CRIMINAL LAW II REVIEWER

Revised Penal Code
Book II
Crimes and Penalties

TITLE I. CRIMES AGAINST NATIONAL SECURITY AND THE LAW OF NATIONS

Crimes against national security
1. Treason (Art. 114);
2. Conspiracy and proposal to commit treason (Art. 115);
3. Misprision of treason (Art. 116); and
4. Espionage (Art. 117).

Crimes against the law of nations
1. Inciting to war or giving motives for reprisals (Art. 118);
2. Violation of neutrality (Art. 119);
3. Corresponding with hostile country (Art. 120);
4. Flight to enemy's country (Art. 121);
5. Piracy in general and mutiny on the high seas (Art. 122).

The crimes under this title can be prosecuted even if the criminal act or acts were committed outside the Philippine territorial jurisdiction. However, prosecution can proceed only if the offender is within Philippine territory or brought to the Philippines pursuant to an extradition treaty. This is one of the instances where the Revised Penal Code may be given extra-territorial application under Article 2 (5) thereof. In the case of crimes against the law of nations, the offender can be prosecuted whenever he may be found because the crimes are regarded as committed against humanity in general.

Almost all of these are crimes committed in times of war, except the following, which can be committed in times of peace:

(1) Espionage, under Article 114 – This is also covered by Commonwealth Act No. 616 which punishes conspiracy to commit espionage. This may be committed both in times of war and in times of peace.

(2) Inciting to War or Giving Motives for Reprisals, under Article 118 – This can be committed even if the Philippines is not a participant. Exposing the Filipinos or their properties because the offender performed an unauthorized act, like those who recruit Filipinos to participate in the gulf war. If they involve themselves to the war, this crime is committed. Relevant in the cases of Flor Contemplacion or Abner Afuang, the police officer who stepped on a Singaporean flag.

(3) Violation of Neutrality, under Article 119 – The Philippines is not a party to a war but there is a war going on. This may be committed in the light of the Middle East war.

A. Treason and Espionage

1. ARTICLE 114. TREASON

Elements
1. Offender is a Filipino or resident alien;
2. There is a war in which the Philippines is involved;
3. Offender either –
   a. LEVIES WAR AGAINST THE GOVERNMENT; OR
   b. adheres to the enemies, giving them aid or comfort within the Philippines or elsewhere

Requirements of levying war
1. Actual assembling of men;
2. To execute a treasonable design by force;
3. Intent is to deliver the country in whole or in part to the enemy; and
4. Collaboration with foreign enemy or some foreign sovereign

Two ways of proving treason
1. Testimony of at least two witnesses to the same overt act; or
2. Confession of accused in open court.

2. ARTICLE 115. CONSPIRACY AND PROPOSAL TO COMMIT TREASON

Elements of conspiracy to commit treason
1. There is a war in which the Philippines is involved;
2. At least two persons come to an agreement to –
   a. levy war against the government; or
   b. adhere to the enemies, giving them aid or comfort;
   c. They decide to commit it.

Elements of proposal to commit treason
1. There is a war in which the Philippines is involved;
2. At least one person decides to –
   a. A. levy war against the government; or
   b. adhere to the enemies, giving them aid or comfort;
   c. He proposes its execution to some other persons.

3. ARTICLE 116. MISPRISION OF TREASON

Elements
1. Offender owes allegiance to the government, and not a foreigner;
2. He has knowledge of conspiracy to commit treason against the government;
3. He conceals or does not disclose and make known the same as soon as possible to the governor or fiscal of the province in which he resides, or the mayor or fiscal of the city in which he resides.

While in treason, even aliens can commit said crime because of the amendment to the article, no such amendment was made in misprision of treason. Misprision of treason is a crime that may be committed only by citizens of the Philippines.

The essence of the crime is that there are persons who conspire to commit treason and the offender knew this and failed to make the necessary report to the government within the earliest possible time. What is required is to report it as soon as possible. The criminal liability arises if the treasonous activity was still at the conspiratorial stage. Because if the treason already erupted into an overt act, the implication is that the government is already aware of it. There is no need to report the same. This is a felony by omission although committed with dolo, not with culpa.

The persons mentioned in Article 116 are not limited to mayor, fiscal or governor. Any person in authority having equivalent jurisdiction, like a provincial commander, will already negate criminal liability.

Whether the conspirators are parents or children, and the ones who learn the conspiracy is a parent or child, they are required to report the same. The reason is that although blood is thicker than water so to speak, when it comes to security of the state, blood relationship is always subservient to national security. Article 20 does not apply here because the persons found liable for this crime are not considered accessories; they are treated as principals.
In the 1994 bar examination, a problem was given with respect to misprision of treason. The text of the provision simply refers to a conspiracy to overthrow the government. The examiner failed to note that this crime can only be committed in times of war. The conspiracy adverted to must be treasonous in character. In the problem given, it was rebellion. A conspiracy to overthrow the government is a crime of rebellion because there is no war. Under the Revised Penal Code, there is no crime of misprision of rebellion.

4. ARTICLE 117. ESPIONAGE

a. ARTICLE 117: ACTS PUNISHED

1. By entering, without authority therefore, a warship, fort or naval or military establishment or reservation to obtain any information, plans, photograph or other data of a confidential nature relative to the defense of the Philippines;

   Elements
   a. Offender enters any of the places mentioned;
   b. He has no authority therefore;
   c. His purpose is to obtain information, plans, photographs or other data of a confidential nature relative to the defense of the Philippines.

2. By disclosing to the representative of a foreign nation the contents of the articles, data or information referred to in paragraph 1 of Article 117, which he had in his possession by reason of the public office he holds.

   Elements
   a. Offender is a public officer;
   b. He has in his possession the articles, data or information referred to in paragraph 1 of Article 117, by reason of the public office he holds;
   c. He discloses their contents to a representative of a foreign nation.

b. COMMONWEALTH ACT 616 (ESPIONAGE LAW): AN ACT TO PUNISH ESPIONAGE AND OTHER OFFENSES AGAINST NATIONAL SECURITY

Acts punished
1. Unlawfully obtaining or permitting to be obtained information affecting national defense;
2. Unlawful disclosing of information affecting national defense;
3. Disloyal acts or words in times of peace;
4. Disloyal acts or words in times of war;
5. Conspiracy to violate preceding sections; and
6. Harboring or concealing violators of law.

c. BP 39 (FOREIGN AGENTS ACT OF 1979)

Purpose: For reasons of national security and interest, this act shall regulate the activities of foreign agents and require them to register and disclose their political activities in the Republic of the Philippines, so that the government and the people of the Philippines may be informed of their identity and may appraise their statements and actions.

"Person" refers to an individual, partnership, association, corporation or any other combination of individuals.

"Foreign principal" refers to the government of a foreign country or a foreign political party; a foreigner located within or outside the jurisdiction of the Republic of the Philippines; or a partnership, association, corporation, organization or other entity owned or controlled by foreigners.

"Foreign agent" refers to any person who acts or agrees to act as political consultant, public relations counsel, publicity agent, information representative, or as agent, servant, representative, or attorney for a foreign principal or for any domestic organization

subsidized directly or indirectly in whole or in part by a foreign principal. The term "foreign agent" shall not include a duly accredited diplomatic or consular officer of a foreign country or officials of the United Nations and its agencies and of other international organizations recognized by the Republic of the Philippines while engaged in activities within the scope of their legitimate functions as such officers or a bona fide member or employee of a foreign press service or news organization while engaged in activities within the scope of his legitimate functions as such.

Registration. Every person who is now a foreign agent shall, within thirty days after this Act takes effect, and every persons who shall hereafter become a foreign agent shall, within ten days thereafter, file with the Ministry of Justice, a true and a complete registration statement, under oath. The termination of the status of the foreign agent shall not relieve him from his obligation to file a registration statement in accordance with this Act for the period during which he was such an agent.
Statement Open to Public Scrutiny. The Minister of Justice shall retain in permanent form all statements filed under this Act, and such statements shall be public records and open to public examination and inspection at all reasonable hours, under such rules and regulations as the Minister may prescribe.

The Minister shall, promptly upon receipt, transmit one copy of every registration statement and other statements or matters related thereto, to the Minister of Foreign Affairs and the Minister of Public Information for such comment and use as they may determine to be appropriate from the point of view of the foreign relations and internal policies of the Philippines.

Exemptions. This Act shall not apply to any person engaging or agreeing to engage only —

1. In private and non-political activities in furtherance of the bona fide trade or commerce of a foreign principal;
2. In activities in furtherance of bona fide charitable, religious, scholastic, academic, artistic or scientific pursuits;
3. In the legal representation of a foreign principal before any court or government agency: Provided, That for purposes of this subsection, legal representation does not include attempts to influence or persuade government personnel or officials other than in the course of their ordinary official business.

Unlawful Acts:

1. It shall be unlawful for any person within the Philippines who is a foreign agent:

   a. to transmit, convey, or otherwise furnish to any agency or official of the government for or in the interest of a foreign principal any political propaganda, or to request from any agency or official for or in the interest of such foreign principal any information or advice pertaining to any political or public interests, policies or relations of foreign country or of a political party or pertaining to the foreign or domestic policies of the Philippines, unless the propaganda being issued or the request being made is prefaced or accompanied by a true and accurate statement to the effect that such person is registered as a foreign agent under this Act.

   b. to be a party to any contract, agreement, or understanding, either express or implied, with a foreign principal pursuant to which the amount or payment of the compensation, fee or other remuneration of such agent is contingent in whole or in part upon the success of any political activity carried out by such agent.

   c. to make, directly or indirectly, any contribution of money or other thing or value, or promise expressly or impliedly to make any such contribution, in connection with any convention, caucus or other process to select candidates for any political office.

2. It shall be unlawful for any person in the Philippines to solicit, accept, or receive, directly or indirectly, from any foreign agent or from a foreign principal, any of the contributions, or promises to make such contributions, referred to in subsection (c) of this Section.

3. It shall be unlawful for any public officer or employee or his spouse to act as a foreign agent. However, the government may employ any foreign agent: Provided, That the head of the employing agency certifies that such employment is required in the national interest. A certification issued under this paragraph shall be forwarded by the head of such agency to the Minister who shall cause the same to be filed along with the registration statement and other documents filed by such agent.

d. PD 1069 (THE PHILIPPINE EXTRADITION LAW)

Extradition - The removal of an accused from the Philippines with the object of placing him at the disposal of foreign authorities to enable the requesting state or government to hold him in connection with any criminal investigation directed against him or the execution of a penalty imposed on him under the penal or criminal law of the requesting state or government.

Extradition Treaty or Convention - An extradition agreement between the Republic of the Philippines and one or more foreign states or governments.

Accused - The person who is, or is suspected of being, within the territorial jurisdiction of the Philippines, and whose extradition has been requested by a foreign state or government.

Requesting State or Government - The foreign state or government from which the request for extradition has emanated.

Aims of Extradition: Extradition may be granted only pursuant to a treaty or convention, and with a view to:

1. A criminal investigation instituted by authorities of the requesting state or government charging the accused with an offense punishable under the laws both of the requesting state or government and the Republic of the Philippines by imprisonment or other form relevant extradition treaty or convention; or

2. The execution of a prison sentence imposed by a court of the requesting state or government, with such duration as that stipulated in the relevant extradition treaty or convention, to be served in the jurisdiction of and as a punishment for an offense committed by the accused within the territorial jurisdiction of the requesting state or government.

Request; By whom made; Requirements.

Any foreign state or government with which the Republic of the Philippines has entered into extradition treaty or convention, only when the relevant treaty or convention, remains in force, may request for the extradition of any accused who is or suspected of being in the territorial jurisdiction of the Philippines.

The request shall be made by the Foreign Diplomat of the requesting state or government, addressed to the Secretary of Foreign Affairs.

Issuance of Summons; Temporary Arrest; Hearing, Service of Notices.

1. Immediately upon receipt of the petition, the presiding judge of the court shall, as soon as practicable, summon the accused to appear and to answer the petition on the day and hour fixed in the order. We may issue a warrant for the immediate arrest of the accused which may be served any where within the Philippines if it appears to the presiding judge that the immediate arrest and temporary detention of the accused will best serve the ends of justice. Upon receipt of the answer, or should the accused after having received the summons fail to answer within the time fixed, the presiding judge shall hear the ace or set another date for the hearing thereof.

2. The order and notice as well as a copy of the warrant of arrest, if issued, shall be promptly served each upon the accused and the attorney having charge of the case.

Nature and Conduct of Proceedings. In the hearing, the provisions of the Rules of Court insofar as practicable and not inconsistent with the summary nature of the proceedings, shall apply to extradition cases, and the hearing shall be conducted in such a manner as to arrive as a fair and speedy disposition of the case.

Surrender of Accused. After the decision of the court in an extradition case has become final and executory, the accused shall be placed at the disposal of the authorities of the requesting state or government, at a time and place to be determined by the Secretary of Foreign Affairs, after consultation with the foreign diplomat of the requesting state or government.

Provisional Arrest. In case of urgency, the requesting state may, pursuant to the relevant treaty or convention and while the same remains in force; request for provisional arrest of the accused pending receipt of the request for extradition made in accordance with Section 4 of this Decree. A request for provisional arrest shall be sent to the Director of the National Bureau of Investigation, Manila, either through the diplomatic channels or direct by post or telegraph. The Director of the National Bureau of Investigation or any official acting on his behalf shall upon receipt of the request immediately secure a warrant for the provisional arrest of the accused from the presiding judge of the Court of First Instance of the province or city having jurisdiction of the place, who shall issue the warrant for the provisional arrest of the accused. The Director of the National Bureau of Investigation through the Secretary of Foreign Affairs shall inform the requesting of the result of its request. If within a period of 20 days after the provisional arrest the Secretary of Foreign Affairs has not received the request for extradition and the documents required by this Decree, the accused shall be released from custody. Release from provisional arrest shall not prejudice re-arrest and extradition of the accused if a request for extradition is received subsequently in accordance with the relevant treaty of convention.

e. CONST. ART. IV, SECTION 5.

Dual allegiance of citizens is inimical to the national interest and shall be dealt with by law.

B. Provoking War and disloyalty in case of war

1. ARTICLE 118. INCITING TO WAR OR GIVING MOTIVES FOR REPRISALS

Elements
1. Offender performs unlawful or unauthorized acts;
2. The acts provoke or give occasion for –
   a. a war involving or liable to involve the philippines; or
   b. exposure of filipino citizens to reprisals on their persons or property.

2. ARTICLE 119. VIOLATION OF NEUTRALITY

Elements
1. There is a war in which the Philippines is not involved;
2. There is a regulation issued by a competent authority to enforce neutrality;
3. Offender violates the regulation.

When we say national security, it should be interpreted as including rebellion, sedition and subversion. The Revised Penal Code does not treat rebellion, sedition and subversion as crimes against national security, but more of crimes against public order because during the time that the Penal Code was enacted, rebellion was carried out only with bolos and spears; hence, national security was not really threatened. Now, the threat of rebellion or internal wars is serious as a national threat.

3. ARTICLE 120. CORRESPONDENCE WITH HOSTILE COUNTRY

Elements
1. It is in time of war in which the Philippines is involved;
2. Offender makes correspondence with an enemy country or territory occupied by enemy troops;
3. The correspondence is either –
   a. prohibited by the government;
   b. carried on in ciphers or conventional signs; or
   c. containing notice or information which might be useful to the enemy.

4. ARTICLE 121. FLIGHT TO ENEMY'S COUNTRY

Elements
1. There is a war in which the Philippines is involved;
2. Offender must be owing allegiance to the government;
3. Offender attempts to flee or go to enemy country;
4. Going to the enemy country is prohibited by competent authority.

In crimes against the law of nations, the offenders can be prosecuted anywhere in the world because these crimes are considered as against humanity in general, like piracy and mutiny. Crimes against national security can be tried only in the Philippines, as there is a need to bring the offender here before he can be made to suffer the consequences of the law. The acts against national security may be committed abroad and still be punishable under our law, but it can not be tried under foreign law.

C. Piracy and Mutiny on the High Seas or in Philippine Waters and Qualified Piracy

1. ARTICLE 122. PIRACY IN GENERAL AND MUTINY ON THE HIGH SEAS OR IN PHILIPPINE WATERS

Acts punished as piracy
1. Attacking or seizing a vessel on the high seas or in Philippine waters;
2. Seizing in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers.

Elements of piracy
1. The vessel is on the high seas or Philippine waters;
2. Offenders are neither members of its complement nor passengers of the vessel;
3. Offenders either –
   a. attack or seize a vessel on the high seas or in Philippine waters; or
   b. seize in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers;
   c. There is intent to gain.

Originally, the crimes of piracy and mutiny can only be committed in the high seas, that is, outside Philippine territorial waters. But in August 1974, *Presidential Decree No. 532* (The Anti-Piracy and Anti-Highway Robbery Law of 1974) was issued, punishing piracy, but not mutiny, in Philippine territorial waters. Thus came about two kinds of piracy: (1) that which is punished under the Revised Penal Code if committed in the high seas; and (2) that which is punished under Presidential Decree No. 532 if committed in Philippine territorial waters.

Amending Article 122, Republic Act No. 7659 included therein piracy in Philippine waters, thus, pro tanto superseding Presidential Decree No. 532. As amended, the article now punishes piracy, as well as mutiny, whether committed in the high seas or in Philippine territorial waters, and the penalty has been increased to reclusion perpetua from reclusion temporal.

But while under Presidential Decree No. 532, piracy in Philippine waters could be committed by any person, including a passenger or member of the complement of a vessel, under the amended article, piracy can only be committed by a person who is not a passenger nor member of the complement of the vessel irrespective of venue. So if a passenger or complement of the vessel commits acts of robbery in the high seas, the crime is robbery, not piracy.

Note, however, that in Section 4 of Presidential Decree No. 532, the act of aiding pirates or abetting piracy is penalized as a crime distinct from piracy. Said section penalizes any person who knowingly and in any manner aids or protects pirates, such as giving them information about the movement of the police or other peace officers of the government, or acquires or receives property taken by such pirates, or in any manner derives any benefit therefrom; or who directly or indirectly abets the commission of piracy. Also, it is expressly provided in the same section that the offender shall be considered as an accomplice of the principal offenders and punished in accordance with the Revised Penal Code. This provision of Presidential Decree No. 532 with respect to piracy in Philippine water has not been incorporated in the Revised Penal Code. Neither may it be considered repealed by Republic Act No. 7659 since there is nothing in the amendatory law is inconsistent with said section. Apparently, there is still the crime of abetting piracy in Philippine waters under Presidential Decree No. 532.

Considering that the essence of piracy is one of robbery, any taking in a vessel with force upon things or with violence or intimidation against person is employed will always be piracy. It cannot co-exist with the crime of robbery. Robbery, therefore, cannot be committed on board a vessel. But if the taking is without violence or intimidation on persons of force upon things, the crime of piracy cannot be committed, but only theft.

PIRACY is a crime against humanity (*hostes humanes generis*)

2. ARTICLE 123. QUALIFIED PIRACY

Elements
1. The vessel is on the high seas or Philippine waters;
2. Offenders may or may not be members of its complement, or passengers of the vessel;
3. Offenders either –
   a. attack or seize the vessel; or
   b. seize the whole or part of the cargo, its equipment., or personal belongings of the crew or passengers;
4. The preceding were committed under any of the following circumstances:
   a. whenever they have seized a vessel by boarding or firing upon the same;
   b. whenever the pirates have abandoned their victims without means of saving themselves; or
   c. whenever the crime is accompanied by murder, homicide, physical injuries or rape.

If any of the circumstances in Article 123 is present, piracy is qualified. Take note of the specific crimes involve in number 4 c (murder, homicide, physical injuries or rape). When any of these crimes accompany piracy, there is no complex crime. Instead, there is only one crime committed – qualified piracy. Murder, rape, homicide, physical injuries are mere circumstances qualifying piracy and cannot be punished as separate crimes, nor can they be complexed with piracy.
Although in Article 123 merely refers to qualified piracy, there is also the crime of qualified mutiny. Mutiny is qualified under the following circumstances:

(1) When the offenders abandoned the victims without means of saving themselves; or

(2) When the mutiny is accompanied by rape, murder, homicide, or physical injuries.

Note that the first circumstance which qualifies piracy does not apply to mutiny.

3. REPUBLIC ACT NO. 6235 (THE ANTI HI-JACKING LAW)

Anti hi-jacking is another kind of piracy which is committed in an aircraft. In other countries, this crime is known as aircraft piracy.

Four situations governed by anti hi-jacking law:
(1) usurping or seizing control of an aircraft of Philippine registry while it is in flight, compelling the pilots thereof to change the course or destination of the aircraft;

(2) usurping or seizing control of an aircraft of foreign registry while within Philippine territory, compelling the pilots thereof to land in any part of Philippine territory;

(3) carrying or loading on board an aircraft operating as a public utility passenger aircraft in the Philippines, any flammable, corrosive, explosive, or poisonous substance; and

(4) loading, shipping, or transporting on board a cargo aircraft operating as a public utility in the Philippines, any flammable, corrosive, explosive, or poisonous substance if this was done not in accordance with the rules and regulations set and promulgated by the Air Transportation Office on this matter.

Between numbers 1 and 2, the point of distinction is whether the aircraft is of Philippine registry or foreign registry. The common bar question on this law usually involves number 1. The important thing is that before the anti hi-jacking law can apply, the aircraft must be in flight. If not in flight, whatever crimes committed shall be governed by the Revised Penal Code. The law makes a distinction between aircraft of a foreign registry and of Philippine registry. If the aircraft subject of the hi-jack is of

Philippine registry, it should be in flight at the time of the hi-jacking. Otherwise, the anti hi-jacking law will not apply and the crime is still punished under the Revised Penal Code. The correlative crime may be one of grave coercion or grave threat. If somebody is killed, the crime is homicide or murder, as the case may be. If there are some explosives carried there, the crime is destructive arson. Explosives are by nature pyro-techniques. Destruction of property with the use of pyro-technique is destructive arson. If there is illegally possessed or carried firearm, other special laws will apply.

On the other hand, if the aircraft is of foreign registry, the law does not require that it be in flight before the anti hi-jacking law can apply. This is because aircrafts of foreign registry are considered in transit while they are in foreign countries. Although they may have been in a foreign country, technically they are still in flight, because they have to move out of that foreign country. So even if any of the acts mentioned were committed while the exterior doors of the foreign aircraft were still open, the anti hi-jacking law will already govern.

Note that under this law, an aircraft is considered in flight from the moment all exterior doors are closed following embarkation until such time when the same doors are again opened for disembarkation. This means that there are passengers that boarded. So if the doors are closed to bring the aircraft to the hangar, the aircraft is not considered as in flight. The aircraft shall be deemed to be already in flight even if its engine has not yet been started.

TITLE II. CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE

Crimes against the fundamental laws of the State
1. Arbitrary detention (Art. 124);
2. Delay in the delivery of detained persons to the proper judicial authorities (Art. 125);
3. Delaying release (Art. 126);
4. Expulsion (Art. 127);
5. Violation of domicile (Art. 128);
6. Search warrants maliciously obtained and abuse in the service of those legally obtained (Art. 129);
7. Searching domicile without witnesses (Art. 130);
8. Prohibition, interruption, and dissolution of peaceful meetings (Art. 131);
9. Interruption of religious worship (Art. 132);
10. Offending the religious feelings (Art. 133);

Crimes under this title are those which violate the Bill of Rights accorded to the citizens under the Constitution. Under this title, the offenders are public officers, except as to the last crime – offending the religious feelings under Article 133, which refers to any person. The public officers who may be held liable are only those acting under supposed exercise of official functions, albeit illegally.

In its counterpart in Title IX (Crimes Against Personal Liberty and Security), the offenders are private persons. But private persons may also be liable under this title as when a private person conspires with a public officer. What is required is that the principal offender must be a public officer. Thus, if a private person conspires with a public officer, or becomes an accessory or accomplice, the private person also becomes liable for the same crime. But a private person acting alone cannot commit the crimes under Article 124 to 132 of this title.

A. Arbitrary Detention and Expulsion

1. ARBITRARY DETENTION (ART. 124)

Elements
1. Offender is a public officer or employee;
2. He detains a person;
3. The detention is without legal grounds.

Meaning of absence of legal grounds
1. No crime was committed by the detained;
2. There is no violent insanity of the detained person; and
3. The person detained has no ailment which requires compulsory confinement in a hospital.

The crime of arbitrary detention assumes several forms:

(1) Detaining a person without legal grounds under;

(2) Having arrested the offended party for legal grounds but without warrant of arrest, and the public officer does not deliver the arrested person to the proper judicial authority within the period of 12, 18, or 36 hours, as the case may be; or

(3) Delaying release by competent authority with the same period mentioned in number 2.

Distinction between arbitrary detention and illegal detention

1. In arbitrary detention --
   a. The principal offender must be a public officer. Civilians can commit the crime of arbitrary detention except when they conspire with a public officer committing this crime, or become an accomplice or accessory to the crime committed by the public officer; and
   b. The offender who is a public officer has a duty which carries with it the authority to detain a person.

2. In illegal detention --
   a. The principal offender is a private person. But a public officer can commit the crime of illegal detention when he is acting in a private capacity or beyond the scope of his official duty, or when he becomes an accomplice or accessory to the crime committed by a private person.
   b. The offender, even if he is a public officer, does not include as his function the power to arrest and detain a person, unless he conspires with a public officer committing arbitrary detention.

Note that in the crime of arbitrary detention, although the offender is a public officer, not any public officer can commit this crime. Only those public officers whose official duties carry with it the authority to make an arrest and detain persons can be guilty of this crime. So, if the offender does not possess such authority, the crime committed by him is illegal detention. A public officer who is acting outside the scope of his official duties is no better than a private citizen.

In a case decided by the Supreme Court a Barangay Chairman who unlawfully detains another was held to be guilty of the crime of arbitrary detention. This is because he is a person in authority vested with the jurisdiction to maintain peace and order within his barangay. In the maintenance of such peace and order, he may cause the arrest and detention of troublemakers or those who disturb the peace and order within his barangay. But if the legal basis for the apprehension and detention does not exist, then the detention becomes arbitrary.

Whether the crime is arbitrary detention or illegal detention, it is necessary that there must be an actual restraint of liberty of the offended party. If there is no actual restraint, as the offended party may still go to the place where he wants to go, even though there have been warnings, the crime of arbitrary detention or illegal detention is not committed. There is either grave or light threat.

However, if the victim is under guard in his movement such that there is still restraint of liberty, then the crime of either arbitrary or illegal detention is still committed.

Distinction between arbitrary detention and unlawful arrest

(1) As to offender
   a. In arbitrary detention, the offender is a public officer possessed with authority to make arrests.
   b. In unlawful arrest, the offender may be any person.

(2) As to criminal intent
   a. In arbitrary detention, the main reason for detaining the offended party is to deny him of his liberty.
   b. In unlawful arrest, the purpose is to accuse the offended party of a crime he did not commit, to deliver the person to the proper authority, and to file the necessary charges in a way trying to incriminate him.

When a person is unlawfully arrested, his subsequent detention is without legal grounds.

2. DELAY IN DELIVERY OF DETAINED PERSONS TO THE PROPER JUDICIAL AUTHORITIES (125)

Elements
1. Offender is a public officer or employee;
2. He detains a person for some legal ground;
3. He fails to deliver such person to the proper judicial authorities within –
   a. 12 hour for light penalties;
   b. 18 hours for correctional penalties; and
   c. 36 hours for afflictive or capital penalties

This is a form of arbitrary detention. At the beginning, the detention is legal since it is in the pursuance of a lawful arrest. However, the detention becomes arbitrary when the period thereof exceeds 12, 18 or 36 hours, as the case may be, depending on whether the crime is punished by light, correctional or afflictive penalty or their equivalent.

The period of detention is 12 hours for light offenses, 18 hours for correctional offences and 36 hours for afflictive offences, where the accused may be detained without formal charge. But he must cause a formal charge or application to be filed with the proper court before 12, 18 or 36 hours lapse. Otherwise he has to release the person arrested.

Note that the period stated herein does not include the nighttime. It is to be counted only when the prosecutor's office is ready to receive the complaint or information.

This article does not apply if the arrest is with a warrant. The situation contemplated here is an arrest without a warrant.

3. DELAYING RELEASE (126)

Acts punished
1. Delaying the performance of a judicial or executive order for the release of a prisoner;
2. Unduly delaying the service of the notice of such order to said prisoner;
3. Unduly delaying the proceedings upon any petition for the liberation of such person.

Elements
1. Offender is a public officer or employee;
2. There is a judicial or executive order for the release of a prisoner or detention prisoner, or that there is a proceeding upon a petition for the liberation of such person;
3. Offender without good reason delays –
   a. the service of the notice of such order to the prisoner;
   b. the performance of such judicial or executive order for the release of the prisoner; or
   c. the proceedings upon a petition for the release of such person.

RA 7438: RIGHTS OF PERSONS ARRESTED, DETAINED OR UNDER CUSTODIAL INVESTIGATION; DUTIES OF PUBLIC OFFICERS.

Any person arrested detained or under custodial investigation shall at all times be assisted by counsel.

Any public officer or employee, or anyone acting under his order or his place, who arrests, detains or investigates any person for the commission of an offense shall inform the latter, in a language known to and understood by him, of his rights to remain silent and to have competent and independent counsel, preferably of his own choice, who shall at all times be allowed to confer privately with the person arrested, detained or under custodial investigation. If such person cannot afford the services of his own counsel, he must be provided with a competent and independent counsel by the investigating officer.

The custodial investigation report shall be reduced to writing by the investigating officer, provided that before such report is signed, or thumbmarked if the person arrested or detained does not know how to read and write, it shall be read and adequately explained to him by his counsel or by the assisting counsel provided by the investigating officer in the language or dialect known to such arrested or detained person, otherwise, such investigation

report shall be null and void and of no effect whatsoever.

Any extrajudicial confession made by a person arrested, detained or under custodial investigation shall be in writing and signed by such person in the presence of his counsel or in the latter's absence, upon a valid waiver, and in the presence of any of the parents, elder brothers and sisters, his spouse, the municipal mayor, the municipal judge, district school supervisor, or priest or minister of the gospel as chosen by him; otherwise, such extrajudicial confession shall be inadmissible as evidence in any proceeding.

Any waiver by a person arrested or detained under the provisions of Article 125 of the Revised Penal Code, or under custodial investigation, shall be in writing and signed by such person in the presence of his counsel; otherwise the waiver shall be null and void and of no effect.

Any person arrested or detained or under custodial investigation shall be allowed visits by or conferences with any member of his immediate family, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, or by any national non-governmental organization duly accredited by the Commission on Human Rights of by any international non-governmental organization duly accredited by the Office of the President. The person's "immediate family" shall include his or her spouse, fiancé or fiancée, parent or child, brother or sister, grandparent or grandchild, uncle or aunt, nephew or niece, and guardian or ward.

Custodial investigation - includes the practice of issuing an "invitation" to a person who is investigated in connection with an offense he is suspected to have committed, without prejudice to the liability of the "inviting" officer for any violation of law.

Assisting Counsel - Assisting counsel is any lawyer, except those directly affected by the case, those charged with conducting preliminary investigation or those charged with the prosecution of crimes.

Penalty Clause:

(a) Any arresting public officer or employee, or any investigating officer, who fails to inform any person arrested, detained or under custodial investigation of his right to remain silent and to have competent and independent counsel preferably of his own choice, shall suffer a fine of Six thousand pesos (P6,000.00) or a penalty of imprisonment of not less than eight (8) years but not more than ten (10) years, or both. The penalty of perpetual absolute disqualification shall also be imposed upon the investigating officer who has been previously convicted of a similar offense.

The same penalties shall be imposed upon a public officer or employee, or anyone acting upon orders of such investigating officer or in his place, who fails to provide a competent and independent counsel to a person arrested, detained or under custodial investigation for the commission of an offense if the latter cannot afford the services of his own counsel.

(b) Any person who obstructs, prevents or prohibits any lawyer, any member of the immediate family of a person arrested, detained or under custodial investigation, or any medical doctor or priest or religious minister chosen by him or by any member of his immediate family or by his counsel, from visiting and conferring privately with him, or from examining and treating him, or from ministering to his spiritual needs, at any hour of the day or, in urgent cases, of the night shall suffer the penalty of imprisonment of not less than four (4) years nor more than six (6) years, and a fine of four thousand pesos (P4,000.00).

The provisions of the above Section notwithstanding, any security officer with custodial responsibility over any detainee or prisoner may undertake such reasonable measures as may be necessary to secure his safety and prevent his escape.

Const. Art III, Section 12. (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.

Const. Art III, Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
(2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused: Provided, that he has been duly notified and his failure to appear is unjustifiable.

4. EXPULSION (127)

Acts punished
1. Expelling a person from the Philippines;
2. Compelling a person to change his residence.

Elements
1. Offender is a public officer or employee;
2. He either –
   a. expels any person from the Philippines; or
   b. compels a person to change residence;
3. Offender is not authorized to do so by law.

The essence of this crime is coercion but the specific crime is "expulsion" when committed by a public officer. If committed by a private person, the crime is grave coercion.

In **Villavicencio v. Lukban, 39 Phil 778**, the mayor of the City of Manila wanted to make the city free from prostitution. He ordered certain prostitutes to be transferred to Davao, without observing due processes since they have not been charged with any crime at all. It was held that the crime committed was expulsion.

CONST ART. III, §6. The liberty of abode and of changing the same within the limits prescribed by law shall not be impaired except upon lawful order of the court. Neither shall the right to travel be impaired except in the interest of national security, public safety, or public health, as may be provided by law.

MARCOS V. MANGLAPUS, 117 SCRA 668 (1989)
Facts: Deposed Pres. Marcos exiled in Hawaii wishes to return to the Philippines. However, Pres. Aquino rendered a decision to bar his return considering its consequent impact to the nation at the time when the stability of the government was threatened. Mr. Marcos filed a petition for mandamus and prohibition to compel the Sec. of Foreign Affairs to issue travel documents to him and his family, alleging that his right to return to the Philippine is guaranteed under the Bill of Rights, and questioning Pres. Aquino's power to impair his right to travel in the absence of legislation to that effect.

Issue: May the Pres. prohibit Mr. Marcos and his family's return to the Philippines?

Held: YES. The right to return to one's country is not among the rights specifically guaranteed in the Bill of Rights, which treats only of the Liberty of Abode and the right to travel. However, it is a well-settled view that the right to return may be considered as a generally accepted principle of international law and, under the Constitution, forms part of the law of the land. However, it is distinct and separate from the right to travel.

The constitutional guarantees invoked by the Marcoses are neither absolute nor inflexible for the exercise of such freedoms has limits and must adjust to the concerns which involve the public interest.

The request or demand of the Marcoses to be allowed to return to the Philippines cannot be considered in light solely of the constitutional provisions guaranteeing liberty of abode and the right to travel, subject to certain exemptions, or of case law which clearly never contemplated situations similar to the present one. It must be treated as a matter that is appropriately addressed by those unstated residual powers of the president which are implicit in and correlative to the paramount duty residing in that office to safeguard and protect general welfare.

The president did not act arbitrarily, capriciously and whimsically in deciding that the return of the Marcoses poses a serious threat to the national interest and welfare and in prohibiting their return.

B. Violation of Domicile

1. VIOLATION OF DOMICILE (ART. 128)

Acts punished
1. Entering any dwelling against the will of the owner thereof;
2. Searching papers or other effects found therein without the previous consent of such owner; or
3. Refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave the same

Common elements
1. Offender is a public officer or employee;
2. He is not authorized by judicial order to enter the dwelling or to make a search therein for papers or other effects.

Circumstances qualifying the offense
1. If committed at nighttime; or
2. If any papers or effects not constituting evidence of a crime are not returned immediately after the search made by offender.

Under Title IX (Crimes against Personal Liberty and Security), the corresponding article is qualified trespass to dwelling under Article 280. Article 128 is limited to public officers. The public officers who may be liable for crimes against the fundamental laws are those who are possessed of the authority to execute search warrants and warrants of arrests.

Under Rule 113 of the Revised Rules of Court, when a person to be arrested enters a premise and closes it thereafter, the public officer, after giving notice of an arrest, can break into the premise. He shall not be liable for violation of domicile.

According to **People vs. Doria** and **People vs. Elamparo**, the following are the accepted exceptions to the warrant requirement: (1) search incidental to an arrest; (2) search of moving vehicles; (3) evidence in plain view; (4) customs searches; and (5) consented warrantless search. Stop and frisk is no longer included.

There are three ways of committing the violation of Article 128:
(1) By simply entering the dwelling of another if such entering is done against the will of the occupant. In the plain view doctrine, public officer should be legally entitled to be in the place where the effects were found. If he entered the place illegally and he saw the effects, doctrine inapplicable; thus, he is liable for violation of domicile.

(2) Public officer who enters with consent searches for paper and effects without the consent of the owner. Even if he is welcome in the dwelling, it does not mean he has permission to search.

(3) Refusing to leave premises after surreptitious entry and being told to leave the same. The act punished is not the entry but the refusal to leave. If the offender upon being directed to eave, followed and left, there is no crime of violation of domicile. Entry must be done surreptitiously; without this, crime may be unjust vexation. But if entering was done against the will of the occupant of the house, meaning there was express or implied prohibition from entering the same, even if the occupant does not direct him to leave, the crime of is already committed because it would fall in number 1.

2. UNLAWFUL USE OF SEARCH WARRANTS

a. SEARCH WARRANTS MALICIOUSLY OBTAINED AND ABUSE IN SERVICE OF THOSE LEGALLY OBTAINED (129)

Acts punished

1. Procuring a search warrant without just cause;
   Elements
   a. Offender is a public officer or employee;
   b. He procures a search warrant;
   c. There is no just cause.

2. Exceeding his authority or by using unnecessary severity in executing a search warrant legally procured.

   Elements
   a. Offender is a public officer or employee;
   b. He has legally procured a search warrant;
   c. He exceeds his authority or uses unnecessary severity in executing the same.

b. SEARCHING DOMICILE WITHOUT WITNESSES (130)

Elements

1. Offender is a public officer or employee;
2. He is armed with search warrant legally procured;
3. He searches the domicile, papers or other belongings of any person;
4. The owner, or any members of his family, or two witnesses residing in the same locality are not present.

Crimes under Articles 129 and 130 are referred to as violation of domicile. In these articles, the search is made by virtue of a valid warrant, but the warrant notwithstanding, the liability for the crime is still incurred through the following situations:

(1) Search warrant was irregularly obtained – This means there was no probable cause determined in obtaining the search warrant. Although void, the search warrant is entitled to respect because of presumption of regularity. One remedy is a motion to quash the search warrant, not refusal to abide by it. The public officer may also be prosecuted for perjury, because for him to succeed in obtaining a search warrant without a probable cause, he must have perjured himself or induced someone to commit perjury to convince the court.

(2) The officer exceeded his authority under the warrant – To illustrate, let us say that there was a pusher in a condo unit. The PNP Narcotics Group obtained a search warrant but the name of person in the search warrant did not tally with the address stated. Eventually, the person with the same name was found but in a different address. The occupant resisted but the public officer insisted on the search. Drugs were found and seized and occupant was prosecuted and convicted by the trial court. The Supreme Court acquitted him because the public officers are required to follow the search warrant to the letter. They have no discretion on the matter. Plain view doctrine is inapplicable since it presupposes that the officer was legally entitled to be in the place where the effects where found. Since the entry was illegal, plain view doctrine does not apply.

(3) When the public officer employs unnecessary or excessive severity in the implementation of the search warrant. The search warrant is not a license to commit destruction.

(4) Owner of dwelling or any member of the family was absent, or two witnesses residing within the same locality were not present during the search.

Const. Art. III, Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce, and particularly describing the place to be searched and the persons or things to be seized.

RULE 126 - SEARCH AND SEIZURE

Search warrant defined. – An order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.

Requisites for issuing search warrant. – A search warrant shall not issue except upon probable cause in connection with one specific offense to be

determined personally by the judge after examination under oath or affirmation of the complainant and the witness he may produce, and particularly describing the place to be searched and the things to be seized which may be anywhere in the Philippines.

Right to break door or window to effect search. – The officer, if refused admittance to the place of directed search after giving notice of his purpose and authority, may break open any outer or inner door or window of a house or any part of a house or anything therein to execute the warrant to liberate himself or any person lawfully aiding him when unlawfully detained therein.

Search of house, room, or premises to be made in presence of two witnesses. – No search of a house, room, or any other premises shall be made except in the presence of the lawful occupant thereof or any member of his family or in the absence of the latter, two witnesses of sufficient age and discretion residing in the same locality.

Time of making search. – The warrant must direct that it be served in the day time, unless the affidavit asserts that the property is on the person or in the place ordered to be searched, in which case a direction may be inserted that it be served at any time of the day or night.

Validity of search warrant. – A search warrant shall be valid for ten (10) days from its date. Thereafter, it shall be void.

Receipt for the property seized. – The officer seizing the property under the warrant must give a detailed receipt for the same to the lawful occupant of the premises in whose presence the search and seizure were made, or in the absence of such occupant, must, in the presence of at least two witnesses of sufficient age and discretion residing in the same locality, leave a receipt in the place in which he found the seized property.

C. Prohibition, Interruption and Dissolution of Peaceful Meetings (131)

Elements
1. Offender is a public officer or employee;
2. He performs any of the following acts:
    a. prohibiting or by interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same;
    b. hindering any person from joining any lawful association, or attending any of its meetings;
    c. prohibiting or hindering any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

The government has a right to require a permit before any gathering could be made. Any meeting without a permit is a proceeding in violation of the law. That being true, a meeting may be prohibited, interrupted, or dissolved without violating Article 131 of the Revised Penal Code.
But the requiring of the permit shall be in exercise only of the government's regulatory powers and not really to prevent peaceful assemblies as the public may desire. Permit is only necessary to regulate the peace so as not to inconvenience the public. The permit should state the day, time and the place where the gathering may be held. This requirement is, therefore, legal as long as it is not being exercised in as a prohibitory power.

If the permit is denied arbitrarily, Article 131 is violated. If the officer would not give the permit unless the meeting is held in a particular place which he dictates defeats the exercise of the right to peaceably assemble, Article 131 is violated.

At the beginning, it may happen that the assembly is lawful and peaceful. If in the course of the assembly the participants commit illegal acts like oral defamation or inciting to sedition, a public officer or law enforcer can stop or dissolve the meeting. The permit given is not a license to commit a crime.

There are two criteria to determine whether Article 131 would be violated:

(1) Dangerous tendency rule – applicable in times of national unrest such as to prevent coup d'etat.

(2) Clear and present danger rule – applied in times of peace. Stricter rule.

Distinctions between prohibition, interruption, or dissolution of peaceful meetings under Article 131, and tumults and other disturbances, under Article 153

(1) As to the participation of the public officer

a. In Article 131, the public officer is not a participant. As far as the gathering is concerned, the public officer is a third party.

b. If the public officer is a participant of the assembly and he prohibits, interrupts, or dissolves the same, Article 153 is violated if the same is conducted in a public place.

(2) As to the essence of the crime

a. In Article 131, the offender must be a public officer and, without any legal ground, he prohibits, interrupts, or dissolves a peaceful meeting or assembly to prevent the offended party from exercising his freedom of speech and that of the assembly to petition a grievance against the government.

b. In Article 153, the offender need not be a public officer. The essence of the crime is

that of creating a serious disturbance of any sort in a public office, public building or even a private place where a public function is being held.

D. Crimes against Religious Worship

1. INTERRUPTION OF RELIGIOUS WORSHIP (132)

Elements
1. Offender is a public officer or employee;
2. Religious ceremonies or manifestations of any religious are about to take place or are going on;
3. Offender prevents or disturbs the same.

Qualified if committed by violence or threat.

2. OFFENDING THE RELIGIOUS FEELINGS (133)

Elements
1. Acts complained of were performed in a place devoted to religious worship, or during the celebration of any religious ceremony;
2. The acts must be notoriously offensive to the feelings of the faithful.

There must be deliberate intent to hurt the feelings of the faithful.

Const. Art. III, Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

TITLE III. CRIMES AGAINST PUBLIC ORDER

Crimes against public order

1. Rebellion or insurrection (Art. 134);
2. Conspiracy and proposal to commit rebellion (Art. 136);
3. Disloyalty to public officers or employees (Art. 137);
4. Inciting to rebellion (Art. 138);
5. Sedition (Art. 139);
6. Conspiracy to commit sedition (Art. 141);
7. Inciting to sedition (Art. 142);
8. Acts tending to prevent the meeting of Congress and similar bodies (Art. 143);
9. Disturbance of proceedings of Congress or similar bodies (Art. 144);
10. Violation of parliamentary immunity (Art. 145);
11. Illegal assemblies (Art. 146);
12. Illegal associations (Art. 147);
13. Direct assaults (Art. 148);
14. Indirect assaults (Art. 149);
15. Disobedience to summons issued by Congress, its committees, etc., by the constitutional commissions, its committees, etc. (Art. 150);
16. Resistance and disobedience to a person in authority or the agents of such person (Art. 151);
17. Tumults and other disturbances of public order (Art. 153);
18. Unlawful use of means of publication and unlawful utterances (Art. 154);
19. Alarms and scandals (Art. 155);
20. Delivering prisoners from jails (Art. 156);
21. Evasion of service of sentence (Art. 157);
22. Evasion on occasion of disorders (Art. 158);
23. Violation of conditional pardon (Art. 159);
24. Commission of another crime during service of penalty imposed for another previous offense (Art. 160).

A. Rebellion, *Coup d'etat*, Sedition and Disloyalty

1. REBELLION OR INSURRECTION

a. ARTICLE 134. REBELLION OR INSURRECTION

Elements

1. There is a public uprising and taking arms against the government;
2. The purpose of the uprising or movement is –
   a. to remove from the allegiance to the government or its laws Philippine territory or any part thereof, or any body of land, naval, or other armed forces; or
   b. to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

The essence of this crime is a public uprising with the taking up of arms. It requires a multitude of people. It aims to overthrow the duly constituted government. It does not require the participation of any member of the military or national police organization or public officers and generally carried out by civilians. Lastly, the crime can only be committed through force and violence.

Rebellion and insurrection are not synonymous. *Rebellion is more frequently used where the object of the movement is completely to overthrow and supersede the existing government*; while *insurrection is more commonly employed in reference to a movement which seeks merely to effect some change of minor importance, or to prevent the exercise of governmental authority with respect to particular matters of subjects (Reyes, citing 30 Am. Jr. 1).*

*Rebellion can now be complexed with common crimes. Not long ago, the Supreme Court, in **Enrile v. Salazar, 186 SCRA 217**, reiterated and affirmed the rule laid down in **People v. Hernandez, 99 Phil 515**, that rebellion may not be complexed with common crimes which are committed in furtherance thereof because they are absorbed in rebellion. In view of said reaffirmation, some believe that it has been a settled doctrine that rebellion cannot be complexed with common crimes, such as killing and destruction of property, committed on the occasion and in furtherance thereof.*

This thinking is no longer correct; there is no legal basis for such rule now.

The statement in **People v. Hernandez** that common crimes committed in furtherance of rebellion are absorbed by the crime of rebellion, was dictated by the provision of Article 135 of the Revised Penal Code prior to its amendment by the Republic Act No. 6968 (An Act Punishing the Crime of Coup D'etat), which became effective on October 1990. Prior to its amendment by Republic Act No. 6968, Article 135 punished those "who while holding any public office or employment, take part therein" by any of these acts: engaging in war against the forces of Government; destroying property; committing serious violence; exacting contributions, diverting funds for the lawful purpose for which they have been appropriated.

Since a higher penalty is prescribed for the crime of rebellion when any of the specified acts are committed in furtherance thereof, said acts are punished as components of rebellion and, therefore, are not to be treated as distinct crimes. The same acts constitute distinct crimes when committed on a different occasion and not in furtherance of rebellion. In short, it was because Article 135 then punished said acts as components of the crime of rebellion that precludes the application of Article 48 of the Revised Penal Code thereto. In the eyes of the law then, said acts constitute only one crime and that is rebellion. The Hernandez doctrine was reaffirmed in Enrile v. Salazar because the text of Article 135 has remained the same as it was when the Supreme Court resolved the same issue in the People v. Hernandez. So the Supreme Court invited attention to this fact and thus stated:

"There is a an apparent need to restructure the law on rebellion, either to raise the penalty therefore or to clearly define and delimit the other offenses to be considered absorbed thereby, so that it cannot be conveniently utilized as the umbrella for every sort of illegal activity undertaken in its name. The court has no power to effect such change, for it can only interpret the law as it stands at any given time, and what is needed lies beyond interpretation. Hopefully, Congress will perceive the need for promptly seizing the initiative in this matter, which is purely within its province."

Obviously, Congress took notice of this pronouncement and, thus, in enacting Republic Act No. 6968, it did not only provide for the crime of coup d'etat in the Revised Penal Code but moreover, deleted from the provision of Article 135 that portion referring to those –

"…who, while holding any public office or employment takes part therein [rebellion or insurrection], engaging in war against the forces of government, destroying property or committing serious violence, exacting contributions or diverting public funds from the lawful purpose for which they have been appropriated …"

Hence, overt acts which used to be punished as components of the crime of rebellion have been severed therefrom by Republic Act No. 6968. The legal impediment to the application of Article 48 to rebellion has been removed. After the amendment, common crimes involving killings, and/or destructions of property, even though committed by rebels in furtherance of rebellion, shall bring about complex crimes of rebellion with murder/homicide, or rebellion with robbery, or rebellion with arson as the case may be.

To reiterate, before Article 135 was amended, a higher penalty is imposed when the offender engages in war against the government. "War" connotes anything which may be carried out in pursuance of war. This implies that all acts of war or hostilities like serious violence and destruction of property committed on occasion and in pursuance of rebellion are component crimes of rebellion which is why Article 48 on complex crimes is inapplicable. In amending Article135, the acts which used to be component crimes of rebellion, like serious acts of violence, have been deleted. These are now distinct crimes. The legal obstacle for the application of Article 48, therefore, has been removed. Ortega says legislators want to punish these common crimes independently of rebellion. Ortega cites no case overturning Enrile v. Salazar.

In **People v. Rodriguez, 107 Phil. 569,** it was held that an accused already convicted of rebellion may not be prosecuted further for illegal possession of firearm and ammunition, a violation of Presidential Decree No. 1866, because this is a necessary element or ingredient of the crime of rebellion with which the accused was already convicted.

However, in **People v. Tiozon, 198 SCRA 368,** it was held that charging one of illegal possession of firearms in furtherance of rebellion is proper because this is not a charge of a complex crime. A crime under the Revised Penal Code cannot be absorbed by a statutory offense.

*In **People v. de Gracia**, it was ruled that illegal possession of firearm in furtherance of rebellion under Presidential Decree No. 1866 is distinct from the crime of rebellion under the Revised Penal Code and, therefore, Article 135 (2) of the Revised Penal Code should not apply. The offense of illegal possession of firearm is a malum prohibitum, in which case, good faith and absence of criminal intent are not valid defenses.*

*In **People v. Lovedioro**, an NPA cadre killed a policeman and was convicted for murder. He appealed invoking rebellion. The Supreme Court found that there was no evidence shown to further the end of the NPA movement. It held that there must be evidence shown that the act furthered the cause of the NPA; it is not enough to say it.*

Rebellion may be committed even without a single shot being fired. No encounter needed. Mere public uprising with arms enough.
Article 135, as amended, has two penalties: a higher penalty for the promoters, heads and maintainers of the rebellion; and a lower penalty for those who are only followers of the rebellion.

Distinctions between rebellion and sedition

(1) As to nature
   a. In rebellion, there must be taking up or arms against the government.
   b. In sedition, it is sufficient that the public uprising be tumultuous.

(2) As to purpose
   a. In rebellion, the purpose is always political.
   b. In sedition, the purpose may be political or social. Example: the uprising of squatters against Forbes park residents. The purpose in sedition is to go against established government, not to overthrow it.

When any of the objectives of rebellion is pursued but there is no public uprising in the legal sense, the crime is direct assault of the first form. But if there is rebellion, with public uprising, direct assault cannot be committed.

b. ARTICLE 134-A. COUP D' ETAT

Elements
1. Offender is a person or persons belonging to the military or police or holding any public office or employment;
2. It is committed by means of a swift attack accompanied by violence, intimidation, threat, strategy or stealth;
3. The attack is directed against the duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power;

4. The purpose of the attack is to seize or diminish state power.

The essence of the crime is a swift attack upon the facilities of the Philippine government, military camps and installations, communication networks, public utilities and facilities essential to the continued possession of governmental powers. It may be committed singly or collectively and does not require a multitude of people. The objective may not be to overthrow the government but only to destabilize or paralyze the government through the seizure of facilities and utilities essential to the continued possession and exercise of governmental powers. It requires as principal offender a member of the AFP or of the PNP organization or a public officer with or without civilian support. Finally, it may be carried out not only by force or violence but also through stealth, threat or strategy.

Persons liable for rebellion, insurrection or coup d' etat under **Article 135**

1. The leaders –
   a. Any person who promotes, maintains or heads a rebellion or insurrection; or
   b. Any person who leads, directs or commands others to undertake a coup d' etat;
2. The participants –
   a. Any person who participates or executes the commands of others in rebellion, insurrection or coup d' etat;
   b. Any person not in the government service who participates, supports, finances, abets or aids in undertaking a coup d' etat.

c. ARTICLE 136. CONSPIRACY AND PROPOSAL TO COMMIT COUP D' ETAT, REBELLION OR INSURRECTION

Conspiracy and proposal to commit rebellion are two different crimes, namely:

1. Conspiracy to commit rebellion; and
2. Proposal to commit rebellion.

There is conspiracy to commit rebellion when two or more persons come to an agreement to rise publicly and take arms against government for any of the purposes of rebellion and decide to commit it.

There is proposal to commit rebellion when the person who has decided to rise publicly and take arms against the government for any of the purposes of rebellion proposes its execution to some other person or persons.

d. ARTICLE 138. INCITING TO REBELLION OR INSURRECTION

Elements

1. Offender does not take arms or is not in open hostility against the government;
2. He incites others to the execution of any of the acts of rebellion;
3. The inciting is done by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.

Distinction between inciting to rebellion and proposal to commit rebellion

1. In both crimes, offender induces another to commit rebellion.
2. In proposal, the person who proposes has decided to commit rebellion; in inciting to rebellion, it is not required that the offender has decided to commit rebellion.
3. In proposal, the person who proposes the execution of the crime uses secret means; in inciting to rebellion, the act of inciting is done publicly.

e. REPUBLIC ACT NO. 8294: AMENDING PD 1866 ON ILLEGAL POSSESSION OF FIREARMS

Acts punished:

1. Unlawful manufacture, sale, acquisition, disposition or possession of firearms or ammunition or instruments used or intended to be used in the manufacture of firearms or ammunition.

   Note: 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.

   Note: If the violation of this Sec. is in furtherance of or incident to, or in connection with the crime of rebellion or insurrection, sedition, or attempted coup d'etat, such violation shall be absorbed as an element of the crime of rebellion, or insurrection, sedition, or attempted coup d'etat.

   The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the firearms owned by such firm, company, corporation or entity to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs or willfully or knowingly allow any of them to use unlicensed firearms or firearms without any legal authority to be carried outside of their residence in the course of their employment.

   The penalty of arresto mayor shall be imposed upon any person who shall carry any licensed firearm outside his residence without legal authority therefor.

2. Unlawful manufacture, sale, acquisition, disposition or possession of explosives.

   Note: When a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of the

aforementioned explosives, detonation agents or incendiary devices, which results in the death of any person or persons, the use of such explosives, detonation agents or incendiary devices shall be considered as an aggravating circumstance.

If the violation of this Sec. is in furtherance of, or incident to, or in connection with the crime of rebellion, insurrection, sedition or attempted coup d'etat, such violation shall be absorbed as an element of the crimes of rebellion, insurrection, sedition or attempted coup d'etat.

The same penalty shall be imposed upon the owner, president, manager, director or other responsible officer of any public or private firm, company, corporation or entity, who shall willfully or knowingly allow any of the explosives owned by such firm, company, corporation or entity, to be used by any person or persons found guilty of violating the provisions of the preceding paragraphs.

3. Tampering of firearm's serial number.

4.Repacking or altering the composition of lawfully manufactured explosives.

Coverage of the Term Unlicensed Firearm. — The term unlicensed firearm shall include:

1. firearms with expired license; or

2. unauthorized use of licensed firearm in the commission of the crime.

2. SEDITION (ARTS. 139, 140, 141, 142)

a. ARTICLE 139. SEDITION

Elements
1. Offenders rise publicly and tumultuously;
2. Offenders employ force, intimidation, or other means outside of legal methods;
3. Purpose is to attain any of the following objects:
   a. To prevent the promulgation or execution of any law or the holding of any popular election;
   b. To prevent the national government or any provincial or municipal government, or any public officer from exercising its or his functions or prevent the execution of an administrative order;
   c. To inflict any act of hate or revenge upon the person or property of any public officer or employee;
   d. To commit, for any political or social end, any act of hate or revenge against private persons or any social classes;
   e. To despoil for any political or social end, any person, municipality or province, or the national government of all its property or any part thereof.

The crime of sedition does not contemplate the taking up of arms against the government because the purpose of this crime is not the overthrow of the government. Notice from the purpose of the crime of sedition that the offenders rise publicly and create commotion and disturbance by way of protest to express their dissent and obedience to the government or to the authorities concerned. This is like the so-called *civil disobedience* except that the means employed, which is violence, is illegal.

Persons liable for sedition under **Article 140**
1. The leader of the sedition; and
2. Other person participating in the sedition.

b. ARTICLE 141. CONSPIRACY TO COMMIT SEDITION

In this crime, there must be an agreement and a decision to rise publicly and tumultuously to attain any of the objects of sedition.

There is no proposal to commit sedition.

c. ARTICLE 142. INCITING TO SEDITION

Acts punished
1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.;
2. Uttering seditious words or speeches which tend to disturb the public peace;
3. Writing, publishing, or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace.

Elements
1. Offender does not take direct part in the crime of sedition;

He incites others to the accomplishment of any of the acts which constitute sedition;

2. Inciting is done by means of speeches, proclamations, writings, emblems, cartoons, banners, or other representations tending towards the same end.

Only non-participant in sedition may be liable.

Considering that the objective of sedition is to express protest against the government and in the process creating hate against public officers, any act that will generate hatred against the government or a public officer concerned or a social class may amount to Inciting to sedition. Article 142 is, therefore, quite broad.

The mere meeting for the purpose of discussing hatred against the government is inciting to sedition. Lambasting government officials to discredit the

government is Inciting to sedition. But if the objective of such preparatory actions is the overthrow of the government, the crime is inciting to rebellion.

3. DISLOYALTY (137)

a. ARTICLE 137. DISLOYALTY OF PUBLIC OFFICERS OR EMPLOYEES

Acts punished
1. By failing to resist a rebellion by all the means in their power;
2. By continuing to discharge the duties of their offices under the control of the rebels; or
3. By accepting appointment to office under them.

Offender must be a public officer or employee.

B. Crimes Against Popular Representation

1. ACTS TENDING TO PREVENT THE MEETING OF THE ASSEMBLY AND SIMILAR BODIES AND DISTURBANCE OF PROCEEDINGS (143, 144)

a. ARTICLE 143. ACTS TENDING TO PREVENT THE MEETING OF THE CONGRESS OF THE PHILIPPINES AND SIMILAR BODIES

Elements
1. There is a projected or actual meeting of Congress or any of its committees or subcommittees, constitutional committees or divisions thereof, or of any provincial board or city or municipal council or board;
2. Offender, who may be any person, prevents such meetings by force or fraud.

b. ARTICLE 144. DISTURBANCE OF PROCEEDINGS

Elements
1. There is a meeting of Congress or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board;
2. Offender does any of the following acts:
   a. He disturbs any of such meetings;
   b. He behaves while in the presence of any such bodies in such a manner as to interrupt its proceedings or to impair the respect due it.

2. VIOLATION OF PARLIAMENTARY IMMUNITY (145)

a. ARTICLE 145. VIOLATION OF PARLIAMENTARY IMMUNITY

Acts punished
1. Using force, intimidation, threats, or frauds to prevent any member of Congress from attending the meetings of Congress or of any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or from expressing his opinion or casting his vote;

Elements
a. Offender uses force, intimidation, threats or fraud;
b. The purpose of the offender is to prevent any member of Congress from:
   i. attending the meetings of the Congress or of any of its committees or constitutional commissions, etc.;
   ii. expressing his opinion; or
   iii. casting his vote.

2.Arresting or searching any member thereof while Congress is in regular or special session, except in case such member has committed a crime punishable under the Code by a penalty higher than prision mayor.

Elements
a. Offender is a public officer of employee;
b. He arrests or searches any member of Congress;
c. Congress, at the time of arrest or search, is in regular or special session;
d. The member arrested or searched has not committed a crime punishable under the Code by a penalty higher than prision mayor.

Under Section 11, Article VI of the Constitution, a public officer who arrests a member of Congress who has committed a crime punishable by prision mayor (six years and one day, to 12 years) is not liable Article 145.

According to Reyes, to be consistent with the Constitution, the phrase "by a penalty higher than prision mayor" in Article 145 should be amended to read: "by the penalty of prision mayor or higher."

Const., Art VI. Section 11. A Senator or Member of the House of Representatives shall, in all offenses punishable by not more than six years imprisonment, be privileged from arrest while the Congress is in session. No Member shall be questioned nor be held liable in any other place for any speech or debate in the Congress or in any committee thereof.

C. Illegal Assemblies and Associations (146, 147)

1. ARTICLE 146. ILLEGAL

ASSEMBLIES

Acts punished

1. Any meeting attended by armed persons for the purpose of committing any of the crimes punishable under the Code;

Elements

a. There is a meeting, a gathering or group of persons, whether in fixed place or moving;
b. The meeting is attended by armed persons;
c. The purpose of the meeting is to commit any of the crimes punishable under the Code.

