

***** CULLED FROM THE BOOKS OF REYES, GREGORIO, PALATTAO & SANDOVAL WITH EXCERPTS FROM ORTEGA NOTES**

Criminal Law – A branch of municipal law which defines crimes, treats of their nature and provides for their punishment.

Legal Basis of Punishment

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

The objective of the punishment is two-fold: absolute and relative. The **absolute theory** is to inflict punishment as a form of retributive justice. It is to destroy wrong in its effort to annihilate right, to put an end to the criminal activity of the offender.

On the other hand, the **relative theory** purports to prevent the offender from further offending public right or to the right to repel an imminent or actual aggression, exemplary or by way of example to others not to follow the path taken by the offender and ultimately for reformation or to place him under detention to teach him the obligations of a law-abiding citizen.

Power to Enact Penal Laws

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

Limitations on the power of Congress to enact penal laws

1. Must be general in application.
2. Must not partake of the nature of an *ex post facto* law.
3. Must not partake of the nature of a bill of attainder.
4. Must not impose cruel and unusual punishment or excessive fines.

Characteristics of Criminal Law: (G.T.P.)

1. **General** – the law is binding to all persons who reside in the Philippines

Generality of criminal law means that the criminal law of the country governs all persons within the country regardless of their race, belief, sex, or creed. However, it is subject to certain exceptions brought about by international agreement. Ambassadors, chiefs of states and other diplomatic officials are immune from the application of penal laws when they are in the country where they are assigned.

Note that consuls are not diplomatic officers. This includes consul-general, vice-consul or any consul in a foreign country, who are therefore, not immune to the operation or application of the penal law of the country where they are assigned. Consuls are subject to the penal laws of the country where they are assigned.

It has no reference to territory. Whenever you are asked to explain this, it does not include territory. It refers to persons that may be governed by the penal law.

Exceptions to general application of criminal law:

- a) principles of public international law
- b) treaties or treaty stipulations

- c) laws of preferential application
2. **Territorial** – the law is binding to all crimes committed within the National Territory of the Philippines
Exception to Territorial Application: Instances enumerated under Article 2.

Territoriality means that the penal laws of the country have force and effect only within its territory. It cannot penalize crimes committed outside the same. This is subject to certain exceptions brought about by international agreements and practice. The territory of the country is not limited to the land where its sovereignty resides but includes also its maritime and interior waters as well as its atmosphere.

Terrestrial jurisdiction is the jurisdiction exercised over land.

Fluvial jurisdiction is the jurisdiction exercised over maritime and interior waters.

Aerial jurisdiction is the jurisdiction exercised over the atmosphere.

The Archipelagic Rule

All bodies of water comprising the maritime zone and interior waters abounding different islands comprising the Philippine Archipelago are part of the Philippine territory regardless of their breadth, depth, width or dimension.

What Determines Jurisdiction in a Criminal Case?

1. Place where the crime was committed;
 2. The nature of the crime committed; and
 3. The person committing the crime.
3. **Prospective (Prospectivity)**– the law does not have any retroactive effect.
Exception to Prospective Application: when new statute is favorable to the accused.

This is also called *irretrospectivity*.

Acts or omissions will only be subject to a penal law if they are committed after a penal law had already taken effect. Vice-versa, this act or omission which has been committed before the effectivity of a penal law could not be penalized by such penal law because penal laws operate only prospectively.

The exception where a penal law may be given retroactive application is true only with a repealing law. *If it is an original penal law, that exception can never operate.* What is contemplated by the exception is that there is an original law and there is a repealing law repealing the original law. It is the repealing law that may be given retroactive application to those who violated the original law, if the repealing penal law is more favorable to the offender who violated the original law. If there is only one penal law, it can never be given retroactive effect.

Effect of repeal of penal law to liability of offender

A repeal is absolute or total when the crime punished under the repealed law has been decriminalized by the repeal. *Because of the repeal, the act or omission which used to be a crime is no longer a crime.* An example is Republic Act No. 7363, which decriminalized subversion.

A repeal is partial or relative when the crime punished under the repealed law continues to be a crime in spite of the repeal. *This means that the repeal merely modified the conditions affecting the crime under the repealed law.* The modification may be prejudicial or beneficial to the offender. Hence, the following rule:

Consequences if repeal of penal law is total or absolute

- (1) *If a case is pending in court involving the violation of the repealed law, the same shall be dismissed, even though the accused may be a habitual delinquent.* This is so because all persons accused of a crime are presumed innocent until they are convicted by final judgment. *Therefore, the accused shall be acquitted.*

- (2) *If a case is already decided and the accused is already serving sentence by final judgment, if the convict is not a habitual delinquent, then he will be entitled to a release unless there is a reservation clause in the penal law that it will not apply to those serving sentence at the time of the repeal. But if there is no reservation, those who are not habitual delinquents even if they are already serving their sentence will receive the benefit of the repealing law. They are entitled to release.*

This does not mean that if they are not released, they are free to escape. If they escape, they commit the crime of evasion of sentence, even if there is no more legal basis to hold them in the penitentiary. This is so because prisoners are accountabilities of the government; they are not supposed to step out simply because their sentence has already been, or that the law under which they are sentenced has been declared null and void.

If they are not discharged from confinement, a *petition for habeas corpus* should be filed to test the legality of their continued confinement in jail.

If the convict, on the other hand, is a habitual delinquent, he will continue serving the sentence in spite of the fact that the law under which he was convicted has already been absolutely repealed. This is so because penal laws should be given retroactive application to favor only those who are not habitual delinquents.

Consequences if repeal of penal law is partial or relative

- (1) *If a case is pending in court involving the violation of the repealed law, and the repealing law is more favorable to the accused, it shall be the one applied to him. So whether he is a habitual delinquent or not, if the case is still pending in court, the repealing law will be the one to apply unless there is a saving clause in the repealing law that it shall not apply to pending causes of action.*
- (2) *If a case is already decided and the accused is already serving sentence by final judgment, even if the repealing law is partial or relative, the crime still remains to be a crime. Those who are not habitual delinquents will benefit on the effect of that repeal, so that if the repeal is more lenient to them, it will be the repealing law that will henceforth apply to them.*

Express or implied repeal. – Express or implied repeal refers to the manner the repeal is done.

Express repeal takes place when a subsequent law contains a provision that such law repeals an earlier enactment. For example, in Republic Act No. 6425 (The Dangerous Drugs Act of 1972), there is an express provision of repeal of Title V of the Revised Penal Code.

Implied repeals are not favored. It requires a competent court to declare an implied repeal. An implied repeal will take place when there is a law on a particular subject matter and a subsequent law is passed also on the same subject matter but is inconsistent with the first law, such that the two laws cannot stand together, one of the two laws must give way. It is the earlier that will give way to the later law because the later law expresses the recent legislative sentiment. So you can have an implied repeal when there are two inconsistent laws. When the earlier law does not expressly provide that it is repealing an earlier law, what has taken place here is implied repeal. If the two laws can be reconciled, the court shall always try to avoid an implied repeal.

For **example**, under Article 9, light felonies are those infractions of the law for the commission of which a penalty of *arresto mayor* or a fine not exceeding P200.00 or both is provided. On the other hand, under Article 26, a fine whether imposed as a single or an alternative penalty, if it exceeds P6,000.00 but is not less than P 200.00, is considered a correctional penalty. These two articles appear to be inconsistent. So to harmonize them, the Supreme Court ruled that if the issue involves the prescription of the crime, that felony will be considered a light felony and, therefore, prescribes within two months. But if the issue involves prescription of the penalty, the fine of P200.00 will be considered correctional and it will prescribe within 10 years. Clearly, the court avoided the collision between the two articles.

Consequences if repeal of penal law is express or implied

- (1) *If a penal law is impliedly repealed, the subsequent repeal of the repealing law will revive the original law. So the act or omission which was punished as a crime under the original law will be revived and the same shall again be crimes although during the implied repeal they may not be punishable.*

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- (2) *If the repeal is express, the repeal of the repealing law will not revive the first law, so the act or omission will no longer be penalized.*

These effects of repeal do not apply to self-repealing laws or those which have automatic termination. An example is the Rent Control Law which is revived by Congress every two years.

When there is a repeal, the repealing law expresses the legislative intention to do away with such law, and, therefore, implies a condonation of the punishment. Such legislative intention does not exist in a self-terminating law because there was no repeal at all.

In Co v. CA, decided on October 28, 1993, it was held that the principle of prospectivity of statutes also applies to administrative rulings and circulars.

Theories of Criminal Law

1. **Classical Theory** – Man is essentially a moral creature with an absolute free will to choose between good and evil and therefore more stress is placed upon the result of the felonious act than upon the criminal himself.

The purpose of penalty is retribution. The offender is made to suffer for the wrong he has done. There is scant regard for the human element of the crime. The law does not look into why the offender committed the crime. Capital punishment is a product of this kind of this school of thought. Man is regarded as a moral creature who understands right from wrong. So that when he commits a wrong, he must be prepared to accept the punishment therefore.

2. **Positivist Theory** – Man is subdued occasionally by a strange and morbid phenomenon which conditions him to do wrong in spite of or contrary to his volition. (Crime is essentially a social and natural phenomenon)

The purpose of penalty is reformation. There is great respect for the human element because the offender is regarded as socially sick who needs treatment, not punishment. Crimes are regarded as social phenomena which constrain a person to do wrong although not of his own volition

Eclectic or Mixed Philosophy

This combines both positivist and classical thinking. Crimes that are economic and social and nature should be dealt with in a positivist manner; thus, the law is more compassionate. Heinous crimes should be dealt with in a classical manner; thus, capital punishment.

Sources of Criminal Law

1. The Revised Penal Code
2. Special Penal Laws – Acts enacted of the Philippine Legislature punishing offenses or omissions.

Construction of Penal Laws

1. Criminal Statutes are liberally construed in favor of the offender. This means that no person shall be brought within their terms who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by statute.
2. The original text in which a penal law is approved in case of a conflict with an official translation.
3. Interpretation by analogy has no place in criminal law

BASIC MAXIMS IN CRIMINAL LAW

Doctrine of Pro Reo

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

This is in consonance with the fundamental rule that all doubts shall be construed in favor of the accused and consistent with presumption of innocence of the accused. This is peculiar only to criminal law.

Nullum crimen, nulla poena sine lege

There is no crime when there is no law punishing the same. This is true to civil law countries, but not to common law countries.

Because of this maxim, there is *no common law crime in the Philippines*. No matter how wrongful, evil or bad the act is, if there is no law defining the act, the same is not considered a crime.

Common law crimes are wrongful acts which the community/society condemns as contemptible, even though there is no law declaring the act criminal.

Not any law punishing an act or omission may be valid as a criminal law. If the law punishing an act is ambiguous, it is null and void.

Actus non facit reum, nisi mens sit rea

The act cannot be criminal where the mind is not criminal. This is true to a felony characterized by *dolo*, but not a felony resulting from *culpa*. This maxim is not an absolute one because it is not applied to culpable felonies, or those that result from negligence.

Utilitarian Theory or Protective Theory

The primary purpose of the punishment under criminal law is the protection of society from actual and potential wrongdoers. The courts, therefore, in exacting retribution for the wronged society, should direct the punishment to potential or actual wrongdoers, since criminal law is directed against acts and omissions which the society does not approve. Consistent with this theory, the *mala prohibita* principle which punishes an offense regardless of malice or criminal intent, should not be utilized to apply the full harshness of the special law.

In Magno v CA, decided on June 26, 1992, the Supreme Court acquitted Magno of violation of Batas Pambansa Blg. 22 when he acted without malice. *The wrongdoer is not Magno but the lessor who deposited the checks. He should have returned the checks to Magno when he pulled out the equipment.* To convict the accused would defeat the noble objective of the law and the law would be tainted with materialism and opportunism.

MALA IN SE AND MALA PROHIBITA

Violations of the Revised Penal Code are referred to as *malum in se*, which literally means, that the act is inherently evil or bad or *per se* wrongful. On the other hand, *violations of special laws* are generally referred to as *malum prohibitum*.

Note, however, that *not all violations of special laws are mala prohibita*. While intentional felonies are always *mala in se*, it does not follow that prohibited acts done in violation of special laws are always *mala prohibita*. *Even if the crime is punished under a special law, if the act punished is one which is inherently wrong, the same is malum in se, and, therefore, good faith and the lack of criminal intent is a valid defense; unless it is the product of criminal negligence or culpa.*

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

When the act penalized is not inherently wrong, it is wrong only because a law punishes the same.

For example, Presidential Decree No. 532 punishes piracy in Philippine waters and the special law punishing brigandage in the highways. These acts are inherently wrong and although they are punished under special law, the acts themselves are *mala in se*; thus, good faith or lack of criminal intent is a defense.

Mala in se vs. Mala prohibita

Crimes mala in se	Crimes mala prohibita
Those so serious in their effects on society as to call for almost unanimous condemnation of its members;	Those violations of mere rules of convenience designed to secure a more orderly regulation of the affairs of society

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Criminal intent necessary	Criminal intent is not necessary
Refers generally to felonies defined and penalized by the Revised Penal Code	Refers generally to acts made criminal by special laws

Distinction between crimes punished under the Revised Penal Code and crimes punished under special laws

1. *As to moral trait of the offender*

In crimes punished under the Revised Penal Code, the moral trait of the offender is considered. This is why liability would only arise when there is dolo or culpa in the commission of the punishable act.

In crimes punished under special laws, the moral trait of the offender is not considered; it is enough that the prohibited act was voluntarily done.

2. *As to use of good faith as defense*

In crimes punished under the Revised Penal Code, good faith or lack of criminal intent is a valid defense; unless the crime is the result of culpa

In crimes punished under special laws, good faith is not a defense

3. *As to degree of accomplishment of the crime*

In crimes punished under the Revised Penal Code, the degree of accomplishment of the crime is taken into account in punishing the offender; thus, there are attempted, frustrated, and consummated stages in the commission of the crime.

In crimes punished under special laws, the act gives rise to a crime only when it is consummated; there are no attempted or frustrated stages, unless the special law expressly penalize the mere attempt or frustration of the crime.

4. *As to mitigating and aggravating circumstances*

In crimes punished under the Revised Penal Code, mitigating and aggravating circumstances are taken into account in imposing the penalty since the moral trait of the offender is considered.

In crimes punished under special laws, mitigating and aggravating circumstances are not taken into account in imposing the penalty.

5. *As to degree of participation*

In crimes punished under the Revised Penal Code, when there is more than one offender, the degree of participation of each in the commission of the crime is taken into account in imposing the penalty; thus, offenders are classified as principal, accomplice and accessory.

In crimes punished under special laws, the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is no principal or accomplice or accessory to consider.

Test to determine if violation of special law is malum prohibitum or malum in se

Analyze the violation: Is it wrong because there is a law prohibiting it or punishing it as such? If you remove the law, will the act still be wrong?

If the wording of the law punishing the crime uses the word "willfully", then malice must be proven. Where malice is a factor, good faith is a defense.

In violation of special law, the act constituting the crime is a prohibited act. Therefore culpa is not a basis of liability, unless the special law punishes an omission.

When given a problem, take note if the crime is a violation of the Revised Penal Code or a special law.

Art. 1. This Code shall take effect on January 1, 1932.

Art. 2. *Application of its provisions.* -- Except as provided in the treaties and laws of preferential application, the provisions of this Code shall be enforced not only within the Philippine Archipelago including its atmosphere, its interior waters and Maritime zone, but also outside of its jurisdiction, against those who:

1. Should commit an offense while on a Philippine ship or airship;
2. Should forge or counterfeit any coin or currency note of the Philippine Islands or obligations and securities issued by the Government of the Philippine Islands;
3. Should be liable for acts connected with the introduction into these islands of the obligations and securities mentioned in the preceding number;
4. While being public officers or employees, should commit an offense in the exercise of their functions; or *(Some of these crimes are bribery, fraud against national treasury, malversation of public funds or property, and illegal use of public funds; e.g., A judge who accepts a bribe while in Japan.)*
5. Should commit any crimes against the national security and the law of nations, defined in Title One of Book Two of this Code. *(These crimes include treason, espionage, piracy, mutiny, inciting to war or giving motives for reprisals, correspondence with hostile country, flight to enemy's country and violation of neutrality)*

- **Rules as to crimes committed aboard foreign merchant vessels:**

1. **French Rule** – Such crimes are not triable in the courts of that country, *unless* their commission affects the peace and security of the territory or the safety of the state is endangered.
2. **English Rule** – Such crimes are triable in that country, *unless* they merely affect things within the vessel or they refer to the internal management thereof. *(This is applicable in the Philippines)*

- **Requirements of “an offense committed while on a Philippine Ship or Airship”**

1. Registered with the Philippine Bureau of Customs
2. Ship must be in the high seas or the airship must be in international airspace.

Under international law rule, a vessel which is not registered in accordance with the laws of any country is considered a pirate vessel and piracy is a crime against humanity in general, such that wherever the pirates may go, they can be prosecuted.

- **US v. Bull**

A crime which occurred on board of a foreign vessel, which began when the ship was in a foreign territory and continued when it entered into Philippine waters, is considered a continuing crime. Hence within the jurisdiction of the local courts.

Two situations where the foreign country may not apply its criminal law even if a crime was committed on board a vessel within its territorial waters and these are:

- (1) *When the crime is committed in a war vessel of a foreign country, because war vessels are part of the sovereignty of the country to whose naval force they belong;*

- (2) *When the foreign country in whose territorial waters the crime was committed adopts the French Rule, which applies only to merchant vessels, except when the crime committed affects the national security or public order of such foreign country.*

When public officers or employees commit an offense in the exercise of their functions

As a **general rule**, the Revised Penal Code governs only when the crime committed pertains to the exercise of the public official's functions, those having to do with the discharge of their duties in a foreign country. The functions contemplated are those, which are, under the law, to be performed by the public officer in the Foreign Service of the Philippine government in a foreign country.

Exception: The Revised Penal Code governs if the crime was committed within the Philippine Embassy or within the embassy grounds in a foreign country. This is because embassy grounds are considered an extension of sovereignty.

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

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

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

- **Acts** – an overt or external act
- **Omission** – failure to perform a duty required by law.

To be considered as a felony there must be an act or omission; a mere imagination no matter how wrong does not amount to a felony. An act refers to any kind of body movement that produces change in the outside world.

In **felony by omission** however, there must be a law requiring the doing or the performance of an act. Thus, mere passive presence at the scene of the crime, mere silence and failure to give the alarm, without evidence of agreement or conspiracy is not punishable.

Example of an omission: failure to render assistance to anyone who is in danger of dying or is in an uninhabited place or is wounded - abandonment.

- **Felonies** - acts and omissions punishable by the Revised Penal Code
- **Offense**- crimes punished under special law
- **Misdemeanor**- minor infraction of law, such as violation of ordinance
- **Crime** - acts and omissions punishable by any law

• **HOW FELONIES ARE COMMITTED:**

1. *by means of deceit (dolo)* - There is deceit when the act is performed with deliberate intent.

Requisites:

- a. freedom
- b. intelligence
- c. intent

Examples: murder, treason, and robbery.

2. *by means of fault (culpa)* - There is fault when the wrongful act results from imprudence, negligence, lack of foresight, or lack of skill.

- a. **imprudence** - deficiency of action; e.g. A was driving a truck along a road. He hit B because it was raining - reckless imprudence.

- b. **Negligence** - deficiency of perception; failure to foresee impending danger, usually involves lack of foresight
- c. **Requisites:**
1. Freedom
 2. Intelligence
 3. Imprudence, negligence, lack of skill or foresight
 4. Lack of intent

Intentional felonies vs. Culpable Felonies

Intentional Felonies	Culpable Felonies
Act or omission is malicious	Act or omission is not malicious
Offender has the intention to cause an injury to another	Offender has no intention to cause injury
Act performed or omission incurred with deliberate intent	Act or omission results from imprudence, negligence, lack or foresight or lack of skill

Voluntariness comprehends the concurrence of freedom of action, intelligence and the fact that the act was intentional. *In culpable felonies*, there is no voluntariness if either freedom, intelligence or imprudence, negligence, lack of foresight or lack of skill is lacking. *Without voluntariness, there can be no dolo or culpa, hence, there is no felony.*

Criminal Intent

Criminal Intent is not deceit. Do not use deceit in translating dolo, because the nearest translation is deliberate intent.

In criminal law, intent is categorized into two:

- (1) *General criminal intent; and*
- (2) *Specific criminal intent.*

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

Specific criminal intent is not presumed because it is an ingredient or element of a crime, like intent to kill in the crimes of attempted or frustrated homicide/parricide/murder. The prosecution has the burden of proving the same.

Criminal intent is not necessary in these cases:

- (1) When the crime is the product of culpa or negligence, reckless imprudence, lack of foresight or lack of skill;
- (2) When the crime is a prohibited act under a special law or what is called malum prohibitum.

Distinction between intent and discernment

Intent is the determination to do a certain thing, an aim or purpose of the mind. It is the design to resolve or determination by which a person acts.

On the other hand, *discernment* is the mental capacity to tell right from wrong. It relates to the moral significance that a person ascribes to his act and relates to the intelligence as an element of dolo, distinct from intent.

Distinction between intent and motive

Intent is demonstrated by the use of a particular means to bring about a desired result – it is not a state of mind or a reason for committing a crime.

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On the other hand, *motive* implies motion. It is the moving power which impels one to do an act. When there is motive in the commission of a crime, it always comes before the intent. But a crime may be committed without motive.

If the crime is intentional, it cannot be committed without intent. Intent is manifested by the instrument used by the offender. The specific criminal intent becomes material if the crime is to be distinguished from the attempted or frustrated stage.

Criminal intent is on the basis of the act, not on the basis of what the offender says.

Look into motive to determine the proper crime which can be imputed to the accused

- **Mistake of fact** - is a misapprehension of fact on the part of the person who caused injury to another. He is *not criminally liable*.

a. **Requisites:**

1. that the act done would have been lawful had the facts been as the accused believed them to be;
2. intention of the accused is lawful;
3. mistake must be without fault of carelessness.

Mistake of fact would be relevant only when the felony would have been intentional or through dolo, but not when the felony is a result of culpa. When the felony is a product of culpa, do not discuss mistake of fact

It exists when a person who in the exercise of due diligence, acts under the influence of an erroneous appreciation of facts, which if true would relieve him from criminal responsibility.

It is an omission or commission performed by the individual which is the result of a misconception or misapprehension of events or facts before him which in law is considered voluntary. The accused performed acts or omissions which would be lawful, had it been true as he perceived them to be. To be an absolute cause, the mistake of facts as committed must originate from legitimate sentiment or intention. The further requirement in order to escape criminal responsibility, must be, that the mistake of facts was done without negligence. The good faith of the offender maybe derived from the sequence of events, before, during and after the alleged mistake of facts. If at anytime there is a showing that the actor was at fault for not exercising ordinary prudence, then he will be liable criminally, not however for *dolo*, but for *culpa*.

b. Example: *United States v. Ah Chong*.

Ah Chong being afraid of bad elements, locked himself in his room by placing a chair against the door. After having gone to bed, he was awakened by somebody who was trying to open the door. He asked the identity of the person, but he did not receive a response. Fearing that this intruder was a robber, he leaped out of bed and said that he will kill the intruder should he attempt to enter. At that moment, the chair struck him. Believing that he was attacked, he seized a knife and fatally wounded the intruder.

Mens rea

The technical term mens rea is sometimes referred to in common parlance as *the gravamen of the offense*. To a layman, that is what you call the "*bullseye*" of the crime. This term is used synonymously with criminal or deliberate intent, but that is not exactly correct.

Mens rea of the crime depends upon the elements of the crime. You can only detect the mens rea of a crime by knowing the particular crime committed. Without reference to a particular crime, this term is meaningless. For example, in *theft*, the mens rea is the taking of the property of another with intent to gain. In *falsification*, the mens rea is the effecting of the forgery with intent to pervert the truth. It is not merely writing something that is not true; the intent to pervert the truth must follow the performance of the act.

In criminal law, we sometimes have to consider the crime on the basis of intent. For example, attempted or frustrated homicide is distinguished from physical injuries only by the intent to kill. Attempted rape is distinguished from acts of lasciviousness by the intent to have sexual intercourse. In robbery, the mens rea is the taking of the property of another coupled with the employment of intimidation or violence upon persons or things; remove the employment of force or intimidation and it is not robbery anymore.

Real concept of culpa

Under Article 3, it is clear that *culpa is just a modality by which a felony may be committed*. A felony may be committed or incurred through dolo or culpa. *Culpa is just a means by which a felony may result.*

The concept of criminal negligence is the inexcusable lack of precaution on the part of the person performing or failing to perform an act. If the danger impending from that situation is clearly manifest, you have a case of reckless imprudence. But if the danger that would result from such imprudence is not clear, not manifest nor immediate you have only a case of simple negligence.

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

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

In the first paragraph, **two elements** must be present:

1. A felony committed; and
2. The felony committed resulted in the commission of another felony.

The requirement however, must be, that the resulting other felony or felonies must be direct, material and logical consequence of the felony committed even if the same is not intended or entirely different from what was in the mind of the offender.

- **Doctrine of Proximate Cause** – such adequate and efficient cause as, in the natural order of events, and under the particular circumstances surrounding the case, which would necessarily produce the event.

Requisites:

- a. the direct, natural, and logical cause
 - b. produces the injury or damage
 - c. unbroken by any sufficient intervening cause
 - d. without which the result would not have occurred
- **Proximate Cause is negated by:**
 - a. Active force, distinct act, or fact absolutely foreign from the felonious act of the accused, which serves as a sufficient intervening cause.
 - b. Resulting injury or damage is due to the intentional act of the victim.
 - **Requisite for Presumption that the blow was cause of the death** – Where there has been an injury inflicted sufficient to produce death followed by the demise of the person, the presumption arises that the injury was the cause of the death. *Provided:*
 - a. victim was in normal health
 - b. death ensued within a reasonable time

Even if other causes cooperated in producing the fatal result as long as the wound inflicted is dangerous, that is, calculated to destroy or endanger life, the actor is liable. This is true even though the immediate cause of death was erroneous or unskillful medical treatment, refusal of the victim to submit

to surgical operation, or that the deceased was suffering from tuberculosis, heart disease or other internal malady or that the resulting injury was aggravated by infection.

There must however be *no efficient intervening cause*.

Article 4, paragraph 1 presupposes that the act done is the proximate cause of the resulting felony. *It must be the direct, natural, and logical consequence of the felonious act.*

Proximate cause is that cause which sets into motion other causes and which unbroken by any efficient supervening cause produces a felony without which such felony could not have resulted. *As a general rule*, the offender is criminally liable for all the consequences of his felonious act, although not intended, if the felonious act is the proximate cause of the felony or resulting felony. *A proximate cause is not necessarily the immediate cause.* This may be a cause which is far and remote from the consequence which sets into motion other causes which resulted in the felony.

In criminal law, *as long as the act of the accused contributed to the death of the victim*, even if the victim is about to die, he will still be liable for the felonious act of putting to death that victim.

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

The one who caused the proximate cause is the one liable. The one who caused the immediate cause is also liable, but merely contributory or sometimes totally not liable.

- **Causes which produce a different result:**

- a. **Mistake in identity of the victim** – injuring one person who is mistaken for another e.g., A intended to shoot B, but he instead shot C because he (A) mistook C for B.

In error in personae, the intended victim was not at the scene of the crime. It was the actual victim upon whom the blow was directed, but he was not really the intended victim

How does error in personae affect criminal liability of the offender?

Error in personae is mitigating if the crime committed is different from that which was intended. *If the crime committed is the same as that which was intended*, error in personae does not affect the criminal liability of the offender.

In mistake of identity, if the crime committed was the same as the crime intended, but on a different victim, error in persona does not affect the criminal liability of the offender. *But if the crime committed was different from the crime intended*, Article 49 will apply and the penalty for the lesser crime will be applied. In a way, mistake in identity is a mitigating circumstance where Article 49 applies. *Where the crime intended is more serious than the crime committed*, the error in persona is not a mitigating circumstance

In any event, the offender is prosecuted for the crime committed not for the crime intended.

- b. **Mistake in blow** – hitting somebody other than the target due to lack of skill or fortuitous instances (this is a complex crime under Art. 48) e.g., B and C were walking together. A wanted to shoot B, but he instead injured C.

In aberratio ictus, a person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else. *In aberratio ictus*, the intended victim as well as the actual victim are both at the scene of the crime.

If the actor intended the commission of several felonies with a single act, it is not called *aberratio ictus* or mistake of blow, simply because there was no mistake.

Distinguish this from error in personae, where the victim actually received the blow, but he was mistaken for another who was not at the scene of the crime. The distinction is important because the legal effects are not the same.

In aberratio ictus, the offender delivers the blow upon the intended victim, but because of poor aim the blow landed on somebody else. *You have a complex crime, unless the resulting consequence is not a grave or less grave felony.* You have a single act as against the intended victim and also giving rise to another felony as against the actual victim. *If the resulting physical injuries were only slight, then you cannot complex.* In other words, *aberratio ictus*, generally gives rise to a complex crime. *This being so, the penalty for the more serious crime is imposed in the maximum period.*

- c. ***Injurious result is greater than that intended*** – causing injury graver than intended or expected (this is a mitigating circumstance due to lack of intent to commit so grave a wrong under Art. 13) e.g., A wanted to injure B. However, B died.

In praeter intentionem, it is mitigating only if there is a notable or notorious disparity between the means employed and the resulting felony. In criminal law, intent of the offender is determined on the basis employed by him and the manner in which he committed the crime. *Intention of the offender is not what is in his mind*; it is disclosed in the manner in which he committed the crime.

In praeter intentionem, it is essential that there is a notable disparity between the means employed or the act of the offender and the felony which resulted. This means that the resulting felony cannot be foreseen from the acts of the offender. *If the resulting felony can be foreseen or anticipated from the means employed*, the circumstance of *praeter intentionem* does not apply.

Intent to kill is only relevant when the victim did not die. This is so because the purpose of intent to kill is to differentiate the crime of physical injuries from the crime of attempted homicide or attempted murder or frustrated homicide or frustrated murder. *But once the victim is dead*, you do not talk of intent to kill anymore. The best evidence of intent to kill is the fact that victim was killed.

- *In all these instances the offender can still be held criminally liable, since he is motivated by criminal intent.*

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

- **Requisites:**
 - a. Act would have been an offense against persons or property
 - b. Act is not an actual violation of another provision of the Code or of a special penal law
 - c. There was criminal intent
 - d. Accomplishment was inherently impossible; or inadequate or ineffectual means were employed.
- **Notes:**
 - a. Offender must believe that he can consummate the intended crime, a man stabbing another who he knew was already dead cannot be liable for an impossible crime.
 - b. The law intends to punish the criminal intent.
 - c. There is no attempted or frustrated impossible crime.
- **Felonies against persons:** parricide, murder, homicide, infanticide, physical injuries, etc.
- **Felonies against property:** robbery, theft, usurpation, swindling, etc.
- **Inherent impossibility:** A thought that B was just sleeping. B was already dead. A shot B. A is liable. If A knew that B is dead and he still shot him, then A is not liable.

inherent impossibility, this means that under any and all circumstances, the crime could not have materialized. *If the crime could have materialized under a different set of facts, employing the same mean or the same act, it is not an impossible crime; it would be an attempted felony.*

Legal impossibility occurs where the intended act, even if completed, would not amount into a crime.

Factual impossibility occurs when an extraneous circumstances is unknown to the actor or beyond his control to prevent the consummation of the intended crime.

Under Art. 4, par. 2, the law does not make any distinction between factual or physical impossibility and legal impossibility. (**pp vs. intod**)

- **Employment of inadequate means:** A used poison to kill B. However, B survived because A used small quantities of poison - frustrated murder.
- **Ineffectual means:** A aimed his gun at B. When he fired the gun, no bullet came out because the gun was empty. A is liable.

Whenever you are confronted with a problem where the facts suggest that an impossible crime was committed, be careful about the question asked. *If the question asked is: "Is an impossible crime committed?", then you judge that question on the basis of the facts.* If really the facts constitute an impossible crime, then you suggest than an impossible crime is committed, then you state the reason for the inherent impossibility.

If the question asked is "Is he liable for an impossible crime?", this is a catching question. Even though the facts constitute an impossible crime, if the act done by the offender constitutes some other crimes under the Revised Penal Code, he will not be liable for an impossible crime. He will be prosecuted for the crime constituted so far by the act done by him. The reason is an offender is punished for an impossible crime just to teach him a lesson because of his criminal perversity. Although objectively, no crime is committed, but subjectively, he is a criminal. That purpose of the law will also be served if he is prosecuted for some other crime constituted by his acts which are also punishable under the RPC.

By its very nature, *an impossible crime is a formal crime.* It is either consummated or not committed at all. There is therefore *no attempted or frustrated impossible crime.* At this stage, it would be best to *distinguish impossible crime from attempted or frustrated felony.* The evil intent is attempted or frustrated felony is possible of accomplishment, while in impossible crime, it cannot be accomplished because of its inherent impossibility. In attempted or frustrated felony, what prevented its accomplishment is the intervention of a certain cause or accident independent of the will of the perpetrator or offender.

Unconsummated felonies (Attempted and frustrated felonies) vs. Impossible crimes

Attempted of Frustrated Felony	Impossible Crime
Intent is not accomplished	Intent is not accomplished
Intent of the offender possible of accomplishment	Intent of the offender, cannot be accomplished
Accomplishment is prevented by the intervention of certain cause or accident in which the offender had no part	Intent cannot be accomplished because it is inherently impossible of accomplishment or because the means employed by the offender is inadequate or ineffectual

Art 5. Duty of the court in connection with acts which should be repressed but which are not covered by the law, and in cases of excessive penalties. –

Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made subject of legislation.

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

NO CRIME UNLESS THERE IS A LAW PUNISHING IT

When a person is charged in court, and the court finds that there is no law applicable, the court will acquit the accused and the judge will give his opinion that the said act should be punished.

Article 5 covers two situations:

- (1) The court cannot convict the accused because the acts do not constitute a crime. The proper judgment is acquittal, but the court is mandated to report to the Chief Executive that said act be made subject of penal legislation and why.
 - (2) Where the court finds the penalty prescribed for the crime too harsh considering the conditions surrounding the commission of the crime, the judge should impose the law (*Dura lex sed lex*). The most that he could do is to recommend to the Chief Executive to grant executive clemency.
- *Paragraph 2 does not apply to crimes punishable by special law, including profiteering, and illegal possession of firearms or drugs. There can be no executive clemency for these crimes.*

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

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

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

- **Development of a crime**
 1. **Internal acts** – intent and plans; usually not punishable
 2. **External acts**
 - a. *Preparatory Acts* – acts tending toward the crime
 - b. *Acts of Execution* – acts directly connected the crime

Mere intention is therefore, not punishable. For as long as there is no physical form of the internal acts, the same is outside the inquiry of criminal law.

Stages of Commission of a Crime		
Attempt	Frustrated	Consummated
• Overt acts of execution	• All acts of execution are	• All the acts of execution

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<p>are started</p> <ul style="list-style-type: none"> • Not all acts of execution are present • Due to reasons other than the spontaneous desistance of the perpetrator 	<p>present</p> <ul style="list-style-type: none"> • Crime sought to be committed is not achieved • Due to intervening causes independent of the will of the perpetrator 	<p>are present</p> <ul style="list-style-type: none"> • The result sought is achieved
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There are three stages in the commission of felonies or crimes committed by means of *dolo*. Again, they *do not refer to felonies committed by means of culpa*. It is essentially incompatible with the elements of negligence as another means to commit felony.

Desistance

Desistance on the part of the offender negates criminal liability in the attempted stage. Desistance is true only in the attempted stage of the felony. If under the definition of the felony, the act done is already in the frustrated stage, no amount of desistance will negate criminal liability.

The spontaneous desistance of the offender negates only the attempted stage but not necessarily all criminal liability. Even though there was desistance on the part of the offender, if the desistance was made when acts done by him already resulted to a felony, that offender will still be criminally liable for the felony brought about his act. What is negated is only the attempted stage, but there may be other felony constituting his act.

The desistance referred to under Article 6 has reference to the crime intended to be committed. It has no reference to the crime actually committed by the offender before the desistance.

In deciding whether a felony is attempted or frustrated or consummated, there are three criteria involved:

- (1) *The manner of committing the crime;*
- (2) *The elements of the crime; and*
- (3) *The nature of the crime itself.*

Manner of committing a crime

For example, let us take the crime of *bribery*. Can the crime of frustrated bribery be committed? No. (Incidentally, the common concept of bribery is that it is the act of one who corrupts a public officer. Actually, *bribery is the crime of the receiver not the giver*. The *crime of the giver is corruption of public official*. *Bribery is the crime of the public officer who in consideration of an act having to do with his official duties would receive something, or accept any promise or present in consideration thereof.*)

The confusion arises from the fact that this crime requires two to commit -- the giver and the receiver. The law called the crime of the giver as corruption of public official and the receiver as bribery. Giving the idea that these are independent crimes, but actually, they cannot arise without the other. Hence, *if only one side of the crime is present, only corruption, you cannot have a consummated corruption without the corresponding consummated bribery. There cannot be a consummated bribery without the corresponding consummated corruption.* If you have bribery only, it is only possible in the attempted stage. If you have a corruption only, it is possible only in the attempted stage. A corruptor gives money to a public officer for the latter not to prosecute him. The public officer received the money but just the same, arrested him. He received the money to have evidence of corruption. Do not think that because the corruptor has already delivered the money, he has already performed all the acts of execution, and, therefore, the corruption is already beyond the attempted stage. That thinking does away with the concept of the crime that it requires two to commit. *The manner of committing the crime requires the meeting of the minds between the giver and the receiver.*

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When the giver delivers the money to the supposed receiver, but there is no meeting of the minds, the only act done by the giver is an attempt. It is not possible for him to perform all the acts of execution because in the first place, the receiver has no intention of being corrupted.

Similarly, when a public officer demands a consideration by official duty, the corruptor turns down the demand, there is no bribery.

If the one to whom the demand was made pretended to give, but he had reported the matter to higher authorities, the money was marked and this was delivered to the public officer. If the public officer was arrested, do not think that because the public officer already had the money in his possession, the crime is already frustrated bribery, it is only attempted bribery. This is because the supposed corruptor has no intention to corrupt. In short, there is no meeting of the minds. On the other hand, if there is a meeting of the minds, there is consummated bribery or consummated corruption. This leaves out the frustrated stage because of the manner of committing the crime.

But indirect bribery is always consummated. This is because the manner of consummating the crime does not admit of attempt or frustration.

You will notice that under the Revised Penal Code, when it takes two to commit the crime, there could hardly be a frustrated stage. For instance, the crime of *adultery*. There is no frustrated adultery. Only attempted or consummated. This is because it requires the link of two participants. If that link is there, the crime is consummated; if such link is absent, there is only an attempted adultery. There is no middle ground when the link is there and when the link is absent.

There are instances where an intended felony could already result from the acts of execution already done. Because of this, there are felonies where the offender can only be determined to have performed all the acts of execution when the resulting felony is already accomplished. Without the resulting felony, there is no way of determining whether the offender has already performed all the acts or not. It is in such felonies that the frustrated stage does not exist because without the felony being accomplished, there is no way of stating that the offender has already performed all the acts of execution. An example of this is the crime of rape. The essence of the crime is carnal knowledge. No matter what the offender may do to accomplish a penetration, if there was no penetration yet, it cannot be said that the offender has performed all the acts of execution. We can only say that the offender in rape has performed all the acts of execution when he has effected a penetration. Once there is penetration already, no matter how slight, the offense is consummated. For this reason, *rape admits only of the attempted and consummated stages, no frustrated stage.* This was the ruling in the case of **People v. Orita**.

In rape, it requires the connection of the offender and the offended party. No penetration at all, there is only an attempted stage. Slightest penetration or slightest connection, consummated. You will notice this from the nature of the crime requiring two participants.

This is also true in the crime of *arson*. It does not admit of the frustrated stage. *In arson, the moment any particle of the premises intended to be burned is blackened, that is already an indication that the premises have begun to burn.* It does not require that the entire premises be burned to consummate arson. Because of that, the frustrated stage of arson has been eased out. The reasoning is that one cannot say that the offender, in the crime of arson, has already performed all the acts of execution which could produce the destruction of the premises through the use of fire, unless a part of the premises has begun to burn. *If it has not begun to burn, that means that the offender has not yet performed all the acts of execution. On the other hand, the moment it begins to burn, the crime is consummated.* Actually, the frustrated stage is already standing on the consummated stage except that the outcome did not result. As far as the stage is concerned, the frustrated stage overlaps the consummated stage.

Because of this reasoning by the Court of Appeals in **People v. Garcia**, the Supreme Court followed the analysis that one cannot say that the offender in the crime of arson has already performed all the acts of execution which would produce the arson as a consequence, unless and until a part of the premises had begun to burn.

BUT *In US v. Valdez*, the offender had tried to burn the premises by gathering jute sacks laying these inside the room. He lighted these, and as soon as the jute sacks began to burn, he ran away. The occupants of the room put out the fire. The court held that what was committed was frustrated arson.

This case was much the way before the decision in the case of People v. Garcia was handed down and the Court of Appeals ruled that there is no frustrated arson. But even then, the analysis in the case of US v. Valdez is correct. This is because, in determining whether the

felony is attempted, frustrated or consummated, the court does not only consider the definition under Article 6 of the Revised Penal Code, or the stages of execution of the felony. When the offender has already passed the subjective stage of the felony, it is beyond the attempted stage. It is already on the consummated or frustrated stage depending on whether a felony resulted. If the felony did not result, frustrated.

*The attempted stage is said to be within the subjective phase of execution of a felony. On the **subjective phase**, it is that point in time when the offender begins the commission of an overt act until that point where he loses control of the commission of the crime already. If he has reached that point where he can no longer control the ensuing consequence, the crime has already passed the subjective phase and, therefore, it is no longer attempted. The moment the execution of the crime has already gone to that point where the felony should follow as a consequence, it is either already frustrated or consummated. If the felony does not follow as a consequence, it is already frustrated. If the felony follows as a consequence, it is consummated.*

*The trouble is that, in the jurisprudence recognizing the objective phase and the subjective phase, the Supreme Court considered not only the acts of the offender, but also his belief. That although the offender may not have done the act to bring about the felony as a consequence, if he could have continued committing those acts but he himself did not proceed because he believed that he had done enough to consummate the crime, Supreme Court said the subjective phase has passed. This was applied in the case of **US v. Valdez**, where the offender, having already put kerosene on the jute sacks, lighted the same, he had no reason not to believe that the fire would spread, so he ran away. That act demonstrated that in his mind, he believed that he has performed all the acts of execution and that it is only a matter of time that the premises will burn. The fact that the occupant of the other room came out and put out the fire is a cause independent of the will of the perpetrator.*

*The ruling in the case of **US v. Valdez** is still correct. But in the case of **People v. Garcia**, the situation is different. Here, the offender who put the torch over the house of the offended party, the house being a nipa hut, the torch which was lighted could easily burn the roof of the nipa hut. But the torch burned out.*

In that case, you cannot say that the offender believed that he had performed all the acts of execution. There was not even a single burn of any instrument or agency of the crime.

The analysis made by the Court of Appeals is still correct: that they could not demonstrate a situation where the offender has performed all the acts of execution to bring about the crime of arson and the situation where he has not yet performed all the acts of execution. The weight of the authority is that the crime of arson cannot be committed in the frustrated stage. The reason is because we can hardly determine whether the offender has performed all the acts of execution that would result in arson, as a consequence, unless a part of the premises has started to burn. On the other hand, the moment a particle or a molecule of the premises has blackened, in law, arson is consummated. This is because consummated arson does not require that the whole of the premises be burned. It is enough that any part of the premises, no matter how small, has begun to burn.

There are also certain crimes that do not admit of the attempted or frustrated stage, like physical injuries. One of the known commentators in criminal law has advanced the view that the crime of physical injuries can be committed in the attempted as well as the frustrated stage. He explained that by going through the definition of an attempted and a frustrated felony under Article 6, if a person who was about to give a fist blow to another raises his arms, but before he could throw the blow, somebody holds that arm, there would be attempted physical injuries. The reason for this is because the offender was not able to perform all the acts of execution to bring about physical injuries.

On the other hand, he also stated that the crime of physical injuries may be committed in the frustrated stage when the offender was able to throw the blow but somehow, the offended party was able to sidestep away from the blow. He reasoned out that the crime would be frustrated because the offender was able to perform all the acts of execution which would bring about the felony were it not for a cause independent of the will of the perpetrator.

The explanation is academic. You will notice that under the Revised Penal Code, the crime of physical injuries is penalized on the basis of the gravity of the injuries. Actually, there is no simple crime of physical injuries. You have to categorize because there are specific articles that apply whether the physical injuries are serious, less serious or slight. If you say physical injuries, you do not know which article to apply. This being so, you could not punish the attempted or frustrated stage because you do not know what crime of physical injuries was committed.

Questions & Answers

1. *Is there an attempted slight physical injuries?*

If there is no result, you do not know. Criminal law cannot stand on any speculation or ambiguity; otherwise, the presumption of innocence would be sacrificed. Therefore, the commentator's opinion cannot stand because you cannot tell what particular physical injuries was attempted or frustrated unless the consequence is there. You cannot classify the physical injuries.

2. *A threw muriatic acid on the face of B. The injuries would have resulted in deformity were it not for timely plastic surgery. After the surgery, B became more handsome. What crime is committed? Is it attempted, frustrated or consummated?*

The crime committed here is serious physical injuries because of the *deformity*. When there is deformity, you disregard the healing duration of the wound or the medical treatment required by the wound. *In order that in law, a deformity can be said to exist, three factors must concur:*

- (1) The injury should bring about the ugliness;
- (2) The ugliness must be visible;
- (3) The ugliness would not disappear through natural healing process.

