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

Crimes against national security

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

Crimes against the law of nations

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

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

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

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

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

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

Article 114. Treason

Elements

1. Offender is a Filipino or resident alien;
2. There is a war in which the Philippines is involved;
3. Offender either –
   a. levies war against the government; or
   b. adheres to the enemies, giving them aid or comfort

within the Philippines or elsewhere

Requirements of levying war

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

Two ways of proving treason

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

Article 115. Conspiracy and Proposal to Commit Treason

Elements of conspiracy to commit treason

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

Elements of proposal to commit treason

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

Article 116. Misprision of Treason

Elements

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

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

The essence of the crime is that there are persons who conspire to commit treason and the offender knew this and failed to make the necessary report to the government within the earliest possible time. What is required is to report it as soon as possible. The criminal liability arises if the treasonous activity was still at the conspiratorial stage. Because if the treason already erupted into an overt act, the implication is that the government is already aware of it. There is no need to report the same. This is a felony by omission

although committed with dolo, not with culpa.

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

Whether the conspirators are parents or children, and the ones who learn the conspiracy is a parent or child, they are required to report the same. The reason is that although blood is thicker than water so to speak, when it comes to security of the state, blood relationship is always subservient to national security. Article 20 does not apply here because the persons found liable for this crime are not considered accessories; they are treated as principals.

In the 1994 bar examination, a problem was given with respect to misprision of treason. The text of the provision simply refers to a conspiracy to overthrow the government. The examiner failed to note that this crime can only be committed in times of war. The conspiracy adverted to must be treasonous in character. In the problem given, it was rebellion. A conspiracy to overthrow the government is a crime of rebellion because there is no war. Under the Revised Penal Code, there is no crime of misprision of rebellion.

Article 117. Espionage

Acts punished

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

   Elements

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

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

   Elements

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

Commonwealth Act No. 616 – An Act to Punish Espionage and Other Offenses against National Security

Acts punished

1. Unlawfully obtaining or permitting to be obtained information affecting national defense;
2. Unlawful disclosing of information affecting national defense;
3. Disloyal acts or words in times of peace;

4. Disloyal acts or words in times of war;

5. Conspiracy to violate preceding sections; and

6. Harboring or concealing violators of law.

Article 118. Inciting to War or Giving Motives for Reprisals

Elements

1. Offender performs unlawful or unauthorized acts;

2. The acts provoke or give occasion for –

    a. a war involving or liable to involve the Philippines; or

    b. exposure of Filipino citizens to reprisals on their persons or property.

Article 119. Violation of Neutrality

Elements

1. There is a war in which the Philippines is not involved;

2. There is a regulation issued by a competent authority to enforce neutrality;

3. Offender violates the regulation.

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

Article 120. Correspondence with Hostile Country

Elements

1. It is in time of war in which the Philippines is involved;

2. Offender makes correspondence with an enemy country or territory occupied by enemy troops;

3. The correspondence is either –

    a. prohibited by the government;

    b. carried on in ciphers or conventional signs; or

    c. containing notice or information which might be useful to the enemy.

Article 121. Flight to Enemy's Country

Elements

1. There is a war in which the Philippines is involved;

2. Offender must be owing allegiance to the government;

3. Offender attempts to flee or go to enemy country;

4. Going to the enemy country is prohibited by competent authority.

In crimes against the law of nations, the offenders can be prosecuted anywhere in the world because these crimes are considered as against humanity in general,

like piracy and mutiny. Crimes against national security can be tried only in the Philippines, as there is a need to bring the offender here before he can be made to suffer the consequences of the law. The acts against national security may be committed abroad and still be punishable under our law, but it can not be tried under foreign law.

Article 122. Piracy in general and Mutiny on the High Seas or in Philippine Waters

Acts punished as piracy

1. Attacking or seizing a vessel on the high seas or in Philippine waters;

2. Seizing in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers.

Elements of piracy

1. The vessel is on the high seas or Philippine waters;

2. Offenders are neither members of its complement nor passengers of the vessel;

3. Offenders either –

    a. attack or seize a vessel on the high seas or in Philippine waters; or

    b. seize in the vessel while on the high seas or in Philippine waters the whole or part of its cargo, its equipment or personal belongings of its complement or passengers;

4. There is intent to gain.

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

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

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

Note, however, that in Section 4 of Presidential Decree No. 532, the act of aiding pirates or abetting piracy is penalized as a crime distinct from piracy. Said section penalizes any person who knowingly and in any manner aids or protects pirates, such as giving them information about the movement of the police or other peace officers of the government, or acquires or receives property taken by such pirates, or in any manner derives any benefit therefrom; or who directly or indirectly abets the commission of piracy. Also, it is expressly provided in the same section that

the offender shall be considered as an accomplice of the principal offenders and punished in accordance with the Revised Penal Code. This provision of Presidential Decree No. 532 with respect to piracy in Philippine water has not been incorporated in the Revised Penal Code. Neither may it be considered repealed by Republic Act No. 7659 since there is nothing in the amendatory law is inconsistent with said section. Apparently, there is still the crime of abetting piracy in Philippine waters under Presidential Decree No. 532.

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

Questions & Answers

Could theft be committed on board a vessel?

Yes. The essence of piracy is one of robbery.

Elements of mutiny

1. The vessel is on the high seas or Philippine waters;
2. Offenders are either members of its complement, or passengers of the vessel;
3. Offenders either –
    a. attack or seize the vessel; or
    b. seize the whole or part of the cargo, its equipment, or personal belongings of the crew or passengers.

Mutiny is the unlawful resistance to a superior officer, or the raising of commotions and disturbances aboard a ship against the authority of its commander.

Distinction between mutiny and piracy

(1) As to offenders

Mutiny is committed by members of the complement or the passengers of the vessel.

Piracy is committed by persons who are not members of the complement or the passengers of the vessel.

(2) As to criminal intent

In mutiny, there is no criminal intent.

In piracy, the criminal intent is for gain.

Article 123. Qualified Piracy

Elements

1. The vessel is on the high seas or Philippine waters:
2. Offenders may or may not be members of its complement, or passengers of the vessel;
3. Offenders either –
    a. attack or seize the vessel; or
    b. seize the whole or part of the cargo, its equipment., or personal belongings of the crew or passengers;

4. The preceding were committed under any of the following circumstances:

    a. whenever they have seized a vessel by boarding or firing upon the same;

    b. whenever the pirates have abandoned their victims without means of saving themselves; or

    c. whenever the crime is accompanied by murder, homicide, physical injuries or rape.

If any of the circumstances in Article123 is present, piracy is qualified. Take note of the specific crimes involve in number 4 c (murder, homicide, physical injuries or rape). When any of these crimes accompany piracy, there is no complex crime. Instead, there is only one crime committed – qualified piracy. Murder, rape, homicide, physical injuries are mere circumstances qualifying piracy and cannot be punished as separate crimes, nor can they be complexed with piracy.

Although in Article 123 merely refers to qualified piracy, there is also the crime of qualified mutiny. Mutiny is qualified under the following circumstances:

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

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

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

Republic Act No. 6235 (The Anti Hi-Jacking Law)

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

Four situations governed by anti hi-jacking law:

(1) usurping or seizing control of an aircraft of Philippine registry while it is in flight, compelling the pilots thereof to change the course or destination of the aircraft;

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

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

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

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

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

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

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

Questions & Answers

1. The pilots of the Pan Am aircraft were accosted by some armed men and were told to proceed to the aircraft to fly it to a foreign destination. The armed men walked with the pilots and went on board the aircraft. But before they could do anything on the aircraft, alert marshals arrested them. What crime was committed?

The criminal intent definitely is to take control of the aircraft, which is hi-jacking. It is a question now of whether the anti-hi-jacking law shall govern.

The anti hi-jacking law is applicable in this case. Even if the aircraft is not yet about to fly, the requirement that it be in flight does not hold true when in comes to aircraft of foreign registry. Even if the problem does not say that all exterior doors are closed, the crime is hi-jacking. Since the aircraft is of foreign registry, under the law, simply usurping or seizing control is enough as long as the aircraft is within Philippine territory, without the requirement that it be in flight.

Note, however, that there is no hi-jacking in the attempted stage. This is a special law where the attempted stage is not punishable.

2. A Philippine Air Lines aircraft is bound for Davao. While the pilot and co-pilot are taking their snacks at the airport lounge, some of the armed men were also there. The pilots were followed by these men on their way to the aircraft. As soon as the pilots entered the cockpit, they pulled out their firearms and gave instructions where to fly the aircraft. Does the anti hi-jacking law apply?

No. The passengers have yet to board the aircraft. If at that time, the offenders are apprehended, the law will not apply because the aircraft is not yet in flight. Note that the aircraft is of Philippine registry.

3. While the stewardess of a Philippine Air Lines plane bound for Cebu was waiting for the passenger manifest, two of its passengers seated near the pilot surreptitiously entered the pilot cockpit. At gunpoint, they directed the pilot to fly the aircraft to the Middle East. However, before

the pilot could fly the aircraft towards the Middle East, the offenders were subdued and the aircraft landed. What crime was committed?

The aircraft was not yet in flight. Considering that the stewardess was still waiting for the passenger manifest, the doors were still open. Hence, the anti hi-jacking law is not applicable. Instead, the Revised Penal Code shall govern. The crime committed was grave coercion or grave threat, depending upon whether or not any serious offense violence was inflicted upon the pilot.

However, if the aircraft were of foreign registry, the act would already be subject to the anti hi-jacking law because there is no requirement for foreign aircraft to be in flight before such law would apply. The reason for the distinction is that as long as such aircraft has not returned to its home base, technically, it is still considered in transit or in flight.

As to numbers 3 and 4 of Republic Act No. 6235, the distinction is whether the aircraft is a passenger aircraft or a cargo aircraft. In both cases, however, the law applies only to public utility aircraft in the Philippines. Private aircrafts are not subject to the anti hi-jacking law, in so far as transporting prohibited substances are concerned.

If the aircraft is a passenger aircraft, the prohibition is absolute. Carrying of any prohibited, flammable, corrosive, or explosive substance is a crime under Republic Act No. 6235. But if the aircraft is only a cargo aircraft, the law is violated only when the transporting of the prohibited substance was not done in accordance with the rules and regulations prescribed by the Air Transportation Office in the matter of shipment of such things. The Board of Transportation provides the manner of packing of such kind of articles, the quantity in which they may be loaded at any time, etc. Otherwise, the anti hi-jacking law does not apply.

However, under Section 7, any physical injury or damage to property which would result from the carrying or loading of the flammable, corrosive, explosive, or poisonous substance in an aircraft, the offender shall be prosecuted not only for violation of Republic Act No. 6235, but also for the crime of physical injuries or damage to property, as the case may be, under the Revised Penal Code. There will be two prosecutions here. Other than this situation, the crime of physical injuries will be absorbed. If the explosives were planted in the aircraft to blow up the aircraft, the circumstance will qualify the penalty and that is not punishable as a separate crime for murder. The penalty is increased under the anti hi-jacking law.

All other acts outside of the four are merely qualifying circumstances and would bring about higher penalty. Such acts would not constitute another crime. So the killing or explosion will only qualify the penalty to a higher one.

Questions & Answers

1. In the course of the hi-jack, a passenger or complement was shot and killed. What crime or crimes were committed?

The crime remains to be a violation of the anti hi-jacking law, but the penalty thereof shall be higher because a passenger or complement of the aircraft had been killed. The crime of homicide or murder is not committed.

2. The hi-jackers threatened to detonate a bomb in the course of the hi-jack. What crime or crimes were committed?

Again, the crime is violation of the anti hi-jacking law. The separate crime of grave threat is not committed. This is considered as a qualifying circumstance that shall serve to increase the penalty.

TITLE II. CRIMES AGAINST THE FUNDAMENTAL LAWS OF THE STATE

Crimes against the fundamental laws of the State

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

Crimes under this title are those which violate the Bill of Rights accorded to the citizens under the Constitution. Under this title, the offenders are public officers, except as to the last crime – offending the religious feelings under Article 133, which refers to any person. The public officers who may be held liable are only those acting under supposed exercise of official functions, albeit illegally.
In its counterpart in Title IX (Crimes Against Personal Liberty and Security), the offenders are private persons. But private persons may also be liable under this title as when a private person conspires with a public officer. What is required is that the principal offender must be a public officer. Thus, if a private person conspires with a public officer, or becomes an accessory or accomplice, the private person also becomes liable for the same crime. But a private person acting alone cannot commit the crimes under Article 124 to 132 of this title.

Article 124. Arbitrary Detention

Elements

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

Meaning of absence of legal grounds

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

The crime of arbitrary detention assumes several forms:

(1) Detaining a person without legal grounds under;

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

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

Distinction between arbitrary detention and illegal detention

1. In arbitrary detention --

The principal offender must be a public officer. Civilians can commit the crime of arbitrary detention except when they conspire with a public officer committing this crime, or become an accomplice or accessory to the crime committed by the public officer; and

The offender who is a public officer has a duty which carries with it the authority to detain a person.

2. In illegal detention --

The principal offender is a private person. But a public officer can commit the crime of illegal detention when he is acting in a private capacity or beyond the scope of his official duty, or when he becomes an accomplice or accessory to the crime committed by a private person.

The offender, even if he is a public officer, does not include as his function the power to arrest and detain a person, unless he conspires with a public officer committing arbitrary detention.

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

Questions & Answers

1. A janitor at the Quezon City Hall was assigned in cleaning the men's room. One day, he noticed a fellow urinating so carelessly that instead of urinating at the bowl, he was actually urinating partly on the floor. The janitor resented this. He stepped out of the men's room and locked the same. He left. The fellow was able to come out only after several hours when people from the outside forcibly opened the door. Is the janitor liable for arbitrary detention?

No. Even if he is a public officer, he is not permitted by his official function to arrest and detain persons. Therefore, he is guilty only of illegal detention. While the offender is a public officer, his duty does not include the authority to make arrest; hence, the crime committed is illegal detention.

2. A municipal treasurer has been courting his secretary. However, the latter always turned him down. Thereafter, she tried to avoid him. One afternoon, the municipal treasurer locked the secretary inside their office until she started crying. The treasurer opened the door and allowed her to go home. What crime was committed?

Illegal detention. This is because the municipal treasurer has no authority to detain a person although he is a public officer.

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

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

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

Question & Answer

The offended party was brought to a place which he could not leave because he does not know where he is, although free to move about. Was arbitrary or illegal detention committed?

Either arbitrary detention or illegal detention was committed. If a person is brought to a safe house, blindfolded, even if he is free to move as he pleases, but if he cannot leave the place, arbitrary detention or illegal detention is committed.

Distinction between arbitrary detention and unlawful arrest

(1) As to offender

In arbitrary detention, the offender is a public officer possessed with authority to make arrests.

In unlawful arrest, the offender may be any person.

(2) As to criminal intent

In arbitrary detention, the main reason for detaining the offended party is to deny him of his liberty.

In unlawful arrest, the purpose is to accuse the offended party of a crime he did not commit, to deliver the person to the proper authority, and to file the necessary charges in a way trying to incriminate him.

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

Question & Answer

A had been collecting tong from drivers. B, a driver, did not want to contribute to the tong. One day, B was apprehended by A, telling him that he was driving carelessly. Reckless driving carries with it a penalty of immediate detention and arrest. B was brought to the Traffic Bureau and was detained there until the evening. When A returned, he opened the cell and told B to go home. Was there a crime of arbitrary detention or unlawful arrest?

Arbitrary detention. The arrest of B was only incidental to the criminal intent of the offender to detain him. But if after putting B inside the cell, he was turned over to the investigating officer who booked him and filed a charge of reckless imprudence

against him, then the crime would be unlawful arrest. The detention of the driver is incidental to the supposed crime he did not commit. But if there is no supposed crime at all because the driver was not charged at all, he was not given place under booking sheet or report arrest, then that means that the only purpose of the offender is to stop him from driving his jeepney because he refused to contribute to the tong.

Article 125. Delay in the Delivery of Detained Persons to the Proper Judicial Authorities

Elements

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

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

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

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

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

Question & Answer

Within what period should a police officer who has arrested a person under a warrant of arrest turn over the arrested person to the judicial authority?

There is no time limit specified except that the return must be made within a reasonable time. The period fixed by law under Article 125 does not apply because the arrest was made by virtue of a warrant of arrest.

When a person is arrested without a warrant, it means that there is no case filed in court yet. If the arresting officer would hold the arrested person there, he is actually depriving the arrested of his right to bail. As long as there is no charge in the court yet, the arrested person cannot obtain bail because bail may only be granted by the court. The spirit of the law is to have the arrested person delivered to the jurisdiction of the court.

If the arrest is by virtue of a warrant, it means that there is already a case filed in court. When an information is filed in court, the amount of bail recommended is stated. The accused person is not really denied his right to bail. Even if he is interrogated in the police precinct, he can already file bail.

Note that delivery of the arrested person to the proper authorities does not mean physical delivery or turn over of arrested person to the court. It simply means putting the arrested person under the jurisdiction of the court. This is done by filing the necessary complaint or information against the person arrested in court within the period specified in Article 125. The purpose of this is for the court to determine whether the offense is bailable or not and if bailable, to allow him the right to bail.

Under the Rule 114 of the Revised Rules of Court, the arrested person can demand from the arresting officer to bring him to any judge in the place where he was arrested and post the bail here. Thereupon, the arresting officer may release him. The judge who granted the bail will just forward the litimus of the case to the court trying his case. The purpose is in order to deprive the arrested person of his right to post the bail.

Under the Revised Rules of Court, when the person arrested is arrested for a crime which gives him the right to preliminary investigation and he wants to avail his right to a preliminary investigation, he would have to waive in writing his rights under Article 125 so that the arresting officer will not immediately file the case with the court that will exercise jurisdiction over the case. If he does not want to waive this in writing, the arresting officer will have to comply with Article 125 and file the case immediately in court without preliminary investigation. In such case, the arrested person, within five days after learning that the case has been filed in court without preliminary investigation, may ask for preliminary investigation. In this case, the public officer who made the arrest will no longer be liable for violation of Article 125.

Question & Answer

The arrest of the suspect was done in Baguio City. On the way to Manila, where the crime was committed, there was a typhoon so the suspect could not be brought to Manila until three days later. Was there a violation of Article 125?

There was a violation of Article 125. The crime committed was arbitrary detention in the form of delay in the delivery of arrested person to the proper judicial authority. The typhoon or flood is a matter of defense to be proved by the accused, the arresting officer, as to whether he is liable. In this situation, he may be exempt under paragraph 7 of Article 12.

Before Article 125 may be applied, it is necessary that initially, the detention of the arrested person must be lawful because the arrest is based on legal grounds. If the arrest is made without a warrant, this constitutes an unlawful arrest. Article 269, not Article 125, will apply. If the arrest is not based on legal grounds, the arrest is pure and simple arbitrary detention. Article 125 contemplates a situation where the arrest was made without warrant but based on legal grounds. This is known as citizen's arrest.

Article 126. Delaying Release

Acts punished

1. Delaying the performance of a judicial or executive order for the release of a prisoner;

2. Unduly delaying the service of the notice of such order to said prisoner;

3. Unduly delaying the proceedings upon any petition for the liberation of such person.

Elements

1. Offender is a public officer or employee;

2. There is a judicial or executive order for the release of a prisoner or detention prisoner, or that there is a proceeding upon a petition for the liberation of such person;

3. Offender without good reason delays –

   a. the service of the notice of such order to the prisoner;

   b. the performance of such judicial or executive order for the release of the prisoner; or

   c. the proceedings upon a petition for the release of such person.

Article 127. Expulsion

Acts punished

1. Expelling a person from the Philippines;

2. Compelling a person to change his residence.

Elements

1. Offender is a public officer or employee;

2. He either –

   a. expels any person from the Philippines; or

   b. compels a person to change residence;

3. Offender is not authorized to do so by law.

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

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

Questions & Answers

1. Certain aliens were arrested and they were just put on the first aircraft which brought them to the country so that they may be out without due process of law. Was there a crime committed?

Yes. Expulsion.

2. If a Filipino citizen is sent out of the country, what crime is committed?

Grave coercion, not expulsion, because a Filipino cannot be deported. This crime refers only to aliens.

Article 128. Violation of Domicile

Acts punished

1. Entering any dwelling against the will of the owner thereof;

2. Searching papers or other effects found therein without the previous consent of such owner; or

3. Refusing to leave the premises, after having surreptitiously entered said dwelling and after having been required to leave the same

Common elements

1. Offender is a public officer or employee;

2. He is not authorized by judicial order to enter the dwelling or to make a search therein for papers or other effects.

Circumstances qualifying the offense

1. If committed at nighttime; or

2. If any papers or effects not constituting evidence of a crime are not returned immediately after the search made by offender.

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

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

There are only three recognized instances when search without a warrant is considered valid, and, therefore, the seizure of any evidence done is also valid. Outside of these, search would be invalid and the objects seized would not be admissible in evidence.

(1) Search made incidental to a valid arrest;

(2) Where the search was made on a moving vehicle or vessel such that the exigency of he situation prevents the searching officer from securing a search warrant;

(3) When the article seized is within plain view of the officer making the seizure without making a search therefore.

There are three ways of committing the violation of Article 128:

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

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

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

Questions & Answers

1. It was raining heavily. A policeman took shelter in one person's house. The owner obliged and had his daughter serve the police some coffee. The policeman made a pass at the daughter. The owner of the house asked him to leave. Does this fall under Article 128?

No. It was the owner of the house who let the policeman in. The entering is not surreptitious.

2. A person surreptitiously enters the dwelling of another. What crime or crimes were possibly committed?

The crimes committed are (1) qualified trespass to dwelling under Article 280, if there was an express or implied prohibition against entering. This is tantamount to entering against the will of the owner; and (2) violation of domicile in the third form if he refuses to leave after being told to.

Article 129. Search Warrants Maliciously Obtained, and Abuse in the Service of Those Legally Obtained

Acts punished

1. Procuring a search warrant without just cause;

   Elements

   1. Offender is a public officer or employee;
   2. He procures a search warrant;
   3. There is no just cause.

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

   Elements

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

Article 130. Searching Domicile without Witnesses

Elements

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

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

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

he must have perjured himself or induced someone to commit perjury to convince the court.

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

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

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

Article 131. Prohibition, Interruption, and Dissolution of Peaceful Meetings

Elements

1. Offender is a public officer or employee;

2. He performs any of the following acts:

   a. prohibiting or by interrupting, without legal ground, the holding of a peaceful meeting, or by dissolving the same;

   b. hindering any person from joining any lawful association, or attending any of its meetings;

   c. prohibiting or hindering any person from addressing, either alone or together with others, any petition to the authorities for the correction of abuses or redress of grievances.

The government has a right to require a permit before any gathering could be made. Any meeting without a permit is a proceeding in violation of the law. That being true, a meeting may be prohibited, interrupted, or dissolved without violating Article 131 of the Revised Penal Code.

But the requiring of the permit shall be in exercise only of the government's regulatory powers and not really to prevent peaceful assemblies as the public may desire. Permit is only necessary to regulate the peace so as not to inconvenience the public. The permit should state the day, time and the place where the gathering may be held. This requirement is, therefore, legal as long as it is not being exercised in as a prohibitory power.

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

At the beginning, it may happen that the assembly is lawful and peaceful. If in the course of the assembly the participants

commit illegal acts like oral defamation or inciting to sedition, a public officer or law enforcer can stop or dissolve the meeting. The permit given is not a license to commit a crime.

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

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

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

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

(1) As to the participation of the public officer

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

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

(2) As to the essence of the crime

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

In Article 153, the offender need not be a public officer. The essence of the crime is that of creating a serious disturbance of any sort in a public office, public building or even a private place where a public function is being held.

Article 132. Interruption of Religious Worship

Elements

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

Qualified if committed by violence or threat.

Article 133. Offending the Religious Feelings

Elements

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

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

TITLE III. CRIMES AGAINST PUBLIC ORDER

Crimes against public order

1. Rebellion or insurrection (Art. 134);

2. Conspiracy and proposal to commit rebellion (Art. 136);

3. Disloyalty to public officers or employees (Art. 137);

4. Inciting to rebellion (Art. 138);

5. Sedition (Art. 139);

6. Conspiracy to commit sedition (Art. 141);

7. Inciting to sedition (Art. 142);

8. Acts tending to prevent the meeting of Congress and similar bodies (Art. 143);

9. Disturbance of proceedings of Congress or similar bodies (Art. 144);

10. Violation of parliamentary immunity (Art. 145);

11. Illegal assemblies (Art. 146);

12. Illegal associations (Art. 147);

13. Direct assaults (Art. 148);

14. Indirect assaults (Art. 149);

15. Disobedience to summons issued by Congress, its committees, etc., by the constitutional commissions, its committees, etc. (Art. 150);

16. Resistance and disobedience to a person in authority or the agents of such person (Art. 151);

17. Tumults and other disturbances of public order (Art. 153);

18. Unlawful use of means of publication and unlawful utterances (Art. 154);

19. Alarms and scandals (Art. 155);

20. Delivering prisoners from jails (Art. 156);

21. Evasion of service of sentence (Art. 157);

22. Evasion on occasion of disorders (Art. 158);

23. Violation of conditional pardon (Art. 159); and

24. Commission of another crime during service of penalty imposed for another previous offense (Art. 160).

Article 134. Rebellion or Insurrection

Elements

1. There is a public uprising and taking arms against the government;

2. The purpose of the uprising or movement is –

   a. to remove from the allegiance to the government or its laws Philippine territory or any part thereof, or any body of land, naval, or other armed forces;

   or

   b. to deprive the Chief Executive or Congress, wholly or partially, of any of their powers or prerogatives.

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

can only be committed through force and violence.

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

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

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

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

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

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

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

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

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

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

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

*However, in **People v. Tiozon, 198 SCRA 368,** it was held that charging one of illegal possession of firearms in furtherance of rebellion is proper because this is not a charge of a complex crime. A crime under the Revised Penal Code cannot be absorbed by a statutory offense.*
*In **People v. de Gracia,** it was ruled that illegal possession of firearm in furtherance of rebellion under Presidential Decree No. 1866 is distinct from the crime of rebellion under the Revised Penal Code and, therefore, Article 135 (2) of the Revised Penal Code should not apply. The offense of illegal possession of firearm is a malum prohibitum, in which case, good faith and absence of criminal intent are not valid defenses.*

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

Rebellion may be committed even without a single shot being fired. No encounter needed. Mere public uprising with arms enough.

Article 135, as amended, has two penalties: a higher penalty for the promoters, heads and maintainers of the rebellion; and a lower penalty for those who are only followers of the rebellion.

<u>Distinctions between rebellion and sedition</u>

(1) As to nature

In rebellion, there must be taking up or arms against the government.

In sedition, it is sufficient that the public uprising be tumultuous.

(2) As to purpose

In rebellion, the purpose is always political.

In sedition, the purpose may be political or social. Example: the uprising of squatters against Forbes park residents. The purpose in sedition is to go against established government, not to overthrow it.

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

Article 134-A. Coup d' etat

Elements

1. Offender is a person or persons belonging to the military or police or holding any public office or employment;

2. It is committed by means of a swift attack accompanied by violence, intimidation, threat, strategy or stealth;

3. The attack is directed against the duly constituted authorities of the Republic of the Philippines, or any military camp or installation, communication networks, public utilities or other facilities needed for the exercise and continued possession of power;

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

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

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

1. The leaders –

   a. Any person who promotes, maintains or heads a rebellion or insurrection; or

   b. Any person who leads, directs or commands others to undertake a coup d' etat;

2. The participants –

   a. Any person who participates or executes the commands of others in rebellion, insurrection or coup d' etat;

   b. Any person not in the government service who participates, supports, finances, abets or aids in undertaking a coup d' etat.

Article 136. Conspiracy and Proposal to Commit Coup d' etat, Rebellion or Insurrection

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

1. Conspiracy to commit rebellion; and

2. Proposal to commit rebellion.

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

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

Article 137. Disloyalty of Public Officers or Employees

Acts punished

1. By failing to resist a rebellion by all the means in their power;

2. By continuing to discharge the duties of their offices under the control of the rebels; or

3. By accepting appointment to office under them.

Offender must be a public officer or employee.

Article 138. Inciting to Rebellion or Insurrection

Elements

1. Offender does not take arms or is not in open hostility against the government;

2. He incites others to the execution of any of the acts of rebellion;

3. The inciting is done by means of speeches, proclamations, writings, emblems, banners or other representations tending to the same end.

Distinction between inciting to rebellion and proposal to commit rebellion

1. In both crimes, offender induces another to commit rebellion.

2. In proposal, the person who proposes has decided to commit rebellion; in inciting to rebellion, it is not required that the offender has decided to commit rebellion.

3. In proposal, the person who proposes the execution of the crime uses secret means; in inciting to rebellion, the act of inciting is done publicly.

Article 139. Sedition

Elements

1. Offenders rise publicly and tumultuously;

2. Offenders employ force, intimidation, or other means outside of legal methods;

3. Purpose is to attain any of the following objects:

    a. To prevent the promulgation or execution of any law or the holding of any popular election;

    b. To prevent the national government or any provincial or municipal government, or any public officer from exercising its or his functions or prevent the execution of an administrative order;

c. To inflict any act of hate or revenge upon the person or property of any public officer or employee;

d. To commit, for any political or social end, any act of hate or revenge against private persons or any social classes;

e. To despoil for any political or social end, any person, municipality or province, or the national government of all its property or any part thereof.

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

Persons liable for sedition under **Article 140**

1. The leader of the sedition; and

2. Other person participating in the sedition.

Article 141. Conspiracy to Commit Sedition

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

There is no proposal to commit sedition.

Article 142. Inciting to Sedition

Acts punished

1. Inciting others to the accomplishment of any of the acts which constitute sedition by means of speeches, proclamations, writings, emblems, etc.;

2. Uttering seditious words or speeches which tend to disturb the public peace;

3. Writing, publishing, or circulating scurrilous libels against the government or any of the duly constituted authorities thereof, which tend to disturb the public peace.

Elements

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

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

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

Only non-participant in sedition may be liable.

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

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

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

Article 143. Acts Tending to Prevent the Meeting of the Congress of the Philippines and Similar Bodies

Elements

1. There is a projected or actual meeting of Congress or any of its committees or subcommittees, constitutional committees or divisions thereof, or of any provincial board or city or municipal council or board;

2. Offender, who may be any person, prevents such meetings by force or fraud.

Article 144. Disturbance of Proceedings

Elements

1. There is a meeting of Congress or any of its committees or subcommittees, constitutional commissions or committees or divisions thereof, or of any provincial board or city or municipal council or board;

2. Offender does any of the following acts:

    a. He disturbs any of such meetings;

    b. He behaves while in the presence of any such bodies in such a manner as to interrupt its proceedings or to impair the respect due it.

Article 145. Violation of Parliamentary Immunity

Acts punished

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

    Elements

    1. Offender uses force, intimidation, threats or fraud;

    2. The purpose of the offender is to prevent any member of Congress from –

        a. attending the meetings of the Congress or of any of its committees or constitutional commissions, etc.;

        b. expressing his opinion; or

        c. casting his vote.

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

    Elements

    1. Offender is a public officer of employee;

2. He arrests or searches any member of Congress;

3. Congress, at the time of arrest or search, is in regular or special session;

4. The member arrested or searched has not committed a crime punishable under the Code by a penalty higher than prision mayor.

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

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

Article 146. Illegal Assemblies

Acts punished

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

   Elements

   1. There is a meeting, a gathering or group of persons, whether in fixed place or moving;

   2. The meeting is attended by armed persons;

   3. The purpose of the meeting is to commit any of the crimes punishable under the Code.

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

   1. There is a meeting, a gathering or group of persons, whether in a fixed place or moving;

   2. The audience, whether armed or not, is incited to the commission of the crime of treason, rebellion or insurrection, sedition or direct assault.

Persons liable for illegal assembly

1. The organizer or leaders of the meeting;

2. Persons merely present at the meeting, who must have a common intent to commit the felony of illegal assembly.

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

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

Two forms of illegal assembly

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

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

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

Distinction between illegal assembly and illegal association

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

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

Article 147. Illegal Associations

Illegal associations

1. Associations totally or partially organized for the purpose of committing any of the crimes punishable under the Code;

2. Associations totally or partially organized for some purpose contrary to public morals.

Persons liable

1. Founders, directors and president of the association;

2. Mere members of the association.

Distinction between illegal association and illegal assembly

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

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

2. In illegal association, it is the act of forming or organizing and

membership in the association that are punished.

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

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

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

Article 148. Direct Assault

Acts punished

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

   Elements

   1. Offender employs force or intimidation;
   2. The aim of the offender is to attain any of the purposes of the crime of rebellion or any of the objects of the crime of sedition;
   3. There is no public uprising.

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

   Elements

   1. Offender makes an attack, employs force, makes a serious intimidation, or makes a serious resistance;
   2. The person assaulted is a person in authority or his agent;
   3. At the time of the assault, the person in authority or his agent is engaged in the actual performance of official duties, or that he is assaulted by reason of the past performance of official duties;
   4. Offender knows that the one he is assaulting is a person in authority or his agent in the exercise of his duties.
   5. There is no public uprising.

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

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

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

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

Example of the first form of direct assault:

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

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

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

Agent of a person in authority is any person who by direct provision of law or by election or by appointment by competent authority, is charged with the maintenance of public order and the protection and security of life and property, such as a barangay councilman, barrio policeman, barangay leader and any person who comes to the aid of a person in authority.

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

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

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

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

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

In this respect it is enough that the offender should know that the offended party was

exercising some form of authority. It is not necessary that the offender knows what is meant by person in authority or an agent of one because ignorantia legis non excusat.

Article 149. Indirect Assault

Elements

1. A person in authority or his agent is the victim of any of the forms of direct assault defined in Article 148;

2. A person comes to the aid of such authority or his agent;

3. Offender makes use of force or intimidation upon such person coming to the aid of the authority or his agent.

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

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

Take note that under Article 152, as amended, when any person comes in aid of a person in authority, said person at that moment is no longer a civilian – he is constituted as an agent of the person in authority. If such person were the one attacked, the crime would be direct assault.

Due to the amendment of Article 152, without the corresponding amendment in Article 150, the crime of indirect assault can only be committed when assault is upon a civilian giving aid to an agent of the person in authority. He does not become another agent of the person in authority.

Article 150. Disobedience to Summons Issued by Congress, Its Committees or Subcommittees, by the Constitutional Commissions, Its Committees, Subcommittees or Divisions

Acts punished

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

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

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

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

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

Article 151. Resistance and Disobedience to A Person in Authority or the Agents of Such Person

Elements of resistance and serious disobedience under the first paragraph

1. A person in authority or his agent is engaged in the performance of official duty or gives a lawful order to the offender;

2. Offender resists or seriously disobeys such person in authority or his agent;

3. The act of the offender is not included in the provision of Articles 148, 149 and 150.

Elements of simple disobedience under the second paragraph

1. An agent of a person in authority is engaged in the performance of official duty or gives a lawful order to the offender;

2. Offender disobeys such agent of a person in authority;

3. Such disobedience is not of a serious nature.

Distinction between resistance or serious disobedience and direct assault

1. In resistance, the person in authority or his agent must be in actual performance of his duties.

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

2. Resistance or serious disobedience is committed only by resisting or seriously disobeying a person in authority or his agent.

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

3. In both resistance against an agent of a person in authority and direct assault by resisting an agent of a person in authority, there is force employed, but the use of force in resistance is not so serious, as there is no manifest intention to defy the law and the officers enforcing it.

   The attack or employment of force which gives rise to the crime of direct assault must be serious and deliberate; otherwise, even a case of simple resistance to an arrest, which always requires the use of force of some kind, would constitute direct assault and the lesser offense of resistance or disobedience in Article 151 would entirely disappear.

   But when the one resisted is a person I authority, the use of any kind or degree of force will give rise to direct assault.

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

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

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

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

Examples of persons in authority

1. Municipal mayor;

2. Division superintendent of schools;

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

Article 153. Tumults and Other Disturbances of Public Order

Acts punished

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

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

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

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

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

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

Article 154. Unlawful Use of Means of Publication and Unlawful Utterances

Acts punished

1. Publishing or causing to be published, by means of printing, lithography or any other means of publication, as news any false news which may endanger the public order; or cause damage to the interest or credit of the State;
2. Encouraging disobedience to the law or to the constituted authorities or praising, justifying or extolling any act punished by law, by the same

means or by words, utterances or speeches;

3. Maliciously publishing or causing to be published any official resolution or document without proper authority, or before they have been published officially;

4. Printing, publishing or distributing (or causing the same) books, pamphlets, periodicals, or leaflets which do not bear the real printer's name, or which are classified as anonymous.

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

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

Article 155. Alarms and Scandals

Acts punished

1. Discharging any firearm, rocket, firecracker, or other explosive within any town or public place, calculated to cause (which produces) alarm of danger;

2. Instigating or taking an active part in any charivari or other disorderly meeting offensive to another or prejudicial to public tranquility;

3. Disturbing the public peace while wandering about at night or while engaged in any other nocturnal amusements;

4. Causing any disturbance or scandal in public places while intoxicated or otherwise, provided Article 153 in not applicable.

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

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

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

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

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

*In **Araneta v. Court of Appeals,** it was held that if a person is shot at and is wounded, the crime is automatically attempted homicide. Intent to kill is inherent in the use of the deadly weapon.*

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

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

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

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

Article 156. Delivering Prisoners from Jail

Elements

1. There is a person confined in a jail or penal establishment;

2. Offender removes therefrom such person, or helps the escape of such person.

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

Penalty of arresto mayor if other means are used.

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

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

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

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

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

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

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

(1) Infidelity in the custody of prisoners;

(2) Delivery of the prisoner from jail; and

(3) Evasion of service of sentence.

Article 157. Evasion of Service of Sentence

Elements

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

Qualifying circumstances as to penalty imposed

If such evasion or escape takes place –

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

Evasion of service of sentence has three forms:

(1) By simply leaving or escaping from the penal establishment under Article 157;

(2) Failure to return within 48 hours after having left the penal establishment because of a calamity, conflagration or mutiny and such calamity, conflagration or mutiny has been announced as already passed under Article 158;

(3) Violating the condition of conditional pardon under Article 159.

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

Article 158. Evasion of Service of Sentence on the Occasion of Disorders, Conflagrations, Earthquakes, or Other Calamities

Elements

1. Offender is a convict by final judgment, who is confined in a penal institution;
2. There is disorder, resulting from –
   a. conflagration;
   b. earthquake;
   c. explosion; or
   d. similar catastrophe; or
   e. mutiny in which he has not participated;
3. He evades the service of his sentence by leaving the penal

institution where he is confined, on the occasion of such disorder or during the mutiny;

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

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

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

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

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

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

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

Article 159. Other Cases of Evasion of Service of Sentence

Elements of violation of conditional pardon

1. Offender was a convict;

2. He was granted pardon by the Chief Executive;

3. He violated any of the conditions of such pardon.

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

The administrative liability of the convict under the conditional pardon is different and has nothing to do with his criminal liability for the evasion of service of sentence in the event that the condition of the pardon has been violated. Exception: where the violation of the condition of the pardon will

constitute evasion of service of sentence, even though committed beyond the remaining period of the sentence. This is when the conditional pardon expressly so provides or the language of the conditional pardon clearly shows the intention to make the condition perpetual even beyond the unserved portion of the sentence. In such case, the convict may be required to serve the unserved portion of the sentence even though the violation has taken place when the sentence has already lapsed.

