CRIMINAL LAW

Criminal law is that branch of municipal law which defines crimes, treats of their nature and provides for their punishment.

It is that branch of public substantive law which defines offenses and prescribes their penalties. It is substantive because it defines the state's right to inflict punishment and the liability of the offenders. It is public law because it deals with the relation of the individual with the state.

Limitations on the power of Congress to enact penal laws

1. Must be general in application.

2. Must not partake of the nature of an *ex post facto* law.

3. Must not partake of the nature of a bill of attainder.

4. Must not impose cruel and unusual punishment or excessive fines.

Characteristics of Criminal Law

1. Generality

2. Territoriality

3. Prospectivity.

GENERALITY

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

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

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

TERRITORIALITY

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

Terrestrial jurisdiction is the jurisdiction exercised over land.

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

Aerial jurisdiction is the jurisdiction exercised over the atmosphere.

The Archipelagic Rule

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

On the fluvial jurisdiction there is presently a departure from the accepted International Law Rule, because the Philippines adopted the

Archipelagic Rule. In the International Law Rule, when a strait within a country has a width of more than 6 miles, the center lane in excess of the 3 miles on both sides is considered international waters.

Question & Answer

If a foreign merchant vessel is in the center lane and a crime was committed there, under the International Law Rule, what law will apply?

The law of the country where that vessel is registered will apply, because the crime is deemed to have been committed in the high seas.

Under the Archipelagic Rule as declared in Article 1, of the Constitution, all waters in the archipelago regardless of breadth width, or dimension are part of our national territory. Under this Rule, there is no more center lane, all these waters, regardless of their dimension or width are part of Philippine territory.

So if a foreign merchant vessel is in the center lane and a crime was committed, the crime will be prosecuted before Philippine courts.

Three international law theories on aerial jurisdiction

(1) The atmosphere over the country is free and not subject to the jurisdiction of the subjacent state, except for the protection of its national security and public order.

Under this theory, if a crime is committed on board a foreign aircraft at the atmosphere of a country, the law of that country does not govern unless the crime affects the national security.

(2) Relative Theory – The subjacent state exercises jurisdiction over its atmosphere only to the extent that it can effectively exercise control thereof. The Relative Theory

Under this theory, if a crime was committed on an aircraft which is already beyond the control of the subjacent state, the criminal law of that state will not govern anymore. But if the crime is committed in an aircraft within the atmosphere over a subjacent state which exercises control, then its criminal law will govern.

(3) Absolute Theory – The subjacent state has complete jurisdiction over the atmosphere above it subject only to innocent passage by aircraft of foreign country.

Under this theory, if the crime is committed in an aircraft, no matter how high, as long as it can establish that it is within the Philippine atmosphere, Philippine criminal law will govern. This is the theory adopted by the Philippines.

PROSPECTIVITY

This is also called irretrospectivity.

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

In some textbooks, an exemption is said to exist when the penal law is favorable to the offender, in which case it would have retroactive application; provided that the offender is not a habitual delinquent and there is no provision in the law against its retroactive application.

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

Rule of prospectivity also applies to administrative rulings and circulars

*In **Co v. CA, decided on October 28, 1993,** it was held that the principle of prospectivity of statutes also applies to administrative rulings and circulars. In this case, Circular No. 4 of the Ministry of Justice, dated December 15, 1981, provides that "where the check is issued as part of an arrangement to guarantee or secure the payment of an obligation, whether pre-existing or not, the drawer is not criminally liable for either estafa or violation of BP22." Subsequently, the administrative interpretation of was reversed in Circular No. 12, issued on August 8, 1984, such that the claim that the check was issued as a guarantee or part of an arrangement to secure an obligation or to facilitate collection, is no longer a valid defense for the prosecution of BP22. Hence, it was ruled in Que v. People that a check issued merely to guarantee the performance of an obligation is, nevertheless, covered by BP 22. But consistent with the principle of prospectivity, the new doctrine should not apply to parties who had relied on the old doctrine and acted on the faith thereof. No retrospective effect.*

Effect of repeal of penal law to liability of offender

In some commentaries, there are references as to whether the repeal is express or implied. What affects the criminal liability of an offender is not whether a penal law is expressly or impliedly repealed; it is whether it is absolutely or totally repealed, or relatively or partially repealed.

***Total or absolute, or partial or relative repeal.** -- As to the effect of repeal of penal law to the liability of offender, qualify your answer by saying whether the repeal is absolute or total or whether the repeal is partial or relative only.*

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

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

<u>Consequences if repeal of penal law is total or absolute</u>

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

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

not habitual delinquents even if they are already serving their sentence will receive the benefit of the repealing law. They are entitled to release.

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

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

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

Question & Answer

A, a prisoner, learns that he is already overstaying in jail because his jail guard, B, who happens to be a law student advised him that there is no more legal ground for his continued imprisonment, and B told him that he can go. A got out of jail and went home. Was there any crime committed?

As far as A, the prisoner who is serving sentence, is concerned, the crime committed is evasion of sentence.

As far as B, the jail guard who allowed A to go, is concerned, the crime committed is infidelity in the custody of prisoners.

<u>Consequences if repeal of penal law is partial or relative</u>

(1) *If a case is pending in court involving the violation of the repealed law, and the repealing law is more favorable to the accused, it shall be the one applied to him. So whether he is a habitual delinquent or not, if the case is still pending in court, the repealing law will be the one to apply unless there is a saving clause in the repealing law that it shall not apply to pending causes of action.*

(2) *If a case is already decided and the accused is already serving sentence by final judgment,* even if the repealing law is partial or relative, the crime still remains to be a crime. Those who are not habitual delinquents will benefit on the effect of that repeal, so that if the repeal is more lenient to them, it will be the repealing law that will henceforth apply to them.

For example, under the original law, the penalty is six years. Under the repealing law, it is four years. Those convicted under the original law will be subjected to the four-year penalty. This retroactive application will not be possible if there is a saving clause that provides that it should not be given retroactive effect.

Under Article 22, even if the offender is already convicted and serving sentence, a law which is beneficial shall be applied to him unless he is a habitual delinquent in accordance with Rule 5 of Article 62.

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

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

Implied repeals are not favored. It requires a competent court to declare an implied repeal. An implied repeal will take place when there is a law on a particular subject matter and a subsequent law is passed also on the same subject matter but is inconsistent with the first law, such that the two laws cannot stand together, one of the two laws must give way. It is the earlier that will give way to the later law because the later law expresses the recent legislative sentiment. So you can have an implied repeal when there are two inconsistent laws. When the earlier law does not expressly provide that it is repealing an earlier law, what has taken place here is implied repeal. If the two laws can be reconciled, the court shall always try to avoid an implied repeal. For example, under Article 9, light felonies are those infractions of the law for the commission of which a penalty of arresto mayor or a fine not exceeding P200.00 or both is provided. On the other hand, under Article 26, a fine whether imposed as a single or an alternative penalty, if it exceeds P6,000.00 but is not less than P 200.00, is considered a correctional penalty. These two articles appear to be inconsistent. So to harmonize them, the Supreme Court ruled that if the issue involves the prescription of the crime, that felony will be considered a light felony and, therefore, prescribes within two months. But if the issue involves prescription of the penalty, the fine of P200.00 will be considered correctional and it will prescribe within 10 years. Clearly, the court avoided the collision between the two articles.

Consequences if repeal of penal law is express or implied

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

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

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

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

BASIC MAXIMS IN CRIMINAL LAW

Doctrine of Pro Reo

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

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

Question & Answer

One boy was accused of parricide and was found guilty. This is punished by reclusion perpetua to death. Assuming you were the judge, would you give the accused the benefit of the Indeterminate Sentence Law (ISLAW)? The ISLAW does not apply when the penalty imposed is life imprisonment of death. Would you consider the penalty imposable or the penalty imposed, taking into consideration the mitigating circumstance of minority?

If you will answer "no", then you go against the Doctrine of Pro Reo because you can interpret the ISLAW in a more lenient manner. Taking into account the doctrine, we interpret the ISLAW to mean that the penalty imposable and not the penalty prescribed by law, since it is more favorable for the accused to interpret the law.

Nullum crimen, nulla poena sine lege

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

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

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

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

Actus non facit reum, nisi mens sit rea

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

Utilitarian Theory or Protective Theory

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

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

DEVELOPMENT OF CRIMINAL LAW IN THE PHILIPPINES

Code of Kalantiao

If you will be asked about the development of criminal law in the Philippines, do not start with the Revised Penal Code. Under the Code of Kalantiao, there were penal provisions. Under this code, if a man would have a relation with a married woman, she is penalized. Adultery is a crime during those days. Even offending religious things, such as gods, are penalized. The Code of Kalantiao has certain penal

provisions. The Filipinos have their own set of penology also.

Spanish Codigo Penal

When the Spanish Colonizers came, the Spanish Codigo Penal was made applicable and extended to the Philippines by Royal Decree of 1870. This was made effective in the Philippines in July 14, 1876.

Who is Rafael Del Pan?

He drafted a correctional code which was after the Spanish Codigo Penal was extended to the Philippines. But that correctional code was never enacted into law. Instead, a committee was organized headed by then Anacleto Diaz. This committee was the one who drafted the present Revised Penal Code.

The present Revised Penal Code

When a committee to draft the Revised Penal Code was formed, one of the reference that they took hold of was the correctional code of Del Pan. In fact, many provisions of the Revised Penal Code were no longer from the Spanish Penal Code; they were lifted from the correctional code of Del Pan. So it was him who formulated or paraphrased this provision making it simpler and more understandable to Filipinos because at that time, there were only a handful who understood Spanish.

Code of Crimes by Guevarra

During the time of President Manuel Roxas, a code commission was tasked to draft a penal code that will be more in keeping with the custom, traditions, traits as well as beliefs of the Filipinos. During that time, the code committee drafted the so-called Code of Crimes. This too, slept in Congress. It was never enacted into law. Among those who participated in drafting the Code of Crimes was Judge Guellermo Guevarra.

Since that Code of Crimes was never enacted as law, he enacted his own code of crimes. But it was the Code of Crimes that that was presented in the Batasan as Cabinet Bill no. 2. Because the code of crimes prepared by Guevarra was more of a moral code than a penal code, there were several oppositions against the code.

Proposed Penal Code of the Philippines

Through Assemblyman Estelito Mendoza, the UP Law Center formed a committee which drafted the Penal Code of the Philippines. This Penal Code of the Philippines was substituted as Cabinet Bill no. 2 and this has been discussed in the floor of the Batasang Pambansa. So the Code of Crimes now in Congress was not the Code of Crimes during the time of President Roxas. This is a different one. Cabinet Bill No. 2 is the Penal Code of the Philippines drafted by a code committee chosen by the UP Law Center, one of them was Professor Ortega. There were seven members of the code committee. It would have been enacted into law it not for the dissolution of the Batasang Pambansa dissolved. The Congress was planning to revive it so that it can be enacted into law.

Special Laws

During Martial Law, there are many Presidential Decrees issued aside from the special laws passed by the Philippine Legislature Commission. All these special laws, which are penal in character, are part of our Penal Code.

DIFFERENT PHILOSOPHIES UNDERLYING THE CRIMINAL LAW SYSTEM

1. Classical or Juristic Philosophy

2. Positivit or Realistic Philosophy

3. Ecletic or Mixed Philosophy

Classical or Juristic Philosophy

Best remembered by the maxim "An eye for an eye, a tooth for a tooth." [Note: If you want to impress the examiner, use the latin version – Oculo pro oculo, dente pro dente.]

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

Positivist or Realistic Philosophy

The purpose of penalty is reformation. There is great respect for the human element because the offender is regarded as socially sick who needs treatment, not punishment. Cages are like asylums, jails like hospitals. They are there to segregate the offenders from the "good" members of society.

From this philosophy came the jury system, where the penalty is imposed on a case to case basis after examination of the offender by a panel of social scientists which do not include lawyers as the panel would not want the law to influence their consideration.

Crimes are regarded as social phenomena which constrain a person to do wrong although not of his own volition. A tendency towards crime is the product of one's environment. There is no such thing as a natural born killer.

This philosophy is criticized as being too lenient.

Eclectic or Mixed Philosophy

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

Since the Revised Penal Code was adopted from the Spanish Codigo Penal, which in turn was copied from the French Code of 1810 which is classical in character, it is said that our Code is also classical. This is no longer true because with the American occupation of the Philippines, many provisions of common law have been engrafted into our penal laws. The Revised Penal Code today follows the mixed or eclectic philosophy. For example, intoxication of the offender is considered to mitigate his criminal liability, unless it is intentional or habitual; the age of the offender is considered; and the woman who killed her child to conceal her dishonor has in her favor a mitigating circumstance.

MALA IN SE AND MALA PROHIBITA

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

Note, however, that not all violations of special laws are mala prohibita. While intentional felonies are always mala in se, it does not follow that prohibited acts done in violation of special laws are always mala prohibita. Even if the crime is punished under a special law, if the

act punished is one which is inherently wrong, the same is malum in se, and, therefore, good faith and the lack of criminal intent is a valid defense; unless it is the product of criminal negligence or culpa.

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

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

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

<u>Distinction between crimes punished under the Revised Penal Code and crimes punished under special laws</u>

1. As to moral trait of the offender

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

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

2. As to use of good faith as defense

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

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

3. As to degree of accomplishment of the crime

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

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

4. As to mitigating and aggravating circumstances

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

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

5. As to degree of participation

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

   In crimes punished under special laws, the degree of participation of the offenders is not considered. All who perpetrated the prohibited act are penalized to the same extent. There is

no principal or accomplice or accessory to consider.

Questions & Answers

1. Three hijackers accosted the pilot of an airplane. They compelled the pilot to change destination, but before the same could be accomplished, the military was alerted. What was the crime committed?

Grave coercion. There is no such thing as attempted hijacking. Under special laws, the penalty is not imposed unless the act is consummated. Crimes committed against the provisions of a special law are penalized only when the pernicious effects, which such law seeks to prevent, arise.

2. A mayor awarded a concession to his daughter. She was also the highest bidder. The award was even endorsed by the municipal council as the most advantageous to the municipality. The losing bidder challenged the validity of the contract, but the trial court sustained its validity. The case goes to the Sandiganbayan and the mayor gets convicted for violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act). He appeals alleging his defenses raised in the Sandiganbayan that he did not profit from the transaction, that the contract was advantageous to the municipality, and that he did not act with intent to gain. Rule.

Judgment affirmed. The contention of the mayor that he did not profit anything from the transaction, that the contract was advantageous to the municipality, and that he did not act with intent to gain, is not a defense. The crime involved is malum prohibitum.

In the case of ***People v. Sunico,*** *an election registrar was prosecuted for having failed to include in the voter's register the name of a certain voter. There is a provision in the election law which proscribes any person from preventing or disenfranchising a voter from casting his vote. In trial, the election registrar raised as good faith as a defense. The trial court convicted him saying that good faith is not a defense in violation of special laws. On appeal, it was held by he Supreme Court that disenfranchising a voter from casting his vote is not wrong because there is a provision of law declaring it as a crime, but because with or without a law, that act is wrong. In other words, it is malum in se. Consequently, good faith is a defense. Since the prosecution failed to prove that the accused acted with malice, he was acquitted.*

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

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

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

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

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

FELONY, OFFENSE, MISDEMEANOR AND CRIME

Felony

A crime under the Revised Penal Code is referred to as a felony. Do not use this term in reference to a violation of special law.

Offense

A crimes punished under a special law is called as statutory offense.

Misdemeanor

A minor infraction of the law, such as a violation of an ordinance, is referred to as a misdemeanor.

Crime

Whether the wrongdoing is punished under the Revised Penal Code or under a special law, the generic word crime can be used.

SCOPE OF APPLICATION OF THE PROVISIONS OF THE REVISED PENAL CODE

The provision in Article 2 embraces two scopes of applications:

(1) Intraterritorial – refers to the application of the Revised Penal Code within the Philippine territory;

(2) Extraterritorial – refers to the application of the Revised Penal Code outside the Philippine territory.

Intraterritorial application

In the intraterritorial application of the Revised Penal Code, Article 2 makes it clear that it does not refer only to Philippine archipelago but it also includes the atmosphere, interior waters and maritime zone. So whenever you use the word territory, do not limit this to land area only.

As far as jurisdiction or application of the Revised Penal Code over crimes committed on maritime zones or interior waters, the Archipelagic Rule shall be observed. So the three-mile limit on our shoreline has been modified by the rule. Any crime committed in interior waters comprising the Philippine archipelago shall be subject to our laws although committed on board a foreign merchant vessel.

A vessel is considered a Philippine ship only when it is registered in accordance with Philippine laws. Under international law, as long as such vessel is not within the territorial waters of a foreign country, Philippine laws shall govern.

Extraterritorial application

Extraterritorial application of the Revised Penal Code on crime committed on board Philippine ship or airship refers only to a situation where the Philippine ship or airship is not within the territorial waters or atmosphere of a foreign country. Otherwise, it is the foreign country's criminal law that will apply.

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

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

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

The French Rule

The French Rule provides that the nationality of the vessel follows the flag which the vessel flies, unless the crime committed endangers the

national security of a foreign country where the vessel is within jurisdiction in which case such foreign country will never lose jurisdiction over such vessel.

The American or Anglo-Saxon Rule

This rule strictly enforces the territoriality of criminal law. The law of the foreign country where a foreign vessel is within its jurisdiction is strictly applied, except if the crime affects only the internal management of the vessel in which case it is subject to the penal law of the country where it is registered.

Both the rules apply only to a foreign merchant vessel if a crime was committed aboard that vessel while it was in the territorial waters of another country. If that vessel is in the high seas or open seas, there is no occasion to apply the two rules. If it is not within the jurisdiction of any country, these rules will not apply.

Question & Answer

A vessel is not registered in the Philippines. A crime is committed outside Philippine territorial waters. Then the vessel entered our territory. Will the Revised Penal Code apply?

Yes. Under the old Rules of Criminal Procedure, for our courts to take cognizance of any crime committed on board a vessel during its voyage, the vessel must be registered in the Philippines in accordance with Philippine laws. Under the Revised Rules of Criminal Procedure, however, the requirement that the vessel must be licensed and registered in accordance with Philippine laws has been deleted from Section 25, paragraph c of Rule 110 of the Rules of Court. The intention is to do away with that requirement so that as long as the vessel is not registered under the laws of any country, our courts can take cognizance of the crime committed in such vessel.

More than this, the revised provision added the phrase "in accordance with generally accepted principles of International Law". So the intention is clear to adopt generally accepted principles of international law in the matter of exercising jurisdiction over crimes committed in a vessel while in the course of its voyage. Under international law rule, a vessel which is not registered in accordance with the laws of any country is considered a pirate vessel and piracy is a crime against humanity in general, such that wherever the pirates may go, they can be prosecuted.

Prior to the revision, the crime would not have been prosecutable in our court. With the revision, registration is not anymore a requirement and replaced with generally accepted principles of international law. Piracy is considered a crime against the law of nations.

In your answer, reference should be made to the provision of paragraph c of Section15 of the Revised Rules of Criminal Procedure. The crime may be regarded as an act of piracy as long as it is done with "intent to gain".

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

The most common subject of bar problems in Article 2 is paragraph 4: "While being public officers or employees, [they] should commit an offense in the exercise of their functions:"

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

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

Illustration:

A Philippine consulate official who is validly married here in the Philippines and who marries again in a foreign country cannot be prosecuted here for bigamy because this is a crime not connected with his official duties. However, if the second marriage was celebrated within the Philippine embassy, he may be prosecuted here, since it is as if he contracted the marriage here in the Philippines.

Question & Answer

A consul was to take a deposition in a hotel in Singapore. After the deposition, the deponent approached the consul's daughter and requested that certain parts of the deposition be changed in consideration for $10,000.00. The daughter persuaded the consul and the latter agreed. Will the crime be subject to the Revised Penal Code? If so, what crime or crimes have been committed?

Yes. Falsification.

Normally, the taking of the deposition is not the function of the consul, his function being the promotion of trade and commerce with another country. Under the Rules of Court, however, a consul can take depositions or letters rogatory. There is, therefore, a definite provision of the law making it the consul's function to take depositions. When he agreed to the falsification of the deposition, he was doing so as a public officer in the service of the Philippine government.

Paragraph 5 of Article 2, use the phrase "as defined in Title One of Book Two of this Code."

This is a very important part of the exception, because Title I of Book 2 (crimes against national security) does not include rebellion. So if acts of rebellion were perpetrated by Filipinos who were in a foreign country, you cannot give territorial application to the Revised Penal Code, because Title I of Book 2 does not include rebellion.

Illustration:

When a Filipino who is already married in the Philippines, contracts another marriage abroad, the crime committed is bigamy. But the Filipino can not be prosecuted when he comes back to the Philippines, because the bigamy was committed in a foreign country and the crime is not covered by paragraph 5 of Article 2. However, if the Filipino, after the second marriage, returns to the Philippines and cohabits here with his second wife, he commits the crime of concubinage for which he can be prosecuted.

The Revised Penal Code shall not apply to any other crime committed in a foreign country which does not come under any of the exceptions and which is not a crime against national security.

HOW A FELONY MAY ARISE

Punishable by the Revised Penal Code

The term felony is limited only to violations of the Revised Penal Code. When the crime is punishable under a special law you do not refer to this as a felony. So whenever you encounter the term felony, it is to be understood as referring to crimes under the Revised Penal Code
.
This is important because there are certain provisions in the Revised Penal Code where the term "felony" is used, which means that the provision is not extended to crimes under special laws. A specific instance is found in Article 160 – Quasi-Recidivism, which reads:

> A person who shall commit a felony after having been convicted by final judgment, before beginning to serve sentence or while serving the same, shall be punished under the maximum period of the penalty.

Note that the word "felony" is used.

Questions & Answers

1. If a prisoner who is serving sentence is found in possession of dangerous drugs, can he be considered a quasi-recidivist?

No. The violation of Presidential Decree No. 6425 (The Dangerous Drugs Act of 1972) is not a felony. The provision of Article 160 specifically refers to a felony and felonies are those acts and omissions punished under the Revised Penal Code.

2. Is illegal possession of bladed weapon a felony?

No. It is not under the Revised Penal Code.

An act or omission

To be considered as a felony there must be an act or omission; a mere imagination no matter how wrong does not amount to a felony. An act refers to any kind of body movement that produces change in the outside world. For example, if A, a passenger in a jeepney seated in front of a lady, started putting out his tongue suggesting lewdness, that is already an act in contemplation of criminal law. He cannot claim that there was no crime committed. If A scratches something, this is already an act which annoys the lady he may be accused of unjust vexation, not malicious mischief.

Dolo or culpa

However, It does not mean that if an act or omission is punished under the Revised Penal Code, a felony is already committed. To be considered a felony, it must also be done with dolo or culpa.

Under Article 3, there is dolo when there is deceit. This is no longer true. At the time the Revised Penal Code was codified, the term nearest to dolo was deceit. However, deceit means fraud, and this is not the meaning of dolo.

Dolo is deliberate intent otherwise referred to as criminal intent, and must be coupled with freedom of action and intelligence on the part of the offender as to the act done by him.

The term, therefore, has three requisites on the part of the offender:

(1) Criminal intent;

(2) Freedom of action; and

(3) Intelligence.

If any of these is absent, there is no dolo. If there is no dolo, there could be no intentional felony.

Question & Answer

What requisites must concur before a felony may be committed?

There must be (1) an act or omission; (2) punishable by the Revised Penal Code; and (3) the act is performed or the omission incurred by means of dolo or culpa.

But although there is no intentional felony, there could be a culpable felony. Culpa requires the concurrence of three requisites:

(1) criminal negligence on the part of the offender , that is, the crime was the result of negligence, reckless imprudence, lack of foresight or lack of skill;

(2) freedom of action on the part of the offender, that is, he was not acting under duress; and

(3) Intelligence on the part of the offender in performing the negligent act.

Between dolo and culpa, the distinction lies on the criminal intent and criminal negligence. If any of these requisites is absent, there can be no dolo nor culpa. When there is no dolo or culpa, a felony cannot arise.

Question & Answer

What do you understand by "voluntariness" in criminal law?

The word voluntariness in criminal law does not mean acting in one's own volition. In criminal law, voluntariness comprehends the concurrence of freedom of action, intelligence and the fact that the act was intentional. In culpable felonies, there is no voluntariness if either freedom, intelligence or imprudence, negligence, lack of foresight or lack of skill is lacking. Without voluntariness, there can be no dolo or culpa, hence, there is no felony.

In a case decided by the Supreme Court, two persons went wild boar hunting. On their way, they met Pedro standing by the door of his house and they asked him where they could find wild boars. Pedro pointed to a place where wild boars were supposed to be found, and the two proceeded thereto. Upon getting to the place, they saw something moving, they shot, unfortunately the bullet ricocheted killing Pedro. It was held that since there was neither dolo nor culpa, there is no criminal liability.

In ***US v. Bindoy,*** *accused had an altercation with X. X snatched the bolo from the accused. To prevent X from using his bolo on him, accused tried to get it from X. Upon pulling it back towards him, he hit someone from behind, instantly killing the latter. The accused was found to be not liable. In criminal law, there is pure accident, and the principle damnum absque injuria is also honored.*

Even culpable felonies require voluntariness. It does not mean that if there is no criminal intent, the offender is absolved of criminal liability, because there is culpa to consider.

Question & Answer

May a crime be committed without criminal intent?

Yes. Criminal intent is not necessary in these cases:

(1) When the crime is the product of culpa or negligence, reckless imprudence, lack of foresight or lack of skill;

(2) When the crime is a prohibited act under a special law or what is called malum prohibitum.

Criminal Intent

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

In criminal law, intent is categorized into two:

(1) General criminal intent; and

(2) Specific criminal intent.

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

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

Distinction between intent and discernment

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

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

Distinction between intent and motive

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

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

If the crime is intentional, it cannot be committed without intent. Intent is manifested by the instrument used by the offender. The specific criminal intent becomes material if the crime is to be distinguished from the attempted or frustrated stage. For example, a husband came home and found his wife in a pleasant conversation with a former suitor. Thereupon, he got a knife. The moving force is jealousy. The intent is the resort to the knife, so that means he is desirous to kill the former suitor. Even if the offender states that he had no reason to kill the victim, this is not criminal intent. Criminal intent is the means resorted to by him that brought about the killing. If we equate intent as a state of mind, many would escape criminal liability.

In a case where mother and son were living in the same house, and the son got angry and strangled his mother, the son, when prosecuted for parricide, raised the defense that he had no intent to kill his mother. It was held that criminal intent applies on the strangulation of the vital part of the body. Criminal intent is on the basis of the act, not on the basis if what the offender says.

Look into motive to determine the proper crime which can be imputed to the accused. If a judge was killed, determine if the killing has any relation to the official functions of the judge in which case the crime would be direct assault complexed with murder/homicide, not the other way around. If it has no relation, the crime is simply homicide or murder.

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

Distinction between negligence and imprudence

(1) In negligence, there is deficiency of action;

(2) in imprudence, there is deficiency of perception.

Mens rea

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

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

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

Mistake of fact

When an offender acted out of a misapprehension of fact, it cannot be said that he acted with criminal intent. Thus, in criminal law, there is a "mistake of fact". When the offender acted out of a mistake of fact, criminal intent is negated, so do not presume that the act was done with criminal intent. This is absolutory if crime involved dolo.

Mistake of fact would be relevant only when the felony would have been intentional or through dolo, but not when the felony is a result of culpa. When the felony is a product of culpa, do not discuss mistake of fact. When the felonious act is the product of dolo and the accused claimed to have acted out of mistake of fact, there should be no culpa in determining the real facts, otherwise, he is still criminally liable, although he acted out of a mistake of fact. Mistake of fact is only a defense in intentional felony but never in culpable felony.

Real concept of culpa

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

In Article 365, you have criminal negligence as an omission which the article definitely or specifically penalized. The concept of criminal negligence is the inexcusable lack of precaution on the part of the person performing or failing to perform an act. If the danger impending from that situation is clearly manifest, you have a case of reckless imprudence. But if the danger that would result from such imprudence is not clear, not manifest nor immediate you have only a case of simple negligence. Because of Article 365, one might think that criminal negligence is the one being punished. That is why a question is created that criminal negligence is the crime in itself.

In ***People v. Faller,*** *it was stated indirectly that that criminal negligence or culpa is just a mode of incurring criminal liability. In this case, the accused was charged with malicious mischief. Malicious mischief is an intentional negligence under Article 327 of the Revised Penal Code. The provision expressly requires that there be a deliberate damaging of property of another, which does not constitute destructive arson. You do not have malicious mischief through simple negligence or reckless imprudence because it requires deliberateness. Faller was charged with malicious mischief, but was convicted of damage to property through reckless imprudence. The Supreme Court pointed out that although the allegation in the information charged the accused with an intentional felony, yet the words feloniously and unlawfully, which are standard languages in an information, covers not only dolo but also culpa because culpa is just a mode of committing a felony.*

*In **Quezon v. Justice of the Peace,** Justice J.B.L. Reyes dissented and claimed that criminal negligence is a quasi-offense, and the correct designation should not be homicide through reckless imprudence, but reckless imprudence resulting in homicide. The view of Justice Reyes is sound, but the problem is Article 3, which states that culpa is just a mode by which a felony may result.*

Question & Answer

Is culpa or criminal negligence a crime?

First, point out Article 3. Under Article 3, it is beyond question that culpa or criminal negligence is just a mode by which a felony may arise; a felony may be committed or incurred through dolo or culpa.

However, Justice J.B.L. Reyes pointed out that criminal negligence is a quasi–offense. His reason is that if criminal negligence is not a quasi-offense, and only a modality, then it would have been absorbed in the commission of the felony and there would be no need for Article 365 as a separate article for criminal negligence. Therefore, criminal negligence, according to him, is not just a modality; it is a crime by itself, but only a quasi-offense.