Along this concept of deformity in law, the plastic surgery applied to B is beside the point. In law, what is considered is not the artificial or the scientific treatment but the natural healing of the injury. So the fact that there was plastic surgery applied to B does not relieve the offender from the liability for the physical injuries inflicted. The crime committed is serious physical injuries. It is consummated. In determining whether a felony is attempted, frustrated or consummated, you have to consider the manner of committing the felony, the element of the felony and the nature of the felony itself. There is no real hard and fast rule.

Elements of the crime

In the crime of estafa, the element of damage is essential before the crime could be consummated. If there is no damage, even if the offender succeeded in carting away the personal property involved, estafa cannot be considered as consummated. For the crime of estafa to be consummated, there must be misappropriation already done, so that there is damage already suffered by the offended party. If there is no damage yet, the estafa can only be frustrated or attempted.

On the other hand, *if it were a crime of theft*, damage or intent to cause damage is not an element of theft. What is necessary only is intent to gain, not even gain is important. The mere intent to derive some profit is enough but the thinking must be complete before a crime of theft shall be consummated. That is why we made that distinction between theft and estafa.

If the personal property was received by the offender, this is where you have to decide whether what was transferred to the offender is juridical possession or physical possession only. If the offender did not receive the personal property, but took the same from the possession of the owner without the latter's consent, then there is no problem. That cannot be estafa; this is only theft or none at all.

In estafa, the offender receives the property; he does not take it. But in receiving the property, the recipient may be committing theft, not estafa, if what was transferred to him was only the physical or material possession of the object. *It can only be estafa if what was transferred to him is not only material or physical possession but juridical possession as well.*

When you are discussing estafa, do not talk about intent to gain. In the same manner that when you are discussing the crime of theft, do not talk of damage.

The crime of theft is the one commonly given under Article 6. This is so because the concept of theft under the Revised Penal Code differs from the concept of larceny under American common law. Under American common law, the crime of larceny which is equivalent to our crime of theft here requires that the offender must be able to carry away or transport the thing being stolen. Without that carrying away, the larceny cannot be consummated.

In our concept of theft, the offender need not move an inch from where he was. It is not a matter of carrying away. *It is a matter of whether he has already acquired complete control of the personal property involved.* That complete control simply means that the offender has already supplanted his will from the will of the possessor or owner of the personal property involved, such that he could exercise his own control on the thing.

Illustration:

I placed a wallet on a table inside a room. A stranger comes inside the room, gets the wallet and puts it in his pocket. I suddenly started searching him and I found the wallet inside his pocket. The crime of theft is already consummated because he already acquired complete control of my wallet. This is so true when he removed the wallet from the confines of the table. He can exercise his will over the wallet already, he can drop this on the floor, etc.

But as long as the wallet remains on the table, the theft is not yet consummated; there can only be attempted or frustrated theft. If he has started lifting the wallet, it is frustrated. If he is in the act of trying to take the wallet or place it under, attempted.

“Taking” in the concept of theft, simply means exercising control over the thing.

If instead of the wallet, the man who entered the room pretended to carry the table out of the room, and the wallet is there. While taking the table out of the room, I apprehended him. It turned out that he is not authorized at all and is interested only in the wallet, not the table. The crime is not yet consummated. It is only frustrated because as far as the table is concern, it is the confines of this room that is the container. As long as he has not taken this table out of the four walls of this room, the taking is not complete.

A man entered a room and found a chest on the table. He opened it found some valuables inside. He took the valuables, put them in his pocket and was arrested. In this case, theft is consummated.

But if he does not take the valuables but lifts the entire chest, and before he could leave the room, he was apprehended, there is frustrated theft.

*If the thing is stolen from a compound or from a room, as long as the object has not been brought out of that room, or from the perimeter of the compound, the crime is only frustrated. This is the confusion raised in the case of **US v. Diño** compared with **People v. Adio** and **People v. Espiritu**.*

*In **US v. Diño**, the accused loaded boxes of rifle on their truck. When they were on their way out of the South Harbor, they were checked at the checkpoint, so they were not able to leave the compound. It was held that what was committed was frustrated Theft.*

*In **People v. Espiritu**, the accused were on their way out of the supply house when they were apprehended by military police who found them secreting some hospital linen. It was held that what was committed was consummated theft.*

The emphasis, which was erroneously laid in some commentaries, is that, in both cases, the offenders were not able to pass the checkpoint. But why is it that in one, it is frustrated and in the other, it is consummated?

*In the case of **US v. Diño**, the boxes of rifle were stocked file inside the compound of the South Harbor. As far as the boxes of rifle are concerned, it is the perimeter of the compound that is the container. As long as they were not able to bring these boxes of rifle out of the compound, the taking is not complete. On the other hand, in the case of **People v. Espiritu**, what were taken were hospital linens. These were taken from a warehouse. Hospital linens were taken from boxes that were diffused or destroyed and brought out of the hospital. From the moment they took it out of the boxes where the owner or the possessor had placed it, the control is complete. You do not have to go out of the compound to complete the taking or the control.*

This is very decisive in the problem because in most problems given in the bar, the offender, after having taken the object out of the container changed his mind and returned it. Is he criminally liable? Do not make a mistake by saying that there is a desistance. *If the crime is one of theft, the moment he brought it out, it was consummated.* The return of the thing cannot be desistance because in criminal law, *desistance is true only in the attempted stage.* You cannot talk of desistance anymore when it is already in the consummated stage. If the offender has already acquired complete control of what he intended to take, the fact that he changed his mind and returned the same will no longer affect his criminal liability. It will only affect the civil liability of the

crime because he will no longer be required to pay the object. As far as the crime committed is concerned, the offender is criminally liable and the crime is consummated theft.

Illustration:

A and B are neighbors. One evening, A entered the yard of B and opened the chicken coop where B keeps his fighting cocks. He discovered that the fighting cocks were not physically fit for cockfighting so he returned it. The crime is consummated theft. The will of the owner is to keep the fighting cock inside the chicken coop. When the offender succeeded in bringing the cock out of the coop, it is clear that his will completely governed or superseded the will of the owner to keep such cock inside the chicken coop. Hence, the crime was already consummated, and being consummated, the return of the owner's property is not desistance anymore. The offender is criminally liable but he will not be civilly liable because the object was returned.

When the receptacle is locked or sealed, and the offender broke the same, in lieu of theft, the crime is robbery with force upon things. However, that the receptacle is locked or sealed has nothing to do with the stage of the commission of the crime. It refers only to whether it is theft or robbery with force upon things.

Nature of the crime itself

In crimes involving the taking of human life – parricide, homicide, and murder – in the definition of the frustrated stage, *it is indispensable that the victim be mortally wounded*. Under the definition of the frustrated stage, to consider the offender as having performed all the acts of execution, the acts already done by him must produce or be capable of producing a felony as a consequence. *The general rule is that there must be a fatal injury inflicted, because it is only then that death will follow.*

If the wound is not mortal, the crime is only attempted. The reason is that the wound inflicted is not capable of bringing about the desired felony of parricide, murder or homicide as a consequence; it cannot be said that the offender has performed all the acts of execution which would produce parricide, homicide or murder as a result.

An exception to the general rule is the so-called subjective phase. The Supreme Court has decided cases which applied the subjective standard that when the offender himself believed that he had performed all the acts of execution, even though no mortal wound was inflicted, the act is already in the frustrated stage.

• **Stages of a Crime does not apply in:**

1. Offenses punishable by Special Penal Laws, unless the otherwise is provided for.
2. Formal crimes (e.g., slander, adultery, etc.)
3. Impossible Crimes
4. Crimes consummated by mere attempt. *Examples:* attempt to flee to an enemy country, treason, corruption of minors.
5. Felonies by omission
6. Crimes committed by mere agreement. *Examples:* betting in sports (endings in basketball), corruption of public officers.

In criminal law, you are not allowed to speculate, not to imagine what crime is intended, but apply the provisions of the law on the facts given.

Test to determine whether attempted or frustrated stage:

The first test is what we call the **subjective phase**. The second test is what is referred to as the **objective phase**. When the subjective and objective phases in the commission of the crime are both present, there is a *consummated felony*.

As suggested, the **subjective phase** is the portion of the execution of the felony starting from the point where he has control over his acts. If it reaches the point where he has no more control over his acts, the *subjective phase* in the commission of the crime is completed.

For as long as he has control over his acts, the subjective phase in the commission of the crime is not yet over. If a person while performing acts that are within the subjective phase is interrupted such that he is not able to perform all acts of execution, the crime committed would be attempted.

On the other hand, the **objective phase** covers that the period of time where the subjective phase has ended and where the offender has no more control over the effects of his criminal acts.

If the subjective phase is completed or has already passed, but the felony was not produced nonetheless, the crime committed as a rule would be frustrated.

• **Applications:**

- a. A put poison in B's food. B threw away his food. A is liable - *attempted murder*.¹
- b. A stole B's car, but he returned it. A is liable - *(consummated) theft*.
- c. A aimed his gun at B. C held A's hand and prevented him from shooting B - *attempted murder*.
- d. A inflicted a mortal wound on B. B managed to survive - *frustrated murder*.
- e. A intended to kill B by shooting him. A missed - *attempted murder*.
- f. A doused B's house with kerosene. But before he could light the match, he was caught - *attempted arson*.
- g. A cause a blaze, but did not burn the house of B - *frustrated arson*.
- h. B's house was set on fire by A - *(consummated) arson*.
- i. A tried to rape B. B managed to escape. There was no penetration - *attempted rape*.
- j. A got hold of B's painting. A was caught before he could leave B's house - *frustrated robbery*.²

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

A *light felony* is a violation of a penal law which is punished by a penalty of imprisonment of not more than thirty days or *arresto menor* or a fine of not more than P200.00 or both, upon the discretion of the court.

- *Examples of light felonies*: slight physical injuries; theft (php 5.00 or less); alteration of boundary marks; alarms and scandals; simple slander; malicious mischief (not exceed php 200.00); and intriguing against honor.

¹ The difference between murder and homicide will be discussed in Criminal Law II. These crimes are found in Articles 248 and 249, Book II of the Revised Penal Code.

²

The difference between theft and robbery will be discussed in Criminal Law II. These crimes are found in Title Ten, Chapters One and Three, Book II of the Revised Penal Code.

- In commission of crimes against properties and persons, every stage of execution is punishable but only the principals and accomplices are liable for light felonies, accessories are not.

Art. 8. Conspiracy and proposal to commit felony. -- Conspiracy and proposal to commit felony are punishable only in the cases in which the law specially provides a penalty therefore.

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

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

- *Conspiracy is punishable in the following cases:* treason, rebellion or insurrection, sedition, coup d'etat, arson(PD 1613) and monopolies and combinations in restraint of trade.
- *Conspiracy to commit a crime is not to be confused with conspiracy as a means of committing a crime.* In both cases there is an agreement but mere conspiracy to commit a crime is not punished EXCEPT in treason, rebellion, or sedition. Even then, if the treason is actually committed, the conspiracy will be considered as a means of committing it and the accused will all be charged for treason and not for conspiracy to commit treason.

Conspiracy and Proposal to Commit a Crime		
	<i>Conspiracy</i>	<i>Proposal</i>
<i>Elements</i>	<ul style="list-style-type: none"> • Agreement among 2 or more persons to commit a crime • They decide to commit it 	<ul style="list-style-type: none"> • A person has decided to commit a crime • He proposes its commission to another
<i>Crimes</i>	<ol style="list-style-type: none"> 1. Conspiracy to commit sedition 2. Conspiracy to commit rebellion 3. Conspiracy to commit treason 	<ol style="list-style-type: none"> 1. Proposal to commit treason 2. Proposal to commit rebellion or insurrection

- In proposal, only the person proposing or the proponent is criminally liable
- Mere conspiracy in combination in restraint of trade (Art. 186), and brigandage (Art. 306).

Two ways for conspiracy to exist:

- (1) *There is an agreement.*
- (2) *The participants acted in concert or simultaneously which is indicative of a meeting of the minds towards a common criminal goal or criminal objective.* When several offenders act in a synchronized, coordinated manner, the fact that their acts complimented each other is indicative of the meeting of the minds. There is an implied agreement.

Two kinds of conspiracy:

- (1) *Conspiracy as a crime; and*
- (2) *Conspiracy as a manner of incurring criminal liability*

When conspiracy itself is a crime, no overt act is necessary to bring about the criminal liability. The mere conspiracy is the crime itself. This is only true when the law expressly punishes the mere conspiracy; otherwise, the conspiracy does not bring about the commission of the crime because conspiracy is not an overt act but a mere preparatory act. *Treason, rebellion, sedition, and coup d'etat are the only crimes where the conspiracy and proposal to commit to them are punishable.*

Codal and Notes in CRIMINAL LAW BOOK I by RENE CALLANTA
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When the conspiracy is only a basis of incurring criminal liability, there must be an overt act done before the co-conspirators become criminally liable.

When the conspiracy itself is a crime, this cannot be inferred or deduced because there is no overt act. All that there is the agreement. On the other hand, if the co-conspirator or any of them would execute an overt act, the crime would no longer be the conspiracy but the overt act itself.

If the conspiracy is only a basis of criminal liability, none of the co-conspirators would be liable, unless there is an overt act. So, for as long as anyone shall desist before an overt act in furtherance of the crime was committed, such a desistance would negate criminal liability. For as long as none of the conspirators has committed an overt act, there is no crime yet. But when one of them commits any overt act, all of them shall be held liable, unless 1)a co-conspirator was absent from the scene of the crime or 2)he showed up, but he tried to prevent the commission of the crime

As a general rule, if there has been a conspiracy to commit a crime in a particular place, anyone who did not appear shall be presumed to have desisted. The exception to this is if such person who did not appear was the mastermind.

conspiracy as a crime, must have a clear and convincing evidence of its existence. Every crime must be proved beyond reasonable doubt.

When the conspiracy is just a basis of incurring criminal liability, however, the same may be deduced or inferred from the acts of several offenders in carrying out the commission of the crime. The existence of a conspiracy may be reasonably inferred from the acts of the offenders when such acts disclose or show a common pursuit of the criminal objective.

Conspiracy is a matter of substance which must be alleged in the information, otherwise, the court will not consider the same.

*In **People v. Laurio, 200 SCRA 489**, it was held that it must be established by positive and conclusive evidence, not by conjectures or speculations.*

*In **Taer v. CA, 186 SCRA 5980**, it was held that mere knowledge, acquiescence to, or approval of the act, without cooperation or at least, agreement to cooperate, is not enough to constitute a conspiracy. There must be an intentional participation in the crime with a view to further the common felonious objective.*

A conspiracy is possible even when participants are not known to each other.

Proposal is true only up to the point where the party to whom the proposal was made has not yet accepted the proposal. *Once the proposal was accepted, a conspiracy arises.* Proposal is unilateral, one party makes a proposition to the other; conspiracy is bilateral, it requires two parties.

There is conspiracy when the offenders acted simultaneously pursuing a common criminal design; thus, acting out a common criminal intent.

Even though there was conspiracy, if a co-conspirator merely cooperated in the commission of the crime with insignificant or minimal acts, such that even without his cooperation, the crime could be carried out as well, such co-conspirator should be punished as an accomplice only.

Composite crimes

Composite crimes are crimes which, in substance, consist of more than one crime but in the eyes of the law, there is only one crime. For example, the crimes of robbery with homicide, robbery with rape, robbery with physical injuries.

In case the crime committed is a composite crime, the conspirator will be liable for all the acts committed during the commission of the crime agreed upon. This is because, in the eyes of the law, all those acts done in pursuance of the crime agreed upon are acts which constitute a single crime.

As a general rule, when there is conspiracy, the rule is that the act of one is the act of all. This principle applies only to the crime agreed upon.

The exception is if any of the co-conspirator would commit a crime not agreed upon. This happens when the crime agreed upon and the crime committed by one of the co-conspirators are distinct crimes.

Exception to the exception: In acts constituting a single indivisible offense, even though the co-conspirator performed different acts bringing about the composite crime, all will be liable for such crime. They can only evade responsibility for any other crime outside of that agreed upon if it is proved that the particular conspirator had tried to prevent the commission of such other act.

The rule would be different if the crime committed was not a composite crime.

Art. 9. *Grave felonies* are those to which the law attaches the capital punishment or penalties which in any of their are afflictive, in accordance with Article 25 of this Code.

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

***Light felonies* are those infractions of law for the commission of which he penalty of *arresto mayor* or a fine not exceeding 200 pesos, or both is provided.**

- ***Capital punishment*** - death penalty.
- ***Penalties (imprisonment):***

Grave - six years and one day to *reclusion perpetua* (life);

Less grave - one month and one day to six years;

Light - *arresto menor* (one day to 30 days).

Felonies are classified as follows:

- (1) ***According to the manner of their commission***

*Under Article 3, they are classified as, **intentional felonies** or those committed with deliberate intent; and **culpable felonies** or those resulting from negligence, reckless imprudence, lack of foresight or lack of skill.*

- (2) ***According to the stages of their execution***

*Under Article 6., felonies are classified as **attempted felony** when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance; **frustrated felony** when the offender commences the commission of a felony as a consequence but which would produce the felony as a consequence but which nevertheless do not produce the felony by reason of causes independent of the perpetrator; and, **consummated felony** when all the elements necessary for its execution are present.*

- (3) ***According to their gravity***

*Under Article 9, felonies are classified as **grave felonies** or those to which attaches the capital punishment or penalties which in any of their periods are afflictive; **less grave felonies** or those to which the law punishes with penalties which in their maximum period was correctional; and **light felonies** or those infractions of law for the commission of which the penalty is *arresto menor*.*

While Article 3 classifies the crimes into Intentional and Culpable, a third class can be grouped with it – that is, those defined and penalized by

special laws which include crime punished by city or municipality ordinances. They are generally referred to as *mala prohibita*. As a rule, intent to commit the crime is not necessary. It is sufficient that the offender has the intent to perpetrate the act prohibited by the special law. The act alone, irrespective of the motives, constitutes the offense. Good faith is not a defense.

Why is it necessary to determine whether the crime is grave, less grave or light?

To determine whether these felonies can be complexed or not, and to determine the prescription of the crime and the prescription of the penalty. In other words, these are felonies classified according to their gravity, stages and the penalty attached to them. Take note that when the Revised Penal Code speaks of grave and less grave felonies, the definition makes a reference specifically to Article 25 of the Revised Penal Code. Do not omit the phrase "In accordance with Article 25" because there is also a classification of penalties under Article 26 that was not applied.

If the penalty is fine and exactly P200.00, it is only considered a light felony under Article 9.

If the fine is imposed as an alternative penalty or as a single penalty, the fine of P200.00 is considered a correctional penalty under Article 26.

If the penalty is exactly P200.00, apply Article 26. It is considered as correctional penalty and it prescribes in 10 years. If the offender is apprehended at any time within ten years, he can be made to suffer the fine.

*In the case of light felonies, crimes prescribe in two months. If the crime is correctional, it prescribes in ten years, except *arresto mayor*, which prescribes in five years.*

Art. 10. Offenses not subject to the provisions of this code. --Offenses which are or in the future may be punishable under special laws are not subject to the provisions of this Code. This Code shall be supplementary to such laws, unless the latter should specially provide the contrary.

- *For Special Laws: Penalties should be imprisonment, and not *reclusion perpetua*, etc.*
- *Offenses that are attempted or frustrated are not punishable, unless otherwise stated.*
- *Plea of guilty is not mitigating for offenses punishable by special laws.*
- *No minimum, medium, and maximum periods for penalties.*
- *No penalty for an accessory or accomplice, unless otherwise stated.*
- **Provisions of RPC applicable to special laws:**
 - a. Art. 16 Participation of Accomplices
 - b. Art. 22 Retroactivity of Penal laws if favorable to the accused
 - c. Art. 45 Confiscation of instruments used in the crime

You will only apply the provisions of the Revised Penal Code as a supplement to the special law, or simply correlate the violated special law, if needed to avoid an injustice. If no justice would result, do not give suppletory application of the Revised Penal Code to that of special law.

*In **People v. Rodriguez**, it was held that the use of arms is an element of rebellion, so a rebel cannot be further prosecuted for possession of firearms. A violation of a special law can never absorb a crime punishable under the Revised Penal Code, because violations of the Revised Penal Code are more serious than a violation of a special law. But a crime in the Revised Penal Code can absorb a crime punishable by a special law if it is a necessary ingredient of the crime in the Revised Penal Code.*

In the crime of sedition, the use of firearms is not an ingredient of the crime. Hence, two prosecutions can be had: (1) sedition; and (2) illegal possession of firearms.

*But do not think that when a crime is punished outside of the Revised Penal Code, it is already a special law. For example, the crime of cattle-rustling is not a mala prohibitum but a modification of the crime theft of large cattle. So Presidential Decree No. 533, punishing cattle-rustling, is not a special law. It can absorb the crime of murder. If in the course of cattle rustling, murder was committed, the offender cannot be prosecuted for murder. Murder would be a qualifying circumstance in the crime of qualified cattle rustling. This was the ruling in **People v. Martinada**.*

If a special law is an amendment to a provision of the RPC, the act is considered a felony and consequently the provisions of the RPC are made applicable to such special law.

The amendments of Presidential Decree No. 6425 (The Dangerous Drugs Act of 1972) by Republic Act No. 7659, which adopted the scale of penalties in the Revised Penal Code, means that mitigating and aggravating circumstances can now be considered in imposing penalties. Presidential Decree No. 6425 does not expressly prohibit the suppletory application of the Revised Penal Code. The stages of the commission of felonies will also apply since suppletory application is now allowed.

In conclusion, any Special Law that uses the nomenclature of the Revised Penal Code in the imposition of penalties makes such Special Law a felony.

Circumstances affecting criminal liability

There are five circumstances affecting criminal liability:

- (1) Justifying circumstances;
- (2) Exempting circumstances;
- (3) Mitigating circumstances;
- (4) Aggravating circumstances; and
- (5) Alternative circumstances.

There are two others which are found elsewhere in the provisions of the Revised Penal Code:

- (1) Absolutory cause; and
- (2) Extenuating circumstances.

In justifying and exempting circumstances, there is no criminal liability. When an accused invokes them, he in effect admits the commission of a crime but tries to avoid the liability thereof. The burden is upon him to establish beyond reasonable doubt the required conditions to justify or exempt his acts from criminal liability. What is shifted is only the burden of evidence, not the burden of proof.

Justifying circumstances contemplate intentional acts and, hence, are incompatible with dolo. Exempting circumstances may be invoked in culpable felonies.

Absolutory cause

The effect of this is to absolve the offender from criminal liability, although not from civil liability.

1) Article 20 provides that the penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural and adopted brothers and sisters, or relatives by affinity within the same degrees with the exception of accessories who profited themselves or assisting the offender to profit by the effects of the crime.

2) Article 89 provides how criminal liability is extinguished:

Death of the convict as to the personal penalties, and as to pecuniary penalties, liability therefor is extinguished if death occurs before final judgment;

Service of the sentence;

Amnesty;

Absolute pardon;

Prescription of the crime;

Prescription of the penalty; and

Marriage of the offended woman as provided in Article 344.

3) Under Article 247, a legally married person who kills or inflicts physical injuries upon his or her spouse whom he surprised having sexual intercourse with his or her paramour or mistress is not criminally liable.

4) Under Article 219, discovering secrets through seizure of correspondence of the ward by their guardian is not penalized.

5) Under Article 332, in the case of theft, swindling and malicious mischief, there is no criminal liability but only civil liability, when the offender and the offended party are related as spouse, ascendant, descendant, brother and sister-in-law living together or where in case the widowed spouse and the property involved is that of the deceased spouse, before such property had passed on to the possession of third parties.

6) Under Article 344, in cases of seduction, abduction, acts of lasciviousness, and rape, the marriage of the offended party shall extinguish the criminal action.

7) Any person who entered another's dwelling to prevent serious harm to himself, the occupants of the dwelling or a third person rendered some service to humanity or justice, or entered cafes, taverns, inns and other public houses while the same were open. (Art. 280, par. 3)

Absolutory cause has the effect of an exempting circumstance and they are predicated on lack of voluntariness like instigation. Instigation is associated with criminal intent. Do not consider culpa in connection with instigation. If the crime is culpable, do not talk of instigation. In instigation, the crime is committed with dolo. It is confused with entrapment.

Entrapment is not an absolutory cause. Entrapment does not exempt the offender or mitigate his criminal liability. But instigation absolves the offender from criminal liability because in instigation, the offender simply acts as a tool of the law enforcers and, therefore, he is acting without criminal intent because without the instigation, he would not have done the criminal act which he did upon instigation of the law enforcers.

Difference between instigation and entrapment

In instigation, the criminal plan or design exists in the mind of the law enforcer with whom the person instigated cooperated so it is said that the person instigated is acting only as a mere instrument or tool of the law enforcer in the performance of his duties.

On the other hand, *in entrapment*, a criminal design is already in the mind of the person entrapped. It did not emanate from the mind of the law enforcer entrapping him. Entrapment involves only ways and means which are laid down or resorted to facilitate the apprehension of the culprit.

Entrapment is not an absolutory cause because in entrapment, the offender is already committing a crime.

The element which makes instigation an absolutory cause is the lack of criminal intent as an element of voluntariness.

If the instigator is a law enforcer, the person instigated cannot be criminally liable, because it is the law enforcer who planted that criminal mind in him to commit the crime, without which he would not have been a criminal. *If the instigator is not a law enforcer, both will be criminally liable, you cannot have a case of instigation.* In instigation, the private citizen only cooperates with the law enforcer to a point when the private citizen upon instigation of the law enforcer incriminates himself. It would be contrary to public policy to prosecute a citizen who only cooperated with the law enforcer. The private citizen believes that he is a law enforcer and that is why when the law enforcer tells him, he believes that it is a civil duty to cooperate.

If the person instigated does not know that the person is instigating him is a law enforcer or he knows him to be not a law enforcer, this is not a case of instigation. This is a case of inducement, both will be criminally liable.

In entrapment, the person entrapped should not know that the person trying to entrap him was a law enforcer. The idea is incompatible with each other because in entrapment, the person entrapped is actually committing a crime. The officer who entrapped him only lays down ways and means to have evidence of the commission of the crime, but even without those ways and means, the person entrapped is actually engaged in a violation of the law.

Instigation absolves the person instigated from criminal liability. This is based on the rule that a person cannot be a criminal if his mind is not criminal. On the other hand, entrapment is not an absolatory cause. It is not even mitigating.

In case of **somnambulism** or one who acts while sleeping, the person involved is definitely acting without freedom and without sufficient intelligence, because he is asleep. He is moving like a robot, unaware of what he is doing. So the element of voluntariness which is necessary in *dolo* and *culpa* is not present. Somnambulism is an absolatory cause. If element of voluntariness is absent, there is no criminal liability, although there is civil liability, and if the circumstance is not among those enumerated in Article 12, refer to the circumstance as an absolatory cause.

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

Extenuating circumstances

The effect of this is to mitigate the criminal liability of the offender. In other words, this has the same effect as mitigating circumstances, only you do not call it mitigating because this is not found in Article 13.

The *concealment of honor by mother in the crime of infanticide* is an extenuating circumstance but not in the case of parricide when the age of the victim is three days old and above.

In the crime of adultery on the part of a married woman abandoned by her husband. Abandonment by the husband does not justify the act of the woman. It only extenuates or reduces criminal liability. When the effect of the circumstance is to lower the penalty there is an extenuating circumstance.

Distinctions between justifying circumstances and exempting circumstances

In justifying circumstances –

- (1) The circumstance affects the act, not the actor;
- (2) The act complained of is considered to have been done within the bounds of law; hence, it is legitimate and lawful in the eyes of the law;
- (3) Since the act is considered lawful, there is no crime, and because there is no crime, there is no criminal;
- (4) Since there is no crime or criminal, there is no criminal liability as well as civil liability.

In exempting circumstances –

- (1) The circumstances affect the actor, not the act;
- (2) The act complained of is actually wrongful, but the actor acted without voluntariness. He is a mere tool or instrument of the crime;
- (3) Since the act complained of is actually wrongful, there is a crime. But because the actor acted without voluntariness, there is absence of *dolo* or *culpa*. There is no criminal;
- (4) Since there is a crime committed but there is no criminal, there is civil liability for the wrong done. But there is no criminal liability. However, in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

When you apply for justifying or exempting circumstances, it is confession and avoidance and burden of proof shifts to the accused and he can no longer rely on weakness of prosecution's evidence

Art. 11: Justifying Circumstances - those wherein the acts of the actor are in accordance with law, hence, he is justified. There is no criminal and civil liability because there is no crime.

- **SELF-DEFENSE**

- A. *Reason for lawfulness of self-defense*: because it would be impossible for the State to protect all its citizens. Also a person cannot just give up his rights without any resistance being offered.

Since the justifying circumstances are in the nature of defensive acts, there must be always unlawful aggression. The reasonableness of the means employed depends on the gravity of the aggression. If the unlawful aggressor was killed, this can only be justified if it was done to save the life of the person defending or the person being defended. The equation is "**life was taken to save life.**"

- B. **Rights included in self-defense**:

1. Defense of *person*
2. Defense of *rights* protected by law
3. Defense of *property*:
 - a. The owner or lawful possessor of a thing has a right to exclude any person from the enjoyment or disposal thereof. For this purpose, he may use such force as may be reasonably necessary to repel or prevent an actual or threatened unlawful physical invasion or usurpation of his property. (Art. 429, New Civil Code)
4. Defense of *chastity*

- C. **ELEMENTS**:

1. **UNLAWFUL AGGRESSION** - is a physical act manifesting danger to life or limb; it is either actual or imminent.
 - a. *Actual/real aggression* - Real aggression presupposes an act positively strong, showing the wrongful intent of the aggressor, which is not merely threatening or intimidating attitude, but a material attack. There must be real danger to life a personal safety.
 - b. *Imminent unlawful aggression* - it is an attack that is impending or on the point of happening. It must not consist in a mere threatening attitude, nor must it be merely imaginary. The intimidating attitude must be offensive and positively strong.

Do not confuse unlawful aggression with provocation. What justifies the killing of a supposed unlawful aggressor is that if the offender did not kill the aggressor, it will be his own life that will be lost.

To give rise to self-defense, the aggression must not be a lawful one like the attack of a husband against a paramour of his wife whom he surprised in an uncompromising situation, or a chief of police who threw stones at the accused who was running away to elude arrest of a crime committed in his presence. Their aggression was not considered unlawful.

- c. Where there is an *agreement to fight*, there is no unlawful aggression. Each of the protagonists is at once assailant and assaulted, and neither

can invoke the right of self-defense, because aggression which is an incident in the fight is bound to arise from one or the other of the combatants. *Exception*: Where the attack is made in violation of the conditions agreed upon, there may be unlawful aggression.

- d. *Unlawful aggression in self-defense, to be justifying, must exist at the time the defense is made.* It may no longer exist if the aggressor runs away after the attack or he has manifested a refusal to continue fighting. If the person attacked allowed some time to elapse after he suffered the injury before hitting back, his act of hitting back would not constitute self-defense, but revenge.

The unlawful aggression must come from the person who was attacked by the accused. It follows that when the source of the unlawful aggression is not known, then unlawful aggression cannot be considered present in the resolution of the case. This observation is true only in self-defense. Obviously, it cannot apply to defense of relatives and strangers.

- A light push on the head with the hand is not unlawful aggression, but a slap on the face is, because his dignity is in danger.
- A police officer exceeding his authority may become an unlawful aggressor.
- The nature, character, location, and extent of the wound may belie claim of self-defense.

When the aggressors runs away, the one making a defense has no more right to invoke self-defense. (*People vs. Alconga*)

2 **2. REASONABLE NECESSITY OF THE MEANS EMPLOYED TO PREVENT OR REPEL IT;**

It contemplates two situations that may arise while the aggression is taking place. The *first* is to repel an actual aggression. The *second* is to prevent an imminent or impending aggression.

a. *Requisites:*

- Means were used to prevent or repel
 - Means must be necessary and there is no other way to prevent or repel it
 - Means must be reasonable – depending on the circumstances, but generally proportionate to the force of the aggressor.
- b. The rule here is to *stand your ground when in the right* which may invoked when the defender is unlawfully assaulted and the aggressor is armed with a weapon.

Where the accused is “where he has the right to be” the law does not require him to retreat when assaulted, but rather to “stand ground when in the right.” (*U.S. vs. Damen*)

- c. The rule is more liberal when the accused is a peace officer who, unlike a private person, cannot run away.
- d. The reasonable necessity of the means employed to put up the defense.
- *The gauge of reasonable necessity is the instinct of self-preservation*, i.e. a person did not use his rational mind to pick a means of defense but acted out of self-preservation, using the nearest or only means available to defend himself, even if such means be disproportionately

advantageous as compared with the means of violence employed by the aggressor.

- *Reasonableness of the means depends on the nature and the quality of the weapon used, physical condition, character, size and other circumstances.*

Whether or not the means employed is reasonable will depend upon the place, occasion and other circumstances. More often, it is the nature and quality of weapon used by the aggressor. It is also dictated by the physical condition, size and sex of the person defending himself.

3. LACK OF SUFFICIENT PROVOCATION ON THE PART OF THE PERSON DEFENDING HIMSELF.

For provocation to be considered serious by the court, the degree must be sufficient and must at all times be immediate to the unlawful aggression. (*Castanares vs. Court of Appeals, 92 SCRA 567*)

- a. When no provocation at all was given to the aggressor by the person defending himself.
- b. *When even if provocation was given by the person defending himself, such was not sufficient to cause violent aggression on the part of the attacker, i.e. the amount of provocation was not sufficient to stir the aggressor into the acts which led the accused to defend himself.*
- c. When even if the provocation were sufficient, it was not given by the person defending himself.
- d. When even if provocation was given by the person defending himself, the attack was not proximate or immediate to the act of provocation.
- e. Sufficient means proportionate to the damage caused by the act, and adequate to stir one to its commission.

D. Kinds of Self-Defense

1. **Self-defense of chastity** - to be entitled to complete self-defense of chastity, there must be an attempt to rape, mere imminence thereof will suffice.

Honor of a woman in respect of her defense is equated with her virginity

2. **Defense of property** - an attack on the property must be coupled with an attack on the person of the owner, or of one entrusted with the care of such property.

This can only be invoked if the life and limb of the person making the defense is also the subject of unlawful aggression. *Life cannot be equal to property.*

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

In order however, that one may invoke this novel doctrine, the defamatory statements made by the accused must be a fair answer to the libel made by the supposed offended party and must be related to the imputation made. (*pp vs. Chua Hong*) In conclusion, if the answer which is libelous is excessive, it will not constitute self-defense.

***Burden of proof** - *on the accused* (sufficient, clear and convincing evidence; must rely on the strength of his own evidence and not on the weakness of the prosecution)

• DEFENSE OF RELATIVE

Elements:

1. *unlawful aggression*
2. *reasonable necessity of the means employed to prevent or repel the attack;*
3. *in case provocation was given by the person attacked, that the person making the defense had no part in such provocation.*

Relatives entitled to the defense:

1. spouse
 2. ascendants
 3. descendants
 4. legitimate, natural or adopted brothers or sisters
 5. relatives by affinity in the same degree (2nd degree)
 6. relatives by consanguinity within the 4th civil degree.
- *The third element need not take place.* The relative defended may even be the original aggressor. All that is required to justify the act of the relative defending is that he takes no part in such provocation.
 - General opinion is to the effect that all *relatives mentioned must be legitimate, except* in cases of brothers and sisters who, by relatives by nature, may be illegitimate.
 - The unlawful aggression may depend on the honest belief of the person making the defense.

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

Mistake of fact can be the basis of defending a relative. If the defender believes in good faith the events presented to him and he acts accordingly, he is entitled to the benefit of defense of relatives, even if later on, the events would actually show that they were different.

• DEFENSE OF STRANGER

Elements

1. *unlawful aggression*
2. *reasonable necessity of the means employed to prevent or repel the attack;*
3. *the person defending be not induced by revenge, resentment or other evil motive.*

*** A relative not included in defense of relative is included in defense of stranger.

*** *Be not induced by evil motive* means that even an enemy of the aggressor who comes to the defense of a stranger may invoke this justifying circumstances so long as he is not induced by a motive that is evil.

• STATE OF NECESSITY

A. Art. 11, Par. 4 provides:

Any person who, in order to avoid an evil or injury, does an act which causes damage to another, provided that the following *requisites* are present:

First. That the evil sought to be avoided actually exists;

Second. That the injury feared be greater than that done to avoid it;

Third. That there be no other practical and less harmful means of preventing it.

The term damage to another refers to injury to persons and prejudice or damage to property.

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

- B. A *state of necessity* exists when there is a clash between unequal rights, the lesser right giving way to the greater right. Aside from the 3 requisites stated in the law, it should also be added that the *necessity must not be due to the negligence or violation of any law by the actor.*

The state of necessity must not have been created by the one invoking the justifying circumstances.

- C. *The person for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which may have been received.* This is the only justifying circumstance which provides for the payment of civil indemnity. Under the other justifying circumstances, no civil liability attaches. The courts shall determine, in their sound discretion, the proportionate amount for which one is liable.

Civil liability referred to in a state of necessity is based not on the act committed but on the benefit derived from the state of necessity. So the accused will not be civilly liable if he did not receive any benefit out of the state of necessity. On the other hand, persons who did not participate in the damage or injury would be pro tanto civilly liable if they derived benefit out of the state of necessity.

• FULFILLMENT OF DUTY OR LAWFUL EXERCISE OF A RIGHT OR OFFICE

A. *Elements:*

1. *that the accused acted in the performance of a duty, or in the lawful exercise of a right or office;*
 2. *that the injury caused or offense committed be the necessary consequence of the due performance of the duty, or the lawful exercise of such right or office.*
- B. A police officer is justified in shooting and killing a criminal who refuses to stop when ordered to do so, and after such officer fired warning shots in the air.
- shooting an offender who refused to surrender is justified, but not a thief who refused to be arrested.
- C. *The accused must prove that he was duly appointed to the position he claimed he was discharging at the time of the commission of the offense.* It must be made to appear not only that the injury caused or the offense committed was done in the fulfillment of a duty, or in the lawful exercise of a right or office, but that the offense committed was a necessary consequence of such fulfillment of duty, or lawful exercise of a right or office.
- D. A mere security guard has no authority or duty to fire at a thief, resulting in the latter's death.

- **OBEDIENCE TO A SUPERIOR ORDER**

- A. **Elements:**

1. *there is an order;*
2. *the order is for a legal purpose;*
3. *the means used to carry out said order is lawful.*

The person giving the order must act within the limitations prescribed by law. The subordinate taking the order must likewise act within the bounds of law. (*People vs. Oanis*)

- B. *The subordinate who is made to comply with the order is the party which may avail of this circumstance.* The officer giving the order may not invoke this.
 - C. *The subordinate's good faith is material here.* If he obeyed an order in good faith, not being aware of its illegality, he is not liable. However, *the order must not be patently illegal.* If the order is patently illegal this circumstance cannot be validly invoked.
 - D. The reason for this justifying circumstance is the subordinate's mistake of fact in good faith.
 - E. *Even if the order be patently illegal,* the subordinate may yet be able to invoke the exempting circumstances of having acted under the compulsion of an irresistible force, or under the impulse of an uncontrollable fear.

EXEMPTING CIRCUMSTANCES

- **Exempting circumstances** (*non-imputability*) are those ground for exemption from punishment because there is wanting in the agent of the crime of any of the conditions which make the act voluntary, or negligent.
- **Basis:** The exemption from punishment is based on the complete absence of intelligence, freedom of action, or intent, or on the absence of negligence on the part of the accused.
- *A person who acts WITHOUT MALICE* (without intelligence, freedom of action or intent) *or WITHOUT NEGLIGENCE* (without intelligence, freedom of action or fault) *is NOT CRIMINALLY LIABLE or is EXEMPT FROM PUNISHMENT.*
- There is a *crime committed but no criminal liability arises* from it because of the complete absence of any of the conditions which constitute free will or voluntariness of the act.
- **Burden of proof:** Any of the circumstances is a matter of defense and must be proved by the defendant to the satisfaction of the court.

Art. 12. CIRCUMSTANCES WHICH EXEMPT FROM CRIMINAL LIABILITY.
The following are exempt from criminal liability:

1. AN IMBECILE OR INSANE PERSON, unless the latter has acted during a lucid interval.

- When the imbecile or an insane person has committed an act which the law defines as a felony (delito), the court shall order his confinement on one of the hospital or

asylums established for persons thus afflicted. He shall not be permitted to leave without first obtaining the permission of the same court.

- **Requisites:**

- a. Offender is an imbecile
- b. Offender was insane at the time of the commission of the crime

- **IMBECILITY OR INSANITY**

- a. **Basis:** complete absence of intelligence, and element of voluntariness.

- b. **Definition :**

An *imbecile* is one who while advanced in age has a mental development comparable to that of children between 2 and 7 years of age.

An *insane* is one who acts with complete deprivation of intelligence/reason or without the least discernment or with total deprivation of freedom of the will.

The insanity that is exempting is limited only to mental aberration or disease of the mind and must completely impair the intelligence of the accused.

the two tests for exemption on grounds of insanity:

- (1) *The test of cognition*, or whether the accused acted with complete deprivation of intelligence in committing said crime; and
- (2) *The test of volition*, or whether the accused acted in total deprivation of freedom of will.

- An *imbecile* is exempt in all cases from criminal liability (no lucid interval). The *insane* is not so exempt if it can be shown that he acted during a lucid interval. In the latter, loss of consciousness of ones acts and not merely abnormality of mental faculties will qualify ones acts as those of an insane.
- **Procedure:** court is to order the confinement of such persons in the hospitals or asylums established. Such persons will not be permitted to leave without permission from the court. The court, on the other hand, has no power to order such permission without first obtaining the opinion of the DOH that such persons may be released without danger.
- *Presumption is always in favor of sanity.* The defense has the burden to prove that the accused was insane at the time of the commission of the crime. For the ascertainment such mental condition of the accused, it is permissible to receive evidence of the condition of his mind during a reasonable period both before and after that time. Circumstantial evidence which is clear and convincing will suffice. An examination of the outward acts will help reveal the thoughts, motives and emotions of a person and if such acts conform to those of people of sound mind.
- *Insanity at the time of the commission of the crime and not that at the time of the trial will exempt one from criminal liability.* In case of insanity at the time of the trial, there will be a suspension of the trial until the mental capacity of the accused is restored to afford him a fair trial.
- *Evidence of insanity must refer to the time preceding the act under prosecution or to the very moment of its execution.* Without such evidence, the accused is presumed to be sane when he committed the crime. Continuance of insanity which is occasional or intermittent in nature will not be presumed. Insanity at another time must be proved to exist at the time of the commission of the crime. A person is also presumed to have committed a crime in one of the lucid intervals. Continuance of insanity will only be presumed in cases wherein the accused has been adjudged insane or has been committed to a hospital or an asylum for the insane.

- **Instances of Insanity:**

- a. *Dementia praecox (Schizophrenia)* is covered by the term insanity because homicidal attack is common in such form of psychosis. It is characterized by delusions that he is being interfered with sexually, or that his property is being taken, thus the person has no control over his acts.
 - b. *Kleptomania* or presence of abnormal, persistent impulse or tendency to steal, to be considered exempting, will still have to be investigated by competent psychiatrist to determine if the unlawful act is due to the irresistible impulse produced by his mental defect, thus loss of will-power. If such mental defect only diminishes the exercise of his willpower and did not deprive him of the consciousness of his acts, it is only mitigating.
 - c. *Epilepsy* which is a chronic nervous disease characterized by convulsive motions of the muscles and loss of consciousness may be covered by the term insanity. However, it must be shown that commission of the offense is during one of those epileptic attacks.
- Reyes: *Feeble-mindedness* is not imbecility because the offender can distinguish right from wrong. An imbecile and an insane to be exempted must not be able to distinguish right from wrong.
 - Relova: *Feeble-mindedness* is imbecility.
 - Crimes committed while in a dream, by a *somnambulist* are embraced in the plea of insanity. *Hypnotism*, however, is a debatable issue.
 - Crime committed while *suffering from malignant malaria* is characterized by insanity at times thus such person is not criminally liable.

2. A PERSON UNDER NINE YEARS OF AGE.

- **MINORITY**
 - a. **Requisite:** *Offender is under 9 years of age at the time of the commission of the crime.* There is absolute criminal irresponsibility in the case of a minor under 9-years of age.
 - b. **Basis:** complete absence of intelligence.
- *Under nine years to be construed nine years or less.* Such was inferred from the next subsequent paragraph which does not totally exempt those over nine years of age if he acted with discernment.

If a youth committed homicide on his 9th birthday – meaning, he was *exactly nine years old* at that time and he acted with discernment, it would seem that, following the policy that penal laws are to be strictly construed against the Government and liberally in favor of the accused, he should be exempt from criminal liability.

- Presumptions of incapability of committing a crime is absolute.
- *Age is computed up to the time of the commission of the crime.* Age can be established by the testimonies of families and relatives.
- *Senility or second childhood is only mitigating.*
- **4 periods of the life of a human being:**

Age	Criminal Responsibility
<i>9 years and below</i>	Absolute irresponsibility
<i>Between 9 and 15 years old</i>	Conditional responsibility <i>Without discernment</i> – no liability <i>With Discernment</i> – mitigated liability
<i>Between 15 and 18</i>	Mitigated responsibility

<i>years old</i>	
<i>Between 18 and 70 years old</i>	Full responsibility
<i>Over 70 years old</i>	Mitigated responsibility

3. A PERSON OVER NINE YEARS OF AGE AND UNDER FIFTEEN, UNLESS HE HAS ACTED WITH DISCERNMENT, in which case, such minor shall be proceeded against in accordance with the provisions of article 80 of this Code.