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

Question & Answer

Is the violation of conditional pardon a substantive offense?

Under Article 159, there are two situations provided:

(1) There is a penalty of prision correccional minimum for the violation of the conditional pardon;

(2) There is no new penalty imposed for the violation of the conditional pardon. Instead, the convict will be required to serve the unserved portion of the sentence.

If the remitted portion of the sentence is less than six years or up to six years, there is an added penalty of prision correccional minimum for the violation of the conditional pardon; hence, the violation is a substantive offense if the remitted portion of the sentence does not exceed six years because in this case a new penalty is imposed for the violation of the conditional pardon.

But if the remitted portion of the sentence exceeds six years, the violation of the conditional pardon is not a substantive offense because no new penalty is imposed for the violation.

In other words, you have to qualify your answer.

*The Supreme Court, however, has ruled in the case of **Angeles v. Jose** that this is not a substantive offense. This has been highly criticized.*

Article 160. Commission of Another Crime During Service of Penalty Imposed for Another Previous Offense

Elements

1. Offender was already convicted by final judgment of one offense;

2. He committed a new felony before beginning to serve such sentence or while serving the same.

TITLE IV. CRIMES AGAINST PUBLIC INTEREST

Crimes against public interest

1. Counterfeiting the great seal of the Government of the Philippines (Art. 161);

2. Using forged signature or counterfeiting seal or stamp (Art. 162);

3. Making and importing and uttering false coins (Art. 163);

4. Mutilation of coins, importation and uttering of mutilated coins (Art. 164);

5. Selling of false or mutilated coins, without connivance (Art. 165);

6. Forging treasury or bank notes or other documents payable to bearer, importing and uttering of such false or forged notes and documents (Art. 166);

7. Counterfeiting, importing and uttering instruments not payable to bearer (Art. 167);

8. Illegal possession and use of forged treasury or bank notes and other instruments of credit (Art. 168);

9. Falsification of legislative documents (Art. 170);

10. Falsification by public officer, employee or notary (Art. 171);

11. Falsification by private individuals and use of falsified documents (Art. 172);

12. Falsification of wireless, cable, telegraph and telephone messages and use of said falsified messages (Art. 173);

13. False medical certificates, false certificates of merit or service (Art. 174);

14. Using false certificates (Art. 175);

15. Manufacturing and possession of instruments or implements for falsification (Art. 176);

16. Usurpation of authority or official functions (Art. 177);

17. Using fictitious name and concealing true name (Art. 178);

18. Illegal use of uniforms or insignia (Art. 179);

19. False testimony against a defendant (Art. 180);

20. False testimony favorable to the defendant (Art. 181);

21. False testimony in civil cases (Art. 182);

22. False testimony in other cases and perjury (Art. 183);

23. Offering false testimony in evidence (Art. 184);

24. Machinations in public auction (Art. 185);

25. Monopolies and combinations in restraint of trade (Art. 186);

26. Importation and disposition of falsely marked articles or merchandise made of gold, silver, or other precious metals or their alloys (Art. 187);

27. Substituting and altering trade marks and trade names or service marks (Art. 188);

28. Unfair competition and fraudulent registration of trade mark or trade name, or service mark; fraudulent designation of origin, and false description (Art. 189).

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

Article 161. Counterfeiting the Great Seal of the Government of the Philippine Islands, Forging the Signature or Stamp of the Chief Executive

Acts punished

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

Article 162. Using Forged Signature or Counterfeit Seal or Stamp

Elements

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

Offender under this article should not be the forger.

Article 163. Making and Importing and Uttering False Coins

Elements

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

Kinds of coins the counterfeiting of which is punished

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

Article 164. Mutilation of Coins

Acts punished

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

The first acts of falsification or falsity are –

(1) Counterfeiting – refers to money or currency;

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

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

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

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

In the crime of counterfeiting, the law is not concerned with the fraud upon the public such that even though the coin is no longer legal tender, the act of imitating or manufacturing the coin of the government is penalized. In punishing the crime of counterfeiting, the law wants to prevent people from trying their ingenuity in their imitation of the manufacture of money.

It is not necessary that the coin counterfeited be legal tender. So that even if the coin counterfeited is of vintage, the crime of counterfeiting is committed. The reason is to bar the counterfeiter from perfecting his craft of counterfeiting. The law punishes the act in order to discourage people from ever attempting to gain expertise in gaining money. This is because if people could counterfeit money with impunity just because it is no longer legal tender, people would try to counterfeit(1) non-legal tender coins. Soon, if they develop the expertise to make the counterfeiting more or less no longer discernible or no longer noticeable, they could make use of their ingenuity to counterfeit coins of legal tender. From that time on, the government shall have difficulty determining which coins are counterfeited and those which are not. It may happen that the counterfeited coins may look better than the real ones. So, counterfeiting is penalized right at the very start whether the coin is legal tender or otherwise.

Question & Answer

X has in his possession a coin which was legal tender at the time of Magellan and is considered a collector's item. He manufactured several pieces of that coin. Is the crime committed?

Yes. It is not necessary that the coin be of legal tender. The provision punishing counterfeiting does not require that the money be of legal tender and the law punishes this even if the coin concerned is not of legal tender in order to discourage people from practicing their ingenuity of imitating money. If it were otherwise, people may at the beginning try their ingenuity in imitating money not of legal tender and once they acquire expertise, they may then counterfeit money of legal tender.

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

<u>Requisites of mutilation under the Revised Penal Code</u>

(1) Coin mutilated is of legal tender;

(2) Offender gains from the precious metal dust abstracted from the coin; and

(3) It has to be a coin.

Mutilation is being regarded as a crime because the coin, being of legal tender, it is still in circulation and which would necessarily prejudice other people who may come across the coin. For example, X mutilated a P 2.00 coin, the octagonal one, by converting it into a round one and extracting 1/10 of the precious metal dust from it. The coin here is no longer P2.00 but only P 1.80, therefore, prejudice to the public has resulted.

There is no expertise involved here. In mutilation of coins under the Revised Penal Code, the offender does nothing but to scrape, pile or cut the coin and collect the

dust and, thus, diminishing the intrinsic value of the coin.

Mutilation of coins is a crime only if the coin mutilated is legal tender. If the coin whose metal content has been depreciated through scraping, scratching, or filing the coin and the offender collecting the precious metal dust, even if he would use the coin after its intrinsic value had been reduced, nobody will accept the same. If it is not legal tender anymore, no one will accept it, so nobody will be defrauded. But if the coin is of legal tender, and the offender minimizes or decreases the precious metal dust content of the coin, the crime of mutilation is committed.

In the example, if the offender has collected 1/10 of the P 2.00 coin, the coin is actually worth only P 1.80. He is paying only P1.80 in effect defrauding the seller of P .20. Punishment for mutilation is brought about by the fact that the intrinsic value of the coin is reduced.

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

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

It shall be unlawful for any person to willfully deface, mutilate, tear, burn, or destroy in any manner whatsoever, currency notes and coins issued by the Central Bank.

Mutilation under the Revised Penal Code is true only to coins. It cannot be a crime under the Revised Penal Code to mutilate paper bills because the idea of mutilation under the code is collecting the precious metal dust. However, under Presidential Decree No. 247, mutilation is not limited to coins.

Questions & Answers

1. The people playing cara y cruz, before they throw the coin in the air would rub the money to the sidewalk thereby diminishing the intrinsic value of the coin. Is the crime of mutilation committed?

Mutilation, under the Revised Penal Code, is not committed because they do not collect the precious metal content that is being scraped from the coin. However, this will amount to violation of Presidential Decree No. 247.

2. When the image of Jose Rizal on a five-peso bill is transformed into that of Randy Santiago, is there a violation of Presidential Decree No. 247?

Yes. Presidential Decree No. 247 is violated by such act.

3. Sometime before martial law was imposed, the people lost confidence in banks that they preferred hoarding their money than depositing it in banks. Former President Ferdinand Marcos declared upon declaration of martial law that all bills without the Bagong Lipunan sign on them will no longer be recognized. Because of this, the people had no choice but to surrender their money to banks and exchange them with those with the Bagong Lipunan sign on them. However, people who came up with a lot of money were also being charged with hoarding for which reason certain printing presses did the stamping of the Bagong Lipunan sign themselves to avoid prosecution. Was there a violation of Presidential Decree No. 247?

Yes. This act of the printing presses is a violation of Presidential Decree No. 247.

4. An old woman who was a cigarette vendor in Quiapo refused to accept one-centavo coins for payment of the vendee of cigarettes he purchased. Then came the police who advised her that she has no right to refuse since the coins are of legal tender. On this, the old woman accepted in her hands the one-centavo coins and then threw it to the face of the vendee and the police. Was the old woman guilty of violating Presidential Decree No. 247?

She was guilty of violating Presidential Decree No. 247 because if no one ever picks up the coins, her act would result in the diminution of the coin in circulation.

5. A certain customer in a restaurant wanted to show off and used a P 20.00 bill to light his cigarette. Was he guilty of violating Presidential Decree No. 247?

He was guilty of arrested for violating of Presidential Decree No. 247. Anyone who is in possession of defaced money is the one who is the violator of Presidential Decree No. 247. The intention of Presidential Decree No. 247 is not to punish the act of defrauding the public but what is being punished is the act of destruction of money issued by the Central Bank of the Philippines.

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

The primary purpose of Presidential Decree No. 247 at the time it was ordained was to stop the practice of people writing at the back or on the edges of the paper bills, such as "wanted: pen pal".

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

Article 165. Selling of False or Mutilated Coin, without Connivance

Acts punished

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

   Elements

   1. Possession;
   2. With intent to utter; and
   3. Knowledge.

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

   Elements

   1. Actually uttering; and
   2. Knowledge.

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

Acts punished

1. Forging or falsification of treasury or bank notes or other documents payable to bearer;

2. Importation of such false or forged obligations or notes;

3. Uttering of such false or forged obligations or notes in connivance with the forgers or importers.

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

Elements

1. There is an instrument payable to order or other documents of credit not payable to bearer;

2. Offender either forged, imported or uttered such instrument;

3. In case of uttering, he connived with the forger or importer.

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

Elements

1. Any treasury or bank note or certificate or other obligation and security payable to bearer, or any instrument payable to order or other document of credit not payable to bearer is forged or falsified by another person;

2. Offender knows that any of those instruments is forged or falsified;

3. He either –

   a. uses any of such forged or falsified instruments; or

   b. possesses with intent to use any of such forged or falsified instruments.

How forgery is committed under **Article 169**

1. By giving to a treasury or bank note or any instrument payable to bearer or to order mentioned therein, the appearance of a true and genuine document;

2. By erasing, substituting, counterfeiting, or altering by any means the figures, letters, words, or sign contained therein.

Forgery under the Revised Penal Code applies to papers, which are in the form of obligations and securities issued by the Philippine government as its own obligations, which is given the same status as legal tender. Generally, the word "counterfeiting" is not used when it comes to notes; what is used is "forgery." Counterfeiting refers to money, whether coins or bills.

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

When what is being counterfeited is obligation or securities, which under the Revised Penal Code is given a status of money or legal tender, the crime committed is forgery.

Questions & Answers

1. Instead of the peso sign (₱), somebody replaced it with a dollar sign ($). Was the crime of forgery committed?

No. Forgery was not committed. The forged instrument and currency note must be given the appearance of a true and genuine document. The crime committed is

a violation of Presidential Decree No. 247. Where the currency note, obligation or security has been changed to make it appear as one which it purports to be as genuine, the crime is forgery. In checks or commercial documents, this crime is committed when the figures or words are changed which materially alters the document.

2. An old man, in his desire to earn something, scraped a digit in a losing sweepstakes ticket, cut out a digit from another ticket and pasted it there to match the series of digits corresponding to the winning sweepstakes ticket. He presented this ticket to the Philippine Charity Sweepstakes Office. But the alteration is so crude that even a child can notice that the supposed digit is merely superimposed on the digit that was scraped. Was the old man guilty of forgery?

Because of the impossibility of deceiving whoever would be the person to whom that ticket is presented, the Supreme Court ruled that what was committed was an impossible crime. Note, however, that the decision has been criticized. In a case like this, the Supreme Court of Spain ruled that the crime is frustrated. Where the alteration is such that nobody would be deceived, one could easily see that it is a forgery, the crime is frustrated because he has done all the acts of execution which would bring about the felonious consequence but nevertheless did not result in a consummation for reasons independent of his will.

3. A person has a twenty-peso bill. He applied toothache drops on one side of the bill. He has a mimeograph paper similar in texture to that of the currency note and placed it on top of the twenty-peso bill and put some weight on top of the paper. After sometime, he removed it and the printing on the twenty-peso bill was reproduced on the mimeo paper. He took the reverse side of the P20 bill, applied toothache drops and reversed the mimeo paper and pressed it to the paper. After sometime, he removed it and it was reproduced. He cut it out, scraped it a little and went to a sari-sari store trying to buy a cigarette with that bill. What he overlooked was that, when he placed the bill, the printing was inverted. He was apprehended and was prosecuted and convicted of forgery. Was the crime of forgery committed?

The Supreme Court ruled that it was only frustrated forgery because although the offender has performed all the acts of execution, it is not possible because by simply looking at the forged document, it could be seen that it is not genuine. It can only be a consummated forgery if the document which purports to be genuine is given the appearance of a true and genuine document. Otherwise, it is at most frustrated.

Article 170. Falsification of Legislative Documents

Elements

1. There is a bill, resolution or ordinance enacted or approved or pending approval by either House of the Legislature or any provincial board or municipal council;

2. Offender alters the same;

3. He has no proper authority therefor;

4. The alteration has changed the meaning of the documents.

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

The crime of falsification must involve a writing that is a document in the legal sense. The writing must be complete in itself and capable of extinguishing an

obligation or creating rights or capable of becoming evidence of the facts stated therein. Until and unless the writing has attained this quality, it will not be considered as document in the legal sense and, therefore, the crime of falsification cannot be committed in respect thereto.

Five classes of falsification:

(1) Falsification of legislative documents;

(2) Falsification of a document by a public officer, employee or notary public;

(3) Falsification of a public or official, or commercial documents by a private individual;

(4) Falsification of a private document by any person;

(5) Falsification of wireless, telegraph and telephone messages.

Distinction between falsification and forgery:

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

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

Note that forging and falsification are crimes under Forgeries.

Article 171. Falsification by Public Officer, Employee or Notary or Ecclesiastical Minister

Elements

1. Offender is a public officer, employee, or notary public;
2. He takes advantage of his official position;
3. He falsifies a document by committing any of the following acts:
   a. Counterfeiting or imitating any handwriting, signature or rubric;
   b. Causing it to appear that persons have participated in any act or proceeding when they did not in fact so participate;
   c. Attributing to persons who have participated in an act or proceeding statements other than those in fact made by them;
   d. Making untruthful statements in a narration of facts;
   e. Altering true dates;
   f. Making any alteration or intercalation in a genuine document which changes its meaning;
   g. Issuing in an authenticated form a document purporting to be a copy of an original document when no such original exists, or including in such a copy a statement contrary to, or different from, that of the genuine original; or
   h. Intercalating any instrument or note relative to the issuance thereof in a protocol, registry, or official book.

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

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

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

The document where a crime was committed or the document subject of the prosecution may be totally false in the sense that it is entirely spurious. This notwithstanding, the crime of falsification is committed.

It does not require that the writing be genuine. Even if the writing was through and through false, if it appears to be genuine, the crime of falsification is nevertheless committed.

Questions & Answers

1. A is one of those selling residence certificates in Quiapo. He was brought to the police precincts on suspicion that the certificates he was selling to the public proceed from spurious sources and not from the Bureau of Treasury. Upon verification, it was found out that the certificates were indeed printed with a booklet of supposed residence certificates. What crime was committed?

Crime committed is violation of Article 176 (manufacturing and possession of instruments or implements for falsification). A cannot be charged of falsification because the booklet of residence certificates found in his possession is not in the nature of "document" in the legal sense. They are mere forms which are not to be completed to be a document in the legal sense. This is illegal possession with intent to use materials or apparatus which may be used in counterfeiting/forgery or falsification.

2. Public officers found a traffic violation receipts from a certain person. The receipts were not issued by the Motor Vehicle Office. For what crime should he be prosecuted for?

It cannot be a crime of usurpation of official functions. It may be the intention but no overt act was yet performed by him. He was not arrested while performing such overt act. He was apprehended only while he was standing on the street suspiciously. Neither can he be prosecuted for falsification because the document is not completed yet, there being no name of any erring driver. The document remains to be a mere form. It not being completed yet, the document does not qualify as a document in the legal sense.

4. Can the writing on the wall be considered a document?

Yes. It is capable of speaking of the facts stated therein. Writing may be on anything as long as it is a product of the handwriting, it is considered a document.

5. In a case where a lawyer tried to extract money from a spinster by typing on a bond paper a subpoena for estafa. The spinster agreed to pay. The spinster went to the prosecutor's office to verify the exact amount and found out that there was no charge against her. The lawyer was prosecuted for falsification. He

contended that only a genuine document could be falsified. Rule.

As long as any of the acts of falsification is committed, whether the document is genuine or not, the crime of falsification may be committed. Even totally false documents may be falsified.

There are four kinds of documents:

(1) Public document in the execution of which, a person in authority or notary public has taken part;

(2) Official document in the execution of which a public official takes part;

(3) Commercial document or any document recognized by the Code of Commerce or any commercial law; and

(4) Private document in the execution of which only private individuals take part.

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

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

Acts punished

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

Elements under paragraph 1

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

Elements under paragraph 2

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

Elements under the last paragraph

In introducing in a judicial proceeding –

1. Offender knew that the document was falsified by another person;
2. The false document is in Articles 171 or 172 (1 or 2);

3. He introduced said document in evidence in any judicial proceeding.

In use in any other transaction –

1. Offender knew that a document was falsified by another person;

2. The false document is embraced in Articles 171 or 172 (1 or 2);

3. He used such document;

4. The use caused damage to another or at least used with intent to cause damage.

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

Acts punished

1. Uttering fictitious wireless, telegraph or telephone message;

   Elements

   1, Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;

   2. He utters fictitious wireless, cable, telegraph or telephone message.

2. Falsifying wireless, telegraph or telephone message;

   Elements

   1, Offender is an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;

   2. He falsifies wireless, cable, telegraph or telephone message.

3. Using such falsified message.

   Elements

   1. Offender knew that wireless, cable, telegraph, or telephone message was falsified by an officer or employee of the government or an officer or employee of a private corporation, engaged in the service of sending or receiving wireless, cable or telephone message;

   2. He used such falsified dispatch;

   3. The use resulted in the prejudice of a third party or at least there was intent to cause such prejudice.

Article 174. False Medical Certificates, False Certificates of Merits or Service, Etc.

Persons liable

1. Physician or surgeon who, in connection with the practice of his profession, issues a false certificate (it must refer to the illness or injury of a person);

   [The crime here is false medical certificate by a physician.]

2. Public officer who issues a false certificate of merit of service, good conduct or similar circumstances;

[The crime here is false certificate of merit or service by a public officer.]

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

Article 175. Using False Certificates

Elements

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

Article 176. Manufacturing and Possession of Instruments or Implements for Falsification

Acts punished

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

Article 177. Usurpation of Authority or Official Functions

Acts punished

1. Usurpation of authority;

    Elements

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

2. Usurpation of official functions.

    Elements

    1. Offender performs any act;
    2. Pertaining to any person in authority or public officer of the Philippine government or any foreign government, or any agency thereof;
    3. Under pretense of official position;
    4. Without being lawfully entitled to do so.

Article 178. Using Fictitious Name and Concealing True Name

Acts punished

1. Using fictitious name

Elements

1. Offender uses a name other than his real name;

2. He uses the fictitious name publicly;

3. Purpose of use is to conceal a crime, to evade the execution of a judgment or to cause damage [to public interest – Reyes].

2. Concealing true name

Elements

1. Offender conceals his true name and other personal circumstances;

2. Purpose is only to conceal his identity.

Commonwealth Act No. 142 (Regulating the Use of Aliases)

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

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

Article 179. Illegal Use of Uniforms or Insignia

Elements

1. Offender makes use of insignia, uniforms or dress;

2. The insignia, uniforms or dress pertains to an office not held by such person or a class of persons of which he is not a member;

3. Said insignia, uniform or dress is used publicly and improperly.

Wearing the uniform of an imaginary office is not punishable.

So also, an exact imitation of a uniform or dress is unnecessary; a colorable resemblance calculated to deceive the common run of people is sufficient.

Article 180. False Testimony against A Defendant

Elements

1. There is a criminal proceeding;

2. Offender testifies falsely under oath against the defendant therein;

3. Offender who gives false testimony knows that it is false.

4. Defendant against whom the false testimony is given is either acquitted or convicted in a final judgment.

Three forms of false testimony

1. False testimony in criminal cases under Article 180 and 181;

2. False testimony in civil case under Article 182;

3. False testimony in other cases under Article 183.

Article 181. False Testimony Favorable to the Defendant

Elements

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

Article 182. False Testimony in Civil Cases

Elements

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

Article 183. False Testimony in Other Cases and Perjury in Solemn Affirmation

Acts punished

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

Elements of perjury

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

Article 184. Offering False Testimony in Evidence

Elements

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

Article 185. Machinations in Public Auctions

Acts punished

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

   Elements

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

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

Elements

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

Article 186. Monopolies and Combinations in Restraint of Trade

Acts punished

1. Combination to prevent free competition in the market;

   Elements

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

2. Monopoly to restrain free competition in the market;

   Elements

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

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

   Elements

   1. Manufacturer, producer, processor or importer of any merchandise or object of commerce;
   2. Combines, conspires or agrees with any person;
   3. Purpose is to make transactions prejudicial to lawful commerce or to increase the market price of any merchandise or object of commerce manufactured, produced, processed, assembled or imported into the Philippines.

Article 187. Importation and Disposition of Falsely Marked Articles or Merchandise Made of Gold, Silver, or Other Precious Metals of Their Alloys

Elements

1. Offender imports, sells or disposes articles made of gold, silver, or other precious metals or their alloys;
2. The stamps, brands, or marks of those articles of merchandise fail to

indicate the actual fineness or quality of said metals or alloys;

3. Offender knows that the stamps, brands, or marks fail to indicate the actual fineness or quality of the metals or alloys.

Article 188. Substituting and Altering Trademarks, Trade names, or Service Marks

Acts punished

1. Substituting the trade name or trademark of some other manufacturer or dealer, or a colorable imitation thereof for the trade name or trademark of the real manufacturer or dealer upon any article of commerce and selling the same;

2. Selling or offering for sale such articles of commerce knowing that the trade name or trademark has been fraudulently used;

3. Using or substituting the service mark of some other person, or a colorable imitation of such mark n the sale or advertising of his services;

4. Printing, lithographing or reproducing trade name, trademark, or service mark of one person or a colorable imitation thereof to enable another person to fraudulently use the same knowing the fraudulent purpose for which it is to be used.

Article 189. Unfair Competition, Fraudulent Registration of Trade Name, Trademark, or Service Mark, Fraudulent Designation of Origin, and False Description

Acts punished

1. Unfair competition;

   Elements

   1. By selling his goods;

   2. Giving them the general appearance of the goods of another manufacturer or dealer;

   3. The general appearance is shown in the goods themselves, or in the wrapping of their packages, or in the device or words therein, or in any feature of their appearance;

   4. There is actual intent to deceive the public or defraud a competitor.

2. Fraudulent designation of origin; false description:

   Elements

   1. By affixing to his goods or using in connection with his services a false designation of origin, or any false description or representation; and

   2. Selling such goods or services.

3. Fraudulent registration

   Elements

   1. By procuring fraudulently from the patent office;

   2. The registration of trade name, trademark or service mark

Republic Act No. 8293 (An Act Prescribing the Intellectual Property Code and Establishing the Intellectual Property Office, Providing for Its Power and Functions, and for Other Purposes)

Section 170. *Penalties.* – Independent of the civil and administrative sanctions imposed by law, a criminal penalty of imprisonment from two (2) years to five (5) years and a fine ranging from Fifty thousand pesos (P 50,000.00) to Two hundred thousand pesos (P 200,000.00), shall be imposed on any person who is found guilty of committing any of the acts mentioned in Section 155, Section 168 and Subsection 169.1.

Section 155. *Remedies; Infringement.* – Any person who shall, without the consent of the owner of the registered mark:

155.1. Use in commerce any reproduction, counterfeit, copy, or colorable imitation of a registered mark or the same container or a dominant feature thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to course confusion, or to cause mistake, or to deceive; or

155.2. Reproduce, counterfeit, copy or colorably imitate a registered mark or a dominant feature thereof and apply such reproduction, counterfeit, copy or colorable imitation to labels, signs, prints, packages, wrappers, receptacles or advertisement intended to be used in commerce upon or in connection with the sale, offering for sale, distribution, or advertising of goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive shall be liable in a civil action for infringement by the registrant for the remedies hereinafter set forth: *Provided,* that the infringement takes place at the moment any of the acts stated in Subsection 155.1 or this subsection are committed regardless of whether there is actual sale of goods or services using the infringing material.

Section 168. *Unfair Competition, Rights, Regulation and Remedies.*

168.1. Any person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or service so identified, which will be protected in the same manner as other property rights.

168.2. Any person who shall employ deception or any other means contrary to good faith by which he shall pass off the goods manufactured by him or in which he deals, or his business, or services for those of the one having established such goodwill, or who shall commit any acts calculated to produce said result, shall be guilty of unfair competition, and shall be subject to an action therefor.

168.3. In particular, and without in any way limiting the scope of protection against unfair competition, the following shall be deemed guilty of unfair competition:

(a) Any person, who is selling his goods and gives them the general appearance of goods of another manufacturer or dealer, either as to the goods themselves or in the wrapping of the packages in which they are contained, or the devices or words thereon, on in any other feature or their appearance, which would be likely to influence purchasers to believe that the goods offered are those of a manufacturer or dealer, other than the actual manufacturer or dealer, or who otherwise clothes the goods with such appearance as shall deceive the public and defraud another of his legitimate trade, or any subsequent vendor of such goods or

any agent of any vendor engaged in selling such goods with a like purpose; or

(b) Any person who by any artifice, or device, or who employs any other means calculated to induce the false belief that such person is offering the services of another who ahs identified such services in the mind of the public; or

(c) Any person who shall make any false statement in the course of trade or who shall commit any other act contrary to good faith of a nature calculated to discredit the goods, business or services of another.

168.4. The remedies provided by Section 156, 157 and 161 shall apply mutatis mutandis.

Section 169. *False Designation or Origin; False Description or Representation.*

169.1. Any person who, on or in connection with any goods or services, or any container for goods, uses in commerce any word, term, name, symbol, or device, or any combination thereof, or any false designation of origin, false or misleading description of fact, or false or misleading representation of fact, which:

(a) Is likely to cause confusion, or to cause mistake, or to deceive as to the affiliation, connection, or association of such person with another person, or as to the origin, sponsorship, or approval of his or her goods, services, or commercial activities by another person; or

(b) In commercial advertising or promotion, misrepresents the nature, characteristics, qualities, or geographic origin of his or her or another person's goods, services or commercial activities, shall be liable to a civil action for damages and injunction provided in Section 156 and 157 of this Act by any person who believes that he or she is or likely to be damaged by such act.

TITLE V. CRIMES RELATIVE TO OPIUM AND OTHER PROHIBITED DRUGS

Articles 190, 191, 192, 193 and194 of the Revised Penal Code have been *repealed* by **Republic Act No. 6425 (The Dangerous Drugs Act of 1972),** as amended by Presidential Decree No. 1683 and further amended by Republic Act No. 7659.

Acts punished by the Republic Act No. 6425

1. Importation of prohibited drugs;
2. Sale, administration, delivery, distribution and transportation of prohibited drugs;
3. Maintenance of a den, dive or resort for prohibited drug users;
4. Being employees and visitors of prohibited drug den;
5. Manufacture of prohibited drugs;
6. Possession or use of prohibited drugs;
7. Cultivation of plants which are sources of prohibited drugs;
8. Failure to comply with the provisions of the Act relative to the keeping of records of prescriptions, sales, purchases, acquisitions and/or deliveries of prohibited drugs;
9. Unlawful prescription of prohibited drugs;
10. Unnecessary prescription of prohibited drugs;
11. Possession of opium pipe and other paraphernalia for prohibited drugs;

12. Unauthorized importation, manufacture, sale administration, dispensation, delivery, transportation, distribution, possession or use of regulated drugs, failure to comply with the provisions of the Act relative to the keeping of records of prescriptions, sales, purchases, acquisitions and/or deliveries, unlawful prescription, unnecessary prescription of regulated drugs, and maintenance of a den, dive or resort for regulated drug users.

TITLE VI. CRIMES AGAINST PUBLIC MORALS

Crimes against public morals

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

Article 195. What Acts Are Punishable in Gambling

Acts punished

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

Article 196. Importation, Sale and Possession of Lottery Tickets or Advertisements

Acts punished

1. Importing into the Philippines from any foreign place or port any lottery ticket or advertisement; or
2. Selling or distributing the same in connivance with the importer;
3. Possessing, knowingly and with intent to use them, lottery tickets or advertisements; or

4. Selling or distributing the same without connivance with the importer of the same.

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

Article 197. Betting in Sport Contests

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

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

Article 198. Illegal Betting on Horse Race

Acts punished

1. Betting on horse races during periods not allowed by law;

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

When horse races not allowed

1. July 4 (Republic Act No. 137);

2. December 30 (Republic Act No. 229);

3. Any registration or voting days (Republic Act No. 180, Revised Election Code); and

4. Holy Thursday and Good Friday (Republic Act No. 946).

Article 199. Illegal Cockfighting

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

- Only allows one cockpit per municipality, unless the population exceeds 100,000 in which case two cockpits may be established;

- Cockfights can only be held in licensed cockpits on Sundays and legal holidays and local fiestas for not more than three days;

- Also allowed during provincial, municipal, city, industrial, agricultural fairs, carnivals, or exposition not more than three days;

- Cockfighting not allowed on December 30, June 12, November 30, Holy Thursday, Good Friday, Election or Referendum Day, and registration days for referendums and elections;

- Only municipal and city mayors are allowed to issue licenses for such.

Presidential Decree No. 1602 (Simplifying and Providing Stiffer Penalties for Violations of Philippine Gambling Laws)

Section 1. *Violations and Penalties.* -- The penalty of prision mayor in its medium degree or a fine ranging from Five Hundred Pesos to Two Thousand Pesos and in case of recidivism the penalty of

prision correccional in its medium degree or a fine of ranging from One Thousand Pesos to Six Thousand Pesos shall be imposed upon:

(a) Any person other than those referred to in the succeeding subsection who in any manner, shall directly or indirectly take part in any game of cockfighting, jueteng, bookies (jai- alai or horse racing to include game fixing) and other lotteries, cara y cruz or pompiang and the like, black jack, lucky nine, "pusoy" or Russian Poker, monte, baccarat and other card games, palk que, domino, mahjong, high and low, slot machines, roulette, pinball and other mechanical inventories or devices, dog racing, boat racing, car raising and other races, basketball, volleyball, boxing, seven-eleven dice games and the like and other contests to include game fixing, point shaving and other machinations banking or percentage game, or any other game or scheme, whether upon chance or skill, which do not have a franchise from the national government, wherein wagers consisting of money, articles of value of representative of value are made;

(b) Any person who shall knowingly permit any form of gambling referred to in the preceding subdivision to be carried on in inhabited or uninhabited places or any building, vessel or other means of transportation owned or controlled by him. If the place where gambling is carried on has a reputation of a gambling place or that prohibited gambling is frequently carried on therein or the place is a public or government building or barangay hall, the culprit shall be punished by the penalty provided for in its maximum period and a fine of Six Thousand Pesos.

The penalty of prision correccional in its maximum degree and a fine of Six Thousand Pesos shall be imposed upon the maintainer, conductor of the above gambling schemes.

The penalty of prision mayor in its medium degree and temporary absolute disqualification and a fine of Six Thousand Pesos shall be imposed if the maintainer, conductor or banker is a government official, or if a player, promoter, referee, umpire, judge or coach in cases of game-fixing, point-shaving and other game machination.

The penalty of prision correccional in its medium degree and a fine ranging from Five Hundred pesos to Two Thousand Pesos shall be imposed upon any person who shall knowingly and without lawful purpose in any hour of any day shall have in his possession any lottery list, paper, or other matter containing letter, figures, signs or symbols which pertain to or in any manner used in the game of jueteng, jai-alai or horse racing bookies and similar game or lottery which has taken place or about to take place.

Section 2. *Barangay Official.* – Any barangay official in whose jurisdiction such gambling house is found and which house has the reputation of a gambling place shall suffer the penalty of prision correccional in its medium period and a fine ranging from Five Hundred to Two Thousand Pesos and temporary absolute disqualifications.

While the acts under the Revised Penal Code are still punished under the new law, yet the concept of gambling under it has been changed by the new gambling law.

Before, the Revised Penal Code considered the skill of the player in classifying whether a game is gambling or not. But under the new gambling law, the skill of the players is immaterial.

Any game is considered gambling where there are bets or wagers placed with the hope to win a prize therefrom.

Under this law, even sports contents like boxing, would be gambling insofar as those

who are betting therein are concerned. Under the old penal code, if the skill of the player outweighs the chance or hazard involved in winning the game, the game is not considered gambling but a sport. It was because of this that betting in boxing and basketball games proliferated.

"Unless authorized by a franchise, any form of gambling is illegal." So said the court in the recent resolution of the case against the operation of jai-alai.

There are so-called parlor games which have been exempted from the operation of the decree like when the games are played during a wake to keep the mourners awake at night. Pursuant to a memorandum circular issued by the Executive Branch, the offshoot of the exemption is the intentional prolonging of the wake of the dead by gambling lords.

As a general rule, betting or wagering determines whether a game is gambling or not. Exceptions: These are games which are expressly prohibited even without bets. Monte, jueteng or any form of lottery; dog races; slot machines; these are habit-forming and addictive to players, bringing about the pernicious effects to the family and economic life of the players.

Mere possession of lottery tickets or lottery lists is a crime punished also as part of gambling. However, it is necessary to make a distinction whether a ticket or list refers to a past date or to a future date.

Illustration:

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

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

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

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

Illustrations:

(1) *A certain supermarket wanted to increase its sales and sponsored a lottery where valuable prices are offered at stake. To defray the cost of the prices offered in the lottery, the management increased their prices of the merchandise by 10 cents each. Whenever someone buys from that supermarket, he pays 10 cents more for each merchandise and for his purchase, he gets a coupon which is to be dropped at designated drop boxes to be raffled on a certain period.*

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

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

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

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

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

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

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

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

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

Article 200. Grave Scandal

Elements

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

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

In alarms and scandals, the scandal involved refers to disturbances of the public

tranquility and not to acts offensive to decency.

Any act which is notoriously offensive to decency may bring about criminal liability for the crime of grave scandal provided such act does not constitute some other crime under the Revised Penal Code. Grave scandal is a crime of last resort.

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

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

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

Public view does not require numerous persons. Even if there was only one person who witnessed the offensive act for as long as the third person was not an intruder, grave scandal is committed provided the act does not fall under any other crime in the Revised Penal Code.

Illustrations:

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

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

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

This is grave scandal.

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

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

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

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

Article 201. Immoral Doctrines, Obscene Publications and Exhibitions and Indecent Shows

Acts punished

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

2. a. The authors of obscene literature, published with their knowledge in any form, the editors publishing such literature; and the owners/operators of the establishment selling the same;

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

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

Article 202. Vagrants and Prostitutes; Penalty

Vagrants

1. Any person having no apparent means of subsistence, who has the physical ability to work and who neglects to apply himself or herself to some lawful calling;

2. Any person found loitering about public or semi-public buildings or places or trampling or wandering about the country or the streets without visible means of support;

3. Any idle or dissolute person who ledges in houses of ill fame;

4. Ruffians or pimps and those who habitually associate with prostitutes;

5. Any person who, not being included in the provisions of other articles of this Code, shall be found loitering in any inhabited or uninhabited place belonging to another without any lawful or justifiable purpose;

6. Prostitutes, who are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct.

Prostitutes are women who, for money or profit, habitually indulge in sexual intercourse or lascivious conduct, are deemed to be prostitutes.

Test of Obscenity: Whether or not the material charged as obscene has the tendency to deprave and corrupt the minds of those open to the influence thereof, or into whose hands such material may come to (Kottinger Rule).

The test is objective. It is more on the effect upon the viewer and not alone on the conduct of the performer.

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

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

Classification Board (MTRCB), the question is moot and academic.

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

Illustration:

A sexy dancing performed for a 90 year old is not obscene anymore even if the dancer strips naked. But if performed for a 15 year old kid, then it will corrupt the kid's mind. (Apply Kottinger Rule here.)

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

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

Illustration:

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

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

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

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

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

Question & Answer

If a person is found wandering in an estate belonging to another, whether public

or private, without any lawful purpose, what other crimes may be committed?

When a person is apprehended loitering inside an estate belonging to another, the following crimes may be committed:

(1) Trespass to property under Article 281 if the estate is fenced and there is a clear prohibition against entering, but the offender entered without the consent of the owner or overseer thereof. What is referred to here is estate, not dwelling.

(2) Attempted theft under Article 308, paragraph 3, if the estate is fenced and the offender entered the same to hunt therein or fish from any waters therein or to gather any farm products therein without the consent of the owner or overseer thereof;

(3) Vagrancy under Article 202 if the estate is not fenced or there is no clear prohibition against entering.