2. Any meeting in which the audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition, or assault upon person in authority or his agents.

Elements

a. There is a meeting, a gathering or group of persons, whether in a fixed place or moving;
b. The audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault.

Persons liable for illegal assembly

1. The organizer or leaders of the meeting;
2. Persons merely present at the meeting, who must have a common intent to commit the felony of illegal assembly.

If any person present at the meeting carries an unlicensed firearm, it is presumed that the purpose of the meeting insofar as he is concerned is to commit acts punishable under the Revised Penal Code, and he is considered a leader or organizer of the meeting.

The gravamen of the offense is mere assembly of or gathering of people for illegal purpose punishable by the Revised Penal Code. Without gathering, there is no illegal assembly. If unlawful purpose is a crime under a special law, there is no illegal assembly. For example, the gathering of drug pushers to facilitate drug trafficking is not illegal assembly because the purpose is not violative of the Revised Penal Code but of The Dangerous Drugs Act of 1972, as amended, which is a special law.

Two forms of illegal assembly

(1) No attendance of armed men, but persons in the meeting are incited to commit treason, rebellion or insurrection, sedition or assault upon a person in authority. When the illegal purpose of the gathering is to incite people to commit the crimes mentioned above, the presence of armed men is unnecessary. The mere gathering for the purpose is sufficient to bring about the crime already.

(2) Armed men attending the gathering – If the illegal purpose is other than those mentioned above, the presence of armed men during the gathering brings about the crime of illegal assembly.

Example: Persons conspiring to rob a bank were arrested. Some were with firearms. Liable for illegal assembly, not for conspiracy, but for gathering with armed men.

Distinction between illegal assembly and illegal association

In illegal assembly, the basis of liability is the gathering for an illegal purpose which constitutes a crime under the Revised Penal Code.

In illegal association, the basis is the formation of or organization of an association to engage in an unlawful purpose which is not limited to a violation of the Revised Penal Code. It includes a violation of a special law or those against public morals. Meaning of public morals: inimical to public welfare; it has nothing to do with decency., not acts of obscenity.

2. ARTICLE 147. ILLEGAL ASSOCIATIONS

Illegal associations

1. Associations totally or partially organized for the purpose of committing any of the crimes punishable under the Code;
2. Associations totally or partially organized for some purpose contrary to public morals.

Persons liable

1. Founders, directors and president of the association;
2. Mere members of the association.

Distinction between illegal association and illegal assembly

1. In illegal association, it is not necessary that there be an actual meeting.

   In illegal assembly, it is necessary that there is an actual meeting or assembly or armed persons for the purpose of committing any of the crimes punishable under the Code, or of individuals who, although not armed, are incited to the commission of treason, rebellion, sedition, or assault upon a person in authority or his agent.

2. In illegal association, it is the act of forming or organizing and membership in the association that are punished.

   In illegal assembly, it is the meeting and attendance at such meeting that are punished.

3. In illegal association, the persons liable are (1) the founders, directors and president; and (2) the

members.

In illegal assembly, the persons liable are (1) the organizers or leaders of the meeting and (2) the persons present at meeting.

BP 880: "PUBLIC ASSEMBLY ACT OF 1985"

The constitutional right of the people peaceably to assemble and petition the government for redress of grievances is essential and vital to the strength and stability of the State. To this end, the State shall ensure the free exercise of such right without prejudice to the rights of others to life, liberty and equal protection of the law.

"Public assembly" means any rally, demonstration, march, parade, procession or any other form of mass or concerted action held in a public place for the purpose of presenting a lawful cause; or expressing an opinion to the general public on any particular issue; or protesting or influencing any state of affairs whether political, economic or social; or petitioning the government for redress of grievances.

The processions, rallies, parades, demonstrations, public meetings and assemblages for religious purposes shall be governed by local ordinances: Provided, however, That the declaration of policy as provided in Section 2 of this Act shall be faithfully observed.

The definition herein contained shall not include picketing and other concerted action in strike areas by workers and employees resulting from a labor dispute as defined by the Labor Code, its implementing rules and regulations, and by the Batas Pambansa Bilang 227.

Permit when required and when not required - A written permit shall be required for any person or persons to organize and hold a public assembly in a public place. However, no permit shall be required if the public assembly shall be done or made in a freedom park duly established by law or ordinance or in private property, in which case only the consent of the owner or the one entitled to its legal possession is required, or in the campus of a government-owned and operated educational institution which shall be subject to the rules and regulations of said educational institution. Political meetings or rallies held during any election campaign period as provided for by law are not covered by this Act.

The application shall be filed with the office of the mayor of the city or municipality in whose jurisdiction the intended activity is to be held, at least five (5) working days before the scheduled public assembly.

Action to be taken on the application -

(a) It shall be the duty of the mayor or any official acting in his behalf to issue or grant a permit unless there is clear and convincing evidence that the public assembly will create a clear and present danger to public order, public safety, public convenience, public morals or public health.

(b) The mayor or any official acting in his behalf shall act on the application within two (2) working days from the date the application was filed, failing which, the permit shall be deemed granted. Should for any reason the mayor or any official acting in his behalf refuse to accept the application for a permit, said application shall be posted by the applicant on the premises of the office of the mayor and shall be deemed to have been filed.

(c) If the mayor is of the view that there is imminent and grave danger of a substantive evil warranting the denial or modification of the permit, he shall immediately inform the applicant who must be heard on the matter.

(d) The action on the permit shall be in writing and served on the application within twenty-four hours.

(e) If the mayor or any official acting in his behalf denies the application or modifies the terms thereof in his permit, the applicant may contest the decision in an appropriate court of law.

Non-interference by law enforcement authorities - Law enforcement agencies shall not interfere with the holding of a public assembly. However, to adequately ensure public safety, a law enforcement contingent under the command of a responsible police officer may be detailed and stationed in a place at least one hundred (100) meter away from the area of activity ready to maintain peace and order at all times.

Police assistance when requested - It shall be imperative for law enforcement agencies, when their assistance is requested by the leaders or organizers, to perform their duties always mindful that their responsibility to provide proper protection to those exercising their right peaceably to assemble and the freedom of expression is primordial. Towards this end, law enforcement agencies shall observe the following guidelines:

(a) Members of the law enforcement contingent who deal with the demonstrators shall be in complete uniform with their nameplates and units to which they belong displayed prominently on the front and dorsal parts of their uniform and must observe the policy of "maximum tolerance" as herein defined;

(b) The members of the law enforcement contingent shall not carry any kind of firearms but may be equipped with baton or riot sticks, shields, crash helmets with visor, gas masks, boots or ankle high shoes with shin guards;

(c) Tear gas, smoke grenades, water cannons, or any similar anti-riot device shall not be used unless the public assembly is attended by actual violence or serious threats of violence, or deliberate destruction of property.

Dispersal of public assembly with permit - No public assembly with a permit shall be dispersed. However, when an assembly becomes violent, the police may disperse such public assembly as follows:

(a) At the first sign of impending violence, the ranking officer of the law enforcement contingent shall call the attention of the leaders of the public assembly and ask the latter to prevent any possible disturbance;

(b) If actual violence starts to a point where rocks or other harmful objects from the participants are thrown at the police or at the non-participants, or at any property causing damage to such property, the ranking officer of the law enforcement contingent shall audibly warn the participants that if the disturbance persists, the public assembly will be dispersed;

(c) If the violence or disturbances prevailing as stated in the preceding subparagraph should not stop or abate, the ranking officer of the law enforcement contingent shall audibly issue a warning to the participants of the public assembly, and after allowing a reasonable period of time to lapse, shall immediately order it to forthwith disperse;

(d) No arrest of any leader, organizer or participant shall also be made during the public assembly unless he violates during the assembly a law, statute, ordinance or any provision of this Act. Such arrest shall be governed by Article 125 of the Revised Penal Code, as amended:

(e) Isolated acts or incidents of disorder or branch of the peace during the public assembly shall not constitute a group for dispersal.

Dispersal of public assembly without permit - When the public assembly is held without a permit where a permit is required, the said public assembly may be peacefully dispersed.

Prohibited acts:

(a) The holding of any public assembly as defined in this Act by any leader or organizer without having first secured that written permit where a permit is required from the office concerned, or the use of such permit for such purposes in any place other than those set out in said permit: Provided, however, That no person can be punished or held criminally liable for participating in or attending an otherwise peaceful assembly;

(b) Arbitrary and unjustified denial or modification of a permit in violation of the provisions of this Act by the mayor or any other official acting in his behalf.

(c) The unjustified and arbitrary refusal to accept or acknowledge receipt of the application for a permit by the mayor or any official acting in his behalf;

(d) Obstructing, impeding, disrupting or otherwise denying the exercise of the right to peaceful assembly;

(e) The unnecessary firing of firearms by a member of any law enforcement agency or any person to disperse the public assembly;

(f) Acts in violation of Section 10 hereof;

(g) Acts described hereunder if committed within one hundred (100) meters from the area of activity of the public assembly or on the occasion thereof;

1. the carrying of a deadly or offensive weapon or device such as firearm, pillbox, bomb, and the like;

2. the carrying of a bladed weapon and the like;

3 the malicious burning of any object in the streets or thoroughfares;

4. the carrying of firearms by members of the law enforcement unit;

5.the interfering with or intentionally disturbing the holding of a public assembly by the use of a motor vehicle, its horns and loud sound systems.

Const. Art III. Section 4. No law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances.

D. Assaults and Disobedience

1. ARTICLE 148. DIRECT ASSAULT

Acts punished

1. Without public uprising, by employing force or intimidation for the attainment of any of the purposes enumerated in defining the crimes of rebellion and sedition;

   Elements

   a. Offender employs force or intimidation;

   b. The aim of the offender is to attain any of the purposes of the crime of rebellion or any of the objects of the crime of sedition;

   c. There is no public uprising.

2. Without public uprising, by attacking, by employing force or by seriously intimidating or by seriously resisting any person in authority or any of his agents, while engaged in the performance of official duties, or on occasion of such performance.

Elements

a. Offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance;

b. The person assaulted is a person in authority or his agent;

c. At the time of the assault, the person in authority or his agent is engaged in the actual performance of official duties, or that he is assaulted by reason of the past performance of official duties;

d. Offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.

e. There is no public uprising.

The crime is not based on the material consequence of the unlawful act. The crime of direct assault punishes the spirit of lawlessness and the contempt or hatred for the authority or the rule of law.

To be specific, if a judge was killed while he was holding a session, the killing is not the direct assault, but murder. There could be direct assault if the offender killed the judge simply because the judge is so strict in the fulfillment of his duty. It is the spirit of hate which is the essence of direct assault.

So, where the spirit is present, it is always complexed with the material consequence of the unlawful act. If the unlawful act was murder or homicide committed under circumstance of lawlessness or contempt of authority, the crime would be direct assault with murder or homicide, as the case may be. In the example of the judge who was killed, the crime is direct assault with murder or homicide.

The only time when it is not complexed is when material consequence is a light felony, that is, slight physical injury. Direct assault absorbs the lighter felony; the crime of direct assault can not be separated from the material result of the act. So, if an offender who is charged with direct assault and in another court for the slight physical Injury which is part of the act, acquittal or conviction in one is a bar to the prosecution in the other.

Example of the first form of direct assault:

Three men broke into a National Food Authority warehouse and lamented sufferings of the people. They called on people to help themselves to all the rice. They did not even help themselves to a single grain.

The crime committed was direct assault. There was no robbery for there was no intent to gain. The crime is direct assault by committing acts of sedition under Article 139 (5), that is, spoiling of the property, for any political or social end, of any person municipality or province or the national government of all or any its property, but there is no public uprising.

Person in authority is any person directly vested with jurisdiction, whether as an individual or as a member of some court or government corporation, board, or commission. A barangay chairman is deemed a person in authority.

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, such as a barangay councilman, barrio policeman, barangay leader and any person who comes to the aid of a person in authority.**

In applying the provisions of Articles 148 and 151, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges and universities and lawyers in the actual performance of their duties or on the occasion of such performance, shall be deemed a person in authority.

In direct assault of the first form, the stature of the offended person is immaterial. The crime is manifested by the spirit of lawlessness.

In the second form, you have to distinguish a situation where a person in authority or his agent was attacked while performing official functions, from a situation when he is not performing such functions. If attack was done during the exercise of official functions, the crime is always direct assault. It is enough that the offender knew that the person in authority was performing an official function whatever may be the reason for the attack, although what may have happened was a purely private affair.

On the other hand, if the person in authority or the agent was killed when no longer performing official functions, the crime may simply be the material consequence of he unlawful act: murder or homicide. For the crime to be direct assault, the attack must be by reason of his official function in the past. Motive becomes important in this respect. Example, if a judge was killed while resisting the taking of his watch, there is no direct assault.

In the second form of direct assault, it is also important that the offended party knew that the person he is attacking is a person in authority or an agent of a person in authority, performing his official functions. No knowledge, no lawlessness or contempt.
For example, if two persons were quarreling and a policeman in civilian clothes comes and stops them, but one of the protagonists stabs the policeman, there would be no direct assault unless the offender knew that he is a policeman.

In this respect it is enough that the offender should know that the offended party was exercising some form of authority. It is not necessary that the offender knows what is meant by person in authority or an agent of one because ignorantia legis neminem excusat.

2. ARTICLE 149. INDIRECT ASSAULT

Elements

1. A person in authority or his agent is the victim of any of the forms of direct assault defined in Article 148;
2. A person comes to the aid of such authority or his agent;
3. Offender makes use of force or intimidation upon such person coming to the aid of the authority or his agent.

The victim in indirect assault should be a private person who comes in aid of an agent of a person in authority. The assault is upon a person who comes in aid of the person in authority. The victim cannot be the person in authority or his agent.

There is no indirect assault when there is no direct assault.

Take note that under Article 152, as amended, when any person comes in aid of a person in authority, said person at that moment is no longer a civilian – he is constituted as an agent of the person in authority. If such person were the one attacked, the crime would be direct assault.
Due to the amendment of Article 152, without the corresponding amendment in Article 150, the crime of indirect assault can only be committed when assault is upon a civilian giving aid to an agent of the person in authority. He does not become another agent of the person in authority.

3. ARTICLE 150. DISOBEDIENCE TO SUMMONS ISSUED BY CONGRESS, ITS COMMITTEES OR SUBCOMMITTEES, BY THE CONSTITUTIONAL COMMISSIONS, ITS COMMITTEES, SUBCOMMITTEES OR DIVISIONS

Acts punished

1. By refusing, without legal excuse, to obey summons of Congress, its special or standing committees and subcommittees, the Constitutional Commissions and its committees, subcommittees or divisions, or by any commission or committee chairman or member authorized to summon witnesses;

2. By refusing to be sworn or placed under affirmation while being before such legislative or constitutional body or official;

3. By refusing to answer any legal inquiry or to produce any books, papers, documents, or records in his possession, when required by them to do so in the exercise of their functions;

4. By restraining another from attending as a witness in such legislative or constitutional body;

5. By inducing disobedience to a summons or refusal to be sworn by any such body or official.

4. ARTICLE 151. RESISTANCE AND DISOBEDIENCE TO A PERSON IN AUTHORITY OR THE AGENTS OF SUCH PERSON

Elements of resistance and serious disobedience under the first paragraph

1. A person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender;
2. Offender resists or seriously disobeys such person in authority or his agent;
3. The act of the offender is not included in the provision of Articles 148, 149 and 150.

Elements of simple disobedience under the second paragraph

1. An agent of a person in authority is engaged in the performance of official duty or gives a lawful order to the offender;
2. Offender disobeys such agent of a person in authority;
3. Such disobedience is not of a serious nature.

Distinction between resistance or serious disobedience and direct assault

1. In resistance, the person in authority or his agent must be in actual performance of his duties.
   In direct assault, the person in authority or his agent must be engaged in the performance of official duties or that he is assaulted by reason thereof.

2. Resistance or serious disobedience is committed only by resisting or seriously disobeying a person in authority or his agent.
   Direct assault (the second form) is committed in four ways, that is, (1) by attacking, (2) by employing force, (3) by seriously intimidating, and (4) by seriously resisting a persons in authority or his agent.

3. In both resistance against an agent of a person in authority and direct assault by resisting an agent of a person in authority, there is force employed, but the use of force in resistance is not so serious, as there is no manifest intention to defy the law and the officers enforcing it.
   The attack or employment of force which gives rise to the crime of direct assault must be serious and deliberate; otherwise, even a case of simple resistance to an arrest, which always requires the use of force of some kind, would constitute direct assault and the lesser offense of resistance or disobedience in Article 151 would entirely disappear.
   But when the one resisted is a person I

authority, the use of any kind or degree of force will give rise to direct assault.

If no force is employed by the offender in resisting or disobeying a person in authority, the crime committed is resistance or serious disobedience under the first paragraph of Article 151.

Who are deemed persons in authority and agents of persons in authority under **Article 152**

*A **person in authority** is one directly vested with jurisdiction, that is, the power and authority to govern and execute the laws.*

An agent of a person in authority is one charged with (1) the maintenance of public order and (2) the protection and security of life and property.

Examples of persons in authority

1. Municipal mayor;
2. Division superintendent of schools;
3. Public and private school teachers;
4. Teacher-nurse;
5. President of sanitary division;
6. Provincial fiscal;
7. Justice of the Peace;
8. Municipal councilor;
9. Barrio captain and barangay chairman.

E. Public Disorders

1. TUMULTS AND OTHER DISTURBANCES (153)

a. ARTICLE 153. TUMULTS AND OTHER DISTURBANCES OF PUBLIC ORDER

Acts Punished

1. Causing any serious disturbance in a public place, office or establishment;
2. Interrupting or disturbing performances, functions or gatherings, or peaceful meetings, if the act is not included in Articles 131 and 132;
3. Making any outcry tending to incite rebellion or sedition in any meeting, association or public place;
4. Displaying placards or emblems which provoke a disturbance of public order in such place;
5. Burying with pomp the body of a person who has been legally executed.

The essence is creating public disorder. This crime is brought about by creating serious disturbances in public places, public buildings, and even in private places where public functions or performances are being held.

For a crime to be under this article, it must not fall under Articles 131 (prohibition, interruption, and dissolution of peaceful meetings) and 132 (interruption of religious worship).

In the act of making outcry during speech tending to incite rebellion or sedition, the situation must be distinguished from inciting to sedition or rebellion. If the speaker, even before he delivered his speech, already had the criminal intent to incite the listeners to rise to sedition, the crime would be inciting to sedition. However, if the offender had no such criminal intent, but in the course of his speech, tempers went high and so the speaker started inciting the audience to rise in sedition against the government, the crime is disturbance of the public order.

The disturbance of the pubic order is tumultuous and the penalty is increased if it is brought about by armed men. The term "armed" does not refer to firearms but includes even big stones capable of causing grave injury.

It is also disturbance of the public order if a convict legally put to death is buried with pomp. He should not be made out as a martyr; it might incite others to hatred.

2. ALARMS AND SCANDALS (155)

Acts Punished

1. Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, calculated to cause (which produces) alarm of danger;
2. Instigating or taking an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;
3. Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusements;
4. Causing any disturbance or scandal in public places while intoxicated or otherwise, provided Article 153 in not applicable.

When a person discharges a firearm in public, the act may constitute any of the possible crimes under the Revised Penal Code:

(1) Alarms and scandals if the firearm when discharged was not directed to any particular person;

(2) Illegal discharge of firearm under Article 254 if the firearm is directed or pointed to a particular person when discharged but intent to kill is absent;

(3) Attempted homicide, murder, or parricide if the firearm when discharged is directed against a person and intent to kill is present.

In this connection, understand that it is not necessary that the offended party be wounded or hit. Mere discharge of firearm towards another with intent to kill already amounts to attempted homicide or attempted murder or attempted parricide. It can not be frustrated because the offended party is not mortally wounded.

In** Araneta v. Court of Appeals, **it was held that if a person is shot at and is wounded,

the crime is automatically attempted homicide. Intent to kill is inherent in the use of the deadly weapon.

The crime alarms and scandal is only one crime. Do not think that alarms and scandals are two crimes.

Scandal here does not refer to moral scandal; that one is grave scandal in Article 200. The essence of the crime is disturbance of public tranquility and public peace. So, any kind of disturbance of public order where the circumstance at the time renders the act offensive to the tranquility prevailing, the crime is committed.

> Charivari is a mock serenade wherein the supposed serenaders use broken cans, broken pots, bottles or other utensils thereby creating discordant notes*. Actually, it is producing noise, not music and so it also disturbs public tranquility. Understand the nature of the crime of alarms and scandals as one that disturbs public tranquility or public peace. If the annoyance is intended for a particular person, the crime is unjust vexation.*

Even if the persons involved are engaged in nocturnal activity like those playing patintero at night, or selling balut, if they conduct their activity in such a way that disturbs public peace, they may commit the crime of alarms and scandals.

3. ART. 254. DISCHARGE OF FIREARMS

Any person who shall shoot at another with any firearm shall suffer the penalty of prision correccional in its minimum and medium periods, unless the facts of the case are such that the act can be held to constitute frustrated or attempted parricide, murder, homicide or any other crime for which a higher penalty is prescribed by any of the articles of this Code.

4. UNLAWFUL USE OF MEANS OF PUBLICATION AND UNLAWFUL UTTERANCES (154)

Acts punished

1. Publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any false news which may endanger the public order; or cause damage to the interest or credit of the State;
2. Encouraging disobedience to the law or to the constituted authorities or praising, justifying or extolling any act punished by law, by the same means or by words, utterances or speeches;
3. Maliciously publishing or causing to be published any official resolution or document without proper authority, or before they have been published officially;
4. Printing, publishing or distributing (or causing the same) books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.

Actual public disorder or actual damage to the credit of the State is not necessary.

Republic Act No. 248 prohibits the reprinting, reproduction or republication of government publications and official documents without previous authority.

5. DELIVERY OF PRISONERS FROM JAIL (156)

Elements

1. There is a person confined in a jail or penal establishment;
2. Offender removes therefrom such person, or helps the escape of such person.

Penalty of arresto mayor in its maximum period to prision correccional in its minimum period is imposed if violence, intimidation or bribery is used.

Penalty of arresto mayor if other means are used.

Penalty decreased to the minimum period if the escape of the prisoner shall take place outside of said establishments by taking the guards by surprise.

In relation to infidelity in the custody of prisoners, correlate the crime of delivering person from jail with infidelity in the custody of prisoners punished under Articles 223, 224 and 225 of the Revised Penal Code. In both acts, the offender may be a public officer or a private citizen. Do not think that infidelity in the custody of prisoners can only be committed by a public officer and delivering persons from jail can only be committed by private person. Both crimes may be committed by public officers as well as private persons.

In both crimes, the person involved may be a convict or a mere detention prisoner.

The only point of distinction between the two crimes lies on whether the offender is the custodian of the prisoner or not at the time the prisoner was made to escape. If the offender is the custodian at that time, the crime is infidelity in the custody of prisoners. But if the offender is not the custodian of the prisoner at that time, even though he is a public officer, the crime he committed is delivering prisoners from jail.

> *Liability of the prisoner or detainee who escaped – When these crimes are committed, whether infidelity in the custody of prisoners or delivering prisoners from jail, the prisoner so escaping may also have criminal liability and this is so if the prisoner is a convict serving sentence by final judgment. The crime of evasion of service of sentence is committed by the prisoner who escapes if such prisoner is a convict serving sentence by final judgment.*

If the prisoner who escapes is only a detention prisoner, he does not incur liability from escaping if he does not know of the plan to remove him from jail. But if such prisoner knows of the plot to remove him from jail and cooperates therein by escaping, he himself becomes liable for delivering prisoners from jail as a principal by indispensable cooperation.

If three persons are involved – a stranger, the custodian and the prisoner – three crimes are committed:

(1) Infidelity in the custody of prisoners;
(2) Delivery of the prisoner from jail; and
(3) Evasion of service of sentence.

F. Evasion of Service of Sentence

1. ARTICLE 157. EVASION OF SERVICE OF SENTENCE

Elements

1. Offender is a convict by final judgment;
2. He is serving sentence which consists in the deprivation of liberty;
3. He evades service of his sentence by escaping during the term of his imprisonment.

Qualifying circumstances as to penalty imposed

If such evasion or escape takes place –

1. By means of unlawful entry (this should be "by scaling" - Reyes);
2. By breaking doors, windows, gates, walls, roofs or floors;
3. By using picklock, false keys, disguise, deceit, violence or intimidation; or
4. Through connivance with other convicts or employees of the penal institution.

Evasion of service of sentence has three forms:

(1) By simply leaving or escaping from the penal establishment under Article 157;
(2) Failure to return within 48 hours after having left the penal establishment because of a calamity, conflagration or mutiny and such calamity, conflagration or mutiny has been announced as already passed under Article 158;
(3) Violating the condition of conditional pardon under Article 159.

In leaving or escaping from jail or prison, that the prisoner immediately returned is immaterial. It is enough that he left the penal establishment by escaping therefrom. His voluntary return may only be mitigating, being analogous to voluntary surrender. But the same will not absolve his criminal liability.

2. ARTICLE 158. EVASION OF SERVICE OF SENTENCE ON THE OCCASION OF DISORDERS, CONFLAGRATIONS, EARTHQUAKES, OR OTHER CALAMITIES

Elements

1. Offender is a convict by final judgment, who is confined in a penal institution;

2. There is disorder, resulting from –
   a. conflagration;
   b. earthquake;
   c. explosion; or
   d. similar catastrophe; or
   e. mutiny in which he has not participated;

3. He evades the service of his sentence by leaving the penal institution where he is confined, on the occasion of such disorder or during the mutiny;

4. He fails to give himself up to the authorities within 48 hours following the issuance of a proclamation by the Chief Executive announcing the passing away of such calamity.

The leaving from the penal establishment is not the basis of criminal liability. It is the failure to return within 48 hours after the passing of the calamity, conflagration or mutiny had been announced. Under Article 158, those who return within 48 hours are given credit or deduction from the remaining period of their sentence equivalent to 1/5 of the original term of the sentence. But if the prisoner fails to return within said 48 hours, an added penalty, also 1/5, shall be imposed but the 1/5 penalty is based on the remaining period of the sentence, not on the original sentence. In no case shall that penalty exceed six months.

Those who did not leave the penal establishment are not entitled to the 1/5 credit. Only those who left and returned within the 48-hour period.

The mutiny referred to in the second form of evasion of service of sentence does not include riot. The mutiny referred to here involves subordinate personnel rising against the supervisor within the penal establishment. One who escapes during a riot will be subject to Article 157, that is, simply leaving or escaping the penal establishment.

Mutiny is one of the causes which may authorize a convict serving sentence in the penitentiary to leave the jail provided he has not taken part in the mutiny.

The crime of evasion of service of sentence may be committed even if the sentence is destierro, and this is committed if the convict sentenced to destierro will enter the prohibited places or come within the prohibited radius of 25 kilometers to such places as stated in the judgment.

If the sentence violated is destierro, the penalty upon the convict is to be served by way of destierro also, not imprisonment. This is so because the penalty for the evasion can not be more severe than the penalty evaded.

3. ARTICLE 159. OTHER CASES OF EVASION OF SERVICE OF SENTENCE

Elements of violation of conditional pardon
1. Offender was a convict;
2. He was granted pardon by the Chief Executive;
3. He violated any of the conditions of such pardon.

> *In violation of conditional pardon, as a rule, the violation will amount to this crime only if the condition is violated during the remaining period of the sentence. As a rule, if the condition of the pardon is violated when the remaining unserved portion of the sentence has already lapsed, there will be no more criminal liability for the violation. However, the convict maybe required to serve the unserved portion of the sentence, that is, continue serving original penalty.*

The administrative liability of the convict under the conditional pardon is different and has nothing to do with his criminal liability for the evasion of service of sentence in the event that the condition of the pardon has been violated. Exception: where the violation of the condition of the pardon will constitute evasion of service of sentence, even though committed beyond the remaining period of the sentence. This is when the conditional pardon expressly so provides or the language of the conditional pardon clearly shows the intention to make the condition perpetual even beyond the unserved portion of the sentence. In such case, the convict may be required to serve the unserved portion of the sentence even though the violation has taken place when the sentence has already lapsed.

In order that the conditional pardon may be violated, it is conditional that the pardonee received the conditional pardon. If he is released without conformity to the conditional pardon, he will not be liable for the crime of evasion of service of sentence.

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 the service of his sentence under the circumstances mentioned in Article 58 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 to in said article.

G. Quasi-recidivism (160)

1. ARTICLE 160. COMMISSION OF ANOTHER CRIME DURING SERVICE OF PENALTY IMPOSED FOR ANOTHER PREVIOUS OFFENSE

Elements of Quasi-Recidivism

1. Offender was already convicted by final judgment of one offense;
2. He committed a new felony before beginning to serve such sentence or while serving the same.

Note: Do not confuse quasi – recidivism with the following:

	Habitual Delinquency Art. 62 (5)	**Recidivism Art. 14 (9)**	**Habituality / Reiteracion / Repetition Art. 14 (10)**
Crimes committed	Specified: (a) less serious or serious physical injuries (b) robbery (c) theft (d) estafa (e) falsification	Sufficient that the offender have been previously convicted by final judgment for another crime embraced in the same title of the Code on the date of his trial	Necessary that the offender shall have served out his sentence for the first offense
Period of time the crimes are committed	Within 10 years from his last release or conviction	No period of time	
Number of crimes committed	Guilty the third time or oftener	The second conviction for an offense embraced in the same title of this Code	The previous and subsequent offenses must NOT be embraced in the same title of the Code
Their effects	An additional penalty shall be imposed	If not offset by any mitigating circumstance, increase the penalty only to the maximum	Not always an aggravating circumstance

TITLE IV. CRIMES AGAINST PUBLIC INTEREST

Crimes against public interest

1. Counterfeiting the great seal of the Government of the Philippines (Art. 161);
2. Using forged signature or counterfeiting seal or stamp (Art. 162);
3. Making and importing and uttering false coins (Art. 163);
4. Mutilation of coins, importation and uttering of mutilated coins (Art. 164);
5. Selling of false or mutilated coins, without connivance (Art. 165);
6. Forging treasury or bank notes or other documents payable to bearer, importing and uttering of such false or forged notes and documents (Art. 166);
7. Counterfeiting, importing and uttering instruments not payable to bearer (Art. 167);
8. Illegal possession and use of forged treasury or bank notes and other instruments of credit (art. 168);
9. Falsification of legislative documents (Art. 170);
10. Falsification by public officer, employee or notary (Art. 171);
11. Falsification by private individuals and use of falsified documents (Art. 172);
12. Falsification of wireless, cable, telegraph and telephone messages and use of said falsified messages (Art. 173);
13. False medical certificates, false certificates of merit or service (Art. 174);
14. Using false certificates (Art. 175);
15. Manufacturing and possession of instruments or implements for falsification (Art. 176);
16. Usurpation of authority or official functions (Art. 177);
17. Using fictitious name and concealing true name (Art. 178);
18. Illegal use of uniforms or insignia (Art. 179);
19. False testimony against a defendant (Art. 180);
20. False testimony favorable to the defendant (Art. 181);
21. False testimony in civil cases (Art. 182);
22. False testimony in other cases and perjury (Art. 183);
23. Offering false testimony in evidence (Art. 184);
24. Machinations in public auction (Art. 185);
25. Monopolies and combinations in restraint of trade (Art. 186);
26. Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys (Art. 187);
27. Substituting and altering trademarks and trade names or service marks (Art. 188);
28. Unfair competition and fraudulent registration of trademark or trade name, or service mark; fraudulent designation of origin, and false description (Art. 189).

The crimes in this title are in the nature of fraud or falsity to the public. The essence of the crime under this title is that which defraud the public in general. There is deceit perpetrated upon the public. This is the act that is being punished under this title.

A. Forgeries

1. ACTS OF COUNTERFEITING (161-167)

a. ARTICLE 161. COUNTERFEITING THE GREAT SEAL OF THE GOVERNMENT OF THE PHILIPPINE ISLANDS, FORGING THE SIGNATURE OR STAMP OF THE CHIEF EXECUTIVE

Acts punished

1. Forging the great seal of the Government of the Philippines;
2. Forging the signature of the President;
3. Forging the stamp of the President.

When the signature of the president is forged, the crime committed is covered by this provision and not falsification of public document.

b. ARTICLE 162. USING FORGED SIGNATURE OR COUNTERFEIT SEAL OR STAMP

Elements

1. The great seal of the Republic was counterfeited or the signature or stamp of the Chief Executive was forged by another person;
2. Offender knew of the counterfeiting or forgery;
3. He used the counterfeit seal or forged signature or stamp.

Offender under this article should not be the forger. The participation of the offender is in effect that of an accessory, and although the general rule is that he should be punished by a penalty of two degrees lower, under Art. 162 he is punished by a penalty only one degree lower.

c. ARTICLE 163. MAKING AND IMPORTING AND UTTERING FALSE COINS

Elements

1. There be false or counterfeited coins;
2. Offender either made, imported or uttered such coins;
3. In case of uttering such false or counterfeited coins, he connived with the counterfeiters or importers.

Kinds of coins the counterfeiting of which is punished

1. Silver coins of the Philippines or coins of the Central Bank of the Philippines;
2. Coins of the minor coinage of the Philippines or of the Central Bank of the Philippines;
3. Coin of the currency of a foreign country.

Former coins withdrawn from circulation may be counterfeited under Art 163 because of the harm that may be caused to the public in case it goes into circulation again. (**People vs. Kong Leon**, 48 OG 664)

d. ARTICLE 164. MUTILATION OF COINS

Acts punished

1. Mutilating coins of the legal currency, with the further requirements that there be intent to damage or to defraud another;
2. Importing or uttering such mutilated coins, with the further requirement that there must be connivances with the mutilator or importer in case of uttering.

The first acts of falsification or falsity are –

(1) Counterfeiting – refers to money or currency;

(2) Forgery – refers to instruments of credit and obligations and securities issued by the Philippine government or any banking institution authorized by the Philippine government to issue the same;

(3) Falsification – can only be committed in respect of documents.

In so far as coins in circulation are concerned, there are two crimes that may be committed:

(1) Counterfeiting coins -- This is the crime of remaking or manufacturing without any authority to do so.

In the crime of counterfeiting, the law is not concerned with the fraud upon the public such that even though the coin is no longer legal tender, the act of imitating or manufacturing the coin of the government is penalized. In punishing the crime of counterfeiting, the law wants to prevent people from trying their ingenuity in their imitation of the manufacture of money. It is not necessary that the coin counterfeited be legal tender. The reason is to bar the counterfeiter from perfecting his craft of counterfeiting. Soon, if they develop the expertise to make the counterfeiting more or less no longer discernible or no longer noticeable, they could make use of their ingenuity to counterfeit coins of legal tender. From that time on, the government shall have difficulty determining which coins are counterfeited and those which are not.

(2) Mutilation of coins -- This refers to the deliberate act of diminishing the proper metal contents of the coin either by scraping, scratching or filling the edges of the coin and the offender gathers the metal dust that has been scraped from the coin.

Requisites of mutilation under the Revised Penal Code

(1) Coin mutilated is of legal tender;
(2) Offender gains from the precious metal dust abstracted from the coin;
(3) It has to be a coin.

The coin mutilated should be of legal tender and only of the Philippines.

Mutilation is being regarded as a crime because the coin, being of legal tender, it is still in circulation and which would necessarily prejudice other people who may come across the coin. For example, X mutilated a P 2.00 coin, the octagonal one, by converting it into a round one and extracting 1/10 of the precious metal dust from it. The coin here is no longer P2.00 but only P 1.80, therefore, prejudice to the public has resulted. If it is not legal tender anymore, no one will accept it, so nobody will be and damaged.

There is no expertise involved here. In mutilation of coins under the Revised Penal Code, the offender does nothing but to scrape, pile or cut the coin and collect the dust and, thus, diminishing the intrinsic value of the coin. Punishment for mutilation is brought about by the fact that the intrinsic value of the coin is reduced.

The offender must deliberately reduce the precious metal in the coin. Deliberate intent arises only when the offender collects the precious metal dust from the mutilated coin. If the offender does not collect such dust, intent to mutilate is absent, but Presidential Decree No. 247 will apply.

Presidential Decree No. 247 (Defacement, Mutilation, Tearing, Burning or Destroying Central Bank Notes and Coins)

It shall be unlawful for any person to willfully deface, mutilate, tear, burn, or destroy in any manner whatsoever, currency notes and coins issued by the Central Bank. Mutilation under the Revised Penal Code is true only to coins. It cannot be a crime under the Revised Penal Code to mutilate paper bills because the idea of mutilation under the code is collecting the precious metal dust. However, under Presidential Decree No. 247, mutilation is not limited to coins.

Note that persons making bracelets out of some coins violate Presidential Decree No. 247.

So, if the act of mutilating coins does not involve gathering dust like playing cara y cruz, that is not mutilation under the Revised Penal Code because the offender does not collect the metal dust. But by rubbing the coins on the sidewalk, he also defaces and destroys the coin and that is punishable under Presidential Decree No. 247.

e. ARTICLE 165. SELLING OF FALSE OR MUTILATED COIN, WITHOUT CONNIVANCE

Acts punished

1. Possession of coin, counterfeited or mutilated by another person, with intent to utter the same, knowing that it is false or mutilated;

Elements
a. Possession;
b. With intent to utter; and
c. Knowledge.

2. Actually uttering such false or mutilated coin, knowing the same to be false or mutilated.

Elements
a. Actually uttering; and
b. Knowledge.

The possession prohibited in this article pertains not only to physical possession but also to constructive possession or subjection of the thing to one's control. Otherwise, offenders could easily evade the law by placing it under another's physical possession.

The possessor should not be the counterfeiter, mutilator, or importer of the coins, otherwise the crime of possessing such coins would be absorbed by the crime of counterfeiting,

The offender need not connive with the counterfeiter or mutilator as long as he has knowledge that the coin is false or mutilated.

f. Article 166. Forging Treasury or Bank Notes or Other Documents Payable to Bearer; Importing and Uttering Such False or Forged Notes and Documents

Acts punished
1. Forging or falsification of treasury or bank notes or other documents payable to bearer;
2. Importation of such false or forged obligations or notes;
3. Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

A bank note, certificate or obligation and security is payable to bearer when ownership is transferred by mere delivery.

The code punishes forging or falsification of bank notes and of documents of credit payable to bearer and issued by the state more severely than counterfeiting coins. The documents mentioned in the former are proofs of government indebtedness, thus safeguarding the credibility of the state.

g. Article 167. Counterfeiting, Importing, and Uttering Instruments Not Payable to Bearer

Elements
1. There is an instrument payable to order or other documents of credit not payable to bearer;
2. Offender either forged, imported or uttered such instrument;
3. In case of uttering, he connived with the forger or importer.

This covers instruments or other documents of credit issued by a foreign government or bank.

The instrument is payable to order when it is drawn payable to the order of a specified person or to him or his order. It is not negotiated by endorsement and delivery.

This includes instruments or documents of credit issued by a foreign government t or bank because the act punished includes that of importing, without specifying the country issuing them.

2. ACTS OF FORGERY (169, 166, 168)

a. Article 168. Illegal Possession and Use of False Treasury or Bank Notes and Other Instruments of Credit

Elements
1. Any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person;
2. Offender knows that any of those instruments is forged or falsified;
3. He either –
   a. uses any of such forged or falsified instruments; or
   b. possesses with intent to use any of such forged or falsified instruments

The rule is that if a person had in his possession a falsified document and he made use of it, taking advantage of it and profiting thereby, the presumption is that he is the material author of the falsification. (**People vs. Sendaydiego**, 82 SCRA 120)

How forgery is committed under **Article 169**

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document;
2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or sign contained therein.

Possession of false treasury or bank note alone is not a criminal offense. For it to constitute an offense, it must be possession with intent to use.

Forgery under the Revised Penal Code applies to papers, which are in the form of obligations and securities issued by the Philippine government as its own obligations, which is given the same status as legal tender.

The word obligation or security of the Philippine Islands shall be held to mean all bonds, certificates of indebtedness, national bank notes, coupons, treasury notes, fractional notes, certificates of deposits, bills, checks, drafts for money, and other representatives of value issued under any act of Congress.

Generally, the word "counterfeiting" is not used when it comes to notes; what is used is "forgery." Counterfeiting refers to money, whether coins or bills.

The Revised Penal Code defines forgery under Article 169. Notice that mere change on a document does not amount to this crime. The essence of forgery is giving a document the appearance of a true and genuine document. Not any alteration of a letter, number, figure or design would amount to forgery. At most, it would only be frustrated forgery.

In **People vs. Galano**, 3 SCRA 650, it was held that forgery can be committed through the use of genuine paper bills that have been withdrawn from circulation, by giving them the appearance of some other true and genuine document. However, the dissenting opinion stated that the provision only embraces situations in which spurious, false or fake documents are given the appearance of a true and genuine document.

3. ACTS OF FALSIFICATION

a. FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE OR ECCLESIASTICAL MINISTER (171) SEE ALSO 48

i. ARTICLE 171. FALSIFICATION BY PUBLIC OFFICER, EMPLOYEE OR NOTARY OR ECCLESIASTICAL MINISTER

Elements

1. Offender is a public officer, employee, or notary public;

2. He takes advantage of his official position;

3. He falsifies a document by committing any of the following acts:

   a. *Counterfeiting or imitating any handwriting, signature or rubric* – intent or attempt to imitate is inferred when there is sufficient resemblance or when it is likely to deceive an ordinary person receiving or dealing with the doc. Feigning is covered by this paragraph, which includes the case of forging signatures of people who do not know how to write.
   b. *Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate* – as opposed to the former paragraph, imitation of signature is not necessary.
   c. *Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;*
   d. *Making untruthful statements in a narration of facts* – there should be a legal obligation to disclose the truth (**Beradio vs. CA**). There should also be malice or deliberate intent unless the document falsified is a public one (**Syquian vs. People**).
   e. *Altering true dates* – the date must be essential and could change the effects of the document (such as dates of birth, marriage, or death)
   f. *Making any alteration or intercalation in a genuine document which changes its meaning* – change or insertion must affect the integrity or effects of the document. Furthermore, the alteration should make the document speak something false, otherwise it would merely be a correction.
   g. *Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original*
   h. *Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.*

4. In case the offender is an ecclesiastical minister who shall commit any of the offenses enumerated, with respect to any record or document of such character that its falsification may affect the civil status of persons.

If the second element is absent, the crime would be covered by art. 172.

For example, a customer in a hotel did not write his name on the registry book, which was intended to be a memorial of those who got in and out of that hotel. There is no complete document to speak of. The document may not extinguish or create rights but it can be an evidence of the facts stated therein.

Note that a check is not yet a document when it is not completed yet. If somebody writes on it, he makes a document out of it.

There must be a genuine document for paragraphs 6, 8 and for the 2nd part of 7. In other paragraphs, falsification can be committed by simulation or fabrication.

There are four kinds of documents:

(1) Public document in the execution of which, a person in authority or notary public has taken part;
(2) Official document in the execution of which a public official takes part;
(3) Commercial document or any document recognized by the Code of Commerce or any commercial law; and
(4) Private document in the execution of which only private individuals take part.

Public document is broader than the term official document. Before a document may be considered official, it must first be a public document. But not all public documents are official documents. To become an official document, there must be a law which requires a public officer to issue or to render such document. Example: A cashier is required to issue an official receipt for the amount he receives. The official receipt is a public document which is an official document.

The element of damage is not necessary because it is the interest of the community which is intended to be guaranteed. The character of the offender and his faithfulness to his duty is the mainly taken into consideration.

b. Falsification by Private Individuals and Use of Falsified Documents (172); Using False Certificates (175), 48

i. Article 172. Falsification by Private Individual and Use of Falsified Documents

Acts punished
1. Falsification of public, official or commercial document by a private individual;
2. Falsification of private document by any person;
3. Use of falsified document.

Elements under paragraph 1
1. Offender is a private individual or public officer or employee who did not take advantage of his official position;
2. He committed any act of falsification;
3. The falsification was committed in a public, official, or commercial document or letter of exchange.

Elements under paragraph 2
1. Offender committed any of the acts of falsification except Article 171(7), that is, issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original;
2. Falsification was committed in any private document;
3. Falsification causes damage to a third party or at least the falsification was committed with intent to cause such damage.

Elements under the last paragraph
In introducing in a judicial proceeding –
1. Offender knew that the document was falsified by another person;
2. The false document is in Articles 171 or 172 (1 or 2);
3. He introduced said document in evidence in any judicial proceeding.

In use in any other transaction –
1. Offender knew that a document was falsified by another person;
2. The false document is embraced in Articles 171 or 172 (1 or 2);
3. He used such document;
4. The use caused damage to another or at least used with intent to cause damage.

The possessor of a falsified document is presumed to be the author of the falsification (**people vs. Manansala**, 105 Phil 1253). The presumption also holds if the use was so closely connected in time with the falsification and the user had the capacity of falsifying the document (**people vs. Sendaydiego**)

There is no crime of estafa through falsification of a private document. Both crimes require the element of damage which each of the two should have its own. The fraudulent gain obtained through deceit should not be the very same damage caused by the falsification of the private document.

The crime would be estafa if the estafa was already consummated at the time of the falsification or if the falsification of a private document was committed for the purpose of concealing the estafa.

Since damage is not an element of falsification of a public document, it could be complexed with estafa as a necessary means to commit the latter.

There can be falsification of public document through reckless imprudence but there is no crime of falsification of private document through negligence or imprudence.

If the document is intended by law to be part of the public or official record, the falsification, although it was private at the time of falsification, is regarded as falsification of a public or official document.

ii. Article 175. Using False Certificates

Elements
1. The following issues a false certificate:
   a. Physician or surgeon, in connection with the practice of his profession, issues a false certificate;
   b. Public officer issues a false certificate of merit of service, good conduct or similar circumstances;
   c. Private person falsifies a certificate falling within the classes mentioned in the two preceding subdivisions.
2. Offender knows that the certificate was false;
3. He uses the same.

a. Falsification of Wireless, Cable, Telegraph and Telephone Messages and Use of Falsified Message (173), of Legislative Documents (170), of Medical Certificates and Certificate of Merit (174); see also RA 4200

i. Article 173. Falsification of Wireless, Cable, Telegraph and Telephone Messages, and Use of Said Falsified Messages

Acts punished
1. Uttering fictitious wireless, telegraph or telephone message;

   Elements
   a. Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service

of sending or receiving wireless, cable or telephone message;
b. He utters fictitious wireless, cable, telegraph or telephone message.

2. Falsifying wireless, telegraph or telephone message;

Elements
a. Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;
b. He falsifies wireless, cable, telegraph or telephone message.

3. Using such falsified message.

Elements
a. Offender knew that wireless, cable, telegraph, or telephone message was falsified by an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;
b. He used such falsified dispatch;
c. The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice.

ii. ARTICLE 170. FALSIFICATION OF LEGISLATIVE DOCUMENTS

Elements
1. There is a bill, resolution or ordinance enacted or approved or pending approval by either House of the Legislature or any provincial board or municipal council;
2. Offender alters the same;
3. He has no proper authority therefor;
4. The alteration has changed the meaning of the documents.

The words "municipal council" should include the city council or municipal board – Reyes.

The crime of falsification must involve a writing that is a document in the legal sense. The writing must be complete in itself and capable of extinguishing an obligation or creating rights or capable of becoming evidence of the facts stated therein. Until and unless the writing has attained this quality, it will not be considered as document in the legal sense and, therefore, the crime of falsification cannot be committed in respect thereto.

Five classes of falsification:
(1) Falsification of legislative documents;
(2) Falsification of a document by a public officer, employee or notary public;
(3) Falsification of a public or official, or commercial documents by a private individual;
(4) Falsification of a private document by any person;
(5) Falsification of wireless, telegraph and telephone messages.

Distinction between falsification and forgery:

Falsification is the commission of any of the eight acts mentioned in Article 171 on legislative (only the act of making alteration), public or official, commercial, or private documents, or wireless, or telegraph messages.

The term forgery as used in Article 169 refers to the falsification and counterfeiting of treasury or bank notes or any instruments payable to bearer or to order.

Note that forging and falsification are crimes under Forgeries.

iii. ARTICLE 174. FALSE MEDICAL CERTIFICATES, FALSE CERTIFICATES OF MERITS OR SERVICE, ETC.

Persons liable
1. Physician or surgeon who, in connection with the practice of his profession, issues a false certificate (it must refer to the illness or injury of a person);
[The crime here is false medical certificate by a physician.]

2. Public officer who issues a false certificate of merit of service, good conduct or similar circumstances;
[The crime here is false certificate of merit or service by a public officer.]

3. Private person who falsifies a certificate falling within the classes mentioned in the two preceding subdivisions.

iv. RA 4200: ANTI-WIRETAPPING LAW

It shall be unlawful for any person, not being authorized by all the parties to any private communication or spoken word, to tap any wire or cable, or by using any other device or arrangement, to secretly overhear, intercept, or record such communication or spoken word by using a device commonly known as a dictaphone or dictagraph or dictaphone or walkie-talkie or tape recorder, or however otherwise described

It shall also be unlawful for any person, be he a participant or not in the act or acts penalized in the next preceding sentence, to knowingly possess any tape record, wire record, disc record, or any other such record, or copies thereof, of any communication or spoken word secured either before or after the effective date of this Act in the manner prohibited by this law; or to replay the same for any other person or persons; or to communicate the contents thereof, either verbally or in writing, or to furnish transcriptions thereof, whether complete or partial, to any other person: *Provided*, That the use of such record or any copies thereof as evidence in any civil,

criminal investigation or trial of offenses shall not be covered by this prohibition.

Any person who willfully or knowingly does or who shall aid, permit, or cause to be done any of the acts declared to be unlawful in the preceding section or who violates the provisions of the following section or of any order issued thereunder, or aids, permits, or causes such violation shall, upon conviction thereof, be punished by imprisonment for not less than six months or more than six years and with the accessory penalty of perpetual absolute disqualification from public office if the offender be a public official at the time of the commission of the offense, and, if the offender is an alien he shall be subject to deportation proceedings.

b. ARTICLE 176. MANUFACTURING AND POSSESSION OF INSTRUMENTS OR IMPLEMENTS FOR FALSIFICATION

Acts punished
1. Making or introducing into the Philippines any stamps, dies, marks, or other instruments or implements for counterfeiting or falsification;
2. Possession with intent to use the instruments or implements for counterfeiting or falsification made in or introduced into the Philippines by another person.

As in Art. 165, the possession contemplated here is constructive possession. The implements confiscated need not form a complete set.

B. Other Falsities

1. USURPATION OF AUTHORITY OR OFFICIAL FUNCTIONS (177)

Acts punished
1. Usurpation of authority. (no connection with the office represented)

Elements
a. Offender knowingly and falsely represents himself;
b. As an officer, agent or representative of any department or agency of the Philippine government or of any foreign government.

2. Usurpation of official functions. (excess of authority)

Elements
a. Offender performs any act;
b. Pertaining to any person in authority or public officer of the Philippine government or any foreign government, or any agency thereof;
c. Under pretense of official position;
d. Without being lawfully entitled to do so.

Any person who shall falsely assume and take upon himself to act as a diplomatic, consular or any other official of a Foreign Govt duly accredited as such to the Phil Govt with intent to defraud such Foreign Govt or the Phil Govt shall suffer, in addition to the penalties imposed in the RPC, the penalty of a fine not more than P5,000.00 or shall be imprisoned for not more than 5 years or both. (RA 75, Sec. 1)

2. USING FICTITIOUS AND CONCEALING TRUE NAME (178)

Acts punished
1. Using fictitious name

Elements
a. Offender uses a name other than his real name;
b. He uses the fictitious name publicly;
c. Purpose of use is to conceal a crime, to evade the execution of a judgment or to cause damage [to public interest – Reyes].

2. Concealing true name

Elements
a. Offender conceals his true name and other personal circumstances;
b. Purpose is only to conceal his identity.

Commonwealth Act No. 142 (Regulating the Use of Aliases)
No person shall use any name different from the one with which he was registered at birth in the office of the local civil registry, or with which he was registered in the bureau of immigration upon entry; or such substitute name as may have been authorized by a competent court.

Exception: Pseudonym solely for literary, cinema, television, radio, or other entertainment and in athletic events where the use of pseudonym is a normally accepted practice.

CC Art. 379. The employment of pen names or stage names is permitted, provided it is done in good faith and there is no injury to third persons. Pen names and stage names cannot be usurped.

CC Art. 380. Except as provided in the preceding article, no person shall use different names and surnames.

3. ILLEGAL USE OF UNIFORMS AND INSIGNIA (179)

Elements
1. Offender makes use of insignia, uniforms or dress;
2. The insignia, uniforms or dress pertains to an office not held by such person or a class of persons of which he is not a member;
3. Said insignia, uniform or dress is used publicly and improperly.

Wearing the uniform of an imaginary office is not punishable.

Exact imitation of a uniform or dress is unnecessary; a colorable resemblance calculated to deceive the common run of people is sufficient.

RA 75 also punishes using the use of uniform, decoration or regalia of a foreign state by people not entitled to do so. RA 493 punishes wearing an insignia, badge, or emblem of rank of the members of the AFP or constabulary.

4. FALSE TESTIMONY

i. ARTICLE 180. FALSE TESTIMONY AGAINST A DEFENDANT

Elements
1. There is a criminal proceeding;
2. Offender testifies falsely under oath against the defendant therein;
3. Offender who gives false testimony knows that it is false.
4. Defendant against whom the false testimony is given is either acquitted or convicted in a final judgment.

The witness who gave the false testimony is liable even if his testimony was not considered by the court.

Three forms of false testimony
1. False testimony in criminal cases under Article 180 and 181;
2. False testimony in civil case under Article 182;
3. False testimony in other cases under Article 183.

Articles 180 – 184 punish the acts of making false testimonies since because such acts seriously expose the court to miscarriage of justice.

ii. ARTICLE 181. FALSE TESTIMONY FAVORABLE TO THE DEFENDANT

Elements
1. A person gives false testimony;
2. In favor of the defendant;
3. In a criminal case.

The testimony need not be beneficial to the defendant.

Conviction or acquittal of defendant in the principal case is not necessary.

Rectification made spontaneously after realizing the mistake is not false testimony.

iii. ARTICLE 182. FALSE TESTIMONY IN CIVIL CASES

Elements
1. Testimony given in a civil case;
2. Testimony relates to the issues presented in said case;
3. Testimony is false;
4. Offender knows that testimony is false;
5. Testimony is malicious and given with an intent to affect the issues presented in said case.

182 does not apply in special proceedings. These are covered by 183 under "other cases".

iv. ARTICLE 183. FALSE TESTIMONY IN OTHER CASES AND PERJURY IN SOLEMN AFFIRMATION

Acts punished
1. By falsely testifying under oath;
2. By making a false affidavit.

Elements of perjury (**Diaz vs. People**, 191 SCRA 86)
1. Offender makes a statement under oath or executes an affidavit upon a material matter;
2. The statement or affidavit is made before a competent officer, authorized to receive and administer oaths;
3. Offender makes a willful and deliberate assertion of a falsehood in the statement or affidavit;
4. The sworn statement or affidavit containing the falsity is required by law, that is, it is made for a legal purpose.

The statement should be outside the coverage of art 180-181.

Material matter is defined as the main fact which is the subject of the inquiry or any circumstance which tends to prove that fact, or any fact or circumstance which tends to corroborate or strengthen the testimony relative to the subject of inquiry, or which legitimately affects the credit of any witness who testifies. As an element of a crime, there must be competent proof of materiality.

Because of the requirement that the assertion of a falsehood be made willfully and deliberately, there could be no perjury through negligence or imprudence. Furthermore, good faith or lack of malice is a defense in perjury.

It is not necessary that there be a law requiring the statement to be made under oath, as long as it is made for a legal purpose.

v. ARTICLE 184. OFFERING FALSE TESTIMONY IN EVIDENCE

Elements
1. Offender offers in evidence a false witness or testimony;
2. He knows that the witness or the testimony was false;
3. The offer is made in any judicial or official proceeding.

The counsel is the one liable in this case.

C. Frauds

1. ARTICLE 185. MACHINATIONS IN PUBLIC AUCTIONS

Acts punished

1. Soliciting any gift or promise as a consideration for refraining from taking part in any public auction;

Elements

a. There is a public auction;
b. Offender solicits any gift or a promise from any of the bidders;
c. Such gift or promise is the consideration for his refraining from taking part in that public auction;
d. Offender has the intent to cause the reduction of the price of the thing auctioned.

2. Attempting to cause bidders to stay away from an auction by threats, gifts, promises or any other artifice.

Elements

a. There is a public auction;
b. Offender attempts to cause the bidders to stay away from that public auction;
c. It is done by threats, gifts, promises or any other artifice;
d. Offender has the intent to cause the reduction of the price of the thing auctioned.

The crime is consummated by mere solicitation of gift or promise as consideration for not bidding, or by mere attempt to cause prospective bidders to stay away from an auction.

2. ARTICLE 186. MONOPOLIES AND COMBINATIONS IN RESTRAINT OF TRADE

Acts punished

1. Combination to prevent free competition in the market;

Elements

a. Entering into any contract or agreement or taking part in any conspiracy or combination in the form of a trust or otherwise;
b. In restraint of trade or commerce or to prevent by artificial means free competition in the market.

2. Monopoly to restrain free competition in the market;

Elements

a. By monopolizing any merchandise or object of trade or commerce, or by combining with any other person or persons to monopolize said merchandise or object;
b. In order to alter the prices thereof by spreading false rumors or making use of any other artifice;
c. To restrain free competition in the market

3. Manufacturer, producer, or processor or importer combining, conspiring or agreeing with any person to make transactions prejudicial to lawful commerce or to increase the market price of merchandise.

Elements

a. manufacturer, producer, processor or importer of any merchandise or object of commerce;
b. Combines, conspires or agrees with any person;
c. Purpose is to make transactions prejudicial to lawful commerce or to increase the market price of any merchandize or object of commerce manufactured, produced, processed, assembled or imported into the Philippines.

TITLE V. CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

*** Repealed. See Republic Act No. 6195 below, otherwise known as Comprehensive Dangerous Drugs Act of 2002.

TITLE VI. CRIME AGAINST PUBLIC MORALS

CRIMES AGAINST PUBLIC MORALS
1. Gambling (Art. 195);
2. Importation, sale and possession of lottery tickets or advertisements (Art. 196);
3. Betting in sport contests (Art. 197);
4. Illegal betting on horse races (Art. 198);
5. Illegal cockfighting (Art. 199);
6. Grave scandal (Art. 200);
7. Immoral doctrines, obscene publications and exhibitions (Art. 201); and
8. Vagrancy and prostitution (Art. 202)

A. Gambling

1. ARTICLE 195. WHAT ACTS ARE PUNISHABLE IN GAMBLING

Acts punished

1. Taking part directly or indirectly in –
   a. any game of monte, jueteng, or any other form of lottery, policy, banking, or percentage game, dog races, or any other game or scheme the results of which depend wholly or chiefly upon chance or hazard; or wherein wagers consisting of money, articles of value, or representative of value are made; or
   b. the exploitation or use of any other mechanical invention or contrivance to determine by chance the loser or winner of money or any object or representative of value;
2. Knowingly permitting any form of gambling to be carried on in any place owned or controlled by the offender;
3. Being maintainer, conductor, or banker in a game of jueteng or similar game;
4. Knowingly and without lawful purpose possessing lottery list, paper, or other matter containing letters, figures, signs or symbol which pertain to or are in any manner used in the game of jueteng or any similar game.

2. ARTICLE 196. IMPORTATION, SALE AND POSSESSION OF LOTTERY TICKETS OR ADVERTISEMENTS

Acts punished
1. Importing into the Philippines from any foreign place or port any lottery ticket or advertisement; or
2. Selling or distributing the same in connivance with the importer;
3. Possessing, knowingly and with intent to use them, lottery tickets or advertisements; or
4. Selling or distributing the same without connivance with the importer of the same.

Note that possession of any lottery ticket or advertisement is prima facie evidence of an intent to sell, distribute or use the same in the Philippines.

3. ARTICLE 197. BETTING IN SPORT CONTESTS

This article has been repealed by **Presidential Decree No. 483 (Betting, Game-fixing or Point-shaving and Machinations in Sport Contests):**

Section 2. Betting, game-fixing, point-shaving or game machination unlawful. – Game-fixing, point-shaving, game machination, as defined in the preceding section, in connection with the games of basketball, volleyball, softball, baseball; chess, boxing bouts, jai-alia, sipa, pelota and all other sports contests, games or races; as well as betting therein except as may be authorized by law, is hereby declared unlawful.

BETTING
➔ betting money or any object or article of value or representative of value upon the result of any game, races and other sport contests.

GAME-FIXING
➔ any arrangement, combinations, scheme or agreement by which the result of any game, races or sport contests shall be predicated and/or known other than on the basis of the honest playing skill or ability of the players or participants.

POINT-SHAVING
➔ any such arrangement, combination, scheme or agreement by which the skill of ability of any player or participant in a game, races or sports contests to make points or scores shall be limited deliberately in order to influence the result thereof in favor one or the other team, player or participant therein.

GAME MACHINATION
➔ any other fraudulent, deceitful, unfair or dishonest means, methods, manner or practice employed for the purpose of influencing the result of any game, races or sports contest.

4. ARTICLE 198. ILLEGAL BETTING ON HORSE RACE

Acts punished

1. Betting on horse races during periods not allowed by law;
2. Maintaining or employing a totalizer or other device or scheme for betting on races or realizing profit therefrom during the periods not allowed by law.

When horse races not allowed
1. July 4 (Republic Act No. 137);
2. December 30 (Republic Act No. 229);
3. Any registration or voting days (Republic Act No. 180, Revised Election Code); and
4. Holy Thursday and Good Friday (Republic Act No. 946).