When such minor is adjudged to be criminally irresponsible, the court, in conformity with the provisions of this and the preceding paragraph, shall commit him to the care and custody of his family who shall be charged with his surveillance and education; otherwise, he shall be committed to the care of some institution or person mentioned in said article 80.

- **QUALIFIED MINORITY: *Basis:*** complete absence of intelligence
- *Such minor over 9 years and under 15 years of age must have acted without discernment to be exempted from criminal liability. If with discernment, he is criminally liable.*
- *Presumption is always that such minor has acted without discernment. The prosecution is burdened to prove if otherwise.*
- ***Discernment*** means the mental capacity of a minor between 9 and 15 years of age to fully appreciate the consequences of his unlawful act and the mental capacity to understand the difference between right and wrong. ***Such is shown by:*** (1) *manner the crime was committed* (i.e. commission of the crime during nighttime to avoid detection; taking the loot to another town to avoid discovery), or (2) *the conduct of the offender after its commission* (i.e. elation of satisfaction upon the commission of his criminal act as shown by the accused cursing at the victim).

An accused who knows the morality of his acts, or can appreciate the consequences of his action has acted with discernment.

- *If such minor is adjudged to be criminally liable, he is charged to the custody of his family, otherwise, to the care of some institution or person mentioned in article 80. This is because of the court's presupposition that the minor committed the crime without discernment.*

*A youthful offender can only be confined in a reformatory upon order of the court. Under the amendment to Presidential Decree No. 603, Presidential Decree No. 1179 requires that before a youthful offender may be given the benefit of a suspension of sentence, there must be an application filed with the court which should pronounce sentence. Note that the *commitment of the offender in a reformatory is just a consequence of the suspension of the sentence.* If the sentence is not suspended, there is no commitment in a reformatory. The commitment is in a penitentiary, since suspension of sentence requires certain conditions:*

- (1) *The crime committed should not be punishable by reclusion perpetua or death penalty;*
- (2) *The offender should not have been given the benefit of a suspended sentence before. This means he is a first timer;*
- (3) *He must be below 18 years old because a youthful offender is one who is below 18.*

How does the minority of the offender affect his criminal liability?

- (1) ***If the offender is within the bracket of nine years old exactly or less***, he is exempt from criminal liability but not from civil liability. This type of offenders are absolutely

exempt. Even if the offender nine years or below acted with discernment, this should not be taken against him because in this age bracket, the exemption is absolute.

- (2) ***If over nine but below 15***, a distinction has to be made whether the offender acted with or without discernment. The *burden is upon the prosecution to prove that the offender acted with discernment*. It is not for the minor to prove that he acted without discernment. All that the minor has to show is that he is within the age bracket. If the prosecution would want to pin criminal liability on him, it has to prove that the crime was committed with discernment. Here, if the offender was exempt from criminal liability because the prosecution was not able to prove that the offender acted with discernment, he is only civilly liable but he will be committed to the surveillance of his parents who will be required to report to the court periodically on the progress or development of the offender. *If the offender is proven to have acted with discernment*, this is where the court may give him the benefit of a suspended sentence. He may be given the benefit of a suspended sentence under the conditions mentioned earlier and only if he would file an application therefor.

Suspension of sentence is not automatic. If the youthful offender has filed an application therefor.

- (3) ***If at the time the judgment is to be promulgated he is already above 18***, he cannot avail of a suspended sentence. The reason is because if the sentence were to be suspended, he would be committed in a reformatory. Since he cannot be committed to a reformatory anymore because he is not less than 18 years old, he would have to be committed to a penitentiary. That means promulgation of the sentence shall not be suspended. If the sentence should not be suspended, although the minor may be qualified, the court will promulgate the sentence but the minor shall be entitled to the reduction of the penalty by at least two degrees.

When the offender is over nine but below 15, the penalty to be imposed is discretionary on the court, but lowered by at least two degrees. It may be lowered by three or four degrees, depending upon whether the court deems best for the interest of the offender. The limitation that it should be lowered by at least two degrees is just a limitation on the power of the court to reduce the penalty. It cannot be less than two degrees.

- (4) ***If the offender is 15 years old and above but below 18***, there is no exemption anymore but he is also given the benefit of a suspended sentence under the conditions stated earlier and if at the time the sentence is promulgated, he is not 18 years old or over yet. If the sentence is promulgated, the court will impose a penalty one degree lower.

- Allegation of “*with intent to kill*” in the information is sufficient allegation of discernment as such conveys the idea that he knew what would be the consequences of his unlawful act. Thus is the case wherein the information alleges that the accused, with intent to kill, willfully, criminally and feloniously pushed a child of 8 1/2 years of age into a deep place. It was held that the requirement that there should be an allegation that she acted with discernment should be deemed amply met.

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

- **ACCIDENT (DAMNUM ABSQUE INJURIA):** *Basis:* lack of negligence and intent.
- **Elements:**
 - a. *A person is performing a lawful act*
 - b. *Exercise of due dare*
 - c. *He causes injury to another by mere accident*
 - d. *Without fault or intention of causing it.*

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Under Article 12, paragraph 4, the offender is exempt not only from criminal but also from civil liability. This paragraph embodies the Latin maxim "damnum absque injuria".

- Discharge of a firearm in a thickly populated place in the City of Manila being prohibited by Art. 155 of the RPC is not a performance of a lawful act when such led to the accidental hitting and wounding of 2 persons.
- Drawing a weapon/gun in the course of self-defense even if such fired and seriously injured the assailant is a lawful act and can be considered as done with due care since it could not have been done in any other manner.

Problem:

A, armed with .38 caliber and B, who has no weapon, robbed a store; but in the course thereof, were seen by P, a policeman who was armed with a .45 caliber gun, and when he demanded for the surrender of A and B, A shot him but missed, and so P repelled the attack. In the exchange of shots, A was killed, together with B, and C the owner of the store. The three were killed by the bullets fired from a .45 caliber. In such case, P is not liable for the death of A due to *self-defense* as all the three (3) elements were present. He is not also liable for the death of B, not because of self-defense because the latter being weaponless can not commit unlawful aggression, but because of *performance of duty*. For the death of C, the store owner, P, is also not criminally liable obviously not because of self-defense nor of fulfillment of duty but because of *accident* provided for in par. 1 of Art. 12.

- With the fact duly established by the prosecution that the appellant was guilty of negligence, this exempting circumstance cannot be applied because application presupposes that there is no fault or negligence on the part of the person performing the lawful act.
- Accident happens outside the sway of our will, and although it comes about some act of our will, lies beyond the bounds of humanly foreseeable consequences. If the consequences are plainly foreseeable, it will be a case of negligence.
- The accused, who, while hunting saw wild chickens and fired a shot can be considered to be in the performance of a lawful act executed with due care and without intention of doing harm when such shot recoiled and accidentally wounded another. Such was established because the deceased was not in the direction at which the accused fired his gun.
- The chauffeur, who while driving on the proper side of the road at a moderate speed and with due diligence, suddenly and unexpectedly saw a man in front of his vehicle coming from the sidewalk and crossing the street without any warning that he would do so, in effect being run over by the said chauffeur, was held not criminally liable, it being by mere accident.

The infliction of the injury by mere accident does not give rise to a criminal or civil liability, but the person who caused the injury is duty bound to attend to the person who was injured. If he would abandon him, it is in that abandonment that the crime arises which is punished under the second paragraph of Article 275.

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

- **IRRESISTIBLE FORCE: Basis:** complete absence of freedom, an element of voluntariness
- **Elements:**
 - a. *That the compulsion is by means of physical force*

b. That the physical force must be irresistible.

c. That the physical force must come from a third person

- *Force, to be irresistible*, must produce such an effect on an individual that despite of his resistance, it reduces him to a mere instrument and, as such, incapable of committing a crime. It compels his member to act and his mind to obey. It must act upon him from the outside and by a third person. He must act not only without a will but also against his will.
- Baculi, who was accused but not a member of a band which murdered some American school teachers and was seen and compelled by the leaders of the band to bury the bodies, was not criminally liable as accessory for concealing the body of the crime. Baculi acted under the compulsion of an irresistible force.
- Irresistible force can never consist in an impulse or passion, or obfuscation. *It must consist of an extraneous force coming from a third person.*

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

- **UNCONTROLLABLE FEAR: Basis:** complete absence of freedom
- **Elements**
 - a. that the threat which causes the fear is of an evil greater than, or at least equal to that w/c he is required to commit*
 - b. that it promises an evil of such gravity and imminence that the ordinary man would have succumbed to it.*
- **Duress**, to be a valid defense, should be based on real, imminent or reasonable fear for one's life or limb. It should not be inspired by speculative, fanciful or remote fear.

The fear must be grave, actual, serious and of such kind that majority of men would succumb to such moral compulsion. The latter must be such as to leave a reasonable fear for one's life or limb and not speculative, fanciful or remote fear. (*Pp vs. Parula, 88 Phil 615*)

- *Threat of future injury is not enough.* The compulsion must leave no opportunity to the accused for escape or self-defense in equal combat.
- Duress is the use of violence or physical force.
- There is uncontrollable fear is when the offender employs intimidation or threat in compelling another to commit a crime, while irresistible force is when the offender uses violence or physical force to compel another person to commit a crime.
- **"an act done by me against my will is not my act"**

The offender must be totally deprived of freedom. If the offender has still freedom of choice, whether to act or not, even if force was employed on him or even if he is suffering from uncontrollable fear, he is not exempt from criminal liability because he is still possessed with voluntariness. In exempting circumstances, the offender must act without voluntariness.

The distinction between irresistible force and uncontrollable fear is that, in the former, the offender uses violence or physical force to compel another person to commit a crime; while in the latter, the offender employs threat or intimidation to compel another to commit a crime. Since the actor acted without freedom, he incurs no criminal liability.

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

- **LAWFUL OR INSUPERABLE CAUSE: *Basis:*** acts without intent, the third condition of voluntariness in intentional felony
- **Elements:**
 - a. *That an act is required by law to be done*
 - b. *That a person fails to perform such act*
 - c. *That his failure to perform such act was due to some lawful or insuperable cause*
- **Examples of lawful cause:**
 - a. Priest can't be compelled to reveal what was confessed to him
 - b. No available transportation – officer not liable for arbitrary detention
 - c. Mother who was overcome by severe dizziness and extreme debility, leaving child to die – not liable for infanticide
- *To be an EXEMPTING circumstance – INTENT IS WANTING*
- **INTENT** – presupposes the exercise of freedom and the use of intelligence
- **Distinction between justifying and exempting circumstance:**
 - a. **Exempting** – there is a crime but there is no criminal. Act is not justified but the actor is not criminally liable.

General Rule: There is civil liability

Exception: Par 4 (causing an injury by mere accident) and Par 7 (lawful cause)
 - b. **Justifying** – person does not transgress the law, does not commit any crime because there is nothing unlawful in the act as well as the intention of the actor.

Distinction between Exempting and Justifying Circumstances		
	<i>Exempting Circumstance</i>	<i>Justifying Circumstance</i>
<i>Existence of a crime</i>	There is a crime but there is no criminal, the actor is exempted from liability of his act	There is no crime, the act is justified

- **Absolutive Causes** – are those where the act committed is a crime but for some reason of public policy and sentiment, there is no penalty imposed.
- Exempting and Justifying Circumstances are absolutive causes.
- **Other examples of absolutive causes:**
 - 1) Art 6 – spontaneous desistance
 - 2) Art 20 – accessories exempt from criminal liability
 - 3) Art 19 par 1 – profiting one's self or assisting offenders to profit by the effects of the crime
- Instigation v. Entrapment

INSTIGATION	ENTRAPMENT
Instigator practically induces the would-be accused into the commission of the	The ways and means are resorted to for the purpose of trapping and capturing the

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offense and himself becomes co-principal	lawbreaker in the execution of his criminal plan.
Accused will be acquitted	NOT a bar to accused's prosecution and conviction
Absolutory cause	NOT an absolutory cause

MITIGATING CIRCUMSTANCES

- **Definition** – Those circumstance which reduce the penalty of a crime
- **Effect** – Reduces the penalty of the crime but does not erase criminal liability nor change the nature of the crime

- **Kinds of Mitigating Circumstance:**

	Privileged Mitigating	Ordinary Mitigating
<i>Offset by any aggravating circumstance</i>	Cannot be offset by any aggravating circumstance	Can be offset by a generic aggravating circumstance
<i>Effect on the penalty</i>	Has the effect of imposing the penalty by 1 or 2 degrees lower than that provided by law	If not offset, has the effect of imposing the penalty in the minimum period
<i>Kinds</i>	Minority, Incomplete Self-defense, two or more mitigating circumstances without any aggravating circumstance (has the effect of lowering the penalty by one degree)	Those circumstances enumerated in paragraph 1 to 10 of Article 13

IN RELATION TO THE I.S.L.

Privilege mitigating circumstance will apply over and above all other considerations. When you arrive at the correct penalty, that is the time when you find out whether the Indeterminate Sentence Law will apply or not.

For purposes of lowering the penalty by one or two degrees, the age of the offender at the time of the commission of the crime shall be the basis, not the age of the offender at the time the sentence is to be imposed. *But for purposes of suspension of the sentence,* the age of the offender at the time the crime was committed is not considered, it is the age of the offender at the time the sentence is to be promulgated.

Article 13. Mitigating circumstances. --

1. Those mentioned in the preceding chapter, when all the requisites necessary to justify the act or to exempt from criminal liability in the respective cases are not attendant

- **Justifying circumstances**

- a. **Self-defense/defense of relative/defense of stranger** – *unlawful aggression must be present for Art 13 to be applicable.* Other 2 elements not necessary. *If 2 requisites are present – considered a privileged mitigating circumstance.*

Example: Juan makes fun of Pedro. Pedro gets pissed off, gets a knife and tries to stab Juan. Juan grabs his own knife and kills Pedro. Incomplete self-defense because although there was unlawful aggression and reasonable means to repel was taken, there was sufficient provocation on the part of Juan. But since 2 elements are present, it considered as privileged mitigating.

How, if at all, may incomplete self-defense affect the criminal liability of the offender?

If the question specifically refers to incomplete self-defense, defense of relative or defense of stranger, you have to qualify your answer.

First, to have incomplete self-defense, the offended party must be guilty of unlawful aggression. Without this, there can be no incomplete self-defense, defense of relative, or defense of stranger.

Second, if only the element of unlawful aggression is present, the other requisites being absent, the offender shall be given only the benefit of an ordinary mitigating circumstance.

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

- b. **State of Necessity (par 4) avoidance of greater evil or injury**; if any of the last 2 requisites is absent, there's only an ordinary Mitigating Circumstance.

Example: While driving his car, Juan sees Pedro carelessly crossing the street. Juan swerves to avoid him, thus hitting a motorbike with 2 passengers, killing them instantly. Not all requisites to justify act were present because harm done to avoid injury is greater. Considered as mitigating.

- c. **Performance of Duty (par 5)**

Example: Juan is supposed to arrest Pedro. He thus goes to Pedro's hideout. Juan sees a man asleep. Thinking it was Pedro, Juan shot him. Juan may have acted in the performance of his duty but the crime was not a necessary consequence thereof. Considered as mitigating.

- **Exempting circumstance**

- a. **Minority over 9 and under 15** – if minor acted with discernment, considered Privilege mitigating

Example: 13 year old stole goods at nighttime. Acted with discernment as shown by the manner in which the act was committed.

If the offender is proven to have acted with discernment, this is where the court may give him the benefit of a suspended sentence. He may be given the benefit of a suspended sentence under the conditions mentioned earlier and only if he would file an application therefor.

- b. **Causing injury by mere accident** – if 2nd requisite (due care) and 1st part of 4th requisite (without fault – thus negligence only) are ABSENT, considered as mitigating because the penalty is lower than that provided for intentional felony.

Example: Police officer tries to stop a fight between Juan and Pedro by firing his gun in the air. Bullet ricocheted and killed Petra. Officer willfully discharged his gun but was unmindful of the fact that area was populated.

- c. **Uncontrollable fear** – only one requisite present, considered mitigating

Example: Under threat that their farm will be burned, Pedro and Juan took turns guarding it at night. Pedro fired in the air when a person in the shadows refused to reveal his identity. Juan was awakened and shot the unidentified person. Turned out to be a neighbor looking for his pet. Juan may have acted under the influence of fear but such fear was not entirely uncontrollable. Considered mitigating.

2. That the offender is UNDER 18 YEARS of age or OVER 70 YEARS. In the case of a minor, he shall be proceeded against in accordance with the provisions of Art 192 of PD 903

- **Applicable to:**
 - a. Offender over 9, under 15 who acted with discernment
 - b. Offender over 15, under 18
 - 3
 - 4 c. Offender over 70 years
- *Age of accused which should be determined as his age at the date of commission of crime, not date of trial*

- **Various Ages and their Legal Effects**

- a. *under 9* – exemptive circumstance
- b. *over 9, below 15* – exemptive; except if acted with discernment
- c. *minor delinquent under 18* – sentence may be suspended (PD 603)
- d. *under 18* – privileged mitigating circumstance
- e. *18 and above* – full criminal responsibility
- f. *70 and above* – mitigating circumstance; no imposition of death penalty; execution of death sentence if already imposed is suspended and commuted.

If the minor acted with discernment(age 9-15), he is entitled to a privileged mitigating circumstance and by source of authority of Article 68, the penalty is reduced by two degrees from that prescribed by law for the crime committed. If the offender is over fifteen and under eighteen years of age, discernment is no longer in issue but the offender is entitled to a privileged mitigating circumstance and the reduction is only by one degree. (Garcia vs. Madrigal, 857 Phil. 651)

3. That the offender had no intention to commit so grave a wrong as that committed (*Praeter Intentionem*)

5

- Can be used only when the facts prove to show that there is a *notable and evident disproportion between means employed to execute the criminal act and its consequences*

Intent is an indispensable element of the crime. When the intent is less than the actual act committed, reason and fair play dictate that a mitigated responsibility be imposed upon the offender.

- **Intention:** as an internal act, is judged by the proportion of the means employed to the evil produced by the act, and also by the fact that the blow was or was not aimed at a vital part of the body.
- **Judge by considering** (1) the weapon used, (2) the injury inflicted and (3) the attitude of mind when the accuser attacked the other.

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Example: Pedro stabbed Tomas on the arm. Tomas did not have the wound treated, so he died from loss of blood.

- *Not applicable when offender employed brute force*

Example: Rapist choked victim. Brute force of choking contradicts claim that he had no intention to kill the girl.

- Art 13, par 3 addresses itself to the intention of the offender at the particular moment when he executes or commits the criminal act, not to his intention during the planning stage.
- *In crimes against persons* – if victim does not die, the absence of the intent to kill reduces the felony to mere physical injuries. It is not considered as mitigating. Mitigating only when the victim dies.

Example: As part of fun-making, Juan merely intended to burn Pedro's clothes. Pedro received minor burns. Juan is charged with physical injuries. Had Pedro died, Juan would be entitled to the mitigating circumstance.

- Not applicable to felonies by negligence. Why? In felonies through negligence, the offender acts without intent. The intent in intentional felonies is replaced by negligence, imprudence, lack of foresight or lack of skill in culpable felonies. There is no intent on the part of the offender which may be considered as diminished.
- Basis of par 3: intent, an element of voluntariness in intentional felony, is diminished

Praeter intentionem

The common circumstance given in the bar of praeter intentionem, under paragraph 3, means that there must be a *notable disproportion between the means employed by the offender compared to that of the resulting felony*. If the resulting felony could be expected from the means employed, this circumstance does not avail. *This circumstance does not apply when the crime results from criminal negligence or culpa*. When the crime is the product of reckless imprudence or simple negligence, mitigating circumstances does not apply. This is one of the three instances where the offender has performed a felony different from that which he intended. Therefore, this is the *product of intentional felony, not a culpable one*.

4. That the SUFFICIENT PROVOCATION OR THREAT on the part of the offended party immediately preceded the act.

- **Provocation** – any unjust or improper conduct or act of the offended party, capable of exciting, inciting or irritating anyone.
- **Basis:** diminution of intelligence and intent
- **Requisites:**
 - Provocation must be sufficient.**
 - Sufficient* – adequate enough to excite a person to commit the wrong and must accordingly be proportionate to its gravity.
 - Sufficiency depends on:*
 - the act constituting the provocation
 - the social standing of the person provoked
 - time and place provocation took place
 - Example:* Juan likes to hit and curse his servant. His servant thus killed him. There's mitigating circumstance because of sufficient provocation.
 - When it was the defendant who sought the deceased, the challenge to fight by the deceased is NOT sufficient provocation.
 - It must originate from the offended party**
 - Why? Law says the provocation is "on the part of the offended party"
 - Example:* Tomas' mother insulted Petra. Petra kills Tomas because of the insults. No Mitigating Circumstance because it was the mother who insulted her, not Tomas.

3. Provocation by the deceased in the first stage of the fight is not Mitigating

Circumstance when the accused killed him after he had fled because the deceased from the moment he fled did not give any provocation for the accused to pursue and attack him.

c. Provocation must be immediate to the act., i.e., to the commission of the crime by the person who is provoked

1. Why? If there was an interval of time, the conduct of the offended party could not have excited the accused to the commission of the crime, he having had time to regain his reason and to exercise self-control.
2. *Threat should not be offensive and positively strong* because if it was, the threat to inflict real injury is an unlawful aggression which may give rise to self-defense and thus no longer a Mitigating Circumstance

The commission of the felony must be immediate to the threat or provocation in order that this circumstance be mitigating. If there is sufficient break of time before the provocation or threat and the consequent commission of the crime, the law presupposes that during that interval, whatever anger or diminished self control may have emerged from the offender had already vanished or disappeared.

This is the correct interpretation of paragraph 4, Article 13. *As long as the offender at the time he committed the felony was still under the influence of the outrage caused by the provocation or threat, he is acting under a diminished self control.* This is the reason why it is mitigating.

You have to look at two criteria:

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

In People v. Diokno, a Chinaman eloped with a woman. Actually, it was almost three days before accused was able to locate the house where the Chinaman brought the woman. Here, sufficient provocation was one of the mitigating circumstances considered by the Supreme Court in favor of the accused.

5. That the act was committed in the IMMEDIATE VINDICATION OF A GRAVE OFFENSE to the one committing the felony (delito), his spouse, ascendants, descendants, legitimate, natural or adopted brother or sisters, or relatives by affinity within the same degree.

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

1. **Requisites:**

- there's a grave offense done to the one committing the felony etc.
 - that the felony is committed in vindication of such grave offense.
2. *Lapse of time is allowed between the vindication and the one doing the offense* (proximate time, not just immediately after)
 3. *Example:* Juan caught his wife and his friend in a compromising situation. Juan kills his friend the next day – still considered proximate.

PROVOCATION	VINDICATION
Made directly only to the person	Grave offense may be also against the

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committing the felony	offender's relatives mentioned by law
Cause that brought about the provocation need not be a grave offense	Offended party must have done a grave offense to the offender or his relatives
Necessary that provocation or threat immediately preceded the act. No time interval	May be proximate. Time interval allowed

- *More lenient in vindication because offense concerns the honor of the person.* Such is more worthy of consideration than mere spite against the one giving the provocation or threat.

Vindication of a grave offense

The word "offense" should not be taken as a crime. It is enough if what was imputed or what was done was wrong. *In considering whether the wrong is a grave one upon the person who committed the crime, his age, education and social status will be considered.*

Here, in vindication of a grave offense, the vindication need not be done by the person upon whom the grave offense was committed. So, unlike in sufficient threat or provocation where the crime should be inflicted upon the very person who made the threat or provocation, here, it need not be the same person who committed the grave offense or who was offended by the wrong done by the offended party.

The word "immediate" here does not carry the same meaning as that under paragraph 4. The word "immediate" here is an erroneous Spanish translation because the Spanish word is "proxima" and not "immediatamenta." *Therefore, it is enough that the offender committed the crime with the grave offense done to him, his spouse, his ascendant or descendant or to his brother or sister, whether natural, adopted or legitimate and that is the proximate cause of the commission of the crime.*

It would seem that the rule is that, the court must consider the lasting effect and influence of the grave offense to the offender when he resorted to commit the crime to vindicate such grave offense.

- Vindication of a grave offense and passion and obfuscation can't be counted separately and independently

6. That of having acted upon an impulse so powerful as naturally to have produced PASSION OR OBFUSCATION

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

- *Passion and obfuscation is mitigating:* when there are causes naturally producing in a person powerful excitement, he loses his reason and self-control. Thereby dismissing the exercise of his will power.
- *PASSION AND OBFUSCATION are Mitigating Circumstances only when the same arise from lawful sentiments* (not Mitigating Circumstance when done in the spirit of revenge or lawlessness)
- **Requisites for Passion & Obfuscation**
 - a. The offender acted on impulse powerful enough to produce passion or obfuscation
 - b. That the act was committed not in the spirit of lawlessness or revenge
 - c. The act must come from lawful sentiments
- **Act which gave rise to passion and obfuscation**
 - a. That there be an act, both unlawful and unjust

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- b. The act be sufficient to produce a condition of mind
- c. That the act was proximate to the criminal act
- d. The victim must be the one who caused the passion or obfuscation
- *Example:* Juan saw Tomas hitting his (Juan) son. Juan stabbed Tomas. Juan is entitled to Mitigating Circumstance of P&O as his actuation arose from a natural instinct that impels a father to rush to the rescue of his son.
- The obfuscation must be caused by unlawful act
- *The exercise of a right or a fulfillment of a duty is not the proper source of P&O.*
Example: A policeman arrested Juan as he was making a public disturbance on the streets. Juan's anger and indignation resulting from the arrest can't be considered passionate obfuscation because the policeman was doing a lawful act.
- *The act must be sufficient to produce a condition of mind.* If the cause of the loss of self-control was trivial and slight, the obfuscation is not mitigating.
Example: Juan's boss punched him for not going to work the other day. Cause is slight.
- There could have been no Mitigating Circumstance of P&O when more than 24 hours elapsed between the alleged insult and the commission of the felony, or several hours have passed between the cause of the P&O and the commission of the crime, or at least ½ hours intervened between the previous fight and subsequent killing of deceased by accused.
- *Not mitigating if relationship is illegitimate*
- The passion or obfuscation will be considered even if it is based only on the honest belief of the offender, even if facts turn out to prove that his beliefs were wrong.
- Passion and obfuscation cannot co-exist with treachery since that means the offender has had time to ponder his course of action.
- PASSION AND OBFUSCATION arising from one and the same cause should be treated as only one mitigating circumstance
- Vindication of grave offense can't co-exist w/ PASSION AND OBFUSCATION

PASSION AND OBFUSCATION	IRRESISTIBLE FORCE
Mitigating	Exempting
No physical force needed	Requires physical force
From the offender himself	Must come from a 3rd person
Must come from lawful sentiments	Unlawful

PASSION AND OBFUSCATION	PROVOCATION
Produced by an impulse which may be caused by provocation	Comes from injured party
Offense, which engenders perturbation of mind, need not be immediate. It is only required that the influence thereof lasts until the crime is committed	Must immediately precede the commission of the crime
Effect is loss of reason and self-control on the part of the offender	Same

there is a ruling to the effect that if the offender is given the benefit of paragraph 4, he cannot be given the benefit of paragraph 5 or 6, or vice-versa. Only one of the three mitigating circumstances should be given in favor of the offender.

However, in one case, one of the mitigating circumstances under paragraphs 4, 5 and 6 stands or arises from a set of facts, and another mitigating circumstance arises from another set of facts. Since they are predicated on different set of facts, they may be appreciated together, although they arose from one and the same case. Hence, the prohibition against considering all these mitigating circumstances together and not as one applies only if they would be taken on the basis of the same set of facts.

If the case involves a series of facts, then you can predicate any one of these circumstances on one fact and the other on another fact and so on.

7. That the offender had VOLUNTARILY SURRENDERED himself to a person in authority or his agents, or that he had VOLUNTARILY CONFESSED HIS GUILT before the court prior to the presentation of the evidence for the prosecution.

- **2 Mitigating Circumstances present:**
 - a) voluntarily surrendered
 - b) voluntarily confessed his guilt
- *If both are present, considered as 2 independent mitigating circumstances.* Mitigate penalty to a greater extent
- **Requisites of voluntary surrender:**
 - a) *offender not actually arrested*
 - b) *offender surrendered to a person in authority or the latter's agent*
 - c) *surrender was voluntary*
- **Surrender must be spontaneous** – shows his interest to surrender unconditionally to the authorities
- **Spontaneous** – emphasizes the idea of inner impulse, acting without external stimulus. The conduct of the accused, not his intention alone, after the commission of the offense, determines the spontaneity of the surrender.

Example: Surrendered after 5 years, not spontaneous anymore.

Example: Surrendered after talking to town councilor. Not V.S. because there's an external stimulus

- Conduct must indicate a desire to own the responsibility
- *Not mitigating when warrant already served.* Surrender may be considered mitigating if warrant not served or returned unserved because accused can't be located.

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

- Surrender of person required. Not just of weapon.
- **Person in authority** – one directly vested with jurisdiction, whether as an individual or as a member of some court/government/corporation/board/commission. Barrio captain/chairman included.
- **Agent of person in authority** – person who by direct provision of law, or by election, or by appointment by competent authority is charged with the maintenance of public

order and the protection and security of life and property and any person who comes to the aid of persons in authority.

- RPC does not make distinction among the various moments when surrender may occur.
- Surrender must be by reason of the commission of the crime for which defendant is charged

Voluntary surrender

The essence of voluntary surrender requires that the offender, after having committed the crime, had evaded the law enforcers and the law enforcers do not know of his whereabouts. In short, he continues to elude arrest. If, under this circumstance, the offender would come out in the open and he gives himself up, his act of doing so will be considered as indicative of repentance and he also saves the government the time and the expense of looking for him.

As a general rule, if after committing the crime, the offender did not flee and he went with the responding law enforcers meekly, voluntary surrender is not applicable.

However, there is a ruling that if after committing the crime, the offender did not flee and instead waited for the law enforcers to arrive and he surrendered the weapon he used in killing the victim, the ruling was that voluntary surrender is mitigating. In this case, the offender had the opportunity to go into hiding, the fact that he did not flee is voluntary surrender.

However, if he comes out from hiding because he is seriously ill and he went to get medical treatment, the surrender is not considered as indicative of remorse or repentance. The surrender here is only done out of convenience to save his own self. Hence, it is not mitigating.

Even if the offender may have gone into hiding, if the law enforcers had already known where he is hiding and it is just a matter of time before he is flushed out of that place, then even if the law enforcers do not know exactly where he was hiding and he would come out, this is not voluntary surrender.

Whether or not a warrant of arrest had been issued against the offender is immaterial and irrelevant. The criterion is whether or not the offender had gone into hiding or had the opportunity to go into hiding and the law enforcers do not know of his whereabouts. If he would give up, his act of surrendering under such circumstance indicates that he is willing to accept the consequences of the wrong he has done and also thereby saves the government the effort, the time and the expenses to be incurred in looking for him.

Surrender to be considered voluntary and thus mitigating, must be spontaneous, demonstrating an intent to submit himself unconditionally to the person in authority or his agent in authority, because (1) he acknowledges his guilt (2) he wishes to save the government the trouble and expenses of searching and capturing him. Where the reason for the surrender of the accused was to insure his safety, his arrest by policemen pursuing him being inevitable, the surrender is not spontaneous.

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

A. The answer is yes, because he fled to the scene of a crime not to escape but to seek legal advice.

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

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

- ***Requisites for plea of guilty***

- a) *offender spontaneously confessed his guilt*
- b) *confession of guilt was made in open court (competent court)*
- c) *confession of guilt was made prior to the presentation of evidence for the prosecution*
- To be mitigating, the plea of guilty must be without conditions. But conditional plea of guilty may still be mitigating if the conditions imposed by the accused are found to be meritorious.
- Plea of guilty not applicable to special law.
- plea made after arraignment and after trial has begun does not entitle accused to have plea considered as Mitigating Circumstance
- plea in the RTC in a case appealed from the MTC is not mitigating - *must make plea at the first opportunity*
- plea during the preliminary investigation is no plea at all
- even if during arraignment, accused pleaded not guilty, he is entitled to Mitigating Circumstance as long as he withdraws his plea of not guilty to the charge before the fiscal could present his evidence
- plea to a lesser charge is not Mitigating Circumstance because to be voluntary plea of guilty, must be to the offense charged
- plea to the offense charged in the amended info, lesser than that charged in the original info, is Mitigating Circumstance
- present Rules of Court require that even if accused pleaded guilty to a capital offense, its mandatory for court to require the prosecution to prove the guilt of the accused being likewise entitled to present evidence to prove, inter alia, Mitigating Circumstance

8. That the offender is deaf and dumb, blind or otherwise suffering from some PHYSICAL DEFECT w/c thus restricts his means of action, defense or communication w/ his fellow beings.

- **Basis:** one suffering from physical defect which restricts him does not have complete freedom of action and therefore, *there is diminution of that element of voluntariness.*

The law says that the offender is deaf and dumb, meaning not only deaf but also dumb, or that he is blind, meaning in both eyes, but even if he is only deaf and not dumb, or dumb only but not deaf, or blind only in one eye, he is still entitled to a mitigating circumstance under this article as long as his physical defects restricts his means of action, defense communication with his fellowmen. The restriction however, must relate to the mode of committing the crime.

- No distinction between educated and uneducated deaf-mute or blind persons
- *The physical defect of the offender should restrict his means of action, defense or communication with fellow beings*, this has been extended to cover cripples, armless people even stutterers.
- The circumstance assumes that with their physical defect, the offenders do not have a complete freedom of action therefore diminishing the element of voluntariness in the commission of a crime.

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

9. Such ILLNESS of the offender as would diminish the exercise of the will-power of the offender w/o depriving him of consciousness of his acts.

- **Basis:** diminution of intelligence and intent
- **Requisites:**
 - a) illness of the offender must diminish the exercise of his will-power
 - b) such illness should not deprive the offender of consciousness of his acts

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

- deceased mind, not amounting to insanity, may give place to mitigation

Feeble-mindedness of the accused who, in a fit of jealousy, stabbed his wife, then carried her up to the house, laid her on the floor and then lay down beside her, warrants the finding in his favor of this mitigating circumstance. (*Pp vs. Formigones, 87 Phil. 658*)

10. And ANY OTHER CIRCUMSTANCE of a similar nature and analogous to those above-mentioned

- **Examples of "any other circumstance":**
 - a) defendant who is 60 years old with failing eyesight is similar to a case of one over 70 years old
 - b) outraged feeling of owner of animal taken for ransom is analogous to vindication of grave offense
 - c) impulse of jealous feeling, similar to PASSION AND OBFUSCATION
 - d) voluntary restitution of property, similar to voluntary surrender
 - e) extreme poverty, similar to incomplete justification based on state of necessity
 - f) esprit de corps is similar to passion or obfuscation

Analogous cases

The act of the offender of leading the law enforcers to the place where he buried the instrument of the crime has been considered as *equivalent to voluntary surrender*. The act of a thief in leading the authorities to the place where he disposed of the loot has been considered as *analogous or equivalent to voluntary surrender*.

Stealing by a person who is driven to do so out of extreme poverty is considered as *analogous to incomplete state of necessity*. However, this is not so where the offender became impoverished because of his own way of living his life. If his lifestyle is one of having so many vices, as a result of which he became poor, his subsequent stealing because of his poverty will not be considered mitigated by incomplete state of necessity.

- **NOT analogous:**
 - a) killing wrong person
 - b) not resisting arrest not the same as voluntary surrender

c) running amuck is not mitigating

- **MITIGATING CIRCUMSTANCE which arise from:**

- a) *moral attributes of the offender*

Example: Juan and Tomas killed Pedro. Juan acted w/ PASSION AND OBFUSCATION. Only Juan will be entitled to Mitigating Circumstance

- b) *private relations with the offended party*

Example: Juan stole his brother's watch. Juan sold it to Pedro, who knew it was stolen. The circumstance of relation arose from private relation of Juan and the brother. Does not mitigate Pedro.

- c) *other personal cause*

Example: Minor, acting with discernment robbed Juan. Pedro, passing by, helped the minor. Circumstance of minority, mitigates liability of minor only.

Shall serve to mitigate the liability of the principals, accomplices and accessories to whom the circumstances are attendant.

- **Circumstances which are neither exempting nor mitigating**

- a) mistake in the blow

- b) mistake in the identity of the victim

- c) entrapment of the accused

- d) accused is over 18 years old

- e) performance of a righteous action

Example: Juan saved the lives of 99 people but caused the death of the last person, he is still criminally liable

Note: Under the Rules of Court on **plea bargaining**, the accused is allowed to negotiate with the prosecution during his arraignment, to enter a plea for a lesser offense, or for the consideration of mitigating circumstances under Art. 13; for the prosecution to forego or delete aggravating circumstances, without regard to the rules and jurisprudence mentioned above.

AGGRAVATING CIRCUMSTANCES

- **Definition** – Those circumstance which raise the penalty for a crime without exceeding the maximum applicable to that crime.

- **Basis:** *The greater perversity of the offense as shown by:*

- a) the motivating power behind the act

- b) the place where the act was committed

- c) the means and ways used

- d) the time

- e) the personal circumstance of the offender

- f) the personal circumstance of the victim

- **Kinds:**

- a) **Generic** – generally applicable to all crimes

- b) **Specific** – apply only to specific crimes (ignominy – for chastity crimes; treachery – for persons crimes)

- c) **Qualifying** – those that change the nature of the crime (evident premeditation – becomes murder)

- d) **Inherent** – necessarily accompanies the commission of the crime; it is an element of the crime committed (evident premeditation in theft, estafa)

QUALIFYING AGGRAVATING CIRCUMSTANCE	GENERIC AGGRAVATING CIRCUMSTANCE
Gives the proper and exclusive name, places the author thereof in such a situation as to deserve no other penalty than that specifically prescribed by law	Increase penalty to the maximum, without exceeding limit prescribed by law
Can't be offset by Mitigating Circumstance	May be compensated by Mitigating Circumstance
Must be alleged in the information. Integral part of the offense	Need not be alleged. May be proved over the objection of the defense. Qualifying if not alleged will make it generic

- **Aggravating Circumstances which DO NOT have the effect of increasing the penalty:**
 - 1) *which themselves constitute a crime specifically punishable by law or which are included in the law defining a crime and prescribing the penalty thereof*
Example: breaking a window to get inside the house and rob it
 - 2) *aggravating circumstance inherent in the crime to such degree that it must of necessity accompany the commission thereof*

Example: evident premeditation inherent in theft, robbery, estafa, adultery and concubinage
- *Aggravating circumstances are not presumed.* Must be proved as fully as the crime itself in order to increase the penalty.

Art 14. Aggravating circumstances. — The following are aggravating circumstances:

1. That advantage be taken by the offender of his PUBLIC POSITION

- **Requisite:**
 - a. *The offender is a public officer*
 - b. *The commission of the crime would not have been possible without the powers, resources and influence of the office he holds.*

A **public officer** is any person who, by (1) direct provision of the law, (2) popular election or (3) appointment by competent authority shall take part in the performance of public functions in the Government of the Philippine Islands or shall perform in said Government or in any of its branches, public duties as an employee, agent or subordinate official of any rank or class.

- **Essential** - Public officer used the influence, prestige or ascendancy which his office gives him as the means by which he realized his purpose.

If the accused could have perpetrated the crime without occupying his position, then there is no abuse of public position.

- Failure in official duties is tantamount to abusing of office

When the public position is an element of the offense like Bribery (Direct – Article 210, Indirect – 211, or Qualified Bribery – Sec. 4, R.A. 7659), this circumstance can not be taken into consideration.

- Wearing of uniform is immaterial – what matters is the proof that he indeed took advantage of his position

Taking advantage of public position

Article 62 was also amended by the Republic Act No. 7659. The legal import of this amendment is that the subject circumstance has been made a **qualifying or special aggravating** that shall not be offset or compensated by a mitigating circumstance. *If not alleged in the information*, however, but proven during the trial, it is only appreciated as a generic aggravating circumstance.

Under Sec. 23, 1 (a) of R.A. 7659, when in the commission of the crime, advantage was taken by the offender of his public position, the penalty to be imposed shall be in its maximum regardless of mitigating circumstances.

2. That the crime be committed IN CONTEMPT OF OR WITH INSULT TO THE PUBLIC AUTHORITIES

- **Requisites:**
 - a. *The offender knows that a public authority is present*
 - b. *The public authority is engaged in the exercise of his functions*
 - c. *The public authority is not the victim of the crime*
 - d. *The public authority's presence did not prevent the criminal act*
- **Example:** Juan and Pedro are quarrelling and the municipal mayor, upon passing by, attempts to stop them. Notwithstanding the intervention and the presence of the mayor, Juan and Pedro continue to quarrel until Juan succeeds in killing Pedro.
- **Person in authority** – public authority who is directly vested with jurisdiction, has the power to govern and execute the laws
- **Examples of Persons in Authority**
 - a. Governor
 - b. Mayor
 - c. Barangay captain
 - d. Councilors
 - e. Government agents
 - f. Chief of Police
- *Rule not applicable when committed in the presence of a mere agent.*
- **Agent** – subordinate public officer charged with the maintenance of public order and protection and security of life and property

Example: barrio vice lieutenant, barrio councilman

3. That the act be committed:

- (1) **with insult or in disregard of the respect due to the offended party on account of his (A) RANK, (B) AGE, (C) SEX or**

- circumstances (rank, age, sex) may be taken into account *only in crimes against persons or honor*, it cannot be invoked in crimes against property
- **Rank** – refers to a high social position or standing by which to determine one's pay and emoluments in any scale of comparison within a position
- **Age** – the circumstance of lack of respect due to age applies in case where the victim is of tender age as well as of old age (age of the offended party)
- **Sex** – refers to the female sex, not to the male sex; *not applicable when*
 - a. The offender acted w/ PASSION AND OBFUSCATION
 - b. there exists a relation between the offender and the victim (but in cases of divorce decrees where there is a direct bearing on their child, it is applicable)
 - c. the condition of being a woman is indispensable in the commission of the crime (Ex. Parricide, rape, abduction)
- **Requisite of disregard to rank, age, or sex**
 - a. *Crimes must be against the victim's person or his honor*

- b. *There is deliberate intent to offend or insult the respect due to the victim's rank, age, or sex*

NOTE: While nighttime is absorbed in treachery, the aggravating circumstance of disregard of sex and age cannot be similarly absorbed, as Treachery refers to the manner of the commission of the crime, while the latter pertains to the relationship of the victim with the offender. (*Pp vs. Lapaz, 171 SCRA 539*)

(2) that it be committed in the DWELLING of the offended party, if the latter has not given provocation.

- **Dwelling** – must be a building or structure exclusively used for rest and comfort (combination house and store not included)
 - a. may be temporary as in the case of guests in a house or bedspacers
 - b. basis for this is the sanctity of privacy the law accords to human abode
- *dwelling includes dependencies*, the foot of the staircase and the enclosure under the house
- **Elements of the aggravating circumstance of dwelling**
 - a. *Crime occurred in the dwelling of the victim*
 - b. *No provocation on the part of the victim*
- **Requisites for Provocation:** ALL MUST CONCUR
 - a. given by the owner of the dwelling
 - b. sufficient
 - c. immediate to the commission of the crime

Dwelling will only be aggravating if it is the dwelling of the offended party. It should also not be the dwelling of the offender. If the dwelling is both that of the offended party and the offender, dwelling is not aggravating.

Dwelling need not be owned by the offended party. It is enough that he used the place for his peace of mind, rest, comfort and privacy. The rule that dwelling, in order to be aggravating must be owned by the offended party is no longer absolute. Dwelling can be aggravating even if it is not owned by the offended party, provided that the offended party is considered a member of the family who owns the dwelling and equally enjoys peace of mind, privacy and comfort.

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Dwelling should not be understood in the concept of a domicile. A person has more than one dwelling.

Dwelling is not limited to the house proper. All the appurtenances necessary for the peace and comfort, rest and peace of mind in the abode of the offended party is considered a dwelling.

<i>When dwelling may and may not be considered</i>	
When it may be considered	When it may not be considered
<ul style="list-style-type: none"> • although the offender fired the shot from outside the house, as long as his victim was inside • even if the killing took place outside the dwelling, so long as the commission began inside the dwelling • when adultery is committed in the dwelling of the husband, even if it is also the dwelling of the wife, it is still aggravating because she and her paramour committed a grave offense to the head of the house • In robbery with violence against persons, robbery with homicide, abduction, or illegal detention 	<ul style="list-style-type: none"> • If the offended party has given provocation • If both the offender and the offended party are occupants of the same dwelling • In robbery with force upon things, it is inherent

The victim should be the owner, occupant or lessee of the house. However, in *People vs. Balansi, 187 SCRA 566*, it was held that the victim need not be the owner or occupant of the dwelling where he was shot, since, "the stranger, as an invited guest, is sheltered by the same roof and protected by the same intimacy of life it affords. It may not be his house, but it is, even for a brief moment, home to him."