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

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

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

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

TITLE VII. CRIMES COMMITTED BY PUBLIC OFFICERS

Crimes committed by public officers

1. Knowingly rendering unjust judgment (Art. 204);
2. Judgment rendered through negligence (Art. 205);
3. Unjust interlocutory order (Art. 206);
4. Malicious delay in the administration of justice (Art. 207);
5. Prosecution of offenses; negligence and tolerance (Art. 208);
6. Betrayal of trust by an attorney or solicitor – Revelation of secrets (Art. 209);
7. Direct bribery (Art. 210);
8. Indirect bribery (Art. 211);
9. Qualified bribery (Art. 211-A);
10. Corruption of public officials (Art. 212);
11. Frauds against the public treasury and similar offenses (Art. 213);
12. Other frauds (Art. 214);
13. Prohibited transactions (Art. 215);
14. Possession of prohibited interest by a public officer (Art. 216);
15. Malversation of public funds or property – Presumption of malversation (Art. 217)

16. Failure of accountable officer to render accounts (Art. 218);

17. Failure of a responsible public officer to render accounts before leaving the country (Art. 219);

18. Illegal use of public funds or property (Art. 220);

19. Failure to make delivery of public funds or property (Art. 221);

20. Conniving with or consenting to evasion (Art. 223);

21. Evasion through negligence (Art. 224);

22. Escape of prisoner under the custody of a person not a public officer (Art. 225);

23. Removal, concealment or destruction of documents (Art. 226);

24. Officer breaking seal (Art. 227);

25. Opening of closed documents (Art. 228);

26. Revelation of secrets by an officer (Art. 229);

27. Public officer revealing secrets of private individual (Art. 230);

28. Open disobedience (Art. 231);

29. Disobedience to order of superior officer when said order was suspended by inferior officer (Art. 232);

30. Refusal of assistance (Art. 233);

31. Refusal to discharge elective office (Art. 234);

32. Maltreatment of prisoners (Art. 235);

33. Anticipation of duties of a public office (Art. 236);

34. Prolonging performance of duties and powers (Art. 237);

35. Abandonment of office or position (Art. 238);

36. Usurpation of legislative powers (Art. 239);

37. Usurpation of executive functions (Art. 240);

38. Usurpation of judicial functions (Art. 241);

39. Disobeying request for disqualification (Art. 242);

40. Orders or requests by executive officers to any judicial authority (Art. 243);

41. Unlawful appointments (Art. 244); and

42. Abuses against chastity (Art. 245).

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

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

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

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

or

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

2. His authority to take part in the performance of public functions or to perform public duties must be –

   a. By direct provision of the law;

   b. By popular election; or

   c. By appointment by competent authority.

Originally, Title VII used the phrase "public officer or employee" but the latter word has been held meaningless and useless because in criminal law, "public officer" covers all public servants, whether an official or an employee, from the highest to the lowest position regardless of rank or class; whether appointed by competent authority or by popular election or by direct provision of law.

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

Breach of oath of office partakes of three forms:

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

Example: bribery.

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

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

Article 204. Knowingly Rendering Unjust Judgment

1. Offender is a judge;

2. He renders a judgment in a case submitted to him for decision;

3. Judgment is unjust;

4. The judge knows that his judgment is unjust .

Article 205. Judgment Rendered through Negligence

1. Offender is a judge;

2. He renders a judgment in a case submitted to him for decision;

3. The judgment is *manifestly* unjust;

4. It is due to his *inexcusable negligence* or ignorance.

Article 206. Unjust Interlocutory Order

1. Offender is a judge;

2. He performs any of the following acts:

   a. Knowingly rendering an unjust interlocutory order or decree; or

b. Rendering a manifestly unjust interlocutory order or decree through inexcusable negligence or ignorance.

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

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

Article 207. Malicious Delay in the Administration of Justice

1. Offender is a judge;

2. There is a proceeding in his court;

3. He delays in the administration of justice;

4. The delay is malicious, that is, with deliberate intent to inflict damage on either party in the case.

Malice must be proven. Malice is present where the delay is sought to favor one party to the prejudice of the other.

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

Article 208. Prosecution of Offenses; Negligence and Tolerance

Acts Punished

1. Maliciously refraining from instituting prosecution against violators of the law;

2. Maliciously tolerating the commission of offenses.

Elements of dereliction of duty in the prosecution of offenses

1. Offender is a public officer or officer of the law who has a duty to cause the prosecution of, or to prosecute, offenses;

2. There is a dereliction of the duties of his office, that is, knowing the commission of the crime, he does not cause the prosecution of the criminal, or knowing that a crime is about to be committed, he tolerates its commission;

3. Offender acts with malice and deliberate intent to favor the violator of the law.

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

This crime can only be committed by a public officer whose official duty is to prosecute offenders, that is, state prosecutors. Hence, those officers who are not duty bound to perform these obligations cannot commit this crime in the strict sense.

When a policeman tolerates the commission of a crime or otherwise refrains from apprehending the offender, such peace officer cannot be prosecuted for this crime but they can be prosecuted as:

(1) An accessory to the crime committed by the principal in accordance with Article 19, paragraph 3; or

(2) He may become a fence if the crime committed is robbery or theft, in which case he violates the Anti-Fencing Law; or

(3) He may be held liable for violating the Anti-Graft and Corrupt Practices Act.

However, in distant provinces or municipalities where there are no municipal attorneys, the local chief of police is the prosecuting officer. If he is the one who tolerates the violations of laws or otherwise allows offenders to escape, he can be prosecuted under this article.

This is also true in the case of a barangay chairman. They are supposed to prosecute violators of laws within their jurisdiction. If they do not do so, they can be prosecuted for this crime.

Prevaricacion

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

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

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

<u>Illustration:</u>

The offender was caught for white slavery. The policeman allowed the offender to go free for some consideration. The policeman does not violate Article 208 but he becomes an accessory to the crime of white slavery.

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

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

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

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

modifies Article 210 of the Revised Penal Code on direct bribery.

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

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

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

Illustration:

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

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

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

Acts punished

1. Causing damage to his client, either—

    a. By any malicious breach of professional duty;

    b. By inexcusable negligence or ignorance.

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

2. Revealing any of the secrets of his client learned by him in his professional capacity;

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

Under the rules on evidence, communications made with prospective clients to a lawyer with a view to engaging his professional services are already

privileged even though the client-lawyer relationship did not eventually materialize because the client cannot afford the fee being asked by the lawyer. The lawyer and his secretary or clerk cannot be examined thereon.

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

Illustration:

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

A did not commit the crime under Article 209, although the lawyer's act may be considered unethical. The client-lawyer relationship between A and B was not yet established. Therefore, there is no trust to violate because B has not yet actually engaged the services of the lawyer A. A is not bound to B. However, if A would reveal the confidential matter learned by him from B, then Article 209 is violated because it is enough that such confidential matters were communicated to him in his professional capacity, or it was made to him with a view to engaging his professional services.

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

Illustration:

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

Several acts which would make a lawyer criminally liable:

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

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

(3) Inexcusable negligence;

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

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

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

A lawyer who had already undertaken the case of a client cannot later on shift to the opposing party. This cannot be done.

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

It is not the duty of the lawyer to give advice on the commission of a future crime. It is, therefore, not privileged in character. The

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

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

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

Breach of professional duty

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

Professional duties – Lawyer must appear on time. But the client must have suffered damage due to the breach of professional duty. Otherwise, the lawyer cannot be held liable.

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

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

Breach of confidential relation

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

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

The client who was suing his wife disclosed that he also committed acts of unfaithfulness. The lawyer talked about this to a friend. He is, thus, liable.

Article 210. Direct Bribery

Acts punished

1. Agreeing to perform, or performing, in consideration of any offer, promise, gift or present – an act constituting a crime, in connection with the performance of his official duties;

2. Accepting a gift in consideration of the execution of an act which does not constitute a crime, in connection with the performance of his official duty;

3. Agreeing to refrain, or by refraining, from doing something which it is his official duty to do, in consideration of gift or promise.

Elements

1. Offender is a public officer within the scope of Article 203;

2. Offender accepts an offer or a promise or receives a gift or present by himself or through another;

3. Such offer or promise be accepted, or gift or present received by the public officer –

   a. With a view to committing some crime; or

   b. In consideration of the execution of an act which does not constitute a crime, but the act must be unjust; or

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

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

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

Distinction between direct bribery and indirect bribery

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

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

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

Illustration:

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

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

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

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

If the public officer commits the act which constitutes the crime, he, as well as the corruptor shall be liable also for that other crime.

Illustrations:

(1) If the corruptor offers a consideration to a custodian of a public record to remove certain files, the mere agreement, without delivery of the consideration, brings

about the crime of direct bribery and corruption of public official.

If the records were actually removed, both the public officer and the corruptor will in addition to the two felonies above, will also be liable for the crime committed, which is infidelity in the custody of the public records for which they shall be liable as principals; one as principal by inducement, the other as principal by direct participation.

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

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

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

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

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

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

Unless the public officer receives the consideration for doing his official duty, there is no bribery. It is necessary that there must be delivery of monetary consideration. This is so because in the second situation, the public officer actually performed what he is supposed to perform. It is just that he would not perform what he is required by law to perform without an added consideration from the public which gives rise to the crime.

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

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

Direct bribery may be committed only in the attempted and consummated stages because, in frustrated felony, the offender must have performed all the acts of execution which would produce the felony as a consequence. In direct bribery, it is

possible only if the corruptor concurs with the offender. Once there is concurrence, the direct bribery is already consummated. In short, the offender could not have performed all the acts of execution to produce the felony without consummating the same.

Actually, you cannot have a giver unless there is one who is willing to receive and there cannot be a receiver unless there is one willing to give. So this crime requires two to commit. It cannot be said, therefore, that one has performed all the acts of execution which would produce the felony as a consequence but for reasons independent of the will, the crime was not committed.

It is now settled, therefore, that the crime of bribery and corruption of public officials cannot be committed in the frustrated stage because this requires two to commit and that means a meeting of the minds.

Illustrations:

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

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

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

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

Article 211. Indirect Bribery

Elements

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

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

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

Article 211-A. Qualified Bribery

Elements

1. Offender is a public officer entrusted with law enforcement;

2. He refrains from arresting or prosecuting an offender who has committed a crime;

3. Offender has committed a crime punishable by reclusion perpetua and/or death;

4. Offender refrains from arresting or prosecuting in consideration of any offer, promise, gift, or present.

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

Presidential Decree No. 46

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

The prohibition giving and receiving gifts given by reason of official position, regardless of whether or not the same is for past or future favors.

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

Presidential Decree No. 749

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

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

(1) He voluntarily discloses the transaction he had with the public officer constituting direct or indirect bribery, or any other corrupt transaction;

(2) He must willingly testify against the public officer involved in the case to be filed against the latter.

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

(1) Information must refer to consummated bribery;

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

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

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

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

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

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

one transaction does not extend to other transactions.

The immunity attaches only if the information given turns out to be true and correct. If the same is false, the public officer may even file criminal and civil actions against the informant for perjury and the immunity under the decree will not protect him.

Republic Act No. 7080 (Plunder)

Plunder is a crime defined and penalized under Republic Act No. 7080, which became effective in 1991. This crime somehow modified certain crimes in the Revised Penal Code insofar as the overt acts by which a public officer amasses, acquires, or accumulates ill-gotten wealth are felonies under the Revised Penal Code like bribery (Articles 210, 211, 211-A), fraud against the public treasury [Article 213], other frauds (Article 214), malversation (Article 217), when the ill-gotten wealth amounts to a total value of P50,000,000.00. The amount was reduced from P75,000,000.00 by Republic Act No. 7659 and the penalty was changed from life imprisonment to reclusion perpetua to death.

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

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

Plunder is committed through a combination or series of overt acts:

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

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

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

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

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

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

While the crime appears to be malum prohibitum, Republic Act No. 7080 provides that "in the imposition of penalties, the degree of participation and the attendance of mitigating and aggravating circumstances shall be considered by the court".

Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act)

The mere act of a public officer demanding an amount from a taxpayer to whom he is to render public service does not amount to bribery, but will amount to a violation of the Anti-graft and Corrupt Practices Act.

Illustration:

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

If the secretary persuaded the judge to make a favorable resolution, even if the judge did not do so, this constitutes a violation of Anti-Graft and Corrupt Practices Act, Sub-Section A.

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

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

Illustration:

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

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

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

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

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

Illustration:

Sen. Dominador Aytono had an interest in the Iligan Steel Mills, which at that time was being subject of an investigation by the Senate Committee of which he was a chairman. He was threatened with prosecution under Republic Act No. 3019 so

he was compelled to sell all his interest in that steel mill; there is no defense. Because the law says so, even if he voted against it, he commits a violation thereof.

These cases are filed with the Ombudsman and not with the regular prosecutor's office. Jurisdiction is exclusively with the Sandiganbayan. The accused public officer must be suspended when the case is already filed with the Sandiganbayan.

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

<u>Illustration:</u>

A public officer was assigned to direct traffic in a very busy corner. While there, he caught a thief in the act of lifting the wallet of a pedestrian. As he could not leave his post, he summoned a civilian to deliver the thief to the precinct. The civilian agreed so he left with the thief. When they were beyond the view of the policeman, the civilian allowed the thief to go home. What would be the liability of the public officer?

The liability of the traffic policeman would be merely administrative. The civilian has no liability at all.
Firstly, the offender is not yet a prisoner so there is no accountability yet. The term "prisoner" refers to one who is already booked and incarcerated no matter how short the time may be.

The policeman could not be said as having assisted the escape of the offender because as the problem says, he is assigned to direct traffic in a busy corner street. So he cannot be considered as falling under the third 3rd paragraph of Article 19 that would constitute his as an accessory.

The same is true with the civilian because the crime committed by the offender, which is snatching or a kind of robbery or theft as the case may be, is not one of those crimes mentioned under the third paragraph of Article 19 of the Revised Penal Code.

Where the public officer is still incumbent, the prosecution shall be with the Ombudsman.

Where the respondent is separated from service and the period has not yet prescribed, the information shall be filed in any prosecution's office in the city where the respondent resides. The prosecution shall file the case in the Regional Trial Court unless the violation carries a penalty higher than prision correccional, in which case the Sandiganbayan has jurisdiction.

The fact that the government benefited out of the prohibited act is no defense at all, the violation being mala prohibita.

Section 3 (f) of the Anti-Graft and Corrupt Practices Act – where the public officer neglects or refuses to act on a matter pending before him for the purpose of obtaining any pecuniary or material benefit or advantage in favor of or discriminating against another interested party.

The law itself additionally requires that the accused's dereliction, besides being without justification, must be for the purpose of obtaining from any person interested in the matter some pecuniary or material benefit or for the purpose of favoring any interested

party, or discriminating against another interested party. This element is indispensable.

In other words, the neglect or refusal to act must motivated by gain or benefit, or purposely to favor the other interested party as held in ***Coronado v. SB,*** *decided on August 18, 1993.*

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

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

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

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

Article 212. Corruption of Public Officials

Elements

1. Offender makes offers or promises or gives gifts or presents to a public officer;

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

Article 213. Frauds against the Public Treasury and Similar Offenses

Acts punished

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

2. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law, in collection of taxes, licenses, fees, and other imposts;

3. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially, in the collection of taxes, licenses, fees, and other imposts;

4. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law, in the collection of taxes, licenses, fees, and other imposts.

Elements of frauds against public treasury under paragraph 1

1. Offender is a public officer;

2. He has taken advantage of his office, that is, he intervened in the transaction in his official capacity;

3. He entered into an agreement with any interested party or speculator or made use of any other scheme with regard to furnishing supplies, the making of contracts, or the adjustment or settlement of accounts relating to public property or funds;

4. He had intent to defraud the government.

The essence of this crime is making the government pay for something not received or making it pay more than what is due. It is also committed by refunding more than the amount which should properly be refunded. This occurs usually in cases where a public officer whose official duty is to procure supplies for the government or enter into contract for government transactions, connives with the said supplier with the intention to defraud the government. Also when certain supplies for the government are purchased for the high price but its quantity or quality is low.

Illustrations:

(1) A public official who is in charge of procuring supplies for the government obtained funds for the first class materials and buys inferior quality products and pockets the excess of the funds. This is usually committed by the officials of the Department of Public Works and Highways.

(2) Poorest quality of ink paid as if it were of superior quality.

(3) One thousand pieces of blanket for certain unit of the Armed Forces of

the Philippines were paid for but actually, only 100 pieces were bought.

(4) The Quezon City government ordered 10,000 but what was delivered was only 1,000 T-shirts, the public treasury is defrauded because the government is made to pay that which is not due or for a higher price.

Not all frauds will constitute this crime. There must be no fixed allocation or amount on the matter acted upon by the public officer.

The allocation or outlay was made the basis of fraudulent quotations made by the public officer involved.

For example, there was a need to put some additional lighting along the a street and no one knows how much it will cost. An officer was asked to canvass the cost but he connived with the seller of light bulbs, pricing each light bulb at P550.00 instead of the actual price of P500.00. This is a case of fraud against public treasury.

If there is a fixed outlay of P20,000.00 for the lighting apparatus needed and the public officer connived with the seller so that although allocation was made a lesser number was asked to be delivered, or of an inferior quality, or secondhand. In this case there is no fraud against the public treasury because there is a fixed allocation. The fraud is in the implementation of procurement. That would constitute the crime of "other fraud" in Article 214, which is in the nature of swindling or estafa.

Be sure to determine whether fraud is against public treasury or one under Article 214.

Elements of illegal exactions under paragraph 2

1. Offender is a public officer entrusted with the collection of taxes, licenses, fees and other imposts;

2. He is guilty of any of the following acts or omissions:

   a. Demanding, directly or indirectly, the payment of sums different from or larger than those authorized by law; or

   b. Failing voluntarily to issue a receipt, as provided by law, for any sum of money collected by him officially; or

   c. Collecting or receiving, directly or indirectly, by way of payment or otherwise, things or objects of a nature different from that provided by law.

This can only be committed principally by a public officer whose official duty is to collect taxes, license fees, import duties and other dues payable to the government.

Not any public officer can commit this crime. Otherwise, it is estafa. Fixers cannot commit this crime unless he conspires with the public officer authorized to make the collection.

Also, public officers with such functions but are in the service of the Bureau of Internal Revenue and the Bureau of Customs are not to be prosecuted under the Revised Penal Code but under the Revised Administrative Code. These officers are authorized to make impositions and to enter into compromises. Because of this discretion, their demanding or collecting different from what is necessary is legal.

This provision of the Revised Penal Code was provided before the Bureau of Internal Revenue and the Tariff and Customs Code. Now, we have specific Code which will apply to them. In the absence of any provision applicable, the Revised Administrative Code will apply.

The essence of the crime is not misappropriation of any of the amounts but the improper making of the collection which would prejudice the accounting of collected amounts by the government.

On the first form of illegal exaction

In this form, mere demand will consummate the crime, even if the taxpayer shall refuse to come across with the amount being demanded. That will not affect the consummation of the crime.

In the demand, it is not necessary that the amount being demanded is bigger than what is payable to the government. The amount being demanded maybe less than the amount due the government.

Note that this is often committed with malversation or estafa because when a public officer shall demand an amount different from what the law provides, it can be expected that such public officer will not turn over his collection to the government.

Illustrations:

(1) A taxpayer goes to the local municipal treasurer to pay real estate taxes on his land. Actually, what is due the government is P400.00 only but the municipal treasurer demanded P500.00. By that demand alone, the crime of illegal exaction is already committed even though the taxpayer does not pay the P500.00.

(2) Suppose the taxpayer came across with P500.00. But the municipal treasurer, thinking that he would abstract the P100.00, issued a receipt for only P400.00. The taxpayer would naturally ask the municipal treasurer why the receipt was only for P400.00. The treasurer answered that the P100.00 is supposed to be for documentary stamps. The taxpayer left.

He has a receipt for P400.00. The municipal treasurer turned over to the government coffers P400.00 because that is due the government and pocketed the P100.00.

The mere fact that there was a demand for an amount different from what is due the government, the public officer already committed the crime of illegal exaction.

On the P100.00 which the public officer pocketed, will it be malversation or estafa?

In the example given, the public officer did not include in the official receipt the P100.00 and, therefore, it did not become part of the public funds. It remained to be private. It is the taxpayer who has been defrauded of his P100.00 because he can never claim a refund from the government for excess payment since the receipt issued to him was only P400.00 which is due the government. As far as the P100.00 is concerned, the crime committed is estafa.

(3) A taxpayer pays his taxes. What is due the government is P400.00 and the public officer issues a receipt for P500.00 upon payment of the taxpayer of said amount demanded by the public officer involved. But he altered the duplicate to reflect only P400.00 and he extracted the difference of P100.00.

In this case, the entire P500.00 was covered by an official receipt. That act of covering the whole amount received from the taxpayer in an official receipt will have the characteristics of becoming a part of the public funds. The crimes committed, therefore, are the following:

(a) Illegal exaction – for collecting more than he is authorized to collect. The mere act of demanding is enough to constitute this crime.

(b) Falsification – because there was an alteration of official document which is the duplicate of the official receipt to show an amount less than the actual amount collected.

(c) Malversation – because of his act of misappropriating the P100.00 excess which was covered by an official receipt already, even though not payable to the government. The entire P500.00 was covered by the receipt, therefore, the whole amount became public funds. So when he appropriated the P100 for his own benefit, he was not extracting private funds anymore but public funds.

Should the falsification be complexed with the malversation?

As far as the crime of illegal exaction is concerned, it will be the subject of separate accusation because there, the mere demand regardless of whether the taxpayer will pay or not, will already consummate the crime of illegal exaction. It is the breach of trust by a public officer entrusted to make the collection which is penalized under such article. The falsification or alteration made on the duplicate can not be said as a means to commit malversation. At most, the duplicate was altered in order to conceal the malversation. So it cannot be complexed with the malversation.

It cannot also be said that the falsification is a necessary means to commit the malversation because the public officer can misappropriate the P100.00 without any falsification. All that he has to do is to get the excess of P100.00 and misappropriate it. So the falsification is a separate accusation.

However, illegal exaction may be complexed with malversation because illegal exaction is a necessary means to be able to collect the P100.00 excess which was malversed.

In this crime, pay attention to whether the offender is the one charged with the collection of the tax, license or impost subject of the misappropriation. If he is not the one authorized by disposition to do the collection, the crime of illegal exaction is not committed.

If it did not give rise to the crime of illegal exaction, the funds collected may not have become part of the public funds. If it had not become part of the public funds, or had not become impressed with being part of the public funds, it cannot be the subject of malversation. It will give rise to estafa or theft as the case may be.

(3) The Municipal Treasurer demanded P500.00 when only P400.00 was due. He issued the receipt at

P400.00 and explained to taxpayer that the P100 was for documentary stamps. The Municipal Treasurer placed the entire P500.00 in the vault of the office. When he needed money, he took the P100.00 and spent it.

The following crimes were committed:

(a) Illegal exaction – for demanding a different amount;

(b) Estafa – for deceiving the taxpayer; and

(c) Malversation – for getting the P100.00 from the vault.

Although the excess P100.00 was not covered by the Official Receipt, it was commingled with the other public funds in the vault; hence, it became part of public funds and subsequent extraction thereof constitutes malversation.

Note that numbers 1 and 2 are complexed as illegal exaction with estafa, while in number 3, malversation is a distinct offense.

The issuance of the Official Receipt is the operative fact to convert the payment into public funds. The payor may demand a refund by virtue of the Official Receipt.

In cases where the payor decides to let the official to "keep the change", if the latter should pocket the excess, he shall be liable for malversation. The official has no right but the government, under the principle of accretion, as the owner of the bigger amount becomes the owner of the whole.

<u>On the second form of illegal exaction</u>

The act of receiving payment due the government without issuing a receipt will give rise to illegal exaction even though a provisional receipt has been issued. What the law requires is a receipt in the form prescribed by law, which means official receipt.

<u>Illustration:</u>

If a government cashier or officer to whom payment is made issued a receipt in his own private form, which he calls provisional, even though he has no intention of misappropriating the amount received by him, the mere fact that he issued a receipt not in the form prescribed by law, the crime of illegal exaction is committed. There must be voluntary failure to issue the Official Receipt.

<u>On the third form of illegal exaction</u>

Under the rules and regulations of the government, payment of checks not belonging to the taxpayer, but that of checks of other persons, should not be accepted to settle the obligation of that person.

<u>Illustration:</u>

A taxpayer pays his obligation with a check not his own but pertaining to another. Because of that, the check bounced later on.

The crime committed is illegal exaction because the payment by check is not allowed if the check does not pertain to the taxpayer himself, unless the check is a manager's check or a certified check, amended already as of 1990. (See the case of Roman Catholic.)

Under Article 213, if any of these acts penalized as illegal exaction is committed by those employed in the Bureau of Customs or Bureau of Internal Revenue, the law that will apply to them will be the Revised Administrative Code or the Tariff and Customs Code or National Revenue Code.

This crime does not require damage to the government.

Article 214. Other Frauds

Elements

1. Offender is a public officer;
2. He takes advantage of his official position;
3. He commits any of the frauds or deceits enumerated in Article 315 to 318.

Article 215. Prohibited Transactions

Elements

1. Offender is an appointive public officer;
2. He becomes interested, directly or indirectly, in any transaction of exchange or speculation;
3. The transaction takes place within the territory subject to his jurisdiction;
4. He becomes interested in the transaction during his incumbency.

Article 216. Possession of Prohibited Interest By A Public Officer

Persons liable

1. Public officer who, directly or indirectly, became interested in any contracts or business in which it was his official duty to intervene;
2. Experts, arbitrators, and private accountants who, in like manner, took part in any contract or transaction connected with the estate or property in the appraisal, distribution or adjudication of which they had acted;
3. Guardians and executors with respect to the property belonging to their wards or the estate.

Section 14, Article VI of the Constitution

No Senator or Member of the House of Representatives may personally appear as counsel before any court of justice or before the Electoral Tribunals, or quasi-judicial and other administrative bodies. Neither shall he, directly or indirectly, be interested financially in any contract with, or in any franchise or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including any government-owned or controlled corporation or its subsidiary, during his term of office. He shall not intervene in any matter before any office of the government for his pecuniary benefit or where he may be called upon to act on account of his office.

Section 13, Article VII of the Constitution

The President, Vice-President, the Members of the Cabinet and their deputies or assistant shall not, unless otherwise provided in this Constitution, hold any other office or employment during their tenure. They shall not, during said tenure, directly or indirectly, practice any other profession, participate in any business, or be financially interested in any contract with, or in any franchise, or special privilege granted by the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries. They shall strictly avoid conflict of interest in the conduct of their office.

Section 2, Article IX-A of the Constitution

No member of a Constitutional Commission shall, during his tenure, hold any office or employment. Neither shall he engage in the practice of any profession or in the active management or control of any business which in any way may be affected by the functions of his office, nor shall he be financially interested, directly or indirectly, in any contract with, or in any franchise or privilege granted by the government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations or their subsidiaries.

Article 217. Malversation of Public Funds or Property – Presumption of Malversation

Acts punished

1. Appropriating public funds or property;

2. Taking or misappropriating the same;

3. Consenting, or through abandonment or negligence, permitting any other person to take such public funds or property; and

4. Being otherwise guilty of the misappropriation or malversation of such funds or property.

Elements common to all acts of malversation under Article 217

1. Offender is a public officer;

2. He had the custody or control of funds or property by reason of the duties of his office;

3. Those funds or property were public funds or property for which he was accountable;

4. He appropriated, took, misappropriated or consented or, through abandonment or negligence, permitted another person to take them.

This crime is predicated on the relationship of the offender to the property or funds involved. The offender must be accountable for the property misappropriated. If the fund or property, though public in character is the responsibility of another officer, malversation is not committed unless there is conspiracy.

It is not necessary that the offender profited because somebody else may have misappropriated the funds in question for as long as the accountable officer was remiss in his duty of safekeeping public funds or property. He is liable for malversation if such funds were lost or otherwise misappropriated by another.

There is no malversation through simple negligence or reckless imprudence, whether deliberately or negligently. This is one crime in the Revised Penal Code where the penalty is the same whether committed with dolo or culpa.

Question & Answer

What crime under the Revised Penal Code carries the same penalty whether committed intentionally or through negligence?

Malversation under Article 217. There is no crime of malversation through negligence. The crime is malversation, plain and simple, whether committed

through dolo or culpa. There is no crime of malversation under Article 365 – on criminal negligence – because in malversation under Article 217, the same penalty is imposed whether the malversation results from negligence or was the product of deliberate act.

The crime of malversation can be committed only by an officer accountable for the funds or property which is appropriated. This crime, therefore, bears a relation between the offender and the funds or property involved.

The offender, to commit malversation, must be accountable for the funds or property misappropriated by him. If he is not the one accountable but somebody else, the crime committed is theft. It will be qualified theft if there is abuse of confidence.

Accountable officer does not refer only to cashier, disbursing officers or property custodian. Any public officer having custody of public funds or property for which he is accountable can commit the crime of malversation if he would misappropriate such fund or property or allow others to do so.

Questions & Answers

1. An unlicensed firearm was confiscated by a policeman. Instead of turning over the firearm to the property custodian for the prosecution of the offender, the policeman sold the firearm. What crime was committed?

The crime committed is malversation because that firearm is subject to his accountability. Having taken custody of the firearm, he is supposed to account for it as evidence for the prosecution of the offender.

2. Can the buyer be liable under the Anti-fencing law?

No. The crime is neither theft nor robbery, but malversation.

3. A member of the Philippine National Police went on absence without leave. He was charged with malversation of the firearm issued to him. After two years, he came out of hiding and surrendered the firearm. What crime was committed?

The crime committed was malversation. Payment of the amount misappropriated or restitution of property misappropriated does not erase criminal liability but only civil liability.

When private property is attached or seized by public authority and the public officer accountable therefor misappropriates the same, malversation is committed also.

Illustration:

If a sheriff levied the property of the defendants and absconded with it, he is not liable of qualified theft but of malversation even though the property belonged to a private person. The seizure of the property or fund impressed it with the character of being part of the public funds it being in custodia legis. For as long as the public officer is the one accountable for the fund or property that was misappropriated, he can be liable for the crime of malversation. Absent such relation, the crime could be theft, simple or qualified.

Question & Answer

There was a long line of payors on the last day of payment for residence certificates. Employee A of the municipality placed all his collections inside his table and requested his employee B to watch over his table while he goes to the restroom. B took advantage of A's absence and took P50.00 out of the collections. A returned and found

his money short. What crimes have been committed?

A is guilty of malversation through negligence because he did not exercise due diligence in the safekeeping of the funds when he did not lock the drawer of his table. Insofar as B is concerned, the crime is qualified theft.

Under jurisprudence, when the public officer leaves his post without locking his drawer, there is negligence. Thus, he is liable for the loss.

Illustration:

A government cashier did not bother to put the public fund in the public safe/vault but just left it in the drawer of his table which has no lock. The next morning when he came back, the money was already gone. He was held liable for malversation through negligence because in effect, he has abandoned the fund or property without any safety.

A private person may also commit malversation under the following situations:

(1) Conspiracy with a public officer in committing malversation;

(2) When he has become an accomplice or accessory to a public officer who commits malversation;

(3) When the private person is made the custodian in whatever capacity of public funds or property, whether belonging to national or local government, and he misappropriates the same;

(4) When he is constituted as the depositary or administrator of funds or property seized or attached by public authority even though said funds or property belong to a private individual.

Illustration:

Municipal treasurer connives with outsiders to make it appear that the office of the treasurer was robbed. He worked overtime and the co-conspirators barged in, hog-tied the treasurer and made it appear that there was a robbery. Crime committed is malversation because the municipal treasurer was an accountable officer.

Note that damage on the part of the government is not considered an essential element. It is enough that the proprietary rights of the government over the funds have been disturbed through breach of trust.

It is not necessary that the accountable public officer should actually misappropriate the fund or property involved. It is enough that he has violated the trust reposed on him in connection with the property.

Illustration:

(1) It is a common practice of government cashiers to change the checks of their friends with cash in their custody, sometimes at a discount. The public officer knows that the check is good because the issuer thereof is a man of name. So he changed the same with cash. The check turned out to be good.

With that act of changing the cash of the government with the check of a private person, even though the check is good, malversation is committed. The reason is that a check is cleared only after three days. During that period of three days, the government is being denied the use of the public fund. With more reason if that check bounce because the government suffers.

(2) *An accountable public officer, out of laziness, declares that the payment was made to him after he had cleaned his table and locked his safe for the collection of the day. A taxpayer came and he insisted that he pay the amount so that he will not return the next day. So he accepted the payment but is too lazy to open the combination of the public safe. He just pocketed the money. When he came home, the money was still in his pocket. The next day, when he went back to the office, he changed clothes and he claims that he forgot to put the money in the new funds that he would collect the next day. Government auditors came and subjected him to inspection. He was found short of that amount. He claimed that it is in his house -- with that alone, he was charged with malversation and was convicted.*

Any overage or excess in the collection of an accountable public officer should not be extracted by him once it is commingled with the public funds.

<u>Illustration:</u>

When taxpayers pay their accountabilities to the government by way of taxes or licenses like registration of motor vehicles, the taxpayer does not bother to collect loose change. So the government cashier accumulates the loose change until this amounts to a sizable sum. In order to avoid malversation, the cashier did not separate what is due the government which was left to her by way of loose change. Instead, he gets all of these and keeps it in the public vault/safe. After the payment of the taxes and licenses is through, he gets all the official receipts and takes the sum total of the payment. He then opens the public vault and counts the cash. Whatever will be the excess or the overage, he gets. In this case, malversation is committed.

Note that the moment any money is commingled with the public fund even if not due the government, it becomes impressed with the characteristic of being part of public funds. Once they are commingled, you do not know anymore which belong to the government and which belong to the private persons. So that a public vault or safe should not be used to hold any fund other that what is due to the government.

When does presumption of misappropriation arise?

When a demand is made upon an accountable officer and he cannot produce the fund or property involved, there is a prima facie presumption that he had converted the same to his own use. There must be indubitable proof that thing unaccounted for exists. Audit should be made to determine if there was shortage. Audit must be complete and trustworthy. If there is doubt, presumption does not arise.

Presumption arises only if at the time the demand to produce the public funds was made, the accountability of the accused is already determined and liquidated. A demand upon the accused to produce the funds in his possession and a failure on his part to produce the same will not bring about this presumption unless and until the amount of his accountability is already known.

*In **Dumagat v. Sandiganbayan, 160 SCRA 483,** it was held that the prima facie presumption under the Revised Penal Code arises only if there is no issue as to the accuracy, correctness and regularity of the audit findings and if the fact that public funds are missing is indubitably established. The audit must be thorough and complete down to the last detail, establishing with absolute certainty the fact that the funds are indeed missing.*

*In **De Guzman v. People, 119 SCRA 337,** it was held that in malversation, all that is necessary to prove is that the defendant received in his possession the public funds and that he could not account for them and that he could not give a reasonable excuse for their disappearance. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is the shortage in the accounts which he has not been able to explain satisfactorily.*

*In **Cabello v. Sandiganbaya, 197 SCRA 94,** it was held it was held that malversation may be committed intentionally or by negligence. The dolo or culpa bringing about the offences is only a modality in the perpetration of the offense. The same offense of malversation is involved, whether the mode charged differs from the mode established in the commission of the crime. An accused charged with willful malversation may be convicted of Malversation through her negligee.*

*In **Quizo v. Sandiganbayan,** the accused incurred shortage (P1.74) mainly because the auditor disallowed certain cash advances the accused granted to employees. But on the same date that the audit was made, he partly reimbursed the amount and paid it in full three days later. The Supreme Court considered the circumstances as negative of criminal intent. The cash advances were made in good faith and out of good will to co-employees which was a practice tolerated in the office. The actual cash shortage was only P1.74 and together with the disallowed advances were fully reimbursed within a reasonable time. There was no negligence, malice, nor intent to defraud.*

*In **Ciamfranca Jr. v. Sandiganbayan,** where the accused in malversation could not give reasonable and satisfactory explanation or excuse for the missing funds or property accountable by him, it was held that the return of the funds or property is not a defense and does not extinguish criminal liability.*

*In **Parungao v. Sandiganbayan, 197 SCRA 173,** it was held that a public officer charged with malversation cannot be convicted of technical malversation (illegal use of public funds under Article 220). To do so would violate accused's right to be informed of nature of accusation against him.*

Technical malversation is not included in the crime of malversation. In malversation, the offender misappropriates public funds or property for his own personal use, or allows any other person to take such funds or property for the latter's own personal use. In technical malversation, the public officer applies the public funds or property under his administration to another public use different from that for which the public fund was appropriated by law or ordinance. Recourse: File the proper information.

Article 218. Failure of Accountable Officer to Render Accounts

Elements

1. Offender is public officer, whether in the service or separated therefrom by resignation or any other cause;

2. He is an accountable officer for public funds or property;

3. He is required by law or regulation to render account to the Commission on Audit, or to a provincial auditor;

4. He fails to do so for a period of two months after such accounts should be rendered.

Article 219. Failure of A Responsible Public Officer to Render Accounts before Leaving the Country

Elements

1. Offender is a public officer;

2. He is an accountable officer for public funds or property;

3. He unlawfully leaves or attempts to leave the Philippine Islands without securing a certificate from the Commission on Audit showing that his accounts have been finally settled.

When an accountable officer leaves the country without first settling his accountability or otherwise securing a clearance from the Commission on Audit regarding such accountability, the implication is that he left the country because he has misappropriated the funds under his accountability.

Who can commit this crime? A responsible public officer, not necessarily an accountable one, who leaves the country without first securing clearance from the Commission on Audit.

The purpose of the law is to discourage responsible or accountable officers from leaving without first liquidating their accountability.

Mere leaving without securing clearance constitutes violation of the Revised Penal Code. It is not necessary that they really misappropriated public funds.

Article 220. Illegal use of public funds or property

Elements

1. Offender is a public officer;

2. There are public funds or property under his administration;

3. Such fund or property were appropriated by law or ordinance;

4. He applies such public fund or property to any public use other than for which it was appropriated for.

Illegal use of public funds or property is also known as technical malversation. The term technical malversation is used because in this crime, the fund or property involved is already appropriated or earmarked for a certain public purpose.

The offender is entrusted with such fund or property only to administer or apply the same to the public purpose for which it was appropriated by law or ordinance. Instead of applying it to the public purpose to which the fund or property was already appropriated by law, the public officer applied it to another purpose.

Since damage is not an element of malversation, even though the application made proved to be more beneficial to public interest than the original purpose for which the amount or property was appropriated by law, the public officer involved is still liable for technical malversation.

If public funds were not yet appropriated by law or ordinance, and this was applied to a public purpose by the custodian thereof, the crime is plain and simple malversation, not technical malversation. If the funds had been appropriated for a particular public purpose, but the same was applied to private purpose, the crime committed is simple malversation only.

Illustration:

The office lacked bond papers. What the government cashier did was to send the janitor, get some money from his collection, told the janitor to buy bond paper so that the office will have something to use. The amount involved maybe immaterial but the cashier commits malversation pure and simple.

This crime can also be committed by a private person.

Illustration:

A certain road is to be cemented. Bags of cement were already being unloaded at the side. But then, rain began to fall so the supervisor of the road building went to a certain house with a garage, asked the owner if he could possibly deposit the bags of cement in his garage to prevent the same from being wet. The owner of the house, Olive, agreed. So the bags of cement were transferred to the garage of the private person. After the public officer had left, and the workers had left because it is not possible to do the cementing, the owner of the garage started using some of the cement in paving his own garage. The crime of technical malversation is also committed.

Note that when a private person is constituted as the custodian in whatever capacity, of public funds or property, and he misappropriates the same, the crime of malversation is also committed. See Article 222.

Illustration:

The payroll money for a government infrastructure project on the way to the site of the project, the officers bringing the money were ambushed. They were all wounded. One of them, however, was able to get away from the scene of the ambush until he reached a certain house. He told the occupant of the house to safeguard the amount because it is the payroll money of the government laborers of a particular project. The occupant of the house accepted the money for his own use. The crime is not theft but malversation as long as he knew that what was entrusted in his custody is public fund or property.