*However, in **Samson v. CA,** where a person who has been charged with falsification as an intentional felony, was found guilty of falsification through simple negligence. This means that means that culpa or criminal negligence is just a modality of committing a crime.*

In some decisions on a complex crime resulting from criminal negligence, the Supreme Court pointed out that when crimes result from criminal negligence, they should not be made the subject of a different information. For instance, the offender was charged with simple negligence resulting in slight physical injuries, and another charge for simple negligence resulting in damage to property. The slight physical injuries which are the result of criminal negligence are under the jurisdiction of the inferior court. But damage to property, if the damage is more than P2,000.00, would be under the jurisdiction of the Regional Trial Court because the imposable fine ranges up to three times the value of the damage.

*In **People v. Angeles,** the prosecution filed an information against the accused in an inferior court for slight physical injuries through reckless imprudence and filed also damage to property in the Regional Trial Court. The accused pleaded guilty to the charge of slight physical injuries. When he was arraigned before the Regional Trial Court, he invoked double jeopardy. He was claiming that he could not be prosecuted again for the same criminal negligence. The Supreme Court ruled that here is no double jeopardy because the crimes are two different crimes. Slight physical injuries and damage to property are two different crimes.*

In so ruling that there is no double jeopardy, the Supreme Court did not look into the criminal negligence. The Supreme Court looked into the physical injuries and the damage to property as the felonies and not criminal negligence.

In several cases that followed, the Supreme Court ruled that where several consequences result from reckless imprudence or criminal negligence, the accused should be charged only in the Regional Trial Court although the reckless imprudence may result in slight physical injuries. The Supreme Court argued that since there was only one criminal negligence, it would be an error to split the same by prosecuting the accused in one court and prosecuting him again in another for the same criminal negligence. This is tantamount to splitting a cause of action in a civil case. For orderly procedure, the information should only be one. This however, also creates some doubts. As you know, when the information charges the accused for more than the crime, the information is defective unless the crime

charged is a complex one or a special complex crime.

CRIMINAL LIABILITY

Since in Article 3, a felony is an act or omission punishable by law, particularly the Revised Penal Code, it follows that whoever commits a felony incurs criminal liability. In paragraph 1 of Article 4, the law uses the word "felony", that whoever commits a felony incurs criminal liability. A felony may arise not only when it is intended, but also when it is the product of criminal negligence. What makes paragraph 1 of Article 4 confusing is the addition of the qualifier "although the wrongful act be different from what he intended."

Questions & Answers

1. A man thought of committing suicide and went on top of a tall building. He jumped, landing on somebody else, who died instantly. Is he criminally liable?

Yes. A felony may result not only from dolo but also from culpa. If that fellow who was committing suicide acted negligently, he will be liable for criminal negligence resulting in the death of another.

2. A had been courting X for the last five years. X told A, "Let us just be friends. I want a lawyer for a husband and I have already found somebody whom I agreed to marry. Anyway there are still a lot of ladies around; you will still have your chance with another lady." A, trying to show that he is a sport, went down from the house of X, went inside his car, and stepped on the accelerator to the limit, closed his eyes, started the vehicle. The vehicle zoomed, running over all the pedestrians on the street. At the end, the car stopped at the fence. He was taken to the hospital, and he survived. Can he be held criminally liable for all those innocent people that he ran over, claiming that he was committing suicide?

He will be criminally liable, not for an intentional felony, but for culpable felony. This is so because, in paragraph 1 of Article 4, the term used is "felony", and that term covers both dolo and culpa.

3. A pregnant woman thought of killing herself by climbing up a tall building and jumped down below. Instead of falling in the pavement, she fell on the owner of the building. An abortion resulted. Is she liable for an unintentional abortion? If not, what possible crime may be committed?

The relevant matter is whether the pregnant woman could commit unintentional abortion upon herself. The answer is no because the way the law defines unintentional abortion, it requires physical violence coming from a third party. When a pregnant woman does an act that would bring about abortion, it is always intentional. Unintentional abortion can only result when a third person employs physical violence upon a pregnant woman resulting to an unintended abortion.

In one case, a pregnant woman and man quarreled. The man could no longer bear the shouting of the woman, so he got his firearm and poked it into the mouth of the woman. The woman became hysterical, so she ran as fast as she could, which resulted in an abortion. The man was prosecuted for unintentional abortion. It was held that an unintentional abortion was not committed. However, drawing a weapon in the height of a quarrel is a crime of other light threats under Article 285. An unintentional abortion can only be committed out of physical violence, not from mere threat.

Proximate cause

Article 4, paragraph 1 presupposes that the act done is the proximate cause of the resulting

felony. It must be the direct, natural, and logical consequence of the felonious act.

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

Illustrations:

A, B, C, D and E were driving their vehicles along Ortigas Aveue. A's car was ahead, followed by those of B, C, D, and E. When A's car reached the intersection of EDSA and Ortigas Avenue, the traffic light turned red so A immediately stepped on his break, followed by B, C, D. However, E was not aware that the traffic light had turned to red, so he bumped the car of D, then D hit the car of C, then C hit the car of B, then, finally, B hit the car of A. In this case, the immediate cause to the damage of the car of A is the car of B, but that is not the proximate cause. The proximate cause is the car of E because it was the car of E which sets into motion the cars to bump into each other.

In one case, A and B, who are brothers-in-law, had a quarrel. At the height of their quarrel, A shot B with an airgun. B was hit at the stomach, which bled profusely. When A saw this, he put B on the bed and told him not to leave the bed because he will call a doctor. While A was away, B rose from the bed, went into the kitchen and got a kitchen knife and cut his throat. The doctor arrived and said that the wound in the stomach is only superficial; only that it is a bleeder, but the doctor could no longer save him because B's throat was already cut. Eventually, B died. A was prosecuted for manslaughter. The Supreme Court rationalized that what made B cut his throat, in the absence of evidence that he wanted to commit suicide, is the belief that sooner or later, he would die out of the wound inflicted by A. Because of that belief, he decided to shorten the agony by cutting his throat. That belief would not be engendered in his mind were it not because of the profuse bleeding from his wound. Now, that profusely bleeding would not have been there, were it not for the wound inflicted by A. As a result, A was convicted for manslaughter.

In criminal law, as long as the act of the accused contributed to the death of the victim, even if the victim is about to die, he will still be liable for the felonious act of putting to death that victim. In one decision, the Supreme Court held that the most precious moment in a man's life is that of losing seconds when he is about to die. So when you robbed him of that, you should be liable for his death. Even if a person is already dying, if one suffocates him to end up his agony, one will be liable for murder, when you put him to death, in a situation where he is utterly defenseless.

*In **US v. Valdez,** the deceased is a member of the crew of a vessel. Accused is in charge of the crewmembers engaged in the loading of cargo in the vessel. Because the offended party was slow in his work, the accused shouted at him. The offended party replied that they would be better if he would not insult them. The accused resented this, and rising in rage, he moved towards the victim, with a big knife in hand threatening to kill him. The victim believing himself to be in immediate peril, threw himself into the water. The victim died of drowning. The accused was prosecuted for homicide. His contention that his liability should be only for grave threats since he did not even stab the victim, that the victim died of drowning, and this can be considered as a supervening cause. It was held that the deceased, in throwing himself into the river, acted solely in obedience to the instinct of self-preservation, and was in no sense legally responsible for his own death. As to him, it was but the exercise of*

a choice between two evils, and any reasonable person under the same circumstance might have done the same. The accused must, therefore, be considered as the author of the death of the victim.

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

If a person shouted fire, and because of that a moviegoer jumped into the fire escape and died, the person who shouted fire when there is no fire is criminally liable for the death of that person.

In a case where a wife had to go out to the cold to escape a brutal husband and because of that she was exposed to the element and caught pneumonia, the husband was made criminally liable for the death of the wife.

Even though the attending physician may have been negligent and the negligence brought about the death of the offending party – in other words, if the treatment was not negligent, the offended party would have survived – is no defense at all, because without the wound inflicted by the offender, there would have been no occasion for a medical treatment.

Even if the wound was called slight but because of the careless treatment, it was aggravated, the offender is liable for the death of the victim not only of the slight physical injuries. Reason – without the injury being inflicted, there would have been no need for any medical treatment. That the medical treatment proved to be careless or negligent, is not enough to relieve the offender of the liability for the inflicting injuries.

When a person inflicted wound upon another, and his victim upon coming home got some leaves, pounded them and put lime there, and applying this to the wound, developed locked jaw and eventually he died, it was held that the one who inflicted the wound is liable for his death.

In another instance, during a quarrel, the victim was wounded. The wound was superficial, but just the same the doctor put inside some packing. When the victim went home, he could not stand the pain, so he pulled out the packing. That resulted into profuse bleeding and he died because of loss of blood. The offender who caused the wound, although the wound caused was only slight, was held answerable for the death of the victim, even if the victim would not have died were it not for the fact that he pulled out that packing. The principle is that without the wound, the act of the physician or the act of the offended party would not have anything to do with the wound, and since the wound was inflicted by the offender, whatever happens on that wound, he should be made punishable for that.

In ***Urbano v. IAC,*** *A and B had a quarrel and started hacking each other. B was wounded at the back. Cooler heads intervened and they were separated. Somehow, their differences were patched up. A agreed to shoulder all the expenses for the treatment of the wound of B, and to pay him also whatever lost of income B may have failed to receive. B, on the other hand, signed a forgiveness in favor of A and on that condition, he withdrew the complaint that he filed against A. After so many weeks of treatment in a clinic, the doctor pronounced the wound already healed. Thereafter, B went back to his farm. Two months later, B came home and he was chilling. Before midnight, he died out of tetanus poisoning. The heirs of B filed a case of homicide against A. The Supreme Court held that A is not liable. It took into account the incubation period of tetanus toxic. Medical evidence were presented that tetanus toxic is good only for two weeks. That if, indeed, the victim had incurred tetanus poisoning out of the wound inflicted by A, he would not have lasted two months. What brought about tetanus to infect the body of B was his working in his farm using his bare hands. Because of this, the Supreme Court said that the act of B of working in his farm*

where the soil is filthy, using his own hands, is an efficient supervening cause which relieves A of any liability for the death of B. A, if at all, is only liable for physical injuries inflicted upon B.

If you are confronted with this facts of the Urbano case, where the offended party died because of tetanus poisoning, reason out according to that reasoning laid down by the Supreme Court, meaning to say, the incubation period of the tetanus poisoning was considered. Since tetanus toxic would affect the victim for no longer than two weeks,, the fact that the victim died two months later shows that it is no longer tetanus brought about by the act of the accused. The tetanus was gathered by his working in the farm and that is already an efficient intervening cause.

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

Wrongful act done be different from what was intended

What makes the first paragraph of Article 4 confusing is the qualification "although the wrongful act done be different from what was intended". There are three situations contemplated under paragraph 1 of Article 4:

(1) Aberratio ictus or mistake in the blow;

(2) Error in personae or mistake in identity; and

(3) Praeter intentionem or where the consequence exceeded the intention.

Aberration ictus

In aberratio ictus, a person directed the blow at an intended victim, but because of poor aim, that blow landed on somebody else. In aberratio ictus, the intended victim as well as the actual victim are both at the scene of the crime.
Distinguish this from error in personae, where the victim actually received the blow, but he was mistaken for another who was not at the scene of the crime. The distinction is important because the legal effects are not the same.

In aberratio ictus, the offender delivers the blow upon the intended victim, but because of poor aim the blow landed on somebody else. You have a complex crime, unless the resulting consequence is not a grave or less grave felony. You have a single act as against the intended victim and also giving rise to another felony as against the actual victim. To be more specific, let us take for example A and B. A and B are enemies. As soon as A saw B at a distance, A shot at B. However, because of poor aim, it was not B who was hit but C. You can readily see that there is only one single act – the act of firing at B. In so far as B is concerned, the crime at least is attempted homicide or attempted murder, as the case may be, if there is any qualifying circumstance. As far as the third party C is concerned, if C were killed, crime is homicide. If C was only wounded, the crime is only physical injuries. You cannot have attempted or frustrated homicide or murder as far as C is concerned, because as far as C is concern, there is no intent to kill. As far as that other victim is concerned, only physical injuries – serious or less serious or slight.

If the resulting physical injuries were only slight, then you cannot complex; you will have one prosecution for the attempted homicide or murder, and another prosecution for slight physical injuries for the innocent party. But if the innocent party was seriously injured or less seriously injured, then you have another grave or less grave felony resulting from the same act which gave rise to attempted homicide or murder against B; hence, a complex crime.

In other words, aberratio ictus, generally gives rise to a complex crime. This being so, the penalty for the more serious crime is imposed in the maximum period. This is the legal effect.

The only time when a complex crime may not result in aberratio ictus is when one of the resulting felonies is a light felony.

Question & Answer

The facts were one of aberratio ictus, but the facts stated that the offender aimed carelessly in firing the shot. Is the felony the result of dolo or culpa? What crime was committed?

All three instances under paragraph 1, Article 4 are the product of dolo. In aberratio ictus, error in personae and praeter intentionem, never think of these as the product of culpa. They are always the result of an intended felony, and, henc,e dolo. You cannot have these situations out of criminal negligence. The crime committed is attempted homicide or attempted murder, not homicide through reckless imprudence.

Error in personae

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

This is very important because Article 49 applies only in a case of error in personae and not in a case of abberatio ictus.

In Article 49, when the crime intended is more serious than the crime actually committed or vice-versa, whichever crime carries the lesser penalty, that penalty will be the one imposed. But it will be imposed in the maximum period. For instance, the offender intended to commit homicide, but what was actually committed with parricide because the person he killed by mistake was somebody related to him within the degree of relationship in parricide. In such a case, the offender will be charged with parricide, but the penalty that would be imposed will be that of homicide. This is because under Article 49, the penalty for the lesser crime will be the one imposed, whatever crime the offender is prosecuted under. In any event, the offender is prosecuted for the crime committed not for the crime intended.

Illustrations:

A thought of killing B. He positioned himself at one corner where B would usually pass. When a figure resembling B was approaching, A hid and when that figure was near him, he suddenly hit him with a piece of wood on the nape, killing him. But it turned out that it was his own father. The crime committed is parricide, although what was intended was homicide. Article 49, therefore, will apply because out of a mistake in identity, a crime was committed different from that which was intended.

In another instance, A thought of killing B. Instead of B, C passed. A thought that he was B, so he hit C on the neck, killing the latter. Just the same, the crime intended to be committed is homicide and what was committed is actually homicide, Article 49 does not apply. Here, error in personae is of no effect.

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

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

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

committed, the error in persona is not a mitigating circumstance

Praeter intentionem

In ***People v. Gacogo, 53 Phil 524,*** *two persons quarreled. They had fist blows. The other started to run away and Gacogo went after him, struck him with a fist blow at the back of the head. Because the victim was running, he lost balance, he fell on the pavement and his head struck the cement pavement. He suffered cerebral hemorrhage. Although Gacogo claimed that he had no intention of killing the victim, his claim is useless. Intent to kill is only relevant when the victim did not die. This is so because the purpose of intent to kill is to differentiate the crime of physical injuries from the crime of attempted homicide or attempted murder or frustrated homicide or frustrated murder. But once the victim is dead, you do not talk of intent to kill anymore. The best evidence of intent to kill is the fact that victim was killed. Although Gacogo was convicted for homicide for the death of the person, he was given the benefit of paragraph 3 of Article13, that is, " that the offender did not intend to commit so grave a wrong as that committed".*

This is the consequence of praeter intentionem. In short, praeter intentionem is mitigating, particularly covered by paragraph 3 of Article 13. In order however, that the situation may qualify as praeter intentionem, there must be a notable disparity between the means employed and the resulting felony. If there is no disparity between the means employed by the offender and the resulting felony, this circumstance cannot be availed of. It cannot be a case of praeter intentionem because the intention of a person is determined from the means resorted to by him in committing the crime.

<u>Illustrations:</u>

A stabbed his friend when they had a drinking spree. While they were drinking, they had some argument about a basketball game and they could not agree, so he stabbed him eleven times. His defense is that he had no intention of killing his friend. He did not intend to commit so grave a wrong as that committed. It was held that the fact that 11 wounds were inflicted on A's friend is hardly compatible with the idea that he did not intend to commit so grave a wrong that committed.

In another instance, the accused was a homosexual. The victim ridiculed or humiliated him while he was going to the restroom. He was so irritated that he just stabbed the victim at the neck with a lady's comb with a pointed handle, killing the victim. His defense was that he did not intend to kill him. He did not intend to commit so grave a wrong as that of killing him. That contention was rejected, because the instrument used was pointed. The part of the body wherein it was directed was the neck which is a vital part of the body. In praeter intentionem, it is mitigating only if there is a notable or notorious disparity between the means employed and the resulting felony. In criminal law, intent of the offender is determined on the basis employed by him and the manner in which he committed the crime. Intention of the offender is not what is in his mind; it is disclosed in the manner in which he committed the crime.

In still another case, the accused entered the store of a Chinese couple, to commit robbery. They hogtied the Chinaman and his wife. Because the wife was so talkative, one of the offenders got a pan de sal and put it in her mouth. But because the woman was trying to wriggle from the bondage, the pan de sal slipped through her throat. She died because of suffocation. The offender were convicted for robbery with homicide because there was a resulting death, although their intention was only to rob. They were given the benefit of paragraph 3 of Article 13, "that they did not intend to commit so grave a wrong as that committed". There was really no intention to bring about the killing, because it was the pan de sal they put into the mouth. Had it been a piece of rag, it would be different. In that case, the Supreme Court gave the offenders the benefit of praeter intentionem as a mitigating circumstance. The means employed is not

capable of producing death if only the woman chewed the pan de sal.

A man raped a young girl. The young girl was shouting so the man placed his hand on the mouth and nose of the victim. He found out later that the victim was dead already; she died of suffocation. The offender begged that he had no intention of killing the girl and that his only intention was to prevent her from shouting. The Supreme Court rejected the plea saying that one can always expect that a person who is suffocated may eventually die. So the offender was prosecuted for the serious crime of rape with homicide and he was not given the benefit of paragraph 3, Article 13.

Differentiating this first case with the case of the Chinamana nd his wife, it would seem that the difference lies in the means employed by the offender.

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

For example, if A gave B a karate blow in the throat, there is no praeter intentionem because the blow to the throat can result in death.

So also, if A tried to intimidate B by poking a gun at the latter's back, and B died of a cardiac arrest, A will be prosecuted for homicide but will be given the mitigating circumstance praeter intentionem.

Impossible crime

An impossible crime is an act which would be an offense against person or property were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.

Question & Answer

1. Accused was a houseboy in a house where only a spinster resides. It is customary for the spinster to sleep nude because her room was warm. It was also the habit of the houseboy that whenever she enters her room, the houseboy would follow and peek into the keyhole. Finally, when the houseboy could no longer resist the urge, he climbed into the ceiling, went inside the room of his master, placed himself on top of her and abused her, not knowing that she was already dead five minutes earlier. Is an impossible crime committed?

Yes. Before, the act performed by the offender could not have been a crime against person or property. The act performed would have been constituted a crime against chastity. An impossible crime is true only if the act done by the offender constitutes a crime against person or property. However, with the new rape law amending the Revised Penal Code and classifying rape as a crime against persons, it is now possible that an impossible crime was committed. Note, however, that the crime might also fall under the Revised Administrative Code – desecrating the dead.

2. A was driving his car around Roxas Boulevard when a person hitched a ride. Because this person was exquisitely dressed, A readily welcomed the fellow inside his car and he continued driving. When he reached a motel, A suddenly swerved his car inside. A started kissing his passenger, but he found out that his passenger was not a woman but a man, and so he pushed him out of the car, and gave him fist blows. Is an impossible crime committed? If not, is there any crime committed at all?

It cannot be an impossible crime, because the act would have been a crime

against chastity. The crime is physical injuries or acts of lasciviousness, if this was done against the will of the passenger. There are two ways of committing acts of lasciviousness. Under Article 336, where the acts of lasciviousness were committed under circumstances of rape, meaning to say, there is employment of violence or intimidation or the victim is deprived of reason. Even if the victim is a man, the crime of acts of lasciviousness is committed. This is a crime that is not limited to a victim who is a woman. Acts of lasciviousness require a victim to be a woman only when it is committed under circumstances of seduction. If it is committed under the circumstances of rape, the victim may be a man or a woman. The essence of an impossible crime is the inherent impossibility of accomplishing the crime or the inherent impossibility of the means employed to bring about the crime. When we say inherent impossibility, this means that under any and all circumstances, the crime could not have materialized. If the crime could have materialized under a different set of facts, employing the same mean or the same act, it is not an impossible crime; it would be an attempted felony.

Under Article 4, paragraph 2, impossible crime is true only when the crime committed would have been against person or against property. It is, therefore, important to know what are the crimes under Title VIII, against persons and those against property under Title X. An impossible crime is true only to any of those crimes.

3. A entered a department store at about midnight, when it was already closed. He went directly to the room where the safe or vault was being kept. He succeeded in opening the safe, but the safe was empty. Is an impossible crime committed? If not, what crime is possibly committed?

This is not an impossible crime. That is only true if there is nothing more to steal. But in a department store, where there is plenty to steal, not only the money inside the vault or safe. The fact that the vault had turned out to be empty is not really inherently impossible to commit the crime of robbery. There are other things that he could take. The crime committed therefore is attempted robbery, assuming that he did not lay his hands on any other article. This could not be trespass to dwelling because there are other things that can be stolen.

4. A and B were lovers. B was willing to marry A except that A is already married. A thought of killing his wife. He prepared her breakfast every morning, and every morning, he placed a little dose of arsenic poison into the breakfast of the wife. The wife consumed all the food prepared by her husband including the poison but nothing happened to the wife. Because of the volume of the household chores that the wife had to attend to daily, she developed a physical condition that rendered her so strong and resistance to any kind of poisoning, so the amount of poison applied to her breakfast has no effect to her. Is there an impossible crime?

No impossible crime is committed because the fact itself stated that what prevented the poison from taking effect is the physical condition of the woman. So it implies that if the woman was not of such physical condition, the poison would have taken effect. Hence, it is not inherently impossible to realize the killing. The crime committed is frustrated parricide.

If it were a case of poisoning , an impossible crime would be constituted if a person who was thinking that it was a poison that he was putting into the food of the intended victim but actually it was vetsin or sugar or soda. Under any and all circumstances, the crime could not have been realized. But if due to the quantity of vetsin or sugar or soda, the intended victim developed LBM and was hospitalized, then it would not be a case of impossible crime anymore. It would be a case of physical injuries, if the act done does not amount to some other crime under the Revised Penal Code.

Do not confuse an impossible crime with the attempted or frustrated stage.

5. Scott and Charles are roommate in a boarding house. Everyday, Scott leaves for work but before leaving he would lock the food cabinet where he kept his food. Charles resented this. One day, he got an electric cord tied the one end to the door knob and plugged the other end to an electric outlet. The idea was that, when Scott comes home to open the door knob, he would be electrocuted. Unknown to Charles, Scott is working in an electronic shop where he received a daily dosage of electric shock. When Scott opened the doorknob, nothing happened to him. He was just surprised to find out that there was an electric cord plugged to the outlet and the other hand to the door knob. Whether an impossible crime was committed or not?

It is not an impossible crime. The means employed is not inherently impossible to bring about the consequence of his felonious act. What prevented the consummation of the crime was because of some cause independent of the will of the perpetrator.

6. A and B are enemies. A, upon seeing B, got the revolver of his father, shot B, but the revolver did not discharge because the bullets were old, none of them discharged. Was an impossible crime committed?

No. It was purely accidental that the firearm did not discharge because the bullets were old. If they were new, it would have fired. That is a cause other than the spontaneous desistance of the offender, and therefore, an attempted homicide.

But if let us say, when he started squeezing the trigger, he did not realize that the firearm was empty. There was no bullet at all. There is an impossible crime, because under any and all circumstances, an unloaded firearm will never fire.

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

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

7. A and B are neighbors. They are jealous of each other's social status. A thought of killing B so A climbed the house of B through the window and stabbed B on the heart, not knowing that B died a few minutes ago of bangungot. Is A liable for an impossible crime?

No. A shall be liable for qualified trespass to dwelling. Although the act done by A against B constitutes an impossible crime, it is the principle of criminal law that the offender shall be punished for an impossible crime only when his act cannot be punished under some other provisions in the Revised Penal Code.

In other words, this idea of an impossible crime is a one of last resort, just to teach the offender a lesson because of his criminal perversity. If he could be taught of the same lesson by charging him with some other crime constituted by his act, then that will be the proper way. If you want to play safe, you state there that although an impossible crime is constituted, yet it is a principle of criminal law that he will only

be penalized for an impossible crime if he cannot be punished under some other provision of the Revised Penal Code.

If the question is "Is an impossible crime is committed?", the answer is yes, because on the basis of the facts stated, an impossible crime is committed. But to play safe, add another paragraph: However, the offender will not be prosecuted for an impossible crime but for _____ [state the crime]. Because it is a principle in criminal law that the offender can only be prosecuted for an impossible crime if his acts do not constitute some other crimes punishable under the Revised Penal Code. An impossible crime is a crime of last resort.

Modified concept of impossible crime:

In a way, the concept of impossible crime has been modified by the decision of the Supreme Court in the case of ***Intod v. CA, et al., 215 SCRA 52.*** *In this case, four culprits, all armed with firearms and with intent to kill, went to the intended victim's house and after having pinpointed the latter's bedroom, all four fired at and riddled said room with bullets, thinking that the intended victim was already there as it was about 10:00 in the evening. It so happened that the intended victim did not come home on the evening and so was not in her bedroom at that time. Eventually the culprits were prosecuted and convicted by the trial court for attempted murder. The Court of Appeals affirmed the judgment but the Supreme Court modified the same and held the petitioner liable only for the so-called impossible crime. As a result, petitioner-accused was sentenced to imprisonment of only six months of arresto mayor for the felonious act he committed with intent to kill: this despite the destruction done to the intended victim's house. Somehow, the decision depreciated the seriousness of the act committed, considering the lawlessness by which the culprits carried out the intended crime, and so some members of the bench and bar spoke out against the soundness of the ruling. Some asked questions: Was it really the impossibility of accomplishing the killing that brought about its non-accomplishment? Was it not purely accidental that the intended victim did not come home that evening and, thus, unknown to the culprits, she was not in her bedroom at the time it was shot and riddled with bullets? Suppose, instead of using firearms, the culprits set fire on the intended victim's house, believing she was there when in fact she was not, would the criminal liability be for an impossible crime?*

Until the Intod case, the prevailing attitude was that the provision of the Revised Penal Code on impossible crime would only apply when the wrongful act, which would have constituted a crime against persons or property, could not and did not constitute another felony. Otherwise, if such act constituted any other felony although different from what the offender intended, the criminal liability should be for such other felony and not for an impossible crime. The attitude was so because Article 4 of the Code provides two situations where criminal liability shall be incurred, to wit:

> *Art 4. Criminal liability – Criminal liability shall be incurred:*
>
> 1. *By any person committing a felony (delito) although the wrongful act be different from that which he intended.*
>
> 2. *By any person performing an act which would be an offense against persons or property, were it not for the inherent impossibility of its accomplishment or on account of the employment of inadequate or ineffectual means.*

Paragraph 1 refers to a situation where the wrongful act done constituted a felony although

it may be different from what he intended. Paragraph 2 refers to a situation where the wrongful act done did not constitute any felony, but because the act would have given rise to a crime against persons or against property, the same is penalized to repress criminal tendencies to curtail their frequency. Because criminal liability for impossible crime presupposes that no felony resulted from the wrongful act done, the penalty is fixed at arresto mayor or a fine from P200.00 to P500.00, depending on the "social danger and degree of criminality shown by the offender" (Article 59), regardless of whether the wrongful act was an impossible crime against persons or against property.

There is no logic in applying paragraph 2 of Article 4 to a situation governed by paragraph 1 of the same Article, that is, where a felony resulted. Otherwise, a redundancy and duplicity would be perpetrated.

In the Intod case, the wrongful acts of the culprits caused destruction to the house of the intended victim; this felonious act negates the idea of an impossible crime. But whether we agree or not, the Supreme Court has spoken, we have to respect its ruling.

NO CRIME UNLESS THERE IS A LAW PUNISHING IT

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

Article 5 covers two situations:

(1) The court cannot convict the accused because the acts do not constitute a crime. The proper judgment is acquittal, but the court is mandated to report to the Chief Executive that said act be made subject of penal legislation and why.

(2) Where the court finds the penalty prescribed for the crime too harsh considering the conditions surrounding the commission of he crime, the judge should impose the law. The most that he could do is to recommend to the Chief Executive to grant executive clemency.

STAGES IN THE COMMISSION OF FELONY

The classification of stages of a felony in Article 6 are true only to crimes under the Revised Penal Code. This does not apply to crimes punished under special laws. But even certain crimes which are punished under the Revised Penal Code do not admit of these stages.

The purpose of classifying penalties is to bring about a proportionate penalty and equitable punishment. The penalties are graduated according to their degree of severity. The stages may not apply to all kinds of felonies. There are felonies which do not admit of division.

Formal crimes

Formal crimes are crimes which are consummated in one instance. For example, in oral defamation, there is no attempted oral defamation or frustrated oral defamation; it is always in the consummated stage.

So also, in illegal exaction under Article 213 is a crime committed when a public officer who is authorized to collect taxes, licenses or impose for the government, shall demand an amount bigger than or different from what the law authorizes him to collect. Under sub-paragraph a of Article 213 on Illegal exaction, the law uses the word "demanding". Mere demanding of an amount different from what the law authorizes him to collect will already consummate a crime, whether the taxpayer pays the amount being demanded or not. Payment of the amount being demanded is not essential to the consummation of the crime.

The difference between the attempted stage and the frustrated stage lies on whether the offender has performed all the acts of execution for the accomplishment of a felony. Literally, under the article, if the offender has performed all the acts of execution which should produce the felony as a consequence but the felony was not realized, then the crime is already in the frustrated stage. If the offender has not yet performed all the acts of execution – there is yet something to be performed – but he was not able to perform all the acts of execution due to some cause or accident other than his own spontaneous desistance, then you have an attempted felony.

You will notice that the felony begins when the offender performs an overt act. Not any act will mark the beginning of a felony, and therefore, if the act so far being done does not begin a felony, criminal liability correspondingly does not begin. In criminal law, there is such a thing as preparatory act. These acts do not give rise to criminal liability.

