When the justifying or exempting circumstance has only two (2) requisites, the presence of one element is sufficient [People v. Macbul, G.R. No. L-48976 (1943)].
2. Incomplete justification is a privileged mitigating circumstance (it cannot be offset by aggravating circumstances) [People v. Ulep, supra].

INCOMPLETE SELF-DEFENSE, DEFENSE OF RELATIVES AND STRANGERS

1. Unlawful Aggression - should always be present to be appreciated as a mitigating circumstance.
2. Ordinary mitigating circumstance - if only unlawful aggression is present.
3. Privileged mitigating circumstance - if two of the three requisites are present [People v. Oanis, G.R. No. L-47722 (1943)].

Minority and Seniority

Minority

When the offender is a minor under 18 years, the penalty next lower than that prescribed by law shall be imposed, but always in the proper period [People v. Jacinto, G.R. No. 182239 (2011)].

If the child, who is above 15 years of age, acted with discernment, minority is a privileged mitigating circumstance of minority, which shall lower the penalty by one degree. There is no more ordinary mitigating circumstance of minority.

However, analogous mitigating circumstance of minority for purposes of applying the penalty in its minimum period can

be considered in favor of an accused, who is 18 years of age or over, if his mental condition affects his discernment in committing the crime.

What is controlling, with respect to the exemption from criminal liability of the accused, is not his age at the time of the promulgation of judgment but his age at the time of the commission of the offense. (Caneda v. People, G.R. No. 182941)

Seniority
Mitigating circumstance of old age can only be appreciated if the accused is over 70 years old at the time of the commission of the crime under R.A. No. 8019 and not at the time of promulgation of judgment. (People v. Reyes, G.R. Nos. 177105-06)

Thus, on his 70th birthday, an offender is not yet a senior citizen; he becomes a senior citizen after his 70th birthday.

Comments:

- This is always a privileged mitigating circumstance where the penalty shall be one degree lower but in the proper period.

Age	How appreciated
15 and below	Exempting Circumstance
Above 15 but under 18	**Without discernment**: Exempting circumstance **With discernment**: Privileged Mitigating Circumstance
Over 70	• Ordinary Mitigating Circumstance • except when the penalty imposable is death, in such case, the penalty shall be reduced to reclusion perpetua, partaking the nature of privileged mitigating circumstance. (Prior to RA 9346 and pursuant to Art 83)

Praeter Intentionem

The offender had no intention to commit a grave so wrong as what was actually committed. [Art. 13 (3), RPC].

Requisites
There is **Notable and Evident Disproportion** between the means employed to execute the criminal act and its consequences [U.S. v. Reyes, G.R. No. 12635 (1917)].

Applicable only to offenses resulting in physical injuries or material harm
Thus, the mitigating circumstance that the offender did not intend to commit so grave a wrong as that committed was not appreciated in cases of defamation or slander. (People v. Galang de Bautista, C.A., 40 O.G. 4473)

When Not Applicable

1. Where the acts were reasonably sufficient and did actually produce the death of the victim. [People v. Sales, G.R. No. 177218 (2011)]
2. Cases involving defamation or slander. [People v. Galang de Bautista, supra]
3. Inapplicable when the offender employed brute force. The brute force employed by the appellant, completely contradicts the claim that he had no intention to kill the victim." (People v. Yu, No. L13780)
4. Not appreciated if crime is qualified by treachery. Lack of intention to commit so grave a wrong is not appreciated where the offense committed is characterized by treachery. (People v. Pajenado, No. L-26458)
5. Not applicable to felonies by negligence. In the case of infidelity in the custody of prisoners through negligence (Art. 224), this circumstance was not considered. (People v. Medina, C.A., 40 O.G. 4196)
6. Not applicable to felonies where intention is immaterial. In unintentional abortion, where the abortion that resulted is not intended by the offender, the mitigating circumstance that the offender had no intention to commit so grave a wrong as that committed is not applicable. (People v. Cristobal, C.A., G.R. No. 8739)

Considerations in Determining Existence of Praeter Intentionem
The intention, as an internal act, is judged not only by the proportion of the means employed by him to the evil produced by his act, but also by the:

1. Weapon used
2. Part of the body injured
3. Injury inflicted
4. Manner it is inflicted.
5. Subsequent acts of the accused immediately after committing the offense.
6. Mindset of offender at the time of commission of crime.

Intent, being in an internal state, must be judged by external acts
Thus, it may be deduced from the proven facts that the accused had no intent to kill the victim, his design being only to maltreat him, such that when he realized the fearful consequences of his felonious act, he allowed the victim to secure medical treatment at the municipal dispensary. (People v. Ural, No. L-30801)

Wacoy v. People, G.R. No. 213792 (2015)

Accused kicked and punched the victim, who died as a

consequence. Circumstance shows lack of intent to kill. However, the accused is liable for homicide because intent to kill is conclusively presumed. Even if there is no intent to kill, the penal law holds the aggressor responsible for all the consequences of his unlawful acts. However, they are entitled to the mitigating circumstance of praeter. intentionem.

Comments:

- This circumstance can be invoked even in murder, where the killing was unintentional but there is a qualifying circumstance attending the commission of the crime. (People v. Enriquez, 58 Phil. 536)
    - Now that the penalty for Murder is single indivisible, this has no bearing anymore for the purpose of penalty, but may be crucial for parole.
- Thus, if there was no intent to kill, but the attack was treacherous or premeditated, the crime would still be murder if the victim dies.
- If the victim does not die, the crime could NOT be attempted/frustrated murder because of lack of intent to kill. It would be physical injuries. If the injuries are serious, it would be qualified. If not, the treachery would be ordinary aggravating.

Sufficient Provocation or Threat

Provocation

Any unjust or improper conduct or act of the offended party capable of exciting, inciting, or irritating anyone [Pepito v. Court of Appeals, G.R. No. 119942 (1999)].

When the law speaks of "provocation" as a mitigating circumstance or "lack of provocation" as an essential element of self-defense, it requires that the same be sufficient or proportionate to the act committed and that it be adequate to arouse one to its commission. It is not enough that the provocative act be unreasonable or annoying. (Aquino citing People v. Dolfo, CA 46 O.G. 1621)

Provocation can only be appreciated in crime against persons. One cannot provoke another person to commit forcible abduction theft or estafa.

Threat

Threat must not be offensive and positively strong, otherwise, it may result to unlawful aggression, justifying self-defense. See: discussion on self-defense [People v. Guysayco, G.R. No. 4912 (1903)].

Requisites

1. Provocation must be sufficient.
2. It must originate from the offended party.
3. It must be personal and directed to the accused.
4. It must be immediate to the act.
5. When there is an interval of time between the provocation and the commission of the crime, the perpetrator has time to regain his reason [People v. Pagal, G.R. No. L- 32040 (1977)].

Provocation as a Requisite of Incomplete Self-Defense	Provocation as a Mitigating Circumstance
It pertains to its absence on the part of the person defending himself. [People v. CA, G.R. No. 103613 (2001)]	It pertains to its presence on the part of the offended party. [People v. CA, G.R. No. 103613 (2001)]

BAR TIP: The common set-up given in a bar problem is that of provocation given by somebody against whom the person provoked cannot retaliate; thus the person provoked retaliated on a younger brother or on the father. Although in fact, there is sufficient provocation, it is not mitigating because the one who gave the provocation is not the one against whom the crime was committed.

Look at two criteria

1. Element of time; consider:
    a. Material lapse of time, and
    b. Effect of the threat of provocation.
2. If at the time the offender committed the crime, he is still suffering from outrage of the threat or provocation done to him, then he will still get the benefit of this mitigating circumstance.

People v. Pagal

Provocation is immediate if no interval of time elapsed between the provocation and the commission of the crime.

Vindication of Grave Offense

This need not be a crime. It may be any act or event which offends the accused causing mental agony to him and moves him to vindicate himself of such offense.

Requisites

(1) Victim committed grave offense;
(2) The grave offense was committed against the offender or his spouse, ascendants, descendants, legitimate, illegitimate or adopted brothers or sisters, or his relatives by affinity within the same degrees; and
(3) The offender committed the crime in proximate vindication of such grave offense.
(4) The vindication need not be done by the person upon whom the grave offense was committed.

Grave Offense

"Offense" need not be a crime. It may be any act or event which offends the accused causing mental agony to him and

moves him to vindicate himself of such offense. (Boado, Compact Reviewer in Criminal Law)

Lapse of Time Allowed

Although the grave offense which engendered the perturbation of mind was not so immediate, it was held that the influence thereof, by reason of its gravity, lasted until the moment the crime was committed [People v. Parana, G.R. No. L- 45373 (1937)].

However, this circumstance cannot be considered where sufficient time has elapsed for the accused to regain his composure [People v. Ventura, G.R. No. 148145-46 (2004)].

People v. Parana, GR L-45373, March 31, 1937

Immediate in this circumstance means proximate and allows an interval of time between the commission of the offense and its vindication as long as the offender is still suffering from mental agony brought about by the offense.

Provocation must be sufficient

The provocation must be sufficient, which means that it should be proportionate to the act of aggression and adequate to stir the aggressor to its commission. (People vs. Alconga, 78 Phil. 366)

Gravity of Personal Offense

Courts must consider the following to determine the gravity of the offense in vindication

1. Time when the insult was made;
2. Place; and
3. Social standing of the person.

	Provocation [Art. 13 (6)]	**Vindication [art. 13 (5)]**
As to Offended Party	It is made directly only to the person committing the felony.	The grave offense may be committed against the offender's relatives mentioned by law.
As to Graveness of Offense	The offense need not be a grave offense.	The offended party must have done a grave offense to the offender of his relatives.
As to Immediate-ness of Offense	The provocation or threat must immediately precede the act.	The grave offense may be proximate, which admits of an interval of time.
As to Subject of Offense	It is a mere spite against the one giving the provocation or threat.	It concerns the honor of the person.

Passion or Obfuscation

Requisites

1. The accused acted upon an impulse [Art. 13 (6), RPC];
2. The impulse must be so powerful that it naturally produces passion or obfuscation in him [Art. 13(6), RPC; People v. Danafrata, G.R. No. 143010 (2003)];
3. That there be an Act, both Unlawful and Sufficient to produce such condition of mind [People v. Comillo, G.R. No. 186538 (2009)]; and
4. That said act which produced the obfuscation was not far removed from the commission of the crime by a considerable Length of time, during which the perpetrator might recover his normal equanimity [Del Poso v. People, G.R. No. 210810 (2016)].

There is passion or obfuscation when there are causes naturally producing in a person the following:

1. Powerful excitement
2. Loss of reason and self-control
3. Diminution of the exercise of his will power [U.S. v. Salandanan, G.R. No. 951 (1902)].

When Not Applicable

1. When the act is committed in a spirit of lawlessness or revenge [People v. Bates, G.R. No. 139907 (2003)].
2. If the cause of loss of self-control is trivial and slight, obfuscation is not mitigating [U.S. v. Diaz, G.R. No. 5155 (1910)]. If the cause of the loss of self-control was trivial and slight, as when the victim failed to work on the hacienda of which the accused was the overseer, or where the accused saw the injured party picking fruits from the tree claimed by the former, the obfuscation is not mitigating. (Reyes, Book I citing U.S. vs. Diaz, 15 Phil. 123)
3. Act causing obfuscation does not come from the offended party [Alforte v. People, G.R. No. 159672 (Notice) (2014)].
4. **Exercise of a right or fulfillment of duty is not a proper source of passion or obfuscation.** Where the accused was making a disturbance on a public street and a policeman came to arrest him, the anger and indignation of the accused resulting from the arrest cannot be considered passion or obfuscation, because the policeman was performing a lawful act. (Reyes, Book I citing U.S. vs. Taylor, 6 Phil. 162)
5. **No passion or obfuscation after 24 hours, or several hours or half an hour**. The act producing the obfuscation must not be far removed from the

commission of the crime by a considerable length of time, during which the accused might have recovered his normal equanimity. The defense must prove that the act which produced the passion or obfuscation took place at a time not far removed from the commission of the crime. (Reyes, Book I)

6. **Crime committed must be the result of a sudden impulse of natural and uncontrollable fury**. Obfuscation cannot be mitigating in a crime which was planned and calmly meditated or if the impulse upon which the accused acted was deliberately fomented by him for a considerable period of time. (People vs. Daos, G.R. No. L-40331)
7. **Cause producing passion or obfuscation must come from the offended party**. Where passion or obfuscation of the accused is not caused by the offended party but by the latter's relatives who mauled the wife of the accused, the same may not be considered as a mitigating circumstance in his favor. (People vs. Lao, C.A., 64 O.G. 7873)
8. **Does not arise if the act is actuated by a spirit of lawlessness, jealousy, and revenge**. Passion or obfuscation must originate from lawful sentiments, not from the fact that, for example, the girl's sweetheart killed the girl's father and brother because the girl's parents objected to their getting married and the girl consequently broke off their relationship. Such an act is actuated more by a spirit of lawlessness and revenge rather than any sudden and legitimate impulse of natural and uncontrollable fury. (People vs. Gravino, G.R. Nos. L-31327-29).

Passion or obfuscation must arise from lawful sentiments and not from a spirit of lawlessness or revenge or from anger and resentment. (People vs. Bates, G.R. No. 139907)

People v. Sanico, C.A. 46 0.G. 9

The accused, who raped his victim in extreme state of passion, is not entitled to mitigating circumstance of passion because this circumstance can only be appreciated if passion arose from lawful sentiment of the offender and not from spirit of lawlessness.

Manaban v. CA. GR 150723 (2006)

In his testimony, Manaban admitted shooting Bautista because Bautista turned around and was allegedly about to draw his gun to shoot Manaban. The act of Bautista in turning around is not unlawful and sufficient cause for Manaban to lose his reason and shoot Bautista. That Manaban interpreted such act of Bautista as preparatory to drawing his gun to shoot Manaban does not make Bautista's act unlawful. The threat was only in the mind of Manaban and is mere speculation which is not sufficient to produce obfuscation which is mitigating.

	Passion or Obfuscation [Art. 13 (6)]	**Irresistible Force [Art. 12 (5)]**
As to Type of Circumstance	Mitigating Circumstance	Exempting Circumstance
As to Role of Physical Force	Does not involve physical force.	Physical force is a condition sine qua non.
As to Source of Circumstance	Passion/ obfuscation comes from the offender himself.	Irresistible force comes from a third person.
As to Source of Sentiments	Must arise from lawful sentiments to be mitigating.	Irresistible force is unlawful.

	Passion or Obfuscation [Art. 13 (6)]	**Provocation [Art. 13 (4)]**
As to Source of Provocation	Provocation comes from the injured party.	
As to Immediate-ness of Commission	The offense which endangers the perturbation of the mind need not be immediate. It is only required that the influence thereof lasts until the moment the crime is committed.	Must immediately precede the commission of the crime.
	In both, the effect is the loss of reason and self-control on the part of the offender.	

Passion and Obfuscation Considered Alongside Other Circumstances. Passion and obfuscation cannot be considered separately from:

1. **Treachery (Aggravating Circumstance)**. Passion cannot co- exist with treachery because in passion, the offender loses his control and reason while in treachery the means employed are consciously adopted [People v. Germina, G.R. No. 120881 (1998)].
2. **Provocation (Mitigating Circumstance)**. They cannot be considered as two separate mitigating circumstances. If these two circumstances are based on the same facts, they should be treated together as one mitigating circumstance [Romera v. People, G.R. No. 151978 (2004)].

3. **Vindication (Mitigating Circumstance).** Vindication of a grave offense and passion or obfuscation cannot be counted separately and independently. If these two circumstances arise from one and the same incident, they should be considered as only one mitigating circumstance [People v. Torpio, G.R. No. 138984 (2004)].

   Example: victim slandered the offender, causing him to get angry.

Romera v People

Thrusting his bolo at petitioner, threatening to kill him, and hacking the bamboo walls of his house are, in the Court's view, sufficient provocation to enrage any man, or stir his rage and obfuscate his thinking, more so when the lives of his wife and children are in danger. Petitioner stabbed the victim as a result of those provocations, and while petitioner was still in a fit of rage. In the Court's view, there was sufficient provocation and the circumstance of passion or obfuscation attended the commission of the offense.

But, the Court stressed that provocation and passion or obfuscation are not two separate mitigating circumstances. Well-settled is the rule that if these two circumstances are based on the same facts, they should be treated together as one mitigating circumstance. From the facts established in this case, it is clear that both circumstances arose from the same set of facts aforementioned. Hence, they should not be treated as two separate mitigating circumstances.

Voluntary Surrender

The essence of voluntary surrender is that no restraint was made whether or not a warrant was served or issued.

People v. Basite, GR 150382, October 2, 2003

Surrender, to be voluntary, must be spontaneous, showing the intent of the accused to submit himself unconditionally to the authorities, either because he acknowledges his guilt, or he wishes to save them the trouble and expense necessarily incurred in his search and capture. If none of these two (2) reasons impelled the accused to surrender, because his surrender was obviously motivated more by an intention to insure his safety, his arrest being inevitable, the surrender is not spontaneous.

The conduct of accused-appellant after the commission of the offense, of running away after having been stabbed by private complainant and of fleeing from complainant's relatives when they tried to bring him to the authorities, do not show voluntary surrender as contemplated under the law. It appears that accused-appellant willingly went to the police authorities with Gilbert Sacla only to escape the wrath of private complainant's relatives who were pursuing him and who appeared to be thirsting for his blood.

Requisites

1. **Offender has Not been actually Arrested**

XPN: Where a person, after committing the offense and having opportunity to escape, voluntarily waited for the agents of the authorities and voluntarily gave up, he is entitled to the benefit of the circumstance, even if he was placed under arrest by a policeman then and there [People v. Parana, G.R. No. L-45373 (1937)].

2. **Offender Surrendered himself to a person in authority or to the latter's agent**

Person in authority – one directly vested with jurisdiction. [Art. 152] Agent of person in authority – person, who, by direct provision of law, or by election or by competent authority, is charged with the maintenance of public order and the protection and security of life and property and any person who comes to the aid of persons in authority. [Art. 152]

Examples:

- When the accused surrenders himself to the commanding officer [Ebajan v. Court of Appeals, G.R. No. 77930-31 (1989)].
- When the accused who first surrendered to the Municipal Court later surrenders himself to the Constabulary headquarters of the province [People v. Casalme, G.R. No. L-18033 (1966)].

3. **Surrender was Voluntary**

Surrender is voluntary if it is spontaneous either because he:

- Acknowledges his guilt., or
- Wishes to save them the trouble and expenses that would be necessarily incurred in his search and capture [Andrada v. People, G.R. No. 135222 (2005)]

Not Considered Voluntary Surrender

1. Merely requesting a policeman to accompany the accused to the police headquarters [People v. Flores, G.R. No. 137497 (1994)].
2. If the only reason for the supposed surrender is to ensure the safety of the accused whose arrest is inevitable, the surrender is not spontaneous and hence not voluntary [People v. Pinca, G.R. No. 129256 (1999)].
3. When the accused surrendered only 14 days after the commission of the offense, as this shows that his surrender was merely an afterthought [People v. Agacer, G.R. No. 177751 (2011)].

4. **Not mitigating if defendant was in fact arrested**. Where a person, after committing the offense and having opportunity to escape, voluntarily waited for the agents of the authorities and voluntarily gave himself up, he is entitled to the benefit of this circumstance, even if he was

placed under arrest by a policeman then and there. (People vs. Parana, G.R. No. 45373)

5. **Surrender of weapons cannot be equated with voluntary surrender**. Where the accused merely surrendered the gun used in the killing, without surrendering his own person to the authorities, such act of the accused does not constitute voluntary surrender. (People vs. Palo, G.R Nos. L-9593-94)

6. **Intention to surrender, without actually surrendering, is not mitigating**. The mitigating circumstance of voluntary surrender cannot be appreciated in favor of the accused who claims to have intended to surrender but did not, despite several opportunities to do so, and was in fact arrested. (People vs. Dimdiman, G.R. No. L12622) There is spontaneity even if the surrender is induced by fear of retaliation by the victim's relatives. (People vs. Clemente, G.R. No. L-23463)

7. **When the offender imposed a condition or acted with external stimulus, surrender is not voluntary**. A surrender is not voluntary when forced by circumstances, as when the culprits considered it impossible to live in hostility and resistance to the constituted authorities and their agents in view of the fact that the said authorities had neither given them rest nor left them in peace for a moment. (People vs. Sakam, G.R No. 41566)

When warrant of arrest had not been served or not returned unserved because the accused cannot be located, the surrender is mitigating.
While it is true that the warrant for the arrest of the accused was dated Mar. 7,1967, and the police authorities were able to take custody of the accused only on Mar. 31,1967, there is nothing in the record to show that the warrant had actually been served on him, or that it had been returned unserved for failure of the server to locate said accused. Upon the other hand, there is direct evidence that the accused voluntarily presented himself to the police. The fact that it was effected sometime after the warrant of arrest had been issued does not detract from the voluntary character of the surrender in the absence of proof to the contrary. (People vs. Brana, G.R No. L-29210)

Law does not require that the surrender be prior to the order of arrest
When after the commission of the crime and the issuance of the warrant of arrest, the accused presented himself in the municipal building to post the bond for his temporary release, voluntary surrender is mitigating. The fact that the order of arrest had already been issued is no bar to the consideration of the circumstance because the law does not require that the surrender be prior to the order of arrest. (Rivera vs. CA, G.R. No. 125867)

Voluntary surrender does not simply mean nonflight
As a matter of law, it does not matter if the accused never avoided arrest and never hid or fled. What the law considers as mitigating is the voluntary surrender of an accused before his arrest, showing either acknowledgment of his guilt or an intention to save the authorities from the trouble and expense that his search and capture would require. (Reyes, Book I)

Surrender must be by reason of the commission of the crime for which defendant is prosecuted
Defendant cannot claim the circumstance of voluntary surrender because he did not surrender to the authority or its agents by reason of the commission of the crime for which he was prosecuted, but for being a Huk who wanted to come within the pale of the law. (People vs. Semaiiada, G.R. No. L-11361)

Plea of Guilt

Requisites

1. Offender Spontaneously confessed his guilt;
2. Confession of guilt was made in Open court; and
3. Confession of guilt was made Prior to the presentation of evidence [People v. Crisostomo, G.R. No. L-32243 (1988)].

Comments:

- To be considered mitigating, plea of guilty must be voluntary and unconditional, and made before the presentation of evidence for prosecution.

- An extrajudicial confession is NOT mitigating because it is not made in open court.

People v. Yturriaga, 86 Phil 534

Where the accused pleaded guilty but asked that he be allowed to prove mitigating circumstances, his plea is still unconditional and mitigating as he did not deny his guilt

Legal Effects
GR: While the plea of guilty is mitigating, it is also considered an admission of all material facts alleged in the information, including aggravating circumstances. The admission covers both the crime and its attendant circumstances qualifying and/or aggravating [People v. Jose, G.R. No. L-28232 (1971)].

XPN: Plea of guilty cannot be held to include treachery and evident premeditation where the evidence adduced does not adequately disclose its existence [People v. Gravino, G.R. No. L-31327-29 (1983)].

When Mitigating

1. Change of plea if made at the first opportunity when his arraignment was first set [People v. Hermino, G.R. No. 45466 (1937)].
2. Withdrawal of plea of not guilty before presentation of evidence by prosecution [People v. Kayanan, G.R. No. L-30355(1978)].

3. A plea of guilty on an amended information will be considered as an attenuating circumstance if no evidence was presented in connection with the charges made therein [People v. Ortiz, G.R. No. L-19585 (1965)].
4. **Withdrawal of plea of not guilty and pleading guilty before presentation of evidence by prosecution is still mitigating**. All that the law requires is voluntary plea of guilty prior to the presentation of the evidence by the prosecution. Thus, even if during the arraignment, the accused pleaded not guilty, he is entitled to this mitigating circumstance as long as he withdraws his plea of not guilty and thereafter pleads guilty to the charge before the fiscal could present his evidence. (Reyes, Book I)

When Not Mitigating

1. Conditional plea of guilty - It is when an accused admits his guilt provided that a certain penalty be imposed upon him. The appellant in this case must be considered as having entered a plea of not guilty [People v. Moro Sabilul, G.R. No. L-3765 (1951)]
2. Extrajudicial Confession – It is not voluntary confession because it was made outside the court [People v. Pardo, G.R. No. L-562 (1947)].
3. Plea of Guilt on Appeal - Plea must be made at the first opportunity [People v. Hermino, G.R. No. 45466 (1937)].
4. **Plea to a lesser charge is not a mitigating circumstance**. This is because to be voluntary, the plea of guilty must be to the offense charged. (People vs. Noble, G.R No. L-288)
5. **Plea of guilty is not mitigating in culpable felonies and in crimes punishable by special laws**. Art. 365, par. 5, RPC, which prescribes the penalties for culpable felonies, provides that "in the imposition of these penalties, the courts shall exercise their sound discretion, without regard to the rules prescribed in Art. 64." (People v. Agito, G.R. No. L12120) When the crime is punished by a special law, the court shall also exercise its sound discretion, as Art. 64 is not applicable. The penalty prescribed by special laws is usually not divisible into 3 periods. Art. 64 is applicable only when the penalty has 3 periods. (Reyes, Book I)

Plea to a Lesser Offense

The accused may be allowed to plead guilty to a lesser offense which is necessarily included in the offense charged, with the consent of the offended party and prosecutor. This may be done at arraignment or after withdrawing his plea of not guilty [Sec. 2, Rule 116, ROC].

- NOTE: In plea bargaining, the information would not be changed.
    - **Example:** If one committed murder but he pleads for a lesser crime of Homicide, he will be penalized for homicide, but the charges remain to be murder.
        - This is different from an ordinary mitigating circumstance of a plea of guilty because it will lower the period of the crime.

Physical Defect of Offender

The offender's being deaf and dumb, or blind, or otherwise suffering from some physical defect must be related to the offense committed because the law requires that the defect has the effect of restricting his means of action, defense, or communication to his fellow beings.

Requisites:

1. The offender is:
    a. Deaf and Dumb
    b. Blind, or
    c. Otherwise suffering from some physical defect which thus restricts his means of:
        i. Action
        ii. Defense, or
        iii. Communication with his fellow beings
2. Physical defect must have a Relation to the commission of the crime [REYES, Book 1]

Note: Illness must only diminish and not deprive the offender of the consciousness of his acts. Otherwise, he will be exempted from criminal liability [People v. Javier, G.R. No. 130654 (1999)].

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

Physical defect referred to in this paragraph is such as being armless, cripple, or a stutterer, whereby his means to act, defend himself or communicate with his fellow beings are limited. (Albert)

This paragraph does not distinguish between educated and uneducated deaf-mute or blind persons. The Code considers them as being on equal footing. (Reyes, Book I)

Illness of the Offender

Requisites

1. Illness of the offender must Diminish the exercise of his Will-Power.
2. Illness should Not Deprive the offender of Consciousness of his acts [People v. Javier, G.R. No. 130654 (1999)].

Note: Because if the illness will deprive the offender of consciousness, then, he will be exempted from criminal liability.

	Illness	Insanity

	[Art. 13 (9)]	[Art. 12 (1)]
Definition	Refers only to diseases of pathological state that trouble the conscience or will.	Insanity is a "manifestation in language or conduct, of disease or defect of the brain, or a more or less permanently diseased or disordered condition of the mentality, functional or organic, and characterized by perversion, inhibition, or by disordered function of the sensory or of the intellective faculties, or by impaired or disordered volition" [People v. Dungo, G.R. No. 89420 (1991)].
As to Effect	Diminution of intelligence.	Complete deprivation of intelligence [People v. Ambal, G.R. No. 52688 (1980); People v. Renegado, G.R. No. L- 27031 (1974); People v. Cruz, 109 Phil. 288, 292; People v. Puno y Filomeno, G.R. No. L- 33211 (1981)].
How Appreciated	Mitigating Circumstance	Exempting Circumstance

Example

1. Mild behavior disorder (illness of nerves or moral faculty);
2. Acute neurosis making a person ill-tempered and easily angered;
3. Feeblemindedness (may be considered under par. 8);
4. One with obsession that witches are to be eliminated akin to one with morbid infirmity but still retaining unconsciousness; and
5. Schizo-affective disorder or psychosis

People v Montesclaros

Schizophrenia may be considered mitigating under Art. 13 (9) if it diminishes the exercise of the willpower of the accused. In this case, the testimony of Dr. Costas shows that even though Ida was diagnosed with schizophrenia, she was not totally deprived of intelligence but her judgment was affected. Thus, on the basis of the Medical Certification that Ida suffered from and was treated for schizophrenia a few months prior to the incident, and on the testimony of Dr. Costas, Ida's schizophrenia could be considered to have diminished the exercise of her willpower although it did not deprive her of the consciousness of her acts.

Analogous Mitigating Circumstances

Any other circumstance of similar nature and analogous to the nine mitigating circumstances enumerated in Art. 13 may be mitigating.

Note: This is only true for mitigating. There are no other circumstances in other modifying circumstances.

Examples:

1. Stealing because of extreme poverty is considered as analogous to incomplete state of necessity [People v. Macbul, G.R. No. 48976 (1943)].
2. Over 60 years old with failing sight is considered as analogous to over 70 years of age mentioned in par. 2 [People v. Reantillo, G.R. No L-45685 (1938)].
3. Voluntary restitution of stolen goods is considered as analogous to voluntary surrender [People v. Luntao, 50 O.G. 1182].
4. Impulse of jealous feelings is considered as analogous to passion and obfuscation [People v. Libria, G.R. No. L-6585 (1954)].
5. Testifying for the prosecution, without previous discharge is considered as analogous to a plea of guilty [People v. Navasca, G.R. No. L-29107 (1977)].
6. Voluntarily taking a stolen cow back to the authorities to save them the time and effort of looking for the cow is considered as analogous to voluntary surrender [Canta v. People, G.R. No. 140937 (2001)].

Circumstances which are neither Exempting nor Mitigating

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

Reimbursement of Funds Misappropriated

Lumauig vs. People, GR 166680, July 7, 2014

In malversation of public funds, the payment, indemnification, or reimbursement of the funds misappropriated may be considered a mitigating circumstance being analogous to voluntary surrender. Although this case does not involve malversation of public funds under Art. 217 of RPC but rather failure to render an account under Art 218, the same reasoning may be applied to the return or full restitution of the funds that were previously unliquidated in considering the same as a mitigating circumstance in favor of petitioner.

The ruling in Kimpo v. Sandiganbayan (95604. April 29, 1994) which involved Malversation of Public Funds was applied in analogy to the case at bar. The SC held in the said case that "In the crime of Malversation of Public Funds, payment, indemnification, or reimbursement of funds misappropriated after the commission of the crime does not extinguish the criminal liability of the offender which, at most, can merely affect the accused's civil liability thereunder and be considered a mitigating circumstance".

d) Aggravating Circumstances

Those which, if attendant in the commission of the crime, serve to **increase the penalty imposed in its maximum period** provided by law for the offense.

Aggravating circumstances have to be included in the charges otherwise, these will not be included in the computation because the accused has the right to be informed of the penalty. As to other modifying circumstances, there is no need for those to be stated in the complaint.

Kinds Of Aggravating Circumstances

1. **GENERIC**. Those that can generally apply to all crimes. Nos. 1, 2, 3 (dwelling), 4, 5, 6, 9, 10, 14, 18, ~~19~~, and 20 except "by means of motor vehicles". A generic aggravating circumstance may be offset by a generic mitigating circumstance.

   Note: There is no law providing that the additional rape/s or homicide/s should be considered as aggravating circumstance. The enumeration of aggravating circumstance under Article 14 is exclusive as opposed to Article 13 where there is a specific paragraph (paragraph 10) providing for analogous mitigating circumstances. (People v. Regala)

2. **SPECIFIC**. Those that apply only to particular crimes. Nos. 3 (except dwelling), 15, 16, 17 and 21.

3. **QUALIFYING**. Those that change the nature of the crime (i.e. Art. 248 enumerate the qualifying aggravating circumstance which qualifies the killing of person to murder).

   If two or more possible qualifying circumstances were alleged and proven, only one would qualify the offense and the others would be generic aggravating.

   Examples:
   - Cruelty in crimes against persons
   - Treachery in crimes against persons
   - Victim is the offender's parents, ascendants, guardians, curators, teachers, or persons in authority
   - Unlicensed firearms in robbery in band
   - Circumstance of treachery or evident premeditation qualifies the killing of a person to murder. [Art. 248]
   - Circumstances of grave abuse of confidence and calamity qualifies the crime of theft to qualified theft. [Art. 310]
   - Circumstances of minority or taking advantage of public office qualifies the crime of simple seduction to qualified seduction. [Art. 337]

   It must be proven as conclusively as the guilt of the offender because of its effect which is to change the nature of the offense and consequently increase the penalty by degrees.

   It is not the qualifying circumstance itself that increases the penalty by degree. What the qualifying circumstance does is to change the nature of the crime resulting in the increase in the penalty.

   Thus, homicide becomes murder and the penalty for murder is higher than for the homicide. The penalty for homicide is always reclusion temporal which can be lowered but not increased to reclusion perpetua. <u>The homicide has to be changed by a qualifying circumstance to murder for the penalty to increase to reclusion perpetua</u>.

Generic	Specific	Qualifying
As to Penalty Imposed		
Increases the penalty to the **maximum** period.	Increases the penalty to the **maximum** period.	It places the author of the crime in such a situation as to deserve **another penalty**, as specially

		prescribed by law.
As to Applicability		
Applicable to **all** crimes.	Applicable only to **particular** crimes.	Applicable only to **relevant provisions** where such circumstances were specified (e.g. art. 248-Murder)
As to the Nature of the Circumstance		
It is not an ingredient of the crime. It only **affects the penalty** to be imposed.	It is not an ingredient of the crime. It only **affects the penalty** to be imposed.	Circumstance affects the nature of the crime itself such that the offender shall be liable for a more serious crime. Circumstance is actually an **ingredient of the crime.**
As to being offset		
Can be offset by an ordinary mitigating circumstance.	Can be offset by an ordinary mitigating circumstance.	*Cannot be offset by any mitigating circumstance.*

4. **INHERENT**. Those that are already elements of the felony and are thus no longer considered against the offender in the determination of the felony.

   Examples:
   - Abuse of public office in Bribery
   - Breaking of a wall or unlawful entry into a house in robber with force upon things
   - Fraud in Estafa
   - Deceit in Simple Seduction
   - Ignominy in Rape
   - Evident Premeditation in Robbery and Estafa
   - Disregard of respect due the offended party on account rank in Direct Assault
   - Superior Strength in Treason
   - Cruelty in Mutilation

5. **SPECIAL.** Those which arise under special conditions to increase the penalty of the offense and *cannot be offset by mitigating circumstances*:
   1. Quasi-recidivism [Art. 160]
   2. Complex crimes [Art. 48]
   3. Error in personae [Art. 49]
   4. Taking advantage of position [Art. 171]
   5. Membership in organized/syndicated group [Art. 62]
   6. Certain Circumstances in relation to Arson [Sec. 4, P.D. 1613]

   A generic aggravating the special circumstance of spite does not change the character of the arson charged. *However,* unlike generic aggravating which can be offset by an ordinary mitigating circumstance, special aggravating cannot be offset by an ordinary mitigating circumstance. (People v. De Leon, G.R. No. 179943, June 26, 2009)

Penalty Not Increased Despite Presence of Aggravating Circumstances:
1. Aggravating circumstances which are included by the law in defining a crime and prescribing the penalty [Art. 62, par. 1].
2. Aggravating circumstances inherent in the crime to such a degree that it must of necessity accompany the commission thereof [Art. 62, par. 2].

Aggravating Circumstances Personal to Offenders:
1. Moral attributes of offender (evident premeditation);
2. His private relations with offended party (consanguinity and affinity); and
3. Any other personal cause (recidivism).

Effect: Above circumstances shall only serve to aggravate the liability of the principals, accomplices, and accessories as to whom such circumstances apply [Art. 62, par. 3].

Aggravating Circumstances which Depend on the Knowledge for their Application

The following circumstances shall serve to aggravate the liability of only the persons who had knowledge of them at the time of the execution of the act or their cooperation therein:
1. Circumstances related to the material execution of the act; and
2. Circumstances related to the means employed to accomplish it (e.g. nighttime) [Art. 62, par. 4]

Public Position

[Article 14 (1) of RPC]

Kind: Generic Aggravating Circumstance

Requisites
1. Offender is a Public Officer
2. Such officer used the Influence, Prestige or Ascendancy which his office gives him
3. The same was used as Means by which he realizes his purpose. [U.S. v. Rodriguez, G.R. No. 6344 (1911)]

Test: "Did the accused abuse his office in order to commit the crime?" [U.S. v. Rodriguez, G.R. No. 6344 (1911)]

If he did, then this circumstance is present. (Sanchez v. Demetriou) The public official must use the influence, prestige, and ascendancy which his office gives him in realizing his purpose. There must be an **intimate connection** between the offense and the office of the accused.

If the accused could have perpetrated the crime even without occupying his position, there is no abuse of public position [People v. Villamor, G.R. Nos. 140407-08 (2002)].

Example:
When the offender falsifies a document in connection with the duties of his office which consist of either making or preparing or otherwise intervening in the preparation of a document. (Layno v. People, September 1992).

People v. Amion, G.R. No. 140511 (2001)

For such to be considered aggravating, the public official must use the influence, prestige and ascendancy which his office gives him in realizing his purpose. That accused used his service firearm in shooting the victim should not be considered as taking advantage of public position.

People v. Villa, Jr., G.R. No. 129899 (2000)

The mere fact that the accused was a member of the CAFGU and was issued an M-l Garand rifle is not sufficient to establish that he misused his public position in the commission of the crimes.

Insult To The Public Authorities

[Article 14 (2) of RPC]

Kind: Generic Aggravating Circumstance

Public Authority — A public authority, sometimes called a person in authority, is a public officer who is directly vested with jurisdiction and has the power to govern and execute the laws.

Agent of A Person in Authority — An agent of a person in authority is any person who, by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property.

Note: Teachers or professors of a public or recognized private school and lawyers are not "public authority" within the contemplation of this paragraph. (Campanilla, Criminal Law Reviewer Volume I)

Teachers in private colleges and private lawyers in court are persons in authority for purposes of applying Direct Assault and Resistance only. Crimes committed against them are not necessarily aggravated.

Requisites

1. Public authority is Engaged in the exercise of his functions
2. Public authority is Not the person against whom the crime is committed

   Note: If the crime is committed against the public authority while in the performance of his duty, the offender commits direct assault instead [Art. 148, RPC].

3. Offender Knows him to be a public authority
4. His Presence has not prevented the offender from committing the criminal act.

Does not apply when the crime is committed in the presence of an agent only
Par. 2 of Art. 14 was not applied in a case where the crime was committed in the presence of the chief of police of a town, because he is not a public authority, but an agent of the authorities. (People vs. Verzo, G.R. No. L-22517)

Knowledge that a public authority is present is essential
Lack of knowledge on the part of the offender that a public authority is present indicates lack of intention to insult the public authority. (Reyes, Book I)

Rank, Age, and Sex

[Article 14 (3) of RPC]

Kind: Specific Aggravating Circumstance specific to crimes against persons or honor [People v. Pagal, G.R. No. L-32040 (1977)].

People v. Rodil

Those generally considered of high station in life, on account of their rank, age or sex, deserve to be respected. Therefore, whenever there is a **difference in social condition** between the offender and the offended party, any of these circumstances sometimes is present.

There must be evidence that in the commission of the crime, the accused deliberately intended to offend or insult the sex or age of the offended party. (People vs. Mangsant y Esmiña, G.R. No. L-45704)

When all four aggravating circumstances are present

If all the four circumstances are present, they have the weight of one aggravating circumstance only. (Reyes, Book I) However, these may be considered singly when their elements are distinctly perceived and can subsist independently [People v. Santos, 91 Phil. 320, 327-328 (1952)].

It is not taken into account in crimes against property. It also does not apply to the special complex crime of Robbery With Homicide which is classified as a crime against property. (Pp vs. Nabaluna, July 17, 1986)

Note: Treachery applies to crimes against persons and also to Robbery with Homicide, even if the latter is a crime against property.

Requisites

1. Insult or disregard was made on account of:
    a. Rank
    b. Age
    c. Sex

2. Such insult or disregard was deliberately intended

Rank

"Rank" refers to the designation or title of distinction conferred upon an officer in order to fix his relative position in reference to other officers in matters of privileges, precedence, and sometimes of command or by which to determine his pay and emoluments as in the case of army staff officers; or to a grade or official standing, relative position in civil or social life, or in any scale of comparison, status, grade, including its grade, status or scale of comparison within a position. (People vs. Rodil, G.R. No. L-35156

Note: Disregarding the rank of the barangay captain shall not be appreciated as an aggravating circumstance in the absence of proof of the specific fact or circumstance that the accused disregarded the respect due to the offended party. It must be shown that the accused deliberately intended to insult the rank of victim as barangay captain. (People v. Talay, G.R. No. L-24952

Rank was aggravating in the following cases:

1. The killing of a staff sergeant by his corporal;
2. The killing of the Assistant Chief of Personnel Transaction of the Civil Service Commission by a clerk therein;
3. The murder by a pupil of his teacher;
4. The murder of a municipal mayor;
5. The murder of a city chief of police by the chief of the secret service division;
6. Assault upon a 66-year-old CF judge by a justice of the peace (now municipal judge);
7. The killing of a consul by a mere chancellor; and
8. The killing of an army general.

Age

May refer to old age or tender age of the victim.

Guidelines to Prove Age

The Court established the guidelines in appreciating age, either as an element of the crime or as a qualifying circumstance, as follows:

1. Best evidence - original or certified true copy of the certificate of live birth of such party.
2. In the absence of a certificate of live birth, similar authentic documents (e.g., baptismal certificate and school records which show the date of birth)
3. In the absence of the foregoing, testimony, if clear and credible, of the victim's mother or a member of the family either by affinity or consanguinity who is qualified to testify on matters respecting pedigree such as the exact age or date of birth of the offended party pursuant to Section 40, Rule 130 of the Rules on Evidence shall be **sufficient under the following circumstances**:
    a. If the victim is alleged to be below 3 years of age and what is sought to be proved is that she is less than 7 years old;
    b. If the victim is alleged to be below 7 years of age and what is sought to be proved is that she is less than 12 years old;
    c. If the victim is alleged to be below 12 years of age and what is sought to be proved is that she is less than 18 years old.
4. In the absence of the foregoing, the complainant's testimony will suffice provided that it is expressly and clearly admitted by the accused.

Note: It is the prosecution that has the burden of proving the age of the offended party. The failure of the accused to object to the testimonial evidence regarding age shall not be taken against him [People v. Arpon, G.R. No. 183563 (2011)].

Sex

This refers to the female sex, not to the male sex. However, the mere fact that the victim is a woman is not per se aggravating. There must be deliberate intent to insult the sex of the victim or disrespect to her womanhood.

Not Considered as Aggravating Circumstance:

1. When the offender acted with passion and obfuscation [People v. Ibañez, G.R. No. 197813].

    These circumstances cannot co-exist with passion or obfuscation where the offender lost his control or reason. They are considered in crimes against persons, security, or honor but not in crimes against property.
2. When there exists a relationship between the offended party and the offender [People v. Valencia, G.R. No. L-39864 (1993)].

3. When the condition of being a woman is indispensable in the commission of the crime (e.g., parricide, rape, abduction, or seduction). [Reyes, Book 1, p. 348]

People v. Verchez, G.R. No. 82729-32 (1994)

The circumstance of disregard of the respect due the offended party on account of his rank is unavailing. There is no showing that appellants intended to deliberately offend or insult the rank of the victim, which is the essence of said aggravating circumstance. This is so because the raiding police officers were not even in uniform.

Relevant Jurisprudence

Mari v CA

Brief Background:
Petitioner borrowed from complainant the records of his 201 file. However, several papers were missing upon return. Upon instruction of her superior officer, complainant sent a memorandum asking petitioner to explain. Instead of acknowledging receipt of the memorandum, petitioner confronted complainant and angrily shouted at her: "Putang ina , bullshit, bugo ." He banged a chair in front of complainant and choked her. Petitioner was convicted of slander by deed accompanied with the aggravating circumstance that the offended party is a woman.

Ruling:
The mere fact that the victim is a woman is not per se an aggravating circumstance. There was no finding that the evidence proved that the accused in fact deliberately intended to offend or insult the sex of the victim, or showed manifest disrespect to the offended woman or displayed some specific insult or disrespect to her womanhood. There was no proof of specific fact or circumstance, other than the victim is a woman, showing insult or disregard of sex in order that it may be considered as aggravating circumstance. Hence, such aggravating circumstance was not proved, and indeed, in the circumstances of this case may not be considered as aggravating

People v Nabaluna (1986)

Brief Background:
Accused-appellants were charged with the crime of robbery with homicide for killing and robbing a septugenarian.

Ruling:
The Court ruled that there was no aggravating circumstances of treachery, abuse of superior strength and disregard of old age in this case. Consideration of these circumstances and the imposition of the extreme penalty on the appellants herein should not have been made. There was no eyewitness when the crime was committed. In the case at bar, there is no evidence on record as to the method resorted to by the assailants in robbing and attacking the victim, or any showing that the latter was unaware when he was attacked. The element of treachery cannot simply be presumed. This aggravating circumstance must be clearly proven as the crime itself in order to aggravate the penalty or liability incurred by the culprit

As regards the aggravating circumstance of abuse of superior strength, such should also not be applied. The mere fact that two of the accused, with one of them being armed with a bolo, does not necessarily constitute abuse of superior strength on their part. To take advantage of superior strength, it is imperative that there be a showing of purposely using excessive force which is out of proportion to the means of defense available to the person attacked

Moreover, the aggravating circumstance of disregard of old age should not be taken into account for, as stated in the case of People vs. Pagal, 79 SCRA 570, it is not proper to consider this aggravating circumstance in crimes against property. Robbery with homicide is primarily a crime against property and not against persons. Homicide is a mere incident of the robbery, the latter being the main purpose and object of the criminal.

Act Committed in Dwelling

[Article 14 (3) of RPC]

Kind: Generic Aggravating Circumstance

PP v. Perreras, GR No. 139622 (2001)

Dwelling is considered aggravating primarily because of the sanctity of privacy the law accords to human abode.

He who goes to another's house hurt him is guilty than he who offends him elsewhere.

Requisites

1. Act was committed in the dwelling, which may pertain to a:
    a. Building; or
    b. Structure, which is
    c. Exclusively used for Rest and Comfort.
2. Offended party must not give Provocation.

Crime must be wholly or partly committed therein or in any integral part thereof
Dwelling not limited to the main house. Appurtenances and parts of the house necessarily for the peaceful rest of a person also constitute dwelling. Roof is part of the house. Dwelling includes dependencies such as the foot of the staircase and enclosure under the house [U.S. v. Tapan, G.R. No. 6504 (1911)].

If the deceased was only about to step on the first rung of the ladder when he was assaulted, the aggravating circumstance of dwelling will not be applicable. (People vs. Sespene, G.R. No. L-9346)

It is not necessary that the victim owns where she lives or dwells. A lessee, boarder, or bedspacer can consider such place as his home, the sanctity of which the law seeks to uphold [People v. Daniel, G.R. No. L- 40330 (1978)].

People v Dela Torre

Brief Background:
Accused was convicted for the crime of rape. The victim was employed as a cook with her husband being co-workers with accused. The victim was raped by the accused around 8pm. The accused appeared in the kitchen holding a knife and bolo, and dragged her outside and brought her towards a house under construction about 200 meters away. The victim's children tried to follow but they desisted when the accused threatened them. Accused threatened the victim not to tell anybody about the incident as he would slash her neck.

Ruling:
The Information alleged the presence of the aggravating circumstance of dwelling in the commission of the offense. This should have been appreciated by the court. It appears from the records that the kitchen at the La Fiesta Farm where Marita was dragged by appellant is her "dwelling," albeit the same does not belong to her. In People v. Parazo , the Court stressed that the "dwelling" contemplated in Article 14(3) of the Revised Penal Code does not necessarily mean that the victim owns the place where he lives or dwells. Be he a lessee, a boarder, or a bedspacer, the place is his home, the sanctity of which the law seeks to protect. The fact that the crime was consummated in the nearby house is also immaterial. Marita was forcibly taken by appellant from her dwelling house (kitchen) and then raped her. Dwelling is aggravating if the victim was taken from his house although the offense was not completed therein.

Dwelling is not included in the qualifying circumstance of treachery. (People vs. Ruzol, 100 Phil. 537, 544)

Considered as Aggravating Circumstances:

1. **Even without entry to dwelling** - it is enough that the victim was attacked inside his own house [People v. Ompaid, G.R. No. L-23513 (1969)].

PP v. Ompad, G.R. No. L-23513 (1969)

The aggravating circumstance of dwelling should be taken into account. Although the triggerman fired the shot from outside the house, his victim was inside. For this circumstance to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant may have devised means to perpetrate the assault from without (People vs. Albar, 86 Phil. 36).

2. **When crime was committed outside the dwelling** - Dwelling is still aggravating if the commission of the crime began inside the dwelling [U.S. v. Lastimosa, G.R. No. 9178 (1914)].

Not Considered as an Aggravating Circumstance:

1. **When both the offender and the offended party are occupants of the same house.**

   This is true even if the offender is a servant of the house [People v. Caliso, supra].

   XPN: In case of adultery in the conjugal dwelling, the same is aggravating. However, if the paramour also dwells in the conjugal dwelling, the applicable aggravating circumstance is abuse of confidence.

2. **When the owner of the dwelling gave sufficient and immediate provocation** [People v. Molina y Flores, G.R. No. 129051 (1999)].

   A condition sine qua non of this circumstance, is that the offended party "has not given provocation" to the offender. When it is the offended party who has provoked the incident, he loses his right to the respect and consideration due him in his own house. (People vs. Ambis, G.R. No. 46298)

3. **When robbery is committed by the use of force upon things, dwelling is not aggravating because it is inherent**

   XPN: Dwelling is aggravating in robbery with violence against or intimidation of persons because this class of robbery can be committed without the necessity of trespassing of the offended party's house. This applies as well on Dwelling in Robbery with Homicide.

4. **In the crime of trespass to dwelling, it is inherent or included by law in defining the crime.**

5. **The victim is not a dweller of the house.**

6. **People v. Taño**

PP v. Taño, GR 133872 (2000)

Brief Background:
Accused was convicted of the crime of robbery with rape.

Accused went to the video rental shop, which was attended to by the accused. Accused raped the victim and masked the victim's cries by increasing the volume of a karaoke which was turned on. After the rape, accused then looted the place of valuables belonging to the victim's employer.

TN: The video rental shop was situated in a two-storey house, the second floor of which was used as a dwelling.

Ruling:
Dwelling aggravates a felony when the crime was committed in the residence of the offended party and the latter has not given any provocation. It is considered an aggravating circumstance primarily because of the sanctity of privacy that the law accords to human abode. As one commentator puts it, one's dwelling place is a sanctuary worthy of respect; thus, one who slanders another in the latter's house is more severely punished than one who offends him elsewhere. According to Cuello Calon, the commission of the crime in another's dwelling shows worse perversity and produces graver alarm.

In the case at bar, the building where the two offenses were committed was not entirely for dwelling purposes. The evidence shows that it consisted of two floors: the ground floor, which was being operated as a video rental shop, and the upper floor, which was used as a residence. It was in the video rental shop where the rape was committed. True, the victim was dragged to the kitchen and toilet but these two sections were adjacent to and formed parts of the store. Being a commercial shop that caters to the public, the video rental outlet was open to the public. As such, it is not attributed the sanctity of privacy that jurisprudence accords to residential abodes. Hence, dwelling cannot be appreciated as an aggravating circumstance in the crime of rape.

Comments:

- If the place is half-abode and half-store, there is still dwelling if the store is closed and not open to public at the time of commission.

- If the store is open, there is no dwelling even if the attack occurred in the dwelling part if there is only one entrance.

Where the crime was committed in a store, which is about 15 meters away from the complainant's house, dwelling cannot be considered. The store cannot be considered a dwelling or even a dependency of the complainant's home. (People v. Joya, G.R. No. 79090, October 1, 1993) As dwelling must exclusively be used for rest and comfort, a combination store and dwelling is not a "dwelling" as used in the law.

CASE STUDY

Juan entered the house of Pedro through an open door, and once inside, he threatened Pedro with a gun and demanded money and jewelry. After taking there, he escaped by breaking the back door as he heard the siren of a police car approaching. Is dwelling aggravating?

- Dwelling is still aggravating here. The crime is Robbery with violence and intimidation against persons.
- The breaking of the door was not for the purpose of entrance. Hence, dwelling is not inherent or absorbed.

CASE STUDY

Juan entered the house of Pedro by breaking the door, and once inside, he threatened Pedro with a gun and demanded money and jewelry. After taking these, he escaped through the back door. What are the aggravating circumstances?

- Assuming that Napolis and Fransdilla are no longer applicable in light of RA 10951, the crime is simply robbery with violence and intimidation, with the aggravating circumstances of (1) dwelling and (2) unlawful entry.

Napolis And Fransdilla cases
In robbery with violence and intimidation, dwelling can be aggravating. So, if robbers went inside the dwelling and aimed guns at the victims so the victims would give their valuables to the robbers, the dwelling is aggravating and not absorbed, in this case, because it is done with violence and intimidation.

However, in robbery with use of force upon things, dwelling is not aggravating, but is merely absorbed in the crime of robbery because it is a necessary element of robbery with use of force upon things.

People vs. Napolis, G.R. No. L-28865 (1972)

The robbers went inside the store by breaking the door and walls in order to gain entry. Once they were inside the store, they did not take anything. There was no robbery in the store. They proceeded to the bedroom which was adjacent to the store and found the victim spouses. They pointed guns at the victims, the reason why they gave their valuables.

Comments:

- So, there was only one taking. And the taking was done in the dwelling part. So, in that case, the SC kind of had a dilemma because both means of committing the robbery were present. There was force upon things and there was also violence and intimidation.
- So what should the crime be? It was important to determine the crime because they have different penalties. And we've been told over and over again,

that the more serious robbery is robbery violence and intimidation.

- Here, there was only one robbery. So there was only one taking. It would have been different if there were two takings (i.e. when there was something taken in the store and then went to the bedroom and committed another robbery there).
- The problem is that the more serious crime which is violence and intimidation carries a lower penalty compared to force upon things. It makes no sense that there is a crime committed in two ways and just because you wanted to become more serious, it will result to a lesser penalty.
- SC could not ignore the fact that there was violence or intimidation which is the more serious crime, but designating the crime as the more serious crime would result in the imposition in a lesser penalty.
- So, the **SC complexed the penalty – Robbery with Robbery.**

Note: People vs. Fransdilla reiterated the Napolis ruling in 2015.

RA No. 10951
The amounts involved in Robbery, Estafa, and Theft have been changed. Before, P250 was already a correctional penalty. Now, the amounts are way higher. It begins with P50,000. Then, after that, in order to be afflictive, it should be P1.2 Million.

Q: Why is the amendment relevant?

- The amendment on the amounts only refer to Robbery by the use of force upon things, which means that the amount should be higher in order that the penalty be higher as well.
- In force upon things, the amount should be bigger in order to be afflictive. But in violence or intimidation, the amounts are still low.
- This means that, most likely, the penalties for Robbery with Violence or Intimidation would be more than 6 years *whereas* with the same amount of P250, the penalty for Robbery with the Use of Force Upon Things would be only a fine or Arresto Mayor at the most.