5. ARTICLE 199. ILLEGAL COCKFIGHTING

This article has been modified or repealed by **Presidential Decree No. 449 (The Cockfighting Law of 1974):**

- Only allows one cockpit per municipality, unless the population exceeds 100,000 in which case two cockpits may be established;
- Cockfights can only be held in licensed cockpits on Sundays and legal holidays and local fiestas for not more than three days;
- Also allowed during provincial, municipal, city, industrial, agricultural fairs, carnivals, or exposition not more than three days;
- Cockfighting not allowed on December 30, June 12, November 30, Holy Thursday, Good Friday, Election or Referendum Day, and registration days for referendums and elections;
- Only municipal and city mayors are allowed to issue licenses for such.

6. PRESIDENTIAL DECREE NO. 1602 (SIMPLIFYING AND PROVIDING STIFFER PENALTIES FOR VIOLATIONS OF PHILIPPINE GAMBLING LAWS)

- Arts. 195-199 and provisions of PD 483 and 449 are repealed insofar as they are inconsistent with PD 1602, which provides for stiffer penalties for violation of the Gambling Laws.
- While the acts under the Revised Penal Code are still punished under the new law, yet the concept of gambling under it has been changed by the new gambling law.
- Before, the Revised Penal Code considered the skill of the player in classifying whether a game is gambling or not. But under the new gambling law, the skill of the players is immaterial.
- Any game is considered gambling where there are bets or wagers placed with the hope to win a prize therefrom.
- Under this law, even sports contents like boxing, would be gambling insofar as those who are betting therein are concerned. Under the old penal code, if the skill of the player outweighs the chance or hazard involved in winning the game, the game is not considered gambling but a sport. It was because of this that betting in boxing and basketball games proliferated.
- "Unless authorized by a franchise, any form of gambling is illegal." So said the court in the recent resolution of the case against the operation of jai-alai.
- There are so-called parlor games which have been exempted from the operation of the decree like when the games are played during a wake to keep the mourners awake at night. Pursuant to a memorandum circular issued by the Executive Branch, the offshoot of the exemption is the intentional prolonging of the wake of the dead by gambling lords.
- As a general rule, betting or wagering determines whether a game is gambling or not. Exceptions: These are games which are expressly prohibited even without bets. Monte, jueteng or any form of lottery; dog races; slot machines; these are habit-forming and addictive to players, bringing about the pernicious effects to the family and economic life of the players.
- Mere possession of lottery tickets or lottery lists is a crime punished also as part of gambling. However, it is necessary to make a distinction whether a ticket or list refers to a past date or to a future date.

Illustration:

X was accused one night and found in his possession was a list of jueteng. If the date therein refers to the past, X cannot be convicted of gambling or illegal possession of lottery list without proving that such game was indeed played on the date stated. Mere possession is not enough. If the date refers to the future, X can be convicted by the mere possession with intent to use. This will already bring about criminal liability and there is no need to prove that the game was played on the date stated. If the possessor was caught, chances are he will not go on with it anymore.

There are two criteria as to when the lottery is in fact becomes a gambling game:

1. If the public is made to pay not only for the merchandise that he is buying, but also for the chance to win a prize out of the lottery, lottery becomes a gambling game. Public is made to pay a higher price.

2. If the merchandise is not saleable because of its inferior quality, so that the public actually does not buy them, but with the lottery the public starts patronizing such merchandise. In effect, the public is paying for the lottery and not for the merchandise, and therefore the lottery is a gambling game. Public is not made to pay a higher price.

Illustrations:

(1) A certain supermarket wanted to increase its sales and sponsored a lottery where valuable prices are offered at stake. To defray the cost of the prices offered in the lottery, the management increased their prices of the merchandise by 10 cents each. Whenever

someone buys from that supermarket, he pays 10 cents more for each merchandise and for his purchase, he gets a coupon which is to be dropped at designated drop boxes to be raffled on a certain period.

The increase of the price is to answer for the cost of the valuable prices that will be covered at stake. The increase in the price is the consideration for the chance to win in the lottery and that makes the lottery a gambling game.

But if the increase in prices of the articles or commodities was not general, but only on certain items and the increase in prices is not the same, the fact that a lottery is sponsored does not appear to be tied up with the increase in prices, therefore not illegal.

Also, in case of manufacturers, you have to determine whether the increase in the price was due to the lottery or brought about by the normal price increase. If the increase in price is brought about by the normal price increase [economic factor] that even without the lottery the price would be like that, there is no consideration in favor of the lottery and the lottery would not amount to a gambling game.

If the increase in the price is due particularly to the lottery, then the lottery is a gambling game. And the sponsors thereof may be prosecuted for illegal gambling under Presidential Decree No. 1602.

(2) The merchandise is not really saleable because of its inferior quality. A certain manufacturer, Bhey Company, manufacture cigarettes which is not saleable because the same is irritating to the throat, sponsored a lottery and a coupon is inserted in every pack of cigarette so that one who buys it shall have a chance to participate. Due to the coupons, the public started buying the cigarette. Although there was no price increase in the cigarettes, the lottery can be considered a gambling game because the buyers were really after the coupons not the low quality cigarettes.

If without the lottery or raffle, the public does not patronize the product and starts to patronize them only after the lottery or raffle, in effect the public is paying for the price not the product.

Under this decree, a barangay captain who is responsible for the existence of gambling dens in their own locality will be held liable and disqualified from office if he fails to prosecute these gamblers. But this is not being implemented.

Gambling, of course, is legal when authorized by law.

Fund-raising campaigns are not gambling. They are for charitable purposes but they have to obtain a permit from Department of Social Welfare and Development. This includes concerts for causes, Christmas caroling, and the like.

B. Offenses Against Decency and Good Custom

1. GRAVE SCANDAL (200)

Elements
1. Offender performs an act or acts;
2. Such act or acts be highly scandalous as offending against decency or good customs;
3. The highly scandalous conduct is not expressly falling within any other article of this Code; and
4. The act or acts complained of be committed in a public place or within the public knowledge or view.

DECENCY
➔ means proprietary of conduct; proper observance of the requirements of modesty , good taste, etc.

CUSTOMS
➔ established usage, social conventions carried on by tradition and enforced by social disapproval of any violation thereof.

GRAVE SCANDAL
➔ consists of acts which are offensive to decency and good customs which, having committed publicly, have given rise to public scandal to persons who have accidentally witnessed the same.

- In grave scandal, the scandal involved refers to moral scandal offensive to decency, although it does not disturb public peace. But such conduct or act must be open to the public view.

- In alarms and scandals, the scandal involved refers to disturbances of the public tranquility and not to acts offensive to decency.
- Any act which is notoriously offensive to decency may bring about criminal liability for the crime of grave scandal provided such act does not constitute some other crime under the Revised Penal Code. Grave scandal is a crime of last resort.

- If the acts of the offender are punished under another article of RPC, Art. 200 is not applicable.

Distinction should be made as to the place where the offensive act was committed, whether in the public place or in a private place:

(1) In public place, the criminal liability arises irrespective of whether the immoral act is open to the public view. In short public view is not required.

(2) When act offensive to decency is done in a private place, public view or public knowledge is required.

Public view does not require numerous persons. Even if there was only one person who witnessed

the offensive act for as long as the third person was not an intruder, grave scandal is committed provided the act does not fall under any other crime in the Revised Penal Code.

Illustrations:

(1) A man and a woman enters a movie house which is a public place and then goes to the darkest part of the balcony and while there the man started performing acts of lasciviousness on the woman.

If it is against the will of the woman, the crime would be acts of lasciviousness. But if there is mutuality, this constitutes grave scandal. Public view is not necessary so long as it is performed in a public place.

(2) A man and a woman went to Luneta and slept there. They covered themselves their blanket and made the grass their conjugal bed.

This is grave scandal.

(3) In a certain apartment, a lady tenant had the habit of undressing in her room without shutting the blinds. She does this every night at about eight in the evening. So that at this hour of the night, you can expect people outside gathered in front of her window looking at her silhouette. She was charged of grave scandal. Her defense was that she was doing it in her own house.

It is no defense that she is doing it in her private home. It is still open to the public view.

(4) In a particular building in Makati which stands right next to the house of a young lady who goes sunbathing in her poolside. Every morning several men in the upper floors would stick their heads out to get a full view of said lady while in her two-piece swimsuit. The lady was then charged with grave scandal. Her defense was that it is her own private pool and it is those men looking down at her who are malicious.

This is an act which even though done in a private place is nonetheless open to public view.

2. IMMORAL DOCTRINES, OBSCENE PUBLICATIONS AND EXHIBITIONS AND INDECENT SHOWS (201)

Acts punished

1. Those who shall publicly expound or proclaim doctrines openly contrary to public morals;

2. a. The authors of obscene literature, published with their knowledge in any form, the editors publishing such literature; and the owners/operators of the establishment selling the same;
   b. Those who, in theaters, fairs, cinematographs, or any other place, exhibit indecent or immoral plays, scenes, acts, or shows, it being understood that the obscene literature or indecent or immoral plays, scenes, acts or shows, whether live or in film, which are proscribed by virtue hereof, shall include those which: (1) glorify criminals or condone crimes; (2) serve no other purpose but to satisfy the market for violence, lust or pornography; (3) offend any race, or religion; (4) tend to abet traffic in and use of prohibited drugs; and (5) are contrary to law, public order, morals, good customs, established policies, lawful orders, decrees and edicts; and

3. Those who shall sell, give away, or exhibit films, prints, engravings, sculptures, or literature which are offensive to morals.

MORALS

➔ imply conformity with the generally accepted standards of goodness or rightness in conduct or character, sometimes, specifically, to sexual conduct.

THE TEST OF OBSCENITY

➔ The test is whether the tendency of the matter charged as obscene, is to corrupt those whose minds are open to such influences, and into whose hands such a publication may fall and also whether or not such publication or act shocks the ordinary and common sense of men as an indecency. "Indecency" is an act against the good behavior and a just delicacy. (US vs. Kotiinger, 45 Phil 352)

➔ The reaction of the public during the performance of a dance by one who had nothing to cover herself with, except nylon patches over her breasts and too abbreviated pair of nylon panties to interrupt her stark nakedness should be made the gauge in the determination of whether the dance or exhibition was indecent or immoral. (People vs. Aparici, 52 OG 249)

- *The test is obje*ctive. It is more on the effect upon the viewer and not alone on the conduct of the performer.

- If the material has the tendency to deprave and corrupt the mind of the viewer then the same is obscene and where such obscenity is made publicly, criminal liability arises.

- Because there is a government body which deliberates whether a certain exhibition, movies and plays is pornographic or not, if such body approves the work the same should not be charged under this title. Because of this, the test of obscenity may be obsolete already. If allowed by the Movies and Television Review and Classification Board (MTRCB), the question is moot and academic.

- The law is not concerned with the moral of one person. As long as the pornographic matter or exhibition is made privately, there is no crime committed under the Revised Penal Code because what is protected is the morality of the public in general. Third party is there. Performance of one to another is not.

Illustration:

A sexy dancing performed for a 90 year old is not obscene anymore even if the dancer strips naked.

But if performed for a 15 year old kid, then it will corrupt the kid's mind. (Apply Kottinger Rule here.)

In some instances though, the Supreme Court did not stick to this test. It also considered the intention of the performer.

> ***In** People v. Aparici, **the accused was a performer in the defunct Pacific Theatre, a movie house which opens only at midnight. She was arrested because she was dancing in a "different kind of way." She was not really nude. She was wearing some sort of an abbreviated bikini with a flimsy cloth over it. However, on her waist hung a string with a ball reaching down to her private part so that every time she gyrates, it arouses the audience when the ball would actually touch her private part. The defense set up by Aparici was that she should not be criminally liable for as a matter of fact, she is better dressed than the other dancers. The Supreme Court ruled that it is not only the display of the body that gives it a depraved meaning but rather the movement of the body coupled with the "tom-tom drums" as background. Nudity alone is not the real scale. (Reaction Test)***

Illustration:

A sidewalk vendor was arrested and prosecuted for violation of Article 201. It appears that the fellow was selling a ballpen where one who buys the ballpen can peep into the top of the pen and see a girl dancing in it. He put up the defense that he is not the manufacturer and that he was merely selling it to earn a living. The fact of selling the ballpen was being done at the expense of public morals. One does not have to be the manufacturer to be criminally liable. This holds true for those printing or selling Playboy Magazines.

DISPOSITION OF PROHIBITED ARTICLES
The disposition of the literature, films, prints, engravings, sculptures, paintings or other materials involved in violation shall be governed by the following rules:

1. Upon conviction of the offender – to be forfeited in favor of the government to be destroyed.
2. Where the criminal case against the violator of the decree results in an acquittal – to be forfeited in favor of the government to be destroyed, after forfeiture proceedings conducted by the chief constabulary.
3. The person aggrieved by the forfeiture action of the Chief of Police may, within 15 days after his receipt of the copy of the decision, appeal the matter to the Secretary of the National Defense for review. The decision of the Secretary of the National Defense shall be final and unappealable. (sec. 2, P.D. 969)

3. VAGRANCY AND PROSTITUTION (202)

Persons Liable:
1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;
2. Any person found loitering about public or semi-public buildings or places or trampling or wandering about the country or the streets without visible means of support;
3. Any idle or dissolute person who ledges in houses of ill fame;
4. Ruffians or pimps and those who habitually associate with prostitutes;
5. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

PROSTITUTES
➔ women who, for money or profit habitually indulge in sexual intercourse or lascivious conduct

VAGRANTS
1. An idle or dissolute person who lodges in houses of ill-fame
2. Ruffian or pimp; or
3. One who habitually associates with prostitutes.

The common concept of a vagrant is a person who loiters in public places without any visible means of livelihood and without any lawful purpose.

While this may be the most common form of vagrancy, yet even millionaires or one who has more that enough for his livelihood can commit vagrancy by habitually associating with prostitutes, pimps, ruffians, or by habitually lodging in houses of ill-repute.

Vagrancy is not only a crime of the privileged or the poor. The law punishes the act involved here as a stepping stone to the commission of other crimes. Without this article, law enforcers would have no way of checking a person loitering in the wrong place in the wrong time. The purpose of the law is not simply to punish a person because he has no means of livelihood; it is to prevent further criminality. Use this when someone loiters in front of your house every night.

Any person found wandering in an estate belonging to another whether public or private without any lawful purpose also commits vagrancy, unless his acts constitutes some other crime in the Revised Penal Code.

Under the Mendicancy Law of 1978 (PD 1563), one who has no visible and legal means of support, or lawful employment and who is physically able to work but neglects to apply himself to some lawful calling and instead uses begging as a means of living, is a mendicant and, upon conviction, shall be punished by a fine not exceeding P500.00 or by imprisonment for a period not exceeding 2 years or

both at the discretion of the court.

If convicted of mendicancy under PD 1563 two or more times, the offender shall be punished by a fine not exceeding P1,000.00 or by imprisonment for a period not exceeding 4 years or both at the discretion of the court.
Any person who abets mendicancy by giving alms directly to mendicants, exploited infants and minors on public roads, sidewalks, parks and bridges shall be punished by a fine not exceeding P20.00.

But giving alms through organized agencies operating under the rules and regulation of the Ministry of Public Information is not a violation of the Mendicancy Law. (Sec. 6 of PD 1563)

Prostitution and vagrancy are both punished by the same article, but prostitution can only be committed by a woman.

The term prostitution is applicable to a woman who for profit or money habitually engages in sexual or lascivious conduct. A man if he engages in the same conduct – sex for money – is not a prostitute, but a vagrant.

In law the mere indulging in lascivious conduct habitually because of money or gain would amount to prostitution, even if there is no sexual intercourse. Virginity is not a defense. Habituality is the controlling factor; is has to be more than one time.

There cannot be prostitution by conspiracy. One who conspires with a woman in the prostitution business like pimps, taxi drivers or solicitors of clients are guilty of the crime under Article 341 for white slavery.

TITLE VII. CRIMES COMMITTED BY PUBLIC OFFICERS

Crimes committed by public officers

1. Knowingly rendering unjust judgment (Art. 204);
2. Judgment rendered through negligence (Art. 205);
3. Unjust interlocutory order (Art. 206);
4. Malicious delay in the administration of justice (Art. 207);
5. Prosecution of offenses; negligence and tolerance (Art. 208);
6. Betrayal of trust by an attorney or solicitor – Revelation of secrets (Art. 209);
7. Direct bribery (Art. 210);
8. Indirect bribery (Art. 211);
9. Qualified bribery (Art. 211-A);
10. Corruption of public officials (Art. 212);
11. Frauds against the public treasury and similar offenses (Art. 213);
12. Other frauds (Art. 214);
13. Prohibited transactions (Art. 215);
14. Possession of prohibited interest by a public officer (Art. 216);
15. Malversation of public funds or property – Presumption of malversation (Art. 217)
16. Failure of accountable officer to render accounts (Art. 218);
17. Failure of a responsible public officer to render accounts before leaving the country (Art. 219);
18. Illegal use of public funds or property (Art. 220);
19. Failure to make delivery of public funds or property (Art. 221);
20. Conniving with or consenting to evasion (Art. 223);
21. Evasion through negligence (Art. 224);
22. Escape of prisoner under the custody of a person not a public officer (Art. 225);
23. Removal, concealment or destruction of documents (Art. 226);
24. Officer breaking seal (Art. 227);
25. Opening of closed documents (Art. 228);
26. Revelation of secrets by an officer (Art. 229);
27. Public officer revealing secrets of private individual (Art. 230);
28. Open disobedience (Art. 231);
29. Disobedience to order of superior officer when said order was suspended by inferior officer (Art. 232);
30. Refusal of assistance (Art. 233);
31. Refusal to discharge elective office (Art. 234);
32. Maltreatment of prisoners (Art. 235);
33. Anticipation of duties of a public office (Art. 236);
34. Prolonging performance of duties and powers (Art. 237);
35. Abandonment of office or position (Art. 238);
36. Usurpation of legislative powers (Art. 239);
37. Usurpation of executive functions (Art. 240);
38. Usurpation of judicial functions (Art. 241);
39. Disobeying request for disqualification (Art. 242);
40. Orders or requests by executive officers to any judicial authority (Art. 243);
41. Unlawful appointments (Art. 244); and
42. Abuses against chastity (Art. 245).

The designation of the title is misleading. Crimes under this title can be committed by public officers or a non-public officer, when the latter become a conspirator with a public officer, or an accomplice, or accessory to the crime. The public officer has to be the principal.

In some cases, it can even be committed by a private citizen alone such as in Article 275 (infidelity in the custody of a prisoner where the offender is not a public officer) or in Article 222 (malversation).

A. Definition of Public Officers (203)

Requsites to be a public officer under **Article 203**

1. Taking part in the performance of public functions in the government;

   or

   Performing in said government or in any of its branches public duties as an employee, agent or subordinate official, or any rank or class;

2. His authority to take part in the performance of public functions or to perform public duties must be –
   a. By direct provision of the law;
   b. By popular election; or
   c. By appointment by competent authority.

Under Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act), the term public officer is broader and more comprehensive because it includes all persons whether an official or an employee, temporary or not, classified or not, contractual or otherwise. Any person who receives compensation for services rendered is a public officer.

Breach of oath of office partakes of three forms:

(1) Malfeasance - when a public officer performs in his public office an act prohibited by law.

Example: bribery.

(2) Misfeasance - when a public officer performs official acts in the manner not in accordance with what the law prescribes.

(3) Nonfeasance - when a public officer willfully refrains or refuses to perform an official duty which his office requires him to perform.

B. Malfeasance and Misfeasance in Office)

1. UNJUST JUDGMENTS

a. ARTICLE 204. KNOWINGLY RENDERING UNJUST JUDGMENT

Elements

1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. Judgment is unjust;

4. The judge knows that his judgment is unjust.

An unjust judgment is one which is contrary to law, or is not supported by evidence.

A manifestly unjust judgment is one which is so manifestly contrary to law that even a person having a few knowledge of the law cannot doubt the injustice.
No liability if mere error in good faith.

There must be evidence that the judgment is unjust.

b. ARTICLE 205. JUDGMENT RENDERED THROUGH NEGLIGENCE

Elements
1. Offender is a judge;
2. He renders a judgment in a case submitted to him for decision;
3. The judgment is manifestly unjust;
4. It is due to his inexcusable negligence or ignorance.

c. ARTICLE 206. UNJUST INTERLOCUTORY ORDER

Elements
1. Offender is a judge;
2. He performs any of the following acts:
   a. Knowingly rendering an unjust interlocutory order or decree; or
   b. Rendering a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

The crime of knowingly rendering an unjust judgment, or knowingly issuing an unjust interlocutory order, may be committed only by a judge of a trial court and never of an appellate court. The reason for this is that in appellate court, not only one magistrate renders or issues the interlocutory order. An appellate court functions as a division and the resolutions thereof are handed down only after deliberations among the members of a division so that it cannot be said that there is malice or inexcusable negligence or ignorance in the rendering of a judgment or order that is supposedly unjust as held by the Supreme Court in one administrative case.

There is more injustice done in cases of judgment than mere interlocutory order that is why the penalty is higher in the first case.

d. ARTICLE 207. MALICIOUS DELAY IN THE ADMINISTRATION OF JUSTICE

Elements
1. Offender is a judge;
2. There is a proceeding in his court;
3. He delays in the administration of justice;
4. The delay is malicious, that is, with deliberate intent to inflict damage on either party in the case.

Malice must be proven. Malice is present where the delay is sought to favor one party to the prejudice of the other. Delay without malice is not punishable by this article.

These have been interpreted by the Supreme Court to refer only to judges of the trial court.

e. ARTICLE 208. PROSECUTION OF OFFENSES; NEGLIGENCE AND TOLERANCE

Acts Punished
1. Maliciously refraining from instituting prosecution against violators of the law;
2. Maliciously tolerating the commission of offenses.

Elements of dereliction of duty in the prosecution of offenses
1. Offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;
2. There is a dereliction of the duties of his office, that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission;
3. Offender acts with malice and deliberate intent to favor the violator of the law.

A public officer engaged in the prosecution of offenders shall maliciously tolerate the commission of crimes or refrain from prosecuting offenders or violators of the law.

This crime can only be committed by a public officer whose official duty is to prosecute offenders, including the chief of police and punong barangays. Hence, those officers who are not duty bound to perform these obligations cannot commit this crime in the strict sense.

Prevaricacion

This used to be a crime under the Spanish Codigo Penal, wherein *a public officer regardless of his duty violates the oath of his office by not carrying out the duties of his office for which he was sworn to office, thus, amounting to dereliction of duty.*

But the term prevaricacion is not limited to dereliction of duty in the prosecution of offenders. It covers any dereliction of duty whereby the public officer involved violates his oath of office. The thrust of prevaricacion is the breach of the oath of office by the public officer who does an act in relation to his official duties.

While in Article 208, dereliction of duty refers only to prosecuting officers, the term prevaricacion applies to public officers in general who is remiss or who is maliciously refraining from exercising the duties of his office.

Illustration:

The offender was caught for white slavery. The policeman allowed the offender to go free for some consideration. The policeman does not violate

Article 208 since he is not a prosecuting officer but he becomes an accessory to the crime of white slavery.

But in the crime of theft or robbery, where the policeman shared in the loot and allowed the offender to go free, he becomes a fence. Therefore, he is considered an offender under the Anti-Fencing Law.

Relative to this crime under Article 208, consider the crime of qualified bribery. Among the amendments made by Republic Act No. 7659 on the Revised Penal Code is a new provision which reads as follows:

> Article. 211-A. Qualified Bribery – If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by Reclusion Perpetua and/or death in consideration of any offer, promise, gift, or present, he shall suffer the penalty for the offense which was not prosecuted.

Actually the crime is a kind of direct bribery where the bribe, offer, promise, gift or present has a consideration on the part of the public officer, that is refraining from arresting or prosecuting the offender in consideration for such offer, promise, gift or present. In a way, this new provision modifies Article 210 of the Revised Penal Code on direct bribery.

However, the crime of qualified bribery may be committed only by public officers "entrusted with enforcement" whose official duties authorize then to arrest or prosecute offenders. Apparently, they are peace officers and public prosecutors since the nonfeasance refers to "arresting or prosecuting." *But this crime arises only when the offender whom such public officer refrains from arresting or prosecuting, has committed a crime punishable by reclusion perpetua and/or death.* If the crime were punishable by a lower penalty, then such nonfeasance by the public officer would amount to direct bribery, not qualified bribery.

If the crime was qualified bribery, the dereliction of the duty punished under Article 208 of the Revised Penal Code should be absorbed because said article punishes the public officer who "maliciously refrains from instituting prosecution for the punishment of violators of the law or shall tolerate the commission of offenses". The dereliction of duty referred to is necessarily included in the crime of qualified bribery.

On the other hand, if the crime was direct bribery under Article 210 of the Revised Penal Code, the public officer involved should be prosecuted also for the dereliction of duty, which is a crime under Article 208 of the Revised Penal Code, because the latter is not absorbed by the crime of direct bribery. This is because in direct bribery, where the public officer agreed to perform an act constituting a crime in connection with the performance of his official duties, Article 210 expressly provides that the liabilty thereunder shall be "in addition to the penalty corresponding to the crime agreed upon, if the crime shall have been committed.

Illustration:

A fiscal, for a sum of money, refrains from prosecuting a person charged before him. If the penalty for the crime involved is reclusion perpetua, the fiscal commits qualified bribery. If the crime is punishable by a penalty lower than reclusion perpetua, the crime is direct bribery.

In the latter situation, three crimes are committed: direct bribery and dereliction of duty on the part of the fiscal; and corruption of a public officer by the giver.

f. Article 209. Betrayal of Trust by An Attorney or Solicitor – Revelation of Secrets

Acts punished

1. Causing damage to his client, either—
   a. By any malicious breach of professional duty;
   b. By inexcusable negligence or ignorance.

   Note: When the attorney acts with malicious abuse of his employment or inexcusable negligence or ignorance, there must be damage to his client.

2. Revealing any of the secrets of his client learned by him in his professional capacity (damage is not necessary);

3. Undertaking the defense of the opposing party in the same case, without the consent of his first client, after having undertaken the defense of said first client of after having received confidential information from said client.

Under the rules on evidence, communications made with prospective clients to a lawyer with a view to engaging his professional services are already privileged even though the client-lawyer relationship did not eventually materialize.

Therefore, if the lawyer would reveal the same or otherwise accept a case from the adverse party, he would already be violating Article 209. Mere malicious breach without damage is not violative of Article 209; at most he will be liable administratively as a lawyer, e.g., suspension or disbarment under the Code of Professional Responsibility.

Illustration:

B, who is involved in the crime of seduction wanted A, an attorney at law, to handle his case. A received confidential information from B. However, B cannot pay the professional fee of A. C, the offended party, came to A also and the same was accepted.

A did not commit the crime under Article 209, although the lawyer's act may be considered unethical. The client-lawyer relationship between A and B was not yet established.

However, if A would reveal the confidential matter learned by him from B, then Article 209 is violated because it is enough that such confidential matters were communicated to him in his professional capacity, or it was made to him with a view to engaging his professional services.

Here, matters that are considered confidential must have been said to the lawyer with the view of engaging his services. Otherwise, the communication shall not be considered privileged and no trust is violated.

Illustration:

A went to B, a lawyer/notary public, to have a document notarized. A narrated to B the detail of the criminal case. If B will disclose what was narrated to him there is no betrayal of trust since B is acting as a notary public and not as a counsel. The lawyer must have learned the confidential matter in his professional capacity.

Several acts which would make a lawyer criminally liable:

(1) Maliciously causing damage to his client through a breach of his professional duty. The breach of professional duty must be malicious. If it is just incidental, it would not give rise to criminal liability, although it may be the subject of administrative discipline;

(2) Through gross ignorance, causing damage to the client;

(3) Inexcusable negligence;

(4) Revelation of secrets learned in his professional capacity;

(5) Undertaking the defense of the opposite party in a case without the consent of the first client whose defense has already been undertaken.

Note that only numbers 1, 2 and 3 must approximate malice.

Under the circumstances, it is necessary that the confidential matters or information was confided to the lawyer in the latter's professional capacity.

It is not the duty of the lawyer to give advice on the commission of a future crime. It is, therefore, not privileged in character. The lawyer is not bound by the mandate of privilege if he reports such commission of a future crime. It is only confidential information relating to crimes already committed that are covered by the crime of betrayal of trust if the lawyer should undertake the case of opposing party or otherwise divulge confidential information of a client.

Under the law on evidence on privileged communication, it is not only the lawyer who is protected by the matter of privilege but also the office staff like the secretary.

The nominal liability under this article may be constituted either from breach of professional duties in the handling of the case or it may arise out of the confidential relation between the lawyer and the client.

Breach of professional duty

Tardiness in the prosecution of the case for which reason the case was dismissed for being non-prosecuted; or tardiness on the part of the defense counsel leading to declaration of default and adverse judgment.

If the prosecutor was tardy and the case was dismissed as non-prosecuted, but he filed a motion for consideration which was granted, and the case was continued, the lawyer is not liable, because the client did not suffer damage.

If lawyer was neglectful in filing an answer, and his client declared in default, and there was an adverse judgment, the client suffered damages. The lawyer is liable.

Breach of confidential relation

Revealing information obtained or taking advantage thereof by accepting the engagement with the adverse party. There is no need to prove that the client suffered damages. The mere breach of confidential relation is punishable.

In a conjugal case, if the lawyer disclosed the confidential information to other people, he would be criminally liable even though the client did not suffer any damage.

2. BRIBERY

a. ARTICLE 210. DIRECT BRIBERY

Acts punished
1. Agreeing to perform, or performing, in consideration of any offer, promise, gift or present – an act constituting a crime, in connection with the performance of his official duties;
2. Accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty;
3. Agreeing to refrain, or by refraining, from doing something which it is his official duty to do, in consideration of gift or promise.

Elements
1. Offender is a public officer within the scope of Article 203;
2. Offender accepts an offer or a promise or receives a gift or present by himself or through another;
3. Such offer or promise be accepted, or gift or present received by the public officer –
   a. With a view to committing some crime; or
   b. In consideration of the execution of an act which does not constitute a crime, but the act must be unjust; or

c. To refrain from doing something which it is his official duty to do.

4. The act which offender agrees to perform or which he executes be connected with the performance of his official duties.

There exists an agreement between public officer and giver.

It is a common notion that when you talk of bribery, you refer to the one corrupting the public officer. Invariably, the act refers to the giver, but this is wrong. Bribery refers to the act of the receiver and the act of the giver is corruption of public official.

Distinction between direct bribery and indirect bribery

Bribery is direct when a public officer is called upon to perform or refrain from performing an official act in exchange for the gift, present or consideration given to him.

If he simply accepts a gift or present given to him by reason of his public position, the crime is indirect bribery. Bear in mind that the gift is given "by reason of his office", not "in consideration" thereof. So never use the term "consideration." The public officer in Indirect bribery is not to perform any official act.

Note however that what may begin as an indirect bribery may actually ripen into direct bribery.

Illustration:

Without any understanding with the public officer, a taxi operator gave an expensive suiting material to a BLT registrar. Upon receipt by the BLT registrar of his valuable suiting material, he asked who the giver was. He found out that he is a taxi operator. As far as the giver is concerned, he is giving this by reason of the office or position of the public officer involved. It is just indirect bribery

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If the BLT registrar calls up his subordinates and said to take care of the taxis of the taxi operator so much so that the registration of the taxis is facilitated ahead of the others, what originally would have been indirect bribery becomes direct bribery.

In direct bribery, consider whether the official act, which the public officer agreed to do, is a crime or not.

If it will amount to a crime, it is not necessary that the corruptor should deliver the consideration or the doing of the act. The moment there is a meeting of the minds, even without the delivery of the consideration, even without the public officer performing the act amounting to a crime, bribery is already committed on the part of the public officer. Corruption is already committed on the part of the supposed giver. The reason is that the agreement is a conspiracy involving the duty of a public officer. The mere agreement is a felony already.

If the public officer commits the act which constitutes the crime, he, as well as the corruptor shall be liable also for that other crime as principals by direct participation and inducement, respectively.

Illustrations:

(1) If the corruptor offers a consideration to a custodian of a public record to remove certain files, the mere agreement, without delivery of the consideration, brings about the crime of direct bribery and corruption of public official.

(2) A party litigant approached the court's stenographer and proposed the idea of altering the transcript of stenographic notes. The court stenographer agreed and he demanded P 2,000.00.

Unknown to them, there were law enforcers who already had a tip that the court stenographer had been doing this before. So they were waiting for the chance to entrap him. They were apprehended and they said they have not done anything yet.

Under Article 210, the mere agreement to commit the act, which amounts to a crime, is already bribery. That stenographer becomes liable already for consummated crime of bribery and the party who agreed to give that money is already liable for consummated corruption, even though not a single centavo is delivered yet and even though the stenographer had not yet made the alterations.

If he changed the transcript, another crime is committed: falsification.

The same criterion will apply with respect to a public officer who agrees to refrain from performing his official duties. If the refraining would give rise to a crime, such as refraining to prosecute an offender, the mere agreement to do so will consummate the bribery and the corruption, even if no money was delivered to him. If the refraining is not a crime, it would only amount to bribery if the consideration be delivered to him.

If it is not a crime, the consideration must be delivered by the corruptor before a public officer can be prosecuted for bribery. Mere agreement, is not enough to constitute the crime because the act to be done in the first place is legitimate or in the performance of the official duties of the public official.

The idea of the law here is that he is being paid salary for being there. He is not supposed to demand additional compensation from the public before performing his public service. The prohibition will apply only when the money is delivered to him, or if he performs what he is supposed to perform in anticipation of being paid the money.

Here, the bribery will only arise when there is already the acceptance of the consideration because the act to be done is not a crime. So, without the acceptance, the crime is not committed.

The crime of bribery has no frustrated stage. If one

party does not concur, then there is no agreement and not all the acts necessary to commit the crime were present.

Illustrations:

(1) If the public official accepted the corrupt consideration and turned it over to his superior as evidence of the corruption, the offense is attempted corruption only and not frustrated. The official did not agree to be corrupted.

If the public officer did not report the same to his superior and actually accepted it, he allowed himself to be corrupted. The corruptor becomes liable for consummated corruption of public official. The public officer also becomes equally liable for consummated bribery.

(2) If a public official demanded something from a taxpayer who pretended to agree and use marked money with the knowledge of the police, the crime of the public official is attempted bribery. The reason is that because the giver has no intention to corrupt her and therefore, he could not perform all the acts of execution.

Be sure that what is involved is a crime of bribery, not extortion. If it were extortion, the crime is not bribery, but robbery. The one who yielded to the demand does not commit corruption of a public officer because it was involuntary.

b. Article 211. Indirect Bribery

Elements
1. Offender is a public officer;
2. He accepts gifts;
3. The gifts are offered to him by reason of his office.

The public official does not undertake to perform an act or abstain from doing an official duty from what he received. Instead, the official simply receives or accepts gifts or presents delivered to him with no other reason except his office or public position. This is always in the consummated stage. There is no attempted much less frustrated stage in indirect bribery.

The Supreme Court has laid down the rule that for indirect bribery to be committed, the public officer must have performed an act of appropriating of the gift for himself, his family or employees. It is the act of appropriating that signifies acceptance. Merely delivering the gift to the public officer does not bring about the crime. Otherwise it would be very easy to remove a public officer: just deliver a gift to him.

c. Article 211-A. Qualified Bribery

Elements
1. Offender is a public officer entrusted with law enforcement;
2. He refrains from arresting or prosecuting an offender who has committed a crime;
3. Offender has committed a crime punishable by reclusion perpetua and/or death;
4. Offender refrains from arresting or prosecuting in consideration of any offer, promise, gift, or present.

Note that the penalty is qualified if the public officer is the one who asks or demands such present.

d. Corruption of Public Officials (212)

i. Article 212. Corruption of Public Officials

Elements
1. Offender makes offers or promises or gives gifts or presents to a public officer;
2. The offers or promises are made or the gifts or presents given to a public officer, under circumstances that will make the public officer liable for direct bribery or indirect bribery.

The offender is the fiver of gifts or offeror of promise

ii. Presidential Decree No. 749

The decree grants immunity from prosecution to a private person or public officer who shall voluntarily give information and testify in a case of bribery or in a case involving a violation of the Anti-graft and Corrupt Practices Act.

It provides immunity to the bribe-giver provided he does two things:

(1) he voluntarily discloses the transaction he had with the public officer constituting direct or indirect bribery, or any other corrupt transaction;
(2) He must willingly testify against the public officer involved in the case to be filed against the latter.

Before the bribe-giver may be dropped from the information, he has to be charged first with the receiver. Before trial, prosecutor may move for dropping bribe-giver from information and be granted immunity. But first, five conditions have to be met:

(1) Information must refer to consummated bribery;

(2) Information is necessary for the proper conviction of the public officer involved;

(3) That the information or testimony to be given is not yet in the possession of the government or known to the government;

(4) That the information can be corroborated in its material points;

(5) That the information has not been convicted previously for any crime involving moral turpitude.

These conditions are analogous to the conditions under the State Witness Rule under Criminal Procedure.

The immunity granted the bribe-giver is limited only to the illegal transaction where the informant gave voluntarily the testimony. If there were other transactions where the informant also participated, he is not immune from prosecution. The immunity in one transaction does not extend to other transactions.

The immunity shall not attach when it turns out that the information given is false and malicious, for the purposes of harassing the officer. The public officer in this even is entitled to the appropriate action against the informant.

iii. REPUBLIC ACT NO. 7080 (PLUNDER)

This crime somehow modified certain crimes in the Revised Penal Code insofar as the overt acts by which a public officer amasses, acquires, or accumulates ill-gotten wealth are felonies under the Revised Penal Code like bribery, fraud against the public treasury, other frauds, malversation, when the ill-gotten wealth amounts to a total value of P50,000,000.00. The amount was reduced from P75,000,000.00 by Republic Act No. 7659.

Short of the amount, plunder does not arise. Any amount less than P50,000,000.00 is a violation of the Revised Penal Code or the Anti-Graft and Corrupt Practices Act (RA 3019).

Under the law on plunder, the prescriptive period is 20 years commencing from the time of the last overt act.

A public officer commits plunder by amassing ill-gotten wealth through a combination or series of overt acts:

(1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

(2) by receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project by reason of the office or position of the public officer;

(3) By illegal or fraudulent conveyance or disposition of asset belonging to the national government or any of its subdivisions, agencies or instrumentalities or government-owned or controlled corporations and their subsidiaries;

(4) By obtaining, receiving, or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business or undertaking;

(5) By establishing agricultural, industrial, or commercial monopolies or other combinations and/or implementations of decrees and orders intended to benefit particular persons or special interests; or

(6) By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people, and the Republic of the Philippines.

Act No. 7080 provides that "in the imposition of penalties, the degree of participation and the attendance of mitigating and aggravating circumstances shall be considered by the court".

Any ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stock derived from the deposit or investment shall be forfeited in favor of the state.

It shall not be necessary to prove each and every criminal act done by the accused in furtherance of the scheme or conspiracy to amass, accumulate or acquire ill-gotten wealth. It is sufficient to establish beyond reasonable doubt a pattern of overt or criminal acts indicative of the overall unlawful scheme or conspiracy.

In **Estrada vs. Sandiganbayan**, Nov. 19, 2001, the plunder law was found constitutional. The void-for-vagueness challenge does not apply even though the term "combination or series" was not defined. There is no constitutional command that Congress must define every word it uses. The rules of evidence are not lowered since it is procedural. Plunder is a malum in se which requires proof of criminal intent.

iv. REPUBLIC ACT NO. 3019 (ANTI-GRAFT AND CORRUPT PRACTICES ACT)

Acts Punished (Sec. 3):

1. Persuading, inducing, or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by a competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense;

2. Directly or Indirectly requesting or receiving and gift, present, share, percentage or benefit, for himself or for any other person in connection with any other contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law;

3. Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section Thirteen of this Act;

4. Accepting or having any member of his family accept employment in a private enterprise which has pending business with him during the pendency thereof or within one year after his termination;

5. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;

6. Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party;

7. Entering, on behalf of the government, into a contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;

8. Directly or indirectly having financial or pecuniary interest in any business, contract, or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;

9. Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong;

10. Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege, or advantage, or of a mere representative or dummy of one who is not so qualified or entitled;

11. Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized date.

Illustration:

A court secretary received P500 .00 from a litigant to set a motion for an early hearing. This is direct bribery even if the act to be performed is within his official duty so long as he received a consideration therefor.

If the secretary persuaded the judge to make a favorable resolution, even if the judge did not do so, this constitutes a violation of RA, under 3(a).

Under the Anti-Graft and Corrupt Practices Act, particularly Section 3, there are several acts defined as corrupt practices. Some of them are mere repetitions of the act already penalized under the Revised Penal Code, like prohibited transactions under Article 215 and 216. In such a case, the act or omission remains to be mala in se.

But there are acts penalized under the Anti-Graft and Corrupt Practices Act which are not penalized under the Revised Penal Code. Those acts may be considered as mala prohibita. Therefore, good faith is not a defense.

Illustration:

Section 3 (e) of the Anti-Graft and Corrupt Practices Act – causing undue injury to the government or a private party by giving unwarranted benefit to the party whom does not deserve the same. This is the broadest act in the list.

In this case, good faith is not a defense because it is in the nature of a malum prohibitum. Criminal intent on the part of the offender is not required. It is enough that he performed the prohibited act voluntarily. Even though the prohibited act may have benefited the government. The crime is still committed because the law is not after the effect of the act as long as the act is prohibited.

Section 3 (g) of the Anti-Graft and Corrupt Practices Act – where a public officer entered into a contract for the government which is manifestly disadvantageous to the government even if he did not profit from the transaction, a violation of the Anti-Graft and Corrupt Practices Act is committed.

If a public officer, with his office and a private enterprise had a transaction and he allows a relative or member of his family to accept employment in that enterprise, good faith is not a defense because it is a malum prohibitum. It is enough that that the act was performed.

Where the public officer is a member of the board, panel or group who is to act on an application of a contract and the act involved one of discretion, any public officer who is a member of that board, panel or group, even though he voted against the approval of the application, as long as he has an interest in that business enterprise whose application is pending before that board, panel or group, the public officer concerned shall be liable for violation of the Anti-Graft and Corrupt Practices Act. His only course of action to avoid prosecution under the Anti-graft and Corrupt Practices Act is to sell his interest in the enterprise which has filed an application before that board, panel or group where he is a member. Or

otherwise, he should resign from his public position.

Illustration:

Sen. Dominador Aytono had an interest in the Iligan Steel Mills, which at that time was being subject of an investigation by the Senate Committee of which he was a chairman. He was threatened with prosecution under Republic Act No. 3019 so he was compelled to sell all his interest in that steel mill; there is no defense. Because the law says so, even if he voted against it, he commits a violation thereof.

Under the Anti-Graft and Corrupt Practices Act, the public officer who is accused should not be automatically suspended upon the filing of the information in court. It is the court which will order the suspension of the public officer and not the superior of that public officer. As long as the court has not ordered the suspension of the public officer involved, the superior of that public officer is not authorized to order the suspension simply because of the violation of the Anti-Graft and Corrupt Practices Act. The court will not order the suspension of the public officer without first passing upon the validity of the information filed in court. Without a hearing, the suspension would be null and void for being violative of due process.

No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under RA 3019 or under the provision of the RPC on bribery.

v. Republic Act No. 1379 (Forfeiture of Ill-gotten Wealth)

Correlate with RA 1379 -- properly under Remedial Law. This provides the procedure for forfeiture of the ill-gotten wealth in violation of the Anti-Graft and Corrupt Practices Act. The proceedings are civil and not criminal in nature.

Any taxpayer having knowledge that a public officer has amassed wealth out of proportion to this legitimate income, arising to the presumption of unlawful acquisition, may file a complaint with the prosecutor's office of the place where the public officer resides or holds office. The prosecutor conducts a preliminary investigation just like in a criminal case and he will forward his findings to the office of the Solicitor General. The Solicitor General will determine whether there is reasonable ground to believe that the respondent has accumulated an unexplained wealth.

If the Solicitor General finds probable cause, he would file a petition requesting the court to issue a writ commanding the respondent to show cause why the ill-gotten wealth described in the petition should not be forfeited in favor of the government. This is covered by the Rules on Civil Procedure. The respondent is given 15 days to answer the petition. Thereafter trial would proceed. Judgment is rendered and appeal is just like in a civil case. Remember that this is not a criminal proceeding. The basic difference is that the preliminary investigation is conducted by the prosecutor.

vi. Presidential Decree No. 46

Presidential Decree No. 46 prohibits giving and acceptance of gifts by a public officer or to a public officer, even during anniversary, or when there is an occasion like Christmas, New Year, or any gift-giving anniversary. The Presidential Decree punishes both receiver and giver.

The giving of parties by reason of the promotion of a public official is considered a crime even though it may call for a celebration. The giving of a party is not limited to the public officer only but also to any member of his family.

3. FRAUDS AND ILLEGAL EXACTIONS AND TRANSACTIONS

a. Article 213. Frauds Against the Public Treasury and Similar Offenses

Acts Punished

1. Entering into an agreement with any interested party or speculator or making use of any other scheme, to defraud the government, in dealing with any person with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds;

2. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law, in collection of taxes, licenses, fees, and other imposts;

3. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially, in the collection of taxes, licenses, fees and other imposts;

4. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law, in the collection of taxes, licenses, fees and other imposts.

Elements of frauds against public treasury under paragraph 1

1. Offender is a public officer;
2. He has taken advantage of his office, that is, he intervened in the transaction in his official capacity;
3. He entered into an agreement with any interested party or speculator or made use of any other scheme with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds;
4. He had intent to defraud the government.

The essence of this crime is making the government pay for something not received or making it pay more than what is due. It is also committed by

refunding more than the amount which should properly be refunded. This occurs usually in cases where a public officer whose official duty is to procure supplies for the government or enter into contract for government transactions, connives with the said supplier with the intention to defraud the government. Also when certain supplies for the government are purchased for the high price but its quantity or quality is low.

For Par. 1, It is not necessary that the govt is actually defrauded by reason of the transaction. It is sufficient that the public officer who acted in his official capacity had the intent to defraud the govt.

Not all frauds will constitute this crime. There must be no fixed allocation or amount on the matter acted upon by the public officer.

Example, if there is a fixed outlay of P20,000.00 for the lighting apparatus needed and the public officer connived with the seller so that although allocation was made a lesser number was asked to be delivered, or of an inferior quality, or secondhand. In this case there is no fraud against the public treasury because there is a fixed allocation. The fraud is in the implementation of procurement. That would constitute the crime of "other fraud" in Article 214, which is in the nature of swindling or estafa.

Be sure to determine whether fraud is against public treasury or one under Article 214.

Government Procurement Reform Act of 2003 (RA 9184) imposes penal sanctions on government officials and employees, without prejudice to prosecution under RA 3019, who committed any of the following:

1. Opening sealed bids for government contracts;
2. Unjustly delaying screening, opening and evaluation of bids as well as awarding of contracts;
3. Unduly using influence or pressure on any member of the BAC or the government procuring entity to favor a particular bidder;
4. Splitting contracts which exceed procedural purchase limits and competitive bidding as to an agency head, gravely abusing discretion to favor a bidder closely related to him/her.

Elements of illegal exactions under par. 2

1. Offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts;
2. He is guilty of any of the following acts or omissions:
   a. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law; or
   b. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; or
   c. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

This can only be committed principally by a public officer whose official duty is to collect taxes, license fees, import duties and other dues payable to the government. Not any public officer can commit this crime. Otherwise, it is estafa.

Fixers cannot commit this crime unless he conspires with the public officer authorized to make the collection.

Also, public officers with such functions but are in the service of the Bureau of Internal Revenue and the Bureau of Customs are not to be prosecuted under the Revised Penal Code but under the Revised Administrative Code. These officers are authorized to make impositions and to enter into compromises. Because of this discretion, their demanding or collecting different from what is necessary is legal.

This provision of the Revised Penal Code was provided before the Bureau of Internal Revenue and the Tariff and Customs Code. Now, we have specific Code which will apply to them. In the absence of any provision applicable, the Revised Administrative Code will apply.

The essence of the crime is not misappropriation of any of the amounts but the improper making of the collection which would prejudice the accounting of collected amounts by the government.

On the first form of illegal exaction

In this form, mere demand will consummate the crime, even if the taxpayer shall refuse to come across with the amount being demanded. That will not affect the consummation of the crime.

Note that this is often committed with malversation or estafa because when a public officer shall demand an amount different from what the law provides, it can be expected that such public officer will not turn over his collection to the government.

Illustrations:

(1) A taxpayer goes to the local municipal treasurer to pay real estate taxes on his land. Actually, what is due the government is P400.00 only but the municipal treasurer demanded P500.00. By that demand alone, the crime of illegal exaction is already committed even though the taxpayer does not pay the P500.00.

(2) Suppose the taxpayer came across with P500.00. But the municipal treasurer, thinking that he would abstract the P100.00, issued a receipt for only P400.00. The taxpayer would naturally ask the municipal treasurer why the receipt was only for P400.00. The treasurer answered that the P100.00 is supposed to be for documentary stamps. The taxpayer left.

He has a receipt for P400.00. The municipal treasurer turned over to the government coffers P400.00 because that is due the government and pocketed the P100.00.

The mere fact that there was a demand for an amount different from what is due the government, the public officer already

committed the crime of illegal exaction.

On the P100.00 which the public officer pocketed, will it be malversation or estafa?

In the example given, the public officer did not include in the official receipt the P100.00 and, therefore, it did not become part of the public funds. It remained to be private. It is the taxpayer who has been defrauded of his P100.00 because he can never claim a refund from the government for excess payment since the receipt issued to him was only P400.00 which is due the government. As far as the P100.00 is concerned, the crime committed is estafa.

(3) A taxpayer pays his taxes. What is due the government is P400.00 and the public officer issues a receipt for P500.00 upon payment of the taxpayer of said amount demanded by the public officer involved. But he altered the duplicate to reflect only P400.00 and he extracted the difference of P100.00.

In this case, the entire P500.00 was covered by an official receipt. That act of covering the whole amount received from the taxpayer in an official receipt will have the characteristics of becoming a part of the public funds. The crimes committed, therefore, are the following:

(a) Illegal exaction – for collecting more than he is authorized to collect. The mere act of demanding is enough to constitute this crime.
(b) Falsification – because there was an alteration of official document
(c) Malversation – The entire P500.00 was covered by the receipt, therefore, the whole amount became public funds.

Illegal exaction may be complexed with malversation if illegal exaction is a necessary means to be able to collect the P100.00 excess which was malversed.

In this crime, pay attention to whether the offender is the one charged with the collection of the tax, license or impost subject of the misappropriation. If he is not the one authorized by disposition to do the collection, the crime of illegal exaction is not committed.

If it did not give rise to the crime of illegal exaction, the funds collected may not have become part of the public funds. If it had not become part of the public funds, or had not become impressed with being part of the public funds, it cannot be the subject of malversation. It will give rise to estafa or theft as the case may be.

(4) The Municipal Treasurer demanded P500.00 when only P400.00 was due. He issued the receipt at P400.00 and explained to taxpayer that the P100 was for documentary stamps. The Municipal Treasurer placed the entire P500.00 in the vault of the office. When he needed money, he took the P100.00 and spent it.

The following crimes were committed:

(a) Illegal exaction – for demanding a different amount;
(b) Estafa – for deceiving the taxpayer; and
(c) Malversation – for getting the P100.00 from the vault.

Although the excess P100.00 was not covered by the Official Receipt, it was commingled with the other public funds in the vault; hence, it became part of public funds and subsequent extraction thereof constitutes malversation.

Note that numbers 1 and 2 are complexed as illegal exaction with estafa, while in number 3, malversation is a distinct offense.

The issuance of the Official Receipt is the operative fact to convert the payment into public funds. The payor may demand a refund by virtue of the Official Receipt.

In cases where the payor decides to let the official to "keep the change", if the latter should pocket the excess, he shall be liable for malversation. The official has no right but the government, under the principle of accretion, as the owner of the bigger amount becomes the owner of the whole.

<u>On the second form of illegal exaction</u>

The act of receiving payment due the government without issuing a receipt will give rise to illegal exaction even though a provisional receipt has been issued. What the law requires is a receipt in the form prescribed by law, which means official receipt.

<u>Illustration:</u>

If a government cashier or officer to whom payment is made issued a receipt in his own private form, which he calls provisional, even though he has no intention of misappropriating the amount received by him, the mere fact that he issued a receipt not in the form prescribed by law, the crime of illegal exaction is committed. There must be voluntary failure to issue the Official Receipt.

<u>On the third form of illegal exaction</u>

Under the rules and regulations of the government, payment of checks not belonging to the taxpayer, but that of checks of other persons, should not be accepted to settle the obligation of that person.

<u>Illustration:</u>

A taxpayer pays his obligation with a check not his own but pertaining to another. Because of that, the check bounced later on.

The crime committed is illegal exaction because the payment by check is not allowed if the check does not pertain to the taxpayer himself, unless the check is a manager's check or a certified check, amended already as of 1990. (See the case of Roman Catholic.)

Under Article 213, if any of these acts penalized as illegal exaction is committed by those employed in

the Bureau of Customs or Bureau of Internal Revenue, the law that will apply to them will be the Revised Administrative Code or the Tariff and Customs Code or National Revenue Code.

This crime does not require damage to the government.

b. Article 214. Other Frauds

Elements
1. Offender is a public officer;
2. He takes advantage of his official position;
3. He commits any of the frauds or deceits enumerated in Article 315 to 318.

c. Article 215. Prohibited Transactions

Elements
1. Offender is an appointive public officer;
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation;
3. The transaction takes place within the territory subject to his jurisdiction;
4. He becomes interested in the transaction during his incumbency.

The offender may also be held liable under RA 3019 Sec 3(i)

d. Article 216. Possession of Prohibited Interest By A Public Officer

Persons liable
1. Public officer who, directly or indirectly, became interested in any contracts or business in which it was his official duty to intervene;
2. Experts, arbitrators, and private accountants who, in like manner, took part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they had acted;
3. Guardians and executors with respect to the property belonging to their wards or the estate.

The basis here is the possibility that fraud may be committed or that the officer may place his own interest above that of the government or party he represents.

Fraud is not necessary. Intervention must be by virtue of the public office held.

Section 14, Article VI of the Constitution

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit or where he may be called upon to act on account of his office.

Section 13, Article VII of the Constitution

The President, Vice-President, the Members of the Cabinet and their deputies or assistant shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

Section 2, Article IX-A of the Constitution

No member of a Constitutional Commission shall, during his tenure, hold any office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

4. MALVERSATION

a. Public Funds or Property

i. Article 217. Malversation of Public Funds or Property – Presumption of Malversation

Acts punished
1. Appropriating public funds or property;
2. Taking or misappropriating the same;
3. Consenting, or through abandonment or negligence, permitting any other person to take such public funds or property; and
4. Being otherwise guilty of the misappropriation or malversation of such funds or property.

Elements common to all acts of malversation under Article 217
1. Offender is a public officer;
2. He had the custody or control of funds or property by reason of the duties of his office;
3. Those funds or property were public funds or property for which he was accountable;
4. He appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

This crime is predicated on the relationship of the offender to the property or funds involved. The offender must be accountable for the property misappropriated. If the fund or property, though public in character is the responsibility of another officer, malversation is not committed unless there is conspiracy.

It is not necessary that the offender profited because somebody else may have misappropriated the funds in question for as long as the accountable officer was remiss in his duty of safekeeping public funds or property. He is liable for malversation if such funds were lost or otherwise misappropriated by another.

The failure of a public officer to have duly forthcoming any funds or property which he is chargeable, upon demand by any duly authorized officer, shall be prima facie evidence that he has put such missing funds or property to personal use.

The crime is malversation whether committed deliberately or negligently. This is one crime in the Revised Penal Code where the penalty is the same whether committed with dolo or culpa.

The return of the funds malversed is only a mitigating circumstance, not an exempting circumstance.

The offender, to commit malversation, must be accountable for the funds or property misappropriated by him. If he is not the one accountable but somebody else, the crime committed is theft. It will be qualified theft if there is abuse of confidence.

Illustration:

If a sheriff levied the property of the defendants and absconded with it, he is not liable of qualified theft but of malversation even though the property belonged to a private person. The seizure of the property or fund impressed it with the character of being part of the public funds it being in custodia legis. For as long as the public officer is the one accountable for the fund or property that was misappropriated, he can be liable for the crime of malversation. Absent such relation, the crime could be theft, simple or qualified.

A private person may also commit malversation under the following situations:

(1) Conspiracy with a public officer in committing malversation;

(2) When he has become an accomplice or accessory to a public officer who commits malversation;

(3) When the private person is made the custodian in whatever capacity of public funds or property, whether belonging to national or local government, and he misappropriates the same;

(4) When he is constituted as the depositary or administrator of funds or property seized or attached by public authority even though said funds or property belong to a private individual.

Illustration:

Municipal treasurer connives with outsiders to make it appear that the office of the treasurer was robbed. He worked overtime and the co-conspirators barged in, hog-tied the treasurer and made it appear that there was a robbery. Crime committed is malversation because the municipal treasurer was an accountable officer.

Note that damage on the part of the government is not considered an essential element. It is enough that the proprietary rights of the government over the funds have been disturbed through breach of trust.

It is not necessary that the accountable public officer should actually misappropriate the fund or property involved. It is enough that he has violated the trust reposed on him in connection with the property.

Illustration:

(1) It is a common practice of government cashiers to change the checks of their friends with cash in their custody, sometimes at a discount. The public officer knows that the check is good because the issuer thereof is a man of name. So he changed the same with cash. The check turned out to be good.

With that act of changing the cash of the government with the check of a private person, even though the check is good, malversation is committed. The reason is that a check is cleared only after three days. During that period of three days, the government is being denied the use of the public fund. With more reason if that check bounce because the government suffers.

(2) An accountable public officer, out of laziness, declares that the payment was made to him after he had cleaned his table and locked his safe for the collection of the day. A taxpayer came and he insisted that he pay the amount so that he will not return the next day. So he accepted the payment but is too lazy to open the combination of the public safe. He just pocketed the money. When he came home, the money was still in his pocket. The next day, when he went back to the office, he changed clothes and he claims that he forgot to put the money in the new funds that he would collect the next day. Government auditors came and subjected him to inspection. He was found short of that amount. He claimed that it is in his house -- with that alone, he was charged with malversation and was convicted.

Any excess in the collection of an accountable public officer should not be extracted by him once it is commingled with the public funds.

Illustration:

When taxpayers pay their accountabilities to the

government by way of taxes or licenses like registration of motor vehicles, the taxpayer does not bother to collect loose change. So the government cashier accumulates the loose change until this amounts to a sizable sum. In order to avoid malversation, the cashier did not separate what is due the government which was left to her by way of loose change. Instead, he gets all of these and keeps it in the public vault/safe. After the payment of the taxes and licenses is through, he gets all the official receipts and takes the sum total of the payment. He then opens the public vault and counts the cash. Whatever will be the excess or the overage, he gets. In this case, malversation is committed.

Note that the moment any money is commingled with the public fund even if not due the government, it becomes impressed with the characteristic of being part of public funds. Once they are commingled, you do not know anymore which belong to the government and which belong to the private persons. So that a public vault or safe should not be used to hold any fund other that what is due to the government.

When does presumption of misappropriation arise?

When a demand is made upon an accountable officer and he cannot produce the fund or property involved, there is a prima facie presumption that he had converted the same to his own use. There must be indubitable proof that thing unaccounted for exists. Audit should be made to determine if there was shortage. Audit must be complete and trustworthy. If there is doubt, presumption does not arise.

Presumption arises only if at the time the demand to produce the public funds was made, the accountability of the accused is already determined and liquidated. A demand upon the accused to produce the funds in his possession and a failure on his part to produce the same will not bring about this presumption unless and until the amount of his accountability is already known.

In **De Guzman v. People,** 119 SCRA 337, it was held that in malversation, all that is necessary to prove is that the defendant received in his possession the public funds and that he could not account for them and that he could not give a reasonable excuse for their disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is the shortage in the accounts which he has not been able to explain satisfactorily.

In **Quizo v. Sandiganbayan,** the accused incurred shortage (P1.74) mainly because the auditor disallowed certain cash advances the accused granted to employees. But on the same date that the audit was made, he partly reimbursed the amount and paid it in full three days later. The Supreme Court considered the circumstances as negative of criminal intent. The cash advances were made in good faith and out of good will to co-employees which was a practice tolerated in the office. The actual cash shortage was only P1.74 and together with the disallowed advances were fully reimbursed within a reasonable time. There was no negligence, malice, nor intent to defraud.

In **Ciamfranca Jr. v. Sandiganbayan,** it was held that the return of the funds or property is not a defense and does not extinguish criminal liability.

Technical malversation is not included in the crime of malversation. In malversation, the offender misappropriates public funds or property for his own personal use, or allows any other person to take such funds or property for the latter's own personal use. In technical malversation, the public officer applies the public funds or property under his administration to another public use different from that for which the public fund was appropriated by law or ordinance. Recourse: File the proper information.

b. Failure to Render Accounts (218-221)

i. Article 218. Failure of Accountable Officer to Render Accounts

Elements
1. Offender is public officer, whether in the service or separated therefrom by resignation or any other cause;
2. He is an accountable officer for public funds or property;
3. He is required by law or regulation to render account to the Commission on Audit, or to a provincial auditor;
4. He fails to do so for a period of two months after such accounts should be rendered.

Demand for accounting is not necessary. It is also not essential that there be misappropriation because if present, the crime would be malversation.

ii. Article 219. Failure of A Responsible Public Officer to Render Accounts before Leaving the Country

Elements
1. Offender is a public officer;
2. He is an accountable officer for public funds or property;
3. He unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Commission on Audit showing that his accounts have been finally settled.

When an accountable officer leaves the country without first settling his accountability or otherwise securing a clearance from the Commission on Audit regarding such accountability, the implication is that he left the country because he has misappropriated the funds under his accountability.