Question & Answer

A and B are husband and wife. A met C who was willing to marry him, but he is already married. A thought of eliminating B and to poison her. So, he went to the drugstore and bought arsenic poison. On the way out, he met D. D asked him who was sick in the family, A confided to D that he bought the poison to poison his wife in order to marry C. After that, they parted ways. D went directly to the police and reported that A is going to kill his wife. So the policemen went to A's house and found A still unwrapping the arsenic poison. The policemen asked A if he was planning to poison B and A said yes. Police arrested him and charged him with attempted parricide. Is the charge correct?

No. Overt act begins when the husband mixed the poison with the food his wife is going to take. Before this, there is no attempted stage yet.

An overt act is that act which if allowed to continue in its natural course would definitely result into a felony.

In the attempted stage, the definition uses the word "directly". This is significant. In the attempted stage, the acts so far performed may already be a crime or it may be just an ingredient of another crime. The word "directly'" emphasizes the requirement that the attempted felony is that which is directly linked to the overt act performed by the offender, not the felony he has in his mind.

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

When a person starts entering the dwelling of another, that act is already trespassing. But the act of entering is an ingredient of robbery with force upon things. You could only hold him liable for attempted robbery when he has already completed all acts performed by him directly leading to robbery. The act of entering alone is not yet indicative of robbery although that may be what he may have planned to commit. In law, the attempted stage is only that overt act which is directly linked to the felony intended to be committed.

In ***US v. Namaja,*** *the accused was arrested while he was detaching some of the wood panels of a store. He was already able to detach two wood panels. To a layman, the only conclusion that will come to your mind is that this fellow started to enter the store to steal something. He would not be there just to sleep there. But in criminal law, since the act of removing the panel indicates only at most the intention to enter. He can only be prosecuted for trespass. The removal of the panelling is just an attempt to trespass, not an attempt to rob. Although, Namaja was prosecuted for attempted robbery, the Supreme Court held it is only attempted trespass because that is the*

crime that can be directly linked to his act of removing the wood panel.
There are some acts which are ingredients of a certain crime, but which are, by themselves, already criminal offenses.

In abduction, your desire may lead to acts of lasciviousness. In so far the woman being carried is concerned, she may already be the victim of lascivious acts. The crime is not attempted abduction but acts of lasciviousness. You only hold him liable for an attempt, so far as could be reasonably linked to the overt act done by him. Do not go far and imagine what you should do.

Question & Answer

A awakened one morning with a man sleeping in his sofa. Beside the man was a bag containing picklocks and similar tools. He found out that the man entered his sala by cutting the screen on his window. If you were to prosecute this fellow, for what crime are you going to prosecute him?

The act done by him of entering through an opening not intended for the purpose is only qualified trespass. Qualified trespass because he did so by cutting through the screen. There was force applied in order to enter. Other than that, under Article 304 of the Revised Penal Code, illegal possession of picklocks and similar tools is a crime. Thus, he can be prosecuted for two crimes: (1) qualified trespass to dwelling, and (2) illegal possession of picklocks and similar tools; not complex because one is not necessary means to commit the other.

Desistance

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

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

Illustrations:

A fired at B and B was hit on the shoulder. But B's wound was not mortal. What A then did was to approach B, and told B, "Now you are dead, I will kill you." But A took pity and kept the revolver and left. The crime committed is attempted homicide and not physical injuries, because there was an intention to kill. The desistance was with the second shot and would not affect the first shot because the first shot had already hit B. The second attempt has nothing to do with the first.

In another instance, A has a very seductive neighbor in the person of B. A had always been looking at B and had wanted to possess her but their status were not the same. One evening, after A saw B at her house and thought that B was already asleep, he entered the house of B through the window to abuse her. He, however, found out that B was nude, so he lost interest and left. Can a be accused of attempted rape? No, because there was desistance, which prevented the crime from being consummated. The attempted stage was erased because the offender desisted after having commenced the commission of the felony.

The attempted felony is erased by desistance because the offender spontaneously desisted from pursuing the acts of execution. It does not mean, however, that there is no more felony committed. He may be liable for a

consummated felony constituted by his act of trespassing. When A entered the house through the window, which is not intended for entrance, it is always presumed to be against the will of the owner. If the offender proceeded to abuse the woman, but the latter screamed, and A went out of the window again, he could not be prosecuted for qualified trespass. Dwelling is taken as an aggravating circumstance so he will be prosecuted for attempted rape aggravated by dwelling.

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

(1) The manner of committing the crime;

(2) The elements of the crime; and

(3) The nature of the crime itself.

Manner of committing a crime

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

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

When the giver delivers the money to the supposed receiver, but there is no meeting of the minds, the only act done by the giver is an attempt. It is not possible for him to perform all the acts of execution because in the first place, the receiver has no intention of being corrupted. Similarly, when a public officer demands a consideration by official duty, the corruptor turns down the demand, there is no bribery.

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

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

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

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

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

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

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

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

This case was much the way before the decision in the case of ***People v. Garcia*** *was handed down and the Court of Appeals ruled that there is no frustrated arson. But even then, the analysis in the case of* ***US v. Valdez*** *is correct. This is because, in determining whether the felony is attempted, frustrated or consummated, the court does not only consider the definition under Article 6 of the Revised Penal Code, or the stages of execution of the felony. When the offender has already passed the subjective stage of the felony, it is beyond*

the attempted stage. It is already on the consummated or frustrated stage depending on whether a felony resulted. If the felony did not result, frustrated.

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

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

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

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

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

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

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

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

Questions & Answers

1. Is there an attempted slight physical injuries?

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

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

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

(1) The injury should bring about the ugliness;

(2) The ugliness must be visible;

(3) The ugliness would not disappear through natural healing process.

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

Elements of the crime

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

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

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

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

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

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

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

Illustration:

I placed a wallet on a table inside a room. A stranger comes inside the room, gets the wallet and puts it in his pocket. I suddenly started searching him and I found the wallet inside his pocket. The crime of theft is already consummated because he already acquired complete control of my wallet. This is so true when he removed the wallet from the confines of the table. He can exercise his will over the wallet already, he can drop this on the floor, etc. But as long as the wallet remains on the table, the theft is not yet consummated; there can only be attempted or frustrated theft. If he has started lifting the wallet, it is frustrated. If he is in the act of trying to take the wallet or place it under, attempted.

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

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

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

But if he does not take the valuables but lifts the entire chest, and before he could leave the

room, he was apprehended, there is frustrated theft.

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

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

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

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

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

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

<u>Illustration:</u>

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

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

Nature of the crime itself

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

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

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

CONSPIRACY AND PROPOSAL TO COMMITE A FELONY

Two ways for conspiracy to exist:

(1) There is an agreement.

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

Two kinds of conspiracy:

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

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

Question & Answer

Union A proposed acts of sedition to Union B. Is there a crime committed? Assuming Union B accepts the proposal, will your answer be different?

There is no crime committed. Proposal to commit sedition is not a crime. But if Union B accepts the proposal, there will be conspiracy to commit sedition which is a crime under the Revised Penal Code.

When the conspiracy is only a basis of incurring criminal liability, there must be an overt act done before the co-conspirators become criminally liable.

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

<u>Illustration:</u>

A, B, C and D came to an agreement to commit rebellion. Their agreement was to bring about the rebellion on a certain date. Even if none of them has performed the act of rebellion, there is already criminal liability arising from the conspiracy to commit the rebellion. But if anyone of them has committed the overt act of rebellion, the crime of all is no longer conspiracy to commit rebellion but rebellion itself. This subsists even though the other co-conspirator does not know that one of them had already done the act of rebellion.

This legal consequence is not true if the conspiracy is not a crime. If the conspiracy is only a basis of criminal liability, none of the co-conspirators would be liable, unless there is an overt act. So, for as long as anyone shall desist before an overt act in furtherance of the crime was committed, such a desistance would negate criminal liability.

<u>Illustration:</u>

Three persons plan to rob a bank. For as long as none of the conspirators has committed an overt act, there is no crime yet. But when one of them commits any overt act, all of them shall be held liable, unless a co-conspirator was absent from the scene of the crime or he showed up, but he tried to prevent the commission of the crime

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

We have to observe the distinction between the two because conspiracy as a crime, must have a clear and convincing evidence of its existence. Every crime must be proved beyond reasonable doubt.

When the conspiracy is just a basis of incurring criminal liability, however, the same may be deduced or inferred from the acts of several offenders in carrying out the commission of the crime. The existence of a conspiracy may be reasonably inferred from the acts of the offenders when such acts disclose or show a common pursuit of the criminal objective. This was the ruling in ***People v. Pinto, 204 SCRA 9.***

Although conspiracy is defined as two or more person coming to an agreement regarding the commission of a felony and deciding to commit it, the word "person" here should not be understood to require a meeting of the co-conspirator regarding the commission of the felony. A conspiracy of the second kind can be inferred or deduced even though they have not met as long as they acted in concert or simultaneously, indicative of a meeting of the minds toward a common goal or objective.

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

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

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

When several persons who do not know each other simultaneously attack the victim, the act of one is the act of all, regardless of the degree of injury inflicted by any one of them. All will be liable for the consequences. A conspiracy is possible even when participants are not known to each other. Do not think that participants are always known to each other.

<u>Illustrations:</u>

A thought of having her husband killed because the latter was maltreating her. She hired some

persons to kill him and pointed at her husband. The goons got hold of her husband and started mauling him. The wife took pity and shouted for them to stop but the goons continued. The wife ran away. The wife was prosecuted for parricide. But the Supreme Court said that there was desistance so she is not criminally liable.

A law student resented the fact that his brother was killed by A. He hired B to kill A and offered him P50,000.00. He disclosed to B that A was being arraigned in the City Hall of Manila and told him to execute the plan on the following day. In the evening of that same day, the law student changed his mind so he immediately went to the police and told them to dispatch police officers to prevent B from committing the crime. Unfortunately, the police were caught in traffic causing their delay, so that when they reached the place, B had already killed A. In this case, there was no proposal but a conspiracy. They have conspired to execute a crime but the crime involved here is murder and a conspiracy to commit murder is not a crime in itself but merely a basis for incurring criminal liability. This is just a preparatory act, and his desistance negates criminal liability.

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

As pointed out earlier, desistance is true only in the attempted stage. Before this stage, there is only a preparatory stage. Conspiracy is only in the preparatory stage.

The Supreme Court has ruled that one who desisted is not criminally liable. "When a person has set foot to the path of wickedness and brings back his foot to the path of righteousness, the law shall reward him for doing so."

Where there are several persons who participated, like in a killing, and they attacked the victim simultaneously, so much so that it cannot be known what participation each one had, all these participants shall be considered as having acted in conspiracy and they will be held collectively responsible.
Do not search for an agreement among the participants. If they acted simultaneously to bring about their common intention, conspiracy exists. And when conspiracy exists, do not consider the degree of participation of each conspirator because the act of one is the act of all. As a general rule, they have equal criminal responsibility.

Question & Answer

There are several offenders who acted simultaneously. When they fled, a victim was found dead. Who should be liable for the killing if who actually killed the victim is not known?

There is collective responsibility here. Without the principle of conspiracy, nobody would be prosecuted; hence, there is the rule on collective responsibility since it cannot be ascertained who actually killed the victim.

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

Illustration:

A, B and C have been courting the same lady for several years. On several occasions, they even visited the lady on intervening hours. Because of this, A, B and C became hostile with one another. One day, D invited the young lady and she accepted the invitation. Eventually, the young lady agreed to marry D. When A, B and C learned about this, they all stood up to leave the house of the young lady feeling disappointed. When A looked back at the young lady with D, he saw D laughing menacingly. At that instance, A stabbed D. C

and B followed. In this case, it was held that conspiracy was present.

The common notion is that when there is conspiracy involved, the participants are punished as principals. This notion is no longer absolute. In the case of ***People v. Nierra,*** *the Supreme Court ruled that even though there was conspiracy, if a co-conspirator merely cooperated in the commission of the crime with insignificant or minimal acts, such that even without his cooperation, the crime could be carried out as well, such co-conspirator should be punished as an accomplice only. The reason given is that penal laws always favor a milder form of responsibility upon an offender. So it is no longer accurate to think that when there is a conspiracy, all are principals.*

Notwithstanding that there is conspiracy, a co-conspirator may be held liable only as an accomplice. That means the penalty which shall be imposed upon him is one degree lower. For example, there was a planned robbery, and the taxi driver was present during the planning. There, the conspirators told the taxi driver that they are going to use his taxicab in going to the place of robbery. The taxi driver agreed but said, "I will bring you there, and after committing the robbery I will return later". The taxi driver brought the conspirators where the robbery would be committed. After the robbery was finished, he took the conspirators back to his taxi and brought them away. It was held that the taxi driver was liable only as an accomplice. His cooperation was not really indispensable. The robbers could have engaged another taxi. The taxi driver did not really stay during the commission of the robbery. At most, what he only extended was his cooperation. That is why he was given only that penalty for an accomplice.

A, B, and C, under the influence of marijuana, broke into a house because they learned that the occupants have gone on an excursion. They ransacked the house. A got a colored TV, B saw a camera and took that, and C found a can of salmon and took that. In the crime of robbery with force upon things, the penalty is based on the totality of the value of the personal property taken and not on the individual property taken by him.

In ***Siton v. CA,*** *it was held that the idea of a conspiracy is incompatible with the idea of a free for all. There is no definite opponent or definite intent as when a basketball crowd beats a referee to death.*

Composite crimes

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

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

Illustrations:

A, B, and C decided to commit robbery in the house of D. Pursuant to their agreement, A would ransack the second floor, B was to wait outside, and C would stay on the first floor. Unknown to B and C, A raped the girl upstairs. All of them will be liable for robbery with rape. The crime committed is robbery with rape, which is not a complex crime, but an indivisible felony under the Article 294 of the Revised Penal Code. Even if B and C did not know that rape was being committed and they agreed only and conspired to rob, yet rape was part of robbery. Rape can not be separated from robbery.

A, B and C agreed to rob the house of D. It was agreed that A would go the second floor, B would stay in the first floor, and C stands guard outside. All went to their designated areas in pursuit of the plan. While A was ransacking the

second floor, the owner was awakened. A killed him. A, B and C will be liable for robbery with homicide. This is because, it is well settled that any killing taking place while robbery is being committed shall be treated as a single indivisible offense.

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

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

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

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

Illustration:

A, B and C agreed to kill D. When they saw the opportunity, A, B and C killed D and after that, A and B ran into different directions. C inspected the pocket of the victim and found that the victim was wearing a ring – a diamond ring – and he took it. The crimes committed are homicide and theft. As far as the homicide is concerned, A, B and C are liable because that was agreed upon and theft was not an integral part of homicide. This is a distinct crime so the rule will not apply because it was not the crime agreed upon. Insofar as the crime of theft is concerned, C will be the only one liable. So C will be liable for homicide and theft.

CLASSIFICATION OF FELONIES

This question was asked in the bar examination: How do you classify felonies or how are felonies classified?

What the examiner had in mind was Articles 3, 6 and 9. Do not write the classification of felonies under Book 2 of the Revised Penal Code. That was not what the examiner had in mind because the question does not require the candidate to classify but also to define. Therefore, the examiner was after the classifications under Articles 3, 6 and 9.

Felonies are classified as follows:

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

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

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

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

(3) *According to their gravity*

Under Article 9, felonies are classified as grave felonies or those to which

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

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

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

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

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

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

This classification of felony according to gravity is important with respect to the question of prescription of crimes.

In the case of light felonies, crimes prescribe in two months. After two months, the state loses the right to prosecute unless the running period is suspended. If the offender escapes while in detention after he has been loose, if there was already judgment that was passed, it can be promulgated even if absent under the New Rules on Criminal Procedure. If the crime is correctional, it prescribes in ten years, except arresto mayor, which prescribes in five years.

SUPPLETORY APPLICATION OF THE REVISED PENAL CODE

Article 10 is the consequence of the legal requirement that you have to distinguish those punished under special laws and those under the Revised Penal Code. With regard to Article 10, observe the distinction.

In Article 10, there is a reservation "provision of the Revised Penal Code may be applied suppletorily to special laws". You will only apply the provisions of the Revised Penal Code as a supplement to the special law, or simply correlate the violated special law, if needed to avoid an injustice. If no justice would result, do not give suppletorily application of the Revised Penal Code to that of special law.

For example, a special law punishes a certain act as a crime. The special law is silent as to the civil liability of one who violates the same. Here is a person who violated the special law and he was prosecuted. His violation caused damage or injury to a private party. May the court pronounce that he is civilly liable to the offended party, considering that the special law is silent on this point? Yes, because Article 100 of the Revised Penal Code may be given suppletory application to prevent an injustice from being done to the offended party. Article 100 states that every person criminally liable for a felony is also civilly liable. That article shall be applied suppletory to avoid an injustice that would be caused to the private offended party, if he would not be indemnified for the damages or injuries sustained by him.

In ***People v. Rodriguez,*** *it was held that the use of arms is an element of rebellion, so a rebel cannot be further prosecuted for possession of firearms. A violation of a special law can never absorb a crime punishable under*

the Revised Penal Code, because violations of the Revised Penal Code are more serious than a violation of a special law. But a crime in the Revised Penal Code can absorb a crime punishable by a special law if it is a necessary ingredient of the crime in the Revised Penal Code.
In the crime of sedition, the use of firearms is not an ingredient of the crime. Hence, two prosecutions can be had: (1) sedition; and (2) illegal possession of firearms.

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

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

Circumstances affecting criminal liability

<u>There are five circumstances affecting criminal liability:</u>

(1) Justifying circumstances;

(2) Exempting circumstances;

(3) Mitigating circumstances;

(4) Aggravating circumstances; and

(5) Alternative circumstances.

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

(1) Absolutory cause; and

(2) Extenuating circumstances.

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

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

Absolutory cause

The effect of this is to absolve the offender from criminal liability, although not from civil liability. It has the same effect as an exempting circumstance, but you do not call it as such in order not to confuse it with the circumstances under Article 12.

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

Then, Article 89 provides how criminal liability is extinguished:

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

Amnesty;

Absolute pardon;

Prescription of the crime;

Prescription of the penalty; and

Marriage of the offended woman as provided in Article 344.

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

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

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

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

Absolutory cause has the effect of an exempting circumstance and they are predicated on lack of voluntariness like instigation. Instigation is associated with criminal intent. Do not consider culpa in connection with instigation. If the crime is culpable, do not talk of instigation. In instigation, the crime is committed with dolo. It is confused with entrapment.
Entrapment is not an absolutory cause. Entrapment does not exempt the offender or mitigate his criminal liability. But instigation absolves the offender from criminal liability because in instigation, the offender simply acts as a tool of the law enforcers and, therefore, he is acting without criminal intent because without the instigation, he would not have done the criminal act which he did upon instigation of the law enforcers.

<u>Difference between instigation and entrapment</u>

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

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

<u>Illustrations:</u>

An agent of the narcotics command had been tipped off that a certain house is being used as an opium den by prominent members of the society. The law enforcers cannot themselves penetrate the house because they do not belong to that circle so what they did was to convince a prominent member of society to visit such house to find out what is really happening inside and that so many cars were congregating there. The law enforcers told the undercover man that if he is offered a cigarette, then he should try it to find out whether it is loaded with dangerous drugs or not. This fellow went to the place and mingled there. The time came when he was offered a stick of cigarette and he tried it to see if the cigarette would affect him. Unfortunately, the raid was

conducted and he was among those prosecuted for violation of the Dangerous Drugs Act. Is he criminally liable? No. He was only there upon instigation of the law enforcers. On his own, he would not be there. The reason he is there is because he cooperated with the law enforcers. There is absence of criminal intent.

If the law enforcer were able to enter the house and mingle there, nobody would offer him a cigarette because he is unknown. When he saw somebody, he pleaded to spare him a smoke so this fellow handed to him the cigarette he was smoking and found out that it was loaded with a dangerous drug. He arrested the fellow. Defense was that he would not give a cigarette if he was not asked. Is he criminally liable? Yes. This is a case of entrapment and not instigation. Even if the law enforcer did not ask for a cigarette, the offender was already committing a crime. The law enforcer ascertained if it is a violation of the Dangerous Drugs Act. The means employed by the law enforcer did not make the accused commit a crime. Entrapment is not an absolutory cause because in entrapment, the offender is already committing a crime.

In another instance, a law enforcer pretended to be a buyer of marijuana. He approached a person suspected to be a pusher and prevailed upon this person to sell him two kilos of dried marijuana leaves and this fellow gave him and delivered them. He apprehended the fellow. Defense is instigation, because he would not have come out for the marijuana leaves if the law enforcer had not instigated him. It is a case of entrapment because the fellow is already committing the crime from the mere fact that he is possessing marijuana. Even without selling, there is a crime committed by him: illegal possession of dangerous drugs. How can one sell marijuana if he is not in possession thereof. The law enforcer is only ascertaining if this fellow is selling marijuana leaves, so this is entrapment, not instigation. Selling is not necessary to commit the crime, mere possession is already a crime.

A fellow wants to make money. He was approached by a law enforcer and was asked if he wanted to deliver a package to a certain person. When that fellow was delivering the package, he was apprehended. Is he criminally liable? This is a case of instigation; he is not committing a crime.

A policeman suspected a fellow selling marijuana. The law enforcer asked him, "Are you selling that? How much? Could you bring that to the other fellow there?" When he brought it there, the person, who happens to be a law enforcer, to whom the package was brought to found it to be marijuana. Even without bringing, he is already possessing the marijuana. The fact that he was appointed to another person to find out its contents, is to discover whether the crime is committed. This is entrapment.

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

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

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

In entrapment, the person entrapped should not know that the person trying to entrap him was a

law enforcer. The idea is incompatible with each other because in entrapment, the person entrapped is actually committing a crime. The officer who entrapped him only lays down ways and means to have evidence of the commission of the crime, but even without those ways and means, the person entrapped is actually engaged in a violation of the law.

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

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

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

Extenuating circumstances

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

Illustrations:

An unwed mother killed her child in order to conceal a dishonor. The concealment of dishonor is an extenuating circumstance insofar as the unwed mother or the maternal grandparents is concerned, but not insofar as the father of the child is concerned. Mother killing her new born child to conceal her dishonor, penalty is lowered by two degrees. Since there is a material lowering of the penalty or mitigating the penalty, this is an extenuating circumstance.

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

In the crime of adultery on the part of a married woman abandoned by her husband, at the time she was abandoned by her husband, is it necessary for her to seek the company of another man. Abandonment by the husband does not justify the act of the woman. It only extenuates or reduces criminal liability. When the effect of the circumstance is to lower the penalty there is an extenuating circumstance.

A kleptomaniac is one who cannot resist the temptation of stealing things which appeal to his desire. This is not exempting. One who is a kleptomaniac and who would steal objects of his desire is criminally liable. But he would be given the benefit of a mitigating circumstance analogous to paragraph 9 of Article 13, that of suffering from an illness which diminishes the exercise of his will power without, however, depriving him of the consciousness of his act. So this is an extenuating circumstance. The effect is to mitigate the criminal liability.

Distinctions between justifying circumstances and exempting circumstances

In justifying circumstances –

(1) The circumstance affects the act, not the actor;

(2) The act complained of is considered to have been done within the bounds of law; hence, it is legitimate and lawful in the eyes of the law;

(3) Since the act is considered lawful, there is no crime, and because there is no crime, there is no criminal;

(4) Since there is no crime or criminal, there is no criminal liability as well as civil liability.

In exempting circumstances –

(1) The circumstances affect the actor, not the act;

(2) The act complained of is actually wrongful, but the actor acted without voluntariness. He is a mere tool or instrument of the crime;

(3) Since the act complained of is actually wrongful, there is a crime. But because the actor acted without voluntariness, there is absence of dolo or culpa. There is no criminal;

(4) Since there is a crime committed but there is no criminal, there is civil liability for the wrong done. But there is no criminal liability. However, in paragraphs 4 and 7 of Article 12, there is neither criminal nor civil liability.

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

Justifying circumstances

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

<u>Self Defense</u>

In justifying circumstances, the most important is self-defense. When this is given in the bar, it is the element of unlawful aggression that is in issue. Never confuse unlawful aggression with provocation. Mere provocation is not enough.

<u>Illustration:</u>

A and B are long standing enemies. Because of their continuous quarrel over the boundaries of their adjoining properties, when A saw B one afternoon, he approached the latter in a menacing manner with a bolo in his hand. When he was about five feet away from B, B pulled out a revolver and shot A on the chest, killing him. Is B criminally liable? What crime was committed, if any?

The act of A is nothing but a provocation. It cannot be characterized as an unlawful aggression because in criminal law, an unlawful aggression is an attack or a threatened attack which produces an imminent danger to the life and limb of the one resorting to self-defense. In the facts of the problem given above, what was said was that A was holding a bolo. That bolo does not produce any real or imminent danger unless a raises his arm with the bolo. As long as that arm of A was down holding the bolo, there is no imminent danger to the life or limb of B. Therefore, the act of B in shooting A is not justified.

Defense of rights is included in the circumstances of defense and so is defense of honor.

*In **US v. Mateo,** while a woman was sleeping, her sister and brother-in-law went to see a movie and came home late that evening. The accused was already asleep. The brother-in-law came up first while his wife was still in the*

staircase. He started feeling through the dark, and in the process, he awakened the accused. Believing that her honor was at stake, she got a pair of scissors and stabbed the man. When the lights were turned on, she realized that she had stabbed her brother-in-law. The accused claimed as having acted in defense of her honor and mistake of fact. She said that she believed that her own honor was at stake. It was held that the whole matter is purely her imagination. Touching the arm could not produce such danger as would really be imminent to the honor of the woman.

Apparently, under the Revised Penal Code, the honor of a woman in respect of her defense is equated with her virginity.

In ***US v. Jaurigue,*** *it was held that it was not possible to rape the accused because the whole thing transpired in the church, where there were so many people. Therefore, her availing of defense of honor is not tenable. She could not possibly be raped in that place. Defense of honor here is being equated with one of abuse of chastity of a woman. In this case, the offended party placed his hand on the thigh of the woman who was then praying. There was already some sort of aggression but it was not enough to warrant the act resorted to by the accused in getting a small knife from her bag and thrusting it on the chest of the offended party.*

Do not confuse unlawful aggression with provocation. What justifies the killing of a supposed unlawful aggressor is that if the offender did not kill the aggressor, it will be his own life that will be lost. That will be the situation. If that is not the situation, even if there was an unlawful aggression that has already begun, you cannot invoke self-defense.

Illustration:

Two policemen quarreled inside a police precinct. One shot the other. The other was wounded on his thigh. The policeman who was wounded on the thigh jumped on the arm of the fellow who shot him. In the process, they wrestled for possession of the gun. The policeman who shot the other guy fell on the floor. On that point, this policeman who was shot at the thigh was already able to get hold of the revolver. In that position, he started emptying the revolver of the other policeman who was lying on the floor. In this case, it was held that the defense of self-defense is no available. The shooting was not justified.

In ***People v. Rodriguez,*** *a woman went into the house of another woman whom she suspected of having an affair with her husband. She started pouring gasoline on the house of the woman. Since the woman has children inside the house, she jumped out to prevent this other woman from pouring gasoline around the house. The woman who was pouring gasoline had a bolo, so she started hacking the other woman with it. They grappled with the bolo. At that moment, the one who jumped out of the house was able to wrest the bolo away and started hacking the other woman. It was held that the hacking was not justified. Actually, when she killed the supposed unlawful aggressor, her life and limb were no longer in imminent danger. That is the focal point.*

At the time the accused killed the supposed unlawful aggressor, was her life in danger? If the answer is no, there is no self-defense. But while there may be no justifying circumstance, do not forget the incomplete self-defense. This is a mitigating circumstance under paragraph 1 of Article 13. This mitigating circumstance is either privileged or ordinary. If ordinary, it has the effect of reducing the imposable penalty to the minimum period. But if it is privileged, it has the effect of lowering the penalty by one to two degrees, depending on how the court will regard the absence or presence of conditions to justify the act.

Defense of property rights

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

Defense of stranger

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

Question & Answer

The person being defended was a relative – a first cousin. But the fellow who killed the aggressor had some score to settle with the aggressor. Is he entitled to a justifying circumstance?

Yes. In law, the condition that a person making the defense did not act out of revenge, resentment or evil motive is not a requirement in defense of relative. This is only required in defense of strangers.

Incomplete self-defense or incomplete justifying circumstance or incomplete exempting circumstances

When you say incomplete justifying circumstance, it means that not all the requisites to justify the act are present or not the requisites to exempt from criminal liability are present.

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

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

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

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

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

If the question refers generally to justifying or exempting circumstances, the question should be, "how may incomplete justifying circumstance affect criminal liability of the offender, if at all?"

Make a separate answer with respect to self-defense, defense of relative or defense of stranger because in these cases, you always have to specify the element of unlawful aggression; otherwise, there would be no incomplete self-defense, defense of relative or defense of stranger. In general, with respect to other circumstances, you need only to say this:
If less than a majority of the requisites necessary to justify the act or exempt from criminal liability are present, the offender shall only be entitled to an ordinary mitigating circumstance.

If a majority of the requisites needed to justify the act or exempt from criminal liability are present, the offender shall be given the benefit of a privileged mitigating circumstance. The penalty shall be lowered by one or two degrees.

When there are only two conditions to justify the act or to exempt from criminal liability, the presence of one shall be regarded as the majority.

State of necessity

The state of necessity must not have been created by the one invoking the justifying circumstances. For example, A drove his car beyond the speed limit so much so that when he reached the curve, his vehicle skidded towards a ravine. He swerved his car towards a house, destroying it and killing the occupant therein. A cannot be justified because the state of necessity was brought about by his own felonious act.

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

Civil liability is based on the benefit derived and not on the act, damage or injury caused. It is wrong to treat this as an exception to the rule that in justifying circumstances, there is no criminal nor civil liability, on the principle that "no one should enrich himself at the expense of another".

Illustration:

A and B are owners of adjoining lands. A owns the land for planting certain crops. B owns the land for raising certain goats. C used another land for a vegetable garden. There was heavy rain and floods. Dam was opened. C drove all the goats of B to the land of A. The goats rushed to the land of A to be saved, but the land of A was destroyed. The author of the act is C, but C is not civilly liable because he did not receive benefits. It was B who was benefited, although he was not the actor. He cannot claim that it was fortuitous event. B will answer only to the extent of the benefit derived by him. If C who drove all the goats is accused of malicious mischief, his defense would be that he acted out of a state of necessity. He will not be civilly liable.