Fiscal: I would say that the Napolis and Franscdilla have already been overtaken by the amendments.

Q: Is there still a complex crime of Robbery with Robbery?

Because of the amendment, it would seem that there is no more need to complex. Remember, that was not really complexed. The only reason why the SC complexed it was because they wanted to impose the higher penalty.

It's like an exception to the rule whereby the court complexed crimes which should not have been complexed. It should have been Robbery with violence and intimidation with the ordinary aggravating circumstance of dwelling. That should have been the crime. But this only increase by period.

Relevant Jurisprudence

People v De Los Reyes

Brief Background:
Accused, armed with revolvers and a hunting knife, arrived at the house of Kapi Batao in Zamboanga del Sur. Two of the accused positioned themselves behind the bushes while two others walked towards the stairs. Then, one of them shouted, "Nay, Nay". Kapi thought it was a son-in-law and ordered someone to open the door.

Accused then barged in and stuck and hacked people who tried to obstruct their way. They then proceeded to rob the household.

Ruling:
With regard to the aggravating circumstance of dwelling, this should have been taken into account in the imposition of the proper penalty because robbery with homicide can be committed without necessarily transgressing the sanctity of the home.

Abuse of Confidence

[Article 14 (4) of RPC]

Kind: Generic Aggravating Circumstance

Requisites

1. Offended party Trusted the offender
2. Offender Abused such trust
3. Abuse of confidence Facilitated the commission of the crime

Immediate and personal
Confidence between the offender and the offended party must be immediate and personal.

People v. Arojado, 350 SCRA 679

For abuse of confidence to exist, it is essential to show that the confidence between the parties must be immediate and personal as would give the accused some advantage or make it easier for him to commit the criminal act.

The confidence must be a means of facilitating the commission of the crime, the *culprit taking advantage of the offended party's belief that the former would not abuse said confidence*.

Relevant Jurisprudence

If two persons just met for the first time, there can be no personal or immediate relationship upon which confidence

might rest between them [People v. Mandolado, G.R. No. L-51304-05 (1983)].

A jealous lover, who had already determined to kill his sweetheart, invited her to a ride in the country. The girl, unsuspecting of his plans, went with him. While they were in the car, the jealous lover stabbed her. It was held that this aggravating circumstance was present. (People vs. Marasigan, 70 Phil. 583, 594)

The maid, Jan, allowed a friend to stay in the house of her employer. If the friend steals something, the crime will NOT be qualified because the trust and confidence of the employer was not reposed on the thief but on the maid. Hence, there was no abuse of confidence.

Note:

- Abuse of confidence is aggravating only if the victim was the one who gave the confidence. If the victim is another person from the one who gave the trust, it is not aggravating.
- Confidence given prior to the crime, which was already terminated at the time of the commission of the offense, will not anymore aggravate.

Special relation

Abuse of confidence requires a special confidential relationship between the offender and the victim, while this is not required for there to be obvious ungratefulness.

Abuse Confidence is an Inherent Circumstance of:

1. Qualified seduction [Art. 337, RPC]
2. Qualified theft [Art. 310, RPC]
3. Estafa by conversion or misappropriation [Art. 315, RPC]
4. Malversation [Art. 217, RPC]

Obvious Ungratefulness

[Article 14 (4) of RPC]

Requisites

1. Offended party Trusted the offender
2. Offender Abused such trust
3. Act was committed with obvious Ungratefulness

Relevant Jurisprudence

This circumstance was present in the case of the accused who killed his father-in-law in whose house he lived and who partially supported him. (People vs. Floresca, G.R. Nos. L-8614-15)

The circumstance was present where the victim was suddenly attacked while in the act of giving the assailants their bread and coffee for breakfast. Instead of being grateful to the victim, at least by doing him no harm, they took advantage of his helplessness when his two arms were used for carrying their food, thus preventing him from defending himself from the sudden attack. (People vs. Bautista, No. L-38624)

Place of The Chief Executive, Public Authorities, Place of Religious Worship

[Article 14 (5) of RPC]

Kind: Generic Aggravating Circumstance

Greater perversity of the offender, as shown by the place of the commission of the crime, which must be respected.

Four (4) Circumstances Contemplated Crime was committed:

1. In the Palace of the Chief Executive, or
2. In his Presence, or
3. Where public authorities are engaged in the Discharge of their duties, or
4. In a place dedicated to Religious Worship.

Note: Offender must have the **intention** to commit a crime when he entered the place [People v. Jaurigue, C.A. No. 384 (1946)]. The aggravating circumstance that the killing was done in a place dedicated to religious worship cannot be legally considered, where there is no evidence to show that the defendant had murder in her heart when she entered the chapel on the fatal night. (People v. Jargiue, 76 Phil. 174, 182)

This ruling seems to be applicable also in case a crime is committed in Malacañang palace or where public authorities are engaged in the discharge of their duties.

	Public Authorities Engaged in Discharge of Duties (Par. 5)	**Contempt or Insult to Public Authorities (Par. 2)**
	Public authorities are engaged in the performance of their duties.	
As to Acts Punished	Crime was committed in a **place** where public authorities are engaged in the discharge of their duties.	Crime was committed in the **presence** of a public authority engaged in the performance of his function, **regardless of the place.**
As to Offended Party	Offended party may or may not be the public authority.	Public authority should **not** be the offended party.

Places Dedicated to Religious Worship

Requisites:

1. The crime occurred in a place dedicated to the worship of God regardless of religion;
2. The offender must have decided to commit the crime when he entered the place of worship;
3. The place must be exclusively dedicated to public religious worship; private chapels are not included; and
4. There must be intention to desecrate the place dedicated to public religious worship.

Note: Cemeteries are not considered as places dedicated to worship.

The place of the commission of the felony (par. 5), if it is Malacañang palace or a church, is aggravating, *regardless* of whether State or official or religious functions are being held. (Reyes, Book I)

In the palace of the Chief Executive or In His Presence

The Chief Executive need not be in Malacañang palace. His presence alone in any place where the crime is committed is enough to constitute the aggravating circumstance. This aggravating circumstance is present even if he is not engaged in the discharge of his duties in the place where the crime is committed.

Public Authorities

Requisites:
1. Crime occurred in the public office; and
2. Public authorities are actually performing their public duties

Q: Is performance of public function necessary in the appreciation of the aggravating circumstances in paragraph 5 of Article 14?

Only in the third circumstance (where public authorities are engaged in the discharge of their duties) is performance of function necessary.

The other three circumstances require merely that the crime be committed in the places specified — in the palace of the Chief Executive, in his presence, or in a place dedicated to religious worship.

Nighttime, Uninhabited Place, By a Band
[Article 14 (6) of RPC]

Kind: Generic Aggravating Circumstance

Requisites:
Circumstances of nighttime, uninhabited place or band:
1. When it facilitated the commission of the crime; or
2. When especially sought for by the offender to insure the commission of the crime or for the purpose of impunity; or
3. When the offender took advantage thereof for the purpose of impunity.

Can be Considered Separately
GR: If they concur in the commission of the crime, they are considered as one aggravating circumstance.

XPN: When the following are present:
1. When their elements are distinctly perceived
2. When they can subsist independently.
3. When it reveals a greater degree of perversity [People v. Santos, G.R. No. L41-89 (1952)].

Nighttime

Two (2) Tests for Nocturnity

1. **Objective test** – nighttime is aggravating because the darkness facilitated the commission of the offense; [People v. Pardo, G.R. No. L- 562 (1947)] and

2. **Subjective test** – nighttime is aggravating because the darkness was purposely sought by the offender [People v. Ventura, supra].

By and if itself, nocturnity or nighttime is not an aggravating circumstance.

It becomes aggravating when, aside from the requisites, it is used to ensure that the offended party cannot put up a defense.

Period of nighttime
That period of darkness beginning at the end of dusk and ending at dawn. (Art. 13, NCC) (after sunset and before sunrise)

Commission of the crime must begin and be accomplished in the nighttime
Thus, although the safe was thrown into the bay at night, but the money, the taking of which constituted the offense, was withdrawn from the treasury during the daytime, the crime of malversation was not attended by the aggravating circumstance of nighttime. (U.S. vs. Dowdell, 11 Phil. 4, 7)

When the place of the crime is illuminated by light, nighttime is not aggravating
When the place is illuminated by light, nighttime is not aggravating [People v. Bato, G.R. No. L-23405 (1967)].

The fact that the scene of the incident was illuminated by the light on the street negates the notion that accused had especially sought or had taken advantage of night time in order to facilitate the commission of the crime of theft or for purposes of impunity. (People vs. Joson, C.A., 62 O.G. 4604)

Especially sought for by offender

Nighttime is not especially sought for when the notion to commit the crime was conceived shortly before commission or when crime was committed at night upon a casual encounter. (People vs. Cayabyab, G.R No. 123073)

If there was no proof that nighttime was deliberately sought by the accused in committing the crime, said circumstance should be disallowed. (People v. Pasiliao, G.R. No. 98152-53, October 26, 1992)

However, in this example:

Nighttime was specifically sought in order to kill a son or a spouse. So, the crime here would be parricide. It is already qualified by reason of relationship.

The treachery cannot become a qualifying circumstance anymore because the crime is already qualified by relationship.

The nighttime/treachery will now become just ordinary aggravating circumstance.

Note: If the crime is already qualified by one, the other circumstances can only be treated as ordinary circumstance.

When both Nighttime and Treachery are present

GR: Nighttime is absorbed in treachery if it is part of the treacherous means to insure the execution of the crime [People v. Ong, G.R. No. 34497 (1975)].

XPN: Where both the treacherous mode of attack and nocturnity were deliberately chosen upon the same case. Both may be perceived distinct from one another [People v. Berdida, G.R. No. L-20183 (1966)].

Uninhabited Place

One where there are no houses at all, or a place at a considerable distance from town, where the houses are scattered at a great distance from each other.

A place where there are no people or any number of houses within a perimeter of 200 meters is uninhabited. (People v. Balisteros, G.R. No. 110289, October 7, 1994)

Securing Assistance
It is determined not by the distance of the nearest house to the scene of the crime but whether or not in the place of the commission of the offense, there was a reasonable possibility of the victim receiving some help [People v. Desalisa, G.R. No. 95262 (1994)].

When place of crime could be seen and the voice of the victim could be heard from a nearby house, the place of the crime is not "uninhabited" [People v. Laoto, G.R. No. 1928 (1928)].

Solitude must be sought to better attain the criminal purpose
The offenders must choose the place as an aid either (1) to an easy and **uninterrupted** accomplishment of their criminal designs, or (2) to insure **concealment** of the offense, that he might thereby be better secured against detection and punishment. (People vs. Andaya, G.R. No. L-63862)

Band (Cuadrilla)

Requisites

1. More than three malefactors (four or more persons)
2. All of them should be armed
3. Malefactors acted together in the commission of the offense (Presupposing the presence of conspiracy)

It is necessary that there be **more than three armed malefactors** acting together in the commission of the offense [Art. 14(6); People v. Atencio, G.R. No. L-22518 (1968)]

This aggravating circumstance requires that there should be at least four persons who commit the crime, all of whom should be armed. Even if there are four offenders, but only three or less are armed, it is not a band. Here, there is no evidence that all four accused were armed at the time of the perpetration of the crime. Hence, this circumstance cannot be appreciated against the appellants [People v. Solamillo, G.R. No. 123161 (2003)].

If only two of the accused carried firearms, en cuadrilla cannot be appreciated as aggravating circumstance [People v. Oco, G.R. Nos. 137370-71 (2003)].

Must all be principals by direct participation
The armed persons contemplated must all be principals by direct participation who acted together in the execution of the acts constituting the crime; in this case, conspiracy is presumed. (People v. Lozano, G.R. No.s 1317370-71)

When the armed men met up casually with others, and a crime was thereafter committed, it cannot be considered as an aggravating circumstance. (Reyes, Book I)

Abuse of superior strength and use of firearms
GR: The aggravating circumstance of taking advantage of their superior strength and with the use of firearms is **absorbed** by the generic aggravating circumstance of the commission of the offense by a band, (People vs. Escabarte, G.R. No. 42964)

XPN: When the firearm has no license or there is a lack of license to carry the firearm. (Reyes, Book I)

Brigandage
Brigandage is committed by more than three armed persons forming a band of robbers [Art. 306, RPC]. Thus, that the crime was committed by a band is **inherent** in the definition of the crime and is not aggravating [Reyes, Book 1, p. 374].

Pp vs Librando, G.R. No. 132251, July 6, 2000

If nighttime, uninhabited place or band concur in the commission of the crime, all will constitute one aggravating circumstance only, as a general rule, although they can be considered separately if their elements are distinctly perceived and can subsist independently, revealing a greater degree of perversity.

Calamities and Misfortunes

[Article 14 (7) of RPC]

Kind: Generic Aggravating Circumstance

Rationale

The debased form of criminality of one who, in the midst of a great calamity, instead of lending aid to the afflicted, adds to their suffering by taking advantage of their misfortune and despoiling them [U.S. v. Rodriguez, G.R. No. 6344 (1911)].

Requisites

1. The crime was committed when there was a calamity or misfortune similar to conflagration, shipwreck, earthquake or epidemic; and
2. The offender took advantage of the state of confusion or chaotic condition from such misfortune.

Offender must take advantage of the calamity or misfortune

This will not apply if the offender was provoked by the offended party during the calamity or misfortune. (Reyes, Book I)

"Or Other Calamity or Misfortune"

Refers to other conditions of distress similar to "conflagration, shipwreck, earthquake or epidemic."

Aid of Armed Men

[Article 14 (8) of RPC]

Kind: Generic Aggravating Circumstance

Requisites

1. That armed men or persons took part in the commission of the crime, directly or indirectly; and
2. That the accused availed himself of their aid or relied upon them when the crime was committed.

Armed Men

Persons equipped with weapons. It also covers armed women [People v. Licop, G.R. No. L06061 (1954)].

Not Considered as an Aggravating Circumstance:

1. When both the attacking party and the party attacked were equally armed. [Albert]

2. When the accused as well as those who cooperated with him in the commission of the crime acted under the same plan and for the same purpose [People v. Piring, G.R. No. 45053 (1936)].

   Aid of armed men cannot be appreciated when there is conspiracy, accused acting under the same plan and for the same purpose. Hence, they are all principals in the commission of the crime.

3. Casual presence, or when the offender did not avail himself of their aid nor knowingly count upon their assistance in the commission of the crime [U.S. v. Abaigar, G.R. No. 1255 (1903)].

	By a Band (Par. 6)	**With Aid of Armed Men (Par. 8)**
As to Number of Malefactors	Requires more than 3 armed malefactors (at least 4)	At least 2 armed men Note: their number is not specified nor required as long as there is more than one
As to Degree of Participation	Band members are all principals [Reyes, Book 1, p. 372]	Armed men are mere accomplices [Reyes, Book 1, p. 376]

Note: In band and aid of armed men, the crimes are not specified; in organized crime syndicate, the purpose is to commit crimes for gain.

Accused is a Recidivist

[Article 14 (9) of RPC]

Kind: Generic Aggravating Circumstance

Requisites

1. Offender is on Trial for an offense;
2. He was Previously Convicted by final judgment of another crime;

   Note: "Final judgment" means executory, i.e., 15 days have elapsed from its promulgation without the convict appealing the conviction.

3. Both the first and second offenses are embraced in the Same title of the Code (RPC);
4. Offender is Convicted of the new offense.

Recidivist

One who at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC.

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

Effects of pardon
Recidivism **can be appreciated even if the convict was given absolute pardon**, as pardon extinguishes the penalty only but not the effects of the offense.

"At the time of his trial for one crime"
What is controlling is the time of trial, not the time of the commission of the crime. It is not required that at the time of the commission of the crime, the accused should have been previously convicted by final judgment of another crime. (Reyes, Book I)

Q: The accused was prosecuted and tried for theft, estafa and robbery. Judgments for three offenses were read on the same day. Is he a recidivist?

No, because the judgment in any of the first two offenses was not yet final when he was tried for the third offense. (Reyes, Book I)

The present crime and the previous crime must be "embraced in the same title of this Code."
When one offense is punishable by an ordinance or special law and the other by the Revised Penal Code, the two offenses are not embraced in the same title of the Code.

There is recidivism even if the lapse of time between two felonies is more than 10 years.
Recidivism must be taken into account no matter how many years have intervened between the first and second felonies. (People v. Colocar, G.R. No. 40871) There is no specific period between the prior conviction and the second conviction.

Reiteracion/Habituality

[Article 14 (10) of RPC]

Kind: Generic Aggravating Circumstance

Requisites
1. Offender is on Trial for an offense.
2. He was Previously Served sentence for:
    a. Another offense of Equal or Greater penalty than the new offense; or
    b. 2 or more crimes of lighter penalty
3. Offender is Convicted of the new offense.

"Has been previously punished"
Means that the accused previously served sentence for another offense or sentences for other offenses before his trial for the new offense. (People vs. Abella, G.R. No. L-32205)

Note: This is different from habitual delinquency

A person is a habitual delinquent if:

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

Habitual delinquency is a special aggravating circumstance because it is not included in Article 14. It is not an "ordinary" special aggravating circumstance because its effect is to impose an incremental penalty, that is, an additional penalty to that imposed for the crime actually committed.

Two penalties shall therefore be imposed — for the crime committed and for the habitual delinquency. The penalty for the habitual delinquency escalates with the number of conviction.

It is not also a qualifying circumstance because although the increase in the penalty is significant, it does not change the nature of the offense committed.

It is in effect a crime by itself because it has its own penalty.

In Consideration of Price, Reward, Promise

[Article 14 (11) of RPC]

Kind: Generic Aggravating Circumstance

Requisites
1. There are at least 2 principals:
    a. Principal by inducement (one who offers); and
    b. Principal by direct participation (one who accepts);
2. The price, reward, or promise should be previous to and in consideration of the commission of the criminal act.

Principal by direct participation
They affect principal by direct participation who com-mitted the crime for consideration.

The other co-conspirators, if there be any who did not benefit from the price, promise or reward will not have his penalty aggravated because this circumstance is personal to the receiver.

The price, reward or promise need not
1. Consist of or refer to Material things; or
2. Be Actually Delivered; it being sufficient that the offer made by the principal by inducement was accepted by the principal by direct participation before the commission of the offense. [Regalado, pp. 100-101]

Also applicable to the one who gave the price

When this aggravating circumstance is present, it affects not only the person who received the price or the reward, but also the person who gave it. (U.S. v. Parro, G.R No. 12607)

Voluntarily giving such price or reward without previous promise, as an expression of appreciation for the sympathy and aid, is not takn into consideration to increase the penalty [U.S. v. Flores, G.R. No. 9008 (1914)].

Crimes Committed by Other Means

[Article 14 (12) of RPC]

Kind: Generic Aggravating Circumstance

As a generic aggravating circumstance

When another aggravating circumstance already qualifies the crime, any of these aggravating circumstances shall be considered as generic aggravating circumstances only. (Reyes, Book I)

Requisites

Crime was committed by means of:

1. Inundation
2. Fire
3. Poison
4. Explosion
5. Stranding of a vessel
6. Intentional damage to a vessel
7. Derailment of a locomotive
8. Any Other artifice involving great waste and ruin

Actual design to kill a person

When the crime intended to be committed is arson and somebody dies as a result thereof, the crime is simply arson and the act resulting in the death of that person is not even an independent crime of homicide, it being absorbed. (People vs. Paterno, et al., 85 Phil. 722)

If the offender had the intent to kill the victim, burned the house where the latter was, and the victim died as a consequence, the crime is murder, qualified by the circumstance that the crime was committed "by means of fire." (See Art. 248)

When used as a means to kill another person, the crime is murder

If the purpose of the explosion, inundation, fire or poison is to kill a predetermined person, the crime committed is murder. Once any of these circumstances is alleged in the information to qualify the offense, it should not be considered as generic aggravating circumstance for the purpose of increasing the penalty, because it is an integral element of the offense. (Reyes, Book I)

Each of the circumstances of "fire," "explosion," and " derailment of a locomotive" may be a part of the definition of particular crime, such as, arson (Art. 320), crime involving destruction (Art. 324), and damages and obstruction to means of communication (Art. 330). In these cases, they do not serve to increase the penalty, because they are already included by the law in defining the crimes

Intentional Damage

People vs Galura

The accused wanted to have a good time with the victim. So he invited her to a dinner date where he laced the food with cantharides; the purpose being to make the victim more consenting. So the purpose was more on the lewd designs of the accused to have carnal knowledge with the victim afterwards.

But what happened was that the effect of the chemicals poisoned and caused the death of the victim.

Supreme Court said that the poison there cannot be taken as a qualifying circumstance because it was not specifically sought to kill.

So even if the killing was caused by poisoning with the use of chemicals intentionally placed on the food of the victim, Supreme Court said it is not qualifying.

Note:

- These circumstances by themselves constitute a crime, hence, Article 62(1) shall apply.
- Thus, "aggravating circumstances which in themselves constitute a crime specially punished by law or which are included by the law in defining a crime and prescribing the penalty therefor shall not be taken into account for the purpose of increasing the penalty."
- If one of these circumstances was a means to kill, the crime is murder, not homicide, hence, the penalty will be for murder. The circumstance will no longer be considered aggravating.

Evident Premeditation

[Article 14 (13) of RPC]

Kind: Generic Aggravating Circumstance

The prosecution must prove:

1. The Time when the offender determined to commit the crime;
2. An Act manifestly indicating that the culprit has clung to his determination; and
3. Sufficient Lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will [People v. Raquipo, G.R. No. 90766 (1990)]..

Sufficient lapse of Time

1. An opportunity to coolly and serenely think and deliberate
    a. On the meaning; and

b. Consequences of what he planned to do.

2. An interval long enough for his conscience and better judgment to overcome his evil desire and scheme [People v. Durante, G.R. No. L-31101 (1929)].

The date and time when the offender determined to commit the crime is essential, because the lapse of time for the purpose of the third requisite is computed from that date and time [Rabor v. People, G.R. No. 140344 (2000)].

Evident premeditation connotes adherence to a plan to commit a crime. Returning to the scene of an earlier fight four hours later does not establish these elements. Mere lapse of time is not equivalent to evident premeditation.

Deliberate planning
It cannot be appreciated to qualify a killing to murder in the absence of evidence, not only of sufficient lapse of time, but also of the planning and preparation to kill when the plan was conceived. (People v. Nell)

Evident premeditation must be based on external facts which are evident, not merely suspected, which indicate deliberate planning [People v. Abadies, G.R. No. 135975 (2002)].

There must be direct evidence showing a plan or preparation to kill, or proof that the accused meditated and reflected upon his decision to kill the victim. Criminal intent must be evidenced by notorious outward acts evidencing a determination to commit the crime. In order to be considered an aggravation of the offense, the circumstance must not merely be "premeditation" but must be "evident premeditation" [People v. Abadies, G.R. No. 135975 (2002)]

Conspiracy presupposes premeditation [U.S. v. Cornejo, G.R. No. 9773 (1914)]

XPN: When conspiracy is merely implied [People v. Upao Moro, G.R. No. L-6771 (1957)]. It is not necessary that the accused premeditated the killing of a particular individual. If the offender premeditated on the killing of any person (general attack), it is proper to consider as an aggravating circumstance because whoever was killed was contemplated in the premeditation [US v. Manalinde, G.R. No. L-5292 (1909)].

Not Considered as Aggravating Circumstance:

1. Anger or Grudge - The mere existence of ill-feeling or grudge between the parties is not sufficient to establish premeditated killing. There must be an outward act showing or manifesting criminal intent [People v. Bernal, G.R. No. 113685 (2002)].
2. Crimes Where Premeditation is Inherent:
    a. **Preconceived act** – where the accused would execute the preconceived act only after having thought out the method by which he intends to accomplish it (e.g. arson, theft, estafa, etc.) [People v. Cu, G.R. No. L-13413 (1977)].
    b. **Robbery**; except in robbery with homicide if the premeditation includes the killing of the victim [People v. Valeriano, G.R. No. L-2159 (1951)].
    c. **Treason** [People v. Racaza, G.R. No. L-365 (1942)]
3. **Error in personae** – Premeditation is not aggravating when there is mistake of identity as the victim is not the object of premeditation [People v. Dueño, G.R. No. L-31102 (1979)].
4. **Aberratio ictus** – When the victim is different from that intended, premeditation is not aggravating [People v. Hilario, et al., G.R. No. 128083 (2001)].

Not necessary that there is a plan to kill a particular person
For premeditation to exist, it is not necessary that the accused planned to kill a particular person.

When the offender decided to kill a ***particular*** person and premeditated on the killing of the latter, but when he carried out his plan he actually killed another person, it cannot properly be said that he premeditated on the killing of the actual victim.

However, if the offender premeditated the killing of ***any*** person, it is proper to consider against the offender the aggravating circumstance of premeditation, because whoever is killed by him is contemplated in his premeditation. (Reyes, Book I)

Craft, Fraud, Disguise

[Article 14 (14) of RPC]

Kind: Generic Aggravating Circumstance

Crime was committed by means of:

1. Craft
2. Fraud
3. Disguise

These circumstances are not aggravating if they did not **facilitate the commission** of the crime or not taken advantage of by the offender in the course of the assault.

Craft
Involves intellectual trickery or cunning on the part of the accused; a chicanery resorted to by the accused to aid in the execution of his criminal design. It is employed as a scheme in the execution of the crime.

> **Example:** The offender assumed position of authority to gain entry in a house; or feigning friendship to lure a victim to an uninhabited place.

Not aggravating where:

1. The unlawful scheme could have been carried out just the same even without the pretense. (People v. Aspili, G.R. Nos. 89418-19)

2. Craft partakes of an element of the offense.

Fraud
Insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design.

Disguise
Resorting to any device to conceal identity. The purpose of the offender in using any device must be to conceal his identity. (Reyes, Book I)

> TEST: Whether the device or contrivance was intended to or did make identification more difficult, such as the use of a mask, false hair or beard [People v. Reyes, G.R. No. 118649 (1998)].
>
> **If Disguise was Ineffective**
> When in spite of the use of disguise, the culprits were recognized by the victim, disguise is not considered as an aggravating circumstance [People v. Sonsona, G.R. No. L-8966 (1956)].
>
> The fact that the mask subsequently fell down thus paving the way for this one's identification does not render the aggravating circumstance of disguise inapplicable. (People v. Cabato, G.R. No. L-37400)

Craft	Fraud	Disguise
As to Purpose		
Done in order to not arouse suspicion	Done to induce someone through insidious words and machinations	Done to conceal identity

Craft and Fraud absorbed in Treachery
Craft and fraud may be absorbed in treachery if they have been deliberately adopted as the means, methods or forms for the treacherous strategy. Otherwise, they may co-exist independently where they are adopted for a different purpose in the commission of the crime [People v. Lab-eo, supra].

If they were used to insure the commission of the crime against persons without risk to offender, they are absorbed by treachery.

Not Considered as an Aggravating Circumstance
1. Qualified theft [Art. 310, RPC] – Craft is an element of qualified theft [People v. Tiongson, C.A., 59 O.G. 4521].
2. Crimes where Fraud is inherent:
    a. Preventing the meeting of Congress and similar bodies [Art. 143, RPC]
    b. Violation of parliamentary immunity [Art. 145, RPC]
    c. Crimes against public interest under Chapter Three
    d. Crimes committed by public officers under Chapter Three
    e. Execution of deeds by means of violence or intimidation [Art. 298, RPC]
    f. Crimes against property under Chapters 5 and 6
    g. Marriage contracted against the provisions of the law [Art. 350, RPC]
    h. Rape through fraudulent machination [Art. 266-A (1)(c), RPC]

Related Jurisprudence

> Supreme Court said in one case involving 2 UP law students during an initiation, one of the accused was wearing a mask, and the mask fell, prosecution said it could still be considered as an ordinary aggravating circumstance even if the disguise was not effective (because it fell).
>
> What determines whether or not the disguise should be taken into consideration is not that it is effective, but rather if the accused USED a disguise.
>
> Thus in this case, even if the mask fell and the disguise ineffective, but because it was purposely sought by the accused, the disguise can still be taken into consideration.

Abuse of Superior Strength

[Article 14 (15) of RPC]

Kind: Specific Aggravating Circumstance

Advantage of Superior Strength
To use purposely excessive force out of proportion to the means of defense available to the person attacked [People v. Martinez, G.R. No. L-31755 (1980)].

Requisites
1. There is a Notorious Inequality of forces between victim and aggressor [People v. Barcelon, G.R. No. 144308 (2002)].
2. Offender Purposely used excessive force out of proportion to the means of defense available to the persons attacked [People v. Sansaet, G.R. No. 139330 (2002)].

Considerations in Determining Abuse of Superior Strength
1. Age;
2. Size; and
3. Strength of the parties [People v. Cabato, G.R. No. L-37400 (1988)]

The means used must not totally eliminate possible defense of the victim, otherwise it will fall under treachery.

Not Considered as an Aggravating Circumstance:

1. When one who attacks is overcome with passion and obfuscation [Reyes, Book 1]
2. When quarrel arose unexpectedly [U.S. v. Badines, G.R. No. 1951 (1905)]
3. When treachery is present, superior strength is absorbed. [People v. Mobe, G.R. No. L-1292 (1948)]
4. Crimes where Abuse of Superior Strength is Inherent:
    a. Parricide [People v. Galapia, G.R. Nos. L-39303-05 (1978)]
    b. Rape [People v. de Leon, G.R. No. 128436 (1999)]

Note: For superior strength to aggravate a crime, it must be clearly shown that there was **deliberate intent** to take advantage of it. The mere fact that the accused were superior in number is not sufficient to consider the use of superior strength [People v. Martinez, supra].

It must be proved that the attackers cooperated in such a way as to secure advantage from superiority of strength.

That the victim is a woman is inherent in parricide
Abuse of superior strength is inherent in the crime of parricide where the husband kills the wife. It is generally accepted that the husband is physically stronger than the wife. (Reyes, Book I)

By a Band	Abuse of superior strength
When the offense is committed by more than 3 armed malefactors regardless of the comparative strength of the victim.	The gravamen of abuse of superiority is the taking advantage by the culprits of their collective strength to overpower their weaker victims.

Means Employed to Weaken Defense
The offender employs means that materially weaken the resisting power of the offended party.

> **Example:**
> Where one, struggling with another, suddenly throws a cloak over the head of his opponent then he wounds or kills him.
>
> When the offender, who had the intention to kill the victim, made the deceased intoxicated, thereby materially weakening the latter's resisting power.
>
> This aggravating circumstance is appreciated where the accused intentionally intoxicated the victim [People v. Ducusin, supra].

Note: This circumstance is applicable only to crimes against persons, and sometimes against person and property, such as robbery with physical injuries or homicide.

Treachery

[Article 14 (16) of RPC]

(Alevosia)

Kind: Specific Aggravating Circumstance; Specific to crimes against persons

Treachery
There is treachery when the offender commits any of the crimes against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. Treachery means that the offended party was not given an opportunity to make a defense. (Reyes, Book I)

Requisites

1. At the time of the attack, the victim was not in a position to defend himself; and
2. The offender consciously and deliberately adopted the particular means, method or form of attack employed by him.

The essence of treachery is that by virtue of the means, method or form employed by the offender, the offended party was not able to put up any defense [People v. Tiozon, G.R. No. 89823 (1991)].

The mode of attack must be consciously adopted. The accused must make some preparation to kill the deceased in such manner as to insure the execution of the crime or to make it impossible or hard for the person attacked to defend himself or retaliate [People v. Tumaob, G.R. Mo. 125690 (1998)].

> Mere fact that wound is on the back, without proof as to how attack was committed, will negate treachery.

The treacherous character of the means employed in the aggression does not depend upon the result thereof but upon the means itself. Thus, frustrated murder could be aggravated by treachery [People v. Parana, G.R. No. 45373 (1937)].

Treachery may still be appreciated even when the victim was forewarned of danger to his person. What is decisive is that the execution of the attack made it impossible for the victim to defend himself or to retaliate [People v. Malejana, G.R. No. 145002 (2006)].

Hence, a sudden attack by the assailant, whether frontally or from behind, is treachery if he deliberately adopted such mode of attack with the purpose of depriving the victim of a chance to either fight or retreat [People v. Lab- eo, supra].

In a 2019 decision penned by J. Zalameda, the Court emphasized that the mere suddenness of an attack does not necessarily equate to treachery. Even though the victim may have been unarmed and was stabbed at the doorstep, that it was done in broad daylight, in a house shared with other tenants, and within the immediate view and proximity of the witness, negates that the attack was done deliberately to ensure the victim would not be able to defend himself, or to retreat, or even to seek help from others [People v. Dela Cruz, G.R. No. 227997 (2019)].

People v Matibag

Brief Background:
Accused was convicted for the crime of murder. While walking, the accused confronted the victim and asked "ano bang pinagsasabi mo?" The victim replied "wala" and without warning, accused delivered a fist blow hitting the accused on the left cheek and caused him to teeter backwards. Accused then pulled out his gun and shot the victim, who fell face first on the pavement. While the victim remained in that position, accused shot him several more times.

Ruling:
Under Article 14 of the RPC, there is treachery when the offender commits any of the crimes against the person, employing means, methods, or forms in the execution thereof which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.

☆ In People v. Tan, the Court explained that the essence of treachery is the sudden and unexpected attack, without the slightest provocation on the part of the person attacked.

In People v. Perez, it was explained that a frontal attack does not necessarily rule out treachery. The qualifying circumstance may still be appreciated if the attack was so sudden and so unexpected that the deceased had no time to prepare for his or her defense.

In this case, the prosecution was able to prove that the accused, who was armed with a gun, confronted the victim, and without any provocation, punched and shot the victim on the chest. Although the attack was frontal, the sudden and unexpected manner by which it was made rendered it impossible for the victim to defend himself, adding too that he was unarmed. Accused also failed to prove that a heated exchange of words preceded the incident so as to forewarn the victim against any impending attack from his assailant. The deliberateness from his act is further evinced from his disposition preceding the moment of execution. The accused was ready and destined to effect such dastardly act, considering that he had an axe to grind when he confronted the victim, coupled with the fact that he did so, armed with a loaded handgun.

Further, the special aggravating circumstance of use of unlicensed firearm, which was duly alleged in the Information, should be appreciated in the imposition of penalty.

Degree of Proof
Treachery cannot be presumed. The suddenness of the attack does not, of itself, suffice to support a finding of alevosia, so long as the decision was made all of a sudden and the victim's helpless position was accidental [People v. Lubreo, G.R. No. 74146 (1991)].

☆ **Continuous and Non-continuous Aggression**

1. When aggression is continuous – treachery must be present in the beginning of the assault. [U.S. v. Balagtas, G.R. No. 6432 (1911)]

2. When aggression was not continuous – in that there was an interruption, it is sufficient that treachery was present at the moment the fatal blow was given [U.S. v. Baluyot, G.R. No. 14476 (1919)].

Conspiracy
When there is conspiracy in the commission of a crime, treachery can be appreciated against all conspirators [People v. Ong, G.R. No. L- 34497 (1975)].

No Aggravating Circumstance:

1. When the offended party was able to put up a defense [People v. Butler, G.R. No. L-50276 (1983)]
2. When victim's helpless position was accidental [People v. Cadag, G.R. No. L-13830 (1961)]
3. When there was no other witness to the offense or when such witness could not provide full details of the attack. [People v. Tiozon, G.R. No. 89823 (1991)]
4. Crimes where treachery is inherent:
    a. Murder by poisoning [People v. Caliso, G.R. No. L-37271(1933)]
    b. Treason [People v. Racaza, supra]
5. There is no treachery if the attack is an impulse of the accused or when the killing is due to passion or when the accused did not make any preparation to kill the deceased so as to insure the commission of the crime.

Treachery Absorbs:

1. Abuse of superior strength
2. Craft
3. Employing means to weaken the defense
4. Cuadrilla ("band")
5. Aid of armed men
6. Nighttime
7. Employing means to weaken the defense

8. Disregard of Sex

	Treachery	Evident Premeditation
As to essence	Swiftness and unexpectedness of the attack upon the unsuspecting and unarmed victim who does not give the slightest provocation	Cool thought and reflection

People v. Rebamontan, G.R. No. 125318 (1999)

Its essence is the swiftness and the unexpectedness of the attack upon the unsuspecting and unarmed victim, who does not give the slightest provocation.

The fact that CJ was facing accused at the same moment as the latter's attack did not erase its treacherous nature. **Even if the assault were frontal, it was sudden or totally unexpected**, thus giving the victim no opportunity at all to defend himself or to retaliate, definitely points to the presence of treachery.

Relevant Jurisprudence

People v. Flores

An attack upon an unconscious victim who could not have put up any defense whatsoever; where the victim is a child of tender age and the assailant is an adult and therefore the child is helpless to put up any defense at all; where the victim was hogtied and therefore in a helpless condition before he was killed; where the victim was totally unconscious, dead drunk, lying on the pavement when accused administered strong, vicious and killing kicks at the belly of the victim.

Totally unconscious, the victim could not have put up any defense whatsoever against the sudden assault by the accused. There was absolutely no risk to accused from any defense that the victim might have made.

People v Perreras

Brief Background:
Accused was convicted for the crime of murder. Accused looked for the house of Estanislao Salo. He stopped by the window of Estanislao's house which was just adjacent to the house of Manoling. The place was lighted by a mercury lamp about twelve (12) meters from the house of Estanislao. As soon as accused-appellant saw Estanislao, he rolled up his sleeves, drew a gun from his waist, and fired at Estanislao, hitting him on the head.

Ruling:
In this case, the victim was in the comforts of his own home, enjoying a televised basketball game. He was shot in the head from the back, with the gunman even having all the time in the world to roll up his sleeves and take careful aim. The victim was unaware of the attempt on his life, and was not in the position to defend himself. Clearly, treachery was present in this killing.

Further, although accused-appellant was outside of the house when he fired, the victim was inside his house. For the circumstance of dwelling to be considered, it is not necessary that the accused should have actually entered the dwelling of the victim to commit the offense; it is enough that the victim was attacked inside his own house, although the assailant might have devised means to perpetrate the assault from the outside

People v Borromeo Sr.

Brief Background:
Accused was charged with murder of Joves Camata with the aggravating circumstance of premeditation and treachery. The victim was eating and watching television at the house of Renato Casabuena when the accused suddenly appeared and stabbed the victim thrice.

Ruling:
The killing was attended by the qualifying circumstance of treachery.

The victim, while squatting on top of a bench and eating his meal with a plate in one hand, was certainly in no position to defend himself or to retaliate. Accused-appellant may have forewarned Joves about what he was about to do by telling him to finish his meal. Nevertheless, accused-appellant did not wait for Joves to finish. He did not give Joves the opportunity to stand up. Joves not only failed to reply to accused-appellant's order for him to finish his meal, but also failed to make any instinctive reaction to the perceived threat posed by accused-appellant who was holding two knives. From all indications, the attack on Joves was sudden and unexpected.

Ignominy

[Article 14 (17) of RPC]

Kind: Specific Aggravating Circumstance

Specific to the following
1. Coercion (light or grave)
2. Murder
3. Wanton Robbery for personal gain

4. Crimes against Chastity
5. Less serious physical injuries [Art. 265, RPC]
6. Rape

Ignominy
It is a circumstance pertaining to the moral order, which adds disgrace to the material injury caused by the crime [People v. Acaya, G.R. No. L-72998 (1988)].

When Appreciated
Ignominy is appreciated when the offense is committed in a manner that tends to make its effect more humiliating, adding to the victim's moral suffering. Thus, where the victim was already dead when his body or a part thereof was dismembered, ignominy cannot be taken against the accused [People v. Cachola, G.R. No. 135047 (2004)].

Examples:
- Examining a woman's genitals before raping her in the presence of her old father were deliberately done to humiliate her, thereby aggravating and compounding her moral sufferings [People v. Bumidang, G.R. No. 130630 (2000)].

Note: Ignominy relates to moral suffering whereas, cruelty refers to physical suffering.

People v. Diaz (1999)

Ignominy pertains to the moral order, which adds disgrace and obloquy to the material injury caused by the crime. It was not appreciated where the sexual assault was not done to put the victim to shame before the killing.

Unlawful Entry

[Article 14 (18) of RPC]

Kind: Generic Aggravating Circumstance

There is unlawful entry when an entrance is effected by a way not intended for that purpose [Art. 14 (18), RPC]. It qualifies the crime of theft to robbery.

Inherent in the Following Crimes, no longer aggravating:
1. Trespass to dwelling under Art. 280 [Reyes, Book 1]
2. Robbery with force upon things under Art. 299(a) and Art. 302 [Reyes, Book 1]

Effect if Dwelling and Unlawful Entry are Both Present
Dwelling and unlawful entry are taken separately in murders committed in a dwelling [People v. Barruga, G.R. No. 42744 (1935)].

Means Commission of A Crime, Wall, Roof, Floor, Door, Window Be Broken

"As a means to the commission of a crime."

To be considered as an aggravating circumstance, breaking the door must be utilized as a means to the commission of the crime. It is not to be appreciated where the accused did not break the door of the victims as a means to commit robbery with homicide where the accused after breaking the rope which was used to close the door could have already entered the house. Breaking of the shutters and the framing of the door to insure the elements of surprise does not aggravate the commission of the crime. (People vs. Capillas, No. L27177

Kind: Generic Aggravating Circumstance

Requisites:
1. Any of the following be broken:
    a. Wall
    b. Roof
    c. Floor
    d. Door
    e. Window

2. Breaking was used as a means to effect Entrance and not merely for escape.

	Unlawful Entry [Art. 14 (18)]	**Breaking of Wall, Roof, etc. [Art. 14 (19)]**
Actual Breaking of the Entrance	No	Yes
Entrance Actually Happened	Yes	No
Used as Means of Committing the Crime	No	Yes

When Breaking of Door or Window is Lawful
When an officer, after giving notice of his purpose and authority, is refused admittance:
1. To make an arrest in any building or enclosure where the person to be arrested is or is reasonably believed to be [Rule 113, Sec. 11, Revised Rules of Criminal Procedure];
2. To effect search in the place of directed search [Rule 126, Sec. 7, Revised Rules of Criminal Procedure];
3. To liberate himself or any person lawfully aiding him when unlawfully detained in the place of directed search [Rule 126, Sec. 7, Revised Rules of Criminal Procedure].

For Entrance, Not Escape/Exit
This circumstance is aggravating only when the offender resorted to any means in order to enter the place [Reyes, Book 1].

The circumstance is aggravating only in those cases where the offender resorted to any of said means to enter the house. If the wall, etc., is broken in order to get out of the place, it is not an aggravating circumstance.

It is not necessary that the offender should have entered the building. What aggravates the liability is the breaking of a part of the building as a means of committing the crime. (Reyes, Book I)

No Aggravating Circumstance:
Inherent in Robbery with force upon things under Art. 299 (a) and Art. 302.

Note: Since paragraph 19 states that "as a means to the commission of the crime a wall, roof, floor, door, or window be broken," unlawful entry excludes ingress by means of such breaking.

Aid of Persons Under 15 Y.O., Motor Vehicles, Airships, Similar Means

[Article 14 (20) of RPC]

Kind: Generic Aggravating Circumstance

With the Aid of Persons Under 15 Years Old

Rationale
To repress the frequent practice resorted to by professional criminals of availing themselves of minors taking advantage of their lack of criminal responsibility (since minors are given leniency when they commit a crime) [Reyes, Book 1].

Note: The use of a minor in the commission of the offense shows the greater perversity of the offender because he is educating the innocent in committing an offense. Especially so in view of R.A. 9346 exempting 15 year old and below from criminal liability.

Example:
A caused B, a boy 14 years old, to climb the wall of the house of C, to enter the same through its window, and once inside, to take, as in fact B took, clothes and other personal property in the house of C. B threw them to the ground where A picked them up. The aggravating circumstance that the crime was committed with the aid of a person under 15 years of age should be taken into account against A. (Reyes, Book I)

By Means of a Motor Vehicle

Requisites
1. That any of the following was used:
    a. Motorized vehicles; or,
    b. Other efficient means of transportation Similar to automobile or airplane.
2. That the same was used as Means of Committing the crime, such as by using the same to:
    a. Go to the place of the crime
    b. Carry away the effects thereof; and
    c. Facilitate their escape [People Espejo, G.R. No. L-27708 (1970)]

The use of motorized means of conveyance to commit the crime is penalized because they pose difficulty to the authorities in apprehending them.

This circumstance is considered when the motor vehicle was purposely used to facilitate the commission of the offense not when used to escape because the law used the phrase "committed x x x by means of."

"Other similar means" should refer to other means of transportation that are similar to motor vehicles such as motorcycles under the principle of ejusdem generis.

By Means of a Motor Vehicle
Intended to counteract the great facilities found by modern criminals in said means to commit crime and flee and abscond once the same is committed.

Use of motor vehicle is aggravating where the accused purposely and deliberately used the motor vehicle in going to the place of the crime, in carrying away the effects thereof, and in facilitating their escape. (People v. Espejo, No. L-27708)

If motor vehicle was used only in facilitating the escape
Where the use of a vehicle was not deliberate to facilitate the killing of the victim, the escape of the assailants from the scene of the crime, and the concealment of the body of the victim, but only incidental, it is not an aggravating circumstance. (People vs. Munoz, No. L-38016)

Example:
Use of motor vehicle was aggravating in theft where a truck was used in carrying away the stolen rails and iron and wooden ties from the scene of the theft to the place where they were sold (People vs. Arabia, C.A., 53 O.G. 6569), and in robbery with homicide where a motor vehicle was used in transporting the accused. (People vs. Valeriano, 90 Phil. 15, 31, 35)

Cruelty

[Article 14 (21) of RPC]

Kind: Specific Aggravating Circumstance; Specific to crimes against persons

There is cruelty when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing unnecessary physical pain in the consummation of the criminal act. (People vs. Dayug, 49 Phil. 423, 427)

To be aggravating, it is essential that the wrong done was intended to prolong the suffering of the victim, causing him unnecessary moral and physical pain. (People vs. Llamera, G.R. Nos. L-21604-6)

Requisites

1. The injury caused be deliberately increased by causing other wrong; and
2. The other wrong is unnecessary for the execution of the purpose of the offender.

For cruelty to exist, there must be proof showing that the accused delighted in making their victim suffer slowly and gradually, causing him unnecessary physical and moral pain in the consummation of the criminal act [People v. Catian, G.R. No. 139693 (2002)].

Note: The mere fact that there were numerous stab wounds on the victim will not cause appreciation of cruelty because the offender may be overwhelmed by passion or obfuscation or it may be that the victim was already dead when the stab wounds were inflicted and can no longer suffer pain in excess of that necessary to commit the crime.

Outraging the Corpse

If the victim was already dead when the acts of mutilation were being performed, this would also qualify the killing to murder due to outraging of his corpse [Art. 248, par. 6, RPC].

There must be proof that the wounds inflicted on the victim were done while he was still alive in order to be considered cruelty [People v. Pacris, G.R. No. 69986 (1991)].

People v. Ferrer

The test in appreciating cruelty is whether the accused deliberately and sadistically augmented the wrong by causing another wrong not necessary for its commission or inhumanly increased the victim's suffering or outraged or scoffed at his person or corpse.

Cruelty cannot be appreciated where the prosecution failed to prove that the accused inflicted the 13 wounds upon the victim in such a way that he was made to agonize before they rendered any of the blows which snuffed out his life.

The accused dealt the victim successive blows so that he must have died instantaneously, considering that nine of his wounds were fatal.

	Ignominy	**Cruelty**
As to Type of Suffering	Shocks the moral conscience of man	Physical
As to Whether the Victim has to be Alive	It pertains to the moral order, whether or not the victim is dead or alive	Refers to the physical suffering of the victim so the victim has to be alive.

Other Aggravating Circumstances

1. Organized or Syndicated crime group
2. Use of Explosives
3. Use of Loose firearms
4. Use of Dangerous drugs
5. Arson under P .D. 1613
6. When the owner, driver, passenger of a carnapped vehicle is killed or raped (Sec 14, RA 6539)

Organized/syndicated crime group

A group of two or more persons collaborating, confederating, or mutually helping one another for purposes of gain committing any crime [Art. 62, RPC as amended by R.A. 7659].

Effect

When a crime is committed by an organized/syndicated group, and the purpose of such crime was to gain, the maximum penalty shall be imposed [Art. 62, RPC as amended by R.A. 7659].

Crimes where Purpose is to Gain

1. Theft
2. Estafa
3. Robbery
4. Illegal recruitment

Use of Explosives

The Decree Codifying the Laws on Illegal/ Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition, of Firearms, Ammunition or Explosives [P .D. 1866, as amended by R.A. 8294] provides that the use of explosives or incendiary devices in the commission of a crime, resulting to death of a person, shall be considered an aggravating circumstance.

Requisites

1. Offender commits a crime in the RPC or in a Special law;
2. In its commission, the offender uses any of the following:
    a. Hand grenade/s
    b. Rifle grenade/s
    c. Other Explosives such as pillbox, Molotov cocktail bombs, and fire bombs
    d. Other Incendiary devices capable of producing destructive effect on contiguous objects or causing injury or death to any person; and
3. Results in the Death of a person [Sec. 3, P.D. 1866, as amended by R.A. 8294].

Use of "Loose Firearms"

Special Aggravating Circumstance

RA 10591 or the Comprehensive Firearms and Ammunition Regulation Act (2013) expressly repealed Sec. 1 of P.D. 1866 as amended:

> **Use of Unlicensed Firearms**
> If homicide or murder is committed with the use of an unlicensed firearm, such use of an unlicensed firearm shall be considered as an aggravating circumstance. (Sec. 1, par. 3)

When a person commits any crime under the Revised Penal Code or Special Laws with the use of explosives including but not limited to pillbox, molotov cocktail bombs, detonation agents or incendiary devises resulting in the death of a person, the same is aggravating. (Sec. 3)

Loose firearms:
Pertains to firearms that are

1. Unregistered;
2. Possessed by non-licensee;
3. Illegally manufactured
4. Stolen;
5. Obliterated;
6. Lost;
7. Altered; or
8. With Revoked license

Rules:

- To be considered as an aggravating circumstance – if the use of a loose firearm is inherent in the commission of a crime punishable under the RPC or other special laws [Sec/ 29, R.A. 10883]

  If the crime committed is penalized with a maximum penalty lower than that prescribed for illegal possession of firearm – penalty for illegal possession of firearm shall instead be imposed.

  If the crime committed is penalized by the law with a maximum penalty equal to that imposed for illegal possession of firearms – penalty of prision mayor in its minimum period shall be imposed in addition to the penalty for the crime committed.

- To be absorbed as an element of the crime – if the violation is in furtherance of, or incident to, or in connection with the crime of rebellion, insurrection, or attempted coup d' etat, such violation shall be absorbed as an element of the said crimes [Sec. 29 (2), R.A. 10591].

- To be considered as a separate and distinct offense - If the crime is committed by the person without using the loose firearm, the violation of this Act shall be considered as a distinct and separate offense. [Sec. 29 (3), R.A. 10591]

Special Aggravating Circumstance

RA 8294 does not specify whether or not the use of an unlicensed firearm in murder or homicide is generic or special aggravating. It merely states that the use of the unlicensed firearm is appreciated as "aggravating."

In Palaganas v. People [G.R. No. 165483 (2006)], the Court interpreted this as making the use of unlicensed firearm in murder or homicide as special aggravating. Applying the logic of Palaganas by analogy, Section 29 in RA 10591 should be interpreted as assigning the use of loose firearms as special aggravating as well.

People v Malinao

Thus, where an accused used an unlicensed firearm in committing homicide or murder, he may no longer be charged with what used to be the 2 separate offenses of homicide or murder under the RPC and qualified illegal possession of firearms used in homicide or murder under PD 1866; in other words, where murder or homicide was committed, the penalty for illegal possession of firearms is no longer imposable since it becomes merely a special AC.

Use of Dangerous Drugs

Qualifying Aggravating Circumstance
A positive finding for the use of dangerous drugs is a qualifying aggravating circumstance and the application of the penalty provided for in the RPC shall be applicable [Sec. 25, R.A. 9165].

When a crime is committed by an offender who is under the influence of dangerous drugs, such state shall be considered as a qualifying aggravating circumstance. (Sec. 25)

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemical trade, the maximum penalty shall be imposed in every case. (Sec. 5)

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed. (Sec. 5)

Arson under P.D. 1613

Special Aggravating Circumstance
The following are considered special aggravating circumstances when the crime of Arson is committed; that the crime was committed:

1. For the Benefit of another
2. Because of Hatred towards owner/occupant
3. With Intent to Gain
4. By a Syndicate

When the owner, driver, passenger of a carnapped vehicle is killed or raped

(Sec 14, RA 6539)
Any person who is found guilty of carnapping, as this term is defined in Sec 2 of this Act, shall, irrespective of the value of motor vehicle taken, be punished by imprisonment for not less than 14 yrs and 8 months and not more than 17 yrs and 4 months, when the carnapping is committed without violence or intimidation of persons, or force upon things; and by imprisonment for not less than 17 yrs and 4 months and not more than 30 yrs, when the carnapping is committed by means of violence against or intimidation of any person, or force upon things; and the penalty of reclusion perpetua to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

Other Jurisprudence Based on Fiscal Petralba's Readings

People v Arizobal

The victims were asleep in their house. Around 9:30 in the evening, Laurencio roused Clementina and told her to open the doors because there were people outside. Since it was pitch-dark she lit a kerosene lamp and stood up to open the door. She was suddenly confronted by three (3) armed men pointing their guns at her.

The accused barged into the bedroom and forcibly opened the aparador. The robbers likewise asked Laurencio to accompany them to Jimmy's house. Outside, Clementina heard gunshots and knew that her husband was shot.

On the other hand, the robbers ransacked the sari sari store of Jimmy and Erlinda. They likewise ransacked their household in search of valuables. They took around P1,000.00 from her sarisari store and told them to produce P100,000.00 in exchange for Jimmy's life.

Three (3) masked men then dragged Jimmy outside the house and together with Laurencio brought them some fifty (50) meters away while leaving behind Clarito Arizobal and Erly Lignes to guard Francisco and Erlinda's son.

Moments later she heard a burst of gunfire which reverberated through the stillness of the night. When the masked men returned to Jimmy's house, one of them informed Erlinda that her husband and father-in-law had been killed for trying to escape.

Ruling:
The trial court correctly ruled in appreciating dwelling as an aggravating circumstance. Generally, dwelling is considered inherent in the crimes which can only be committed in the abode of the victim, such as trespass to dwelling and robbery in an inhabited place. However, in robbery with homicide the authors thereof can commit the heinous crime without transgressing the sanctity of the victim's domicile. In the case at bar, the robbers demonstrated an impudent disregard of the inviolability of the victims' abode when they forced their way in, looted their houses, intimidated and coerced their inhabitants into submission, disabled Laurencio and Jimmy by tying their hands before dragging them out of the house to be killed.

However, the Court ruled that the lower court was incorrect in appreciating the aggravating circumstance of treachery. The accused stand charged with, tried and convicted of robbery with homicide. This special complex crime is primarily classified in this jurisdiction as a crime against property, and not against persons, homicide being merely an incident of robbery with the latter being the main purpose and object of the criminals. As such, treachery cannot be validly appreciated as an aggravating circumstance under Art. 14 of The Revised Penal Code.