The purpose of the law is to discourage responsible or accountable officers from leaving without first liquidating their accountability. It is not necessary that they really misappropriated public funds.

iii. ARTICLE 220. ILLEGAL USE OF PUBLIC FUNDS OR PROPERTY

Elements
1. Offender is a public officer;
2. There are public funds or property under his administration;
3. Such fund or property were appropriated by law or ordinance;
4. He applies such public fund or property to any public use other than for which it was appropriated for.

Illegal use of public funds or property is also known as technical malversation. The term technical malversation is used because in this crime, the fund or property involved is already appropriated or earmarked for a certain public purpose.

The offender is entrusted with such fund or property only to administer or apply the same to the public purpose for which it was appropriated by law or ordinance. Instead of applying it to the public purpose to which the fund or property was already appropriated by law, the public officer applied it to another purpose.

Since damage is not an element of malversation, even though the application made proved to be more beneficial to public interest than the original purpose for which the amount or property was appropriated by law, the public officer involved is still liable for technical malversation.

If public funds were not yet appropriated by law or ordinance, and this was applied to a public purpose by the custodian thereof, the crime is plain and simple malversation, not technical malversation. If the funds had been appropriated for a particular public purpose, but the same was applied to private purpose, the crime committed is simple malversation only.

Illustration:

The office lacked bond papers. What the government cashier did was to send the janitor, get some money from his collection, told the janitor to buy bond paper so that the office will have something to use. The amount involved maybe immaterial but the cashier commits malversation pure and simple.

This crime can also be committed by a private person.

Illustration:

A certain road is to be cemented. Bags of cement were already being unloaded at the side. But then, rain began to fall so the supervisor of the road building went to a certain house with a garage, asked the owner if he could possibly deposit the bags of cement in his garage to prevent the same from being wet. The owner of the house, Olive, agreed. So the bags of cement were transferred to the garage of the private person. After the public officer had left, and the workers had left because it is not possible to do the cementing, the owner of the garage started using some of the cement in paving his own garage. The crime of technical malversation is also committed.

Note that when a private person is constituted as the custodian in whatever capacity, of public funds or property, and he misappropriates the same, the crime of malversation is also committed. See Article 222.

Illustration:

The payroll money for a government infrastructure project on the way to the site of the project, the officers bringing the money were ambushed. They were all wounded. One of them, however, was able to get away from the scene of the ambush until he reached a certain house. He told the occupant of the house to safeguard the amount because it is the payroll money of the government laborers of a particular project. The occupant of the house accepted the money for his own use. The crime is not theft but malversation as long as he knew that what was entrusted in his custody is public fund or property.

iv. ARTICLE 221. FAILURE TO MAKE DELIVERY OF PUBLIC FUNDS OF PROPERTY

Acts punished
1. Failing to make payment by a public officer who is under obligation to make such payment from government funds in his possession;
2. Refusing to make delivery by a public officer who has been ordered by competent authority to deliver any property in his custody or under his administration.

Elements of failure to make payment
1. Public officer has government funds in his possession;
2. He is under obligation to make payment from such funds;
3. He fails to make the payment maliciously.

5. INFIDELITY OF PUBLIC OFFICERS

a. IN THE CUSTODY OF PRISONERS (223-225)

i. ARTICLE 223. CONNIVING WITH OR CONSENTING TO EVASION

Elements
1. Offender is a public officer;
2. He had in his custody or charge a prisoner, either detention prisoner or prisoner by final judgment;

3. Such prisoner escaped from his custody;
4. He was in connivance with the prisoner in the latter's escape.

Classes of prisoners involved
1. If the fugitive has been sentenced by final judgment to any penalty;
2. If the fugitive is held only as detention prisoner for any crime or violation of law or municipal ordinance.

This includes allowing prisoners to sleep and eat in the officer's house or utilizes the prisoner's services for domestic chores.

ii. Article 224. Evasion through Negligence

Elements
1. Offender is a public officer;
2. He is charged with the conveyance or custody of a prisoner or prisoner by final judgment;
3. Such prisoner escapes through negligence.

This covers only positive carelessness, not definite laxity, in that there is no deliberate non-performance of duties.

iii. Article 225. Escape of Prisoner under the Custody of a Person not a Public Officer

Elements
1. Offender is a private person;
2. The conveyance or custody of a prisoner or person under arrest is confided to him;
3. The prisoner or person under arrest escapes;
4. Offender consents to the escape, or that the escape takes place through his negligence.

The crime is infidelity in the custody of prisoners if the offender involved is the custodian of the prisoner.

If the offender who aided or consented to the prisoner's escaping from confinement, whether the prisoner is a convict or a detention prisoner, is not the custodian, the crime is delivering prisoners from jail under Article 156.

The crime of infidelity in the custody of prisoners can be committed only by the custodian of the prisoner.

If the jail guard who allowed the prisoner to escape is already off-duty at that time and he is no longer the custodian of the prisoner, the crime committed by him is delivering prisoners from jail.

Note that you do not apply here the principle of conspiracy. The party who is not the custodian who conspired with the custodian in allowing the prisoner to escape does not commit infidelity in the custody of the prisoner. He commits the crime of delivering prisoners from jail.

The penalty fro private persons liable is one degree lower than that prescribed for public officers liable in 223 and 224.

This crime can be committed also by a private person if the custody of the prisoner has been confided to a private person.

Illustration:

A policeman escorted a prisoner to court. After the court hearing, this policeman was shot at with a view to liberate the prisoner from his custody. The policeman fought the attacker but he was fatally wounded. When he could no longer control the prisoner, he went to a nearby house, talked to the head of the family of that house and asked him if he could give the custody of the prisoner to him. He said yes. After the prisoner was handcuffed in his hands, the policeman expired. Thereafter, the head of the family of that private house asked the prisoner if he could afford to give something so that he would allow him to go. The prisoner said, "Yes, if you would allow me to leave, you can come with me and I will give the money to you." This private persons went with the prisoner and when the money was given, he allowed him to go. What crime/s had been committed?

Under Article 225, the crime can be committed by a private person to whom the custody of a prisoner has been confided.

Where such private person, while performing a private function by virtue of a provision of law, shall accept any consideration or gift for the non-performance of a duty confided to him, Bribery is also committed. So the crime committed by him is infidelity in the custody of prisoners and bribery.

If the crime is delivering prisoners from jail, bribery is just a means, under Article 156, that would call for the imposition of a heavier penalty, but not a separate charge of bribery under Article 156.

But under Article 225 in infidelity, what is basically punished is the breach of trust because the offender is the custodian. For that, the crime is infidelity. If he violates the trust because of some consideration, bribery is also committed.

A higher degree of vigilance is required. Failure to do so will render the custodian liable. The prevailing ruling is against laxity in the handling of prisoners.

In **People vs. Rodillas**, it was held that the public officer was negligent when he gave the female detention prisoner the opportunity to escape by allowing the latter to go to the comfort room with a companion without inspecting first. The fact that he was not trained to escort female prisoners was no excuse. It was also found that there was no genuine effort on the part of Rodillas to recapture the prisoner as it was only in the evening when he formally reported the incident to his superior. The delay gave the prisoner greater opportunity to escape. Connivance or consent to evasion is not necessary because presence of such would render the officer liable under 223 instead.

b. In the Custody of Documents (226-228)

i. Article 226. Removal, Concealment, or Destruction of Documents

Elements
1. Offender is a public officer;
2. He abstracts, destroys or conceals a document or papers;
3. Said document or papers should have been entrusted to such public officer by reason of his office;
4. Damage, whether serious or not, to a third party or to the public interest has been caused.

Crimes falling under the section on infidelity in the custody of public documents can only be committed by the public officer who is made the custodian of the document in his official capacity. If the officer was placed in possession of the document but it is not his duty to be the custodian thereof, this crime is not committed.

This could cover failure on the part of the post office to forward the letters to their destination..

Damage to public interest is necessary. However, material damage is not necessary.

Illustration:

If any citizen goes to a public office, desiring to go over public records and the custodian of the records had concealed the same so that this citizen is required to go back for the record to be taken out, the crime of infidelity is already committed by the custodian who removed the records and kept it in a place where it is not supposed to be kept. Here, it is again the breach of public trust which is punished.

Although there is no material damage caused, mere delay in rendering public service is considered damage.

Removal of public records by the custodian does not require that the record be brought out of the premises where it is kept. It is enough that the record be removed from the place where it should be and transferred to another place where it is not supposed to be kept. This would mean that delivering the document to the wrong party could be covered. If damage is caused to the public service, the public officer is criminally liable for infidelity in the custody of official documents.

Where in case for bribery or corruption, the monetary considerations was marked as exhibits, such considerations acquires the nature of a document such that if the same would be spent by the custodian the crime is not malversation but Infidelity in the custody of public records, because the money adduced as exhibits partake the nature of a document and not as money. Although such monetary consideration acquires the nature of a document, the best evidence rule does not apply here. Example, photocopies may be presented in evidence.

Distinction between infidelity and theft
- There is infidelity if the offender opened the letter but did not take the same.
- There is theft if there is intent to gain when the offender took the money.

Note that he document must be complete in legal sense. If the writings are mere forms, there is no crime.

Illustration:

As regard the payroll, which has not been signed by the Mayor, no infidelity is committed because the document is not yet a payroll in the legal sense since the document has not been signed yet.

ii. Article 227. Officer Breaking Seal

Elements
1. Offender is a public officer;
2. He is charged with the custody of papers or property;
3. These papers or property are sealed by proper authority;
4. He breaks the seal or permits them to be broken.

If the official document is sealed or otherwise placed in an official envelope, the element of damage is not required. The mere breaking of the seal or the mere opening of the document would already bring about infidelity even though no damage has been suffered by anyone or by the public at large.

The act is punished because if a document is entrusted to the custody of a public officer in a sealed or closed envelope, such public officer is supposed not to know what is inside the same. If he would break the seal or open the closed envelop, indications would be that he tried to find out the contents of the document. For that act, he violates the confidence or trust reposed on him. Also, he puts the document meant to be confidential into the risk of being known by other people.

In "breaking of seal", the word "breaking" should not be given a literal meaning. Even if actually, the seal was not broken, because the custodian managed to open the parcel without breaking the seal.

iii. Article 228. Opening of Closed Documents

Elements
1. Offender is a public officer;
2. Any closed papers, documents, or object are entrusted to his custody;
3. He opens or permits to be opened said closed papers, documents or objects;
4. He does not have proper authority.

The act should not fall under 227.

c. Revelation of Secrets (229-230)

i. Article 229. Revelation of Secrets by An Officer

Acts punished
1. Revealing any secrets known to the offending public officer by reason of his official capacity;

   Elements
   a. Offender is a public officer;
   b. He knows of a secret by reason of his official capacity;
   c. He reveals such secret without authority or justifiable reasons;
   d. Damage, great or small, is caused to the public interest.

2. Delivering wrongfully papers or copies of papers of which he may have charge and which should not be published.

   Elements
   a. Offender is a public officer;
   b. He has charge of papers;
   c. Those papers should not be published;
   d. He delivers those papers or copies thereof to a third person;
   e. The delivery is wrongful;
   f. Damage is caused to public interest.

Espionage is not contemplated in this article since revelation of secrets of the State to a belligerent nation is already defined in Art 117 and CA 616.

Secrets must affect public interest. Secrets of private persons are not included.

ii. Article 230. Public Officer Revealing Secrets of Private individual

Elements
1. Offender is a public officer;
2. He knows of the secrets of a private individual by reason of his office;
3. He reveals such secrets without authority or justifiable reason.

When the offender is a public attorney or a solicitor, the act of revealing the secret should not be covered by Art 209.

6. OTHER OFFENSES OR IRREGULARITIES BY PUBLIC OFFICERS

a. Disobedience, Refusal of Assistance and Maltreatment of Prisoners (231-235)

i. Article 231. Open Disobedience

Elements
1. Officer is a judicial or executive officer;
2. There is a judgment, decision or order of a superior authority;
3. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities;
4. He, without any legal justification, openly refuses to execute the said judgment, decision or order, which he is duty bound to obey.

ii. Article 232. Disobedience to Order of Superior Officer When Said Order Was Suspended by Inferior Officer

Elements
1. Offender is a public officer;
2. An order is issued by his superior for execution;
3. He has for any reason suspended the execution of such order;
4. His superior disapproves the suspension of the execution of the order;
5. Offender disobeys his superior despite the disapproval of the suspension.

In case the superior officer may have been mistaken in judgment, this would entitle the subordinate to suspend such orders and submit his reason to be given proper weight. If the superior disapproves the suspension and reiterates the order to his subordinate, the latter should obey at once.

This does not apply if the order of the superior is illegal.

iii. Article 233. Refusal of Assistance

Elements
1. Offender is a public officer;
2. A competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service;
3. Offender fails to do so maliciously.

Any public officer who, upon being requested to render public assistance within his official duty to render and he refuses to render the same when it is necessary in the administration of justice or for public service, may be prosecuted for refusal of assistance.

Illustration:

A government physician, who had been subpoenaed to appear in court to testify in connection with physical injury cases or cases involving human lives, does not want to appear in court to testify. He may be charged for refusal of assistance. As long as they have been properly notified by subpoena and they disobeyed the subpoena, they can be charged always if it can be shown that they are deliberately refusing to appear in court.

Note that the request must come from one public officer to another.

Illustration:

A fireman was asked by a private person for services but was refused by the former for lack of "consideration".

It was held that the crime is not refusal of assistance because the request did not come from a public authority. But if the fireman was ordered by the authority to put out the fire and he refused, the crime is refusal of assistance.

If he receives consideration therefore, bribery is committed. But mere demand will fall under the prohibition under the provision of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

iv. ARTICLE 234. REFUSAL TO DISCHARGE ELECTIVE OFFICE

Elements
1. Offender is elected by popular election to a public office;
2. He refuses to be sworn in or to discharge the duties of said office;
3. There is no legal motive for such refusal to be sworn in or to discharge the duties of said office.

Once an individual is elected to an office by the will of the people, discharge of duties becomes a matter of duty, not only a right.

This only applies for elective, not appointive officers.

v. ARTICLE 235. MALTREATMENT OF PRISONERS

Elements
1. Offender is a public officer or employee;
2. He has under his charge a prisoner or detention prisoner;
3. He maltreats such prisoner in either of the following manners:
    a. By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either –
        (1) By the imposition of punishment not authorized by the regulations;
        (2) By inflicting such punishments (those authorized) in a cruel and humiliating manner;
    b. By maltreating such prisoners to extort a confession or to obtain some information from the prisoner.

This is committed only by such public officer charged with direct custody of the prisoner. Not all public officers can commit this offense.

If the public officer is not the custodian of the prisoner, and he manhandles the latter, the crime is physical injuries.

The maltreatment does not really require physical injuries. Any kind of punishment not authorized or though authorized if executed in excess of the prescribed degree.

Illustration:

(1) After having been booked, the prisoner was made to show any sign on his arm, hand or his neck; "Do not follow my footsteps, I am a thief." That is maltreatment of prisoner if the offended party had already been booked and incarcerated no matter how short, as a prisoner.

(2) If a prisoner who had already been booked was made to strip his clothes before he was put in the detention cell so that when he was placed inside the detention cell, he was already naked and he used both of his hands to cover his private part, the crime of maltreatment of prisoner had already been committed.

But if as a result of the maltreatment, physical injuries were caused to the prisoner, a separate crime for the physical injuries shall be filed. You do not complex the crime of physical injuries with the maltreatment because the way Article 235 is worded, it prohibits the complexing of the crime.

If the maltreatment was done in order to extort confession, therefore, the constitutional right of the prisoner is further violated. The penalty is qualified to the next higher degree.

The offended party here must be a prisoner in the legal sense. The mere fact that a private citizen had been apprehended or arrested by a law enforcer does not constitute him a prisoner. To be a prisoner, he must have been booked and incarcerated no matter how short it is.

Illustration:

A certain snatcher was arrested by a law enforcer, brought to the police precinct, turned over to the custodian of that police precinct. Every time a policeman entered the police precinct, he would ask, "What is this fellow doing here? What crime has he committed?". The other policeman would then tell, "This fellow is a snatcher." So every time a policeman would come in, he would inflict injury to him. This is not maltreatment of prisoner because the offender is not the custodian. The crime is only physical injuries.

But if the custodian is present there and he allowed it, then he will be liable also for the physical injuries inflicted, but not for maltreatment because it was not the custodian who inflicted the injury.

But if it is the custodian who effected the maltreatment, the crime will be maltreatment of prisoners plus a separate charge for physical injuries.

Before this point in time, when he is not yet a prisoner, the act of hanging a sign on his neck will only amount to slander because the idea is to cast dishonor. Any injury inflicted upon him will only give

rise to the crime of physical injuries.

b. Anticipation, Prolongation and Abandonment of Duties (236-238)

i. Article 236. Anticipation of Duties of A Public Office

Elements
1. Offender is entitled to hold a public office or employment, either by election or appointment;
2. The law requires that he should first be sworn in and/or should first give a bond;
3. He assumes the performance of the duties and powers of such office;
4. He has not taken his oath of office and/or given the bond required by law.

ii. Article 237. Prolonging Performance of Duties and Powers

Elements
1. Offender is holding a public office;
2. The period provided by law, regulations or special provision for holding such office, has already expired;
3. He continues to exercise the duties and powers of such office.

The offenders here can be those suspended, separated, declared over-aged, or dismissed.

iii. Article 238. Abandonment of Office or Position

Elements
1. Offender is a public officer;
2. He formally resigns from his position;
3. His resignation has not yet been accepted;
4. He abandons his office to the detriment of the public service.

For the resignation to be formal, it has to be in written form. The offense is qualified when the purpose of the abandonment is to evade the discharge of duties of preventing, prosecuting, punishing any of the crimes falling within Title One and Chapter One of Title Three of book two of the RPC.

c. Usurpation of Powers and Unlawful Appointments (239-244)

i. Article 239. Usurpation of Legislative Powers

Elements
1. Offender is an executive or judicial officer;
2. He (a) makes general rules or regulations beyond the scope of his authority or (b) attempts to repeal a law or (c) suspends the execution thereof.

Arts 239-241 punish interference by public officers of the executive or judiciary with the functions of another department of government to keep them within legitimate confines of their respective jurisdictions.

Legislative officers are not liable for usurpation of powers.

ii. Article 240. Usurpation of Executive Functions

Elements
1. Offender is a judge;
2. He (a) assumes a power pertaining to the executive authorities, or (b) obstructs the executive authorities in the lawful exercise of their powers.

iii. Article 241. Usurpation of Judicial Functions

Elements
1. Offender is an officer of the executive branch of the government;
2. He (a) assumes judicial powers, or (b) obstructs the execution of any order or decision rendered by any judge within his jurisdiction.

iv. Article 242. Disobeying Request for Disqualification

Elements
1. Offender is a public officer;
2. A proceeding is pending before such public officer;
3. There is a question brought before the proper authority regarding his jurisdiction, which is not yet decided;
4. He has been lawfully required to refrain form continuing the proceeding;
5. He continues the proceeding.

The disobedient officer is liable even if the jurisdictional question is resolved in his favor.

v. Article 243. Orders or Request by Executive Officers to Any Judicial Authority

Elements
1. Offender is an executive officer;
2. He addresses any order or suggestion to any judicial authority;
3. The order or suggestion relates to any case or business coming within the exclusive jurisdiction of the courts of justice.

The purpose is to maintain the independence of the judiciary from executive dictations.

vi. ARTICLE 244. UNLAWFUL APPOINTMENTS

Elements
1. Offender is a public officer;
2. He nominates or appoints a person to a public office;
3. Such person lacks the legal qualifications therefore;
4. Offender knows that his nominee or appointee lacks the qualification at the time he made the nomination or appointment.

This can also be covered by RA 3019.

d. ABUSES AGAINST CHASTITY (245)

i. ARTICLE 245. ABUSES AGAINST CHASTITY

Acts punished
1. Soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer;
2. Soliciting or making immoral or indecent advances to a woman under the offender's custody;
3. Soliciting or making immoral or indecent advances to the wife, daughter, sister or relative within the same degree by affinity of any person in the custody of the offending warden or officer.

Elements:
1. Offender is a public officer;
2. He solicits or makes immoral or indecent advances to a woman;
3. Such woman is –
   a. interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or
   b. under the custody of the offender who is a warden or other public officer directly charged with the care and custody of prisoners or persons under arrest; or
   c. the wife, daughter, sister or relative within the same degree by affinity of the person in the custody of the offender.

The name of the crime is misleading. It implies that the chastity of the offended party is abused but the essence of the crime is mere making of immoral or indecent solicitation or advances. The crime is consummated by mere proposal.

If he forced himself against the will of the woman, another crime is committed, that is, rape aside from abuse against chastity.

You cannot consider the abuse against chastity as absorbed in the rape because the basis of penalizing the acts is different from each other.

Immoral or indecent advances contemplated here must be persistent. It must be determined. A mere joke would not suffice.

Illustration:

Mere indecent solicitation or advances of a woman over whom the public officer exercises a certain influence because the woman is involved in a case where the offender is to make a report of result with superiors or otherwise a case which the offender was investigating.

This crime is also committed if the woman is a prisoner and the offender is her jail warden or custodian, or even if the prisoner may be a man if the jail warden would make the immoral solicitations upon the wife, sister, daughter, or relative by affinity within the same degree of the prisoner involved.

Three instances when this crime may arise:

(1) The woman, who is the offended party, is the party in interest in a case where the offended is the investigator or he is required to render a report or he is required to consult with a superior officer.

This does not include any casual or incidental interest. This refers to interest in the subject of the case under investigation.

If the public officer charged with the investigation or with the rendering of the report or with the giving of advice by way of consultation with a superior, made some immoral or indecent solicitation upon such woman, he is taking advantage of his position over the case. For that immoral or indecent solicitation, a crime is already committed even if the woman did not accede to the solicitation.

It is immaterial whether the woman did not agree or agreed to the solicitation. If the woman did not agree and the public officer involved pushed through with the advances, attempted rape may have been committed.

(2) The woman who is the offended party in the crime is a prisoner under the custody of a warden or the jailer who is the offender.

This crime cannot be committed if the prisoner is a man. The offended party in this provision can only be a woman. Even if the warden is a woman, so long as the prisoner is as well, the crime can be committed.

(3) The crime is committed upon a female relative of a prisoner under the custody of the offender, where the woman is the daughter, sister or relative by affinity in the same line as of the prisoner under the custody of the offender who made the indecent or immoral solicitation.

The mother is not included so that any immoral or indecent solicitation upon the mother of the prisoner does not give rise to this crime, but the offender may be prosecuted under the Section 28 of Republic Act No. 3019 (Anti-graft and Corrupt Practices Act).

If the offender were not the custodian, then crime would fall under Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

ii. REPUBLIC ACT NO. 7877 (ANTI-SEXUAL HARASSMENT ACT)

Committed by any person having authority, influence or moral ascendancy over another in a work, training or education environment when he or she demands, requests, or otherwise requires any sexual favor from the other regardless of whether the demand, request or requirement for submission is accepted by the object of the said act (for a passing grade, or granting of scholarship or honors, or payment of a stipend, allowances, benefits, considerations; favorable compensation terms, conditions, promotions or when the refusal to do so results in a detrimental consequence for the victim).

Also holds liable any person who directs or induces another to commit any act of sexual harassment, or who cooperates in the commission, the head of the office, educational or training institution solidarily.

Complaints to be handled by a committee on decorum, which shall be determined by rules and regulations on such.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

C. Special Penal Statutes on Graft and Corruption, Ethical Conduct of Public Officers and Employees

1. RA 3019 – ANTI-GRAFT OF CORRUPT PRACTICES ACT

It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

Article XI of the constitution, entitled Accountability of public officers, provides in its first section that public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency; act with patriotism and justice, and lead modest lives.

Definitions:

(a) "Government" includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation, even nominal, from the government as defined in the preceding subparagraph.

Under Republic Act No. 3019, the term public officer, as opposed to the definition in the RPC, is broader and more comprehensive because it includes all persons whether an official or an employee, temporary or not, classified or not, contractual or otherwise.

(c) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive.

(d) "Person" includes natural and juridical persons, unless the context indicates otherwise.

The punishable acts of public officers in this case can be taken in relation with the law on bribery. The acts enumerated in section 3 are as follows:

1. Persuading, inducing, or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by a competent authority or an offense in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense;

2. Directly or Indirectly requesting or receiving and gift, present, share, percentage or benefit, for himself or for any other person in connection with any other contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law;

3. Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given, without prejudice to Section Thirteen of this Act;

4. Accepting or having any member of his family accept employment in a private enterprise which has pending business with him during the pendency thereof or within one year after his termination;

5. Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official

administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions;

6. Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party;

7. Entering, on behalf of the government, into a contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby;

8. Directly or indirectly having financial or pecuniary interest in any business, contract, or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest;

9. Directly or indirectly becoming interested, for personal gain, or having material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group. Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong;

10. Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege, or advantage, or of a mere representative or dummy of one who is not so qualified or entitled;

11. Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized date.

Prohibition on private individuals: (sec. 4)

1. it would be unlawful for any person having family or close personal relation with any public official to capitalize of such relationship by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from another person having some business, transaction, application, request or contract with the govt, in which such public official has to intervene.

2. It is likewise unlawful for any person to knowingly induce or cause any public officer to commit any of the offenses defined in section

Prohibition on certain relatives: (Sec 5)

1. It would be unlawful for the spouse or for any relative by consanguinity or affinity within the 3rd civil degree of the President, the VP, Senate Pres, Speaker of the House of Reps, to intervene directly or indirectly in any business, transaction, contract or application with the govt.

Exceptions:

1. this is not applicable to any person who prior to the assumption of office of any of the above officials to who he is related, has already been dealing with the government along the same line of business.
2. Transactions, contracts, or applications existing at the time of assumption of public office.
3. Applications filed wherein the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law or rules or regulations in law.
4. Acts lawfully performed in an official capacity or in the exercise of a profession.

Prohibition on Members of Congress: It shall be unlawful hereafter for any Member of the Congress during the term for which he has been elected (sec. 6)

1. to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.
2. to continue to retain the same interest for 30 days after the approval of such resolution or law, when the officer had the interest prior the approval of such law or resolution authored or recommended by him.

The provision of this section shall apply to any other public officer who recommended the initiation in Congress of the enactment or adoption of any law or resolution, and acquires or receives any such interest during his incumbency.

Requirement to make Statement of Assets and Liabilities and penalties for failure to comply:

Who to file: Every public officer
When to file:

1. 30 days upon approval of this act or after assuming office and
2. within the month of January of every other year, as well as;
3. upon expiration of his term or officer, or upon his resignation or separation from office.

Where to file:

1. office of the corresponding dept. head or
2. in case of a dept head or chief of an independent office, office of the president.
3. in the case of members of congress and their officials and employees, the office of the secretary of the corresponding house.

What to file: a true detailed and sworn statement of assets and liabilities which shall include:

1. a statement of the amounts and sources of his income
2. amounts of his personal and family expenses
3. amount of income taxes paid for the next preceding calendar year

In relation with RA 1379, there arises a presumption ill-gotten wealth when the wealth is manifestly out of proportion to the salary as public officer or employee and to other lawful sources of income.

Violations of sections 3-6 shall be punished with all of the following:

1. imprisonment for not less than 10 years
2. perpetual disqualification from public office.
3. Confiscation or forfeiture in favor of the govt of any prohibited interest and unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party shall be entitled to recover in the criminal action with priority over the forfeiture in favor of Govt, the count of money or thing he may have given to the accuse, or the value of such thing.

Violations of section 7, pertaining to the filing statements of assents and liabilities, shall be punished by a fine not less than P100, nor more than P1,000 or by imprisonment not exceeding 1 year or by both at the court's discretion. Such violation, if proven in a proper administrative proceeding shall be sufficient ground for dismissal regardless of want of criminal prosecution.

No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under RA 3019 or under the provision of the RPC on bribery.

Exceptions as provided for in section 14 are:

1. unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage.
2. nothing in this act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation during his incumbency.

   Except: when the practice of such profession involves conspiracy with any other person or public official to commit any of the violations punished in this act.

2. RA 6713: CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES

It is the policy of the State to promote a high standard of ethics in public service. Public officials and employees shall at all times be accountable to the people and shall discharge their duties with utmost responsibility, integrity, competence, and loyalty, act with patriotism and justice, lead modest lives, and uphold public interest over personal interest.

Definition of terms:

"Public Officials" includes elective and appointive officials and employees, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless of amount.

"Gift" refers to a thing or a right to dispose of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.

"Receiving any gift" includes the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal nor insignificant, or the gift is given in anticipation of, or in exchange for, a favor.

"Loan" covers both simple loan and commodatum as well as guarantees, financing arrangements or accommodations intended to ensure its approval.

"Substantial stockholder" means any person who owns, directly or indirectly, shares of stock sufficient to elect a director of a corporation. This term shall also apply to the parties to a voting trust.
(g) "Family of public officials or employees" means their spouses and unmarried children under eighteen (18) years of age.

"Conflict of interest" arises when a public official or employee is a member of a board, an officer, or a substantial stockholder of a private corporation or owner or has a substantial interest in a business, and the interest of such corporation or business, or his rights or duties therein, may be opposed to or affected by the faithful performance of official duty.

"Divestment" is the transfer of title or disposal of interest in property by voluntarily, completely and actually depriving or dispossessing oneself of his right or title to it in favor of a person or persons

other than his spouse and relatives as defined in this Act.

"Relatives" refers to any and all persons related to a public official or employee within the fourth civil degree of consanguinity or affinity, including bilas, inso and balae.

Prohibited Acts and Transactions: (sec. 7)

In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

(a) Financial and material interest. - Public officials and employees shall not, directly or indirectly, have any financial or material interest in any transaction requiring the approval of their office.

(b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:
    (1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
    (2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or
    (3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.

(c) Disclosure and/or misuse of confidential information. - Public officials and employees shall not use or divulge, confidential or classified information officially known to them by reason of their office and not made available to the public, either:
    (1) To further their private interests, or give undue advantage to anyone; or
    (2) To prejudice the public interest.

(d) Solicitation or acceptance of gifts. - Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office.

As to gifts or grants from foreign governments, the Congress consents to:

(ii) The acceptance and retention by a public official or employee of a gift of nominal value tendered and received as a souvenir or mark of courtesy;

(iii) The acceptance by a public official or employee of a gift in the nature of a scholarship or fellowship grant or medical treatment; or

(iv) The acceptance by a public official or employee of travel grants or expenses for travel taking place entirely outside the Philippine (such as allowances, transportation, food, and lodging) of more than nominal value if such acceptance is appropriate or consistent with the interests of the Philippines, and permitted by the head of office, branch or agency to which he belongs.

These prohibitions shall continue to apply for a period of one (1) year after resignation, retirement, or separation from public office, except in the case of subparagraph (b) (2) above, but the professional concerned cannot practice his profession in connection with any matter before the office he used to be with, in which case the one-year prohibition shall likewise apply.

Divestment (sec 9):

A public official or employee shall avoid conflicts of interest at all times. When a conflict of interest arises, he shall resign from his position in any private business enterprise within thirty (30) days from his assumption of office and/or divest himself of his shareholdings or interest within sixty (60) days from such assumption.

The same rule shall apply where the public official or employee is a partner in a partnership.

Penalties:

(a) Any public official or employee shall be punished with a fine not exceeding the equivalent of six (6) months' salary or suspension not exceeding one (1) year, or removal depending on the gravity of the offense after due notice and hearing by the appropriate body or agency. If the violation is punishable by a heavier penalty under another law, he shall be prosecuted under the latter statute.

    Violations of sections 7-9 shall be punishable with imprisonment not exceeding five (5) years, or a fine not exceeding five thousand pesos (P5,000), or both, and, in the discretion of the court of competent jurisdiction, disqualification to hold public office. (section 8 pertains to the filing of a statement of assets and liabilities)

(b) Any violation hereof proven in a proper administrative proceeding shall be sufficient cause for removal or dismissal of a public official or employee, even if no criminal prosecution is instituted against him.

(c) Private individuals who participate in conspiracy as co-principals, accomplices or accessories, with public officials or employees, in violation of this Act, shall be subject to the same penal

liabilities as the public officials or employees and shall be tried jointly with them.

(d) The official or employee concerned may bring an action against any person who obtains or uses a report for any purpose prohibited by Section 8 (D) of this Act. The Court in which such action is brought may assess against such person a penalty in any amount not to exceed twenty-five thousand pesos (P25,000). If another sanction hereunder or under any other law is heavier, the latter shall apply.

RA 7080: Plunder Law
(see section on bribery, art. 211)

TITLE VIII. CRIMES AGAINST PERSONS

Crimes against persons
1. Parricide (Art. 246);
2. Murder (Art. 248);
3. Homicide (Art. 249);
4. Death caused in a tumultuous affray (Art. 251);
5. Physical injuries inflicted in a tumultuous affray (Art. 252);
6. Giving assistance to suicide (Art. 253);
7. Discharge of firearms (Art. 254);
8. Infanticide (Art. 255);
9. Intentional abortion (Art. 256);
10. Unintentional abortion (Art. 257);
11. Abortion practiced by the woman herself or by her parents (Art. 258);
12. Abortion practiced by a physician or midwife and dispensing of abortives (Art. 259);
13. Duel (Art. 260);
14. Challenging to a duel (Art. 261);
15. Mutilation (Art. 262);
16. Serious physical injuries (Art. 263);
17. Administering injurious substances or beverages (Art. 264);
18. Less serious physical injuries (Art. 265);
19. Slight physical injuries and maltreatment (Art. 266); and
20. Rape (Art. 266-A).

- The essence of crime here involves the taking of human life, destruction of the fetus or inflicting injuries.

- Note that parricide is premised on the relationship between the offender and the offended. The victim is three days old or older. A stranger who conspires with the parent is guilty of murder.

- In infanticide, the victim is younger than three days or 72 hours old; can be committed by a stranger. If a stranger who conspires with parent, both commit the crime of infanticide.

A. Destruction of Life

1. PARRICIDE (246)

Elements
1. A person is killed;
2. The deceased is killed by the accused;
3. The deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse, of the accused.

Cases of parricide when the penalty shall not be *reclusion perpetua* to death:
1. parricide through negligence (art .365)
2. parricide by mistake (art. 249)
3. parricide under exceptional circumstances (art. 247)

- This is a crime committed between people who are related by blood. Between spouses, even though they are not related by blood, it is also parricide.

- The relationship must be in the direct line and not in the collateral line.

- The relationship between the offender and the offended party must be legitimate, except when the offender and the offended party are related as parent and child.

- If the offender and the offended party, although related by blood and in the direct line, are separated by an intervening illegitimate relationship, parricide can no longer be committed. The illegitimate relationship between the child and the parent renders all relatives after the child in the direct line to be illegitimate too.

- The only illegitimate relationship that can bring about parricide is that between parents and illegitimate children as the offender and the offended parties.

- A stranger who cooperates and takes part in the commission of the crime of parricide, is not guilty of parricide but only homicide or murder, as the case may be. The key element in parricide is the relationship of the offender with the victim. *(People vs. Dalag, GR No. 129895, April 30, 2003)*

Illustration:

A is the parent of B, the illegitimate daughter. B married C and they begot a legitimate child D. If D, daughter of B and C, would kill A, the grandmother, the crime cannot be parricide anymore because of the intervening illegitimacy. The relationship between A and D is no longer legitimate. Hence, the crime committed is homicide or murder.

Since parricide is a crime of relationship, if a stranger conspired in the commission of the crime, he cannot be held liable for parricide. His participation would make him liable for murder or for homicide, as the case may be. The rule of conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party.

Illustration:

A spouse of B conspires with C to kill B. C is the stranger in the relationship. C killed B with treachery. The means employed is made known to A and A agreed that the killing will be done by poisoning.

As far as A is concerned, the crime is based on his relationship with B. It is therefore parricide. The treachery that was employed in killing Bong will only be generic aggravating circumstance in the crime of parricide because this is not one crime that requires a qualifying circumstance.

But that same treachery, insofar as C is concerned, as a stranger who cooperated in the killing, makes the crime murder; treachery becomes a qualifying circumstance.

In killing a spouse, there must be a valid subsisting marriage at the time of the killing. Also, the information should allege the fact of such valid marriage between the accused and the victim.

In a ruling by the Supreme Court, it was held that if the information did not allege that the accused was legally married to the victim, he could not be convicted of parricide even if the marriage was established during the trial. In such cases, relationship shall be appreciated as generic aggravating circumstance.

The Supreme Court has also ruled that Muslim husbands with several wives can be convicted of parricide only in case the first wife is killed. There is no parricide if the other wives are killed although their marriage is recognized as valid. This is so because a Catholic man can commit the crime only once. If a Muslim husband could commit this crime more than once, in effect, he is being punished for the marriage which the law itself authorized him to contract.

That the mother killed her child in order to conceal her dishonor is not mitigating. This is immaterial to the crime of parricide, unlike in the case of infanticide. If the child is less than three days old when killed, the crime is infanticide and intent to conceal her dishonor is considered mitigating.

If a person wanted to kill a stranger but by mistake killed his own father, will it be parricide?

Yes, but Art. 49 applies as regards the proper penalty to be imposed.

If a person killed another not knowing that the latter was his son, will he be guilty of parricide?

Yes, because the law does not require knowledge of relationship between them

2. MURDER (248)

Elements

1. A person was killed;
2. Accused killed him;
3. The killing was attended by any of the following qualifying circumstances –
    a. With treachery, taking advantage of superior strength, with the aid or armed men, or employing means to waken the defense, or of means or persons to insure or afford impunity;
    b. In consideration of a price, reward or promise;
    c. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
    d. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
    e. With evident premeditation;
    f. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.
4. The killing is not parricide or infanticide.

- Homicide is qualified to murder if any of the qualifying circumstances under Article 248 is present. It is the unlawful killing of a person not constituting murder, parricide or infanticide.

In murder, any of the following qualifying circumstances is present:

(1) Treachery, taking advantage of superior strength, aid or armed men, or employing means to waken the defense, or of means or persons to insure or afford impunity;

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

This circumstance involves means, methods, form in the execution of the killing which may actually be an aggravating circumstance also, in which case, the treachery absorbs the same.

Illustration:

A person who is determined to kill resorted to the cover of darkness at nighttime to insure the killing. Nocturnity becomes a means that constitutes treachery and the killing would be murder. But if the aggravating circumstance of nocturnity is considered by itself, it is not one of those which qualify a homicide to murder. One might think the killing is homicide unless nocturnity is considered as constituting treachery, in which case the crime is murder.

The essence of treachery is that the offended party was denied the chance to defend himself because of the means, methods, form in executing the crime deliberately adopted by the

offender. It is a matter of whether or not the offended party was denied the chance of defending himself.

If the offended was denied the chance to defend himself, treachery qualifies the killing to murder. If despite the means resorted to by the offender, the offended was able to put up a defense, although unsuccessful, treachery is not available. Instead, some other circumstance may be present. Consider now whether such other circumstance qualifies the killing or not.

Illustration:
If the offender used superior strength and the victim was denied the chance to defend himself, there is treachery. The treachery must be alleged in the information. But if the victim was able to put up an unsuccessful resistance, there is no more treachery but the use of superior strength can be alleged and it also qualifies the killing to murder.

One attendant qualifying circumstance is enough. If there are more than one qualifying circumstance alleged in the information for murder, only one circumstance will qualify the killing to murder and the other circumstances will be taken as generic.

To be considered qualifying, the particular circumstance must be alleged in the information. If what was alleged was not proven and instead another circumstance, not alleged, was established during the trial, even if the latter constitutes a qualifying circumstance under Article 248, the same can not qualify the killing to murder. The accused can only be convicted of homicide.

Generally, murder cannot be committed if at the beginning, the offended had no intent to kill because the qualifying circumstances must be resorted to with a view of killing the offended party. So if the killing were at the "spur of the moment", even though the victim was denied the chance to defend himself because of the suddenness of the attack, the crime would only be homicide. Treachery contemplates that the means, methods and form in the execution were consciously adopted and deliberately resorted to by the offender, and were not merely incidental to the killing.

If the offender may have not intended to kill the victim but he only wanted to commit a crime against him in the beginning, he will still be liable for murder if in the manner of committing the felony there was treachery and as a consequence thereof the victim died. This is based on the rule that a person committing a felony shall be liable for the consequences thereof although different from that which he intended.

Illustration:

The accused, three young men, resented the fact that the victim continued to visit a girl in their neighborhood despite the warning they gave him. So one evening, after the victim had visited the girl, they seized and tied him to a tree, with both arms and legs around the tree. They thought they would give him a lesson by whipping him with branches of gumamela until the victim fell unconscious. The accused left not knowing that the victim died.

The crime committed was murder. The accused deprived the victim of the chance to defend himself when the latter was tied to a tree. Treachery is a circumstance referring to the manner of committing the crime. There was no risk to the accused arising from the defense by the victim.

Although what was initially intended was physical injury, the manner adopted by the accused was treacherous and since the victim died as a consequence thereof, the crime is murder -- although originally, there was no intent to kill.

When the victim is already dead, intent to kill becomes irrelevant. It is important only if the victim did not die to determine if the felony is physical injury or attempted or frustrated homicide.

So long as the means, methods and form in the execution is deliberately adopted, even if there was no intent to kill, there is treachery.

(2) In consideration of price, reward or promises;

(3) Inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of a motor vehicle, or with the use of other means involving great waste and ruin;

The only problem insofar as the killing by fire is concerned is whether it would be arson with homicide, or murder.

When a person is killed by fire, the primordial criminal intent of the offender is considered. If the primordial criminal intent of the offender is to kill and fire was only used as a means to do so, the crime is only murder. If the primordial criminal intent of the offender is to destroy property with the use of pyrotechnics and incidentally, somebody within the premises is killed, the crime is arson with homicide. But this is not a complex crime under Article 48. This is single indivisible crime penalized under Article 326, which is death as a consequence of arson. That somebody died

during such fire would not bring about murder because there is no intent to kill in the mind of the offender. He intended only to destroy property. However, a higher penalty will be applied.

In **People v. Pugay and Samson, 167 SCRA 439,** there was a town fiesta and the two accused were at the town plaza with their companions. All were uproariously happy, apparently drenched with drink. Then, the group saw the victim, a 25 year old retard walking nearby and they made him dance by tickling his sides with a piece of wood. The victim and the accused Pugay were friends and, at times, slept in the same place together. Having gotten bored with their form of entertainment, accused Pugay went and got a can of gasoline and poured it all over the retard. Then, the accused Samson lit him up, making him a frenzied, shrieking human torch. The retard died.

It was held that Pugay was guilty of homicide through reckless imprudence. Samson only guilty of homicide, with the mitigating circumstance of no intention to commit so grave a wrong. There was no animosity between the two accused and the victim such that it cannot be said that they resort to fire to kill him. It was merely a part of their fun making but because their acts were felonious, they are criminally liable.

(4) On occasion of any of the calamities enumerated in the preceding paragraph c, or an earthquake, eruption of volcano, destructive cyclone, epidemic or any other public calamity;

(5) Evident premeditation; and

(6) Cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Cruelty includes the situation where the victim is already dead and yet, acts were committed which would decry or scoff the corpse of the victim. The crime becomes murder.

Hence, this is not actually limited to cruelty. It goes beyond that because even if the victim is already a corpse when the acts deliberately augmenting the wrong done to him were committed, the killing is still qualified to murder although the acts done no longer amount to cruelty.

Under Article 14, the generic aggravating circumstance of cruelty requires that the victim be alive, when the cruel wounds were inflicted and, therefore, must be evidence to that effect. Yet, in murder, aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.

Illustration:

Two people engaged in a quarrel and they hacked each other, one killing the other. Up to that point, the crime is homicide. However, if the killer tried to dismember the different parts of the body of the victim, indicative of an intention to scoff at or decry or humiliate the corpse of the victim, then what would have murder because this circumstance is recognized under Article 248, even though it was inflicted or was committed when the victim was already dead.

RULES:

1. Murder will exist with only one of the circumstances described in Art. 248. When one or more than one of said circumstances are present, the others must be considered as generic aggravating.
2. When the other circumstances are absorbed or included in one qualifying circumstance, they cannot be considered as generic aggravating.
3. Any of the qualifying circumstances enumerated in Art. 248 must be alleged in the information.

The following are holdings of the Supreme Court with respect to the crime of murder:

(1) Killing of a child of tender age is murder qualified by treachery because the weakness of the child due to his tender age results in the absence of any danger to the aggressor.

(2) Evident premeditation is absorbed in price, reward or promise, if without the premeditation the inductor would not have induced the other to commit the act but not as regards the one induced.

(3) Abuse of superior strength is inherent in and comprehended by the circumstance of treachery or forms part of treachery.

(4) Treachery is inherent in poison.

(5) Where one of the accused, who were charged with murder, was the wife of the deceased but here relationship to the deceased was not alleged in the information, she also should be convicted of murder but the relationship should be appreciated as aggravating.

(6) Killing of the victims hit by hand grenade thrown at them is murder qualified by explosion not by treachery.

(7) Where the accused housemaid gagged a three year old boy, son of her master, with stockings, placed him in a box with head down and legs upward and covered the box with some sacks and other boxes, and the child instantly died because of suffocation, and then the

accused demanded ransom from the parents, such did not convert the offense into kidnapping with murder. The accused was well aware that the child could be suffocated to death in a few minutes after she left. Ransom was only a part of the diabolical scheme to murder the child, to conceal his body and then demand money before discovery of the body.

(8) The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or deprivation of his liberty. If there is no showing that the accused intended to deprive their victims of their liberty for some time and there being no appreciable interval between their being taken and their being shot, murder and not kidnapping with murder is committed.

3. HOMICIDE (249, 250)

Elements
1. A person was killed;
2. Offender killed him without any justifying circumstances;
3. Offender had the intention to kill, which is presumed;
4. The killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide

- Homicide is the unlawful killing of a person not constituting murder, parricide or infanticide.

Distinction between homicide and physical injuries:

In attempted or frustrated homicide, there is intent to kill.

In physical injuries, there is none. However, if as a result of the physical injuries inflicted, the victim died, the crime will be homicide because the law punishes the result, and not the intent of the act.

The following are holdings of the Supreme Court with respect to the crime of homicide:

(1) Physical injuries are included as one of the essential elements of frustrated homicide.

(2) If the deceased received two wounds from two persons acting independently of each other and the wound inflicted by either could have caused death, both of them are liable for the death of the victim and each of them is guilty of homicide.

(3) If the injuries were mortal but were only due to negligence, the crime committed will be serious physical injuries through reckless imprudence as the element of intent to kill in frustrated homicide is incompatible with negligence or imprudence.

(4) Where the intent to kill is not manifest, the crime committed has been generally considered as physical injuries and not attempted or frustrated murder or homicide.

(5) When several assailants not acting in conspiracy inflicted wounds on a victim but it cannot be determined who inflicted which would which caused the death of the victim, all are liable for the victim's death.

Note that while it is possible to have a crime of homicide through reckless imprudence, it is not possible to have a crime of frustrated homicide through reckless imprudence.

ARTICLE 250. PENALTY FOR FRUSTRATED PARRICIDE, MURDER OR HOMICIDE.

"The courts, in view of the facts of the case, may impose upon the person guilty of the frustrated crime of parricide, murder or homicide, defined and penalized in the preceding articles, a penalty lower by one degree than that which should be imposed under the provision of Article 50.

"The courts, considering the facts of the case, may likewise reduce by one degree the penalty which under Article 51 should be imposed for an attempt to commit any of such crimes."

4. DEATH CAUSED IN TUMULTUOUS AFFRAY (251)

Elements
1. There are several persons;
2. They do not compose groups organized for the common purpose of assaulting and attacking each other reciprocally;
3. These several persons quarreled and assaulted one another in a confused and tumultuous manner;
4. Someone was killed in the course of the affray;
5. It can not be ascertained who actually killed the deceased;
6. The person or persons who inflicted serious physical injuries or who used violence can be identified.

TUMULTUOUS AFFRAY

➔ simply means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer is if death results*, or who inflicted the serious physical injury, but the person or persons who used violence are known.*

- It is not a tumultuous affray which brings about the crime; it is the inability to ascertain actual perpetrator. It is necessary that the very person who caused the death can not be known, not that he can not be identified. Because if he is known but only his identity is not known, then he will be charged for the crime of homicide or murder under a fictitious name and not death in a tumultuous affray. If there is a conspiracy,

this crime is not committed.

To be considered death in a tumultuous affray, there must be:

(1) a quarrel, a free-for-all, which should not involve organized group; and

(2) someone who is injured or killed because of the fight.

As long as it cannot be determined who killed the victim, all of those persons who inflicted serious physical injuries will be collectively answerable for the death of that fellow.

The Revised Penal Code sets priorities as to who may be liable for the death or physical injury in tumultuous affray:

(1) The persons who inflicted serious physical injury upon the victim;

(2) If they could not be known, then anyone who may have employed violence on that person will answer for his death.

(3) If nobody could still be traced to have employed violence upon the victim, nobody will answer. The crimes committed might be disturbance of public order, or if participants are armed, it could be tumultuous disturbance, or if property was destroyed, it could be malicious mischief.

The fight must be tumultuous. The participants must not be members of an organized group. This is different from a rumble which involves organized groups composed of persons who are to attack others. If the fight is between such groups, even if you cannot identify who, in particular, committed the killing, the adverse party composing the organized group will be collectively charged for the death of that person.

Illustration:

If a fight ensued between 20 Sigue-Sigue Gang men and 20 Bahala-Na- Gang men, and in the course thereof, one from each group was killed, the crime would be homicide or murder; there will be collective responsibility on both sides. Note that the person killed need not be a participant in the fight.

5. PHYSICAL INJURIES CAUSED IN TUMULTUOUS AFFRAY (252)

Elements
1. There is a tumultuous affray;
2. A participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only;
3. The person responsible thereof can not be identified;
4. All those who appear to have used violence upon the person of the offended party are known.

- If in the course of the tumultuous affray, only serious or less serious physical injuries are inflicted upon a participant, those who used violence upon the person of the offended party shall be held liable.

- Note that only those who used violence are punished, because if the one who caused the physical injuries is known, he will be liable for the physical injuries actually committed, and not under this article.

- In physical injuries caused in a tumultuous affray, the conditions are also the same. But you do not have a crime of physical injuries resulting from a tumultuous affray if the physical injury is only slight. The physical injury should be serious or less serious and resulting from a tumultuous affray. So anyone who may have employed violence will answer for such serious or less serious physical injury.

- If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray. The offended party cannot complain if he cannot identify who inflicted the slight physical injuries on him.

6. GIVING ASSISTANCE TO SUICIDE (253)

Acts punished
1. Assisting another to commit suicide, whether the suicide is consummated or not;

2. Lending his assistance to another to commit suicide to the extent of doing the killing himself.

- Giving assistance to suicide means giving means (arms, poison, etc.) or whatever manner of positive and direct cooperation (intellectual aid, suggestions regarding the mode of committing suicide, etc.).

- In this crime, the intention must be for the person who is asking the assistance of another to commit suicide.

- If the intention is not to commit suicide, as when he just wanted to have a picture taken of him to impress upon the world that he is committing suicide because he is not satisfied with the government, the crime is held to be inciting to sedition.

- He becomes a co-conspirator in the crime of inciting to sedition, but not of giving assistance to suicide because the assistance must be given to one who is really determined to commit suicide.

- If the person does the killing himself, the penalty is similar to that of homicide, which is reclusion temporal. There can be no qualifying circumstance because the determination to die must come from the victim. This does not contemplate euthanasia or mercy killing where the crime is homicide (if without consent; with

consent, covered by Article 253).

The following are holdings of the Supreme Court with respect to this crime:

(1) The crime is frustrated if the offender gives the assistance by doing the killing himself as firing upon the head of the victim but who did not die due to medical assistance.

(2) The person attempting to commit suicide is not liable if he survives. The accused is liable if he kills the victim, his sweetheart, because of a suicide pact.

- In other penal codes, if the person who wanted to die did not die, there is liability on his part because there is public disturbance committed by him. Our Revised Penal Code is silent but there is no bar against accusing the person of disturbance of public order if indeed serious disturbance of public peace occurred due to his attempt to commit suicide. If he is not prosecuted, this is out of pity and not because he has not violated the Revised Penal Code.

Is assistance to suicide identical with euthanasia (mercy killing)?
No. Euthanasia which is termed for mercy killing is the practice of painlessly putting to death a person suffering from some incurable disease. Euthanasia is not lending assistance to suicide. In euthanasia, the victim is not in a position to commit suicide. Whoever would heed his advice is not really giving assistance to suicide but doing the killing himself. In giving assistance to suicide, the principal actor is the person committing the suicide. A doctor who resorts to mercy-killing of his patient may be liable for murder.

7. DEATH OR PHYSICAL INJURIES INFLICTED UNDER EXCEPTIONAL CIRCUMSTANCES (247)

Elements

1. A legally married person, or a parent, surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person;
2. He or she kills any or both of them, or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter;
3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

- The requisites of Art. 247 must be established by the evidence of the defense, because the prosecution will have to charge the defendant with parricide and/or homicide, in case death results; or serious physical injuries in the other case.

- To Art. 247 to apply (death under exceptional circumstances), the offender must prove that he actually surprised his wife and [her paramour] in flagrante delicto, and that he killed the man during or immediately thereafter. Evidence of the victim's promiscuity, is inconsequential to the killing. *(People vs. Puedan, GR No. 139576, September 2, 2002)*

Justification for Art. 247:
The law considers the spouse or parent as acting in a justified burst of passion.

Two stages contemplated before the article will apply:

(1) When the offender surprised the other spouse with a paramour or mistress. The attack must take place while the sexual intercourse is going on. If the surprise was before or after the intercourse, no matter how immediate it may be, Article 247 does not apply. The offender in this situation only gets the benefit of a mitigating circumstance, that is, sufficient provocation immediately preceding the act.

(2) When the offender kills or inflicts serious physical injury upon the other spouse and/or paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

- You have to divide the stages because as far as the first stage is concerned, it does not admit of any situation less than sexual intercourse.

- So if the surprising took place before any actual sexual intercourse could be done because the parties are only in their preliminaries, the article cannot be invoked anymore.

- If the surprising took place after the actual sexual intercourse was finished, even if the act being performed indicates no other conclusion but that sexual intercourse was had, the article does not apply.

- As long as the surprising took place while the sexual intercourse was going on, the second stage becomes immaterial.

- It is either killing or inflicting physical injuries while in that act or immediately thereafter. If the killing was done while in that act, no problem. If the killing was done when sexual intercourse is finished, a problem arises. First, were they surprised in actual sexual intercourse? Second, were they killed immediately thereafter?

- ***The phrase "immediately thereafter" has been interpreted to mean that between the surprising and the killing of the inflicting of the physical injury, there should be no break of time. In other words, it must be a continuous process.***

- The article presumes that a legally married person who surprises his or her better half in actual sexual intercourse would be overcome by the obfuscation he felt when he saw them in the act that he lost his head. The law, thus, affords protection to a spouse who is considered to

have acted in a justified outburst of passion or a state of mental disequilibrium. The offended spouse has no time to regain his self-control.

- If there was already a break of time between the sexual act and the killing or inflicting of the injury, the law presupposes that the offender regained his reason and therefore, the article will not apply anymore.

As long as the act is continuous, the article still applies.

> ***Where the accused surprised his wife and his paramour in the act of illicit intercourse, as a result of which he went out to kill the paramour in a fit of passionate outburst. Although about one hour had passed between the time the accused discovered his wife having sexual intercourse with the victim and the time the latter was actually killed, it was held in*** *People v. Abarca, 153 SCRA 735,* ***that Article 247 was applicable, as the shooting was a continuation of the pursuit of the victim by the accused. Here, the accused, after the discovery of the act of infidelity of his wife, looked for a firearm in Tacloban City.***

- Article 247 does not provide that the victim is to be killed instantly by the accused after surprising his spouse in the act of intercourse. What is required is that the killing is the proximate result of the outrage overwhelming the accused upon the discovery of the infidelity of his spouse. The killing should have been actually motivated by the same blind impulse.

Illustration:

A upon coming home, surprised his wife, B, together with C. The paramour was fast enough to jump out of the window. A got the bolo and chased C but he disappeared among the neighborhood. So A started looking around for about an hour but he could not find the paramour. A gave up and was on his way home. Unfortunately, the paramour, thinking that A was no longer around, came out of hiding and at that moment, A saw him and hacked him to death. There was a break of time and Article 247 does not apply anymore because when he gave up the search, it is a circumstance showing that his anger had already died down.

Article 247, far from defining a felony merely grants a privilege or benefit, more of an exempting circumstance as the penalty is intended more for the protection of the accused than a punishment. Death under exceptional character can not be qualified by either aggravating or mitigating circumstances.

In the case of **People v. Abarca, 153 SCRA 735,** two persons suffered physical injuries as they were caught in the crossfire when the accused shot the victim. A complex crime of double frustrated murder was not committed as the accused did not have the intent to kill the two victims. Here, the accused did not commit murder when he fired at the paramour of his wife. Inflicting death under exceptional circumstances is not murder. The accused was held liable for negligence under the first part, second paragraph of Article 365, that is, less serious physical injuries through simple negligence. No aberratio ictus because he was acting lawfully.

A person who acts under Article 247 is not committing a crime. Since this is merely an exempting circumstance, the accused must first be charged with:

(1) Parricide – if the spouse is killed;

(2) Murder or homicide – depending on how the killing was done insofar as the paramour or the mistress is concerned;

(3) Homicide – through simple negligence, if a third party is killed;

(4) Physical injuries – through reckless imprudence, if a third party is injured.

- If death results or the physical injuries are serious, there is criminal liability although the penalty is only destierro. The banishment is intended more for the protection of the offender rather than a penalty.

- If the crime committed is less serious physical injuries or slight physical injuries, there is no criminal liability.

- The article does not apply where the wife was not surprised in flagrant adultery but was being abused by a man as in this case there will be defense of relation.

- If the offender surprised a couple in sexual intercourse, and believing the woman to be his wife, killed them, this article may be applied if the mistake of facts is proved.

- The benefits of this article do not apply to the person who consented to the infidelity of his spouse or who facilitated the prostitution of his wife.

- The article is also made available to parents who shall surprise their daughter below 18 years of age in actual sexual intercourse while "living with them." The act should have been committed by the daughter with a seducer. The two stages also apply. The parents cannot invoke this provision if, in a way, they have encouraged the prostitution of the daughter.

- It would seem that although the law does not use the word "unmarried" in relation to daughter, this article applies only when the daughter is single because while under 18 years old and single, she is under parental authority. If she is married, her husband alone can claim the benefit of Art. 247.

- ***The phrase "living with them" is understood to be in their own dwelling, because of the embarrassment and humiliation done not only to the parent but also to the parental abode.***

- If it was done in a motel, the article does not apply.

Illustration:

A abandoned his wife B for two years. To support their children, A had to accept a relationship with another man. A learned of this, and surprised them in the act of sexual intercourse and killed B. A is not entitled to Article 248. Having abandoned his family for two years, it was natural for her to feel some affection for others, more so of a man who could help her.

Homicide committed under exceptional circumstances, although punished with destierro, is within the jurisdiction of the Regional Trial Court and not the MTC because the crime charged is homicide or murder. The exceptional circumstances, not being elements of the crime but a matter of defense, are not pleaded. It practically grants a privilege amounting to an exemption for adequate punishment.

8. INFANTICIDE AND ABORTION

a. INFANTICIDE (255)

Elements
1. A child was killed by the accused;
2. The deceased child was less than 72 hours old.

- This is a crime based on the age of the victim. The victim should be less than three days old.

- The offender may actually be the parent of the child. But you call the crime infanticide, not parricide, if the age of the victim is less than three days old. If the victim is three days old or above, the crime is parricide.

- Only the mother and the maternal grandparents of the child are entitled to the mitigating circumstance of concealing the dishonor.

- A stranger who cooperates in the perpetration of infanticide committed by the mother or grandparent on the mother's side, is liable for infanticide, but he must suffer the penalty prescribed for murder.

Illustration:

An unmarried woman, A, gave birth to a child, B. To conceal her dishonor, A conspired with C to dispose of the child. C agreed and killed the child B by burying the child somewhere.

If the child was killed when the age of the child was three days old and above already, the crime of A is parricide. The fact that the killing was done to conceal her dishonor will not mitigate the criminal liability anymore because concealment of dishonor in killing the child is not mitigating in parricide.

If the crime committed by A is parricide because the age of the child is three days old or above, the crime of the co-conspirator C is murder. It is not parricide because he is not related to the victim.

If the child is less than three days old when killed, both the mother and the stranger commits infanticide because infanticide is not predicated on the relation of the offender to the offended party but on the age of the child. In such a case, concealment of dishonor as a motive for the mother to have the child killed is mitigating.
Concealment of dishonor is not an element of infanticide. It merely lowers the penalty. If the child is abandoned without any intent to kill and death results as a consequence, the crime committed is not infanticide but abandonment under Article 276.

If the purpose of the mother is to conceal her dishonor, infanticide through imprudence is not committed because the purpose of concealing the dishonor is incompatible with the absence of malice in culpable felonies.

If the child is born dead, or if the child is already dead, infanticide is not committed.

b. ABORTIONS

i. INTENTIONAL (256)

Acts punished
1. Using any violence upon the person of the pregnant woman;
2. Acting, but without using violence, without the consent of the woman. (By administering drugs or beverages upon such pregnant woman without her consent.)
3. Acting (by administering drugs or beverages), with the consent of the pregnant woman.

Elements
1. There is a pregnant woman;
2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;
3. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom;
4. The abortion is intended.

ABORTION
➔ is the violent expulsion of a fetus from the maternal womb. If the fetus has been delivered but it could not subsist by itself, it is still a fetus and not a person. Thus, if it is killed, the crime committed is abortion not infanticide.

Distinction between infanticide and abortion
- It is infanticide if the victim is already a person less that three days old or 72 hours and is viable or capable of living separately from the mother's womb. It is abortion if the victim is not viable but remains to be a fetus.