Fulfillment of duty

In the justifying circumstance of a person having acted out of fulfillment of a duty and the lawful exercise of a right or office, there are only two conditions:

(1) The felony was committed while the offender was in the fulfillment of a duty or in the lawful exercise of a right or office; and

(2) The resulting felony is the unavoidable consequence of the due fulfillment of the duty or the lawful exercise of the right or office.

Invariably, when you are given a problem on this premise, and the first condition is present, but the second is not because the offender acted with culpa, the offender will be entitled to a privelege mitigating circumstance. This is what you call incomplete justification of fulfillment of duty or incomplete justification of exercise of a right. In that case, the penalty would be reduced by one or two degrees.

*In **People v. Oanis and Callanta,** the accused Chief of Police and the constabulary soldier were sent out to arrest a certain Balagtas, supposedly a notorious bandit. There was an order to kill Balagtas if he would resist. The accused arrived at the house of a dancer who was supposedly the girlfriend of Balagtas. When they were there, they saw a certain person who resembled Balagtas in all his bodily appearance sleeping on a bamboo bed but facing the other direction. The accused, without going around the house, started firing at the man. They found out later on that the man was not really Balagtas. They tried to invoke the justifying circumstance of having acted in fulfillment of a duty.*

The second requisite is absent because they acted with negligence. There was nothing that prevented them from looking around the house and looking at the face of the fellow who was sleeping. There could not be any danger on their life and limb. Hence, they were held guilty of the crime of murder because the fellow was killed when he was sleeping and totally defenseless. However, the Supreme Court granted them the benefit of incomplete justification of fulfillment of duty and the penalty was reduced by one or two degrees.

Do not confuse fulfillment of a duty with self-defense.

Illustration:

A, a policeman, while waiting for his wife to go home, was suddenly stabbed at the back by B, a hoodlum, who mistook him for someone else. When A saw B, he drew his revolver and went after B. After firing a shot in the air, B did not stop so A shot B who was hit at a vital part of the body. B died. Is the act of A justified?

Yes. The justifying circumstance of self-defense cannot be invoked because the unlawful aggression had already ceased by the time A shot B. When the unlawful aggressor started fleeing, the unlawful aggression ceased. If the person attacked runs after him, in the eyes of the law, he becomes the unlawful aggressor. Self-defense cannot be invoked. You apply paragraph 5 on fulfillment of duty. The offender was not only defending himself but was acting in fulfillment of a duty, to bring the criminal to the authorities. As long as he was not acting out of malice when he fired at the fleeing criminal, he cannot be made criminally liable. However, this is true only if it was the person who stabbed was the one killed. But if, let us say, the policeman was stabbed and despite the fact that the aggressor ran into a crowd of people, the policeman still fired indiscriminately. The policeman would be held criminally liable because he acted with imprudence in firing toward several people where the offender had run. But although he will be criminally liable, he will be given the benefit of an incomplete fulfillment of duty.

Exempting circumstances

In exempting circumstances, the reason for the exemption lies on the involuntariness of the act – one or some of the ingredients of voluntariness such as criminal intent, intelligence, or freedom of action on the part of the offender is missing. In case it is a culpable felony, there is absence of freedom of action or intelligence, or absence of negligence, imprudence, lack of foresight or lack of skill.

Imbecility and insanity

There is complete absence of intelligence. Imbecile has an IQ of 7. The intellectual deficiency is permanent. There is no lucid interval unlike in insanity.

The insanity that is exempting is limited only to mental aberration or disease of the mind and must completely impair the intelligence of the accused. Under common law countries, emotional or spiritual insanity are exempting circumstances unlike in this jurisdiction because the Revised Administrative Code, as defined is limited to mental aberration of the mind. This was the ruling in ***People v. Dungo.***

In ***People v. Rafanan, decided on November 21, 1991,*** *the following are the two tests for exemption on grounds of insanity:*

(1) The test of cognition, or whether the accused acted with complete deprivation of intelligence in committing said crime; and

(2) The test of volition, or whether the accused acted in total deprivation of freedom of will.

Schizoprenia (dementia praecox) can only be considered a mitigating circumstance because

it does not completely deprive the offender of consciousness of his acts.

Minority

In exempting circumstances, the most important issue is how the minority of the offender affected his criminal liability. It seems that the view of many is that when the offender is a youthful offender, he must necessarily be confined in a reformatory. This is wrong. A youthful offender can only be confined in a reformatory upon order of the court. Under the amendment to Presidential Decree No. 603, Presidential Decree No. 1179 requires that before a youthful offender may be given the benefit if a suspension of sentence, there must be an application filed with the court which should pronounce sentence. Note that the commitment of the offender in a reformatory is just a consequence of the suspension of the sentence. If the sentence is not suspended, there is no commitment in a reformatory. The commitment is in a penitentiary, since suspension of sentence requires certain conditions:

(1) The crime committed should not be punishable by reclusion perpetua or death penalty;

(2) The offender should not have been given the benefit of a suspended sentence before. This means he is a first timer;

(3) He must be below 18 years old because a youthful offender is one who is below 18.

Note that the age of majority has been reduced to 18. There is no more bracket where the offender is a minor yet no longer entitled to a mitigating circumstance. An offender below 18 is always entitled to a mitigating or exempting circumstance.

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

(1) If the offender is within the bracket of nine years old exactly or less, he is exempt from criminal liability but not from civil liability. This type of offenders are absolutely exempt. Even if the offender nine years or below acted with discernment, this should not be taken against him because in this age bracket, the exemption is absolute.

(2) If over nine but below 15, a distinction has to be made whether the offender acted with or without discernment. The burden is upon the prosecution to prove that the offender acted with discernment. It is not for the minor to prove that he acted without discernment. All that the minor has to show is that he is within the age bracket. If the prosecution would want to pin criminal liability on him, it has to prove that the crime was committed with discernment. Here, if the offender was exempt from criminal liability because the prosecution was not able to prove that the offender acted with discernment, he is only civilly liable but he will be committed to the surveillance of his parents who will be required to report to the court periodically on the progress or development of the offender.

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

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

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

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

(4) *If the offender is 15 years old and above but below 18, there is no exemption anymore but he is also given the benefit of a suspended sentence under the conditions stated earlier and if at the time the sentence is promulgated, he is not 18 years old or over yet. If the sentence is promulgated, the court will impose a penalty one degree lower. This time it is fixed. It is to be imposed one degree lower and in the proper periods subject to the rules in Article 64.*

<u>Damnum absque injuria</u>

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

<u>Illustration:</u>

A person who is driving his car within the speed limit, while considering the condition of the traffic and the pedestrians at that time, tripped on a stone with one of his car tires. The stone flew hitting a pedestrian on the head. The pedestrian suffered profuse bleeding. What is the liability of the driver?

There is no civil liability under paragraph 4 of Article 12. Although, this is just an exempting circumstance, where generally there is civil liability, yet, in paragraph 4 of Article 12, there is no civil liability as well as criminal liability. The driver is not under obligation to defray the medical expenses.

However, correlate paragraph 4 of Article 12 with the second paragraph of Article 275. Article 275 gives you the crime of abandoning the victim of one's own accident. It is a crime. Here, the accident referred to in paragraph 2 of Article 275 is in the concept of paragraph 4 of Article 12. This means that the offender must be performing a lawful act, that he was doing it with due care but somehow, injury resulted by mere accident without fault or intention of causing it.

If at the very beginning, the offender was negligent, you do not apply Article 275, paragraph 2. Instead, it will be Article 365 on criminal negligence. Notice that in the last paragraph of Article 365, in the case of the so-called hit and run drivers who have injured somebody and would abandon the victim of the accident, the penalty is qualified to a higher degree. Here, under paragraph 4 of Article 12, the infliction of the injury by mere accident does not give rise to a criminal or civil liability, but the person who caused the injury is duty bound to attend to the person who was injured. If he would abandon him, it is in that abandonment that the crime arises which is punished under the second paragraph of Article 275.

Compulsion of irresistible force and under the impulse of an uncontrollable fear

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

In a situation where the offender would otherwise be exempt, but the requisites for exemption are not all present, the offender is still entitled to a mitigating circumstance of incomplete exemption under paragraph 1 of Article 13. Apply the rule if majority of the requisites to exempt from criminal liability are present. The offender shall be given the benefit of privelege mitigating circumstances. That means that the penalty prescribed of the crime committed shall be reduced by one or two degrees in accordance with Article 69 of the Revised Penal Code. If less than a majority of the requisites for exemption are present, the offender shall be given only the benefit of ordinary mitigating circumstances. That means the penalty shall be reduced to the minimum period of the prescribed penalty, unless the mitigating circumstance is offset by an aggravating circumstance.

Mitigating circumstances

Distinctions between ordinary mitigating circumstances and privileged mitigating circumstances

(1) As to the nature of the circumstances

Ordinary mitigating circumstances can be offset by aggravating circumstances.

Privilege mitigating circumstance can never be offset by any aggravating circumstance.

(2) As to effect

Ordinary mitigating circumstances, if not offset, will operate to reduce the penalty to the minimum period, provided the penalty is a divisible one.

Privilege mitigating circumstances operate to reduce the penalty by one or two degrees, depending upon what the law provides.

You can easily detect whether the circumstance which mitigates the liability of the offender is privilege or not, that is, if the penalty is reduced by degree. If the penalty is lowered by one or two degrees, it is privilege; therefore, even if there is an aggravating circumstance, do not compensate because that would be violating the rules.

The circumstances under Article 13 are generally ordinary mitigating, except in paragraph 1, where it is privilege, Article 69 would apply. So also, paragraph 2, in cases where the offender is below 18 years old, such an offender if criminally liable is entitled to the lowering of penalty by one degree. But if over nine but under 15, he is entitled to a discretionary penalty of at least two degrees lower. When there is a lowering of penalties by degrees, it is a privilege. It cannot be offset by an aggravating circumstance.

Although the bulk of the circumstances in Article 13 are ordinary mitigating circumstances, yet, when the crime committed is punishable by a divisible penalty, two or more of this ordinary mitigating circumstances shall have the effect of a privilege mitigating circumstances if there is no aggravating circumstance at all.

Correlate Article 13 with Articles 63 and 64. Article 13 is meaningless without knowing the rules of imposing the penalties under Articles 63 and 64.

In bar problems, when you are given indeterminate sentences, these articles are very important.

When the circumstance which mitigates criminal liability is privileged, you give effect to it above all considerations. In other words, before you go into any circumstance, lower first the penalty to the proper degree. That is precisely why this circumstance is considered privileged. It takes preference over all other circumstances.

Question & Answer

A 17 year old boy committed parricide. Will he be given the benefit of Indeterminate Sentence Law? Then, the facts state, penalty for parricide is reclusion perpetua to death.

You have learned that the Indeterminate Sentence Law does not apply, among other situations, when the penalty imposed is death or life imprisonment. But then in the problem given, the offender is a 17-year old boy. That circumstance is privileged. So before you go in the Indeterminate Sentence Law, you have to apply that circumstance first. Being a 17-year old boy, therefore, the penalty would go one degree lower and the penalty for parricide which now stands at reclusion perpetua will go down to reclusion temporal. Reclusion temporal is already governed by the Indeterminate Sentence Law.

The answer, therefore, is yes. He shall be given the benefit of the Indeterminate Sentence Law. Although the penalty prescribed for the crime committed is reclusion perpetua, that is not the imposable penalty, since being 17 years old is a privilege mitigating circumstance. That privilege lowers the penalty by one degree. The imposable penalty, therefore, is reclusion temporal. The Indeterminate Sentence Law applies to this and so the offender will be given its benefit.

Criminal laws are to be construed always in a manner liberal or lenient to the offender. Between giving the offender the benefit of the Indeterminate Sentence Law and withholding it away from him, there is more reason to give him its benefit. It is wrong for you to determine whether the Indeterminate Sentence Law will apply or not on the basis of reclusion perpetua because that is not the imposable penalty. The moment you do that, you disregard the privileged character of minority. You are only treating it as an ordinary mitigating circumstance. Privilege mitigating circumstance will apply over and above all other considerations. When you arrive at the correct penalty, that is the time when you find out whether the Indeterminate Sentence Law will apply or not.

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

Praeter intentionem

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

<u>Sufficient threat or provocation</u>

This is mitigating only if the crime was committed on the very person who made the threat or provocation. The common set-up given in a bar problem is that of provocation was given by somebody. The person provoked cannot retaliate against him; thus, the person provoked retaliated on a younger brother or on an elder father. Although in fact, there is sufficient provocation, it is not mitigating because the one who gives the provocation is not the one against whom the crime was committed.

Question & Answer

A was walking in front of the house of B. B at that time was with his brother C. C told B that sometime in the past, A boxed him, and because he was small, he did not fight back. B approached A and boxed him, but A cannot hit back at B because B is bigger, so A boxed C. Can A invoke sufficient provocation to mitigate criminal liability?

No. Sufficient provocation must come from the offended party. There may actually be sufficient provocation which immediately preceded the act, but if provocation did not come from the person offended, paragraph 4, Article 13 will not apply.

The commission of the felony must be immediate to the threat or provocation in order that this circumstance be mitigating. If there is sufficient break of time before the provocation or threat and the consequent commission of the crime, the law presupposes that during that interval, whatever anger or diminished self control may have emerged from the offender had already vanished or disappeared. In applying this mitigating circumstance, the courts are generally considering that there must be no break between the provocation or threat and the commission of the felony. In other words, the felony was committed precisely because he was then and there provoked.

However, the recent rulings of the Supreme Court, as well as the Court of Appeals, has stretched this criterion – it is not only a matter of time anymore. Before, there was a ruling that if a period of one hour had lapsed between the provocation and the commission of the felony, this mitigating circumstance is no longer applicable.

<u>Illustration:</u>

The accused went to a barrio dance. In that gathering, there was a bully and he told the accused that he is not allowed to go inside. The accused tried to reason out but the bully slapped him several times in front of so many people, some of whom were ladies who were being courted by the accused, so he was humiliated and embarrassed. However, he cannot fight the bully at that time because the latter was much bigger and heavier. Accused had no choice but to go home. When he saw the bully again, this time, he was armed with a knife and he stabbed the bully to death. The evidence for the accused showed that when he went home, he was not able to sleep throughout the night, thinking of the humiliation and outrage done to him, despite the lapse of about 22 hours. The Supreme Court gave him the benefit of this mitigating circumstance. The reason stated by the Supreme Court for allowing the accused to be benefited by this mitigating circumstance is that the effect of the humiliation and outrage emitted by the offended party as a provocation upon the accused was still present when he committed the crime and, therefore, the reason for paragraph 4 still applies. The accused was still acting under a diminished self control because he was thinking of the humiliation he suffered in the hands of the offended party. The outrage was so serious unless vindicated.

This is the correct interpretation of paragraph 4, Article 13. As long as the offender at the time he committed the felony was still under the influence of the outrage caused by the

provocation or threat, he is acting under a diminished self control. This is the reason why it is mitigating.

You have to look at two criteria:

(1) If from the element of time, there is a material lapse of time stated in the problem and there is nothing stated in the problem that the effect of the threat or provocation had prolonged and affected the offender at the time he committed the crime, then you use the criterion based on the time element.

(2) However, if there is that time element and at the same time, facts are given indicating that at the time the offender committed the crime, he is still suffering from outrage of the threat or provocation done to him, then he will still get the benefit of this mitigating circumstance.

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

Vindication of a grave offense

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

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

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

Passion or obfuscation

This stands on the premise or proposition that the offender is suffering from a diminished self control because of the passion or obfuscation. The same is true with the circumstances under paragraphs 4 and 5. So, there is a ruling to the effect that if the offender is given the benefit of paragraph 4, he cannot be given the benefit of paragraph 5 or 6, or vice-versa. Only one of the three mitigating circumstances should be given in favor of the offender.

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

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

The passion must be legitimate. As a rule, it cannot be based on common law relationship

because common law relationships are illicit. However, consider whether passion or obfuscation is generated by common law relationship or by some other human consideration.

In a case where the relationship between the accused and the woman he was living with was one of common law, he came home and surprised his common law wife having sexual intercourse with a friend. This infuriated him. He killed the friend and he claimed passion or obfuscation. The trial court denied his claim because the relationship was a common law one.

On review, the accused was given the benefit of the circumstances and the basis of considering passion or obfuscation in favor of the accused was the act of the common law wife in committing adultery right from the conjugal bed. Whether or not they are married, any man who discovers that infidelity was committed on the very bed provided by him to the woman would naturally be subjected to obfuscation.

When a married person surprised his better half in the act of sexual intercourse with another, he gets the benefit of Article 247. However, that requisite which in the first place, the offender must have surprised his/her spouse actually committing sexual intercourse should be present. If the surprising was done not in the actual act of sexual intercourse but before or after it, then Article 247 does not apply.

Although this is the ruling, still, the accused will be given the benefit of sufficient provocation if the intercourse was done in his dwelling. If this act was done somewhere else and the accused kills the paramour or the spouse, this may be considered as mitigation of a grave offense to him or otherwise as a situation sufficient to create passion or obfuscation. Therefore, when a married man upon coming home, surprises his wife who was nude and lying with another man who was also nude, Article 247 does not apply. If he kills them, vindication of a grave offense will be mitigating in favor of the offender.

Illustrations:

A is courting B, a receptionist in a beerhouse. C danced with B. A saw this and stabbed C. It was held that jealousy is an acknowledged basis of passion.

A, a male classmate is escorting B, a female classmate. On the way out, some men whistled lustfully. The male classmate stabbed said men. This was held to be obfuscation.

When a man saw a woman bathing, almost naked, for which reason he raped her, such man cannot claim passion as a mitigating circumstance.

A man and a woman were living together for 15 years. The man left the village where they were living and never returned home. The common law wife learned that he was getting married to a classmate. On the scheduled wedding day, she stabbed the groom in the chest, instantly killing him. She confessed and explained that any woman cannot tolerate what he did to her. She gave him the best years of her life. She practically waited for him day and night. It was held that passion and obfuscation were considered mitigating. Ingratitude was shown here.

Voluntary surrender

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

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

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

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

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

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

Where the offender went to the municipal building not to own responsibility for the killing, such fact is not tantamount to voluntary surrender as a mitigating circumstance. Although he admitted his participation in the killing, he tried to avoid responsibility by claiming self-defense which however he was not able to prove. ***People v. Mindac, decided December 14, 1992.***

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

<u>Physical defect</u>

The physical defect that a person may have must have a relation to the commission of the crime. In a case where the offender is deaf and dumb, personal property was entrusted to him and he misappropriated the same. The crime committed was estafa. The fact that he was deaf and dumb is not mitigating because that does not bear any relation to the crime committed.

Not any physical defect will affect the crime. It will only do so if it has some relation to the crime committed. If a person is deaf and dumb and he has been slandered, he cannot talk so what he did was, he got a piece of wood and struck the fellow on the head. The crime committed was physical injuries. The Supreme Court held that being a deaf and dumb is mitigating because the only way is to use his force because he cannot strike back.

If the offender is blind in one eye, as long as his means of action, defense or communication with others are not restricted, such circumstance is not mitigating. This circumstance must also have a bearing on the crime committed and must depend on how the crime was committed.

<u>Analogous cases</u>

The act of the offender of leading the law enforcers to the place where he buried the

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

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

Aggravating circumstances

Kinds of aggravating circumstances:

(1) Generic or those that can generally apply to all crime;

(2) Specific or those that apply only to a particular crime;

(3) Qualifying or those that change the nature of the crime;

(4) Inherent or those that must of necessity accompany the commission of the crime.

The aggravating circumstances must be established with moral certainty, with the same degree of proof required to establish the crime itself.

Most important of the classification of aggravating circumstances are the qualifying and the generic aggravating circumstances.

In practice, the so-called generic aggravating circumstances are referred to simply as aggravating circumstances. The so-called qualifying aggravating circumstances are simply referred to as qualifying circumstances. This is so because there is no qualifying circumstance that is not aggravating. To say qualifying aggravating circumstance is redundant. In the examination, if you find qualifying circumstances, you have to think about these as aggravating circumstances which are the ingredients of the crime.

Distinctions between aggravating and qualifying circumstances:

In aggravating circumstances –

(1) The circumstance can be offset by an ordinary mitigating circumstance;

(2) No need to allege this circumstance in the information, as long as it is proven during trial. If it is proved during trial, the court would consider the same in imposing the penalty;

(3) It is not an ingredient of a crime. It only affects the penalty to be imposed but the crime remains the same.

In qualifying circumstance –

(1) The circumstance affects the nature of the crime itself such that the offender shall be liable for a more serious crime. The circumstance is actually an ingredient of the crime;

(2) Being an ingredient of the crime, it cannot be offset by any mitigating circumstance;

(3) Qualifying circumstances to be appreciated as such must be specifically alleged in the complaint or information. If not alleged but proven during the trial, it will be considered only as generic aggravating circumstance. If this happens, they are susceptible of being offset by a mitigating circumstance.

An aggravating circumstance is qualifying when it is an ingredient of the crime. Therefore it is

included in the provision of law defining the crime. If it is not so included, it is not qualifying.

In Article 248, in the crime of murder, the law specifically mentions thereunder several circumstances which are aggravating under Article 14. All of these will qualify a killing from homicide to murder; however, you understand that only one is qualifying.

If let us say, the accused was charged with murder. Three of these circumstances: treachery, evident premeditation and act was done in consideration of a price, reward or promise were alleged as aggravating. Only one of these is qualifying. If any one of the three circumstances was proven, the crime was already murder. If the other two are also proven, even if they are alleged in the information or complaint, they are only to be taken as generic. If there is any mitigating circumstance in favor of the offender, the two other circumstances which are otherwise qualifying could be offset by the mitigating, provided the mitigating circumstance is not a privileged mitigating circumstance. Therefore, if there are three of the qualifying circumstances alleged in the complaint or information, only one will qualify the crime. The others will merely be considered as generic. Thus, if there is any ordinary mitigating circumstance in favor of the accused, such will be wiped out by these circumstances, although initially they are considered as qualifying. Do not hesitate to offset on the principle that a qualifying circumstance cannot be offset by an ordinary mitigating circumstance because only one is necessary.

Even if any of the qualifying circumstances under Article 248 on murder was proven, if that is not the circumstance alleged in the information, it cannot qualify the crime. Let us say, what was alleged in the information was treachery. During the trial, what was proven was the price, reward or promise as a consideration for killing. The treachery was not proved. Just the same, the accused cannot be convicted of murder because the circumstance proven is not qualifying but merely generic. It is generic because it is not alleged in the information at all. If any of these qualifying circumstances is not alleged in the information, it cannot be considered qualifying because a qualifying is an ingredient of the crime and it cannot be taken as such without having alleged in the information because it will violate the right of the accused to be informed of the nature of the accusation against him.

Correlate Article 14 with Article 62. Article 62 gives you the different rules regarding aggravating circumstances. Aggravating circumstances will not be considered when it is the crime itself. If the crime charged is qualified trespass to dwelling, dwelling is no longer aggravating. When the aggravating circumstance refers to the material execution of the crime, like treachery, it will only aggravate the criminal liability of those who employed the same.

Illustration:

A person induced another to kill somebody. That fellow killed the other guy and employed treachery. As far as the killing is concerned, the treachery will qualify only the criminal liability of the actual executioner. The fellow who induced him becomes a co-principal and therefore, he is liable for the same crime committed. However, let us say, the fellow was hired to kill the parent of the one who hired him. He killed a stranger and not the parent. What was committed is different from what was agreed upon. The fellow who hired him will not be liable for the crime he had done because that was not the crime he was hired to commit.

Taking advantage of public position

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

proven during the trial, it is only appreciated as a generic aggravating circumstance.

The mitigating circumstance referred to in the amendment as not affecting the imposition of the penalty in the maximum are only ordinary mitigating circumstances. Privileged mitigating circumstances always lower the penalty accordingly.

Disrespect due to rank, age, sex

*Aggravating only in crimes against persons and honor, not against property like Robbery with homicide (**People v. Ga, 156 SCRA 790**).*

*Teachers, professors, supervisors of public and duly recognized private schools, colleges and universities, as well as lawyers are persons in authority only for purposes of direct assault and simple resistance, but not for purposes of aggravating circumstances in paragraph 2, Article 14. (**People v. Taoan, 182 SCRA 601**).*

Abuse of confidence

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

Illustrations:

A mother left her young daughter with the accused because she had nobody to leave the child with while she had to go on an errand. The accused abused the child. It was held that the abuse of confidence is not aggravating. What is present is betrayal of trust and that is not aggravating.

In a case where the offender is a servant, the offended party is one of the members of the family. The servant poisoned the child. It was held that abuse of confidence is aggravating. This is only true however, if the servant was still in the service of the family when he did the killing. If he was driven by the master already out of the house for some time and he came back and poisoned the child, abuse of confidence is no longer aggravating. The reason is because that confidence has already been terminated when the offender was driven out of the house.

Dwelling

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

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

Illustration:

Husband and wife quarreled. Husband inflicted physical violence upon the wife. The wife left the conjugal home and went to the house of her sister bringing her personal belongings with her. The sister accommodated the wife in the formers home. The husband went to the house of the sister-in-law and tried to persuade the wife to come back to the conjugal home but the wife refused because she is more at peace in her sister's house than in the conjugal abode. Due to the wife's refusal to go back to the conjugal home and live with the husband, the husband pulled out a knife and stabbed the wife which caused her death. It was held that dwelling was aggravating although it is not

owned by the offended party because the offended party is considered as a member of the family who owns the dwelling and that dwelling is where she enjoyed privacy. Peace of mind and comfort.

Even a room in a hotel if rented as a dwelling, like what the salesmen do when they are assigned in the provinces and they rent rooms, is considered a dwelling. A room in a hotel or motel will be considered dwelling if it is used with a certain degree of permanence, where the offended party seeks privacy, rest, peace of mind and comfort.

If a young man brought a woman in a motel for a short time and there he was killed, dwelling is not aggravating.

A man was killed in the house of his common law wife. Dwelling is aggravating in this case because the house was provided by the man.

Dwelling should not be understood in the concept of a domicile. A person has more than one dwelling. So, if a man has so many wives and he gave them a places of their own, each one is his own dwelling. If he is killed there, dwelling will be aggravating, provided that he also stays there once in a while. When he is only a visitor there, dwelling is not aggravating.

The crime of adultery was committed. Dwelling was considered aggravating on the part of the paramour. The paramour is not a resident of the same dwelling. However, if the paramour was also residing on the same dwelling, dwelling is not considered aggravating.

The term "dwelling" includes all the dependencies necessary for a house or for rest or for comfort or a place of privacy. If the place used is on the second floor, the stairs which are used to reach the second floor is considered a dwelling because the second floor cannot be enjoyed without the stairs. If the offended party was assaulted while on the stairs, dwelling is already aggravating. For this reason, considering that any dependency necessary for the enjoyment of a place of abode is considered a dwelling.

Illustrations:

A and B are living in one house. A occupies the ground floor while B the upper floor. The stairs here would form part only of B's dwelling, the same being necessary and an integral part of his house or dwelling. Hence, when an attack is made while A is on the stairs, the aggravating circumstance of dwelling is not present. If the attack is made while B was on the stairs, then the aggravating circumstance of dwelling is present.

Whenever one is in his dwelling, the law is *presuming that he is not intending to commit a wrong so one who attacks him while in the tranquility of his home shows a degree of perversity in him. Hence, this aggravating circumstance.*

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

Illustrations:

A man was fixing something on the roof of his house when he was shot. It was held that dwelling is aggravating. Roof still part of the house.

In the provinces where the comfort rooms are usually far from the house proper, if the offended party while answering the call of nature is killed, then dwelling is aggravating because the comfort room is a necessary dependency of the house proper.

A person while in the room of his house, maintaining the room, was shot. Dwelling is aggravating.

If the offender entered the house and the offended party jumped out of the house, even if the offender caught up with him already out of the house, dwelling is still aggravating. The

reason is because he could not have left his dwelling were it not for the fact that the attacker entered the house.

If the offended party was inside the house and the offender was outside and the latter shot the former inside the house while he was still outside. Dwelling is still aggravating even if the offender did not enter the house.

A garage is part of the dwelling when connected with an interior passage to the house proper. If not connected, it is not considered part of the dwelling.

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

Balcony is part of the dwelling because it is appurtenant to the house

*Dwelling is aggravating in robbery with homicide because the crime can be committed without necessarily transgressing the sanctity of the home (**People v. De Los Reyes, decided October 22, 1992**).*

Dwelling is aggravating where the place is, even for a brief moment, a "home", although he is not the owner thereof as when victim was shot in the house of his parents.

<u>Band</u>

In band, there should at least be four persons. All of them should be armed. Even if there are four, but only three or less are armed, it is not a band. Whenever you talk of band, always have in mind four at least. Do not say three or more because it is four or more. The way the law defines a band is somewhat confusing because it refers simply to more than 3, when actually it should be 4 or more.

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

However, where brigandage is actually committed, band becomes aggravating.

<u>Uninhabited place</u>

It is determined not by the distance of the nearest house to the scene of the crime but whether or not in the place of the commission of the offense , there was a reasonable possibility of the victim receiving some help.

Illustration:

A is on board a banca, not so far away. B and C also are on board on their respective bancas. Suddenly, D showed up from underwater and stabbed B. Is there an aggravating circumstance of uninhabited place here? Yes, considering the fact that A and C before being able to give assistance still have to jump into the water and swim towards B and the time it would take them to do that, the chances of B receiving some help was very little, despite the fact that there were other persons not so far from the scene.

Evidence tending to prove that the offender took advantage of the place and purposely availed of it is to make it easier to commit the crime, shall be necessary.

<u>Nighttime</u>

What if the crime started during the daytime and continued all the way to nighttime? This is not aggravating.

As a rule, the crime must begin and end during the nighttime. Crime began at day and ended at night, as well as crime began at night and ended at day is not aggravated by the circumstance of nighttime.

Darkness is what makes this circumstance aggravating.