Further, there was no robbery in band. While it appears that at least five (5) malefactors took part in the commission of the crime, the evidence on record does not disclose that "more than three" persons were armed, and robbery in "band" means "more than three armed malefactors united in the commission of robbery." Nowhere in the records can it be gathered that more than three (3) of the robbers were armed. Hence, "band" cannot be aggravating where no proof is adduced that at least four (4) of the five (5) perpetrators involved in this case were armed.

Moreover, there was no aggravating circumstance of nighttime. The fact that the offense was committed at 9:30 in the evening does not suffice to sustain nocturnidad for, by itself, nighttime is not an aggravating circumstance. To be properly so considered, it must be shown that nocturnidad was deliberately and intentionally sought by accused-appellants to help them realize their evil intentions. Nowhere can it be inferred from the records that the malefactors sought the cover of darkness to facilitate the accomplishment of their devious design. On the contrary, the locus criminis was well lighted and nighttime was merely an incidental element to the whole drama.

Aggravating Circumstance	Requisites	Basis
Par. 1. Taking advantage of Public office	1. Offender is a Public Officer 2. Such officer used the Influence, Prestige or Ascendancy which his office gives him 3. The same was used as Means by which he realizes his purpose.	Personal circumstance of the offender and the means to secure the commission of the crime
Par. 2. In Contempt of or with insult to public authorities	1. Public authority is Engaged in the exercise of his functions. 2. Public authority is Not the person against whom the crime is committed. 3. Offender Knows him to be a public authority. 4. His Presence has not prevented the offender from committing the criminal act.	Lack of respect for the public authorities
Par. 3. With insult or lack of regard due to offended party by reason of Rank, age, or sex	1. Insult or disregard was made on account of: a. Rank – designation or title used to fix the relative position of the offended party in reference to others. There must be a difference in the social condition of the offender and offended party b. Age - May refer to old age or tender age of the victim. c. Sex - Refers to the female sex 2. Such insult or disregard was Deliberately intended.	Personal circumstances of the offended party
Par. 3. Dwelling	1. Act was committed in the dwelling, which may pertain to a: a. Building; or b. Structure, which is c. Exclusively used for Rest andComfort. 2. Offended party must Not give Provocation.	Place of the commission of the crime
Par. 4. Abuse of confidence	1. Offended party had Trusted the offender. 2. Offender Abused such trust by committing a crime against the offended party. 3. The abuse of confidence Facilitated the commission of the crime.	Means and ways employed in commission of the crime
Par. 4. Obvious ungratefulness	1. Offended party Trusted the offender; 2. Offender Abused such trust; and 3. Act was committed with obvious Ungratefulness.	Means and ways employed in commission of the crime
Par. 5. In the palace of the Chief Executive or in his presence, or where public authorities are engaged in the discharge of their duties, or in a Place dedicated to religious worship	Crime was committed: 1. In the Palace of the Chief Executive, or 2. In his Presence, or 3. Where public authorities are engaged in the Discharge of their duties, or 4. In a place dedicated to Religious Worship	Place of the commission of the crime
Par. 6. Nighttime, uninhabited place, by a band	Circumstances of nighttime, uninhabited place or band: 1. Facilitated the commission of the crime; [Reyes, Book 1, p. 364]; and 2. Was Especially Sought for by the offender to insure the commission of the crime or for the purpose of impunity; [People v. Pardo, G.R. No. L-562 (1947)].	Time, place, and means of the commission of the crime
Par. 7. On occasion of a	The offender must take advantage of the calamity or misfortune	Time and place of the

Calamity		commis-sion of the crime
Par. 8. Aid of Armed men or means to ensure impunity	1. That the armed men or persons took part in the Commission of the crime, directly or indirectly; and 2. Accused Availed himself of their Aid or relied upon them when the crime was committed.	Means and ways employed in commis-sion of the crime
Par. 9. Recidivism	1. Offender is on Trial for an offense; 2. He was Previously Convicted by final judgment of another crime; 3. That both the 1st and 2nd offenses are embraced in the Same title of the Code; and 4. Offender is Convicted of the new offense.	Inclination to commit crime
Par. 10. Reiteracion or Habituality	1. Accused is on Trial for an offense; 2. He Previously Served sentence for another offense to which the law attaches: a. an equal or greater penalty, or b. For 2 or more crimes to which it attaches lighter penalty than that for the new offense; and 3. That he is Convicted of the new offense.	Inclination to commit crime
Par. 11. Price, reward, or promise	1. There must be Two or more principals a. One who gives or Offers price or promise b. One who Accepts it 2. Price, reward, or promise must be for the purpose of Inducing another to perform the deed. The price, reward or promise need not: 1. Consist of or refer to Material things; or 2. Be Actually Delivered; it being sufficient that the offer made by the principal by inducement was accepted by the principal by direct participation before the commission of the offense.	Motivating power
Par. 12. Inundation, fire, poison, explosion, etc.	Crime was committed by means of: 1. Inundation 2. Fire 3. Poison 4. Explosion 5. Stranding of a vessel 6. Intentional damage to a vessel 7. Derailment of a locomotive 8. Any Other artifice involving great waste and ruin	Means and ways employed in commis-sion of the crime
Par. 13. Evident premeditation	Prosecution must prove: 1. Time when the offender determined to commit the crime; 2. An Act manifestly indicating that the culprit has clung to his determination; and 3. A sufficient Lapse of time between the determination and execution, to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will.	Means and ways employed in commission of the crime
Par. 14. Craft, fraud, or disguise	That the crime was committed by means of: 1. Craft: Intellectual trickery and cunning on the part of the accused; 2. Fraud: Insidious words or machinations used to induce the victim to act in a manner which would enable the offender to carry out his design; or 3. Disguise: Any device to conceal identity	Means and ways employed in commis-sion of the crime

Par. 15. Superior strength or means to weaken defense	1. There is a Notorious Inequality of forces between victim and aggressor. 2. Offender Purposely used excessive force out of proportion to the means of defense available to the persons attacked.	Means and ways employed in commis-sion of the crime
Par. 16. Alevosia (Treachery)	1. Offender Consciously Adopts particular means, methods, or forms tending directly and specially to ensure the execution of the crime. 2. The employment of such means gave the offended party No opportunity to defend himself or retaliate.	Means and ways employed in commission of the crime
Par. 17. Ignominy	The means employed or the circumstances brought about must tend to make the effects of the crime more humiliating or to put the offended party to shame.	Means and ways employed in commis-sion of the crime
Par. 18. Unlawful entry	Entrance is effected by a way not intended for the purpose.	Means and ways employed in commission of the crime
Par. 19. Breaking wall, floor, roof	1. Breaking the Wall, Roof, Floor, Door, or Window is a means to the commission of the crime; and 2. Breaking was used as a means to effect Entrance and not merely for escape.	Means and ways employed in commis-sion of the crime
Par. 20. With aid of persons Under 15	Commission of the crime is committed with the aid of children under 15 years of age	Means and ways employed in commission of the crime Repress practice of criminals to avail of minors and take advantage of their irresponsibility
Par. 20. By Motor vehicles, airships, or other similar means	1. That any of the following was used: a. Motorized vehicles; or b. Other efficient means of transportation Similar to automobile or airplane. 2. The same was used as Means of Committing the crime, such as by using the same to: a. Go to the place of the crime b. Carry away the effects thereof; and c. Facilitate their escape	Means and ways employed in commis-sion of the crime To counteract the great facilities found by modern criminals as means to commit crime, and flee and abscond
Par. 21. Cruelty	1. Injury caused be was Deliberately Increased by causing other wrong; 2. Other wrong was Unnecessary for the Execution of the purpose of the offender.	Means and ways employed in commission of the crime

d) Alternative Circumstances

Those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission [Art. 15 of RPC].

They are considered only when they **influenced the commission of the crime.** When the nature of the circumstance has been proved, they are no longer called alternative circumstances but are denominated as aggravating or mitigating circumstances, as the case may be.

Kinds of Alternative Circumstances:

1. Relationship
2. Intoxication
3. Degree of Education/instruction

Relationship

The alternative circumstance of relationship shall be taken into consideration when the offended party is the:

1. Spouse
2. Ascendant
3. Descendant
4. Legitimate, natural, or adopted brother or sister (Siblings)
5. Relative by Affinity in the same degree of the offender
6. Stepfather or stepmother and stepson or stepdaughter
7. Adoptive parent and adopted child [Art. 15 of RPC].

Relatives by Affinity
Includes in-laws, stepfather, or stepmother, stepchild and the like. It is the duty of the stepparents to bestow upon their stepchildren a mother's or father's affection, care and protection [People v. Bersabal, G.R. No. 24532 (1925)].

Other relatives included
The relationship of stepfather or stepmother and stepson or stepdaughter is included by analogy as similar to that of ascendant and descendant [People v. Bersabal, G.R. No. 24532 (1925); People v. Portento, C.A., 38 O.G. 46].

Relationship as Exempting Circumstance

1. **<u>When the accessory is related to the principal</u>;**

XPN: When said relatives profited themselves or assisted the offender to profit by the effects of the crime [Art. 19 (1), RPC].

2. **<u>Death under exceptional circumstances; and</u>**

> **Art. 247. Death or physical injuries inflicted under exceptional circumstances.** — Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.
>
> If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.
>
> These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducer, while the daughters are living with their parents.
>
> Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

The accused must establish the following:

1. That a legally married person (or a parent) surprises his spouse (or his daughter, under 18 years of age and living with him), in the act of committing sexual intercourse with another person.

2. That he or she kills any or both of them or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter.

   <u>Note:</u> If not done in the act or immediately thereafter, the commission of the crime may be attended by **ordinary mitigating circumstance of passion.**

   The killing must be the direct by-product of the accused's rage.

3. That he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse. (People v. Puedan, G.R. No. 139576, September 2, 2002)

Relevant Jurisprudence

Not Absolutory Cause. Accused saw his wife was rising up with a man, who was standing and buttoning his drawers. Completely obfuscated, the accused killed his wife. The circumstance indicates that she had just finished having sexual intercourse with another man. This is not death under exceptional circumstance since he did not catch his wife in the very act of carnal intercourse, but after such an act. [People v. Gonzales, G.R. No. 46310 (1939)]

Sexual Intercourse. There is no death under exceptional circumstance if the accused caught his wife having homosexual intercourse with another woman. "Homosexual intercourse" is not within the contemplation of the term "sexual intercourse" in Article 247. [People v. Belarmino, G.R. No. L-4429 (1952)]

Criminal Liability (Article 247)

1. In case of slight physical injuries or less serious physical injuries under exceptional circumstance, the accused shall be exempt from punishment.

2. In case of serious physical injuries or death under exceptional circumstance, the accused shall suffer the penalty of destierro.

Note: Frustrated murder or frustrated parricide is within the contemplation of the words "serious physical injuries" in Article 247 of the Revised Penal Code.

3. **Selected Crimes Against Property**.

> **Art. 332. Persons exempt from criminal liability.** — No criminal, *but only civil liability*, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:
> 1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
> 2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
> 3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.
>
> The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;

   Note: A step-relationship, falls within the contemplation of the phrase relatives under Article 332.

2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and

   Note: For the term "spouse," the law makes no distinction between a couple whose cohabitation is sanctioned by a sacrament or legal tie and another who are husband and wife de facto. The basis of this ruling is the rule on **co-ownership** over properties by common-law spouses. Thus, absent the co-ownership, the exemption does not apply.

3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

   Note: Relationships continue even after the death of the deceased spouse. The principle of pro reo calls for the adoption of the **continuing affinity** view because it is more favorable to the accused. [Intestate Estate of Gonzales v. People, G.R. No. 181409 (2010)]

The exemption does not apply where:

1. Any of the crimes mentioned under Article 332 is **complexed** with another crime, such as theft through falsification or estafa through falsification. [Intestate Estate of Gonzales v. People, G.R. No. 181409 (2010)]
2. To **strangers** participating in the commission of the crime. [Art. 332, RPC]

Relationship as Mitigating Circumstance

1. **In crimes against property**
   a. Robbery [Arts. 294-302, RPC]
   b. Usurpation [Art. 312, RPC]
   c. Fraudulent insolvency [Art. 314, RPC]
   d. Arson [Arts. 321-322, 325-326, RPC]

2. **Crimes against persons**
   When the crime is less serious or slight physical injuries – if the offended party is a relative of a lower degree than the offender [Art. 263, RPC].

3. **In trespass to dwelling**
   Where a son-in-law, believing his wife to be in her father's house, attempted to force an entry therein, the relationship is to be considered in mitigation [U.S. v. Ostrea, 2 Phil. 93, 95 (1903)].

Relationship as Aggravating Circumstances

Crime Against Person	Crime Against Chastity
GR: Higher degree; or Relatives of the same level [People v. Alisub, 69 Phil. 362 (1969)]. **XPNs:** Always aggravating in the following – 1. Serious Physical Injuries [Reyes, Book 1] 2. Homicide or Murder [Reyes, Book 1] 3. Rape [People v. Delen, G.R. No. 194446 (2014)]	Relationship is always aggravating [People v. Orilla, G.R. Nos. 14894940 (2004)]

Note: Article 264 provides that if the injury is inflicted upon the father, mother or child, other ascendants or descendants and spouse, the penalty shall be one or two degrees higher

except when committed against the offender's child due to excessive chastisement, in which case it is not aggravating.

Relationship Not Appreciated:

1. **When relationship is an element of the offense:**

    a. Parricide
    b. Adultery
    c. Concubinage [Reyes, Book 1]

2. **For Persons Attached by Common Law Relations.**

    The law cannot be stretched to include such relations because there is no blood relationship or legal bond that links the parties [People v. Atop, G.R. Nos. 124303-05 (1998)].

3. **For Relationships by Affinity.**

    Relationships by affinity should not be deemed to aggravate the crime in the absence of evidence to show that the offended party is of a higher degree in the relationship than that of the offender [People v. Canitan, G.R. No. L-16498 (1963)].

People v. Orilla, G.R. Nos. 148939-40 (2004)

Accused, who was the brother of the 15-year old victim, was convicted of rape.

Article 14 does not include relationship as an aggravating circumstance. Relationship is an alternative circumstance under Article 15 of the Revised Penal Code.

Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission. Based on a strict interpretation, alternative circumstances are thus not aggravating circumstances per se.

The Revised Penal Code is silent as to when relationship is mitigating and when it is aggravating. Jurisprudence considers relationship as an aggravating circumstance in crimes against chastity. However, rape is no longer a crime against chastity for it is now classified as a crime against persons. The determination of whether an alternative circumstance is aggravating or not to warrant the death penalty cannot be left on a case-by-case basis.

Intoxication

Intoxication as Mitigating Circumstance

Requisites

1. Act was done due to alcoholic intake of the offender, he suffers from **Diminished Self-Control**.
2. Offender is Not a Habitual Drinker.
3. Offender did Not take the alcoholic drink With the Intention to Reinforce his resolve to commit crime [Reyes, Book 1]

Drunkenness must affect mental faculties

Before drunkenness may be considered as a mitigating circumstance, it must first be established that the liquor taken by the accused was of such quantity as to have blurred his reason and deprived him of self-control. It should be such an intoxication that would diminish the agent's capacity to know the injustice of his acts, and his will to act accordingly. (People vs. Ruiz, Nos. L-33604-05)

Accused's State of Intoxication Must be Proved

The defendant testified that before the murder, he took a bottle of wine and drank little by little until he got drunk. The policeman who arrested the accused testified that the latter smelled of wine and vomited. The Court held that the evidence presented was not satisfactory to warrant a mitigation of the penalty. [People v. Noble, supra]

The person pleading intoxication must prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason [People v. Bernal, G.R. No. 132791 (2002)].

People v. Fontillas, G.R. No. 184177 (2010)

Accused was indicted for rape qualified by his relationship with and the minority of AAA. The victim was the accused's own daughter. Accused interposed as defense by way of mitigating circumstance his extreme intoxication.

The Court of Appeals correctly rejected the accused-appellant's assertion that his extreme intoxication from alcohol on the night of the rape should be appreciated as a mitigating circumstance. Accused appellant did not present any evidence that his intoxication was not habitual or subsequent to the plan to commit the rape. **The person pleading intoxication must likewise prove that he took such quantity of alcoholic beverage, prior to the commission of the crime, as would blur his reason.** Accused-appellant utterly failed to present clear and convincing proof of the extent of his intoxication on the night of December 8, 2001 and that the amount of liquor he had taken was of such quantity as to affect his mental faculties. Not one of accused-appellant's drinking buddies testified that they, in fact, consumed eight bottles of gin prior to the rape incident.

Hence, the conviction of the accused-appellant of qualified rape without any mitigating circumstance by the Court of Appeals must be affirmed.

People v. Dawaton, G.R. No. 146247 (2002)

Accused was found guilty by the trial court of murder qualified by treachery and sentenced to death. Accused killed the victim while they were on a drinking spree.

The trial court erred in not appreciating the alternative circumstance of intoxication in favor of the accused.

The allegation that the accused was drunk when he committed the crime was corroborated by the prosecution witnesses. The accused and his drinking companions had consumed four (4) bottles of gin at the house of Esmeraldo Cortez, each one drinking at least a bottle. It was also attested that while the four (4) shared another bottle of gin at the house of Amado Dawaton, it was the accused who drank most of its contents. In addition, Esmeraldo testified that when Edgar and Leonides arrived at his house that noon, they were already intoxicated. There being no indication that the accused was a habitual
drunkard or that his alcoholic intake was intended to fortify his resolve to commit the crime, the circumstance of intoxication should be credited in his favor.

Intoxication as Aggravating Circumstance

Requisites

1. If intoxication is habitual; or
2. If it is intentional (subsequent to the plan to commit a felony)

It is intentional when the offender drinks liquor fully knowing its effects, to find in the liquor a stimulant to commit a crime or a means to suffocate any remorse. (Reyes, Book I)

Meaning of Habitual Drunkard

A habitual drunkard is one given to intoxication by excessive use of intoxicating drinks. The habit should be actual and confirmed. It is unnecessary that it be a matter of daily occurrence. It lessens individual resistance to evil thought and undermines will-power making its victim a potential evildoer. [People v. Camano, G.R. Nos. L- 36662-6 (1982)].

Degree of Education/Instruction

Whether to be considered as aggravating or mitigating depends upon the nature of the crime committed.

Degree of Education/Instruction as Mitigation Circumstance

The court may exercise its sound discretion to justify a more lenient treatment of an "ignorant and semi civilized offender" [U.S. v. Marqui, G.R. No. 8931 (1914)].

GR: Low degree of education is a **mitigating circumstance** [U.S. v. Reguera, G.R. No. L- 16639 (1921)].

XPNs:

1. Crimes against Property [U.S. v. Pascual, G.R. No. L-3777 (1908)], theft and robbery [U.S. v. Marqui, G.R. No. 8931 (1914)]
2. Crimes against Chastity [People v. Baltazar, supra]
3. Treason [People v. Lansanas, G.R. No. L-1622 (1948)]
4. Rape; No one is so ignorant as not to know that the crime of rape is wrong and in violation of the law [U.S. v. GamillaI, G.R. No. 13981 (1918)]
5. Murder or homicide; to kill is forbidden by natural law which every rational being is endowed to know and feel [People v. Laspardas, G.R. No. L- 46146 (1979)]. One does not have to be educated or intelligent to be able to know that it is unlawful to take the life of another person even if it is to redress a wrong committed against him (People v. Lapaz, G.R. No. 68898 (1989)].

Degree of Education/Instruction as Aggravating Circumstance

The alternative circumstance of instruction may be considered as aggravating circumstance when the accused took advantage of his education or instruction in committing the crime.

Illiteracy alone is insufficient

Not illiteracy alone but also lack of sufficient intelligence are necessary to invoke the benefit of this circumstance. A person able to sign his name but otherwise so densely ignorant and of such low intelligence that he does not realize the full consequences of a criminal act, may still be entitled to this mitigating circumstance [People v. Ripas, supra].

On the other hand, another unable to write because of lack of educational facilities or opportunities, may yet be highly or **exceptionally intelligent and mentally alert** that he easily and ever realizes the full significance of his acts, in which case he may not invoke this mitigating circumstance in his favor [People v. Ripas, supra].

> Note: The high degree of learning should be taken in relation to the crime committed whether his education puts him in a better position than the ordinary offenders.
>
> **E.g.** falsification or estafa committed by a lawyer.

However, the degree of instruction or education may already have been considered in the penalty prescribed such as abortion practiced by physician. In that case, it is not aggravating.

If the accused studied up to sixth grade, the Court said that "that is more than sufficient schooling to give him a degree of instruction as to properly apprise him of what is right and wrong" [People v. Pujinio, G.R. No. L-21690 (1969)].

f) Absolutory Causes

Act committed is a crime but for reasons of **public policy and sentiment** there is no penalty imposed [People v. Talisic, G.R. No. 97961 (1997)].

Absolutory causes are *neither justifying nor exempting circumstances* but nonetheless similarly results in no criminal liability on the actor, not because they are justified (Art. 11, RPC) nor exempt (Art. 12, RPC), but because of public policy.

A circumstance which is present prior to or simultaneously with the offense by reason of which the accused who acts with criminal intent, freedom, and intelligence does not incur criminal liability for an act which constitutes a crime.

The following are absolutory causes:

1. Relationship in Theft, Malicious Mischief, and Swindling [Art. 332, RPC].
2. Death or Physical Injuries Under Exceptional Circumstance [Art. 247, RPC].
3. Instigation
4. Pardon by the offended party
5. Acts Not covered by law and in case of excessive punishment [Art. 5, RPC].
6. Accessories in light felonies [Art. 16, RPC]
7. Light felonies not consummated [Art. 16, RPC]
8. Spontaneous desistance [Art. 6, RPC]
9. Prescription of crimes [Art. 89, RPC]
10. Accessories exempt under Art. 20 [Art. 20, RPC]
11. Trespass to dwelling to prevent serious harm to self [Art. 280, RPC]
12. Discovering secrets through Seizure of correspondence of the ward by their guardian [Art. 219, RPC]
13. Mistake of fact

Note: The above list is not exclusive.

Instigation

	Entrapment	Instigation
As to Nature	Ways and means are resorted to for the purpose of **trapping and capturing** the lawbreaker in the execution of his criminal plan.	The instigator practically **induces** the would-be accused into the commission of the offense and himself becomes a **co-principal**.
As to Origin of the Crime	The means originate from the mind of the **criminal**.	The **law enforcer** conceives the commission of the crime and suggests to the accused who carries it into execution.
As to Means	A person has planned or is about to commit a crime and ways and means are resorted to by a public officer to trap and catch the criminal.	A public officer or a private detective induces an innocent person to commit a crime and would arrest him upon or after the commission of the crime by the latter.
As to Conviction or Acquittal	**Not a bar to the prosecution** and conviction of the lawbreaker.	The **accused must be acquitted** because the offender simply acts as a tool of the law enforcers.

Instigation

There may be criminal liability on the instigator. The person instigated may or may not be liable depending on how the instigation was conducted.

> If the instigation was of such force and effect that there was **compelling force/irresistible force**, it is possible that the person committing the crime will NOT be criminally liable.

The involvement of a law officer in the crime itself in the following manner:

1. He induces a person to commit a crime for personal gain.
2. He doesn't take the necessary steps to seize the instrument of the crime & to arrest the offenders before he obtains the profits in mind.
3. He obtained the profits in mind, even though afterwards does take the necessary steps to seize the instrument of the crime and to arrest the offenders.

Instigation is recognized as a valid defense that can be raised by an accused. To use this as a defense, however, the accused must prove with sufficient evidence that the government induced him to commit the offense (People v. Legaspi y Lucas, G.R. No. 173485 (2011)].

Entrapment

The law officers shall not be guilty to the crime if they have done the following:

1. He does not induce a person to commit a crime for personal gain or is not involved in the planning of the crime.

2. Does take the necessary steps to seize the instrument of the crime and to arrest the offenders before he obtained the profits in mind.

People v. Bayani, G.R. No. 179150 (2008)

A police officer's act of soliciting drugs from the accused during buy-bust operation, or what is known as a "decoy solicitation," is not prohibited by law and does not render invalid the buy-bust operations. The sale of contraband is a kind of offense habitually committed, and the solicitation simply furnishes evidence of the criminal's course of conduct. A **"decoy solicitation"** is not tantamount to inducement or instigation.

People v. Shirly Casio, G.R. No. 211465 (2014) ☆

The intent and the actions of the accused are important to determine whether it was instigation or entrapment.

"Chicks mo dong?" This statement shows that the offender has already decided to commit a crime when she offered the chicks. She was not instigated in order so she will commit a crime. Rather, when they first bumped into each other, she already had the decision to commit a crime because of the words "Chicks mo, dong?" It shows there was already an offer. The offer shows that she has already decided to commit a crime and in order to catch her actually committing a crime, they played along and therefore, there was entrapment.

People v. De Leon, GR 186471 (2010)

In this jurisdiction, the [entrapment] operation is legal and has been proved to be an effective method of apprehending drug peddlers, provided due regard to constitutional and legal safeguards is undertaken.

People v Periodica, G.R. No. 73006 (1989)

The alleged offense was the barter by Periodica and his companion of 50 pieces of marijuana leaves with a .45 caliber pistol on that New Year's Day. The transaction was consummated on a hill in Paete, Laguna, and was observed by two prosecution witnesses, C2C Filemon Togado and Pat. Juanito Damayo, who claimed they were about 50 meters away

The Court cannot accept the defense submission that it was actually an instigation that should absolve Periodica of criminal responsibility. The evidence showed that the accused-appellant and Villarin had been under surveillance weeks before the incident in question. The authorities decided on the operation when they learned that the two were interested in bartering marijuana leaves for a pistol. The idea for the exchange came from the two, not the agents. The operatives merely saw this as a chance to entrap Periodica and Villarin, which was eventually done.

Generally, **buy-bust operation**, which is considered as a form of entrapment, is a valid means of arresting violators of R.A. No. 9165.

People v Doria, G.R. No. 125299 (1999)

A buy-bust operation is a form of entrapment employed by peace officers as an effective way of apprehending a criminal in the act of the commission of an offense. Entrapment has received judicial sanction when undertaken with due regard to constitutional and legal safeguards.

We therefore stress that the **"objective" test** in buy-bust operations demands that the details of the purported transaction must be clearly and adequately shown. This must start from the initial contact between the poseur buyer and the pusher, the offer to purchase, the promise or payment of the consideration until the consummation of the sale by the delivery of the illegal drug subject of the sale. The manner by which the initial contact was made, whether or not through an informant, the offer to purchase the drug, the payment of the "buy-bust" money, and the delivery of the illegal drug, whether to the informant alone or the police officer, must be the subject of strict scrutiny by courts to insure that law-abiding citizens are not unlawfully induced to commit an offense. Criminals must be caught but not at all cost.

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

Pardon By Offended Party

Crimes of adultery and concubinage shall not be prosecuted except upon a complaint filed by the offended spouse. The offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders [Art. 344, RPC].

See: Art. 344 for detailed discussion.

Mistake of Fact

To constitute a crime, evil intent must combine with an act. A mistake of fact shows that the act committed have proceeded from no sort of evil in the mind and thus necessarily relieves the actor from criminal liability. The applicable maxims here are actus non facit reum nisi mens sit rea (the act itself does not make man guilty unless his intention were so) and actus me incito factus non est meus actus (an act done by me against my will is not my act). (U.S. v. Ah Chong, G.R. No. L5272)

3. PERSONS LIABLE AND DEGREE OF PARTICIPATION

Persons Criminally Liable
When more than one person participated in the commission of the felony, the law looks into their **participation**.

Art. 16, Revised Penal Code

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

a. Principals;
b. Accomplices; and
c. Accessories

The following are criminally liable for light felonies:

1. Principals; and
2. Accomplices;

The RPC classifies persons criminally liable as:

1. Principal
2. Accomplice
3. Accessory

The following are criminally liable for light felonies:

1. Principals
2. Accomplices

Why Accessories not liable for light felonies
Because the law does not deal with trifles (*de minimis non curatlex*). Also two degrees lower than arresto menor is not possible

This classification is true only under the RPC and not under special laws, because the penalties under the latter are never graduated.

If the crime is punishable under special laws, the more appropriate term would be "offender/s, culprit/s, accused".

Grave and Less Grave Felonies v. Light Felonies
[Art. 16, RPC]

Grave and Less Grave Felonies	Light Felonies
All participants (**principal, accomplice, accessory**) are criminally liable.	Only the **principal and accomplice** are liable. The accessory of light felony is not liable

Parties to a Crime

1. **Active subject**
2. **Passive subject**

1. **Active Subject** – the offender (*e.g., principal , accomplice, accessory)*

General Rule: Only natural persons can be the active subjects of a crime due to the highly personal nature of criminal responsibility.

- Juridical persons cannot be active subjects.

  Rationale: Only natural persons can act with personal malice or negligence. Moreover, penalties such as substitution of deprivation of liberty (subsidiary imprisonment) for pecuniary penalties in case of insolvency, or destierro can only be executed against individuals.

Exception: Special laws where corporations are expressly penalized for their violations (e.g. *Corporation Law, Public Service Law, Securities Law, Election Code, etc.*).

Officers of Corporation are Liable General Rule: If the offender is a corporation, the directors, trustees, stockholders, members, officers, or employees may be held liable if they are responsible for the violation or indispensable to the commission of the offense [Sec. 171, Revised Corporation Code].

2. **Passive Subject** - the injured party.

Principals

Art. 17, Revised Penal Code

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

a. Those who take a Direct part in the execution of the act;
b. Those who directly force or Induce others to commit it;
c. Those who Cooperate in the commission of the offense by another act without which it would not have been accomplished.

The following are Principals: (DIC)

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

Requisites to be Considered as Principal

Principal by Direct Participation [PCP]	Principal by Inducement [IDC]	Principal by Indispensable Cooperation [PAC-CI]
1. Offender **P**articipated in the criminal resolution;	. Indu-cement was made with the **I**ntention of procuring the commission of the crime; and	. Offender **P**articipated in the criminal resolution such that there is **A**nterior **C**onspiracy or unity of criminal purpose and intention before the commission of the crime.
. Offender **C**arried out their plan and **P**ersonally took part in its execution by acts which directly tended to the same end [People v. Ong Chiat Lay, G.R. No. L-39086 (1934)]. (actually performed the overt acts which give rise to the commission of the offense)	2. Said induce-ment is the **D**etermining **C**ause of the commission of the crime by the material executor [US v. Indanan, G.R. No. L-8187 (1913)].	2. **C**ooperation in the commission of the offense by performing another act which is **I**ndispensable, and <u>without which it would not have been accomplished</u> [REYES, Book 1]

By Direct Participation

Principal by Direct Participation

The principal by direct participation personally takes part in the execution of the act constituting the crime. (Reyes, Book I)

An active participant in the commission of the offense. One who participated in the criminal resolution to commit the offense [People v. Solomon, G.R. No. 77206 (1988)].

Those who cooperate in the commission of the crime by performing overt acts which by themselves are acts of execution [People v. Pilola, G.R. No. 121828 (2003)].

Principal by Direct Participation in a Conspiracy

In order to convict [the accused conspirator] as a principal by direct participation, it is necessary that conspiracy among him and his co-accused be proved. Conspiracy; like any other ingredient of the <u>offense, must be proved as sufficient as the crime itself through clear and convincing evidence, not only by mere conjectures</u>. *Proof beyond reasonable doubt is required to establish the presence of criminal conspiracy* [People v. Jorge, G.R. No. 99379 (1994)].

Principal by Direct Participation in a Conspiracy by prior agreement:

The principal by direct participation who does not appear at the crime scene is not liable because:

A. His non-appearance is deemed desistance which is favored and encouraged.
B. Conspiracy is generally not a crime unless the law especially provides a penalty therefor. By merely conspiring, he has not yet committed any crime unless he would appear at the site of the crime and perform any act directly or indirectly in the execution of the plan
C. There is no basis for criminal liability as there is no criminal participation

Requisites: Direct Participation

2 or more persons who took part in the commission of the crime are principals by direct participation when:

(1) Participation in the criminal resolution (conspiracy);
(2) Culprits carried out their plan and personally took part in its execution, by acts which directly tended to the same end.

They participated in the criminal resolution.

A person may be convicted for the criminal act of another where, between them, there has been conspiracy or unity of purpose and intention in the commission of the crime charged. (People vs. Talla, G.R. No. 44414)

They carried out their plan and personally took part in its execution by acts, which directly tended to the same end.

A principal by direct participation must personally take part in executing the criminal plan to be carried out. This means that he must be at the scene of the commission of the crime, personally taking part in its execution. (Reyes, Book I)

When this element is lacking, there is only conspiracy.

In conspiracy by prior agreement, the principal by direct participation who does not appear at the scene of the crime is <u>not liable</u>, because:

a. Non-appearance is deemed desistance which is favored and encouraged;
b. Conspiracy is generally not a crime unless the law specifically provides a penalty and

c. There is no basis for criminal liability because there is no criminal participation
d. At best, he can be a principal by inducement.

By Inducement

Principal by Inducement
Those who directly forces or induces others to commit a criminal act by promise or reward.

Note:
- The inducement must be the main reason for the commission of the crime.
- It must partake of an order to be obeyed, without which, the offender would not have committed the crime.

Requisites: By Inducement

(1) Inducement be made with the Intention of producing the commission of the crime.
(2) Said inducement is the Determining Cause of the commission of the crime by the material executor.
(3) Without such inducement the crime would not have been committed.

People v Agapinay

The words, "Kill him and we will bury him" amount but to imprudent utterances said in the excitement of the hour or in the heat of anger (it does not appear whether or not Rapada held a grudge against the deceased), and not, rather, in the nature of a command that had to be obeyed.

It has been held:

". . A chance word spoken without reflection, a wrong appreciation of a situation, an ironical phrase, a thoughtless act, may give birth to a thought of, or even a resolution to, crime in the mind of one for some independent reason predisposed thereto without the one who spoke the word or performed the act having any expectation that his suggestion would be followed or any real intention that it produce a result. In such case, while the expression was imprudent and the results of it grave in the extreme, he would not be guilty of the crime committed. Therefore, in applying the principles laid down to concrete cases it is necessary to remember only that the inducement must be made directly with the intention of procuring the commission of the crime and that such inducement must be the determining cause of the crime."

People v. Madali

When a person uttered "Kill him!" in excitement in the course of a fight, but it does not partake of an order or impelled the killing, he cannot be liable as principal by inducement. There is no proof that those inciting words had great dominance and influence over accused as to become the determining cause of the crimes.

People v. Balderama

But when the utterance is made by someone with moral ascendancy to the point that it can be taken as a command, he can be liable.

PP v. Rafael

A father who uttered "kill him!" was held liable as accomplice because he did so after the hacking (or the delivery of the fatal blow).

People v Balderama

The Court said that for the utterances of an accused to make him a principal by inducement, the same must be of a nature and uttered in such manner as to become the determining cause of the crime, and that the inducement precisely was intended to serve such purpose.

In the present case, that Oscar, who was not shown to have any rancor against Nestor, would not have given the fatal thrust had it not been for Ernesto's shout of "Birahin mo na" or "birahin mo."

Two Ways of becoming a principal by inducement:
1. By directly forcing another to commit a crime
2. By directly inducing another to commit a crime

By using irresistible force or causing uncontrollable fear

a. **Irresistible Force** - Such physical force as would produce an effect upon the individual that despite all his resistance, it reduces him to a mere instrument.

   Force, fear, duress, or intimidation must be present, imminent, impending; and of such nature as to induce a well-grounded apprehension of death or serious bodily harm if the act be done [People v. Anod, G.R. No. 186420 (2009].

b. **Uncontrollable Fear** – Such fear that must be grave, actual, serious and of such kind that majority of men would succumb to such moral compulsion.

   Mere threat of future injury is not sufficient. Compulsion must be such that it reduced the offender to a mere instrument acting not only without will but against his will as well. It must be of such character to leave the accused no opportunity for escape [Ty v. People, G.R. No. 149275 (2004)].

In these cases, there is no conspiracy, not even a unity of criminal purpose and intention. Only the one using force or causing fear is criminally liable.

By giving of price or offering of reward or promise or using words of command

a. **By giving of price or offering of reward or promise** – The one giving the price or offering the reward or promise is a principal by inducement while the one committing the crime in consideration thereof is a principal by direct participation. There is collective criminal responsibility.

b. **By using words of command** – person who used the words of command is a principal by inducement while the person who committed the crime because of the words command is a principal by direct participation.

Requisites: Using Words of Command

(1) The one uttering the words of command must have the intention of procuring the commission of the crime;
(2) The one who made the command must have ascendancy or influence over the person who acted;
(3) The words used must be so direct, so efficacious, so powerful as to amount to physical or moral coercion;
(4) The words of command must be uttered prior to the commission of the crime; and
(5) The material executor of the crime has no personal reason to commit the crime.

Comments: To constitute inducement, there must exist on the part of the inducer the most positive resolution and the most persistent effort to secure the commission of the crime, together with the presentation to the person induced of the very strongest kind of temptation to commit the crime. (U.S. v. Indanan, G.R. No. L-8187)

The inducement must precede the act induced and must be so influential in producing the criminal act that without it, the act would not have been performed. (Reyes, Book I

In order to be a Principal by Inducement, the inducer must give an order that is expected to be obeyed or he must have an influence over the perpetrator.

If his utterances did not have any effect like in the case of PP vs Rafael, his utterances were only given after the fatal blows were delivered, he could not be said to be a principal by inducement *because the utterances were not the reason for the killing* as he only said "Patayin! Patayin!" AFTER the fatal blows were delivered.

- If any, it only showed that he concurred in the criminal design of the offenders.
- *Rafael therefore was only sentenced as an accomplice*.

NOT an act of a principal by inducement

Mere careless comment made by one who does not possess dominance or moral ascendancy over the offender will make him neither a principal by inducement nor an accomplice. (Boado, pg. 131)

Nature of liability of principal by inducement:
The inducer is generally liable as an accomplice because the law favors a lesser penalty. (Boado, pg.131)

Principals by inducement (or mastermind) are liable even if they did not appear in the crime scene because the crime would not have been committed without the inducement and because they induce others to commit the crime so they do not have to appear or do the "dirty work".

Eg. The fact that MM and not petitioner dealt directly with the fixers cannot exculpate the latter from the charge of falsification. He is a principal by inducement in the commission of said crime.

Principal by Inducement v. Offender Who Made Proposal to Commit a Felony

	Principal by Inducement	**Proposal to Commit a Felony**
As to Purpose	Inducement to commit a crime	
As to Liability	Liable only when crime is committed by principal by direct participation	Person to whom proposal is made should not commit the crime
As to Crimes Included	Involves any crime	Proposal to be punishable must involve only treason/ rebellion

Effect of Acquittal of Principal by Direct Participation

General Rule: Conspiracy is negated by acquittal of co-defendant. One cannot be held guilty of having instigated the commission of a crime without first being shown that the crime has been actually committed by another [People v. Ong Chiat Lay, supra].

Exception: When the principal actor is acquitted because he acted without malice or criminal intent. [People v. Po Giok To, G.R. No. L-7236 (1955)].

But if the one charged as principal by direct participation is acquitted, it does not necessarily lead to the acquittal of the principal by inducement. (People vs. Po Giok To, G.R. No. L-7236)

By Indispensable Cooperation

Principal by Indispensable Cooperation
Those who cooperate in the commission of the offense by another, without which it would not have been accomplished.

To be considered a principal by indispensable cooperation, one must directly participate in the criminal design **by another act of such importance** that the crime would not have been committed without him. (Boado, 132)

Requisites: Indispensable Participation

Requisites [PAC-CI]:

1. Participation in criminal resolution such that there is:
    a. Anterior Conspiracy *or*
    b. unity of criminal purpose and
    c. intention before the commission of the crime.

2. Cooperation in the commission of the offense by performing another act which is Indispensable and without which it would not have been accomplished [Reyes, Book 1].

Cooperation
To cooperate is to presuppose knowledge of the ultimate purpose in view [Samson v. CA, G.R. Nos. L- 10364 & L-10376 (1958)].

To cooperate means to desire or wish in common a thing. But that common will or purpose does not necessarily mean previous understanding, for it can be explained or inferred from the circumstances of each case. (People v. Aplegido, G.R. No. L-163)

There can be no principal by inducement or principal by cooperation unless there is a principal by direct participation. However, there may be a principal by direct participation despite the absence of the former.

Note: Cooperation must be indispensable, any other kind of cooperation will not make a person criminally liable as principal by indispensable cooperation. He may be punished as an accomplice or accessory.

But when there is a conspiracy, whether express or implied, he can incur the same liability as the main perpetrator by reason of the conspiracy, where "the act of one is the act of all" (People v. Maralit)

People v Madali

The fact that Annie dealt a blow on Agustin while he was being dragged by Madali to their yard does not make her a principal by direct participation. Annie's act, being previous to Madali's act of shooting Agustin, was actually not indispensable to the crime committed against Agustin.

Example:

A and B plan to murder X. There was no way that X could be killed except by using a rifle because he lives in an islet.

C is the person who provided the rifle to A and B, but he did not know how the rifle will be used by the latter. Is C a principal or a mere accomplice?

- **C is a principal by direct participation** if this is the only way that X may be killed, otherwise C is merely an accomplice.
- Note that if there is implied or express conspiracy, you cannot be considered as an accomplice or accessory because of the presence of conspiracy.

Individual Criminal
Responsibility in the absence of conspiracy, unity of criminal purpose and intention immediately before the commission of the crime, or community of criminal design, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and each of the participants is liable only for acts committed by him. (U.S. v. Magcomot, G.R. No. L- 18289)

Collective Criminal Responsibility
There is collective criminal responsibility when the offenders are criminally liable in the same manner and to the same extent. The penalty to be imposed must be the same for all.

Principal by indispensable cooperation in Conspiracy
A principal by indispensable cooperation may be a co-conspirator under the doctrine of implied conspiracy. The voluntary and indispensable cooperation of the offender is a concurrence of the criminal act to be executed. Consequently he is a co-conspirator by indispensable cooperation, although the common design or purpose was never bottled up by previous undertaking (Subayco v. Sandiganbayan, G.R. Nos. 117267-117310)

The indispensable cooperator need not be a party in the planning stage of a conspiracy for he may become a principal at the moment of the execution of the crime with the other principals. His common purpose and unity of design with the other conspirators may be inferred from the circumstances of the crime.

Liability in case participation is not indispensable:
The participation of the cooperator must be indispensable to the commission of the crime. If his participation is dispensable, that is, with or without his participation, the offense will be committed, the liability is that of an **accomplice**

Accomplices
Art. 18, Revised Penal Code

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

Accomplices
An accomplice cooperates in the execution of the offense by previous or simultaneous acts, provided he has no direct participation in its execution or does not force or induce others to commit it, or his cooperation is not indispensable to its accomplishment [People v. Mandolado, supra].

Accomplice must have knowledge (at least that the act is illicit) and must cooperate, BUT there is no agreement

Requisites: Accomplices

(1) There is community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose.
(2) He cooperates in the execution of the offense by previous or simultaneous acts, with the intention of supplying material or moral aid in the execution of the crime in an efficacious way.
(3) There should be a relation between the acts done by the principal and those attributed to the person charged as accomplice.

Knowledge of Actual Crime Not Required
One can be an accomplice even if he did not know of the actual crime intended by the principal, provided he was aware that it was an illicit act [People v. Doctolero, G.R. No. 34386 (1991)].

Knowledge as an Accomplice v. Conspirator
There is some degree of knowledge, but the knowledge is not the same as that of a conspirator.

- it must be knowledge of a particular offense OR victim, otherwise, if you already know the particular crime AND against whom, then that is already tantamount to conspiracy.

Example: you own the gun store and here is A and B who bought guns from you.

- It does not mean that accomplice naka sa tanan nilang buhaton,
- what will make the person who supplied the firearm as a conspirator is when he agrees,
- or if he does not agree expressly or impliedly but he knows that it is going to be committed for some crime (whatever the crime is because) you don't know specifically then we can say that there is already cooperation by prior acts.
- Once there is an agreement as to what time and against who, then there is already conspiracy because conspiracy need not be express, it may be implied.

In a conspiracy, there is:

1. **Knowledge** of plan to commit a crime;
2. **Adherence to the criminal resolution** to commit a specific crime; coupled with
3. **Participation to arrive at the conclusion** of the plan.

   The accomplice does not have this degree of involvement in the plan.

Accomplice does Not Decide the Crime
Accomplices do not decide whether the crime should be committed; they merely assent to the plan of the principal by direct participation and cooperate in its accomplishment [People v. Pilola, G.R. No. 121828 (2003)].

For instance, a group of robbers may have planned, conspired, and agreed to commit robbery in a particular house. So they will all be held liable as conspirators. (The act of one is the act of all.)

The accomplice is one who learned of the plan, but he is not part of the planning. He assisted the robbers (i.e. providing the ladder), but he is not really part of the plan or agreement.

People v Montesclaros

Brief Background:
Accused Ida was convicted as accomplice for the rape of her daughter. Tampus, the principal, died during appeal, thus the CA dismissed his appeal.

Ruling:
The finding of guilt of the accused as an accomplice of rape is dependent on proving the guilt of the principal accused. The Supreme Court found Tampus guilty beyond reasonable doubt, thus appellant Ida can be convicted as an accomplice in the same criminal case.

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

The testimony of ABC established that Ida cooperated in the execution of the rape by forcing ABC to drink beer and agreeing to Tampus' request for him to have sexual intercourse with ABC. Ida's acts show that she had knowledge of and even gave permission to the plan of Tampus to have sexual intercourse with her daughter.

It is settled jurisprudence that the previous acts of cooperation by the accomplice should not be indispensable to the commission of the crime; otherwise, she would be liable as a principal by indispensable cooperation. The evidence shows that the acts of cooperation by Ida are not indispensable to the commission of rape by Tampus. First, because it was both Ida and Tampus who forced ABC to

drink beer, and second because Tampus already had the intention to have sexual intercourse with ABC and he could have consummated the act even without Ida's consent.

Accomplice in Bigamy
A person, whether man or woman, who knowingly consents or agrees to be married to another already bound in lawful wedlock is guilty as an accomplice in the crime of bigamy. [Santiago v. People, G.R. No. 200233 (2015)]

Mere presence of the accomplice in the scene of the crime:
It does not of itself constitute a simultaneous act of cooperation sufficient to make one an accomplice. (Boado pg. 134)

Liability of Accomplice
The liability of accomplices is less than principals and they shall be meted with the penalty next lower in degree (1 degree) than that prescribed by law [Arts. 52, 54, & 56, RPC].

It is also possible for an accomplice to be liable as such for a different crime than what the principal committed, such as when he/she provides transport for someone committing robbery but does not participate in the killing committed by the latter [People v. Doble, G.R. No. L-30028 (1982)].

Quasi-collective criminal responsibility
Between collective criminal responsibility and individual criminal responsibility, where some of the offenders in the crime are criminal and the others are accomplices, in case of doubt, the participation of the offender will be considered that of an *accomplice rather than of a principal*.

Accomplices are penalized one degree lower than the principal unless the law provides otherwise.

Conspirator v. Accomplice

	Conspirator	Accomplice
As to Criminal Design	They know of and join in the criminal design.	They know and agree with the criminal design.
As to When Criminal Intention is Known	From its inception, because they themselves have decided upon such course of action.	Only after the principals have reached the decision to commit it.
As to Who Decides to Commit the Crime	Conspirators decide that a crime should be committed.	Accomplices merely assent to the plan and cooperate in its accomplishment.
As to Authorship of the Crime	Conspirators are the authors of a crime.	Accomplices are merely instruments who perform acts that are useful for, but not essential to, the perpetration of the offense, giving material/moral aid without conspiracy.

Lookouts:
When accomplice:
A lookout who was not part of the conspiracy but participated only after such decision was reached incurs criminal liability as an accomplice since he is merely an instrument of the crime and he cooperates after the decision to commit the same had already been made. (People v. De Vera, G.R. No. 128966)

When principal:
Consequently, a lookout is a principal if he were a co-conspirator and participated in deciding the court of action to be taken in the criminal design or he is a co-author of the crime and provides his companions effective means and encouragement to carry out the same.

Accomplices and in case doubt as to the nature of liability:
An accomplice's role in the perpetration of the crime is of a minor character. If there is ample of evidence of criminal participation but a doubt exists as to the nature of liability, courts should resolve to favor the milder form of responsibility, that of an accomplice.

Accessory
Art. 18, Revised Penal Code

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

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

the life of the Chief Executive, or is known to be habitually guilty of some other crime.

Knowledge of the commission of the crime
An accessory must have knowledge of the commission of the crime, and having that knowledge, he took part subsequent to its commission. In the absence of positive proof, direct or circumstantial, of his knowledge that the goods were of illegal origin or fraudulently acquired by the vendors at the time of the transaction, a customer who purchases such goods cannot be held criminally responsible as accessory. (People vs. Labrador, C.A., 36 O.G. 166)

How accessory takes part
An accessory does not participate in the criminal design, nor cooperate in the commission of the felony, but, with knowledge of the commission of the crime, he subsequently takes part in 3 ways:

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

By profiting themselves or assisting the offender to profit by the effects of the crime (Par. 1)

a. Profiting themselves by the effects of the crime

A person who received any property from another, and used it, knowing that the same had been stolen, is guilty of the crime of theft as an accessory. (People vs. Tanchoco, 76 Phil. 463, 467)

The accessory should not take the property without the consent of the principal. Otherwise, he is not an accessory but a principal in the crime of theft.

Example:
If the crime is robbery or theft and on bought, sold, possessed, or in any other manner dealt with the articles which he knew or should know are proceeds of robbery or theft, he is a principal in the crime of fencing. If he were not charged with fencing in a separate information, then he is liable only as an accessory

If the crime is brigandage and he profited from the loot, he is liable for abetting brigandage —-- an accomplice of brigands. He should be charged in a separate information otherwise he would be liable as an accessory.

Employing two carabaos in his farm that were previously stolen (cattle rustling). The person using the carabaos is deemed profiting by the objects of the cattle rustling. Hence, an accessory.

b. Assisting the offender to profit by the effects of the crime

A person who receives any property from another, which he knows to have been stolen, and sells the same for the thief to whom he gives the proceeds of the sale, is guilty of the crime of theft, as an accessory. (U.S. vs. Galanco, 11 Phil. 575)

An accessory should not be in conspiracy with the principal.

Concealing/destroying the body of the crime or the effects or instruments thereof to prevent its discovery (Par. 2)

Body of the Crime ("corpus delicti")
Fact of the commission of the crime, not the physical body of the deceased [Rimorin v. People, G.R. No. 146481 (2003)]. *The body here could refer to the weapon, body of the victim*

Examples:

a. Assisting in the burial of a homicide victim to prevent the discovery of the crime [US v. Leal, G.R. No. 432 (1902)]
b. Making the victim appear armed to show the necessity of killing him [US v. Cuison, G.R. No. L-6840 (1911)]
c. Concealing the effects/instruments of the crime, such as concealing a gun [Reyes, Book 1]

Comments:
Corpus delicti refers to the fact that a crime has been actually committed. Proof of Corpus Delicti is indispensable in prosecutions for felonies and offenses. In murder, the fact of death is the Corpus Delicti. In arson, Corpus Delicti is satisfied by proof of the bare occurrence of the fire and of its having been intentionally caused. The uncorroborated testimony of a single eyewitness, if credible, may be enough to prove the Corpus Delicti and to warrant conviction.

Corpus delicti is a compound fact made up of two things:

A. The existence of a certain act or result forming the basis of the criminal charge (criminal event); and
B. The existence of a criminal agency as the cause of this act or result.

Otherwise stated the **elements of Corpus delicti** are

A. Proof of the occurrence of a certain event; and
B. Some person's criminal responsibility

Harboring/concealing/assisting in the Escape of the principal of the crime committed by either a public officer or a private person (Par. 3)

What is concealed is not the corpus delicti but the criminal himself.

Classes of accessories in par. 3:

1. Public officers, who harbor, conceal or assist in the escape of the principal of any crime (not light felony) with **abuse of his public functions**

Requisites

(1) The accessory is a public officer;
(2) He harbors, conceals, or assists in the escape of the principal;
(3) He acts with abuse of his public function; and
(4) The crime committed by the principals is any crime, except a light felony;

2. Private persons, who harbor, conceal or assist in the escape of the author of the crime – guilty of treason, parricide, murder, or an attempt against the life of the President, or who is known to be **habitually** guilty of some other crime.

Requisites

(1) The accessory is a private person;
(2) He harbors, conceals or assists in the escape of the author of the crime;
(3) The crime committed by the principal is either:
   (a) Treason;
   (b) Parricide;
   (c) Murder;
   (d) An attempt against the life of the president; or
   (e) That the principal is known to be habitually guilty of some other crime.

NOTE: The offender to be assisted must be a principal assisting an accomplice is not included.

Elements under the Two (2) Classes of Accessories

Public Officer [PAHAL]	**Private Person [PH-TPaMAPH]**
Offender is a Public officer who acts with Abuse of his public functions	Offender is a Private person
Offender Harbors/conceals/assists in the escape of the principal	
Principal commits Any crime except Light felonies *The crime committed by the principal does not matter, as long as it is not a light felony, because the accessory of a light felony does not incur criminal liability anymore.*	Crime is either Treason, Parricide, Murder, Attempt *against the life of the President,* or Principal is known to be Habitually guilty of another crime
Note: The principal must be tried and convicted. The accessory here cannot be held liable until there is a conviction.	

Q: When can there be accessory no. 3?

1. Accessory acts with abuse of public functions;
2. Principal is guilty of treason, parricide, murder, attempt to take the life of the president; OR
3. Principal offender is a habitual criminal
   a. (Only applies if principal is identified and his guilt proven)

"OR"

Either one of the three above enumerated can make a person as Accessory No. 3.

Note: If neither are present, he cannot be accessory no. 3; but it does not mean to say that he will not incur any more any criminal liability because there is a special penal law of Obstruction of Justice.

Q: Will there be Double Jeopardy?

A: No. Because it pertains to a Special Penal Law and these are two different things, obstruction has different elements.

Remember: An accessory will be charged together with the principal. You will not be charged separately.

So in the charges, the elements will be the elements for the crime committed by the principal which is different from the elements of obstruction.

Important: The principal here must be tried and found guilty. So, if the principal is in hiding, you can never convict the accessory. The conviction of the accessory will depend on the conviction of the principal. But this is only for #3.

Liability of Accessories

Liability is subordinate to the principal because their participation is subsequent to the commission of the crime [US v. Mendoza, G.R. No. 7540 (1912)].

The penalty to be imposed for accessories is two (2) degrees lower than that prescribed for the felony [Art. 53, 55, & 57 RPC].

When accessory liable as principal:

Accessories may be liable as principal in another crime if his act or omission is also penalized in a special law. In crimes under special laws or mala prohibita, the offenders generally are penalized as principals unless otherwise provided. There must however be compliance with the procedural requirement

of charging in another information so that he would be liable as principal instead of accessory.

Effect of Acquittal of Principal

General Rule: If the facts alleged are not proven or do not constitute a crime, the legal grounds for convicting the accessory do not exist [US v. Mendoza, G.R. No. 7540 (1912)].