Question & Answer

The sheriff, after having levied on the property subject of a judgment, conducted a public auction sale. He received the proceeds of the public auction. Actually, the proceeds are to be delivered to the plaintiff. The sheriff, after deducting the sheriff's fees due to the office, spent part of that amount. He gave the balance to the plaintiff and executed a promissory note to pay the plaintiff the amount spent by him. Is there a crime committed?

The Supreme Court ruled that the sheriff committed the crime of malversation because the proceeds of the auction sale was turned over to the plaintiff, such proceeds is impressed with the characteristic of being part of public funds. The sheriff is accountable therefore because he is not supposed to use any part of such proceeds.

Article 221. Failure to Make Delivery of Public Funds of Property

Acts punished

1. Failing to make payment by a public officer who is under obligation to make such payment from government funds in his possession;

2. Refusing to make delivery by a public officer who has been ordered by competent authority to deliver any property in his custody or under his administration.

Elements of failure to make payment

1. Public officer has government funds in his possession;

2. He is under obligation to make payment from such funds;

3. He fails to make the payment maliciously.

Article 223. Conniving with or Consenting to Evasion

1. Offender is a public officer;

2. He had in his custody or charge a prisoner, either detention prisoner or prisoner by final judgment;

3. Such prisoner escaped from his custody;

4. He was in connivance with the prisoner in the latter's escape.

Classes of prisoners involved

1. If the fugitive has been sentenced by final judgment to any penalty;

2. If the fugitive is held only as detention prisoner for any crime or violation of law or municipal ordinance.

Article 224. Evasion through Negligence

Elements

1. Offender is a public officer;

2. He is charged with the conveyance or custody of a prisoner or prisoner by final judgment;

3. Such prisoner escapes through negligence.

Article 225. Escape of Prisoner under the Custody of a Person not a Public Officer

Elements

1. Offender is a private person;

2. The conveyance or custody of a prisoner or person under arrest is confided to him;

3. The prisoner or person under arrest escapes;

4. Offender consents to the escape, or that the escape takes place through his negligence.

The crime is infidelity in the custody of prisoners if the offender involved is the custodian of the prisoner.

If the offender who aided or consented to the prisoner's escaping from confinement, whether the prisoner is a convict or a detention prisoner, is not the custodian, the crime is delivering prisoners from jail under Article156.

The crime of infidelity in the custody of prisoners can be committed only by the custodian of a prisoner.

If the jail guard who allowed the prisoner to escape is already off-duty at that time and he is no longer the custodian of the prisoner, the crime committed by him is delivering prisoners from jail.

Note that you do not apply here the principle of conspiracy that the act of one is the act of all. The party who is not the custodian who conspired with the custodian in allowing the prisoner to escape does not commit infidelity in the custody of the

prisoner. He commits the crime of delivering prisoners from jail.

Question & Answer

If a private person approached the custodian of the prisoner and for a certain consideration, told the custodian to leave the door of the cell unlocked for the prisoner to escape. What crime had been committed?

It is not infidelity in the custody of prisoners because as far as the private person is concerned, this crime is delivering prisoners from jail. The infidelity is only committed by the custodian.

This crime can be committed also by a private person if the custody of the prisoner has been confided to a private person.

Illustration:

A policeman escorted a prisoner to court. After the court hearing, this policeman was shot at with a view to liberate the prisoner from his custody. The policeman fought the attacker but he was fatally wounded. When he could no longer control the prisoner, he went to a nearby house, talked to the head of the family of that house and asked him if he could give the custody of the prisoner to him. He said yes. After the prisoner was handcuffed in his hands, the policeman expired. Thereafter, the head of the family of that private house asked the prisoner if he could afford to give something so that he would allow him to go. The prisoner said, "Yes, if you would allow me to leave, you can come with me and I will give the money to you." This private persons went with the prisoner and when the money was given, he allowed him to go. What crime/s had been committed?

Under Article 225, the crime can be committed by a private person to whom the custody of a prisoner has been confided.

Where such private person, while performing a private function by virtue of a provision of law, shall accept any consideration or gift for the non-performance of a duty confided to him, Bribery is also committed. So the crime committed by him is infidelity in the custody of prisoners and bribery.

If the crime is delivering prisoners from jail, bribery is just a means, under Article 156, that would call for the imposition of a heavier penalty, but not a separate charge of bribery under Article 156.

But under Article 225 in infidelity, what is basically punished is the breach of trust because the offender is the custodian. For that, the crime is infidelity. If he violates the trust because of some consideration, bribery is also committed.

A higher degree of vigilance is required. Failure to do so will render the custodian liable. The prevailing ruling is against laxity in the handling of prisoners.

Illustration:

A prison guard accompanied the prisoner in the toilet. While answering the call of nature, police officer waiting there, until the prisoner escaped. Police officer was accused of infidelity.

There is no criminal liability because it does not constitute negligence. Negligence contemplated here refers to deliberate abandonment of duty.

Note, however, that according to a recent Supreme Court ruling, failure to accompany lady prisoner in the comfort room is a case of negligence and therefore the custodian is liable for infidelity in the custody of prisoner.

Prison guard should not go to any other place not officially called for. This is a case of infidelity in the custody of prisoner through negligence under Article 224.

Article 226. Removal, Concealment, or Destruction of Documents

Elements

1. Offender is a public officer;

2. He abstracts, destroys or conceals a document or papers;

3. Said document or papers should have been entrusted to such public officer by reason of his office;

4. Damage, whether serious or not, to a third party or to the public interest has been caused.

Crimes falling under the section on infidelity in the custody of public documents can only be committed by the public officer who is made the custodian of the document in his official capacity. If the officer was placed in possession of the document but it is not his duty to be the custodian thereof, this crime is not committed.

Illustration:

A letter is entrusted to a postmaster for transmission of a registered letter to another. The postmaster opened the letter and finding the money, extracted the same. The crime committed is infidelity in the custody of the public document because under Article 226, the law refers also to papers entrusted to public officer involved and currency note is considered to be within the term paper although it is not a document.

With respect to official documents, infidelity is committed by destroying the document, or removing the document or concealing the document.

Damage to public interest is necessary. However, material damage is not necessary.

Illustration:

If any citizen goes to a public office, desiring to go over public records and the custodian of the records had concealed the same so that this citizen is required to go back for the record to be taken out, the crime of infidelity is already committed by the custodian who removed the records and kept it in a place where it is not supposed to be kept. Here, it is again the breach of public trust which is punished.

Although there is no material damage caused, mere delay in rendering public service is considered damage.

Removal of public records by the custodian does not require that the record be brought out of the premises where it is kept. It is enough that the record be removed from the place where it should be and transferred to another place where it is not supposed to be kept. If damage is caused to the public service, the public officer is criminally liable for infidelity in the custody of official documents.

Distinction between infidelity in the custody of public document, estafa and malicious mischief

- *In infidelity in the custody of public document, the offender is the custodian of the official document removed or concealed.*

- *In estafa, the offender is not the custodian of the document removed or concealed.*

- *In malicious mischief, the offender purposely destroyed and damaged the property/document.*

Where in case for bribery or corruption, the monetary considerations was marked as exhibits, such considerations acquires the nature of a document such that if the same would be spent by the custodian the crime

is not malversation but Infidelity in the custody of public records, because the money adduced as exhibits partake the nature of a document and not as money. Although such monetary consideration acquires the nature of a document, the best evidence rule does not apply here. Example, photocopies may be presented in evidence.

Article 227. Officer Breaking Seal

Elements

1. Offender is a public officer;
2. He is charged with the custody of papers or property;
3. These papers or property are sealed by proper authority;
4. He breaks the seal or permits them to be broken.

If the official document is sealed or otherwise placed in an official envelope, the element of damage is not required. The mere breaking of the seal or the mere opening of the document would already bring about infidelity even though no damage has been suffered by anyone or by the public at large. The offender does not have to misappropriate the same. Just trying to discover or look what is inside is infidelity already.

The act is punished because if a document is entrusted to the custody of a public officer in a sealed or closed envelope, such public officer is supposed not to know what is inside the same. If he would break the seal or open the closed envelop, indications would be that he tried to find out the contents of the document. For that act, he violates the confidence or trust reposed on him.

A crime is already committed regardless of whether the contents of the document are secret or private. It is enough that it is entrusted to him in a sealed form or in a closed envelope and he broke the seal or opened the envelop. Public trust is already violated if he managed to look into the contents of the document.

Distinction between infidelity and theft

- *There is infidelity if the offender opened the letter but did not take the same.*
- *There is theft if there is intent to gain when the offender took the money.*

Note that he document must be complete in legal sense. If the writings are mere form, there is no crime.

Illustration:

As regard the payroll, which has not been signed by the Mayor, no infidelity is committed because the document is not yet a payroll in the legal sense since the document has not been signed yet.

In "breaking of seal", the word "breaking" should not be given a literal meaning. Even if actually, the seal was not broken, because the custodian managed to open the parcel without breaking the seal.

Article 228. Opening of Closed Documents

Elements

1. Offender is a public officer;
2. Any closed papers, documents, or object are entrusted to his custody;
3. He opens or permits to be opened said closed papers, documents or objects;

4. He does not have proper authority.

Article 229. Revelation of Secrets by An Officer

Acts punished

1. Revealing any secrets known to the offending public officer by reason of his official capacity;

   Elements

   1. Offender is a public officer;
   2. He knows of a secret by reason of his official capacity;
   3. He reveals such secret without authority or justifiable reasons;
   4. Damage, great or small, is caused to the public interest.

2. Delivering wrongfully papers or copies of papers of which he may have charge and which should not be published.

   Elements

   1. Offender is a public officer;
   2. He has charge of papers;
   3. Those papers should not be published;
   4. He delivers those papers or copies thereof to a third person;
   5. The delivery is wrongful;
   6. Damage is caused to public interest.

Article 230. Public Officer Revealing Secrets of Private individual

Elements

1. Offender is a public officer;
2. He knows of the secrets of a private individual by reason of his office;
3. He reveals such secrets without authority or justifiable reason.

Article 231. Open Disobedience

Elements

1. Officer is a judicial or executive officer;
2. There is a judgment, decision or order of a superior authority;
3. Such judgment, decision or order was made within the scope of the jurisdiction of the superior authority and issued with all the legal formalities;
4. He, without any legal justification, openly refuses to execute the said judgment, decision or order, which he is duty bound to obey.

Article 232. Disobedience to Order of Superior Officer When Said Order Was Suspended by Inferior Officer

Elements

1. Offender is a public officer;
2. An order is issued by his superior for execution;
3. He has for any reason suspended the execution of such order;

4. His superior disapproves the suspension of the execution of the order;

5. Offender disobeys his superior despite the disapproval of the suspension.

Article 233. Refusal of Assistance

1. Offender is a public officer;

2. A competent authority demands from the offender that he lend his cooperation towards the administration of justice or other public service;

3. Offender fails to do so maliciously.

Any public officer who, upon being requested to render public assistance within his official duty to render and he refuses to render the same when it is necessary in the administration of justice or for public service, may be prosecuted for refusal of assistance.

This is a crime, which a policeman may commit when, being subpoenaed to appear in court in connection with a crime investigated by him but because of some arrangement with the offenders, the policeman does not appear in court anymore to testify against the offenders. He tried to assail the subpoena so that ultimately the case would be dismissed. It was already held that the policeman could be prosecuted under this crime of refusal of assistance and not that of dereliction of duty.

Illustration:

A government physician, who had been subpoenaed to appear in court to testify in connection with physical injury cases or cases involving human lives, does not want to appear in court to testify. He may be charged for refusal of assistance. As long as they have been properly notified by subpoena and they disobeyed the subpoena, they can be charged always if it can be shown that they are deliberately refusing to appear in court.

It is not always a case or in connection with the appearance in court that this crime may be committed. Any refusal by the public officer to render assistance when demanded by competent public authority, as long as the assistance requested from them is within their duty to render and that assistance is needed for public service, the public officers who are refusing deliberately may be charged with refusal of assistance.

Note that the request must come from one public officer to another.

Illustration:

A fireman was asked by a private person for services but was refused by the former for lack of "consideration".

It was held that the crime is not refusal of assistance because the request did not come from a public authority. But if the fireman was ordered by the authority to put out the fire and he refused, the crime is refusal of assistance.

If he receives consideration therefore, bribery is committed. But mere demand will fall under the prohibition under the provision of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act).

Article 234. Refusal to Discharge Elective Office

Elements

1. Offender is elected by popular election to a public office;

2. He refuses to be sworn in or to discharge the duties of said office;

3. There is no legal motive for such refusal to be sworn in or to discharge the duties of said office.

Article 235. Maltreatment of Prisoners

Elements

1. Offender is a public officer or employee;

2. He has under his charge a prisoner or detention prisoner;

3. He maltreats such prisoner in either of the following manners:

    a. By overdoing himself in the correction or handling of a prisoner or detention prisoner under his charge either –

        (1) By the imposition of punishment not authorized by the regulations; or

        (2) By inflicting such punishments (those authorized) in a cruel and humiliating manner; or

    b. By maltreating such prisoners to extort a confession or to obtain some information from the prisoner.

This is committed only by such public officer charged with direct custody of the prisoner. Not all public officer can commit this offense.

If the public officer is not the custodian of the prisoner, and he manhandles the latter, the crime is physical injuries.

The maltreatment does not really require physical injuries. Any kind of punishment not authorized or though authorized if executed in excess of the prescribed degree.

Illustration:

Make him drink dirty water, sit on ice, eat on a can, make him strip, hang a sign on his neck saying "snatcher".

But if as a result of the maltreatment, physical injuries were caused to the prisoner, a separate crime for the physical injuries shall be filed. You do not complex the crime of physical injuries with the maltreatment because the way Article 235 is worded, it prohibits the complexing of the crime.

If the maltreatment was done in order to extort confession, therefore, the constitutional right of the prisoner is further violated. The penalty is qualified to the next higher degree.

The offended party here must be a prisoner in the legal sense. The mere fact that a private citizen had been apprehended or arrested by a law enforcer does not constitute him a prisoner. To be a prisoner, he must have been booked and incarcerated no matter how short it is.

Illustration:

A certain snatcher was arrested by a law enforcer, brought to the police precinct, turned over to the custodian of that police precinct. Every time a policeman entered the police precinct, he would ask, "What is this fellow doing here? What crime has he committed?". The other policeman would then tell, "This fellow is a snatcher." So every time a policeman would come in, he would inflict injury to him. This is not maltreatment of prisoner because the offender is not the custodian. The crime is only physical injuries.

But if the custodian is present there and he allowed it, then he will be liable also for the

physical injuries inflicted, but not for maltreatment because it was not the custodian who inflicted the injury.

But if it is the custodian who effected the maltreatment, the crime will be maltreatment of prisoners plus a separate charge for physical injuries.

If a prisoner who had already been booked was make to strip his clothes before he was put in the detention cell so that when he was placed inside the detention cell, he was already naked and he used both of his hands to cover his private part, the crime of maltreatment of prisoner had already been committed.

After having been booked, the prisoner was made to show any sign on his arm, hand or his neck; "Do not follow my footsteps, I am a thief." That is maltreatment of prisoner if the offended party had already been booked and incarcerated no matter how short, as a prisoner.

Before this point in time, when he is not yet a prisoner, the act of hanging a sign on his neck will only amount to slander because the idea is to cast dishonor. Any injury inflicted upon him will only give rise to the crime of physical injuries.

Article 236. Anticipation of Duties of A Public Office

Elements

1. Offender is entitled to hold a public office or employment, either by election or appointment;

2. The law requires that he should first be sworn in and/or should first give a bond;

3. He assumes the performance of the duties and powers of such office;

4. He has not taken his oath of office and/or given the bond required by law.

Article 237. Prolonging Performance of Duties and Powers

Elements

1. Offender is holding a public office;

2. The period provided by law, regulations or special provision for holding such office, has already expired;

3. He continues to exercise the duties and powers of such office.

Article 238. Abandonment of Office or Position

Elements

1. Offender is a public officer;

2. He formally resigns from his position;

3. His resignation has not yet been accepted;

4. He abandons his office to the detriment of the public service.

Article 239. Usurpation of Legislative Powers

Elements

1. Offender is an executive or judicial officer;

2. He (a) makes general rules or regulations beyond the scope of his authority or (b) attempts to repeal a law or (c) suspends the execution thereof.

Article 240. Usurpation of Executive Functions

Elements

1. Offender is a judge;
2. He (a) assumes a power pertaining to the executive authorities, or (b) obstructs the executive authorities in the lawful exercise of their powers.

Article 241. Usurpation of Judicial Functions

Elements

1. Offender is an officer of the executive branch of the government;
2. He (a) assumes judicial powers, or (b) obstructs the execution of any order or decision rendered by any judge within his jurisdiction.

Article 242. Disobeying Request for Disqualification

Elements

1. Offender is a public officer;
2. A proceeding is pending before such public officer;
3. There is a question brought before the proper authority regarding his jurisdiction, which is not yet decided;
4. He has been lawfully required to refrain form continuing the proceeding;
5. He continues the proceeding.

Article 243. Orders or Request by Executive Officers to Any Judicial Authority

Elements

1. Offender is an executive officer;
2. He addresses any order or suggestion to any judicial authority;
3. The order or suggestion relates to any case or business coming within the exclusive jurisdiction of the courts of justice.

Article 244. Unlawful Appointments

Elements

1. Offender is a public officer;
2. He nominates or appoints a person to a public office;
3. Such person lacks the legal qualifications therefore;
4. Offender knows that his nominee or appointee lacks the qualification at the time he made the nomination or appointment.

Article 245. Abuses against Chastity

Acts punished

1. Soliciting or making immoral or indecent advances to a woman interested in matters pending before the offending officer for decision, or with respect to which he is required to submit a report to or consult with a superior officer;
2. Soliciting or making immoral or indecent advances to a woman under the offender's custody;

3. Soliciting or making immoral or indecent advances to the wife, daughter, sister or relative within the same degree by affinity of any person in the custody of the offending warden or officer.

Elements:

1. Offender is a public officer;

2. He solicits or makes immoral or indecent advances to a woman;

3. Such woman is –

   a. interested in matters pending before the offender for decision, or with respect to which he is required to submit a report to or consult with a superior officer; or

   b. under the custody of the offender who is a warden or other public officer directly charged with the care and custody of prisoners or persons under arrest; or

   c. the wife, daughter, sister or relative within the same degree by affinity of the person in the custody of the offender.

The name of the crime is misleading. It implies that the chastity of the offended party is abused but this is not really the essence of the crime because the essence of the crime is mere making of immoral or indecent solicitation or advances.

Illustration:

Mere indecent solicitation or advances of a woman over whom the public officer exercises a certain influence because the woman is involved in a case where the offender is to make a report of result with superiors or otherwise a case which the offender was investigating.

This crime is also committed if the woman is a prisoner and the offender is her jail warden or custodian, or even if the prisoner may be a man if the jail warden would make the immoral solicitations upon the wife, sister, daughter, or relative by affinity within the same degree of the prisoner involved.

Three instances when this crime may arise:

(1) The woman, who is the offended party, is the party in interest in a case where the offended is the investigator or he is required to render a report or he is required to consult with a superior officer.

This does not include any casual or incidental interest. This refers to interest in the subject of the case under investigation.

If the public officer charged with the investigation or with the rendering of the report or with the giving of advice by way of consultation with a superior, made some immoral or indecent solicitation upon such woman, he is taking advantage of his position over the case. For that immoral or indecent solicitation, a crime is already committed even if the woman did not accede to the solicitation.

Even if the woman may have lied with the hearing officer or to the public officer and acceded to him, that does not change the crime because the crime seeks to penalize the taking advantage of official duties.

It is immaterial whether the woman did not agree or agreed to the solicitation. If the woman did not

agree and the public officer involved pushed through with the advances, attempted rape may have been committed.

(2) *The woman who is the offended party in the crime is a prisoner under the custody of a warden or the jailer who is the offender.*

If the warden or jailer of the woman should make immoral or indecent advances to such prisoner, this crime is committed.

This crime cannot be committed if the warden is a woman and the prisoner is a man. Men have no chastity.

If the warden is also a woman but is a lesbian, it is submitted that this crime could be committed, as the law does not require that the custodian be a man but requires that the offended be a woman.

Immoral or indecent advances contemplated here must be persistent. It must be determined. A mere joke would not suffice.

<u>Illustrations:</u>

(1) *An investigating prosecutor where the woman is charged with estafa as the respondent, made a remark to the woman, thus: "You know, the way of deciding this case depends on me. I can just say this is civil in character. I want to see a movie tonight and I want a companion." Such a remark, which is not discerned if not persistent will not give rise to this crime. However, if the prosecutor kept on calling the woman and inviting her, that makes the act determined and the crime is committed.*

(2) *A jailer was prosecuted for abuse against chastity. The jailer said, "It was mutual on their part. I did not really force my way upon the woman. The woman fell in love with me, I fell in love with the woman." The woman became pregnant. The woman admitted that she was not forced. Just the same, the jailer was convicted of abuse against chastity.*

Legally, a prisoner is an accountability of the government. So the custodian is not supposed to interfere. Even if the prisoner may like it, he is not supposed to do that. Otherwise, abuse against chastity is committed.
Being responsible for the pregnancy is itself taking advantage the prisoner.

If he forced himself against the will of the woman, another crime is committed, that is, rape aside from abuse against chastity.

You cannot consider the abuse against chastity as absorbed in the rape because the basis of penalizing the acts is different from each other.

(3) *The crime is committed upon a female relative of a prisoner under the custody of the offender, where the woman is the daughter, sister or relative by affinity in the same line as of the prisoner under the custody of the offender who made the indecent or immoral solicitation.*

The mother is not included so that any immoral or indecent solicitation upon the mother of the prisoner

does not give rise to this crime, but the offender may be prosecuted under the Section 28 of Republic Act No. 3019 (Anti-graft and Corrupt Practices Act).

Why is the mother left out? Because it is the mother who easily succumbs to protect her child.

If the offender were not the custodian, then crime would fall under Republic Act No. 3019 (The Anti-Graft and Corrupt Practices Act).

Republic Act No. 7877 (Anti-Sexual Harassment Act)

Committed by any person having authority, influence or moral ascendancy over another in a work, training or education environment when he or she demands, requests, or otherwise requires any sexual favor from the other regardless of whether the demand, request or requirement for submission is accepted by the object of the said act (for a passing grade, or granting of scholarship or honors, or payment of a stipend, allowances, benefits, considerations; favorable compensation terms, conditions, promotions or when the refusal to do so results in a detrimental consequence for the victim).

Also holds liable any person who directs or induces another to commit any act of sexual harassment, or who cooperates in the commission, the head of the office, educational or training institution solidarily.

Complaints to be handled by a committee on decorum, which shall be determined by rules and regulations on such.

Administrative sanctions shall not be a bar to prosecution in the proper courts for unlawful acts of sexual harassment.

TITLE VIII. CRIMES AGAINST PERSONS

Crimes against persons

1. Parricide (Art. 246);
2. Murder (Art. 248);
3. Homicide (Art. 249);
4. Death caused in a tumultuous affray (Art. 251);
5. Physical injuries inflicted in a tumultuous affray (Art. 252);
6. Giving assistance to suicide (Art. 253);
7. Discharge of firearms (Art. 254);
8. Infanticide (Art. 255);
9. Intentional abortion (Art. 256);
10. Unintentional abortion (Art. 257);
11. Abortion practiced by the woman herself or by her parents (Art. 258);
12. Abortion practiced by a physician or midwife and dispensing of abortives (Art. 259);
13. Duel (Art. 260);
14. Challenging to a duel (Art. 261);
15. Mutilation (Art. 262);
16. Serious physical injuries (Art. 263);
17. Administering injurious substances or beverages (Art. 264);
18. Less serious physical injuries (Art. 265);
19. Slight physical injuries and maltreatment (Art. 266); and
20. Rape (Art. 266-A).

The essence of crime here involves the taking of human life, destruction of the fetus or inflicting injuries.

As to the taking of human life, you have:

(1) Parricide;

(2) Murder;

(3) Homicide;

(4) Infanticide; and

(5) Giving assistance to suicide.

Note that parricide is premised on the relationship between the offender and the offended. The victim is three days old or older. A stranger who conspires with the parent is guilty of murder.

In infanticide, the victim is younger than three days or 72 hours old; can be committed by a stranger. If a stranger who conspires with parent, both commit the crime of infanticide.

Article 246. Parricide

Elements

1. A person is killed;

2. The deceased is killed by the accused;

3. The deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendant or other descendant, or the legitimate spouse, of the accused.

This is a crime committed between people who are related by blood. Between spouses, even though they are not related by blood, it is also parricide.

The relationship must be in the direct line and not in the collateral line.

The relationship between the offender and the offended party must be legitimate, except when the offender and the offended party are related as parent and child.

If the offender and the offended party, although related by blood and in the direct line, are separated by an intervening illegitimate relationship, parricide can no longer be committed. The illegitimate relationship between the child and the parent renders all relatives after the child in the direct line to be illegitimate too.

The only illegitimate relationship that can bring about parricide is that between parents and illegitimate children as the offender and the offended parties.

Illustration:

A is the parent of B, the illegitimate daughter. B married C and they begot a legitimate child D. If D, daughter of B and C, would kill A, the grandmother, the crime cannot be parricide anymore because of the intervening illegitimacy. The relationship between A and D is no longer legitimate. Hence, the crime committed is homicide or murder.

Since parricide is a crime of relationship, if a stranger conspired in the commission of the crime, he cannot be held liable for parricide. His participation would make him liable for murder or for homicide, as the case may be. The rule of conspiracy that the act of one is the act of all does not apply here because of the personal relationship of the offender to the offended party.

Illustration:

A spouse of B conspires with C to kill B. C is the stranger in the relationship. C killed B

with treachery. The means employed is made known to A and A agreed that the killing will be done by poisoning.

As far as A is concerned, the crime is based on his relationship with B. It is therefore parricide. The treachery that was employed in killing Bong will only be generic aggravating circumstance in the crime of parricide because this is not one crime that requires a qualifying circumstance.

But that same treachery, insofar as C is concerned, as a stranger who cooperated in the killing, makes the crime murder; treachery becomes a qualifying circumstance.

In killing a spouse, there must be a valid subsisting marriage at the time of the killing. Also, the information should allege the fact of such valid marriage between the accused and the victim.

In a ruling by the Supreme Court, it was held that if the information did not allege that the accused was legally married to the victim, he could not be convicted of parricide even if the marriage was established during the trial. In such cases, relationship shall be appreciated as generic aggravating circumstance.

The Supreme Court has also ruled that Muslim husbands with several wives can be convicted of parricide only in case the first wife is killed. There is no parricide if the other wives are killed although their marriage is recognized as valid. This is so because a Catholic man can commit the crime only once. If a Muslim husband could commit this crime more than once, in effect, he is being punished for the marriage which the law itself authorized him to contract.

That the mother killed her child in order to conceal her dishonor is not mitigating. This is immaterial to the crime of parricide, unlike in the case of infanticide. If the child is less than three days old when killed, the crime is infanticide and intent to conceal her dishonor is considered mitigating.

Article 247. Death or Physical Injuries Inflicted under Exceptional Circumstances

Elements

1. A legally married person, or a parent, surprises his spouse or his daughter, the latter under 18 years of age and living with him, in the act of committing sexual intercourse with another person;

2. He or she kills any or both of them, or inflicts upon any or both of them any serious physical injury in the act or immediately thereafter;

3. He has not promoted or facilitated the prostitution of his wife or daughter, or that he or she has not consented to the infidelity of the other spouse.

Two stages contemplated before the article will apply:

(1) When the offender surprised the other spouse with a paramour or mistress. The attack must take place while the sexual intercourse is going on. If the surprise was before or after the intercourse, no matter how immediate it may be, Article 247 does not apply. The offender in this situation only gets the benefit of a mitigating circumstance, that is, sufficient provocation immediately preceding the act.

(2) When the offender kills or inflicts serious physical injury upon the other spouse and/or paramour while in the act of intercourse, or immediately thereafter, that is, after surprising.

You have to divide the stages because as far as the first stage is concerned, it does not admit of any situation less than sexual intercourse.

So if the surprising took place before any actual sexual intercourse could be done because the parties are only in their preliminaries, the article cannot be invoked anymore.

If the surprising took place after the actual sexual intercourse was finished, even if the act being performed indicates no other conclusion but that sexual intercourse was had, the article does not apply.

As long as the surprising took place while the sexual intercourse was going on, the second stage becomes immaterial.

It is either killing or inflicting physical injuries while in that act or immediately thereafter. If the killing was done while in that act, no problem. If the killing was done when sexual intercourse is finished, a problem arises. First, were they surprised in actual sexual intercourse? Second, were they killed immediately thereafter?

The phrase "immediately thereafter" has been interpreted to mean that between the surprising and the killing of the inflicting of the physical injury, there should be no break of time. In other words, it must be a continuous process.

The article presumes that a legally married person who surprises his or her better half in actual sexual intercourse would be overcome by the obfuscation he felt when he saw them in the act that he lost his head. The law, thus, affords protection to a spouse who is considered to have acted in a justified outburst of passion or a state of mental disequilibrium. The offended spouse has no time to regain his self-control.

If there was already a break of time between the sexual act and the killing or inflicting of the injury, the law presupposes that the offender regained his reason and therefore, the article will not apply anymore.

As long as the act is continuous, the article still applies.

Where the accused surprised his wife and his paramour in the act of illicit intercourse, as a result of which he went out to kill the paramour in a fit of passionate outburst. Although about one hour had passed between the time the accused discovered his wife having sexual intercourse with the victim and the time the latter was actually killed, it was held in ***People v. Abarca, 153 SCRA 735,*** *that Article 247 was applicable, as the shooting was a continuation of the pursuit of the victim by the accused. Here, the accused, after the discovery of the act of infidelity of his wife, looked for a firearm in Tacloban City.*

Article 247 does not provide that the victim is to be killed instantly by the accused after surprising his spouse in the act of intercourse. What is required is that the killing is the proximate result of the outrage overwhelming the accused upon the discovery of the infidelity of his spouse. The killing should have been actually motivated by the same blind impulse.

<u>Illustration:</u>

A upon coming home, surprised his wife, B, together with C. The paramour was fast enough to jump out of the window. A got the bolo and chased C but he disappeared among the neighborhood. So A started looking around for about an hour but he could not find the paramour. A gave up and was on his way home. Unfortunately, the paramour, thinking that A was no longer around, came out of hiding and at that moment, A saw him and hacked him to death. There was a break of time and Article 247 does not apply anymore because when he gave up the search, it is a

circumstance showing that his anger had already died down.

Article 247, far from defining a felony merely grants a privilege or benefit, more of an exempting circumstance as the penalty is intended more for the protection of the accused than a punishment. Death under exceptional character can not be qualified by either aggravating or mitigating circumstances.

In the case of ***People v. Abarca, 153 SCRA 735,*** *two persons suffered physical injuries as they were caught in the crossfire when the accused shot the victim. A complex crime of double frustrated murder was not committed as the accused did not have the intent to kill the two victims. Here, the accused did not commit murder when he fired at the paramour of his wife. Inflicting death under exceptional circumstances is not murder. The accused was held liable for negligence under the first part, second paragraph of Article 365, that is, less serious physical injuries through simple negligence. No aberratio ictus because he was acting lawfully.*

A person who acts under Article 247 is not committing a crime. Since this is merely an exempting circumstance, the accused must first be charged with:

(1) Parricide – if the spouse is killed;

(2) Murder or homicide – depending on how the killing was done insofar as the paramour or the mistress is concerned;

(3) Homicide – through simple negligence, if a third party is killed;

(4) Physical injuries – through reckless imprudence, if a third party is injured.

If death results or the physical injuries are serious, there is criminal liability although the penalty is only destierro. The banishment is intended more for the protection of the offender rather than a penalty.

If the crime committed is less serious physical injuries or slight physical injuries, there is no criminal liability.

The article does not apply where the wife was not surprised in flagrant adultery but was being abused by a man as in this case there will be defense of relation.

If the offender surprised a couple in sexual intercourse, and believing the woman to be his wife, killed them, this article may be applied if the mistake of facts is proved.

The benefits of this article do not apply to the person who consented to the infidelity of his spouse or who facilitated the prostitution of his wife.

The article is also made available to parents who shall surprise their daughter below 18 years of age in actual sexual intercourse while "living with them." The act should have been committed by the daughter with a seducer. The two stages also apply. The parents cannot invoke this provision if, in a way, they have encouraged the prostitution of the daughter.

The phrase "living with them" is understood to be in their own dwelling, because of the embarrassment and humiliation done not only to the parent but also to the parental abode.

If it was done in a motel, the article does not apply.

<u>Illustration:</u>

A abandoned his wife B for two years. To support their children, A had to accept a relationship with another man. A learned of this, and surprised them in the act of sexual intercourse and killed B. A is not entitled to Article 248. Having abandoned his family for two years, it was natural for her to feel

some affection for others, more so of a man who could help her.

Homicide committed under exceptional circumstances, although punished with destierro, is within the jurisdiction of the Regional Trial Court and not the MTC because the crime charged is homicide or murder. The exceptional circumstances, not being elements of the crime but a matter of defense, are not pleaded. It practically grants a privilege amounting to an exemption for adequate punishment.

Article 248. Murder

Elements

1. A person was killed;
2. Accused killed him;
3. The killing was attended by any of the following qualifying circumstances –
    a. With treachery, taking advantage of superior strength, with the aid or armed men, or employing means to waken the defense, or of means or persons to insure or afford impunity;
    b. In consideration of a price, reward or promise;
    c. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin;
    d. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic, or any other public calamity;
    e. With evident premeditation;
    f. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

4. The killing is not parricide or infanticide.

Homicide is qualified to murder if any of the qualifying circumstances under Article 248 is present. It is the unlawful killing of a person not constituting murder, parricide or infanticide.

In murder, any of the following qualifying circumstances is present:

(1) Treachery, taking advantage of superior strength, aid or armed men, or employing means to waken the defense, or of means or persons to insure or afford impunity;

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

This circumstance involves means, methods, form in the execution of the killing which may actually be an aggravating circumstance also, in which case, the treachery absorbs the same.

<u>Illustration:</u>

A person who is determined to kill resorted to the cover of darkness at nighttime to insure the killing. Nocturnity becomes a means that constitutes treachery and the killing would be murder. But if the aggravating circumstance of nocturnity is considered by itself, it is not one of those which qualify a homicide to murder. One might think the killing is homicide unless nocturnity is considered as constituting treachery, in which case the crime is murder.

The essence of treachery is that the offended party was denied the chance to defend himself because of the means, methods, form in executing the crime deliberately adopted by the offender. It is a matter of whether or not the offended party was denied the chance of defending himself.

If the offended was denied the chance to defend himself, treachery qualifies the killing to murder. If despite the means resorted to by the offender, the offended was able to put up a defense, although unsuccessful, treachery is not available. Instead, some other circumstance may be present. Consider now whether such other circumstance qualifies the killing or not.

<u>Illustration:</u>

If the offender used superior strength and the victim was denied the chance to defend himself, there is treachery. The treachery must be alleged in the information. But if the victim was able to put up an unsuccessful resistance, there is no more treachery but the use of superior strength can be alleged and it also qualifies the killing to murder.

One attendant qualifying circumstance is enough. If there are more than one qualifying circumstance alleged in the information for murder, only one circumstance will qualify the killing to murder and the other circumstances will be taken as generic.

To be considered qualifying, the particular circumstance must be alleged in the information. If what

was alleged was not proven and instead another circumstance, not alleged, was established during the trial, even if the latter constitutes a qualifying circumstance under Article 248, the same can not qualify the killing to murder. The accused can only be convicted of homicide.

Generally, murder cannot be committed if at the beginning, the offended had no intent to kill because the qualifying circumstances must be resorted to with a view of killing the offended party. So if the killing were at the "spur of the moment", even though the victim was denied the chance to defend himself because of the suddenness of the attack, the crime would only be homicide. Treachery contemplates that the means, methods and form in the execution were consciously adopted and deliberately resorted to by the offender, and were not merely incidental to the killing.

If the offender may have not intended to kill the victim but he only wanted to commit a crime against him in the beginning, he will still be liable for murder if in the manner of committing the felony there was treachery and as a consequence thereof the victim died. This is based on the rule that a person committing a felony shall be liable for the consequences thereof although different from that which he intended.

<u>Illustration:</u>

The accused, three young men, resented the fact that the victim continued to visit a girl in their neighborhood despite the warning they gave him. So one evening, after the victim had visited the girl, they seized and tied him to a tree, with both arms and legs around the tree. They thought they would give him a lesson by whipping him with branches of gumamela until the victim fell unconscious. The accused left not knowing that the victim died.

The crime committed was murder. The accused deprived the victim of the chance to defend himself when the latter was tied to a tree. Treachery is a circumstance referring to the manner of committing the crime. There was no risk to the accused arising from the defense by the victim.

Although what was initially intended was physical injury, the manner adopted by the accused was treacherous and since the victim died as a consequence thereof, the crime is murder -- although originally, there was no intent to kill.

When the victim is already dead, intent to kill becomes irrelevant. It is important only if the victim did not die to determine if the felony is physical injury or attempted or frustrated homicide.

So long as the means, methods and form in the execution is deliberately adopted, even if there was no intent to kill, there is treachery.

(2) In consideration of price, reward or promises;

(3) Inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of a motor vehicle, or with the use of other means involving great waste and ruin;

The only problem insofar as the killing by fire is concerned is whether

it would be arson with homicide, or murder.

When a person is killed by fire, the primordial criminal intent of the offender is considered. If the primordial criminal intent of the offender is to kill and fire was only used as a means to do so, the crime is only murder. If the primordial criminal intent of the offender is to destroy property with the use of pyrotechnics and incidentally, somebody within the premises is killed, the crime is arson with homicide. But this is not a complex crime under Article 48. This is single indivisible crime penalized under Article 326, which is death as a consequence of arson. That somebody died during such fire would not bring about murder because there is no intent to kill in the mind of the offender. He intended only to destroy property. However, a higher penalty will be applied.

In ***People v. Pugay and Samson, 167 SCRA 439,*** *there was a town fiesta and the two accused were at the town plaza with their companions. All were uproariously happy, apparently drenched with drink. Then, the group saw the victim, a 25 year old retard walking nearby and they made him dance by tickling his sides with a piece of wood. The victim and the accused Pugay were friends and, at times, slept in the same place together. Having gotten bored with their form of entertainment, accused Pugay went and got a can of gasoline and poured it all over the retard. Then, the accused Samson lit him up, making him a frenzied, shrieking human torch. The retard died.*

It was held that Pugay was guilty of homicide through reckless imprudence. Samson only guilty of homicide, with the mitigating circumstance of no intention to commit so grave a wrong. There was no animosity between the two accused and the victim such that it cannot be said that they resort to fire to kill him. It was merely a part of their fun making but because their acts were felonious, they are criminally liable.

(4) On occasion of any of the calamities enumerated in the preceding paragraph c, or an earthquake, eruption of volcano, destructive cyclone, epidemic or any other public calamity;

(5) Evident premeditation; and

(6) Cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

Cruelty includes the situation where the victim is already dead and yet, acts were committed which would decry or scoff the corpse of the victim. The crime becomes murder.