While this aggravating circumstance cannot be considered in Trespass to Dwelling or Robbery in an Inhabited House as it is included necessarily in these crimes (Art. 62), it can be considered in Robbery with Homicide because this kind of Robbery can be committed without the necessity of transgressing the sanctity of the house. (*Pp vs. Pareja, 265 SCRA 429*)

One-half of the house is used as a store and the other half is used for dwelling but there is only one entrance. If the dwelling portion is attacked, dwelling is not aggravating because whenever a store is open for business, it is a public place and as such is not capable of being the subject of trespass. If the dwelling portion is attacked where even if the store is open, there is another separate entrance to the portion used for dwelling, the circumstance is aggravating. However, in case the store is closed, dwelling is aggravating since here, the store is not a public place as in the first case.

4. That the act be committed with (1) ABUSE OF CONFIDENCE or (2) OBVIOUS UNGRATEFULNESS

Requisites of Abuse of Confidence	Requisite of Obvious Ungratefulness
<p>a) <i>Offended party has trusted the offender</i></p> <p>b) <i>Offender abused such trust</i></p> <p>c) <i>Abuse of confidence facilitated the commission of the crime</i></p>	<p>a) <i>ungratefulness must be obvious, that is, there must be something which the offender should owe the victim a debt of gratitude for</i></p> <p><i>Note: robbery or theft committed by a visitor in the house of the offended party is aggravated by obvious ungratefulness</i></p>

- *Example: A jealous lover, already determined to kill his sweetheart, invited her for a ride and during that ride, he stabbed her*
- **Abuse of confidence is inherent in:**

- a. malversation
- b. qualified theft
- c. estafa by conversion
- d. misappropriation
- e. qualified seduction

Do not confuse this with mere betrayal of trust. This is aggravating only when the very offended party is the one who reposed the confidence. If the confidence is reposed by another, the offended party is different from the fellow who reposed the confidence and abuse of confidence in this case is not aggravating.

5. That the crime be committed in the PALACE OF THE CHIEF EXECUTIVE, or in his presence, or when PUBLIC AUTHORITIES ARE ENGAGED IN THE DISCHARGE OF THEIR DUTIES, or in a PLACE DEDICATED TO RELIGIOUS WORSHIP.

- **Requirements of the aggravating circumstance of public office:**
 - a. *The crime occurred in the public office*
 - b. *Public authorities are actually performing their public duties*
- A polling precinct is a public office during election day
- Nature of public office should be taken into account, like a police station which is on duty 24 hrs. a day
- *place of the commission of the felony (par 5):* if it was committed in *Malacañang palace or a church* it is aggravating, regardless of whether State or official; functions are being held.

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

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

The accused must have the intention to commit the crime in such place so that if the meeting of the offender and the victim was only casual, this circumstance cannot be considered.

However, in a place which is dedicated to religious worship, any offense committed thereat even if no ceremony is taking place, is aggravated by this circumstance.

- **Requisites for aggravating circumstances for place of worship:**
 - a. *The crime occurred in a place dedicated to the worship of God regardless of religion*
 - b. *Offender must have decided to commit the crime when he entered the place of worship*

<i>When Paragraph 2 and 5 of Article 14 are applicable</i>	
Committed in the presence of the Chief Executive, in the Presidential Palace or a place of worship (Par. 5, Art. 14)	Committed in contempt of Public Authority (Par. 2, Art 14)
Public authorities are performing of their duties when the crime is committed	Same
When crime is committed in the public office, the officer must be performing his duties, except in the Presidential Palace	Outside the office (still performing duty)
Public authority may be the offended party	Public authority is not be the offended party

6. (A) That the crime be committed (1) in the NIGHTTIME, or (2) in an UNINHABITED PLACE (3) by a BAND, whenever such circumstances may facilitate the commission of the offense.

- ***Nighttime, Uninhabited Place or by a Band Aggravating when:***
 - a. *it facilitated the commission of the crime*
 - b. *especially sought for by the offender to insure the commission of the crime or for the purpose of impunity*
 - c. *when the offender took the advantage thereof for the purpose of impunity*
 - d. *commission of the crime must have begun and accomplished at nighttime*
 - ***Impunity*** – means to prevent the accused's being recognized or to secure himself against detection or punishment or to facilitate his escape more easily.
- ***Nighttime*** begins at the end of dusk and ending at dawn; from sunset to sunrise
 - a. commission of the crime must begin and be accomplished in the nighttime
 - b. when the place of the crime is illuminated by light, nighttime is not aggravating
 - c. absorbed by Treachery

Even if there was darkness but the nighttime was only an incident of a chance meeting, there is no aggravating circumstance here. *It must be shown that the offender deliberately sought the cover of darkness and the offender purposely took advantage of nighttime to facilitate the commission of the offense, to insure his immunity from capture, or otherwise to facilitate his getaway. (pp vs. pareja, 265 scra 429)*

- ***Uninhabited Place*** – one where there are no houses at all, a place at a considerable distance from town, where the houses are scattered at a great distance from each other

Requisites:

- a. *The place facilitated the commission or omission of the crime*
- b. *Deliberately sought and not incidental to the commission or omission of the crime*
- c. *Taken advantage of for the purpose of impunity*

While there is no hard and fast rule on the matter, a place where there are no people or houses within a distance of 200 meters or less is considered uninhabited. *(Pp vs. Egot, 130 SCRA 134)*

- What should be considered here is whether in the place of the commission of the offense, there was a reasonable possibility of the victim receiving some help

6. (B) - Whenever more than 3 armed malefactors shall have acted together in the commission of an offense, it shall be deemed to have been committed by a BAND.

- ***Requisites:***
 - a. *Facilitated the commission of the crime*

- b. Deliberately sought*
- c. Taken advantage of for the purposes of impunity*
- d. There must be four or more armed men*

- If one of the four-armed malefactors is a principal by inducement, they do not form a band because it is undoubtedly connoted that he had no direct participation,

Where more than three armed malefactors participated in the commission of the offense, if the aggrupation did not facilitate the commission of the crime, it will not be considered as aggravating because of the language of the law which requires that such circumstance must have facilitated the commission of the offense.

When the two (2) groups are almost similarly armed, like where the group of the offended party numbered five (5) but only three (3) were armed so that there is no band, while the offenders were four (4) who were all armed and therefore constituted a band, there is no band as aggravating circumstance as it did not facilitate the commission of the crime. Likewise, if the meeting is casual, the homicide committed by the killers comprising a band is not aggravated.

- Arms is not limited to firearms, sticks and stones included
- Band is inherent in robbery committed in band and brigandage

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

- It is not considered in the crime of rape
- It has been applied in treason and in robbery with homicide

7. That the crime be committed on the occasion of a conflagration, shipwreck, earthquake, epidemic or other CALAMITY OR MISFORTUNE

- **Requisites:**
 - a. Committed when there is a calamity or misfortune*
 - 1. Conflagration*
 - 2. Shipwreck*
 - 3. Epidemic*
 - b. Offender took advantage of the state of confusion or chaotic condition from such misfortune*
- **Basis:** Commission of the crime adds to the suffering by taking advantage of the misfortune.
- based on time
- offender must take advantage of the calamity or misfortune

<i>Distinction between Paragraphs 7 and 12 of Article 14</i>	
<i>Committed during a calamity or misfortune</i>	<i>Committed with the use of wasteful means</i>
Crime is committed DURING any of the calamities	Crime is committed BY using fire, inundation, explosion or other wasteful means

8. That the crime be committed with the AID OF (1) ARMED MEN OR (2) PERSONS WHO INSURE OR AFFORD IMPUNITY

- based on the means and ways of committing the crime
- **Requisites:**
 - a. *that armed men or persons took part in the commission of the crime, directly or indirectly*
 - b. *that the accused availed himself of their aid or relied upon them when the crime was committed*

If the accused relied on the presence of armed men, availing himself of the aid of the latter, his liability is aggravated. However, where it appeared that appellants were not merely present at the scene of the crime but were in conspiracy with the assailant, shooting the victim and leaving the scene together after apparently accomplishing their purpose clearly evincing conspiracy, this circumstance cannot be appreciated. (*Pp vs. Umbrero, 196 SCRA 821*)

There must be no unity of purpose between the offender and the armed men present in the commission of the crime. The existence of conspiracy will make the armed men liable as principals by direct participation.

- **Exceptions:**
 - a. when both the attacking party and the party attacked were equally armed
 - b. not present when the accused as well as those who cooperated with him in the commission of the crime acted under the same plan and for the same purpose.
 - c. Casual presence, or when the offender did not avail himself of any of their aid nor did not knowingly count upon their assistance in the commission of the crime

WITH THE AID OF ARMED MEN	BY A BAND
Present even if one of the offenders merely relied on their aid. Actual aid is not necessary	Requires more than 3 armed malefactors who all acted together in the commission of an offense

- if there are more than 3 armed men, aid of armed men is absorbed in the employment of a band.

If the accused, upon assurance of policemen A and B that they would not patrol the area so that he could theft or robbery thereat, the commission of burglary in the said area where no routine patrolling was done is aggravated by the ***aid of persons who insure or afford impunity***.

9. That the accused is a RECIDIVIST

- **Recidivist** – one who at the time of his trial for one crime, shall have been previously convicted by final judgment of another crime embraced in the same title of the RPC

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

- **Basis:** Greater perversity of the offender as shown by his inclination to commit crimes
- **Requisites:**
 - a. offender is on trial for an offense
 - b. he was previously convicted by final judgment of another crime

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- c. that both the first and the second offenses are embraced in the same title of the RPC (not special law)
- d. the offender is convicted of the new offense
- *What is controlling is the time of the trial, not the time of the commission of the offense.* At the time of the trial means from the arraignment until after sentence is announced by the judge in open court.
- *When does judgment become final?* (Rules of Court)
 - a. after the lapse of a period for perfecting an appeal
 - b. when the sentence has been partially or totally satisfied or served
 - c. defendant has expressly waived in writing his right to appeal
 - d. the accused has applied for probation
- **Example of Crimes embraced in the Same title of the RPC**
 - a. robbery and theft – title 10
 - b. homicide and physical injuries – title 8

In recidivism, the crimes committed should be felonies. Recidivism cannot be had if the crime committed is a violation of a special law.

- **Q:** The accused was prosecuted and tried for theft, robbery and estafa. Judgments were read on the same day. Is he a recidivist?
A: No. Because the judgment in any of the first two offenses was not yet final when he was tried for the third offense
- Recidivism must be taken into account no matter how many years have intervened between the first and second felonies
- **Pardon** does not obliterate the fact that the accused was a recidivist, but **amnesty** extinguishes the penalty and its effects

If the offender has already served his sentence and he was extended an absolute pardon, the pardon shall erase the conviction including recidivism because there is no more penalty so it shall be understood as referring to the conviction or the effects of the crime.

- *To prove recidivism*, it must be alleged in the information and with attached certified copies of the sentences rendered against the accused
- **Exceptions:** if the accused does not object and when he admits in his confession and on the witness stand

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

- **REITERACION OR HABITUALITY** – it is essential that the offender be previously punished; that is, he has served sentence.
- Par. 10 speaks of *penalty attached to the offense*, not the penalty actually imposed

in reiteracion, the penalty attached to the crime subsequently committed should be higher or at least equal to the penalty that he has already served. If that is the situation, that means that the offender was never reformed by the fact that he already served the penalty imposed on him on the first conviction. *However, if he commits a felony carrying a lighter penalty;* subsequently, the law considers that somehow he has been reformed *but if he, again commits another felony which*

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carries a lighter penalty, then he becomes a repeater because that means he has not yet reformed.

You will only consider the penalty in reiteracion if there is already a second conviction. When there is a third conviction, you disregard whatever penalty for the subsequent crimes committed. Even if the penalty for the subsequent crimes committed are lighter than the ones already served, since there are already two of them subsequently, the offender is already a repeater.

However, if there is only a second conviction, pay attention to the penalty attached to the crime which was committed for the second crime. That is why it is said that reiteracion is not always aggravating. This is so because if the penalty attached to the felony subsequently committed is not equal or higher than the penalty already served, even if literally, the offender is a repeater, repetition is not aggravating.

REITERACION	RECIDIVISM
Necessary that offender shall have served out his sentence for the first sentence	Enough that final judgment has been rendered in the first offense
Previous and subsequent offenses must not be embraced in the same title of the Code	Same title
Not always an aggravating circumstance	Always aggravating

Thus, if A has been convicted of Murder, and after grant of parole committed Homicide, he labors under this paragraph (10) known as reiteracion, but he is also suffering from recidivism (recidencia). In such a case, he will be considered only as recidivist, and par. 10 will no longer apply to him.

• **4 Forms of Repetition**

- a. *Recidivism* – generic
- b. *Reiteracion or Habituality* – generic
- c. *Multiple recidivism or Habitual delinquency* – extraordinary aggravating
- d. *Quasi-Recidivism* – special aggravating

Distinctions between recidivism and habitual delinquency

In recidivism –

- (1) *Two convictions are enough.*
- (2) *The crimes are not specified; it is enough that they may be embraced under the same title of the Revised Penal Code.*
- (3) *There is no time limit between the first conviction and the subsequent conviction. Recidivism is imprescriptible.*
- (4) *It is a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance. If not offset, it would only increase the penalty prescribed by law for the crime committed to its maximum period.*
- (5) *The circumstance need not be alleged in the information.*

In habitual delinquency –

- (1) *At least three convictions are required.*
- (2) *The crimes are limited and specified to: (a) serious physical injuries, (b) less serious physical injuries, (c) robbery, (d) theft, (e) estafa or swindling and (f) falsification.*
- (3) *There is a time limit of not more than 10 years between every convictions computed from the first conviction or release from punishment thereof to conviction computed from the second conviction or release therefrom to the third conviction and so on . . .*

- (4) *Habitual delinquency is a special aggravating circumstance, hence it cannot be offset by any mitigating circumstance. Aside from the penalty prescribed by law for the crime committed, an additional penalty shall be imposed depending upon whether it is already the third conviction, the fourth, the fifth and so on . . .*
- (5) *The circumstance must be alleged in the information; otherwise the court cannot acquire jurisdiction to impose additional penalty.*

- **HABITUAL DELINQUENCY** – when a person within a period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification is found guilty of any of said crimes a third time or oftener.

When the offender is a recidivist and at the same time a habitual delinquent, the penalty for the crime for which he will be convicted will be increased to the maximum period unless offset by a mitigating circumstance. After determining the correct penalty for the last crime committed, an added penalty will be imposed in accordance with Article 62.

Habitual delinquency, being a special or specific aggravating circumstance must be alleged in the information. If it is not alleged in the information and in the course of the trial, the prosecution tried to prove that the offender is a habitual delinquent over the objection of the accused, the court has no jurisdiction to consider the offender a habitual delinquent.

- **QUASI-RECIDIVISM** – any person who shall commit a felony after having been convicted by final judgment, before beginning to serve such sentence, or while serving the same, shall be punished by the maximum period of the penalty prescribed by law for the new felony

The emphasis here is on the crime committed before sentence or while serving sentence which should be a felony, a violation of the Revised Penal Code. In so far as the earlier crime is concerned, it is necessary that it be a felony.

The emphasis is on the nature of the crime committed while serving sentence or before serving sentence. It should not be a violation of a special law.

Quasi-recidivism is a special aggravating circumstance. This cannot be offset by any mitigating circumstance and the imposition of the penalty in the maximum period cannot be lowered by any ordinary mitigating circumstance. When there is a privileged mitigating circumstance, the penalty prescribed by law for the crime committed shall be lowered by 1 or 2 degrees, as the case may be, but then it shall be imposed in the maximum period if the offender is a quasi-recidivist.

11. That the crime be committed IN CONSIDERATION OF A PRICE, REWARD OR PROMISE.

- **Requisites:**
 - a. *At least 2 principals*
 1. *The principal by inducement*
 2. *The principal by direct participation*
 - b. *the price, reward, or promise should be previous to and in consideration of the commission of the criminal act*
- *Applicable to both principals.*

To consider this circumstance, *the price, reward or promise must be the primary reason or the primordial motive for the commission of the crime.* Thus, if A approached B and told the latter what he thought of X, and B answered "he is a bad man" to which A retorted, "you see I am going to kill him this afternoon", and so B told him "If you do that, I'll give you P5,000.00" and after killing X, A again approached B, told him he had already killed X, and B in compliance with his promise, delivered the P5,000.00, this aggravating circumstance is not present.

12. That the crime be committed by means of inundation, fire, poison, explosion, stranding a vessel or intentional damage thereto, or derailment of a locomotive, or by use of any other artifice involving GREAT WASTE OR RUIN.

- **Requisite:** The *wasteful means* were used by the offender to accomplish a criminal purpose

Fire is not aggravating in the crime of arson.

Whenever a killing is done with the use of fire, as when to kill someone, you burn down his house while the latter is inside, this is murder.

There is no such crime as murder with arson or arson with homicide. The crime committed is only murder.

If the victim is already dead and the house is burned, the crime is arson. It is either arson or murder.

If the intent is to destroy property, the crime is arson even if someone dies as a consequence. If the intent is to kill, there is murder even if the house is burned in the process.

Under R.A. 8294 which amends P.D. 1866, when a person commits any crime under the Revised Penal Code or special laws with the use of explosives including but not limited to pillbox, motolov cocktail bombs, detonation agents or incendiary devices resulting in the death of a person, the same is aggravating. (Section 2)

13. That the act be committed with EVIDENT PREMEDITATION

- **Essence of premeditation:** the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during the space of time sufficient to arrive at a calm judgment
- **Requisites:**
 - a. the time when the offender determined to commit the crime*
 - b. an act manifestly indicating that the culprit has clung to his determination*
 - c. a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will*
- Conspiracy generally presupposes premeditation

There are cases however, when conspiracy is established because of the manner the crime was committed by the offenders, which more often is manifested by their acts before, during and after the commission of the crime. This is called **implied conspiracy**. When such situation arises, the court cannot presume evident premeditation. There is unity of purpose and they all took part in the commission of the crime, but such is not evident premeditation. It only establishes conspiracy.

- *When victim is different from that intended, premeditation is not aggravating.* Although it is not necessary that there is a plan to kill a particular person for premeditation to exist (e.g. plan to kill first 2 persons one meets, general attack on a village...for as long as it was planned)
- The premeditation must be based upon external facts, and must be evident, not merely suspected indicating deliberate planning

- Evident premeditation is inherent in robbery, adultery, theft, estafa, falsification, and etc.

In evident premeditation, there must be a clear reflection on the part of the offender. *However, if the killing was accidental, there was no evident premeditation.* What is necessary to show and to bring about evident premeditation aside from showing that as some prior time, the offender has manifested the intention to kill the victim, and subsequently killed the victim.

In *People vs. Mojica, 10 SCRA 515*, the lapse of one hour and forty-five minutes (4:15 p.m. to 6 p.m.) was considered by the Supreme Court as sufficient. In *People vs. Cabodoc, 263 SCRA 187*, where at 1:00 p.m., the accused opened his balisong and uttered "I will kill him (referring to the victim)", at 4:30 p.m. of the said date accused stabbed the victim, it was held that the lapse of three and a half hours (3 ½ hours) from the inception of the plan to the execution of the crime satisfied the last requisite of evident premeditation.

14. That (1) CRAFT, (2) FRAUD, OR (3) DISGUISE be employed

- **Craft** – involves intellectual trickery and cunning on the part of the accused. It is employed as a scheme in the execution of the crime (e.g. accused pretended to be members of the constabulary, accused in order to perpetrate rape, used chocolates containing drugs)

Craft is present since the accused and his cohorts pretended to be bonafide passengers of the jeep in order not to arouse suspicion; when once inside the jeep, they robbed the driver and other passengers (*People vs. Lee, 204 SCRA 900*)

- **Fraud** – involves insidious words or machinations used to induce victim to act in a manner which would enable the offender to carry out his design.
- *as distinguished from craft* which involves acts done in order not to arouse the suspicion of the victim, *fraud* involves a direct inducement through entrapping or beguiling language or machinations
- **Disguise** – resorting to any device to conceal identity. Purpose of concealing identity is a must.

But the accused must be able to hide his identity during the initial stage, if not all through out, the commission of the crime and his identity must have been discovered only later on, to consider this aggravating circumstance. If despite the mask worn by the accused, or his putting of charcoal over his body, the offended party even before the initial stage knew him, he was not able to hide his identity and this circumstance cannot be appreciated.

<i>Distinction between Craft, Fraud, and Disguise</i>		
Craft	Fraud	Disguise
Involves the use of intellectual trickery and cunning to arouse suspicion of the victim	Involves the use of direct inducement by insidious words or machinations	Involves the use of devise to conceal identity

- **Requisite:** *The offender must have actually taken advantage of craft, fraud, or disguise to facilitate the commission of the crime.*

The circumstance is characterized by the intellectual or mental approach, rather than the physical means to which criminal resorts to carry out his intention.

- **Inherent in:** estafa and falsification

15. That (1) ADVANTAGE BE TAKEN OF SUPERIOR STRENGTH, or (2) MEANS BE EMPLOYED TO WEAKEN THE DEFENSE

- *To purposely use excessive force out of the proportion to the means of defense available to the person attacked.*
 - a. Superiority may arise from aggressor's sex, weapon or number as compared to that of the victim (e.g. accused attacked an unarmed girl with a knife; 3 men stabbed to death the female victim).
 - b. No advantage of superior strength when one who attacks is overcome with passion and obfuscation or when quarrel arose unexpectedly and the fatal blow was struck while victim and accused were struggling.
 - c. **Vs. by a band** : circumstance of abuse of superior strength, what is taken into account is not the number of aggressors nor the fact that they are armed but their relative physical might vis-à-vis the offended party

There must be evidence of notorious inequality of forces between the offender and the offended party in their age, size and strength, and that the offender took advantage of such superior strength in committing the crime. *The mere fact that there were two persons who attacked the victim does not per se constitute abuse of superior strength (People v. Carpio, 191 SCRA 12).*

To appreciate abuse of superior strength, what should be considered is not that there were three, four or more assailants of the victim. What matters is whether the aggressors took advantage of their combined strength in order to consummate the crime.

The fact known however that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength. To take advantage of superior strength means to purposely use excessive force out of proportion to the means available to the person attacked to defend himself. *(People vs. Casingal, 243 SCRA 37)*

Had treachery or alevosia been proven, it would have absorbed abuse of superior strength. *(People vs. Panganiban, 241 SCRA 91)*

- **Requisite of Means to Weaken Defense**
 - a. *Means were purposely sought to weaken the defense of the victim to resist the assault*
 - b. *The means used must not totally eliminate possible defense of the victim, otherwise it will fall under treachery*
- **To weaken the defense** – illustrated in the case where one struggling with another suddenly throws a cloak over the head of his opponent and while in the said situation, he wounds or kills him. Other means of weakening the defense would be intoxication or disabling thru the senses (casting dirt or sand upon another's eyes)

16. That the act be committed with TREACHERY (alevosia)

- **TREACHERY:** when the offender commits any of the crime against the person, employing means, methods or forms in the execution thereof which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make.
- **Requisites:**
 - a. *that at the time of the attack, the victim was not in the position to defend himself*

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- b. that the offender consciously adopted the particular means, method or form of attack employed by him*

The essence of treachery is that by virtue of the means, method or form employed by the offender, the offended party was not able to put up any defense. If the offended party was able to put up a defense, even only a token one, there is no treachery anymore. Instead some other aggravating circumstance may be present but not treachery anymore.

- **Treachery** – *can't be considered when there is no evidence that the accused, prior to the moment of the killing, resolved to commit to crime, or there is no proof that the death of the victim was the result of meditation, calculation or reflection.*
 - a. does not exist if the accused gave the deceased chance to prepare or there was warning given or that it was preceded by a heated argument
 - b. there is always treachery in the killing of child
 - c. generally characterized by the deliberate and sudden and unexpected attack of the victim from behind, without any warning and without giving the victim an opportunity to defend himself

Treachery is out when the attack was merely incidental or accidental because in the definition of treachery, the implication is that the offender had consciously and deliberately adopted the method, means and form used or employed by him

- Examples: victim asleep, half-awake or just awakened, victim grappling or being held, attacks from behind
- *But treachery may exist even if attack is face-to-face* – as long as victim was not given any chance to prepare defense
- *Where there is conspiracy*, treachery is considered against all the offenders
- *Treachery absorbs* abuse of strength, aid of armed men, by a band and means to weaken the defense

TREACHERY	ABUSE OF SUPERIOR STRENGTH	MEANS EMPLOYED TO WEAKEN DEFENSE
Means, methods or forms are employed by the offender to make it impossible or hard for the offended party to put any sort of resistance	Offender does not employ means, methods or forms of attack, he only takes advantage of his superior strength	Means are employed but it only materially weakens the resisting power of the offended party

Intoxication is the means deliberately employed by the offender to weaken the defense of the offended party. *If this was the very means employed, the circumstance may be treachery and not abuse of superior strength or means to weaken the defense.*

There must be evidenced on how the crime was committed. It is not enough to show that the victim sustained treacherous wound. It must be shown that the victim was totally defenseless.

Suddenness of the attack does not by itself constitute treachery in the absence of evidence that the manner of the attack was consciously adopted by the offender to render the offended party defenseless (*People v. Ilagan, 191 SCRA 643*).

Even if the person killed is different from the intended victim, treachery must be considered against the offender because he is responsible either for the intended victim or the actual victim.

For treachery to be appreciated however, the circumstance must be present at the inception of the attack and if absent, and the attack is continuous, treachery at a subsequent stage is not to be considered. (*People*

vs. Escoto, 244 SCRA 382). However, if there is a break in the continuity of the aggression, it is not necessary that treachery be present in the beginning of the assault; it is sufficient that when the fatal blow was inflicted, there was treachery. (*U.S. vs. Balagtas, 19 Phil. 164*)

17. That the means be employed or circumstances brought about which add IGNOMINY to the natural effects of the acts

- **IGNOMINY** – is a circumstance pertaining to the moral order, which adds disgrace and obloquy to the material injury caused by the crime

Applicable to crimes against chastity (rape included), less serious physical injuries, light or grave coercion and murder

- **Requisites:**

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

b. The circumstance made the crime more humiliating and shameful for the victim

- *Examples:* accused embraced and kissed the offended party not out of lust but out of anger in front of many people, raped in front of the husband, raped successively by five men
- tend to make the effects of the crime more humiliating
- Ignominy not present where the victim was already dead when such acts were committed against his body or person

Distinction between ignominy and cruelty

Ignominy shocks the moral conscience of man while *cruelty* is physical. *Ignominy* refers to the moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive. *Cruelty* pertains to physical suffering of the victim so the victim has to be alive. In plain language, *ignominy is adding insult to injury*.

Cruelty and ignominy are circumstances brought about which are not necessary in the commission of the crime.

18. That the crime be committed after an UNLAWFUL ENTRY

- **Unlawful entry** – when an entrance is effected by a way not intended for the purpose. Meant to effect entrance and NOT exit.
- *Why aggravating?* One who acts, not respecting the walls erected by men to guard their property and provide for their personal safety, shows greater perversity, a greater audacity and hence the law punishes him with more severity
- *Example:* Rapist gains entrance thru the window
- *Inherent in:* Trespass to dwelling, and robbery with force upon things.

Unlawful entry is inherent in the crime of robbery with force upon things but aggravating in the crime of robbery with violence against or intimidation of persons.

Where the escape was done through the window, the crime is not attended by this circumstance since there was no unlawful entry.

19. That as a means to the commission of the crime, A WALL, ROOF, DOOR OR WINDOW BE BROKEN

- **Requisites:**
 - a. *A wall, roof, window, or door was broken*
 - b. *They were broken to effect entrance*
- Applicable only if such acts were done by the offender to effect entrance.

The breaking of the parts of the house must be made as a means to commit the offense. So, if A entered the door of his neighbor after killing him, escaped by breaking the jalousies of the window or the door, this aggravating circumstance is absent.

The basis of this aggravating circumstance refers to means and ways employed to commit the crime. It is not necessary that the offender should have entered the building because the phrase "as a means to the commission of the crime" does not require entry to the building. It is also inherent in the crime of robbery with force upon things.

- ***Breaking is lawful in the following instances:***
 - a. an officer in order to make an arrest may break open a door or window of any building in which the person to be arrested is or is reasonably believed to be;
 - b. an officer if refused admittance may break open any door or window to execute the search warrant or liberate himself,

20. That the crime be committed (1) with the AID OF PERSONS UNDER 15 YEARS of age, or (2) by MEANS OF MOTOR VEHICLES, airships or other similar means.

- ***Reason for #1:*** to repress, so far as possible, the frequent practice resorted to by professional criminals to avail themselves of minors taking advantage of their responsibility (remember that minors are given leniency when they commit a crime)

The minors here could be accessories, accomplices or principals who aided the accused in the commission of the crime.

Example: Juan instructed a 14-year old to climb up the fence and open the gate for him so that he may rob the house

- ***Reason for #2:*** to counteract the great facilities found by modern criminals in said means to commit crime and flee and abscond once the same is committed.
- *Necessary that the motor vehicle be an important tool to the consummation of the crime (bicycles not included)*

Example: Juan and Pedro, in committing theft, used a truck to haul the appliances from the mansion.

This circumstance is aggravating only when used in the commission of the offense. If motor vehicle is used only in the escape of the offender, motor vehicle is not aggravating. To be aggravating, it must have been used to facilitate the commission of the crime.

The motor vehicle must have been sought by the offender to facilitate the commission of the crime.

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

- **CRUELTY:** when the culprit enjoys and delights in making his victim suffer slowly and gradually, causing him unnecessary physical pain in the consummation of the criminal act. Cruelty cannot be presumed nor merely inferred from the body of the deceased. Has to be proven.
 - a. mere plurality of words do not show cruelty
 - b. no cruelty when the other wrong was done after the victim was dead
- **Requisites:**
 - a. *that the injury caused be deliberately increased by causing other wrong*
 - b. *that the other wrong be unnecessary for the execution of the purpose of the offender*

For cruelty to exist as an aggravating circumstance, there must be evidence showing that the accused inflicted the alleged cruel wounds slowly and gradually and that he is delighted seeing the victim suffer in pain. In the absence of evidence to this effect, there is no cruelty.

There is cruelty when the offender is deliberately and inhumanly augmented the suffering of the victim.

The essence of cruelty is that the culprit finds delight in prolonging the suffering of the victim.

IGNOMINY	CRUELTY
Moral suffering – subjected to humiliation	Physical suffering

OTHER AGRAVATING CIRCUMSTANCES:

Organized or syndicated crime group

In the same amendment to Article 62 of the Revised Penal Code, paragraphs were added which provide that the maximum penalty shall be imposed if the offense was committed by any person who belongs to an organized or syndicated crime group.

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

With this provision, the circumstance of an organized or syndicated crime group having committed the crime has been added in the Code as a special aggravating circumstance. The circumstance being special or qualifying, it must be alleged in the information and proved during the trial. Otherwise, if not alleged in the information, even though proven during the trial, the court cannot validly consider the circumstances because it is not among those enumerated under Article 14 of the Code as aggravating. It is noteworthy, however, that there is an organized or syndicated group even when only two persons collaborated, confederated, or mutually helped one another in the commission of a crime, which acts are inherent in a conspiracy. Where therefore, conspiracy in the commission of the crime is alleged in the information, the allegation may be considered as procedurally sufficient to warrant receiving evidence on the matter during trial and consequently, the said special aggravating circumstance can be appreciated if proven.

Under the Influence of Dangerous Drugs

Sec. 17 of B.P. Blg. 179 promulgated on March 2, 1982 provides:

“The provision of any law to the contrary notwithstanding, when a crime is committed by an offender who is under the influence of dangerous drugs, such state shall be considered as qualifying aggravating circumstance.”

Use of Unlicensed Firearm

Although the circumstance that human life was destroyed with the use of an unlicensed firearm is not aggravating under Art. 14, RPC, it may still be taken into consideration to increase the penalty because of the explicit provisions of the Presidential Decree No. 1866 as amended by R.A. 8294. Section (1), 3rd par. of said law says that 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. Further, under Sec. 3 thereof, when a person commits any of the crimes defined in the Revised Penal Code or special laws with the use of explosives like pill box, motolov cocktail bombs, firebombs or other incendiary devices which result in the death of a person, such use shall be considered as an aggravating circumstance.

Art 15. ALTERNATIVE CIRCUMSTANCES. Their concept. — Alternative circumstances are those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and the other conditions attending its commission. They are the relationship, intoxication and the degree of instruction and education of the offender.

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

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

- **Alternative Circumstances** – those which must be taken into consideration as aggravating or mitigating according to the nature and effects of the crime and other conditions attending its commission.

Use only the term alternative circumstance for as long as the particular circumstance is not involved in any case or problem. The moment it is given in a problem, do not use alternative circumstance, refer to it as aggravating or mitigating depending on whether the same is considered as such or the other.

- **They are:**
 - a. **relationship** – taken into consideration when offended party is the spouse, ascendant, descendant, legitimate, natural or adopted brother or sister, or relative by affinity in the same degree (2nd) of the offender

The relationship of step-daughter and step father is included (*Pp vs. Tan, 264 SCRA 425*), But not of uncle and niece. (*People vs. Cabresos, 244 SCRA 362*)

- b. **intoxication** – mitigating when the offender has committed a felony in the state of intoxication, if the same is not habitual or subsequent to the plan to commit the said felony. Aggravating if habitual or intentional

c. degree of instruction and education of the offender

Except for the circumstance of intoxication, the other circumstances in Article 15 may not be taken into account at all when the circumstance has no bearing on the crime committed. So the court will not consider this as aggravating or mitigating simply because the circumstance has no relevance to the crime that was committed.

It is only the circumstance of intoxication which if not mitigating, is automatically aggravating. But the other circumstances, even if they are present, but if they do not influence the crime, the court will not consider it at all. Relationship may not be considered at all, especially if it is not inherent

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in the commission of the crime. *Degree of instruction* also will not be considered if the crime is something which does not require an educated person to understand.

RELATIONSHIP

<i>MITIGATING CIRCUMSTANCE</i>	<i>AGGRAVATING CIRCUMSTANCE</i>
<i>In crimes against property</i> (robbery, usurpation, fraudulent insolvency, arson)	<i>In crimes against persons</i> – in cases where the offender, or when the offender and the offended party are relatives of the same level, as killing a brother, adopted brother or half-brother. <i>Always aggravating in crimes against chastity.</i>
<i>Exception: Art 332 of CC</i> – no criminal liability, civil liability only for the crimes of theft, swindling or malicious mischief committed or caused mutually by spouses, ascendants, descendants or relatives by affinity (also brothers, sisters, brothers-in-law or sisters-in-law if living together). <i>It becomes an EXEMPTING circumstance.</i> (1) In the case of an accessory who is related to the principal within the relationship prescribed in Article 20; (2) Also in Article 247, a spouse does not incur criminal liability for a crime of less serious physical injuries or serious physical injuries if this was inflicted after having surprised the offended spouse or paramour or mistress committing actual sexual intercourse.	<i>Sometimes, relationship is a qualifying and not only a generic aggravating circumstance.</i> In the crime of qualified seduction, the offended woman must be a virgin and less than 18 yrs old. But if the offender is a brother of the offended woman or an ascendant of the offended woman, regardless of whether the woman is of bad reputation, even if the woman is 60 years old or more, crime is qualified seduction. In such a case, relationship is qualifying.

- Relationship neither mitigating nor aggravating when relationship is an element of the offense.
Example: parricide, adultery, concubinage.

INTOXICATION

<i>MITIGATING CIRCUMSTANCE</i>	<i>AGGRAVATING CIRCUMSTANCE</i>
a) if intoxication is not habitual b) if intoxication is not subsequent to the plan to commit a felony	a) if intoxication is habitual – such habit must be actual and confirmed b) if its intentional (subsequent to the plan to commit a felony)

This circumstance is ipso facto mitigating, so that if the prosecution wants to deny the offender the benefit of this mitigation, they should prove that it is habitual and that it is intentional. *The moment it is shown to be habitual or intentional to the commission of the crime*, the same will immediately aggravate, regardless of the crime committed.

- Must show that he has taken such quantity so as to blur his reason and deprive him of a certain degree of control

Intoxication means that the offender's mental faculties are affected by drunkenness. It is not the quantity of alcohol taken by the offender that determines drunkenness. It is the effect of the alcohol taken by him that matters. If the alcohol taken by him blurs his reason and deprives him of self-control, then he is intoxicated.

Intoxication to be considered mitigating, requires that the offender has reached that degree of intoxication where he has no control of himself anymore. The idea is the offender, because of the intoxication is already acting under diminished self control. *It is not the quantity of alcoholic drink. Rather it is the effect of the alcohol upon the offender which shall be the basis of the mitigating circumstance.*

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The conduct of the offender, the manner of committing the crime, his behavior after committing the crime must show the behavior of a man who has already lost control of himself. Otherwise intoxication cannot legally be considered.

- A habitual drunkard is given to inebriety or the excessive use of intoxicating drinks.
- Habitual drunkenness must be shown to be an actual and confirmed habit of the offender, but not necessarily of daily occurrence.

DEGREE OF INSTRUCTION AND EDUCATION

<i>MITIGATING CIRCUMSTANCE</i>	<i>AGGRAVATING CIRCUMSTANCE</i>
<i>Low degree of instruction / education or the lack of it. Because he does not fully realize the consequences of his criminal act. Not just mere illiteracy but lack of intelligence.</i>	<i>High degree of instruction and education – offender avails himself of his learning in committing the offense.</i>

In appreciating these circumstances, the court considers not only literally but also lack of intelligence of the offender. **Illiteracy** refers to the ability of the individual to read and write and the ability to comprehend and discern the meaning of what he has read. *In order to be mitigating, there must be the concurrence or combination of illiteracy and lack of intelligence on the part of the offender.*

The nature of the crime committed must be considered in making such a conclusion.

The fact that the offender did not have schooling and is illiterate does not mitigate his liability if the crime committed is one which he inherently understands as wrong such as parricide.

- **Exceptions (not mitigating):**
 - a. crimes against property
 - b. crimes against chastity (rape included)
 - c. crime of treason

Art 16. Who are criminally liable. — The following are criminally liable for grave and less grave felonies:

1. Principals.
2. Accomplices.
3. Accessories.

The following are criminally liable for light felonies:

1. Principals
2. Accomplices.

This classification is true only under the Revised Penal Code and is not used under special laws, because the penalties under the latter are never graduated. Do not use the term principal when the crime committed is a violation of special law. Only use the term “offender.” Also only classify offenders when more than one took part in the commission of the crime to determine the proper penalty to be imposed. So, if only one person committed a crime, do not use principal. Use the “offender,” “culprit,” or the “accused.”

When a problem is encountered where there are several participants in the crime, the first thing to find out is if there is a conspiracy. If there is, as a general rule, the criminal liability of all will be the same, because the act of one is the act of all. However, if the participation of one is so insignificant, such that even without his cooperation, the crime would be committed just as well, then notwithstanding the existence of a conspiracy, such offender will be regarded only as an accomplice.

As to the liability of the participants in a felony, the Code takes into consideration whether the felony committed is grave, less grave, or light.

When the felony is grave, or less grave, all participants are criminally liable.

But where the felony is only light only the principal and the accomplice are liable. The accessory is not. But even the principal and the accomplice will not be liable if the felony committed is only light and the same is not consummated unless such felony is against persons or property

- **Accessories** – not liable for light felonies because the individual prejudice is so small that penal sanction is not necessary
- *Only natural persons can be criminals* as only they can act with malice or negligence and can be subsequently deprived of liberty. *Juridical persons are liable under special laws.*
- *Manager of a partnership* is liable even if there is no evidence of his direct participation in the crime.
- *Corporations* may be the injured party
- *General Rule:* Corpses and animals have no rights that may be injured.
- *Exception:* defamation of the dead is punishable when it blackens the memory of one who is dead.

Art 17. Principals. — The following are considered principals:

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

- **PRINCIPALS BY DIRECT PARTICIPATION**

The principal by direct participation must be at the scene of the crime, personally taking part in the execution of the same.

Requisites for 2 or more to be principals by direct participation:

- a. participated in the criminal resolution (conspiracy)
- b. carried out their plan and personally took part in its execution by acts which directly tended to the same end

- **Conspiracy** – Is unity of purpose and intention.

To be a party to a conspiracy, one must have the intention to participate in the transaction with a view to further the common design and purpose. Mere knowledge, acquiescence, or approval of the act is not enough. When there is no conspiracy in the commission of the crime, each of the offenders is liable only by the acts performed by him.

Establishment of Conspiracy

- a. proven by overt act
- b. Not mere knowledge or approval
- c. It is not necessary that there be formal agreement.
- d. Must prove beyond reasonable doubt
- e. Conspiracy is implied when the accused had a common purpose and were united in execution.
- f. *Unity of purpose and intention in the commission of the crime may be shown in the following cases:*

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1. Spontaneous agreement at the moment of the commission of the crime
 2. Active Cooperation by all the offenders in the perpetration of the crime
 3. Contributing by positive acts to the realization of a common criminal intent
 4. Presence during the commission of the crime by a band and lending moral support thereto.
- g. While conspiracy may be implied from the circumstances attending the commission of the crime, it is nevertheless a rule that conspiracy must be established by positive and conclusive evidence.

Where the accused conspired with three (3) co-accused to kill the two (2) victims and the role assigned to him was to kill one of the victims which he did, he is a principal by direct participation in the two (2) murders.

- Conspirator not liable for the crimes of the other which is not the object of the conspiracy or is not a logical or necessary consequence thereof

A co-conspirator who committed an act substantially different from the crime conspired upon is solely liable for the crime committed by him. The other members of the conspiracy will not be liable for the crime. (*Pp vs. Dela Cerna, L-20911, Oct. 20, 1979*)

A conspirator is liable for another crime which is the necessary and logical consequence of the conspiracy.

A person in conspiracy with others, who had desisted before the crime was committed by the others, is not criminally liable. (*Pp vs. Dalmacio Timbol, G. R. Nos. L-47471-47473, Aug. 4, 1944*)

When there is a conspiracy in the commission of the crime, it is not necessary to ascertain the specific act of each conspirator. (*Pp vs. Fernandez, G. R. No. 62116, March 22, 1990, 183 SCRA*)

- **Multiple rape** – each rapist is liable for another's crime because each cooperated in the commission of the rapes perpetrated by the others
- **Exception:** *in the crime of murder with treachery* – all the offenders must at least know that there will be treachery in executing the crime or cooperate therein.

Example: Juan and Pedro conspired to kill Tomas without the previous plan of treachery. In the crime scene, Juan used treachery in the presence of Pedro and Pedro knew such. Both are liable for murder. But if Pedro stayed by the gate while Juan alone killed Tomas with treachery, so that Pedro didn't know how it was carried out, Juan is liable for murder while Pedro for homicide.

- *No such thing as conspiracy to commit an offense through negligence.* However, special laws may make one a co-principal.
- *Example: Under the Pure Food and Drug Act,* a storeowner is liable for the act of his employees of selling adulterated coffee, although he didn't know that coffee was being sold.
- Conspiracy is negated by the acquittal of co-defendant.
- **That the culprits “carried out the plan and personally took part in the execution, by acts which directly tended to the same end”:**
 - a. The principals by direct participation must be at the scene of the crime, personally taking part,
 - b. One serving as guard pursuant to the conspiracy is a principal direct participation.

- *If the second element is missing, those who did not participate in the commission of the acts of execution cannot be held criminally liable, unless the crime agreed to be committed is treason, sedition, or rebellion.*

- **PRINCIPALS BY INDUCTION (INDUCEMENT)**

- a. *“Those who directly force or induce others to commit it”*

- b. *Principal by induction liable only when principal by direct participation committed the act induced*

Two ways of becoming a principal by inducement. The first one is by directly forcing another to commit the crime and the second is by directly inducing another to commit the crime.

Under Art. 12, there are *two ways of forcing another to commit a crime: by using irresistible force and by using uncontrollable fear*. In these cases, conspiracy is not considered because only one person is criminally liable – the person who directly forces another to commit a crime. The one forced to perform the act or the material executor is not criminally liable as he is exempt from criminal liability according to Art. 12.

- c. **Requisites:**

1. *inducement be made directly with the intention of procuring the commission of the crime*
2. *such inducement be the determining cause of the commission of the crime by the material executor*

Even if the inducement be directly made, with the inducer insistent and determined to procure the commission of the crime, he still cannot be classified as principal by induction if the inducement is not the determining cause for committing the crime. Thus, if the actor has reason of his own to commit the offense, there can be no principal by induction.

- d. **Forms of Inducements**

1. By Price, reward or promise
 1. By irresistible force or uncontrollable fear

Imprudent advice does not constitute sufficient inducement

Mere suggestions, or a thoughtless expression or a chance word spoken without any intention or expectation that it would produce the result cannot hold the utterer liable as principal by inducement.

Concept of the inducement – *one strong enough that the person induced could hardly resist. This is tantamount to an irresistible force compelling the person induced to carry out the execution of the crime.* Ill advised language is not enough unless he who made such remark or advice is a co-conspirator in the crime committed.

It is necessary that the inducement be the determining cause of the commission of the crime by the principal by direct participation, that is, without such inducement, the crime would no have been committed. If the principal by direct participation has personal reasons to commit just the same even if no inducement was made on him by another, there can be no principal by inducement.