Exemption: If the principal was convicted but not held criminally liable for an exempting circumstance (i.e. insanity, minority, etc.) [Art. 12, RPC], the accessory may still be held criminally liable since the crime was still committed [US v. Villaluz, G.R. No. 10726 (1915)]. Determination of the liability of the accessory can proceed independently of that of the principal [Vino v. People, G.R. No. 84163 (1989)].

Exemptions from Criminal Liability

An accomplice is exempted from criminal liability when:

1. Crime is a light felony [Art. 19 (c), RPC]; or
2. Principal is a relative under the exemptions in RPC Art. 20, except if said accessory has profited or assisted the principal in profiting from the crime

Relatives Included Under Art. 20 [SAD- BSR]

a. Spouse
b. Ascendant
c. Descendant
d. Legitimate/natural/adopted Brother or Sister
e. Relative by affinity within the same degree

Remember: Relationship by affinity between surviving spouse and blood relatives of the deceased spouse survives even after the death of the deceased spouse.

Rationale: The ties of blood and the preservation of the cleanliness of one's name, which compels one to conceal crimes committed by relatives so near as those mentioned in this article [People v. Mariano, G.R. No. 134847 (2000)]

ART. 20 FROM ART. 332

Based on the ties of blood and the preservation of the cleanliness of one's name

ARTICLE 332. Persons Exempt from Criminal Liability.

No criminal, but only civil liability, shall result from the commission of the crime of theft, swindling or malicious mischief committed or caused mutually by the following persons:

1. Spouses, ascendants and descendants, or relatives by affinity in the same line;
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same shall have passed into the possession of another; and
3. Brothers and sisters and brothers-in-law and sisters- in-law, if living together.

The exemption established by this article shall not be applicable to strangers participating in the commission of the crime.

Art. 332 applies to specific crimes only (theft, malicious mischief, estafa). It applies to principals.

ARTICLE 20. Accessories Who are Exempt from Criminal Liability.

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

Refers to an exemption of Accessories No. 2 and 3.

Art. 20 refers to no liability for accessories with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees.

Remember: While such relatives may be exempt as Accessories No. 2 and 3 under the RPC, they can still be held liable for Obstruction of Justice (PD 1829 - Special Penal Law)

Exception to exception

Accessory No. 1 who:

(1) Profited by the effects of the crime; or
(2) Assisted the offender to profit by the effects of the crime

Reason: Offender is prompted not by defense of relative but more by greed, and personal gain.

Comments: Relatives can be accessory No. 1 because being relatives will only absolve you from criminal liability if your participation is accessory no. 2.

It is only in accessory in No. 3 where you have the specific crimes, because the specific crimes which are treason, parricide, murder, these are not necessary in accessories 1 and 2; they only come to play only in No. 3.

Ties of blood or relationship constitutes a more powerful incentive than the call of duty.

The absolutory cause of the relationship of the accessory to the criminal is only important in No. 2 and 3, not in 1.

Problem:

The victim is living in a small islet and there is no way that he could be killed unless he is shot from a distance.

- The guy who made the order was A. A, here, is a principal by inducement.
- The guy who will shoot is B. B is principal by execution.
- The guy who supplied the only weapon that can effect the killing was C. C was principal by indispensable cooperation.
- But if we have *another guy who transported the firearms - he knew of the plan and his role in the plot, which was to bring the firearm - he was just the driver*.
    - He knew concurred to the criminal design.
    - Because of his agreement, he will become a conspirator;
    - therefore, even if he was not a principal in any way, he will be held liable as a principal.

Principal v. Accomplice v. Accessory

Principal [Art. 17]	**Accomplice [Art. 18]**	**Accessory [Art. 19]**
As to Acts Committed		
One who: 1. Directly participated in the offense; or 2. Induced or forced others to commit the crime; or 3. Committed acts which are indispensable to the commission of the crime.	One who cooperated in the commission of the offense without being covered by Art. 17.	One who: 1. Made a profit from or assisted the offender in profiting from effects of the crime; or 2. Concealed or destroyed the body of the crime; or 3. Harbored, concealed or assisted in the escape of the principal. **Note:** ● The accessory does not take direct part or cooperate in, or induce, the commission of crime. ● The accessory does not cooperate in the commission of the offense by acts either prior thereto or simultaneous therewith.
As to Imposable Penalty		
Penalty prescribed by law	1 degree lower [Arts. 52, 54, & 56, RPC]	2 degrees lower [Arts. 53, 55, & 57, RPC]
As to When Acts Were Committed		
During the commission of the offense **Except**: When there is a conspiracy and the principal has already performed his part prior to its commission. [People v. Santos, G.R. No. 117873 (1997)] Hence, it could be: ● **Previous** ● **Simultaneous** ● **After** (for continuous crimes such as kidnapping) ○ The one who collected the ransom will still be liable as a principal even if he/she participated way after the actual snatching of the victim. ○ As a matter of fact, he/she may be classified as a Principal by Direct	Before or after the commission of the offense	After the commission of the offense

Participation		
As to Necessity of Cooperation		
Indispensable to the commission of the crime	Not indispensable	Not indispensa-ble

Special Laws

Special Laws define and penalize crimes not included in the RPC; their nature is different from those defined and punished therein.

As a general rule SPLs are not subject to the provisions of the RPC. The first sentence of Article 10 is a superfluity for it merely expresses the cardinal rule in statutory construction that special law prevails over a general law.

The RPC shall have supplementary application to the SPLs whenever the latter uses the nomenclature of penalties in the RPC

Special Laws

1. Anti-Fencing Law
2. Anti Piracy and Highway Robbery Law of 1974

Anti-Fencing Law v. Anti-Piracy and Highway Robbery Law of 1974 v. Accomplice

Anti-Fencing Law [P.D. 1612]	**Anti-Piracy and Highway Robbery Law [P.D. 532]**	**Accessory [Art. 19 (1)]**
As to Punishable Acts		
Knowingly profiting or assisting the principal to profit by the effects of a robbery or theft	Knowingly acquiring or receiving property taken by pirates or brigands or in any manner benefiting therefrom	Profiting themselves or assisting the offender to profit by the effects of the crime
As to Crimes Applicable		
Robbery or Theft	Robbery or Theft	Any crime
Whether Possession Beings About Presumption of Committing the Crime		
Mere possession brings about the presumption of fencing.	No such presumption.	No such presumption.
As to Imposable Penalty		
Higher than mere accessory to robbery/theft [Sec. 3, P.D. 1612]	Penalty imposed for the accomplice [Sec. 4, P.D. 532]	2 degrees lower than that of the principal [Art. 53 to 55, RPC]

Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders [P.D. 1829]

Any person who knowingly or willfully obstructs, impedes, frustrates or delays the apprehension of suspects and the investigation and prosecution of criminal cases, shall be punished:

1. Prision correccional in its maximum period, or
2. Fine ranging from PhP 1,000 – 6,000, or
3. Both

Accessory v. Principal in Obstruction of Justice

	Accessory [Art. 19 (3)]	**Laws Penalizing "Obstruction of Justice" [P.D. 1829]**
As to Acts Punished	Harboring, concealing, or assisting in the escape of the principal of the crime	Knowingly or willfully obstructing, impeding, frustrating, or delaying the apprehension of suspects and the investigation and prosecution of criminal cases
As to Liability of the Offender	Offender is merely an accessory to the crime charged and another person is charged as the principal.	Offender is liable as the principal of P.D. 1829.
As to Crimes Applicable	**If committed by private person** – only applies to the specified crimes (e.g., treason, parricide, murder, attempt against the life of the President, or	Applies to any crime.

	principal is habitually guilty of another crime) If committed by public officer – applies to any crime, except light felonies.	

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

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

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

b) CONSPIRACY AND PROPOSAL

Art. 8, Revised Penal Code

Art. 8. Conspiracy and Proposal to Commit Felony. - Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefor.

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

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

There are instances where conspiracy and proposal to commit a crime are only preparatory acts, and the law regards them as innocent or at least permissible except in rare and exceptional cases.

Two concepts of Conspiracy

1. Conspiracy can be a crime by itself (felony); or
2. Conspiracy can be a mode of incurring collective criminal liability.

If the crime agreed upon is committed, all conspirators are liable for that crime. If the crime is not committed, they will only be liable if the conspiracy itself is punished as a crime.

Note: Conspiracy contemplated in Article 8 pertains to conspiracy as a crime, and not conspiracy as a mode of incurring collective criminal liability.

A Crime By Itself

Proposal

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

Proposal	Inciting
The person proposing has actually decided to commit it	The inciter may not have actually decided to commit it.
The commission is committed discreetly	The inciter must do it publicly

Requisites of Proposal as a Crime

(1) A person has **decided** to commit a felony
(2) He proposes its execution to some **other person** or Persons
(3) There must be a **law** prescribing a penalty for proposal to commit such crime; and
(4) The persons to whom the proposal were made have **not agreed and decided** to commit such crime.

Note: Agreement to the proposal is not necessary. Once the proposal is accepted then it becomes a conspiracy. The essence of conspiracy is community of criminal intent. (People v. Tilos, G.R. No. 138384)

No proposal as a Crime

1. Person who proposes is not determined to commit the felony

   Ex. If a person is not decided to commit rebellion, but he proposes to other persons the commission of rebellion without his participation, he is not liable for proposal to commit rebellion.

2. No decided, concrete and formal proposal
3. Not the execution of a felony is proposed

Penalty

GR: Proposal to commit a crime is not yet punishable. The mind of the proposer is criminal. However, unless and until he after proposing to commit a crime such as murder externalizes

his criminal mind by committing an overt act such as stabbing the victim, he will not be punished.

XPNs:

1. Proposal to commit treason (Article 115); and
2. Proposal to commit rebellion or coup d'etat (Article 136);
3. Proposal to Commit Terrorism (The Anti-Terrorism Act of 2020, Republic Act No. 11479, [July 3, 2020])

Note: If the law prescribes a penalty for a mere proposal to commit a particular crime, then the one who made such criminal proposal shall be punished.

If the persons to whom the proposal were made have agreed and decided to commit the proposed crime then they together with the proposer are liable for conspiracy as crime.

But if the conspiracy is to commit murder and the murder did not push through, the conspirators are NOT liable. The law does not punish conspiracy to commit murder as a crime, it only punishes murder itself.

Conspiracy

Two or more persons come to an agreement concerning the commission of a felony and decide to commit it.

Requisites of Conspiracy as a Crime

(1) There must be an **agreement** to commit a crime;
(2) The parties to the agreement must be **decided** to commit such crime;
(3) There must be a **law** prescribing a penalty for conspiring to commit such crime; and
(4) The crime agreed upon was **not committed**.

An agreement to commit a crime is not conspiracy unless evidence shows that the accused are all decided to commit it.

> **Ex.** After agreeing to commit rebellion, the accused recruited others to join them and collected guns to be used in executing their plan. Circumstances show that they are decided to commit rebellion.

Penalty

GR: Conspiracy to commit a crime is not yet punishable. The minds of the criminal conspirators are criminals. However, unless and until the conspirators externalize their criminal mind by committing an overt act such as stabbing the victim, they will not be punished.

XPNs:

1. Conspiracy to commit treason (Article 115);
2. Conspiracy to commit rebellion or coup d'etat (Article 136);
3. Conspiracy to commit sedition (Article 141);
4. Conspiracy to commit arson (Section 7 of P.D. No. 1613);
5. Conspiracy to commit crime involving trafficking of dangerous drug (Section 26 of R.A. No. 9165);
6. Conspiracy to commit the crime of financing of terrorism (Section 5 of R.A. No. 10168);
7. Conspiracy to commit child pornography (Section 4
8. of R.A. No. 9775);
9. Conspiracy to commit money laundering (Section 4 of R.A. No. 9160, as amended by R.A. No. 10365);
10. Conspiracy to Commit Terrorism (The Anti-Terrorism Act of 2020, Republic Act No. 11479, [July 3, 2020])

Note: If the law prescribes a penalty for a mere conspiracy to commit a particular crime, then the conspirators shall be punished.

Mode Of Incurring Collective Criminal Liability

Note: Proposal CANNOT be a mode of incurring criminal liability.

The purpose of the concept of conspiracy as a crime is to penalize the conspirators; while the purpose of the concept of conspiracy as a mode of incurring criminal liability is to apply the collective responsibility rule for the commission of the crime agreed upon.

Conspiracy Theory/ Collective Responsibility Rule

All those who agreed to the commission of the crime are, as a general rule, liable for the acts of the other conspirators including those that are foreseeable, unless he does not do anything in the furtherance of the conspiracy. [People v. Compo, G.R. No. 112990 (2001)]

Requisites of conspiracy as a mode of incurring collective responsibility

(1) There must be conspiracy to commit a crime;
(2) The crime agreed upon has been committed; and
(3) The conspirators, to apply the collective responsibility rule to them, must perform an act in furtherance of conspiracy.

Note: The third requisite can be dispensed with if the conspirator is the **mastermind** of the crime. One who plans the commission of a crime is liable as conspirator and principal by inducement [People v. Comiling, G.R. No. 140405 (2004)].

Kinds of Conspiracy

As a basis for incurring liability it is necessary to determine whether it is express conspiracy (conspiracy by prior agreement) or implied conspiracy.

1. **Express conspiracy** (conspiracy by prior agreement) — a conspirator is liable as long as he appeared in the situs of the crime. But the mastermind or principal by inducement is liable even if he does not appear because the crime would not have been committed without his inducement.

GR: In conspiracy by prior agreement, the liability of the conspirators is only for the crime agreed upon.

XPNs:

a. When the other crime was committed in their presence and they did not prevent its commission which is taken as approval or acquiescence to the second crime;
b. When the other crime is the natural consequence of the crime planned, e.g. homicide resulting from physical injuries; or
c. When the resulting crime is a composite crime or a special complex crime considered a single indivisible felony except when a conspirator is not aware of the commission of the second unplanned crime.

1. Implied conspiracy — where the conspiracy is instantaneous at the moment of the commission of the crime — it is essential for criminal liability that the conspirator participated in the commission of the crime.

   An overt act of a co-conspirator can be any of the following:

   a. Active participation in the actual commission of the crime itself;
   b. Lending moral assistance to his co-conspirators by being present at the commission of the crime; or
   c. Exerting moral ascendancy over the other co-conspirators.

EXPRESSED CONSPIRACY

Requisites

1. Agreement
2. Participation

Note: Mere agreement alone is not enough; it must be coupled with participation.

Agreement

There must be actual, written or explicit agreement.

Conspiracy proven by direct evidence is called express conspiracy. But direct proof of conspiracy is rarely found; for criminals do not write down their lawless plans and plots. (Angeles v. CA, G.R. No. 101442)

If a conspirator backs out, that means that he is not anymore in agreement at the time of the commission of the crime. Therefore, he cannot be held liable.

To exempt himself from criminal liability, a conspirator must have performed an overt act to dissociate or detach himself from the conspiracy to commit the felony and prevent the commission thereof. (Quintas v. People, G.R. No. 205298, September 10, 2014)

However, if the one who backs out is the principal by inducement, his liability will not be by reason of the conspiracy but by reason of his being a principal by inducement.

If one was a principal by inducement who already gave the order, he shall have already done his participation. He is liable.

Participation

Conspirators to be held liable on the basis of collective responsibility must perform an act in furtherance of conspiracy such as providing active participation or moral assistance or exerting moral ascendency.

1. Active Participation

To make a conspirator collectively responsible with others, it must also be established that he performed an act in furtherance of conspiracy. Mere knowledge, acquiescence, or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose. [People v. Compo, G.R. No. 112990 (2001)]

2. **Moral Assistance**

To hold one as a co-principal by reason of conspiracy, it must be shown that he performed an overt act in pursuance of or furtherance of the conspiracy, although the acts may have been distinct and separate. This overt act may consist of the crime or it may consist of moral assistance to his co-conspirators, by being present at the crime scene or exerting a moral ascendance over the others by moving them to execute the plan. (People v. Natividad, G.R. No. 151072, [September 23, 2003])

One can be considered a conspirator if he agreed to dispose the firearm or to dispose the body of the victim and he knew that a crime is about to be committed. He consented and agreed to bury the body of the victim. Here, he is not merely an accessory. Thus, he can incur the liability of a principal.

However, if he did not agree to bury the body of the victim nor to the commission of a crime, he merely bury the victim after the crime had been committed, then that would make him an accessory. In order to be liable, it is not enough that a conspirator agreed, he must agree and contribute something.

Examples:

SITUATION 1
A, B, C agreed to kill X. A even shouted "Yeaaah! I'll do it". However, at the scheduled date, A did not appear. Is A liable in the same manner as B and C who actually committed the crime just because he agreed to the commission of the crime?

No. Mere agreement will not make him liable. In order to be liable, he must participate. His participation may be active or may be by giving moral aid.

SITUATION 2
A said that he will be the one to kill X and B agreed. B was there at the scene. However, the one who fired the fatal shot was only A but B was there and was lying waiting in ambush.

In this situation, even if he did not actually shoot the victim, he is still a conspirator.

SITUATION 3
What if muingon si A, "ato nang patyon si X" and B said "sige patay ra man kaha." Then A stabbed X then sigeg abiba si B. So will that constitute giving moral aid?

In order to constitute the giving of moral aid the abiba, the aid given by the accused must be convincing. It must have moral influence. If iya kay gara-gara lang but it did not affect the decision of the perpetrator, the abiba will not make him a conspirator.

***(BAR TIP:** If the facts of the question do not mention that the parties had an actual, written or explicit agreement, decide based on the elements of Implied Conspiracy and not Expressed Conspiracy.)*

IMPLIED CONSPIRACY

There is no explicit agreement, but the meeting of the minds can be deduced from the action of the offender. It can be deduced that one concurred to the criminal design of the other.

> Conspiracy may be established by circumstantial evidence. This is called implied conspiracy. Implied conspiracy may be proven through the collective acts of the accused, before, during and after the commission of a felony, all the accused aiming at the same object, one performing one part and another performing another for the attainment of the same criminal objective. (People v. Agudez, G.R. Nos. 188386-87)

Sim vs. CA

When the malefactors have a common purpose and were united in its execution. Spontaneous agreement or active cooperation by all perpetrators at the moment of the commission of the crime is sufficient to create joint criminal responsibility.

Example:
Juan and Pedro having a Fist fight. Here comes Juana and she gave Juan a knife. Juanito also came with a baseball bat. All of them mauled Pedro. They did not agree beforehand to kill Pedro. But their individual acts would show that they had a common purpose and that is to murder and to kill Pedro. They were all united in the purpose therefore there was conspiracy and they can all be liable as principals.

Example – No Agreement:

A and B do not know each other, they encountered a suspicious-looking man and mauled him. There was no agreement, they just acted on their own. A punched the victim, and B stabbed him to death.

At this stage, we cannot say that A and B conspired to kill the victim because there is no showing of any agreement to kill the victim.

Hence, only B will be liable for the death of the victim. A will not incur the same criminal liability because there is no showing that A concurred in the criminal design to kill the victim. A will only be liable for his own actions (injuries).

Example – Implied Agreement:

A was mauling X and without prior agreement, B approached A and gave A a knife to stab X, or B held X so A could finish him off.

Here, there was no prior agreement but based on the acts we can say that B agreed with A to kill X. They must be united in the execution of the crime.

Both of them will incur the same criminal liability for both of them concurred with the criminal design. The agreement is implied from the actions.

GR: Act of one is the act of all

People v. Bagano

If there is conspiracy, the extent and character of their participation need not be determined and is immaterial, for the act of one is the act of all.

For conspiracy to exist, it is sufficient that at the time of the commission of the offense, the accused had the same purpose and were united in its execution. Proof of an actual planning of the perpetuation of the crime is not a condition

precedent. Co-conspirators are not necessarily principals, hence each one's degree of participation need not be determined.

In the case of Bagano, both accused were one in their intention to kill the victim. In conspiracy "the act of one is the act of all, the fact that it was Bagano who delivered the fatal blow and Canete's participation was limited to a mere embrace is immaterial. Conspiracy bestows upon them equal liability, and they shall suffer the same fate for their acts."

The reason for the criminal liability of the conspirator is not the degree of participation but the AGREEMENT and the PARTICIPATION. It could be any participation. Thus, it is NOT necessary that the conspirators have the same degree of participation.

XPN: However, even if it is not necessary to determine the nomenclature of the participation, there are cases where conspiracy is found, but the conspirators who had minor contributions were meted the penalty of an accomplice.

Conspirator	Accomplice
Conspirators agreed and decided to commit the crime; in sum, their collective responsibility is based on **conspiracy.**	Accomplices acquire knowledge and concur with the criminal design of the conspirators after the latter reached a decision; in sum, their quasi collective responsibility is based on **community of design.**
Conspirators to be held liable on the basis of collective responsibility must perform an act in furtherance of conspiracy such as providing **active participation or moral assistance or exerting moral ascendency.**	To be liable as an accomplice, one must supply **material or moral aid in an efficacious way.**
The nature and time of participation of conspirators is not important.	The participation of the accomplices must be **previous or simultaneous** to the commission of the crime but it must **not be indispensable** to the commission thereof; otherwise, they are liable as principal by indispensable cooperation.

Community of Design

Community of design means that the accomplice (or principal by indispensable cooperation) knows of, and concurs with the criminal design of the principal by direct participation. [People v. Maliao, G.R. No. 178058 (2009)]

Elements

1. Knowledge
2. Concurrence

People v. Garcia

Knowledge of and participation in the criminal act are also inherent elements of an accomplice so these facts alone do not make one a co-conspirator. There must be evidence indubitably proving that one participated in the decision to commit the crime. In some exceptional situations, having community of design with the principal does not prevent a malefactor from being regarded as an accomplice if his role in the perpetration of the homicide or murder was, relatively speaking, of a minor character, and if the help given is indispensable to the end proposed. At any rate, where the quantum of proof required to establish conspiracy is lacking and doubt created as to whether the accused acted as principal or accomplice, the balance tips for the milder form of criminal liability of an accomplice.

However, in the Garcia case, SC ruled that a taxi driver's participation of bringing the robbers to the crime scene and taking them afterwards, without staying during the commission, will only make him liable as accomplice despite his agreement, his participation being only minimal.

So, even if the act of one is considered the act of all, there is a conspiracy; and therefore all participants in the conspiracy will have to incur the same criminal liability; under exceptional situations, the Supreme Court would only impose the lesser penalties if the participation is minor or minimal.

People v. Nierras

Strictly speaking, as co-conspirators, they should be punished as co-principals. However, since their participation was not absolutely indispensable to the consummation of the murder, the rule that the court should favor the milder form of liability may be applied to them.

Relevant Jurisprudence

In the case of People v. Octa, G.R. No. 195195 (2015), the accused received the ransom money which indicated the commonality of purpose of his acts together with those who abducted and detained the victim. In sum, the participation of the abductors and the accused, who demanded or received ransom, are circumstantial evidence that they agreed and decided beforehand to commit kidnapping for ransom.

His participation is not indispensable to the commission of kidnapping for ransom since obtaining ransom money is not an element thereof. What is important in this crime is abducting the victim for the purpose of ransom. Since obtaining ransom is not indispensable to the commission of the crime, the accused is merely liable as an accomplice. (People v. Castro, G.R. No. 132726, July 23, 2002)

In People v. Paragas, G.R. No. 146308 (2002), while in the passenger jeepney, the chief actor glanced at the accused and the two nodded at each other before the former stabbed the victim. Accused immediately and successfully prevented the other passengers from pursuing the chief actor by volunteering to go after him (killer) instead. Accused was held equally liable with the chief actor by reason of conspiracy.

In People v. Bulan, G.R. No. 143404 (2005), accused were waiting outside the dance hall near the gate when Edwin brought the victim towards them, onto the street. Jose held the victim by the right shoulder, while Allan held him by the left. Chief actor suddenly appeared from behind the victim and stabbed the latter at the back with a small bolo. The accused continued holding the victim as chief actor stabbed him yet again. Accused are guilty as principals by direct participation in the killing of the victim since implied conspiracy was established. All the participants performed specific acts with such closeness and coordination as to indicate a common purpose or design to bring out the victim's death.

In People v. Lascano, G.R. No. 192180 (2012), accused are liable for two counts of rape on account of a clear conspiracy between them, shown by their obvious **concerted efforts** to perpetrate, one after the other, the rapes. Each of them is responsible not only for the rape committed personally by him but also for the rape committed by the other as well.

In Jaca v. People, G.R. No. 166967 (2013), a paymaster obtained cash advances despite the fact that she has previous unliquidated cash advances. The City Treasurer certified that the cash advances are necessary and lawful. The City Accountant certified that the expenditures are supported by documents and previous cash advances are liquidated and accounted for. The City Administrator approved the voucher and countersigned the check. City Treasurer, City Accountant, and City administrator are liable for violation of Section 3(e) of R.A. No. 3019 committed through gross inexcusable negligence. They are liable because of **conspiracy of silence or inaction**. Public officers' omissions to question irregularities indicate a common understanding and concurrence of sentiments respecting the commission of the offense.

(Be wary of using the Doctrine of Conspiracy of Silence or Inaction as this may not be applied easily in other cases. Conspiracy, as a general rule, is only applicable to intentional felonies)

People v Verceles

The rule in this jurisdiction is that whenever a rape is committed as a consequence, or on the occasion of a robbery, all those who took part therein are liable as principals of the crime of robbery with rape, although not all of them took part in the rape. Once conspiracy is established between two accused in the commission of the crime of robbery, they would be both equally culpable for the rape committed by one of them on the occasion of the robbery, unless any of them proves that he endeavored to prevent the other from committing the rape.

People v Bangcado

In the absence of any previous plan or agreement to commit a crime, the criminal responsibility arising from different acts directed against one and the same person is individual and not collective, and that each of the participants is liable only for his own acts.

People v Canturia

Conspirators cannot be held responsible for acts committed by their co-conspirators in the absence of positive proof that they were aware of said act, much less abetted the same.

Maralit v CA

Moral aid, at the very least, during the commission of a crime may make one a conspirator thus, being equally liable. In this case, the totality of the circumstances showed conspiracy and a unity of criminal design to commit the crime.

People v Rafael

Conspiracy exists when two or more persons come to an agreement concerning the commission of a crime and decide to commit it. Conspiracy, like the crime itself, must be proven beyond reasonable doubt. Mere presence, knowledge, acquiescence to or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.

When there is doubt as to whether a guilty participant in the killing has committed the role of a principal or that of an accomplice, the court should favor the milder form of responsibility.

In order that a person may be considered an accomplice, the following requisites must concur:

1. community of design; that is, knowing the criminal design of the principal by direct participation, he concurs with the latter in his purpose;
2. that he cooperates in the execution of the offense by previous or simultaneous acts, with the intention of supplying material and moral aid in the execution of the crime in an efficacious way; and
3. that there be a relation between the acts and those attributed to the person charged as an accomplice

Legal Effect of Conspiracy

The legal effect once an express or implied conspiracy as a mode of incurring criminal liability is proved, is that all of the conspirators are **liable as co-principals regardless of the extent and character of their respective active participation** in the commission of the crime that they agreed to commit. They are also liable for other crimes perpetrated in furtherance of the conspiracy. In contemplation of the law **the act of one is the act of all.** [People v. Peralta; G.R. No. L-19069 (1968)]

People v. Montanir, et al.

When conspiracy is established, the responsibility of the conspirators is collective, not individual. This renders all of them equally liable regardless of the extent of their respective participations, the act of one being deemed to be the act of the other or the others, in the commission of the felony. Conspirators are held to have intended the consequences of their acts and by purposely engaging in conspiracy which necessarily and directly produces a prohibited result, they are, in contemplation of law, chargeable with intending that result. Conspirators are necessarily liable for the acts of another conspirator unless such act differs radically and substantively from that which they intended to commit.

Each conspirator is responsible for everything done by his confederates which follows incidentally in the execution of a common design as one of its probable and natural consequences even though it was not intended as part of the original design. Responsibility of a conspirator is not confined to the accomplishment of a particular purpose of conspiracy but extends to collateral acts and offenses incident to and growing out of the purpose intended.

People v. Sanidad

Where a conspiracy animates several persons with a single purpose, their individual acts done in pursuance of that purpose are looked upon as a single act, the act of execution, giving rise to a **single complex offense**.

Conspiracy Theory
All conspirators are liable for the crime agreed upon. (Art. 8)

Conspiracy, when it is not committed as a separate crime, can make all the offenders liable as principal even if they are not exactly principals.

Examples:

1. A, B, C and D agreed to murder E. A was the one who paid B. B executed the crime. C merely threw the body of E.

Ordinarily, if there was no conspiracy, C would only be liable as an accessory; but because of the conspiracy, their specific contribution to the crime would not matter. They will incur the same liability as principal.

2. A, B, C, and D agreed to rob a bank. The agreement was only to rob the bank. Even if D was just the driver of the get-away vehicle, because of the conspiracy, D would still be liable for the same crime as A, B, and C. However, B killed the Security Guard. Homicide was outside the agreement. What would be the liability?

Homicide is foreseeable.

So long as they have a contribution, even if the contribution is not direct, they are considered as conspirators.

In the **conspiracy theory,** even if the agreement pertains only to one crime, the theory extends even to other crimes not agreed upon provided they are foreseeable in the crime agreed upon.

Criminal Liability in Conspiracy

SITUATION 1 - PROPOSAL

Pedro:
"I'd like to kill Jose. Will you do the job with me?"

Juan:
"I'll think about it."

At this stage, Pedro is still proposing. The crime proposed here is murder. As previously mentioned, there is no crime of proposal to commit murder.

At this stage:
- PEDRO – No criminal liability
- JUAN – No criminal liability

SITUATION 2 - CONSPIRACY

Pedro:
"I'd like to kill Jose. Will you do the job with me?"

Juan:
"I agree!"

Proposal is accepted. There is now an agreement and conspiracy.

Conspiracy to commit murder is not a crime in itself.

If the crime did not push through:

- PEDRO – No criminal liability
- JUAN – No criminal liability

If the crime pushes through:

- PEDRO – liable
- JUAN – liable

Juan may be held liable even if he did not participate in the killing but gave moral support.

People v. Maralit

Lending moral, if not material aid during the commission of the offense may make a person liable as conspirator and therefore makes one equally liable for the crime. In this case, even if the appellants did not fire the shot nor possess firearms, their acts show a concurrence to the criminal design when they also waited in ambush together with the gunmen for the victim. Their act shows an implied conspiracy.

Only as an accomplice

People v. Rafael

The appellant's participation in the commission of the crime are his presence at the locus criminis and his shouting "Patayin patayin iran amen!" (Kill them all!).

In this case, appellant's acts of going to Gloria's house with his sons and his encouraging shouts clearly demonstrated his concurrence in their aggressive design and lent support to their nefarious intent and afforded moral and material support to their attack against the victims. Hence, we are convinced he must be held liable as an accomplice in the commission of the crimes.

Juan is NOT liable even if he was present but did nothing.

People v. Compo

Mere knowledge, acquiescence, or agreement to cooperate, is not enough to constitute one as a party to a conspiracy, absent any active participation in the commission of the crime, with a view to the furtherance of the common design and purpose.

Compo, Maralit, and Rafael Rulings:

- Nothing inconsistent since the facts are different
- In Compo, although he was earlier seen with the perpetrator, he was not really there during the killing.
- In Maralit, he was with the perpetrator during the killing and he even waited with the perpetrator in ambush. The SC deemed such acts as giving moral support that would suffice in making him liable.
- In Rafael, the father shouted "kill him" AFTER the sons delivered the fatal blow. There was participation but the yelling came after, so he was merely treated as an accomplice. The father was still a conspirator.

Quantum of Evidence

In conspiracy, direct proof is not required, only positive and conclusive evidence. It must be a positive evidence even if circumstantial.

Direct proof is NOT required

Conspiracy is predominantly a state of mind as it involves the meeting of minds and intent of malefactors.

To establish conspiracy, direct evidence of a previous plan or agreement to commit assault is not required, as it is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack.

People v. Barlaan

There is conspiracy because there is unity in purpose and intention in the commission of the crime. Direct evidence of previous plan or agreement is not required. It is sufficient that at the time of the aggression, all the accused manifested by their acts a common intent or desire to attack.

Positive and conclusive evidence required

It must be shown to exist as clearly and convincingly as the commission of the crime itself. (PP vs Mapalo, G.R. No. 172608, Feb 6, 2007)

People v. Mapalo

Conspiracy exists when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Conspiracy as a basis for conviction must rest on nothing less than a moral certainty.

Considering the far-reaching consequences of criminal conspiracy, the same degree of proof necessary in establishing the crime is required to support the attendance thereof, i.e., it must be shown to exist as clearly and convincingly as the commission of the offense itself. Thus, it has been held that neither joint nor simultaneous actions is per se sufficient proof of conspiracy.

It must be shown to exist as clearly and convincingly as the commission of the offense itself. Obedience to a command does not necessarily show concert of design, for at any rate it is the acts of the conspirators that show their common design.

People v. De Leon

The chain of custody requirement ensures that unnecessary doubts concerning the identity of the evidence are removed. Non-compliance with the requirements, under justifiable grounds, shall not render void and invalid such seizures of and custody over said items. What is essential is "the preservation of the integrity and the evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the accused."

Doctrine of Limited Liability

If there is conspiracy
Every participant incurs the liability for the crime committed by all ("act of one is act of all") even if his participation does not tantamount to executing the crime itself.

If there is NO conspiracy
If no conspiracy, whether express or implied, the Doctrine of Limited Liability applies. A participant will only be liable for the injury he caused.

People vs. Bangcado

Without conspiracy, the offenders are liable only for their own individual acts.

SITUATION 1 – NO CONSPIRACY

Passerby
If Juan was punched by Pedro, and suddenly a passerby joined in and stabbed Juan, killing him, Pedro could not be liable for the death of Juan if there is no conspiracy, express or implied, between Pedro and the passerby. Pedro will only be liable for the injury he inflicted on Juan.

Example:
When there is no conspiracy, then even if a group of persons contributed to the infliction of injury of a person – they all contributed:

A - Gihapak
B - Gisikaran
C - Gisagpa
D - Gidunggab na gyud

Then the victim died; but there was no conspiracy. If that happens, they will only be liable for their own individual acts.

So, it is still possible that A who merely dukol, B who merely sikad and then C who merely sagpa; A, B, C who did not actually kill the victim, if there is no conspiracy, then they can still be charged for Physical Injuries even if the victim actually died. Why? Because they did not kill him. They just injured him. So, if there is no conspiracy, the act of D cannot be the act of A.

SITUATION 2 – IMPLIED CONSPIRACY

Passerby who handed a knife
But if the passerby approached Pedro and gave him a knife, which Pedro used in stabbing Juan and causing his death, the passerby is now an implied conspirator, for he joined in the criminal resolution of Pedro and their collaborative acts showed the intention to kill with the use of the knife.

(The passerby is also a principal by indispensable cooperation)

Other kinds of Conspiracy

1. **Wheel Conspiracy**

   All participants in the conspiracy are connected to the main man like spokes in a wheel connected to its axis.

   In the Wheel Conspiracy, we have a person who is at the center of the operations of the conspiracy. He is the center and he is directly linked like a wheel, like a spoke in a wheel to all the participants or the actors in the conspiracy. That's the Wheel Conspiracy. So, all the participants in the conspiracy take orders from the main man.

2. **Chain Or Ladder Conspiracy**

   Each conspirator commits a specific crime or performs a wrongful act and are not centrally connected, but each crime or act is a step (ladder) or link (chain) to other acts or crimes.

   The top guy is not necessarily connected to the members of the lower rank. So, there is a hierarchy where the top man is disconnected from the other people in the ladder.

Ex. Illegal gambling – financier has a different crime from the coordinator and the bettor.

In the Chain of Ladder Conspiracy, there are several rungs in the ladder of conspiracy. The Top Guy merely goes to the 2nd Guy and the 2nd to the 3rd and so on and so forth. Meaning, the one in the lowest rung may not necessarily have a direct access to the Top Guy.

CASE STUDY

A, B, C and D kidnapped a rich businessman. They kept him in a bodega owned by E, who only came to know of the kidnapping after the victim was brought to his bodega. They then instructed F to collect the ransom. F was unaware of the kidnapping until his participation in collecting the ransom, which he knew was for the release of a kidnapped victim.

Is F liable for Kidnapping for ransom with the other accused?

SUGGESTED ANSWER:
Yes. The crime is kidnapping for ransom, which is a continuing crime. Anybody who agreed and contributed while the kidnapping was going on, can be held liable as a conspirator.

In fact, under our law, kidnapping does not only mean taking, it includes detaining. It can even be committed without taking so long as there is deprivation of freedom.

In this case, the victim was illegally detained. While the kidnapping was going on, F participated by doing his share. As such, he can be liable in the same manner as A, B, C, and D.

If for example, you take part in profiting from the loot and did not agree nor take part in the robbery itself?

You are liable as an accessory. In the situation above, the kidnapping was still ongoing, making F liable.

Note: A person can be held as a conspirator, whereby the acts of the others can be considered as his acts, if the crime is still continuing.

CASE STUDY

A, B and C belong to a group of Illegal Recruiters. They set up an office in Cebu City and gypped unsuspecting job-seekers. They were able to defraud R, S and T.

Seeing that A, B and C have a lot of money, D decided to join their group. Together, they were able to defraud Z.
Is D liable for the crimes committed against R, S and T?

SUGGESTED ANSWER
NO. The crimes committed by A, B, and C in so far as R, S, and T are concerned, were already completed and terminated. So, D had not contributed to that swindling. He cannot be held liable. However, if D profited from the proceeds of the swindling, he can be considered as an accessory.

In so far as the swindling committed against Z, D can now be held liable.

Special Penal Laws

Q: Can conspiracy be applied in Special Penal Laws?

(Fiscal: Yes, since the Revised Penal Code can apply suppletorily to Special Penal Laws)

MULTIPLE OFFENSES

Forms of Repetition:

1. Recidivism (Art. 14, par. 9);
2. Reiteracion or habituality (Art. 14, par. 10);
3. Multi-recidivism or habitual delinquency (Art. 62, par. 5); and
4. Quasi-recidivism (Art. 160)

Differences

1. **Crimes Committed** - In recidivism, the previous crime and the present crime are embraced in the same Title of the Revised Penal Code. In quasi-recidivism, the nature of the previous crime and present crime is not material. In reiteracion, the penalty for the previous crime is equal or greater than that for the present crime or the penalty for the two previous crimes is lighter than that for the present crime. In habitual delinquency, the previous, subsequent and present crimes must be serious or less serious physical injuries, theft, robbery, estafa or falsification of document.

2. **Period of Time** - In quasi-recidivism and reiteracion, what is important is the date of commission of the present crime. In quasi-recidivism, the accused committed the present crime before beginning to serve or while serving his sentence for the previous crime. In reiteracion, the accused committed the present crime after serving his sentence for previous crime/s.

   In recidivism, what is important is the date of trial of the present crime in relation to date of conviction of his previous crime. In recidivism, the accused was being tried of the present crime when he was convicted of the previous crime by final judgment.

   In habitual delinquency, what is important is the date of conviction of the subsequent or present crime in relation to the date of his last release or conviction. (People v. Morales, G.R. No. 42924, March 12, 1935)

In habitual delinquency, the accused was convicted (found guilty) of the second crime within 10 years after conviction or release of the first crime; then, he is convicted of the third crime within 10 years after conviction or release of the second crime; and so on and so forth.

3. **Number of Crimes Committed** - In recidivism and quasi-recidivism, there must be at least two crimes. In reiteracion, there must be at least two crimes; but if the penalty for the previous crimes is lighter than that for the present crime, there must be at least three crimes. In habitual delinquency, there must be at least three crimes.

4. **Effects in Relation to the Penalty** - Recidivism and reiteracion are ordinary aggravating circumstances, the presence of any of which will require the application of the penalty for the present crime in its maximum period unless it is offset by a mitigating circumstance. Quasi-recidivism is a special aggravating circumstance, the presence of which will require the application of the penalty for the present crime in its maximum period regardless of the presence of a mitigating circumstance. Habitual delinquency is an extraordinary or special aggravating circumstance, the presence of which will require the imposition of penalty in addition to the principal penalty for the present crime. This is not subject to the offset rule.

Recidivism

Recidivist
A recidivist is one who, at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC. (People v. Lagarto, G.R. No. 65833)

Requisites: Recidivism

(1) The offender is on trial for an offense;
(2) He was previously convicted by final judgment of another crime;
(3) Both the first and the second offenses are embraced in the same title of the code; and
(4) The offender is convicted of the new offense

"At the time of his trial for one crime"
What is controlling is the time of trial, not the time of the commission of the crime. It is not required that at the time of the commission of the crime, the accused should have been previously convicted by final judgment of another crime. (Reyes, Book I)

It is meant to include everything that is done in the course of the trial, from arraignment until after the sentence is announced by the judge in open court. (People v. Lagarto, G.R. No. 65833)

However, recidivism can still be appreciated even if before his trial for the present crime, he was convicted by final judgment of his previous crime. (People v. Bernal, G.R. No. 44988)

"Previously convicted by final judgment."
The accused was prosecuted and tried for theft, estafa and robbery. Judgments for three offenses were read on the same day. Is he a recidivist? No, because the judgment in any of the first two offenses was not yet final when he was tried for the third offense. (Reyes, Book I)

The present crime and the previous crime must be "embraced in the same title of this Code."
When one offense is punishable by an ordinance or special law and the other by the RPC, the two offenses are not embraced in the same title of the Code.

There is recidivism even if the lapse of time between two felonies is more than 10 years.
Recidivism must be taken into account no matter how many years have intervened between the first and second felonies. (People v. Colocar, G.R. No. 40871)

Habituality (Reiteracion)

Reiteracion
There is reiteracion when the offender has been previously punished for an offense to which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty. (Art. 14, RPC)

Requisites: Reiteracion

(1) The accused is on trial for an offense;
(2) He previously served sentence for another offense to which the law attaches an equal or greater penalty, or for 2 or more crimes to which it attaches lighter penalty than that for the new offense; and
(3) He is convicted of the new offense.

"Previously punished"
The phrase "previously punished" employed in defining reiteracion means that the accused has served out the sentence for his previous crime. (Campanilla, Criminal Law Reviewer Volume I)

Previous crime and present crime
If there is only one prior offense, it must be punishable by a penalty equal or greater than that for the present crime. The penalty for the previous crime of homicide, which has been served out, is reclusion temporal while that for simple rape is reclusion perpetua. There is no reiteracion because the penalty for the previous crime of homicide is lesser than that for simple rape. (People v. Race, Jr., G.R. No. 93148)

If there is more than one prior crime, reiteracion is present even if previous crimes are punishable by a penalty lesser than that for present crime. Thus, there is reiteracion even if the

penalties for grave slander, qualified trespass to dwelling and robbery, which have been served out, are lesser than that for the crime of murder. (People v. Molo, G.R. No. L44680)

In appreciating reiteracion, what is controlling is the penalty prescribed by law for the previous and present crimes and not the penalty actually imposed by the court after trial. (Campanilla, Criminal Law Reviewer Volume I)

Recidivism and Reiteracion
If the crimes are embraced in the same Title such as homicide and maltreatment, the aggravating circumstance to be appreciated against him is recidivism rather than reiteracion. There is no reiteracion because that circumstance requires that the previous offenses should not be embraced in the same Title of the Code. In reiteracion, the offender commits a crime different from that for which he was previously convicted. (People v. Real, G.R. No. 98436)

Quasi-Recidivism

Quasi-Recidivist
Any person, who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be considered as a quasi-recidivist. (Art. 160, RPC)

As an extraordinary aggravating circumstance
Quasi-recidivism is an extraordinary aggravating circumstance and cannot be offset by an ordinary mitigating circumstance. (People v. Macariola, G.R. No. L-40757)

Previous and present crime
Quasi-recidivism will be appreciated regardless of whether the previous crime, for which an accused is serving sentence at the time of the commission of the crime charged, falls under the RPC or under special law. (People v. Aticia, G.R. No. L-88176)

Before serving sentence
One who committed a crime outside of prison before he begins to serve his sentence for homicide is a quasi-recidivist. (1968 and 1988 Bar Exams)

If the accused is placed on probation, the conviction shall become final but the service of sentence shall be suspended. One who committed a crime while on probation is a quasi-recidivist because the crime was committed before serving her sentence for the previous crime for which she is placed under probation. (People v. Salazar, G.R. No. 98060)

If the pardon is absolute, the criminal liability is extinguished, and thus, the penalty is considered as served out. One who committed a crime after the grant of absolute pardon is not a quasi-recidivist. But reiteracion may be appreciated. (Campanilla, Criminal Law Reviewer Volume I)

While serving sentence, there is quasi-recidivism:

1. Where the convicted prisoner killed the victim inside the New Bilibid Prison (People v. Alvis, G.R. No. L-89049); or
2. Where the convicted prisoner escaped from a penal colony, and then committed robbery with homicide. (People v. Retania, G.R. No. L84841)

Quasi-recidivism v. Reiteracion
Quasi-recidivism cannot at the same time constitute reiteracion since the former exists before accused begins to serve sentence or while serving the same while the latter exists after accused has duly served sentence, hence this aggravating circumstance cannot apply to a quasi-recidivist.

Habitual Delinquency (Multi-Recidivism)

Habitual Delinquency
There is habitual delinquency when a person, within a period of 10 years from the date of his release or last conviction of the crimes of (1) serious or less serious physical injuries, (2) robbery, (3) theft, (4) estafa or (5) falsification, is found guilty of any of said crimes a third time or oftener. (Art. 62, RPC)

In habitual delinquency, the offender is either a recidivist or one who has been previously punished for two or more offenses. He shall suffer an additional penalty for being a habitual delinquent. (Reyes, Book I)

Requisites: Reiteracion

(1) The offender had been convicted of any of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification;
(2) After that conviction or after serving his sentence, and within 10 years from his first conviction or release, he again commits any of said crimes for the second time; and
(3) After his conviction of, or after service sentence for, the second offense, and within 10 years from his last conviction or last release for said second offense, he again committed any of said crimes and also convicted, the third time or oftener.

The crimes are specified in habitual delinquency
If A was convicted of and served sentence for theft in 1935; after his release he committed homicide (Art. 249), was convicted in 1937, and was released in 1951; and in 1957 was convicted of rape (Art. 335); he is not a habitual delinquent even if he was convicted the third time. Homicide and rape are not mentioned in the definition of habitual delinquency. (Molesa vs. Director of Prisons, G.R. No. L-39998)

Computation of 10-year period
With respect to the period of 10 years, the law expressly mentions the defendant's last conviction or (last) release as the starting point from which the ten-year period should be counted.

Subsequent crime must be committed AFTER CONVICTION of former crime

In order that an accused may be legally deemed a habitual criminal, it is necessary that he committed the second crime after his conviction of, or after service of sentence for, the first crime; that he committed the third crime after his conviction of, or after service of sentence for, the second crime; the fourth crime, after his conviction of, or after service of sentence for, the third crime, etc. (People vs. Santiago, G.R. No. L-45367)

Effects of Habitual Delinquency

1. The law imposes an additional penalty based on the criminal propensity of the accused apart from that provided by law for the last crime for which he is found guilty. Habitual delinquency is not, however, a crime in itself; it is only a factor in determining the total penalty. (Campanilla, Criminal Law Reviewer Volume I)
2. An accused who is a habitual delinquent will not benefit from a favorable retroactive application of a penal law. (Art. 22, RPC)
3. In case of the commission of another crime during service of penalty, a habitual delinquent shall not be pardoned at the age of 70 years even if he already served out his original sentence. (Art. 160, RPC).
4. A habitual delinquent will not be entitled to the 1/2 deduction from term of imprisonment under Art. 29.
5. The Indeterminate Sentence Law shall not apply to those who are habitual delinquents. (Sec. 2, Act No. 4103)

Stages of execution

Habitual delinquency is applicable to the crimes mentioned in the law regardless of the stage of execution. (People vs. Abuyen, G.R No. 30664)

Accomplice and accessories

Habitual delinquency applies to accomplices and accessories of habitual delinquency crimes. (People vs. San Juan, G.R. No. L–46896)

Recidivism and Habitual Delinquency

One who is convicted of robbery with homicide and was previously convicted for theft three times is a recidivist and habitual delinquent at the same time. These habitual delinquency crimes are embraced in the same Title of the RPC on crimes against property. Both circumstances of recidivism and habitual delinquency shall be appreciated against him since the effects thereof are not inconsistent with each other. The effect of recidivism is the application of the penalty for theft in its maximum period; while the effect of habitual delinquency is the imposition of a penalty in addition to the principal penalty for theft. (1988 & 2001 Bar Exams)

However, while recidivism will aggravate the principal penalty for theft, it cannot aggravate the additional penalty for habitual delinquency because recidivism is inherent in habitual delinquency. (People v. Manalo, G.R. No. L-8586)

Q: Can a convict be a habitual delinquent without being a recidivist? Yes, when no two of the crimes committed are embraced in the same title of the Code. (Reyes, Book I

Decree Penalizing Obstruction of Apprehension and Prosecution of Criminal Offenders (PD 1829)

PENALTIES

GENERAL PRINCIPLES ON PENALTIES

Definition

Penalty
Penalty is that suffering that is inflicted by the State for the transgression of the law. Penalty in its general sense signifies pain; especially considered in the judicial sphere, it means suffering undergone, because of the action of human society, by one who commits crime.

Penalties are the punishment imposed by lawful authority upon a person who commits a deliberate or negligent act (People v. Moran, 44 Phil. 431)

They are prescribed by statutes and are essentially and exclusively **legislative in character**. Judges can only interpret and apply them and have no authority to modify or revise their range as determined by the legislature. (People v. Dela Cruz, GR 100386, Dec. 11, 1992)

> **Maximum Imposable:** The court cannot increase the penalty prescribed by any degree no matter how many aggravating circumstances are present.
>
> Thus, in homicide, even if there are 10 aggravating (not qualifying) circumstances without any mitigating, the penalty can only be increased to the maximum period of reclusion temporal and cannot be increased to reclusion perpetua.

Judicial Conditions Of Penalty

1. Must be productive of suffering, without however affecting the integrity of the human personality;
2. Must be commensurate with the offense – different crimes must be punished with different penalties;
3. Must be personal – no one should be punished for the crime of another;
4. Must be legal – it is the consequence of a judgment according to law;
5. Must be certain – no one may escape its effects;
6. Must be equal for all;
7. Must be correctional.

Prospectivity and Retroactivity

[Article 21-23, RPC]

Penalties that may be imposed
Nullum crimen nulla poena sine lege. This Latin maxim means there is no crime if there is no penal law punishing it. The law must exist prior to the commission of the crime. No felony shall be punishable by any penalty not prescribed by law prior to its commission. Unless there is a law penalizing an act or omission, or a habitual delinquent, the offender cannot be penalized, no matter how reprehensible the act may be. This supplements the ex post facto edict under the Constitution.

Regardless of the number of aggravating circumstances, the penalty cannot go higher than that prescribed by law, unless the nature of the crime has changed by any modifying circumstance.

> In habitual delinquency, the penalty for habitual delinquents may be higher than that prescribed by the law defining the crime, as there is another provision of law providing as such.

Criminal liability under the repealed law subsists:

1. When the provisions of the former law are reenacted; or
2. When the repeal is by implication; or
3. When there is a saving clause. (U.S. v. Cuna, 12 Phil. 241; Wing vs. U.S., 218 U.S. 272)

The right to punish offenses committed under an old penal law is not extinguished if the offenses are still punished in the repealing penal law. (People v. Rosenthal, 68 Phil. 328)

Incremental Penalty Rule
In crimes like Estafa and Theft, the penalty is based on the amount involved. The higher the amount, the higher the penalty. This is also provided by the law.

This higher penalty is also prescribed by law. The penalty prescribed by law is the base penalty for the brackets of the amounts mentioned in the law, but beyond the maximum amount stated therein, an additional penalty may be added to that base penalty.

> Thus, in art. 309 as amended by RA 10951, if the thing stolen exceeds 2.2M there shall be an additional penalty of 1-year imprisonment for each additional million which could reach up to 20 years.
>
> If such penalty ranges from 12 years and 1 day to 20 years, it shall be termed reclusion temporal.

Hisoler v People, G.R. No. 242737 (2019)

In arriving at the imposable penalty, the RTC and the CA concluded that since the subject amount of Php50,000.00 is Php 28,000.00 beyond the Php 22,000.00 ceiling set by law, the penalty to be imposed upon the petitioner should be taken within the maximum period of the penalty prescribed; and from the highest allowable duration thereof should be added the incremental penalty of two (2) years. Therefore, the RTC and the CA set the maximum period of indeterminate penalty to ten (10) years (8 years from the range of the maximum period of the penalty prescribed by law plus 2 years incremental penalty).

People v. Mandelma, G.R. No. 238910, [July 20, 2022], J. Hernando

In this case, the total amount defrauded is P51,500.00, and thus, pursuant to the above provision, the penalty prescribed is arresto mayor in its maximum period to prisión correccional in its minimum period, as the amount is over P40,000 but does not exceed P1,200,000. Applying the Indeterminate Sentence Law (ISL), the Court is guided by its disposition in People v. Dejolde, Jr., which also involved the application of RA 10951 vis-a-vis the third paragraph of Article 315, as amended, to wit:

However, in view of the recent enactment of RA 10951, there is a need to modify the penalties imposed by the CA insofar as the two counts of estafa, docketed as Criminal Case Nos. 27592-R and 27602-R, are concerned. For committing estafa involving the amounts of [P]440,000.00 and [P]350,000.00, Article 315 of the RPC, as amended by RA 10951, now provides that the penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed if the amount involved is over [P]40,000.00 but does not exceed [P]1,200,000.00. There being no mitigating and aggravating circumstance, the maximum penalty should be one (1) year and one (1) day of prision correccional. Applying the Indeterminate Sentence Law, the minimum term of the indeterminate sentence is arresto mayor in its minimum and medium periods, the range of which is one (1) month and one (1) day to four (4) months. Thus, the indeterminate penalty for each count of estafa should be modified to a prison term of two (2) months and one (1) day of arresto mayor, as minimum, to one (1) year and one (1) day of prision correccional, as maximum.

Retroactive effect of penal laws

**in addition to the discussion in the previous modules and in consonance with the discussion on penalties*

The prospectivity rule mandates that penal laws shall have only prospective application. Article 22 provides the exception when the law shall be given retroactive application.

Example:

- The favorable provisions of R.A. 7659 can be given retroactive effect to entitle the drug offender to a lesser penalty.

- By force of Art. 10, the beneficent provisions of Art. 22 shall apply and shall be given effect to crimes punished by special laws.
  However, Habitual delinquency would not apply to those convicted of drug offenses since it refers to convictions for the third time or more of the crimes of falsification, robbery, estafa, theft, serious and less serious physical injuries. (People v. Simon, GR 93028, July 29, 1994)

- The court can *sua sponte* apply Art. 22 even if not invoked by the accused, otherwise, the plain precept thereof would be useless and nugatory if courts were not under obligation to fulfill such duty, whether or not the accused has applied for it, just as would also all provisions relating to prescription of crime and penalty. (id.) (Contra: People v. Bon which held that habeas corpus petition must be filed.)