Hence, this is not actually limited to cruelty. It goes beyond that because even if the victim is already a corpse when the acts deliberately augmenting the wrong done to him were committed, the killing is still qualified to murder although the acts done no longer amount to cruelty.

Under Article 14, the generic aggravating circumstance of cruelty requires that the victim be alive, when the cruel wounds were inflicted and, therefore, must be evidence to that effect. Yet, in murder, aside from cruelty, any act that would amount to scoffing or decrying the corpse of the victim will qualify the killing to murder.

Illustration:

Two people engaged in a quarrel and they hacked each other, one killing the other. Up to that point, the crime is homicide. However, if the killer tried to dismember the different parts of the body of the victim, indicative of an intention to scoff at or decry or humiliate the corpse of the victim, then what would have murder because this circumstance is recognized under Article 248, even though it was inflicted or was committed when the victim was already dead.

The following are holdings of the Supreme Court with respect to the crime of murder:

(1) Killing of a child of tender age is murder qualified by treachery because the weakness of the child due to his tender age results in the absence of any danger to the aggressor.

(2) Evident premeditation is absorbed in price, reward or promise, if without the premeditation the inductor would not have induced the other to commit the act but not as regards the one induced.

(3 Abuse of superior strength is inherent in and comprehended by the circumstance of treachery or forms part of treachery.

(4) Treachery is inherent in poison.

(5) Where one of the accused, who were charged with murder, was the wife of the deceased but here relationship to the deceased was not alleged in the information, she also should be convicted of murder but the relationship should be appreciated as aggravating.

(6) Killing of the victims hit by hand grenade thrown at them is murder qualified by explosion not by treachery.

(7) Where the accused housemaid gagged a three year old boy, son of her master, with stockings, placed him in a box with head down and legs upward and covered the box with some sacks and other boxes, and the child instantly died because of suffocation, and then the accused demanded ransom from the parents, such did not convert the offense into kidnapping with murder. The accused was well aware that the child could be suffocated to death in a few minutes after she left. Ransom was only a part of the diabolical scheme to murder the child, to conceal his body and then demand money before discovery of the body.

The essence of kidnapping or serious illegal detention is the actual confinement or restraint of the victim or deprivation of his liberty. If there is no showing that the accused intended to deprive their victims of their liberty for some time and there being no appreciable interval between their being taken and their being shot, murder and not kidnapping with murder is committed.

Article 249. Homicide

Elements

1. A person was killed;

2. Offender killed him without any justifying circumstances;

3. Offender had the intention to kill, which is presumed;

4. The killing was not attended by any of the qualifying circumstances of murder, or by that of parricide or infanticide.

Homicide is the unlawful killing of a person not constituting murder, parricide or infanticide.

Distinction between homicide and physical injuries:

In attempted or frustrated homicide, there is intent to kill.

In physical injuries, there is none. However, if as a result of the physical injuries inflicted, the victim died, the crime will be homicide because the law punishes the result, and not the intent of the act.

The following are holdings of the Supreme Court with respect to the crime of homicide:

(1) Physical injuries are included as one of the essential elements of frustrated homicide.

(2) If the deceased received two wounds from two persons acting independently of each other and the wound inflicted by either could have caused death, both of them are liable for the death of the victim and each of them is guilty of homicide.

(3) If the injuries were mortal but were only due to negligence, the crime committed will be serious physical injuries through reckless imprudence as the element of intent to kill in frustrated homicide is incompatible with negligence or imprudence.

(4) Where the intent to kill is not manifest, the crime committed has been generally considered as physical injuries and not attempted or frustrated murder or homicide.

(5) When several assailants not acting in conspiracy inflicted wounds on a victim but it cannot be determined who inflicted which would which caused the death of the victim, all are liable for the victim's death.

Note that while it is possible to have a crime of homicide through reckless imprudence, it is not possible to have a crime of frustrated homicide through reckless imprudence.

Article 251. Death Caused in A Tumultuous Affray

Elements

1. There are several persons;

2. They do not compose groups organized for the common purpose of assaulting and attacking each other reciprocally;

3. These several persons quarreled and assaulted one another in a confused and tumultuous manner;

4. Someone was killed in the course of the affray;

5. It can not be ascertained who actually killed the deceased;

6. The person or persons who inflicted serious physical injuries or who used violence can be identified.

Tumultuous affray simply means a commotion in a tumultuous and confused manner, to such an extent that it would not be possible to identify who the killer is if death results, or who inflicted the serious physical injury, but the person or persons who used violence are known.

It is not a tumultuous affray which brings about the crime; it is the inability to ascertain actual perpetrator. It is necessary that the very person who caused the death can not be known, not that he can not be identified. Because if he is known but only his identity is not known, then he will be charged for the crime of homicide or murder under a fictitious name and not death in a tumultuous affray. If there is a conspiracy, this crime is not committed.

To be considered death in a tumultuous affray, there must be:

(1) a quarrel, a free-for-all, which should not involve organized group; and

(2) someone who is injured or killed because of the fight.

As long as it cannot be determined who killed the victim, all of those persons who inflicted serious physical injuries will be collectively answerable for the death of that fellow.

The Revised Penal Code sets priorities as to who may be liable for the death or physical injury in tumultuous affray:

(1) The persons who inflicted serious physical injury upon the victim;

(2) If they could not be known, then anyone who may have employed violence on that person will answer for his death.

(3) If nobody could still be traced to have employed violence upon the victim, nobody will answer. The crimes committed might be disturbance of public order, or if participants are armed, it could be tumultuous disturbance, or if property was destroyed, it could be malicious mischief.

The fight must be tumultuous. The participants must not be members of an organized group. This is different from a rumble which involves organized groups composed of persons who are to attack others. If the fight is between such groups, even if you cannot identify who, in particular, committed the killing, the adverse party composing the organized group will be collectively charged for the death of that person.

Illustration:

If a fight ensued between 20 Sigue-Sigue Gang men and 20 Bahala-Na- Gang men, and in the course thereof, one from each group was killed, the crime would be homicide or murder; there will be collective responsibility on both sides. Note that the person killed need not be a participant in the fight.

Article 252. Physical Injuries Inflicted in A Tumultuous Affray

Elements

1. There is a tumultuous affray;

2. A participant or some participants thereof suffered serious physical injuries or physical injuries of a less serious nature only;

3. The person responsible thereof can not be identified;

4. All those who appear to have used violence upon the person of the offended party are known.

If in the course of the tumultuous affray, only serious or less serious physical injuries are inflicted upon a participant, those who used violence upon the person of the offended party shall be held liable.

In physical injuries caused in a tumultuous affray, the conditions are also the same. But you do not have a crime of physical injuries resulting from a tumultuous affray if the physical injury is only slight. The physical injury should be serious or less serious and resulting from a tumultuous affray. So anyone who may have employed violence will answer for such serious or less serious physical injury.

If the physical injury sustained is only slight, this is considered as inherent in a tumultuous affray. The offended party cannot complain if he cannot identify who inflicted the slight physical injuries on him.

Article 253. Giving Assistance to Suicide

Acts punished

1. Assisting another to commit suicide, whether the suicide is consummated or not;

2. Lending his assistance to another to commit suicide to the extent of doing the killing himself.

Giving assistance to suicide means giving means (arms, poison, etc.) or whatever manner of positive and direct cooperation (intellectual aid, suggestions regarding the mode of committing suicide, etc.).

In this crime, the intention must be for the person who is asking the assistance of another to commit suicide.

If the intention is not to commit suicide, as when he just wanted to have a picture taken of him to impress upon the world that he is committing suicide because he is not satisfied with the government, the crime is held to be inciting to sedition.

He becomes a co-conspirator in the crime of inciting to sedition, but not of giving assistance to suicide because the assistance must be given to one who is really determined to commit suicide.

If the person does the killing himself, the penalty is similar to that of homicide, which is reclusion temporal. There can be no qualifying circumstance because the determination to die must come from the victim. This does not contemplate euthanasia or mercy killing where the crime is homicide (if without consent; with consent, covered by Article 253).

The following are holdings of the Supreme Court with respect to this crime:

(1) The crime is frustrated if the offender gives the assistance by doing the killing himself as firing upon the head of the victim but who did not die due to medical assistance.

(2) The person attempting to commit suicide is not liable if he survives. The accused is liable if he kills the victim, his sweetheart, because of a suicide pact.

In other penal codes, if the person who wanted to die did not die, there is liability on his part because there is public disturbance committed by him. Our Revised Penal Code is silent but there is no bar against accusing the person of disturbance of public order if indeed serious disturbance of public peace occurred due to his attempt to commit suicide. If he is not prosecuted, this

is out of pity and not because he has not violated the Revised Penal Code.

In mercy killing, the victim is not in a position to commit suicide. Whoever would heed his advice is not really giving assistance to suicide but doing the killing himself. In giving assistance to suicide, the principal actor is the person committing the suicide.

Both in euthanasia and suicide, the intention to the end life comes from the victim himself; otherwise the article does not apply. The victim must persistently induce the offender to end his life. If there is only slight persuasion to end his life, and the offender readily assented thereto.

Article 254. Discharge of Firearms

1. Offender discharges a firearm against or at another person;

2. Offender had no intention to kill that person.

This crime cannot be committed through imprudence because it requires that the discharge must be directed at another.

If the firearm is directed at a person and the trigger was pressed but did not fire, the crime is frustrated discharge of firearm.

If the discharge is not directed at a person, the crime may constitute alarm and scandal.

The following are holdings of the Supreme Court with respect to this crime:

(1) If serious physical injuries resulted from discharge, the crime committed is the complex crime of serious physical injury with illegal discharge of firearm, or if less serious physical injury, the complex crime of less serious physical injury with illegal discharge of firearm will apply.

(2) Firing a gun at a person even if merely to frighten him constitutes illegal discharge of firearm.

Article 255. Infanticide

Elements

1. A child was killed by the accused;

2. The deceased child was less than 72 hours old.

This is a crime based on the age of the victim. The victim should be less than three days old.

The offender may actually be the parent of the child. But you call the crime infanticide, not parricide, if the age of the victim is less than three days old. If the victim is three days old or above, the crime is parricide.

Illustration:

An unmarried woman, A, gave birth to a child, B. To conceal her dishonor, A conspired with C to dispose of the child. C agreed and killed the child B by burying the child somewhere.

If the child was killed when the age of the child was three days old and above already, the crime of A is parricide. The fact that the killing was done to conceal her dishonor will not mitigate the criminal liability anymore because concealment of dishonor in killing the child is not mitigating in parricide.

If the crime committed by A is parricide because the age of the child is three days old or above, the crime of the co-conspirator C is murder. It is not parricide because he is not related to the victim.

If the child is less than three days old when killed, both the mother and the stranger commits infanticide because infanticide is not predicated on the relation of the offender to the offended party but on the age of the child. In such a case, concealment of dishonor as a motive for the mother to have the child killed is mitigating.

Concealment of dishonor is not an element of infanticide. It merely lowers the penalty. If the child is abandoned without any intent to kill and death results as a consequence, the crime committed is not infanticide but abandonment under Article 276.

If the purpose of the mother is to conceal her dishonor, infanticide through imprudence is not committed because the purpose of concealing the dishonor is incompatible with the absence of malice in culpable felonies.

If the child is born dead, or if the child is already dead, infanticide is not committed.

Article 256. Intentional Abortion

Acts punished

1. Using any violence upon the person of the pregnant woman;

2. Acting, but without using violence, without the consent of the woman. (By administering drugs or beverages upon such pregnant woman without her consent.)

3. Acting (by administering drugs or beverages), with the consent of the pregnant woman.

Elements

1. There is a pregnant woman;

2. Violence is exerted, or drugs or beverages administered, or that the accused otherwise acts upon such pregnant woman;

3. As a result of the use of violence or drugs or beverages upon her, or any other act of the accused, the fetus dies, either in the womb or after having been expelled therefrom;

4. The abortion is intended.

Abortion is the violent expulsion of a fetus from the maternal womb. If the fetus has been delivered but it could not subsist by itself, it is still a fetus and not a person. Thus, if it is killed, the crime committed is abortion not infanticide.

Distinction between infanticide and abortion

It is infanticide if the victim is already a person less that three days old or 72 hours and is viable or capable of living separately from the mother's womb.

It is abortion if the victim is not viable but remains to be a fetus.

Abortion is not a crime against the woman but against the fetus. If mother as a consequence of abortion suffers death or physical injuries, you have a complex crime of murder or physical injuries and abortion.

In intentional abortion, the offender must know of the pregnancy because the particular criminal intention is to cause an abortion. Therefore, the offender must have known of the pregnancy for otherwise, he would not try an abortion.

If the woman turns out not to be pregnant and someone performs an abortion upon her, he is liable for an impossible crime if the woman suffers no physical injury. If she does, the crime will be homicide, serious physical injuries, etc.

Under the Article 40 of the Civil Code, birth determines personality. A person is considered born at the time when the umbilical cord is cut. He then acquires a personality separate from the mother.

But even though the umbilical cord has been cut, Article 41 of the Civil Code provides that if the fetus had an intra-uterine life of less than seven months, it must survive at least 24 hours after the umbilical cord is cut for it to be considered born.

Illustration:

A mother delivered an offspring which had an intra-uterine life of seven months. Before the umbilical cord is cut, the child was killed.

If it could be shown that had the umbilical cord been cut, that child, if not killed, would have survived beyond 24 hours, the crime is infanticide because that conceived child is already considered born.

If it could be shown that the child, if not killed, would not have survived beyond 24 hours, the crime is abortion because what was killed was a fetus only.

In abortion, the concealment of dishonor as a motive of the mother to commit the abortion upon herself is mitigating. It will also mitigate the liability of the maternal grandparent of the victim – the mother of the pregnant woman – if the abortion was done with the consent of the pregnant woman.

If the abortion was done by the mother of the pregnant woman without the consent of the woman herself, even if it was done to conceal dishonor, that circumstance will not mitigate her criminal liability.

But if those who performed the abortion are the parents of the pregnant woman, or either of them, and the pregnant woman consented for the purpose of concealing her dishonor, the penalty is the same as that imposed upon the woman who practiced the abortion upon herself .

Frustrated abortion is committed if the fetus that is expelled is viable and, therefore, not dead as abortion did not result despite the employment of adequate and sufficient means to make the pregnant woman abort. If the means are not sufficient or adequate, the crime would be an impossible crime of abortion. In consummated abortion, the fetus must be dead.

One who persuades her sister to abort is a co-principal, and one who looks for a physician to make his sweetheart abort is an accomplice. The physician will be punished under Article 259 of the Revised Penal Code.

Article 257. Unintentional Abortion

1. There is a pregnant woman;

2. Violence is used upon such pregnant woman without intending an abortion;

3. The violence is intentionally exerted;

4. As a result of the violence, the fetus dies, either in the womb or after having been expelled therefrom.

Unintentional abortion requires physical violence inflicted deliberately and voluntarily by a third person upon the person of the pregnant woman. Mere intimidation is not enough unless the degree of intimidation already approximates violence.

If the pregnant woman aborted because of intimidation, the crime committed is not unintentional abortion because there is no violence; the crime committed is light threats.

If the pregnant woman was killed by violence by her husband, the crime

committed is the complex crime of parricide with unlawful abortion.

Unintentional abortion may be committed through negligence as it is enough that the use of violence be voluntary.

Illustration:

A quarrel ensued between A, husband, and B, wife. A became so angry that he struck B, who was then pregnant, with a soft drink bottle on the hip. Abortion resulted and B died.

*In **US v. Jeffry, 15 Phil. 391,** the Supreme Court said that knowledge of pregnancy of the offended party is not necessary. In **People v. Carnaso, decided on April 7, 1964,** however, the Supreme Court held that knowledge of pregnancy is required in unintentional abortion.*

Criticism:

Under Article 4, paragraph 1 of the Revised Penal Code, any person committing a felony is criminally liable for all the direct, natural, and logical consequences of his felonious acts although it may be different from that which is intended. The act of employing violence or physical force upon the woman is already a felony. It is not material if offender knew about the woman being pregnant or not.

If the act of violence is not felonious, that is, act of self-defense, and there is no knowledge of the woman's pregnancy, there is no liability. If the act of violence is not felonious, but there is knowledge of the woman's pregnancy, the offender is liable for unintentional abortion.

Illustration:

The act of pushing another causing her to fall is a felonious act and could result in physical injuries. Correspondingly, if not only physical injuries were sustained but abortion also resulted, the felonious act of pushing is the proximate cause of the unintentional abortion.

Questions & Answers

1. A pregnant woman decided to commit suicide. She jumped out of a window of a building but she landed on a passerby. She did not die but an abortion followed. Is she liable for unintentional abortion?

No. What is contemplated in unintentional abortion is that the force or violence must come from another. If it was the woman doing the violence upon herself, it must be to bring about an abortion, and therefore, the crime will be intentional abortion. In this case, where the woman tried to commit suicide, the act of trying to commit suicide is not a felony under the Revised Penal Code. The one penalized in suicide is the one giving assistance and not the person trying to commit suicide.

2. If the abortive drug used in abortion is a prohibited drug or regulated drug under Presidential Decree No. 6425 (The Dangerous Drugs Act of 1972), as amended, what are the crimes committed?

The crimes committed are (1) intentional abortion; and (2) violation of the Dangerous Drugs Act of 1972.

Article 258. Abortion Practiced by the Woman Herself or by Her Parents

Elements

1. There is a pregnant woman who has suffered an abortion;

2. The abortion is intended;

3. Abortion is caused by –

   a. The pregnant woman herself;

b. Any other person, with her consent; or

c. Any of her parents, with her consent for the purpose of concealing her dishonor.

Article 259. Abortion Practiced by A Physician or Midwife and Dispensing of Abortives

Elements

1. There is a pregnant woman who has suffered an abortion;

2. The abortion is intended;

3. Offender, who must be a physician or midwife, caused or assisted in causing the abortion;

4. Said physician or midwife took advantage of his or her scientific knowledge or skill.

If the abortion is produced by a physician to save the life of the mother, there is no liability. This is known as a therapeutic abortion. But abortion without medical necessity to warrant it is punishable even with the consent of the woman or her husband.

Illustration:

A woman who is pregnant got sick. The doctor administered a medicine which resulted in Abortion. The crime committed was unintentional abortion through negligence or imprudence.

Question & Answer

What is the liability of a physician who aborts the fetus to save the life of the mother?

None. This is a case of therapeutic abortion which is done out of a state of necessity. Therefore, the requisites under Article 11, paragraph 4, of the Revised Penal Code must be present. There must be no other practical or less harmful means of saving the life of the mother to make the killing justified.

Article 260. Responsibility of Participants in A Duel

Acts punished

1. Killing one's adversary in a duel;

2. Inflicting upon such adversary physical injuries;

3. Making a combat although no physical injuries have been inflicted.

Persons liable

1. The person who killed or inflicted physical injuries upon his adversary, or both combatants in any other case, as principals.

2. The seconds, as accomplices.

There is no such crime nowadays because people hit each other even without entering into any pre-conceived agreement. This is an obsolete provision.

A duel may be defined as a formal or regular combat previously consented to by two parties in the presence of two or more seconds of lawful age on each side, who make the selection of arms and fix all the other conditions of the fight to settle some antecedent quarrel.

If these are not the conditions of the fight, it is not a duel in the sense contemplated in the Revised Penal Code. It will be a quarrel and anyone who killed the other will be liable for homicide or murder, as the case may be.

The concept of duel under the Revised Penal Code is a classical one.

Article 261. Challenging to A Duel

Acts punished

1. Challenging another to a duel;

2. Inciting another to give or accept a challenge to a duel;

3. Scoffing at or decrying another publicly for having refused to accept a challenge to fight a duel.

Illustration:

If one challenges another to a duel by shouting "Come down, Olympia, let us measure your prowess. We will see whose intestines will come out. You are a coward if you do not come down", the crime of challenging to a duel is not committed. What is committed is the crime of light threats under Article 285, paragraph 1 of the Revised Penal Code.

Article 262. Mutilation

Acts punished

1. Intentionally mutilating another by depriving him, either totally or partially, of some essential organ for reproduction;

   Elements

   1. There be a castration, that is, mutilation of organs necessary for generation, such as the penis or ovarium;

   2. The mutilation is caused purposely and deliberately, that is, to deprive the offended party of some essential organ for reproduction

2. Intentionally making other mutilation, that is, by lopping or clipping off any part of the body of the offended party, other than the essential organ for reproduction, to deprive him of that part of his body.

Mutilation is the lopping or clipping off of some part of the body.

The intent to deliberately cut off the particular part of the body that was removed from the offended party must be established. If there is no intent to deprive victim of particular part of body, the crime is only serious physical injury.

The common mistake is to associate this with the reproductive organs only. Mutilation includes any part of the human body that is not susceptible to grow again.

If what was cut off was a reproductive organ, the penalty is much higher than that for homicide.

This cannot be committed through criminal negligence.

Article 263. Serious Physical Injuries

How committed

1. By wounding;

2. By beating;

3. By assaulting; or

4. By administering injurious substance.

In one case, the accused, while conversing with the offended party, drew the latter's bolo from its scabbard. The offended party caught hold of the edge of the blade of his bolo and wounded himself. It was held that since the accused did not wound, beat or assault the offended party, he can not be guilty of serious physical injuries.

Serious physical injuries

1. When the injured person becomes insane, imbecile, impotent or blind in consequence of the physical injuries inflicted;

2. When the injured person –

   a. Loses the use of speech or the power to hear or to smell, or loses an eye, a hand, afoot, an arm, or a leg;

   b. Loses the use of any such member; or

   c. Becomes incapacitated for the work in which he was theretofore habitually engaged, in consequence of the physical injuries inflicted;

3. When the person injured –

   a. Becomes deformed; or

   b. Loses any other member of his body; or

   c. Loses the use thereof; or

   d. Becomes ill or incapacitated for the performance of the work in which he was habitually engaged for more than 90 days in consequence of the physical injuries inflicted;

4. When the injured person becomes ill or incapacitated for labor for more than 30 days (but must not be more than 90 days), as a result of the physical injuries inflicted.

The crime of physical injuries is a crime of result because under our laws the crime of physical injuries is based on the gravity of the injury sustained. So this crime is always consummated, notwithstanding the opinion of Spanish commentators like Cuello Calon, Viada, etc., that it can be committed in the attempted or frustrated stage.

If the act does not give rise to injuries, you will not be able to say whether it is attempted slight physical injuries, attempted less serious physical injuries, or attempted serious physical injuries unless the result is there.

The reason why there is no attempted or frustrated physical injuries is because the crime of physical injuries is determined on the gravity of the injury. As long as the injury is not there, there can be no attempted or frustrated stage thereof.

Classification of physical injuries:

(1) Between slight physical injuries and less serious physical injuries, you have a duration of one to nine days if slight physical injuries; or 10 days to 20 days if less serious physical injuries. Consider the duration of healing and treatment.

The significant part here is between slight physical injuries and less serious physical injuries. You will consider not only the healing duration of the injury but also the medical attendance required to treat the injury. So the healing duration may be one to nine days, but if the

medical treatment continues beyond nine days, the physical injuries would already qualify as less serious physical injuries. The medical treatment may have lasted for nine days, but if the offended party is still incapacitated for labor beyond nine days, the physical injuries are already considered less serious physical injuries.

(2) Between less serious physical injuries and serious physical injuries, you do not consider the period of medical treatment. You only consider the period when the offended party is rendered incapacitated for labor.

If the offended party is incapacitated to work for less than 30 days, even though the treatment continued beyond 30 days, the physical injuries are only considered less serious because for purposes of classifying the physical injuries as serious, you do not consider the period of medical treatment. You only consider the period of incapacity from work.

(3) When the injury created a deformity upon the offended party, you disregard the healing duration or the period of medical treatment involved. At once, it is considered serious physical injuries.

So even though the deformity may not have incapacitated the offended party from work, or even though the medical treatment did not go beyond nine days, that deformity will bring about the crime of serious physical injuries.

Deformity requires the concurrence of the following conditions:

(1) The injury must produce ugliness;

(2) It must be visible;

(3) The ugliness will not disappear through natural healing process.

<u>Illustration:</u>

Loss of molar tooth – This is not deformity as it is not visible.

Loss of permanent front tooth – This is deformity as it is visible and permanent.

Loss of milk front tooth – This is not deformity as it is visible but will be naturally replaced.

Question & Answer

The offender threw acid on the face of the offended party. Were it not for timely medical attention, a deformity would have been produced on the face of the victim. After the plastic surgery, the offended party was more handsome than before the injury. What crime was committed? In what stage was it committed?

The crime is serious physical injuries because the problem itself states that the injury would have produced a deformity. The fact that the plastic surgery removed the deformity is immaterial because in law what is considered is not the artificial treatment but the natural healing process.

In a case decided by the Supreme Court, accused was charged with serious physical injuries because the injuries produced a scar. He was convicted under Article 263 (4). He appealed because, in the course of the trial, the scar disappeared. It was held that accused can not be convicted of serious physical injuries. He is liable only for slight physical injuries because the victim was not incapacitated, and there was

no evidence that the medical treatment lasted for more than nine days.

Serious physical injuries is punished with higher penalties in the following cases:

(1) If it is committed against any of the persons referred to in the crime of parricide under Article 246;

(2) If any of the circumstances qualifying murder attended its commission.

Thus, a father who inflicts serious physical injuries upon his son will be liable for qualified serious physical injuries.

Republic Act No. 8049 (The Anti-Hazing Law)

Hazing -- This is any initiation rite or practice which is a prerequisite for admission into membership in a fraternity or sorority or any organization which places the neophyte or applicant in some embarrassing or humiliating situations or otherwise subjecting him to physical or psychological suffering of injury. These do not include any physical, mental, psychological testing and training procedure and practice to determine and enhance the physical and psychological fitness of the prospective regular members of the below.

Organizations include any club or AFP, PNP, PMA or officer or cadet corps of the CMT or CAT.

Section 2 requires a written notice to school authorities from the head of the organization seven days prior to the rites and should not exceed three days in duration.

Section 3 requires supervision by head of the school or the organization of the rites.

Section 4 qualifies the crime if rape, sodomy or mutilation results therefrom, if the person becomes insane, an imbecile, or impotent or blind because of such, if the person loses the use of speech or the power to hear or smell or an eye, a foot, an arm or a leg, or the use of any such member or any of the serious physical injuries or the less serious physical injuries. Also if the victim is below 12, or becomes incapacitated for the work he habitually engages in for 30, 10, 1-9 days.

It holds the parents, school authorities who consented or who had actual knowledge if they did nothing to prevent it, officers and members who planned, knowingly cooperated or were present, present alumni of the organization, owner of the place where such occurred liable.

Makes presence a prima facie presumption of guilt for such.

Article 264. Administering Injurious Substances or Beverages

Elements

1. Offender inflicted upon another any serious physical injury;

2. It was done by knowingly administering to him any injurious substance or beverages or by taking advantage of his weakness of mind or credulity;

3. He had no intent to kill.

Article 265. Less Serious Physical Injuries

Matters to be noted in this crime

1. Offended party is incapacitated for labor for 10 days or more (but not more than 30 days), or needs medical attendance for the same period of time;

2. The physical injuries must not be those described in the preceding articles.

Qualified as to penalty

1. A fine not exceeding P 500.00, in addition to arresto mayor, shall be imposed for less serious physical injuries when –

   a. There is a manifest intent to insult or offend the injured person; or

   b. There are circumstances adding ignominy to the offense.

2. A higher penalty is imposed when the victim is either –

   a. The offender's parents, ascendants, guardians, curators or teachers; or

   b. Persons of rank or person in authority, provided the crime is not direct assault.

If the physical injuries do not incapacitate the offended party nor necessitate medical attendance, slight physical injuries is committed. But if the physical injuries heal after 30 days, serious physical injuries is committed under Article 263, paragraph 4.

Article 265 is an exception to Article 48 in relation to complex crimes as the latter only takes place in cases where the Revised Penal Code has no specific provision penalizing the same with a definite, specific penalty. Hence, there is no complex crime of slander by deed with less serious physical injuries but only less serious physical injuries if the act which was committed produced the less serious physical injuries with the manifest intent to insult or offend the offended party, or under circumstances adding ignominy to the offense.

Article 266. Slight Physical Injuries and Maltreatment

Acts punished

1. Physical injuries incapacitated the offended party for labor from one to nine days, or required medical attendance during the same period;

2. Physical injuries which did not prevent the offended party from engaging in his habitual work or which did not require medical attendance;

3. Ill-treatment of another by deed without causing any injury.

This involves even ill-treatment where there is no sign of injury requiring medical treatment.

Slapping the offended party is a form of ill-treatment which is a form of slight physical injuries.

But if the slapping is done to cast dishonor upon the person slapped, the crime is slander by deed. If the slapping was done without the intention of casting dishonor, or to humiliate or embarrass the offended party out of a quarrel or anger, the crime is still ill-treatment or slight physical injuries.

Illustration:

If Hillary slaps Monica and told her "You choose your seconds . Let us meet behind the Quirino Grandstand and see who is the better and more beautiful between the two of us", the crime is not ill-treatment, slight physical injuries or slander by deed; it is a form of challenging to a duel. The criminal intent is to challenge a person to a duel.

The crime is slight physical injury if there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance.

Republic Act No. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act), in relation to murder, mutilation or injuries to a child

The last paragraph of Article VI of Republic Act No. 7610, provides:

"For purposes of this Act, the penalty for the commission of acts punishable under Articles 248, 249, 262 (2) and 263 (1) of Act No 3815, as amended of the Revised Penal Code for the crimes of murder, homicide, other intentional mutilation, and serious physical injuries, respectively, shall be reclusion perpetua when the victim is under twelve years of age."

The provisions of Republic Act No. 7160 modified the provisions of the Revised Penal Code in so far as the victim of the felonies referred to is under 12 years of age. The clear intention is to punish the said crimes with a higher penalty when the victim is a child of tender age. Incidentally, the reference to Article 249 of the Code which defines and penalizes the crime of homicide were the victim is under 12 years old is an error. Killing a child under 12 is murder, not homicide, because the victim is under no position to defend himself as held in the case of ***People v. Ganohon, 196 SCRA 431.***

For murder, the penalty provided by the Code, as amended by Republic Act No. 7659, is reclusion perpetua to death – higher than what Republic Act no. 7610 provides. Accordingly, insofar as the crime is murder, Article 248 of the Code, as amended, shall govern even if the victim was under 12 years of age. It is only in respect of the crimes of intentional mutilation in paragraph 2 of Article 262 and of serious physical injuries in paragraph 1 of Article 263 of the Code that the quoted provision of Republic Act No. 7160 may be applied for the higher penalty when the victim is under 12 years old.

Article 266-A. Rape, When and How Committed

Elements under paragraph 1

1. Offender is a man;
2. Offender had carnal knowledge of a woman;
3. Such act is accomplished under any of the following circumstances:
    a. By using force or intimidation;
    b. When the woman is deprived of reason or otherwise unconscious;
    c. By means of fraudulent machination or grave abuse of authority; or
    d. When the woman is under 12 years of age or demented.

Elements under paragraph 2

1. Offender commits an act of sexual assault;
2. The act of sexual assault is committed by any of the following means:
    a. By inserting his penis into another person's mouth or anal orifice; or
    b. By inserting any instrument or object into the genital or

anal orifice of another person;

3. The act of sexual assault is accomplished under any of the following circumstances:

   a. By using force or intimidation; or

   b. When the woman is deprived of reason or otherwise unconscious; or

   c. By means of fraudulent machination or grave abuse of authority; or

   d. When the woman is under 12 years of age or demented.

Republic Act No. 8353 (An Act Expanding the Definition of the Crime of Rape, Reclassifying the Same as A Crime against Persons, Amending for the Purpose the Revised Penal Code) repealed Article335 on rape and added a chapter on Rape under Title 8.

Classification of rape

(1) Traditional concept under Article 335 – carnal knowledge with a woman against her will. The offended party is always a woman and the offender is always a man.

(2) Sexual assault - committed with an instrument or an object or use of the penis with penetration of mouth or anal orifice. The offended party or the offender can either be man or woman, that is, if a woman or a man uses an instrument on anal orifice of male, she or he can be liable for rape.

Rape is committed when a man has carnal knowledge of a woman under the following circumstances:

(1) Where intimidation or violence is employed with a view to have carnal knowledge of a woman;

(2) Where the victim is deprived of reason or otherwise unconscious;

(3) Where the rape was made possible because of fraudulent machination or abuse of authority; or

(4) Where the victim is under 12 years of age, or demented, even though no intimidation nor violence is employed.

Sexual assault is committed under the following circumstances:

(1) Where the penis is inserted into the anal or oral orifice; or

(2) Where an instrument or object is inserted into the genital or oral orifice.

If the crime of rape / sexual assault is committed with the following circumstances, the following penalties are imposed:

(1) *Reclusion perpetua* to death/ *prision mayor* to *reclusion temporal* --

   (a) Where rape is perpetrated by the accused with a deadly weapon; or

   (b) Where it is committed by two or more persons.

(2) *Reclusion perpetua* to death/ *reclusion temporal* --

   (a) Where the victim of the rape has become insane; or

(b) Where the rape is attempted but a killing was committed by the offender on the occasion or by reason of the rape.

(3) Death / *reclusion perpetua* --

Where homicide is committed by reason or on occasion of a consummated rape.

(4) Death/reclusion temporal --

(a) Where the victim is under 18 years of age and the offender is her ascendant, stepfather, guardian, or relative by affinity or consanguinity within the 3rd civil degree, or the common law husband of the victim's mother; or

(b) Where the victim was under the custody of the police or military authorities, or other law enforcement agency;

(c) Where the rape is committed in full view of the victim's husband, the parents, any of the children or relatives by consanguinity within the 3rd civil degree;

(d) Where the victim is a religious, that is, a member of a legitimate religious vocation and the offender knows the victim as such before or at the time of the commission of the offense;

(e) Where the victim is a child under 7 yrs of age;

(f) Where the offender is a member of the AFP, its paramilitary arm, the PNP, or any law enforcement agency and the offender took advantage of his position;

(g) Where the offender is afflicted with AIDS or other sexually transmissible diseases, and he is aware thereof when he committed the rape, and the disease was transmitted;

(h) Where the victim has suffered permanent physical mutilation;

(i) Where the pregnancy of the offended party is known to the rapist at the time of the rape; or

(j) Where the rapist is aware of the victim's mental disability, emotional disturbance or physical handicap.

Prior to the amendment of the law on rape, a complaint must be filed by the offended woman. The persons who may file the same in behalf of the offended woman if she is a minor or if she was incapacitated to file, were as follows: a parent; in default of parents, a grandparent; in default or grandparent, the judicial guardian.

Since rape is not a private crime anymore, it can be prosecuted even if the woman does not file a complaint.

If carnal knowledge was made possible because of fraudulent machinations and grave abuse of authority, the crime is rape. This absorbs the crime of qualified and simple seduction when no force or violence was used, but the offender abused his authority to rape the victim.

Under Article 266-C, the offended woman may pardon the offender through a subsequent valid marriage, the effect of which would be the extinction of the

offender's liability. Similarly, the legal husband may be pardoned by forgiveness of the wife provided that the marriage is not void ab initio. Obviously, under the new law, the husband may be liable for rape if his wife does not want to have sex with him. It is enough that there is indication of any amount of resistance as to make it rape.

Incestuous rape was coined in Supreme Court decisions. It refers to rape committed by an ascendant of the offended woman. In such cases, the force and intimidation need not be of such nature as would be required in rape cases had the accused been a stranger. Conversely, the Supreme Court expected that if the offender is not known to woman, it is necessary that there be evidence of affirmative resistance put up by the offended woman. Mere "no, no" is not enough if the offender is a stranger, although if the rape is incestuous, this is enough.

The new rape law also requires that there be a physical overt act manifesting resistance, if the offended party was in a situation where he or she is incapable of giving valid consent, this is admissible in evidence to show that carnal knowledge was against his or her will.

When the victim is below 12 years old, mere sexual intercourse with her is already rape. Even if it was she who wanted the sexual intercourse, the crime will be rape. This is referred to as statutory rape.

In other cases, there must be force, intimidation, or violence proven to have been exerted to bring about carnal knowledge or the woman must have been deprived of reason or otherwise unconscious.

Where the victim is over 12 years old, it must be shown that the carnal knowledge with her was obtained against her will. It is necessary that there be evidence of some resistance put up by the offended woman. It is not, however, necessary that the offended party should exert all her efforts to prevent the carnal intercourse. It is enough that from her resistance, it would appear that the carnal intercourse is against her will.

Mere initial resistance, which does not indicate refusal on the part of the offended party to the sexual intercourse, will not be enough to bring about the crime of rape.

Note that it has been held that in the crime of rape, conviction does not require medico-legal finding of any penetration on the part of the woman. A medico-legal certificate is not necessary or indispensable to convict the accused of the crime of rape.

It has also been held that although the offended woman who is the victim of the rape failed to adduce evidence regarding the damages to her by reason of the rape, the court may take judicial notice that there is such damage in crimes against chastity. The standard amount given now is P 30,000.00, with or without evidence of any moral damage. But there are some cases where the court awarded only P 20,000.00.

An accused may be convicted of rape on the sole testimony of the offended woman. It does not require that testimony be corroborated before a conviction may stand. This is particularly true if the commission of the rape is such that the narration of the offended woman would lead to no other conclusion except that the rape was committed.

<u>Illustration:</u>

Daughter accuses her own father of having raped her.

Allegation of several accused that the woman consented to their sexual intercourse with her is a proposition which is revolting to reason that a woman would allow more than one man to have sexual intercourse with her in the presence of the others.

It has also been ruled that rape can be committed in a standing position because complete penetration is not necessary. The slightest penetration – contact with the labia – will consummate the rape.

On the other hand, as long as there is an intent to effect sexual cohesion, although unsuccessful, the crime becomes attempted rape. However, if that intention is not proven, the offender can only be convicted of acts of lasciviousness.

The main distinction between the crime of attempted rape and acts of lasciviousness is the intent to lie with the offended woman.

In a case where the accused jumped upon a woman and threw her to the ground, although the accused raised her skirts, the accused did not make any effort to remove her underwear. Instead, he removed his own underwear and placed himself on top of the woman and started performing sexual movements. Thereafter, when he was finished, he stood up and left. The crime committed is only acts of lasciviousness and not attempted rape. The fact that he did not remove the underwear of the victim indicates that he does not have a real intention to effect a penetration. It was only to satisfy a lewd design.

Is there a complex crime under Article 48 of kidnapping with rape? Read kidnapping.

TITLE IX. CRIMES AGAINST PERSONAL LIBERTY AND SECURITY

Crimes against liberty

1. Kidnapping and serious illegal detention (Art. 267);
2. Slight illegal detention (Art. 268);
3. Unlawful arrest (Art. 269);
4. Kidnapping and failure to return a minor (Art. 270);
5. Inducing a minor to abandon his home (Art. 271);
6. Slavery (Art. 272);
7. Exploitation of child labor (Art. 273);
8. Services rendered under compulsion in payment of debts (Art. 274).