- d. **Requisites for words of command to be considered inducement:**

1. *Commander has the intention of procuring the commission of the crime*
2. *Commander has ascendancy or influence*

3. *Words used be so direct, so efficacious, so powerful*

4. *Command be uttered prior to the commission*

5. *Executor had no personal reason*

It is also important to note that the words of inducement must be made prior to the commission of the crime. If uttered while the crime was being committed or after the crime was committed, inducement would no longer be a matter of concern. (*Pp vs. Castillo, G. R. No. L-192388, July 26, 1966*)

It is necessary that one uttering the words of command must have the intention of procuring commission of the crime and must have ascendancy or influence over the person acting. Such words used must be direct, so efficacious and so powerful as to amount to physical or moral coercion, that the words of command must be uttered prior to the commission of the crime and that the material executor of the crime must have no personal reason of his own to commit the crime. (*Pp vs. Agapinoy, G. R. 77776, June 27, 1990*)

- e. Words uttered in the heat of anger and in the nature of the command that had to be obeyed do not make one an inductor.

INDUCTOR	PROPOSES TO COMMIT A FELONY
Induce others	Same
Liable only when the crime is executed	Punishable at once when proposes to commit rebellion or treason. The person to whom one proposed should not commit the crime, otherwise the latter becomes an inductor
Covers any crime	Covers only treason and rebellion

- *Effects of Acquittal of Principal by direct participation on liability of principal by inducement*

- a. Conspiracy is negated by the acquittal of the co-defendant.
- b. *One can not be held guilty of instigating the commission of the crime without first showing that the crime has been actually committed by another.* But if the one charged as principal by direct participation be acquitted because he acted without criminal intent or malice, it is not a ground for the acquittal of the principal by inducement.

- **PRINCIPALS BY INDISPENSABLE COOPERATION**

- a. *“Those who cooperate in the commission of the offense by another act without which it would not have been accomplished”*

Principals by Indispensable Cooperation are those who cooperate in the commission of the offense by another act without which it would not have been accomplished. Like in the case of Principal by Inducement, it presupposes the existence of the principal by direct participation otherwise with whom shall he cooperate with indispensably?

- b. **Requisites:**

1. *Participation in the criminal resolution*
2. *Cooperation through another act (includes negligence)*

The offender in this case must have knowledge of the criminal designs of the principal by direct participation. Thereafter, he cooperates in the commission

of the offense by an act without which the crime would not have been committed.

- *There is collective criminal responsibility* when the offenders are criminally liable in the same manner and to the same extent. The penalty is the same for all.
- *There is individual criminal responsibility* when there is no conspiracy.

The requisites for one to come under the ambit of paragraph 3 requires the participation of the offender in the criminal resolution. The participation must be before the commission of the crime charged. He should cooperate in the commission of the offense by performing another act by without which the offense would not have been committed. The act of the principal by indispensable cooperation should not be the act that constitutes the execution of the crime. It must be by another act.

Principal by indispensable cooperation distinguished from an accomplice

The point is not just on participation but on the importance of participation in committing the crime. The basis is the importance of the cooperation to the consummation of the crime. *If the crime could hardly be committed without such cooperation, then such cooperation would bring about a principal.* But if the cooperation merely facilitated or hastened the consummation of the crime, this would make the cooperator merely an accomplice.

Where both accused conspired and confederated to commit rape, and one had sex with the offended party while the other was holding her hands, and thereafter the latter was the one who raped the victim, both are principals by direct participation and by indispensable cooperation in the two (2) crimes of rape committed. (*People vs. Fernandez, 183 SCRA 511*)

Where A, a municipal treasurer, conspired with B for the latter to present a false receipt and which receipt was the basis of the reimbursement approved by A, and both thereafter shared the proceeds, A is the principal by direct participation and B by indispensable cooperation in the crime of Malversation.

Art. 18. *Accomplices.* — Accomplices are those persons who, not being included in Art. 17, cooperate in the execution of the offense by previous or simultaneous acts.

- **Requisites:**
 - a. *there be a community of design (principal originates the design, accomplice only concurs)*
 - b. *he cooperates in the execution by previous or simultaneous acts, intending to give material and moral aid (cooperation must be knowingly done, it must also be necessary and not indispensable)*
 - c. *There be a relation between the acts of the principal and the alleged accomplice*
- *Examples:* a) Juan was choking Pedro. Then Tomas ran up and hit Pedro with a bamboo stick. Juan continued to choke Pedro until he was dead. Tomas is only an accomplice because the fatal blow came from Juan.
- b) Lending a dagger to a killer, knowing the latter's purpose.
- An accomplice has knowledge of the criminal design of the principal and all he does is concur with his purpose.

The accomplice does not conspire with the principal although he cooperated in the execution of the criminal act.

- There must be a relation between the acts done by the principal and those attributed to the person charged as an accomplice
- *In homicide or murder*, the accomplice must not have inflicted the mortal wound.

Art. 19. Accessories. — Accessories are those who, having knowledge of the commission of the crime, and without having participated therein, either as principals or accomplices, take part subsequent to its commission in any of the following manners:

1. By profiting themselves or assisting the offender to profit by the effects of the crime.

2. By concealing or destroying the body of the crime, or the effects or instruments thereof, in order to prevent its discovery.

3. By harboring, concealing, or assisting in the escape of the principals of the crime, provided the accessory acts with abuse of his public functions or whenever the author of the crime is guilty of treason, parricide, murder, or an attempt to take the life of the Chief Executive, or is known to be habitually guilty of some other crime.

To be an accessory to a crime, one must learn or must have knowledge of the same after its commission. The crime must have been consummated. His participation must take place subsequent to such knowledge and in the manner provided under Article 49.

All the above-mentioned acts are performed by the accessory after the commission of the crime. An accessory neither participates in the criminal design nor cooperates in the commission of the crime. That is the reason why he is sometimes called an **accessory after the fact**.

The crime committed must either be a less grave or grave felony because if it is only a light felony, no criminal liability is incurred by the accessory because of Article 7.

- **Example of Par 1:** person received and used property from another, knowing it was stolen

One can be an accessory not only by profiting from the effects of the crime but also by assisting the offender to profit from the effects of the crime.

The accessory however should not take the property without the consent of the principal or accomplice in possession of the same, otherwise he is a principal in the crime of theft since a stolen property can also be subject of theft or robbery.

- **Example of Par 2:** placing a weapon in the hand of the dead who was unlawfully killed to plant evidence, or burying the deceased who was killed by the principals

Destroying the corpus delicti

The body of the crime however does not only mean the body of the person killed. This phrase refers to CORPPUS DELICTI – that is, the body or the substance of the offense (*People vs. Bantagan, 54 Phil. 841*). Corpus delicti means the fact that a crime has actually been committed. (*People vs. Madlangbayan, 94 SCRA 685*)

Codal and Notes in CRIMINAL LAW BOOK I by RENE CALLANTA
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When the crime is robbery or theft, with respect to the second involvement of an accessory, do not overlook the purpose which must be to prevent discovery of the crime.

The corpus delicti is not the body of the person who is killed, even if the corpse is not recovered, as long as that killing is established beyond reasonable doubt, criminal liability will arise and if there is someone who destroys the corpus delicti to prevent discovery, he becomes an accessory.

While the body of the victim is a part of the term *corpus delicti* by itself. The body of the crime may refer to the instrument used in the commission of the crime such as knife, poison, gun or any material evidence relevant to prove or establish the commission of the crime.

Example: Where the wife misled the authorities informing them that the person who killed her husband was a thief who has fled, when in truth, the killer was her paramour, the wife is liable as an accessory for concealing the body of the crime.

- **Example of Par 3:** a) public officers who harbor, conceal or assist in the escape of the principal of any crime (not light felony) with abuse of his public functions, b) private persons who harbor, conceal or assist in the escape of the author of the crime – guilty of treason, parricide, murder or an attempt against the life of the President, or who is known to be habitually guilty of some crime.

Harboring or concealing an offender

*In the case of a **public officer**, the crime committed by the principal is immaterial. Such officer becomes an accessory by the mere fact that he helped the principal to escape by harboring or concealing, making use of his public function and thus abusing the same.*

*On the other hand, in case of a **civilian**, the mere fact that he harbored concealed or assisted the principal to escape does not ipso facto make him an accessory. The law requires that the principal must have committed the crime of **treason, parricide, murder or attempt on the life of the Chief Executive**. If this is not the crime, the civilian does not become an accessory unless the principal is known to be habitually guilty of some other crime.*

Even if the crime committed by the principal is treason, or murder or parricide or attempt on the life of the Chief Executive, the accessory cannot be held criminally liable without the principal being found guilty of any such crime. Otherwise the effect would be that the accessory merely harbored or assisted in the escape of an innocent man, if the principal is acquitted of the charges.

Illustration:

Crime committed is kidnapping for ransom. Principal was being chased by soldiers. His aunt hid him in the ceiling of her house and aunt denied to soldiers that her nephew had ever gone there. When the soldiers left, the aunt even gave money to her nephew to go to the province. Is aunt criminally liable? No. Article 20 does not include an auntie. However, this is not the reason. The reason is because one who is not a public officer and who assists an offender to escape or otherwise harbors, or conceals such offender, the crime committed by the principal must be either treason, parricide murder or attempt on the life of the Chief executive or the principal is known to be habitually guilty of some other crime.

The crime committed by the principal is determinative of the liability of the accessory who harbors, conceals knowing that the crime is committed. If the person is a public officer, the nature of the crime is immaterial. What is material is that he used his public function in assisting escape.

However, although under paragraph 3 of Article 19 when it comes to a civilian, the law specifies the crimes that should be committed, yet there is a special law which punishes the same act and it does not specify a particular crime. **Presidential Decree No. 1829**, which penalizes obstruction of apprehension and prosecution of criminal offenders, effective January 16, 1981, punishes acts commonly referred to as "**obstructions of justice**". This Decree penalizes under **Section 1(c)** thereof, the act, inter alia, of
 "(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 in order to prevent his arrest, prosecution and conviction."

Here, *there is no specification of the crime to be committed by the offender for criminal liability to be incurred for harboring, concealing, or facilitating the escape of the offender, and the offender need not be the principal – unlike paragraph 3, Article 19 of the Code.* The subject acts may not bring about criminal liability under the Code, but under this decree. Such an offender if violating Presidential Decree No. 1829 is no longer an accessory. He is simply an offender without regard to the crime committed by the person assisted to escape. So in the problem, the standard of the Revised Penal Code, aunt is not criminally liable because crime is kidnapping, but under Presidential Decree No. 1829, the aunt is criminally liable but not as an accessory.

The term “or is ***known to be habitually guilty of some other crimes***” must be understood in ordinary concept. Habituality in law means three times or more. It can refer to any crime wherein the accused was convicted for three times and such fact is known to the private individual who assisted the principal in his escape.

- **General Rule:** Principal acquitted, Accessory also acquitted
- **Exception:** when the crime was in fact committed but the principal is covered by exempting circumstances.

Example: Minor stole a ring and Juan, knowing it was stolen, bought it. Minor is exempt. Juan liable as accessory

- *Trial of accessory may proceed without awaiting the result of the separate charge against the principal* because the criminal responsibilities are distinct from each other

Even if the principal is convicted, if the evidence presented against a supposed accomplice or a supposed accessory does not meet the required proof beyond reasonable doubt, then said accused will be acquitted. *So the criminal liability of an accomplice or accessory does not depend on the criminal liability of the principal but depends on the quantum of evidence.* But if the evidence shows that the act done does not constitute a crime and the principal is acquitted, then the supposed accomplice and accessory should also be acquitted. If there is no crime, then there is no criminal liability, whether principal, accomplice, or accessory.

- **Liability of the accessory** – the responsibility of the accessory is subordinate to that of a principal in a crime because the accessory’s participation therein is subsequent to its commission, and his guilt is directly related to the principal. *If the principal was acquitted by an exempting circumstance the accessory may still be held liable.*

But not Presidential Decree No. 1829. This special law does not require that there be prior conviction. It is a malum prohibitum, no need for guilt, or knowledge of the crime.

Two situations where accessories are not criminally liable:

- (1) *When the felony committed is a light felony;*
- (2) *When the accessory is related to the principal as spouse, or as an ascendant, or descendant or as brother or sister whether legitimate, natural or adopted or where the accessory is a relative by affinity within the same degree, unless the accessory himself profited from the effects or proceeds of the crime or assisted the offender to profit therefrom.*

- **Difference of accessory from principal and accomplice:**
 - a. Accessory does not take direct part or cooperate in, or induce the commission of the crime
 - b. Accessory does not cooperate in the commission of the offense by acts either prior thereto or simultaneous therewith
 - c. Participation of the accessory in all cases always takes place after the commission of the crime
 - d. Takes part in the crime through his knowledge of the commission of the offense.

One cannot be an accessory unless he knew of the commission of the crime. One must not have participated in the commission of the crime. The accessory comes into the picture when the crime is already consummated. Anyone who participated before the consummation of the crime is either a principal or an accomplice. He cannot be an accessory.

Accessory as a fence

where the crime committed by the principal was robbery or theft, such participation of an accessory brings about criminal liability under *Presidential Decree No. 1612 (Anti-Fencing Law)*. One who knowingly profits or assists the principal to profit by the effects of robbery or theft is not just an accessory to the crime, but principally liable for fencing under Presidential Decree No. 1612.

Any person who, with intent to gain, acquires and/or sell, possesses, keeps or in any manner deals with any article of value which he knows or should be known to him to be the proceeds of robbery or theft is considered a “fence” and incurs criminal liability for “fencing” under said decree. *The penalty is higher than that of a mere accessory to the crime of robbery or theft.*

Likewise, the participation of one who conceals the effects of robbery or theft gives rise to criminal liability for “fencing”, not simply of an accessory under paragraph 2 of Article 19 of the Code. *Mere possession of any article of value which has been the subject of robbery or theft brings about the prima facie presumption of “fencing”.*

In both laws, Presidential Decree No. 1612 and the Revised Penal Code, *the same act is the basis of liability and you cannot punish a person twice for the same act as that would go against double jeopardy.*

The crimes of robbery and fencing are clearly two distinct offenses. The law on fencing does not require the accused to have participated in the criminal design to commit, or to have been in any wise involved in the commission of the crime or robbery or theft made to depend on an act of fencing in order that it can be consummated. True, the object property in fencing must have been previously taken by means of either robbery or theft but the place where the robbery or theft occurs is inconsequential.

Acquiring the effects of piracy or brigandage

The act of knowingly acquiring or receiving property which is the effect or the proceeds of a crime generally brings about criminal liability of an accessory under Article 19, paragraph 1 of the Revised Penal Code. *But if the crime was piracy of brigandage under Presidential Decree No. 533 (Anti-piracy and Anti-Highway Robbery Law of 1974), said act constitutes the crime of abetting piracy or abetting brigandage as the case may be, although the penalty is that for an accomplice, not just an accessory, to the piracy or brigandage. To this end, Section 4 of Presidential Decree No. 532 provides that any person who knowingly and in any manner... acquires or receives property taken by such pirates or brigands or in any manner derives benefit therefrom... shall be considered as an accomplice of the principal offenders and be punished in accordance with the Rules prescribed by the Revised Penal Code.*

Art. 20. Accessories who are exempt from criminal liability. — The penalties prescribed for accessories shall not be imposed upon those who are such with respect to their spouses, ascendants, descendants, legitimate, natural, and adopted brothers and sisters, or relatives by affinity within the same degrees, with the single exception of accessories falling within the provisions of paragraph 1 of the next preceding article.

- **Basis:** Ties of blood and the preservation of the cleanliness of one’s name which compels one to conceal crimes committed by relatives so near as those mentioned.
- Nephew and Niece not included
- *Accessory not exempt* when helped a relative-principal by profiting from the effects of the crime, or assisted the offender to profit from the effects of the crime.
- Only accessories covered by par 2 and 3 are exempted.

- Public officer who helped his guilty brother escape does not incur criminal liability as ties of blood constitutes a more powerful incentive than the call of duty.

PENALTIES

- **PENALTY** – suffering inflicted by the State for the transgression of a law.

Five (5) theories that justify the imposition of penalty:

- a. **Prevention** – The State must punish the criminal to prevent or suppress the danger to the State arising from the criminal acts of the offender;
- b. **Self-defense** – The State has the right to punish the criminal as a measure of self-defense so as to protect society from the threat and wrong inflicted by the criminal;
- c. **Reformation** – The object of punishment in criminal cases is to correct and reform the offender;
- d. **Exemplarity** – The criminal is punished to serve as an example to deter others from committing crimes;
- e. **Justice** – That crime must be punished by the State as an act retributive justice, a vindication of absolute right and moral as violated by the criminal.

Imposition of a penalty has a three-fold purpose:

- a. **Retribution or expiation** – The penalty is commensurate with the gravity of the offense.
 - b. **Correction or reformation** – rules which regulate the execution of penalties consisting of deprivation of liberty
 - c. **Social defense** – as manifested by the inflexibilities and severity in the imposition of the penalty to recidivists and habitual delinquents.
- **Juridical Conditions of Penalty**
 - a. *Must be productive of suffering* – limited by the integrity of human personality
 - b. *Must be proportionate to the crime*
 - c. *Must be personal* – imposed only upon the criminal
 - d. *Must be legal* – according to a judgment of fact and law
 - e. *Must be equal* – applies to everyone regardless of the circumstance
 - f. *Must be correctional* – to rehabilitate the offender

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

- Guarantees that no act of a citizen will be considered criminal unless the State has made it so by law and provided a penalty
- **Except:** When the penalty is favorable to the criminal

By reason of Art. 21, an act or omission cannot be punished by the State if at the time it was committed there was no law prohibiting it. The

rule is that a man cannot be expected to obey an order that was not made known to him.

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

- **General Rule:** Criminal laws are given prospective effects
- **Exception:** Give retroactive effect when favorable to the accused (not a habitual delinquent). Ex. Special law made the penalty less severe – but must refer to the same deed or omission penalized by the former statute
- New law may provide that its provisions not be applied to cases already filed in court at the time of the approval of such law.
- *The favorable retroactive effect of a new law may find the defendant in one of the 3 situations*
 - a. crime has been committed and the prosecution begins
 - b. sentence has been passed but service has not begun
 - c. sentence is being carried out.
- **Habitual criminal** (person who within the pd of 10 years from date of release or last conviction of the crimes of serious or less serious physical injuries, robbery, theft, estafa or falsification, he is found guilty of any said crimes a third time or oftener) *is NOT entitled to the benefit of the provisions of the new favorable law.*
- *Civil liabilities not covered by Art 22* because rights of offended persons are not within the gift of arbitrary disposal of the State.
- *But new law increasing civil liability cannot be given retroactive effect.*
- Retroactivity applicable also to special laws
- The right to punish offenses committed under an old penal law is not extinguished if the offenses are still punished in the repealing penal law. However, if by re-enactment of the provisions of the former law, the repeal is by implication and there is a saving clause, criminal liability under the repealed law subsists.
- *No retroactive effect of penal laws as regards jurisdiction of the court.* Jurisdiction of the court is determined by the law in force at the time of the institution of the action, not at the time of the commission of the crime.
- Jurisdiction of courts in criminal cases is determined by the allegations of the complaint or information, and not by the findings the court may make after trial.
- **When a law is ex post facto**
 - a Makes criminal an act done before the passage of the law and which was innocent when done, and punishes such an act.
 - b Aggravates the crime or makes it greater than it was when committed.
 - c Changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.
 - d Alters the legal rules of evidence and authorizes conviction upon less or different testimony than the law required at the time of the commission of the crime.

- e Assuming to regulate civil rights and remedies only, in effect imposes penalty or deprivation of a right for something which when done was lawful.
 - f Deprives a person accused of a crime some lawful protection to which he has become entitled, such as the protection of a former conviction or acquittal or a proclamation of amnesty.
- **Bill of Attainder** – a legislative act which inflicts punishment without trial. Its essence is the substitution of a legislative for a judicial determination of guilt.

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

- *Even if injured party already pardoned the offender* – fiscal can still prosecute. Not even considered a ground for dismissal of the information. **Exception: Art 344** - crimes of seduction, abduction, rape or acts of lasciviousness – pardon must be expressed.

A pardon given by the offended party does not extinguish criminal action because such pardon by the offended party is not a ground for dismissal of the complaint or information. A crime committed is an offense against the State. In criminal cases, the intervention of the aggrieved parties is limited to being witnesses for the prosecution, the offended party being the Republic of the Philippines.

- Only Chief Executive can pardon the offenders
- *Can't compromise criminal liability, only civil liability* – but it still shall not extinguish the public action for the imposition of the legal penalty.

Art. 2034 of the New Civil Code provides: “there may be a compromise upon the civil liability arising from an offense; but such compromise shall not extinguish the public action for the imposition of the legal penalty.”

A contract stipulating for the renunciation of the right to prosecute an offense or waiving the criminal liability is void.

- Offended party in the crimes of adultery and concubinage can't institute criminal prosecution if he shall have consented or pardoned the offenders.
- *Pardon in adultery and concubinage may be implied* – continued inaction after learning of the offense. Must pardon both offenders.
- *The pardon afforded the offenders must come BEFORE the institution of the criminal proceedings.* Complaint for any of the above-mentioned crimes in Art 344 will still be prosecuted by the court on the ground that the pardon (basis for the motion to dismiss) was given after the filing of the complaint.
- The only act that extinguishes the penal action, after the institution of criminal action, is the *marriage between the offender and the offended party*
- *Pardon under Art 344 is only a bar to criminal prosecution.* It DOES NOT extinguish criminal liability. It is not one of the causes that totally extinguish criminal liability in Art 89.
- *Civil liability with regard to the interest of the injured party is extinguished by his express waiver* because personal injury may be repaired through indemnity anyway. State has no reason to insist on its payment.

- Waiver must be express.

Art. 24. *Measures of prevention or safety which are not considered penalties.* — The following shall not be considered as penalties:

1. The arrest and temporary detention of accused persons, as well as their detention by reason of insanity or imbecility, or illness requiring their confinement in a hospital.

2. The commitment of a minor to any of the institutions mentioned in Article 80 and for the purposes specified therein.

3. Suspension from the employment of public office during the trial or in order to institute proceedings.

4. Fines and other corrective measures which, in the exercise of their administrative disciplinary powers, superior officials may impose upon their subordinates.

5. Deprivation of rights and the reparations which the civil laws may establish in penal form.

- Par 1 refers to the “accused persons” who are detained “by reason of insanity or imbecility” *not an insane or imbecile who has not been arrested for a crime.*
- They are not considered penalties because they are *not imposed as a result of judicial proceedings.* Those in par 1, 3 and 4 are merely preventive measures before the conviction of offenders.
- *Commitment of a minor is not a penalty because it is not imposed by the court in a judgment.* The imposition of the sentence in such a case is suspended.
- Fines in par 4 are not imposed by the court because otherwise, they constitute a penalty

Correlating Article 24 with Article 29

Although under Article 24, the detention of a person accused of a crime while the case against him is being tried does not amount to a penalty, yet the law considers this as part of the imprisonment and generally deductible from the sentence.

When will this credit apply? *If the penalty imposed consists of a deprivation of liberty.* Not all who have undergone preventive imprisonment shall be given a credit

Under Article 24, preventive imprisonment of an accused who is not yet convicted is not a penalty. Yet Article 29, if ultimately the accused is convicted and the penalty imposed involves deprivation of liberty, provides that the period during which he had undergone preventive detention will be deducted from the sentence, unless he is one of those disqualified under the law.

So, if the accused has actually undergone preventive imprisonment, but if he has been convicted for two or more crimes whether he is a recidivist or not, or when he has been previously summoned but failed to surrender and so the court has to issue a warrant for his arrest, *whatever credit he is entitled to shall be forfeited.*

If the offender is not disqualified from the credit or deduction provided for in Article 29 of the Revised Penal Code, then the next thing to determine is whether he signed an undertaking to abide by the same rules and regulations governing convicts. *If he signed an undertaking to abide by the same rules and regulations governing convicts,* then it means that while he is suffering from preventive imprisonment, he is suffering like a convict, that is why the credit is full.

But if the offender did not sign an undertaking, then he will only be subjected to the rules and regulations governing detention prisoners. As such, he will only be given 80% or 4/5 of the period of his preventive detention.

Preventive imprisonment is the incarceration undergone by a person accused of a crime which is notailable, or he cannot afford to post bond. During the trial of his case, he is detained in jail. He is known as detention prisoner.

Subsidiary imprisonment, on the other hand, is the personal penalty prescribed by law in substitution of the payment of fine embodied in the decision when the same cannot be satisfied because of the culprit's insolvency. (*People vs. Jarumayan, 52 O.G. 248*)

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

PRINCIPAL PENALTIES

Capital punishment:

Death.

Afflictive penalties:

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

Correctional penalties:

Prision correccional,
Arresto mayor,
Suspension,
Destierro.

Light penalties:

Arresto menor,
Public censure.

Penalties common to the three preceding classes:

Fine, and
Bond to keep the peace.

ACCESSORY PENALTIES

Perpetual or temporary absolute disqualification,
Perpetual or temporary special disqualification,
Suspension from public office, the right to vote and be voted for, the profession or calling.

Civil interdiction,

Indemnification,

Forfeiture or confiscation of instruments and proceeds of the offense,

Payment of costs.

- **Classification of penalties:**

- a Principal
- b Accessory

Principal penalties are those expressly imposed by the court while **Accessory penalties** are those that are deemed included in the principal penalties imposed.

- **According to divisibility (principal)**
 - a divisible – those that have fixed duration and are divisible into 3 periods
 - b indivisible – no fixed duration (death, RP, perpetual or absolute disqualification)
- **According to subject matter**
 - a corporal – death
 - b deprivation of freedom – reclusion, prision, arresto
 - c restriction of freedom – destierro
 - d deprivation of rights – disqualification and suspension
 - e pecuniary – fine
- **According to gravity**
 - a capital
 - b afflictive
 - c correccional
 - d light
- *Public censure is a penalty, and being such, is not proper in acquittal. But a competent court, while acquitting an accused may, with unquestionable propriety express its disapproval or reprehension of those acts to avoid the impression that by acquitting the accused it approves or admires his conduct.*
- Permanent and temporary absolute and permanent and temporary special disqualification and suspension may be principal or accessory penalties because they are found in 2 general classes.

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

- *Fines are imposed either as alternative (Art 144 punishing disturbance of proceedings with arresto mayor or fine from 200 pesos to 1000 pesos) or single (fine of 200 to 6000 pesos)*
- *Penalty cannot be imposed in the alternative since it's the duty of the court to indicate the penalty imposed definitely and positively. Thus, the court cannot sentence the guilty person in a manner as such as "to pay fine of 1000 pesos, or to suffer an imprisonment of 2 years, and to pay the costs."*
- If the fine imposed by the law for the felony is exactly 200 pesos, it is a light felony.
- **Fines:**
 - a *Afflictive* – over 6000
 - b *Correctional* – 201 to 6000
 - c *Light* – 200 and less
- *Note: The classification applies if the fine is imposed as a single or alternative penalty. Hence, it does not apply if the fine imposed together with another penalty.*
- **Bond to keep the peace is by analogy:**
 - a *Afflictive* – over 6000
 - b *Correctional* – 201 to 6000

c *Light* – 200 and less

<i>Distinction between classification of Penalties in Art. 9 and Art. 26</i>	
Article 9	Article 26
Applicable in determining the prescriptive period of felonies	Applicable in determining the prescriptive period of penalties

DURATION AND EFFECT OF PENALTIES

Art. 27. *Reclusion perpetua.* — The penalty of reclusion perpetua shall be from twenty years and one day to forty years.

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

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

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

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

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

Bond to keep the peace. — The bond to keep the peace shall be required to cover such period of time as the court may determine.

- **3 fold rule:** *the maximum duration of the convict's sentence shall not be more than 3 times the length of time corresponding to the most severe of the penalties imposed upon him.*
- the maximum duration of the convict's sentence shall in no case exceed 40 years

Three-Fold Rule is to be given effect when the convict is already serving sentence in the penitentiary. It is the prison authority who will apply the Three-Fold Rule.

- Temporary disqualification and suspension, when imposed as accessory penalties, have different durations – they follow the duration of the principal penalty
- ***Destierro is imposed in the following circumstances:***
 - a serious physical injuries or death under exceptional circumstances (Art. 247)
 - b failure to give bond for good behavior (a person making threat may be required to give bond not to molest the person threatened, if not destierro)
 - c penalty for the concubine
 - d in cases where the reduction of the penalty by one or more degrees results in destierro

Destierro is a principal penalty. It is a punishment whereby a convict is vanished to a certain place and is prohibited from entering or coming near that place designated in the sentence, not less than 25 Kms.. However, the court cannot extend beyond 250 Kms. If the convict should enter the prohibited places, he commits the crime of evasion of service of sentence under Article 157. But if the convict himself would go further from which he is vanished by the court, there is no evasion of sentence because the 250-Km. limit is upon the authority of the court in vanishing the convict

- **Bond to keep the peace** is not specifically provided as a penalty for any felony and therefore cannot be imposed by the court. It is required in Art 284 and not to be given in cases involving other crimes.
- **Summary:**
 - a **Perpetual penalties (R.P.)** – (20 yrs 1day – 40yrs) after 30 years, can be pardoned, except when he is unworthy of pardon by reason of his conduct and some other serious cause, it won't exceed 40 years.
 - b **Reclusion Temporal** – 12 yrs and 1 day to 20 yrs
 - c **Prision Mayor and temporary disqualification** – 6 yrs and 1 day to 12 yrs; disqualification if accessory follows the duration of the principal penalty
 - d **Prision Correccional, suspension and destierro** – 6 mos and 1 day to 12 yrs; disqualification if accessory follows the duration of the principal penalty
 - e **Arresto Mayor** – 1 month and 1 day to 6 months
 - f **Arresto Menor** – 1 day to 30 days
 - g **Bond to keep the peace** – the period during which the bond shall be effective is discretionary to the court

Capital and Afflictive Penalties

	Death	Reclusion Perpetua	Reclusion Temporal	Prision Mayor
<i>Term of Imprisonment</i>	None	20 years and 1 day to 40 years	12 years and 1 day to 20 years	6 years and 1 day to 12 years
<i>Accessory Penalties</i>	<i>None, unless pardoned:</i> -Perpetual absolute disqualification -Civil interdiction for 30 years	-Civil Interdiction or during his sentence -Perpetual absolute disqualification	-Civil Interdiction or during his sentence -Perpetual absolute disqualification	-Temporary absolute disqualification -Perpetual special disqualification from the right of suffrage which the offender suffers although pardoned

Correctional and Light Penalties

	Prision Correccional	Arresto Mayor	Arresto Menor
<i>Imprisonment</i>	6 months and 1 day to 6 years	1 month and 1 day to 6 months	1 day to 30 days

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<i>Accessory Penalties</i>	-Suspension from public office -Suspension from the right to follow a profession or calling -Perpetual special disqualification on the right of suffrage	-Suspension of right to hold office -Suspension of the right of suffrage during the term of the sentence	-Suspension of right to hold office -Suspension of the right of suffrage during the term of the sentence
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Reclusion perpetua, despite its “defined duration” in R.A. 7659 – 20 years and one day to 40 years – is still to be classified as an indivisible penalty (*People vs. Lucas, 232 SCRA 537*), and should be imposed in its entire duration in accordance with Art. 63 of the Revised Penal Cde. (*People vs. Magallano, 266 SCRA 305*)

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

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

- **Director of Prisons/warden to compute based on Art 28:**
 - a *When the offender is in prison* – the duration of the temporary penalties (PAD, TAD, detention, suspension) is from the day on which the judgment of conviction becomes final.
 - b *When the offender is not in prison* – the duration of the penalty in deprivation of liberty is from the day that the offender is placed at the disposal of judicial authorities for the enforcement of the penalty
 - c *The duration of the other penalties* – the duration is from the day on which the offender commences to serve his sentence
- *Reason for rule (a)* – because under Art 24, the arrest and temporary detention of the accused is not considered a penalty
- *if in custody, the accused appealed*, the service of the sentence should commence from the date of the promulgation of the decision of the appellate court, not from the date of the judgment of the trial court was promulgated.
- service of one in prison begins only on the day the judgment of conviction becomes final.
- **In cases if temporary penalties**, if the offender is under detention, as when undergoing preventive imprisonment, rule (a) applies.
- *If not under detention* (released on bail) rule (c) applies
- *Offender under preventive imprisonment*, rule (c) applies not rule (a)
- The offender is entitled to a deduction of full-time or 4/5 of the time of his detention.

Art. 29. *Period of preventive imprisonment deducted from term of imprisonment.* — Offenders who have undergone preventive imprisonment shall be credited in the service of their sentence consisting of deprivation of liberty, with the full time during which they have undergone preventive

imprisonment, if the detention prisoner agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners, *except in the following cases:*

1. When they are recidivists or have been convicted previously twice or more times of any crime; and

2. When upon being summoned for the execution of their sentence they have failed to surrender voluntarily.

If the detention prisoner does not agree to abide by the same disciplinary rules imposed upon convicted prisoners, he shall be credited in the service of his sentence with four-fifths of the time during which he has undergone preventive imprisonment. *(As amended by Republic Act 6127, June 17, 1970).*

Whenever an accused has undergone preventive imprisonment for a period equal to or more than the possible maximum imprisonment of the offense charged to which he may be sentenced and his case is not yet terminated, he shall be released immediately without prejudice to the continuation of the trial thereof or the proceeding on appeal, if the same is under review. In case the maximum penalty to which the accused may be sentenced is destierro, he shall be released after thirty (30) days of preventive imprisonment. *(As amended by E.O. No. 214, July 10, 1988)*

- ***Accused undergoes preventive suspension if:***
 - a offense is non-bailable
 - b bailable but can't furnish bail
- the full time or 4/5 of the time during which the offenders have undergone preventive suspension shall be deducted from the penalty imposed
- *preventive imprisonment must also be considered in perpetual penalties.* Article does not make any distinction between temporal and perpetual penalties.
- Credit is given in the service of sentences "consisting of deprivation of liberty" (imprisonment and destierro). Thus, *persons who had undergone preventive imprisonment but the offense is punishable by a fine only would not be given credit.*
- *Destierro* is considered a "deprivation of liberty"
- If the *penalty imposed is arresto menor to destierro*, the accused who has been in prison for 30 days (arresto menor - 30 days) should be released because although the maximum penalty is destierro (6 mos 1 day to 6 yrs), the accused sentenced to such penalty does not serve it in prison.

The following offenders are not entitled to any deduction of the time of preventive imprisonment:

1. Recidivists or those previously convicted for two or more times of any crime.
 2. Those who, upon being summoned for the execution of their sentence, failed to surrender voluntarily.
- *Habitual Delinquents* not entitled to the full time or 4/5 credit of time under preventive imprisonment since he is necessarily a recidivist or has been convicted previously twice or more times of any crime.

- *Example:* X who was arrested for serious physical injuries, detained for 1 year and went out on bail but was later on found guilty. He was consequently summoned for the execution of the sentence, but having failed to appear, X will not be credited in the service of his sentence for serious physical injuries w/ one year or 4/5 of one year preventive imprisonment.

Art. 30. *Effects of the penalties of perpetual or temporary absolute disqualification.* — The penalties of perpetual or temporary absolute disqualification for public office shall produce the following effects:

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

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

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

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

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

- *The exclusion is a mere disqualification for protection and not for punishment* – the withholding of a privilege, not a denial of a right.
- *Perpetual absolute disqualification* is effective during the lifetime of the convict and even after the service of the sentence.
- *Temporary absolute disqualification* is effective during the term of sentence and is removed after the service of the same. *Exception:* (1) deprivation of the public office or employment; (2) loss of all rights to retirement pay or other pension for any office formerly held.
- **Effects of Perpetual and temporary absolute disqualification:**
 - a Deprivation of any public office or employment of offender
 - b Deprivation of the right to vote in any election or to be voted upon
 - c Loss of rights to retirement pay or pension
 - d All these effects last during the lifetime of the convict and even after the service of the sentence except as regards paragraphs 2 and 3 of the above in connection with Temporary Absolute Disqualification.

Art. 31. *Effect of the penalties of perpetual or temporary special disqualification.* — The penalties of perpetual or temporal special disqualification for public office, profession or calling shall produce the following effects:

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

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

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

- Temporary disqualification if imposed as an accessory penalty, its duration is that of the principal penalty
- **Effects of Perpetual and Temporary Special Disqualification**
 - a. *For public office, profession, or calling*
 - 1. Deprivation of the office, employment, profession or calling affected
 - 2. Disqualification for holding similar offices or employment during the period of disqualification
 - b. *For the exercise of the right of suffrage*
 - 1. Deprivation of the right to vote or to be elected in an office.
 - 1. Cannot hold any public office during the period of disqualification.

Art. 33. *Effects of the penalties of suspension from any public office, profession or calling, or the right of suffrage.* — The suspension from public office, profession or calling, and the exercise of the right of suffrage shall disqualify the offender from holding such office or exercising such profession or calling or right of suffrage during the term of the sentence. The person suspended from holding public office shall not hold another having similar functions during the period of his suspension.

- **Effects:**
 - a Disqualification from holding such office or the exercise of such profession or right of suffrage during the term of the sentence.
 - b Cannot hold another office having similar functions during the period of suspension.

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

- **Effects:**
 - a. *Deprivation of the following rights:*
 - 1. Parental rights
 - 2. Guardianship over the ward
 - 3. Marital authority
 - 4. Right to manage property and to dispose of the same by acts inter vivos
 - b. *Civil Interdiction is an accessory penalty to the following principal penalties*
 - 1. If death penalty is commuted to life imprisonment
 - 2. Reclusion perpetua

3. Reclusion temporal

- He can dispose of such property by will or donation mortis causa

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

The court shall determine, according to its discretion, the period of duration of the bond.

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

- Bond to keep the peace is different from *bail bond* which is posted for the provisional release of a person arrested for or accused of a crime. *Bond to keep the peace or for good behavior* is imposed as a penalty in threats.

The legal effect of a failure to post a bond to keep the peace is imprisonment either for six months or 30 days, depending on whether the felony committed is grave or less grave on one hand, or it is light only on the other hand. *The legal effect of failure to post a bond for good behavior* is not imprisonment but destierro under Article 284.

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

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

- *Pardon by the President* does not restore the right to public office or suffrage except when both are expressly restored in the pardon. Nor does it exempt from civil liability/from payment of civil indemnity.
- **Limitations to President's power to pardon:**
 - a can be exercised only after final judgment
 - b does not extend to cases of impeachment
 - c does not extinguish civil liability – only criminal liability
- **General rule:** Pardon granted in general terms does not include accessory penalties.
- **Exceptions:**
 - a. *If the absolute pardon is granted after the term of imprisonment has expired*, it removes all that is left of the consequences of conviction. *However*, if the penalty is life imprisonment and after the service of 30 years, a pardon is granted, the pardon does not remove the accessory penalty of absolute perpetual disqualification
 - b. if the facts and circumstances of the case show that the purpose of the President is to precisely restore the rights i.e., granting absolute pardon after election to a

post (mayor) but before the date fixed by law for assuming office to enable him to assume the position in deference to the popular will

Pardon must be accepted

Pardon is an act of grace, proceeding from the Chief Executive, which exempts the individual upon whom it is bestowed from the punishment which the law inflicts for the crime he has committed. It is a private, though official, act of the Chief Executive delivered to the individual for whose benefit it is not intended. It is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. Until delivery, all that may have been done is a matter of intended favor, and the pardon may be cancelled to accord with the change of intention. If cancelled before acceptance, it has no effect.

Effects of Pardon

There are two kinds of pardon that may be extended by the President. The first one is known as ***conditional pardon***. This pardon contemplates of a situation wherein the offender is granted temporary liberty under certain conditions. If he violates the conditions of this pardon, he commits a crime known as *evasion of service of sentence*.

Then we have ***absolute pardon*** – when an absolute pardon is granted, it releases the offender from the punishment imposed by the court on him, so that in the eyes of the law, the offender is innocent as if he had never committed the offense. It removes the penalties and disabilities and restores him to all his civil rights. It makes him a new man and gives him a new credit and capacity.

Pardon relieves the offender from the consequences of an offense for which he has been convicted, that is, it abolishes or forgives the punishment, subject to exceptions mentioned in Art. 36.

- ***Pardon by the offended party*** – does not extinguish criminal liability, may include offended party waiving civil indemnity and it is done before the institution of the criminal prosecution and extended to both offenders.

Pardon by the Chief Executive distinguished from pardon by the offended party:

1. Pardon by the Chief Executive extinguishes the criminal liability of the offender; such is not the case when the pardon is given by the offended party.
2. Pardon by the Chief Executive cannot include civil liability which the offender must pay; but the offended party can waive the civil liability which the offender must pay.
3. In cases where the law allows pardon by the offended party, the pardon should be given before the institution of criminal prosecution and must be extended to both offenders. This is not true for pardon extended by the Chief Executive for the same may be extended to offenders whether the crime committed is public or private offense.

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

- **Costs include:**
 - a. fees
 - b. indemnities in the course of judicial proceedings
- Costs (expenses of the litigation) are chargeable to the accused in case of conviction.
- *In case of acquittal*, the costs are de oficio, each party bearing is own expense
- No costs allowed against the Republic of the Philippines until law provides the contrary

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

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

Pecuniary liability as contemplated under Art. 38 includes both civil liabilities and pecuniary penalties *except* the civil liability of restitution because this is an exclusive liability.

Civil liability consists of reparation and indemnification while ***pecuniary penalty*** consists of fine imposed by the court.

It is worth noting, as will further be discussed under Art. 89, that the death of the offender before final judgment extinguishes the pecuniary penalty but not the civil liability included in his pecuniary liabilities.

- *Applicable “in case property of the offender should not be sufficient for the payment of all his pecuniary liabilities.”* Hence, if the offender has insufficient or no property, there is no use for Art 38.
- *Order of payment is mandatory*
- *Example:* Juan inflicted serious physical injuries against Pedro and took the latter's watch and ring. He incurred 500 worth of hospital bills and failed to earn 300 worth of salary. Given that Juan only has 1000 pesos worth of property not exempt from execution, it shall be first applied to the payment of the watch and ring which cannot be returned as such is covered by “reparation of the damage caused” thus, no. 1 in the order of payment. The 500 and 300 are covered by “indemnification of the consequential damage” thus, no. 2 in the order of payment.

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

1. If the principal penalty imposed be prision correccional or arresto and fine, he shall remain under confinement until his fine referred to in the preceding paragraph is satisfied, but his subsidiary imprisonment shall not

exceed one-third of the term of the sentence, and in no case shall it continue for more than one year, and no fraction or part of a day shall be counted against the prisoner.

2. When the principal penalty imposed be only a fine, the subsidiary imprisonment shall not exceed six months, if the culprit shall have been prosecuted for a grave or less grave felony, and shall not exceed fifteen days, if for a light felony.

3. When the principal imposed is higher than prison correccional, no subsidiary imprisonment shall be imposed upon the culprit.

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

5. The subsidiary personal liability which the convict may have suffered by reason of his insolvency shall not relieve him, from the fine in case his financial circumstances should improve. *(As amended by RA 5465, April 21, 1969.)*

- There is no subsidiary penalty for non-payment of reparation, indemnification and costs in par 1, 2 and 4 of Art 38. It is only for fines.

Article 39 deals with subsidiary penalty. *There are two situations there:*

- (1) When there is a principal penalty of imprisonment or any other principal penalty and it carries with it a fine; *and*
- (2) When penalty is only a fine.

Therefore, there shall be no subsidiary penalty for the non-payment of damages to the offended party.

- Art 39 applies only when the convict has no property with which to meet the fine in par 3 of art 38. Thus, a convict who has property enough to meet the fine and not exempted from execution cannot choose to serve the subsidiary penalty instead of the payment of the fine.

In People v. Subido, it was held that the convict cannot choose not to serve, or not to pay the fine and instead serve the subsidiary penalty. A subsidiary penalty will only be served if the sheriff should return the execution for the fine on the property of the convict and he does not have the properties to satisfy the writ.

- *Subsidiary imprisonment is not an accessory penalty.* It is covered by Art 40-45 of this Code. Accessory penalties are deemed imposed even when not mentioned while subsidiary imprisonment must be expressly imposed.

A subsidiary penalty is not an accessory penalty. Since it is not an accessory penalty, *it must be expressly stated in the sentence*, but the sentence does not specify the period of subsidiary penalty because it will only be known if the convict cannot pay the fine. The sentence will merely provide that in case of non-payment of the fine, the convict shall be required to save subsidiary penalty. It will then be the prison authority who will compute this. *If the judgment is silent, he cannot suffer any subsidiary penalty.*

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- **Rules:**

PENALTY IMPOSED	LENGTH OF SUBSIDIARY PENALTY
<i>Prision correccional or arresto and fine</i>	Not exceed 1/3 of term of sentence, in no case more than 1 year fraction or part of a day not counted.
<i>Fine only</i>	Not to exceed 6 months if prosecuted for grave or less grave felony, not to exceed 15 days if prosecuted for light felony
<i>Higher than prision correccional</i>	No subsidiary imprisonment
<i>Not to be executed by confinement but of fixed duration</i>	Same deprivations as those of the principal penalty under rules 1, 2 and 3 above

When is subsidiary penalty applied

- (1) If the subsidiary penalty prescribed for the non-payment of fine which goes with the principal penalty, *the maximum duration of the subsidiary penalty is one year, so there is no subsidiary penalty that goes beyond one year.* But this will only be true if the one year period is higher than 1/3 of the principal penalty, the convict cannot be made to undergo subsidiary penalty more than 1/3 of the duration of the principal penalty and in no case will it be more than 1 year - get 1/3 of the principal penalty - whichever is lower.
- (2) *If the subsidiary penalty is to be imposed for non payment of fine and the principal penalty imposed be fine only, which is a single penalty, that means it does not go with another principal penalty, the most that the convict will be required to undergo subsidiary imprisonment is six months, if the felony committed is grave or less grave, otherwise, if the felony committed is slight, the maximum duration of the subsidiary penalty is only 15 days.*

Do not consider the totality of the imprisonment the convict is sentenced to but consider the totality or the duration of the imprisonment that the convict will be required to serve under the Three-Fold Rule. If the totality of the imprisonment under this rule does not exceed six years, then, even if the totality of all the sentences without applying the Three-Fold Rule will go beyond six years, the convict shall be required to undergo subsidiary penalty if he could not pay the fine.