Illustration:

One evening, a crime was committed near the lamp post. The Supreme Court held that there is no aggravating circumstance of nighttime. Even if the crime was committed at night, but there was light, hence, darkness was not present, no aggravating circumstance just by the fact of nighttime alone.

Even if there was darkness but the nighttime was only an incident of a chance meeting, there is no aggravating circumstance here. It must be shown that the offender deliberately sought the cover of darkness and the offender purposely took advantage of nighttime to facilitate the commission of the offense.

Nocturnity is the period of time after sunset to sunrise, from dusk to dawn.

Different forms of repetition or habituality of the offender

(1) Recidivism under Article 14 (9) – The offender at the time of his trial for one crime shall have been previously convicted by final judgment of another embraced in the same title of the Revised Penal Code.

(2) Repetition or reiteracion under Article 14 (10) – The offender has been previously punished for an offense which the law attaches an equal or greater penalty or for two or more crimes to which it attaches a lighter penalty.

(3) Habitual delinquency under Article 62 (5) – The offender within the period of 10 years from the date of his release or last conviction of the crimes of serious or less serious physical injuries, robo, hurto, estafa or falsification, is found guilty of the any of said crimes a third time or oftener.

(4) Quasi-recidivism under Article 160 – Any person who shall commit a felony after having been convicted by final judgment before beginning to serve such sentence or while serving such sentence shall be punished by the maximum period prescribed by law for the new felony.

Distinctions between recidivism and habitual delinquency

In recidivism –

(1) Two convictions are enough.

(2) The crimes are not specified; it is enough that they may be embraced under the same title of the Revised Penal Code.

(3) There is no time limit between the first conviction and the subsequent conviction. Recidivism is imprescriptible.

(4) It is a generic aggravating circumstance which can be offset by an ordinary mitigating circumstance. If not offset, it would only increase the penalty prescribed by law for the crime committed to its maximum period.

(5) The circumstance need not be alleged in the information.

In habitual delinquency –

(1) At least three convictions are required.

(2) *The crimes are limited and specified to: (a) serious physical injuries, (b) less serious physical injuries, (c) robbery, (d) theft, (e) estafa or swindling and (f) falsification.*

(3) *There is a time limit of not more than 10 years between every convictions computed from the first conviction or release from punishment thereof to conviction computed from the second conviction or release therefrom to the third conviction and so on . . .*

(4) *Habitual delinquency is a special aggravating circumstance, hence it cannot be offset by any mitigating circumstance. Aside from the penalty prescribed by law for the crime committed, an additional penalty shall be imposed depending upon whether it is already the third conviction, the fourth, the fifth and so on . . .*

(5) *The circumstance must be alleged in the information; otherwise the court cannot acquire jurisdiction to impose additional penalty.*

Recidivism

In recidivism, the emphasis is on the fact that the offender was previously convicted by final judgement of a felony and subsequently found guilty of another felony embraced in the same title of the Revised Penal Code. The law considers this aggravating when a person has been committing felonies embraced in the same title because the implication is that he is specializing on such kind of crime and the law wants to prevent any specialization. Hence, ordinarily, when a person commits a crime under different titles, no aggravating circumstance is present. It is important that the conviction which came earlier must refer to the crime committed earlier than the subsequent conviction.

Illustration:

In 1980, A committed robbery. While the case was being tried, he committed theft in 1983. He was found guilty and was convicted of theft also in 1983. The conviction became final because he did not appeal anymore and the trial for his earlier crime which was robbery ended in 1984 where he was also convicted. He also did not appeal this decision. Is the accused a recidivist? The subsequent conviction must refer to a felony committed later in order to constitute recidivism. The reason for this is as the time the first crime was committed, there was no other crime of which he was convicted so he cannot be regarded as a repeater.

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

Recidivism does not prescribe. No matter how long ago the offender was convicted, if he is subsequently convicted of a crime embraced in the same title of the Revised Penal Code, it is taken into account as aggravating in imposing the penalty.

Pardon does not erase recidivism, even if it is absolute because only excuses the service of the penalty, but not the conviction.

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

Recidivism may be considered even though not alleged in the information because this is only a generic aggravating circumstance.

It is necessary to allege recidivism in the information, but if the defense does not object to the presentation of evidence during the trial and the same was proven, the court shall consider such aggravating circumstance because it is only generic.

In recidivism, although the law defines it as a circumstance where a person having been convicted by final judgement was previously convicted also by final judgement for a crime embraced in the same title in the Revised Penal Code, it is necessary that the conviction must come in the order in which they are committed.

Question & Answer

In 1975, the offender committed robbery. While the same was being tried in 1978, he committed theft. In 1980, he was convicted of theft and he did not appeal this decision. The trial for robbery ended in 1981. May the judge in imposing the penalty for robbery consider the accused a recidivist considering that he was already convicted in 1980 for the crime of theft which is under the same title of the Revised Penal Code as that of robbery?

No, because the robbery which was committed earlier would be decided later. It must be the other way around. This is because in 1975 when he committed the robbery, there was no crime committed yet. Thus, even though in imposing the penalty for the robbery, there was already a previous conviction, if that conviction is subsequent to the commission of the robbery, he is not a recidivist. If you will interpret the definition of recidivism, this would seem to be covered but that is not so.

Habitual delinquency

We have to consider the crimes in it and take note of the titles of crimes in the Revised Penal Code.

If the offender had committed and was convicted of each of the crimes under each category so that no two crimes fall under the same title of the Revised Penal Code, you have a situation where the offender is a habitual delinquent but not a recidivist because no two crimes fall under the same title of the Code.

If the first conviction is for serious physical injuries or less serious physical injuries and the second conviction is for robbery, theft or estafa and the third is for falsification, then the moment the habitual delinquent is on his fourth conviction already, you cannot avoid that he is a habitual delinquent and at the same time a recidivist because at least, the fourth time will have to fall under any of the three categories.

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

Habitual delinquency, being a special or specific aggravating circumstance must be alleged in the information. If it is not alleged in the information and in the course of the trial, the prosecution tried to prove that the offender is a habitual delinquent over the objection of the accused, the court has no jurisdiction to consider the offender a habitual delinquent. Even if the accused is in fact a habitual delinquent but it is not alleged in the information, the prosecution when introducing evidence was objected to, the court cannot admit the evidence presented to prove habitual delinquency over the objection of the accused.

On the other hand, recidivism is a generic aggravating circumstance. It need not be alleged in the information. Thus, even if recidivism is not alleged in the information, if proven during trial, the court can appreciate the same. If the prosecution tried to prove recidivism and the defense objected, the objection should be overruled. The reason is recidivism is a generic aggravating circumstance only. As such, it does not have to be alleged in the information because even if not alleged, if proven during trial, the trial court can appreciate it.

Right now, the present rule is that it can be appreciated even if not alleged in the

information. This is the correct view because recidivism is a generic aggravating circumstance. The reason why habitual delinquency cannot be appreciated unless alleged in the information is because recidivism has nothing to do with the crime committed. Habitual delinquency refers to prior conviction and therefore this must be brought in the information before the court can acquire jurisdiction over this matter.

Generally, the procedure you know that when the prosecutor alleges habitual delinquency, it must specify the crimes committed, the dates when they were committed, the court which tried the case, the date when the accused was convicted or discharged. If these are not alleged, the information is defective.

However, in a relatively recent ruling of the Supreme Court, it was held that even though the details of habitual delinquency was not set forth in the information, as long as there is an allegation there that the accused is a habitual delinquent, that is enough to confer jurisdiction upon the court to consider habitual delinquency. In the absence of the details set forth in the information, the accused has the right to avail of the so-called bill of particulars. Even in a criminal case, the accused may file a motion for bill of particulars. If the accused fails to file such, he is deemed to have waived the required particulars and so the court can admit evidence of the habitual delinquency, even though over and above the objection of the defense.

Reiteracion

This has nothing to do with the classification of the felonies. In reiteracion, the offender has already tasted the bitterness of the punishment. This is the philosophy on which the circumstance becomes aggravating.

It is necessary in order that there be reiteracion that the offender has already served out the penalty. If the offender had not yet served out his penalty, forget about reiteracion. That means he has not yet tasted the bitterness of life but if he had already served out the penalty, the law expects that since he has already tasted punishment, he will more or less refrain from committing crimes again. That is why if the offender committed a subsequent felony which carries with it a penalty lighter than what he had served, reiteracion is not aggravating because the law considers that somehow, this fellow was corrected because instead of committing a serious crime, he committed a lesser one. If he committed another lesser one, then he becomes a repeater.

So, in reiteracion, the penalty attached to the crime subsequently committed should be higher or at least equal to the penalty that he has already served. If that is the situation, that means that the offender was never reformed by the fact that he already served the penalty imposed on him on the first conviction. However, if he commits a felony carrying a lighter penalty; subsequently, the law considers that somehow he has been reformed but if he, again commits another felony which carries a lighter penalty, then he becomes a repeater because that means he has not yet reformed.

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

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

Quasi-recidivism

This is found in Article 160. The offender must already be convicted by final judgement and therefore to have served the penalty already, but even at this stage, he committed a felony before beginning to serve sentence or while serving sentence.

Illustration:

Offender had already been convicted by final judgement. Sentence was promulgated and he was under custody in Muntinlupa. While he was in Muntinlupa, he escaped from his guard and in the course of his escape, he killed someone. The killing was committed before serving sentence but convicted by final judgement. He becomes a quasi-recidivist because the crime committed was a felony.

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

Illustration:

The offender was convicted of homicide. While serving sentence in Muntinlupa, he was found smoking marijuana. He was prosecuted for illegal use of prohibited drugs and was convicted. Is he a quasi-recidivist? No, because the crime committed while serving sentence is not a felony.

Reverse the situation. Assume that the offender was found guilty of illegal use of prohibited drugs. While he was serving sentence, he got involved in a quarrel and killed a fellow inmate. Is he a quasi-recidivist? Yes, because while serving sentence, he committed a felony.

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

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

In consideration of a price, reward or promise

The Supreme Court rulings before indicate that this circumstance aggravates only the criminal liability of the person who committed the crime in consideration of the price, promise, or reward but not the criminal liability of the person who gave the price, reward or consideration. However, when there is a promise, reward or price offered or given as a consideration for the commission of the crime, the person making the offer is an inducer, a principal by inducement while the person receiving the price, reward or promise who would execute the crime is a principal by direct participation. Hence, their responsibilities are the same. They are both principals and that is why the recent rulings of the Supreme Court are to the effect that this aggravating circumstance affects or aggravates not only the criminal liability of the receiver of the price, reward or promise but also the criminal liability of the one giving the offer.

By means of inundation or fire

Fire is not aggravating in the crime of arson.

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

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

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

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

Illustration:

A and B were arguing about something. One argument led to another until A struck B to death with a bolo. A did not know that C, the son of B was also in their house and who was peeping through the door and saw what A did. Afraid that A might kill him, too, he hid somewhere in the house. A then dragged B's body and poured gasoline on it and burned the house altogether. As a consequence, C was burned and eventually died too.

As far as the killing of B is concerned, it is homicide since it is noted that they were arguing. It could not be murder. As far as the killing of C is concerned, the crime is arson since he intended to burn the house only.

No such crime as arson with homicide. Law enforcers only use this to indicate that a killing occurred while arson was being committed. At the most, you could designate it as "death as a consequence of arson."

Evident premeditation

For evident premeditation to be aggravating, the following conditions must concur:

(1) The time when the accused determined to commit the crime;

(2) An act manifestly indicating that the accused has clung to his determination;

(3) Sufficient lapse of time between such determination and execution, to allow him to reflect upon the consequences of his act.

Illustration:

A, on Monday, thought of killing B on Friday. A knew that B is coming home only on Friday so A decided to kill B on Friday evening when he comes home. On Thursday, A met B and killed him. Is there evident premeditation? None but there is treachery as the attack was sudden.

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

Illustrations:

A and B fought. A told B that someday he will kill B. On Friday, A killed B. A and B fought on Monday but since A already suffered so many blows, he told B, "This week shall not pass, I will kill you." On Friday, A killed B. Is there evident premeditation in both cases? None in both cases. What condition is missing to bring about evident premeditation? Evidence to show that between Monday and Friday, the offender clung to his determination to kill the victim, acts indicative of his having clung to his determination to kill B.

A and B had a quarrel. A boxed B. A told B, "I will kill you this week." A bought firearms. On Friday, he waited for B but killed C instead. Is there evident premeditation? There is aberratio ictus. So, qualify. Insofar as B is concerned, the crime is attempted murder because there is evident premeditation. However, that murder cannot be considered for C. Insofar as C is concerned, the crime is homicide because there was no evident premeditation.

Evident premeditation shall not be considered when the crime refers to a different person other than the person premeditated against.

While it is true that evident premeditation may be absorbed in treachery because the means, method and form of attack may be premeditated and would be resorted to by the offender. Do not consider both aggravating circumstances of treachery and evident premeditation against the offender. It is only treachery because the evident premeditation is the very conscious act of the offender to ensure the execution.

But there may be evident premeditation and there is treachery also when the attack was so sudden.

A and B are enemies. They fought on Monday and parted ways. A decided to seek revenge. He bought a firearm and practiced shooting and then sought B. When A saw B in the restaurant with so many people, A did not dare fire at B for fear that he might hit a stranger but instead, A saw a knife and used it to stab B with all suddenness. Evident premeditation was not absorbed in treachery because treachery refers to the manner of committing the crime. Evident premeditation is always absorbed in treachery.

This is one aggravating circumstance where the offender who premeditated, the law says evident. It is not enough that there is some premeditation. Premeditation must be clear. It is required that there be evidence showing meditation between the time when the offender determined to commit the crime and the time when the offender executed the act. It must appear that the offender clung to his determination to commit the crime. The fact that the offender premeditated is not prima facie indicative of evident premeditation as the meeting or encounter between the offender and the offended party was only by chance or accident.

In order for evident premeditation to be considered, the very person/offended party premeditated against must be the one who is the victim of the crime. It is not necessary that the victim is identified. It is enough that the victim is determined so he or she belongs to a group or class who may be premeditated against. This is a circumstance that will qualify a killing from homicide to murder.

Illustration:

A person who has been courting a lady for several years now has been jilted. Because of this, he thought of killing somebody. He, then bought a knife, sharpened it and stabbed the first man he met on the street. It was held that evident premeditation is not present. It is essential for this aggravating circumstance for the victim to be identified from the beginning.

A premeditated to kill any member of particular fraternity. He then killed one. This is murder – a homicide which has been qualified into murder by evident premeditation which is a qualifying circumstance. Same where A planned to kill any member of the Iglesio ni Kristo.

There are some crimes which cannot be aggravated by evident premeditation because they require some planning before they can be committed. Evident premeditation is part of the crime like kidnapping for ransom, robbery with force upon things where there is entry into the premises of the offended party, and estafa through false pretenses where the offender employs insidious means which cannot happen accidentally.

<u>Craft</u>

*Aggravating in a case where the offenders pretended to be bona fide passengers of a jeepney in order not to arouse suspicion, but once inside the jeepney, robbed the passengers and the driver (**People v. Lee, decided on December 20, 1991**).*

<u>Abuse of superior strength</u>

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

Treachery

Treachery refers to the employment of means, method and form in the commission of the crime which tend directly and specially to insure its execution without risk to himself arising from the defense which the offended party might make. The means, method or form employed my be an aggravating circumstance which like availing of total darkness in nighttime or availing of superior strength taken advantage of by the offender, employing means to weaken the defense.

Illustration:

A and B have been quarreling for some time. One day, A approached B and befriended him. B accepted. A proposed that to celebrate their renewed friendship, they were going to drink. B was having too much to drink. A was just waiting for him to get intoxicated and after which, he stabbed B.

A pretended to befriend B, just to intoxicate the latter. Intoxication is the means deliberately employed by the offender to weaken the defense of the offended party. If this was the very means employed, the circumstance may be treachery and not abuse of superior strength or means to weaken the defense.

What is the essence of treachery?

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

Illustration:

A and B quarreled. However A had no chance to fight with B because A is much smaller than B. A thought of killing B but then he cannot just attack B because of the latter's size. So, A thought of committing a crime at nighttime with the cover of darkness. A positioned himself in the darkest part of the street where B passes on his way home. One evening, A waited for B and stabbed B. However, B pulled a knife as well and stabbed A also. A was wounded but not mortal so he managed to run away. B was able to walk a few steps before he fell and died. What crime was committed?

The crime is only homicide because the aggravating circumstance is only nocturnity and nocturnity is not a qualifying circumstance. The reason why treachery cannot be considered as present here is because the offended party was able to put up a defense and that negates treachery. In treachery, the offended party, due to the means, method or form employed by the offender, the offended party was denied the chance to defend himself. If because of the cover of darkness, B was not able to put up a defense and A was able to flee while B died, the crime is murder because there is already treachery. In the first situation, the crime was homicide only, the nighttime is generic aggravating circumstance.

In the example where A pretended to befriend B and invited him to celebrate their friendship, if B despite intoxication was able to put up some fight against A but eventually, B died, then the attendant circumstance is no longer treachery but means employed to weaken the defense. But in murder, this is also a qualifying circumstance. The crime committed is murder but then the correct circumstance is not treachery but means employed to weaken the defense.

In the same manner, if the offender avails of the services of men and in the commission of the crime, they took advantage of superior strength but somehow, the offended party fought back, the crime is still murder if the victim is killed. Although the qualifying circumstance is abuse of superior strength and not treachery, which is also a qualifying circumstance of murder under Article 248.

Treachery is out when the attack was merely incidental or accidental because in the definition of treachery, the implication is that the offender had consciously and deliberately adopted the method, means and form used or employed by him. So, if A and B casually met and there and then A stabbed B, although stabbing may be sudden since A was not shown to have the intention of killing B, treachery cannot be considered present.

There must be evidenced on how the crime was committed. It is not enough to show that the victim sustained treacherous wound. Example: A had a gunshot wound at the back of his head. The SC ruled this is only homicide because treachery must be proven. It must be shown that the victim was totally defenseless.

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

*But where children of tender years were killed, being one year old and 12 years old, the killing is murder even if the manner of attack was not shown (**People v. Gahon, decided on April 30, 1991**).*

*In **People v. Lapan, decided on July 6, 1992,** the accused was prosecuted for robbery with homicide. Robbery was not proven beyond reasonable doubt. Accused held liable only for the killings. Although one of the victims was barely six years old, the accused was convicted only for homicide, aggravated by dwelling and in disregard of age.*

*Treachery not appreciated where quarrel and heated discussion preceded a killing, because the victim would be put on guard (**People v. Gupo**). But although a quarrel preceded the killing where the victim was atop a coconut tree, treachery was considered as the victim was not in a position to defend himself (**People v. Toribio**).*

Distinction between ignominy and cruelty

Ignominy shocks the moral conscience of man while cruelty is physical. Ignominy refers to the moral effect of a crime and it pertains to the moral order, whether or not the victim is dead or alive. Cruelty pertains to physical suffering of the victim so the victim has to be alive. In plain language, ignominy is adding insult to injury. A clear example is a married woman being raped before the eyes of her husband.

In a case where the crime committed is rape and the accused abused the victims from behind, the Supreme Court considered the crime as aggravated by ignominy. Hence, raping a woman from behind is ignominous because this is not the usual intercourse, it is something which offends the moral of the offended woman. This is how animals do it.

In a case of homicide, while the victim after having been killed by the offender, the offender shoved the body inside a canal, ignominy is held aggravating.

After having been killed, the body was thrown into pile of garbage, ignominy is aggravating. The Supreme Court held that it added shame to the natural effects of the crime.

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

Illustration:

A and B are enemies. A upon seeing B pulled out a knife and stabbed B 60 times. Will that

fact be considered as an aggravating circumstance of cruelty? No, there is cruelty only when there are evidence that the offender inflicted the stab wounds while enjoying or delighted to see the victim in pain. For cruelty to exist as an aggravating circumstance, there must be evidence showing that the accused inflicted the alleged cruel wounds slowly and gradually and that he is delighted seeing the victim suffer in pain. In the absence of evidence to this effect, there is no cruelty. Sixty stab wounds do not ipso facto make them aggravating circumstances of cruelty. The crime is murder if 60 wounds were inflicted gradually; absence of this evidence means the crime committed is only homicide.

*Cruelty is aggravating in rape where the offender tied the victim to a bed and burnt her face with a lighted cigarette while raping her laughing all the way (**People v. Lucas, 181 SCRA 315**).*

Unlawful entry

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

Motor vehicle

The Supreme Court considers strictly the use of the word "committed", that the crime is committed with the use of a motor vehicle, motorized means of transportation or motorized watercraft. There is a decision by the Court of Appeals that a motorized bicycle is a motor vehicle even if the offender used only the foot pedal because he does not know how to operate the motor so if a bicycle is used in the commission of the crime, motor vehicle becomes aggravating if the bicycle is motorized.

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

Aggravating when a motorized tricycle was used to commit the crime

Organized or syndicated crime group

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

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

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

Alternative circumstances

Four alternative circumstances

(1) *Relationship;*

(2) *Intoxication;*

(3) *Degree of instruction; and*

(4) *Education.*

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

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

Do not think that because the article says that these circumstances are mitigating or aggravating, that if the circumstance is present, the court will have to take it as mitigating, if not mitigating, aggravating. That is wrong. It is only the circumstance of intoxication which if not mitigating, is automatically aggravating. But the other circumstances, even if they are present, but if they do not influence the crime, the court will not consider it at all. Relationship may not be considered at all, especially if it is not inherent in the commission of the crime. Degree of instruction also will not be considered if the crime is something which does not require an educated person to understand.

Relationship

Relationship is not simply mitigating or aggravating. There are specific circumstances where relationship is exempting. Among such circumstances are:

(1) *In the case of an accessory who is related to the principal within the relationship prescribed in Article 20;*

(2) *Also in Article 247, a spouse does not incur criminal liability for a crime of less serious physical injuries or serious physical injuries if this was inflicted after having surprised the offended spouse or paramour or mistress committing actual sexual intercourse.*

(3) *Those commonly given in Article 332 when the crime of theft, malicious mischief and swindling or estafa. There is no criminal liability but only civil liability if the offender is related to the offended party as spouse, ascendant, or descendant or if the offender is a brother or sister or brother in law or sister in law of the offended party and they are living together. Exempting circumstance is the relationship. This is an absolutory cause.*

Sometimes, relationship is a qualifying and not only a generic aggravating circumstance. In the crime of qualified seduction, the offended woman must be a virgin and less than 18 yrs old. But if the offender is a brother of the offended woman or an ascendant of the offended woman, regardless of whether the woman is of bad reputation, even if the woman is 60 years old or more, crime is qualified seduction. In such a case, relationship is qualifying.

Intoxication

This circumstance is ipso facto mitigating, so that if the prosecution wants to deny the offender the benefit of this mitigation, they should prove that it is habitual and that it is intentional. The moment it is shown to be

habitual or intentional to the commission of the crime, the same will immediately aggravate, regardless of the crime committed.

Intoxication to be considered mitigating, requires that the offender has reached that degree of intoxication where he has no control of himself anymore. The idea is the offender, because of the intoxication is already acting under diminished self control. This is the rational why intoxication is mitigating. So if this reason is not present, intoxication will not be considered mitigating. So the mere fact that the offender has taken one or more cases of beer of itself does not warrant a conclusion that intoxication is mitigating. There must be indication that because of the alcoholic intake of the offender, he is suffering from diminished self control. There is diminished voluntariness insofar as his intelligence or freedom of action is concerned. It is not the quantity of alcoholic drink. Rather it is the effect of the alcohol upon the offender which shall be the basis of the mitigating circumstance.

Illustration:

In a case, there were two laborers who were the best of friends. Since it was payday, they decided to have some good time and ordered beer. When they drank two cases of beer they became more talkative until they engaged in an argument. One pulled out a knife and stabbed the other. When arraigned he invoked intoxication as a mitigating circumstance. Intoxication does not simply mean that the offender has partaken of so much alcoholic beverages. The intoxication in law requires that because of the quality of the alcoholic drink taken, the offender had practically lost self control. So although the offender may have partaken of two cases of beer, but after stabbing the victim he hailed a tricycle and even instructed the driver to the place where he is sleeping and the tricycle could not reach his house and so he has to alight and walk to his house, then there is no diminished self control. The Supreme Court did not give the mitigating circumstance because of the number of wounds inflicted upon the victim. There were 11 stab wounds and this, the Supreme Court said, is incompatible with the idea that the offender is already suffering from diminished self control. On the contrary, the indication is that the offender gained strength out of the drinks he had taken. It is not the quantity of drink that will determine whether the offender can legally invoke intoxication. The conduct of the offender, the manner of committing the crime, his behavior after committing the crime must show the behavior of a man who has already lost control of himself. Otherwise intoxication cannot legally be considered.

<u>Degree of instruction and education</u>

These are two distinct circumstances. One may not have any degree of instruction but is nevertheless educated. Example: A has been living with professionals for sometime. He may just be a maid in the house with no degree of instruction but he may still be educated.

It may happen also that the offender grew up in a family of professionals, only he is the black sheep because he did not want to go to school. But it does not follow that he is bereft of education.

If the offender did not go higher than Grade 3 and he was involved in a felony, he was invoking lack of degree of education. The Supreme Court held that although he did not receive schooling, yet it cannot be said that he lacks education because he came from a family where brothers are all professionals. So he understands what is right and wrong.

The fact that the offender did not have schooling and is illiterate does not mitigate his liability if the crime committed is one which he inherently understands as wrong such as parricide. If a child or son or daughter would kill a parent, illiteracy will not mitigate because the low degree of instruction has no bearing on the crime.

In the same manner, the offender may be a lawyer who committed rape. The fact that he

has knowledge of the law will not aggravate his liability, because his knowledge has nothing to do with the commission of the crime. But if he committed falsification, that will aggravate his criminal liability, where he used his special knowledge as a lawyer.

PERSONS WHO ARE CRIMINALLY LIABLE

Under the Revised Penal Code, when more than one person participated in the commission of the crime, the law looks into their participation because in punishing offenders, the Revised Penal Code classifies them as:

(1) principal;

(2) accomplice; or

(3) accessory.

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

When a problem is encountered where there are several participants in the crime, the first thing to find out is if there is a conspiracy. If there is, as a general rule, the criminal liability of all will be the same, because the act of one is the act of all.

However, if the participation of one is so insignificant, such that even without his cooperation, the crime would be committed just as well, then notwithstanding the existence of a conspiracy, such offender will be regarded only as an accomplice. The reason for this ruling is that the law favors a milder form of criminal liability if the act of the participant does not demonstrate a clear perversity.

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

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

But where the felony is only light only the principal and the accomplice are liable. The accessory is not.

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

Therefore it is only when the light felony is against person or property that criminal liability attaches to the principal or accomplice, even though the felony is only attempted or frustrated, but accessories are not liable for liable for light felonies.

Principal by indispensable cooperation distinguished from an accomplice

It is not just a matter of cooperation, it is more than if the crime could hardly be committed. It is not that the crime would not be committed because if that is what you would imply it becomes an ingredient of the crime and that is not what the law contemplates.

In the case of rape, where three men were accused, one was on top of the woman, one held the hands, one held the legs, the Supreme Court ruled that all participants are principals. Those who held the legs and arms are principals by indispensable cooperation.

The accused are father and son. The father told his son that the only way to convince the victim to marry him is to resort to rape. So

when they saw the opportunity the young man grabbed the woman, threw her on the ground and placed himself on top of her while the father held both legs of the woman and spread them. The Supreme Court ruled that the father is liable only as an accomplice.

The point is not just on participation but on the importance of participation in committing the crime.

In the first situation, the facts indicate that if the fellow who held the legs of the victim and spread them did not do so, the offender on top could hardly penetrate because the woman was strong enough to move or resist. In the second situation, the son was much bigger than the woman so considering the strength of the son and the victim, penetration is possible even without the assistance of the father. The son was a robust farm boy and the victim undernourished. The act of the father in holding the legs of the victim merely facilitated the penetration but even without it the son would have penetrated.

The basis is the importance of the cooperation to the consummation of the crime. If the crime could hardly be committed without such cooperation, then such cooperation would bring about a principal. But if the cooperation merely facilitated or hastened the consummation of the crime, this would make the cooperator merely an accomplice.

In a case where the offender was running after the victim with a knife. Another fellow came and blocked the way of the victim and because of this, the one chasing the victim caught up and stabbed the latter at the back. It was held that the fellow who blocked the victim is a principal by indispensable cooperation because if he did not block the way of the victim, the offender could not have caught up with the latter.

In another case, A was mauling B. C, a friend of B tried to approach but D stopped C so that A was able to continuously maul B. The liability of the fellow who stopped the friend from approaching is as an accomplice. Understandably he did not cooperate in the mauling, he only stopped to other fellow from stopping the mauling.

In case of doubt, favor the lesser penalty or liability. Apply the doctrine of pro reo.

Principal by inducement

Concept of the inducement – one strong enough that the person induced could hardly resist. This is tantamount to an irresistible force compelling the person induced to carry out the execution of the crime. Ill advised language is not enough unless he who made such remark or advice is a co-conspirator in the crime committed.
While in the course of a quarrel, a person shouted to A, "Kill him! Kill him." A killed the other fellow. Is the person who shouted criminally liable. Is that inducement? No. It must be strong as irresistible force.

There was a quarrel between two families. One of the sons of family A came out with a shotgun. His mother then shouted, "Shoot!". He shot and killed someone. Is the mother liable? No.

<u>Examples of inducement:</u>

"I will give you a large amount of money."

"I will not marry you if you do not kill B"(let us say he really loves the inducer).

They practically become co-conspirators. Therefore you do not look into the degree of inducement anymore.

In ***People v. Balderrama,*** *Ernesto shouted to his younger brother Oscar, "Birahin mo na, birahin mo na." Oscar stabbed the victim. It was held that there was no conspiracy. Joint or simultaneous action per se is not indicia of conspiracy without showing of common design. Oscar has no rancor with the victim for him to kill the latter. Considering that Ernesto had great moral ascendancy and influence over*

Oscar being much older, 35 years old, than the latter, who was 18 yrs old, and it was Ernesto who provided his allowance, clothing as well as food and shelter, Ernesto is principal by inducement.