Crimes against security

1. Abandonment of persons in danger and abandonment of one's own victim (Art. 275);
2. Abandoning a minor (Art. 276);
3. Abandonment of minor by person entrusted with his custody; indifference of parents (Art. 277);
4. Exploitation of minors (Art. 278);
5. Trespass to dwelling (Art. 280);
6. Other forms of trespass (Art. 281);
7. Grave threats (Art. 282);
8. Light threats (Art. 283);
9. Other light threats (Art. 285);
10. Grave coercions (Art. 286);
11. Light coercions (Art. 287);
12. Other similar coercions (Art. 288);
13. Formation, maintenance and prohibition of combination of capital or labor through violence or threats (Art. 289);
14. Discovering secrets through seizure of correspondence (Art. 290);

15. Revealing secrets with abus of office (Art. 291);

16. Revealing of industrial secrets (Art. 292).

Article 267. Kidnapping and Serious Illegal Detention

Elements

1. Offender is a private individual;

2. He kidnaps or detains another, or in any other manner deprives the latter of his liberty;

3. The act of detention or kidnapping must be illegal;

4. In the commission of the offense, any of the following circumstances is present:

    a. The kidnapping lasts for more than 3 days;

    b. It is committed simulating public authority;

    c. Any serious physical injuries are inflicted upon the person kidnapped or detained or threats to kill him are made; or

    d. The person kidnapped or detained is a minor, female, or a public officer.

If there is any crime under Title IX which has no corresponding provision with crimes under Title II, then, the offender may be a public officer or a private person. If there is a corresponding crime under Title II, the offender under Title IX for such similar crime is a private person.

When a public officer conspires with a private person in the commission of any of the crimes under Title IX, the crime is also one committed under this title and not under Title II.

Illustration:

If a private person commits the crime of kidnapping or serious illegal detention, even though a public officer conspires therein, the crime cannot be arbitrary detention. As far as that public officer is concerned, the crime is also illegal detention.

In the actual essence of the crime, when one says kidnapping, this connotes the idea of transporting the offended party from one place to another. When you think illegal detention, it connotes the idea that one is restrained of his liberty without necessarily transporting him from one place to another.

The crime of kidnapping is committed if the purpose of the offender is to extort ransom either from the victim or from any other person. But if a person is transported not for ransom, the crime can be illegal detention. Usually, the offended party is brought to a place other than his own, to detain him there.

When one thinks of kidnapping, it is not only that of transporting one person from one place to another. One also has to think of the criminal intent.

Forcible abduction -- If a woman is transported from one place to another by virtue of restraining her of her liberty, and that act is coupled with lewd designs.

Serious illegal detention – If a woman is transported just to restrain her of her liberty. There is no lewd design or lewd intent.

Grave coercion – If a woman is carried away just to break her will, to compel her to agree to the demand or request by the offender.

In a decided case, a suitor, who cannot get a favorable reply from a woman, invited the woman to ride with him, purportedly to take home the woman from class. But while the woman is in his car, he drove the woman to a far place and told the woman to marry him. On the way, the offender had repeatedly touched the private parts of the woman. It was held that the act of the offender of touching the private parts of the woman could not be considered as lewd designs because he was willing to marry the offended party. The Supreme Court ruled that when it is a suitor who could possibly marry the woman, merely kissing the woman or touching her private parts to "compel" her to agree to the marriage, such cannot be characterized as lewd design. It is considered merely as the "passion of a lover". But if the man is already married, you cannot consider that as legitimate but immoral and definitely amounts to lewd design.

If a woman is carried against her will but without lewd design on the part of the offender, the crime is grave coercion.

Illustration:

Tom Cruz invited Nicole Chizmacks for a snack. They drove along Roxas Boulevard, along the Coastal Road and to Cavite. The woman was already crying and wanted to be brought home. Tom imposed the condition that Nicole should first marry him. Nicole found this as, simply, a mission impossible. The crime committed in this case is grave coercion. But if after they drove to Cavite, the suitor placed the woman in a house and would not let her out until she agrees to marry him, the crime would be serious illegal detention.

If the victim is a woman or a public officer, the detention is always serious – no matter how short the period of detention is.

Circumstances which make illegal detention serious

(1) When the illegal detention lasted for three days, regardless of who the offended party is;

(2) When the offended party is a female, even if the detention lasted only for minutes;

(3) If the offended party is a minor or a public officer, no matter how long or how short the detention is;

(4) When threats to kill are made or serious physical injuries have been inflicted; and

(5) If it shall have been committed simulating public authority.

Distinction between illegal detention and arbitrary detention

Illegal detention is committed by a private person who kidnaps, detains, or otherwise deprives another of his liberty.

Arbitrary detention is committed by a public officer who detains a person without legal grounds.

The penalty for kidnapping is higher than for forcible abduction. This is wrong because if the offender knew about this, he would perform lascivious acts upon the woman and be charged only for forcible abduction instead of kidnapping or illegal detention. He thereby benefits from this absurdity, which arose when Congress amended Article 267, increasing the penalty thereof, without amending Article 342 on forcible abduction.

*Article 267 has been modified by **Republic Act No. 7659** in the following respects:*

(1) Illegal detention becomes serious when it shall have lasted for more

than three days, instead of five days as originally provided;

(2) In paragraph 4, if the person kidnapped or detained was a minor and the offender was anyone of the parents, the latter has been expressly excluded from the provision. The liability of the parent is provided for in the last paragraph of Article 271;

(3) A paragraph was added to Article 267, which states:

> When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture, or dehumanizing acts, the maximum penalty shall be imposed.

This amendment brings about a composite crime of kidnapping with homicide when it is the victim of the kidnapping who was killed, or dies as a consequence of the detention and, thus, only one penalty is imposed which is death.

Article 48, on complex crimes, does not govern in this case. But Article 48 will govern if any other person is killed aside, because the provision specifically refers to "victim". Accordingly, the rulings in cases of ***People v. Parulan, People v. Ging Sam,*** *and other similar cases where the accused were convicted for the complex crimes of kidnapping with murder have become academic.*

In the composite crime of kidnapping with homicide, the term "homicide" is used in the generic sense and, thus, covers all forms of killing whether in the nature of murder or otherwise. It does not matter whether the purpose of the kidnapping was to kill the victim or not, as long as the victim was killed, or died as a consequence of the kidnapping or detention. There is no more separate crime of kidnapping and murder if the victim was kidnapped not for the purpose of killing her.

If the victim was raped, this brings about the composite crime of kidnapping with rape. Being a composite crime, not a complex crime, the same is regarded as a single indivisible offense as in fact the law punishes such acts with only a single penalty. In a way, the amendment depreciated the seriousness of the rape because no matter how many times the victim was raped, there will only be one kidnapping with rape. This would not be the consequence if rape were a separate crime from kidnapping because each act of rape would be a distinct count.

However for the crime to be kidnapping with rape, the offender should not have taken the victim with lewd designs as otherwise the crime would be forcible abduction; and if the victim was raped, the complex crime of forcible abduction with rape would be committed. If the taking was forcible abduction, and the woman was raped several times, there would only be one crime of forcible abduction with rape, and each of the other rapes would constitute distinct counts of rape. This was the ruling in the case of ***People v. Bacalso.***

In ***People v. Lactao, decided on October 29, 1993,*** *the Supreme Court stressed that the crime is serious illegal detention if the purpose was to deprive the offended party of her liberty. And if in the course of the illegal detention, the offended party was raped, a separate crime of rape would be committed. This is so because there is no complex crime of serious illegal detention with rape since the illegal detention was not a necessary means to the commission of rape.*

In ***People v. Bernal, 131 SCRA 1,*** *the appellants were held guilty of separate*

crimes of serious illegal detention and of multiple rapes. With the amendment by Republic Act No. 7659 making rape a qualifying circumstance in the crime of kidnapping and serious illegal detention, the jurisprudence is superseded to the effect that the rape should be a distinct crime. Article 48 on complex crimes may not apply when serious illegal detention and rape are committed by the same offender. The offender will be charged for the composite crime of serious illegal detention with rape as a single indivisible offense, regardless of the number of times that the victim was raped.

Also, when the victim of the kidnapping and serious illegal detention was subjected to torture and sustained physical injuries, a composite crime of kidnapping with physical injuries is committed.

Article 268. Slight Illegal Detention

Elements

1. Offender is a private individual;

2. He kidnaps or detains another, or in any other manner deprives him of his liberty.

3. The act of kidnapping or detention is illegal;

4. The crime is committed without the attendance of any of the circumstances enumerated in Article 267.

This felony is committed if any of the five circumstances in the commission of kidnapping or detention enumerated in Article 267 is not present.

The penalty is lowered if –

(1) The offended party is voluntarily released within three days from the start of illegal detention;

(2) Without attaining the purpose;

(3) Before the institution of the criminal action.

One should know the nature of the illegal detention to know whether the voluntary release of the offended party will affect the criminal liability of the offender.

When the offender voluntarily releases the offended party from detention within three days from the time the restraint of liberty began, as long as the offender has not accomplished his purposes, and the release was made before the criminal prosecution was commenced, this would serve to mitigate the criminal liability of the offender, provided that the kidnapping or illegal detention is not serious.

If the illegal detention is serious, however, even if the offender voluntarily released the offended party, and such release was within three days from the time the detention began, even if the offender has not accomplished his purpose in detaining the offended party, and even if there is no criminal prosecution yet, such voluntary release will not mitigate the criminal liability of the offender.

One who furnishes the place where the offended party is being held generally acts as an accomplice. But the criminal liability in connection with the kidnapping and serious illegal detention, as well as the slight illegal detention, is that of the principal and not of the accomplice.

Before, in ***People v. Saliente,*** *if the offended party subjected to serious illegal detention was voluntarily released by the accused in accordance with the provisions of Article 268 (3), the crime, which would have been serious illegal detention, became slight illegal detention only.*

*The prevailing rule now is **Asistio v. Judge,** which provides that voluntary release will only mitigate criminal liability if crime was slight illegal detention. If serious, it has no effect.*

In kidnapping for ransom, voluntary release will not mitigate the crime. This is because, with the reimposition of the death penalty, this crime is penalized with the extreme penalty of death.

What is ransom? It is the money, price or consideration paid or demanded for redemption of a captured person or persons, a payment that releases a person from captivity.

*The definition of ransom under the Lindberg law of the U.S. has been adopted in our jurisprudence in **People v. Akiran, 18 SCRA 239, 242,** such that when a creditor detains a debtor and releases the latter only upon the payment of the debt, such payment of the debt, which was made a condition for the release is ransom, under this article.*

*In the case of **People v. Roluna, decided March 29, 1994,** witnesses saw a person being taken away with hands tied behind his back and was not heard from for six years. Supreme Court reversed the trial court ruling that the men accused were guilty of kidnapping with murder. The crime is only slight illegal detention under Article 268, aggravated by a band, since none of the circumstances in Article 267 has been proved beyond a reasonable doubt. The fact that the victim has been missing for six years raises a presumption of death, but from this disputable presumption of death, it should not be further presumed that the persons who were last seen with the absentee is responsible for his disappearance.*

Article 269. Unlawful Arrest

Elements

1. Offender arrests or detains another person;

2. The purpose of the offender is to deliver him to the proper authorities;

3. The arrest or detention is not authorized by law or there is no reasonable ground therefor.

This felony consists in making an arrest or detention without legal or reasonable ground for the purpose of delivering the offended party to the proper authorities.

The offended party may also be detained but the crime is not illegal detention because the purpose is to prosecute the person arrested. The detention is only incidental; the primary criminal intention of the offender is to charge the offended party for a crime he did not actually commit.

Generally, this crime is committed by incriminating innocent persons by the offender's planting evidence to justify the arrest – a complex crime results, that is, unlawful arrest through incriminatory machinations under Article 363.

If the arrest is made without a warrant and under circumstances not allowing a warrantless arrest, the crime would be unlawful arrest.

If the person arrested is not delivered to the authorities, the private individual making the arrest incurs criminal liability for illegal detention under Article 267 or 268.

If the offender is a public officer, the crime is arbitrary detention under Article 124.

If the detention or arrest is for a legal ground, but the public officer delays delivery of the person arrested to the proper judicial authorities, then Article 125 will apply.

Note that this felony may also be committed by public officers.

Article 270. Kidnapping and Failure to Return A Minor

Elements

1. Offender is entrusted with the custody of a minor person (whether over or under seven years but less than 21 years of age);

2. He deliberately fails to restore the said minor to his parents or guardians.

If any of the foregoing elements is absent, the kidnapping of the minor will then fall under Article 267.

If the accused is any of the parents, Article 267 does not apply; Articles 270 and 271 apply.

If the taking is with the consent of the parents, the crime in Article 270 is committed.

*In **People v. Generosa,** it was held that deliberate failure to return a minor under one's custody constitutes deprivation of liberty. Kidnapping and failure to return a minor is necessarily included in kidnapping and serious illegal detention of a minor under Article 267(4).*

*In **People v. Mendoza,** where a minor child was taken by the accused without the knowledge and consent of his parents, it was held that the crime is kidnapping and serious illegal detention under Article 267, not kidnapping and failure to return a minor under Article 270.*

Article 271. Inducing A Minor to Abandon His Home

Elements

1. A minor (whether over or under seven years of age) is living in the home of his parents or guardians or the person entrusted with his custody;

2. Offender induces said minor to abandon such home.

Article 272. Slavery

Elements

1. Offender purchases, sells, kidnaps or detains a human being;

2. The purpose of the offender is to enslave such human being.

This is committed if anyone shall purchase, kidnap, or detain a human being for the purpose of enslaving him. The penalty is increased if the purpose of the offender is to assign the offended party to some immoral traffic.

This is distinguished from illegal detention by the purpose. If the purpose of the kidnapping or detention is to enslave the offended party, slavery is committed.

The crime is slavery if the offender is not engaged in the business of prostitution. If he is, the crime is white slave trade under Article 341.

Article 273. Exploitation of Child Labor

Elements

1. Offender retains a minor in his services;

2. It is against the will of the minor;

3. It is under the pretext of reimbursing himself of a debt incurred by an ascendant, guardian or person entrusted with the custody of such minor.

Article 274. Services Rendered under Compulsion in Payment of Debt

Elements

1. Offender compel a debtor to work for him, either as household servant or farm laborer;

2. It is against the debtor's will;

3. The purpose is to require or enforce the payment of a debt.

Article 275. Abandonment of Persons in Danger and Abandonment of One's Own Victim

Acts punished

1. Failing to render assistance to any person whom the offender finds in an uninhabited place wounded or in danger of dying when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense.

   Elements

   1. The place is not inhabited;

   2. Accused found there a person wounded or in danger of dying;

   3. Accused can render assistance without detriment to himself;

   4. Accused fails to render assistance.

2. Failing to help or render assistance to another whom the offender has accidentally wounded or injured;

3. By failing to deliver a child, under seven years of age, whom the offender has found abandoned, to the authorities or to his family, or by failing to take him to a safe place.

Under the first act, the offender is liable only when he can render such assistance without detriment to himself, unless such omission shall constitute a more serious offense. Where the person is already wounded and already in danger of dying, there is an obligation to render assistance only if he is found in an uninhabited place. If the mortally wounded, dying person is found in a place not uninhabited in legal contemplation, abandonment will not bring about this crime. An uninhabited place is determined by possibility of person receiving assistance from another. Even if there are many houses around, the place may still be uninhabited if possibility of receiving assistance is remote.

If what happened was an accident at first, there would be no liability pursuant to Article 12 (4) of the Civil Code – damnum absque injuria. But if you abandon your victim, you will be liable under Article 275. Here, the character of the place is immaterial. As long as the victim was injured because of the accident caused by the offender, the offender would be liable for abandonment if he would not render assistance to the victim.

Article 276. Abandoning A Minor

Elements

1. Offender has the custody of a child;

2. The child is under seven years of age;

3. He abandons such child;

4. He has no intent to kill the child when the latter is abandoned.

Circumstances qualifying the offense

1. When the death of the minor resulted from such abandonment; or

2. If the life of the minor was in danger because of the abandonment.

Article 277. Abandonment of Minor by Person Entrusted with His Custody; Indifference of Parents

Acts punished

1. Delivering a minor to a public institution or other persons without the consent of the one who entrusted such minor to the care of the offender or, in the absence of that one, without the consent of the proper authorities;

   Elements

   1. Offender has charge of the rearing or education of a minor;

   2. He delivers said minor to a public institution or other persons;

   3. The one who entrusted such child to the offender has not consented to such act; or if the one who entrusted such child to the offender is absent, the proper authorities have not consented to it.

2. Neglecting his (offender's) children by not giving them the education which their station in life requires and financial condition permits.

   Elements:

   1. Offender is a parent;

   2. He neglects his children by not giving them education;

   3. His station in life requires such education and his financial condition permits it.

Article 278. Exploitation of Minors

Acts punished

1. Causing any boy or girl under 16 years of age to perform any dangerous feat of balancing, physical strength or contortion, the offender being any person;

2. Employing children under 16 years of age who are not the children or descendants of the offender in exhibitions of acrobat, gymnast, rope-walker, diver, or wild-animal tamer, the offender being an acrobat, etc., or circus manager or engaged in a similar calling;

3. Employing any descendant under 12 years of age in dangerous exhibitions enumerated in the next preceding paragraph, the offender being engaged in any of the said callings;

4. Delivering a child under 16 years of age gratuitously to any person following any of the callings enumerated in paragraph 2, or to any habitual vagrant or beggar, the offender being an ascendant, guardian, teacher or person

entrusted in any capacity with the care of such child; and

5. Inducing any child under 16 years of age to abandon the home of its ascendants, guardians, curators or teachers to follow any person engaged in any of the callings mentioned in paragraph 2 or to accompany any habitual vagrant or beggar, the offender being any person.

The offender is engaged in a kind of business that would place the life or limb of the minor in danger, even though working for him is not against the will of the minor.

Nature of the Business – This involves circuses which generally attract children so they themselves may enjoy working there unaware of the danger to their own lives and limbs.

Age – Must be below 16 years. At this age, the minor is still growing.

If the employer is an ascendant, the crime is not committed, unless the minor is less than 12 years old. Because if the employer is an ascendant, the law regards that he would look after the welfare and protection of the child; hence, the age is lowered to 12 years. Below that age, the crime is committed.

But remember Republic Act No. 7610 (Special Protection of Children against Child Abuse, Exploitation and Discrimination Act). It applies to minors below 18 years old, not 16 years old as in the Revised Penal Code. As long as the employment is inimical – even though there is no physical risk – and detrimental to the child's interest – against moral, intellectual, physical, and mental development of the minor – the establishment will be closed.

Article 278 has no application if minor is 16 years old and above. But the exploitation will be dealt with by Republic Act No. 7610.

If the minor so employed would suffer some injuries as a result of a violation of Article 278, Article 279 provides that there would be additional criminal liability for the resulting felony.

Illustration:

The owner of a circus employed a child under 16 years of age to do a balancing act on the tightrope. The crime committed is exploitation of minors (unless the employer is the ascendant of the minor who is not below 12 years of age). If the child fell and suffered physical injuries while working, the employer shall be liable for said physical injuries in addition to his liability for exploitation of minors.

Article 280. Qualified Trespass to Dwelling

Elements

1. Offender is a private person;

2. He enters the dwelling of another;

3. Such entrance is against the latter's will.

Two forms of trespass

1. Qualified trespass to dwelling – This may be committed by any private person who shall enter the dwelling of another against the latter's will. The house must be inhabited at the time of the trespass although the occupants are out. Or offender breaks in with force and violence (Article 280).

2. Trespass to property - Offender enters the closed premises or

fenced estate of another; such close premises or fenced estate is uninhabited; there is a manifest prohibition against entering such closed premises or fenced estate; and offender has not secured the permission of the owner or caretaker thereof (Article 281).

(See also Presidential Decree No. 1227 regarding unlawful entry into any military base in the Philippines.)

Dwelling – This is the place that a person inhabits. It includes the dependencies which have interior communication with the house. It is not necessary that it be the permanent dwelling of the person. So, a person's room in a hotel may be considered a dwelling. It also includes a room where one resides as a boarder.

If the purpose in entering the dwelling is not shown, trespass is committed. If the purpose is shown, it may be absorbed in the crime as in robbery with force upon things, the trespass yielding to the more serious crime. But if the purpose is not shown and while inside the dwelling he was found by the occupants, one of whom was injured by him, the crime committed will be trespass to dwelling and frustrated homicide, physical injuries, or if there was no injury, unjust vexation.

If the entry is made by a way not intended for entry, that is presumed to be against the will of the occupant (example, entry through a window). It is not necessary that there be a breaking.

"Against the will" -- This means that the entrance is, either expressly or impliedly, prohibited or the prohibition is presumed. Fraudulent entrance may constitute trespass. The prohibition to enter may be made at any time and not necessarily at the time of the entrance.

To prove that an entry is against the will of the occupant, it is not necessary that the entry should be preceded by an express prohibition, provided that the opposition of the occupant is clearly established by the circumstances under which the entry is made, such as the existence of enmity or strained relations between the accused and the occupant.

On violence, Cuello Calon opines that violence may be committed not only against persons but also against things. So, breaking the door or glass of a window or door constitutes acts of violence. Our Supreme Court followed this view in ***People v. Tayag.*** *Violence or intimidation must, however, be anterior or coetaneous with the entrance and must not be posterior. But if the violence is employed immediately after the entrance without the consent of the owner of the house, trespass is committed. If there is also violence or intimidation, proof of prohibition to enter is no longer necessary.*

<u>Distinction between qualified trespass to dwelling and violation of domicile</u>

Unlike qualified trespass to dwelling, violation of domicile may be committed only by a public officer or employee and the violation may consist of any of the three acts mentioned in Article 128 – (1) entering the dwelling against the will of the owner without judicial order; (2) searching papers or other effects found in such dwelling without the previous consent of the owner thereof; and (3) refusing to leave the dwelling when so requested by the owner thereof, after having surreptitiously entered such dwelling.

<u>Cases when Article 280 does not apply:</u>

(1) When the purpose of the entrance is to prevent serious harm to himself, the occupant or third persons;

(2) When the purpose of the offender in entering is to render some service to humanity or justice;

(3) Anyone who shall enter cafes, taverns, inns and other public houses while they are open .

Pursuant to Section 6, Rule 113 of the Rules of Court, a person who believes that a crime has been committed against him has every right to go after the culprit and arrest him without any warrant even if in the process he enters the house of another against the latter's will.

Article 281. Other forms of trespass

Elements

1. Offender enters the closed premises or the fenced estate of another;
2. The entrance is made while either of them is uninhabited;
3. The prohibition to enter is manifest;
4. The trespasser has not secured the permission of the owner or the caretaker thereof.

Article 282. Grave Threats

Acts punished:

1. Threatening another with the infliction upon his person, honor or property or that of this family of any wrong amounting to a crime and demanding money or imposing any other condition, even though not unlawful, and the offender attained his purpose;
2. Making such threat without the offender attaining his purpose;
3. Threatening another with the infliction upon his person, honor or property or that of his family of any wrong amounting to a crime, the threat not being subject to a condition.

Threat is a declaration of an intention or determination to injure another by the commission upon his person, honor or property or upon that of his family of some wrong which may or may not amount to a crime:

(1) Grave threats – when the wrong threatened to be inflicted amounts to a crime. The case falls under Article 282.

(2) Light threats – if it does not amount to a crime. The case falls under Article 283.

But even if the harm intended is in the nature of a crime, if made orally and in the heat of anger and after the oral threat, the issuer of the threat did not pursue the act, the crime is only other light threats under Article 285.

To constitute grave threats, the threats must refer to a future wrong and is committed by acts or through words of such efficiency to inspire terror or fear upon another. It is, therefore, characterized by moral pressure that produces disquietude or alarm.

The greater perversity of the offender is manifested when the threats are made demanding money or imposing any condition, whether lawful or not, and the offender shall have attained his purpose. So the law imposes upon him the penalty next lower in degree than that prescribed for the crime threatened to be committed. But if the purpose is not attained, the penalty lower by two degrees is imposed. The maximum period of the penalty is imposed if the threats are made in writing or through a middleman as they manifest evident premeditation.

Distinction between threat and coercion:

The essence of coercion is violence or intimidation. There is no condition involved; hence, there is no futurity in the harm or wrong done.

In threat, the wrong or harm done is future and conditional. In coercion, it is direct and personal.

Distinction between threat and robbery:

(1) As to intimidation – In robbery, the intimidation is actual and immediate; in threat, the intimidation is future and conditional.

(2) As to nature of intimidation – In robbery, the intimidation is personal; in threats, it may be through an intermediary.

(3) As to subject matter – Robbery refers to personal property; threat may refer to the person, honor or property.

(4) As to intent to gain – In robbery, there is intent to gain; in threats, intent to gain is not an essential element.

(5) In robbery, the robber makes the danger involved in his threats directly imminent to the victim and the obtainment of his gain immediate, thereby also taking rights to his person by the opposition or resistance which the victim might offer; in threat, the danger to the victim is not instantly imminent nor the gain of the culprit immediate.

Article 283. Light Threats

Elements

1. Offender makes a threat to commit a wrong;
2. The wrong does not constitute a crime;
3. There is a demand for money or that other condition is imposed, even though not unlawful;
4. Offender has attained his purpose or, that he has not attained his purpose.

In order to convict a person of the crime of light threats, the harm threatened must not be in the nature of crime and there is a demand for money or any other condition is imposed, even though lawful.

Question & Answer

Blackmailing constitutes what crime?

It is a crime of light threat under Article 283 if there is no threat to publish any libelous or slanderous matter against the offended party. If there is such a threat to make a slanderous or libelous publication against the offended party, the crime will be one of libel, which is penalized under Article 356. For example, a person threatens to expose the affairs of married man if the latter does not give him money. There is intimidation done under a demand.

The law imposes the penalty of bond for good behavior only in case of grave and light threats. If the offender can not post the bond, he will be banished by way of destierro to prevent him from carrying out his threat.

Article 285. Other Light Threats

Acts punished

1. Threatening another with a weapon, or by drawing such weapon in a

quarrel, unless it be in lawful self-defense;

2. Orally threatening another, in the heat of anger, with some harm constituting a crime, without persisting in the idea involved in his threat;

3. Orally threatening to do another any harm not constituting a felony.

Article 286. Grave Coercions

Acts punished

1. Preventing another, by means of violence, threats or intimidation, from doing something not prohibited by law;

2. Compelling another, by means of violence, threats or intimidation, to do something against his will, whether it be right or wrong.

Elements

1. A person prevented another from doing something not prohibited by law, or that he compelled him to do something against his will; be it right or wrong;

2. The prevention or compulsion be effected by violence, threats or intimidation; and

3. The person that restrained the will and liberty of another had not the authority of law or the right to do so, or in other words, that the restraint shall not be made under authority of law or in the exercise of any lawful right.

Grave coercion arises only if the act which the offender prevented another to do is not prohibited by law or ordinance. If the act prohibited was illegal, he is not liable for grave coercion.

If a person prohibits another to do an act because the act is a crime, even though some sort of violence or intimidation is employed, it would not give rise to grave coercion. It may only give rise to threat or physical injuries, if some injuries are inflicted. However, in case of grave coercion where the offended party is being compelled to do something against his will, whether it be wrong or not, the crime of grave coercion is committed if violence or intimidation is employed in order to compel him to do the act. No person shall take the law into his own hands.

Illustration:

Compelling the debtor to deliver some of his properties to pay a creditor will amount to coercion although the creditor may have a right to collect payment from the debtor, even if the obligation is long over due.

The violence employed in grave coercion must be immediate, actual, or imminent. In the absence of actual or imminent force or violence, coercion is not committed. The essence of coercion is an attack on individual liberty.

The physical violence is exerted to (1) prevent a person from doing something he wants to do; or (2) compel him to do something he does not want to do.

Illustration:

If a man compels another to show the contents of the latter's pockets, and takes the wallet, this is robbery and not grave coercion. The intimidation is a means of committing robbery with violence or intimidation of persons. Violence is inherent in the crime of robbery with violence or intimidation upon persons and in usurpation of real properties because it is the means of committing the crime.

Exception to the rule that physical violence must be exerted: where intimidation is so serious that it is not a threat anymore – it approximates violence.

*In **Lee v. CA, 201 SCAR 405,** it was held that neither the crime of threats nor coercion is committed although the accused, a branch manager of a bank made the complainant sign a withdrawal slip for the amount needed to pay the spurious dollar check she had encashed, and also made her execute an affidavit regarding the return of the amount against her better sense and judgment. According to the court, the complainant may have acted reluctantly and with hesitation, but still, it was voluntary. It is different when a complainant refuses absolutely to act such an extent that she becomes a mere automaton and acts mechanically only, not of her own will. In this situation, the complainant ceases to exits as an independent personality and the person who employs force or intimidation is, in the eyes of the law, the one acting; while the hand of the complainant sign, the will that moves it is the hand of the offender.*

Article 287. Light Coercions

Elements

1. Offender must be a creditor;

2. He seizes anything belonging to his debtor:

3. The seizure of the thing be accomplished by means of violence or a display of material force producing intimidation;

4. The purpose of the offender is to apply the same to the payment of the debt.

The first paragraph deals with light coercions wherein violence is employed by the offender who is a creditor in seizing anything belonging to his debtor for the purpose of applying the same to the payment of the debt.

In the other light coercions or unjust vexation embraced in the second paragraph, violence is absent.

In unjust vexation, any act committed without violence, but which unjustifiably annoys or vexes an innocent person amounts to light coercion.

As a punishable act, unjust vexation should include any human conduct which, although not productive of some physical or material harm would, however, unjustifiably annoy or vex an innocent person.

It is distinguished from grave coercion under the first paragraph by the absence of violence.

Illustration:

Persons stoning someone else's house. So long as stoning is not serious and it is intended to annoy, it is unjust vexation. It disturbs the peace of mind.

The main purpose of the statute penalizing coercion and unjust vexation is precisely to enforce the principle that no person may take the law into his hands and that our government is one of laws, not of men. The essence of the crimes is the attack on individual liberty.

Article 288. Other Similar Coercions

Acts punished:

1. Forcing or compelling, directly or indirectly, or knowingly permitting the forcing or compelling of the laborer or employee of the offender to purchase merchandise of commodities of any kind from him;

Elements:

1. Offender is any person, agent or officer of any association or corporation;

2. He or such firm or corporation has employed laborers or employees;

3. He forces or compels, directly or indirectly, or knowingly permits to be forced or compelled, any of his or its laborers or employees to purchase merchandise or commodities of any kind from him or from said firm or corporation.

2. Paying the wages due his laborer or employee by means of tokens or object other than the legal tender currency of the Philippines, unless expressly requested by such laborer or employee.

Elements:

1. Offender pays the wages due a laborer or employee employed by him by means of tokens or object;

1. Those tokens or objects are other than the legal tender currency of the Philippines;

3. Such employee or laborer does not expressly request that he be paid by means of tokens or objects.

Article 289. Formation, Maintenance, and Prohibition of Combination of Capital or Labor through Violence or Threats

Elements

1. Offender employs violence or threats, in such a degree as to compel or force the laborers or employers in the free and legal exercise of their industry or work;

2. The purpose is to organize, maintain or prevent coalitions of capital or labor, strike of laborers or lockout of employers.

Article 290. Discovering Secrets through Seizure of Correspondence

Elements

1. Offender is a private individual or even a public officer not in the exercise of his official function;

2. He seizes the papers or letters of another;

3. The purpose is to discover the secrets of such another person;

4. Offender is informed of the contents of the papers or letters seized.

This is a crime against the security of one's papers and effects. The purpose must be to discover its effects. The act violates the privacy of communication.

According to Ortega, it is not necessary that the offender should actually discover the contents of the letter. Reyes, citing ***People v. Singh, CA, 40 OG, Suppl. 5, 35,*** believes otherwise.

The last paragraph of Article 290 expressly makes the provision of the first and second paragraph thereof inapplicable to parents, guardians, or persons entrusted with the custody of minors placed under their care or custody, and to the spouses with respect to the papers or letters of either of them. The

teachers or other persons entrusted with the care and education of minors are included in the exceptions.

In a case decided by the Supreme Court, a spouse who rummaged and found love letters of husband to mistress does not commit this crime, but the letters are inadmissible in evidence because of unreasonable search and seizure. The ruling held that the wife should have applied for a search warrant.

Distinction from estafa, damage to property, and unjust vexation:

If the act had been executed with intent of gain, it would be estafa;

If, on the other hand, the purpose was not to defraud, but only to cause damage to another's, it would merit the qualification of damage to property;

If the intention was merely to cause vexation preventing another to do something which the law does not prohibit or compel him to execute what he does not want, the act should be considered as unjust vexation.

Revelation of secrets discovered not an element of the crime but only increases the penalty.

Article 291. Revealing Secrets with Abuse of Office

Elements

1. Offender is a manager, employee or servant;
2. He learns the secrets of his principal or master in such capacity;
3. He reveals such secrets.

An employee, manager, or servant who came to know of the secret of his master or principal in such capacity and reveals the same shall also be liable regardless of whether or not the principal or master suffered damages.

The essence of this crime is that the offender learned of the secret in the course of his employment. He is enjoying a confidential relation with the employer or master so he should respect the privacy of matters personal to the latter.

If the matter pertains to the business of the employer or master, damage is necessary and the agent, employee or servant shall always be liable. Reason: no one has a right to the personal privacy of another.

Article 292. Revelation of Industrial Secrets

Elements

1. Offender is a person in charge, employee or workman of a manufacturing or industrial establishment;
2. The manufacturing or industrial establishment has a secret of the industry which the offender has learned;
3. Offender reveals such secrets;
4. Prejudice is caused to the owner.

A business secret must not be known to other business entities or persons. It is a matter to be discovered, known and used by and must belong to one person or entity exclusively. One who merely copies their machines from those already existing and functioning cannot claim to have a business secret, much less, a discovery within the contemplation of Article 292.

TITLE X. CRIMES AGAINST PROPERTY

Crimes against property

1. Robbery with violence against or intimidation of persons (Art. 294);
2. Attempted and frustrated robbery committed under certain circumstances (Art. 297);
3. Execution of deeds by means of violence or intimidation (Art. 298);
4. Robbery in an inhabited house or public building or edifice devoted to worship (Art. 299);
5. Robbery in an inhabited place or in a private building (Art. 302);
6. Possession of picklocks or similar tools (Art. 304);
7. Brigandage (Art. 306);
8. Aiding and abetting a band of brigands (Art. 307);
9. Theft (Art. 308);
10. Qualified theft (Art. 310);
11. Theft of the property of the National Library and National Museum (Art. 311);
12. Occupation of real property or usurpation of real rights in property (Art. 312);
13. Altering boundaries or landmarks (Art. 313);
14. Fraudulent insolvency (Art. 314);
15. Swindling (Art. 315);
16. Other forms of swindling (Art. 316);
17. Swindling a minor (Art. 317);
18. Other deceits (Art. 318);
19. Removal, sale or pledge of mortgaged property (Art. 319);
20. Destructive arson (Art. 320);
21. Other forms of arson (Art. 321);
22. Arson of property of small value (Art. 323);
23. Crimes involving destruction (Art. 324);
24. Burning one's own property as means to commit arson (Art. 325);
25. Setting fire to property exclusively owned by the offender (Art. 326);
26. Malicious mischief (Art. 327);
27. Special case of malicious mischief (Art. 328);
28. Damage and obstruction to means of communication (Art. 330);
29. Destroying or damaging statues, public monuments or paintings (Art. 331).

Article 293. Who Are Guilty of Robbery

Robbery – This is the taking or personal property belonging to another, with intent to gain, by means of violence against, or intimidation of any person, or using force upon anything.

Elements of robbery in general

1. There is personal property belonging to another;
2. There is unlawful taking of that property;

3. The taking must be with intent to gain; and

4. There is violence against or intimidation of any person, or force upon anything.

Article 294. Robbery with Violence against or Intimidation of Persons

Acts punished

1. When by reason or on occasion of the robbery (taking of personal property belonging to another with intent to gain), the crime of homicide is committed;

2. When the robbery is accompanied by rape or intentional mutilation or arson;

3. When by reason of on occasion of such robbery, any of the physical injuries resulting in insanity, imbecility, impotency or blindness is inflicted;

4. When by reason or on occasion of robbery, any of the physical injuries resulting in the loss of the use of speech or the power to hear or to smell, or the loss of an eye, a hand, a foot, an arm, or a leg or the loss of the use of any such member or incapacity for the work in which the injured person is theretofore habitually engaged is inflicted;

5. If the violence or intimidation employed in the commission of the robbery is carried to a degree unnecessary for the commission of the crime;

6. When in the course of its execution, the offender shall have inflicted upon any person not responsible for the commission of the robbery any of the physical injuries in consequence of which the person injured becomes deformed or loses any other member of his body or loses the sue thereof or becomes ill or incapacitated for the performance of the work in which he is habitually engaged for more than 90 days or the person injured becomes ill or incapacitated for labor for more than 30 days;

7. If the violence employed by the offender does not cause any of the serious physical injuries defined in Article 263, or if the offender employs intimidation only.

Violence or intimidation upon persons may result in death or mutilation or rape or serious physical injuries.

If death results or even accompanies a robbery, the crime will be robbery with homicide provided that the robbery is consummated.

This is a crime against property, and therefore, you contend not with the killing but with the robbery.

As long as there is only one (1) robbery, regardless of the persons killed, the crime will only be one (1) count of robbery with homicide. The fact that there are multiple killings committed in the course of the robbery will be considered only as aggravating so as to call for the imposition of the maximum penalty prescribed by law.

If, on the occasion or by reason of the robbery, somebody is killed, and there are also physical injuries inflicted by reason or on the occasion of the robbery, don't think that those who sustained physical injuries may separately prosecute the offender for physical injuries. Those physical injuries are only considered aggravating circumstances in the crime of robbery with homicide.

This is not a complex crime as understood under Article 48, but a single indivisible crime. This is a special complex crime because the specific penalty is provided in the law.

In ***Napolis v. CA,*** *it was held that when violence or intimidation and force upon things are both present in the robbery, the crime is complex under Article 48.*

In robbery with violence of intimidation, the taking is complete when the offender has already the possession of the thing even if he has no opportunity to dispose of it.

In robbery with force upon things, the things must be brought outside the building for consummated robbery to be committed.

On robbery with homicide

The term "homicide" is used in the generic sense, and the complex crime therein contemplated comprehends not only robbery with homicide in its restricted sense, but also with robbery with murder. So, any kind of killing by reason of or on the occasion of a robbery will bring about the crime of robbery with homicide even if the person killed is less than three days old, or even if the person killed is the mother or father of the killer, or even if on such robbery the person killed was done by treachery or any of the qualifying circumstances. In short, there is no crime of robbery with parricide, robbery with murder, robbery with infanticide – any and all forms of killing is referred to as homicide.

Illustration:

The robbers enter the house. In entering through the window, one of the robbers stepped on a child less than three days old. The crime is not robbery with infanticide because there is no such crime. The word homicide as used in defining robbery with homicide is used in the generic sense. It refers to any kind of death.