Effect of Pardon by the Offended Party

GR: If the act constitutes a crime, it is now beyond the control of the private offended party. Because the real offended party will now be the People of the Philippines. Hence, the pardon by the private offended party, as a general rule, will have no bearing in the prosecution of the offense.

"A pardon by the offended party does not extinguish criminal action." – Even if the injured party already pardoned the offender, the fiscal can still prosecute the offender. Such pardon by the offended party is not even a ground for the dismissal of the complaint or information.

Reason: A crime committed is an offense against the State.

In criminal cases, the intervention of the aggrieved parties is limited to being witnesses for the prosecution. (People. Despavellador)

XPN: Incipient criminal liability - crimes that are not yet ripened.

Examples:

1. **Estafa (Significance of demand letters) -** Estafa committed by the abuse of trust and confidence found in Art 315 1(b).

   Here, there is an obligation to return something. And then, the perpetrator misappropriated it with abuse of trust and confidence.

   The SC has ruled that in that kind of estafa, you cannot file a case without a demand. In a sense the demand has become one of the elements of the crime. Without which, the filing of the case will be premature.

2. **BP 22 -** The fact alone that the check bounced will not yet make the drawer criminally liable. In order to make him liable, the payee must make a written notice of dishonor. Without which, the crime is not yet ripe.

   Although it would seem that the main elements of the crime are already committed, at that stage, the private offended party still has control as to whether the case should proceed to trial or not.

Because if they will settle or he will waive by not making a demand, the criminal prosecution will not prosper.

During this stage, the pardon by the offended party will have a bearing. It is therefore not up to the state to proceed with the prosecution of the case.

3. **Private crimes** – the plaintiff is still the People of the Philippines; However, they cannot be prosecuted by the state without the concurrence of the private offended party

There are only 5 of them:

1. Concubinage,
2. Adultery,
3. Seduction,
4. Abduction,
5. Acts of lasciviousness and
6. Defamation relating to those mentioned above.

Rape used to be a private crime; amended, making it a public crime. However, under the law of rape, the pardon of the offended party, which is only in the form of marriage, will extinguish the criminal liability.

In Art 344, if the victim of a rape pardons a rapist, then the criminal liability of the pardoned rapist will be extinguished. But that is PERSONAL only as to him and will NOT benefit the conspirators of the rapist.

"Except as provided in Art. 344 of this Code." – The offended party in the crimes of **adultery and concubinage** cannot institute criminal prosecution, if he shall have consented or pardoned the offenders. (Art. 344, par.2)

In the **crimes of seduction, abduction, rape or acts of lasciviousness,** there shall be no criminal prosecution if the offender has been expressly pardoned by the offended party or her parents, grandparents, or guardian, as the case may be. The pardon must be express.

Generally, the effect of pardon will only affect the civil liability, not the criminal liability.

Purpose of Penalties

The purposes of prescribing penalty for the commission of the crime are:

1. **Prevention** - The State must punish the criminal to prevent or suppress the danger to the State arising from the criminal acts of the offender.
2. **Self-defense** - The State has the right to punish as a measure of self-defense so as to protect society from the threat and wrong inflicted by the criminal.
3. **Reformation** - The object of punishment in criminal cases is to correct and reform the offender.
4. **Exemplarity** - The criminal is punished to serve as an example to deter others from committing crimes.
5. **Justice** - That crime must be punished by the State as an act of retributive justice, a vindication of absolute right and moral law violated by the criminal.

Imposable Penalties

Prescribed Penalty	Imposable Penalty	Penalty Actually Imposed
As to Definition		
An initial penalty as a general prescription for the felonies defined therein which consists of a range of period of time.	Penalty after the attending or modifying circumstances have been appreciated	A single fixed penalty (also called a **straight penalty**) chosen by the court
Example: (As Applied to homicide)		
Reclusion temporal	One ordinary aggravating and no mitigating circumstances: reclusion temporal in its maximum period	17 years, 4 months and 1 day of reclusion temporal

Prohibition of the Imposition of Death Penalty ★

The imposition of the penalty of death is prohibited. (Section 1 of R.A. No. 9346) In lieu of the death penalty, the following shall be imposed:

1. The penalty of **reclusion perpetua**, when the law violated makes use of the nomenclature of the penalties of the Revised Penal Code; or
2. The penalty of **life imprisonment**, when the law violated does not make use of the nomenclature of the penalties of the Revised Penal Code. (Section 2)

Person convicted of an offense punished with reclusion perpetua, or whose sentences will be reduced to reclusion perpetua from death penalty shall not be eligible for parole under the Indeterminate Sentence Law. (Section 3)

Nature Of Penalties

1. Imprisonment
2. Fines
3. Destierro
4. Community Service (RA 11362 authorizing community service)

Imprisonment

When imposed as a penalty, imprisonment must be served in a facility approved by the court. These facilities are usually operated by the BuCor.

Light sentences may be served in a facility operated by the BJMP under the DILG or LGU. These are sentences of three (3) years or lower.

Under GCTA, or the Good Conduct Time Allowance Law, the term prisons are different from the term jails.

- **Prisons** are those where convicts serve their sentences such as Muntinlupa.
- **Jails** are detention facilities for those who are not yet convicted.

  Ex. The CPDRC, or the Mandaue City Jail.

Fines

Which are pecuniary in nature.
The fine contemplated in Art. 25 is that which is imposed by a court, even if imposed for the violation of a local ordinance.

"Administrative fines" for regulatory purposes imposed by administrative agencies are not covered here under criminal law because strictly speaking, they are not considered criminal in nature.

Ex. Those imposed by LTO for failure to wear a helmet or those imposed by the DENR for dolomite mining.

Destierro

Destierro is a correctional penalty. It involves the restriction of freedom and movement.

It is a divisible penalty and has a duration of 6 months and 1 day to 6 years. This penalty consists in prohibiting the convict from entering a designated place within the radius of 25 - 250km from the designated place.

In terms of the gravity of the penalty of destierro, it is considered higher than arresto mayor because the duration is longer than arresto mayor but for purposes of service of sentence, destierro is considered lower than arresto menor, meaning that if there are several penalties, arresto menor has to be served first before destierro.

When imposed?

- Serious physical injuries or death under exceptional circumstances (Art.247)
- Failure to give bond for good behavior (Art.284)
- Penalty for concubine in concubinage (Art.334)
- In cases where after reducing the penalty by one or more degrees, destierro is the proper penalty.

Community Service (RA 11362)
Consist of any actual physical activity which inculcates civic consciousness, and is intended towards the improvement of a public work or promotion of a public service. May be imposed in lieu of arresto menor or arresto mayor.

Note: If exercised as penalty, that's not community service

Measures of Prevention or Safety

[Article 24, RPC]

The following shall not be considered as penalties:

1. Detention of accused (not convicted) persons;
2. Detention and hospitalization of insane persons;
3. Commitment of minors to institutions;
4. Suspension of employment during trial or in order to institute proceedings;
5. Administrative fines as disciplinary measures;
6. Deprivation of rights and reparations

The five measures in Article 24 of RPC are not penalties for otherwise, it will violate the constitutional provision on presumption of innocence and because these measures are not imposed as a result of a trial on the merits.

However, Art. 29 provides that the period of preventive imprisonment will be deducted from the term of imprisonment.

Detention of accused not convicted

Others call this **pretrial detention**.

The guys in BBRC and CPDRC are not yet convicted. Their detention is not considered penalty, because they have not yet been found guilty beyond reasonable doubt. That is why the detainees can still exercise their rights. They can still vote.

Ex. De Lima and Trillanes can still run for office.

Once a person is already convicted, depending on the penalty, there will be accessory penalty which may include either perpetual or temporary disqualification from holding office.

Detention and hospitalization of insane persons

If an insane person commits a crime and at the time of the commission of the crime, he was already insane, he cannot be held criminally liable.

There is no criminal liability that can be attached to him and this is not the type of detention we are talking about here.

BUT if a person commits a crime, and after the commission of the crime, he becomes insane, he cannot also be made to serve his sentence because he is still insane.

The insanity can occur during trial or after conviction, but it must not happen during the commission of the crime. This person must be sent to a medical facility and his confinement in such facility shall not be considered as a penalty.

Commitment of minors to institutions

Such as Operation Second Chance or Bahay Pag-Asa, they are not there for as a penalty but for detention intervention programs.

As of now, the prisons for those who are not yet detained and are presumed innocent are the miserable ones, as compared to those convicted ones, they have better accommodations.

Suspension of employment or public office during trial or in order to institute proceedings

We are talking here of **preventive suspension.** *(Suspension can be a penalty for an administrative offense, which is not the kind of suspension in number 4.)*

Preventive suspension pending investigation is not a penalty, but a measure intended to enable the disciplining authority to investigate the charges against respondent preventing the latter from intimidating or in any way influencing witnesses against him.

> If the investigation is not finished and a decision is not rendered within that period, the suspension will be lifted and he will automatically be reinstated. If after investigation the respondent is exonerated, he should be reinstated. (Gloria v. CA, GR 131012, April 21, 1999)

Preventive suspension is not a penalty for it is not imposed as a result of judicial proceedings. In fact, if acquitted, the respondent shall be entitled to reinstatement and to the salaries and benefits he failed to receive. (Santiago v. SB, GR 128055, April 18, 2001)

Three kinds of suspension:

1. Preventive suspension in administrative investigation;
2. Suspension pendente lite issued by the courts upon filing a valid information against public officers facing anti-graft cases under Sec. 13 of R.A. 3019; and
3. Suspension as penalty imposed by the Ombudsman against public officers in administrative cases pursuant to the Constitution.

Administrative fines as disciplinary measures

Ex. Fines by LTO for not wearing helmet.

Fines under penal statute can only be enforced by the court. Hence, even violations of traffic ordinances are filed in court because these ordinances are penal in nature not administrative.

Deprivation of rights and reparation

Reparations are not penalties of course because these are part of civil liability and not of criminal liability. It may go together with criminal liability but not as criminal liability itself.

CLASSIFICATION

[Article 25, RPC]

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

1. **Principal Penalties**
   a. Capital punishment:
   b. Death.
   c. Afflictive penalties:
   d. Reclusion perpetua,
   e. Reclusion temporal,
   f. Perpetual or temporary absolute disqualification,
   g. Perpetual or temporary special disqualification,
   h. Prision mayor.

2. **Correctional penalties:**
   a. Prision correccional,
   b. Arresto mayor,
   c. Suspension,
   d. Destierro.

3. **Light penalties:**
   a. Arresto menor,
   b. Public censure.

4. **Penalties common to the three preceding classes:**
   a. Fine, and
   b. Bond to keep the peace.

5. **Accessory Penalties**
   a. Perpetual or temporary absolute disqualification,
   b. Perpetual or temporary special disqualification,
   c. Suspension from public office, the right to vote and be voted for, the profession or calling.
   d. Civil interdiction,
   e. Indemnification,
   f. Forfeiture or confiscation of instruments and proceeds of the offense,

g. Payment of costs

Note: No penalty shall be imposed not bearing the nomenclature of under Art. 25 above.

Courts must employ the proper nomenclature, such as reclusion perpetua, not life imprisonment; or 10 days of arresto menor not 10 days of imprisonment. (People v. Latupan)

General Classification

1. **Principal Penalties** - Those expressly imposed by the court in the judgment of conviction.

2. **Accessory Penalties** - Those that are deemed included in the imposition of the principal penalties by operation of law. As such, they need not be expressly stated in the decision. (Art. 73, RPC).

    - By operation of Articles 40-45 and 73, a corresponding accessory penalty automatically attaches every time a court lays down a principal penalty outlined in Articles 25 and 27.

    - The applicable accessory penalty is determined using as reference the principal penalty imposed by the court before the prison sentence is computed in accordance with the ISL. This determination is made in spite of the two classes of penalties mentioned in an indeterminate sentence.

      It must be emphasized that the provisions on the inclusion of accessory penalties specifically allude to the **actual "penalty"** imposed, not to the "prison sentence" set by a court.

      The ISL did not intend to have the effect of imposing on the convict two distinct sets of accessory penalties for the same offense. The two penalties are only relevant insofar as setting the minimum imprisonment period is concerned, after which the convict may apply for parole and eventually seek the shortening of the prison term. (People v. CA, GR 154954, Dec. 1, 2014)

Note: The following may be principal or accessory penalties, because they are formed in the two general classes: [Reyes, Book 1]

1. Perpetual or temporary absolute disqualification
2. Perpetual or temporary special disqualification (e.g., Arts. 226-228, RPC)
3. Suspension (e.g., Art. 236, RPC)

Classification of Fine

1. Single penalty (P40,000);
2. Alternative penalty (P40,000 or arresto menor); or
3. Additional penalty (P40,000 and arresto menor).

If the law prescribed an **alternative penalty** of fine or imprisonment, the court in sentencing the accused must choose between fine and imprisonment. The court cannot sentence the accused to suffer fine or imprisonment. To do so, is to allow the accused to choose in serving the penalty between fine and imprisonment, which is a violation of the principle of non-delegation of power. The law delegates to the court the discretionary power to impose fine or imprisonment. The court cannot re-delegate such discretion to the accused by sentencing him to suffer fine or imprisonment.

Two or more accused could not be sentenced to pay fine jointly and severally because in case of non-payment thereof by reason of insolvency, the subsidiary imprisonment could not be fixed. Subsidiary imprisonment is a penalty which must be served only by the culprit who failed to pay it due to insolvency. (People v. Lopez, [CA] 71 O.G. 7824)

Fine (Art. 26, RPC (as amended by Republic Act No. 10951,[August 29, 2017])

1. Afflictive – if it exceeds P1,200,000;
2. Correctional – P40,000 to P1,200,000; and
3. Light – less than P40,000.

Art. 26, RPC determines the classification of a fine whether imposed as a single (e.g. fine of P200 to P6000) or as an alternative (e.g. penalty is arresto mayor OR a fine ranging from P200 to P1000) penalty for a crime.

The rule does not apply where the fine involved is in a compound penalty, that is, it is imposed in conjunction with another penalty. In this case, the highest penalty shall be made the basis for computing the period for the prescription of crimes (Art. 90)

Where the fine in question is exactly P200 under Art. 9, it is a light felony, hence, the felony involved is a light felony; whereas under Art. 26, it is a correctional penalty; hence, the offense involved is a less grave felony.

It has been held that this discrepancy should be resolved liberally in favor of the accused, hence Art. 9 prevails over Art. 26. (People v. Yu Hai, G.R. No. L-9598) But according to Justice Regalado there is no such discrepancy. What is really in issue is the prescription of the offense vis-à-vis the prescription of the penalty, the former being the forfeiture of the right of the State to prosecute the offender and the latter being the loss of its power to enforce the judgment against the convict.

In determining the prescription of crimes, apply Art. 9 (P40,000 fine is light felony).

In determining the prescription of penalty, apply Art. 26 (P200 fine prescribes in 10 years).

Classification of Felony

1. **Grave** - are those to which the law attaches the capital punishment or penalties which in any of their periods are afflictive. (e.g., reclusion perpetua, reclusion temporal, prision mayor or a fine exceeding P1,200,000.)

2. **Less Grave** - are those which the law punishes with penalties which in their maximum period are correctional (e.g., prision correccional, arresto mayor or a fine not less than P40,000 but not exceeding P1,200,000).

3. **Light** - are those infractions of law for the commission of which the penalty of arresto menor or a fine not exceeding P40,000 or both is provided.

   Note: If the penalty of fine for the crime committed is exactly P40,000, the felony is classified as light in accordance with Article 9 because the prescribed fine is **not exceeding P40,000.**

Significance:
The purpose of this classification, under Article 9 of the Revised Penal Code, is to ascertain:

1. Whether the offender is liable for attempted and frustrated felony under Article 7 of the Revised Penal Code;
2. Whether the offender is liable as accessory under Article 16;
3. The period of subsidiary imprisonment under Article 39;
4. If the crime can be complexed with another crime resulting from the same act under Article 48;
5. The penalty for crime with incomplete accident under Article 67; and
6. The penalty for reckless imprudence under Article 365.

Other Classifications

1. **According to Divisibility**

   Divisible - Those that have fixed duration and can be divided into three periods: *minimum, medium, maximum.*
      1. Reclusion temporal
      2. Prision mayor
      3. Prision correccional
      4. Suspension
      5. Destierro
      6. Arresto mayor
      7. Arresto menor

   Note: The range of the minimum, medium and maximum periods fixed in accordance with Article 76 is one-third equal portion of the respective penalties except arresto mayor. Under Article 76, the minimum period of arresto mayor ranges from 1 month and 1 day to 2 months; medium period from 2 months and 1 day to 4 months; and maximum period from 4 months and 1 day to 6 months.

   Indivisible - Those that have no fixed duration.
      1. Death
      2. Reclusion perpetua
      3. Perpetual absolute/special disqualification
      4. Public censure

Significance: Because in the graduation of penalties and in application of ordinary mitigating or aggravating or ISLAW, that has to be considered. If the penalty is indivisible, we do not apply ISLAW.

2. **According to Subject Matter**
      a. Corporal – Death.
      b. Deprivation of freedom – Reclusion, prision, arresto.
      c. Restriction of freedom – Destierro.
      d. Deprivation of Rights – Disqualification, suspension. (i.e. disqualification from running into office, Civil Interdiction)
      e. Pecuniary – Fine.

3. **According to Gravity** [Art. 9, 25, and 26, RPC]
      a. Capital
      b. Afflictive
      c. Correctional
      d. Light

Significance: The prescriptive period depends on the gravity of the penalty. If the penalty is afflictive, the prescriptive period is longer up to 20 years. If it is correctional, it can be from 10 or 5 years; and light felonies, which are prescribed in 60 days.

DURATION AND EFFECTS

Capital Punishment

The death penalty shall be imposed in all cases in which it must be imposed under existing laws, except in the following cases (reclusion perpetua shall be imposed):

1. When the guilty person is more than seventy (70) years of age at the time of the commission of the crime [Art. 47, RPC, as amended by R.A. 9344]
2. When the guilty person is below eighteen (18) years of age at the time of the commission of the crime [Art. 47, RPC, as amended by R.A. 9344]
3. When upon appeal or automatic review of the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty [Art. 47, RPC, as amended by R.A. 9346].

Abolition of Death Penalty

R.A. 9346 (Act Prohibiting the Imposition of Death Penalty) provides for:

1. Prohibition on death penalty [Sec. 1, R.A. 9346]
2. Repeal of R.A. 8177 (Act Designating Death by Lethal Injection) and R.A. 7659 (Death Penalty Law) [Sec. 1, R.A. 9346]
3. In lieu of death penalty, following shall be imposed:
    a. Reclusion perpetua - if the law violated uses the RPC's nomenclature; and
    b. Life imprisonment - if it does not [Sec. 2, R.A. 9346]

Constitutional Prohibition

In the constitutional prohibition on death penalty [Art. III, Sec. 19(1), 1987 Constitution], the latter is placed in a "suspensive condition" or in a "state of hibernation." It is included in the computation of penalty but not imposed.

"Death" as used in Art. 71, RPC, shall no longer form part of the equation in the graduation of penalties. For example, the determination of his penalty for attempted rape shall be reckoned not from two degrees lower than death, but two degrees lower than reclusion perpetua [People v. Bon, G.R. No. 166401 (2006)].

Take note:

- The 1987 Constitution merely suspended the imposition of death penalty. R.A. No. 7659 restored the death penalty while R.A. No. 9346 abolished the death penalty. 2nd OP to the ICCPR, signed by the Philippines in 2006, provides for abolition of death penalty.
- RA 9346 converts death penalty to reclusion perpetua or life imprisonment (PP vs. Bon, GR No. 166401, Oct. 30, 2006)
- With the abolition of the death penalty by RA 9346, the penalty for Qualified Rape is reclusion perpetua.
- Pursuant to People v. Bon, the penalty for attempted rape should be reckoned from reclusion perpetua. (People v. Brioso, GR 182517, March 13, 2009)
- Arpon and Sarcia said that when the reduction of attempted felony is due to the privileged mitigating circumstance of minority, the lowering should be reckoned from death penalty.
- Debarring the death penalty through R.A. 9346 did not declassify those crimes previously catalogued as "heinous" (in R.A. 7659).
- R.A. 9346's amendments extend only to the application of the death penalty but not to the definition or classification of crimes. It does not serve as a basis for the reduction of civil indemnity and other damages that adhere to heinous crimes [People v. Bon, supra].

Reclusion Perpetua

[Article 27, RPC]

The penalty of reclusion perpetua shall be from 20 years and 1 day to 40 years.

30 Years

If the penalty prescribed by law is reclusion perpetua, the maximum is only 30 years.

Per RA 10951, credit for **preventive imprisonment** (before conviction) for Reclusion Perpetua is 30 years.

> It means that if a person is accused of a crime where the penalty is Reclusion Perpetua but it took so many years for the trial to be terminated such that after 30 years the trial is still on going, then the accused should be credited with his preventive imprisonment and after 30 years he should be released because that is the maximum of RP for purposes of preventive suspension.

For purposes of pardon and 3-fold, RP is 30 years.

40 Years

If the reclusion perpetua was arrived at because the penalty prescribed by law cannot be imposed, we have to settle to that kind of reclusion perpetua that is higher compared to the reclusion perpetua that is prescribed by law for a crime– so 40 years.

When the penalty of death cannot be imposed pursuant to Art. 74, the period of imprisonment should be fixed at 40 years of reclusion perpetua.

> *Art. 74 – If the penalty is not specifically designated but would have been death, it cannot anymore be imposed by reason of RA 9346, but the accessory penalties thereto under Art. 40 can still be imposed. Hence, the higher penalty to reclusion perpetua is still reclusion perpetua, but with higher accessory penalty.*

Purpose

There would be no difference at all between Reclusion Perpetua imposed as the penalty next higher in degree and reclusion perpetua imposed at the penalty fixed by law if both are to be served for 40 years.

> **In Celestial v. People,** the accused was convicted of qualified theft with a penalty 2 degrees higher than simple theft. Based on the amount taken, the penalty should be 2 degrees higher than reclusion temporal. The penalty should have been death which is supposedly the penalty 2 degrees higher than reclusion temporal.
>
> So we apply Art. 74. We will term the penalty as reclusion perpetua even if it is not actually reclusion perpetua that is prescribed by law.

This is the kind of reclusion perpetua that has a maximum of 40 years, and the accessory penalties that go with it are not the accessory penalties reclusion perpetua, but shall be the accessory penalties of death.

The proper penalty to be imposed in this case, therefore, is **40 years of reclusion perpetua with the accessory penalties of death.** (Celestial v. People, GR 214865, Aug. 19, 2015)

Indivisibility

Reclusion perpetua remains to be an indivisible penalty and, when it is the prescribed penalty, should be imposed in its entirety, i.e., reclusion perpetua sans a fixed period for its duration, regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime [People v. Ticalo, G.R. No. 138990 (2002)].

Considering that it is an indivisible penalty, it is also unnecessary for the court to specify the length of imprisonment [People v. Ramirez, G.R. No. 138261 (2001)].

People v. Zacarias, GR 138990, Jan. 30, 2002

Wally Ticalo was convicted of murder by the Regional Trial Court, Branch 35, of Ormoc City, and was sentenced to serve the penalty of reclusion perpetua for the death of Christopher Sacay. He was charged, together with three other persons.

Reclusion perpetua is the penalty immediately higher than reclusion temporal which has a duration of twelve years and one day to twenty years.

The minimum range of reclusion perpetua should then, by necessary implication, start at 20 years and 1 day while the maximum thereunder could be co-extensive with the rest of the natural life of the offender.

Article 70, however, provides that the maximum period in regard to the service of sentence shall not exceed 40 years.

Reclusion perpetua remains to be an indivisible penalty and, when it is the prescribed penalty, should be imposed in its entirety, i.e., reclusion perpetua sans a fixed period for its duration, regardless of any mitigating or aggravating circumstance that may have attended the commission of the crime.

In prescribing the penalty of reclusion perpetua, its duration in years, in fine, need not be specified.

People v. Tena, GR 100909, Oct. 21, 1992

In 1988, Altamarino Sr. was found dead inside the bedroom of his house in Quezon. He was laid in an orderly manner on his bed with eight (8) stab wounds with a fracture on the head and wound on his eyebrow.

The house was missing a diamond ring, Rolex and Seiko watches, as well as other rings and dollars. The caretakers of the deceased were suspected but no evidence was found. Ultimately, it was traced back to a syndicate, and a member named Camota was interrogated. He confessed in participating in the robbery, pointing to Tena and other persons as companions.

An information for Robbery with Homicide was filed against them, where the trial court rendered the penalty of thirty (30) years of reclusion perpetua for the complex crime of robbery with homicide, changing the typo from twenty (20) to thirty (30). Tena appealed, stating inadmissibility of evidence but was denied.

SC ruled that **there was no need to specify the duration in years of reclusion perpetua when imposed as a penalty.** *Article 27 of the RPC already imposes the minimum and maximum ranges*. The article simply declares that any person "sentenced to any of the perpetual penalties shall be pardoned after undergoing the penalty for thirty years, unless such person by reason of his conduct or some other serious cause shall be considered by the Chief Executive as unworthy of pardon." The provision's intendment is that a person condemned to undergo the penalty of reclusion perpetua shall remain in prison perpetually, or for the rest of his natural life; however, he becomes eligible for pardon by the Chief Executive after he shall have been imprisoned for at least thirty years, unless he is deemed unworthy of such a pardon.

In applying the three-fold rule (computation of the maximum duration of the convict's sentence when serving two or more penalties should not exceed three-fold the length of time corresponding to the most severe of the penalties imposed upon him), the duration for reclusion perpetua should be at thirty (30) years. This is only to serve as basis for determining the convict's eligibility for pardon or for the application of the threefold rule in the service of multiple penalties.

The RPC has set the minimum and maximum range for reclusion perpetua. The inclusion of thirty (30) years is merely for the basis in pardon or computing the three- fold rule.

Note: There is no mandatory automatic review of reclusion perpetua.

If the convict does not appeal, the penalty will become final and executory. (Garcia v. People, GR 106531, Nov. 18, 1999)

Consequently, escape of the convict ipso facto makes the decision imposing reclusion perpetua final and executory.

A.M. No. 15-08-02-SC, in rel. to Sec. 3, R.A. 9346

Conditions	Effect
Convicted of offense punished with or reduced to reclusion perpetua	Ineligible for parole under Indeterminate Sentence Law (ISLAW)
When death penalty is not warranted	No need to use qualification of "without eligibility for parole" as convicted persons penalized with an indivisible penalty are not eligible for parole
When death penalty is warranted, if not for R.A. 9346	Must use qualification "without eligibility for parole" to qualify reclusion perpetua and to emphasize that the accused should have been sentenced to suffer the death penalty if not for R.A. 9346.

Reclusion perpetua and life imprisonment are distinguished as follows:

	Cadena Perpetua (Life Imprisonment)	Reclusion Perpetua
As to Offenses	Imposed for serious offenses penalized by special laws	Prescribed under the RPC
As to Accessory Penalties	No accessory penalties	With accessory penalties
As to Duration	Does not appear to have any definite extent or duration	Entails imprison-ment for at least 30 years after which the convict becomes eligible for pardon although the maximum period shall in no case exceed 40 years
Applicability of Art. 74	*(Fiscal: Does not apply, so there is no more penalty higher than life imprisonment)*	Applies

Note: **"RP imposed in RPC; LI imposed in SPL"** – not accurate anymore because RP is also a penalty imposed in crimes punished under special penal laws, but there used to be that classification. Many recent SPLs now impose RP.

As early as 1948, it was made clear that reclusion perpetua is not the same as life imprisonment. S.C. A.C. 6-A-92 enjoins strict observance of their distinctions to curb the erroneous practice of using them interchangeably in the imposition of penalty for serious offenses like murder.

People v. Latupan, GR 112453-56, June 28, 2001

Latupan was convicted of double murder and sentenced to life imprisonment. Armed with a pointed knife, Latupan attacked the Asuncions, killing two of them.

The penalty for murder at the time of commission (1991) was reclusion temporal to death. The proper imposable penalty is reclusion perpetua (RP), not life imprisonment (LI).

Reclusion perpetua and life imprisonment are not the same; they are distinct in duration and penalties in the following ways:

(1) Life imprisonment is imposed for serious offenses penalized by special laws, while RP is prescribed under the RPC;
(2) LI doesn't have any accessory penalties, while RP does; and
(3) LI does not have a definite period, while RP entails imprisonment for at least thirty (30) years after which the convict may be pardoned. It shall not exceed 40 years.

Destierro

Destierro is a principal, correctional, and divisible penalty.

Applicability

Destierro applies in the following cases: [F- ICE]

1. In case of Failure to give bond for good behavior [Art. 284, RPC]
2. Serious physical Injuries
3. Penalty of Concubine in concubinage [Art. 334, RPC]
4. Death under Exceptional circumstance [Art. 247, RPC]
5. In cases where after reducing the penalty by one or more degrees, destierro is the proper penalty. [REYES, Book 1]

Duration

Destierro lasts from 6 months and 1 day to 6 years [Art. 27, RPC].

Nature of Destierro

Those sentenced to destierro are not allowed to enter the place/s designated in the sentence or within the 25-250 km. radius specified [Art. 87, RPC].

Although destierro does not constitute imprisonment, it is still a deprivation of liberty. Art. 29 of the RPC applies when the penalty is destierro [People v. Bastasa, G.R. No. L-32792 (1979)].

Penalties Common to Afflictive, Correctional, and Light Penalties

Fines

Classification of Penalty

Art. 26 merely classifies fine and has nothing to do with the definition of offenses. Hence, Art. 9 should prevail over Art. 26 where the prescription of a crime and not the prescription of a penalty is the question [People v. Yu Hai, G.R. No. L-9598 (1956)].

Rules in Fines

1. The court can fix any amount of the fine within the limits established by law but must consider:
    a. Mitigating and aggravating circumstances
    b. Wealth or means of the culprit [Art. 66, RPC]
2. When the law does not fix its minimum – the determination of the amount of is left to the sound discretion of the court, provided within the maximum authorized by law [People v. Quinto, G.R. No. 40934 (1934)].
3. Fines are not divisible

Increasing or Reducing Fine

Fines are graduated into degrees when imposing them upon accomplices and accessories or in principals in frustrated/attempted felonies [Arts. 50-57, RPC].

If it is necessary to increase/reduce the penalty of fine by 1 or more degrees it shall be increased/reduced respectively or each degree by one-fourth (1/4) of the maximum prescribed amount by law without changing the minimum. This shall also be observed with fines that are made proportional [Art. 75, RPC].

This does not apply when there is no minimum amount fixed by law, in which case the amount imposed is left to the sound discretion of the courts [People v. Quinto, G.R. No. L-40934 (1934)].

	Fine With Minimum	**Fine Without Minimum**
As to What Fixes the Maximum	In both, the law fixes the maximum of the fine.	
As to the Court Imposing the Minimum	The Court cannot change the minimum.	The Court can impose any amount not exceeding the maximum.
When Court Also Fixed the Maximum	The Court can impose an amount higher than the maximum.	The Court cannot impose an amount higher than the maximum.

Note: There are penalties under the RPC which provide for the penalty of imprisonment and the penalty of fine, sometimes the word used is "and", sometimes the word used is "or"

Q: What will be the basis of the prescriptive period if the penalty prescribed by law is either a fine or imprisonment or both?

Ex. The penalty for imprisonment is only arresto menor but the penalty of fine is P60k *because arresto menor falls under the category of light penalty but we are talking about the fine, that would fall under the category of correctional.* So which of them now controls?

The SC decided in the case of PP vs. Basalo, if this happens what controls is the higher penalty. So, if the higher penalty is the fine, then that would be the basis for the prescriptive period.

This can happen in cases of imprudence resulting in damage to property because the penalty of imprisonment for imprudence is very low whereas for damage to property, the basis for the penalty of fine is the amount of the damage or the value of the thing damaged.

Bond to Keep Peace

Bond to Keep the Peace

1. Afflictive – if it exceeds P1,200,000;
2. Correctional – P40,000 to P1,200,000; and
3. Light – less than P40,000.

Imposed only in the crime of threats (Art. 284), either grave (Art. 282) or light (Art. 283).

Effect of Penalty:

1. Offender must present two (2) sureties who shall undertake that the offender will not commit the offense sought to be prevented and that they will pay a court-determined amount if said offense be committed.
2. Offender must Deposit amount to the clerk of court.
3. Offender must be Detained if he cannot give the bond.

a. Grave/less grave felonies - not more than 6 months
b. Light penalties - not more than 30 days for light penalties. [see Art. 35, RPC]

Duration
The bond to keep the peace shall be required to cover such period of time as the court may determine [Art. 27, RPC, as amended by R.A. 7659].

Applicability

GR: Since according to Art. 21 no felony shall be punishable by any penalty not prescribed by law prior to its commission, and the bond to keep the peace is not specifically provided for by the Code for any felony, it shall be required to cover such a period of time as the court may determine [As amended by Section 21, R.A. No. 7659]

XPN: Bond to keep the peace is required of a person making a grave or light threat [Art. 284, RPC].

	Bond to Keep the Peace	**Bail Bond**
As to Purpose/ Applicability	Penalty for offense of grave/light threat	Posted to provisional release of a person arrested/ accused of a crime

Termination of Parental Authority
Unless subsequently revived by a final judgment, parental authority also terminates [Art. 229, RPC]:
1. Upon judicial declaration of abandonment of the child in a case filed for the purpose; or
2. Upon final judgment of a competent court divesting the party concerned of parental authority; xxx

When Duration of Penalty Begins [Art. 28, RPC]

Scenario	**When Duration of Penalty Commences**
When offender is in prison	Duration of temporary penalties is from the day on which the judgment of conviction becomes final.
When offender is not in prison	Duration of penalty consisting of deprivation of liberty is from the day the offender is placed at the disposal of judicial authorities for the enforcement of the penalty.
For other penalties	From the day on which the offender commences to serve his sentence.
When the accused, who was in custody, appealed	From the date of the promulgation of the decision of the appellate court. [Ocampo v. CA, G.R. No. L-7469 (1955)]
Temporary Penalties	
If offender is undergoing preventive imprisonment	From day on which the judgment of conviction becomes final, but offender is entitled to a deduction of full time or 4/5 of the time of detention
If offender is not under detention because offender was released on bail	From the day on which the offender commences to serve his sentence

APPLICATION

GR: The penalty prescribed by law in general terms shall be imposed:
1. Upon the principals; and
2. For consummated felony. (Art. 46, RPC)

XPN:
When the law fixes a penalty for the frustrated or attempted felony in cases where law considers that the penalty lower by 1 or 2 degrees corresponding to said acts of execution is not proportionate to the wrong done. (Reyes, Book I)

Application of Penalties

1. **Degree of penalty** refers to full extent of a penalty prescribed by law and that of the graduated penalty.

2. **Period** is the one-third portion of a divisible penalty. Period may be a prescribed penalty in period or a proper imposable penalty.

    a. The penalty of arresto mayor in its minimum period prescribed by Article 287 of the Revised Penal Code, for light coercion is a **prescribed penalty in period**.

    b. If the crime is attended by mitigating circumstance, the minimum period of arresto mayor in its minimum period is the **proper imposable period**.

3. **Compound penalty** is composed of two distinct penalties. Reclusion perpetua to death prescribed for murder is a compound penalty.

4. **Complex penalty** is composed of three distinct penalties. Reclusion temporal to death for treason committed by resident alien is a complex penalty.

5. **Compound period** is composed of two distinct penalties in period. Prision correccional in its medium and maximum periods prescribed for theft is a compound period.

6. **Complex period** is composed of three penalties in period. Prison correccional in its maximum period to prision mayor in its medium period prescribed for robbery is a complex period. Complex period is considered as a complex penalty.

(Take note also of the difference between indivisible and divisible penalties. Because in the graduation of penalties and in application of ordinary mitigating or aggravating or ISLAW, that has to be considered. If the penalty is indivisible, we do not apply ISLAW.)

Indeterminate Sentence Law

(Act No. 4103, as amended)

Approved on June 19, 1965.

Purpose

The law is intended to favor the defendant, particularly to shorten his term of imprisonment, depending upon his behavior and his physical, mental and moral record as a prisoner, to be determined by the Board of Indeterminate Sentence.

The basic purpose of the law is to uplift and redeem valuable human material and prevent unnecessary and excessive deprivation of liberty and economic usefulness. (People v. Ducosin, G.R. No. L-38332)

Principle of Pro Reo

The fundamental principle in interpreting and applying penal laws is the principle of pro reo. The phrase in dubio pro reo means when in doubt, for the accused. The Indeterminate Sentence Law is intended to favor the accused particularly to shorten his term of imprisonment. Hence, pro reo principle must be used in interpreting Islaw.

Applicability

GR: Applicable to those sentenced with imprisonment exceeding one (1) year.

Application of the law is based on the penalty actually imposed. Hence, in a case where the court imposes a penalty of prisión correccional minimum (6 months and 1 day), ISLAW does not apply [People v. Moises, G.R. No. L-32495 (1975)].

XPNs:
Not applicable when unfavorable to the accused [People v. Nang Kay, 88 Phil. 515, 519]

Note: ISLAW applies to SPL. If the penalty provided is fixed, the penalty under ISLAW shall be within those limits. The maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same.

If the penalty is borrowed from RPC, the rules for RPC shall apply. (PP vs. Simon, July 29, 1994)

"Indeterminate Sentence"
However, his release upon serving the minimum penalty is indeterminate since the President may or may not place him on parole.

After serving the minimum, the convict may be released on parole, OR if he is not fitted for release, he shall continue serving his sentence until the end of the maximum [People v. Ducosin, G.R. No. L-38332 (1933)].

Mandatory Application
Application of ISLAW is mandatory because the law employs the phrases "convicts shall be sentenced" and "the court shall sentence the accused to an indeterminate sentence" [People v. Yu Lian, CA 40 OG 4205]. The Application of the ISLAW is mandatory to both the Revised Penal Code and the special laws [Romero v. People, G.R. No. 171644 (2011)].

Note: ISLAW is mandatory only for sentences involving imprisonment (unless the sentence constitutes an exception).

The following are excluded from coverage:

1. **Convicted of Piracy** [Sec. 2, ISLAW]

2. **Use of trafficked victims** (Section 11 of R.A. No. 9208, as amended by R.A. No. 10364)

3. **Habitual delinquents** [Sec. 2, ISLAW]

A recidivist is not excluded from the coverage of the Indeterminate Sentence Law.

4. **Convicted of offenses punished with death penalty, life imprisonment,** [Sec. 2, ISLAW] **or reclusion perpetua** (R.A. No. 9346)

PP vs Lian, G.R. No. 115988 (1996)

Doctrine: "There can be no indeterminate sentence if the penalty imposed is reclusion perpetua or life imprisonment,

otherwise it will result in commingling divisible and indivisible penalties in the same sentence to be served by the convict."

To exclude the accused from the coverage of ISLAW, what is important is not the prescribed penalty, but that actually imposed in accordance with the law.

When there are two mitigating circumstances, despite the offense being punishable by reclusion temporal to death, ISLAW applies. [People v. Roque, 90 Phil 142, 146 (1951)]

Under RA 4885 amending RA 315 2(d), the penalty ranging from 20y 1d to 30y arrived at after computing the incremental penalty of 1 year per P10,000 embezzled is also termed RP, only for purposes of determining the accessory penalties (Cajigas v. PP, GR 156541, Feb. 23, 2009) – Thus, ISLAW was applied here.

BUT, per RA 10951, maximum is only RT, and amount is at least P4.4M plus 1 year from PM min for every P2M

5. **Those who shall have escaped from confinement or Evaded service of sentence** [Sec. 2, ISLAW]

The law contemplates confinement in prison and not in a mental hospital.

6. **Those whose maximum term of imprisonment does not exceed one year** [Sec. 2, ISLAW]

Lumauig v. People, GR 166680 (2014)

Doctrine: "The ISLAW, under Section 2, is not applicable to cases where the maximum term of imprisonment does not exceed one year. In determining "whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the imposable penalty."

7. **Those sentenced to the penalty of Destierro or Suspension.**

Under the ISLAW, in imposing a "prison sentence" for an offense, the court shall sentence the accused to an indeterminate sentence. Hence, ISLA W is not applicable in imposing "non-prison sentence."

8. **Convicted of misprision of Treason, Rebellion, Espionage, Sedition, and conspiracy or proposal to commit treason** [Sec. 2, ISLAW]

9. **Those who Violated the terms of conditional pardon granted to them by the Chief Executive** [Sec. 2, ISLAW]

10. **Those who had been sentenced by final Judgment at the time of the approval of this law.** [Sec. 2, ISLAW]

Maximum and Minimum Terms

The court must, instead of a single fixed penalty, determine two penalties, referred to in the Indeterminate Sentence Act as the "maximum" and "minimum" terms. (Reyes, Book I) There is no "medium" penalty under the ISLAW.

The prisoner must be sentenced to imprisonment for a period which is not more than the maximum and not less than the minimum.

Maximum Term	Minimum Term
Revised Penal Code	
Penalty which could be properly imposed under the rules of the RPC, in view of the attending circumstances. Basis: Imposable penalty (after considering mitigating or aggravating circumstances) [Sec. 1, ISLAW]	Court's discretion, provided that the minimum term is anywhere **within the range of the penalty next lower to that prescribed** by the RPC for the offense, without regard to its 3 periods [Sec. 1, ISLAW]. Basis: Prescribed penalty, not the imposable penalty [People v. Temporada, supra].
Special Penal Laws	
Maximum term shall not exceed the maximum fixed by the special law [Sec. 1, ISLAW]. Presence of attending circumstances does not affect the imposition of the penalty. **XPN**: When the special law adopts the technical nomenclature and signification of penalties under RPC, indeterminate sentence is based on rule intended for crimes punishable by RPC [Imbo v.	Minimum term shall not be less than minimum specified by the law. **XPN**: When the special law adopts the technical nomenclature and signification of penalties under RPC, indeterminate sentence is based on rule intended for crimes punishable by RPC [Imbo v. People, supra]

People, G.R. No. 197712 (2015)].	

Illustration

The accused surrendered to authorities after committing frustrated homicide, and thereafter, confessed to this crime in open court. The penalty of reclusion temporal for homicide shall be reduced to prision mayor because the crime is at the frustrated stage. Prision mayor shall further be reduced to prision correccional because of special mitigating circumstance of confession and surrender. Since confession and surrender was already used to graduate the penalty to prision correccional, there are no remaining mitigating circumstances that can be employed to apply such penalty in its minimum period. Hence, prision correccional shall be applied in its medium period.

Applying the Indeterminate Sentence Law, the court shall fix the maximum penalty within the range of the proper imposable period, and that is, medium period of prision correccional (2 years, 4 month and 1 day to 4 years, 2 months). For purpose of parole, the court shall fix the minimum penalty within the range of the penalty next lower in degree, and that is, arresto mayor (1 month and 1 day to 6 months). Hence, the court can sentence the accused to suffer 6 months of arresto mayor as minimum penalty to 3 years of prision correccional as maximum penalty.

Q: Which comes first?

The Ducosin formula [People v. v. Ducosin, 59 Phil 109, 118 (1933)] that maximum is determined first, and minimum is derived from penalty imposed by the court is abandoned (only the formula is abandoned; the doctrinal pronouncements still hold true).

GR: Go to the minimum first by lowering 1 degree from the prescribed penalty.

XPN: When there is a privileged mitigating or accused that is not principal or stage is not consummated, take this into account first before getting the minimum.

Effect Of Privileged Mitigating Circumstance

Even if the penalty imposed is Reclusion Perpetua, if there is a privileged mitigating circumstance (e.g., minority), ISLAW can only be applied after taking into consideration the privileged mitigating circumstance.

Being privileged, it always takes precedence. Criminal laws are to be applied in a manner that is advantageous to the accused.

Degree with Two (2) Periods

Gelig v. People, GR 173150 (2010)

Applying ISLAW – imposable penalty is:

- Minimum range - AM max to PC min
- Maximum range - PC med to PC max

SC sub-divided PC med, med to max into 3 to arrive at 3 sub-periods. The max range is taken from the med of the sub-periods.

This is an illustration of the application of Art 65. The degree or penalty prescribed by law which only has 2 periods. Here, it is Prision Correcional medium to Prision Correcional maximum. These constitute a degree for graduation of penalties.

Applying ISLAW penalty is maximum range Prision Correcional medium to Prision Correcional medium. The minimum range is arresto mayor maximum to Prision Correcional minimum.

To arrive at the proper period, the SC subdivided PC med to PC max to 3 to arrive at sub periods due to ordinary mitigating or ordinary aggravating. No need to divide the minimum range as it can be imposed anywhere.

Complex Penalty

Ex. If the penalty prescribed by law for robbery is PM max to RT med, and the special aggravating circumstance of quasi-recidivism is present, the indeterminate minimum penalty shall be fixed anywhere within the range of PC max to PM med, which is the penalty next lower in degree, while the indeterminate maximum penalty shall be fixed anywhere within the range of maximum period of the prescribed penalty or RT med [People v. Martinada, G.R. Nos. 66401-03 (1991)].

Ex. RT maximum to RP is not singular, unusual or prohibited in the scheme of penalties in the RPC. This is a complex and divisible penalty. Such a penalty is in Art. 61 which speaks of a principal penalty composed of one indivisible penalty and the maximum period of a divisible penalty.

The penalty next lower in degree consists of the 3 succeeding periods taken from the penalties next lower in degree, that is, PM max to RT med. (PP vs Lian, March 29, 1996)

Factors in Fixing Minimum Penalty

The Judge has a wide latitude of discretion in the determination of the minimum range.

Criminal as an individual

1. Age of the criminal
2. General health and physical conditions
3. Mentality, heredity and personal habits
4. Previous conduct, environment, mode of life, and criminal record

5. Previous education (intellectual & moral)
6. Proclivities and aptitudes for usefulness or injury to society
7. Demeanor during trial and attitude with regard to the crime committed
8. Gravity of the offense

Criminal as a member of society

1. Relationship toward his dependents, family and associates, and their relationship with him
2. Relationship towards society at large and the State

Rules in Authorizing Prisoner to be Released on Parole

The sole purpose of fixing the minimum penalty is to determine the time when the convict shall be eligible to apply for parole.

Whenever the prisoner shall have served the minimum penalty imposed on him, and it shall appear to the Board of Indeterminate Sentence that such prisoner is fitted for release, the Board may authorize his release on parole, upon terms and conditions as may be prescribed.

Whenever the prisoner on parole during the period of surveillance violates any of the conditions, Board may issue an order for his arrest where the prisoner shall serve the unexpired portion of the maximum sentence. [Secs. 6 and 8, R.A. 4103, as amended by Act No. 4225]

Other Rules in Application of Penalties

1. **Incomplete Accident**
   a. If guilty of grave felony: Arresto mayor in its maximum period to prision correccional in its minimum period
   b. If guilty of less grave felony: Arresto mayor in its minimum and medium periods [Art. 67, RPC]

2. **Incomplete Exemption or Justification**
   a. When deed is not wholly excusable by reason of lack of some conditions required for exempting or justifying circumstances – a penalty lower by one or two degrees shall be imposed, provided that majority of the conditions are present [Art. 69, RPC].
   b. Incomplete justification is a privileged mitigating circumstance (it cannot be offset by aggravating circumstances) [People v. Ulep, supra].

3. **Incomplete Self-Defense, Defense of Relatives and Strangers**
   a. Unlawful Aggression – should always be present to be appreciated as a mitigating circumstance [U.S. v. Navarro, 7 Phil. 713].
   b. Ordinary mitigating circumstance – if only unlawful aggression is present.
   c. Privileged mitigating circumstance – if two of the three requisites are present [People v. Oanis, G.R. No. L- 47722 (1943)].

Subsidiary Imprisonment

Subsidiary imprisonment must be part of the penalty if such is the intention of the court.

As amended by R.A. No. 10159

Art. 39. Subsidiary Penalty. – If the convict has no property with which to meet the fine mentioned in paragraph 3 of the next preceding article, he shall be subject to a subsidiary personal liability at the rate of one day for each amount equivalent to the highest minimum wage rate prevailing in the Philippines at the time of the rendition of judgment of conviction by the trial court, subject to the following rules:

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

2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a fight felony.

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

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

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him from the fine in case his financial circumstances should improve.

A convict shall suffer subsidiary imprisonment for nonpayment of fine by reason of insolvency. The convict could not opt to serve subsidiary imprisonment instead of fine if he is solvent.

No subsidiary penalty is imposed for non-payment of:

(1) the reparation of the damage caused;

(2) indemnification of the consequential damages;
(3) the costs of the proceedings.

Subsidiary penalty is the auxiliary liability to be imposed upon and undergone by the convict who has no property to pay his pecuniary liability for the penalty of fine, to be computed at the rate of one day per the highest daily minimum wage in the Philippines at the time of the rendition of judgment of conviction.

It takes the place of the fine imposed on insolvent convicts. It is neither a principal nor accessory penalty, but a **substitute penalty for fine.**

> It used to be 8 pesos per day but in 2012, there was an amendment that it is to be computed at the rate of one day per the highest daily minimum wage in the Philippines at the time of the rendition of judgment of conviction.
>
> If the convict cannot pay the fine, he may be imprisoned and the rate now is "highest minimum wage". It's not the minimum wage of Cebu, or in the rural areas. It is the highest minimum wage – it shall always be the minimum wage in NCR.

It cannot be served unless expressly stated in the judgment.

People vs. Alapan, G.R. No. 199527 (2018)

The convict was sentenced to pay a fine equivalent of 3 times of the check that bounced and because in the case of Vaca vs. CA and PP. vs. Rosa Lim, the court already stated that the Court should not impose the penalty of imprisonment but only the penalty of fine. So the Court imposed the penalty of fine. However, the Convict was unable to pay. The plaintiff now appealed for the subsidiary imprisonment of the convict.

The SC said, NO. He cannot be made to serve subsidiary imprisonment because that was not mentioned in the decision. Maybe it was an error of the judge, but still he cannot impose a penalty that is not provided by the law. (At. 78)

Comments:

- In People v. Alapan we said that if the penalty is a fine, and there is failure to pay the fine, there may be subsidiary imprisonment for the non-payment of fine. Not only must the fine be stated in the order, but the subsidiary penalty must also be stated in the order.
- In here, it involved a BP 22 check. Under People v. Rosalin and many other cases, the courts will only impose payment of fine, even if there is imprisonment. However, here, the penalty was not paid.
- The issue is can alternative subsidiary penalty be imposed for non-payment of fine? SC said no since it must also be stated in the order or judgment. In the case of Alapan, it was not stated. Thus, you cannot execute a penalty except when stated in a final judgment.

Issue on Constitutionality

Under the Constitution, no person shall be imprisoned by reason of non-payment of debt. Debt means obligation to pay a sum of money arising from a contract. The obligation to pay a fine arises from law, which prescribes it as a penalty, and not from contract. Thus, Article 39 is not unconstitutional. [Quemel u. CA, G.R. No. L-22794 (1968)]

Principal penalty imposed is higher than prision correctional

No prisoner shall be held in jail for more than six years by reason of insolvency. [Toledo v. The Superintendent of the Correctional Institution for Women, G.R. No. L-16377 (1961)]

> **Ex.** If the convict was sentenced to suffer two or more imprisonment penalties and fine, the aggregate penalties imposed shall be considered to determine if his sentence has exceeded prison correccional (six years of imprisonment); if it does, he shall not be made to suffer subsidiary imprisonment due to non-payment of fine.

Due Process Requirement

The imposition of fine does not carry with it the imposition of subsidiary imprisonment. To require the accused to suffer subsidiary imprisonment, the court must expressly state in the judgment that the accused is sentenced to pay "fine with subsidiary imprisonment in case of insolvency.

If not expressly imposed, the remedy of the accused is to file a petition for **habeas corpus**.

Subsidiary penalty must be stated in the ruling. Subsidiary imprisonment in case of insolvency or nonpayment of the penalty of fine must be expressly stated in the judgment of conviction, otherwise it will violate Art. 78, RPC that no penalty shall be executed except by virtue of a final judgment. (PP v. Alapan) There is no provision in the Code that states that subsidiary imprisonment is automatic.

The time-honored Doctrine of Immutability of Judgment precludes modification of a final and executory judgment.

> In a case, the SC said that if the penalty prescribed by law for the violation of a crime is either or both imprisonment and fine, the basis for the subsidiary penalty shall not be the imprisonment if it is not imposed.
>
> **Ex.** The penalty for the crime as prescribed in the law is arresto mayor or a fine of P20k but if the judgment by the court did not impose the

imprisonment but only the penalty of fine which is P20k, the penalty shall be based on the fine of P20k.

If the penalty of fine is not paid, the basis for the subsidiary penalty shall not be the arresto mayor because the arresto mayor, even if it is one of the penalties prescribed by law, has not imposed by the court and so the convict cannot be made to serve a sentence which is not imposed even if it is prescribed. It should be both prescribed and imposed.

Rules as to Subsidiary Imprisonment [Art. 39, RPC]

Penalty Imposed	Duration of Subsidiary Imprisonment
Prisión correccional or arresto; and fine	Shall not exceed 1/3 of the term of the sentence and shall not continue for more than 1 year. Fraction or part of a day not counted.
Fine Only	Grave or less grave felony: Shall not exceed 6 months. Light felony: Shall not exceed 15 days.
Higher than prisión correccional	No subsidiary imprisonment.
Penalty not to be executed by confinement, but of fixed duration	Same deprivations as those of the principal penalty, under the same rules as in the first 3 cases above.
In case financial circumstances of the convict should improve	Convict shall pay the fine, notwithstanding fact that he suffered subsidiary personal liability therefor.

If the principal penalty imposed is not to be executed by confinement in a penal institution, but such penalty is of fixed duration, the convict "shall continue to suffer the same deprivations as those of which the principal penalty consists." (Art. 39, par. 4)

Thus, if the penalty imposed is imprisonment, the subsidiary penalty must be imprisonment also. If the penalty is destierro, the subsidiary penalty must be destierro also.

Not an Alternative

A convict—who has property (a) not exempt from execution and (b) sufficient enough to meet the fine—cannot choose to serve the subsidiary penalty [Art. 39, par. 5, RPC].

When Not Applicable

1. When the penalty imposed is higher than prisión correccional [Art. 39, par. 3, RPC]
2. For failure to pay the reparation of the damage caused, indemnification of the consequential damages, and the costs of the proceedings
3. When the penalty imposed is a fine and a penalty not to be executed by confinement in a penal institution and which has no fixed duration

Note: Subsidiary imprisonment can be imposed for violation of special laws pursuant to Art. 10 of the RPC, which provides that the RPC shall be supplementary to special laws; unless, the special law provides that subsidiary imprisonment shall not be imposed [Art. 10, RPC; Jao Yu v. People, G.R. No. 134172 (2004)].

GRADUATION OF PENALTIES

The graduation of penalties refers to:

1. By degree
2. By period

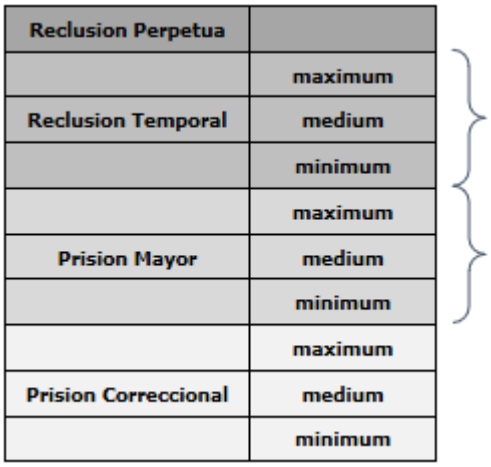
By Degree

Q: What is a degree?