- If financial circumstances improve, convict still to pay the fine even if he has suffered subsidiary personal liability.
- the penalty imposed must be PC, AM, Am, suspension, destierro and fine only. – other than these (PM, RT, RP) court cannot impose subsidiary penalty.
- Even if the penalty imposed is not higher than PC, if the accused is a habitual delinquent who deserves an additional penalty of 12 yrs and 1 day of RT, there is no subsidiary imprisonment.

Subsidiary imprisonment can be applied to the fine imposed for violation of special penal laws. This is authorized by Art. 1732 and by Art. 10 which makes the Revised Penal Code applicable to special laws.

Art. 40. *Death — Its accessory penalties.* — **The death penalty, when it is not executed by reason of commutation or pardon shall carry with it that of perpetual absolute disqualification and that of civil interdiction during thirty years following the date sentence, unless such accessory penalties have been expressly remitted in the pardon.**

Art. 41. *Reclusion perpetua and reclusion temporal.* — **Their accessory penalties.** — **The penalties of reclusion perpetua and reclusion temporal shall carry with them that of civil interdiction for life or during the period of the sentence as the case may be, and that of perpetual absolute**

disqualification which the offender shall suffer even though pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 42. *Prision mayor — Its accessory penalties.* — The penalty of prison mayor, shall carry with it that of temporary absolute disqualification and that of perpetual special disqualification from the right of suffrage which the offender shall suffer although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

Art. 43. *Prision correccional — Its accessory penalties.* — The penalty of prison correccional shall carry with it that of suspension from public office, from the right to follow a profession or calling, and that of perpetual special disqualification from the right of suffrage, if the duration of said imprisonment shall exceed eighteen months. The offender shall suffer the disqualification provided in the article although pardoned as to the principal penalty, unless the same shall have been expressly remitted in the pardon.

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

- **Outline of accessory penalties inherent in principal penalties**
 - a. **death** – if not executed because of commutation or pardon
 1. perpetual absolute disqualification
 2. civil interdiction during 30 years (if not expressly remitted in the pardon)
 - b. **RP and RT**
 1. civil interdiction for life or during the sentence
 2. perpetual absolute disqualification (unless expressly remitted in the pardon)
 - c. **PM**
 1. temporary absolute disqualification
 2. perpetual absolute disqualification from suffrage (unless expressly remitted in the pardon)
 - d. **PC**
 1. suspension from public office, profession or calling
 2. perpetual special disqualification from suffrage if the duration of the imprisonment exceeds 18 months (unless expressly remitted in the pardon)
- The accessory penalties in Art 40-44 must be suffered by the offender, although pardoned as to the principal penalties. *To be relieved of these penalties*, they must be expressly remitted in the pardon.
- No accessory penalty for destierro
- Persons who served out the penalty may not have the right to exercise the right of suffrage. *For a prisoner who has been sentenced to one year of imprisonment or more for any crime*, absolute pardon restores to him his political rights. *If the penalty is less than one year*, disqualification does not attach except if the crime done was against property.
- The nature of the crime is immaterial when the penalty imposed is one year imprisonment or more.

- The *accessory penalties* are understood to be always imposed upon the offender by the mere fact that the law fixes a certain penalty for the crime. Whenever the courts impose a penalty which by provision of law, carries with it other penalties, it's understood that the accessory penalties are also imposed.
- the *accessory penalties* do not affect the jurisdiction of the court in which the information is filed because they don't modify or alter the nature of the penalty provided by law. What determines jurisdiction in criminal cases is the extent of the principal penalty w/c the law imposes of the crime charged.
- the MTC has exclusive jurisdiction over offenses punishable with imprisonment of not exceeding 4 years and 2 months or a fine of not more than 4000 or both regardless of other imposable accessory or other penalties.

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

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

- every penalty imposed carries with it the forfeiture of the proceeds of the crime and the instruments or tools used in the commission of the crime
- proceeds and instruments/tools of the crime are confiscated in favor of the government
- 3rd persons' (not liable for the offense) property is not subject to confiscation and forfeiture
- property not subject of lawful commerce (whether it belongs to accused or 3rd person) shall be destroyed.
- can't confiscate/forfeit unless there's a criminal case filed and tried, and accused is acquitted.
- must indict 3rd person to order confiscation of his property
- instruments of the crime belonging to innocent 3rd person may be recovered
- confiscation can be ordered only if the property is submitted in evidence or placed at the disposal of the court
- articles which are forfeited - when the order of forfeiture is already final, can't be returned even in case of an acquittal
- *confiscation and forfeiture are additional penalties.* Where the penalty imposed did not include the confiscation of the goods involved, the confiscation & forfeiture of said goods would be an additional penalty and would amount to an increase of the penalty already imposed, thereby placing the accused in double jeopardy.
- when the accused has appealed, confiscation and forfeiture not ordered by the trial court may be imposed by the appellate court
- the government can't appeal the modification of a sentence if the defendant did not appeal. But if the defendant appeals, it removes all bars to the review and correction

of the penalty imposed by the court below, even if an increase thereof should be the result.

Art. 46. *Penalty to be imposed upon principals in general.* — The penalty prescribed by law for the commission of a felony shall be imposed upon the principals in the commission of such felony.

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

- **General rule:** The penalty prescribed by law in general terms shall be imposed:
 - a upon the principals
 - b for consummated felony
- **Exception:** when the law fixes a penalty for the frustrated or attempted felony.

Whenever it is believed that the penalty lower by one or two degrees corresponding to said acts of execution is not proportionate to the wrong done, the law fixes a distinct penalty for the principal in the frustrated or attempted felony.

- **The graduation of penalties refers to:**
 - a stages of execution (consummated, frustrated, attempted)
 - b degree of the criminal participation of the offender (principal, accomplice, accessory)
- the division of a divisible penalty (min, med, max) refers to the proper period of the penalty which should be imposed when aggravating or mitigating circumstances attend the commission of the crime.

Art. 47. *In what cases the death penalty shall not be imposed; Automatic review of death penalty cases.* – The death penalty shall be imposed in all cases in which it must be imposed under existing laws, *except* when the guilty person is below eighteen (18) years of age at the time of the commission of the crime or is more than seventy (70) years of age or when upon appeal or automatic review of the case by the Supreme Court, the required majority vote is not obtained for the imposition of the death penalty, in which cases the penalty shall be *reclusion perpetua*.

In all cases where the death penalty is imposed by the trial court, the records shall be forwarded to the Supreme Court for automatic review and judgment by the court *en banc*, within twenty (20) days but not earlier than fifteen (15) days after promulgation of the judgment or notice of denial of any motion for new trial or consideration. The transcript shall also be forwarded within ten (10) days after the filing thereof by the stenographic reporter. (As amended by Sec. 22, RA 7659).

- whenever the judgment of the lower court imposes the death penalty, the case shall be determined by 10 justices of the court. *When 10 justices fail to reach a decision (as to the propriety of the imposition of the death penalty), the penalty next lower in degree than the death penalty shall be imposed.*
- **Death penalty not imposed in the ff cases:**
 - a) when the person is more than 70 years old at time RTC sentenced him
 - b) when upon appeal or revision of the case by the SC, 10 justices are not unanimous in their voting

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- c) when the offender is a minor under 18 yrs of age. Why? Because minority is always a mitigating circumstance
- d) while a woman is pregnant and within one year after delivery
- **Justification for the death penalty:** social defense and exemplarity. Not considered cruel and unusual because does not involve torture or lingering death.
- **Crimes where death penalty is imposed:**
 - a) treason
 - b) certain acts of espionage under Commonwealth Act 616
 - c) correspondence w/ hostile country when it contains notice or information and the intention of the offender is to aid the enemy
 - d) qualified piracy
 - e) certain violations of the Anti-subversion act
 - f) parricide
 - g) murder
 - h) kidnapping and serious illegal detention
 - i) robbery w/ homicide
 - j) rape w/ homicide
 - k) when death resulted from the commission of arson or other crime involving destruction
- *trial court must require the prosecution to present evidence, despite plea of guilty, when the crime charged is punished by death.* A sentence of death is valid only if it is susceptible of a fair and reasonable examination by the court. This is impossible if no evidence of guilt was taken after a plea of guilty.

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

- *The 2 or more grave or less grave felonies must be the result of a single act, or an offense must be a necessary means to commit the crime.*
- **Complex crime** – one crime only as there is only one criminal intent – only one information need be filed
- **2 kinds of complex crimes:**
 - a) **compound crime** – single act constitutes 2 or more grave or less grave felonies

Requisites:

- 1) *that only one single act is committed by the offender*
- 2) *that the single act produces*
 - a) *2 or more grave felonies*
 - b) *one or more grave and one or more less grave felonies*
 - c) *2 or more less grave felonies*
- b) **complex crime proper** – when an offense is a necessary means for committing another

Requisites:

- 1) *that at least 2 offenses are committed*
- 2) *that one or some of the offenses must be necessary to commit the other*
- 3) *that both or all the offenses must be punished under the same statute*

- **No single act in the following cases:**
 - a) When 2 persons are killed one after the other, by different acts, although these 2 killings were the result of a single criminal impulse, the different acts must be considered as distinct crimes.
 - b) When the acts are wholly different, not only in themselves, but also because they are directed against 2 different persons, as when one fires his gun twice in succession, killing one and injuring the other.

When an offender performed more than one act, although similar, if they result in separate crimes, there is no complex crime at all, instead, the offender shall be prosecuted for as many crimes as are committed under separate information.

When the single act brings about two or more crimes, the offender is punished with only one penalty, although in the maximum period, because he acted only with single criminal impulse. if there is only one criminal impulse which brought about the commission of the crime, the offender should be penalized only once. In this case it is not the singleness of the act but the singleness of the impulse that has been considered

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

Examples:

- a) several light felonies resulting from one single act – *not complex*

Juan hit Pedro's car, resulting in several light injuries and light felony of damage to property. No complex crime because the crime of slight physical injuries and damage to property are light felonies. There are as many crimes as there are persons injured w/ light physical injuries and as many penalties as there are light felonies committed, even though they are produced by a single act of the offender.

- b) when the crime is committed by force or violence, slight physical injuries are absorbed.

- **Examples of complex crimes:**

- a) Juan was a barangay captain who was killed while discharging his duty, the crime is a complex crime of *homicide w/ assault upon a person of authority*.

- b) Juan raped Petra, causing her physical injuries w/c required a month's worth of medical attention. This is a complex crime of *rape w/ less serious physical injuries*. The injuries were necessary to the commission of the rape.

- when in obedience to an order, several accused simultaneously shot many persons, without evidence how many each killed, there is only a single offense, there being a *single criminal impulse*.

Effect of conspiracy in the commission of a complex crime. When a conspiracy animates several persons in the attainment of a single purpose, and in the process, several persons perform various acts in the attainment of said purpose, their individual acts are treated as a single act. The felonious agreement produces a sole and solidary liability.

- *when various acts are executed for the attainment of a single purpose w/c constitutes an offense, such acts must be considered only as one offense.*

Example: Juan falsified 100 warehouse receipts from April to June which enabled him to swindle the bank of 100 million. There's only one complex crime of estafa through multiple falsification of documents.

- There is no complex crime of arson w/ homicide

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- *Art 48 is applicable to crimes through negligence*

Example: Juan lit a cigarette as he poured gas in the tank of his car in his garage. The gas caught fire and the house burned. His sister died and the maid suffered serious physical injuries. The crimes of arson, homicide, serious physical injuries and damage to property constitute a complex crime. There is only one penalty but there are 3 civil liabilities.

Article 48 also applies in cases when out of a single act of negligence or imprudence, two or more grave or less grave felonies resulted, although only the first part thereof (compound crime). The second part of Article 48 does not apply, referring to the complex crime proper because this applies or refers only to a deliberate commission of one offense to commit another offense.

- No complex crime when one of the offenses is penalized by a special law

Article 48 is not applicable when the crimes committed are made punishable by different laws.

Mala prohibita and mala in se cannot be grouped together to form a complex crime under Article 48

- *Example of complex crime proper* (at least 2 crimes must be committed):
Kidnapping the victim to murder him in a secluded place – ransom wasn't paid so victim was killed. Kidnapping was a necessary means to commit murder. But where the victim was taken from his home for the sole purpose of killing him and not for detaining him illegally or for the purpose of ransom, the crime is simple murder.
- *"Necessary means" does not mean "indispensable means"*. Indispensable would mean it is an element of the crime. The crime can be committed by another mean. The means actually employed (another crime) was merely to facilitate and insure the consummation of the crime.

"Necessary" should not be understood as indispensable, otherwise, it shall be considered absorbed and not giving rise to a complex crime.

- *When in the definition of a felony, one offense is a means to commit the other, there is no complex crime.*

Ex. Murder committed by means of fire. Murder can be qualified by the circumstance of fire so no complex crime even if Art 321 and 324 punishes arson. It's plain and simple murder.

There is no disagreement that when a crime is committed because it is necessary to commit another crime, it is a complex crime and Article 48 is made applicable. However, the crime committed is an element of the other crime, then it is not considered a separate crime but is absorbed by the other crime.

- Not complex crime when trespass to dwelling is a direct means to commit a grave offense. Like rape, there is no complex crime of trespass to dwelling with rape. Trespass will be considered as aggravating (unlawful entry or breaking part of a dwelling)
- *No complex crime when one offense is committed to conceal another*

Example: Juan set the school on fire after committing homicide. 2 crimes.

- When the offender had in his possession the funds w/c he misappropriated, the falsification of a public or official document involving said funds is a separate offense. But when the offender had to falsify a public or official document to obtain possession of the funds w/c he misappropriated, the falsification is a necessary means to commit the malversation.

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- There is no complex crime of rebellion with murder, arson, robbery or other common crimes. They are mere ingredients of the crime of rebellion – absorbed already.

When the crime of murder, arson and robbery are committed in the furtherance of the crime of rebellion, it is not a complex crime of rebellion with murder, arson and robbery. The crime committed is simple rebellion. The crimes of murder, arson and robbery are treated as elements of rebellion. Note however, that in order that said crimes may be absorbed, it is necessary that the same were done in furtherance of the crime of rebellion. (*Pp vs. Geronimo*)

- *When 2 crimes produced by a single act are respectively within the exclusive jurisdiction of 2 courts of different jurisdiction, the court of higher jurisdiction shall try the complex crime.*

Example: Although the forcible abduction which was supposedly commenced in Manila was not proven, and although the rape which was proven was actually committed in Cavite, still the RTC of Manila had jurisdiction to convict the accused of rape. The complex crime of forcible abduction with rape was charged in the complaint on the basis of which the case was tried.

In criminal procedure, it is prohibited to charge more than one offense in an information, except when the crimes in one information constitute a complex crime or a special complex crime.

So whenever the Supreme Court concludes that the criminal should be punished only once, because they acted in conspiracy or under the same criminal impulse, it is necessary to embody these crimes under one single information. It is necessary to consider them as complex crimes even if the essence of the crime does not fit the definition of Art 48, because there is no other provision in the RPC.

- Art. 48 is intended to favor the culprit.
- *The penalty for complex crime is the penalty for the most serious crime, the same to be applied in its maximum period.* If the different crimes resulting from one single act are punished with the same penalty, the penalty for any one of them shall be imposed, the same to be applied in the maximum period. The same rule shall be observed when an offense is a necessary means to commit the other.

If by complexing the crime, the penalty would turn out to be higher, do not complex anymore.

Example: Murder and theft (killed with treachery, then stole the right).

Penalty: If complex – Reclusion temporal maximum to death.

If treated individually – Reclusion temporal to Reclusion Perpetua.

Complex crime is not just a matter of penalty, but of substance under the Revised Penal Code.

- *A complex crime of the second form may be committed by two persons.*
- *But when one of the offenses, as a means to commit the other, was committed by one of the accused by reckless imprudence, the accused who committed the crime by reckless imprudence is liable for his acts only.*

Example: Juan cooperated in the commission of the complex offense of estafa through falsification by reckless imprudence by acts without which it could not have been accomplished, and this being a fact, there would be no reason to exculpate him from liability. Even assuming he had no intention to defraud Tomas if his co-defendants succeeded in attaining the purpose sought by the culprits, Juan's participation together w/ the participation of his co-defendants in the commission of the offense completed all the elements necessary for the perpetration of the complex crime of estafa through falsification of documents.

- When two felonies constituting a complex crime are punishable by imprisonment and fine, respectively, only the penalty of imprisonment shall be imposed.

- When a single act constitutes two grave or less grave or one grave and another less grave, and the penalty for one is imprisonment while that for the other is fine, the severity of the penalty for the more serious crime should not be judged by the classification of each of the penalties involved, but by the nature of the penalties.

Example: Even if the fine for damage to property through reckless imprudence is P40,000, an afflictive penalty, and the penalty for the physical injuries resulting from the same act is only 4 mos of arresto mayor, a correccional penalty may be imposed.

- In the order of severity of the penalties, arresto mayor and arresto menor are considered more severe than destierro and arresto menor is higher in degree than destierro.
- Fine is not included in the list of penalties in the order of severity and it is the last in the order.
- *Art 48 applies only to cases where the Code doesn't provide a specific penalty for a complex crime.*
- *Art 48 doesn't apply when the law provides one single penalty for single complex crimes like the ff: (**composite crimes**)*
 - a) robbery w/ homicide
 - b) robbery w/ rape
 - c) kidnapping w/ serious physical injuries
 - d) rape w/ homicide

A **composite crime** is one in which substance is made up of more than one crime, but which in the eyes of the law is only a single indivisible offense. This is also known as **special complex crime**.

- When a complex crime is charged and one offense is not proven, the accused can be convicted of the other.
- **Plurality of crimes** – consists in the successive execution by the same individual of different criminal acts upon any of w/c no conviction has yet been declared.
- **Kinds of plurality of crimes:**
 - a) *formal or ideal* – only one criminal liability
 - b) *real or material* – there are different crimes in law as well as in the conscience of the offender, in such cases, the offender shall be punished for each and every offense that he committed.

Example: Juan stabbed Pedro, then Juan stabbed Tomas too. There are 2 committed as 2 acts were performed.

When the plurality of crimes is covered by a specific provision of law and declares that such aggrupation is but a single crime and provides a specific penalty for its commission, Art. 48 should not be made to apply. When there is no law that covers the combination of the crimes committed, then Art. 48 will apply.

PLURALITY OF CRIMES	RECIDIVISM
No conviction of the crimes committed	There must be conviction by final judgment of the first prior offense

- **Formal/ideal plural crimes are divided into 3 groups:** (*a person committing multiple crimes is punished w/ one penalty in the ff cases*)
 - a) when the offender commits any of the complex crimes defined in art 48
 - b) when the law specifically fixes a single penalty for 2 or more offenses committed: robbery w/ homicide, kidnapping w/ serious physical injuires
 - c) when the offender commits continued crimes

- **Continued crimes** – refers to a single crime consisting of a series of acts but all arising from one criminal resolution. Although there is a series of acts, there is only one crime committed, so only one penalty shall be imposed.

A “**continued crime**” is one where the offender performs a series of acts violating one and the same penal provision committed at the same place and about the same time for the same criminal purpose, regardless of a series of acts done, it is regarded in law as one.

When the actor, there being unity of purpose and of right violated, commits diverse acts, each of which, although of a delictual character, merely constitutes a partial delict, such occurrence of delictual acts is called “**delicto continuado**”.” (*Gamboa vs. Court of Appeals, 68 SCRA 314*)

- **Examples of continued crimes:**
 - a) a collector of a commercial firm misappropriates for his personal use several amounts collected by him from different persons. There is only one crime because the different and successive appropriations are but the different moments during which one criminal resolution arises.
 - b) Juan stole 2 books belonging to 2 different persons. He commits only one crime because there is unity of thought in the criminal purpose of the offender.
- *A continued crime is not a complex crime as offender does not perform a single act but a series of acts. Therefore:*
 - a) penalty not to be imposed in the maximum
 - b) no actual provision punishing a continued crime – it’s a principle applied in connection w/ 2 or more crimes committed w/ a single intention.
- *Continued crime is different from a transitory crime. **Transitory crime** is “moving crime”.*

Example: kidnapping someone for ransom and moving him to another venue. The offenders can be prosecuted and tried in either of the 2 areas.

REAL/MATERIAL PLURALITY	CONTINUED CRIME
There is a series of acts performed by the offender	Same
Each act performed constitutes a separate crime because each act is generated by a criminal impulse	Different acts constitute only one crime because all of the acts performed arise from one criminal resolution.

In the **theft cases**, the trend is to follow the **single larceny doctrine**, that is taking of several things, whether belonging to the same or different owners, at the same time and place, constitutes one larceny only.

Defamation cases

A libelous publication affecting more than one person constitutes as many crimes as there are offended parties. The crime is not complex even though there was only one act of publication.

Where the defamatory statement was uttered only once on a single occasion against a group of persons not mentioned individually, the act constitutes only one offense.

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

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1. If the penalty prescribed for the felony committed be higher than that corresponding to the offense which the accused intended to commit, the penalty corresponding to the latter shall be imposed in its maximum period.

2. If the penalty prescribed for the felony committed be lower than that corresponding to the one which the accused intended to commit, the penalty for the former shall be imposed in its maximum period.

3. The rule established by the next preceding paragraph shall not be applicable if the acts committed by the guilty person shall also constitute an attempt or frustration of another crime, if the law prescribes a higher penalty for either of the latter offenses, in which case the penalty provided for the attempted or the frustrated crime shall be imposed in its maximum period.

- Art 49 has reference to the provision in the 1st par of Art 4 which provides that criminal liability shall be incurred “by any person committing a felony although the wrongful act done be different from that which he intended”
- *Art 49 applicable only in cases when there is a mistake in identity of the victim of the crime and the penalty for the crime committed is different from that for the crime intended to be committed.*
- Art 49 also has *no application* where a more serious consequence not intended by the offender befalls the same person.

Example: Juan only wanted to inflict a wound upon Pedro but because he lost control of his right arm, he killed Pedro. Art 49 not applicable.

ART 49	ART 48
Lesser penalty to be imposed in its maximum pd	Penalty for the more serious crime shall be imposed in its maximum pd

Notes:

1. Art. 49 has reference to Art. 4(1). It applies only when there is **error in personae**.
2. In Art. 49 (Paragraphs 1 and 2) the lower penalty in its maximum period is always imposed.
3. In Par. 3 the penalty for the attempted or frustrated crime shall be imposed in its maximum period. This rule is not necessary and may well be covered by Art. 48, in view of the fact that the same act also constitutes an attempt or a frustration of another crime.

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

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

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

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

Art. 54. *Penalty to be imposed upon accomplices in a frustrated crime.* — The penalty next lower in degree than prescribed by law for the frustrated felony shall be imposed upon the accomplices in the commission of a frustrated felony.

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

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

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

Application of Article 50 to 57			
Participation	Consummated	Frustrated	Attempted
Principal	Penalty imposed by law	1° less	2° less
Accomplice	1° less	2° less	3° less
Accessory	2° less	3° less	4° less

- **Notes:**

Art 50-57 not applicable when the law specifically prescribes the penalty for the frustrated and attempted felony or that to be imposed upon the accomplices and accessories.

Degree – one whole penalty, one entire penalty or one unit of the penalties enumerated in the graduated scales provided for in Art 71

Period – one of 3 equal portions, min/med/max of a divisible penalty. A period of a divisible penalty when prescribed by the Code as a penalty for a felony, is in itself a degree.

Distinctions between Degree and Period	
Degree	Period
Refers to the penalty imposable for a felony committed considering the stages of execution and the degree of participation of the offender	Refers to the duration of the penalty consisting of the maximum, medium, and minimum, after considering the presence or absence of aggravating / mitigating circumstances
May refer to both divisible and indivisible penalties	Refers only to divisible penalties

- The rules provided in Arts. 53, 55 and 57 do not apply if the felony is light because accessories are not liable for the same
- **Bases for imposition of the penalty under the RPC**
 - a. Stage of the commission of the crime

1. Participation of the persons liable
2. Presence of aggravating or mitigating circumstances

In making any reduction by one or more degrees, the basis used in the penalty already prescribed, not as already reduced.

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

- Art.58 is limited only to grave and less grave felonies since it is not possible to have accessories liable for light felonies. It is further limited to those whose participation in the crime is characterized by the misuse of public office or authority.

Example: a) A mayor aided in friend, a wanted criminal, in escaping
 b) A senator gives protection to his jueteng lord friend

- **Additional Penalties for Public Officers who are accessories**
 1. Absolute perpetual disqualification, if the principal offender is guilty of a grave felony.
 2. Absolute temporary disqualification if the principal offender is guilty of less grave felony

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

- **Basis for the imposition of proper penalty in impossible crimes:** social danger and degree of criminality shown by the offender.

Example: Juan fired a revolver at Pedro at the distance of 2 kilometers. This shows stupidity rather than danger. Juan should not be punished as there is no social danger nor degree of criminality.

But if Juan was a convicted felon, act may be punished.

- Article limited to those cases of grave and less grave felonies.

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

- **2 cases wherein the accomplice is punished w/ the same penalty imposed upon the principal**
 - a) ascendants, guardians, curators, teachers and any person who by abuse of authority or confidential relationship shall cooperate as accomplices in the crimes of rape, acts of lasciviousness, seduction, corruption of minors, white slave trade or abduction.
 - b) one who furnished the place for the perpetration of the crime of slight illegal detention.
- **Accessory punished as principal:** Art 142 – punishes an accessory for knowingly concealed certain evil practices.
- **Cases when instead of a penalty 2 degrees lower, one degree for accessory:**
 - a) knowingly using counterfeited seal or forged signature or stamp of the President
 - b) illegal possession and use of false treasury or bank note
 - c) using a falsified document
 - d) using a falsified dispatch

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

1. When the penalty prescribed for the felony is single and indivisible, the penalty next lower in degrees shall be that immediately following that indivisible penalty in the respective graduated scale prescribed in Article 71 of this Code.
2. When the penalty prescribed for the crime is composed of two indivisible penalties, or of one or more divisible penalties to be impose to their full extent, the penalty next lower in degree shall be that immediately following the lesser of the penalties prescribed in the respective graduated scale.
3. When the penalty prescribed for the crime is composed of one or two indivisible penalties and the maximum period of another divisible penalty, the penalty next lower in degree shall be composed of the medium and minimum periods of the proper divisible penalty and the maximum periods of the proper divisible penalty and the maximum period of that immediately following in said respective graduated scale.
4. When the penalty prescribed for the crime is composed of several periods, corresponding to different divisible penalties, the penalty next lower in degree shall be composed of the period immediately following the minimum prescribed and of the two next following, which shall be taken from the penalty prescribed, if possible; otherwise from the penalty immediately following in the above mentioned respective graduated scale.
5. When the law prescribes a penalty for a crime in some manner not especially provided for in the four preceding rules, the courts, proceeding by analogy, shall impose corresponding penalties upon those guilty as principals of the frustrated felony, or of attempt to commit the same, and upon accomplices and accessories.

- *The rules provided in this Art should also apply in determining the minimum of the Indeterminate Sentence Law (ISL). It also applies in lowering the penalty by one or two degrees by reason of the presence of the privileged mitigating circumstance or when the penalty is divisible and there are two or more mitigating circumstances.*

Graduated Scale in Art 71

- **Indivisible Penalties:**
 - a) Death
 - b) Reclusion Perpetua
- **Divisible Penalties:**
 - a) Reclusion Temporal
 - b) Prision Mayor
 - c) Prision Correccional
 - d) Arresto Mayor
 - e) Destierro
 - f) Arresto Menor
 - g) Public Censure
 - h) Fine
- **Rule No. 1:**
When the penalty is single and indivisible (ex. RP), the penalty next lower shall be reclusion temporal.
- **Rule No. 2:**
 - a) *when the penalty is composed of two indivisible penalties*
Ex. penalty for parricide is reclusion perpetua to death, the next lower penalty is reclusion temporal
 - b) *when the penalty is composed of one or more divisible penalties to be imposed to their full extent*
 - Ex. 1) *one divisible penalty* is reclusion temporal. The penalty immediately following RT is prision mayor.
 - 2) *2 divisible penalties* are prision correccional to prision mayor. The penalty immediately preceding the lesser of the penalties of prision correccional to prision mayor is arresto mayor.
- **Rule No. 3:**
When the penalty is composed of 2 indivisible penalties and the maximum period of a divisible penalty or when composed of one divisible penalty the maximum of one divisible penalty
Ex. penalty for murder is reclusion temporal(max) to death. The point of reference will be on the proper divisible penalty which is reclusion temporal. Under the 3rd rule, the penalty next lower to reclusion temporal is composed of the medium and minimum periods of reclusion temporal and the maximum of prision mayor.
- **Rule No.4:**
When the penalty is composed of several periods
Ex. the "several" periods contemplated in this rule correspond to different divisible penalties. A penalty of prision mayor in its medium period to reclusion temporal in its minimum period is an example of such. The penalty immediately following the minimum of the entire sentence, which is prision mayor medium, is prision mayor in its minimum and the 2 periods next following, which are prision correccional max and medium.
- **Rule No.5:**
When the penalty has only 2 periods
Ex. Abduction punishable by prision correccional in its medium and minimum. The next penalty following is formed by 2 periods to be taken from the same penalty if possible or from the periods of the penalty numerically following the

lesser of the penalties prescribed. The penalty next following prision correccional in its med and min shall be arresto mayor in its med and max.

- *Mitigating and Aggravating circumstances* are first disregarded in the application of the rules for graduating penalties. It is only after the penalty next lower in degree is already determined that the mitigating and aggravating circumstances should be considered.

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

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

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

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

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

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

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

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

5. *Habitual delinquency shall have the following effects.*

(a) Upon a third conviction, the culprit shall be sentenced to the penalty provided by law for the last crime of which he be found guilty and to the additional penalty of prision correccional in its medium and maximum periods;

(b) Upon a fourth conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prision mayor in its minimum and medium periods; and

(c) Upon a fifth or additional conviction, the culprit shall be sentenced to the penalty provided for the last crime of which he be found guilty and to the additional penalty of prison mayor in its maximum period to reclusion temporal in its minimum period.

Notwithstanding the provisions of this article, the total of the two penalties to be imposed upon the offender, in conformity herewith, shall in no case exceed 30 years.

For the purpose of this article, *a person shall be deemed to be habitual delinquent*, if within a period of ten years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, he is found guilty of any of said crimes a third time or oftener. *(As amended by Section 23 of R.A. no. 7659)*

- **Par 1:** *Aggravating circumstances are not to be taken into account when:*
 - a) they themselves constitute a crime
Ex. by “means of fire” – arson
 - b) they are included by law in the definition of a crime

Example: the aggravating circumstances of trespass or “escalamiento” is in itself a crime (Art. 280). The breaking of a roof, floor or window may constitute malicious mischief. The burning of anything of value may constitute arson. These aggravating circumstances, if considered as felonies, do not increase the penalty.

Among the aggravating circumstances included in the definition of a crime are taking advantage of public position in estafa under Art. 214, abuse of confidence in qualified theft (Art. 310); the circumstances which qualify homicide in murder (Art. 248); and the use of artifice involving great waste and ruin in the crimes punished in Arts. 324 and 330.

- **Par 2:** *Same rules applies when the aggravating circumstance is inherent in the crime*

Example: Relationship is inherent in the crimes of parricide and infanticide; abuse of confidence is inherent in malversation, qualified theft, seduction and estafa; sex is inherent in crimes against chastity; taking advantage of public position, in crimes committed by public officers; premeditation is inherent in robbery, theft, estafa and similar offenses. Nocturnity, abuse of superiority and craft are absorbed by treachery and are therefore inherent in murder qualified by treachery. Premeditation, abuse of superiority and treachery are inherent in treason.

- **Par 3.** *Aggravating or mitigating circumstances arising from any of the ff affect only those to whom such circumstances are attendant:*
 - a) from the moral attributes of the offender
 - b) from his private relations w/ the offended party
 - c) from any other personal cause

Example: Four malefactors commit homicide. One of them is under 18. Another is drunk. The third is a recidivist, and the fourth is neither under age, nor drunk, nor a recidivist. The first has in his favor the mitigating circumstances of *minority* which does not affect his co-defendants. The second has a different circumstances in his favor, *drunkenness*, which does not extend to the other participants in the crime. The third has an aggravating circumstance which affects him only. The fourth shall suffer the penalty corresponding to him without taking into consideration the aggravating circumstances affecting one or the extenuating circumstances affecting the others.

Rule 3 is illustrated in the crime of parricide wherein a stranger had participated. He is guilty of homicide or murder and not parricide. In the same manner, the stranger who participated in the commission of qualified theft involving abuse of confidence and who had no confidential relationship with the victim is only guilty of simple theft. But the rule is different in malversation. A private individual coordinating with the accountable public officer in committing malversation is a co-principal in the crime.

In homicide, relationship aggravates the liability of the relative, who is a co-principal, but not of the other principals who are not related to the victim. Lack of instruction is mitigating as to the principal, who is actually illiterate, but not with respect to the other principals who have educational attainment.

However, in adultery, the privileged mitigating circumstance of abandonment would benefit both offenders, even if it was only the offending wife who was abandoned. (*Pp vs. Avelino*)

- **Par 4:** *the circumstances w/c consist of the ff shall serve to aggravate and mitigate the liability only of those who had knowledge of them at the time of the commission of the offense*
 - a) material execution of the act
 - b) means employed to accomplish the crime

Groizard says that the circumstances attending the commission of a crime either relate to the persons participating in the same or to its *material execution*, or to the *means employed*. The *former* do not affect all the participants in the crime, but only to those whom, they particularly apply; the *latter* have direct bearing upon the criminal liability of all defendants who had knowledge thereof at the time of the commission of the crime, or of their cooperation therein.

Example: A and B killed C. In the execution of the act of killing, A disguised himself in peace officer which was not made known to B. The aggravating circumstance of disguising as a peace officer shall be appreciated only against A, who employed the same in the killing of C. It is only logical that A should be made to suffer a more serious penalty, as the idea is to affect only those who have knowledge of it at the time of the execution of the act.

In the crime of murder, A hired B to kill C, to prevent the latter from being a candidate for mayor in the May 11, 1998 elections. In the actual killing of C, deliberately augmented the suffering of C chopping him into pieces and scattering his remains in several places. The aggravating circumstances of cruelty and outraging or scoffing at the person or corpse of C should be appreciated only against B.

Example: A, B and C agreed to kill X so armed with guns, they proceeded to the house of the latter whereupon A told B and C that he would stay in the yard to prevent any relative of X from helping the victim. When B and C entered the room of X, and saw him sleeping, it was C who shot him. The treachery that attended the commission of the crime shall also affect B and not only C who treacherously killed X in his sleep because B had knowledge of the treacherous act being present actually during the shooting. A's liability is not aggravated by treachery as he had no knowledge of it, being in the yard.

- **Cases where the attending aggravating or mitigating circumstances are not considered in the imposition of penalties.**
 - Penalty that is single and indivisible

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- Felonies through negligence
- Penalty is a fine
- Penalty is prescribed by a special law
- **Par 5: Habitual Delinquent** is a person who within the period of 10 years from the date of his (last) release or last conviction of the crimes of:
 - a) serious or less serious physical injuries
 - b) robbery
 - c) theft
 - d) estafa
 - e) falsification
 is found guilty of any of the said crimes a third time or oftener.
- Ten year period to be computed from the time of last release or conviction
- Subsequent crime must be committed after conviction of the former crime. Cases still pending are not to be taken into consideration.

HABITUAL DELINQUENCY	RECIDIVISM
Crimes to be committed are specified	Same title
W/ in 10 years	No time fixed by law
Must be found guilty 3 rd time or oftener	Second conviction
Additional penalty is imposed	Is not offset by MC, increases penalty to maximum

Habitual delinquency is not a crime. It is a circumstance that will authorize the court to add an additional penalty for the present crime committed. It is only a factor in determining the total penalty to be imposed upon the offender.

Habitual delinquency imposes an additional penalty, however, if the same is imposed after the court has acquired jurisdiction over the crime, and the total penalty would exceed the jurisdictional limit of the court, such situation will not divest the court of its jurisdiction over the crime. (*Pp vs. Blanco, 86 Phil. 296*)

In order that habitual delinquency may be appreciated against the accused, it must be alleged and detailed in the information or complaint. The dates of the commission of the previous crimes; the last conviction of release must be contained or written in the information.

Under Article 22, when one is a habitual delinquent and he commits felony or offense, any future punitive law that may favor him in relation to the punishment imposed on him, will not be given a retroactive effect insofar as said offender is concerned.

He is not also entitled to the application of the Indeterminate Sentence Law.

Example:

CRIMES COMMITTED	DATE OF CONVICTION	DATE OF RELEASE
Serious Physical Injury	January, 1960	January, 1973
Theft	February, 1968	February, 1975
Robbery	March, 1980	

In the example mentioned above, as regards the conviction for theft in February, 1968 the starting point for the computation of the ten-year period

is the date of conviction for serious physical injuries in January, 1960 because that is the last conviction with respect to the second conviction for theft in February, 1968. The date of release is not considered anymore because the conviction for theft took place within ten years from the last conviction for serious physical injuries. We ignore the date of release because it came after the conviction.

With respect to the third conviction for robbery in March 1980, the ten-year period is to be computed not from the date of last conviction for theft in February, 1968 because that would be beyond the period provided by law, but from the date of release of the accused in February, 1975, as the law provides for the computation of the ten-year period in the alternative, either from the last conviction or release. Apparently, in the example given, the last or third conviction is more than ten years from 1968, but within ten years from release. The period of ten years is therefore satisfied. The offender in the example given is a habitual delinquent.

• **Rulings on Habitual Delinquency:**

- a) the law on habitual delinquency does not contemplate the exclusion from the computation of prior conviction those falling outside the 10 yr period immediately preceding the crime for w/c the defendant is being tried
- b) ten yr period is counted not from the date of commission of the subsequent offense but to the date of conviction thereof in relation to the date of his last release or last conviction
- c) when an offender has committed several crimes mentioned in the definition of habitual delinquent, without being first convicted of any of them before committing the others, he is not a habitual delinquent
- d) convictions on the same day or at about the same time are considered as one only (days, weeks..)
- e) crimes committed on the same date, although convictions on different dates are considered as one
- f) previous convictions are considered every time a new offense is committed
- g) commissions of those crimes need not be consummated
- h) habitual delinquency applies to accomplice and accessories as long it is in the crimes specified
- i) a crime committed in the minority of the offender is not counted
- j) imposition of additional penalty is mandatory and constitutional
- k) modifying circumstances applicable to additional penalty
- l) habitual delinquency is not a crime, it is simply a fact or circumstance which if present gives rise to the imposition of additional penalty
- m) penalty for habitual delinquency is a real penalty that determines jurisdiction
- n) in imposing the additional penalty, recidivism is not aggravating. The additional penalty must be imposed in its minimum
- o) an offender can be a habitual delinquent w/o being a recidivist

Notes:

- *In no case shall be the total penalties imposed upon the offender exceed 30 years*
- The law does not apply to crimes described in Art. 155(*alarms and scandals*)
- The imposition of the additional penalties on habitual delinquents are *constitutional*, it is simply a punishment on future crimes on account of the criminal propensities of the accused.
- *Habitual delinquency applies at any stage of the execution* because subjectively, the offender reveals the same degree of depravity or perversity as the one who commits a consummated crime.
- *Habitual delinquency applies to all participants* because it reveals persistence in them of the inclination to wrongdoing and of the perversity of character that led them to commit the previous crime.

Note: There is no habitual delinquency in offenses punished by special laws. Courts cannot also take judicial notice of the previous convictions of the accused. Facts of previous convictions must be established during the trial of the accused.

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

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

1. When in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.
2. When there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.
3. When the commission of the act is attended by some mitigating circumstances and there is no aggravating circumstance, the lesser penalty shall be applied.
4. When both mitigating and aggravating circumstances attended the commission of the act, the court shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation.

- Art 63 applies only when the penalty prescribed by the Code is either one indivisible penalty or 2 indivisible penalties

Article 63 must be understood to mean and to refer only to ordinary mitigating circumstances. It does not refer to privileged mitigating circumstances.

- **General rule:** When the penalty is composed of *2 indivisible penalties*, the *penalty cannot be lowered by one degree no matter how many mitigating circumstances are present*
 - **Exception:** in cases of privileged mitigating circumstances
- **Par.4:** the moral value rather than the numerical weight shall be taken into account

- **Rules for the application of indivisible penalties**
 - *Penalty is single and indivisible* – applied regardless of the presence of aggravating and mitigating circumstances
 - *Penalty composed of two indivisible penalties*
 1. *One aggravating circumstance present* – higher penalty
 2. *One mitigating circumstance present* – lower penalty
 3. *Some mitigating circumstances present and no aggravating* – lower penalty
 4. *Mitigating and Aggravating Circumstance are present* – basis in number and importance

Art. 64. *Rules for the application of penalties which contain three periods.*
 — In cases in which the penalties prescribed by law contain three periods, whether it be a single divisible penalty or composed of three different penalties, each one of which forms a period in accordance with the provisions of Articles 76 and 77, the court shall observe for the application of the penalty the following rules, according to whether there are or are not mitigating or aggravating circumstances:

1. When there are neither aggravating nor mitigating circumstances, they shall impose the penalty prescribed by law in its medium period.
 2. When only a mitigating circumstance is present in the commission of the act, they shall impose the penalty in its minimum period.
 3. When an aggravating circumstance is present in the commission of the act, they shall impose the penalty in its maximum period.
 4. When both mitigating and aggravating circumstances are present, the court shall reasonably offset those of one class against the other according to their relative weight.
 5. When there are two or more mitigating circumstances and no aggravating circumstances are present, the court shall impose the penalty next lower to that prescribed by law, in the period that it may deem applicable, according to the number and nature of such circumstances.
 6. Whatever may be the number and nature of the aggravating circumstances, the courts shall not impose a greater penalty than that prescribed by law, in its maximum period.
 7. Within the limits of each period, the court shall determine the extent of the penalty according to the number and nature of the aggravating and mitigating circumstances and the greater and lesser extent of the evil produced by the crime.
- *Art 64 applies when the penalty has 3 periods* because they are divisible. If the penalty is composed of 3 different penalties, each forms a period according to Art 77
 - **Par 4:** the mitigating circumstances must be ordinary, not privileged. The aggravating circumstances must be generic or specific, not qualifying or inherent.

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Example: a qualifying circumstance (treachery) cannot be offset by a generic mitigating circumstance (voluntary circumstance)

- The court has discretion to impose the penalty within the limits fixed by law
- *Art 64 not applicable* when the penalty is indivisible or prescribed by special law or a fine
- **Rules for the application of divisible penalties**
 - *No aggravating and no mitigating circumstances* – medium period
 - *One mitigating circumstance* – minimum period
 - *One aggravating circumstance* – maximum period
 - *Mitigating and aggravating circumstance offset each other and according to relative weight*
 - *2 or more mitigating without any aggravating circumstance* – on degree lower

If in the commission of the crime, one aggravating circumstance is present, and four mitigating circumstances are likewise left, the offsetting of one aggravating circumstance will not entitle the accused to a reduction of his penalty by one degree. You will only lower the penalty by one degree if it is divisible and there is absolutely no aggravating circumstance.

Penalty for murder under the Revised Penal Code is reclusion temporal maximum to death. So, the penalty would be reclusion temporal maximum – reclusion perpetua – death. This penalty made up of three periods.

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

COMPUTATIONS:

A. Example: Prision Mayor (6 yrs, 1 day to 12 yrs)

1) **subtract the minimum (disregard 1 day) from the maximum**

$$12\text{yrs} - 6\text{yrs} = 6\text{ yrs}$$

2) **divide the difference by 3**

$$6\text{ yrs} / 3 = 2\text{ yrs}$$

3) **use the minimum (6 yrs and 1 day) as the minimum of the minimum period. Then add the 2 yrs (disregarding the 1 day) to the minimum to get the maximum of the minimum**

$$\begin{array}{r} 6\text{ yrs (minimum of the minimum)} \\ + \quad 2\text{ yrs (difference)} \\ \hline \end{array}$$

$$8\text{ yrs (maximum of the minimum).}$$

Therefore, *minimum period of prision mayor; 6 yrs 1 day to 8 yrs*

4) **use the maximum of the minimum period as the minimum of the medium period and add 1 day to distinguish from the minimum period. Then add 2 years to the minimum of the medium (disregarding the 1 day) to get the maximum of the medium period.**

$$\begin{array}{r} 8\text{ yrs (minimum of the medium)} \\ + \quad 2\text{ yrs (difference)} \\ \hline \end{array}$$

$$10\text{ yrs (maximum of the medium)}$$

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Therefore, *medium period of prision mayor; 8 yrs 1 day to 10 yrs*

- 5) use the maximum of the medium period as the minimum of the maximum pd, add 1 day to distinguish it from the medium period. Then add 2 yrs to the minimum of the maximum pd (disregarding the 1 day) to get the maximum of the maximum period)

$$\begin{array}{r} 10 \text{ yrs (maximum of the medium)} \\ + \quad 2 \text{ yrs (difference)} \\ \hline \end{array}$$

12 yrs (maximum of the maximum)

Therefore, *maximum period of prision mayor; 10 yrs 1 day to 12 yrs*

➤ *Computation above applicable to all others except arresto mayor*

B. Example: Prision Mayor minimum (6 yrs 1 day to 8 yrs) only

- 1) Subtract minimum from the maximum

$$8\text{yrs} - 6\text{yrs} = 2 \text{ yrs}$$

- 2) Divide the difference by 3

$$2\text{yrs} / 3 = 8 \text{ months}$$

- 3) Use the minimum of the given example as the minimum period. Then to get to get the maximum of the minimum, add the 8 months

$$6 \text{ yrs} + 8 \text{ months} = 6 \text{ yrs and } 8 \text{ months}$$

Therefore, *minimum of prision mayor minimum; 6 yrs 1 day to 6 yrs 8 months*

- 4) Use the maximum of the minimum as the minimum of the medium period. Add 1 day to distinguish it from the maximum of the minimum. Add the 8 months and this becomes the maximum of the medium

$$6 \text{ yrs } 8 \text{ months} + 8 \text{ months} = 7 \text{ yrs } 4 \text{ months}$$

Therefore, *the medium period of prision mayor minimum; 6 yrs 8 mos 1 day to 7 yrs 4 mos*

- 5) Use the maximum of the medium as the minimum period of the maximum period and add 1 day to distinguish. Add the 8 months to get the maximum of this maximum

$$7 \text{ yrs } 4 \text{ mos} + 8 \text{ mos} = 8 \text{ yrs}$$

Therefore, *maximum of prision mayor; 7 yrs 4 mos 1 day to 8 yrs*

Act No. 4013 (INDETERMINATE SENTENCE LAW), as amended

Three things to know about the Indeterminate Sentence Law:

- (1) Its purpose;
- (2) Instances when it does not apply; and
- (3) How it operates

Indeterminate Sentence Law governs whether the crime is punishable under the Revised Penal Code or a special Law. It is not limited to violations of the Revised Penal Code.