Although it is a crime against property and treachery is an aggravating circumstance that applies only to crimes against persons, if the killing in a robbery is committed with treachery, the treachery will be considered a generic aggravating circumstance because of the homicide.

When two or more persons are killed during the robbery, such should be appreciated as an aggravating circumstance.

As long as there is only one robbery, regardless of the persons killed, you only have one crime of robbery with homicide. Note, however, that "one robbery" does not mean there is only one taking.

Illustration:

Robbers decided to commit robbery in a house, which turned out to be a boarding house. Thus, there were different boarders who were offended parties in the robbery. There is only one count of robbery. If there were killings done to different boarders during the robbery being committed in a boarder's quarter, do not consider that as separate counts of robbery with homicide because when robbers decide to commit robbery in a certain house, they are only impelled by one criminal intent to rob and there will only be one case of robbery. If there were homicide or death committed, that would only be part of a single robbery. That there were several killings done would only aggravate the commission of the crime of robbery with homicide.

*In **People v. Quiñones, 183 SCRA 747,** it was held that there is no crime of robbery with multiple homicides. The charge should be for robbery with homicide only because the number of persons killed is immaterial and does not increase the penalty prescribed in Article 294. All the killings are merged in the composite integrated whole that is robbery with homicide so long as the killings were by reason or on occasion of the robbery.*

In another case, a band of robbers entered a compound, which is actually a sugar mill. Within the compound, there were quarters of the laborers. They robbed each of the quarters. The Supreme Court held that there was only one count of robbery because when they decided and determined to rob the compound, they were only impelled by one criminal intent to rob.

With more reason, therefore, if in a robbery, the offender took away property belonging to different owners, as long as the taking was done at one time, and in one place, impelled by the same criminal intent to gain, there would only be one count of robbery.

In robbery with homicide as a single indivisible offense, it is immaterial who gets killed. Even though the killing may have resulted from negligence, you will still designate the crime as robbery with homicide.

Illustration:

On the occasion of a robbery, one of the offenders placed his firearm on the table. While they were ransacking the place, one of the robbers bumped the table. As a result, the firearm fell on the floor and discharged. One of the robbers was the one killed. Even though the placing of the firearm on the table where there is no safety precaution taken may be considered as one of negligence or imprudence, you do not separate the homicide as one of the product of criminal negligence. It will still be robbery with homicide, whether the person killed is connected with the robbery or not. He need not also be in the place of the robbery.

In one case, in the course of the struggle in a house where the robbery was being committed, the owner of the place tried to wrest the arm of the robber. A person several meters away was the one who got killed. The crime was held to be robbery with homicide.

Note that the person killed need not be one who is identified with the owner of the place where the robbery is committed or one who is a stranger to the robbers. It is enough that the homicide was committed by reason of the robbery or on the occasion thereof.

Illustration:

There are two robbers who broke into a house and carried away some valuables. After they left such house these two robbers decided to cut or divide the loot already so that they can go of them. So while they are dividing the loot the other robber noticed that the one doing the division is trying to cheat him and so he immediately boxed him. Now this robber who was boxed then pulled out his gun and fired at the other one killing the latter. Would that bring about the crime of robbery with homicide? Yes. Even if the robbery was already consummated, the killing was still by reason of the robbery because they quarreled in dividing the loot that is the subject of the robbery.

*In **People v. Domingo, 184 SCRA 409,** on the occasion of the robbery, the storeowner, a septuagenarian, suffered a stroke due to the extreme fear which directly caused his death when the robbers pointed their guns at him. It was held that the crime committed was robbery with homicide. It is immaterial that death supervened as a mere accident as long as the homicide was produced by reason or on the occasion of the robbery, because it is only the result which matters, without reference to the circumstances or causes or persons intervening in the commission of the crime which must be considered.*

Remember also that intent to rob must be proved. But there must be an allegation as to the robbery not only as to the intention to rob.

If the motive is to kill and the taking is committed thereafter, the crimes committed are homicide and theft. If the primordial intent of the offender is to kill and not to rob but after the killing of the victims a robbery was committed, then there are will be two separate crimes.

<u>Illustration:</u>

If a person had an enemy and killed him and after killing him, saw that he had a beautiful ring and took this, the crime would be not robbery with homicide because the primary criminal intent is to kill. So, there will be two crimes: one for the killing and one for the taking of the property after the victim was killed. Now this would bring about the crime of theft and it could not be robbery anymore because the person is already dead.

For robbery with homicide to exist, homicide must be committed by reason or on the occasion of the robbery, that is, the homicide must be committed "in the course or because of the robbery." Robbery and homicide are separate offenses when the homicide is not committed "on the occasion" or "by reason" of the robbery.

*Where the victims were killed, not for the purpose of committing robbery, and the idea of taking the money and other personal property of the victims was conceived by the culprits only after the killing, it was held in **People v. Domingo, 184 SCRA 409,** that the culprits committed two separate crimes of homicide or murder (qualified by abuse of superior strength) and theft.*

The victims were killed first then their money was taken the money from their dead bodies. This is robbery with homicide. It is important here that the intent to commit robbery must precede the taking of human life in robbery with homicide. The offender must have the intent to take personal property before the killing.

*It must be conclusively shown that the homicide was committed for the purpose of robbing the victim. In **People v. Hernandez**, appellants had not thought of robbery prior to the killing. The thought of taking the victim's wristwatch was conceived only after the killing and throwing of the victim in the canal. Appellants were convicted of two separate crimes of homicide and theft as there is absent direct relation and intimate connection between the robbery and the killing.*

On robbery with rape

This is another form of violence or intimidation upon person. The rape accompanies the robbery. In this case where rape and not homicide is committed, there is only a crime of robbery with rape if both the robbery and the rape are consummated. If during the robbery, attempted rape were committed, the crimes would be separate, that is, one for robbery and one for the attempted rape.

The rape committed on the occasion of the robbery is not considered a private crime because the crime is robbery, which is a crime against property. So, even though

the robber may have married the woman raped, the crime remains robbery with rape. The rape is not erased. This is because the crime is against property which is a single indivisible offense.

If the woman, who was raped on the occasion of the robbery, pardoned the rapist who is one of the robbers, that would not erase the crime of rape. The offender would still be prosecuted for the crime of robbery with rape, as long as the rape is consummated.

If the rape is attempted, since it will be a separate charge and the offended woman pardoned the offender, that would bring about a bar to the prosecution of the attempted rape. If the offender married the offended woman, that would extinguish the criminal liability because the rape is the subject of a separate prosecution.

The intention must be to commit robbery and even if the rape is committed before the robbery, robbery with rape is committed. But if the accused tried to rape the offended party and because of resistance, he failed to consummate the act, and then he snatched the vanity case from her hands when she ran away, two crimes are committed: attempted rape and theft.

There is no complex crime under Article 48 because a single act is not committed and attempted rape is not a means necessary to commit theft and vice-versa.

The Revised Penal Code does not differentiate whether rape was committed before, during or after the robbery. It is enough that the robbery accompanied the rape. Robbery must not be a mere accident or afterthought.

In ***People v. Flores, 195 SCRA 295,*** *although the offenders plan was to get the victim's money, rape her and kill her, but in the actual execution of the crime, the thoughts of depriving the victim of her valuables was relegated to the background and the offender's prurient desires surfaced. They persisted in satisfying their lust. They would have forgotten about their intent to rob if not for the accidental touching of the victim's ring and wristwatch. The taking of the victim's valuables turned out to be an afterthought. It was held that two distinct crimes were committed: rape with homicide and theft.*

In ***People v. Dinola, 183 SCRA 493,*** *it was held that if the original criminal design of the accused was to commit rape and after committing the rape, the accused committed robbery because the opportunity presented itself, two distinct crimes – rape and robbery were committed – not robbery with rape. In the latter, the criminal intent to gain must precede the intent to rape.*

On robbery with physical injuries

To be considered as such, the physical injuries must always be serious. If the physical injuries are only less serious or slight, they are absorbed in the robbery. The crime becomes merely robbery. But if the less serious physical injuries were committed after the robbery was already consummated, there would be a separate charge for the less serious physical injuries. It will only be absorbed in the robbery if it was inflicted in the course of the execution of the robbery. The same is true in the case of slight physical injuries.

<u>Illustration:</u>

After the robbery had been committed and the robbers were already fleeing from the house where the robbery was committed, the owner of the house chased them and the robbers fought back. If only less serious physical injuries were inflicted, there will be separate crimes: one for robbery and one for less serious physical injuries.

But if after the robbery was committed and the robbers were already fleeing from the house where the robbery was committed,

the owner or members of the family of the owner chased them, and they fought back and somebody was killed, the crime would still be robbery with homicide. But if serious physical injuries were inflicted and the serious physical injuries rendered the victim impotent or insane or the victim lost the use of any of his senses or lost a part of his body, the crime would still be robbery with serious physical injuries. The physical injuries (serious) should not be separated regardless of whether they retorted in the course of the commission of the robbery or even after the robbery was consummated.

I*n Article 299, it is only when the physical injuries resulted in the deformity or incapacitated the offended party from labor for more than 30 days that the law requires such physical injuries to have been inflicted in the course of the execution of the robbery, and only upon persons who are not responsible in the commission of the robbery.*

But if the physical injuries inflicted are those falling under subdivision 1 and 2 of Article 263, even though the physical injuries were inflicted upon one of the robbers themselves, and even though it had been inflicted after the robbery was already consummated, the crime will still be robbery with serious physical injuries. There will only be one count of accusation.

<u>Illustration:</u>

After the robbers fled from the place where the robbery was committed, they decided to divide the spoils and in the course of the division of the spoils or the loot, they quarreled. They shot it out and one of the robbers was killed. The crime is still robbery with homicide even though one of the robbers was the one killed by one of them. If they quarreled and serious physical injuries rendered one of the robbers impotent, blind in both eyes, or got insane, or he lost the use of any of his senses, lost the use of any part of his body, the crime will still be robbery with serious physical injuries.

If the robbers quarreled over the loot and one of the robbers hacked the other robber causing a deformity in his face, the crime will only be robbery and a separate charge for the serious physical injuries because when it is a deformity that is caused, the law requires that the deformity must have been inflicted upon one who is not a participant in the robbery. Moreover, the physical injuries which gave rise to the deformity or which incapacitated the offended party from labor for more than 30 days, must have been inflicted in the course of the execution of the robbery or while the robbery was taking place.

If it was inflicted when the thieves/robbers are already dividing the spoils, it cannot be considered as inflicted in the course of execution of the robbery and hence, it will not give rise to the crime of robbery with serious physical injuries. You only have one count of robbery and another count for the serious physical injuries inflicted.

If, during or on the occasion or by reason of the robbery, a killing, rape or serious physical injuries took place, there will only be one crime of robbery with homicide because all of these – killing, rape, serious physical injuries -- are contemplated by law as the violence or intimidation which characterizes the taking as on of robbery. You charge the offenders of robbery with homicide. The rape or physical injuries will only be appreciated as aggravating circumstance and is not the subject of a separate prosecution. They will only call for the imposition of the penalty in the maximum period.

If on the occasion of the robbery with homicide, robbery with force upon things was also committed, you will not have only one robbery but you will have a complex crime of robbery with homicide and robbery with force upon things (see ***Napolis v. CA****). This is because robbery with violence or*

intimidation upon persons is a separate crime from robbery with force upon things.

Robbery with homicide, robbery with intentional mutilation and robbery with rape are not qualified by band or uninhabited place. These aggravating circumstances only qualify robbery with physical injuries under subdivision 2, 3, and 4 of Article 299.

When it is robbery with homicide, the band or uninhabited place is only a generic aggravating circumstance. It will not qualify the crime to a higher degree of penalty.

*In **People v. Salvilla,** it was held that if in a robbery with serious physical injuries, the offenders herded the women and children into an office and detained them to compel the offended party to come out with the money, the crime of serious illegal detention was a necessary means to facilitate the robbery; thus, the complex crimes of robbery with serious physical injuries and serious illegal detention.*

*But if the victims were detained because of the timely arrival of the police, such that the offenders had no choice but to detain the victims as hostages in exchange for their safe passage, the detention is absorbed by the crime of robbery and is not a separate crime. This was the ruling in **People v. Astor.***

On robbery with arson

Another innovation of Republic Act No. 7659 is the composite crime of robbery with arson if arson is committed by reason of or on occasion of the robbery. The composite crime would only be committed if the primordial intent of the offender is to commit robber and there is no killing, rape, or intentional mutilation committed by the offender during the robbery. Otherwise, the crime would be robbery with homicide, or robbery with rape, or robbery with intentional mutilation, in that order, and the arson would only be an aggravating circumstance. It is essential that robbery precedes the arson, as in the case of rape and intentional mutilation, because the amendment included arson among the rape and intentional mutilation which have accompanied the robbery.

Moreover, it should be noted that arson has been made a component only of robbery with violence against or intimidation of persons in said Article 294, but not of robbery by the use of force upon things in Articles 299 and 302.

So, if the robbery was by the use of force upon things and therewith arson was committed, two distinct crimes are committed.

Article 295. Robbery with Physical Injuries, Committed in An Uninhabited Place and by A Band

Robbery with violence against or intimidation of person qualified is qualified if it is committed

1. In an uninhabited place;

2. By a band;

3. By attacking a moving train, street car, motor vehicle, or airship;

4. By entering the passengers' compartments in a train, or in any manner taking the passengers thereof by surprise in the respective conveyances; or

5. On a street, road, highway or alley, and the intimidation is made with the use of firearms, the offender shall be punished by the maximum periods of the proper penalties prescribed in Article 294.

Article 296 defines a robbery by a band as follows: when at least four armed

malefactors take part in the commission of a robbery.

Requisites for liability for the acts of the other members of the band

1. He was a member of the band;
2. He was present at the commission of a robbery by that band;
3. The other members of the band committed an assault;
4. He did not attempt to prevent the assault.

Article 298. Execution of Deeds by Means of Violence or intimidation

Elements

1. Offender has intent to defraud another;
2. Offender compels him to sign, execute, or deliver any public instrument or document.
3. The compulsion is by means of violence or intimidation.

Article 299. Robbery in An Inhabited House or Public Building or Edifice Devoted to Worship

Elements under subdivision (a)

1. Offender entered an inhabited house, public building
2. The entrance was effected by any of the following means:
    a. Through an opening not intended for entrance or egress;
    b. By breaking any wall, roof or floor, or breaking any door or window;
    c. By using false keys, picklocks or similar tools; or
    d. By using any fictitious name or pretending the exercise of public authority.
3. Once inside the building, offender took personal property belonging to another with intent to gain.

Elements under subdivision (b):

1. Offender is inside a dwelling house, public building, or edifice devoted to religious worship, regardless of the circumstances under which he entered it;
2. Offender takes personal property belonging to another, with intent to gain, under any of the following circumstances:
    a. By the breaking of doors, wardrobes, chests, or any other kind of locked or sealed furniture or receptacle; or
    b. By taking such furniture or objects away to be broken or forced open outside the place of the robbery.

"Force upon things" has a technical meaning in law. Not any kind of force upon things will characterize the taking as one of robbery. The force upon things contemplated requires some element of trespass into the establishment where the robbery was committed. In other words, the offender must have entered the premises where the robbery was committed. If no entry was effected, even though force may have been employed actually in the taking

of the property from within the premises, the crime will only be theft.

Two predicates that will give rise to the crime as robbery:

1. *By mere entering alone, a robbery will be committed if any personal property is taken from within;*

2. *The entering will not give rise to robbery even if something is taken inside. It is the breaking of the receptacle or closet or cabinet where the personal property is kept that will give rise to robbery, or the taking of a sealed, locked receptacle to be broken outside the premises.*

If by the mere entering, that would already qualify the taking of any personal property inside as robbery, it is immaterial whether the offender stays inside the premises. The breaking of things inside the premises will only be important to consider if the entering by itself will not characterize the crime as robbery with force upon things.

Modes of entering that would give rise to the crime of robbery with force upon things if something is taken inside the premises: entering into an opening not intended for entrance or egress, under Article 299 (a).

Illustration:

The entry was made through a fire escape. The fire escape was intended for egress. The entry will not characterize the taking as one of robbery because it is an opening intended for egress, although it may not be intended for entrance. If the entering were done through the window, even if the window was not broken, that would characterize the taking of personal property inside as robbery because the window is not an opening intended for entrance.

Illustration:

On a sari-sari store, a vehicle bumped the wall. The wall collapsed. There was a small opening there. At night, a man entered through that opening without breaking the same. The crime will already be robbery if he takes property from within because that is not an opening intended for the purpose.

Even of there is a breaking of wall, roof, floor or window, but the offender did not enter, it would not give rise to robbery with force upon things.

Breaking of the door under Article299 (b) – Originally, the interpretation was that in order that there be a breaking of the door in contemplation of law, there must be some damage to the door.

Before, if the door was not damaged but only the lock attached to the door was broken, the taking from within is only theft. But the ruling is now abandoned because the door is considered useless without the lock. Even if it is not the door that was broken but only the lock, the breaking of the lock renders the door useless and it is therefore tantamount to the breaking of the door. Hence, the taking inside is considered robbery with force upon things.

If the entering does not characterize the taking inside as one of robbery with force upon things, it is the conduct inside that would give rise to the robbery if there would be a breaking of sealed, locked or closed receptacles or cabinet in order to get the personal belongings from within such receptacles, cabinet or place where it is kept.

If in the course of committing the robbery within the premises some interior doors are broken, the taking from inside the room where the door leads to will only give rise to theft. The breaking of doors contemplated in the law refers to the main door of the house and not the interior door.

But if it is the door of a cabinet that is broken and the valuable inside the cabinet was taken, the breaking of the cabinet door would characterize the taking as robbery. Although that particular door is not included as part of the house, the cabinet keeps the contents thereof safe.

Use of picklocks or false keys refers to the entering into the premises – If the picklock or false key was used not to enter the premises because the offender had already entered but was used to unlock an interior door or even a receptacle where the valuable or personal belonging was taken, the use of false key or picklock will not give rise to the robbery with force upon things because these are considered by law as only a means to gain entrance, and not to extract personal belongings from the place where it is being kept.

The law classifies robbery with force upon things as those committed in:

(1) an inhabited place;

(2) public buildings;

(3) a place devoted to religious worship.

The law also considers robbery committed not in an inhabited house or in a private building.

Note that the manner of committing the robbery with force upon things is not the same.

When the robbery is committed in a house which is inhabited, or in a public building or in a place devoted to religious worship, the use of fictitious name or pretension to possess authority in order to gain entrance will characterize the taking inside as robbery with force upon things.

Question & Answer

Certain men pretended to be from the Price Control Commission and went to a warehouse owned by a private person. They told the guard to open the warehouse purportedly to see if the private person is hoarding essential commodities there. The guard obliged. They went inside and broke in . They loaded some of the merchandise inside claiming that it is the product of hoarding and then drove away. What crime was committed?

It is only theft because the premises where the simulation of public authority was committed is not an inhabited house, not a public building, and not a place devoted to religious worship. Where the house is a private building or is uninhabited, even though there is simulation of public authority in committing the taking or even if he used a fictitious name, the crime is only theft.

Note that in the crime of robbery with force upon things, what should be considered is the means of entrance and means of taking the personal property from within. If those means do not come within the definition under the Revised Penal Code, the taking will only give rise to theft.

Those means must be employed in entering. If the offender had already entered when these means were employed, anything taken inside, without breaking of any sealed or closed receptacle, will not give rise to robbery.

<u>Illustration:</u>

A found B inside his (A's) house. He asked B what the latter was doping there. B claimed he is an inspector from the local city government to look after the electrical installations. At the time B was chanced upon by A, he has already entered. So anything he took inside without breaking of any sealed or closed receptacle will not give rise to robbery because the simulation of public authority was made not in order to enter but when he has already entered.

Article 301 defines an inhabited house, public building, or building dedicated to religious worship and their dependencies, thus:

Inhabited house – Any shelter, ship, or vessel constituting the dwelling of one or more persons, even though the inhabitants thereof shall temporarily be absent therefrom when the robbery is committed.

Public building – Includes every building owned by the government or belonging to a private person but used or rented by the government, although temporarily unoccupied by the same.

Dependencies of an inhabited house, public building, or building dedicated to religious worship – All interior courts, corrals, warehouses, granaries, barns, coachhouses, stables, or other departments, or enclosed interior entrance connected therewith and which form part of the whole. Orchards and other lands used for cultivation or production are not included, even if closed, contiguous to the building, and having direct connection therewith.

Article 302. Robbery in An Uninhabited Place or in A Private Building

Elements

1. Offender entered an uninhabited place or a building which was not a dwelling house, not a public building, or not an edifice devoted to religious worship;

2. Any of the following circumstances was present:

    a. The entrance was effected through an opening not intended for entrance or egress;

    b. A wall, roof, floor, or outside door or window was broken;

    c. The entrance was effected through the use of false keys, picklocks or other similar tools;

    d. A door, wardrobe, chest, or any sealed or closed furniture or receptacle was broken; or

    e. A closed or sealed receptacle was removed, even if the same be broken open elsewhere.

3. Offender took therefrom personal property belonging to another with intent to gain.

Under **Article 303**, if the robbery under Article 299 and 302 consists in the taking of cereals, fruits, or firewood, the penalty imposable is lower.

Article 304. Possession of Picklock or Similar Tools

Elements

1. Offender has in his possession picklocks or similar tools;

2. Such picklock or similar tools are especially adopted to the commission of robbery;

3. Offender does not have lawful cause for such possession.

Article 305 defines false keys to include the following:

1. Tools mentioned in Article 304;

2. Genuine keys stolen from the owner;

3. Any key other than those intended by the owner for use in the lock forcibly opened by the offender.

Brigandage – This is a crime committed by more than three armed persons who form a band of robbers for the purpose of committing robbery in the highway or kidnapping persons for the purpose of extortion or to obtain ransom, or for any other purpose to be attained by means of force and violence.

Article 306. Who Are Brigands

Elements of brigandage

1. There are least four armed persons;

2. They formed a band of robbers;

2. The purpose is any of the following:

   a. To commit robbery in the highway;

   b. To kidnap persons for the purpose of extortion or to obtain ransom; or

   c. To attain by means of force and violence any other purpose.

Article 307. Aiding and Abetting A Band of Brigands

Elements

1. There is a band of brigands;

2. Offender knows the band to be of brigands;

3. Offender does any of the following acts:

   a. He in any manner aids, abets or protects such band of brigands;

   b. He gives them information of the movements of the police or other peace officers of the government; or

   c. He acquires or receives the property taken by such brigands.

Distinction between brigandage under the Revised Penal Code and highway robbery/brigandage under ***Presidential Decree No. 532:***

(1) Brigandage as a crime under the Revised Penal Code refers to the formation of a band of robbers by more than three armed persons for the purpose of committing robbery in the highway, kidnapping for purposes of extortion or ransom, or for any other purpose to be attained by force and violence. The mere forming of a band, which requires at least four armed persons, if for any of the criminal purposes stated in Article 306, gives rise to brigandage.

(2) Highway robbery/brigandage under Presidential Decree No. 532 is the seizure of any person for ransom, extortion or for any other lawful purposes, or the taking away of the property of another by means of violence against or intimidation of persons or force upon things or other unlawful means committed by any person on any Philippine highway.

Brigandage under Presidential Decree No. 532 refers to the actual commission of the robbery on the highway and can be committed by one person alone. It is this brigandage which deserves some attention because not any robbery in a highway is

brigandage or highway robbery. A distinction should be made between highway robbery/brigandage under the decree and ordinary robbery committed on a highway under the Revised Penal Code.

*In **People v. Puno, decided February 17, 1993,** the trial court convicted the accused of highway robbery/ brigandage under Presidential Decree No. 532 and sentenced them to reclusion perpetua. On appeal, the Supreme Court set aside the judgment and found the accused guilty of simple robbery as punished in Article 294 (5), in relation to Article 295, and sentenced them accordingly. The Supreme Court pointed out that the purpose of brigandage "is, inter alia, indiscriminate highway robbery. And that PD 532 punishes as highway robbery or Brigandage only acts of robbery perpetrated by outlaws indiscriminately against any person or persons on a Philippine highway as defined therein, not acts committed against a predetermined or particular victim". A single act of robbery against a particular person chosen by the offender as his specific victim, even if committed on a highway, is not highway robbery or brigandage.*

*In **US v. Feliciano, 3 Phil. 422,** it was pointed out that highway robbery or brigandage is more than ordinary robbery committed on a highway. The purpose of brigandage is indiscriminate robbery in highways. If the purpose is only a particular robbery, the crime is only robbery or robbery in band, if there are at least four armed participants.*

Presidential Decree No. 532 introduced amendments to Article 306 and 307 by increasing the penalties. It does not require at least four armed persons forming a band of robbers. It does not create a presumption that the offender is a brigand when he an unlicensed firearm is used unlike the Revised Penal Code. But the essence of brigandage under the Revised Penal Code is the same as that in the Presidential Decree, that is, crime of depredation wherein the unlawful acts are directed not only against specific, intended or preconceived victims, but against any and all prospective victims anywhere on the highway and whoever they may potentially be.

Article 308. Who Are Liable for Theft

Persons liable

1. Those who with intent to gain, but without violence against or intimidation of persons nor force upon things, take personal property of another without the latter's consent;

2. Those who having found lost property, fails to deliver the same to the local authorities or to its owner;

3. Those who, after having maliciously damaged the property of another, remove or make use of the fruits or objects of the damage caused by them;

4. Those who enter an enclosed estate or a field where trespass is forbidden or which belongs to another and, without the consent of its owner, hunt or fish upon the same or gather fruits, cereals or other forest or farm products.

Elements

1. There is taking of personal property;

2. The property taken belongs to another;

3. The taking was done with intent to gain;

4. The taking was done without the consent of the owner;

5. The taking is accomplished without the use of violence against or intimidation of persons of force upon things.

*Fencing under **Presidential Decree No. 1612** is a distinct crime from theft and robbery. If the participant who profited is being prosecuted with person who robbed, the person is prosecuted as an accessory. If he is being prosecuted separately, the person who partook of the proceeds is liable for fencing.*

*In **People v. Judge de Guzman,** it was held that fencing is not a continuing offense. Jurisdiction is with the court of the place where the personal property subject of the robbery or theft was possessed, bought, kept, or dealt with. The place where the theft or robbery was committed was inconsequential.*

*Since Section 5 of Presidential Decree No. 1612 expressly provides that mere possession of anything of value which has been subject of theft or robbery shall be prima facie evidence of fencing, it follows that a possessor of stolen goods is presumed to have knowledge that the goods found in his possession after the fact of theft or robbery has been established. The presumption does not offend the presumption of innocence in the fundamental law. This was the ruling in **Pamintuan v. People, decided on July 11, 1994.***

Burden of proof is upon fence to overcome presumption; if explanation insufficient or unsatisfactory, court will convict. This is a malum prohibitum so intent is not material. But if prosecution is under the Revised Penal Code, as an accessory, the criminal intent is controlling.

When there is notice to person buying, there may be fencing such as when the price is way below ordinary prices; this may serve as notice. He may be liable for fencing even if he paid the price because of the presumption.

*Cattle Rustling and Qualified Theft of Large Cattle – The crime of cattle-rustling is defined and punished under **Presidential Decree No. 533,** the Anti-Cattle Rustling law of 1974, as the taking by any means, method or scheme, of any large cattle, with or without intent to gain and whether committed with or without violence against or intimidation of person or force upon things, so long as the taking is without the consent of the owner/breed thereof. The crime includes the killing or taking the meat or hide of large cattle without the consent of the owner.*

Since the intent to gain is not essential, the killing or destruction of large cattle, even without taking any part thereof, is not a crime of malicious mischief but cattle-rustling.

The Presidential Decree, however, does not supersede the crime of qualified theft of large cattle under Article 310 of the Revised Penal Code, but merely modified the penalties provided for theft of large cattle and, to that extent, amended Articles 309 and 310. Note that the overt act that gives rise to the crime of cattle-rustling is the taking or killing of large cattle. Where the large cattle was not taken, but received by the offender from the owner/overseer thereof, the crime is not cattle-rustling; it is qualified theft of large cattle.

Where the large cattle was received by the offender who thereafter misappropriated it, the crime is qualified theft under Article 310 if only physical or material possession thereof was yielded to him. If both material and juridical possession thereof was yielded to him who misappropriated the large cattle, the crime would be estafa under Article 315 (1b).

Presidential Decree No. 533 is not a special law in the context of Article 10 of the Revised Penal Code. It merely modified the penalties provided for theft of large cattle under the Revised Penal Code and amended Article 309 and 310. This is explicit from Section 10 of the Presidential Decree. Consequently, the trial court should not have convicted the accused of frustrated murder separately from cattle-rustling, since the former should have been absorbed by cattle-rustling as killing was a result of or on the occasion of cattle-rustling. It should only be an aggravating circumstance. But because the information did not allege the injury, the same can no longer be appreciated; the crime should, therefore be only, simple cattle-rustling. ***(People v. Martinada, February 13, 1991)***

Article 310. Qualified Theft

Theft is qualified if

1. Committed by a domestic servant;
2. Committed with grave abuse of confidence;
3. The property stolen is a motor vehicle, mail matter, or large cattle;
4. The property stolen consists of coconuts taken from the premises of a plantation;
5. The property stolen is fish taken from a fishpond or fishery; or
6. If property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident, or civil disturbance.

Article 311. Theft of the Property of the National Library or National Museum

If the property stolen is any property of the National Library or of the National Museum

Article 312. Occupation of Real Property or Usurpation of Real Rights in Property

Acts punished:

1. Taking possession of any real property belonging to another by means of violence against or intimidation of persons;
2. Usurping any real rights in property belonging to another by means of violence against or intimidation of persons.

Elements

1. Offender takes possession of any real property or usurps any real rights in property;
2. The real property or real rights belong to another;
3. Violence against or intimidation of persons is used by the offender in occupying real property or usurping real rights in property;
4. There is intent to gain.

Use the degree of intimidation to determine the degree of the penalty to be applied for the usurpation.

Usurpation under Article 312 is committed in the same way as robbery with violence or intimidation of persons. The main difference is that in robbery, personal property is involved; while in usurpation of real rights, it is real property. ***(People v. Judge Alfeche, July 23, 1992)***

Usurpation of real rights and property should not be complexed using Article 48 when violence or intimidation is committed.

There is only a single crime, but a two-tiered penalty is prescribed to be determined on whether the acts of violence used is akin to that in robbery in Article 294, grave threats or grave coercion and an incremental penalty of fine based on the value of the gain obtained by the offender.

Therefore, it is not correct to state that the threat employed in usurping real property is absorbed in the crime; otherwise, the additional penalty would be meaningless.

The complainant must be the person upon whom violence was employed. If a tenant was occupying the property and he was threatened by the offender, but it was the owner who was not in possession of the property who was named as the offended party, the same may be quashed as it does not charge an offense. The owner would, at most, be entitled to civil recourse only.

On carnapping and theft of motor vehicle

The taking with intent to gain of a motor vehicle belonging to another, without the latter's consent, or by means of violence or intimidation of persons, or by using force upon things is penalized as carnapping under ***Republic Act No. 6539 (An Act Preventing and Penalizing Carnapping)****, as amended. The overt act which is being punished under this law as carnapping is also the taking of a motor vehicle under circumstances of theft or robbery. If the motor vehicle was not taken by the offender but was delivered by the owner or the possessor to the offender, who thereafter misappropriated the same, the crime is either qualified theft under Article 310 of the Revised Penal Code or estafa under Article 315 (b) of the Revised Penal Code. Qualified theft of a motor vehicle is the crime if only the material or physical possession was yielded to the offender; otherwise, if juridical possession was also yielded, the crime is estafa.*

On squatting

According to the **Urban Development and Housing Ac**t, the following are squatters:

1. Those who have the capacity or means to pay rent or for legitimate housing but are squatting anyway;

2. Also the persons who were awarded lots but sold or lease them out;

3. Intruders of lands reserved for socialized housing, pre-empting possession by occupying the same.

Article 313. Altering Boundaries or Landmarks

Elements

1. There are boundary marks or monuments of towns, provinces, or estates, or any other marks intended to designate the boundaries of the same;

2. Offender alters said boundary marks.

Article 314. Fraudulent Insolvency

Elements

1. Offender is a debtor, that is, he has obligations due and payable;

2. He absconds with his property;

3. There is prejudice to his creditors.

Article 315. Swindling (Estafa)

Elements in general

1. Accused defrauded another by abuse of confidence or by means of deceit; and

This covers the three different ways of committing estafa under Article 315; thus, estafa is committed –

a. With unfaithfulness or abuse of confidence;

b. By means of false pretenses or fraudulents acts; or

c. Through fraudulent means.

(The first form under subdivision 1 is known as estafa with abuse of confidence; and the second and third forms under subdivisions 2 and 3 cover cover estafa by means of deceit.)

2. Damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.

Elements of estafa with unfaithfulness of abuse of confidence under Article 315 (1)

Under paragraph (a)

1. Offender has an onerous obligation to deliver something of value;

2. He alters its substance, quantity, or quality;

3. Damage or prejudice is caused to another.

Under paragraph (b)

1. Money, goods, or other personal property is received by the offender is trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return, the same;

2. There is misappropriation or conversion of such money or property by the offender, or denial on his part of such receipt;

3. Such misappropriation or conversion or denial is to the prejudice of another; and

4. There is a demand made by the offended party to the offender.

(The fourth element is not necessary when there is evidence of misappropriation of the goods by the defendant. **[Tubb v. People, et al., 101 Phil. 114]**).

*Under **Presidential Decree No. 115**, the failure of the entrustee to turn over the proceeds of the sale of the goods, documents, or instruments covered by a trust receipt, to the extent of the amount owing to the entruster, or as appearing in the trust receipt; or the failure to return said goods, documents, or instruments if they were not sold or disposed of in accordance with the terms of the trust receipt constitute estafa.*

Under paragraph (c)

1. The paper with the signature of the offended party is in blank;

2. Offended party delivered it to the offender;

3. Above the signature of the offended party, a document is written by the offender without authority to do so;

4. The document so written creates a liability of, or causes damage to, the offended party or any third person.

Elements of estafa by means of false pretenses or fraudulent acts under Article 315 (2)

Acts punished under paragraph (a)

1. Using fictitious name;

2. Falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions; or

3. By means of other similar deceits.

Under paragraph (b)

Altering the quality, fineness, or weight of anything pertaining to his art or business.

Under paragraph (c)

Pretending to have bribed any government employee, without prejudice to the action for calumny which the offended party may deem proper to bring against the offender.

Under paragraph (d)

1. Offender postdated a check, or issued a check in payment of an obligation;

2. Such postdating or issuing a check was done when the offender had no funds in the bank, or his funds deposited therein were not sufficient to cover the amount of the check.

Note that this only applies if –

(1) The obligation is not pre-existing;

(2) The check is drawn to enter into an obligation;

(Remember that it is the check that is supposed to be the sole consideration for the other party to have entered into the obligation. For example, Rose wants to purchase a bracelet and draws a check without insufficient funds. The jeweler sells her the bracelet solely because of the consideration in the check.)

(3) It does not cover checks where the purpose of drawing the check is to guarantee a loan as this is not an obligation contemplated in this paragraph

The check must be genuine. If the check is falsified and is cashed with the bank or exchanged for cash, the crime is estafa thru falsification of a commercial document.

The general rule is that the accused must be able to obtain something from the offended party by means of the check he issued and delivered. Exception: when the check is issued not in payment of an obligation.

It must not be promissory notes, or guaranties.

Good faith is a defense.

If the checks were issued by the defendant and he received money for them, then stopped payment and did not return the money, and he had an intention to stop payment when he issued the check, there is estafa.

Deceit is presumed if the drawer fails to deposit the amount necessary to cover the check within three days from receipt of notice of dishonor or insufficiency of funds in the bank.

Batas Pambansa Blg. 22

How violated

A. 1. A person makes or draws and issues any check;

2. The check is made or drawn and issued to apply on account or for value;

   Thus, it can apply to pre-existing obligations, too.

3. The person who makes or draws and issued the check knows at the time of issue that he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment;

3. The check is subsequently dishonored by the drawee bank for insufficiency of funds or credit, or would have been dishonored for the same reason had not the drawer, without any valid reason, ordered the bank to stop payment.

B. 1. A person has sufficient funds in or credit with the drawee bank when he makes or draws and issues a check;

2. He fails to keep sufficient funds or to maintain a credit to cover the full amount of the check if presented within 90 days from the date appearing;

3. The check is dishonored by the drawee bank.

Distinction between estafa under Article 315 (2) (d) of the Revised Penal Code and violation of Batas Pambansa Blg. 22:

(1) Under both Article 315 (2) (d) and Batas Pambansa Blg. 22, there is criminal liability if the check is drawn for non-pre-existing obligation.

If the check is drawn for a pre-existing obligation, there is criminal liability only under Batas Pambansa Blg. 22.

(2) Estafa under Article 315 (2) (d) is a crime against property while Batas Pambansa Blg. 22 is a crime against public interest. The gravamen for the former is the deceit employed, while in the latter, it is the issuance of the check. Hence, there is no double jeopardy.

(3) In the estafa under Article 315 (2) (d), deceit and damage are material, while in Batas Pambansa Blg. 22, they are immaterial.

(4) In estafa under Article 315 (2) (d), knowledge by the drawer of insufficient funds is not required, while in Batas Pambansa Blg. 22, knowledge by the drawer of insufficient funds is reqired.

When is there prima facie evidence of knowledge of insufficient funds?

There is a prima facie evidence of knowledge of insufficient funds when the check was presented within 90 days from the date appearing on the check and was dishonored.

Exceptions

1. When the check was presented after 90 days from date;

2. When the maker or drawer --

   a. Pays the holder of the check the amount due within five banking days after receiving notice that such check has not been paid by the drawee;

   b. Makes arrangements for payment in full by the drawee

of such check within five banking days after notice of non-payment

The drawee must cause to be written or stamped in plain language the reason for the dishonor.

If the drawee bank received an order of stop-payment from the drawer with no reason, it must be stated that the funds are insufficient to be prosecuted here.

The unpaid or dishonored check with the stamped information re: refusal to pay is prima facie evidence of (1) the making or issuance of the check; (2) the due presentment to the drawee for payment & the dishonor thereof; and (3) the fact that the check was properly dishonored for the reason stamped on the check.

Acts punished under paragraph (e)

1. a. Obtaining food, refreshment, or accommodation at a hotel, inn, restaurant, boarding house, lodging house, or apartment house;

   b. Without paying therefor;

   c. With intent to defraud the proprietor or manager.

2. a. Obtaining credit at any of the establishments;

   b. Using false pretense;

3. a. Abandoning or surreptitiously removing any part of his baggage in the establishment;

   b. After obtaining credit, food, refreshment, accommodation;

   c. Without paying.