- Abortion is not a crime against the woman but

against the fetus. If mother as a consequence of abortion suffers death or physical injuries, you have a complex crime of murder or physical injuries and abortion.

- In intentional abortion, the offender must know of the pregnancy because the particular criminal intention is to cause an abortion. Therefore, the offender must have known of the pregnancy for otherwise, he would not try an abortion.

- If the woman turns out not to be pregnant and someone performs an abortion upon her, he is liable for an impossible crime if the woman suffers no physical injury. If she does, the crime will be homicide, serious physical injuries, etc.

- Under the Article 40 of the Civil Code, birth determines personality. A person is considered born at the time when the umbilical cord is cut. He then acquires a personality separate from the mother.

- But even though the umbilical cord has been cut, Article 41 of the Civil Code provides that if the fetus had an intra-uterine life of less than seven months, it must survive at least 24 hours after the umbilical cord is cut for it to be considered born.

Illustration:

A mother delivered an offspring which had an intra-uterine life of seven months. Before the umbilical cord is cut, the child was killed.

If it could be shown that had the umbilical cord been cut, that child, if not killed, would have survived beyond 24 hours, the crime is infanticide because that conceived child is already considered born.

If it could be shown that the child, if not killed, would not have survived beyond 24 hours, the crime is abortion because what was killed was a fetus only.

- In abortion, the concealment of dishonor as a motive of the mother to commit the abortion upon herself is mitigating. It will also mitigate the liability of the maternal grandparent of the victim – the mother of the pregnant woman – if the abortion was done with the consent of the pregnant woman.

- If the abortion was done by the mother of the pregnant woman without the consent of the woman herself, even if it was done to conceal dishonor, that circumstance will not mitigate her criminal liability.

- But if those who performed the abortion are the parents of the pregnant woman, or either of them, and the pregnant woman consented for the purpose of concealing her dishonor, the penalty is the same as that imposed upon the woman who practiced the abortion upon herself.

- Frustrated abortion is committed if the fetus that is expelled is viable and, therefore, not dead as abortion did not result despite the employment of adequate and sufficient means to make the pregnant woman abort. If the means are not sufficient or adequate, the crime would be an impossible crime of abortion. In consummated abortion, the fetus must be dead.

- One who persuades her sister to abort is a co-principal, and one who looks for a physician to make his sweetheart abort is an accomplice. The physician will be punished under Article 259 of the Revised Penal Code.

ii. UNINTENTIONAL (257)

Elements
1. There is a pregnant woman;
2. Violence is used upon such pregnant woman without intending an abortion;
3. The violence is intentionally exerted;
4. As a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

- Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

- If the pregnant woman aborted because of intimidation, the crime committed is not unintentional abortion because there is no violence; the crime committed is light threats.

- If the pregnant woman was killed by violence by her husband, the crime committed is the complex crime of parricide with unlawful abortion.

- Unintentional abortion may be committed through negligence as it is enough that the use of violence be voluntary.

Illustration:

A quarrel ensued between A, husband, and B, wife. A became so angry that he struck B, who was then pregnant, with a soft drink bottle on the hip. Abortion resulted and B died.

In **US v. Jeffry, 15 Phil. 391,** the Supreme Court said that knowledge of pregnancy of the offended party is not necessary. In **People v. Carnaso, decided on April 7, 1964,** however, the Supreme Court held that knowledge of pregnancy is required in unintentional abortion.

Criticism:

Under Article 4, paragraph 1 of the Revised Penal Code, any person committing a felony is criminally liable for all the direct, natural, and logical consequences of his felonious acts although it may be different from that which is intended. The act of employing violence or physical force upon the woman is already a felony. It is not material if

offender knew about the woman being pregnant or not.

If the act of violence is not felonious, that is, act of self-defense, and there is no knowledge of the woman's pregnancy, there is no liability. If the act of violence is not felonious, but there is knowledge of the woman's pregnancy, the offender is liable for unintentional abortion.

Illustration:

The act of pushing another causing her to fall is a felonious act and could result in physical injuries. Correspondingly, if not only physical injuries were sustained but abortion also resulted, the felonious act of pushing is the proximate cause of the unintentional abortion.

(a) Can there be unintentional abortion through imprudence? (b) Is one guilty of abortion even he did not know that the woman is pregnant?
(a) Unintentional abortion may be committed through reckless imprudence (ie., calesa bumped the abdomen of pregnant woman.)
(b) Yes, being responsible for all the consequences of his acts, however, contrasting ruling- the accused must know the pregnancy- being ruled. (People vs. Carnaso)

iii. Abortion by the Woman or Parent (258)

Elements
1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Abortion is caused by –
   a. The pregnant woman herself;
   b. Any other person, with her consent; or
   c. Any of her parents, with her consent for the purpose of concealing her dishonor.

- No mitigation for parents of pregnant woman even if the purpose is to conceal dishonor, unlike in infanticide.

iv. Abortion by a Physician or Midwife and Dispensing of Abortives (259); Const II, §2

Elements
1. There is a pregnant woman who has suffered an abortion;
2. The abortion is intended;
3. Offender, who must be a physician or midwife, caused or assisted in causing the abortion;
4. Said physician or midwife took advantage of his or her scientific knowledge or skill.

- If the abortion is produced by a physician to save the life of the mother, there is no liability. This is known as a therapeutic abortion. But abortion without medical necessity to warrant it is punishable even with the consent of the woman or her husband.

Illustration:

A woman who is pregnant got sick. The doctor administered a medicine which resulted in Abortion. The crime committed was unintentional abortion through negligence or imprudence.

9. DUELS (260-261)

a. Article 260. Responsibility of Participants in A Duel

Acts punished
1. Killing one's adversary in a duel;
2. Inflicting upon such adversary physical injuries;
3. Making a combat although no physical injuries have been inflicted.

Persons liable
1. The person who killed or inflicted physical injuries upon his adversary, or both combatants in any other case, as principals.
2. The seconds, as accomplices.

DUEL
➔ a formal or regular combat previously consented to by two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight to settle some antecedent quarrel.

- There is no such crime nowadays because people hit each other even without entering into any pre-conceived agreement. This is an obsolete provision.

- If these are not the conditions of the fight, it is not a duel in the sense contemplated in the Revised Penal Code. It will be a quarrel and anyone who killed the other will be liable for homicide or murder, as the case may be.

- The concept of duel under the Revised Penal Code is a classical one.

b. Article 261. Challenging to A Duel

Acts punished
1. Challenging another to a duel;
2. Inciting another to give or accept a challenge to a duel;
3. Scoffing at or decrying another publicly for having refused to accept a challenge to fight a duel.

Persons responsible under Art. 261 are:
1. Challenger
2. Instigators

Illustration:
If one challenges another to a duel by shouting "Come down, Olympia, let us measure your prowess. We will see whose intestines will come out. You are a coward if you do not come down", the crime of

challenging to a duel is not committed. What is committed is the crime of light threats under Article 285, paragraph 1 of the Revised Penal Code.

B. Physical Injuries

1. MUTILATION (262)

Acts punished
1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction;

   Elements
   a. There be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium;
   b. The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction

2. Intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

MUTILATION

➔ is the lopping or clipping off of some part of the body.

- The intent to deliberately cut off the particular part of the body that was removed from the offended party must be established. If there is no intent to deprive victim of particular part of body, the crime is only serious physical injury.

- The common mistake is to associate this with the reproductive organs only. Mutilation includes any part of the human body that is not susceptible to grow again.

- If what was cut off was a reproductive organ, the penalty is much higher than that for homicide.

- This cannot be committed through criminal negligence.

2. SERIOUS PHYSICAL INJURIES (263)

How committed
1. By wounding;
2. By beating;
3. By assaulting; or
4. By administering injurious substance.

In one case, the accused, while conversing with the offended party, drew the latter's bolo from its scabbard. The offended party caught hold of the edge of the blade of his bolo and wounded himself. It was held that since the accused did not wound, beat or assault the offended party, he can not be guilty of serious physical injuries.

Serious physical injuries
1. When the injured person becomes insane, imbecile, impotent or blind in consequence of the physical injuries inflicted;
2. When the injured person –
   a. Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, afoot, an arm, or a leg;
   b. Loses the use of any such member; or
   c. Becomes incapacitated for the work in which he was theretofore habitually engaged, in consequence of the physical injuries inflicted;
3. When the person injured –
   a. Becomes deformed; or
   b. Loses any other member of his body;
   c. Loses the use thereof; or
   d. Becomes ill or incapacitated for the performance of the work in which he was habitually engaged for more than 90 days in consequence of the physical injuries inflicted;
4. When the injured person becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

Physical Injuries vs. Attempted or Frustrated homicide

Physical Injuries	**Attempted or Frustrated homicide**
The offender inflicts physical injuries.	Attempted homicide may be committed, even if no physical injuries are inflicted.
Offender has no intent to kill the offended party	The offender has an intent to kill the offended party.

- The crime of physical injuries is a crime of result because under our laws the crime of physical injuries is based on the gravity of the injury sustained. So this crime is always consummated, notwithstanding the opinion of Spanish commentators like Cuello Calon, Viada, etc., that it can be committed in the attempted or frustrated stage.

- If the act does not give rise to injuries, you will not be able to say whether it is attempted slight physical injuries, attempted less serious physical injuries, or attempted serious physical injuries unless the result is there.

- The reason why there is no attempted or frustrated physical injuries is because the crime of physical injuries is determined on the gravity of the injury. As long as the injury is not there, there can be no attempted or frustrated stage thereof.

Classification of physical injuries:

(1) Between slight physical injuries and less serious physical injuries, you have a duration of one to nine days if slight physical injuries; or 10 days to 20 days if less serious physical injuries. Consider the duration of healing and treatment.

The significant part here is between slight physical injuries and less serious physical injuries. You will consider not only the healing duration of the injury but also the medical attendance required to treat the injury. So the healing duration may be one to nine days, but if the medical treatment continues beyond nine days, the physical injuries would already qualify as less serious physical injuries. The medical treatment may have lasted for nine days, but if the offended party is still incapacitated for labor beyond nine days, the physical injuries are already considered less serious physical injuries.

(2) Between less serious physical injuries and serious physical injuries, you do not consider the period of medical treatment. You only consider the period when the offended party is rendered incapacitated for labor.

If the offended party is incapacitated to work for less than 30 days, even though the treatment continued beyond 30 days, the physical injuries are only considered less serious because for purposes of classifying the physical injuries as serious, you do not consider the period of medical treatment. You only consider the period of incapacity from work.

(3) When the injury created a deformity upon the offended party, you disregard the healing duration or the period of medical treatment involved. At once, it is considered serious physical injuries.

So even though the deformity may not have incapacitated the offended party from work, or even though the medical treatment did not go beyond nine days, that deformity will bring about the crime of serious physical injuries.

Deformity requires the concurrence of the following conditions:

(1) The injury must produce ugliness;
(2) It must be visible;
(3) The ugliness will not disappear through natural healing process.

Illustration:

Loss of molar tooth – This is not deformity as it is not visible.

Loss of permanent front tooth – This is deformity as it is visible and permanent.

Loss of milk front tooth – This is not deformity as it is visible but will be naturally replaced.

In a case decided by the Supreme Court, accused was charged with serious physical injuries because the injuries produced a scar. He was convicted under Article 263 (4). He appealed because, in the course of the trial, the scar disappeared. It was held that accused can not be convicted of serious physical injuries. He is liable only for slight physical injuries because the victim was not incapacitated, and there was no evidence that the medical treatment lasted for more than nine days.

Serious physical injuries is punished with higher penalties in the following cases:

(1) If it is committed against any of the persons referred to in the crime of parricide under Article 246;
(2) If any of the circumstances qualifying murder attended its commission.

Thus, a father who inflicts serious physical injuries upon his son will be liable for qualified serious physical injuries.

Republic Act No. 8049 (The Anti-Hazing Law)

Hazing -- This is any initiation rite or practice which is a prerequisite for admission into membership in a fraternity or sorority or any organization which places the neophyte or applicant in some embarrassing or humiliating situations or otherwise subjecting him to physical or psychological suffering of injury. These do not include any physical, mental, psychological testing and training procedure and practice to determine and enhance the physical and psychological fitness of the prospective regular members of the below.

Organizations include any club or AFP, PNP, PMA or officer or cadet corps of the CMT or CAT.

Section 2 requires a written notice to school authorities from the head of the organization seven days prior to the rites and should not exceed three days in duration.

Section 3 requires supervision by head of the school or the organization of the rites.

Section 4 qualifies the crime if rape, sodomy or mutilation results therefrom, if the person becomes insane, an imbecile, or impotent or blind because of such, if the person loses the use of speech or the power to hear or smell or an eye, a foot, an arm or a leg, or the use of any such member or any of the serious physical injuries or the less serious physical injuries. Also if the victim is below 12, or becomes incapacitated for the work he habitually engages in for 30, 10, 1-9 days.

It holds the parents, school authorities who consented or who had actual knowledge if they did nothing to prevent it, officers and members who planned, knowingly cooperated or were present, present alumni of the organization, owner of the place where such occurred liable.

Makes presence a prima facie presumption of guilt

for such.

3. ADMINISTERING INJURIOUS SUBSTANCES OR BEVERAGES (264)

Elements
1. Offender inflicted upon another any serious physical injury;
2. It was done by knowingly administering to him any injurious substance or beverages or by taking advantage of his weakness of mind or credulity;
3. He had no intent to kill.

4. LESS SERIOUS PHYSICAL INJURIES (265)

Elements:
1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time;
2. The physical injuries must not be those described in the preceding articles.

Qualified as to penalty
1. A fine not exceeding P 500.00, in addition to arresto mayor, shall be imposed for less serious physical injuries when –
   a. There is a manifest intent to insult or offend the injured person; or
   b. There are circumstances adding ignominy to the offense.

2. A higher penalty is imposed when the victim is either –
   a. The offender's parents, ascendants, guardians, curators or teachers; or
   b. Persons of rank or person in authority, provided the crime is not direct assault.

If the physical injuries do not incapacitate the offended party nor necessitate medical attendance, slight physical injuries is committed. But if the physical injuries heal after 30 days, serious physical injuries is committed under Article 263, paragraph 4.

Article 265 is an exception to Article 48 in relation to complex crimes as the latter only takes place in cases where the Revised Penal Code has no specific provision penalizing the same with a definite, specific penalty. Hence, there is no complex crime of slander by deed with less serious physical injuries but only less serious physical injuries if the act which was committed produced the less serious physical injuries with the manifest intent to insult or offend the offended party, or under circumstances adding ignominy to the offense.

5. SLIGHT PHYSICAL INJURIES AND MALTREATMENT (266)

Acts punished
1. Physical injuries incapacitated the offended party for labor from one to nine days, or required medical attendance during the same period;
2. PHYSICAL INJURIES WHICH DID NOT PREVENT THE OFFENDED PARTY FROM ENGAGING IN HIS HABITUAL WORK OR WHICH DID NOT REQUIRE MEDICAL ATTENDANCE;
3. Ill-treatment of another by deed without causing any injury.

This involves even ill-treatment where there is no sign of injury requiring medical treatment.

Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

But if the slapping is done to cast dishonor upon the person slapped, the crime is slander by deed. If the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or anger, the crime is still ill-treatment or slight physical injuries.

Where there is no evidence of actual injury, it is only slight physical injuries. In the absence of proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the crime committed is slight physical injuries.

Illustration:

If Hillary slaps Monica and told her "You choose your seconds . Let us meet behind the Quirino Grandstand and see who is the better and more beautiful between the two of us", the crime is not ill-treatment, slight physical injuries or slander by deed; it is a form of challenging to a duel. The criminal intent is to challenge a person to a duel.
The crime is slight physical injury if there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance.

6. REPUBLIC ACT NO. 7610 (SPECIAL PROTECTION OF CHILDREN AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION ACT), IN RELATION TO MURDER, MUTILATION OR INJURIES TO A CHILD

The last paragraph of Article VI of Republic Act No. 7610, provides:
"For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262 (2) and 263 (1) of Act No 3815, as amended of the Revised Penal Code for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve years of age."
The provisions of Republic Act No. 7160 modified the provisions of the Revised Penal Code in so far as the victim of the felonies referred to is under 12 years of age. The clear intention is to punish the said crimes with a higher penalty when the victim is a child of

tender age. Incidentally, the reference to Article 249 of the Code which defines and penalizes the crime of homicide were the victim is under 12 years old is an error. Killing a child under 12 is murder, not homicide, because the victim is under no position to defend himself as held in the case of **People v. Ganohon, 196 SCRA 431.**

For murder, the penalty provided by the Code, as amended by Republic Act No. 7659, is reclusion perpetua to death – higher than what Republic Act no. 7610 provides. Accordingly, insofar as the crime is murder, Article 248 of the Code, as amended, shall govern even if the victim was under 12 years of age. It is only in respect of the crimes of intentional mutilation in paragraph 2 of Article 262 and of serious physical injuries in paragraph 1 of Article 263 of the Code that the quoted provision of Republic Act No. 7160 may be applied for the higher penalty when the victim is under 12 years old.

C. Rape (Arts, 266-A to 266-D) see also 8505 (Rape Victim Assistance and Protection Act

Article 266-A. Rape, When and How Committed

Elements under paragraph 1
1. Offender is a man;
2. Offender had carnal knowledge of a woman;
3. Such act is accomplished under any of the following circumstances:
   a. By using force or intimidation;
   b. When the woman is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority; or
   d. When the woman is under 12 years of age or demented.

Elements under paragraph 2
1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
   a. By inserting his penis into another person's mouth or anal orifice; or
   b. By inserting any instrument or object into the genital or anal orifice of another person;
3. The act of sexual assault is accomplished under any of the following circumstances:
   a. By using force or intimidation; or
   b. When the woman is deprived of reason or otherwise unconscious; or
   c. By means of fraudulent machination or grave abuse of authority; or
   d. When the woman is under 12 years of age or demented.

Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as A Crime against Persons, Amending for the Purpose the Revised Penal Code) repealed Article 335 on rape and added a chapter on Rape under Title 8.

Under R.A. 8353, the crime of rape can now be committed by a male or a female.

There is no crime of frustrated rape. The slightest penetration or mere touching of the genitals consummates the crime of rape.

Classification of rape

(1) Traditional concept under Article 335 – carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.

(2) Sexual assault - committed with an instrument or an object or use of the penis with penetration of mouth or anal orifice. The offended party or the offender can either be man or woman, that is, if a woman or a man uses an instrument on anal orifice of male, she or he can be liable for rape.

Rape is committed when a man has carnal knowledge of a woman under the following circumstances:

(1) Where intimidation or violence is employed with a view to have carnal knowledge of a woman;
(2) Where the victim is deprived of reason or otherwise unconscious;
(3) Where the rape was made possible because of fraudulent machination or abuse of authority; or
(4) Where the victim is under 12 years of age, or demented, even though no intimidation nor violence is employed.

Sexual assault is committed under the following circumstances:

(1) Where the penis is inserted into the anal or oral orifice; or
(2) Where an instrument or object is inserted into the genital or oral orifice.

If the crime of rape / sexual assault is committed with the following circumstances, the following penalties are imposed:

(1) Reclusion perpetua to death/ prision mayor to reclusion temporal --
   (a) Where rape is perpetrated by the accused with a deadly weapon; or
   (b) Where it is committed by two or more persons.

(2) Reclusion perpetua to death/ reclusion temporal --
   (a) Where the victim of the rape has become insane; or
   (b) Where the rape is attempted but a killing was committed by the offender on the occasion or by reason of the rape.

(3) Death / reclusion perpetua --
   Where homicide is committed by reason or on occasion of a consummated rape.

(4) Death/reclusion temporal --
   (a) Where the victim is under 18 years of age and the offender is her ascendant, stepfather, guardian, or relative by affinity or consanguinity within the 3rd civil degree, or the common law husband of the victim's mother; or
   (b) Where the victim was under the custody of the police or military authorities, or other law enforcement agency;
   (c) Where the rape is committed in full view of the victim's husband, the parents, any of the children or relatives by consanguinity within the 3rd civil degree;
   (d) Where the victim is a religious, that is, a member of a legitimate religious vocation and the offender knows the victim as such before or at the time of the commission of the offense;
   (e) Where the victim is a child under 7 yrs of age;
   (f) Where the offender is a member of the AFP, its paramilitary arm, the PNP, or any law enforcement agency and the offender took advantage of his position;
   (g) Where the offender is afflicted with AIDS or other sexually transmissible diseases, and he is aware thereof when he committed the rape, and the disease was transmitted;
   (h) Where the victim has suffered permanent physical mutilation;
   (i) Where the pregnancy of the offended party is known to the rapist at the time of the rape; or
   (j) Where the rapist is aware of the victim's mental disability, emotional disturbance or physical handicap.

Prior to the amendment of the law on rape, a complaint must be filed by the offended woman. The persons who may file the same in behalf of the offended woman if she is a minor or if she was incapacitated to file, were as follows: a parent; in default of parents, a grandparent; in default or grandparent, the judicial guardian.

Since rape is not a private crime anymore, it can be prosecuted even if the woman does not file a complaint.

If carnal knowledge was made possible because of fraudulent machinations and grave abuse of authority, the crime is rape. This absorbs the crime of qualified and simple seduction when no force or violence was used, but the offender abused his authority to rape the victim.

Under Article 266-C, the offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the offender's liability. Similarly, the legal husband may be pardoned by forgiveness of the wife provided that the marriage is not void ab initio. Obviously, under the new law, the husband may be liable for rape if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape.

Since rape is now a crime against persons, marriage between the offender and the victim extinguishes the penal action and penalty only as to principal and not as to to the accomplices and accessories.

While marriage with one defendant extinguishes the criminal liability, its benefits cannot be extended to the acts committed by the others of which he is a co-principal.

Incestuous rape was coined in Supreme Court decisions. It refers to rape committed by an ascendant of the offended woman. In such cases, the force and intimidation need not be of such nature as would be required in rape cases had the accused been a stranger. Conversely, the Supreme Court expected that if the offender is not known to woman, it is necessary that there be evidence of affirmative resistance put up by the offended woman. Mere "no, no" is not enough if the offender is a stranger, although if the rape is incestuous, this is enough.

EVIDENCE WHICH MAY BE ACCEPTED IN THE PROSECUTION OF RAPE:

1. Any physical overt act manifesting resistance against the act of rape in any degree from the offended party; or
2. Where the offended party is so situated as to render him/her incapable of giving his consent

When the victim is below 12 years old, mere sexual intercourse with her is already rape. Even if it was she who wanted the sexual intercourse, the crime will be rape. This is referred to as statutory rape.

In other cases, there must be force, intimidation, or violence proven to have been exerted to bring about carnal knowledge or the woman must have been deprived of reason or otherwise unconscious.

Where the victim is over 12 years old, it must be shown that the carnal knowledge with her was obtained against her will. It is necessary that there be evidence of some resistance put up by the offended woman. It is not, however, necessary that the offended party should exert all her efforts to prevent the carnal intercourse. It is enough that from her resistance, it would appear that the carnal intercourse is against her will.

Mere initial resistance, which does not indicate refusal on the part of the offended party to the sexual intercourse, will not be enough to bring about the crime of rape. In People vs. Sendong (2003), a rape victim does not have the burden of proving resistance.

In People vs. Luna (2003), it was held that it would be unrealistic to expect a uniform reaction from rape victims.

Note that it has been held that in the crime of rape, conviction does not require medico-legal finding of any penetration on the part of the woman. A medico-legal certificate is not necessary or indispensable to convict the accused of the crime of rape.

It has also been held that although the offended woman who is the victim of the rape failed to adduce evidence regarding the damages to her by reason of the rape, the court may take judicial notice that there is such damage in crimes against chastity. The standard amount given now is P 30,000.00, with or without evidence of any moral damage. But there are some cases where the court awarded only P 20,000.00.

An accused may be convicted of rape on the sole testimony of the offended woman. It does not require that testimony be corroborated before a conviction may stand. This is particularly true if the commission of the rape is such that the narration of the offended woman would lead to no other conclusion except that the rape was committed.

Illustration:

Daughter accuses her own father of having raped her.

Allegation of several accused that the woman consented to their sexual intercourse with her is a proposition which is revolting to reason that a woman would allow more than one man to have sexual intercourse with her in the presence of the others.

It has also been ruled that rape can be committed in a standing position because complete penetration is not necessary. The slightest penetration – contact with the labia – will consummate the rape.

On the other hand, as long as there is an intent to effect sexual cohesion, although unsuccessful, the crime becomes attempted rape. However, if that intention is not proven, the offender can only be convicted of acts of lasciviousness.

The main distinction between the crime of attempted rape and acts of lasciviousness is the intent to lie with the offended woman.

In a case where the accused jumped upon a woman and threw her to the ground, although the accused raised her skirts, the accused did not make any effort to remove her underwear. Instead, he removed his own underwear and placed himself on top of the woman and started performing sexual movements. Thereafter, when he was finished, he stood up and left. The crime committed is only acts of lasciviousness and not attempted rape. The fact that he did not remove the underwear of the victim indicates that he does not have a real intention to effect a penetration. It was only to satisfy a lewd design.

TITLE IX. CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

CRIMES AGAINST LIBERTY
1. Kidnapping and serious illegal detention (Art. 267);
2. Slight illegal detention (Art. 268);
3. Unlawful arrest (Art. 269);
4. Kidnapping and failure to return a minor (Art. 270);
5. Inducing a minor to abandon his home (Art. 271);
6. Slavery (Art. 272);
7. Exploitation of child labor (Art. 273);
8. Services rendered under compulsion in payment of debts (Art. 274).

CRIMES AGAINST SECURITY
1. Abandonment of persons in danger and abandonment of one's own victim (Art. 275);
2. Abandoning a minor (Art. 276);
3. Abandonment of minor by person entrusted with his custody; indifference of parents (Art. 277);
4. Exploitation of minors (Art. 278);
5. Trespass to dwelling (Art. 280);
6. Other forms of trespass (Art. 281);
7. Grave threats (Art. 282);
8. Light threats (Art. 283);
9. Other light threats (Art. 285);
10. Grave coercions (Art. 286);
11. Light coercions (Art. 287);
12. Other similar coercions (Art. 288);
13. Formation, maintenance and prohibition of combination of capital or labor through violence or threats (Art. 289);
14. Discovering secrets through seizure of correspondence (Art. 290);
15. Revealing secrets with abuse of office (Art. 291);
16. Revealing of industrial secrets (Art. 292).

A. Crimes Against Liberty

1. KIDNAPPING AND SERIOUS ILLEGAL DETENTION (267)

Elements
1. Offender is a private individual;
2. He kidnaps or detains another, or in any other manner deprives the latter of his liberty;
3. The act of detention or kidnapping must be illegal;
4. In the commission of the offense, any of the following circumstances is present:
   a. The kidnapping lasts for more than 3 days;
   b. it is committed simulating public authority;
   c. Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or
   d. The person kidnapped or detained is a minor, female, or a public officer.

QUALIFYING CIRCUMSTANCES: DEATH PENALTY IS IMPOSED[1]
1. Purpose is to extort ransom.
2. When the victim is killed or dies as a consequence of the detention.
3. When the victim is raped.
4. When victim is subjected to torture of dehumanizing acts.

- If there is any crime under Title IX which has no corresponding provision with crimes under Title II, then, the offender may be a public officer or a private person. If there is a corresponding crime under Title II, the offender under Title IX for such similar crime is a private person.

- When a public officer conspires with a private person in the commission of any of the crimes under Title IX, the crime is also one committed under this title and not under Title II.

- The purpose is immaterial when any of the circumstances in the first paragraph of Art. 267 is present. (People vs. Mercado).

Illustration:

If a private person commits the crime of kidnapping or serious illegal detention, even though a public officer conspires therein, the crime cannot be arbitrary detention. As far as that public officer is concerned, the crime is also illegal detention.

- In the actual essence of the crime, when one says kidnapping, this connotes the idea of transporting the offended party from one place to another. When you think illegal detention, it connotes the idea that one is restrained of his liberty without necessarily transporting him from one place to another.

- Illegal detention, as defined and punished in RPC, may consist no only in placing a person in an inclosure but also in detaining him or depriving him in any manner of his liberty. When one had freedom of locomotion, but not the freedom to leave at will, it is tantamount to deprovin him of liberty.

- The crime of kidnapping is committed if the purpose of the offender is to extort ransom either from the victim or from any other person. But if a person is transported not for ransom, the crime can be illegal detention. Usually, the offended party is brought to a place other than his own, to detain him there.

- When one thinks of kidnapping, it is not only that of transporting one person from one place to another. One also has to think of the criminal intent.

[1] RA 9346, passed by the Senate and House of Representatives on July 7, 2006, prohibited the imposition of the death penalty. See also a discussion of this law under the section on special laws.

- Forcible abduction -- If a woman is transported from one place to another by virtue of restraining her of her liberty, and that act is coupled with lewd designs.

- Serious illegal detention – If a woman is transported just to restrain her of her liberty. There is no lewd design or lewd intent.

- Grave coercion – If a woman is carried away just to break her will, to compel her to agree to the demand or request by the offender.

- In a decided case, a suitor, who cannot get a favorable reply from a woman, invited the woman to ride with him, purportedly to take home the woman from class. But while the woman is in his car, he drove the woman to a far place and told the woman to marry him. On the way, the offender had repeatedly touched the private parts of the woman. It was held that the act of the offender of touching the private parts of the woman could not be considered as lewd designs because he was willing to marry the offended party. The Supreme Court ruled that when it is a suitor who could possibly marry the woman, merely kissing the woman or touching her private parts to "compel" her to agree to the marriage, such cannot be characterized as lewd design. It is considered merely as the "passion of a lover". But if the man is already married, you cannot consider that as legitimate but immoral and definitely amounts to lewd design.

- If a woman is carried against her will but without lewd design on the part of the offender, the crime is grave coercion.

Illustration:

Tom Cruz invited Nicole Chizmacks for a snack. They drove along Roxas Boulevard, along the Coastal Road and to Cavite. The woman was already crying and wanted to be brought home. Tom imposed the condition that Nicole should first marry him. Nicole found this as, simply, a mission impossible. The crime committed in this case is grave coercion. But if after they drove to Cavite, the suitor placed the woman in a house and would not let her out until she agrees to marry him, the crime would be serious illegal detention.

If the victim is a woman or a public officer, the detention is always serious – no matter how short the period of detention is.

Circumstances which make illegal detention serious

(1) When the illegal detention lasted for three days, regardless of who the offended party is;
(2) When the offended party is a female, even if the detention lasted only for minutes;
(3) If the offended party is a minor or a public officer, no matter how long or how short the detention is;
(4) When threats to kill are made or serious physical injuries have been inflicted; and
(5) If it shall have been committed simulating public authority.

Distinction between illegal detention and arbitrary detention

Illegal detention is committed by a private person who kidnaps, detains, or otherwise deprives another of his liberty.

Arbitrary detention is committed by a public officer who detains a person without legal grounds.

The penalty for kidnapping is higher than for forcible abduction. This is wrong because if the offender knew about this, he would perform lascivious acts upon the woman and be charged only for forcible abduction instead of kidnapping or illegal detention. He thereby benefits from this absurdity, which arose when Congress amended Article 267, increasing the penalty thereof, without amending Article 342 on forcible abduction.

Article 267 has been modified by **Republic Act No. 7659** in the following respects:

(1) Illegal detention becomes serious when it shall have lasted for more than three days, instead of five days as originally provided;

(2) In paragraph 4, if the person kidnapped or detained was a minor and the offender was anyone of the parents, the latter has been expressly excluded from the provision. The liability of the parent is provided for in the last paragraph of Article 271;

(3) A paragraph was added to Article 267, which states:

> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture, or dehumanizing acts, the maximum penalty shall be imposed.

- The amendment of Art. 267 by RA 7659 introduced in our criminal statutes the concept of "special complex crime" of kidnapping with murder or homicide. It effectively eliminated the distinction drawn by the courts between those cases where the killing of the kidnapped victim was purposely sought by the accused, and those where the killing of the victim was not deliberately resorted to but was merely an afterthought. Consequently, the rule now is: 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.

- Article 48, on complex crimes, does not govern in this case. But Article 48 will govern if any

other person is killed aside, because the provision specifically refers to "victim". Accordingly, the rulings in cases of **People v. Parulan, People v. Ging Sam,** and other similar cases where the accused were convicted for the complex crimes of kidnapping with murder have become academic.

- In the composite crime of kidnapping with homicide, the term "homicide" is used in the generic sense and, thus, covers all forms of killing whether in the nature of murder or otherwise. It does not matter whether the purpose of the kidnapping was to kill the victim or not, as long as the victim was killed, or died as a consequence of the kidnapping or detention. There is no more separate crime of kidnapping and murder if the victim was kidnapped not for the purpose of killing her.

- If the victim was raped, this brings about the composite crime of kidnapping with rape. Being a composite crime, not a complex crime, the same is regarded as a single indivisible offense as in fact the law punishes such acts with only a single penalty. In a way, the amendment depreciated the seriousness of the rape because no matter how many times the victim was raped, there will only be one kidnapping with rape. This would not be the consequence if rape were a separate crime from kidnapping because each act of rape would be a distinct count.

- However for the crime to be kidnapping with rape, the offender should not have taken the victim with lewd designs as otherwise the crime would be forcible abduction; and if the victim was raped, the complex crime of forcible abduction with rape would be committed. If the taking was forcible abduction, and the woman was raped several times, there would only be one crime of forcible abduction with rape, and each of the other rapes would constitute distinct counts of rape. This was the ruling in the case of **People v. Bacalso.**

- In **People v. Lactao, decided on October 29, 1993,** the Supreme Court stressed that the crime is serious illegal detention if the purpose was to deprive the offended party of her liberty. And if in the course of the illegal detention, the offended party was raped, a separate crime of rape would be committed. This is so because there is no complex crime of serious illegal detention with rape since the illegal detention was not a necessary means to the commission of rape.

- In **People v. Bernal, 131 SCRA 1,** the appellants were held guilty of separate crimes of serious illegal detention and of multiple rapes. With the amendment by Republic Act No. 7659 making rape a qualifying circumstance in the crime of kidnapping and serious illegal detention, the jurisprudence is superseded to the effect that the rape should be a distinct crime. Article 48 on complex crimes may not apply when serious illegal detention and rape are committed by the same offender. The offender will be charged for the composite crime of serious illegal detention with rape as a single indivisible offense, regardless of the number of times that the victim was raped.

- Also, when the victim of the kidnapping and serious illegal detention was subjected to torture and sustained physical injuries, a composite crime of kidnapping with physical injuries is committed.

2. KIDNAPPING AND FAILURE TO RETURN A MINOR (270)

Elements
1. Offender is entrusted with the custody of a minor person (whether over or under seven years but less than 18 years of age);
2. He deliberately fails to restore the said minor to his parents or guardians.

- If any of the foregoing elements is absent, the kidnapping of the minor will then fall under Article 267.

- The essential element which qualifies the crime of kidnapping a minor under Art. 270 is that the offender is entrusted with the custody of the minor.

- If the accused is any of the parents, Article 267 does not apply; Articles 270 and 271 apply.

- If the taking is with the consent of the parents, the crime in Article 270 is committed.

- In **People v. Generosa,** it was held that deliberate failure to return a minor under one's custody constitutes deprivation of liberty. Kidnapping and failure to return a minor is necessarily included in kidnapping and serious illegal detention of a minor under Article 267(4).

- In **People v. Mendoza,** where a minor child was taken by the accused without the knowledge and consent of his parents, it was held that the crime is kidnapping and serious illegal detention under Article 267, not kidnapping and failure to return a minor under Article 270.

3. INDUCING A MINOR TO ABANDON HIS HOME (271)

Elements
1. A minor (whether over or under seven years of age) is living in the home of his parents or guardians or the person entrusted with his custody;
2. Offender induces said minor to abandon such home.

- Inducement must be (a) actual, and (b) committed with criminal intent

- The minor should not leave his home of his own free will. What constitutes the crime is the act of inducing a minor to abandon his home of his guardian, and it is not necessary that the minor actually abandons the home.

4. SLIGHT ILLEGAL DETENTION (268)

Elements
1. Offender is a private individual;
2. He kidnaps or detains another, or in any other manner deprives him of his liberty.
3. The act of kidnapping or detention is illegal;
4. The crime is committed without the attendance of any of the circumstances enumerated in Article 267.

- This felony is committed if any of the five circumstances in the commission of kidnapping or detention enumerated in Article 267 is not present.

The penalty is lowered if –

(1) The offended party is voluntarily released within three days from the start of illegal detention;

(2) Without attaining the purpose;

(3) Before the institution of the criminal action.

- One should know the nature of the illegal detention to know whether the voluntary release of the offended party will affect the criminal liability of the offender.

- When the offender voluntarily releases the offended party from detention within three days from the time the restraint of liberty began, as long as the offender has not accomplished his purposes, and the release was made before the criminal prosecution was commenced, this would serve to mitigate the criminal liability of the offender, provided that the kidnapping or illegal detention is not serious.

- If the illegal detention is serious, however, even if the offender voluntarily released the offended party, and such release was within three days from the time the detention began, even if the offender has not accomplished his purpose in detaining the offended party, and even if there is no criminal prosecution yet, such voluntary release will not mitigate the criminal liability of the offender.

- One who furnishes the place where the offended party is being held generally acts as an accomplice. But the criminal liability in connection with the kidnapping and serious illegal detention, as well as the slight illegal detention, is that of the principal and not of the accomplice.

- Before, in **People v. Saliente,** if the offended party subjected to serious illegal detention was voluntarily released by the accused in accordance with the provisions of Article 268 (3), the crime, which would have been serious illegal detention, became slight illegal detention only.

- The prevailing rule now is **Asistio v. Judge,** which provides that voluntary release will only mitigate criminal liability if crime was slight illegal detention. If serious, it has no effect.

- In kidnapping for ransom, voluntary release will not mitigate the crime. This is because, with the reimposition of the death penalty, this crime is penalized with the extreme penalty of death.[2]

What is ransom? It is the money, price or consideration paid or demanded for redemption of a captured person or persons, a payment that releases a person from captivity.

The definition of ransom under the Lindberg law of the U.S. has been adopted in our jurisprudence in **People v. Akiran, 18 SCRA 239, 242,** such that when a creditor detains a debtor and releases the latter only upon the payment of the debt, such payment of the debt, which was made a condition for the release is ransom, under this article.

In the case of **People v. Roluna, decided March 29, 1994,** witnesses saw a person being taken away with hands tied behind his back and was not heard from for six years. Supreme Court reversed the trial court ruling that the men accused were guilty of kidnapping with murder. The crime is only slight illegal detention under Article 268, aggravated by a band, since none of the circumstances in Article 267 has been proved beyond a reasonable doubt. The fact that the victim has been missing for six years raises a presumption of death, but from this disputable presumption of death, it should not be further presumed that the persons who were last seen with the absentee is responsible for his disappearance.

5. UNLAWFUL ARREST (269)

Elements
1. Offender arrests or detains another person;
2. The purpose of the offender is to deliver him to the proper authorities;
3. The arrest or detention is not authorized by law or there is no reasonable ground therefor.

- This felony consists in making an arrest or detention without legal or reasonable ground for the purpose of delivering the offended party to the proper authorities.

- The offended party may also be detained but the crime is not illegal detention because the

[2] See discussion on RA 9346 under the section on Special Laws.

purpose is to prosecute the person arrested. The detention is only incidental; the primary criminal intention of the offender is to charge the offended party for a crime he did not actually commit.

- Generally, this crime is committed by incriminating innocent persons by the offender's planting evidence to justify the arrest – a complex crime results, that is, unlawful arrest through incriminatory machinations under Article 363.

- If the arrest is made without a warrant and under circumstances not allowing a warrantless arrest, the crime would be unlawful arrest.

- If the person arrested is not delivered to the authorities, the private individual making the arrest incurs criminal liability for illegal detention under Article 267 or 268.

- If the offender is a public officer, the crime is arbitrary detention under Article 124.

- If the detention or arrest is for a legal ground, but the public officer delays delivery of the person arrested to the proper judicial authorities, then Article 125 will apply.

- Note that this felony may also be committed by public officers.

DELAY IN THE DELIVERY OF DETAINED PERSONS (Art. 125)	**UNLAWFUL ARREST (Art. 269)**
Detention is for some legal ground	Detention is not authorized by law
Crime is committed by failing to deliver such person to the proper judicial authority within a certain period	Committed by making an arrest not authorized by law

6. SLAVERY (272) AND SERVICES RENDERED UNDER COMPULSION IN PAYMENT OF DEBTS (273)

a. ARTICLE 272. SLAVERY

Elements
1. Offender purchases, sells, kidnaps or detains a human being;
2. The purpose of the offender is to enslave such human being.

- This is committed if anyone shall purchase, kidnap, or detain a human being for the purpose of enslaving him. The penalty is increased if the purpose of the offender is to assign the offended party to some immoral traffic.

- This is distinguished from illegal detention by the purpose. If the purpose of the kidnapping or detention is to enslave the offended party, slavery is committed.

- The crime is slavery if the offender is not engaged in the business of prostitution. If he is, the crime is white slave trade under Article 341.

- The employment or custody of a minor with the consent of the parent or guardian although against the child's own will cannot be considered involuntary servitude.

- But where is proven that the defendant was obliged to render service in plaintiff's house as a servant without remuneration whatever and to remain there so long as she has not paid her debt, there is slavery.

b. ANTI-TRAFFICKING OF PERSONS ACT OF 2003 (RA 9208)

Sec. 4 enumerates the following as unlawful:
1. recruiting, transporting, harboring, transferring, providing or receiving persons, even under the pretext of overseas employment, for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude and debt bondage;
2. facilitating, for profit or consideration, introductions or mail-order bride schemes between Filipinas and foreigners for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude and debt bondage;
3. offering and contracting marriages for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude and debt bondage;
4. organizing "sex" tours and similar travel packages;
5. hiring persons for purposes of prostitution or pornography;
6. adopting children for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude and debt bondage;
7. engaging in illegal trade of body organs, incl. Abducting and forcing persons to sell/donate organs/tissues.
8. adopting/recruiting child soldiers for armed conflict

Sec. 5 also penalizes acts that promote, facilitate or otherwise assist in the commission of the acts enumerated in Sec. 4.

Under Sec. 6, trafficking is qualified when:
1. the trafficked person is a child;
2. the inter-country adoption is effected for purposes of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude and debt bondage;
3. trafficking is committed by a syndicate (large-scale);
4. offender is an ascendant, parent, sibling, guardian or otherwise exercises authority over the trafficked person or a public officer or employee;
5. trafficking is made for purposes of engaging in prostitution with law enforcement/military agencies;

6. offender is a member of law enforcement/military agencies;
7. by reason of trafficking, the victim dies, becomes insane, suffers mutilation or is infected with HIV virus/ AIDS.

c. ARTICLE 273. EXPLOITATION OF CHILD LABOR

Elements
1. Offender retains a minor in his services;
2. It is against the will of the minor;
3. It is under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.

- The existence of an indebtedness constitutes no legal justification for holding a person and depriving him of his freedom to live where he wills.

d. ANTI-CHILD LABOR ACT OF 2003 (RA 9231)

RA 9231 amended RA 7160 by imposing heavier penalties on parents, guardians and employers of children 18 yrs. And below who commit any of the following acts:

1. Making the child work beyond the maximum no. of working hours provided by said law;
2. Misappropriating the earnings of the child and/or failure to set up a trust fund for the latter and render a semi-annual accounting of such;
3. Using, procuring or offering the child for purposes of prostitution or pornographic activities;
4. Using, procuring or offering the child for illicit activities, such as trafficking of drugs and other illegal substances;
5. Making the child work in hazardous working conditions;
6. Subjecting the child to various forms of slavery as defined in RA 9208, incl. Trafficking of children, recruitment of child soldiers, etc.

e. ARTICLE 278. EXPLOITATION OF MINORS

Acts punished
1. Causing any boy or girl under 16 years of age to perform any dangerous feat of balancing, physical strength or contortion, the offender being any person;
2. Employing children under 16 years of age who are not the children or descendants of the offender in exhibitions of acrobat, gymnast, rope-walker, diver, or wild-animal tamer, the offender being an acrobat, etc., or circus manager or engaged in a similar calling;
3. Employing any descendant under 12 years of age in dangerous exhibitions enumerated in the next preceding paragraph, the offender being engaged in any of the said callings;
4. Delivering a child under 16 years of age gratuitously to any person following any of the callings enumerated in paragraph 2, or to any habitual vagrant or beggar, the offender being an ascendant, guardian, teacher or person entrusted in any capacity with the care of such child; and
5. Inducing any child under 16 years of age to abandon the home of its ascendants, guardians, curators or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 or to accompany any habitual vagrant or beggar, the offender being any person.

Circumstance qualifying the offense
➔ If the delivery of the child to any person following any of the calling of acrobat, gymnast, rope-walker, diver, wild-animal tamer or circus manager or to any habitual vagrant or beggar is made in consideration of any price, compensation or promise, the penalty is higher.

- The offender is engaged in a kind of business that would place the life or limb of the minor in danger, even though working for him is not against the will of the minor.

Nature of the Business
➔ This involves circuses which generally attract children so they themselves may enjoy working there unaware of the danger to their own lives and limbs.

- Age – Must be below 16 years. At this age, the minor is still growing.

- If the employer is an ascendant, the crime is not committed, unless the minor is less than 12 years old. Because if the employer is an ascendant, the law regards that he would look after the welfare and protection of the child; hence, the age is lowered to 12 years. Below that age, the crime is committed.

- But remember Republic Act No. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act). It applies to minors below 18 years old, not 16 years old as in the Revised Penal Code. As long as the employment is inimical – even though there is no physical risk – and detrimental to the child's interest – against moral, intellectual, physical, and mental development of the minor – the establishment will be closed.

- Article 278 has no application if minor is 16 years old and above. But the exploitation will be dealt with by Republic Act No. 7610.

- If the minor so employed would suffer some injuries as a result of a violation of Article 278, Article 279 provides that there would be additional criminal liability for the resulting felony.

Illustration:

The owner of a circus employed a child under 16 years of age to do a balancing act on the tightrope. The crime committed is exploitation of minors

(unless the employer is the ascendant of the minor who is not below 12 years of age). If the child fell and suffered physical injuries while working, the employer shall be liable for said physical injuries in addition to his liability for exploitation of minors.

B. Crimes Against Security (abandonment, trespass, threats and coercion)

1. ABANDONMENT OF PERSONS IN DANGER AND ABANDONMENT OF OWN VICTIM (275)

Acts punished

1. Failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.

   Elements
   a. The place is not inhabited;
   b. Accused found there a person wounded or in danger of dying;
   c. Accused can render assistance without detriment to himself;
   d. Accused fails to render assistance.

2. Failing to help or render assistance to another whom the offender has accidentally wounded or injured;

3. By failing to deliver a child, under seven years of age, whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

- Under the first act, the offender is liable only when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense. Where the person is already wounded and already in danger of dying, there is an obligation to render assistance only if he is found in an uninhabited place. If the mortally wounded, dying person is found in a place not uninhabited in legal contemplation, abandonment will not bring about this crime. An uninhabited place is determined by possibility of person receiving assistance from another. Even if there are many houses around, the place may still be uninhabited if possibility of receiving assistance is remote.

- If what happened was an accident at first, there would be no liability pursuant to Article 12 (4) of the Civil Code – damnum absque injuria. But if you abandon your victim, you will be liable under Article 275. Here, the character of the place is immaterial. As long as the victim was injured because of the accident caused by the offender, the offender would be liable for abandonment if he would not render assistance to the victim.

2. ABANDONING A MINOR (276)

Elements
1. Offender has the custody of a child;
2. The child is under seven years of age;
3. He abandons such child;
4. He has no intent to kill the child when the latter is abandoned.

Circumstances qualifying the offense
1. When the death of the minor resulted from such abandonment; or
2. If the life of the minor was in danger because of the abandonment.

- The purpose in abandoning the minor under his custody is to avoid the obligation of taking care of said minor.

- Intent to kill cannot be presumed from the death of the child. The ruling that the intent to kill is presumed from the death of the victim of the crime is applicable only to crimes against persons, and not to crimes against security, particularly the crime of abandoning a minor under Art. 276.

3. ABANDONMENT OF MINOR BY PERSON ENTRUSTED WITH CUSTODY; INDIFFERENCE OF PARENTS (277)

Acts punished

1. Delivering a minor to a public institution or other persons without the consent of the one who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of the proper authorities;

   Elements
   a. Offender has charge of the rearing or education of a minor;
   b. He delivers said minor to a public institution or other persons;
   c. The one who entrusted such child to the offender has not consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

2. Neglecting his (offender's) children by not giving them the education which their station in life requires and financial condition permits.

   Elements:
   a. Offender is a parent;
   b. He neglects his children by not giving them education;
   c. His station in life requires such education and his financial condition permits it.

ABANDONMENT OF MINOR BY PERSONS ENTRUSTED WITH CUSTODY (ART. 277)	ABANDONMENT OF MINOR (ART. 276)
The custody of the offender is specific, that is , the custody for the rearing or education of the minor	The custody of the offender is stated in general
Minor is under 18 yrs. of age	Minor is under 7 years of age
Minor is delivered to a public institution or other person	Minor is abandoned in such a way as to deprive him of the care and protection that his tender years need

Article 279. Additional penalties for other offenses. — The imposition of the penalties prescribed in the preceding articles, shall not prevent the imposition upon the same person of the penalty provided for any other felonies defined and punished by this Code.

4. QUALIFIED TRESPASS TO DWELLING (280) AND OTHER FORMS OF TRESPASS (281)

a. ARTICLE 280. QUALIFIED TRESPASS TO DWELLING

Elements
1. Offender is a private person;
2. He enters the dwelling of another;
3. Such entrance is against the latter's will.

Two forms of trespass
1. Qualified trespass to dwelling – This may be committed by any private person who shall enter the dwelling of another against the latter's will. The house must be inhabited at the time of the trespass although the occupants are out. Or offender breaks in with force and violence (Article 280).

2. Trespass to property - Offender enters the closed premises or fenced estate of another; such close premises or fenced estate is uninhabited; there is a manifest prohibition against entering such closed premises or fenced estate; and offender has not secured the permission of the owner or caretaker thereof (Article 281).

(See also Presidential Decree No. 1227 regarding unlawful entry into any military base in the Philippines.)

DWELLING

➔ This is the place that a person inhabits. It includes the dependencies which have interior communication with the house. It is not necessary that it be the permanent dwelling of the person. So, a person's room in a hotel may be considered a dwelling. It also includes a room where one resides as a boarder.

- If the purpose in entering the dwelling is not shown, trespass is committed. If the purpose is shown, it may be absorbed in the crime as in robbery with force upon things, the trespass yielding to the more serious crime. But if the purpose is not shown and while inside the dwelling he was found by the occupants, one of whom was injured by him, the crime committed will be trespass to dwelling and frustrated homicide, physical injuries, or if there was no injury, unjust vexation.

- If the entry is made by a way not intended for entry, that is presumed to be against the will of the occupant (example, entry through a window). It is not necessary that there be a breaking.

- "Against the will" -- This means that the entrance is, either expressly or impliedly, prohibited or the prohibition is presumed. Fraudulent entrance may constitute trespass. The prohibition to enter may be made at any time and not necessarily at the time of the entrance.

- To prove that an entry is against the will of the occupant, it is not necessary that the entry should be preceded by an express prohibition, provided that the opposition of the occupant is clearly established by the circumstances under which the entry is made, such as the existence of enmity or strained relations between the accused and the occupant.

- *On violence, Cuello Calon opines that violence may be committed not only against persons but also against things. So, breaking the door or glass of a window or door constitutes acts of violence. Our Supreme Court followed this view in People v. Tayag. Violence or intimidation must, however, be anterior or coetaneous with the entrance and must not be posterior. But if the violence is employed immediately after the entrance without the consent of the owner of the house, trespass is committed. If there is also violence or intimidation, proof of prohibition to enter is no longer necessary.*

EXAMPLES OF TRESPASS BY MEANS OF VIOLENCE:
1. Pushing the door violently and maltreating the occupants after entering.
2. Cutting of a ribbon or string with which the door latch of a closed room was fastened. The cutting of the fastenings of the door was an act of violence.
3. Wounding by means of a bolo, the owner of the house immediately after entrance

EXAMPLES OF TRESPASS BY MEANS OF INTIMIDATION:

1. Firing a revolver in the air by persons attempting to force their way into a house.
2. The flourishing of a bolo against inmates of the house upon gaining an entrance

- Prohibition is not necessary when violence or intimidation is employed by the offender.

- Trespass may be committed by the owner of a dwelling.

Distinction between qualified trespass to dwelling and violation of domicile

Unlike qualified trespass to dwelling, violation of domicile may be committed only by a public officer or employee and the violation may consist of any of the three acts mentioned in Article 128 – (1) entering the dwelling against the will of the owner without judicial order; (2) searching papers or other effects found in such dwelling without the previous consent of the owner thereof; and (3) refusing to leave the dwelling when so requested by the owner thereof, after having surreptitiously entered such dwelling.

Cases when Article 280 does not apply:

(1) When the purpose of the entrance is to prevent serious harm to himself, the occupant or third persons;

(2) When the purpose of the offender in entering is to render some service to humanity or justice;

(3) Anyone who shall enter cafes, taverns, inns and other public houses while they are open .

Pursuant to Section 6, Rule 113 of the Rules of Court, a person who believes that a crime has been committed against him has every right to go after the culprit and arrest him without any warrant even if in the process he enters the house of another against the latter's will.

b. ARTICLE 281. OTHER FORMS OF TRESPASS

Elements

1. Offender enters the closed premises or the fenced estate of another;
2. The entrance is made while either of them is uninhabited;
3. The prohibition to enter is manifest;
4. The trespasser has not secured the permission of the owner or the caretaker thereof.

QUALIFIED TRESPASS TO DWELLING (ART. 280)	OTHER FORMS OF TRESPASS (ART. 281)
Offender is a private person	The offender is any person
Offender enters a dwelling house	Offender enters closed premises or fenced estate without securing the permission of the owner or caretaker thereof
Place entered is inhabited	Prohibition to enter must be manifest
Act constituting the crime is entering the dwelling against the will of the owner	It is the entering the closed premises or the fenced estate without securing the permission of the owner or caretaker thereof
Prohibition to enter is express or implied	Prohibition to enter must be manifest

PREMISES

➔ signifies distinct and definite locality. It may mean a room, shop, building or definite area, but in either case, locality is fixed.

5. THREATS

a. ARTICLE 282. GRAVE THREATS

Acts punished:

1. Threatening another with the infliction upon his person, honor or property or that of this family of any wrong amounting to a crime and demanding money or imposing any other condition, even though not unlawful, and the offender attained his purpose;
2. Making such threat without the offender attaining his purpose;
3. Threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime, the threat not being subject to a condition.

Qualifying Circumstance:

If threat was made in writing or through a middleman.

Threat is a declaration of an intention or determination to injure another by the commission upon his person, honor or property or upon that of his family of some wrong which may or may not amount to a crime:

(1) Grave threats – when the wrong threatened to be inflicted amounts to a crime. The case falls under Article 282.

(2) Light threats – if it does not amount to a crime. The case falls under Article 283.

- But even if the harm intended is in the nature of a crime, if made orally and in the heat of anger and after the oral threat, the issuer of the threat did not pursue the act, the crime is only other light threats under Article 285.

- To constitute grave threats, the threats must refer to a future wrong and is committed by

acts or through words of such efficiency to inspire terror or fear upon another. It is, therefore, characterized by moral pressure that produces disquietude or alarm.

- The greater perversity of the offender is manifested when the threats are made demanding money or imposing any condition, whether lawful or not, and the offender shall have attained his purpose. So the law imposes upon him the penalty next lower in degree than that prescribed for the crime threatened to be committed. But if the purpose is not attained, the penalty lower by two degrees is imposed. The maximum period of the penalty is imposed if the threats are made in writing or through a middleman as they manifest evident premeditation.

- If there is another crime actually committed or the objective of the offender is another crime, and the threat is only a means to commit it or a mere incident in its commission, the threat is absorbed by the other crime. But if the threat was made with the deliberate purpose of creating in the mind of the person threatened, the belief that the threat would be carried into effect, the crime committed is grave threats, and the minor crime which accompanied it should be disregarded.

Distinction between threat and coercion:

1. The essence of coercion is violence or intimidation. There is no condition involved; hence, there is no futurity in the harm or wrong done.

2. In threat, the wrong or harm done is future and conditional. In coercion, it is direct and personal.

Distinction between threat and robbery:

(1) As to intimidation – In robbery, the intimidation is actual and immediate; in threat, the intimidation is future and conditional.

(2) As to nature of intimidation – In robbery, the intimidation is personal; in threats, it may be through an intermediary.

(3) As to subject matter – Robbery refers to personal property; threat may refer to the person, honor or property.

(4) As to intent to gain – In robbery, there is intent to gain; in threats, intent to gain is not an essential element.

(5) In robbery, the robber makes the danger involved in his threats directly imminent to the victim and the obtainment of his gain immediate, thereby also taking rights to his person by the opposition or resistance which the victim might offer; in threat, the danger to the victim is not instantly imminent nor the gain of the culprit immediate.

b. Article 283. Light Threats

Elements
1. Offender makes a threat to commit a wrong;
2. The wrong does not constitute a crime;
3. There is a demand for money or that other condition is imposed, even though not unlawful;
4. Offender has attained his purpose or, that he has not attained his purpose.

- Light threats in Art. 283 does not include a threat to commit a wrong not constituting a crime, which is not subject to a condition.

- In order to convict a person of the crime of light threats, the harm threatened must not be in the nature of crime and there is a demand for money or any other condition is imposed, even though lawful.

The law imposes the penalty of bond for good behavior only in case of grave and light threats. If the offender can not post the bond, he will be banished by way of destierro to prevent him from carrying out his threat.

c. Article 284. Bond for Good Behavior

WHEN A PERSON IS REQUIRED TO GIVE BAIL BOND
1. When he threatens another under the circumstances mentioned in Art. 282.
2. When he threatens another under the circumstances mentioned in Art. 283.

- This is an additional penalty.

d. Article 285. Other Light Threats

Acts punished
1. Threatening another with a weapon, or by drawing such weapon in a quarrel, unless it be in lawful self-defense;

2. ORALLY THREATENING ANOTHER, IN THE HEAT OF ANGER, WITH SOME HARM CONSTITUTING A CRIME, WITHOUT PERSISTING IN THE IDEA INVOLVED IN HIS THREAT;

3. Orally threatening to do another any harm not constituting a felony.

6. COERCIONS (286-289)

a. Article 286. Grave Coercions

Acts punished
1. Preventing another, by means of violence, threats or intimidation, from doing something not prohibited by law;
2. Compelling another, by means of violence, threats or intimidation, to do something against his will, whether it be right or wrong.

Elements
1. A person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will; be it right or wrong;
2. The prevention or compulsion be effected by violence, threats or intimidation; and
3. The person that restrained the will and liberty of another had not the authority of law or the right to do so, or in other words, that the restraint shall not be made under authority of law or in the exercise of any lawful right.

PURPOSE OF THE LAW

➔ To enforce the principle that no person may take the law into his hands, and that our government is one of law, not of men.

- Grave coercion arises only if the act which the offender prevented another to do is not prohibited by law or ordinance. If the act prohibited was illegal, he is not liable for grave coercion.

- If a person prohibits another to do an act because the act is a crime, even though some sort of violence or intimidation is employed, it would not give rise to grave coercion. It may only give rise to threat or physical injuries, if some injuries are inflicted. However, in case of grave coercion where the offended party is being compelled to do something against his will, whether it be wrong or not, the crime of grave coercion is committed if violence or intimidation is employed in order to compel him to do the act. No person shall take the law into his own hands.

Illustration:

Compelling the debtor to deliver some of his properties to pay a creditor will amount to coercion although the creditor may have a right to collect payment from the debtor, even if the obligation is long over due.

The violence employed in grave coercion must be immediate, actual, or imminent. In the absence of actual or imminent force or violence, coercion is not committed. The essence of coercion is an attack on individual liberty.

The physical violence is exerted to (1) prevent a person from doing something he wants to do; or (2) compel him to do something he does not want to do.

Illustration:

If a man compels another to show the contents of the latter's pockets, and takes the wallet, this is robbery and not grave coercion. The intimidation is a means of committing robbery with violence or intimidation of persons. Violence is inherent in the crime of robbery with violence or intimidation upon persons and in usurpation of real properties because it is the means of committing the crime.

Exception to the rule that physical violence must be exerted: where intimidation is so serious that it is not a threat anymore – it approximates violence.

In **Lee v. CA, 201 SCAR 405,** it was held that neither the crime of threats nor coercion is committed although the accused, a branch manager of a bank made the complainant sign a withdrawal slip for the amount needed to pay the spurious dollar check she had encashed, and also made her execute an affidavit regarding the return of the amount against her better sense and judgment. According to the court, the complainant may have acted reluctantly and with hesitation, but still, it was voluntary. It is different when a complainant refuses absolutely to act such an extent that she becomes a mere automaton and acts mechanically only, not of her own will. In this situation, the complainant ceases to exits as an independent personality and the person who employs force or intimidation is, in the eyes of the law, the one acting; while the hand of the complainant sign, the will that moves it is the hand of the offender.

WHEN *PRISION MAYOR* SHALL BE IMPOSED:
1. If the coercion is committed in violation of the exercise of the right of suffrage.
2. if the coercion is committed to compel another to perform any religious act
3. if the coercion is committed to prevent another from performing any religious act

- A public officer who shall prevent by means of violence or threats the ceremonies or manifestations of any religion is guilty of interruption of religious worship (Art. 132)

- Any person who, by force, prevents the meeting of a legislative body is liable under Art. 143.

- Any person who shall use force or intimidation to prevent any member of Congress from attending the meetings thereof, expressing his opinions, or casting his vote is liable under Art. 145.

- The crime is not grave coercion when the violence is employed to seize anything belonging to the debtor of the offender. It is light coercion under Art. 287.