It applies only when the penalty served is imprisonment. If not by imprisonment, then it does not apply.

Purpose

The purpose of the Indeterminate Sentence law is to avoid prolonged imprisonment, because it is proven to be more destructive than constructive to the offender. So, the purpose of the Indeterminate Sentence Law in shortening the possible detention of the convict in jail is to save valuable human resources. In other words, if the valuable human resources were allowed prolonged confinement in jail, they would deteriorate. Purpose is to preserve economic usefulness for these people for having committed a crime -- to reform them rather than to deteriorate them and, at the same time, saving the government expenses of maintaining the convicts on a prolonged confinement in jail.

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If the crime is a violation of the Revised Penal Code, the court will impose a sentence that has a minimum and maximum. *The **maximum of the indeterminate sentence** will be arrived at by taking into account the attendant mitigating and/or aggravating circumstances according to Article 64 of the Revised Penal Code. In arriving at the **minimum of the indeterminate sentence**, the court will take into account the penalty prescribed for the crime and go one degree lower.* Within the range of one degree lower, the court will fix the minimum for the indeterminate sentence, and within the range of the penalty arrived at as the maximum in the indeterminate sentence, the court will fix the maximum of the sentence. *If there is a **privilege mitigating circumstance** which has been taken in consideration in fixing the maximum of the indeterminate sentence, the minimum shall be based on the penalty as reduced by the privilege mitigating circumstance within the range of the penalty next lower in degree.*

If the crime is a **violation of a special law**, in fixing the **maximum of the indeterminate sentence**, the court will impose the penalty within the range of the penalty prescribed by the special law, as long as it will not exceed the limit of the penalty. In fixing the **minimum**, the court can fix a penalty anywhere within the range of penalty prescribed by the special law, as long as it will not be less than the minimum limit of the penalty under said law. *No mitigating and aggravating circumstances are taken into account.*

*The minimum and the maximum referred to in the Indeterminate Sentence Law are not periods. So, **do not say, maximum or minimum period.** For the purposes of the indeterminate Sentence Law, use the term **minimum** to refer to the duration of the sentence which the convict shall serve as a minimum, and when we say **maximum**, for purposes of ISLAW, we refer to the maximum limit of the duration that the convict may be held in jail. We are not referring to any period of the penalty as enumerated in Article 71.*

Courts are required to fix a minimum and a maximum of the sentence that they are to impose upon an offender when found guilty of the crime charged. So, whenever the Indeterminate Sentence Law is applicable, there is always a minimum and maximum of the sentence that the convict shall serve. *If the crime is punished by the Revised Penal Code*, the law provides that the maximum shall be arrived at by considering the mitigating and aggravating circumstances in the commission of the crime according to the proper rules of the Revised Penal Code. To fix the maximum, consider the mitigating and aggravating circumstances according to the rules found in Article 64. *This means –*

- (1) Penalties prescribed by the law for the crime committed shall be imposed in the medium period if no mitigating or aggravating circumstance;
- (2) If there is aggravating circumstance, no mitigating, penalty shall be imposed in the maximum;
- (3) If there is mitigating circumstance, no aggravating, penalty shall be in the minimum;
- (4) If there are several mitigating and aggravating circumstances, they shall offset against each other. Whatever remains, apply the rules.
- (5) If there are two or more mitigating circumstance and no aggravating circumstance, penalty next lower in degree shall be the one imposed.

Rule under Art 64 shall apply in determining the maximum but not in determining the minimum.

In determining the applicable penalty according to the Indeterminate Sentence Law, there is no need to mention the number of years, months and days; it is enough that the name of the penalty is mentioned while the Indeterminate Sentence Law is applied. To fix the minimum and the maximum of the sentence, penalty under the Revised Penal Code is not the penalty to be imposed by court because the court must apply the Indeterminate Sentence Law. The attendant mitigating and/or aggravating circumstances in the commission of the crime are taken into consideration only when the maximum of the penalty is to be fixed. But in so far as the minimum is concerned, the basis of the penalty prescribed by the Revised Penal Code, and go one degree lower than that. But penalty one degree lower shall be applied in the same manner that the maximum is also fixed based only on ordinary mitigating circumstances. This is true only if the mitigating circumstance taken into account is only an ordinary mitigating circumstance. If the mitigating circumstance is privileged, you cannot follow the law in so far as fixing the minimum of the indeterminate sentence is concerned; otherwise, it may happen that the maximum of the indeterminate sentence is lower than its minimum.

In one Supreme Court ruling, it was held that for purposes of applying the Indeterminate Sentence Law, the penalty prescribed by the Revised Penal Code and not that which may be

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imposed by court. This ruling, however, is obviously **erroneous**. This is so because such an interpretation runs contrary to the rule of pro reo, which provides that the penal laws should always be construed and applied in a manner liberal or lenient to the offender. *Therefore, the rule is, in applying the Indeterminate Sentence Law, it is that penalty arrived at by the court after applying the mitigating and aggravating circumstances that should be the basis.*

Crimes punished under **special law** carry only one penalty; there are no degree or periods. Moreover, crimes under special law do not consider mitigating or aggravating circumstance present in the commission of the crime. So in the case of statutory offense, **no mitigating and no aggravating circumstances will be taken into account**. Just the same, courts are required in imposing the penalty upon the offender to fix a minimum that the convict should serve, and to set a maximum as the limit of that sentence. *Under the law, when the crime is punished under a special law, the court may fix any penalty as the maximum without exceeding the penalty prescribed by special law for the crime committed. In the same manner, courts are given discretion to fix a minimum anywhere within the range of the penalty prescribed by special law, as long as it will not be lower than the penalty prescribed.*

Disqualification may be divided into three, according to –

- (1) The time committed;
- (2) The penalty imposed; and
- (3) The offender involved.

The Indeterminate Sentence Law shall not apply to:

- (1) Persons convicted of offense punishable with death penalty or life imprisonment;
- (2) Persons convicted of treason, conspiracy or proposal to commit treason;
- (3) Persons convicted of misprision of treason, rebellion, sedition, espionage;
- (4) Persons convicted of piracy;
- (5) Persons who are habitual delinquents;
- (6) Persons who shall have escaped from confinement or evaded sentence;
- (7) Those who have been granted conditional pardon by the Chief Executive and shall have violated the term thereto;
- (8) Those whose maximum term of imprisonment does not exceed one year(consider the maximum term not the minimum term), *but not to those already sentenced by final judgment at the time of the approval of Indeterminate Sentence Law.*
- (9) *Those sentenced to destierro or suspension(this are not punishable by imprisonment).*

Although the penalty prescribed for the felony committed is death or reclusion perpetua, if after considering the attendant circumstances, the imposable penalty is reclusion temporal or less, the Indeterminate Sentence Law applies (People v. Cempron, 187 SCRA 278).

Recidivists entitled to the availment of the Indeterminate Sentence Law since those disqualified are Habitula delinquents. *(People vs. Venus, 63 Phil. 435)*

When the accused escaped from jail while his case was on appeal, he is not entitled to the benefits of the Indeterminate Sentence Law. *(People vs. Martinado, 214 SCRA 712)*

A youthful offender whose sentence is suspended under Sec. 192 of P.D. 603 and who escaped from his confinement is still entitled to the application of the Indeterminate Sentence Law. The same is true with an accused confined in the National Center for Mental Health (formerly National Mental Hospital) since their confinement cannot be considered punishment

but more of administrative matters for their rehabilitation. (*People vs. Soler, 63 Phil. 868*)

A person sentenced to destierro who entered the prohibited area within the prohibited period has evaded the service of his sentence (*People vs. Abilog, 82 Phil. 174*) and when he committed a crime in that area, he will not be entitled to the benefits of the Indeterminate Sentence Law for the new crime.

* ISL should not be applied when it is unfavorable to the accused.

* ISL does not apply to non-divisible penalties.

Reason for the ISL max and min: so that the prisoner could be released on parole after serving the minimum sentence and could be rearrested to serve the maximum.

Illustrations:

1. **No mitigating, aggravating, or the circumstances were offset**

Example: *crime is punishable by reclusion temporal (homicide)*

ISL max – RT medium

ISL min – PM any period (discretion of the judge)

2. **One mitigating**

ISL max – RT minimum

ISL min – PM any period (discretion of the judge)

*** The mitigating circumstance shall be considered only in the imposition of the maximum term of the sentence

3. **One aggravating**

ISL max – RT maximum

ISL min – PM, any period

4. **Two mitigating, one aggravating**

ISL max – RT minimum because after offsetting one mitigating and one aggravating, only one mitigating will be left.

ISL min – PM, any period

5. **Complex crime**

Example: *homicide with assault*

Homicide – RT

Assault – PC

*** Remember that complex crimes are punishable by the more severe penalty of the two crimes to imposed in its max period. Therefore,

ISL max – RT max

ISL min – PM, any period

Example: *frustrated homicide with assault* (being frustrated, one degree lower)

ISL max – PM max

ISL min - PC, any period

6. Art. 282 says that the crime of **grave threats** is punishable by a penalty lower by two degrees than that prescribed by law for the crime threatened.

Example: A threatened to kill B. Homicide is punishable by RT. Since A is liable only for threats of homicide, he shall be punished by prison

correctional. If there is an aggravating circumstance (relationship of A to B, for example) then the maximum period shall attach to the penalty (PC) only after lowering by 2 degrees.

ISL max – PC max (with aggravating)

ISL min – AM any period

7. Complex crime with two mitigating, no aggravating

For purposes of ISL, the penalty next lower should be determined without due regard as to whether the basic penalty provided by the Code should be applied in its max or min period as circumstances modifying liability may require. However (as an exemption), whether the number of the mitigating is such as to entitle the accused to the penalty next lower in degree, this penalty in the ISL should be starting point for the determination of the next lower in degree (ISL min). For instance, if the more serious offense in the complex crime is punishable by prision mayor, the whole of prision mayor should be considered for the purposes of determining the penalty next lower in degree – NOT prision mayor max which is the usual rule.

So now, we lower it by one degree because of the two mitigating – the **ISL max** will be PC max (max because it's a complex crime). **ISL min** will be AM any period.

8. A privileged mitigating and an ordinary mitigating

When there is a privileged mitigating (minority or incomplete self-defense) and an ordinary mitigating (plea of guilty or voluntary surrender), the **rule** is: *Lower first the penalty prescribed by the Code by one degree* (because of the privileged mitigating). This will be the max of the ISL and the penalty next lower will be the minimum of the ISL.

Example: A, a minor, pleaded guilty to murder. Murder is punishable by RT max to death.

*** There being a privileged mitigating circumstance of minority, the penalty should be one degree lower.

*** There is also an ordinary mitigating circumstance (plea of guilty), so the lowered penalty will be imposed in its minimum period which is PM max

ISL max – PM max

ISL min – any period between PC max to PM med

9. Two privileged mitigating and ordinary mitigating circumstance

Example: A, a minor, killed B in self-defense but A did not employ reasonable means. A surrendered to the authorities. The penalty of homicide is RT.

ISL max – PC min

There are 2 privileged mitigating namely minority and incomplete self-defense so RT should be lowered by 2 degrees (PC). It should likewise be imposed in the minimum because of the ordinary mitigating of voluntary surrender.

ISL min – AM any period

10. Incomplete defense, no mitigating, no aggravating

To determine the **ISL max**
 Unlawful aggression only - ordinary mitigating
 Unlawful aggression plus one other requisite – 1 degree lower
ISL min – penalty next lower to the above

11. Incomplete self-defense, plus 2 ordinary mitigating, no aggravating

Example: A killed B in self-defense. But means used was not reasonable. However, there were 2 ordinary mitigating: A acted with obfuscation and he surrendered

The penalty for homicide is RT, RT should be lowered by 1 degree for incomplete self-defense (unlawful aggression and no provocation from A), making it prision mayor. This should be further reduced by one degree because of 2 ordinary mitigating without any aggravating, making it PC.

ISL max – PC med
ISL min – AM any period

12. Murder with 2 or more mitigating, no aggravating

Code punishes murder with *RT max to death*. If for instance, there was voluntary surrender and plea of guilty, the penalty should be lowered by one degree, there being 2 mitigating. One degree lower to DM max to RT medium (refer to scale in No.8).

This should be subdivided into 3 periods. The ISL max would be then the medium period of PM max to RT med which is 12 yrs, 5 mos, 11 days to 14 yrs, 10 mos, 20 days. The ISL min would be anywhere within PC max to PM medium (refer to scale)

13. Robbery in uninhabited house

This crime is punishable by RT. If the offender is not armed and the stolen thing is less than 250 pesos, it should be lowered by one degree which is PM in its minimum period. The penalty is to be imposed in the medium period, there no aggravating nor mitigating. The ISL max should then be to the PM min.

If under special law

- no modifying circumstance is taken into account unless specially provided for by the law
- the basis of the application of the ISL is the “penalty actually imposed” and not that imposable by law

Presidential Decree No. 968 (PROBATION LAW)

Probation is a manner of disposing of an accused who have been convicted by a trial court by placing him under supervision of a probation officer, under such terms and conditions that the court may fix. This may be availed of before the convict begins serving sentence by final judgment and provided that he did not appeal anymore from conviction.

The ff. are disqualified:

1. those sentenced to a max of term of imprisonment of more than 6 years

Codal and Notes in CRIMINAL LAW BOOK I by RENE CALLANTA

2. those convicted of subversion or any crime against national security or public order
3. those who were previously convicted by final judgment of an offense punished by imprisonment of not less than 1 month and 1 day and/or fine of not more than 200
4. those who have been once on probation
5. those already serving sentence

Without regard to the nature of the crime, *only those whose penalty does not exceed six years of imprisonment are those qualified for probation.* If the penalty is six years plus one day, he is no longer qualified for probation.

If the offender was convicted of several offenses which were tried jointly and one decision was rendered where multiple sentences imposed several prison terms as penalty, the basis for determining whether the penalty disqualifies the offender from probation or not is the term of the individual imprisonment and not the totality of all the prison terms imposed in the decision. So even if the prison term would sum up to more than six years, if none of the individual penalties exceeds six years, the offender is not disqualified by such penalty from applying for probation.

On the other hand, without regard to the penalty, *those who are convicted of subversion or any crime against the public order are not qualified for probation.* So know the crimes under Title III, Book 2 of the Revised Penal Code. Among these crimes is *Alarms and Scandals*, the penalty of which is only *arresto menor* or a fine. *Under the amendment to the Probation Law, those convicted of a crime against public order regardless of the penalty are not qualified for probation. May a recidivist be given the benefit of Probation Law?*

As a general rule, NO

Exception: *If the earlier conviction refers to a crime the penalty of which does not exceed 30 days imprisonment or a fine of not more than P200.00 (Arresto Menor), such convict is not disqualified of the benefit of probation.* So even if he would be convicted subsequently of a crime embraced in the same title of the Revised Penal Code as that of the earlier conviction, he is not disqualified from probation provided that the penalty of the current crime committed does not go beyond six years and the nature of the crime committed by him is not against public order, national security or subversion.

Although a person may be eligible for probation, *the moment he perfects an appeal from the judgment of conviction, he cannot avail of probation anymore.* So the benefit of probation must be invoked at the earliest instance after conviction. He should not wait up to the time when he interposes an appeal or the sentence has become final and executory. The idea is that probation has to be invoked at the earliest opportunity.

An application for probation is exclusively within the jurisdiction of the trial court that renders the judgment. For the offender to apply in such court, *he should not appeal such judgment.*

Once he appeals, regardless of the purpose of the appeal, he will be disqualified from applying for Probation, even though he may thereafter withdraw his appeal.

If the offender would appeal the conviction of the trial court and the appellate court reduced the penalty to say, less than six years, that convict can still file an application for probation, because the earliest opportunity for him to avail of probation came only after judgment by the appellate court.

Whether a convict who is otherwise qualified for probation may be given the benefit of probation or not, the courts are always required to conduct a hearing. If the court denied the application for probation without the benefit of the hearing, where as the applicant is not disqualified under the provision of the Probation Law, but only based on the report of the probation officer, the denial is correctible by certiorari, because it is an act of the court in excess of jurisdiction or without jurisdiction, the order denying the application therefore is null and void.

Probation is intended to promote the correction and rehabilitation of an offender by providing him with individualized treatment; to provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; to prevent the commission of

offenses; to decongest our jails; and to save the government much needed finance for maintaining convicts in jail

Probation is only a privilege. So even if the offender may not be disqualified of probation, yet the court believes that because of the crime committed it was not advisable to give probation because it would depreciate the effect of the crime, the court may refuse or deny an application for probation.

Generally, the courts do not grant an application for probation for violation of the Dangerous Drugs Law, because of the prevalence of the crime. So it is not along the purpose of probation to grant the convict the benefit thereof, just the individual rehabilitation of the offender but also the best interest of the society and the community where the convict would be staying, if he would be released on probation. To allow him loose may bring about a lack of respect of the members of the community to the enforcement of penal law. In such a case, the court even if the crime is probationable may still deny the benefit of probation.

Consider not only the probationable crime, but also the probationable penalty. If it were the non-probationable crime, then regardless of the penalty, the convict cannot avail of probation. *Generally, the **penalty which is not probationable** is any penalty exceeding six years of imprisonment. **Offenses which are not probationable** are those against natural security, those against public order and those with reference to subversion.*

Persons who have been granted of the benefit of probation cannot avail thereof for the second time. Probation is only available once and this may be availed only where the convict starts serving sentence and provided he has not perfected an appeal. If the convict perfected an appeal, he forfeits his right to apply for probation. *As far as offenders who are under preventive imprisonment,* that because a crime committed is notailable or the crime committed, althoughailable, they cannot afford to put up a bail, upon promulgation of the sentence, naturally he goes back to detention, that does not mean that they already start serving the sentence even after promulgation of the sentence, sentence will only become final and executory after the lapse of the 15-day period, unless the convict has waived expressly his right to appeal or otherwise, he has partly started serving sentence and in that case, the penalty will already be final and exeutory, no right to probation can be applied for.

Probation shall be denied if the court finds:

- (1) That the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution;
- (2) That there is undue risk that during the period of probation the offender will commit another crime; or
- (3) Probation will depreciate the seriousness of the crime.

The probation law imposes two kinds of conditions:

- (1) Mandatory conditions; and
- (2) Discretionary conditions.

Mandatory conditions:

- (1) The convict must report to the Probation Officer (PO) designated in the court order approving his application for Probation within 72 hours from receipt of Notice of such order approving his application; and
- (2) The convict, as a probationer, must report to the PO at least once a month during the period of probation unless sooner required by the PO.

These conditions being mandatory, the moment any of these is violate, the probation is cancelled.

Discretionary conditions:

The trial court which approved the application for probation may impose any condition which may be constructive to the correction of the offender, provided the same would not violate the constitutional rights of the offender and subject to this two restrictions: (1) the conditions imposed should not be unduly restrictive of the probationer; and (2) such condition should not be incompatible with the freedom of conscience of the probationer

Procedure of Probation:

1. trial court gives a sentence (one that qualifies you to apply for probation)
2. within the period for filing an appeal, must apply for probation in the trial court. If already filed an appeal. As long as records haven't reached appellate courts, must withdraw to apply for probation. Applying for probation means waiver of RT to appeal.
3. upon application, trial court to suspend execution of sentence. But does not mean already on probation
4. judge to order probation officer to investigate case (whether qualified, character antecedents, environment, mental and physical condition and available institutional and community resources) Officer to submit report not later than 60 days. Court to give decision not later than 15 days after receipt of report. Pending investigation, may be released under bail. No bail filed, can be released on the custody of a responsible member of the community.
5. the judge may grant the application or not

Granted – released subject to certain conditions: Two important requirements: (1) present self to probation officer within 72 hours from receipt of order (2) you will report to said officer at least once a month at such time and place as specified by the officer.

Other conditions are special and discretionary and are provided in Sec. 10 of the Probation Law.

Once granted, accessory penalties are deemed suspended.

Denied – reasons of the court may be:

1. that you need correctional treatment
2. there is undue risk that you will commit another crime
3. probation may depreciate the seriousness of the offense
6. an order granting or denying probation is NOT appealable
7. *probation will last according to the ff:*
 - a. if sentence is not more than 1 year, probation shall not exceed 2 years
 - b. if sentence is more than 1 year, probation shall not exceed 6 years
 - c. if sentence is fine with subsidiary imprisonment, probation shall be twice the days of subsidiary
8. Probationer may be arrested at anytime during probation if there was a serious violation of the conditions. If revoked, must serve the sentence originally imposed. Court's order not appealable.
9. Probation ends after the court, basing on the probation's officer's report, orders final discharge. All civil rights will be restored. Pay fine for the original crime.

*** Expiration of the probation period does not automatically terminate probation. Must have court order.

Art. 66. *Imposition of fines.* — In imposing fines the courts may fix any amount within the limits established by law; in fixing the amount in each

case attention shall be given, not only to the mitigating and aggravating circumstances, but more particularly to the wealth or means of the culprit.

- ***Court must consider the following in imposing the fine:***
 - a) mitigating and aggravating circumstances
 - b) the wealth and means of the culprit
- When the minimum of the fine is not fixed, the court shall have the discretion provided it does not exceed the amount authorized by law

it is not only the mitigating and/or aggravating circumstances that the court shall take into consideration, but primarily, the financial capability of the offender to pay the fine.

If the fine imposed by the law appears to be excessive, the remedy is to ask the Congress to amend the law by reducing the fine to a reasonable amount.

Art. 67. *Penalty to be imposed when not all the requisites of exemption of the fourth circumstance of Article 12 are present.—* When all the conditions required in circumstances Number 4 of Article 12 of this Code to exempt from criminal liability are not present, the penalty of arresto mayor in its maximum period to prision correccional in its minimum period shall be imposed upon the culprit if he shall have been guilty of a grave felony, and arresto mayor in its minimum and medium periods, if of a less grave felony.

- **Requisites of Art 12 par 4(Accident)**
 - a) act causing the injury must be lawful
 - b) act performed w/ due care
 - c) injury was caused by mere accident
 - d) no fault or intention to cause injury
- ***if these conditions are not all present, then the ff penalties shall be imposed:***
 - a) *grave felony* – arresto mayor max to prision correccional min
 - b) *less grave felony* – arresto mayor min to arresto mayor med

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

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

Notes:

- Art. 68 applies to such minor if his application for suspension of sentence is disapproved or if while in the reformatory institution he becomes incorrigible in which case he shall be returned to the court for the imposition of the proper penalty.

- **Art. 68 provides for 2 privileged mitigating circumstances**
 - *under 15 but over 9 and has acted w/ discernment: 2 degrees lower*
 - *under 18 but over 15: 1 degree lower*

If the act is attended by two or more mitigating circumstance and no aggravating circumstance, the penalty being divisible a minor over 15 but under 18 may still get a penalty two degrees lower.

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

- **Penalty to be imposed when the crime committed is not wholly excusable**
 - *1 or 2 degrees lower if the majority of the conditions for justification or exemption in the cases provided in Arts. 11 and 12 are present.*

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

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

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

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

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

Such maximum period shall in no case exceed forty years.

In applying the provisions of this rule the duration of perpetual penalties (penal perpetua) shall be computed at thirty years. (As amended by CA#217).

Art. 70 refers to service of sentence. It is therefore addressed to the jail warden or to the director of prisons. The court or the judge has no power to implement Article 70 because the provision is not for the imposition of penalties. If the penalty by their very nature can be served simultaneously, then it must be so served.

- **Maximum duration of the convict's sentence:** 3 times the most severe penalty
- **Max period shall not exceed 40 years**
- **Subsidiary imprisonment** – this shall be excluded in computing for the maximum duration
Example: Juan has 10 sentences of 6 months and 1 day each and a fine of 1000. He was not able to pay the fine. Therefore, he must serve subsidiary penalty after 18 months and 3 days in jail.

The Three-Fold Rule

Under this rule, *when a convict is to serve successive penalties, he will not actually serve the penalties imposed by law. Instead, the most severe of the penalties imposed on him shall be multiplied by three and the period will be the only term of the penalty to be served by him. However, in no case should the penalty exceed 40 years.*

If the sentences would be served simultaneously, the Three-Fold rule does not govern.

Although this rule is known as the Three-Fold rule, you cannot actually apply this if the convict is to serve only three successive penalties. *The Three-Fold Rule can only be applied if the convict is to serve four or more sentences successively.*

The chronology of the penalties as provided in Article 70 of the Revised Penal Code shall be followed.

It is in the service of the penalty, not in the imposition of the penalty, that the Three-Fold rule is to be applied. The three-Fold rule will apply whether the sentences are the product of one information in one court, whether the sentences are promulgated in one day or whether the sentences are promulgated by different courts on different days. What is material is that the convict shall serve more than three successive sentences.

For purposes of the Three-Fold Rule, even perpetual penalties are taken into account. So not only penalties with fixed duration, even penalties without any fixed duration or indivisible penalties are taken into account. For purposes of the Three-Fold rule, indivisible penalties are given equivalent of 30 years. If the penalty is perpetual disqualification, it will be given and equivalent duration of 30 years, so that if he will have to suffer several perpetual disqualification, under the Three-Fold rule, you take the most severe and multiply it by three. The Three-Fold rule does not apply to the penalty prescribed but to the penalty imposed as determined by the court.

Illustration:

Penalties imposed are –

One prision correccional – minimum – 2 years and 4 months

One arresto mayor - 1 month and 1 day to 6 months

One prision mayor - 6 years and 1 day to 12 years

Do not commit the mistake of applying the Three- Fold Rule in this case. *Never apply the Three-Fold rule when there are only three sentences. Even if you add the penalties, you can never arrive at a sum higher than the product of the most severe multiplied by three.*

The common mistake is, if given a situation, whether the Three-Fold Rule could be applied. If asked, if you were the judge, what penalty would you impose, for purposes of imposing the penalty, the court is not at liberty to apply the Three-Fold Rule, whatever the sum total of penalty for each crime committed, even if it would amount to 1,000 years or more. *It is only when the convict is serving sentence that the prison authorities should determine how long he should stay in jail.*

This rule will apply only if sentences are to be served successively.

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

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

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

SCALE NO. 1

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

SCALE NO. 2

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

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

- *the penalties shall be satisfied according to the scale of Art 70*

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

- *subsidiary penalties are deemed imposed. However, the subsidiary imprisonment must be expressly stated in the decision.*

The rule that the principal penalty imposed carries with it the accessory penalties does not mean that the accused would serve subsidiary imprisonment in case he is not able to pay the pecuniary liabilities imposed in the judgment. Subsidiary imprisonment must be expressly ordered.

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

- if the decision or law says higher than RP or 2 degrees than RT, then the penalty imposed is RP or RT as the case may be. **Death must be designated by name.** However, for the other penalties, this does not apply.

Example: the penalty for crime X is 2 degrees lower than RP. The penalty imposed is prision mayor.

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

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

- **To get the lower degree:**
 - *Max:* reduce by one-fourth
 - *Min:* the same

With respect to the penalty of fine, if the fine has to be lowered by degree either because the felony committed is only attempted or frustrated or because there is an accomplice or an accessory participation, the fine is lowered by deducting 1/4 of the maximum amount of the fine from such maximum without changing the minimum amount prescribed by law.

Illustration:

If the penalty prescribed is a fine ranging from P200.00 to P500.00, but the felony is frustrated so that the penalty should be imposed one degree lower, 1/4 of P500.00 shall be deducted therefrom. This is done by deducting P125.00 from P500.00, leaving a difference of P375.00. The penalty one degree lower is P375.00. To go another degree lower, P125.00 shall again be deducted from P375.00 and that would leave a difference of P250.00. Hence, the penalty another degree lower is a fine ranging from P200.00 to P250.00. If at all, the fine has to be lowered further, it cannot go lower than P200.00. So, the fine will be imposed at P200.00. This rule applies when the fine has to be lowered by degree.

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

Art. 77. *When the penalty is a complex one composed of three distinct penalties.* — In cases in which the law prescribes a penalty composed of

three distinct penalties, each one shall form a period; the lightest of them shall be the minimum the next the medium, and the most severe the maximum period.

Whenever the penalty prescribed does not have one of the forms specially provided for in this Code, the periods shall be distributed, applying by analogy the prescribed rules.

- if there are 3 distinct penalties; there shall be a minimum, a medium and a maximum
Example: Reclusion temporal max to death

EXECUTION AND SERVICE OF PENALTIES

Art. 78. *When and how a penalty is to be executed.* — No penalty shall be executed except by virtue of a final judgment.

A penalty shall not be executed in any other form than that prescribed by law, nor with any other circumstances or incidents than those expressly authorized thereby.

In addition to the provisions of the law, the special regulations prescribed for the government of the institutions in which the penalties are to be suffered shall be observed with regard to the character of the work to be performed, the time of its performance, and other incidents connected therewith, the relations of the convicts among themselves and other persons, the relief which they may receive, and their diet.

The regulations shall make provision for the separation of the sexes in different institutions, or at least into different departments and also for the correction and reform of the convicts.

- *Only penalty by final judgment can be executed.* Judgment is final if the accused has not appealed within 15 days or he has expressly waived in writing that he will not appeal.

An appeal suspends the service of the sentence imposed by the trial court. In the absence of an appeal, the law contemplates a speedy execution of the sentence, and in the orderly administration of justice, the defendant should be forthwith remanded to the sheriff for the execution of the judgment.

- There could be *no subsidiary liability if it was not expressly ordered in the judgment*

Art. 79. *Suspension of the execution and service of the penalties in case of insanity.* — When a convict shall become insane or an imbecile after final sentence has been pronounced, the execution of said sentence shall be suspended only with regard to the personal penalty, the provisions of the second paragraph of circumstance number 1 of article 12 being observed in the corresponding cases.

If at any time the convict shall recover his reason, his sentence shall be executed, unless the penalty shall have prescribed in accordance with the provisions of this Code.

The respective provisions of this section shall also be observed if the insanity or imbecility occurs while the convict is serving his sentence

- **Cases of insanity:**

- a) *after final sentence*, suspend the sentence regarding the personal penalties
- b) *if he recovers*, the sentence is executed unless it has prescribed
- c) *the payment of civil or pecuniary liabilities shall not be suspended*

Art 80 (as amended by PD 603: Child and Youth Welfare Code)

- a) **youthful offender** – over 9 but under 18 at time of the commission of the offense

A child nine years of age or under at the time of the commission of the offense shall be exempt from criminal liability and shall be committed to the care of his or her father or mother, or nearest relative or family friend in the discretion of the court and subject to its supervision. The same shall be done for a child over nine years and under fifteen years of age at the time of the commission of the offense, unless he acted with discernment, in which case he shall be proceeded against in accordance with Article 192.

The Revised Penal Code declared a youthful offender to be one who is under 18 years old at the time he committed the crime attributed to him. For him to be entitled to the benefits of the law, the sentence must also be made while the accused is under 18 years of age. If the accused is already 18 years old or above upon promulgation, he will no longer be entitled to a suspension of his sentence.

The suspension of the sentence is only observed if the youthful offender commits the crime above nine years and below 18 years of age and the promulgation of the judgment is likewise done while the accused is under 18 years of age.

The suspension of sentence is not automatic or mandatory for the court to implement. The youthful offender must apply for suspension.

- b) a youthful offender held for examination or trial who cannot furnish bail will be committed to the DSWD/local rehab center or detention home
- c) **judgment of the court shall not be pronounced but suspended except for the ff cases:**
 1. those who previously enjoyed a suspension of sentence
 2. those convicted of death or life imprisonment
 3. those convicted for an offense by the military tribunals
- d) the DSWD may dismiss the case if the youth behaves properly
- e) the records of the proceeding shall be privileged and shall not be disclosed
- f) the civil liability of the youthful offender may be voluntarily assumed by a relative or a friend

The civil liability for acts committed by a youthful offender shall devolve upon the offender's father and, in the case of his death or incapacity, upon the mother, or in case of her death or incapacity, upon the guardian. Civil liability may also be voluntarily assumed by a relative or family friend of the youthful offender.

- g) the parent or guardian of the child is liable when he aids, abets or connives w/ the commission of the crime or does an act producing, promoting or contributing to the child's being a juvenile delinquent.
- h) The penalties for the parent or guardian: Fine not exceeding 500 and/or imprisonment not exceeding 2 years

Art. 81. *When and how the death penalty is to be executed.* — The death sentence shall be executed with preference to any other and shall consist in putting the person under sentence to death by lethal injection. The death sentence shall be executed under the authority of the Director of Prisons, endeavoring so far as possible to mitigate the sufferings of the person under sentence during the lethal injection as well as during the proceedings prior to the execution.

The Director of the Bureau of Corrections shall take steps to insure that the lethal injection to be administered is sufficient to cause instantaneous death of the convict.

The death sentence shall be carried out not earlier than one(1) year but not later than eighteen(18) months after the judgment has become final and executory without prejudice to the exercise by the President of his clemency powers at all times . *(As amended by RA# 8177)*

DEATH PENALTY

To which crimes imposed:

Applies only to those crimes which are specified under RA 7659. If a crime is not included in the list of heinous crimes, the penalty cannot be validly imposed for said crime.

What are heinous crimes?

These are grievous, odious and hateful offenses, which by reason of their inherent or manifest wickedness, viciousness, atrocity and perversity are repugnant and outrageous to the common standards and norms of decency and morality in a just, civilized and ordered society.

What are the heinous crimes under RA 7659?

1. Treason
2. Qualified piracy / mutiny
3. Qualified bribery
4. Parricide
5. Murder
6. Infanticide
7. Kidnapping and Serious Illegal Detention
8. Robbery with Homicide
9. Robbery with rape
10. Robbery with Intentional Mutilation
11. Robbery with arson
12. Destructive Arson
13. Rape committed with the use of deadly weapon
14. Rape committed by two or more persons
15. Rape with Homicide / Attempted rape with homicide
16. Rape under certain circumstances
17. Plunder
18. Violation of RA 6425, where quantity involved is more than or equal to that certified under Sec. 20 thereof
19. Carnapping where the owner or occupant of the vehicle is killed

Art. 82. *Notification and execution of the sentence and assistance to the culprit.* — The court shall designate a working day for the execution but not the hour thereof; and such designation shall not be communicated to the

offender before sunrise of said day, and the execution shall not take place until after the expiration of at least eight hours following the notification, but before sunset. During the interval between the notification and the execution, the culprit shall, in so far as possible, be furnished such assistance as he may request in order to be attended in his last moments by priests or ministers of the religion he professes and to consult lawyers, as well as in order to make a will and confer with members of his family or persons in charge of the management of his business, of the administration of his property, or of the care of his descendants.

- Designate a working day w/c shall not be communicated to the offender before the sunrise of said day. The execution shall not take place until after the expiration of at least 8 hrs following such notification.
- He can execute a will.

Art. 83. *Suspension of the execution of the death sentence.* — The death sentence shall not be inflicted upon a woman while she is pregnant or within one(1) year after delivery, nor upon any person over seventy years of age. In this last case, the death sentence shall be commuted to the penalty of reclusion perpetua with the accessory penalties provided in Article 40.

In all cases where the death sentence has become final, the records of the case shall be forwarded immediately by the Supreme Court to the Office of the President for possible exercise of the pardoning power. *(As amended by Sec. 25, RA# 7659)*

- **Death sentence commuted to RP:**
 - a) woman, while pregnant or within 1 yr after delivery (only suspended)
 - b) person over 70 years old.

Art. 84. *Place of execution and persons who may witness the same.* — The execution shall take place in the penitentiary or Bilibid in a space closed to the public view and shall be witnessed only by the priests assisting the offender and by his lawyers, and by his relatives, not exceeding six, if he so request, by the physician and the necessary personnel of the penal establishment, and by such persons as the Director of Prisons may authorize.

Art. 85. *Provisions relative to the corpse of the person executed and its burial.* — Unless claimed by his family, the corpse of the culprit shall, upon the completion of the legal proceedings subsequent to the execution, be turned over to the institute of learning or scientific research first applying for it, for the purpose of study and investigation, provided that such institute shall take charge of the decent burial of the remains. Otherwise, the Director of Prisons shall order the burial of the body of the culprit at government expense, granting permission to be present thereat to the members of the family of the culprit and the friends of the latter. In no case shall the burial of the body of a person sentenced to death be held with pomp.

Art. 86. *Reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor.* — The penalties of reclusion perpetua, reclusion temporal, prision mayor, prision correccional and arresto mayor, shall be executed and served in the places and penal establishments provided by the Administrative Code in force or which may be provided by law in the future.

Art. 87. *Destierro.* — Any person sentenced to destierro shall not be permitted to enter the place or places designated in the sentence, nor within the radius therein specified, which shall be not more than 250 and not less than 25 kilometers from the place designated.

- ***Destierro shall be imposed in the ff cases:***
 - a) death or serious physical injuries is caused or are inflicted under exceptional circumstance
 - b) person fails to give bond for good behavior
 - c) concubine's penalty for the crime of concubinage
 - d) lowering the penalty by degrees
- ***Execution of Distierro***
 - a) Convict shall not be permitted to enter the place designated in the sentence nor within the radius specified, which shall not be more than 250 and not less than 25 km from the place designated.
 - b) If the convict enters the prohibited area, he commits *evasion of sentence*

Art. 88. *Arresto menor.* — The penalty of arresto menor shall be served in the municipal jail, or in the house of the defendant himself under the surveillance of an officer of the law, when the court so provides in its decision, taking into consideration the health of the offender and other reasons which may seem satisfactory to it.

- ***Served where:***
 - In the municipal jail
 - In the house of the offender, but under the surveillance of an officer of the law whenever the court so provides in the decision due to the health of the offender. But the reason is not satisfactory just because the offender is a respectable member of the community

EXTINCTION OF CRIMINAL LIABILITY

Art. 89. *How criminal liability is totally extinguished.* — Criminal liability is totally extinguished:

re-election to public office is not one of the grounds by which criminal liability is extinguished. This is only true to administrative cases but not criminal cases.

(1) By the death of the convict, as to the personal penalties and as to pecuniary penalties, liability therefor is extinguished only when the death of the offender occurs before final judgment.

- Extinguishment of criminal liability is a ground of motion to quash
- Criminal liability whether before or after final judgment is extinguished upon death because it is a personal penalty
- Pecuniary penalty is extinguished only when death occurs before final judgement.

PP vs. BAYOTAS

1. Death of the accused pending appeal of his conviction extinguishes his criminal liability as well as the civil liability based solely thereon.
2. The claim of civil liability survives notwithstanding the death of accused, if the same may also be predicated on a source of obligation other than delict.
3. Where the civil liability survives, an action for recovery therefore, may be pursued but only by way of filing a separate civil action and subject to Section 1 Rule 111 of the 1985 Rules on Criminal Procedure as amended. This separate civil action may be enforced either against the executor/administrator of the estate of the accused, depending on the source obligation upon which the same is based as explained above.

If the act or omission complained of gives rise to a cause of action arising from quasi-delict, the separate civil action must be filed against the executor or administrator of the estate of the accused pursuant to Sec. 1, Rule 87 of the Rules of Court.

If the same act or omission complained of also arises from contract, the separate civil action must be filed against the estate of the accused, pursuant to Sec. 5, Rule 86 of the Rules of Court.

When the civil liability does not arise from a certain crime and predicated on law, contract, quasi-contract, or quasi-delict, the civil liability survives notwithstanding the death of the accused during the pendency of the trial of a criminal action or appeal.

What is contemplated in Article 89 is that the accused who died before the finality of a verdict or conviction cannot be ordered to make restitution, reparation or indemnification to the offended party by way of moral and exemplary damages.

Where there are several accused, the death of one does not result to the dismissal of the action because the liabilities, whether civil or criminal of said accused are distinct and separate.

The death of the offended party pending the trial is not included in the total extinction of criminal liability under Art. 89, neither is it a ground for the dismissal of a criminal complaint or information. (*Pp vs. Bundalian, 117 SCRA 718*)

(2) By service of the sentence

- Crime is a debt, hence extinguished upon payment
- Service does not extinguish civil liability

(3) By amnesty, which completely extinguishes the penalty and all its effects

Amnesty – is an act of the sovereign power granting oblivion or general pardon. It wipes all traces and vestiges of the crime but does not extinguish civil liability

(4) By absolute pardon

- **Pardon** – an act of grace proceeding from the power entrusted w/ the execution of laws, which exempts the individual from the punishment the law inflicts for the crime.

Pardon, although absolute does not erase the effects of conviction. Pardon only excuses the convict from serving the sentence. There is an exception to this and that is when the pardon was granted when the convict had already served the sentence such that there is no more service of

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sentence to be executed then the pardon shall be understood as intended to erase the effects of the conviction. But if he was serving sentence when he was pardoned, that pardon will not wipe out the effects of the crime, unless the language of the pardon absolutely relieve the offender of all the effects thereof. *Considering that recidivism does not prescribe, no matter how long ago was the first conviction, he shall still be a recidivist.*

When the crime carries with it moral turpitude, the offender even if granted pardon shall still remain disqualified from those falling in cases where moral turpitude is a bar.

*In **Monsanto v. Factoran, Jr., 170 SCRA 191**, it was held that absolute pardon does not ipso facto entitle the convict to reinstatement to the public office forfeited by reason of his conviction. Although pardon restores his eligibility for appointment to that office, the pardoned convict must reapply for the new appointment*

AMNESTY	PARDON
Extended to classes of persons who may be guilty of political offenses	Exercised individually by the president (any crime)
Exercised even before trial or investigation	Exercised when one is convicted
Looks backward and abolishes the offense itself	Looks forward and relieves the offender of the consequences
Does not extinguish civil liability	Same
A public act that needs the declaration of the president with the concurrence of Congress	A private act of the president
Courts should take judicial notice	Must be pleaded and proved

Pardon becomes valid only when there is a final judgment. If given before this, it is premature and hence void. There is no such thing as a premature amnesty, because it does not require a final judgment; it may be given before final judgment or after it.

(5) By prescription of the crime

- When the crime prescribes, the state loses the right to prosecute
- **Prescription of a crime** – is the loss/forfeiture of the right of the state to prosecute the offender after the lapse of a certain time.

(6) By prescription of the penalty

- *Means:* the loss/forfeiture of the right of government to execute the final sentence after the lapse of a certain time. Conditions: there must be final judgement and the period has elapsed.

(6) By the marriage of the offended woman, as provided in Art 344 of this Code

In the case of marriage, do not say that it is applicable for the crimes under **Article 344**. *It is only true in the crimes of rape, abduction, seduction and acts of lasciviousness.* Do not say that it is applicable to private crimes because the term includes adultery and concubinage. Marriages in these cases may even compound the crime of adultery or concubinage. *It is only in the crimes of rape, abduction, seduction and acts of lasciviousness that the marriage by the offender with the offended woman shall extinguish civil liability, not only criminal liability of the principal who marries the offended woman, but also that of the accomplice and accessory, if there are any.*

Co-principals who did not themselves directly participate in the execution of the crime but who only cooperated, will also benefit from such marriage, but not when such co-principal himself took direct part in the execution of the crime.

Marriage as a ground for extinguishing civil liability must have been contracted in good faith. The offender who marries the offended woman must be sincere in the marriage and therefore must actually perform the duties of a husband after the marriage, otherwise, notwithstanding such

marriage, the offended woman, although already his wife can still prosecute him again, although the marriage remains a valid marriage. Do not think that the marriage is avoided or annulled. The marriage still subsists although the offended woman may re-file the complaint. The Supreme Court ruled that marriage contemplated must be a real marriage and not one entered to and not just to evade punishment for the crime committed because the offender will be compounding the wrong he has committed.

In cases of **multiple rapes**, however, the *principle does not apply*. Thus, if A, B and C raped W in that when A was having sex with W, B and C were holding the legs and arms, and when it was B's turn, A and C were the ones holding W's legs and arms, and when C was the one having sex with W, the ones holding her arms and legs were A and B. Even if later on, A contracted marriage with W, there is no extinction of penal responsibility because this is a case of multiple rapes.