In ***People v. Agapinay, 186 SCRA 812,*** *the one who uttered "Kill him, we will bury him," while the felonious aggression was taking place cannot be held liable as principal by inducement. Utterance was said in the excitement of the hour, not a command to be obeyed.*

In ***People v. Madali, 188 SCRA 69,*** *the son was mauled. The family was not in good graces of the neighborhood. Father challenged everybody and when neighbors approached, he went home to get a rifle. The shouts of his wife "Here comes another, shoot him" cannot make the wife the principal by inducement. It is not the determining cause of the crime in the absence of proof that the words had great dominance and influence over the husband. Neither is the wife's act of beaming the victim with a flashlight indispensable to the commission of the killing. She assisted her husband in taking good aim, but such assistance merely facilitated the felonious act of shooting. Considering that it was not so dark and the husband could have accomplished the deed without his wife's help, and considering further that doubts must be resolved in favor of the accused, the liability of the wife is only that of an accomplice.*

Accessories

Two situations where accessories are not criminally liable:

(1) When the felony committed is a light felony;

(2) When the accessory is related to the principal as spouse, or as an ascendant, or descendant or as brother or sister whether legitimate, natural or adopted or where the accessory is a relative by affinity within the same degree, unless the accessory himself profited from the effects or proceeds of the crime or assisted the offender to profit therefrom.

One cannot be an accessory unless he knew of the commission of the crime. One must not have participated in the commission of the crime. The accessory comes into the picture when the crime is already consummated. Anyone who participated before the consummation of the crime is either a principal or an accomplice. He cannot be an accessory.

When an offender has already involved himself as a principal or accomplice, he cannot be an accessory any further even though he performs acts pertaining to an accessory.

Accessory as a fence

The Revised Penal Code defines what manners of participation shall render an offender liable as an accessory. Among the enumeration is "by profiting themselves or by assisting the offender to profit by the effects of the crime". So the accessory shall be liable for the same felony committed by the principal. However, where the crime committed by the principal was robbery or theft, such participation of an accessory brings about criminal liability under Presidential Decree No. 1612 (Anti-Fencing Law). One who knowingly profits or assists the principal to profit by the effects of robbery or theft is not just an accessory to the crime, but principally liable for fencing under Presidential Decree No. 1612.

Any person who, with intent to gain, acquires and/or sell, possesses, keeps or in any manner deals with any article of value which he knows or should be known to him to be the proceeds of robbery or theft is considered a "fence" and incurs criminal liability for "fencing" under said decree. The penalty is higher than that of a mere accessory to the crime of robbery or theft.

Likewise, the participation of one who conceals the effects of robbery or theft gives rise to criminal liability for "fencing", not simply of an

accessory under paragraph 2 of Article 19 of the Code. Mere possession of any article of value which has been the subject of robbery or theft brings about the presumption of "fencing".

Presidential Decree No. 1612 has, therefore, modified Article 19 of the Revised Penal Code.

Questions & Answers

1. May one who profited out of the proceeds of estafa or malversation be prosecuted under the Anti-Fencing Law?

No. There is only a fence when the crime is theft or robbery. If the crime is embezzlement or estafa, still an accessory to the crime of estafa, not a fence.

2. If principal committed robbery by snatching a wristwatch and gave it to his wife to sell, is the wife criminally liable? Can she be prosecuted as an accessory and as a fence?

The liability of the wife is based on her assisting the principal to profit and that act is punishable as fencing. She will no longer be liable as an accessory to the crime of robbery.

In both laws, Presidential Decree No. 1612 and the Revised Penal Code, the same act is the basis of liability and you cannot punish a person twice for the same act as that would go against double jeopardy.

Acquiring the effects of piracy or brigandage

It is relevant to consider in connection with the criminal liability of accessories under the Revised Penal Code, the liability of persons acquiring property subject of piracy or brigandage.

The act of knowingly acquiring or receiving property which is the effect or the proceeds of a crime generally brings about criminal liability of an accessory under Article 19, paragraph 1 of the Revised Penal Code. But if the crime was piracy of brigandage under Presidential Decree No. 533 (Anti-piracy and Anti-Highway Robbery Law of 1974), said act constitutes the crime of abetting piracy or abetting brigandage as the case may be, although the penalty is that for an accomplice, not just an accessory, to the piracy or brigandage. To this end, Section 4 of Presidential Decree No. 532 provides that any person who knowingly and in any manner… acquires or receives property taken by such pirates or brigands or in any manner derives benefit therefrom… shall be considered as an accomplice of the principal offenders and be punished in accordance with the Rules prescribed by the Revised Penal Code.

It shall be presumed that any person who does any of the acts provided in this Section has performed them knowingly, unless the contrary is proven.

Although Republic Act No. 7659, in amending Article 122 of the Revised Penal Code, incorporated therein the crime of piracy in Philippine territorial waters and thus correspondingly superseding Presidential Decree No. 532, Section 4 of the Decree which punishes said acts as a crime of abetting piracy or brigandage, still stands as it has not been repealed nor modified, and is not inconsistent with any provision of Republic Act No. 7659.

Destroying the corpus delicti

When the crime is robbery or theft, with respect to the second involvement of an accessory, do not overlook the purpose which must be to prevent discovery of the crime.

The corpus delicti is not the body of the person who is killed, even if the corpse is not recovered, as long as that killing is established beyond reasonable doubt, criminal liability will arise and if there is someone who destroys the corpus delicti to prevent discovery, he becomes an accessory.

<u>Harboring or concealing an offender</u>

In the third form or manner of becoming an accessory, take note that the law distinguishes between a public officer harboring, concealing or assisting the principal to escape and a private citizen or civilian harboring concealing or assisting the principal to escape.

In the case of a public officer, the crime committed by the principal is immaterial. Such officer becomes an accessory by the mere fact that he helped the principal to escape by harboring or concealing, making use of his public function and thus abusing the same.

On the other hand, in case of a civilian, the mere fact that he harbored concealed or assisted the principal to escape does not ipso facto make him an accessory. The law requires that the principal must have committed the crime of treason, parricide, murder or attempt on the life of the Chief Executive. If this is not the crime, the civilian does not become an accessory unless the principal is known to be habitually guilty of some other crime. Even if the crime committed by the principal is treason, or murder or parricide or attempt on the life of the Chief Executive, the accessory cannot be held criminally liable without the principal being found guilty of any such crime. Otherwise the effect would be that the accessory merely harbored or assisted in the escape of an innocent man, if the principal is acquitted of the charges.

<u>Illustration:</u>

Crime committed is kidnapping for ransom. Principal was being chased by soldiers. His aunt hid him in the ceiling of her house and aunt denied to soldiers that her nephew had ever gone there. When the soldiers left, the aunt even gave money to her nephew to go to the province. Is aunt criminally liable? No. Article 20 does not include an auntie. However, this is not the reason. The reason is because one who is not a public officer and who assists an offender to escape or otherwise harbors, or conceals such offender, the crime committed by the principal must be either treason, parricide murder or attempt on the life of the Chief executive or the principal is known to be habitually guilty of some other crime.

The crime committed by the principal is determinative of the liability of the accessory who harbors, conceals knowing that the crime is committed. If the person is a public officer, the nature of the crime is immaterial. What is material is that he used his public function in assisting escape.

However, although under paragraph 3 of Article 19 when it comes to a civilian, the law specifies the crimes that should be committed, yet there is a special law which punishes the same act and it does not specify a particular crime. Presidential Decree No. 1829, which penalizes obstruction of apprehension and prosecution of criminal offenders, effective January 16, 1981, punishes acts commonly referred to as "obstructions of justice". This Decree penalizes under Section 1(c) thereof, the act, inter alia, of "(c) Harboring or concealing, or facilitating the escape of any person he knows or has reasonable ground to believe or suspect, has committed any offense under existing penal laws in order to prevent his arrest, prosecution and conviction."

Here, there is no specification of the crime to be committed by the offender for criminal liability to be incurred for harboring, concealing, or facilitating the escape of the offender, and the offender need not be the principal – unlike paragraph 3, Article 19 of the Code. The subject acts may not bring about criminal liability under the Code, but under this decree. Such an offender if violating Presidential Decree No. 1829 is no longer an accessory. He is simply an offender without regard to the crime committed by the person assisted to escape. So in the problem, the standard of the Revised Penal Code, aunt is not criminally liable because crime is kidnapping, but under Presidential Decree No. 1829, the aunt is criminally liable but not as an accessory.

Whether the accomplice and the accessory may be tried and convicted even before the principal is found guilty.

There is an earlier Supreme Court ruling that the accessory and accomplice must be charged together with the principal and that if the latter be acquitted, the accomplice and the accessory shall not be criminally liable also, unless the acquittal is based on a defense which is personal only to the principal. Although this ruling may be correct if the facts charged do not make the principal criminally liable at all, because there is no crime committed.

Yet it is not always true that the accomplice and accessory cannot be criminally liable without the principal first being convicted. Under Rule 110 of the Revised Rules on Criminal Procedure, it is required that all those involved in the commission of the crime must be included in the information that may be filed. And in filing an information against the person involved in the commission of the crime, the law does not distinguish between principal, accomplice and accessory. All will be accused and whether a certain accused will be principal or accomplice or accessory will depend on what the evidence would show as to his involvement in the crime. In other words, the liability of the accused will depend on the quantum of evidence adduced by the prosecution against the particular accused. But the prosecutor must initiate proceedings versus the principal.

Even if the principal is convicted, if the evidence presented against a supposed accomplice or a supposed accessory does not meet the required proof beyond reasonable doubt, then said accused will be acquitted. So the criminal liability of an accomplice or accessory does not depend on the criminal liability of the principal but depends on the quantum of evidence. But if the evidence shows that the act done does not constitute a crime and the principal is acquitted, then the supposed accomplice and accessory should also be acquitted. If there is no crime, then there is no criminal liability, whether principal, accomplice, or accessory.

Under paragraph 3, Article 19, take note in the case of a civilian who harbors, conceals, or assists the escape of the principal, the law requires that the principal be found guilty of any of the specified crimes: treason, parricide, etc. The paragraph uses the particular word "guilty". So this means that before the civilian can be held liable as an accessory, the principal must first be found guilty of the crime charged, either treason, parricide, murder, or attempt to take the life of the Chief Executive. If the principal is acquitted, that means he is not guilty and therefore, the civilian who harbored, concealed or assisted in the escape did not violate art. 19. That is as far as the Revised Penal Code is concerned. But not Presidential Decree No. 1829. This special law does not require that there be prior conviction. It is a malum prohibitum, no need for guilt, or knowledge of the crime.

In ***Taer v. CA,*** *accused received from his co-accused two stolen male carabaos. Conspiracy was not proven. Taer was held liable as an accessory in the crime of cattle rustling under Presidential Decree No. 533. [Taer should have been liable for violation of the Anti-fencing law since cattle rustling is a form of theft or robbery of large cattle, except that he was not charged with fencing.]*

In ***Enrile v. Amin,*** *a person charged with rebellion should not be separately charged under Presidential Decree No. 1829. The theory of absorption must not confine itself to common crimes but also to offenses punished under special laws which are perpetrated in furtherance of the political offense.*

PENALTIES

Measures of prevention not considered as penalty

The following are the measures of prevention or safety which are not considered penalties under Article 24:

(1) *The arrest and temporary detention of accused persons as well as their detention by reason of insanity or imbecility or illness requiring their confinement in a hospital.*

(2) *The commitment of a minor to any of the institutions mentioned in art. 80 for the purposes specified therein.*

(3) *Suspension from the employment or public office during the trial or in order to institute proceedings.*

(4) *Fines and other corrective measures which, in the exercise of their administrative disciplinary powers, superior officials may impose upon their subordinates.*

(5) *Deprivation of rights and reparations which the civil laws may establish in penal form.*

Why does the Revised Penal Code specify that such detention shall not be a penalty but merely a preventive measure?

This article gives justification for detaining the accused. Otherwise, the detention would violate the constitutional provision that no person shall be deprived of life, liberty and property without due process of law. And also, the constitutional right of an accused to be presumed innocent until the contrary is proved.

Repeal of Article 80

When may a minor be committed to a reformatory?

If the minor is between 9 - 15 years old and acted with discernment, sentence must first be suspended under the following conditions:

(1) *Crime committed is not punishable by death or reclusion perpetua;*

(2) *He is availing of the benefit of suspension for the first time;*

(3) *He must still be a minor at the time of promulgation of the sentence.*

Correlating Article 24 with Article 29

Although under Article 24, the detention of a person accused of a crime while the case against him is being tried does not amount to a penalty, yet the law considers this as part of the imprisonment and generally deductible from the sentence.

When will this credit apply? If the penalty imposed consists of a deprivation of liberty. Not all who have undergone preventive imprisonment shall be given a credit

Under Article 24, preventive imprisonment of an accused who is not yet convicted, but by express provision of Article24 is not a penalty. Yet Article 29, if ultimately the accused is convicted and the penalty imposed involves deprivation of liberty, provides that the period during which he had undergone preventive detention will be deducted from the sentence, unless he is one of those disqualified under the law.

So, if the accused has actually undergone preventive imprisonment, but if he has been convicted for two or more crimes whether he is a recidivist or not, or when he has been previously summoned but failed to surrender and so the court has to issue a warrant for his arrest, whatever credit he is entitled to shall be forfeited.

If the offender is not disqualified from the credit or deduction provided for in Article 29 of the Revised Penal Code, then the next thing to determine is whether he signed an undertaking to abide by the same rules and regulations governing convicts. If he signed an undertaking to abide by the same rules and regulations governing convicts, then it means that while he is suffering from preventive imprisonment, he is

suffering like a convict, that is why the credit is full.

But if the offender did not sign an undertaking, then he will only be subjected to the rules and regulations governing detention prisoners. As such, he will only be given 80% or 4/5 of the period of his preventive detention.

From this provision, one can see that the detention of the offender may subject him only to the treatment applicable to a detention prisoner or to the treatment applicable to convicts, but since he is not convicted yet, while he is under preventive imprisonment, he cannot be subjected to the treatment applicable to convicts unless he signs and agrees to be subjected to such disciplinary measures applicable to convicts.

Detention prisoner has more freedom within the detention institution rather than those already convicted. The convicted prisoner suffers more restraints and hardship than detention prisoners.

Under what circumstances may a detention prisoner be released, even though the proceedings against him are not yet terminated?

Article 29 of the Revised Penal Code has been amended by a Batas Pambansa effective that tool effect on September 20, 1980. This amendment is found in the Rules of Court, under the rules on bail in Rule 114 of the Rules on Criminal Procedure, the same treatment exactly is applied there.

In the amendment, the law does not speak of credit. Whether the person is entitled to credit is immaterial. The discharge of the offender from preventive imprisonment or detention is predicated on the fact that even if he would be found guilty of the crime charged, he has practically served the sentence already, because he has been detained for a period already equal to if not greater than the maximum penalty that would be possibly be imposed on him if found guilty.

If the crime committed is punishable only by destierro, the most the offender may be held under preventive imprisonment is 30 days, and whether the proceedings are terminated or not, such detention prisoner shall be discharged.

Understand the amendment made to Article 29. This amendment has been incorporated under Rule 114 precisely to do away with arbitrary detention.

Proper petition for habeas corpus must be filed to challenge the legality of the detention of the prisoner.

Questions & Answers

If the offender has already been released, what is the use of continuing the proceedings?

The proceedings will determine whether the accused is liable or not. If he was criminally liable, it follows that he is also civilly liable. The civil liability must be determined. That is why the trial must go on.

Duration of penalties

Reclusion perpetua

What is the duration of reclusion perpetua?

Do not answer Article 27 to this question. The proper answer would be that reclusion perpetua has no duration because this is an indivisible penalty and indivisible penalties have no durations.

Under Article 27, those sentenced to reclusion perpetua shall be pardoned after undergoing the penalty for 30 years, unless such person, by reason of his conduct or some other serious cause, shall be considered by the Chief Executive as unworthy of pardon.

Under Article 70, which is the Three-Fold Rule, the maximum period shall in no case exceed 40 years. If a convict who is to serve several sentences could only be made to serve 40 years, with more reason, one who is sentenced to a singly penalty of reclusion perpetua should not be held for more than 40 years.

The duration of 40 years is not a matter of provision of law; this is only by analogy. There is no provision of the Revised Penal Code that one sentenced to reclusion perpetua cannot be held in jail for 40 years and neither is there a decision to this effect.

Destierro

What is the duration of destierro?

The duration of destierro is from six months and one day, to six year, which is the same as that of prision correcional and suspension. Destierro is a principal penalty. It is a punishment whereby a convict is vanished to a certan place and is prohibited form entering or coming near that place designated in the sentence, not less than 25 Kms.. However, the court cannot extend beyond 250 Kms. If the convict should enter the prohibited places, he commits the crime of evasion of service of sentence under Article 157. But if the convict himself would go further from which he is vanished by the court, there is no evasion of sentence because the 240-Km. limit is upon the authority of the court in vanishing the convict.

Under the Revised Penal Code, destierro is the penalty imposed in the following situations:

(1) When a legally married person who had surprised his or her spouse in the act of sexual intercourse with another and while in that act or immediately thereafter should kill or inflict serious physical injuries upon the other spouse, and/or the paramour or mistress. This is found in Article 247.

(2) In the crime of grave threat or light threat, when the offender is required to put up a bond for good behavior but failed or refused to do so under Article 284, such convict shall be sentenced to destierro so that he would not be able to carry out his threat.

(3) In the crime of concubinage, the penalty prescribed for the concubine is destierro under Article 334.

(4) Where the penalty prescribed by law is arresto mayor, but the offender is entitled privileged mitigating circumstance and lowering the prescribed penalty by one degree, the penalty one degree lower is destierro. Thus, it shall be the one imposed.

Civil Interdiction

Civil interdiction is an accessory penalty. Civil interdiction shall deprive the offender during the time of his sentence:

(1) The rights of parental authority, or guardianship either as to the person or property of any ward;

(2) Marital authority;

(3) The right to manage his property; and

(4) The right to dispose of such property by any act or any conveyance inter vivos.

Can a convict execute a last will and testament? Yes.

Primary classification of penalties

Principal penalties and accessory penalties

The penalties which are both principal and accessory penalties are the following:

(1) Perpetual or temporary absolute disqualification;

(2) Perpetual or temporary special disqualification.

Questions & Answers

1. If the penalty of suspension is imposed as an accessory, what is the duration?

Its duration shall be that of the principal penalty.

2. If the penalty of temporary disqualification is imposed as principal penalty, what is the duration?

The duration is six years and one day to 12 years.

3. What do we refer to if it is perpetual or temporary disqualification?

We refer to the duration of the disqualification.

4. What do we refer to if it is special or absolute disqualification?

We refer to the nature of the disqualification.

The classification of principal and accessory is found in Article 25.

In classifying the penalties as principal and accessory, what is meant by this is that those penalties classified as accessory penalties need not be stated in the sentence. The accessory penalties follow the principal penalty imposed for the crime as a matter of course. So in the imposition of the sentence, the court will specify only the principal penalty but that is not the only penalty which the offender will suffer. Penalties which the law considers as accessory to the prescribed penalty are automatically imposed even though they are not stated in the judgment. As to the particular penalties that follow a particular principal penalty, Articles 40 to 45 of the Revised Penal Code shall govern.

If asked what are the accessory penalties, do not just state the accessory penalties. State the principal penalty and the corresponding accessory penalties.

Penalties in which other accessory penalties are inherent:

(1) Article 40. Death - perpetual absolute disqualification, and civil interdiction during 30 years following date of sentence;

(2) Article 41. Reclusion perpetua and reclusion temporal - civil interdiction for life or during the period of the sentence as the case may be, and perpetual absolute disqualification;

(3) Article 42. Prision mayor - temporary absolute disqualification perpetual special disqualification from the right of suffrage;

(4) Article 43. Prision correccional - suspension from public office, from the right to follow a profession or calling, and perpetual special disqualification from the rights of suffrage if the duration of said imprisonment shall exceed 18 months.

(5) Article 44. Arresto - suspension of the right to hold office and the right of suffrage during the term of the sentence.

There are accessory penalties which are true to other principal penalties. An example is the penalty of civil interdiction. This is an accessory penalty and, as provided in Article 34, a convict sentenced to civil interdiction suffers certain disqualification during the term

of the sentence. One of the disqualifications is that of making a conveyance of his property inter vivos.

Illustration:

A has been convicted and is serving the penalty of prision mayor. While serving sentence, he executed a deed of sale over his only parcel of land. A creditor moved to annul the sale on the ground that the convict is not qualified to execute a deed of conveyance inter vivos. If you were the judge, how would you resolve the move of the creditor to annul the sale?

Civil interdiction is not an accessory penalty in prision mayor. The convict can convey his property.

Questions & Answers

What accessory penalty is common to all principal penalties?

Confiscation or forfeiture on the instruments or proceeds of the crime.

Bond to keep the peace

One of the principal penalties common to the others is bond to keep the peace. There is no crime under the Revised Penal Code which carries this penalty.

Bond for good behavior

Bond for good behavior is prescribed by the Revised Penal Code for the crimes of grave threats and light threats under Article 234. You cannot find this penalty in Article 25 because Article 25 only provides for bond to keep the peace. Remember that no felony shall be punished by any penalty not prescribed by law prior to its commission pursuant to Article 21.

Questions & Answers

1. If bond to keep the peace is not the same as bond for good behavior, are they one and the same bond that differ only in name?

No. The legal effect of each is entirely different. The legal effect of a failure to post a bond to keep the peace is imprisonment either for six months or 30 days, depending on whether the felony committed is grave or less grave on one hand, or it is light only on the other hand. The legal effect of failure to post a bond for good behavior is not imprisonment but destierro under Article 284. Thus, it is clear that the two bonds are not the same considering that the legal effect or the failure to put up the bond is not the same.

Divisible and indivisible penalties

When we talk of period, it is implying that the penalty is divisible.

If, after being given a problem, you were asked to state the period in which the penalty of reclusion perpetua is to be imposed, remember that when the penalty is indivisible, there is no period. Do not talk of period, because when you talk of period, you are implying that the penalty is divisible because the period referred to is the minimum, the medium, and the maximum. If it is indivisible, there is no such thing as minimum, medium and maximum.

The capital punishment

You were asked to state whether you are in favor or against capital punishment. Understand that you are not taking the examination in Theology. Explain the issue on the basis of social utility of the penalty. Is it beneficial in deterring crimes or not? This should be the premise of your reasoning.

Designation of penalty

Since the principal penalties carry with them certain accessory penalties, the courts are not at liberty to use any designation of the principal penalty. So it was held that when the penalty should be reclusion perpetua, it is error for the court to use the term "life imprisonment". In other words, the courts are not correct when they deviate from the technical designation of the principal penalty, because the moment they deviate from this designation, there will be no corresponding accessory penalties that will go with them.

Illustration:

When the judge sentenced the accused to the penalty of reclusion perpetua, but instead of saying reclusion perpetua, it sentenced the accused to life imprisonment, the designation is wrong.

Reclusion perpetua as modified

Before the enactment of Republic Act No. 7659, which made amendments to the Revised Penal Code, the penalty of reclusion perpetua had no fixed duration. The Revised Penal Code provides in Article 27 that the convict shall be pardoned after undergoing the penalty for thirty years, unless by reason of his conduct or some other serious cause, he is not deserving of pardon. As amended by Section 21 of Republic Act No. 7659, the same article now provides that the penalty of reclusion perpetua shall be from 20 years to 40 years. Because of this, speculations arose as to whether it made reclusion perpetua a divisible penalty.

As we know, when a penalty has a fixed duration, it is said to be divisible and, in accordance with the provisions of Articles 65 and 76, should be divided into three equal portions to form one period of each of the three portions. Otherwise, if the penalty has no fixed duration, it is an indivisible penalty. The nature of the penalty as divisible or indivisible is decisive of the proper penalty to be imposed under the Revised Penal Code inasmuch as it determines whether the rules in Article 63 or the rules in Article 64 should be observed in fixing the penalty.

Thus, consistent with the rule mentioned, the Supreme Court, by its First Division, applied Article 65 of the Code in imposing the penalty for rape in ***People v. Conrado Lucas, GR No. 108172-73, May 25, 1994****. It divided the time included in the penalty of reclusion perpetua into three equal portions, with each portion composing a period as follows:*

Minimum - 20 years and one day, to 26 years and eight months;

Medium - 26 years, eight months and one day, to 33 years and four months;

Maximum - 34 years, four months and one day, to 40 years.

Considering the aggravating circumstance of relationship, the Court sentenced the accused to imprisonment of 34 years, four months and one day of reclusion perpetua, instead of the straight penalty of reclusion perpetua imposed by the trial court. The appellee seasonably filed a motion for clarification to correct the duration of the sentence, because instead of beginning with 33 years, four months and one day, it was stated as 34 years, four months and one day. The issue of whether the amendment of Article 27 made reclusion perpetua a divisible penalty was raised, and because the issue is one of first impression and momentous importance, the First Division referred the motion to the Court en banc.

In a resolution promulgated on January 9, 1995, the Supreme Court en banc held that reclusion perpetua shall remain as an indivisible penalty. To this end, the resolution states:

> *After deliberating on the motion and re-examining the legislation history of RA 7659, the Court concludes that although Section 17 of RA 7659 has fixed the duration of Reclusion Perpetua*

from twenty years (20) and one (1) to forty 40 years, there was no clear legislative intent to alter its original classification as an indivisible penalty. It shall then remain as an indivisible penalty.

Verily, if reclusion perpetua was classified as a divisible penalty, then Article 63 of the Revised Penal Code would lose its reason and basis for existence. To illustrate, the first paragraph of Section 20 of the amended RA No. 6425 provides for the penalty of reclusion perpetua to death whenever the dangerous drugs involved are of any of the quantities stated herein. If Article 63 of the Code were no longer applicable because reclusion perpetua is supposed to be a divisible penalty, then there would be no statutory rules for determining when either reclusion perpetua or death should be the imposable penalty. In fine, there would be no occasion for imposing reclusion perpetua as the penalty in drug cases, regardless of the attendant modifying circumstances.

Now then, if Congress had intended to reclassify reclusion perpetua as divisible penalty, then it should have amended Article 63 and Article 76 of the Revised Penal Code. The latter is the law on what are considered divisible penalties under the Code and what should be the duration of the periods thereof. There are, as well, other provisions of the Revised Penal Code involving reclusion perpetua, such as Article 41 on the accessory penalties thereof and paragraphs 2 and 3 of Article 61, which have not been touched by a corresponding amendment.

Ultimately, the question arises: "What then may be the reason for the amendment fixing the duration of reclusion perpetua?" This question was answered in the same case of ***People v. Lucas*** *by quoting pertinent portion of the decision in* ***People v. Reyes, 212 SCRA 402,*** *thus:*

> *The imputed duration of thirty (30) years for reclusion perpetua, thereof, is only to serve as the basis for determining the convict's eligibility for pardon or for the application of the three-fold rule in the service of penalties. Since, however, in all the graduated scales of penalties in the Code, as set out in Article 25, 70 and 21, reclusion perpetua is the penalty immediately next higher to reclusion temporal, it follows by necessary implication that the minimum of reclusion perpetua is twenty (20) years and one (1) day with a maximum duration thereafter to last for the rest of the convict's natural life, although, pursuant to Article 70, it appears that the maximum period for the service of penalties shall not exceed forty (40) years. It would be legally absurd and violative of the scales of penalties in the Code to reckon the minimum of Reclusion Perpetua at thirty (30) years since there would thereby be a resultant lacuna whenever the penalty exceeds the maximum twenty (20) years of Reclusion Temporal but is less than thirty (30) years.*

Innovations on the imposition of the death penalty

Aside form restoring the death penalty for certain heinous crimes, Republic Act No. 7659 made innovations on the provisions of the Revised Penal Code regarding the imposition of the death penalty:

(1) Article 47 has been reworded to expressly include among the instances where the death penalty shall not be imposed, the case of an offender who is below 18 years old at the time of the commission of the offense. But even without this amendment, the death penalty may not be meted out on an offender who was below 18 years of age at the time of the commission of the crime because Article 68 the lowers the imposable penalty upon such offenders by at least one degree than that prescribed for the crime.

(2) In the matter of executing the death penalty, Article 81 has been amended and, thus, directs that the manner of putting the convict to death by electrocution shall be changed to gas poisoning as soon as the facilities are provided, and the sentence shall be carried out not later that one year after the finality of judgment.

(3) The original provision of Article 83, anent the suspension of the execution of the death penalty for three years if the convict was a woman, has been deleted and instead, limits such suspension to last while the woman was pregnant and within one year after delivery.

Subsidiary penalty

Is subsidiary penalty an accessory penalty? No.

If the convict does not want to pay fine and has so many friends and wants to prolong his stay in jail, can he stay there and not pay fine? No.

After undergoing subsidiary penalty and the convict is already released from jail and his financial circumstances improve, can he be made to pay? Yes, for the full amount with deduction.

Article 39 deals with subsidiary penalty. There are two situations there:

(1) When there is a principal penalty of imprisonment or any other principal penalty and it carries with it a fine; and

(2) When penalty is only a fine.

Therefore, there shall be no subsidiary penalty for the non-payment of damages to the offended party.

This subsidiary penalty is one of important matter under the title of penalty. A subsidiary penalty is not an accessory penalty. Since it is not an accessory penalty, it must be expressly stated in the sentence, but the sentence does not specify the period of subsidiary penalty because it will only be known if the convict cannot pay the fine. The sentence will merely provide that in case of non-payment of the fine, the convict shall be required to save subsidiary penalty. It will then be the prison authority who will compute this.

So even if subsidiary penalty is proper in a case, if the judge failed to state in the sentence that the convict shall be required to suffer subsidiary penalty in case of insolvency to pay the fine, that convict cannot be required to suffer the accessory penalty. This particular legal point is a bar problem. Therefore, the judgment of the court must state this. If the judgment is silent, he cannot suffer any subsidiary penalty.

The subsidiary penalty is not an accessory penalty that follows the principal penalty as a matter of course. It is not within the control of

the convict to pay the fine or not and once the sentence becomes final and executory and a writ of execution is issued to collect the fine, if convict has property to levy upon, the same shall answer for the fine, whether he likes it or not. It must be that the convict is insolvent to pay the fine. That means that the writ of execution issued against the property of the convict, if any, is returned unsatisfied.