The full extent of a penalty such as the full extent of Reclusion Temporal. It may consist of several periods from different penalties such as a period from Prision Correcional to Prision Mayor. This consists of one degree.

ILLUSTRATION

If the prescribed penalty is in full extent such as RT in its full extent. The next lower degree shall also be in its full extent.



ILLUSTRATION

If the prescribed penalty is composed of 3 periods from different penalties, the next lower degree shall also be the next 3 periods regardless of the fact that they belong to different penalties. Here the period starts at PM max and ends at RT med.

Reclusion Perpetua	
	maximum
Reclusion Temporal	medium
	minimum
	maximum
Prision Mayor	medium
	minimum
	maximum
Prision Correccional	medium
	minimum

ILLUSTRATION
If the penalty is composed of 2 periods with no mitigating or aggravating, Art. 65 states that we must still get the medium range of this penalty by dividing into three.

Legal basis: PP v. Temporada, GR 173473 (2008)
"The maximum period of the prescribed penalty of PC max to PM min is not PM min. To compute the maximum period of the prescribed penalty, PC max to PM min should be divided into 3 equal portions of time, each of which shall be deemed to form 1 period in accordance with Art. 65."

Reclusion Perpetua	
	maximum
Reclusion Temporal	medium
	minimum
	maximum
Prision Mayor	medium
	minimum
	maximum
Prision Correccional	medium
	minimum

ILLUSTRATION
According to Art 61(3) of RPC, if a penalty is composed of an indivisible penalty such as Reclusion Perpetua, and maximum of a divisible penalty such as Reclusion Temporal maximum, the next lower degree shall be the medium and minimum of the divisible penalty and the maximum of the next lower penalty. Thus, the lower degree now has 3 periods which end at the maximum. If you go even lower it would still end at the maximum.

> The penalty would be the next lower in degree consisting of the 3 succeeding periods taken from the penalties next lower in degree, that is, PM max to RT med. (PP vs Lian, March 29, 1996)

Reclusion Perpetua	
	maximum
Reclusion Temporal	medium
	minimum
	maximum
Prision Mayor	medium
	minimum
	maximum
Prision Correccional	medium
	minimum

> Note: To find the periods of complex penalty, look at Art 65. Art. 61 refers to lowering by degree. Art. 65 is lowering by a period.

ILLUSTRATION
If the prescribed penalty is RT max to RP, no mitigating or aggravating and the penalty must be the medium of the degree. We do not divide this according to their duration.

According to PP vs Lian, RP being indivisible and this being the harshest penalty, this automatically becomes the maximum. The medium and the minimum will be arrived at by dividing RT maximum into two for the medium and the minimum. If there is no ordinary mitigating or aggravating, the proper penalty to be imposed is only RT max in its medium subperiod.

Reclusion Perpetua	
	maximum
Reclusion Temporal	medium
	minimum
	maximum
Prision Mayor	medium
	minimum
	maximum
Prision Correccional	medium
	minimum

ILLUSTRATION
If the prescribed penalty is one 1 period, the penalty shall be considered as one degree for purposes of graduating.

If the prescribed penalty is Reclusion Temporal minimum only, the next lower degree is the next period which is Prision Mayor maximum. This is the next lower degree. Here, the period is a degree in itself.

In order to find the proper period of this one period penalty, this must still be divided into three to get three equal portions. The highest shall be the maximum, middle is medium and lowest is minimum.

When penalty is always at its maximum

Penalty imposed is always at its maximum when:

1. **Special aggravating circumstances:**
   a. taking advantage of public position
   b. committed by syndicate or organized crime group
   c. quasi-recidivism (Art. 160)

2. **Ordinary complex crime**
   The penalty of the graver offense shall be placed in the maximum. (Art. 48)

ILLUSTRATION
If the prescribed penalty for an ordinary complex crime is RT max to RP, with an ordinary aggravating circumstance.

Since this is an ordinary complex, we will have to impose the maximum of the penalty, which is RP. Automatically, the maximum is RP. Thus, since it is the maximum and it is indivisible, we do not anymore subdivide it even if there is ordinary aggravating or ordinary mitigating, because our maximum is indivisible.

ILLUSTRATION
The prescribed penalty is composed of RT max to RP, and there is minority (privileged mitigating) and 1 ordinary mitigating.

Here, the penalty will be PM max. Because there is a privileged mitigating (minority), we go one degree lower. So, the next lower degree is PM max to RT med, but because there is one ordinary mitigating, we select the minimum of the lower degree. In that degree, the minimum period is PM max.

ILLUSTRATION
If the prescribed penalty for a complex crime is RT max to RP, in addition to privileged MC of minority and either (1) 1 ordinary mitigating or (2) 1 ordinary aggravating.

There is a privileged mitigating, so we will lower by one degree, which is PM max to RT med. In this lower penalty, PM max is the minimum and RT med is the maximum.

Since this is an ordinary complex crime, we will have to impose the maximum of the penalty, which is RT med.

Q: What happens if there is an ordinary mitigating?

We will not apply RT med. Rather, we will have to subdivide RT med into three sub periods. If there is ordinary mitigating, the penalty will be the minimum sub-period of RT med.

Q: What happens if there is an ordinary aggravating?

If there ordinary aggravating, the penalty will be the maximum sub-period of RT med.

Factors Affecting Graduation By Degree

Factors to be considered are:
1. Stages of execution;
2. Degree of the criminal participation of the offender; and
3. The presence of special mitigating circumstances, or privileged mitigating circumstances

Stages of execution

All the penalties provided in the RPC are presumed to be committed in its consummated stage. If it is not consummated, we cannot find it in the RPC because no specific penalty is provided for the frustrated and attempted. So we will have to graduate.

Stages of Execution	Graduation of Penalty by Degree
Frustrated	One degree lower
Attempted	Two degrees lower

Degree of participation

The penalty provided by the RPC is a penalty for the principal. It does not provide a penalty for the accomplice and accessory. So we will have to graduate.

Degree of Participation	Graduation of Penalty by Degree
Accomplice	One degree lower
Accessory	Two degrees lower

Presence of mitigating circumstances

1. **Privileged mitigating circumstance**

   Ex. Incomplete justification or exemption - one or two degree lower

2. **Special mitigating circumstances**

   It has an effect of a privileged mitigating circumstance, e.g. two ordinary mitigating circumstances without aggravating equals one special circumstance.

Effect of repeat offending on the penalty

1. **RECIDIVISM**

Accused commits felonies under the same title. It is an ordinary aggravating. Thus, it can be offset by an ordinary mitigating.

2. **QUASI-RECIDIVISM**

The convict committed another crime either before or during service of the first sentence. This is a special aggravating. Thus, the penalty is always maximum, and it cannot be offset by an ordinary mitigating.

3. **HABITUALITY**

The commission of any crime more than once. It is an ordinary aggravating. Thus, it can be offset by an ordinary mitigating.

4. **HABITUAL DELINQUENCY OR MULTI RECIDIVISM**

The convict has committed a crime the3rd time or oftener within 10 years, and the crime must be that specified under Art. 65. This imposes an additional penalty.

By Period

Minimum, medium, and maximum refer to the proper period of the penalty, which should be imposed when aggravating or mitigating circumstances attend the commission of the crime.

Where there is no ordinary aggravating or mitigating, only the medium is prescribed.

Factors Affecting Graduation By Period

Graduation by periods does not apply in imprudence cases.

Reynaldo Mariano vs. People, GR 178145 (2014)

"Conformably with Art. 365 (imprudence), RPC, Art. 64 (graduation by period) does not apply in reckless imprudence cases."

GRADUATION OF FINE

By Degree

Art. 75. Increasing or Reducing the Penalty of Fine by One or More Degrees. — Whenever it may be necessary to increase or reduce the penalty of fine by one or more degrees, it shall be increased or reduced, respectively, for each degree, by one-fourth of the maximum amount prescribed by law, without, however, changing the minimum.

To go one degree lower, take 1/4 of the maximum amount to get the next degree lower, and so on.

Ex. The maximum fine is P100,000, take 1/4 of that, so the next is P75,000.

By Period

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

The fine cannot go outside the limits provided by law.

Maximum should not exceed the fine prescribed by law Minimum should not be lower than that provided by law.

Ex. The fine is between P50,000 to P100,000, if we graduate this by period, the maximum should not exceed P100,000 and the minimum should not be lower than P50,000.

Jurisprudence in Fiscal's Prescribed Cases

People v Temporada

Crime: Large scale illegal recruitment, or violation of Article 38 of the Labor Code, as amended, and five (5) counts of estafa under Article 315 (2) (a) of the RPC

Ruling:
When the amount defrauded exceeds P22,000.00, is prisión correccional maximum to prisión mayor minimum. The minimum term is taken from the penalty next lower or anywhere within prisión correccional minimum and medium (i.e., from 6 months and 1 day to 4 years and 2 months). Consequently, the RTC correctly fixed the minimum term for the five estafa cases at 4 years and 2 months of prisión correccional since this is within the range of prisión correccional minimum and medium.

On the other hand, the maximum term is taken from the prescribed penalty of prisión correccional maximum to prisión mayor minimum in its maximum period, adding 1 year of imprisonment for every P10,000.00 in excess of P22,000.00, provided that the total penalty shall not exceed 20 years. However, the maximum period of the prescribed penalty of prisión correccional maximum to prisión mayor minimum is not prisión mayor minimum as apparently assumed by the RTC. To compute the maximum period of the prescribed penalty, prisión correccional maximum to prisión mayor minimum should be divided into three equal portions of time each of

which portion shall be deemed to form one period in accordance with Article 65 of the RPC. Following this procedure, the maximum period of prisión correccional maximum to prisión mayor minimum is from 6 years, 8 months and 21 days to 8 years. The incremental penalty, when proper, shall thus be added to anywhere from 6 years, 8 months and 21 days to 8 years, at the discretion of the court.

In computing the incremental penalty, the amount defrauded shall be subtracted by P22,000.00, and the difference shall be divided by P10,000.00. Any fraction of a year shall be discarded as was done starting with the case of People v. Pabalan in consonance with the settled rule that penal laws shall be construed liberally in favor of the accused.

Hisoler v People

Crime: Estafa
Note: Conflict with penalty under RPC and RA 10951, which modified the penalty for swindling or estafa

Ruling:
The Court is now confronted with a situation wherein the imposable penalty under the RPC, which is six (6) months and one (1) day to ten (10) years, presents a lower minimum period but a higher maximum period of imprisonment than that imposable under R.A. No. 10951, which is six (6) years and one (1) day to eight (8) years and eight (8) months.

As stated, Section 100 of R.A. No. 10951 applies only insofar as it is favorable to the accused. While the imposable penalty under the RPC and R.A. No. 10951 both have their advantages, the Court weighing the attendant circumstances, finds that the penalty imposed under the RPC should apply.

Primarily, it must be emphasized that the penalty imposed by the RTC and the CA in this case is within the range of allowable penalty, and as such is valid exercise of discretion and must be affirmed by the Court. In fine, jurisprudence dictates that the determination of the minimum and the maximum terms is left entirely to the discretion of the trial court, the exercise of which will not be disturbed on appeal in the absence of showing that there is grave abuse.

This notwithstanding, it is worth reiterating that the penalty imposable upon the petitioner, and the incremental penalty could be added anywhere within the maximum period of the penalty prescribed or somewhere from six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years. In this case, the RTC deemed it wise to add the incremental penalty to eight (8) years, thus bringing the maximum period of indeterminate penalty to be imposed upon the petitioner to ten (10) years. In this regard, the Court notes for the sake of illustration that had the RTC chosen to add the incremental penalty of two (2) years to the minimum threshold of the maximum period imposable which is six (6) years, this situation would not have arisen. As in the latter instance, it is clear that the penalty imposable upon the petitioner under the RPC would be more favorable to her considering that both the minimum and the maximum periods are lower than that under R.A. No. 10951. Otherwise stated, the indeterminate penalty imposable under the RPC in that case would be six (6) months and one (1) day to eight (8) years as maximum, which is clearly more advantageous for the petitioner as opposed to the six (6) years and one (1) day to eight (8) years and eight (8) months that is imposable under R.A. No. 10951.

At any rate, even if the maximum period imposable upon the petitioner under the RPC in this case is higher than that under R.A. No. 10951, the Court finds that the benefits that would accrue to the petitioner with the imposition of a lower minimum sentence outweighs the longer prison sentence and is more in keeping with the spirit of the Indeterminate Sentence Law.

In fixing the indeterminate penalty imposable upon the accused, the Court should be mindful that the basic purpose of the Indeterminate Sentence Law is to "uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness." Simply, an indeterminate sentence is imposed to give the accused the opportunity to shorten the term of imprisonment depending upon his or her demeanor, and physical, mental, and moral record as a prisoner. The goal of the law is to encourage reformation and good behavior, and reduce the incidence of recidivism. While the grant of parole after service of the minimum sentence is still conditional, the flexibility granted upon the petitioner to immediately avail of the benefits of parole considering the much shorter minimum sentence under the RPC should inspire the petitioner into achieving the underlying purpose behind the Indeterminate Sentence Law.

People v Sunga

Crime: Dangerous Drugs Act of 1972

Q: Is Islaw applicable?

Ruling:
Yes, since drug offenses are not included in nor has appellant committed any act which would put him within the exceptions to said law and the penalty to be imposed does not involve reclusion perpetua or death, provided, of course, that the penalty as ultimately resolved will exceed one year of imprisonment. The more important aspect, however, is how the indeterminate sentence shall be ascertained

It is true that Section 1 of said law, after providing for indeterminate sentence for an offense under the Revised Penal Code, states that "if the offense is punished by any other law, the court shall sentence the accused to an indeterminate sentence, the maximum term of which shall not exceed the maximum fixed by said law and the minimum shall not be less than the minimum term prescribed by the same" We hold that this quoted portion of the section indubitably refers to an offense under a special law wherein the penalty imposed was not taken from and is without reference to the Revised Penal Code, as discussed in the preceding illustrations, such that it may be said that the "offense is punished" under that law.
There can be no sensible debate that the aforequoted rule on indeterminate sentence for offenses under special laws was necessary because of the nature of the former type of penalties under said laws which were not included or contemplated in the scale of penalties in Article 71 of the Code, hence there could be no minimum "within the range of the penalty next lower to that prescribed by the Code for the offense," as is the rule for felonies therein. Furthermore, considering the vintage of Act No. 4103 as earlier noted, this holding is but an application and is justified under the rule of contemporanea expositio.

Thus, with regard to the phrase in Section 2 thereof excepting from its coverage "persons convicted of offenses punished with death penalty or life imprisonment," we have held that what is considered is the penalty actually imposed and not the penalty imposable under the law, and that reclusion perpetua is likewise embraced therein although what the law states is "life imprisonment."

People v Cesar

Crime: Direct assault upon a person in authority with homicide

Ruling:
This being a complex crime, the penalty for the more serious crime should be imposed, the same to be applied in its maximum period. The more serious crime is homicide punishable by reclusion temporal

Accused has to his credit two mitigating circumstances: the special or privileged mitigating circumstance of minority and the ordinary mitigating circumstance of plea of guilty. Therefore, under Art. 64, par. 5 of the Revised Penal Code, the penalty imposable is the penalty next lower to that prescribed by law. Under Art. 71, Revised Penal Code, the penalty next lower to reclusion temporal is prision mayor. Because of the complex nature of the crime committed by accused-appellant, the penalty of prision mayor is to be applied in its maximum period. However, having in his favor the ordinary mitigating circumstance of plea of guilty without any offsetting aggravating circumstance, applying Art. 64, par. 2 of the Revised Penal Code, the penalty of prision mayor maximum should be imposed in its minimum range.

The proper method is to start from the penalty imposed by the Revised Penal Code, i.e., reclusion temporal; then apply the privileged mitigating circumstance of minority and determine the penalty immediately inferior in degree, i.e., prision mayor; and finally apply the same in its maximum degree but within the minimum range 8 thereof because of the ordinary mitigating circumstance of plea of guilty. Prision mayor being the maximum of the indeterminate sentence, the minimum of the indeterminate penalty is within the range of the penalty next lower to it as prescribed by the Revised Penal Code, i.e., prision correccional. All told, and applying now the Indeterminate Sentence Law, accused-appellant should be sentenced to an indeterminate penalty of not less than six (6) years of prision correccional, to not more than ten (10) years and eight (8) months of prision mayor

Lumauig v People

Crime: Failure of Accountable Officer to Render Accounts Under Article 218 of the Revised Penal Code

Ruling:
In sentencing petitioner to a straight penalty of six months and one day of prisión correccional and a fine of P1,000.00, the Sandiganbayan correctly considered the mitigating circumstance of voluntary surrender, as borne by the records, in favor of petitioner. However, it failed to consider the mitigating circumstance of return or full restitution of the funds that were previously unliquidated.

In malversation of public funds, the payment, indemnification, or reimbursement of the funds misappropriated may be considered a mitigating circumstance being analogous to voluntary surrender. Although this case does not involve malversation of public funds under Article 217 of the Revised Penal Code but rather failure to render an account under Article 218 (i.e. , the succeeding Article found in the same Chapter), the same reasoning may be applied to the return or full restitution of the funds that were previously unliquidated in considering the same as a mitigating circumstance in favor of petitioner.

The prescribed penalty for violation of Article 218 is prisión correccional in its minimum period or six months and one day to two years and four months, or by a fine ranging from 200 to 6,000 pesos, or both. Considering that there are two mitigating circumstances and there are no aggravating circumstances, under Article 64 (5) 23 of the Revised Penal Code, the imposable penalty is the penalty next lower to the prescribed penalty which, in this case, is arresto mayor

in its maximum period or four months and one day to six months.

The Indeterminate Sentence Law, under Section 2, is not applicable to, among others, cases where the maximum term of imprisonment does not exceed one year. In determining "whether an indeterminate sentence and not a straight penalty is proper, what is considered is the penalty actually imposed by the trial court, after considering the attendant circumstances, and not the imposable penalty." In the case at bar, since the maximum of the imposable penalty is six months, then the possible maximum term that can be actually imposed is surely less than one year. Hence, the Indeterminate Sentence Law is not applicable to the present case. As a result, and in view of the attendant circumstances in this case, we deem it proper to impose a straight penalty of four months and one day of arresto mayor and delete the imposition of fine.

Spouses Cajigas v People

Crime: Two (2) counts of estafa under Article 315 (2) of the RPC

Ruling:
In Criminal Case No. RTC-1411, the total value of the dishonored checks is P33,758.21 while in Criminal Case No. RTC-1412, the total value of the checks is P55,000. Considering that the total face value of the checks in both criminal cases exceeds P22,000, the penalty of reclusion temporal should be imposed in its maximum period, which is from 17 years, 4 months and 1 day to 20 years, adding one year for each additional P10,000. 37 Accordingly, in Criminal Case No. RTC-1411, one year is added to 20 years, for a total of 21 years of reclusion perpetua. In Criminal Case No. RTC-1412, three years are added to 20 years, for a total of 23 years of reclusion perpetua.

Applying the Indeterminate Sentence Law, the minimum of the indeterminate sentence can be anywhere within the range of the penalty next lower in degree to the penalty prescribed by the RPC for the crime. The determination of the minimum term of the indeterminate sentence should be done without considering any modifying circumstance attendant to the commission of the crime and without reference to the periods into which it may be subdivided. The penalty prescribed under Article 315, paragraph 2 (d) of the RPC, as amended by PD 818, is reclusion temporal. The penalty next lower in degree is prision mayor. The minimum term of the indeterminate penalty should be anywhere within six years and one day to 12 years of prision mayor.

Gelig v People

Crime: Complex crime of direct assault with unintentional abortion

Ruling:
The penalty for this crime is prision correccional in its medium and maximum periods and a fine not exceeding P1,000.00, when the offender is a public officer or employee, or when the offender lays hands upon a person in authority. Here, Lydia is a public officer or employee since she is a teacher in a public school. By slapping and pushing Gemma, another teacher, she laid her hands on a person in authority.

The penalty should be fixed in its medium period in the absence of mitigating or aggravating circumstances. Applying the Indeterminate Sentence Law, the petitioner should be sentenced to an indeterminate term, the minimum of which is within the range of the penalty next lower in degree, i.e. , arresto mayor in its maximum period to prision correccional in its minimum period, and the maximum of which is that properly imposable under the Revised Penal Code, i.e. , prision correccional in its medium and maximum periods.

Thus, the proper and precise prison sentence that should be imposed must be within the indeterminate term of four (4) months and one (1) day to two (2) years and four (4) months of arresto mayor, maximum to prision correccional minimum to three (3) years, six (6) months and twenty-one (21) days to four (4) years, nine (9) months and ten (10) days of prision correccional in its medium and maximum periods. A fine of not more than P1,000.00 must also be imposed on Lydia in accordance with law.

People v Lee Jr.

Crime: Homicide

Ruling:
The application of the Indeterminate Sentence Law is mandatory if the imprisonment would exceed one year. It would be favorable to the accused

Judge Lee found that the homicide was attended by the two generic mitigating circumstances provocation and voluntary surrender to the authorities. There was no aggravating circumstance. Hence, the penalty of reclusion temporal must be lowered by one degree or to prision mayor. The maximum of the indeterminate sentence should be taken from prision mayor minimum

By applying the Indeterminate Sentence Law, the penalty has to be reduced by one degree or to prision correccional from which the minimum sentence has to be taken.

Mariano v People

Crime: Reckless imprudence resulting in serious physical injuries

Ruling:
The penalty for the offender guilty of reckless imprudence is based on the gravity of the resulting injuries had his act been intentional. Thus, Article 365 of the Revised Penal Code stipulates that had the act been intentional, and would constitute a grave felony, the offender shall suffer arresto mayor in its maximum period to prision correccional in its medium period; if it would have constituted a less grave felony, arresto mayor in its minimum and medium periods shall be imposed; and if it would have constituted a light felony, arresto menor in its maximum period shall be imposed.

Pursuant to Article 9 of the Revised Penal Code , a grave felony is that to which the law attaches the capital punishment or a penalty that in any of its periods is afflictive in accordance with Article 25 of the Revised Penal Code ; a less grave felony is that which the law punishes with a penalty that is correctional in its maximum period in accordance with Article 25 of the Revised Penal Code ; and a light felony is an infraction of law for the commission of which a penalty of either arresto menor or a fine not exceeding P200.00, or both is provided.

In turn, Article 25 of the Revised Penal Code enumerates the principal afflictive penalties to be reclusion perpetua, reclusion temporal, and prision mayor; the principal correctional penalties to be prision correccional, arresto mayor, suspension and destierro; and the light penalties to be arresto menor and fine not exceeding P200.00. Under this provision, death stands alone as the capital punishment.

The Revised Penal Code classifies the felony of serious physical injuries based on the gravity of the physical injuries

In its decision, the CA found that Ferdinand had sustained multiple facial injuries, a fracture of the inferior part of the right orbital wall, and subdural hemorrhage secondary to severe head trauma; that he had become stuporous and disoriented as to time, place and person. It was also on record that he had testified at the trial that he was unable to attend to his general merchandise store for three months due to temporary amnesia; and that he had required the attendance of caregivers and a masseur until October 31, 1999.

With Ferdinand not becoming insane, imbecile, impotent, or blind, his physical injuries did not fall under Article 263, supra . Consequently, the CA incorrectly considered the petitioner's act as a grave felony had it been intentional, and should not have imposed the penalty at arresto mayor in its maximum period to prision correccional in its medium period. Instead, the petitioner's act that caused the serious physical injuries, had it been intentional, would be a less grave felony under Article 25 of the Revised Penal Code , because Ferdinand's physical injuries were those under Article 263, supra , for having incapacitated him from the performance of the work in which he was habitually engaged in for more than 90 days.

Conformably with Article 365 of the Revised Penal Code , the proper penalty is arresto mayor in its minimum and medium periods, which ranges from one to four months. As earlier mentioned, the rules in Article 64 of the Revised Penal Code are not applicable in reckless imprudence, and considering further that the maximum term of imprisonment would not exceed one year, rendering the Indeterminate Sentence Law inapplicable, the Court holds that the straight penalty of two months of arresto mayor was the correct penalty for the petitioner.

People v Medroso Jr.

Crime: Homicide through reckless imprudence for which the penalty provided for in Paragraph 6, sub-section 2 of Article 365 of the Revised Penal Code is prision correccional in its medium and maximum periods or from two years, four months and one day to six years.

**Appellant contended that he has two mitigating circumstances in his favor, therefore, he is entitled to a penalty one degree lower than that prescribed by law pursuant to Article 64 of the RPC*

Ruling:
Appellant's proposition would indeed be correct if he were charged with any of the offenses penalized in the Revised Penal Code other than Article 365 thereof. But because appellant is accused under Article 365, he is not entitled as a matter of right to the provisions of Article 64 of the Code.

Paragraph 5 of Article 365 expressly states that in the imposition of the penalties provided for in the Article, the courts shall exercise their sound discretion without regard to the rules prescribed in Article 64. The rationale of the law can be found in the fact that in quasi-offenses penalized under Article 365, the carelessness, imprudence or negligence which characterizes the wrongful act may vary from one situation to another, in nature, extent, and resulting consequences, and in order that there may be a fair and just application of the penalty, the courts must have ample discretion in its imposition, without being bound by what We may call the mathematical formula provided for in Article 64 of the Revised Penal Code. On the basis of this particular provision, the trial court was not bound to apply paragraph 5 of Article 64 in the instant case even if appellant had two mitigating circumstances in his favor with no aggravating circumstance to offset them.

Thus, the penalty for homicide thru reckless imprudence with violation of the Automobile Law is prision correccional in its medium and maximum periods with a duration from two years, four months, and one day to six years. Applying the Indeterminate Sentence Law to which appellant is entitled the imposable penalty covers a minimum to be taken from the penalty one degree lower than that prescribed by law or arresto mayor in its maximum period to prision correccional in its minimum period, i.e. four months and one day to two years and four months, and a maximum to be taken in turn from the penalty prescribed for the offense the duration of which is from two years, four months and one day to six years. The determination of the minimum and maximum terms is left entirely to the discretion of the trial court, the exercise of which will not be disturbed on appeal unless there is a clear abuse.

The penalty imposed by the trial court is well within the periods we have given above except for the one day excess in the minimum thereof. The minimum of the indeterminate sentence given by His Honor the trial Judge should have been "two years and four months of prision correccional" instead of "two years, four months and one day", because with the addition of one day the minimum term fell within the range of the penalty prescribed for the offense in contravention of the provisions of the Indeterminate Sentence Law. On this score, there is need to correct the minimum of the indeterminate penalty imposed by the court a quo.

ACCESSORY PENALTIES

Accessory penalties
Those that are deemed included in the imposition of the principal penalties.

1. Perpetual or temporary absolute disqualification
2. Perpetual or temporary special disqualification,
3. Suspension from public office, the right to vote and be voted for, the profession or calling.
4. Civil interdiction,
5. Indemnification,
6. Forfeiture or confiscation of instruments and proceeds of the offense,
7. Payment of costs. (Art. 25, RPC)

Disqualification – accessory penalties

Effects of Disqualification

- Perpetual
- Temporary
- Absolute
- Special

Accessory penalties need not be expressly imposed as they are deemed imposed
Art. 73 provides that whenever the courts shall impose a penalty which, by provision of law, carries with it other penalties, it must be understood that the necessary penalties are also imposed upon the convict.

Perpetual or Temporary Absolute Disqualification

Perpetual absolute disqualification
Effective during the lifetime of the convict and even after the service of the sentence.

Temporary absolute disqualification
General Rule:
Lasts during the term of the sentence; removed after the service of the same.

Exceptions:

1. Deprivation of the public office or employment (effect no.1); and
2. Loss of all rights to retirement pay or other pension for any office formerly held (effect no. 4)

Effects [DOVDOP] [Art. 30, RPC]

1. **D**eprivation of any public Office or employment of offender; even if by election.
2. Deprivation of the right to **V**ote in any election or to be voted upon;
3. **D**isqualification for the Offices or public employments and for the exercise of any of the rights mentioned.
4. Loss of rights to retirement pay or **P**ension.

Duration

1. Perpetual Absolute Disqualification – during the lifetime of the convict and even after the service of the sentence
2. Temporary Absolute Disqualification – during the term of the sentence, except as to:
    a. Deprivation of the public office or employment; and
    b. Loss of all rights to retirement pay or other pension for any office formerly held [Art. 30 (3), RPC].

Additional Penalty for Certain Accessories
Accessories falling within Art. 19 (3) of the RPC who act with abuse of their public functions, harbored, concealed, or assisted in the escape of the principal of the crime shall suffer the additional penalty:

1. Perpetual absolute disqualification – for grave felonies
2. Temporary absolute disqualification – for less grave felonies

Perpetual or Temporary Special Disqualification

For Public Office, Profession or Calling [Art. 31, RPC]
Effects of the penalties of perpetual or temporary special disqualification (Art. 31, RPC)

1. Disqualification from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence; and
2. If suspended from public office, the offender cannot hold another office having similar functions during the period of suspension.

For Exercise of Right to suffrage [Art. 32, RPC]
Effects of the penalties of perpetual or temporary special disqualification for the exercise of the right of suffrage (Art. 32, RPC)

1. Deprivation of the right to vote in any election for popular office; and
2. Deprivation of right to be elected in such office.

No Denial of Right
It is presumed those convicted of a felony are unfit to exercise the privilege of suffrage or to hold office. The exclusion must for this reason be adjudged a mere disqualification, imposed for protection and not for punishment, the withholding of a privilege and not the denial of a personal right [People v. Corral, G.R. No. L- 42300 (1936)].

Duration

1. Perpetual Disqualification or Suspension – perpetually [Art. 30, RPC]
2. Temporary Disqualification or Suspension – if imposed as an accessory penalty, the duration is the same as that of the principal penalty. [Art. 30 (3)(2), RPC]

Either principal or accessory
Perpetual or temporary absolute disqualification, perpetual or temporary special disqualification, and suspension may be principal or accessory penalties, because they are formed in the two general classes. (Reyes, Book I)

Art. 236, punishing the crime of anticipation of duties of a public office, provides for suspension as a principal penalty.

Arts. 226, 227 and 228, punishing infidelity of public officers in the custody of documents, provide for temporary special disqualification as a principal penalty

Suspension from Public Office, the Right to Vote and Be Voted For, the Right to Practice a Profession or Calling

Effects
Involves disqualification from: [Art. 33, RPC]

1. Holding such office and holding another office having similar functions during the period of suspension
2. Exercising such profession
3. Exercising right of suffrage

Duration
Term of the sentence [Art. 33, RPC]

Civil Interdiction

Effects [Art. 34, RPC]
Deprivation of the following rights: [PAG-MA- MAP]

1. Parental Authority
2. Guardianship over the ward, either as to the person or property of any ward
3. Marital Authority
4. Right to MAnage Property and to dispose of the same by acts inter vivos.
5. He can also manage or dispose of his property by acts inter vivos, if done in his behalf by a judicial guardian appointed for him as an "incompetent." (Sec. 2, Rule 92, ROC)

Comments:

- Civil interdiction (CI) is one of the restrictions on capacity to act but does not exempt the offender from certain obligations, as when the latter arise from his act or from property relations.
- It is an accessory penalty meted on a person sentenced to reclusion perpetua and reclusion temporal. (Art. 38, NCC)
- CI covers deprivation of parental authority, marital authority, and guardianship which relates to family relations; managing and disposing property by act inter vivos covered by properly laws.
- A civilly interdicted convict cannot appoint an agent for the act of the agent is the act of the principal. Otherwise he would be doing indirectly what the law prohibits to be done directly. CI is one of the causes of extinction of agency.
- The law prohibits the disposition of property by an act inter vivos. **The convict can execute his last will and testament for this is an act mortis causa** and the will does not dispose of the property at the time of its making but at the time of death.

Other Effects under the Civil Code:

1. Offer given by the convict before acceptance is conveyed shall become ineffective [Art. 1323, NCC]
2. Dissolution [of partnership] is caused: (7) By the civil interdiction of any partner [Art. 1830, NCC]
3. Civil interdiction of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:
    a. Under a right so to do stated in the certificate, or
    b. With the consent of all members. [Art. 1860, NCC]
4. Agency is extinguished: (3) By the [xxx] civil interdiction [xxx] of the agent [Art. 1919, NCC]

Civil interdiction is an accessory penalty to the following principal penalties:

1. If death penalty is commuted to life imprisonment;
2. Reclusion perpetua; and
3. Reclusion temporal.

Indemnification or Confiscation of Instruments or Proceeds of the Offense

Generally

Effects

Forfeiture in favor of the Government of the proceeds of the crime and the instruments or tools with which it was committed [Art. 45, RPC].

Rules: [Art. 45, RPC]

1. Every penalty imposed carries with it the forfeiture of the proceeds of the crime and the instruments or tools used in the commission of the crime.
2. Proceeds and instruments or tools of the crime are confiscated and forfeited in favor of the Government.
3. Property of a third person not liable for the offense, is not subject to confiscation and forfeiture.
4. Property not subject of lawful commerce (whether it belongs to the accused or to third person) shall be destroyed.

Forfeiture as Additional Penalty

When the proceeds or instruments of the crime are not confiscated prior to the final judgment of sentence, the court cannot modify, alter or change the sentence to confiscate such [U.S. v. Hart, 24 Phil. 578, 581-582]. It is an additional penalty, and amounts to an increase of the penalty already imposed, placing the accused in double jeopardy [People v. Sanchez, G.R. No. L-9768 (1957)].

SPECIAL LAWS PROVIDING FOR CONFISCATION OF PROPERTY

An Act Declaring Forfeiture in Favor of the State Any Property Found to Have Been Unlawfully Acquired by Any Public Officer or Employee and Providing for the Proceedings Therefor [RA No. 1379]

If the public officer is unable to show that the property in question was lawfully acquired, the court shall declare this property forfeited in favor of the State. Such judgment may not be rendered within six months before any general election, nor three months before any special election [Sec. 6, R.A. 1379].

Plunder Law [RA No. 7080]

The Court shall declare any and all ill-gotten wealth and their interests and other income and assets including the properties and shares of stocks derived from the deposit or investment thereof, forfeited in favor of the State [Sec. 2, R.A. 7080].

Anti-Graft and Corrupt Practices Act [RA No. 3019]

Any prohibited interest or unexplained wealth out of proportion to the offender's lawful income, shall be forfeited or confiscated in favor of the State [Sec. 9, R.A. 3019].

Comprehensive Dangerous Drugs Act of 2002, as amended [RA No. 9165]

All equipment and paraphernalia used for the production of illegal drugs shall be confiscated and forfeited in favor of the government.

After conviction in the RTC, the Court shall immediately schedule a hearing for the confiscation and forfeiture of all the proceeds of the offense. However, during the proceedings before the RTC, no property or income may be forfeited or confiscated [Sec. 20, R.A. 9165].

2016 Revised Implementing Rules and Regulations of R.A. 9160, or the Anti-Money Laundering Act, as amended.

Monetary instruments or property that are the proceeds of money laundering shall be forfeited in favor of the Government. If this cannot be enforced, the court may order the offender to pay an amount equal to the value of the monetary instrument or property [Rule XII].

Payment of Costs

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

- Payment of costs is discretionary upon the courts.

Exclusion

Not allowed against the Republic of the Philippines. [Rule 142, Sec. 1, ROC], unless the law provides the contrary.

What are Included

1. Fees, and
2. Indemnities, in the course of judicial proceedings. [Art. 37, RPC]

Expenses of Litigation

Costs of suit are the expenses of litigation allowed and regulated by the Rules of Court to be assessed against or to be recovered by a party in litigation [People v. Bergante, et. al., G.R. No. 12036970 (1998)].

Order of Payment

The civil liabilities of a person found guilty of two or more offenses shall be satisfied by following the chronological order of the dates of the judgments rendered against him [Art. 72, RPC].

Applicable in case the property of the offender is not sufficient to pay all his pecuniary liabilities. The order of payment being [Art. 39, RPC]:

1. Reparation of the damage caused
2. Indemnification of consequential damages
3. Fine
4. Costs of the proceedings

Comments:

- Applicable in case the property of the offender should not be sufficient for the payment of all his pecuniary liabilities
- If the offender has sufficient or no property, then Article 38 has no use.
- Courts cannot disregard the order of payment.
- Of the 4 pecuniary liabilities, only fine is criminal in nature.
- Pecuniary Liabilities of the offender are those owing to the offended party for reparation of the damage caused and indemnification of consequential damages (Art. 104) and those owing to the government in the form of fine and costs of proceedings.
- When we talk of reparation, usually this applies to property crimes. But when we talk of indemnification, this usually refers to crimes against honor, crimes against persons because indemnification is consequential damages, such as moral damages. Reparation is strictly property. Indemnification, although it is usually pecuniary liability for crimes against honor, crimes against persons, this can also apply to all other crimes.
- So these can be imposed by the court. Apart from the sentence of imprisonment, these pecuniary liabilities can also be imposed by the court. But when we talk of fine here, we are not talking of the administrative fine. We are talking about the fine which is penalty.
- Reparation is the recovery of the value of the thing. Restitution is the recovery of the very same thing.
- There is reparation in the crime of rape when the dress of the woman was torn.

PARDON; Its Effects

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

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

DISTINCTION BET. PARDON BY PRESIDENT & OFFENDED	
PARDON BY PRESIDENT	**PARDON BY THE OFFENDED PARTY**
Presidential pardon can be extended for any crime.	Pardon by offended party applies only to private crimes. (Art. 344)
Presidential pardon extinguishes criminal liability.	Pardon by offended party bars criminal prosecution.
Presidential pardon does not affect civil liability.	Pardon by offended party could include waiver of civil liability;
Presidential pardon can be extended only after conviction	Pardon by offended party must be given before institution of criminal action;
Presidential pardon may be extended to any party.	Pardon by offended party in adultery and concubinage must include both offenders;
Presidential pardon maybe absolute or conditional.	Pardon by offended party cannot be subject to any condition.

- Pardon can be either:
  - Absolute – it will erase the criminal liability. The civil liability stays.
  - Conditional – based on a condition
- Pardon by President shall not restore the right to hold public office or the right of suffrage; except when expressly restored by the terms of the pardon.
- Pardon by President shall not exempt the culprit from the payment of the civil indemnity; can't make an exception to this rule.
- Such power does not extend to cases of impeachment.
- Pardon may be granted only after conviction by final judgment. If it is granted in general terms, it does not include accessory penalty. Exception: Absolute pardon
- Pardon after 30 years does not remove Perpetual Absolute Disqualification. Exception: Such right be expressly restored by the terms of the pardon.

DIFFERENCE BETWEEN AMNESTY AND PARDON	
AMNESTY	**PARDON**
Requires concurrence of Congress	Purely presidential prerogative
Always involves a political crime	Extends to any crime

Granted prior to conviction and in fact will stop the prosecution of the crime	Granted only afterwards

SUMMARY

RULES IN GRADUATING PENALTIES		
By degree	**By period**	**Always maximum**
Depending on: 1. stage of commission 2. participation 3. Privileged mitigating	Depending on: 1. Ordinary Aggravating 2. Ordinary Mitigating	When there is: 1. Special aggravating 2. Ordinary complex crime

DEGREE	**PERIOD**
Definition	
One entire penalty; One whole penalty ot one unit of the penalties enumerated in the graduated scales provided for in Art. 71 [ESTRADA, Book 1]	One of three equal portions, called minimum, medium and maximum, of a divisible penalty
How affected	
Graduation of penalties by degrees considers the following: 1. Stages of execution (consummated, frustrated, attempted) 2. Extent of Participation (principal, accomplice, accessory) 3. Privileged Mitigating Circumstance alleged in the information 4. Qualifying circumstance alleged in the information	**GR:** Graduation by periods considers the ordinary aggravating and mitigating circumstances. **XPNs:** 1. When the penalty penalty is Single and indivisible (except if privileged mitigating) 2. In felonies through Negligence 3. When the penalty is only a Fine imposed by an ordinance 4. When the penalties are prescribed by special laws.

GRADUATED SCALES FOR LOWERING OF PENALTIES	
SCALE No. 1	1. Reclusion perpetua 2. Reclusion temporal 3. Prision mayor 4. Prision correccional 5. Arresto mayor 6. Destierro 7. Arresto menor 8. Public censure 9. Fine
SCALE NO. 2	1. Perpetual absolute disqualification 2. Temporary absolute disqualification 3. Suspension from public office, the right to vote and be voted for, and the right to follow a profession or calling 4. Public censure 5. Fine

Note: Art. 71 provides for the scales which should be observed in graduating the penalties by degrees in accordance with Art. 61.

GENERAL CLASSIFICATION OF PENALTIES		
Capital Punishment	Death	
Afflictive Penalties	Reclusion perpetua	20 yrs, 1 day - 40 yrs
	Reclusion temporal	12 yrs, 1 day - 20 yrs
	Perpetual or temporary absolute disqualification	
	Perpetual or temporary special disqualification	
	Prision mayor	6 yrs, 1 day - 12 yrs
	Fine	***> PHP 1,200,000***
Correctional Penalties	Prision correccional	6 mos., 1 day - 6 yrs
	Arresto mayor	1 mo., 1 day - 6 mos.
	Suspension	
	Destierro	
	Fine	***PHP 40,000 - PHP 1,200,000***
Light Penalties	Arresto menor	1 day - 30 days
	Public censure	
	Fine	***< PHP 40,000***
Penalties common to the three preceding classes	Bond to keep the peace	
Accessory Penalties	Suspension from public office the right to vote and be voted for the profession or calling	
	Civil interdiction	
	Indemnification	
	Forfeiture or confiscation of instruments and proceeds of the offense	
	Payment of costs	

DURATION OF PENALTIES				
Penalties	**Time included in the penalty in its <u>entirety</u>**	**Time included in its <u>minimum</u> period**	**Time included in its <u>medium</u> period**	**Time included in its <u>maximum</u> period**
Reclusion Perpetua	20 yrs, 1 day to 40 yrs			
Reclusion Temporal	12 yrs, 1 day to 20 yrs	12 yrs, 1 day to 14 yrs, 8 mos	14 yrs, 8 mos, 1 day to 17 yrs, 4 mos	17 yrs, 4 mos, 1 day to 20 yrs
Prision mayor, absolute disqualification and temporary disqualification	6 yrs, 1 day to 12 yrs	6 yrs, 1 day to 8 yrs	8 yrs, 1 day to 10 yrs	10 yrs, 1 day to 12 yrs
Prision correccional, suspension and destierro	6 mos., 1 day to 6 yrs	6 mos., 1 day to 2 yrs, 4 mos	2 yrs, 4 mos, 1 day to 4 yrs, 2 mos	4 yrs, 2 mos., 1 day to 6 yrs
Arresto Mayor	1 mo, 1 day to 6 mos	1 mo to 2 mos	2 mos, 1 day to 4 mos	4 mos, 1 day to 6 mos
Arresto Menor	1 to 30 days	1 to 10 days	11 to 20 days	21 to 30 days

PENALTY	ACCESSORIES
Capital Punishment	
Death **(REPEALED)**	1. Perpetual absolute disqualification; and 2. Civil interdiction for 30 years, if not expressly remitted in the pardon [Art. 40, RPC]
Afflictive Penalties	
Reclusion Perpetua	1. Civil interdiction for life or during the period of the sentence as the case may be 2. Perpetual Absolute Disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon [Art. 41, RPC]
Reclusion Temporal	1. Civil interdiction for life or during the period of the sentence as the case may be. 2. Perpetual Absolute Disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon [Art. 41, RPC].
Prision Mayor	1. Temporary Absolute Disqualification 2. Perpetual Special Disqualification from the right to suffrage which the offender shall suffer although pardoned as to the principal penalty unless the same shall have been expressly remitted in the pardon [Art. 42, RPC].
Correctional Penalties	
Prision Correccional	1. Suspension from public office 2. Suspension from the right to follow a profession or calling 3. Perpetual Special Disqualification for the right of suffrage, if the duration of the imprisonment shall exceed 18 months [Art. 43, RPC]
Arresto Mayor	1. Suspension of right to hold office 2. Suspension of the right of suffrage during the term of the sentence [Art. 44, RPC]
Light Penalties	
Arresto Menor	1. Suspension of right to hold office 2. Suspension of the right of suffrage during the term of the sentence [Art. 44, RPC]

PENALTY	ACCESSORIES
Bond to keep the peace	

Afflictive Penalties	
Perpetual Absolute Disqualification	1. Deprivation of public office, even if by election 2. Deprivation of right to vote & be voted for 3. Disqualification from public office held 4. Loss of retirement rights [Art. 30, RPC]
Temporary Absolute Disqualification	1. Deprivation of public office, even if by election 2. Deprivation of right to vote & be voted for during sentence 3. Disqualification from public office held during sentence 4. Loss of retirement rights [Art. 30, RPC]
Perpetual Special Disqualification	1. Deprivation of office, employment, profession, or calling affected 2. Disqualification from similar offices or employments [Art. 31, RPC] 3. Right to suffrage (vote in any popular election for public office or be elected to such office) [Art. 32, RPC]
Temporary Special Disqualification	1. Deprivation of office, employment, profession, or calling affected 2. Disqualification from similar offices or employment [Art. 31, RPC] 3. Right to suffrage (vote in any popular election for public office or be elected to such office) [Art. 32, RPC]
Correctional Penalties	
Suspension	1. Public office 2. Profession or calling 3. Suffrage [Art. 33, RPC]
Destierro	Prohibition to enter w/in 25- 250 km radius from the designated place [Art. 87, RPC]

EXECUTION AND SERVICE OF SENTENCE

Art. 78 - When and how penalty is executed

No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

A convict can never be made to serve a penalty that is not provided in the Judgment.

The judgment must be final before it can be executed, because the accused may still appeal within 15 days from its promulgation. But if the defendant has expressly waived in writing his right to appeal, the judgment becomes final immediately. (Rule 120, Sec.7, Rules of Court).

Comments:

- Judgments are executed only after they become final and executory, <u>except for minors:</u>
    - By service in an institution as prescribed by law or order
    - By the penalty of paying fine
    - By leaving the place in destierro
    - By community service
- Imprisonment must be served:
    - In a penal institution operated under the Bureau of Corrections (not the BJMP, LGU, PNP, unless the penalty is not more than 3 years)*; or
    - In an agricultural camp or training institution, if the convict committed the crime when he was still a minor, pursuant to RA 9344
        - *under the IRR to RA 10592 dated Sept. 16, 2019, a "jail" is different from a "prison"
- When a person is convicted and he is to serve 3 years or may be 2 years now, he cannot be made to serve his sentence in the Local jail (ex. City jail, CPDRC, PDRC) because these are not the proper institutions for convicted felons. The proper institutions are like the IHAWIG, ABUYOG, or MUNTINLUPA which are prisons run by the Dept. of Justice.
- When a person, let's say, is imprisoned in BJMP and he is already convicted, he cannot ask for PAROLE yet. He has to be transmitted first to the Bureau of prison and they will be the one to recommend for his release under parole. BJMP cannot.
- If the penalty is lower such as those sentenced with 6 years or less, they can even avail of probation.
    - If they can no longer do so as they may be repeat offenders, they may be made to serve their penalty in a jail, so they don't have to serve in a penal colony.
- Destierro is served in sending a person to leave a designated place, 200-250 KM from the place designated in the order or judgement.
- Under RA 11362, we also have Community service. This is not like the community service quotation that some violators of the face mask were made to do in the early stages of ECQ. Going back to Art. 78, penalties may only be executed when there is a final judgment. The community service under RA 11362 is that community service which is ordered by a court and even authorized by the court in case they are supervised by other authorities. The authority that it can be authorized by court are the probationer officers, not City Hall. These are probation officers which are under the DOJ.
- Penalties, especially of imprisonment, are suspended if the convict is still a minor at the time of the judgment. The Child in Conflict with the Law (CICL) committed a crime during his minority, but at the time of the promulgation of the judgment is already 21 or over, the sentence may already be imposed.

SERVICE OF SENTENCES

The instances or situations in criminal cases wherein the accused can be granted a **suspended sentence** are as follows:

(1) Where the accused became insane before sentence could be promulgated (Article 79 of the Revised Penal Code);
(2) Where the offender is placed under probation. (Baclayon v. Mutia, G.R. No. L-59298, April 30, 1984);
(3) Where the offender needs to be confined in a rehabilitation center because of drug-dependency although he committed the crime of use of dangerous drugs in accordance with Section 54 of R.A. No. 9165;
(4) Where the offender is a child in conflict with the law entitled to automatic suspension of sentence under Section 38 of R.A. No. 9344.

No imprisonment if:

- The convict is granted probation;
- The penalty is destierro or fine;
- The convict avails of community service

<u>When the convict has to serve more than 1 sentence</u>

Art. 70. Successive service of sentence. — When the culprit has to serve two or more penalties, he shall serve them simultaneously if the nature of the penalties will so permit otherwise, the following rules shall be observed:

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

xxx

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

Such maximum period shall in no case exceed forty years.

In applying the provisions of this rule the duration of perpetual penalties (pena perpetua) shall be computed at thirty years.

Material Accumulation System

If he committed several crimes, but these would only make him serve one penalty (such as in a complex crime or under single larceny), we would apply this rule.

Service of sentence shall be successive, unless simultaneous service is possible. He serves the graver penalty first.

Under this provision, the general rule on service of multiple penalties is successive. Simultaneous service of multiple penalties is an exception to the rule.

Note: First, it has to be simultaneous if the nature of the penalty so permits, and then, successive.

Examples:

- Fine and disqualification; or fine and imprisonment. The convict can serve these penalties because they are capable of being served simultaneously. If the penalties are not capable of being served simultaneously, then it should be served successively starting with the gravest.
- Accused is sentenced to serve prision mayor and prision correcional. He will serve prision mayor first and then prision correcional thereafter.

Simultaneous Service of Multiple Penalties

Ex. The service of principal penalty of reclusion perpetua and its accessory penalties such as disqualification can be served simultaneously.

Successive Service of Multiple Penalties

Imprisonments cannot be served simultaneously by reason of their nature. Thus, a convict must serve them successively.

A convict must serve multiple penalties successively:

(1) where the penalties to be served are destierro and imprisonment;
(2) where the penalties to be served are multiple imprisonments; and
(3) where the principal penalties to be served are imprisonment, disqualifications and suspension.

However, the successive service of sentences is subject to the scale of penalties in accordance with its severity and to the threefold rule and 40-year limitation rule.

Juridical Accumulation System

If he committed several crimes, and these would only make him serve several sentences, 3 rules apply: (WHICHEVER IS LOWEST)*

1. The sum of the number of years; or
2. The 3-fold rule;
3. Cap of 40 years

Note:

- The above limits only refer to penalties NOT YET served
- The imprisonment cannot be more than 40 years and also it cannot be more than 3 times of the most severe penalty. Even if there are 20 reclusion perpetua, the maximum years of imprisonment would still be 40 years.
    - Example:
      3 arresto mayors, and then you have 1 reclusion temporal, the maximum of which is 20. All of them may be served. However, if the gravest penalty multiplied by 3 would be lesser than the total of all the penalties, then the former shall apply because it's always the more advantageous penalty that is meted to the convict.
- Under this system, you do not decide immediately which of the rules apply.
- You apply all of these first, and determine which one should yield the lowest.
- This may also occur under single larceny doctrine, wherein one commits several thefts, but because these were made under one single intent, the doctrine applies and he will be made only to serve one penalty. There will only be one imprisonment. If he is convicted for more than one crime, and there are several sentences, then we will adopt the juridical accumulation system.

According To Its Severity

Under the scale of penalties in accordance with its severity, the penalties must be served successively in the order of the

following penalties: Death, reclusion perpetua, reclusion temporal, prision mayor, prision correccional, arresto mayor, arresto menor, destierro, perpetual absolute disqualification, temporary absolute disqualification, suspension and public censure.

Ex. The accused is sentenced to suffer prision mayor with the accessory penalties including temporary absolute disqualification for frustrated homicide, and fine of P50,000 and temporary special disqualification for technical malversation.

Following the scale, he must first serve prision mayor with the accessory penalty of disqualification for frustrated homicide ahead of the principal penalty of disqualification for technical malversation.

3-Fold Rule

Purpose
To avoid the absurdity of a man being sentenced to imprisonment for a longer period than his natural life [Rodriguez v. Director of Prisons, G.R. No. L-35386 (1962)].

Three-Fold Rule
The maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him.

Example:
Accused is convicted of 11 counts of unjust vexation and sentenced to suffer in each case 11 days of arresto menor. Applying the three-fold rule, accused will merely serve 33 days of imprisonment and not the total duration of the penalties, and that is, 121 days.

No other penalty to which he may be liable shall be inflicted after the sum total of those imposed equals the said maximum period.

`40-Year Limitation Rule` ☆
Such maximum period shall in no case exceed 40 years.

Example:
X is sentenced to suffer:
- 14 years, 8 months and 1 day (homicide)
- 17 years, 4 months, and 1 day (in another case) — most severe penalty
- 14 years and 8 months (third case)
- 12 years (frustrated homicide)

The most severe penalty is 17 years, 4 months, and 1 day. Three times the penalty is 52 years and 3 days.

But since the law limits the duration of the maximum term to not more than 40 years, X will suffer 40 years only.

In computing the servable penalties under the three-fold rule, the court shall consider the maximum penalty under the Indeterminate Sentence Law.

The three-fold rule applies although the penalties were imposed for different crimes, at different times, and under separate informations. (Torres v. Superintendent, G.R. No. 40373)

If the sentence is indeterminate, the basis of the three-fold rule is the maximum term of the sentence. (People v. Desierto, C.A., 45 O.G. 4542)

In applying the provisions of this rule, the duration of perpetual penalties (pena perpetua) shall be computed at thirty years.

Example:
The accused is sentenced to suffer two penalties of reclusion perpetua. The duration of perpetual penalties shall be computed at 30 years. However, the accused shall suffer imprisonment for a period of 40 years and not 60 years. [People u. Mirto, G.R. No. 193479 (2011)]

Subsidiary imprisonment shall be excluded in computing for the maximum duration.

Article 70 of the Revised Penal Code is to be taken into account not in the imposition of the penalty but in connection with the service of the sentence imposed.

Ex. The court cannot dismiss criminal cases in excess of three on the basis of three-fold rule.

Miguel v. Director of the Bureau of Prisons, UDK-15368, [September 15, 2021], J. Hernando
Plainly, nowhere in the cited provision does it state that perpetual penalties, such as reclusion perpetua, are capped at thirty (30) years. Instead, what it only provides is that in applying the rules laid out in Article 70, such as the three-fold rule, the duration of perpetual penalties shall be computed at thirty (30) years, thus:

> In the case of People v. Mendoza, G.R. L-3271, May 5, 1950, it was held that the accused were guilty of murders and that each of them must be sentenced to suffer reclusion perpetua for each of the five murders, although the duration of the aggregate penalties shall not exceed 40 years. In this case, after serving one reclusion perpetua, which is computed at 30 years, the accused will serve 10 years more. All the other penalties will not be served. (Emphasis supplied)

In People v. Reyes, Article 70 is further explained:

> The other applicable reference to reclusion perpetua is found in Article 70 of the Code which, in laying

> down the rule on successive service of sentences where the culprit has to serve more than three penalties, provides, that 'the maximum duration of the convict's sentence shall not be more than three-fold the length of time corresponding to the most severe of the penalties imposed upon him,' and '(i)n applying the provisions of this rule the duration of perpetual penalties (pena perpetual) shall be computed at thirty years.'
>
> The imputed duration of thirty (30) years for reclusion perpetua, therefore, is only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of multiple penalties x x x. (Emphasis supplied)

Miguel's position is further negated by the pronouncement in People v. Baguio, where the Court similarly held that "[r]eclusion perpetua entails imprisonment for at least thirty (30) years, after which the convict becomes eligible for pardon x x x."