- The owner of a thing has no right to prohibit the interference of another with the same, if the interference is necessary to avert an imminent danger and the threatened damage, compared to the damage arising to the owner from the interference, is much greater. (Art. 432, Civil Code)

b. ARTICLE 287. LIGHT COERCIONS

Elements
1. Offender must be a creditor;
2. He seizes anything belonging to his debtor:
3. The seizure of the thing be accomplished by means of violence or a display of material force producing intimidation;
4. The purpose of the offender is to apply the same to the payment of the debt.

- The first paragraph deals with light coercions wherein violence is employed by the offender who is a creditor in seizing anything belonging to his debtor for the purpose of applying the same to the payment of the debt.

- In the other light coercions or unjust vexation embraced in the second paragraph, violence is absent.

UNJUST VEXATION
➔ any act committed without violence, but which unjustifiably annoys or vexes an innocent person amounts to light coercion.
➔ should include any human conduct which, although not productive of some physical or material harm would, however, unjustifiably annoy or vex an innocent person.

- It is distinguished from grave coercion under the first paragraph by the absence of violence.

Illustration:

Persons stoning someone else's house. So long as stoning is not serious and it is intended to annoy, it is unjust vexation. It disturbs the peace of mind.
The main purpose of the statute penalizing coercion and unjust vexation is precisely to enforce the principle that no person may take the law into his hands and that our government is one of laws, not of men. The essence of the crimes is the attack on individual liberty.

c. ARTICLE 288. OTHER SIMILAR COERCIONS

Acts punished:
1. Forcing or compelling, directly or indirectly, or knowingly permitting the forcing or compelling of the laborer or employee of the offender to purchase merchandise of commodities of any kind from him;

   Elements:
   a. Offender is any person, agent or officer of any association or corporation;
   b. He or such firm or corporation has employed laborers or employees;
   c. He forces or compels, directly or indirectly, or knowingly permits to be forced or compelled, any of his or its laborers or employees to purchase merchandise or commodities of any kind from him or from said firm or corporation.

2. Paying the wages due his laborer or employee by means of tokens or object other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

   Elements:
   b. Offender pays the wages due a laborer or employee employed by him by means of tokens or object;
   c. Those tokens or objects are other than the legal tender currency of the Philippines;
   c. Such employee or laborer does not expressly request that he be paid by means of tokens or objects.

- As a general rule, wages shall be paid in legal tender and the use of tokens, promissory notes, vouchers, coupons or any other forms alleged to represent legal tender is absolutely prohibited even when expressly requested by the employee. (Section 1, Rule VIII, Book III, Omnibus Rules Implementing the Labor Code)

- No employer shall limit or otherwise interfere with the freedom of any employee to dispose of his wages. He shall not in any manner force, compel, oblige his employees to purchase merchandise, commodities or other property from the employer or from any other person. (Art. 112, Labor Code.)

- Compelling an employee to purchase merchandise or commodities of the employer or compelling him to receive tokens or objects in payment of his wages are punished under the Revised Penal Code.

- Inducing an employee to give up any part of his wages by force, stealth, intimidation, threat or by any other means is unlawful under Article 116 of the Labor Code, not under the Revised Penal Code.

d. ARTICLE 289. FORMATION, MAINTENANCE, AND PROHIBITION OF COMBINATION OF CAPITAL OR LABOR THROUGH VIOLENCE OR THREATS

Elements
1. Offender employs violence or threats, in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work;
2. The purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employers.

The act should not be a more serious offense. If death or some serious physical injuries are cause in an effort to curtail the exercise of the rights of the laborers and employers, the act should be punished in accordance with the other provisions of the Code.

C. Discovery and Revelation of Secrets

1. DISCOVERY THROUGH SEIZURE OF CORRESPONDENCE (290) SEE ALSO CONST ART. III, §3(1) (2), RA 4200

a. ARTICLE 290. DISCOVERING SECRETS THROUGH SEIZURE OF CORRESPONDENCE

Elements
1. Offender is a private individual or even a public officer not in the exercise of his official function;
2. He seizes the papers or letters of another;
3. The purpose is to discover the secrets of such another person;
4. Offender is informed of the contents of the papers or letters seized.

This is a crime against the security of one's papers and effects. The purpose must be to discover its effects. The act violates the privacy of communication.

According to Ortega, it is not necessary that the offender should actually discover the contents of the letter. Reyes, citing **People v. Singh, CA, 40 OG, Suppl. 5, 35,** believes otherwise.

The last paragraph of Article 290 expressly makes the provision of the first and second paragraph thereof inapplicable to parents, guardians, or persons entrusted with the custody of minors placed under their care or custody, and to the spouses with respect to the papers or letters of either of them. The teachers or other persons entrusted with the care and education of minors are included in the exceptions.

In a case decided by the Supreme Court, a spouse who rummaged and found love letters of husband to mistress does not commit this crime, but the letters are inadmissible in evidence because of unreasonable search and seizure. The ruling held that the wife should have applied for a search warrant.

Distinction from estafa, damage to property, and unjust vexation:

If the act had been executed with intent of gain, it would be estafa;

If, on the other hand, the purpose was not to defraud, but only to cause damage to another's, it would merit the qualification of damage to property;

If the intention was merely to cause vexation preventing another to do something which the law does not prohibit or compel him to execute what he does not want, the act should be considered as unjust vexation.

Revelation of secrets discovered not an element of the crime but only increases the penalty.

b. Republic Act No. 4200- An Act To Prohibit And Penalize Wire Tapping And Other Related Violations Of The Privacy Of Communication, And For Other Purposes.

SECTION 1. Unlawful acts by any person or participant, not authorized by all the parties to any private communication or spoken word.

1. To tap any wire or cable
2. To use any other device or arrangement to secretly overhear, intercept or record such communication by using a device known as dictaphone, dictagraph, detectaphone, walkie-talkie or tape-recorder.
3. To knowingly possess any tape/wire or disc record, or copies of any communication or spoken word
4. To replay the same for any person or persons
5. To communicate the contents thereof, verbally or in writing
6. To furnish transcriptions thereof, whether complete or partial

EXCEPTION:

When a peace officer is authorized by written order from the court.

Any recording, communication or spoken word obtained in violation of the provisions of this Act – INADMISSIBLE IN EVIDENCE IN ANY JUDICIAL, QUASI-JUDICIAL OR ADMINISTRATIVE HEARING OR INVESTIGATION.

2. REVEALING SECRETS WITH ABUSE OF OFFICE (291)

Elements
1. Offender is a manager, employee or servant;
2. He learns the secrets of his principal or master in such capacity;
3. He reveals such secrets.

An employee, manager, or servant who came to know of the secret of his master or principal in such capacity and reveals the same shall also be liable regardless of whether or not the principal or master suffered damages.

The essence of this crime is that the offender learned of the secret in the course of his employment. He is enjoying a confidential relation with the employer or master so he should respect the privacy of matters personal to the latter.

If the matter pertains to the business of the employer or master, damage is necessary and the agent, employee or servant shall always be liable. Reason: no one has a right to the personal privacy of another.

3. REVELATION OF INDUSTRIAL SECRETS (292)

Elements
1. Offender is a person in charge, employee or workman of a manufacturing or industrial establishment;
2. The manufacturing or industrial establishment has a secret of the industry which the offender has learned;
3. Offender reveals such secrets;
4. Prejudice is caused to the owner.

A business secret must not be known to other business entities or persons. It is a matter to be discovered, known and used by and must belong to one person or entity exclusively. One who merely copies their machines from

those already existing and functioning cannot claim to have a business secret, much less, a discovery within the contemplation of Article 292.

The secrets here must be those relating to the manufacturing processes invented by or for a manufacturer and used only in his factory or in a limited number of them, otherwise, as when such processes are generally used, they will not be a secret.

The act constituting the crime is revealing the secret of the industry of employer. When, the offender used for his own benefit, without revealing it to others, he is not liable under this article.

TITLE X. CRIMES AGAINST PROPERTY

A. Robbery (293)

1. ARTICLE 293. WHO ARE GUILTY OF ROBBERY

- Robbery: the taking of personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything.

Elements of Robbery in General:
a. That there be (1) personal property; (2) belonging to another;
b. That there is (3) unlawful taking of that property;
c. That the taking must be (4) with intent to gain; and
d. That there is (5) violence against or intimidation of any person, or force upon anything.

- The property taken must be personal, for if real property occupied or real right is usurped by means of violence against or intimidation of person, the crime is usurpation (Art. 312).

- Prohibitive articles may be the subject of robbery, e.g., opium

- "Taking": depriving the offended party of ownership of the thing taken with the character of permanency.

- Intent to gain is presumed from the unlawful taking of personal property. Being an internal act, it cannot be established by direct evidence, except in case of confession by the accused. It must, therefore, be deduced from the circumstances surrounding the commission of the offense.

Distinctions between effects of employment of violence against or intimidation of person and those of use of force upon things:
1. In the former, the taking of personal property belonging to another is always robbery. In the latter, the taking is robbery only if the force is used either to enter the building or to break doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle inside the building or to force them open outside after taking the same from the building (Art. 299 & 302)
2. In the former, the value of the property taken is immaterial. The penalty depends (a) on the result of the violence used, as when homicide, rape, intentional mutilation or any of the serious physical injuries resulted, or when less serious or slight physical injuries were inflicted, which are only evidence of simple violence, and (b) on the existence of intimidation only.
In the latter, committed in an inhabited house, public building, or edifice devoted to religious worship, the penalty is based (a) on the value of the property taken and (b) on whether or not the offenders carry arms; and in robbery taken with force upon things, the value of the property taken.

2. WITH VIOLENCE AGAINST OR INTIMIDATION OF PERSONS

a. WITH VIOLENCE OR INTIMIDATION OF PERSONS (294)

Acts punished under Art. 294:
1. When by reason or on occasion of the robbery, the crime of homicide is committed.
2. When the robbery is accompanied by rape or intentional mutilation or arson.
3. When by reason or on occasion of such robbery, any of the physical injuries resulting in insanity, imbecility, impotency, or blindness is inflicted.
4. When by reason or on occasion of robbery, any of the physical injuries resulting in the loss of the use of speech or the power to hear or to smell, or the loss of an eye, a hand, a foot, an arm or a leg or the loss of the use of any such member, or incapacity for the work in which the injured person is theretofore habitually engaged is inflicted.
5. If the violence or intimidation employed in the commission of the robbery is carried to a degree clearly unnecessary for the commission of the crime.
6. When in the course of its execution, the offender shall have inflicted upon any person not responsible for the commission of the robbery any of the physical injuries in consequence of which the person injured becomes deformed or loses any other member of his body or loses the use thereof or becomes ill or incapacitated for the performance of the work in which he is habitually engaged for labor for more than 30 days
7. If the violence employed by the offender does not cause any of the serious physical injuries defined in Art. 263, or if the offender employs intimidation only.

- The crime defined in this article is a special complex crime.

- The violence must be against the person of the offended party, not upon the thing taken. It must be present before the taking of personal property is complete.

Exception: When the violence results in: (1) homicide, (2) rape, (3) intentional mutilation, or (4) any of the serious physical injuries penalized in paragraphs 1 & 2 of Art. 263, the taking of personal property is robbery complexed with any of those crimes under Art. 294, even if the taking was already complete when the violence was used by the offender.

- There is no such crime as robbery with murder.

- The law does not require that the person killed is the owner of the property taken. The crime is still robbery with homicide if, in the course of the robbery, another robber was killed by his companion. There is also robbery with homicide,

even if the person killed was an innocent bystander.

- Even if the rape was committed in another place, it is still robbery with rape.
- When the taking of personal property of a woman is an independent act following defendant's failure to consummate the rape, there are two distinct crimes committed: attempted rape and theft.
- Additional rapes committed on the same occasion of robbery will not increase the penalty.
- When rape and homicide co-exist in the commission of robbery, the crime is robbery with homicide, the rape to be considered as an aggravating circumstance only.
- Absence of intent to gain will make the taking of personal property grave coercion if there is violence used (Art. 286).

b. With Physical Injuries, in an Uninhabited Place and by a band (295, 296)

i. Article 295. Robbery with Physical Injuries, in an Uninhabited Place and by a band

Robbery with violence against or intimidation or persons is qualified when it is committed:
1. In an uninhabited place, or
2. By a band, or
3. By attacking a moving train, street car, motor vehicle, or airship, or
4. By entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances, or
5. On a street, road, highway, or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties in Art. 294.

- Any of these five qualifying circumstances must be alleged in the information.
- Being qualifying, it cannot be offset by a generic mitigating circumstance.
- The intimidation with the use of firearm qualifies only robbery on a street, road, highway, or alley.
- Art. 295 does not apply to robbery with homicide, or robbery with rape, or robbery with serious physical injuries under par. 1 of Art. 263.

ii. Article 296. Definition of a Band and Penalty Incurred by the Members Thereof

Outline of Art. 296:
1. When at least 4 armed malefactors take part in the commission of a robbery, it is deemed committed by a band.
2. When any of the arms used in the commission of robbery is not licensed, the penalty upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice to the criminal liability for illegal possession of such firearms.
3. Any member of a band who was present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the crime.

- When the robbery was not committed by a band, the robber who did not take part in the assault by another is not liable for that assault.
- When the robbery was not by a band and homicide was not determined by the accused when they plotted the crime, the one who did not participate in the killing is liable for robbery only.
- A principal by inducement, who did not go with the band at the place of the commission of the robbery, is not liable for robbery with homicide, but only for robbery, there being no evidence that he gave instructions to kill the victim or intended that this should be done.
- Proof of conspiracy is not necessary when 4 or more armed persons committed robbery.
- There is no crime as "robbery with homicide in band". If the robbery with homicide was committed by a band, the offense would still be "robbery with homicide", the circumstance that it was committed by a band would be appreciated as an ordinary aggravating circumstance.
- The special aggravating circumstance of use of unlicensed firearm is not applicable to robbery with homicide, robbery with rape, or robbery with physical injuries, committed by a band.

c. Attempted and Frustrated Robbery with Homicide (297)

- "Homicide" includes multiple homicides, murder, parricide, or even infanticide.
- The penalty is the same, whether robbery is attempted or frustrated.
- Robbery with homicide and attempted or frustrated robbery with homicide are special complex crimes, not governed by Art. 48, but by the special provisions of Arts. 294 & 297, respectively.
- There is only one crime of attempted robbery with homicide even if slight physical injuries were inflicted on other persons on the occasion or by reason of the robbery.

d. Execution of Deeds through Violence or Intimidation (298)

i. ARTICLE 298. EXECUTION OF DEEDS THROUGH VIOLENCE OR INTIMIDATION

Elements:
1. That the offender has intent to defraud another
2. That the offender compels him to sign, execute, or deliver any public instrument or document
3. That the compulsion is by means of violence or intimidation.

- If the violence resulted in the death of the person to be defrauded, the crime is robbery with homicide and the penalty for that crime is prescribed in par. 1 of Art. 294 shall be imposed.
- Art. 298 applies even if the document signed, executed, or delivered is a private or commercial document.
- Art. 298 is not applicable if the document is void.
- When the offended party is under obligation to sign, execute or deliver the document under the law, there is no robbery. There will be coercion if violence is used in compelling the offended party to sign or deliver the document.

3. BY FORCE UPON THINGS

- Robbery by the use of force upon things is committed only when either (1) the offender entered a house or building by any of the means specified in Art. 299 or Art. 302, or (2) even if there was no entrance by any of those means, he broke a wardrobe, chest, or any other kind of locked or closed or sealed furniture or receptacle in the house or building, or he took it away to be broken or forced open outside.

a. IN AN INHABITED PLACE OR EDIFICE FOR WORSHIP (299, 301)

i. ARTICLE 299. ROBBERY IN AN INHABITED HOUSE OR PUBLIC BUILDING OR EDIFICE DEVOTED TO WORSHIP

Elements of robbery with force upon things under subdivision (a):
1. That the offender entered (a) an inhabited house, or (b) public building, or (c) edifice devoted to religious worship.
2. That the entrance was effected by any of the following means:
   a. Through an opening not intended for entrance or egress;
   b. By breaking any wall, roof, or floor or breaking any door or window;
   c. By using false keys, picklocks or similar tools; or
   d. By using any fictitious name or pretending the exercise of public authority.
3. That once inside the building, the offender took personal property belonging to another with intent to gain.

- There must be evidence or the facts must show that the accused entered the dwelling house or building by any of the means enumerated in subdivision (a) of Art. 299.
- In entering the building, the offender must have an intention to take personal property.
- "Inhabited house": any shelter, ship, or vessel constituting the dwelling of one or more persons even though the inhabitants thereof are temporarily absent therefrom when the robbery is committed.
- "Public building": every building owned by the Government or belonging to a private person but used or rented by the Government, although temporarily unoccupied by the same.
- Any of the four means described in subdivision (a) of Art. 249 must be resorted to by the offender to enter a house or building, not to get out.
- If the culprit had entered the house through an open door, and the owner, not knowing that the culprit was inside, closed and locked the door from the outside and left, and the culprit, after taking personal property in the house, went out through the window, it is only theft, not robbery.
- The whole body of the culprit must be inside the building to constitute entering.
- "Breaking": means entering the building. The force used in this means must be actual, as distinguished from that in the other means which is only constructive force.
- The wall must be an outside wall.
- The outside door (main or back door) must be broken.
- "False keys": genuine keys stolen from the owner or any keys other than those intended for use in the lock forcibly opened by the offender.
- The genuine key must be stolen, not taken by force or with intimidation, from the owner.
- The false key or picklock must be used to enter the building.
- It is only theft when the false key is used to open wardrobe or locked receptacle or drawer or inside door.
- The use of fictitious name or the act of pretending to exercise authority must be to enter the building.

Elements of robbery with force upon things under subdivision (b) of Art. 299:
1. That the offender is inside a dwelling house, public building, or edifice devoted to religious worship, regardless of the circumstances under which he entered it.
2. That the offender takes personal property

belonging to another, with intent to gain, under any of the following circumstances.

a. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle; or

b. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

- Entrance into the building by any of the means mentioned in subdivision (a) of Article 299 is not required in robbery under subdivision (b) of the same article.
- The term "door" in par. 1, subdivision (b) of Art. 299, refers only to "doors, lids or opening sheets" of furniture or other portable receptacles—not to inside doors of house or building.
- Breaking the keyhole of the door of a wardrobe, which is locked, is breaking a locked furniture.
- When sealed box or receptacle is taken out of the house or building for the purpose of breaking it outside, it is not necessary that is actually opened.
- It is estafa or theft, if the locked or sealed receptacle is not forced open in the building where it is kept or taken therefrom to be broken outside.
- The penalty for robbery with force upon things in inhabited house, public building or edifice devoted to religious worship depends on the value of property taken and on whether or not offender carries arm.
- Arm carried must not be used to intimidate.
- Even those without are liable to the same penalty.
- The provision punishes more severely the robbery in a house used as a dwelling than that committed in an uninhabited place, because of the possibility place, because of the possibility that the inhabitants in the former might suffer bodily harm during the commission of the robbery.

ii. ARTICLE 301. WHAT IS AN UNINHABITED HOUSE, PUBLIC BUILDING DEDICATED TO RELIGIOUS WORSHIP AND THEIR DEPENDENCIES

- A ship is covered by the term "inhabited house".
- The place is still inhabited even if the occupant was absent.
- "Dependencies" of any inhabited house, public building or building dedicated to religious worship: all interior courts, corrals, warehouses, granaries or inclosed places contiguous to the building or edifice, having an interior entrance connected therewith, and which form part of the whole (Art. 301, par. 2).
  -Requisites:
  1. Must be contiguous to the building;
  2. Must have an interior entrance connected therewith;
  3. Must form part of the whole.
- Orchards and lands used for cultivation or production are not included in the term "dependencies" (Art. 301, par. 3).

b. IN AN UNINHABITED PLACE AND BY A BAND (300, 296)

i. ARTICLE 300. ROBBERY IN AN UNINHABITED PLACE AND BY A BAND

- Robbery in an inhabited house, public building or edifice to religious worship is qualified when committed by a band and in an uninhabited place.
- The inhabited house, public building, or edifice devoted to religious worship must be located in an uninhabited place.

Distinction between the two classes of robbery as to their being qualified:
-Robbery with force upon things (Art. 299), in order to be qualified must be committed in an uninhabited place and by a band (Art. 300), while robbery with violence against or intimidation of persons must be committed in an uninhabited place or by a band (Art. 295).

Art. 296. Definition of a band and penalty incurred by the members thereof. — When more than three armed malefactors take part in the commission of a robbery, it shall be deemed to have been committed by a band. When any of the arms used in the commission of the offense be an unlicensed firearm, the penalty to be imposed upon all the malefactors shall be the maximum of the corresponding penalty provided by law, without prejudice of the criminal liability for illegal possession of such unlicensed firearms.

Any member of a band who is present at the commission of a robbery by the band, shall be punished as principal of any of the assaults committed by the band, unless it be shown that he attempted to prevent the same.

c. IN AN INHABITED PLACE OR PRIVATE BUILDING (302)

Elements:
1. That the offender entered an uninhabited place or a building which was not a dwelling house, not a public building, or not an edifice devoted to religious worship.
2. That any of the following circumstances was present:

a. The entrance was effected through an opening not intended for entrance or egress;

b. A wall, roof, floor, or outside door or window was broken

c. The entrance was effected through the use of

false keys, picklocks or other similar tools;
d. A door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken; or
e. A closed or sealed receptacle was removed, even if the same be broken open elsewhere.
3. That with intent to gain, the offender took therefrom personal property belonging to another.

- "Building": includes any kind of structure used for storage or safekeeping of personal property, such as (a) freight car ad (b) warehouse.
- Entrance through an opening not intended for entrance or egress, or after breaking a wall, roof, floor, door or window, or through the use of false keys, picklocks, or other similar tools in not necessary, if there is breaking of wardrobe, chest, or sealed or closed furniture or receptacle, or removal thereof to be broken open elsewhere.
- Unnailing of cloth over door of freight car is breaking by force.
- Breaking padlock is use of force upon things.
- Use of fictitious name or pretending the exercise of public authorities is not covered under this article.
- The receptacle must be "closed" or "sealed".
- Penalty is based only on value of property taken.

Robbery in a store—when punishable under Art. 299 or under Art. 302:
1. If the store is used as a dwelling of one or more persons, the robbery committed therein would be considered as committed in an inhabited house under Art. 299 (People v Suarez)
2. If the store was not actually occupied at the time of the robbery and was not used as a dwelling, since the owner lived in a separate house, the robbery committed therein is punished under Art. 302 (People v Silvestre)
3. If the store is located on the ground floor of the house belonging to the owner, having an interior entrance connected therewith, it is a dependency of an inhabited house and the robbery committed therein is punished under the last par. of Art. 299 (US v Tapan).

d. Cereals, Fruits or Firewood in an inhabited place or private building (303)

- The penalty is one degree lower when cereals, fruits, or firewood are taken in robbery with force upon things.
- The palay must be kept by the owner as "seedling" or taken for that purpose by the robbers.

e. Article 304. Possession of Picklock or Similar Tools

Elements
1. Offender has in his possession picklocks or similar tools;
2. Such picklock or similar tools are especially adopted to the commission of robbery;
3. Offender does not have lawful cause for such possession.

Article 305 defines false keys to include the following:
1. Tools mentioned in Article 304;
2. Genuine keys stolen from the owner;
3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender.

B. Brigandage (306-307)

1. ARTICLE 306. WHO ARE BRIGANDS

Elements of Brigandage
1. There be at least 4 armed persons
2. They formed a band of robbers
3. The purpose is any of the following:
a. To commit robbery in the highway; or
b. To kidnap persons for the purpose of extortion or to obtain ransom; or
c. To attain by means of force and violence any other purpose.

- It is not necessary for the prosecution to show that a member or members of the band had actually committed highway robbery, etc., in order to convict him or them.
- Presumption of law as to brigandage: all are presumed highway robbers or brigands, if any of them carries unlicensed firearm.
- The arms carried by the members of the band of robbers may be deadly weapon.
- The main object of the law is to prevent the formation of band of robbers.

The following must be proved:
1. That there is an organization of more than 3 armed persons forming a band of robbers
2. That the purpose of the band is any of those enumerated in Art. 306.
3. That they went upon the highway or roamed upon the country for that purpose.
4. That the accused is a member of such band.

- The previous activities of the armed band are considered, because they prove the purpose of the band.
- The term "highway" includes city streets.

Brigandage and Robbery in Band, distinguished:
-Both brigandage and robbery in band require that the offenders form a band of robbers.

-In the former, the purpose of the offenders is any of the following: (1) to commit robbery in the highway, or (2) to kidnap persons for the purpose of extortion or to obtain ransom, or (3) for any other purpose to be attained by means of force and violence; in the latter, the purpose of the offenders is only to commit robbery, not necessarily in the highway.
If the agreement among more than 3 armed men was to commit only a particular robbery, the offense is not brigandage, but only robbery, in band.
-In the former, the mere formation of a band for any of the purposes mentioned in the law is sufficient, as it would not be necessary to show that the band actually committed robbery in the highway, etc., in the latter, it is necessary to prove that the band actually committed robbery, as a mere conspiracy to commit robbery is not punishable.

a. ARTICLE 307. AIDING AND ABETTING A BAND OF BRIGANDS

Elements:
1. That there is a band of brigands
2. That the offender knows the band to be of brigands
3. That the offender does any of the following acts:
a. He in any manner aids, abets or protects such band of brigands; or
b. He gives them information of the movements of the police or other peace officers of the Government; or
c. He acquires or receives the property taken by such brigands.

- It is presumed that the person performing any of the acts provided in this article has performed them knowingly, unless the contrary is proven.

- Any person who aids or protects highway robbers or abets the commission of highway robbery or brigandage shall be considered as an accomplice.

A. Theft (308, 309, 311) and Qualified Theft (310)

Theft: committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.

1. ARTICLE 308. WHO ARE LIABLE FOR THEFT

Persons liable for theft:
1. Those who, (a) with intent to gain, (b) but without violence against or intimidation of persons nor force upon things, (c) take, (d) personal property, (e) of another, (f) without the latter's consent.
2. Those who, (a) having found lost property, (b) fail to deliver the same to the local authorities or to its owner.
3. Those who, (a) after having maliciously damaged the property of another, (b) remove or make use of the fruits or object of the damage caused by them.
4. Those who, (a) enter an inclosed estate or field where (b) trespass is forbidden or which belongs to another and, without the consent of its owner, (c) hunt or fish upon the same or gather fruits, cereals, or other forest or farm products.

Elements of Theft:
1. That the there be taking of personal property
2. That said property belongs to another
3. That the taking be done with intent to gain.
4. That the taking be done without the consent of the owner.
5. That the taking be accomplished without the use of violence against or intimidation of persons or force upon things.

- In theft, the *taking away* or *carrying away of personal property* of another is required as in larceny in common law.

- The theft was consummated when the culprits were able to take possession of the thing taken by them. It is not an indispensable element of theft that the thief carry, more or less far away, the thing taken by him from its owner. The taking is complete only when the offender is able to place the thing taken under his control and in such a situation as he could dispose of it at once.

- There is "taking" even if the offender received the thing from the offended party.

- Selling the share of a partner or joint owner is not theft.

- Employee is not the owner of separation pay which is not actually delivered to him.

- Intent to gain is presumed from the unlawful taking of personal property belonging to another.

- Actual or real gain is not necessary in theft.

- The consent contemplated in the element of theft refers to consent freely given and not to one which may only be inferred from mere lack of opposition on the part of the owner of the property taken.

- The taking of personal property belonging to another must be accompanied without violence against or intimidation of person.

- It is not robbery when violence is for a reason entirely foreign to the fact of taking.
- Unless the force upon things is employed to enter a building, the taking of the personal property belonging to another with intent to gain is theft and not robbery.

- When a person has in possession, part of the recently stolen property, he is presumed to the thief of all, in the absence of satisfactory explanation of his possession.

- The term "lost property" embraces loss by stealing or by any act of a person other than the owner, as well as by the act of the owner himself or through some casual occurrence.

It is necessary to prove the following in order to establish theft by failure to deliver or return lost property:
1. The time of the seizure of the thing
2. That it was a lost property belonging to another; and
3. That the accused having had the opportunity to return or deliver the lost property to its owner or to the local authorities, refrained from doing so.

- Par. 1 of Art. 308 is not limited to actual finder.
- The law does not require knowledge of the owner of the property.
- Intent to gain is inferred from deliberate failure to deliver the lost property to the proper person.

Elements of hunting, fishing or gathering fruits, etc., in enclosed estate:
1. That there is an enclosed estate or a field where trespass is forbidden or which belongs to another
2. That the offender enters the same
3. That the offender hunts or fishes upon the same or gathers fruits, cereals or other forest or farm products in the estate or field; and
4. That the hunting or fishing or gathering of products is without the consent of the owner.

- Fishing should not be in the fishpond or fishery within the field or estate. Otherwise, the crime would be qualified theft.

2. ARTICLE 309. PENALTIES

- The basis of the penalty in theft is (1) the value of the thing stolen, and in some cases (2) the value and also the nature of the property taken, or (3) the circumstances or causes that impelled the culprit to commit the crime.
- If there is no evidence of the value of the property stolen, the court should impose the minimum penalty corresponding to theft involving the value of P5.00. The court may also take judicial notice of its value in the proper cases, as in the case of a jeep which has at least a value of P1000.
- When the resulting penalty for the accessory in theft has no medium period, the court can impose the penalty which is favorable to the accused.

3. ARTICLE 310. QUALIFIED THEFT

Theft is qualified if:
1. The theft is committed by a domestic servant
2. The theft is committed with grave abuse of confidence
3. The property stolen is (a) motor vehicle,[3] (b) mail matter, or (c) large cattle
4. The property stolen consists of coconuts taken from the premises of a plantation
5. The property stolen is fish taken from a fishpond or fishery
6. The property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.

- The penalty for qualified theft is 2 degrees higher.
- When the offender is a domestic servant, it is not necessary to show that he committed the crime with grave abuse of discretion.
- The abuse of confidence must be grave. There must be allegation in the information and proof of a relation, by reason of dependence, guardianship or vigilance, between the accused and the offended party, that has created a high degree of confidence between them, which the accused abused.
- Theft of any material, spare part, product or article by employees and laborers is heavily punished under PD 133.
- Taking money in his possession by receiving teller of bank is qualified theft.
- "Motor vehicle": all vehicles propelled by power, other than muscular power.
- When the purpose of taking the car is to destroy by burning it, the crime is arson.
- If the person who took the letter containing postal money order is a private individual, the crime would be qualified theft. If he is the postmaster, to whom the letter was delivered, the crime would be infidelity in the custody of documents.

4. PD 1612: ANTI-FENCING LAW

Fencing: the act of any person who, with intent to gain for himself or for another, shall buy, receive, keep, acquire, conceal, sell, or dispose of, or shall buy and sell or in any other manner deal in any article, item, object, or anything of value which he knows, or should be known to him, to have been derived from the proceeds of the crime of robbery or theft.

Elements:
1. The crime of robbery or theft has been committed.
2. The accused, who is not a principal or accomplice in the commission of the crime of robbery or theft, buys, receives, possesses, keeps, acquires, conceals, sells or disposes, or buys and sells, or in any manner deals in any article, item, object, or anything of value, which has been derived from the proceeds of the said crime.
3. The accused knows or should have known that the said article, item, object or anything of value has been derived from the proceeds of the crime of robbery or theft.
4. There is, on the part of the accused, intent to gain for himself or another.

[3] Carnapping is penalized under the Anti-Carnapping Act of 1972 (Republic Act 6539), as amended. See discussion of this Law under Section on Special Laws.

- Mere possession of any good, article, item, object, or anything of value which has been the subject of robbery or thievery shall be prima facie evidence of fencing.

- Robbery or theft, on the one hand, and fencing, on the other hand, are separate and distinct offenses.

5. ARTICLE 311. THEFT OF THE PROPERTY OF THE NATIONAL LIBRARY AND NATIONAL MUSEUM

-Theft of property of the National Museum and National Library has a fixed penalty regardless of its value. But if the crime is committed with grave abuse of confidence, the penalty for qualified theft shall be imposed.

B. Usurpation (312, 313)

1. ARTICLE 312. OCCUPATION OF REAL PROPERTY OR USURPATION OF REAL RIGHTS IN PROPERTY

Acts punishable under Art. 312:
1. Taking possession of any real property belonging to another by means of violence against or intimidation of persons
2. Usurping any real rights in property belonging to another by means of violence against or intimidation of persons.
Elements:
1. That the offender takes possession of any real property or usurps any real rights in property
2. That the real property or real rights belong to another
3. That violence against or intimidation of persons is used by the offender in occupying real property or usurping real rights in property.
4. That there is intent to gain.

- There is only civil liability, if there is no violence or intimidation in taking possession of real property.

- Art. 312 does not apply when the violence or intimidation took place subsequent to the entry into the property, because the violence or intimidation must be the means used in occupying real property or in usurping real rights.

- Art. 312 does not apply to a case of open defiance of the writ of execution issued in the forcible entry case.

- Criminal action for usurpation of real property is not a bar to civil action for forcible entry.

Distinguished from theft or robbery:
1. While there is taking or asportation in theft or robbery, there is occupation of usurpation in this crime.
2. In theft or robbery, personal property is taken; in this crime, there is real property or real right involved.
3. In both crimes, there is intent to gain.

- RA 947 punishes entering or occupying public agricultural land including lands granted to private individuals.

2. ARTICLE 313. ALTERING BOUNDARIES OR LANDMARKS

Elements:
1. That there be boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same.
2. That the offender alters said boundary marks.

- Art. 313 does not require intent to gain.

- The word "alter" may include:
  a. destruction of stone monument
  b. taking it to another place
  c. removing a fence

C. Culpable Insolvency (314)

1. ARTICLE 314. FRAUDULENT INSOLVENCY

Elements:
1. That the offender is a debtor; that is, he has obligations due and payable
2. That he absconds with his property
3. That there be prejudice to his creditors

- Actual prejudice, not intention alone, is required. Even if the debtor disposes of his property, unless it is shown that such disposal has actually prejudiced his creditor, conviction will not lie. Fraudulent concealment of property is not sufficient if the debtor has some property with which to satisfy his obligation.

- Being a merchant is not an element of this offense.

- The word "abscond" does not require that the debtor should depart and physically conceal his property. Hence, real property could be the subject matter of Art. 314.

- The person prejudiced must be the creditor of the offender.

Distinguished from the Insolvency Law:
-The Insolvency law requires that the criminal act should have been committed after the institution of insolvency proceedings.
-Under Art. 314, there is no such requirement, and it is not necessary that the defendant should have been adjudged bankrupt or insolvent.

D. Swindling and other deceits

1. ESTAFA (315)

Elements of Estafa in General:
1. That the accused defrauded another (a) by abuse of confidence; or (b) by means of deceit; and
2. That damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

Ways of committing estafa:
1. With unfaithfulness or abuse of confidence
2. By means of false pretenses or fraudulent acts; or
3. Through fraudulent means.

- The 3 ways of committing estafa under Art. 315 may be reduced to 2 only. The first form under subdivision 1 is known as *estafa with abuse of confidence,* and the second and third forms under subdivisions 2 & 3 cover *estafa by means of deceit.*
- Deceit is not an essential element of estafa with abuse of confidence.
- It is necessary that the damage or prejudice be capable of estimation, because the amount of the damage or prejudice is the basis of the penalty for estafa.

a. With Unfaithfulness or Abuse of Confidence (315 par. 1(a) (b) (c))

(i) Altering substance, quantity or quality of object subject of obligation to deliver (315 par 1(a))

Elements:
1. That the offender has an onerous obligation to deliver something of value.
2. That he alters its substance, quantity, or quality
3. That damage or prejudice is caused to another
There must be an existing obligation to deliver something of value

- In estafa by altering the substance, quantity or quality of anything of value which the offender delivers, the delivery of anything of value must be "by virtue of an onerous obligation to do so".
- When the fraud committed consists in the adulteration or mixing of some extraneous substance in an article of food so as to lower its quantity, it may be a violation of the Pure Food Law.
- When there is no agreement as to the quality of the thing to be delivered, the delivery of the thing not acceptable to the complainant is not estafa.
- Estafa may arise even if the thing to be delivered, under the obligation to deliver it, is not a subject of lawful commerce, such as opium.

(ii) Misappropriation and Conversion (315 par.1(b))

Elements:
1. That money, goods, or other personal property be received by the offender in trust, or in commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;
2. That there be misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;
3. That such misappropriation or conversion or denial is to the prejudice of another; and
4. That there is a demand made by the offended party to the offender.

- The 4th element is not necessary when there us evidence of misappropriation of the goods by the defendant.
- Check is included in the word "money".
- Money, goods or other personal property must be received by the offender under certain kinds of transaction transferring juridical possession to him.
- When the thing received by the offender from the offended party (1) in trust, or (2) on commission, or (3) for administration, the offender acquires both material or physical possession and juridical possession of the thing received.
- "Juridical possession": means a possession which gives the transferee a right over the thing which the transferee may set up even against the owner.
- When the delivery of a chattel has not the effect of transferring the juridical possession thereof, or title thereto, it is presumed that the possession of, and title to, the thing so delivered remain in the owner.
- Failure to turn over to the bank the proceeds of the sale of goods covered by trust receipts is estafa.
- The phrase "or under any obligation involving the duty to make delivery of, or to return the same", includes quasi-contracts and certain contracts of bailment.
- The obligation to return or deliver the thing must be contractual without transferring to the accused the ownership of the thing received.
- When the ownership of the thing is transferred to the person who has received it, his failure to return it will give rise to civil liability only.

Applicable Civil Code provisions:
-*Art. 1477*. The ownership of the thing sold shall be transferred to the vendee upon actual or constructive delivery thereof.
-*Art. 1482*. Whenever earnest money is given in a contract of sale, it shall be considered as part of the

price and as proof of the perfection of the contract.

- In estafa with abuse of confidence under par. (b), subdivision 1 of Art. 315, the very same thing received must be returned, if there is an obligation to return it. If there is no obligation to return the very same thing received, because ownership is transferred, there is only civil liability.

- When the transaction of purchase and sale fails, there is no estafa if the accused refused to return the advance payment.

- There is no estafa when the money or other personal property received by the accused is not to be used for a particular purpose or to be returned.

- Amounts paid by the students to the school to answer for the value of materials broken are not mere deposits.

- There is no estafa if the thing is received under a contract of sale on credit.

- Novation of contract from one of agency to one of sale, or to one of loan, relieves defendant from incipient criminal liability under the first contract.

- Acceptance of promissory note or extension of time for payment does not constitute novation.

<u>3 ways of committing estafa with abuse of confidence under Art. 315 par. (b):</u>
1. By misappropriating the thing received.
2. By converting the thing received.
3. By denying that the thing was received.

- "Conversion": presupposed that the thing has been devoted to a purpose or use different from that agreed upon.

- The fact that an agent sold the thing received on commission for a lower price than the one fixed, does not constitute the crime of estafa (US v Torres).

- The law does not distinguish between temporary and permanent misappropriations.

- Estafa under Art. 315 par (b) is not committed when there is neither misappropriation nor conversion.

<u>Right of agent to deduct commission from amounts collected:</u>
-If the agent is authorized to retain his commission out of the amounts he collected, there is no estafa. Otherwise, he is guilty of estafa, because he right to commission does not make the agent a joint owner, with a right to the money collected.

- There 3rd element of estafa with abuse of confidence is that the misappropriation, conversion, or denial by the offender has resulted in the prejudice of the offended party.

- "To the prejudice of another": not necessarily of the owner of the property.

- Partners are not liable for estafa of money or property received for the partnership when the business commenced and profits accrued.

- Failure of partner to account for partnership funds may give rise to a civil obligation only, not estafa.
- Exception: when offending partner misappropriates the share of another partner in the profits, the act constitutes estafa.

- A co-owner is not liable for estafa, but he is liable if, after the termination of the co-ownership, he misappropriates the thing which has become the exclusive property of the other.

- But when the money or property had been received by a partner for specific purpose and he later misappropriated it, such partner is guilty of estafa.

- Under the 4th element of estafa with abuse of confidence under Art. 315, demand may be required.

In estafa by means of deceit, demand is not necessary, because the offender obtains delivery of the thing wrongfully from the beginning. In estafa with abuse of confidence, the offender receives the thing from the offended party under a lawful transaction. Demand is not required by law, but it may be necessary, because failure to account, upon demand, is circumstantial evidence of misappropriation.

The mere failure to return the thing received for safekeeping, of for administration, or under any other obligation involving the duty to make delivery or return the same or deliver the value thereof to the owner could only give rise to a civil action and des not constitute the crime of estafa.

- Presumption of misappropriation arises only when the explanation of the accused is absolutely devoid of merit.

- There is no estafa through negligence.

- The gravity of the crime of estfa is determined on the basis of the amount not returned before the institution of the criminal action.

<u>Estafa with abuse of confidence distinguished from theft:</u>
-A person who misappropriated the thing which he had received from the offended party may be guilty of theft, not estafa, if he had acquired only the material or physical possession of the thing.
-In theft, the offender takes the thing; in estafa, the offender receives the thing from the offended party.
-If in receiving the thing from the offended party, the offender acquired also the juridical possession of the thing, and he later misappropriated it, he would be guilty of estafa. If he only acquired material and transitory possession but not the juridical possession, he is liable only for theft, not estafa.

- In estafa, the offender receives the thing—he does not take the thing without the consent of the

owner.

- Test to distinguish theft from estafa: In theft, upon the delivery of the thing to the offender, the owner expects an immediate return of the thing to him. (Albert)

- When the owner does not expect the immediate return of the thing he delivered to the accused, the misappropriation of the same is estafa.
- Exception: When the offender received the thing from the offended party, with the obligation to delver it to a third person and, instead of doing so, misappropriated it to the prejudice of the owner, the crime committed is qualified theft.

- Selling the thing received to be pledged for the owner is theft, when the intent to appropriate existed at the time it was received.

Estafa with abuse of confidence distinguished from malversation:
1. In both crimes, the offenders are entrusted with funds or property.
2. Both are continuing offenses.
3. But while in estafa, the funds or property are always private; in malversation, they are usually public funds or property.
4. In estafa, the offender is a private individual or even a public officer who is not accountable for public funds or property; in malversation, the offender who is usually a public officer is accountable for public funds or property.
5. In estafa with abuse of confidence, the crime is committed by misappropriating, converting or denying having received money, goods or other personal property; in malversation, the crime is committed by appropriating, taking or misappropriating or consenting, or, through abandonment or negligence, permitting any other person to take the public funds or property.

- When in the prosecution for malversation the public officer accountable for public funds is acquitted, the private individual allegedly in conspiracy with him may be held liable for estafa.

- Misappropriation of firearms received by a policeman is estafa, if it is not involved in the commission of a crime; it is malversation, if it is involved in the commission of a crime.

(iii) TAKING ADVANTAGE OF SIGNATURE IN BLANK (315 PAR.1(C))

Elements:
1. That the paper with the signature of the offended party be in blank.
2. That the offended party should have delivered it to the offender.
3. That above the signature of the offended party a document is written by the offender without authority to do so.
4. That the document so written creates a liability of, or causes damage to, the offended party or any third person.

b. THROUGH FALSE PRETENSES OR FRAUDULENT ACTS (315 PAR 2(A) TO (E))

Elements of estafa by means of deceit:
1. That there must be a false pretense, fraudulent act or fraudulent means.
2. That such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud.
3. That the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means.
4. That as a result thereof, the offended party suffered damage.

- There is no deceit if the complainant was aware of the fictitious nature of the pretense.

(i) USING FICTITIOUS NAME OR FALSE PRETENSES AT POWER, INFLUENCE... OR OTHER SIMILAR DECEITS (315, PAR 2(A))

Ways of committing the offense:
1. By using fictitious name;
2. By falsely pretending to possess: (a) power, (b) influence, (c) qualifications, (d) property, (e) credit, (f) agency, (g) business or imaginary transactions; or
3. By means of other similar deceits.

- In the prosecution of estafa under Art. 315 par. 2(a), it is indispensable that the element of deceit, consisting in the false statement or fraudulent representation of the accused, be made prior to, or, at least simultaneously with, the delivery of the thing by the complainant, it being essential that such false statement or fraudulent representation constitutes the very cause or the only motive which induces the complainant to part with the thing. If there be no such prior or simultaneous false statement or fraudulent representation, any subsequent act of the accused, however fraudulent and suspicious it may appear, cannot serve as a basis for prosecution for the class of estafa.

- A creditor who deceived his debtor is liable for estafa.

- In estafa by means of deceit under Art. 315 2(a), there must be evidence that the pretense of the accused is false. In the absence of proof that the representation was actually false, criminal intent to deceive cannot be inferred.

- Fraud must be proved with clear and positive evidence.

- Where commission salesman took back the machines from prospective customers and misappropriated them, the crime committed is theft, not estafa.

- Estafa through false pretense made in writing is only a simple crime of estafa, not a complex crime of estafa through falsification.

- Manipulation of scale is punished under the Revised Administrative Code

(ii) BY ALTERING THE QUALITY, FINENESS OR WEIGHT OF ANYTHING PERTAINING TO ART OR BUSINESS (315 PAR 2(B))

(iii) BY PRETENDING TO HAVE BRIBED ANY GOVERNMENT EMPLOYEE (315 PAR. 2(C))

- Committed by any person who would ask money from another for the alleged purpose of bribing a government employee, when in truth and in fact the offender intended to convert the money to his own personal use and benefit.
- But if he really gives the money to the government employee, he is liable for corruption of public officer.

Estafa by means of fraudulent acts:
-The acts must be fraudulent, that is, the acts must be characterized by, or founded on, deceit, trick, or cheat.
-In *false pretenses* the deceit consists in the use of deceitful words, in *fraudulent acts* the deceit consists principally in deceitful acts.
-The fraudulent acts must be performed prior to or simultaneously with the commission of the fraud.
-The offender must be able to obtain something from the offended party because of the fraudulent acts, that is, without which, the offended party would not have parted with it.

(iv) BY POSTDATING A CHECK OR ISSUING A BOUNCING CHECK (315 PAR 2(D))

Elements:
1. That the offender postdated a check, or issued a check in payment of an obligation;
2. That such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check.

- The check must be genuine, and not falsified.

- The check must be postdated or issued in payment of an obligation contracted at the time of the issuance and delivery of the check.

- The rule that the issuance of a bouncing check in payment of a pre-existing obligation does not constitute estafa has not at all been altered by RA 4885.

- The accused must be able to obtain something from the offended party by means of the check he issues and delivers.

- Exception: When postdated checks are issued and intended by the parties only as promissory notes, there is no estafa even if there are no sufficient funds in the bank to cover the same.

- When the check is issued by a guarantor, there is no estafa.

- The mere fact that the drawer had insufficient or no funds in the bank to cover the check at the time he postdated or issued a check, is sufficient to make him liable for estafa.

- RA 4885 eliminated the phrase "the offender knowing that at the time he had no funds in the bank".
  -Under RA 4885, the failure of the drawer of the check to deposit the amount necessary to cover his check within 3 days from receipt of notice from the bank and/or the payee or holder of that said check has been dishonored for lack or insufficiency of funds shall be prima facie evidence of deceit constituting false pretense or fraudulent act.

- Good faith is a defense in a charge of estafa by postdating or issuing a check.

- One who got hold of a check issued by another, knowing that the drawer had no sufficient funds in the bank, and used the same in the purchase of goods, is guilty of estafa (People v. Isleta).

- The payee or person receiving the check must be defrauded.

- PD 818 applies only to estafa under par 2(d) of Art. 315, and does not apply to other forms of estafa under the other paragraphs of the same article. (People v Villaraza, 81 SCRA 95). Hence, the penalty prescribed in PD 818, not the penalty provided for in Art. 315, should be imposed when the estafa committed is covered by par 2(d) of Art. 315.

- Estafa by issuing a bad check is a continuing crime.

ANTI-BOUNCING CHECKS LAW (BATAS PAMBANSA BLG. 22)

BP 22 may be violated in 2 ways:
1. By making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.
2. Having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, by failing to keep sufficient funds or to maintain in a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon, for which reason it is

dishonored by the drawee bank.

Elements of the offense defined in the 1st paragraph of Sec. 1:
1. That a person makes or draws and issued any check
2. That the check is made or drawn and issued to apply on account or for value.
3. That the person who makes or draws and issues the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment.
4. That the check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

Elements of the offense defined in the 2nd paragraph of Sec. 2:
1. That a person has sufficient funds in or credit with the drawee bank when he makes or draws and issues a check.
2. That he fails to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within a period of 90 days from the date appearing thereon.
3. That the check is dishonored by the drawee bank.

- The gravamen of BP 22 is the issuance of a check.

Rule of Preference in imposing penalties in BP 22:
-Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provision of BP 22 such that where the circumstances of the case, for instance, clearly indicate good faith or a clear mistake of fact without taint of negligence, the imposition of fine alone should be considered as the more appropriate penalty. Needless to say, the determination of whether the circumstances warrant the imposition of fine alone rests solely upon the judge. Should the judge decide that imprisonment is the more appropriate penalty, Administrative Circular No. 12-2000 ought not to be deemed a hindrance.

-The maker's knowledge of the insufficiency of funds is legally presumed from the dishonor of his check for insufficiency of funds.
Exceptions:
a. When the check is presented after 90 days from the date of the check.
b. When the maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payments in full by the drawee of such check within 5 banking days after receiving notice that such check has not been paid by the drawee.

- Prima facie evidence does not arise where notice of non-payment is not sent to the maker or drawer of the check.

- Sec. 3 requires the drawee, who refuses to pay the check to the holder thereof, to cause to be written, printed or stamped in plain language thereon, or attached thereto, the reason for his dishonor or refusal to pay the same. Where there are no sufficient funds in or credit with it, the drawee bank shall explicitly state that fact in the notice of dishonor or refusal.
-If the drawee bank received an order to stop payment from the drawer, the former shall state in the notice that there were no sufficient funds in or credit with it for the payment in full of the check, if such be the fact.

- In all prosecutions under BP 22, the introduction in evidence of any unpaid and dishonored check with the drawee's refusal to pay stamped or written thereon, or attached thereto, shall be prima facie evidence of—
  a. The maiking or issuance of the check;
  b. The due presentment to the drawee for payment and the dishonor thereof; and
  c. The fact that the same was properly dishonored for the reason written, stamped, or attached by the drawee on such dishonored check.

- The prosecution has to present in evidence only the unpaid and dishonored check with the drawee's refusal to pay stamped or written thereon, or attached thereto. It would not be necessary to prove the making or issuance of the check by the drawer; the due presentment of the check to the drawee for payment and the dishonor thereof; and the fact that the same was properly dishonored for the reason written, stamped or attached by the drawee on the dishonored check.

- Issuing a check in payment of an obligation, which is subsequently dishonored, may be punished under the RPC or under BP 22, or under both. While under BP 22 deceit and damage are immaterial, the RPC requires the additional facts of deceit and damage to convict the defendant.

(v) BY OBTAINING ANY FOOD, REFRESHMENT OR ACCOMMODATION WITH INTENT TO DEFRAUD THROUGH NONPAYMENT (315 PAR 2(E))

3 ways of committing the offense:
1. By obtaining food, refreshment or accommodation at a hotel, inn, restaurant, boarding house, lodging house or apartment house without paying therefor, with intent to defraud the proprietor or manager thereof;
2. By obtaining credit ay any of said establishments by the use of any false pretense; or
3. By abandoning or surreptitiously removing any part of his baggage from any of said establishments after obtaining credit, food, refreshment or accommodation therein, without paying therefor.

c. THROUGH OTHER FRAUDULENT MEANS (315 PAR 3(A) (B) (C))

(i) BY INDUCING ANOTHER, THROUGH

DECEIT, TO SIGN ANY DOCUMENT (315 PAR 3(A))

Elements:
1. That the offender induced the offended party to sign a document.
2. That deceit be employed to make him sign the document.
3. That the offended party personally signed the document.
4. That prejudice be caused.

- The offender must induce the offended party to sign the document. If the offended party is willing and ready from the beginning to sign the document and there is deceit as to the character or contents of the document, because the contents are different from those which the offended told the accused to state in the document, the crime is falsification.

(ii) BY RESORTING TO SOME FRAUDULENT PRACTICE TO ENSURE SUCCESS IN A GAMBLING GAME (315 PAR.3(B))

(iii) BY REMOVING, CONCEALING OR DESTROYING ANY COURT RECORD, OFFICE FILES, DOCUMENT OR ANY OTHER PAPERS (315 PAR.3(C))

Elements:
1. That there be court record, office files, documents or any other papers.
2. That the offender removed, concealed or destroyed any of them.
3. That the offender had intent to defraud another.

- If there is no malicious intent to defraud, the act of destroying court record will be malicious mischief.

- Elements of deceit and abuse of confidence may co-exist.

- If there is neither deceit nor abuse of confidence, there is not estafa, even if there is damage. There is only civil liability.

The element of damage or prejudice capable of pecuniary estimation may consist in:
1. The offended party being deprived of his money or property, as result of the defraudation;
2. Disturbance in property right; or
3. Temporary prejudice

- Payment made subsequent to the commission of estafa does not extinguish criminal liability or reduce the penalty.

- The crime of estafa is not obliterated by acceptance of promissory note.

- A private person who procures a loan by means of deceit through a falsified public document of mortgage, but who effect full settlement of the loan within the period agreed upon, does not commit the crime of estafa, there being no disturbance of proprietary rights and no person defrauded thereby. The crime committed is only falsification of a public document.

- The accused cannot be convicted of estafa with abuse of confidence under an information alleging estafa by means of deceit.

2. OTHER FORMS OF SWINDLING AND DECEITS (316-318)

a. ARTICLE 316. OTHER FORMS OF SWINDLING

(i) PARAGRAPH 1. BY CONVEYING, SELLING, ENCUMBERING, OR MORTGAGING ANY REAL PROPERTY, PRETENDING TO BE THE OWNER OF THE SAME

Elements:
1. That the thing be immovable, such as a parcel of land or a building.
2. That the offender who is not the owner of said property should represent that he is the owner thereof.
3. That the offender should have executed an act of ownership (selling, encumbering or mortgaging the real property).
4. That the act be made to prejudice of the owner or a third person.

- The thing disposed of must be real property. If the property is a chattel, the act is punishable under Art. 315 (estafa), by falsely pretending to possess property or by means of other similar deceits.

- There must be existing real property.

- Even if the deceit is practiced against the second purchaser and the damage is incurred by the first purchaser, there is violation of par.1 of Art. 316.

- Since the penalty of fine prescribed by Art. 316 is based on the "value of the damage caused", mere intent to cause damage is not sufficient. There must be actual damage caused by the act of the offender.

(ii) PARAGRAPH 2. BY DISPOSING OF REAL PROPERTY AS FREE FROM ENCUMBRANCE, ALTHOUGH SUCH ENCUMBRANCE BE NOT RECORDED

Elements:
1. That the thing disposed of be real property.
2. That the offender knew that the real property was encumbered, whether the encumbrance is recorded or not.
3. That there must be express representation by the offender that the real property is free from encumbrance.
4. That the act of disposing of the real property be made to the damage of another.

- "Encumbrance": includes every right or interest in the land which exists in favor of third persons.

- The offended party must have been deceived, that is, he would not have granted the loan had he known that the property was already encumbered.

- When the load had already been granted when defendant offered the property as security for the payment of the loan, Art. 316 par. 2 is not applicable.

- Usurious loan with equitable mortgage is not an encumbrance on the property.

- The third element requires misrepresentation, fraud, or deceit.

- When the third element is not established, there is no crime.

- There must be damage caused. But it is not necessary that the act be made to the prejudice of the owner of the land.

- The phrase "as free from encumbrance" is omitted in par 2 of Art. 316. The Spanish text says "*el que dispusiere de un inmueble como libre, sabiendo que estaba gravado, etc."*
- The omitted phrase "as free from encumbrance" is the basis of the ruling that *silence as to such encumbrance does not involve a crime.*

(iii) PARAGRAPH 3. BY WRONGFULLY TAKING BY THE OWNER OF HIS PERSONAL PROPERTY FROM ITS LAWFUL POSSESSOR

Elements:
1. That the offender is the owner of personal property.
2. That said property is in the lawful possession of another.
3. That the offender wrongfully takes it from its lawful possessor.
4. That prejudice is thereby caused to the lawful possessor or third person.

- The offender must wrongfully take the personal property from the lawful possessor.

- If the owner took the personal property from its lawful possessor without the latter's knowledge and later charged him with the value of the property, the crime committed is theft (US v Albao).

- If the thing is taken by means of violence, without intent to gain, the crime would not be estafa, but grave coercion.

- If there is intent to charge the bailee with its value, the crime is robbery (US v Albao)

(iv) PARAGRAPH 4. BY EXECUTING ANY FICTITIOUS CONTRACT TO THE PREJUDICE OF ANOTHER

- The crime of estafa under par. 4 may be illustrated in the case of a person who simulates a conveyance of his property to another, for the purpose of defrauding his creditors. If the conveyance is real and not simulated, the crime would be fraudulent insolvency under Art. 314.

(v) PARAGRAPH 5. BY ACCEPTING ANY COMPENSATION FOR SERVICES NOT RENDERED OR FOR LABOR NOT PERFORMED

- The crime consists in accepting an compensation given the accused who did not render the service or perform the labor for which payment was made.

- This kind of estafa requires fraud as an important element. If there is no fraud, it becomes solution indebiti under the Civil Code, with civil obligation to return the wrong payment.

- What constituted estafa under this paragraph is the malicious failure to return the compensation wrongfully received.
- If the money in payment of a debt was delivered to a wrong person, Art. 316 par 5 is not applicable, in case the person who received it later refused or failed to return it to the owner of the money. Art. 315 subdivision 1(b) is applicable.

(vi) PARAGRAPH 6. BY SELLING, MORTGAGING OR ENCUMBERING REAL PROPERTY OR PROPERTIES WITH WHICH THE OFFENDER GUARANTEED THE FULFILLMENT OF HIS OBLIGATION AS SURETY

Elements:
1. That the offender is a surety in a bond given in a criminal or civil action.
2. That he guaranteed the fulfillment of such obligation with his real property or properties.
3. That he sells, mortgages, or, in any other manner encumbers said real property.
4. That such sale, mortgage, or encumbrance is (a) without express authority from the court, or (b)made before the cancellation of his bond, or (c) before being relieved from the obligation contracted by him.

- There must be damage caused under Art. 316.

b. ARTICLE 317. SWINDLING OF A MINOR

Elements:
1. That the offender takes advantage of the inexperience or emotions or feelings of a minor.
2. That he induces such minor (1) to assume an obligation, or (2) to give release, or (3) to execute a transfer of any property right.

3. That the consideration is () some loan of money, (2) credit, or (3) other personal property.
4. That the transaction is to the detriment of such minor.

-Element no. 3 specifies loan of money, credit or other personal property as a consideration. Real property is not included because it cannot be made to disappear, since a minor cannot convey real property without judicial authority.

c. ARTICLE 318. OTHER DECEITS

Other deceits are:
1. By defrauding or damaging another by any other deceit not mentioned in the preceding articles.
2. By interpreting dreams, by making forecasts, by telling fortunes, or by taking advantage of the credulity of the public in any other manner, for profit or gain.

- Any other kind of conceivable deceit may fall under this article. As in other cases of estafa, damage to the offended party is required.

- The deceits in this article include false pretenses and fraudulent acts.

B. Chattel Mortgage (319)

1. ARTICLE 319. REMOVAL, SALE, OR PLEDGE OF MORTGAGED PROPERTY

- The object of the Chattel Mortgage Law, from which Art. 319 was taken, is to give the necessary sanction to the provision of the statute in the interest of the public at large, so that in all cases wherein loans are made and secured under the terms of the statute the mortgage debtors may be deterred from the violation of its provisions and the mortgage creditors may be protected against loss of inconvenience resulting from the wrongful removal or sale of the mortgaged property.

Acts punishable under Art. 319:
1. By knowingly removing any personal property mortgaged under the Chattel Mortgage Law to any province or city other than the one in which it was located at the time of execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns.
2. By selling or pledging personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

- The chattel mortgage must be valid and subsisting. If the chattel mortgage does not contain an affidavit of good faith and is not registered, it is void and cannot be the basis of a criminal prosecution under Art. 319.

Elements of knowingly removing mortgaged personal property:
1. That personal property is mortgaged under the Chatter Mortgage Law.
2. That the offender knows that such property is so mortgaged.
3. That he removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage.
4. That the removal is permanent.
5. That there is no written consent of the mortgagee or his executors, administrators or assigns to such removal.

- A third person (person other than the mortgagor) who removed the property to another province, knowing it to have been mortgaged under the Chattel Mortgage Law may be held liable under Art. 319.

- If the chattel mortgage is not registered, there is no violation of Art. 319; there's no felonious intent when the transfer of personal property is due to change of residence.

- The removal of the mortgaged personal property must be coupled with intent to defraud.

- If the mortgagee elected to file a suit for collection, not foreclosure, thereby abandoning the mortgage as basis for relief, the removal of the property to the province other than that where it was originally located at the time of the mortgage is not a violation of par. 1 of Art. 319.

Elements of selling or pledging personal property already pledged:
1. That personal property is already pledged under the terms of the Chattel Mortgage Law.
2. That the offender, who is the mortgagor of such property, sells or pledges the same of any part thereof.
3. That there is no consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds.

- The consent of the mortgagee must be (1) in writing, (2) on the back of the mortgage, and (3) noted on the record thereof in the office of the register of deeds.

- Damage is not essential.

- Chattel mortgage may give rise to estafa by means of deceit.