Estafa through any of the following fraudulent means under Article 315 (3)

Under paragraph (a)

1. Offender induced the offended party to sign a document;

2. Deceit was employed to make him sign the document;

3. Offended party personally signed the document;

4. Prejudice was caused.

Under paragraph (b)

Resorting to some fraudulent practice to insure success in a gambling game;

Under paragraph (c)

1. Offender removed, concealed or destroyed;

2. Any court record, office files, documents or any other papers;

3. With intent to defraud another.

*In **Kim v. People, 193 SCRA 344,** it was held that if an employee receives cash advance from his employer to defray his travel expenses, his failure to return unspent amount is not estafa through misappropriation or conversion because ownership of the money was transferred to employee and no fiduciary relation was created in respect to such advance. The money is a loan. The employee has no legal obligation to return the same money, that is, the same bills and coins received.*

*In **Saddul Jr. v. CA, 192 SCRA 277,** it was held that the act of using or disposing of another's property as if it were one's own,*

or of devoting it to a purpose or use different from that agreed upon, is a misappropriation and conversion to the prejudice of the owner. Conversion is unauthorized assumption an exercise of the right of ownership over goods and chattels belonging to another, resulting in the alteration of their condition or exclusion of the owner's rights.

In ***Allied Bank Corporation v. Secretary Ordonez, 192 SCRA 246, it was held that*** *under Section 13 of Presidential Decree No. 115, the failure of an entrustee to turn over the proceeds of sale of the goods covered by the Trust Receipt, or to return said goods if they are not sold, is punishable as estafa Article 315 (1) (b).*

On issuance of a bouncing check

The issuance of check with insufficient funds may be held liable for estafa and Batas Pambansa Blg. 22. Batas Pambansa Blg. 22 expressly provides that prosecution under said law is without prejudice to any liability for violation of any provision in the Revised Penal Code. Double Jeopardy may not be invoked because a violation of Batas Pambansa Blg. 22 is a malum prohibitum and is being punished as a crime against the public interest for undermining the banking system of the country, while under the RevisedPenal Code, the crime is malum in se which requires criminal intent and damage to the payee and is a crime against property.

In estafa, the check must have been issued as a reciprocal consideration for parting of goods (kaliwaan). There must be concomitance. The deceit must be prior to or simultaneous with damage done, that is, seller relied on check to part with goods. If it is issued after parting with goods as in credit accommodation only, there is no estafa. If the check is issued for a pre-existing obligation, there is no estafa as damage had already been done. The drawer is liable under Batas Pambansa Blg. 22.

For criminal liability to attach under Batas Pambansa Blg. 22, it is enough that the check was issued to "apply on account or for value" and upon its presentment it was dishonored by the drawee bank for insufficiency of funds, provided that the drawer had been notified of the dishonor and inspite of such notice fails to pay the holder of the check the full amount due thereon within five days from notice.

Under Batas Pambansa Blg. 22, a drawer must be given notice of dishonor and given five banking days from notice within which to deposit or pay the amount stated in the check to negate the presumtion that drawer knew of the insufficiency. After this period, it is conclusive that drawer knew of the insufficiency, thus there is no more defense to the prosecution under Batas Pambansa Blg. 22.

The mere issuance of any kind of check regardless of the intent of the parties, whether the check is intended to serve merely as a guarantee or as a deposit, makes the drawer liable under Batas Pambansa Blg. 22 if the check bounces. As a matter of public policy, the issuance of a worthless check is a public nuisance and must be abated.

In ***De Villa v. CA, decided April 18, 1991,*** *it was held that under Batas Pambansa Blg. 22, there is no distinction as to the kind of check issued. As long as it is delivered within Philippine territory, the Philippine courts have jurisdiction. Even if the check is only presented to and dishonored in a Philippine bank, Batas Pambansa Blg. 22 applies. This is true in the case of dollar or foreign currency checks. Where the law makes no distinction, none should be made.*

In ***People v. Nitafan,*** *it was held that as long as instrument is a check under the negotiable instrument law, it is covered by Batas Pambansa Blg. 22. A memorandum*

check is not a promissory note, it is a check which have the word "memo," "mem", "memorandum" written across the face of the check which signifies that if the holder upon maturity of the check presents the same to the drawer, it will be paid absolutely. But there is no prohibition against drawer from depositing memorandum check in a bank. Whatever be the agreement of the parties in respect of the issuance of a check is inconsequential to a violation to Batas Pambansa Blg. 22 where the check bounces.

But overdraft or credit arrangement may be allowed by banks as to their preferred clients and Batas Pambansa Blg. 22 does not apply. If check bounces, it is because bank has been remiss in honoring agreement.

The check must be presented for payment within a 90-day period. If presented for payment beyond the 90 day period and the drawer's funds are insufficient to cover it, there is no Batas Pambansa Blg. 22 violation.

*Where check was issued prior to August 8, 1984, when Circular No. 12 of the Department of the Justice took effect, and the drawer relied on the then prevailing Circular No. 4 of the Ministry of Justice to the effect that checks issued as part of an arrangement/agreement of the parties to guarantee or secure fulfillment of an obligation are not covered by Batas Pambansa Blg. 22, no criminal liability should be incurred by the drawer. Circular should not be given retroactive effect. (**Lazaro v. CA, November 11, 1993, citing People v. Alberto, October 28, 1993**)*

Article 316. Other Forms of Swindling

Under paragraph 1 – By conveying, selling, encumbering, or mortgaging any real property, pretending to be the owner of the same

Elements

1. There is an immovable, such as a parcel of land or a building;
2. Offender who is not the owner represents himself as the owner thereof;
3. Offender executes an act of ownership such as selling, leasing, encumbering or mortgaging the real property;
4. The act is made to the prejudice to the owner or a third person.

Under paragraph 2 – by disposing of real property as free from encumbrance, although such encumbrance be not recorded

Elements

1. The thing disposed is a real property:
2. Offender knew that the real property was encumbered, whether the encumbrance is recorded or not;
3. There must be express representation by offender that the real property is free from encumbrance;
4. The act of disposing of the real property is made to the damage of another.

Under paragraph 3 – by wrongfully taking by the owner of his personal property from its lawful possessor

Elements

1. Offender is the owner of personal property;

2. Said personal property is in the lawful possession of another;

3. Offender wrongfully takes it from its lawful possessor;

4. Prejudice is thereby caused to the possessor or third person.

Under paragraph 4 – by executing any fictitious contract to the prejudice of another

Under paragraph 5 – by accepting any compensation for services not rendered or for labor not performed

Under paragraph 6 – by selling, mortgaging or encumbering real property or properties with which the offender guaranteed the fulfillment of his obligation as surety

Elements

1. Offender is a surety in a bond given in a criminal or civil action;

2. He guaranteed the fulfillment of such obligation with his real property or properties;

3. He sells, mortgages, or in any manner encumbers said real property;

4. Such sale, mortgage or encumbrance is without express authority from the court, or made before the cancellation of his bond, or before being relieved from the obligation contracted by him.

Article 317. Swindling A Minor

Elements

1. Offender takes advantage of the inexperience or emotions or feelings of a minor;

2. He induces such minor to assume an obligation or to give release or to execute a transfer of any property right;

3. The consideration is some loan of money, credit or other personal property;

4. The transaction is to the detriment of such minor.

Article 318. Other deceits

Acts punished

1. Defrauding or damaging another by any other deceit not mentioned in the preceding articles;

2. Interpreting dreams, by making forecasts, by telling fortunes, or by taking advantage or the credulity of the public in any other similar manner, for profit or gain.

Article 319. Removal, Sale or Pledge of Mortgaged Property

Acts punished

1. Knowingly removing any personal property mortgaged under the Chattel Mortgage law to any province or city other than the one in which it was located at the time of execution of the mortgage, without the written consent of the mortgagee or his executors, administrators or assigns;

   Elements:

   1. Personal property is mortgaged under the Chattel Mortgage Law;
   2. Offender knows that such property is so mortgaged;
   3. Offender removes such mortgaged personal property to any province or city other than the one in which it was located at the time of the execution of the mortgage;
   4. The removal is permanent;
   5. There is no written consent of the mortgagee or his executors, administrators or assigns to such removal.

2. Selling or pledging personal property already pledged, or any part thereof, under the terms of the Chattel Mortgage Law, without the consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds of the province where such property is located.

   Elements:

   1. Personal property is already pledged under the terms of the Chattel Mortgage Law;
   2. Offender, who is the mortgagor of such property, sells or pledges the same or any part thereof;
   3. There is no consent of the mortgagee written on the back of the mortgage and noted on the record thereof in the office of the register of deeds.

Arson

Kinds of arson

1. Arson, under Section 1 of **Presidential Decree No. 1613**;
2. Destructive arson, under **Article 320** of the Revised Penal Code, as amended by Republic Act No. 7659;
3. Other cases of arson, under **Section 3 of Presidential Decree No. 1613**.

Article 327. Who Are Liable for Malicious Mischief

Elements

1. Offender deliberately caused damage to the property of another;
2. Such act does not constitute arson or other crimes involving destruction;
3. The act of damaging another's property was committed merely for the sake of damaging it;

There is destruction of the property of another but there is no misappropriation. Otherwise, it would be theft if he gathers the effects of destruction.

Article 328. Special Case of Malicious Mischief

Acts punished

1. Causing damage to obstruct the performance of public functions;
2. Using any poisonous or corrosive substance;
3. Spreading any infection or contagion among cattle;
4. Causing damage to the property of the National Museum or National Library, or to any archive or registry, waterworks, road, promenade, or any other thing used is common by the pubic.

Article 329. Other Mischiefs

All other mischiefs not included in the next preceding article

Article 330. Damage and Obstruction to Means of Communication

This is committed by damaging any railway, telegraph or telephone lines.

Article 331. Destroying or Damaging Statues, Public Monuments, or Paintings

Article 332. Persons Exempt from Criminal Liability

Crimes involved in the exemption

1. Theft;
2. Estafa; and
3. Malicious mischief.

Persons exempted from criminal liability

1. Spouse, ascendants and descendants, or relatives by affinity in the same line;
2. Widowed spouse with respect to the property which belonged to the deceased spouse before the same passed into the possession of another
3. Brothers and sisters and brothers-in-law and sisters-in-law, if living together.

Only the relatives enumerated incur no liability if the crime relates to theft (not robbery), swindling, and malicious mischief. Third parties who participate are not exempt. The relationship between the spouses is not limited to legally married couples; the provision applies to live-in partners.

Estafa should not be complexed with any other crime in order for exemption to operate.

TITLE XI. CRIMES AGAINST CHASTITY

Crimes against chastity

1. Adultery (Art. 333);
2. Concubinage (Art. 334);
3. Acts of lasciviousness (Art. 336);
4. Qualified seduction (Art. 337);
5. Simple seduction (Art. 338);
6. Acts of lasciviousness with the consent of the offended party (Art. 339);
7. Corruption of minors (Art. 340);

8. White slave trade (Art. 34);

9. Forcible abduction (Art. 342);

10. Consented abduction (Art. 343).

The crimes of adultery, concubinage, seduction, abduction and acts of lasciviousness are the so-called private crimes. They cannot be prosecuted except upon the complaint initiated by the offended party. The law regards the privacy of the offended party here as more important than the disturbance to the order of society. For the law gives the offended party the preference whether to sue or not to sue. But the moment the offended party has initiated the criminal complaint, the public prosecutor will take over and continue with prosecution of the offender. That is why under Article 344, if the offended party pardons the offender, that pardon will only be valid if it comes before the prosecution starts. The moment the prosecution starts, the crime has already become public and it is beyond the offended party to pardon the offender.

Article 333. Who Are Guilty of Adultery

Elements

1. The woman is married;

2. She has sexual intercourse with a man not her husband;

3. As regards the man with whom she has sexual intercourse, he must know her to be married.

Adultery is a crime not only of the married woman but also of the man who had intercourse with a married woman knowing her to be married. Even if the man proves later on that he does not know the woman to be married, at the beginning, he must still be included in the complaint or information. This is so because whether he knows the woman to be married or not is a matter of defense and its up to him to ventilate that in formal investigations or a formal trial.
If after preliminary investigation, the public prosecutor is convinced that the man did not know that the woman is married, then he could simply file the case against the woman.

The acquittal of the woman does not necessarily result in the acquittal of her co-accused.

In order to constitute adultery, there must be a joint physical act. Joint criminal intent is not necessary. Although the criminal intent may exist in the mind of one of the parties to the physical act, there may be no such intent in the mind of the other party. One may be guilty of the criminal intent, the other innocent, and yet the joint physical act necessary to constitute the adultery may be complete. So, if the man had no knowledge that the woman was married, he would be innocent insofar as the crime of adultery is concerned but the woman would still be guilty; the former would have to be acquitted and the latter found guilty, although they were tried together.

A husband committing concubinage may be required to support his wife committing adultery under the rule in pari delicto.

There is no frustrated adultery because of the nature of the offense.

For adultery to exist, there must be a marriage although it be subsequently annulled. There is no adultery, if the marriage is void from the beginning.

Adultery is an instantaneous crime which is consummated and completed at the moment of the carnal union. Each sexual intercourse constitutes a crime of adultery. Adultery is not a continuing crime unlike concubinage.

Illustration:

Madamme X is a married woman residing in Pasay City. He met a man, Y, at Roxas Boulevard. She agreed to go with to Baguio City, supposedly to come back the next day. When they were in Bulacan, they stayed in a motel, having sexual intercourse there. After that, they proceeded again and stopped at Dagupan City, where they went to a motel and had sexual intercourse.

There are two counts of adultery committed in this instance: one adultery in Bulacan, and another adultery in Dagupan City. Even if it involves the same man, each intercourse is a separate crime of adultery.

Article 334. Concubinage

Acts punished

1. Keeping a mistress in the conjugal dwelling;

2. Having sexual intercourse, under scandalous circumstances;

3. Cohabiting with her in any other place.

Elements

1. The man is married;

2. He is either –

    a. Keeping a mistress in the conjugal dwelling;

    b. Having sexual intercourse under scandalous circumstances with a woman who is not his wife; or

    c. Cohabiting with a woman who is not his wife in any other place;

3. As regards the woman, she knows that the man is married.

With respect to concubinage the same principle applies: only the offended spouse can bring the prosecution. This is a crime committed by the married man, the husband. Similarly, it includes the woman who had a relationship with the married man.

It has been asked why the penalty for adultery is higher than concubinage when both crimes are infidelities to the marital vows. The reason given for this is that when the wife commits adultery, there is a probability that she will bring a stranger into the family. If the husband commits concubinage, this probability does not arise because the mother of the child will always carry the child with her. So even if the husband brings with him the child, it is clearly known that the child is a stranger. Not in the case of a married woman who may bring a child to the family under the guise of a legitimate child. This is the reason why in the former crime the penalty is higher than the latter.

Unlike adultery, concubinage is a continuing crime.

Article 335. Rape

This has been repealed by Republic Act No. 8353 or the **Anti-Rape Law of 1997**. See **Article 266-A.**

Article 336. Acts of Lasciviousness

Elements

1. Offender commits any act of lasciviousness or lewdness;

2. It is done under any of the following circumstances:

a. By using force or intimidation;

b. When the offended party is deprived or reason of otherwise unconscious; or

c. When the offended party is another person of either sex.

Note that there are two kinds of acts of lasciviousness under the Revised Penal Code: (1) under Article 336, and (2) under Article 339.

1. *Article 336. Acts of Lasciviousness*

Under this article, the offended party may be a man or a woman. The crime committed, when the act performed with lewd design was perpetrated under circumstances which would have brought about the crime of rape if sexual intercourse was effected, is acts of lasciviousness under this article. This means that the offended party is either –

(1) under 12 years of age; or

(2) being over 12 years of age, the lascivious acts were committed on him or her through violence or intimidation, or while the offender party was deprived of reason, or otherwise unconscious.

2. *Article 339. Acts of Lasciviousness with the Consent of the Offended Party:*

Under this article, the victim is limited only to a woman. The circumstances under which the lascivious acts were committed must be that of qualified seduction or simple seduction, that is, the offender took advantage of his position of ascendancy over the offender woman either because he is a person in authority, a domestic, a househelp, a priest, a teacher or a guardian, or there was a deceitful promise of marriage which never would really be fulfilled.

See Article 339.

Always remember that there can be no frustration of acts of lasciviousness, rape or adultery because no matter how far the offender may have gone towards the realization of his purpose, if his participation amounts to performing all the acts of execution, the felony is necessarily produced as a consequence thereof.

Intent to rape is not a necessary element of the crime of acts of lasciviousness. Otherwise, there would be no crime of attempted rape.

Article 337. Qualified Seduction

Acts punished

1. Seduction of a virgin over 12 years and under 18 years of age by certain persons, such as a person in authority, priest, teacher; and

Elements

1. Offended party is a virgin, which is presumed if she is unmarried and of good reputation;

2. She is over 12 and under 18 years of age;

3. Offender has sexual intercourse with her;

4. There is abuse of authority, confidence or relationship on the part of the offender.

2. Seduction of a sister by her brother, or descendant by her ascendant, regardless of her age or reputation.

Person liable

1. Those who abused their authority –
    a. Person in public authority;
    b. Guardian;
    c. Teacher;
    d. Person who, in any capacity, is entrusted with the education or custody of the woman seduced;
2. Those who abused confidence reposed in them –
    a. Priest;
    b. House servant;
    c. Domestic;
3. Those who abused their relationship –
    a. Brother who seduced his sister;
    b. Ascendant who seduced his descendant.

This crime also involves sexual intercourse. The offended woman must be over 12 but below 18 years.

The distinction between qualified seduction and simple seduction lies in the fact, among others, that the woman is a virgin in qualified seduction, while in simple seduction, it is not necessary that the woman be a virgin. It is enough that she is of good repute.

For purposes of qualified seduction, virginity does not mean physical virginity. It means that the offended party has not had any experience before.

Although in qualified seduction, the age of the offended woman is considered, if the offended party is a descendant or a sister of the offender – no matter how old she is or whether she is a prostitute – the crime of qualified seduction is committed.

Illustration:

If a person goes to a sauna parlor and finds there a descendant and despite that, had sexual intercourse with her, regardless of her reputation or age, the crime of qualified seduction is committed.

In the case of a teacher, it is not necessary that the offended woman be his student. It is enough that she is enrolled in the same school.

Deceit is not necessary in qualified seduction. Qualified seduction is committed even though no deceit intervened or even when such carnal knowledge was voluntary on the part of the virgin. This is because in such a case, the law takes for granted the existence of the deceit as an integral element of the crime and punishes it with greater severity than it does the simple seduction, taking into account the abuse of confidence on the part of the agent. Abuse of confidence here implies fraud.

Article 338. Simple Seduction

Elements

1. Offender party is over 12 and under 18 years of age;
2. She is of good reputation, single or widow;

3. Offender has sexual intercourse with her;

4. It is committed by means of deceit.

This crime is committed if the offended woman is single or a widow of good reputation, over 12 and under 18 years of age, the offender has carnal knowledge of her, and the offender resorted to deceit to be able to consummate the sexual intercourse with her.

The offended woman must be under 18 but not less than 12 years old; otherwise, the crime is statutory rape.

Unlike in qualified seduction, virginity is not essential in this crime. What is required is that the woman be unmarried and of good reputation. Simple seduction is not synonymous with loss of virginity. If the woman is married, the crime will be adultery.

The failure to comply with the promise of marriage constitutes the deceit mentioned in the law.

Article 339. Acts of Lasciviousness with the Consent of the Offender Party

Elements

1. Offender commits acts of lasciviousness or lewdness;

2. The acts are committed upon a woman who is a virgin or single or widow of good reputation, under 18 years of age but over 12 years, or a sister or descendant, regardless of her reputation or age;

3. Offender accomplishes the acts by abuse of authority, confidence, relationship, or deceit.

Article 340. Corruption of Minors

This punishes any person who shall promote or facilitate the prostitution or corruption of persons under age to satisfy the lust of another.

It is not required that the offender be the guardian or custodian of the minor.

It is not necessary that the minor be prostituted or corrupted as the law merely punishes the act of promoting or facilitating the prostitution or corruption of said minor and that he acted in order to satisfy the lust of another.

Article 341. White Slave Trade

Acts punished

1. Engaging in the business of prostitution;

2. Profiting by prostitution;

3. Enlisting the services of women for the purpose of prostitution.

Article 342. Forcible Abduction

Elements

1. The person abducted is any woman, regardless or her age, civil status, or reputation;

2. The abduction is against her will;

3. The abduction is with lewd designs.

A woman is carried against her will or brought from one place to another against her will with lewd design.

If the element of lewd design is present, the carrying of the woman would qualify as abduction; otherwise, it would amount to kidnapping. If the woman was only brought

to a certain place in order to break her will and make her agree to marry the offender, the crime is only grave coercion because the criminal intent of the offender is to force his will upon the woman and not really to restrain the woman of her liberty.

If the offended woman is under 12 years old, even if she consented to the abduction, the crime is forcible abduction and not consented abduction.

Where the offended woman is below the age of consent, even though she had gone with the offender through some deceitful promises revealed upon her to go with him and they live together as husband and wife without the benefit of marriage, the ruling is that forcible abduction is committed by the mere carrying of the woman as long as that intent is already shown. In other words, where the man cannot possibly give the woman the benefit of an honorable life, all that man promised are just machinations of a lewd design and, therefore, the carrying of the woman is characterized with lewd design and would bring about the crime of abduction and not kidnapping. This is also true if the woman is deprived of reason and if the woman is mentally retardate. Forcible abduction is committed and not consented abduction.

Lewd designs may be demonstrated by the lascivious acts performed by the offender on her. Since this crime does not involve sexual intercourse, if the victim is subjected to this, then a crime of rape is further committed and a complex crime of forcible abduction with rape is committed.

The taking away of the woman may be accomplished by means of deceit at the beginning and then by means of violence and intimidation later.

The virginity of the complaining witness is not a determining factor in forcible abduction.

In order to demonstrate the presence of the lewd design, illicit criminal relations with the person abducted need not be shown. The intent to seduce a girl is sufficient.

If there is a separation in fact, the taking by the husband of his wife against her will constitutes grave coercion.

<u>Distinction between forcible abduction and illegal detention:</u>

When a woman is kidnapped with lewd or unchaste designs, the crime committed is forcible abduction.

When the kidnapping is without lewd designs, the crime committed is illegal detention.

But where the offended party was forcibly taken to the house of the defendant to coerce her to marry him, it was held that only grave coercion was committed and not illegal detention.

Article 343. Consented Abduction

<u>Elements</u>

1. Offended party is a virgin;
2. She is over 12 and under 18 years of age;
3. Offender takes her away with her consent, after solicitation or cajolery;
4. The taking away is with lewd designs.

*Where several persons participated in the forcible abduction and these persons also raped the offended woman, the original ruling in the case of **People v. Jose** is that there would be one count of forcible abduction with rape and then each of them will answer for his own rape and the rape of the others minus the first rape which was*

complexed with the forcible abduction. This ruling is no longer the prevailing rule. The view adopted in cases of similar nature is to the effect that where more than one person has effected the forcible abduction with rape, all the rapes are just the consummation of the lewd design which characterizes the forcible abduction and, therefore, there should only be one forcible abduction with rape.

In the crimes involving rape, abduction, seduction, and acts of lasciviousness, the marriage by the offender with the offended woman generally extinguishes criminal liability, not only of the principal but also of the accomplice and accessory. However, the mere fact of marriage is not enough because it is already decided that if the offender marries the offended woman without any intention to perform the duties of a husband as shown by the fact that after the marriage, he already left her, the marriage would appear as having been contracted only to avoid the punishment. Even with that marriage, the offended woman could still prosecute the offender and that marriage will not have the effect of extinguishing the criminal liability.

Pardon by the offended woman of the offender is not a manner of extinguishing criminal liability but only a bar to the prosecution of the offender. Therefore, that pardon must come before the prosecution is commenced. While the prosecution is already commenced or initiated, pardon by the offended woman will no longer be effective because pardon may preclude prosecution but not prevent the same.

All these private crimes – except rape – cannot be prosecuted de officio. If any slander or written defamation is made out of any of these crimes, the complaint of the offended party is till necessary before such case for libel or oral defamation may proceed. It will not prosper because the court cannot acquire jurisdiction over these crimes unless there is a complaint from the offended party. The paramount decision of whether he or she wanted the crime committed on him or her to be made public is his or hers alone, because the indignity or dishonor brought about by these crimes affects more the offended party than social order. The offended party may prefer to suffer the outrage in silence rather than to vindicate his honor in public.

In the crimes of rape, abduction and seduction, if the offended woman had given birth to the child, among the liabilities of the offender is to support the child. This obligation to support the child may be true even if there are several offenders. As to whether all of them will acknowledge the child, that is a different question because the obligation to support here is not founded on civil law but is the result of a criminal act or a form of punishment.

It has been held that where the woman was the victim of the said crime could not possibly conceive anymore, the trial court should not provide in its sentence that the accused, in case a child is born, should support the child. This should only be proper when there is a probability that the offended woman could give birth to an offspring.

TITLE XII. CRIMES AGAINST THE CIVIL STATUS OF PERSONS

Crimes against the civil status of persons

1. Simulation of births, substitution of one child for another and concealment or abandonment of a legitimate child (art. 347);

2. Usurpation of civil status (Art. 348);

3. Bigamy (Art. 349);

4. Marriage contracted against provisions of law (Art. 350);

5. Premature marriages (Art. 351);

6. Performance of illegal marriage ceremony (Art. 352).

Article 347. Simulation of Births, Substitution of One Child for Another, and Concealment of Abandonment of A Legitimate Child

Acts punished

1. Simulation of births;

2. Substitution of one child for another;

3. Concealing or abandoning any legitimate child with intent to cause such child to lose its civil status.

Illustration:

People who have no child and who buy and adopt the child without going through legal adoption.

If the child is being kidnapped and they knew that the kidnappers are not the real parents of their child, then simulation of birth is committed. If the parents are parties to the simulation by making it appear in the birth certificate that the parents who bought the child are the real parents, the crime is not falsification on the part of the parents and the real parents but simulation of birth.

Questions & Answers

1. A woman who has given birth to a child abandons the child in a certain place to free herself of the obligation and duty of rearing and caring for the child. What crime is committed by the woman?

The crime committed is abandoning a minor under Article 276.

2. Suppose that the purpose of the woman is abandoning the child is to preserve the inheritance of her child by a former marriage, what then is the crime committed?

The crime would fall under the second paragraph of Article 347. The purpose of the woman is to cause the child to lose its civil status so that it may not be able to share in the inheritance.

3. Suppose a child, one day after his birth, was taken to and left in the midst of a lonely forest, and he was found by a hunter who took him home. What crime was committed by the person who left it in the forest?

*It is attempted infanticide, as the act of the offender is an attempt against the life of the child. See **US v. Capillo, et al., 30 Phil. 349.***

Article 349. Usurpation of Civil Status

This crime is committed when a person represents himself to be another and assumes the filiation or the parental or conjugal rights of such another person.

Thus, where a person impersonates another and assumes the latter's right as the son of wealthy parents, the former commits a violation of this article.

The term "civil status" includes one's public station, or the rights, duties, capacities and incapacities which determine a person to a given class. It seems that the term "civil status" includes one's profession.

Article 349. Bigamy

Elements

1. Offender has been legally married;

2. The marriage has not been legally dissolved or, in case his or her

spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;

3. He contracts a second or subsequent marriage;

4. The second or subsequent marriage has all the essential requisites for validity.

The crime of bigamy does not fall within the category of private crimes that can be prosecuted only at the instance of the offended party. The offense is committed not only against the first and second wife but also against the state.

Good faith is a defense in bigamy.

Failure to exercise due diligence to ascertain the whereabouts of the first wife is bigamy through reckless imprudence.

The second marriage must have all the essential requisites for validity were it not for the existence of the first marriage.

A judicial declaration of the nullity of a marriage, that is, that the marriage was void ab initio, is now required.

One convicted of bigamy may also be prosecuted for concubinage as both are distinct offenses. The first is an offense against civil status, which may be prosecuted at the instance of the state; the second is an offense against chastity, and may be prosecuted only at the instance of the offended party. The test is not whether the defendant has already been tried for the same act, but whether he has been put in jeopardy for the same offense.

One who, although not yet married before, knowingly consents to be married to one who is already married is guilty of bigamy knowing that the latter's marriage is still valid and subsisting.

Distinction between bigamy and illegal marriage:

Bigamy is a form of illegal marriage. The offender must have a valid and subsisting marriage. Despite the fact that the marriage is still subsisting, he contracts a subsequent marriage.

Illegal marriage includes also such other marriages which are performed without complying with the requirements of law, or such premature marriages, or such marriage which was solemnized by one who is not authorized to solemnize the same.

For bigamy to be committed, the second marriage must have all the attributes of a valid marriage.

Article 350. Illegal Marriage

Elements

1. Offender contracted marriage;

2. He knew at the time that –

   a. The requirements of the law were not complied with; or

   b. The marriage was in disregard of a legal impediment.

Marriages contracted against the provisions of laws

1. The marriage does not constitute bigamy.

2. The marriage is contracted knowing that the requirements of the law have not been complied with or in disregard of legal impediments.

3. One where the consent of the other was obtained by means of violence, intimidation or fraud.

4. If the second marriage is void because the accused knowingly contracted it without complying with legal requirements as the marriage license, although he was previously married.

5. Marriage solemnized by a minister or priest who does not have the required authority to solemnize marriages.

Article 351. Premature Marriage

Persons liable

1. A widow who is married within 301 days from the date of the death of her husband, or before having delivered if she is pregnant at the time of his death;

2. A woman who, her marriage having been annulled or dissolved, married before her delivery or before the expiration of the period of 301 days after the date of the legal separation.

The Supreme Court has already taken into account the reason why such marriage within 301 days is made criminal, that is, because of the probability that there might be a confusion regarding the paternity of the child who would be born. If this reason does not exist because the former husband is impotent, or was shown to be sterile such that the woman has had no child with him, that belief of the woman that after all there could be no confusion even if she would marry within 301 days may be taken as evidence of good faith and that would negate criminal intent.

TITLE XIII. CRIMES AGAINST HONOR

Crimes against honor

1. Libel by means of writings or similar means (Art. 355);

2. Threatening to publish and offer to prevent such publication for a compensation (Art. 356);

3. Prohibited publication of acts referred to in the course of official proceedings (Art. 357);

4. Slander (Art. 358);

5. Slander by deed (Art. 359);

6. Incriminating innocent person (Art. 363);

7. Intriguing against honor (Art. 364).

Article 353. Definition of Libel

A libel is a public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstances tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead.

Elements:

1. There must be an imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status, or circumstance;

2. The imputation must be made publicly;

3. It must be malicious;

4. The imputation must be directed at a natural or juridical person, or one who is dead;

5. The imputation must tend to cause the dishonor, discredit or contempt of the person defamed.

Distinction between malice in fact and malice in law

Malice in fact is the malice which the law presumes from every statement whose tenor is defamatory. It does not need proof. The mere fact that the utterance or statement is defamatory negates a legal presumption of malice.

In the crime of libel, which includes oral defamation, there is no need for the prosecution to present evidence of malice. It is enough that the alleged defamatory or libelous statement be presented to the court verbatim. It is the court which will prove whether it is defamatory or not. If the tenor of the utterance or statement is defamatory, the legal presumption of malice arises even without proof.

Malice in fact becomes necessary only if the malice in law has been rebutted. Otherwise, there is no need to adduce evidence of malice in fact. So, while malice in law does not require evidence, malice in fact requires evidence.

Malice in law can be negated by evidence that, in fact, the alleged libelous or defamatory utterance was made with good motives and justifiable ends or by the fact that the utterance was privileged in character.

In law, however, the privileged character of a defamatory statement may be absolute or qualified.

When the privileged character is said to be absolute, the statement will not be actionable whether criminal or civil because that means the law does not allow prosecution on an action based thereon.

Illustration:

As regards the statements made by Congressmen while they are deliberating or discussing in Congress, when the privileged character is qualified, proof of malice in fact will be admitted to take the place of malice in law. When the defamatory statement or utterance is qualifiedly privileged, the malice in law is negated. The utterance or statement would not be actionable because malice in law does not exist. Therefore, for the complainant to prosecute the accused for libel, oral defamation or slander, he has to prove that the accused was actuated with malice (malice in fact) in making the statement.

When a libel is addressed to several persons, unless they are identified in the same libel, even if there are several persons offended by the libelous utterance or statement, there will only be one count of libel.

If the offended parties in the libel were distinctly identified, even though the libel was committed at one and the same time, there will be as many libels as there are persons dishonored.

Illustration:

If a person uttered that "All the Marcoses are thieves," there will only be one libel because these particular Marcoses regarded as thieves are not specifically identified.

If the offender said, "All the Marcoses – the father, mother and daughter are thieves." There will be three counts of libel because each person libeled is distinctly dishonored.

If you do not know the particular persons libeled, you cannot consider one libel as giving rise to several counts of libel. In order that one defamatory utterance or imputation may be considered as having dishonored more than one person, those persons dishonored must be identified. Otherwise, there will only be one count of libel.

Note that in libel, the person defamed need not be expressly identified. It is enough that

he could possibly be identified because "innuendos may also be a basis for prosecution for libel. As a matter of fact, even a compliment which is undeserved, has been held to be libelous.

The crime is libel is the defamation is in writing or printed media.

The crime is slander or oral defamation if it is not printed.

Even if what was imputed is true, the crime of libel is committed unless one acted with good motives or justifiable end. Poof of truth of a defamatory imputation is not even admissible in evidence, unless what was imputed pertains to an act which constitutes a crime and when the person to whom the imputation was made is a public officer and the imputation pertains to the performance of official duty. Other than these, the imputation is not admissible.

When proof of truth is admissible

1. When the act or omission imputed constitutes a crime regardless of whether the offended party is a private individual or a public officer;

2. When the offended party is a government employee, even if the act or omission imputed does not constitute a crime, provided if its related to the discharged of his official duties.

Requisites of defense in defamation

1. If it appears that the matter charged as libelous is true;

2. It was published with good motives;

3. It was for justifiable ends.

If a crime is a private crime, it cannot be prosecuted de officio. A complaint from the offended party is necessary.

Article 355. Libel by Means of Writings or Similar Means

A libel may be committed by means of –

1. Writing;

2. Printing;

3. Lithography;

4. Engraving;

5. Radio;

6. Photograph;

7. Painting;

8. Theatrical exhibition;

9. Cinematographic exhibition; or

10. Any similar means.

Article 356. Threatening to Publish and Offer to Prevent Such Publication for A Compensation

Acts punished

1. Threatening another to publish a libel concerning him, or his parents, spouse, child, or other members of his family;

2. Offering to prevent the publication of such libel for compensation or money consideration.

Blackmail – In its metaphorical sense, blackmail may be defined as any unlawful extortion of money by threats of accusation or exposure. Two words are expressive of

*the crime – hush money. (**US v. Eguia, et al., 38 Phil. 857**) Blackmail is possible in (1) light threats under Article 283; and (2) threatening to publish, or offering to prevent the publication of, a libel for compensation, under Article 356.*

Article 357. Prohibited Publication of Acts Referred to in the Course of Official Proceedings

Elements

1. Offender is a reporter, editor or manager of a newspaper, daily or magazine;
2. He publishes facts connected with the private life of another;
3. Such facts are offensive to the honor, virtue and reputation of said person.

The provisions of Article 357 constitute the so-called "Gag Law."

Article 358. Slander

Slander is oral defamation. There are tow kinds of oral defamation:

(1) Simple slander; and

(2) Grave slander, when it is of a serious and insulting nature.

Article 359. Slander by Deed

Elements

1. Offender performs any act not included in any other crime against honor;
2. Such act is performed in the presence of other person or persons;
3. Such act casts dishonor, discredit or contempt upon the offended party.

Slander by deed refers to performance of an act, not use of words.

Two kinds of slander by deed

1. Simple slander by deed; and
2. Grave slander by deed, that is, which is of a serious nature.

Whether a certain slanderous act constitutes slander by deed of a serious nature or not, depends on the social standing of the offended party, the circumstances under which the act was committed, the occasion, etc.

Article 363. Incriminating Innocent Persons

Elements

1. Offender performs an act;
2. By such an act, he incriminates or imputes to an innocent person the commission of a crime;
3. Such act does not constitute perjury.

This crime cannot be committed through verbal incriminatory statements. It is defined as an act and, therefore, to commit this crime, more than a mere utterance is required.

If the incriminating machination is made orally, the crime may be slander or oral defamation.

If the incriminatory machination was made in writing and under oath, the crime may be perjury if there is a willful falsity of the statements made.

If the statement in writing is not under oath, the crime may be falsification if the crime is a material matter made in a written statement which is required by law to have been rendered.

As far as this crime is concerned, this has been interpreted to be possible only in the so-called planting of evidence.

Article 364. Intriguing against Honor

This crime is committed by any person who shall make any intrigue which has for its principal purpose to blemish the honor or reputation of another person.

Intriguing against honor is referred to as gossiping. The offender, without ascertaining the truth of a defamatory utterance, repeats the same and pass it on to another, to the damage of the offended party. Who started the defamatory news is unknown.

Distinction between intriguing against honor and slander:

When the source of the defamatory utterance is unknown and the offender simply repeats or passes the same, the crime is intriguing against honor.

If the offender made the utterance, where the source of the defamatory nature of the utterance is known, and offender makes a republication thereof, even though he repeats the libelous statement as coming from another, as long as the source is identified, the crime committed by that offender is slander.

Distinction between intriguing against honor and incriminating an innocent person:

In intriguing against honor, the offender resorts to an intrigue for the purpose of blemishing the honor or reputation of another person.

In incriminating an innocent person, the offender performs an act by which he directly incriminates or imputes to an innocent person the commission of a crime.

TITLE XVI. CRIMINAL NEGLIGENCE

Article 365. Imprudence and Negligence

Quasi-offenses punished

1. Committing through reckless imprudence any act which, had it been intentional, would constitute a grave or less grave felony or light felony;

2. Committing through simple imprudence or negligence an act which would otherwise constitute a grave or a less serious felony;

3. Causing damage to the property of another through reckless imprudence or simple imprudence or negligence;

4. Causing through simple imprudence or negligence some wrong which, if done maliciously, would have constituted a light felony.

Distinction between reckless imprudence and negligence:

The two are distinguished only as to whether the danger that would be impending is easily perceivable or not. If the danger that may result from the criminal negligence is clearly perceivable, the imprudence is reckless. If it could hardly be

perceived, the criminal negligence would only be simple.

There is no more issue on whether culpa is a crime in itself or only a mode of incurring criminal liability. It is practically settled that criminal negligence is only a modality in incurring criminal liability. This is so because under Article 3, a felony may result from dolo or culpa.

Since this is the mode of incurring criminal liability, if there is only one carelessness, even if there are several results, the accused may only be prosecuted under one count for the criminal negligence. So there would only be one information to be filed, even if the negligence may bring about resulting injuries which are slight.

Do not separate the accusation from the slight physical injuries from the other material result of the negligence.

If the criminal negligence resulted, for example, in homicide, serious physical injuries and slight physical injuries, do not join only the homicide and serious physical injuries in one information for the slight physical injuries. You are not complexing slight when you join it in the same information. It is just that you are not splitting the criminal negligence because the real basis of the criminal liability is the negligence.

If you split the criminal negligence, that is where double jeopardy would arise.