Guided by the foregoing jurisprudence, it is evident that the penalty of reclusion perpetua requires imprisonment of at least thirty (30) years, after which the convict becomes only eligible for pardon, and not for release. This is in stark contrast to Miguel's claim that a convict meted with the penalty of reclusion perpetua must serve only thirty (30) years.

CASE STUDY:

If the penalties imposed have a maximum of: 5 years, 4 years, 2 years, and 1 year. What is the maximum number of years that the convict should serve?

- The sum (after adding) would be 12 years;
- 3-fold rule (multiply the highest number by 3) would result in 15 years
- Cap is 40 years

ANS: Only 12 years should be served, as it is the most favorable.

For example, if penalties imposed are: 5, 4, 1, 2 years. You have 4 sentences. Applying the first rule, we add. After adding, we would end up at 12 years. 3 fold rule – highest number by 3 which is 5. That results in 15 years. Cap is 40 years.

The lowest among the 3 is 12 years. So, it is what is going to be served as maximum by the convict because it is the most favorable.

Note that the above limits refer to penalties not yet served. If a convict has already been sentenced in relation to an old case, let us say the case was made final 20 years ago, and he served 15 years or 17 years for that 20 year sentence. The next time around when he commits other crimes, he cannot be made to serve another 20. We will still apply the rules because these refer to penalties not yet served.

Absorption System

Greater penalties absorb lesser penalties where there is a single criminal intent, or in the case of continuing crimes, complex crimes, or special complex crimes

Effects of insanity

- At the time of the commission – no liability (exempting circumstance)
- At the time of trial – suspended.
    - Under the Bill of Rights, the accused is given the right to confront and cross-examine the witnesses against him and if he is insane at the time of hearing he, would be deprived of these rights.
    - But, if he gains sanity, then the trial will continue.
- At the time of sentencing – suspended.
    - The sentencing will be suspended because the judgement cannot be promulgated if the accused does not understand the judgement.
- At the time of service – suspended; civil liability may be enforced.
    - Recovery may mean that the criminal liability may be enforced again, unless prescription has set in.

Rule regarding execution and service of penalties in case of insanity:

- If the offender was insane at the time of the commission of the crime, he is exempt from criminal liability (Art. 12 par. 1)
- If he becomes insane during trial, the trial will be suspended because he cannot be informed of the nature of his crime if he is insane.
- Becomes imbecile after final sentence, execution is suspended (personal penalty). He will be taken out of the facility to undergo medical treatment. His sentence will not prescribe, but at the meantime, civil liability may be imposed.
- If he recovers his reason, sentence shall be executed, unless the penalty has prescribed
- But payment of civil or pecuniary liabilities shall not be suspended.

EXECUTION OF PRINCIPAL PENALTIES

General Rule: Penalties should be served at the jail.

Exceptions:

- Destierro – Judge will order the convict to stay away from the place of commission which could be from 25km - 250km
- Arresto menor – may not be served at the jail; may be served even at the police station

Comments:

- In terms of gravity, destierro is graver than arresto mayor because its duration is longer.
- In terms of service of sentence, destierro comes only after imprisonment (under Art. 70), so it is even lower than arresto mayor. It can only be served after all the sentences for imprisonment have been served.
- If you violate destierro, you can be arrested not because of the crime, but because of the contempt of court.

PROBATION LAW

(P.D. No. 968, as amended)

Probation

Probation is a special privilege granted by the state to a penitent qualified offender. It essentially rejects appeals and encourages an otherwise eligible convict to immediately admit his liability and save the state of time, effort and expenses to jettison an appeal. The law expressly requires that an accused must not have appealed his conviction before he can avail of probation. [Francisco v. Court of Appeals, G.R. No. 108747 (1995)]

It is a disposition under which a defendant, after conviction and sentence, is released subject to conditions imposed by the court and to the supervision of a probation officer.

When applied for

Probation is applied for after conviction and sentencing of a defendant for a probationable penalty and upon application within the period of perfecting an appeal.

NOTE: May be availed of even by those who had appealed a sentence of more than 6 years and on appeal received a penalty of 6 years and below.

SEC. 4. Grant of Probation, **RA 10707**. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: Provided, That when a judgment of conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through 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. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction.

"The trial court shall, upon receipt of the application filed, suspend the execution of the sentence imposed in the judgment.

"This notwithstanding, the accused shall lose the benefit of probation should he seek a review of the modified decision which already imposes a probationable penalty.

"Probation may be granted whether the sentence imposes a term of imprisonment or a fine only. The filing of the application shall be deemed a waiver of the right to appeal.

"An order granting or denying probation shall not be appealable."

GR: A perfected appeal from the judgment of conviction bars the grant of the privilege of probation. The remedies of appeal and probation are **alternative and mutually exclusive** of each other.

XPN: Appeal for correction of a non probationable penalty.

> When a judgment of conviction imposing a non probationable penalty is appealed or reviewed, and such judgment is modified through 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. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been re-raffled. [Colinares v. People, G.R. No. 182748 (2011)]

Colinares v. People, G.R. No. 182748 (2011)

Brief Background:
Accused was convicted of frustrated homicide by the lower court. Accused appealed the case and at the same time requested for probation. It should be noted that a penalty for frustrated homicide is not probationable.

Issue:
Is the accused entitled to probation?

Ruling:
An accused has the right to probation. If the Court allows accused to apply for probation because of the lowered penalty, it is still up to the trial judge to decide whether or not to grant the accused the privilege of probation, taking into account the full circumstances of the case.

Further, it is true that under the probation law the accused who appeals "from the judgment of conviction" is disqualified from availing himself of the benefits of probation. The Probation Law, requires that an accused must not have appealed his conviction before he can avail himself of probation. This requirement "outlaws the element of speculation on the part of the accused- to wager on the result of his appeal- that when his conviction is finally affirmed on appeal, the moment of truth well-nigh at hand, and the service of his sentence inevitable, he now applies for probation as an 'escape hatch' thus rendering nugatory the appellate court's affirmance of his conviction." However, in this case, two judgments have been meted out: (1) a conviction for frustrated homicide by the RTC; and (2) a conviction for attempted homicide by the Supreme Court.

Here, the accused did not appeal from a judgment that would have allowed him to apply for probation. He did not have a choice between appeal and probation.

The Probation Law never intended to deny an accused his right to probation through no fault of his. The underlying philosophy of probation is one of liberality towards the accused. Such philosophy is not served by a harsh and stringent interpretation of the statutory provisions. As Justice Vicente V. Mendoza said in his dissent in Francisco, the Probation Law must not be regarded as a mere privilege to be given to the accused only where it clearly appears he comes within its letter; to do so would be to disregard the teaching in many cases that the Probation Law should be applied in favor of the accused not because it is a criminal law but to achieve its beneficent purpose.

If the application for probation is based on the modified decision reducing the penalty to a probationable level rendered by the appellate court, it must be filed before such decision becomes final.

Comments:

- If the original sentence is not more than 6 years and he appealed, he cannot anymore avail of probation.
- In order to be able to avail probation, the original sentence appealed from must be more than 6 years, and later on, the appellate court prescribes a sentence that is not more than 6 years.

People v. Galuga y Wad-as, G.R. No. 221428, [February 13, 2019], J. Hernando

Accused-appellant is likewise disqualified from applying for probation as Section 9 (a) of the Probation Law is clear that the benefits of probation shall not extend to those sentenced to serve a maximum term of imprisonment of more than six (6) years. Irrefragably, the sentence of reclusion perpetua imposed on accused-appellant in this case exceeds six (6) years of imprisonment.

Furthermore, Section 4 of the Probation Law, as amended, reads:

> SEC. 4. Grant of Probation. — Subject to the provisions of this Decree, the trial court may, after it shall have convicted and sentenced a defendant for a probationable penalty and upon application by said defendant within the period for perfecting an appeal, suspend the execution of the sentence and place the defendant on probation for such period and upon such terms and conditions as it may deem best. No application for probation shall be entertained or granted if the defendant has perfected the appeal from the judgment of conviction: Provided, That when a judgment or conviction imposing a non-probationable penalty is appealed or reviewed, and such judgment is modified through 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. The application for probation based on the modified decision shall be filed in the trial court where the judgment of conviction imposing a non-probationable penalty was rendered, or in the trial court where such case has since been raffled. In a case involving several defendants where some have taken further appeal, the other defendants may apply for probation by submitting a written application and attaching thereto a certified true copy of the judgment of conviction. (Emphasis ours.)

Section 4 of the Probation Law, as amended, intends to put a stop to the practice of appealing from judgments of conviction even if the sentence is probationable, for the purpose of securing an acquittal and applying for the probation only if the accused fails in his bid. **An accused must not have appealed his conviction before he can avail himself of probation**. Jurisprudence treats appeal and probation as mutually exclusive remedies because the law is unmistakable about it. The law is very clear and a contrary interpretation would counter its envisioned mandate. Thus, even assuming that herein accused-appellant is qualified to apply for parole, he has already availed himself of the remedy of appeal twice, by appealing the RTC judgment of conviction before the Court of Appeals, and then appealing the Court of Appeals decision affirming his conviction before this Court, which already proscribes him from applying for probation.

Rules and effects of filing and grant/denial of application for probation

1) Filing of application for probation operates as a **waiver of the right to appeal**.

   However, the accused can withdraw the application for probation and file an appeal provided that both the **withdrawal** and appeal are made within the period of perfecting an appeal. (Yusi v. Morales, G.R. No. 61958, April 28, 1983)

2) If the defendant has **perfected an appeal**, no application will be granted.

Note: If the applicant is **a child in conflict with the law**, the application for probation can be filed at any time in accordance with Section 42 of R.A. No. 9344, which is amendatory to Section 4 of P.D. No. 968. The phrase at any time means the child in conflict with the law may file an application for probation even beyond the period of perfecting an appeal or during the pendency of the appeal.

Note: Take note of the Neypes principle or the **"fresh period rule"** to the period of appeal in criminal cases. In Neypes, the Court modified the rule in civil cases on the counting of the 15-day period within which to appeal. The Court categorically set a fresh period of 15 days from a denial of a motion for reconsideration within which to appeal.

However, the accused shall lose the benefit of probation should he seek a review of a modified decision where the appellate court reduces the penalty from a non-probationable to a probationable level such as filing a motion for reconsideration. (Section 4 of P.D. No. 968, as amended by R.A. No. 10707) If the motion for reconsideration of such a modified decision is denied by the appellate court, the accused cannot anymore file an application for probation.

3) After having convicted and sentenced a defendant, the trial court may suspend the execution of the sentence, and place the defendant on probation, upon application by the defendant within the period for perfecting an appeal.

4) Probation may be granted whether the sentence imposes the penalty of imprisonment or fine only.

5) The order granting or denying probation shall **not be appealable** since probation is not an absolute right.

An order granting or denying probation (Section 4 of P.D. No. 968) or revoking the grant of probation or modifying the terms and conditions thereof (Section 15) shall not be appealable for being discretionary. (Suyan u. People, G.R. No. 189644, July 2, 2014)

XPN: Grave abuse of discretion tantamount to lack or excess of jurisdiction in granting or denying application for probation.

6) **Accessory penalties** are deemed suspended once probation is granted.

It appears then that during the period of probation, the probationer is not even disqualified from running for public office because the accessory penalty of suspension from public office is put on hold for the duration of the probation. During the period of probation, the probationer does not serve the penalty imposed upon him by the court but is merely required to comply with all the conditions prescribed in the probation order. (Villareal u. People, C.R. No. 151258, December 1, 2014)

7) The convict is not immediately placed on probation. There shall be a prior investigation by the probation officer and a determination by the court.

Condition of grant of probation

The probationer shall:

1. Present himself to his probation officer designated to undertake his supervision at a place specified in the order within 72 hours from receipt of said order;
2. Report to his probation officer at least once a month at such time and place as specified by said officer; and,
3. Other additional conditions that the court may require as listed in Section 10 of PD 968.

Grounds for denial of application for probation

Application for probation shall be denied upon the finding of the court that:

1. Probation will depreciate the seriousness of the offense committed;
2. There is undue risk of committing another crime during the probation period; or
3. The offender is in need of correctional treatment that can be provided effectively by his commitment to an institution.

Disqualified offenders

The benefits of the Probation Law shall not be extended to the following persons:

1. Those sentenced to serve a maximum term of imprisonment of more than 6 years;

   Note: To determine whether or not the penalty exceeds six years of imprisonment, the maximum indeterminate penalty should be considered.

2. Those convicted of subversion or any crime against the national security;
3. Those previously convicted by final judgment of an offense punished by imprisonment of more than 6 months and 1 day and/or a fine more than P1,000;
4. Those once placed on probation;
5. Those already serving sentence at the time the Probation Law became applicable;
6. Those who have perfected an appeal;
7. Those who were convicted of drug trafficking or drug pushing under RA 9165, Sec. 24;

   Note: Under Section 70 of R.A. No. 9165, a first-time minor offender can apply for probation for the crime

of illegal possession or use of dangerous drug even if the penalty is higher than six years of imprisonment. If the charge is selling dangerous drugs, the applicable rule is Section 24 of R.A. No. 9165, which disqualifies drug traffickers and pushers for applying for probation.

8. Those who were convicted of election offenses under the Omnibus Election Code;
9. If placing the offender on probation will NOT serve the end of justice or the best interest of the society and the offender himself;
10. Those guilty of malicious reporting of money laundering under RA 9160, as amended; and,
11. In order not to depreciate the crime of torture (RA 9745).

Period of probation

Term Of Imprisonment	Duration
Penalty for crime is not more than 1 year	Probation shall not exceed 2 years
Penalty for crime is more than 1 year	Probation shall not exceed 6 years
When penalty is a fine and offender is made to serve subsidiary imprisonment	Probation shall be twice the total number of days of subsidiary imprisonment

Arrest of Probationer

At any time during probation, the court may issue a warrant for the arrest of a probationer for any serious violation of the conditions of probation, or upon commission of another offense.

The probationer, once arrested and detained, shall immediately be brought before the court for a hearing, which may be informal and summary, of the violation charged. The accused may be permitted bail pending such hearing.

If violation is established, the court may:

1. Revoke his probation, and thus make him serve the sentence originally imposed; or,
2. Continue his probation and modify its conditions.

If revoked, the probationer shall serve the sentence originally imposed.

The period for which the accused has undergone probation cannot be deducted from the imposed penalty because an order placing the defendant on "probation" is not a "sentence," but is in effect a suspension of the execution of the sentence.

Termination of Probation

The court may order the final discharge of the probationer upon finding that he has fulfilled the terms and conditions of his probation.

Effect of termination of probation

1. Case is deemed terminated.
2. Restoration of all civil rights lost or suspended.
3. Fully discharges liability for any fine imposed. Probation is not coterminous with the period.

The expiration of the probation period alone does not automatically terminate probation.

There must be an ORDER issued by court discharging the probationer, only from issuance can the case of probationer be deemed terminated. (Bala v. Martinez, G.R. No. L-67301, 1990

Thus, the court may revoke the probation for transferring residence after the expiration of the period of probation but before the discharge of the probationer in violation of the condition thereof.

Civil Liability

Grant of probation shall not suspend the payment of civil liability.

Discharge of the probationer shall extinguish his criminal liability involving fine but not his civil liability concerning reparation for damages caused and indemnification for consequential damage.

Distinction

Probation	Parole	Pardon
Grant of probation is judicial	Grant of parole is executive	Grant of pardon is executive
Probation suspends the sentence	Parole suspends the unserved portion of the sentences;	Pardon is remission of penalty;
Offender can generally apply for probation within the period of perfecting an appeal;	Offender is eligible for pardon after conviction by final judgment;	Offender is eligible for parole after serving the minimum of the indeterminate penalty;
Offender, who was sentenced to suffer a penalty of more than six years of imprisonment, is disqualified to	Offender, who was sentence to suffer reclusion perpetua, life imprisonment or death penalty, is not qualified	The President can pardon offender even 1f the penalty imposed upon him is reclusion

apply for probation.	for parole	perpetua (or death penalty).

JUVENILE JUSTICE AND WELFARE ACT

(RA 9344, as amended)

Definition of Terms

Best interest of the child
It refers to the totality of the circumstances and conditions which are most congenial to the survival, protection and feelings of security of the child and most encouraging to the child's physical, psychological and emotional development. It also means the least detrimental available alternative for safeguarding the growth and development of the child.

Child
It refers to a person under the age of eighteen (18) years.

> Note: An adult, who cannot protect himself from abuse because of his mental or physical condition is a child under R.A. No. 7610 but not under R.A. No. 9344.

Child at risk
It refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

1. being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
2. being exploited including sexually or economically;
3. being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
4. coming from a dysfunctional or broken family or without a parent or guardian;
5. being out of school;
6. being a streetchild;

Child in conflict with the law
A child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

Bahay Pag-asa
It refers to a 24-hour child-caring institution established, funded and managed by local government units (LGUs) and licensed and/or accredited nongovernment organizations (NGOs) providing short-term residential care for children in conflict with the law who are above fifteen (15) but below eighteen (18) years of age who are awaiting court disposition of their cases or transfer to other agencies or jurisdiction.

Part of the features of a 'Bahay Pag-asa' is an intensive juvenile intervention (IJISC) and support center. This Center will be allocated for children in conflict with the law in accordance with Sections 20, 20-A and 20-B (children below the age of criminal responsibility, children above 12 but below 15 who commit serious crimes, repeat offenders) hereof. These children will be required to undergo a more intensive multi-disciplinary intervention program.

Multi-disciplinary team
They operate the 'Bahay Pag-asa', composed of a social worker, a psychologist/mental health professional, a medical doctor, an educational/guidance counselor and a Barangay Council for the Protection of Children (BCPC) member.

Diversion
An alternative, child-appropriate process of determining the responsibility and treatment of a child in conflict with the law on the basis of his/her social, cultural, economic, psychological or educational background without resorting to formal court proceedings.

Juvenile Justice Welfare Council
A body attached to the DSWD chaired by an Undersecretary of the DSWD. They shall ensure the effective implementation of the JJWA .

Initial contact with the child
Apprehension or taking into custody of a child in conflict with the law by law enforcement officers or private citizens

Intervention
A series of activities which are designed to address issues that caused the child to commit an offense. It may take the form of an individualized treatment program which may include counseling, skills training, education, and other activities that will enhance his/her psychological, emotional and psycho-social well-being.

Recognizance
An undertaking in lieu of a bond assumed by a parent or custodian who shall be responsible for the appearance in court of the child in conflict with the law, when required.

Restorative justice
A principle which requires a process of resolving conflicts with the maximum involvement of the victim, the offender and the community. It seeks to obtain reparation for the victim; reconciliation of the offender, the offended and the community; and reassurance to the offender that he/she can be reintegrated into society. It also enhances public safety by activating the offender, the victim and the community in prevention strategies.

Status offenses
This refers to offenses which discriminate only against a child, while an adult does not suffer any penalty for committing similar acts. These shall include curfew violations; truancy, parental disobedience and the like.

Youth Rehabilitation Center

It refers to a 24-hour residential care facility managed by the Department of Social Welfare and Development (DSWD), LGUs, licensed and/or accredited NGOs monitored by the DSWD, which provides care, treatment and rehabilitation services for children in conflict with the law. Rehabilitation services are provided under the guidance of a trained staff where residents are cared for under a structured therapeutic environment with the end view of reintegrating them into their families and communities as socially functioning individuals. (Sec. 4)

Rights of the Child in Conflict with the Law

Every child in conflict with the law shall have the following rights, including but not limited to:

1. The right not to be subjected to torture or other cruel, inhuman or degrading treatment or punishment;
2. The right not to be imposed a sentence of capital punishment or life imprisonment, without the possibility of release;
3. The right not to be deprived, unlawfully or arbitrarily, of his/her liberty; detention or imprisonment being a disposition of last resort, and which shall be for the shortest appropriate period of time;
4. The right to be treated with humanity and respect, for the inherent dignity of the person, and in a manner which takes into account the needs of a person of his/her age.
5. The right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his/her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on such action;
6. The right to bail and recognizance, in appropriate cases;
7. The right to testify as a witness in his/her own behalf under the rule on examination of a child witness;
8. The right to have his/her privacy respected fully at all stages of the proceedings;
9. The right to diversion if he/she is qualified and voluntarily avails of the same;
10. The right to be imposed a judgment in proportion to the gravity of the offense where his/her best interest, the rights of the victim and the needs of society are all taken into consideration by the court, under the principle of restorative justice;
11. The right to have restrictions on his/her personal liberty limited to the minimum, and where discretion is given by law to the judge to determine whether to impose fine or imprisonment, the imposition of fine being preferred as the more appropriate penalty;
12. The right to automatic suspension of sentence;
13. The right to probation as an alternative to imprisonment, if qualified under the Probation Law;
14. The right to be free from liability for perjury, concealment or misrepresentation; and,
15. Other rights as provided for under existing laws, rules and regulations.

Minimum Age of Criminal Responsibility

Below 15 years old at the time of the commission of the offense.

a. Criminal liability – EXEMPT, but subject to Intervention program
b. Civil liability – LIABLE

A child is deemed to be fifteen (15) years of age on the day of the fifteenth anniversary of his/her birthdate.

Above 15 but below 18 years old, acting WITHOUT discernment at the time of the commission of the offense.

a. Criminal liability – EXEMPT, but subject to Intervention program
b. Civil liability – LIABLE

Above 15 but below 18 years old, acting WITH discernment at the time of the commission of the offense

a. Criminal liability – Privileged Mitigating, Diversion
b. Civil liability – LIABLE

Above 18 years old at the time of the commission of the offense

a. Criminal liability – LIABLE
b. Civil liability – LIABLE

Reaching the age of majority at any stage of the case will not deprive him of his entitlements under the law as a child in conflict with the law. Thus, a child in conflict with the law, who already reached the age of majority during the pendency of the case, is still entitled to the privileged mitigating circumstance of minority, the privilege of being confined in agricultural camp or other training facilities and suspension of sentence.

Suspension of Sentence

Once the child in conflict with the law is found guilty of the offense charged, the court, instead of pronouncing judgment of conviction, shall place him under suspended sentence, without need of application.

But the court shall determine and ascertain any civil liability which may have resulted from the offense committed. (Section 38 of R.A. No. 9344) In other words, the suspension of sentence does not extend to the civil aspect of the case.

XPN: Upon reaching the age of 21 years, a child in conflict with the law is not anymore entitled to the benefit of a suspended sentence.

However, he shall be given the benefit of being confined in an agricultural camp or any other training

facility. (People v. Rupisan, G.R. No. 226494, February 14, 2018)

Note: No disqualification.

Ex. Even if the child in conflict with the law is convicted of sale of dangerous drugs, which is a heinous crime, he is still entitled to a suspended sentence under R.A. No. 9344. (People v. Sarcia, G.R. No. 169641, September 10, 2009; People v. Jacinto, G.R. No. 182239, March 16, 2011)

Guidelines

Judgment against children in conflict with the law shall be guided by the following:

1. It shall be considered in the circumstances of the best interest of the child, in the demands of restorative justice;
2. Restrictions on personal liberty shall be at the minimum. When the court has the discretion to impose a fine instead of the penalty of imprisonment, the imposition of the fine shall be proferred as the more appropriate penalty;
3. Prohibition on corporal punishment; and
4. Doubts shall be resolved in favor of the child.

Presumption of minority

The child in conflict with the law shall enjoy the presumption of minority. The child shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older. (Sec. 7)

Proof of age

The age of a child may be determined from the child's birth certificate, baptismal certificate or any other pertinent documents.

In the absence of these documents, age may be based on information from the child himself/herself, testimonies of other persons, the physical appearance of the child and other relevant evidence. In case of doubt as to the age of the child, it shall be resolved in his/her favor. (Sec. 7)

If child taken into custody is 15 years or below

The authority which will have initial contact with the child, in consultation with the local social welfare and development officer, has the duty to immediately release the child to the custody of his/her parents or guardian, or in the absence thereof, the child's nearest relative.

The child shall be subjected to a community-based intervention program supervised by the local social welfare and development officer, unless the best interest of the child requires the referral of the child to a youth care facility or 'Bahay Pag-asa'. (Sec. 20)

Child above 12 years of age up to 15 years of age

Exempt from criminal liability but he can be considered as a neglected child under P.D. No. 603 and be mandatorily placed in a youth care facility or Bahay Pag-asa in the following instances:

Serious crimes

Such as parricide, murder, infanticide, kidnapping and serious illegal detention where the victim is killed or raped, robbery, with homicide or rape, destructive arson, rape, or carnapping where the driver or occupant is killed or raped or offenses under Republic Act No. 9165 punishable by more than 12 years of imprisonment.

A petition for involuntary commitment shall be filed by a social worker in court.

Repetition of offenses

Commits an offense for the second time or often: Provided, That the child was previously subjected to a community-based intervention program, shall be deemed a neglected child and shall undergo an intensive intervention program supervised by the local social welfare and development officer.

The parents or guardians of the child shall execute a written authorization for voluntary commitment. However, if the child has no parents or guardians or if they refuse or fail to execute such authorization, the proper petition for involuntary commitment shall be immediately filed by the social worker in court; but the child may be subjected to intensive intervention program supervised by the local social officer instead of involuntary commitment. (Section 20-A and 20-B of R.A. No. 9344, as amended by R.A. No. 10630)

Prohibited Acts

The following and any other similar acts shall be considered prejudicial and detrimental to the psychological, emotional, social, spiritual, moral and physical health and well-being of the child in conflict with the law and therefore, prohibited:

1. In the conduct of the proceedings beginning from the initial contact with the child, the competent authorities must refrain from branding or labeling children as young criminals, juvenile delinquents, prostitutes or attaching to them in any manner any other derogatory names.
2. No discriminatory remarks and practices shall be allowed particularly with respect to the child's class or ethnic origin.
3. Employment of threats of whatever kind and nature;
4. Employment of abusive, coercive and punitive measures such as cursing, beating, stripping, and solitary confinement;
5. Employment of degrading, inhuman and cruel forms of punishment such as shaving the heads, pouring irritating, corrosive or harmful substances over the body of the child in conflict with the law, or forcing him/her to walk around the community wearing signs

which embarrass, humiliate, and degrade his/her personality and dignity; and

6. Compelling the child to perform involuntary servitude in any and all forms under any and all instances. (Secs. 60 and 61)

Diversion and Intervention

System of Diversion

Children in conflict with the law shall undergo diversion programs without undergoing court proceedings:

1. Where the imposable penalty for the crime committed is not more than six (6) years imprisonment – The law enforcement officer or Punong Barangay with the assistance of the local social welfare and development officer or other members of the LCPC shall conduct mediation, family conferencing and conciliation and, where appropriate, adopt indigenous modes of conflict resolution in accordance with the best interest of the child with a view to accomplishing the objectives of restorative justice and the formulation of a diversion program. The child and his/her family shall be present in these activities.
2. In victimless crimes where the imposable penalty is not more than six (6) years imprisonment – The local social welfare and development officer shall meet with the child and his/her parents or guardians for the development of the appropriate diversion and rehabilitation program, in coordination with the BCPC.
3. Where the imposable penalty for the crime committed exceeds six (6) years imprisonment – Diversion measures may be resorted to only by the court. (Sec. 23)

Where the maximum penalty imposed by law for the offense with which the child in conflict with the law is charged is imprisonment of not more than twelve (12) years, regardless of the fine or fine alone regardless of the amount, and before arraignment of the child in conflict with the law, the court shall determine whether or not diversion is appropriate. (Sec. 37)

If during the conferencing, mediation or conciliation outside the criminal justice system or prior to his entry into said system, the child voluntarily admits the commission of the act, a contract of diversion may be entered into during such conferencing, mediation or conciliation proceedings. (Sec. 26)

Stages where diversion program may be conducted

Diversion may be conducted at –

1. Katarungang Pambarangay;
2. Police investigation;
3. Inquest;
4. Preliminary Investigation; or
5. All levels and phases of the proceedings including the judicial level (Sec. 24)

Factors in determining the diversion program

In determining whether diversion is appropriate and desirable, the following factors shall be taken into consideration:

1. The nature and circumstances of the offense charged;
2. The frequency and the severity of the act;
3. The circumstances of the child (e.g. age, maturity, intelligence, etc.);
4. The influence of the family and environment on the growth of the child;
5. The reparation of injury to the victim;
6. The weight of the evidence against the child;
7. The safety of the community; and,
8. The best interest of the child (Sec. 29)

Factors in formulating the diversion program

In formulating a diversion program, the individual characteristics, and the peculiar circumstances of the child in conflict with the law shall be used to formulate an individualized treatment.

The following factors shall be considered in formulating a diversion program for the child:

1. The child's feelings of remorse for the offense he/she committed;
2. The parents' or legal guardians' ability to guide and supervise the child;
3. The victim's view about the propriety of the measures to be imposed; and,
4. The availability of community-based programs for rehabilitation and reintegration of the child. (Sec. 30)

Agricultural Camp or Other Training Facilities

The child in conflict with the law may, after conviction and upon order of the court, be made to serve his sentence, in lieu of confinement in a regular penal institution, in an agricultural camp and other training facilities in accordance with Section 51 of R.A. No. 9344. (People v. Mantalaba, G.R. No. 186227, July 20, 2011)

Full Credit of Preventive Imprisonment

A convict is entitled to a full or 4/5 credit of his preventive imprisonment. (Article 29 of the Revised Penal Code)

If the convict is a child in conflict with the law, he shall be credited in the services of his sentence the full time spent in actual commitment and detention. (Section 41, R.A. No. 9344; Atizado v. People, G.R. No. 173822, October 13, 2010)

Offenses Not Applicable to Children

Persons below eighteen (18) years of age shall be exempt from prosecution for the following crimes:

1. Vagrancy and prostitution under Section 202 of the Revised Penal Code;
2. Mendicancy under Presidential Decree No. 1563; and
3. Sniffing of rugby under Presidential Decree No. 1619. (Sec. 58)

Exemption from Death Penalty

The provisions of the Revised Penal Code, as amended, Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002, and other special laws notwithstanding, no death penalty shall be imposed upon children in conflict with the law.

Exploitation of Children For Commission of Crimes

Any person who, in the commission of a crime, makes use, takes advantage of, or profits from the use of children, including any person who abuses his/her authority over the child or who, with abuse of confidence, takes advantage of the vulnerabilities of the child and shall induce, threaten or instigate the commission of the crime, shall be imposed the penalty prescribed by law for the crime committed in its maximum period.

EFFECTS OF MINORITY IN THE EXECUTION:

- At the time of the commission – benefits under RA 9344
- At the time of trial – bail and custody
- At the time of sentencing – at least 1 degree lower (privileged mitigating)
- At the time of service
    - Suspended
    - Probation
    - Agricultural/training camps

Comments:

- The benefits of minority can only be considered if the CICL was a minor at the time of the commission of the crime.
- Unlike in insanity where the insanity may insist either at the time of commission or after.

If the minority occurred at time of commission of crime, the minor convict will benefit all that are granted under RA 9344.

What are these?

1. We have privileged mitigating. So one degree lower. We also have bail always, as a matter of right. We have probation, which is also always a right regardless the period. He may serve at the training camp.

2. He may be under the custody of his parents or DSWD at the time of trial, but of course, not in jail. He will be made to serve a sentence, but only after reaching the age of majority because the sentence may be suspended. It is not true that he cannot be in the custody of the court. The court may order it, but it must not be with the jail authorities.

3. After conviction, he may be in an agricultural or training camp.

NOTE: Minority can only be considered if the CICL was a minor at the time of the commission of the crime. It is possible that at the time of trial, he is not anymore a minor. He was a minor at the time of commission but not trial. He was a minor at commission but not anymore at promulgation. So, in order for the benefits of suspended sentence, he must be a minor at the time of commission, necessarily

An Act Adjusting the Amount or the Value of Property and Damage on Which a Penalty is Based and the Fines Imposed Under the Revised Penal Code

(RA 10951)

Basis

In the case of Lito Corpuz v. People, G.R. No. 180016, April 29, 2014, the Supreme Court turned the spotlight on the perceived injustice brought about by the range of penalties that the courts continue to impose on crimes committed today, based on the amount of damage measured by the value of money 80 years ago.

Times 200/100 Formula

R.A. No. 10951 has adjusted the penalty of fine and the amount involved, and value of the property or damage on which the penalty is based under the Code by multiplying them by 200.

> **Ex.** The penalty for alarm and scandal under Article 155 of the Revised Penal Code is arresto menor or fine not exceeding P200. R.A. No. 10951 has adjusted this amount of fine to P40,000 by multiplying P200 by 200.

Note: Because of restorative justice (HB No. 5513), R.A. No. 10951 sometimes uses the times 100 formula in making an adjustment. There are also instances where the adjustment was made without using the times 200/100 formula.

Retroactive Effect

GR: A judgment that has acquired finality becomes immutable and unalterable and may no longer be modified in any respect even if the modification is meant to correct erroneous conclusions of fact or law.

XPN: It should be noted that Section 100, R.A. No. 10951 adds that this retroactivity applies not only to persons accused of crimes but have yet to be meted their final sentence, but also to those already "serving sentence by final judgment." (People v. Valencia, G.R. No. 225735, January 10, 2018)

Note: Section 100 of R.A. No. 10951 provides "this Act shall have retroactive effect to the extent that it is favorable to the accused or person serving sentence by final judgment." This provision does not require non-habitual delinquency as a condition for the retroactive application of the favorable parts of R.A. No. 10951.

Remedies to Avail the Lesser Penalty

Supreme Court in a petition for adjustment of penalty filed by Elbanbuea, G.R. No. 237721, July 31, 2018 issued the following procedural guidelines:

1. **Scope -**
   a. the modification, based on the amendments introduced by R.A. No. 10951, of penalties imposed by final judgments; and
   b. the immediate release of the petitioner-convict on account of full service of the penalty/penalties, as modified.

2. **Who may file -** The Public Attorney's Office, the concerned inmate, or his/her counsel/representative, may file the petition.

3. **Where to file -** The petition shall be filed with the Regional Trial Court exercising territorial jurisdiction over the locality where the petitioner-convict is confined.

COMMUNITY SERVICE ACT

(R.A. No. 11362 and A.M. No. 20-06-14-SC)

Approved on August 8, 2019.

Community service consists in **actual physical activity** which inculcates civic consciousness and is intended towards the improvement of a public work or the promotion of a public service. (Sec. 3, R.A. No. 11362)

The court in the discretion may, **in lieu of service in jail,** require that the penalties of arresto menor and arresto mayor may be served by the defendant by rendering community service in the place where the crime was committed, under such terms as the court shall determine, taking into consideration the gravity of offense and the circumstances of the case, which shall be under the supervision of a probation officer. [Sec. 3, R.A. No. 11362, amending Art. 88(a) of Act No. 3815]

The court will prepare an order imposing the community service, specifying the number of hours to be worked and the period within which to complete the service. The order is then referred to the assigned probation officer who shall have responsibility of the defendant. (Sec. 3, R.A. No. 11362)

The defendant shall likewise be required to undergo **rehabilitative counseling** under the social welfare and development office of the city or municipality concerned with the assistance of the DSWD. In requiring community service, the court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering a public service. (Sec. 3, R.A. No. 11362)

If the defendant violates the terms of the community service, the court shall order his/her re-arrest and the defendant shall serve the full term of the penalty, as the case may be, in jail, or in the house of the defendant **(house arrest)** as provided under Art. 88. However, if the defendant has fully complied with the terms of the community service, the court shall order the release of the defendant unless detained for some other offenses.

The privilege of rendering community service in lieu of service in jail shall be availed of only **once**. (Sec. 3, R.A. No. 11362)

The imposition of the penalty of community service is still within the discretion of the Court and should not be taken as an unbridled license to commit minor offenses. It is merely a privilege since the offended cannot choose it over imprisonment as a matter of right. In requiring community service, the Court shall consider the welfare of the society and the reasonable probability that the person sentenced shall not violate the law while rendering the service. With the enactment of R.A. No. 11362, apart from the law's objective to improve public work participation and promote public service, it is expected that the State's policy to promote restorative justice and to decongest jails will be achieved. (Realiza v. People, G.R. No. 228745)

Guidelines

GUIDELINES IN THE IMPOSITION OF COMMUNITY SERVICE AS PENALTY IN LIEU OF IMPRISONMENT (A.M. NO. 20-06-14-SC)

After promulgation of judgment or order where the imposable penalty for the crime or offense committed by the accused is arresto menor or arresto mayor, it shall be the court's duty to inform the accused of and announce in open court his/her options within 15 calendar days from promulgation:

1) file an appeal;
2) apply for probation as provided by law; or
3) apply that the penalty be served by rendering community service in the place where the crime was committed.

It shall further be explained to the accused that if he/she chooses to appeal the conviction, such resort thereto bars any application for community service or probation.

In exercising the discretion to allow service of penalty through community service, the following factors may be considered by the court:

1. Gravity of the offense;
2. Circumstances of the case;
3. Welfare of the society; and
4. Reasonable probability that the accused shall not violate the law while rendering the service.

In no case shall the benefit of the Community Service Act be given to the accused more than once. The period for the community service to be rendered should not be more than

the maximum sentenced imposed by law, but not less than 1/3 thereof.

If the accused has undergone preventive imprisonment, the period shall be deducted from the term of community service.

In the event the court denies the application for community service, and the period to appeal has not yet lapsed, the accused may still choose to appeal said judgment or apply for probation.

An accused who has applied and was granted probation in a previous case is not disqualified to apply for community service in a subsequent case.

Comments:

- Example, the penalty is arresto mayor (where there can also be probation). What should be the course of action of the convict, avail of probation or community service?
    - If there is a possibility that he may still be convicted in the future, avail nalang of probation first because no physical activity, and in the next time he gets convicted, he can still avail of community service if the penalty is either arrestor mayor or menor.
    - Those who have undergone community service cannot avail probation, but those who availed of probation can still avail of community service.

EXTINCTION OF CRIMINAL LIABILITY

TWO KINDS OF EXTINCTION

1. Total
2. Partial

TOTAL EXTINCTION TO CRIMINAL LIABILITY

Criminal liability of the offender is totally extinguished by:

1. Death of the offender;
2. Service of sentence;
3. Amnesty or Absolute pardon;
4. Prescription of the crime;
5. Prescription of the penalty;
6. Marriage between the offender and the offended party in crimes against chastity or in rape; or frgiveness in martial rape;
7. Final discharge of the probationer (PD 968 as amended by RA 10707); and
8. Express repeal of penal law (i.e., the act is decriminalized).

Death

Death of the convict whether before or after final judgment

The death of the convict, whether before or after final judgment, extinguishes criminal liability, because one of the juridical conditions of penalty is that it is personal.

When the accused dies during the pendency of his appeal, his criminal liability has already been extinguished. Considering that his death pending appeal extinguishes his criminal liability and civil liability ex delicto, the criminal action must be dismissed since there is no longer a defendant to stand as the accused. From that point on, the criminal action had no defendant upon which the action is based. (Tuano y Hernandez v. People, G.R. 205871)

Amnesty or Absolute pardon

Amnesty — is an act of the sovereign power granting oblivion or general pardon for past offense, exerted in favor of a class of person. It completely extinguishes the penalty and all its effects. Amnesty may be granted after conviction.

Absolute pardon — is an act of grace proceeding from the power which executes the law exempting an individual from punishment of crime committed.

The pardon must be absolute and must be accepted by the convicted person.

Amnesty	Pardon
Political offenses (e.g. murder)	Any offense
A class of person or communities	An individual is pardoned
May be exercised even before trial or investigation, i.e. usually granted before conviction	Individual is already convicted, i.e. can only be granted after conviction
Looks backward and abolishes the offense itself (ex. convict will no longer be a recidivist)	Looks forward and relieves offender of consequences of the offense he was convicted of (ex. convict will remain a recidivist)
Granted by President with concurrence of Congress	Solely the discretion of the President

Note: Absolute pardon is an executive act. It is purely discretionary on part of the President. Amnesty on the other hand involves Executive and Legislative. In amnesty, it usually involves a law and it is a law sort of exempting classes of people from criminal liability even before the crime is committed. Pardon is also known as executive clemency.

> **Example:** Here are people committing "Coup d'état" even before they are caught they may be cleansed. They may be cleared of any criminal liability to a legislative and executive act called an amnesty. For absolute pardon, on the other hand, there must be a conviction first. The President cannot pardon somebody who has not yet been convicted.

Q: Can there still be absolute pardon even if the sentence is fully served?

Yes, because even if the sentence is fully served, there are accessory penalties which can still be affected by the absolute pardon or other penalties which have not been satisfied yet like unpaid fines.

Note: Pardon does not extinguish civil liability unlike the pardon by the offended party. The pardon by the offended party will also serve as a waiver under Rule 111 of the ROC. When the crime is committed, there is also a civil liability. Pardon of the offended party will also serve as a waiver to that civil liability.

Marriage of the offended woman

Marriage of the offended woman

In cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offender with the offended party shall extinguish the criminal action or remit the penalty

already imposed upon him. The provisions of this paragraph shall also be applicable to the coprincipals, accomplices and accessories after the fact of the abovementioned crimes. (Art. 344, RPC)

In cases of rape under Art. 266-C, the subsequent valid marriage between the offended party (and the rape victim) shall extinguish the criminal action or the penalty imposed.

Note: Marriage of the offender with the offended woman must be contracted in good faith. Hence, marriage contracted only to avoid criminal liability is devoid of legal effects. (People vs. Santiago)

MODES OF PREVENTING CRIMINAL LIABILITY

Novation

Novation is not a mode of extinguishing criminal liability. Hence, as a general rule, novation is not a defense in a criminal case.

Contractual Relationship
However, novation can extinguish the old contract, which may be the basis of criminal liability.

People vs Nery, G.R. No. L-19567 (1964)

The novation theory may perhaps apply prior to the filing of the criminal information in court by the state prosecutors because up to that time the original trust relation may be converted by the parties into an ordinary creditor-debtor situation, thereby placing the complainant in estoppel to insist on the original trust. But after the justice authorities have taken cognizance of the crime and instituted action in court, the offended party may no longer divest the prosecution of its power to exact the criminal liability, as distinguished from the civil. The crime being an offense against the state, only the latter can renounce it.

Comments:

- There was novation. This is not a mode of extinguishing criminal liability for the estafa. It merely means that there is no more estafa in the first place because there was an agreement to convert the original obligation to a contract of sale.

  Initially, the elements of Estafa were present. However, before the filing of the case in court, they made an agreement where payment will instead be made. It changed the nature of the obligation from Agency to Sale. The contract was changed.

- As such, the elements of Estafa are no longer present. The obligation is no longer to return or remit the proceeds, but to pay. There is no longer an agency, but a contract of sale.

- Although it is not one of the means to extinguish criminal liability as recognized by the RPC, it may prevent the rise of criminal liability or it may cast a doubt on the true nature of the original basic transaction provided that the novation takes place before the filing of information with the Trial Court.

Note: If there is juridical possession of a thing taken and this person who had juridical possession failed to return or remit the thing or money to the rightful owner, there could be Estafa.

Example:
There was jewelry entrusted by Maria to Juana so the latter may sell it on commission. If she fails to sell, she may return it. If she is successful, she has to remit the proceeds. In the meantime, she retains juridical possession. If she fails to perform her obligation, she commits Estafa. However, if Maria gave the jewelry to Juana and the latter gave a downpayment, there is no longer a transfer of juridical personality, but a transfer of ownership.

Nery ruling inapplicable to theft case
The Nery ruling does not apply to a theft case since no contract existed which can be modified (Pp. vs. Tanjutco, April 29, 1968).

SSS vs DOJ

The facts of this case negate the application of novation. In the first place, there is, between SENCOR and petitioner, no original contract that can be replaced by a new contract changing the object or principal condition of the original contract, substituting the person of the debtor, or subrogating a third person in the rights of the creditor.

The original relationship between SENCOR and petitioner is defined by law – RA 1161, as amended – which requires employers like SENCOR to make periodic contributions to petitioner under pain of criminal prosecution. Unless Congress enacts a law further amending RA 1161 to give employers a chance to settle their overdue contributions to prevent prosecution, no amount of agreements between petitioner and SENCOR (represented by respondent Martels) can change the nature of their relationship and the consequence of SENCOR's non-payment of contributions. The indispensability of a prior contractual relation between the complainant and the accused as requisite for the application of novation in criminal cases was underscored in People v. Tanjutco.

In that case, the accused, who was charged with Qualified Theft, invoked People v. Nery to support his claim that the complainant's acceptance of partial payment of the stolen funds before the filing of the Information with the trial court converted his liability into a civil obligation thus rendering baseless his prosecution. The Court rejected this claim and

held that unlike in Nery, there was, in that case, no prior "contractual relationship or bilateral agreement, which can be modified or altered by the parties."

In this case, SC said that this novation thing does not apply if there was no prior contract, meaning, if the criminal liability did not arise from a contract. So if the criminal liability arose from a contract and the parties changed the terms and conditions in the contract such that it would now preclude or bar the offender from enforcing the original contract, there can be no more criminal liability. However, if the criminal liability did not arise from a contract, but arose from a different source of obligation, which is a law (RA 1161), therefore, novation, as to extinguish criminal liability, cannot be applied.

Note: Be mindful of the facts given in a question because it would seem that the Nery case can be applied only if the case involves estafa and such other cases that the obligations arose from a contract. But in all other cases, you cannot apply the novation theory to extinguish criminal liability.

PRESCRIPTION

Prescription of Crime	Prescription of Penalty
In prescription of crime, the crime itself is extinguished because of failure to file a case. In short, for a crime to remain alive, a case must be filed in court. It dies after a certain period of time, and no criminal liability will attach anymore.	In prescription of penalty, the offender must be convicted by final judgment, arrested to serve his sentence, then escapes. After a period of time that he is running from the law, his penalty prescribes and cannot anymore be enforced.

Prescription of Crimes

[Art. 90 of RPC]

Prescription of the crime is the forfeiture or loss of the right of the State to prosecute the offender after the lapse of a certain time. In the prescription of crime, the crime itself is extinguished because of failure to file a case.

For a crime to remain alive, a case must be filed in court. It dies after a certain period of time, and no criminal liability will attach anymore.

Penalty Of Offense	Prescriptive Period
General Rule	
Death, reclusion perpetua, reclusion temporal	20 years
Afflictive penalties	15 years
Correctional penalty (except arresto mayor)	10 years
Arresto mayor	5 years
Light offenses: Arresto Menor, Public Censure (including Simple Slander)	2 months
Special Rules	
Libel and other similar offenses	1 year
Oral defamation and slander by deed	6 months

Penalty in Special Laws	Prescriptive Period
Imprisonment of 6 years or more	12 years
Imprisonment of 2 years to less than 6 years	8 years
Offenses under Internal Revenue Law	5 years
Imprisonment 1 month to less than 2 years	4 years
Fine or imprisonment or not more than 1 month, or both	1 year
Violation of Municipal Ordinances	2 months
Violation of the regulations or conditions of certificate of convenience by the Public Service Commission	2 months

Note: When the penalty is compound, the highest penalty is the basis for the application of the rules in Art. 90.

Where there is an alternative penalty of fine, which is higher than the penalty of imprisonment, prescription of the crime will be based on the fine.

Computation Of Prescription Of Offenses

Reckoning Period [Art. 91 of RPC]
The period of prescription commences to run from the day on which the crime is discovered by the offended party, the authorities or their agents.

It is interrupted by the filing of the complaint or information and commences to run again when the proceedings terminate without the accused being convicted or acquitted or unjustifiably stopped for any reason not imputable to him.

> Note: Prescription does not run when the offender is absent from the Philippines. (Reyes, Book I)
>
> When the last day falls on a Sunday or legal holiday, the information can no longer be filed on the next day as the crime has already been prescribed. (Yapdiangco v Buencamino, No. L- 28841)

Filing with the Lupon will suspend the running of the prescriptive period, but only for a period of 45 days. For the prosecutor's office, the period will stop to run. However, if the prosecutor would take a long time to decide the case, the prosecutor handling the case can be administratively liable.

Once a case is filed in court, that will now stop the running of the period for prescription for the prosecution of crimes.

Republic v. Desierto, G.R. No. 136506, [January 16, 2023], J. Hernando

As to the reckoning point of the prescriptive period, RA 3019 fails to explicitly provide. Thus, reference is to be made to Act No. 3326 which governs the prescription of offenses punished by special penal laws.

Sec. 2 of Act No. 3326 provides that prescription commences from: (a) the day of the commission of the violation of the law, which is the general rule; or (b) if the same is not known, from the time of discovery thereof and the institution of judicial proceeding for its investigation and punishment, which is the exception and otherwise known as the discovery rule or the blameless ignorance doctrine. The discovery rule or the blameless ignorance doctrine states:

> SECTION 2. Prescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation and punishment.
>
> The prescription shall be interrupted when proceedings are instituted against the guilty person, and shall begin to run again if the proceedings are dismissed for reasons not constituting jeopardy. (Emphasis supplied)

As elucidated in Del Rosario v. People, as a general rule, "the fact that any aggrieved person entitled to an action has no knowledge of his/[her] right to sue or of the facts out of which his/[her] right arises does not prevent the running of the prescriptive period." On the other hand, the blameless ignorance rule provides that "the statute of limitations runs only upon discovery of the fact of the invasion of a right which will support a cause of action."

In Presidential Commission on Good Government v. Carpio-Morales (Carpio-Morales), the Court explains the construction of the discovery rule or the blameless ignorance doctrine and provides guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, to wit:

> In interpreting the meaning of the phrase "if the same be not known at the time, from the discovery thereof and the institution of judicial proceeding for its investigation," this Court has, as early as 1992 in People v. Duque, held that in cases where the illegality of the activity is not known to the complainant at the time of its commission, Act No. 3326, Section 2 requires that prescription, in such a case, would begin to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts.
>
> It is also in Duque where this Court espoused the raison d'être for the second mode. We said, "[i]n the nature of things, acts made criminal by special laws are frequently not immoral or obviously criminal in themselves; for this reason, the applicable statute requires that if the violation of the special law is not known at the time, the prescription begins to run only from the discovery thereof, i.e., discovery of the unlawful nature of the constitutive act or acts."
>
> Further clarifying the meaning of the second mode, the Court, in Duque, held that Section 2 should be read as " [p]rescription shall begin to run from the day of the commission of the violation of the law, and if the same be not known at the time, from the discovery thereof and until the institution of judicial proceedings for its investigation and punishment." Explaining the reason therefor, this Court held that a contrary interpretation would create the absurd situation where "the prescription period would both begin and be interrupted by the same occurrence; the net effect would be that the prescription period would not have effectively begun, having been rendered academic by the simultaneous interruption of that same period." Additionally, this interpretation is consistent with the second paragraph of the same provision which states that "prescription shall be interrupted when proceedings are instituted against the guilty person, [and shall] begin to run again if the proceedings are dismissed for reasons not constituting jeopardy."

Applying the same principle, We have consistently held in a number of cases, some of which likewise involve behest loans contracted during the Marcos regime, that the prescriptive period for the crimes therein involved generally commences from the discovery thereof, and not on the date of its actual commission.

An evaluation of the foregoing jurisprudence on the matter reveals the following guidelines in the determination of the reckoning point for the period of prescription of violations of RA 3019, viz.:

1. As a general rule, prescription begins to run from the date of the commission of the offense.
2. If the date of the commission of the violation is not known, it shall be counted from the date of discovery thereof.
3. In determining whether it is the general rule or the exception that should apply in a particular case, the availability or suppression of the information relative to the crime should first be determined.

If the necessary information, data, or records based on which the crime could be discovered is readily available to the public, the general rule applies. Prescription shall, therefore, run from the date of the commission of the crime.

Otherwise, should martial law prevent the filing thereof or should information about the violation be suppressed, possibly through connivance, then the exception applies and the period of prescription shall be reckoned from the date of discovery thereof.

In Perez v. Sandiganbayan (Perez) citing People v. Pangilinan (Pangilinan), We declared that "prescription is interrupted when the preliminary investigation against the accused is commenced.

Panaguiton further held that to rule that the running of the prescriptive period is interrupted only through the institution of judicial proceedings would deprive the injured party of his "right to obtain vindication on account of delays that are not under his control." An aggrieved party who actively pursues his or her cause should not be allowed to suffer unnecessarily simply because of accused's delaying tactics or delay, and inefficiency of the investigating agencies.

Effects of Prescription

The Rules of Court is explicit that an order sustaining a motion to quash based on prescription is a bar to another prosecution for the same offense. Article 89 of the Revised Penal Code also provides that "prescription of the crime" is one of the grounds for "total extinction of criminal liability." (Cabral vs. Puno)

> When the defense failed to move to quash before pleading, he must be deemed to have waived all objections, and cannot apply to the defense of prescription thereafter.

The accused cannot be convicted of an offense lesser than that charged if a lesser offense had already been prescribed at the time the information was filed.

If the accused is never arrested

If the accused is never arrested, as you know in your Criminal Procedure, the court has several options:

1. **The Court will dismiss the case provisionally**

   In which case, it can be refiled within the period of one (1) year if the penalty is imprisonment of less than six (6) years; or two (2) years if the penalty is more than six (6) years, which means within the jurisdiction of the RTC.

   Once the dismissal has become permanent, then the prescription will start to run again. So, either there can be a provisional dismissal, or the accused invokes the speedy trial provision.

   When there is a violation of the right to 'Speedy Trial', no case can be filed anymore, even if the prosecution witness or the victim will reappear. It cannot be filed anymore because that kind of dismissal is with prejudice.

2. **The Court will archive the case.**

   When a case is archived, it remains on the records and so, the prescription will not run.

Falsification of Public Document

Effect of Registration in a Public Registry

Registration in a public registry is constructive notice to the whole world. Hence, it is equivalent to the time of discovery, even if there was no actual discovery by the party. All persons are charged with knowledge of what it contains.

Case Study

> Juan falsified a Deed of Sale of a land worth P1M legally belonging to Pedro and sold the same to Jose in Jan. 1980. Pedro did not know of the crime until after he came home from the US on Jan. 1, 1995 and found out that Jose was already making improvements thereon. Juan has since gone to work in Japan from 1992 until 2015. Can Pedro still file the case in court if the penalty is correctional?

Crime: Falsification of a public documents
Penalty: Prision correctional; prescribes in 10 years.

If there was no registration in a public registry in 1980:

Yes, Pedro can still file a case. The date of commission was 1980. The date of discovery was January 1995, but in the meantime, the offender went to Japan in 1992, which was before the discovery, and came back to the Philippines only in 2015.

If there was no registration involved, he can still file a case because the 10 year period is counted from

2015 when Pedro came back from Japan because prescription shall not run when the offender is outside of the Philippines.