Distinguished from estafa (Art. 316) by disposing of encumbered property:
-In both offenses, there is the selling of a mortgaged property.
-In estafa under Art. 316 par 2, the property involved is real property; in sale of mortgaged property, it is personal property.
-But to constitute the crime of estafa, it is sufficient

that the real property mortgaged be sold as free, even though the vendor may have obtained the consent of the mortgagee in writing.
-Selling or pledging of personal property already pledged or mortgaged is committed by the mere failure to obtain consent of the mortgagee in writing, even if the offender should inform the purchases that the thing sold is mortgaged.
-The purpose of Art. 319 is to protect the mortgagee; in Art. 316, the purpose if to protect the purchaser, whether the first or the second.

C. Arson and other Crimes Involving Destruction

Kinds of Arson:
1. Arson (PD 1613, Sec. 1)
2. Destructive arson (Art. 320, as amended by RA 7659)
3. Other cases of arson (Sec. 3, PD 1613)

Attempted, Frustrated, and Consummated Arson:
-Attempted arson: A person, intending to burn a wooden structure, collects some rags, soaks them in gasoline and places them beside the wooden wall of the building. When he about to light a match to set fire to the rags, he is discovered by another who chases him away.
-Frustrated arson: If that person is able to light or set fire to the rags but the fire was put out before any part of the building was burned.
-Consummated arson: If before the fire was put out, it had burned a part of the building.

- In attempted arson, it is not necessary that there be a fire. The peculiar facts and circumstances of a particular case should carry more weight in the decision of that case.
- If the property burned is an inhabited house or dwelling, it is not required hat the house be occupied by one or more persons and the offender knew it when the house was burned.
- There is no complex crime of arson with homicide. If by reason of or on the occasion of arson death results, the penalty of reclusion perpetua to death shall be imposed. The crime os homicide is absorbed.
- Standing alone, unexplained, or uncontradicted, any of the 7 circumstances enumerated in Sec. 6 of PD 1613 is sufficient to establish the fact of arson.

PD 1613, §1.
DESTRUCTIVE ARSON
SEC. 2. Destructive Arson—The penalty of Reclusion Temporal in its maximum period to Reclusion Perpetua shall be imposed if the property burned is any of the following:
1. Any ammunition factory and other establishment where explosives, inflammable or combustible materials are stored.
2. Any archive, museum, whether public or private, or any edifice devoted to culture, education or social services.
3. Any church or place of worship or other building where people usually assemble.
4. Any train, airplane or any aircraft, vessel or watercraft, or conveyance for transportation of persons or property.
5. Any building where evidence is kept for use in any legislative, judicial, or administrative or other official proceeding.
6. Any hospital, hotel, dormitory, lodging house, housing tenement, shopping center, public or private market, theater or movie house or any similar place or building.
7. Any building, whether used as a dwelling or not, situated in a populated or congested area.
SEC. 3. Other Cases of Arson—The penalty of Reclusion Temporal to Reclusion Perpetua shall be imposed if the property burned is any of the following:
1. Any building used as offices of the government or any of its agencies
2. Any inhabited house or dwelling
3. Any industrial establishment, shipyard, oil well or mine shaft, platform or tunnel
4. Any plantation, farm, pasture land, growing crop, grain field, orchard, bamboo grove or forest;
5. Any rice mill, sugar mill, cane mill or mill central
6. Any railway or bus station, airport, wharf or warehouse

D. Malicious Mischief

1. WHO ARE RESPONSIBLE FOR (327)

Elements of malicious mischief:
1. That the offender deliberately caused damage to the property of another.
2. That such act does not constitute arson or other crimes involving destruction
3. That the act of damaging another's property be committed merely for the sake of damaging it.

- If there is no malice in causing the damage, the obligation to repair or pay for the damages is only civil *(Art. 2176)*
- Damage means not only loss but also diminution of what is a man's own. Thus, damage to another's house includes defacing it. *(People v Asido, et. Al, 59 OG 3646)*

2. SPECIAL CASES OF MALICIOUS MISCHIEF (328)

Special cases of malicious mischief: (qualified malicious mischief)
1. causing damage to obstruct the performance of public functions
2. using any poisonous or corrosive substance
3. spreading infection or contagion among cattle
4. causing damage to property of the National Museum or National Library, or to any archive ore

registry, waterworks, road, promenade, or any other thing used in common by the public.

3. OTHER MISCHIEFS (329)

- Other mischiefs not included in Art. 328 are punished according to the value of the damage caused.
- Even if the amount involved cannot be estimated, the penalty of arresto menor of fine not exceeding P200 is fixed by law.
- *People v Dumlao, 38 OG 3715:* When several persons scattered coconut remnants which contained human excrement on the stairs and floor of the municipal building, including its interior, the crime committed is malicious mischief under Art. 329.

E. Damage and obstruction to means and communication (330)

- The offense under Art. 330 is committed by damaging any railway, telegraph, or telephone lines.
- If the damage shall result in any derailment of cars, collision, or other accident, a higher penalty shall be imposed. (Circumstance qualifying the offense)
- Art. 330 is not applicable when the telegraph or telephone lines do not pertain to railways.

When as a result of the damage caused to railway, certain passengers of the train are killed:

-it depends. Art. 330 says "without prejudice to the criminal liability of the offender for other consequences of his criminal act." If there is no intent to kill, the crime is "damages to means to means of communication" with homicide because of the first paragraph of Art. 4 and Art. 48. If there is intent to kill, and damaging the railways was the means to accomplish the criminal purpose, the crime is murder.

F. Destroying or damaging statues, public monuments or paintings (331)

- The penalty is lower if the thing destroyed or damaged is a public painting, rather than a public monument.

G. Exemption from Criminal Liability in Crimes Against Property (332)

Crimes involved in the exemption:
1. theft
2. swindling (estafa)
3. malicious mischief

Persons exempt from criminal liability:
1. Spouses, ascendants and descendants, or relatives by affinity in the same line.
2. The widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another.
3. brothers and sisters and brothers-in-law and sisters-in-law, if living together.

- There is no criminal, but only civil liability.
- Reason for exemption: the law recognizes the presumed co-ownership of the property between the offender and the offended party.
- Art. 332 does not apply to a stranger who participates in the commission of the crime.
- *People v Alvarez, 52 Phil 65; People v Adame, et. al., CA., 40 OG Supp. 21, 63:* Stepfather and stepmother are included as ascendants by affinity.
- *People v Alvarez, 52 Phil 65:* A stepfather, who was angry with his stepson, took the suitcase of the sister with its content and burned it in an orchard. As this crime should be treated as malicious mischief only, the stepfather is not criminally liable.
- *Guevara:* An adopted or natural child should also be considered as relatives included in the term "descendants" and a concubine or paramour within the term "spouses".
- *Art. 144, CC; People v Constantino, CA, 60 OG 3605:* Art. 332 applies to common-law spouses.

TITLE XI. CRIMES AGAINST CHASTITY

A. Adultery (333)

Elements:
1. That the woman is married.
2. That she has sexual intercourse with a man not her husband
3. That as regards the man with whom she has sexual intercourse, he must know her to be married.

- There is adultery, even if the marriage of the guilty woman with the offended husband is subsequently declared void.
- Carnal knowledge may be proved by circumstantial evidence.
- Each sexual intercourse constitutes a crime of adultery.
- Even if the husband should pardon his adulterous wife, such pardon would not exempt the wife and her paramour from criminal liability for adulterous acts committed after the pardon had been granted, because the pardon refers to previous and not to subsequent adulterous acts. *(Peole v Zapata and Bondoc, 88 Phil 688, citing Cuello Calon, Derecho Penal, Vol. II, p. 569, and Viada [5th ed] Vol. 5, and Groizard [2nd ed.] Vol. 5, pp. 57-58).*
- The gist of the crime of adultery is the danger of introducing spurious heirs into the family, where the rights of the real heirs may be impaired and a man may be charged with the maintenance of a family not his own. *(US v Mata, 18 Phil 490).*
- Abandonment without justification is not exempting, but only mitigating, circumstance.
- Both defendants are entitled to this mitigating circumstance.
- A married man who is not liable for adultery, because he did not know that the woman was married, may be held liable for concubinage.
- A married man might not be guilty of adultery, on the ground that he did not know that the woman was married, but if he appeared to be guilty of any of the acts defined in Art. 334, he would be liable for concubinage. *(Del Prado v De la Fuerte, 28 Phil 23)*
- Acquittal of one of the defendants does not operate as a cause for acquittal of the other.

Effect of death of paramour
-It will not bar prosecution against the unfaithful wife, because the requirement that both offenders should be included in the complaint is absolute only when the two offenders are alive.

Effect of death of offended party
-The proceedings may continue. The theory that a man's honor ceases to exist from the moment that he dies is not acceptable. Art. 353 seeks to protect the honor and reputation not only of the living but of dead persons as well. Moreover, even assuming that there is a presumed pardon upon the offended party's death, pardon granted after criminal proceedings have been instituted cannot extinguish criminal liability. *(People v Diego, 38 OG 2537).*

Act of intercourse subsequent to adulterous conduct is an implied pardon.
-the act of having intercourse with the offending spouse subsequent to adulterous conduct is, at best, an implied pardon of said adulterous conduct. But it does not follow that, in order to operate as such, an express pardon must also be accompanied by intercourse between the spouses thereafter. Where the pardon given is express—not merely implied—the act of pardon by itself operates as suc whether sexual intercourse accompanies the same or not. *(People v Muguerza, et. al., 13 CA Rep. 1079)*

Effect of consent
-The husband, knowing that his wife, after serving sentence for adultery, resumed living with her co-defendant, did nothing to interfere with their relations or to assert his rights as husband. Shortly thereafter, he left for Hawaii where he remained for seven years completely abandoning his wife and child. Held: The second charge of adultery should be dismissed because of consent. *(People v Sensano and Ramos, 58 Phil 73)*

Agreement to separate
-While the agreement is void in law, it is nevertheless, competent evidence to explain the husband's inaction after he knew of his wife's living with her co-accused. He may be considered as having consented to the infidelity of his wife, which bars him from instituting criminal complaint. *(People v Guinucud, et. al., 58 Phil 621)*

- Under the law, there is no accomplice in adultery

-Under the law, there cannot be an accomplice in the crime of adultery, although in fact there can be such an accomplice. *(Dec. of the Sup. Ct. of Spain of June 3, 1874; Viada, 3 Cod. Pen. 107)*

B. Concubinage (334)

Three ways of committing concubinage:
1. by keeping a mistress in the conjugal dwelling; or
2. By having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; or
3. by cohabiting with her in any other place.

Elements:
1. That the man must be married
2. That he committed any of the following acts:
   a. keeping a mistress in the conjugal dwelling; or
   b. having sexual intercourse, under scandalous circumstances, with a woman who is not his wife; or
   c. cohabiting with her in any other place.

- Concubinage is a violation of the marital vow.

- The woman becomes liable only when she knew him to be married prior to the commission of the crime.

Who is a mistress?
-In view of the rulings in the cases of *People v Bacon, CA, 44 OG 2760, and People v Hilao, et. al., CA, 52 OG 904*, it is necessary that the woman is taken by the accused is not the conjugal dwelling as a concubine.

What is a conjugal dwelling?
-By conjugal dwelling is meant the home of the husband and wife even if the wife happens to be temporarily absent on any account.

- A house constructed from the proceeds of the sale of the conjugal properties of the spouses, especially where they had intended it to be so, is a conjugal dwelling, and the fact that the wife never had a chance to reside therein and that the husband used it with his mistress instead, does not detract from its nature. *(People v Cordova, CA, GR No. 19100-R, June 23, 1959, 55 OG 1042)*

Concubinage by having sexual intercourse under scandalous circumstances
-It is only when the mistress is kept elsewhere (outside o the conjugal dwelling) that "scandalous circumstances" become an element of the crime *(US v Macabagbag, et. al., 31 Phil 257)*

-Scandal consists in any reprehensible word or deed that offends public conscience, redounds to the detriment of the feelings of honest persons, and gives occasion to the neighbors' spiritual damage or ruin. *(People v Santos, et. al., 45 OG 2116)*

-The scandal produced by the concubinage of a married man occurs not only when (1) he and his mistress live in the same room of a house, but also when (2) they appear together in public, and (3) perform acts in sight of the community which give rise to criticisms and general protest among the neighbors.

- The qualifying expression "under scandalous circumstances" refers to the act of sexual intercourse which may be proved by circumstantial evidence.

- When spies are employed, there is no evidence of scandalous circumstances.

- When spies are employed for the purpose of watching the conduct of the accused and it appearing that none of the people living in the vicinity has observed any suspicious conduct on his part in relation with his co-accused, there is no evidence of scandalous circumstances. *(US v Campos Rueda, 35 Phil 51)*

- In the third way of committing the crime, mere cohabitation is sufficient. Proof of scandalous circumstances is not necessary. *(People v Pitoc, et. al., 43 Phil 760)*

- The term "cohabit" means to dwell together, in the manner of husband and wife, for some period of time, as distinguished from occasional transient interviews for unlawful intercourse. Hence, the offense is not a single act of adultery; it is cohabiting in a state of adultery which may be a week, a month, a year or longer. *(People v Pitoc, et. al., 43 Phil 760)*

- Adultery is more severely punished that concubinage.

-Reason: Because adultery makes possible the introduction of another man's blood into the family so that the offended husband may have another man's son bearing his (husband's) name and receiving support from him.

C. Acts of Lasciviousness (336)

Elements:
1. That the offender commits any act of lasciviousness or lewdness.
2. That the act of lasciviousness is committed against a person of either sex;
3. That it is done under any of the following circumstances:
   a. By using force or intimidation; or
   b. When the offended party is deprived of reason or otherwise unconscious;
   c. By means of fraudulent machination or grave abuse of authority; or
   d. When the offended party is under 12 years of age or demented.

- Compelling a girl to dance naked before a man is an act of lasciviousness, even if the dominant motive is revenge, for her failure to pay a debt.

Art 336 distinguished from grave coercion:
-In the former, compulsion or force is included in the constructive element of force in the crime of act of lasciviousness. In grave coercion, the compulsion or force is the very act constituting the offense of grave coercion.

-Moral compulsion amounting to intimidation is sufficient.

Abuses against chastity (Art. 245) distinguished from Art. 336:
-Art. 245 is committed by a public officer, and that a mere immoral or indecent proposal made earnestly and persistently is sufficient; in Art. 336, the offender is, in the majority of cases, a private individual, and it is necessary that some act of lasciviousness should have been executed by the offender.

Art. 336 distinguished from attempted rape:
-The manner of committing the crime is the same, that is, force or intimidation is employed, by means of fraudulent machination or grave abuse of authority or the offended party is deprived of reason or otherwise unconscious, under 12 years of age or is demented.

-The offended party in both crimes is a person of either sex;
-The performance of acts of lasciviousness character is common to both crimes.
-The differences are:
(a) If the acts performed by the offender clearly indicate that his purpose was to lie with the offended party, it is attempted or frustrated rape.
(b) In the case of attempted rape, the lascivious acts are but the preparatory acts to the commission of rape; in Art. 336, the lascivious acts are themselves the final objective sought by the offender.

- Desistance in the commission of attempted rape may constitute acts of lasciviousness.
- There is no attempted or frustrated acts of lasciviousness.

Two kinds of seduction:
1. Qualified seduction (Art. 337)
2. Simple seduction (Art. 338)

Seduction: enticing a woman to unlawful sexual intercourse by promise of marriage or other means of persuasion without use of force.

D. Qualified Seduction (337)

Two classes of qualified seduction:
1. Seduction of a virgin over 12 years and under 18 years of age by certain persons, such as, a person in authority, priest, teacher, etc; and
2. Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age or reputation.

Elements of qualified seduction of a virgin:
1. That the offended party is a virgin, which is presumed if she is unmarried and of good reputation.
2. That she must be over 12 and under 18 years of age.
3. That the offender has sexual intercourse with her.
4. That there is abuse of authority, confidence or relationship on the part of the offender.

- The offended party need not be physically virgin.
- If there is no sexual intercourse and only acts of lewdness are performed, the crime is act of lasciviousness under Art. 336.

Who could be the offenders in qualified seduction:
1. Those who abused their authority:
   -person in public authority
   -guardian
   -teacher
   -person who, in any capacity, is entrusted with the education or custody of the woman seduced.
2. Those who abused confidence reposed in them:
   -priest
   -house servant
   -domestic
3. Those who abused their relationship:
   -brother who seduced his sister
   -ascendant who seduced his descendant

- The acts would not be punished were it not for the character of the person committing the same, on account of the excess of power or abuse of confidence of which the offender availed himself (US v Ariante).
- Deceit is not an element of qualified seduction.
- The fact that the girl gave consent to the sexual intercourse is no defense.
- It is not necessary that the offender be the teacher of the offended party herself; it is sufficient that he is a teacher in the same school.
- Qualified seduction may also be committed by a master to his servant, or a head of the family to any of its members.
- "Domestic": a person usually living under the same roof, pertaining to the same house.
- Domestic is distinct from house servant.
- If any of the circumstances in the crime of rape is present, the crime is not to be punished under Art. 337.
- The accused charged with rape cannot be convicted of qualified seduction under the same information.

E. Simple Seduction (338)

Elements:
1. That the offended party is over 12 and under 18 years of age
2. That she must be of good reputation, single or widow.
3. That the offender has sexual intercourse with her.
4. That it is committed by means of deceit.

- Virginity of offended party is not required.
- Deceit generally takes the form of unfulfilled promise of marriage or of material things.
- Promise of marriage after sexual intercourse does not constitute deceit.
- There's no continuing offense of seduction

F. Acts of lasciviousness with the consent of the offended party (339)

Elements:
1. That the offender commits acts of lasciviousness or lewdness.
2. That the acts are committed upon a woman who is a virgin or single or widow of good reputation,

under 18 years of age but over 12 years, or a sister or descendant regardless of her reputation or age.

3. That the offender accomplishes the acts by abuse of authority, confidence, relationship, or deceit.

- Male cannot be the offended party in this crime.

- In order that the crime under Art. 339 may be committed, it is necessary that it is committed under circumstances which would make it qualified or simple seduction had there been sexual intercourse, instead of acts of lewdness only.

G. Corruption of minors (340);

- Any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another, shall be punished by prision mayor and if the culprit is a public officer or employee, including those in government-owned or controlled corporations, he shall also suffer the penalty of temporary absolute disqualification (As amended by BP 92).

- Habituality or abuse of authority or confidence is not necessary.

- It is not necessary that the unchaste acts shall have been done.

RA 7610 §§5 AND 6: CHILD PROSTITUTION

Sec. 5. Child prostitution and other sexual abuse—Children, whether male or female, who for money, profit, or other consideration or due to the coercion or influence of any adult syndicate or group, indulge in sexual intercourse or lascivious conduct, are deemed to be children exploited in prostitution and other sexual abuse.

The penalty of reclusion temporal in its medium period to reclusion perpetua shall be imposed upon the following:

(a) Those who engage in or promote, facilitate or induce child prostitution which include, but are not limited, to the following:
   (1) Acting as a procurer of a child prostitute
   (2) Inducing a person to be a client of a child prostitute by means of written or oral advertisements or other similar means;
   (3) Taking advantage of influence or relationship to procure a child as a prostitute;
   (4) Threatening or using violence towards a child to engage him as a prostitute
   (5) Giving monetary consideration, goods or other pecuniary benefit to a child with the intent to engage such child in prostitution.

(b) Those who commit the act of sexual intercourse or lascivious conduct with a child exploited in prostitution or subjected to other sexual abuse; Provided, that when the victim is under 12, the perpetrators shall be prosecuted under Art. 335, par. 3, for rape and Art. 336 of Act. No. 3815, as amended, the RPC, for rape or lascivious conduct, as the case may be; Provided, that the penalty for lascivious conduct when the victim is under 12 years of age shall be reclusion temporal in its medium period; and

(c) Those who derive profit or advantage therefrom, whether as manager or owner of the establishment where the prostitution takes place, or of the sauna, disco, bar, resort, place of entertainment or establishment serving as a cover or which engages in prostitution in addition to the activity for which the license has been issued to said establishment.

Sec. 6. Attempt to commit child prostitution—There is attempt to commit child prostitution under Sec. 5 par. (a) hereof when any person who, not being a relative of a child, is found alone with the said child inside the room or cubicle of a house, an inn, hotel, motel, pension house apartelle or other hidden or secluded area under circumstances which lead a reasonable person to believe that the child is about to be exploited in prostitution and other sexual abuse.

There is also an attempt to commit child prostitution, under par (b) of Sec. 5 hereof when any person is receiving services from a child in a sauna parlor or bath ,massage clinic, health club and other similar establishments. A penalty lower by 2 degrees than that prescribed for the consummated felony under Sec. 5 hereof shall be imposed upon principals of the attempt to commit the crime of child prostitution under this Act, or, in the proper cases, under the RPC.

H. White Slave Trade (341)

Acts penalized under Art. 341:
1. Engaging in business of prostitution
2. Profiting by prostitution
3. Enlisting the services of women for the purpose of prostitution.

- Habituality is not a necessary element of white slave trade.

- Offender need not be the owner of the house.

- Maintainer or manager of house of ill-repute need not be present therein at the time of raid or arrest.

I. Forcible Abduction (342)

Abduction: the taking away of a woman from her house or the place where she may be for the purpose of carrying her to another place with the intent to marry or to corrupt her.

Two kinds of abduction:
1. Forcible abduction (Art. 342)
2. Consented abduction (Art. 343)

Elements:
1.That the person abducted is any woman, regardless of her age, civil status, or reputation

2. That the abduction is against her will
3. That the abduction is with lewd designs

Crimes against chastity where age and reputation are immaterial:
1. Acts of lasciviousness against the will or without the consent of the offended party
2. Qualified seduction of sister or descendant
3. Forcible abduction

- The taking away of the woman may be accomplished by means of deceit first and them by means of violence and intimidation.
- If the female abducted is under 12, the crime is forcible abduction, even if she voluntarily goes with her abductor.
- Sexual intercourse is not necessary in forcible abduction.
- Lewd designs may be shown by the conduct of the accused.
- When there are several defendants, it is enough that one of them had lewd designs.
- Husband is not liable for abduction of his wife, as lewd design is wanting.
- Nature of the crime: The act of the offender is violative of the individual liberty of the abducted, her honor and reputation, and public order.

Forcible abduction distinguished from grave coercion:
-In both crimes, there is violence or intimidation used by the offender and the offended party is compelled to do something against her will.
-When there is no lewd design, it is coercion, provided that there is no deprivation of liberty for an appreciable length of time.

- When the victim was abducted by the accused without lewd designs, but for the purpose of lending her to illicit intercourse with others, the crime is not abduction but corruption of minors.
- When there is deprivation of liberty and no lewd designs, it is kidnapping and serious illegal detention.
- There can only be one complex crime of forcible abduction with rape.
- Commission of other crimes during confinement of victim is immaterial to charge of kidnapping with serious illegal detention.
- Rape may absorb forcible abduction, if the main objective was to rape the victim.
- Conviction of acts of lasciviousness is not a bar to conviction of forcible abduction.

J. Consented Abduction (343)

Elements:
1. That the offended party must be a virgin
2. That she must be over 12 and under 18.
3. That the taking away of the offended party must be with her consent, after solicitation or cajolery from the offender.
4. That the taking away of the offended party must be with lewd designs.

- The taking away of the girl need not be with some character of permanence.
- Offended party need not be taken from her house.
- When there was no solicitation or cajolery and no deceit and the girl voluntarily went with the man, there is no crime committed even if they had sexual intercourse.

K. Prosecution of private offenses (344)

Who may file the complaint:
1. Adultery and concubinage must be prosecuted upon complaint signed by the offended spouse.
2. Seduction, abduction, or acts of lasciviousness must be prosecuted upon complaint signed by--
   a. offended party
   b. her parents
   c. grandparents, or
   d. guardians in the order in which they are named above.

- The court motu proprio can dismiss the case for failure of the aggrieved party to file the proper complaint, though the accused never raised the question on appeal, thereby showing the necessity of strict compliance with the legal requirement even at the cost of nullifying all the proceedings already had in the lower court.
- Crimes against chastity cannot be prosecuted de oficio.
- In adultery and concubinage, the offended party cannot institute criminal prosecution without including both the guilty parties, if they are both alive, nor, in any case, if he shall have consented or pardoned the offenders.
- The imputation of a crime of prostitution against a woman can prosecuted de oficio.
- Both parties must be included in the complaint even if one of them is not guilty.
- Prosecution of rape may be made upon complaint by any person.
- When the offended party is a minor, her parents may file the complaint.
- When the offended party is of age and is in complete possession of her mental and physical faculties, she alone can file the complaint.
- The term "guardian" refers to legal guardian

- The complaint must be filed in court, not with the fiscal.

- In case of complex crimes, where one of the component offenses is a public crime, the criminal prosecution may be instituted by the fiscal.

Pardon:
- Pardon of the offenders by the offended party is a bar to prosecution for adultery or concubinage.
- Pardon must exist before the institution of the criminal action and both offenders must be pardoned by the offended party.
- The Spanish text speaks of pardon of the adulterous act itself, which in effect is a pardon that extends to both defendants.
- Delay in the filing of complaint, if satisfactorily explained, does not indicate pardon.
- Pardon by the offended party who is a minor must have the concurrence of parents.

Consent:
- Consent may be express or implied.
- Agreement to live separately may be evidence of consent.
- Affidavit showing consent may be a basis for new trial.

- Marriage of the offender with the offended party in seduction, abduction, acts of lasciviousness and rape, extinguishes criminal action or remits the penalty already imposed.

- Condonation or forgiveness of one act of adultery or concubinage is not a bar to prosecution of similar acts that may be committed by the offender in the future.

L. Civil Liability of persons guilty of crimes against chastity (345)

Civil liability of persons guilty of rape, seduction or abduction:
1. To indemnify the offended woman
2. To acknowledge the offspring, unless the law should prevent him from doing so
3. In every case to support the offspring.

- The adulterer and the concubine can be sentenced only to indemnify for damages caused to the offended spouse.

- Under the RPC, there is no civil liability for acts of lasciviousness.

- Art. 2219 of the CC provides that moral damages may be recovered in seduction, abduction, rape, or other lascivious acts, as well as in adultery and concubinage. The parents of the female seduced, abducted, raped, or abused may also recover moral damages.

- In multiple rape, all the offenders must support the offspring.

- For the application of Art. 283 (1) of the CC, in a criminal action for rape, there must be evidence that the offended woman became pregnant within 120 days from the date of the commission of the crime. In the absence of such evidence, it is not proper for the judgment to indulge in speculation by sentencing the accused to recognize the offspring.

M. Liability of ascendants, guardians, teachers or other persons entrusted with the custody of the offended party (346)

- Persons who cooperate as accomplices but are punished as principals in rape, seduction, abduction, etc.

They are:
(1) ascendants
(2) guardians
(3) curators
(4) teachers, and
(5) any other person, who cooperate as accomplice with abuse of authority or confidential relationship

"Crimes embraced in the 2nd, 3rd, & 4th of this title":
(1) rape
(2) acts of lasciviousness
(3) qualified seduction
(4) simple seduction
(5) acts of lasciviousness with consent of the offended party
(6) corruption of minors
(7) white slave trade
(8) forcible abduction
(9) consented abduction

TITLE XII. CRIMES AGAINST THE CIVIL STATUS OF PERSONS

Crimes against the civil status of persons
1. Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child (art. 347);
2. Usurpation of civil status (Art. 348);
3. Bigamy (Art. 349);
4. Marriage contracted against provisions of law (Art. 350);
5. Premature marriages (Art. 351);
6. Performance of illegal marriage ceremony (Art. 352).

A. Simulation of births, substitution of one child for another, and concealment or abandonment of a legitimate child (347)

Acts punished
1. Simulation of births;
2. Substitution of one child for another;
3. Concealing or abandoning any legitimate child with intent to cause such child to lose its civil status.

The object of the crime is the creation of false, or causing of the loss of, civil status.

Illustration:

People who have no child and who buy and adopt the child without going through legal adoption.

If the child is being kidnapped and they knew that the kidnappers are not the real parents of their child, then simulation of birth is committed. If the parents are parties to the simulation by making it appear in the birth certificate that the parents who bought the child are the real parents, the crime is not falsification on the part of the parents and the real parents but simulation of birth.

B. Usurpation of Civil Status (348)

This crime is committed when a person represents himself to be another and assumes the filiation or the parental or conjugal rights of such another person.

Thus, where a person impersonates another and assumes the latter's right as the son of wealthy parents, the former commits a violation of this article.

The term "civil status" includes one's public station, or the rights, duties, capacities and incapacities which determine a person to a given class. It seems that the term "civil status" includes one's profession.

Remember that there must be intent to enjoy the rights arising from the civil status of another.

C. Bigamy (349)

Elements
1. Offender has been legally married;
2. The marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;
3. He contracts a second or subsequent marriage;
4. The second or subsequent marriage has all the essential requisites for validity.

The crime of bigamy does not fall within the category of private crimes that can be prosecuted only at the instance of the offended party. The offense is committed not only against the first and second wife but also against the state.

Good faith is a defense in bigamy.

Failure to exercise due diligence to ascertain the whereabouts of the first wife is bigamy through reckless imprudence.

The second marriage must have all the essential requisites for validity were it not for the existence of the first marriage.

A judicial declaration of the nullity of a marriage, that is, that the marriage was void ab initio, is now required.

One convicted of bigamy may also be prosecuted for concubinage as both are distinct offenses. The first is an offense against civil status, which may be prosecuted at the instance of the state; the second is an offense against chastity, and may be prosecuted only at the instance of the offended party. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.

Distinction between bigamy and illegal marriage:

Bigamy is a form of illegal marriage. The offender must have a valid and subsisting marriage. Despite the fact that the marriage is still subsisting, he contracts a subsequent marriage.

Illegal marriage includes also such other marriages which are performed without complying with the requirements of law, or such premature marriages, or such marriage which was solemnized by one who is not authorized to solemnize the same.

For bigamy to be committed, the second marriage must have all the attributes of a valid marriage.

D. Marriage contracted against provisions of law (350)

Elements
1. Offender contracted marriage;
2. He knew at the time that –
    a. The requirements of the law were not complied with; or
    b. The marriage was in disregard of a legal impediment.

Marriages contracted against the provisions of laws
1. The marriage does not constitute bigamy.
2. The marriage is contracted knowing that the requirements of the law have not been complied with or in disregard of legal impediments.
3. One where the consent of the other was obtained by means of violence, intimidation or fraud.

If the second marriage is void because the accused knowingly contracted it without complying with legal requirements as the marriage license, although he was previously married.

4. Marriage solemnized by a minister or priest who does not have the required authority to solemnize marriages.

E. Premature marriages (351)

Persons liable
1. A widow who is married within 301 days from the date of the death of her husband, or before having delivered if she is pregnant at the time of his death;
2. A woman who, her marriage having been annulled or dissolved, married before her delivery or before the expiration of the period of 301 days after the date of the legal separation.

    The Supreme Court has already taken into account the reason why such marriage within 301 days is made criminal, that is, because of the probability that there might be a confusion regarding the paternity of the child who would be born. If this reason does not exist because the former husband is impotent, or was shown to be sterile such that the woman has had no child with him, that belief of the woman that after all there could be no confusion even if she would marry within 301 days may be taken as evidence of good faith and that would negate criminal intent.

F. Performance of illegal marriage ceremony (352)

Priests or ministers of any religious denomination or sect, or civil authorities who shall perform or authorize any illegal marriage ceremony shall be punished in accordance with the provisions of the Marriage Law.

TITLE XIII. CRIMES AGAINST HONOR

CRIMES AGAINST HONOR
1. Libel by means of writings or similar means (Art. 355);
2. Threatening to publish and offer to prevent such publication for compensation (Art. 356);
3. Prohibited publication of acts referred to in the course of official proceedings (Art. 357);
4. Slander (Art. 358);
5. Slander by deed (Art. 359);
6. Incriminating innocent person (Art. 363);
7. Intriguing against honor (Art. 364)

A. Libel (353)

ARTICLE 353. DEFINITION OF LIBEL

LIBEL
➔ is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstances tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Elements:
1. There must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance;
2. The imputation must be made publicly;
3. It must be malicious;
4. The imputation must be directed at a natural or juridical person, or one who is dead;
5. The imputation must tend to cause the dishonor, discredit or contempt of the person defamed.

TEST OF THE DEFAMATORY CHARACTER OF THE WORD USED
➔ A charge is sufficient if the words are calculated to induce the hearers to suppose and understand that the person against whom they were uttered was guilty of certain offenses, or are sufficient to impeach his honesty, virtue or reputation, or to hold him up to public ridicule.

PUBLICATION
➔ is the communication of the defamatory matter to some third person or persons.

There is no crime if the defamatory imputation is not published. The communication of libelous matter to the person defamed alone does not amount to publication, for that cannot injure his reputation. A man's reputation is the estimate in which others hold him; not the good opinion which he has to himself.

In order to maintain a libel suit, it is essential that the victim be identifiable, although it is not necessary that he be named.

Where the defamation is alleged to have been directed at a group or class, it is essential that the statement must be so sweeping or all-embracing as to apply to every individual in that group or class, or sufficiently specific so that each individual in the class or group can prove that the defamatory statement specifically pointed to him, so that he can bring the action separately, if need be. (Newsweek Inc. vs. IAC, 142 SCRA 171)

1. REQUIREMENT FOR PUBLICITY (354)

When the imputation is defamatory, the prosecution or the plaintiff need not prove malice on the part of the defendant. The law presumes that the defendant's imputation is malicious.

Even if the defamatory imputation is true, the presumption of malice still exists, if no good intention and justifiable motive for making it is shown.

THE PRESUMPTION OF MALICE IS REBUTTED, IF IT IS SHOWN BY THE ACCUSED THAT –
1. The defamatory imputation is true, in case the law allows proof of the truth of the imputation; and
2. It is published with good intention; and
3. There is justifiable motive for making it.

MALICE IS NOT PRESUMED IN THE FOLLOWING: (PRIVILEGED COMMUNICATIONS)

1. A private communication made by any person to another in the performance of any legal, moral or social duty; and

2. A fair and true report, made in good faith, without any comments or remarks, of any judicial, legislative or other official proceedings which are not of confidential nature, or of any statement, report or speech delivered in said proceedings, or of any other act performed by public officers in the exercise of their functions.

The prosecution must prove malice in fact to convict the accused on a charge of libel involving a privileged communication.

Art. 354 does not cover an absolutely privileged communication, because the privilege character of the communication mentioned therein is lost upon proof of malice.

A private communication made by any person to another is a privileged communication, when the following requisites are present: (Art. 354, Par. 1)
1. That the person who made the communication had a legal, moral or social duty to make the communication, or, at least, he had an interest to be upheld;
2. That the communication is addressed to an officer or a board, or superior, having some interest or duty in the matter.
3. That the statements in the communication are made in good faith without malice (in fact).

When a copy of a privileged communication is sent to a newspaper publication, the privilege is destroyed by the conduct of the accused. Unnecessary publicity destroys good

faith.

The defense of privileged communication will be rejected, if it is shown by the prosecution that (1) the defendant acted with malice in fact, or (2) there is no reasonable ground for believing the charge to be true.

In order that the publication of a report of an official proceeding may be considered privileged, the following conditions must exist: (Art. 354, par.2):
That it is fair and true report of a judicial, legislative, or other official proceedings which are not of confidential nature, or of an statement, report a speech delivered in said proceedings, or of any other act performed by a public officer in the exercise of his functions;
That it is made in good faith; and
That it without any comments or remarks.

Well settled is the rule that parties, counsel and witnesses are exempted from liability in libel or slander cases for words otherwise defamatory, uttered or published in the course of judicial proceedings, provided the statements are pertinent or relevant to the case. (Malit vs. People, 114 SCRA 348)

Defamatory remarks and comments on the conduct or acts of public officers which are related to the discharge of their official duties will not constitute libel if the defendant proves the truth of the imputation. It is a matter of public interest. A matter of public interest is a common property; hence, anybody may express an opinion on it. It is a defense that the words complained of are fair comments on a matter of public interest.

But any attack upon the private character of the public officer on matters which are not related to the discharge of their official functions may constitute libel. The right to criticize public officers does not authorize defamation. No one has the right to invade another's privacy.

In appropriate case, self-defense in libel, as well as in slander, may be invoked as a legitimate defense. For self-defense to exist in instances such as this, the defendant should not go beyond explaining what was previously said of him for the purpose of repairing or minimizing if not entirely removing the effect of the damage caused to him. The principle does not license him to utter blow-by-blow scurrilous language in return for what he received. (People vs. Pelayo)

Distinction between malice in fact and malice in law

Malice in fact is the malice which the law presumes from every statement whose tenor is defamatory. It does not need proof. The mere fact that the utterance or statement is defamatory negates a legal presumption of malice.

In the crime of libel, which includes oral defamation, there is no need for the prosecution to present evidence of malice. It is enough that the alleged defamatory or libelous statement be presented to the court verbatim. It is the court which will prove whether it is defamatory or not. If the tenor of the utterance or statement is defamatory, the legal presumption of malice arises even without proof.

Malice in fact becomes necessary only if the malice in law has been rebutted. Otherwise, there is no need to adduce evidence of malice in fact. So, while malice in law does not require evidence, malice in fact requires evidence.

Malice in law can be negated by evidence that, in fact, the alleged libelous or defamatory utterance was made with good motives and justifiable ends or by the fact that the utterance was privileged in character.

In law, however, the privileged character of a defamatory statement may be absolute or qualified.

When the privileged character is said to be absolute, the statement will not be actionable whether criminal or civil because that means the law does not allow prosecution on an action based thereon.

Illustration:

As regards the statements made by Congressmen while they are deliberating or discussing in Congress, when the privileged character is qualified, proof of malice in fact will be admitted to take the place of malice in law. When the defamatory statement or utterance is qualifiedly privileged, the malice in law is negated. The utterance or statement would not be actionable because malice in law does not exist. Therefore, for the complainant to prosecute the accused for libel, oral defamation or slander, he has to prove that the accused was actuated with malice (malice in fact) in making the statement.

When a libel is addressed to several persons, unless they are identified in the same libel, even if there are several persons offended by the libelous utterance or statement, there will only be one count of libel.

If the offended parties in the libel were distinctly identified, even though the libel was committed at one and the same time, there will be as many libels as there are persons dishonored.

Illustration:

If a person uttered that "All the Marcoses are thieves," there will only be one libel because these particular Marcoses regarded as thieves are not specifically identified.
If the offender said, "All the Marcoses – the father, mother and daughter are thieves." There will be three counts of libel because each person libeled is distinctly dishonored.

If you do not know the particular persons libeled, you cannot consider one libel as giving rise to several counts of libel. In order that one defamatory utterance or imputation may be considered as having dishonored more than one person, those persons dishonored must be identified. Otherwise, there will only be one count of libel.

Note that in libel, the person defamed need not be expressly identified. It is enough that he could possibly be identified because "innuendos may also be a basis for prosecution for libel. As a matter of fact, even a compliment which is undeserved, has been held to be libelous.

The crime is libel is the defamation is in writing or printed media.

The crime is slander or oral defamation if it is not printed.

Even if what was imputed is true, the crime of libel is committed unless one acted with good motives or justifiable end. Poof of truth of a defamatory imputation is not even admissible in evidence, unless what was imputed pertains to an act which constitutes a crime and when the person to whom the imputation was made is a public officer and the imputation pertains to the performance of official duty. Other than these, the imputation is not admissible.

When proof of truth is admissible
1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer;
2. When the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided if its related to the discharged of his official duties.

Requisites of defense in defamation
1. If it appears that the matter charged as libelous is true;
2. It was published with good motives;
3. It was for justifiable ends.

If a crime is a private crime, it cannot be prosecuted de officio. A complaint from the offended party is necessary.

2. LIBEL BY WRITINGS OR SIMILAR MEANS (355)

A libel may be committed by means of –
1. Writing;
2. Printing;
3. Lithography;
4. Engraving;
5. Radio;
6. Photograph;
7. Painting;
8. Theatrical exhibition;
9. Cinematographic exhibition; or
10. Any similar means.

- Defamation through amplifier system is slander not libel.

- If defamatory remarks are made in the heat of passion which culminated in a threat, the derogatory statements will not constitute an independent crime of libel but a part of the more serious crime of threats.

3. THREATENING TO PUBLISH AND OFFER TO PREVENT SUCH PUBLICATION FOR A COMPENSATION (356)

Acts punished
1. Threatening another to publish a libel concerning him, or his parents, spouse, child, or other members of his family;
2. Offering to prevent the publication of such libel for compensation or money consideration.

Blackmail – In its metaphorical sense, blackmail may be defined as any unlawful extortion of money by threats of accusation or exposure. Two words are expressive of the crime – hush money. (**US v. Eguia, et al., 38 Phil. 857**) Blackmail is possible in (1) light threats under Article 283; and (2) threatening to publish, or offering to prevent the publication of, a libel for compensation, under Article 356.

4. PROHIBITED PUBLICATION OF ACTS REFERRED TO IN THE COURSE OF OFFICIAL PROCEEDINGS (357)

Elements
1. Offender is a reporter, editor or manager of a newspaper, daily or magazine;
2. He publishes facts connected with the private life of another;
3. Such facts are offensive to the honor, virtue and reputation of said person.

- This article is referred to as the *Gag Law* because while a report of an official proceeding is allowed, it gags those who would publish therein facts which this article prohibits, and punishes any violation thereof.

Under Republic Act No. 1477:

➔ A newspaper reporter cannot be compelled to reveal the source of the news report he made, unless the court or a House or committee of Congress finds that such revelation is demanded by the *security of the state.*

B. Slander (358)

Slander is oral defamation. There are two kinds of oral defamation:

(1) Simple slander; and

(2) Grave slander, when it is of a serious and insulting nature.

Factors that determine the gravity of the oral defamation:
a. expressions used
b. personal relations of the accused and the offended party.
c. the circumstances surrounding the case.

d. social standing and position of the offended party.

C. Slander by deed (359)

Elements
1. Offender performs any act not included in any other crime against honor;
2. Such act is performed in the presence of other person or persons;
3. Such act casts dishonor, discredit or contempt upon the offended party.

Slander by deed refers to performance of an act, not use of words.

Two kinds of slander by deed
1. Simple slander by deed; and
2. Grave slander by deed, that is, which is of a serious nature.

Common Element of Slander by deed and Unjust Vexation – **Irritation or Annoyance;** Without any other concurring factor, it is only Unjust Vexation; if the purpose is to shame or humiliate, Slander by deed.

D. General provisions (360-362)

1. ARTICLE 360 - PERSONS RESPONSIBLE FOR LIBEL.

1. The person who *publishes* exhibits or causes the publication or exhibition of any defamation in writing or similar means.
2. The *author or editor* of a book or pamphlet.
3. The *editor or business manager* of a daily newspaper magazine or serial publication.
4. The *owner* of the printing plant which publishes a libelous article with his consent and all other persons who in any way participate in or have connection with its publication.

The rules on venue in article 360 are:
1. Whether the offended party is a public official or a private person, the criminal action may be filed in the Court of First Instance of the province or city where the libelous article is printed and first published.
2. If the offended party is a private individual, the criminal action may also be filed in the Court of First Instance of the province where he actually resided at the time of the commission of the offense.
3. If the offended party is a public officer whose office is in Manila at the time of the commission of the offense, the action may be filed in the Court of First Instance of Manila.
4. If the offended party is a public officer holding office outside of Manila, the action may be filed in the Court of First Instance of the province or city where he held office at the time of the commission of the offense.

2. ARTICLE 361 – PROOF OF TRUTH

WHEN PROOF OF THE TRUTH IS ADMISSIBLE IN A CHARGE FOR LIBEL:
1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer.
2. When the offended party is a Government employee, even if the imputation does not constitute a crime, provided it is related to the discharge of his official duties.

Defense in Defamation:
1. It appears that the matters charged as libelous is true;
2. It was published with good motives;
3. AND for a justifiable end.

3. ARTICLE 362. LIBELOUS REMARKS

Libelous remarks or comments connected with the matter privileged under the provisions of Art. 354, if made with malice, shall not exempt the author thereof nor the editor or managing editor of a newspaper from criminal liability.

E. Incriminatory Machinations (363-364)

1. ARTICLE 363. INCRIMINATING INNOCENT PERSONS

Elements
1. Offender performs an act;
2. By such an act, he incriminates or imputes to an innocent person the commission of a crime;
3. Such act does not constitute perjury.

- This crime cannot be committed through verbal incriminatory statements. It is defined as an act and, therefore, to commit this crime, more than a mere utterance is required.
- If the statement in writing is not under oath, the crime may be falsification if the crime is a material matter made in a written statement which is required by law to have been rendered.
- As far as this crime is concerned, this has been interpreted to be possible only in the so-called planting of evidence.

INCRIMINATING INNOCENT PERSONS	**PERJURY BY MAKING FALSE ACCUSATIONS**
Limited to the act of planting evidence and the like in order to incriminate an innocent person	Giving of false statement under oath or making a false affidavit, imputing to the person the commission of a crime

INCRIMINATING INNOCENT PERSONS	DEFAMATION
Offender does not avail himself of written or spoken word in besmirching the victim's reputation	Imputation is public and malicious calculated to cause dishonor, discredit, or contempt upon the offended party.

2. ARTICLE 364. INTRIGUING AGAINST HONOR

- This crime is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

- Intriguing against honor is referred to as gossiping. The offender, without ascertaining the truth of a defamatory utterance, repeats the same and pass it on to another, to the damage of the offended party. Who started the defamatory news is unknown.

Distinction between intriguing against honor and slander:

When the source of the defamatory utterance is unknown and the offender simply repeats or passes the same, the crime is intriguing against honor.

If the offender made the utterance, where the source of the defamatory nature of the utterance is known, and offender makes a republication thereof, even though he repeats the libelous statement as coming from another, as long as the source is identified, the crime committed by that offender is slander.

Distinction between intriguing against honor and incriminating an innocent person:

In intriguing against honor, the offender resorts to an intrigue for the purpose of blemishing the honor or reputation of another person.

In incriminating an innocent person, the offender performs an act by which he directly incriminates or imputes to an innocent person the commission of a crime.

TITLE XIV. QUASI-OFFENSES (365)

Article 365. Imprudence and Negligence

Quasi-offenses punished

1. Committing through reckless imprudence any act which, had it been intentional, would constitute a grave or less grave felony or light felony;

2. Committing through simple imprudence or negligence an act which would otherwise constitute a grave or a less serious felony;
3. Causing damage to the property of another through reckless imprudence or simple imprudence or negligence;

4. Causing through simple imprudence or negligence some wrong which, if done maliciously, would have constituted a light felony.

Distinction between reckless imprudence and negligence:

Both imprudence and negligence indicate a deficiency of action in the part of the offender. The former is a failure in precaution while the latter is failure in advertence.

The two are also distinguished as to whether the danger that would be impending is easily perceivable or not. If the danger that may result from the criminal negligence is clearly perceivable, the imprudence is reckless. If it could hardly be perceived, the criminal negligence would only be simple.

There is no more issue on whether culpa is a crime in itself or only a mode of incurring criminal liability. It is practically settled that criminal negligence is only a modality in incurring criminal liability. This is so because under Article 3, a felony may result from dolo or culpa.

Crimes thru culpa are punishable through this article unless they are specifically penalized under other provisions of the Code such as malversation thru negligence (Art. 217).

Since this is the mode of incurring criminal liability, if there is only one carelessness, even if there are several results, the accused may only be prosecuted under one count for the criminal negligence. So there would only be one information to be filed, even if the negligence may bring about resulting injuries which are slight.

Do not separate the accusation from the slight physical injuries from the other material result of the negligence.

If the criminal negligence resulted, for example, in homicide, serious physical injuries and slight physical injuries, do not join only the homicide and serious physical injuries in one information for the slight physical injuries. You are not complexing slight when you join it in the same information. It is just that you are not splitting the criminal negligence because the real basis of the criminal liability is the negligence.

If you split the criminal negligence, that is where double jeopardy would arise.

The rules for graduating penalties based on mitigating and aggravating circumstances are not applicable to offenses punishable thru criminal negligence.

However, if a person is placed in an emergency by the negligence of another and is compelled to act instantly to avoid an impending danger, he is not liable if he makes a choice an ordinarily prudent person would make even if he did not make the wisest choice under the circumstance. This is known as the emergency rule.

The article also provides for a qualifying circumstance. That is, if the offender fails to render immediate assistance to the injured party. In this case, the penalty is raised by one degree. The qualifying circumstance must be alleged in the information to be taken into account.

Selected Acts Prohibited by Special Laws and their Penalties

I. Access Devices Regulation Act (RA 8484)

Access Device means any card, plate, code, account number, electronic serial number, personal identification number, or other telecommunications service, equipment, or instrumental identifier, or other means of account access that can be used to obtain money, good, services, or any other thing of value or to initiate a transfer of funds (other than a transfer originated solely by paper instrument)

Prohibited Acts:

- producing, using, or trafficking in one or more counterfeit or unauthorized access devices;
- using, with intent to defraud, unauthorized access device or using an access device fraudulently applied for;
- possessing one or more counterfeit access devices or access devices fraudulently applied for;
- producing, trafficking in, or possessing device-making or altering equipment without being in the business which lawfully deals with the manufacture of such equipment;
- making it appear that the device holder has entered into a transaction other than those which said device holder had lawfully contracted for;
- effecting transaction, with one or more access devices issued to another person or persons, to receive payment or any other thing of value

Conspiracy to commit access device fraud. — Each of the parties shall be punished as in the case of the doing of the act, the accomplishment of which is the object of such conspiracy.

Frustrated and attempted access device fraud. — Punishment for frustrated access device fraud is two-thirds (2/3) of the fine and imprisonment provided for the consummated offenses listed in said section. Punishment for attempted access device fraud is one-half (1/2) of the fine and imprisonment provided for the consummated offenses listed in the said section.

Accessory to access device fraud. —An accessory shall be punished with one-half (1/2) of the fine and imprisonment provided for the applicable consummated offenses listed in Section 9 of this Act. Said person shall be prosecuted under this Act or under the Anti-Fencing Law of 1979 (Presidential Decree No. 1612) whichever imposes the longer prison term as penalty for the consummated offense.

Presumption and prima facie evidence of intent to defraud. — The mere possession, control or custody of:

(a) an access device, without permission of the owner or without any lawful authority;

(b) a counterfeit access device;

(c) access device fraudulently applied for;

(d) any device-making or altering equipment by any person whose business or employment does not lawfully deal with the manufacture, issuance, or distribution of access device;

(e) an access device or medium on which an access device is written, not in the ordinary course of the possessor's trade or business; or

(f) a genuine access device, not in the name of the possessor, or not in the ordinary course of the possessor's trade or business, shall be prima facie evidence that such device or equipment is intended to be used to defraud.

A cardholder who abandons the place of employment, business or residence stated in his application or credit card, without informing the credit card company of the place where he could actually be found, if at the time of such abandonment, the outstanding and unpaid balance is past due for at least 90 days and is more than P10,000, shall be prima facie presumed to have used his credit card with intent to defraud.

II. Anti-Sexual Harassment Act of 1995 (RA 7877)

Work, education or training-related sexual harassment is committed by an employee, manager, supervisor, agent of the employer, teacher, instructor, professor, coach, trainor, or any other person who, having authority, influence or moral ascendancy over another in a work or training or education environment, demands, requests or otherwise requires any sexual favor from the other, regardless of whether the demand, request or requirement for submission is accepted by the object of said Act.

Punishment - Imprisonment of not less than one (1) month nor more than six (6) months, or a fine of not less than Ten thousand pesos (P10,000) nor more

than Twenty thousand pesos (P20,000), or both such fine and imprisonment at the discretion of the court.

Prescription – Three years.

Liability - The employer or head of office, educational training institution shall be solidarily liable for damage arising from the acts of sexual harassment committed in the employment, education or training environment if the employer or head of office, educational or training institution is informed of such acts by the offended party and no immediate action is taken thereon.

III. Anti-Trafficking in Persons Act of 2003 (RA 9208)

Trafficking in Persons - the recruitment, transportation, transfer or harboring, or receipt of persons with or without the victim's consent or knowledge, within or across national borders by means of threat or use of force, or other forms of coercion, abduction, fraud, deception, abuse of power or of position, taking advantage of the vulnerability of the person, or, the giving or receiving of payments or benefits to achieve the consent of a person having control over another person for the purpose of exploitation which includes at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude or the removal or sale of organs.

Qualified Trafficking in Persons. - The following are considered as qualified trafficking:

(a) When the trafficked person is a child;

(b) When the adoption is effected through the "Inter-Country Adoption Act of 1995" and said adoption is for the purpose of prostitution, pornography, sexual exploitation, forced labor, slavery, involuntary servitude or debt bondage;

(c) When the crime is committed by a syndicate, or in large scale;

(d) When the offender is an ascendant, parent, sibling, guardian or a person who exercises authority over the trafficked person or when the offense is committed by a public officer or employee;

(e) When the trafficked person is recruited to engage in prostitution with any member of the military or law enforcement agencies;

(f) When the offender is a member of the military or law enforcement agencies; and

(g) When the offended party dies, becomes insane, suffers mutilation or is afflicted with HIV or AIDS.

Confidentiality. - At any stage of the investigation, prosecution and trial, law enforcement officers, prosecutors, judges, court personnel and medical practitioners, and parties to the case, shall recognize the right to privacy of the trafficked person and the accused.

Punishment for the Use of Trafficked Persons.

(a) First offense - six months of community service as may be determined by the court and a fine of P50,000; and

(b) Second and subsequent offenses - imprisonment of one year and a fine of P100,000.

Offender is a Juridical person - The penalty shall be imposed upon the owner, president, partner, manager, and/or any responsible officer who participated in the commission of the crime or who shall have knowingly permitted or failed to prevent its commission

Offender is a Foreigner - He shall be immediately deported after serving his sentence and be barred permanently from entering the country

Offender is Government Employee or Official- He shall be held administratively liable, without prejudice to criminal liability under this Act. He shall, upon conviction, be dismissed from the service and be barred permanently to hold public office. Retirement and other benefits shall likewise be forfeited.

IV. Special Protection of Children against Abuse, Exploitation and Discrimination Act (RA 7610)

Child Prostitution and Other Sexual Abuse. - Children, who for money, profit, or any other consideration or due to the coercion or influence of any adult, syndicate or group, indulge in sexual intercourse or lascivious conduct.

Child Trafficking. - Trading and dealing with children for money or for any other consideration or barter.

Obscene Publications and Indecent Shows. - Hiring, employing, inducing or coercing a child to perform in obscene exhibitions and indecent shows, whether live or in video, or model in obscene publications or pornographic materials or to sell or distribute the said materials

Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development. -

(a) other acts of child abuse, cruelty or exploitation or other conditions prejudicial to the child's development;

(b) having in company a minor, twelve years or under or who in ten years or more his junior in any public or private place,

hotel, motel, beer joint, discotheque, cabaret, pension house, massage parlor, beach and/or resort or similar places

(c) inducing, delivering or offering a minor to any one prohibited by this Act to keep or have in his company a minor

(d) person, owner, or manager of any public or private place of accommodation allowing any person to take along with him to such place or places any minor

(e) using coercion, force or intimidation against street child or any other child to;

(1) Beg or use begging as a means of living;

(2) Act as conduit or middlemen in drug trafficking or pushing; or

(3) Conduct any illegal activities

Sanctions of Establishments or Enterprises – They shall be immediately closed and their authority or license to operate cancelled, without prejudice to the owner or manager thereof being prosecuted. A sign with the words "off limits" shall be conspicuously displayed outside the establishments.

Protective Custody of the Child. - The offended party shall be immediately placed under the protective custody of the Department of Social Welfare and Development.

V. Anti-Carnapping Act of 1972 (RA 6539, as amended)

Section 2 of the Act defines "carnapping" as:

Taking, with intent to gain, of a motor vehicle belonging to another:

- *without the latter's consent, or*
- *by means of violence or intimidation of persons, or*
- *by using force upon things*

It defines motor vehicles as"

Any vehicle propelled by any power other than muscular power using the public highways, but excepting road rollers, trolley cars, street sweepers, etc.

Section 14 provides the penalty for carnapping. Any person who is found guilty of carnapping, as the term is defined in Section 2, shall, irrespective of the value of motor vehicle taken, be punished by:

- imprisonment for not less than 14 years & 8 months and not more than 17 years & 4 months, when the carnapping is committed without violence or intimidation of persons, or force upon things;
- imprisonment for not less than 17 years & 4 months and not more than 30 years, when the carnapping is committed by means of violence or intimidation of any person or force upon things
- *reclusion perpetua* to death (see discussion on RA 9346 below), when the owner, driver, occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

VI. Bouncing Checks (BP 22)

Prohibited Acts

1. By making or drawing and issuing any check to apply on account or for value, knowing at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment, which check is subsequently dishonored by the drawee bank for insufficiency of funds or credit or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.
2. Having sufficient funds in or credit with the drawee bank when he makes or draws and issues a check, by failing to keep sufficient funds or to maintain a credit to cover the full amount of check if presented within a period of 90 days from the date appearing thereon, for which reason it is dishonored by the drawee bank.

The gravamen of BP 22 is the issuance of the check, not the non0payment of an obligation. (Lozano v. Martinez, 146 SCRA 323)

BP 22 imposes the penalty of imprisonment of not less than thirty days but not more than one (1) year or by a fine of not less than but not more than double the amount of the check which fine shall in no case exceed Two Hundred Thousand Pesos, or both such fine and imprisonment at the discretion of the court.

Supreme Court en banc in Rosa Lim v. People of the Philippines deleted the penalty of imprisonment and sentenced the drawer of the fine of 200,000 and concluded that "such would serve the ends of criminal justice."

"All courts and judges concerned should henceforth take note of the foregoing policy of the Supreme Court on the matter of the imposition of penalties for violation of BP 22" (SC-Administrative Circular No. 12-2000)

SC-Administrative Circular No. 13-2001 clarified that the clear tenor and intention of SC-Administrative Circular No. 12-2000 is not to remove imprisonment as an alternative penalty, but to law down a rule of preference in the application of the penalties provided for in BP 22.

SC-Administrative Circular No. 12-2000 establishes a rule of preference in the application of the penal provision of BP 22.

BP Blg 22 requires that the person who makes or draws and issues a check must have knowledge at

the time of issue that he does not have sufficient funds in or credit with the drawee bank.

Section 2 establishes prima facie evidence of knowledge of such insufficiency of funds or credit. The making, drawing and issuance of check, payment of which is refused by the drawee because of insufficient funds in or credit with such bank, is prima facie evidence of knowledge of insufficiency of funds or credit, when the check is presented within 90 days from the date of the check.

Exceptions:

a. When the check is presented after 90 days from the date of the check.
b. When the maker or drawer pays the holder thereof the amount due thereon, or makes arrangements for payment in full by the drawee of such check within 5 banking days after receiving notice that such checks has not been paid by the drawee.

Section 3 requires the drawee, who refuses to pay the check to the holder thereof, to cause to be written, printed, or stamped in plain language thereon, or attached thereto, the reason for drawee's dishonor or refusal to pay the same. Where there are no sufficient funds in or credit with such drawee bank, such fact shall always be explicitly stated in the notice of dishonor or refusal.

If the drawee bank received an order to stop payment, the drawee shall state in the notice that there were no sufficient funds in or credit with such bank for the payment in full of such check, if such be the fact.

An evidence of any unpaid and dishonored check with the drawee's refusal to pay stamped or written thereto, shall be prima facie evidence of –

1. the making or issuance of check;
2. the due presentment to the drawee for payment and the dishonor thereof; and
3. the fact that the same was properly dishonored for the reason written, stamped or attached by the drawee on such dishonored check.

BP 22 requires the drawer's knowledge of or lack of insufficiency of funds in the drawee bank at the time of issuance of check, the RPC does not require such knowledge. Hence, the acquittal or conviction under BP 22 is not a bar to his prosecution or conviction under BP 22, because the latter law requires the additional fact of the drawer's knowledge of lack or insufficiency of funds. (US v. Capurro)

VII. Wide Scale Illegal Recruitment (PD 2018, further amending Arts. 38-39, Labor Code)

Illegal Recruitment — Any recruitment activities to be undertaken by non-licensees or non-holders of authority; when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Committed by a syndicate if carried out by a group of three or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction of recruitment.

Large scale if committed against three or more persons individually or as a group.

Penalties — Imprisonment and a fine of P100,000 if illegal recruitment constitutes economic sabotage;

Any licensee or holder of authority found violating or causing another to violate any provision shall suffer the penalty of imprisonment of two to five years or a fine of not less than P10,000 nor more than P50,000 or both, at the discretion of the court;

Any person who is neither a licensee nor a holder of authority shall suffer the penalty of imprisonment of not less than four years nor more than eight years or a fine of not less than P20,000 nor more than P100,000 or both such imprisonment and fine, at the discretion of the Court;

If the offender is a corporation, partnership, association or entity, the penalty shall be imposed upon the officer or officers of the corporation, partnership, association or entity responsible for violation; and if such officer is an alien, he shall, in addition be deported.