In ***People v. Subido,*** *it was held that the convict cannot choose not to serve, or not to pay the fine and instead serve the subsidiary penalty. A subsidiary penalty will only be served if the sheriff should return the execution for the fine on the property of the convict and he does not have the properties to satisfy the writ.*

Questions & Answers

The penalty imposed by the judge is fine only. The sheriff then tried to levy the property of the defendant after it has become final and executory, but it was returned unsatisfied. The court then issued an order for said convict to suffer subsidiary penalty. The convict was detained, for which reason he filed a petition for habeas corpus contending that his detention is illegal. Will the petition prosper?

Yes. The judgment became final without statement as to subsidiary penalty, so that even if the convict has no money or property to satisfy the fine, he cannot suffer subsidiary penalty because the latter is not an accessory and so it must be expressly stated. If the court overlooked to provide for subsidiary penalty in the sentence and its attention was later called to that effect, thereafter, it tried to modify the sentence to include subsidiary penalty after period to appeal had already elapsed, the addition of subsidiary penalty will be null and void. This is tantamount to double jeopardy.

If the fine is prescribed with the penalty of imprisonment or any deprivation of liberty, such imprisonment should not be higher than six years or prision correccional. Otherwise, there is no subsidiary penalty.

When is subsidiary penalty applied

(1) If the subsidiary penalty prescribed for the non-payment of fine which goes with the principal penalty, the maximum duration of the subsidiary penalty is one year, so there is no subsidiary penalty that goes beyond one year. But this will only be true if the one year period is higher than 1/3 of the principal penalty, the convict cannot be made to undergo subsidiary penalty more than 1/3 of the duration of the principal penalty and in no case will it be more than 1 year - get 1/3 of the principal penalty - whichever is lower.

(2) If the subsidiary penalty is to be imposed for non payment of fine and the principal penalty imposed be fine only, which is a single penalty, that means it does not go with another principal penalty, the most that the convict will be required to undergo subsidiary imprisonment is six months, if the felony committed is grave or less grave, otherwise, if the felony committed is slight, the maximum duration of the subsidiary penalty is only 15 days.

There are some who use the term subsidiary imprisonment. The term is wrong because the penalty is not only served by imprisonment. The subsidiary penalty follows the nature of the principal penalty. If the principal penalty is destierro, this being a divisible penalty, and a penalty with a fixed duration, the non-payment of the fine will bring about subsidiary penalty. This being a restriction of liberty with a fixed duration under Article 39 for the nonpayment of fine that goes with the destierro, the convict will be required to undergo subsidiary penalty and it will also be in the form of destierro.

Illustration:

A convict was sentenced to suspension and fine. This is a penalty where a public officer anticipates public duties, he entered into the performance of public office even before he has complied with the required formalities. Suppose the convict cannot pay the fine, may he be required to undergo subsidiary penalty?

Yes, because the penalty of suspension has a fixed duration. Under Article 27, suspension and destierro have the same duration as prision correccional. So the duration does not exceed six years. Since it is a penalty with a fixed duration under Article 39, when there is a subsidiary penalty, such shall be 1/3 of the period of suspension which in no case beyond one year. But the subsidiary penalty will be served not by imprisonment but by continued suspension.

If the penalty is public censure and fine even if the public censure is a light penalty, the convict cannot be required to pay the fine for subsidiary penalty for the non-payment of the fine because public censure is a penalty that has no fixed duration.

Do not consider the totality of the imprisonment the convict is sentenced to but consider the totality or the duration of the imprisonment that the convict will be required to serve under the Three-Fold Rule. If the totality of the imprisonment under this rule does not exceed six years, then, even if the totality of all the sentences without applying the Three-Fold Rule will go beyond six years, the convict shall be required to undergo subsidiary penalty if he could not pay the fine.

Illustration:

A collector of NAWASA collected from 50 houses within a certain locality. When he was collecting NAWASA bills, the charges of all these consumers was a minimum of 10. The collector appropriated the amount collected and so was charged with estafa. He was convicted. Penalty imposed was arresto mayor and a fine of P200.00 in each count. If you were the judge, what penalty would you impose? May the convict be required to undergo subsidiary penalty in case he is insolvent to pay the fine?

The Three-Fold Rule should not applied by the court. In this case of 50 counts of estafa, the penalty imposed was arresto mayor and a fine of P200.00. Arresto mayor + P200.00 x 50. Arresto Mayor is six months x 50 = 25 years. P200.00 x 50 = P10,000.00. Thus, I would impose a penalty of arresto mayor and a fine of P200.00 multiplied by 50 counts and state further that "as a judge, I am not in the position to apply the Three-Fold Rule because the Three-Fold Rule is to be given effect when the convict is already serving sentence in the penitentiiary. It is the prison authority who will apply the Three-Fold Rule. As far as the court is concerned, that will be the penalty to be imposed."

For the purposes of subsidiary penalty, apply the Three-Fold Rule if the penalty is arresto mayor and a fine of P200.00 multiplied by 3. This means one year and six months only. So, applying the Three- Fold Rule, the penalty does not go beyond six years. Hence, for the non-payment of the fine of P10,000.00, the convict shall be required to undergo subsidiary penalty. This is because the imprisonment that will be served will not go beyond six years. It will only be one year and six months, since in the service of the sentence, the Three-Fold Rule will apply.

It is clearly provided under Article 39 that if the means of the convict should improve, even if he has already served subsidiary penalty, he shall still be required to pay the fine and there is no deduction for that amount which the convict has already served by way of subsidiary penalty.

Articles 63 and 64

If crime committed is parricide, penalty is reclusion perpetua. The accused, after committing parricide, voluntarily surrendered and pleaded guilty of the crime charged upon arraignment. It was also established that he

was intoxicated, and no aggravating circumstances were present. What penalty would you impose?

Reclusion perpetua, because it is an indivisible penalty.

When there are two or more mitigating circumstances and there is no aggravating circumstance, penalty to be imposed shall be one degree lower to be imposed in the proper period. Do not apply this when there is one aggravating circumstance.

Illustration:

There are about four mitigating circumstances and one aggravating circumstance. Court offsets the aggravating circumstance against the mitigating circumstance and there still remains three mitigating circumstances. Because of that, the judge lowered the penalty by one degree. Is the judge correct?

No. In such a case when there are aggravating circumstances, no matter how many mitigating circumstances there are, after offsetting, do not go down any degree lower. The penalty prescribed by law will be the penalty to be imposed, but in the minimum period. Cannot go below the minimum period when there is an aggravating circumstance.

Go into the lowering of the penalty by one degree if the penalty is divisible. So do not apply the rule in paragraph 5 of Article 64 to a case where the penalty is divisible.

Article 66

When there are mitigating circumstance and aggravating circumstance and the penalty is only fine, when it is only ordinary mitigating circumstance and aggravating circumstance, apply Article 66. Because you determine the imposable fine on the basis of the financial resources or means of the offender. But if the penalty would be lowered by degree, there is a privileged mitigating circumstance or the felony committed is attempted or frustrated, provided it is not a light felony against persons or property, because if it is a light felony and punishable by fine, it is not a crime at all unless it is consummated. So, if it is attempted or frustrated, do not go one degree lower because it is not punishable unless it is a light felony against person or property where the imposable penalty will be lowered by one degree or two degrees.

Penalty prescribed to a crime is lowered by degrees in the following cases:

(1) When the crime is only attempted or frustrated

If it is frustrated, penalty is one degree lower than that prescribed by law.

If it is attempted, penalty is two degrees lower than that prescribed by law.

This is so because the penalty prescribed by law for a crime refers to the consummated stage.

(2) When the offender is an accomplice or accessory only

Penalty is one degree lower in the case of an accomplice.

Penalty is two degrees lower in the case of an accessory.

This is so because the penalty prescribed by law for a given crime refers to the consummated stage.

(3) When there is a privilege mitigating circumstance in favor of the offender, it will lower the penalty by one or two degrees than that prescribed by law depending on what the particular provision of the Revised Penal Code states.

(4) When the penalty prescribed for the crime committed is a divisible penalty

and there are two or more ordinary mitigating circumstances and no aggravating circumstances whatsoever, the penalty next lower in degree shall be the one imposed.

(5) Whenever the provision of the Revised Penal Code specifically lowers the penalty by one or two degrees than what is ordinarily prescribed for the crime committed.

Penalty commonly imposed by the Revised Penal Code may be by way of imprisonment or by way of fine or, to a limited extent, by way of destierro or disqualification, whether absolute or special.

In the matter of lowering the penalty by degree, the reference is Article 71. It is necessary to know the chronology under Article 71 by simply knowing the scale. Take note that destierro comes after arresto mayor so the penalty one degree lower than arresto mayor is not arresto menor, but destierro. Memorize the scale in Article 71.

In Article 27, with respect to the range of each penalty, the range of arresto menor follows arresto mayor, since arresto menor is one to 30 days or one month, while arresto mayor is one month and one day to six months. On the other hand, the duration of destierro is the same as prision correccional which is six months and one day to six years. But be this as it is, under Article 71, in the scale of penalties graduated according to degrees, arresto mayor is higher than destierro.

In homicide under Article 249, the penalty is reclusion temporal. One degree lower, if homicide is frustrated, or there is an accomplice participating in homicide, is prision mayor, and two degrees lower is prision correccional.

This is true if the penalty prescribed by the Revised Penal Code is a whole divisible penalty -- one degree or 2 degrees lower will also be punished as a whole. But generally, the penalties prescribed by the Revised Penal Code are only in periods, like prision correcional minimum, or prision correcional minimum to medium.

Although the penalty is prescribed by the Revised Penal Code as a period, such penalty should be understood as a degree in itself and the following rules shall govern:

(1) When the penalty prescribed by the Revised Code is made up of a period, like prision correccional medium, the penalty one degree lower is prision correccional minimum, and the penalty two degrees lower is arresto mayor maximum. In other words, each degree will be made up of only one period because the penalty prescribed is also made up only of one period.

(2) When the penalty prescribed by the Code is made up of two periods of a given penalty, every time such penalty is lowered by one degree you have to go down also by two periods.

<u>Illustration:</u>

If the penalty prescribed for the crime is prision correccional medium to maximum, the penalty one degree lower will be arresto mayor maximum to prision correccional minimum, and the penalty another degree lower will be arresto mayor minimum to medium. Every degree will be composed of two periods.

(3) When the penalty prescribed by the Revised Penal Code is made up of three periods of different penalties, every time you go down one degree lower, you have to go down by three periods.

<u>Illustration:</u>

The penalty prescribed by the Revised Penal Code is prision mayor maximum to reclusion temporal medium, the penalty one degree lower is prision

correccional maximum to prision mayor medium. Another degree lower will be arresto mayor maximum to prision correccional medium.

These rules have nothing to do with mitigating or aggravating circumstances. These rules refer to the lowering of penalty by one or two degrees. As to how mitigating or aggravating circumstances may affect the penalty, the rules are found in Articles 63 and 64. Article 63 governs when the penalty prescribed by the Revised Penal Code is indivisible. Article 64 governs when the penalty prescribed by the Revised Penal Code is divisible. When the penalty is indivisible, no matter how many ordinary mitigating circumstances there are, the prescribed penalty is never lowered by degree. It takes a privileged mitigating circumstance to lower such penalty by degree. On the other hand, when the penalty prescribed by the Revised Penal Code is divisible, such penalty shall be lowered by one degree only but imposed in the proper period, when there are two or more ordinary mitigating circumstance and there is no aggravating circumstance whatsoever.

Article 75 – Fines

With respect to the penalty of fine, if the fine has to be lowered by degree either because the felony committed is only attempted or frustrated or because there is an accomplice or an accessory participation, the fine is lowered by deducting 1/4 of the maximum amount of the fine from such maximum without changing the minimum amount prescribed by law.

Illustration:

If the penalty prescribed is a fine ranging from P200.00 to P500.00, but the felony is frustrated so that the penalty should be imposed one degree lower, 1/4 of P500.00 shall be deducted therefrom. This is done by deducting P125.00 from P500.00, leaving a difference of P375.00. The penalty one degree lower is P375.00. To go another degree lower, P125.00 shall again be deducted from P375.00 and that would leave a difference of P250.00. Hence, the penalty another degree lower is a fine ranging from P200.00 to P250.00. If at all, the fine has to be lowered further, it cannot go lower than P200.00. So, the fine will be imposed at P200.00. This rule applies when the fine has to be lowered by degree.

Article 66

In so far as ordinary mitigating or aggravating circumstance would affect the penalty which is in the form of a fine, Article 66 of the Revised Penal Code shall govern. Under this article, it is discretionary upon the court to apply the fine taking into consideration the financial means of the offender to pay the same. In other words, it is not only the mitigating and/or aggravating circumstances that the court shall take into consideration, but primarily, the financial capability of the offender to pay the fine. For the same crime, the penalty upon an accused who is poor may be less than the penalty upon an accused committing the same crime but who is wealthy

.
For instance, when there are two offenders who are co-conspirators to a crime, and their penalty consists of a fine only, and one of them is wealthy while the other is a pauper, the court may impose a higher penalty upon the wealthy person and a lower fine for the pauper.

Penalty for murder under the Revised Penal Code is reclusion temporal maximum to death. So, the penalty would be reclusion temporal maximum – reclusion perpetua – death. This penalty made up of three periods.

The Three-Fold Rule

Under this rule, when a convict is to serve successive penalties, he will not actually serve the penalties imposed by law. Instead, the most severe of the penalties imposed on him shall be multiplied by three and the period will be the only term of the penalty to be served by

him. However, in no case should the penalty exceed 40 years.

This rule is intended for the benefit of the convict and so, you will only apply this provided the sum total of all the penalties imposed would be greater than the product of the most severe penalty multiplied by three but in no case will the penalties to be served by the convict be more than 40 years.

Although this rule is known as the Three-Fold rule, you cannot actually apply this if the convict is to serve only three successive penalties. The Three-Fold Rule can only be applied if the convict is to serve four or more sentences successively. If the sentences would be served simultaneously, the Three-Fold rule does not govern.

The chronology of the penalties as provided in Article 70 of the Revised Penal Code shall be followed.

It is in the service of the penalty, not in the imposition of the penalty, that the Three-Fold rule is to be applied. The three-Fold rule will apply whether the sentences are the product of one information in one court, whether the sentences are promulgated in one day or whether the sentences are promulgated by different courts on different days. What is material is that the convict shall serve more than three successive sentences.

For purposes of the Three-Fold Rule, even perpetual penalties are taken into account. So not only penalties with fixed duration, even penalties without any fixed duration or indivisible penalties are taken into account. For purposes of the Three-Fold rule, indivisible penalties are given equivalent of 30 years. If the penalty is perpetual disqualification, it will be given and equivalent duration of 30 years, so that if he will have to suffer several perpetual disqualification, under the Three-Fold rule, you take the most severe and multiply it by three. The Three-Fold rule does not apply to the penalty prescribed but to the penalty imposed as determined by the court.

Illustration:

Penalties imposed are –

One prision correcional – minimum – 2 years and 4 months

One arresto mayor - 1 month and 1 day to 6 months

One prision mayor - 6 years and 1 day to 12 years

Do not commit the mistake of applying the Three- Fold Rule in this case. Never apply the Three-Fold rule when there are only three sentences. Even if you add the penalties, you can never arrive at a sum higher than the product of the most severe multiplied by three.

The common mistake is, if given a situation, whether the Three-Fold Rule could be applied. If asked, if you were the judge, what penalty would you impose, for purposes of imposing the penalty, the court is not at liberty to apply the Three-Fold Rule, whatever the sum total of penalty for each crime committed, even if it would amount to 1,000 years or more. It is only when the convict is serving sentence that the prison authorities should determine how long he should stay in jail.

Illustration:

A district engineer was sentenced by the court to a term of 914 years in prison.

A person was sentenced to three death sentences. Significance: If ever granted pardon for 1 crime, the two remaining penalties must still be executed.

This rule will apply only if sentences are to be served successively.

Act No. 4013 (Indeterminate Sentence Law), as amended

Three things to know about the Indeterminate Sentence Law:

(1) Its purpose;

(2) Instances when it does not apply; and

(3) How it operates

Indeterminate Sentence Law governs whether the crime is punishable under the Revised Penal Code or a special Law. It is not limited to violations of the Revised Penal Code.

It applies only when the penalty served is imprisonment. If not by imprisonment, then it does not apply.

Purpose

The purpose of the Indeterminate Sentence law is to avoid prolonged imprisonment, because it is proven to be more destructive than constructive to the offender. So, the purpose of the Indeterminate Sentence Law in shortening the possible detention of the convict in jail is to save valuable human resources. In other words, if the valuable human resources were allowed prolonged confinement in jail, they would deteriorate. Purpose is to preserve economic usefulness for these people for having committed a crime -- to reform them rather than to deteriorate them and, at the same time, saving the government expenses of maintaining the convicts on a prolonged confinement in jail.

If the crime is a violation of the Revised Penal Code, the court will impose a sentence that has a minimum and maximum. The maximum of the indeterminate sentence will be arrived at by taking into account the attendant mitigating and/or aggravating circumstances according to Article 64 of the Revised Penal Code. In arriving at the minimum of the indeterminate sentence, the court will take into account the penalty prescribed for the crime and go one degree lower. Within the range of one degree lower, the court will fix the minimum for the indeterminate sentence, and within the range of the penalty arrived at as the maximum in the indeterminate sentence, the court will fix the maximum of the sentence. If there is a privilege mitigating circumstance which has been taken in consideration in fixing the maximum of the indeterminate sentence, the minimum shall be based on the penalty as reduced by the privilege mitigating circumstance within the range of the penalty next lower in degree.

If the crime is a violation of a special law, in fixing the maximum of the indeterminate sentence, the court will impose the penalty within the range of the penalty prescribed by the special law, as long as it will not exceed the limit of the penalty. In fixing the minimum, the court can fix a penalty anywhere within the range of penalty prescribed by the special law, as long as it will not be less than the minimum limit of the penalty under said law. No mitigating and aggravating circumstances are taken into account.

The minimum and the maximum referred to in the Indeterminate Sentence Law are not periods. So, do not say, maximum or minimum period. For the purposes of the indeterminate Sentence Law, use the term minimum to refer to the duration of the sentence which the convict shall serve as a minimum, and when we say maximum, for purposes of ISLAW, we refer to the maximum limit of the duration that the convict may be held in jail. We are not referring to any period of the penalty as enumerated in Article 71.

Courts are required to fix a minimum and a maximum of the sentence that they are to impose upon an offender when found guilty of the crime charged. So, whenever the Indeterminate Sentence Law is applicable, there is always a minimum and maximum of the sentence that the convict shall serve. If the crime is punished by the Revised Penal Code, the law provides that the maximum shall be arrived at by considering the mitigating and aggravating circumstances in the commission

of the crime according to the proper rules of the Revised Penal Code. To fix the maximum, consider the mitigating and aggravating circumstances according to the rules found in Article 64. This means –

(1) Penalties prescribed by the law for the crime committed shall be imposed in the medium period if no mitigating or aggravating circumstance;

(2) If there is aggravating circumstance, no mitigating, penalty shall be imposed in the maximum;

(3) If there is mitigating circumstance, no aggravating, penalty shall be in the minimum;

(4) If there are several mitigating and aggravating circumstances, they shall offset against each other. Whatever remains, apply the rules.

(5) If there are two or more mitigating circumstance and no aggravating circumstance, penalty next lower in degree shall be the one imposed.

Rule under Art 64 shall apply in determining the maximum but not in determining the minimum.

In determining the applicable penalty according to the Indeterminate Sentence Law, there is no need to mention the number of years, months and days; it is enough that the name of the penalty is mentioned while the Indeterminate Sentence Law is applied. To fix the minimum and the maximum of the sentence, penalty under the Revised Penal Code is not the penalty to be imposed by court because the court must apply the Indeterminate Sentence Law. The attendant mitigating and/or aggravating circumstances in the commission of the crime are taken into consideration only when the maximum of the penalty is to be fixed. But in so far as the minimum is concerned, the basis of the penalty prescribed by the Revised Penal Code, and go one degree lower than that. But penalty one degree lower shall be applied in the same manner that the maximum is also fixed based only on ordinary mitigating circumstances. This is true only if the mitigating circumstance taken into account is only an ordinary mitigating circumstance. If the mitigating circumstance is privileged, you cannot follow the law in so far as fixing the minimum of the indeterminate sentence is concerned; otherwise, it may happen that the maximum of the indeterminate sentence is lower than its minimum.

In one Supreme Court ruling, it was held that for purposes of applying the Indeterminate Sentence Law, the penalty prescribed by the Revised Penal Code and not that which may be imposed by court. This ruling, however, is obviously erroneous. This is so because such an interpretation runs contrary to the rule of pro reo, which provides that the penal laws should always be construed an applied in a manner liberal or lenient to the offender. Therefore, the rule is, in applying the Indetermiante Sentence Law, it is that penalty arrived at by the court after applying the mitigating and aggravating circumstances that should be the basis.

Crimes punished under special law carry only one penalty; there are no degree or periods. Moreover, crimes under special law do not consider mitigating or aggravating circumstance present in the commission of the crime. So in the case of statutory offense, no mitigating and no aggravating circumstances will be taken into account. Just the same, courts are required in imposing the penalty upon the offender to fix a minimum that the convict should serve, and to set a maximum as the limit of that sentence. Under the law, when the crime is punished under a special law, the court may fix any penalty as the maximum without exceeding the penalty prescribed by special law for the crime committed. In the same manner, courts are given discretion to fix a minimum anywhere within the range of the penalty prescribed by special law, as long as it will not be lower than the penalty prescribed.

Disqualification may be divided into three, according to –

(1) The time committed;

(2) The penalty imposed; and

(3) The offender involved.

<u>The Indeterminate Sentence Law shall not apply to:</u>

(1) Persons convicted of offense punishable with death penalty or life imprisonment;

(2) Persons convicted of treason, conspiracy or proposal to commit treason;

(3) Persons convicted of misprision of treason, rebellion, sedition, espionage;

(4) Persons convicted of piracy;

(5) Persons who are habitual delinquents;

(6) Persons who shall have escaped from confinement or evaded sentence;

(7) Those who have been granted conditional pardon by the Chief Executive and shall have violated the term thereto;

(8) Those whose maximum term of imprisonment does not exceed one year, but not to those already sentenced by final judgment at the time of the approval of Indeterminate Sentence Law.

*Although the penalty prescribed for the felony committed is death or reclusion perpetua, if after considering the attendant circumstances, the imposable penalty is reclusion temporal or less, the Indeterminate Sentence Law applies (**People v. Cempron, 187 SCRA 278**).*

Presidential Decree No. 968 (Probation Law)

Among the different grounds of partial extinction of criminal liability, the most important is probation. Probation is a manner of disposing of an accused who have been convicted by a trial court by placing him under supervision of a probation officer, under such terms and conditions that the court may fix. This may be availed of before the convict begins serving sentence by final judgment and provided that he did not appeal anymore from conviction.

Without regard to the nature of the crime, only those whose penalty does not exceed six years of imprisonment are those qualified for probation. If the penalty is six years plus one day, he is no longer qualified for probation.

If the offender was convicted of several offenses which were tried jointly and one decision was rendered where multiple sentences imposed several prison terms as penalty, the basis for determining whether the penalty disqualifies the offender from probation or not is the term of the individual imprisonment and not the totality of all the prison terms imposed in the decision. So even if the prison term would sum up to more than six years, if none of the individual penalties exceeds six years, the offender is not disqualified by such penalty from applying for probation.

On the other hand, without regard to the penalty, those who are convicted of subversion or any crime against the public order are not qualified for probation. So know the crimes under Title III, Book 2 of the Revised Penal Code. Among these crimes is Alarms and Scandals, the penalty of which is only arresto menor or a fine. Under the amendment to the Probation Law, those convicted of a crime against public order regardless of the penalty are not qualified for probation.

May a recidivist be given the benefit of Probation Law?

As a general rule, no.

Exception: If the earlier conviction refers to a crime the penalty of which does not exceed 30 days imprisonment or a fine of not more than P200.00, such convict is not disqualified of the benefit of probation. So even if he would be convicted subsequently of a crime embraced in the same title of the Revised Penal Code as that of the earlier conviction, he is not disqualified from probation provided that the penalty of the current crime committed does not go beyond six years and the nature of the crime committed by him is not against public order, national security or subversion.

Although a person may be eligible for probation, the moment he perfects an appeal from the judgment of conviction, he cannot avail of probation anymore. So the benefit of probation must be invoked at the earliest instance after conviction. He should not wait up to the time when he interposes an appeal or the sentence has become final and executory. The idea is that probation has to be invoked at the earliest opportunity.

An application for probation is exclusively within the jurisdiction of the trial court that renders the judgment. For the offender to apply in such court, he should not appeal such judgment.

Once he appeals, regardless of the purpose of the appeal, he will be disqualified from applying for Probation, even though he may thereafter withdraw his appeal.

If the offender would appeal the conviction of the trial court and the appellate court reduced the penalty to say, less than six years, that convict can still file an application for probation, because the earliest opportunity for him to avail of probation came only after judgment by the appellate court.

Whether a convict who is otherwise qualified for probation may be give the benefit of probation or not, the courts are always required to conduct a hearing. If the court denied the application for probation without the benefit of the hearing, where as the applicant is not disqualified under the provision of the Probation Law, but only based on the report of the probation officer, the denial is correctible by certiorari, because it is an act of the court in excess of jurisdiction or without jurisdiction, the order denying the application therefore is null and void.

Probation is intended to promote the correction and rehabilitation of an offender by providing him with individualized treatment; to provide an opportunity for the reformation of a penitent offender which might be less probable if he were to serve a prison sentence; to prevent the commission of offenses; to decongest our jails; and to save the government much needed finance for maintaining convicts in jail

Probation is only a privilege. So even if the offender may not be disqualified of probation, yet the court believes that because of the crime committed it was not advisable to give probation because it would depreciate the effect of the crime, the court may refuse or deny an application for probation.

Generally, the courts do not grant an application for probation for violation of the Dangerous Drugs Law, because of the prevalence of the crime. So it is not along the purpose of probation to grant the convict the benefit thereof, just the individual rehabilitation of the offender but also the best interest of the society and the community where the convict would be staying, if he would be released on probation. To allow him loose may bring about a lack of respect of the members of the community to the enforcement of penal law. In such a case, the court even if the crime is probationable may still deny the benefit of probation.

Consider not only the probationable crime, but also the probationable penalty. If it were the non-probationable crime, then regardless of the penalty, the convict cannot avail of probation. Generally, the penalty which is not probationable is any penalty exceeding six years of imprisonment. Offenses which are not probationable are those against natural

security, those against public order and those with reference to subversion.

Persons who have been granted of the benefit of probation cannot avail thereof for the second time. Probation is only available once and this may be availed only where the convict starts serving sentence and provided he has not perfected an appeal. If the convict perfected an appeal, he forfeits his right to apply for probation. As far as offenders who are under preventive imprisonment, that because a crime committed is not bailable or the crime committed, although bailable, they cannot afford to put up a bail, upon promulgation of the sentence, naturally he goes back to detention, that does not mean that they already start serving the sentence even after promulgation of the sentence, sentence will only become final and executory after the lapse of the 15-day period, unless the convict has waived expressly his right to appeal or otherwise, he has partly started serving sentence and in that case, the penalty will already be final and exeuctory, no right to probation can be applied for.

<u>Probation shall be denied if the court finds:</u>

(1) That the offender is in need of correctional treatment that can be provided most effectively by his commitment to an institution;

(2) That there is undue risk that during the period of probation the offender will commit another crime; or

(3) Probation will depreciate the seriousness of the crime.

<u>The probation law imposes two kinds of conditions:</u>

(1) Mandatory conditions; and

(2) Discretionary conditions.

<u>Mandatory conditions:</u>

(1) The convict must report to the Probation Officer (PO) designated in the court order approving his application for Probation within 72 hours from receipt of Notice of such order approving his application; and

(2) The convict, as a probationer, must report to the PO at least once a month during the period of probation unless sooner required by the PO.

These conditions being mandatory, the moment any of these is violate, the probation is cancelled.

<u>Discretionary conditions:</u>

The trial court which approved the application for probation may impose any condition which may be constructive to the correction of the offender, provided the same would not violate the constitutional rights of the offender and subject to this two restrictions: (1) the conditions imposed should not be unduly restrictive of the probationer; and (2) such condition should not be incompatible with the freedom of conscience of the probationer

EXTINCTION OF CRIMINAL LIABILITY

Always provide two classifications when answering this question.

<u>Criminal liability is totally extinguished as follows:</u>

(1) By the death of the convict as to personal penalties; and as to pecuniary penalties, liability therefore is extinguished only when the death of the offender occurs before final judgment

(2) By service of sentence;

(3) By amnesty which completely extinguished the penalty and all its effects;

(4) By absolute pardon;

(5) By prescription of the crime;

(6) By prescription of the penalty;

(7) By the marriage of the offended women as in the crimes of rape, abduction, seduction and acts of lasciviousness.

Criminal liability is partially extinguished as follows:

(1) By conditional pardon;

(2) By commutation of sentence;

(3) For good conduct, allowances which the culprit may earn while he is serving sentence;

(4) Parole; and

(5) Probation.

Total extinction of criminal liability

Among the grounds for total extinction as well as those for partial extinction, you cannot find among them the election to public office. In one case, a public official was charged before the Sandiganbayan for violation of Anti-Graft and Corrupt Practices Act. During the ensuing election, he was nevertheless re-elected by the constituents, one of the defenses raised was that of condonation of the crime by his constituents, that his constituents have pardoned him. The Supreme Court ruled that the re-election to public office is not one of the grounds by which criminal liability is extinguished. This is only true to administrative cases but not criminal cases.