The **grant of probation** may be considered as a **form of extinction of criminal liability** which was bestowed while accused who has never been incarcerated, was out on bail, may thus be categorized as total extinction thereof. However, if it was granted after the conviction of the accused who was in jail, it can be considered as partial extinction only. It must be noted however, that unlike in service of sentence, in probation, the probationer is still required to report to Probation Officer at a certain period until the duration of the probation period.

Art. 90. Prescription of crime. — Crimes punishable by death, reclusion perpetua or reclusion temporal shall prescribe in twenty years.

Crimes punishable by other afflictive penalties shall prescribe in fifteen years.

Those punishable by a correctional penalty shall prescribe in ten years; with the exception of those punishable by arresto mayor, which shall prescribe in five years.

The crime of libel or other similar offenses shall prescribe in one year.

The crime of oral defamation and slander by deed shall prescribe in six months.

Light offenses prescribe in two months.

When the penalty fixed by law is a compound one, the highest penalty shall be made the basis of the application of the rules contained in the first, second and third paragraphs of this article. (As amended by RA 4661, approved June 19, 1966.)

- *In computing for the period*, the first day is excluded and the last day included. Subject to leap years
- *When the last day of the prescriptive period falls on a Sunday or a legal holiday*, the info can no longer be filed the ff day
- *Simple slander* prescribes in 2 months and *grave slander* in 6 months
- Since *destierro* is a correctional penalty, it prescribes in 10 years. Afflictive penalties, 15 years.
- *If compound penalty*, basis will be the highest penalty

Offense punished with a fine

To determine whether the prescriptive period of an offense punished with a fine is imposed as a single or as an alternative penalty, such fine should not be reduced or converted into a prison term. It should be classified into an afflictive, correctional, or light penalty pursuant to Article 26.

When fine is imposed as an alternative penalty to imprisonment (imposed together w/ a penalty lower than the fine), and fine constitute a higher penalty than the penalty of imprisonment, the basis of the prescriptive period should be the fine.

The rule on prescription as to fines does not refer to subsidiary imprisonment. It takes into consideration the nature of the penalty as afflictive, correctional and light. It is a rule that prescriptive period is always based on the fine even if there is a subsidiary imprisonment.

- *Prescription begins to run from the discovery thereof.* Interrupted when proceedings are instituted and shall begin to run again when the proceedings are dismissed.

The defense of prescription cannot be waived and it may be raised during the trial or even on appeal. However, the defense of prescription of crime cannot defeat the right of the state to recover its properties which were unlawfully acquired by public officials.

- Prescription does not take away the court's jurisdiction but only absolves the defendant and acquits him.

Extinction of crime by prescription does not extinguish civil liability unless extinction proceeds from a declaration in a final judgment that the fact from which the civil liability might arise did not exist.

Where the special law such as the Copyright Law provides for its own prescriptive period, said special law will govern. Act 3326 will not be applied.

Prescription of Crimes (Art. 90)

Penalty or Felony	Time after which Crime will Prescribe
Death, reclusion perpetua or reclusion temporal	20 years
Other afflictive penalties	15 years
Correctional penalty, except arresto mayor	10 years
Arresto mayor	5 years
Libel or other similar offenses	1 year
Oral defamation and slander by deed	6 months
Light offenses	2 months

Prescriptive periods of offenses punished under special laws and municipal ordinances (Act No. 3763)

Penalty or Offense	Time after which offense will prescribe
Fine only; or imprisonment for not more than 1 month, Or both,	1 year
Imprisonment for more than 1 month, but less than 2 years	4 years
Imprisonment for 2 years or more but	8 years

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less than 6 years	
Imprisonment for 6 years or more	12 years
Internal Revenue Law offenses	5 years
Violations of municipal ordinances	2 months
Violations of the regulations or conditions of certificate of convenience by the Public Service Commission	2 months

Art. 91. *Computation of prescription of offenses.* — The period of prescription shall commence to run from the day on which the crime is discovered by the offended party, the authorities, or their agents, and shall be interrupted by the filing of the complaint or information, and shall commence to run again when such proceedings terminate without the accused being convicted or acquitted, or are unjustifiably stopped for any reason not imputable to him.

The term of prescription shall not run when the offender is absent from the Philippine Archipelago.

The aforementioned rule, however is not applicable in the following cases:

- a. In *continuing crimes* where the prescriptive period will start to run only at the termination of the intended result;
 - b. In crimes which are not concealed because there is a *constructive notice* to the public, such as to those which involve a public document registered in public offices. It is a rule that registration is tantamount to a declaration to the whole world. In such cases, the prescriptive period shall commence from the time of the registration of the document.
 - c. In the crime of *false testimony* where the prescriptive period is reckoned from the day of final judgment is rendered by the court and not at the time the false testimony was made.
- *If there is nothing concealed* (appears in a public document), the crime commences to run on the date of the commission
 - Period of prescription for crimes that is continuing never runs
 - **Crime needs to be discovered by:**
 - a) offended party
 - b) authorities
 - c) their agents
 - If a person witnesses the crime but only tells the authorities 25 years later, prescription commences on the day the authorities were told.

“Commission of the crime is public” -- This does not mean alone that the crime was within public knowledge or committed in public.

Illustration:

In the crime of falsification of a document that was registered in the proper registry of the government like the Registry of Property or the Registry of Deeds of the Civil registry, *the falsification is deemed public from the time the falsified document was registered or recorded in such public office* so even though, the offended party may not really know of the falsification, the prescriptive period of the crime shall already run from the moment the falsified document was recorded in the public registry. So in the case where a deed of sale of a parcel of land which was falsified was recorded in the corresponding Registry of Property, the owner of the land came to know of the falsified transaction only after 10 years, so he brought the criminal action only then.

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The Supreme Court ruled that the crime has already prescribed. *From the moment the falsified document is registered in the Registry of Property, the prescriptive period already commenced to run (Constructive notice rule).*

- **What interrupts prescription?**

- a) preliminary examination or investigation w/c is similar to judicial proceeding
- b) filing the proper complaint w/ the fiscal's office and the prosecutor. Police not included.
- c) Filing complaint with the court that has proper jurisdiction

The prescription of the crime is interrupted or suspended –

- (1) When a complaint is filed in a proper barangay for conciliation or mediation as required by Chapter 7, Local Government Code, *but the suspension of the prescriptive period is good only for 60 days. After which the prescription will resume to run, whether the conciliation or mediation is terminated for not;*
- (2) When criminal case is filed in the prosecutor's office, *the prescription of the crime is suspended until the accused is convicted or the proceeding is terminated for a cause not attributable to the accused.*

Holiday is not a legal efficient cause which interrupts the prescription of the offense. Where the last day to file an information falls on a Sunday or legal holiday, the prescriptive period cannot be extended up to the next working day.

But where the crime is subject to Summary Procedure, the prescription of the crime will be suspended only when the information is already filed with the trial court. It is not the filing of the complaint, but the filing of the information in the trial which will suspend the prescription of the crime.

If the case involves a minor offense and it is filed in the fiscal's office, the filing of the case in the fiscal's office will not interrupt the running of the period of prescription.

- **When the period commences to run again**

- a) When the proceeding is terminated without the accused being convicted or acquitted
 - b) When the proceeding is unjustifiably stopped for a reason not imputable to the offender
- **“when such proceedings terminate”** – termination that is final; an unappealed conviction or acquittal
 - **“unjustifiably stopped for any reason”** – example: accused evades arrest, proceedings must be stopped
 - **Art 91 applies to a special law** when said law does not provide for the application but only provides for the period of prescription

The prevailing rule now is, prescription of the crime is not waivable, When a crime prescribes, the State loses the right to prosecute the offender, hence, even though the offender may not have filed a motion to quash on this ground the trial court, but after conviction and during the appeal he learned that at the time the case was filed, the crime has already prescribed, such accused can raise the question of prescription even for the first time on appeal, and the appellate court shall have no jurisdiction to continue, if legally, the crime has indeed prescribed.

Art. 92. When and how penalties prescribe. — The penalties imposed by final sentence prescribe as follows:

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1. Death and reclusion perpetua, in twenty years;
2. Other afflictive penalties, in fifteen years;
3. Correctional penalties, in ten years; with the exception of the penalty of *arresto mayor*, which prescribes in five years;
4. Light penalties, in one year.

When Penalties Prescribe (Art. 92)

Penalty	Prescriptive Period
Death Reclusion perpetua	20 years
Other afflictive penalties	15 years
Correctional penalties, except <i>arresto mayor</i>	10 years
<i>Arresto mayor</i>	5 years
Light penalties	1 year

- Note that *final sentence must be imposed*

The penalty, to be subject of prescription must have been imposed by final judgment. Thus, if A after conviction by the trial court, appealed the decision, and escaped from jail where he has been detained during the trial, the penalty will never prescribe. In prescription of penalty, the offender must be serving sentence, and must have escaped, committing the crime of Evasion of Sentence. From the day he escaped, the prescription of penalty commence to run.

Problem: A was sentenced to reclusion temporal for homicide and while serving sentence, for January 1, 1980. He must be able to elude authorities up to January 2, 1995 to consider the penalty prescribed. Supposed he was arrested after five (5) years of escape – that is, on January 1, 1985, and was able to hide for just ten (10) more years. The five-year period during his first escape must have to be considered for purposes of completing the fifteen (15)-year period for the prescription of the penalty of Homicide.

- If a convict can avail of mitigating circumstances and the penalty is lowered, it is still the original penalty that is used as the basis for prescription. However, if the convict already serves a portion of his sentence and escapes after, the penalty that was imposed (not the original) shall be the basis for prescription
- Fines less than 200 fall under light penalty. Those above are correccional.

Art. 93. Computation of the prescription of penalties. — The period of prescription of penalties shall commence to run from the date when the culprit should evade the service of his sentence, and it shall be interrupted if the defendant should give himself up, be captured, should go to some foreign country with which this Government has no extradition treaty, or should commit another crime before the expiration of the period of prescription.

- **Elements:**
 - a) penalty is final
 - b) convict evaded the sentence
 - c) convict has not given himself up
 - d) penalty has prescribed because of lapse of time from the date of the evasion of the service of the sentence

On the prescription of the penalty, the period will only commence to run when the convict has begun to serve the sentence. *Actually, the penalty will prescribe from the moment the convict evades the service of the sentence.* So if an accused was convicted in the trial court, and the conviction becomes final and executory, so this fellow was arrested to serve the sentence, on the way to the penitentiary, the vehicle carrying him collided with another vehicle and overturned, thus enabling the prisoner to escape, no matter how long such convict has been a fugitive from justice, the penalty imposed by the trial court will never prescribe because he has not yet commenced the service of his sentence. *For the penalty to prescribe, he must be brought to Muntinlupa, booked there, placed inside the cell and thereafter he escapes.*

- **Interruption of the period**

- If the defendant surrenders
- If he is captured
- If he should go into a foreign country with which the Philippines has no extradition treaty

Presently the Philippines has an extradition treaty with Taiwan, Indonesia, Canada, Australia, USA and Switzerland

- If he should commit another crime before the expiration of the period of prescription

The moment the convict commits another crime while he is fugitive from justice, prescriptive period of the penalty shall be suspended and shall not run in the meantime. The crime committed does not include the initial evasion of service of sentence that the convict must perform before the penalty shall begin to prescribe, so that the initial crime of evasion of service of sentence does not suspend the prescription of penalty, it is the commission of other crime, after the convict has evaded the service of penalty that will suspend such period.

- Acceptance of a conditional pardon(*People v. Puntilos*)
- If a government has an extradition treaty w/ the country to w/c a convict escaped and the crime is not included in the treaty, the running of the prescription is interrupted
- Sentence evasion clearly starts the running of the prescription. It does not interrupt it. *Acceptance of the conditional pardon interrupts the prescriptive period.*
- *Rolito Go case*: since he was captured, he is only supposed to serve the remainder of his sentence. *Reason*: during the period he escaped, his existence is one of fear and discomfort

Art. 94. Partial Extinction of criminal liability. — Criminal liability is extinguished partially:

1. **By conditional pardon;**
2. **By commutation of the sentence; and**
3. **For good conduct allowances which the culprit may earn while he is serving his sentence.**

Conditional pardon – contract between the sovereign power of the executive and the convict

- Convict shall not violate any of the penal laws of the Philippines
- Violation of conditions:
 - Offender is re-arrested and re-incarcerated
 - Prosecution under Art. 159

Commutation – change in the decision of the court by the chief regarding the (1) degree of the penalty;

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(2) by decreasing the length of the imprisonment or fine

- **Commutation allowed when:**
 - a) person over 70 yrs old
 - b) 10 justices fail to reach a decision affirming the death penalty
- Consent not necessary in commutation
- Prisoner is also allowed *special time allowance for loyalty* w/c is 1/5 deduction of the period of his sentence.

Parole – consists in the suspension of the sentence of a convict after serving the minimum term of the indeterminate penalty, without granting pardon, prescribing the terms upon which the sentence shall be suspended. *In case his parole conditions are not observed*, a convict may be returned to the custody and continue to serve his sentence without deducting the time that elapsed.

CONDITIONAL PARDON	PAROLE
Given after final judgement	Given after service of the minimum penalty
Granted by Chief Executive	Given by the Bd of Pardons and Parole
For violation, convict may not be prosecuted under 159	For violations, may be rearrested, convict serves remaining sentence

- *Good conduct allowance during confinement*
Deduction for the term of sentence for good behavior

Good conduct allowance

This includes the allowance for loyalty under Article 98, in relation to Article 158. *A convict who escapes the place of confinement on the occasion of disorder resulting from a conflagration, earthquake or similar catastrophe or during a mutiny in which he has not participated and he returned within 48 hours after the proclamation that the calamity had already passed, such convict shall be given credit of 1/5 of the original sentence from that allowance for his loyalty of coming back.* Those who did not leave the penitentiary under such circumstances do not get such allowance for loyalty. *Article 158 refers only to those who leave and return.*

Art. 95. *Obligation incurred by person granted conditional pardon.* — Any person who has been granted conditional pardon shall incur the obligation of complying strictly with the conditions imposed therein otherwise, his non-compliance with any of the conditions specified shall result in the revocation of the pardon and the provisions of Article 159 shall be applied to him.

- Condition of pardon is limited to unserved portion of the sentence, unless an intention to extend it beyond the time is manifest

Art. 96. *Effect of commutation of sentence.* — The commutation of the original sentence for another of a different length and nature shall have the legal effect of substituting the latter in the place of the former.

Art. 97. *Allowance for good conduct.* — The good conduct of any prisoner in any penal institution shall entitle him to the following deductions from the period of his sentence:

1. **During the first two years of his imprisonment, he shall be allowed a deduction of five days for each month of good behavior;**

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2. During the third to the fifth year, inclusive, of his imprisonment, he shall be allowed a deduction of eight days for each month of good behavior;

3. During the following years until the tenth year, inclusive, of his imprisonment, he shall be allowed a deduction of ten days for each month of good behavior; and

4. During the eleventh and successive years of his imprisonment, he shall be allowed a deduction of fifteen days for each month of good behavior.

- Allowance for good conduct not applicable when prisoner released under conditional pardon.
- Good conduct time allowance is given in consideration of good conduct of prisoner while he is serving sentence.

Allowances for Good conduct per year	
Years	Allowance
First 2 years	5 days per month of good behavior
3 rd to 5 th years	8 days per month of good behavior
Following years up to 10 th year	10 days per month of good behavior
11 th year and successive years	15 days per month of good behavior

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 158 of this Code, gives himself up to the authorities within 48 hours following the issuance of a proclamation announcing the passing away of the calamity or catastrophe to in said article.

- ***Special time allowance for loyalty of prisoners:***
 - The article applies only to prisoners who escaped
 - deduction of 1/5 of the period of sentence of prisoner who having evaded the service of his sentence during the calamity or catastrophe mentioned in Art 158, gives himself up to the authorities w/in 48 hrs ff the issuance of the proclamation by the President announcing the passing away of the calamity or catastrophe
 - *deduction based on the original sentence and not on the unexpired portion*
- ***Art 158 provides for increased penalties:***
 - a convict who has evaded the service of his sentence by leaving the penal institution on the occasion of disorder resulting from conflagration, earthquake or similar catastrophe or during mutiny in which he did not participate is liable to an increased penalty (1/5 of the time still remaining to be served – not to exceed 6 months), if he fails to give himself up to the authorities w/in 48 hrs ff the issuance of a proclamation by the President announcing the passing away of the calamity.

Art. 99. *Who grants time allowances.* — Whenever lawfully justified, the Director of Prisons shall grant allowances for good conduct. Such allowances once granted shall not be revoked.

a) authority to grant time allowance for good conduct is exclusively vested in the Director of prisons (e.g. provincial warden cannot usurp Director's authority)

b) it is not an automatic right and once granted, cannot be revoked by him

CIVIL LIABILITY

Acts or omissions resulting in felonies produce two classes of injuries. The first injury is directed against the state and is known as **“social injury”**. The offended party is the government or the collective right of our people. It is repaired through the imposition of penalties. The second injury is directed to the private offended party and is known as **“personal injury”**. The injury is caused to the victim of the crime who may have suffered damage, either to his person, to his property, or to his honor which is compensated by way of indemnity which is civil in nature.

A person criminally liable is also civilly liable. The award of civil damages arising from crime is governed by the Revised Penal Code, subject to the provisions of Article 32, 33 and 34 of the New Civil Code. Procedural aspect of the civil liability of the accused, Rule 111 of the Revised Rules of Court governs. **Section 1, Rule 111** provides that:

Section 1. *Institution of criminal and civil actions.* – When a criminal action is instituted, the civil action for the recovery of civil liability is implied instituted with the criminal action, unless the offended party waives the civil action, reserves his right to institute it separately, or institutes the civil action prior to the criminal action.

A *waiver* of any of the civil actions extinguishes the others. The institution of, or the *reservation* of the right to file, any of said civil actions separately waives the others.

In no case may the offended party recover damages twice for the same act or omission of the accused.

In cases wherein the amount of damages, other than actual, is alleged in the complaint or information, the corresponding filing fees shall be paid by the offended party upon the filing thereof in court for trial.

Civil liability in the aforecited rule is predicted on the crime committed by the offender. *If the civil liability arose from crimes covered under Articles 32, 33 and 34 and 2176 of the New Civil Code, an independent civil action can be instituted, either before or after the filing of the criminal case, provided that in the latter case, the offended party makes an express reservation to file a separate civil action.* When a civil action is filed as stated above, the same is suspended upon filing of the criminal action, meaning, the trial is not to be done until the criminal case is resolved or decided. This rule, however, is not applicable if the civil liability that is separately instituted, arises or originates from the provisions of Articles 32, 33 and 34 of the Civil Code.

It is necessary, however that the civil liability under all said articles arise from the same act or omission of the accused.

When the civil liability arising from the crime is different from civil liability arising from the Civil Code, if civil liability is already awarded in the criminal action, the offender cannot again claim civil liability arising from crime, and one arising from quasi-delict.

Civil Liabilities vs. Pecuniary Liabilities

Civil Liability	Pecuniary Liability
Includes reparation of damage caused and indemnification for consequential damages	Includes reparation of damages caused and indemnification for consequential damages
Includes restitution	Does not include restitution

Does not include fines and costs of the proceedings	Includes fine and the costs of the proceedings
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Art. 100. *Civil liability of a person guilty of felony.* — Every person criminally liable for a felony is also civilly liable.

Basis:

obligation to repair or to make whole the damage caused to another by reason of an act or omission, whether done intentionally or negligently and whether or not punishable by law

If the crime is one from which no civil liability may arise, like Illegal Possession of Firearm (P.D. 1866 as amended by R.A. 8294), or illegal sale, transport or possession of prohibited drugs (R.A. 64225 as amended by R.A. 7659), the convict incurs no civil liability.

Dual character of the crime as against:

- a) the **state** because of the disturbance of peace and order
- b) the **private person injured** unless it involves the crime of treason, rebellion, espionage, contempt and others where no civil liability arises on the part of the offender either because there are no damages or there is no private person injured by the crime

The civil liability of the accused may be enforced in the criminal action or in a direct civil action. The choice is in the offended party. If his preference is to prosecute the civil action in the criminal proceedings, he cannot be compelled to institute a separate civil action instead. (*Pp vs. Guido, 57 Phil. 52*)

Damage that may be recovered in criminal cases:

- *Crimes against persons, like crime of physical injuries* – whatever he spent for treatment of wounds, doctor's fees, medicines as well as salary or wages unearned
- *Moral Damages:* seduction, abduction, rape or other lascivious acts, adultery or concubinage, illegal or arbitrary detention or arrest, illegal search, libel, slander or any other form of defamation, malicious prosecution
- *Exemplary Damages:* imposed when crime was committed with one or more aggravating circumstances

NOTES:

- a) If there is no damage caused by the commission of the crime, offender is not civilly liable
- b) Dismissal of the info or the crime action does not affect the right of the offended party to institute or continue the civil action already instituted arising from the offense, because such dismissal does not carry with it the extinction of the civil one.
- c) When accused is acquitted on ground that his guilt has not been proven beyond reasonable doubt, a civil action for damages for the same act or omission may be instituted

When during the trial what was established was only the civil aspect of the case and the same facts adduced did not constitute a crime, civil liability is also awarded. (*Padilla vs. Court of Appeals, 129 SCRA 558*)

- d) Exemption from criminal liability in favor of an imbecile or insane person, and a person under 9 yrs, or over 9 but under 15 who acted w/ discernment and those acting under the impulse of irresistible force or under the impulse of an uncontrollable fear of an equal or greater injury does not include exemption from civil liability.

- e) Acquittal in the criminal action for negligence does not preclude the offended party from filing a civil action to recover damages, based on the theory that the act is quasi-delict
- f) When the court found the accused guilty of criminal negligence but failed to enter judgement of civil liability, the private prosecutor has a right to appeal for the purposes of the civil liability of the accused. The appellate court may remand the case to the trial court for the latter to include in its judgement the civil liability of the accused

Where the accused was convicted in a criminal case but the court did not make any pronouncement on his civil liability, such omission on the part of the court will not operate to prevent or bar the offended party to file a separate civil action. (*Bachrach Motors, Inc. vs. Gamboa, 101 Phil. 1219*) Silence is the declaration that the same is reserved by the complainant and will not operate as res adjudicata.

- g) Before expiration of the 15-day for appealing, the trial court can amend the judgement of conviction by adding a provision for the civil liability of the accused, even if the convict has started serving the sentence.
- h) *An independent civil action may be brought by the injured party during the pendency of the criminal case provided the right is reserved. Reservation is necessary in the ff cases:*
 1. any of the cases referred to in Art 32 (violation of ones fundamental rights)
 2. defamation, fraud and physical injury (bodily injury and not the crime of physical injury)(Art.33)
 3. civil action is against a member of a city or municipal police force for refusing or failing to render aid or protection to any person in case of danger to life or property(Art.34)
 4. in an action for damage arising from fault or negligence and there is no pre-existing contractual relation between the parties (quasi-delict)(Art.2176)
- i) **Prejudicial Question** – one w/c arises in a case, the resolution of which is a logical antecedent of the issue involved in said case and the cognizance of which pertains to another tribunal.

The following **requisites** must be present:

1. The civil case involves facts intimately related with those of the criminal case; and
 2. The resolution of the issue or issues raised in the civil action wherein the guilt or innocence of the accused would necessarily be determined. (*Sec. 5, Rule III, RRC*)
- *For the principle to apply*, it is essential that there be 2 cases involved, a civil and a criminal case. Prejudicial questions may be decided before any criminal prosecution may be instituted or may proceed.
 - *An independent civil action* may be brought by the injured party during the pendency of the criminal case, provided that the right is reserved

When the civil aspect of the case is not reserved but is prosecuted in the criminal action, the offended party may, by appropriate motion, pray or ask the trial court to issue a writ of preliminary attachment against the property of the accused as security for the satisfaction of any judgment that may be awarded in favor of the offended party upon the termination of the case.

If the offended party in a criminal case is represented by a private prosecutor, he cannot file a separate civil action.

If the offended party is represented by a private prosecutor and the latter did not produce evidence to prove civil liability and the case was resolved without the evidence to prove civil liability and the case was resolved without the court disposing of the civil aspect of the case, the decision of the court shall operate as a bar to the recovery of civil liability. In a criminal case, the *presence of a private prosecutor is justified because of the civil aspect of the case*. As a rule, the moment the private prosecutor makes a manifestation that the offended party is reserving the civil aspect of the case, he is immediately disqualified to appear as private prosecutor. (*Roas vs. dela Cruz*)

- *Extinction of the penal action does not carry with it the extinction of the civil, unless the extinction proceeds from a declaration in a final judgement that the fact from which the civil might arise did not exist*

In a criminal case, the civil liability of the employee is enforceable against the employer if the former is insolvent.

Art. 101. Rules regarding civil liability in certain cases. — The exemption from criminal liability established in subdivisions 1, 2, 3, 5 and 6 of article 12 and in subdivision 4 of article 11 of this Code does not include exemption from civil liability, which shall be enforced subject to the following rules:

First. In cases of subdivisions 1, 2, and 3 of Article 12, the civil liability for acts committed by an imbecile or insane person, and by a person under nine years of age, or by one over nine but under fifteen years of age, who has acted without discernment, shall devolve upon those having such person under their legal authority or control, unless it appears that there was no fault or negligence on their part.

Should there be no person having such insane, imbecile or minor under his authority, legal guardianship or control, or if such person be insolvent, said insane, imbecile, or minor shall respond with their own property, excepting property exempt from execution, in accordance with the civil law.

Second. In cases falling within subdivision 4 of Article 11, the persons for whose benefit the harm has been prevented shall be civilly liable in proportion to the benefit which they may have received.

The courts shall determine, in sound discretion, the proportionate amount for which each one shall be liable.

When the respective shares cannot be equitably determined, even approximately, or when the liability also attaches to the Government, or to the majority of the inhabitants of the town, and, in all events, whenever the damages have been caused with the consent of the authorities or their agents, indemnification shall be made in the manner prescribed by special laws or regulations.

Third. In cases falling within subdivisions 5 and 6 of Article 12, the persons using violence or causing the fears shall be primarily liable and secondarily, or, if there be no such persons, those doing the act shall be

liable, saving always to the latter that part of their property exempt from execution.

General Rule: exemption from criminal liability does not include exemption from civil liability

Exception: *no civil liability in par 4 and 7 of art 12.* Par 1,2,3,5 and 6 are NOT exempt from civil liability although exempt from criminal liability

Who are civilly liable for:

a. acts of insane or minor exempt from criminal liability

1. primarily devolve upon persons having legal authority or control over him, if at fault or negligent (except if proven that they acted w/o fault or w/ due diligence)
2. if no fault or negligence, or even w/ fault but is insolvent and there are no persons having legal authority over them, the property of the insane, minor or imbecile not exempt from execution shall be held liable.

b. over 15 but under 18 w. discernment

- β 1. civil code says parent (dad then mom)_
2. guardians
 3. minors own property where a guardian ad litem shall be appointed

In actual practice, when a minor or an insane person is accused of a crime, the court will inquire who are the persons exercising legal control upon the offender. When the names of such persons are made known to the court, they are required to participate in the proceedings, not only to help the accused in his defense but also for said persons in legal authority to protect their interests as persons primarily liable to pay the civil liability caused by the minor or insane. They may, however, invoke the defense embodied under *Article 2180* of the New Civil Code which provides that *in order to escape civil liability, the persons primarily liable must prove that they observed all the diligence of a god father of a family to prevent damages.*

In the event that the minor or insane has no parents or guardian, the court will appoint a guardian ad litem to protect the interests of the minor or insane. In such a case, the court will render judgment fixing the civil liability of the minor or insane and under such a situation, the property of the minor shall be primarily liable in the payment of civil liability.

*final release of a child based on good conduct does not remove his civil liability for damages.

c. persons acting under an irresistible force or uncontrollable fear

1. persons using violence or causing the fear are primarily liable
2. if there are none, those doing the act

d. no civil liability in justifying circumstances EXCEPT: par 4 of Art 11, the one benefited by the act is civilly liable.

e. civil liability in case of state of necessity

Those who benefited by the act and court shall determine the proportionate amount for which each shall be liable. If the government or majority of the inhabitants are liable, such will be determined by special laws or regulations.

Art. 102. Subsidiary civil liability of innkeepers, tavernkeepers and proprietors of establishments. — In default of the persons criminally liable,

innkeepers, tavernkeepers, and any other persons or corporations shall be civilly liable for crimes committed in their establishments, in all cases where a violation of municipal ordinances or some general or special police regulation shall have been committed by them or their employees.

Innkeepers are also subsidiarily liable for the restitution of goods taken by robbery or theft within their houses from guests lodging therein, or for the payment of the value thereof, provided that such guests shall have notified in advance the innkeeper himself, or the person representing him, of the deposit of such goods within the inn; and shall furthermore have followed the directions which such innkeeper or his representative may have given them with respect to the care and vigilance over such goods. No liability shall attach in case of robbery with violence against or intimidation of persons unless committed by the innkeeper's employees.

Elements of Par 1:

1. That the innkeeper of the establishment or his employee committed a violation of municipal ordinance or some general or special police regulation
2. A crime is committed in such establishment
3. Person criminally liable is insolvent

When the foregoing circumstances are present in the commission of the crime, the civil liability of the offender shall also be the civil liability of the owners of the establishments. Such civil liability arises only if the person criminally liable is insolvent because the nature of the liability of the innkeeper and the others is only **subsidiary**.

Elements of Par 2:

1. guests notified in advance the innkeeper of the deposit of such goods w/in the inn
 2. guests followed the directions of the innkeeper w/ respect to the care and vigilance over the such goods
 3. such goods of the guest lodging therein were taken by robbery w/ force upon things or theft
- When all these are present, the innkeeper is subsidiarily liable
 - *No civil liability in case of robbery w/ violence against or intimidation of person, unless committed by the innkeeper's employees*
 - Actual deposit of the things of the guest to the innkeeper is not necessary, it is enough that they were within the inn.

The Supreme Court ruled that even though the guest did not obey the rules and regulations prescribed by the management for safekeeping of the valuables, this does not absolve management from the subsidiary civil liability. Non-compliance with such rules and regulations by the guests will only be regarded as contributory negligence, but it won't absolve the management from civil liability.

Art. 103. Subsidiary civil liability of other persons. — The subsidiary liability established in the next preceding article shall also apply to employers, teachers, persons, and corporations engaged in any kind of industry for felonies committed by their servants, pupils, workmen, apprentices, or employees in the discharge of their duties.

Elements

- a. employer, teacher, person or corporation is engaged in any kind of industry
- b. any of their servants, pupils, workmen, apprentices of employees commits a felony while in the discharge of his duties which are related to the business of his employer
- c. the said employee is insolvent and has not satisfied his civil liability

Industry – any department or branch of art, occupation or business; especially one w/c employs so much labor and capital is a distinct branch of trade

- Hospitals are not engaged in industry; hence not subsidiarily liable for acts of nurses
- Private persons w/o business or industry, not subsidiarily liable

there is no need to file a civil action against the employer in order to enforce the subsidiary civil liability for the crime committed by his employee, it is enough that the writ of execution is returned unsatisfied.

In the trial of the case, if the court will allow the participation of the employer to protect its civil liability, *it cannot put up the defense of diligence of a good father of a family*. Such kind of defense is available only if the action is based or predicated on quasi-delict under Article 2180 of the Civil Code.

Distinctions between the civil liability of the employer under **Article 103** of the Revised Penal Code and his liability under **Article 2180** of the New Civil Code:

1. *As to the source of the civil liability of the offender-employer.*

Under Article 103 of the Revised Penal Code, the civil liability arises from crime, while under Article 2180, the obligation arises from quasi-delict.

2. *As to the nature of the liability of the employer.*

The liability of the employer under the RPC is subsidiary, while under the Civil Code, it is direct and primary;

3. *As to whether a separate complaint must be filed against the employer.*

Under the RPC, the filing of a separate complaint against the operator for recovery of subsidiary liability is clear from the decision of conviction against the accused. Under the Civil Code, the complaint must be filed against the employer because his liability is direct and primary.

4. *As to the necessity of previous conviction in a criminal case.*

The RPC requires previous conviction of the offender-employer. Such is not required under the Civil Code.

5. *As to the availability of the defense of the “exercise of diligence of a good father of the family in the selection and supervision of employee.”*

This defense is not available to defeat the employer’s subsidiary liability under the RPC. On the other hand, the Civil Code allows such defense in favor of the employer.

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A judgment of conviction sentencing a defendant employee to pay an indemnity is conclusive upon the employer in an action for the enforcement of the latter's subsidiary liability. (*Rotea vs. Halili, 109 Phil. 495*)

Acquittal of the driver in the criminal case is not a bar to the prosecution of the civil action based on quasi-delict. The source of obligation in the criminal case is Article 103, or obligations arising from crime, while the civil action is based on Article 2176 or quasi-delict. Article 1157 of the Civil Code provides that quasi-delicts and acts or omissions punishable by law are two different sources of obligations. (*Virata vs. Ochoa*)

Art. 104. What is included in civil liability. — The civil liability established in Articles 100, 101, 102, and 103 of this Code includes:

- 1. Restitution;**
- 2. Reparation of the damage caused;**
- 3. Indemnification for consequential damages.**

- First remedy granted by law is no. 1, in case this is not possible no. 2.
- In either case, no. 3 may be required
- **Restitution** – in theft, the culprit is duty bound to return the property stolen
- **Reparation** – in case of inability to return the property stolen, the culprit must pay the value of the property stolen.
- In case of physical injuries, the reparation of the damage cause would consist in the payment of hospital bills and doctor's fees to the offended party
- **Indemnification** – the lost of salary or earnings

CIVIL LIABILITIES	PECUNIARY LIABILITIES
Includes reparation and indemnification	Same
Includes restitution (return property taken), nothing to pay in terms of money	No restitution as the liabilities are to be paid out of the property of the offender
No fines and costs of proceedings	Includes fines and costs of proceedings

Art. 105. Restitution. — How made. — The restitution of the thing itself must be made whenever possible, with allowance for any deterioration, or diminution of value as determined by the court.

The thing itself shall be restored, even though it be found in the possession of a third person who has acquired it by lawful means, saving to the latter his action against the proper person, who may be liable to him.

This provision is not applicable in cases in which the thing has been acquired by the third person in the manner and under the requirements which, by law, bar an action for its recovery.

- The convict cannot by way of restitution, give to the offended party a similar thing of the same amount, kind or species and quality. *The very thing should be returned.*
- If the property stolen while in the possession of the third party *suffers deterioration* due to his fault, the court will assess the amount of the deterioration and, in addition to the return of the property, the culprit will be ordered to pay such amount

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- **General Rule:** the owner of the property illegally taken by the offender can recover it from whomsoever is in possession thereof. Thus, even if the property stolen was acquired by a 3rd person by purchase w/o knowing that it has been stolen, such property will be returned to the owner.

Exception: purchased in a public sale or auction in good faith

Restitution or restoration presupposes that the offended party was divested of property, and such property must be returned. *If the property is in the hands of a third party, the same shall nevertheless be taken away from him and restored to the offended party, even though such third party may be a holder for value and a buyer in good faith of the property, except when such third party buys the property from a public sale where the law protects the buyer.*

- If the thing is acquired by a person *knowing that it was stolen*, then he is an accessory and therefore criminally liable (*liable under anti-fencing law*)
- The third party who acquired the stolen property may be reimbursed w/ the price paid therefor if it be acquired at (a) *a public sale* and (b) *in good faith*

- **Circumstances which bar an action for recovery:**

1. Torrens title
2. When sale is authorized

- *When the liability to return a thing arises from a contract*, not from a criminal act, the court cannot order its return in the criminal case.
- Restitution may be ordered, even if accused is acquitted, provided the offense is proved and it is shown that the thing belongs to someone else

The obligation of the offender transcends to his heirs, even if the offender dies, provided he died after judgment became final, the heirs shall assume the burden of the civil liability, but this is only to the extent that they inherit property from the deceased, if they do not inherit, they cannot inherit the obligations.

- *When crime is not against property*, no restitution or reparation of the thing can be done

Some believed that this civil liability is true only in crimes against property, this is not correct. Regardless of the crime committed, if the property is illegally taken from the offended party during the commission of the crime, the court may direct the offender to restore or restitute such property to the offended party. It can only be done if the property is brought within the jurisdiction of that court.

- The court has authority to order the reinstatement of the accused acquitted of a crime punishable by the penalty of perpetual or temporary disqualification

If the property cannot be restituted anymore, then the damage must be repaired, requiring the offender to pay the value thereof, as determined by the court. *That value includes the sentimental value to the offended party, not only the replacement cost.* But if what would be restored is brand new, then there will be an allowance for depreciation, otherwise, the offended party is allowed to enrich himself at the expense of the offender.

Art. 106. *Reparation. — How made. —* The court shall determine the amount of damage, taking into consideration the price of the thing, whenever possible, and its special sentimental value to the injured party, and reparation shall be made accordingly.

Notes:

- Reparation will be ordered by the court if restitution is not possible
- **Reparation shall be**
 - a) the price of the thing
 - b) its sentimental value

In case of human life, reparation of the damage cause is basically P50,000.00 value of human life, exclusive of other forms of damages. This P50,000.00 may also increase whether such life was lost through intentional felony or criminal negligence, whether the result of *dolo* or *culpa*. *Also in the crime of rape*, the damages awarded to the offended woman is generally P50,000.00 for the damage to her honor. Supreme Court ruled that even if the offended woman does not adduce evidence or such damage, court can take judicial notice of the fact that if a woman was raped, she inevitably suffers damages.

- If there is no evidence as to the value of the thing unrecovered, reparation cannot be made
- Payment by the insurance company does not relive the offender of his obligation to repair the damage caused
- The damages shall be limited to those caused by the crime
- Accused is liable for the damages caused as a result of the destruction of the property after the crime was committed either because it was lost or destroyed by the accused himself or that of any other person or as a result of any other cause or causes

Art. 107. *Indemnification — What is included.* — Indemnification for consequential damages shall include not only those caused the injured party, but also those suffered by his family or by a third person by reason of the crime.

- *Indemnity* refers to crimes against persons; *reparation* to crimes against property

Indemnification of consequential damages refers to the loss of earnings, loss of profits. This does not refer only to consequential damages suffered by the offended party; this also includes consequential damages to third party who also suffer because of the commission of the crime.

- Indemnity for medical services still unpaid may be recovered
- *Contributory negligence* on the part of the offended party reduces the civil liability of the offender
- The civil liability may be increased only if it will not require an aggravation of the decision in the criminal case on w/c it is based
- The **amount of damages for death** shall be at least 50,000, even though there may have been mitigating circumstances.
- ***In addition:***
 1. payment for the loss of the earning capacity of the deceased
 2. if the deceased was obliged to give support, the recipient who is not an heir, may demand support from the defendant
 3. the spouse, illegitimate and illegitimate descendants and ascendants of the deceased may demand for moral damages.
- ***Moral damages may be recovered in the ff:***
 1. physical injuries
 2. seduction, abduction, rape
 3. adultery, concubinage
 4. illegal or arbitrary detention

5. illegal search
 6. libel, slander, defamation
 7. malicious prosecution
- **Exemplary damages** may be imposed when the crime was committed with one or more aggravating circumstances; cannot be recovered as a matter of right, the court will decide whether they should be adjudicated.

Indemnification also includes the award of attorney's fees. Private prosecutor is therefore entitled to the award of attorney's fees.

Art. 108. *Obligation to make restoration, reparation for damages, or indemnification for consequential damages and actions to demand the same — Upon whom it devolves.* — The obligation to make restoration or reparation for damages and indemnification for consequential damages devolves upon the heirs of the person liable.

The action to demand restoration, reparation, and indemnification likewise descends to the heirs of the person injured.

- The heirs of the person liable has no obligation if restoration is not possible and the deceased left no property
- *Civil liability is possible only when the offender dies after final judgement.*
- If the death of the offender took place before any final judgement of conviction was rendered against him, the action for restitution must necessarily be dismissed.

An action for damages by reason of wrongful death may be instituted by the heirs of the deceased against the administrator or executor of the estate of the deceased offender. It cannot be brought by the administrator of the victim's estate.

Art. 109. *Share of each person civilly liable.* — If there are two or more persons civilly liable for a felony, the courts shall determine the amount for which each must respond.

In case of insolvency of the accomplices, the principal shall be subsidiarily liable for their share of the indemnity and *in case of the insolvency of the principal*, the accomplices shall be subsidiarily liable, jointly and severally liable, for the indemnity due from said principal

When there are several offenders, the court in the exercise of its discretion shall determine what shall be the share of each offender depending upon the degree of participation – as principal, accomplice or accessory. If within each class of offender, there are more of them, such as more than one principal or more than one accomplice or accessory, the liability in each class of offender shall be subsidiary. Anyone of them may be required to pay the civil liability pertaining to such offender without prejudice to recovery from those whose share have been paid by another.

If all the principals are insolvent, the obligation shall devolve upon the accomplice(s) or accessory(s). But whoever pays shall have the right of recovering the share of the obligation from those who did not pay but are civilly liable. *In case the accomplice and the principal cannot pay*, the liability of those subsidiarily liable is absolute.

To relate with Article 38, when there is an order or preference of pecuniary (monetary) liability, therefore, restitution is not included here.

There is not subsidiary penalty for non-payment of civil liability.

The owners of taverns, inns, motels, hotels, where the crime is committed within their establishment due to noncompliance with general police regulations, if the offender who is primarily liable cannot pay, the proprietor, or owner is subsidiarily liable.

Felonies committed by employees, pupils, servants in the course of their employment, schooling or household chores. The employer, master, teacher is subsidiarily liable civilly, while the offender is primarily liable.

Art. 110. *Several and subsidiary liability of principals, accomplices and accessories of a felony — Preference in payment. — Notwithstanding the provisions of the next preceding article, the principals, accomplices, and accessories, each within their respective class, shall be liable severally (in solidum) among themselves for their quotas, and subsidiaries for those of the other persons liable.*

The subsidiary liability shall be enforced, first against the property of the principals; next, against that of the accomplices, and, lastly, against that of the accessories.

Whenever the liability in solidum or the subsidiary liability has been enforced, the person by whom payment has been made shall have a right of action against the others for the amount of their respective shares.

- ***Subsidiary liability will be enforced on:***
 1. *first*, against the property of the principal
 2. *second*, against that of the accomplice
 3. *third*, against that of the accessories

Illustration: Two principals, two accomplices and two accessories were convicted in a homicide case, and the indemnity to the heirs of the victim was fixed at Php6,000.00. The quota of the principals was fixed at Php3,000.00; the accomplices at Php2,000.00 and the accessories at Php1,000.00 and as between themselves, the liability of each was $\frac{1}{2}$. If both principals were insolvent, their quota would be borne by the two accomplices whose liability would be Php2,500.00 each for a total of Php5,000.00, the quota of both principals and accomplices. If the accessories were insolvent, the principals would bear their quota. Subsidiarily and in default of the principals, the accomplices would bear the quota of the accessories.

Art. 111. *Obligation to make restitution in certain cases. — Any person who has participated gratuitously in the proceeds of a felony shall be bound to make restitution in an amount equivalent to the extent of such participation.*

Notes:

1. This refers to a person who has participated gratuitously in the commission of a felony and he is bound to make restitution in an amount equivalent to the extent of such participation
2. The third person must be innocent of the commission of the crime otherwise he would be liable as an accessory and this article will not apply

Art. 112. *Extinction of civil liability. — Civil liability established in Articles 100, 101, 102, and 103 of this Code shall be extinguished in the*

same manner as obligations, in accordance with the provisions of the Civil Law.

- **Civil liability is extinguished by:**
 1. payment or performance
 2. loss of the thing due
 3. condonation or remission of the debt
 4. confusion or merger of the rights of creditor and debtor
 5. compensation
 6. novation
- Other causes of extinguishment of obligations: annulment, rescission, fulfillment of a resolutive condition and prescription .
- **Civil liability may arise from**
 1. Crime - RPC
 2. Breach of contract - CC
 3. Tortious act – CC
- The civil liability from any of these is extinguished by the same causes enumerated above
- The accused shall still be liable for the payment of the thing stolen even if it is lost or destroyed

Civil liability of the offender is extinguished in the same manner as civil obligation is extinguished but this is not absolutely true. Under civil law, a civil obligation is extinguished upon loss of the thing due when the thing involved is specific. This is not a ground applicable to extinction of civil liability in criminal case if the thing due is lost, the offender shall repair the damages caused.

The judgment for civil liability prescribes in ten years. It may be enforced by writ of execution within the first five years and by action for revival of judgment during the next five years. Insolvency is not a defense to an action to enforce judgment.

Art. 113. *Obligation to satisfy civil liability.* — Except in case of extinction of his civil liability as provided in the next preceding article the offender shall continue to be obliged to satisfy the civil liability resulting from the crime committed by him, notwithstanding the fact that he has served his sentence consisting of deprivation of liberty or other rights, or has not been required to serve the same by reason of amnesty, pardon, commutation of sentence or any other reason.

Notes:

- Unless extinguished, civil liability subsists even if the offender has served sentence consisting of deprivation of liberty or other rights or has served the same, due to amnesty, pardon, commutation of the sentence or any other reason.
- Under the law as amended, *even if the subsidiary imprisonment is served for non-payment of fines, this pecuniary liability of the defendant is not extinguished.*
- While *amnesty* wipes out all traces and vestiges of the crime, it does not extinguish the civil liability of the offender. A *pardon* shall in no case exempt the culprit from the payment of the civil indemnity imposed upon him by the sentence
- *Probation* affects only the criminal aspect of the crime.