VIII. The Comprehensive Dangerous Drugs Act of 2002 (RA 9165)

RA 9165 was enacted to safeguard the integrity of the State and the well-being of the citizenry, particularly the youth, from the harmful effects of dangerous drugs. It also aimed to provide effective mechanisms and measures to reintegrate into society individuals who have fallen victims to drug abuse or dangerous drug dependence through sustainable programs of treatment and rehabilitation. (Sec 2)

I. Unlawful Acts and Penalties:

Unlawful Act	Penalty	Qualifying Circumstance
1. Importation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (Sec 4)	**DD:** Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000. **CP and Protector/Coddler:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000	- Imports through the use of a diplomatic passport, diplomatic facilites or other means involving his/her official status - Person who organizes, manages or acts as financier of any of the illegal activities in this section
2. Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (Sec 5)	**DD:** Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000. **CP, Broker and Protector/ Coddler:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000	-Use of minors or mentally incapacitated individuals as runners, couriers and messengers - Victim is a minor or a mentally incapacitated individual - DD and CP be the proximate cause of a death of a victim - Person who organizes, manages or acts as financier of any of the illegal activities in this section
3. Maintenance of a Den, Dive or Resort (Sec 6)	**DD:** Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000. **CP and Protector/Coddler:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000 **DD be the proximate cause of the death of the victim:** Penalty of death and a fine ranging from 1 million to 15 million pesos - If the den, dive or resort is owned by a third person, it shall be confiscated and escheated in favor of the State provided: 1. The criminal complaint allege that such place is intentionally used un the furtherance of the crime 2. Intent on the part of the owner to use the property for such purpose 3. Owner shall be included as an accused in the criminal complaint	- When DD is administered, delivered or sold to a minor who is allowed to use the same in such place
4. Employees and Visitors of a Den, Dive and Resort (Sec 7)	Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000, imposed upon: 1. employee of a den, dive or resort who is aware of the nature of the place 2. any person who is aware of the nature of the place and shall knowingly visit the same	
5. Manufacture of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals (Sec 8)	**DD:** Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000 **CP and Protector/Coddler:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000	- When DD is administered, delivered or sold to a minor who is allowed to use the same in such place - **Aggravating Circumstance:** 1. Manufacturing process was conducted in the presence or with the help of minors 2. Manufacturing process undertaken within 100m of a residential, business, church or school premises 3. Laboratory was secured or protected with booby traps 4. Laboratory was concealed with legitimate business operations 5. Employment of a practitioner, chemical engineer, public official or foreigner.
6. Illegal Chemical Diversion of Controlled Precursors & Essential Chemicals (§9)	Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000	
7. Manufacture or Delivery of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs and/or Controller Precursors and Essential Chemicals (Sec 10)	**Manufacture and Delivery:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000 **Used to Inject, Ingest, Inhale or Introduce Dangerous Drugs to the Human Body:** Imprisonment from 6 months and 1 day to 4 years and a fine ranging from P10,000- P50,000	- Use of a minor or a mentally incapacitated individual to deliver such equipment, instrument, apparatus and other paraphernalia for dangerous drugs

8. Possession of Dangerous Drugs (Sec 11)	Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000, if found in possession of: 1. 10g or more of opium, morphine, heroin, cocaine, marijuana resin, and other drugs 2. 50g or more of shabu 3. 500g or more of marijuana Life Imprisonment and a fine ranging from P400,000- P500,000, if found in possession of 10-50g of shabu Imprisonment of 20 years and 1 day to Life Imprisonment and a fine ranging from P400,000- P500,000, if found in possession of 5-10g of opium, morphine, heroin, cocaine, marijuana resin, shabu and other drugs Imprisonment of 12 years to 1 day to 20 years and a fine ranging from P300,000 to P400,00, if found in possession of less than 5g of opium, morphine, heroin, cocaine, marijuana resin, shabu and other drugs	- Possession of dangerous drugs during parties, social gatherings or meetings (Sec 13)
9. Possession of Equipment, Instrument, Apparatus and Other Paraphernalia for Dangerous Drugs (Sec 12)	Imprisonment from 6 months and 1 day to 4 years and a fine ranging from P10,000- P50,000 - Violation of Sec 12 is a prima facie evidence that the person violated Sec 15 (Use of Dangerous Drugs)	- Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs during Parties, Social Gatherings or Meetings (Sec 14)
10. Use of Dangerous Drugs (Sec 15)	**First Offense:** 6 months of rehabilitation in a government center **Second Offense:** Imprisonment of 6 years and 1 day to 12 years and a fine ranging from P50,000- P200,000. - In case the person also violated Sec 11, the latter penalty shall apply	
11. Cultivation or Culture of Plants Classified as Dangerous Drugs or are Sources Thereof (Sec 16)	Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000, The land in which the plants are cultivates shall be confiscated and escheated in favor of the State **Protector/Coddler:** Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000	- If the land is part of the public domain - Person who organizes, manages or acts as financier of any of the illegal activities in this section
12. Maintenance and Keeping of Original Records of Transaction on Dangerous Drugs (Sec 17)	Imprisonment ranging from 1 year and 1 day to 6 years and a fine ranging from P10,000- P50,000 - Revocation of professional or business license	
13. Unnecessary Prescription of Dangerous Drugs (Sec 18)	Imprisonment from 12 years and 1 day to 20 years and a fine ranging from P100,000 to P500,000 - Revocation of the license	
14. Unlawful Prescription of Dangerous Drugs (Sec 19)	Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000	
15. Issuance of False or Fraudulent Drug Test Result (Sec 37)	Imprisonment ranging from 6 years and 1 day to 12 years and a fine ranging from P100,000- P500,000 - Revocation of professional license	
16. Misappropriation, Misapplication or Failure to Account for Confiscated Property (Sec 27)	Life Imprisonment to Death and a fine ranging from P500,000- P10,000,000 - Absolute Perpetual Disqualification from Public Office	

II. Confiscation and Forfeiture of the Proceeds or Instruments of the Unlawful Act (Sec 21)

1. The apprehending team shall immediately inventory and photograph the confiscated items in the presence of the accused or person from whom the properties were seized or his representative or counsel, a representative of the media and the DOJ and any elected public official who will be required to sign the copies of the inventory.
2. Within 24 hours, the confiscated materials shall be delivered to the PDEA Forensic Laboratory for a qualitative and quantitative examination.
3. A certification of the forensic laboratory results shall be issued within 24 hours.
4. After the filing of the criminal case, the Court shall within 72 hours, conduct an ocular inspection of the confiscated materials, and after 24 hours, proceed with the destruction or burning of the same in the presence of the accused, a representative of the media and DOJ, civil society groups and any elected public official.
5. The Board shall issue a sworn certificate as to the fact of destruction or burning of the subject items. This shall be submitted to the court having jurisdiction over the case.
6. The accused shall be allowed to personally observe all the above proceedings and his/her presence shall not constitute an admission of guilt.
7. After the promulgation and judgment in the criminal case, the samples presented as evidence shall be turned over to PDEA for proper disposition and destruction within 24 hours.

III. Circumstances Affecting Liability

Any person charged of violating the Act shall not be allowed to avail of the provision on **plea bargaining** (Sec 23). Any person convicted for drug trafficking and pushing cannot avail of the privilege granted by the **Probation Law** (Sec 24).

The maximum penalty for the unlawful act in addition to absolute perpetual disqualification from public office shall be imposed if those found guilty of the act are **government officials and employees** (Sec 28). In case any violation of the Act is committed by a partnership, corporation or association or any juridical entity, the **partner, president, director manager, trustee, estate administrator or officer** who consents or tolerates such violation shall be held criminally liable as **co-principal** (Sec 30). Any **alien** who violates the act shall, after service of sentence, be deported immediately without further proceedings (Sec 31).

The positive finding for the use of dangerous drugs shall be **qualifying aggravating circumstance in the commission of a crime** by an offender, in which case the penalty provided for in the RPC shall be applicable (Sec 25). Any person who is found guilty of "**planting**" any dangerous drug and/or controlled precursor and essential chemical shall suffer the penalty of death (Sec 29).

Moreover, any **attempt or conspiracy** to commit the following acts shall be penalized **by the same penalty prescribed for the commission of the same**:

1. Importation of any dangerous drug and/or controller precursor and essential chemical
2. Sale, trading, administration, dispensation, delivery, distribution and transportation of any dangerous drug and/or controlled precursor and essential chemical
3. Maintenance of a den, dive or resort where any dangerous drug is used in any form
4. Manufacture of any dangerous drug and/or controlled precursor and essential chemical
5. Cultivation or culture of plants which are sources of dangerous drugs. (Sec 26)

IV. Immunity from Prosecution and Punishment

To whom applicable: Any person who has violated Sections 7, 11, 12, 14, 15 and 19 of Art II, who voluntarily gives information about:

(a) any violation of Sections 4, 5, 6, 10, 13 and 16 of Art II of this Act, or

(b) any violation of the offenses mentioned if committed by a drug syndicate, or

(c) any information leading to the whereabouts, identities and arrest of all or any of the members thereof.

Requisites:

(1) The information and testimony are necessary for the conviction of the person described above

(2) Such information and testimony are not yet in the possession of the State

(3) Such information and testimony can be corroborated on its material points

(4) The informant or witness has not been previously convicted of a crime involving moral turpitude, except when there is no other direct evidence available for the State other than the information and testimony of said informant or witness, and

(5) The informant or witness shall strictly and faithfully comply without delay, any condition or undertaking, reduced into writing, lawfully imposed by the State as further consideration for the grant of immunity from prosecution and punishment.

A person may only avail of this immunity if:

(1) The informant or witness does not appear to be most guilty for the offense

(2) There is no direct evidence available for the State except for the information and testimony of said informant or witness. (Sec 33)

The immunity shall not attach or shall be terminated when:

(1) The testimony is false, malicious or made only for the purpose of harassing, molesting or prejudicing the person.

(2) The informant or witness fails or refuses to testify without just cause

(3) The informant violates any condition accompanying such immunity (Sec 34)

V. Accessory Penalties

A person convicted under this Act shall be disqualified to exercise his/her civil rights (right to parental authority, guardianship, rights to dispose property by any act or conveyance inter vivos) and political rights (right to vote and be voted for) Sec 35.

VI. Voluntary Submission of a Drug Dependent to Confinement, Treatment and Rehabilitation

(1) A drug dependent may by himself/herself, or through his parents, spouse, guardian or relative within the fourth degree of consanguinity and affinity apply to the Board for treatment and rehabilitation of drug dependency.

(2) The Board shall bring the matter to the Court which shall order that the applicant be examined for drug dependency.

(3) If the examination by a DOH-accredited physician results in the issuance of a certification that the applicant is a drug dependent, he/she shall be ordered by the Court to undergo treatment and rehabilitation in a Center designated by the Board for a period of not less than six months and shall not exceed one year.

(4) The Court and the Board shall determine whether confinement will be for the welfare of the drug dependant and his/her family or the community.

The drug dependent may be place under the care of a DOH-accredited physician if:

(1) there is no center near or accessible to the residence of the drug dependent, or

(2) where the drug dependent is below 18 years old and is a first time offender and non confinement in a Center will not pose a serious danger to his/her family or community. (Sec 54)

Exemption from Criminal Liability under the Voluntary Submission Program

Requisites:

(1) He/she has complied with the rules and regulations of the Center, the applicable rules and regulations of the Board, including the after-care and follow-up program for at least 18 months following temporary discharge from confinement in the Center.

(2) He/she has never been charged or convicted of any offense punishable under this Act, RA 6425, the RPC or any special laws

(3) He/she has no record of escape from a Center, or if ever he escaped he surrendered himself to his family within one week from the date of the said escape

(4) He/she poses no serious danger to himself/herself, his/her family or the community by his/her exemption from criminal liability (Sec. 55)

VII. Compulsory Confinement of a Drug Dependent who Refuses to Apply under the Voluntary Submission Program

(1) A petition for the confinement of a person alleged to be a drug dependent may be filed by any person authorized by the Board with the RTC.

(2) After the petition is filed, the court shall fix a date for hearing and a copy of the order shall be served on the person alleged to be a drug dependent and to the one having charge of him.

(3) If after such hearing and the facts so warrant, the court shall order the drug dependent to be examined by two physicians accredited by the Board.

(4) If both physicians conclude that the person is not a drug dependent, he shall be discharged. If either one finds him a drug dependent, the court shall conduct a hearing. If the court finds him a drug dependent, it shall issue an order for his/her commitment to a treatment and rehabilitation center under the supervision of the DOH. (Sec 61)

VIII. Compulsory Submission of a Drug Dependent Charged with an Offense to Treatment and Rehabilitation

(1) If a person charged with an offense punishable by imprisonment of less than 6 years and 1 day is found by the Court to be a drug dependent, the prosecutor shall suspend all further proceedings and transmit copies of the record of the case to the Board.

(2) If the Board finds that public interest requires that such drug dependent by committed to a center and rehabilitation, it shall file a petition for his/her commitment with the RTC where he/she is being investigated.

(3) If the court finds him to be a drug dependent, it shall order his/her commitment to a Center for treatment and rehabilitation. The head of the Center shall submit to the court every 4 months a written report on the progress of the treatment.

(4) If the drug dependent is rehabilitated, he/she shall be returned to the court for his/her discharge therefrom.

(5) Thereafter, prosecution for the original offense shall continue. In case of conviction, the accused shall be given full credit for the period he/she was confined in the Center if he/she has maintained good behavior during his/her rehabilitation. (Sec 62)

Prescription: The period of prescription of the offense charged against a drug dependent under the compulsory submission program shall not run during the time that the drug dependent is under confinement in a Center or otherwise under the treatment and rehabilitation program approved by the Board (Sec 63).

IX. Minor Offenders

a. Suspension of Sentence of a First Time Minor Offender

To whom applicable: An accused who is over 15 at the time of the commission of the offense, but not more than 18 years at the time when judgment should have been promulgated, after having found guilty of the offense.

Requisites:

(1) He/she has been previously convicted of violating this Act, Ra 6425, the RPC or special laws

(2) He/she has not been previously committed to a Center or to the care of a DOH-accredited physician, and

(3) The Board favorably recommends that his/her sentence be suspended

- In the case of minors under 15 years at the time of the commission of any offense, PD 603 shall apply. (Sec 66)

b. Discharge after Compliance with Conditions of Suspended Sentence of a First Time Minor Offender

If the accused first time minor offender under suspended sentence complies with the applicable rules and regulations of the Board, the court, upon a favorable recommendation of the Board, shall discharge the accused and dismiss all proceedings.

Upon the dismissal of the proceedings against the accused, the court shall enter an order to expunge all official records, other that the confidential record to be retained by the DOJ relating to the case. (sec 67)

c. Privilege of Suspended Sentence to be Availed of Only Once by a First Time Minor Offender (Sec 68)

d. Promulgation of Sentence for First-Time Minor Offender

If the accused first time minor offender violates any of the conditions of his/her suspended sentence, the court shall pronounce judgment of conviction and he/she shall serve sentence as any other convicted person. (Sec 69)

e. Probation or Community Service for a First Time Minor Offender in Lieu of Imprisonment

Upon promulgation of the sentence, the court may place the accused under probation even if the sentence provided under this Act is higher that that provided under existing law on probation or impose community service in lieu of imprisonment.

If the sentence promulgated by the court requires imprisonment, the period spent in the Center by the accused during the suspended sentence period shall be deducted from the sentence to be served. (Sec 70)

IX. RA 7080 An Act Defining and Penalizing the Crime of Plunder (July 12, 1991)

I. Definition of the Crime of Plunder

(1) Any public officer who by himself or in connivance with member of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons

(2) Amasses, accumulates or acquires ill-gotten wealth, through a combination or series of the following means or similar schemes:

a. Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

b. By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

c. By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivisions, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

d. By obtaining, receiving or accepting directly or indirectly any shares of stock, equity or any other form of interest or participation including promise of future employment in any business enterprise or undertaking;

e. By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

f. By taking undue advantage of official position, authority, relationship, connection or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

(3) In the aggregate amount or total value of at least P50,000,000

Penalty: Reclusion Perpetua to Death. The court (Sandiganbayan) shall also decree that all ill gotten wealth shall be forfeited in favor of the State. Aside from these, the public officer shall lose all retirement or gratuity benefits under the law

II. Rule of Evidence

It is not necessary to prove each and every criminal act done by the accused to amass, accumulate or acquire ill gotten wealth, it being sufficient to establish beyond a reasonable doubt a pattern of overt or criminal acts indicative of the over-all unlawful scheme or conspiracy.

III. Prescription of Crimes

The crime shall prescribe in 20 years. However, the right of the Sate to recover properties unlawfully acquired by public officers from them or from their nominees or transferees shall not be barred by prescription, laches or estoppel.

X. Anti Money Laundering Act of 2001 (RA 9160, September 29, 2001)

The Anti-Money Laundering Act was enacted to preserve the integrity and confidentiality of bank accounts and to ensure that the Philippines shall not be used as a money laundering site for the proceeds of any unlawful activity. (Sec 2)

I. Definitions

a. Covered Institution refers to:

(1) banks, non-banks, quasi-banks, trust entities, and all other institutions and their subsidiaries and affiliates supervised or regulated by the BSP

(2) Insurance companies and all other institutions supervised or regulated by the Insurance Commission; and

(3) (i) securities dealers, brokers, salesmen, investment houses and other similar entities managing securities or rendering services as investment agent, advisor, or consultant, (ii) mutual funds, close and investment companies, common trust funds, pre-need companies and other similar entities, (iii) foreign exchange corporations, money changers, money payment, remittance, and transfer companies and other similar entities, and (iv) other entities administering or otherwise dealing in currency, commodities or financial derivatives based thereon, valuable objects, cash substitutes and other similar monetary instruments or property supervised or regulated by Securities and Exchange Commission.

b. Covered Transaction: transaction in cash or other monetary instrument involving a total amount in excess of P500,000 within 1 banking day

c. Suspicious Transaction: transactions in any covered institution wherein any of the following exist:

1. There is no underlying legal or trade obligation, purpose or economic justification
2. The client is not properly identified
3. The amount involved is not commensurate with the business or financial capacity of the client
4. Taking into account all known circumstances, it may be perceived that the client's transaction is structured in order to avoid being the subject of reporting requirements under the Act
5. Any circumstance relating to the transaction which is observed to deviate from the profile of the client and/or the client's past transactions with the covered institution.
6. The transaction is in any way related to an unlawful activity or offense under this Act that is about to be, is being, or has been committed
7. Any transaction that is similar or analogous to any of the foregoing.

II. Money Laundering Offense

Money laundering is a crime whereby the proceeds of an unlawful activity are transacted thereby making them appear to have originated from legitimate sources. It is committed by the following:

a. Any person, knowing that any monetary instrument or property involves the proceeds of any unlawful activity, transacts the monetary instrument or property.

b. Any person, knowing that any monetary instrument or property involves the proceeds of any unlawful activity, performs or fails to perform any act as a result of which he facilitates the offense of money laundering.

c. Any person knowing that any monetary instrument or property is required under this Act to be disclosed and filed with the Anti-Money Laundering Council, fails to do so. (Sec 4)

III. Prosecution of Money Laundering

Jurisdiction	a) Private Persons: Regional Trial Court b) Public Officers of Private Persons in Conspiracy with Public Officers: Sandiganbayan (Sec 5)
Prosecution	The person can be charged and convicted for both money laundering and the unlawful activity. However, the proceeding relating to the unlawful activity shall be given precedence over the prosecution of money laundering. (Sec 6)
Prohibition Against Political Harassment	The Act shall not be used for political and economic persecution and harassment. No case for money laundering may be filed against and no assets shall be frozen, attached or forfeited to the prejudice of a candidate for an electoral office during an election period. (Sec 16)

IV. Anti-Money Laundering Council

Composition: Governor of the BSP as chairman, the Commissioner of the Insurance Commission and the Chairman of the SEC as members.

Functions:

a. to require and receive covered or suspicious transaction reports from covered institutions

b. to issued orders addressed to the appropriate to issue orders addressed to the appropriate Supervising Authority or the covered institution to determine the true identity of the owner of any monetary instrument or property subject of a covered or suspicious transaction report or request for assistance from a foreign State, or believed by the Council, on the basis of substantial evidence to be in whole or in part, the proceeds of an unlawful activity;

c. to institute civil forfeiture proceedings and all other remedial proceedings through the Office of the Solicitor General;

d. to cause the filing of complaints with the Department of Justice or the Ombudsman for the prosecution of money laundering offenses;

e. to investigate suspicious transactions and covered transactions deemed suspicious after an investigation by AMLC, money laundering activities and violations of this Act

f. to apply before the CA, ex parte, for the freezing of any monetary instrument or property alleged to be proceeds of any unlawful activity

g. to implement such measures as may be necessary and justified under this Act to counteract money laundering;

h. to receive and take action in respect of, any request from foreign states for assistance in their own anti-money laundering operations provided in this Act;

i. to develop educational programs on the pernicious effects of money laundering, the methods and techniques used in money laundering, the viable means of preventing money laundering and the effective ways of prosecuting and punishing offenders; and

j. to enlist the assistance of any branch, department, bureau, office, agency or instrumentality of the government, including government-owned and –controlled corporations, in undertaking any and all anti-money laundering operations, which may include the use of its personnel, facilities and resources for the more resolute prevention, detection and investigation of money laundering offenses and prosecution of offenders.

k. to impose administrative sanctions for the violations of laws, rules, regulation and orders and resolutions issued pursuant thereto. (Sec 7)

Composition of the AMLC Secretariat: An Executive Director shall be appointed by the Council for a term of 5 years. He must be a member of the Philippine Bar, at least 35 years old, of good moral character, unquestionable integrity and known probity. All other members of the Secretariat must have served for at least 5 years in the Insurance commission, SEC or BSP. (Sec 8)

V. Freezing of Monetary Instrument or Property and Exemption from Bank Secrecy

The CA may issue a freeze order effective immediately, after determination that probable causes exists that any monetary instrument or property may relate to an unlawful activity. The freeze order shall be for a period of 20 days. (Sec 10)

The AMLC may inquire into or examine a particular deposit or investment with any banking or non-bank financial institution upon order of any competent court in cases of violation of the Act. No court order shall be required in case the unlawful activity is kidnapping for ransom or violation of RA 9165. (Sec 11)

VI. Reporting of Covered Transactions

When reporting covered or suspicious transactions, covered institutions and their officers and employees shall not be deemed to have violated RA 1405, RA 6426 or RA 8791 and other similar laws, but are prohibited from communicating in any manner to any person the fact that a covered or suspicious transaction report was made. No administrative, criminal or civil proceeding shall lie against a person who reported such transactions in the regular performance of his duties and in good faith, even if such reporting did not result in a criminal prosecution under this Act or the RPC.

The covered institution and their officers and employees are prohibited from reporting to any person or the media, the fact that a covered transaction report was made, the contents thereof, or any other information in relation thereto. Neither may such reporting be published or aired by the mass media. In case of violation, the concerned officer or employee, the covered institution or mass media shall be held criminally liable. (Sec 9c)

VII. Penalties

a. Money Laundering:

1. **First Type of Money Laundering (see II a):** Imprisonment ranging from 7 to 14 years and a fine of not less than P3 million but not more than twice the value of the monetary instrument or property involved in the offense
2. **Second Type (see II b):** Imprisonment from 4 to 7 years and a fine of not less than P1,500,000 but not more than P3,000,000
3. **Third Type (see II c):** Imprisonment from 6 months to 4 years or a fine not less than P100,000 but not more than P500,000, or both

b. Failure to Keep Records: Imprisonment from 6 months to 4 years or a fine not less than P100,000 but not more than P500,000, or both

c. Malicious Reporting: Imprisonment of 6 years to 4 years and a fine of not less than P100,000 but not more than P500,000. The offender is not entitled to avail the benefits of the Probation Law.

If the offender is a **juridical person**, the penalty shall be imposed upon the responsible officers who participated in the commission of the crime or allowed the negligence. The court can also suspend or revoke its license. If the offender is an **alien**, he shall also be deported. If the offender is a **public official or employee**, he shall also suffer perpetual or temporary absolute disqualification from office.

d. Breach of Confidentiality: Imprisonment ranging from 3 to 8 years and a fine of not less than P500,000 but not more than P1,000,000. In case it is published or reported by media, the responsible reporter, writer, president, publishing manager, and editor-in-chief shall be liable under this Act. (Sec 14)

- Restitution for any aggrieved party shall be governed by the provisions of the New Civil Code. (Sec 17)

XI. Anti-Graft and Corrupt Practices Act (RA No. 3019, as amended)

Purpose
The Anti-Graft Law was enacted under the police power of the State to promote morality in the public service. (**Morfe v. Mutuc**, 22 SCRA 424)

Corrupt practices of public officers
(a) Persuading another public officer to violate regulations or to commit an offense in connection with the official duties of the latter, or allowing himself to be persuaded.

(b) Requesting or receiving any gift in connection with any contract between the Government and any other part, wherein the public officer in his official capacity has to intervene under the law.

(c) Requesting or receiving any gift from any person for whom the public officer, in any manner or capacity, has secured or obtained, any Government permit or license, in consideration for the help given or to be given.

(d) Accepting or having any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its termination.

(e) Causing any undue injury to any party, or giving any private party any unwarranted benefits in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. (f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining from any person interested in the matter some pecuniary or material benefit, or for the purpose of favoring his own interest.

(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby.

(h) Having financial or pecuniary interest in any business in connection with which he

intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(i) Becoming interested, for personal gain in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval.

(j) Knowingly granting any license or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date.

Prohibition on private individual

(a) It shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business with the government, in which such public official has to intervene.

(b) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses.

Prohibition on certain relatives

It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government:

Prohibition on Members of Congress

It shall be unlawful for any Member of the Congress to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

Statement of assets and liabilities

Every public officer after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or with the Office of the President, or with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year.

Dismissal due to unexplained wealth

If a public official has been found to have acquired during his incumbency, whether in his name or in the name of other persons, an amount of property and/or money manifestly out of proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal.

Exception

Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this Act.

XII. Anti-Fencing Law (PD 1612)

Elements of Fencing

1. The crime of robbery or theft has been committed.
2. The accused, who is not a principal or accomplice buys, receives, keeps, conceals, sells, or buys and sells any item which has been derived from the proceeds of the said crime.
3. The accused knows, or should have known that the item has been derived from the proceeds of the crime of robbery or theft.
4. The accused has intent to gain for himself or another. (**Dizon-Pamintuan v. People**, 234 SCRA 63)

Presumption

Mere possession of any good, article, item, or object which has been the subject of robbery or theft shall be prima facie evidence of fencing.

XIII. Obstruction of Justice (PD 1829)

Purpose

To discourage public indifference or apathy towards the apprehension and prosecution of criminal offenders.

Acts Prohibited

(a) preventing witnesses from testifying or from reporting the commission offense or the identity of the offender by bribery, misrepresentation, deceit, intimidation, force or threats;
(b) altering, destroying, or concealing any document or object, with intent to impair its verity, availability, or admissibility as evidence;
(c) harboring or concealing, or facilitating the escape of, any person he knows, or has reasonable ground to believe or suspect, has committed any offense under existing penal laws;
(d) publicly using a fictitious name for the purpose of concealing a crime, evading prosecution or the execution of a judgment, or concealing his true name and other personal circumstances;

(e) delaying the prosecution of criminal cases by obstructing the service of process or court orders or disturbing proceedings;
(f) making or using any record or object with knowledge of its falsity and with intent to affect the course or outcome of the investigation or official proceedings;
(g) accepting, or agreeing to accept any benefit in consideration of abstaining from or impeding the prosecution of a criminal offender;
(h) threatening another with the infliction of any wrong upon his person, honor or property or that of any immediate member or members of his family in order to prevent a person from appearing in the investigation of or in official proceedings;
(i) giving of false or fabricated information to mislead law enforcement agencies from apprehending the offender or from protecting the life or property of the victim.

XIV. Heinous Crimes Act (RA 7659, as amended)

Crimes are heinous for being grievous, odious, and hateful offenses and which, by reason of their inherent or manifest wickedness, viciousness, atrocity, and perversity are repugnant to the common standards and norms of decency and morality in a just, civilized, and ordered society.

Congress may reimpose death penalty when:
1. it defines or describes what is meant by heinous crimes,
2. it specifies and penalizes by death, only crimes that qualify as heinous in accordance with the definition or description set in the death penalty bill and/or designate crimes punishable by reclusion perpetua to death in which, the latter case, death can only be imposed upon the attendance of circumstances duly proven in court that characterize the crime to be heinous, and
3. it, in enacting the death penalty bill be singularly motivated by "compelling reasons involving heinous crimes." (**People v. Echagaray**, 267 SCRA 682)

XV. Republic Act 9346 (Act Prohibiting the Imposition of Death Penalty in the Philippines)

Section 1 of the Act declared that the penalty of death is prohibited. It repealed RA 8177 (Act designating death by Lethal Injection), RA 7659 (the Death Penalty Law), and repealed and amended all other inconsistent laws.

Section 2 provides that, in lieu of the death penalty, the following shall be imposed:

- Penalty of *Reclusion Perpetua*, if the law violated makes use of the nomenclature of the RPC; and
- Penalty of Life Imprisonment, if the law violated does not make use of the nomenclature of the penalties of the RPC.

Under Section 3, persons convicted of offenses punished with *reclusion perpetua*, or whose sentences will be reduved to *reclusion perpetua* by reason of this RA 9346, shall not be eligible for parole under Act No. 4180 (Indeterminate Sentence Law, as amended)

The act provided that it shall take effect immediately after its publication in 2 national newspapers of general circulation. On June 29, 2006, it was published in Malaya and Manila Times. Accordingly, it took effect on June 30, 2006.

XVI. Juvenile Justice and Welfare Act of 2006 (RA 9344)

Section 4 of the Act defined the following terms, among others:

- "Child" refers to a person under the age of eighteen (18) years.
- "Child at Risk" refers to a child who is vulnerable to and at the risk of committing criminal offenses because of personal, family and social circumstances, such as, but not limited to, the following:

  (1) being abused by any person through sexual, physical, psychological, mental, economic or any other means and the parents or guardian refuse, are unwilling, or unable to provide protection for the child;
  (2) being exploited including sexually or economically;
  (3) being abandoned or neglected, and after diligent search and inquiry, the parent or guardian cannot be found;
  (4) coming from a dysfunctional or broken family or without a parent or guardian;
  (5) being out of school;
  (6) being a streetchild;
  (7) being a member of a gang;
  (8) living in a community with a high level of criminality or drug abuse; and
  (9) living in situations of armed conflict.

- "Child in Conflict with the Law" refers to a child who is alleged as, accused of, or adjudged as, having committed an offense under Philippine laws.

Section 6 of the Act declares that:

- A child fifteen (15) years of age or under at the time of the commission of the offense shall be exempt from criminal liability.

However, the child shall be subjected to an intervention program pursuant to Section 20 of this Act.

- A child above fifteen (15) years but below eighteen (18) years of age shall likewise be exempt from criminal liability and be subjected to an intervention program, unless he/she has acted with discernment, in which case, such child shall be subjected to the appropriate proceedings in accordance with this Act.

However, it also stated that the exemption from criminal liability therein established does not include exemption from civil liability, which shall be enforced in accordance with existing laws.

Section 7 provided for the presumption of minority, stating that a "child in conflict with the law shall enjoy the presumption of minority. He/She shall enjoy all the rights of a child in conflict with the law until he/she is proven to be eighteen (18) years old or older."

SEC. 34. Bail. - For purposes of recommending the amount of bail, the privileged mitigating circumstance of minority shall be considered.

SEC. 35. Release on Recognizance. - Where a child is detained, the court shall order:

(a) the release of the minor on recognizance to his/her parents and other suitable person;

(b) the release of the child in conflict with the law on bail; or

(c) the transfer of the minor to a youth detention home/youth rehabilitation center.

The court shall not order the detention of a child in a jail pending trial or hearing of his/her case.

SEC. 36. Detention of the Child Pending Trial. - Children detained pending trial may be released on bail or recognizance as provided for under Sections 34 and 35 under this Act. In all other cases and whenever possible, detention pending trial may be replaced by alternative measures, such as close supervision, intensive care or placement with a family or in an educational setting or home. Institutionalization or detention of the child pending trial shall be used only as a measure of last resort and for the shortest possible period of time.

Whenever detention is necessary, a child will always be detained in youth detention homes established by local governments, pursuant to Section 8 of the Family Courts Act, in the city or municipality where the child resides.

In the absence of a youth detention home, the child in conflict with the law may be committed to the care of the DSWD or a local rehabilitation center recognized by the government in the province, city or municipality within the jurisdiction of the court. The center or agency concerned shall be responsible for the child's appearance in court whenever required.

SEC. 37. Diversion Measures. - 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. 38. Automatic Suspension of Sentence. - Once the child who is under eighteen (18) years of age at the time of the commission of the offense is found guilty of the offense charged, the court shall determine and ascertain any civil liability which may have resulted from the offense committed. However, instead of pronouncing the judgment of conviction, the court shall place the child in conflict with the law under suspended sentence, without need of application: Provided, however, That suspension of sentence shall still be applied even if the juvenile is already eighteen years (18) of age or more at the time of the pronouncement of his/her guilt.

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

SEC. 39. Discharge of the Child in Conflict with the Law. - Upon the recommendation of the social worker who has custody of the child, the court shall dismiss the case against the child whose sentence has been suspended and against whom disposition measures have been issued, and shall order the final discharge of the child if it finds that the objective of the disposition measures have been fulfilled.

The discharge of the child in conflict with the law shall not affect the civil liability resulting from the commission of the offense, which shall be enforced in accordance with law.

SEC. 40. Return of the Child in Conflict with the Law to Court. - If the court finds that the objective of the disposition measures imposed upon the child in conflict with the law have not been fulfilled, or if the child in conflict with the law has willfully failed to comply with the conditions of his/her disposition or rehabilitation program, the child in conflict with the law shall be brought before the court for execution of judgment.

If said child in conflict with the law has reached eighteen (18) years of age while under suspended sentence, the court shall determine whether to discharge the child in accordance with this Act, to order execution of sentence, or to extend the suspended sentence for a certain specified period or until the child reaches the maximum age of twenty-one (21) years.

SEC. 41. Credit in Service of Sentence. - The child in conflict with the law shall be credited in the services of his/her sentence with the full time spent in actual commitment and detention under this Act.

SEC. 42. Probation as an Alternative to Imprisonment. - The court may, after it shall have convicted and sentenced a child in conflict with the law, and upon application at any time, place the child on probation in lieu of service of his/her sentence taking into account the best interest of the child. For this purpose, Section 4 of Presidential Decree No. 968, otherwise known as the "Probation Law of 1976", is hereby amended accordingly.

SEC. 47. Female Children. - Female children in conflict with the law placed in an institution shall be given special attention as to their personal needs and problems. They shall be handled by female doctors, correction officers and social workers, and shall be accommodated separately from male children in conflict with the law.

SEC. 58. Offenses Not Applicable to Children. - Persons below eighteen (18) years of age shall be exempt from prosecution for the crime of vagrancy and prostitution under Section 202 of the Revised Penal Code, of mendicancy under Presidential Decree No. 1563, and sniffing of rugby under Presidential Decree No. 1619, such prosecution being inconsistent with the United Nations Convention on the Rights of the Child: Provided, That said persons shall undergo appropriate counseling and treatment program.

SEC. 59. Exemption from the Application of 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.

SEC. 64. Children in Conflict with the Law Fifteen (15) Years Old and Below. - Upon effectivity of this Act, cases of children fifteen (15) years old and below at the time of the commission of the crime shall immediately be dismissed and the child shall be referred to the appropriate local social welfare and development officer. Such officer, upon thorough assessment of the child, shall determine whether to release the child to the custody of his/her parents, or refer the child to prevention programs as provided under this Act. Those with suspended sentences and undergoing rehabilitation at the youth rehabilitation center shall likewise be released, unless it is contrary to the best interest of the child.

SEC. 65. Children Detained Pending Dial. - If the child is detained pending trial, the Family Court shall also determine whether or not continued detention is necessary and, if not, determine appropriate alternatives for detention.

If detention is necessary and he/she is detained with adults, the court shall immediately order the transfer of the child to a youth detention home.

SEC. 66. Inventory of "Locked-up" and Detained Children in Conflict with the Law. - The PNP, the BJMP and the BUCOR are hereby directed to submit to the JJWC, within ninety (90) days from the effectivity of this Act, an inventory of all children in conflict with the law under their custody.

SEC. 67. Children Who Reach the Age of Eighteen (18) Years Pending Diversion and Court Proceedings. - If a child reaches the age of eighteen (18) years pending diversion and court proceedings, the appropriate diversion authority in consultation with the local social welfare and development officer or the Family Court in consultation with the Social Services and Counseling Division (SSCD) of the Supreme Court, as the case may be, shall determine the appropriate disposition. In case the appropriate court executes the judgment of conviction, and unless the child in conflict the law has already availed of probation under Presidential Decree No. 603 or other similar laws, the child may apply for probation if qualified under the provisions of the Probation Law.

SEC. 68. Children Who Have Been Convicted and are Serving Sentence. - Persons who have been convicted and are serving sentence at the time of the effectivity of this Act, and who were below the age of eighteen (18) years at the time the commission of the offense for which they were convicted and are serving sentence, shall likewise benefit from the retroactive application of this Act. They shall be entitled to appropriate dispositions provided under this Act and their sentences shall be adjusted accordingly. They shall be immediately released if they are so qualified under this Act or other applicable law.

Q&A

Q1. In the course of the hi-jack, a passenger or complement was shot and killed. What crime or crimes were committed?

A. The crime remains to be a violation of the anti hi-jacking law, but the penalty thereof shall be higher because a passenger or complement of the aircraft had been killed. The crime of homicide or murder is not committed.

Q2. The hi-jackers threatened to detonate a bomb in the course of the hi-jack. What crime or crimes were committed?

A. Again, the crime is violation of the anti hi-jacking law. The separate crime of grave threat is not committed. This is considered as a qualifying circumstance that shall serve to increase the penalty.

Q3. A janitor at the Quezon City Hall was assigned in cleaning the men's room. One day, he noticed a fellow urinating so carelessly that instead of urinating at the bowl, he was actually urinating partly on the floor. The janitor resented this. He stepped out of the men's room and locked the same. He left. The fellow was able to come out only after several hours when people from the outside forcibly opened the door. Is the janitor liable for arbitrary detention?

A. No. Even if he is a public officer, he is not permitted by his official function to arrest and detain persons. Therefore, he is guilty only of illegal detention. While the offender is a public officer, his duty does not include the authority to make arrest; hence, the crime committed is illegal detention.

Q4. A municipal treasurer has been courting his secretary. However, the latter always turned him down. Thereafter, she tried to avoid him. One afternoon, the municipal treasurer locked the secretary inside their office until she started crying. The treasurer opened the door and allowed her to go home. What crime was committed?

A. Illegal detention. This is because the municipal treasurer has no authority to detain a person although he is a public officer.

Q5. The offended party was brought to a place which he could not leave because he does not know where he is, although free to move about. Was arbitrary or illegal detention committed?

A. Either arbitrary detention or illegal detention was committed. If a person is brought to a safe house, blindfolded, even if he is free to move as he pleases, but if he cannot leave the place, arbitrary detention or illegal detention is committed.

Q6. A had been collecting tong from drivers. B, a driver, did not want to contribute to the tong. One day, B was apprehended by A, telling him that he was driving carelessly. Reckless driving carries with it a penalty of immediate detention and arrest. B was brought to the Traffic Bureau and was detained there until the evening. When A returned, he opened the cell and told B to go home. Was there a crime of arbitrary detention or unlawful arrest?

A. Arbitrary detention. The arrest of B was only incidental to the criminal intent of the offender to detain him. But if after putting B inside the cell, he was turned over to the investigating officer who booked him and filed a charge of reckless imprudence against him, then the crime would be unlawful arrest. The detention of the driver is incidental to the supposed crime he did not commit. But if there is no supposed crime at all because the driver was not charged at all, he was not given place under booking sheet or report arrest, then that means that the only purpose of the offender is to stop him from driving his jeepney because he refused to contribute to the tong.

Q7. Within what period should a police officer who has arrested a person under a warrant of arrest turn over the arrested person to the judicial authority?

A. There is no time limit specified except that the return must be made within a reasonable time. The period fixed by law under Article 125 does not apply because the arrest was made by virtue of a warrant of arrest.

When a person is arrested without a warrant,

it means that there is no case filed in court yet. If the arresting officer would hold the arrested person there, he is actually depriving the arrested of his right to bail. As long as there is no charge in the court yet, the arrested person cannot obtain bail because bail may only be granted by the court. The spirit of the law is to have the arrested person delivered to the jurisdiction of the court.

Q8. The arrest of the suspect was done in Baguio City. On the way to Manila, where the crime was committed, there was a typhoon so the suspect could not be brought to Manila until three days later. Was there a violation of Article 125?

A. There was a violation of Article 125. The crime committed was arbitrary detention in the form of delay in the delivery of arrested person to the proper judicial authority. The typhoon or flood is a matter of defense to be proved by the accused, the arresting officer, as to whether he is liable. In this situation, he may be exempt under Article 12(7).

Q9. Certain aliens were arrested and they were just put on the first aircraft which brought them to the country so that they may be out without due process of law. Was there a crime committed?

A. Yes. Expulsion.

Q10. If a Filipino citizen is sent out of the country, what crime is committed?

A. Grave coercion, not expulsion, because a Filipino cannot be deported. This crime refers only to aliens.

Q11. It was raining heavily. A policeman took shelter in one person's house. The owner obliged and had his daughter serve the police some coffee. The policeman made a pass at the daughter. The owner of the house asked him to leave. Does this fall under Article 128?

A. No. It was the owner of the house who let the policeman in. The entering is not surreptitious.

Q12. A person surreptitiously enters the dwelling of another. What crime or crimes were possibly committed?

A. The crimes committed are (1) qualified trespass to dwelling under Article 280, if there was an express or implied prohibition against entering. This is tantamount to entering against the will of the owner; and (2) violation of domicile in the third form if he refuses to leave after being told to.

Q13. Can there be a complex crime of coup d'etat with rebellion?

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

Q14. Can coup d'etat be complexed with sedition?

A. (Suggested): Yes. Coup d'etat and sedition are essentially different and distinctly punished under the RPC. Sedition may not be directed against the Government for it can be non-political in objective but coup d'etat is political in objective for it is directed against the Government and led by persons/public officers belonging to the military/national police. Art. 48 may be applied.

(Alternative): No, coup d'etat may not be complexed with sedition. While their principal offenders may be different, both crimes are political in purpose and directed against the Government. The essence is the same and thus constitute only one crime. When the two crimes are not distinct, Art. 48 does not properly apply.

Q15. Is the violation of conditional pardon a substantive offense?

A. Under Article 159, there are two situations provided:

(1) There is a penalty of prision correccional minimum for the violation of the conditional pardon;

(2) There is no new penalty imposed for the violation of the conditional pardon. Instead, the convict will be required to serve the unserved portion of the sentence.

If the remitted portion of the sentence is less than six years or up to six years, there is an added penalty of prision correccional minimum for the violation of the conditional pardon; hence, the violation is a substantive offense if the remitted portion of the sentence does not exceed six years because in this case a new penalty is imposed for the violation of the conditional pardon.

But if the remitted portion of the sentence exceeds six years, the violation of the conditional pardon is not a substantive offense because no new penalty is imposed for the violation.

In other words, you have to qualify your answer.

The Supreme Court, however, has ruled in the case of Angeles v. Jose that this is not a substantive offense. This has been highly criticized.

Q16. X has in his possession a coin which was legal tender at the time of Magellan and is considered a collector's item. He manufactured several pieces of that coin. Is the crime committed?

A. Yes. It is not necessary that the coin be of legal tender. The provision punishing counterfeiting does not require that the money be of legal tender and the law punishes this even if the coin concerned is not of legal tender in order to discourage people from practicing their ingenuity of imitating money. If it were otherwise, people may at the beginning try their ingenuity in imitating money not of legal tender and once they acquire expertise, they may then counterfeit money of legal tender.

Q17. The people playing cara y cruz, before they throw the coin in the air would rub the money to the sidewalk thereby diminishing the intrinsic value of the coin. Is the crime of mutilation committed?

A. Mutilation, under the Revised Penal Code, is not committed because they do not collect the precious metal content that is being scraped from the coin. However, this will amount to violation of Presidential Decree No. 247.

Q18. When the image of Jose Rizal on a five-peso bill is transformed into that of Randy Santiago, is there a violation of Presidential Decree No. 247?

A. Yes. Presidential Decree No. 247 is violated by such act.

Q19. Sometime before martial law was imposed, the people lost confidence in banks that they preferred hoarding their money than depositing it in banks. Former President Ferdinand Marcos declared upon declaration of martial law that all bills without the Bagong Lipunan sign on them will no longer be recognized. Because of this, the people had no choice but to surrender their money to banks and exchange them with those with the Bagong Lipunan sign on them. However, people who came up with a lot of money were also being charged with hoarding for which reason certain printing presses did the stamping of the Bagong Lipunan sign themselves to avoid prosecution. Was there a violation of Presidential Decree No. 247?

A. Yes. This act of the printing presses is a violation of Presidential Decree No. 247.

Q20. An old woman who was a cigarette vendor in Quiapo refused to accept one-centavo coins for payment of the vendee of cigarettes he purchased. Then came the police who advised her that she has no right to refuse since the coins are of legal tender. On this, the old woman accepted in her hands the one-centavo coins and then threw it to the face of the vendee and the police. Was the old woman guilty of violating Presidential Decree No. 247?

A. She was guilty of violating Presidential Decree No. 247 because if no one ever picks

up the coins, her act would result in the diminution of the coin in circulation.

Q21. A certain customer in a restaurant wanted to show off and used a P 20.00 bill to light his cigarette. Was he guilty of violating Presidential Decree No. 247?

A. He was guilty of arrested for violating of Presidential Decree No. 247. Anyone who is in possession of defaced money is the one who is the violator of Presidential Decree No. 247. The intention of Presidential Decree No. 247 is not to punish the act of defrauding the public but what is being punished is the act of destruction of money issued by the Central Bank of the Philippines.

Q22. Instead of the peso sign (P), somebody replaced it with a dollar sign ($). Was the crime of forgery committed?

A. No. Forgery was not committed. The forged instrument and currency note must be given the appearance of a true and genuine document. The crime committed is a violation of Presidential Decree No. 247. Where the currency note, obligation or security has been changed to make it appear as one which it purports to be as genuine, the crime is forgery. In checks or commercial documents, this crime is committed when the figures or words are changed which materially alters the document.

Q23. An old man, in his desire to earn something, scraped a digit in a losing sweepstakes ticket, cut out a digit from another ticket and pasted it there to match the series of digits corresponding to the winning sweepstakes ticket. He presented this ticket to the Philippine Charity Sweepstakes Office. But the alteration is so crude that even a child can notice that the supposed digit is merely superimposed on the digit that was scraped. Was the old man guilty of forgery?

A. Because of the impossibility of deceiving whoever would be the person to whom that ticket is presented, the Supreme Court ruled that what was committed was an impossible crime. Note, however, that the decision has been criticized. In a case like this, the Supreme Court of Spain ruled that the crime is frustrated. Where the alteration is such that nobody would be deceived, one could easily see that it is a forgery, the crime is frustrated because he has done all the acts of execution which would bring about the felonious consequence but nevertheless did not result in a consummation for reasons independent of his will.

Q24. A person has a twenty-peso bill. He applied toothache drops on one side of the bill. He has a mimeograph paper similar in texture to that of the currency note and placed it on top of the twenty-peso bill and put some weight on top of the paper. After sometime, he removed it and the printing on the twenty-peso bill was reproduced on the mimeo paper. He took the reverse side of the P20 bill, applied toothache drops and reversed the mimeo paper and pressed it to the paper. After sometime, he removed it and it was reproduced. He cut it out, scraped it a little and went to a sari-sari store trying to buy a cigarette with that bill. What he overlooked was that, when he placed the bill, the printing was inverted. He was apprehended and was prosecuted and convicted of forgery. Was the crime of forgery committed?

A. The Supreme Court ruled that it was only frustrated forgery because although the offender has performed all the acts of execution, it is not possible because by simply looking at the forged document, it could be seen that it is not genuine. It can only be a consummated forgery if the document which purports to be genuine is given the appearance of a true and genuine document. Otherwise, it is at most frustrated.

Q25. A is one of those selling residence certificates in Quiapo. He was brought to the police precincts on suspicion that the certificates he was selling to the public proceed from spurious sources and not from the Bureau of Treasury. Upon verification, it was found out that the certificates were indeed printed with a booklet of supposed residence certificates. What crime was committed?

A. Crime committed is violation of Article 176

(manufacturing and possession of instruments or implements for falsification). A cannot be charged of falsification because the booklet of residence certificates found in his possession is not in the nature of "document" in the legal sense. They are mere forms which are not to be completed to be a document in the legal sense. This is illegal possession with intent to use materials or apparatus which may be used in counterfeiting/forgery or falsification.

Q26. Public officers found a traffic violation receipts from a certain person. The receipts were not issued by the Motor Vehicle Office. For what crime should he be prosecuted for?

A. It cannot be a crime of usurpation of official functions. It may be the intention but no overt act was yet performed by him. He was not arrested while performing such overt act. He was apprehended only while he was standing on the street suspiciously. Neither can he be prosecuted for falsification because the document is not completed yet, there being no name of any erring driver. The document remains to be a mere form. It not being completed yet, the document does not qualify as a document in the legal sense.

Q27. Can the writing on the wall be considered a document?

A. Yes. It is capable of speaking of the facts stated therein. Writing may be on anything as long as it is a product of the handwriting, it is considered a document.

Q28. In a case where a lawyer tried to extract money from a spinster by typing on a bond paper a subpoena for estafa. The spinster agreed to pay. The spinster went to the prosecutor's office to verify the exact amount and found out that there was no charge against her. The lawyer was prosecuted for falsification. He contended that only a genuine document could be falsified. Rule.

A. As long as any of the acts of falsification is committed, whether the document is genuine or not, the crime of falsification may be committed. Even totally false documents may be falsified.

Q29. When a person is apprehended loitering inside an estate belonging to another, what are the crimes that may have been committed?

A. (1) Trespass to property under Article 281 if the estate is fenced and there is a clear prohibition against entering, but the offender entered without the consent of the owner or overseer thereof. What is referred to here is estate, not dwelling.

(2) Attempted theft under Article 308, paragraph 3, if the estate is fenced and the offender entered the same to hunt therein or fish from any waters therein or to gather any farm products therein without the consent of the owner or overseer thereof;

(3) Vagrancy under Article 202 if the estate is not fenced or there is no clear prohibition against entering.

Q30. Can there be prostitution by conspiracy?

A. No. One who conspires with a woman in the prostitution business like pimps, taxi drivers or solicitors of clients are guilty of the crime under Article 341 for white slavery.

Q31. The Central Bank, by resolution of the Monetary Board, hires Theof Sto. Tomas, a retired manager of a leading bank as a consultant. Theof later receives a valuable gift from a bank under investigation by the Central Bank. May Theof be prosecuted under RA 3019 for accepting the gift? Explain.

A. No, Theof may not be prosecuted under RA 3019 but he can be prosecuted for violation of PD 46, under which such act of receiving a valuable gift is punished. Although Theof is a "public officer" within the application of RA 3019, his act of receiving the gift does not appear to be included among the acts punished by said law since he did not intervene in his official capacity in the investigation of the bank that gave the gift. Penal laws must be construed against the state and Theof is also administratively liable.

Q32. What crime under the Revised Penal Code carries the same penalty whether committed intentionally or through negligence?

A. Malversation under Article 217. There is no crime of malversation through negligence. The crime is malversation, plain and simple, whether committed through dolo or culpa. There is no crime of malversation under Article 365 – on criminal negligence – because in malversation under Article 217, the same penalty is imposed whether the malversation results from negligence or was the product of deliberate act.

The crime of malversation can be committed only by an officer accountable for the funds or property which is appropriated. This crime, therefore, bears a relation between the offender and the funds or property involved.

The offender, to commit malversation, must be accountable for the funds or property misappropriated by him. If he is not the one accountable but somebody else, the crime committed is theft. It will be qualified theft if there is abuse of confidence.

Accountable officer does not refer only to cashier, disbursing officers or property custodian. Any public officer having custody of public funds or property for which he is accountable can commit the crime of malversation if he would misappropriate such fund or property or allow others to do so.

Q33. An unlicensed firearm was confiscated by a policeman. Instead of turning over the firearm to the property custodian for the prosecution of the offender, the policeman sold the firearm. What crime was committed?

A. The crime committed is malversation because that firearm is subject to his accountability. Having taken custody of the firearm, he is supposed to account for it as evidence for the prosecution of the offender.

Q34. Can the buyer be liable under the Anti-fencing law?

A. No. The crime is neither theft nor robbery, but malversation.

Q35. A member of the Philippine National Police went on absence without leave. He was charged with malversation of the firearm issued to him. After two years, he came out of hiding and surrendered the firearm. What crime was committed?

A. The crime committed was malversation. Payment of the amount misappropriated or restitution of property misappropriated does not erase criminal liability but only civil liability.

When private property is attached or seized by public authority and the public officer accountable therefor misappropriates the same, malversation is committed also.

Q36. There was a long line of payors on the last day of payment for residence certificates. Employee A of the municipality placed all his collections inside his table and requested his employee B to watch over his table while he goes to the restroom. B took advantage of A's absence and took P50.00 out of the collections. A returned and found his money short. What crimes have been committed?

A. A is guilty of malversation through negligence because he did not exercise due diligence in the safekeeping of the funds when he did not lock the drawer of his table. Insofar as B is concerned, the crime is qualified theft.

Under jurisprudence, when the public officer leaves his post without locking his drawer, there is negligence. Thus, he is liable for the loss.

Q37. The sheriff, after having levied on the property subject of a judgment, conducted a public auction sale. He received the proceeds of the public auction. Actually, the proceeds are to be delivered to the plaintiff. The sheriff, after deducting the sheriff's fees due to the office, spent part of that amount. He gave the balance to the plaintiff and executed a promissory note to pay the plaintiff the amount spent by him. Is there a crime committed?

A. The Supreme Court ruled that the sheriff committed the crime of malversation because the proceeds of the auction sale was turned over to the plaintiff, such proceeds is impressed with the characteristic of being part of public funds. The sheriff is accountable therefore because he is not supposed to use any part of such proceeds.

Q38. If a private person approached the custodian of the prisoner and for a certain consideration, told the custodian to leave the door of the cell unlocked for the prisoner to escape. What crime had been committed?

A. It is not infidelity in the custody of prisoners because as far as the private person is concerned, this crime is delivering prisoners from jail. The infidelity is only committed by the custodian.

This crime can be committed also by a private person if the custody of the prisoner has been confided to a private person.

Q39. A pregnant woman decided to commit suicide. She jumped out of a window of a building but she landed on a passerby. She did not die but an abortion followed. Is she liable for unintentional abortion?

A. No. What is contemplated in unintentional abortion is that the force or violence must come from another. If it was the woman doing the violence upon herself, it must be to bring about an abortion, and therefore, the crime will be intentional abortion. In this case, where the woman tried to commit suicide, the act of trying to commit suicide is not a felony under the Revised Penal Code. The one penalized in suicide is the one giving assistance and not the person trying to commit suicide.

Q40. If the abortive drug used in abortion is a prohibited drug or regulated drug under Presidential Decree No. 6425 (The Dangerous Drugs Act of 1972), as amended, what are the crimes committed?

A. The crimes committed are (1) intentional abortion; and (2) violation of the Dangerous Drugs Act of 1972.

Q41. What is the liability of a physician who aborts the fetus to save the life of the mother?

A. None. This is a case of therapeutic abortion which is done out of a state of necessity. Therefore, the requisites under Article 11, paragraph 4, of the Revised Penal Code must be present. There must be no other practical or less harmful means of saving the life of the mother to make the killing justified.

Q42. The offender threw acid on the face of the offended party. Were it not for timely medical attention, a deformity would have been produced on the face of the victim. After the plastic surgery, the offended party was more handsome than before the injury. What crime was committed? In what stage was it committed?

A. The crime is serious physical injuries because the problem itself states that the injury would have produced a deformity. The fact that the plastic surgery removed the deformity is immaterial because in law what is considered is not the artificial treatment but the natural healing process.In a case decided by the Supreme Court, accused was charged with serious physical injuries because the injuries produced a scar. He was convicted under Article 263 (4). He appealed because, in the course of the trial, the scar disappeared. It was held that accused can not be convicted of serious physical injuries. He is liable only for slight physical injuries because the victim was not incapacitated, and there was no evidence that the medical treatment lasted for more than nine days.

Q43. In a free-for-all brawl that ensued after some customers inside a night club became unruly, guns were fired by a group, among them A and B, that finally put the customers back to their senses. Unfortunately, one customer died. Subsequent investigation revealed that B's gunshot had inflicted a fatal wound on the deceased and A's gunshot never materially contributed to it. A contends his liability, if at all, is limited to slight physical injury. Do you agree?

A. Suggested): No. He should be liable for attempted homicide because he inflicted said injury with the use of a firearm that is a lethal weapon. Intent to kill is inherent in the use of a firearm **(Araneta vs. CA**).

A(Alternative): Yes, because he fired his gun only to pacify the unruly customers of the club and had no intent to kill. B's gunshot that inflicted the fatal wound may not be imputed to A because conspiracy does not exist in a free-for-all brawl or tumultuous affray. A and B are liable only for their acts.

Q44. Blackmailing constitutes what crime?

A. It is a crime of light threat under Article 283 if there is no threat to publish any libelous or slanderous matter against the offended party. If there is such a threat to make a slanderous or libelous publication against the offended party, the crime will be one of libel, which is penalized under Article 356. For example, a person threatens to expose the affairs of married man if the latter does not give him money. There is intimidation done under a demand.The law imposes the penalty of bond for good behavior only in case of grave and light threats. If the offender can not post the bond, he will be banished by way of destierro to prevent him from carrying out his threat.

Q45. Certain men pretended to be from the Price Control Commission and went to a warehouse owned by a private person. They told the guard to open the warehouse purportedly to see if the private person is hoarding essential commodities there. The guard obliged. They went inside and broke in. They loaded some of the merchandise inside claiming that it is the product of hoarding and then drove away. What crime was committed?

A. It is only theft because the premises where the simulation of public authority was committed is not an inhabited house, not a public building, and not a place devoted to religious worship. Where the house is a private building or is uninhabited, even though there is simulation of public authority in committing the taking or even if he used a fictitious name, the crime is only theft.

Note that in the crime of robbery with force upon things, what should be considered is the means of entrance and means of taking the personal property from within. If those means do not come within the definition under the Revised Penal Code, the taking will only give rise to theft.

Those means must be employed in entering. If the offender had already entered when these means were employed, anything taken inside, without breaking of any sealed or closed receptacle, will not give rise to robbery.

Q46. A & B agreed to meet at the latter's house to discuss B's financial problems. On his way, one of A's car tires blew up. Before A left the following meeting, he asked B to lend him money so he could buy a new spare tire. B temporarily exhausted his bank deposits, leaving a zero balance. Anticipating, however, a replenishment of his account soon, B issued A a post-dated check that the latter negotiated for a new tire. When presented, the check bounced for lack of funds. The tire company filed criminal charges against A and B. What would be the criminal liability, if any, of each of the two accused?

A. (Suggested): A who negotiated the unfounded check of B may only be prosecuted for estafa if he was aware that there were insufficient funds at the time of the negotiation. Otherwise, he is not criminally liable. B who accommodated A with his check may be prosecuted under BP 22 for having issued the check, knowing that he had no sufficient funds at that time and that A will negotiate it to buy a new tire, i.e. for value. B is not liable for estafa because facts indicate he had no intent to defraud anyone in issuing the check. Dolo is absent since B issued the check only to help A.

Q47. A woman who has given birth to a child abandons the child in a certain place to free herself of the obligation and duty of rearing and caring for the child. What crime is committed by the woman?

A. The crime committed is abandoning a minor under Article 276.

Q48. Suppose that the purpose of the woman is abandoning the child is to preserve the inheritance of her child by a former marriage, what then is the crime committed?

A. The crime would fall under the second paragraph of Article 347. The purpose of the woman is to cause the child to lose its civil status so that it may not be able to share in the inheritance.

Q49. Suppose a child, one day after his birth, was taken to and left in the midst of a lonely forest, and he was found by a hunter who took him home. What crime was committed by the person who left it in the forest?

A. It is attempted infanticide, as the act of the offender is an attempt against the life of the child. See **US v. Capillo, et al., 30 Phil. 349.**

Q50. During a seminar workshop attended by government employees from the Bureau of Customs and BIR, A, the speaker, in the course of his lecture, lamented the fact that a great majority of those serving in the said agencies were utterly dishonest and corrupt. The next morning, the whole group of employees in the two agencies who attended the seminar filed a criminal complaint against A for uttering what they claimed to be defamatory statements of the lecturer. In court, A filed a Motion to Quash the information, claiming the facts alleged do not constitute an offense. If you were the judge, how would you resolve the motion?

A. (Suggested): I would grant the motion to quash on the ground that the facts alleged do not constitute an offense since there is no definite person/s dishonored. The crime of libel or slander is a crime against honor such that the person/s dishonored must be identifiable even by innuendoes: otherwise the crime against honor is not committed **(Newsweek vs. IAC).** Moreover, A is not making a malicious imputation but merely stating an opinion. He was, without malice, delivering a lecture during the seminar workshop. Malice being inherently absent in the utterance, the statement is not actionable as defamatory.

Q51. Is contributory negligence punished under Article 365?

A. No. It is not applicable in cases under this article on the criminal aspect, and is only mitigating for the civil liability (**People vs. Quinones**). In **People vs. Tan,** it was held that the parents of a child who died in a vehicular accident can also be persecuted I they were themselves negligent and not merely contributorily so, without prejudice to the liability of the driver for negligence.

Q52. When can a driver leave his vehicle without aiding the victim?

A. If he is in imminent danger of being harmed, if he wants to report to the nearest officer of the law or if he wants to summon medical assistance for the injured (Sec. 55 of the Land Transportation Code, RA 4136)

Questions from Bar Exams 2006

Q53. When can a Filipino citizen residing in this country use an alias legally? Give 3 instances. 2.5%

Q54. Under what situations may a private person enter any dwelling, residence, or other establishments without being liable for trespass to dwelling

Q55. What are the 3 ways of committing arbitrary detention? Explain each. 2.5%

Q56. What are the legal grounds for detention? 2.5%

Q57. Eduardo Quintos, a widower for the past 10 years, felt that his retirement at the age of 70 gave him the opportunity to engage in his favorite pastime - voyeurism. If not using his high-powered binoculars to peep at his neighbor's homes and domestic activities, his second choice was to follow sweet young girls. One day, he trailed a teenage girl up to the LRT station at EDSA-Buendia. While ascending the stairs, he stayed one step behind her and in a moment of bravado, placed his hand on her left hip and gently massaged it. She screamed and shouted for help. Eduardo was arrested and charged with acts of lasciviousness. Is the designation of the crime correct? 5%