Death of the offender

*Where the offender dies before final judgment, his death extinguishes both his criminal and civil liabilities. So while a case is on appeal, the offender dies, the case on appeal will be dismissed. The offended party may file a separate civil action under the Civil Code if any other basis for recovery of civil liability exists as provided under Art 1157 Civil Code. (**People v. Bayotas, decided on September 2, 1994**)*

Amnesty and pardon

The effects of amnesty as well as absolute pardon are not the same. Amnesty erases not only the conviction but also the crime itself. So that if an offender was convicted for rebellion and he qualified for amnesty, and so he was given an amnesty, then years later he rebelled again and convicted, is he a recidivist? No. Because the amnesty granted to him erased not only the conviction but also the effects of the conviction itself.

Suppose, instead of amnesty, what was given was absolute pardon, then years later, the offended was again captured and charged for rebellion, he was convicted, is he a recidivist? Yes. Pardon, although absolute does not erase the effects of conviction. Pardon only excuses the convict from serving the sentence. There is an exception to this and that is when the pardon was granted when the convict had already served the sentence such that there is no more service of sentence to be executed then the pardon shall be understood as intended to erase the effects of the conviction.

So if the convict has already served the sentence and in spite of that he was given a pardon that pardon will cover the effects of the crime and therefore, if he will be subsequently convicted for a felony embracing the same title as that crime, he cannot be considered a recidivist, because the pardon wipes out the effects of the crime.

But if he was serving sentence when he was pardoned, that pardon will not wipe out the effects of the crime, unless the language of the pardon absolutely relieve the offender of all the effects thereof. Considering that recidivism

does not prescribe, no matter how long ago was the first conviction, he shall still be a recidivist.

Illustrations:

When the crime carries with it moral turpitude, the offender even if granted pardon shall still remain disqualified from those falling in cases where moral turpitude is a bar.

Pedro was prosecuted and convicted of the crime of robbery and was sentenced to six years imprisonment or prision correccional. After serving sentence for three years, he was granted absolute pardon. Ten years later, Pedro was again prosecuted and convicted of the crime of theft, a crime embraced in the same title, this time he shall be a recidivist. On the other hand, if he has served all six years of the first sentence, and his name was included in the list of all those granted absolute pardon, pardon shall relieve him of the effects of the crime, and therefore even if he commits theft again, he shall not be considered a recidivist.

In ***Monsanto v. Factoran, Jr., 170 SCRA 191,*** *it was held that absolute pardon does not ipso facto entitle the convict to reinstatement to the public office forfeited by reason of his conviction. Although pardon restores his eligibility for appointment to that office, the pardoned convict must reapply for the new appointment*
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Pardon becomes valid only when there is a final judgment. If given before this, it is premature and hence void. There is no such thing as a premature amnesty, because it does not require a final judgment; it may be given before final judgment or after it.

Prescription of crime and prescription of the penalty

Prescription of the crime begins, as a general rule on the day the crime was committed, unless the crime was concealed, not public, in which case, the prescription thereof would only commence from the time the offended party or the government learns of the commission of the crime.

"Commission of the crime is public" -- This does not mean alone that the crime was within public knowledge or committed in public.

Illustration:

In the crime of falsification of a document that was registered in the proper registry of the government like the Registry of Property or the Registry of Deeds of the Civil registry, the falsification is deemed public from the time the falsified document was registered or recorded in such public office so even though, the offended party may not really know of the falsification, the prescriptive period of the crime shall already run from the moment the falsified document was recorded in the public registry. So in the case where a deed of sale of a parcel of land which was falsified was recorded in the corresponding Registry of Property, the owner of the land came to know of the falsified transaction only after 10 years, so he brought the criminal action only then. The Supreme Court ruled that the crime has already prescribed. From the moment the falsified document is registered in the Registry of Property, the prescriptive period already commenced to run.

When a crime prescribes, the State loses the right to prosecute the offender, hence, even though the offender may not have filed a motion to quash on this ground the trial court, but after conviction and during the appeal he learned that at the time the case was filed, the crime has already prescribed, such accused can raise the question of prescription even for the first time on appeal, and the appellate court shall have no jurisdiction to continue, if legally, the crime has indeed prescribed.

The prevailing rule now is, prescription of the crime is not waivable, the earlier jurisprudence to the contrary had already been abrogated or overruled. Moreover, for purposes of prescription, the period for filing a complaint or

information may not be extended at all, even though the last day such prescriptive period falls on a holiday or a Sunday.

For instance, light felony prescribes in 60 days or two months. If the 60th day falls on a Sunday, the filing of the complaint on the succeeding Monday is already fatal to the prosecution of the crime because the crime has already prescribed.

The rules on Criminal Procedure for purposes of prescription is that the filing of the complaint even at the public prosecutor's office suspends the running of the prescriptive period, but not the filing with the barangay. So the earlier rulings to the contrary are already abrogated by express provision of the Revised Rules on Criminal Procedure.

<u>The prescription of the crime is interrupted or suspended –</u>

(1) When a complaint is filed in a proper barangay for conciliation or mediation as required by Chapter 7, Local Government Code, but the suspension of the prescriptive period is good only for 60 days. After which the prescription will resume to run, whether the conciliation or mediation is terminated for not;

(2) When criminal case is filed in the prosecutor's office, the prescription of the crime is suspended until the accused is convicted or the proceeding is terminated for a cause not attributable to the accused.

But where the crime is subject to Summary Procedure, the prescription of the crime will be suspended only when the information is already filed with the trial court. It is not the filing of the complaint, but the filing of the information in the trial which will suspend the prescription of the crime.

On the prescription of the penalty, the period will only commence to run when the convict has begun to serve the sentence. Actually, the penalty will prescribe from the moment the convict evades the service of the sentence. So if an accused was convicted in the trial court, and the conviction becomes final and executory, so this fellow was arrested to serve the sentence, on the way to the penitentiary, the vehicle carrying him collided with another vehicle and overturned, thus enabling the prisoner to escape, no matter how long such convict has been a fugitive from justice, the penalty imposed by the trial court will never prescribe because he has not yet commenced the service of his sentence. For the penalty to prescribe, he must be brought to Muntinlupa, booked there, placed inside the cell and thereafter he escapes.

Whether it is prescription of crime or prescription of penalty, if the subject could leave the Philippines and go to a country with whom the Philippines has no extradition treaty, the prescriptive period of the crime or penalty shall remain suspended whenever he is out of the country.

When the offender leaves for a country to which the Philippines has an extradition treaty, the running of the prescriptive period will go on even if the offender leaves Philippine territory for that country. Presently the Philippines has an extradition treaty with Taiwan, Indonesia, Canada, Australia, USA and Switzerland. So if the offender goes to any of these countries, the prescriptive period still continues to run.

In the case of the prescription of the penalty, the moment the convict commits another crime while he is fugitive from justice, prescriptive period of the penalty shall be suspended and shall not run in the meantime. The crime committed does not include the initial evasion of service of sentence that the convict must perform before the penalty shall begin to prescribe, so that the initial crime of evasion of service of sentence does not suspend the prescription of penalty, it is the commission of other crime, after the convict has evaded the service of penalty that will suspend such period.

Marriage

In the case of marriage, do not say that it is applicable for the crimes under Article 344. It is only true in the crimes of rape, abduction, seduction and acts of lasciviousness. Do not say that it is applicable to private crimes because the term includes adultery and concubinage. Marriages in these cases may even compound the crime of adultery or concubinage. It is only in the crimes of rape, abduction, seduction and acts of lasciviousness that the marriage by the offender with the offended woman shall extinguish civil liability, not only criminal liability of the principal who marries the offended woman, but also that of the accomplice and accessory, if there are any.

Co-principals who did not themselves directly participate in the execution of the crime but who only cooperated, will also benefit from such marriage, but not when such co-principal himself took direct part in the execution of the crime.

Marriage as a ground for extinguishing civil liability must have been contracted in good faith. The offender who marries the offended woman must be sincere in the marriage and therefore must actually perform the duties of a husband after the marriage, otherwise, notwithstanding such marriage, the offended woman, although already his wife can still prosecute him again, although the marriage remains a valid marriage. Do not think that the marriage is avoided or annulled. The marriage still subsists although the offended woman may re-file the complaint. The Supreme Court ruled that marriage contemplated must be a real marriage and not one entered to and not just to evade punishment for the crime committed because the offender will be compounding the wrong he has committed.

Partial extinction of criminal liability

Good conduct allowance

This includes the allowance for loyalty under Article 98, in relation to Article 158. A convict who escapes the place of confinement on the occasion of disorder resulting from a conflagration, earthquake or similar catastrophe or during a mutiny in which he has not participated and he returned within 48 hours after the proclamation that the calamity had already passed, such convict shall be given credit of 1/5 of the original sentence from that allowance for his loyalty of coming back. Those who did not leave the penitentiary under such circumstances do not get such allowance for loyalty. Article 158 refers only to those who leave and return.

Parole

This correspondingly extinguishes service of sentence up to the maximum of the indeterminate sentence. This is the partial extinction referred to, so that if the convict was never given parole, no partial extinction.

CIVIL LIABILITY OF THE OFFENDER

Civil liability of the offender falls under three categories:

(1) Restitution and restoration;

(2) Reparation of the damage caused; and

(3) Indemnification of consequential damages.

Restitution or restoration

Restitution or restoration presupposes that the offended party was divested of property, and such property must be returned. If the property is in the hands of a third party, the same shall nevertheless be taken away from him and restored to the offended party, even though

such third party may be a holder for value and a buyer in good faith of the property, except when such third party buys the property from a public sale where the law protects the buyer.

For example, if a third party bought a property in a public auction conducted by the sheriff levied on the property of a judgment creditor for an obligation, the buyer of the property at such execution sale is protected by law. The offended party cannot divest him thereof. So the offended party may only resort to reparation of the damage done from the offender.

Some believed that this civil liability is true only in crimes against property, this is not correct. Regardless of the crime committed, if the property is illegally taken from the offended party during the commission of the crime, the court may direct the offender to restore or restitute such property to the offended party. It can only be done if the property is brought within the jurisdiction of that court.

For example, in a case where the offender committed rape, during the rape, the offender got on of the earrings of the victim. When apprehended, the offender was prosecuted for rape and theft. When the offender was asked why he got on of the earrings of the victim, the offender disclosed that he took one of the earrings in order to have a souvenir of the sexual intercourse. Supreme Court ruled that the crime committed is not theft and rape but rape and unjust vexation for the taking of the earring. The latter crime is not a crime against property, this is a crime against personal security and liberty under Title IX of Book II of the RPC. And yet, the offender was required to restore or restitute the earring to the offended woman.

Property will have to be restored to the offended party even this would require the taking of the property from a third person. Where personal property was divested from the offended party pursuant to the commission of the crime, the one who took the same or accepted the same would be doing so without the benefit of the just title. So even if the property may have been bought by the third person, the same may be taken from him and restored to the offended party without an obligation on the part of the offended party to pay him whatever he paid.

The right to recover what he has paid will be against the offender who sold it to him. On the other hand, if the crime was theft or robbery, the one who received the personal property becomes a fence, he is not only required to restitute the personal property but he incurs criminal liability in violation of the Anti-Fencing Law.

If the property cannot be restituted anymore, then the damage must be repaired, requiring the offender to pay the value thereof, as determined by the court. That value includes the sentimental value to the offended party, not only the replacement cost. In most cases, the sentimental value is higher than the replacement value. But if what would be restored is brand new, then there will be an allowance for depreciation, otherwise, the offended party is allowed to enrich himself at the expense of the offender. So there will be a corresponding depreciation and the offended party may even be required to pay something just to cover the difference of the value of what was restored to him.

The obligation of the offender transcends to his heirs, even if the offender dies, provided he died after judgment became final, the heirs shall assume the burden of the civil liability, but this is only to the extent that they inherit property from the deceased, if they do not inherit, they cannot inherit the obligations.

The right of the offended party transcends to heirs upon death. The heirs of the offended party step into the shoes of the latter to demand civil liability from the offender.

<u>Reparation of the damage caused</u>

In case of human life, reparation of the damage cause is basically P50,000.00 value of human

life, exclusive of other forms of damages. This P50,000.00 may also increase whether such life was lost through intentional felony or criminal negligence, whether the result of dolo or culpa. Also in the crime of rape, the damages awarded to the offended woman is generally P30,000.00 for the damage to her honor. In earlier rulings, the amount varied, whether the offended woman is younger or a married woman. Supreme Court ruled that even if the offended woman does not adduce evidence or such damage, court can take judicial notice of the fact that if a woman was raped, she inevitably suffers damages. Under the Revised Rules on Criminal Procedure, a private prosecutor can recover all kinds of damages including attorney's fee. The only limitation is that the amount and the nature of the damages should be specified. The present procedural law does not allow a blanket recovery of damages. Each kind of damages must be specified and the amount duly proven.

Indemnification of consequential damages

Indemnification of consequential damages refers to the loss of earnings, loss of profits. This does not refer only to consequential damages suffered by the offended party; this also includes consequential damages to third party who also suffer because of the commission of the crime.

The offender carnapped a bridal car while the newly-weds were inside the church. Since the car was only rented, consequential damage not only to the newly-weds but also to the entity which rented the car to them.

Most importantly, refer to the persons who are civilly liable under Articles 102 and 103. This pertains to the owner, proprietor of hotels, inns, taverns and similar establishments, an obligation to answer civilly for the loss or property of their guests.

Under Articloe 102, two conditions must be present before liability attaches to the inkeepers, tavernkeepers and proprietors:

(1) The guest must have informed the management in advance of his having brought to the premises certain valuables aside from the usual personal belongings of the guest; and

(2) The guest must have followed the rules and regulations prescribed by the management of such inn, tavern, or similar establishment regarding the safekeeping of said valuables.

The Supreme Court ruled that even though the guest did not obey the rules and regulations prescribed by the management for safekeeping of the valuables, this does not absolve management from the subsidiary civil liability. Non-compliance with such rules and regulations but the guests will only be regarded as contributory negligence, but it won't absolve the management from civil liability.

Liability specially attaches when the management is found to have violated any law or ordinance, rule or regulation governing such establishment.

Even if the crime is robbery with violence against or intimidation of persons or committed by the inkeeper's employees, management will be liable, otherwise, not liable because there is duress from the offender, liable only for theft and force upon things.

Under Article 103, the subsidiary liability of an employer or master for the crime committed by his employee or servant may attach only when the following requisites concur:

(1) The employer must be engaged in business or in trade or industry while the accused was his employee;

(2) At the time the crime was committed, the employee-employerr relationship must be existing between the two;

(3) The employee must have been found guilty of the crime charged and accordingly held civilly liable;

(4) The writ of execution for the satisfaction of the civil liability was returned unsatisfied because the accused-employee does not have enough property to pay the civil liability.

When these requisites concur, the employer will be subsidiarily civilly liable for the full amount that his employee was adjudged civilly liable. It is already settled in jurisprudence that there is no need to file a civil action against the employer in order to enforce the subsidiary civil liability for the crime committed by his employee, it is enough that the writ of execution is returned unsatisfied. There is no denial of due process of law because the liability of the employer is subsidiary and not primary. He will only be liable if his employee does not have the property to pay his civil liability, since it is the law itself that provides that such subsidiary liability exists and ignorance of the law is not an excuse.

Civil liability of the offender is extinguished in the same manner as civil obligation is extinguished but this is not absolutely true. Under civil law, a civil obligation is extinguished upon loss of the thing due when the thing involved is specific. This is not a ground applicable to extinction of civil liability in criminal case if the thing due is lost, the offender shall repair the damages caused.

When there are several offenders, the court in the exercise of its discretion shall determine what shall be the share of each offender depending upon the degree of participation – as principal, accomplice or accessory. If within each class of offender, there are more of them, such as more than one principal or more than one accomplice or accessory, the liability in each class of offender shall be subsidiary. Anyone of the may be required to pay the civil liability pertaining to such offender without prejudice to recovery from those whose share have been paid by another.

If all the principals are insolvent, the obligation shall devolve upon the accomplice(s) or accessory(s). But whoever pays shall have the right of covering the share of the obligation from those who did not pay but are civilly liable.

To relate with Article 38, when there is an order or preference of pecuniary (monetary) liability, therefore, restitution is not included here.

There is not subsidiary penalty for non-payment of civil liability.

Subsidiary civil liability is imposed in the following:

(1) In case of a felony committed under the compulsion of an irresistible force. The person who employed the irresistible force is subsidiarily liable;

(2) In case of a felony committed under an impulse of an equal or greater injury. The person who generated such an impulse is subsidiarily liable.

The owners of taverns, inns, motels, hotels, where the crime is committed within their establishment due to noncompliance with general police regulations, if the offender who is primarily liable cannot pay, the proprietor, or owner is subsidiarily liable.

Felonies committed by employees, pupils, servants in the course of their employment, schooling or household chores. The employer, master, teacher is subsidiarily liable civilly, while the offender is primarily liable.

In case the accomplice and the principal cannot pay, the liability of those subsidiarily liable is absolute.

COMPLEX CRIME

Philosophy behind plural crimes: The treatment of plural crimes as one is to be lenient to the offender, who, instead of being made to suffer

distinct penalties for every resulting crime is made to suffer one penalty only, although it is the penalty for the most serious one and is in the maximum period. Purpose is in the pursuance of the rule of pro reo.

If be complexing the crime, the penalty would turn out to be higher, do not complex anymore.

Example: Murder and theft (killed with treachery, then stole the right).
Penalty: If complex – Reclusion temporal maximum to death.
If treated individually – Reclusion temporal to Reclusion Perpetua.

Complex crime is not just a matter of penalty, but of substance under the Revised Penal Code.

Plurality of crimes may be in the form of:

(1) Compound crime;

(2) Complex crime; and

(3) Composite crime.

A compound crime is one where a single act produces two or more crimes.

A complex crime strictly speaking is one where the offender has to commit an offense as a means for the commission of another offense. It is said that the offense is committed as a necessary means to commit the other offense. "Necessary" should not be understood as indispensable, otherwise, it shall be considered absorbed and not giving rise to a complex crime.

A composite crime is one in which substance is made up of more than one crime, but which in the eyes of the law is only a single indivisible offense. This is also known as special complex crime. Examples are robbery with homicide, robbery with rape, rape with homicide. These are crimes which in the eyes of the law are regarded only as a single indivisible offense.

Composite Crime/Special Complex Crime

This is one which in substance is made up of more than one crime but which in the eyes of the law is only a single indivisible offense. This is also known as a special complex crime. Examples are robbery with homicide, robbery with rape, and rape with homicide.

The compound crime and the complex crime are treated in Article 48 of the Revised Penal Code. But in such article, a compound crime is also designated as a complex crime, but "complex crimes" are limited only to a situation where the resulting felonies are grave and/or less grave.

Whereas in a compound crime, there is no limit as to the gravity of the resulting crimes as long as a single act brings about two or more crimes. Strictly speaking, compound crimes are not limited to grave or less grave felonies but covers all single act that results in two or more crimes.

Illustration:

A person threw a hand grenade and the people started scampering. When the hand grenade exploded, no on was seriously wounded all were mere wounded. It was held that this is a compound crime, although the resulting felonies are only slight.

Illustration of a situation where the term "necessary" in complex crime should not be understood as indispensable:

Abetting committed during the encounter between rebels and government troops such that the homicide committed cannot be complexed with rebellion. This is because they are indispensable part of rebellion. (Caveat: Ortega says rebellion can be complexed with common crimes in discussion on Rebellion)

The complex crime lies actually in the first form under Article 148.

The first form of the complex crime is actually a compound crime, is one where a single act constitutes two or more grave and/or less grave felonies. The basis in complexing or compounding the crime is the act. So that when an offender performed more than one act, although similar, if they result in separate crimes, there is no complex crime at all, instead, the offender shall be prosecuted for as many crimes as are committed under separate information.

When the single act brings about two or more crimes, the offender is punished with only one penalty, although in the maximum period, because he acted only with single criminal impulse. The presumption is that, since there is only one act formed, it follows that there is only one criminal impulse and correctly, only one penalty should be imposed.

Conversely, when there are several acts performed, the assumption is that each act is impelled by a distinct criminal impulse and for ever criminal impulse, a separate penalty. However, it may happen that the offender is impelled only by a single criminal impulse in committing a series of acts that brought about more than one crime, considering that Criminal Law, if there is only one criminal impulse which brought about the commission of the crime, the offender should be penalized only once.

There are in fact cases decided by the Supreme Court where the offender has performed a series of acts but the acts appeared to be impelled by one and the same impulse, the ruling is that a complex crime is committed. In this case it is not the singleness of the act but the singleness of the impulse that has been considered. There are cases where the Supreme Court held that the crime committed is complex even though the offender performed not a single act but a series of acts. The only reason is that the series of acts are impelled by a single criminal impulse.

CONTINUED AND CONTINUING CRIMES

In criminal law, when a series of acts are perpetrated in pursuance of a single criminal impulse, there is what is called a continued crime. In criminal procedure for purposes of venue, this is referred to as a continuing crime.

The term "continuing crimes" as sometimes used in lieu of the term "continued crimes", however, although both terms are analogous, they are not really used with the same import. "Continuing crime" is the term used in criminal procedure to denote that a certain crime may be prosecuted and tried not only before the court of the place where it was originally committed or began, but also before the court of the place where the crime was continued. Hence, the term "continuing crime" is used in criminal procedure when any of the material ingredients of the crime was committed in different places.

A "continued crime" is one where the offender performs a series of acts violating one and the same penal provision committed at the same place and about the same time for the same criminal purpose, regardless of a series of acts done, it is regarded in law as one.

In ***People v. de Leon****, where the accused took five roosters from one and the same chicken coop, although, the roosters were owned by different persons, it was held that there is only one crime of theft committed, because the accused acted out of a single criminal impulse only. However performing a series of acts but this is one and the same intent Supreme Court ruled that only one crime is committed under one information.*

In ***People v. Lawas,*** *the accused constabulary soldiers were ordered to march with several muslims from one barrio to another place. These soldiers feared that on the way, some of the Muslims may escape. So Lawas ordered the men to tie the Muslims by the hand connecting one with the other, so no one would run away. When the hands of the Muslims were tied, one of them protested, he did not*

want to be included among those who were tied becase he was a Hajji, so the Hajji remonstrated and there was commotion. At the height of the commotion, Lawas ordered his men to fire, and the soldiers mechanically fired. Eleven were killed and several others were wounded. The question of whether the constabulary soldiers should be prosecuted for the killing of each under a separate information has reached the Supreme Court. The Supreme Court ruled that the accused should be prosecuted only in one information, because a complex crime of multiple homicide was committed by them.

In another case, a band of robbers came across a compound where a sugar mill is located. The workers of said mill have their quarters within the compound. The band of robbers ransacked the different quarters therein. It was held that there is only one crime committed – multiple robbery, not because of Article 48 but because this is a continued crime. When the robbers entered the compound, they were moved by a single criminal intent. Not because there were several quarters robbed. This becomes a complex crime.

The definition in Article 48 is not honored because the accused did not perform a single act. There were a series of acts, but the decision in the Lawas case is correct. The confusion lies in this. While Article 48 speaks of a complex crime where a single act constitutes two or more grave or less grave offenses, even those cases when the act is not a single but a series of acts resulting to two or more grave and less grave felonies, the Supreme Court considered this as a complex crime when the act is the product of one single criminal impulse.

If confronted with a problem, use the standard or condition that it refers not only to the singleness of the act which brought two or more grave and/less grave felonies. The Supreme Court has extended this class of complex crime to those cases when the offender performed not a single act but a series of acts as long as it is the product of a single criminal impulse.

You cannot find an article in the Revised Penal Code with respect to the continued crime or continuing crime. The nearest article is Article 48. Such situation is also brought under the operation of Article 48.

In ***People v. Garcia,*** *the accused were convicts who were members of a certain gang and they conspired to kill the other gang. Some of the accused killed their victims in one place within the same penitentiary, some killed the others in another place within the same penitentiary. The Supreme Court ruled that all accused should be punished under one information because they acted in conspiracy. The act of one is the act of all. Because there were several victims killed and some were mortally wounded, the accused should be held for the complex crime of multiple homicide with multiple frustrated homicide. There is a complex crime not only when there is a single act but a series of acts. It is correct that when the offender acted in conspiracy, this crime is considered as one and prosecuted under one information. Although in this case, the offenders did not only kill one person but killed different persons, so it is clear that in killing of one victim or the killing of another victim, another act out of this is done simultaneously. Supreme Court considered this as complex. Although the killings did not result from one single act.*

In criminal procedure, it is prohibited to charge more than one offense in an information, except when the crimes in one information constitute a complex crime or a special complex crime.

So whenever the Supreme Court concludes that the criminal should be punished only once, because they acted in conspiracy or under the same criminal impulse, it is necessary to embody these crimes under one single information. It is necessary to consider them as complex crimes even if the essence of the crime does not fit the definition of Art 48, because there is no other provision in the RPC.

Duplicity of offenses, in order not to violate this rule, it must be called a complex crime.

In earlier rulings on abduction with rape, if several offenders abducted the woman and abused her, there is multiple rape. The offenders are to be convicted of one count of rape and separately charged of the other rapes.

In ***People v. Jose,*** *there were four participants here. They abducted the woman, after which, the four took turns in abusing her. It was held that each one of the four became liable not only for his own rape but also for those committed by the others. Each of the four offenders was convicted of four rapes. In the eyes of the law, each committed four crimes of rape. One of the four rapes committed by one of them was complexed with the crime of abduction. The other three rapes are distinct counts of rape. The three rapes are not necessary to commit the other rapes. Therefore, separate complaints/information.*

In ***People v. Pabasa,*** *the Supreme Court through Justice Aquino ruled that there is only one count of forcible abduction with rape committed by the offenders who abducted the two women and abused them several times. This was only a dissenting opinion of Justice Aquino, that there could be only one complex crimeof abduction with rape, regardless of the number of rapes committed because all the rapes are but committed out of one and the same lewd design which impelled the offender to abduct the victim.*

In ***People v. Bojas,*** *the Supreme Court followed the ruling in* ***People v. Jose*** *that the four men who abducted and abused the offended women were held liable for one crime – one count or forcible abudction with rape and distinct charges for rape for the other rapes committed by them.*

In ***People v. Bulaong****, the Supreme Court adopted the dissenting opinion of Justice Aquino in* ***People v. Pabasa,*** *that when several persons abducted a woman and abused her, regardless of the number of rapes committed, there should only be one complex crime of forcible abduction with rape. The rapes committed were in the nature of a continued crime characterized by the same lewd design which is an essential element in the crime of forcible abduction.*

The abuse amounting to rape is complexed with forcible abduction because the abduction was already consummated when the victim was raped. The forcible abduction must be complexed therewith. But the multiple rapes should be considered only as one because they are in the nature of a continued crime.

Note: This is a dangerous view because the abductors will commit as much rape as they can, after all, only one complex crime of rape would arise.

In adultery, each intercourse constitutes one crime. Apparently, the singleness of the act is not considered a single crime. Each intercourse brings with it the danger of bringing one stranger in the family of the husband.

Article 48 also applies in cases when out of a single act of negligence or imprudence, two or more grave or less grave felonies resulted, although only the first part thereof (compound crime). The second part of Article 48 does not apply, referring to the complex crime proper because this applies or refers only to a deliberate commission of one offense to commit another offense.

However, a light felony may result from criminal negligence or imprudence, together with other grave or less grave felonies resulting therefrom and the Supreme Court held that all felonies resulting from criminal negligence should be made subject of one information only. The reason being that, there is only one information and prosecution only. Otherwise, it would be tantamount to splitting the criminal negligence similar to splitting a cause of action which is prohibited in civil cases.

Although under Article 48, a light felony should not be included in a complex crime, yet by

virtue of this ruling of the Supreme Court, the light felony shall be included in the same information charging the offender with grave and/or less grave felonies resulting from the negligence of reckless imprudence and this runs counter to the provision of Article 48. So while the Supreme Court ruled that the light felony resulting from the same criminal negligence should be complexed with the other felonies because that would be a blatant violation of Article 48, instead the Supreme Court stated that an additional penalty should be imposed for the light felony. This would mean two penalties to be imposed, one for the complex crime and one for the light felony. It cannot separate the light felony because it appears that the culpa is crime itself and you cannot split the crime.

Applying the concept of the "continued crime", the following cases have been treated as constituting one crime only:

*(1) The theft of 13 cows belonging to two different persons committed by the accused at the same place and period of time (**People v. Tumlos, 67 Phil. 320**);*

(2) *The theft of six roosters belonging to two different owners from the same coop and at the same period of time (**People v. Jaranillo**);*

*(3) The illegal charging of fees for service rendered by a lawyer every time he collects veteran's benefits on behalf of a client who agreed that attorney's fees shall be paid out of such benefits (**People v. Sabbun, 10 SCAR 156**). The collections of legal fees were impelled by the same motive, that of collecting fees for services rendered, and all acts of collection were made under the same criminal impulse.*

On the other hand, the Supreme Court declined to apply the concept in the following cases:

(1) *Two Estafa cases, one which was committed during the period from January 19 to December, 1955 and the other from January 1956 to July 1956 (**People v. Dichupa, 13 Phil 306**). Said acts were committed on two different occasions;*

(2) *Several malversations committed in May, June and July 1936 and falsifications to conceal said offenses committed in August and October, 1936. The malversations and falsifications were not the result of one resolution to embezzle and falsify (**People v. CIV, 66 Phil. 351**);*

(3) Seventy-five estafa cases committed by the conversion by the agents of collections from the customers of the employer made on different dates.

In the theft cases, the trend is to follow the single larceny doctrine, that is taking of several things, whether belonging to the same or different owners, at the same time and place, constitutes one larceny only. Many courts have abandoned the separate larceny doctrine, under which there was distinct larceny as to the property of each victim.

Also abandoned is the doctrine that the government has the discretion to prosecute the accused for one offense or for as many distinct offenses as there are victims (Santiago v. Justice Garchitorena, decided on December 2, 1993). Here, the accused was charged with performing a single act – that of approving the legalization of aliens not qualified under the law. The prosecution manifested that they would only file one information. Subsequently, 32 amended informations were filed. The Supreme Court directed the prosecution to consolidate the cases into one offense because (1) they were in violation of the same law – Executive Order No. 324; (2) caused injury to one party only – the government; and (3) they were done in the same day. The concept of delito continuado has been applied to crimes under special laws since in Article 10, the

Revised Penal Code shall be supplementary to special laws, unless the latter provides the contrary.