If there was registration in a public registry in 1980:
No, he could no longer file a case. If there is registration in a public registry, the registration will be constructive notice to the whole world. Hence, the prescription runs as of the time of registration.

However, even if there was registration, if the offender was outside of the country, still, the prescription will not run. Registration is only equal to discovery. It will not do away with the requirements that the offender should be in the Philippines for the prescription to run.

Thus, from 1980 (registration) to 1992 (went out of the Philippines), 12 years have already passed, and the crime has already been prescribed.

Relevant Jurisprudence

Recebido v. People, G.R. No. 141931 (2000)

Doctrine
If there is registration in a public registry, it is constructive notice to the whole world, hence, prescription runs as of registration. However, even if there is a public document but there is no registration with the public registry, the prescription period will not run.

Brief Facts
Recebido was charged, tried, and convicted of Falsification of Public Document and was sentenced accordingly.

In 1983, Dorol mortgaged an agricultural land to her cousin, Recebido. Recebido and Dorol did not execute a document on the mortgage but the latter, instead gave Recebido a copy of the Deed of Sale. Dorol then went to Recebido to redeem her property. However, Recebido refused to surrender the property claiming that Dorol sold it to him.

After comparison of the specimen signatures of Caridad Dorol in other documents, with that appearing on the questioned Deed of Sale, the NBI found that the latter signature was falsified.

Issue
Whether or not the crime charged had already prescribed at the time the information was filed in 1991.

Ruling
No, the crime has not prescribed. Recebido is correct in stating that the crime prescribes in ten years. However, the petitioner missed the issue of when the reckoning point of the prescriptive period is.

When the information was filed would depend on the penalty imposable therefor, which in this case is "prision correccional in its medium and maximum periods and a fine of not more than 5,000.00 pesos." Under the Revised Penal Code, said penalty is a correctional penalty in the same way that the fine imposed is categorized as correctional. Both the penalty and fine being correctional, the offense shall prescribe in ten years.

Further, under Article 91 of the Revised Penal Code, the period of prescription shall "commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, ..." In People v. Reyes , the Court declared that registration in the public registry is a notice to the whole world. The record is constructive notice of its contents as well as all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains.

People v Reyes, G.R. Nos. 74226-27 (1989)

Brief Background
Accused was charged with the crime of falsification of a public document which carries with it an imposable penalty of prision correccional in its medium and maximum periods and a fine of not more than P5,000.00 [Art. 172, Revised Penal Code (RPC)]. Being punishable by a correctional penalty, this crime prescribes in ten (10) years [Art. 90, par. 3 (RPC)]. The ten (10) year prescriptive period commences to run "from the day on which the crime is discovered by the offended party, the authorities, or their agents . . . "

In the case at bar, the public document allegedly falsified was registered on May 26, 1961 while the two informations for falsification of a public document were only filed on October 18, 1984. Complainants claimed that they discovered the falsified notarized deed of sale in June 1983.

Issue
Whether the crime has prescribed which hinges on whether or not its discovery may be deemed to have taken place from the time the document was registered with the Register of Deeds, consistent with the rule on constructive notice

Ruling
The rule is well-established that registration in a public registry is a notice to the whole world. The record is constructive notice of its contents as well as all interests, legal and equitable, included therein. All persons are charged with knowledge of what it contains. Pursuant to this rule, it has been held that a purchaser of registered

land is presumed to be charged with notice of every fact shown by the record.

It has also been ruled that when an extrajudicial partition of the property of the deceased was executed by some of his heirs, the registration of the instrument of partition with the Register of Deeds is constructive notice that said heirs have repudiated the fiduciary relationship between them and the other heirs vis-a-vis the property in question. The heirs who were not included in the deed of partition are deemed to have notice of its existence from the time it was registered with the Register of Deeds. Cerna v. De la Cerna, G.R. No. L-28838, August 31, 1976, 72 SCRA 514]. Likewise, the rule on constructive notice has been applied in the interpretation of a provision in the Civil Code on the prescription of actions for annulment of contracts which is parallel to Art. 91 of the Revised Penal Code.

The law on prescription of crimes rests on a more fundamental principle. Being more than a statute of repose, it is an act of grace whereby the state, after the lapse of a certain period of time, surrenders its sovereign power to prosecute the criminal act. While the law on prescription of civil suits is interposed by the legislature as an impartial arbiter between two contending parties, the law on prescription of crimes is an act of amnesty and liberality on the part of the state in favor of the offender [People v. Moran, supra , at p. 405]. Hence, in the interpretation of the law on prescription of crimes, that which is most favorable to the accused is to be adopted. The application of the rule on constructive notice in the construction of Art. 91 of the Revised Penal Code would most certainly be favorable to the accused since the prescriptive period of the crime shall have to be reckoned with earlier, i.e., from the time the notarized deed of sale was recorded in the Registry of Deeds. In the instant case, the notarized deed of sale was registered on May 26, 1961. The criminal informations for falsification of a public document having been filed only on October 18, 1984; or more than ten (10) years from May 26, 1961, the crime for which the accused was charged has prescribed.

Perjury

Example:
An accused was an heir of the original owner of a land. When the original owner of the land passed away, the accused executed an Affidavit of Adjudication of Sole Heir, which was false considering that there were other heirs. By virtue of the false affidavit, the register of deeds issued a title. Will the prescriptive period reckon from the date of registration or from the date of discovery of the crime?

In this case, what was falsified is not the title, but the affidavit. Consequently, the crime would not be falsification of a document. The proper crime to be charged is perjury. Thus, the reckoning period for the prescription of the offense of perjury would then be from the date of the discovery of the crime, and not from the registration of the title of the land.

Prescription of Penalties

Prescription of the penalty is the loss or forfeiture of the right of the Government to execute the final sentence after the lapse of a certain time.

In prescription of penalty, the offender must be convicted by final judgment, arrested to serve his sentence, then escapes. After a period of time that he is running from the law, his penalty is prescribed and cannot anymore be enforced.

Penalty	Prescriptive Period
Death and reclusion perpetua	20 years
Other afflictive penalties	15 years
Correctional penalties (except arresto mayor)	10 years
Light penalties	1 years

Requisites

1. Penalty is imposed by final judgment
2. Convict evaded the service of sentence by escaping during the term of his sentence.
3. Convict who had escaped from prison has not given himself up, or been captured, or gone to a foreign country with which we have no extradition treaty
4. Penalty has prescribed, because of lapse of time from the date of evasion of service of sentence by convict

Computation of Prescription of Penalties

Commences to run from the date when the culprit evaded the service of his sentence

Interrupted when the convict:

1. Gives himself up;
2. Is captured;
3. Goes to a foreign country with no extradition treaty;
4. Commits another crime before the expiration of the period of prescription; or
5. Acceptance of conditional pardon (People v Puntillas, G.R. No. 45267)

Note: Where the accused was never placed in confinement, the period for prescription never starts to run in his favor. (Pangan v Hon. Gatbalite, et al., G.R. No. 141718)

Meaning of Escape

Escape means the unlawful departure and one who was not committed to prison cannot be said to have escape from prison. The prescription of penalty only applies when the accused is a person deprived of liberty.

In the case of Pangan v. Gatbalite, the SC held that conviction alone is not enough for the penalty to prescribe. Jurisdiction over the person of the accused must be acquired by the court.

Pangan v Gatbalite, G.R. No. 141718 (2005)

Accused was convicted for simple seduction. However, during the promulgation of the decision, neither petitioner nor his counsel appeared. Thus, an order of arrest was issued against the petitioner. Petitioner alleged that the penalty imposed on him had already been prescribed, thus making his detention illegal.

Issue
How should the phrase "shall commence to run from the date when the culprit should evade the service of sentence" in Article 93 of the revised penal code on the computation of the prescription of penalties be construed? put a little differently, when does the prescriptive period of penalties begin to run?

Petitioner claimed that the period for the computation of penalties under Article 93 ran began from the moment the judgment of conviction became final and the convict successfully evades, eludes, and dodges arrest for him to serve sentence.

Ruling
The dispute is in the construction of the phrase "should evade the service of sentence ." The Infante ruling construes this to mean that the convict must escape from jail "because such evasion presupposes escaping during the service of the sentence consisting in deprivation of liberty."

The legislature wrote "should evade the service of sentence" to cover or include convicts like him who, although convicted by final judgment, were never arrested or apprehended by government for the service of their sentence. With all the powers of government at its disposal, petitioner was able to successfully evade service of his 2 months and 1 day jail sentence for at least nine (9) years, from August 9, 1991 to January 20, 2000. This is approximately 3 years and 5 months longer than the 5-year prescriptive period of the penalty imposed on him.

A perusal of the facts in Infante v. Warden reveals that it is not on all fours with the present case. In Infante, the convict was on conditional pardon when he was re-arrested. Hence, he had started serving sentence but the State released him. In the present case, the convict evaded service of sentence from the start, and was arrested eight years later.

The Court pronounced that the prescription of penalties found in Article 93 of the Revised Penal Code, applies only to those who are convicted by final judgment and are serving sentence which consists in deprivation of liberty. The period for prescription of penalties begins only when the convict evades service of sentence by escaping during the term of his sentence. Since petitioner never suffered deprivation of liberty before his arrest on January 20, 2000 and as a consequence never evaded sentence by escaping during the term of his service, the period for prescription never began.

Fiscal (2022) : He must be in prison, not another facility

Fines

If the penalty is fine only, there is no issue because we will only determine if it is light, correctional or grave.

Q: What if the penalty is in the alternative, i.e. imprisonment or fine or both?

What if the fine is afflictive but the penalty is correctional? When can that happen? Imprudence cases resulting in damage to property because in some cases, penalty is only arresto but the fine will be based on the property damaged.

We had a case where a car hit a bike. The fine was P1.5M. That is already afflictive but arresto mayor is only correctional. But for purposes of prescription, the basis is the higher penalty even if the penalty is only a fine.

Example:
For bouncing checks the check is valued at P 3 Million, the fine is based on the value of the check. So it is afflictive. The alternative penalty is Arresto Mayor. The basis for the prescription is the graver one. Hence, it is the fine of P 3 Million because it is afflictive.

Illustration

X committed a crime for which the law provides a fine of P200.00 as penalty. What is the prescriptive period of crime?

Two months. The issue here is not the prescription of the penalty (requires conviction first). If Prescription of Crime (because of failure to file action), Article 9 prevails over Article 26.

Illustration

X was convicted, cannot pay the fine of P200.00 and was made to serve subsidiary imprisonment. While serving the sentence, he escaped, evading the sentence. What is the prescriptive period?

Ten years. The issue here is the prescription of penalty. If Prescription of Penalty, Article 26 prevails over Article 9. Here, what will prescribe is not the crime but the penalty, which means that there must already be a conviction.

Relevant Jurisprudence

People v Basalo, G.R. No. L-9892 (1957)

To determine the prescriptibility of an offense penalized with a fine, whether imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term, but rather it should be considered as such fine under Article 26 of the Revised Penal Code; and that for purposes of prescription of the offense, defined and penalized in Article 319 of the Revised Penal Code, the fine imposable therein if correctional or afflictive under the terms of Article 26, same Code, should be made the basis rather than that of arresto mayor.

People v Crisostomo

Brief Background:
Accused was charged under Article 316 (2) of the RPC. Accused contended that the offense had already been prescribed in 5 years, it being punishable with arresto mayor. On the other hand, the prosecution contended that the offense charged prescribes in 15 years because aside from the penalty of arresto mayor, the law also imposes a fine of not less than the value of the damage caused and not more than three times such value, which in this case would be a minimum of P15,000.00.

Q: When does a crime punishable under Art. 316 (2) of the RPC, prescribe?

Ruling:
Article 26 points out that it is only when a fine is imposed as a single penalty or as an alternative one, as provided in article 319, par. 2, Rev. Penal Code (Basalo case), that classification thereof into afflictive, correctional or light penalties may be made. However, whatever doubt said article 26 might engender, is cast away by the last paragraph of Article 90, which provides that, "When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article" (See also People vs. Rufo Cruz, G.R. No. L-15132, May 25, 1960). Under the facts alleged in the present information, the fine is a higher penalty than arresto mayor, because by virtue of its amount P15,000.00 to P45,000,00), it is afflictive; while arresto mayor is merely correctional. Certainly, article 26 provides the classification, while article 90 indicates when such classification should be applied

The Revised Penal Code contains no provision which states that a fine when imposed in conjunction with an imprisonment is subordinate to the main penalty. In conjunction with imprisonment, a fine is as much a principal penalty as the imprisonment. Neither is subordinate to the other. On the contrary, in the instant case, the fine is higher than the imprisonment because it is afflictive in view of the amount involved and, as stated heretofore, it is the basis for computation to determine the prescriptive period. **Therefore, that where the Revised Penal Code provides a penalty consisting of imprisonment and fine, whichever penalty is the higher, should be the basis in computing the period of prescription.**

PARTIAL EXTINCTION OF CRIMINAL LIABILITY

Partial Extinction of Criminal Liability

1. Conditional pardon (Art. 95, RPC)
2. Commutation of sentence (Art. 95, RPC)
3. Good conduct allowances which the culprit may earn while he is serving his sentence (Art. 95, RPC)
4. Parole (Reyes, Book I)

Additional by Boado: Special time allowance for loyalty under Art. 98, as amended by RA 10952; Probation under P.D. 968; and Implied repeal or amendment of penal law lowering the penalty.

Conditional pardon

Conditional pardon (Art. 95, RPC)
Conditional pardon refers to the exemption of an individual, with certain limits or conditions, from the punishment which the law inflicts for the offense he had committed resulting in the partial extinction of his criminal liability (Sec. 2[p], Revised Rules and Regulations of the Board of Pardons and Parole).

The usual condition imposed upon the convict in conditional pardon is that he shall not again violate any of the penal laws of the Philippines

Commutation of sentence

Commutation of sentence (Art. 95, RPC)
Commutation of sentence refers to the reduction of the duration of a prison sentence of a prisoner. (Sec. 2[po], Revised Rules and Regulations of the Board of Pardons and Parole)

E.g. When the convict sentenced to death is over 70 years of age (Art. 83); When 8 SC Justices fail to reach decision of affirmance of death penalty.

Good conduct allowances

Good conduct allowances which the culprit may earn while he is serving his sentence (Art. 95, RPC)
Allowances for good conduct are deductions from the term of the sentence for good behavior. (Art. 97, RPC)

This is different from Art. 29 which is an extraordinary reduction of full time or 4/5 of the preventive imprisonment from the term of the sentence.

Prisoners are also entitled to a special time allowance for loyalty. (Art. 98)

Parole

Parole (Reyes, Book I)
Parole refers to the conditional release of an offender from a correctional institution after he has served the minimum of his prison sentence. It consists in the suspension of the sentence of a convict after serving the minimum of the indeterminate penalty without the grant of pardon.

If the convict fails to observe the conditions of the parole, the Board of Pardons and Parole is authorized to direct his arrest and return to custody and thereafter to carry out his sentence without deduction of the time that has elapsed between the date of the parole and the subsequent arrest.

Note: A parole is always subject to condition of good behavior.

CONDITIONAL PARDON v. PAROL

CONDITIONAL PARDON	PAROLE
Granted by Chief Executive	Granted by the Board of Pardons and Parole
Basis is Administrative Code	Basis is the Indeterminate Sentence Law
Give any time after final judgment	Given after prisoner has served the minimum penalty
Violation of conditional pardon may result in reincarceration and prosecution under Art 159 (evasion of service of sentence)	Violation of parole may lead to reincarceration for service of unserved potion of original penalty without prosecution for Art. 159.

ALLOWANCE FOR GOOD CONDUCT (Art. 97, RPC)

LENGTH OF SENTENCE SERVED	ALLOWED DEDUCTION PER MONTH OF GOOD BEHAVIOR
First 2 years	20 days
3rd to 5th years	23 days
6th to 10th years	25 days
11th year onwards	30 days

No allowance for good conduct while prisoner is released under conditional pardon
This is because the GCTA is given in consideration for conduct observed by the prisoner while serving his sentence. (People vs. Martin, G.R. No. L-46432)

The GCTA Law provides for deduction from the sentence:

a) the days of preventive detention (before conviction);
Preventive detention is time spent in jails
b) good conduct time allowances during preventive detention;
c) good conduct time allowances during the service of sentence

SPECIAL TIME ALLOWANCE FOR LOYALTY (Art. 98, RPC)
A deduction of one fifth (1/5) of the period of sentence is granted to any prisoner who, having evaded his prevented imprisonment or the service of his sentence, under the following circumstances:

1. On the occasion of disorder resulting from a conflagration, earthquake, explosion, or similar catastrophe, or
2. During a mutiny in which he has not participated — gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe.

A deduction of two-fifths (2/5) of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe.

RA NO. 10592

An Act Amending Articles 29, 94, 97-99 of the RPC

ART. 97. Allowance for good conduct. – The good conduct of any offender qualified for credit for preventive imprisonment pursuant to Article 29 of this Code, or of any convicted prisoner in any penal institution, rehabilitation or detention center or any other local jail shall entitle him to the following deductions from the period of his sentence:

"1. During the first two years of imprisonment, he shall be allowed a deduction of twenty days for each month of good behavior during detention;

"2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a reduction of twenty-three days for each month of good behavior during detention;

"3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of

twenty-five days for each month of good behavior during detention;

"4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of thirty days for each month of good behavior during detention; and

"5. At any time during the period of imprisonment, he shall be allowed another deduction of fifteen days, in addition to numbers one to four hereof, for each month of study, teaching or mentoring service time rendered.

"An appeal by the accused shall not deprive him of entitlement to the above allowances for good conduct."

SEC. 4. Article 98 of the same Act is hereby further amended to read as follows:

ART. 98. Special time allowance for loyalty. – A deduction of one fifth of the period of his sentence shall be granted to any prisoner who, having evaded his preventive imprisonment or the service of his sentence under the circumstances mentioned in Article 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe referred to in said article. A deduction of two-fifths of the period of his sentence shall be granted in case said prisoner chose to stay in the place of his confinement notwithstanding the existence of a calamity or catastrophe enumerated in Article 158 of this Code.

"This Article shall apply to any prisoner whether undergoing preventive imprisonment or serving sentence."

SEC. 5. Article 99 of the same Act is hereby further amended to read as follows:"

ART. 99. Who grants time allowances. – Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked."

Amendment to Article 29

AMENDMENTS TO ART. 29 (PERIOD OF PREVENTIVE IMPRISONMENT DEDUCED FROM TERM OF IMPRISONMENT)

General Rule: Offenders or accused who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive imprisonment if the detention prisoner agrees voluntarily in writing after being informed of the effects thereof and with the assistance of counsel to abide by the same disciplinary rules imposed upon convicted prisoners.

Exceptions: This cannot be availed of in the following cases:

1. When they are recidivists, or
2. Have been convicted previously twice or more times of any crime; and
3. When upon being summoned for the execution of their sentence, they have failed to surrender voluntarily.
4. Habitual delinquents
5. Persons charged with heinous crimes*
6. Escapees

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall do so in writing with the assistance of a counsel and shall be credited in the service of his sentence with 4/5 of the time during which he has undergone preventive imprisonment.

Credit for preventive imprisonment for the penalty of reclusion perpetua shall be deducted from 30 years.

NOTE: This amendment clarified that the crediting of preventive imprisonment shall likewise extend to those who have been sentenced to reclusion perpetua and that credit shall be deducted from 30 years. (Reyes, Book I)

Whenever an accused has undergone preventive imprisonment for a period equal to the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review.

**List of heinous crimes*

Under Republic Act 7659, the law signed in 1993 and which imposed the death penalty, says that heinous crimes include:

- Treason
- Piracy in general and mutiny on the high seas in Philippine waters
- Qualified piracy
- Qualified bribery
- Parricide
- Murder
- Infanticide
- Kidnapping and serious illegal detention
- Robbery with violence against or intimidation of persons
- Destructive arson
- Rape
- Importation, distribution, manufacturing and possession of illegal drugs

RPC versus RA 10592

Pursuant to the IRR of 2019, GCTA cannot apply to disqualified persons who were convicted before the passage of RA 10592. They could be entitled to GCTA under the RPC. This is more beneficial to such disqualified offenders.

Disqualified persons who were convicted after the passage of RA 10592 cannot avail of GCTA, either under RPC or this law.

IRR to RA 10592

1. The computation is done regularly: the first is done after five years
2. The computation cannot be made in advance
3. A convict cannot be released until he qualifies during the period of computation.

Miguel v. Director of the Bureau of Prisons, UDK-15368, [September 15, 2021], J. Hernando
Murder is considered a heinous crime in so far as the GCTA Law is concerned, and persons charged with and/or convicted of such are disqualified from availing of the benefits of the law.

Amendment to Article 94

AMENDMENTS TO ART. 94 (PARTIAL EXTINCTION OF CRIMINAL LIABILITY)

Criminal liability is extinguished partially:

1. By conditional pardon;
2. By commutation of the sentence; and
3. For good conduct allowances which the culprit may earn while he is undergoing preventive imprisonment or serving his sentence.

Amendment to Article 99

AMENDMENTS TO ART. 99 (WHO GRANTS TIME ALLOWANCES)
Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

Comment: Prior to the amendment of Art. 99, only the Director of Prisons (now the Director of the Bureau of Corrections) was allowed to grant time allowance of good conduct. Since city and municipal prisoners are not under the jurisdiction of the Director of the Bureau of Corrections, the amendment to Article 99 seeks to fast-track the application and grant of good conduct time allowance by likewise granting to the Chief of the Bureau of Jail Management and Penology and/or the warden of a provincial, district, municipal or city jail, the authority to grant time allowance for good conduct. (Reyes, Book I)

Q: GCTA Law and Pemberton case. Does it apply to Pemberton even if he is detained in Camp Aguinaldo [and not in a BuCor facility]?

A: I would go by the wording of the law. I am not really familiar with the side stories of Sanchez and Pemberton. If we're talking about GCTA, for crimes committed under the RPC. Kaning Sanchez and Pemberton were both convicted with crimes under the RPC. As of now, there is already a new law which is GCTA Law. The new GCTA Law says that it does not apply to convicts who committed heinous crimes.

Therefore, if kanang crime ni Sanchez, karon na commit, he cannot avail of the new GCTA Law. Under the new GCTA, dili sila qualified. But, because they committed it under RPC, there is good conduct allowance in the RPC, but it is not under the new GCTA Law, but the old good conduct allowance in the RPC. It can still be availed if more favorable.

Under the good conduct allowance in the RPC, there is no distinction as to what crime is committed [so it can include heinous crimes, unlike the new GCTA Law]. What matters under the RPC, is that there is good conduct. When Sanchez committed the crime, there was as of yet, no heinous crime law. If he committed it before 1993, we did not have yet the law. We did not yet know which crimes are considered heinous. For the new death penalty law, it is passed only in 1993. We cannot say it is heinous if committed before. That word came about only with the enactment of the new death penalty law. Sanchez can still avail of GCTA under RPC, but not the new GCTA Law.

In the case of Pemberton, he was made to serve for 10 years but by virtue of deduction, he was eligible for parole after 6 years. There can be no advance computation [of the CGCTA] made here. You compute it after the periodic time of computation. When GCTA took effect, those who committed heinous crimes are not qualified of the GCTA. Pemberton was convicted not of murder, but only for homicide.

[In relation to Pemberton], who is authorized to compute GCTA?
A: It is only THE Bureau of Prisons under BuCor [Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail]. The Bureau of Probation and Parole and BuCor are under DOJ. It must be passed through the DOJ. In the first place, in order for GCTA computation to be correct, ang mu-compute dapat correct sad.

Mao to issue si [former DOJ Sec] Aguirre kay siya ga appoint ato taga BuCor or Prisons ba to. They are the only ones authorized to compute. However, with the pardon, the issue as to whether the computation of GCTA is correct or not has become moot and academic.

In the first place, in order for computation to be correct, ang mu-compute dapat correct sad. Wa man siya na detained in a facility. Nevermind the legality of detention. Insofar as

detention's legality, it is now by reason of a treaty. It is only SC who can declare the legality of the treaty.

Pemberton's case is the same as Paco Larañaga. He was detained in Spain so kinsa may mucompute nuon [of his good conduct time allowance]? Under the GCTA Law, it specifies who should compute/grant the good conduct time allowance, and since they are not detained in facilities of BuCor, etc., the GCTA computation cannot be correct.

That is the issue on computation of GCTA which is separate from the issue of if legal ba iya pag detain kay he was detained by virtue of the treaty that existed after SC ruling. In the case of Pemberton, the treaty was existing already.

Q: Had Pemberton not been pardoned, what is the correct remedy to question the granting of GCTA to him? [Note: Some legal experts say that the government could appeal the grant of the GCTA]

A: NO TO APPEAL! You are not questioning a court order. You are questioning an act of any government official agency whether a court, executive branch, etc. The proper action should be certiorari under Rule 65 (but you cannot question the grant of a pardon because it is a political question, so non-justiciable). In appeal, we are referring to judgment. You do not appeal the decision that is not from a court. [The court is not the one who granted the GCTA]

You cannot appeal if you are questioning a judgment which has already become final and executory. You cannot appeal a decision of a body which is not a court. You cannot question the President's action because it is not a justiciable issue.

You are not questioning a court order. You are questioning an act of any government official agency whether a court, executive branch, etc. You cannot appeal the judgment. In this case, this is not a court. You cannot appeal the order of the body which is not a court.

Since there is a pardon by the President, it will now be a non-justiciable issue. So you cannot file a certiorari under Rule 65 after the Pardon.

CIVIL LIABILITIES IN CRIMINAL CASES

CIVIL LIABILITY

Civil Liability (GENERAL RULE)
Every person criminally liable is also civilly liable. (Art. 100, RPC)

Comments:

- This is true even in public crimes, where the one aggrieved is not really the one who files the complaint. Civil damages may be recovered by the private offended party.
- Civil liability is not totally dependent on the outcome of the criminal case because the quantum of evidence required in criminal cases is more stringent than that of a civil case.
- The civil liability for the same act considered quasi-delict only and not crime is not extinguished even by a declaration in the criminal case that the criminal act charged has not happened or has not been committed by the accused.
- If the offended party is able to secure a favorable decision for both cases, he may only be entitled to the bigger reward.
- Thus, even if the offender is acquitted because no crime was attributed to him, it does not mean that he cannot pay civil liability anymore.
- There may be civil liability even if the act is justified or exempt under Arts. 11 and 12.
    - **Persons who avoided a greater evil (Art. 11, Par. 4, RPC) –** those who benefitted from the avoidance of such evil is liable. If several persons were benefitted, the court shall determine their proportionate share.
    - **Irresistible force or uncontrollable fear –** primary liability is imposed on those who employed the force or caused the fear; secondary liability is on the actor.

EXCEPTIONS:

- No civil liability is incurred for any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it (Art. 12, par. 4, RPC)
- No civil liability is also incurred for any person who fails to perform an act required by law, when prevented by some lawful or insuperable cause (Art 12, par. 7, RPC).
- Parents and guardians - primarily liable for minors and insane, unless there is no fault or negligence on their part. If there are no parents, minor's property is secondarily liable except for those exempt from execution.
- Victimless crimes like illegal possession of firearms, dangerous drugs, illegal gambling. In such cases, there will be no civil liability because there is no private offended party.

  Note: Civil liability is not extinguished upon death of the offender. It survives and may carry on to the estate of the deceased.

Who are civilly liable
The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable. The action to demand restoration, reparation, and indemnification likewise descends to the heirs of the person injured. (Art. 108, RPC)

If there are 2 or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond. (Art. 109, RPC)

The principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable. (Art 110, par. 1, RPC)

Comments:

- If there are 2 or more persons civilly liable, the courts shall determine the amount for which each must respond, but only if the both of them are arrested, convicted, and brought before the court.
- That notwithstanding, principals, accomplices and accessories, each within their class, shall be liable solidarily among themselves for their quotas, and subsidiarily for those of the others.
- Under Article 2194 of the Civil Code, joint tortfeasors are solidarily liable for the resulting damage. Joint tortfeasors are each liable as principals, to the same extent and in the same manner as if they had performed the wrongful act themselves.

  It would not be an excuse for any of the joint tortfeasors to assert that her individual participation in the wrong was insignificant as compared to those of the others. The damages cannot be apportioned among them, except by themselves. They are jointly and severally liable for the whole amount. Hence, Inovero's liability towards the victims of their illegal recruitment was solidary, regardless of whether she actually received the amounts paid or not, and notwithstanding that her co-accused, having escaped arrest until now, have remained untried.

- The nature of co-conspirators in the commission of the crime requires solidarity where each debtor may be compelled to pay the entirety of the obligation. As a co-conspirator, his civil liability is similar to that of a joint tortfeasor, who, under the Civil Code, is solidarily liable with the others.

  Example: A, B, C, and D are the offenders. D was the only one who paid because the

others have no money. D can demand payment from A, B, and C.

Case Study:
Juan, Jose and Julio were engaged in the illegal recruitment of Pedro, who shelled out P200k. Juan got P150k, while his co-conspirators got P25k each. Only Julio was prosecuted, as the other two had gone into hiding. In case Julio is convicted, would he be required to pay P200k to Pedro, when he only got P25k?

- Julio, solidarily liable, would be required to pay the entire P200,000, even if he was not able to get hold of that amount. Only Julio was prosecuted as the others have gone into hiding, but conspiracy was established. The act of one is the act of all. Unfortunately for Julio, he was the only one arrested and prosecuted.
- The apportionment of the civil liability is only true among the accused, but insofar as the victim, it is none of his business. He can collect from any of them the whole amount. (PP vs Velasco, G.R. No. 195668, June 25, 2014)

When acquittal will not bar civil liability:

1. **If acquittal is based on reasonable doubt** (because prosecution could not prove the guilt of the accused beyond reasonable doubt)- does not bar complainant from filing separate and independent civil action for civil liability arising from crime. This is because the amount of evidence required for civil indemnity or damages arising from crime is merely "preponderance of evidence" and not guilt beyond reasonable doubt.
2. If **acquittal is based on finding that the accused did not commit the crime at all-** this bars complainant from filing a separate civil action for damages.
3. **Court declares that accused's liability is only civil in nature**;

   Example: Juan got something from Pedro, so Pedro filed a case for estafa against Juan. The court ruled there was no estafa because while it is true that Juan took something from Pedro, what was transferred was merely ownership, not juridical possession. Because of that, it is as if the court acknowledged that there is no crime but civil liability.
4. **Civil liability did not arise from the criminal act**
   - In a way, we may also say that justifying circumstance would apply to this.
   - Example: A person destroys one's house to prevent fire from spreading. While it is true that there was a destruction of the house, it was necessary to prevent fire from spreading. Even though damage was done, it was not the result of a criminal act.

IMPORTANT ISSUE: Constitutionality of Incremental Penalty Rule (IPR)

- The Supreme Court in one case said that civil indemnity is not a penalty or fine, and it can be increased. (Note: The Maximum IP for Estafa is P1M)
- Justice Carpio – the law has relative constitutionality. It may have been constitutional at that time but not anymore. However, because civil liability is not a penalty, the court may award more.
- The reasoning of increasing the value of civil liability cannot be the same reasoning that would sustain the adoption of the ratio in the IPR.

What is included in civil liability (Art. 104, RPC)

1. RESTITUTION (Art. 105, RPC)
2. REPARATION OF DAMAGE CAUSED (Art. 106, RPC)
3. INDEMNIFICATION OF CONSEQUENTIAL DAMAGES (Art. 107, RPC)

Restitution

RESTITUTION (Art. 105, RPC)
The restitution of the thing itself must be made whenever possible, with allowance for any deterioration or diminution of value as determined by the court. The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person who may be liable to him. (Art. 105)

This provision is not applicable in cases which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery. (Id)

Thus, even if the property stolen was acquired by a third person by purchase without knowing that it had been stolen, such property shall be returned to the owner. If the thing is acquired by a person who knows it to be stolen, he is an accessory and he is also criminally liable. (Reyes, Book I)

When after trial the court finds that a sum of money was received by the accused from the complainant as a loan, and for that reason dismisses the criminal case for estafa, it cannot order the accused to pay the amount to the complainant, because his liability to return it arises from civil contract, not

from a criminal act, and may not be enforced in the criminal case. (People vs. Pantig, 97 Phil. 749,750)

Generally limited to crimes against property.

Reparation

REPARATION OF DAMAGE CAUSED (Art. 106, RPC)
The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly. (Art. 106)

If restitution cannot be made by the offender (Art. 105), or by his heirs (Art. 108), the law allows the offended party reparation. (Id)

When the stolen property cannot be returned because it was sold by the thief to an unknown person, he will be required by the court, if found guilty, to pay the actual price of the thing plus its sentimental value to its owner. If there is no evidence as to the value of the thing unrecovered, reparation cannot be made. (People vs. Dalena, G.R. Nos. 11387-R & 11388-R)

The civil damages which may be recovered in criminal action are limited to consequential damage caused by, and flowing from, the commission of the crime of which the accused is convicted. (Reyes, Book I)

Generally the remedy granted to victims of crimes against property.

Indemnification

INDEMNIFICATION OF CONSEQUENTIAL DAMAGES (Art. 107, RPC)
Indemnification of consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime. (Art. 107)

Since the deceased was guilty of contributory negligence, this circumstance reduces the civil liability of the offender in homicide through reckless imprudence. (People vs. De Guia, C.A., G.R. No. 11769-R)

Civil indemnity may be increased only if it will not require an aggravation of the decision in the criminal case on which it is based. In other words, the accused may not, on appeal by the adverse party, be convicted of a more serious offense or sentenced to a higher penalty to justify the increase in the civil indemnity. (Heirs of Rillorta vs. Firme, G.R. No. L-54904)

Comments:

- Restitution and reparation are generally ordered in crimes against property;
- Indemnification is generally awarded in crimes against persons and honor.
- There are only two pecuniary liabilities: restitution OR reparation and indemnification. Reparation shall only be made if restitution is not possible, in accordance with Art. 38 of the RPC.
- "The indemnities for loss of earning capacity and moral damages are recoverable separately from and in addition to the fixed sum corresponding to the indemnity for the sole fact of death, and these damages maybe increased or lessened according to the mitigating or aggravating circumstances." (People vs. Teehankee)

Civil Liability v. Pecuniary Liability (Reyes, Book I)

CIVIL LIABILITY (Art. 104)	PECUNIARY LIABILITY (Art. 38)
Reparation of damages caused	
Indemnification for consequential damages	
Includes restitution	No restitution in pecuniary liability, liability is paid out of property of the offender. In restitution, there is nothing to pay in terms of money, as the property unlawfully taken is returned.
Does not include fines or costs of the proceedings	Includes fines and costs of the proceedings

Damages that may be recovered in criminal cases

OFFENSE	AWARDED
Crimes against property	Damages are based on price of the thing and sentimental value to the injured party if the thing itself cannot be restored. (Art. 106, in relation to Art. 105, RPC)
Crimes against persons (i.e. physical injuries)	Whatever the injured party spent for the treatment of his wounds, doctor's fees, and unearned wages by reason of inability to work because of the injuries. In case of temporary or permanent personal injury, damages for loss or impairment of earning capacity may be awarded. (Reyes, Book I)

Criminal offenses resulting in physical injuries, in crimes of seduction, abduction, rape or other lascivious acts, adultery, concubinage, illegal or arbitrary detention or arrest, illegal search, libel, slander, defamation, and malicious prosecution	Moral damages (Art. 2219, NCC)
Offense committed with one or more aggravating circumstance.	Exemplary damages (Article 2230, NCC)

Civil liability is extinguished in the same manner as other obligations (i.e. payment, performance, loss of the thing due)

Exemplary Damages

The imposition of exemplary damages is required by public policy to suppress the wanton acts of the offender and to serve as deterrent to serious wrongdoings and as a vindication of undue suffering.

Exemplary damages may also be awarded by the court if the crime in heinous, so reprehensible, and obnoxious to the public conscience. This is usually awarded when an aggravating circumstance, ordinary or qualifying, is present in the crime committed.

Also referred to as punitive or vindictive damages.

Example:

Unprovoked aggression to kill the life of a girl in the prime of her youth and gunned down in cold blood for no apparent reason at a time when crime rate was soaring. This was also attended by treachery. Is the amount of damages ex-delito based on penalty?

- The principal consideration for the award of damages is the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender.
- The litmus test therefore, in the determination of the civil indemnity is the heinous character of the crime committed, which would have warranted the imposition of the death penalty, regardless of whether the penalty actually imposed is reduced to reclusion perpetua (People v. Sarcia, People v. Salome, and People v. Quiachon)

Recent Cases involving Damages

- Damages recoverable in the case of death: P75,000 (People v. Lucero)
- Rape with Homicide: P100,000 for civil indemnity, P75,000 - moral damages, P25,000 – temperate damages, P100,000 – exemplary damages (People v. Gumimba)
- Loss of earning Capacity of Deceased (formula under Art. 2206, par. 1, NCC)
- Moral damages for mental anguish in favor of spouse, descendant, or ascendant of deceased (Art. 2206, par. 2, NCC)
- Exemplary damages in certain cases (Art. 2230, NCC)

Acquittal of the accused

The acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where:

1. Acquittal is based on reasonable doubt as only preponderance of evidence is required;
2. The court declares that the liability of the accused is only civil; and
3. Civil liability of the accused does not arise from or is not based upon the crime of which the accused is acquitted.

However, the civil action based on delict may be deemed extinguished if mere is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him. (Dy v. People, G.R. No. 189081)

Rules: Civil Liabilities in Certain Cases

RULES REGARDING CIVIL LIABILITY IN CERTAIN CASES (Art. 101)

Civil liability of persons acting under exempting circumstances.

a. **General Rule:** Civil liability shall still be imposed in cases falling under exempting circumstances. (Art. 12, RPC) b.
b. **Exceptions:** There is no civil liability in:
    1. Par. 4, Art. 12 – for injury caused by mere accident
    2. Par. 7, Art. 12 – for failure to perform an act required by law when prevented by some lawful or insuperable cause.

Civil liability for acts of insane or minors exempt from criminal liability

The civil liability for acts committed by an imbecile or insane or minor exempt from criminal liability shall devolve upon the persons having legal authority or control over them, if the latter are at fault or negligent. But if there is no fault or negligence on their part, or even if at fault or negligent but insolvent, or should there be no person having such authority or control, the insane, imbecile, or such minor shall respond with their own property not exempt from execution. (Art. 101, RPC)

Civil liability for acts of a minor over 15 years of age who acts with discernment

A minor over 15 years of age who acts with discernment is not exempt from criminal liability, hence, the silence of the RPC as to the subsidiary liability of his parents should he be convicted. (Art. 2180, NCC)

Civil liability for acts committed by persons acting under irresistible force or uncontrollable fear

The persons using violence or causing the fear are primarily liable. If there are no such persons, those doing the act shall be liable secondarily. (Art. 101, RPC).

Civil liability of persons acting under justifying circumstances

a. **General rule:** There is no civil liability in justifying circumstances.
b. **Exception:** Par. 4, Art. 11 – there is civil liability, but the person civilly liable is the one benefited by the act which causes damage to another. (Art. 101, RPC).

Civil liability for Stolen Property Destroyed by Force Majeure

- The offender shall be civilly liable to the owner of the stolen property even if it was thereafter destroyed by force majeure and/or did not actually benefit the offender.
- If there can be restitution, it could take place. If it is already destroyed, then there can be reparation. This may occur, even if it was not the offender who destroyed it.

SUBSIDIARY LIABILITY

Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishment (Art. 102, RPC)

In default of the persons criminally liable, innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees. (Art. 102, par. 1, RPC)

Elements under Art. 102, par. 1

(1) That the innkeeper, tavernkeeper or proprietor of establishment or his employee committed a violation of municipal ordinance or some general or special police regulation.
(2) That a crime is committed in such inn, tavern or establishment.
(3) That the person criminally liable is insolvent

When all the above elements are present, the innkeeper, tavernkeeper or any other person or corporation is civilly liable for the crime committed in his establishment. (Reyes, Book I)

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care of and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees. (Art. 102, par. 2, RPC)

Elements under Art. 102, par. 2

(1) The guests notified in advance the innkeeper or the person representing him of the deposit of their goods within the inn or house.
(2) The guests followed the directions of the innkeeper or his representative with respect to the care of and vigilance over such goods.
(3) Such goods of the guests lodging therein were taken by robbery with force upon things or theft committed within the inn or house.

When all the above elements are present, the innkeeper is subsidiarily liable.

No liability shall attach in case of robbery with violence against or intimidation of persons, unless committed by the innkeeper's employees. (Reyes, Book I)

In a case where the owner of a hotel disclaimed liability because plaintiff did not deposit his properties with the manager despite a notice to that effect posted in the hotel, it was held that actual delivery to him or his employee of the effects of the guest is not necessary; it is enough that they were within the inn. (De los Santos vs. Tarn Khey, C.A., 58 O.G. 7693)

Subsidiary civil liability of other persons (Art. 103, RPC)

Subsidiary liability shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties. (Art. 103, RPC)

Elements under Art. 103

(1) The employer, teacher, person or corporation is engaged in any kind of industry.
(2) Any of their servants, pupils, workmen, apprentices or employees commits a felony while in the discharge of his duties.
(3) Said employee is insolvent and has not satisfied his civil liability

When all these elements are present, the employer or teacher is subsidiarily liable.

Requisites to hold an employer subsidiarily liable:

1. Employer- employee relationship is established
2. The crime was committed by accused during the performance of his assigned task.
3. The employer is engaged in an industry.
4. The accused was convicted and civil liability goes with the conviction.
5. Judgment was final and executory but the writ of execution was returned unsatisfied because the accused has no property. The filing of a motion for issuance of a subsidiary writ of execution with notice to the employer so that the latter may be heard is necessary.

NOTE:

- May be only civil and subsidiary – although the employer may not be charged criminally, his civil liability (in case of insolvency of the guilty employee) must still be determined in a hearing of the motion for execution of judgment in the criminal case. There is still a need for a court order.
- The subsidiary civil liability of the employer can be determined in the criminal action, unless it was waived or reserved. There is no need for bringing a separate civil action for that purpose. (Ozoa vs. Madula, Dec. 22, 1987)
- Non-compliance with notification requirements will be considered as lack of due process on the part of the employer. No execution against the employer may be done without notifying him during the hearing for the motion for execution of judgment.

Industry

"Industry" is any department or branch of art, occupation or business; especially, one which employs so much labor and capital and is a distinct branch of trade. Hence, a person who owns a truck and uses it in the transportation of his own products is engaged in industry. (Reyes, Book I)

Under Art. 103 of the RPC, employers are subsidiarily liable for the adjudicated civil liabilities of their employees in the event of the latter's insolvency. The provisions of the RPC on subsidiary liability (Arts. 102 and 103) are deemed written into the judgments in the cases to which they are applicable. Thus, in the dispositive portion of its decision, the trial court need not expressly pronounce the subsidiary liability of the employer. (Philippine Rabbit Bus Lines, Inc. v. People, G.R. No. 147703)

In the absence of any collusion between the accused-employee and the offended party, the judgment of conviction should bind the person who is subsidiarily liable. In effect and implication, the stigma of a criminal conviction surpasses mere civil liability. (Philippine Rabbit Bus Lines, Inc. v. People)

To allow employers to dispute the civil liability fixed in a criminal case would enable them to amend, nullify or defeat a final judgment rendered by a competent court. By the same token, to allow them to appeal the final criminal conviction of their employees without the latter's consent would also result in improperly amending, nullifying or defeating the judgment. (Philippine Rabbit Bus Lines, Inc. v. People)

The decision convicting an employee in a criminal case is binding and conclusive upon the employer not only with regard to the former's civil liability, but also with regard to its amount. The liability of an employer cannot be separated from that of the employee. (Philippine Rabbit Bus Lines, Inc. v. People)

Before the employers' subsidiary liability is exacted, there must be adequate evidence establishing that:

1. they are indeed the employers of the convicted employees;
2. that the former are engaged in some kind of industry;
3. that the crime was committed by the employees in the discharge of their duties; and
4. that the execution against the latter has not been satisfied due to insolvency. (Philippine Rabbit Bus Lines, Inc. v. People)

The resolution of these issues need not be done in a separate civil action. But the determination must be based on the evidence that the offended party and the employer may fully and freely present. Such determination may be done in the same criminal action in which the employee's liability, criminal and civil, has been pronounced; and in a hearing set for that precise purpose, with due notice to the employer, as part of the proceedings for the execution of the judgment. (Id)

Case Study:

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

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

A:

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

b. If D is insolvent, P the pedestrian can sue the employer/ operator on the basis of Article 103 on the subsidiary civil liability of the employer/owner arising from delict. Or, as an option, P may also sue the employer/owner on the basis of Article

2176 and Article 2180 in the form of subsidiary civil liability of the owner/employer arising from quasi-delict.

Case Study 2
Joselito, a minor, burned the house of Pedro. Pedro filed a criminal case, for which Joselito was found guilty. Is Jose, the parent of Joselito, civilly liable? When?

- Yes, Joselito's parent is civilly liable. His liability is primary.

What if Joselito was an employee of Ramon's general services company, and the arson was committed while Joselito was working at Pedro's house, would your answer be the same?

- Yes. The hierarchy of civil liability holds the parent primarily liable for cases of minors. The liability of the employer is merely subsidiary; thus, you must go after the parent of the minor who is primarily liable.
- Only after proving the requisites to hold employers liable (not necessarily in a separate proceeding) can you go after the employer.

Case Study 3
Pedro is a taxi driver of Bombero Taxi owned by Nestor. One early morning, he hit Vicente's car due to reckless imprudence, causing damage to the latter's car. Let us assume he was declared criminally liable.

Is Pedro civilly liable?
- Yes, Pedro is civilly liable.

Is Nestor civilly liable?
- Being the employer of Pedro, Nestor MAY be civilly liable; however, the liability is ONLY SUBSIDIARY.
- He may only be made to pay if Pedro, the one who is primarily and civilly liable, is not able to pay. His liability would depend on Pedro's inability to comply with his civil obligation.

Must Nestor be included with Pedro in the criminal case to be filed by Vicente?
- No. Nestor is not criminally liable. He is merely civilly liable in case Pedro is not able to pay.
- Nestor is not necessarily needed in the criminal case. This is a criminal case. Nestor is only the employer. Although he may be held subsidiarily civilly liable, he is not criminally liable. It can only be filed against the person who is criminally liable.

Oza v Vda de Madula

A person criminally liable is also civilly liable; and upon the institution of the criminal action, the civil action for the recovery of the civil liability arising from the crime is also impliedly instituted unless waived, or the filing of a separate action therefor is reserved. The employer is subsidiarily answerable for the adjudicated civil liability ex delito of his employee in the event of the latter's insolvency; and the judgment in the criminal action pronouncing the employee to be also civilly liable is conclusive on the employer not only as to the actuality of that liability but also as to its amount.

But the foregoing statement does not exhaust the entirety of the rules relevant and applicable to the juridical situation under consideration. There is the additional precept, of which sight should not be lost because essential due process, that before the employer's subsidiary liability is exacted, there must be adequate evidence establishing that (1) he is indeed the employer of the convict; (2) that he is engaged in some kind of industry; (3) the crime was committed by the employee in the discharge of his duties; and (4) execution against the employee is unsatisfied. 9 The determination of these issues need not be done in a separate civil action. But a determination there must be, on the basis of evidence that the offended party and the employer may fully and freely present; and this may be done in the same criminal action at which the employee's liability, criminal and civil, has been pronounced. It may be done at a hearing set for that precise purpose, with due notice to the employer, "as part of the proceeding for the execution of the judgment."

It goes without saying that the determination thus made as regards the employer's subsidiary civil liability is not conclusive in the sense of being non-reviewable by higher judicial authority. It may be appealed to a higher court at the instance of the aggrieved party — either the offended party or the employer — by writ of error seeking review of questions of fact or mixed questions of fact and law, or through a petition for review on [certiorari], limited to a consideration only of questions of law. Or review may be sought by the institution of a special civil action of certiorari, upon the theory that the determination was made by the Trial Court without or in excess of its jurisdiction, or with grave abuse of discretion.

People v Velasco

Accused committed illegal recruitment in large scale.

Ruling:
It is, indeed, a basic tenet of our criminal law that every person criminally liable is also civilly liable. Civil liability includes restitution, reparation of the damage caused, and indemnification for consequential damages. To enforce the civil liability, the Rules of Court has deemed to be instituted with the criminal action the civil action for the recovery of

civil liability arising from the offense charged unless the offended party waives the civil action, or reserves the right to institute the civil action separately, or institutes the civil action prior to the criminal action. Considering that the crime of illegal recruitment, when it involves the transfer of funds from the victims to the accused, is inherently in fraud of the former, civil liability should include the return of the amounts paid as placement, training and processing fees.

That the civil liability should be made part of the judgment by the RTC and the CA was not disputable. The Court pointed out in Bacolod v. People that it was "imperative that the courts prescribe the proper penalties when convicting the accused, and determine the civil liability to be imposed on the accused, unless there has been a reservation of the action to recover civil liability or a waiver of its recovery."

Gosiaco v Ching

Petitioner filed a case against Ching, an employee of ASB for issuing a bouncing check. Lower Courts acquitted Ching on the ground that the amount petitioner sought to recover was a loan made to ASB and not to Ching.

Q: Is a corporate officer who signed a bouncing check civilly liable under BP 22?

Ruling:
When a corporate officer issues a worthless check in the corporate name he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who with intent to defraud another of money or property, draws or issues a check on any bank with knowledge that he has no sufficient funds in such bank to meet the check on Presentment. Moreover, the personal liability of the corporate officer is predicated on the principle that he cannot shield himself from liability from his own acts on the ground that it was a corporate act and not his personal act.

The general rule is that a corporate officer who issues a bouncing corporate check can only be held civilly liable when he is convicted. In the recent case of Bautista v. Auto Plus Traders Inc. , the Court ruled decisively that the civil liability of a corporate officer in a B.P. Blg. 22 case is extinguished with the criminal liability

Q: Under the Rules of Procedure, the criminal action for violation of BP 22 shall be deemed to include the corresponding civil action. Can a complainant then implead a corporation in a criminal case for BP 22?

Ruling:
Technically, nothing in Section 1 (b) of Rule 11 prohibits the reservation of a separate civil action against the juridical person on whose behalf the check was issued. What the rules prohibit is the reservation of a separate civil action against the natural person charged with violating B.P. Blg. 22, including such corporate officer who had signed the bounced check.

In theory the B.P. Blg. 22 criminal liability of the person who issued the bouncing check in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. B.P. Blg. 22 itself fused this criminal liability of the signer of the check in behalf of the corporation with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability not from the corporation, but from the person who signed the check in its behalf.

However, with the insistence under the amended rules that the civil and criminal liability attaching to the bounced check be pursued jointly, the previous option to directly pursue the civil liability against the person who incurred the civil obligation — the corporation itself — is no longer that clear. In theory, the implied institution of the civil case into the criminal case for B.P. Blg. 22 should not affect the civil liability of the corporation for the same
check, since such implied institution concerns the civil liability of the signatory, and not of the corporation. Let us pursue this point further.

Note: This case was referred to the Committee. Please research and take note on the Revised Rules on Criminal Procedure or any other matter to know whether or not such guidelines have been updated.

Rimando v Aldaba

Spouses Aldaba filed a case against Rimando on the ground of estafa and another one for violation of BP22. Rimando was acquitted in the BP 22 cases on the ground of reasonable doubt. RTC acquitted Rimando of the crime of estafa but found her civilly liable to Sps Aldaba due to the absence of the element of deceit.

Rimando contended that her acquittal and exoneration from the civil liability in the BP 22 cases should have barred the spouses from claiming civil liability from her in the estafa case.

Ruling:
Rimando's acquittal in the estafa case does not necessarily absolve her from any civil liability to private complainants, Sps. Aldaba. It is well-settled that "the acquittal of the accused does not automatically preclude a judgment against him on the civil aspect of the case. The extinction of the penal action does not carry with it the extinction of the civil liability where: (a) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (b) the court declares that the liability of the accused is only civil; and (c) the civil liability of the accused does not arise from or is not based upon the crime of which

the accused is acquitted. However, the civil action based on delict may be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist or where the accused did not commit the acts or omission imputed to him."

In this case, Rimando's civil liability did not arise from any purported act constituting the crime of estafa as the RTC clearly found that Rimando never employed any deceit on Sps. Aldaba to induce them to invest money in Multitel. Rather, her civil liability was correctly traced from being an accommodation party to one of the checks she issued to Sps. Aldaba on behalf of Multitel. In lending her name to Multitel, she, in effect, acted as a surety to the latter, and as such, she may be held directly liable for the value of the issued check. Verily, Rimando's civil liability to Sps. Aldaba in the amount of P500,000.00 does not arise from or is not based upon the crime she is charged with.

Essentially, while a BP 22 case and an estafa case may be rooted from an identical set of facts, they nevertheless present different causes of action, which, under the law, are considered "separate, distinct, and independent" from each other. Therefore, both cases can proceed to their final adjudication — both as to their criminal and civil aspects — subject to the prohibition on double recovery. Perforce, a ruling in a BP 22 case concerning the criminal
and civil liabilities of the accused cannot be given any bearing whatsoever in the criminal and civil aspects of a related estafa case, as in this instance.

Navarra v People

Accused was convicted of BP 22.

Ruling:
When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who draws or issues a check on any bank with knowledge that the funds are not sufficient in such bank to meet the check upon presentment. Moreover, the corporate officer cannot shield himself from liability on the ground that it was a corporate act and not his personal act. The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf

People v Montesclaros

Accused Tampus raped the daughter of Accused Ida Montesclaros.

Ruling:
The particular liability that each accused is responsible for depends on the nature and degree of his participation in the commission of the crime. The penalty prescribed by the Revised Penal Code for a particular crime is imposed upon the principal in a consummated felony. The accomplice is only given the penalty next lower in degree than that prescribed by the law for the crime committed and an accessory is given the penalty lower by two degrees. However, a felon is not only criminally liable, he is likewise civilly liable. Apart from the penalty of imprisonment imposed on him, he is also ordered to indemnify the victim and to make whole the damage caused by his act or omission through the payment of civil indemnity and damages.

Civil liability arising from the crime is shared by all the accused. Although, unlike criminal liability — in which the Revised Penal Code specifically states the corresponding penalty imposed on the principal, accomplice and accessory — the share of each accused in the civil liability is not specified in the Revised Penal Code. The courts have the discretion to determine the apportionment of the civil indemnity which the principal, accomplice and accessory are respectively liable for, without guidelines with respect to the basis of the allotment.

Article 109 of the Revised Penal Code provides that "[i]f there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond". Notwithstanding the determination of the respective liability of the principals, accomplices and accessories within their respective class, they shall also be subsidiarily liable for the amount of civil liability adjudged in the other classes. Article 110 of the Revised Penal Code provides that "[t]he principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiarily for those of the other persons liable".

Though the responsibility to decide the respective shares of persons liable for a felony is left to the courts, this does not mean that this amount can be decided arbitrarily or upon conjecture. The power of the courts to grant indemnity and damages demands factual, legal and equitable justification, and cannot be left to speculation and caprice.

The entire amount of the civil indemnity, together with the moral and actual damages, should be apportioned among the persons who cooperated in the commission of the crime according to the degree of their liability, respective responsibilities and actual participation in the criminal act.